

COUNTY OF YORK

MEMORANDUM

DATE: August 19, 2022
TO: York County Board of Supervisors
FROM: Neil A. Morgan, County Administrator
SUBJECT: Zoning for Short-Term Rentals



INTRODUCTION

At its July 19 meeting, the Board received comments on the subject of short-term rentals (STRs) from two County residents, Richard Howell and Dana deJager, both of whom reside in Queens Lake and has taken an active interest in issues surrounding STRs and have addressed the Board several times over the past few years in opposition to various tourist home applications. Mr. Howell supplemented his comments with a printed handout that he distributed to the Board members. In response to the information they provided, I would like to offer some clarification as well as provide an update on recent Planning Commission discussions relative to the Zoning Ordinance provisions for STRs.

BACKGROUND

In his comments to the Board, Mr. Howell correctly stated that several years ago, the Board requested the staff to develop additional zoning guidelines for regulating short-term rentals. Unfortunately, his comments also gave the impression that staff never completed this assignment when, in fact, staff has spent time and effort developing a series of Zoning Ordinance text amendments pertaining to short-term rentals that were unanimously adopted by the Board in March 2020. That effort began with an August 2019 Planning Commission work session at which staff provided an issue paper that included a detailed analysis of the issue of short-term rentals (STRs) and how they are regulated in York County, including case studies of past applications and a review of possible policy options. Staff also provided a summary of zoning regulations for STRs utilized by some other Virginia localities. Following discussion, the Commissioners expressed a preference for keeping the flexibility that the use permit process provides while adding some criteria or considerations to provide guidance to the decision-makers evaluating proposals for short-term rentals.

Staff subsequently drafted a set of proposed Zoning Ordinance text amendments and presented them to the Commission at its February 12, 2020, meeting, and a public hearing was held at which eight people spoke. The citizens who spoke were generally supportive of the proposed amendments while expressing a desire for three additional changes: 1) requiring STR owners to live in the residence or in an adjacent residence; 2) requiring STR approvals to run with the applicant rather than with the land; and 3) prohibiting signage in connection with home occupations. In addition, one speaker recommended that neighborhoods be given the opportunity to essentially “opt out” of the allowance for

STRs through some sort of neighborhood survey or vote. Of these recommendations, the one that was given the most serious consideration by members of the Commission was the suggestion that the owner be required to live in the home or in an adjacent home. Under the draft amendments, the owner/proprietor would have to *either* reside in the home or in an adjacent premises *or* designate a responsible party who will be available to promptly respond to and resolve problems or complaints that arise while rentals are taking place. Two Commissioners expressed an interest in establishing a residency requirement, while other members pointed out that with or without that the proposed mechanism for monitoring guest' behavior, the Board would still have the ability to deny any application where it felt such an arrangement would not adequately protect the surrounding neighborhood from the possibility of unruly guest behavior. Following discussion, the Commission voted 5:0 (with two members absent) to recommend that the Board adopt the amendments as written.

The Board considered the proposed amendments at its March 17, 2020, meeting – just as the seriousness of the COVID-19 pandemic was being widely recognized and businesses, churches, sporting events, and other activities across the country were being shut down. Consequently, although the meeting was open to the public, attendance consisted of just three Board members (with the other two participating electronically), a very limited number of staff, a rezoning applicant and his attorney, and a citizen who was present to speak on another matter. No one spoke at the public hearing; however, the Board did have the benefit of the Planning Commission minutes, which contained all the public comments made at the Commission meeting and were included in the agenda material. Following the public hearing, the Board voted 5:0 to approve the amendments as written.

Shortly after the amendments were adopted, the STR issue was reopened as a result of a Special Use Permit application for a one-bedroom tourist home in the Queens Lake subdivision. The application generated considerable opposition in the neighborhood, although the immediately adjacent neighbors were all in support of it. Though recommended for approval by the Planning Commission and staff, the application was ultimately denied by the Board on a 3:2 vote. In the aftermath of that application, the County was approached by a small group of Queens Lake residents, which included Mr. Howell and Ms. deJager, that subsequently met several times with me and Planning Division staff to discuss the possibility of adopting additional amendments to the ordinance to address citizens' concerns underlying their opposition to the Queens Lake tourist home application and to STRs in general. In these meetings, staff expressed a receptiveness to some of the proposals while expressing concerns that some of them would be impractical, overly restrictive, or unnecessary. At the third of these meetings, all parties agreed that a Planning Commission work session would be the appropriate venue for a discussion of the STR issue and the specific proposals put forth by the Queens Lake team.

That work session took place on July 27, 2021. Unlike most work sessions, which are open to the public but typically do not provide an opportunity for public comment, this one was designed to be more interactive in order to allow back-and-forth dialogue between the Queens Lake team and the Commission (and staff, as necessary) rather than limiting public participation to the traditional public comment opportunity with time limits and no opportunity for questions or follow-up. Several STR owners and others were

also in attendance and participated in the discussion. As a follow-up to that meeting, the Commission dedicated its August 11 meeting to an extensive discussion of the group's recommendations with the purpose of giving staff direction in drafting potential Zoning Ordinance amendments for the Commission's consideration. The recommendations that were discussed are listed below, along with the general consensus of the Commission on each.

1. USE PERMIT EXPIRATION REQUIREMENTS

- Should Special Use Permits for STRs run with the land or with the property owner? *The general consensus of the Commission was that STR use permits should run with the property owner, although one Commissioner felt they should run with the land just as all other use permits do.*

2. RESIDENCY REQUIREMENTS

- Should the STR owner/proprietor be required to be on the premises (or an adjacent premises) while rentals are taking place? *The general consensus of the Commission was that while it is preferable for the owner/operator to reside in the home or in an adjacent premises, it should be treated not as a requirement but as something the Commission and Board should consider when evaluating an application for a tourist home.*

3. WHOLE HOUSE RENTALS

- Should whole-house rentals be prohibited? *The consensus was that there should not be a ban on whole-house rentals.*

4. STR DENSITY CAPS

- Should there be some sort of numerical limit on the number or density of STRs in a given area (outside the Yorktown village)? Alternatively, should the presence of one or more existing STRs in proximity to a proposed STR site be added to the Zoning Ordinance as another factor to be taken into consideration with the goal of preserving the residential character of the neighborhood? *The general consensus of the Commission was that the County should not try to control STR density with a specific numerical standard and that the presence of other STRs in close proximity or in the same neighborhood or general area should be treated as a consideration, consistent with the goal of preserving the residential character of the neighborhood. Two Commissioners opined that there should be some kind of density limit.*

5. NEIGHBORHOOD "OPT-OUTS"

- Should neighborhoods be able to "opt out" of having any STRs by majority (or "super majority," however that is defined) vote of the residents? *The general consensus was that neighborhoods should not have the ability to opt out of having STRs, although one Commissioner disagreed.*

