

Moderator's Committee on Short Term Rentals

February 3, 2021

Meeting recording and transcript

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## Meeting Minutes

### **Moderator's Committee on Short Term Rentals**

2/3/2021

#### **Public Meeting Convened at 7:02PM**

All six members of the committee were in attendance.

The Chair opened the Public Meeting and notified the public that the meeting is being recorded.

Paul reviewed the January 27, 2021 committee meeting minutes. Paul motioned to adopt the meeting minutes as edited, seconded by Ana. The motion passed by a vote of 6-0-0..

The Chair welcomed the group of senior town officials to the meeting and introduced them. The officials include Building Commissioner Dan Bennett, Deputy Town Administrator Melissa Goff, Assistant Town Counsel, Patty Correa, Director of Regulatory and Planning, Polly Selkoe and Transportation Administrator, Todd Kirrane. The Chair then initiated a process of Q&A between the committee and the senior town officials.

Paul asked a question relating to lodging houses.

- Paul asked if lodging houses would be covered by the STR regulations. He raised a concern that a lodging house located at 89 Marion St. may be offering some of its rooms on a short-term rental basis.
- Patty Correa stated that lodging houses are covered under a separate state law and would not be subject to the STR regulations.
- Dan Bennett stated that 89 Marion St. was a licensed lodging house.
- Patty Correa stated that the Town had two options to restrict lodging houses from offering their rooms on a short-term basis. The first option would be for the town to petition the legislature to change the state law's definition of a lodging house to exclude short-term rentals. The second, an easier option, would be for Brookline to modify its lodging regulations to require that lodging houses rent for more than 28 days.

Ana asked if a person could license their home or a portion of their home as a lodging house.

- Patty Correa shared that lodging houses require a special permit from the ZBA and have strict criteria and inspections that must be met to be approved.
- Dan also shared that lodging houses are restricted in where they can operate. For example, a lodging house can not be located in a single family zone. Lodging houses also need to have a minimum of serving 4 unrelated guests.
- Ana asked about the fees collected for lodging houses.
- Melissa Goff stated that lodging houses are subject to the local option tax and that the town collects approximately \$30,000 in annual license fees.

Sean shared the following:

- Types of lodging houses including for profit lodging houses, affordable housing, B&Bs, college dormitories and short-term housing for patients of hospitals are operating in Brookline.
- Stated that it would be difficult for a single family home owner to get a lodging house license but not impossible.

Patty Correa shared the following:

- Lodging houses are defined by state law.
- The town got approval from the state to include B&Bs in the state definition of lodging house.

Paul asked if we were to enact STR regulations would the regulations apply to lodging houses?

- Patty stated that state law would not address the operating issues related to a lodging house operating as a short-term rental.

Chris stated that investor owned lodging houses would be able to operate as an STR in Brookline.

Paul shared that some on the committee desire is to protect long term housing. There is a risk of converting our lodging houses into STRs (effectively a hotel) and thereby removing needed affordable housing in Brookline.

Patty Correa stated that we could look at modifying the Select Boards regulations to address lodging house concerns.

Paul asked if we could modify the Select Board lodging regulations or general bylaw regulations for lodging houses to restrict their rentals to greater than 28 days thereby eliminating them as Short-Term Rentals. Patty Correa stated that this could be a way to do it and it would require further investigation on her part.

Chris commented on the Building Commissioner's estimate that there have been 15 to 20 complaints about STRs in the last two years and that this seems to be a very low number considering the number of STRs operating in Brookline.

The Building Commission shared that he believed there were estimated 40 complaints in the past 3 or 5 years which he still considered low. He receives complaints via email and phone call and they investigate by responding to the individual making the complaining. The typical resolution is to get something from the property owner in writing that they acknowledge that STRs are not allowed in Brookline. He shared that most complaints are related to arrival and departure times, noise in hallways in multi-unit buildings, smoking around the premises, cleaning companies arriving multiple times per week.

Sean stated that the number of official complaints is not indicative of the number of problems. Neighbors often won't call on neighbors and there are others that have no way of knowing who

to call due to the complexity of navigating town departments. Sean also believes that some people just give up due to problems not being resolved after multiple reports.

Paul shared that he spoke with the building commissioner on October 12, 2020 on the subject of STRs and that he took notes to document the meeting. First, the commissioner shared that there has been no record keeping of complaints. What has been shared about statistics is all based on recollection and recollection is not an adequate nor accurate reporting mechanism. Paul shared that STR complaints can come in many forms and to different departments including noise and nuisance complaints to police, trash complaints to the DPW, health department complaints as well as calls to the building department. There is no integrated capture of complaints about STRs so there is no way of knowing what is actually taking place and recollection is not a replacement for record keeping. Paul shared that the building commission had informed him that 20 STRs had been shut down.

