MEMO

Date: April 15, 2012

To: Alexandria Town Board

From: Ben Oleson, Hometown Planning
Zoning Administrator, Alexandria Township

Re: Zoning Administrator's Report

I will be unable to attend your April 16 meeting, but can be available by phone up until about 6:45pm if there is a need to call me.

There are two issues that I would like to present to the Town Board for discussion and direction. They are:

1. Interpretation of the Township's existing regulations regarding "vacation rental" of single-family homes or townhomes.
2. Interpretation of whether a product called "Turfstone" is considered impervious or pervious.

Vacation Rentals

Staff has been approached by at least two individuals in the last couple weeks regarding the Township's regulations regarding vacation rentals. They were primarily wondering if there were any permit requirements for such a use.

The Township's ordinance is largely silent on the issue. Nowhere is the term "vacation rental" used. However, the ordinance does reference "resort", which is defined as:

> **RESORT** - One or more, together with accessory buildings, buildings available for rent or lease as a temporary residence to transient visitor and rented on a daily or weekly basis and used for the purpose of providing private recreational opportunities for guests.

Douglas County has previously attempted to enforce a restriction on the operation of vacation rental of a single-family home (saying that it required a conditional use permit) in 2006. The county's contention was that vacation rental of a single-family home on a weekly or nightly basis met the definition of a "resort" and also a "commercial planned unit development (PUD)".

The case went to court, where the County's argument was rejected by both the District Court and the Court of Appeals. In Staff's reading of the decision (see attached), it seems that the Court of Appeals agreed that vacation rental of a single-family home met the definition of "resort," but not a "commercial planned unit development". Since the County's ordinance only referenced "commercial PUDs" and not "resorts" when listing out permitted and conditional uses, the court found that vacation rental of a single-family home was not prohibited, and thus allowed.

Since the Township's ordinance largely mirrors the Douglas County ordinance, there is also no mention of "resort" in the list of permitted, conditional, etc… uses. However, the County and Township ordinance do use the following language as a "catch-all" for other uses not specifically listed:

> Other uses of the same general character as those listed above, provided they are deemed fitting or compatible to the district by the Planning Commission

Presumably, the Township could argue that using a single-family home as a "resort" fits into this category, although this language existed in the County's ordinance at the time of the court case.

Staff would present the following as options for the Board:

1. Allow vacation rentals, given the previous court decision that went against the County.
2. Allow vacation rentals, and begin a Township discussion about whether to amend the ordinance to restrict/regulate vacation rentals in some manner (which could be as simple as including "resort/vacation rental" in the list of permitted, conditional, interim, etc… uses
3. Argue that the current ordinance already allows for resort/vacation rental to be regulated as an interim use under the "other uses of the same general character" clause.

NOTE: The State Legislature has been presented with the issue of unregulated vacation rentals several times over the last few years. Nothing has come out of that in terms of new law, but it is possible that new law would be written sometime in the near future. Staff's understanding is that in addition to concerned neighbors of vacation rentals, traditional resort owners are also concerned that vacation rentals do not need to meet some of the same public health and other regulations that are required of them.

"Turfstone" product

When the Township first adopted its zoning ordinance, one of the first issues discussed was whether there would be any "credit" given for pervious pavers as being considered at least partly pervious. At the time, the Township decided that pervious pavers would be considered 100% impervious (same as a roof or a driveway).

Staff has recently been asked whether a product called "Turfstone" which is a paver stone product that has larger voids in between the concrete that allows for soil and grass. A copy of the web page that was sent to Staff by a contractor is attached.

Staff does not know much about this product. On the face of it, it does seem to reduce the possibility of "clogging" of the voids (the primary concern of the Board when it didn't give credit to pervious pavers) since they are larger than in a traditional pervious paver stone construction. However, Staff has not seen any research that would suggest whether it is truly pervious or not.

Staff would not recommend giving this product, or any other similar product, credit as partially or completely pervious without further research. However, if the Town Board feels that the issue deserves further research and possibly amending of the ordinance, Staff would appreciate such direction.

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If you have questions or concerns on the items in this report or any other issues, please do not hesitate to contact us. You can reach me by email at oleson@hometownplanning.com or by phone at 888-439-9793.

STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1776

County of Douglas,
Appellant,

vs.

Richard N. Owen,
Respondent,

Judith A. Owen,
Respondent.

Filed August 25, 2009
Affirmed
Collins, Judge[*]

Douglas County District Court
File No. 21-C8-06-000767

Christopher D. Karpan, Douglas County Attorney, 305 Eighth Avenue West, Alexandria, MN 56308 (for appellant)

William J. Leuthner, 218 Third Avenue East, #102, Alexandria, MN 56308 (for respondents)

Considered and decided by Minge, Presiding Judge; Stoneburner, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appealing from the denial of an injunction sought to restrict respondents' rental of properties as vacation homes, appellant, a county, argues that the district court erred by ruling that (1) the properties are exempt from regulation because they are single-family dwellings and (2) the properties are not planned-unit developments under the zoning ordinance. We affirm.

FACTS

Respondents Richard and Judith Owen own three lakeshore properties (the properties). One, the Chateau, is a five-bedroom, four-bathroom house with gourmet kitchen purchased in 1984; another, the Haven, is a four-bedroom, two-bathroom house with full kitchen purchased in 2001; and the third, Lake Pointe Lodge, is a six-bedroom, three-bathroom house with gourmet kitchen purchased in 2004. The Owens' primary residence is in Florida.

The Owens both rent the properties to others as fully-furnished vacation homes and occasionally use the properties themselves. In 2006, the Owens rented out the Chateau for 13 days, the Haven for 23 days and one full month, and Lake Pointe Lodge for 19 days. In 2007, the Chateau was rented out for 17 days, the Haven for 31 days and one full month, and Lake Pointe Lodge for 30 days. Rental includes the use of a boat, various appliances, and outdoor furniture. The properties are advertised as private vacation rentals on websites, including that of the Alexandria Chamber of Commerce.

