

New York State Federation
of Lake Associations
2021 Annual Conference
April 30, 2021



Short Term Rentals (“STRs”):
*Community Concerns;
Considerations; & Covid-19*



What is a Short Term Rental (“STR”)?

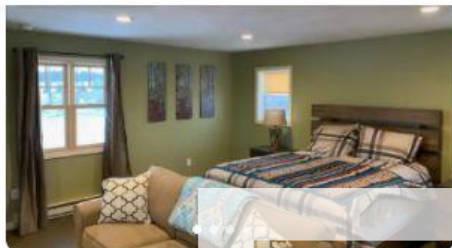
- Short Term Rentals (“STRs”) allow property owners to rent property to short term tenants (typically under 30 days).
 - Many municipalities refer to these type of renters as “transient guests”
 - Town of Cazenovia Zoning Law –
 - Definitions: “TRANSIENT OCCUPANCY
Living and/or sleeping accommodations provided for compensation and/or barter for any period of less than 30 consecutive calendar days, counting any portion of a particular day as a full calendar day.”



WHY ARE STRs A
CONCERN FOR
LAKEFRONT
COMMUNITIES?



STRs HAVE BECOME MORE COMMON WITH THE GROWTH OF INTERNET AND APPLICATION BASED “HOUSE SHARING” COMPANIES (I.E., “AIRBNB,” “VRBO,” AND “HOMEAWAY”)



The Orchard Cottage

4 guests · Studio · 2 beds · 1 bath
Wifi · Kitchen · Heating · Free parking

★ 4.96 (91)

\$95 / night



The Cottage on Cazenovia Lake

5 guests · 4 bedrooms · 1 bath
Wifi · Kitchen · Heating · Free parking

STR Industry Shifts Following Covid-19 “Lockdowns”

- STRs have become increasingly popular for travelers because of the shift in tourism and “work from anywhere” stays in remote and rural areas.

– Areas that have spiked in STR bookings since Covid-19 affected the industry include STRs offering proximity to:



SUPERHOST



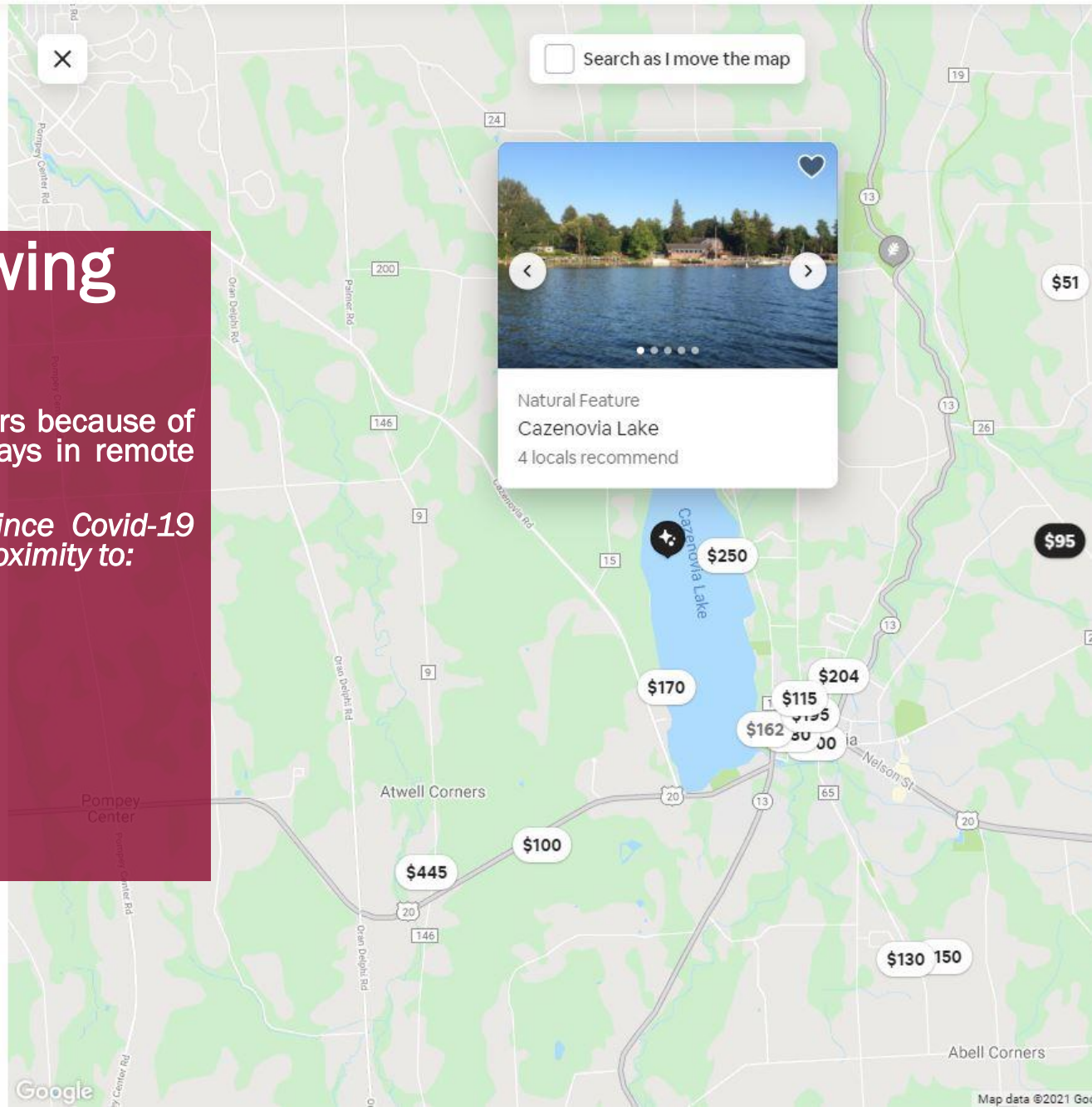
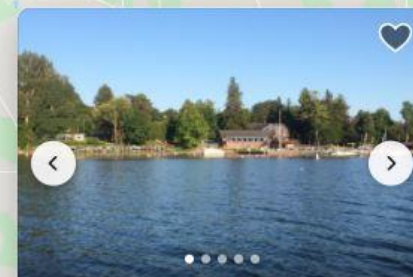
SUPERHOST

