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10/6/21

Chris French, AICP, Planning and Design Supervisor
Office of Planning and Development Services
444 S. 5th St., Suite 300
Louisville, KY 40202

Re: City of St. Matthews Response, 21-APPEAL-0006

Dear Mr. French:

On behalf of the City of St. Matthews, please find the City's response below to 21-APPEAL-0006 and add this to the official record.

City of St. Matthews Response, 21-APPEAL-0006

This appeal involves the Appellant's use of 108 Staebler Avenue (zoned R-5), as a short-term rental facility. Short-term rental is not a permitted use under R-5 zoning in the City of St. Matthews' Development Code. The City of St. Matthews' Development Code does not allow uses of property that are not specifically permitted, as is clearly stated in Article 3(C)(1) and (2) excerpted below and attached in full as **Exhibit One**:

C. THE USE OF LAND AND BUILDINGS:

1. Land Use and Agricultural Purposes:
No land may be used except for a purpose permitted in the district in which is located
....

2. Building Uses and Location:
a. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered, nor shall any building be used or designed to be used for any purpose except a use permitted in the district in which the building is located.

The above section of the St. Matthews Development Code unequivocally states that uses not permitted are not allowed. All parties agree that short-term rental is not permitted in R-5 and that there is no other alternative permitted use in R-5 which would allow short-term rental. These facts should end the case. However, Appellant argues that since St. Matthews has not defined short-term rental in its Development Code, it must be considered legal.

But that is not how the Development Code in St. Matthews is written and that is not how zoning works. As shown above, the Development Code is a "permissive" code, meaning that in order for short-term rental to be legal, it must be listed as a permitted use in the applicable zoning classification. The fact that the City of St. Matthews did not approve the addition of short-term rental in its Development

Code in is not an arbitrary act, it is instead an intentional decision to not expand short-term rental broadly into single family zoning districts.

The City of St. Matthews is not required to define and exclude every possible inappropriate use of land in every zoning classification. The Development Code is a list of things you can do, not a list of all the thousands of things you cannot do.

This was also the position of Louisville Metro Planning and Design Services prior to 2016 when Louisville Metro added short-term rental as a permitted use to the Land Development Code in a broad range of single-family residential zoning classifications. This fact is illustrated in the PowerPoint presentation supporting the 2016 text amendment (16-AMEND-1002), adding short-term rental to the Land Development Code. The attached slide from that Power Point presentation notes that **"beginning in early 2015, Develop Louisville received over 50 complaints regarding unlawful short-term use of dwellings.... Since the first complaint was filed, 5 notices of violations were issued."** **(Exhibit Two)**.

Also attached are the 2015 Louisville Metro Council resolutions explaining that because there was no permitted use for short-term rental in the Land Development Code, the Department of Codes and Regulations has been issuing notices of violations. The resolution goes on to require Louisville Metro Department of Planning and Design Services to propose an amendment to permit short-term rental as a permitted use in single-family residential zoning classifications.

Therefore, it is not just St. Matthews who determined that short-term rental was illegal unless specifically permitted by the zoning code, instead it was also the official position of Louisville Metro Planning and Design Services. The City of St. Matthews Council intentionally did not approve 16-AMEND-1002, and therefore did not join Louisville Metro in extending short-term rental as a permitted use in single-family zoning classifications. This means that within the City of St. Matthews, short-term rental is only allowed as a permitted use in R-7 and office/residential and commercial zones, in which boarding and lodging houses or hotels are allowed.

Appellant next argues that short-term rental is just another allowable single-family use and should be allowed in any residential zoning classification. However, short-term rental is not just another single-family use, and that fact has been widely recognized. Louisville Metro recognized this fact when the 2016 amendment to the Land Development Code was created to regulate short-term rental as a distinct type of residential use and require detailed standards, limitations and in some cases a Conditional Use Permit.

In 2018, that difference was recognized by the highest court in Kentucky. In the case of **Hensley v. Gadd**, 560 S.W 3d 516 (Ky. 2018), excerpted below and attached in full as **Exhibit Three**, the Court recognized that short-term rental was not just a normal single-family use:

> **"In analyzing the restrictions and the facts of this case, we agree with the trial court and with Hensley that one-night, two-night, weekend, weekly inhabitants cannot be considered "residents" within the commonly understood meaning of that word, or the use by such persons as constituting "residential." Gadds use of the property meets the very statutory definition of hotel: a "building or structure kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public." KRS 219.011(3)...."**

While the case **Hensley v. Gadd**, 560 S.W 3d 516 (Ky. 2018) involved enforcement of a deed of restriction by a neighborhood association, the Court's finding that the short-term-term rental use is a not a normal single-family use is applicable to the current appeal. Simply stated, at the very least this ruling proves that Appellant cannot argue that short-term rental is just another single-family use.

Appellant next contends that City of St. Matthews ordinance enforcement officer Jack Ruf erred in discussing with Applicant possible alternative uses of boarding and lodging houses or hotels. Prior to being employed by St. Matthews, Mr. Ruf enjoyed a 30-plus year career with Louisville Metro Planning and Design Services, details of which are attached as **Exhibit 4**. During that third of a century of Planning and Zoning experience, Mr. Ruf has always attempted to give applicants alternative suggestions to achieve their goals. This was also the long-standing practice of the Planning Commission staff.

Boarding and lodging houses and hotels are similar because each use authorizes rental of the whole, or a part of a home for short stays. Appellant argues that this alternative is not available because the definition of boarding and lodging house mentions "three or more" renters at a time. However, it is the allowance of transient, short term stays that is critical and makes short term rental most similar to boarding and lodging houses and hotels. Mr. Ruf's direct experience with short-term rental of single-family homes in St. Matthews indicates that short-term rentals are used in the same manner as boarding and lodging houses, which is a permitted use in the R-7 zone, or office-residential and commercial zoning classifications.

For instance, Mr. Ruf's first investigation of 108 Stabler revealed three cars parked at or in front of 108 Stabler, all with Texas license plates, suggesting that there were at least three persons staying at that location. Further, during an investigation of a prior short-term rental violation in St. Matthews, Mr. Ruf documented 5 persons using that residence as a short-term rental. From this experience, it appears unlikely someone would rent an entire house for short-term rental for less than 3 persons.

