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**I KEPT MY EYES
OPEN FOR
127 HOURS**

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In Old Lyme, Fighting a Curb on Year-Round Use

By LISA PREVOST

ROSEMARY BREEN owns two houses but is ready to downsize. Approaching 60, and with a disabled husband, Ms. Breen, a school nurse, hopes to sell their colonial in Newington and move to their wood-shingled Cape Cod in Point O' Woods, one of several beach communities in the shoreline town of Old Lyme.

But before she can do that, Old Lyme must accept the Breens as year-round residents. New zoning regulations require that they first prove their property has previously been in year-round use, with approved heating and well-water systems.

If the town is not satisfied, their home will be listed in a new registry as "seasonal," which means it may be occupied only between March 15 and Nov. 30, with limited exceptions. Water to seasonal properties is turned off during the off-season.

Ms. Breen hasn't been formally rejected for year-round status, but she doesn't think the odds are good under the regulations. And, having just paid about \$20,000 toward the installation of a sewer system in Point O' Woods, and another \$78,000 for renovations to her home there, she resents even having to ask.

She is one of more than 40 homeowners who have signed on to a federal lawsuit against Old Lyme, claiming that the zoning commission's seasonal classification violates their right to due process and denies them equal protection under the law.

"My house is not a cottage — this is where I'm going to live," Ms. Breen declared. "Why should I have to explain to them why I want to live in my home?"

Friction between town officials and the roughly 2,000 homeowners in what is known as the R-10 zone has increased in recent years as values in those areas have risen. Once cottage communities, these neighborhoods were established as far back as the 1930s on lots of a quarter acre or less. As more owners improve their properties and want to live in them or rent them out full time — or at least to have that right — town officials have cited a variety of concerns, including inadequate septic systems, public safety and the impact of increased population on the "rural character" of Old Lyme.

Point O'Woods has eliminated septic concerns by hooking into a sewer system. But sewers are "not a panacea for the density issue on the shore," said Eric Knapp, the lawyer for Old Lyme's zoning commission. The area's narrow streets can make access difficult for emergency vehicles and snowplows, he said.

"There's a sentiment that the more people you have living there year round, the harder it is to ensure that people can live there safely," Mr. Knapp said.

In the 1990s, town officials decided to sort out which homes were seasonal and which weren't. In 1995 the zoning commission adopted regulations requiring the zoning enforcement officer to make a case-by-case determination based on a review of public records.

Some owners saw the process as arbitrary, and this sparked a round of legal

action that is partially responsible for the current challenge. In 1999, about 400 members of the South Lyme Property Owners Association filed a federal lawsuit charging that the classification process was a violation of due-process rights.

The suit was settled in 2008 without a ruling on the constitutional questions. The terms were kept secret, but amendments to the town's zoning regulations hinted at the outcome: the property owners involved were granted year-round status.

The homeowners suing this time around want equal treatment, said A. Paul Spinella, their lawyer.

Mr. Spinella said that zoning commission documents made the homeowners' case for them. "I have it, they say it in the transcripts — they say, the people in this first lawsuit have 'a golden ticket' whereby they're entitled to full-time use," he said. "My mother lives in Point O' Woods. The guy across the street from her was part of the first lawsuit. He's got a golden ticket and she doesn't. What's to distinguish the two?"

The town set up the registry system just last year. Now, property owners who want year-round status must prove to zoning officials that their homes were in year-round use before Dec. 31, 1999.

Owners of the houses deemed seasonal may apply for a permit to convert to year-round use, but among the zoning requirements is a lot size of 10,000 square feet. That leaves out many residents, including the Breens, whose lot is closer to 7,000 square feet.

Another shoreline town, Old Saybrook, has also wrestled with the issue of seasonal vs. year-round use. It, too, has classified some homes as seasonal.

But decisions in Old Saybrook have been based on whether a house has heating, according to the town assessor. During the off-season, owners may

use their properties for two-day periods up to twice a month. If upgrades are made, a house's status can change. Town officials say they decided years ago not to handle the issue through zoning because they didn't think it was fair to individual property owners, according to Michael E. Cronin Jr., the town attorney.

"We adopted a health ordinance to address the issue of year-round use," Mr. Cronin said. "We said anybody could convert, provided they could upgrade the property from a structural and a health point of view. So we're not bogged down with the problems that Old Lyme is going through now."

Old Saybrook made its ordinance more stringent in the 1990s in response to pollution from septic systems. That made conversion more difficult, but to get around the requirements, property owners "have the right to knock the house down and rebuild on the same lot," Mr. Cronin said. "And an awful lot of people have done that."