

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF BLOOMINGTON

In the Matter of Craig Rheame, d/b/a
Compass Rose Real Estate LLC and North
by Northwest Properties' Appeal of the
Denial of Three Rental Dwelling Licenses
for 8402, 8414, and 8422 22nd Avenue
South, Bloomington, MN by the City of
Bloomington

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge Perry Wilson on November 23, 2015, at the Bloomington Civic Plaza, Dakota Conference Room, 1800 West Old Shakopee Road, Bloomington, Minnesota. The hearing record closed at the conclusion of the hearing.

Marianna Kaul, Assistant Bloomington City Attorney, appeared on behalf of the Licensing Authority (City). Richard Glassman appeared on behalf of Craig Rheame, Compass Rose Real Estate LLC, and North by Northwest Properties (Applicants).

STATEMENT OF THE ISSUES

1. Do Applicants' Occupancy Agreements and the actual operation of the town house properties located at 8402, 8414, and 8422 22nd Avenue South in Bloomington as "crash pads" violate the occupancy limits set forth in Bloomington City Code § 14.557(b)?

2. If section 14.557(b) is violated by Applicants' Agreements and actual operation of the town house properties, does such violation provide a legally sufficient basis to deny the license application under Bloomington City Code § 14.578?

Based upon the submissions of counsel and the hearing record, the Administrative Law Judge makes the following:

SUMMARY OF RECOMMENDATIONS

Based upon the evidence in the hearing record, the Administrative Law Judge respectfully makes the following recommendations:

1. The operation of the townhouse properties located at 8402, 8414 and 8422 22nd Avenue South in the City of Bloomington is in compliance with the occupancy limits set forth in Bloomington City Code § 14.557(b), as of the date of the hearing.

2. The license applications filed with the City of Bloomington by Applicants should be granted by the Bloomington City Council.

Based upon the hearing record and the arguments of counsel, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Applicants own the townhouse properties located at 8402, 8414, and 8422 22nd Avenue South in the City of Bloomington, Minnesota (the Properties).¹

2. In August 2014, the City housing inspector reviewed the internet website www.msppcrashpad1.com.² This website described the availability of beds in the Properties as crash pads for airline crew members in need of a place to stay overnight close to the Minneapolis-St. Paul International Airport.³ The website described the Properties, their location close to the airport, the common facilities available, and the availability of beer for purchase.⁴

3. The inspector believed that the operation of the Properties described in the website indicated that the Properties were being operated by the Applicants as rental housing.⁵

4. The inspector determined that the properties were not licensed by the City as rental housing.⁶

5. Applicants were notified by letters dated August 22, 2014, that they were required to apply for rental licenses because the Properties were being operated in violation of the City Code.⁷

6. On August 27, 2014, Applicants wrote a letter to the City explaining the use of the Properties and concluding that a City rental license was not required. The description stated in part that:

The Properties are owned and used by employees in the airline industry. Within this industry, typically employees find themselves having to spend a night in a city waiting for their next flight. A number of units are used to provide them a home like atmosphere that can be used on an as-needed basis to essentially stay for a night when passing through town. Typically, there are no more than two people occupying a Property at any one time, and none of the individuals are residents of the State of Minnesota

¹ City Exhibits (Exs.) 1, 2.

² City Ex. 3.

³ *Id.*

⁴ *Id.*

⁵ Testimony (Test.) of Mark Stangenes.

⁶ *Id.*

⁷ *Id.*

or reside in the Property. They contribute a nominal fee to help maintain and use the Property on an as-needed basis.⁸

7. Applicants applied for rental licenses for the Properties on September 4, 2014.⁹ Each of the applications described each of the properties as a “single family dwelling/townhouse.”¹⁰

8. According to the Applicant, in September of 2014, the Properties were leased to between 12 and 14 people for each townhouse, but no more than three or four people stayed overnight on any given night.¹¹

9. The Properties were inspected by the City on October 21, 2014.¹² As the result of these inspections, each property received correction orders.¹³ The correction orders for each property included an entry referencing bunk beds in the bedrooms.¹⁴ According to the City inspector, this note referred to his observation of multiple bunk beds in each bedroom of each property.¹⁵

10. By letter dated November 26, 2014, the City inspector provided a written summary of the results of the inspection of the Properties to the Applicants.¹⁶ The letter noted that “[t]he properties cannot be rented to more than one family, which includes not more than 4 unrelated persons. The inspection noted accommodations (beds) set up for more than 4 persons...”¹⁷ The letter noted that each of the Properties had sleeping arrangements for between 12 and 15 people.¹⁸

11. The November 26, 2014 letter required that Applicants provide, for each property, a written lease, a tenant register, and the discontinuation of beer sales.¹⁹ The letter further indicated that the Properties would not receive licenses until the violations noted in the letter were corrected and a re-inspection of each property was successfully completed.²⁰

⁸ City Ex. 7.

⁹ City Ex. 4.

¹⁰ *Id.*

¹¹ Test. of Craig Rheaume.

¹² City Ex. 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Test. of M. Stangenes.