6. RENTAL LIMITS

- Should there be a limit on the number of rental nights per year, and if so,

what should that limit be? Also, should there be a limit on the number of rooms rented, and if so, what should that limit be? *The consensus of the Commission was that the Zoning Ordinance should not have a specific limit on the number of rooms. With regard to limiting the number of rental nights per year, the Commission tabled the issue, stating that they wanted input from the STR owners as to the impact that such a restriction would have on their businesses. Staff subsequently posed this question to all of the STR owners that were operating in the County at the time, four of whom responded. The Commission revisited this issue at its December 11 meeting and, based on the input from the STR owners, decided that imposing a blanket restriction on the number of rental nights per year would be an arbitrary restriction that would place an undue financial hardship on the proprietors. Two of the Commissioners, however, felt that there should be a limit, at least initially, that could be increased incrementally over time if the STR operates without any problems and in accordance with all County requirements. There was general agreement that the Board should have the ability to limit the number of rental nights in individual cases if the circumstances warrant it.*

7. LIABILITY INSURANCE

- Should STR operators be required to maintain liability insurance coverage and if so, what should the minimum coverage be? *The general consensus was that liability insurance coverage should not be required, with one Commissioner dissenting.*

8. ZONING ENFORCEMENT – FEES, PENALTIES, RENEWAL, ETC.

- *The consensus of the Commission was that zoning fees and penalties should remain as they are.*

9. OTHER RECOMMENDATIONS

- Should there be a requirement for prior residency on the property before a person can apply for a Special Use Permit for an STR? *The general consensus was that prior residency could be used as a consideration but that there should be no specific requirement. Two Commissioners felt there should be a requirement.*
- Should an applicant for an STR use permit have to have the agreement of the neighborhood in order for the proposal to go forward? *The general consensus of the Commission was that neighborhood support should not be required for an application to go forward since the public hearing process provides ample opportunity for neighbors to offer their opinions and those opinions are given serious consideration.*

Based on the views of the majority of Planning Commissioners as expressed at the August 11 meeting, staff drafted a set of possible amendments to the STR provisions of the Zoning Ordinance, and the Commission discussed them at its December 8, 2021, meeting. For the most part, the proposed amendments were relatively modest since most of the

Commissioners were not in favor of making major changes to the STR provisions. The most significant proposed change was to allow STR use permits to run with the property owner rather than with the property. Allowing STR approvals to run with the land has been the major bone of contention among STR opponents ever since 2015 when the Airbnb phenomenon began to take hold in the County. The proposed amendment would stipulate that all STR approvals automatically expire when the property is transferred to a new owner. Other recommended changes include a requirement that STR owners maintain a guest log book as well as additional language clarifying that onsite residency is preferred but not required as long as applicants can demonstrate that they have adequate provisions in place to monitor guest behavior. After discussion, the Commissioners indicated that the draft amendments adequately and accurately reflect the general – albeit not unanimous – consensus of the members.

CONCLUSION

The Zoning Ordinance provisions for STRs are intended to preserve the quality of life in the County’s residential neighborhoods while protecting the rights of private property owners to use their property as they see fit. I believe that for the most part, our current process achieves a reasonable balance between these two goals by allowing homeowners to operate short-term rentals only when the Board determines that doing so will not infringe on their neighbors’ quality of life. It is worth noting that there have been no neighborhood complaints or compliance problems associated with any of the STRs that have been approved through the use permit or YVA process.

For many land uses, the Zoning Ordinance stipulates very detailed and specific performance standards. This is often necessary for uses that are permitted as a matter of right because the Board has no approval authority over such projects and no ability to apply conditions to mitigate adverse impacts. For STRs, however, this is not the case. Unlike many other Virginia localities, York County requires a Special Use Permit for STRs in *all* residential zoning districts. As described in Section 24.1-115 of the Zoning Ordinance, the use permit process is specifically intended to take site- and use-specific circumstances and other intangibles into consideration:

“Certain uses, because of their *unique characteristics* or potential impacts on adjacent land uses, are not generally permitted in certain zoning districts as a matter of right, but may, *under the right set of circumstances and conditions* be acceptable in *certain specific locations*. These uses are permitted only through the issuance of a special use permit by the board after ensuring that the use can be appropriately accommodated *on the specific property*, will be in conformance with the comprehensive plan, can be constructed and operated in a manner which is compatible with the surrounding land uses and overall character of the community, and that the public interest and general welfare of the citizens of the county will be protected. No inherent right exists to receive a special use permit; such permits are a special privilege granted by the board *under a specific set of circumstances and conditions*, and *each application and situation is unique*. Consequently, mere compliance with the generally applicable re-

quirements may not be sufficient and additional measures, occasionally substantial, may be necessary to mitigate the impact of the proposed development. In other situations, no set of conditions would be sufficient to approve an application, even though the same request in another location would be approved.” (Emphases added)

STRs do not lend themselves to a “one size fits all” regulatory approach, which is why the County requires a case-by-case review. This ensures that affected neighbors will have an opportunity to express their views on any proposed STR and allows the Board and the Planning Commission to consider those views and to use their best judgment in evaluating each application on its particular merits. I believe that approach is preferable to adopting a highly prescriptive ordinance that does not allow for consideration of the unique aspects of each STR proposal.

Of course, no ordinance is perfect, and the Planning Commission will be recommending possible improvements to the County’s ordinance. I recommend that the Board allow that process to proceed to its conclusion and then, once the Commission has completed its work, held a public hearing on the draft amendments, and formally transmitted its recommendations to the Board for consideration, plan on holding a work session – which could possibly be a joint meeting with the Planning Commission – to have a thorough discussion of the regulation of STRs. In particular, I believe there are two key questions that need to be addressed in that discussion:

- Should the Zoning Ordinance require STR operators to live in the house or in an adjacent premises and be present while rentals are taking place? If not, should there be some specified maximum allowable distance between the tourist home and the owner’s residence?
- Should the Zoning Ordinance include some specified limit on the number, density, or proximity of STRs in a single neighborhood?

The Planning Commission has made it clear where it stands on these questions, but the Board has never specifically addressed them, and I believe they are the most critical issues raised by the Queens Lake team. Other STR policy options that the Board might want to consider would also be open for discussion.

Concerns have been raised about the sheer volume of tourist home applications and approvals in recent years. Ms. deJager stated to the Board that STR applications are increasing “exponentially,” and one of the slides distributed by Mr. Howell suggests a similar trend. While it is true that with the advent of the Airbnb phenomenon, the past several years – and especially 2022 – have seen a notable increase in the number of STR applications compared to previous years, the overall scale of STR activity in the County is still extremely small. Since 1995, there have been a total of 43 STR applications, 33 of them between 2017 and 2022. Twenty-nine of these have been approved (including 21 since 2017), and six have been denied. Another six were withdrawn by the applicants – in most cases after receiving a recommendation of denial from the Commission – and two have not yet been considered by the Commission. Of the 29 approved STRs, six either have

ceased operation or were never established, leaving a total of 23 STRs currently permitted to operate in the County. That is a very small number, particularly when one considers that they constitute only about one-eighth of one percent of the approximately 18,000 single-family detached homes in the County. (Since almost all STRs are in single-family detached homes, townhouses are not included in this analysis, even though two of the permitted STRs are located in townhouses in the Yorktown village.)

