

SUNAPEE BOARD OF SELECTMEN  
MEETING  
6:30PM Town Office Meeting Room  
Monday, July 25, 2022

Present: Vice-Chairman Suzanne Gottling, Chairman Josh Trow, Selectman Jeremy Hathorn, Selectman Fred Gallup and Shannon Martinez, Town Manager.  
Via ZOOM: Selectmen Carol Wallace

REVIEW OF ITEMS FOR SIGNATURE:

INTENT TO CUT:

Parcel ID: 0239-0013-0000 329 Nutting Rd, Shean Austin

**Motion to approve INTENT TO CUT by Selectman Hathorn seconded by Selectman Gallup. All voted in favor.**

LAND DISTURBANCE BOND:

Parcel ID: 0125-0026-0000 154 Garnet St, Phil & Ellaine Goldberg

**Motion to approve LAND DISTURBANCE BOND by Selectman Gallup seconded by Vice-Chairman Gottling. All voted in favor.**

APPOINTMENTS

•7:00PM-Troy Hack-Request to ban boats from loitering

Troy Hack presented him as a designer and one of the forty petitioners to the State to request a No Rafting Zone in the Joe's Creek Pond Area which was shown on the map he presented. As he had understood it this was the process that the Department of Safety oversees, they ask for a number of signatures in a petition which was submitted to them, they schedule a public hearing with official notices attached to them on the second page from the documents he submitted to the Board. He explained the definition of rafting which by the State is defined as three or more tied together in an anchor. It is a relatively small area; boats are getting bigger these days and he showed them a picture of 21 people and 5 boats in about 30-40 yards from the dock. He said that it has a lot of noise quality and life impact so they thought they would ask the State for their assistance in just keep an intensification use at where is now. He had purposedly come here to inform the Board of Selectmen, to take questions or guidance as they might have.

Chairman Trow asked if they ran into a raft of more than five boats and an unidentified member of the audience replied that they have counted one time a number of 21 boats anchored and it was recently and it is getting worse. Selectmen Wallace pointed out that rafting is not allowed anywhere in the lake. Mr. Hack responded that 2-3 areas on the lake are not allowed for rafting and that with their petition they are asking for the Joe's Creek Pond Area to become a prohibited area for rafting as well. Vice-Chairman Gottling asked if they get any problems with the trash od noise in the area to which Mr. Hack responded that it gets very noisy and they could hear conversation and when they start playing the boom boxes and stuff across the boats, it gets very noisy.



Kristine Quarry via ZOOM asked about clarification if the 21 boats mentioned earlier were rafting and the answer from the audience was 2-3 rafts in a group not as a whole 21 boats raft. She further asked for clarification about the petition as of do they asking for the whole lake to be prohibited for rafting to which Mr. Hack answered that they are only asking for a specific area around Joe's Creek Pond to be prohibited for rafting and at that point Chairman Trow read the petition and went through the exact area asked to be prohibited for rafting.

Selectman Gallup asked Mr. Hack if there were something that he would like from the Board. Mr. Hack said that if the Board felt that it was appropriate, they could make a comment to the Commissioner of the Department of Safety that the Board had found no fault to the petition and that they support it, it would be terrific.

Chairman Trow had no objection to the petition other than the question of it obviously not going to address the core problem which is a lot of people in a small area.

Selectman Gallup's opinion was that it is not going to eliminate the whole problem, but it would take care of the kind of things that they see in the picture.

#### •7:15PM-Cordell Johnston-Short-Term Rental Presentation

Cordell Johnston introduced himself as an attorney practicing Municipal Law and was invited to speak on Short-Term Rentals because he has done quite a bit of work on this issue in the last 5-6 years starting with work at a legislator because in the last several years on a state level have been a number of efforts to prohibit the municipalities from regulating Short-Term Rentals. Groups that support and market Short-Term Rentals have seen at a fair amount of influence especially in the Senate and have gotten a legislation couple of times through the State Senate that would have prohibited towns from regulating Short-Term Rentals. Thankfully, the House was less influenced and has stopped those bills most recently this year. He wanted to make clear that he is not here to give legal advice and not going to talk about anything specific about Sunapee or its Ordinance or recommend anything. He said that there is no definition of Short-Term Rentals at the State level, but it is basically renting a property or part of a property that is usually a single or multi family home on a short-term basis as opposed to a long-term rental which is where somebody is a tenant and resides at the property. Short-Term Rentals are typically last from 14-30 days and after that are considered. One of the big issues that had come up is the argument that short-term rentals are the same as the long-term rentals just short, and if you are not regulating someone who is renting a house on a yearly basis how can you regulate someone who is renting it on a nightly or weekly basis. He said that he understands the argument, but it really does not hold water because at the case of long-term rentals someone lives there as a resident whereas someone who comes and stays there for the weekend, they are not residents, they are on vacation there and the property is a lot more like a hotel than residence. The situations that caused the biggest problem around the State are the ones where you have an investor buying house and becoming absentee owner and may have a local managing company and basically being used as a hotel. The State Law although it does not define short-term rental, in several different context it does make a distinction between short-term and long-term rentals and the most obvious example is in the meals and rooms tax statute. He said that towns have the authority to regulate short-term rentals through the Zoning Ordinance. One thing he would recommend for sure is that if the Ordinance is unclear about the short-term rentals, they ought to try and clarify it regardless of



