

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

MINUTES OF THE REGIONAL ISSUES COMMITTEE -

October 11, 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 4:01 p.m. by Chair Mullin.

The following Committee Members were present:

James Mullen, New Marlborough, Chair
C.J. Hoss, Pittsfield, Vice Chair
Larysa Bernstein, North Adams
Bob Bott, Mt. Washington
Andrew Groff, Williamstown
Kyle Hanlon, North Adams
Sarah Hudson, Tyringham
Pam Kueber, Lenox
Gwen Miller, Lenox

Staff Present:

Nat Karns, Executive Director

II. Approval of Minutes of August 23, 2017 Meeting

A motion was made by Kyle Hanlon, seconded by CJ Hoss, to approve the minutes. Modifications were requested to the 1st full paragraph on the second page. The corrected minutes were approved with two abstentions.

III. Short Term Housing Rentals

Jamie Mullen opened the discussion about the issue of short term rentals and suggested that the Committee was looking for ideas and possible language both for our communities and the legislature.

Nat Karns reported on the workshop for their local officials held by the Franklin Regional Council of Governments. This topic is more confusing because both the new (9th) edition of the building code is under consideration for adoption and there are revisions being considered to the health code as it may pertain to some forms of short-term rentals. The advice given at the FRCOG workshop was for communities to hold off on doing anything until these new regulations are adopted. Each set of regulations defines things differently and it seems like it would be useful if there were a common set of thresholds that helped define the various forms of short-term rentals. These definitions and thresholds all have implications due to health code, building code (especially which use group is appropriate for what type of use) and zoning regulations. They did provide a list of how each community in Franklin County dealt with short term rentals. The building code defines any stay of 30 days or less as a transient residential use, which then kicks things into a building code use group which has much more stringent requirements than a single-family use.

The Health Code treats “lodging houses” as being letting 5 or fewer rooms for short-term rentals and requires they meet some minimal standards. These include that the septic system be adequately sized and that annual pumping reports must be provided, the rooms meet basic temperature limits in both the summer and winter, there be screens on all windows, and there be smoke and CO detectors. The health code requires that if there is a hot tub, there must be a certified pool/spa operator, the same as if there were a large pool at a hotel. They must meet the requirements for a public water supply with annual testing and then less frequent fuller testing.

For the building code, the 9th edition is promised momentarily. Currently, any change of use requires an application be filed with the building commissioner. There are four residential use categories – single and two-family; R-1 which covers hotels and motels; R-2 which covers dormitories and multi-family with more than 16 occupants; and R-3 which are miscellaneous uses. No one seems to know where short-term rentals fall. The current code indicates that any applicant for a change to any transient use group would trigger a sprinkler system and this includes both change in use and expansion. The R-3 use group includes lodging houses that don’t have separate living units and may include renting out a number of bedrooms. If are renting five or fewer rooms, the standards are close to the single-family standards. Under the new edition of the building code there apparently will be a point system which allows more flexibility in how to accomplish requirements using a performance system. This would require that a certain number of points be achieved in order to comply but some flexibility in how to achieve that. What triggers a change in use becomes critical .

Zoning deals more with the traditional community and neighborhood impacts, such as on affordable housing supply, traffic, parking, lighting, etc. Communities make choices regarding areas that may not be compatible with more transient use. Both the House and Senate bills allow communities to set maximum numbers of units, limit the areas in which they may be rented out, and to require that the units have to be owner-occupied for some portion of the year. Questions would include whether an “inn-keeper” is require; whether a very large house with many bedrooms such be treated the same as a much smaller unit. It would seem more appropriate to regulate some things on the basis of the physical aspects, such as number of bedrooms, of the home or apartment.

Bob Bott asked whether someone wanted to convert a part of a large single family home into a short-term rental, would zoning allow that, does the building code allow it, and what health permits are needed? There was a Land Court decision involving the Town of Hull in which the town prevailed. This involved whether your town’s bylaws had language which precluded uses not otherwise allowed in the bylaw, versus allowing other similar uses. In the Hull case, since there wasn’t any language which allowed short-term rentals and the town’s bylaw prohibited uses not listed as permitted, then short-term rental was not allowed. The distinction in the Hull case was more complicated because it revolved around whether the use was in fact a commercial use or was a residential use.

Manchester-by-the-Sea and Dennis both regulate short-term rentals through general bylaws rather than deal with them through zoning. Both require a license and registration and each year the units being rented have to be inspected.