Although there has been an increase in tourist home applications in recent years, I would note that the majority of them do not generate significant controversy or opposition from neighboring residents, although some have proven to be highly contentious. Just as some County residents welcome or at least do not oppose STRs in their neighborhood, there are others who are opposed to STRs in residential neighborhoods under any circumstances. There is, however, one aspect of STRs on which the Board, Planning Commission, staff, and most citizens seem to agree: they should not be permitted in residential neighborhoods as a matter of right. Given that consensus, the Board should be prepared to accept that unless it wants to ban short-term rentals altogether, it will continue to have to grapple with tourist home applications and the emotions they sometimes trigger among citizens on both sides of the issue. No set of standards and restrictions we place on STRs will alter that fact.

Cross/3496

MINUTES
YORK COUNTY PLANNING COMMISSION

Regular Meeting
York Hall, 301 Main Street
August 11, 2021

MEMBERS

Douglas Holroyd
Glen D. Titus
Mary P. Leedom
Michael S. King
Robert T. Criner
Robert W. Peterman

CALL TO ORDER

Chair Titus called the meeting to order at 7:00 p.m. and stated that the Code of Virginia requires local governments to have a Planning Commission, the purpose of which is to advise the Board of Supervisors on land use and planning issues affecting the County. He explained that this responsibility is exercised through recommendations conveyed by resolutions or other official means, all of which are matters of public record. He stated that the Commission is comprised of seven citizen volunteers appointed by the Board, including one representative from each voting district and two at-large members.

ROLL CALL

The roll was called and all members were present. Staff members present were Timothy C. Cross, Deputy Director of Planning and Development Services; James Barnett, County Attorney; Amy Parker, Senior Planner; Earl W. Anderson, Senior Planner; Jeanne Sgroi, Management Analyst Intern, and Cathy Tartabini, Planning Assistant. Also in attendance was Susan D. Kassel, Director of Planning and Development Services.

NEW BUSINESS

Chair Titus stated that the Commission would be discussing potential Zoning Ordinance amendments pertaining to short-term rentals. He stated that a group of Queens Lake residents had provided the Commission with a document outlining their proposed changes and that staff had prepared a list of discussion topics based on that document and on the discussion at the July 27 work session. He suggested that the Commission discuss each item in turn as outlined on the list of discussion topics and give staff some direction on each.

Chair Titus stated that the first discussion topic is whether Special Use Permits for STRs should run with the land or with the property owner.

Mr. King stated he is in favor of having use permits for STRs run with the property owner since the Commission makes its recommendations based largely on the information presented by the applicant and so if the property changes hands, the new owner should have to go through the same process.

Mr. Criner asked staff if there is a mechanism by which the County would be notified if the property is sold.

Earl Anderson responded that a change in property owners would come up as part of the County's annual inspection of all use permits.

Ms. Leedom asked if STR owner/operators could be required to notify the County if they sell the property, which she felt would give some layer of protection to the neighbors.

Mr. Criner responded that since there is already a trigger in place with the annual inspections, he is confident that sufficient protections are in place to ensure that a new owner would eventually get caught if they are running an STR without approval. He added that he agrees with Mr. King that the use permits should run with the owner.

Mr. Cross added that use permit resolutions are a matter of public record and are recorded at the courthouse, so any potential buyer should be aware that there is a condition tying the use permit to the property owner and all other conditions of approval. He added that there is a quarterly tax reporting requirement, so the Commissioner of the Revenue's Office would know if a report was received from somebody who was not registered as a short-term rental operator.

Chair Titus asked if the proposed change would also apply to bed-and-breakfast establishments (B&Bs).

Mr. Cross responded that the term "short-term rental" encompasses both tourist homes and B&Bs, so it would apply to B&Bs as well as tours homes.

Chair Titus stated that he feels the use permits should run with the land, noting that use permits should not be approved on the basis of personalities. He said there are procedures in place to deal with those who violate material conditions, and he questioned whether the identity of the operator constitutes a material condition.

Mr. King responded that he understands Chair Titus's concerns but that he is concerned that there is no guarantee that a new owner might not operate an STR in the same manner as the original applicant, which he felt would place an additional burden on Zoning and Code Enforcement staff.

Mr. Holroyd commented that most use permits for STRs are approved when the neighbors are in agreement, which he said only happens when the property owner is a long-time resident whom the neighbors trust. He stated that a new owner would not have that same level of trust, so he believes the use permit should be tied to the owner.

Chair Titus responded that the same logic would seem to apply to home occupations. He asked why STRs should be treated differently.

Mr. King asked the County Attorney if the County can have different requirements for different types of use permits.

Mr. Barnett responded that there is nothing in the Code of Virginia that requires use permit conditions to be uniform for all use permits.

Mr. Peterman stated that he agrees that use permits for STRs should be tied to the owner and not the property.

Chair Titus summarized the discussion, stating that the consensus is that STR use permits should

run with the owner.

Chair Titus introduced the next topic, which was whether or not STR owners should be required to be on the premises – or in an adjacent premises – while rentals are taking place.

Mr. King expressed his opposition to such a requirement, stating that although he tends to look more favorably upon STRs that have on-site management, there are exceptions, such as the one that was approved on Goosley Road where the owners did not live on or near the premises. He said he does not want to make the standards overly restrictive and take away the flexibility to evaluate each case on its own merits.

Mr. Criner stated that in considering STR proposals, he gives a lot of weight to the fact that the owner lives in the home or next door but that he does not want to make it an absolute requirement since there can be extraordinary circumstances that can be considered on a case-by-case basis.

Ms. Leedom asked if such a requirement would apply to whole-house rentals or just room rentals, noting that it would be difficult to have the owner living in a whole-house rental.

Mr. King said that is a good point, stating with a whole-house rental, the owner cannot live in the house but could live next door.

Mr. Peterman responded that whether the owner lives next door or across the street or a block away, each case has to be considered individually. He stressed that the Commission's main concern is that the person operating the short-term rental must be responsible to the neighborhood and able to respond to any situation that arises.

Mr. Holroyd commented that having a physical presence in or near the home is the most effective way of monitoring the situation, more so than electronic surveillance. He stated that he feels the owner should remain in the local area, however that is defined.

Mr. King responded that the term "local" is subjective.

Chair Titus commented that this discussion is centered specifically on tourist homes since the Zoning Ordinance requires B&B owners to live on the premises or in an adjacent premises.

Mr. King stated that case-by-case review allows the Commission and the Board to decide whether or not the owner is in sufficient proximity to the STR and avoids the problem of having to define it in the Zoning Ordinance.

Mr. Titus stated that the general preference appears to be that on-site residency should be treated as a consideration rather than a requirement.