¹⁶ City Ex. 6.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

12. In response to the correction orders and the November 26, 2014 letter, Applicant revised the terms pursuant to which beds in the Properties were leased.²¹ The revision limited the number of persons who could occupy each property to no more than four on any given night.²² The number of people holding lease agreements for each of the townhouses was not reduced.²³

13. On January 6, 2015, Applicants, their attorney, and representatives of the City met to discuss the licensing status of the Properties.²⁴ The City inspector wrote a letter to the Applicants dated February 25, 2015 in which the City's requirements for issuing rental licenses were described in detail.²⁵ These requirements included that Applicants "[d]iscontinue leasing to more than one family or a maximum of four unrelated persons."²⁶ The letter also required proof of criminal history inquiries for all tenants, a tenant register, a revised lease agreement, and discontinuance of use of the Properties as transient lodging.²⁷ The letter set a compliance deadline of April 1, 2015, after which the license applications for the Properties would be denied.²⁸

14. On March 10, 2015, Applicants and City staff met again to discuss the rental license applications for the Properties and the efforts of Applicants to comply with the City's letter dated February 25, 2015.²⁹

15. On March 17, 2015, the City inspector advised the Applicants that the orders issued on February 25, 2015 still stand.³⁰

16. On March 24, 2015, Applicants were granted an extension of the compliance deadline to June 1, 2015, so that Applicants could terminate certain leases on the Properties.³¹

17. On April 21, 2015, the City housing inspector again inspected the Properties.³² The inspector found that a number of violations had been corrected.³³ The inspector found that each of the Properties still had a number of bunk beds in each of the

²¹ City Ex. 7.

²² Test. of C. Rheume; Rheume Ex. 3.

²³ *Id.*

²⁴ City Ex. 10.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ City Ex. 11.

³⁰ City Ex. 12.

³¹ Test. of Lynn Moore.

³² City Ex. 13.

³³ *Id.*

bedrooms and that these beds exceeded the beds necessary to provide accommodations for four unrelated persons in each townhouse.³⁴

18. On April 23, 2015, the City housing inspector sent Applicants a letter reflecting his findings in the April 21, 2015 inspection.³⁵ The open violations listed in the April 23, 2015 letter were that the Properties were leased to more than four unrelated persons, no proof of criminal history inquiries was provided, no tenant register was provided, no revised leases were provided, and the Properties were operated as transient housing.³⁶

19. On May 7, 2015, Applicants sent an email to the City housing inspector updating the compliance status of the Properties.³⁷ The email enclosed tenant registers, criminal background checks for tenants, and a written lease for each tenant.³⁸ The tenant registers and written leases showed that each townhouse was rented to four individuals.³⁹ The written leases provided that “[t]enant understands that they will use and occupy one bedroom and will share the other rooms with other tenants.”⁴⁰

20. On July 16, 2015, the City housing inspector emailed Applicants and asked for verification that the additional bunk beds had been removed from the Properties so that a re-inspection could be scheduled.⁴¹ On July 24, 2015, the City housing inspector again inquired about the removal of the bunk beds from the Properties and set July 31, 2015 as the deadline for removal of the beds and scheduling of a re-inspection.⁴²

21. On July 29, 2015, Applicants asked the City housing inspector to provide a citation to the City Code authorizing the City to require removal of the bunk beds.⁴³ The inspector responded that same day stating that section 14.577 of the City Code authorized the City’s demand for removal of the bunk beds, stating that “[o]ne way to determine compliance with this Section of the Code is to note the number of beds in a given unit.”⁴⁴

22. On July 31, 2015, Applicants attorney emailed the City housing inspector noting that the bunk beds were expensive, difficult to remove and that they “will not be used...”⁴⁵

³⁴ *Id.*

³⁵ City Ex. 14.

³⁶ *Id.*

³⁷ City Ex. 15.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ City Ex. 16.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ City Ex. 17.

23. On August 13, 2015, the City issued its letter formally denying Applicant's applications for rental licenses for the Properties.⁴⁶ The letter stated that the reason for the denial was the failure of the Properties to comply with City Code section 14.577, based on the fact that most of the bedrooms in the Properties have "2 to 4 beds per bedroom, many bunked."⁴⁷ The letter stated that this number of beds was "excessive" and when coupled with the advertisement of the Properties as "crash pads," and Applicants admission that they had leased the Properties to more than four people per townhouse in the past, showed that Applicants "are or may lease to more than four unrelated persons per dwelling..."⁴⁸

24. On August 24, 2015, Applicants appealed the City's denial of the rental license applications for the Properties.⁴⁹

25. A member of the board of directors of the townhome association in which the Properties are located stated, at the hearing, that she did not hear excess noise coming from the Properties and had no objection to how Applicants were operating the properties.⁵⁰

26. An owner of a townhome located near the Properties stated, at the hearing, that he is concerned about the number of strangers coming and going from the Properties.⁵¹

27. Three owners of townhomes located near the Properties sent the City email objections to the licensing of the Properties.⁵² The objections were: that additional rental properties would increase the premium for home owners insurance paid by the townhome association; that strangers coming and going from the Properties increase safety issues; traffic and noise; complaints unrelated to the Properties about the operation of the townhome association and, negative effects on property values in the area.⁵³

28. Three users of bedrooms in the Properties described, at the hearing, their relationship to the Applicants and their use of the Properties as places to stay overnight while on a layover at Minneapolis-St. Paul International Airport.⁵⁴

Based upon the Findings of Fact, the Administrative Law Judge makes the following:

⁴⁶ City Ex. 18.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ City Ex. 19.

