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Written Testimony of Michael L Krancer Submitted to the Senate Economic Development, Housing & General Affairs Committee and the House Committee on General & Housing – Joint Hearing, Thursday February 16, 2023 Concerning the State of Housing In Vermont, February 16, 2023

Members of the Committees, thank you for the opportunity to provide testimony which relates both my personal experience and my professional expertise to the question presented at this Joint Hearing. My testimony will focus on a particular problem that negatively impacts the state of housing in Vermont, i.e., unregulated absentee owner Short Term Rentals (STRs).

I am a part time resident of Stowe (Bull Moose Ridge Road in Sterling Valley) and my wife, Barbara and I split time between Stowe and suburban Philadelphia, PA. We have had our house in Stowe since 2012. I have a degree in Economics from the University of Virginia (1980), and a J.D. Degree from the Washington & Lee School of Law (1983). I practiced environmental law for 30 years and was formerly the Cabinet level Secretary of Pennsylvania’s Department of Environmental Protection (PADEP) from 2011 to 2013. Before that I was Judge and Chief Judge of the Pennsylvania Environmental Hearing Board (statewide trial court for environmental cases) for 10 years and Deputy General Counsel, Environmental Health and Safety for the Exelon Corporation, a competitive energy generation company and parent company to the electric and natural gas public utilities known as PECO, serving the Philadelphia area, and ComEd, serving the metro Chicago area. At Exelon I also served in a non-legal energy policy development role which was part of the Government Relations department. My CV is attached hereto as Exhibit A which outlines my work history and my qualifications.

First, I will define what is **not** the problem. This is necessary because there has been a concerted effort by the short-term rental lobby and the short-term renter platform lobby (e.g., AirBnB) to obfuscate this issue in an attempt to mislead the public and elected officials. The problem is not Vermont property owners who are present on-site renting a room or even rooms in their houses to supplement their income or earn incidental income. Similarly, there is no issue of subjecting the ‘regular person’ who wants to rent a room in their house to earn supplemental income to ‘burdensome regulations’.

This is what the problem **is**: the problem is unregulated absentee owners (often out of state absentee owners) who engage in the business of short-term rentals with bought-up second or even third homes in Vermont. I will refer to non-owner occupied, absentee owner, short term rentals as STRs for short.

By the way, another favorite stalling tactic of the pro-absentee STR interests and renting platform lobbyists is to say that the negative impacts of STRs are only ‘anecdotal’ and thus

should be discounted. This is false. These negative impacts which I will discuss hereinafter are observable and palpable. The Vermont State Senators and Vermont State Representative are too smart to buy the 'anecdotal' red herring. Many see these negative impacts in their districts and know they exist from their constituents. For example, Rep. Emilie Kornheiser, for one, is keenly aware of the havoc that unregulated absentee owner STRs are playing in her district (WDH-2-1, i.e., Brattleboro), which borders Massachusetts, by Massachusettsans buying up second homes for AirBnBs thus drying up the supply of affordable housing for her Vermont constituents. Ergo, she introduced H200 of 2021. Also, the negative impacts have been found as judicial fact by Judge Thomas Z. Carlson in the case of Krancer v. McCready, Civil Division Docket no. 112-8-12 Lecv (Lamoille County), a court decision I will discuss in more detail later. A copy of Judge Carlson's opinion is attached hereto as Exhibit B.

In addition, the Lamoille Working Communities Challenge has conducted a comprehensive empirical study of community members regarding information and beliefs regarding the growth of STRs in Lamoille County. The results of that work can be found at the following links outlined below. So, the assertion that information delineating the deleterious impacts of STRs is completely false.

