

COURT OF APPEAL FOR ONTARIO

CITATION: Tiny Township Association of Responsible STR Owners v. Tiny
(Township), 2026 ONCA 408
DATE: 20260611
DOCKET: COA-25-CV-0560

Gomery, Madsen and Osborne JJ.A.

BETWEEN

Tiny Township Association of Responsible STR Owners*,
Jamie-Lyn Banting, Olga Kolodij, ~~George Karaelis,~~
~~Karaelis Family Holdings Inc.~~, Oliver Shaw, Jason Barham,
2691251 Ontario Inc., Justin James Tristan Johnson

Applicants (Appellant*)

and

The Corporation of the Township of Tiny

Respondent (Respondent)

Tina H. Lie, for the appellant

Matthew Hodgson and Emerson Wargel, for the respondent

Heard: March 9, 2026

On appeal from the order of Justice Howard Leibovich of the Superior Court of Justice, dated March 24, 2025, with reasons reported at 2025 ONSC 1578, and the costs order dated June 3, 2025, with reasons reported at 2025 ONSC 3241.

S. Gomery J.A.:

Overview

[1] The picturesque Township of Tiny borders the southern part of Georgian Bay in the County of Simcoe. Its beaches and trails make it a popular summer vacation spot. Prior to 2022, local property owners were essentially unconstrained in their ability to rent their premises to any number of renters, for any period of time. Complaints emerged about the behaviour of renters and concerns over the broader impact of short-term rental accommodations or “STRs” on the local community.

[2] In August 2022, the Corporation of the Township of Tiny passed By-Law 22-017, regulating the operation of STRs in the Township.¹ The STR By-Law requires STR owners to apply for and obtain an annual licence, restricts how STRs can be used, regulates the duration of rental periods, and caps the total number of days each year that an STR can be rented.

[3] The STR By-Law was unpopular with some STR owners, and as a result, the Tiny Township Association of Responsible STR Owners was formed. In early 2023, the Association, along with some of its individual members, applied to quash the STR By-Law under s. 273(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25. They asserted that they did not object to some regulation of STRs. In their submission, however, the STR By-Law’s intent and effect was to prohibit the operation of STRs

¹ By-Law 22-017 is entitled “A By-law to Licence, Regulate and Govern Short-Term Rental Accommodation”. This By-Law was amended twice, once in August 2022 and again in November 2022. The term “STR By-Law” refers collectively to By-Law 22-017 and any amending by-laws.

altogether, through the imposition of onerous and arbitrary measures that the Township was not empowered to take. The application judge found otherwise.

[4] In this appeal, the Association argues that the STR By-Law is *ultra vires* the Township's business licensing power because it applies to non-commercial activity; the provisions of the STR By-Law restricting the duration and manner of renting an STR effectively prohibit, rather than regulate, the operation of STRs in the Township; and these restrictions are not a legitimate use of the Township's authority to regulate as they do not take into account existing property rights. The Association also submits that the licensing cap is *ultra vires* the Township's authority respecting economic, social and environmental well-being of the municipality. Finally, the Association seeks leave to appeal the application judge's order requiring the applicants collectively to pay costs of \$38,000 to the Township.

[5] I would dismiss the appeal. The Township was empowered to enact the STR By-Law based on its power to enact licensing schemes for businesses under ss. 11 and 151 of the *Municipal Act*, as well as its power to pass by-laws on matters affecting the Township's economic, social and environmental well-being; health, safety and well-being of persons; and the protection of persons and property, including consumer protection under s. 11. Section 8(1) of the *Municipal Act* mandates a liberal interpretation of these municipal powers.

[6] The STR By-Law's effect does not prohibit the operation of STR rentals, as the Association contends. It is not the courts' role to second-guess policy choices embodied in by-laws enacted in good faith pursuant to statutory authority, particularly where, as here, the enactment followed extensive investigation and public consultation.

[7] The Association's proposed costs appeal has no merit. I would accordingly not grant leave for the Association to pursue it.

The STR By-Law

Events leading to the STR By-Law's enactment

[8] In 2015, the Township's Council initiated a review of potential STR regulations, prompted by a staff report and concerns expressed by community members about the unruly and noisy behaviour of STR renters. Over the next seven or so years, the Council took a series of steps to obtain community feedback on STRs and to determine how to balance policy goals, including ensuring a supply of affordable housing, mitigating community disruptions related to STRs, and increasing municipal revenue through licensing and regulation. During this process, it received input from STR owners as well as other Township residents.

