

John P. Norusis,

Plaintiff,

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER DENYING
MOTION FOR TEMPORARY
INJUNCTION**

vs.

City of Marine on St. Croix,

Defendant.

Court File No.: 82-CV-20-3974

The above-captioned matter came on for a remote hearing before Judge Douglas B. Meslow, Washington County District Court, on December 18, 2020, on Plaintiff's Motion for a Temporary Injunction.

Plaintiff appeared and was represented by Brandon M. Schwartz, Esq. Defendant was represented by Paul D. Reuvers, Esq.

Now, therefore, based on the motions, affidavits and arguments of counsel and upon the files, records and proceedings herein, the Court issues the following:

FINDINGS OF FACT

1. Plaintiff John P. Norusis ("Plaintiff") owns real property located at 801 Pine Cone Trail in the City of Marine on St. Croix, Washington County, Minnesota ("Property"). Plaintiff purchased the Property on or around May 17, 2018, and paid \$1,130,000.00 for the Property.

2. Prior to purchasing the Property, Plaintiff alleges that he confirmed with the City of Marine on St. Croix ("City") that City had no ordinances or regulations that prohibited long-

term or short-term rental of properties within the City and no permit was required to hold a wedding or other social events on the Property.

3. Plaintiff does not reside on the Property and uses the Property primarily as a short-term rental. Since purchasing the Property, Plaintiff has rented the Property out on at least (40) occasions and received approximately \$95,000.00 in income from renting the Property.

4. Plaintiff contends that the rental income he receives from the Property is necessary for him to be able to pay the mortgage on the Property.

5. On August 13, 2020, the City enacted Ordinance No. 2020-156 regulating short-term rentals in the City. (Norusis Aff. – Ex. B). The Ordinance is effective as of November 1, 2020. (Norusis Aff. – Ex. C).

6. The Ordinance defines Short-Term Rental as: “A dwelling that is offered to transient guests for a period of less than 30 consecutive days at a time.” (Norusis Aff. – Ex. B - Section 3).

7. The Ordinance defines Short-Term Rental, Type A (hosted short-term rental) as: “A dwelling, or portion thereof, that is offered to transient guests for a period of less than 30 consecutive days, where an owner of the property is primarily present (i.e., from 10:00 p.m. to 7:00 a.m. during overnight stays) during the period of occupancy by the transient guest.” *Id.*

8. The Ordinance defines Short-Term Rental, Type B (unhosted short-term rental) as: “A dwelling, or portion thereof, that is offered to transient guests for a period of less than 30 consecutive days, where an owner of the property is not present while the transient guests are present.” *Id.*

9. The Ordinance defines Short-Term Rental, Type C (dedicated short-term rental) as: “A dwelling, or portion thereof, that is offered to transient guests for a period of less than 30

consecutive days, where the primary property use (“use” is a typical term) is a short-term rental.”

Id.

10. It is undisputed that Plaintiff’s use of the Property is short-term rental Type C as defined by the Ordinance.

11. Section 4 A. of the Ordinance provides as follows:

License Required. No property, structure or dwelling may be used as a Short-Term Rental (Type A, B or C) unless an application is submitted and a license is first granted by the City provided, however, that Short-Term Rentals located exclusively within the Central Business District shall not be subject to the restrictions of this Ordinance. The License shall be entered on a short-term rental registry. *Type C Short Term Rentals are not permitted in the City.*

(Emphasis Added).

12. The criteria for issuance of a short-term rental license requires that the dwelling be “materially used for its owner’s enjoyment-which shall mean to state the owner shall accurately certify and document to the City annually that the Dwelling has been physically inhabited by the owner for more days and nights than it has been rented.” (Ex. B – Section 4 E. (a)(vi).

13. It is undisputed that Plaintiff does not occupy the Property for “more days and nights than it has been rented.”

14. The Ordinance further provides that operating a short-term rental without a license shall constitute a misdemeanor. (*Id.* – Section 6 A. 2.).

15. Plaintiff alleges that he has short-term rentals booked up until June 2021 and a wedding “as far out” as June 2021. Plaintiff contends that he will be substantially and irreparably harmed if he cancels the rental contracts because he would be sued by the renters. Plaintiff also alleges that he would be harmed by those renters whose contracts were cancelled

since they would likely leave negative reviews on the VRBO, Airbnb, and/or Better Business Bureau websites. Plaintiff asserts that since his Property is not part of a large hotel chain, positive reviews on social media are key to booking the Property for short-term rental. Additionally, Plaintiff is considered a “super host” by Airbnb, which generates bookings and publishes the Property on the top of a search result. Plaintiff contends that cancelled contracts will result in him losing status as a super host for a year. Plaintiff argues that he has no way of recouping the lost revenue as a result of the negative reviews.

