

**Final**



**WEARE PLANNING BOARD  
MEETING MINUTES  
September 9, 2021**

**PRESENT:** BRUCE FILLMORE, JR., VICE CHAIRMAN; JOHN (JACK) MEANEY, EX-OFFICIO; WILLIAM (BILL) STOCKHAUS, SECRETARY; RAYMOND (RAY) MENARD, ALTERNATE; NAOMI BOLTON, INTERIM LAND USE COORDINATOR

**ABSENT:** CRAIG A. FRANCISCO, CHAIRMAN; FRANK (CHUCK) BOLTON

**GUESTS:** John Nikias, Dave & Jackie Pratte

**I. CALL TO ORDER**

Vice Chairman Fillmore called the meeting to order at 7:00 pm. and welcomed those present to the September 9, 2021 meeting of the Weare Planning Board.

Vice Chairman Fillmore appointed Ray Menard a voting member and stated tonight's work session discussion is for Zoning Amendments to Airbnbs, wetland setbacks and buffers. He explained Chairman Francisco was working on wetland setbacks and buffers. In his absence, those items will be forwarded to another meeting.

**II. DISCUSSION**

**A. Residential Rental Property Amendment**

Vice Chairman Fillmore presented to the Board and guests his latest draft work sheet for amending the Residential Rental Property. He then opened the floor for our resident guests to speak at the podium.

John Nikias, 106 East Shore Drive, stated he is a 40 year resident, not new to town looking to just come in and change everything. He explained the residence adjacent to his property has had a couple different owners in the past few years. John stated he previously presented to the Board proof this neighbor's two-bedroom septic designed home is advertised on the internet for rental property sleeping eight people. While he was attending the Planning Board meeting two weeks ago, there were six cars, 15 people, at the property and the next day seven cars parked in the road. He is outraged. Someone renting their home for a couple weeks is very different from people buying a property for the sole purpose of renting it out. This is a business. They have no intention of ever living in the home. Parking on a Class VI road blocks access; there is no room for another vehicle to pass. Winter rentals creates even worse scenarios, parking in snow banks on both sides of the road, blocking the road. John suggested banning this business, not regulating it. Those that rent out their homes for a few weeks a year is not the same as property owners renting out their homes as a business. Businesses should not be allowed in a residential area. The Town of North Conway, NH. has banned the renting of residential homes and have won their lawsuits against this. John proposed a warrant article worded in such a way that it cannot be taken under advisement. Signatures for the article could be easily obtained. The key is proper wording, shutting it down 100%. Not regulating it based on the septic size because some older homes do not have a septic design.

John asked Vice Chairman Fillmore if a home without a septic design could rent to twelve people, for example. Vice Chairman Fillmore responded if a property has no septic design on file, and they are using it as an Airbnb, they will have to put a septic system in with a design on file. John asked how and who will regulate that requirement. Vice Chairman Fillmore explained if worded properly it could be enforced. He stated he has discussed this with the Fire Chief. Chief Vezina's concern is life safety. A life and health issue needs to be worded carefully. A permitted process. Someone could ask for a variance for anything in a town's zoning ordinance.

It is against the law to ban them no matter how an ordinance is worded stated Vice Chairman Fillmore. He stated Weare is rural with farmland, mountain views and waterfront homes that people should be allowed to rent on a short-term basis.

John reiterated how outrageous the behavior of renters are and stated Vice Chairman Fillmore is missing the point. Twenty people can be found standing on a dock fifteen feet from his bedroom window. For fear of a positive drug test for his work, there are days he cannot go outside on his own property because of renter's choices. Outrageous.

Vice Chairman Fillmore restated the idea is to limit the number of people allowed, period. Enforceable where the Police can be called.

John reiterates it was declared at the last Planning Board work session no parking allowed on the road. Jack Meaney commented the Police cannot enforce cars parked on private property. The Fire Department as well can enforce the issue because there has to be enough room for an emergency vehicle to pass.

John emphasized his frustration with dealing with this situation seven days a week. If he has to call the Police every time he smells pot or someone parks on the road he will. Specifically, John addressed the Board stating he physically brought the Board a copy of the neighbor's tax card showing a two-bedroom septic design and the Airbnb advertisement depicting the rental property sleeps eight. Was anything done?

Jack Meaney stated the Town Administrator asked the BOS to follow through and no one from the Select Board has looked into it.