Private room in Chittenango

Above Chittenango Falls - large private bedroom

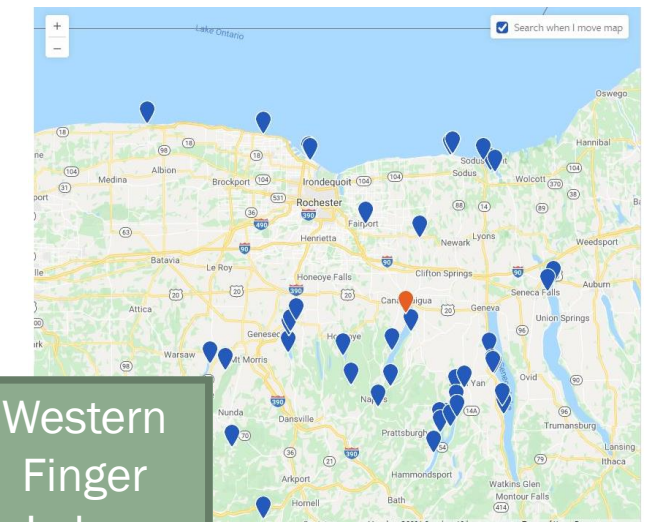
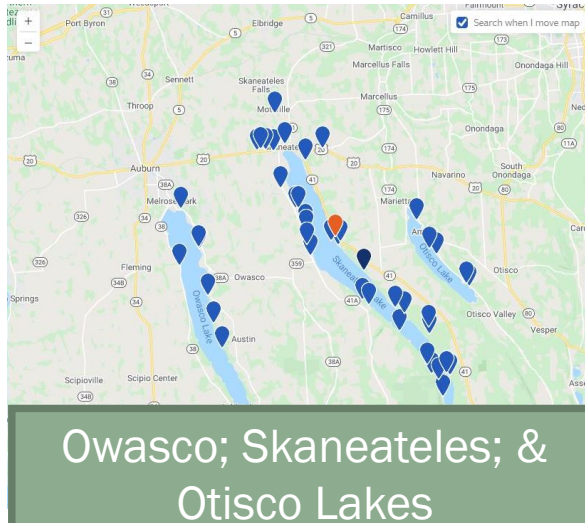
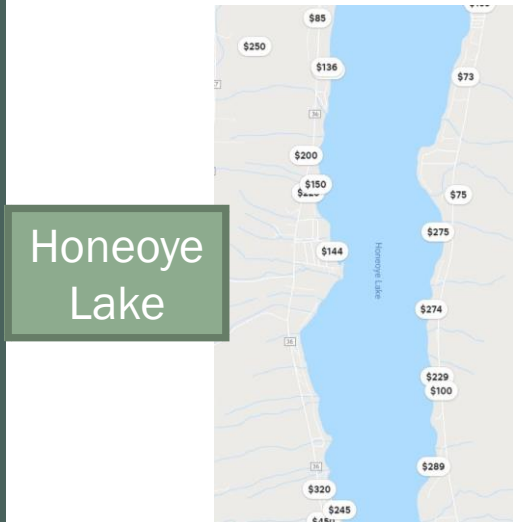
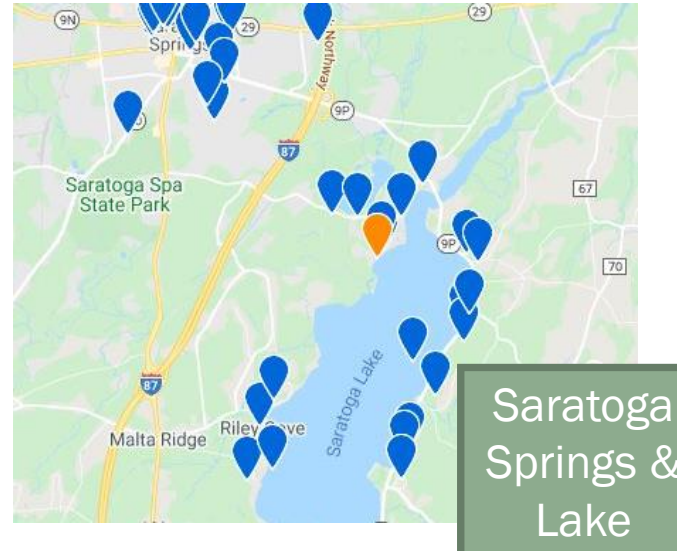
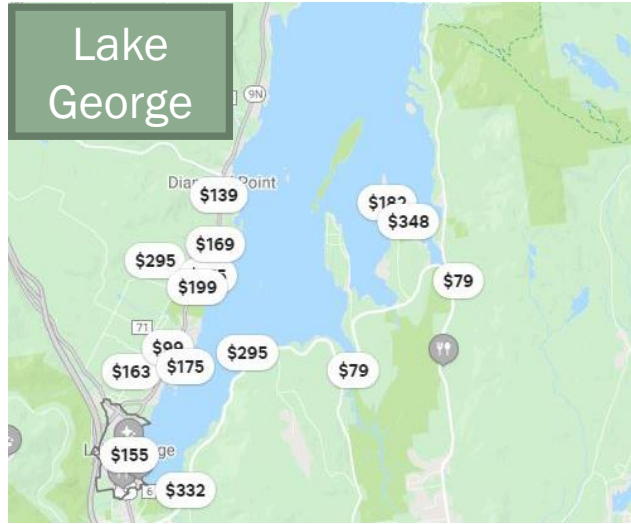
4 guests · 1 bedroom · 2 beds · 1 private bath
Wifi · Kitchen · Heating · Free parking

\$75 / night


☐ Search as I move the map


Natural Feature
