

Village of Coxsackie

Public Hearing Minutes

Local Law #4 of 2023-Short-Term Residential Rentals

May 8, 2023

The Public Hearing was called to order by Mayor Mark Evans at 6:30 p.m. Present were Trustee Donald Daoust, Trustee Katlyn Irwin, Trustee Rodney Levine, and Trustee Rebecca Vermilyea.

Mayor Evans stated that the purpose of the Public Hearing is to allow for public comment on Local Law #4 of 2023. This is a local law enacting regulation of Short-Term Residential Rentals. A few months ago, there was a discussion by the Board that the Village should look into the present Village Code regarding Short-Term Rentals, and address some concerns that have been voiced to various Board Members. Discussion then ensued amongst the Board itself, and the past few months was spent working with Village Counsel, Robert Stout, on making potential changes to the Code. It was a far bigger project than the Board had anticipated. There was a lot to consider, and a lot that they had not thought about in the past. Attorney Stout was instrumental about bringing forth local laws that several other communities had adopted regarding Short-Term Rentals. With Attorney Stout's assistance, a new draft local law was crafted, and the Public Hearing tonight is to present that draft local law to the public, and allow for any comments. The Board will leave this Public Hearing open for 2 weeks, so if there is anybody that would like to submit written comments, they can do so by sending them to either the Village Clerk, or to the Board directly. The Board will certainly take any comments received into consideration going forward. Barring any significant issues, the plan would be to adopt it at the June Board Meeting. For right now, we are going to ask Attorney Robert Stout to give an overview of the draft local law, and then we will open it up to public comment.

Robert Stout, Village Attorney, stated that what was posted online for the public was a redline version of the draft local law showing any changes that are proposed to be made to the existing local law. They tried to work within the confines of the existing Short-Term Rental law, rather than to start from scratch. A fair amount of the changes are what he would call clean up changes. This includes trying to harmonize the language, and bring it up to a modern standard, as far as referencing modern codes. The key substance of distinctions would be the fact that going forward the Village Board is proposing to limit Short-Term Rentals to the "Community Commercial" and "Village Center" zoning districts, and not in any other zoning district, with some limited exceptions. There is a "grandfathering" provision in the local law, that would provide an opportunity for both existing licensed Short-Term Rentals throughout the village, in maintaining their existing status, provided that they submit continuous renewals, provided that the property has not been transferred to a new owner, and provided that they continue to comply with the Short-Term Rental law, and Village Code. This draft local law also has in it an ability of an existing Short-Term Rental, meaning somebody who in practice has a Short-Term Rental, but had not registered it with the Village, allowing them 60 days to register that Short-Term Rental, provided that certain forms of evidence are provided to establish that they have already been operating as a Short-Term Rental, wherever they may be operating within the village. There are some updates made to the material that needs to be provided at the time of rental unit registration. This includes updating the address listings, having the applicant provide the number of units that they have in a particular building, and having the applicant number

those units so that they are easily identified in an emergency situation. Emergency contact information has to be placed on the back of the door, similar to what you would see in a hotel. The Village Board is also proposing to place a cap on the maximum number of Short-Term Rentals in the Community Commercial zoning district of 15, and a maximum cap in the Village Center zoning district of 10. The fees are proposed to be increased to \$500.00 per building, and \$200.00 per Short-Term Rental unit. That was a function of looking at other municipalities to see what the average fees are. The Uniform Code and Property Maintenance Code of NYS was incorporated to ensure that owners are complying with that. The enforcement provisions were also updated so that property owners can only advertise Short-Term Rentals for the scope of the Short-Term Rental that they applied for, and are permitted to operate. So, if somebody is advertising that they have a greater capacity than they have approval for, or have more units than they have approval for, that evidence could be used against them in an enforcement proceeding. Those are all of the key highlights, and he advises that the Board opens the meeting to the public for questions and comments.

Janet Foley, of 142 South River Street, asked if the cap of the number of Airbnb's across the two zoning areas include the ones that currently exist.

