

Town of Lenox  
Planning Board  
Lenox Dale Fire Station  
January 22, 2019

**Members present:** Chair Pam Kueber (PK); Kate McNulty-Vaughan (KMV); Kameron Spaulding (KS); Tom Delasco (TD)

**Absent with notice:** Deborah Rimmner (DR)

**Staff present:** Gwen Miller, Land Use Planner/Director (GM) and Peggy Ammendola, Land Use Clerk (PA)

**Others present:** Joel Williams of the Berkshire Record and Clarence Fanto of the Berkshire Eagle, who along with staff recorded the meeting. Seven members of the public were also present.

The meeting was called to order at 6:05 PM.

**List of documents provided for this meeting:**

- January 22, 2019 agenda
- Notes-preparations for January 22, 2019-Feedback from Land Use Director Gwen Miller on a marijuana technical issues PK requested
- Marijuana retail-use limiting language
- Schedule of uses and what it would look like if a new bylaw is not passed
- Article 9-November proposed bylaw
- January 7, 2019 minutes for approval
- January 8, 2019 minutes for approval

**Discuss next steps: Adult Use Marijuana Establishments bylaw**

a. Public Comment – inviting residents of Lenox Dale, in particular, to share their views on zoning of Adult Use Marijuana production-related establishments in the Industrial Zone

b. Deliberate on bylaw elements and vote to move to Town Meeting or schedule additional voting meeting within time frame to meet the posting deadline of February 7<sup>th</sup> in the Berkshire Eagle in order to have a Public Hearing February 26<sup>th</sup>.

It was agreed that the Board would make their decision on a bylaw at this meeting tonight.

**Public Comment:**

*Ed Lane*-He feels that the main focus is to make sure that a bylaw is passed at the upcoming Annual Town Meeting (ATM). If not passed, anyone can have a growing facility if they want. He personally does not have a problem with such a facility, but he suggested that the Board bring to the Town Meeting one part, e.g., where retail would be permitted and at another Town Meeting bring forward a growing facility.

*Amy Lafave*-She understands that in a marijuana growing facility there can be odors, so she suggested that there be stringent requirements to prevent that from happening.

KS commented that those he has spoken with have expressed concern about the odor emitted by a marijuana growing facility. Discussion followed with regards to state and local regulations.

*Francie Sorrentino*-She objects to having a growing facility being placed in Lenox Dale.

*Ed Lane*-He reiterated that he is not opposed to putting a growing facility in the Dale and that it is very important that a bylaw be passed. The technology is there to remove any odor, he added.

TD stated that the sale of marijuana will not be allowed in the Dale and that growing and processing is allowed in an industrial zone. (The Dale is an industrial zone.) Everything, but retail is permitted “by right”.

With regards to comments that the Board needs to make the bylaw simpler, KS argued that other communities have 9-10 page bylaws whereas the bylaw being proposed is only 2 pages. He pointed out that the November draft of the proposed bylaw failed by only 5 votes. The moratorium ends on June 30<sup>th</sup> and will not be extended. If the bylaw fails again at the May ATM, any requests regarding production or sales will default to the use table and marijuana businesses can go where they choose. GM added that without a bylaw all of the marijuana uses, retail, cultivation and processing, could be down in the Dale. On the federal level, marijuana is still illegal.

*Amy Lafave*-She asked if the Board could break down the proposal into two warrants- one for retail and one for cultivation.

Discussion followed and PK said that she would like to see growing and processing to be limited to Route 7 in the C1A and C3A zones. KMV agreed that it should not be allowed in the industrial zone. KS suggested that the uses require a special permit which would bring it in line with other communities. KMV opined that in the past the Board has tried to avoid so many special permits.

*Paul Marshall*-He is an architect and he shared that in Pittsfield the production facilities are designed to have a building within a building, i.e. a “clean room”.

KS made a motion to change all of the “yeses” under our use table to BA (special permit). TD seconded the motion and the Board voted 3-1. KMV was opposed.

The discussion now centered on the designated number of retail marijuana establishments. Mr. Lane cautioned that the maximum allowed may create concern by residents and stressed again that it is important that a bylaw be approved at the ATM.

Limiting language provided by GM for the Board’s consideration:

***8.13.4 Designated Number of MEs*** (Marijuana Establishments)

1. The total number of Marijuana Retailers shall not exceed twenty percent (20%), of the number of licenses issued within the Town for the retail sale of alcoholic beverages

not to be drunk on the premises. Fractions of retailers shall be rounded up to the nearest whole number.

2. The total number of non-retail ME's shall not exceed fourteen. (14)

3. In the event that the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be drunk on the premises decreases, any ME, if then exceeding the limits as noted in Subsection D.1, may remain in operation.

Relating to the numbering within the bylaw language being considered. KS made a motion "to add the language for Designated Number of MEs as Section 8.13.4 and then bump the other ones down in order. Also need to check the severability number will stay .6. The old general requirements will become .5."

PK asked to amend the motion to "that the total number of non MEs shall not exceed 14." She said this is the way it had been drafted for the Board's consideration. She added that she believes it should be 7 and that would be total... 2 research testing facilities, 1 of something else and none of the others.

Discussion continued and GM explained how the number of marijuana establishments could be broken down.

KMV asked where the Board was in the motion. KS and PK explained that KS's motion had not been seconded and neither had PK's amendment to his motion.