⁵⁰ Test. of Yvonne Jerrett.

⁵¹ Test. of Daniel Storlien.

⁵² City Ex. 21.

⁵³ *Id.*

⁵⁴ Test. of John Kitkowski; David Farley; Rachael Bechthold.

CONCLUSIONS OF LAW

1. Minn. Stat. §§ 14.50, 14.55 (2014) and Bloomington City Code § 14.578 provide the Administrative Law Judge and City with the authority to conduct this proceeding and to consider whether the Applicants' rental license applications should be approved. The role of the Administrative Law Judge is to make findings, conclusions, and recommendations on that subject.

2. The City gave the Applicants proper and timely notice of the hearing in this matter, and the City has complied with all of the law's substantive and procedural requirements. This matter is properly before the Administrative Law Judge pursuant to Resolution of the City Council dated September 28, 2015, referring the public hearing in this matter to the Minnesota Office of Administrative Hearings.

3. Bloomington City Code § 14.557 provides the standard on which Applicants' compliance with law is to be judged:

An owner may adopt standards that reduce the maximum allowed occupancy of a dwelling unit from the standards set forth herein. The maximum permissible occupancy of any licensed rental dwelling unit is determined according to the 2012 International Property Maintenance Code and as follows:

- (a) Not more than one family, except for temporary guests, will occupy a licensed rental dwelling unit.
- (b) No one will lease a licensed rental dwelling unit to more than four unrelated persons.
- (c) Tenants of a licensed rental dwelling unit must not lease or sublet the dwelling unit to another without the prior approval of the property owner.

4. Applicants' use of the Properties was in violation of City Code § 14.577, beginning when Applicants began operation of the Properties by leasing each townhouse to more than four unrelated persons.

5. The Applicants' operation of the Properties in August of 2014 constituted the operation of rental properties and on August 22, 2014, the City properly required Applicants to apply for City rental housing licenses.

6. Applicants' operation of the Properties continued to be in violation of City Code § 14.577 until May 7, 2015, when Applicants provided the City with evidence that the Properties came into compliance with the City Code by renting to no more than four unrelated persons.

7. The Applicants' operation of the Properties was in compliance with City Code § 14.577 on the date of the hearing in this matter.

8. City Code § 14.577 does not regulate the number of beds that may be placed in a rental property.

9. City Code § 14.577 does not provide the City with a basis to refuse to issue rental housing licenses to Applicants for the Properties based on the number of or configuration of beds located in the Properties.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Findings of Fact and Conclusions of Law, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge respectfully recommends that:

The applications of Craig Rheaume, d/b/a Compass Rose Real Estate LLC and North by Northwest Properties for three rental dwelling licenses for 8402, 8414, and 8422 22nd Avenue South, Bloomington, Minnesota be **GRANTED**.

Dated: December 23, 2015

s/Perry M. Wilson

PERRY M. WILSON
Administrative Law Judge

Reported: Digitally Recorded; not transcribed.

NOTICE

This Report is a recommendation, not a final decision. The hearing process has been conducted and this Report has been prepared pursuant to Bloomington City Council Resolution dated September 28, 2015. The City Council of Bloomington will make the final decision after a review of the record. The Council may adopt, reject, or modify the Findings of Fact, Conclusions of Law, and Recommendations. Parties should contact the City Clerk's Office, City of Bloomington, 1800 West Old Shakopee Road, Bloomington, MN 55431-3027, to ascertain the procedure for filing exceptions or presenting argument to the City Council.

MEMORANDUM

The undisputed evidence presented at the hearing showed that, on the hearing date, Applicants' rental of the Properties was limited to four unrelated persons for each of the three townhomes. Therefore, Applicants were in compliance with section 14.557 of the City Code and the rental license applications should be granted.

The City witnesses expressed concern that Applicants' refusal to remove beds in excess of four in each townhome, coupled with Applicants' history of leasing each townhome to as many as 14 unrelated persons, indicates that Applicants could easily again operate the Properties in violation of section 14.577. This concern is understandable, but it is equally true that any rental property in the City could be operated in violation of the Code, by renting to more than four unrelated persons. The City Code does not provide a basis for the City to regulate the number of beds in rental housing, only the number of unrelated persons who may sleep in those beds.

Pursuant to section 14.589 of the City Code, the City has the power to inspect the Properties to determine whether Applicants are operating them in compliance with the City Code. If the Properties are not in compliance upon inspection, the City may take action against the rental licenses issued to the Applicants, including suspension and revocation of the licenses.

P. M. W.