

# LAW OF THE LAND

A blog on land use law and zoning

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## VT Supreme Court Holds Renting Out Single-Family Residence as Vacation Home not a Change in Use

John and Margaret Toor, residents of California, own a five-bedroom single-family residence on Lake Champlian's Grand Isle, Vermont. The Toors purchased the property in 2001 and used it to entertain guests, friends, and family members. To defray the taxes and maintenance costs on the property, the Toors in 2009 began renting the home for short periods in the summer and fall for periods as short as two nights and as long as two weeks. The Toors charged rent for use of the home, plus a nine-percent Vermont Rooms and Meals Tax, and permitted groups renting the home to use it "in substantially the same way" they used it — for vacations, birthday and anniversary celebrations, and entertaining.

The Town of Grand Isle Zoning Administrator issued a notice of violation to the Toors in September 2009, claiming the rental of the property was a change in use to either a bed and breakfast, a rooming and boarding house, or a hotel or motel without a permit. While most of these uses are permitted in the zone where the house is located, operation of a hotel or motel is not. For those reasons, Grand Isle officials demanded that the Toors cease renting out their property and apply for the necessary permits for a change in use from single-family home to bed and breakfast or rooming and boarding house.

The Toors appealed to the Development Review Board (DRB), which upheld the Zoning Administrator's actions on a different basis, finding that rental of the house to individuals who were not a family meant that the house was no longer being used as a single-family dwelling. Since the Town bylaws define a family, for dwelling purposes, as "one or more persons living as a household unit, *but not including individuals or groups occupying rooming and boarding houses, clubs, motels or hotels,*" and since the tenants of the Toor house did not fit this definition of family, the rental of the home was in violation of the Town bylaw, since it was a use different from the single-family use approved for the property. The DRB stated that it made no difference whether the Toors' rental of the property changed the use to a bed and breakfast, a hotel or motel, or any other specific use; so long as its use was no longer as a single-family dwelling, it was a change in use for which a permit was required.

The Toors appealed the DRB's determination to the Vermont Superior Court, Environment Division. On cross-motions for summary judgment, the court held in the Town's favor, but based its decision on an entirely new rationale, finding that the zoning bylaws at issue were unambiguous in defining

a single-family dwelling, which does not include income-producing short-term rentals of the property. The Environment Division said the proper inquiry in this case was strictly whether the character of the tenants' occupancy was use as a single-family dwelling — which the court held it was not. Since the Toors had changed the use of their property from residential to commercial — an income-producing short-term rental — without obtaining a permit for a change in use, the Toors had violated Town bylaws.

On appeal by the Toors from the Environment Division holding, the Vermont Supreme Court first held that there was nothing about the house itself, aside from possibly its use, which violated the Town laws, since the structure itself — with a single kitchen, dining area, and living room — clearly met the definition of a single-family dwelling. The court further held that the use to which the Toors were putting the property when they rented it was essentially the same as the use to which it was put when the Toors used it themselves.

The Vermont Supreme Court then systematically rejected the reasoning advanced by the Town, DRB, and Environment Division for finding a violation by the Toors. First, the Court pointed out that the Town had, throughout the course of litigation, conceded that its original basis for finding a violation — that the Toors' rental of the house constituted a change in use to a bed and breakfast or rooming and boarding house — was incorrect. Next, the Court rejected the DRB's assertion that a violation had occurred because the persons using the house did not fit the definition of single family. The DRB's interpretation was flawed because it would render the Toors' own use of the property — allowing non-paying relatives and friends to stay at the house, with the Toors or independently, for short or long periods — a violation of the Town bylaw. As this was an untenable result, the DRB's interpretation was rejected.

The Court also rejected the Environment Division's rationale that the rental of the house changed the use from residential to commercial, in violation of Town bylaws. Given that a commercial use such as a bed and breakfast, rooming or boarding house was permitted in the zone, the Court held there was no reason to imply a prohibition on commercial activity related to single-family uses in the zone, finding that "it is not the commercial nature of the uses that defines the limits of this zone."

Faced with no other persuasive basis on which to find a violation of the Town bylaw, the Court held that the Toors' rental of the property was not a change in use. The Court reversed the decision of the Environment Division.

*In re Toor*, 2012 WL 3641550 (Vt. Aug. 24, 2012)

The opinion can be accessed at: <http://info.libraries.vermont.gov/supct/current/op2011-085.html>  
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