

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

Minutes of the Special Meeting

Date: Thursday, August 26, 2021

Time: 7:00 - 9:00 PM

Call to Order 7:00 pm

Commission Members present: Rick Smith (Chair), Beth Steele (Vice Chair), Blake Powell, Art Tanner and Dana Oviatt. Alternates Hansina Wright and Lynne Marshall were present.

A link to the audio recording of the meeting is:

https://1drv.ms/u/s!ApV_BVCbHuQwr3ug7xRo8IKZ4l7B?e=NSZW3K

Chairman Smith identified three overarching questions that the Commission needed to address.

The questions were:

1. Should the Commission allow some STR use
 - a. In Noank?
 - b. In some zoning districts but not others?
2. If so, how would the Commission regulate STRs? (This may take a few meetings)
3. How does the Commission wish to deal with P.A. 21-29?
 - a. Allow all accessory apartments to be used for STRs?
 - b. Allow accessory apartments but prohibit their use as STRs?
 - c. Opt out of allowing accessory apartments by the process specified in the law?

Smith noted the question #3 could be deferred to a later meeting, per the advice of counsel. Smith asked if there was any disagreement with dealing with the first two questions. There was none.

Discussion:

Should Noank allow some STR use? If so, should it be in Noank only or just certain districts?

Commissioner Oviatt opined that the ideal compromise would be to allow some short term renting but how to define it (what kind of STRs?) and how much to allow. Smith suggested they ought to be defined as in the April 20, 2021 Commission draft. If the Commission wanted to re-define it, that's a subject for discussion. Oviatt felt that might be a way to authorize some owner-occupied STRs but noted that there is still disagreement on the issue of STR in apartments.

Commissioner Tanner noted that the simplest solution would be "no short term rentals" and to start enforcing it. He noted that the Commission was not required to authorize homeowners to do short term renting (no compelling reason to allow STRs). Out of approximately 500-600 residential properties in Noank, there were only about 30 doing STRs and would probably like to continue but

there was no compelling reason why the Commission should allow them to continue given that those 30, it's good for them but it's a negative for the rest of the properties in the fire district.

Commissioner Powell recommended that the fairest solution that applies to everyone equally would be to apply the same rule be applicable to all, no hosted vs. non-hosted rules variations, where some people can do it but others can't. He felt it should either be allowed for everybody or not allowed for everybody. He felt he had not heard a convincing reason why anybody should be allowed to do STR. We heard comment that it would open the door to commercializing residential properties. He noted that if the Commission authorizes the activity, it will expand in the future. He recommended leaving the rules as they are now (i.e. not an authorized use under the Noank Zoning Ordinance) and hopefully they will be enforced.

Commissioner Steele agreed with Tanner and Powell. She was originally sympathetic to those claiming they were trying to "keep the family home." Wanted people to be able to remain here but the Commission would be zoning for a very small, targeted group and it needed to look at the village and the population as a whole. One of the attorneys said the Commission needed a rational basis for changing its regulations. She was advocating for a different outcome but it's the same argument. What's the rational basis for proposing a change? Because a few people want to make money, or make enough money to pay their taxes? That isn't a rational basis, legally, for changing Noank's regulations. The fairest solution is to keep the zoning ordinance as it is (i.e. STRs are not an authorized use under the Noank Zoning Ordinance) and enforce this rule.

Commissioner Smith asked "what's the best thing we could do for Noank?" What's the benefit of short term renting? He concluded that non-hosted renting is of no benefit to Noank, it's only a benefit to the property owner. They feel strongly that they want to keep making their money but there's no compelling reason for them to keep doing what they're doing. It's only a financial benefit to the owners so they can keep a second home that is expensive to maintain. He felt differently about hosted short term renting if hosted renting is defined so that the owner had to be in residence on the property at the times it was rented on a short term basis. To the argument that everyone ought to be equally treated by the regulation, he felt there was a vast difference between hosted renting and non-hosted renting. Hosted renting when the owner resides in the home is functionally a residential use of residential property. The short term renting is an ancillary use, rental of a bedroom or a wing of a house that you block off with a door. Non-hosted renting is a business use. It's running a hotel with no supervision on your your private residential property. We call them all short term rentals because that's what the industry calls them but even when the industry started, Air BnB was the owner is in the home and rents a room or a suite. VRBO was the rental of a whole house. One bought out the other and they merged their ideas and it's complicated the matter because they are two very different types of renting.

