

To: Mark Ells, Barnstable Town Manager
Barnstable Town Councilors

From: Frederick Wrightson, Lois Wrightson, Gail Nightengale, Tim Largay, Karen Largay, Niles Sutphin, Margaret Sutphin, Alice Bresnahan, William Shinnick, Dawn Sprague, Robert Sprague, Bob Schulte, Anne Schulte, Peter Hansen, Karen Smith, Robert Platt, Stephanie Platt, Diane Richardson, Stacey Guenther, Hector Guenther, George Gingold, Anne Gingold, John Crow, Brian Koelbel, Chester Arnold, Carol Bosco-Dymek, Marie Arnold, Conrad Beliveau, Mara Beliveau, John Clark, Joan Clark, Ellen Osmond, John Osmond, Heather Hunt, Janet Charpentier, Mr. & Mrs. Paul Kaneb, Christine Burns, Steven G. Hoch, MJ Eplett, Shulamit Bresler, Barbara Swift, Elizabeth Katchpole, Paul Warren, Sally Warren, Hermann Schaefer, Mary Mohan, Tony Capo, Kathleen Capo, Peter Holcombe, Kathy Holcombe, Jo Myall, Paul Lemme, Joseph B. McWilliams, Helen B. McWilliams, Ken Nosal, Ellen Nosal, Jim Wilson, Mary Wilson, Michelle Lombard, Mary E. Doolin, Joseph Doolin, Vincent R Byrne, Priscilla Hostetter, Chuck Tuttle

Date: December 16, 2020

**Request to Operationalize the Town Council's 2021-2022 Strategic Plan
on Communication and Citizen Engagement
on Residential Zoning Issues**

We are Barnstable residents, and we were pleased to read that the Town Council prioritized improving communications and resident engagement in the Town Council's 2021-2022 Strategic Plan. We ask you to give meaning to that priority by operationalizing it, now, in the context of potential residential zoning changes.

As a threshold matter, we learned in 2019 - 2020 that a resident question, request or complaint about matters relating to the work of the ad hoc Regulatory Subcommittee most often go unanswered. We responded by getting ever-increasing numbers of residents to sign communications. We chose not to get hundreds of residents to sign this communication. Instead, we ask you to be responsive to communications from residents who care about our Town and our business. If you require dozens or hundreds of signers to consider the merits of what we have to say and to reply, please tell us that directly. We will produce as many signatures as you need.

Zoning affects the community and every resident in it, from how our community and our Villages look and feel, to housing, to the value of our most significant investments, to our daily quality of life. Zoning also has the potential to cause deep division in our community and to give

rise to litigation. Using best practices with respect to communication, solicitation of initial input and continued citizen engagement around residential zoning can help mitigate those. It is also the right thing to do.

The Town of Barnstable has demonstrated its ability to communicate with and to seek engagement of citizens when it wants to. The Town Council's website is always up to date with its meeting agendas and minutes. Last week, the Town issued a press release seeking public comment on a trail extension *before* it developed a planning framework. This resulted in an article in the local press. The Town issues a weekly community newsletter, and shares issues of interest on Facebook. Channel 18 produces award-winning educational work available at no incremental charge to residents.

Yet, the Town has not applied its demonstrated ability or used any of its tools to communicate with residents about potential residential zoning changes.

This fall, for example, the Town Council's ad hoc Zoning Subcommittee met three times to discuss a town-wide residential zoning change.¹ This followed a presentation in June 2020 by a consortium comprised of the Realtors' Association lobby, the Chamber of Commerce, the Homebuilders Association and some others about a proposed zoning change. The ad hoc Zoning Subcommittee did not post on its website agendas or minutes for its September, October, and November meetings where it discussed that residential zoning change proposal. It back posted them in December only after residents, who had looked at the ad hoc Zoning Subcommittee's webpage regularly since June and saw no meetings, complained. Public comment at each of those meetings was basically limited to the same public official who also happens to be a real estate developer. The Town has not mentioned a new town-wide residential zoning change proposal in any community newsletter. The Town has not issued press releases seeking citizen input before it worked on a zoning change proposal as it did for trail locations (consider that residential zoning is likely more impactful to more residents than is trail placement).

