

STATE OF MINNESOTA
COUNTY OF WASHINGTON

DISTRICT COURT
TENTH JUDICIAL DISTRICT

John P. Norusis,

Plaintiffs,

v.

City of Marine on Saint Croix,

Defendant.

Case Type: Declaratory Judgment
Court File No.: 82-CV-20-3974

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

The Court has been presented with competing Motions for Summary Judgment. Both parties argue that the facts are undisputed and that they are entitled to judgment as a matter of law. But only John P. Norusis (“Norusis”) supported his Motion for Summary Judgment with admissible evidence as required by law. The City of Marine on Saint Croix (“City”) presented no admissible evidence in support of its Motion for Summary Judgment and therefore the City’s Motion must be denied as a matter of law.

The City did not offer an affidavit from its Mayor, any councilmember, the City Clerk, or Chairman of the Planning Commission in support of its request for summary judgment. Norusis asserts that is because the deposition testimonies from Lynette Peterson (City Clerk, Zoning Administrator, and Treasurer) and Gerald Mroska (Chairperson of the Planning Commission) were unequivocal that Short-Term Rentals (“STRs”) had not and would not injuriously affect the public health, morals, safety, convenience, or general welfare.

The City did not offer a single affidavit from a resident that STRs had injuriously affected the public health, morals, safety, convenience, or general welfare.

The City did not offer a single affidavit from a resident that Norusis had violated the Short-Term Rental Ordinance, Ordinance No. 2020-156 (“Ordinance”).

Instead, the only affidavit submitted by the City in support of its Motion was the Affidavit of Andrew A. Wolf dumping 700-plus pages of documents on this Court. But Mr. Wolf does not have personal knowledge as to the veracity of the documents attached to it. Mr. Wolf does not have personal knowledge of any purported injurious affect to the public health, morals, safety, convenience, or general welfare of the City relating to STRs. Because the City

failed to offer any admissible evidence, the Court need not delve into whether the facts are in dispute as the City has not offered any admissible evidence.

STRs had no injurious affect. This was not a proper exercise of the City's police powers, but a concerted and discriminatory effort aimed at Norusis because a few of his neighbors did not like having a formerly incarcerated individual living near them. The Ordinance unjustifiably treats different classes differently. The Ordinance is unconstitutional, the City's Motion must be denied, and Norusis' Motion should be granted.

ISSUES

1. Has the City supported its Motion with admissible evidence?

DOCUMENTS RELIED UPON

1. *Affidavit of John P. Norusis*, Doc. No. 45;
2. *Affidavit of Brandon M. Schwartz*, Doc. No. 46;
3. *Affidavit of Brandon M. Schwartz*, Doc. No. 61; and
4. *Affidavit of Brandon M. Schwartz*, dated June 25, 2021.

FACTS

Norusis fully incorporates by reference the Facts set forth in his Memorandum of Law in Support of Motion for Summary Judgment (Doc. No. 60) and will not burden the Court by again restating the same.

ARGUMENT

I. THE CITY FAILED TO SUPPORT ITS MOTION WITH ADMISSIBLE EVIDENCE.

The only affidavit or declaration offered by the City in support of its Motion for Summary Judgment was the Affidavit of its attorney, Mr. Wolf. But the Affidavit of Mr. Wolf suffers from two fatal defects. Mr. Wolf does not have foundation sufficient to authenticate the documents attached to his Affidavit and, second, nearly all of the documents are inadmissible hearsay. Because the City failed to support its Motion with any admissible evidence, the Motion fails and must be denied.

a. Mr. Wolf lacks foundation to authenticate documents.

Minn. R. Civ. P. 56.05 provides that “affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that **the affiant is competent to testify to the matters stated therein.**” (emphasis added). In deciding a motion for summary judgment, the District Court may only consider “material that **would be admissible in evidence or otherwise usable at trial.**” *State ex rel. Swanson v. Integrity Advance, LLC*, 846 N.W.2d 435, 440 (Minn. Ct. App. 2014) (emphasis added) *quoting Lundgren v. Eustermann*, 370 N.W.2d 877, 881 n. 1 (Minn. 1985). “Evidence offered to support or defeat a motion for summary judgment **must be such evidence as would be admissible at trial.**” *Twin Cities Metro-Certified Dev. Co. v. Stewart Title Guar. Co.*, 868 N.W.2d 713, 720 (Minn. Ct. App. 2015) (emphasis added); *Hopkins by LaFontaine v. Empire Fire and Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. Ct. App. 1991) (same).

