

FILED
09-17-2024
Door County
Clerk of Circuit Court
2024CV000119
Honorable Jennifer
Moeller
Branch 1

STATE OF WISCONSIN CIRCUIT COURT DOOR COUNTY

HUNTER and JESSICA CLINTON
10841 Birchwood Drive
Sister Bay, WI 54234

JOHN and ERIN WILSON
10547 Fieldcrest Road
Sister Bay, WI 54234

Declaratory Judgment
Case Code: 30701
Case No. 24-CV-

NICK and TARA FROEMMING
10541 Fieldcrest Road
Sister Bay, WI 54234

MARK and CALEY SWANSON
2226 Scandia Road
Sister Bay, WI 54234

Plaintiffs,

v.

VILLAGE OF SISTER BAY and JULIE
SCHMELZER, as Village Administrator for the
Village of Sister Bay
2382 Maple Drive
Sister Bay, WI 54234

Defendants.

SUMMONS

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is **Door County Clerk of Courts, 1209 South Duluth Avenue, Sturgeon Bay, Wisconsin 54235**, and to the **Wisconsin Institute for Law & Liberty**, Plaintiff's attorneys, whose address is **330 East Kilbourn Avenue, Suite 725, Milwaukee, Wisconsin 53202**. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: September 17, 2024.

WISCONSIN INSTITUTE FOR
LAW & LIBERTY, INC.

Electronically signed by Luke N. Berg _____

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COMPLAINT

Plaintiffs Hunter and Jessica Clinton, John and Erin Wilson, Nick and Tara Froemming, and Mark and Caley Swanson, by their undersigned attorneys at the Wisconsin Institute for Law & Liberty, hereby allege as follows:

INTRODUCTION

1. Under Wisconsin law, homeowners have the right to rent their homes on a short-term basis. Wis. Stat. § 66.1014.

2. Homeowners also have a right under Wisconsin law to continue a non-conforming use after a change to local zoning laws, preventing municipalities from retroactively applying zoning changes to existing properties. *E.g.*, Wis. Stat. §§ 62.23(7)(h); 61.35 (applying the same to Villages); *Golden Sands Dairy LLC v. Town of Saratoga*, 2018 WI 61, ¶ 21, 381 Wis. 2d 704, 913 N.W.2d 118.

3. A similar rule applies to properties that are in the process of being built when the zoning code changes.

4. This so-called “building permit rule” is a “bright line rule” that gives property owners a “vest[ed] [] right to use property consistent with current zoning at the time a building permit application that strictly conforms to all applicable zoning regulations is filed.” *Golden Sands Dairy*, 2018 WI 61, ¶ 18.

5. Despite these clear legal rights, the Village of Sister Bay (“the Village”) has refused to confirm that its new zoning ordinance—limiting short-term rentals to using four or fewer bedrooms—will not retroactively apply to existing rental properties with more than four bedrooms.

6. Instead, the Village has made clear that it will not grant any exceptions to the 4-bedroom limit, and the Village Administrator, Julie Schmelzer, has even told some of the Plaintiffs that they must “lock” their extra rooms such that their guests will be “prevented” from accessing them.

7. Administrator Schmelzer has also attempted to unilaterally dictate where guests can and cannot sleep within the home—telling Plaintiffs their guests cannot use futons and pull-out couches—even though no Village ordinance addresses this.

8. Plaintiffs notified the Village that these limits cannot be enforced against them, in part because they are grandfathered, and spent multiple weeks going back and forth with the Village about this, but the Village refused to tell Plaintiffs whether it agreed with them or not and also refused to provide any assurances that the limits would not be enforced against them.

9. As a result, Plaintiffs have no choice but to come to this court for declaratory and injunctive relief to establish that the Village cannot restrict where their guests can sleep within their homes.

10. The Village's actions in this matter violate Wisconsin law in multiple ways, and this Court should grant the requested relief.

PARTIES

11. Plaintiffs Hunter and Jessica Clinton own a home in the Village at 10841 Birchwood Drive that they rent on a short term-basis. They market this property online as “Starkhaus.” <https://www.vrbo.com/3359595>.

12. Plaintiffs John and Erin Wilson own a home in the Village at 10547 Fieldcrest Road that they rent on a short term-basis. They market this property online as “The Sister Bay Haus.” <https://www.thesisterbayhaus.com/>.

13. Plaintiffs Nick and Tara Froemming own a home in the Village at 10541 Fieldcrest Road that they rent on a short term-basis. They market this property as “The Cherry Cabana.” <https://www.vrbo.com/3637752>.

14. Plaintiffs Mark and Caley Swanson own three homes in Sister Bay that they rent on a short-term basis.

15. The first, at 2226 Scandia Rd., they call “Luna’s Retreat.” <https://www.vrbo.com/2136950>.

16. The second, at 2215 Scandia Rd., is “Scandia Retreat.” <https://www.vrbo.com/3110135>.

17. And the third, at 10809 Cardinal Ct., is “Cardinal Retreat.” <https://www.vrbo.com/3902154>.

18. Defendant Julie Schmelzer is the Village Administrator.

JURISDICTION AND VENUE

19. This is an action for declaratory and injunctive relief under Wis. Stat. §§ 806.04 and 813.01.

20. Venue in this Court is proper pursuant to Wis. Stat § 801.50(2).

BACKGROUND

The Village’s 4-Bedroom Limit

21. In June 2023, the Sister Bay Village Board adopted a new ordinance that limits short-term rentals to using only four bedrooms in the home. Village Ordinance § 2023-004. A true and correct copy of this ordinance is attached to this complaint as Exhibit A.

22. The 4-bedroom limit was added to the definition section of the zoning code. Village Ordinance § 66.2100. It reads as follows: “In no case shall more than four bedrooms be rented, unless more bedrooms are authorized by the Plan Commission.”

23. In that same section, the ordinance also added a limit on the number of persons in a short-term rental, as follows: “short-term rental properties shall be restricted in occupancy to a maximum of [three] 3 persons per legally permitted bedroom in existence at the time of this amendment.”

24. By limiting short-term rentals to four bedrooms, the combined effect of these provisions is a 12-person capacity limit on short-term rentals with four or more bedrooms.

25. Although these limits were adopted in June 2023, as a practical matter, they did not go into effect with respect to most short-term-rental properties until July 1, 2024.

26. The Village’s short-term-rental license period runs from July 1 until June 30 the following year, and most short-term rentals had already obtained their licenses when the limit was adopted.

27. For such properties, the Village did not enforce the 4-bedroom limit until the following licensing cycle, starting in July 2024.

Background on Plaintiffs and Their Properties

28. Prior to the adoption of this limit in June 2023, each of the Plaintiffs had already been renting their home(s) on a short-term basis or had begun building their home(s) for use as a short-term rental.

29. The Swansons purchased their property at 2226 Scandia Road in 2020 and have been renting it on a short-term basis since 2021.

30. Their property has five bedrooms, and, until July 2024, the Swansons were advertising it as a five-bedroom property and allowing their guests to use all of the bedrooms.

31. The Swansons built it specifically as a short-term rental and personal vacation home. They purposefully built it with 5 bedrooms to make it more attractive to renters.

32. The additional cost of the fifth bedroom was in the range of \$20k–\$30k.

33. When the Swansons eventually retire, they are hoping to spend significantly more time in Sister Bay, and they are using the property as a short-term rental to make that dream a reality.

34. In the meantime, they are also personally invested in Sister Bay, and they spend approximately ten or more weeks per year at their home in Sister Bay.

35. In the fall of 2023, when the Swansons were preparing for the upcoming rental season, Mark Swanson emailed Administrator Schmelzer to ask about the bedroom limit. He explained that his house had 5 bedrooms, but that his limit was 12-people, and he “assum[ed] [the Village’s] concern is less about the # of bedrooms and more about the total number of people in a house, but wanted to check.” A true and correct copy of this email is attached to this complaint as Exhibit B.

36. Schmelzer responded, “No, it’s a max of 4 legal rooms, so one would have to be locked/not accessible to guests.”

37. The Swansons subsequently purchased their other two properties in Sister Bay (2215 Scandia Rd. and 10809 Cardinal Ct.). Both have only four bedrooms but are still subject to Administrator Schmelzer's ad hoc limits on where guests can sleep within the homes.

38. When the Swansons applied for their license for their Cardinal Ct. property, Administrator Schmelzer's email to them stated that their license was subject to certain restrictions, including that "you can only allow sleeping in the 4 bedrooms (no pull out couches, etc.)." A true and correct copy of this email is attached to this complaint as Exhibit C.

39. The Clintons purchased their property at 10841 Birchwood Drive in January 2023 and have been renting it on a short-term basis since March 2023.

40. Their property has five bedrooms, and, until July 2024, the Clintons were advertising it as a five-bedroom property and allowing their guests to use all of the bedrooms.

41. The Clintons purchased the home as both a short-term rental and a vacation home for personal use and for use with friends and family.

42. They are also personally invested in Sister Bay, and they spend approximately four to six weeks per year at their home in Sister Bay.

43. The Wilsons entered into a contract for their property at 10547 Fieldcrest Road in October 2022 and construction was completed in September 2023 (although it was originally scheduled to be completed in early summer 2023).

44. When the Wilsons signed a contract for their property, the builder had already obtained a building permit.

45. The builder obtained the building permit in August 2022.

46. After they closed on the property, the Wilsons worked with the builder to modify the pre-construction design to finish the lower level and add 4th and 5th bedrooms to accommodate larger groups of guests. The plans were completed October 2022 and construction began early 2023.

47. The Wilsons always intended to use the home as a short-term rental and for personal use when they built it.

48. They intentionally designed it with five bedrooms to make it more attractive to guests.

49. Had they known they would be limited to four bedrooms, they would have built the property differently, with four larger bedrooms instead of five.

50. The additional cost for the fifth bedroom was approximately \$20,000.

51. The Wilsons are hoping to eventually retire in Sister Bay, and they are using the property as a short-term rental to make that dream a reality.

52. They are also personally invested in Door County and spend a significant portion of their time (30+ trips) there throughout the year.

53. Erin Wilson is a board member of a local business council and their family volunteers to support various events in Door County throughout the year.

54. The Wilsons were granted a Door County Tourism Zone Short Term Rental permit on May 5, 2023, as construction was nearing completion. The Wilsons

applied for a DATCP State Lodging License on May 1, 2023, and had the property inspected by the state on June 29th, 2023.

55. When the Wilsons were in the process of applying for their Sister Bay license, Administrator Schmelzer sent them an email asking, “How will the fifth bedroom be restricted from use? I need a statement indicating how it will be prevented access, e.g. will it be locked at all times?” A true and correct copy of this email is attached to this complaint as Exhibit D.

56. The Froemmings entered into a contract to build their property at 10541 Fieldcrest Road in October 2022, and construction was completed in August 2023.

57. The Froemmings designed the property themselves, for use both as a short-term rental and for personal use with family and friends.