Mr. Cross responded that in fact, it is already included as a consideration in the Zoning Ordinance, which states that applicants must either be on the premises or in an adjacent premises or designate a responsible party who can respond promptly to any complaints or problems that arise. He mentioned the case of the Yorktown Cottages, where the owners lived in Marlbank when the application was approved but later moved to Dandy, which is much further away. He said it is impossible to anticipate and control for every scenario, but it is something to keep in mind when considering use permits for STRs.

Chair Titus asked if it would be fair to recommend that STR owners have some kind of electronic

surveillance mechanisms in place if they are not living on the property or nearby. He commented that designating a manager to monitor STR can put a tremendous burden on somebody designated to go to a trouble spot when they don't know how to handle the situation other than to call the Sheriff's Office.

Mr. Cross said that might be the way to address those situations, whether or not the owner is on-site.

Mr. King stated that the County needs to be careful not to dictate what kind of surveillance is used, and he added that requiring someone to be on the premises in all cases is simply not practical. As an example, he cited the STR approved on Goosley Road, which is a house by itself and not in a neighborhood.

Chair Titus stated that the challenge is in allowing STRs in residential areas while ensuring that they do not become investment properties. He said that in this case, no change to the code is needed since on-site residency is already included as a consideration.

Mr. Cross asked the Chair to clarify if the consensus is that the Commission does not want to require the owner to be on the premises or in an adjacent premises.

Chair Titus said that is correct, that the Commission wants to retain the flexibility because there are some places in the County where a stand-alone STR would be acceptable, especially if the owner/operators can be next door or a short distance away or have mechanisms that will allow real-time surveillance of the property.

Mr. Holroyd added that there was general agreement that the owner should be reasonably close.

Mr. Criner asked Mr. Barnett what the rules are regarding video surveillance on a rental house. He stated that his understanding is that it is not allowed.

Mr. Barnett responded that he would have to study this question. He stated that any activity on the exterior of the house is open and obvious to anyone and therefore might not raise a privacy issue. He stated that he would have to research the issue but that he was not aware of any prohibition on a property owner videotaping in his or her own home.

Chair Titus stated that the next question is whether or not whole-house rentals should be prohibited, which he felt was addressed in the previous discussion.

Mr. Cross responded that this issue was raised in staff's discussions with the citizens group, which felt that whole-house rentals should not be allowed.

Mr. Anderson stated that based on the Commission's consensus that the owners should not be required to be in the home while rentals or taking place, any proposed whole-house rentals would be reviewed on a case-by-case basis.

Mr. King stated that the Commission would follow the evaluation criteria discussed previously and that if the Commission is not satisfied that the owners are in close enough proximity, then it can recommend denial.

Mr. Peterman stated that he has no objection to whole-house rentals as long as there is adequate supervision of the property. He stated that a prohibition on whole-house rentals could be

problematic since an owner could claim that some part of the house is not going to be rented and therefore it is not a whole-house rental. He stated that he feels whole-house rentals should continue to be evaluated on a case-by-case basis.

Chair Titus agreed and said that the consensus is that a ban on whole-house rentals is not necessary.

Chair Titus introduced the next subject, which was whether or not there be some sort of numerical limit on the number or density of STRs in a given area.

Mr. Peterman stated that the problem with this proposal is that “community” and “neighborhood” are not defined terms. He said he was unable to find a definition in the County Code.

Mr. King said he had the same concern, stating that it would be difficult to define the boundaries of a neighborhood.

Mr. Cross responded that the citizens group referred specifically to “defined neighborhoods,” which would be easy to define in the case of a subdivision but difficult to define in other cases. He stated that the staff did a lot of research into this issue and found that setting limits on the number of STRs in a given area is not commonly done in Virginia. In fact, he stated, staff was unable to find a single locality in the state that does it, although the City of Virginia Beach is considering capping the percentage of STRs in its two proposed STR overlay districts to roughly 10% of the homes. He said there are a number of localities in the western states, such as California and Oregon, that limit the density by limiting the distance between STRs. Mr. Cross cited a few examples, including one city that prohibits an STR within 300 feet of another STR on the same street, another city that limits the total number of STRs to 250 and prohibits them from being within 110 feet of another property, and another locality that limits the number of STRs to 3% of the homes in a given Census Tract.

Mr. King stated that he is reluctant to set arbitrary limits on STR density and that if there are too many STRs in a given neighborhood, the Commission will know about it. He stated that the staff does a good job at pointing out where the existing ones are and that the presence of an existing STR nearby would be a factor for the Commission to consider. He agreed with Mr. Peterman about the difficulty of defining a community, and he noted that homes can be in separate but adjacent subdivisions.

Chair Titus commented that his subdivision of Patriot Village is inter-connected with Tabb Lakes, York Meadows, The Greenlands, and Coventry all within a mile of each other, resulting in several individual neighborhoods that overlap. He said it would be possible to have two STRs adjacent to each other because they are in separate neighborhoods. Chair Titus added that Yorktown Village is fairly dense already.

Mr. Cross noted that if there were density caps, the Yorktown Village would likely be excluded since STRs are actually encouraged there by the Yorktown Master Plan.

Mr. Criner recommended that the existence of other STRs nearby be identified as a consideration and that the Commission not try to rewrite the rules.

Mr. Holroyd disagreed, stating that he feels there needs to be a minimum distance between STRs, which would effectively serve as a density cap.

Ms. Leedom added that a single STR can change the neighborhood in terms of added traffic, more people, and more strangers. She stated that she would like to see some sort of cap.

Mr. King responded that examples cited by staff of 110, 300, and 500 feet would not be much of a limit.

Mr. Cross commented that if the Commission wants to go in that direction, it can pick whatever minimum distance it feels is reasonable.

Mr. King noted that some neighborhoods are denser than others, which makes it difficult to come up with a uniform distance that would make sense in every area.

Mr. Criner stated that the presence of other STRs nearby should be treated as a factor for the Commission and Board to take into consideration when evaluating STR applications.

Mr. Holroyd disagreed, reiterating that he feels there should be a limit.

Ms. Leedom stressed that it will be important for the Commission to watch the numbers to make sure no neighborhood has an over-abundance of STRs.

Chair Titus summarized the discussion, stating that most of the members agree that it should be a consideration and that the County should not try to control STR density with a specific numerical standard.

Chair Titus stated that the next issue is whether or not neighborhoods should be able to essentially opt out of having any STRs by majority – or super-majority – vote of its residents. He addressed a question to Mr. Cross stating that he was under the impression that this would not be allowable.

Mr. Cross responded that there is language in the Code of Virginia stating that all zoning regulations must be uniform for uses throughout each particular zoning district such that, for example, if STRs are permitted with a use permit in one neighborhood that is zoned Rural Residential, the same would apply to all other neighborhoods that are zoned Rural Residential. He stated that the only way to get around that would be to create a different zoning district for each neighborhood, which he said would be problematic.