- https://docs.google.com/document/d/1fcpgwPrVjdTIawnjCikrHkhcTAbt_JUVb5Wuj5mT05U/edit
- <https://docs.google.com/spreadsheets/d/17wSrsLBjc361kxIlpycKI43zw9NzgZxR5L1pVkyPvyl/edit#gid=1741533780>
- <https://docs.google.com/forms/d/1r-oZILYOoSZaAZRCXi2DaH4K-lspRSyMRNdKOyTcP0w/viewanalytics>
- https://uwlamoille.org/file_download/10d63c50-4063-430a-8986-f41efd55e729 (download link for the entire study with survey results by town in PDF form)

Another diversionary tactic by the STR lobby (for specific example the lobbyist group "Vermont Short Term Rental Alliance," <https://vtstra.org> represented by lobby firm 'MMR, LLC' in Montpelier) and rental platform lobby is to claim they are 'educating their landlords', whatever that means. Bottom line is that is merely word salad and an obvious effort to forestall reasonable and sensible regulation. It's like the say in athletics - you can't teach speed. Likewise, you can't teach 'stake in neighborhood' to absentee owners who are hundreds of miles away from the neighborhood. Also, This Legislature would not eschew environmental laws and regulations or worker safety laws and regulations or traffic safety laws and regulations because the companies are "educating" their employees, or the AAA is 'educating' drivers, nor should it be satisfied with the STR lobby mantra here.

The problem of unregulated STRs is directly related to the shortage of affordable available housing, whether long-term rental or owned in the State of Vermont. The detrimental impacts of STRs are, of course, much broader than that and I will discuss a broad range of them besides the drying up and crowding out of affordable housing.

The problems presented by this unregulated and unrestricted practice are myriad. Unregulated STRs create and present at least these categories of problems, in no particular order of ranking are set forth below. After setting forth the problems I will present to you some thoughts on potential policy solutions that you can enact to solve these problems.

It is important to note in that regard that this is a State issue because the problems catalogued here are State-wide problems requiring State level action and cannot be solved comprehensively on a piecemeal basis from one municipality to another.

- **Environmental threat to the groundwaters of Vermont**
- **Social justice inequality**
 - Favoring the rich over the poor and middle class
 - Exacerbation of inequality of wealth distribution, i.e., the Wealth Gap
- **Landlord abuses of power over tenants**
- **Favoring interests of out-of-staters over Vermont residents**
- **Regulatory unfairness, i.e., unlevel playing field vis-à-vis regulated lodging businesses in Vermont**
- **Direct threat to human safety because of fire hazards**
- **Lack of availability of long-term rentals at affordable prices exacerbates Vermont's homelessness problem and constrains the availability of workforce to Vermont small businesses which presents and the threat to the health of Vermont small businesses that depend on the availability of a workforce**
- **Neighborhood nuisances and Destruction of Character of Neighborhoods (the 'party house')**

Some of these categories overlap with each other and this may not even be an exhaustive list, but I will focus on these categories of problems and discuss them briefly.

For the record, as mentioned before, I have direct experience with the STR problem as I went to court to shut down an AirBnB "party house" which posed a nuisance to our quiet residential family neighborhood and that case was documented in the press. As also mentioned before, Judge Carlson ruled in our favor and granted a preliminary injunction to abate the nuisance. See attached hereto as Exhibit C news article by Dan D'Ambrosio which appeared in both the Burlington Free Press and USA Today in 2021.

Environmental Threat. STRs almost always advertise for house groups that are larger than the permitted capacity for on-lot septic treatment system capacity. In our case, the AirBnB STR advertisements marketed to groups "16+ guests" with "8 bedrooms" where the applicable zoning and wastewater permit provided for a maximum of only 6 bedrooms and 12 people. Thus, the zoning permit and wastewater treatment permit capacity was being violated. This situation is being played out all over Vermont with over-capacity STRs. This presents a direct threat of septic system failures and resultant pollution to the waters of Vermont.

Thus, to be in favor of unrestricted STRs or to sit idly by and allow that state of affairs to continue is to be against protecting the environment and in favor of threats and/or actual pollution to the environment. On the other hand, to be in favor of sensible regulation of STRs is to be in favor of protecting the environment.

