

UNAPPROVED MINUTES



TOWN OF WARNER

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Planning Board Meeting

Town Hall- Lower Meeting Room

Monday, January 9, 2023

7:00 PM

I. OPEN MEETING at 7:07 PM.

ROLL CALL:

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

In Attendance: Janice Loz – Land Use Administration

Also present: Holly Riley (White Clover, LLC) – via ZOOM, Alice Chamberlin (Groundwater Committee), Mike Tardiff (CNHRPC), Matt Monahan (Warner Circuit Rider and CHNRP), Ed Mical

II. APPROVAL OF MINUTES: December 5, 2022 and December 17, 2022.

Don Hall made a motion to approve the minutes as amended. Andy Bodnarik seconded the motion. Vote Tally: 6 – 0. The minutes of November 7, 2022 were approved as amended.

Andy Bodnarik made a motion to approve the minutes as amended. Don Hall seconded the motion. Vote Tally: 6 – 0. The minutes of November 7, 2022 were approved as amended.

III. NEW BUSINESS

A. First Public Hearing for Zoning Ordinance Amendments

1. AMENDMENT A: Groundwater Protection Ordinance and Map

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The board reviewed the Groundwater Protection Ordinance comments made by Andy. Then the Board reviewed the Ordinance with comments and recommendations made by the Town's Attorney.

Ray Martin, administrator for the Warner Water Precinct said he strongly agrees with the Groundwater Protection Ordinance and protecting the aquifer.

Alice Chamberlin, Conversation Commission member and the Chair of the Groundwater Protection Committee spoke about the education and outreach initiatives to the public, done by the committee, on the proposed groundwater protection ordinance. Alice thanked the Board for their expertise.

David Bates, added to the conversation by expressing his thanks to the Board and committees that worked on the ordinance. He also states that he is in support of these additional ordinances.

James Gaffney expressed concerns on a very ambitious and short timeline to complete and finetune these ordinances. James believes it is not ready to go forward to the public to vote on.

An email was referenced during the public comment, stating that Susan Bartlett supported the groundwater ordinances.

Nancy Martin clarified that if these ordinances are discussed for an additional four to six more weeks, it will not make it onto the town ballot. Nancy said she opposes extending this process any further. David Bates agrees with not postponing the process.

The Chair asks if anyone else has public comment, with no additional comments, the Chair closed the public hearing. The Board discussed Amendment A further. With Andy starting the conversation with the definition of "bulk plant or terminal" and classifying the tanks. Andy continued saying there is an issue with talking about the development in terms of expanded use, versus conditional use. Don Hall emphasized the importance of making sure to have strong communication lines between owners of bulk tanks storage and the Board. The Chair stated how conditional uses differ from excepted uses, and how different uses either go through Planning Board or through the Zoning Board for a variance. The Chair summed up James proposal of moving bulk storage to a conditional use.

James made a motion to move bulk storage (number 7) from a Prohibited Use to the Conditional Use section of the Ordinance. Andy Bodnarik seconded the motion. Discussion: Andy mentioned leaving the term bulk storage as is, makes more work for this board, and moving it to Conditional Use helps streamline the process. James mentioned how this use would still be receptive to all other conditional uses that have already been outlined. Don had clear concerns on the clarity of these terms. Karen Coyne agreed with James to have it be a conditional approval. Lois disagreed saying that the term is appropriate as researched and already written. The Chair voiced his opinion, stating that to prevent harm from something, is to prevent that something from happening. Therefore, the Chair, believes in this case it is not allowing bulk storage petroleum in this district as proposed. **Hand Vote Tally:** 2 – 4 with Karen and James voting, yes. The motion failed and the reference to bulk storage number 7 will remain as a Prohibited Use.

The Board reviewed comments by the Town Attorney and decided which comment to keep and which to change. James said the groundwater ordinances only apply to

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commercial entities and are not for residential enforcement purposes. James said that it is not clear when an individual outside the Board reads these ordinances, since nowhere in the document does it explicitly say only for commercial purposes. Therefore, it is recommended by James that somewhere in the document it needs to say that these proposed ordinances do not apply to residential uses, concluding that this verbiage should be added under applicability. James says it is unclear to the reader, and there needs to be more clarity for a reader with no background knowledge. The Chair clarified the statement in the ordinance "does not apply to residential use."

The Chair asked if there was any opposition to this change. There was none.

James clarified the new proposed version will be posted on the web site.