A document must be authenticated to be admissible. Minn. R. Evid. 901(a). “It is well-established that ‘unauthenticated documents cannot be considered in a motion for summary

judgment.” *Besett v. Hegg*, 890 F.Supp.2d 1076, 1092 (D. Minn. 2012). The authentication requirement is “satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” *Id.* Counsel’s mere representation that a document attached is a “true and correct” copy cannot authenticate a document. *Id.* citing *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 777-78 (9th Cir. 2002) (holding that various documents were not authenticated, even though copies were attached to the attorney’s affidavit, because no testimony was introduced from the document author providing that they wrote the document, and explaining that the attorney’s affidavit does not lay foundation for the documents because he neither wrote them nor witnessed the author do so); *United States v. Dibble*, 429 F.2d 598, 602 (9th Cir. 1970) (“A writing is not authenticated simply by attaching it to an affidavit, even if the writing appears on its face to have originated from some governmental agency and the affiant is a government official. The foundation is laid for receiving a document in evidence by the testimony of a witness with personal knowledge of the facts who attests to the identity and due execution of the document and, where appropriate, its delivery.”). “For the exhibits to be admissible the affiant must be a person through whom the exhibits could be admitted into evidence.” *Besett*, 890 F.Supp.2d at 1092 (internal quotation omitted). **“An affidavit completed by an individual who may not properly testify at trial will have no effect.”** *Gutwein v. Edwards*, 419 N.W.2d 809, 812-13 (Minn. Ct. App. 1988) (emphasis added) citing *Peterson v. American Family Mutual Ins. Co.*, 160 N.W.2d 541, 545 (Minn. 1968).

Mr. Wolf’s Affidavit tries to introduce 107 exhibits. Mr. Wolf lacks foundation for the admission of nearly all of these exhibits and, as a result, the exhibits are not properly before the Court as they are inadmissible.

- Exhibits A1 – A36 are exhibits purporting to be minutes from Council Meetings and Planning Commission Meetings. Mr. Wolf has no foundation for the admission of Exhibits A1 – A36 as he is not the author nor custodian of any of these exhibits.
- Exhibits B1, B2, B3, B5, and B6¹ are resolutions and ordinances which Norusis does not object to from a foundational basis. Mr. Wolf lacks foundation for admission of Exhibit B4 as he is not the author nor custodian of Exhibit B4.
- Exhibits C1 – C46 are Public Comments. Mr. Wolf lacks foundation to offer into evidence each of the Public Comments as he is not the author nor custodian of any of these exhibits.
- Exhibits D1 – D3 are surveys and Mr. Wolf lacks foundation to offer into evidence each of the surveys as he is not the author nor custodian of any of these exhibits.
- Exhibits E1 – E3 contain alleged documents from the City’s Planning Commission. Mr. Wolf does not have foundation sufficient to introduce Exhibits E1 – E3 as he is not the author nor custodian of any of these exhibits.
- Exhibit F1 is an email from Mr. Mrosla to himself containing a cite to a 2016 article and Exhibit F2 is an email from Ms. Peterson to Mr. Mrosla (and others). Mr. Wolf lacks foundation to offer into evidence both exhibits as he is not the author nor custodian of any of these exhibits.

¹ Exhibit B6 is dated May 13, 2021 and appears to be the City’s belated efforts to address Norusis’ argument that the Ordinance is impossible to comply with, as first set forth in his Memorandum of Law filed on April 23, 2021 (Doc. No. 45) and addressed during the deposition of Ms. Peterson on April 7, 2021. At the pertinent time in question, the adoption of the Ordinance, the Ordinance was impossible to comply with and therefore unconstitutional.

- Exhibit G1 appears to be an email with a picture and illegibly small writing. Exhibit G2 is a letter from Ms. Peterson to Norusis which is unrelated to this litigation. Exhibits G3 – G7 are redacted complaint forms which do not have the name of the purported reporter and each of which is dated after the passage of the Ordinance. Mr. Wolf lacks foundation to offer into evidence Exhibits G1 – G7 as he is not the author nor custodian of any of these exhibits. And Exhibit G8 is not evidence – it is a letter from one of the City’s attorneys who also lacks any firsthand knowledge on which he could offer any testimony related to any actions by Norusis.
- Exhibits H, I and K are the deposition transcripts of Norusis, Ms. Peterson and Mr. Mroska, respectively. While Norusis does not object to Exhibits H, I and K being introduced, the City’s only citation to any of the three exhibits appears in footnote 1 referencing Norusis’ proper invocation of his Fifth Amendment² protections given the criminal nature of a violation of the Ordinance and the City’s Counterclaim.

The City’s Motion is unsupported by any admissible evidence. Under Minn. Gen. R. Prac. 115, the City cannot try to belatedly cure this defect – the City is only permitted to file a Reply pursuant to Minn. Gen. R. Prac. 115.03(c) and not any additional affidavits or exhibits. As a result, the City’s Motion must be denied.

b. The City’s inadmissible hearsay.

Even if Mr. Wolf had foundation for authentication of the Exhibits (he does not), the

² Because the City requested no relief related to Norusis’ proper invocation of his Fifth Amendment protections, Norusis will not further address the same. Suffice to say, the case law supports Norusis’ position.

City's Motion suffers from a second fatal defect – the City relies only on inadmissible hearsay. A summary judgment motion supported only by inadmissible hearsay can have only one result – denial.

Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is “not admissible” unless it meets one of the exceptions set forth in Minn. R. Evid. 803 or 804. Minn. R. Evid. 802. “When deciding any summary-judgment motion, the **district court must disregard hearsay evidence that would be inadmissible at trial.**” *In re Trusts A & B of Divine*, 672 N.W.2d 912, 921 (Minn. Ct. App. 2004) (emphasis added) *citing* *Murphy v. Country House, Inc.*, 240 N.W.2d 507, 511 (Minn. 1976) (stating that because affidavit contained inadmissible hearsay, it could not be considered in deciding summary-judgment motion); *Blackwell v. Eckman*, 410 N.W.2d 390, 391 (Minn. Ct. App. 1987) (affirming the trial court's disregard of hearsay evidence in determining no material fact issued existed in granting summary judgment); *Besett*, 890 F.Supp.2d at 1092 (“When an affidavit contains an out-of-court statement offered to prove the truth of the statement that is inadmissible hearsay, the statement may not be used to support or defeat a motion for summary judgment.” *Id. quoting* *Brooks v. Tri-Systems, Inc.*, 425 F.3d 1109, 1111 (8th Cir. 2005); *Pink Supply Corp. v. Hiebert, Inc.*, 788 F.2d 1313, 1319 (8th Cir. 1986).

1. Exhibits A1 – A36.

Exhibits A1 – A36 are minutes from Council Meetings and Planning Commission Meetings. The minutes are hearsay. In fact, the minutes are hearsay within hearsay. Thus, to be admissible, all aspects of the minutes must meet with a hearsay exception to be admissible.

Minn. R. Evid. 805.

While the minutes might meet the exclusion set forth in Minn. R. Evid. 803(8)(A), only statements in them attributable to public officials are admissible. *Carver v. Omsted County Housing and Redevelopment Authority*, 574 N.W.2d 725, n. 3 (Minn. Ct. App. 1998) (“But Minn. R. Evid. 803(8) applies only to statements made by public officials, so while the note from the caseworker would be admissible hearsay, the underlying statement by the landlord’s daughter would not.”) citing *City of Fairmont v. Sjostrom*, 157 N.W.2d 849, 853 (Minn. 1968). As a result, all statements attributable to the City’s residents are inadmissible hearsay.

In that regard, and glaringly barren from Exhibits A1 – A36, are any studies or data by the Planning Commission or any City representative which in any way establishes or even references any injurious affect from or likely injurious affect from STRs or events on the City, on any neighborhoods in the City, on any residents within the City, or any neighborhood quality in the City. Likewise, Exhibits A1 – A36 are glaringly barren of any studies or data by the City that STRs or events did or could increase crime, nuisance claims, or zoning violations. Exhibits A1 – A36 contain no evidence that there were any police calls because of STRs or events, criminal activity from STRs or events, noise complaints from STRs or events, or zoning violations written for STRs or events. The City did not retain any independent consultants to study the effect of STRs or events and did not conduct any cost-benefit analysis to regulating STRs or events. The City did not file a single affidavit from any individual with firsthand knowledge testifying to, explaining or contending that STRs or events had or would have an injurious affect. The utter lack of any factual support dooms the City’s case.

The case most heavily relied on by the City for its police power argument is compelling

in how a governmental body properly uses its police powers contrasted with what occurred here. In *Dean v. City of Winona*, 843 N.W.2d 249 (Minn. Ct. App. 2014), *review granted* (Minn. May 20, 2014) and *appeal dismissed* (Minn. Aug. 5, 2015), a case the City described as putting “all doubts to rest”,³ the City of Winona “decided to **seek studies and findings** on the effect of rental housing on the area.” *Id.* at 254 (emphasis added). The City of Winona formed a task force that found that “52% of the complaints received by the Community Development Department (CDD) related to rental properties.” *Id.* The task force also found that “student rental housing tend to become run-down and unattractive”, the “CDD found that 95 of the 99 addresses that had two or more calls for police service based on noise and party-related complaints were rental properties”, and the planning commission noted that “52% of the zoning violations that resulted in written violations during 2004 were for rental properties.” *Id.* The City of Winona also retained a consulting firm (the Hoinsington Koegler Group Inc.) to provide a report about the rental-housing concentration on neighborhood quality and livability which concluded that: “the concentration of rental housing in Winona results in increased levels of nuisance and police violations in those neighborhoods and that the concentration of rental housing leads to a decreased neighborhood quality and livability.” *Id.* at 255 (internal quotations omitted).

Based on these comprehensive studies finding an increase in crime, nuisances, zoning violations, and dilapidated properties from renting, the City of Winona adopted an ordinance that provided that rental properties must obtain certification from the City of Winona as a rental property and that only 30% of the number of lots on a block are eligible for such certification. *Id.* at 256. Here, the City did not seek out studies or findings, there is no evidence of any increased complaints or calls to the police, and there is no evidence that STRs or events led to

³ (Doc. No. 58, p. 22).

increased levels of nuisance or decreased neighborhood quality or livability. The City's adoption of the Ordinance was not a valid exercise of its police powers, but a law aimed at one individual (Norusis) because his neighbors do not like living next to someone who was formerly incarcerated. In this regard, the Ordinance is "clearly arbitrary, discriminatory, and unreasonable and without any substantial relation to public health, safety, morals, or general welfare."

