

Nantucket Short Term Rental Working Group

Meeting Summary

Session 3 | November 8, 2022 | 5 PM – 8:00 PM ET

MEETING OBJECTIVES

- Clarify Legal Questions
- Understand the Basics of Nantucket Zoning
- Identify the Range of Possible Policy Levers
- Discuss next steps

DECISIONS & ACTION ITEMS

- Stacie will work with the town on developing a work plan and scheduling for a longer, in person/hybrid meeting for November or December
- CBI and the town will work on scheduling a virtual public meeting in December.
- CBI will send out a poll for timing around next meetings
- CBI will send out a survey regarding policy topics
- CBI will produce a meeting summary

WELCOME & INTRODUCTIONS

Stacie Smith, Consensus Building Institute, welcomes Working Group (WG) members and members of the public to the third session of the STRWG. She reviewed the agenda and discussed zoom norms. The group then voted to approve the meeting summaries from October 11 and October 25, with no opposition.

Stacie then asked members to go around and share something that they love about Nantucket or a connection they have to the island. Members shared memories of raising their kids here, watching school plays, moments the community came together, the great losses they experienced, and their gratitude for their neighbors. Stacie thanked everyone who shared for their openness.

To see the full list of present and absent WG members, alternates, and WG staff, please see Appendix A.

OVERVIEW LEGAL ISSUES

Stacie introduced Alex Weisheit, KP Law, to review any legal questions the WG members had about the process and the towns understanding of current STRWG laws and regulations. He spoke about [a memo](#) that had been distributed to members based on member questions. The following is a summary of key points of discussion, with participant questions and comments in bullets and responses italics in sub-bullets below.

Pre-existing Non-Conforming Uses

Alex explained that zoning by-laws provide grandfathering protections of legal pre-existing non-conforming uses, whereas a general bylaw does not provide grandfathering protection unless the bylaw expressly provides for such protection. Participants asked about the legal risks of not grandfathering preexisting STRs, especially if owners relied on STR income in their mortgage arrangements with banks. Alex answered that this wouldn't necessarily create legal risk, but that treatment of existing uses should be considered carefully. He also noted that people with rental stipulations from banks would still have the right to rent their homes longer term.

Town Legal Interpretation of STRs

Members asked for clarification about the Town's position on the legality of STRs currently. Alex stated the current position of the building commissioner, that STRs are legal customary accessory uses. He noted that this position was being challenged in court and that resolving this disagreement could be one of the benefits of this WG.

General Bylaw vs. Zoning Amendment

The group further discussed the legal impacts of using a general bylaw vs. a zoning amendment. The memo from town council describes the pros and cons to each. A member asked, even if the group used a general bylaw, wouldn't zoning still need to be addressed in some way? Alex agreed that having both would be ideal, and explained that a general bylaw would allow you to deal with the operation of STRs, rather than the use. A member noted that the zoning bylaw should use the same definitions and terms as a general bylaw to be consistent.

Definitions

The group had some discussion about the meaning of accessory use, particularly for seasonal properties that cannot be lived in year-round. Alex explained that the zoning definition is a use that is minor and incidental to the primary use. He noted that the group would want to think through this issue as they develop their bylaw. There is not a clear line, so it is hard to give a clear answer on how it applies on the island.

Legal Precedents

Alex was asked to explain the New Orleans finding. He described that the 5th Circuit Court found that an STR regulation that created local residency requirements violated the dormant commerce clause of the constitution. This ruling does not create a precedent for Nantucket, it would be up to the 1st Circuit Court to decide. Another member asked about Palm Springs' ordinance that allowed only "natural persons" to operate STRs, and asked if a court in MA were to agree with the New Orleans case, would we still be able to limit commercial entities? Alex answered that regulating a class of operators is allowed by the state statute and would not be a violation of interstate commerce.

Stacie thanked Alex for his participation in this meeting.

ZONING 101

After the legal discussion, Stacie introduced the WG to Judi Barrett, Barrett Planning Group LLC, to give [a presentation on zoning](#). Judi introduced herself and explained that addressing STRs has been a big issue in a lot of communities. Her presentation reviewed zoning vs. general bylaw approaches to regulating STRs and their respective benefits and drawbacks, an overview of Nantucket zoning, and how these apply to STRs. She then opened the discussion to any WG members who had questions or comments.

One member asked whether the group could restrict the percentage of units used as STRs in a zoning district. Judi suggested that this would be easier to do by creating a minimum separation between STRs, and explained that they could marry the zoning use chart to the registration requirements from article 39 to name which districts would be regulated and how. A member asked whether reconciling Articles 42 and 43 would require a zoning bylaw. Judi explained that zoning is needed to create different rules in different geographic areas. She clarified that rules about the operations of STRs across the whole island could go in a general bylaw (for example: regulating a class of operators or limiting the number of days STRs could operate).

One member noted that Nantucket now has regulations in place that will address noise, nuisance, and safety and suggested that we have a chance to see how well these work to resolve these issues. They noted that clear definitions in Zoning are the things that most need to be addressed, because these are what is needed to stop lawsuits.

