

UNAPPROVED MINUTES



TOWN OF WARNER

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**Planning Board Meeting
Town Hall- Lower Meeting Room**

Monday, December 19, 2022

7:00 PM

I. OPEN MEETING at 7:06 PM.

ROLL CALL:

Board Member	Present	Absent
Andy Bodnarik	✓	
Karen Coyne	✓ via zoom	
Ben Frost (Chair)	✓	
James Gaffney	✓	
Don Hall (Vice Chair)	✓	
Ben Inman		✓
Lois Shea (Select Board)		✓

In Attendance Janice Loz – Land Use Administration

Also present and speaking: Alice Chamberlin (Groundwater Committee), Mike Tardiff (Central New Hampshire Regional Planning Commission - CNHRPC), Matt Monahan via Zoom (Warner Circuit Rider and CNHRPC), Harry Seidel via Zoom

II. NEW BUSINESS

The Chair stated there was no new business, with emphasis on follow up on unfinished business.

III. UNFINISHED BUSINESS

A. Groundwater Protection Update - Alice Chamberlin, Mike Tardiff (CNHRPC), Matt Monahan (Circuit Rider and CNHRPC)

Summary of Groundwater Protection Public Meeting

Alice Chamberlin updated the board with news from the public informational meeting which occurred a week prior. Alice said the public informational meeting focused mostly on dialogue and questions from the audience. Major takeaways from the informational

UNAPPROVED MINUTES

meeting were the public's support for the groundwater protection, and concerns as to why the proposal is not more strict. Mike Tardiff mentioned the engagement techniques used to capture the public's attention on this project, such as postcards sent to impacted individuals and an electronic display board in town. Andy Bodnarik gave insight as to why the postcards were sent only to individuals being impacted, and not the entire town. Mike followed up with the explanation to focus on a target group due to the history of the groundwater system. Andy said the audience had an acute interest on prohibited and regulated use of substances/material, as well as the design and constant testing of the groundwater system. Which lead to how the groundwater system ultimately impacts business, wildlife, and residents. Alice reiterated the purpose of the groundwater committee tonight was to recognize the public's questions and comments, and to understand the process and the next steps being taken on the ordinances. The Chair, clarified with Alice the plan tonight was to decide on whether to adjust the ordinances further or bring them to a public hearing.

The Chair checked in with Board members to see if they had any questions or comments about the process, before discussing the ordinances. James Gaffney inquired about the groundwater map. The Chair directed the Board to the ordinance discussion. Alice stated there have been small changes to the new draft, which is draft number 11 compiled on December 19, 2022.

Updates and Changes Made to Ordinances

Matt Monahan pinpointed any changes that were made from the previous draft. Starting with a placeholder section for the finalized version of the new map that would be inserted. This map would impact Article 2a and 2c. With mention to the Groundwater Protection District Boundaries, this map would create a more distinct interpretation of those lines. Matt stated this would support the scientific element where these districts are driven by the aquifer, and if someone were to dispute those boundaries, there would be provisions implemented for that. It was recommended by James that the term "scientific" is used without a proper explanation of where the boundaries came from. It was mentioned to make an additional statement that references where the aquifer boundary originates, which would support the science behind the Groundwater Protection. Matt said the boundary is driven by the aquifer. The aquifer is defined by previous geographical surveys, and in-depth research on potential boundaries being defined within an area, sorted by soil types and other environmental variables. Matt mentioned the origin of the aquifer is from a University of New Hampshire (UNH) datasets titled Granite and USGS Data.

The Chair agreed with James and suggested the explanation should be mentioned somewhere within the draft ordinances. Alice stated there was a reference to USGS datasets which underpins the aquifer maps, which are mentioned within the ordinances. However, the Chair agreed with James that a specific reference regarding the dataset used to build this map, needs to be outlined on the map and not just within ordinances. James emphasized the reasoning behind this change is to assist the reader in comprehending whether these boundaries came out of a political process versus a scientific process, or hybrid of those two mechanisms. Matt agreed to make a change within the map to accommodate the request.

