

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

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT**

This matter came duly on for trial on January 11, 2022, on Defendant's counterclaims for Declaratory Judgment and Injunctive Relief. Plaintiff, John P. Norusis was represented by Brandon M. Schwartz, Esq. Defendant, City of Marine on Saint Croix was represented by Paul D. Reuvers, Esq.

The record was left open until February 11, 2021, for Defendant to submit a written closing argument and proposed Findings of Fact and until March 11, 2022, for Plaintiff to submit a written closing argument and proposed Findings of Fact.

The Court received the following evidence at trial:

- Defendant Ex. 4: Airbnb 2019 Booked Earnings;
- Defendant Ex. 5: Airbnb 2020 Booked Earnings;
- Defendant Ex. 6: Reservation spreadsheet [06/07/18 – 10/24/20];
- Defendant Ex. 7: Guest list/earnings [10/04/19 – 10/23/20];
- Defendant Ex. 8: Airbnb Payouts [10/04/19 – 10/24/20];
- Defendant Ex. 10: John Norusis affidavit (11/02/20);

- Defendant Ex. 11: John Norusis affidavit (04/23/21);
- Defendant Ex. 13: John Norusis letter to city council dated 11/05/19;
- Defendant Ex. 19: Castle on St. Croix reviews (Submitted at Sara Tobin deposition – the Court will receive this exhibit only as to the Sara Robin review - the remaining reviews are hearsay and will not be considered by the Court);
- Defendant Ex. 20: Screenshot of 09/23/21 phone call between Sara Tobin and John Norusis (submitted at Sara Tobin deposition);
- Defendant Ex. 21: Airbnb messages between Sara Tobin and John Norusis (06/09/21 – 09-27/21);
- Defendant Ex. 27: Short Term Rental (“STR”) complaint submitted by John Goodfellow to City – date of incident (October 23 – 25, 2020);
- Defendant Ex. 30: Letter to City from John Goodfellow and other neighbors dated Jan. 11, 2021, regarding commercial rental activity at 801 Pine Cone Road;
- Defendant Ex. 33: STR complaint submitted by John Goodfellow to City – date of incident (May 21 – 23, 2021);
- Defendant Ex. 34: STR complaint submitted by John Goodfellow to City – date of incident (May 29 – 31, 2021);
- Defendant Ex. 35: STR complaint submitted by John Goodfellow to City – date of incident (June 13 - 17, 2021);
- Defendant Ex. 36: June 14, 2021 letter from John Goodfellow to City Council regarding June 11 – 13 event at 801 Pine Cone Road;
- Defendant Ex. 38: June 26, 2021 letter from John Goodfellow to City Council regarding June 26 event at 801 Pine Cone Road;

- Defendant Ex. 39: STR complaint submitted by John Goodfellow to City – date of incident (June 26, 2021);
- Defendant Ex. 40: STR complaint submitted by John Goodfellow to City – date of incident (July 9 - 11, 2021);
- Defendant Ex. 41: STR complaint submitted by John Goodfellow to City – date of incident (July 16 - 18, 2021);
- Defendant Ex. 42: STR complaint submitted by John Goodfellow to City – date of incident (August 4 - 8, 2021);
- Defendant Ex. 44: STR complaint submitted by John Goodfellow to City – date of incident (August 20 - 23, 2021);
- Defendant Ex. 45: STR complaint submitted by John Goodfellow to City – date of incident (September 4 - 6, 2021);
- Defendant Ex. 47: STR complaint submitted by John Goodfellow to City – date of incident (September 10 - 12, 2021);
- Defendant Ex. 49: STR complaint submitted by John Goodfellow to City – date of incident (September 17 - 19, 2021);
- Defendant Ex. 51: STR complaint submitted by John Goodfellow to City – date of incident (September 23 - 27, 2021);
- Defendant Ex. 54: STR complaint submitted by John Goodfellow to City – date of incident (October 2, 2021);
- Defendant Ex. 55: Spreadsheet of activity at 801 Pine Cone Road (02/13/21 – 09/10/21) [Court will only receive those entries that John Goodfellow testified he made];
- Defendant Ex. 58: STR complaint submitted by John Goodfellow to City – date of incident (October 30 – November 1, 2021);

