

Town of Wolfeboro  
Short Term Rental Subcommittee  
Planning Board  
Monday, June 7, 2021

Present: Geordy Hutchinson, Peter Cooke, Brad Harriman, John Thurston, Susan Repplier, Tavis Austin, Kathy Barnard.

The meeting was called to order at 8:00 AM in the Great Hall.

The minutes of May 17, 2021 were reviewed. Kathy made a correction to the minutes as follows: 3<sup>rd</sup> paragraph, 4<sup>th</sup> sentence, after – whether the use of ADD short term rental or.  
A motion was made and seconded to approve the minutes as corrected.

Kathy then went over the purpose of the Committee.

Susan then discussed the conversation the Planning Board members had at a recent meeting regarding this issue. There is no information from the State regarding this issue. Summer is coming and we should address this issue now. Possibility the committee should suggest asking the Planning board to talk to the Board of Selectmen about increasing the fine for noise and disruptive behavior when the police are called to deal with these issues. The fine needs to be assessed to the property owner/property agent. The fine could be increase after each visit.

Tavis then remind committee members that the complaint that we have heard about includes parking issue, noise, vandalism. He then made the committee aware of a memo from Attorney Laura Spector-Morgan in regards to question asked by John at the last meeting.

The opinion is part of the minutes.

Laura said our definition of single family does not include transient occupancy as there was in the Working Stiff Partners case in Portsmouth.

It was also discussed that we need to determine how we want to definite short-term rentals.

The committee was reminded that we do not have enough staff to follow up on calls that come to the office about this issue.

This would require a zoning ordinance change.

If the issue is more enforcement by the police, then this is a Board of Selectmen issue.

There was a suggestion that adding “transient” to single family dwelling may be a solution.

Susan then made a motion as follows: Ask the Planning Board to consider going to the Board of Selectmen and asking them to increase the police powers to deal with problem property owners and increase the fines for these problem properties each time they visit the property. Geordy seconded the motion and all voted in favor of the motion.

Susan then made another motion as follows: The committee needs to recommend to the Planning Board that they start the process of amending the single-family definition to make the definition more stringent to address the issue. Peter seconded the motion. The motion passed with one No vote.

Peter mention that we need more information about grandfathering and how you would define a family.

The committee then decided to set the next meeting date to July 12, 2021 at 8:00 AM in the Great Hall.

The public session was then opened.

The public comments were as follows:

Concerns about safety issues

There are other issues that need to be addressed  
Many people are not paying the State for the Meals/Rooms tax  
The web page needs to be updated  
Grandfathering issues need to be addressed  
The noise and other issues impact the entire neighborhood  
Is there a liability issue if there is under age drinking taking place on community property?  
This is more of a police problem  
There is an economic issue that needs to be addressed.

The meeting adjourned at 9:30 AM.

Submitted by  
Kathy Barnard

***Legal Opinion as presented to the Committee:***

Hi Tavis. Let's start with the second part of the question. Short term rentals are residential, not commercial uses, of property. The property is used identically whether it is occupied by one family for an entire year or 50 families over the course of the year. The mere fact that someone makes money from the rental of the property is not sufficient to convert it to a commercial use, nor would the fact that the owner must pay some sort of business profit tax make the property suddenly commercial. This is particularly true where the term used in state statute to distinguish between uses is actually "non-residential," not commercial; and this use is clearly not non-residential.

As for whether short term rentals as that term is defined in SB 458 (2020) are permitted, that is a much more nuanced question. That bill, which was tabled and therefore has no legal effect, defined short term rentals as "any single family building or structure or 1-4 family building or structure, regardless of how it is owned or occupied and regardless of whether the building or structure is conforming or non-conforming, offered in whole or in part for rental or transient use."

The rental of an entire home on a short term basis appears to be permitted by your zoning ordinance wherever single family residences are permitted. This is due to your definition of single family dwelling, which is a building principally used, designed or adapted as a single dwelling unit (one or more rooms arranged, designed or used for residential purposes and for one household and containing independent sanitary and cooking facilities). There is nothing in that definition which excludes transient occupancy from a single family dwelling, as there was in the Working Stiff Partners case, which I assume you and the board have seen.

The rental of individual rooms within an owner occupied house might be permitted. It depends on how many rooms are for rent and what is included in the rental. For example, if breakfast is included, and there are no more than 6 individual bedrooms, then the use would be a bed and breakfast as that term is defined in the zoning ordinance. If the dwelling is occupied by 10 or fewer occupants on a short term basis, then the use would be a boardinghouse, and would have to follow regulations for such a use. If the building is occupied by a resident manager and his/her family and not more than 8 other occupants, it may be a dormitory. And if there are 5-50 sleeping rooms with private bathrooms which provides overnight lodging facilities, it may be a hotel-inn-motel.

I'm sure there will be follow up questions, and I'm happy to meet with the board either in person or via zoom if it would be helpful.

Thanks!

Laura

Laura Spector-Morgan, Esquire

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**From:** Tavis Austin  
**Sent:** Tuesday, May 18, 2021 10:26 AM  
**To:** Laura Spector-Morgan <[laura@mitchellmunigroup.com](mailto:laura@mitchellmunigroup.com)>  
**Subject:** Short Term Rental Committee Questions

Hello Laura,

Below are two motions from the Planning Board's Short Term Rental committee. If you need or would like to discuss prior to responding to the questions please don't hesitate to reach out.

*I make a motion to seek clarification from the Town's legal counsel to see whether the use of "vacation rental"/short-term rental in NH bill 458 amended RSA 674:16 is a permitted use under current zoning regulation or ordinances in any district within the boundaries of the Town of Wolfboro. The motion was seconded. All members present voted in favor of the motion.*

*Motion to seek clarification from the Town's legal counsel to see whether the collection of a business tax for a short-term rental or vacation rental is defined as a business for profit in NH. This motion was seconded. All members present voted in favor of the motion. Tavis will forward this to the Planning Board's attorney.*

Thanks in advance,

Tavis

**Tavis J. Austin, AICP** | DIRECTOR OF PLANNING AND DEVELOPMENT | TOWN OF WOLFBORO | 84 SOUTH MAIN ST. | P.O. BOX 629 | WOLFBORO, NH 03894 | [PLANNINGDIRECTOR@WOLFBORONH.US](mailto:PLANNINGDIRECTOR@WOLFBORONH.US) | 603-569-5970 (EXT: 121) |

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