The Board moved onto Article 3 of the Groundwater Protection draft ordinance, which focused on definitions. Matt followed up on Mike's request about the definition of "Bulk Storage." Matt justified the definition which was based on similar terms within the book of

UNAPPROVED MINUTES

zoning terms, which gave rise to the already established definition of "Bulk Storage." James questioned that the lack of a volume definition within the term "Bulk Storage," which leads to ambiguity on classifying containers as "Bulk Storage." James claims there needs to be a better classification of what the volume threshold considered in "Bulk Storage." Matt agreed to research other towns and looking into some numeric thresholds to better identify the term volume and clean up the definition of "Bulk Storage." The Chair suggested the addition of the words "commercially distributed" to the definition. "Bulk Storage tank or other container used for the storage of regulated substance which is (*commercially distributed or resale*) to be distributed further into smaller containers for others end users." (Article 3 Amendment - Draft 11 of Groundwater Committee). This additional would focus the attention on how it is moving towards its end user. James highlighted how it doesn't change the definition but addressed the concern of the specific users. The Chair believed this addition will answer the question, who is being regulated, which is the commercial distributor. Matt agreed with this addition to the definition.

James questioned the definition of junkyard, which is lengthy, and does not define a junkyard very well. He believed there is uncertainty when it comes to the word "junk." It was suggested to potentially add a reference to RSA 236:112. Andy said it is tricky to ensure you do not trap motor vehicle dealerships. Andy detailed the referenced RSA 236:126, when read does mention referencing RSA 236:112i. The Chair recommended looking up a junkyard ordinance. The conversation included the question to either define a junkyard in reference to an ordinance or number of unregistered vehicles. Don Hall questioned the enforcement of regulating junkyards. The Chair stated previous legislation defines a junkyard based on the number of unregistered vehicles. Matt supported the already established definition because it is based on the vantage point of the aquifer and the unregistered cars regulations might lead to a separate situation. Moreover, the term junkyard and the use of the RSA by itself is often based on the individual town's interpretation, however it is often dealt with on a case-by-case basis. Therefore, the term junkyard is only being referred in reference to the aquifer. Andy offered a compromise, to refer directly to the definition stated in RSA 236:12 that covers all the unknown of what junk is, mentioning batteries, rubber, motor vehicles, iron scrap which can impact groundwater. The Chair justified this addition because while the reference doesn't necessarily use the term junk, it alludes to material considered in a junkyard.

James' concern was that there are statements regarding junk affecting groundwater, but we need to understand what is defined as junk. Don answered this by stating that previous cases involved abutters next to junkyards, and this term was often already established. Alice affirmed that adding the reference of RSA 236:12 helps better define a junkyard. Andy mentioned the potential chemistry in regard to how a junkyard impacts the surrounding environment. Janice informed the Board that the General Provisions of Zoning Ordinances, already has a reference to junkyard as a place, or storage of unregistered vehicles or other scrap. She suggested that since junkyard is referenced somewhere else it might be okay to leave the definition as is, leading to a cross reference to the General Provisions.

The Chair reiterated that based on what Andy said, there is value to including a definition of junkyard RSA 236:112. He suggested that if the Board decides to advance this ordinance to the January public hearing the junkyard discussion can continue. Matt summed up that the language will be altered to better align with the General Provisions of the Zoning Ordinances.

UNAPPROVED MINUTES

Matt continued to another definition that was altered, "snow dump." Which is defined for the purpose of this ordinance as a location where snow, which has been cleared from off-site locations, is placed for disposal. There was no further discussion on this definition and the discussion moved to Article 11b.