- Defendant Ex. 59: photo of chairs and altar set up at 801 Pine Cone Road on October 31, 2021;
- Defendant Ex. 60: photo of chairs and altar set up at 801 Pine Cone Road on October 31, 2021;
- Defendant Ex. 61: Airbnb listing of Castle on St. Croix;
- Defendant Ex. 65: Castle on St. Croix Facebook page (admitted at John Norusis deposition);
- Defendant Ex. 66: Castle on St. Croix Instagram page (admitted at John Norusis deposition);

Plaintiff's exhibits 101-111 were all admitted at John Norusis' December 27, 2021, deposition

- Plaintiff Ex. 101: December 2021 – November 2022 calendar pages showing dates unavailable to rent Castle on St. Croix;
- Plaintiff Ex. 102: Airbnb future reservation page for Castle on St. Croix;
- Plaintiff Ex. 103: Cancelled reservations for Castle on St. Croix (05/26/20 – 09/02/21);
- Plaintiff Ex. 104: Refund for Taylor (06/10/21 – 06/12/21);
- Plaintiff Ex. 105: Airbnb message from Plaintiff to Miraz for rental of Castle on St. Croix from Feb. 4 -6, 2022 – cannot rent – not allowed by City;
- Plaintiff Ex. 106: Facebook message from Plaintiff to Ahsley Olson for rental of Castle on St. Croix – cannot rent – not allowed by City;
- Plaintiff Ex. 107: Airbnb message from Plaintiff to Shannon for rental of Castle on St. Croix from September 9 - 11, 2022 – cannot rent – not allowed by City;
- Plaintiff Ex. 108: Airbnb message from Plaintiff to Jacob for rental of Castle on St. Croix from January 14 - 16, 2022 – cannot rent – not allowed by City;

- Plaintiff Ex. 109: Airbnb message from Plaintiff to Nadine for rental of Castle on St. Croix from December 30, 2021 – January 1, 2022 – cannot rent – not allowed by City;
- Plaintiff Ex. 110: Airbnb message from Plaintiff to John for rental of Castle on St. Croix from December 27 - 29, 2021 – cannot rent – not allowed by City;
- Plaintiff Ex. 111: Airbnb message from Plaintiff to Katerina for rental of Castle on St. Croix from December 27 - 29, 2021 – cannot rent – not allowed by City;
- Plaintiff Ex. 112: City Ordinance 2020-156 regulating short term rentals.

John Goodfellow and Kevin Nyenhuis testified at trial. The parties agreed to submit Plaintiff’s testimony by deposition, which was taken by video on December 27, 2021. (Ex. 84 [video] and Ex. 86 [deposition transcript]). The parties agreed to submit Sara Tobin’s testimony by deposition, which was taken by video on December 27, 2021. (Ex. 87 [video] and Ex. 89 [deposition transcript]).

Based upon the files and evidence received at trial, the Court hereby issues the following:

FINDINGS OF FACT

Background:

1. Plaintiff John P. Norusis (“Plaintiff”) owns real property located at 801 Pine Cone Trail (“Property”) in the City of Marine on St. Croix (“City”), Washington County, Minnesota. (November 11, 2020, Amended Complaint – ¶2 - Index #19).
2. City enacted Ordinance No. 2020-156 regulating short-term rentals in the City effective on August 13, 2020. (*Id.* ¶23, Plaintiff Ex. 112).
3. 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.*

4. 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.*

5. The Ordinance defines Short-Term Rental (“STR”), 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.*

6. Section 4A. of the Ordinance provides that no property may be used as a STR unless a license is granted by the City. *Id.*

7. On October 16, 2020, Plaintiff filed a Complaint against City seeking a declaratory judgment that the Ordinance is unconstitutional and for injunctive relief. (Complaint – Index #2).¹

8. On October 22, 2020, Plaintiff filed a motion for a temporary injunction to enjoin City from enforcement of the Ordinance. (Motion for Temporary Injunction - Index #9).

9. On December 22, 2020, the Court issued Findings of Fact, Conclusions of Law and Order Denying Motion for Temporary Injunction. (Index #33).

10. On July 20, 2021, City filed counterclaims for (1) a Declaratory Judgment identifying and confirming all violations of the Ordinance on the Property and (2) a permanent injunction. (Counterclaim – Index #81)

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

11. On October 5, 2021, the Court issued an Order granting City’s motion for summary judgment on Plaintiff’s complaint and denying both parties’ motions for summary judgment on City’s counterclaim. (Order Granting Defendant’s Motion for Summary Judgment on Plaintiff’s Complaint and Denying Defendant’s Motion for Summary judgment on its Counterclaims – Index #84) Thus, the only claims that remained for trial were City’s claims for Declaratory Judgment claim and for a Permanent Injunction.

