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In *McCullough v. Maryland* (1819), Justice John Marshall delivered the often-repeated maxim, “An unlimited power to tax involves, necessarily, a power to destroy.” Likewise does the unlimited power to regulate.

There is a growing threat on the march to destroy small residential proprietors’ Short Term Rentals. That is because we are pinching the profits of corporate high rollers, because those of us in the STR business take customers away from powerful hotels and restaurants. We are the affordable housing component of the lodging business in New Hampshire. Our customers tend to be working families with kids who cannot afford a vacation where they have to stay in multiple hotel rooms and eat out at expensive restaurants every meal. We provide them with a home away from home where they can keep their families together in a few rooms for a fair price while grilling some hamburgers on the deck when they get hungry. Because of that, we have accounted for the current boom in New Hampshire tourism, but we have drawn the ire of those with whom we compete. Meanwhile, we are filling state and local tax coffers. According to testimony given before the House Committee on County and Municipal Government on April 7<sup>th</sup>, AIRBNB paid \$40 million last year in Rooms and Meals Tax collected from its New Hampshire members. Town by town, we tend to be among the highest paying property tax payers, because our properties are becoming more highly assessed. All-in-all, we are the goose that is laying the golden egg in New Hampshire’s current economy. So why doesn’t local government support SB 249? Because it would take away their power to BAN us!

Banning us is just what the high rollers want them to do, so they pitch the deceptive line to municipal officials that the bill would “*take away your right to regulate!*” Nothing pushes the button of a local official more than the threat that their power and turf is being usurped. Yet anyone who actually reads the language in the bill quickly realizes that it grants MORE regulatory power to local boards than exists in any other sector. It allows a locality to regulate an STR with respect to building, sanitary, and fire codes, and inspect them for compliance. It allows a permitting process that would require registration of an owner or local agent who could then be summonsed with civil process into any legal proceeding and held to account, and whose registration and right to operate could be revoked upon a second violation of any law, including any bylaw relating to noise, traffic, trash, code violation, or nuisance. No other property owners of any kind in our state presently face such a stringent regulatory regime. But, in exchange for all that, the bill would actually permit, as a matter of right, any owner of a single or two-family residential property to establish an STR upon it, and therein lies the rub! Small property owners

allowed to be free to choose how to use their own property is anathema to the powerful. They will pay for government protection from pedestrian enterprises that disrupt their cash stream to their big hotels and restaurants.

Virtually all the testimony by opponents at the April 7<sup>th</sup> hearing last week described horror stories of STR guests “parking too many cars on the street” or “making noise at late hours,” but these are the same problems often caused by long-term rentals that are not managed responsibly. All violate local laws, however, you don’t hear anyone calling for a ban on long-term rentals! Long-term rental owners are not threatening corporate elites. That’s why. SB 249 comprehensively cures all nuisance and code problems occurring in STRs with its unprecedented enabling of local regulatory power, arming boards with real teeth and the power to issue, as well as revoke, a permit, and it enables a locality to charge fees to cover the costs of permitting and monitoring. It simply takes away the power to ban.

Notably, the Mayor of Portsmouth came to the hearing to represent his corporate constituents, blaming STRs for the lack of affordable housing in his city, neglecting the fact that, while Portsmouth was layering its streets with gentrified gold for the last three decades, it never once cared to invest in affordable housing. Now it is paying for that neglect, finding no local working-class tenants to operate its preferred hospitality establishments. However, killing the cash cow while praying that STR investors will react by choosing to invest in affordable housing is a strategy that has never worked anywhere. Every urban setting in which affordable housing has been maintained while rising property values pushed out working class tenants, including Boston and New York, taxed those valuable properties to invest in low-cost housing and kept their long-term tenants in town.

There is no good or fair reason to retain the power to stop a small residential property owner from establishing an STR in a one or two-family zone unless you want to destroy his right to use that property as he sees fit. If that owner’s STR gets out of hand just twice, you can haul him and yank his permit. You can inspect the STR for code compliance upon inception, or even require permit renewal and reinspection every few years. There is no possibility that an irresponsible STR operator can survive that. Then you would have STRs where small property owners choose to have them, but only those who demonstrate they can be good neighbors.

However, if SB 249 does not pass in some form, when the hotels and big restaurants you want to attract here finally arrive, they will use their leverage with whoever they can get on the boards and the council to strip STR owners of all their ability to utilize their property in this way. In many places in the state, municipalities are limiting their numbers, their seasons, and their location, using the bogus argument that there is something inherently bad about them. I am proof that is not so. In six years of operating an STR, the city has never had a complaint filed against it and no neighbor has ever expressed a negative comment. I also have the highest rating in the region from each service publishes reviews. There are others like me. Why should our ability to grow our small business be compromised because of a few that don’t care? SB 249 allows you to make the city safe for us while getting rid of the bad apples. Without it, a future board will be co-opted by the high rollers to wipe us out.

Berlin is growing because of us and will continue to thrive if we have a path forward. The Senate, and our senator who sponsored the bill, voted for it to protect us. But you sent Rep. Theberge to speak against the bill on your behalf. They House will now say, if Berlin, who really needs STRs as they are the only accommodations in town, doesn't even want us, then why should we?

Lastly, the Planning Board thoroughly examined the issue here in Berlin, as well as all the bylaws restricting STRs across the state. As the minutes below demonstrate\*, our ONLY recommendation to you was for what SB 249 now allows, the right to register a local person to hold accountable and the right to fine him, or to revoke his permit.

Therefore, I beseech the Council, before it is too late, to ask our state reps to support this bill and protect this growing small enterprise among us that creates tax revenues and jobs in this city. I assure you that, without this protection, they will eventually destroy us and kill the heart of the tourist economy with us. Of this I have no doubt. They are already doing it elsewhere.

\*April 6, 2022 Minutes

Continued discussion regarding Short Term Rentals and Regulations Ms. Laflamme is continuing to work on developing regulation for short term rentals. It is clear that any staffing for an enforcement process is limited. The current City Ordinance 10.5 – 36, Public Nuisance Activity, was looked at to see if it could help with developing short term rental regulations but it does not mention anything about different types of property owners. Also looked at was City Ordinance 17-29 Accessory Dwelling Units. It was suggested that we need to first look at what the issues are that we need to regulate, such as noise, trash, and parking. It will need to be decided how to deal with repeat offenders, whether through a fine or closure of the short term rental. Chair McCue spoke about doing a Conditional Use Permit vs a Special Exception. Since a conditional use permit is granted to an individual and has no ties to the property, it's a better way to go. The different zones should also be looked at as to whether a short term rental would be allowed in certain zones or all. A committee consisting of Ms. Remillard, Ms. Langlois, and Mr. Bosen will be working on issues surrounding Short Term Rentals.

\*May 4, 2022

Continued discussion regarding Short Term Rentals and Regulations Ms. Laflamme informed the board that after some ideas and questions were passed around with the members of the Short Term Rentals Committee, it appears this may not really be a Planning Board or Zoning issue. Some of the ideas discussed within the Short Term Rentals Committee were having the property

owners registered by providing contact information with the Fire Department and Police Department and having informational documents concerning trash, parking and noise that the owner would share with their renters. Also talked about was the complaint process and possibly adding fines for first, second and third offenses. After some discussion among the board as to where we go from here, it was decided that Ms. Laflamme will submit a memo to the City Council or possibly to the Traffic and Safety Committee with the board's recommendations. Mr. McCue asked for a copy to be circulated to the Planning Board.