



## STAFF REPORT TO COUNCIL

**Department:** Planning                      **Staff Name:** Greg Corbett, PLANSCAPE INC.  
**Date:** July 10<sup>th</sup>, 2020                      **Report Number:** PL-041-20  
**Subject:** Zoning By-law Review  
Short-Term Rental Accommodations

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### **Purpose:**

As part of the Township's Zoning By-law Review, one of the issues identified for further review related to the emergence of short-term rental accommodations in the Township. The purpose of this report is to provide Council with background information on the issue of short-term rental accommodations and options available, to assist Council in making a decision on how such a use should be addressed in the Township of Algonquin Highlands.

### **Background:**

#### ***Introduction***

In Ontario, short-term rentals (STR) or "home-sharing" is one of the fastest growing sectors in the sharing economy. This growth has been driven by the emergence of on-line platforms that host listings and facilitate bookings and payments such as Airbnb and VRBO. According to the provincial guide on home-sharing, these on-line platforms are present in over 190 countries across the globe. This growth has resulted in a number of municipalities investigating the need for further regulation and/or licensing to address STR.

#### ***Defining Short-term Rental Accommodations***

The term 'short-term rental accommodation' is generally used to describe a wide range of rentals that occur over a short period, typically one to three days or a week but less than 30 days, within a residential dwelling that falls outside of traditional commercial accommodations such as hotel, motel, tourist establishment, and bed and breakfast. STR occur in various forms of residential dwellings, such as single-detached dwellings, semi-detached dwellings, duplexes, townhouses and apartments, but in the Township of Algonquin Highlands, STR are primarily associated with cottage rentals.

A STR can generally occur in three distinguishable ways:

- **Operator's Residence and Operator Present:** A property owner rents one or more bedrooms in the dwelling and is also present in the dwelling. This is similar to a traditional bed and breakfast.
- **Operator's Residence and Operator Not Present:** A property owner rents the entire dwelling while the dwelling is not being used but does use the dwelling themselves the majority of the time. This would be similar to a traditional cottage rental when the cottage owner may rent their cottage for a few weeks of the year when they are not using it to assist in paying the "carrying costs" of the cottage.
- **Not Operator's Residence and Operator Not Present:** A property owner may purchase a property, with no intention of residing or using the property, but rather rents it out for short periods of time to generate income. Such uses have been referred to as "ghost hotels", as there can be significant turnover of guests and prolonged times when the property is unoccupied.

### **Analysis:**

#### ***Short-Term Rental Accommodations in the Township of Algonquin Highlands***

The exact number of short-term rental accommodations within the Township of Algonquin Highlands is unknown, however a review of the various on-line rental platforms identifies approximately 100 short-term rental accommodations. As to be expected, the majority of these rental accommodations are located on the shoreline of the various lakes within the Township. **Appendix "1"** provides a listing of the units that have been identified. It is recognized this list does not likely capture all units available, such as those that may be rented through a real estate firm or private "word of mouth" but as some units listed may also be available on more than one platform, this balances with the unknown and as such, it is anticipate the total number available is close to the number identified to date.

#### ***Existing Regulations Pertaining to Short-Term Rentals in Algonquin Highlands***

##### **Official Plan**

The Township's Official Plan contains no specific policies related to short-term rental accommodations.

The Plan does contain policies related to Bed and Breakfast Establishments with Section 6.1.

Section 6.1 directs bed and breakfast establishments be permitted as an accessory use within a single detached dwelling provided:

- the physical character of the dwelling is not substantially altered;
- the use does not have a negative impact on the privacy and enjoyment of neighbouring properties;
- the number of rooms available for rent does not exceed three (3); and,
- adequate water, sewage disposal, parking facilities, buffering and access are provided on the site.

### Zoning By-law

Like the Official Plan, the Township's Comprehensive Zoning By-law does not contain any specific provisions related to short-term rental accommodations.

With respect to Bed and Breakfast establishments, such uses are permitted as an accessory use within the Rural (RU), Hamlet Residential (HR), Rural Residential (RR) and Shoreline Residential Type One (SR1) zones, but are not permitted within any other zones, including the Shoreline Residential Type 2 (SR2) zone.

In keeping with the Official Plan policy, the Zoning By-law defines a Bed and Breakfast as:

*“An owner occupied single detached dwelling in which no more than three (3) guest rooms are made available for temporary accommodation of the traveling or vacationing public; such an establishment may offer light meals to those persons temporarily residing at the establishment, but shall not include a restaurant or a tourist establishment.”*

### Implementation of Current Regulations

Generally, Zoning By-laws function by prohibiting all uses of land within a defined area unless specifically authorized in the Zoning By-law. As a short-term rental accommodation is not specifically identified as a permitted use in the Zoning By-law, it would suggest such a use is not permitted. However, a court decision did counter this argument.