58. The builder obtained the building permit for the property around August 2022.

59. The Froemmings always intended to use the home as a short-term rental when they built it.

60. They designed it with six bedrooms to make it more attractive to guests.

61. The additional cost for the fifth and sixth bedrooms was in the range of \$15k–\$20k.

62. The Froemmings are hoping to eventually retire in Sister Bay, and they are using the property as a short-term rental to make that dream a reality.

63. In the meantime, they are also personally invested in Sister Bay and visit there approximately ten times per year.

64. Part of the Froemmings' love for Sister Bay came from Tara Froemming's parents, who both passed away a few years ago. Sister Bay was their favorite place. The Froemmings even spread her father's ashes up in Door County to honor him. Inspired by Tara's parents love for the area, the Froemmings decided to purchase a home and become invested in the area themselves.

Plaintiffs' Attempts to Seek Exceptions From the 4-Bedroom Limit

65. As noted above, the Village Ordinance provides that the Plan Commission can grant exceptions to the 4-bedroom limit.

66. Seeing this as the path of least resistance, two of the Plaintiffs attempted to seek exceptions from the Plan Commission, but that body made clear that it wouldn't grant any, at least in residential districts.

67. The Wilsons asked for an exception to the 4-bedroom limit during a Plan Commission meeting in January 2024.

68. For unknown reasons, the Plan Commission has removed the link to the video of that meeting from their website (<https://sisterbaywi.gov/meetings/>).

69. It has not done so for any other Plan Commission meeting.

70. The video of the meeting is still available on YouTube, however. <https://www.youtube.com/watch?v=X9zCnU5axrw>.

71. The discussion of the Wilsons' request for an exception to the 4-bedroom limit begins at 1:25:55.

72. Erin Wilson explained that they were “not asking for an increase in the number of people that we’d be allowed to host,” they just wanted to give their guests “more space for people to spread out.” *Id.* at 1:26:51–1:28:37.

73. They usually “have families that rent, so grandma and grandpa don’t necessarily want to have grandkids sleeping in the room, or what have you.” *Id.*

74. The Plan Commission members, however, repeatedly expressed their hostility toward short-term rentals and towards the request, even suggesting that the Wilsons would lie about the number of guests they have.

75. The very first question, asked by Patrice Champeau (both a Plan Commission Member and Village Board Member), was: “your home could accommodate 15 guests. How do we know that it’s not going to be rented out to 15 guests all summer long?” *Id.* at 1:28:38.

76. Erin Wilson repeated that they were not asking to exceed the 12-person limit. She explained that all of their advertisements and documents specify that the limit is 12 people. She emphasized that they work hard to follow all the rules.

77. When it finally came to the discussion of the Wilsons’ request, the Plan Commission members made clear that they would not grant any exceptions in a residential district.

78. At 1:39:21, Village Administrator Julie Schmelzer stated, “As of July 1, there should not be any five-bedroom rentals any more in Sister Bay.”

79. At 1:39:50, Patrice Champeau stated, “I think as a Planning Commission we need to stick to our guns and make it follow the rules and not expand things.”

80. Denise Bhirdo, also a Village Board member, then chimed in, “When we set up those rules on the four bedrooms ... we knew that there were a lot of homes out there that had more than four bedrooms, and we consciously made that decision.” *Id.* at 1:40:02.

81. She also expressed her disagreement with state law: “It’s not being utilized as a home anymore. ... No matter what the state legislature says, this is not a single-family unit.” *Id.* at 1:40:33.

82. Village Board Member Nate Bell then asked specifically, “what circumstances do we want to say ok to beyond four bedrooms? Is there a circumstance we want to? What criteria would we have to say, yeah, we think it’s ok to do more than four? I’m hard pressed to think how we would want to do that.” *Id.* at 1:41:08.

83. Bhirdo responded, “I think I might be inclined depending upon the zoning district, the density of the neighborhood. If somebody wanted to do that in countryside where you have to have a 10-acre lot, I might look at that differently.” *Id.* at 1:41:28.

84. Commission member Ron Kane said, “I would agree with you. But not in a residential district.” *Id.* at 1:42:10.

85. Bhirdo then agreed with that clarification, “Not in an R District. Yeah.” *Id.* at 1:42:16.

86. Bell later agreed: “I don’t think we should go beyond four. I don’t.” *Id.* at 1:44:23.

87. After some further discussion, Erin Wilson made her final plea, “We are hoping to retire up here. We love it. We grew up around here. We got engaged up here. ... We love door county. That’s how we are trying to get up here sooner to be permanent residents. ... I’m very hands on, we always communicate very well. I always personally keep my cell phone on me 24 hours a day ... We’ve never had any complaints from neighbors. I’m a very hands-on host. I respect the neighborhood, I respect our neighbors, and I want to follow all the rules and guidelines. I understand that things are complicated because there are perhaps some people who don’t do that. And on behalf of all STR owners, I apologize for that. ... But we’re simply following the rules. It is a 5-bedroom home. We’re not asking for more. We just want to be transparent about what the layout’s going to be when people come there.” *Id.* at 1:45:50.

88. The Plan Commission then denied the request, with no further discussion.

89. Four months later, the Swansons made a similar request for an exception to the 4-bedroom limit, and their request was heard during the May 28, 2024, meeting.

90. The video of that meeting is available on YouTube at <https://www.youtube.com/watch?v=2ggZ-Lck5UA>, and the discussion of the Swansons’ request begins at 1:37:12.

91. Like the Wilsons, the Swansons explained that they did not want to exceed the 12-person limit, but just wanted to allow people to spread out and use the whole house.

92. Denise Bhirdo was the first Plan Commission member to comment, and she immediately raised the denial of the Wilsons' prior request: "Wilson's asked for the same thing that Swansons are asking for. We denied Wilson's. How—if we're supposed to be fair and equitable—how do we allow this?" *Id.* at 1:40:03.

93. She said she "underst[ood] to a certain point" the Swansons' argument that they just want to allow guests to spread out, to provide "the best possible stay and privacy for the guests," but then said, "when I was growing up and there were no STRs, if you didn't rent a cottage you got a motel room and there were two beds and mom and dad slept in one and the kids slept in the other one and there was no privacy and that's just the way the world revolved. Um, I realized we live in a different world now, um, but, I'm just going to make a motion to deny." *Id.* at 1:40:26.

94. Plan Commission member Marjorie Grutzmacher immediately seconded the motion to deny. *Id.* 1:41:26.

95. After just a few more minutes of discussion, the Plan Commission denied the request. *Id.* 1:41:28–1:46:50.

96. Only Nate Bell voted against the motion to deny the request, on the basis that the Swansons' home is in a different location in the Village than the Wilsons' home. *Id.*

Plaintiffs' Numerous Attempts to Resolve the Issue With the Village

97. On August 14, 2024, counsel for the Plaintiffs sent a letter to the Village Administrator, Julie Schmelzer, the Village Attorney, Randy Nesbitt, and the Village Board, explaining that the 4-bedroom limit is unlawful as applied to them for a variety of reasons, including, among others, that their properties are grandfathered, legal nonconforming uses under the Village's own ordinances and state law. A true and correct copy of this letter is attached to this complaint as Exhibit E.

98. Among other things, the letter asked for clarification from the Village about whether it agreed that the Plaintiffs' properties were grandfathered and exempt from the 4-bedroom limit.

99. Plaintiffs' letter asked for a response two weeks later, to allow the Village enough time to discuss the letter at its next board meeting scheduled for August 20.

100. Two days later, Mr. Nesbitt sent back a letter stating that "Village Officials are in no position to provide advance determinations as to potential future enforcement of the Village Zoning Code." A true and correct copy of this letter is attached to this complaint as Exhibit F.

101. Counsel for the Plaintiffs responded via email an hour later. A true and correct copy of that email chain, and most emails described below, is attached to this complaint as Exhibit G.

102. As stated in Mr. Nesbitt's letter and provided in Village ordinances, one of the duties of the Village Administrator is to "make interpretations regarding the provisions of [the zoning code]." Village Ordinance § 66.1510(3).

103. Plaintiffs' counsel explained that Plaintiffs were seeking "an interpretation of the zoning code as to our clients," "specifically, ... that their properties are grandfathered." Ex. G at 10–11.

104. The email emphasized that the Plaintiffs "do not want to violate the law or risk an enforcement action against them," and "would rather get clarity from the Village about this without litigation." Ex. G at 11.

105. Plaintiffs also asked, "[i]f there is some other process for seeking a determination from the Village about this," to "please let [them] know what that is." Ex. G at 11.

106. Plaintiffs' counsel followed up via email five days later, the morning after the Village's board meeting, on August 21. Ex. G at 10.

107. Administrator Schmelzer responded with a short email stating that "the Village has referred the matter to our insurance carrier." Ex. G at 9.

108. Plaintiffs' counsel responded an hour later: "Ok, but at this point, all I am asking is what the Village's position is with respect to the issues we raised in our letter. Does the Village agree or disagree with us that the 4-bedroom limit cannot be applied to our clients, because, among other reasons, they are grandfathered?" Ex. G at 9.

109. Mr. Nesbitt then responded that "[t]he Village's position is set forth in its Code of Ordinances." Ex. G at 8.

110. Plaintiffs' counsel tried again, explaining that "[t]he Village's ordinances are not clear in this situation. As noted in our letter, we read the Village's

grandfathering provisions (66.0900 et seq.) as applying to our clients to allow them to continue using their 5th (and/or 6th bedrooms), subject to continued compliance with the occupancy limit. We also do not read the Village's ordinances as clearly prohibiting short-term-rental owners from allowing their guests to use futons and pull-out couches, as Julie has been telling short-term-rental owners. So I am just trying, on behalf of our clients, to understand the Village's position as to how it interprets its own ordinances so that they can determine if they are at risk of some sort of enforcement proceedings against them." Ex. G at 7.

111. Plaintiffs' counsel also asked again, "Is there some other process by which we can get a determination from the Village about these issues, other than the letter we sent and discussion we are currently having? If so, please let me know what that is." Ex. G at 7.

112. On August 22, Plaintiffs' counsel met briefly with Mr. Nesbitt in person to discuss this issue. Plaintiffs' counsel reiterated that Plaintiffs were trying to resolve the issue without litigation if at all possible, and, at this stage, simply wanted to understand the Village's position. Counsel emphasized that, if the Village needed more time to determine its position, Plaintiffs would be more than willing to wait a reasonable amount of time.

113. Mr. Nesbitt said he understood and would think about possibly calling a special meeting for the Board to discuss the issues raised in Plaintiffs' letter more thoroughly.

114. Five days later, on August 27, Plaintiffs' counsel followed up, asking, "[w]hen do you think you will be able to tell me what the Village's position is with respect to the issues raised in our letter?" Ex. G at 7.