Further, the ad hoc Zoning Subcommittee recently added two people from the Planning Board; its authority to expand and contract membership at will is at best unclear. Whether and to what extent the Town has slid responsibility for zoning change recommendations from the Planning Board to the ad hoc Zoning Subcommittee is also unclear.² So is how the two bodies

¹ This proposal pertained to Accessory Dwelling Units (ADUs), about which we express no view in this request. In June 2020, the one meeting on ADUs about which the ad hoc Zoning Subcommittee posted materials, the Planning Department characterized single-family residential zoning as burdening the community. It is entirely unclear whether that reflects Barnstable residents' views. This underscores the need for the Town, through a new body that includes residents and no officials who have expressed an intent not to listen to them, to conduct broad citizen education and then input sessions, as Newton is doing, to educate and gather citizen views *before* any further action on any zoning change proposal.

² The Town web site tells residents that the Planning Board's responsibility is to review, hold hearings, propose, and recommend zoning ordinance amendments. The Town Code tells residents that the Planning Board makes recommendations to the Town Council with regard to any changes in the Zoning Ordinance of the Town, and interacts with the Town Council, principally through the Council Committee on Planning and Development concerning items related to zoning, subdivisions, land use planning. The Town does not tell residents, or answer questions, about what the ad hoc Zoning Subcommittee has been asked to do, by when, or how it interacts with other bodies.

interact, or whether the Subcommittee membership change suggests they will effectively merge. Residents should not have to guess what public bodies are responsible for what.

Upon hearing there is a new residential zoning change in process, several residents asked the current Chair, Councilor Schnepf, and the Town Attorney's office what specific matters the Town Council had assigned to the ad hoc Zoning Subcommittee upon its formation, and the timeframe it was given to complete those assignments. No one has answered.

A lack of timely public engagement and integrity of process has defined the ad hoc Zoning Subcommittee from its creation in 2017. A view of the ad hoc Zoning Subcommittee process is attached. If we have any of it wrong, we welcome correction. If we have it basically right, we hope you will agree there is good cause to move on from the ad hoc Subcommittee to a fresh start for all.

Before the Town Council, or any public body, takes any action on any residential zoning change proposal, we ask the Town to:

- 1) Terminate the current ad hoc Zoning Subcommittee.**
- 2) Develop and execute a community outreach process to solicit citizen input on their views and priorities about zoning in the summer of 2021 to respect residents who do not winter here. See, as one example, the sincere community outreach that Newton is undertaking on zoning as a model: www.newtonma.gov/zoningredesign. There are many other examples.**
- 3) Form a Zoning Task Force that includes residents of each Village and some Councilors (please include none who have previously participated in communications about disinterest in public views) to assess citizen feedback and to develop a straw framework and timeframe for moving ahead with potential proposals in a way that is transparent to residents.**
- 4) Given experience in 2019 and 2020 with respect to financial interests in zoning matters (i.e., the Planning Board 2020 "re-do"³, the illustrations in the attachment, and others), conduct training for the Planning Department and any others that are involved in zoning rule development.**

Thank you in advance for responding to these requests.

³ The Town never posted minutes of the 2020 Planning Board meeting that needed a "re-do". The Town then removed that meeting's agenda from the Planning Board's website. This (mis)leads the public to believing there was no meeting on that date.

Attachment

The Town Council's ad hoc Zoning Subcommittee

Context around the ad hoc Zoning Subcommittee may be helpful to understand the basis for residents' lack of confidence in it, and the request to replace it with an entirely different structure, to conduct public outreach and an input process *before* the Town takes any action, develops proposals or does any further work on any residential zoning change proposal.

The following is a summary of its background based on our review of public records. We welcome corrections if this reflects missing information or errors. We believe the ad hoc Zoning Subcommittee's history supports residents' lack of confidence in it from its formation to present and our request for an entirely new structure and process *before* the Town takes any action on any residential zoning matter.