Mayor Evans stated that it does include currently existing Airbnb's.

Veronica Foley, of 56 Ely Street, asked if the Village knows how many Airbnb's exist in those two zoning districts currently. She asked how close the Village is to meeting those maximum limits.

Trustee Irwin stated that the Village is not close to hitting the maximum limit in either zoning district. She said that there is a source called Airdna.co that pulls together all Short-Term Rental listing info from sites like Airbnb, VRBO, etc., and it will actually give you a map where you can see things like higher concentrations of Airbnb's, and different data, based on the zip code that you choose. She said that the Board found 1 or 2 properties that didn't show up, or showed up later. She doesn't know how long someone has to be actively listing online before this site catches it, but it's a good tool for anyone who is looking for an accurate number, and where they are placed within your community.

Attorney Robert Stout stated that that research was done to try and capture those that weren't registered, that the Village wouldn't otherwise know about.

Charles Hailer, of 33 Church Street, stated that he has an Airbnb unit in his house. First of all, the issues that he imagines that this legislation is trying to address would be the affordability, and issues with people renting out homes to large groups/parties and becoming disruptive, and that makes sense. He encourages the Board to pursue laws that help reign some of those things in, but he doesn't see how this legislation actively accomplishes that. He thinks that for both of those things, it might actually work against that. He moved into a house with two apartment units, and he rents out one apartment unit as an Airbnb. That was the way that they were able to afford to own a home. If in the future, there are other people who are looking to take on a similar property, or similar project, and this income now comes with a several hundred dollar increase per year, that puts an additional burden on affordability for that person who is trying to get that first home. So, that is something that he would really like to encourage the Board to think about. Those fees seem pretty high. We're talking about an increase of around 400% of where we were before. Beyond that, there is no carving out for owner occupied buildings. He understands that non-owner occupied buildings contribute to a scarcity of housing, but there's no carving out for people who actually live in these buildings. The same fees are applied to a

homeowner who lives on site at that Airbnb, as an investor who just bought a property out and isn't on site. He really encourages the Board to also consider a carve out for owner occupied Airbnb's. That's true for him personally, but he also thinks that that's true for homeowners who have a room to rent out. If all of a sudden, they have to pay several hundred dollars, and are even able to register that room, that's a source of income that was taken away from a homeowner. That's a pretty significant burden for a homeowner.

Nancy Harm, of 87 South River Street, stated that her home is not in the Village Center zoning district. She asked if these rules apply to those that are not in Village Center or Community Commercial as well.

Attorney Robert Stout stated that going forward, those will be the only two districts that Short-Term Rentals are permitted in, but there is a "grandfathering" provision in there that would allow existing Short-Term Rentals in other zones to continue. So long as the applicant continues with the annual registration, and comply with all of the laws, they will be able to continue that use in that zoning district. There wouldn't be any new Short-Term Rentals in other zoning districts.

Janet Foley stated that she was in the situation to where she needed that extra income to help pay for her mortgage. So, the fee increase is a heavy lift. However, she is retired, and she might travel. So, she was thinking that when she travels, she could Airbnb her space. It wouldn't be very often, but it would help her make a little extra money. She asked if she would be able to do that under this new law.

Attorney Robert Stout asked if her property was outside of the two zoning districts mentioned.

Janet Foley stated that she is an already existing registered Short-Term Rental.

Trustee Irwin stated that she knows that there are two units in Ms. Foley's home. One of them is a registered existing Airbnb, and she is an owner occupied existing space. She occupies the second space.

Attorney Robert Stout stated that as long as Ms. Foley is in compliance with the law, then the "grandfathering" provision would allow her to continue to operate.

Emily Brewer-Yarnall, of 45 Ely Street, asked if someone decided to rent out their main living space, they were not registered as an Airbnb, and it is outside of the two allowed zoning districts, if they could still register.

Attorney Robert Stout stated that they could register if they are within 60 days of the adoption of the local law.

Emily Brewer-Yarnall asked if this applied to those who are not already operating as an Airbnb.

