



JOINT
Planning and Zoning Commission
And
Village Board of Trustees

Short Term Rentals Workshop
August 29, 2023
Minutes

Village Representatives Present:

Chairman David Gauger and Commission Members Joe Bongiovanni, Eric Swanson, Barbara Nakanishi and Jeff Bell

Mayor Donny Schmit and Trustees Brian Marr and Debra Vander Weit

Village Staff: Dusty Hosna, Jessica Chernich, Mary Locher, Patty Russell

Chairman Gauger opened the workshop at 6:34PM. Dusty Hosna introduced Daniel J. Bolin of Ancel Glink as the speaker and invited host of the workshop. The purpose of the workshop is to gain a better understanding of the short-term rental processes and procedures.

Mr. Bolin is a partner at Ancel Glink Law Firm. The firm represents units of local government all over the state of Illinois. Mr. Bolin is part of Ancel Glinks' Land Use and Zoning Practices group. The group does a lot of training for planning commissions, including the American Planning Association National Conference, about short term rentals. This is a topic of increasing importance to communities all over the country.

Mayor Schmit gave a brief overview of “how we got here”. Before we had any short-term rentals, a person a few streets over was renting their house out for \$3,000 a weekend. There would be 30 people coming over and destroying the neighborhood. Then someone from Chicago came into town and brought his friends (gangs) along with him. So, the Village felt that we should get a handle on this situation.

This town has always been based on tourism. When the Mayor was growing up in Fox Lake, there were 15 taverns on Grand Avenue and every sub-division had 2 or 3 taverns. The Village couldn’t disrupt people’s lives; people had a right to do what they wanted with their homes. Fox Lake was one of the first communities in Lake County to get ahead of the short-term rentals.

In the beginning, short-term rentals were like “Animal House”. They were strictly party houses with little regard for the neighborhoods or the village. Now, it’s a family thing.

So, over the course of time, the rules were modified and limits were set. One difficulty for the Commissioners and Village Board members is that, although there are many objections, there haven’t been a many problems. It is hard to deny someone based upon something that might happen. The history does not support the fears. We also struggle with having so many STR’s on one road that it changes the community. We want to be fair so we are asking for some guidance.

There are opponents and supporters of the short-term rentals in the audience here tonight. Compromise is needed in order to get the best result.

Mr. Bolin agreed that short-term rentals have changed over time and are not the same as they were 5 years ago. He used a power-point presentation to highlight his major points: What are Short-Term Rentals; Challenges with Short-Term Rentals; Short-Term Rental Regulations; Village Regulations.

Short-term rentals are not new. What is new is that they are being rented on platforms like AirB&B, VRBO, etc. Challenges include quality of life, noise,

parking, traffic, garbage, party houses, safety, planning, taxes, fair housing, affordable housing, industry disposition. Most communities already have ordinances that address these concerns. A lot of short-term litigation comes about when a community has not addressed STR's in their ordinances and definitions.

Can Municipalities Regulate Short-Term Rentals? What Should Municipalities Consider? What do you have – what do you want – how do you get it?

In terms of short-term rental regulations you should consider: how many do you have, where they are located, what types of property (single family, multi-family, high-end properties, low-end properties, occupied or unoccupied properties). What is your regulatory goal? What are the prime issues to be addressed or regulated?

One of the biggest challenges for municipalities is finding unlicensed short-term rentals. They can pop up on a listing site one day and be gone the next. Also, the listing services don't reveal the address of a site until after the booking is complete but there are websites that can help to identify these locations.

For non-home-rule communities, Mr. Bolin suggested that tying the license regulations to zoning would be the most effective. For these communities, a license is more specific.

Some communities will only allow short-term rentals in dwellings where the owner occupies the dwelling as a permanent residence. Also, some require that an owner of a short-term rental live in the community, but not necessarily at the rental site. The community can also disallow short-term rentals in long-term rental housing (no STR's in rented apartments or homes).

Compliance: Code enforcement and assistance.

Voluntary compliance by STR's owners is optimal. Also, short-term renters need to be educated about the rules and regulations of the community. We don't tend to have issues once someone has a permit for STR, the issues come from illegal renters. Also, the homes are being marketed as short-term rental opportunities and the new owners are unaware that they need to go through our permitting process.

Also, sometime they are approved and sometimes they are not. And some have been issued tickets but they don't comply. Enforcement through adjudication is very difficult. What are our options?

New owners cannot apply for the special use permit until they own the property and are not assured of being awarded a STR permit after purchase and the seller cannot pass along a STR permit. Therefore, if a purchaser wants to use the property for STR, they are taking the chance that it may not be allowed.

Mr. Bolin suggested using fines as a tool against non-permitted short-term rental properties. He also suggested a ban on STR's probably would not work and would cause more time and money to try to enforce. Mayor Schmit suggested that issuing fines and going before the adjudicator is often not successful. We don't have code enforcement on the weekend and even the neighbors taking photos is not effective in court. The renter takes down their ad before the adjudication and the case is dismissed. Then the cycle starts all over again.

Mr. Bolin also suggested 3rd party companies that would scrub the internet to find illegal rental locations. Regarding any comments from Mr. Bolin regarding the STR ordinances of the village, he is not saying that they are wrong or illegal. In fact, the Board should be commended for having them. Whether or not you are happy about how the regulations are working out is up to the Village to decide. He is only making observations that the Board can take or leave.

Building and Zoning Regulations:

The Board has adopted building regulation and zoning regulation the deal with short-term rentals. The beginning of this definition establishes its ruling power. The rest of the definition is regulatory and would be better to be in the regulations. Some of these regulations might be found elsewhere in the ordinances, but having more concise definition might be more helpful. The same goes for the short-term rental license definition.

