

Nantucket Short Term Rental Working Group

Meeting Summary

May 16, 2023 | 5:00 AM – 8:00 PM ET

Meeting Objectives

- Brief Short Term Rental Discussion from Town Meeting
- Explore Data Updates
- Discuss Legal, Enforcement, and Implementation implications of draft policies

Meeting Materials

- STRWG April 25 Meeting Summary
- STRWG May 4 Meeting Summary
- Data Slides

To find meeting materials, please visit the project website [here](#).

Welcome & Overview

Stacie Smith, Consensus Building Institute (CBI), welcomed members of the Short-Term Rental Working Group (STRWG) and the public to the thirteenth Working Group (WG) meeting. Members approved the meeting summaries from April 25th and May 4th.

To see the full list of WG members and alternates in attendance, please see Appendix A.

Group Discussion: Debrief on Town Meeting

Stacie began the meeting with a debrief of the discussion and outcomes on Short Term Rental (STR) Articles during the 2023 Nantucket Town Meeting. Members made the following points:

Articles 60 and 61

One member felt that the failure of Article 60 provided the WG a clear mandate, since many voters appeared to support giving the STRWG time to finish their work. Since any Zoning bylaw will need two-thirds vote to pass, the group should get laser focused on what the voters will support. Another member agreed that this was a vote of confidence in the WG, adding the view that people are concerned about the full codification of STR's through Zoning. They also noted that focusing regulation and restriction in general bylaws will make it easier to iterate and improve regulations over time. A member noted that Article 61, which they saw as an attempt at full codification of STRs, received only 27% of the vote, and wondered how much of that was based on the lack of support of the Select Board. Another agreed that there was distrust in the community about codifying STR rentals through Zoning - even though it is essential.

Corporate STRs

A member noted that although corporate STR ownership is a small contributor, the public seems highly supportive of limiting it. They suggested that the group consider clarifying the reasons that the WG is choosing to address at this time, and acknowledge that it is a small component of the current number of STRs.

Attainable Housing

One member described a discussion with a Select Board member who expressed concerns about protecting/expanding attainable housing, particularly those lower price point 1-2 bedroom accommodations that the middle class relies on to enter into homeownership. He suggested that while the WG needs to protect those who already own and STR 1-2 bedroom units, they will likely win more votes if they stop the bleeding on conversion of attainable housing to STRs. Another member agreed that the group should be explicit about protecting middle-income people in the WG's policy goals, and broadcast to the community that this is an issue of concern to the WG. Someone else disagreed, stating that other Town processes are in place and better suited to addressing the lack of available middle income housing, given the lack of clarity around the link between this and STRs. Another member felt that increasing or preventing the loss of available housing was a goal for this group, and if policy proposals did not address this, they would fail to achieve their goals. Another member noted that there are also voters who do not support dramatic restrictions on STRs, and that the group should not ignore that constituency either.

One member wondered how it is possible to protect middle-income housing units through their policy levers, and hoped that John Giorgio, Town Council, would be able to give the group a sense of what is legal - beyond caps in zoning districts, which had other challenges. They suggested that not allowing STRs in buildings with subsidized housing might be able to help keep units more affordable.

A member reminded the group that, as discussed previously, STR regulation ought to be an iterative process, because they need to see how their policies will play out on Nantucket. They added the group should keep their sights realistic, have clear definitions, create a zoning and general bylaw, and address corporate ownership as first steps, and suggested that trying to solve affordable housing and fractional ownership at this time would be unrealistic.

Article 40

One member asked whether this group should discuss regulations to prevent fractional ownership, which was the subject of Article 40. The Planning Board representative explained that there were some technical challenges to this, and that their Board was working solutions to bring to Town Meeting, and agreed to come back to the WG with an update on where this stands.

Other

A member acknowledged the efforts of community members who brought citizen petition articles to Town Meeting. They noted that it is hard work to draft Articles and put them in front of their friends and neighbors, and that their commitment should be appreciated.

Data Updates

Stacie then turned the discussion to Matt *Heffenreffer*, Process First, to give an update on the data questions that the group has asked. He reviewed an updated presentation prepared by Process First. He noted that they will be asking the Town for an additional small scope of work to continue supporting the group through the end of their process, and can also support answering questions that this group has shown interest in pursuing after this process is complete. As he went through his presentation, members asked him the following questions and comments:

NAREB Data

Members hoped for an update on when the NAREB data will be integrated into Process First presentation and expressed concern about going in front of the community without all the information. Matt clarified that they were told that June 9th would be the likely date for a sharable body of NAREB data. He noted that they have highlighted in the presentation those areas where they expect NAREB data to have a significant impact, such as the total number of contracts and total revenue per year. He noted that, while NAREB has significantly more total STR unit listings, many of them are relatively inactive and so make up significantly less of the total rental contracts. Process First will continue to update the group as information comes in, but noted that even without NAREB data, there is much for the group to consider. One member wondered how the NAREB data would impact the length of rental contracts in the summer data. Process First said that a majority of NAREB listings are 7 or more days, so it will likely pull the current number (5.4 days) up to around 7 days, but likely not a lot higher.

