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BY THE COURT:

DATE SIGNED: August 1, 2025

Electronically signed by Jennifer Moeller
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT BRANCH 1 DOOR COUNTY

HUNTER and JESSICA CLINTON,
JOHN and ERIN WILSON,
NICK and TARA FROEMMING,
and MARK and CALEY SWANSON,

PLAINTIFFS,

v.

VILLAGE OF SISTER BAY,

DEFENDANT.

Case No. 24-CV-119

DECISION ON MOTIONS FOR SUMMARY JUDGMENT

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Both sides filed motions for summary judgment with supporting briefs. Plaintiffs' motion was filed on March 19, 2025. Defendant's motion and brief were filed on June 3, 2025, with a response to Plaintiffs' motion. Plaintiffs' response and reply were filed on July 1, 2025, and the Defendant filed their reply on July 15. Plaintiffs filed a surreply in support of summary judgment on July 22, 2025, requesting that Defendant's new arguments be rejected and that the Court deem it conceded that the four-bedroom limit is a zoning ordinance.

The Court reviewed the motions, supporting information, and the court file. The Court is now prepared to issue this written decision on both motions for summary judgment.

LEGAL STANDARD

A trial court's standard of review on a motion for summary judgment under Wisconsin Statute Section 802.08 is well defined and established. Counsels' briefs detail and summarize that standard. Disposition of a case on a motion for summary judgment is a drastic remedy and one which is not to be granted lightly. The party moving for such relief must establish its right to judgment as a matter of law.

The court's standard of review on a motion for summary judgment is whether there is a genuine issue or issues of material fact in dispute necessitating trial. With the exception of Plaintiffs' surreply on one limited issue if one Village argument is not precluded, neither party contends that there is a genuine issue of material fact necessitating a trial.

PARTIES

This case concerns property owners, their right to rent their residences, and the right of the Village of Sister Bay to regulate their short-term rentals. Hunter and Jessica Clinton own a five-bedroom property that they have rented out since 2023. John and Erin Wilson own a five-bedroom home. Nick and Tara Froemming own a six-bedroom house. Mark and Caley Swanson rented out their five-bedroom home at 2226 Scandia Road since 2021.

RIGHT TO RENT

Wisconsin Statute Section 66.1014(2)(a) states "a political subdivision may not enact or enforce an ordinance that prohibits the rental of a residential dwelling for seven days or longer."

Wisconsin Statute Section 66.1014(2)(d) states, "If a residential dwelling is rented for periods of more than six but fewer than 30 consecutive days, a political subdivision may limit the total number of days within any consecutive 365 day period that the dwelling may be rented to no fewer than 180 days." Subsection (d) goes on with more detail.

Wisconsin Statute Section 66.1014(2)(c) states, "Nothing in this subsection limits the authority of a political subdivision to enact an ordinance regulating the rental of a residential dwelling in a manner that is not inconsistent with the provisions of pars. (a) and (d)."

There is no question that the homeowners in this case may rent their residential dwellings. The issue is whether the Village's short term rental ordinance limiting sleeping to four bedrooms, violates the rights of the homeowners.

VILLAGE ORDINANCE SECTION 66.2100

Exhibit A to Plaintiffs' complaint is "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." The definition of a Short-Term Rental is found at Section 66.2100 which restricts occupancy "to a maximum of three persons per legally permitted bedroom in existence at the time of this amendment" and "In no case shall more than four bedrooms be rented, unless" authorized by the Plan Commission. Additional occupancy may also be permissible upon Plan Commission approval.

Plaintiffs argue that the Village ordinance violates Wisconsin's right to rent law. First, they argue that a prohibition of using more than four bedrooms prevents homeowners from using parts of their home for their short-term rental. The Village ordinance only limits the use of extra bedrooms as bedrooms. Extra bedrooms could be used for game rooms, storage offices, dens,

sitting rooms or other areas for homeowners and those to whom they rent. The whole home may be rented, but every space in the house may not be used for bedrooms.

