

UNAPPROVED



TOWN OF WARNER

P.O. Box 265, 5 East Main Street
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
Email: landuse@warnernh.us

***Planning Board
Zoning Board of Adjustment
Select Board***

**Regulating SHORT-TERM RENTALS in
Warner**

**Town Hall- Lower Meeting Room
Wednesday, October 12, 2022
7:00 PM**

I. OPEN MEETING at 7:00 PM.

Member Present at the meeting:

Select Board	
Sam Bower	✓
Christine Frost	✓
Lois Shea (& Planning Board)	✓
Planning Board	
Andy Bodnarik	✓
Karen Coyne	✓
Ben Frost (Chair)	✓
James Gaffney	✓
Don Hall (Vice Chair)	✓
Zoning Board of Adjustment	
Jan Gugliotti (Alternate)	✓
Elizabeth Labbe	✓
Barbara Marty (Chair)	✓
Lucinda McQueen	✓
Harry Seidel (Vice Chair)	✓

In Attendance: Janice Loz – Land Use Administration

Also present and speaking: Bob Holmes, Dan Emanuelle, Mike Biagiotti, Erin Boyer (Zoom)

UNAPPROVED

Ben Frost, Planning Board Chair, volunteered to facilitate the joint meeting of the Planning Board, the Select Board and the Zoning Board of Adjustment which opened the meeting at 7:00 PM. The three Boards were meeting to discuss Short-Term Rentals (STR) for the Town of Warner. Ben raised some fundamental questions for members to consider, is there a problem that needs to be addressed, if so, should we regulate it, if so, then, how?

Ben said in the packets prepared for the members was some background information on STR's. Also included were selected excerpts from the Zoning Ordinances, including the Definitions section of the ordinances. There is no definition specific to STR's. The next item provided in the packet was Article IV General Provisions. If they were to regulate STR's it may fit into the General Provisions or in its own section similar to Workforce Housing. The last section in the provided materials was the TABLE 1, USE REGULATIONS (USE Table). Ben said he and Janice have had conversations about the USE Table and STR's. In the Retail and Services section, number 8., Lodging House or Bed and Breakfast, neither term is defined in the Zoning Ordinance. Ben proposed the question, "what is a Lodging House?" The Planner's Dictionary includes a couple of references to lodgings although they could come up with their own definition. Ben said they do not have a sense of whether to regulate STR's. One could argue it fits the definition of a lodging house but, that is not defined either.

Also, included in the packet is a presentation done by Attorney Cordell Johnston, who recently retired from the Municipal Association after about 20 years. This presentation was part of a Spring Zoning and Planning Conference. There is no statutory definition of STR or accepted definition. The presentation outlines a couple of different approaches and states what some New Hampshire (NH) towns have enacted.

Ben reference the meeting Agenda which had an item labeled "Zoning versus Business Regulation." The Select Board has the power to regulate businesses by adopting a bylaw, or the Zoning Ordinances could be amended to include STR's or both.

Ben asked members if they would like to hear public first so they could get a sense of what direction to take. James Gaffney, from the Planning Board, said it may be helpful to read out a couple of the key definitions that already exist, such as, dwelling unit. James read from the Ordinances, "dwelling unit is one or more living or sleeping rooms arranged for the use of one or more individuals living as a single housekeeping unit with cooking, living, sanitation, and sleeping facilities." James noted that a dwelling unit is suggested by this definition to not be transient in nature. Ben said the term "single housekeeping unit" suggests some degree of permanence.

Harry Seidel, the Vice-Chair of the Zoning Board of Adjustment (ZBA), said he read what Cordell Johnston had written on this subject. His evaluation of that definition was that it was not strong enough because it lacks the word "residential." He thinks the term "residential" is one of the more significant criteria in talking about a dwelling unit. Harry said, non-residential use and residential use are not defined. Also, lodging house is not defined in the Ordinances.

