

THE TOBYHANNA TOWNSHIP BOARD OF SUPERVISORS
SPECIAL WORK SESSION
FEBRUARY 15, 2020

A Special Meeting of the Tobyhanna Township Board of Supervisors was held on February 15, 2020, at the Tobyhanna Township Government Center Building, 105 Government Center Way, Pocono Pines, Pennsylvania, 18350.

Present are Supervisors John Kerrick, John Holahan, III, Brendon Carroll, Solicitor Jonathan J. Reiss, Esquire, and staff. David Carbone and Lloyd Vought are not present.

1. Chair John Kerrick calls the meeting to order at 11:00AM. It is determined that a quorum is present.

2. The Pledge of Allegiance is recited.

3. New Business

- a. Short-Term Rental (STR) Draft Ordinance - Julia Heilakka will present changes since the last meeting. The Township received numerous comments regarding the ordinance.
- b. Background – The PA Supreme Court issued a decision in the Slice of Life case rendering STRs illegal per our current ordinance. The Township is striving to create an ordinance balanced between residents and renters as we are a heavily tourism-based area.
- c. Ordinance – To keep the discussion orderly, the ordinance will be reviewed by section. It is asked that comments be made during the appropriate section.
John Holahan III discloses he has STRs and he went to the Ethics Commission and got approval for joining the discussion.

Julia Heilakka states there were many changes to the draft ordinance, but the most significant change is that the Board wanted the ordinance to conform to zoning regulations only, so the Board instructed her and Matthew Helbers to remove references to the UCC, IRC, and IBC.

Jonathan Reiss indicates when the ordinance is adopted, the Township needs a zoning ordinance amendment that will allow STRs as a use in residential districts or as an accessory use.

- i. Section 1: Title - no issue.
- ii. Section 2: Lisa Liebetrau questions what resort under item b. means. Julia recites the definition of resort.
Donna Osmon questions if a bed and breakfast is allowed in a resort community. Jonathan Reiss states if you have a zoning permit for a bed and breakfast in a resort community, this ordinance does not apply to you. Bed and breakfast is then defined for the audience.
- iii. Section 3: Kara Sincavage asks if we can specifically list communities that do not allow STRs because there are less that don't allow it. Jonathan Reiss recommends not listing them as it is not up to the Township to determine, it is up to the HOA to enforce it.

- iv. Section 4: Definition of person in charge changed. There was originally a 15-mile limit requirement but this changed because living within a certain radius does not ensure a specific response time. The point is to get owners to respond. Donna Osmon questions if the two-hour response time could be subjugated to someone else; can an interim person be in charge, i.e. if owner is on vacation?
Jonathan Reiss indicated yes, but owner would have to notify the Township or answer their cell and give the other person's information.
Donna Osmon feels it is important to spell out that availability.
It is noted that the ordinance reads an owner has 14 days to notify the Township if there is a change of the person in charge. Jonathan's recommendation is that this be a more immediate notification. The larger concern is if there is an emergency and an owner cannot be available. After discussion it was decided that there should be a secondary contact on the form.
Mr. Kerrick requests thoughts on the 14-day time period.
It becomes irrelevant if the Township has a secondary or alternate person in charge. Notification of change needs to be made in writing.
Peter Brooks asks how firm is two hours?
Julia Heilakka indicates the intent was to get rid of mile requirement, the Township looked at situations that would require owners to be on site. There are really only serious situations. It would be somewhat difficult to track. Compliance is the goal.
Sally Ladd feels it is important to list examples of why an owner would need to be on site. She cannot imagine what she could not resolve on cell phone. She wants to understand when it would be required.
Jonathan Reiss states he does not agree as it already says for issue not able to be addressed by telephone.
Sally Ladd asks does two hours start when call is made? What if goes to voicemail? She wants time to respond to call.
Jonathan Reiss answers if the call goes to voicemail, a detailed message should be left with the time of call stated, and the next call to the alternate made.
Joe Crandall states it is the business owner's responsibility to take care of the business; and therefore owners should react to calls when made.
Sarah Naughton asks if there can be more than one alternate.
Julia Heilakka suggests a requirement of a person in charge and an alternate, with the option to provide a list of contacts from there.
Donna Osmon shares concerns that what is and isn't resolvable by phone is subject to interpretation of enforcement officer and asks if there will be guidelines.
Jonathan Reiss states the enforcement officer has discretion. If an owner says they will try to resolve a situation with the tenant, the Township will allow them the chance, but if it is not resolved the person in charge will need to show up.
Ricky Cortez asks if owners would need to be on site for specialized work they cannot do, like plumbing?
The Township recognizes not all issues can be resolved immediately, the point to is make sure contact can be made.

