

Town of Lenox  
Planning Board  
Lenox Town Hall  
April 23, 2019  
**Approved April 30, 2019**

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

**Absent with notification:** Deborah Rimmler (DR)

**Members of the Public:** Clarence Fanto (Berkshire Eagle) & Emily Thurlow (Berkshire Record)

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

- Minutes for April 9, 2019 for approval
- Agenda for April 23, 2019
- Note of Public Hearing for April 23, 2019
- Citizens petition -- Adult Use Marijuana Establishments
- Citizens petition -- Short-Term Rentals
- Response from Town Counsel Joel Bard regarding Planning Board questions on two citizens' petitions, dated April 19
- Correspondence: Relayed verbally by PK: phone correspondence from Ellen Roche on Adult Use Marijuana Establishments; letter from Tom & Suky Werman, Stonover Farm, regarding Short-Term Rentals

PK opened the PB meeting at 6:05pm. The meeting was recorded by the Planning Board and by Mr. Fanto of the Berkshire Eagle.

**1. Public Hearing on citizens' zoning petitions on Adult-Use Marijuana Establishments and Short-Term Rentals.**

- PK explained the process for the hearing of the Public Hearing in regards to the Adult-Use Marijuana Establishments and Short-Term Rentals zoning bylaw proposals by citizens' petition. PK stated the purpose of the Public Hearing is for the Planning Board to hear citizen comment on the petitions to make written recommendations for the Annual Town Meeting.
- TD opened Public Hearing at 6:12pm by reading the notice of the Public Hearing for Adult-Use Marijuana Establishments citizen's petition.
- **Adult-Use Marijuana Establishments**
  - Dick DeFazio (DD) read the citizen petition.
  - DD underscored that this citizen petition is not looking to prohibit the use of marijuana in the town, but to prohibit the sale and cultivation of marijuana within the town limits.
  - KMV reviewed the questions submitted to the town counsel from the Planning Board in regards to the citizen petition as well as the answers received from town counsel. The questions were mostly procedural.
  - Board has no further questions for the petitioner.

- PK opened up to public comment.
- Eric Federer has concerns that it should be limited to the commercial district on Route 7&20. Concern about parking and concerns about public health. PK stated that the Planning Board’s zoning bylaw that is an article on the Town Warrant for the ATM, restricts retail sales of marijuana to the C1A and C3A zones on Route 7&20 and for cultivation and other processing-type uses to the C1A, C3A and I districts.
- PK stated she received a call from Ellen Roche with support of citizen petition bylaw proposal.
- Mark Smith asked for data in regards to the list within the citizen petition. DD responded that he will provide data at the ATM either verbally or with a handout.
- A citizen in the audience of the Public Hearing has a question in regards to what happens if neither passes. KS stated a lot of scenarios for this bylaw. The PB bylaw will go up first at the ATM and then the vote for prohibition will go at the end of the ATM. A “nightmare” scenario would be if neither passes at the ATM because then no zoning will be in effect when the moratorium ends on June 30. So, the Planning Board will be recommending that citizens vote YES on the Planning Board proposal (Article 16) in case the citizen petition to prohibit (Article 18) fails. That way, we would be sure to have zoning in place.
- Jackie Wong asked if the PB make the point of the “nightmare” scenario during the ATM. KS responded, yes.
- **Short Term Rentals**
  - Ted Silverman (TS) presented the Short Term Rentals citizens’ petition. He summarized key points.
  - TS will be motioning the exact bylaw as written to insert into zoning bylaw at the Annual Town Meeting (ATM).
  - TS stated he took what the Planning Board put together for last town meeting in November and made tweaks and that this Zoning Bylaw proposal is addressing investment properties and prohibit investment properties as Short Term Rentals.
  - TS explained that this proposal does not exclude second homeowners.. This bylaw is about primary and secondary homeowners.
  - KMV reviewed the town counsel questions and answers of this bylaw proposal. Most of the questions were procedural.
  - KMV asks if the definitions in this bylaw section apply to this bylaw section only. Michael Martin (MM), a lawyer representing TS, answered that they do apply only to this proposed bylaw section. KS followed up with a question of how are the definitions different in this proposal zoning bylaw from the definitions that are already listed in the Zoning Bylaws? MM reiterated that these definitions are specific to this proposed zoning bylaw.
  - KMV asked questions if other stakeholders have read this bylaw and been involved in STRs discussions. What is the public objective with this bylaw? TS responded with the public objectives listed on the first page of the citizens’ petition under the “purpose” section.
  - PK asked about the definition of the Investment Rental Property. She said that if she bought a house and for the first 30 days lived in the house, she could then use it solely as a short-term rental from that point on – this means investor units are legal with this proposal.? TS and MM responded: He took a “stab” at trying to

define what an investment property is by this definition because that was what he heard from the town with concerns with investment properties.