Barb Marty, ZBA Chair, said "legal residence" is defined, which reads, "shall be a person that is living at a permanent fixed place domicile or abode at a specific address which they intend to return despite temporary absence." Ben said this was amended in 2015 he didn't know when it was originally adopted. He asked where this is used in the Zoning Ordinance. Barb said it is in the Definitions section on page 4.

UNAPPROVED

James said in the Ordinances overtime there were uses that were commonly understood that have subsequently fallen out of favor. He said that may be the case with the term Lodging House and other terms they have struggled with over the years.

Andy Bodnarik, Planning Board member, said terms they have struggled with lately, is whether it is an inn or some other commercial use. He thought they should talk about Hotels, Motels and Bed and Breakfasts, as well. He questioned where these terms are going to be addressed, in definitions, or as a separate ordinance similar to the Excavation Ordinance.

James said we may have (Planning) Board support to define Lodging House and what a STR is. Ben said maybe start by defining terms we already use and add to that STR's.

Ben said there are two different types of zoning ordinances, there is Permissive and Restrictive. A Permissive zoning ordinance lists those uses that are permitted. If it is not listed, it is not permitted. The Town of Warner has Permissive ordinances. If something is not listed and not arguably within another term like lodging house which could potentially be considered as a STR then it is not a permitted use. For that use to be allowed it would require a variance granted by the ZBA.

Ben said the other types of zoning ordinances are Restrictive which is the opposite, everything is permitted except for those things that are explicitly restricted. Those type of ordinances are unusual, and he has not seen any in NH although there may be some.

Ben asked the members if they want to hear from the public, the consensus was, yes.

Bob Holmes, there are STR's, Hotels, Motels, Lodging homes, seasonal homes that are rented out either on a lake or in the woods. These Uses are very different from each other, he doesn't think they can be grouped together. A hotel with 500 rooms is different from a person who rents a bedroom out of their house. Some people have a second home and when they are not using it they rent to their friends or other folks. He is not aware of any problem that exists with the new Uses such as an Air-BnB, which are rented for a night or a weekend or two weeks. He is not aware of any issues with single family houses used in this way.

Ben said they don't care about the platform, whether it is Air-BnB or VRBO.

Christine Frost, Select Board member, said the reason we are having this conversation was because there were complaints sent to the Select Board about people doing STR's. So, the Board went to the Planning Board and asked them to help us define a STR. Bob said he didn't think those people should be responded to. If there is really a nuisance, then the police should be involved. There are legal remedies for this type of problem. Christine said she thinks they need to pay attention to any person who brings an issue forward to the Select Board.

Mike Biagiotti said he came tonight to get educated about what is going on. He asked if there is a problem? He sides on trusting our homeowners. He is not a fan in restricting property rights in any way, except when there is a clear and decisive problem. He went on Air-BnB and VRBO and he thinks there are four STR's in all of Warner. He doesn't want one particular issue to put a blanket over property rights of homeowners. STR's are an industry that didn't exist over 10 years ago. There are long-term rentals and people who rent seasonally and there are home exchanges. Which is great way for families to take low-cost vacations.

UNAPPROVED

Ben said, the online industry is very recent, although this was previously done through realtors for much longer.

Dan Emmanuel, he has not brought forward a specific complaint although others in his neighborhood have. He believes we need to trust people to do the right thing, although he knows things can go awful. They have in some ways seen that in their neighborhood. He is not opposed to Air-BnB's, Hotels and Bed and Breakfasts. What does concern him is when people are allowed to do things and it changes the complexion of the neighborhood. It changes the characteristics of the neighborhood and the safety. When there are rules and ordinances, he would be in favor of using them. He thinks they should also look at terms like home occupation. There are a number of cases where a hotel is strictly a commercial investment. Often an BnB has an owner who resides on the property. When the owner is not on the property then it is treated more like an investment property, which can be subject to the risks of owning an investment. When you have seven to ten people moving in and out of the house from one day to the next that becomes a concern that changes the complexion of the neighborhood and the zoning that was intended to cover a district. He would like to see some thoughtful recommendations to ensure that the spirit of our ordinances is upheld but, still give taxpayers the benefit of the properties they own.

