



TOWN OF WARNER

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Planning Board Meeting Town Hall - Lower Meeting Room Monday, January 30, 2023

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

II. NEW BUSINESS

A. Second Public Hearing for Zoning Ordinance Amendments

1. AMENDMENT A: Groundwater Protection Ordinance

The Chair summarized the Groundwater Protection Ordinances stating the intent is to protect the groundwater resources and preserve quality and volume of the water within the aquifers. These ordinances are crafted by the Groundwater Protection Committee, which was appointed by the Select Board, to develop recommendations for these new ordinances to consider. A map accompanied the ordinances. The Chair continued to share examples of the changes that the Planning Board recommended.

The Chair asked for public comment. David Bates thanked the committee for their work on the ordinance. He stated that he had a direct stake in this Groundwater Protection Ordinance, as the water he uses at home is the same water that flows through the aquifer identified in the Groundwater Protection Ordinances. He supported the Ordinance, and hopes the Board would support the recommendations.

Ray Martin, from the Water Precinct, was in favor of the Ordinance. He mentioned the aquifer offers water to the majority of businesses in Warner, and protecting this vital source is key.

Janice read a comment from Harry Seidel attending on Zoom, giving his support of the Ordinance and asked for it to be put to a vote at the 2023 Town Meeting.

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The Chair summarized eight emails which were all in favor of the Groundwater Protection Ordinance. These emails were from David Karrick, David Elliott, Sara McNeil, Joan and George Packard, Bret Ingold, Emily Karmen, Dianne Bichoff, and Michael Amaral.

Alice Chamberlin, Chair of the Groundwater Protection Committee and current member of the Conservation Commission, discussed the history and events that lead to the formation of the Ordinance. She emphasized that without these Ordinances in place, there could be devastating effects on the water quality within the aquifer. She hoped that the Board will move the Ordinances forward to the voters of Warner.

James Gaffney was concerned that there still needs to be work done on the Ordinances and stated hesitation in moving these plans forward without further detail and assessment. He mentioned examples where language within the Ordinances still need to be fine-tuned and crafted. James clarified these Ordinances only apply to business uses, and not residential requirements. James believed this Ordinance should be further amended throughout the next year, with the goal of a 2024 deadline.

Andy Bodnarik said there is nothing further they can do with these Groundwater Protection Ordinances. He believed a great effort was put in from the Committee, the Planning Board, and the public. These Ordinances are the beginning steps to protect our water. The Groundwater Protection Ordinances may not be the best and in perfect order, but it is a start, and we need to start somewhere.

Sam Bower stated that he supports the Ordinance. Karen Coyne agreed with Andy, that they need to start somewhere, and she supports the Ordinance. The Chair agreed with supporting the Ordinance, while recognizing James' concerns. However, a significant amount of work has already been put into these Ordinances from the Committee, and other stakeholders. The Chair ended his statement with support of the Ordinance, and commented that it is a really good start in protecting our water quality.

Andy made a point that it would be interesting to see the Ordinances in action, and to test if the Ordinances do in fact help protect our groundwater and accomplish what we hope they do. Therefore, we must put them in front of the voters, it is time to move these Ordinances forward.

Sam Bower made a motion to send move the Groundwater Protection Ordinance to be voted on by the public on the ballot. Andy Bodnarik seconded the motion. Discussion: None. **Vote Tally:** 5 - 0. The Planning Board supports putting the Groundwater Protection Ordinance on the ballot for public vote.

2. AMENDMENT B: Housing Definitions

The Chair summarized changes made by the Board to the Housing Definitions amendment. The amendment proposes adding definitions to the Zoning Ordinances for Dwelling Unit, Short Term Rental (STR), Bed and Breakfast Inn, Hotel, Lodging House, and Motel. Also, adding a reference to STR's to the Use Table. Karen and Andy clarified that if we do not include these definitions STR's will be subject to a variance. The Chair said it is debatable whether STR's are covered by the term "Lodging," if "Lodging" is not defined.

The Chair asked the public for comment.

