

# Planning and Zoning Workshop Notes Dec. 4, 2024

Meeting called to order at 6:03 p.m. on a snowy, cold and slippery evening.

Attending were: Jim Erdman, Rob Vacheresse, Bob Walter, Ron Harrell, attorney Blair Murphy-Pociast (Herrling Clark Law Firm). Absent: Tom Castle, Carol Kaufmann, Susan Stearns, Sharon Karow. Fourteen members of the public attended including Town Board members Bill Demler and Matt Merten.

Notes from the last meeting were approved unanimously.

**Erdman:** We're not adopting anything tonight. This is a discussion. We're looking at the Town of Vinland Ordinance, crafted by Herrling Clark.

**Blair:** Wisconsin recently amended the statute which allows for short term-rentals. The statute imposes certain limits on what can be regulated and defines what a short-term rental actually is. The floor for what a person can rent is 180 days. But if you rent 10 or fewer days you won't be subject to curbing or other ordinance requirements. So I think the goal of the town here is to adopt something similar to what was recently adopted by Vinland and Neenah which I would describe as something a bit more restrictive and aimed at curbing a lot of the nuisances and common complaints that people have when they're potentially neighbors with the people who rent their homes as a short-term rental.

## **The Vinland Ordinance:**

**Blair--Purpose--**regulating the health, safety and general welfare for the community.

***Substantive portions--***Vinland is a little more unique and restrictive because its ordinance includes a provision that says your short-term rental dwelling has to be the primary residence of the property owner, meaning that this can't be the secondary home or sort of commercial property owned by someone else who's never there, and it explicitly prohibits third party rental appropriations.

***So how the ordinance works.*** If you are renting your primary residence as a short-term rental property, and you're collecting it for profit renting to outside parties, you're subject to licensing requirements and other requirements from the town so they have an opportunity to keep track of who's renting, an enforcement mechanism as part of the licenses, a more comprehensive way of controlling and setting standards for short-term rentals, but the big thing in the Vinland one is the primary residence requirement and the exclusion of the third party for non-owners applying for the licenses. Those provisions are unique to Vinland and a little more strict than a lot of places out there. It's still up in the air whether it will come into court challenges or lawsuits but that's how they constructed their ordinance at this time.

If it's 10 or fewer days in a year (like EAA), you won't have to worry about the requirements. Once you get past the 10 days....

There's an exception to the Vinland Ordinance that essentially grandfathers in prior existing uses That is one of the concerns we felt could be cause for litigation once this ordinance goes into

effect. Those are the first people that would probably sue to challenge it. You're subjecting yourself to less exposure if you decide to enforce your ordinance and its provisions proactively and allow some existing conditions.

**Erdman:** It's going to be a work in progress with the litigation that is going on. Local ordinances only have to be passed by the town board.

**Some of the motivations for the Ordinances are:** Curbing Nuisances--Excessive noise, outdoor activities of certain time and place, parking, maybe people coming in from out of town for a short period of time may cause some issues

*\*Erdman explained the history of small lots on the water, among other things.*

*\*Erdman opened things up for discussion.*

**Brad Niemuth, 2555 Edgewood Lane:** What is the difference between a residential with the sole purpose of being an Airbnb and a hotel?

*He then showed pictures of what has happened near him. All P and Z board members had received the photos prior to the meeting. He is concerned about the renter who is renting his residence to contractors who are staying at the residence instead of a hotel. Pictured were vans, trailers, a boom truck and the like all parked in the vicinity of Brad's home. Seven vehicles and two trailers parked across four properties. Another renter was taking wood from Brad's woodpile. Is it OK to have a business in a residential area?*

