

## Background Materials – May 9, 2022 – Planning Board Meeting

Prepared by Anne Capra, Director of Planning and Conservation, 5/6/22

**Cable Access Channel 15 – Cable Access Channel 15** – The Cable Studio has indicated that this meeting will be live streamed on Channel 15.

### AGENDA ITEM #1 Open Comment Period

This 10-minute period is set aside for the public to offer comments on items not on the posted agenda, in accordance with the adopted policy posted on the Town of South Hadley Planning and Conservation Department webpage here: [Policy-on-Open-Comment-Period---As-Adopted-2021-03-08 \(southhadley.org\)](#)

**Action Needed:** Allow members of the public to offer comments to the Board.

### AGENDA ITEM #2 Minutes

Planning and Conservation Coordinator Colleen Canning forward the minutes of the April 25, 2022 meeting.

**Action Needed:** Vote to approve the minutes.

### AGENDA ITEM #3 Correspondence

A list of correspondence received is attached.

**Action Needed:** No action needed.

### AGENDA ITEM #4 Elnk Special Permit Public Hearing Continuance – Request for Continuance to May 23, 2022

The applicant has requested a continuance until May 23, 2022 so that they may prepare additional materials for the Board to address questions posed at the April 25, 2022 Public Hearing. I recommend the Board grant the continuance.

**Action Needed:** Move to continue the Public Hearing to May 23, 2022 at 6:30PM.

### AGENDA ITEM #5 Discussion on Amendments to Planning Board Rules and Regulations

The Planning Board has adopted four sets of rules and regulations as outlined below. The following is a description of recommended amendments to these and/or clarification of the most recent version as adopted by the Board.

- Chapter 345 Planning Board Regulations (a.k.a. Planning Board General Rules and Regulations)
- Chapter 255 Attachment 4 – Appendix B: Planning Board Rules and Regulations for Site Plan Review

- Chapter 255 Attachment 7 - Appendix E: Application and Rules and Regulations for Special Permits
- Chapter 360 Subdivision Regulations

I'm recommending the Planning Board schedule a Public Hearing on the amendments to rules and regulations as outlined below. Notice of the hearing needs to be published for two successive weeks not less than two weeks prior to the hearing date. Thus, earliest date for the hearing would be June 13, 2022.

### **Planning Board General Rules and Regulations**

Current version posted to Ecode: Chapter 345 Planning Board Regulations

<https://ecode360.com/35005058>

Date: as amended 08-19-2019

At the last meeting the Planning Board Chair requested amending the rules and regulations to require revised or additional application materials be submitted to the Board a minimum of 72 hours prior to the meeting. Such a change would need to be made in the General Rules and Regulations and Special Permit Rules and Regulations.

### **Proposed Amendment:**

345-2 Application Procedure

ADD the following language in red italicized:

E. Modifications of application materials or subsequent supplemental materials related to pending applications shall be submitted in the same quantity and formats as the original application submittal. *Modified and/or supplemental materials must be submitted a minimum of 72 hours prior to a scheduled public hearing or public meeting for the Board's consideration. It is at the Board's discretion to delay consideration of any materials submitted less than 72 hours prior to a scheduled public hearing or public meeting to a later date.*

### **Planning Board Rules and Regulations for Special Permits**

Current version posted on Ecode:

Ecode 255 Attachment 7 – Appendix E Application and Rules and Regulations for Special Permits

Date: 08-01-2017

[SO1428-255g App E, Application and Rules and Regs For Special Permit.pdf \(ecode360.com\)](#)

Version posted on Planning Board webpage:

Special Permit Rules and Regulations – as adopted on December 13, 2010, as updated 2019-08-26

<https://southhadley.org/DocumentCenter/View/5614/Special-Permit-Rules-and-Regulations---as-adopted-on-December-13-2010-as-Updated-2019-08-26>

In reviewing the Special Permit Rules and Regulations, it appears that the updated Special Permit Rules and Regulations, as approved 8/26/2019, were never brought into Ecode. The version on Ecode is dated 8/1/2017, but the version on the Planning Board webpage is dated 12/13/10 as amended 8/26/19. Therefore, I am proposing the Planning Board hold a Public Hearing to repeal 255 Attachment 7 Appendix E, and replace with the version posted to the Planning Board webpage (dated 8/26/19), with the following additional edit:

1. Add to Sec. XI. Filing:

*Modified and/or supplemental materials must be submitted to the Planning Board a minimum of 72 hours prior to a scheduled public hearing or public meeting for the Board's consideration. It is at the Board's discretion to delay consideration of any materials submitted less than 72 hours prior to a scheduled public hearing or public meeting to a later date.*

**Action Needed:** Schedule Public Hearing for June 13<sup>th</sup> at 6:30pm.

## AGENDA ITEM #6 Discussion on Amendments to Planning Board Rules and Regulations for Minor Site Plan Review

Current version posted to Ecode: Ecode 255 Attachment 4 – Appendix B Planning Board Rules and Regulations for Site Plan Review

<https://ecode360.com/attachment/SO1428/SO1428-255d%20App%20B,%20Planning%20Board%20Rules%20and%20Regs%20for%20Site%20Plan%20Review.pdf>

Date: 08-01-2017

### **Proposed Amendment:**

Provisions for “Minor Site Plan Review”, as referenced in Zoning Article XII Site Plan Review 255-147(B), appear to never have been brought into Ecode. In reviewing past meeting minutes, a Public Hearing on “Proposed Minor Site Plan Review Amendment” was held on May 27, 2014. See attached May 27, 2014 meeting minutes and attachment. The proposed amendment (4) Minor Site Plan Review was voted in for adoption by five out of five members present. It is believed that this amendment was overlooked and not codified in Ecode. I am recommending the Board schedule a Public Hearing to re-adopt section 4 Minor Site Plan Review, with modifications as follows:

1. Update references to sections of the Zoning Bylaw.
2. Add to 4(a) uses qualifying for Minor Site Plan Review - 7) *Agricultural, horticultural and floricultural uses on parcels of less than five acres, as identified in the Zoning Bylaw Use Regulations Schedule.*

**Action Needed:** Schedule Public Hearing for June 13<sup>th</sup> at 6:30pm.

## AGENDA ITEM #7 Discussion on Short Term Rentals

On April 6<sup>th</sup> the Building Commissioner has issued cease and desist letters to 12 properties he identified as hosting short term transient lodging, and instructed the property owners to seek a Special Permit from the Planning Board for this use. The only local bylaw regulating short term rentals is under the Zoning Bylaw 255-39 Bed-and-Breakfast Facilities (BnB). Currently, BnBs are allowed by Special Permit in the RA1, RA2 and Agricultural Zoning districts. Under 255-39, a BnB can be permitted as a BnB Home or BnB Inn, each with specific standards that need to be met for a Special Permit.

So far, two of the properties that received the cease and desist letter have submitted a Special Permit application – 16 Summit Street and 629 Granby Road. Both applications are incomplete and thus I have not scheduled their Public Hearings. It also appears that both may not meet the standards under 255-39 to receive a Special Permit. In speaking with two of the other property owners, they wouldn't meet the standards either.

I'm recommending that the Planning Board take up consideration of a Short Term Rental Bylaw that could be sent to a Special Town Meeting in the Fall for adoption. I've attached a presentation by Franklin Regional Council of Governments (FRCOG) titled "Short Term Residential Rentals" for some useful background information on this

255-39 Bed-and-Breakfast Facilities  
<https://ecode360.com/30053385>

**Action Needed:** Schedule next meeting to continue discussion on short term rentals.

## AGENDA ITEM #8 Discussion on Zoning Bylaw for Animal Keeping and Agriculture

255-25 Agricultural, horticultural and floricultural uses  
<https://ecode360.com/30053040>

The Building Commissioner has recently investigated complaints related to the keeping of goats and other farm animals on a residential property less than five acres in the Agricultural District. Animal keeping and agriculture are regulated under zoning in 255-25 Agricultural, horticultural and floricultural uses and in the Use Regulations Schedule. Such uses are regulated as either on parcels of five acres or more, or less than five acres. For uses on parcels of less than five acres, Site Plan Review is required "as provided in Article VII". Article VII of the Zoning bylaw is the Supplemental District Regulations. Thereunder, 255-25 provides certain restrictions related the types of animals, number of some animals, structures, etc.

In reviewing 255-25, and discussing how agricultural uses are regulated in South Hadley with the Building Commissioner and the Public Health Director, and the opinion of Town Counsel, the issues and concerns listed below have been identified.

1. 255-25A and 255-25E are in conflict related to Industrial A: 255-25A allows stated uses in IA but 255-25E then prohibits all uses entirely.
2. Definitions through the bylaw need to be clarified – Are chickens livestock or just poultry? What animals are considered livestock? What are "other like objectionable uses" as related to the "the keeping and raising" of animals?
3. The Use Table requires Site Plan Review for these uses on parcels less than five acres. The question posed to Town Counsel was how does this apply to parcels less than five acres with a residential dwelling on it. Is the agriculture use (e.g. raising of several goats) then considered a primary or accessory use, and is SPR required? Town Counsel has said that if the parcel is less than five acres and there is no residential dwelling on it, the agricultural activity is considered a primary use and SPR is required. On parcels with a residential dwelling, the agricultural use is considered accessory to the primary residential dwelling use and SPR is NOT required.
  - a. The Building Commissioner disagrees with this opinion and feels that a parcel less than five acres with a residential dwelling and any number of goats or cattle or other "livestock" does need SPR by the Planning Board.
4. Town Counsel and the Building Commissioner have also interpreted 255-25 to mean that on a parcel less than five acres with no residential dwelling, and agricultural, horticultural or floricultural use on the property would be considered the primary use and thus need SPR. The Building Commissioner is aware of several parcels that are separate tax parcels and have

vegetable gardens or vineyards or orchards on them that meet this standard and thus would need SPR by the Planning Board.

5. Last, in reviewing Article XII Site Plan Review, it seems that there aren't standards for agricultural operations. Per my recommendations on amending SPR Rules and Regulations above, I'm recommending that such uses on parcels of less than five acres can qualify for Minor Site Plan Review. The Board of Health has regulation called Minimum Standards for Keeping of Animals. People with agricultural animals are also required to get an annual livestock permit from the Board of Health.

Use Classifications	Districts													Water Supply Protection Overlay
	Residence				Agric.	Business				Industrial				
	A-1	A-2	B	C		A-1	A	B	C	A	B	Garden		
<b>Open Space Uses</b>														
Agricultural, horticultural, or floricultural uses on parcels of five acres or more	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Agricultural, horticultural, or floricultural uses on parcels of less than five acres, as provided in Article VII	SPR	SPR	SPR	SPR	SPR	N	SPR	SPR	SPR	N	N	N	SPR/b	

**Action Needed:** Continue discussion at an upcoming Planning Board meeting.

**AGENDA ITEM #9 Planning & Conservation Department Report**

**Town Meeting, Wednesday, May 11<sup>th</sup> at 6pm, High School Auditorium**

A Planning Board member should be in attendance to speak to the warrant article on endorsement of the Master Plan. I will be there as well and can represent the Stormwater Bylaw warrant article.

**AGENDA ITEM #10 Other New Business (topics which the Chair could not reasonably expect to be discussed/considered as of the date of this notice)**

No new business had been submitted to me as of today.

**SOUTH HADLEY PLANNING BOARD  
LIST OF CORRESPONDENCES  
MAY 9, 2022 REGULAR MEETING**

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**Letters & Memos**

- Email received from Robert Pleasure, Jewett Lane, with references for the Board to consider relative to E-Ink Corporation's Special Permit application.
- Email received from Town Spring, developer, with pictures showing the restoration plantings associated with the Special Permit issued by the Board for development of the Skinnerwoods Residential Complex.
- Email received from Stephan Chase, President of FSi Oil and Propane, expressing support for the Special Permit application filed by E-Ink Corporation.
- Email received with comments from the Board of Health regarding the Special Permit application filed by E-Ink Corporation.