16. Plaintiff also contends that he would suffer irreparable harm because the inability to use the Property for short-term rental will decrease the value of the Property.

17. Finally, Plaintiff argues that if he continues to use the Property for short-term rentals, he would be irreparably harmed because he would be subject to jail time.

18. On October 16, 2020, Plaintiff filed a complaint against Defendant seeking a declaratory judgment that Plaintiff’s use of the Property is grandfathered-in and permissible under the Ordinance. Alternatively, Plaintiff seeks a declaratory judgment that the Ordinance is invalid, unenforceable and/or unconstitutional. The complaint also seeks temporary and permanent injunctive relief.¹

19. On October 22, 2020, Plaintiff filed a motion seeking a Temporary Injunction to enjoin Defendant from enforcement of the Ordinance.

¹ The parties stipulated that Plaintiff could file and serve an Amended Complaint on November 11, 2020. The Amended Complaint adds additional allegations, but it does not add any additional counts.

Based on the foregoing Findings of Fact, the Court hereby makes the following:

CONCLUSIONS OF LAW

1. Minnesota Rule of Civil Procedure 65.02(b) provides that “A temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor.”

2. A temporary injunction “is meant to preserve the status quo pending an adjudication on the merits. The grant of a temporary injunction neither establishes the law of the case nor constitutes an adjudication of the issues on the merits.” *Metropolitan Sports Facilities Commission v. Minnesota Twins Partnership*, 683 N.W.2d 214, 220 (Minn. App. 2002)(*rev. denied* Feb. 4, 2002)(citations omitted).

3. “The burden of proof rests upon the complainant to establish the material allegations entitling him to relief.” *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 110 N.W.2d 348, 251 (Minn. 1961).

4. A temporary injunction is an extraordinary equitable remedy. *Pacific Equipment & Irr., Inc. v. Toro Co.*, 519 N.W.2d 911, 915 (Minn. App. 1994).

5. In *Dahlberg Bros. Inc., v. Ford Motor Co.*, 137 N.W.2d 314, 321 (Minn. 1965), the Minnesota Supreme Court outlined five factors that courts should consider in determining whether to issue a temporary injunction. Those factors are set forth as follows:

a) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief;

“The granting of a temporary injunction serves only to maintain the status quo until the case can be decided on the merits.” *Pickerign v. Pasco Marketing, Inc.*, 228 N.W.2d 562, 564 (Minn. 1975). “The first Dahlberg factor, [relates to] preserving the ‘status quo ante’

relationship of the parties.” *Queen City Const., Inc. v. City of Rochester*, 604 N.W.2d 368, 372 (Minn. App. 1999)(*rev. denied* March 14, 2000).

City passed the Ordinance regulating short-term rentals. The Ordinance was passed after discussion and input from City residents at several City Planning Commission public meetings, including a Planning Commission meeting that Plaintiff attended and spoke against the proposed Ordinance. (Peterson Aff. Ex. 2-8). “[I]t is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in the performance of their duties. *White Bear Lake Docking and Storage v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982). An injunction could seriously impair a city’s interest in enforcing its criminal laws. *Alexander v. Severson*, 408 N.W.2d 195, 199 (Minn. App. 1987)(*rev. denied* Aug. 19, 1987). The issuance of a temporary injunction would disrupt the relationship between the City and its residents.

If the Court grants Plaintiff the relief that he requests, then the Court is deciding *on a temporary basis and before a trial on the merits* that the Ordinance does not apply to the Property. On the record as presented, this Court is not prepared to make this determination. To do so would infringe on the City’s ability to govern itself.