The two bills under active consideration are more focused on the collection of taxes rather than many of the issues our communities are concerned about. At some point, during the duration, frequency, and minimal use versus maximum use a short-term rental may become more of a commercial use. There is a website, Hostcompliance.com, which can assist a community in thinking through the issues of regulating short-term rentals. They have an instructional video and use algorithms to track usage. Their advise is to focus on your community’s values in establishing any regulations. But they find it is impossible to track duration of stays as it is impossible to get the data. One of the bills requires that the owner maintain a log of rentals. There are some things which are enforceable, for instance Cambridge requires that short-term rental hosts must get a business license and must show that license number in their on-line listing. Each town has to establish its own fee for a business license. The hosting entities, such as Airbnb, require that the person listing the unit must sign off on being in compliance with all state and local regulations. The hosting platforms provide the casualty and loss insurance and if you are not in compliance then you are effectively at risk that your insurance is not valid. The Senate bill requires an affidavit from the owner that they have insurance which covers short-term rentals and most homeowners insurance does not cover short-term rentals. Both bills have a lodging tax which goes to the state general fund and both allow a local option lodging tax, with 50% of that having to go to affordable housing (probable mechanism would be a local housing trust fund).

In Massachusetts, because the landlord-tenant laws are so favorable to renters, no one with short-term rental units would want them to be rented to any single party for more than 30 days as that would kick the unit into the protections of that law. The duration of stays is not an issue in communities, it is the frequency of rentals and how much time it is rented versus being owner-occupied. One of the bills sets the total length of time being rented over the course of the year by how many days it was offered, rather than how many actually occupied on a short-term basis and that seems problematic since units are often not rented for every day they are offered for rental.

The House bill collects are taxes through the hosting entities. The Senate bill is more complicated and has a number of different categories which allow the capture of more taxes but which would be more problematic in capturing the revenues. In both cases the specifics of what and how to regulate these come back to the municipalities to determine.

The committee agreed that the important things for the legislature to focus on are getting the tax aspects done and to clarify the health and building codes so that they are clear, reasonable and enforceable.

Final discussions included that one of the difficulties in this topic is that everything that is in the building code comes from “spilled blood” somewhere. There may be a concern that is the fees and costs are too much, then it may make it not financially feasible to rent out units in the short-term market. There are concerns about taking long-term rental units off the market and the impact of that on housing affordability and availability. Strict enforcement of the building code could push property owners out of the short-term rental market. There is a bigger issue with the lack of affordable housing. Investor owners are purchasing modest homes to convert to short-term rentals; not very expensive homes, so this does impact the availability of workforce housing. People do benefit from renting their units out but frequency and duration can come into play. There is a difference in the occasional renter owner and the investor owner. There are equity issues between the small country inn that has to comply with various codes and pay lodging taxes and a short-term rental unit. Is there really any difference between a purely investor owned unit which is being rented out constantly and small inn? Both are businesses at that point. The non-owner occupied unit is the real issue as it is basically a commercial use. These can have impacts on other residents in the neighborhood.

Is there evidence of any significant neighborhood issues from short-term rentals and any impact on service levels in the community? Lenox has not heard of any issues from their police or fire departments.

There is a danger that the state or a community could overregulate short term rentals and drive them underground. The State does need to set up a taxing system and a fairly minimalist regulatory system, allowing the communities to determine what best fits their circumstances.

It was agreed that we should draft a short letter, requesting that the state pass legislation to collect the transient room tax and to sort out the state code issues, but also not in an overly restrictive manner. The legislation should explicitly allow municipalities to set up a local regulatory framework as the community sees fit. It is not helpful to suggest what communities should do until the state law is established.

IV. Next Committee Meeting Date, Time & Topic

The next meeting will in November, with a date to be established via Doodle poll, on a Wednesday at 4 p.m. The Committee will review a letter to be provided to the Commission which meets on November 16th, wrapping up its views on short-term rental legislation. They will also begin discussion of housing issues, including Tiny Houses and increasing the affordable housing stock, perhaps in innovative ways.

V. Adjournment

Due to loss of a quorum, the meeting was adjourned at 5:03 p.m.

Material Sent or Provided to the Committee

- Agenda for October 11, 2017 Meeting
- Draft minutes for August 23, 2017 Meeting
- Cape Cod Municipal Management Association letter, 8/24/2017
- Workshop Flyer on Short Term Rentals – Franklin Regional Council of Governments
- New Report: Airbnb Hosts Earned Nearly \$2 Million During 2017 Tanglewood Music Festival
- Short Term Rental Proposed Legislation
- Zoning for Inn/B&B for FCCIP member towns