Naegele Outdoor Advertising Co. of Minn. v. Village of Minnetonka, 162 N.W.2d 206, 209 (Minn. 1968) *citing Kiges v. City of St. Paul*, 62 N.W.2d 363, 369 (Minn. 1953). The arbitrary and discriminatory focus of the Ordinance was not disputed by the City's Chairman of the Planning Commission during his deposition:

Q The timing of it, Mr. Norusis buys his property in May of 2018, and then in June – or excuse me, July of 2018 there's discussion by the Planning Commission about regulating short-term rentals.

It looks like the regulation of short-term rentals is almost entirely focused on Mr. Norusis' property; correct?

A Possible.

(Doc. No. 61, **Exhibit A**, p. 65:14-21).

The Ordinance is discriminatory and arbitrary and without substantial relation to the public health, safety, or general welfare. How could the Ordinance have any such relation when it is undisputed that STRs and events had no injurious affect on the public health, safety, or general welfare? It could not. In fact, there is no admissible evidence that because of increased crime, or to protect against nuisances, or to increase neighborhood quality, the Ordinance was adopted. The Ordinance was adopted in hopes that it would force Norusis from the City and give Pine Cone Trail back to the neighbors who so vehemently dislike him. This is improper as there is a lack of a rational

relationship between the Ordinance and the general well-being. *See e.g. Nelson v. Peterson*, 313 N.W.2d 580 (Minn. 1981) (striking down an ordinance prohibiting state-employed attorneys who represented petitioners in workers' compensation cases from becoming workers compensation judges as irrational and violating equal protection); *Fairmont Foods Co. v. City of Duluth*, 110 N.W.2d 155, 157 (Minn. 1961) (striking down an ordinance restricting the bacteria count in raw milk as not reasonably related to public health); *City of St. Paul v. Dalsin*, 71 N.W.2d 855, 859 (Minn. 1955) (striking down an ordinance requiring roofers to qualify in warm air heating and ventilation because these had no reasonable relation to the roofing trade). Simply stated, there is no admissible evidence of any injurious affect or potential injurious affect from STRs or events; instead, the Ordinance was adopted to appease a select few Pine Cone Trail residents who do not like Norusis.

The City's summary judgment submission is also barren of any admissible evidence that even remotely explains any justification for the differential treatment under the Ordinance. The Ordinance restricts one class of persons (Type C) which are not imposed on others (Type A and B) engaged in the same business (STRs) and under similar circumstances. There is no evidence, information, data, or studies that Type C STRs caused higher crime or more nuisance calls or more domestic disturbances than Type A or B STRs. In fact, there is no justification at all for the differential treatment. The lack of any admissible evidence supporting the differential treatment requires a holding that the Ordinance violated the equal-protection clause. *Matter of Griepentrog*, 888 N.W.2d 478, 491 (Minn. Ct. App. 2016) ("A facial equal-protection challenge

alleges that the statute creates at least two classes of individuals, which are treated differently under the statute, and that this difference in treatment cannot be justified.”) citing *In re McCannel*, 301 N.W.2d 910, 916 (Minn. 1980); *City of St. Paul*, 71 N.W.2d at 860 (declaring ordinance unconstitutional); *In re McCannel*, 301 N.W.2d at 916 (“the equal protection clause provides protection against arbitrary discrimination resulting from the express terms of a statute as well as from a statute’s improper execution”); *Weir v. ACCRA Care, Inc.*, 828 N.W.2d 470, 476 (Minn. Ct. App. 2013) (holding that Minn. Stat. § 268.035, subd. 20(20) (2012) violated equal protection because it provided that immediate-family-member caregivers were not covered under the unemployment statutes but non-immediate-family-member caregivers were covered); *Healthstar Home Health, Inc. v. Jesson*, 827 N.W.2d 444, 447, 449, 453 (Minn. Ct. App. 2012) (holding that a pay cut imposed on relative caregivers but not on caregivers who were unrelated to their patients violated equal protection because both groups were “required to comply with the same statutes, rules and regulations” and were thus similarly situated).

2. Exhibits B1-B6.

Exhibits B1 – B6 do not contain any admissible evidence that the Ordinance has any, let alone the required “substantial relationship to public health, safety, morals, or general welfare” necessary for the City’s police power to be constitutional. *County of Freeborn v. Claussen*, 203 N.W.2d 323, 326 (Minn. 1972).

3. Exhibits C1 – C46.

Each of the Public Comments set forth in Exhibits C1 – C46 are hearsay and inadmissible pursuant to Minn. R. Evid. 801(c) and are inadmissible under Minn. R. Evid. 802. Exhibits C1 –

C46 must be disregarded as a matter of law.