which side they want to go, make it illegal or not or somewhere in between. He mentioned some examples and different approaches that different municipalities and towns have allowed or restricted short-term rentals through classifying them as owner or non-owner occupied and which ones were permitted or restricted or maybe even allowed in certain districts only. He emphasized that Sunapee has as he called it permissive Zoning Ordinance which means that it lists all the uses that are permitted and anything that is not expressly permitted in the Ordinance it is deemed to be prohibited. So that should be the starting point where they look at the ordinance and he is sure that if they go through the Ordinance, they will not see the term Short-Term Rentals in there, but they may see another definition in there that can be interpreted as short-term rental. Chairman Trow asked if this presentation went to the Zoning Board because it is obviously talking about cleaning the ordinance and it starts with them. Town Manager Martinez said that there has been a couple of different conversations with them, the Community Group had met meet them, but it is all super slow and they need to dig much deeper. Mr. Johnston emphasized that in case they are currently permitted under the ordinance, and they decide that they want to prohibit them, they cannot do that because anything that lawfully existed before that is allowed to continue. They can also allow them under special exemptions or a conditional use permit under a number of criteria or conditions applied. A few other things apart from the Zoning Ordinance is through business permit and this is something that is not used that often. State Law allows Selectmen to establish regulations relative to business obtaining municipal permits. Lastly, about the site plan review he stated that is clear that at least for non-owner-occupied short-term rental it is a change of use and should be subject to site plan review even if it is permitted in the Zoning Ordinance. Selectmen Gallup said that the presentation is a valuable information and gives them a little bit of path as far as where they need to go, and he hopes that the Committee will gather information and work with it and then they can all get together and determine where they would need to go to on Short-Term Rentals. It is a start, and few rotten apples are spoiling the program because out of a 120 and some in town only a few are a problem. Selectmen Wallace asked if there is a definition for owner occupied in terms of days of owner occupation and the answer from Mr. Johnston was that there is not but there are some towns that have produced their own definition. Selectmen Hathorn said that is all about clarity and making sure that they do it in the right way. Pam Calaneco was wondering if there is an example where the town is looking case by case permits and about the owner occupancy what if somebody is managing it really well who lives in the town and there are a lot of different scenarios that could be happening and Chairman Trow said that planning and zoning rules always say if there is a reason to get an exemption you could get it and it depends on the requirements and to her core question he answered that there is always an ability for exception as long as you have a good case for it. Vicki Jepson from the Task Force asked if you get an exception then it runs with the property and if you go through business permit with conditional items then it does not and when he talked about grandfathered, if it was not legal because at this point nobody is legal, so nobody is grandfathered yet. Chairman Trow said that that was the point that Mr. Johnston was trying to get clear, and he did not go through the Ordinance, but it does not say that Short-Term Rentals are allowed anywhere and perhaps it falls under the case of single-family residences are permitted everywhere and through the interpretations that could include those things. The problem is that people are tenacious, and lawyers are particularly good at finding loopholes and



those little bits and there is a good chance that there is probably some hole in their Ordinance or many that will probably allow it through some interpretation.

Selectmen Gallup is not sure that anybody there has intent on shutting anybody down and he thinks more of what everybody is interested here is to get a little bit of control of things so they would have things like the life safety and the building itself to be up to code.

Town Manager Martinez said that there is why they are having this on their agenda and that is why they are having this conversation because even getting the boards on the same page is difficult, so let's get educated and try to come to a joint consensus that they agree that Short-Term Rental is a business and then they can put a structure. She said that they are getting to a point where they are just spinning right now and that the community group is frustrated and she has been dragged down by the Short-Term Rentals, so they all need to move this form down steady and quick.