Far from exceeding his power and scope of authority, Mr. Ruf simply told this Applicant what Louisville Metro Planning and Design Services told everyone prior to 2016, which is that short-term rental is not recognized as a permitted use in R-5 zoning and is therefore not allowed. Mr. Ruf then did what government officials are supposed to do, which is to suggest the alternative zones under which Applicant could continue to operate its short-term rental facility, either as a boarding and lodging house, or as a hotel. These decisions are clearly within the scope, power and legal authority granted the City of St. Matthews and were appropriate and reasonable.

Finally, Applicant contends that the City of St. Matthews picked out 108 Staebler Avenue for "selective enforcement," but provides no evidence to support that allegation. In fact, just as in Louisville Metro, the City of St. Matthews's ordinance enforcement is complaint driven and the City was simply responding to a neighbor's complaint about the use of 108 Stabler Avenue. For the reason set out above, the City of St. Matthews respectfully requests denial of 21-APPEAL-0006.

Sincerely,

John Singler

Cc: Client
Chris Morris

DEVELOPMENT CODE

for all of

JEFFERSON COUNTY, KENTUCKY

including

ZONING DISTRICT REGULATIONS

as in effect April, 2001

and

METROPOLITAN SUBDIVISION REGULATIONS

as in effect December 4, 2003

Also including Floodplain Management Ordinance
(Chapter 157 Jefferson County Code of Ordinances)
With the
Erosion Prevention and Sediment Control
Ordinance adopted September 25, 2001

JEFFERSON COUNTY, KENTUCKY

DIVISION OF PLANNING AND DESIGN SERVICES
LOUISVILLE AND JEFFERSON COUNTY PLANNING COMMISSION

444 SOUTH FIFTH STREET SUITE 300
LOUISVILLE, KENTUCKY 40202-4313
PHONE 502-574-6230
FAX 502-574-8129

3. All territory which may hereafter be annexed to an incorporated area shall continue to be subject to the zoning district regulations applicable thereto prior to the time of annexation.

B. BOUNDARIES OF DISTRICTS:

1. A zoning district letter-number combination shown on the Zoning District Map indicates that the regulations pertaining to the zoning district so designated extends throughout the whole area bounded by the zoning district boundary lines, except as otherwise provided by this section.

2. Where uncertainty exists with respect to the boundaries of the various districts on the Zoning District Map, the following rules shall apply:

   a. In cases where a boundary line is shown within a street, alley or stream, it shall be deemed to be in the center of the street, alley or stream, and if the actual location of such street, alley or stream varies slightly from the location as shown on the Zoning District Map, then the actual location shall control;

   b. In cases where a boundary line is shown a specific distance from a street or property line or other physical features, this distance shall control;

   c. In cases where a boundary line is shown adjoining or coincident with a railroad or public utility right-of-way or easement, it shall be deemed to be in the center of the railroad or public utility right-of-way or easement;

   d. Where the Zoning District Map shows a district boundary line as approximately coterminous with a property line or lot line, then the district boundary line shall be said property line or lot line;

   e. Where the public street or alley is officially vacated or abandoned the district boundary of the abutting property shall extend to the center line of such vacated or abandoned street or alley; and

   f. Where any private right-of-way or easement of any railroad, canal, transportation or public utility company is vacated or abandoned, the district boundary of the abutting property shall extend to the center line of such vacated or abandoned property.

C. THE USE OF LAND AND BUILDINGS:

1. Land Use and Agricultural Purposes:

   No land may be used except for a purpose permitted in the district in which it is located; however, land which is used solely for agricultural, farming, dairying, stock-raising, or similar purposes is not subject to regulations imposed by this ordinance relating to building permits, certificates of occupancy, height, yard or location requirements for agricultural buildings, including and limited to one mobile home used as a dwelling except that:

a. Setback lines may be required for the operation of existing and proposed streets and highways, and

b. All buildings or structures in a designated floodway or flood plain or which tend to increase flood heights or obstruct the flow of floodwaters are subject to the Flood Plain Regulations of this ordinance.

2. Building Uses and Location:

a. No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered, nor shall any building be used or designed to be used for any purpose except a use permitted in the district in which the building is located;

b. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit herein established for the district in which the building is located;

c. No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area requirements of the district in which the building is located;

d. Every building hereafter erected or structurally altered shall be located on a lot or tract as herein defined, and in no case shall there be more than one main building on one lot except group houses, multi-family residential buildings, religious complexes (sanctuaries/houses of worship, having ancillary structures such as activity buildings, residences for church personnel), commercial buildings and industrial buildings; *

e. No mobile home shall be occupied or used for any residential purpose except when parked in a mobile home park, or when located on a lot of not less than five acres and used for agricultural purposes, and not more than one automobile trailer or mobile home shall be sold, displayed or stored on any property unless approved as a conditional use under Article 15. No other building or structure shall be attached to a mobile home. *

f. Developments with an aggregate of 200 or more dwellings (single family or multi-family) shall have at least two separate access roadways connecting directly to existing roadway(s). Developments created prior to the effective date of this paragraph and not in compliance with it may be modified, including construction of ancillary facilities and improvements to existing structures, provided that the modifications do not increase the number of dwelling units. *

* Docket No. 9-26-00

EXHIBIT TWO tabbies

Case # 16AMEND1002

Short Term Rentals
Land Development Code Text Amendment

Planning Commission

Joseph Haberman, AICP, Planning & Design Manager

April 11, 2016

Background

- Beginning in early 2015, Develop Louisville received over 50 complaints regarding unlawful short term use of dwellings (54 cases have been opened to date), most of which were being advertised on online platforms such as Airbnb.com

- Since the first complaint was filed, 5 notices of violations were issued

- In March 2015, the Metro Council adopted Resolution #035-2015; requesting that Louisville Metro Government evaluate whether or not the current laws, and the enforcement thereof, adequately address the unique business practice of short term rentals

Louisville METRO

Popular Online Platforms for Short Term Rentals

- On April 11, 2016, in the Louisville area:
  - On airbnb.com, there were 171 rentals available for April 11, 2016; with the rentals available in the following forms:
    - 103 entire home
    - 74 private room
    - 4 shared room
    - Of the 171 rentals available, the average cost was $362
  - On airbnb.com, there were 300+ rentals available in Louisville (not restricted to staying on April 11, 2016)
  - On homeaway.com, there were 40 rentals available
  - On homeaway.com, there were 246 rentals available in Louisville (not restricted to staying on April 11, 2016)

