

Minutes of EAST LYME SHORT TERM RENTALS AD HOC COMMITTEE - 08/14/23

Date and time: 08/14/23 7:00 PM to: 08/14/23 8:03 PM

Present: Brooke Stevens, Recording Secretary, Anne Santoro, Anne Thurlow, Paul Formica, John Cellino, Gary Cicchiello, Greg McIntire, Gary Farrugia, Absent:, Daniel Beachy

CC: Kevin Seery, First Selectman, David Garside, Chief Building Official, Bill Bundy, Fire Marshal, William Mulholland, Zoning Official

Location: East Lyme Town Hall Upper Conf. Room, 108 Pennsylvania Avenue, Niantic, CT, 06357

Link: <https://app.meetingking.com/meetings/403554>

Topics

1. Call Meeting to Order/Pledge

Note First Selectman Seery called the meeting to order at 7:00 p.m., and the pledge of allegiance.

2. Welcoming Remarks by the First Selectman, Committee members & Staff resources

Note Mr. Seery made some of the following welcoming remarks:

He wants to thank everyone for volunteering to be on a committee exploring a topic that has increasingly become an item of concern over the last several years.

On July 5th, the Board of Selectmen agreed to form a Short-Term Rental Ad Hoc Committee.

On August 6th, they developed the charge and appointed the Committee.

Greg McIntire will be taking the place of John Schweizer since he is only a summer resident.

Mr. McIntire can share his thoughts this evening but won't become a voting member until he's officially appointed at the next Board of Selectmen meeting.

The Committee is comprised of Ms. Santoro, a member of the Board of Selectmen, Anne Thurlow, the Chair of the Zoning Commission, Mr. Formica, the President of the Giants Neck Beach Association, Mr. Farrugia, a member of Saunders Point, Mr. Cellino, the Chair of the Black Point Beach Club Association, Mr. Beachy, a member of the Crescent Beach Association, and Mr. Cicchiello, a member of the community at large.

Town staff- Mr. Garside, Mr. Mulholland, and Mr. Bundy are in attendance this evening and will be on hand as needed.

Ms. Stevens will be the recording secretary and will take the meeting minutes and distribute them along with the meeting agendas to the committee members.

RECEIVED FOR RECORD
EAST LYME, CT
2023 AUG 29 A 8:04
Keara McIntire
TOWN CLERK

Note This topic is not unique to Niantic or East Lyme.

Short term rentals have been long existing, and people have been doing rentals for decades.

Some of the beach associations have had problems with air b&b's and with the emergence of LLC's purchasing homes to be used as rental properties.

Beachfront property is being rented out on a very short-term basis, and some occurrences impact many of our residents and their quality of life.

It's a safety concern too.

If you have a two- or three-bedroom home, and a house full of 15-20 people, that's obviously not supposed to be the case.

Does the home have adequate smoke detectors?

Can it accommodate emergency parking.

Enforcement of this has become very difficult.

There's a lot of things we have to concern ourselves with.

We know they exist, it's incumbent upon the town to make sure they're safe and done responsibly.

3. Election of the Short-Term Rentals (STR) Ad Hoc Committee Chair and Vice Chair

Note Mr. Seery called for nominations for the STR Ad Hoc Committee Chair.

Note MOTION (1)

Mr. Cicchiello nominated Ms. Santoro as STR Ad Hoc Committee Chair.

Ms. Thurlow seconded the nomination.

Note Ms. Santoro suggested a co-chair scenario and said it might be better to have two at large co-chairs in lieu of an elected official.

Note The Committee briefly discussed the possibilities for a committee chair and Ms. Santoro observed that 2 co-chairs would be helpful for the division of labor and the running of meetings.

Note Mr. Seery said it might be appropriate for each chair to be from a different political party, he noted that Ms. Santoro is republican, and she is nominated as the first co-chair.

Note MOTION (2)

Ms. Thurlow nominated Mr. Cicchiello as the second STR Ad Hoc Committee Co-Chair, and noted he belongs to the democratic party.

Ms. Santoro seconded the nomination.

Note There were no further nominations.

Decision MOTION (1) Vote:

Motion carried, 6-0-0.