Fire Chief Galloway asked if a Fire Marshal's Office would because they are in a kind of a gray area go inspect a single- and two-family house and does the Ordinance that the town makes will make them fall under commercial where then they can fall under inspection rules. Mr. Johnston said that what number of towns had done is either by special exception in the Zoning Ordinance or by adopting a business permit they make it a condition to get the approval, they must submit to Fire Code Inspection.

Ann Bordeianu asked what the reasoning behind the decision is to go with a business permit. Mr. Johnston clarified that most have done both.

John Augustine thinks that a business permit from a practical point generates revenue and that he had heard it several times in other meetings as well that if they could get just a few bad actors to play nice everything would be ok, and he does not agree with that. The demographics of the town are transforming and as the housing stock changes from being residential over extended number of months to transient and transforming to short-term rentals. He also thinks that if the process takes so long that 25-50% of the housing stock is transformed and that is considered legal because it is grandfathered, then it is too late.

Jamie Silverstein, Vice-Chairman of the Zoning Board thinks that they need to address this, they have had cases coming to the Zoning Board and they need guidance, they need all the board to be talking the same language and they need to focus on this for the better of the community, so it is not divisive amongst the neighbors. Chairman Trow asked what the Zoning Board is looking from the Planning Board, Conservation and whoever might be, and Ms. Silverstein said definitions, because they are to advice the applicants based on what is written in the Ordinance. She suggested to get all the boards in the same room, and all understand the perimeters then turn them back to the Board of Selectmen to begin the process with the Planning Board.

Town Manager Martinez said that probably what they need is something from the Board of Selectmen telling the Planning Board what some of their expectations are in terms of the structure. The Task Force can only go so far and they can get the framework and then it has to go the Planning Board, then they have to do the fine details but if they don't want to or if we cannot get there, that could be a problem, unless they go through a different way, either through the Planning Board or strictly from the Board of Selectmen and implement it in the Ordinance.

Chairman Trow thinks that it is certainly fair to move forward with looking at the whole business permit idea and get all the boards in the room and vote on what they think is right.



Selectmen Gallup said that historically the Board of Selectmen has basically allowed the Planning Board to take care of the Planning and Zoning Ordinances. They work through the process and make the amendments to the ordinances and sections that they have. He does not recall the Board of Selectmen ever give the Planning and Zoning Board a directive and if they have a situation with the Planning Board is waffling on what they want to do and where they want to go with something, maybe now is the time that they as Selectmen take some input from the Committee and from both boards and then give them a directive.

Selectmen Wallace would like to see all three boards together to make sure that the definitions in the ordinance meet their expectations.

? wanted to talk about the possibility of issuing business permits because there is no problem in it, and she said that she lives in a rural residential zone and from 100 homes there 30 are short-term rentals when she moved there were bed & breakfast and hotels by special exceptions only. She thinks that there needs to be regulations, they need to register as businesses.

Chairman Trow agreed with the general principal of it but thinks that part of the issue that they have when they were talking earlier about definitions, he kind of looks at the things if they are not mentioned they are not allowed but clearly the legalese of that can dispute that. He pointed that he certainly would not know the Zoning Ordinance any better than the Zoning Board and they have much better idea about the definitions. If the town says that they do not want the short-term rentals and he does not think that the town goes that way, then they just need to make sure that there are not any loopholes in the Ordinance. Anyway, he does not think that their ordinance is that tight about the short-term rentals, so what they need to do is find what level of acceptance the town has for short-term rentals and drive forward. There was a draft send with percentages, there was discussion to maybe do it by zone, permitted with owner occupied and other examples and he thinks that the decision needs to be made. To the question of Ms. Silverstein where the decision comes from, he answered that it comes from the people in town and through the Master Plan where should be some definitions of what people want from the town. He is going to fault every board in town and Town Manager and everybody else ever being involved because Master Plans have been bad in the past for getting public input. So, he thinks that is part of the problem and a member of the audience (Michael Jewzyn) objected to that saying that they are asking volunteers who serve on board and meet 12 times in the year to plan out what an entire town should want; that should come from the top. Chairman Trow pointed out that one of requirements of being on the board is that every ten years they do a Master Plan. Mr. Jewzyn said that he understands that, but the hands are tied because people do not want to give up power and they do not want to keep things through. In this whole short-term rental thing, they (Board of Selectmen) don't even know what they want, do they actually know what their goals are, are they trying to take extra income from people that are renting the short-term rental, are they thinking through this thing even carefully, do they even know what are they trying to accomplish; he does not think that they do. If they want to maintain their leadership that is fine because they have what they have, but do not be faulting boards.

