

UNAPPROVED - Minutes of June 7, 2021



Town of Warner

Planning Board

DRAFT – Meeting Minutes

June 7, 2021, 7:00 PM

No physical location for this meeting; it was conducted via Zoom.

1. OPEN MEETING and ROLL CALL

At 7:00 p.m., Chairman Ben Frost called the meeting to order and made this statement: “As Chair of the Planning Board, I am recognizing that an emergency exists and I’m invoking the provisions of RSA 91-A: 2,III (b). Federal, State and local officials have determined that large gatherings people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is essential to the continued operation of the Town of Warner government and services which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location. At this time, I also welcome members of the public accessing this meeting remotely Even though this meeting is being conducted in an unusual manner and under unusual circumstances, the usual rules of conduct and decorum will apply. Please note that all votes taken during this meeting will be by roll call vote.”

ROLL CALL: Ben Frost (Chairman), 1 other in residence; Andy Bodnarik, 2 others in residence; Clyde Carson (Board of Selectmen representative), alone; Romeo Dubreuil, 1 other in residence; James Gaffney, alone; Diana Corriveau 1 other in residence (arrived at 7:13pm)

Also present: Janice Loz,(Land Use Secretary)

Absent: Don Hall (Vice Chairman), Ben Inman

2. REVIEW OF MINUTES OF APRIL 5, 2021 AND MAY 3, 2021

It was moved by Clyde Carson to approve the minutes of April 5, 2021 as amended and seconded by Andy Bodnarik to approve the minutes of April 5, 2021 as submitted.

James: Yes, Clyde: Yes, Romeo: Yes, Andy: Yes, Frost: Yes

The motion passed.

It was moved by Andy Bodnarik to approve the minutes of May 3, 2021 as amended and seconded by Romeo Dubreuil to approve the minutes of May 3, 2021 as submitted.

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James: Yes, Clyde: Yes, Romeo: Yes, Andy: Yes, Frost: Yes

The motion passed.

3. NEW BUSINESS

A. Conceptual Consultation – Michael Brown, 302 Kearsarge Mountain Road, 13-36-1, R2 District. The goal is to separate the original 3-acre house and barn parcel purchased in 1983 from a 1.3-acre lot annexed in 1984, allowing the estate to sell the house and barn on the original 3-acre parcel.

Mr. Brown said Paul and Diane Violette (his wife's parents) owned Merrimack County Telephone (MCT). When satellite towers became needed, they had a 1.3-acre lot annexed to their property in 1984 on which to place the tower and satellite system. They divorced in the late 80's and the property was acquired by Mr. Brown's mother-in-law, who until her demise earlier this year, had been receiving rent for the use of these utilities on her property. There are three siblings, for which he is the speaker. Mr. Brown and his wife (one of the siblings) would like to purchase the house as a family property but having this 1.3-acre portion (which is a value), makes things a little difficult. The tower company would like to purchase the lease agreement or the property from the family. The family would like to sell the property to the company to insure a clear title and relieve themselves of other liabilities that come with the towers.

Chairman Frost noted that Diana Corriveau had just joined the meeting (7:13pm).

Chairman Frost confirmed that the 4.1-acre property was part of the estate of the late Diane Violette. Mr. Brown answered in the affirmative. Chairman Frost asked who owned the tower. Mr. Brown said that the tower company, River Bridge Tower Company, owned the tower and equipment. He said that MCT was sold by the Violette's and other entities in 2003 to TDS. He thinks that the tower company is a landlord entity, selling rental space to others on the tower. They own all the equipment; the family was just leasing the land to them. Chairman Frost asked about the tower right-of-way on the map and if it still exists. Mr. Brown said that the right-of-way still existed and veers off that 1.3-acre lot onto the original 3 acres. There is still a road there and a gate and the tower company may need to encroach onto the 3-acre lot the Brown's are looking to purchase to continue to have access to their tower and equipment.