Don Hall moved to approve the changes made by the Planning Board that will proceed to the second public hearing on January 30, 2023. Lois Shea seconded the motion. Discussion: It was noted that will be the last public hearing. **Hand Vote Tally:** 6 – 0.

2. AMENDMENT B: Housing Definitions

The Chair said they were discussing the proposed definitions for the terms, Short Term Rental, Bed and Breakfast, Hotel and Lodging House and Motel. Also, proposing allowing Short Term Rentals by Special Exception in the R1, R2, R3, B1, C1, OC-1 and OR.

The Board received two emailed public comments on the proposed changes to the ordinances. The Chair opened the public hearing. James said the ordinances in Warner are permissive and Short Term Rentals currently according to the existing ordinances are not permitted. The Chair said whether they are permitted or not is a subject of debate. The Chair clarified that permissive zoning ordinances which means for a use to be permitted it must be listed in the ordinances. If it is not listed, it is not permitted. We have terms that appear in the Use Table but are not defined and we are seeking to provide definitions to some uses. The Chair said there has been inquiries and complaints about some Short Terms Rentals in town, but we do not include in the Zoning Ordinances any reference to Short Term Rentals (STR). So, the question is, is it prohibited, or does it fit into one of the other items in the Use Table. That is open to debate. So, to forestall that debate we are purposing a definition and to list it to be permitted by Special Exception.

The Chair said there is a case before the New Hampshire Supreme Court, involving the Town of Conway. The case deals with the issue of municipal enforcement against STR's. The case will turn on the terms of the town's ordinances. Unfortunately, it may not provide us with meaningful law unless you live in Conway. There was a case Working Stiff Partners versus the Town of Portsmouth, which was decided several years ago. One could argue that it says municipalities can regulate STR's and that's probably true if you have an ordinance structured identically to the city of Portsmouth.

The Chair explained that is the preface to Amendment B Housing Definitions and STR's. The Chair opened the meeting to public comment.

Bob Holmes, referenced the Town of Conway case and said the judge said single family residences includes Short Term Rentals. The court also rejected the argument that STR's are somehow a home occupation business. Conway is looking to overturn the superior courts decision. He believed that under existing Warner law they are allowed. His understanding of this issue is New Hampshire isn't going to do anything

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in this area until the Supreme Court comments on the situation. Although the court may come out with more information this June. He proposes nothing be done until the Supreme Court decides in this area. He said he had no idea how many people would be grandfathered. When he looks at the definition being proposed and STR's being able to operate for six months of the year he has a couple of problems with that. There are people who own second homes in Warner. Second homes are frequently rented out, historically for a week or two weeks. He thinks people should be able to continue to do that or you are forcing people to sell their second home. That could drop the values of homes in Warner. He asked the Board if they knew how many second homes there were in Warner? The Chair said they are here to listen to the public, not to answer questions. Bob said he thought it was a large number. Also, people who spend part of their time in residences in Florida, during the time they are gone they rent their property out during that time. The Chair thanked him for his comments.

Barb Marty, she sent an email to the Board regarding some of the definitions. The definition of a dwelling unit concludes by saying this shall not include such transient occupancies as Hotels, Motels, Lodging House, Bed and Breakfast Inn or STR's. She said that seems to be conflicting with the next definition of STR which says it is a dwelling unit. She would recommend changing the term dwelling unit to either a residence or something other than a dwelling unit. Also, up until last week the STR was limited to 90 days in the original definition. Then there was a discussion about travel trailers having a 6 month limit and bringing the definition in line with travel trailers. The ordinance does limit travel trailers to 90 days in any 12-month period. She thinks it would be prudent to change the STR definition back to the 90 days, as originally purposed. She thought the original wording said something like less than 30 consecutive days. She is not sure when that dropped out. She is not sure if it is something to have, at what point is something not a STR. She asked the Board to consider adding that back into the definition. Also, since this Board will be addressing the whole Housing section of the Master Plan in the coming year. She believes there are still a lot of details that need to be worked out before this goes into the Use Table. Getting that definition right is useful because that makes the use of the lodging house to fit a STR very clear where that delineation is. She thinks it is important to have definitions. She does not feel it is ready to go into the Use Table at this point. The Chair thanked Barb for her comments.

Andy asked Barb for clarification. He asked when you are speaking about Page 20, in reference to travel trailers, he does not see where it limits to 90 days. Barb clarified she was speaking about Page 23. Janice said travel trailers cannot be in a certain position on a property for more than the specified amount of time. Andy said that is for general requirements for all manufactured houses. Andy said in the original draft proposal they talked about 30 consecutive days.

