

# TOWN OF THORNTON

## PLANNING BOARD

Approved on: Nov 26 2019  
PB Initials: SBS  
Rec'd by Town Clerk on: 11/26/19  
Town Clerk Initials: 11/26/19

### Planning Board Work Session Minutes Tuesday November 12, 2019

#### CALL TO ORDER:

Planning Director B. Regan opened the work session at 2:01 p.m.

#### ROLL CALL:

Members present: F. Freeman, L. Hoyt, P. Laufenberg, D. O'Donnell

Alternates present: J. Piehn

Others present: Brian Regan, Sara Holland, Tom DeMatteo, Debbie Duffy, Kathy Harris, Joell Freeman, Stanley Freeman, Corey Smith, Chris Gowen, Stanley Bujalski, Leslie Fox, Bernard Monagle, Beverly Monagle, Darlene King Jennings, Wayne King, Melissa Levin, Art Marks, Aaron Woods, Tim Scanlon, Kevin French

#### PRELIMINARY REMARKS:

B. Regan advised those in attendance that this is a work session, not a public hearing, and there will be no public input or comment. Board members present have a packet before them with a summary of the task at hand, some proposed questions as to how we approach the matter and supporting materials.

He then stated the main reason we are here is the Board of Selectmen letter of June 19<sup>th</sup> requested the Planning Board's input and recommendation as to which way to go with the increasingly controversial issue of short-term rentals. Also before the Board is the legislative committee report; a presentation from a NH municipal association's legal team basically outlining many of the aspects – pros, cons, otherwise – of the matter of short-term rentals and whether or not they can be regulated, and if so, by whom; a NH municipal association discussing item discussing when is a house a hotel; a draft amendment to the zoning ordinance proposed by Laconia; a draft ordinance from a different township outside of New Hampshire which gives a background as to the types of things that are being addressed in local control; a work session done jointly by the Portsmouth NH City Council and Planning Board relative to the matter – presently they do not allow short-term rentals; and recent New Jersey news clippings about the election last week in Jersey City addressing the matter. This is background for the Board's use as they go forward.

B. Regan stated the real issue is what needs to be done and if something needs to be done, which avenue of approach to take. He stated if a zoning amendment is something that is to be considered, whether regulations would be considered and if any of those are considered, then to what extent.

#### SHORT-TERM RENTALS-DISCUSSION:

P. Laufenberg stated the first question is: Does the current Thornton zoning ordinance effectively address the matter of short-term rental regulations? The concern is back-to-back rentals, short-term, in residential zones. He stated if you look at the zoning, it is allowed – rental rooms for board to resident guests and private family dwellings. Elsewhere in zoning it does not seem to address the situation. The question is should the Thornton Zoning Ordinance be amended to clarify whether or not to permit short-term rentals in residential zones.

B. Regan stated the particular issue came up several months ago – a letter went out to many cities and towns from an attorney who indicated he represented the NH Realtors Association. The attorney, it would appear, was discouraging local control. NH Municipal Association's legal team has addressed this with a follow-up discussion with our planning board council and he agrees that it certainly can be controlled or regulated. Therefore, it can be put into our Town – the question is whether it should be in the zoning

ordinance, whether it should be a regulation or a policy. It definitely can be done – the question is to what extent and how does it get detailed.

B. Regan clarified that a zoning amendment would require a Town Meeting vote – there would be at least a time frame for getting that process in place. The deadline to get on the warrant is the beginning of February – so hearings would have to be prior to that. A regulation would be done by a Town Board – whether it be the Select Board or the Planning Board. It would still be a public hearing process to review whatever was proposed. From the information before you, you can get a sense of what the issues are. Obviously people have property rights and they also have the right to keep the value of their property intact.

P. Laufenberg stated the consensus of the Board was generally, even in short-term rentals in residential areas, there is nothing wrong with that. The question is when it becomes either a safety concern, a nuisance, or the character of a residential zone – the Town has no way to enforce that, look into it, or even have the fire chief go out and do a safety check. There is no ordinance or anything to go back on.

B. Regan stated it was recently noted that there is a disorderly conduct ordinance that was enacted in recent years. Reference was made to that as a potential enforcement tool. He believes, after reading it, it addresses activities in public places which he does not believe gets over the line of somebody's private property. The zoning ordinance, although it's been amended many times since, was enacted in 1970 and times have changed. Things need to be changed to adapt to these changes.

P. Laufenberg questioned whether this needs to be addressed through the zoning ordinance or a regulation. This will be presented to the Board of Selectmen and they will make the decision on how to move forward.

B. Regan stated people raised concerns to the Board of Selectmen who then brought it to the Planning Board with their letter in June, questioning whether the zoning ordinance presently addresses it adequately or not or whether it could be amended or adapted. The Board is asking for a recommendation about what to do. There is no reason the recommendation can't have A, B, or C alternatives. Whatever this board ultimately comes up with, obviously the full board will have to hear what the work session result is.

