

Nantucket Short Term Rental Working Group

Meeting Summary

June 20, 2023 | 5:00 PM – 8:00 PM ET

Meeting Objectives

- Discuss and Refine Draft Bylaws

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

Welcome & Internal Group Work

Stacie Smith, Consensus Building Institute (CBI), welcomed members of the Short-Term Rental Working Group (STRWG) and the public to the seventeenth Working Group (WG) meeting.

She briefly reviewed the following negotiation tips that Work Group should keep in mind as they come to the end of the STRWG process:

- Consider your BATNA - Best Alternative To A Negotiated Agreement. This is the most likely outcome if the group is not be able to reach an agreement. What happens to your interests if the group does not pass this proposal?
- Seek to make Wise Trade-offs - be willing to make concessions in areas that are lower priority or value in order to achieve interests that are highest priority.
- Consider Contingent Agreements in the face of uncertainty, such as provisions that allow things to change based on what happens in the future.

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

Discuss and Refine Draft Bylaws

Stacie opened the discussion to WG members to give their thoughts on the draft policy packet. The group then discussed the following General Bylaw provisions. *The articles listed below are the ones that were discussed by the WG during the meeting. If you would like to see the FULL list of bylaws being proposed by the WG, please visit the project website [here](#).*

1. If a property is sold after this bylaw, the unit cannot change occupancy more than 4 times during July and August (residential exemption).
2. An owner may register to operate only one dwelling unit as a short-term rental.
3. Hosted stays are exempted, and an agency designated by the Select Board can provide waivers.
4. Any person or other legal entity who receives a certificate of registration prior to the effective date of this Chapter or within 60 days of the Town's establishment of the rental registration program, if it hasn't been established at the time of this vote, may continue to engage in short-term rentals in accordance with the

existing certificate of registration, except for subsection K of this section which shall apply to all short-term rentals, until the dwelling unit is transferred or conveyed, or the certificate of registration is not renewed.

5. Short term rentals are not allowed in units deed restricted for affordable or attainable housing.

1. Restricting to 4 Contracts During July and August (Residential Exemption)

A WG member noted that the current proposal to offer an exception to the limit of 4 contracts during July and August for new homeowners was unfair because it discriminated against seasonal residents. They felt this policy was unconstitutional and thought there were other policy levers in the package that would achieve the same goal (limiting corporations and helping year-round residents with housing). They suggested people look at the New Orleans decision made by the 5th Circuit Court to understand their concerns, and noted that they would not support a policy that would have different rules for residents and non-residents.

Another member disagreed, saying that supporting local community members to afford stable year-round housing is more important than allowing off-islanders to buy vacation homes. They reiterated that the goal of this policy lever was limiting the incentives for investor-owned STRs. They added that Process First and NAREB have shown data that Corporations make up only a small piece of the STR pool, and there are other forms of investor-only ownership that the group needs to regulate.

One member supported discouraging people from buying properties to use solely as STRs, but proposed adding a 5-year sunset clause, to ensure they were not limiting the number of rooms available long term. Another member agreed with the concern of reducing the lodging stock without a mechanism to add back leases or evaluate in the future.

Another member added that although they feel concern about allowing STRs as a permissible use in the zoning bylaw, this general bylaw provision would balance the package because this is an explicit guardrail around STRs. Regarding the idea that this policy is discriminatory because it gives residents an exemption, the WG member cited data from Process First that showed that seasonal, off island homeowners register 1/3rd of their properties as STRs compared to 1/10th of year-round residents. They felt that this local exemption was needed to correct an existing imbalance in the playing field for local residents. They noted that while they do not support a sunset clause, they would vote for it if it meant reaching consensus.

A member clarified that raising the number of allowable leases back to 9 after 5 years would not alleviate the constitutional issue, and suggested instead the ability to apply for a hardship waiver for residents and non-residents. Another WG member questioned the idea that this would be unconstitutional, considering there are a number of laws that treat people differently.