James clarified for Section 6 - exempted uses parts b and c. James believed these sections regulate five-gallon cans of fuel. However, Matt clarified that if it is less than five gallons of fuel you are exempt. James suggested that maybe it should read six gallons or less, pointing out the need for five-and-a-half gallon containers in commercial use. Andy raised concerns that per the definitions in the RSA, they already specified quantities, and do not want to conflict volume numbers with the RSA's protocol. Matt clarified that these exempted uses do not mean that people cannot have these substances but trying to provide clarity on variables that may fall under permitted uses. Such as someone's home heating tank would not be included in these ordinances. Matt explained that exempted uses are written in a way that supports permitted uses within this ordinance. Prohibited and conditional sections are the most important sections and if there is confusion on any other sections, we can cut the exempted uses.

The Chair summed up the fault line of Section 6 Exempted Uses, by saying the difference between exempt users and permitted users is unclear. The Chair then suggested cutting the entirety of Section 6. Janice offered that the reader might like to know that private residences are exempt. Alice suggested putting it into the second sentence of permitted uses. Matt and the Chair agreed that exempted uses should be kept except b and c. However, the change will erase the words exempted uses and sections a, d, e, and f will be put under as a subsection of permitted uses.

James inquired about battery storage and how it impacts the ordinance. Mike says it is determined it should come under regulated substances. Matt clarified with the Board that prohibited uses are only talking about substances over the aquifer zone. He also stated that grandfathered uses are okay, however it is the expansion of them over the aquifer that would be a potential prohibited use.

James asked a question regarding prohibited uses within the Groundwater Protection District, which is the development or operation of a petroleum bulk plant or terminal. He asked hypothetically could the Planning Board issue a conditional use permit. Matt responded that is a question for the Board with any of these uses and can be open to interpretation. These prohibited uses are just over the aquifer as a conditional use, and it is open to the board to discuss if you do not think they belong in the aquifer. Andy said that the public had comments about people using other non-prohibited areas of the town and building these prohibited use items. Therefore, it is important to illuminate the importance of protection to our groundwater system. What needs to be changed above ground to protect what's below ground. Matt agreed with Andy, stating these two lists, the prohibited and conditional uses, help determine the added layer of protection of our groundwater system.

After Matt's summary of the rest of the sections within this draft, the Chair believed section 11 and 12, which are the savings clause, and the effect date are not needed within the draft. Under conditional uses, Andy suggested a reference that would answer the question, quantities exceeding or equal to a reportable quantity. Andy and the Chair make a point of a hyperlink to the online PDF version of this draft that will give direct access to all references on the draft. The Chair summarized Andy's suggestion, which is adding to

UNAPPROVED MINUTES

the definition of regulated substances, “as amended.” Therefore, it references any new substances added to the regulated substance lists. James recommended changing a sentence under permitted uses by deleting the word “allowed.”

Summary of Changes Made by Board

The Chair summarized all the suggested changes to the Groundwater Protection draft ordinance. Starting with how Matt is going to look at the potential biometric measures related to the definition “Bulk Storage.” Also, added to the definition will be the “commercially” in relation to distributed. In terms of the phrase “junkyard” in Article 4.c. and 4.e., Matt will rewrite it in order to conform to the Zoning Ordinances, excluding unregistered motor vehicles. Within the definition of “Regulated Substances” the wording will be amended. Under Article 11.b. permitted uses, number 5, will also include items a, b, e, f, g, h renumbered 1-6. Also, under permitted uses the word “allowed” will be erased. Under conditional uses, section b would be altered to include the verbiage “equal to or exceeding reportable quantities (RQ).” Lastly number 12 and 13 of this draft are to be deleted.

Janice wondered if this draft gets accepted is the application process affected in any way going forward. She clarified that a map of the aquifer is provided to Land Use so the boundaries are easily identifiable. She asked if in regard to the notification of stakeholders, if an applicant is building within the aquifer, will all individuals within the aquifer need to be notified. The Groundwater Committee and the Chair said, no.