John asked was anything sent to the Police Department stating they had to respond to calls with cars in the road.

Town Administrator Bolton responded she knows it was said, but the Police should have to respond without a letter.

John asked if he calls and the Police do not show up, should he come back to a BOS meeting. Jack Meaney replied yes.

John explained the zoning ordinances are in the process of being amended, nobody including himself truly understands them. What do they mean? This whole situation is very confusing. You can flip a coin and decide an interpretation. Something has to be done. The Town has the proof, two-bedroom septic design and an advertisement for an eight-person rental.

Vice Chairman Fillmore stated this particular situation is not the jurisdiction of the Planning Board. It is the Code Enforcement Officer's job.

John asked is that driven by the Selectmen. Vice Chairman Fillmore responded yes.

John stated he was told to come to the Planning Board. Vice Chairman Fillmore explained the Planning Board is working on revising the code. This in turn gives the Code Enforcement Officer and Police more leverage.

John asked the Board if he stakes the property boundaries would the Police have the illegally parked cars towed. Jack Meaney answered yes, it is a residential area, not zoned for a business; the problem is the ordinances have to be clarified. A commercial business cannot be run in a residential area. Some residents are running a business at their properties. Unfortunately, right now the ordinances need better “teeth” for enforcement. Revised ordinances that do not restrict short-term rentals. John agreed, there is a difference between daily, short-term rentals and running a business renting properties fulltime.

Vice Chairman Fillmore restated the ordinances have to be carefully revised. He will keep in mind what John has stated as he understands and cares what he had to say.

Jack Meaney explained the current situation is tough because the Town does not have a Code Enforcement Officer. The new Building Inspector is busy doing building inspections.

Town Administrator Bolton stated the Building Inspector does not have enough hours, as the townspeople did not vote for a fulltime position.

John asked if the Code Enforcement Officer is a fulltime position. Town Administrator Bolton responded it was fulltime, but positions were changed and the fulltime Code Enforcement/Building Inspector position was combined. It was then put forth as a fulltime position and was voted down.

Jack Meaney stated without a Code Enforcement Officer the duty falls to the Selectmen.

John stated there is money in the budget, but one cannot be appointed. This is strange. He asked should he come to the BOS meeting. Town Administrator Bolton responded yes.

Ray Menard attested to the fact that one does not just put stakes in the ground and call Police for towing. There are posting requirements.

Jackie Pratt, 51 Winter Road, addressed the Board concerning a neighbor having an easement on her property. Her driveway is shared by her adjacent neighbor, though she owns the driveway. After investigating, she found it is against the law to make money off an easement. She stated she maintains the wear and tear to the driveway. Therefore, it is not right that her neighbor is renting out his property making money using her driveway. In the same way, if there was a fair in town she could not make money charging people a place to park. She has a property lawyer looking into her neighbor’s venues.

The second issue she is having with this same neighbor is he has overdeveloped his property so much there is no place for trucks to turn around on his land. So, Amazon and other delivery trucks are parking in her driveway to walk down and make deliveries. There is no room for them to maneuver or back up. Already in trouble with NHDES, a Shoreline Protection process, there will be an even bigger problem if they force her neighbor to make restorations.

Jackie continued outlining the lengthy details of violations by this one neighbor operating an Airbnb, housing people in a bunkhouse/barn the town permitted as an office/storage space. Multi-layered violations from parking 12 - 15 mid-sized cars, advertising rental property sleeping 16+ people on a two-bedroom designed septic system.

Jackie contends the Town should have given a permit pending. Making sure NHDES signed off before a legitimate permit was issued. Currently, his barn is permitted for two offices, a gym, a half bath and a full bath. This will be rented out. This structure is right outside her living room. It was built between their two houses. She stated there needs to be a three strike you're out protocol where these operations can be shut down upon multiple infractions. Also, she suggested there should be a listing of registered Airbnbs in Town with emergency phone numbers for the Police because many of these properties are owned by people who do not live here. Falsely claiming they are on their sites, when they are not. Vice Chairman Fillmore responded that is a good idea to have a database. Town Administrator Bolton commented she read the Town of Conway, NH. initiated a four strike you're out rule. Jackie offered the strikes should be accompanied by fines as well.