**Legal Notices**

*Amherst*

- Notice received from the Amherst Planning Board for a hearing on May 18 to consider amendments to the Zoning Bylaw relative to demolition delay of structures with historical or architectural significance.

*Chicopee*

- Notice from the Chicopee Zoning Board of Appeals for notification of approval of a variance to reduce side yard setbacks to allow construction of a garage at 555 Burnett Road.

*Granby*

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*Hadley*

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*Holyoke*

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## Special Permit Proceeding-E Ink Corporation, Request to Submit References Prior to Continued Hearing

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**ROBERT PLEASURE** <robertpleasure@comcast.net>

Fri, Apr 29, 2022 at 12:20 PM

To: "ccanning@southhadleyma.gov" <ccanning@southhadleyma.gov>

Cc: "acapra@southhadleyma.gov" <acapra@southhadleyma.gov>

Dear Ms. Canning: I request the opportunity to submit references and make them available to the Planning Board and Applicant at this time in the above special permit matter.

If that is not consistent with the Board's rules and procedures, then in the alternative, I ask that these references be shared with the Board and the Applicant once you have published the agenda for the continued hearing.

I am submitting the following linked references early because of the request made during the last hearing by one of the Board members that he hoped, when possible, to receive lengthy documents earlier in time.

<https://www.osha.gov/toluene/risk-assessment>

<https://www.cdc.gov/niosh/npg/npgd0619.html>

<https://www.cdc.gov/niosh/docs/73-11023/default.html>

<https://www.osha.gov/toluene/standards>

By way of further explanation, I ask that the documents associated with the above links be part of the record so that I can make reference to them during the hearing with precision on matters, such as, for example, flash point, toxicity, and the like.

Thank you for considering this request.

Sincerely,

Robert Pleasure

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## Fwd: Skinnerwoods

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**Colleen Canning** <ccanning@southhadleyma.gov>  
To: Colleen Canning <ccanning@southhadleyma.gov>

Fri, May 6, 2022 at 10:13 AM

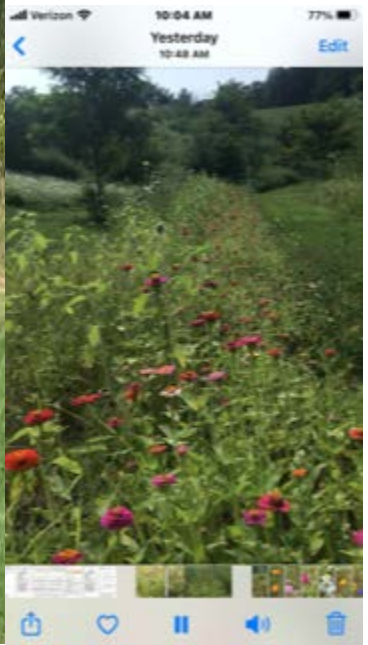
From: **Tom SPRING** <thomasaspring@yahoo.com>  
Date: Sun, May 1, 2022 at 4:41 PM  
Subject: Skinnerwoods  
To: Anne Capra <acapra@southhadleyma.gov>

Hi Anne. Just a few pics from Skinnerwoods.

Sent from my iPhone

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Anne Capra, AICP  
Director, Planning & Conservation  
Town of South Hadley  
116 Main Street | South Hadley, MA 01075  
(413) 538-5017 x6128  
acapra@southhadleyma.gov







Verizon 10:05 AM Yesterday 10:48 AM

Verizon 4:24 PM December 11, 2021 3:58 PM Edit

Verizon 7:18 PM August 18, 2021 9:58 AM Edit



Verizon 10:05 AM Yesterday 10:48 AM

Verizon 4:24 PM December 11, 2021 3:58 PM Edit

Verizon 7:18 PM August 18, 2021 9:58 AM Edit

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## Fwd: E-Ink Facility

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**Colleen Canning** <ccanning@southhadleyma.gov>  
To: Colleen Canning <ccanning@southhadleyma.gov>

Fri, May 6, 2022 at 12:45 PM

----- Forwarded message -----

From: **Steve Chase** <schase@fuelservices.biz>  
Date: Fri, May 6, 2022 at 11:02 AM  
Subject: E-Ink Facility  
To: [acapra@southhadleyma.gov](mailto:acapra@southhadleyma.gov) <[acapra@southhadleyma.gov](mailto:acapra@southhadleyma.gov)>  
Cc: John Pommenville ([jpommenville@eink.com](mailto:jpommenville@eink.com)) <[jpommenville@eink.com](mailto:jpommenville@eink.com)>, Bill Zych <[BZych@fuelservices.biz](mailto:BZych@fuelservices.biz)>

Good morning, Anne...

I'd like to take this opportunity to express my support for our neighbor, E-Ink. When I purchased the old terminal, E-Ink and their staff went out of their way to assist me in all that was needed to make the transition from a chemical plant to a first-class fuel storage facility. I initially had concerns as to how our shared drive with easements would work, those have long since dissipated... E-Ink is a good neighbor and we have a great working relationship as far as our facility goes.

Good business growth in South Hadley is dependent on strong companies willing to invest in this community and solid support from the town. E-Ink's decision to invest the millions to improve their facility and remain here is a testimonial to their commitment. This project is essential to their growth. I realize that they will be storing Toluene and other solvents in their new facility, but their new storage facility will be above and beyond every local, state and federal code requirements. They have been very cooperative with every request made by the Fire Department. Remember, my facility is their old storage facility that housed all these chemicals before.

From FSI's standpoint, there are absolutely no safety concerns with this facility, and I strongly support their effort to proceed with this project.

