

PLANNING BOARD

September 16, 2021

MEMORIAL BUILDING

7:00 P.M.

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

Present in meeting room: Bryan O'Day, Tim Bray, Ken Jacques, Dan Saulnier, Darrin Patten and Ken Jacques.

Others Present: Tamara Butcher, Dick Hendl, Whit Smith and Alex Belensz.

The meeting began at 7:00 p.m. Dan Saulnier was asked to sit in as an alternate.

Tim Bray signed the Saggese request for merger prior to the start of the meeting.

Minutes of August 19, 2021:

Bryan made a motion to accept the minutes as written. The motion was seconded by Darrin. Ken Jacques, Dan Saulnier, Tim Bray, Darrin Patten and Bryan O'Day voted in favor of the motion. Mike Howard abstained.

Old Business:

Noise: Dan worked up the suggested changes in the noise ordinance document to the best of his ability. Dan feels the biggest change made was that they took the liberty of renaming the front page as a Commercial Noise ordinance. They are trying to put the emphasis on noises coming from commercial businesses. They are defining that as businesses, home business and home occupations; they are focusing on the noises generated from those activities in hopes that it would take residential noise off the table. Tim thought that was the most potentially controversial thing, when people think they won't be able to do regular homeowner activities. Mike stated one of the goals of the noise ordinance is to make it as easy to administer as possible. Dan said the other change they tried to implement was going through the idea of measuring noise from a receptor premises to measuring noise where it is created. A thought Whit had is the fact that the town is zoned entirely rural residential or forest conservation, meaning commercial activity occurs as the result of the special exception. So, if you start providing an ordinance that's based on commercial use you may be asking for a leap in terms of legal interpretation because the land use is technically either rural residential or forest conservation.

There was lots of discussion on the area of Georges Mills Road, and it has become commercial. Ken said to be fair about that area, it has morphed into what you consider to be a commercial area only due to its proximity to the interstate.

Copies of the drafted noise ordinance, prepared by Dan Saulnier, were given to the board and audience members. Whit also had notes he had made on the draft which were given to all present in the room. After some discussion the Board agreed to review the draft along with Whit's notes and discuss at the next meeting.

Rentals:

Tamara provided the Board members with three printouts from different towns, which were received from attorney Christine Fillmore, for the board to review and see how these towns are dealing with short-term rentals. The selectboard drafted a policy and it was sent to Attorney Christine Fillmore for feedback; the feedback being there was still some work that needed to be done with it. The Selectmen need try to come up with something better, putting some kind of ordinance in place where these short-term rentals must come to them and obtain a license to operate and there will be regulations they have to follow from a health and safety standpoint. The three printouts provided are the beginnings of what we might consider putting into our zoning ordinance.

Tim thought of the subject of short-term rentals considering how he would feel if it were next door to him; people coming and going with no ties to the community. Tamara added they would also be doing what they want with no consequences. Dick's view is if you are offering rental to the general public, it is a business, regardless of short-term or long-term. Whit respects Dick's opinion, but the other side of that is if Whit decides to move and decides to rent out his house by lease for a year, he feels that is not a business. Dick said he could agree with that, however they would still need to come to the Planning Board and explain the situation.

NH tax law says that guest facilities or itinerant occupancy does not create a residence for the individual who is there so therefore it more easily slips into the definition of business. But if there is a long-term lease, the person living there can claim that as their residence. Tim said there is a clear distinction between renting out your residence and turning it into a business where it is a guest facility.

Whit returned to Ken's point, being why do you need anything more in the zoning ordinance if in fact the site plan review and special exception would be used to consider and presumably approve that business. Tim believes the Selectboard was talking about more of a license to run a business. Or, according to Whit, the possibility of a policy to clarify what the existing zoning ordinance says. Tim asked Ken, beyond the site plan review and special exception, if he had to have a license to run his business. Ken said you have to have a food-service license, room and meals license, and liquor license (if you choose to sell alcohol). Ken said he has to have a room and meals license because anything under 180 in the state of NH you have to pay rooms and meals tax on.

There was some discussion amongst the Board as to how Airbnb functions. Airbnb doesn't focus any attention on safety issues. Dan explained how Airbnb works from a customer's point of view; the customer signs a document stating they absolve Airbnb if anything were to happen. Airbnb is just the facilitator. Ken thinks it is important that the town not be culpable in this whole process; the town does what it's supposed to do to ensure the business is meeting safety standards.

The Selectboard has been working on making some kind of statement to the effect that rental properties, whether they are short term or long term, constitutes running a business; then all the

business-related requirements would flow from that. It is not the intention of the Selectboard to create a new set of regulations for that type of a business. The intention is to declare that operation is a business, and they need to go to the Planning Board and the Zoning Board of Adjustment to go through the appropriate steps.

Whit said the statement Dick was referring to was originally styled as a policy to provide clarification with respect to the Zoning Board on guest facilities. Tim said that is how the Planning Board started it, the Board was looking at definitions and felt they were lacking. Guest facility might fit under the current definition, but it is poorly defined. The question was should the Board write better definitions and modify the zoning ordinance without going to town meeting. Tamara said you can't improve your definitions without going to town meeting, which she was told by Christine Fillmore. Ken feels a second opinion is necessary; he believes the Board has changed definitions that have not made a substantial change. Ken asked Alex Belenzs if you change or modify a definition in an ordinance does that need to go to town meeting. Alex said there is two ways to answer the questions. There is the legal sense of does that constitute expanding the zoning ordinance. Then there is the public process aspect of is it the right thing to do to put the question to the voters of the town if it does constitute an expansion of the zoning ordinance. That is the debate, is this already covered, are we just clarifying things or are we expanding the type of uses that are covered that may not have been covered before. The answer comes from answering that question. Whit said the lawyers would say if it constitutes a substantive change than it needs to go to the town. If it's really a clarification and without a substantive change, clarification of the language not a change of the intent it shouldn't need to go to town meeting. Tim thinks this falls under being a clarification. Guest facilities back when the ordinance was written meant something different. Now we have a new type of activity with the internet and advertising through Airbnb; we need to clarify the definition so that would be included under guest facilities. This would not be a substantive change; it would be a clarification. Whit stated without going to the town, as a suggestion that Attorney Christine Fillmore made which was that with overnight or guest facilities you could have the Selectboard mandate a licensing requirement. Dick informed the planning board that RSA 78-A has a very complete definition of short-term rental, which includes Airbnb.