[9] The steps taken by the Township in the lead-up to the STR By-Law were reviewed at length by the application judge in his reasons. They included:

- Research and reporting by Township staff on approaches taken in other Ontario municipalities to regulate STRs and on a framework for an STR licensing policy and registration program;
- Soliciting public feedback on the impacts of STRs and on potential licensing and regulation schemes;
- Engaging a planning consultant with expertise on zoning aspects of STR regulation;
- Considering complimentary amendments to the Township's Official Plan and zoning regulations, and holding a virtual public meeting to obtain community input on proposed changes;
- Creating an STR Task Force, consisting of the Chief Administrative Officer, two Council members, two residents affected by STRs, and two STR owners, to hold public meetings, the results of which were reviewed by the Chief Administrative Officer, Director of Emergency Services/Fire Chief, Director of Planning and Development, Chief Municipal Law Enforcement Officer, the Township's Planning Consultant, and legal counsel;
- Receiving deputations from local residents and associations, along with presentations from staff, legal counsel, and the Township's

planning consultant on proposed STR licensing and zoning by-laws, at a May 2022 Special Committee of the Whole Meeting; and

- Directing staff to report on implementing an STR licensing program, including additional staff costs.

[10] At a special meeting on August 11, 2022, Council passed the STR By-Law, which came into effect on October 4, 2022. On August 31, 2022, the Council passed By-Law 22-060 to adopt an Official Plan amendment with respect to policies for regulating STRs (the “Official Plan Amendment”), and By-Law 22-061 to amend the Township’s Zoning By-Law (the “Zoning By-Law Amendment”). The Zoning By-Law Amendment defines STR accommodation, permits STRs in certain zones, sets minimum parking requirements, and prohibits STRs in accessory buildings.

The STR By-Law’s provisions and related by-law provisions

[11] The STR By-Law defines a “Short-Term Rental Accommodation” as:

[T]he secondary use of a residential Dwelling Unit that offers a place of accommodation or temporary residence, or occupancy by way of concession, permit, lease, licence, rental agreement or similar arrangement for fewer than twenty-eight (28) consecutive calendar days with no on-site management throughout all or part of the year. Short-Term Rental Accommodation uses shall not mean a motel, hotel, bed and breakfast establishment, tourist establishment, tourist cabin establishment, or similar commercial accommodation use. For the purposes of this definition, a secondary use shall mean secondary in terms of time the Dwelling Unit is used as a Short-Term Rental Accommodation.

[12] Pursuant to the STR By-Law, STR owners must apply for a licence as a condition of renting their premises. Obtaining a licence is conditional on payment of a fee; the filing of a site plan and floor plan; proof of ownership and liability insurance; a signed statutory declaration; and proof of electrical, HVAC, and, depending on the amenities in the accommodation, other inspections.

[13] Licences must be renewed annually and cannot be transferred or assigned. Only 300 licences may be issued at any given time.

[14] The annual application fee was originally \$1,500. In November 2023, however, it was raised to \$1,750.

[15] The STR By-Law restricts how STRs may be used. Notably:

- An STR can be rented a maximum of 92 days per calendar year.
- An STR cannot be rented for a period shorter than six consecutive days during high-season (April 15 to October 15) and it cannot be rented more often than once in every six-day period during the remainder of the year.
- No more than 10 renters at a time may occupy any STR, with no more than two renters per bedroom, as identified and approved on the floor plans submitted with the licence application.

[16] The STR By-Law prohibits the advertising of STR accommodations inconsistent with these licensing restrictions. Licence applications and issued licences are posted on the Township's public website.

[17] An STR licence requires the designation of a person available to respond to any emergency or contravention of any Township by-law and to attend on site of the STR within 60 minutes of notification. A licensee must sign a code of conduct and acknowledgment that they will be held responsible for any contraventions by renters of municipal by-laws, acts, or regulations.

[18] The Zoning By-Law Amendment further restricts the operation of STRs by confining their operation to premises in identified zones, setting minimum parking space requirements, and prohibiting the use of an "accessory building or structure" as an STR.

The creation of the Association and the application to quash the STR By-Law

[19] The Association is a not-for-profit corporation formed in September 2022 in response to the enactment of the STR By-Law. In its factum, it states that it acts on behalf of "property owners within the Township who rent their properties from time to time to supplement their income and defray the carrying costs of their properties."

[20] In March 2023, the Association and some of its members applied for an order quashing the STR By-Law, for declarations that various provisions were of

no force and effect, and for injunctive relief. The applicants filed affidavits expressing the view that the STR By-Law was overly restrictive and onerous. They stated that the new regime prevented them from generating sufficient income to maintain their properties and, because STR licences are non-transferable, it would have an impact on the market value of their properties.