Mr. Barnett agreed with Mr. Cross and added that such a provision would have the appearance of divesting the Board of Supervisors, who are the elected officials, of the ability to control zoning. He said it was a novel idea but that the uniformity issue would be a problem. He said he would have a problem with allowing a group of people who are not elected officials to simply say by vote that they are going to control what the County can allow under its ordinances.

Mr. Peterman commented that once again, the problem of trying to define neighborhoods would be an issue.

Chair Titus stated that the mechanism for neighborhoods to disallow STRs is to regulate them through their homeowners' association (HOA) covenants. He noted that the Coventry HOA is, in fact, pursuing such a change, although he acknowledged that this is not an option in subdivisions that do not have an HOA.

Mr. King added that neighbors can also attend the public hearings to make their views known.

Mr. Barnett commented that pursuant to the Code of Virginia, any vote would have to be done without the assistance of the Electoral Board or the Registrar's office.

Chair Titus stated that the consensus appears to be that neighborhoods should not be able to opt out.

Ms. Leedom stated that she believes that neighborhoods should be able to opt out through their HOA or whatever association they have in place.

Chair Titus explained that if a neighborhood prohibits STRs in its covenants, that rule would supersede the County's ability to authorize an STR.

Mr. King asked about the definition of a super majority.

Mr. Cross responded that the central issue is the concept of opting out by vote and that if the Commission wants to allow this, the staff can come back with specific suggestions on how such a provision would be implemented.

Mr. Holroyd asked Mr. Cross how the City of Chesapeake handles this issue, noting that STRs are not allowed in certain areas.

Mr. Cross responded that Chesapeake regulates it through zoning. He explained that the city only allows B&Bs and tourist homes as a conditional use in its Agricultural zoning district and in its Historic and Cultural Preservation overlay district. He reiterated that the only way to prevent STRs in a given area would be by zoning.

Chair Titus asked the Commissioners if they wanted to address this issue through zoning, and the consensus was in the negative.

Chair Titus introduced the next topic, which was whether or not there should be limits on the number of rentals per year for an approved STR and whether there should be a limit on the number of rooms available for rent.

Mr. King asked for clarification regarding a limit on the number of rentals.

Mr. Cross responded that at the July 27 work session, the citizens group had suggested that STRs be limited to a maximum of 90 days of the year. He noted that other localities in Virginia have similar provisions, with the number of rentals ranging from 60 to 104 days, while others have no limit at all. He explained that the rationale for the citizens ^[KS1] group recommendation of a 90-day limit is that it would ensure that the commercial aspect of the home is ancillary to the principal use, which is residential.

Mr. King asked if the County received any feedback from existing STR owners of STRs as to whether a three-month limit on rentals is a business model that works.

Mr. Cross responded that it clearly would not work for the approved STR on Goosley Road since it is basically a commercial venture and the owners do not live in the house and that it would probably be problematic for the Yorktown Cottages as well. He recalled that there was some negative feedback from the STR owners in the audience when the topic was discussed at the work session but stated that the Planning Division has not received any formal feedback.

Mr. Criner asked if there have been any complaints or problems.

Mr. Cross responded that there have been no problems or complaints about any of the legally approved STRs.

Mr. Holroyd stated that he feels there should be a limit to prevent people from buying up homes in their neighborhoods for investment purposes. He stated that he feels this is the best way to limit the number of STRs in our neighborhoods.

Mr. King responded that he would like to hear from the STR owners and find out if an arbitrary 90-day limit would put them out of business, and he added that the tourist season in this area is longer than 90 days.

Mr. Criner stated, based on his experience as the owner of a beach house, that the rental season is four months.

Mr. Cross commented that 90 days just happens to be the number that was suggested by the citizens group. He said that if the Commission feels a limit makes sense it can pick whatever number seems appropriate. He agreed that the tourist season exceeds 90 days, noting the season schedule for Busch Gardens, William & Mary's graduation in May, and the fact that a lot of tourists visit Williamsburg at Christmastime.

Mr. Criner stated that he is not opposed to a limit but that he does not know what the number should be.

Mr. King said he feels the same way and would like to hear more input from the STR numbers.

Mr. Peterman stated that while he understands the concern, he is generally opposed to placing a limit on the number of rentals. He agreed that it would be good to hear from the current STR owners and get some feedback before moving forward on this question.

Mr. King suggested that this issue be tabled until the Commission can receive input from the STR owners.

Chair Titus agreed that there would have to be a rational basis for any such limitation.

Mr. Cross noted that the Commission has said it does not want to require the owners to live in the home or in an adjacent premises, which raises the question of what a non-resident STR owner is supposed to do with the house for the rest of the year if there is a limit on the number of rental nights.

Chair Titus responded that in that situation, the limitation would probably force the STR to close.

Following discussion, **Chair Titus** stated that the matter would be tabled pending the receipt of additional information.

Mr. Cross stated that the Commission also needs to address the question of whether or not to limit the number of rooms that can be rented in a home that is not a whole-house rental.

Mr. Criner stated that if whole-house rentals are allowed, he does not see the point in limiting

the number of rooms rented.

Chair Titus stated that the Commission appears to agree.

Chair Titus raised the next discussion topic, which was whether or not STR operators should be required to maintain liability insurance. He recollected that the amount of coverage recommended was \$1 million.

Mr. Cross said that was the number that was suggested by the citizens group. He stated the only localities he could find in Virginia that have an insurance requirement are the City of Williamsburg, which has a very restrictive ordinance and requires \$500,000 of coverage, and the City of Virginia Beach, which requires a million dollars in coverage. He added that insurance requirements are more common outside Virginia, especially in the western states, where the minimum coverage is typically half a million dollars.

Mr. Criner asked who the coverage would be protecting.

Mr. Cross responded that he had the same question, noting that it would protect the guests and the property owner but that he is not sure how it would protect the neighborhood. He stated the concern was raised specifically by Queens Lake residents who were concerned that the Community Association could be liable if an STR guest were to get hurt on the community playground or on one of the common areas or other community facilities.

Mr. Criner responded that liability insurance would not cover those areas anyway and would only cover care for the person who owns the house and the people who are renting the house, which he said is a private agreement between the owner and renter.

Mr. Cross agreed.

Mr. King recalled that at the work session, one of the STR owners mentioned that one or more of the online platforms allow people to pay for extra insurance.

Mr. Cross stated that the owner of the Yorktown Cottages had mentioned something along those lines but that the Commission should not focus on the policies of Airbnb, VRBO, and other online platforms. He noted that the County has tourist homes that have their own websites for making reservations and do not advertise on those other platforms.

Chair Titus said he could not understand why an owner or business operator would not have liability insurance.

Mr. King said he had the same question and also wondered what it would cost to have \$500,000 or \$1 million of liability insurance.

Mr. Criner responded that it is not tremendously expensive but questioned why the County should be dictating this since it has no effect on the rest of the neighborhood or the County.

Mr. Cross responded it can be argued that it would benefit public safety by ensuring that a renter who is injured will be covered.

