THE STATE OF NEW HAMPSHIRE
SUPREME COURT

2022 Term

No. 2022-0098

Town of Conway
v.
Scott Kudrick

BRIEF OF *AMICI CURIAE,* NEW HAMPSHIRE MUNICIPAL ASSOCIATION & NEW HAMPSHIRE PLANNERS ASSOCIATION

IN SUPPORT OF THE TOWN OF CONWAY

RULE 7 APPEAL FINAL DECISION OF THE
CARROLL SUPERIOR COURT

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STATEMENT OF THE FACTS AND OF THE CASE

The New Hampshire Municipal Association and the New Hampshire Planners Association defer to the Statement of Facts and of the Case by the Town of Conway and rely thereon.

SUMMARY OF THE ARGUMENT

The trial court's interpretation of the key provision of the Conway ordinance, "living as a household," merely requires any social unit or group of individuals to be together in the same dwelling place for residential purposes, eating, sleeping, bathing and engaging in incidental activities. This approach to interpreting the Conway zoning ordinance conflicts with the broader public welfare purposes of residential zoning districts as expressed by decisions of the Supreme Courts of Pennsylvania and Massachusetts and is divorced from the larger public purposes of zoning that ought to serve as general guidance when interpreting a zoning provision.

Furthermore, the court's reasoning sheds little light on how the term "living as a household" is used in the ordinance. In essence, the court determined that any group of people who happen to be alive at the same time in the same place can be deemed to be "living as a household." Thus, ten strangers who arrive separately and spend one night in an AMC hut, or a youth hostel, or a sleeper car on a train, are "living as a household." This defies common sense, and the ordinance surely did not intend such a broad definition.

The trial court erroneously viewed the use of a short-term rental from the subjective expectations of the user of the property, rather than from the objective business purposes of the owner of the property. The trial court's interpretative approach will exacerbate the diminishing supply of affordable house.

ARGUMENT

I. The term "living as a household" should be interpreted to mean the occupants of a dwelling live and behave in a family like manner that is not transitory

The trial court adopted a narrow interpretation of the key provision of the Conway ordinance, "living as a household." The court interpreted that phrase to mean "the state of living in a social unit or group of people together in the same dwelling place." Notice of Appeal (hereinafter NOA), page 11. Based upon this interpretation the trial court found and ruled that the Conway zoning ordinance does not draw a distinction along durational lines or familial lines. Instead, "living as a household" merely requires any social unit or group of individuals to be together in the same dwelling place for residential purposes, eating, sleeping, bathing and engaging in incidental activities. NOA page 11. This approach to interpreting the Conway zoning ordinance conflicts with the broader public welfare purposes of residential zoning districts as expressed by decisions of the Supreme Courts of Pennsylvania and Massachusetts.

A. Decisions by the Pennsylvania and Massachusetts Supreme Courts provide the most persuasive guidance on the meaning of "living as a household"

In *Slice of Life, LLC v. Hamilton Township Zoning Hearing Board,* 207 A.3d 886 (Pa. 2019), the Pennsylvania Supreme Court was asked to determine whether a local zoning ordinance that defines "family" as requiring "a single housekeeping unit" would permit purely transient uses of a property, such as a short-term rental use. *Id.* at 888. Like the Conway

zoning ordinance, the zoning ordinance interpreted in *Slice of Life* did not separately define the phrase "single housekeeping unit."[1]

Turning to the history of residential zoning districts, the *Slice of Life* court observed that the establishment of residential zoning districts has long been recognized as a valid exercise of a municipality's police power:

> They serve to insulate areas intended for residential living from increased noise and traffic, protect children living there and their ability to utilize quiet, open spaces for play, and to maintain "the residential character of the neighborhood." *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 394, 47 S.Ct. 114, 71 L.Ed. 303 (1926). Non-family uses, including fraternity houses and boarding houses, have been found to be antithetical to the "residential character," as [m]ore people occupy a given space; more cars ... continuously pass by; more cars are parked; [and] noise travels with crowds." *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 9, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974).

