

December 11<sup>th</sup>, 2023 STR Ad Hoc  
Committee Meeting Minutes

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*Cathy Hill*  
TOWN CLERK

# Minutes of EAST LYME SHORT TERM RENTALS AD HOC COMMITTEE REGULAR MEETING - 12/11/23

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**Date and time:** 12/11/23 7:00 PM to: 12/11/23 8:52 PM

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

**CC:** Mark Zamarka, Town Attorney, Candace Carlson, Ex-Officio

**Location:** East Lyme Town Hall, Upper Meeting Room

**Link:** <https://app.meetingking.com/meetings/408457>

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## Topics

### 1. Call Meeting to Order/Pledge

**Note** Co-Chair Santoro called the meeting to order at 7:00 p.m. and led those assembled in the pledge of allegiance.

### 2. Correspondence

**Note** see attached correspondence.

 [Kametz\\_email\\_thread.pdf](#)

**Note** see attached correspondence.

 [Vafidis\\_email\\_thread.pdf](#)

**Note** see attached correspondence.

 [G.\\_McIntire\\_Correspondence.pdf](#)

**Note** see attachment part 2.

 [University\\_of\\_Texas\\_Paper\\_on\\_Short\\_Term\\_Rentals.pdf](#)

**Note** see attached correspondence.

 [vafidis\\_email\\_thread\\_2.pdf](#)

**Note** see attached correspondence.

 [G.\\_McIntire\\_Correspondence\\_2.pdf](#)


**Note** see attached correspondence.

 [webinar\\_email.pdf](#)

**Note** see attached correspondence.

 [CCM\\_Workshop.pdf](#)

**Note** see attachment #2

 [CCM\\_Workshop\\_Attachment\\_2.pdf](#)

**Note** Ms. Santoro noted that she and Ms. Thurlow are continuing to serve on the STR Ad Hoc Committee, and that the Board of Selectmen has changed the charge to allow for that. She added that Candace Carlson has been appointed to serve as Ex-Officio to the Committee.

### 3. Public Delegations

#### 3-1. Dr. Constance Vafidis of Oak Grove Beach

**Note** Dr. Vafidis said some of the following:

He's one of the owners of 44 Shore Road.

A lot of discussion has taken place, and he would like to sum everything up.

The police reports from Oak Grove Beach paint a pretty clear picture and show that there have been no significant disturbances warranting any time of concern.

The Chief of Police has also confirmed the absence of any widespread issues related to these rentals, and the Fire Chief stated something similar as well.

It's quite interesting why this Committee persists.

Is it targeting Oak Grove Beach Association as a problematic area?

His family presented a lot of the police reports at one of the initial meetings and in the last 3 years, there's been only two calls to Oak Grove Beach.

The answer is simple but troubling.

The Committee exists to serve the interests of a few individuals within that local Association and not the community at large.

Most of the evidence that has been presented doesn't show any major problem areas.

The Committee keeps mentioning Oak Grove Beach as the dedicated problem area but where is the evidence to support that?

He thinks this is the result of three neighbors that unfortunately may have some ties to some of the Selectmen, that may have instigated and created this Committee.

#### 3-2. George Vafidis of Oak Grove Beach

#### 3-3. Sparro Peris of Oak Grove Beach

**Note** Mr. Peris said some of the following:

He's a family member of 44 Shore Road.

He's been to the last 3 meetings and has heard all of the talking points.

He didn't write anything down because he wants to speak from the heart regarding the dedication, they have for maintaining this property.

They constantly check up on everything and monitor any safety hazards, which has been a major talking point of this Committee.

Their property is constantly kept up to the highest standard possible.

They show up immediately to address any problems that do arise, which have only ever been minor issues.

There is nothing more heartwarming than having people from out of state come in, and tell them how beautiful this town is, asking for recommendations, where to go to eat, where to have a cup of coffee, where to enjoy a nice pastry.

