

## **BOARD OF SELECTMEN**

**August 31, 2021**

## **MEMORIAL BUILDING**

**4:30 P.M.**

*The following are to be considered draft minutes only until approved by the Board at their next meeting.*

The meeting was called to order at 4:30 p.m.

Selectmen present: Tamara Butcher, Dick Hendl and Amy Lewis  
Others: Eugenia Snyder and Whit Smith

Work Session for the Board of Selectmen to discuss and review regulations relative to guest facilities.

Tamara signed the representation letter for the auditors so the audit can be completed.

Tamara announced the board is holding this work session to discuss short-term rentals, how the zoning ordinance defines them, how the board wants to define them moving forward. The board has now received two letters for properties in town that are running an Airbnb that is basically operating illegally because they don't have special exception which is required according to our ordinance.

Eugenia Snyder, who submitted one of the letters, was present at the work session. Eugenia made that Board aware that a series of things will be coming in from all the neighbors. Eugenia has a lot of experience with this problem, they have lived in multiple states in very attractive areas, and they've watched those areas go from having almost no short-term rentals to having a plethora of them. They have been driven out of neighborhoods before due to this problem. This doesn't seem to be a major problem, yet, for Springfield, but Eugenia said from experience she has watched it happen in multiple places over five and ten year periods, and how it changes everything. Also, having purchased a lot of real estate in multiple locations, the two most common questions that realtors get are 'is there an HOA' and 'are short term rentals allowed'. So many people are buying second homes and those are being funded by renting them out. They have no intention to live there, they are not part of the neighborhood and that is where the crux of the problem comes.

Eugenia is interested to know what can be done about this as everyone on the road is upset about it. Tamara informed her that currently our zoning ordinance does state that any guest facilities operating are required to have been granted a special exception. The property in question does not have one, so as of today they are operating illegally, which is why the Board is meeting. According to the Airbnb advertisement she has been operating since 2018. Eugenia said another concern is her capacity for expansion due to the size of the building. Eugenia appreciates the Board taking time to address the issue and do what can be done. Tamara stated if neighbors want to submit a letter it is documentation they can keep on file. Tamara explained the process of obtaining a special exception from the Zoning Board of Adjustment.

Dick asked Eugenia if it is the proximity of this establishment that is particularly upsetting as she does live close to Twin Lake Villa. Eugenia explained that Twin Lake Villa's traffic coming and going does not impact them at all. The property in questions is located directly across the street; and everyone drives by their house to get into the driveway to the rental property. They get the people walking up and down from the house, cars going back and forth, they have two outdoor dogs that bark every time someone comes and goes. Janet asked if people that rent or stay at Twin Lake Villa walk past Eugenia's house when they do hikes or anything like that; Eugenia said not usually. Eugenia will encourage other neighbors to write in with their feelings and she will wait to hear what happens.

Tamara said in dealing rentals in general the zoning ordinance is clear as to what can and cannot happen with guest facilities. Tamara's thought is for right now improving our definitions is a good idea and it is something we can do without having to have a public hearing to change the zoning ordinance. Once January 1<sup>st</sup> comes around if we want to make changes to the zoning ordinance, we will have all year to make sure that what we do is the best before holding public hearings and bringing it to the town meeting in 2023. Janet and Whit are not sure that there are no requirements to change definitions in the ordinance. Janet said most anything in the zoning ordinance needs to be brought before the voters. Tamara said the ordinance right now says that guest facilities cannot be operated if they don't have a special exception. So, if there is anywhere in town that is operating a guest facility and they don't have a special exception they are illegal. The Board currently has two letters for one property they are being told is operating a guest facility.

Whit will be, along with Amy, working with the Planning Board on this. He has given this a lot of thought. The change in the zoning ordinance, there should be a general presumption that requires an approval at town meeting. If there are non-substantive changes that are to provide clarification, such as definitions, those non-substantives providing clarification probably do not need to go to town meeting. But a change in definitions that has substantive result probably does need to go to town meeting. Whit said if the Board adopted a policy that guest facilities constitute a business, that probably doesn't need to go to town meeting; that is a statement of enforcement policy by the board of selectmen. Whit said the letter from NHMA states clearly the ambiguity in NH statutes. The tax statute treats this activity as a business because they want to attach the revenue. Whit said the fair housing act of the state, referred to as the housing standards statute, actually says the letting of rooms or accommodation is a residential activity, so that flies in the face of what the tax code says.

Whit feels if the Board acknowledges there is ambiguity here and we are going to clear it up by stating that our policy is that if you are operating guest facilities for consideration on a short-term basis, leaving to the Board what determines short term. You can say that as a matter of policy and then you've taken one step in the direction of saying these enterprises are actually business in nature and not residential.

Amy asked what the difference is between short term and long rental. Tamara read House Bill 1590 for the State of New Hampshire. It stated that short term rental as defined as the rental of one or more rooms in a residential unit for occupancy for tourists or transient use for less than 185 consecutive days. Dick feels that any entity that is available for rent is a business regardless

of short or long term; if someone rents out a house for a year or three nights that is a business. However, if you are renting your home out to a family member, not the general public and there is no advertising Dick does not see that as a business. For clarification Whit asked if he has a rental property that he makes available for lease that's a business; Dick said yes.

Whit asked the Board to keep in mind that this rooms and meals tax standard and definition could potentially be helpful or just add to the confusion. Someone who is leasing for more than 185 days is not subject to obtaining a rooms and meals tax license, but someone who is renting or leasing for less than 185 days presumably is required to obtain a rooms and meals tax license. One approach might be if under our states statute you need to get a rooms and meals tax license than we are going to treat this as a business. Dick disagrees, he doesn't think it has anything to do with the rooms and meals tax, it has to do with the intent of holding out to the general public the opportunity rent space that you own, that is a business.