Cazenovia Lake
4 locals recommend

Lakefront Airbnb and VRBO STR Listings Around NYS



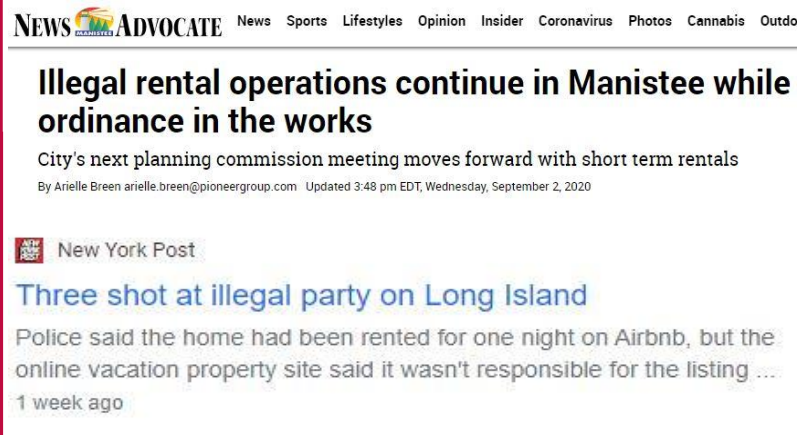
An aerial photograph showing a large body of water in the upper left corner, surrounded by dense green forested hills. A winding road or path is visible through the forest in the lower right. A semi-transparent dark red rectangular box is overlaid on the left side of the image, containing white text.

