

Town Plan Steering Committee Meeting opened at 9:08

Meeting Minutes

04/30/22

Don Gagnon: Planning Board met on 4/12, handed over copies of the ADU Bylaw proposal. Heard from Tom at Berkshire Regional Planning: The Planning Board was given the grant to begin the process. Chris Brown will provide technical assistance and help with the next level of hard work to hammer out the bylaw language.

We had just finished a rather contentious meeting on special permit for Jacob Trudeau so it was brief.

One member, Sean Lennon, could not make it to get his nomination signed, still interested in serving; I would hope you could do a write in. It's easier to get 50 people to write you in than to get 25 signatures at the transfer station.

For the Short term rental bylaw discussion, we have an example from North Adams and a proposal for Fairhaven.

North Adams a city with multiple zoning areas. Fairhaven, is on this side of the Cape, in the Buzzards Bay area. As I was looking these over, my question was, What are our concerns? These take time about developing and identifying what would happen if something bad were to go on. If police had been there four times. When you google Short Term Rentals (STRs), mostly what comes up is the 2018 State document.

Kent Lew: In 2018, they expanded the definition of room tax to include STRs. It had been applied to B&B establishments as opposed to B&B homes. They expanded it to encompass and apply to STRs. Prior to that, we had no reason to apply local room tax. Finance committee, looking ahead, thought, let's adopt a room tax before there are too many people to object. Becket had tried to do it and was shot down.

There are five registered properties that operate as STRs. As a result of the room tax, we got \$6k last year, a nice side gig. A positive trend: Starting this last tax year, we were able to claim anticipated revenue based on the history, taking a certain amount off the tax levy.

The greatest possible concern might be an outside investor who comes in and starts snapping up properties and becomes a STR mogul in town. A distant possibility, but we should draw some kind of barrier. We don't want to make it too broad, so as to disadvantage home owners.

A second concern: someone operating a short term rental irresponsibly so it becomes a problem in town.

The thing that occurred to me, that we could say, we want to restrict the number of STRs that could be operated by an LLC or any other kind of incorporated entity. The likelihood is that someone would put it into an LLC so as not to be personally liable. To separate our personal assets from that liability. We could say, they could operate up to three. And those have to register, and you can only have up to some number.

Keeps the administration modest, it would be easy to define because ownership is registered.

Dick Spencer: What constitutes a business. If I am using two rooms in my house as STRs, am I a business?

KL: I don't care if you are a business, if you've incorporated, you would be subject to this. What's on the deed.

An interesting question, when does a side hustle become a business? That's where residency issue might come into play.

DG: These things are going to happen to you if you own a property and start renting out on it, and you've got \$10k in excess of personal property, you will pay a bill on it.

KL: There is a lot of room for flying under the radar on personal property tax. White Wolf and Always Growing, and Second Homers are subject to the property tax.

The assessors make an assessment as to whether it is second home. The Haywards, for instance, are now considering it their primary residence, and no longer subject to personal property tax. Personal property is content, your piano, paintings, stuff in the home.

We want revenue from people who don't already pay. I would like to see us, as a community, find ways to capitalize on all this open space. It does us no economic good because we have no businesses that can benefit from that. Individuals can benefit from a side hustle on their property (an STR) and the town benefits from the room tax. We don't have a problem with too many and would benefit from more.

Carol Lew: If we could make this simple and not admin heavy, that's the way to go. That person swooping in and getting a lot of properties, that's the thing.

KL: The state collects the room tax. People who operate in such a way that should be subject to room tax, they would be investigated by the State. There are certain boxes, if there are no reservations, or more than 30 days, probably not a STR, but it could be lodging.

Peter Matson: What is the difference in the definition of a B&B and a STR.

KL: I believe it is the presence of breakfast. There's a weird overlap in the definitions. A distinction between B&B establishments and a B&B home. If someone has a room in their

home, and has people come in, a B&B home is exempt from room tax, but a STR is not. If we want to rent our room out and want to get around the room tax, if we serve them breakfast, we are exempt and if we don't we are not. That seems to be the only key.

We can't make a local regulation that would override the B&B Home rule.

With regard to the room tax, all of this is in state statute. We can make determinations as to whether STRs have to register.

Exemptions: If someone rents out a room for less than 14 days total in a calendar year, they have to register and declare they are not subject to the room tax. If they say they don't rent out for more than 14 days, but rent out 15, they will be penalized.

