

December 6, 2023 Special Town Meeting Warrant

COMMONWEALTH OF MASSACHUSETTS
BERKSHIRE, SS.

2023 DEC 6 PM 4:00
7850 401 577 00-0


To any of the Constables of the Town of Lee, Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify all of the inhabitants of the Town of Lee, qualified to vote in Town Affairs, to meet at the **Lee Middle/High School Auditorium on December 6 at the hour of 7:00 p.m.** in the evening, for the purposes then and there, to take action upon the following Articles, namely:

ANNUAL TOWN MEETING WARRANT ARTICLES

Article 1. Public Safety/Public Works Facilities (2/3 VOTE) – Finance Committee Recommends Approval.

To see if the Town will vote to (i) appropriate \$36,700,000 or any other amount for the purpose of designing, engineering, constructing and equipping a Public Safety Facility, related demolition of existing facilities, costs of relocating the Public Works Department to 1185 Pleasant Street, and for the payment of all other costs incidental and related thereto, and to determine whether this amount shall be raised by borrowing or otherwise, and (ii) to appropriate an additional sum of money to pay costs of acquiring by gift, purchase and/or eminent domain, the following parcels of real property for municipal purposes and described in a deed recorded at the Middle Berkshire Registry of Deeds namely: 41 Railroad Street (assessor's parcel 150018A000000430) Book 5662 Page 165 and 1185 Pleasant Street (assessor's parcel 150030000000071A) Book 7231 Page 300, and to determine whether this amount shall be raised by borrowing or otherwise, or to take any other action relative thereto.

Article 2. Opioid Settlement Money – Finance Committee Recommends APPROVAL

To see if the Town will vote to appropriate the sum of \$55,967.21 to the "Rural Recovery Center" and \$11,200.00 to the Lee Police budget for the purpose of the funding of substance use disorder prevention, harm reduction, treatment and recovery programs, as further detailed in the Massachusetts State-Subdivision Agreement for Statewide Opioid Settlements, and that to meet this appropriation, \$67,167.21 be transferred from the Opioid Special Revenue Account reflecting the amount allocated by the Commonwealth to the Town of Lee in the Fiscal Year ending June 30, 2023 from the Commonwealth of Massachusetts' Opioid Settlement Fund; or take any other action relative thereto.

Article 3. CPA land Acquisition of 505 Stockbridge Rd. Finance Committee Recommends APPROVAL

To see if the Town will vote to appropriate \$25,000 in legal and acquisition costs, and \$110,000 in land purchase expense, for a total appropriation of \$135,000 to enable the Town of Lee to acquire for conservation purposes under Chapter 44B, the Community Preservation Act, and to authorize the Board of Selectmen to accept the deed to the town of fee simple interest or less, of a parcel of land on 505 Stockbridge Road, consisting of 25± acres of open land identified as Parcel 15002300000000250 (Book 1672, Page 327 recorded at the Middle Berkshire Registry of Deeds) in the records of the town assessors; a map being on file with the Town Clerk, together with all rights and easements and subject to all easements; said land to be managed by the Town of Lee Conservation Commission; and that to meet this appropriation the sum of \$135,000 be transferred from the Undesignated Community Preservation Fund and/or Open Space Recreation Fund balance and to authorize the Board of Selectmen to submit on behalf of the town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts, or the United States, under the Self-Help Act (M.G.L. Chapter 132A § 11) and/or any other state or federal programs including those in aid of conservation land acquisition; and/or any others in any way connected with the scope of this Article; said gifts or grants to be deposited in the Undesignated Community Preservation Fund balance; and that the Board of Selectmen be directed to grant a perpetual conservation restriction in said parcel of land meeting the requirements of M.G.L. Chapter 44B, § 12 and M.G.L. Chapter 184, §§ 31-33, and to enter into all agreements and execute any and all instruments as may be necessary to effect said purchase, said funds to be expended by the Community Preservation Committee; or take any other action thereon.

Article 4. Disposition of Barn and 1.2 Acres of Residual Land on 300 Stockbridge Rd. Finance Committee Recommends APPROVAL

To see if the Town will authorize the Select Board to dispose of 1.2 acre of land and unusable unoccupied barn structure on 300 Stockbridge Road (Assessor's Parcel 15002400000000010 Book 1417 Page 1024 recorded at the Middle Berkshire Registry of Deeds) as shown in the map on file in the Town Clerk's office, and to authorize Select Board to enter into all agreements and execute any and all instruments as may be necessary, or take any other action relative thereto.