Plaintiffs argue that the state statute definition of residential dwelling "any building structure or part of the building or structure that is used or intended to be used as a home residence or sleeping place by one person or by two or more persons maintaining a common household to the exclusion of all others" means that any place you sleep in the residential dwelling may be rented. This court does not find that to be a common sense reading of the definition of residential dwelling as it applies to short term rentals and the ability to regulate them. The village ordinance does not limit the ability for a homeowner to rent out their entire residence. However, it does limit how many rooms in the residence can be used for bedrooms.

Wisconsin statute section 66.1014 (2) (a) and (d) relate to number of consecutive days of rental. The Village's four-bedroom limit is unrelated to the number of rental days consecutive or otherwise. The court does not find the four-bedroom limit to be inconsistent with 66.1014 (2) (a) and (d).

ZONING V. POLICE POWERS

Both sides argue whether the Village's ordinance is a zoning ordinance or authorized by their police powers, referencing throughout this case, *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 338 Wis. 2d 488, 809 N.W.2d 362. "Zoning power is a subset of the police power." *Zwiefwelhofer* 338 Wis. 2d at paragraph 31. These powers "serve the same overarching purpose of protecting the health, safety, and welfare of the community." Id.

The last Village brief referenced for the first time *Wildwood Estate, LLC, v. Village of Summit* No. 2024AP178, 2025 WL 1891788 and *State ex rel. Andersen v. Newbold* 395 Wis. 2d 351, 2021 WI 6. In their surreply, Plaintiffs request that the Village arguments based on these cases be disregarded. They assert that the cases favor the Plaintiffs, in any event. Both cases discuss *Zwiefelhofer* at length as well as other cases previously cited by the parties. It must be noted that the *Wildwood* court finds the regulation of short-term rentals in the Town of Summit business code to be a zoning ordinance. Sister Bay's short term rental ordinance is in the zoning code.

The *Zwiefelhofer* characteristics provide a non-exhaustive list but must be considered on this issue. First, zoning ordinances typically divide a geographic area into multiple zones or districts. *Zwiefelhofer*, 2012 WI 7 at ¶ 36. Second, within the established districts or zones, certain uses are typically allowed as of right and certain uses are prohibited. *Id*., ¶ 38. Third, zoning ordinances are traditionally aimed at directly controlling where a use takes place as opposed to how it takes place. *Id*., ¶ 39. Fourth, traditionally classifying uses in general terms, zoning ordinances attempt to comprehensively address all possible uses in geographic area. *Id*., ¶ 40. Fifth, zoning ordinances traditionally make a fixed, forward-looking determination regarding what uses will be permitted as opposed to case-by-case determinations. *Id*. And sixth, traditional zoning ordinances allow certain landowners whose land use was legal prior to the adoption of the zoning ordinance to maintain their land use despite its failure to conform to the ordinance. *Id*., ¶ 42. These characteristics constitute "the heart of traditional zoning ordinances." *Id*., ¶ 43. Broadly, zoning ordinances have the purpose of promoting the welfare, the community regulating the growth and development of the city in an orderly manner, conserving property values and encouraging the most appropriate use of land. *Id*., ¶ 45-46.

In this case, the four-bedroom limit is not dividing a geographic area into multiple zones or districts and is not establishing districts or zones for certain uses. The ordinance is not directed at where a use takes place. The four-bedroom limit is a requirement on how the use of short-term rentals may be conducted. Short term rentals have licenses which are granted individually. The four-bedroom limit applies to all short-term rentals. The four-bedroom limit on short-term rentals does not regulate growth and development or encourage the most appropriate use of land. But, it could be argued that short-term rentals relate to property values. These *Zwiefelhofer* factors could suggest that the four-bedroom limit is not a zoning ordinance.

But going back to Exhibit A to the Complaint, it is not just the title amending the zoning code, it is also the text of the ordinance. The first paragraph notes "land use compatibility concerns have arisen which warrant looking at the zoning regulations applicable to Short-Term Rentals." The recitals include a statement that such changes should only be allowed if consistent with the Purpose and Intent of the Zoning Code, and that "the *Purpose* of the code is "to promote health, safety, aesthetics and general welfare of the community." Each of the recitals reference the zoning code and zoning regulations. Other amendments therein apply to uses in different districts.