Ken thinks it's important to really pay attention to what we are trying to accomplish and who you are trying to regulate. Dick said there will always be situations that fall in the middle. In Dick's opinion the definition of holding out rental, without specifying the length of time, to the general public is a business. That is where the Selectboard started to try clarify things. Once that was accepted, then anybody in that category would have to come to the Planning Board and the Zoning Board to go through what businesses go through. Ken said in that instance, a rental could be considered to be sub-standard and require some improvements; what happens when they don't make their improvements. Dick said there has got to be the enforcement aspect of it. Tim said that is the trouble, as there is no enforcement and there is really no inspection. Darrin said the Board has the right to visit a property once the property owner submits their application; he feels, with a lot of stuff planning board does, we let a lot of stuff fall through the cracks by not having someone seeing what is being requested in the application. Tim has done some visits to

sites with Whit and feels it gives you whole other perspective. Darrin stated the board also has the right and the responsibility to bring in the professional they need to fill in the gaps of information they don't have or know. Tim said maybe that is the way the Board can evolve and grow; Go visit a property and see if there is anything concerning, like they do with wetlands.

Mike said, on the enforcement issue, if you have someone who comes in and is informed what needs to be done to open the business but opts not to do those things and opens the business anyway, he would think you could design a letter from the town to them that said this is not legitimate in our town and you need to inform your insurance company that you are operating a business that doesn't meet town requirements. That kind of a letter, if acceptable with the town attorney, is going to get peoples attention. This is not a guaranteed level of enforcement, but most people take notice if they think their insurance could be affected. Whit said if that kind of a letter is sent than the insured is technically on notice that there may be a violation and their insurance policy says if you have any indication that you may be in violation you have a duty to inform the company or your insurance can be voided; that's where the leverage is. Tamara asked if commercial insurance is something that can be required. Whit believes you could require it, but it would follow the site plan and special exception; it could be in the conditions of the special exception that they have to provide evidence of insurance.

Dan asked if we start looking more closely at short-term or long-term rentals with a view towards tenant safety, then if there is a problem at a facility we didn't look at or one we did look at, would the town be liable. Whit said probably not, but it is always a risk. Mike said that is where you get to ask them for a certificate of insurance. If they are unable to get insurance, then we can say no to their business. Whit said the concept of sovereign immunity, what Dan is sort of addressing, says that if a municipality is acting in good faith doing what it is supposed to be doing, they can't be sued.

Mike asked the present Selectboard members if they feel the proposed mechanism, which is to bring our definitions up to what the state RSA says and then that would trigger them having to get a special exception and a site plan, would solve the issues. Tamara doesn't think it would solve them, but it would definitely help. Dick said there needs to be a clear statement somewhere in there that would say that anybody who holds out rental to the general public is running a business; that has to be clear. Mike asked if the planning board were to write up that language and did it in consultation with the selectboard if that would be a way to move forward at this point. Yes, and it would have to be run by Attorney Fillmore.

Tim asked Dan where the requirement for insurance would go. The Planning Board feels the requirement to provide insurance would be a condition of the site plan.

Ken thinks we have the mechanism currently in the ordinance to regulate, if it's a business, this operation. Dick agrees but feels there needs to be a definitive statement that you are running a business. The planning board feels that can be done by updating our definition. Whit suggested that everyone reads the paper from NHMA as there is some ambiguity in there. Whit said that

Amy did draft a policy clarification, which he has some thoughts and comments on to tighten it up a bit, and that could be a good first step. The boards could collectively work on taking Amy's work and making it presentable for consideration by the Planning Board and the Board of Selectmen at another meeting.

Tim stated we should start with the definition to include these short-term rentals and what we mean by short-term. Mike asked if Amy's draft is something we could build a work session around. Whit said what Amy has drafted is a statement of policy by the Selectboard to provide clarification to the definition of guest facilities which is referred to in 3.12 which is thirty-seven years old at this point and requires an update. This update would clearly put short term rentals into the category of guest facilities; duplexes have not been addressed as a business and we carved out anything that is more than 185 days as not being addressed. These are considered to be a business, and therefore require under 3.12 a site plan and special exception.

Bryan says our ordinance would be contradictory if you called a duplex a business. Our ordinance claims that single and multi-family units are allowed. Then it goes on to say if you have a business you have to get a special exception. Whit said you are allowed to have a duplex; you're allowed to have a two-family residence; now the question is what's going on and how does that effect the use of the land. If in fact it is an income generating investment than maybe it is a business, even though it's allowed. Tim said it is when you make a residence into a business that triggers our current rules of getting a special exception and a site plan; the key is in the definitions.

The planning board will read Amy's draft and discuss it at the next meeting or a work session if necessary.

The meeting was adjourned at 8:33 p.m.

Jill Hastings
Deputy Administrative Assistant