Robert Holmes doesn't believe these housing definitions are ready and questions the six-month limitation.

Pat Goneau believes the definition of STR is very broad, and questions the minimum days rented instead of just the maximum. The Chair clarified that in calculating the six-month maximum represents an aggregate of up to a total of 182 days of operation for an STR. That 182 days can be whatever configuration of days the property owner decides. Pat stated that

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she did not agree with this amendment.

Jim Dudley stated that he agreed with Pat, and that he disagrees with the terms laid out in the amendment.

Beverley Howe stated that she disagreed with the terms in the amendment. She stated her personal connection and opposition to STR's. She said STR's tarnish a residential community. Her opinion was there needs to be more discussion on the definitions, and more input from the public, and the Town needs to be more aware of the problems with STR's. Beverly was concerned with the enforcement of the Zoning Ordinances, further expressing concerns about the amount of time occupants are renting, and the lack of enforcement from the Town in ensuring a peaceful and quiet community. The Chair clarified that the enforcement of Zoning Ordinances is the responsibility of the Select Board.

David Bates and the Chair discussed what determines a Permissive Zoning Ordinance.

Missy Biagiotti had concerns and wondered about the distinction for the Uses of commercial and residential Use for STR's.

Rachel DeThomas relayed a personal connection with renting in Town. She said her grandmother rented her house when she was elderly and how renting it out helped her become more financially stable. Furthermore, she stated there are a lack of business investors looking for a house to rent STR's, based upon her time as a realtor. In her experience it is mostly families or residential people that buy second homes and use them as an additional income. She stated that there are limitations and consequences on prohibiting STR's. STR's benefit traveling nurses, short-term visa applicants, seasonal workers, artists, professionals, and college students, people that are in limbo who move from one house to another and just need a place to live for a bit. She emphasized the multiple benefits of individuals from all walks of life that are grateful for STR's.

Dan Emanuele on Zoom communicated that he believed STR's need to be regulated and in order to do so it needs to be better defined. He expressed that STR's might tarnish a neighborhood. He believed the primary occupant of a residence should be the owner, and not tenants. He believed there needs to be a clearer definition of STR's that answers the questions who can rent, how long, and what circumstances are allowed, and when variances come into play. This is not accomplished by the current definition.

David Bates said when he was at the legislature the type of STR that created problems were the single whole house rental where the owner was absent. No other STR has any problems, he suggested the Board consider doing a narrower definition before sending 80 people to the Zoning Board of Adjustment (ZBA).

Harry Seidel communicated that STR's are hard to manage and enforce. In terms of affordable housing in Warner, STR's do not help the situation. His overall feeling is that STR's should not be defined in our Zoning Ordinances, and that protects us because of our Permissive Ordinances. He is also concerned with the definition of "Lodging house" and how it can often pertain to STR's. He believed Lodging houses need to be taken out of the Use Table, and therefore allows Warner and the residents to not be disturbed.

Karen said if we do not say what a STR is how can we ask if the public want it? Harry believed that it is okay because it is a Permissive Zoning Ordinance. Karen said there could be some more details on what defines the amount of time that classifies an STR. She states there might be a difference in STR's as a commercial use, where the owner never lives there, or a residential use where it is only occupied for half the year. Overall, Karen believed, they needed to define STR's in order to give the Town of Warner a voice on whether the voters want STR's, or not.

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James acknowledged that STR's already exist in Warner, and they are not simply going to stop. He asked, if the Town adopts a new definition of STR's, how are the existing Uses going to be treated.

The Chair said it depends on what Use you are talking about. If you are talking about Uses that already appear in the Zoning Ordinances, with the exception of STR's, then they are putting a box around those things that already exist. They would be allowed to continue. However, STR's because this term does not currently exist in the Zoning Ordinance would be regarded as something, without a Special Exception, would be in violation of the Zoning Ordinance. With this definition and its appearance in the Use Table, it is now a Permitted Use, meaning previously it was an illegal Use. Unless you could prove you had some sort of previous permission.