Jackie informed the Board two weeks after the Town sent him, her neighbor, a Stop Work Order he hung up a new sign, weekly rentals. She tried, originally, to be civil with him and ultimately he has verbally accosted her in her driveway. One of his workers intentionally backed a vehicle towards her in her yard while she yelled to get his attention. He ignored her. The Town needs to be diligent with a list, track the violations and shut them down stated Jackie. Stick to it and fine them.

Jackie maintains the Town is short staffed, but she should not have to sell her home. As the previous owner did because they could not deal with the ongoing illegal activity. She moved out to the country for peace and quiet, she doesn't hurt anyone and abides by the laws. She could have moved to Manchester to sit on her deck and see a parking lot. It was her intent when she moved here to get away from that. She has lived in town for five years and has never called the Police on anyone. It is out of control. What do you do with an easement?

Jack Meaney responded an easement would fall under a Civil Complaint with your personal lawyers.

Town Administrator Bolton asked could an easement be taken away. Jack Meaney stated that would involve a deed and the property owner's attorney.

Jackie stated she disagrees with the Board, stating a property owner that pays their taxes should not have to hire an attorney when a neighbor violates the law. Jack Meaney explained certain laws are enforceable by the Code Enforcement Officer, but the town does not have one at this time. Other laws, for example, disputes with your neighbor are Civil Complaints handled by your attorney. Easements can be considered a contract not handle by the BOS or Police.

Jackie explained her issue is not the easement; it is her neighbor running a business renting three properties. Jack Meaney stated in the absence of a Code Enforcement Officer the matter delegates to the BOS who have fulltime jobs. Currently, two Board members are looking into another case, but it is difficult because it has to be done at night. The BOS will have to decide who will respond to this complaint.

Jackie asked if her neighbor is renting three properties and the town has already sent him a letter of violations, why does he still have a sign up offering rentals. Jack Meaney replied the town needs a Code Enforcement Officer. Jackie answered the town sent the letter without a Code Enforcement Officer. Jack Meaney stated Town Administrator Bolton sent the letter. He understands Jackie's frustration and does not disagree with her.

Town Administrator Bolton asked would the registration of these businesses fall under zoning, or could the Board of Selectmen create an ordinance without going to Town Meeting?

Vice Chairman Fillmore responded that is the way to go. The ordinance could have an automatic fine system, no need to go through the Code Enforcement Officer. Fire or Police could issue them, automatic fine and ticket.

Jack Meaney stated something has to be done if they ignore the fine. Vice Chairman Fillmore added the town could put a lien on the property. Jack Meaney stated the town could file a petition in District Court.

Jackie also stated the Fire Department or Police should be doing inspections for available parking, etc.

Vice Chairman Fillmore stated that will be included as part of their registration. Fire Chief Vezina will do a life safety inspection with annual renewals up for review. Complaints would generate a visit during the year; if for example, cars are blocking the road.

John Nikias asked if an Airbnb is allowed to register with the town, shouldn't the abutters of the property be notified? Vice Chairman Fillmore answered the property owner will fill out an application, Fire, Police and the Health Officer will review it.

John Nikias reiterated would the abutters have a say. Vice Chairman Fillmore replied any permit issued by the town; the abutters have a 30-day appeal period. Unfortunately, there is no notification process. If a building permit is issued anywhere in the State of NH there is no requirement to notify an abutter.

Secretary Stockhaus asked if a Site Plan Review was needed for a significant Change of Use. Vice Chairman Fillmore replied no. However, Vice Chairman Fillmore stated, her neighbor "adding a venue" should have had a Site Plan Review coming before the Planning Board. Town Administrator Bolton added that was stated in their letter.

Secretary Stockhaus pointed out a 1950's septic system in the Aquifer District of the town lake should have a Site Plan Review regardless if commercial or residential. Vice Chairman Fillmore responded he disagreed because renting out a room(s) or a building does not require a Site Plan.

Secretary Stockhaus added it could be addressed in the application process for certain qualifications or additional issues, warranting a Site Plan. Vice Chairman Fillmore stated having an approved septic system on file would alleviate a lot of issues. Not just a plan, it has to be built, as 95% of the lots around the lake will only handle a two-bedroom septic design.

Secretary Stockhaus pointed out on the official Airbnb website there are only two legitimate ones in Weare. The town needs to define their terms, as some rentals are not Airbnbs. Vice Chairman Fillmore stated he chooses not to use any of those terms. He suggested short-term rentals, all rentals to non-family members. Residential rentals period, one day or two years.