Mr. Criner responded that he would encourage owners to purchase insurance but felt the County should not be dictating it to them.

Chair Titus commented that it seems that by requiring insurance, the County would be getting very involved in dictating to the owners specifically how to run their business.

Mr. Holroyd responded that since it is a business, there are certain things he feels the County should insist on certain elements, such as fire and safety requirements throughout the building. He felt that liability insurance should be required.

Chair Titus responded that the County has no insurance requirements for other businesses, such as gas stations.

Mr. King stated that he feels requiring liability insurance would be overreach and agreed with Mr. Criner that it would have no effect on the community. He stated that it is up to the owner whether or not to purchase insurance and that it should not be dictated to them by the County.

Mr. Peterman commented that he believe the reason that the citizens group wanted this requirement was to add another hurdle to make it more expensive to operate an STR, thereby discouraging STR owners from using the home as an investment property He stated that any responsible homeowner would want to have liability insurance to protect themselves whether it is dictated to them by the County or not.

Chair Titus stated the consensus of the Commission that is that liability insurance should be encouraged but not required.

Mr. Holroyd said in that case it would be a guideline and not a mandate.

Mr. King added that the Commission can always ask the applicants if they have liability insurance and consider that when evaluating a proposed STR.

Chair Titus stated that the next topic on the list has to do with zoning enforcement fees, penalties, and renewal requirements for STRs. He recalled that the citizens group had recommended that application fees be increased to cover the total staff costs associated with zoning enforcement for STRs.

Mr. King asked what the current application fee is for a Special Use Permit.

Mr. Cross responded that effective July 1st, the use permit application fees were raised to \$560 except for home occupations and accessory apartments, for which the fee is \$500. He stated that the standard use permit fee was \$450 for a number of years and that it did not even cover the advertising costs. He stated that years ago, staff had recommended to the Board consider raising the fees to at least come closer to paying for the advertising but that the Board was not interested in that.

Mr. King asked what the average cost is today for advertising an application.

Mr. Cross responded that staff had compiled that information to show the Board how the fees were falling short of the advertising costs and that since then, the Daily Press ad rates have risen considerably while the application fees stayed the same, at least until July 1 of this year.

Mr. King asked how raising the fees would protect the community.

Mr. Cross responded that the citizens group's concern is not the cost of advertising but rather

the cost of increased staffing resources needed to implement its recommendations for additional zoning enforcement, which the group felt should be borne by the STR owners and not the taxpayers. He said the group also recommends increased penalties for violators.

Mr. Holroyd asked what the penalty is for an illegal operator.

Mr. Cross responded that there are civil fines spelled out in the code. He explained that the owner would first receive a Notice of Violation and then be taken to court if the violation is not addressed and that there has to be legal action before any fines are paid.

Mr. Barnett explained that if there is a financial penalty to be imposed, it is imposed by the court. He stated that the County has in the past taken illegal STRs to court and gotten injunctions against them but that he didn't recall if any monetary penalties were handed down. He stated that for a first offense the courts tend not to weigh heavily unless there has been a record of willful violation such as someone who has simply ignored violation notices and attempts by the County to bring them into compliance.

Mr. King asked if the County charges applicants for use permit inspections for other uses.

Mr. Cross responded that other than the two exceptions previously noted, home occupations and accessory apartments, the use permit fee is the same for all uses, except that there is an additional acreage fee for sites that are larger than five acres.

Mr. King commented that charging a fee to cover the cost of sending zoning inspectors out every so often to visit each site would effectively kill the STRs because the cost would be outrageous.

Chair Titus commented that it raises the issue of what is the role of government and what costs should be absorbed by the government as part of its normal operations.

Mr. Criner noted that these facilities are being taxed and are entitled to a certain level of service for their tax money.

Chair Titus agreed, adding that the government should not be in the business of making a profit.

Mr. King stated he is not against raising the application fee but that it could never be high enough to cover all the costs.

Mr. Cross clarified that the citizens group's recommendations were not limited to the application fees but to other fees as well, such as a \$250 annual use permit renewal fee. He stated that there are a lot of localities in Virginia that charge an annual STR registration fee in the range of \$150 to \$200 but that in those localities, STRs are typically permitted administratively without having to go through a public hearing process.

Mr. Holroyd stated that it sounds like the fees are basically set by the Board of Supervisors and the penalties are set by the court, so there is nothing for the Commission to discuss.

Chair Titus summarized the discussion, stating that the consensus is for zoning fees to stay as they are. He asked if the Commissioners have any additional items they want to bring up.

Mr. Holroyd introduced two additional items that he wanted to discuss, the first of which is a requirement for prior residency on the property before a person can apply for a Special Use Permit

for an STR, and the second of which is the issue of neighborhood agreement or disagreement and how much that should weigh into whether a Special Use Permit goes forward.

Chair Titus recollected that the citizens group had recommended a residency requirement of two years.

Mr. Holroyd stated that he felt it was a legitimate request to prevent people from buying property and immediately flipping it for rental purposes. He said this would control the spread of STRs and prevent the problem of people buying and flipping properties into rental properties, as in Virginia Beach.

Mr. King replied he is not opposed to some sort of minimum residency requirement so that people have to live there for at least a certain period of time to have a connection to the neighborhood.

Chair Titus countered that there is nothing to prevent people from buying homes and immediately flipping them for long-term rental purposes. He questioned why the County should care as long as the residential character of the property is maintained.

Ms. Leedom stated that she felt there should be a residency requirement for STRs. She reiterated her belief that a single STR changes the character of the neighborhood.

Mr. King stated that he feels long-term rentals are different from short-term rentals because the long-term renters become part of the neighborhood.

Chair Titus stated that with a residency requirement, a person could buy a property, live six blocks away, and never be around their neighbors and yet would have to wait two years before applying for a use permit to operate an STR even though that person was never part of the neighborhood. He stated that many neighborhoods are not close-knit and in many cases people do not know their neighbors.

Mr. Cross brought up the example of the STR on Goosley Road, which the owners purchased with the intent of offering it as an STR. He said that with a residency requirement, they would just have to hold the property for two years before they could do anything with it.

Ms. Leedom responded that since there are no neighbors near the property, that case could have been treated differently.

Mr. Cross responded that if there is a two-year mandatory waiting period, then the Commission and Board would have no latitude to consider extenuating circumstances.

Chair Titus stated that he would not be against allowing STRs as a matter of right, subject to certain requirements.

Ms. Leedom replied that York County is not a tourist community like Nags Head where four out of five houses are rentals.

Mr. King replied that people who live in Yorktown would not agree that the County is not a tourist community.

Mr. Cross commented that there are more than twenty thousand homes in the County, only eleven of which are being operated as STRs, which is a very small proportion. He said that outside of the

Yorktown Village, they are generally scattered all over the County, although there is a small cluster of properties in Queens Lake that were unsuccessfully proposed for STRs.

Mr. King stated that if the consensus of the Commission is that there should be no waiting period, he would go along with it.