115. The following day, Mr. Nesbitt responded that he had learned "that the Village Staff is undertaking a review of the ordinance position with respect to 5+ bedroom rentals," and this review might, possibly, result in "recommended changes to" the ordinance. In light of that, Mr. Nesbitt stated that he was "not going to sidestep their review of the process with a request or direction to the Village Board." As for "how long" this review and recommendation might take, Mr. Nesbitt stated that "there is no specific timeframe for that process." Ex. G at 6.

116. Plaintiffs' counsel then asked whether the Village would "agree that, in the meantime, [Plaintiffs] can allow their guests to use their extra bedrooms (and allow their guests to sleep wherever they want, including futons and pull-out couches), so long as they stay under the 12-person limit?" Counsel emphasized that this would be a temporary agreement, but it would allow the Village to "take as long as it wants to review the issue carefully and thoroughly and [] avoid litigation for the time being." Ex. G at 5–6.

117. If not, however, counsel emphasized that Plaintiffs would "need, at the very least, some sense of how long this review process will take," since "[t]he four-bedroom limit and limit on where guests can sleep are impacting both current guests and future reservations." Ex. G at 6.

118. On Friday, August 30, Mr. Nesbitt responded, “I can’t in good conscience recommend that the Village suspend an[] ordinance while it is under review. So I will not be making that request.” Ex. G at 5.

119. A half an hour later, Plaintiffs’ counsel tried to explain, yet again: “We are not asking you or the Village to suspend the ordinance. As you know from our letter, our position is that, under *the Village’s existing ordinances*, the 4-bedroom limit does not apply to our clients because they are grandfathered (i.e., legal non-conforming uses) under 66.0900 et seq. Does the Village agree with us about that or not?” Ex. G at 4.

120. Counsel also asked Administrator Schmelzer directly, “Can you give us a sense on how long this review will take?” Ex. G at 4.

121. Plaintiffs’ counsel followed up again, five days later, in the late afternoon of September 3. Ex. G at 3.

122. Mr. Nesbitt responded a few minutes later, restating that “neither Julie nor I have the authority to suspend an ordinance, nor can I recommend in fairness and good conscience that the Village Board suspend an ordinance subject to later review.” Ex. G at 3.

123. Within minutes, Plaintiffs’ counsel replied, “Ok, but that still doesn’t answer my question. Does the Village agree that my clients are grandfathered under the Village’s existing ordinances or not?” Ex. G at 2–3.

124. Plaintiffs' counsel followed up again the following day, and re-asked Administrator Schmelzer for "a sense of how long your review and recommendation will take." Ex. G at 2.

125. Mr. Nesbitt responded that he "has no plan to render any legal opinion on the subject," "given that there are no pending permit issuances or enforcement issues with respect to the code section that you have inquired about." As for the timeframe for a review of the ordinance, he represented that "my recent discussions with Julie suggest there is no set timeline in which to do so." Ex. G at 2.

126. A few minutes later, Administrator Schmelzer responded separately, "it is on my list of projects, but a very low priority." A true and correct copy of this email is attached to this complaint as Exhibit H.

127. Plaintiffs' counsel sent one final email the following day emphasizing that the Village's refusal to "tell [Plaintiffs] its position on whether [they] are grandfathered" or to provide "any assurances that the Village won't enforce the 4-bedroom limit and limit on where guests can sleep against them" was insufficient to avoid a lawsuit. Ex. G at 1.

128. Counsel emphasized that Plaintiffs would still "love to resolve this without litigation if at all possible," but since the Village seemed uninterested, Plaintiffs had no choice but to file a lawsuit, given that the limits have a "real and present impact on their guests and future reservations." Ex. G at 1.

129. Counsel warned that this would be the last email before Plaintiffs filed a lawsuit. Ex. G at 1.

130. Neither Mr. Nesbitt nor Administrator Schmelzer responded.

CAUSES OF ACTION

CLAIM ONE: Violation of Wis. Stat. § 66.1014

131. Wisconsin's right to rent law, Wis. Stat. § 66.1014, provides that municipalities like the Village "may not enact or enforce an ordinance that prohibits the rental of a residential dwelling."

132. Any ordinance inconsistent with the right to rent "does not apply and may not be enforced." *Id.*

133. The Village may "regulat[e]" short-term rentals, but not "in a manner that is [] inconsistent with" the right to rent a home. *Id.*

134. The Village's 4-bedroom limit effectively prohibits homeowners with 5 or more bedrooms from using part of their home for their short-term rental.

135. Similarly, Administrator Schmelzer's ad hoc limit on where guests can sleep within the home also effectively prohibits homeowners from using parts of their home for their short-term rental.

136. These limits are therefore "inconsistent with" the right-to-rent law and "may not be enforced." *Id.*

CLAIM TWO: Violation of Village Ordinances §§ 66.0901, 66.0911

137. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

138. Village Ordinance § 66.0901 provides: "[t]he lawful non-conforming use of land or water; or a lawful non-conforming use on a conforming or non-conforming

lot which existed at the time of the adoption or amendment of this chapter may be continued, although the use does not conform with the provisions of this chapter.”

139. Village Ordinance § 66.0911 provides: “[t]he use of a structure existing at the time of the adoption or amendment of this chapter may be continued although the structure’s size or location does not conform to the established building setback, height, parking, loading and/or access provisions of this chapter.”

140. Renting a single-family home on a short-term basis is a permitted use under the Village’s zoning code. *See* Village Ordinance § 66.0311(1)(a).

141. As described above, the Swansons (with respect to 2226 Scandia Rd.) and the Clintons were both renting their properties on a short-term basis before the 4-bedroom limit was adopted.

142. Thus, under the Village’s own ordinances, they may “continue” to use their fifth bedrooms, notwithstanding the change to the zoning code.

143. The Village’s refusal to acknowledge that the 4-bedroom limit does not apply to the Swansons’ and Clintons’ properties violates the Village’s own ordinances.

CLAIM THREE: Violation of Wis. Stat. § 66.23(7)(h)

144. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

145. Similarly, Wis. Stat. § 66.23(7)(h) provides, in relevant part, that “[t]he continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance.”

146. This section is applicable to villages through Wis. Stat. § 61.35.

147. As described above, the Swansons (with respect to 2226 Scandia Rd.) and the Clintons were both renting their properties on a short-term basis before the 4-bedroom limit was adopted.

148. Thus, under state law, they may “continue[]” to use their fifth bedrooms, notwithstanding the change to the zoning code.

149. The Village’s refusal to acknowledge that the 4-bedroom limit does not apply to the Swansons’ and Clintons’ properties violates state law.

CLAIM FOUR: Violation of the “Building Permit Rule”

150. The Wisconsin Supreme Court has recognized “the Building Permit Rule,” which is a “bright line rule vesting the right to use property consistent with the current zoning at the time a building permit application that strictly conforms to all applicable zoning regulations is filed.” *Golden Sands Dairy, LLC*, 2018 WI 61, ¶ 18 (citation omitted).

151. The Wisconsin Supreme Court made clear in *Golden Sands* that the building-permit rule applies not only to the *structures* covered by the permit, but also to the “use” of the property, per the zoning code in place at the time of the permit. *E.g.*, 2018 WI 61, ¶¶ 2–4, 13, 18, 24–26.

152. As the Court noted, the rationale of the rule is to provide “predictability for land owners, purchasers, developers, municipalities[,] and the courts,” and to allow “developer[s] [to] make expenditures in reliance on a zoning classification.” *Id.* § ¶¶ 22, 24.

153. As noted above, Plaintiffs Wilsons and Froemmings both began building their properties, with building permits, in late 2022/early 2023, well before the 4-bedroom limit was adopted in June 2023.

154. Both built their properties intending to use them as short-term rentals and expended significant resources adding a fifth and/or sixth bedroom, specifically to make the house more attractive to their guests.

155. Per the building permit rule, they are entitled to use the property consistent with the zoning code at the time the building permit was obtained.

156. The 4-bedroom limit therefore cannot be enforced against them.

157. The Village's refusal to acknowledge that the 4-bedroom limit does not apply to the Wilsons' and Froemmings' properties violates the building permit rule.

CLAIM FIVE: Violation of Wis. Const. art. I, § 1 – Retroactive Zoning

158. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

159. Article I, Section 1 of the Wisconsin Constitution provides: "All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed."

160. This provision provides due process protections similar to those guaranteed under the Fourteenth Amendment to the United States Constitution. *See, e.g., Miller v. Zoning Bd. of Appeals of Vill. of Lyndon Station*, 2023 WI 46, ¶ 11, 407 Wis. 2d 687, 991 N.W.2d 380; *In re Paternity of John R.B.*, 2005 WI 6, ¶ 18, 277 Wis. 2d 378, 690 N.W.2d 849.

161. Many courts have held that the retroactive application of zoning laws would violate due process; and thus any preexisting, nonconforming use must be permitted to continue after a change in zoning laws. *See generally*, 8A McQuillin Mun. Corp. § 25:249 (3d ed.).

162. The Wisconsin Supreme Court held the same in *Des Jardin v. Town of Greenfield*, 262 Wis. 43, 47–48, 53 N.W.2d 784 (1952), finding that, if an ordinance prohibiting a trailer on a property “were to be construed as being retrospective in operation, it would be unconstitutional and invalid.” The Court favorably quoted McQuillin for the proposition that “zoning regulations cannot be made retroactive and neither can prior nonconforming uses be removed nor existing conditions be affected thereby.”

163. Wisconsin courts have continued to recognize that *Des Jardin* stands for this proposition. *See Golden Sands Dairy*, 2018 WI 61, ¶ 21 (“The nonconforming use doctrine is implicated when lawful uses of land are made unlawful by a change in zoning regulations ... under the nonconforming use doctrine, the landowner is allowed to continued using the land in the now-nonconforming fashion.”); *Adams Outdoor Advert. Ltd. P’ship v. City of Madison*, 2017 WI App 56, ¶ 13, 377 Wis. 2d 728, 902 N.W.2d 808 (“*Des Jardin* stands for the proposition that ‘zoning regulations cannot be made retroactive and neither can prior nonconforming uses be removed nor preexisting conditions be affected thereby.’”), *aff’d*, 2018 WI 70, 382 Wis. 2d 377, 914 N.W.2d 660.

164. And Wisconsin courts have repeatedly emphasized that “[l]egal nonconforming uses are protected because of concerns that retroactive application of zoning ordinances would be unconstitutional.” *Hussein v. Vill. of Germantown Bd. of Zoning Appeals*, 2011 WI App 96, ¶ 12, 334 Wis. 2d 764, 800 N.W.2d 551; *State ex rel. Covenant Harbor Bible Camp of Cent. Conf. of Evangelical Mission Covenant Church of Am. v. Steinke*, 7 Wis. 2d 275, 283, 96 N.W.2d 356 (1959); *Sauk Cnty. v. Trager*, 113 Wis. 2d 48, 56, 334 N.W.2d 272 (Ct. App. 1983) (“Zoning ordinances can not be applied retroactively where vested or substantial rights are involved.”), *aff’d*, 118 Wis. 2d 204, 346 N.W.2d 756 (1984).

