

STR Ad Hoc Committee August 26th, 2024
Meeting Minutes

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Minutes of EAST LYME SHORT TERM RENTALS AD HOC COMMITTEE REGULAR MEETING - 08/26/24

Date and time: 08/26/24 07:00 pm to: 08/26/24 08:47 pm

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

CC: Mark Zamarka, Town Attorney, Diane Vitagliano, Assessor, Absent:, Candace Carlson, Ex-Officio

Location: East Lyme Town Hall, Conf. Room #1, 108 Pennsylvania Avenue, Niantic, CT, 06357

Topics

1. Call Meeting to Order and Pledge of Allegiance

Note Ms. Santoro called the August 26th, 2024, Regular Meeting of the STR Ad Hoc Committee to order at 7:03 p.m. and led those assembled in the Pledge of Allegiance.

2. Public Delegations

Note There were none.

3. Approval of Meeting Minutes

3-1. April 8,2024, Regular Meeting Minutes

Note see attached minutes.

 [STR-Ad-Hoc-Committee-April-8-2024-Minutes-1.pdf](#)

Note MOTION (1)

Mr. Farrugia moved to approve the April 8th, 2024, Regular Meeting Minutes of the STR Ad Hoc Committee as submitted.

Mr. Cicchiello seconded the motion.

Note On page three, Mr. Formica referred to his remarks in the third paragraph. There was some discussion back and forth about the matter as recorded in the minutes. He offered an apology for any offense his comments on bias may have caused, yet he emphasized the importance of maintaining our concern regarding the item.

Decision MOTION (2)

Mr. Farrugia moved to approve the April 8th, 2024, Regular Meeting Minutes of the STR Ad Hoc Committee as amended.

Mr. Cicchiello seconded the motion.

Motion carried, 7-0-1.

Mr. Beachy abstained from the vote due to his absence from the April 8th, 2024, Meeting.

4. Reports

4-1. Reports of Co-Chairs

Note Ms. Santoro mentioned that their meeting will focus on item five of the agenda, which pertains to the recent Supreme Court case and the current state of the law. She would like to note that there have been developments since our previous meeting on April 8th. For the benefit of the public and anyone following, complete details of this Committee's work are available on the Ad Hoc Short-Term Rental Committee website page <https://eltownhall.com/government/boards-commissions/ad-hoc-short-term-rental-committee>.

Note Ms. Santoro reminded everyone that a status report was completed in April and presented to the Board of Selectmen. Knowing that the Wihbey decision, which was significant to their work, would not be decided until summer, they opted to take a pause. We have since taken our pause, and the decision was released a few weeks ago.

Note Ms. Santoro highlighted a key update: the passage of Public Act 24-143, as outlined in the agenda. This legislation allows municipalities to establish ordinances for the registration and regulation of short-term rentals.

Note Ms. Santoro also mentioned the enactment of the Fair Rent Commission in the town, noting that short-term rentals are exempt from its provisions.

Note Ms. Santoro highlighted the regulations adopted by the Borough of Fenwick, shared with her by Mr. Formica, as a potential reference for their own community's guidelines (see attachment.)

 [Fenwick_Regs.pdf](#)

Note Ms. Santoro also provided the Committee with three additional newspaper and internet articles.

Note see attachment a.

 [Day_Article.pdf](#)

Note see attachment b.

 [CT_Mirror.pdf](#)

Note see attachment c.

 [Hartford_Courant_Article.pdf](#)

Note Ms. Santoro noted the Supreme Court case was not substantive and that was adopted at Pine Orchard, was very unique to their situation.

Note Ms. Santoro acknowledged a proposal from Mr. McIntire, a Committee Member, and distributed it for future discussion. (see attached proposal.)

 [McIntire_Proposal.pdf](#)

Note Mr. Cicchiello emphasized that the Committee has significant work ahead to understand the implications of the Wihbey decision, and Ms. Santoro added that there has been little media coverage or guidance from local organizations regarding the decision, but Betsy Gara, who's from the Connecticut Council of Small Towns, is hoping to do some kind of a webinar on the decision.

5. Discussion of Developments Following Our Status Report of April 2024

5-1. Sec. 7 of Public Act No. 24-143, effective 10/1/24 & Wihbey decision, 7 /29/24

Note see Public Act No, 24-143 attachment.

 [Public_Act_24-143.pdf](#)

Note see Wihbey Majority Decision

 [Wihbey_Majority.pdf](#)

Note see attachment Wihbey Dissenting Opinion.

 [Wihbey_Dissenting.pdf](#)

Note Ms. Santoro observed that the Public Act is not particularly detailed, but it does allow for licensing, regulating operation, use and hiring.

Note Mr. Formica suggested it might make sense to hear from Attorney Mark Zamarka, the Town Attorney.