Andy said on page 7 of our Ordinances is a section on Home Occupation. Dan said he thinks it applies to this situation; homeowners of a home business must reside in the property. So, what do you do when you have a homeowner that runs a STR and lives out of state and doesn't reside there? Dan said then it resembles of an investment or a commercial venture. Ben asked if he was suggesting that a STR use in an owner-occupied dwelling is a home occupation. Dan said he is not suggesting it is a home occupation, but it is a source of income, you could look at the IRS regulations on how many days someone is allowed to rent a house before they are obligated to declare the income. What he is suggesting is if the Town has defined a Home Occupation subject to a homeowner having to reside on that property that gives some parameters.

James thanked Dan for his comments. James said our current ordinances being permissive does not arguably accommodate STR's. He said someone who lives in a house and rents out a room or an accessory apartment, then we are starting to get into the area of accessory use. James asked Janice to put a link to the Zoning Ordinance document in the Zoom Chat.

Karen Coyne, Planning Board member, said when Dan mentioned owner occupied, is he envisioning the owner is always there like in a BnB situation or the owner is there at least sometimes. She said for instance if the owner is in the house all summer long and leaves all winter and every week a different family rents the home. She wondered where the line was. James asked is it your primary dwelling? Karen said what if two-thirds of the year the owner is in the house. So, they would rent for three months of the year. So, is that where they are still domiciled legally?

Dan Emmanuel said it would be clear as to where they are registered to vote and where does the homeowner declare taxes. Dan said that he has read the Cordell Johnston presentation and it is confusing. But, if the Town has a Permissible Ordinance, it suggests that if you don't have STR's defined then you look to other categories that may be close, like Home Occupations, Hotels, BnB's and then use the Variance process to give approval when necessary. Dan said they love living in Warner, they have faith in the process of trying to sort this out.

Sam Bower, Select Board member, asked if it would be helpful in reading the definitions. The Town allows for residential home occupied businesses that are subordinate to the majority function of the owner residing in that building. Janice Loz, Land Use Administration, said she

UNAPPROVED

believes home occupations are limited to 25% of the use of the home. Ben said he believes it doesn't have to be homeowner occupied because renters occupying a home can have home occupation.

Erin Boyer, via Zoom, she is an owner of an Air-BnB in Town, at 183 Waterloo Street. She is not a resident of NH. When they purchased the home it was their intention to reside most of the time in Warner, circumstances have changed and we cannot make it our full time house. It is their hope to continue to rent the property. They have invested \$70,000 into the property, including taking down trees that were overhanging the street that were a danger to neighbors using the walking path. There are properties that go into dereliction that have people that live there full time. Whereas they take pride in their house and the property. She commented that all the surrounding towns allow STR's, she doesn't know if that is permanent, or they haven't addressed it yet. At the beginning they came in and tried to work with the Town to find out if a permit was required and got a lot of confused responses. But, they have appreciated having the open communication. Would they consider that we have purchased the property knowing that we could use it for a STR and that was their expectation. They asked deliberately before completing purchase of the property. They love Warner. It is very difficult being in the position of having bought the property under one set of assumptions and now changing the rights of the homeowner. Obviously, they will respect whatever the Town decides as we hope to be part of the community for years to come.

Karen asked for clarification on the complaints that were received were they strictly in reference to non-owner-occupied rentals. Christine, said it was the non-owner-occupied, not that it matters, what matters is defining things. The Select Board did not know the direction to send an owner of this type of use. Defining it gives them the capacity to know what to do.

Elizabeth Labbe, ZBA member, said she found in RSA 788, the STR definition. She referenced that specifically because they are looking at businesses. This RSA is specifically about taxes on meals and rooms, which addresses STR's very specifically and also addresses advertisements. An issue she is having is how are we regulating and that they have the correct license. Do we do that with BnB's? James said it is permitted with a Special Exception. Elizabeth agreed and said only Hotels and Motels are allowed in the Intervale as a permitted use. Everywhere else has to have a Special Exception or a Variance. Maybe we could offer permits or something like that. Ben clarified that she is suggesting Select Board permits. Elizabeth said, yes, as outlined in RSA 41:11-C.

