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February 21, 2021

VIA Email:

To the Moderator's Committee on Short Term Rentals

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All,

Inasmuch as on February 17, 2021, the Committee voted on a proposed warrant article draft (“WA”), which I’m told currently is being circulated within Town departments for comment and will be further discussed at the Committee’s meeting on February 24th, I’m writing to provide my own comments to the draft WA. This effort is intended as a helpful gesture in raising issues that the Committee perhaps did not consider or would like to reconsider following receipt of Town department comments, and, hopefully, those expressed in this letter. I know that the Committee has worked diligently to comply with the terms of the Moderator’s charge, and I am very appreciative of the Committee’s efforts.

That the issue of Short Term Rentals (“STRs”) in Brookline is very emotionally charged is understandable given (i) the potential financial deprivation experienced by STR hosts from an overreaching set of regulations, and (ii) the potential nuisance that could result from a set of regulations that inadequately protects neighbors from undue noise, unkept trash, and illegally parked cars, as some examples. Given these financial and quality of life implications, a balance in the regulations does need to be carefully determined. With a number of provisions, I believe that the Committee has found that balance, yet there are several important provisions where it has not.

Where the Committee has not achieved that balance stems from what I believe is (i) a misperception of potential harm that STR operations could unleash on the Town, and (ii) a belief that the Town somehow has the right (and perhaps even a duty) to protect non-STR host condominium unit owners from such potential harm.

1. A Misperception of Potential Harm.

(a) There has been no study by the Town of the true number and nature of STRs in Brookline, except to the very limited extent of knowing the tax revenue generated by STR operation for the Town. Based on the November 2020 Combined Reports, the estimated number of STRs in Brookline is in the ballpark of 300 to 400 over some period of years. However, what information do we have on these?

- i. What time period does the 300 – 400 unit estimate cover? Which years? What is the current number in 2020? In 2021?
- ii. What is the nature of each rental (*e.g.*, is it owner occupied, owner adjacent, or non-owner occupied, investor-owned)?
- iii. How many rentals and rental days per year has each STR accounted for?
- iv. Relative to each rental, how many people actually are guests in the home (*e.g.*, generating noise, trash, illegally parked cars)?
- v. Relative to each rental, how much has each generated in tax income to the Town?
- vi. Has any STR resulted in removal of apartments or homes from the long-term or affordable apartment or home rental market in Brookline?

(b) Who are Brookline's STR hosts renting their primary residences? I suspect that we may find that many are seniors, retirees, and those out of work or underemployed who need to rent out their homes in the manner of a STR to make a living, make ends meet, and/or remain in their homes. If this is the case, shouldn't we be very careful of the regulations that we adopt to avoid adverse financial impact and deprivation for these residents?

(c) Relative to the estimated number of STRs in Town, I understand that there are very few citizen complaints rising to the level of a public nuisance or disruption that have been documented and substantiated. I'm advised that actual complaints against known STR units have totaled approximately 30 over a 5 year period. Again, what does the Committee know about these and how much weight should such complaints be given in the draft WA? For example, does the Committee know:

- i. to which Town authority each complaint was made?
- ii. how many individual STRs have been the subject of such complaints? What type of STR rentals were the subject of such complaints (*e.g.*, investor owned, or non-investor owned)?
- iii. how many complaints per STR related to one incident, or were multiple incidents reported?
- iv. who made these complaints (*e.g.*, were they anonymous complaints, were they repeatedly made by the same person or group of people concerning one incident, or one STR. Or is there a diversity of complaints from multiple people affecting multiple units on multiple occasions)?

- v. what were the nature of such complaints, were they investigated, if so, by whom? Was a report made relative to each complaint, was the report shared with the host? What happened as a result of each such complaint? Was the problem complained of addressed by the host?
- vi. prior to making the complaint, what efforts had the complaining party made to address the problem directly with the STR host or guest, or in the case of a condominium, with the condo association?

2. Protection of Condominium Unit Owners. As an overarching concept, I question the Town's public purpose in diminishing a person's property interest in their real estate which is recognized by state statute (M.G.L. 183A) and granted by the master deed, unit deed and other condominium documents (and functions as an intrusion into the private quasi-contractual condominium owner relationship) when:

(a) each owner purchased his or her unit with full knowledge and acceptance of the rules and regulations governing the operation of the condominium, how the condominium would be governed, and what redress would be available to those aggrieved;

(b) unlike with a cooperative, condominium unit owners have no right to approve prospective unit owners; therefore, unit owners may have as fellow unit owners those who are noisy, travel frequently for work, have rollerboard suitcases going up and down the stairs, entertain frequent visitors to their units who are not recognized in the parking garage, etc.. The point here, of course, is that a fellow unit owner could have troublesome attributes that are no different from those of a STR guest. Therefore, because, with or without STRs, the condominium could have as occupants difficult people, why should the Town regulate the behavior of an STR guest via regulations restricting a potential STR host's activities, but not regulate a condominium unit owner with that same behavior?

(c) with regard to the governing condominium documents, condominium unit owners, like everyone else, have other available remedies and redress against a fellow troublesome owner or visiting STR guest for creating a nuisance or otherwise violating law. In such events, redress could include approaching noisy perpetrators and asking them to stop their behavior, complaining to the homeowner's association or seeking changes in the condominium's rules and regulations, or calling the police, fire department or building inspector in case of a violation of law; and

(d) there is no public right of a unit owner to have the quiet enjoyment of his or her condominium unit when that is a private right granted to owners, if at all, within the condominium documents. The right of quiet enjoyment is not to be enforced by the Town on behalf of condominium unit owners when no such enforcement is done for other homeowners or tenants, except to the extent of responding to public nuisances as noted in (c) above.

To the extent not otherwise clear from my comments above, I'm very troubled by intrusive regulations that serve arbitrarily to overburden and possibly deprive residents of important and necessary income without having complete information about STRs in our Town. That other

communities have adopted regulations does not require Brookline to do so without a thorough researched process as is more typical of how we do things here. Respectfully, I hope that the Committee will rise above the unfounded fear and rancor evident in recent public statements given at Town Meeting and to the Committee, and be clear-eyed and balanced in voting on a proposed WA for Town Meeting's consideration.

To the extent that anyone has any questions, I'm available to discuss. I look forward to reviewing the final proposed WA voted upon by the Committee. Thank you.

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