John Nikias asked doesn't this fall under the Health Inspection Officer on the payroll. Town Administrator Bolton replied the town does not have one of those either. Jack Meaney stated the town would have to call the State. John Nikias asked does a failed septic with water running toward the lake have to happen before something is done. Vice Chairman Fillmore responded unfortunately yes. John Nikias apologized he did not know the town did not have a Health Inspector as well. Vice Chairman Fillmore stated NHDES only has one Enforcement Officer for the entire State.

Town Administrator Bolton stated the letter to the resident from NHDES was also forwarded to their legal counsel. It must be serious.

Vice Chairman Fillmore asked if this person has been notified he needs a Site Plan. Town Administrator Bolton explained yes and as Jackie has stated his fine is now in excess of \$17,000.00. Jack Meaney stated permits should be suspended for falsifying an official document. Town Administrator Bolton explained our Town Attorney is involved. NHDES has a long list of items he has to contend with.

Jackie explained she has done everything she can, filed complaints, etc.

Vice Chairman Fillmore stated he has ideas he will take to the Town Attorney and Department Heads for a fine system.

Town Administrator Bolton stated the Board of Selectmen could create an ordinance. Vice Chairman Fillmore and Jack Meaney agreed.

Secretary Stockhaus suggested Dave and Jackie Pratt, as John Nikias was told to, come to a BOS meeting because they are currently the Code Enforcement Officers.

Jack Meaney stated other town's Airbnb restrictions would be taken into consideration to come to a suitable conclusion.

Vice Chairman Fillmore stated Portsmouth have zoned it banned in some areas and allowed in others. Jack Meaney stated they are a large city with many employees to enforce their laws.

Parking is an issue stated Vice Chairman Fillmore. We need to keep people from parking in the road. Renters need to have parking on their property as part of their permit. Only two cars allowed to park on your property. He stated the problems are fixable without completely restricting Airbnbs.

Jack Meaney offered a town official has to physically inspect before application is okayed.

John Nikias suggested because there is no notification for issuing permits could the Town Website have an Airbnb location page. Town Administrator Bolton explained the E-Subscribe aspect with email notification for Town website postings.

Jackie reiterated her previous point regarding a pending permit vs. issuing a permit without NHDES signing off. Had her neighbor been given a pending permit, he would have been stopped. Vice Chairman Fillmore stated this needs to be addressed in our Building Ordinance. Anything in the shoreline zone a permit will not be issued until the NHDES shoreline permit is approved.

Upon leaving, Vice Chairman Fillmore and Jack Meaney thanked the guests for their input and suggestions.

### **III. OTHER BUSINESS**

Secretary Stockhaus suggested under Vice Chairman Fillmore's draft work sheet *Residential rentals shall be permitted in all zones where residential uses are allowed... add, with an approved annual registration permit.* Jack Meaney stated that is a good idea.

Vice Chairman Fillmore stated the problem across the State is 90% of the time, for example, when someone requests an ADU permit the town's Building Inspector require a septic design first, but tell them they only have to install it if their current system fails.

Jack Meaney stated many times homeowners apply for septic designs their property size cannot support. Four bedrooms are built on two-bedroom septic.

Ray Menard asked how are these revised ordinances going to be enforced. He pointed out the Town already has an ordinance #18 in place that states, *No on street parking*. Ray reiterated what John Nikias had stated, his neighbor had 16 cars parked in the street and the Police did not come. Vice Chairman Fillmore replied that is the fault of the Police.



Secretary Stockhaus suggested on page 15 of our Site Plan Review regulations after *B & B*... we need to clarify by adding *short-term rental*. Vice Chairman Fillmore responded he is going to call them short-term rentals period. The Fire Department will have a lot of requirements, emergency egress, Co2 detectors, etc.

#### **IV. MINUTES**

August 26, 2021 Minutes: **Secretary Stockhaus moved, Jack Meaney seconded to accept the minutes of August 26th as written, passed 2-0-2, Vice Chairman Fillmore and Ray Menard abstained.**

#### **V. NEXT MEETING**

September 23, 2021

**Being there was no further business to come before the Board, Secretary Stockhaus moved, Ray Menard seconded to adjourn the meeting at 8:24 pm. Passed 4-0-0**

A True Record

*Karen Nelson*

Karen Nelson transcribed from

You Tube Recording, TA Bolton notes