Jonathan Reiss indicates the Township would not to get involved in plumbing issues. This is more related to tenant issues.

Jackie Gutierrez is a resident with STRs in her neighborhood, and she wants owners to take responsibility so that the tenants are not disruptive.

Provisions for repeat offenders are under consideration.

Sally Ladd states most owners don't want their neighbors disturbed. She recommends considering making homeowners phone numbers available directly.

Julia Heilakka replies addresses and personal numbers are exempt under the Right-to-Know Law.

Jonathan Reiss states this doesn't prevent individual owners from giving out their info, but it will not be part of the ordinance.

Sally Ladd foresees getting targeted by groups that don't want renters. AirBNB now has a neighbor reporting tool and others can report to them if there is a problem. Perhaps, there should be a push to make people aware of this. Can owners give consent for contact info distribution?

Jonathan Reiss states burden shouldn't be on the Township to go to neighbors to give out phone numbers, the owner would need to do this.

The public questions if this information could it be published.

Jonathan Reiss states could put on website if linked to a grassroots site.

Donna Osmon recommends it be completely voluntary. Residents can have issues with neighbors who own as well. In communities, other levels of report ability, residents can go to community itself to report. Jackie Gutierrez responds that she is told to contact the community or Township based on the severity of the problem.

Peter Brooks ask why existing statutes about fires, noise, etc. need to be listed again when already reflected in the zoning ordinance. Whether a renter or owner, it is already a Township issue.

This ordinance isn't regulating open fire, it is saying if a tenant violates the ordinance, it is possibly one strike against the rental permit.

Michael Osmon asks why the owner is responsible if the renter violated the ordinance.

Jonathan Reiss states the owner is responsible for their tenants. If there is a problem at an STR, it can be considered one of three strikes.

Donna Osmon states there is no control over the character of the person at a property and asks if there is an attempt to mitigate, how can it be held against you?

Brendon Carroll likens it to a guest policy where residents are responsible for their guest.

Kara Sincavage suggests removing day guests. Everyone will say they're a day guest.

Mark Edwards says day guests have no parameter, there is nothing that precludes parties to 2 am.

Julia Heilakka indicates in section 8b: a max number of day guests is defined.

Mark Edwards states a day is not defined.

Jonathan Reiss indicates it is difficult for the Township to enforce.

Brendon Carroll says Township “must” change to “shall be” notified. The 14-day notification wasn’t resolved. He agrees it should be a shorter time frame.
Jonathan Reiss recommends the Township be notified in writing prior to the change.

Lisa Liebatrau discusses egress windows.

Michael Osmon asks what building codes are being used?

Brendon Carroll says it uses the code used today for the portion being updated/added.

Julia Heilakka states other references to building codes were removed per the Board, so the reference in parenthesis will be removed as well.

Kara Sincavage states then it is unsafe.

Julia Heilakka states we have building codes, but this is about zoning.

Mike Bond asks if it is okay to have windows built to other codes?

John Holahan states they may need to check with insurance company.

Julia Heilakka states if you have building code questions, ask Bureau Veritas.

Joe Crandall states an AirBNB rental has a bedroom in the basement with no egress
Nothing has been done.

Brendon Carroll says under ordinance they would get caught.

Jonathan Reiss says it is a building code issue.

- v. Section 5: Peter Brooks asks if there is any indication of a fee. At this point, a fee cannot be discussed until it is determined what the Zoning Officer (ZO) is inspecting. The Township will have to adopt a resolution to adopt fees. The fee will be based on the ZO’s expended effort.
Sally Ladd asks to keep in mind burden on smaller vs. larger properties.
Julia Heilakka states whether the home has two or four bedrooms the difference in time spent is trivial.
There is a suggestion to look at other municipalities for their fees to get an idea.
Donna Osmon asks about phasing once the ordinance is approved; will operations need to be suspended? This is addressed in a later section.

