

**ZONING COMMISSION
NOANK FIRE DISTRICT
10 WARD AVENUE
NOANK, CT 06340**

Approved Minutes of the Special Meeting

Date: Tuesday, January 5, 2021
Location: Zoom Meeting

Consistent with Governor Ned Lamont's directives on the use of remote meeting technology during the coronavirus pandemic, the meeting was held on Zoom and the recording is available at the following link:

<https://www.youtube.com/watch?v=WsBkVZH-SUM&list=PLp4s6RQGCh5T9I68DGPVVGpN4hWxQqRqQ&index=1>

All meeting documents are available at the following link, and can be accessed from a laptop or desktop computer without a Microsoft user account or password. Use of a mobile phone may require establishing an account.

<https://1drv.ms/u/s!BLWm4wCa4MFlvW9Y5ubvwNwB-EfH?e=TXqqS9>

Call to Order 7:00 pm

Commission Members present: Rick Smith (Chair), Beth Steele (Vice Chair), Blake Powell, Art Tanner and Dana Oviatt. Alternate member Larry Dunn was present. Mary Beth Silano introduced as new clerk.

The Chairman read the rules for holding remote meetings into the record.

The purposes of the meeting were to: 1) approve four sets of meeting minutes, 2) further develop management measures for the short term rental issue, and 3) potentially vote to transmit the final proposals to counsel and the ZEO for review.

Approval of Minutes

Minutes of November 17, 2020 Regular Meeting, November 24, 2020 Special Meeting, December 1, 2020 Special Meeting, and December 15, 2020. No comments. Without objection, all four sets approved.

SHORT TERM RENTAL ISSUE (0:04:30 minutes into the recording)

All discussion was based on the Draft Concepts Document dated December 9, 2020 that was made available for the meeting, accessible at the above link. Items requiring agreement with language highlighted in light green. Items requiring a decision highlighted in yellow.

Definition of Large Parties (00:06:00 minutes into the recording)

Action: Motion (Steele/Oviatt) - Use Option 11A of the definitions from the Concepts document.

Approved 5:0.

A minor language addition was discussed, to add "...advertising..." to the section on Permit Requirement (B.2.) to read "Any person advertising for, or operating a short term rental..."

Action: Consensus - Proposed language agreed upon.

Waiting Period (00:09:22 minutes into the recording)

The Commission had previously voted to include the measure in Section C.2. The current discussion was to approve the language embodying that decision.

Action: Consensus - Proposed language in the document at Section C.2. agreed upon.

In two places, language stating "...is grounds for permit revocation." was changed to ("...is grounds for enforcement action and penalties up to and including permit revocation."

Action: Consensus - Proposed language agreed upon.

Parking (at 00:14:08 minutes into the recording)

Dunn preferred Option b3 but would add "short term rental" before parking spaces.

Marshall sought clarification on numbers of bedrooms to be occupied. Smith wondered about using the number of parking spaces to determine number of people in a rental party since the capacity of cars varies.

Tanner recommended that, although a bit draconian, if there are not a sufficient number of parking spaces for the number of bedrooms authorized in the dwelling, the application should be denied. The concern was how to control occupancy if people

were allowed to rent a house with more bedrooms than there were parking spaces available for that number of people.

Dunn wondered how the commission would enforce such a measure. Online services may be able to do this based on advertising the number of parking spaces available.

Smith asked whether it was necessary to require the internet-based advertisement to indicate limitations on parking. The requirement has been included in the permit application. Marshall and Dunn both noted that on-line advertising often states both the number of parking spaces and the number of bedrooms authorized.

Tanner noted that the property owner could always create additional parking spaces in his yard.

Tanner's language became the basis of a motion.

Action: Motion (Tanner/No Second) - If there are not a sufficient number of parking spaces for the number of bedrooms authorized in the dwelling, the permit will be denied.

Motion died for lack of second. Tanner was concerned that this was "bad process" and if no one was willing to offer a second so the commission could have discussion, that's a really bad process. Smith noted that the parliamentary procedure is that, if no one is willing to second the motion even for discussion, the mover got his answer. Tanner stated "but people avoided having discussion." Smith noted that there had been debate on the question, before the motion.

Oviatt agreed with Tanner so he offered to second the motion.

Action: Motion (Tanner/Oviatt) - If there are not a sufficient number of parking spaces for the number of bedrooms authorized in the dwelling, the permit will be denied.

Tanner felt many of the other measures were loose (difficult to monitor and enforce). He felt if commissioners didn't like this measure because it's too tough and they don't vote for it, he'd like to see something offered that deals with this problem. Perhaps it required more research to see what other communities did.

Marshall suggested we needed something enforceable. Felt the measures now were only enforceable at the permitting stage of the process.

Smith suggested the motion didn't seem to be terribly contentious given that the Commission has repeatedly stated that it was concerned with congestion (fire trucks can't pass) and people parking all over lawns, to the visual detriment of the community. The motion gets at congestion and overflow parking on the street and deals with the potentially unsightly behavior of parking cars all over the lawn.

