

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY
43RD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

TOBYHANNA FOR ALL, LLC,
Plaintiff,

No. SS93 CV 2022

Monroe County PA Prothonotary

SEP 27 '22 PM4:07

v.

TOBYHANNA TOWNSHIP,
Defendant.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering written appearance personally or by Attorney and filing in writing with the Court, your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Monroe County Bar Association
Find a Lawyer Program
913 Main Street
Stroudsburg, PA 18360
Telephone: (570) 424-7288

NEWMAN WILLIAMS, P.C.
A PROFESSIONAL CORPORATION

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ATTORNEY FOR: Plaintiff

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TOBYHANNA FOR ALL, LLC,
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COMPLAINT

AND NOW COMES the Plaintiff, Tobyhanna for All, LLC, by and through its attorneys, Newman Williams, P.C., and files this challenge in accordance with Section 1601(f) of the Second-Class Township Code to the substantive validity of certain provisions of Tobyhanna Township Ordinance No. 569 relating to the use and regulation of short-term rental (STR) units in Tobyhanna Township and avers as follows:

The Parties

1. Plaintiff, Tobyhanna for All, LLC, a Pennsylvania limited liability company with a registered business address of 440 Williamson Rd., Gladwyne, PA.
2. Defendant, Tobyhanna Township, a Township of the second class acting by and through its duly elected Supervisors with an address of 105 Government Center Way, Pocono Pines, PA 18350.

Jurisdiction

3. The Second Class Township Code provides “[a]ny person aggrieved by the adoption of any ordinance may make complaint as to the legality of the ordinance to the court of common pleas.” *53 Pa. Stat. Ann. § 66601(f)*.

4. Section 7533 of the Declaratory Judgments Act provides that certain persons affected by a municipal ordinance may obtain a declaration of rights, status or other legal relations thereunder. *42 Pa. Cons. Stat. Ann. § 7533*.

Factual Background

5. The Monroe County Planning Commission drafted a model short-term rental ordinance to assist municipalities with the regulation of short-term rentals. (the “County Model Ordinance”). The County Model Ordinance (July 2019) is attached hereto as **Exhibit “A”** and incorporated herein by this reference as if fully set forth herein.

6. The Township, acting through its Board of Supervisors, passed Ordinance No. 569 relating to the use and regulation of short-term rental (STR) units in Tobyhanna Township on June 28, 2022 (the “STR Ordinance”). The STR Ordinance is attached hereto as **Exhibit “B”** and incorporated herein by this reference as if fully set forth herein.

7. The STR Ordinance was passed under the auspices of the Second-Class Township Code, Act of May 1, 1993, P.L. 103, No. 69, as amended by the Act of November 9, 1995, P.L. 350, No. 60, found at 53 P.S. § 66506, entitled "General Powers," which authorizes the adoption of ordinances for the management, care and control of a township, and the maintenance of the health and welfare of its citizens.

8. The implication is the STR Ordinance is not a land use ordinance as that term is defined in Section 107 of the Pennsylvania Municipalities Planning Code (MPC) and,

therefore, pursuant to Section 1601(f) of the Second Class Township Code (Code), TFA must bring this challenge to the substantive validity of the STR Ordinance with this Court. *53 P.S. § 10107; 53 P.S. § 66601(f)*.

9. The Ordinance became effective 90 days after its passage, i.e., September 26, 2022.

10. Plaintiff, Tobyhanna For All, is comprised of owners of property in Tobyhanna Township who are collectively aggrieved by various provisions in the STR Ordinance that are arbitrary, unreasonable, irrational, and not directly related to the health, safety, and welfare of the Township.

Camps, cabins and cottages exemption

11. Section 2 of the STR Ordinance provides in pertinent part as follows:

H. Camps, cabins and cottages that predate the township Zoning Ordinance are exempt from this Chapter.

12. The terms “cabin” and “cottage” are not defined in the STR Ordinance or the Zoning Ordinance.¹

13. This creates ambiguity as to what constitutes a “cabin” or “cottage”.

14. The provision is also vague as to whether the “cabin” or “cottage” needed to be built prior to the adoption of the Zoning Ordinance to be exempt or whether the “cabin” or “cottage” needed to be used as a short-term rental prior to the adoption of the Zoning Ordinance to be exempt.

15. As of the date of this filing, the Township is already proposing to eliminate this

¹ Section 2G of the STR Ordinance refers to the Zoning Ordinance for the definitions to the terms “resort, camp, hotel/ motel/ inn, bed and breakfast, or boarding- or rooming house.” This despite the fact the STR Ordinance is not a land use ordinance under the MPC. There is no reference to the Zoning Ordinance definitions of “cabin” and “cottage” presumably because the terms are not defined in the Zoning Ordinance.

exemption presumably due to its vagueness. The proposed amendment is attached hereto as **Exhibit “C”** and incorporated herein by this reference as if fully set forth herein.

16. Section 2H of the STR Ordinance remains part of this challenge given it remains in effect as of the date of this pleading.

Maximum occupancy

17. The County Model Ordinance provides “[o]vernight occupancy of a Short Term Rental shall be limited to no more than (i) two (2) persons per bedroom plus four (4) additional persons, or (ii) a maximum of fourteen (14) occupants, whichever is less.”