Stacie acknowledged that this timeline is not ideal, but reminded the group there will continue to be opportunities to tweak the policy levers as needed after June 9th should the NAREB data drastically change the group's understanding of the current STR market.

Number of STRs

Matt presented a slide that showed that there were currently 3,103 total Nantucket listings on the State STR Registry, which were reduced to 2460 once they were cleaned and deduplicated. He then showed a graph of the growth of STRs on the State Registry from 2019-2023. One member asked if this data implied the number of STRs was doubling. Matt explained that the number of registrations doubled, but that does not necessarily mean the number of STRs also doubled, as they do not know how many STRs existed prior to registration requirements. A member clarified that the registry was set up in January 2019, and people were given a grace period until [July 1, 2019](#) to register. Another member noted that many people came into STR compliance in 2020, and that is when the bulk of the STR registration is seen.

Where STRs are Listed

Process First shared a slide that showed that, in 2022, of the 2,460 total STRs on the State Registry, 1,160 were listed on platforms associated with AirDNA, and 2,053 were listed by NAREB, implying a range of overlap of somewhere between 753 and 1160. One member noticed that the range calculated was large and left them with more questions. Process First said they would explore other ways to visualize the data.

One member noted that the slide had a range of 0-407 STRs as “unlisted” and asked for clarity on what that meant. Process First explained this was the possible range of STRs registered in State Registry who were potentially inactive (e.g., listing neither with AirDNA platforms nor NAREB partners). A member noted that the group is interested in understanding the number of STRs that are active, and another noted that they wanted to understand where people fall on a scale of very active to intermittently active. Matt noted that later slides could better answer that question for the AirDNA listings, and that they would need to await NAREB’s data for the full picture.

How Many STRs There Are

Process First showed a slide summarizing their data on the number and performance of STRs. Matt noted that in 2022 there were 1,160 active whole home/apartment rentals on AirDNA, which was 16% lower than the average between 2017-2019.

Members of the group began discussing whether or not there was a drop off in STR tax revenue in 2023, and eventually forwarded Stacie an email with recent lodging tax numbers from the Town. *[Note: that report showed that year to date revenues for STRs was up 6.6% over last year.]*

Where are the STRs

Matt showed some slides with heat maps indicating the density of STRs, first showing all dwelling units and then comparing to AirDNA listings. He noted that he received a question from a member of the public requesting a map pin-pointing all STRs on the island using GIS data, and noted that he did not have permission to share data of this granularity.

Due to time, Stacie proposed that the WG set up a Data Subgroup meeting to talk about more data questions and requested that the group think about their data questions as they talk about policy mechanisms so Matt can give them specific answers to focused questions.

Policy Mechanisms

Stacie then turned to John Giorgio, Town Council, and Judi Barrett, Barrett Planning Group LLC, to review their suggested by-law language to meet the initial draft policies developed by the WG at their previous meeting. John Giorgio began by noting he suggested that the general bylaw amend Chapter 123, which is the existing Short-term Rental Registration Bylaw passed by Town Meeting in 2022. He advised the group that in November, Town Meeting

should first consider the group's General Bylaw, which would include a provision saying that it only would take effect if the companion zoning bylaw passes. He explained that the draft included a Purpose section that clearly outlines the rational basis for the changes being proposed, in order to help protect against possible constitutional claims. Particularly, he suggested the WG make clear the nexus between the ill effects of STRs and the recommended actions to address those effects. He then opened the discussion for members to ask questions or make comments about his draft policy:

Limiting Corporate STRs

One member asked if there was a way to address the issue of companies like Heirloom and other ownership types that are corporations but able to list themselves as people.

- John Giorgio: There are always going to be workarounds. This language is from the Great Barrington ordinance which was approved by the Attorney General. If you include the grandfathering clause it would de-incentivize people using workarounds. Not sure how else to address this other than see how people respond when this bylaw goes into effect.

Limiting STRs in Deed Restricted Buildings

John Giorgio noted that he was concerned about preventing STRs in any buildings with deed restrictions, suggesting this could be left to the regulatory process and was unsure what the rationale of this clause was. A member clarified that the goal was to protect the class of more affordable units, to keep people from buying more affordable properties only to STR them. This could be a way to protect attainable housing for year-round residents.

Judi Barrett clarified that deed restricted units are required to serve as a principal residence, but may not have any explicit language about STRs. She noted she would follow up on this. A member suggested allowing people to rent their homes as long as it's their primary residence. The group discussed whether limiting STRs in more affordable units could hurt people's ability to afford those homes, and agreed it was something to discuss further.

A member asked if it was possible to have the general bylaw tied to the zoning on the ones the WG has consensus on, and then offer a menu of additional policies that they can vote on separately. John replied that they could have one main bylaw that is contingent on the zoning bylaw passing and then have other stand-alone warrant articles.

High Season Contract Limits

Someone asked how John Giorgio felt about limiting the number of contracts in July and August to 9. John responded that he did not see any legal concerns with the provision, and thought it could reduce churn.