Louisville METRO

RESOLUTION NO. 124, SERIES 2015

A RESOLUTION REQUESTING THAT THE PLANNING COMMISSION, THROUGH ITS STAFF WITH PLANNING AND DESIGN SERVICES, RESEARCH "SHORT TERM RENTAL(S)" AS A LAND USE AND PROPOSE POSSIBLE TEXT AMENDMENTS TO THE LAND DEVELOPMENT CODE ADDRESSING WHAT "SHORT TERM RENTALS" ARE AND IN WHAT ZONING DESIGNATIONS THROUGHOUT LOUISVILLE METRO THEY WOULD BE ALLOWED TO OPERATE, HOLD A PUBLIC HEARING TO PRESENT THESE PROPOSED TEXT AMENDMENTS TO THE LAND DEVELOPMENT CODE AND ALLOW FOR PUBLIC COMMENT THEREON, AND FORWARD ITS RECOMMENDATION(S) TO THE LOUISVILLE METRO COUNCIL.

Sponsored by: Councilman James Peden

WHEREAS, today travelers and individuals in need of short term rentals are increasingly turning to the internet as a new method to secure short term rental opportunities, including the ability to rent by the room or an entire house, which has created a fluid market of residential property being offered for short term rentals (commonly referred to as "short term rentals");

WHEREAS, Louisville Metro has a growing number of dwelling units being rented for short terms, most of which are being advertised via online third party platforms;

WHEREAS, Metro Council evaluated existing laws to adequately understand licensing, taxation, zoning, health and safety issues associated with these new internet based sites for the travelers and residents of these short term rentals arrangements;

WHEREAS, Metro Council understands that Codes and Regulations and Develop Louisville have received complaints regarding short term rentals and in response has issued notices of alleged violations of the Land Development Code;

WHEREAS, Metro Council seeks to balance the interests and needs of travelers and individuals in need of short term rentals with property owners and residents while also considering the impact on the community;

WHEREAS, Metro Council, for the reasons stated above, wishes to research "short term rentals" as a land use, specifically how Louisville Metro should define "short term rental" as it relates to carrying out the guidelines and policies of Cornerstone 2020, and further identify what zoning designations would be appropriate for "short term rental" to operate.

NOW, THEREFORE, BE IT RESOLVED BY THE METRO COUNCIL AS FOLLOWS:

Section I: That the Metro Council hereby requests the Louisville Metro Department of Planning and Design Services, as staff to the Louisville Metro Planning Commission, to research "short term rental" as a land use and propose texts amendments to the Land Development Code specifically setting forth its definition and in what zoning classifications "short term rental(s)" are permitted to operate.

Section II: That the Metro Council hereby further requests that after drafting the proposed text amendments to the Land Development Code related to "short term rental(s)" as described in Section I above, Planning and Design Services shall present said proposed text amendments to the Planning Commission during a duly-noticed public hearing where testimony related to the proposed text amendments can be heard and, subsequently, the Planning Commission, after sufficient deliberation, shall forward

its recommendations related to the text amendments to the Metro Council and other legislative bodies within Louisville Metro with zoning authority.

Section III: This Resolution shall take effect upon passage and approval.

H. Stephen Ott
Metro Council Clerk

David W. Tandy
President of the Coucil

Greg Fischer
Mayor

Approved: 12/4/15
Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By:

LOUISVILLE METRO COUNCIL
ADOPTED
December 3, 2015

R-230-15

RESOLUTION NO. 035, SERIES 2015

A RESOLUTION REQUESTING LOUISVILLE METRO GOVERNMENT TO EVALUATE WHETHER CURRENT LAWS AND THE ENFORCEMENT THEREOF ADEQUATELY ADDRESS THE UNIQUE BUSINESS PRACTICE OF SHORT TERM RENTALS.

Sponsored By: Council Member James Peden

WHEREAS, today travelers and individuals in need of short term rentals are increasingly turning to the internet for new methods to advertise and secure short term rental opportunities, including the ability to rent by the room or an entire house, which has created a fluid market of residential property being offered for short term rentals (commonly referred to as "short term rentals");

WHEREAS, Metro Council is evaluating existing laws to adequately understand licensing, taxation, zoning, health and safety of these new internet based sites for the travelers and residents of these short term rentals arrangements;

WHEREAS, Metro Council understands that Codes and Regulations has received complaints regarding short term rentals and in response has issued notices of alleged violations of the Land Development Code.

WHEREAS, Metro Council seeks to balance the interests and needs of travelers and individuals in need of short term rentals with property owners and residents while also considering the impact on the community.

NOW THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The Louisville Metro Council hereby requests the Louisville Metro Government, through Develop Louisville, evaluate current laws and the enforcement

thereof to adequately address the unique business practice of short term rentals as described above.

SECTION II: During Louisville Metro Government's review of this matter, Louisville Metro Council requests the executive branch to refrain for a period of 90 days from issuing citations or pursuing alleged land use violations against property owners who list using these sites.

SECTION III: The Louisville Metro Council anticipates introducing legislation within 90 days that is rationally based and reasonably tailored to protect the integrity of Louisville Metro's residential communities and our tourism industry.

SECTION IV: This Resolution shall take effect upon its passage and approval.

H. Stephan Ott
Metro Council Clerk

David Tandy
President of the Council

Greg Fischer
Mayor

3/31/15
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney
BY: Sarah J. Martin

LOUISVILLE METRO COUNCIL
ADOPTED
March 26, 2015

Short Term Rental Resolution 3-9-15 draft-Peden Changes

560 S.W.3d 516 (Ky. 2018), 2017-SC-000189-DG AND 2017-SC-000431-DG, Hensley v. Gadd /* */ div.c1 {text-align: center} /**/

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560 S.W.3d 516 (Ky. 2018)

Don HENSLEY, Appellant/Cross-Appellee

v.

Keith A. GADD and JHT Properties, LLC, Appellees/Cross-Appellants

No. 2017-SC-000189-DG AND 2017-SC-000431-DG

Supreme Court of Kentucky

November 15, 2018

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[Copyrighted Material Omitted]

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ON REVIEW FROM COURT OF APPEALS, CASE NOS. 2015-CA-001948-MR AND 2016-CA-000164-MR, GARRARD CIRCUIT COURT NO. 13-CI-00308

COUNSEL FOR APPELLANT/CROSS-APPELLEE: Frederick Short

COUNSEL FOR APPELLEES/CROSS-APPELLANTS: Carroll Morris Redford III, Elizabeth C. Woodford, MILLER, GRIFFIN, & MARKS, P.S.C.