**Blair.** So the way the ordinance is crafted so that the property owner who is renting their property has to be their primary residence. The way Vinland crafted their ordinance was that they provided essentially a grandfathering clause saying that the primary residence requirement did not apply to dwelling units that operated as short-term rentals prior to the effective date of charges. However, those same property owners would still have to seek an exception from the town board, and they're still subject to the same other licensing requirements. They're just essentially exempt from the property being their required primary residence. They'd still have to apply for a license, they still have to keep a guest register, and abide by those nuisance provisions, and things like that. But at least the way the Vinland one was written and you're drafting off of, that person may be exempted. *Garbled recording (sorry about that)*

**Matt Merten, Town Board member:** How can you do this commercial activity when it's zoned residential?

*\*Garbled recording. Sorry about that.*

**Paula Hayford, 3048 Shorewood:** *The only way to eliminate that situation (Brad's) is to eliminate grandfathering. By grandfathering you are allowing that to happen. More garbled recording.*

**Will Steiner, 3220 Shorewood Drive:** Read all 47 pages of Title 11 which lists all the things you cannot do, and it pretty much covers all of the things that are happening around his property (Brad's). Why aren't the current codes being enforced? How could they be better enforced?

Because he already has a route to go to prevent that from happening? You're gonna add more rules. Who is going to enforce the next level of rules? Just like the rules that are already there aren't being enforced. Seems like the first step would be to create some kind of platform where it's very easy to enforce the rules we already have, whether there's a restriction on short-term rentals or not.

It's huge. It took me a couple hours. I literally fell asleep a couple of times. Covers everything--noise, dogs, parties, parking. My concern is you add some more codes we still have the same problem of enforcement. If I have a short-term rental, if I'm his neighbor; they didn't enforce any of the code before, why would I follow the new rules? The old rules aren't being enforced, why would I care about the new rules?

**Erdman:** Towns are part-time people; we don't have full-time staff. For bigger issues you call the sheriff's department. We don't have the clout that cities have. We don't have home rule.

**Blair:** If you require licenses for rentals, even with overlapping ordinances, there are now economic incentives to abide by those ordinances. because you run the risk of getting your license revoked or not being renewed for committing those violations.

**Steiner:** So what? You don't have a license. There's nothing to stop you. Someone has to enforce them. No one is preventing Brad's neighbor from being obnoxious when the code clearly lays out ways it could stop him.

**Lee McCann, 2669 Edgewood Lane:** If you're grandfathered under this ordinance and you desire to sell your property, does the grandfather status remain with your property?

**Blair:** It would depend how the subsequent owner plans on using the property. If it's the primary residence then there's no reason to grandfather, but if they're buying the property for the intention of using it as a strictly rental property, one, they should probably know about the ordinance that prevents that, but if they buy it with the expectation they can use it for a certain use and now. I'd say the answer isn't super clear in the way the ordinance is written now.

**Dick Flynn, 2577 Edgewood Lane:** After our last meeting I did some research--Some of the ordinances say they have to show where they're parking, has to be a primary owner of the residence, the primary owner or manager has to live within 35 miles of the residence, some have to rent it out seven nights or longer or they even put a ban on how many nights to be rented out. Talked with staff at Dan Feyen's office--she said these are rules you probably are not going to get rid of but there are plenty of rules they can put in there if they want to. The people that are for it here, how many of the people actually live next door to it? He's (Brad) right next door, and I'm one house away. I saw the kids in his woodpile. They took these sticks three or four houses down, but Brad caught them the next day. You could end up in a legal battle no matter what we do.

**Erdman:** America's the land of the free, and anybody can sue anybody for anything at any time.

**Dan Kellner, 3015 Shorewood Drive:** On this proposal, we've gone around with last time. We keep pushing six days. We're down to three days, not seven or six. That's not helping him

(Brad). They're renting a week at a time for crews. We have it, we police our people, we watch where they park and all that, that seven or six day rental, that's no good. Never has been. That's shutting us down. There are other people on this block who are doing this so they can retire there. It's a big expense to buy a house but that's where they want to retire. They can then sell their home and retire at one of those places. You have less issues with three-day rentals than you will have month to month or year to year. Your place will not be destroyed.