- Planning Board asked if this bylaw is meant to replace 8.8.1 in the Town of Lenox Zoning Bylaws? Does it compete? TS and MM stated that it would replace this bylaw and that amendment would be made on the floor during the town meeting.
- TD stated in response to MM statement, that if the work the Planning Board has put forth thus far on the STR issue was appreciated by the petitioners, then individuals would have come to planning board meetings in January/February.
- PK stated that the Planning Board has not lost steam on this issue and that the board has “let the dust settle” and let the new state laws take hold and then it will be time to pick up this issue again. There was a conscience decision by the board to stage this step by step.
- The Planning Board asked questions in regards to different sections of the citizens’ petition and TS and MM answered all questions presented by the board.
- KMV states that abutters will have nothing if this passes and will not be able to rebut this bylaw as they were not noticed that this may happen near them.
- KMV states it is unfair to ask the voters of the town and vote on this bylaw. And that they should not have submitted this the day before it was due to the Town Clerk.
- Abutters rights (TD) that they have a right to weigh in on this.
- **PK Opening up to public comment**
- Marybeth Mitts believes this bylaw is a poorly thought out idea. Stating that this is a commercial use and should be paying commercial property taxes and commercial activities aren’t allowed in residential zone.
- Sarah Lane a second homeowner in town spends 40% of her time in Lenox. Feels that there is a sense to vilify someone like her as a second home owner where she rents out her property when she is not in Lenox.
- Jeffrey Lynch made comment in regards to why this bylaw should not pass or be voted on. Wishes the town to reopen the conversation with all of the stakeholders that the zoning bylaw would pertain to.
- Jackie Wong commented that people doing short term rentals don’t feel heard by the Planning Board.
- Jeffrey Lynch read the letter as well as questions from Stonover Farm as the owners were unable to attend the meeting.
- Scott Shortt, who owns the Kemble Inn, made comments about having a bias on this topic of Short-Term Rentals and has much respect for the Planning Board because they took a 360° view on the issue of lodging within the town whether it be an Inn/B&B or Short Term Rentals. He said the citizens submitting this petition also had a bias.
- Tom Johnson made comments on why this document should be voted down. He lives and owns the Birchwood Inn. He stated that the way this bylaw is written it would apply to him and his business and then asked if that would mean he could only rent out his rooms at his Inn for only 180 days?
- Mary Jo Piretti commented that changing zoning laws is a very serious matter and that is why a Planning Board is elected to do what is best for our community.
- David Fisher proposes that the voting at the Town Meeting be done as a secret ballot.

- Paul Marshall commented that no one has impeded planning board to do their job. There is nothing wrong with bringing a citizen bylaw forward.
- KS moves to vote to close the public hearing. TD seconds. All in favor 4-0.

**2. After close of Public Hearing, discuss and begin to draft Board's written recommendations to Town Meeting as required by state statute. Review any Town Counsel comments, as available. Agree on Adult-Use Marijuana Establishments next meeting date (April 25 to be noticed) if more time is needed to complete written report.**

- Planning Board began discussion in regards to written recommendations for the Annual Town Meeting. Discussion will continue at the next meeting that has been noticed on April 25, 2019.
- Board discussed Marijuana bylaw petition by the citizen. KS suggests making letter very short that the Planning Board had a hearing and both the petitioner and the public made comment and the Planning Board supports their own zoning bylaw and recommends a no vote for this petition. PK agrees to this affect for this recommendation. PK to write up recommendation.
- The board will continue discussion of recommendation for Short Term Rentals at the Thursday, April 25 2019 meeting. KMV to make first draft of this recommendation to review at next meeting.

**3. Discuss zoning of food trucks.**

- The Planning Board began discussion around zoning for food trucks within Lenox. PK did some research on how food trucks are regulated in the Commonwealth of Massachusetts. After researching food trucks it seems that this business venture would fall under the Select Boards purview.
- There is not much zoning around it especially in the Berkshires area.
- KS recommended looking to Great Barrington which has done zoning for Food Trucks. He noted that food trucks fall under a general bylaw in the town of Great Barrington.

**4. Approve meeting minutes for April 9, 2019**

- KMV motions to approve minutes with amendments. TD seconds. Motion passed unanimously (3-0) – KS was not present for the meeting.

**5. Other Committee and Board updates, time permitting.**

- Not enough time during the meeting for this agenda item.

**Meeting closed @ 8:43pm KS motioned and KMV seconded. Passed unanimously 4-0.**