



CITY COUNCIL WORK SESSION

Monday, October 28, 2024 at 6:00 PM

Council Chambers - City Hall, 3rd Floor
1717 E. Park Street, Two Rivers, WI 54241

AGENDA

NOTICE: Arrangements for Addressing the City Council by Telephone, During Public Hearings or Input from the Public can be made by Contacting the City Manager's Office at 920-793-5532 or City Clerk's Office at 920-793-5526 by 4:00 p.m. on the day of the meeting

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL BY CITY CLERK

Councilmembers: Mark Bittner, Doug Brandt, Shannon Derby, Bill LeClair, Darla LeClair, Tim Petri, Bonnie Shimulunas, Scott Stechmesser, Adam Wachowski

4. ACTION ITEMS

A. TID No. 12 Development Agreement with Milkweed Ventures, LLC, to Provide a Pay-as-You-GO Developer Grant to Assist With Development of the Violet Inn Spa and Lounge, 1415 16th Street (Tabled from October 21 City Council Meeting)

Recommended Action:

Motion to authorize the City Manager and City Clerk to sign the agreement on behalf of the City

5. DISCUSSION ITEMS

A. Discussion of Topics Pertaining to Short-Term Rental Properties (STR's) or "Vacation Rentals"

1. Current City Ordinances Related to STR's--Overview by City Attorney

2. Wisconsin Laws Related to STR's and the Ability of Local Municipalities to Regulate Such Properties, Including Examples from Other Wisconsin Communities--Overview by City Attorney

3. What We Know About STR's in the City of Two Rivers

a. Number of registered STR's

b. Impact on Local Tourism

c. Policing Issues

d. Feedback from Local Residents

4. City Council Views on Whether Amendments to Existing Ordinances and Possible Additional Regulation are needed at this time

6. CLOSED EXECUTIVE SESSION

The City Council reserves the right to enter into Closed Session, per Wisc. Stats 19.85(1)(e) deliberating or negotiating the purchasing of public properties, the investment of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

- Discuss property acquisition matters
- Discuss possible assistance to development project

7. RECONVENE IN OPEN SESSION

To consider possible actions in follow-up to closed session discussions

8. ADJOURNMENT

Motion to dispense with the reading of the minutes of this meeting and adjourn

In accordance with the requirements of Title II of the Americans with Disabilities Act (ADA), the City of Two Rivers will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. If you need assistance or reasonable accommodations in participating in this meeting or event due to a disability as defined under the ADA, please call the City Clerk's office at 920-793-5526 or email clerk@two-rivers.org at least 48 hours prior to the scheduled meeting or event to request an accommodation. For additional assistance, individuals with hearing or speech disabilities can call 711 and be connected to a telephone relay system.

It is possible that members of and possibly a quorum of governmental bodies of the municipality may be in attendance at the above stated meeting to gather information; no other action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF TWO RIVERS AND MILKWEED VENTURES, LLC**

SECTION 1: PREAMBLE

This Agreement (“Agreement”) is made as of the ____ day of _____, 2024 between the City of Two Rivers, Wisconsin, a municipal corporation (hereinafter “City”) and Milkweed Ventures, LLC, a Wisconsin limited liability company (hereinafter “Ventures”). The parties are collectively referenced hereinafter as “The Parties.”

The City wishes to assist in the successful redevelopment of 1415 16th Street, Two Rivers, WI 54241, the “Development Site”, a blighted property, to enhance the tax base and job opportunities in the community, further known by the legal description and images included as Exhibit A and incorporated herein. To that end, City has amended, effective May 30, 2024, the Project Plan for Tax Incremental District No. 12 (“TID 12”). Said amendment was submitted on August 20, 2024, to the Wisconsin Department of Revenue for its review and approval as required by Wisconsin law.

Project Plan Amendment Number 2 for TID 12 specifically provides for a TID cash grant of up to \$130,000 to Ventures to assist in financing the “Project,” as described herein.

Ventures proposes to renovate the building at the Development Site. The “Project” as defined herein, is converting the former bar into a boutique hotel, containing six rooms, with spa amenities, and a cocktail lounge to be open to the public and hotel guests. The plans are attached as Exhibit B and incorporated herein. Ventures estimates the total cost of the proposed improvements to be approximately \$1,500,000, per the Project Budget attached hereto as Exhibit C. These estimates include the costs already incurred by Ventures for site acquisition.

Ventures has represented and hereby affirms, that the Project is contingent upon City assistance in the form of the “TID 12 Cash Grant” as described herein.

By Wisconsin State Statute, Section 66.1105(2)(f)(2)d, the terms for any TID-funded cash grant to Ventures must be addressed in a written economic development grant agreement. This Agreement is to serve as such agreement and is subject to be approved by the City Council.

SECTION 2: DEFINITIONS

Certain Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms as used herein shall have the following meanings:

(1) **"Development Site"** is defined as the project location of 1415 16th Street, Two Rivers, WI 54241, which consists of one parcel, further described by the legal description attached hereto as Exhibit A and incorporated herein.

(2) **"Available Tax Increment"** means, for any given Revenue Year, an amount equal to the Tax Increment attributable to the Development Site, which shall be calculated by subtracting Base Taxes for the Development Site from the property taxes attributable to the Development Site for the Revenue year in question.

(3) **"Base Taxes"** means the real property taxes payable for Tax Year 2024 based on the assessed value of the Development Site as of January 1, 2024.

(4) **"City Assistance"** means the TIF Grant described herein.

(5) **"Memorandum"** means a short form memorandum of this Agreement recorded in the office of the Manitowoc County Register of Deeds. The parties agree that the form of memorandum attached hereto as Exhibit D is acceptable to both parties.

(6) **"Private Financing"** means private equity, bank loans or financing from other, non-City sources necessary to fully fund the Project Budget attached hereto as Exhibit C

(7) **"Project"** means the renovation of 1415 16th Street into a boutique hotel, lounge, and spa along with the improvements identified in Exhibit B, the "Project Plans".

(8) **"Project Commencement Deadline"** December 31, 2024

(9) **"Project Completion Deadline"** means December 31, 2025

(10) **"Revenue Year"** means any calendar year in which the City is reasonably expected to receive the revenue for such calendar year by reason of the actual payment of real estate taxes. By way of example, 2026 is the Revenue Year for the 2025 Tax Year based on the real estate valuation as of January 1, 2025.

(11) **"Tax Year"** means each calendar year for which real and personal property taxes are levied.

(12) **"TIF Grant"** means a "pay as you go" grant of the Available Tax Increment for development of the Project in the amount of \$130,000.

(13) **"TIF Grant Installment Amount"** for each Revenue Year (commencing in Revenue Year 2027) means the Available Tax Increment for such Revenue Year which has been appropriated by the City Council to payment of the TIF Grant provided, however, that in no event shall the cumulative total of all such TIF Grant Installment Amount payments exceed the total TIF Grant.

(14) "TIF Grant Payment Deadline" means December 1, 2027, for Revenue Year 2027, and on each anniversary thereof for each subsequent Revenue Year.