Lakefront STRs and Covid-19 Impact

- “Short-term rental platform Airbnb found a 40% rise in user searches for rentals in the Catskills, Adirondacks and Hudson Valley as part of a broader national trend of people seeking to socially distance in the rural parts of the country for Fourth of July weekend.”
- Finger Lakes Premier Properties (owns/manages over 250 properties across 6 Finger Lakes) call volume was up 44% in 2020, compared to 2019, for people looking to rent lakefront vacation homes; likely a result of the more socially distanced amenities these types of rentals offer compared to hotels.

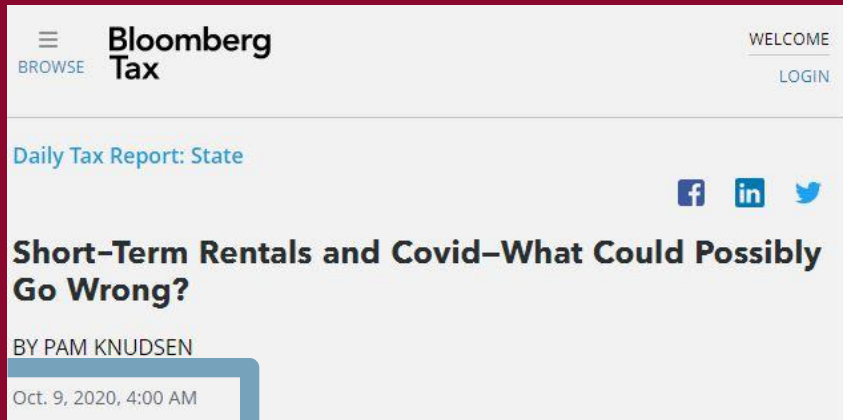
Concerns for Municipalities

- The Covid-19 market shift has caused discord regarding STRs attributed primarily to:
 - *non-compliance with STR licensing, registration, and other local regulations;*
 - *party houses;*
 - *impact on neighboring properties values;*
 - *tax collection issues; and*
 - *community character concerns.*
- Lakefront communities around the Country have been impacted negatively by the proliferation of the STR market:
 - *Municipal authorities received “complaints of ‘noise, smoke, excessive parking, offensive language, drug use, nudity and other indecent conduct’.”*



Industry Response

In response to these concerns, STR host companies (i.e., Expedia, Airbnb, etc.) have crafted memorandums of understanding with municipalities crafting guidelines, rules, and enforcement mechanisms to address non-compliance by STR hosts and guests.



“Longevity and greater success hinge on embracing regulation, compliance, adherence to rules, and being an accountable contributor to the local sales and lodging tax base.”



Common Themes of STR Local Laws and Ordinances

■ Common themes found in short term rental ordinances and self-regulation:

- “Non-hosted” (i.e., owner not on premises) rentals are the target of most local ordinances;
- Regulate rentals for terms of 30 or less days (more than 30 day terms are viewed as conventional tenant – landlord relationships);
- Whole house rentals are subject to heightened scrutiny (rental of an entire home may result in a more substantial change in the character of a neighborhood than a room/section of apartment/home);
- Density restrictions and limit on total number of days in a year a home is rented; and
- Most aimed at obtaining registration and require voluntary compliance.

■ Self-regulation and Community Character Considerations:

- Airbnb offers an online complaint form and Neighborhood Support team hotline (+1 (855) 635-7754) ; and
- Airbnb offers guidance to neighbors of hosts and provides a summary of expectations.

Neighborhood Support

We know that issues can come up in any community. It's usually fastest to communicate directly with your neighbor to address concerns related to home sharing, but you can also call or message us below for additional support. If you have a concern unrelated to your neighborhood, please visit our [Help Center](#).



Is this an emergency?

Call **911** to contact local police or other emergency services if someone is in danger or injured.



Is there a party or disturbance nearby?

Request a call from the Neighborhood Support team.

Call the Neighborhood Support team directly at +1 (855) 635-7754.