The application judge's decision

[21] The sole issue on the application was whether the STR By-Law should be quashed pursuant to s. 273(1) of the *Municipal Act*. The Association and individual applicants argued that the STR By-Law was enacted in bad faith, that it was a disguised zoning by law, and that it amounted to an illegal attempt to regulate STRs out of existence. The application judge rejected these submissions and dismissed the application.²

[22] The application judge found no evidence that the Township had acted in bad faith in enacting the STR By-Law but rather created it in response to concerns expressed in the community. The STR By-Law, as well as the accompanying Official Plan Amendment and Zoning By-Law Amendment, were the product of years of investigation, consultation, and review.

² The applicants also argued, unsuccessfully, that the STR By-Law infringed licensees' privacy rights under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 and their freedom of expression under s. 2(b) of the *Canadian Charter of Rights and Freedoms*. The application judge's rejection of these arguments is not challenged on appeal and the factual findings underlying his decision on these points are not relevant to any issue on appeal.

[23] Turning to the substance of the STR By-Law, the application judge found that it was not a disguised zoning by-law. It regulates the business of running an STR, as opposed to its location. This is a lawful exercise of the Township's ability to license and regulate businesses and promote the health, safety and well-being of community members. Regulation for these purposes is expressly contemplated by the *Municipal Act* and, as such, was not *ultra vires* of the Township.

[24] The application judge also rejected the applicants' arguments that the STR By-Law was unduly restrictive and effectively prohibited the operation of STRs. I will review his reasoning on these issues below.

[25] The application judge ordered the applicants to pay the Township \$38,000 in costs. He discounted the Township's partial indemnity costs based on the public interest nature of the litigation and some fees which he found unreasonable in the circumstances.

Grounds advanced on appeal

[26] The Association advances three grounds of appeal:

- (1) The STR By-Law is *ultra vires* the Township's business licensing power, because:
 - (a) It applies to non-commercial activity;
 - (b) It effectively prohibits, rather than regulates, the operation of STRs; and

- (c) The STR By-Law does not balance existing property rights.
- (2) The licensing cap is *ultra vires* the Township's authority respecting economic, social, and environmental well-being.
- (3) The application judge's costs order does not recognize that the Township has already been indemnified for its litigation costs as a result of the annual licensing fee imposed on STR owners.

[27] Before addressing each of these grounds of appeal, I will set out the statutory framework and relevant legal principles for determining the STR By-Law's validity.

The statutory framework

[28] Section 8(1) of the *Municipal Act* mandates a liberal interpretation of municipal powers to allow municipalities to govern as they see fit:

The powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.

[29] A lower tier municipality such as the Township may pass by-laws on a wide range of matters, including “[e]conomic, social and environmental well-being of the municipality”, the “[h]ealth, safety and well-being of persons” and the “[p]rotection of persons and property, including consumer protection”: s. 11(2) of the

Municipal Act. Under s. 11(3)11 of the *Municipal Act*, a lower tier municipality may enact by-laws respecting business licensing.

[30] By virtue of s. 8(3) of the *Municipal Act*, a by-law enacted respecting a matter in s. 11 may:

- (a) regulate or prohibit respecting the matter;
- (b) require persons to do things respecting the matter;
- (c) provide for a system of licences respecting the matter.

[31] Municipal licensing schemes are addressed in Part IV of the *Municipal Act*. Section 151(1) expands upon a municipality's power to regulate businesses through a licensing scheme:

Without limiting sections 9, 10 and 11, a municipality may provide for a system of licences with respect to a business and may,

- (a) prohibit the carrying on or engaging in the business without a licence;
- (b) refuse to grant a licence or to revoke or suspend a licence;
- (c) impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;
- (d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (e) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence; and
- (f) license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it.

[32] Although these provisions contemplate the regulation of businesses, s. 151(5) recognizes that a licensing scheme may be enacted within any other sphere in respect of which a municipality may validly enact by-laws:

Subsections (1) to (4) apply with necessary modifications to a system of licences with respect to any activity, matter or thing for which a by-law may be passed under sections 9, 10 and 11 as if it were a system of licences with respect to a business.

[33] Finally, pursuant to s. 273(1) of the *Municipal Act*, any person may apply to the Superior Court of Justice to quash a municipal by-law in whole or in part for illegality. If, however, a by-law is passed in good faith, it “shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law”: s. 272.