Powell questioned whether it was a correct presumption that there could be two houses next to one another, one with four bedrooms, the other with two and both having identical driveways and the four bedroom house might not be able to get a permit but the two bedroom house could.

Tanner noted that current regulations do not allow driveway space as parking spots (Section 9) rather, they have to be designated parking places of a certain dimension and the plan they submit with the permit application will have to show that the separate parking places are available for the cars of the renters. Marshall asked where is this specified. Tanner noted it was in the parking section and applied to residences as well as businesses.

Dunn agreed with Powell's evaluation as to inconsistency. With a similar lot size but one house has two bedrooms and the other has four, it seems unfair to that one might not even be able to rent at all. He suggested it was a measure that could benefit from counsel's review.

Marshall, having read the section, noted that driveways "may" be used for parking for single family dwellings.

Smith suggested that people with insufficient parking spaces could redesign their yard to create a proper parking "lot" for the purpose they intended. This would resolve the concern that Powell had raised.

Approved 3:2.

The discussion returned to Option b3.

Action: Motion (Tanner/Oviatt) - Use Option b3 in the parking section of the Concepts document.

Approved 5:0.

NOTE: In revising the document, it appeared that two inconsistent motions were passed (Tanner's first motion regarding the permit denial approach, and his second, Option b3). Smith notified commissioners that the issue would require clarification. Subsequently, in preparing the minutes, it was noted that, in the record at 00:37:25 minutes, Smith said "The motion that just passed (i.e. Tanner's first) would be an add-on to Option b3 (ed. note: actually a substitution for the last sentence). In other words, b3 should apparently become "If owner occupied, short term rental parking spaces are in addition to the spaces required for the owner's family. If the property cannot accommodate all of the parking spaces required by this ordinance, the permit shall be denied." The Commission needs to clarify that this was its intent.

Language at C.18.d was added to ensure that the ZEO will be the authority for determining whether the proper number of parking spaces are available.

Action: Consensus - Agreed

Corporate Ownership (at 00:42:20 minutes)

Action: Motion (Steele/Powell) - Keep the corporate ownership language in Section D2.

A number of problems and concerns were voiced. It was suggested that this measure would also benefit from counsel's review. The purpose of the corporate language concern was to ensure that only one property per owner would be authorized for use as a STR property. This was subsequently clarified to mean to prevent family members in the same household from each owning an STR property. It was reiterated that this issue was ripe for counsel's review.

Marshall asked a number of questions all relating to the complications of corporate ownership, the definition of a member of the corporation, the administrative difficulty of implementing annual revisions, and ways that such a measure might be gotten around.

Approved 5:0.

At 00:45:40 in the record, further discussion on the issue of corporate ownership suggested some types of corporate ownership should not be allowed. The question was re-cast in the nature of "one STR permit per owner, and then, what is an owner?" If every LLC is an owner, then a person could set up a separate LLC and what does that mean in practical terms. It means no limit to the number of properties you could own.

Tanner suggested the issue was identifying who the members of the LLC were and, once they show up in the application process, no one could be in two LLCs. He agreed it would be a lot of work to review each year. That said, this language would help ensure that a person could not be a member of two or more different LLCs. Marshall noted that a problem in other parts of the country was that a father could have one STR house, the mother a different one, the son a different one, the daughter a different one, so a family of four could own four STR properties and have four permits).

Tanner noted that the origination of the measure was that some properties being rented were in some kind of corporate ownership but the corporation was family members and the commission was sympathetic to that opportunity but the commission had to be cognizant of corporate ownership in other forms. It could open doors to abuse. He noted that the other restrictions in the commission's package of proposals would serve to diminish the interest in the type of corporate ownership that concerned the commission.

Dunn (00:51:35) noted that the commission's concerns seemed similar but we were tied up on definitions of permits and owners. The intent was to prevent a corporation (ed. note: actually, an owner or owners) from own multiple dwellings for the purpose of short term renting. Needed counsel's review, and whether the commission could limit STRs to certain types of owners and not others. Marshall suggested that the commission didn't seem to want one person to be in several corporations and, therefore, be able to have a permit for each dwelling and also family members living in the same household and having each member serving as an owner and having several permits for the members of that household. It would become a pretty big family business.

Oviatt (00:53:53) noted that, in his opinion, the reasons for the concern about corporate ownership were to: 1) prohibit any one person from running more than two STRs in the village, and 2) prohibit corporate entities in general from owning ANY property in Noank. He disagreed with allowing LLCs to exist as short term rentals. Didn't recall that the commission had agree that it was OK.

Smith noted, in general, that the choice of words was important and commissioners should avoid discussing the issue in terms of where a person lived. It doesn't matter and it's a constitutional issue because the commission will look like it's treating people differently based on residency. The goal should be one property per owner and let legal counsel inform the commission how best to achieve the goal.

Tanner noted that the goal should be that each family member in a household should not be allowed to have a STR permit.