4. Exhibit D1 – D3.

Exhibits D1 – D3 are 88 surveys, each containing the hearsay statements of City residents, and a summary of the survey results. Exhibits D1 – D3 are inadmissible hearsay pursuant to Minn. R. Evid. 801(c), are inadmissible under Minn. R. Evid. 802, and must be disregarded as a matter of law.

5. Exhibits E1 – E3.

Exhibit E1 simply states on the top “Short Term Rentals Review”. There is no explanation or basis as to what Exhibit E1 purports to represent.

Exhibit E2 is titled “Initial Planning Commission Findings”, however, the document does not contain any actual findings. Instead, Exhibit E2 appears to be a summary of what the Planning Commission had reviewed and the initial outline of what ultimately became the Ordinance.

Exhibit E3 is titled “Short Term Rentals – Parameters for Draft Ordinance”.

Exhibits E1 – E3 are all inadmissible hearsay pursuant to Minn. R. Evid. 801(c), are inadmissible under Minn. R. Evid. 802, and must be disregarded as a matter of law. Moreover, Exhibits E1 – E3 do not contain any evidence that restraints upon STRs were necessary for the general welfare.

6. Exhibits F1 – F2.

Exhibit F1 is an email from Mr. Mrosła to himself containing a cite to a 2016 article and Exhibit F2 is an email from Ms. Peterson to Mr. Mrosła (and others). Both emails are inadmissible hearsay pursuant to Minn. R. Evid. 801(c), are inadmissible under Minn. R. Evid.

802, and must be disregarded as a matter of law.

7. Exhibits G1 – G7.

Exhibits G1 – G8 are the “evidence” offered by the City in purported support of its Counterclaim asserting that Norusis violated the Ordinance. As a reminder, a violation of the Ordinance is a criminal misdemeanor. And the only evidence offered by the City are the redacted complaint forms which lack the name of the purported reporter/witness and which are inadmissible hearsay under Minn. R. Evid. 801(c) and 802 as they are not sworn to under oath.

Moreover, Exhibits G1 – G8 violate Norusis’ constitutional right to be “confronted with the witnesses against him”. Minn. Const. art. 1, § 6. There is no criminal prosecution in which the state can offer unverified letters from undisclosed witnesses as the exclusive basis for establishing criminal liability. Such a proposition is absurd.

In *State v. Reinke*, 702 N.W.2d 308 (Minn. Ct. App. 2005), relied on by the City in support of its allegation that Norusis violated the Ordinance, there was an actual trial in which the sheriff testified about ordinance violations. Rather than relying on unverified, redacted, hearsay complaints, the State offered actual admissible evidence – distinguishable from the City’s summary judgment submission.

The City also relies on the “detailed and well-written 49-page order” of Judge Hoffman in *Town of W. Lakeland v. Auleciems* in purported support of its Counterclaim against Norusis. To begin, the ordinance at issue was not challenged as unconstitutional as it is here. Even so, the evidentiary distinctions between this matter and *Town of W. Lakeland* are enormous and establish the impropriety of the City’s Motion. In *Town of W. Lakeland*, there was an actual evidentiary hearing in which Sergeant Gribble, Town Chairman Daniel Kylo, Sylvia Zinn,

Jennifer Rolf, Jo Iverson, Barbara Erickson, Connor Urman, and Stephanie Kilby each provided testimony, under oath, and based on their own personal knowledge about the defendants' violations. **Exhibit A** to *Affidavit of Brandon M. Schwartz*, Finding of Fact, ¶¶ 26, 52, 79, 85, 88, 96, 104.⁴ The City has not presented a single witness who has provided any testimony under oath and based on their own personal knowledge that Norusis violated the Ordinance.

It is also crucial to note that each of the unverified and redacted complaint forms attached as Exhibits G1 – G7 occurred after the adoption of the Ordinance. It therefore strains credibility to argue that the complaint forms support that STRs had an adverse impact on the City thereby necessitating the adoption of the Ordinance.

8. Exhibits H, I and K.

Exhibits H, I and K are the deposition transcripts of Norusis, Ms. Peterson and Mr. Mrosła, respectively. There is no testimony, under oath, that STRs or events had injuriously affected the public health, morals, safety, convenience, or general welfare of the City which is why the City does not specifically cite the Court to any page or line of any transcript. To the contrary, the testimony was crystal clear that STRs had no negative impact and had no potential to have a negative impact on the City:

Ms. Peterson Testimony:

Q Are you aware of any injurious effect or injuries to the public from short-term rentals?

A No.

⁴ Distinguishable from the inadmissible exhibits attached to the Affidavit of Mr. Wolf, the Court could simply take judicial notice of the *Findings of Fact, Conclusions of Law, Order for Judgment and Judgment of the Town of W. Lakeland* decision attached as **Exhibit A** to the *Schwartz Aff.* and as Norusis is not offering the decision for evidentiary purposes, but to establish the lack of evidentiary support proffered by the City.

Q Are you aware of any injurious effect to the public health from Mr. Norusis's use of the property?

A No.

Q Are you aware of any injurious effect to the morals of the City from short-term rentals?