Andy said he was confused as to what the term "annexed" meant. Mr. Brown said Paul and Diane Violette were living at the residence and they purchased their neighbor's 1.3 acres and annexed it to their property. They did this because they couldn't get a subdivision due to the zoning regulations at the time. Chairman Frost said the statutes refer to annexations as mergers. Janice said she sees a lot line adjustment in the file for this property.

James wasn't sure how to turn the 1.3-acre property into a conforming lot. He thought perhaps they could sell and annex it to one of the abutting properties. Chairman Frost said they could also ask for a variance from the ZBA (Town of Warner Zoning Board of Adjustment). He is looking into the minimum lot size requirements for all lots or just buildable lots. Perhaps a 1.3-acre property could exist as a lot that could not be built on.

Romeo thought there was an RSA that a municipality could not create an unbuildable lot. He tried to look for it but couldn't find it. RSA 674:41 was the RSA about road frontage.

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Chairman Frost said that he has seen other instances in towns where lots were created for one reason or another, which were unbuildable.

Andy asked if there was an existing driveway for the lot. Mr. Brown said the driveway exists on the corner of the original house lot for 130' and the veers onto the 1.3-acre lot. There is an existing driveway and gate onto the property. Romeo said another concern is that while there isn't a dwelling on the lot, there is a structure. Now they are back to the definition of structure. Mr. Brown said there is a tower and a mechanical building on the site. He estimated it was about 8x16 sized building. James asked if there were other utilities coming into that property from the road. Mr. Brown said yes, electrical and communication cables. He believed they were underground from the street.

Chairman Frost noted Article VI: C1.a. (of the Town of Warner Zoning Ordinance) says every lot should have a minimum of 200' of frontage and a minimum buildable area of at least 2 acres unless the lot is served by municipal sewer. These are the operative standards they are "stuck" with in the zoning ordinance for the R2 district. He believes that getting a variance from the ZBA to the frontage and lot size requirements is the appropriate thing to do. Chairman Frost suggested that Mr. Brown work with an attorney and look at the statutes. Andy said that there are special statutes that go along with towers like this. He is bothered by the right-of-way; would an easement have to be attached to the tower lot? Probably so, thought Chairman Frost.

674:41 is the RSA that should be considered. This is pertaining to creating a lot without road frontage. Mr. Brown's next step is to go to the ZBA for a variance, and then come back to the Planning Board for a subdivision.

B. Request from the Warner River Local Advisory Committee to include the WRLAC in the application process.

Ken Milender said their mission is to provide advice and counsel to any kind of land use or environmental permit applications for anything that goes on within the Warner River corridor. The designated river corridor is ¼ mile outward from the banks, which is a ½ mile strip of land. When any kind of a land use permit goes to NHDES regarding land within this corridor they are automatically notified and are able to counsel and work with the applicants. He is trying to set up the same kind of communications between the WRLAC and the town governments. They will go to the other riverfront towns after they work on this with Warner.

Ken believes that there are various permit applications that a one-line or checkbox could be added, which asks if the property in question is within the designated Warner River corridor. If the answer is yes, there would be a statutory duty to get involved. The WRLAC would provide their opinion on whether things are fine as proposed or if more work needs to be done.

James said 483 is the RSA that governs the river management protection program. He wondered where in the RSA the half mile designation is stated. Ken didn't have the RSA in front of him but said it is in there, somewhere in the beginning of it. James didn't think it was fair to put undue burden on property owners without reason. He thinks this is a pretty significant discussion and should be discussed when the full board is present.

Chairman Frost believed they should proceed with this although a decision may not be made that night.

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Clyde asked if the intention was to be notified for renewals or for new projects. Ken said both. Clyde said generally if there was nothing changed, they give the renewal. Ken said that he agrees; if there was nothing changing, they likely won't have a problem. They may want to take a look at things and see if there are any additional best management practices that NHDES has available that might apply. It depends on the applications. Clyde asked about the timeframe for replies from the WRLAC. Ken said they could certainly impose a deadline by which responses from the WRLAC would be required.