Attorney Robert Stout stated that this does not apply to those who are not already operating as an Airbnb. They must already be operating as such, but possibly did not register with the Village. The concept being that the law is there to protect those that have been doing it already, so that use isn't taken away from them if they have already been engaged in it.

Charles Hailer asked if years from now, he sold his house, and he is outside of the two zones, if that means that the person who is purchasing that house loses that license.

Attorney Robert Stout stated that the way it is written right now, the license would not transfer to the new buyer.

Charles Hailer stated that it seems like that would affect the value of a house. That is another thing that he would like to encourage the Board to consider.

Nancy Harm asked if the Town of Coxsackie is considering something similar for Short-Term Rentals.

Mayor Evans stated that he has not spoken to the Town Supervisor about what they might be doing. He is really not sure. What he does know is over the last year, there have been a lot of articles about other towns along the Hudson Valley addressing the same situation. Some of them addressed it well behind the curve, and they are not happy. The Village felt that we did not want to be behind the curve. The Board didn't want to wait until people had big issues with what was going on. He thinks the timing is very appropriate, and the moratorium for a short period of time was appropriate. He appreciates the comments. This was a tough point to get to.

Trustee Irwin stated that she has a clarification question for Attorney Stout. She asked if she is correct in understanding that a municipality itself defines what they call a Short-Term Rental, in terms of how long a Short-Term Rental is. For example, for the Village, it is 28 days or less.

Attorney Robert Stout stated that that is correct. Generally, that is a common definition because when you start to get to one month, you essentially become a month to month tenancy. So, generally, Short-Term Rentals are just under that 30 day threshold.

Trustee Irwin asked if she was correct in understanding that if something like this local law were adopted, it wouldn't affect anyone trying to rent their home/apartment/space month to month.

Attorney Robert Stout stated that that is correct. In fact, that is expressly excluded from regulation of this law.

Emily Brewer-Yarnall asked how the Board came to the decision to classify a proper rental unit that may be in a duplex or multi-family home, as the same as being a room in a house.

Mayor Evans stated that there was a lot of debate. He said that the Board looked at a lot of other laws that are in existence in other towns and villages, and tried to develop something that made sense. There was a lot of discussion about if someone bought a building that potentially had several units, if the Board would want to see all of those units as Short-Term Rentals, right next to another building that might have several units.

Emily Brewer-Yarnall stated that in looking at Airbnb's around Coxsackie, it seems like a lot of them are one room in a house. This income probably helps subsidize certain costs. She is concerned that with the increase in fees, it does not have the same repercussions as someone with a several unit building.

Trustee Irwin asked if Ms. Brewer-Yarnall was looking at Airbnb's in the village or the town.

Emily Brewer-Yarnall stated that she believes that she was just looking in the village.

Trustee Irwin stated that she saw just the opposite when reviewing the data. She said that

there were a lot of conversations about owner occupied rentals, and the idea of someone subsidizing their income vs. an investment purchase. The trickiest things that the Board still looks over are legal definitions, such as what is a rental unit vs. a room, or set of rooms. That was a really big challenge to digest or understand.

Attorney Robert Stout stated that he thinks that the point being made here is that regardless of how you define a rental unit, there will be inherently some rental units that make less money than other rental units. He believes that Ms. Brewer-Yarnall's concern is that that is not reflected in the fee structure.

Emily Brewer-Yarnall stated that her concern is with both the fee structure, and the lack of someone being able to buy a house and rent out space in order to subsidize income. She understands that there needs to be a balance between property rights, but that seems a little too far in one direction.

Mayor Evans stated that at one point in trying to get a visual of where all of these Short-Term Rentals were located throughout the village, both Trustee Irwin, and Clerk, Nikki Berezna, spent a lot of time researching where Airbnb's were that they could find, and then had Greene County plot those on some maps. So, the Board actually had maps printed out so that they could see the zoning districts, but also see where the existing Short-Term Rentals were. You were able to see the Short-Term Rentals that were in, and not in, the specific zones the Board was looking at.