Smith advocated for prohibiting non-hosted short term renting and allowing hosted renting as long as the owner resides there and then begin to pare out unnecessary rules, such as the three-year waiting period, the corporate language, the regulation becomes simpler. But you have to buy in to the argument that there's a value to Noank of hosted, owner-residency renting and here's what that value is. It provides the opportunity for Noank resident owners to remain in their homes due to

unforeseen circumstances, like a spouse passing away, a job is lost. This is a way to do it but it would require a rule change to do it.

His final point was that all the risk of unruly behavior and parking problems resides in the non-hosted camp because nobody's there to supervise. With hosted renting when the owner is present, nothing is perfect but you can almost guarantee that the owner won't allow his or her renters to get away with much that will cause that owner to have to appear at a public hearing to keep the STR permit. The enforcement is there because the owner would reside there and would regulate the behavior of his or her occupants. He concluded that Noank would be best served if the Commission found a way to allow owner-residing hosted renting and then see how the rule could be made simpler.

A question was asked regarding special permits and B & Bs. The problems with this approach were discussed.

Commissioner Powell noted that the justification that both non-hosted and hosted rental owners used was the same – they felt they needed STRs in order to pay for property taxes and maintenance. Smith felt the difference was significant, that in the hosted case, the resident owner was trying to keep the home that he or she lived in. The non-hosted owner was trying to keep the second home as a vacation home. Powell reiterated that essentially, both types of STR operators were using the same justification. If you accept the justification for one, you would have to accept it for both.

Commissioner Oviatt originally felt all STRs should be prohibited but, then, began to think about trying to do the most amount of good for the most amount of people and the least amount of harm to the least amount of people. Prohibiting STRs totally comes down hard on Noank on all STRs because it protects everybody and it's fair and that's true, but are we instituting the fairness that we want to institute for Noank? It's a compromise for the community, which I think is what Smith is trying to get at, not a compromise in terms of the people who are commercializing their STRs by having a second home, which I would not support at all. It seems that Smith is suggesting that his view is a bit more fair than just saying "no STRs."

Smith noted that one part of what Powell and Oviatt both had to say gave him pause. If we get challenged in court, how does a judge view his logic that it is more important for a resident to be able to do STRs to stay in his home than it is for a distant owner who has a second home in Noank to be able to keep his home for that purpose. Because that's a value judgment on who's use is more important. Smith felt it was more important to provide the opportunity for the resident than the distant owner but others could argue differently. The discussion gave him pause to be sure that his argument wasn't weak because of the points being made. He still felt the Commission could find a way to regulate two different types of short term renting.

Commissioner Tanner was concerned that Smith's view ignored a lot of the complications that would have to be addressed, e.g. would the owner have to be present, or an agent. There would be a number of such considerations that would likely become a can of worms. He reiterated his point that a rule change with all its complications would be serving only a handful of owners currently doing STRs without authorization. He felt only a handful of those currently doing STRs were owners-in-residence. He did not feel the Commission should change its rules for the benefit of a

few. The fairest view was “no one gets to do it.” The converse is unacceptable, to allow everyone to do it.

Tanner felt that everyone had spoken and minds were not being changed so perhaps we should move the question.

Smith stated he did not want to forestall anyone offering additional views but if no one raised their hand, it would be time to consider a motion.

Commissioner Steele noted that both of the examples Smith used (resident renting or distant-owner renting) were both commercial activities (commercializations of residential property). Smith agreed there were commercial overtones to both (making money from a residential property) but he felt the owner in the home renting a room or a suite occasionally was different than a home not occupied by the owner (other than for a few weeks in the summer) being rented on a short term basis throughout the year.