Relevant legal principles in assessing the STR By-Law’s validity

[34] In *Auer v. Auer*, 2024 SCC 36, 497 D.L.R. (4th) 381, the Supreme Court of Canada set out the principles governing this court’s review of subordinate legislation such as a municipal by-law. A court’s review of a by-law is limited to assessing the reasonableness of the enacting municipality’s interpretation of its statutory power, and not the reasonableness or policy merits of the by-law itself, that is, whether a by-law is “necessary, wise, or effective”: *Auer*, at paras. 3, 56.

[35] The reasonableness of a municipality’s interpretation of its power is assessed based on the framework in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. The court must therefore consider whether the enactment decision “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is

justified in relation to the relevant factual and legal constraints that bear on the decision”: *Vavilov*, at para. 99.

[36] *Auer* reaffirmed some of the interpretive principles set out in *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810. Accordingly:

- (1) a by-law is presumptively valid;
- (2) a by-law must be consistent both with specific provisions of the enabling statute (for our purposes in this appeal, the *Municipal Act*) and with its overriding purpose or object;
- (3) both a by-law and the enabling statute should be interpreted using a broad and purposive approach to statutory interpretation.

[37] The presumption of validity does not just mean that the party challenging a by-law has the burden to demonstrate its invalidity. The presumption also “favours an interpretive approach that reconciles the [by-law] with its enabling statute so that, *where possible*, the [by-law] is construed in a manner which renders it *intra vires*”: *Auer*, at para. 37, citing *Katz*, at para. 25 (emphasis in original).

[38] To overcome the presumption of validity, the Association must demonstrate that the STR By-Law cannot be supported by any “*reasonable* interpretation” of the Township’s statutory authority: *Auer*, at para. 39 (emphasis in original). The *Municipal Act* gives municipalities broad powers to regulate matters of local

concern. Provided a municipality acts within its jurisdictional limits, it is accountable to its constituents and not to the courts: *Friends of Lansdowne Inc. v. Ottawa (City)*, 2012 ONCA 273, 110 O.R. (3d) 1, at para. 15.

[39] The determination of whether a municipal by-law is *ultra vires* is a question of law and the application judge's decision is subject to a correctness standard: *Clublink Corporation ULC v. Oakville (Town)*, 2019 ONCA 827, 148 O.R. (3d) 558, at para. 39, citing, *Cash Converters Canada Inc. v. Oshawa (City)*, 2007 ONCA 502, 86 O.R. (3d) 401, at para. 20; *Friends of Lansdowne*, at para. 14. This court must nonetheless defer to the application judge's factual findings and inferences drawn from those facts: *Clublink*, at para. 39.

The STR By-Law is not *ultra vires* the Township's business licensing power

The STR By-Law is a valid exercise of both the Township's general licensing power and its power to licence businesses

[40] The Association contends that the application judge erred by assuming that STRs meet the definition of a "business" under s. 150 of the *Municipal Act*. It argues that municipal business licensing powers may only be used to regulate commercial activity, and that premises may meet the definition of an STR accommodation under the STR By-Law yet not be used for any commercial

purpose. As a result, the Association contends that the STR By-Law's licensing scheme is *ultra vires*.³

[41] This argument cannot succeed, for two reasons.

[42] First, a municipality may enact a licensing scheme for a purpose other than licensing businesses. Section 8(3) of the *Municipal Act* states that a by-law under ss. 10 and 11 respecting a matter may "provide for a system of licences respecting the matter". There is no qualification restricting this power to licensing businesses, and the specific licensing powers in s. 151(1) do not limit or derogate from the more general authority conferred by s. 11. In fact, s. 151(5) confirms that a licensing scheme may be enacted for a purpose other than the regulation of a business.

[43] This proposition was confirmed by this court in *2211266 Ontario Inc. (Gentlemen's Club) v. Brantford (City)*, 2013 ONCA 300, 307 O.A.C. 34. The appellant club challenged a by-law enacted by the City of Brantford that imposed licensing requirements on the owners and operators of adult entertainment parlours and performers within those facilities. This court upheld the by-law as a valid exercise of the City's power to license businesses as well as its power to implement a system of licensing in connection with matters relating to health,

³ In its oral submissions, the Association insisted that it was not challenging the licensing scheme as a whole, only some specific restrictions in the STR By-Law such as the cap on the total number of days annually than an STR may be rented. At the same time, however, it argued that the Township had no licensing power with respect to STRs. It is impossible, in my view, to see this argument as anything less than a broadside challenge to the STR By-Law as a whole.

safety and the well-being of persons in the municipality, and the protection of persons and property: *Gentlemen's Club*, at paras. 12-13.

