

KYLE HANLON, Chair
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NATHANIEL W. KARNS, A.I.C.P.
Executive Director

MINUTES OF THE REGIONAL ISSUES COMMITTEE - Draft

November 15, 2017

*At Berkshire Regional Planning Commission Office
1 Fenn Street, Ste. 201, Pittsfield, MA 01201*

I. Call to Order

The meeting was called to order at 4:08 p.m. by Chair Mullin.

The following Committee Members were present:

James Mullen, New Marlborough, Chair
Larysa Bernstein, North Adams
Bob Bott, Mt. Washington
Andrew Groff, Williamstown
Kyle Hanlon, North Adams
Sarah Hudson, Tyringham
Sheila Irvin, Pittsfield
Pam Kueber, Lenox
Gwen Miller, Lenox
Marie Raftery, Stockbridge
Chris Rembold, Great Barrington
Eleanor Tillinghast, Mt. Washington

Staff Present:

Nat Karns, Executive Director

II. Approval of Minutes of October 11, 2017 Meeting

As the minutes were not yet prepared, this was tabled to the next meeting.

III. Approval of Letter on Short Term Housing Rentals

The Committee recognized the draft letter on short term rentals that had been provided in the packet and worked from a revised draft provided by Pam Kueber. Both active bills are entitled “a bill to regulate” so that term is used in the letter. In Lenox, at least, the revenue issue isn’t just not collecting tax on the units rented through websites but also that there are indications that revenue from traditional lodging taxes are decreased due to this untaxed competition. There is an estimate that Lenox is losing between \$100,000 and \$200,000 annually due to that loss of customers in traditional lodging. The \$4.2 million of lost room revenue is Airbnb’s estimate of the revenue the state currently does not collect from people staying at sites rented out through Airbnb in Berkshire County. That sentence should be modified to read “potentially generating \$4.2 million in room tax revenue had it been collected.” This is also an issue of levelling the playing field between traditional lodging and the website-based rentals.

One potential area of concern, at least in Lenox, is the impact on the supply of workforce housing available. They are doing to do some focused local research on how much of an impact this might be. The Committee felt this was a possible impact for other communities and the letter should raise it but not in a manner which singled out Lenox. It had been

brought up that communities are spending a lot of time to create affordable housing but the short term rental market may be acting to reduce the supply of moderate priced housing already in the community. Lenox has identified a number of pros and cons in its community discussions thus far. The “pros” are: short term rentals provide a supplementary income to limited income households; they provide a product desired by visitors; they provide an opportunity for moderate income people to live in a higher cost community; they increase spending in local businesses; and they help raise property values (which conversely can also be a “con”). “Cons” are: impact on the availability and affordability of moderate priced houses; impacts on neighborhoods; the unlevel playing field with traditional lodging; and a lack of even modest inspections for health and safety issues.

There was discussion about the code application and enforcement issues that currently exist. Each community is probably experiencing a different level of concern in this area. The B&B and small inn owners feel the current situation is very inequitable – they have to spend a lot on improvements and inspections while website-based rentals with similar impacts and degrees of risk do not. There is a lack of periodic inspections and there is possibly an enhanced public safety risk as older homes may not have any up-to-date safety measures (modern fire and CO detectors, for instance) while newer homes would have at least those.

Based on the previous meetings, there appear to be at least four codes in play: building, fire, health, and housing codes. There are not common definitions nor thresholds across these. This creates considerable confusion and uncertainty for the property owner, the local building official, and the local health boards. Because of this confusion and uncertainty, the building officials and health boards have tended to take a hands-off approach to the web-based rentals.

Nat indicated that it seems illogical that if a single family home is primarily owner occupied and they choose to rent it out for a single less than thirty day period, because of that short-term rental, it is considered a change in use and they are supposed to, under the building code, be reclassified in the same category as a hotel or motel, triggering a fire suppression system. It seems that it is still being used as a single family house from a building code standpoint. While it might need to meet some standards, the current situation seems excessive. There should be a declination of standards across all the lodging types that is more refined. The small inns and B&Bs also shouldn't be required to meet the same standards as a large, multi-story hotel.

It is possible that the local officials are both confused about which code requirements should apply and also do not agree with what the codes indicate so they end up not enforcing short-term rentals. This is apparently an issue across the entire region based on the discussion.

There are community and neighborhood issues as well and these are best determined and regulated, if desired, at the local level. There can be an impact on neighborhood character. Neighborhood impacts are definitely not appropriate for regulation at a state-wide level. It was agreed that the letter should be clear that neighborhood and community impacts can vary widely and regulation of that is best set at the community level.

Kyle Hanlon moved to approve the letter as amended as a result of the discussion. Sarah Hudson seconded the motion which carried unanimously.

The full Commission will consider the letter, as modified, at its meeting on the following evening.

V. Next Committee Meeting Date, Time & Topic

The next topic which had been pending had been “housing” with various possible subtopics including tiny houses, age-friendly housing, and the missing middle housing market.

Eleanor Tillinghast asked if the Committee might look at the two pieces of legislation which are under active consideration clarifying the property tax exemptions for solar and wind energy systems on private property. The Department of Revenue had interpreted that they should be subject to personal property tax but the Appellant Tax Board has found differently and thus these are exempt from taxation. The legislature is trying to clarify this. Because of the ruling, the municipalities are in a weakened position in negotiating PILOT agreements. She is interested in the Committee drafting letters on the legislation for the Commission to consider.

The Committee agree they would like to know more about this. Both Great Barrington and Pittsfield have a lot of these projects and it is a potential source of revenue for communities. Neither bill precludes communities from signing PILOT agreements but it would give them more leverage in negotiations with developers. This is an active issue in the House and Senate. It also came up in Sheffield in regards to the solar project at Berkshire School. Projects only providing electricity for the premises, even if they are net-metered, are not subject to taxation. The bill numbers are S.2160 and H.3906. We will determine the status of the legislation before the next meeting.

The next meeting will at 4 p.m. on Wednesday, December 13th.

VI. Adjournment

Upon a motion by Marie Raftery, seconded by Kyle Hanlon, the meeting was adjourned at 5:02 p.m.

Material Sent or Provided to the Committee

- Agenda for November 15, 2017 Meeting
- Draft letter to Co-Chairs Brady & Kaufman – no changes – November 17, 2017
- Draft letter to Co-Chairs Brady & Kaufman – track changes – November 17, 2017
- From 9th edition page – amendments to 8th edition section online

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