- vi. Section 6: The Township doesn’t want to jeopardize standing reservations, so if an owner has bookings, they need to give reservation information to the Township and it will be taken into consideration.
Ricky Cortez mentions it has to be time stamped and proven to be in place prior to approval of the ordinance.
This only applies when this first starts. After the ordinance is in effect for a while, there won’t be leniency.
Wendy Ney Manley comments that STR owners are being held to higher standard. If a property owner wants party, the number of guests is not limited.
Julia Heilakka states hotel tax collection is based on Monroe County. Collecting taxes is coming into compliance. As a business operator, you are gaining a profit. This is a commercial business in a residential area. We have to try to accommodate everyone.

Bob Price states the current ordinance modifies the right of residential owners by opening commercial interest in a residential area. The Township needs to consider the essence of residential areas while allowing a commercial interest. Those that are out of compliance are extreme and aggravating. These extreme cases need to be addressed. There needs to be a failsafe that would trigger compliance issue on a nuisance property.

Wendy Ney Manley states there is a need to take care of those not complying, but people doing it right shouldn't be penalized.

vii. Section 7: Jackie Gutierrez raises concerns about overtaxed septic systems.

Per the ordinance, when an owner advertises, the Township requires proof of the septic system's capabilities. If they cannot provide proof, the default is 3 bedrooms. Jonathan Reiss recommends adding that by signing application, the owner authorizes Township official to enter property to inspect and ensure compliance.

Michael Osmon asks for clarification of entering onto or into?

Jonathan Reiss replies the ZO may enter the property and knock on the door.

Michael Osmon asks what happens if they are denied.

Jonathan Reiss states if it is an ongoing issue, the official would then contact property owners. There will be an inspection of property and the ZO needs to be allowed in at least once a year.

Michael Osmon asks for the code this is under and questions an official coming into property.

Jonathan Reiss states there is an inspection requirement in the ordinance and some places require internal inspections for long-term rentals to check for safety issues.

Donna Osmon comments that she would want to be present as the property owner.

Brendon Carroll states there needs to be a willingness for owners to comply if they want to rent their home.

Jonathan Reiss states that the tenant can say no. This is because there is a complaint, the first step is to investigate. More than likely, complaints will go to the police, not Township.

Donna Osmon wants to know what rights are being waived by signing the permit.

Jonathan Reiss state it allows a one-time inspection and allows the ZO to walk onto the property to knock on the door.

Lisa Leibatrau states the floor plan is already on file with the township. Julia

Heilakka replies sometimes it is, but not always. If we have one, we can provide it.

The Township is not looking for scaled plans, just a general layout.

Wendy Ney Manley asks what the intent is?

The intent is to verify there are the number of bedrooms listed.

Sally Ladd asks if she can supply numbers rather than a copy of the tax certificate?

Julia Heilakka states we can't verify the number. The certificate prevents more research. This is a one-time requirement but technically needs to be in the building anyway. It then needs to be provided when renewed.

Donna Osmon wants the scope and rights of the enforcement officer delineated in the ordinance.

Jackie Gutierrez asks if house is built and then converted to a larger residence, when the house is inspected will you see that it is not allowed?

Julia Heilakka states that when a permit is handed in, there needs to be proof of septic capacity and if it does not match, the Township will identify that.

Lisa Leibatrau asks how to get proof of septic capacity.

Julia Heilakka states sometimes the Township will have it if there is a permit on file. If we don't have it, the SEO can look, or a hauler company can look. Something in writing needs to be provided to the Township.

John Holahan asks about the evaluation of existing functioning, because any septic tank is designed for 3 bedrooms.

Section 8, Item C. states when nothing is on file, the number of bedrooms will be considered 3.

Donna Osmon asks about number #12 in Section 7, commercial liability insurance. She states that Homeowners Insurance sometimes covers rentals.

The Township wanted to ask rental owners. This was in the model ordinance, but the Township is unsure if liability needs to be per property or per owner.

Jonathan Reiss instructs staff to remove the whole provision. It is up to the owner to determine insurance.

Sarah Naughton states sharing the layout and completing an inspection seems like doubling work. The Township needs to verify the number of bedrooms compared to the floor plan.

John Holahan questions if info is subject to the Right-to-Know Law.

Julia Heilakka states floor plans are exempt.

