

**BOARD OF TRUSTEES
VILLAGE OF WARWICK
JANUARY 16, 2024, 6:30 P.M.
WORK SESSION**

9951

A Work Session of the Board of Trustees of the Village of Warwick was held on Tuesday, January 16, 2024, at 6:30 p.m. in Village Hall, 77 Main Street, Warwick, NY. Present was: Mayor, Michael J. Newhard, Trustees: Barry Cheney, Carly Foster, Mary Collura, and Tom McKnight. Also, present was Village Clerk, Raina Abramson and via Zoom, Village Attorney, Stephen Gaba. Others present: Patrick Gallegher.

The Mayor called the meeting to order and led in the Pledge of Allegiance.
The Village Clerk held the roll call.

Discussion

1. Draft Short-Term Rental Code.

Mayor Newhard started off by explaining the policy had been created by former Trustee Bill Lindberg.

The Village Attorney, Stephen Gaba, mentioned that a recent legal development regarding short-term rentals could impact local regulations. The Fifth Circuit Court of Appeals overturned a law in New Orleans that required owner occupancy for short-term rentals. This decision raised concerns about potential challenges to similar regulations, like those in various New York municipalities. While the Second Circuit, covering New York, isn't bound by the Fifth Circuit's decisions, the trend suggests caution in implementing owner occupancy requirements for short-term rentals. Mr. Gaba recommended instead to come up with other provisions to avoid irresponsible landlords.

Trustee Foster asked if the topic of taking away housing opportunities was brought up in the court proceedings.

Mr. Gaba replied that the court was skeptical and called the issue anecdotal, although there were no housing studies done to back up the statement. The claim was that short term rentals were driving up housing prices in the city of New Orleans and preventing locals from being able to find affordable housing. The city wanted to avoid this by enacting the owner occupancy requirement. But the Fifth Circuit decided there were other ways to achieve that goal without discriminating against interstate commerce.

Trustee Foster brainstormed some alternative approaches.

The Village Attorney, Stephen Gaba, clarified that there is no obligation to permit short-term rentals, and municipalities have the discretion to decide whether to allow them. If the decision is made to allow short-term rentals, it must be done impartially and without discriminatory practices. Gaba suggested that if there's a desire to impose restrictions, such as

limiting rentals to accessory apartments or specific dwelling types, it could be permissible, provided the distinctions are rational and well-articulated.

Trustee Cheney asked if a limit could be imposed on short term rental permits.

Mr. Gaba expressed the challenges of imposing a cap on the number of short-term rentals, highlighting the difficulty in justifying such a limit. He emphasized the need for a well-articulated and factually supported reason for choosing a specific number rather than arbitrary figures. Without a compelling rationale, implementing a cap could face challenges.

Trustee Cheney raised the concern of potential legal challenges if the Village were to limit short-term rentals to accessory apartments. He questioned whether property owners without such apartments might contest the law, arguing for the right to rent out their entire house without occupying it themselves.

Mr. Gaba emphasized the importance of having a study that supports the distinction between short-term rentals for accessory apartments and entire houses. If the study demonstrates that allowing short-term rentals for entire houses would have a substantial impact on the local housing market, while rentals for accessory apartments would not, it could strengthen the Village's position in the face of potential legal challenges.

Trustee Foster inquired about agent occupancy.

A discussion ensued between Trustee Foster, Trustee Cheney, and Mr. Gaba regarding what agent occupancy would entail. It was decided that it could be someone, not necessarily the owner, who would be responsible for the property who lived within a certain distance of the rental.

Mr. Gaba stated that although there is currently no settled law in New York, he recommended getting rid of the owner-occupied provision, emphasizing the likelihood of New York State going the same route as Louisiana and Texas.

Trustee McKnight pointed out that many municipalities in New York State, including large ones like New York City, New Paltz, Tuxedo Park, Tarrytown, Sleepy Hollow, and Rhinebeck, already have regulations requiring owner occupancy for short-term rentals.

Mr. Gaba expressed concern that some municipalities might not have considered the Dormant Commerce Clause and its potential violation when implementing owner occupancy requirements for short-term rentals. He emphasized the need for caution, suggesting that Warwick should avoid being at the forefront of legal challenges and potential expenses related to such regulations.

Trustee Foster explored the idea of modifying the definition from "owner occupied" to "agent occupied." She suggested that this change could involve defining "agent occupied" as a residence where the agent of the record owner maintains their domicile. While the term "Registered Agent" would be defined as a representative of the property owner.

Mr. Gaba discussed the possibility of structuring an agent arrangement where the agent is either in the building or within a reasonable distance to address potential issues. However, Mr. Gaba highlighted the trade-off, noting that while this approach might resolve the Dormant Commerce Clause objection to owner occupancy, it could introduce new challenges. He envisioned scenarios where homeowners want to rent out their houses for short-term stays using platforms like VRBO or Airbnb, and an agent residing part of the year in the building might pose complications.

Trustee Foster clarified that the intention is not to prevent people from renting out their houses for short periods but to address potential problems such as housing stock being occupied by short-term rentals, creating nuisances in neighborhoods, and dealing with situations where no agent is available.

Trustee McKnight emphasized the need for safety regulations, which was already covered in the draft law. Trustee McKnight also shared insights into different experiences with short-term rentals, highlighting a positive example where an Airbnb property next to his former house was owner-occupied, resulting in respectful and non-disruptive neighbors. However, he acknowledged another problematic property where out-of-town owners hosted events causing disturbances for residents. Trustee McKnight expressed concerns about relying on an agent, as demonstrated in the problematic case, and the importance of fostering a sense of pride of ownership among property owners to ensure responsible short-term rentals and good neighborhood relations.