James said they pushed the limit to six months not necessarily because it would be occupied for six months straight, but that it could only be rented out for a total combined amount of no more than six months in a year. Janice clarified what the current definition says captures everything within those 30 days and then limits it to no more than six months in a year.

The Chair reminded everyone they will hold a second public hearing on this on January 30th.

Barb referenced Mr. Holmes' comment and asked if there is any way to know how many second homes there are in Warner. She doesn't know anyone who has a second

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home in Warner. Janice said maybe Assessing would know that although it may be difficult to parse out. The Chair said the census may indicate that as well. There are different ways of getting to that information, that are imperfect. Barb said she believed the figure of 200 seems high. If it is only 10 or 20 people, with second homes we are looking at something that maybe people could get a variance for, if they have a true reason to rent their home. She thinks the number matters in this case. The Chair said perhaps the Regional Planning Commission would have access to that information.

Dan Emanuele said there was a mention of a 30 consecutive day requirement. The housing standard statute RSA 48:A mentions STR's or a vacation rental as any individual or collectively owned single family house or dwelling unit or group of units, cooperative or timeshare or owner occupied residential home that is offered for a fee for less than 30 consecutive days.

Barb said using that definition of less than 30 consecutive days and in reference to the issue of people renting homes seasonally for four months or more, that wouldn't be considered a STR.

Bob Holmes said anything shorter than a week would not be a STR.

James said he doesn't see why the Town should define that, in terms of not exceeding 30 days. The Chair said what we are proposing are for stays up to six months per calendar year. James thought they should leave it to that, there doesn't seem a benefit to an additional constraint limiting stays in the residence.

Barb said it is not a limitation it is just a definition that better fits STR's opposed to any other kind of rental. The Chair said they have defined it as up to six months. Barb said that is not necessarily consecutively six months. The Chair affirmed.

Bob Holmes said he was confused. He asked what if he rents out his home and does not exceed six months. Say he rents it out to 25 people anywhere from 2 days to 3 weeks. If that is not a problem, then what do you mean by STR's? What does the six months limit mean. The Chair said it limits the total aggregate occupancy for guests in a calendar year. Karen clarified once they get a Special Exception. Bob asked what is a STR? Karen said a STR is any rental that isn't a long-term rental. Bob asked then you don't define long term and you don't define STR. The Chair said they are proposing a definition of a STR and as proposed would be allowed by Special Exception, which is an approval process for only STR's. Bob asked if he rents for less than one year is that a STR? The Chair said that does not meet the definition of a STR.

Janice suggested to the Board, that six months may be confusing to people. It may be better to say stays up to 182 days then you don't get the sense that it has to be consecutive. Barb suggested not to exceed 182 days. Janice said if you say six months people may perceive that as being consecutive. James said an aggregate total of 182 days.

The Chair read an email from Kathryn Needham, she has cleaned a few AirBnB's in town. She "believes they are great for our town, they bring in money into the town and they have great turnaround. It doesn't add a ton of extra traffic in town. Its good for small businesses to come to a cute town like ours and provide for a family vacation. It's amazing."

The Chair closed the public hearing and they will have a second public hearing on January 30 2023 at 7:00 PM.

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The Chair asked the Board what they would like to do to Amendment B. Karen asked if they could put in "residence" instead of a "dwelling unit"? Karen also proposed changing "six months" to "182 days". Lois asked if residence is defined somewhere else. The Chair said residential living facility is in the Dwelling Unit definition. Andy said not to exceed an aggregate of 182 days.

Dan Emmanuel asked if he could speak and the Chair agreed. Dan asked if the Board is differentiating between a weekend rental not being somebody's abode. The Chair said that is ultimately the objective. Karen said however we do have STR's in town where the resident does not live in the state. James said it is not their primary residence.

Janice asked for confirmation as to the definition. The Chair said STR means a residential living facility where lodging is provided for transient guests for compensation for stays not to exceed an aggregate of 182 days per calendar year. Janice asked how a "residential living facility" is different than a "dwelling unit." The Chair said "residential living facility" is a component of the definition of a "dwelling unit." The term "residential living facility" is contained in the "Dwelling Unit" definition, linking them together. Andy suggested amending it to say, "and where the residential living facility would normally be considered would normally be considered a residential living unit." The Chair said how about saying "that would normally be considered." Lois suggest they say "unit" instead of "facility". James said it was a residential unit opposed to a residential care facility.