The Chair said the mission tonight is to decide whether to move this draft onto the public hearing, slated for January 9, 2023. With anticipation to make revisions after that public hearing, and before the second public hearing slated for January 30th. Before proceeding with the motion, Don asked Alice how much the dialogue tonight reflects on the precinct boundaries. Proposing the question if they are going to follow the same set of guidelines or would they have their own, respecting the private and town entities. They would be subject to the regulations depending on the aquifer zone. There are existing state regulations that would apply to uses. Don added that it may be useful to add some dialogue from the precinct to get their perspective and thoughts on these groundwater ordinances. Alice highlights that this ordinance is to bring protection to groundwater and the aquifer, and does not add any cost, like taxation. Alice further stressed that postcards were sent to inform the precinct stakeholders about this groundwater protection initiative. The Chair said that at the public hearing we make it a point to hear from the precinct commissioners. Alice is happy to accommodate this request and reach out to them prior to the public hearing.

Motion to Move this Proposal to Public Hearing

Andy Bodnarik made a motion to move this proposal to public hearing for January 9, 2023, subject to the changes that were mentioned tonight. Don Hall seconds the motion. Discussion: James was concerned about the timeline associated with this project, and how the draft is still fluid and changes are being made with feedback. He worries about the process being rushed while the subject matter is extensive and needs a substantial amount of dedicated deliberation to make decisions. Therefore, believes it is not ready to push forward for a town meeting this year. Andy mentioned how a lot of effort has already been done, with a substantial amount of effort being accomplished in August. He believes the time is now, and we have a reputable enough draft to push this forward

UNAPPROVED MINUTES

and let the town vote for protection of groundwater. Andy remarked that the committee has put in enough effort and drive towards this project, and to go another year might dilute the process, and protecting groundwater needs to happen sooner than later. Don believed that all efforts were done to grab the attention of the townspeople and the precinct. If we hold off this groundwater protection project any longer, we will lose the stride and importance of this protection order. The Chair identified the commitment of this committee that is led by Alice and added to by Matt and Mike. This may not be the perfect draft yet, but there may never be a perfect draft, however the Chair believes it is ready to go forth and be seen by the public. It is important to start somewhere, and the first step of groundwater protection is with this draft. Karen Coyne said this is roughly the third meeting where we discussed a draft regarding groundwater protection. She commented that this is currently draft 12, which speaks to how much work and care have gone into crafting these ordinances. Ultimately agreeing with the Chair, how it may not be a perfect draft, but it is ready for review with the public.

The Chair called a vote, and explained that a “yes” vote would send the Groundwater Protection Ordinance to public hearing on January 9, 2023. **Roll Call Vote Tally:** 4 - 1. Don Hall – Yes, Andy Bodnarik – Yes, James Gaffney – No, Karen Coyne – Yes. Ben Frost – Yes. It was decided that once Matt refines the changes made to draft 11, and generates the draft 12, it will be moved forward to the public hearing.

B. Capital Improvements Program

James Gaffney made a motion to approve the Capital Improvement Program as presented by the Chair. Don Hall Seconded the motion. Discussion: James questioned what should be done to deliver Capital Improvements (CIP), to the Budget committee, in respect to time and reasonable schedule preferences. The Chair suggested Matt Monahan could help gather and collect the material together in a more expeditious way. James mentioned asking the select board to direct department heads to provide information by a certain date. **Voice Vote Tally:** 5 - 0. Don Hall – Yes, Andy Bodnarik – Yes, James Gaffney – Yes, Karen Coyne – Yes, Ben Frost - Yes. Motion to approve CIP transmittal memo and forward it to the Select Board and the Budget Committee.

C. Rules of Procedure (ROP)

Tabled.

