

TX Neighborhood Coalition Communication Regarding 23 December 2021 Decision from the Court of Appeals in Fort Worth in the Grapevine STR Case

This communication does not explore the soundness of the Court's rationale, its use of zoning precedents or how the decision might fare at a full trial or Supreme Court. Instead it focuses on the decision as written and its implications for cities.

Summary

In September 2018, Grapevine adopted an updated ordinance clarifying that Short Term Rentals (STRs) were not, and had never been allowed, to officially operate under existing zoning ordinances. STR operators sued and the trial court judge issued an injunction blocking the city from enforcing the new ordinance on STRs that were operating before the new ordinance was adopted. On 23 December 2021, the Court of Appeals in Ft Worth kept that injunction in place. (Note: This opinion replaced a decision of 5 August 2021, but with no material change except to emphasize, as requested by the city, that the Court was not saying the STR operators had a "vested right" under Texas law to do short-term rentals.)

While this decision was disappointing, the Court provided insights on how ongoing STR issues can be addressed. Additionally, Grapevine city leaders have communicated that the city "remains committed to its fight to protect its residents from the harmful impacts of STRs. ... The Mayor and City Council firmly stand behind their pledge to protect our neighborhoods from STRs and the damage they inflict on our residents. ... The City will fight this through to the end."

Comparison with July 2021 Court Decision for Arlington

In July 2021, this same court rejected an attempt by STR operators to block the Arlington STR ordinances adopted in April 2019 that banned STRs in single-family residential neighborhoods. (Note: That ordinance allowed STRs to operate for the very first time in much of the rest of Arlington.) The plaintiffs in the Arlington case had been operating STRs before Arlington's ordinances were adopted in April 2019. **On January 28, 2022, the Texas Supreme Court refused to hear an appeal from that Court of Appeals decision. So, after more than three years the Arlington STR ordinances remain fully in effect.**

For important background, Arlington zoning ordinances had long expressly forbidden rentals of less than 30 days throughout the city. The April 2019 STR ordinances added tougher enforcement mechanisms and specified fine levels for violations, while also providing detailed regulations governing STR operation in areas where they would be permitted for the first time.

Key Elements of Court's Grapevine Decision

The Ft Worth Court of Appeals examined various sections of the Grapevine ordinance that existed prior to September 2018, and concluded that the ordinances did not explicitly enough ban rentals of less than a specified duration. Based on that central conclusion, the Court of Appeals upheld the temporary injunction preventing the city of Grapevine from enforcing its updated Sept 2018 ordinance on STRs that were operating prior to Sept 2018.

In reaching that decision, the Court felt that STR operators had "settled expectations" prior to Sept 2018 that they would be allowed to rent their property in Grapevine on a short-term basis.

Takeaways from the Grapevine and Arlington cases:

An analysis and comparison of the Arlington and Grapevine decisions by the Fort Worth Court of Appeals leads to several important takeaways.

1. Home-rule cities **can** ban STRs based on an appropriate administrative record. In the Grapevine case, the Court expressly held that nothing in Texas laws at the state level precludes home-rule cities from banning STRs. In the Arlington case, the Court of Appeals confirmed this critical point of law by upholding the ban on STRs in single-family residential neighborhoods, and rejecting challenges by STR operators already doing business when the ordinances were passed.
2. The Grapevine ruling was only in favor of those owners operating STRs there prior to the adoption of the revised STR ordinance in September 2018. The Sept 2018 ordinance can be enforced against all attempts to open an STR in Grapevine after September 2018.

3. Specific language in a city's ordinance at the time when STRs begin operating is important. In Arlington's case, forbidding rentals of less than 30 days was critical in the ruling. In Grapevine's case, the Court found that the pre-existing ordinance did not explicitly ban STRs. The court rejected the city's argument that describing permitted uses in single family residential zones (short term leasing was not identified as a permitted use) did not forbid STRs.

Important note for Grapevine: The Court of Appeals focused on an additional requirement in the Grapevine pre-existing ordinance that a single-family detached dwelling was "an enclosed building having accommodations for and occupied by only one family." (Emphasis added) The court then limited its ruling, saying the prior Grapevine ordinance did not prohibit STRs "so long as the renters meet the Zoning Ordinance's definition of 'family.'" (Emphasis added)

In the prior Grapevine ordinance and now, "family" is defined as "... any number of individuals living together as a single housekeeping unit interdependent on one another." Therefore, renting to groups of mere friends or co-workers or acquaintances would appear on its face not to be allowed in Grapevine even by STRs that the city cannot shut down.

4. Cities sued by STR operators should follow the Arlington litigation model and "present evidence that STRs can disrupt residential neighborhoods and that restricting STRs ... is rationally related to the City's objectives."
5. Cities wanting to protect the integrity of residential neighborhoods should immediately review their ordinances and clarify language on who might occupy single-family residences and expressly ban rentals of less than a specified period. This action can help assure that more STRs do not stealthily invade residential neighborhoods and then argue that can't be compelled to shut down.

As part of this ordinance update, cities should also consider specific language limiting or banning other commercial uses of single-family residences, such as hourly or daily renting of rooms/houses for events (e.g., Peerspace), daily/hourly renting of pools (e.g., Swimly), fractional ownership /timeshare (e.g., Pacaso) and other non-residential uses.

6. Cities have options to deal with the proliferation and problems caused by STRs. For example, a city might feel its ordinances are not clear enough and that their Court of Appeals would follow the approach of the Ft. Worth Court of Appeals that grandfathers STRs that can claim "settled rights." (Note: While the Ft. Worth Court of Appeals rejected the application of Grapevine's Sept 2018 STR ordinance to pre-existing STR operators, other Texas Courts of Appeals have explicitly ruled that cities have the legal authority to adopt and enforce zoning ordinances that disallowed previously permitted uses of property. *E.g., Mbogo v. City of Dallas* (Dallas Court of Appeals, June 29, 2018); *Starbright Car Wash LLC v. City of Belton*, (Court of Appeals in Belton, December 10, 2019). However, if a city is uncertain what its courts will decide in the case of pre-existing STRs, that city can nonetheless:

- Adopt a ban on new STRs that should be successful in stopping the further proliferation of STRs.
- Review their existing ordinances for language that can restrict some of the issues caused by STRs, i.e., see #3 above and the definition of 'family.'
- Adopt licensing requirements and regulations for STRs that prohibit certain types of egregious conduct, such as raucous parties, noise late at night, amplified noise that goes beyond property lines, excessive numbers of occupants, and parking on the street (Ref. Arlington Ordinance).

Although these behavioral remedies are typically difficult, if not impossible, to effectively enforce, they might mitigate some of the misery caused to neighbors by preexisting STRs. Unfortunately, such licensing and regulations do not deal with the root causes of the STR problem, such as the loss of the sense of security and safety of neighborhoods, hollowing out of neighborhoods and schools, and siphoning off available housing stock by deep-pocketed commercial businesses.