

Re: HB 5438 Testimony 4/17/24

In 2018 the house across the street my home was sold was converted from a 3-bedroom home with a family of four to an 8 Bedroom Short Term Rental (STR) that routinely hosted over 20 guests for Bachelor and Bachelorette parties.

Not only was this home routinely violating multiple laws and city ordinances, but I had 2 young daughters in 4<sup>th</sup> and 5<sup>th</sup> grade. My girls lived in fear of going outside of our house to play in the yard due to the constant traffic and nonstop open drug and alcohol use across the street. The City provided no remedies and when I pointed out building codes, state occupancy standards, parking and zoning Ordinances were openly being violated. I was told unless I was reporting an active crime there was nothing they could do. In 2020 I ran for City Council and was elected by the public on the platform of regulating Short Term Rentals In the City of New Buffalo and I have been appointed Mayor twice now by my fellow council members

Short Term Rentals remained a growing problem throughout our community in which 75% of our 2505 Residential properties were already second homes. In May 2020 the City Council issued a moratorium on new STR permits citing a list of issues that undermined the character and stability of our neighborhoods. Our City Council passed a new regulatory ordinance, increased permit fees to cover the cost of Public Safety and most importantly we moved to amend our Zoning Ordinance. Short Term Rentals were never a defined land use in our zoning ordinance, so the City's past issuing of permits for a land use that didn't exist, was in error. We limited all future STR to commercial areas and our Waterfront districts and only allowed existing uses to remain as non-conforming in residential districts until the property was sold and permits not renewed.

Of course, the City was sued!, by a group of 18 property owners, the majority of which were out of state residents, Their argument In essence was they had the right to run private hotels in our residential neighborhoods in violation of our Zoning Ordinance and in violation of rights of every resident who brought property in the City limits with the expectation that the City honored its own laws.

The plaintiffs and their agents financially backed by a Nevada private equity firm ran a smear campaign against me and my family. They defamed, libeled, and slandered us. They attempted to recall me twice, had my wife and I privately investigated, and even posted photos of my wife's car and license plate on social media platforms in efforts to intimidate us.

The City of New Buffalo has prevailed in federal court 3 times now. Our rights as a municipality to manage our own communities through our zoning ordinance are protected by long established federal case law. Our case was tried federally because its instigators were residents of another State. We should be worried about that here in Michigan.

Since the demise of the Michigan auto Industry in 2008 and States refocus on tourism with "Pure Michigan" We have seen the cornerstone of municipal government Public Act 279, The Home Rule City Act, which is directly responsible for the individual personalities of our Townships, Cities and Villages creating those tourism destination over the last 115 years, constantly under attack.

The City of New Buffalo is but one of many lakefront destinations in the 38<sup>th</sup> District. If you talk to public officials from New Buffalo to Saugatuck, you will hear the same story again and again. The faces will change but the underlying narrative will be the same. We are all under some form of duress from the long-term effects of the unrecovered costs of tourism.

My opponents will tell you that STRs are wonderful things. They bring additional people to your community who spend all kinds of money at stores and businesses. They create local jobs and increase property values by rehabbing old properties. What they do not understand or are just unwilling to acknowledge is the relationship between private interests and public costs.

Tourism is a private enterprise that has very public costs and those costs are not remunerated. There are no use taxes, lodging taxes or excise taxes available to the City of New Buffalo and that puts the entire burden of tourism costs directly on the residents.

Our municipalities are all funded by property taxes. Taxable values are capped by the Headley amendment 60% of all local taxes go to the county, state, and if you are second homeowner its 75% of your taxes go that to County, State and Schools. Second Homeowners fund the entire local component of our school system which they are not Stakeholders in.

This lopsided property ownership dynamic combined with current taxation mechanism has created one of the most out of formula school districts in the entire state spending over \$36,000 a student. The school has a budget 7x greater than our local municipality. While the City must figure out a way to manage 15-20K people a weekend, the entire school district has 550 students.

State Sales Tax remuneration is based on residential population, so while we routinely have 15-20k people in our town on given summer weekend. 90% of all Sales Taxes are going into State coffers and not coming back to our City Governments because our Census Population is only 1800.

As a result, we have crumbling roads, 80-year-old sewer and water infrastructure, and are unable to meet the demands of public safety in the summer month without important corners being cut. We have no housing for those local jobs, service workers all come from elsewhere and median income families completely priced out by those high property values.