Fortunately, we have amazing places in this area.

Flanders Fish Market, Cafe Sol, and all the bakeries are constantly recommended.

Factually the evidence is there, and there is nothing really negatively affecting this town when it comes to Airbnbs.

We've heard from management agencies as well as different authorities in this town, that have presented the hard facts about the benefits of rentals in this area.

Hopefully the Committee has strongly taken all of this information into consideration and will continue to do so going forward.

### 4. Approval of Minutes

#### 4-1. Minutes of Regular Meeting of November 20, 2023

**Note** see attached minutes.

 [STR-Ad-Hoc-Committee-November-20-2023.pdf](#)

**Note** MOTION (1)

Mr. Farrugia moved to approve the Meeting Minutes of November 20th, 2023, as presented.  
Ms. Thurlow seconded the motion.

**Note** Ms. Santoro said she has a spelling correction, all references to the "Whitty v. Pine Orchard Zoning Board of Appeals" court case should actually read "Wihbey v. Pine Orchard Zoning Board of Appeals."  
Ms. Santoro directed everyone to page 2 of the minutes, under item #5, 4 lines down. She explained that since a municipal election was held last week, she thinks it should read that some members who are on this Committee "will no longer be serving on the boards and commissions" since they were still serving when the November 20th, 2023, meeting took place.

**Decision** MOTION (2)

Mr. Farrugia moved to approve the Meeting Minutes of November 20th, 2023, as amended.  
Ms. Thurlow seconded the motion.  
Motion carried, 6-0-2.

Mr. Beachy and Mr. Formica abstained due to their absence from the November 20th, 2023, meeting.

#### 5. Continued Discussion & Possible Action Concerning Findings, Goals, and ways to address Concerns.

##### 5-1. Consider Draft #1 of goals & suggested regulation derived from Committee discussion at the Regular Meeting of 11/20/2023.

**Note** see attached draft.

 [STR\\_Committee--Draft\\_1\\_Goals\\_and\\_Suggested\\_Regulation.pdf](#)

**Note** Ms. Santoro presented the draft she created, and Mr. Beachy questioned #8 of the goals, and said he's not sure this Committee is in a position to take the issue of affordable housing on.

**Note** Ms. Santoro explained that an argument is being made that STRs effect the amount of affordable housing and Mr. Cicchiello suggested that this idea may be better represented by the word "impact."

**Note** Ms. Thurlow commented on the lack of available housing in town and noted that properties by the beach aren't affordable. She said she's seen many people who would like to buy in town, who are outbid by investors who can pay more, and that they then turn these properties into short-term rentals. Ms. Thurlow further observed that this drives housing prices up and reduces stock.

**Note** Mr. Formica said affordable housing by definition speaks to deed restricted housing and not market based housing.

**Note** The Committee further discussed the need for regulation of short-term rentals and the potential impact on affordable and available housing.

**Note** Mr. Formica said they're talking about a lot of potential regulations or requirements that this Committee would recommend to the Board of Selectmen about short-term rentals. He said he's glad Attorney Zamarka is here, because he's wondering if their falling into the same trap that led the Wihbey case to the Supreme Court by requiring inspections and the like for short-term rentals but not for long-term rentals.

**Note** Mr. Formica said he thinks they should think long and hard about permissible zones for short-term rentals, lottery system for permits, enforcement and fines, inspections, occupancy limits.

**Note** Ms. Santoro replied that the suggested regulation isn't mutually exclusive, they're not taken as a collection; each of these items discussed at the last meeting are merely possible areas for regulation.

**Note** Mr. Formica said his point is that we're targeting a specific use, short-term rental use, which is the same rental use that led us to the Supreme Court and could possibly lead them to the Supreme Court again.

**Note** Ms. Santoro said she does want to put forth tonight a request for legal opinion from Attorney Zamarka, on certain issues. She said as they begin to think in a regulatory fashion, they need to know how they're going to do it and to what extent.