Id., at 889. That history, along with a comprehensive survey of related state court decisions led the *Slice of Life* court to conclude that the term "single housekeeping unit" requires the occupants of a home to live in a manner like a family that is permanent and not transitory. Furthermore, that a single-family home be occupied by a single housekeeping unit and that such households remain non-transient. *Id*. at 889 – 890. Based upon these conclusions the *Slice of Life* court ruled that a short-term rental use in a residential zoning district was purely transient since the individuals rent the subject premises for a minimum of two nights up to a week at a time.

[1] For the purposes of relying upon *Slice of Life* as persuasive authority in this matter, the terms "living as a household" and "single housekeeping unit" are sufficiently comparable such that they should be deemed synonymous.

Accordingly, the use was deemed not to be a single housekeeping unit and was not permitted in the subject residential zoning district. *Id*. at 903.

Relying upon *Slice of Life* the Massachusetts Supreme Judicial Court in *Styller v. Zoning Board of Appeals of Lynnfield,* 487 N.E. 3d 588 (Mass. 2021), similarly ruled that the Lynnfield zoning ordinance unambiguously excluded purely transient use, such as short-term rentals, in residential zoning districts. *Id*. at 171.

B. The meaning of the Conway ordinance should be interpreted based on the intention of the town meeting, from its construction as a whole and not from the construction of isolated words and phrases

The construction of the terms of a zoning ordinance is a question of law that requires the court to determine the meaning of the words and phrases used. *Trottier v. Lebanon*, 117 N.H. 148 (1977); *Seabrook v. Tra-Sea Corp*., 119 N.H. 937 (1979). The Court "determine[s] the meaning of a zoning ordinance from its construction as a whole, not by construing isolated words or phrases." *Working Stiff Partners v. City of Portsmouth,* 172 N.H. 611, 615-16 (2019). In doing so, the Court must seek the specific intent of the lawmakers and relies on that intent to determine how to construe the ordinance consistent with the intent of the framers. *Tremblay v. Hudson*, 116 N.H. 178 (1976).

Section 190-5 of the Conway Zoning Ordinance states, in relevant part, "[t]his chapter is constructed as a permissive zoning ordinance; if a use is not identified as a permitted use or a use permitted by special

exception in a zoning district, then the use is not permitted in that zoning district." That is, "[i]n the absence of a variance or special exception, such an ordinance functions generally to prohibit uses of land unless they are expressly permitted as primary uses or can be found to be accessory to a permitted use." *Windham v. Alfond*, 129 N.H. 24, 523 (1986). Thus, in the Conway Zoning Ordinance, in order for a use to be allowed, it must be expressly permitted under the terms of the ordinance. *Id.* at 523.

Old Street Barn, LLC v. Town of Peterborough is illustrative of this rule. 147 N.H. 254 (2001). In that case, the issue was whether pumping and removing water using four 8,200-gallon-tank trucks per day for commercial sale violated the applicable zoning ordinance. *Id.* at 257. In that particular district, the zoning ordinance contemplated certain uses – farming, gardening, and other agricultural uses, as well as residential and recreational uses – and, by the general terms of the ordinance, excluded all other uses. *Id.* at 258. As the Court concluded, "[t]he plain language of the ordinance simply does not contemplate using the property for a commercial venture involving pumping and removing four 8,200-gallon tank trucks of water per day." *Id.* at 258.

In so concluding, the Court looked to the "plain language" of the ordinance. *Id.* at 258. In the case of zoning disputes, any doubt about the meaning of any terms or provisions of an ordinance is determined in accordance with the intent of the municipal body that enacted it, and any ambiguity is resolved by reference to the apparent object of the provision. *Storms v. Eaton*, 131 N.H. 50, 549 (1988) (holding that in determining whether ordinance applies in a particular instance the functional capacity of structure involved will control, not subjective intent of builder). As such,

the ordinance must specifically contemplate a particular use if that use is to be considered as permitted by the ordinance. *Old Street Barn*, 147 N.H. 254 (2001). In the absence of such express permission, the owner of the property must seek relief from the zoning board of adjustment in order to use the property for the purpose that is not allowed under the plain meaning of the terms used by the ordinance. *Id.* at 258.