[Airbnb Support Policy](#)



MUNICIPALITIES MAY PROHIBIT STRs

Town of Webster Zoning Law:

TRANSIENT RENTAL: Rental of a dwelling unit for a period of less than 28 continuous days.

Rentals:

Transient rentals are specifically prohibited.

Additional Community Concerns: *A Housing Crisis*

SECTIONS THE DAILY GAZETTE LOGIN SUBSCRIBE ?

As Lake Placid celebrates 40th anniversary of Winter Olympics, community faces a housing crisis

Soaring prices are squeezing local residents out

By Pete DeMola | February 16, 2020



PHOTOGRAPHER: ERICA MILLER

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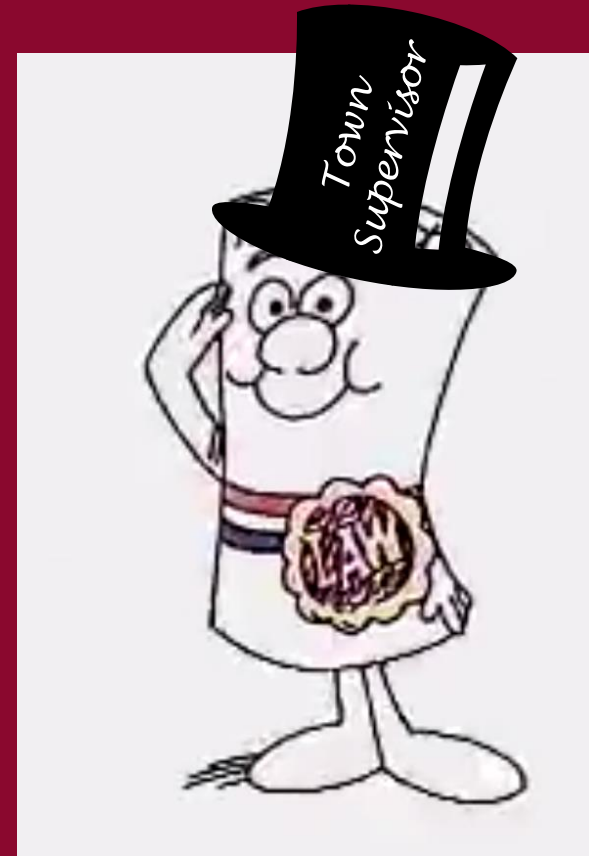
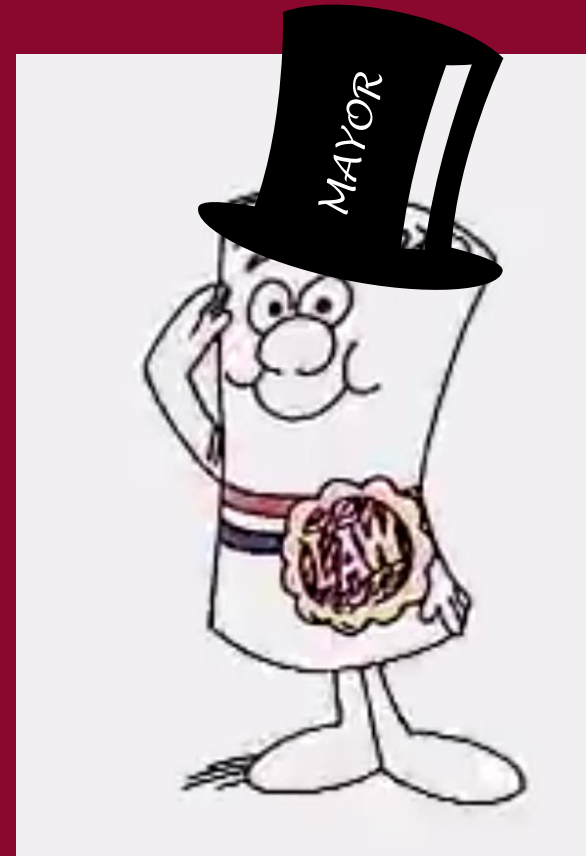
Insurer for Schenectady's Stockade Inn sues two contractors for alleged faulty work that escalated 2020 fire

Schenectady County Legislature passes police reform plan

Luther Forest warehouse/distribution plans moving in Malta; Plans could bring 2,500 permanent jobs