**Note** Ms. Carlson asked if we're prepared to monitor regulations and have the infrastructure to do so.

**Note** Ms. Carlson asked how much regulation they're talking about, noting that if someone owns a home that's their property, and there's some who feel that's invoking their rights.

**Note** Ms. Carlson said they can be guided legally, but they certainly don't want to go too far and take rights away.

**Note** Ms. Santoro said they have the enforcement of regulations and potential fines for non-compliance on this list, but that it hasn't been refined since they don't know yet what regulatory action, if any, they want to recommend.

**Note** Mr. Cicchiello said he thinks they need to make it clear, that they have an obligation as a Committee to discuss all of the issues whether popular or not, in order to do their due diligence. He cited an outright ban of short-term rentals as an example and noted that it needs to be discussed even if no one supports it or recommends it.

Mr. Cicchiello added that all of these discussions are part of the brainstorming process.

**Note** Mrs. Carlson said community forums are important as well, and Ms. Thurlow replied that they're planning on having at least one more public hearing as well.

**Note** Mr. Formica asked if existing short-term rentals would be considered pre-existing non-conforming in the case of a ban and Attorney Zamarka offered the following remarks:

If anything is going to be done, a regulation would not apply to everywhere in town.

He assumes this is just a kind of an overarching term.

This is still a very, very fluid situation.

Basically, the appellate court has said you can't ban, you cannot put a time frame on the rental of a residential property.

When looking at the suggested regulation section of the draft, there are 3 items that stood out to him from a legal standpoint- caps, the permissible zones, and the lottery system for permits.

These all would impose restrictions or limitations on what the Court has already referred to as the indisputable right of an owner to rent his property.

He's not suggesting the Committee do one thing or another, but merely advising that they proceed with caution.

New Orleans, earlier this year, instituted a lottery system. Two weeks after the lottery was held, there were two lawsuits filed in Federal Court.

The Federal District Court for the Eastern District of Louisiana issued a temporary restraining order.

Motions for summary judgment will be argued in front of the Court in December.

In Holland, Michigan, they banned short-term rentals in residential zones, effective October 1st of this year.

They defined short-term rental as anything under 28 days.

They also instituted a cap and a lottery system.

This is now before the courts in the state of Michigan.

Austin, Texas, in 2016, had an ordinance that banned short-term rentals that were not owner-occupied.

The court in Texas ruled that this was unconstitutionally restrictive.

It invoked the Commerce Clause and decided that that had to be struck down.

A suburb of Cincinnati, Milford, Ohio, instituted an ordinance prohibiting non-owner-occupied short-term rentals.

The owners sued in federal court in September of this year.

In Wilmington, North Carolina, in 2020, they instituted a 2% cap, a lottery system on short-term rentals.

They also put what they referred to as a 400-foot buffer zone between short-term rentals, so you didn't have one, two, three, and so forth, in a row.

The North Carolina Superior Court held that some of these provisions were unconstitutional, and the city rescinded the registration requirement along with the distance requirement and the cap.

As to what Mr. Formica brought up, all of these imply possible lawsuits being brought and bring up constitutional issues.

**Note** Mr. Cicchiello asked how they reconcile that the East Lyme Zoning Regulations does not permit short-term rentals.

**Note** Mr. Zamarka replied that goes back to the difference between a regulation and an ordinance and reminded the Committee of the following:

The East Lyme Zoning Regulations are permissive.

If a use is not specifically permitted, it is not allowed.

The Appellate Court, however, kind of found a way around that when they saw that the sign regulations allowed the rental of residential units.

They decided that meant that the Zoning Commission, and thus the town, was aware that property could be rented, therefore they were not going to say you can't do it for 30 days or less, if you can do it for 30 days or more.

Keep in mind that East Lyme has a sign regulation similar to the one referenced in the court case.