Paul shared that a property on Washington street has probably had 15 to 20 complaints just about that location and asked what is the barrier to stopping a location like that and what can we put into the regulations to help empower him to solve the problem.

The building commissioner shared that the property has been a problem for a long time. They have done everything in their power to shut the STR down. The owner now claims that he is leasing over the 30 day limit. It is the one property that they have had the most complaints and the most difficulty in shutting down.

Ana asked about what platform would be used to track complaints. The building commissioner shared that a new permit program is being used and that they are starting the process to enter and code complaints including for short-term rentals. The building commissioner shared that there are likely more complaints about STRs than he has been made aware of. The commissioner also shared that, anecdotally, there has not been an increase in crime from the information that has been shared with him by the police department.

Ana asked if the committee could request complaint data on STRs from the police department. He stated that the information could be requested.

The building commissioner shared that the vast majority of complaints seem to be coming from multi-unit buildings. He shared that when a complaint comes from a condo owner, he suggests that they reach out to their condo board to understand their bylaws and if the use is allowed.

Paula shared that multiple departments will be impacted by short-term rentals. Paula asked if the department heads had an understanding of what the costs may be to support and enforce STRs. Melissa stated that it was not possible to forecast the costs because the regulations have not yet been finalized.

The building commissioner shared that the cost of administering the regulations could be built into the fee set for licensing. He shared that there would possibly be an annual fee. The

commissioner shared that “may” vs. “shall” with respect to inspections was intended to help the manage the flow of inspections to ensure that the department is not overwhelmed. He shared that lodging houses are inspected over a three month period.

Todd Kirrane shared that enforcing parking regulations would fall on the police department. He believes that it is too early to estimate what it may cost to issue and administer parking permits for STRs.

Ana asked if the town knows the cost to administer lodging house regulations. Melissa shared that the departments are spending approximately \$30,000 to oversee the lodging houses. Melissa shared that the cost of overseeing STRs will be higher at the start of implementation of the new STRs regulations and costs would stabilize and may lower as everyone gets comfortable with the regulations.

Paul asked Melissa about the data provided on the list of short-term rentals provided to the committee. Melissa stated that the list came from the department of revenue and includes anyone who signed up with the department of revenue. Melissa stated that the list included all active registrations in the department of revenue’s database.

Paul asked Melissa if the town can get a list of the amount of tax paid by registered short-term rental. She said that the department of revenue does not provide that level of detail.

Melissa shared that STRs pay the local option room tax which is 6%.

Maureen asked if the list provided by the department of revenue is accurate. Melissa shared that the data has some discrepancies but not filtered to a level that they would normally do if the regulations were active. Melissa stated that the list provided would be used to determine and track what new properties came on as STRs so they could be verified.

Maureen asked if it was legal or advisable for the town to require that four unit or less condo owners have unanimous approval from all owners for an STR operating in their association. Patty stated that the town could not get into how condo’s set their bylaws as the town does not have that authority. Patty stated that we could ask for a certification from the condo association. Patty flagged to the committee that we should not be getting condo documents because they are long complicated documents that we will not have time to review. Patty suggested language that would permit us to ask operators for additional information to respond to complaints by condo owners about another operator putting forward a fraudulent condo certification.

Maureen stated that the proposed regulations are stating that the town is mandating how a condo association is passing a bylaw.

Paul shared that the regulations do not state how a bylaw in a condo association is to be passed. What the regulations state is that all owners in a four unit or less association must attest that they approve of the operation of an STR in the association if their bylaws are silent on

the matter. Maureen reiterated her concern that asking all condo owners to approve an STR may be putting a higher threshold on how the condo association may make their decisions.

Paul asked Patty if there is any legal reason that the town could not ask a unit owner that's applying for a certificate of operation in a four unit or less condominium association to get letters of consent from the other owners. Patty responded, no.

Patty described one possible way of structuring the forms for association approval.

Melissa stated that whatever is done, town staff cannot be asked to chase down signatures or incomplete forms. Melissa shared that a model similar to what is done when a bank needs a signature from an association when a condo loan is being applied for might work for STRs.

Ana shared that documents are easily shared electronically and can't we get them that way? Patty responded that the town will not be looking at the documents so we should not get them.

Sean mentioned that we heard from people during public comment about illegal parking from STR guests. Sean asked Todd if there was any feedback on these issues since we are not addressing them in our drafting. Sean asked if STR guests might take up the limited supply of guest permits and town overnight parking lots. Sean shared that he did not believe that our committee could address parking issues since it is up to the Transportation Board.