Should you have any questions, please feel free to contact me

Best,

Steve

**Stephan C Chase**

President



FSI Oil and Propane

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## Fwd: Please Forward to Your Chair

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**Colleen Canning** <ccanning@southhadleyma.gov>  
To: Colleen Canning <ccanning@southhadleyma.gov>

Fri, May 6, 2022 at 1:56 PM

----- Forwarded message -----

From: **Jennifer Jernigan** <jjernigan@southhadleyma.gov>  
Date: Fri, May 6, 2022 at 1:39 PM  
Subject: Please Forward to Your Chair  
To: Anne Capra <acapra@southhadleyma.gov>  
Cc: Sharon Hart <shart@southhadleyma.gov>, Monasia Ceasar <mceasar@southhadleyma.gov>, Jessica Collins <jcollins@shadleyma.org>

Hi Anne:

This is from the Board of Health:

The Board of Health met on Tuesday May 3<sup>rd</sup> and discussed the Special Permit before the Planning Committee. Upon review of the Weston and Sampson Peer Review report version 4.11.22, the Board of Health recommends due to asthma rates being higher than state rates for our students K-8, per the Community Profile Report put out by The Massachusetts Environmental Public Health Tracking/Community Profile/South Hadley, that extra care of any risk factors that exacerbate asthma be mitigated and monitored with extra care.

The report covers Environmental Justice criteria and health outcomes impacted and exacerbated by certain elements in our communities. " According to the U.S. Centers for Disease Control, communities of color and low-income communities are more likely to live near toxic waste sites, in areas with high air pollution, and in low quality housing. These policies contribute to increased exposures to environmental and health hazards through inequitable distribution of high pollution sites (e.g. highways, factories, and waste facilities) and limited participation or meaningful involvement... which reduces community members' ability to advocate for healthy living conditions." South Hadley has 24.6% of its population, compared to 20.8% of the state population that resides in block group neighborhoods that have one or more criteria of being an EJ Community.

This means we need to be careful about what other toxic stresses we put on our neighborhoods in particular, South Hadley Falls.

Our recommendation is that the Planning Board add that E Ink will not only have air quality monitors to track VOCs and HAPs but that they connect with the Pioneer Valley Air Quality Network that has monitors in place to track the impacts of air quality in our region. E Ink monitors should also be connected and consistent, ongoing monthly data from their monitors should be shared with appropriate Town Staff, Public Health and Emergency Preparedness staff Sharon Hart, as well as, but not just shared when there is "alarm from elevated VOC and HAP levels" experienced.

Monitoring and mitigating information is essential to ensuring community understanding, ability for municipal staff to respond appropriately and to ensure best business practices.

Thank you for your consideration.

BOH Members present 5/3/22

Tony Judge (Chair), Karen Walsh Pio (Clerk), Christine McKiernon, MD (Vice Chair) and Jessica Collins

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**Jennifer Jernigan,**  
**Assistant Public Health Director/Burial Agent**  
Town of South Hadley

Several Board members inquired if the changes to the Inclusionary Zoning Bylaw had been included. Mr. Harris stated that the motion did not include any changes.

**Motion** – Ms. Fantini moved and Mr. Cavanaugh seconded the motion to reconsider the recommendation on the Inclusionary Zoning Bylaw article. The Board voted **Five (5)** out of **Five (5)** members present in favor of the motion.

**Motion** – Ms. O’Brien moved and Ms. Fantini seconded the motion to recommend approval of the Inclusionary Zoning article as drafted except that the applicability is to be limited to residential developments requiring a Special Permit. The Board voted **Five (5)** out of **Five (5)** members present in favor of the motion.

Mr. Squire recessed the meeting for the public hearing at 9:52 p.m.

**4. 7:45 p.m. Public Hearing: Proposed amendment to Site Plan Review Regulations regarding Minor Site Plan Review**

The Public Hearing was held. (See minutes of Public Hearing.)

The meeting reconvened at 9:56 p.m.

**5. Consider adoption of proposed amendment to Site Plan Review Regulations regarding Minor Site Plan Review**

Mr. Harris stated that this is an action which does not need to go to Town Meeting. The Board has the authority to adopt the amendment to the Regulations.

**Motion** – Ms. O’Brien moved and Ms. Fantini seconded the motion to adopt the amendment to the Site Plan Review Regulations as drafted. The Board voted **Five (5)** out of **Five (5)** members present in favor of the motion.

**9. Other New Business (topics which the Chair could not reasonably expect to be discussed/considered as of the date of this notice)**

No other business was mentioned.

**10. Adjournment**

**Motion** – Ms. O’Brien moved and Ms. Rosner seconded the motion to adjourn. The Board voted **Five (5)** out of **Five (5)** members present in favor of the motion.

The meeting adjourned at 10:01 p.m.

Respectfully submitted,

**AS APPROVED**

Richard Harris, Recorder

**SOUTH HADLEY PLANNING BOARD PUBLIC HEARING**

**ON PROPOSED MINOR SITE PLAN REVIEW AMENDMENT**

**MINUTES OF MAY 27, 2014**

**As Approved February 10, 2015**

**Present:** Jeff Squire, Chair; Mark Cavanaugh, Vice-Chair; Helen Fantini, Clerk; Joan Rosner, Member; Melissa O'Brien, Member; Dan Dodge, Associate Member; and Richard Harris, Town Planner

Mr. Squire called the public hearing to order at 9:52 p.m. He reviewed the procedures for conducting the public hearing.

Ms. Fantini read the public hearing notice:

Pursuant to the provisions of South Hadley Zoning By-Law, Section 12(D), the Planning Board of the Town of South Hadley will hold a public hearing to discuss proposed amendments to the South Hadley Planning Board Site Plan Review Rules and Regulations as noted herein. The public hearing will be held as follows:

Place: South Hadley Town Hall, Selectboard Meeting Room;  
116 Main Street, South Hadley, MA  
Date: Tuesday, May 27, 2014  
Time: 7:45 p.m.

