

Town Council & Planning Board Joint Meeting
June 27, 2022
6:00 pm in the Civic Center
Minutes & General Account

Council Members Present: Mayor Montgomery, Council Members Wolfe, Rayborn, Capes & Straughn

Planning Board Members Present: Sarah Glanville, Chair; Jane Walker Payne, Kerry Miller, Russ Walker, Robert Coon (ETJ), Donald Dale, Jr. (ETJ), Sherrie Richmond (ETJ), & Peggy Levi (ETJ)

Planning Board Members Absent: Ed Stafford, Vice Chair

Staff Members Present: Katie M. Weiner, Anna Hawryluk, & Tom Terrell, Land Use Attorney

Visitors Present: Mary Saia, Tony Saia, Carmen Heydary, Lee Richmond, Dick Gardner, Sharla Gardner, Mike Fields, Courtney Fields, Jackie Lawrence, Brent Lawrence, Jervais Seegars, Natia Seegars, Patti Holtzman, Del Holtzman, Jamey Dyer, Louis Jorgensen, Betty LaBella, Jessica Murphy, Jim Barborak, Shirley Barborak, Cam Tally, & Carol Brooks

Call to Order for the Town Council- Mayor Montgomery called the meeting to order for the Town Council.

Call to Order for the Planning Board- Glanville called the meeting to order for the Planning Board.

- Pledge of Allegiance- Mayor Montgomery led everyone in the Pledge of Allegiance.
- Moment of Silence- Mayor Montgomery called for a moment of silence.

Introduction to the Joint Meeting- Weiner stated that the Town's updated Strategic Plan was adopted at the June 23rd Town Council Meeting. She added that holding an annual joint meeting with the Town Council and the Planning Board was one of the goals included in the Plan. She said that staff were aware that the Council and Board Members had received questions about short-term rentals from members of the community. She noted that the joint meeting would provide an opportunity for Tom Terrell, the Town's Land Use Attorney, to address some of the questions that had been raised. She thanked everyone for attending the meeting.

Overview of Short-Term Rental Regulations- Hawryluk said that the interest in and use of short-term rentals had increased in popularity over the past several years. She stated that many municipalities had sought options on how to best address the issue both legally and practically through local government regulation. She added that many local governments had adopted ordinances restricting short-term rental properties. However, she noted that the Court of Appeals had ruled that state law prohibited the requirement of registration for short-term rentals in April 2022. Hawryluk said that the Court had also ruled that state law allowed for general zoning and development standards for the rentals. She introduced Tom Terrell, the Town's Land Use Attorney, to present additional information on the current status of laws related to the regulation of short-term rentals.

Terrell presented an overview of the legal precedents for regulation of rental of property. He said that short-term rentals were very common especially locally because of furniture market. He spoke about the increased popularity of companies like AirBnB and their growing impact on the hotel industry.

Terrell stated that there was a groundswell of effort to regulate short-term rentals in Asheville. He said that the General Assembly got involved because of those regulation efforts.

Terrell explained that cities only have powers that the state gives them. He noted that local governments have powers via their charters and also granted by state statute. He said that there was a statute enacted in 2011 when short-term rentals were growing in popularity. He noted that it restricted the right of local governments to regulate short-term rentals. He added that it prohibited municipalities from requiring a permit for the properties. Terrell said that it also prevented property owners from having to ask local governments for permission to rent out their homes. He stated that the General Assembly went further in 2017 by adding language that stated that property owners could not be required to register short-term rentals with towns or cities.

Terrell presented an overview of the Shroeder v. City of Wilmington case that the Court of Appeals ruled on in 2022. He said that the Shroeder family owned a condo that they used as a short-term rental. He stated that Wilmington passed an ordinance that limited short-term rentals, required registration, and forced property owners to enter into a lottery to have the right to rent out their property. Terrell said that in the meantime the statutes were recodified. He stated that a judge that ruled on the case included in her opinion that the North Carolina Constitution establishes the state as sovereign. She added that local governments may exercise only those powers that the General Assembly deems advisable. He noted that Wilmington did not have the right to restrict property owners from using their properties as short-term rentals. He added that the ruling was unanimous amongst the judges.

Council Member Wolfe stated that the Town did have a noise ordinance that restricted loud parties if that was an issue for community members. She also spoke about restricted covenants and bylaws that prevented a percentage of rentals within a community that had an HOA. Koonce said that she felt the best way to regulate short-term rentals would be for neighborhoods to set up HOA's or ensure that their covenants prohibit them. Koonce added that she was not aware of any test cases for that specific situation and that she was not sure if it would hold up in court. Koonce and Terrell agreed that the government's hands were essentially tied in regard to regulation.

Council Member Members and Planning Board Members discussed regulation options with Terrell and Koonce. There was some discussion about considering short-term rentals as a hotel. Terrell said he had some hesitation whether or not that would work because long-term rentals could also be considered a business using that logic.

Levi asked about potential restrictions for companies that were buying homes instead of people that were actually going to reside in the homes. Terrell said that it would be very difficult to regulate because many homes were technically owned by companies through a trust.

Glanville spoke about the difference between AirBnB's and beds and breakfasts. Terrell stated that beds & breakfasts fall into a hotel/motel classification because they serve meals.

Richmond asked if there could be a distinction made between those that rent for furniture market and homes that were always used as short-term rentals. Terrell said he did not think that was a possibility. He reiterated that governments did not have the right to grant permission to homeowners regarding the rental of their properties.

Council Member Capes discussed restricted covenants with Terrell. Terrell said that he did not know how a restrictive covenant could be enforced retroactively in an existing neighborhood.

Council Member Straughn said that a lot of people were concerned about loud parties, suspicious people, etc. and those issues could be resolved by contacting the Guilford County Sheriff's Department.

Glanville asked what actions people could take if they were dissatisfied with the limitations that the Town had to restrict short-term rentals. Terrell stated that people could contact the legislators to put political pressure on them to reconsider the statute.

Richmond discussed her concerns about the impact of short-term rentals on home values.

Council Member Wolfe said that it seemed that the takeaway was that there was no way for the Town to regulate existing AirBnB's.

The Town Council and Planning Board Members thanked Terrell for his time.

Council Member Capes made a motion to adjourn the Town Council meeting. Council Member Wolfe made a second to the motion. The motion passed by unanimous vote.

Walker made a motion to adjourn the Planning Board meeting. Coon made a second to the motion. The motion passed by unanimous vote.

The meeting ended at 7:13 pm.

Mayor

Town Clerk