City’s Counterclaims:

12. In 2018, Plaintiff purchased the home, in part, to generate income from weddings/retreats/seminars. (Defendant Ex. 13 – 11/5/19 letter from Plaintiff to City Council). Plaintiff rented the Property through Airbnb. (Ex. 86 - Plaintiff deposition testimony – p. 40 – lines 18 -21). The property is listed on Airbnb as “Castle on St. Croix” and Plaintiff maintains the Castle on St. Croix Airbnb webpage. (Id. – p. 46 – lines 12-16).

13. The Ordinance was enacted on August 13, 2020. Plaintiff’s discovery documents indicate that he continued to rent out the Property in 2020 after the Ordinance was enacted. (Def. Exs. 6, 7, 8).

14. John Goodfellow, who lives next door to the Property, filed a Short Term Rental (“STR”) Complaint with City alleging that he observed an on-site wedding at the Property the weekend of October 23 – 25, 2020. (Def. Ex. 27). He observed a U-Haul truck, a flower delivery, and (11) cars parked at the Property. *Id.* The Airbnb transaction history for Castle on St. Croix indicates that Andrew Stark paid \$3,298.00 to rent the Property from October 23 – 25, 2020. (Def. Ex. 8).

15. The Airbnb transaction history lists an additional (13) payments from the date of enactment of the Ordinance through the end of 2020. *Id.*

16. The Court finds that City has demonstrated by a preponderance of the evidence that Plaintiff continued to rent out the Property from after the Ordinance was enacted through the end of 2020.

17. On December 23, 2020, this Court issued an Order denying Plaintiff's Motion for a Temporary Injunction. ("TRO Order" – Index # 33).

18. Mr. Goodfellow filed the following STR Complaints regarding the Property in 2021:

- May 21 – 23, 2021 (Ex. 33);
- May 29 – 31, 2021 (Ex. 34);
- June 13 – 17, 2021 (Ex. 35). Mr. Goodfellow wrote a letter to the City Council regarding this incident which included his observations of a dozen vehicles, an RV, and two trailers. (Ex. 36). Mr. Goodfellow testified at trial that he recalled this being a particularly disruptive event, which he described as an "encampment." Mr. Goodfellow took pictures of the encampment which were attached to his letter to the City Council. (Ex. 36);
- June 26, 2021 (Ex. 39). Mr. Goodfellow's complaint includes pictures of signage with balloons directing people where to park for a wedding;
- July 9 – 11, 2021 (Ex. 40);
- July 16 -18, 2021 (Ex. 41);
- August 4 – 8, 2021 (Ex. 42);
- August 20 – 23, 2021 (Ex. 44);
- September 4 - 6, 2021 (Ex. 45);
- September 10 - 12, 2021 (Ex. 47). Mr. Goodfellow recalled that there was a party late at night this weekend and the Sheriff was called;

- September 17 - 19, 2021 (Ex. 49);
- September 23 - 27, 2021 (Ex. 51); and
- October 2 - 3, 2021 (Ex. 54)

19. In June 2021, Sara Tobin booked a reservation for September 21 – 26 at the Castle on St. Croix at the rate of \$959.00 per night. (Ex. 89 – Sara Tobin deposition transcript – p. 14 – lines 3-11; Ex. 21). Ms. Tobin testified that she stayed at Castle on St. Croix from September 21 -26. (*Id.* – lines 12 – 18).

20. On September 23, 2021, while she was staying at the Property, Ms. Tobin called (651-894-3525) to report that the oven was broken and spoke with John. (*Id.* p. 17 lines 11-14, p. 18 lines 18-20; Ex. 20 – screenshot of phone call). Plaintiff’s phone number is 651-894-3525. (Ex. 86 – p. 39 – lines 4-5).

21. On December 27, 2021, Plaintiff was asked about 2021 rentals during his deposition and stated that he had not accepted any rentals since the summary judgment ruling. (Ex. 86 – pp. 40 lines 22-25 and 41 line 1). When asked whether he was accepting new reservations through Airbnb [in 2021] before the summary judgment order, Plaintiff pled the Fifth Amendment. (*Id.* – lines 8 – 13). The Court will draw a negative inference from this response.²

22. The Court finds that Plaintiff continued to rent out the Property in 2021 after the Ordinance was enacted and after the Court denied his motion for a TRO.