Andy said that he reads in the statute 483:4, definitions, ("River corridor"), shows the ¼ mile (1,320 feet) from the river. It also talks about the advisory committee's responsibilities. In statute 483:8-a, III-(a) talks about advising both the federal and municipalities along which the river flows. Since they are a Board, they have somewhat of a responsibility to inform the committee.

James said the proposal shifts the burden back on the landowner instead of the local advisory committee. Chairman Frost guided James to the portion of the RSA that pertained to municipality involvement in such matters. It imposes an obligation on the Planning Board to alert the WRLAC as to what is going on. James feels that the WRLAC can be alerted by reading the minutes of meetings. Andy said he feels the burden is being placed on themselves (the Planning Board) not on the applicant. They need to make sure their notices specify the location of where the applicant is in relation to the river corridor.

Andy said any changes to the application forms have to go through multiple public hearings. Janice agreed that three readings at meetings had to be made before a change could be made. Do they need to revise their ordinance if they are going to require additional notifications? These are things to think about. Public notice must be made; it can't just be changed.

James said he didn't agree to the last point Chairman Frost made about the municipality duty. He referred to the terms "manage and regulate activity" in the statute. He didn't think this was what the Planning Board does. Chairman Frost disagreed; that is the whole point of the Board. People have to seek permission to do things. James said the Town cannot prohibit people's constitutional rights of land use on personal property. Chairman Frost agreed, subject to regulation.

Romeo said regarding permitting and extending permits, if someone wants an extension of a permit that has had an update in regulations or requirements from the state, the old regulations still apply to that permit; they aren't required to upgrade; they are grandfathered in. Also, he feels there needs to be more and better communication between the different departments in Warner. The more communication the better so everyone knows what is going on. Boards should be notified specifically and shouldn't have to look for it in the paper. James feels that is why meetings are noticed.

Clyde agreed with Romeo about notifying the different Boards so they can deliberate and give feedback. James doesn't think this is within the purview of the Planning Board and the timeline will be affected negatively. Chairman Frost agreed but said they are speaking only of the applications from the Selectmen. The statute said they have to post notice of their meetings, so that fulfills the public notice requirement. This statute also gives an affirmative command: "shall inform." They must directly inform the LAC.

James said they have clear requirements for right-to-know and noticing meetings. None

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of that exists here. Part of this revolves around the fact that the Warner River Local Advisory Committee is advisory and has no statutory requirement to be notified.

Janice asked who would be legally obligated to notify the Warner River LAC? The applicant or the land use office? Chairman Frost said in this case it would be the Planning Board. Janice wondered if it even had to be on the application at all if this is the case. Chairman Frost said it did not; it could be part of an internal checklist with the Town. Janice said it could be part of the Land Use checkbox.

Ken Milender said it is not the intent to stall or stifle any proposed plans; it is to advise the committee of land use changes within the river corridor. If they can come up with a better plan, including how to let that the applicant know whether he or she is within the corridor, he is all ears. Chairman Frost wondered why the applicant would need to know. Ken said it would make sense that the applicant know that he or she may be receiving correspondence from the WRLAC. Chairman Frost said he was just looking at the *must* versus *should* statement in the statute.

James said the landowner is obligated to respond to questions that the Planning Board has, but not the questions from an advisory board. Chairman Frost understood. Questions that the WRLAC had would be forwarded to the Planning Board. Ken agreed and said they would send a cc to the applicant and to DES in their correspondence.

Chairman Frost said this discussion would continue at their next scheduled meeting.