Note Mr. Zamarka provided a detailed explanation of the Wihbey case, its background, and the Supreme Court's decision, emphasizing that short-term rentals are allowed under current zoning regulations.

Note He reminded everyone that Mr. Wihbey owned a single-family dwelling within the Pine Orchard Association, which he rented out short-term, a practice not permitted under the 1984 Association Zoning Regulations in effect at that time.

In 2018, the Association updated the rules to clearly ban short-term rentals. However, Mr. Wihbey kept renting out his property short-term, claiming he was grandfathered in under the regulations from 1994. When the Association told him to stop, the trial court sided with Mr. Wihbey. The court said that the Zoning Board of Appeals (ZBA) was wrong to support the Association's cease and desist order.

The trial court ruled that the 1994 regulations didn't ban short-term rentals, and Mr. Wihbey's property use was in line with a single-family dwelling's definition. On appeal, the appellate court upheld the basic property right to rent. They pointed out that the 1994 regulations didn't demand owner-occupancy or a minimum stay for single-family homes. The court decided that without clear rules against renting, they wouldn't enforce such a limit, hinting that the creators of the 1994 regulations would've specified any rental restrictions if that was their intention.

The appellate court noted that the existence of a rule in the Association's regulations allowing signs for renting out residences suggests that both the town and the Zoning Commission accept renting as an allowable use, especially since the regulations do not specify any time limits on this right.

The Supreme Court didn't see eye to eye with the Association's belief that the 1994 rules banned short-term residential rentals. They sided with the appellate court's reasoning that without a specific ban or explicit reference to short-term rentals in the Zoning Regulations, they wouldn't enforce such a limitation. Plus, they were on board with how the appellate court read the sign regulation, recognizing that it suggested residential property leasing was okay.

Note He elaborated that the Supreme Court determined the terms 'home' and 'residence' aren't tied to a specific duration of stay. The regulations we reviewed lack a time constraint on property leases, suggesting 'home' and 'residence' can be understood as any structured space intended for living, no matter how long it's occupied. Moreover, the East Lyme regulations describe 'home,' 'residence,' and 'family' in a way that closely mirrors the Pine Orchard regulations.

Note Mr. Zamarka further detailed how the Supreme Court has upheld the Appellate Court's decision, affirming the constitutional right to lease property. Our zoning regulations, which allow signs advertising the leasing of residential property, acknowledge that renting out such property is permissible in this town. Additionally, it is noted that signs are prohibited in areas designated as residential property. The Supreme Court also noted that a commission or a town is free to adopt regulations that permit only long-term rentals, in order to promote stability, a sense of community, similarly to what Pine Orchard did in 2018.

Note Mr. Zamarka noted that under the existing zoning regulations, short-term rentals are permissible in East Lyme without prohibition or restriction. Additionally, as the Chair pointed out, PA 24-143, Section 7, allows a town to enact an ordinance through its legislative body or select group to license and regulate the operation of short-term rentals.

If the Board of Selectmen were to pass an ordinance limiting or banning short-term rentals, there would be grounds to challenge it, with a good chance of success in maintaining their use as short-term rentals. The Supreme Court has not made a decision on whether Wihbey's use qualifies as a permitted pre-existing non-conforming use; instead, they have deferred to the appellate court's decision to send the case back to the trial court.

He clarified that the town cannot limit short-term rentals to certain zoning districts or use a lottery system under the current legal framework, and the enforcement of any new regulations would require careful consideration of budgetary and administrative implications.

Note Mr. Zamarka acknowledged that Mr. McIntire's proposal contains some promising ideas, yet he suggests only minimal oversight for now. It's clear that outright prohibition or restriction isn't an option. Other towns have indeed set precedents with regulations, such as licensing, fees, and inspections. To avoid becoming a test case, it might be prudent to consider carefully any recommendations to the Board of Selectmen that could be seen as excessive at this stage.

Note He mentioned that, in line with the Town Attorney's initial advice and the new public act, they strongly advise that any recommendations this Committee makes to the Board of Selectmen should be structured as ordinances rather than zoning regulations.

Note Mr. Zamarka said we have to remember that there are three beach communities in this town. with their own zoning, and the amendment to the East Lyme Zoning Regulations would not apply to those three areas. Enforcement also needs to be considered; whatever oversight the Committee may decide to recommend, it'll have to be overseen by somebody, some entity, some person, or some department within the town.

Note Mr. Zamarka and the Committee further discussed and considered some of the following:
The distinction between short-term and long-term rentals, with a focus on the 30-day cut-off as per state definitions and tax codes.

Whether to stop distinguishing between long-term and short-term rentals and just refer to them as rentals.
The right to rent property as an indisputable right of ownership, and whether it should be classified as a primary or accessory use.

Adding definitions of dwelling rentals in zoning regulations without distinguishing between short-term and long-term.