Harry, referenced the Master Plan which talks about the importance of the natural rural character, community spirit, family ties. These are the things people responded to in the Town of Warner's Master Plan. He believes these characteristics are threatened when someone puts an out of state owner of the property, and there are a lot of them, that look at Warner as great places to purchase property and achieve wealth over time. If they can have the property and not live there and rent them out, that is when we start having problems. We have a housing issue; we are trying to encourage development and affordable housing for the elderly. Between 1990 and 2000 there was an 76% increase in individuals over 75 years old living in Warner. These people can't find places to live, and they can't find affordable living. Harry said when you look at Cordell Johnston's problems that he had with STR's one thing that rang true is the effect on the long-term housing market. It takes a whole section of potential residents away from people who are looking for affordable housing. Couple that with Warner residents wanting to maintain the spirit of the community this is counter to the aims of the Master Plan. He doesn't think it is a productive direction for the Town of Warner.

UNAPPROVED

James said the Master Plan is not a binding document, it is a Planning Board document. There are a lot of long-term residents of this Town that have lived here for decades and many of them are elderly and are priced out of their homes by a combination of factors, taxes, inflation, the cost of oil. He believes this discussion is not about who should own property and who should not. Private property is purchased, and the Town does not have the right to say who should own property. The Town has the power to regulate certain Uses, the question is whether the Town should regulate a Use. James said he would like members to address what is the purpose of this meeting. He said they should discuss whether there is a problem and whether it is in the best interest of the Town to define various Uses.

James said do we have a problem in Town, so there are a number of complaints about homes being used as STR's. The homes that are subject of the complaints are older homes that are large. There are older homes, that can accommodate a large number of people. So, is the issue are an appropriate number of people for a specific dwelling using the home. So, arguably is the normal amount of traffic for a home of that size or is it that the people using the home are not residents of the Town, or a separate issue. He is not aware of a situation where anyone reached out to the Chief of Police to address a disorderly conduct situation.

Ben said they do have two representative complaints that were submitted for this meeting. One complaint is from Patricia Goneau, at 160 Waterloo Street and the other from Beverley Howe also on Waterloo Street. Both express similar sentiments, about the change of character in the neighborhood and not knowing who is occupying the place. There isn't a reference in these letters to complaints about noise or disturbances that the police would have the authority to address.

James asked if there is anything in the complaints that address our current Ordinances. Ben said in both letters there is a contention that the Use of the property as a STR is in violation of the Zoning Ordinance.

Andy said the meeting started out discussing the difference between a permissive and a restrictive ordinance. He thinks it is quite clear that STR's are not a permitted Use and that is the problem. There was no Variance applied for, and there was no consultation. Janice said the owners of the STR did contact the Land Use office. Janice did research and told them they would have to go to the ZBA for a Special Exception under the Use Lodging House. Andy said the problem is he does not think they are dealing with a Lodging House. We offer Conceptual Consultations with the full (Planning) Board to discuss the problem and go through the regulation and point out the potential applications. Additionally, he struggles with the Home Occupation Ordinance and a Conditional Use Permit. Also, he appreciates the information that Elizabeth Labbe gave them.

James said he didn't think anyone was going to argue that a property owner doesn't have a right rent out their home on a long-term basis. Ben agreed.

Ben said the question is what is the division between long term and short term human occupancy of a dwelling unit that is residential in character. James said they probably want to build the whole discussion around residency versus commercial use.

Harry said the Master Plan is not something to be dismissed lightly. He said that James talks about property owners' rights and the Master Plan is something much more serious than its my property and my rights and I can do what I want with it. The Master Plan was developed with input from 230 or more residents who were queried about what they wanted the Town to be like. A very serious effort was made to understand what matters to people in Warner. How do they want their town to be. Everything that we do, the Zoning Board, the Planning Board it all comes from the

UNAPPROVED

Master Plan. It is a very serious document it is not something to be dismissed. Harry considers the Master Plan very seriously as a guide as to where the Town is going in long term planning.