**Matt Merten, Town Board member:** What other deterrents are there for non-resident owners of these places besides saying you have to live there?

**Blair:** That is the main deterrent. The availability of having a property manager on site is another one, local presence, 35 miles.

**Paul Schroeder, 3054 Shorewood:** Why is Lee not here?

**Erdman:** Because we have him (Blair). We didn't like how he presented the ordinance.

**Schroeder:** He took out all the things that were illegal. There's a Wisconsin Right to Rent law that says nothing about the primary residence.

**Blair:** However you pass the ordinance you're possibly inviting litigation for anyone, depending on how restrictive the ordinance is. You can always go in cautiously and sign a passive ordinance with fewer restrictions if you want to avoid litigation and then amend later--testing the water.

**Schroeder:** The remedies that are being presented are not really addressing the key complaints, other than providing the terms for short term rentals so far. The complaints that surfaced from a couple folks as well as the dog one and the parking are probably covered by other stuff. We're proposing a lot of restrictions that really don't fit what's going on. Some in the Vinland Ordinance are just blatantly not legal. I would love to know the case number and what it was about.

**Blair:** I think there's only been one published case interpreting the right to rent law; it was in Ashwaubenon. This is a matter of first impression for almost all circuit courts at this point.

**Schroeder:** I know some of you own other properties and rent them long term. Flip it around on yourselves and think from the opposite perspective for a moment. What if someone came to you and said, "I'm sorry, you can't rent your property for a year." The most you can rent is six months. How would that make you feel? That took away your right to rent for long term.

**Kathy Schulze, 3062 Shorewood:** I was at the first meeting. From my perspective we're seeing more rentals on our road. Times are changing; things are changing. I've not had a problem with one rental. The people are very nice. But it has changed the way we live. We don't have our wonderful neighbors. Now we have strangers. Sometimes they say hi and sometimes they don't; sometimes they wave. But it's short term. People come and go. They all come with their animals, their dogs; they're pretty respectful overall. The reason I came to the meeting, will there be a limit to how many rentals we have on our road? I have seen a lot of lake property being bought by out-of-state residents as well as in-state residents, primarily for profit. I understand

that you and your wife want to live there some day. You know if it just started where every other house is a rental. Imagine we've been here 40 years this year. We've raised three children. It's a beautiful place to live. Now it changes everything. I don't want to say bad things about that. But I don't want to lose that sense of neighborhood. We're a very small neighborhood. Shorewood Drive.

**Schroeder:** I totally respect what you're saying, and there are additional concerns with the true commercial properties that are looking to buy a lot because they've raised the prices for everyone else. As you know my wife and I had to pay up to be able to just bid and win this property. I'm not a lawyer to know how these concerns come into play with ordinances. I also think it would be straight up illegal to say you have to live within 30 miles. We are primarily seeing happy people. I gave the town a list of those who have stayed with us. A lot of them are literally celebrating their wedding anniversaries. They don't want to be in a sterile hotel. The text messages are happy and thankful. They don't want to come for seven days.

**Schulze:** Put yourself in our place. So far they've been respectful. Sometimes they use that waterway on our property, and we don't say anything, but it's not a big deal. Imagine in your old neighborhood where you do live and now the homes around you start to be rentals.

**Sandy Flynn, 2577 Edgewood Lane:** Can you put in a percentage of homes that could be Airbnb on a road?

**Blair:** It may be more of a zoning issue. I don't know if any town has decided to cap the number of permits they give out. If you decide to restrict the number of licenses it's subject to challenge.

**Bill Demler, Town Board member:** On the six-day-you could rent it out for a six-day period; if they only wanted it for three, you gave them the three days, and you couldn't rent it for the next three. No third party in ordinance. I think we should mandate they have a third party. We had a couple who said they go with Airbnb or VRBO and they kick them out. Whereas Brad's calling the homeowner who lives in Illinois who doesn't really care--he's getting paid. If he doesn't get paid because the third party rental thing kicked him out, he's going to start changing his rules.