Mr. Criner stated that he would like to use prior residency as a guideline that the Commission can take into consideration, but he added that there are certain circumstances where it would be justifiable to allow a new owner to operate an STR. For example, he stated, there could be a property owner whose spouse dies shortly after purchasing the property and might need to rent rooms for income. He said he would rather err on the side of giving people more rights than taking them away.

Chair Titus expressed his agreement with Mr. Criner.

Mr. Holroyd stated that the neighbors also have rights and that he would rather side with the neighbors.

Mr. Peterman responded that the Commission takes the neighbors' interests into consideration. He said that neighborhood opposition carries a tremendous amount of weight, and that the history has been that when the neighbors have strong concerns that a proposed STR would change the character of the neighborhood, the application is not approved.

Mr. King stated that the process is for everyone and that there are multiple opportunities for all residents to participate. He stated that all citizens' rights are well represented under the current process.

Mr. Cross commented that Mr. Peterman is correct in saying that in every case of an STR being approved, the one common denominator was that there was no significant opposition, and in every case of one that has been denied or withdrawn, there was significant neighborhood opposition. He stated that none of the traditional planning considerations such as lot size and density have entered into the decisions to approve or deny.

Mr. Holroyd raised the question of whether or not an STR applicant should have to have the agreement of the neighborhood in order for the proposal to go forward or if the Commission is only considering opposition.

Chair Titus responded that the Commission hears from neighbors who are in support as well as those who are opposed and that sometimes the neighbors are evenly divided.

Mr. Peterman recalled an application where all the surrounding neighbors expressed support and that everything else about the application was satisfactory but that the key factor was that his neighbors supported it.

Mr. Cross commented that when prospective STR operators approach the Planning Division about applying for a use permit, staff strongly encourages them to talk to the neighbors and the HOA, if there is one, or in a subdivision like Queens Lake, the community association. He added that there have been cases where people have included with their applications signed letters of support from their neighbors.

Mr. King stated that he feels the totality of citizen input is taken into consideration under the current process.

Mr. Holroyd responded that he feels strong neighborhood support should be a guideline for evaluating STR application.

Mr. King replied that it already is used as a guideline that he and the other members take into consideration. He said he does not want to force an STR on a neighborhood that is strongly opposed to it.

Mr. Cross clarified that neighborhood support or opposition comes out of the public hearing process and is not something that would be embedded in the Zoning Ordinance. He explained that staff serves as technical advisors to the Commission and the Board, so citizen input does not enter into the staff's recommendations but that it does legitimately enter into the Commission's recommendations and the ultimate decisions of the Board.

Chair Titus asked Mr. Cross if staff has the guidance it needs from the Commission to move forward.

Mr. Cross said it does and that there are also a number other, less significant, recommendations put forth by the citizens group that have not been discussed, such as requiring STRs to be regulated as hotels. He said he did not include the issue of signs in the discussion topics because that issue has been settled by the U.S. Supreme Court, which has greatly reduced localities' latitude in regulating signs.

Ms. Leedom asked Mr. Cross about applicants' obligations to notify their neighbors when they apply for a Special Use Permit.

Mr. Cross responded that notification of the neighbors is done by the County and not the applicant. He explained that staff sends letters to all immediately adjacent property owners, including those across the street, as required by the Code of Virginia. He stated that the County advertises the public hearings for both the Commission and the Board twice in the Daily Press, which is also a state code requirement. In addition, Mr. Cross stated, the staff posts a sign on every property that is the subject of an application so that residents and property owners in the general area can be aware that an application has been submitted. He added that the application materials and public notices are also posted on the County's website, and that for sites that are in a neighborhood that has an HOA or a duly constituted community association, notification letters are sent to the association.

MINUTES
YORK COUNTY PLANNING COMMISSION
Regular Meeting
York Hall, 301 Main Street
December 8, 2021

MEMBERS
Douglas Holroyd
Glen D. Titus
Mary P. Leedom
Michael S. King
Robert T. Criner
Robert W. Peterman
Joseph P. Smith

CALL TO ORDER

Chair Titus called the meeting to order at 7:00 p.m. and stated that the Code of Virginia requires local governments to have a Planning Commission, the purpose of which is to advise the Board of Supervisors on land use and planning issues affecting the County. He explained that this responsibility is exercised through recommendations conveyed by resolutions or other official means, all of which are matters of public record. He stated that the Commission is comprised of seven citizen volunteers appointed by the Board, including one representative from each voting district and two at-large members.

ROLL CALL

The roll was called and all Commissioners were present with the exception of Mr. Smith. Staff members present were Timothy C. Cross, Deputy Director of Planning and Development Services; Richard E. Hill, Jr., Deputy County Attorney; Amy Parker, Senior Planner; Earl W. Anderson, Senior Planner; Jeanne Sgroi, Management Analyst Intern, and Cathy Tartabini, Planning Assistant. Also in attendance was Susan D. Kassel, Director of Planning and Development Services.

OLD BUSINESS

Chair Titus opened the discussion of STR regulations. He stated that the staff had prepared a set of draft Zoning Ordinance excerpts and is looking for feedback from the Commission.

Mr. Cross stated that there was extensive discussion at the Commission's August 11 meeting about ten specific proposals related to STR regulations. He stated that based on the consensus of the Commission – or the majority of the Commission – on each item, staff prepared the draft amendments for the Commission to review. He stated that the most significant change is to allow STR use permits to run with the property owner rather than with the property. He stated that staff has been doing this as a matter of policy for months through use permit conditions but is recommending that it be added to the code as a general requirement. He said other suggested changes include a requirement that STR owners maintain a guest log book as well as additional language clarifying that onsite residency is preferred but not required as long as applicants can demonstrate that they have adequate provisions in place to monitor guest behavior.

Mr. Cross stated that most of the ten proposals that were discussed at the August meeting are not reflected in the draft language because the majority of Commissioners were not in favor of them.

He stated that the one that remains undecided is whether or not to impose a limit on the number of rental nights per year. Mr. Cross stated that in response to a request from the Commission, staff contacted the eleven existing STR owner/operators in the County to get their feedback and that there were four responses, all of which were included in the agenda materials. He said this is an issue the Commission will need to discuss and reach closure on so staff can move forward with any actual Zoning Ordinance text amendments.

Chair Titus stated that the Commission needs to decide what the maximum number of rental nights per year should be, leave it to the Board of Supervisors to decide on a case-by-case basis, or not have a maximum limit. He said he would rather set the limit at 365 days than have the Board set a limit for each individual case. He said any other number would be arbitrary and capricious and would have no justification.

Mr. Peterman referred to the feedback from the current STR owners who stated that such a restriction would cause a hardship that could require them to cease operation. He said there would need to be a good reason for any limit because it could put people out of business. He said there are enough regulations and procedures in place to deal with any complaints that arise and that he did not see a need for a limit.

Chair Titus responded that there are localities that do limit the number of rental nights and yet the STRs are able to stay in business somehow.