Social Injustice. An elephant in the room about the STR problem is that absentee STRs are, by definition, owned by wealthier individuals who can afford a second (or third) home for investment purposes. Unregulated STRs thus favor the rich over the poor and middle class, i.e., or to put it colloquially; the '1 percenters over the 99 percenters'. This also

exacerbates the ongoing social injustice problem America confronts of inequality in wealth distribution.

Thus, to be in favor of unrestricted STRs or to sit idly by and allow that state of affairs to continue is to be in favor of favoring the rich over the poor and middle class Vermont workers and in favor of making the distribution of wealth (the Wealth Gap) more unequal than it already is. On the other hand, to be in favor of sensible regulation of STRs is to protect the interests of the poor and middle class working Vermonters and to do something to make more equitable the distribution of wealth.

Landlord Abuse of Power Over Tenants. The cases are myriad in this area. Landlords mercurially and suddenly demanding higher rent from long term renters in a thinly veiled effort to force them out (i.e., constructively evicting them) out so they can convert to STRs. Actual evictions are taking place as well with landlords simply refusing to renew long term leases forcing long term tenants to move out because the landlord wants to convert the space to STRs. There are other instances of wholesale repurposing of multi-unit long term rental buildings to repurpose them for STRs because there is more profit to be made. This abuse of power – based upon economic inequity and inequity of power - has no place in Vermont.

This problem has a particularly cruel impact on Vermont’s growing population of senior citizens many of whom are on a fixed income. The last census reports that Vermont’s population is becoming proportionally older, and Vermont is one of the top ranked states in terms of proportion of elderly population. The Vermont Legislative Joint Fiscal Office’s just published Issue Brief, “Vermont’s Population Estimates by Age Group: 2021 Compared With 2010” (January 12, 2023) states that, “the number of Vermonters ages 65 to 79 increased significantly, up more than 40,000, as many baby boomers moved into retirement years; the share of Vermonters ages 65 to 79 rose from 10.5 percent to 16.4 percent.”¹ A copy of the Joint Fiscal Office’s Report is attached hereto as Exhibit D.

Thus, to be in favor of unrestricted STRs or to sit idly by and allow that state of affairs to continue is to be in favor of perpetuating abuse based on economic inequity and inequity of power – which impacts everyone but particularly Vermont’s vulnerable elderly population. On the other hand, to be in favor of sensible restrictions on STRs is to be in favor of protecting the vulnerable over the powerful, and the poor and middle working class over the wealthy to boot.

Favoring Non-Vermonters Over Vermonters. Again, to a very large extent, absentee owners of STR investment second homes are not Vermont residents. This is evident and widely known by those familiar with the situation. You members of the Vermont Legislature represent Vermont voters and Vermont persons, not New Yorkers or Massachusetts people. The current state of affairs unfairly favors out-of-staters to your own constituents.

Thus, to be in favor of unrestricted STRs or to sit idly by and allow that state of affairs to continue is to favor out-of-staters over Vermonters (your own constituents). On

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https://lifo.vermont.gov/assets/Subjects/Demographics/a9239392f8/VT_population_2021_vs_2010.pdf

the other hand, to favor some sensible restrictions on STRs is to favor Vermonters over out-of-staters.

Regulatory Unfairness, i.e., Unlevel Playing Field vis-à-vis Regulated Lodging Businesses in Vermont. As just discussed, and as found by Judge Carlson, STRs are ‘a determined business model for commercial use of ... property’ and they are ‘functionally indistinguishable from any one of a number of commercial hospitality businesses’ operating in Vermont. However, they are not subject to the same regulations for public health and safety, or other subjects, as are commercial lodging establishments.

This is patently unfair and discriminatory. STRs do not have to pay the costs of compliance with commercial lodging regulations as do other commercial lodging establishments. This creates a government-created unfair advantage for STRs over law-abiding other commercial lodging establishments. Also, all Vermonters are, in effect, subsidizing the STR owners and, perversely, that includes other commercial lodging establishments that do comply with applicable rules and regulations who are subsidizing their own competition.