SECTION 3: OBLIGATIONS OF VENTURES. Ventures shall:

- A. Secure all necessary Private Financing for the Project (including a firm commitment for permanent take-out financing for any construction financing) as defined herein, and shall provide proof of such financing to the City, not later than December 31, 2024
- B. Obtain all necessary permits and approvals not later than December 31, 2024.
- C. Commence construction of the "Project" not later than December 31, 2024.
- D. Complete the Project not later than December 31, 2025. Completed Project shall include a six-room boutique hotel, spa amenities, and a lounge, as identified in the Project Plans attached hereto as Exhibit B and incorporated herein.
- E. Provide the City with documentation of Ventures' expenditures of at least \$1,400,000 for the Project between the date of this Agreement and March 31, 2026. Such documentation must be provided to the City not later than April 30, 2026, and shall consist of copies of contractor and vendor invoices and copies of deposited checks or other documentation acceptable to the City, as confirmed by the City in writing, evidencing the payment of such invoices.
- F. Ventures shall not transfer ownership or contract with any other entity for the operation of the Project throughout the term of this Agreement without the express written consent of the City.
- G. Make timely payment of City property taxes, City special assessments and special charges, as well as City utility bills, throughout the term of this Agreement.
- H. Make timely payment of all payments required and otherwise comply with all provisions of any Loan Agreement between Ventures and the Business and Industrial Development Authority of the City of Two Rivers and/or the City of Two Rivers, and the Promissory Note executed by Ventures pursuant to that Loan Agreement.

Ventures must comply with Obligations A. through H. above to maintain its qualification for the grant assistance addressed in this Agreement. Failure to do so may result in the City declaring Ventures in default of this Agreement and withholding TID 12 grant payments pending such a default being cured. Failure by Ventures to cure such defaults in a timely manner may result in the City terminating this Agreement. Upon termination of this Agreement, any TID 12 grant funds already paid to Ventures by the City shall be immediately due and payable by Ventures to the City.

SECTION 4: OBLIGATIONS OF THE CITY.

- A.** Provided that (a) Ventures is not in default of its obligations with this Agreement or its private financing and (b) Project Completion was achieved on or prior to the Project Completion Deadline; the City shall pay to Ventures the TIF Grant in installments each Revenue Year, beginning in 2027, based on the Available Tax Increment for such Revenue Year and subject to the terms and conditions herein. This obligation shall be contingent upon the approval of Amendment No. 2 to the TID 12 Project Plan by the Wisconsin Department of Revenue, as submitted by the City on August 20, 2024.
- B.** The TIF Grant shall be payable solely from each Available Tax Increment which has been received and retained by the City in accordance with the provisions of Section 66.1105 of the Wisconsin Statutes and appropriated by the City Council to payment of the TIF Grant. The TIF Grant shall be payable in annual installments on or before the TIF Grant Payment Deadline of each Revenue Year, commencing with Revenue Year 2027 (based on the Available Tax Increment generated in Tax Year 2026) and on each TIF Grant Payment Deadline thereafter (based on Available Tax Increment generated in the immediately preceding Tax Year) in an amount equal to the TIF Grant Installment Amount for the respective Revenue Year; provided, however, that the City may, at its option and in its sole discretion, prepay the TIF Grant in whole or in part at any time.
- C.** If the total TIF Grant Installment Amount payments have been insufficient to pay the full TIF Grant after the scheduled installment payable on or before the TIF Grant Payment Deadline in Revenue Year 2046 (based on the Available Tax Increments generated in 2045), then the TIF Grant shall be deemed paid in full, the obligation of the City to make any further payment shall terminate, and Ventures shall have no right to receive any additional payments.
- D.** The amount of the TIF Grant shall not exceed \$130,000. No interest rate shall be applied to the amount owed to Ventures under the TIF Grant.
- E.** The City makes no representation or covenant, express or implied, that Available Tax Increments will be generated or that they will be sufficient to pay, in whole or in part, the TIF Grant. All Tax Increments received by the City which are not appropriate to pay the TIF Grant may be used by the City for any legally permitted purpose, in its sole discretion. The application of Available Tax Increments to payment of the TIF Grant each year is subject to future annual appropriation by the City Council. The City makes no representation or covenant, express or implied that any non-zero Available Tax Increment will be generated and/or appropriated in any given year, nor does the City make any representation or covenant as to any aggregate amount of Available Tax Increments to be paid to Ventures. Any Tax Increment which is not appropriated and

allocated toward the Available Tax Increment may be used by the City for any legally permitted purpose, in its sole discretion.

- F. Termination of Obligation.** The City's Obligation to Ventures under this Agreement shall terminate, once the City has paid the TIF Grant, in full, or as of December 31, 2046, regardless of whether there remains an outstanding balance, Ventures has not received an aggregate total of \$130,000, or if this Agreement is terminated for any other reason provided herein.

- G.** Additionally, the City's Obligation terminates if the Development Site becomes exempt from real property taxes, in any Tax Year after the date of signing of this Agreement.

SECTION 5: DEFAULT; REMEDIES; FORCE MAJEURE

- A. Notice of Default and Right to Cure.** In the event of any default in or any breach of this Agreement or any of its terms or conditions by any party hereto, the non-defaulting party shall give written notice of the default to the defaulting party. The defaulting party may then cure such default or breach within thirty (30) calendar days after receipt of such notice. In the event the breach or default cannot reasonably be cured within said thirty calendar day period, the defaulting party shall not be in default, hereunder, if it timely commences to cure such default within said period and diligently pursues the cure and cures the same within a reasonable time thereafter. If the default or breach is not timely cured under this subsection, the non-defaulting party may exercise any right or remedy provided for herein.

- B. Remedies.** Subject to the notice of default and opportunity to cure provisions above, the parties may exercise any rights or remedies provided for by law or equity in the event of any default in or breach of this Agreement by the other party, including but not limited to termination of this Agreement, an action for specific performance and an action for the recovery of damages. All rights and remedies may be exercised independently or concurrently. The election of one remedy does not preclude the pursuit of other remedies, unless otherwise provided for by law.

- C. Waiver.** Any delay by a party in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or to deprive it of or to limit such rights in any way. The parties intend by this provision that no party should be constrained in its efforts to resolve any issues that may arise, and hereby intend to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches or otherwise, or to be compelled to exercise such remedy at a time when it may still hope otherwise to resolve the issue created by the default involved. No waiver in fact made by either party with respect to any specific default by the other party under this Agreement shall be considered or treated as the waiver of the

rights of the non-defaulting party with respect to any other defaults by such defaulting party under this Agreement, or with respect to the default except to the extent specifically waived in writing.

- D. Rights Cumulative.** The rights and remedies of each party, whether provided by law, equity or this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same or different times of any other such remedies for the same event of default or breach or of any remedies for any other event of default or breach by either party.

- E. Enforcement Costs.** In the event any proceeding is commenced because of a default under this Agreement, the prevailing party shall be entitled to recover its reasonable costs and expenses (including but not limited to reasonable attorneys' fees) incurred in enforcing the terms and provisions of this Agreement.

- F. Force Majeure.** For the purposes of any provisions of the Agreement, a party shall not be considered in breach or default of its obligations in the event of enforced delay in the performance of such obligations due to causes beyond its reasonable control and without its fault or negligence, including but not restricted to acts of God, acts of public enemy, acts of adjoining property owners, governmental authority, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, unavailable materials, and unusually severe weather; it being the parties' purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times of performance of any of the obligations of the particular party shall be extended for the period of the enforced delay.

SECTION 6: TERM

Unless terminated early in accordance with this Agreement, the term of this Agreement (the "Term") shall be for a period commencing upon the Effective Date of this Agreement and expiring on December 31, 2046.

SECTION 7: NOTICES AND DEMANDS

A notice, demand or other communication under this Agreement by either Party to the other Party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally as follows:

For the City:
City of Two Rivers
Attn: City Clerk

1717 East Park Street
Two Rivers, WI 54241

For Ventures:
Milkweed Ventures, LLC.
Melissa Nyssen, Member
130 Park Road
Two Rivers, WI 54241

SECTION 8: MISCELLANEOUS

- A. Approvals.** Whenever under this Agreement approvals, authorizations, determinations, satisfactions, or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions, or waivers shall be effective and valid only when given in writing, signed by the party's duly authorized representative. Except as otherwise set forth herein, wherever any approval is required by the terms of this Agreement and request or application for such approval is duly made, such approval shall not be unreasonably withheld.
- B. Waiver; Amendment.** No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Ventures, and then only to the extent specifically set forth in writing.
- C. Entire Agreement.** This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the Parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants, or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements, and undertakings between the parties with respect to the subject matter hereof.
- D. No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of Ventures and the City, and no third party (other than successors and permitted assigns) shall have any rights or interest in any provision of this Agreement. Without limiting the foregoing, no approvals given pursuant to this Agreement by Ventures or the City, or any person acting on behalf of any of them, shall be available for use by

any contractor or other person in any dispute relating to the subject matter of this Agreement.