Mr. King agreed with Chair Titus's comment that to impose a limit on the number of rental nights would be arbitrary. He said there are some cases where the Commission might feel no limit is necessary and others where a limit might make sense. Mr. King said he would like to leave it as it is where each case is decided on its own merits. He stated that an alternative would be to give the Board of Supervisors the option of restricting the number of rental days per calendar year. He said he opposes a blanket restriction on the number of rental days. With regard to the other proposed amendments, Mr. King said he thought the staff did a good job of incorporating the Commission's comments. He noted that the major change is to tie STR use permits to the property owner rather than the land.

Chair Titus suggested that the limit could be set at 365 days unless the Board decides to change it in a particular case.

Mr. Criner said he agrees with that approach.

Mr. Holroyd stated that he believes there needs to be a tier system with guidelines that have to be met before an applicant moves up to the next tier. He advocated a probationary period, as was done in Mr. Moberley's case, in which applicants have to demonstrate that they are responsible business owners who follow the rules and pay the taxes. He stated that under such a system, STRs could be limited to 90 days in the first year and then be allowed to increase to 180 days in the second year if they are in compliance with all the regulations and conditions, and ultimately to 365 days by year four. He stated that a limit of 104 days, as some communities have, would be a good starting point because that would establish that they can screen candidates, control renters' behavior, and ensure that neighbors are in support of it.

Chair Titus asked if applicants would have to come back to the Board periodically for approval.

Mr. Holroyd said that is for staff to decide, and he noted that that is what happened in Mr. Moberley's case. He stated that instead of starting with a 365-day limit, applicants should earn the right to be unlimited by proving that they are meeting the County's expectations.

Mr. Criner responded that he is glad there were no such restrictions in place to force him to earn the right to make money when he started his home-based business.

Mr. Holroyd responded that an STR is not the same as a business in that it involves a homeowner deciding to utilize spare space in the home to rent out to tourists.

Ms. Leedom agreed with Mr. Holroyd that there should be some limit initially and that 365 days is too many. She stated that STRs should be monitored and the applicants should have to come back to the Commission periodically and demonstrate that they are in compliance and that the neighbors are happy.

Chair Titus asked Ms. Leedom what makes a short-term rental different from the multitude of other home-based businesses that the County has approved.

Ms. Leedom responded that with home-based businesses, the owner is on the premises and able to monitor it and that is not necessarily the case with STRs.

Mr. Cross commented that there are provisions in place to revoke use permits when there are problems. He said that years ago, the County had a system similar to what Mr. Holroyd is proposing. He stated that home occupations with non-resident employees were required to come back to the Board every two years and either go through the process again or submit letters from all the neighbors saying they had no objection to the continuation of the business. He said that over time it came to be a pointless exercise that was burdensome to the business owners, some of whom complained. He said that ultimately the Board of Supervisors took that provision out of the ordinance because it was not serving any purpose.

Mr. Criner, said that as a business owner who was in that position, he was grateful to the County for removing that provision.

Richard Hill, Deputy County Attorney, pointed out in response to the comment that was made earlier regarding sex offenders that the sex offender registry is public and searchable. He stated that STR owners can search the registry to make sure prospective renters are not on it. In addition, he stated that the County Attorney's office would have concerns about requiring STR owners to make their guest logs available to staff on demand. He stated such provision would pose serious Constitutional problems in light of existing Supreme Court precedent. He asked the Commission to take that into consideration.

Mr. Cross explained that this provision was included in the draft amendments because a lot of other localities have the same requirement and it seemed reasonable to staff. He added that Mr. Hill had conveyed his comments to staff earlier but they were not received until after the agenda package was sent to the Commission, which is why the language was included as is in the draft document.

Mr. King recommended removing the language based on the advice of the Deputy County Attorney. There was no objection.

Mr. King commented that there is a process that gives the Planning Commission the opportunity to impose additional restrictions on an STR if it believes there is a need. He added that as was pointed out by Mr. Cross, the County has mechanisms in place to deal with any STR that is being operated in an inappropriate manner. Mr. King stated that regardless of what might be the rule in some other locality, to establish some numerical limit on the number of rental nights would be arbitrary and have no rational basis. He said the Commission should base its recommendations on the unique facts of each case and the comments from the neighbors and not on some arbitrary number.

Mr. Hill stated that he and Mr. Cross talked about requiring STR owners to keep a guest log but not requiring that it be available on demand to County staff. He said that would ensure that the information is available in the event that suspicion developed that would justify issuance of a search warrant, so he felt that was a possibility.

Mr. Cross said the language can be changed to require a guest log but not require that it be made available on demand to County staff.

Mr. King said that is a great idea so that if there is a crime or a complaint, the guest information can be provided with a search warrant.

Chair Titus stated with regard to the number of rental days, it could be left unlimited while giving the Board the authority to reduce it in approving a use permit.

Mr. King responded that he was not opposed to having language that would say that the number of calendar days could be limited based on the circumstances of the application. He said this would make it clear to the applicants that they are not guaranteed to have up to 365 rental days and there could be factors that dictate a limit on the number of rental days.

Mr. Cross commented that such a provision would give the Board of Supervisors some leeway, when there are controversial applications, to adopt a compromise position where the applicants are willing to limit the number of rentals per year. In addition, he stated that at its August 11 meeting, the majority of the Commission did not want to prohibit whole-house rentals but as a practical matter, that is what a limit of 60, 90, or 100 rental nights would do in most cases.

Chair Titus summarized the discussion, stating that the proposed amendments should not include a numerical limit but should include language to allow the Board to establish one in any particular case if it deems it necessary.

Mr. Holroyd commented that a person could rent his or her home for 90 days or more, which would not be considered a short-term rental, and if they were in a first-year probationary period, restricting the STR use to 100 days would not prevent them from renting out their house for the rest of the year as long as the rental is for at least 90 days.

Chair Titus asked Mr. Cross if the Commission has given staff the guidance it needs in order to proceed.

Mr. Cross responded that it appears to be the desire of the Commission to make two modifications regarding the guest log and the number of rental nights and sponsor the rest of the amendments as written.

Mr. Holroyd expressed his disagreement with language in the staff report that states that the consensus of the Commissioners was that the zoning fees and penalties should remain as they are. He said his recollection is that the Commission said that fines are set by the courts and fees are set by the Board of Supervisors and that the Planning Commission has no voice on it, not that the Commission agreed that they should stay the same.

Mr. Cross responded that the Commission agreed not to make any changes and the statement to which Mr. Holroyd was referring reflected his own opinion.

Mr. King responded that the bottom line is that the Commission is not recommending any changes.

Mr. Holroyd said that is true but that he disagreed with the wording in the memo.

Chair Titus stated that in his opinion, the proposed amendments represent guidelines for STRs, and he asked Ms. Leedom and Mr. Holroyd if they agree, since he has heard them say there are no guidelines.

Mr. Holroyd responded that once these recommendations are adopted by the Board of Supervisors, there will be guidelines in place.