OPINION

VANMETER JUSTICE

Restrictive covenants governing the use of real property are enforceable according to their terms. The issue we must determine in this case is whether the Garrard Circuit Court erred enforcing Deed of Restrictions for Woodlawn Estates Subdivision Section II, by granting judgment in favor of Don Hensley against Keith A. Gadd and JHT Properties, LLC[1] on the basis that Gadd was renting private residences in the Subdivision as short-term vacation rentals in contravention of restrictions on commercial use of property. We hold that the trial court did not err, and we therefore reverse and vacate so much of the Court of Appeals Opinion as reversed the trial courts judgment. We, however, affirm the Court of Appeals insofar as it affirmed the trial courts dismissal of Gadds counterclaim for harassment.

I. Factual and Procedural Background.

In the early 1990s, Hensley and his wife, Marsha, developed the Subdivision as a lakeside development on Lake Herrington. The Hensleys reside in the Subdivision and own several properties there. As a part of the development, they executed and filed Deed of Restrictions Lots 1-15

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Woodlawn Estates Subdivision Section II.[2] For purposes of our review, the significant provisions of the Deed of Restrictions are

1. Lots 2 thru 15 shall be known and described as single family residential lots and shall be used only for residential purposes. Structures erected thereon shall be designed for and occupied by one family; no more than one residential structure shall be erected on each lot. 2. Lot 1 shall be known and described as commercial lot and may be used only for single family, multi-f

commercial purposes. Commercial use shall be limited to food stores, marinas, offices, hotels, restaurants and similar retail of [sic] professional businesses; no wholesale, industrial or manufacturing activities shall be permitted. 13. No trade, business, or profession of any kind shall be carried out upon any residential lot nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood[.] 14. No sign for advertising or for any other purpose shall be displayed any place on any residential lot or on any residential structure on any lot except one sign for advertising the sale or rental thereof[.]

Keith Gadd owns Lot 3 in the Subdivision, and JHT owned Lot 2. No question exists but that both lots were covered by the Deed of Restrictions.

As found by the trial court, Gadd advertised the properties for short-term recreational residential use, placing ads on LexingtonRentalHomes.com using the phrase "vacation rental per night". The ads listed a nightly rental of $375 for Lot 2, and $300 for Lot 3. Ads on Homeaway.com advertised for nightly and weekly renters, with conditions of a 10% tax rate and a cleaning fee of $125.

In October 2013, Hensley filed a complaint against Gadd alleging violations of the restrictions and that Gadds renters had created an "annoyance and or nuisance" to other owners in the neighborhood. Gadd answered and filed a counterclaim for harassment. [3] KRS 525.070, KRS 446.070.

The parties initially filed cross-motions for summary judgment in January 2014, which the trial court denied. After a period of discovery, the parties again filed cross-motions for summary judgment. At a hearing on the motions, the parties advised the court that all issues had been addressed by deposition and agreed for the trial court to try the case on depositions.[4] [5] CR 43.04(1). The trial court did so, and, on November 20, 2015, issued its Findings of Fact, Conclusions of Law and Judgment.

In addition to the matters set forth above, the trial court noted the complaints of other residents concerning Gadds renters: occasional excessive noise, vehicles parked on the street, possible overuse of septic tank causing offensive odors and possible conduct damaging the Subdivisions golf course property. The trial court noted the communications between Hensley and the other deponents concerning complaints about noise, traffic, septic tanks, and potential damage that short-term

rentals could have on the deponents property values. The trial court did not make a finding that Gadds renters and their activities constituted "an annoyance or a nuisance to the neighborhood" within the meaning of Restriction 13.

The trial court summarized Hensleys testimony, as follows:

[Hensleys] intention when imposing the restrictions was to limit rentals to single families for longer terms. He acknowledged that the specific term was not stated in the restrictions but indicated that he felt like a six month rental or a year rental would be a reasonable length of time.... He acknowledged that "single family" could include members of an extended family, as well as guest of that family.... [W]hen asked about whether a monthly rental would be okay, he acknowledged the ambiguity in the restrictions but insisted that he did not intend for rentals to be made only on a

daily basis.... He described the overnight rentals as giving the properties a "motel atmosphere" inconsistent with the neighborhood.

The trial court summarized the factual statements in Gadds affidavit that he personally used the Lots approximately three months each year and denied any business use. He stated that various governmental agencies have investigated the neighbors complaints and found no violations.

The trial court then examined the restrictions and recent case law from the Court of Appeals in which similar restrictions and factual situations were present. *Barrickman v. Wells,* No. 2013-CA-001578-MR, 2015 WL 2357179 (Ky. App. May 15, 2015); *Vonderhaar v. Lakeside Place Homeowners Assn, Inc.,* No. 2012-CA-002193-MR, 2014 WL 3887913 (Ky. App. Aug. 8, 2014); *Hyatt v. Court,* No. 2008-CA-001474-MR, 2009 WL 2633659 (Ky. App. Aug. 28, 2009). The court concluded that Gadds use of the property, specifically short-term rentals, constituted a business in violation of Restriction 13, and that Hensley had not waived enforcement of the restrictions. The trial court entered judgment in favor of Hensley, enjoined Gadd from further violation of the applicable restrictions, awarded Hensley costs, denied Hensleys request for punitive damages, and dismissed Gadds harassment counterclaim.

Gadd appealed, as a matter of right, to the Court of Appeals. That court determined that the restrictions were ambiguous in that they permitted rentals, but stated no time limit on those rentals, construed the restrictions against Hensley as the grantor, and noted other residents operated business from their homes (as supporting the imprecision of the restrictions). Ultimately, the Court of Appeals concluded that, in case of doubtful meaning, restrictions should be construed in favor of the free use of property. Slip op. at 16 (citing *Connor v. Clemons,* 308 Ky. 9, 11, 213 S.W.2d 438, 439 (1948); *Glenmore Distilleries Co. v. Fiorella,* 273 Ky. 549, 556, 117 S.W.2d 173, 176 (1938)). As to Gadds counterclaim of harassment, the court concluded that he had not proven harassment. The court therefore reversed the trial courts judgment enjoining Gadds short-term rentals of the property, but affirmed dismissal of Gadds counterclaim. Hensley moved this Court for discretionary review, and Gadd similarly requested discretionary review, both of which we granted.