Here, the Conway Zoning Ordinance must, likewise, be interpreted in the same manner, with any doubt about the meaning of specific terms or provisions determined in accordance with the intent of the municipal body that enacted it. *Storms*, 131 N.H. at 54 (1988). When, as here, the term at issue is "residential/dwelling unit," as further defined by the ordinance, the term *should* be interpreted in the manner that "best harmonizes with the context and the apparent policy and objects of the [ordinance]. *Hackett v. Gale*, 104 N.H. 90, 92 (1962). As explained below, the term is best understood to mean someplace that someone lives, not someplace that someone visits.

C. Relying upon *Schack v. Prop. Owners Ass'n of Sunset Bay* diminishes the public purposes of zoning

The trial court deemed the decision of the Court of Appeals of Texas in *Schack v. Property Owners Association of Sunset Bay,* 555 S.W. 3d 339 (Tex. App. 2018) to be instructive when interpreting the term "living as a household." NOA, at 11. Oddly, however, the *Schack* court was not called upon to interpret a zoning regulation adopted by local government, but a real property covenant and restriction imposed by contract between real property owners. *Id*. at 344345. Thus, that decision is divorced from the

larger public purposes of zoning that ought to serve as general guidance when interpreting a zoning provision adopted under RSA 674:16, "[f]or the purpose of promoting the health, safety, or the general welfare of the community." *Compare With, Town of Lincoln v. Chenard,* 174 N.H. 762, 767-768 (2022) (the word junkyard interpreted considering the overall purposes of junkyard regulation as expressed in RSA 236:111, to conserve and safeguard the public safety, health, morals and welfare).

II. The Court should interpret the Conway ordinance as requiring owner occupancy of any dwelling used for short term rental purposes in the residentially zoned districts

As the trial court correctly noted, the Conway zoning ordinance is a "permissive" one in which all uses not expressly permitted in a given district are prohibited. The question, then, is whether short-term rental properties that are not occupied by the owner are an expressly permitted use under the terms of the ordinance.

The defendant argued, and the court ruled, that the defendant's properties fit the definition of a "residential/dwelling unit," which is permitted in the residential districts. There is no suggestion that the properties fit any other definition of a permitted use in those districts. Thus, the only question is whether, as the court ruled, the properties meet the definition of a "residential/dwelling unit." That definition is as follows:

> RESIDENTIAL/DWELLING UNIT – A single unit providing complete and independent living facilities for one or more persons

living as a household, including provisions for living, sleeping, eating, cooking, and sanitation.

It is undisputed that the defendant's properties include provisions for living, sleeping, eating, cooking, and sanitation. The issue is whether they are "living facilities for one or more persons *living as a household*."

The trial court addressed this question by focusing on dictionary definitions of "living" and "household." The court stated that the definition of "living" is "having life" or "the condition of being alive," while the definition of "household" is "a social unit comprised of those living together in the same dwelling place," or "a group of people who dwell under the same roof." Thus, the court reasoned, "living as a household" means "the state of living in a social unit or group of people together in the same dwelling place." NOA, at 11.

This sheds little light on the term's meaning as used in the ordinance. In essence, the court determined that any *group of people* who happen to be *alive* at the same time in the same place can be deemed to be "living as a household." Thus, ten strangers who arrive separately and spend one night in an AMC hut, or a youth hostel, or a sleeper car on a train, are "living as a household." This defies common sense, and the ordinance surely did not intend such a broad definition. As discussed later in this brief, the phrase "living as a household" has a different meaning than the very technical one applied by the superior court.