Lisa Leibatrau asks why a diagram of parking spaces is necessary.

Based on zoning ordinance requirements, off street parking is needed. The Township needs something on file to say parking will be off the street. Lisa Leibatrau asks about measuring driveways.

Sally Ladd asks if this will be part of inspections?

Jonathan Reiss clarifies this is not a survey requirement. Owners need to measure to identify how many cars the driveway can fit.

Donna Osmon asks if she personally decides to lend the home to a family member, will they be held to STR standards.

Julia states the ordinance is designed to govern STRs.

Mark Edwards asks if restrictions from parking on lawns or vegetation prevents parking on gravel. What precludes gravel from being brought in?

Matt Helbers states owners are already able to put down gravel now depending on the type. Some are considered impervious surface.

Another reason for the diagram is that zoning dictates where you can park.

Jenn Van Gilder states she would be proud for having certificate/permit on house as deterrent for poor renters and asks about letter J under section 8: floating lanterns, as she believes the Township allows it at raceway?

Julia Heilakka states the raceway is not in Tobyhanna Township.

Connie Weinbland asks about permits. Are new policies due to people who don't have a permit already?

Jonathan Reiss clarifies any permit received is not from Tobyhanna Township.

Lisa Liebatrau asks about #10, the third part. AirBNB collects taxes on their behalf, they won't produce itemized list.

Julia Heilakka states this doesn't apply to AirBNB. Monroe County proves this with their report. This is if owners collect tax on their own. Owners would submit a quarterly report to Monroe County.

Donna Osmon states there is no way to cross reference, as it is a lump-sum check to the County. It is a combination of hotel excise as well as county tax and service fees.

Julia Heilakka states we want to be sure you are remitting tax and registered with the County.

viii. Section 8: The most significant change is removing the cap of 10 people and making it 2 people per bedroom plus 4 additional people as the septic system is able. The Township will add provisions for an alternate person in charge.

Ricky Cortez states Lake Naomi allows no more than 12 people. Will the inspector be notified of the stricter rule?

Part of the ordinance demonstrates you have to tell your community. They need to be kept informed.

Joe Crandall says Lake Naomi issues 12 badges; 12 is limit per house. Lake Naomi's rule is discussed.

Bob Price states the occupancy standard for those within communities can be monitored, but outside communities, monitoring is difficult. The number of people allowed is too high.

Julia Heilakka reminds the audience that nuisances can still be addressed through PMRPD.

Sally Ladd has concerns that owners will be fined twice, once by the HOA and again by the Township. There is a lot of duplication of documents.

There is already overlap between the municipality and the communities for zoning and permitting. Communities can be more restrictive with their rules, but not more lenient. The Township complaint policy is to send a courtesy letter prior to a fine. We try to work with people. Enforcement is brought to repeat offenders.

Jonathan Reiss explains that if an owner has three problems, their license can be revoked. Other provisions of the ordinance are dealing with those without licenses. If owner continues to operate without a license, then they go to district court. If an owner has a license, the remedy isn't to go to court, it's to revoke the license.

Sally Ladd is concerned if a neighbor calls the Township and security for the community about light or trash, owners are now subject to a citation.

Jonathan Reiss clarifies the Township won't fine for trash. The owner could get a zoning enforcement letter requiring compliance in a set time. There are very few fines unless you do not respond to the enforcement notice.

ix. Section 9: Item E is stricken.

Lisa Liebatrau questions item L. Can this be included in welcome binder? Does it have to be on the front door?

Jonathan Reiss states information should be visible and obvious to the tenant.

Heidi Pickard raises concerns with posting on the front door. She indicates targeting of the property could be an issue.

It is indicated it can be posted on the inside of the door.

x. A change was noted for number 10: the ZO is the enforcement officer.

Wendy Ney Manley asks if bear crates are acceptable.

Julia Heilakka indicates as long as they are acceptable receptacles for trash disposal.

Must identify where you take trash if you do not have a trash pick-up day.

Jonathan Reiss explains it must be contained.

xi. Section 11

Ricky Cortez asks if the Township wants all links to STRs on advertising platforms.

Julia Heilakka indicates permalinks verify your online presence matches what you report to the Township. It is decided all links to all website are needed.

Carey Jacobs states sometimes the house ends up on websites owners are unaware of.