II. Standard of Review.

The trial of this matter was by deposition by agreement of the parties under CR 43.04(1). In pertinent part, the rule provides "the court may upon motion or upon its own initiative, and with due regard to the importance of presenting the testimony of the witnesses orally in open court,

order the testimony to be taken by deposition upon any issue which is to be tried by the court without a jury." *Id.* The trial court essentially conducted a bench trial. CR 52.01 states "[i]n all actions tried upon the facts without a jury ... the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment." "[I]n granting or refusing ... permanent injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action[.]" *Id.* Furthermore, "[f]indings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* [6]

Interpretation or construction of restrictive covenants is a question of law subject to *de novo* review on appeal. *Triple Crown Subdivision Homeowners Assn, Inc. v. Oberst,* 279 S.W.3d 138, 141 (Ky. 2008).

III. Analysis.

A. Restrictive Covenants.

The issues in this case revolve around a proper interpretation of the Deed of Restrictions. Kentucky decisions have recognized that "each case involving restrictions on the use of property, whether it be by reciprocal negative easements contained in conveyances or by a zoning ordinance, must be decided on its merits— on the particular terms of the instrument and the facts of the case." *Robertson v. W. Baptist Hosp.,* 267 S.W.2d 395, 397 (Ky. 1954). As both the trial court and Court of Appeals correctly noted, restrictive covenants are to be construed according to their plain language. "One primary rule of construction relating to all instruments is that every part of the instrument will be given meaning and effect when possible." *McFarland v. Hanley,* 258 S.W.2d 3, 5 (Ky. 1953).

[A]s a fundamental and supreme rule of construction of contracts, the intention of the parties governs. That intention in respect to a restrictive covenant is to be gathered from the entire context of the instruments. Often the surrounding circumstances and the object which the covenant was designed to accomplish, which may be revealed in part by a general scheme or plan of development, are important considerations where the meaning is doubtful.

Parrish v. Newbury, 279 S.W.2d 229, 233 (Ky. 1955) (citations omitted).

"[R]estrictions constitute mutual, reciprocal, equitable easements of the nature of servitudes in favor of owners of other lots of a plot of which all were once a part; that they constitute property rights which run with the land so as to entitle beneficiaries or the owners to enforce the restrictions[.]" *Ashland-Boyd Cty. City-Cty. Health Dept v. Riggs,* 252 S.W.2d 922, 925 (Ky. 1952). Stated another way, " restrictions are regarded more as a protection to the property owner and the public rather than as a restriction on the use of property, and the old-time doctrine of strict construction no longer applies. " *Triple Crown*, 279 S.W.3d at 140 (quoting *Brandon v. Price,* 314 S.W.2d 521, 523 (Ky. 1958)).

"We must seek the intention of the grantor from the language used, considered in light of such factors as the general scheme of the subdivision. We may not substitute what the grantor may have

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intended to say for the plain import of what he said." *Mascolino v. Noland & Cowden Enters., Inc.,* 391 S.W.2d 710, 712 (Ky. 1965) (citation omitted). A similar rule applies when interpreting ambiguous restrictions, *i.e.,* the intention of the parties governs, with consideration given to the general scheme or plan of development. *Triple Crown*, 279 S.W.3d at 140. That said, courts are not to remake contracts for parties and create ambiguity where none exists. *O.P. Link Handle Co. v. Wright,* 429 S.W.2d 842, 847 (Ky. 1968). In *O.P. Link,* we admonished against giving a writing meaning which is not to be found in the instrument itself under the guise of interpretation based on direct evidence of intention. *Id.* (citing 4 Williston on Contracts, § 610A (3d ed.1961)). Parties are bound by the clear meaning of the language used, the same as any other contract. *See Larkins v.*

Miller, 239 S.W.3d 112, 115 (Ky. App. 2007) (stating that "a court should interpret the terms of the contract according to their plain and ordinary meaning[ ]").

These restrictions are unambiguous. In this case, Hensley created a single-family residential subdivision for Lots 2-15. On those lots, the use is limited to residential purposes, and the principal structure is to be a single-family residence. Further, "no trade, business, or profession of any kind [is] permitted to be carried out[,]" although rentals are permitted.[7] These restrictions are clear from Restrictions 1, 13 and 14. The Court of Appeals, however, ignored Restriction 2, which contains the lone exception to the residential use within the subdivision, in that on Lot 1 many uses are permitted: single-family, multi-family or commercial. That restriction further defines the meaning of commercial: "Commercial use shall be limited to food stores, marinas, offices, ***hotels*** , restaurants and similar retail [or] professional businesses; no wholesale, industrial or manufacturing activities shall be permitted." (emphasis added).

The uses upon Lot 1 are countless: single-family, multi-family or commercial. The meaning of a "multi-family" undoubtedly includes a duplex, triplex, fourplex, an apartment building, and a multi-unit condominium. *See, e.g., Macy v. Wormald,* 329 S.W.2d 212, 213 (Ky. 1959) (holding that a four-unit apartment house, as a multiple family dwelling, violated restriction limiting subdivision to "only one residence ... upon each lot[ ]"). Commercial is defined to include a number of uses, including "hotel." The plain meaning of "hotel" is "an establishment that provides lodging and usually meals, entertainment, and various personal services for the public." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/hotel (last visited October 5, 2018). Kentucky case law supports a definition of "hotel" as place of lodging for the public. In *Clemons v. Meadows,* our predecessor court long ago recognized that

Hotels are established and maintained for the purpose of serving the public. The opening of a hotel is an invitation to the public to become its guests. Hotels are not conducted for the social enjoyment of the owners, but for the convenience of the public, that is, those whose business or pleasure may render it necessary that they shall ask and receive food and shelter at a place of public entertainment for compensation. A hotel is a quasi public institution. Those who

desire to conduct a hotel must first obtain a license from the commonwealth allowing them to do so. Laws have been enacted for the purpose of protecting the proprietors of hotels because of the public character of the business.