James said the Master Plan is a non-binding document. Ben suggested that they were both right, the Master Plan is important and property rights are important as well as trying to find a balance between the two.

Karen said STR's didn't exist when the Master Plan was developed. So, we are dealing with something brand new.

Harry said the problem he is wrestling with is if we go down the path of a recreational vacation use for STR's and we do that for 20 to 30 years we will have an entirely different environment and we won't be able to go back. We have something very special and sacred in Warner and the mix of farm community and art community and the community spirit is really something valuable. Harry said he takes this very seriously and cautioned all the members to consider the long-term effects.

Erin Boyer, via Zoom, they did consult an attorney and asked if they had to apply for a Variance. She said attorneys and reasonable people can disagree. The consultation response was they would not have to apply for a variance, given there are not clear definitions listed. She said they are not going to fight the Town legally, she just wanted to share their attorney's advice.

Barb said there is a list of STR ordinances that have been instituted within the last two years in about 31 towns. It is mostly concentrated in towns that have a shoreline. This is definitely coming to Warner. There are books and seminars about how to get rich investing in this type of venture. She believes this is something we need to get our arms around or like Harry said it will change the character of our Town. Ben confirmed with Barb that was the list on the Office of Planning and Development site. Ben said they can send the link out to members.

Janice said the USE Table has the term Lodging House, she wanted help understanding that term. What is it and does it solve the problem, or not? Is it as simple as defining Lodging House and being done with this issue.

Bob Holmes said he lived in a Lodging House for a while, it was a house with one owner and the bedrooms are all rented out. There are varying lengths of stay for each person and you have full use of the house. They don't provide food, like a Boarding House. It is an old fashioned term which was available to 19th century for mill workers.

James said there are a ton of definitions the underlying factor that differentiates it from a STR is residency. The primary resident is there and whomever is lodging there for whatever period of time they are contracted for. That is the key point of the discussion is homeowners are in residency. A Hotel is a short term, non-residential transaction.

Karen referenced the Lodging definition in the Planner's Dictionary which addresses three or more not to exceed 12 and not open to transient guests.

Harry said Lodging House is not defined in our Ordinances, without a definition the Town loses control. He said Warner definitely needs to define it.

Christine, said instead of searching for a definition members need to create a definition for Warner.

UNAPPROVED

Andy said at one time he went through the whole USE Table and he pointed out every term in the table that was not defined. There are some terms that could easily be defined in Webster's dictionary, but there are still a lot of terms that need defining and Lodging House is just one of them.

Ben said when there is a lack of definition, then it falls on the shoulders of the ZBA. They would determine if a use fits with what might be conceived as a Lodging House and therefore require a Special Exception or a Variance. Those are the options and the ZBA would exercise their best judgment on that, right or wrong, appealed or not, something is learned from the experience. Although, if they defined a term the Planning Board might be able to save the five members of the ZBA the headache of having to interpret a use.

Karen asked if they could define STR. Harry said if you define a STR then people are going to assume it is a use that may be permitted. He thought they should define "Dwelling Unit" and include the word "residential" within it. That is what the Supreme Court of NH used to uphold a case in Portsmouth. That would go toward the whole notion of an abode, living there and taking responsibility and voting and being a resident. The term "residential" would be a good word to get into that definition. Ben said as opposed to the term "transient." Harry agreed.

Janice said there is some benefit to not having the terms pinned down too tightly. She said you never know what is going to come up in the future and what kind of Use is going to be developed in the future and you want to leave some leeway for interpretation.

Harry disagreed; he thinks a tight definition is always better.