The Superior Court of Justice in a 2015 case involving the short-term rental of a cottage property in the Township of Puslinch addressed this very issue. In that case, an individual owned a cottage property, which they used themselves but also rented it out when they were not using it. The Township argued the renting of the cottage was not a residential use but rather represented a tourist establishment use which was not permitted in the zone applicable to the property. The owner in turn argued the use of the cottage was the same, no matter who was using it, the owner or the renters. Although recognizing there was a difference in the use, the Court concluded the Township's Zoning By-law did not regulate short-term rentals and was too vague, uncertain and insufficiently specific with respect to the regulation of short-term rentals

and was never intended to prohibit short-term rentals. As a result of this decision, in order for a Municipality's Zoning By-law to regulate short-term rentals, the Zoning By-law needs to clearly address the issue of short-term rentals.

In keeping with this court decision, the rental of a dwelling unit on either a short-term or a long-term basis is currently permitted throughout the Township, and no special approvals or licensing is required. The rental of a room or a portion of a dwelling would be considered a Bed and Breakfast Establishment under the Township's Zoning By-law and would only be permitted as an accessory use to a single detached dwelling within certain zones.

It is understood some concerns have been raised with respect to STR and activities associated with their use, however Township staff have received very few formal written complaints to date with respect to STR in the Township.

### ***Impacts of Short-Term Rental Accommodation***

The impacts of short-term rentals on adjacent properties, neighbourhoods and the local economy can be both positive and negative. The issue of STR, and whether to regulate or not, has become relatively contentious in some municipalities. An assessment of community views and the identification of specific issues related to short-term rentals in the Township has not been undertaken as of yet. In general, the following negative impacts have been associated with STR:

- **Environmental:** this issue is primarily related to the overloading of a sewage disposal system beyond its intended capacity. This has been addressed in some municipalities by incorporating into their licensing a limit on the number of guests permitted within a unit, typical calculated as two people per bedroom plus two.
- **Parking:** It is often cited that the number of vehicles parking at a dwelling used as a short-term rental surpasses that normally accommodated on a strictly residential property. This can be addressed by requiring a greater parking requirement for a STR than a single detached dwelling. Within the Township, 2 parking spaces are currently required for a single detached residential unit and this could be revised for a STR to a requirement based on one parking space per guest room/bedroom, which would be more in line with a tourist establishment and bed and breakfast.
- **Noise:** Noise complaints are often cited as a concern with STR. The Township does have a By-law to Regulate Noise within the Township, By-law 2013-30, which is generally applicable to all properties within the Township.

- **Building Code and Safety:** Concerns have been raised that STR may not comply with the requirements of the Building Code and the Fire Code. This is an issue particularly when only a portion of a dwelling is being rented, such as a bedroom and as a result of the room being rented, the requirements of the Building Code and Fire Code applicable to the room change from that required if it were just a bedroom within a residential dwelling.
- **Housing Affordability:** Concerns have been raised respecting the purchasing of housing for STR use detracting from the available housing supply, thereby reducing the housing supply and raising housing prices. Similarly, the removal of units from the long-term rental housing market may negatively impact the supply and affordability of the rental market. As STR in the Township are primarily associated with recreational dwellings, this does not have the same impact as it does in larger urban areas.
- **Compatibility:** Concerns have been raised about STR changing the character of neighbourhoods by increasing the number of short-term guests and decreasing the number of long-term residents, thereby altering the social fabric of the neighbourhood. It is likely short-term rentals occurring in a dwelling that is not the operator's residence and when the operator is not present pose the greatest risk of causing neighbourhood issues.
- **Unfair Competition with traditional accommodation providers:** Traditional accommodation providers such as tourist establishments may feel that they are not on a level playing field with STR as the regulations and controls applicable to short-term rentals may be less onerous than those applicable to traditional accommodation providers. In addition, STR are paying residential property taxes as opposed to commercial property taxes.

Conversely, numerous benefits with STR have also been identified and include:

- **Increased accommodation options for visitors:** STRs provide an alternate form of accommodation for visitors from more traditional accommodations such as resorts, hotels, motels, etc.
- **Additional income for property owners:** The ability to obtain rental income from a property has provided some property owners with the additional income necessary to afford the carrying costs of the property.
- **Benefits to the tourism sector:** Increasing the opportunity for visitors to the Township benefits the entire tourism sector and many commercial operations.