The potential redundancy of creating new ordinances when existing laws already cover rental regulations.

Examination of the definition of short-term rentals in the context of landlord-tenant statutes.

The implications of the Wihbey decision on single-family dwellings and its potential challenges.

Review of Fenwick regulations and their detailed restrictions on property use, such as prohibiting party celebrations.

The zoning regulations of beach communities and their alignment with town regulations.

The historical context of tourist homes as a precursor to short-term rentals and its implications for current regulations.

The need to determine if short-term rentals are beneficial or problematic for the town, as this is the primary issue to address before moving forward with regulations.

Concerns about the authority of beach communities without zoning power to regulate short-term rentals through bylaws or ordinances.

The quality and quantity of public testimony regarding short-term rentals, noting a slight bias towards owners of short-term rentals.

Note Attorney Zamarka, when questioned by the Committee, confirmed that the Wihbey court concluded its decision by stating towns have the authority to ban short-term rentals (STR). However, should an ordinance be enacted to ban STR, properties that are pre-existing non-conforming may still be permitted to operate as STR.

6. Determination of Outstanding Issues and Questions to Address

Note Ms. Santoro said they're making recommendations, that is the starting point, and cited page 14, section 8, of the report:

"If a town is considering a policy to specifically allow and regulate short-term rentals, it has much to weigh. It must first determine that expressly banning these rentals or relying on our current legal framework are not desirable approaches to addressing concerns presented. It would then need to decide where these rentals might be allowed, what might be regulated, the preferred legal methods of regulation, as well as how the regulations may be enforced and at what cost."

Note Mike Macek, Acting Police Chief, discussed the lack of complaints from beach communities and how enforcement is a challenge, particularly regarding noise complaints due to the lack of a noise meter, which is costly to maintain and calibrate.

Task The Committee inquired about more affordable options for measuring noise and Chief Macek replied that he will look into this.

Owned by Lt. Michael Macek, Acting Police Chief

Note Diane Vitagliano, Town Assessor, shared some of the following:
the real estate situation won't change, but the personal property tax situation could change, if they had a more complete list to work from.

At this point, it has not been proven, that the short-term rental properties are making a property more profitable than just a single-family use.

If that becomes the case, then we would love to have that rental information which we can gather from the internet and use the income approach on it.

Right now, as a single-family property, we don't develop the income approach for those homes.

It's mass appraisal and we value that as single-family properties the most.

It's a statewide practice in Connecticut.

If a property is purchased by an LLC for the purposes of short-term rental, then we keep our eyes on it. If there was ample evidence that the income approach would be the way to go for such properties, we might change our methodology in the future, but we're not there yet.

Note Mr. Cellino said if there was a registration, that could be a requirement that you had to follow. Ms. Vitagliano replied that they don't have that authority within our statutes right now to be able to require that information; right now, we can require income and expense information for any properties that are six units and above. We don't have the statutory framework to require anybody to report to us what their rental income is for anything below the six units.

Note The Committee further discussed and considered the following:

The potential impact of short-term rentals on the availability of permanent housing for residents.

The need for a town-wide noise ordinance and the challenges of enforcing it in different beach communities with their own bylaws.

The enforcement of parking regulations in beach communities and the role of the police in enforcing these local rules.

The complexity of regulating short-term rentals in apartment complexes and the potential issues with transient occupants.

The taxation of real estate and personal property, particularly in relation to Airbnb and short-term rentals.

How to enforce registration and reporting for short-term rentals, including potential penalties for non-compliance.

Debate on whether short-term rentals should be treated differently from long-term rentals in terms of taxation and valuation.

A Plan to review and potentially update the committee's report based on new developments and legal decisions, with a focus on final recommendations.

Looking at other towns' approaches to zoning and ordinances for short-term rentals as part of the committee's research.

The need for a public hearing to gather feedback on the committee's final recommendations.

7. Scheduling Future Meetings of Committee

Note Ms. Santoro encouraged Committee Members to individually think about potential changes to zoning and ordinances and bring their ideas to the next meeting.

Note Ms. Santoro suggested each Member provide a brief summary of their approach to solving a problem, without requiring extensive detail, and agreed to schedule the next meeting for September 23rd, with summaries due the Friday before the meeting.

8. Adjournment

Decision MOTION (3)

Mr. Formica moved to adjourn the August 26th, 2024, Regular Meeting of the STR Ad Hoc Committee at 8:47 p.m.

Ms. Thurlow seconded the motion.

Motion carried, 8-0-0.

Note Respectfully Submitted,
Brooke Stevens, Recording Secretary

Task Summary

New Tasks

Task The Committee inquired about more affordable options for measuring noise and Chief Macek replied that he will look into this.

Owned by Lt. Michael Macek, Acting Police Chief