Article 5. Previous Fiscal Year Omnibus Appropriation (9/10 Vote) – Finance Committee Recommends APPROVAL

To see if the town will appropriate the following sum or sums or any other amount for the purpose paying previous fiscal years invoices to raise and appropriate or transfer from available funds, or take any other action relative thereto.

FY2023 invoices for DPW total \$1,853.19

RW's \$584.85

PLT \$200.25

Cintas \$1068.09

FY2022 invoice for Water & Sewer
Arc GIS \$400
FY2021, 2022 invoice for Fire/EMS
Stryker \$3677.18
FY2021, 2023 invoices for Counsel on Aging, Police and DPW
AWSI \$197 (drug testing)

Article 6 – Acceptance of MGL Chapter 41 Section 110A

To see if the town will accept the provisions of Massachusetts General Laws Chapter 41 Section 110A which allows public offices in a city or town to remain closed on any or all Saturdays and the provision of section nine of chapter four shall apply in the case of such closing of any such office on any Saturday to the same extent as if such Saturday were a legal holiday. Acceptance shall take place upon passage, or take any other action relative thereto.

Article 7 – Zoning Bylaws – Short Term Rentals (2/3 Vote)

Shall the town amend the zoning bylaw in Article IX (Supplemental Use Regulations) by adding new Section 199-.13, as follows, relating to “Short Term Rentals”, or take any other action relative thereto,

§ 199-9.13 SHORT-TERM RENTALS

A. Purpose

This section regulates Short-Term Rentals (STRs) of residential properties in a way that clarifies the extent those uses are allowed and that also preserves and promotes the character, history, health, and safety of the community and of individual neighborhoods.

B. Definitions. As used in this section:

1. “Short-Term Rental” or “STR” means an owner-occupied, tenant-occupied or non-owner-occupied property including, but not limited to, an apartment, house, cottage, condominium or a furnished accommodation where: (i) at least 1 room or unit is rented to an occupant or sub-occupant; and (ii) all accommodations are reserved in advance; provided, however, that a private owner-occupied property shall be considered a single unit if leased or rented as such. This definition is intended to be identical to that used for state tax law under MGL Chapter 64G or its successor.
2. “STR Landlord” means the person, trust or other entity who offers the use of a property as an STR and who has a right of occupancy to the premises after the rental concludes.
3. “Booking Agent” means the person or business entity that makes decisions to grant or deny permission to rent an STR property, facilitates reservations for an STR property or collects payments for rentals of an STR property. Where an automated system makes decisions about rentals, the registration shall identify an individual person within this state who has access to that system and who shall be deemed to be the booking agent.

4. “Property Manager” means the person or business entity who is obligated to respond to all problems, complaints, or emergencies relating to an STR that are reported by an STR guest, other Lee residents, or town government.

C. Exempted Accommodations

The following accommodations are not Short-Term Rentals as used in this section:

1. Hotels, motels, lodging houses, and licensed bed and breakfast establishments.
2. Tenancies at will or month-to-month leases.
3. Time-shares.
4. Any federal, state, or municipal institution.
5. Lodging accommodations, including dormitories at religious, charitable, educational, and philanthropic institutions that are not a hotel or motel or generally open to the public and operated by the institution.
6. Privately-owned and operated convalescent homes or homes for the aged, infirm, indigent, or chronically ill.
7. Religious or charitable homes for the aged, infirm, indigent, or chronically ill.
8. Summer camps for children up to 18 years of age or developmentally disabled individuals.
9. Lodging accommodations provided to seasonal employees by employers.
10. Alcohol and drug-free housing that is certified by the state.

D. Prohibited STR Properties. The following properties are not eligible for STR use:

1. Property owned by a corporation, trust, or partnership. Nevertheless, a corporation may operate an STR if: its principal asset is a single residential property in Lee; that property contains one or two dwelling units; and that property is the primary residence of the entity’s majority stockholder(s), beneficiary or partner.
2. Property occupied by a tenant acting as STR Landlord unless the tenant’s lease from the fee owner explicitly authorizes the tenant in writing to use the property for STR purposes.
3. Residential property designated as “affordable” or otherwise income-restricted and which is subject to affordability covenants or is otherwise subject to housing or rental assistance under local, state, or federal programs or law.
4. Property with current violations of the Building Code, the Fire Code, the town zoning regulations, or an order of the Tri-Town Board of Health/ Lee Board of Health.

E. Prohibited STR Agreements. The following STR rental agreements are prohibited:

1. Renting an STR for use by more persons than the registered maximum STR occupancy.
2. Renting an STR for commercial use, such as for business or sales meetings.
3. Renting an STR to a person under the age of 18.