A denial of the motion for temporary injunction may disturb the status quo in that Plaintiff can no longer use the Property for short-term rentals. However, a court “has the power to shape relief in a manner which protects the basic rights of the parties, even if in some cases it requires disturbing the status quo.” *North Star State Bank of Roseville v. North Star Bank Minnesota*, 361 N.W.2d 889, 895 (Minn. App. 1985)(*rev. denied* April 26, 1985)(citation omitted). The Court concludes that the nature and background of the relationship between the parties preexisting the dispute weighs against granting a temporary injunction.

b) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial;

“The party seeking the injunction must establish that his legal remedy is not adequate and that the injunction is necessary to prevent great and irreparable injury.” *Cherne Indus, Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979)(citations omitted). “The failure to show irreparable harm is, by itself, a sufficient ground upon which to deny a preliminary injunction.” *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. App. 1990)(citations omitted).

Although the party seeking an order for temporary injunction must demonstrate that it would suffer **irreparable** harm if it is not granted, the party arguing against the temporary injunction must only demonstrate that it will suffer **substantial** harm if the injunction is granted. *Yager v. Thompson*, 352 N.W.2d 71, 75 (Minn. App. 1984)(citation omitted)(Emphasis Added).

Plaintiff’s claims of irreparable harm are based, in part, on the possibility that he will face lawsuits from individuals with contracts to rent the Property and that these individuals will post negative reviews on social media. These claims are speculative. “Problematical damages based on speculation cannot be used to establish irreparable harm as a basis for equitable relief.” *City of Mounds View v. Metropolitan Airports Commission*, 590 N.W.2d 355, 357 (Minn. App. 1999).

Additionally, Plaintiff’s claims that he would be irreparably harmed by having to defend against lawsuits and that the Ordinance decreases the value of his Property are financial harms. Money damages are generally not independently sufficient to provide a basis for injunctive relief. *Miller v. Foley*, 317 N.W.2d 710, 713 (Minn.1982). “[T]he temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury.” *Haley v. Forcelle*, 609 N.W.2d 48, 56 (Minn. App. 2003)(*rev. denied* Nov. 25, 2003)(citations omitted).

Finally, Plaintiff claims that he would be irreparably harmed if he was jailed. This harm assumes that Plaintiff chooses to violate the Ordinance. The Court will not grant injunctive relief based on a “harm” caused by a knowing violation of a law. Accordingly, Plaintiff has failed to demonstrate that he would suffer irreparable harm if the Court denies his motion for a temporary injunction.

The Court concludes that this factor weighs heavily against granting the temporary injunction.²

c) The likelihood that one party will succeed on the merits;

Plaintiff contends that his use of the Property prior to enactment of the Ordinance was a lawful use. As such, Plaintiff argues that the City is required to either grandfather-in his use of the Property as a short-term rental property or take the Property through eminent domain. “A residential zoning ordinance may constitutionally prohibit the creation of uses which are nonconforming, but existing nonconforming uses must either be permitted to remain or be eliminated by use of eminent domain.” *County of Morrison v. Wheeler*, 722 N.W.2d 329, 334 (Minn. App. 2006)(*rev. denied* Dec. 20, 2006)(citation omitted).

City asserts that *Wheeler* does not apply because the Ordinance is licensing ordinance and not a zoning ordinance. Thus, the issue of whether Plaintiff’s use of the Property was nonconforming is irrelevant. City argues it has the authority to enact the Ordinance as part of its police powers. Police power “refers to the power of the state and its political subdivisions to impose such restraints upon private rights as are necessary for the general welfare. This

² As set forth in *Morse*, the Court can deny Plaintiff’s motion on the sole basis that he has failed to demonstrate irreparable harm without analyzing the remaining *Dahlberg* factors. (See *Sunny Fresh Foods v. Microfresh Foods*, 424 N.W.2d 309, 310-11 (Minn. App. 1988) (denial of temporary injunction affirmed where district court addressed comparative harm in granting or denying injunction and applicant failed to establish lack of adequate legal remedy); *Satellite Indus. v. Keeling*, 396 N.W.2d 635, 641 (Minn. App. 1986)(*rev. denied* (Minn. Jan. 21, 1987)(denial of temporary injunction affirmed where applicant failed to establish irreparable harm).

government power is essential and difficult to limit, as it includes all matters of public welfare.”

Dean v. City of Winona, 843 N.W.2d 249, 256 (Minn. App. 2014)(citation omitted).

Additionally, Minn. Stat. §412.221, subd. 32 provides as follows:

The council shall have power to provide for the government and good order of the city, the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of residence, trade, and commerce, and the promotion of health, safety, order, convenience, and the general welfare by such ordinances not inconsistent with the Constitution and laws of the United States or of this state as it shall deem expedient.