Standards for Short-Term Rentals:

There are a lot of requirements. Do they all add value? That is a question for the Board to decide. Does staff have the capacity to enforce all of these requirements?

Is it easy for renters to lie about these requirements? Many of these requirements would be better found in the Zoning Ordinances.

Zoning:

Short-term rentals are allowed as “special-use” in residential and business districts. This is on a “principle use” table.

Special Use:

The Recommendations of the Planning and Zoning Commission: Approve; Approve with Conditions; Not Approve. Most of the conditions are addressed in the standards for the short-term rentals. Written Findings of Fact need to be based upon the standards. Hearings that can sometimes get challenged are those that get away from the application and the standards use to make the decision. Concerned neighbors can be considered but the objectors should be required to put forth competent evidence in support of their position. Just stating a potential concern does not make it true. The Commissioners and the Board members are entitled to insist on facts from both sides before making a decision.

Mr. Bolin stated that the standards of special use in the village are fairly typical of other municipalities standards. They are based on court cases. This is good planning; these are good policy when you consider these points in your decision making. Fabric of the neighborhood is not specified in the ordinance but it is something that the commissioners struggle for the interest of adjoining properties. Look at the zoning and determine, what is the interest of this district? There is a reason for the zoning district that is stated in the purpose statement. Consideration of the Comp Plan supports decisions on Special Use permits. Although the Comp Plan is advisory, it can be part of the decision.

When dealing with illegal STR's, the village can lien a property for fines that have been adjudicated.

Questions and Answers:

How long has Ancel Glink been the Village Attorney? They were brought in for this meeting because they are experts on Short Term Rentals. They are not the Village Attorney.

The resident is disappointed that the Village Board did not adopt a density restriction for STR's. Especially in areas that have small lots. He lives on a street where 4 short term rentals were approved in the span of 8 houses and the lots are only 50 feet wide. Things are different on a lot that is 200 feet wide. Also, you can tell who has a short-term rental by the garbage cans that sit out by the street all week. They are put out on Sunday and don't go back in until the next weekend. The village needs to make regulations that are enforceable. What do we need to do to be able to shut someone down if they don't follow the rules? He also mentioned that perhaps fee for the short-term rentals should be increased to cover additional staff to enforce the rules. If you see garbage cans left out; just call and the building department and it will be addressed. We have a full-time Code Enforcement Officer (Miguel) and he is tenacious.

Dusty said that there are questions about the fairness of our process. Are there any recent cases that set a precedence defining a short-term rental as a business? Mr. Bolin said that is up to the village to define in the ordinance. If it is a permitted use based upon the standards then it is permitted.

Do all 6 standards need to be satisfied in order to pass? It's not like a check box. It is totally legitimate that one factor may be very strong and another not strong. The ordinance expects leaders to make decisions based upon those standards and based on finding of facts. If standards 1 -5 are satisfied but standard 6 is not, does this pass? Mr. Bolin said, that is for the commissioners to decide.

Fair consideration: Standard #5, can this standard be used to deny STR even if all other standards have been met? Mr. Bolin advised that this would be denial based on perceived issues, not facts. It was further discussed that in a current situation there is a safety issue based upon emergency vehicles potentially not being able to have access. An audience member added that their STR should not be denied based on this standard because they don't plan to have anyone parking on the street. Mr. Bolin advised that the objectors need to present competent objective evidence that a problem exists, not just a potential problem. Also, the proponents should present competent objective evidence that an issue does not exist. Special

use is allowed but it is conditional based upon. The decision is then up to the members of the Commission and the Board.

Children: It was suggested that the STR ordinance should specify what ages constitutes “children”. Also, number of children allowed should not be unlimited. Is “children” a protected class or is there some other reason that our ordinance does not limit or define that term or was that part of the process just not thought out? Chairman Gauger replied that it was thought out, it is not a protected class, and it is standard language in any village that has any short term rental provisions. It is not an arbitrary policy; it was researched and is in many other short term rental policies in villages larger and smaller than ours. We have not had any problems with a rental having too many children. Another audience member stated that they self-limit the number of children they allow in their home.

What are property owners right in terms of being able to rent their property? The power of the village to regulate short term rentals is well recognized in the law. One of the discussion points was treating these properties as commodities and charging higher fees for hearings, permits, annual fees, etc. Mr. Bolin feels that fees charged should have some relationship to the costs to the village to process, and regulate these units, including enforcement. He also suggested that raising fees too high would encourage more unlicensed STR's. There is a change to the adjudication laws coming January 1st of 2024 which will make the process easier.

It was discussed that owners or managers of STR's should live in the village. Also, the owners have the option of putting a plaque with contact information on their property or giving the contact information to all of their neighbors. It was suggested that the ordinance be re-visited and amended to establish a minimum distance between STR's. This would make some decisions of the Board more objective. It would be difficult due to different sizes of properties. There is no perfect answer.

Is there a way to make the nuisance laws stronger? Mr. Bolin said that the village has existing noise, parking, and garbage regulations that can be used independent of the short-term rental ordinance.

It seems that the building codes and the zoning codes have many of the same regulations. Is it necessary to have the same information in both codes? It seems that there is some opportunity to streamline the regulations. They could be better organized in order to avoid some confusion and improve compliance.

There was discussion about tax levies for short-term rentals, how the taxes are tracked and what percentage is charged. It was suggested that there isn't much income to the village from these taxes and it was noted that unpermitted STR's don't pay any taxes. Some STR platforms collect the taxes and submit them to the municipalities and this is something that Fox Lake should look into.

Thanks to Dan for hosting this evening and leading this discussion.

Meeting was closed at 8:29PM