Thus, to be in favor of unrestricted STRs or to sit idly by and allow that state of affairs to continue is to be in favor of unfair competition, discriminating against law-abiding Vermont lodging establishments who comply with applicable rules and regulations and having all Vermonters subsidize the STR commercial lodging business. On the other hand, to be in favor of sensible restrictions on STRs is to be in favor of Vermont lodging businesses who comply with the law, against unfair competition and against tax-payer subsidization of the STR commercial lodging business.

Public Safety Threat of STRs. Regretfully, it is only a matter of time before a catastrophic fire kills people at one of the overcrowded and unregulated STRs. Case in point: on a February 12, 2021 post in the Stowe Front Page Forum, an AirBnB advertisement with link was featured which states:

3 bedrooms, laundry and a bath are located downstairs **(1 of them technically isn't a bedroom bc it has a small window (best sleeping room in the house) but lacks an egress window. Nevertheless it is a small bedroom with a closet and dresser.)** The other two bedrooms boast large patio doors that flood the spaces with light. One bedroom would be perfect for kids, as there are twin bunk beds, toys, books, and an electronic drum set. We can make the bedding gender specific if you would like!

See:

https://www.airbnb.com/rooms/48110303?source_impression_id=p3_1675855364_VzvGYkzgj5svrpWL (emphasis added).

This is unlikely to be an isolated case and is exemplary of the metaphorical ticking time bombs that are dotted all over Vermont. This one is a flashing red danger light: ‘sleeping room with no egress window’. This is patently outrageous.

It is especially noteworthy that this advertisement focused on “kids”. Kids do not even get to make the voluntary or knowing choice to inhabit these fire traps and to choose

to accept the risk; their parents decide that for them. Children are particularly vulnerable then to this danger. Do we have to wait for a terrible fire with kids and others dying before we do something in Vermont about this problem?

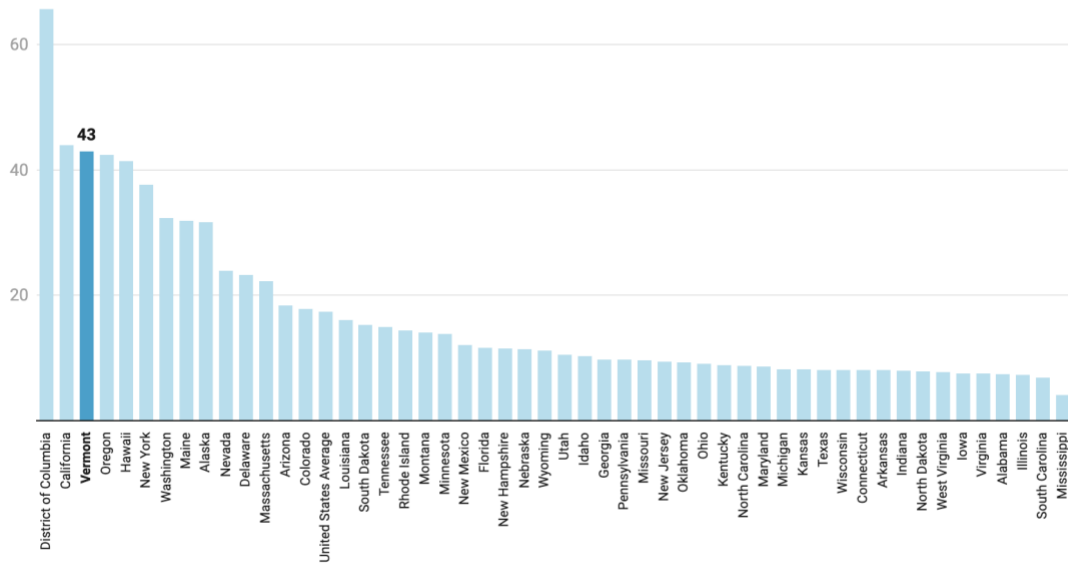
Thus, to be in favor of unrestricted STRs or to sit idly by and allow that state of affairs to continue is to turn a blind eye to a clear and present life-and-death threat in our own backyard, particularly as to children who are most vulnerable. On the other hand, to be in favor of sensible restrictions on STRs is to be in favor of protecting the safety of people including vulnerable children.