**Blair:** This portion of at least Vinland's version of the ordinance is coupled with the primary residence requirement. I don't see anything precluding the use of Airbnb or VRBO. If the owner of that property is using that as the primary residence then they use Airbnb or VRBO in order to facilitate the renting, I don't think there's anything that's prohibited in there.

**Kellner:** If this is what you're proposing for us to accept or not accept, I would like to have us go through that whole thing piece by piece to find out what we want in it or don't want in it, because that (for the gentleman in the back, Brad) doesn't have it, it doesn't have what I would like for the three-day rentals in this; we should go through that piece by piece and put in what we want because it's this town, not Vinland; it's not wherever that's from. And then make it for what's going to fit all the people here. We're just chasing our tail right now.

**Erdman:** No, we're not. We're kicking ideas around. This is not a public hearing.

**Blair:** This is one example. Subject to tapering. You look around at other town's codes or ordinances. Some have that six-day consecutive day requirement; some don't have a requirement at all. Some are more permissive; some are more restrictive. It's up to you to taper this how you think this works for the desired town you're in.

**Todd Cummings, 1691 Edgewood Lane:** With Brad's issue, how many violations would be reasonable when reconsidering the licensing for the following year?

**Blair:** At this point it's at the discretion of the licensing body. There's an appeals process. There's also a penalty clause which includes forfeitures.

**Steiner:** Then I'm just not going to get a license. That could be the route a lot of people take. I'd like to suggest an entirely different avenue to prevent short-term rentals. It would be far more restrictive. Property owners on their own or together as a group, as a neighborhood on their own properties can restrict the use of that property. They can eliminate altogether rentals of the property; it could be deed by deed on each property; each owner could restrict permanently, forever, the use of that property as short-term rental. You can define it any way the homeowner wants. I would encourage neighborhoods or groups of people if they don't want to have short-term rentals, like a homeowner's association. They could just make a deed restriction.

**Erdman:** On the other token, if you want to control everything, buy it. If you don't own it, you don't control it. That's what this is about.

**Rob Vacheresse, board member:** I agree 100 percent with what you just said. I have a deed for my property that says I can never open a tavern on it. It's iron clad. That deed was given to the guy that bought the property before me because he was a tavern owner, so that does have some clout. Then it's a done option. I don't know that that's going to settle all the grievances for the people like the gentleman in the back (Brad).

**Steiner:** This ordinance wouldn't stop it anyway because of the grandfathering. I'm proposing something that's roughly equivalent that could be done by anybody, and it could be done immediately without any worry of litigation.

**Schroeder:** I was just going to address that from a different perspective. I've had two different people approach me with concerns that this will lower their property value because right now it's flexible.

*\*Discussion ensued on how to solve Brad's situation. Call law enforcement, review of number of people acceptable in these houses, call the Public Health Department.*

**Niemuth:** Who do I make a complaint to?

**Vacheresse:** How many complaints would it take to pull that license?

**Erdman:** A draft notice is going to go to public hearing. Public hearing will comment on it. And then it will be up to whether it will be tweaked or not and then it will go the Town Board. Ordinances don't go to the Planning Commission. The Town Board may tweak it or pass it or whether they have an ordinance.

**Schroeder:** If the Town of Oshkosh crafts an ordinance that invites litigation and somebody does sue, who pays the attorney fees?

**Erdman:** The Town.

**Schroeder:** Win or lose?

**Erdman:** Yes. They get paid by the quarter of an hour and their travel time.

**Schroeder:** So you're saying the ordinance could be upheld and the Town would still have to pay for it?

**Erdman:** Yes. They still get paid.

**Steiner:** Why don't we just start fining people for breaking the rules that we already have?

*Discussion ensued about calling law enforcement.*

**Erdman:** Come in Monday night to our board meeting or we'll bring it up to a deputy who often drops in. We have the pictures.

*Harrell moved to adjourn, Walter seconded. Workshop ended at 7:22 p.m.*