Barb Marty said residential living units are not defined in the Ordinances. This term is used to distinguish STR from the newly edited definition of a Dwelling Unit. Saying that STR's are specifically not a Dwelling Unit without a definition of a residential living unit, means we do not know what the difference is between the two. Also the definition of a Dwelling Unit states it shall not include such transient occupancies as Lodging Houses, but the definition of Lodging House says it is not open to transient guests. Which seems to be a contradiction to her. The term transient is used several times and is not defined. Transients and tenants have different legal rights. So, it could be beneficial to give some context to the term transient. Also, the STR definition does not address common concerns like occupancy limits for bedrooms and annual registration with the Town, safety inspections and distinguishing between STR's and possibly seasonal rentals. Some items in this amendment are confusing and does not accomplish the objective of providing clarity. She believed this Ordinance needed further consideration. She is asking the Planning Board to not move forward with Amendment B as written.

Nancy Martin, Conservation Commission, it is her understanding that the Town has applied for a grant to rewrite the Housing Chapter in the Master Plan. She thinks this will be the perfect opportunity to study this issue. This would give time to study the issue and give an opportunity for public input allowing people to be more comfortable with the final result. The Chair responded that the application for the grant has been filed.

Mike Biagiotti said in the joint session of the Planning Board, Select Board and Zoning Board the overriding directives, was is there a problem. Is there a Town problem with STR's that needs this kind of attention. There seems to be some fear mongering to address a problem that doesn't really exist. From an Air BnB standpoint there are four listed currently in Warner. He asked if long term rentals are a Permitted Use in Town? The Chair affirmed, by shaking his head, yes. The Chair said it is the same as a single family residence, a duplex or a multi-family residence. The difference is a commercial and non-commercial Use. Mike believes STR's are materially different than Lodging homes and BnB's. He thinks it is a mistake to marry STR's to be only permitted by Special Exception with those other entities. He highly recommended that this amendment does not go forward.

Robert commented on the current definition of STR and referring to transient guest and stays not to exceed an aggregate of 182 days. The Chair and Robert had a conversation about the meaning of the 182-day limitation.

Pat mentioned that the current STR on Waterloo never went through the Variance process in order to operate. Therefore, it should have become an enforcement issue. She is not sure that these definitions are the answer.

Karen followed up with the statement saying that long term renters are not one-to-two day renters and are not transient. In an STR it is a transient guest, someone who is there for a brief period of time.

Beverley said there is a big difference between people who rent for two weeks and a long term rental. An STR is when a house is filled every weekend with four-to-six cars and the owner doesn't know who the people are staying there. The STR in Waterloo across from her residence is a hotel. The owners do not live there.

Sam Bower, Planning Board representative to the Board, clarified the difference of a long term rental being when someone buys a house and doesn't live there and finds a tenant for 365 days of the year. Although an STR with these definitions can be operated for an aggregate of 182 days of the year. The STR would be subordinate to the primary use of the property the other 183 days of the year. During that time it could be empty or the owner could live in it, but they cannot short term rent it during those 183 days. Therefore, property owners would have to make a choice will they rent it long term, for potentially 365 days a year, or go to the ZBA and get a Special Exception for a STR for half the year.

Pat said she liked what Harry said about the definitions. If you lock these definitions in then it becomes an enforcement issue. Whereas, if you leave it out of the Permissive Zoning it becomes regulated at a lower level, through a Variance. You cannot define everything, but, it needs to be clear. Why put it in, let it go through the vetting process of a Variance.

James said if the Town does nothing we increase the likelihood that the Courts are going to tell us what we are going to do, because there will be legal challenges. We all need to decide whether this is an improvement and which is the least bad path.

Pat said if the definition isn't in the Ordinances, then you have a little more leeway for interpretation and argument.

Karen said if we leave the definition out then it is against the rules and an STR has to ask for a Variance. Eventhough, it has been left out and STR's are against the rules, we have them. Pat and Beverley said then they are not being enforced. Karen indicated she understood.

Pat said the STR on Waterloo didn't go through the Variance process, therefore, a Cease and Desist should have been issued immediately.