Lack of Available Supply of Affordable Long-Term Rentals And Owned Housing. This problem has been documented in Vermont and elsewhere. As the demand for houses for STRs goes up and they get bought for use as absentee owner STRs, the supply of affordable goes down as the price of housing goes up and middle-class working Vermonters and the elderly on fixed incomes are priced out of large swaths of the housing market. This problem has many tentacles and implications. Beyond being simply unfair and perilous to low income and middle-class working-class Vermonters and senior citizens on a fixed income it is a dagger in the back to Vermont's already prodigious homelessness problem and poses a shortage of supply of available workforce to Vermont small business owners because actual and potential workers cannot find affordable housing near the workplace.

- **Homelessness Problem Aggravated.** This problem is especially acute and tragic for Vermont which ranks unfortunately high in the nation in the problem of homelessness. Homelessness is directly driven by the lack of availability of affordable long term rental or owned housing. According to a VTDigger story dated July 28, 2022, "more people are known to be experiencing homelessness in Vermont now than during any other year since the state auditor's report started tracking the numbers in 2014." <https://vtdigger.org/2022/07/28/homelessness-continues-to-rise-in-vermont-since-pandemics-onset-despite-increased-spending/> Indeed, according to a recent report, Vermont "has the second-highest per-capita rate of homelessness in the country, behind only California. That's according to the **latest figures**, published in December, from the U.S. Department of Housing and Urban Development. Based on a nationwide tally taken last January, the federal government estimates that 43.1 out of every 10,000 Vermonters are unhoused." See VTDigger, February 7, 2023. <https://vtdigger.org/2023/02/07/vermonts-rates-of-homelessness-are-almost-the-worst-in-the-country/> The story cites the U.S. Department of Housing and Urban Development Office of Community Planning and Development's 2022 Annual Homelessness Assessment Report (AHAR) to Congress which is authoritative. See: <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>. Here is a telling graphic:

Homelessness rates by state

Based on a point-in-time count conducted in each state in January:



- Shortage of Workers and Economic ‘Death Spiral’.** In terms of worker shortage, the danger to Vermont’s economy is both existential and clear and present. This is already evident in Stowe and elsewhere where small business employers like restaurants, cleaning services, shops, etc. are finding it harder and harder to staff their establishments with workers. This is forcing small Vermont businesses to seriously curtail operations or shutter. This has the snowball negative impact of shuttering businesses and shrinking the economy. Ironically, this is a cannibalism problem even for the STRs. As workers become scarce and small businesses who serve the STR inhabitants close there will be an implosion of the STR market itself. This phenomenon is well known by economists and business analysts and is referred to as the “death spiral”. The term was coined to describe what happens in the electric and gas utility business when electric and or gas providers loose rate payer base to the installation and wide use of off grid power production or migration completely off the grid system.² This “utility death spiral” presents an existential risk to electric and/or gas utilities. The same phenomenon occurring here now with respect to unregulated STRs likewise presents an existential threat to Vermont’s economy.