Allowing existing STRs to continue

John Giorgio noted that the provision gave him much greater comfort legally given the plan to ban future corporate ownership and limit the number of STRs per person. He noted that

Boston and other municipalities who have taken strong stances on this issue have faced legal challenges. A member felt that the idea of legalizing all current corporate owners in perpetuity would be hard for voters. They asked if the group could consider a sunset provision for corporate ownership. John responded that there have been examples of other municipalities banning corporate ownership, and that Great Barrington's corporate prohibition was upheld by the AG. However, he noted that approval by the AG is not protection against lawsuits, and that the group should consider the economic impacts because a corporation could certainly sue the Town. Regarding the sunset idea, the WG could add "for a period of X years", which would act as a sunset, but he noted the concern is that corporations could use the time given to mount legal challenges. Another member noted that this group thought a lot about grandfathering, and felt it was better to make a blanket rule for legal reasons. Since the number of corporate ownerships is small at the moment, this is a provision to protect Nantucket in the future.

Capping the total number of STRs

One member spoke in favor of an island-wide cap. They asked John Giorgio if the group was interested in writing a provision that would cap STRs on the island at 10% over the current number, would they legally be able to say that the remaining 10% of STR licenses should be prioritized to middle-income operators? John replied that this would require applicants to submit proof of income or home value with their application, which would require an administrative entity that would be responsible for reviewing applications. He stated that he was unsure about the legality of this but would follow up with the WG.

One WG member did not like this idea and felt it would inspire infighting among the electorate, and that voters would not support middle-income people getting priority over others. Another member who supported this idea noted that there would need to be an entity that would make the judgment calls on how this is evaluated and who gets priority, as well as consider how the metrics for "middle income" change over time on the island.

One member asked if there was a way to stop the rush they might see if they institute an island wide cap. For instance, if someone is registered but does not rent, could they lose their license? John responded that registrations required renewal annually, and there is language included that says a license goes away if a rental certificate is not renewed. Another member noted concern over this idea, as there are people on the island who do not currently rent, but their children might need to rent in the future to keep the property and they should have that option. Another felt that since there was not a clear body that would decide what the cap was and how it might change, the WG would be setting the island up for conflict. One member suggested adding language to a bylaw that would trigger a Town Meeting article instituting a cap once the number of STR units gets to a certain point.

Zoning Bylaw

Judi Barrett then said a few words about how important it is for the WG to keep these regulations as simple as possible. She asked the group to clarify if they wanted STRs allowed as a principal or only an accessory use. She added that if the group does not go with principal

use, they would not be resolving the legal jeopardy faced by seasonal residents who operate STRs. Several members agreed that they wanted to use the term principal use for this reason, and that it was crucial to ensure there was no discrimination between year round and seasonal residents.

One member felt concerned that if they allow STRs as a primary use, and they also include a provision that people can own 2 STRs, the WG would not be doing enough to address the issue of vacation rentals on the island. They added that the general bylaws need to be stronger and was curious if the group was willing to create stricter bylaws. One member noted that instituting caps would address the further conversion of both year-round and seasonal housing into STRs.

Stacie thanked John and Judi for their hard work and support of the WG so far and opened the meeting for public comment.

Public Comment

- Jon Delano: Thank you very much. This was a very fruitful conversation this evening, and a special thanks to John and Judi. Thanks for Jim for talking on our behalf at Town Meeting. My concern coming out of Town Meeting is that we must keep in mind the politics of all of this. Two-thirds vote is not going to be easy.
- Rick Atherton: My concern as a property owner is that I may want to rent my property later in time (we have never done it), and I am concerned how that might influence your decisions. You have a real difficult situation with caps which impact my ability to do that. I find the data analysis of what happens to rental properties (long-term rentals) and their conversion unhelpful to get at that issue. I have talked to several realtors about this, and they have said if your property has a residential exemption that's all we need to know, but we need to know more than that. How many people rent year-round?
- Bruce Mandel: I wanted to reiterate the comment I made prior to the meeting which was sent to CBI about creating a GIS map that shows where rental properties are. This is something Process First should investigate doing.
 - Stacie: We can raise this for future data registry, but Process First is not able to share this level of information.
- Kathy Baird: Caps are tricky, and we should take it a little at a time, and it will be hard to be fair at this point in time.

Next Steps

Stacie Smith went over the next steps and action items:

- CBI will create a meeting summary
- CBI will schedule a Data Subgroup Meeting for Friday
- CBI will continue to work with John and Judi based on the discussion today to refine the policies and bring it back to the group at the next STRWG meeting

- The next meeting is scheduled for May 30th and will be a four hour meeting to prepare for the public meeting on June 1st.

Stacie thanked everyone for their participation and closed the meeting.

Appendix A: Subgroup Members and Attendance

Working Group Members

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

Working Group Alternates:

Robin Nydes, Nantucket Together
Jon Delano, At Large
William Gardner, Advisory Committee of Non-Voting Taxpayers
Joe Grause, Finance Committee Member

Working Group Staff

Stacie Smith, Consensus Building Institute
Simenesh Semine, Consensus Building Institute
Megan Trudel, Planning Department Liaison
Adrian Rodriguez, Administrative Team