The subject matter of the proposed amendments to the South Hadley Planning Board Site Plan Review Rules and Regulations provide for standards as to what qualifies for "Minor Site Plan Review" and the process for submittal, review, and processing of applications for "Minor Site Plan Review". The complete text and maps (if any are applicable) relative to the proposed amendments is available for inspection during regular business hours (8:30 a.m. to 4:30 p.m.) at the following place:

South Hadley Planning Board Office  
Town Hall – Room 204  
116 Main Street  
South Hadley, MA 01075

Additionally, a copy of said proposed amendments is posted on the Planning Board page of the Town's website in the folder entitled "Proposed Minor Site Plan Review Rules and Regulations". Any person interested in, or wishing to be heard on, the proposed amendments should appear at the time and place designated for the public hearing.

Helen Fantini, Clerk  
South Hadley Planning Board

Publication: Friday, May 2, 2014 and Friday, May 9, 2014

Mr. Harris summarized the proposed amendments. He noted that Town Meeting had authorized the Board to make provision for a Minor Site Plan Review process when the Zoning Bylaw was amended last year in regards to Site Plan Review.

Mr. Squire asked if there were any comments or questions about the proposal.

The Board members discussed the amendments. There were no questions or other comments.

There being no further public comment, Mr. Squire stated that the hearing will be closed. With concurrence from the other members, Mr. Squire closed the hearing at 9:56 p.m.

Respectfully submitted,

*Draft - Draft*

Richard Harris, Recorder

AS APPROVED

***The following section is proposed to be added to the South Hadley Planning Board Site Plan Review Rules and Regulations pursuant to Section 12(D) of the Zoning Bylaw***

4. Minor Site Plan Review

Projects requiring Site Plan Review pursuant to Section 12(B) of the Zoning Bylaw will be considered as “Minor Site Plan Review” projects if they conform to the provisions of paragraphs 4a and 4b below. All projects which qualify for “Minor Site Plan” Review will be processed and reviewed in accordance with paragraph 4d below.

a. Threshold. Subject to the conditions detailed in paragraph 4b below, the following qualify for Minor Site Plan Review:

- 1) Exterior expansion not more than 50% of the existing building’s floor area
- 2) New parking areas (including expansion of existing parking areas) not more than 4,500 square feet
- 3) Uses which require Site Plan Review under Section 5(D) of the Zoning Bylaw but no new construction (other than interior renovation or alterations with no increase in floor area) will be undertaken and the new use will not require more than 4,500 square feet of additional parking area.
- 4) Uses which qualify for exemption under MGL Chapter 40A, Section 3 but which are subject to limited Site Plan Review under Section 12(B) of the Zoning Bylaw
- 5) Construction of new buildings under 5,000 square feet provided a Special Permit is not required.
- 6) Projects located in the South Hadley Falls Overlay District.

b. Conditions. Projects which meet one or more of the following conditions shall not qualify for a “Minor Site Plan” Review even though they meet the threshold in paragraph 4a above:

- 1) The use proposed for the site requires a Special Permit under Section 5(D) of the Zoning Bylaw.
- 2) The property abuts residentially developed property unless the proposed building or portion of the building to be used for the project is at least 300 feet from the nearest dwelling unit.
- 3) The property abuts property which is in the Agricultural, Residence A-1, or Residence B zoning districts unless the proposed building or portion of the building to be used for the project is at least 300 feet from the nearest dwelling unit.
- 4) The project site was developed based on a prior Site Plan Review with conditions and the proposed activity would involve an alteration of one or more of the conditions.

- 5) The project involves residential development to be undertaken pursuant to Section 7(J) of the Zoning Bylaw.
  - 6) The project involves use of a portion of the property for a Home Occupation.
  - 7) The project site is the subject of a Zoning Violation complaint at the time application is made for Site Plan Review.
  - 8) A Medical Marijuana facility which is subject to Section 7 of the Zoning Bylaw.
- c. Sequential Development. For the purposes of computing the total increase in the footprint of the structure, the Planning Board shall aggregate all expansions made within the previous 60 months.
- d. Applications and Procedures.
- 1) Applications for Minor Site Plan Review shall be made in the same manner as prescribed in Section 1, 2, and 3 of these Rules and Regulations. At the time of application, the applicant shall note on the application that the request is for Minor Site Plan Review and how the project meets with the requirements of paragraphs 4a and 4b above.
  - 2) No public hearing shall be required for the Minor Site Plan Review. However, if the Town Planner determines (and the Planning Board agrees with said determination) that the project does not meet the standards for Minor Site Plan Review, the applicant may pay the additional application and related fees and request a regular Site Plan Review which involves a public hearing with notices to the public and abutters.
  - 3) Within three (3) business days of receipt of the application, the Town Planner shall determine whether or not the project qualifies for a Minor Site Plan Review by meeting the Threshold and Conditions outlined in paragraph 4a and 4b. In the absence of the Town Planner, the Planning Board shall designate someone to make such a determination.
    - i. If the Town Planner determines that the project does not qualify for a Minor Site Plan Review, the applicant may appeal the decision to the Planning Board by requesting such an appeal be placed on the next Planning Board agenda provided the posting would conform to the time requirements associated with public meeting notices.
    - ii. The Planning Board shall, by majority vote of members present, affirm or not, the Town Planner's decision.
  - 4) All projects determined to qualify for Minor Site Plan Review shall be processed as follows:
    - i. Within five (5) business days of receipt of the application (or determination by the Planning Board that the project qualifies for

Minor Site Plan Review in the case of an appeal), the Town Planner shall submit the application materials to the various departments as provided in paragraph 1 above.

