

EWART

O'DWYER

Barristers and Solicitors

July 3, 2025

Township of North Kawartha
280 Burleigh Street, P.O. Box 550
Apsley ON K0L 1A0

VIA EMAIL: c.parent@northkawartha.ca

Attention: Connie Parent

Dear Ms. Parent:

**RE: Short-Term Rentals – Regulation – Short Term Rentals Committee
Our File No.: 3248 (General 2025)**

This letter will serve to confirm the meeting between yourself and other municipal staff as it relates to the above issue on June 25, 2025.

It is the writer's understanding that the Short-Term Rentals committee is considering means and methods by which short-term rentals included by regulated within the Township of North Kawartha.

The writer has had the opportunity to review the report of Ms. Stone dated June 26, 2025, and the recommendation that should the committee wish to regulate short-term rentals (STR's), it should be done so through means other than through zoning.

The writer concurs with that recommendation.

As noted by Ms. Stone, while STR's can be regulated through zoning, such step must be taken with caution as it may create unintended consequences and potential legal challenges. This was most recently the case involving the Corporation of the Township of Oro-Medonte and its attempt to regulate STR's through amendments to its zoning by-law.

The efforts of the Township of Oro-Medonte to regulate STR's through amendments to its comprehensive zoning by-law, is instructive to any municipality seeking to regulate STR's through zoning regulations.

By way of background, after several years of study, consultation and interim control by-laws, the Township of Oro-Medonte enacted By-law 2020-073 to amend an existing zoning by-law in an effort to address concerns about disruptive short-term rentals operating within the Township. Following the enactment of By-law 2020-073 in July 2020, the by-law was appealed to the Ontario Land Tribunal. In its decision of March 22, 2022, the Tribunal through written reasons dated August 24, 2022, found that By-law 2020-073 did not represent good planning and was not in the public's interest.

Following the decision of the Ontario Land Tribunal dated August 24, 2022, leave was granted to the municipality to appeal the decision of the Ontario Land Tribunal to the Divisional Court. This matter was heard before the Divisional Court on January 25, 2024 at which time the Divisional Court dismissed the appeal and upheld the decision of the Ontario Land Tribunal.

While the Township had appealed the decision of the Ontario Land Tribunal to Divisional Court on several grounds, the main focus of the appeal was on the basis that the Tribunal failed to correctly interpret the existing zoning bylaw and as a result, failed to correctly interpret the impact of By-law 2020-073.

Specifically, By-law 2020-073 was amended to add the following definition of "commercial accommodation" as follows:

"Commercial Accommodation – means temporary accommodation, lodging, or board and lodging, or occupancy in a building, dwelling or dwelling unit, hotel, motel, inn, bed & breakfast, or boarding house by way of concession, permit, lease, license, rental agreement or similar commercial arrangement for any period of 28 consecutive days or less throughout any part of a calendar year. For the purposes of this By-law, Commercial Accommodation does not include Village Commercial Resort Units."

While the intended effect of the expanded definition of commercial accommodation was to provided clarity to the zoning bylaw, the effect By-law 2020-073 was to prohibit any rentals for 28 days or less in a residential zone, including the rental of family cottages for a period of 28 days or less.

The Township further argued both before the Tribunal and the Divisional Court that By-law 2020-073, with the addition of "commercial accommodation", created a new permitted land use by clarifying that long-term rentals (more than 28 days) as expressly permitted in residential zones.

The Divisional Court however did not agree with the Township and found that the definition of "commercial accommodation" had the unintended effect of creating a new land use prohibition.

As such, the appeal was dismissed and the amendment to By-law 2020-073 was quashed pursuant to the Ontario Land Tribunal's earlier decision.

It is of note that the parties to the hearing both at the Tribunal and Divisional Court level agreed that there was a problem with short-term rentals in the Township. The parties also agreed that the Township had the authority to amend the zoning bylaw to deal with short-term rentals. However, both the Tribunal and the Divisional Court found that By-law 2020-073 was not a proportionate response because it would have also banned historically acceptable rentals rather than "the party houses" which were the focus of By-law 2020-073.

This was clearly not the intention of the Municipality but, in doing so, the Tribunal and Divisional Court ruled that the changes brought about by By-law 2020-073 were not consistent with the *Planning Act*, the Provincial Policy Statement (in effect at the time), the Provincial Growth Plan as well as the County of Simcoe Official Plan and the Township's Official Plan itself. As such, it did not represent good planning.

As noted above, the efforts by the Township of Oro-Medonte to regulate nuisance STR's through amendment to its zoning bylaws, although well intentioned, had the indirect effect of prohibiting those STR's which had historically operated and were benign in nature. This effect was obviously not contemplated at the time that municipal council passed By-law 2020-073.

The experience of the Township of Oro-Medonte in dealing with STR's serves to demonstrate the difficulty of implementing zoning bylaw amendments which do not at the same time, create permitted land uses and prohibited land uses. The use of zoning bylaw to regulate STR's, while permissible, is fraught with risk and requires very careful consideration of both the negative and positive impact such amendments can bring about.

Accordingly, unless the Township of North Kawartha has a clear understanding of what it wishes to achieve through the regulation of short-term rentals, the writer's recommendation is that of Ms. Stone, that other means be considered to regulate short-term rental operations. Such other means could include the vigorous enforcement of noise bylaws and parking bylaws as well as consideration of the passage of a nuisance bylaw, in accordance with the provisions of the *Municipal Act, 2001*. In doing so, the Municipality would then be in a position to avail itself to the enforcement of STR's in accordance with the *Provincial Offences Act* as well as through the application of administrative monetary penalties (AMP) as provided for by Section 434.1 of the *Municipal Act, 2001*.

In addition to the above enforcement mechanisms, the Township could consider a licencing program whereby STR's could only operate pursuant to the issuance of a licence in accordance with Section 151 of the *Municipal Act, 2001*. The granting of a licence would allow for the screening of any potential STR operation as well as the revocation of licence in the event that complaints are received regarding the operation together with an imposition of penalty for failure to comply with the licence requirements.


All of the above are possible alternatives to the Township considering the regulation of short-term rentals through the amendment the Township's comprehensive zoning bylaw which is possible but not recommended for those reasons set out above.

I trust the above is of assistance to you and the Short-Term Rentals committee in this matter.

Should you or the committee have any questions or concerns, I would be pleased to address same either in writer or by attending before the committee itself.

Very truly yours,

EWART O'DWYER



M. John Ewart
MJE/jlh