[44] The same reasoning applies here. In the STR By-Law's preamble, the Township explicitly relied both on its general power to enact a licensing scheme as well as its specific power to do so with respect to a business. The preamble refers to the Township's authority to "enact by-laws for the licensing, regulating and governing of businesses and occupations" as well as s. 151, which "provides that a municipality may provide for a system of licenses with respect to a business". However, the preamble also refers to s. 8(3) and its power under s. 11(2)6 to pass by-laws respecting "the health, safety and well-being of persons". Nowhere in the provisions of the STR By-Law dealing with STR licences are they described as business licences.

[45] The purposes of the STR By-Law were furthermore not confined to the regulation of a business activity. The application judge found that the impetus for the STR By-Law was "complaints about the noise and behavio[u]r emanating from STRs", which were "clearly affecting the well-being of the community", and that a number of the STR By-Law provisions, such as steps required by licence applicants to ensure that premises were safe, were in furtherance of the "[h]ealth, safety and well-being of persons" as well as the "[p]rotection of persons and property, including consumer protection." These are findings of fact based on the application record to which this court must defer.

[46] The Association takes issue with the application judge's finding that the STR By-Law was justified as an exercise of the Township's power with respect to "[e]conomic, social and environmental well-being of the municipality" under s. 11(2)5 of the *Municipal Act*, a goal not mentioned in the STR By-Law's preamble. As the application judge correctly observed, however, "[i]n assessing whether a municipality has acted within their statutory authority, it is necessary to have regard both to the stated purpose and actual substance of the impugned instrument"; see also *Clublink*, at para. 37.

[47] In sum, the Township has the power under the *Municipal Act* to implement a licensing scheme with respect to STRs, whether or not STRs meet the definition of businesses, and the Township did so to further valid statutory purposes. This is a complete answer to the Association's position that the licensing scheme as a whole is invalid.

[48] Even if it were not a complete answer, however, the Association's challenge to the licensing scheme would fail because STRs fall within the definition of businesses under the *Municipal Act*. A "business" is broadly defined under s. 150 of the *Municipal Act* as "any business wholly or partly carried on within a municipality even if the business is being carried on from a location outside the municipality". The definition specifically extends to "the sale or hire of goods or services on an intermittent or one-time basis and the activities of a transient trader": s. 150(c) of the *Municipal Act*.

[49] STRs are premises that may be rented for money or other consideration. As was the case in *Gentlemen's Club*, at para. 24, the STR licensing requirements are triggered by commercial activity occurring at the premises. It does not matter that the premises are not used for this purpose all the time or even most of the time. There is nothing in the definition of a "business" in s. 150 of the *Municipal Act* that requires that the business activity at issue must occur on a full-time basis. On the contrary, the definition recognizes that the hiring of goods may be "intermittent", on a "one-time basis" or "transient". It follows that the activity may also be seasonal.

[50] The Association argues that STR premises cannot be regulated as businesses because, under the Township's Zoning By-Law Amendment, STRs operate in premises located in residential zones and used as residences most of the year. I agree with the Township that this argument conflates zoning and licensing. Nothing in the *Municipal Act* prevents a municipality from imposing a licensing requirement on business activity taking place within a dwelling zoned for residential use. As already noted, the power to license businesses is explicitly not limited to the regulation of full-time businesses.

[51] The Association argues that some STR owners do not make a profit but merely use the rents collected to defray the maintenance or mortgage costs of home ownership. As such, it submits that these STRs are not a "business" within the definition of s. 150 of the *Municipal Act*. I am unpersuaded by this argument. Any money that STR owners collect is a profit; they are generating income from

an asset and are free to use that income for any purpose they choose. In any event, the definition of a “business” does not require that the activity at issue be profitable. A business owner cannot use their business’ lack of success as a justification for challenging licensing requirements.

[52] Finally, the Association argues that the licensing regime may capture some non-commercial activity that falls outside the Township’s business licensing power, due to how broadly an STR is defined. The definition includes “a place of accommodation or temporary residence, or occupancy by way of concession, permit, lease, licence, rental agreement or similar arrangement”. The Association contends that a property-owner could grant a “concession” or “permit” to a family member or friend to allow them to stay in the premises for free.

[53] In my view, the definition of STRs does not include purely gratuitous arrangements. The words “concession” and “permit” must be read purposively and contextually, and courts must favour an interpretation of terms in a by-law consistent with its validity. A “lease”, “licence”, or “rental agreement” all involve the use of premises for consideration. The reference to a “similar arrangement” at the end of the list implies that “concession” and “permit” should be read to exclude arrangements that do not involve consideration.

