

BEFORE THE TALBOT COUNTY BOARD OF APPEALS

APPEAL OF MAURITS and * FINDINGS AND DECISION
ANKE VAN WAGENBERG * Appeal No. 24-1748

* * * * * * * * * * *

The Talbot County Board of Appeals (the “Board”) held a hearing on October 28, 2024 in the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland to consider the Appeal of Maurits and Anke Van Wagenberg.

The Appellants were participants in the matter of Frad Five, LLC (STB-24-16) whereby the Short Term Rental Review Board (“STRRB”) granted a Short-Term Rental License to Frad Five, LLC (“Appellee”).

Voting Board Members present for this hearing were Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Patrick Forrest, Jeff Adelman, and Zakary Krebeck.

STATEMENT OF THE CASE

This matter is brought forth under Article VII of the Talbot County Code, § 190-63.2(H), which provides that “Any party that participated in the hearing and is aggrieved by the [STRRB] Board’s decision may file an appeal to the Talbot County Board of Appeals within 30 days of the issuance of the written decision. Such appeal shall be on the record.” This Board’s review of STRRB decisions is to assure that the decision is in conformance with law and supported by substantial evidence. *Monkton Preservation Ass’n v. Gaylord Brooks Realty*, 107 Md. App. 573, 580 (1995).

The property at issue is located at 27213 Baileys Neck Rd., Easton, Maryland 21601 (“Property”). On June 20, 2024, the STRRB conducted a public hearing that considered the application of Appellee to obtain a Short-Term Rental License for the Property. As set forth in Article VII of the Talbot County Code, § 190-63.2(G)(6):

The [STRRB] Board shall approve an application for a new short-term rental license unless the Board finds that:

- a. The license application is incomplete;
- b. The applicant has made false, inaccurate, incomplete or incorrect statements in connection with the application;
- c. The applicant has not complied with the application notice requirements;
- d. Issuance of the license would unduly disturb the peace of the residents of the neighborhood in which the short-term rental will be located; and/or
- e. There are other substantial reasons in the discretion of the Board why the license should not be issued, in which event the Board shall deny the license.

The STRRB, by a vote of three to two, granted the Short Term Rental License. It issued a written decision, dated July 18, 2024. The written decision addressed each of the criteria set forth in § 190-63.2(G)(6). The written decision found that:

- a. The license application was complete.
- b. The applicant had not made false, inaccurate, incomplete or incorrect statements in connection with the application.
- c. The applicant complied with all notice requirements.
- d. The “issuance of the license would not unduly disturb the peace of the residents of the neighborhood in which the STR is located because the Property does not have any previous complaints.”
- e. There are no other substantial reasons to support denial of the license.

Appellants contend that the STRRB made errors in its determination to grant the license. Specifically, Appellants contend that the license should not have been granted for the following reasons:

1. Appellants contend that Board Member Keith Watts is not eligible to be a Board Member and, therefore, the Board’s decision was invalid.
2. Appellants contend that the Board failed to consider evidence pertaining to road safety because it was uncontradicted and the Board failed to discuss the issue in its deliberations or written decision.
3. The Board Chairwoman improperly disallowed a motion proposed by Board Member Haase, which was immediately followed by Board Member Watts motion to approve the license.

APELLEES MOTION TO DISMISS

The Board considered a Motion to Dismiss made by Appellees. The basis of the motion is that Appellants did not obtain and submit a copy of the STRRB hearing transcript in the time prescribed by the ordinance. Appellee contends that it prejudiced the Appellee’s ability to prepare for hearing in this appeal. However, Appellee’s counsel acknowledged that she did review a video transcript of the STRRB hearing when the written transcript was not available to her.

Appellants contend that the failure to submit a transcript was a mistake and proposed to postpone the hearing if it precluded Appellee from being able to sufficiently prepare for the appellate arguments. Appellee declined to postpone the hearing.

The Board considered the motion and finds that the video transcript was available to Appellees, was relatively short, and that the written transcript was received with enough time to prepare for the hearing without causing prejudice. The Board finds that there are no discrepancies between the video transcript and written transcript. On a motion made by Mr. Forrest and seconded by Vice Chairman Dorsey, the Board unanimously denied the Motion to Dismiss.

SUMMARY OF ARGUMENTS

The Appellants were represented by attorneys Anne C. Ogletree and Mark Gabler who submitted a Pre-Hearing Statement and provided oral argument. The Appellee was represented by attorney Lyndsey Ryan who submitted a Pre-Hearing Statement and provided oral argument. The Board has read and considered the respective written arguments. A summary of the respective oral arguments, in response to the Applicant's bases for appeal, are as follows.

1. *Appellants contend that Board Member Keith Watts is not eligible to be a Board Member and, therefore, the Board's decision was invalid.*

Section 190-63.1 of the Talbot County Code states, among other things, that a Board Member of the STRRB "shall be an adult resident of Talbot County." Appellants argue that Board Member Keith Watts was not an eligible member and, therefore, the 3 to 2 vote affirming the short term rental was invalid. Appellants point to the fact that Mr. Watts is an attorney that is licensed in California and his California Bar certificate lists a New York address as his residence. Mr. Watts is the owner of property in Talbot County. Appellants allege, however, that this property is primarily used as a short term rental property.