165. The Village’s refusal to confirm that the 4-bedroom limit does not apply to Plaintiffs’ properties violates Plaintiffs’ constitutional rights under Article I, Section 1 of the Wisconsin Constitution.

CLAIM SIX: Violation of Village Ordinances

166. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

167. As noted above, Administrator Schmelzer has been telling short-term rental owners that their guests are not allowed to sleep on couches or futons during their stay.

168. No Village ordinance, that Plaintiffs are aware of, clearly provides that guests cannot sleep on futons and pull-out couches within the home.

169. This restriction is therefore ultra vires and unlawful.

CLAIM SEVEN: Violation of Wis. Const. art. I, § 1 – Arbitrary and Unreasonable Regulation

170. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

171. As noted above, the Wisconsin Supreme Court has interpreted article I, section 1 “as providing the same equal protection and due process rights afforded by the Fourteenth Amendment to the United States Constitution.” *Mayo v. Wisconsin Injured Patients & Fams. Comp. Fund*, 2018 WI 78, ¶ 35, 383 Wis. 2d 1, 914 N.W.2d 678.

172. The Wisconsin Supreme Court has recognized that due process protects individuals from “certain arbitrary, wrongful actions ‘regardless of the fairness of the procedures used to implement them.’” *Penterman v. Wisconsin Elec. Power Co.*, 211 Wis. 2d 458, 480, 565 N.W.2d 521 (1997) (citations and quoted source omitted).

173. The Wisconsin Supreme Court has also held, on more than one occasion, that zoning ordinances are unconstitutional and violate due process if they are “arbitrary and unreasonable,” having “no substantial relation to the public health, safety, morals or general welfare.” *E.g.*, *Town of Rhine v. Bizzell*, 2008 WI 76, ¶ 37, 311 Wis. 2d 1, 751 N.W.2d 780 (holding that the Town of Rhine’s zoning ordinance failed that test); *Cushman v. City of Racine*, 39 Wis. 2d 303, 311, 159 N.W.2d 67 (1968) (same with respect to a Racine zoning ordinance).

174. Plaintiffs do not seek to exceed the 12-person capacity limit, and have communicated that clearly to the Village, as described in detail above.

175. Given that, the 4-bedroom limit is “arbitrary and unreasonable” as applied to them.

176. Where guests happen to sleep at night in a private home does not affect anyone else in the neighborhood or the Village, or have any relationship whatsoever to “public health, safety, morals or general welfare.”

177. If anything, forcing guests to crowd into fewer bedrooms than the home has available is *detrimental* to public health and safety.

178. There is no rational justification for the 4-bedroom limit as applied to Plaintiffs.

179. There is also no rational justification for Administrator Schmelzer’s ad hoc prohibition on guests using pull-out couches or futons in the house to sleep at night.

180. These limits are therefore unconstitutional as applied to Plaintiffs.

CLAIM EIGHT: Violation of Wis. Const. art I, § 13

181. Plaintiffs reallege and incorporate the preceding allegations of the complaint.

182. Article I, § 13 of the Wisconsin Constitution provides that “[t]he property of no person shall be taken for public use without just compensation therefor.”

183. The Wisconsin Supreme Court has held that Article I, § 13 “is self-executing and needs no express statutory provision for its enforcement,” and thus claims can be “based directly on Article I, Section 13.” *Zinn v. State*, 112 Wis. 2d 417, 436, 334 N.W.2d 67 (1983); *E-L Enterprises, Inc. v. Milwaukee Metro. Sewerage Dist.*, 2010 WI 58, ¶ 38, 326 Wis. 2d 82, 785 N.W.2d 409.

184. The Village's 4-bedroom limit, as applied to Plaintiffs, operates as a taking of their property without just compensation.

185. The 4-bedroom limit, as applied to Plaintiffs, is effectively a physical invasion of private property.

186. As noted above, Defendant Schmelzer has told one of the Plaintiffs that any bedrooms beyond four "would have to be locked/not accessible to guests," and asked another, "How will the fifth bedroom be restricted from use? I need a statement indicating how it will be prevented access, e.g. will it be locked at all times?"

187. The 4-bedroom limit also deprives Plaintiffs of all economically beneficial use of the fifth and/or sixth bedrooms.

188. The 4-bedroom limit also fails the "ad hoc factual, traditional takings inquiry of *Penn Central* and *Zealy*." *R.W. Docks & Slips v. State*, 2001 WI 73, ¶ 17, 244 Wis. 2d 497, 628 N.W.2d 781.

189. The Village's 4-bedroom limit, as applied to Plaintiffs, is a taking under Article I, § 13 of the Wisconsin Constitution, for which Plaintiffs are entitled to just compensation.

REQUEST FOR RELIEF

Plaintiffs therefore request the following relief:

- A. A temporary injunction preventing the Village from enforcing its 4-bedroom limit or Administrator Schmelzer's ad hoc limit on where guests can sleep against the Plaintiffs while this case proceeds;

- B. A permanent injunction preventing Village from enforcing its 4-bedroom limit or Administrator Schmelzer's ad hoc limit on where guests can sleep against the Plaintiffs;
- C. A declaration that the Village's 4-bedroom limit and Administrator Schmelzer's ad hoc limit on where guests can sleep are unlawful as applied to Plaintiffs and cannot be enforced against them;
- D. In the alternative, an injunction requiring the Village to pay Plaintiffs just compensation for the taking of their property; and
- E. Costs and any such other relief as the Court deems appropriate.

Dated: September 17, 2024

Respectfully Submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY

Electronically signed by Luke N. Berg

Richard M. Esenberg (#1005622)

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Attorneys for Plaintiffs

ORDINANCE NO. 2023-004
AN ORDINANCE AMENDING CHAPTER 66, ZONING,
OF THE MUNICIPAL CODE FOR THE VILLAGE OF SISTER BAY
TO ADDRESS SHORT-TERM RENTAL LAND USE MATTERS

WHEREAS, after one year of administering a Short-Term Rental Licensing Ordinance, known as Article IV, Chapter 18, of the Village of Sister Bay Municipal Code, enacted in 2022, land use compatibility concerns have arisen which warrant looking at the zoning regulations applicable to Short-Term Rentals; and,

WHEREAS, amending the Zoning Code, to accommodate trends and needs, should only be allowed if such change is consistent with the Purpose and Intent of the Zoning Code, said Purpose and Intent identified in Section 100 of Chapter 66; and,

WHEREAS, the *Purpose* of the code is to promote the health, safety, aesthetics and general welfare of the community; and,

WHEREAS, the *Intent* of the code is to regulate parking, lessen congestion, secure safety, facilitate the provision of adequate services, protect traffic routes, stabilize and protect property values, preserve and promote the beauty of the community, and use enforcement and penalties to provide for the administration of the adopted zoning regulations; and,

WHEREAS, a public hearing was held by the Plan Commission on May 22, 2023, and after that hearing careful consideration was given to the comments received, and, upon finding the proposed amendments to Chapter 66 would be consistent with the Purpose and Intent of the Zoning Code, the Plan Commission recommended the Sister Bay Village Board of Trustees make amendments to the Zoning Code.

NOW, THEREFORE, the Village Board of the Village of Sister Bay does hereby ordain as follows:

SECTION 1 Adoption of Code Amendment.

The amendments to the current Zoning Code, known as Chapter 66, of the Village of Sister Bay Municipal Code, be amended as set forth herein. Additions are shown as an underline; deletions are designated by a strikethrough.

Amend Sec. 66.0311(a)(1), Permitted Uses, in the R-1 district, as follows,

(1) *Single family dwellings, including short-term rentals.*

Amend Sec. 66.0312(a)(1) to clarify dwellings in R-2 can be used as short-term rentals; amend subsection (6) which prohibits short-term rentals in residential condominiums in the R-2 district; and create subsection (10) to exempt previously approved developments from renting their units on a short-term basis,

(1) *Single family dwellings, including short-term rentals.*

(6) *Residential condominiums, and multiple family dwelling units ~~excluding transient lodging and/or short-term rentals.~~*



Amend Sec. 66.0313(a)(1), Permitted Uses, in the R-3 district, as follows,

(1) Single family dwellings, including short-term rentals.

Amend Sec. 66.0315(a)(1), Permitted Uses, in the CS-1 district, as follows,

(1) Single family dwellings, including short-term rentals.

Amend Sec. 66.0320(a)(35) to allow short-term rentals in the B-1 district,

(35) Single family housing in existence as of January 1, 2007, said housing can be used as a short-term rental.

Amend Sec. 66.0322(a)(16) to allow short-term rentals in the B-2 district,

(16) Single family housing in existence as of September 1, 2010, said housing can be used as a short-term rental.

Amend Sec. 66.0323(a)(15) to allow short-term rentals in the B-3 district,

(15) Single family housing in existence as of January 1, 2004, said housing can be used as a short-term rental.

Amend Sec. 66.0403(j)(1)(a), Parking space requirements, as follows,

(1) Residential Uses (including garage spaces):

a. Single-family dwellings, two spaces per dwelling unit. Properties licensed as a short-term rental in detached single-family dwellings, regardless of the number of bedrooms rented, shall provide a minimum of two, and not more than four, conforming parking spaces. Additional parking spaces can be authorized upon review by the Plan Commission. Additional parking needed on a temporary basis may be authorized upon the issuance of a Special Event Permit.

Amend Sec. 66.0406(f), Number of driveways allowed, to add,

(f) Lots in the R-1, R-3, R-4, B-2 and B-3 districts shall be limited to one driveway unless a second one is approved by the Plan Commission. Lots in all other districts shall be limited to two driveways. For short-term rentals with a nonconforming number of driveways, the nonconforming number of driveways shall be brought into compliance before the property can be licensed as a short-term rental.

Amend Sec. 66.0406, Highway Access, to add subsection (i),

(i) Shared driveways.

Unless approved by the Plan Commission, there shall be no shared driveways, and, shared driveways in existence as of the date of this Chapter shall not be used to serve a property licensed as a short-term rental unless all parties with an interest in the shared driveway agree the driveway can be used for such purposes.

Amend Sec. 66.0720, On-Premise Signs without Permit, to add subsection (k),

(k) For Sale or Lease Signs. Signs advertising the sale or lease of property shall be limited to one sign, except a corner lot is allowed one sign on each street bordering the lot, said sign not to exceed five sq. ft., and the sign shall not be erected prior to a signed listing contract, and, shall be removed within ten days

of a signed sale document or lease. 'For Lease' signs shall be prohibited on a property licensed as a short-term rental.

Amend Sec. 66.0770, Prohibited Signs, to add subsection (p),

(p) Short-Term Rental Signage. No property with a nonconforming use or detached single family dwelling in the R-1, R-2, R-3, or CS-1 districts used for short-term rental shall erect a sign advertising the name of the short-term rental or availability thereof.