Whit said a simple approach for the time being would be defining what aspect of these guest facilities create a business enterprise. Amy feels the black and white issue is if Hideaway is operating illegally that's what we fix first. Whit said first you need to determine if she is running a business. The basis for that are three factors, are they operating a business, do they have a site plan and do they have a special exception. Tamara read the definition of guest facilities from the towns zoning ordinance, and it says, "bed and breakfasts, inns, campgrounds, board houses and camps". Tamara said if you look up Airbnb you will find that it is a bed and breakfast without breakfast. Whit asked the Board of Selectmen how they feel about this sort of enterprise activity. Dick feels it's a matter of common sense; if you are offering a service for money, bartering, etc. that's a business. Tamara and Amy agree that is a business.

Amy stated that in her opinion Hideaway is a guest facility; Amy deciding to go on sabbatical for a year and rent her house out is not a guest facility. That is her contracting with a property manager to collect the rent on her behalf, obtaining a one-year lease with someone. To Amy that is the clear defining line between long term and short term. Guest facilities would be short term rentals, which is what Hideaway is running. Dick said the sabbatical scenario doesn't sound like a business because her intent is not to carry this on beyond one year, and if she did it would be revisited to determine if she was running a business.

Whit believes what the NHMA was addressing in their paper is, and there probably are changes to concede like when you turn a property into a lease rental property. But the short-term rentals bring itinerant traffic, turnovers (whether weekly or bi-weekly). You rent from Sunday to Saturday then you have the cleaning crew come in on Sunday morning; Whit's feels that is definitely considered a short-term rental. Tim Bray expressed the concern to Whit, which were what if the house next to him became owned by an investor who never intended to live there but to make it available on VRBO and Airbnb. Whit thinks it is constitutionally appropriate for there to be limitations in terms of the number of people who can occupy a rental because there are plenty of reasons from a health and safety point of view. You certainly can't say to an investor you aren't allowed to buy that property. However, you probably can say if you are

going to buy that property the maximum occupancy is X; or if the property is going to be used for this purpose the maximum occupancy of people per bedroom is two, excluding people under the age of four, just as an example.

Amy said the Board should begin by defining short term rentals as what is provided in RSA 78A. The Hideaway Inn is operating guest facilities as outlined in the zoning ordinance, and perhaps a cease and desist should be issued. Then when we get the opportunity to expand the definition of guest facilities we can outline what is considered a bed and breakfast.

Whit feels the board needs to address the fact that RSA 48-A also states, that only for purposes RSA 48-A, vacation rental and short-term rental are residential uses of property which would fly in the face of a declaration that short-term rental and vacation rental are a business because they would say those are residential uses. Assuming you accept the argument that the lawyer for NHMA made, and that is your residential use pertains to where you actually live, your residence. When you go to stay temporarily at a vacation or short-term rental, while you may be in residence that is not a residential use, that is a hospitality industry use.

Whit stated on page five of the NHMA report it provides some examples of defined uses that could include short-term rentals, depending on how they are defined in the ordinance are Bed and Breakfast, Rooming house, Hotel, Home rental, Home business and Apartment. Tamara added that our ordinance has bed and breakfasts, inns, campgrounds, boarding houses, and camps. Janet said those have been in the zoning ordinance since 1987; long before Airbnb existed.

The action item for this meeting is to draft a policy to present to the planning board at their joint work session. Amy will draft the policy, to which Whit has offered to help with if needed. Whit said the drafted statement of policy should effectively say the provision of guest facilities on a short-term rental basis, which is 185 consecutive days or less, is considered by the Board of Selectmen to be the operation of a business pursuant to section 3.12 of the zoning ordinance and therefore requires a special exception be obtained from the Zoning Board of Adjustment and an approved site plan from the Planning Board.

Amy said going back to item D under definitions, do we require the individual hosting the guest facilities to prove they have the rooms and meals license or is that between them and the state. Whit said technically that is between them and the state, we don't have the enforcement authority on it. However we can still require that one be obtained; this could be required as part of the site plan review. Whit said maybe the standardized approach the Planning Board would take would be a check list that includes these details as requirements in order to issue the approval. The planning board ultimately, as a result of public hearing, can determine that the hurdle required to be an appropriate use of the property has not been met and therefore the site plan is not approved.

The property owner must go through the process. Amy stated that way we can show the neighbors who have complained that the Board is working on the matter. The property owner needs to go through the process to rectify the illegal operation to make the guest facilities a legally operated business enterprise and after that there is nothing the Board can do.

A policy has been articulated in the context of short-term rentals; long term rentals will be discussed at a later time. Janet stated if the Board gets to the point with the Planning Board that you want to amend some definitions, run the amendments by the attorney to see if it's something you can just clarify. If it isn't, and you wanted to get those definitions clarified at the 2022 town meeting there is plenty of time to hold the hearings and do that process. Whit said if we are amending the zoning ordinance whether it's a definition or a major section an amendment requires the hearing and town meeting. If you are clarifying something in the zoning ordinance through the issuance of policy or explanation that does not require the hearings or town meeting. Whit said what we are engaged in here is a process of clarification, not amendment.

Janet wasn't sure if the board was thinking of moving forward with a notice of violation at this meeting or wait until getting some other steps done first and wait until the next meeting. Amy referred to a cease and desist, and Janet wanted to add that the first step is a notice of violation and spelling out the specific zoning ordinance that is not in compliance; the lawyers want to see a paper trail before a cease and desist. Whit suggested that an inventory be done of other potential short-term rental properties. Tamara has done an Airbnb search and has not found any others on that website. A few examples were given, and some further research will be done.

The meeting adjourned at 6:09 p.m.

Jill Hastings Deputy  
Administrative Assistant