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Berlin couple challenging Old Lyme's right to determine seasonal/year-round housing

By [Jenna Cho](#) Day Staff Writer

Lawsuit, based partly on infringement of constitutional rights, lists 40 plaintiffs

Old Lyme - They may be in town for only part of the year, but seasonal residents who pay full taxes despite not being allowed to occupy their summer homes in the off-season are tired of being treated like second-class citizens, said Stephen Anderson of Rogers Lake.

The Andersons, who live in Berlin the rest of the year and are the owners of at least 20 other properties in town, are heading to federal court to challenge the town's attempt to determine which homes are seasonal and which are year-round.

It is the second court challenge Old Lyme has faced on the issue; the first was filed in 1999 and settled two years ago before the federal court judge had a chance to determine whether a set of 1995 zoning laws violated residents' constitutional right to due process.

"We bought an old cottage that was built in the 1920s, and my family and I have lived there and enjoyed it all these years," said Anderson, a retired lawyer. "We've been able to just use it in the summer, but I don't want to be precluded from using the property - (from) somebody using it, my kids using it year-round if they want."

The plaintiffs in the lawsuit filed Wednesday plan to request class-action status, which could mean monetary damages paid for all homeowners subjected to the town's attempt for the past 15 years to classify homes as seasonal and year-round, said Paul Spinella of the Hartford law firm Spinella and Associates.

That's about 1,540 homeowners in the R-10 residential zone, where homes have historically been used as summer cottages, in a town of about 7,400 residents. The town maintains it has the right to categorize homes as either seasonal or year-round in the R-10 zone because of public health and safety concerns in neighborhoods where houses are closely packed on quarter-acre lots that line narrow streets.

The seasonal registry that went into effect Dec. 31 required those who wanted year-round status to prove they had been living in their Old Lyme homes year-round since Dec. 31, 1999. The lawsuit claims that the process, which is a variation of the 1995 attempt to classify homes as seasonal and year-round that was also challenged in court, is arbitrary, unconstitutional and does not allow for due process under the Fifth and 14th amendments of the U.S. Constitution.

The draft complaint also alleges that the so-called seasonal registry process denies residents equal protection of the law because it prohibits certain residents from occupying their homes between December and mid-March.

"No government can come in and say, 'You can't use that land,' " Spinella said. "You own it."

Furthermore, the complaint reads, the town also infringed on residents' rights under the U.S. and state constitutions when, in an out-of-court settlement of the South Lyme Property Owners Association's 1999 lawsuit, it granted the 400 or so association members automatic year-round status.

Plaintiffs in that lawsuit got a "golden ticket" to year-round status that was arranged in a secretive manner and has eluded the rest of the homeowners in the R-10 zone who also want year-round status, Spinella said.

"You really have an outrageous set of circumstances in the town imposed by this (zoning) regulation ... and it's capricious," Spinella said.

Timothy Griswold, Old Lyme's first selectman, did not return a phone call seeking comment Friday. Eric Knapp, the town's zoning attorney, previously said the seasonal registry was simply intended to settle a longstanding question on which homes are seasonal and which are year-round in order to enforce zoning regulations.

The lawsuit lists more than 40 plaintiffs, many from the Point O' Woods beach community. The number of

plaintiffs is growing by the day, Spinella said.

Old Lyme Zoning Enforcement Officer Ann Brown, members of the Zoning Commission and Griswold are listed as defendants.

Day staff writer Katie Warchut contributed to this report.