18. The maximum occupancy language from the Model Ordinance was adopted by several municipalities in Monroe County.

19. Section 8 of the STR Ordinance provides as follows:

A. The STR Capacity Limit will be limited to two (2) per bedroom if the permitted septic requirements are consistent with the house design but shall not exceed a total of ten (10) persons. The STR Capacity Limit must be accurately reflected on all advertising and marketing materials whether printed or online.

20. At no point during the process of the Township’s adoption of the STR Ordinance did any Township official intelligibly explain a basis for more restrictive occupancy language than that found in the County Model Ordinance.

21. A Township official did suggest at one point that limiting occupancy to two (2) per bedroom no more than ten (10) was consistent with building codes.

22. This is not the case as residential structures (one and two-family dwellings) are regulated under the International Residential Code (IRC) as opposed to the International Building Code (IBC) that regulates commercial structures.

23. Short term rentals are single-family dwellings occupied on a transient basis by single families, or a group of people living as a single family, and therefore regulated under the IRC, not the IBC.

24. The IRC does not include any restrictions on the number of occupants in a one or two-family dwelling.

25. Consequently, if the maximum occupancy of ten (10) was based on language in the IBC then the Township made an error of law by applying the wrong building code.

26. If, however, the occupancy limitation has no bearing to the IBC, then it would appear to be arbitrary in nature and, consequently, not bear a rational or reasonable relationship with the health, safety or welfare of the community.

Fines

27. Section 15 of the STR Ordinance provides as follows:

*E. Any person, partnership, corporation, or other entity who or which violates or permits a violation of the provisions of this Chapter shall, upon conviction in a summary proceeding, **pay a fine of not less than \$1,000.00 nor more than \$3,000.00 per violation**, plus all court costs and reasonable attorney's fees incurred by the Township of Tobyhanna in the enforcement proceedings, and/or be imprisoned to the extent allowed by law for the punishment of summary offenses.*

(Emphasis supplied).

28. The Second Class Township Code provides that when a township is enforcing an ordinance through summary proceedings, a "board of supervisors may prescribe criminal fines **not to exceed one thousand dollars (\$1,000)**. 53 Pa. Stat. Ann. § 66601. (Emphasis supplied).

29. The Township failed to recognize that it is preempted from enacting a provision that purports to authorize the Township to issue fines greater than the maximum amount set forth in the Second Class Township Code.

30. Section 15 is inconsistent with Pennsylvania Law and must be declared invalid.

Subsequent permits

31. Section 2 of the STR Ordinance provides as follows:

E. A subsequent STR Permit shall not issue to a short-term rental owner until the passage of ninety (90) days following any prior permit having been issued to that same owner.

32. Ordinances are arbitrary when they treat similar landowners differently without a reasonable basis for the different treatment.

33. Section 2E of the STR Ordinance unreasonably and arbitrarily targets those individuals who own multiple properties in the Township without a reasonable basis for this disparate treatment.

34. The provision has no bearing on the health and welfare of the Township and its citizens.

Minimum age

35. Section 8 of the STR Ordinance provides as follows:

B. A person must be twenty-five (25) years of age to contractually rent a STR unit.

36. Certain platforms, such as AirBnB, do not allow hosts to set an age limit other than 18 due to non-discrimination policies.

37. The County Model Ordinance does not contain an age limitation.

38. This provision has no bearing on the health and welfare of the Township and its

citizens.

Person in charge

39. Section 8 of the STR Ordinance provides as follows:

H. A Person in Charge must either reside or have an office located within a thirty (30) minute drive of the Rental Unit

40. This provision also has no bearing on the health and welfare of the Township and its citizens and is arbitrary in nature.

Limitation on number of short term rentals

41. Section 2 of the STR Ordinance provides as follows:

F. Tobyhanna Township, in order to promote the health, safety and welfare of the Township, reserves the right to limit the amount of short-term rental properties in the Township to a percentage of residences within all residential districts.

42. This provision should be deemed invalid as it reserves to the Township a power to limit STR properties in the municipality without any explanation as to what the percentage would be, without disclosure of the amount of residences within the residential zoning districts, and the relationship, if any, between that unknown limitation and the health, safety and welfare of the Township.

**COUNT I
DECLARATORY JUDGMENT**

43. The above paragraphs are incorporated herein by reference as though the same had been set forth in their entirety within this paragraph.

44. This challenge to the substantive validity of provisions of the STR Ordinance represents an actual and ongoing controversy that is ripe for determination.

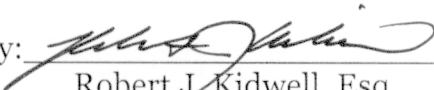
45. The Court is asked to adjudicate whether the challenged provisions are unreasonable, arbitrary, not substantially related to the public interest or otherwise preempted by state law.

WHEREFORE, Plaintiff, Tobyhanna For All, prays that the Court enter a declaratory judgment that:

- (a) the challenged provisions are arbitrary and unreasonable with no substantial relationship to the public health, safety, morals, or general welfare and, therefore, are invalid;
- (b) Such other and further relief as may be proper.

Respectfully submitted,

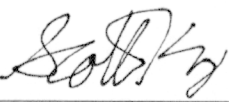
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Date: 9/27/2022

Verification

I verify that the statements made in the foregoing are true and correct to the best of my information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

By:  _____

Printed name: Scott Kunz

Title: Officer

Date: 09/27/2022