- ii. Departments shall be provided fourteen (14) calendar days in which to respond to the Town Planner with comments.
- iii. Within 4 weeks of receipt of the application (or determination by the Planning Board that the project qualifies for Minor Site Plan Review in the case of an appeal), the Planning Board shall consider the application at a public meeting for which such matter is identified on the agenda for consideration. If the Planning Board determines that more information is required to make a decision on the application, the Board may defer a decision to a future meeting by identifying a date and time certain for such consideration and specifying the additional information which is required, but such future meeting shall be no more than five (5) weeks from the date on which the Planning Board began its consideration of the Minor Site Plan Review application.
- iv. The Planning Board review of the submittal is to determine if the submittal conforms to the Site Plan Review criteria specified in Section 12(E) of the Zoning Bylaw.
  - v. As part of its written decision, the Planning Board is to make findings that the project conforms to the Site Plan Review criteria within the Zoning Bylaw
  - vi. Before approval of a site plan, the Planning Board may require that the applicant make modifications in the proposed design of the project to ensure that the Site Plan Review Criteria in Section 12(E) of the Zoning Bylaw are fulfilled
  - vii. The Planning Board shall render a written decision upon completion of the public review of the Minor Site Plan Review application but will, file such a decision with the Town Clerk within three (3) weeks of completion of the public review. The decision shall be in one of the three forms identified in Section 12(F) of the Zoning Bylaw
- viii. The Planning Board's decision shall be mailed to the applicant and filed with the Town Clerk. A copy shall also be sent to the Building Commissioner.
- ix. For the purpose of securing the performance of all proposed work including landscaping and off-site improvements, the Planning Board may require a performance guarantee as provided in paragraph #4 of Section 12(D) of the Zoning Bylaw



# Short Term Residential Rentals

FRCOG Municipal Official  
Workshop Series  
June 3, 2021

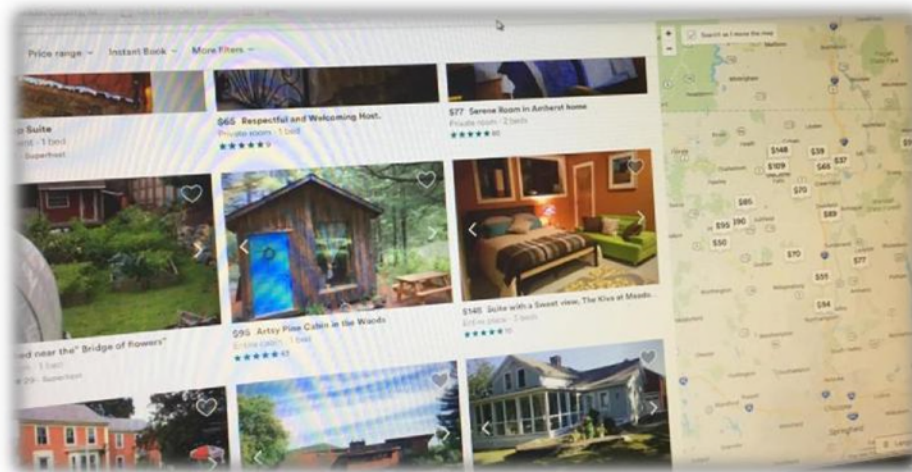
# Agenda:

How do short term residential rentals fit into the state and local regulatory landscape?

- What state and local taxes apply?
- What changes to zoning bylaws or general ordinances can towns adopt?
- What do the sanitary codes say?
- How can Boards of Health regulate them?
- What does the building code say?

# Current Status:

- Short Term Rentals are a major business sector in our region. They are active in the entire county and include: AirBnB, VRBO, FlipKey, HomeAway, Vacationrentals.com
- As of 7/1/19 All STRS must register with MA Dept. of Revenue and pay the state room tax.
- Towns may levy additional taxes with a vote of Town Meeting



# Tax Options:

- The state's room occupancy excise tax rate is 5.7%.
- In addition to the state excise, Massachusetts cities and towns are permitted to charge a [local room occupancy excise](#) tax up to 6%.
- For short-term rentals only, cities and towns are permitted to charge an additional community impact fee up to 3% if an operator has more than one property in that locality or is renting an owner-occupied 2 or 3 family house on a short-term rental basis.

# Tax Revenue in FY 21 through March

TOWN	ROOM TAX REVENUE IN FY21
Athol	\$130
Bernardston	\$8,166
Buckland	\$4,629
Charlemont	\$26,350
Colrain	\$5,417
Conway	\$1,572
Deerfield	\$81,894
Gill	\$1,515
Greenfield	\$113,957
Leverett	\$936
Leyden	\$228
Orange	\$14,678
Shelburne	\$16,322
Shutesbury	\$335
Sunderland	\$2,541
Whately	\$3,690
Total	\$287,777

# Terms of Service Require Compliance With State and Local Policy.

Typically, hosts must certify that they are following all local laws and regulations for permits, licenses, zoning, etc..

- <https://www.airbnb.com/help/article/376/what-legal-and-regulatory-issues-should-i-consider-before-hosting-on-Airbnb>
- <https://www.airbnb.com/help/article/961/what-regulations-apply-to-my-city>

# Short Term Residential Rentals and Local Planning

Peggy Sloan

FRCOG Director of Planning and Development



# Planning Considerations for Short Term Residential Rentals

- What impacts can they have on neighborhoods (e.g. traffic, noise, parking, lighting)?
- What impact could short term rentals have on your town's affordable housing supply (e.g. vacancy rates)?
- Are there places in town that are incompatible with short term residential rentals?
- Should short term residential rentals be owner occupied?
- What size is appropriate for the neighborhood? (e.g. 4 rooms approximately 8 guests & 4 cars)
- What are the Public Health & Safety Impacts (e.g. Board of Health Regulations and Building Code requirements)?

# Zoning Bylaws and Short Term Rentals

Short Term Residential Rentals include Bed & Breakfasts, AirBnBs, VRBO's, etc.