² The Fifth Amendment right against self-incrimination may be invoked in civil as well as criminal proceedings. *Parker v. Hennepin County Dist. Court, Fourth Judicial Dist.*, 285 N.W.2d 81, 82 (Minn. 1979). However, a court may draw adverse inferences against a civil defendant who invokes the Fifth Amendment. *Id.* at 83.

23. On October 5, 2021, Plaintiff's complaint was dismissed after the Court granted City's motion for summary judgment.

24. John Goodfellow filed an STR Complaint with City alleging that he observed an on-site wedding at the Property the weekend of October 30, 2021 – November 1, 2021. (Ex. 58). Mr. Goodfellow testified that it was a Halloween wedding and that he observed service providers, an altar, (40) chairs, 15-20 vehicles, and a "wedding party." Mr. Goodfellow took pictures that weekend of chairs set up in the lawn of the Property and what looks to be an altar. (Exs. 59, 60).

25. The Court finds the testimony of Mr. Goodfellow to be credible.

26. Kevin Nyenhuis, City's mayor, also testified that he observed a Halloween wedding at the Property after the Court issued its summary judgment order. Mayor Nyenhuis observed chairs and delivery vans at the Property.

27. The Court finds the testimony of Mayor Nyenhuis to be credible.

28. An Airbnb review page includes an entry from November 2021 by "Alex" who states that "we stayed at the castle for our Halloween wedding." (Ex. 61).

29. Plaintiff was asked whether there was a reservation made for a Halloween wedding prior to entry the summary judgment order that he decided not to cancel after receiving the order and responded that he was "going to have to plead the Fifth Amendment." (Ex. 86 – p. 43 – lines 1-7). Again, the Court will draw a negative inference from this response.

30. The Court finds that Plaintiff continued to rent out the Property in 2021 after the Ordinance was enacted; after the Court denied his motion for a TRO; and after the Court granted City's motion for summary judgment on Plaintiff's complaint.

31. Mr. Goodfellow and Ms. Tobin both testified that they have no knowledge of any future rentals at the Property.

32. The Airbnb web page for Castle on St. Croix is still active. (*Id.* – p. 54 – lines 6 - 9). Requests to book can be made through the webpage. (*Id.* – lines 14 -16). However, Plaintiff testified that there are no future reservations for the Property on Airbnb. (*Id.* – lines 8-14; Ex. 102). Plaintiff also maintains “Castle on St. Croix” Facebook and Instagram accounts. (*Id.* p. 29 – lines 20-25, p. 30 – lines 1-11; p. 35 – lines 19-21).

33. Plaintiff testified that he is not currently accepting reservations for short term rental or events. (*Id.* – p. 84 – lines 8-10, 18-21; Exs. 104 - 111).

34. The Ordinance also requires that “The Short-Term Rental host shall expressly prohibit and prevent the use of their property for events in any advertisement as well as on-site informational material.” Ex. 112, Sec. 5.F.

35. Plaintiff denied that his “Castle on St. Croix” Facebook and Instagram accounts are advertising because “there’s no media to actually rent through either of those.” (*Id.* p. 36 – lines 3-8). Plaintiff accepts STR reservations through Airbnb. The Court concludes that the Airbnb web page is an advertisement.

CONCLUSIONS OF LAW

1. City has the burden of proving every essential element of his case, including damages, by a fair preponderance of the evidence.” *Carpenter v. Nelson*, 101 N.W.2d 918, 921 (Minn. 1960)(citation omitted).

2. Count I seeks declaratory relief from the Court to find “identifying and conforming all violations of the Ordinance on the Property.” (Counterclaim ¶19). City also seeks a declaratory judgment finding that Plaintiff remains in violation of the Ordinance. (City closing argument – Index #118).

3. Courts have the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Minn. Stat. § 555.01.

4. “Any person ... whose rights, status or other legal relations are affected by a ... municipal ordinance ... may have determined *any question of construction or validity* arising under the ... ordinance ... and obtain a declaration of rights, status, or other legal relations thereunder.” Minn. Stat. § 555.02. (Emphasis Added).