A No.

Q Are you aware of any injurious effect to the morals of the City from Norusis's use of the property?

A To the City specifically?

Q Correct.

A Outside of that he currently does not have a license to run it, no.

Q Are you aware of any injurious effect to the safety of the city's residents from short-term rentals?

A Outside of complaints that we've received from adjacent property and neighbors, but nothing specific.

Q Sure. And I want to -- just so that we have a clear record, Ms. Peterson, the first question was as it relates to short-term rentals in general, okay, and then I'll ask you about Mr. Norusis's property specifically. Okay?

A Okay.

Q And I understand complaints about the property. Are you aware of any injurious effect to the safety of the city's residents from short-term rentals?

A No.

Q Are you aware of any injurious effect to the safety of the city's residents from Norusis's use of the property?

A No.

Q Are you aware of any injurious effect to the convenience of the city's residents from short-term rentals?

A No.

Q Are you aware of any injurious effect to the convenience of the city's residents from Norusis's use of the property?

A No.

Q Are you aware of any injurious effect to the general welfare of the city's residents from short-term rentals?

A No.

Q Are you aware of any injurious effect to the general welfare of the city's residents from Norusis's use of the property?

A No.

(Doc. No. 46, **Exhibit A**, p. 19:15-21:19).

Mr. Mrosla Testimony:

Q The first minutes, just for a point of reference that I can find in the Planning Commission related to short-term rentals is a July 12th, 2018, City Council meeting minute, all right, just using that for point of reference.

A Okay.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the public health from short-term rentals?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the public health from Norusis's use of the property?

A No, sir.

Q You know -- I'm sorry. I don't mean to butcher it. It's Mrosla; right?

A Mrosła.

Q Do you know the address of Mr. Norusis's property?

A I know it's on Pine Cone Trail. I don't know the address.

Q Does 801 Pine Cone Trail sound accurate?

A Yes.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the morals of the City from short-term rentals?

A No, sir.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the morals of the City from Norusis's use of the property?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the safety of citizens from short-term rentals?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the safety of citizens from Norusis's use of the property?

A No, sir.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the convenience of the citizens of the City from short-term rentals?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the convenience of the citizens of the City from Norusis's use of the property?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the general welfare of the citizens of the City from short-term rentals?

A No.

Q Prior to July 12th of 2018, are you aware of any injurious effect to the general welfare of the citizens of the City from Norusis's use of the property?

A No.

Q Now I want to ask you about prior to the passage of the ordinance. If I call it the ordinance, can we have an understanding that we're referring to Ordinance 2020-156, which was the short-term rental ordinance?

A Sounds correct.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the public health from short-term rentals?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the public health from Norusis's use of the property?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the morals of the City from short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the morals of the City from Norusis's use of the property?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the safety of the citizens from short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the safety of the citizens of the City from Norusis's use of the property?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the convenience of the citizens of the City from short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the convenience of the citizens of the City from Norusis's use of the property?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the general welfare of the citizens of the City from short-term rentals?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any injurious effect to the general welfare of the City from Norusis's use of the property?

A No, sir.

(Doc. No. 61, **Exhibit A**, p. 23:14-27:24).

Ms. Peterson Testimony:

Q Prior to July 12th of 2018, are you aware of how many police calls were reported to the City regarding John's use of the property?

A None.

Q Prior to July 12th of 2018, are you aware of how many noise related complaints were reported to the City due to short-term rentals?

A None.

Q Prior to July 12th of 2018, are you aware of how many noise-related complaints were made to the City?

A None.

Q Prior to July 12th of 2018, are you aware of how many zoning violations were written due to short-term rentals in the City?

A None.

Q Prior to July 12th of 2018, are you aware of how many zoning violations were written due to John's use of the property?

A None.

Q Prior to July 12th of 2018, are you aware of how many nuisance complaints were made to the City?

A None.

Q Prior to July 12th of 2018, are you aware of how many nuisance complaints were made to the City due to John's use of the property?

A None.

Q Prior to July 12th of 2018, are you aware of how many crimes were reported to the City due to short-term rentals?

A None.

Q Prior to July 12th of 2018, are you aware of how many crimes were reported to the City due to John's use of the property?

A None.

Q Prior to July 12th of 2018, did the City retain any independent consultants to study the impact of short-term rentals?

A No.

Q Prior to July 12th of 2018, did the City retain any independent consultants to study the impact of John's use of the property?

A No.

Q I'm going to ask you a similar line of questions, but this time I'm asking you prior to the passage of the ordinance. Okay? So I asked you prior to July of 2018.

Prior to the passage of the ordinance, are you aware of how many police calls were made to the City due to short-term rentals?

A None.

Q Prior to the passage of the ordinance, are you aware of any how many police calls were made to the City due to John's use of the property?

A None.

Q Prior to the passage of the ordinance, are you aware of how many noise-related complaints were made to the City due to short-term rentals?

A I don't know.

...

Q Prior to the passage of the ordinance, are you aware of how many noise-related complaints were made due to John's use of the property?