F. Operation of Short-Term Rentals.

1. An STR tenant shall not conduct an event or gathering on an STR property where attendance is more than twice the advertised maximum STR occupancy or the occupancy in the STR rental agreement.
2. An STR tenant shall not conduct an event or gathering on an STR property that includes tents or outdoor amplified music.
3. Each Booking Agent shall keep either paper or electronic records on rental activity that include the name and address of each tenant and the maximum occupancy for that rental period. Those records shall be available within Berkshire County either physically or through the

Internet. Records of each rental shall be maintained for at least two years after that rental concludes. A paper copy of any record shall be produced upon written demand by the Tri-Town Board of Health/Lee Board of Health or the Select Board.

4. Each STR property shall have a Property Manager who shall maintain a 24-hour telephone number and shall respond within two hours to any problem or complaint reported by a tenant.

5. Each STR property relying on a septic system shall comply with the requirements regarding septic systems under "Title 5" and associated state regulations (310 CMR 15.00).

6. Each STR property shall comply with all standards and regulations of the Board of Health. STRs are subject to inspection by the board of health, the fire department, and town building officials.

7. Each STR shall have residential smoke and CO detectors installed and maintained in compliance with state statute law and regulations. A fire extinguisher shall be mounted in a clearly visible and easily accessible location and in or near any kitchen. If there is more than one habitable level, a fire extinguisher shall be mounted on each level in an easily accessible location.

8. Each STR property shall have off-street parking spaces on or adjacent to the property at least equal to the number of STR bedrooms, plus one space.

9. Trash shall be removed from each STR property at least weekly.

10. Each STR shall post, in a conspicuous place:

- a. The identity, telephone number and other contact information of the Property Manager;
- b. A property map that clearly depicts the boundaries of the STR property; and
- c. Instructions to operate any wood-burning fireplace or any wood or pellet stove.

11. Any advertisement offering the STR shall include the Lee STR Registration Number and shall state the maximum allowable STR occupancy. No advertising shall offer to exceed the maximum allowable occupancy registered under the following subsection.

12. Each STR Landlord shall ensure that its registration data at all times accurately describe the current names and contact information for the STR Landlord, Booking Agent, and Property Manager.

G. Registration

1. Each STR Landlord shall register each STR unit with the Lee Select Board. The registration form shall include the following information and statements:

- a. The street address of the property.
- b. A description of the STR property and the rooms or areas offered for short-term rental.
- c. The maximum allowable occupancy of each rental unit.
- d. The STR Landlord's name and contact information.
- e. The Booking Agent's name and contact information.
- f. The Property Manager's name, telephone number and any other contact information.
- g. A copy of a currently valid STR Certificate of Registration with the Massachusetts Department of Revenue.
- h. A statement that residential smoke and Carbon Monoxide detectors are installed and maintained in compliance with state statute law and regulations.
- i. A statement that a fire extinguisher is mounted in a clearly visible and easily accessible location on each habitable level of the STR building and in or near any kitchen.

j. A statement describing whether the STR building is served by a septic tank or municipal sewer.

(1) If served by a municipal sewer, the statement shall describe the number of bedrooms.

(2) If served by a septic system, the statement shall describe the number of bedrooms rated under its septic permit and the date that the septic tank was last pumped.

(3) If served by a composting or innovative or alternative system, the statement shall include a currently valid maintenance agreement for that system.

k. A statement of whether the property is served by municipal water supply or a well. If a well, the statement shall state that the well has been tested within the preceding five years and was found to be potable and safe for personal consumption.

1. A statement and diagram showing the number and location of off-street parking spaces.

2. Each STR registration received by the Town Clerk in proper form and accompanied by the required fee shall be assigned a Lee STR Registration Number, which shall be consistent from year to year.

3. Registrations of STRs shall expire every year on December 31. Renewal registrations may be filed during each December for the following year. The annual registration fee shall be \$100 per rental unit or as otherwise set by the Select Board.

H. Enforcement. Operating an STR without a currently valid registration or in violation of any regulation under subsection F above is a violation of the Lee zoning bylaw, chapter 199. In addition to the penalties otherwise provided for zoning violations, the Select Board, after notice and hearing, may revoke an STR Landlord's registration, for up to twelve months, if it finds that the STR Landlord:

1. Has accrued three or more violations of this section within a 12-month period;

2. Has failed to update all required contact information and has not responded to an inquiry after 20 days; or

3. Has failed to provide access to STR properties for authorized inspection or has failed to comply with orders to correct STR deficiencies.

