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Property rights and short-term rentals – impact on value - by Marc Nadeau

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Inherent in the fee simple ownership of real estate is something that is commonly referred to as the "Bundle of Rights." The Bundle of Rights is in effect the exclusive right, use and disposition of the property that belong to the property owner. Inherent within the Bundle of Rights can be the right to sell, the right to mortgage, the right to occupy, the right to lease, and the right to enter. The owner of the Bundle of Rights typically has the ability to convey all or some of those rights to another, including that of leasing the property to anyone they chose and for whatever time period they choose. Anything less than that is a mitigation of that Bundle of Rights and is therefore a mitigation in the latitude of use and consequently value.

At the core of discussion within this article is the very recent State of Connecticut Supreme Court Decision of Frances Wihbey, Plaintiff vs. the Pine Orchard Association, Zoning Board of Appeals. Wihbey purchased the waterfront home located at 3 Crescent Bluff Rd. in the Pine Orchard neighborhood within the town of Branford. Wihbey has personally used the dwelling as well as renting out the house through one of the popular online platforms such as VRBO or Airbnb.

A brief history of the litigation surrounding the use of this property

Without getting into inordinate detail of the litigation, the case first went to the Pine Orchard Association, Zoning Board of Appeals. Wihbey was turned down and the case proceeded to Superior Court, there Wihbey prevailed. The case was then appealed to the Appellate Court in the State of Connecticut, where Wihbey prevailed and finally, the case was appealed to the State of Connecticut Supreme Court where Wihbey again prevailed.

The case had recently been remanded to the Appellate Court, sending the case back to the Pine Orchard Zoning Board of Appeals which in turn has since found its way back to the Superior Court.

The take on this and other like Property Rights Litigation

Firstly, since the beginning of time when structures were built (for a variety of reasons), property sharing, leasing and fractional use has existed. This is certainly true of the Pine Orchard Neighborhood as well as a great many other communities, water-influenced or not! This appraiser, for nearly forty years has also developed multiple shorefront and water-influenced properties in multiple states during that same tenure. That experience has included that of buying, owning, developing, selling and leasing property (both long-term and short). In fact, during my tenure as an appraiser, I have multiple times experienced that of fractional interest ownership of water-influenced properties, which according to some of the municipalities and private associations that oversee such communities would be illegal! The zoning officer of the Pine Orchard Association on August 16, 2019 had issued a "Cease and Desist Order" to the Plaintiff, Mr. Wihbey in this case. Wherein, the following language was provided "To be clear, only single-family dwellings, and their defined accessory uses, are permitted as a matter of right in residential zones. A single-family dwelling is defined as "a building designed for and occupied exclusively as a home or residence or not more than one family." So, does that mean if you own a fractional interest in a property you cannot use it?

This attitude toward property owners who choose to rent their property, either full-time or part-time

has seemingly evolved into a quiet war and fractured groups of property owners. The petty and sometimes selfish acts by neighbors have grown to ridiculous levels, wherein criticisms have been elevated to the likes of; "I don't like the color of your beach chairs"; "Your walking along my side of the easement; "Your dog peed on my bush." Seriously?

Impact on Property Value

No matter how you slice it, restricting or eliminating what has historically been an intact "Bundle of Rights" will translate into a reduction of property values. This in turn will generate more litigation and challenges to property tax assessments, as a reduction in property rights will only result in a reduction in value!

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