Stacie referred the group to the memo written by John Giorgio, Town Council, circulated last October, stating that "Whether the First Circuit Court of Appeals or the U.S. Supreme Court would reach the same conclusion [as the Fifth Circuit] is purely speculative at this time." One member wanted Town Council or someone else from KP Law present for the final discussion on June 27th, and felt it was not appropriate for the WG to take legal opinions from other members.

A member objected to requiring proof of hardship instead of a general waiver for residents, and felt this approach could cause embarrassment as well as being logistically painful. Someone else added that requiring proof of hardship would create a burden on Town staffing. Another member suggested that the language say that residents can apply (and automatically be approved) for a residential exemption in their taxes if the property is their primary residence.

Another member referenced a letter to the WG from an alternate, suggesting an accommodation exemption based on the price of their home. Another member noted concern about regulating based on home price and if that was allowed under MA property law. One member added that this would incentivize people to buy less expensive homes so they would be able to rent for 9 contracts.

One member felt strongly that if the group removed this policy lever, they would like the group to reconsider caps or a waiting period for new STR permits.

2. One Dwelling Unit Per Owner

A member asked for clarification of this language to include one sentence stating that owners can only register one property, and a second sentence to note that if more than one dwelling unit exists on the same lot, they can rent them under the same contract. Another member added that the registry is based on "Property", while the town's is based on "Dwelling Unit," and agreed that this should be clarified.

3. Hosted Stays and Waivers

One member wanted to include language in this provision that would explicitly name and protect the traditional seasonal cottage properties on the island, also known as "Cottage Colonies". Someone added that some homeowners have one or two seasonal units on their properties that should also be included in this exemption, but others felt those should not be included in this exemption.

One member noted that the original idea behind having a body to grant exemptions was to protect things like the Cottage Colonies but thought that it was supposed to apply to a broader range of exceptions. Members suggested the creation of a committee that was

designated by the Select Board. Someone else noted that this process should not be called a hardship waiver.

4. Grandfathering

One member asked if someone did not re-register for a permit one year, would they lose their grandfathering ability for subsequent years and lose the ability to pass it down to their kids. Someone suggested that the language around "transferred or conveyed" explicitly clarify that inheritance is not included.

5. Deed Restricted Housing

Someone noted that if the WG limited renting in deed restricted apartments, they are limiting people who might most need the additional income. Another member clarified that most deed restricted units cannot rent already.

Zoning Bylaw Provision Discussed:

- Add a definition of Short-Term Rental as "A dwelling unit or portion thereof registered and operated by the owner in accordance with Chapter 123 of the Town Code."
- Amend the use chart to allow Short-term rentals as a permissible use in all districts.

Permissible vs Accessory Use in the Zoning Bylaw

One member noted that their constituents could not live with the current zoning recommendation. They felt strongly that this needs to be changed to an accessory use policy and would be open to hearing suggestions from other WG members along those lines. They added their belief that none of the current policies prevent homes from becoming full-time STRs, and felt that this package will not get support at Town Meeting if it does not do more to restrict the growth while also allowing STRs in all zoning districts.

Other members disagreed. One expressed that codifying STRs as an accessory use in zoning was a non-starter. They noted that the community has already voted that policy down, it would have no enforcement mechanisms, and that people don't want to hurt seasonal residents.

Someone else added that while accessory use might work in other communities, the current aggressive lawsuits have scared Nantucket residents, and now people need to see policy that explicitly protects the legality of STRs. They added that under accessory use, there is no clear equation for whether or how much people can STR, and the community cannot rely on the ZBA or Town to make that decision because they are still being challenged in court.

The WG member who supported accessory use stated that group did not have enough open discussion about the option of accessory use, and felt that the group was led to their current zoning recommendation. Stacie offered the member the opportunity to discuss the issue further and make their case, but the member stated that zoning is complex and didn't feel able to discuss it without experts present. Stacie noted that the group brought in experts such as Judi Barrett to weigh in extensively on the issue, both in full and subgroup meetings, and that she and the Town Counsel both clearly explained why they supported primary use. Another member added that Judi shared her own exploration back and forth on the issue and why she ultimately decided against designating STRs as accessory use for Nantucket.