4. OLD BUSINESS

A. Comet LLC Conditions of Approval

Chairman Frost said he called the applicant's engineer, Ben Osgood, who shared that they have not gotten their NHDOT permit because of changed personnel in the district office or in Concord. This is the sole thing holding up the plans for the final signature. Chairman Frost asked Janice and Diane to call the district engineer to see if they can move things along. It was noted that there was not yet a driveway permit. Clyde said they haven't applied for a building permit yet. It was noted that everyone knows that work has been done on the property already; fill has been brought in and compacted. Ben Osgood has been notified that the property owner is doing this work at his own risk. Andy said it looked like some drainage work had been started as well. Chairman Frost said the property owner knows that they are not going to get a permit from the Town until the plans are signed by NHDOT.

James suggested that the Planning Board send a letter to NHDOT to let them know that the final approval is subject to their moving the plans along. Chairman Frost said that was a possibility. Andy suggested sending an email instead. James said this isn't our obligation, but it would show good faith to the landowner that the Town is behind them and their proposed project. Chairman Frost said he would speak with Diane and if the consensus of the Board was to move forward with an email, he would do so.

B. Development of Regional Impact

Chairman Frost had drafted some language and sent it to James for his review and comment. Once James has provided his comments, this next iteration would be provided to the rest of the Board to discuss. Chairman Frost would look into whether or not a hearing

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would need to be held to adopt an appendix to the Rules of Procedure. Chairman Frost suggested everyone read through the Town's Rules of Procedure to get updated.

5. COMMUNICATIONS

There were none.

6. REPORTS

A. Agricultural Commission

Chairman Frost said with regards to the Agricultural Commission, Town Meeting voted to create such a commission. One member of the Planning Board is to represent the Board on the Commission. He wondered if anyone besides James was interested. James and Romeo were both interested. Clyde suggested a new alternate to the Planning Board also could sit on the Agricultural Commission. He asked Romeo about his background in agriculture. Romeo said he lived on a dairy farm for a long period of time. Clyde said only one person was required to sit on the Commission from the Planning Board; they need not appoint an alternate.

It was moved by Andy Bodnarik and seconded by Ben Frost to nominate James Gaffney to the Agricultural Commission.

Clyde asked what James' connection to agriculture was. James said he grew up on farms. Chairman Frost added that Mr. Gaffney is a horseman.

Andy: Yes, Clyde: Yes, Romeo: Abstain, James: Yes, Ben: Yes

The motion passed.

B. Select Board Update

Clyde reported that Fire Chief, Sean Toomey has been nominated as the new State Fire Commissioner. He will be leaving his post of Chief. John Francis has been appointed as the new Fire Chief, effective immediately.

The Select Board will meet the following evening to talk about ways to open up the Town facilities and meetings. They are still working on when in-person meetings are required. They would like to set up facilities to have a hybrid of Zoom and in-person meetings as attendance is likely to be better. They are working on a proposal to do this.

Clyde said that Jonathan Lord has stepped down from the Select Board for personal reasons. They would like to find someone to fill the gap until March. James suggested to post this publicly to see who may rise to the top. Chairman Frost said he thought this had already been done. Andy noted that it was in the library newsletter.

C. EDAC – There was no meeting.

7. PUBLIC COMMENT

Andy said there was a TAC meeting on June 4th. This is held by the Central NH Regional Planning Commission - Transportation Advisory Committee. They talked about regional trails and are working on a new update, as well as the 10-year transportation plan. Among other topics, there was talk about Route 103 in Warner being a "shovel worthy project." Their next meeting is in August.

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Andy said that on June 8, a second flood management basics webinar would be held. He went to the first one and would sit in on this and report back if there was anything useful share.

James said with regards to communications, he feels the same conditions should be extended to everyone, not just one Board or another. This includes private citizens, other Planning Boards, etc. An email list could be created for interested individuals. Chairman Frost didn't think this was a bad idea but thought this kind of thing was already done. Janice said she distributes the correspondence that comes to the Land Use email to who she thinks would like to receive it. James said he had a broader sense of this communication and distribution list.

The meeting was adjourned by Chairman Frost at 8:38pm.

Respectfully submitted,

Kristy Heath, Recording Secretary

Town of Warner