Smith suggested there was a potential legal defect (treating family members who reside together vs. those who live in different places differently). The Commission agreed the issue required counsel's advice.

Action: Consensus - The conclusion was to request advice of counsel on preventing each family member in a household from each having an STR permit.

Auditing of Records (00:59:57)

In Section D.3.d., proposed language was considered in "Auditing of Records" to add "and use" to the statement "...to obtain any STR information..." to read "...to obtain and use any STR information held by any 3rd party..."

Language on Permit Application Requirement (1:00:48)

Action: Consensus - Proposed language agreed upon.

Language on Permit Renewal (01:01:20)

In Section D6, proposed language was considered in “Permit Renewal” to add “requested and” to read “...for the calendar year for which the permit is requested and issued.”

Action: Consensus - Proposed language agreed upon.

Language stating “...upon is grounds for permit revocation.” was changed to (“...upon is grounds for enforcement action and penalties up to and including permit revocation.”

Action: Consensus - Proposed language agreed upon.

Revocation Rule (01:07:18)

In Section E1 (Revocation Rule), varying views were expressed in favor of Option 1 or Option 1A. It was noted that Option 1 was permissive in that the Commission may revoke a permit so, perhaps, it was not necessary to add the language of Option 1A on all the other ways the ZEO could gain compliance short of a revocation hearing. The sense was that we not water down the opportunity to enforce if necessary.

Action: Motion (Steele/Tanner) - Use the language in Option E1.

Approved 5:0.

Smith clarified some of the language choices to be confirmed, that they satisfied the commission’s decisions.

(01:17:53) Tanner suggested that the commission might want to review applications for at least the first year of implementation, to see if there is any confusion or concern that the commission might want to address. Smith said he would see if it needed to be treated like design review, having the requirement in the language. Tanner noted it was much as the commission did for the solar panel rules, before it subsequently adopted a text amendment to allow the ZEO to administer the process without commission involvement.

Smith noted that, eventually, he thought the draft should go to counsel for legal review and ZEO for implementation review, covering both needs.

Prohibition on Non-Hosted Short Term Rentals (01:21:55):

Smith resurrected the idea of simply prohibiting non-hosted rentals in Noank since 1) they were a commercialization of a residentially-zoned property and, thus, inconsistent with the existing ordinance, 2) the experiences locally and nationwide with the short term rental market was that noise and parking problems usually arose with non-hosted rentals because there was no one on site to control inappropriate behavior, and 3) it

likely decreases property values of surrounding properties, which is inconsistent with one of the purposes of zoning ordinances.

Action: Motion (Smith/Tanner) - (01:24:41) Prohibit non-hosted rentals in Noank.

Oviatt wondered who would be left if we eliminated non-hosted rentals and prohibited STRs in apartments?

Marshall wondered whether the commission could ask counsel whether it makes any sense to prohibit non-hosted STRs and STRs in apartments? Could the commission only allow hosted STRs and apartments would be allowed for STRs? What would be the legal implications?

Tanner (1:29:25) agreed with the rationale for the motion but was concerned with tying it to the prohibition on using apartments for STRs. Eliminating the prohibition on use of apartments as STRs is not appealing. The commission should support the long term renting of apartments. He felt that the two prohibitions had separate and exclusive rationales.

Marshall (1:33:10) agreed with Tanner regarding the reason for prohibiting both types of rental opportunities but it left only room rentals for STRs. She felt the commission should avoid wiping out every STR opportunity.

Tanner noted that there were probably many more apartments in LTR in the village than non-hosted STRs so he'd prefer to allow non-hosted STRs and prohibit using apartments as STR.

Powell and Steele noted that, if the commission were to consider this option, it would likely have to reconsider many other measures because the ones on the table now had been developed and predicated on both hosted and non-hosted rentals being authorized. The implications of disallowing non-hosted rentals and prohibiting apartments from use as STRs was noteworthy.

Most concluded that the range of other measures contained in the proposal were probably sufficient to control any proliferation of STRs in non-hosted residential properties.

Defeated 0:5.

(1:41:50) Discussion was held on the advisability of the prohibition on apartments approved in the past. Advocates for the measure are very concerned with the loss of long-term rental opportunities that would likely ensue if those units became STRs. No change was made to the past decision to propose prohibiting the use of apartments as STRs.

Action: Motion (Powell/Steele) - (01:48:00) Refer the proposal (based on the Concepts document updated after tonight's meeting) to counsel and ZEO for review.

Approved 5:0.

It was noted that the review should include legal sufficiency, ability to be implemented by the ZEO, and enforceability. Dunn and Marshall agreed to be on a subcommittee to consider enforcement potential, after legal review is completed.

Many wanted to receive written comments from counsel and ZEO, and an assessment of what resources ZEO might need to implement.

Smith described a potential timeline/horizon for review, public comment period(s), formal implementation process and implementation.

Adjournment -- Meeting adjourned at 8:55 pm.

Respectfully Submitted,

Rick Smith, Temporary Recording Secretary