D. Zoning Ordinance Amendments

1. Definitions: Short Term Rentals (STR), Lodging, Bed and Breakfast Inns, Hotel, Motel

Janice said for consistency the word “inns” need to appear after “Bed and Breakfast”, for each instance it occurs in the definitions. This would be consistent with how it is stated in the Use Table. Andy summarized that during the last meeting there was elimination of any references to commercial operations, like Airbnb. The Chair said that a definition for Short Term Rental was added to the list. Language after Bed and Breakfast Inns “occupied by the owner or the owner’s agent” was added. Don said there was confusion with the similarity between the terms “Bed and Breakfast” and “Inn”. There was clarification made by the Chair with the terms “Bed and Breakfast”

UNAPPROVED MINUTES

and "Inn", saying an "Inn" is often referred to longer stay, while a "Bed and Breakfast" is usually only a couple of days.

Janice wondered what the point of was of defining a Short Term Rental if it is not included in the Use Table. Andy said that if it is not in the Use Table it is not allowed. Janice asked what's the point of defining it then. James wonders if there should be a proposal for a change in the Use Table. Don questions the lack of the term "lodge" as well. Janice said currently as long as the term "lodging" is not defined in the current ordinances, it could potentially be construed to include STR's.

The Chair asked Harry Seidel, who is on Zoom, about his comments on the letter submitted for the Boards in reference to his opinion on Short Term Rentals. (See attached) Harry is not a fan of STR's and sees them as a great threat. Harry said he would rather Warner remain a town that does not accepted the establishment of STR's. He detailed his opinion on how a dwelling unit should be defined in a way that should not include a transient occupation. He felt adding STR's to the Use Table would create an undue burden for the Zoning Board of Adjustment. He suggested the Board add a definition for dwelling units that includes living "in residence." This would separate a dwelling unit from everything else, as determined by the Supreme Court. He proposed adding "a residence or residency shall mean a person's place of abode or domicile that is designated by a person as their principal place of physical presence for an indefinite period. Further to the exclusion of all others, such residence or residency shall not be interrupted or lost by a temporary absence from it, if there is an attempt to return to the residence or residency as the principal place of physical residence." He said it is very close to what the town has as a legal resident and would protect the dwelling unit that we have from being construed as a STR. He added that a lodging house is antiquated and doesn't know why we are even bothering to define it. He feels that defining a dwelling unit in a way that protects Warner from Short Term Rentals, which he doesn't want. Harry said the attorney should review any definitions.

The Chair thanked Harry and said he had some really good language for dwelling unit. The Chair said he was not sure the direction of the board is to prohibit Short Term Rentals, recognizing they are already established in Warner. The Chair said the objective tonight is to determine whether to list Short Term Rentals in the Use Table or leave it as an ambiguous term. Janice relayed a comment from an owner of a Bed and Breakfast in town who said STR's are in direct competition with Bed and Breakfast's which are regulated, while STR's are not. Pointing out how Bed and Breakfast's are limited to certain districts, while STR's avoid this limitation.

Andy mentioned to Harry that within the definition of "Dwelling" there is mention of one or more persons as a single housekeeping unit. Which captures the residence idea and defines it as legal residence. The Chair said anyone with an STR would have to come in for a special exception if this definition was added.

Karen, on Zoom, comments on owner occupied and how it plays into the STR definition, and wonders about enforcement of STR's. The Chair said what is being proposed here is to provide additional tools, for clarity within the terms "Dwelling, Short Term Rental, and Bed and Breakfast". Karen said it is important to make a distinction between all these terms, and therefore definitions should be added.

James Gaffney made a motion to add into the Short Term Rental definition that it cannot be rented for "no more than 6 months, per calendar year." Andy Bodnarik seconded the motion, with the addition of adding the term

UNAPPROVED MINUTES

“residential” within the definition of dwelling unit. Discussion: Karen built on Andy’s recommendation and suggested “in residence” after the word provisions. Andy and Don agree to these revisions. Furthermore, The Chair clarifies with Andy that, “inn” will be added to each term “Bed and Breakfast”. James comments that if these changes are adopted then this will be taken to first Public Hearing on January 9, 2023. No further discussion. **Voice Vote Tally:** 5 - 0. Don Hall – Yes, Andy Bodnarik – Yes, James Gaffney – Yes, Karen Coyne – Yes. Ben Frost – Yes.