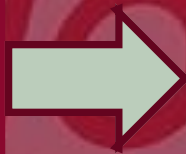
- A housing crisis emerged in Lake Placid due to the lucrative market of converting residential housing and apartments into exclusively STR properties.
- “Online rentals available in Lake Placid on sites like Airbnb and Vrbo average \$376 per night, and short-term rental operators need to keep their rooms occupied for just 56 nights to equal the amount of annual rental revenue generated from long term tenants.”
- The STR market in Lake Placid eroded housing available to the workforce (teachers, public works, restaurant, and tourist industry workers, etc.).
- To address the detrimental impact on the housing market in the Village of Lake Placid and Town of North Elba, the two municipalities adopted a shared STR ordinance.

MUNICIPALITIES
MAY DECIDE TO
ADOPT OR AMEND
LOCAL LAWS TO
REGULATE
“MODERN” STRs



NEIGHBORHOODS ARE FOR NEIGHBORS

Regulating STRs: Considerations for STR Owners and Municipalities When Crafting Regulations



- Registration with Local Government and New York State Department of Taxation and Finance;
 - *New York State Does Not Require STR Hosts Form an LLC to Register with Dept. of Taxation and Finance;*
- Occupancy and Sales Taxes;
 - *Identify Whether the Application/Website Collects Taxes on Your Behalf;*
- Advertising Restrictions;
- Community Input;
- Fines for Noncompliance with STR Regulations;
- Insurance;
 - *Standard homeowners' policies have a "business pursuits exclusion"; and*
 - *New policies and products offered by insurance industry which endorse or provide new coverage to short-term rental properties.*
- Americans with Disabilities Act (ADA) and Fair Housing Act Considerations;
 - *Most STRs are subject to public accommodations laws.*

Airbnb has agreements with 35 New York State Counties to collect applicable room and occupancy taxes. The counties with agreements are as follows:

Allegany; Broome; Cattaraugus; Cayuga;
Chautauqua; Chemung; Chenango; Clinton;
Cortland; Delaware; Dutchess; Essex; Franklin;
Fulton; Livingston; Monroe; Montgomery;
Onondaga; Orange; Orleans; Otsego;
Rensselaer; Schenectady; Schoharie; Schuyler;
Seneca; St. Lawrence; Steuben; Sullivan; Tioga;
Tompkins; Ulster; Washington; Westchester;
and Wyoming.



Town of North Elba and Village of Lake Placid Commissioned A STR Study Prior to Adopting Local Law

- The study conducted by Camoin Associates compared the Town/Village proposals to other STR local laws around the U.S.
- Highlights of the study include:
 - *The Village/Town draft regulations on STRs were in conformity with the majority of study areas;*
 - *Regulations were unique because they impose a 90-day [and 120-day outside Village] restriction on all STRs where other municipalities typically only impose a limit on “unhosted” rentals;*
 - *STRs must apply for permits/licenses and is standard in all of the studied municipalities;*
 - *“Party houses” in residential neighborhoods may reduce adjacent property values; and*
 - *Stronger evidence to support notion that STRs reduce long-term housing and/or rental supply, but due to the limited time in which modern STRs have existed the available data is not definitive;*

SUBMITTED TO:

Town of North Elba & Village of Lake Placid, NY

Short-Term Rental Assessment

TOWN OF NORTH ELBA &
VILLAGE OF LAKE PLACID, NY

Town of North Elba and Village of Lake Placid Adopt STR Local Law

- "Amending the Village of Lake Placid/Town of North Elba Land Use Code to Add Regulations Pertaining to Short-Term Rentals"
 - *Notable Provisions Include:*
 - No short-term rental property may be rented for greater than ninety (90) days in any given calendar year. Short-term rental units located within the Town of North Elba and outside the corporate limits of the Village of Lake Placid may not be rented for greater than one hundred-twenty (120) days in any given calendar year.
 - An [STR] owner shall obtain a revocable short-term rental permit whenever a dwelling unit is to be used for short-term rental purposes.
 - Any outdoor fire located within the limits of the Village of Lake Placid must be extinguished no later than 10:00 p.m.
 - The maximum number of daytime guests between 6:00 a.m. and 10:00 p.m. shall be limited to no more than twice the nightly occupants.
 - *[Local Law restricts occupancy by the most restrictive of: 2 times the number of bedrooms + 2 occupants; studio apartments are permitted 2 occupants for the first 220 sq. ft. with 1 additional occupant for each additional 100 sq. ft. of living space; or the maximum capacity of the septic system for properties serviced by a septic system].*