J. Piehn stated houses that have been purchased solely for income purposes basically, are commercial. They are making money. She wondered if we have anything in our ordinance for residential homes that become commercial money-making properties.

B. Regan stated this is a matter of interpretation.

D. O'Donnell wondered if what is needed here is more of a clarification of what is already in the zoning, where we do allow renting of homes in private family dwellings. Maybe we just need to address that with some clarification of where that extends to or how far that extends.

[F. Freeman arrived at 2:23 p.m.]

B. Regan stated this has been touched on in some of the materials. When is a home a hotel? A commercial enterprise in a residential zone is not, per se, allowable. There are ways to do it, but that is not automatically allowed. Renting a house or renting a condo is commonplace and not unusual, but when does it become more than that and what is more than that?

F. Freeman stated he'd be interested in knowing what the Town's concerns are in this issue. He spends a lot of his time in Waterville Valley and 95% of the homes there are second homes. People commonly rent them out short term. There are not a lot of concerns that he perceives there. Thornton is a different type of community. For the board to have some good input, we need to get a good feel for what the Thornton residents' concerns are with this issue so that we can decide how to best address them from the board's

point of view. We need to have a working definition of what short-term is. He would say anything less than 30 days is a short-term rental and operates differently than a long-term rental. He questioned how to get input to this board as to what the town's concerns are.

B. Regan stated this board has been asked to make a recommendation as to which way to go – whichever way the Select Board determines is appropriate would be the direction that the town takes. When that gets put together in the form of either a proposed amendment, or a clarification to the zoning ordinance, or a regulation freestanding of its own, or a separate ordinance – that would be the time that public input would be requested and welcomed. Right now, there is nothing to input to.

F. Freeman stated that this is a complex issue. There are different degrees of this. You have a residential zone where someone builds, buys or uses as property expressly 365-days a year for short-term rentals; is this a one-room hotel? Is a hotel a business? On the other hand, there is the situation where a person might go on vacation two weeks a year and wants to rent their house out for those two weeks. There are all kinds of degrees that need to be addressed.

P. Laufenberg stated it's a very narrow question that we are answering. It is the buying of property and being an absentee owner, renting it 365-days a year and a new person is coming in every week. That is what the concern is. Going away for a month and renting your house out for a month, isn't necessarily the issue.

Discussion followed regarding residential streets where such rentals are located. There can be many cars parked at these homes, making entrance to the roadway difficult. This is a concern for the fire department.

B. Regan re-iterated the disorderly ordinance which is fairly pervasive spills into the roadways and if it's an accepted street, there may be some overlap. Whatever is done to address this could be dovetailed with that ordinance.

J. Piehn stated in the literature given there are a lot of definitions. We could say to the Board of Selectmen that short-term rentals would be any dwelling or condominium in which the owner does not reside, that is available for use or is used for accommodations or lodging paying a fee or other compensation for a period of less than 30 consecutive days. She wondered if that would be a good place to begin?

B. Regan stated it is as relatively new issue and still being dealt with across the country. There are examples of things that are done in other places and it is going to need to be adjusted to meet the needs of the town talked about.

J. Piehn stated she is not against rentals or Airbnbs. However, living in a residential neighborhood with up to twelve people next door every single weekend, all summer long, changes your neighborhood dramatically. It is an absentee owner and she feels this is what is also causing the problems. If you have purchased your home to put into rental and you have an agency in the community – a realtor, an agency – at least people have someone to contact.

P. Laufenberg stated a managed rental will have a management company that will ensure the renters will not abuse the property. It is a narrow swath of situations we are talking about but it is one that has a significant impact to the residential part.

B. Regan stated he is also getting questions from people that are looking to buy something to use for themselves but also rent it out on occasion. They are concerned because they hear that the Town is looking at controls. Ultimately, your recommendation could be structured to say we think something should be done, a definition is needed, some local control, anything the board feels is going to summarize.

F. Freeman stated he feels definition is the key word. Is the owner present, not present; locally managed, not locally managed. We need to define what it is we are concerned about. Maybe we start off by defining a situation: renting under 30 days, no owner present, not locally managed. This seems to be most people's

concern.

P. Laufenberg stated in response to the Select Board, this does need to be looked at further. Defining in the Zoning Ordinance, Article V, Section A, #11, more specifically. Recommended that be looked at and defined further for 2019. Based on that, the Board will ultimately decide if they want to and do that.

D. O'Donnell wondered what we recommended for length of stay regarding short-term rentals. That will be difficult as recommendations from other towns are quite varied.

F. Freeman stated the State has a definition of 185 days for the 9% meals tax; anything less than 185 days is taxable. The IRS defines a rental property in terms of days of owner use. If the owner uses the property less than 14 days and rents it the rest of the year, it is defined as a rental property. If he uses it himself 15 or more days and rents it, it is defined as a personal home that he also rents. F. Freeman believes 30 days is a reasonable definition for a short-term rental.