Your current Zoning Bylaw can identify whether they are:

- Allowed "By-Right" in certain zoning districts.
- Allowed by Special Permit (SP) in certain zoning districts if a SP is granted by the Special Permit Granting Authority (Planning Board or ZBA)
- Prohibited in certain districts

# Addressing Short Term Rentals in your Zoning Bylaw

- Example of a Use Table in a Zoning Bylaw that includes AirBnBs & other Short Term Residential Rentals

<b>SAMPLE (CUSTOMIZE FOR YOUR TOWN) BUSINESS USES</b>	<b>VC</b>	<b>VR</b>	<b>RR</b>	<b>C</b>	<b>I</b>
Motels, Hotels	SP	N	N	SP	N
Inns	SP	SP	SP	SP	N
Short Term Residential Rentals including Bed and Breakfasts, Air BnB's, VRBO, etc. (1-2 rooms owner occupied)	Y	SP	SP	Y	N
Short Term Residential Rentals including Bed and Breakfasts, Air BnB's, VRBO, etc. (3-4 rooms owner occupied)	SP	SP	N	SP	N
Short Term Residential Rental (entire dwelling unit - non owner occupied)	SP	N	N	SP	N

# Zoning Bylaw Amendments

Some communities add a section to their Zoning Bylaw that spells out the permitting process and conditions for Short Term Residential Rentals

Whately - ~171-22. Short-term rentals in Accessory Apartments, and Single-family, Two-family & Multifamily dwellings [Amended ATM 4-30-2019 Art. 35]

- The stated purpose of the bylaw is to allow for short-term rentals while ensuring public safety, preventing possible nuisances for abutters, and preserving the rural character of the town
- Rentals for a period of less than 30 days may be allowed in residential units under a Special Permit from the Zoning Board of Appeals subject to specific conditions (e.g. on-site parking, noise restrictions, etc.)
- Such rentals must comply with all applicable Board of Health regulations

# How Can Short Term Rentals be addressed in a local (non-zoning) bylaw?

Town can adopt a General Bylaw to require a license for property owners that rent out their residential property to short term paying guests. Factors to consider:

- Define short term paying guests – (e.g. less than 30 consecutive days)
- Determine whether short term residential properties need to be owner occupied
- Determine off-street parking requirements
- Decide on noise & lighting restrictions and other guidelines
- Decide whether to cap the amount of licenses granted to address potential reductions in long term rental units and/or increases in rents that displaces residents
- Decide on a length of time for the license (e.g. annual) and renewal process
- Decide if a Public Hearing will be held by the Select Board to consider granting or revoking licenses
- Decide if notification to abutters will be required

# Example of a General Bylaw

## Manchester by the Sea

Annual Town Meeting adopted a general bylaw, which has been approved by the Attorney General's Office, that requires an annual permit from the Select Board for any property owner that hosts short term residential rentals

- Must meet Building Code & Board of Health requirements
- Must name a local contact if owner is not on-site
- Must keep a guest register
- Select Board issues annual permits and appoints Enforcement Agent

# Short Term Rentals and the Sanitary Codes

Randy Crochier  
CPHS Regional Health Agent



# **Just like a hotel or B&B, Short Term Rentals may fall under the following codes:**

- Housing – All
- Title 5 – if on septic system
- Food – if over six bedrooms and serving food
- Pool – if pool or hot tub are included in the rental

# Short Term Rental/Temporary Lodging House Housing Code Requirements

- Must be inspected for Minimum Standards for Human Habitability and general safe and sanitary conditions:
  - Screens on windows
  - Lockable doors
  - Heat system capable of maintaining 68/64 (am/pm) during the heating season, Sept 15 – June 15 □  
And temp may not exceed 78 F (in season)
  - Bathrooms with hot and cold running water

# Requirements under public health codes, cont'd.

- Under 310 CMR 15, short term rentals must comply with Title 5.
  - Septic system must be properly sized for the number of bedrooms (NOT bathrooms).
  - Septic system must be properly maintained (show pumping reports).



## Note of warning for hosts:

- Under public health laws, after 30 days, a long term renter is officially a tenant
- Lead Law then applies if children under 6 are present in either the owner's or renter's family.
- Numerous other tenant rights become available to the renter.

# If a hot tub or pool is onsite..

- State Pool Regulations 105 CMR 435 require someone on site be a Certified Pool/Spa Operator.
- Updated regulations expected some day may get rid of the requirement for hot tub owners who rent out rooms to have an Operator License



# Best Practice for protecting public health

Short Term Rentals on a private well should require periodic water testing for bacteria and water quality.

(Also applies to any food establishments on a well)



# Best Practice for Protecting Public Health: Licensing by the Board of Health

## **Why:**

Unless a town board of health requires all short term rentals to be permitted, like a hotel or B&B, the only input the town would have is based on a complaint under the housing code.