Subject to tax: B&B Establishments, Hotels, lodging houses and motels, for a period of 90 days or less for traditional lodging. Where stay exceeds 90 days, no tax.

Also subject to tax, STR, imposed on transfer or occupancy for 31 days or less for STR. Where the duration exceeds 31 consecutive days, no excise.

And for STRs, there is no tax if there is, annually, a total of not more than 14 days, provided that the owner has filed and set forth the intention to do it no more than 14 days.

A B&B Establishment is a private, owner occupied home where not less than 4 rooms are let, breakfast is served and all accommodations are booked in advance.

A B&B Home is a private, owner occupied home where three rooms or less are let, breakfast is served and all accommodations are booked in advance.

An occupant uses, possesses or has a right to use or possess a room.

STR, an owner occupied, tenant occupied, or not owner occupied property, where at least one room is rented and booked in advance.

DS: In this area, 60 or so days rental happens quite often.

KL: A full-summer rental would not be considered an STR. If it is one of a number of rooms in a lodging, then it has a 90-day limit, so subject to STR room tax.

The local arts community is looking for places to house their associates.

With the room tax, there was an argument that would make our STRs less competitive. I don't think people make that distinction.

PM: On the cape, the tax has now risen to 15% of the rent. It hasn't impacted anybody.

KL: I think we can compete with Becket on other aspects than whether we charge a room tax.

If there gets to be a lot of activity and we had an inkling that someone is subject to room tax, we would go to DOR and ask them to look into it.

DS: What are our greatest concerns? So far I have heard one: Buying up multiple properties. Are there others?

PM: A restriction on how many rental units a non-resident operator can manage. Puts a cap on someone coming in and running a business out of it.

KL: We could do that across the board, and say no more than 3 by any one owner.

We could say, no more than x percentage in Washington could be run by a corporate entity.

CL: I like differentiating between people and businesses. Someone could have a very large house and rent four rooms, that would be okay, that would be a money maker.

KL: We can define categories by units or by properties.

CL: In our town, do zoning bylaws prohibit a B&B establishment.

DG: We had Bucksteep here, grandfathered in.

KL: There is precedent, and I would be happy to have Bucksteep operated as a lodging, provided it was handled in a certain way.

Pugsy has semi-permanent residents in two buildings. One is a mother-in-law. In the other house, I am not sure who is there. He has groups come and participate in weekend activities. Initially he represented that he was going to provide a place for veterans to stay. He has clearly delineated what is his property. We don't poke around unless there is a good reason.

CL: When we worked on the ADU bylaw, we were branching out into a lot of other conversations.

KL: There have been a lot of tangents. We can only regulate the usage of property in town for the purpose of an STR. That's what zoning can control.

Do we want to put, preemptively, some restrictions to keep things from getting out of control. Especially if we want to promote the activity. If we have a bunch of ADUs and they are all being used as STRs, is that a problem?

DG: If we have definitions to say, that's a this, it will either be an ADU or a house. If we have STRs going on beyond an ADU, we have to manage that.

The management would be how many what-ifs you want. What if someone came in and bought everything up. What if someone has a barn and turns it into a rentable space?

KL: What's the difference between doing that and turning it into the shop for my plumbing business.

DG: Then you have trucks and you can't make the neighborhood look bad.

KL: STR issues?

DG: Driveway issues, traffic. Actually, there could be a 3 percent fee, a community-impact fee.

KL: I think that would be very difficult to manage.

DS: With marijuana community impact, you have to prove there was an impact.

KL: Because of that, community impact fees are coming under scrutiny. Show me the impact and show me you are spending the revenue from the fee on that impact. If we can find something that would be an impact...

DG: We rent our house on the cape, Orleans adds 3.5% as a water tax.

PM: That is the Cape water management tax.

KL: It's the Cape Cod opt in.

DG: If we have more people here driving on the roads in the state forest are we going to have to fix the roads every year.

KL: The Select Board wanted to have businesses registered, there was a lot of pushback.

Typically, the way it happens, those who need to show they have a business license when they are applying for credit, they come to the town clerk. Otherwise, we don't, as a town, require that, because we got so much resistance. We could try to do that with STRs, may run into the same problem as DOR. There may be people operating an STR and not registered with the state.

PM: The penalties are so severe, that you don't want to not pay that tax.

KL: If you are working through Vrbo or AirB&B, they handle it. The only people who are getting around it would be using Craigs list or some other means.