In *Dean*, property owners challenged an ordinance limiting the number of lots on a block that were eligible to obtain certification as rental property in the city. *Dean* at 253. The property owners argued that it was not a valid zoning ordinance. *Id* at 257-58. The Court of Appeals found it was a valid exercise of the city’s police power concluding that “the record establishes that respondent determined that the conversion of owner-occupied homes to rental properties and the concentration of such properties in some neighborhoods began to have a negative impact on the quality and livability of those neighborhoods. That occurrence implicated the public interest and welfare.” *Id* at 257. With respect to the property owners’ argument that the ordinance was an unlawful zoning ordinance, the Court of Appeals found that “[a]ppellants do not persuasively dispute respondent's authority to regulate rental housing within its borders through its police power. . . . Because we conclude that respondent's adoption of the ordinance was an exercise of its police power, it is not necessary to determine whether it was also an exercise of its zoning authority.” *Id* at 257-58.

Plaintiff attempts to distinguish *Dean* from the facts of this case by asserting that, unlike the city of Winona, City in this case did not conduct any studies regarding whether short-term rentals negatively impact the quality and livability in the City. City submitted an affidavit from

City Clerk Lynette Peterson who states that City held (20) public meetings discussing short-term rentals. (Peterson Aff. ¶3). Peterson attaches minutes from (7) Planning Commission meetings. (Id. – Ex. 2-8). This case was recently filed and the parties have conducted little, if any, discovery. The Court is not prepared to find at this early stage in the proceedings and on this record that City’s actions in passing the Ordinance were “inadequate.”

Finally, Plaintiff contends that the Ordinance violates equal protection by “imposing restrictions upon one class of persons (“Type C”) which are not imposed upon others (“Type A” and “Type B”) engaged in the exact same business (STR) and under similar circumstances.” “An equal-protection challenge requires an initial showing that ‘similarly situated persons have been ‘treated differently.’” *Dean* at 259. “In determining whether two groups are similarly situated, the focus is on ‘whether they are alike in all relevant respects.’” *Id.* “Appellate courts ‘routinely reject equal-protection claims when a party cannot establish that he or she is similarly situated to those whom they contend are being treated differently.’” *Id.*

The parties disagree over the zoning classification of the Property. Plaintiff asserts that the Property is zoned residential and City contends that Washington County has classified the Property as commercial. Again, on this scant record, Plaintiff cannot demonstrate whether his Property is sufficiently “alike” the residential properties who are allowed to apply for short-term rental licenses to withstand and equal protection challenge.

If a plaintiff cannot demonstrate a substantial likelihood of success on merits, the district court errs in granting temporary injunctive relief. *Taxpayers’ Choice Volunteer Comm. v. Granitz*, 1995 WL 164527 (Minn. App. 1995). Based on the record before the Court, the Court is unable to conclude that Plaintiff has demonstrated a substantial likelihood of success on the merits. Thus, this factor weighs against issuing a temporary injunction.

d) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal;

Plaintiff contends that it is “inequitable” to require him to face criminal liability during the pendency of this action and, therefore, public policy supports granting the temporary injunction. The Court concludes that public policy does not support the issuance of injunctive relief to protect an individual who knowingly violates an ordinance. Plaintiff also asserts that the Ordinance “severely and negatively” impacts the third parties under contract to rent the Property since he would cancel their contracts. These renters who have contracts with Plaintiff are not parties to the case. The Court concludes that no public policy considerations would be advanced by protecting these unnamed third parties through injunctive relief.

Again, as set forth above, “it is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in the performance of their duties.” *White Bear Lake Docking* at 176. Public policy supports the recognized legal principle recognizing deference to municipalities in their decision-making processes

Plaintiff has not demonstrated that public policy favors granting injunctive relief.

e) The administrative burdens in judicial supervision and enforcement of the temporary decree;

The parties agree that the administrative burdens on the Court and court administration in enforcing a temporary injunction would be minimal, if any. Thus, this factor does not apply.

6. The Court concludes that the facts of this case do not merit granting the extraordinary equitable relief of a temporary injunction.

ORDER

1. Plaintiff’s motion for a Temporary Injunction is **DENIED**.

2. The court administrator shall serve a copy of this Order on counsel for the parties, which constitutes due notice of its provisions for all purposes.

Dated: _____

BY THE COURT

Douglas B. Meslow
Judge of District Court