- **Formation, 2017:** In February 2017, then-President Eric Steinhilber created the ad hoc Zoning Subcommittee by announcement at a Town Council meeting. This followed a presentation to the Town Council by Town Manager Ells about “*Non-Residential Zoning District Review and Update.*” Formation of a zoning subcommittee was not on a Town Council agenda. The Town Council never voted to create it. Then-President Steinhilber did not explain whether or how this new zoning body was to interact with the Planning Board, which the Town Code says is responsible for advancing zoning change proposals.
- **Scope and Timeline, 2017:** The Town Council did not discuss or vote on the Subcommittee's intended scope. Instead, then-President Steinhilber read a scope at the Subcommittee's first meeting.⁴

The Town has since confirmed that the Zoning Subcommittee is ad hoc, not standing. The Town Code states that ad hoc subcommittees are limited to a particular subject area and serve for a specific period of time. As noted, residents have asked Councilor Schnepf and the Town Attorney's office to provide the specific tasks the Town had assigned to the ad hoc Zoning Subcommittee and its timeline. No one answers.

- **Minute problems, 2017 and fall 2020:** In 2017, the ad hoc Zoning Subcommittee met for about half year without posting its meeting minutes. In the fall of 2020, it kept meeting agendas and minutes off its website.
- **Foreseeable public engagement problems, 2017 and fall 2020:** In 2017, public comment appeared to be limited to someone with a commercial interest in the commercial zoning change. In the fall of 2020, public comment appeared to be limited to a public official with a commercial interest. Commercial interests are important, but

⁴ At its first meeting, it appears the Chair was elected contrary to the Town Council rule that does not permit Town Council leadership to serve as subcommittee chairs.

if they are the only interest that know to show up, or that get invited to the table for early input, it's a problem to fix.

- **New Subject Matter and New Members, 2019:** In 2019, the ad hoc Zoning Subcommittee took up a residential zoning change in connection with short-term rentals. There was no public notice that the Town Council or its President assigned this specific matter to the ad hoc Zoning Subcommittee or the timeframe to complete that work.

Around that time, the Subcommittee's membership changed in its entirety, also without explanation, literally as the public sat waiting for its delayed meeting to start.

- **Town Invitations to Financially Interested Public Officials, 2019:** In April 2019, the Town staff invited various public officials to participate in the ad hoc Zoning Subcommittee's development of short-term rental zoning and regulations. Half of them had to recuse themselves when short-term rental matters came before their boards. Yet, the Planning Department concluded there was no conflict when one of them asked about it.

In 2020, a public official told the media that the Planning Department contacted the conflicted and recused Planning Board Chairman in connection drafting the report to the Town Council.

There is a persistent issue here.

- In May 2019, when the ad hoc Zoning Subcommittee began that work, the Town reached out to "community members" for early input. The Town defined "community members" as different flavors of realtors. Conspicuously absent from the list of "community members" to give input were Barnstable resident homeowners.

From: Jenkins, Elizabeth <Elizabeth.Jenkins@town.barnstable.ma.us>
Sent: Tuesday, April 30, 2019 2:30 PM
To: 'Patrick Foran'
Subject: RE: Short-Term Rental Regulations

Hi Patrick,
I don't see any conflict. We're dropping the recommendation for additional CCAAOR participation based on your interest, as well as another's experience on the ZBA. As long as you're comfortable, we are too.
Thanks!!
Elizabeth

From: Patrick Foran [mailto:patrickforan@foran.com]
Sent: Tuesday, April 30, 2019 2:15 PM
To: Jenkins, Elizabeth
Subject: RE: Short-Term Rental Regulations

Hi

Just confirming there is not a conflict for me to participate? I will do my best to be there.

Thanks!

Oh, by the way... Please remember, we can help your friends and family move anywhere, across town or across the country. We are never too busy for any of your referrals.

Patrick J Foran, e-Pro, SFR
President (MA Brokers License # 9088920)
Foran Realty, Inc. (MA License # 7149)

From: Jenkins, Elizabeth <Elizabeth.Jenkins@town.barnstable.ma.us>
Sent: Tuesday, April 30, 2019 1:39 PM
To: 'Walter Watson' <[redacted]>; Patrick Foran <[redacted]>; 'Mark Hansen' <[redacted]>; Herbert Bodensiek <[redacted]>
Cc: Wackrow, Paul <Paul.Wackrow@town.barnstable.ma.us>; Brigham, Anna <Anna.Brigham@town.barnstable.ma.us>
Subject: Short-Term Rental Regulations

Good afternoon,

Thanks for expressing interest in participating in the development of short-term rental regulations for the Town. From your positions on the Planning and Zoning Boards, you have a unique perspective on how home rentals, services such as Airbnb and VRBO, and our current regulatory structure impacts our citizens, economy and housing market. I'm aware this is short notice, and I apologize, but in an effort to move this initiative forward expeditiously, our short-term rental consultant has agreed to provide an initial presentation to the Town Council's Zoning and Regulatory Subcommittee this Thursday at 6:00 p.m. in the Selectmens Conference Room.