KS amended his motion to strike number 2. KMV asked for clarification and as KS was explaining, someone in the audience asked that the motion be restated. KS made the motion "to accept 8.13.4, Designated Number of MEs into the bylaw which would set a limit of two retail establishments. No limit on anything else. TD seconded the motion. The motion was approved 4-0.

KS made a motion to submit the adult use of marijuana in the Lenox bylaw to the ATM as amended. PK seconded the motion and the Board voted 4-0 to agree.

The public hearing is scheduled for February 26<sup>th</sup> at 6 PM at the Town Hall.

### **Discuss next steps: Short-Term Rentals (STR) bylaw**

At a previous meeting PK had requested that the Board think about the next steps. She stated that she spoke with Selectman Neal Maximillian and that there is concern that in reality the state law still needs to roll out and for example, there would be challenging litigation, e.g., Airbnb. She said that the deadline is March 10<sup>th</sup> for the general bylaw. Under the state law people will have to be registered and taxation will need to be sorted out and put in process. It also was thought the Board should wait for the outcome of the Zoning Board of Appeals hearing for the Innkeepers' appeal scheduled for tomorrow. PK feels that it may be too fast of a rush to get something to the Board of Selectmen by March 10<sup>th</sup>. KMV disagreed. TD said that the previous proposal needs significant revision and there needs to be a categorization of the intensity of the use. He reminded the Board that their goal has been to keep the person who has no interest in

Lenox from coming in and purchasing multiple homes to use for STR. He believes second home owners can rent out periodically.

KMV asked if the Board was satisfied to just get the Town Bylaw on for the ATM, which is the responsibility of the BOS, and clarify the language in Section 8.8. Bed and Breakfast Establishments. She feels the Board should move forward and follow the state's regulations.

GM suggested that the BOS and the Planning Board need to ask questions following the state's regulations with regards to required registration and to show that a host is in compliance with code. She questioned if the Board wanted a local registry, licensing and inspections. She believes that these questions should be answered before revising the Town Bylaw and zoning bylaw.

GM stated that the lodging tax has already been adopted and collecting will begin in July. The community impact fee that is in the new law would require approval at the ATM. For a "bed and breakfast home" with only 3 rooms to rent, is exempt from a lot of state legislation. Food is required to be served.

KMV feels that something needs to be put in place. PK will check with the BOS to see if they are preparing to make amendments to the Town General Bylaw that will address STR. KS feels that there isn't enough time for the Board to be prepared to bring a revised bylaw to this ATM.

TD said that there is a need for discussion among residents who are renting rooms out for short durations and innkeepers and provide feedback to the Board. KS suggested a small group of those who are renting out rooms on a short term basis, two Planning Board members and a few innkeepers to have a discussion. He does not believe that continuing discussions at Planning Board meetings is fruitful.

*Jackie Wong*- She asked if at the present time there is a prohibition on renting out a room. TD and KS stated that if it is not in the bylaw, then it isn't allowed. PK stated that if something is not specifically addressed in the bylaw, it is open for interpretation. Seasonal rental of rooms is allowed as per Section 8.8. Ms. Wong would like to participate in the discussion suggested by TD. She noted that people have bought smaller homes, torn them down and then built very large homes. She feels that STR should be for smaller homes.

*Jim Harwood*-He suggested that when presenting the bylaw the Board should tighten their focus and keep it simple and comprehensive. He feels to be just, a second home owner should be treated the same as a single homeowner. He stated that the building code does not make STR as "primarily" a commercial use. He added that the Board should establish a common goal.

*Mark Manoli*-He commented that the state has put forth regulations but has not said how to carry out. GM stated that Town Counsel has provided guidance on the states regulations and it is posted on the townoflenox.com website. The state will be setting up the registry online and there will also be online information regarding the taxation that will be provided by the Department of Revenue.

KS commented that some have the impression that the innkeepers pushed to have STR regulations. He said that it all began with complaints/incidents on police reports about a 10 bedroom home on Cliffwood Street which is owned by an absentee investor.

Mr. Harwood said that the house, formerly a B&B, would have been abandoned has it not sold. He also said that the last time the police were called the owners were on site and entertaining friends.

Mark Manoli said that a Lenox resident spoke at a previous meeting that he was a homeowner in Lenox and that when his mother in law passed away, also a resident, she left her home to her daughter. This would not be an investor owner renting out a house on a short term basis. He believes that when there are severe restrictions, people “dig in”.

KMV believes that the Board should continue to work on a STR bylaw and should be completed before too many summers pass.

**Approve Minutes:**

*January 7, 2019*-Meeting with Board of Selectmen members-KMV made a motion to accept as written. TD seconded the motion and the Board voted to approve 4-0.

*January 8, 2019*-Regular Planning Board meeting-KMV made a motion to accept the minutes with edits. KS seconded the motion and the Board voted to agree 4-0.

**Acknowledge correspondence**-There was none.

**Discuss agenda for next meeting, Feb. 12, 2019**

a. Next steps on signs bylaw

Concrete changes that are being proposed will be presented.

GM told the Board that the Berkshire Regional Planning Commission via Lenox received a grant to be a host for a meeting that would provide regional assistance with regards to Short Term Rentals. Berkshire Regional Planning Commission had asked Lenox if they would agree since we have a large auditorium. GM pointed out that this is not specifically for the Lenox Planning Board’s work on Short Term Rentals.

KS made a motion to adjourn. TD seconded the motion and the Board voted to agree 4-0. The meeting was adjourned at 8:30 pm.

Respectfully submitted,  
Peggy Ammendola