[54] This reading is reinforced by s. 4.11 of the STR By-Law, that provides that the prohibitions in that section apply only when the premises are being “rented” as

a short-term accommodation. This section underscores that the Township did not intend to impose STR requirements on accommodations not actively being used for a commercial purpose, nor does the STR By-Law have such an effect.

[55] I conclude that this ground of appeal should be rejected.

The STR By-Law does not prohibit the operation of STRs in the Township

[56] The Association argues that the business licensing power under the *Municipal Act* gives the Township the authority to regulate STRs, not prohibit them. It contends that, in substance, the STR By-Law prohibits the operation of STRs, because its cumulative impact is to make them “significantly less economically viable.” This impact results from the cost of obtaining a licence; the conditions of licensure; and the limitations on an STR owner’s ability to generate revenue as a result of the restrictions on how and when premises can be used, as well as a cap on the total number of days per year that an STR can be rented.

[57] These submissions invite this court to revisit the application judge’s findings of fact and mixed fact and law despite the lack of any palpable and overriding error on his part.

[58] The application judge correctly observed that “[t]he role of the court is not to second guess the policy decisions made by the Township” but “to determine whether the by-laws are rationally connected to legitimate municipal objectives.” He found that the STR By-Law is rationally connected to various legitimate

purposes, including the regulation of the business of STRs; the promotion of the health, safety and well-being of individuals in the community; the health, safety and well-being of renters; and consumer protection.

[59] The application judge specifically considered the validity of the cap on the total number of STR licences issued at any given time. He found that the cap was intended to regulate the extent of economic competition among businesses, which this court has found to be a legitimate purpose: *Toronto Livery Association v. Toronto (City)*, 2009 ONCA 535, 253 O.A.C. 56, at para. 73. He accepted the Township's evidence that STRs could divert residential properties from long-term housing, reducing the available housing for Township residents. He noted that the cap did not prevent an applicant from obtaining a licence; at worst, it might delay it. Taking all of this into account, the application judge concluded that:

The policy decision to limit the cap at 300 was well within the Township's authority to determine. There is nothing arbitrary or irrational about their determination. Rather, the Township's 300 cap determination was the result of years of study and discussion on the issue and represents a compromise between those community members who sought a complete ban on STRs and those who sought no restrictions. In my view, the 300 cap appears to be logical and well-chosen considering that at the time of the hearing, two years after the cap was installed, the number of STRs is still below the cap.

[60] The application judge considered whether the cap on the number of STR licences available resulted in a prohibition, rather than a restriction, on STRs. He

noted the applicants' argument that the cap should be considered "in conjunction with the other restrictions and administrative hoops that must be complied with". In addition, he found, and I would agree, that the policy decision to impose the cap of 300 licenses was within the authority of the Township to determine. On the record before the application judge, the Township had considered 293 STR license applications. In other words, a large number of operators chose to obtain a license and thereby participate in the regulation of STRs through the STR By-law, and still the cap had not been reached so as to prohibit any new licenses.

[61] The application judge concluded that the STR By-Law did not prohibit the operation of STRs. He rejected an individual applicant's claim, in his affidavit, that an STR owner's ability to generate income had been lessened by 97% as a result of the STR By-Law, finding that this assertion was unsupported by the evidence. He also dismissed as irrelevant the Association's claim that the Township's licensing regime was the most restrictive in Ontario.

[62] I see no error of law or principle in the application judge's approach. On the contrary, it is consistent with this court's dismissal of appeals in which business owners have complained about licensing by-laws that may have a significant, and even arguably fatal, impact on their bottom line.

[63] For instance, in *232169 Ontario Inc. (Farouz Sheesha Café) v. Toronto (City)*, 2017 ONCA 484, 67 M.P.L.R. (5th) 183, the operator of several

hookah bars unsuccessfully challenged a City of Toronto by-law prohibiting “the use of hookah devices in connection with premises, vehicles, or things required to be licensed by the City for various purposes”: at para. 2. The application judge found that the by-law was a valid exercise of the City’s power to enact by-laws for the purpose of promoting public health and safety. On appeal, the operators argued that the by-law’s actual effect determined its purpose.

[64] This court squarely rejected this reasoning, at paragraph 15:

As the application judge noted, the appellants are licensed by the City to sell food and may continue to do so. Indeed, they may continue to sell shisha. What they cannot do is to permit the smoking of hookah pipes on their business premises. There is no doubt that many hookah lounges will suffer economic harm as a result of the by-law and may no longer be economically viable, but it does not follow that this is the by-law’s purpose. The protection of public health and safety necessarily has economic impact on the operation of the appellants’ businesses, but that impact is incidental to, rather than determinative of, the purpose of the by-law. [Emphasis added.]