A. Short-Term Rentals Are Not a Residential Use

This court "construes the words and phrases of an ordinance according to the common and approved usage of the language . . .." *Working Stiff Partners,* 172 N.H. at 615-16. Further, the court "determine[s] the meaning of a zoning ordinance from its construction as a whole, not by construing isolated words or phrases." *Id*. at 615-16.

The defined term in question is "Residential/Dwelling Unit." While additional words are used to define this term, the words of the term itself—"residential" and "dwelling"—deserve attention. Just as the title of a statute, while not conclusive, is a significant indication of the legislature's intent, *Garand v. Town of Exeter,* 159 N.H. 136, 142 (2009), so the words used to name the use being defined in the ordinance are relevant.

The trial court seemed to recognize this, stating repeatedly that the use of the property is allowed if it is "residential and not "commercial." Unfortunately, the court simply assumed that the use in question *is* residential. It clearly is not.

The court apparently believed that what matters is whether the *guests* at the properties are using them "for residential, as opposed to commercial, purposes." But regardless of what the *guests* are doing, the *owner* is unquestionably running a commercial business. Marketing and renting a property for one-night or one-weekend stays is a commercial use—it is no different in concept from a hotel, and no one would deny that a hotel is a commercial use of property.

Further, to the extent the guests' use of the properties is relevant, that use is not "residential" under any ordinary understanding of the word. The most common uses of the words "reside," "residence," "resident," and

"residential" all indicate occupying a place with an intent to make it one's home:

- reside: to dwell permanently or continuously: occupy a place as one's legal domicile
- residence: the act or fact of dwelling in a place for some time; the act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit; the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn . . ..
- resident: one who resides in a place . . ..
- residential: used as a residence or by residents . . ..

Merriam-Webster's Collegiate Dictionary 1060 (11th ed. 2003).

State law defines "residence" even more clearly: "a person's place of abode or domicile. The place of abode or domicile is that designated by a person as his or her principal place of physical presence to the exclusion of all others." RSA 21:6-a. A person who rents an apartment or a house in Conway with the intent of making it his or her home is a resident of that property. In contrast, a person from Boston or New York who rents a house in Conway with the intent of returning home after a night or a weekend does not become a temporary "resident" of Conway. He or she is a vacation or a tourist—a guest at a mini-hotel—not a resident.

Several New Hampshire statutes draw a clear distinction between a long-term rental and a short-term rental, with the former being considered a residential use and the latter a commercial use equivalent to a hotel. Under

RSA chapter 78-A, the meals and rooms tax is imposed on an "occupancy," defined as the use or possession of any room in any "hotel" for any purpose. ("Hotel" includes, among other things, "tourist homes and cabins, . . . lodging homes, . . . furnished room houses, . . . cottages, . . . and apartments.") However, "occupancy" excludes occupancy by a "permanent resident," defined as "any occupant who has occupied any room in a hotel for at least 185 consecutive days." RSA 78-A:3. Short-term rentals—defined as "the rental of one or more rooms in a residential unit for occupancy for tourist or transient use for less than 185 consecutive days"—are expressly subject to the meals and rooms tax, *see* RSA 78-A:4-a, because they are recognized as being the equivalent of a hotel occupancy.

Separately, the hotel statute, RSA chapter 353, treats a "residential property rented for one month or less" the same as a hotel room for purposes of the owner's right to eject the guest. *See* RSA 353:3-c.

Finally, the landlord-tenant statute, RSA chapter 540, explicitly does not apply to "rooms in rooming or boarding houses which are rented to transient guests for fewer than 90 consecutive days." It also does not apply to "rooms in hotels, motels, inns, tourist homes and other dwellings rented for recreational or vacation use." See RSA 540:1-a, I.

All of these statutes recognize that there is a fundamental difference between renting a property for a night or a weekend and renting it as one's residence. Someone who rents a room on a short-term basis does not acquire the rights of a tenant, because it is not that person's "residence." While these definitions, of course, are not controlling for purposes of interpreting a zoning ordinance, they reflect a common understanding that a short-term rental is not a residential use.