123 Ky. 178, 182-83, 94 S.W. 13, 14 (1906).

Kentucky statutes similarly define "hotel." *See* KRS 219.011(3) (defining "hotel"[8] as "every building or structure kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public, and includes motels, tourist homes, and similar establishments, but excludes boarding houses and rooming houses[ ]"); KRS 243.055(1)(a) (defining "hotel"[9] as "any hotel, motel, inn, or other establishment which offers overnight accommodations to the public for hire[ ]"); KRS 306.010(1) (defining "hotel"[10] as "any hotel or inn, and includes an apartment hotel wherein furnished or unfurnished apartments are rented for fixed periods of time and the proprietor, if required, supplies food to the occupants[ ]").

By contrast, the uses upon Lots 2-15 are more limited: residential use, and only one single-

family residence per lot. In *Robertson*, the court noted that "[t]he word family is an elastic term and is applied in many ways." 267 S.W.2d at 396.[11] The question in this case does not turn on whether the structure on Gadds lot is a single-family structure. The restrictions are very clear that Lots 2-15 are to have a single-family residence, as opposed to a multifamily structure or a commercial structure, *e.g.,* hotel. Interpreting a very similar restriction in *Macy,* our predecessor court noted that "[t]he noun residence itself is singular, and the definitions in Websters New International Dictionary all indicate that a residence is a **dwelling place or abode of a single person or family unit.** This likewise is the commonly understood meaning." 329 S.W.2d at 213 (emphasis added).

As recognized by the trial court, the meaning of the terms "residential" and "reside" are important in deciding this case, as to whether Gadds use or that of his renters constitutes residential use. The common meaning of the word "reside" is "to dwell permanently or continuously: [to] occupy a place as ones legal domicile." Merriam-Webster Dictionary, https://www.merriamwebster.com/dictionary/reside (last visited October 9, 2018). Similarly, and as noted by the trial court, Blacks Law Dictionary defines "residence" as

"personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently." *Residence,* Blacks Law Dictionary (5th ed. 1979).

In analyzing the restrictions and the facts of this case, we agree with the trial court and with Hensley that one-night, two-night, weekend, weekly inhabitants cannot be considered "residents" within the commonly understood meaning of that word, or the use by such persons as constituting "residential." Gadds use of the property meets the very statutory definition of hotel: a "building or structure kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public." KRS 219.011(3). Interpreting every provision of the Deed of Restrictions, as we are required to do, leads to the inescapable conclusion that Gadd is operating a hotel on his property, when such use is permitted only on Lot 1. Gadd registered his operation as a hotel with the Commonwealth of Kentucky and collects tax on the rentals.[12] *See* KRS 139.200(2)(a) (assessing 6% tax on "rental of any room or rooms, lodgings, campsites, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, ... or any other place in which rooms, lodgings ... or accommodations are regularly furnished to transients for a consideration[,]" but the tax does not apply to rentals of thirty days or more); KRS 142.400(2) (assessing transient room tax at 1% rate, but excluding any "rental or lease of any room or set of rooms that is equipped with a kitchen, in an apartment building, and that is usually leased as a dwelling for a period of thirty (30) days or more[ ]").

We note further support in this interpretation in Restriction No. 10 which prohibits "camping or similar itinerant residency ... upon any lot." Anyone staying in a house in the subdivision is not *camping out,* as one might with a sleeping bag in a tent or under the stars, but "camp" also has a meaning synonymous with temporary residence: "a place usually away from urban areas where tents or simple buildings (such as cabins) are erected for shelter or for **temporary residence** (as for laborers, prisoners, or **vacationers**)." Merriam-Webster Dictionary, https://www.merriam-

webster.com/dictionary/camp (last visited October 9, 2018) (emphasis added). "Itinerant" similarly connotes a temporary stay: "traveling from place to place." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/itinerant (last visited October 9, 2018). In *Union Natl Bank v. Brown,* 101 Ky. 354, 360, 41 S.W. 273, 274 (1897), the court colorfully defined "itinerant" as "here to-day and there to-morrow." The trial court correctly underscored the importance of these provisions in that transient, "short-term renters are not as motivated to be considerate of the neighbors or the surrounding property. The restriction, therefore, bears a rational relation to the
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developers and the permanent residents desire to maintain a quiet, well-maintained subdivision with sustained property values."

The Court of Appeals significant conclusions were that 1) the restrictions permitted rental but placed no time limitation on that rental; 2) the restrictions emphasize the purpose of the occupation of the property, *i.e.,* "the actual use and activities on the property," and noted that Gadd used it for his living purposes, "sleeping, eating, and other residential purposes," a portion of the time and rented it to others for their living purposes at other times; and 3) Gadd, in fact, did not conduct any business activities on the property since the offering and rental was conducted via the internet and from Gadds Lexington office. We address each of these considerations in turn.

The fact that the restrictions permit rentals does not render the restrictions ambiguous insofar as this case is concerned. The issue before us is whether Gadds renting on a short-term, transient basis is permitted under the restrictions. The clear answer is "no." We have no difficulty concluding that short-term rentals are prohibited because Gadds advertising of such rentals renders his properly the equivalent of a hotel, which is not a permitted use on his lot. Residential rentals are permitted. While we might be tempted to opine that a "residential rental" is one month or more, that issue is not before us.

The Court of Appeals and Gadds emphasis on residential uses— eating, sleeping, reading a book, watching TV— misses the point of the restrictions. Such activities could also occur on Lot 1, under the designation of multifamily or commercial, i.e., hotel, since a person occupying an individual unit in a multifamily structure or hotel could do all those things. As an aside, a person could also do those activities while camping. But no one could possibly conclude that a multifamily or commercial/hotel use is permitted on Lots 2-15. The limitation of those items to Lot 1 excludes those items from Lots 2-15, even though the possible activities thereon are virtually identical.

Finally, we reject the Court of Appeals and Gadds interpretation that Restriction No. 13— "[n]o trade, business, or profession of any kind shall be carried out **upon** any residential lot[ ]"— was not violated since no commercial activity occurred there based on the reasoning that all advertising and financial transactions were conducted through the internet or telephone at Gadds Lexington office. The short-term, transient occupancy of the lot was the business activity carried out upon the lot. The assertion otherwise is akin to a claim that the operation of a Webster County mine occurs in Jefferson County because all the paperwork and financial activity occurs at the Louisville home office of a mining company.