- E. Severability.** If any provision of this Agreement is held invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement, which shall continue in full force and effect.
- F. Successors and Assigns.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto, as well as their respective successors, transferees, and permitted assigns. The obligations of Ventures hereunder run with the land and bind any subsequent owners in title to the Development Site.
- G. Municipal Approvals; Compliance with Law.** The provisions of this Agreement shall not vest any rights in Ventures to any municipal approvals required under applicable law. Nothing contained in this Agreement is intended to or has the effect of releasing Ventures from compliance with any applicable laws, rules, regulations, and ordinances, including the obligation to secure usual and customary building permits and approvals, in addition to compliance with all terms, conditions, and covenants contained in this Agreement.
- H. City's Right of Immunity.** Nothing contained in this Agreement constitutes a waiver of the City's ability to assert its rights of immunity to tort claims under applicable law. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee, or agent of the City have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.
- I. Governing Law.** This Agreement is governed by, and must be interpreted under, the internal laws of the State of Wisconsin. Any suit arising or relating to this Agreement must be brought in Manitowoc County, Wisconsin, or if such court lacks jurisdiction, the Circuit Court for the Eastern District of Wisconsin.
- J. Time is of the Essence; Deadlines.** Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor. In the event a deadline herein falls on a non-business day, the deadline shall be deemed to fall on the next following business day.
- K. Relationship of Parties.** This Agreement does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between the City and Ventures.
- L. Captions and Interpretation.** The captions of the articles and sections of this Agreement are to assist the parties in reading this Agreement and are not a part of the terms of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural and the plural includes the singular.

- M. **Counterparts/Electronic Signature.** This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the agreement among the parties. Facsimile and other forms of electronic signatures shall constitute originals for all purposes.

- N. **Exhibits.** All exhibits referenced herein are incorporated by reference.

Dated as of the date first listed above.

City of Two Rivers, Wisconsin
A Municipal Corporation

By: _____
Gregory E. Buckley City Manager

By: _____
Amanda Baryenbruch, City Clerk

Milkweed Ventures, LLC

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENTS

STATE OF WISCONSIN)
) SS.
COUNTY OF MANITOWOC)

Personally appeared before me this ___ day of October, 2024, the above-named Gregory E. Buckley as City Manager of the City of Two Rivers and Amanda Baryenbruch as City Clerk of the City of Two Rivers, to me known to be such City Manager and City Clerk of the City, by its authority, and acknowledged the same.

Notary Public, State of Wisconsin

STATE OF WISCONSIN)
) SS.
COUNTY OF MANITOWOC)

Personally appeared before me this ___ day of _____, 2024, the above named _____ to me known to be such person and acknowledged the same.

Notary Public, State of Wisconsin

Exhibit A

Legal Description:

Lot 4 of the Original Plat Block 71 as recorded in the Register of Deeds Office in Manitowoc County, Wisconsin.

Address:

1415 16th Street, Two Rivers, WI 54241

Image:

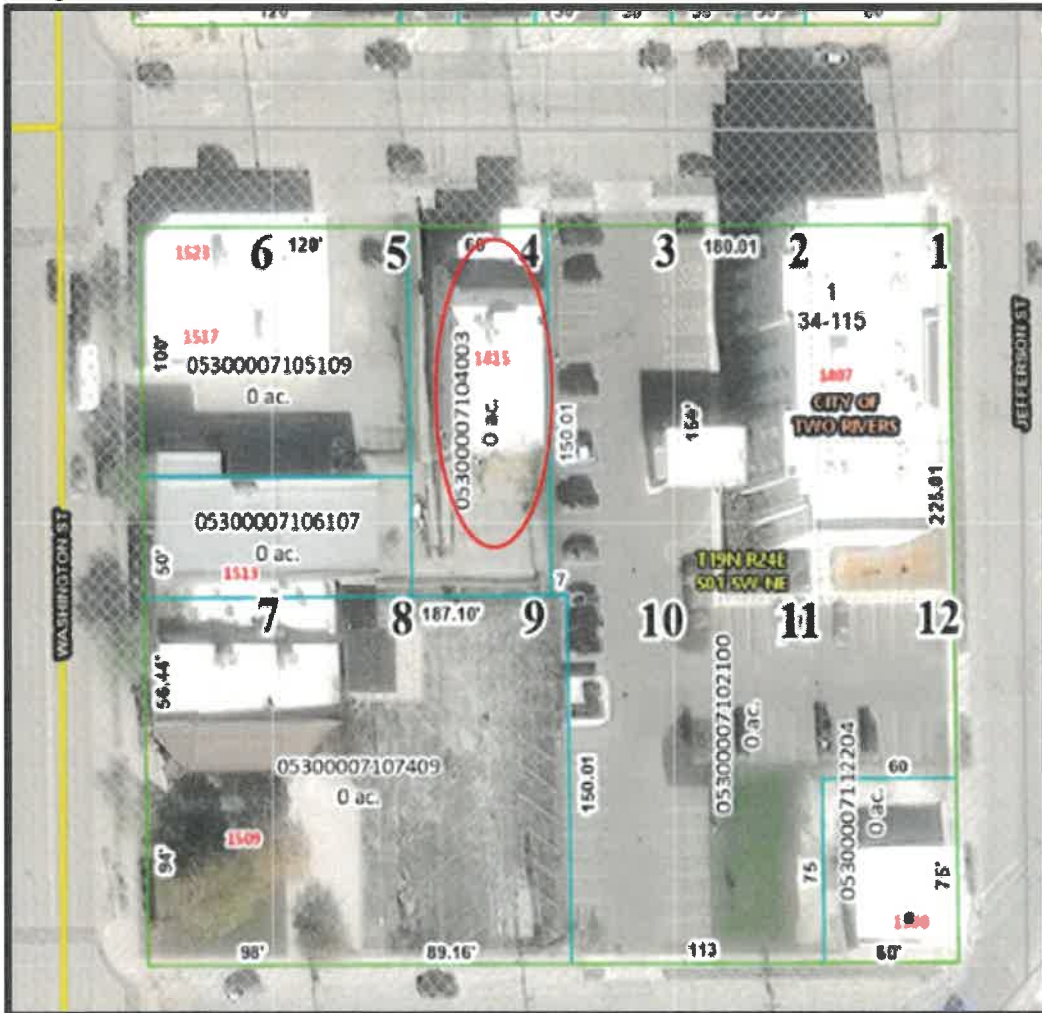


Exhibit B

Project Plans

Image:

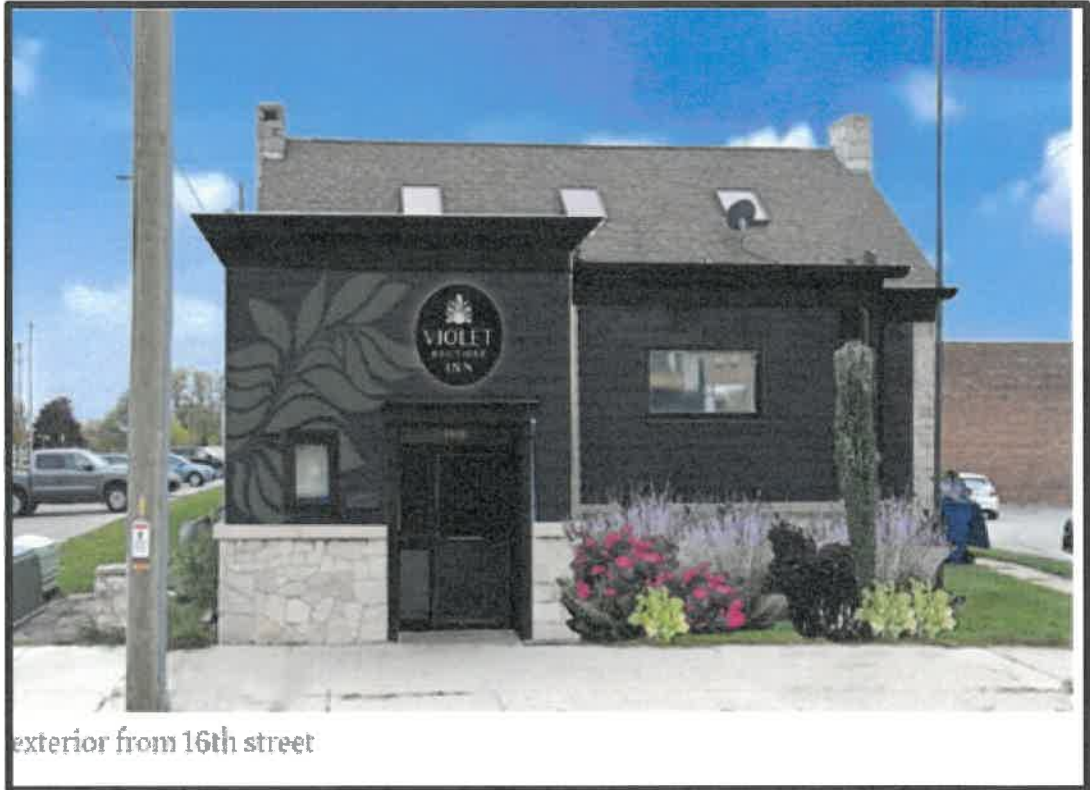


Exhibit C
Project Budget

HAMANN

CONSTRUCTION COMPANY

The Trusted Professionals Since 1933

4613 CUSTER STREET, MANITOWOC, WI 54220
PO BOX 245, MANITOWOC, WI 54221-0245
PHONE (920) 682-8282
FAX (920) 683-3459
www.hamann.com

10/10/24

Violet Inn
1415 16th Street, Two Rivers, WI 54241
Attn: Melissa & Amanda

Dear Melissa and Amanda,

We are pleased to present our proposal for the renovation of Violet Inn:

Division 1: General Conditions **\$77,111.00**

- Building Permit, Supervision, Dumpster, Temporary Toilets, Construction Cleaning

Division 2: Sitework/Demolition **\$109,268.00**

- Required sitework for sidewalk removal and install and setting patio columns.
- Demolition of walls, flooring, dumbwaiter, windows, stairs, walk-in freezer, ceilings where required, upper and lower-level bars.
- Concrete removal throughout jobsite.
- Remove asphalt pad behind building

Division 3: Concrete **\$ 15,364.00**

-Sidewalks, lower-level floor removal & patching, structural modifications, footings and walls where required.

Division 4: Masonry **\$45,848.00**

- Patching where required, patio columns, structural reinforcement beam pockets.

Division 5: Metals **\$3,250.00**

- Structural reinforcement where required

Division 6: Wood & Plastics **\$85,322.00**

- Prepare window openings, install structural headers, new exterior deck, new stairways, wood framing and backing

Division 7: Thermal/Moisture Protect **\$84,184.00**

- Roofing, insulation & sound batts

Division 8: Doors/Windows	\$115,484.00
- New doors, hardware, upper and lower level (frosted) windows, aluminum storefront entries	
Division 9: Finishes	\$202,430.00
- Drywall, flooring, ceilings, paint, includes refinishing existing hardwood floor, floor and shower tile, vinyl base.	
Division 10: Specialties	\$7,547.00
- Bathroom grab bars (4 locations), and fire extinguishers, shower door installation	
Division 11: Equipment	
- N/A	
Division 12: Furnishings	\$3,962.00
- Install windowsills, bathroom countertops, and bathroom shelving. Owner to supply	
Division 13: Special Construction	
- N/A	
Division 14: Conveying System	
Wheelchair Lift	\$42,971.00
Division 15: Mechanical	
Sprinkler:	\$50,835.00
HVAC:	\$195,000.00
Plumbing:	\$156,500.00
Division 16: Electrical	
Electrical:	\$219,450.00
Contractor Fee:	<u>\$ 112,960.00</u>
Sub Total:	<u>\$1,527,485.00</u>
Contingency:	<u>\$ 25,000.00</u>
Total:	<u>\$1,552,486.00</u>

Alternates:

- Electrical:
 - Provide and Install tele data network, switches, wireless access point devices including: Add \$5,395.00
 - (1) Ubiquiti USW-Pro-48-POE (Network switch with POE)
 - (1) Ubiquiti UDM-Pro (Configuration device/router)
 - (8) Ubiquiti U6-Pro-US Access Points (Wi-Fi)
 - (48) patch cables for switch to patch panel
 - (1) DAC Cable
 - Programming and setup of the network
 - Add (7) additional cameras per updated security plan for a total of 15 cameras. Provide 16 channel NVR in leu of 8 channel: Add \$14,688.00
 - Eliminate the 2-door keyless entry system. Owner to provide Z-wave plus wireless keypad door lock system instead. Deduct (\$5,100.00)
 - Remove heated floor and associated equipment in “Nest” area. Deduct (\$9,550.00)
- Add water softener – Add \$3,500.00
- Water softener hookup (for future softener install) - \$1,620.00
- Add sump pump – Add \$800.00 (existing system must be verified)
- Battery backup for sump pump – Add \$1,944.00

Notes:

- Façade repairs shown on 5/29/24 Proposal – not included
- Not included – complete fire rated floor assembly (to be reviewed by local inspector)
- Ceiling in bar area is priced as drywall to meet fire code
- Estimated project time 5-6 months.
- Estimate does not include work associated with beam to hang hammocks in library area.

Respectfully Submitted,

Nick Lohr

Some items added since budgeted proposal include:

- All lower-level demo and framing & finishes
- Wheelchair Lift
- Exterior Deck
- Sprinkler of Lower level
- New Roofing
- Stair Modifications
- Lower-level windows
- Sidewalk modifications
- Fire Rated Room Assemblies
- Structural modifications

Exhibit D
Memorandum of Agreement

**This Instrument Prepared by,
and after recording return to:**

Andrew J. Adams
West & Dunn LLC
214 1st Street, Suite 200
Baraboo, WI 53913

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered into on this ____ day of October, 2024, by and between the City of Two Rivers, a Wisconsin municipality (“City”), and Milkweed Ventures, LLC, a Wisconsin limited liability company (“Ventures”).

1. The City’s principal office is 1717 East Park Street, Two Rivers, WI 54241.
2. Ventures’ principal office is 1415 16th Street, Two Rivers, WI 54241-3030, with registered agent Melissa Nyssen at the same address.
3. City and Ventures entered into that certain Development Agreement By and Between The City of Two Rivers and Milkweed Ventures, LLC, as of the date hereof, (the “Agreement”) for the purpose of providing Tax Increment Financing with which Ventures shall construct certain desirable improvements to a blighted property.
4. The land being improved by Ventures (“Premises”) pursuant to the Agreement is described in Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.
5. The Agreement provides for a term beginning as of May 30, 2024, and terminating upon the first of the following to occur: (a) full payment of the funding set forth in the Agreement or (b) December 31, 2046.
6. This Memorandum of Agreement is not intended to amend or modify the Agreement and shall not be deemed or construed as amending or modifying, any of the terms, conditions, or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Agreement and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.
7. This Memorandum of Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

[Signature page follows.]