Amend Sec. 66.0770(g)(7), Prohibited Signs, to add,

(7) No sign shall be painted on rocks or affixed to trees or any public infrastructure such as utility poles, street signs or similar equipment, including truck bodies, furniture, yard art, mailboxes, school bus waiting shelters, or similar objects not designed to support a ground sign.

Amend Sec. 66.0901, Non-Conforming Uses, to create,

(e) Multiple Occupancy Developments are a grouping of residential rental units on the same lot that predated the Village adopting zoning regulations and do not meet the definition of hotel, motel or condominium. These uses are not listed in a specific zoning district and are regulated by conditional use permit. There are two types of multiple occupancy developments:

i. Multiple Occupancy Development, Short-Term - which rent the units on a transient basis; and,

ii. Multiple Occupancy Development, Long-Term - which rent the units for periods of thirty consecutive days or more.

Short-Term Multiple Occupancy Developments can continue to rent all units which predated zoning, and did not discontinue such rental for twelve months or more, but any expansion of the use shall only be authorized by conditional use permit. Said units can continue to be rented as they were prior to Act 59, but proof of said rental history shall be provided to the Village so as to determine the intensity of the nonconforming use. Since the use cannot be enlarged or extended, the number of days the development can be rented is limited to the number of days in a calendar year it was rented prior to the adoption of Act 59. The nonconforming use must still comply with the Municipal Code, Chapter 18, Business Regulation.

Long-Term Multiple Occupancy Developments cannot rent units less than thirty consecutive days but if a primary dwelling exists within the development, that one dwelling alone can be used as a short-term rental; if more than one unit were rented for periods less than thirty days, the property would transition to a Short-Term Multiple Occupancy Development.

Create Sec. 66.0923, to clarify how to address nonconforming uses that are intensified in use,

66.0923 Intensification of Nonconforming Features

Anytime a use is intensified by increasing the number of occupants, traffic, sales, or similar expansion of the use, the nonconforming features of the lot, such as nonconforming driveways, parking areas, signs, landscaping, open space, or other nonconformities, shall be brought into compliance with this Chapter. However, the intensification of a use shall not require the landowner to bring the lot into conformance

with the dimensional lot width and area standards of this Chapter or the setback provisions of this Chapter. Applicable to the intensification of a use, in no case shall a nonconforming feature of a lot located in a public right-of-way be allowed to continue.

Amend Sec. 66.2100, Specific Words and Phrases, as follows,

Condominium, Residential. A condominium ownership property consisting of multiple single family dwelling units, whether within one building or multiple buildings. ~~where more than 80 percent of the units are owner occupied and the casual rental use does not exceed 30 days per year.~~

Condominium, Transient. A condominium ownership property where more than 80 percent of the units are available for transient rentals for 365 days per year. A staff member must be on-site and available for a minimum period of 4 hours per day while open and operational. The development must be operated by a single management entity.

Duplex. A single structure consisting of two dwelling units with a common wall(s). (Amended Ordinance No. 263-021919)

Dwelling, Multiple-Family. A residential building designed for and occupied by three or more families, with the number of families in a residence not to exceed the number of dwelling units provided. Also referred to as an 'apartment building'. Units in a multiple family dwelling are intended to be rented on a long-term basis and are not considered transient lodging units or short-term rental units and cannot be used as such.

Dwelling, Two-Family. A building, also called a 'duplex', containing two separate dwelling (or living) units, with a common wall, each unit designed for occupancy by not more than ~~two~~ one families, and having separate entrances, sanitary sewer and water connections, and kitchen facilities.

Permitted. Means a use or structure which has received all applicable Zoning Permits and licenses to make the structure or use a legal, conforming use or structure.

Residential Condominium. An individually owned residential unit in a complex or building of like units. ~~Condominium owners own their units but share common spaces, amenities, and other resources.~~

Short Term Rental. A dwelling unit in which sleeping accommodations are offered for pay to tourists or transients for ~~periods of~~ brief periods of time, said stays are predominantly less than 30 consecutive days. These facilities are sometimes referred to as "vacation rentals". They do not include a boarding house which does not accommodate tourists or transients, ~~or~~ bed & breakfast establishments or inns, or a hotel or motel with a central, on-site, staffed reservation desk, and on-site property management. For purposes of this land use, 'rental period' shall mean a definite period of time, typically two to seven consecutive days, with a fixed commencement date and a fixed expiration date; the length of time, in days, one party rents a dwelling unit in a consecutive seven day stretch of time. In the R-1, R-3 and CS-1 zoning districts, short-term rental properties shall be restricted in occupancy to a maximum of 3 persons per legally permitted bedroom in existence at the time of this amendment, or at the time of the dwelling unit's establishment after the date of this amendment; additional occupancy is permissible only upon Plan Commission approval. In no case shall more than four bedrooms be rented, unless more bedrooms are authorized by the Plan Commission. Any property licensed under Chapter 18 as a short-term rental

after July 1, 2023, which was not previously licensed as a short-term rental the prior year, or whose license was suspended or revoked and a new license is required to operate as a short-term rental, the property can be rented just two periods of time in a consecutive seven-day period, each period shall be a minimum of two nights. For a short-term rental in a R-2 district, if the rental is in a condominium, the short-term rental thereof shall only be permissible if the rental was authorized by a Development Agreement, or, if the Homeowner's Association or Condominium Bylaws allow such rental.

~~Transient Condominium. The furnishing of an individually owned unit in a condominium development~~

SECTION 2 Available for Inspection.

A copy of this code section shall be permanently on file and open to public inspection in the Office of the Village Clerk two weeks prior to its adoption and after its enactment.

SECTION 3 Ordinances in Conflict.

All other ordinances in conflict herewith be, and the same hereby are repealed.

SECTION 4 Effective Date.

This ordinance shall take effect and be in full force from and after its passage and posting.

SECTION 5 Severability.

If a court of competent jurisdiction adjudges any section, clause, provision or portion of this ordinance unconstitutional or invalid, the remainder of this ordinance shall not be affected thereby.

VILLAGE OF SISTER BAY

By: 
Nate Bell, President

ATTEST:


Heidi Teich, Village Clerk

Ayes 6 Nays 1

Filed/Posted: June 27, 2023
Village Administration Office, 2383 Maple Dr
Sister Bay Post Office, 10685 N Bay Shore Dr
Sister Bay Liberty Grove Library, 2323 Mill Rd

From: **Julie Schmelzer** <julie.schmelzer@sisterbaywi.gov>
Date: Tue, Oct 10, 2023 at 9:31 AM
Subject: RE: Clarification on recent letter
To: Door County Rentals Swanson [REDACTED]

Hi Mark and Caley, please see my responses below in red.

...

3) When looking at the ordinance online it calls out that a property can have 4 bedrooms and sleep 12 maximum before needing a special permit. I do not see this called out in your letter, so wanted to make sure this is in fact a rule for next year? If so, my property at 2226 scandia has 5 bedrooms and sleeps 12. Given that I am at the 12 limit before needing to get a special use permit, I would assume that I do not need to get a special use permit? I am assuming this concern is less about the # of bedrooms and more about the total number of people in a house, but wanted to check. **No, it's a max of 4 legal rooms, so one would have to be locked/not accessible to guests.**

Exhibit
B

From: **Julie Schmelzer** <julie.schmelzer@sisterbaywi.gov>

Date: Tue, Jul 16, 2024 at 2:20 PM

Subject: STR License - 10809 Cardinal Ct.

To: Mark Swanson <[REDACTED]>

Hi Mark, I am writing in regard to the Short-Term Rental License application submitted authorizing your rental for the upcoming season (2024-2025). The license has been approved.

In order to ensure compliance with the code, be advised the following are restrictions applicable to your unit:

1. There can be no signage on the property visible from the road (e.g. a nameplate advertising the name of the rental);
2. You can only allow sleeping in the 4 bedrooms (no pull out couches, etc.);
3. There shall be no more than 12 guests onsite at a time;
4. There shall be no more than 4 vehicles parked onsite, including any garage stalls.

A license will be mailed to you and copies of the approved property rules sent to your neighbors (our code requires we send them a copy).

Julie Schmelzer, Village Administrator



On Tue, Apr 23, 2024 at 8:56 AM Julie Schmelzer <julie.schmelzer@sisterbaywi.gov> wrote:

Erin and John,

I'm reviewing your application for a STR license. Before we can issue a license I need the following from you:

1. How will the fifth bedroom be restricted from use? I need a statement indicating how it will be prevented access, e.g. will it be locked at all times?
2. We need an email address for your Agent.
3. Your DATCP license is going to expire. Will you have a new license by the time you rent under this new license?
4. Your garbage contract is from May 2023. I need one for 2024.

Please submit the required items to the Village clerk at heidi.teich@sisterbaywi.gov

Julie Schmelzer, Village Administrator





WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141
414-727-WILL (9455) | Fax 414-727-6385 | www.will-law.org
Luke@will-law.org | Direct: 414-727-7361

August 14, 2024

VIA email to:

Julie Schmelzer, Village Administrator

Randy Nesbitt, Village Attorney

Nate Bell, Denise Bhirdo, Kurt Harff, Louise Howson, Patrice Champeau, Lilly Orozco, and Alison Werner, members of the Village Board

Re: 5+ Bedroom Short-Term Rentals

Village of Sister Bay Board, Administrator, and Attorney,

We represent four owners of short-term rentals in Sister Bay with more than four bedrooms. Their names and property addresses are listed below. As you know, in June 2023, the Village amended its zoning ordinances to limit short-term-rentals to four bedrooms. We write to notify you that the four-bedroom limit is unlawful as applied to our clients, for multiple reasons, as explained in more detail below. We ask that, within two weeks of this letter, **by August 28**, you confirm in writing that you will not enforce the 4-bedroom limit against any of the properties listed below. If you are unwilling to do so, we will take further legal action against the Village to protect our clients' rights.

Village Administrator Julie Schmelzer has also been communicating to short-term-rental owners that their guests may not sleep anywhere in their home other than in the four approved bedrooms. According to Ms. Schmelzer, guests may not use pull-out couches, futons, etc., during their stay, even though they are at or under the occupancy limit. An example email from Ms. Schmelzer stating this restriction is attached to this letter. This requirement is not clearly stated anywhere in the Village's ordinances. Regardless, it is also unlawful for all of the reasons described below. We ask that you confirm in writing that, in addition to the 4-bedroom limit, you will not enforce this restriction against any of our clients either.

To be clear, none of our clients seek to exceed the Village's 12-person capacity limit on short-term rentals. They simply want to allow their guests—often families with young kids—to spread out in the home and use all of the bedrooms and sleeping options. To the extent the Village is concerned about overcrowding, the 12-person limit (or 3 per bedroom for fewer than 4 bedrooms) fully addresses that concern. Going further and preventing property owners from using the available rooms and sleeping arrangements in the house is arbitrary and irrational.