B. Short-Term Rental Guests Do Not "Live as a Household" at the Properties

The *amici* acknowledges that the word "residential," as used in the title "Residential/Dwelling Unit," is not conclusive of the ordinance's meaning. The words used in the definition must be interpreted. The trial court focused, appropriately, on the phrase "complete and independent living facilities for one or more persons *living as a household*," but unfortunately applied a hyper-technical meaning to the phrase.

Specifically, the court interpreted "living" as "having life" or "the condition of being alive" and thus concluded that any group of people who are alive in the same place are "living as a household." But "living," in the context of a residential use of property, does not mean merely "being alive." It means residing *at the property*. In this context, the more appropriate definition is "to occupy a home." *Merriam-Webster's Collegiate Dictionary* 728 (11th ed. 2003). When the zoning ordinance defines a "residential/dwelling unit" as being for "one or more persons living as a household," the clear intent is that those persons are *living at the property as their home*.

No short-term rental guest, if asked, "Do you live here?," would answer in the affirmative. They live at their homes. The essential characteristic of the defendants' properties is that *no one lives there*. The words "as a household" make this clearer. The court cited a reasonable definition of "household"--"a social unit comprised of those living together in the same dwelling place"--but then applied it too literally. Under the

court's definition, any group of people existing in the same place at the same time is a household. But no one uses the term that broadly. As commonly understood, a household is a "social unit"--usually but not always a family related by blood or marriage—living together not just for a night or a weekend, but continuously. Yet the defendant's properties are not rented just to people who live together—they are available to any group of people who want to spend some time together.

When the words of the definition are considered together, it is clear that the intent of allowing single-family, two-family, and multi-family "residential/dwelling units" in the residential districts is to provide a place for *families* (loosely defined) to *live*, not for random groups of people to vacation.

C. *Working Stiff Partners* Is Relevant to This Case

In *Working Stiff Partners v. City of Portsmouth,* 172 N.H. 611 (2019), this court interpreted a very similar ordinance to decide exactly the same question that is presented here. The owner of a four-bedroom house in Portsmouth was renting it to guests on a short-term basis, and the city issued a cease-and-desist order. The house was located in a district that allowed single-family, two-family, and multi-family dwellings, but very few other uses. The case turned on the definition of "dwelling unit," which the ordinance defined as follows:

> A building or portion thereof providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. This use shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses.

Id. at 616-17.

This court had no trouble concluding that non-owner-occupied short-term rentals were prohibited, because the definition of "dwelling unit" expressly excluded "such transient occupancies as hotels, motels, rooming or boarding houses." The court applied the common definition of "transient" and determined that the property was being used for transient occupancies. *See id.* at 617-19.

The court also reviewed the Portsmouth ordinance's definitions of "hotel" and similar transient occupancies and then compared them to the short-term rental property at issue:

> While the physical descriptions in the above definitions vary, a common thread runs through them. They all contemplate the provision of lodging to paying guests on a daily basis. Indeed, the ordinance's definitions of hotel and motel explicitly include reference to the availability of lodging at "daily rate[s]." . . .
>
> The plaintiff's use of the property fits this mold. The property was advertised on Airbnb as suitable for lodging for up to nine guests, and was available for rentals as short as one day. The advertisement also included a daily rate. Thus, when we consider the ordinance as a whole, we conclude that the plaintiff's use of the property for daily rentals to paying guests constitutes a "transient occupanc[y]" similar to a hotel, motel, rooming house, or boarding house.

Id. at 618-19. The use therefore was not permitted.

The significant difference between the Portsmouth ordinance and the Conway ordinance is the second sentence in the Portsmouth definition: "This use shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses." The Conway ordinance does not contain this exclusion. This difference, however, does not lead to a

different conclusion. While the definition does not *expressly* exclude hotels and similar uses, they are excluded by virtue of not being expressly permitted. As the trial court noted, *see* NOA at 8 and n.2, hotels and motels are not permitted in the residential districts, while lodging houses, boardinghouses, tourist homes, and rooming houses are allowed only if they are owner-occupied, which the defendant's properties are not. Because the defendants' properties are used more in the manner of a hotel or a "tourist home," they are not permitted.