Mr. Gaba emphasized the challenge of preventing disruptive short-term rentals without relying on owner occupancy restrictions. He acknowledged the potential for problematic situations such as loud parties, inadequate parking, and open containers, emphasizing the need to find alternative solutions if owner occupancy restrictions cannot be enforced. Mr. Gaba suggested exploring measures like permit violations resulting in permit withdrawal for a certain amount of time.

Trustee Cheney asked if restrictions of occupancy could be based on the number of guests per bedroom.

Mr. Gaba replied that the Board could, but suggested square footage of the dwelling to be used for the restrictions instead of the number of bedrooms.

Mr. Gaba said this type of provision would not be challenged and that the Board would simply need a memo from the Building Department stating the limitations of occupancy

based on the fire code. Mr. Gaba also addressed his concern with a designated agent pointing out that bad landlords will have bad agents.

In terms of owner-occupied provisions, Mr. Gaba emphasized the evolving nature of the legal landscape and recommended that the Village of Warwick take these considerations into account when drafting regulations for short-term rentals.

Trustee Foster summarized the main objectives. The first objective is addressing safety and building code concerns, which are already covered by existing mechanisms in the code. The second objective is to enhance protection against issues like noise, nuisance, garbage, and parking associated with short-term rentals. The third objective is to have an on-site agent to oversee and ensure compliance, similar to the approach taken with bed and breakfasts or hotels. The fourth issue was the effect short-term rentals had on the housing inventory.

Mr. Gaba expressed his perspective that while an agent can be helpful for certain property management aspects, they might not be as effective in enforcing regulations related to issues like occupancy limits, illegal parking, or garbage disposal.

A discussion amongst the Board ensued regarding zoning.

Mr. Gaba expressed his willingness to rework the law to address concerns related to short-term rentals. He mentioned the importance of defining the terms and conditions under which short-term rentals would be allowed. He also proposed coming up with revised language to address the suggestion of having an agent available for oversight. He acknowledged the complexity of the issue and expressed a readiness to continue discussing and refining the law based on the board's input.

Mayor Newhard highlighted the positive aspects of short-term rentals, acknowledging their role in supporting the local tourism industry and providing income to residents. He emphasized the need to ensure the safety and protection of everyone involved. Additionally, he acknowledged the broader zoning issues related to middle housing, indicating that addressing these concerns would be an ongoing process for the community.

Trustee McKnight expressed a preference for the current draft, emphasizing its focus on owner occupancy as a way to prioritize safety and minimize nuisance factors associated with short-term rentals. He acknowledged Mr. Gaba's concerns but referred to the large number of municipalities that already have owner-occupied laws in place.

Mayor Newhard raised the possibility that if a Circuit Court observes a widespread adoption of similar local laws in various communities, it might influence their perspective and suggest that there's more to the regulations than just concerns related to interstate commerce.

Mr. Gaba emphasized that while the presence of similar laws in numerous municipalities may influence a court's perspective, it's not guaranteed to sway the decision. The Fifth Circuit, in the example he mentioned, was not swayed by the prevalence of owner occupancy requirements in other laws. The outcome can vary, and it's challenging to predict how the courts will interpret such cases.

A discussion amongst the Board ensued regarding higher courts and the possibility of the case reaching the Supreme Court, but it was noted that the 2022 decision had likely passed the time for appeal. Trustee Cheney inquired about the potential costs and damages if the court were to rule against the local law. Mr. Gaba did not want to elaborate on this topic during open session.

The discussion continued, clarifying the draft law's requirements for owner occupancy and the role of an agent. The existing draft specified that the owner must occupy the premises for at least six months in a calendar year. The conversation also touched on the central business zone, where the owner or agent should reside within 15 miles of the property. There was a suggestion to clarify the agent's role during the six-month period when the owner is not present, ensuring control over the property and who it is rented to.

Additionally, the Board considered the need for parking restrictions and limitations on the number of cars to prevent issues like overcrowding during short-term rentals. There was also a proposal to set restrictions on the number of guests allowed, possibly tying it to the number of people residing in the short-term rental unit, with the option for exceptions granted by the Planning Board or the Village.

Mayor Newhard allowed Patrick Gallagher to read a letter he had written to the Board regarding the short-term rental topic.

In his letter, Mr. Gallagher expressed his concerns and shared his perspective on short-term rentals, particularly owner-occupied Airbnb properties. He highlighted that some residents, like himself, depend on Airbnb income to supplement their Social Security, allowing them to age in place. Mr. Gallagher stated that short-term renters, who often have disposable income, positively impact the local economy by spending money in the community. Mr. Gallagher acknowledged concerns about party houses but argued that not all short-term rentals should be treated the same. He urged the Board to differentiate between owner-occupied Airbnb properties and corporate interests, emphasizing that residents providing Airbnb accommodations benefit the community. Mr. Gallagher expressed opposition to the idea of imposing additional taxes on owner-occupied Airbnb hosts and suggested exploring alternative revenue sources, such as a 1% Village alcohol tax.

Mayor Newhard reiterated that the village does not view Airbnbs as inherently negative and emphasized the importance of finding a balance in addressing concerns and supporting the community.

Adjournment

A **MOTION** was made by Trustee Cheney, seconded by Trustee Foster, and carried to adjourn the work session at approximately 7:25 p.m.

Trustee Cheney Aye Trustee Foster Aye Trustee Collura Aye

Trustee McKnight Aye Mayor Newhard Aye

Raina M. Abramson, Village Clerk