45 square miles of southern Berrien County, encompassing The City of New Buffalo, New Buffalo Township and Chikaming Townships generate an estimated 300 million a season in tourism dollars. There are 1000 permitted Short Term Rentals in that area. A simple review of existing permits tell us that our STR have an average occupancy and thereby an average residential use of 10, while according to the Southwest Michigan Planning Commissions Housing Study, The average residential use of a single family home in our area is 2.2.

Every STR in South Berrien County has 4.5 times the public cost to our community than a standard residence. That means of those 1000 STRs I mention have the same impact as 4500 single family homes. Which is more homes than all of the City of New Buffalo and New Buffalo Township.

In our federal case, *Moskovic vs the City of New Buffalo*, a federal judge determined on evidence from the Plaintiffs that the value of STR permit in our Area was 150,000 dollars a year and the average rental price is \$800 a night.

Those numbers, if accurate, put the revenue from those 1000 STR in South Berrien County at 150 Million Dollars. That a fair piece of this income should come back to our municipalities to support a use that generates this much revenue and has this deep of public cost. should be mandatory.

Our local sewer authority in South Berrien County is managed by 5 communities, We face a 50-million-dollar shortfall in our CIP over the next 10 years because we service the weekly demands of 50 K people in the summer months while we only have 9000 paying customers As a result we have some of highest sewer costs in western Michigan.

Obviously, I am making the case for the urgent need of the excise tax presented in this bill. We are at a precipice without the proper use taxes being levied where tourism thrives. We endanger not only our lakeshore communities but our ability to protect our natural resources as well.

I am unpaid public official who works to protect the quality of life of our residents and the importance of our local history and character, I'm challenged by unlimited money from unscrupulous forces whose only goal is to monetize our land as cheaply as possible for their own private financial interests.

I would urge you with utmost sincerity to define the Land Use of "what a short term rental is" , in this bill. Recent State Case Law in both 2021 *Cherry Homeowners Assoc V. Baker* and 2023 *Aldrich V. Sugar Spring Property Association* have already determined that STR use is specifically commercial.

And to quote the appellate court in 2019's *Susan Reaume V. Township of Spring Lake*

*"Plaintiff's use of the property for short-term rentals was never permitted under the Township's R-1 zoning. This is consistent with case law establishing that commercial or business uses of property, generally meaning uses intended to generate a profit, are inconsistent with residential uses of property."*

If you do not do this, every single Municipality who has not yet acted to regulate short term rental use but chooses to do so at some future point. Will be determining that land use in court, by a judge, and the burden of those costs will be on the taxpayer.

The definition of a Short Term Rental, already in this bill, implies commercial use because the States standard for residency is 28 days. Thereby you can't be a resident in a STR you are a visitor or temporary guest. This is clearly a use best represented as commercial lodging and should be treated as such by the State of Michigan, officially, in this bill.

My opponents have continually relied on the false narrative that STR use is "Struggling homeowners renting out extra rooms or garages to make some extra income." While that may have been Short Term Rental intent back in 2010 it's certainly not what it's become. Of the 1000 STRs I mentioned in our area, as few as 1% are owner occupied property and nearly all are local housing stock repurposed as vacation lodging.

Constantly I am hearing complaints from homeowners that they can't afford their "second" home unless they short term rent them. In what world are people buying "second" homes they can't afford? while my police officers and teachers can't afford to live in the town in which they work? That what's going on right here in Southwest Michigan.

This is not a one size fits all issue, I understand in larger cities STR are often used for housing temporary workers. Communities must be individually allowed to plan for this land use and zone it accordingly. This is not something that in any way that should be allowed to driven by demand of the market or all our lakeside communities face severe risk. Local control is mandatory here. Ask yourselves what the State can do for local units of Government that they can't do themselves.

Two things are readily clear:

The State can define the Land Use of a Short-Term Rental

The State has the power thru taxation to make Municipalities "whole" for 15 years of carrying the costs created by someone else's business.

Lastly, I would ask the State treasury to take a hard look at PRE fraud, The Personal Residency Exemption on local taxes is being openly abused by many short term rental heavy communities. LLC's cannot have PRE exemptions. I know of 100's of examples of PRE fraud in the 38<sup>th</sup> district this is costing the State, and corresponding counties and local school districts millions of dollars.

I want to commend Representative Andrews for his tireless work on this bill and his dedication to working with all of us, in many municipalities with many different needs and many different opinions. I would also like to express my sincere gratitude to you for allowing me to speak to you today. I would be happy to answer any questions.

Thank You

John Humphrey  
Mayor,  
City of New Buffalo.