### ***Experiences in Some Other Municipalities***

As indicated previously, the emergence and success of STR has resulted in a number of municipalities investigating the need for further regulation and/or licensing. The following provides a brief summary of how some municipalities in Ontario have addressed the issue. The Town of the Blue Mountains and the City of Toronto are perhaps the most well known in the planning realm as they both established regulations that were subsequently subject to OMB/LPAT appeals and upheld.

#### *Town of The Blue Mountains*

The Town of the Blue Mountains was the first municipality in Ontario to address the issue in 2009. The Town passed an Official Plan Amendment and Zoning By-law to address what they termed “Short Term Accommodation (STA)”, which were subsequently appealed to the Ontario Municipal Board and approved. An important aspect of the OMB decision was the confirmation that short term rentals did represent a unique form of use and the municipality was justified in distinguishing the use and imposing regulations separate from traditional residential use. The By-law directed STA uses to specific zones, established occupant loads, minimum separation requirements and to require Site Plan approval to address landscaping, parking, garbage, and servicing requirements. In addition to the Zoning By-law requirements, the Town of the Blue Mountains does licence short term accommodation uses and establishes a demerit point system, in which demerit points are incurred when complaints are received, fines can be imposed and once a threshold is reached, the license can be revoked.

#### *City of Toronto*

The City of Toronto approved the regulation of Short-term Rentals in December 2017 and January 2018. One of the principle reasons for the establishment of the regulations was the concern that short-term rentals was significantly impacting the housing supply and housing affordability. The zoning by-law amendment to regulate short-term rentals was appealed to the Local Planning Appeal Tribunal (LPAT) and LPAT upheld the By-law. The key points of the regulations are:

- Permitted in all housing types within residential zones and the residential component of mixed-use zones;
- Must be in the hosts principal residence only;
- Can rent up to three bedrooms or entire residence;
- Entire home can be rented if owner/tenant is away to a maximum of 180 nights per year;
- Host must register with the city, \$50 fee;

- Companies must become licensed and pay a fee of \$5,000 plus \$1 per night booked through platform;
- Hosts must pay 4% Municipal Accommodation Tax (MAT) on rentals of less than 28 consecutive days; and
- Platform companies can collect 4% MAT on behalf of hosts registered with their companies.

### Town of Huntsville

The Town of Huntsville, which is a combined urban/waterfront municipality, passed Zoning By-law 2020-8 in January 2020 to regulate STR for a temporary period of 2 years. The By-law defines STR and restricts to an entire single detached dwellings or up to 2 bedrooms within an owner occupied single detached dwelling. The By-law permits an STR as an accessory use to the permitted single detached dwelling within certain zones in the municipality. In accordance with the By-law, after two years the use must cease. In addition to passing a Temporary Zoning By-law Amendment, the Town also passed a Licensing By-law requiring all STR to be licensed. The Licensing By-law sets out requirements to obtain a license and regulations requiring its operation, together with set fines for the contravention of provisions of the License.

### Municipality of Whitestone

The Municipality of Whitestone, in the District of Parry Sound, is similar to the Township of Algonquin Highlands in that it is primarily a waterfront/rural municipality. The Municipality passed a zoning by-law and associated licensing by-law in 2014 to address rental uses within residential zones. The By-law permits rental units within the Rural, Rural Residential and Waterfront Residential zones. The By-law does not apply to a property rented for two weeks or less a year. The licensing application requires the following:

- Proof of ownership
- Survey or site plan;
- Sewage system permit;
- Building Permits must be finalized;
- Owner responsible for Rental Unit Insurance;
- Taxes paid in full;
- Notification to adjoining property owners;
- Property complies with all laws and regulations; and,
- \$200 application fee.

### Township of Muskoka Lakes

The Township of Muskoka Lakes, in the District of Muskoka, being perhaps the most prominent cottaging area in Ontario, initiated a review of the potential regulation of short-term cottage rentals in 2016. A Steering Committee to review the issue was subsequently established. Following meetings of the Steering Committee, rather than recommending a zoning by-law amendment to address short-term rentals and/or the establishment of a licensing system, the Committee recommended that the Township's existing By-laws pertaining to Noise Control and Parking be reviewed and updated and that a Code of Conduct be distributed to the public. The rationale was that the same impacts that were raised with short-term rentals, such as noise and parking, could result from the use of any property in the Township, whether rented or owned, waterfront, rural or urban. The issue continues to be raised at the Township from time to time, however no specific By-law has been enacted with respect to STR to date.

### *Township of Lake of Bays*

The Township of Lake of Bays, being one of the Township's neighbouring municipalities, is currently in the midst of reviewing the issue of STR. The Township placed a survey online to gather public input on the issue. The survey ended at the end of March. Due to the COVID-19 situation, no further information has been released to date.