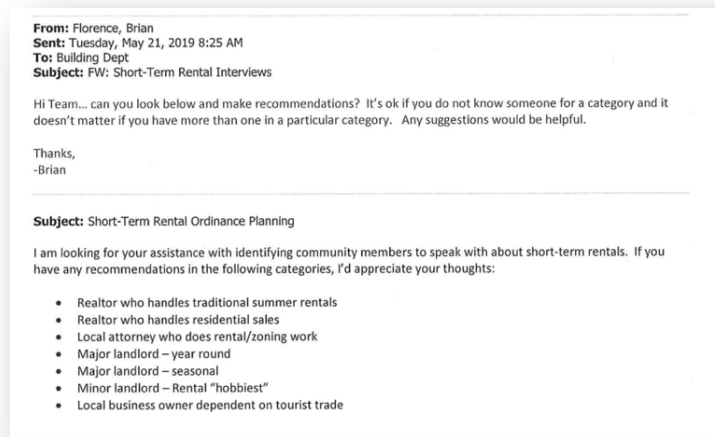
If you are able to attend and listen in, we'll welcome having you there. If not, I will have information from the presentation available afterwards.

Please don't hesitate to contact me if you have questions.

All the best,
Elizabeth

Town Council Zoning & Regulatory Subcommittee: Presentation on Short-Term Rental Regulation
Thursday, May 2nd, 6:00 – 7:00 p.m.
Barnstable Town Hall, Selectmens Conference Room, 2nd Floor

Elizabeth S. Jenkins, AICP | Director
Planning & Development Department | Town of Barnstable
200 & 367 Main Street | Hyannis, MA 02601
elizabeth.jenkins@town.barnstable.ma.us
508-852-4735



- A July 2019 citizen request to the Town for transparency around what stakeholders the Town identified to consult with its short-term rental consulting firm, for public education, and for publicly available information about the process and timing for resident engagement. That went unanswered.
- In the fall of 2019, six months after consulting with realtors, the ad hoc Zoning Subcommittee announced it was time for Civic Association input. It said publicly that it would return to Civic Associations after it had a draft proposal for further feedback. It never did the latter, despite requests to do so. The ad hoc Zoning Subcommittee issued its first draft proposal on January 9, 2020, about 48 hours after the final Civic Association meeting.
- In February 2020, multiple Civic Associations and a large group of citizens proposed model bylaws. That followed many, many weeks of work on nights and weekends by citizens who care about our community. The ad hoc Zoning Subcommittee never even acknowledged that work, much less discussed it, or explained why it disagreed with the suggestions.
- In the spring of 2020, the ad hoc Zoning Subcommittee released revised draft regulations during a period of no public meetings due to COVID-19, without explanation of where the changes from the prior draft came from or were discussed publicly.
- In the summer of 2020, the ad hoc Zoning Subcommittee did not follow the state open meeting law process upon receipt of a complaint, i.e., Chair Schnepf did not distribute material to members or hold a meeting to discuss it prior to issuing the Town's response. Those required steps happened *after* a resident told the Town it bypassed the process. This is not a commentary on the substance but is an example of the Subcommittee's disregard of process required by law. If we have this wrong, please say so.

- Public records showed an ad hoc Zoning Subcommittee member say she would “not give an inch” to Civic Associations, and not respond to public comment.⁵ Many other public records showed Subcommittee member deep disrespect for citizens, input, and engagement.
- In the fall of 2020, the ad hoc Zoning Subcommittee met repeatedly to discuss a town-wide residential zoning change proposal without posting agendas or minutes on its website. It did no other public outreach whatsoever.

If this review of the Subcommittee’s history errs, please let us know. If you conclude this review should leave residents with a sense of confidence in the ad hoc Zoning Subcommittee, please let us know why.

We urge the Town to move forward constructively by overhauling the entire governing structure around potential zoning changes and to include citizens from each Village in a new governing body.

⁵ <https://honorzoning.com/public-records>