The superior court in the present case stated that the *Working Stiff* decision is inapplicable because, unlike the Portsmouth ordinance, the Conway ordinance contains its own definition of "transient." The Conway ordinance defines "transient accommodations" as "living quarters which do not have a kitchen as defined in 'residential unit.'" Thus, according to the superior court, the *Working Stiff* "transient occupancy" analysis is not relevant.

It is true that the *Working Stiff* definition of "transient" cannot be imported into the Conway ordinance, but that does not mean the case is irrelevant. The court's discussion demonstrates that short-term rentals are essentially the same as hotels, not "dwelling units." It is not necessary to find that the defendants' properties fit the ordinance's definition of "transient accommodations" to conclude that they are not permitted. They are not permitted because their use disqualifies them from the definition of "residential/dwelling unit," and the *Working Stiff* opinion supports that conclusion.

D. The Defendants' Properties are Appropriately Classified as "Tourist Homes"

As the superior court noted, one of the uses permitted in the residential districts is an "owner-occupied tourist home and/or owner-occupied rooming house." This is defined as

> Any place consisting of a room or group of rooms located on one premises where *transient or semi-transient accommodations* for sleeping or living purposes are offered for compensation, provided that the same is occupied and operated conjunctively by the owner, an individual person or persons, and shall not have more than four double-occupancy sleeping units.

NOA at 8 (emphasis added). The court stated that "this matter turns on whether the defendant's short-term rental properties meet the definition of residential/dwelling unit (thus not needing to be owner-occupied) or if they are more akin to a boardinghouse, lodging house, rooming house, or tourist house (which would require them to be owner-occupied in residential districts)." *Id.* at 9.

The defendant argued below, and the court seemed to agree, that the properties could not be deemed tourist homes or rooming houses because they contain cooking facilities. This apparently is because the definition contains that word "transient," and the ordinance in turn defines "transient accommodations"

III. Unintended and Untoward Consequences of the Trial Court Ruling

A. Inconsistent Application of Ordinance

In making the determination that the defendant's property qualified as a "residential/dwelling unit" under the ordinance, the court defined the phrase "living as a household" to mean "the state of living in a social unit or group of people together in the same dwelling place." The court then proceeded to apply this definition not to the actual use of the property by the owner—who is renting the property in exchange for compensation—but rather to how the court assumes each renter will use the property. In arriving at its decision the court seemingly made a broad assumption that all renters of short-term rental properties will use the property in a manner consistent with the court's definition of "living as a household." It is the position of the *amici* that the court simply should have applied the above standard to the objective use of the property by its owner and not the subjective, assumed use of each potential renter. If the court had done so, the result would have been that the owner is not using the property as a residential/dwelling unit under the ordinance. Ultimately, the individual tasked with complying with the zoning ordinance is the property owner, not the short-term renter. The individual who owns the property, pays the property taxes, and makes the decisions about use of the property comply with the zoning ordinance and other land use regulations.

Under the court's reasoning, the compliance of the property under the zoning ordinance could change not only from rental to rental, but possibly even during the course of one rental period. The court assumes that individuals choosing to rent a short-term rental will use the rental to "live as a household." However, this is not always the case. Airbnb reported that

in 2020 over 700,000 companies used Airbnb for booking business accommodations for their employees. Airbnb, https://news.airbnb.com/airbnb-for-work-700000/, (last visited July 15, 2022). This number does not even include the number of people using short-term rentals as an actual workspace for activities like photo shoots, meeting locations, or temporary work-from-home offices. Neither the courts nor the town can control how day-to-day renters choose to use a particular building. Consequently, it does not make sense to simply assume that because a building is *structured* in a way to promote "living as a household," but that it will actually be used in that manner. Instead, the court should have applied its standard to the objective way in which the owner of the property is choosing to use the property in question. In this instance, the owner is choosing to rent his property out on a day-to-day or short-term basis to individuals who can choose to use the property as a vacation home for their family, as a place for business accommodation, or even as a home office. In applying the standard to the way in which the owner of the property is using said property, it becomes clearer that the use is far more consistent with a hotel or boarding house as opposed to a residential/dwelling unit.