Exhibit
E

Our hope, and our clients' hope, is that the Village will be reasonable and that we will be able to resolve this issue without litigation. But if not, we are prepared to file a lawsuit.

Wisconsin's Right-to-Rent Law

As you are well aware, Wisconsin law gives homeowners a right to rent their home on a short-term basis. Wis. Stat. § 66.1014. Political subdivisions, like the Village, “may not enact or enforce an ordinance that prohibits the rental of a residential dwelling.” Any ordinance inconsistent with the right to rent “does not apply and may not be enforced.” The Village may “regulat[e]” short-term rentals, but not “in a manner that is [] inconsistent with” the right to rent a home. The Village’s 4-bedroom limit effectively prohibits homeowners with 5 or more bedrooms from using part of their home for their short-term rental. The 4-bedroom limit is therefore “inconsistent with” the right-to-rent law and “may not be enforced.”

Vested Property Rights

Even setting § 66.1014 aside, our clients have a right to use all of the bedrooms in their properties as a matter of vested property rights. The non-conforming use doctrine, a well-established rule of property law, is that “zoning regulations cannot be made retroactive and neither can prior nonconforming uses be removed nor existing conditions be affected thereby.” *Des Jardin v. Town of Greenfield*, 262 Wis. 43 (1952).¹ This principle is not only mandated by the Wisconsin Constitution, as the cases cited above explain, it is also reflected in state law and *in the Village’s own ordinances*. Wis. Stat. § 62.23(7)(h) provides that “[t]he continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance.” Likewise, Village Ordinance § 66.0901 provides that “[t]he lawful non-conforming use of land or water; or a lawful non-conforming use on a conforming or non-conforming lot which existed at the time of the adoption or amendment of this chapter may be continued, although the use does not conform with the provisions of this chapter.” *See also* Village Ordinance § 66.0911.

A related rule is the “building permit rule,” a “bright line rule” that gives property owners a “vest[ed] [] right to use property consistent with current zoning at the time a building permit application that strictly conforms to all applicable zoning regulations is filed.” *Golden Sands Dairy LLC v. Town of Saratoga*, 2018 WI 61, ¶ 18.

¹ For other articulations of the general rule, *see Golden Sands Dairy LLC v. Town of Saratoga*, 2018 WI 61, ¶ 21; *Adams Outdoor Advert. Ltd. P’ship v. City of Madison*, 2017 WI App 56, ¶ 13; *Hussein v. Vill. of Germantown Bd. of Zoning Appeals*, 2011 WI App 96, ¶ 12; *State ex rel. Covenant Harbor Bible Camp of Cent. Conf. of Evangelical Mission Covenant Church of Am. v. Steinke*, 7 Wis. 2d 275, 283 (1959); *Sauk Cnty. v. Trager*, 113 Wis. 2d 48, 56, (Ct. App. 1983), *aff’d*, 118 Wis. 2d 204 (1984).

As you know, the Village's 4-bedroom limit was adopted in June 2023. Village Ordinance 2023-004. While the Ordinance indicates that property owners can seek an exemption to the 4-bedroom limit from the Planning Commission, the Village has made clear that it will not grant any exceptions. Two of our clients attempted to follow that process, both were denied, and during the hearings, Planning Commission members stated that they would not grant any exception request "in an R district."² Moreover, Ms. Schmelzer's emails to our clients have asked them to specify how any extra rooms will be "locked" and how guests will be "prevented" from accessing the additional bedrooms in their homes.

Two of the four property owners listed below (the first two) were renting their homes on a short-term basis before the 4-bedroom limit went into effect, and thus they fall squarely into the non-conforming use doctrine and have a vested right to continue renting their properties and use all of the bedrooms.

The remaining two had a building permit and began building their homes well before the 4-bedroom limit was in place, and each of them invested substantial financial resources to add a fifth (and/or sixth) bedroom that they designed and built specifically for use in a short-term rental. Had they known the bedroom limit was about to change, they would have built their homes differently—precisely what the building permit rule is meant to protect against. The Wisconsin Supreme Court made clear in *Golden Sands* that the building-permit rule applies not only to the *structures* covered by the permit, but also to the "use" of the property, per the zoning code in place at the time of the permit. *E.g.*, 2018 WI 61, ¶¶ 2–4, 13, 18, 24–26. As the Court noted, the rationale of the rule is to provide "predictability for land owners, purchasers, developers, municipalities[,] and the courts," and to allow "developer[s] [to] make expenditures in reliance on a zoning classification," as our clients did here. *Id.* Thus, these homeowners are covered by the building-permit rule and also have a vested right to use all of the bedrooms in their homes when renting their properties on a short-term basis.

We note that the Village has allowed at least one other short-term-rental to continue to operate with more than four bedrooms. It should also allow our clients, who were renting or began building their homes before the change, to continue to use all of their bedrooms.

² See Video of January 23, 2024, Planning Commission Meeting at 1:42:17, available at <https://www.youtube.com/watch?v=X9zCnU5axrw>. At 1:39:20, Julie Schmelzer states "As of July 1, there should not be any five bedroom rentals any more in Sister Bay." At 1:41:07, Nate Bell asks, "The question I would have is, what circumstances do we want to say ok to beyond four bedrooms? Is there a circumstance we want to? ... I'm hard pressed to think how we would want to do that." At 1:41:28, Denise Bhirdo responds, "I might be inclined ... in countryside where you ... have a 10-acre lot ... [but] not in an R district." Notably, the Planning Commission has removed the link to this video from their website (<https://www.sisterbaywi.gov/meetings/>) but has not done so for any other Planning Commission meeting.

Due Process

The Wisconsin Supreme Court has also held, on more than one occasion, that zoning ordinances are unconstitutional and violate due process if they are “arbitrary and unreasonable,” having “no substantial relation to the public health, safety, morals or general welfare.” *E.g.*, *Town of Rhine v. Bizzell*, 2008 WI 76, ¶ 37 (holding that the Town of Rhine’s zoning ordinance failed that test); *Cushman v. City of Racine*, 39 Wis. 2d 303, 311 (1968) (same with respect to a Racine zoning ordinance).

Given that our clients do not seek to exceed the 12-person capacity limit, prohibiting their guests from using the extra bedrooms in their home is clearly arbitrary and unreasonable. Where guests happen to sleep at night in a private home does not affect anyone else in the neighborhood or the Village, or have any relationship whatsoever to “public health, safety, morals or general welfare.” If anything, forcing guests to crowd into fewer bedrooms than the home has available is *detrimental* to public health and safety. There is simply no rational justification for the 4-bedroom limit as applied to our clients. The same goes with Ms. Schmelzer’s prohibition on using pull-out couches or futons in the house.

Taking Without Just Compensation

Finally, to the extent the Village persists in enforcing the 4-bedroom limit against our clients, that limit operates as a taking of our clients’ property without just compensation. As you know, both the U.S. and Wisconsin Constitutions require compensation when government takes private property. *E.g.*, Wis. Const. art. I, § 13 (“The property of no person shall be taken for public use without just compensation therefor.”).

Both the United States Supreme Court and the Wisconsin Supreme Court have recognized that a regulation that goes too far can amount to what courts have called a “regulatory taking.” The Supreme Court has set forth an “ad hoc” balancing test for such claims that considers the “nature and character of the governmental action, the severity of the economic impact of the regulation on the property owner, and the degree to which the regulation has interfered with the property owner’s distinct investment-backed expectations in the property.” *See R.W. Docks & Slips v. State*, 2001 WI 73, ¶ 17; *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978).

These factors cut in favor of a compensable taking here. Our clients invested substantial resources to add the additional rooms to their homes, and the Village has effectively denied all economically beneficial use of the extra bedrooms. The Village’s restriction is also akin to a physical taking; indeed, as noted above, Ms. Schmelzer has even suggested that our clients must lock up their extra rooms to prevent their guests from using them. Finally, as already noted, the Village has no rational justification for deciding where the guests of a short-term-rental can sleep while they

are inside a private home. Given that the Village has “taken” a portion of our clients’ properties, our clients are entitled to just compensation from the Village—if the Village persists in enforcing that limit against them.

Our Clients

Our clients include the following homeowners and properties:

1. Mark and Caley Swanson – [Luna’s Retreat](#) (2226 Scandia Rd.), [Scandia Retreat](#) (2215 Scandia Road), and [Cardinal Retreat](#) (10809 Cardinal Ct.)
2. Hunter and Jessica Clinton – [Starkhaus](#) (10841 Birchwood Drive)
3. John and Erin Wilson – [The Sister Bay Haus](#) (10547 Fieldcrest Road)
4. Nick and Tara Froemming – [The Cherry Cabana](#) (10541 Fieldcrest Road)

Conclusion

As noted above, we respectfully ask for a written determination, within two weeks, that the Village will not enforce its 4-bedroom limit, or its restrictions on where guests sleep, against our clients.

We look forward to the Village’s response.

Sincerely,



Luke N. Berg



Lucas T. Vebber



Nathalie E. Burmeister

On Tue, Apr 23, 2024 at 8:56 AM Julie Schmelzer <julie.schmelzer@sisterbaywi.gov> wrote:

Erin and John,

I'm reviewing your application for a STR license. Before we can issue a license I need the following from you:

1. How will the fifth bedroom be restricted from use? I need a statement indicating how it will be prevented access, e.g. will it be locked at all times?
2. We need an email address for your Agent.
3. Your DATCP license is going to expire. Will you have a new license by the time you rent under this new license?
4. Your garbage contract is from May 2023. I need one for 2024.

Please submit the required items to the Village clerk at heidi.teich@sisterbaywi.gov

Julie Schmelzer, Village Administrator

From: **Julie Schmelzer** <julie.schmelzer@sisterbaywi.gov>

Date: Tue, Oct 10, 2023 at 9:31 AM

Subject: RE: Clarification on recent letter

To: Door County Rentals Swanson <[REDACTED]>

Hi Mark and Caley, please see my responses below in red.

...

3) When looking at the ordinance online it calls out that a property can have 4 bedrooms and sleep 12 maximum before needing a special permit. I do not see this called out in your letter, so wanted to make sure this is in fact a rule for next year? If so, my property at 2226 scandia has 5 bedrooms and sleeps 12. Given that I am at the 12 limit before needing to get a special use permit, I would assume that I do not need to get a special use permit? I am assuming this concern is less about the # of bedrooms and more about the total number of people in a house, but wanted to check. **No, it's a max of 4 legal rooms, so one would have to be locked/not accessible to guests.**

From: **Julie Schmelzer** <julie.schmelzer@sisterbaywi.gov>

Date: Tue, Jul 16, 2024 at 2:20 PM

Subject: STR License - 10809 Cardinal Ct.

To: Mark Swanson <[REDACTED]>

Hi Mark, I am writing in regard to the Short-Term Rental License application submitted authorizing your rental for the upcoming season (2024-2025). The license has been approved.