The Chair recapped the conversation: Short Term Rental means, residential living units, where lodging is provided for transient guests for compensation for stays not to exceed an aggregate of 182 days per calendar year that would normally be considered a residential living unit not associated with regulated commercial activity such as a not hotel, motel, lodging house or bed and breakfast.

Janice said when the Zoning Board receives a Special Exception application potentially for STR, they consider density and character of the neighborhood. Is it potentially unwise to put this where there could be a detrimental effect on a neighborhood. For instance, a B-1 neighborhood may not be adversely affected because of the commercial downtown nature of the district and walkability. An R-1 still may be somewhat acceptable. Then an R-2 which is spread out along the main roadway and arteries along Route 103, it may potentially create traffic congestion. She was thinking maybe the Board would like to make it permitted in B-1, R-1, not permitted in R-2 and a Special Exception in R-3, C-1 and OC-1, OR districts.

James said the traffic from these units isn't going to be any different than an owner-occupied residence or a long-term rental. James said as the district decreases in density it may be less impacted. Janice agreed the less dense districts could be less impacted. The Chair said there may be more of an impact from a Bed and Breakfast than from a STR. Andy agreed. Janice asked if they would want a Bed and Breakfast in a R-2 or an R-3? Andy said they may be some in other towns and that is why we have a Special Exception. Janice said OC-1 and OR are nice because there are more ponds and recreation areas in those districts. The Board didn't see the need to make a change to their proposal.

Andy Bodnarik made a motion to move Amendment B to the second public hearing to be held January 30, 2023 at 7:00 PM. Karen Coyne seconded the motion. Discussion: None. Voice Vote Tally: 6 – 0. The motion passed.

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3. **AMENDMENT C: Permissive Zoning Ordinance** – Amend Table I Use Regulations to include the following statement immediately below the title block: “Building, structures, or land shall be used as permitted by this ordinance. Any use NOT listed in this ordinance is prohibited.”

The Chair introduced discussion on Amendment C.

James was concerned that this lacks context as to why this statement is being added to the Use Table. People may not understand why this is being added. There should be an explanation that all we are doing is recognizing what already exists as opposed to changing something. James is concerned people are going to read this statement and be upset, instead of realizing this already exists and they are only adding clarification.

Karen said couldn't we insert a statement saying Warner currently has a permissive zoning ordinance which means “buildings, structures, or land shall be used . . .” The Chair said he thinks what James is saying there needs to be a contextual statement. Andy said should be in the explanation document accompanying the ballot not in the wording being inserted in the Use Table. James said there are two pieces, the language in the ordinance and the contextual language on the ballot.

The Chair said the difficulty in doing this is the statement on the ballot cannot be an advocacy statement. The statement cannot engage in politicking. The Chair understood the importance of a clarifying statement and he will work on writing it. Andy asked if it could state that the following is a clarification, rather than an amendment. Karen said the reason this has come up is because of the times Janice has had to explain this to the public.

The Chair opened the public hearing on Amendment C. No public comments were heard. The Chair closed the public hearing.

Andy Bodnarik made a motion to move this as presented to the second public hearing on January 30, 2023 at 7:00 PM. Lois Shea seconded the motion.
Discussion: None. Voice Vote Tally: 6 – 0. The motion passed.

B. InvestNH Planning & Zoning Grant Application Outline – Mike Tardiff (CNHRPC)

James clarified this is to provide assistance to the board in the rewrite of the Housing Chapter of the Master Plan. The Chair concurred.

Mike explained this would come under Phase A of the InvestNH program. The deadline for the grant is the 27th of January. The purpose is to update the Housing Chapter of the Master Plan with public engagement.

The Select Board submit the application and then CNHRPC works with the Planning Board on the process. James asked when will the product be delivered? Mike said by September of 2023. Mike said the Board would go through their process for adoption of the Housing Chapter by early fall. James' concern was that everything doesn't come in at the last minute and is rushed. He said as long as they have a draft to begin to review no later than September. The Chair said the InvestNH document states for adoption by September. He asked Mike what was the rough timeline assuming funding is secured in February.

Mike said the deadline for the adoption by the Board for September 30th, 2023.