This Ordinance was written by the Village of Sister Bay, signed by its President, and specify that after public hearing held by the Plan Commission, "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." The Village clearly intended this to be a Zoning Ordinance and amendment. The Court finds it to be a zoning ordinance including the four-bedroom limit.

NONCONFORMING USE

Plaintiffs argue that the Swansons and Clintons cannot be subject to the four-bedroom limit because they previously rented their properties with more bedrooms. The non-conforming use doctrine is a well-established rule of Wisconsin property law and is reflected in the Village of Sister Bay ordinances. Plaintiffs must show that the prior use was active and actual which the Village disputes. The Village also notes that past use does not establish lawful use and questions whether the use by Clintons and Swansons was in fact, lawful. The Court does not find that argument to be persuasive. State law included a right to rent in Wisconsin Statute Section 66.1014 when Clintons and Swansons owned residential property and were free to rent these residential dwellings. They used their residential properties as short-term rentals.

The use is residential that can be used for short-term rental. The Court is not persuaded that limiting four bedrooms is a distinct and separate use from renting five or six bedrooms for sleeping. The whole house can be rented. The ordinance limits the number of bedrooms to be used for sleeping. Moreover, the Court is persuaded by the Village's interpretation of cases that allow such uses to be restricted or even prohibited if it is harmful to a public health, safety, morals, or welfare. While the homeowners may not agree with the rationale, research, and analysis of the Village's decision, the Village stated their concerns regarding overcrowding, neighborhood character, parking, noise, strain on local services, and enforcement. The Court agrees with the Village's conclusion that the limits on using bedrooms for sleeping does not impermissibly regulate the structure. Swansons and Clintons have no right to rent their residences out with five or six bedrooms based on prior nonconforming use.

BUILDING PERMIT RULE

Plaintiffs Wilsons and Froemmings argue that they are exempt from the four-bedroom limit based on the Building Permit Rule. The Wisconsin Building Permit Rule vests "the 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, 381 Wis. 2d 704. *Golden Sands* involved a building permit for seven agricultural buildings on 92 acres of 6,388 acres in the "area involved." 381 Wis. 2d at 711. The court would not separate the structures from their associated land because the building permit would then be worthless to the dairy. *Id*., at 725. The predictability afforded by the Building Permit Rule is best served by vesting rights to all land specifically identified in a building permit application. *Id*., at 724.

The building permits issued to Wilsons and Froemmings were issued for residential construction. All Plaintiffs have residential homes that can be used as residential homes. This is what was vested by their building permits. Certainly, the proper use of these properties is residential. These properties are hardly worthless as residential property.

These residential property owners have a right to use their homes as short-term rentals and are doing so under licenses required by The Village. The building permit rule does not allow a property owner to be free from any and all rules and regulations forever. There is nothing in this case that resembles the unjust, illogical result that would have occurred if Golden Sands was not resolved in the manner in which was decided. The properties in this case have value as residences and value as short-term rentals. The court finds that the Building Permit Rule does not allow Wilsons and Froemmings to use all rooms as bedrooms.

ARBITRARY OR UNREASONABLE ORDINANCE

Plaintiffs allege that the four-bedroom limitation is a violation of the Wisconsin Constitution, Article I, Section 1 providing the same equal protection and due process rights afforded by the 14th amendment of the United States Constitution. Wisconsin courts recognize that due process protects individuals from zoning ordinances that are "arbitrary and unreasonable" and having "no substantial relation to the public health, safety morals or general welfare." See *Town of Rhine v Blizzell*, 2008 WI 76 paragraph 37, 311 Wis 2d 1.

Plaintiffs claim that the four-bedroom limit is arbitrary and unreasonable *as applied to them* and therefore unconstitutional. They do not oppose the twelve-person limit which they believe renders the bedroom limit unnecessary.