Ms. Santoro is the first STR Ad Hoc Committee Co-Chair.

Decision MOTION (2) Vote:

Motion carried, 6-0-0.

Mr. Cicchiello is the second STR Ad Hoc Committee Co-Chair.

Note Mr. Cicchiello said he will defer to Ms. Santoro in terms of the running of the meetings.

4. Review of STR Ad Hoc Committee Charge

Note Attorney Zamarka came forward and read the Charge of the STR Ad Hoc Committee- Whereas the Town of East Lyme is aware that the rental of residential properties on short term basis as a matter of concern to many East Lyme residents, and whereas the Board of Selectmen wishes to investigate the issue of short-term rentals to determine whether and to what extent they may be regulated, if there exists a need in East Lyme to regulate such practices and any other related issues.

Therefore, the Board of Selectmen hereby establishes the Ad Hoc Short-Term Rental Committee and requests that conduct its business as follows:

1. The Committee shall be comprised of eight (8) members, each one being a resident elector of East Lyme. There shall be one member each representing the interests of the Board of Selectmen, the Zoning Commission, and six members at large. The composition of the Committee will comply with the minority representation statute. Five (5) members shall constitute a quorum. All members shall be recommended and appointed by the Board of Selectmen.
2. The Committee shall conduct its business in accordance with all laws and regulations governing the actions of municipal agencies, including the requirements of the Freedom of Information Act.
3. The Committee shall conduct at least two (2) public hearings to receive comments and input from East Lyme residents. The first shall be early in the process and the second one shall be held prior to the report of recommendations to be given to the Board of Selectman.
4. The Committee shall report its findings and any recommendations to the Board of Selectmen no later than 90 days after its first meeting, and the Committee may request additional time if necessary.
5. Any Committee member who has a financial interest in a short-term rental shall disclose same at the first meeting of the Committee.

5. Presentation by Town Attorney

Note see attached presentation summary.

 [Presentation_summary_\(00720910xD3DC6\).pdf](#)

5-1. Freedom of Information Act (FOIA)

Note Attorney Zamarka reviewed the Freedom of Information Act (FOIA), and shared the following: This is a committee it is an agency of the Town of East Lyme.

As such, the Freedom of Information Act applies to all employees, to all municipal boards, agencies, commissions, and committees ad hoc.

For our purposes, we're not necessarily concerned so much with the document's aspect of the Freedom of Information Act but more the overall act.

All meetings must be open to the public, must have minutes taken, must be properly noticed with agendas posted at least 24 hours prior to each meeting.

What's especially significant, is that it's considered a meeting anytime a quorum is present and the work of committee of the committee is discussed.

Since we live in the electronic age, FOI applies to electronic communications.

Your texts, emails, anything that discusses the substantive business of this committee cannot take place outside the bounds of the scheduled committee meetings, be it in person, or via group texts or emails.

If there is the need to send out a text or an email that should be for scheduling purposes only.

5-2. Update on current legal decisions and impact on the Town of East Lyme

Note Attorney Zamarka reviewed current legal decisions and cited *Wihbey v. Pine Orchard ZBA*, 218 Conn. App. 356 (2023), and shared the following:

Facts- Cease & Desist issued to Wihbey for operating STR in area zoned for single family dwelling use. Zoning regs recently amended to prohibit short term rentals of 30 days or less.

Trial Court held Wihbey entitled to use home as STR as consistent with single family dwelling use set out in regs.

The ZBA appealed.

The Appellate Court recognized undisputable right of owners to rent their real estate, and that stripping that right is a significant restriction on the rights of ownership.

They ruled that because the Zoning regulations permit signs on property advertising that property for rent, this indicates that the zoning commission recognized that renting residential property as a permissible use.

Note Mr. Zamarka observed that East Lyme has a similar sign regulation, so the Court would likely hold that this regulation means that the renting of residential property is a permitted use in East Lyme.

Note Mr. Zamarka said the Appellate Court refused to place time/temporal limits on renting property; interpreting the regulations as allowing long term but not short-term rentals, as the owner would have to decide where dividing line was, and it's likely that the Court would interpret the East Lyme regulations in the same way.