Julia Heilakka replies if the township finds a link not previously provided, the township will contact the owner.

xii. Section 12: no changes.

xiii. Section 13: no changes.

xiv. Section 14. Lisa Liebatrau asks if section 14a can be changed.

Julia Heilakka indicates it will be changed to entry onto property.

Jackie Gutierrez states a renter drove across her property, making tire tracks and taking photos.

Lisa Liebatrau states to call the police.

Jackie Gutierrez has concerns about calling them constantly.

Julia Heilakka indicates the Township is focusing on what the zoning officer can do.

Michael Osmon wants to strike the part that gives the ZO the right to go in for enforcement.

Julia Heilakka indicates the last sentence will be struck from 14a.

Sally Ladd asks in section 13, what proof is required for proposed violation?

Julia Heilakka states once a complaint is lodged, a ZO goes out to verify it.

Sally Ladd asks what is the response time?

Julia Heilakka informs that police would be called for a timely manner.

The complaint policy of the Township states complaints must be in writing, or taken over the phone and written down, with complainant information included. Complaint forms are not subject to Right-to-Know requests.

Sally Ladd asks if an online page can be set up.

Julia Heilakka indicates the Township is not currently set up for forms to be filled out and submitted online. Money is the limiting factor for this. An upgrade costing \$10,000-\$15,000 would be needed, with other associated costs.

Jennifer Jacobs indicates that if fines are to be passed to a renter, the longest time to redeem money as a security deposit is approximately 14 days. If there is no notice at this point, the owner is paying it.

Jonathan Reiss indicates the Township typically acts quicker than 14 days if the complaint is accurate.

Donna Osmon talks about burden of proof on a Saturday night.

Julia Heilakka states we would get police report. The burden of proof is on the person investigating the complaint.

Lisa Liebatrau asks the Township to consider extending the permit renewal time if an owner is in compliance and has no strikes.

John Holahan asks if there can be a signed affidavit stating no changes.

Jonathan Reiss states the Township can take it under consideration but will give no answer today. He is reluctant of this because of the current situation where there are numerous unpermitted activities.

John Holahan believes an affidavit should be okay. Things can change right after or right before inspection. This does not eliminate spot check by the ZO.

Jonathan Reiss states the ZO cannot enter for spot checks, just for inspection.

Joe Crandall asks if access link is good enough to tell if something is changing.

John Holahan indicates that means the ZO would have to look at all the links and all rentals. That becomes cumbersome.

Donna Osmon asks about trying to permit yearly. What is the time limit for the enforcement officer?

Julia Heilakka indicates the term set by ordinance; all STR permits reset for November 1st. Owners need to come to the Township to say things have changed. This can be done ahead of time so the Township has prior notice.

Jonathan Reiss recommends ordinance include provision to apply for permits 60-90 days in advance to provide more time for inspections.

Joe Crandall suggests staggering the permit renewal date.

Julia Heilakka indicates having to keep track of staggered permits is a nightmare. The time frame was selected based on the traditionally slow time for zoning and rentals.

John Holahan asks how many rentals there are?

Julia Heilakka estimates about 700, but there could be more. The way the ordinance is written is to ask owners to come into compliance and then follow up on a complaint-driven system.

Jonathan Reiss indicates there should be an effective date. Then start with license year so people have time to get up to speed.

Township staff needs to determine appropriate time period.

Donna Osmon wants an itemized list of what they are looking at when they come for inspection.

Julia Heilakka indicates that they are looking for compliance with the ordinance items such as pool safety, number of bedrooms, and adequate parking.

Connie Weinbland asks about handicap accessibility and sprinklers.

Julia Heilakka states the Township has no authority to enforce building codes.

xv. No comments on sections 16, 17, or 18.

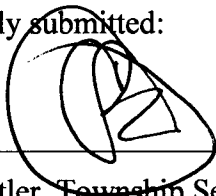
Wendy Ney Manley asks about next steps.

The Township will make changes, distribute the new draft, have conversations with the Board of Supervisors, and determine if there needs to be another meeting or if the draft ordinance should be put out for advertisement.

4. Meeting adjourned at 12:52PM.

Minutes recorded by Autumn Canfield

Respectfully submitted:

A handwritten signature in black ink, appearing to be 'Crystal Butler', written over a horizontal line.

Crystal Butler, Township Secretary