The court agrees with the Village position that the test is not whether something is arbitrary and unreasonable to specific individuals. In addition, the Village maintains that the four-bedroom limit is not arbitrary and unreasonable. They point to their research, studies, and a thoughtful process that brought them to the four-bedroom limit. The Court does not find the Village's ordinance to be arbitrary or unreasonable. The Village has stated their public health, safety, and general welfare concerns, even though Plaintiffs and others may disagree.

FURNITURE REGULATION

Plaintiffs argue that the Village Administrator's comments regarding furniture that guests may sleep on is unlawful and in violation of ordinances. There is no village ordinance restricting what types of furniture guests of short-term rentals may sleep on. As Zoning Administrator, the Village Administrator is in contact with village residents and short-term rental owners. A review of the Village Administrator's emails reflects enforcement of the four-bedroom limit. That is,

limiting sleeping to four bedrooms. The reference to no pull-out couches is a reasonable comment trying to prevent attempts to side step the four-bedroom requirement. The Village Administrator emphasized sleeping in the four bedrooms, not sleeping in other areas of the home with pull out couches, futons, or any other furniture. There is no ordinance restricting the types of furniture in short-term rentals. It would be unlawful for the Administrator to regulate furniture, unlike their power to enforce a four-bedroom limit under their ordinance.

The Village Administrator referenced locking bedrooms. The Court finds that this is also impermissible based on the analysis in this decision. Homeowners have a right to rent their entire home, but the Village can limit the bedrooms for sleeping.

TAKING

Plaintiffs allege that the Village four-bedroom limitation on short-term rentals violates Wisconsin Constitution Article I, Section 13, providing that "the property of no person shall be taken for public use without just compensation, therefor." Plaintiffs believe the four-bedroom limit operates as a taking of their property without just compensation and is a physical invasion of private property, depriving plaintiffs of all economically beneficial use of their fifth or sixth bedrooms.

Both sides and the Court have considered state and federal cases regarding takings. The Supreme Court has recognized "at least two categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint." *Lucas v South Carolina Coastal Council*, 505 US 1003, 1015 (1992). The first is regulatory action that brings about some form of physical "invasion" of private property. *Id.* Second includes regulatory actions that deny all economically beneficial or productive use of land. *Id.* The

Wisconsin Supreme Court described taking jurisprudence in *Zealy v. City of Waukesha*, 201 Wis. 2d 365, 373 (1996) as developing from "two competing principles: on one hand, respect for the property rights of individuals; on the other, recognition that the government retains the ability, in furtherance of the interest of all citizens, to regulate an owner's potential uses of land."

The second category of taking was interpreted by the Wisconsin Supreme Court to include regulatory actions that "deny the landowner all or substantially all practical uses of a property." R.W. Docks & Slips v. State, 244 Wis. 2d 497, 507 (2001) citing Zealy and Eberle v. Dane County Bd. Of Adjust. 227 Wis. 2d 609 (1999). There are no credible arguments for the Plaintiffs to meet this standard. Their Sister Bay homes can be used as such and can also be rented to 12 people who could occupy up to four bedrooms.

The cases based on a physical invasion typically include an actual, tangible physical invasion, although *Heights Apartments, LLC v. Walz* 30 F. 4th 720 – Court of Appeals, 8th Circuit 2022 concerned a taking involving an eviction freeze during the COVID pandemic. Again, the Plaintiffs can use their entire residence as a home and can rent it out which distinguishes this case from *Heights*.

The takings factors recognized by *Penn Central Transportation Co v New York City*, 438 US 104, 124 (1978) include "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 owners' distinct investment-backed expectations in the property." The Plaintiffs have not shown an economic impact. They retain valuable residential properties that also can be rented out.

This Court does not find that the limitation of four bedrooms for sleeping is a physical invasion. And the ordinance does not deny all economically, beneficial and productive use of

land. Again, these are residential homes that may be used as such. Additionally, these homes can be used for short-term rentals and they are. Clearly the regulation does not deny "all economically, beneficial or productive use of the land."

CONCLUSION

Summary Judgment is granted to the Plaintiffs for Claim 6 and for the right to rent their entire homes and not lock bedrooms. Summary Judgment is granted to Defendant for all other claims.