Maybe we do want to say that STRs in Washington need to register if it's being run through a DBA. Any person conducting business under a name other than your own name, you must file a business certificate (so the consumer or creditor can identify the real person). In Washington, to obtain a business certificate, the town requires that taxes are current, that it must be signed under oath. Once certificate is filed with appropriate fee, you will receive a business certificate. Fee is \$1.

CL: You mentioned traffic. Are there additional concerns?

KL: If can't get more PILOT reform, maybe we can get state forests exception, an argument that should be taken up at some point. But I don't know that a community impact fee will fly.

DS: If I rent out three rooms in my house, there would be more traffic, parking issues. One bylaw required at least one parking space per room. In North Adams, that probably matters, here, not so much.

CL: Can we just say no parking on the street.

DS: There was a big stink about cars parked on Beech Road.

CL: I would feel comfortable about just don't park on the road. Keep it simple.

KL: Sons & Daughters we prepare for that parking on Washington Mountain Road. On Easter, we do not. We could say, shall not have tenants parking on the road sides.

PM: Should we have a limitation on number of people in each unit or family unit.

DS: Two per bedroom makes sense.

KL: They say, two per bedroom, plus another 2 over all.

PM: It's hard to police, but if it gets out of hand, you have leverage.

KL: The fact that we haven't enforced it in other circumstances doesn't mean we can't enforce it.

DG: The situation where you have a wedding going on and you have a lot of people, and you have to find places for them, it would behoove any homeowner to make sure their lawn is okay.

KL: We want to look at the chronic situations, not the occasional things. If there is a STR with multiple units and there are chronic problems of their parking on the side of the road.

So concerns include:

Traffic and parking, some aspect of traffic on Route 8 or WMR,
Ownership, outside or corporate owner or an empire builder

DG: Realistically, would the town of Washington have that problem.

DS: It doesn't hurt to regulate something, even if it is not going to happen.

KL: There are folks in the area buying up properties in towns. In Becket, in Lenox. There is a general category of concerns about where an owner purchases properties for purposes unknown. We have an opportunity in STRs to put some control on them. The occasional purpose of a home by someone who wants to run it as an STR, I don't have a problem with that.

ID that thing and say it is restricted in this way.

CL: If we can ID what the entities are and how we want to limit them.

KL: Corporate owned is not the right term. We limit the number that any entity like that can own and operate, and/or limit to the total number of properties in town that could be operated in that way. Limit it to five or maybe ten properties at any given time? If one switches to a long-term rental, then it opens another slot.

We'd have to consider what's an estate or trust as opposed to a corporation.

We can say they have to register and they can only be so many. If someone else comes forward, they will see how many are available.

CL: How many houses do we have in town?

KL: About 248 houses in town

CL: You could look up who is paying the room tax. So you could see if any are registered.

KL: There's a report with the DOR if they are registered, quarterly. A separate report that says how much we are getting, but I don't know who paid it. It's public record, in that it can be requested.

CL: I like there's a way this becomes a system without going to the owners.

KL: To a 90% certainty, there is outside info to evaluate the situation at any given time.

CL: Maybe if it hasn't operated in a year, they forego that slot. Just thinking of a way to close the loop.

KL: So, it's not only a registration, it's a license that can expire.

PM: Could the town have a registry so that it could be advertised.

KL: It could be that publishing the registry acts as an incentive, to publish a list of available rooms on the website. Businesses are required to register; individuals are encouraged. Link to Vrbo or AirB&B. It behooves anyone to use one of those services, they do all the work, and provide the tax documentation. They collect it for us, and they just give it to us.

DG: Personal property tax, who gets that.

KL: The lions share is Real Estate property, but personal property is included. All part of the tax levy.

DG: At the next meeting, we need John here, because he will have the other view.

KL: I am giving a repeat on the State of the Town on Tuesday evening.

SG and LL are doing cookies.

Not doing Zoom. But will have the audio mic in the middle. When we have the meeting on Tuesday. Do I need to be—or should I be—mic'ed.

We're discussing the Annual Town Meeting on Monday. The audio does control it and helps the moderator.

DS: We have the same question about Zoom.

KL: I am inclined not to do it. Is it permissible in an Annual Town Meeting to have a hybrid attendance option that does not have a voting option. Is it possible to consider?

DG: You would get the Berkshire Eagle to Zoom in.

KL: Someone already asked about our warrant, and I have made myself available to them. Will they come? Maybe their interest will be piqued and they will attend.

They are recapping the town meetings in the coming week for the first time. If we do a Zoom, that will get the Eagle there.