**Note** Mr. Zamarka further made the following remarks:

From the outset, we've suggested if the Committee decides to recommend anything, it is our advice that it be an ordinance so it would apply town-wide rather than a zoning regulation, which would not apply to the three beach communities that have their own zoning.

**Note** Mr. Formica replied that would kind of overturn the reason that those communities have their own zoning.

**Note** Mr. Beachy asked if short-term rentals are legally considered the same as long-term rentals and Mr. Zamarka noted that's kind of the pending question before the Supreme Court right now.

**Note** Mr. Zamarka discussed how by charge, the Committee is to set forth and decide on the issue of short-term rentals, and that they're bound by that charge alone.

**Note** Ms. Santoro said they all seem to have similar legal concerns which brings them back to her request for a formal legal opinion, which would have to be approved through the First Selectman's Office.

**Note** Ms. Santoro said one of the questions she's had since the beginning is how would an ordinance affect communities within East Lyme that have homeowners' association regulations? She wonders the same, for covenants running with the land.

**Note** Mr. Formica said they're an advisory Committee and regardless of whether the Court acts in January, April, or November of 2024, they can still provide the Board of Selectmen with some of the research that they've done; they can present the pros and cons of a zoning regulation, an ordinance, and so forth.

**Note** Mr. Formica asked if a short-term rental is deemed non-permissible in a residential zone, is it permissible in a commercial zone?

**Note** Mr. Zamarka discussed how at this point it's speculative and he wouldn't even hazard a guess as to what the Court is going to decide and what perimeters it will include.

**Note** Ms. Santoro said noise and parking are areas outside of zoning and there are suggestions that can be made to improve these conditions.

**Note** Mr. Formica said he thinks they can guide their discussions around the court case and not touch the legal issue.

**Note** Mr. McIntire concurred and said they can make their recommendations regarding short-term rentals to the Board of Selectmen, who has legal guidance, and they can decide whether they want to expand that to all rentals or do nothing.

**Note** Mr. McIntire thanked Mr. Zamarka for his assessment of other areas and said clearly everyone in the country is having issues with short-term rentals and how to get a handle on them. He added that he doesn't think this should slow them down, they just need to be careful.

**Note** Mr. McIntire said he thinks somewhere in the middle would be the right decision. His expectation is that they at least recommend instituting a permit process across all rentals. Mr. McIntire said this way, you're not discriminating against a group, you're just saying anybody who wants to rent needs to get a permit. He said beyond that, he hasn't really wrapped his arms around that yet.

**Note** Mr. McIntire made reference to the public delegations this evening and said he understands that their house is safe, which is great, but not everyone's house is. He discussed how he counted 185 short-term rentals in East Lyme on Airbnb and VRBO, and how they need to ensure all rentals are safe.

**Note** Ms. Santoro pointed out that Attorney Zamarka's services have been provided to this Committee, so that when they make a recommendation, they can make the most legally sensible one.

**Note** Mr. Cicchiello said they can benefit from monitoring the outcome of the various court cases across the country and noted they will need to ask for an extension in order to offer the most sensible recommendation.

**Note** Ms. Santoro recommended looking at the CCM Chart if they have not already done so (see last correspondence attachment.)

**Note** Ms. Santoro reminded everyone that the draft is a working document.

**Note** Mr. Formica said he wonders, if based on the SCCOG article and impact article, if they should start with a very basic registration program, which doesn't exist now.

**Note** Mr. Formica discussed the possibility of implementing a registration program for short-term rentals. He mentioned the need to have a thorough discussion on the pros and cons of such a program and its potential impact on the community. He also discussed the idea of requiring adequate off-street parking and occupancy limits for short-term rentals, and if this is something the Committee would like to see.

**Note** Mr. Beachy suggested conducting a pros and cons analysis of doing nothing and banning short-term rentals. The Committee in their discussion emphasized the importance of having an open mind and considering all options before making a decision. They also discussed the need for further research and information gathering on the legal and constitutional aspects of regulating short-term rentals.