Article 8 – Zoning Bylaws – Accessory Dwelling Units (2/3 Vote)

Shall the town amend the zoning bylaw by adding a new Section 199-4.5 to the existing zoning bylaw, as follows, relating to “Accessory Dwelling Units”, or take any other action relative thereto,

199-4.5 ACCESSORY DWELLING UNITS

A. Purpose and Intent

The purposes of this section are to:

1. Provide homeowners with a means of obtaining rental income, companionship, security and personal services, and thereby to enable homeowners to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;

2. Add moderately priced rental units to the housing stock to meet the needs of smaller households and make housing units available to moderate income households that might otherwise have difficulty finding housing;
3. Develop housing units in residential neighborhoods that are appropriate for households at a variety of life stages and for persons with disabilities; and
4. Protect property values and the character of the town's residential neighborhoods.

B. ADUs Allowed with Special Permit

1. In any residential or business district, on a lot used for a single-family residence, a single (attached or detached) accessory dwelling unit (ADU) is allowable following issuance of a special permit by the Planning Board. Only one ADU may be allowed per lot. Where a lot contains a nonconforming structure, the Planning Board may consolidate the ADU proceeding with any special permit proceeding under article 6.
2. Before granting a special permit, the Planning Board shall make all the findings required by section 13.3 and, in addition, a finding either that the new ADU would be served by town sewer facilities or that the applicant has obtained certification from the Board of Health that the waste disposal system will comply with the State Environmental Code, "Title V" regulations (310 CMR 15.00).

C. ADU Requirements

1. Minimum lot size. Minimum lot size requirements for a single-family dwelling with an ADU shall be the same as for a single-family dwelling. An ADU shall not be established on any lot smaller than 15,000 square feet.
2. Gross floor area. The gross floor area of an ADU shall not be less than 400 square feet nor more than 900 square feet.
3. Setbacks and lot coverage. All applicable setbacks apply to each dwelling unit. Lot coverage limitations apply to the combined dwellings.
4. Separation. Each ADU must function as a fully separate dwelling unit, with separate kitchen, bathroom, and egress and remains subject to the building code.
5. Parking. The site plan for every lot with an ADU shall include at least three off-street parking spaces
6. Home occupation. A home occupation may be conducted in an ADU if the home occupation meets the requirements of this bylaw. Only one home occupation is permitted per lot.
7. Short-Term Rentals. No ADU shall be offered or utilized for short-term rental.
8. A lot on which a detached ADU has been constructed cannot be divided or conveyed in a way that divides ownership of the primary dwelling and the ADU.

Article 9 - Amend Terms in section 199-14.1

To see if the town will amend the zoning bylaws by adding the following definitions to § 199-14.1 of the existing bylaw, to be located alphabetically within that section or take any other action relative thereto,

199-14.1 Terms Defined

The following words and terms shall have the meanings ascribed to them in this section.

ACCESSORY DWELLING UNIT (ADU) – A self-contained dwelling unit that is accessory to the main use of the property and which has an existing single-family dwelling on the same lot. An ADU may be attached to the main dwelling or detached from the main dwelling.

GROSS FLOOR AREA – The sum of the habitable floor area of the spaces within the residential building space, measured to the exterior surfaces of the outside walls, including basements and intermediate floor levels, but excluding exterior balconies, roof overhangs, non-enclosed areas (whether covered by a roof or not), and attached utility structures such as a garage or carport.

AND...

Option A – If STR bylaw passes:

SHORT-TERM RENTAL (STR) is defined as in section 199-9.13 of this bylaw.

OR...

Option B – If STR bylaw doesn't pass:

SHORT-TERM RENTAL (STR) – The rental of residential real property where: (1) the entire property or a portion of the property is rented for a term of less than 30 days; (2) the rental is offered to the public with an opportunity to make reservations for future occupancy; and (3) the tenant promises to pay or does pay financial compensation.

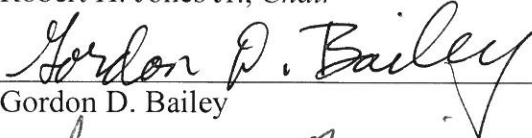
You Are hereby directed to serve this Warrant by posting true and attested copies thereof, in five public places within the Town of Lee, seven (7) days at least, before the day and hour of holding said meeting.

Therefore, Fail Not and make due return of said Warrant with your doing thereon to the Town Clerk of the Town of Lee, at or before the day and hour of holding said meeting.

Given under our hands at Lee, this 7th day of November, 2023.



Robert H. Jones Jr., *Chair*



Gordon D. Bailey



Sean J. Regnier

As per instruction in this Warrant, I have posted same,
this 8th day of November 2023 in five public places.



Constable