The parties and the lower courts analyzed the issues in this case by citation to three unpublished Court of Appeals opinions: *Barrickman v. Wells , Vonderhaar v. Lakeside Place*

Homeowners Assn, Inc., and *Hyatt v. Court.* While these cases contain useful analysis, they obviously are not binding on this Court. We reiterate that each case involving the interpretation of restrictive covenants turns on the "particular terms of the instrument and the facts of the case." *Robertson*, 267 S.W.2d at 397. For example, in *Barrickman,* the restrictions prohibited commercial use. A majority of the court believed that provision was ambiguous, since "commercial" was not otherwise defined. 2015 WL 2357179, at *2. Irrespective of the correctness of that conclusion, in this case, by contrast, Restriction 2 defines "commercial use" as "food stores, marinas, offices, hotels,

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restaurants and similar retail of [sic] professional businesses; no wholesale, industrial or manufacturing activities shall be permitted." Again, as noted, since "commercial use" is limited to Lot 1, it is excluded on Lots 2-15.

B. Waiver of Deed Restrictions.

Gadd argues that Hensley waived enforcement of the restriction on commercial use since testimony showed that some owners had rented their properties and used them "as the actual situs of ongoing business." Specifically, Gadd claims that "Thorup operates his engineering consulting business from his property[,]" and "Burton operates a masonry business from his home." The trial court rejected this contention since "[t]he only proof offered was that any other violations of the restrictions were in-home uses which had no impact on the character of the neighborhood."

A waiver of restrictive covenants occurs when " [a] change in the character of the neighborhood which was intended to be created by restrictions ... generally ... prevent[s] their enforcement in equity, where it is no longer possible to accomplish the purpose intended by such covenant. " *Logan v. Logan,* 409 S.W.2d 531, 534 (Ky. 1966) (quoting *Bagby v. Stewarts Exr,* 265 S.W.2d 75, 77 (Ky. 1954)); *see also Colliver v. Stonewall Equestrian Estates Assn, Inc.,* 139 S.W.3d 521, 525 (Ky. App. 2003) (noting that "[a]rbitrary enforcement of covenants does not necessarily render covenants unenforceable[;]" only arbitrary enforcement that results "in a fundamental change in the character of a neighborhood" will render the covenants unenforceable).

We agree with the trial court that the only proof of other business activity concerned in-home uses that did not impact the character of the neighborhood as a residential subdivision. For example, no proof was adduced that Thorups clients or employees descended on the neighborhood at 9:00 a.m., coming and going throughout the course of the work day, and causing traffic congestion on the neighborhood streets. Nor was Burton operating a brickyard on his property, with commercial vehicles picking up or dropping off brick, sand or mortar. Similarly, Gadds complaint about other owners renting of their properties fails. As we have noted, the restrictions in this case permit residential rentals. The trial court correctly held that Hensley had not waived enforcement of the restrictions.

C. Issuance of Injunctive Relief.

Gadd argues that the original injunction issued by the trial court failed to meet the specificity requirement of CR 65.02(1), which requires "(1) [e]very restraining order or injunction shall be specific in terms and shall describe in reasonable detail, and not by reference to the complaint or

other document, the act restrained or enjoined." The trial courts judgment pertinently stated, as follows:

JUDGMENT

For the reasons set forth above, Plaintiff is granted judgment against the defendants permanently enjoining them from further violations of the applicable restrictions and for his costs herein expended. The Court denies Plaintiffs request for punitive damages, there being no basis in law or fact for that claim. Defendants Counterclaim is dismissed.

On the one hand, Gadd knows, or should know, perfectly well that he is prohibited from violating the restrictions by renting his property on a short-term, transient basis, whether such rentals are procured through LexingtonRentalHomes.com, similar internet sites, or other means. On the other hand, residential

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rentals are permitted in the subdivision. We recognize the purpose of the rule is " to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood. " *White v. Sullivan,* 667 S.W.2d 385, 388 (Ky. App. 1983) (quoting *Schmidt v. Lessard,* 414 U.S. 473, 476, 94 S.Ct. 713, 715, 38 L.Ed.2d 661 (1974)). The trial courts judgment enjoining Gadd from further violations referred generally to "the applicable restrictions" and without reasonable detail. On remand, we trust that the trial court will issue a sufficiently specific injunction based on this opinion.

D. Harassment.

Finally, Gadd claims that the trial court impermissibly dismissed his counterclaim against Hensley for harassment, based on KRS 525.070(1)(e). This statute states that "[a] person is guilty of harassment when, with intent to intimidate, harass, annoy, or alarm another person, he or she ... [e]ngages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose." Although this provision is in the penal code, Gadd asserts the claim as a private right of action under KRS 446.070, which provides "[a] person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation."

The commentary to the Kentucky Penal Code states that this subsection, which is designed as a "catch all" provision since listing all specific types of prohibited conduct would be impossible, "contains three elements: a course of conduct; alarm or serious annoyance of another person; and no legitimate purpose." KRS 525.070, Ky. Crime Commn/LRC Commentary (1974).

Gadd argues that summary judgment on his counterclaim was inappropriate. This argument fails because the trial court did not grant summary judgment. Rather the trial court granted judgment following a trial conducted upon depositions. And in this instance, the trial court concluded, as follows:

[T]here is no evidence that [Hensley], or anyone else in the neighborhood, intended to harass, annoy or alarm Mr. Gadd. In fact, [Hensley] testified that he would like to have Mr. Gadd as a full-time resident in the subdivision as long as he honored the restrictions. All of the communications between the residents were appropriate given their concerns, and all were directed toward the

proper enforcement of the restrictions.

We are unable to say that that the trial courts findings of fact on this issue are clearly erroneous, CR 52.01, or are unsupported by substantial evidence. *Talley v. Paisley,* 525 S.W.3d 523, 526 (Ky. 2017). Since the trial court found against Gadd on two of the requisite elements of harassment, a lack of intent to annoy or alarm, and a legitimate purpose, we affirm the Court of Appeals and the trial court on this issue.

IV. Conclusion.

In conclusion, the Restrictions in this case limited commercial uses, such as a hotel, to Lot 1, and required Lots 2-15 to be used for single-family residential purposes. Because Gadd used Lot 3 as the functional equivalent of a hotel, *i.e.,* a structure advertised or held out to the public as a place where sleeping accommodations are furnished to the public on a short-term transient basis, designated it as a hotel on forms provided to the Commonwealth, and correspondingly paid taxes to the Commonwealth on those rentals, his use of the property violated the Deed of

Restrictions. We reverse the decision of the Court of Appeals insofar as it reversed the Garrard Circuit Court judgment prohibiting Gadds short-term rentals of the property. We affirm the decision of the Court of Appeals as to it affirming the trial courts dismissal of Gadds counterclaim. We remand this case to the Garrard Circuit Court for the issuance of injunctive relief in compliance with CR 65.02.