Missy said it was a complicated issue with many sides to a story. Mike and she have properties they rent where they are not present in the residence. They are just trying to cover expenses in order to hold on to a property. It is a very complex issue and all sides need to be considered before coming up with a solid definition.

Alice asked who would track the 182-day limitation. The Chair said that would be up to the Select Board. It could also be made a condition of granting a Special Exception, by the ZBA, spelling out how that is done.

Janice said in terms of background, before the Board came up with these definitions. There is a use referred to as Lodging, Bed and Breakfast Inn in the Use Table. STR applicants in the State of NH were using that term when applying for a Special Exception. Janice said she conferred with the Town lawyer, the Planning Board and Zoning Board Chairs and the Circuit Rider and asked them if they felt STR's fit under the term Lodgings. The responses were split on this issue. She discuss this with an STR owner in Warner and asked them to apply for a Special Exception. The owner had their lawyer look at the Warner's ordinances and they didn't feel they had to apply for anything. Janice's concern was that this issue isn't going to go away. Having these definitions will at least help. If Lodging House, Bed and Breakfast, Dwelling Unit, Hotel and Motel are defined then those terms cannot be morphed and molded to suit the needs of something very similar that exists now, but, not previously.

Dan Emmanuel, via Zoom, said basically when STR owners were told to apply for something and refused, they lawyered up and the town backed down. Janice said once they said they

wouldn't apply, she informed the Select Board. The Select Board then came to the Planning Board and asked them to help define STR's. Dan asked if these definitions as added to the ordinances as existing STR's are grandfathered. The Chair said grandfathering is a term to describe legally pre-existing Nonconforming Uses. These would not be nonconforming they would conform to the definition of the Zoning Ordinance. Therefore, using the term grandfathered is inappropriate. Dan asked is there any recourse for Town residents to request that people who are doing these things to go though a Special Exception process. The Chair said that people in the Town can ask for enforcement. Dan asked how providing definitions will help if they still aren't enforced. The Chair said a definition gives a clear indication of whether something conforms to the Ordinances or not.

Cathy Schoonmaker asked how they count the 182 days, if she has a six bedroom house and choose to rent out each bedroom separately for 30 days I am good, but not for 35 days. Karen said you are still good because you are under 182 days.

Barb said she agrees, definitions are good, she just doesn't think the definitions that are in this amendment are ready yet and she would like the Board to give them further consideration.

James asked Barb, who is the Chair of the ZBA, if as the definitions are written would they help or harm. James said because the alternative is to do nothing. Barb said having a bad definition is worse than having no definition. James thanked Barb for her comment.

Karen said when they talk about transient, what is the definition of transient? When they discuss some of the issues the Biagiotti's and Rachel brought up, where people use a property for three months out of the year. If the transient number were defined would that help alleviate some of the concerns?

James said his recollection of previous conversation was that they talked about transient it meant not the occupant's primary residence. They would live somewhere else which was their primary residence. The Lodging House residents was their primary residence for the duration of their stay there and that was how it was differentiated.

Harry had a problem with the attitude taken here tonight. By saying, okay, it exists already then we must therefore fold our tent and just permit it in all districts in the Town by Special Exception and let the Zoning Board sort it out. The fact is the Master Plan gives support for a certain kind of protection of housing and there are things the Town can do even if it hasn't enforced the Ordinance, they could be. The Selectman can change, and they may be divided now but they may not be divided three months from now. There are corporations out there now that are advertising STR's, saying someone could be wealthy and not be a landlord. There are a lot of people who want to achieve wealth through STR's, all over the country and world. He thinks they need to be aware of the context of what is going on with STR's. He does not think the Town of Warner will be served well by saying they will be permitted by Special Exception and then come up with definitions which are contrary and confusing. We have a lot more work to do if we want to protect the Town and define STR's.