B. Regan stated for the purposes before the board, it is a matter of suggesting to the Select Board what you recommend, not necessarily defining it. A definition needs to be done but the board does not have to give them one. This board needs to narrow down the concerns in answer to their request. The bottom line is something needs to be done; to what degree is the question.

J. Piehn wondered if we could ask the Select Board to take a look at some of the information provided to the Planning Board.

L. Hoyt agreed that might be a good idea.

P. Laufenberg stated if we did that, he would recommend they look at the State of NH and Laconia. If some sort of regulation is going to be enacted in the Town, they should look at what is being proposed in Laconia and the Hayes Township. The strength of these is the definitions that are there. It would be a good template, a good source, to create any sort of short-term regulations. These could be derived from the Laconia proposed short-term ordinance.

B. Regan stated in the original letter the Select Board is asking if the board finds the zoning ordinance addresses it properly, should it be enforced?

P. Laufenberg stated the letter said 'should the Thornton Zoning Ordinance be amended to clarify whether or not to permit short-term rentals in residential areas'. He further stated they are asking the Planning Board to review the matter and make a recommendation to regulation of the use.

P. Laufenberg stated he doesn't feel there is any disagreement of any sort of short-term rentals in residential neighborhoods; they do not want to prohibit this. The question is does the zoning ordinance need to be tightened up to allow some enforcement when something becomes an issue. He stated the zoning ordinance does not deal with short-term rentals in the way we are looking at it. We first need to further define what it means.

B. Regan stated people start to confuse the short-term rental issue with accessory dwelling units being allowed and that is not at all the issue before the Board. Those are owner occupied and a different scenario that is allowable in any zone.

F. Freeman stated the ordinance needs to have something that addresses short-term rentals. There is nothing mentioned about renting a place out on a short-term vacation basis. It is a new concept since this was written.

B. Regan stated another item that is misconstrued in the existing ordinance is the bed-and-breakfast, which again is owner-occupied. It is a different use in a particular zone. B. Regan confirmed with members that it is agreed that: (1) the ordinance does not effectively address the matter? and (2) the zoning ordinance should be amended to clarify? Based on what has been discussed, seen or heard, should

some other alternative measure be considered?

B. Regan stated the New Jersey, Michigan, and Laconia ordinances, and a newer amendment from Portsmouth, are all amendments or additions to a zoning ordinance as opposed to a regulation.

D. O'Donnell recommended the literature given be read through to be prepared for further questions by the Select Board and suggested the members draft up some ideas so that the ordinance can be changed or clarified.

B. Regan clarified that the question before them is should the ordinance be amended or changed to address the issue; is it currently sufficient to address the issue. The answer is no. Should it be amended and clarified – the answer is yes. After that, the Select Board letter asked about enforcement. If it is found that it presently does address the matter, should it be enforced. The answer was that it doesn't effectively address the matter, so what is there to enforce. Our amendment or clarification is critical to which way they will want to go forward. Ultimately, the Select Board will ask for your input in putting together a draft.

F. Freeman stated he would like to take some time personally in trying to draft up what might be the focus of the most concern – narrow the definition of short-term rentals.

B. Regan stated, it seems he needs to draft a reply to the Select Board informing them of this board's response. In general, it will say that the board doesn't feel the zoning ordinance addresses the issue and does feel it should be clarified or amended.

P. Laufenberg asked about the third point regarding should any prohibition be enforced when complaints come in for such operations.

B. Regan stated his interpretation is that if the board finds that it does address it, then should it be enforced as they are the enforcing authority. The answer now could be that if it is amended or clarified, enforcement measures should be included.

It was noted that the draft minutes for this work meeting would be available at the next full board meeting on 11/21/2019.

**ADJOURNMENT:**

The work session was closed at 2:58 p.m.

Respectfully Submitted,

*Brian Regan*, Planning Director

# Thornton Planning Board

## Work Session

**November 12, 2019**

2:00 p.m.

## Public Sign-in Sheet

PLEASE **PRINT** YOUR **NAME** **AND** **ADDRESS**.

Thank you!

	Name	Address
1.	Sara Holland	SHC Rte 49 Campton
2.	Debbie Duffy	571 Cross Rd, Thornton
3.	Lathy Harris	150 Woodwines Dr, Thornton
4.	Tom DeMatte	S Linkside
5.	Jail Treman	Woods 15th St N
6.	Carey Smith	Waterville Estates
7.	Chris Gaven	26 Diamond Ledge
8.	Stanley Bijalski	11-2 Carey Circle
9.	LESLIE Fox	878 ROUTE 49
10.	Bernard Newby	865 Upper Mad River
11.	Beverly Newby	865 " " "
12.	Dorlene King-Jennings	Campton
13.	Wayne King	Upper Mad River
14.	Madison Lewis	9 Davies Drive Thornton
15.	Lynn Wood	Campton

16. \_\_\_\_\_
17. TIM SCAMON CAMPTON
18. ART MARKS CAMPTON
19. KEVIN FRENCH 581 SCHOOL ST RUMNEY NH
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