A I don't know.

Q Prior to the passage of the ordinance, are you aware of any zoning violations that were written due to short-term rentals in the City?

A Prior to the passage of the ordinance, no.

Q Prior to the passage of the ordinance, are you aware of any zoning violations written due to John's use of the property?

A No

...

Q (By Mr. Schwartz, continuing) Prior to the passage of the ordinance, are you aware of any crimes that were reported to the City due to short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any crimes that were reported to the City due to Mr. Norusis's use of the property?

A No.

Q Prior to the passage of the ordinance, did the City retain any independent consultants to study the impact of short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any independent consultants retained by the City to study the impact of John's use of the property?

A No.

(Doc. No. 46, **Exhibit A**, p. 30:2-35:19).

Mr. Mrosla Testimony:

Q Prior to the passage of the ordinance, are you aware of any police calls made due to short-term rentals in the City?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any police calls made due to Norusis's use of the property?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any noise-related complaints made due to short-term rentals in the City?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any noise-related complaints made due to Norusis's use of the property?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any zoning violations written by the City due to short-term rentals?

A No, sir.

Q Prior to the passage of the ordinance, are you aware of any zoning violations issued by the City to Norusis from the use of his property?

A No.

Q Prior to the passage of the ordinance, are you aware of any nuisance complaints made due to short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any nuisance complaints made related to Norusis's use of the property?

A No.

Q Prior to the passage of the ordinance, are you aware of any crimes committed in the City due to short-term rentals?

A No.

Q Prior to the passage of the ordinance, are you aware of any crimes committed related to Norusis's use of the property?

A No, sir.

...

Q Are you aware of any increased crime or noise complaints or nuisances from commercial or social events being held at a short-term rental?

A No.

(Doc. No. 61, **Exhibit A**, p. 37:4-38:18, 62:17-20).

Ms. Peterson Testimony:

Q Are you aware of any studies⁵ that the City conducted on the effect of short-term rentals on any city resident?

A No. I'm not aware of any.

Q Are you aware of any studies that the City conducted on the effect of John's use of the property on any city resident?

A No.

Q Are you aware of any studies the City conducted regarding the impact of short-term rentals on neighborhood quality?

A I don't know.

Q You're not aware of any; correct?

A Correct.

Q Are you aware of any studies the City conducted regarding John's use of the property on neighborhood quality?

A No.

Q Are you aware of any studies the City conducted regarding crime in the city related to short-term rentals?

A No.

Q Are you aware of any studies the City conducted regarding crime in the city related to John's use of the property?

A No.

Q Are you aware of any studies the City conducted regarding nuisance claims in the city related to short-term rentals?

A No.

⁵ Ms. Peterson confirmed that when questioned about any “studies” or “data”, she was confirming that the City had no such documents establishing any injurious affect from STRs. (Doc. No. 46, **Exhibit A**, p. 93:12-25).

Q Are you aware of any studies the City conducted regarding nuisance claims in the city related to John's use of the property?

A No.

Q Are you aware of any studies the City conducted regarding zoning violations in the city related to short-term rentals?

A No.

Q Are you aware of any studies the City conducted regarding zoning violations in the city related to John's use of the property?

A No.

...

Q My question is, are you aware of any comprehensive cost-benefit analysis on the impact of short-term rentals in Marine that was conducted by the City?

A No.

...

Q Are you aware of any studies that the City conducted regarding the impact of holding weddings?

A As part of the ordinance or in general?

Q In general.

A No.

...

Q Are you aware of any studies that were conducted relating to the impact of holding events?

A Not studies no.

Q Are you aware of any data that the City maintains related to crime regarding weddings being held within the city?

A No.

Q Are you aware of any data that the City maintains related to crime for events being held within the city?

A No.

...

Q Are you aware of any studies conducted by the City related to the recommendation that a short-term rental be limited to 14 days per calendar month and 72 days per calendar year?

A No.

Q Are you aware of any studies conducted by the City related to why short-term rental type A and B are permitted, but short-term rental type C is not?

A No.

...

Q Are you aware of any studies that the City conducted regarding percentages of days in which a property is rented out?

A No.

(Doc. No. 46, **Exhibit A**, p. 19:15-21:19, 48:8-12, 59:19-24, 60: 14-24, 67:8-17, 68:4-7).

Mr. Mrosla Testimony:

Q Are you aware of any studies conducted by the City on the effect of short-term rentals on any neighborhoods?

A No.

Q Are you aware of any studies conducted by the City on the effect of Norusis's use of the property on any neighborhoods?

A No.

Q Are you aware of any studies conducted by the City on the effect of short-term rentals on any City resident?

A No.

Q Are you aware of any studies conducted by the City on the effect of Norusis's use of the property on any City resident?

A No, sir.

...

Q Are you aware of any studies that the City conducted related to crime in the City from short-term rentals?

A No, sir.

Q Are you aware of any studies that the City conducted related to crime in the City regarding Norusis's use of the property?

A No, sir.