[65] Near identical issues arose in *2386240 Ontario Inc. v. Mississauga (City)*, 2019 ONCA 413, 435 D.L.R. (4th) 180, leave to appeal refused, [2019] S.C.C.A. No. 294. This court again upheld the dismissal of a challenge to a ban on smoking waterpipes in specified places, this time in the Regional Municipality of Peel. The application judge again found that the purpose of the by-law was to protect public health and safety and that there was no evidence to support the applicant’s

allegation that the purpose of the impugned by-law was to prohibit their business. The court concluded that, even assuming that the effects of a by-law may be relevant to determining its purpose, “on the facts of this case, the potential economic impact on the appellants’ businesses is but an unfortunate incidental result of the By-law and not determinative of its purpose”: *2386240 Ontario Inc.*, at para. 23.

[66] The Association contends that the prohibition in this case is distinguishable from the prohibition in the hookah lounge cases, because the by-laws at issue in those cases restricted only a specific activity within certain premises. By contrast, the STR By-Law restricts the operation of STRs altogether for significant periods of time, by capping the cumulative number of days that premises can be rented at 92 per year.

[67] I do not find this distinction meaningful. Nothing in the *Municipal Act* prevents a municipality from imposing temporal restrictions on business activities, so long as the restriction is based on a valid exercise of a municipal power under the *Act*. Section 151(1)(f) gives the Township the broad power to “license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it.” I do not see how a temporal cap is more restrictive than a prohibition on the very activity that is a business’ *raison d’être*.

[68] In *York (Regional Municipality) v. Tsui*, 2017 ONCA 230, 135 O.R. (3d) 1, leave to appeal refused, [2017] S.C.C.A. No. 173, by-law provisions limiting the hours of operation of body rub parlours were upheld. At paragraph 100, this court stated that:

As with any other business regulated by a municipality, it is not surprising that hours of operation are encompassed by such a regulatory scheme. Regulating hours as a condition of licensing serves to address the parameters of the operation of a body rub parlour and eliminates late hours that may be conducive to crime associated with the operation of a common bawdy house. The provisions [are] rationally connected to the city's stated objective, the elimination of nuisance associated with the operation of a common bawdy house.

[69] The Association argues that this case is distinguishable because the restriction on opening hours was connected to a valid purpose, whereas the temporal restrictions in the STR By-Law are not. I disagree. One of the purposes of the STR By-Law was the reduction or elimination of behaviour by STR renters that affects the well-being of community members. The cap is rationally connected to this purpose as it limits the amount of time each year that such behaviour may take place.

[70] Finally, I note that the Association's arguments on this ground presuppose that the Township would not have the power to prohibit the operation of STRs altogether. The Association contends that, although s. 8(3)(a) of the *Municipal Act* empowers municipalities to enact by-laws that "regulate or prohibit respecting [a]

matter” that the municipality is empowered to address under s. 11 of the *Municipal Act*, this language does not permit outright prohibition of a class of business. This is debatable, in my view. Given my conclusion that the STR By-Law does not prohibit the operation of STRs in the Township, however, I do not need to address this submission.

[71] I conclude that this ground of appeal has no merit.

The STR By-Law was not enacted without regard to existing property rights

[72] The Association contends that the application judge failed to consider whether, in enacting the STR By-Law, the Township considered its impact on property owners’ vested rights. It argues that the Township’s authority under s. 151(1)(f) of the *Municipal Act* does not contain the clear and unambiguous language required to revoke vested property rights to the degree that the STR By-Law does and that the Township was obliged to, but did not attempt to, strike a balance between individual property rights and legislative goals. In making these arguments, the Association relies on *Re City of Oshawa and 505191 Ontario Ltd.* (1986), 54 O.R. (2d) 632 (C.A.), at pp. 640-641, leave to appeal refused, 58 O.R. (2d) 535n, and *Ontario Harness Horse Assn. v. Ontario Racing Commission* (2002), 62 O.R. (3d) 44 (C.A.), at paras. 53-55, leave to appeal refused, [2002] S.C.C.A. No. 355.

[73] The Township points out that the context of the court's remarks in *Ontario Harness Assn.* was different than the context of this case, because the *Municipal Act* explicitly gives municipalities the broad authority to regulate real property used for business purposes. It also suggests that the balancing language in both the *City of Oshawa* and *Ontario Harness Assn.* decisions is subject to the interpretive principles set out in *Auer*. As a result, in an application to quash a by-law under s. 273 of the *Municipal Act*, the court's review focuses on the reasonableness of the municipality's interpretation of its statutory powers.