B. A Blow to Affordable Housing

Under the court's reasoning, short-term rentals will be permissible in virtually every residentially-zoned section of town. Not only does this have unintended consequences for those living next to a residential house turned short-term rental, but it also leads to consequences for potential home buyers and the availability of affordable housing in the State of New Hampshire. According to an article in The New York Times Magazine, "by 2016, 95 percent of the distressed mortgages on Fannie Mae and Freddie Mac's books were auctioned off to Wall Street investors without any meaningful stipulations, and private-equity firms had acquired more than 200,000 homes in desirable cities and middle-class suburban neighborhoods." Francesca Mari, A $60 Billion Housing Grab by Wall Street, N.Y. TIMES, Mar. 4, 2020, (Magazine), available at https://www.nytimes.com/2020/03/04/magazine/wall-street-landlords.html..

Major corporations are purchasing large numbers of single-family homes in residential neighborhoods, taking them off the housing market for potential first-time home buyers and using them as rental properties. *Id.* This lack of available housing combined with the increased demand has led to rents increasing across the country an average of 15% in 2021. Leslie Stahl, Would-be home buyers may be forced to rent the American dream, rather than buy it, CBS NEWS, Mar. 20, 2022, available at https://www.cbsnews.com/news/rising-rent-prices-60-minutes-2022-03-20/. Rising rent costs and the decreasing availability of affordable housing is not only making New Hampshire less and less inhabitable, but it is also damaging the overall economy of the state and the country.

These “corporation owned” single family houses are not being exclusively used as long-term rental options. Rather, more and more they are being utilized as short-term rentals. Major hotel chains like Marriott are even listing single family dwellings, located in residentially-zoned sections of town, as alternatives to traditional hotel rooms. Marriot, Homes & Villas, https://homes-and-villas.marriott.com/en/search/north-conway-home-and-villa-rental. (Last visited July 15, 2022).

Under the court’s own reasoning, these houses that are owned and operated by major corporations or even hotel chains that are rented out on a daily basis qualify as “residential/dwelling units” simply because they contain a kitchen and because court assumes that the renters will use the property to “live as a household.” This is an example of why examining the use of a property based on the subjective use or intent of a renter, and not to the objective use of the owner, creates unintended consequences. If the court applied the Conway Ordinance to the intended use of the owner of the property, it is undeniable that the owner’s intent is not to “live as a household” on the property, but rather to use it as in income generating piece of real estate. Applying the subjective intent of the short-term renter as the standard for zoning compliance allows not just individuals, but major corporations to operate short-term rental businesses, exactly like a hotel or boarding house, within residentially zoned areas of town and without any of the same regulation and oversight required of hotels or boarding houses.

CONCLUSION

For the foregoing reasons the *amici* respectfully join in the Town of Conway's requests for relief.

Dated: July 25, 2022

Respectfully submitted,
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STATEMENT OF COMPLIANCE

Counsel hereby certifies that pursuant to New Hampshire Supreme Court Rule 26(7), this brief complies with New Hampshire Supreme Court Rule 26. Further, this brief complies with New Hampshire Supreme Court Rule 16(11), as it does not exceed 9,500 words.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2022 a copy of this BRIEF OF THE NEW HAMPSHIRE MUNICIPAL ASSOCIATION and the NEW HAMPSHIRE PLANNERS ASSOCIATON as *AMICI CURIAE* has been transmitted via the NH Supreme Court's electronic filing system to all counsel of record.

Date: 7/25/22 */s/ Stephen C. Buckley*
Stephen C. Buckley