Sam said in some degree a definition can be great and help us accomplish our goals. What is the goal? There is an obvious difference between the makers and growers and crafters of Warner that live in their house and want some supplemental income and want to have an artist in residency in their home. How do we make sure that is protected. What is the difference between an out of State owner owning a property that the sole purpose is to be an economic enterprise. As we define terms, we need to be mindful of the objective. Can we find a way to help Short-Term, Air-BnB type rentals be available to folks that want to also occupy those residences. He is open to the discussion about an out-of-state owner whose sole purpose for a home is an economic enterprise.

Barb said if someone came into a residential neighborhood and wanted to build a hotel that would not be allowed. If someone wants to take a home and convert it to, what is essentially, a hotel should not be allowed. It is not a residence any more it's a commercial business in a residential district.

Andy said they are struggling with what is residential growth versus what is commercial which is a big part of the discussion. Also, a point to consider, is residency required? Does there have to be an owner present at all times? Also, if it is a hotel there is someone there all the time, should emergency services be necessary. A hotel or motel should also be defined. They should consider if someone must be present to represent the owner of the property to deal with liability issues. Once you define a Use you must go to the USE Table and say where it is permitted and how.

Ben said in terms of the issue of who is going to be called when there is a problem, the Zoning Ordinance will not solve that problem. Although, business licensing by the Select Board would address that problem. If someone wants their property to be an STR they would go to the Select Board on an annual basis and file an application for a license to do that, maybe for a fee, they

UNAPPROVED

would indicate a person to contact when there is a problem with the property. That is one of the purposes and benefits of business licensing. As far as he knows the Town doesn't license any business in Town, but it is a tool available for the Town to use.

Harry doesn't see a problem with what Sam mentioned as an intern for agricultural or artist, boarding in a house. Sam said being able to rent out attic space, or space above a commercial space could be acceptable. James said on the merits he doesn't see how that is different than a STR.

Karen said one option is a resident is there full time, another one does not. Which she believes goes back to the commercial versus residential. If it is owner occupied and they rent a room or have a guest, then there is a line drawn between a commercial enterprise where the owner is never in residency, and it is just a business. In terms of the business license, if the house is rented out for five years do I have a business license with the Town. Harry said that is a long-term rental. Karen asked if they define long term rentals. Ben said, no.

Lois Shea, Select Board member, the first question was is there a problem, she thinks the problem is the lack of clarity on the subject. She cannot see any reason not to include a definition in our zoning on STR's. So, ten years from now someone isn't in the same position Janice was in, where she was searching for an answer for the public. Inevitably we will end up with the lawyers talking about who was right. Also, what about the farm stays (agritourism) idea that got folded into the STR industry? Also, what does it mean for someone who has a cottage on Pleasant Pond, maybe an out-of-town resident and they want to rent a couple weeks of the year? When writing the definitions do we want to put a percentage of times that it is okay to rent?

Ben said if they supply a definition, they also have to figure out how it is used and where.

Elizabeth said if there are RSA's that define STR's do we use that definition. Ben clarified that she was referring to RSA 78:23. He responded then, yes and no. That RSA is helpful but is not part of the Planning and Zoning statutes it is not as helpful as we would need. If it was part of RSA 673 which has definitions like "abutter" and "Land Use Boards" that would be controlling. The RSA Elizabeth referenced is in the taxation statute, which is helpful but, it is neither binding or strong enough for their purposes.

Andy said in a recent case we referred an applicant to the state to inquire about business profit taxes on a STR-type of property. If the state finds it is a commercial enterprise, then they would owe taxes to the state for that Use. Whether or not the Town permits the Use, they would still be on the hook to the state if they find that Use is subject to taxation. It is a complicated issue and the problem we are having is how to define the Use. The Ordinances being permissive is the only thing we have to protect the Town, if this is not defined.

Harry said he doesn't see the value in defining STR's unless we know whether we want to permit it, or not. From a Zoning Board perspective to have a STR use that is permitted by Special Exception means the ZBA is going to have the dirty job of determining every case while they consider the neighbors and the applicant. Honestly, he thinks the Planning Board would be ducking the issue if they were to say it was permitted by Special Exception leaving it to the ZBA. He thinks it would be braver to say, no STR's, or have a really tight definition that protects the Town.