### *Other Municipalities in County of Haliburton*

The other three municipalities in the County of Haliburton are currently in the midst of reviewing STR but have not as of yet put any regulations in place. Both the Township of Minden Hills and the Municipality of Highlands East undertook a survey of their residents to obtain public input on the issue. Due to the current COVID-19 situation, the matter is currently on hold in both municipalities. The Municipality of Dysart et al has also initiated a review of STR in their municipality.

### ***Options for Consideration***

There are generally four options to consider with respect to Short-Term Rentals (STR) in the Township. As part of all options, a public education and awareness program could be implemented

#### *Option 1 – Status Quo*

Maintain the status quo and have the Township's Official Plan and Zoning By-law continue to be silent on the issue of STR. Although not identified in the Zoning By-law, legal interpretations in other municipalities have been that STR can be considered as residential uses and thus are permitted where residential uses are permitted in the municipality. Given the continued expansion of the STR industry, it is envisioned that

the number of STR in the Township will continue to increase although there may be a temporary lull or reduction due to the current COVID-19 situation. As STR would be permitted and not subject to any regulatory provisions, there would be little cost involved in the administration or enforcement.

Option 2 – Prohibit STR in the Township

This option would entail defining STR in the Township's Zoning By-law and then specifically prohibiting. If this option were chosen, it would not prohibit STR that currently exist in the Township which would be considered legal non-conforming uses and would be permitted to continue to operate. There would likely be administrative and enforcement costs associated with this option as a zoning by-law amendment would be required and with the prohibition of the use, there would be enforcement costs associated with investigating complaints pertaining to new STR and even respecting STR which may enjoy legal non-conforming status.

Option 3 – Official Plan and/or Zoning By-law Amendments

This option would entail the drafting of Official Plan and/or Zoning By-law Amendments to establish areas within the Township where STR would be permitted and to establish provisions applicable to STR such as occupancy, servicing, parking, etc. This option would provide for the enforcement of STR through the Provincial Court process, which can be time consuming and expensive. It would also not address existing STR.

Option 4 – Official Plan and/or Zoning By-law Amendments and Licensing

This option would build upon Option 3 by also requiring that STR be licensed in accordance with the Municipal Act. This option would allow for the most comprehensive regulatory framework. It would establish the overall philosophy of the Township towards STR through the Official Plan, the implementation and regulation of the use through the Zoning By-law and the tracking, administration and enforcement through the licensing process. The licensing process allows for the Township to require additional information that the zoning by-law does not provide for such as confirmation of Building Code and Fire Code compliance, confirmation of insurance and others. The licensing also allows for the collection of fees to offset the additional administration fees and allows for the establishment of set fines for infractions. The licensing system will increase administrative time and cost, which even with the collection of a fee, is not likely to offset the additional costs. The experience from other municipalities has been that one licensing officer is required for each approximate 100 STR, in order to administer the licensing program.

### **Next Steps**

Prior to an option being selected, it is suggested public comments be obtained with respect to STR and the above-noted options. These comments could be obtained through either a public questionnaire and/or a public information session, either virtually or in-person at a future date when permitted.

With respect to the overall timelines associated with the Township Zoning By-law Review it is recommended Council meet again in late July or early August to discuss the other items identified in the May 27<sup>th</sup>, 2020 report to Council which include:

- Cannabis Production;
- Minimum Dwelling Size;
- Backyard Chicken;
- Legal Non-Conforming structures; and
- Additional matters.

Following further discussion with Council on the above matters staff plan to bring a line by line breakdown of the existing and proposed changes to the Zoning By-law for Council consideration in August. The exact timing on this could be impacted depending on the outcomes of the Service Delivery Review currently taking place.

### **Strategic Vision:**

This report has a direct link to the following points of Council's Strategic Vision:

1. Maintaining **infrastructure sustainability** that meets growing needs;
2. Ensuring continued development toward active and **robust environmental and sustainability plans** and initiatives;
3. Providing purposeful **community engagement**; and,
4. Creating an environment that fosters **year round economic, cultural and recreational vitality**.

### **Financial Impact:**

Costs associated with Zoning By-law Review and Short-Term Rentals have been budgeted for in 2020.

### **Recommendation:**

THAT Council acknowledges receipt of Report PL-041-20 regarding the Short-Term Rental Accommodations submitted by Greg Corbett, consulting planner for the Township and dated July 10, 2020.

Respectfully submitted,

PLANSCAPE INC.

A handwritten signature in black ink, appearing to read "Gregory I. Corbett", is written over a light gray rectangular background.

Gregory I. Corbett, M.PL, MCIP, RPP  
Planning Consultant