Emily Brewer-Yarnall stated that she is more so talking about the future, and people wanting to make a little extra money in something that they are putting a lot of money behind. She understands that you do not want people buying up affordable housing, and turning it into party houses, but she thinks that there needs to be more of a distinction between that, and a local who is investing money.

Mayor Evans stated that he thinks that it might be hard to define that.

Charles Hailer stated that it is something to consider when the Board is voting on this local law.

Nancy Harm asked if she is correct in understanding that that is addressed in the section of the local law pertaining to articles not intended to regulate. Such as, bed and breakfast establishments, rooming houses, etc.

Trustee Irwin stated that those are commercial.

Attorney Robert Stout stated that those are different definitions. There are other amenities that go along with those types of uses. It is slightly different than an owner occupied unit, of someone who is trying to make supplemental income, but isn't in the business of hosting visitors like how a bed and breakfast would be.

Charles Hailer stated that he would like to hear from the Board about why there was a decision not to differentiate between an owner occupied space and an investment property.

Attorney Robert Stout stated that there is some case law out there that is emerging nationally that actually raises constitutional issues with treating somebody who is an owner occupied unit, differently than a non-owner occupied unit, and if that non-owner occupied unit is owned by somebody out of state, there is some commerce law implications.

Charles Hailer stated that somebody within the county has to care for the property. So, it is actually in the legislation already, it's just not differentiating between owner occupied. There is already a different onus on people who aren't here.

Attorney Robert Stout stated that the specific concern he is raising is for out of state owners. Some courts have struck down the owner occupied distinction based on commerce laws. We can look to see if there is another way where we can try to mitigate those types of concerns.

Charles Hailer stated that the Board could take a look at Hudson's Short-Term Rental laws, or another type of popular spot.

Attorney Robert Stout stated that offhand he can't recall what Hudson's laws are.

Emily Brewer-Yarnall stated that she believes Hudson does address owner occupied in their laws.

Mansion & Reed General Store, via Zoom, stated that it is confusing to understand if there is a distinction between mixed use commercial buildings vs multi-family residential houses. We pay sales tax on our Short Term Rentals, contributing already to the yearly Village budget, adding a \$1,800.00 fee on top of that is quite steep.

Trustee Irwin stated that Mansion & Reed General Store's property is located in the Village Center zoning district.

Veronica Foley stated that this may be a bit of a divergence, but while investigating Short-Term Rentals, were there any conversations about requiring a certain amount of affordable housing? For example, if someone buys, or owns a large building that has multiple units, if there is an interest in learning more about how the Village could regulate a building that has several units, by stating that there can be so many Airbnb's vs. long term rentals. In terms of affordable housing, it would be beneficial to learn about possibly regulating these larger buildings.

Trustee Irwin asked if she is correct in understanding Ms. Foley's question, in that she is asking how to regulate how many Short-Term Rentals, or regular rentals, would be permitted in a building designed for multiple units.

Veronica Foley stated that that is correct.

Trustee Irwin stated that the Board talked about that with a property next to the Cask and Rasher on Mansion Street. The building currently has two Short-Term Rentals, and two long term rentals. The Board kind of used that as a model to have exactly that discussion. Again, one of the brick walls that they hit in terms of legal definition, is the definition of a unit. If you say you can have X number of units in a building, what is the next step as far as parceling each one of those units off?

Attorney Robert Stout stated that once you cross a certain threshold you become a hotel.

Emily Brewer-Yarnall asked what the proper definition is of a Short-Term Rental unit.

Trustee Irwin stated that it is anything under 28 continuous days.

Emily Brewer-Yarnall asked if someone purchased a single family home, but wanted to turn it

into Short-Term Rental units, if they would have to get it re-zoned.

Attorney Robert Stout stated that as long as a residential use was allowed there, and as long as the space met all of the building code requirements, then you wouldn't need any zoning change to achieve that.

Emily Brewer-Yarnall stated that it sounds as if someone could purchase a home and make additional units with no oversight.