IN WITNESS HEREOF, the parties to this Memorandum of Agreement have executed this Memorandum of Agreement, effective as of the day and year first written above.

CITY:
CITY OF TWO RIVERS

VENTURES:
MILKWEED VENTURES, LLC

By: _____
Gregory E. Buckley
City Manager

By: _____
Melissa Nyssen
Member

Date: _____

Date: _____

By: _____
Amanda Baryenbruch
City Clerk

Date: _____

STATE OF WISCONSIN)
) SS
COUNTY OF MANITOWOC)

Personally appeared before me this ___ day of October, 2024, the above-named Gregory E. Buckley as City Manager of the City of Two Rivers and Amanda Baryenbruch as City Clerk of the City of Two Rivers, to me known to be such City Manager and City Clerk of the City, by its authority, and acknowledged the same.

Notary Public

State of _____

My Commission Expires: _____

STATE OF WISCONSIN)
) SS
COUNTY OF MANITOWOC)

Personally appeared before me this ___ day of October, 2024, the above-named _____, to me known to be such person, and acknowledged the same.

Notary Public

State of _____

My Commission Expires: _____

EXHIBIT A

Legal Description of the Premises

Lot 4 of the Original Plat Block 71 as recorded in the Register of Deeds Office in Manitowoc County, Wisconsin.

Sec. 6-13-1. - Definitions.

A. The following definitions apply unless specifically modified:

City clerk. The city clerk of the City of Two Rivers or their designee.

License. The short-term rental license issued after an application for a license is submitted and approved following the process in section 6-13-2.

Owner. The person owning a short-term rental property.

Person shall include a corporation, firm, partnership, association, organization, limited liability company and any other group acting as a unit as well as individuals, including a personal representative, receiver or other representative appointed according to law. Whenever the word person is used in any section of this code prescribing a penalty or fine, as to partnerships, limited liability companies or associations, the word shall include the partners or members hereof, and as to corporations, shall include the officers, agents or shareholders thereof who are responsible for any violation of such section.

Property manager. An individual who is not the property owner and who is authorized to act as the agent of the property owner for the receipt of services, remedy of municipal ordinance violations, and for acceptance of service of process pursuant to this chapter.

Residential dwelling unit. Any building, structure, or part of a building or structure with living, cooking, sanitary, and bathroom facilities that is intended to be used as a home, residence or sleeping place by one or more persons related by blood, marriage or adoption or a group of not more than four persons who need not be related. Residential dwelling units include any residential dwelling, tourist rooming house licensed by Manitowoc County, seasonal employee housing and dormitory units.

Short-term rental. A residential dwelling unit that is offered for rent for a fee with a rental term of fewer than 30 consecutive days, as defined in Wis. Stats. § 66.0615(1)(dk).

State. The State of Wisconsin Department of Health or the Wisconsin Department of Agriculture, Trade and Consumer Protection or their designees.

(Ord. of 6-17-2022(1), eff. 1-1-2023, § 1)

Sec. 6-13-2. - Application for a short-term rental license.

A. No person shall maintain, manage or operate a short-term rental more than ten nights a year without a license issued by the City of Two Rivers pursuant to this section.

B. Applications for a license shall follow the following procedures:

- (1) All applications for a license shall be filed with the city clerk on forms provided. Applications must be signed by the property owner and, if applicable, the authorized property manager(s). The property owner's contact information including mailing address, physical address, email address and 24-hour phone number shall be provided. No license shall be issued unless the completed application is accompanied by payment of the required fee.
- (2) Upon receipt of each application, the applicant shall undergo a criminal records inspection and background check by the chief of police or their designee and the chief of police shall make and complete an investigation of the statements made in such registration, and may refuse to approve the application if:
 - (a) There are any material omission or materially inaccurate statements; or
 - (b) Repeated complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns in which the applicant or the property manager conducted similar business; or
 - (c) The applicant or designated property manager have criminal convictions that are materially related to the services being provided.

(d) The applicant failed to comply with any applicable provision of the application process as state herein.

- C. No license may be issued unless the completed application is accompanied by payment of the required fee. Fees shall be as set forth in section 1-2-1.
- D. The city clerk shall issue a license to applicants following payment of the required fee, satisfactory completion of the investigation by the chief of police, and receipt of all completed documentation and information requested in the application. If the city clerk shall determine if the application meets the requirements of this ordinance, the city clerk may approve the application. If the city clerk determines that the application does not meet the requirements of this section, the city clerk may deny the application.
- E. Licenses will only be issued if the applicant provides a copy of a completed Manitowoc County Tourist Rooming House License with a copy of the property inspection report dated within one year of the date of filing the application with the city clerk.

(Ord. of 6-17-2022(1), eff. 1-1-2023, § 1; Ord. No. 2023-017, § 7, 1-16-2023)

Sec. 6-13-3. - Property manager.

- A. *Property manager.* No person may act as a property manager for a short-term rental without authorization from the property owner and contact information on file in accordance with this section.
- B. *Property manager qualifications.* The property manager, as the authorized agent, shall be accessible 24 hours a day by phone or in person in the event of an emergency at the property the manager is responsible for.
- C. Each property manager shall be authorized by the property owner to act as the agent for the owner to provide or facilitate services to the short-term rental property, in the event of an emergency, for the receipt of notice of ordinance violation(s), accept service of process, and shall be authorized by the owner to allow city employees, officers, and their designees, to enter the owner's property for purposes of inspection and enforcement of this ordinance and/or any other city ordinance.

(Ord. of 6-17-2022(1), eff. 1-1-2023, § 1)

Sec. 6-13-4. - License renewal.

- A. The license shall be effective for one year and may be renewed for additional one-year periods. The annual license term is from January 1 to December 31 of each year. A fully completed renewal application and renewal fee must be filed with the city clerk by December 1 of each year if the short-term rental will be continued. The renewal application shall contain any updated information since the filing of the original application. Licenses shall lapse upon a change in ownership.
- B. No license shall be renewed if the applicant or property has outstanding fees, taxes or forfeitures owed to the city unless arrangements for payment have been approved by the city clerk. Also, the license shall not be renewed if the applicant or property is under an order issued by the building inspector or zoning administrator to bring the premises into compliance with city ordinances.
- C. A license may be suspended, revoked, or not renewed following a due process hearing of the city council if the council determines that the licensee: (a) fails to comply with any of the requirements of this section; (b) owner(s) or renter(s) have been convicted of engaging in illegal activity while on the licensed premises on two or more separate occasions within the past 12 months; or (c) has outstanding fees, taxes, or forfeitures owed to the city.

(Ord. of 6-17-2022(1), eff. 1-1-2023, § 1)

Sec. 6-13-5. - Standards for short-term rentals.

- A. Each short-term rental shall comply with all of the following:
- (1) The noise levels shall comply section 9-2-5.
 - (2) Signage advertising the short-term rental is not permitted. Off-site advertising in media channels relating to the availability of the rental may take place only after the city and county licenses have been obtained.
 - (3) No recreational vehicles (RVs), campers, tents, or other temporary lodging arrangements shall be permitted on any residential dwelling unit site as a means of providing additional accommodations for paying guests or other invitees.