Jan Gugliotti, ZBA Alternate member, said she doesn't think you can decide to have it or not have it, until you define it. There may be a lot of controversy, but the mechanics of defining it could be

UNAPPROVED

simple if you had some set characteristics, owner occupied or not, number of bedrooms, on-site parking that matches the number of bedrooms, days of concurrent stays, number of people at one time, maximum people given the bedrooms. There are criteria and you can pick and choose, can you do it in R-1 but not in R-2 and if you do you may need a Special Exception. You can get a definition, agreeing on it may not be easy, but the process of getting to a set of criteria is to define STR's.

James asked if we could start to define it, right now?

Sam asked about a previous conversation about the Select Board creating a bylaw? Also, he wondered about the Conditional Use Permit?

Ben said the Select Board has the power to adopt bylaws to regulate businesses. STR's as a business use may also be subject to regulation through a business licensing process. Sam said if there was a STR definition and in theory STR's could be allowed by permit issued by the Select Board. Ben said STR's could have a stand-alone bylaw by the Select Board without any reference to zoning. Or there could be an interaction between the Zoning Ordinance and the Select Board similar to the sign permit process. Ben said Conditional Use Permits are a very different thing. The authority for that is in the innovative land use control statute, RSA 674:21. It allows municipalities as a zoning provision the ability to issue Conditional Use Permits which are allowable upon conditions being met. It is like a Special Exception except the authority to grant Conditional Use permits are given to bodies other than the ZBA, like the Planning Board, the Select Board, or the Building Inspector. Sam said so if you had a list of conditions like number of rooms, parking availability and the conditions were met then the permit could be issued. Ben said it would be no different than a Special Exception.

Christine said making the definition is critical. The lack of clarity has cost the Town money when they cannot point people in the right direction then attorney's become involved which costs the Town money.

Karen asked if a hotel or motel came into Town would we receive taxes from those entities? James said from property taxes and a portion that the state collects for room and meals tax. Karen said so with no owner occupied commercial STR's is the Town receiving any of that room and meals tax? Ben said, no because the state is not collecting any from STR's. Bob Holmes interjected that the state is collecting from companies like Air-BnB. Ben said but, potentially the Town is not.

Janice commented that she read that when a town does a permit for STR's there could be component for a Site Plan Review in the permitting process, which could check parking and sewer and water, etc. Sam said that could be part of the permit checklist. Janice said, correct. Ben said in the same way that some home occupations are subject to Site Plan Review because of scope and scale.

Elizabeth said a Newbury Land Use Board member stopped by the office earlier and mentioned that she manages a STR for her daughter on Lake Sunapee. She stated that she absolutely has to pay the meals and rooms tax to the State, and it has to be licensed by the State. Ben said good to know, thank you.

Dan Emmanuel wondered whatever process the Town decides to use would there be an opportunity for abutters to weigh in? Ben said it could, depending on how it is structured.

UNAPPROVED

Christine said, always. The participation from the public is important and drives the process.

Ben said that is important. He clarified with Dan that his request was relative to a specific STR getting permission to operate. Dan indicated, yes. Ben said it depends on what process is used. In terms of a business permit, not necessarily, but it could. A ZBA Special Exception, absolutely yes. A Conditional Use Permit absolutely yes. A Site Plan Review, yes. Wherever an abutter notification is required.

James said we cannot define STR until they define a Lodging House. James purposed the following: **A Lodging House:** An owner-occupied dwelling unit which provides lodging for three to twelve non-transient individuals for defined periods of time where said occupancy is the renters/occupants primary residence. **A Short-Term Rental:** A non-owner-occupied dwelling unit available for rent for transient nonresidential purposes for a to-be-determined period of time. The to-be-determined period of time could be 1-to-90 days or congruent with meals and lodging has on the books which he thinks is 85 days. Christine added it should be 185 days.