Attorney Robert Stout stated that in terms of the number of units, that is correct. Once you get to the point that it is considered multi-family, then you would have to check to see if a multi-family use is allowed in that particular zone.

Trustee Irwin stated that they would also have to meet fire code requirements, and things like that.

Emily Brewer-Yarnall asked if there is a single family home, it could be turned into a multi-family home without any re-zoning.

Attorney Robert Stout stated that it would depend on whether or not a multi-family is permitted in that zone.

Emily Brewer-Yarnall asked if the multi-family was allowed in the zoning district, if you would have to go through any approvals.

Attorney Robert Stout stated that you would not need any local zoning approvals, you would just have to check to confirm that the building is up to the building code and fire code. You would still need to get a Certificate of Occupancy.

Emily Brewer-Yarnall stated that that could be a very good way of determining a rental unit.

Attorney Robert Stout stated that goes to the concern that Mr. Brewer-Yarnall raised earlier of the increase in fees. He thinks that these are good, helpful comments.

Mansion and Reed General Store, via Zoom, stated that It is unclear if this law applies to them. They asked if the Village could clarify between zoned uses of buildings.

Attorney Robert Stout stated that he would need to know a little more about their specific use, but the question would be if they meet the definition of a hotel and thus would be permitted that way, or if they would fall under a Short-Term Rental.

Trustee Irwin stated that they have two or three Short-Term Rentals above commercial space in one of the two permitted areas. She asked if they are able to continue operating because they are in commercial space currently.

Attorney Robert Stout stated that they would be able to continue on because they are within the zone that would allow it.

Trustee Irwin asked if that is with or without the Short-Term Rental fee.

Attorney Robert Stout stated that they would operate with the fee. The fee would apply to all

permittee.

Mansion and Reed General Store, via Zoom, stated that they have 4 Short-Term Rentals in 2 buildings, making the new fees \$1,800.00 per year.

Attorney Robert Stout stated that there may need to be further discussion with them because there is an issue of whether or not they are considered a hotel or Short-Term Rental. If you assume for a moment that they are considered a Short-Term Rental, that calculation of \$1,800.00 would be correct. Again, maybe a separate conversation with them needs to occur just to confirm the particulars of their use.

Mansion and Reed General Store, via Zoom, stated that they had thought they were classified more as a hotel, so they will confer with the Village again about that.

Veronica Foley asked what turns a property into a hotel.

Attorney Robert Stout stated that the current definition of a hotel is 4 units.

Trustee Irwin stated that she thinks maybe the concern here is that there are 4 units, but across 2 separate buildings.

Mayor Evans stated that the Village will leave this Public Hearing open for 2 weeks. Anybody who has any questions or comments can feel free to email them to Clerk, Nikki Berezna, and she will make sure that they get forwarded to the Board, or you can email the Board directly. The Board will certainly consider all of those comments after the 2 week period has concluded.

Attorney Robert Stout stated that to the extent that any changes are made, if they are made, then the Village would make notice of another Public Hearing for June.

Nancy Harm asked if these comments will be going on a public Google Drive.

Attorney Robert Stout stated that the Village typically includes comments on legislation during the regular minutes. They are public, and somebody could FOIL them if they wanted to. However, they are not always necessarily posted on the website.

Clerk Nikki Berezna stated that separate written comments are not posted on the website. In fact, there is not a Google Drive set up for Short-Term Rentals. They would just be part of the regular minutes.

Attorney Robert Stout stated that you see Google Drives set up more for projects where an applicant has to respond to all of the questions, and there is more of a back and forth correspondence.

No further public comments were offered.

A motion to adjourn the Public Hearing was made by Mayor Evans and seconded by Trustee Daoust. Trustee Daoust voted yes. Trustee Hanse voted yes. Trustee Irwin voted yes. Trustee Vermilyea voted yes. The motion carried.

The meeting was adjourned at 7:10 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nikki Berezna", with a long horizontal flourish extending to the right.

Nikki Berezna

Clerk