- (4) Activities at the premises shall not become a public nuisance. All activities conducted shall comply with cha Section 5, ItemA.
- (5) All short-term rentals shall be subject to payment of the City of Two Rivers room tax at the applicable rate. Property owners or property managers holding the license are responsible for complying with all room tax requirements as set forth in chapter 6-11.
- (6) The provisions of title 9, article 9 of the city's ordinances, regarding sexual offender residency restrictions, including but not limited to sections 9-9-3.A. and 9-9-3.C., shall apply to all short-term rentals and compliance with those provisions is required.
- (7) Compliance with all applicable state, county, and local codes, laws and regulations is required.
- (8) All short-term rentals shall display proof of a current inspection by the Manitowoc County Health Department and contact information for the Two Rivers Police Department (non-emergency), fire department, property owner or property manager.
- (9) Each short-term rental shall maintain a guest register for two years. The register shall contain the full name and current address of any person renting the property, the time of rental, and the monetary amount or consideration paid. A copy of the register shall be available if requested by the city. The required room tax payments shall be filed as required by chapter 6-11.
- (10) Vehicle parking shall be on a paved or gravel surface in accord with chapter 8-2.
- (11) Each short-term rental unit shall have a minimum of one, off-street parking space with the exception of the downtown area in accord with section 10-1-14.A.(2)(c) off-street parking and loading requirements.
- (12) A safe, unobstructed means of egress from the dwelling leading to safe, open space at ground level shall be provided.
- (13) Shall have functional smoke detectors and carbon monoxide detectors in accordance with the requirements of Chapter SPS 321 of the Wisconsin Administrative Code.
- (14) Shall not have an accessible wood burning fireplace unless the property owner provides a certificate from a properly licensed inspector, dated no more than 30 days prior to submission of the license application or renewal, certifying that the fireplace and chimney have been inspected and comply with the National Fire Prevention Association Fire Code Chapter 211 Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances.
- (15) Shall not have a hibachi, gas-fired grill, charcoal grill, or other similar devices used for cooking or any other purpose on any balcony, deck or under any overhanging structure or within ten feet of any structure.
- (16) Outdoor cooking and heating devices shall be used in accordance with section 3-1-3.
- (17) All property owners shall carry casualty and liability insurance issued by an insurance company authorized to do business in this state by the Wisconsin Office of the Commissioner of Insurance, with liability limits of not less than \$300,000.00 per individual occurrence and not less than \$1,000,000.00 in the aggregate.

(Ord. of 6-17-2022(1), eff. 1-1-2023, § 1)

Sec. 6-13-6. - Appeals.

- A. The denial of any license application or renewal under this section may be appealed by filing a written appeal request with the city clerk within ten days of the city's notice of denial. The appeal shall be heard by the city council. The city council shall consider the application or renewal and recommendations and may approve or deny the application or renewal.
- B. A license may be revoked by the city council for one or more of the following reasons:
- (1) Failure to make payment on taxes or debt owed to the city.
 - (2) Failure to make payment on any City of Two Rivers room tax.
 - (3) Two or more calls in any 12-month period for police department services that relate to criminal or nuisance activities at the short-term rental, fire department services that relate to criminal or nuisance activities at the short-term rental, building code violations, nuisance activities or other ordinance violations as defined in chapter 9-6.
 - (4) Failure to comply with city building inspection requirements that may occur on an as needed basis.
 - (5) Failure to maintain all required local, county, and state licensing requirements.

- (6) Failure to comply with any applicable zoning regulations as described in chapter 6-10.
- (7) Any violation of local, county or state laws that harm or adversely impact the predominantly residential uses and nature of the property or of the surrounding neighborhood.

(Ord. of 6-17-2022(1), eff. 1-1-2023, § 1)

Sec. 6-13-7. - Penalties.

- A. Any person that violates any provisions of this section shall be subject to license revocation. Appeals shall be handled by the process identified per section 6-13-6.
- B. Any person who violates any provision of this chapter or any other order or regulation issued hereunder shall be subject to a penalty as provided in section 1-1-5 of this Code.

(Ord. of 6-17-2022(1), eff. 1-1-2023, § 1)



Short-Term Rentals

Remzy Bitar, Attorney, Municipal Law & Litigation Group, S.C.

As short-term rentals (STRs) such as Airbnb and VRBO become more popular, local governments face classic issues associated with the influx of new uses that can create adverse side effects for the community. Some communities welcome the trend; others do not. For those questioning STRs, two competing interests arise: NIMBY versus “fundamental right to unfettered use of my property.” For unprepared communities, residential zoning and other public and private land use controls do not adequately address this growing trend. Some communities have tried to adopt amendments to their zoning ordinances to expressly restrict and/or regulate short-term rentals, but those amendments have fallen flat in court.

Seeking to address the competing interests, the Legislature created Wis. Stat. § 66.1014 in the 2017 WI Act 59, Biennial Budget Act. The statute contains one relevant definition for “residential dwelling” (“any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others”).¹

Section 66.1014 has several features of note.

First, municipalities cannot prohibit STRs for 7 consecutive days or longer, referred to here as the “prohibition” provision.²

Second, the Legislature addressed regulation of the “durational” aspects of

STRs. If a residential dwelling is rented for periods of more than 6 but fewer than 29 consecutive days, a municipality may limit the total number of days within any consecutive 365-day period to no fewer than 180 days and may require those maximum days to run consecutively. However, it may not specify the period of time during which the residential dwelling may be rented, such as requiring rentals stretch over winter.³

Third, the Legislature unambiguously retained local power – “[n]othing in this subsection limits the authority of a political subdivision to enact an ordinance regulating the rental of a residential dwelling...”⁴ That section leaves local government free to regulate other aspects of STRs in a manner that is “not inconsistent” with the prohibition or durational provisions noted above. Significantly, “[a]ny person who *maintains, manages, or operates*” an STR “shall” obtain a local license, if required by local ordinance.⁵

Fourth, there are non-textual aspects to § 66.1014. The Legislature did not place the law under the city and village zoning enabling statute, Wis. Stat. § 62.23. Moreover, when the Legislature wants to completely regulate an industry and preclude or limit the ability for local regulation, it does so clearly. The Legislature did only two things with this statute: removing the power to prohibit STRs and setting durational provisions on the “total number of days.” Of all the other areas the Legislature could have withdrawn from local government (other than taxation, not discussed here), the Legislature did not address such areas but allowed local control and

licensing. The Legislature’s treatment of STRs stands in stark contrast to the Legislature’s sweeping removal of local power elsewhere, such as cellular tower regulation, wind farms, livestock siting operations, concealed carry, conditional uses, shoreland zoning and alcohol. In these areas, and many others, the Legislature’s regulatory framework has various and extensive subject matter components that are expressly meant to curtail local power.

Until recently, no Wisconsin court had addressed this statute. Just last month, in *Good Neighbors Alliance (GNA) v. Town of Holland*, Case No. 2019CV000269, the Sheboygan County Circuit Court, the Honorable Edward Stengel presiding, issued a decision of first impression in this state, specifically addressing various aspects of Holland’s STR ordinance that were specifically designed to address local concerns, harmonize the statute and address the pre-suit complaints and demands of the plaintiffs. The Town Board worked hard to draft an Ordinance that satisfied competing concerns, followed § 66.1014 and Wis. Admin. Code § ATCP 72 (administrative rules “tourist rooming houses” such as STRs) and could withstand judicial scrutiny.

GNA’s primary claim asserted the statute created a preemptive effect on local regulation, enshrining the right to free and unrestricted use of one’s property. They argued STRs involve private use of homes, not commercial activity. The court, however, found that the Legislature preserved local power due to carve-outs in the statute and that the Town acted comfortably within its powers.

