

Approved July 17, 2017

## Minutes

Planning Board Short Term Rental Subcommittee and Advisory Board, July 6, 2017, 9 a.m.,  
Superintendent's Conference Room, Lenox Town Hall

### Attendance:

- Subcommittee and Advisory Committee members attending: Pam Kueber, Deb Rimmler, Ken Fowler, David Neubert
- Not attending, with notice: Molly Elliott, Kate McNulty Vaughan
- Attending at our request to provide info: BJ Church (BJC), Lee-Lenox Building Commissioner
- Attending in audience: Ruth Pearce, Stockbridge Planning Board; Frank Newton, owner of the White House Inn; Clarence Fanto, Berkshire Eagle (taping meeting)

### Documents used at meeting:

- Table to help guide discussion about uses and how building codes might apply
- <http://www.mass.gov/eohhs/docs/dph/regs/105cmr460.pdf> (D) Short Term Vacation or Recreational Rental Exemption from the Obligation to Abate and/or Contain Paint, Plaster or Other Accessible Structural Material Containing Dangerous Levels of Lead.
- 2014 legal opinion on short term rentals

### Minutes:

- **Citizen comments:** Frank Newton, owner of the White House Inn, spoke about his experience as a longtime owner of B&Bs and Inns in Lenox. He stressed that the subcommittee consider the effect that short term rentals are having on licensed B&Bs, Inns, Hotels and Motels that have invested in their businesses including in safety standards. He listed a variety of safety measures he is required to take at the White House Inn in order to ensure guest safety and to qualify to do business in Lenox. Pam assured Frank that the subcommittee would be scheduling meetings with the lodging business community as this bylaw review process progresses; right now we are in the information-gathering stage.
- **Meeting with Building Commissioner BJ Church:**
  - o Pam explained that this meeting was focused on understanding what Massachusetts building code requirements were relevant to short term rentals, in particular in homes (including all types) that were not owner-occupied. This meeting is not about enforcement issues per se.
  - o Pam also explained that this was the first meeting with BJC and that Pam had not briefed her extensively on what we would be asking. So, this was just the first conversation, and we did not expect her to have all the answers at her fingertips!
  - o BJC said that the building code is 8,500 pages long and can get quite complex depending on the exact circumstance of each home's "use".
    - There is no clear definition of Short Term Rental in the Building Code. The key to how the building code would apply: Understanding "the use" of a given property – the regulations flow from the "use".

- She said that, while this is still a gray area given the rise in Short Term Rentals, she believed in general that if a property were the principal residence of the homeowner(s) and if that homeowner wanted to rent it out short term – with no limit on how often -- there would be no building code requirements triggered above and beyond what is required for the original underlying use. It was agreed we would meet with BJ to understand how the building code works in this area.
- If a property were not the principal residence of the owner – if it were an “investor” property that operated solely as a short term rental, then the questions of how the building code would apply would go into a sort of “decision tree” looking at the building code issue by issue.
  - Understanding “the use” in this case could get complicated – a struggle. Whether a property is to be considered “single family” (for example) versus “commercial” would require more analysis in the current enforcement environment. Other meeting participants suggested possible ways to determine whether ownership was commercial: Whether the ownership was held by a corporation, whether commercial insurance was purchased, whether bylaws required business licenses be obtained to run a short term rental. All this will require more research to gain clarity.
- Dave asked BJC what her recommendations were for us in looking at these building code issues and how they might apply to short term rentals in Lenox. She answered, “The building codes is a safety code” and said that any time you’re renting to a multiplicity of people there is an underlying danger. The question that remains, however, is: What’s the solution?
- PK asked if allowing self-certification would be an okay idea. BJC said she thought that inspections always should be done by licensed professionals.
- In response to a question, BJC confirmed that all Towns must follow Massachusetts building code, but that Towns can be even more (but not less) restrictive.
- Next step: Deb, Pam and Gwen to get with BJC to review building codes and where and how they could apply to different home ownership and short term rental scenarios.

- **Town Counsel’s 2014 opinion:**

- Gwen shared Town Counsel’s 2014 opinion to the Select Board, which she had obtained via research. We did not stop to read the opinion, but Gwen said it said, (1) Lenox bylaws were written such that they did not prohibit short term rentals of single family homes.
  - Dave pointed out that in his research, introductory language with 8.8.1 Seasonal Rental of Rooms suggested that bylaw was about allowing multifamily use.
  - Pam disagreed with Town Counsel’s opinion and pointed the group to the Definition for Dwelling in the bylaws, which does not allow for transient use of a

Dwelling. However, Ruth said tying a bylaw to a Definition may not be enforceable.

- (2) Gwen said that the attorney also explained why the Town should not worry about legal liability for non-enforcement.
- PK will put the Legal opinion on the next subcommittee agenda for discussion, including sharing with all.

- **Next steps:**

- Next meeting of the subcommittee and advisory group is July 10, 1:30 p.m.

Submitted,

Pam Kueber

7/6/2017