James reiterated this is a starting point that can be worked on. He said they probably should define Bed and Breakfast, as well. He purposed they start with these sample definitions. Ben suggested they not wordsmith the definitions tonight until they settle on the principles. James said the principles being whether it is transient or residential, as it applies to STR's and Lodging Houses.

Harry said he heard under the pseudonym Lodging House a definition for a STR as being owner occupied. James said they are two different items. Harry said right now they do not have a definition of Lodging House and maybe in some ways that protects us. He believes they need to decide whether STR's in any capacity is desirable in the Town of Warner. He does not see why the act of defining it tonight is useful.

Ben said he does not suggest defining it tonight. He is suggested they come up with a set of principles that help them with definitions if they choose to do so. They can separately deal with Lodging House and STR as mutually exclusive definitions. Then they can decide, for instance, to go forward with the Lodging House definition and potentially not the STR definition, which could exclude STR's from being a permitted use. Or they could proceed with both and define in what districts and by what means either is permitted. James said if only to provide clarity on Lodging House and Bed and Breakfast, that may be sufficient. Defining a STR provides a definition for the ZBA, whether it is allowed or not. Ben said if we define a STR then it has to be somewhere else in the Zoning Ordinances. It could be within the definition of a Lodging House, even if the definition specifically excludes STR's.

Jan said she believes the business license idea was a good one, she didn't think we would permit anything big enough to require a site plan. Creating a set of credentials and a set of draft definitions, which Board would actually take the first step to do this. Ben said when making amendments to the Zoning Ordinances there are three possible routes. One is the Planning Board drafts a proposal with whatever help it chooses to seek. Secondly, the Select Board can also purpose zoning amendments. The third option is by citizen petition.

Karen said in terms of deciding whether we want STR's, before defining it. She said we have to know what it is before deciding if we want it or not.

Harry asked what are the principles that have been discussed?

UNAPPROVED

Ben said some he has heard are differentiating between commercial and residential. Also, differentiating between residential and transient. Whether to require owner occupancy and figuring out what that means. Whether to require the property to be the domicile, which is different from owner occupancy, which would mean the principal place of occupancy. Harry asked would it also be a principle of whether it is desirable, or whether it is supported by the Master Plan? Ben said that is a threshold question.

Barb commented that we hear a lot about the rights of the owner, but we also have to consider the rights of the abutters and people who live in these neighborhoods. Their home is one of the biggest investments of their life. They pick the location based on the location and the zoning in town. When those factors are changed without notice of input, they feel offended and sometimes go to legal means to find a solution. So, by having this process and coming up with these definitions we can avoid a lot of unhappiness because people's expectations will be set, in some regard.

Andy said a definition for a dwelling unit is another key to this process. Also, the number of days and the number of people which may have been captured in the Planner's Dictionary excerpt. When one thing is defined then you run into problems elsewhere. He likes the idea of a Conditional Use Permit similar to Home Occupation requirements. There is a whole laundry list of criteria developed when we looked at Home Occupations. Parking limits comes up when talking about residential or an apartment building. Registration with the Town could be one of the criteria. There are instances where basic occupancy requirements where the building is checked to see if it is safe.

Ben addressed the next steps. He thinks it is incumbent on the Planning Board to figure out the starting point probably in the Work Session on November 21. They will work on drafts of definitions. This is not a commitment to do anything, it is still an exploration. If the Planning Board decides to put forth amendments, they will be put it forth in at least one Public Hearing. Then if the Planning Board decides to move forward with a potential amendment it will then go to voters, for them to decide. If the Select Board decides to do a business regulation that is a totally different process.

Christine thanked those who contributed to the meeting and the public for coming out and getting involved in the process.

James asked if the posting for the deadlines for amendments and petitions could be made available to the public. Janice said she sent that to the members and said she would get it posted to the website.

A Citizens Petitions must be filed with, the Town Clerk, between November 14, and December 14, 2022.

The meeting closed at 9:00 PM

Respectfully submitted by:

Janice Loz