All sitting. Minton, C.J.; Cunningham, Hughes and Venters, JJ., concur. Wright, J., concurs in result only by separate opinion in which Keller, J., joins.

WRIGHT, J., CONCURRING IN RESULT ONLY:

While I concur with the majoritys result in this case, I write separately to explain my reasoning. This case and future cases obviously turn on the specific language of any restrictions. In the present case, the restrictions specify that a hotel may only be placed on Lot 1. Therefore, the majoritys analysis as to what constitutes a hotel resolves the issue. However, without the provision restricting hotels to Lot 1, the restrictions would have been impermissibly vague, and therefore ambiguous. Ambiguous restrictions are construed against the grantor and in favor of free use of property. *McFarland v. Hanley,* 258 S.W.2d 3, 5 (Ky. 1953). Since I agree that the restrictions in the present case clearly limit commercial use to Lot 1 and define commercial as including hotels, these restrictions are not ambiguous, and that issue is not before us. I therefore concur with the result of the majority opinion.

Keller, J., joins.

Notes:

[1] JHT Properties, LLC is a Kentucky limited liability company with its principal office in Lexington. Gadd is its managing member. The issues in the case concern two lots in the Subdivision, one owned by Gadd and one owned by JHT. At oral argument, counsel represented that JHT sold its lot after Hensley filed his complaint. This fact is reflected in both the trial courts Findings of Fact, Conclusions of Law and Judgment and Court of Appeals Opinion. Gadd and JHT are hereinafter referred to collectively as "Gadd."

[2] The Deed of Restrictions is recorded in Deed Book 155, pages 642-46 in the Garrard County Clerks office.

[3] Kentucky Revised Statutes.

[4] In addition to testimony from the parties, *i.e.*, Hensleys deposition and Gadds affidavit, the trial court indicated it considered depositions of Maurice Wilcoxson, Norma Wilcoxson, Christian Thorup, Margie Thorup, Jim Cox, Patricia Cox, Jeffrey Burton, Teresa Burton, Linda Alexander.

[5] Kentucky Rules of Civil Procedure.

[6] The Court of Appeals erroneously recounted that the Garrard Circuit Court entered a summary judgment, as opposed to a judgment following a trial on depositions. We perceive that to be a minor misstatement which did not impact its opinion.

[7] As discussed, *infra,* short-term transient rentals of the type made by Gadd are not permitted under the Deed of Restrictions. Longer term residential rentals are permitted. Whether residential rentals may be for one month, six months or more, as testified by Hensley, is not necessary for us to decide.

[8] Definition for purposes of Kentucky Hotel Act of 1972, KRS 219.011 to 219.081. KRS 219.011, 219.081.

[9] Definition for purposes of alcoholic beverage Hotel in-room service license. KRS 243.055(1).

[10] Definition for purposes of KRS Chapter 306, relating to Hotels. KRS 306.010.

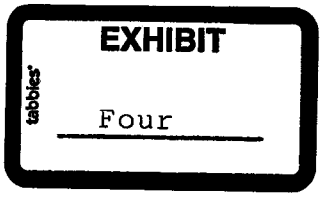
[11] The *Robertson* court noted that the word "family" often is "given a broader meaning and may, and does sometimes, mean a collection of persons living together in a home, though none of them be married." 267 S.W.2d at 396 (quotation omitted). The court held that a home containing lodging for 20 hospital nurses with a matron or housemother was permitted in a zone designated as One Family Zone since the ordinance defined " Family as One or more persons living as a single housekeeping unit, as distinguished from a group occupying a hotel, club, fraternity or sorority house. A family shall be deemed to include servants. " *Id.* As another example, in *Mullins v. Nordlow,* the term "a family" was construed as including a group of lodgers where the lessee cared for the rooms even though the lodgers had the exclusive right of occupancy of those rooms. 170 *Ky* . 169, 177, 185 S.W. 825, 828 (1916). While Hensley adduced proof that on one occasion Gadd rented to three families, this case can be decided without regard to the definition of family.

[12] In June 2010, Gadd filed an Application for Permit/License to Operate a Hotel with the Cabinet for Health Services, Department for Public Health. The word "Hotel" was handwritten on a preprinted form. To the trial court, Gadd claimed that he only did so because "there was no category for vacation rental and not because [Gadd] actually considered the properties to be [a] hotel or actually operated [ ]88 Hunter Drive as a hotel." Defendants Reply in Support of Renewed Cross-Motion for Summary Judgment..., November 4, 2015. Gadds definition of a "vacation rental" is not stated, but if it is a "building or structure kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public[,]" that likewise would seem to be a "hotel."

JACK RUF, AICP

VITAE

- September 1977 – joined Planning Commission staff.
- 1981 – promoted to Planner I to serve as the planner for the Board of Zoning Adjustment.
- 1983 - Completed Masters work at U of L.
- 1988 - Earned admission to the American Institute of Certified Planners.
- 1996 – assigned to a special project, i.e., learn all about cellular tower siting and write regulations in advance of the Planning Commission receiving authority to regulate.
- 1997 - promoted to Planning Manager (equivalent to an assistant director). Responsible for BOZA staff, zoning enforcement for Jefferson County, cellular towers, staff training among other duties.
- 2002 – upon retirement of Planning Director/County Building Department Director, named co-acting director of the Planning Commission with fellow Planning Manager and acting director of the County Building Department until merger was to occur in 2003.
- 2003 - upon merger, tapped by new IPL Director to train all of the merged department's inspectors in zoning rules and enforcement. Resource for entire IPL department on zoning matters.
- 2005 – dual responsibilities at IPL and Planning and Design Services for managing 2 IPL inspection departments and training new staff at Planning and Design Services, continuing cellular tower review, minor plat approval, and mentoring planning staff.
- March 2008 - retired from Metro government.
- May 2008 – hired by the City of St. Matthews as planning officer at the invitation of Rick Tonini, former 20-year Board of Zoning Adjustment member.
- July 2011 – appointed to additional responsibilities as Sign and Code Enforcement Officer for the City.
- July 2012 – appointed to additional position of ABC Administrator for the City.



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