Q Are you aware of any studies the City conducted regarding nuisance claims in the City related to short-term rentals?

A I don't recall.

Q Are you aware of any studies the City conducted regarding nuisance claims in the City related to Norusis's use of the property?

A No, sir.

Q Are you aware of any studies the City conducted regarding zoning violations in the City from short-term rentals?

A No, sir.

Q Are you aware of any studies the City conducted regarding zoning violations in the City related to Norusis's use of the property?

A No, sir.

...

Q Did the City retain any independent consultants to study the impact of short-term rentals?

A I don't believe so.

Q Did the City retain any independent consultants to study the impact of Norusis's use of the property?

A No.

(Doc. No. 61, **Exhibit A**, p. 32:20-33:6, 34:20-35:18, 38:19-25).

The City has only offered inadmissible hearsay in support of its Motion. The Ordinance is unconstitutional. There are no facts supporting the City's argument that STRs and events had or could injuriously affect the City thereby demanding governmental interference with the private business and rights of the City's residents. As a result, there also is no admissible fact that Norusis violated the Ordinance. The City's Motion must, as a matter of law, be denied.

II. IF A ZONING ORDINANCE, NORUSIS MUST BE PERMITTED TO CONTINUE HIS USE OF THE PROPERTY.

The admissible testimony in the record is undisputed as to Norusis' lawful use of the Property before adopting the Ordinance:

- Before purchasing the Property, Norusis confirmed with the City, specifically the City's Clerk, Zoning Administrator, and Treasurer (Lynette Peterson), that the City did not have any ordinance or regulation prohibiting or otherwise regulating long-term or STRs within the City's limits. (Doc. No. 45, ¶ 5; Doc. No. 46, **Exhibit A**, p. 16:17-24):

Q When was the first time that you can recall speaking with John Norusis?

A I believe he – well, he contacted me, I don't remember the exact date, but he contacted me to let me know that – or to question whether or not the City allowed short-term rentals. **And I told him that the City at the time did not regulate short-term rentals.**

Q Do you know when that conversation occurred?

A I don't remember the date exactly.

Q Do you know if that was before or after Mr. Norusis purchased the property in Marine?

A I believe it was before.

(Doc. No. 46, **Exhibit A**, p. 53:11-14 (emphasis added)).

- Before purchasing the Property, Norusis confirmed with the City, specifically Ms. Peterson, that no permit was required from the City to hold a wedding or other social event at the Property. (Doc. No. 45, ¶ 6; Doc. No. 46, **Exhibit A**, p. 17:17-18:8):

Q Did he also ask you about holding weddings at the property?

A Yes.

Q And when I say ask you about, during this initial conversation.

A Yes.

Q Was this initial conversation in person or over the telephone?

A I believe it was over the phone.

Q What specifically did Mr. Norusis ask you about holding weddings at the property?

A I believe he asked if there was any permits required or if it was allowed.

I told him at the time the City did not regulate weddings.
However, we did have ordinances that regulated noise and parking on public streets.

(Doc. No. 46, **Exhibit A**, p. 53:15-18 (emphasis added)).

- As of May 17, 2018, the City did not have any ordinances or regulations prohibiting or otherwise regulating long-term rentals or STRs within the City’s limits. (Doc. No. 45, ¶ 7; Doc. No. 46, **Exhibit A**, p. 16:17-24).
- As of May 17, 2018, the City did not have any ordinances or regulations mandating permits be issued from the City to hold a wedding or other social event at the Property. (Doc. No. 45, ¶ 8; Doc. No. 46, **Exhibit A**, p. 17:17-18:8).

Norusis’ use of the Property for STRs and events was a permitted use. Otherwise, there would have been no need to adopt the Ordinance – the City could have simply relied on some pre-existing provision of the Code or Zoning Ordinance and issued Norusis a citation for violating the same. Most notably, the City did not. And if the City had a provision of the Code or Zoning Ordinance regulating STRs or events, the City’s most capable and honest Clerk and Zoning Administrator would have pointed Norusis to the same. She did not.

As a result, Norusis’ prior use of the Property for STRs and events must be permitted to continue. *AIM Dev. (USA), LLC v. City of Sartell*, 946 N.W.2d 330, 335 (Minn. 2020) (a legal non-conforming use “is a use of land that is prohibited under a current zoning ordinance but nonetheless is permitted to continue because the use lawfully existed before the ordinance took effect.”); Minn. Stat. § 462.357, subd. 1e(a); Section 401 of the Marine on St. Croix Zoning Ordinance.

If the Court holds that the Ordinance is a zoning ordinance, Norusis’ use of the Property as a STR and for events must, as a matter of law, be permitted to continue thereby necessitating the denial of the City’s Motion.

CONCLUSION

Norusis asks the Court to deny the City's Motion for Summary Judgment as it lacks factual support and to grant his Motion for Summary Judgment.

Dated: June 24, 2021

Sincerely,
SCHWARTZ LAW FIRM

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minnesota Statute § 549.211.

Dated: June 24, 2021

Sincerely,
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