[74] I accept the Township's submissions on these points. Even if I did not, I would reject the Association's argument that residents' existing property rights were not considered by the Township. The record reflects that the Township made extensive efforts to balance the competing interests of all community stakeholders, including STR owners. This is borne out by the lengthy consultation, research and review process it undertook over many years. The application judge acknowledged that the STR By-Law changed how the applicants could rent out their property and restricted the income they could earn from their property but noted that its enactment was "based on a detailed investigation of the issues with community participation and feedback". In particular, he found that the licence cap was "a compromise between those community members who sought a complete ban on STRs and those who sought no restrictions."

[75] I would reject this ground of appeal.

The licensing cap is not *ultra vires* the Township's authority respecting economic, social and environmental well-being

[76] The Association argues that the application judge erred in finding that the licensing cap was a valid exercise of the Township's power to pass by-laws respecting the "[e]conomic, social and environmental well-being of the municipality" under s. 11(2)(5), because the STR By-Law's preamble does not refer to this purpose.

[77] I disagree. As mentioned earlier, in assessing whether a by-law is *intra vires*, a court must consider both the by-law's stated purpose and its actual substance. If a municipality is empowered under the *Municipal Act* to pass by-laws for a particular purpose, and the record shows that this purpose motivated the by-law's provisions, the absence of a reference to that purpose in the text of the by-law does not undermine its validity.

[78] The impact of STRs on the economic, social and environmental well-being of the community was clearly a purpose of the licensing regime. In particular, the record shows that the Township was concerned about the impact of unchecked STRs on competition in the area and the availability of affordable housing for the community.

[79] I would therefore reject this ground of appeal.

There is no basis to set aside the application judge's costs award

[80] Based on the criteria in *Sarnia (City) v. River City Vineyard Christian Fellowship of Sarnia*, 2015 ONCA 732, 343 O.A.C. 58, at para. 19, the application judge found that there was a public interest element to the litigation even though the applicants' main interest in bringing the application was pecuniary. He concluded that the Township was entitled to its partial indemnity costs but reduced them by over 20% in consideration of the public interest element and his finding that the Township's legal team was overstaffed. As a result, he awarded the Township all-inclusive costs of \$38,000.

[81] The Association seeks leave to appeal this award. It contends that the application judge did not consider the principle that the purpose of costs is to indemnify the successful party. Had he done so, the application judge would have found that the Township was not entitled to costs because, through the annual licensing fee and, in particular, the increase to that fee, it has already recovered the litigation expenses incurred in this litigation.

[82] I would not grant leave to the Association to appeal costs.

[83] In setting costs, the court should determine the amount that is fair and reasonable for a litigant to pay in a particular proceeding: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at para. 26. The reasonable amount in any proceeding is based on a myriad of factors, notably those listed in r. 57.01(1) of the *Rules of Civil Procedure*,

R.R.O. 1990, Reg. 194. A judge's costs award involves an exercise of discretion with which this court will not interfere unless it results from an error in principle or is plainly wrong: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9, [2004] 1 S.C.R. 303, at para. 27.

[84] Here, in my view, there is no basis to set aside the application judge's costs award.

[85] First, indemnification of the winning party is a recognized justification for awarding costs.

[86] Second, the record does not establish that the Township recovered all its litigation costs through the licensing fees such that, as the Association submitted here, an award of costs would amount to double recovery. At best, it shows that the Township sought to ensure that the STR licensing program was revenue-neutral to general taxpayers by setting licensing fees intended to cover the Township's administrative, enforcement and related legal expenses.

[87] Third, even if the Township recovered some of its litigation costs through the licensing fees, this did not preclude an order requiring the Association and the individual applicants from bearing a share of the costs of defending a lawsuit that they chose, unsuccessfully, to pursue.

[88] Finally, it was open to the application judge to find that the public interest element did not immunize the Association and those members of it who had

participated in the litigation from cost consequences altogether: *CAMPP Windsor Essex Residents Association v. Windsor (City)*, 2020 ONSC 4612, 5 M.P.L.R. (6th) 230, at para. 175.

Disposition

[89] I would dismiss the appeal and the motion for leave to appeal, with all-inclusive costs in the agreed amount of \$20,000 to the Township.

Released: June 11, 2026 "S.G."

"S. Gomery J.A."
"I agree. L. Madsen J.A."
"I agree. P.J. Osborne J.A."