In order to ensure compliance with the code, be advised the following are restrictions applicable to your unit:

1. There can be no signage on the property visible from the road (e.g. a nameplate advertising the name of the rental);
2. You can only allow sleeping in the 4 bedrooms (no pull out couches, etc.);
3. There shall be no more than 12 guests onsite at a time;
4. There shall be no more than 4 vehicles parked onsite, including any garage stalls.

A license will be mailed to you and copies of the approved property rules sent to your neighbors (our code requires we send them a copy).

Julie Schmelzer, Village Administrator



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Since 1976

August 16, 2024

Randall J. Nesbitt
RJN@lcojlaw.com

Atty. Luke Berg
Wisconsin Institute for Law & Liberty
330 E. Kilbourn Ave., Suite 725
Milwaukee, WI 53202

Re: Demand Letter to Village of Sister Bay et al.

Dear Mr. Berg:

Thank you for your letter of August 14, 2024. As legal counsel to the Village of Sister Bay I would like to address your concerns in the most responsive and expeditious manner possible. Your request, as I view it, is a request for confirmation that specified ordinances of the Village of Sister Bay will not be enforced against specified owners or properties located within the Village of Sister Bay.

I will first note that the enforcement of the Village of Sister Bay Ordinances may be made not only by the persons that were included within your letter, but, according to Sec. 66.1550 of the Village of Sister Bay Zoning Code, may be initiated by the Village Board, the Village Administrator, the Village Plan Commission, or any property owner who would be specifically damaged by a violation.

In terms of the Village Officials directly involved in enforcement, the first contact is generally the Village Administrator. The functions of the Village Administrator with respect to zoning matters are set forth at Sec. 66.1510 of the Village of Sister Bay Zoning Code. Those duties include making interpretations of the zoning code, inspecting complaints, and instituting action on behalf of the Village of Sister Bay against violators. The Village of Sister Bay Plan

Exhibit
F

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August 16, 2024

Page 2

Commission also shares in the duties to review complaints and potential violations in dealing with enforcement issues as provided by Sec. 66.1500 of the Village of Sister Bay Zoning Code and Wis. Stats. §62.23.

As a result there is no one person, agency or commission which controls the power to direct enforcement of the Village of Sister Bay Zoning Code. As noted, members of the public claiming specific damage also have the authority to enforce the Village of Sister Bay Zoning Code.

The process by which enforcement of a particular violation is reviewed by Village Officials involves a detailed review of the specific facts and circumstances reported, a review of applicable regulations, and a determination, on a case by case basis, as to the appropriate action, if any, to be taken by the Village of Sister Bay. Determinations as to enforcement actions by the Village of Sister Bay are not taken lightly.

In this instance you are requesting an advance determination as to potential future violations of the Village of Sister Bay Zoning Code. Because there are no specific facts or circumstances as to alleged violations, the Village Officials are in no position to provide advance determinations as to potential future enforcement of the Village Zoning Code. There will also remain, entirely outside the control or influence of Village of Sister Bay, the opportunity of members of the public to initiate enforcement proceedings as to alleged zoning violations.

It is our hope that the clients you represent are able to avoid engaging in activities which would initiate review as to enforcement of the Village of Sister Bay Zoning Code. If that should occur, the Village of Sister Bay will ensure that the facts and circumstances of each alleged violation will be reviewed prior to any determination being made as to the initiation of enforcement proceedings. The commencement of any resulting enforcement proceedings would be filed in

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August 16, 2024

Page 3

Door County Circuit Court to enable any alleged violator to have the full opportunity to exercise Due Process rights as guaranteed by the State of Wisconsin Constitution.

Very truly yours,

LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.

By: 

Randall J. Nesbitt

Cc: Village of Sister Bay Trustees
Julie Schmelzer, Village Administrator

5127692

Friday, September 6, 2024 at 11:46:07 Central Daylight Time

Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals
Date: Thursday, September 5, 2024 at 2:55:44 PM Central Daylight Time
From: Luke Berg
To: Randy J. Nesbitt, Julie Schmelzer
Attachments: image003.png, image005.png, image008.png, image009.png

Thanks for the responses.

To summarize: (1) the Village won't tell us its position on whether our clients are grandfathered; (2) it won't tell us whether it believes there is some process to get a determination from the Village about that or what that process is; (3) it won't give our clients any assurances that the Village won't enforce the 4-bedroom limit and limit on where guests can sleep against them; and (4) the Village may, someday, consider revising the ordinance, but it won't tell us when and it's a "very low priority."

I hope you can understand why none of that is sufficient for our clients. As I already mentioned, the limits have a real and present impact on their guests and future reservations, and they do not want to risk an enforcement action against them.

So, unless the Village changes its position, this will be the last email I send you before we file a lawsuit. Again, we would love to resolve this without litigation if at all possible. But since the Village seems uninterested in working with us on that, we have no choice at this point but to proceed to court.

- Luke

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From: Randy J. Nesbitt <rjn@lcojlaw.com>
Date: Wednesday, September 4, 2024 at 3:51 PM
To: Luke Berg <luke@will-law.org>, Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>
Subject: RE: Grandfathered 5+ Bedroom Short-Term Rentals



Good Afternoon Luke,

Given that there are no pending permit issuances or enforcement issues with respect to the code section that you have inquired about, I have no plan to render any legal opinion on the subject.

As previously noted, Julie Schmelzer plans a review of that ordinance and my recent discussions with Julie suggest there is no set timeline in which to do so.

RANDALL J. NESBITT

Attorney



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Green Bay, WI 54305

P: 920-437-0476 F: 920-437-2868

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From: Luke Berg <luke@will-law.org>

Sent: Wednesday, September 4, 2024 2:08 PM

To: Randy J. Nesbitt <rjn@lcojlaw.com>; Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>

Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Following up. Does the Village agree or not that my clients are grandfathered under the Village's existing ordinances?

Julie – can you give us a sense of how long your review and recommendation will take?

- Luke

From: Luke Berg <luke@will-law.org>

Date: Tuesday, September 3, 2024 at 4:14 PM

To: Randy J. Nesbitt <rjn@lcojlaw.com>, Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>

Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Ok, but that still doesn't answer my question. Does the Village agree that my clients are grandfathered under the Village's existing ordinances or not?

- Luke

From: Randy J. Nesbitt <rjn@lcojlaw.com>

Date: Tuesday, September 3, 2024 at 4:08 PM

To: Luke Berg <luke@will-law.org>, Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>

Subject: RE: Grandfathered 5+ Bedroom Short-Term Rentals

Good Afternoon Luke,

I appreciate your advocacy on behalf of your client, but neither Julie nor I have the authority to suspend an ordinance, nor can I recommend in fairness and good conscience that the Village Board suspend an ordinance subject to later review.

I hope that your Labor Day weekend was nice.

RANDALL J. NESBITT

Attorney



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From: Luke Berg <luke@will-law.org>

Sent: Tuesday, September 3, 2024 3:55 PM

To: Randy J. Nesbitt <rjn@lcojlaw.com>; Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>

Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Randy and Julie,

I hope you each had a good Labor Day weekend.

Following up with each of you on my questions below... thanks!

- Luke

From: Luke Berg <luke@will-law.org>
Date: Friday, August 30, 2024 at 10:08 AM
To: Randy J. Nesbitt <rjn@lcojlaw.com>
Cc: Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>
Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Randy,

We are not asking you or the Village to suspend the ordinance. As you know from our letter, our position is that, under *the Village's existing ordinances*, the 4-bedroom limit does not apply to our clients because they are grandfathered (i.e., legal non-conforming uses) under 66.0900 et seq. Does the Village agree with us about that or not?

If the Village doesn't know what its position is about that because it wants to conduct a review of the language, fine, it can do that. All we are asking for in the meantime is a written confirmation that the Village will not enforce the 4-bedroom limit against our clients while the Village decides what its position is (again, based on its existing ordinances, and state law, etc.).

If the Village's position is that the 4-bedroom limit *does* apply to our clients, but it is considering changing the ordinance so that it does not, then, again, all we are asking for is a temporary confirmation that the limit won't be enforced against our clients while the Village considers whether to change it or not. I think that's a very reasonable request and a simple way to move forward without litigation.

Please let me know which of these two it is.

Julie,

Can you give us a sense on how long this review will take?

- Luke

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From: Randy J. Nesbitt <rjn@lcojlaw.com>
Date: Friday, August 30, 2024 at 9:44 AM
To: Luke Berg <luke@will-law.org>
Cc: Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>
Subject: RE: Grandfathered 5+ Bedroom Short-Term Rentals

Good Morning Luke,

I understand that review of an ordinance for potential changes takes some time, but I can't in good conscience recommend that the Village suspend and ordinance while it is under review. So I will not be making that request.

Hopefully the review will result in an ordinance that all can support.

RANDALL J. NESBITT

Attorney



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From: Luke Berg <luke@will-law.org>
Sent: Thursday, August 29, 2024 8:44 AM
To: Randy J. Nesbitt <rjn@lcojlaw.com>
Cc: Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>
Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Ok, thanks for the update.

Will the Village agree that, in the meantime, our clients can allow their guests to use their extra bedrooms (and allow their guests to sleep wherever they want, including futons and pull-out couches), so long as they stay under the 12-person limit? To be clear, we understand this would not necessarily be a permanent concession; it would last only until the Village decides what to do with this issue. If the Village will agree to that, then it can take as long as it wants to review the issue carefully and thoroughly and we can avoid litigation for the time being – and possibly ever, depending on what the Village ultimately decides to do.

If not, then we are going to need, at the very least, some sense of how long this review process will take. Our clients still have guests staying at their properties and will throughout the fall, and people are already making vacation plans and reservations for next summer. The four-bedroom limit and limit on where guests can sleep are impacting both current guests and future reservations.

- Luke

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From: Randy J. Nesbitt <rjn@lcojlaw.com>
Date: Wednesday, August 28, 2024 at 3:56 PM
To: Luke Berg <luke@will-law.org>
Cc: Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>
Subject: RE: Grandfathered 5+ Bedroom Short-Term Rentals

Good Afternoon Luke,

I have had the opportunity to review this matter with Village Staff and have found that the Village Staff is undertaking a review of the ordinance position with respect to 5+ bedroom rentals under the Village of Sister Bay Zoning Code. As a result of that, I am not going to sidestep their review of the process with a request or direction to the Village Board.

It is more prudent to allow that process to take its course and make a recommendation to the Village Board and Plan Commission as to the status of, and any recommended changes to, the Village STR Licensing ordinance.
That is the nature of legislative process.

In answer to your next question of, 'how long', the answer is that the staff needs time to go through this and make their recommendation, and there is no specific timeframe for that process.

RANDALL J. NESBITT
Attorney



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From: Luke Berg <luke@will-law.org>
Sent: Tuesday, August 27, 2024 9:26 AM
To: Randy J. Nesbitt <rjn@lcojlaw.com>
Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Randy,

Following up with you about this and our conversation last Thursday. When do you think you will be able to tell me what the Village's position is with respect to the issues raised in our letter? Thanks!