**Note** Mr. Formica noted they've already received legal advice in terms of not entertaining a ban, setting caps, permissible zones for STRs, or a lottery system. He said he thinks they can go to public hearing without these items and convey that they're considering regulation. He added that it could be that their opinion is changed by the public hearing.

**Note** Mr. Farrugia said he concurs, that if they go to public hearing as is, they will only get a repeat of the opinions they've already received. He said if they give possibilities, people can react to them.

**Note** The Committee proposed narrowing down the issues by eliminating certain topics and focusing on the two main areas of regulation and ordinance. They discussed the need to gather more information and research on these topics before making any decisions. They also mentioned the possibility of revisiting certain issues if new information becomes available.

**Note** Mr. Cicchiello said he doesn't think the issue of a ban has been discussed sufficiently. He added that New York has done a ban, so East Lyme should at least consider it.

**Note** Ms. Thurlow asked if everyone agrees that something should be done.

**Note** Ms. Carlson said she doesn't think doing nothing is even an option and appreciates speaking about a ban for discussion purposes, but having a ban is huge, it's a constitutional issue, and just because New York does a ban doesn't mean East Lyme should.



**Note** The Committee discussed the option of doing nothing and concluded that it is not a viable solution. They emphasized the need to address the issues surrounding short-term rentals and find a practical and fair approach. They mentioned the importance of considering the impact on the community and ensuring that everyone pays their fair share.

**Note** The Committee discussed the need for enforcement and fines for short-term rentals. They mentioned the possibility of implementing a registration system and requiring property owners to submit income statements and property assessments. They also discussed the importance of fair and consistent enforcement to ensure compliance with regulations.

**Note** Mr. Formica said he thinks a registration system is a reasonable course of action and Ms. Carlson said she thinks it would be helpful in conjunction with a permitting process.

**Note** The Committee discussed the possibility of requiring inspections for short-term rentals and setting occupancy limits based on the number of bedrooms. They mentioned the need to ensure the safety and well-being of guests and neighbors. They also discussed the potential impact on septic systems and the importance of considering environmental factors.

**Note** Mr. Cellino discussed the potential impact of short-term rentals on property assessments. He mentioned the need to consider the income generated from short-term rentals and the value it adds to the property. He also discussed the possibility of adjusting property assessments for short-term rental properties to ensure fairness and equity.

Mr. Cellino said the silent majority needs to also be considered, he looks at this as a business in a residential zone, and that these should also go through the Assessor's Office. He added that he thinks an ordinance makes sense.

**Note** Mr. McIntire said he thinks a mechanism is needed here and suggested a division of labor of the regulation list minus #4, #5, and #6, and each can present each item, summarize the findings, and they can discuss them as a group.

**Note** Mr. Formica asked about a home business and cited the example of an attorney working from home since the onset of Covid. He said is that not the same, since it's a commercial enterprise?

**Note** Mr. Cellino replied that it's more of a zoning issue, home offices are allowed in some areas and not in others. He added that we have people who are making money at the state level, and you choose to tax it, we're not taxing lawyers and accountants working from home, they live there and they're not generating income on renting their homes and bringing an influx of people in and out.

**Note** Mr. McIntire cited the instance where someone bought a house on Upper Pattagansett Road and started running a real estate business out of that house as well as serving as a short-term rental. He explained that the Zoning Board did enforce the zoning regulations there, which did not permit a business. Mr. McIntire said the real estate office was not allowed to continue there, and it's a subtle difference from short-term rentals.

**Note** The Committee divided the labor in regard to the suggested regulation list and the following was determined:

Ms. Thurlow will tackle items #4, #5, & #6 for due diligence purposes.

Mr. Cellino and Mr. Formica will research item #3.

Mr. McIntire and Mr. Farrugia will research item #1, item #2, item #9, and item #10.