5. “The Uniform Declaratory Judgments Act, however, is not an express independent source of jurisdiction.” *Alliance for Metropolitan Stability v. Metropolitan Council*, 617 N.W.2d 905, 915 (Minn. App. 2003)(citations omitted). “A party seeking a declaratory judgment must have an independent, underlying cause of action based on a common-law or statutory right.” *Id.* at 916.

6. City cites no legal authority, and this Court has found none, which authorizes a court to use the Declaratory Judgment Act to declare that an individual “violated” an ordinance.

7. The Ordinance provides for the following remedies if it is violated: 1) revoke a license; 2) pursue a misdemeanor claim; or 3) seek injunctive relief. (Ex. 112 – p. 7 - Section 6A).

8. The Court concludes that the Declaratory Judgment Act does not provide for an independent cause of action for a violation of the Ordinance. The remedies for a violation are contained within the language of the Ordinance.

9. “Generally speaking, pursuant to its police power a municipality may regulate by license any business or trade which may injuriously affect the public health, morals, safety, convenience, or general welfare.” *City of St. Paul v. Dalsin*, 71 N.W.2d 855, 858 (Minn. 1955).

10. Section 6 A.3. of the Ordinance authorizes City to seek injunctive relief and provides as follows:

In the event of *a violation or threatened violation* of this Ordinance, the City, in addition to other remedies, is entitled to seek injunctive relief or proceedings to prevent, restrain, correct, or

abate such violations or threatened violations. (Ex. 112)(Emphasis Added).

11. The Ordinance further provides that “The Short-Term Rental host shall expressly prohibit and prevent the use of their property for events in any advertisement as well as on-site informational material.” (*Id.* - Sec. 5.F.).

12. Minnesota recognizes that an injunction is often the most efficient way for a local governmental unit to deal with continuing zoning violations. *Rockville Township v. Lang*, 387 N.W.2d 200, 205 (Minn. App. 1986)(citation omitted).

13. “[T]o be granted a permanent injunction, a party must show that any remedy at law would be inadequate and that an injunction ‘is necessary to prevent great and irreparable injury.’” *St. Jude Medical Inc. v. Carter*, 913 N.W.2d 678, 683 (Minn. 2018)(citations omitted).

14. Continuous and knowing violation of a local government’s duly promulgated laws and regulations can constitute irreparable harm. *Rockville* at 205. “To permit such violations is to deny the local unit's authority to govern.” *Id.*

15. An injunction may issue for continued violations for the sale of drugs and medicines without the required license even if there is a criminal penalty for such sales. *State v. Red Owl Stores, Inc.*, 92 N.W.2d 103, 113 (Minn. 1958).

16. The Court found that Plaintiff continued to violate the Ordinance in 2020 after it was enacted; that he continued to violate the Ordinance after the Court denied his request for a TRO; and that he continued to violate the Ordinance after the Court issued its Order granting City’s motion for summary judgment.

17. Plaintiff testified that he has no future rentals, will not accept any future rentals, has declined all reservation requests, and will continue to do so unless this Court’s summary judgment order is reversed. However, Plaintiff repeatedly violated the Ordinance after it was

enacted, after the Court denied his motion for a TRO, and after his complaint was dismissed. The Court concludes that City has demonstrated that any remedy at law would be inadequate and that an injunction prohibiting Plaintiff from renting the Property is necessary to prevent great and irreparable injury. However, City's request for Plaintiff to remove his Castle on St. Croix Airbnb page is denied. Plaintiff has indicated he intends to appeal the Orders and, if he is successful in his appeal, he will lose his status as a "Superhost" with Airbnb. (Ex. 86 – p. 56 – lines 5-6). The injunction prohibits Plaintiff from renting and offering to rent the Property. The City has failed to demonstrate that it will suffer irreparable harm if the Court does not order Plaintiff to delete his Airbnb page.

IT IS HEREBY ORDERED

1. Count I of City's Counterclaim – Declaratory Judgment is dismissed with prejudice.
2. Pursuant to the City Code §30.6.A.3, Plaintiff is permanently enjoined from renting or offering to rent the Property without first obtaining a license as required by Chapter 30.
3. Plaintiff is permanently enjoined from using the Property for events as City Code §30.5.F.

**THERE BEING NO JUST REASON FOR DELAY LET JUDGMENT BE ENTERED
ACCORDINGLY**

BY THE COURT:

Dated: _____

Douglas B. Meslow
District Court Judge