Christine Frost said the Select Board was doing their duty and has been made crystal clear tonight, this is a very complex issue. We had a choice of either going down a road of litigation at cost to the taxpayers for a significant amount of money or to ask the Planning Board to come up with a definition, to better understand the issue. The fact that this has produced this conversation with a group of very thoughtful people sitting in the Town Hall at 9:00 PM is a better way to go for a community to come together and try to figure this out versus being in a place of litigation.

The Chair closed the public session. He stated that they have seemed to come up with somethings that no one likes. Andy said he feels there are two bad choices. He feels like there

is no clear solution to the problem with these definitions. He expressed frustration with the Use Table, and how the lack of definitions creates legal pushback. He commented that they haven't even properly defined lodging in the first place. Andy strongly believes that we must do something about this issue, either bring a definition, or leave no definition and prepare for the risk of challenges. If this is pushed forward that is a bigger risk, then if we leave it as is.

James said they have to make a decision on this issue tonight. What are they going to do while thinking as sensitively as possible and considering the home owners and property owners, renters and the neighbors and everyone involved. What are the impacts and burdens whether they do something or not. What is the least bad path forward tonight.

Andy said they are in the process of looking at the Housing Chapter of the Master Plan. We would have the opportunity to get legal advice and technical advice as we do that chapter.

Sam said if they decide to bring the amendment forward for a Town vote, and if it passes. Then applications would go to the ZBA giving people an opportunity to attend the public hearings and present their concerns. It gives the ZBA a definition and a finite number of days that STR's can operate in a year.

Andy said it was a problem for the Town either way. You either have to defend against people that want to call a STR a Lodging House, and apply for a Special Exception. Or we push forward these definitions, even if they are flawed.

Karen asked Janice what would be her recommendation to go forward, based on the fact she interacts with the public regularly. Janice responded that an imperfect definition is better than no definition. Since an imperfect definition gives an outline of what our expectations are for STR's, consequently no definition creates ambiguity and is open to interpretation. The Chair communicated the indecisive nature about this difficult topic. He is wary about the decision to pass this onto the ZBA.

The Chair said he came into the meeting with great reluctance about the proposal for a variety of reasons, some of which were addressed tonight. He thanked the people who came to the Board meeting. He is not worried about the lack of definition of the term transient, which is a common word, found in the dictionary. Opposed to the term "Lodging House" that you may not find in the dictionary. The issue of 182 days is addressed by the term "transient" guests. Which would mean an aggregate of those guests occupying the space for up to 182 days on a transient basis. It does not mean one person for 182 days because that is not transient. He is comfortable with what they came up with. What he is not comfortable with is, is this the right thing to do? Is zoning the best way to address the problem. We have a neighborhood in Town that is experiencing this right now, who have made complaints to the Select Board. That is evidence of a problem. He said moving this forward and leaving the Ordinances the way they are, does not solve the problem. He thinks there is a better way to address STR's and that is through business licensing which is a much lower threshold for a property owner. STR owners would file a form with the Select Board once a year with a fee. He said the Town has submitted a grant application to work on the Housing Chapter of the Master Plan. This could be something that could be taken up along with that work. This process could provide appropriate zoning amendments for STR's.

James Gaffney made a motion to not proceed with the definitions in Amendment B to the ordinances. Andy Bodnarik seconded the motion. Discussion: Andy said there could be a recommendation that the Select Board pursue business licensing for STR's. Then the Board will use Central NH Planning to deal with the zoning part of the issue. Also, the Board should start doing the work on this issue soon and not wait for responses from Central NH Planning. Karen asked for clarification whether the business license would apply to all of these entities not just calling out STR's. The Chair said he was thinking just specifically STR's. Sam said the

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Select Board would make their own definition for their own licensing. James said the Select Board would have to make a policy surrounding STR's, because we don't currently do any licensing. Karen said as long as they continue to move forward with the other pieces, asking the Select Board for business licensing and the Housing Chapter rewrite. Also, in the business licensing piece there needs to be a definition about infractions and the ability to retract licenses. The Chair said this is just a suggestion and it is clear that the Select Board has work ahead on this issue. The legislature has no bills on STR's on its schedule this year. Andy said there are other mechanisms in place to deal with the complaints against STR's and the Board should encourage those to be used. The Chair called a vote. **Voice Vote Tally:** 5 – 0. The Board decided not to forward Amendment B to the Town ballot for voting.