Sean asked Chris, in his capacity of the chair of the Transportation Board, if he thought overnight parking for STR guests and permitting might be a problem. Chris stated he did not want to put the transportation department in the position of trying to distinguish between an STR guest and another type of guest.

Chris asked Todd how many parking permits are being requested (guest overnight). Todd shared that parking permits are for overnight only. In 2020 the town issued 9,000 temporary permits. The majority come from tradesmen and residents displaced by construction. Todd shared that applications must be pulled by residents. However, the town has no way of knowing if the person requesting a guest overnight permit is in fact a resident.

Sean shared that he believes that parking for STRs could potentially become a problem and that ease of obtaining an overnight parking permit from the town could contribute to parking issues.

Chris shared that he is concerned that Town Meeting may not be able to get to the 2/3rds vote threshold. He also shared that there might be a resolution at Town Meeting asking that the building commissioner continue to enforce on a complaint driven basis. Chris asked the building commissioner what his response would be.

The building commissioner shared that if the Town Meeting took a position on STRs his enforcement process would change. If the resolution were to pass, he would consult with town

counsel and authorities above him to see how it would play out. His initial thought is that he would keep status quo unless some other factor came into play like a safety factor. If a new board governed his position than he would follow their direction. He would take the vote of town meeting into consideration and would discuss with others. Initially, he would keep the status quo.

Patty added that the town values Town Meeting voice in whatever forms it comes. She shared that Town Meeting can't speak for the town and that.

Paul stated that the zoning bylaw states that if a use is not defined in the bylaw than it is not an allowed use. Paul asked whose discretion is the enforcement of our zoning bylaws up to?

Paul asked Patty who has the authority to enforce our zoning bylaws? Patty responded that the building commissioner has the authority.

The building commissioner stated that he is responsible for enforcing the bylaws. If a decision that he makes or action that he takes or not takes is not agreed with, then it can be appealed to the zoning board of appeals.

The commissioner shared that a resolution providing guidance to him on enforcement has not been done before, would be interesting and possibly a slippery slope. He stated that the ZBA would go by what is written the zoning bylaw.

The Chair asked the building commissioner for any guidance and advice on the committee's efforts.

The building commissioner stated that there are always unintended consequences when the zoning bylaw is updated. He suggested that the committee be very clear in what it wants. Whatever is adopted and approved needs to be enforceable. Use language that is clear, specific and concise. The commissioner stated that If the committee goes too broad, there might be a problem. Allowing STRs everywhere would become a pre-existing condition that can't be undone. He suggested that the committee start small and work its way up. He shared an example of starting with a few districts and bedrooms and increasing as things go well.

Sean asked what would be the impact of requiring an inspection before a certificate is issued. Patty stated that inspections include health and fire and that the language was originally crafted to allow for a "may" inspect vs. "shall" inspect to provide for some flexibility. Dan shared that his department may need to roll out inspections over time depending on how many applications come in. Dan stated that they are working on hiring the additional building inspector to help with inspections including STRs.

Maureen asked if the new building inspector would be dedicated to STRs. The building commissioner responded that the person would work on all certificates of inspections (COIs) which would include STRs.

The building inspector shared that under “may” inspect language, the building commissioner shared that an operator could continue their operation of an STR if the building department determined that all of the necessary documentation was submitted.

The building inspector and town counsel shared that under “shall” inspect language, a certificate will not be issued until the full inspection is completed. This could delay an operator from starting their STR by perhaps months.

Town Counsel shared that she strongly advises the committee to review the completed language of the warrant articles with Town Counsel and department staff before submitting the articles to the Warrant. The Chair confirmed that this would be the case.

Ana asked Melissa to confirm the number of licenses that the \$30,000 in lodging fees covers. The building commissioner shared that it is 50 to 52 licenses.

Paul shared that the current language in the regulations is that the Select Board could place a cap on the number of STRs by Precinct. Patty stated that the regulation just needs to state that the Select Board can issue regulations. There is no need to have specific cap language. Melissa shared that the zoning district was the department’s recommendation because they have the ability to track by zoning district.

Sean asked if there is any risk to the town in setting caps on licenses if there is no specific language in the regulations. Patty stated that the town would need to provide a rational reason for setting a cap.

Melissa shared that there is a public process that the Select Board and Licensing Commission follows to set regulations. It is public and collaborative.

The Chair discussed the need for an additional meeting to enable the committee to accomplish its work. All members agreed to an additional meeting to be held on February 15th.

The meeting was adjourned at 9:24 PM.