Appellants rely on case law that interprets laws of domicile for public servants elected to public office. *See Oglesby v. Williams*, 372 Md. 360 (2002); *Dorf v. Skolnick*, 180 Md. 101 (1977). In these kinds of cases, domicile is determined by where one lives and where one votes.

Appeals from the STRRB are reviewed based on the evidence in the record from that proceeding. Appellee contends that this issue should not be considered by the Board of Appeals because it is not an issue that was considered on the record. Because it was not an issue that was raised on the record below, it is not an error of the STRRB that can be reviewed.

Appellee notes that the California bar license that Appellants rely on is a license that expired in 2022. Further, even if evidence shows that an individual has residences in other jurisdictions, it does not equate to that individual not being a resident of Talbot County. Additionally, there is no evidence to suggest that Mr. Watts has any conflict of interest that would justify him recusing himself from the vote that occurred.

2. *Appellants contend that the Board failed to consider evidence pertaining to road safety because it was uncontradicted and the Board failed to discuss the issue in its deliberations or written decision.*

Appellant's primary substantive argument, on appeal, is that the STRRB decision did not consider uncontradicted evidence that granting the short term rental license would create unjustifiable traffic safety problems on Baileys Neck Road. There was testimony at the STRRB hearing that the road is extremely narrow, only allowing one-way traffic in certain places, which could result in dangerous situations with increased traffic from short term renters. STRRB Board Member Haase acknowledged the dangerous nature of the road. Vice-Chairperson Suss, in

response to that testimony, stated in that hearing that there are narrow roads all over the County. Mrs. Suss stated: "I mean it's just the way it is here. People have to slow down and be attentive."

Appellants argue that there was no evidence at the hearing that the road was safe and, therefore, the Board should have made that a consideration in its final decision. The legal basis for Appellant's contention is that § 190-63.2(G)(6)(e) requires the STRRB, in its written decision to find that "there are no other substantial reasons to support denial of the license."

Appellee counters that there is evidence on the record that the Appellee was willing to educate its renters regarding the road and its safety concerns. Additionally, there was lots of discussion on the record of the safety concern and so it is apparent that the Board considered the issue.

3. *The Board Chairwoman improperly disallowed a motion proposed by Board Member Haase, which was immediately followed by Board Member Watts motion to approve the license.*

Appellants also argue there was misconduct by the Chairperson, which resulted in lack of due process (fairness) to the Appellant. The alleged misconduct is the Chairperson's failure to acknowledge Board Member Haase when he attempted to make a motion at the conclusion of the hearing. Board Member Watts also made a motion, which the Chairperson acknowledged and the Board voted on. The failure to acknowledge Mr. Haase's motion, according to Appellants, was a violation of Roberts Rules of Order.

Appellee points to the video transcript of this exchange. When reviewing it, compared to the written transcript, it appears both Board members were attempting to make a motion at the same time. Because there was no second made with regard to Mr. Haase's attempt to make a motion, it was not a violation of the Roberts Rules of Order when the Board did not vote on a motion (which was never made) by Member Haase. Additionally, there was no objection noted on the record and so the issue is not ripe for appeal.

DECISION

To begin, we note the standard of review of agency decisions. Judicial review of administrative agency action is narrow. The court's [or this Board's] task on review is *not* to "substitute its judgment for the expertise of those persons who constitute the administrative agency," *Bulluck v. Pelham Woods Apts.*, 283 Md. 505, 513, 390 A.2d 1119, 1124 (1978), quoting *Bernstein v. Real Estate Comm.*, 221 Md. 221, 230, 156 A.2d 657, 662 (1959), *appeal dismissed*, 363 U.S. 419, 80 S. Ct. 1257, 4 L. Ed. 2d 1515 (1960).

The agency's decision is reviewed in the light most favorable to it, and the agency's decision is deemed *prima facie* correct and presumed valid. *Critical Area Comm'n for Chesapeake and Atlantic Coastal Bays v. Moreland, LLC*, 418 Md. 111, 123, 12 A.3d 1223 (2011). "In general, '[a] court's role is limited to determining if there is substantial evidence in

the record as a whole to support the *agency's findings and conclusions*, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Catonville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 568, 709 A.2d 749 (1998) (emphasis supplied) (citing *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226 (1994)).

This Board is skeptical of its authority to consider the legal arguments regarding Board Member Watts' eligibility or the argument that due process was not afforded when the Chairperson failed to acknowledge a Board Member's attempt to make a motion. As Appellee correctly points out, these arguments were not made on the record below nor was there evidence of Mr. Watts eligibility presented on the record below. Fact finding is not a role that this Board performs when reviewing a decision of the STRRB.