This ‘death spiral’ problem was highlighted by the recent Joint Fiscal Office Report referred to earlier. The Report states that “[s]ince 2010, Vermont’s population increased by roughly 20,000 people, including a big swell in older people, ages 65 to 79. But the number

² <https://oilprice.com/Energy/General/Is-The-US-Utility-Industry-Breaking-Free-From-Its-Death-Spiral.html> and <https://www.forbes.com/sites/energyinnovation/2017/09/25/three-ways-electric-utilities-can-avoid-a-death-spiral/?sh=5fd580a0758d>

of children and mid-career working age folks dropped.” The report further states that, “[u]nless Vermonters ages 65 and older decide to leave Vermont in droves or younger working-age people flock to the state in greater numbers, Vermonters ratio of old to working-age people will continue to rise, placing a greater burden on workers to support both young and old.” Thus, the demographic table is set in Vermont right now for the economic ‘death spiral’ and unregulated STRs are a substantial contributor to the acceleration to that end.

Thus, to be in favor of unrestricted STRs or to sit idly by and allow that state of affairs to continue is to be in favor continuing the shrinkage of affordable long-term rental and owned housing to low income, working-class and vulnerable elderly Vermonters and being complicit in both the aggravation of Vermont’s already out of control homelessness problem and the possible collapse of micro-economies or even the State economy. On the other hand, to be in favor of sensible restrictions on STRs is to be in favor of lending a hand to working-class Vermonters who want to live here (and near their places of employment), providing relief for the many homeless of Vermont who want a place to live, and small business owners who employ those in the workforce looking for a place to live so they can work.

Neighborhood Nuisances and Destruction of Character of Neighborhoods. I have direct experience with this problem; and Vermont Superior Court Judge Thomas Z. Carlson and Assistant Judge Karen Bradley saw it the exact same way we did. As mentioned earlier my wife and I sued in 2018 to attempt to quiet an AirBnB ‘party house’ which appeared in our up until that time quiet residential neighborhood.

Among other allegations we made (which the Judge found to be true) was that the activities at the house constituted a nuisance and obnoxious conditions. The Judges found in their decision granting our motion for preliminary injunction, among other things, that the use of the house was not ‘harmonious’ and was ‘noxious and offensive activity that has extended beyond a single event’. They also found, which is indeed relevant to certain other discussion points in this testimony, the operation:

‘is a determined business model for commercial use of the property that is functionally indistinguishable from any one of a number of commercial hospitality businesses on Mountain Road, except for the additional objectionable fact that the use is entirely unsupervised and unmanaged except from a distance of more than a hundred miles.’

Obviously, absentee often out-of-state commercial STR owners have no actual stake in the neighborhoods or communities in which their STRs are located – they don’t live there and are not present there. They have no interactions with neighbors, and they don’t have to. These STR owners have no accountability. As Judge Carlson wrote in the Krancer v. McCready court opinion, this is the “additionally objectionable fact that the use [of the STR by renters] in entirely unsupervised and unmanaged except from a distance of more than a hundred miles.”

As mentioned, this legal case received press attention with articles about it appearing in the Burlington Free Press and USA Today. I have attached a copy of the Judges’ Opinion and the news article to this Testimony.

Thus, to be in favor of unrestricted STRs or to sit idly by and allow that state of affairs to continue is to be in favor of nuisances and the destruction of the character of Vermont neighborhoods. On the other hand, to be in favor of sensible restrictions on STRs is to be in favor of Vermont neighbors and Vermont neighborhoods.

Conclusion and Potential Policy Solutions. Thank you for this opportunity to provide this written testimony. It is important to note that these problems presented by STRs are worsening rapidly because the number of STRs is growing rapidly and the aggressiveness of the marketing tactics to turn houses into AirBnB commercial establishments and to fill them with paying transient customers is unrelenting. As proof of that, just last December I received a solicitation via USPS at my Pennsylvania residence soliciting my participation in “looking to partner with land owners to develop 4-10 acre parcels of land, with the goal of building luxury short-term rentals that generate passive monthly cash flow.” A copy of that solicitation letter is attached as Exhibit E. In addition I have personally received numerous telephone calls from Vacasa, the vacation rental management company soliciting us to hold out our property as an STR.