2. Identifying Warner Zoning Ordinance as a Permissive Ordinance

Janice suggested there needs to be a permissive ordinance statement at the top of the Use Table. Suggesting a statement such as “Building, structures, or land shall be used as permitted by this ordinance. Any use NOT listed in this ordinance is prohibited.” The Chair agreed that the best place is at the top of the Use Table, under the words “Use Regulations.”

Andy Bodnarik made a motion to approve the addition of the permissive ordinance statement to the Use Table. Don Hall seconded the motion. Discussion: None. **Voice Vote Tally:** 5 - 0. Don Hall – Yes, Andy Bodnarik – Yes, James Gaffney – Yes, Karen Coyne – Yes, Ben Frost - Yes.

3. Define Right of Way – Lot Line

The board decided to not address the Right of Way determination for a potential change in the ordinances in 2023. The request from Land Use was to redefine property setbacks determined from the right of way to setbacks determined from a property lot line adjacent to a roadway. This conversation was tabled.

IV. COMMUNICATIONS

None.

V. PUBLIC COMMENT

None

VI. ADJOURN

Motion to adjourn made by Andy Bodnarik. Don Hall seconded the motion. The Chair adjourned the meeting at 10:05pm

Respectfully submitted by,

Molly B. Loz
Recording Secretary
Town of Warner

Warner Planning Board

(Subject: STR's in Warner)

Short Term Rentals

Short Term Rentals (STR's) are currently taking NH towns and the repose of their residents by storm. The predominant outcome has not been a positive one.

The fragile small town sense of calm most of us consider important is under assault. Investors (both from inside and from outside NH) masquerading as thoughtful residents and basking in the good faith of open minded land use officials are profiting off Planning Board weakness and indifference.

Furthermore even when towns have tried to prevent STR's with seemingly tight definitions, STR investor's lawyers hired to achieve the investor's objectives have cleverly brought confusion and conflict into what seemed straight forward.

Towns should use extreme caution with STR's.

- Political consensus whether STR's are in fact desirable should be a requisite before any action, even including a definition of STRs in the Zoning Ordinance.
- Once STRs become a Zoning entity, recent history has shown that expensive litigation for Towns and their residents will surely follow.
- If STRs are actually permitted.....and after later discovery, the town then reverses its allowance of STRs, those that exist because they were previously allowed, are grandfathered and will continue to be troublesome to their neighborhood and tom the town.

My opinions:

- Until comprehensive review proves otherwise and Town meeting consensus favors STRs, we should protect Warner residents and the town of Warner from the undesirable outcomes STRs have already and clearly illustrated.
- To do otherwise would be contrary to the aims and objectives clearly outlined in the Master Plan and reckless.
- I agree it's desirable to have definitions that are clearly supported by other relevant articles in the Zoning Ordinance and which acting together provide an understandable and comprehensive rationale for land use.
- Definitions by themselves, however can do more harm than good.
- Defining 6 other things perhaps related to the subject of STRs but which may not currently exist anymore, such as "Lodging House" is pointless.
- Furthermore, definitions that are not iron clad, but rather, over the moon or ambiguous are equally unhelpful and dangerous.
- Additionally, in the hands of skilled attorneys, definitions "by implication" can develop a presence on their own, that attorneys can use for justification of their client's objective.
- Lodging House definition: Lodging house is a is a [Victorian era](#) term for a form of cheap accommodation that for practical purposes no longer exists.....The slang term [flophouse](#) is roughly the equivalent.... The nearest modern equivalent is a [hostel](#). There are none in Warner and why lodging house was included in Warner's land use table is questionable.

- Unless the Planning Board favors STRs, despite being antiquated, the term Lodging House's proximity to STRs poses a threat. For clarity, Lodging house should be removed from the use table.
- A question for town counsel; If STRs are not listed in the land use table and not defined does this provide actual protection against STR use?

Harry Seidel
28 Bible Hill Rd