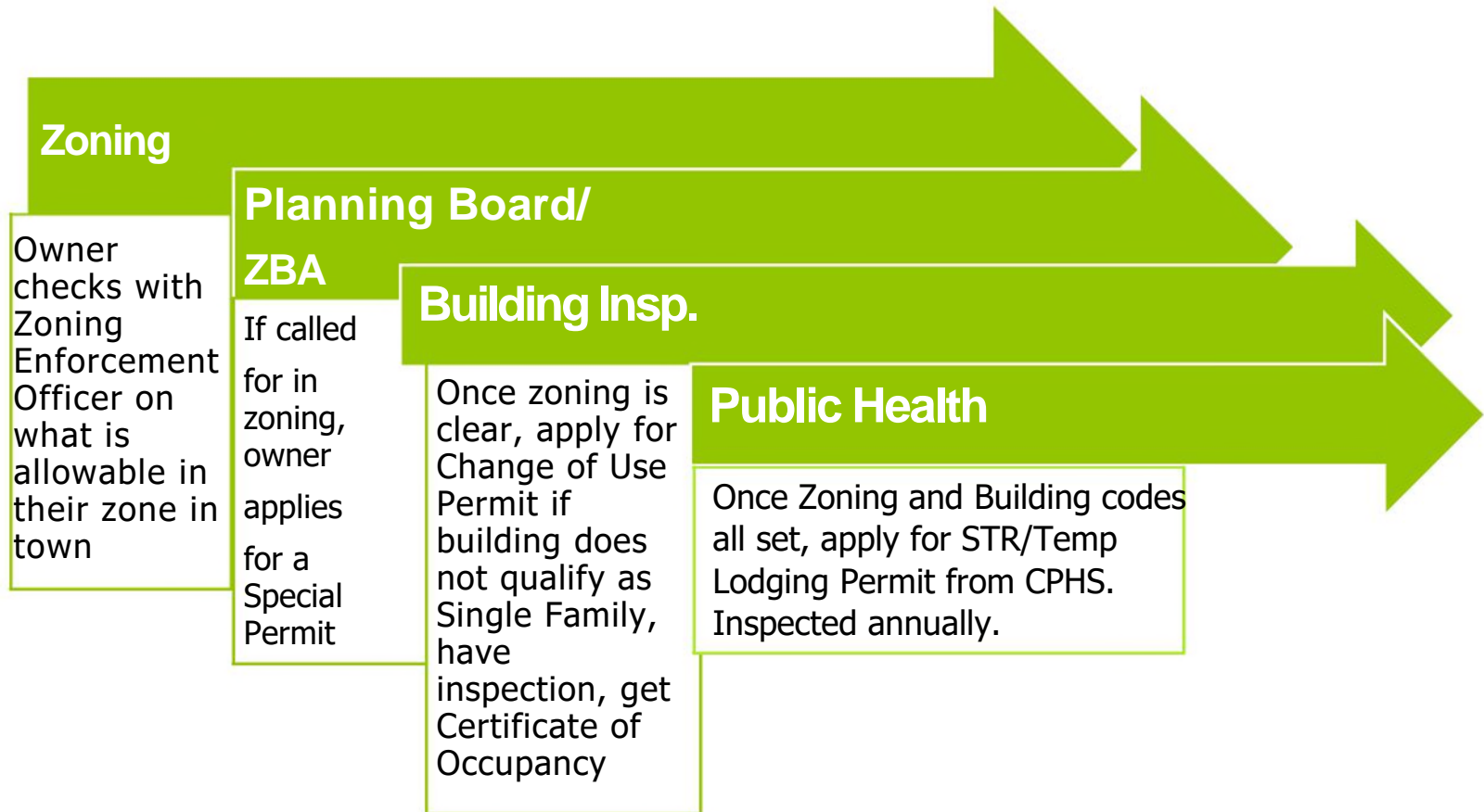
## **How:**

Cooperative Public Health Service Health District at FRCOG permits STRs annually through the online permitting system.

### Details:

- Inspections annually for compliance with all relevant codes
- If on private well, water test every three years
- Permit costs \$75

# CPHS Local Approval Flowchart



# Short Term Rentals and the Building Code

Jim Hawkins  
Building Commissioner

# Building Code

- Massachusetts building code is a complex assortment of books:
  - IBC (commercial code)
  - IRC(residential code)
  - Massachusetts amendments
  - IEBC (existing building code)
  - IECC (energy code)
  - IMC (mechanical)
  - AAB (handicap access code)
- The code is adopted, amended and interpreted by the Massachusetts Building Board of Registration and Standards
- There is no category for short term rentals in the code

# Categories of Residential Buildings in the Building Code

- Single Family Dwelling:  
Permanent Occupancy
- R-1 Use Group Classification:  
Transient Occupancy
- R-3 Use Group Classification:  
Permanent Occupancy,  
(i.e., Lodging House)



# Building Code

- The term “Transitional” is found only in the IBC
  - Occupancy for less than 30 days
  - Defined as R-1 (i.e., hotel, motel, boarding house, etc.)
  - Being in the IBC means sprinkler, fire alarms, smoke detection systems are required

## What is an R-1 Use Group?

- Residential R-1 occupancies containing *sleeping units* where the occupants are primarily *transient* in nature.
- Transient: Not more than 30 days

Examples include:

- Hotel
- Boarding house (transient) with more than 10 occupants

# What is a “single family dwelling”?

- In the 9<sup>th</sup> Edition a single family dwelling is permanent in nature
- Previous codes referenced a single family allowance to rent 5 rooms or fewer; however, that was removed in the 9<sup>th</sup> Edition
- Short term rental of a single family dwelling is the subject of much debate, because of the term “transitional”
- Strict enforcement would require it to have a sprinkler system
- Definition of “dwelling” in the code does not clear up the issue
- “Dwelling” is defined in the code as “any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let, or hired out to be occupied, or that are occupied for living purpose.”

# What is an R-3 Use Group?

- Residential Group R-3 occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4, or I.
- Includes *Lodging houses* with five or fewer *guest rooms*.

## If Short Term Rental is in New Construction: Fire Protection Requirements

Use Group Classification	Sprinkler Required	Manual Fire Alarm	Fire Extinguishers	Annual Inspections
R-3 (constructed per IRC)	NO	NO	NO	NO
R-3 (Constructed per IBC or commercial code)	NFPA-13D	NO	NO	NO
R-1	NFPA-13R	YES WITH SOME EXCEPTIONS	YES	YES

## If the Short Term Rental is in an existing building:

- If considered a single family (see slide 18) no building permit required
- If there is a change of occupancy classification a building permit is required:
  - Owner needs to provide an Existing Building Report
    - > Means of egress
    - > Emergency lighting, exit signs
    - > Fire protection (different fire protection threshold in Ch. 9 IBC)

# “Performance Method”: A way to meet code for Short Term Rentals in existing buildings that fall into R-1 and R-3 Use Groups

- Generally requires the help of an architect
  - Can help owner avoid sprinkler requirement
  - Works as Pass/Fail for entire building – looks at:
    - Fire Safety
    - Means of Egress
    - General Safety

# Experiences

- Sleeping units / studio
- Tiny home
- Yurts
- Tree house
- Zoning

# Speakers

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