Lake Placid short-term rental rules will be law

Adirondack Daily Enterprise | 03-18



LAKE PLACID — New short-term rental regulations will be imposed here in the Adirondack Park's busiest tourist destination. The village Board of

CHECKLIST FOR SHORT-TERM RENTAL PERMIT APPLICATION:

- ▶ Site Plan (click [here](#) for details)
- ▶ Information and Signature Page for all members with ownership interest (click [here](#) for form)
- ▶ 24/7 Emergency Contact Information: The designated representative must be reachable 24/7 and live within a 60-minute drive to the short-term rental unit. This person may be the owner as long as those criteria are met. It is the owner's responsibility to contact the North Elba Building and Planning Department within 48 hours if there is a change of representative.
- ▶ Essex County Room Occupancy Tax Registration Certificate (click [here](#) for a link to the Essex County Treasurer's Office).
- ▶ Type of STR (click [here](#) for a list of STR Types).
- ▶ Parcel Identification Number--Tax Map Number (click [here](#) for link to Essex County Image Mate Online).

SWIS CODES: Town of North Elba 154089 OR Village of Lake Placid 154001

- ▶ Map and description of parking plan provided to guests: Description and plan showing where the spots will be located on the property that you will provide to your guests. The site plan will be accepted if you show where the spots will be located and add a description.
- ▶ Proof of chimney clean-out: acceptable proof is a copy of the invoice provided to you by the chimney cleaning company (invoice must show the service provider's name, address and phone number).
- ▶ Septic Inspection Report, if applicable (click [here](#) for septic inspection report form).
- ▶ Copy of your deed (click [here](#) to obtain a copy of your deed).

TOWN OF NORTH ELBA AND VILLAGE OF
LAKE PLACID STR PERMIT APPLICATION
REQUIREMENTS



Town of North Elba and Village of Lake Placid STRs Local Law: Ongoing Litigation

Calvey et al v. Town Board of North Elba et al, FDNY
Northern District, Index No. 8:20-cv-00711-TJM-CFH

- STR owners are seeking to have the Court void the Town of North Elba and Village of Lake Placid STRs local law.
- The owners allege that the law:
 - is unconstitutional;
 - violates their civil rights;
 - violates their First Amendment and property rights;
 - violates due process;
 - and “substantially burdens” them by capping the number of days their property may be rented.

LITIGATION REGARDING STRs IN NEW YORK STATE

WALLACE V. TOWN OF GRAND ISLAND, 184 AD3D 1088 (4TH DEPT. 2020).

- Landowner brought action against Town of Grand Island (“Town”) alleging that Town’s zoning law that prohibited certain STRs was unconstitutional;
 - Claimed that the zoning law caused the Landowner a severe and negative economic impact because he bought property for the purpose of renting it as an STR;
- The Supreme Court, Appellate Division, Fourth Department held that the Town’s zoning law did not result in an unconstitutional taking of landowner’s property because there were other economically viable uses of the property other than as a STR

“[LANDOWNER] DID NOT SUBMIT EVIDENCE ESTABLISHING THAT, **DUE TO THE PROHIBITION UNDER LOCAL LAW 9 ON SHORT-TERM RENTALS, THE SUBJECT PREMISES WAS NOT CAPABLE OF PRODUCING A REASONABLE RETURN ON HIS INVESTMENT OR THAT IT WAS NOT ADAPTABLE TO OTHER SUITABLE PRIVATE USE.** INSTEAD, PLAINTIFF'S SUBMISSIONS SHOWED A “**MERE DIMINUTION IN THE VALUE OF THE PROPERTY, ... [WHICH] IS INSUFFICIENT TO DEMONSTRATE A [REGULATORY] TAKING.**”

WALLACE, 184 AD3D AT 1091.



CRADIT V. SOUTHOLD TOWN ZONING BOARD OF APPEALS, 179 AD3D 1058 (2D DEPT. 2020).

LANDOWNER PURCHASED REAL PROPERTY IN THE TOWN OF SOUTHOLD (“TOWN”), COUNTY OF SUFFOLK, THAT WAS IMPROVED WITH A SINGLE-FAMILY RESIDENCE AND SITUATED IN A LOW-DENSITY RESIDENTIAL ZONING DISTRICT.