A member expressed frustration that the WG member has not proposed any alternatives beyond accessory use, because there could be many other options in both zoning and general bylaws that they could propose to address their concerns. They added that people are willing to work together on finding this middle ground, but that requires flexibility on both sides.

Next Steps:

One member noted that the group will report their consensus to the Select Board, who will ultimately have the final decision on what bylaw goes to the Warrant. Someone added that it is smart to suggest to the Select Board that the data on STRs from in the registry be examined on a yearly basis, as certainly this bylaw will not be the final solution to STRs on Nantucket forever.

Another member noted that the last three Town Meetings ended with no progress on this topic. People want this group to propose a middle ground for the acceptable use of STRs on the island. They added that although surely this could be refined in future Town Meetings, the WG should not rely on future fixes to the policy, and should aim for the best approach they can come to so the community can move on from discussing STRs.

One member added that throughout this process, WG members have worked hard to find compromises that worked for the collective good. They felt that it was frustrating that some members were not willing to change any of their positions. Another member disagreed, noting that there are members of this WG representing other people and their interests, and while their group's positions have moved over time, this package does not do enough to limit STRs.

Mock Vote

After the discussion, Stacie led the group in a mock vote. She asked members if the current aspects of the bylaws were the final package, would they vote to support it (if the above changes and clarifications discussed were made). Please note that this was just an exercise, and that the final vote for the policy package will be made at the next WG meeting on June 27th.

WG members who voted yes and their organizations:

- John Kitchener, At Large

- Jim Sulzer, At Large
- Karen Zagayko, At Large
- Dave Iverson, Planning Board Member
- Peter Schaeffer, Finance Committee Member
- Kathy Baird, Nantucket Together
- Thomas Dixon, Affordable Housing Advocate

WG members who voted no and their organizations:

- Julia Lindner, Ack Now
- Peter Kahn, Advisory Committee of Non-Voting Taxpayers

Stacie noted that the two WG members who do not support the current package should work in the coming week to bring proposals forward that would address their concerns while considering the concerns and opinions of their fellow WG members. She reminded them that they could also abstain from the vote, meaning they do not support the package but they will not actively oppose it. She added that if either of them would like to schedule a subgroup meeting to discuss proposed changes, they should coordinate with CBI.

She reminded all WG members that they are allowed to meet and discuss this package with their constituencies, but that there should not be serial communication between WG members in the coming week to avoid any violations of Open Meeting Law.

Public Comment

- Alvin Fargo: Can you explain why the mention of State registration was deleted - was that on purpose? What happens to those who aren't able to register with the Town because the registry is not yet operational? Will we lose our grandfathering? We would love to register, and we are an S Class corporation.
 - o Stacie: The group decided that the bylaw start date should reference the Town's registration rather than the State's. S-Corporations made up of natural persons will be able to register even after this bylaw goes into effect..
- Jon Delano: First, as an insider and outsider, I want to respond to what I saw recently as unfounded attacks on this WG from a letter published in the newspaper. From my standpoint, all 9 members have done a terrific job and are working hard to find compromise, so the suggestion that anyone came in with a closed mind and beholden to private interests is not true. You have worked hard to get input from data, the public, and other sources and the community owes you a thank you regardless of the outcome. Second, I am a compromiser, and it may be hard with Ack Now's position, but I could encourage everyone to try and find a way to find agreement with the Non-Voting Taxpayers, because they represent 85% of the taxpayers.
- Peter Halle: I took a look at the STR scenarios and I think it's important that as part of the completion of this group's work the scenarios be completed and vetted because they will be very important for the voters to look at, beyond just the legal language of

the draft bylaw. To know where they fit and what it will mean to them will be very valuable.

Next Steps

Stacie Smith went over the next steps and action items:

- CBI will create a meeting summary
- CBI will create an agenda for the Meeting on June 27th
- Town staff will post all meeting materials to the project website.

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
Thomas Dixon, Affordable Housing Advocate
Jim Sulzer, At Large
Kathy Baird, Nantucket Together
Julia Lindner, Ack Now
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