Note He added that the Pine Orchard ZBA filed for certification to CT Supreme Court, in May, so the ruling could change.

5-3. Practices in other municipalities

Note Mr. Zamarka discussed STR's in other communities and provided the following synopsis:

1. Lyme-
Regulation.
30 days or less = STR
Permit required.
Host (21+) must live on site at the STR during entirety of any rental period.
Zoning permit for up to 6 overnight guests
Special permit for 6+ overnight guests.
2. Ledyard-
Ordinance.
Designated enforcement officer.
STR = 21 days or less.
Permit required.
Local Property Representative must be available 24/7; does not have to live on site.
3. Preston
Regulation.
Max length of stay = 3 weeks in any 3-month period by same party of guests.
1 parking spot for every 2 BR's, no on street parking.
No more than 6 BR.
Permit required, \$200 fee.
4. Simsbury
Ordinance.
Less than 30 days = STR.
Permit required, \$200 fee.
Notice of permit mailed by applicant to all property owners w/in 100 ft.
Owner doesn't have to be present on site but must provide contact info to town if not on site.
6 guests max.
5. Bozrah
Ordinance.
Permit required.
Appoint STR Officer.
Point of contact – owner or designated representative.
Max occupancy 5, not counting kids under 3.

Note Mr. Zamarka discussed the use of regulation v. ordinance and explained they have 3 beach communities that have own zoning regulations in town – Black Point Beach Club Association, Crescent Beach, and Giant's Neck Beach; a zoning regulation would not apply to these communities while an ordinance would apply town-wide and allows the imposition of fines for violations.

5-4. Formation of subcommittees of the STR Ad Hoc Committee

Note Mr. Formica discussed holding off on creating subcommittees until they can elicit additional information from both staff and the public.

Ms. Santoro said they need to define the problem and need further data.

Note Mr. Formica noted for the record that he owns a short-term rental property with his partner, under an LLC, and he lives next door to it.

Note The Committee had a general discussion about looking at the totality of this use and any associated issues.

Note Ms. Thurlow asked about inviting Chief Finklestein to a future meeting so that he can detail his experiences with short-term rentals.

Task Ms. Santoro asked if the officials here this evening- Mr. Mulholland, Mr. Garside, and Mr. Bundy could draft brief presentations detailing their experiences and comments, to share with the Committee at a future meeting.

Owned by Mr. Garside, Mr. Mulholland, and Mr. Bundy

Note Mr. McIntire discussed how 50% of the rental properties in Oak Grove Beach have nonresident owners, so there is no one to contact when issues arise. He added that enforcement is the key issue.

Note Mr. Seery noted he has asked Diane Vitagliano, the Town Assessor, to compile some data as well.

Note Mr. McIntire observed that this information will help them estimate the income that is being made from this practice.

Note Mr. Formica noted the first public hearing will be useful and give them "the lay of the land," so to speak.

Note Mr. Cellino discussed how they need to determine what constitutes a short-term rental verses a rooming house, and what makes it a commercial endeavor with a hotel tax.

Task The Committee discussed how the timeline is not realistic for their Charge, and Mr. Seery said he will put it on the next Board of Selectmen agenda, to extend the 90-day Charge.

Owned by Kevin Seery, First Selectman

Note Mr. Seery discussed how the new Board of Selectmen will be in office as of December 6th, 2023, and the Committee agreed that January 17th, 2024, would be the ideal time to present their final report.

6. Set calendar of meetings & public hearing date

Note The Committee discussed setting a calendar of meetings and how given the current roster of meetings and everyone's schedules, Monday nights seem ideal.

Note Ms. Santoro said she doesn't imagine they would need to meet more than twice a month.

Note The Committee decided to set a tentative public hearing date for Monday September 11th, 2023, if a larger venue such as the middle school, is available.

Note The Committee discussed how they could also meet on Tuesday September 12th, 2023, if necessary, and that a regular meeting could follow the public hearing.

7. Public Comment

Note There was none.

8. Committee member comments

Note Mr. McIntire said this is a complex issue, but enforcement is needed.