The Following excerpt by the Supreme Court of Maryland is instructive here:

It is true that when an appellate court reviews the judgment of a trial court on direct appeal, the appellate court ordinarily will affirm the judgment on any ground adequately shown by the record even though the trial court may not have ruled upon such ground. This principle, however, is not applicable to judicial review of administrative agency decisions. As indicated earlier in this opinion, judicial review of an agency's decision is normally limited to the findings of fact and conclusions of law actually made by the agency. This distinction between review of a trial court's decision and review of an agency's decision was explained by Judge Rodowsky for the Court in *United Steelworkers v. Beth. Steel*, *supra*, 298 Md. at 679, 472 A.2d at 69: "Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency.

United Parcel Serv. V. People's Counsel, 336 Md. 569, 586-86 (1992).

Since the issue of Board Member Watts' eligibility was not an issue considered by the STRRB, or even raised at the hearing, this Board declines to make a decision regarding that issue. Likewise, because no objection was made to the alleged misconduct of the Chairperson at the hearing below, this Board declines to make a decision regarding that issue. We conclude that this Board does not have jurisdiction to consider those issues. This Board does believe, however, that it would be in the best interests of the County if the STRRB considered these issues before its decision is finally implemented.

For the same reasons articulated in the *United Parcel* case, this Board also doesn't have enough information to affirm or deny the safety issue concerning Baileys Neck Road. The record does contain testimony of the issue and there are Board comments made regarding the testimony throughout. There is no discussion of the issue in deliberation and the written decision

fails to mention the issue. This Board is also leery of the written decision itself and questions whether it is merely a restatement of the required findings for all STRRB decisions. It is concerning that the STRRB decision states that “the issuance of the license would not unduly disturb the peace of the residents of the neighborhood in which the STR is located because the Property does not have previous complaints.” The property has never been a STR property and would not have had previous complaints for that reason.

The Supreme Court has stated “when the Board of Appeals [agency] refers to evidence in the record in support of its findings, meaningful judicial review is possible.” *Critical Area Comm’n v. Moreland, LLC*, 418 Md. 11 (2010). In this instance, the STRRB’s findings do not even sufficiently refer to evidence in the record to support its findings and we find that meaningful review is not possible as a consequence.

This Board will not overturn findings of the STRRB if that finding is one that a reasonable individual could make. However, there is not enough information on appeal for this Board to make that determination. This Board will not “search the record for evidence to support the judgment.” 336 Md. 569 at 585. Therefore, this Board remands the matter to the STRRB to provide more adequate deliberation and findings regarding the evidence presented concerning road safety.

Since this matter is remanded for a more substantial decision by the STRRB, this Board also encourages, but does not order, the STRRB to also consider whether Mr. Watts is eligible to serve on that Board and, if not, whether the STRRB can render decisions of an ineligible Board member. This Board also encourages the STRRB to consider whether it erroneously failed to allow a motion by Board member Haase.


EVIDENCE ON THE RECORD


The Board accepted and considered the following documents as part of the record in this appeal:

1. Application for Administrative Appeal with Attachment 1.
2. Checklist for Administrative Appeal.
3. Notice of Intent to Participate.
4. List of Witnesses to be Summoned.
5. Tax Map with subject property highlighted.
6. Notice of Public Hearing for Advertisement in local paper.
7. Newspaper Confirmation.
8. Public Notice with Adjacent Property Owner List attached. (Old List Attached, marked void).
9. Sign Maintenance Agreement.
10. Acknowledgement Form for Administrative Appeal.
11. Frad Five, LLC, STN-24-16 Short Term Rental Decision dated 07/18/24.
12. Copy of the State Bar of California, Keith Alan Watts.
13. Certificate of Service dated 08/16/24 from Maurita and Anke Van Wagenberg.
14. Notice of Intent to Participate from Heather Freidkin (Frad Five).


15. Notice of Intent to Participate from Lyndsey Jones Ryan.
16. Appellants Pre-Hearing Statement from Mark Gabler and Anne Ogletree, received 09-26-24.
17. Applicant's Motion to Dismiss filed by Lyndsey Ryan on 10/22/24.
18. Respondents Pre-Hearing Statement from Lyndsey Ryan, received 10/24/24.
19. Transcript from 06-20-24 STR meeting (Frad Five, LLC, Application # STW-24-16.
20. Appellants' Response to Motion to Dismiss and Motion to Postpone.

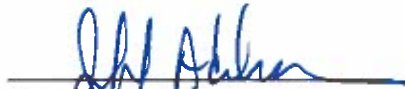
IT IS THEREFORE, this **10th** day of December, 2024, on a motion made by Mr. Forrest, and seconded by Vice Chairman Dorsey, with all Board members in favor, **RESOLVED** that the decision of the Short Term Rental Review Board is **REMANDED** for more detailed findings of fact to support the STRRB's decision. This decision does not require a new hearing by the STRRB.


Frank Cavanaugh, Chairman


Louis Dorsey, Jr., Vice-Chairman


Patrick Forrest


Zakary A. Krebeck


Jeff Adelman