- Luke

From: Luke Berg <luke@will-law.org>
Date: Wednesday, August 21, 2024 at 2:42 PM
To: Randy J. Nesbitt <rjn@lcojlaw.com>
Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Randy,

The Village's ordinances are not clear in this situation. As noted in our letter, we read the Village's grandfathering provisions (66.0900 et seq.) as applying to our clients to allow them to continue using their 5th (and/or 6th bedrooms), subject to continued compliance with the occupancy limit. We also do not read the Village's ordinances as clearly prohibiting short-term-rental owners from allowing their guests to use futons and pull-out couches, as Julie has been telling short-term-rental owners. So I am just trying, on behalf of our clients, to understand the Village's position as to how it interprets its own ordinances so that they can determine if they are at risk of some sort of enforcement proceedings against them.

Is there some other process by which we can get a determination from the Village about these issues, other than the letter we sent and discussion we are currently having? If so, please let me know what that is.

- Luke

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From: Randy J. Nesbitt <rjn@lcojlaw.com>

Date: Wednesday, August 21, 2024 at 2:07 PM

To: Luke Berg <luke@will-law.org>, Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>, Lilly Orozco <lilly.orozco@sisterbaywi.gov>, Alison Werner <alison.werner@sisterbaywi.gov>, Denise Bhirdo <denise.bhirdo@sisterbaywi.gov>, Kurt Harff <kurt.harff@sisterbaywi.gov>, Patrice Champeau <patrice.champeau@sisterbaywi.gov>, Nate Bell <nate.bell@sisterbaywi.gov>, Louise Howson <louise.howson@sisterbaywi.gov>

Subject: RE: Grandfathered 5+ Bedroom Short-Term Rentals

Good Afternoon Luke,

The Village's position is set forth in its Code of Ordinances. Individual interpretations are made as needed upon applications and enforcement issues, neither of which are before the Village right now on the issues that you have identified.

You have raised a legal issue as to these matters, and all communications regarding these issues should be with the village's legal counsel.

RANDALL J. NESBITT

Attorney



Law Firm of Conway Olejniczak & Jerry, S.C.

231 S. Adams Street | P.O. Box 23200

Green Bay, WI 54305

P: 920-437-0476 F: 920-437-2868

E: RJN@lcojlaw.com | lcojlaw.com

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From: Luke Berg <luke@will-law.org>

Sent: Wednesday, August 21, 2024 1:42 PM

To: Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>; Randy J. Nesbitt <rjn@lcojlaw.com>; Lilly Orozco <lilly.orozco@sisterbaywi.gov>; Alison Werner <alison.werner@sisterbaywi.gov>; Denise Bhirdo <denise.bhirdo@sisterbaywi.gov>; Kurt Harff <kurt.harff@sisterbaywi.gov>; Patrice Champeau <patrice.champeau@sisterbaywi.gov>; Nate Bell <nate.bell@sisterbaywi.gov>; Louise Howson <louise.howson@sisterbaywi.gov>

Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Ok, but at this point, all I am asking is what the Village's position is with respect to the issues we raised in our letter. Does the Village agree or disagree with us that the 4-bedroom limit cannot be applied to our clients, because, among other reasons, they are grandfathered? Similar question with respect to the limit on where guests can sleep within a home. Is that actually how the Village interprets its own ordinances or not?

- Luke

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From: Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>

Date: Wednesday, August 21, 2024 at 1:06 PM

To: Luke Berg <luke@will-law.org>, Randy J. Nesbitt <rjn@lcojlaw.com>, Lilly Orozco <lilly.orozco@sisterbaywi.gov>, Alison Werner <alison.werner@sisterbaywi.gov>, Denise Bhirdo <denise.bhirdo@sisterbaywi.gov>, Kurt Harff <kurt.harff@sisterbaywi.gov>, Patrice Champeau <patrice.champeau@sisterbaywi.gov>, Nate Bell <nate.bell@sisterbaywi.gov>, Louise Howson <louise.howson@sisterbaywi.gov>

Subject: RE: Grandfathered 5+ Bedroom Short-Term Rentals

Hi Luke, the Village has referred the matter to our insurance carrier.

Julie

From: Luke Berg <luke@will-law.org>

Sent: Wednesday, August 21, 2024 9:01 AM

To: Randy J. Nesbitt <rjn@lcojlaw.com>; Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>; Lilly Orozco <lilly.orozco@sisterbaywi.gov>; Alison Werner <alison.werner@sisterbaywi.gov>; Denise Bhirdo <denise.bhirdo@sisterbaywi.gov>; Kurt Harff <kurt.harff@sisterbaywi.gov>; Patrice Champeau <patrice.champeau@sisterbaywi.gov>; Nate Bell <nate.bell@sisterbaywi.gov>; Louise Howson <louise.howson@sisterbaywi.gov>

Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Following up on this, now that the Board has had a chance to discuss this last night. Thanks!

- Luke

Deputy Counsel

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From: Luke Berg <luke@will-law.org>

Date: Friday, August 16, 2024 at 3:52 PM

To: Randy J. Nesbitt <rjn@lcojlaw.com>, Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>, lilly.orozco@sisterbaywi.gov <lilly.orozco@sisterbaywi.gov>, alison.werner@sisterbaywi.gov <alison.werner@sisterbaywi.gov>, Denise Bhirdo <denise.bhirdo@sisterbaywi.gov>, kurt.harff@sisterbaywi.gov <kurt.harff@sisterbaywi.gov>, patrice.champeau@sisterbaywi.gov <patrice.champeau@sisterbaywi.gov>, Nate Bell <nate.bell@sisterbaywi.gov>, louise.howson@sisterbaywi.gov <louise.howson@sisterbaywi.gov>

Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Randy,

Thank you for the quick response. As you note in your letter, and as provided in the Village's own ordinances, one of the duties of the Zoning Administrator is to "make interpretations regarding the provisions of [the zoning code]." 66.1510(3). That is what we are asking for - an interpretation of the zoning code as to our clients. Specifically, we're asking for a determination that the 4-bedroom limit, and the limit on where the guests can sleep, do not apply to them, for the reasons explained in our letter, including that their properties are grandfathered.

If there is some other process for seeking a determination from the Village about this, please let me know what that is.

If the Village is unable or unwilling to tell our clients how its own zoning code applies to them, they will have no other option than to file a lawsuit against the Village. Our clients do not want to violate the law or risk an enforcement action against them. They would rather get clarity from the Village about this without litigation, but will proceed to that if the Village will not provide it.

- Luke

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From: Randy J. Nesbitt <rjn@lcojlaw.com>

Date: Friday, August 16, 2024 at 2:17 PM

To: Luke Berg <luke@will-law.org>, Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>, lilly.orozco@sisterbaywi.gov <lilly.orozco@sisterbaywi.gov>, alison.werner@sisterbaywi.gov <alison.werner@sisterbaywi.gov>, Denise Bhirdo <denise.bhirdo@sisterbaywi.gov>, kurt.harff@sisterbaywi.gov <kurt.harff@sisterbaywi.gov>, patrice.champeau@sisterbaywi.gov <patrice.champeau@sisterbaywi.gov>, Nate Bell <nate.bell@sisterbaywi.gov>, louise.howson@sisterbaywi.gov <louise.howson@sisterbaywi.gov>

Subject: RE: Grandfathered 5+ Bedroom Short-Term Rentals

Good Afternoon All,

Please find the Letter from Atty. Randall Nesbitt attached.

RANDALL J. NESBITT

Attorney

**Law Firm of Conway Olejniczak & Jerry, S.C.**

231 S. Adams Street | P.O. Box 23200

Green Bay, WI 54305

P: 920-437-0476 F: 920-437-2868

E: RJN@lcojlaw.com | lcojlaw.com**2015 – 2022 WINNER OF BEST OF THE BAY – BEST LAW FIRM*****IMPORTANT CONFIDENTIAL NOTICE***

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From: Luke Berg <luke@will-law.org>**Sent:** Wednesday, August 14, 2024 8:36 AM**To:** Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>; Randy J. Nesbitt <rjn@lcojlaw.com>; lilly.orozco@sisterbaywi.gov; alison.werner@sisterbaywi.gov; Denise Bhirdo <denise.bhirdo@sisterbaywi.gov>; kurt.harff@sisterbaywi.gov; patrice.champeau@sisterbaywi.gov; Nate Bell <nate.bell@sisterbaywi.gov>; louise.howson@sisterbaywi.gov**Cc:** Lucas Vebber <lucas@will-law.org>; Nathalie Burmeister <Nathalie@will-law.org>**Subject:** Grandfathered 5+ Bedroom Short-Term Rentals

Julie, Randy, and the Village Board,

We represent four short-term-rental owners in the Village with properties that have five or more bedrooms. As we explain in more detail in the attached letter, the Village's 4-bedroom limit, and Julie's additional limits on where guests can sleep, are unlawful as applied to these homeowners.

We ask that you confirm, in writing, that the Village will not enforce these limits against our clients. As noted in the letter, we ask for a response by August 28.

Thank you, and we look forward to your response.

- Luke

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Friday, September 6, 2024 at 11:54:18 Central Daylight Time

Subject: RE: Grandfathered 5+ Bedroom Short-Term Rentals
Date: Wednesday, September 4, 2024 at 3:58:41 PM Central Daylight Time
From: Julie Schmelzer
To: Luke Berg, Randy J. Nesbitt
Attachments: image001.png, image002.png, image003.png, image005.png

I reviewed all these files in spring when they applied for their license. The individual reviews were completed at that time.

I'm just gathering other supporting data. Since it is not a priority/no action to be taken, it is on my list of projects, but a very low priority. We are wrapping up grants and trying to complete the village budget, which is time sensitive.

From: Luke Berg <luke@will-law.org>
Sent: Wednesday, September 4, 2024 2:08 PM
To: Randy J. Nesbitt <rjn@lcojlaw.com>; Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>
Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Following up. Does the Village agree or not that my clients are grandfathered under the Village's existing ordinances?

Julie – can you give us a sense of how long your review and recommendation will take?

- Luke

From: Luke Berg <luke@will-law.org>
Date: Tuesday, September 3, 2024 at 4:14 PM
To: Randy J. Nesbitt <rjn@lcojlaw.com>, Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>
Subject: Re: Grandfathered 5+ Bedroom Short-Term Rentals

Ok, but that still doesn't answer my question. Does the Village agree that my clients are grandfathered under the Village's existing ordinances or not?

- Luke

From: Randy J. Nesbitt <rjn@lcojlaw.com>
Date: Tuesday, September 3, 2024 at 4:08 PM
To: Luke Berg <luke@will-law.org>, Julie Schmelzer <julie.schmelzer@sisterbaywi.gov>
Subject: RE: Grandfathered 5+ Bedroom Short-Term Rentals

Good Afternoon Luke,

I appreciate your advocacy on behalf of your client, but neither Julie nor I have the authority to

Exhibit
H