2014: Owner began listing property on Airbnb;

2015: Town adopted new regulation that prohibited transient rentals in all zoning districts;

2016: Owner served with notice to cease and desist; went through local administrative process where it was ultimately determined that the use of the property as a STR was never permitted because it was comparable to a hotel/motel, which was never permitted in the low-density residential zoning district.

THE SUPREME COURT, APPELLATE DIVISION, SECOND DEPARTMENT AFFIRMED THE TOWN'S DECISION:

“The Board correctly determined that Cradit's use of the residence for short-term rentals was “similar to a hotel/motel use,” which had never been a permissible use in her zoning district.” *Cradit*, 179 AD3d at 1060.

C. EISEMAN V. THE INC. VIL. OF BELLPORT, 2020 N.Y. SLIP OP. 31941(U)(N.Y. SUP CT, SUFFOLK COUNTY 2020)

- The Village of Bellport (“Village”) adopted STR regulations that were immediately subject to legal challenge by residents of the Village. The Residents alleged that the law “is without rational support and carries no legitimate governmental health, safety, or welfare concern and violates the Due Process requirements of the New York Constitution, and that, therefore, the Rental Law is void.”
 - *Some sections of the Rental Law were typical for local STR regulations: filing with Village, obtain a permit, etc.;*
 - *However, the Rental Law differed from typical STR regulations and created a penalty for those who permitted the same “tenant” to rent the property more than 5 separate times during the seasonal period ;*
 - *“[t]his Rental Law would subject owners of homes in the Village to criminal penalties merely for non-occupancy of their homes for any reason, even if those homeowners never rent their homes to anyone”; and*
 - *Record from public hearings demonstrated that the adoption of the regulations was arbitrary and capricious; members of the adopting board admitted on the record that they could not explain how provisions of the regulation were related to the purposes stated in the drafts of the regulations.*

HON. WILLIAM G. FORD
JUSTICE of the SUPREME COURT

**JANE EISEMAN, LANCE SNEAD, & BOUY 2,
LLC; and on behalf of Others Similarly Situated;**

Plaintiffs-Petitioners,

-against-

**The INCORPORATED VILLAGE OF
BELLPORT, Raymond Fell, Robert Rosenberg,
Michael Ferrigno, Joseph Gagliano & Steven
Mackin, in their official capacities as the BOARD
OF TRUSTEES OF THE INCORPORATED
VILLAGE OF BELLPORT**

Defendants-Respondents.

ORDERED that the petitioners' Third Cause of Action (Limitation of Number of Rentals), is hereby granted, inasmuch as the petitioners have established that the Rental Law is arbitrary and capricious and unconstitutional, and the Court hereby adjudges, pursuant to CPLR §7803(3), that the Board's determination of adopting the Rental Law by Resolution on February 26, 2018, was arbitrary and capricious in nature, as well as unconstitutional, and said Rental Registration Law is null and void;

THE SUFFOLK COUNTY SUPREME COURT DETERMINED THAT EVEN WITH THE STRONG PRESUMPTION OF VALIDITY OF LEGISLATIVE ACTS, THAT THE VILLAGE'S RENTAL LAW WAS CLEARLY "ARBITRARY, CAPRICIOUS AND UNCONSTITUTIONAL." *EISEMAN*, 2020 N.Y. SLIP OP. 31941(U) AT 12.

CONCLUSION:

COVID-19 HAS CAUSED A PROLIFERATION OF STRs IN LAKEFRONT COMMUNITIES. THIS HAS EXPOSED REGULATORY WEAKNESSES THAT MAY RESULT IN DAMAGE TO THESE DELICATE ENVIRONMENTS AND DESTROY NEIGHBORHOODS.

LAKEFRONT COMMUNITIES SHOULD CONSIDER ADOPTING OR AMENDING STR REGULATIONS TO ADDRESS THE PROLIFERATION OF STRs. STRs THAT ARE REGULATED ADEQUATELY CAN BE BENEFICIAL TO THE COMMUNITY.

FURTHER, DEVELOP A CLEAR AND CONCISE RECORD TO SUPPORT THE ADOPTION OF ANY REGULATIONS DUE TO THE POSSIBILITY OF LEGAL CHALLENGE. ESPECIALLY WHEN ADDRESSING A CONTROVERSIAL TOPIC LIKE STRs.

COSTELLO

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Experience Innovation



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Questions?