In 1991, appellant Douglas County's assistant zoning administrator, after receiving complaints from neighbors, found that the Chateau was being operated as a "resort," which is a conditional use under the Douglas County Zoning Ordinance. The Owens ultimately appealed to the district court. The district court reversed the decision, finding that "[t]he definition of 'resort' contained in the zoning ordinance does not contemplate its application to a single-family dwelling." The county subsequently amended the zoning ordinance's definition of "resort" to include properties rented to transient visitors on a daily or weekly basis.

In early 2006, the county sued to enjoin the Owens from operating a "Commercial Planned Unit Development, i.e. 'resort'" and renting out properties without a permit. After a court trial, the district court ruled that the properties were designed for, and are being used as, single-family dwellings as defined by the ordinance and, therefore, the Owens cannot be required to obtain conditional use permits to rent out the properties on a short-term basis. The district court denied the requested injunction, and this appeal followed.

D E C I S I O N

The Douglas County zoning ordinances lists three categories of land use in residential shoreland districts like the one at issue here: permitted use, permitted accessory use, and conditional use. Douglas County, Minn., Zoning Ordinance § III(D)(5)-(7) (2007). The county argues that the properties fall within the definition of a commercial planned-unit development (PUD), thus requiring a conditional use permit, because they provide "transient, short-term lodging spaces, rooms, or parcels" and

because they fit the definition of "resort." The district court found that the properties "clearly do not fit the definition of planned unit development" because they are single-family homes on single lots.

"The interpretation of an ordinance is a question of law for the court, which we review de novo." *Eagle Lake of Becker County Lake Ass'n v. Becker County Bd. of Comm'rs*, 738 N.W.2d 788, 792 (Minn. App. 2007) (citing *Billy Graham Evangelistic Ass'n v. City of Minneapolis*, 667 N.W.2d 117, 122 (Minn. 2003)). "[W]here the question is whether an ordinance is applicable to certain facts, the determination of those facts is for the governmental authority, but the manner of applying the ordinance to the facts is for the court." *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). Zoning ordinances should be construed (1) according to their plain and ordinary meanings; (2) strictly against the municipal body and in favor of the property owner; and (3) in light of their underlying policy goals. *Id.* at 608-09.

A PUD is defined as "[a] type of development characterized by a unified site design for a number of dwelling units or sites on a parcel" and can be designated either as commercial or residential based largely on whether it is service-oriented. Douglas County, Minn., Zoning Ordinance § VII (2007). Because the properties are not "characterized by a unified site design for a number of dwelling units or sites," the district court did not err by finding that the properties do not constitute a commercial PUD under the ordinance.

The parties agree that single-family dwellings are permitted uses in the residential shoreland district. A single-family dwelling is defined under the ordinance as "[a]

freestanding (detached) residence structure designed for and occupied by one [ ] family only. A single family dwelling must be a minimum of [24] feet wide." Douglas County, Minn., Zoning Ordinance § VII. It is undisputed that the structure on each of the properties meets the minimum-width requirement. Thus, if the structures were designed for and occupied by one family, they constitute single-family dwellings under the plain text of the ordinance.

The ordinance definition of "family" is an incomplete sentence: "One or more persons occupying a single housekeeping unit and using common cooking facilities, provided that unless all members are related by blood or marriage [sic]." Douglas County, Minn., Zoning Ordinance § VII. Because "courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature," *State v. Moseng*, 254 Minn. 263, 269, 95 N.W.2d 6, 11-12 (1959), we are not at liberty to complete the definition. And here, the evidence establishes that each of the properties has one cooking facility shared by the persons occupying the unit, which fits the ordinance definition of "family," such as it is. Consequently, we cannot conclude that the district court erred by finding that the properties are being used as single-family dwellings for which no conditional-use permit is required.

The county's argument that it may further regulate single-family dwellings if they are being used as resorts also fails. Whether the properties are designated as resorts is irrelevant because, as was noted by the district court, "[w]hile the use of the properties may meet the definition of a resort in the current ordinance, a resort is not specifically identified as either a permitted or conditional use anywhere in the ordinance." As

described above, a PUD involves multiple units on a single parcel, and although a "resort" is listed as an example of a PUD, the examples merely identify ways in which such multiple-unit developments may be organized, rather than dictating that any structure that falls within the definition of a resort is of itself a PUD. The zoning ordinance does not restrict the rental of single-family dwellings on a short-term basis, and the use of the Owens' properties here does not compel the conclusion that the properties are PUDs.

Our interpretation of the zoning ordinance is supported both by the fact that zoning ordinances are strictly construed against the county and that the county's underlying policy goals include the expansion of tourism in the area. Although regulations applicable to resorts indicate that the county also has a policy objective of protecting adjacent properties from a resort's impact, there are no restrictions on the number of people permitted, the ability to congregate around a campfire without disturbing the peace, or the ability to socialize on a property used as a single-family dwelling; indicating that the county's policy regarding resorts is not meant to restrict use of single-family dwellings, particularly when renting them out as vacation homes will expand tourism.

Because we conclude that the district court did not err by finding that the Owens are using the properties as single-family dwellings and are not required to obtain a conditional-use permit, we need not reach other interdependent issues raised in this appeal.

Affirmed.

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SPECIFICATIONS - (Click images to enlarge)

Turf Stone

Product Specifications

Sq. Ft. per Cube	144.18
Sq. Ft. per Layer	16.02
Layers per Cube	10
Pounds per Cube	3,420
Dimensions	
23-5/8" x 15-3/4" x 3-1/8"	

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