Mr. Beachy will research item #7.

Mr. Cicchiello will tackle the issue of banning as well as doing nothing for due diligence purposes.

Ms. Santoro will research item #8.

**Note** Ms. Thurlow said she thinks it's important when they're looking at this, that they're not just putting a band-aid on problems they think we have, and decisions made here impact how the town may look in 10, 20, or 30 years.

## **6. Schedule Future Meetings and Report(s) to the Board of Selectmen.**

### **6-1. Public Hearing #2**

**Note** The Committee set the Public Hearing for January 29th, 2024.

### **6-2. Regular Meeting**

**Note** The Committee set the next Regular Meeting for January 16th, 2024, in Conference Room #1. If the Inland Wetlands Agency happens to cancel their meeting, they will hold the meeting in the Upper Conference Room.

**Note** The Committee briefly discussed their hope of trying to wrap everything up by March.

## **7. Reports of Co-Chairs**

**Note** Mr. Cicchiello had nothing to report.

**Note** Ms. Santoro shared that CCM had its convention recently, Attorney Kerry Olsen gave a legal update on short-term rentals, and the PDF from it will be, will be available online at CCM, but you have to have a login. Ms. Santoro happens to have a login, so she will forward the PDF once it becomes available, for their review.

## **8. Public Delegations Continued**

**Note** Joe Malerba of the Niantic Inn came forward and shared some of the following comments:

He lives in Old Lyme but does own several properties within East Lyme.

He has a few observations to make.

Mr. Cellino remarked that the value of the property is directly affected by how well the short-term rental does.

His family has had some short-term rentals for quite a while.

He's found that the income that is derived from a short-term rental is actually much higher from somebody that's not commercial, but personal.

It's part of the community and that really helps guests feel like they're traveling to a home away from home.

It's not cut and dry.

Mr. McIntire mentioned the office on Upper Pattagansett, which was his office.

And that's also a little complex.

He has four children, six and under.

He thought having his office there, which nobody actually comes to visit, would allow him to keep a closer eye on the Airbnb guests, make sure that there weren't any parties going on, and would allow him to meet his neighbors, so they could see that he's a local person.

He bought that property so he could also bring his children there, and they loved it.

It also subsidizes the cost of having that by short-term renting it, and with a short-term rental he's more able to make sure somebody doesn't absolutely destroy his place, and gives him the ability to bring his family someplace while also creating some income.

He believes very, very strongly in being good neighbors, and every neighborhood is very different.

He really appreciates them putting all the effort they're putting into this.

He knows it's not an easy decision.

He supports some kind of registration system.

Personally, he thinks it would be much easier if it were a flat fee.

He has a lot of commercial and residential properties, and filling out those forms every year is a nightmare.

And, it could technically punish someone that doesn't have a mortgage or somebody that's inherited the property that might not have a high income.

He truly appreciates the work being done here and their efforts.

## 9. Committee Member Comments

**Note** Ms. Santoro made the following closing remark:

For herself, and certainly as a group, she doesn't feel that they have directed their energies to any one resident, or any one short-term rental.

They've heard so much over the course of the last couple of months, and they've made the point a number of times that it's not just Oak Grove Beach they're discussing.

They've heard other complaints from instances in other areas.

They've also heard a lot of positive comments, so it's a mixed bag.

Their intention is to guide the town through this very thorny and difficult legal issue.

They're looking to do something for the benefit of the entire town, so please understand that.

Your remarks are certainly welcome.

She just wants to point out that each of them has different views on this topic, but their overall charge is to do something for the benefit of the whole town, which would affect everyone.

## 10. Adjournment

**Decision** Motion (3)

Mr. McIntire moved to adjourn the December 11th, 2023, Regular Meeting at 8:52 p.m.

Mr. Formica seconded the motion.

Motion carried, 8-0-0.

**Note** Respectfully Submitted,  
Brooke Stevens, Recording Secretary