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 said this will put a statement at the top of the Use Table clarifying that the Ordinances are permissive zoning ordinances. Andy suggested pluralizing the word "Buildings." Karen said to be clear this is just giving a definition stating these are permissive zoning ordinances. The Chair said we are not deciding whether they are permissive or not, they already are.

The Chair opened the public hearing of this topic.

Mike Biagiotti asked if this is just a reinforcement that it is a Permissive Zoning Ordinance and where is it currently stated? The Chair said it is currently embodied in the Use Table. The table lists Uses that are permitted by right or by Special Exception, in the absence of a "P" for permitted or a "S" for Special Exception the Use is not allowed. Zoning is either Permissive where you list the Uses that are permitted or Restrictive uses where you list the uses that are not permitted. We have an Ordinance that is structured as a Permissive Zoning Ordinance. This amendment just spells out with absolute clarity that this is a Permissive Zoning Ordinance. Mike was concerned that something like STR's that aren't in the Use Table would not be allowed if these Ordinances are permissive. The Chair said it depends on how you choose to read things. The Chair said you could say STR's are not allowed because the Use Table does not list STR's specifically. The alternative argument would be, "Lodging House" is like an STR, so maybe that is allowed by a Special Exception.

Mike's concern was that long term rentals were not defined in the Ordinances, does that mean they are not allowed? James said we had a discussion previously that long term rentals didn't need to be explicitly defined. Andy said what we are doing with the reinforcement of the language is telling people to go to the Use Table and look up a district to see what is permitted and what is not. What is not permitted is reflected by an empty column, this statement clarifies that is indicative of something that is not permitted.

Janice said the mere existence of a Use Table means the Ordinances are permissive. There are towns that don't have Use Tables.

Missy Biagiotti said they rent their home for a long time. Long term and short term rental are something that she was familiar with as a real estate agent. The Chair clarified that adding this language does not change anything, the Ordinances have always been permissive.

Janice said anything under 30 days is considered STR's, as per the state definition. Anything over 30 days is a long-term rental. Also, in the Use Table it refers to residential uses as single family, multi-family dwellings, etc., long term rentals are all covered under those terms. They are considered dwelling units meaning the long term rental occupants are considered residents. Missy said she is concerned that there are people who left tonight's meeting thinking by not

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allowing the definitions then STR's are allowed, that is confusing.

Karen stated that adding this sentence up at the top of the Use Table will help with that confusion.

Sam asked if there was any reference in the Ordinances that explains it is permissive. The Chair said, no, that is the purpose of adding this statement.

James stated the description on the ballot should clearly state that this does not change the type of ordinances, they already are permissive. The Chair said it will state that this acknowledges the existence of the type of ordinances.

James Gaffney made a motion to move Amendment C forward to the voters. Andy Bodnarik seconds motion. Discussion: Karen asked is there anyway we can say they are adding a definition and not changing anything. Andy suggested saying they are adding an explanation, not a definition, it could appear to make more sense to the voter. The Chair said he would draft a statement and send it to Janice to disperse to Board members and to comment back. **Voice Vote Tally:** 5 – 0. Amendment C has been moved forward to the voters.

Full text of all amendments is posted at Town Hall and is available at

<https://warner.nh.us/notices/>

III. UNFINISHED BUSINESS

A. Rules of Procedure - Postponed.

IV. PUBLIC COMMENT

Ed Mical asked if the explanation wording for Amendment C is permitted on the ballot. The Chair said it can have a summary, for instance, the Groundwater Protection Ordinance will appear in summary. Otherwise, it would have to be printed in full.

James asked that the entire Groundwater Protection Ordinance be available in its entirety. Alice Chamberlin thought that was a good idea and stated she will work on that effort.

V. ADJOURN

Meeting Adjourned at 10 pm

Respectfully submitted by,

Molly B. Loz
Recording Secretary
Town of Warner