Note Mr. Cellino said this is an important issue and rational decisions are needed.

Note Mr. Formica said he agrees, they need to look at the situation holistically, and find solutions that aren't hardships.

Note Mr. Cicchiello said they need to balance everything with society's interests.

9. Adjournment

Decision MOTION (3)

Mr. Formica moved to adjourn the August 14th, 2023, inaugural meeting of the East Lyme STR Ad Hoc Committee at 8:03 p.m.

Ms. Thurlow seconded the motion.

Motion carried, 6-0-0.

Note Respectfully Submitted,
Brooke Stevens, Recording Secretary

New Tasks

Task Ms. Santoro asked if the officials here this evening- Mr. Mulholland, Mr. Garside, and Mr. Bundy could draft brief presentations detailing their experiences and comments, to share with the Committee at a future meeting.

Owned by Mr. Garside, Mr. Mulholland, and Mr. Bundy

Task The Committee discussed how the timeline is not realistic for their Charge, and Mr. Seery said he will put it on the next Board of Selectmen agenda, to extend the 90-day Charge.

Owned by Kevin Seery, First Selectman

SUMMARY OF PRESENTATION TO
SHORT TERM RENTAL COMMITTEE

FOI Considerations

FOI applies to all municipal boards, agencies commissions and committees, ad hoc included

Requirements:

Meetings properly noticed with agendas at least 24 hours prior

Meetings open to public, and must have minutes taken

Cannot meet to discuss committee business outside of properly noticed meeting
Meeting is considered anytime a quorum is present and work of committee is discussed

FOI applies to electronic communications – texts and emails

No group texts/emails except for scheduling purposes – not to discuss committee business

Current state of STR's in CT

Wihbey v. Pine Orchard ZBA, 218 Conn. App. 356 (2023)

Case of first impression in CT

Facts: C&D issued to Wihbey for operating STR in area zoned for single family dwelling use. Zoning regs recently amended to prohibit short term rentals of 30 days or less.

Trial Court held Wihbey entitled to use home as STR as consistent with single family dwelling use set out in regs. ZBA appealed.

Appellate Court

Recognized undisputable right of owners to rent their real estate, and that stripping that right = significant restriction on the rights of ownership

Zoning regs @ issue permitted signs on property advertising that property for rent. This indicated zoning comm recognized that renting residential property was a permissible use

Here EL has similar sign regulation; court would likely hold that reg means renting of residential property = permitted use in EL

Appellate Court refused to place time/temporal limits on renting property; interpreting regs as allowing long term but not short term rentals = unworkable, as owner would have to decide where dividing line was

Court would likely interpret EL regs same way

Takeaways from Wihbey

Undisputable right to rent one's property

Where regs allow renting of single family residences (inferred from sign regs) then **STR 's are a permitted single family residential use** and court will not put time limitation on rental period

ZBA filed for certification to CT Supreme Court, granted in May, so ruling could change

Examples from other municipalities

Lyme

Regulation

30 days or less = STR

Permit req'd

Host (21+) must live on site at the STR during entirety of any rental period

Zoning permit for up to 6 overnight guests

Special permit for 6+ overnight guests

Ledyard

Ordinance

Designated enforcement officer

STR = 21 days or less

Permit req'd

Local Property Rep must be available 24/7; does not have to live on site

Preston

Regulation

Max length of stay = 3 weeks in any 3 month period by same party of guests

1 parking spot for every 2 BR's, no on street parking

No more than 6 BR

Permit req'd, \$200 fee

Simsbury

Ordinance

Less than 30 days = STR

Permit req'd, \$200 fee

Notice of permit mailed by applicant to all prop owners w/in 100 ft

Owner doesn't have to be present on site but must provide contact info to Town if not on site

6 guests max

Bozrah

Ordinance

Permit req'd

Appoint STR Officer

Point of contact – owner or designated representative

Max occupancy 5, not counting kids under 3

Regulation v. Ordinance

Have 3 beach communities that have own zoning regs – BPBCA, Crescent and Giant's Neck. Zoning regulation would not apply to these communities. Suggest Ordinance that applies Town-wide. Ordinance also allows imposition of fines for violations.