There are deep pockets, lobbyists and greed, both corporate and individual, driving these efforts. These problems are fast approaching the point of no return which is exactly where the pro-STR lobby and the short-term rental platform lobby wants it to go. The people getting hurt most by the negative impacts of STRs have no lobby group or lobbyists. They are everyday Vermonters and they rely on you, their State Legislators, to represent their interests and hear them over the paid lobbyists and vested interests.

The question is whether the Vermont Legislature will be complicit in this downward spiral which hurts Vermonters or will it step up and provide for reasonable regulations.

- **Potential Policy Solutions.**
 - **The essential policy solution is to pass legislation that restricts short-term rentals (30 days or fewer) to owner-occupied dwellings only.**

Short of requiring that short term rentals be allowed only for owner occupied property, then pass legislation that:

- requires that absentee short-term rental hosts register as such with the applicable jurisdictional department of the State of Vermont government;
- requires absentee short-term rental hosts to apply for a zoning permit and register as a rental unit with the jurisdictional local and state government department;
- requires that absentee short-term rental hosts provide one parking space per rented room;
- requires that for any absentee short-term rental hosts the host or a surrogate with oversight responsibility be present at the site during the any rental period for reasonable hours during the day and night;

- requires that any absentee short-term rental premises not be allowed to be occupied by more than the limits presented by local zoning and/or the applicable on-lot septic system permit;
- requires that absentee short-term rental hosts have liability insurance in place in a minimum amount of \$4,000,000 and have a certificate of insurance visibly displayed on the premises;
- requires that absentee short term rental properties be in compliance with all applicable local and state fire code requirements;
- requires that absentee short-term rental hosts have an inspection performed by a licensed inspection firm or individual annually for compliance with all building and fire code regulations and have the host certify to the State that such inspection has been passed (and require that all inspection documents be present on the site and available to jurisdictional state and/or local officials to review upon request);
- requires that absentee short-term rental hosts pay any and all applicable state lodging and meals taxes.

None of these proposed policy solutions are new in this field of short-term rentals and, in fact, one need only look to Burlington, Vermont and Morrisville, Vermont as models for what the State Legislature can do. For Morrisville, see: <https://morristownvt.org/index.asp?SEC=1F833527-930D-444F-B161-D0B40F15360F&DE=E8BAD29D-64B3-4B11-846D-E7B552F1D2C9>. Click “Zoning Bylaws 12.2022” on the left-hand side of the displayed page.

In Morrisville for example, short-term rentals are limited to only where the subject property is the owner’s/host’s primary Vermont residence. The Zoning Bylaws there define the term “short-term housing” as ‘a structure or combination of structures on the same lot that is required to be Owner Occupied, renting Bedrooms to persons for fewer than 30 consecutive days.’ Morrisville 2022 Zoning and Subdivision Bylaws, amended as of December 2022, Section 910 (Morrisville 2022 Bylaws). The Morrisville 2022 Bylaws define the term “Owner Occupied” as ‘...occupancy of the premises by the property owner, where the subject property is the owner’s primary Vermont residence.’ The term “Bedroom” is defined as ‘a room with one or more beds in it being used for sleeping purposes’.

Also, none of these measures would have any impact on, or even applicability to, owners who rent a room or rooms in their house in order to earn extra income.

As mentioned at the outset, this remains a State issue because the problems catalogued here are State-wide problems requiring State action and cannot be solved comprehensively on a piecemeal basis from one municipality to another. Furthermore, some, if not many, municipalities will be unwilling or lack the courage and fortitude to take on these issues and will simply look the other way or claim that they are waiting for State action.

My sense is that the Vermont Legislature will not be complicit in knowingly hurting large and diverse segments of its own constituents by doing nothing. I stand ready to assist the State Legislature to help it formulate sensible and reasonable regulations of STRs so that the problems discussed above, and other problems presented by unregulated absentee owner STRs, can be ameliorated in a way that is fair to everyone.

Respectfully Submitted,

Michael L Krancer

Michael L. Krancer, Esquire