GNA attacked specific features of Holland’s Ordinance as conflicting with § 66.1014, such as:

- Property Manager: “Unless the Property Owner resides within thirty-five (35) miles of the short-term rental property, a local Property Manager must be designated for contact purposes and his or her name must be included in the application filed with the Town Clerk. The local Property Manager must reside within thirty-five (35) miles of the short-term rental property and must be available at all times the property is rented. The Property Owner must notify the Town Clerk within three (3) business days of any change in the Property Manager’s contact information for the short-term rental and submit the revised contact information to the Town Clerk within the same time period.”
- Insurance: “The Property Owner shall have and maintain homeowner’s liability or business liability insurance for the premises that are used for short-term rental and shall provide written evidence of such insurance with the license application and renewal application forms.”
- Property diagram with application: “A diagram drawn to scale showing the location of buildings and the on-site, off-street parking area(s) designated for tenants and invitees on the premises.”
- Revocation for Unpaid Fees, Taxes, Or Forfeitures or For Any Violation of State or Local Laws: “A license may be revoked by the Town Board during the term of a License Year and following a due process hearing for one or more of the following reasons: (1) Failure by the licensee to make payment of delinquent fees, taxes, special charges, forfeitures or other debt owed to the Town. (2) Failure to maintain all required local, county and state licensing requirements.

(3) Any violation of local, county or state laws or regulations which, based upon their number, frequency and/or severity, and their relation to the short-term rental property, its owner(s), tenant(s), occupant(s) or visitor(s), substantially harm or adversely impact the predominantly residential uses and nature of the surrounding neighborhood.”

- One On-Site, Off-Street Parking Space: “Not less than one (1) on-site, off-street parking space shall be provided for every four (4) occupants, based upon maximum occupancy.”
- Forfeitures: “Any person who violates any provision of this chapter shall be subject upon conviction thereof to a forfeiture of not less than \$250 nor more than \$750 for each offense, together with the costs of prosecution, and in the event of default of payment of such forfeiture and costs shall be imprisoned in the Sheboygan County Jail until such forfeiture and costs are paid, except that the amount owed is reduced at the rate of \$25 for each day of imprisonment and the maximum period of imprisonment is 30 days. Each violation and each day a violation occurs or continues to exist shall constitute a separate offense.”

With STRs, there are many side-effects related to the health, safety, and welfare of the public. The goal is to allow such use of the property for rentals yet protect the interests and quality of life for long-term residents. The interests being served include: preserving the character of a neighborhood; eliminating nuisances like noise, parking, and trash problems; ensuring building safety; over-occupancy; and responsiveness to neighbor complaints. Such concerns arose in the town of Holland, where it received complaints over a significant period of time, often occurring weekly during the summer months. Complaints of adverse

impacts caused by STR properties in the town of Holland included lewd behavior, unsafe fires on the beach, dogs running at large, excessive noise, trash left on the beach, traffic and RVs along narrow lake roads, and trespassing. One such trespassing event involved the complainant arriving home at night to find renters from a nearby property in the complainant’s hot tub.

The town carefully considered its proposed ordinance over the course of several months, including several drafts to balance the Legislature’s new statute, preservation of residential property rights and the local interests in protecting the public health, safety, and welfare. After passage of the Ordinance, GNA sought total repeal. The town passed an amended ordinance accomplishing the following:

- the elimination of any restriction on the number of days a property may be rented,
- elimination of restrictions on outdoor events on rental properties,
- elimination of minimum levels of insurance coverage,
- added a provision to allow short-term rental licensure by the town to proceed with evidence that a Wisconsin tourist rooming house license has been applied for rather than actually received,
- removed the requirement for property managers to be licensed with the town,
- removed insurance requirements for property managers,
- documented the appeal steps and procedures for licensure decisions,
- clarified the vehicle restrictions,
- removed annual building and fire inspections requirement,

- removed requirement to provide a property management agreement,
- removed town access to property without consent or inspection warrant,
- removed minimum bathroom requirement, and
- lowered the maximum forfeiture amount.

The Sheboygan Circuit Court found local government can regulate within the same field as § 66.1014 so long as it does not conflict. Due to its careful development of the STR ordinance, Holland survived four-factor preemption analysis and its ordinance was upheld.⁶

Any community desiring such an ordinance should consult with its legal counsel and should also determine if the Holland case has been reviewed by the Court of Appeals.

Licensing and Regulation 403

About the Author:

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Remzy began his legal practice after college at Lawrence University, law school at Washington University School of Law in St. Louis, and then completed a judicial clerkship with the Supreme Court of Missouri for the Honorable Laura Denvir Stith. Contact Remzy at rbitar@ammr.net

1. § 66.1014(1)(b).
2. § 66.1014(2)(a).
3. § 66.1014(2)(d)1.

4. § 66.1014(2)(c).
5. § 66.1014(2)(d) & (2)(d)2b.
6. *Wisconsin Carry, Inc. v. City of Madison*, 2017 WI 19, 373 Wis.2d 543, 892 N.W.2d 233.

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InsideTrack

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Short-Term Rentals: As a Vacation Hub, Wisconsin Navigates the Laws of Leisure

The rise of short-term vacation rentals over the years, through websites like Airbnb and Vrbo, has created some legal friction between homeowners and municipalities.

JEFF M. BROWN

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May 18, 2022 – Memorial Day is right around the corner. Soon families will pack their swim trunks, bug spray, and fishing tackle and head for vacation spots across Wisconsin.

For some, the destination is a cabin that’s been in the family for generations. But an increasing number are turning to short-term rentals of private homes, a trend with implications for property, land use and municipal law.

Shift in Work-Life Balance

Several factors are behind the increase in short-term vacation rentals. One is the [long American workweek](#) and the decades-long rise of households with both parents working, which may leave less free time for family vacations



Another is the advent of online vacation rental services like Airbnb and Vrbo. With a few photos and click of the mouse, absent owners can turn vacant homes into income properties, offering vacationers lodging choices beyond hotels and traditional bed-and-breakfasts.

Timeshares and Zoning

Short-term vacation rentals in Wisconsin and legal disputes surrounding them have been around for decades.



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Zoning law provided the backdrop for a dispute over a short-term vacation rental that reached the Wisconsin Court of Appeals in 1985.

It was a time when many families without a vacation home spent their week at the lake in a multi-family lodge (think [“The Great Outdoors”](#)).

In that pre-internet era, one alternative to a lodge or a family cabin was the timeshare, an arrangement where multiple buyers own allotments of usage, usually in one-week increments, in a property.

John Harding sought a permit to build a timeshare in Door County. The property would be owned by 13 families, each entitled to occupy the property for four weeks each year.

The county turned Harding down, claiming the timeshare would violate a zoning ordinance that restricted the use of the property to a single-family dwelling.

In [State ex rel. Harding v. Door County Adj. Board](#), 125 Wis. 2d 269, 371 N.W.2d 403 (1985), the court of appeals held that the county zoning ordinance did not prohibit a timeshare, because the ordinance focused on how the property would be used by its occupants rather than by its owners.

Because the proposed time share would be used by a single family during any one four-week period, the court of appeals reasoned, it complied with the ordinance.

Single-Family Dwelling?

A similar zoning ordinance was at the center of a 2015 court of appeals case over short-term vacation rentals.

In [Heef Realty & Invs., LLP v. City of Cedarburg Bd. of Appeals](#), 2015 WI App 23, 361 Wis. 2d 185, 861 N.W.2d 797, the court of appeals held that an ordinance did not prohibit short-term rentals in a zone in which “single-family dwellings” were allowed.

A related ordinance defined “dwelling” as buildings “designed or used exclusively as a residence ... but not including boarding or lodging houses, hotels, motels, tents, cabins, or mobile homes.”

The court of appeals began its analysis by noting a Wisconsin Supreme Court decision holding that zoning provisions must be clear and unambiguous because they represent a departure from the common law, which favors the free use of private property.

The *Heef* court then concluded that its decision in *State ex rel Harding* was controlling.

