

*RISD v. Begin*, C.A. No. PC-2020-06584 (R.I. Sup. Ct., filed Nov. 12, 2021) (hereinafter “RISD Opinion”).

**Zoning Board Decision:** June 18, 2020

**Superior Court Decision:** November 12, 2021

**512:** Number of days between the decision of Zoning Board and the decision of Superior Court.

**Key Takeaways:**

1. Rhode Island General Law § 42-63.1-14 does not preempt municipalities from limiting the number of individuals living in short-term rentals.
2. Cities and towns have the power to impose restrictions on short-term rentals, but a court is more likely to enforce them where such restrictions—*e.g.* limiting the number of individuals and the types of events allowed—relate specifically to short-term rentals and are applied equally across similarly situated properties.

**Holding:**

Rhode Island Superior Court (“the Court”) reversed Barrington Zoning Board’s decision to impose restrictions on short-term rentals by applying an ordinance generally applicable to household single-family residential zones, finding such application arbitrary and capricious and without a rational basis where the rule was not enforced equally across similarly situated properties.

**Facts:**

Rhode Island School of Design (“RISD”) owns a property in Barrington at 15 Freemont Avenue (“15 Freemont”). 15 Freemont is located in the R-40 district which is zoned for single-family residential use. RISD began listing 15 Freemont for short-term rentals on Airbnb during the summer of 2019.

On October 1, 2019, after receiving at least one complaint regarding the property, Barrington notified RISD that it may continue renting 15 Freemont, but only to single families related by blood or marriage or to no more than three unrelated persons, pursuant to the definition of “household” under Town Ordinance § 185-5 (“the Ordinance”).

RISD appealed to the Zoning Board for relief, arguing the asserted limitation was erroneous and preempted by RI General Law § 42-63.1-14. The Zoning Board decided the Ordinance applied to short-term rentals; thus, 15 Freemont was subject to the household limitation on guests (“the Decision”). Moreover, the Decision found the Ordinance precluded RISD from holding any events at 15 Freemont Ave because there was no “principal use” of the premises to which events could be considered an “accessory” use.

RISD appealed the Decision to RI Superior Court on September 21, 2020.

**Analysis:**

In its analysis, the Court focused on three main arguments raised by RISD, and reached the following conclusions.

**1. RI State Law did not preempt the Ordinance.**

First, the Court held that RI General Law did not preempt application of the Ordinance because there was no material conflict between that law and the Ordinance.

RI Gen. Law § 42-63.1-14 (“the Statute”) states that municipalities *shall not prohibit owners of residential property from offering their property for tourist or transient use on a hosting platform*. Thus, RISD argued, the Statute preempted the restrictions imposed by the Ordinance. Barrington countered that the Statute did not conflict with the Ordinance because the zoning was merely regulating, rather than prohibiting, short term renters at 15 Freemont.

Here, the court found that RI General Law did not preempt the Barrington Ordinance because the plain language of the Statute and the Ordinance demonstrated that they “clearly address different things.” See *RISD Opinion* at 19. Whereas the Ordinance plainly dealt with the definition of households, § 42-63.1-14 dealt with the rights of owners to offer their property as a short-term rental.

Importantly, the Court recognized the Zoning Board indeed had a valid right to limit the number of related persons in a household. However, because the Zoning Board could still enforce this limitation without violating the Statute—*i.e.* by not outright prohibiting short-term rentals at 15 Freemont—the two rules were not in conflict. Accordingly, the Court concluded that application of the Ordinance was not preempted by state law.

**2. The Zoning Board acted without a rational basis and arbitrarily and capriciously by selectively enforcing the Ordinance to limit the rights of a short-term rental property owner.**

Barrington asserted that the Ordinance applied to 15 Freemont renters because neither the Ordinance nor the plain dictionary definition of “living” (being alive) and “together” (in one place) included a temporal requirement. Nonetheless, the Court agreed with RISD that *the Ordinance’s definition of household did not encompass short term visitors or guests*.

In its analysis, the Court pointed to numerous examples where courts defined living together by reference to time. See *RISD Opinion* at 26-27 (including string cite of cases examining and interpreting “living together”). Moreover, the Statute specifically defined tourist or transient use by length of occupancy (less than 30 days), further bolstering the importance of examining time when determining the applicability of a regulation.

Unlike residents who “live together” for purposes of a “household,” here, the short-term renters at 15 Freemont only occupy the premises for a *brief* period of time (typically a weekend). *Id.* at 28. Additionally, they do not identify the property as their home, do not list the property as a mailing address or sign a lease, and receive only a limited license to use the property, per

Airbnb's Terms of Service. Thus, the Zoning Board failed to provide a rational basis for applying the Ordinance's definition of household, to the short-term rentals at 15 Freemont.

Further, despite at least sixteen other properties in Barrington having been listed on Airbnb and VRBO for short-term rentals, the Zoning Board had only investigated 15 Freemont. Thus, the Court found the Zoning Board's selective application of the Ordinance to 15 Freemont arbitrary and capricious.

In addition, the Court approvingly cited to four other jurisdictions in RI who specifically addressed short-term rentals with targeted ordinances. *See, e.g.*, Chapter 98 of Middletown's Code of Ordinances. The Court urged Barrington to adopt a similar approach, stating: "It would benefit Barrington to address the specific issue of short-term rentals, rather than attempting to shoehorn a preexisting ordinance into unique situations." RISD Opinion at 30.

**3. The Zoning Board's blanket prohibition on "events" as accessory uses at 15 Freemont lacked a rational basis and was an arbitrary and capricious use of the Zoning Board's discretion.**

The Decision precluded 15 Freemont from hosting events by alleging that the property was principally used for commercial short-term rentals, and thus not entitled to uses typically accessory to residential households.

The Court found this Decision to lack a rational basis because if the principal use of 15 Freemont was indeed commercial, then: (1) the Zoning Board would have tacitly authorized an unapproved code violation because 15 Freemont was located in a residential zone, not a commercial zone; and (2) the Zoning Board would *not have previously stated that RISD could rent out the property*, albeit only to single families and no more than three related persons.

Further, the Zoning Board had permitted events at other dwellings zoned in Barrington's R-40 district, subject to reasonable noise and time restrictions. Thus, the Court held the Zoning Board acted arbitrarily and capriciously by applying a blanket prohibition on events at 15 Freemont, but permitting similar events at other residential zoned property.

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