Powell agreed with Steele and disagreed with the term “overtones.” He observed that STR operators were making money, paying their taxes, it was a commercial use. He was sympathetic to Smith’s view but noted that the view presumed that people would be forced to sell their homes if they couldn’t do short term renting and he wasn’t aware that that was the case and, in any event, he didn’t feel it was the business of the commission to decide the question on the basis of the economics and why people are doing it to make money. Our business is to look at the issue from a zoning perspective, not to facilitate people making money off their homes one way or the other.

Commissioner Oviatt noted use of the Home Occupation section of the ordinance could be considered. He hoped everyone was sure of their views that what seemed to be the consensus was right for Noank because “it would hit the fan.” He moved to Noank for the sense of neighborhood and to have neighbors and that was why he was opposed to STRs in second homes. He disagreed with Smith that we should worry about whether people can or cannot afford to stay in their homes. He agreed with Powell, it’s not the business of the Commission. Legally it may be simplest to prohibit them and enforce the rule but does the Commission want to do that?

Steele noted that STRs are already prohibited (i.e. STRs are not an authorized use) and we wouldn’t be changing anything. Is there enough of a rational and reasonable basis to change the regulations? The Commission would be “target zoning” for 30 families. We are supposed to apply the regulations without favor and objectively.

Commissioner Tanner offered kudos to everyone who has put in so much work on this but it seemed fair to assume that the five commissioners now have sufficient information to make a decision, including a good recognition of what the implications of what appears to be the likely decision. He felt it’s perfectly appropriate to say they are not allowed and we are not going to change the regulations to allow them and he didn’t think the Commission owed it to anybody to change the regulations in order to allow [illegible] illegal activities to become legal and [illegible]. He noted he was ready to consider a motion.

The Chairman asked for a motion. After some discussion and rewording, the following motion was offered.

Action: Motion (BP/NT) - “leave the ordinance as is, which means Short Term Rentals remain a non-authorized use under the Noank Zoning Ordinance.”

Discussion: Commissioner Oviatt asked about the enforcement implications. Commissioner Powell noted that a motion really wasn’t required since nothing was changing. Chairman Smith noted it was probably best to have a motion because, for two years, the Commission had stated that STRs were not an authorized use and it had chosen not to enforce it while attempting to find a way to develop a rule (to allow some STR use). If the motion passes, the Commission is concluding that it could not figure out an acceptable way to allow STRs so we’re leaving the ordinance the way it is [ed. note, the word leaving was added after approval for clarity of intent]. Implicit in that decision is that the Commission would begin to enforce the current rule. Because of that two year history and the way people will be confused, a second motion that says “we direct the ZEO to start enforcement...” The ZEO has a number of tools in his toolbox to enforce the existing rules and that was best left to him. That would create a clear record for those who may be confused about the action.

Motion passed 5:0

Action: Motion (BS/NT) - End the deferral of enforcement and direct the Zoning Enforcement Officer to enforce current rules prohibiting STRs.

Discussion: Commissioner Tanner noted that, in the executive session, both ZEO Mulholland and Counsel Casey commented on the methods and approaches available to a ZEO to enforce the district’s ordinances. Those approaches were progressive, beginning with letters from the ZEO informing owners that they are engaged in an activity not authorized according to the Noank Zoning Ordinance and moving on through a number of additional approaches, depending on the response of the owner. Doing it the way he suggested will support the case for the action he has taken.

Motion passed 5:0

Other Issues on STR: The Chairman noted that a formal justification for these decisions is not required since, after considerable review and deliberation, the Commission concluded that it was not in the best interests of Noank to change its rules to let short term renting occur. The rule is, already, to not allow STRs.

Action: Motion (BP/BS) – To Adjourn

Approved 5:0

Meeting adjourned at 7:48 pm

Submitted by:

Rick Smith, Chairman