The City of Cedarburg argued that *State ex rel Harding* shouldn’t control because that case turned upon whether a single family would be occupying the property at any one time, rather than whether renting a property to tourists or other temporary guests constituted a residential use.

But the court of appeals reasoned that terms like “single-family,” “residential,” and “dwelling” did not set temporal restrictions on the use of a property.

If the city wanted to require a certain period of occupancy before a property counted as a dwelling or a residence, the court of appeals held, it needed to do so with clear and unambiguous wording.

“As new arguments are developed, new fact situations presented, and new legislation passed, the law will continue to evolve in this area.”
 – Justice A.W. Bradley, dissenting in *Forshee v. Neuschwander*.

”

A Not-So-Restrictive Covenant

A dispute over the applicability of a restrictive covenant to short-term vacation rentals made its way to the Wisconsin Supreme Court in 2018.

In [Forshee v. Neuschwander](#), 2018 WI 62, 378 Wis. 2d 222, 904 N.W.2d 371 the supreme court affirmed (6-1) a court of appeals decision holding that a restrictive covenant prohibiting commercial activity on subdivision lots did not bar short-term rentals.

Lee and Mary Jo Neuschwander used their property in Hayward as a vacation home but used Vrbo to rent the home out on a short- and long-term basis when they weren't there. Several neighbors objected to the rentals and sued the Neuschwanders.

The lead opinion, written by then-Chief Justice Patience Roggensack and joined by two other justices, held that the term “commercial activity” was ambiguous and therefore unenforceable.

The term was ambiguous, Roggensack explained, because it was undefined in the covenant and because the court was unable to divine the term's meaning by looking to the context of the covenant.

In her concurrence, Justice Shirley Abrahamson concluded that the term “commercial activity” was unambiguous, and that the Neuschwanders hadn't violated the covenant because short-term rentals were not commercial activity.

Abrahamson based her reasoning in part on her conclusion that the short-term renters were using the property for the same residential purposes that both the Neuschwanders and their neighbors were using their respective properties.

In his concurrence, Justice Daniel Kelly (joined by Justice Rebecca Bradley) concluded that the covenant only barred commercial activity on the property.

Renters were not engaged in the commercial activity of renting on the property, Kelly explained, but were rather engaged in the non-commercial activity of sleeping, cooking, eating, and relaxing.

Justice Ann Walsh Bradley dissented. The fact the Neuschwanders took in \$55,784.93 in rent from the property in 2015 and paid \$4,973.81 to the City of Hayward in room tax warranted a conclusion that the Neuschwanders were engaged in commercial activity on the property.

A.W. Bradley also warned that the lead opinion's impact was not limited to residential properties used as short-term vacation rentals, given the historically widespread use of the term “commercial activity” in restrictive covenants.

Common Complaints

Among the complaints cited by neighbors opposed to short-term rentals are weekend rentals marked by binge drinking, loud music, cars cramming lakeside lanes, and overflowing garbage cans.

But the effects short-term rentals have on year-round residents can stretch beyond late-night annoyances.

Curt Witynski, deputy executive director for the League of Wisconsin Municipalities, said Ashwaubenon residents have complained that they're being priced out of the housing market as values are driven up by nonresidents who buy houses in Brown County to rent them out for Packers games.

Balancing Act

Municipalities heard the complaints and moved to address them. Some cities and towns in Wisconsin enacted bans on renting property for less than 30 days at a time.

But in 2017, the legislature limited the ability of municipalities to restrict short-term rentals with an act that became law as part of the budget bill.

Under the act, a municipality may only prohibit rentals fewer than seven days in length. They may also cap the total number of days in a year when a property may be rented, as long as the cap numbers 180 or greater and the property is rented for periods of between six and 28 days at a time.

The maximum number of allowable rental days may run consecutively, but municipalities may not specify the season during which the days may run.

The act requires anyone who maintains, manages, or operates a short-term rental for more than 10 nights a year to obtain a tourist rooming house license from the Department of Agriculture, Trade and Consumer Protection (DATCP).

The act allows municipalities to enact short-term rental regulations that are not inconsistent with the act, including requiring the owners of short-term rentals to obtain a municipal license in addition the tourism rooming house license from DATCP.

Municipalities Adapt

Witynski said the law is having an effect.

“Communities are figuring out ways to adopt regulations which maybe aren’t satisfying to everyone, but it is quieter,” Witynski said.

But having a law on the books is one thing, enforcing it another.

Rural municipalities with small tax bases, including many in areas of the state long popular with summer visitors, sometimes struggle to find the resources to enforce short-term rental ordinances.

Short-term rental regulations adopted by the Town of Holland in the wake of the act’s passage were challenged in a lawsuit filed in Sheboygan County in June 2019.¹

Those regulations specified the following:

- owners who lived more than 35 miles away from the rental property must hire a local property manager;
- owners must maintain homeowner’s liability or business liability insurance and provide proof of insurance;
- the town could revoke the owner’s municipal rental license for unpaid fees, taxes, or forfeitures or for any violation of state or local laws; and
- owners must provide at least one parking space for every four occupants.

The plaintiffs argued that the 2017 act preempted local short-term rental regulations. They also argued that: 1) the short-term rentals did not involve commercial activity; and 2) the town’s regulations were inconsistent with the 2017 act.

But the circuit court granted the defendant’s motion for summary judgment, ruling that the act left municipalities with some authority to regulate short-term rentals and the town’s regulations were consistent with the act.

‘A Reasonable Regulatory Framework’

Tom Larson, senior vice president of legal and public affairs with the Wisconsin Realtors Association, said his organization has filed multiple lawsuits around the state to compel municipalities to comply with the 2017 act and “create a reasonable regulatory framework.”

With regard to some of the common complaints about short-term vacation rentals, Larson said municipalities should curb noisy and annoying behavior regardless of whether it’s exhibited by short-term renters or full-time residents.

“It’s the behavior that should be regulated, not the duration of the tenancy.”



“Communities are figuring out ways to adopt regulations which maybe aren’t satisfying to everyone, but it is quieter,” says Curt Witynski, Deputy Executive Director, League of Wisconsin Municipalities.

Larson said many people have long maintained second homes in Wisconsin, a tradition that's been a boon to the state's economy.

Many of those homes have been rented out informally for years, long before the advent of Airbnb and Vrbo, Larson said.

"We saw that as a huge economic development tool that we shouldn't shut down just because we don't like the nightly rentals. We have to recognize the difference and the important role it plays, especially in getting people to buy second homes in the state of Wisconsin and pay our property taxes while using very little resources."

The municipal bans on rentals of less than 30 days that popped up before passage of the 2017 act deprived local governments of much-needed revenue, Larson said.

Only the Beginning?

Larson said he expects that a lawsuit asserting that a local short-term rental ordinance conflicts with the 2017 act will make eventually make its way to the supreme court.

Justice A.W. Bradley apparently shares that expectation.

"As new arguments are developed, new fact situations presented, and new legislation passed, the law will continue to evolve in this area," Justice A.W. Bradley wrote in her dissent in *Forshee v. Neuschwander*.

"Restrictive covenants will be only one part of this evolution, as they intersect and overlap with the enforcement of local zoning ordinances that attempt to regulate this rapidly growing enterprise," continued Bradley. "There will inevitably be more litigation surrounding short-term rentals."

It sounds like the legal tussle over property rights in vacation homes is as inevitable as sunburns, mosquito bites, and tall tales about the one that got away.

Endnotes

¹ *Good Neighbors Alliance v. Town of Holland*, Case No. 2019CV000269.

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"It's the behavior that should be regulated, not the duration of the tenancy," says Tom Larson, Senior Vice President of Legal and Public Affairs, Wisconsin Realtor Association.