James said he envisions it as there will be something the Board takes and deliberates over then holds public hearings so people can provide input and there would be a trackable process. The Chair said the structure of the program requires robust community

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engagement, not just a survey. James said the vast majority of people want to be left alone. Even though people don't get involved it doesn't mean their opinion isn't of less value.

The Chair said the training academy is really a means of training volunteers of the town on community engagement. How to get people to tell you what they think and to be involved in the process. Especially those people who are not typically involved in the process.

The Chair asked Mike to consider the timing and not rushing the Board at the last minute. Mike concurred.

Janice asked if the grant paid for the whole process of working on the Housing Chapter and the Chair said, yes, with no match from the town.

The Board thanked Mike for his help.

IV. UNFINISHED BUSINESS

- A. Rules of Procedure** – Conversation tabled to January 30, 2023 after the public hearing on the amended changes to the Zoning Ordinances.
- B. Holly Riley** of White Clover, LLC., property on West Main Street opposite of the Police Station and North Road. She believed the written determination by the Board seemed different than what was said on the night of her consultation meeting on December 5, 2022. The minutes said a modification to the footprint of the existing building, or demolition and replacement of the building will require a modification of the Site Plan and a review or visit to the Planning Board. The Chair confirmed. Holly said both her husband and she did not hear that at the meeting.

The Chair said that was said as documented in the minutes and they will be sending to her a notice of decision that includes all the language.

She did not hear any of that in the meeting and asked if she could watch the video of the meeting. The Chair said Janice can get her the recording. Holly said that would be alright. She asked about rebuilding the garage. Janice said that is all addressed in the decision which she will send along with the video, tomorrow. Janice will send everything along to the Building Department, as well, so everyone is in the loop. Janice said she believes the reason for the Board wanted to see changes to the building was to ensure it meets the look of the commercial district and is within the existing footprint. Holly thanked the Board.

V. COMMUNICATIONS

None.

VI. REPORTS

- A. Chair's Report** – Ben Frost
None.
- B. Select Board** – Lois Shea

The Corridor Committee has a survey that is open for comment until January 16. Christine Frost, Select Board member, said there are approximately 12 posters put up today and the survey link is on the town website as well, and they have reached out on Facebook. There are also cards with phone numbers for people at the library to connect personally

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for questions. There was effort made to connect with people who do not have internet access. She made herself available for people who needed a survey that they could manually fill out and return. There is also an electronic billboard on main street. People have also volunteered to go door-to-door and to Market Basket for responses. There has been over 340 responses so far. James inquired about minutes from the committee. Christine said they were available and would follow up to make sure last week's minutes were available.

Lois continued by saying the Select Board will be working on the Warrant Articles. Also, meeting with Mike Tardiff about the InvestNH grant.

- C. **Regional Planning Commission** – Ben Inman – Absent
- D. **Economic Development Advisory Committee** – Ben Frost
 - None.
- E. **Agricultural Commission** – James Gaffney
 - None.
- F. **Groundwater Protection Committee** – Andy Bodnarik
 - Update given earlier in the meeting, no further comment.

VII. PUBLIC COMMENT

Ed Mical said he saw the CIP update and said thank you for including Emergency Management.

Janice said maybe when the Board reviews CIP this year, it may help to have a firm schedule of times and dates for each department to meet with the Board. James asked if the request should come through the Select Board. The Chair said there are several ways we could improve the process. Ed Mical said when he was on the Planning Board they used to have Board members assigned to meet with different departments to work on their CIP's. Andy suggested getting some help from CNHRPC. The Chair said as long as they can stay in the budget. James said starting the CIP process earlier would be key. The Chair stated that in the past they have appointed a subcommittee that has some Planning Board members, the Town Administrator, and the Treasurer. At the time, the subcommittee was meeting on Saturday mornings. The Chair said if we start this in May, it would be helpful.

Don Hall gave a letter to the Chair to read into the record. "To the Warner Planning Board as of January 9th 2023 I submit my resignation. The end. D.S. Hall." Don said it has been a journey, for most of you my legacy goes way back. It has been a pleasure to be part of it. But, he just feels as though where he is today and not knowing what lies ahead, that he thinks its time to relinquish this to someone other than himself. He wishes all of the Board the best of luck and please keep in mind that what you do and how you react is in the good welfare of the town and will bring good results in the end. The board members all said how much they were going to miss Don and thanked him.

VIII. ADJOURN

The Chair adjourned the meeting at 10:10 PM

Respectfully submitted by,

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Molly Belle Loz