A member asked about the relationship between STRs and reasonably priced year-round housing, and asked if limiting STRs would simply change the balance between seasonal residents who offer STRs vs. seasonal residents who are leaving their house empty. Judi shared an observation from a study in the 2000s that the problem on Nantucket is too many markets competing in a market without enough supply. STRs have increased their market presence, so that is a piece of the problem, but in the context of larger market competition. Jeffrey added that understanding the mix of competing marketplaces is very difficult, that many studies exist in different places, but each has its own context.

Judi closed the discussion by reminding the group that zoning can always be amended, and that Nantucket has amended its zoning many times. If you can agree and pass an amendment, but in two years you realize it is not working the way you thought, you can always make another amendment to the bylaws. The decisions you make as a WG will not impact the fate of Nantucket forever.

Stacie thanked Judi for her presentation and thoughtful comments.

OVERVIEW STR POLICY LEVERS

Finally, Stacie turned the floor over to Jeffery Goodman, Granicus, to give [a presentation](#) on the range of policy levers available to the group. He gave an overview of different lodging types, STR uses and users, and the impacts it can have on housing, tourism, neighborhoods, taxes, and sustainability. He discussed the Who, What, Where, When, Why of STRs, and he gave three case studies of other communities who went through a similar process (Newport, RI, San Juan Islands,

WA, and Kennebunkport, ME). He then opened the discussion to the WG for questions and comments.

One member urged Jeffery to include the missing data from the real estate associations. Jeffery said he was working on doing so. Another member asked for information about the growth in STRs over time. Jeffery cautioned about limitations in historical data, but that Granicus has some estimates about when listings were created, and access to general trends.

PROPOSED NEXT STEPS

Stacie shared a proposed schedule of next steps for the WG to meet the January 18 deadline for a general by-law warrant article. She noted that the next meeting would focus on sharing STR data, and suggested a longer, in-person meeting December 5 or 6, and a virtual public meeting on December 13 for the public to weigh in on potential policy options. One member appreciated the effort to do an in-person meeting. While some WG members lauded the urgency to this plan, they were concerned that the final product would not have the proper data behind it. Others noted we needed to rush because we are competing against other articles that would be put forward. One member asked that in the future, WG members are given dates and times ahead of the meeting so they can think about it before the WG discusses the plan.

PUBLIC COMMENTS

- Caroline Baltzer: I agree that this process is moving too quickly. Why are we trying to fast track it? The information about STRs from rental agencies have not been included in the data, so you have not even framed the problem.
- Robyn Nydes: As I understand the group, a big part of the commitment was to be data driven. We have talked a lot about data, but we do not have any. We should not move anything forward that we cannot justify with metrics. I want to thank Alex for his presentation and attempt to define terminology because they are important going forward.
- Campbell Sutton: Thank you to the presenters for the great information. I would like to share a couple of thoughts: 1. This group should aim for a broader general bylaw to form a definition. 2. It seems like there are three tiers based on the NOLA presentation: owner occupied, residential use, and then commercial or over two properties. 3. I think if you are an LLC, you are a business because you are removing yourself from responsibility to what happens on the property. We have expanded commercial neighborhoods a lot, and there are areas where commercial rentals could occur with no impact to neighborhoods. Finally, 4. we need to find a way to tie enforcement into the rental process though a renting app or certificates.
- Rick Atherton: People are concerned that delaying beyond the next town meeting is in the interest of STR supporters. I hope this process moves quickly; delaying is not good for the community.
- Virginia Vidoni: We have rented our house for a long time and have had to keep it in good shape to ensure people come back. I am offended when people call us commercial properties. We are families renting to other families.

- Henry Sanford: NAREB did a study of frequency by area that gave us a baseline for where rentals were occurring. Talk to the people who have been in the market pre- and post-internet, because a lot of what we are seeing is the proliferation of online bookings. I disagree that anyone wants to drag this out - most people who have rentals want to have clarity because they do not want to be sued and must sell their house. Most houses for next summer are already rented, so you are regulating against that.

NEXT STEPS

Stacie Smith went over the next steps and action items:

- Stacie will work with the town and poll the STRWG about dates and times for a longer, in person/hybrid meeting for December
- CBI and the town will work on scheduling a virtual public meeting in December.
- CBI will send out a survey regarding topics and policy topics
- CBI will produce a meeting summary

Stacie thanked everyone for their participation and closed the meeting

APPENDIX A:

Working Group Members:

- John Kitchener, At Large
- Jim Sulzer, At Large
- Karen Zagayko, At Large
- Dave Iverson, Planning Board Member
- Peter Schaeffer, Finance Committee Member
- Peter Kahn, Advisory Committee of Non-Voting Taxpayers
- Julie Lindner, ACK Now
- Kathy Baird, Nantucket Together
- Thomas Dixon, Affordable Housing Advocate
- Meri Lepore, Board of Health Designee (Non-voting)

Working Group Alternates:

- Robin Nydes, Nantucket Together
- Carl Jelleme, ACK Now
- William Gardner, Advisory Committee of Non-Voting Taxpayers
- Barry Rector, Planning Board
- Jon Delano, At Large
- Joseph T Gause, Jr., Finance Committee Member (ABSENT)

Working Group Staff and Consultants

Stacie Smith, Consensus Building Institute

Simenesh Semine, Consensus Building Institute

Megan Trudel, Planning Department Liaison

Adrian Rodriguez, Administrative Team

Judi Barrett, Barrett Planning Group LLC

Jeffrey Goodman, Granicus

Alex Weisheit, KP Law