Chairman Trow said that that was his point because the last Master Plan was not complete in the public input. At this point they are asking a total of 15 people from three boards to make those decisions in the vacuum, and he does not think that can. They all have their opinion, but they need public input somewhere.



Debbie Samalis said that a lot of people forget that this place used to be a vacation destination and they used to track people over via steamships and hotels everywhere and thinks that is very important to have these rentals with definitely some perimeters on them and not sure if a business permit in a residential area is a great idea because it might create a bigger conflict.

Linc Jepson thinks that designed something from the Committee leaves something to be desired for. They should consider hiring a facilitator to coordinate and guide them through this.

Town Manager Martinez said that they are doing that and this is the first step and then Mr. Johnston is going to guide them through the process.

Lisa Hoekstra said that her and her husband have a short-term rental for four years and it is managed, they have fantastic reviews, they meet the criteria of owner occupied and are under a tourist home based on the current ordinance, so when people say they are not allowed at all she finds it offensive. What is important to them is that through this entire process there needs to be transparency and whether that means that all three boards get together, or the community group gets reformulated somehow and transparency in the process inclusively to the STR owners. She said it is their right to be able to use their homes the way they want to if they are following agreed upon rules, but those rules must be inclusive and transparent, honest, and built on integrity and pointed that there has not been an integrity through this process so far.

Town Manager Martinez disagreed with this since there has been a lot of transparency and inclusivity in the process, being open to have more people there is what makes their wheels spin more, they have concluded the need to get reformed. A lot of people have access to information, it has been online, they are being televised now and there has been a lot of effort to make it a broadly and inclusive and transparent process.

#### PUBLIC COMMENTS:

- Debbie Samalis asked about a building permit which was under AFTER-THE-FACT permit scheduled for this meeting and explained that it was probably a misunderstanding or lack of communication and she had felt as Roger had thought they would try to sneak a dwelling unit and she says it is important to tell the Board that that is not how the process went. They have assumed that they will come today for a simple building permit because they are not adding anything new, and they got knocked on their feet with that. Chairman Trow asked for clarification if the only building prior to that work was the 3-car garage and she answered that it was the unit above as well. He also added that the Board will contact Roger Landry about clarification and if anything were listed wrong in the application or not listed at all, the applicants would not need to reapply, and the Board would sign off on their permit.

- Ann Bordeianu about the earlier mentioned transparency of the Short-Term Rental Community Task Force commented that Town Manager Martinez and the members have reached out to both STR and business community as well as regular residents in town to be involved in the process and their program when they meet every other week.

- Joan Puchtler as part of that group added that they have sat down and put a list of regulations and rules of that they have thought is right and asked the Board if they have a similar list like that so they can go through it together as suggestion. She also asked for clarification about dwelling units and what makes a second dwelling unit to which Chairman Trow responded that he believes adding a second kitchen counts as a dwelling unit.



•Lisa Hoekstra clarified what she had said earlier about the lack of transparency of the Short-Term Rentals Community Task Force that the whole draft ordinance was created without some STR owners including herself. At the Planning Board meeting two weeks ago, a video was shown that allegedly the task force created where her and Peter were implicated as bad hosts. So, she was asking officially for that video to be removed from any town record and for the Board to ask the same from the Planning Board because it was shown there. Thirdly, she said that by legal definition they have been slandered, harassed, bullied, labeled and that that needs to be part of the town record and now it is. It is part of the public record, on video, on the minutes, because they were operating a short-term rental that people simply did not like. She added that is not acceptable on the Board to allow these things to happen, they were slandered in this very meeting by somebody in this very room. Th Board is held to higher standards and should think about how integrity impacts town with what they do, and she asked them to consider that some of them are being injured and hurt because they are not following some basic rules.

•George Neuwirt thinks that the Board needs to understand that these issue need leadership and if they have not educated themselves on what is happening with it, he would urge them to do so because it has become very divisive and the Boards bellow them needs guidance, Town Manager needs guidance and somehow, they all need guidance and he would just encourage them to be good leaders.

•An unidentified audience member said that he appreciates all the work that the Board does and that he knows exactly what amount of time and effort they put in and he just wants to emphasize the point that several people made about the urgency of this. Secondly, to the point that there was no transparency there is a significant difference between the transparency of what was being proposed vs. not liking the outcome of what was proposed and discussed. Town Manager has done an excellent job inviting everyone and last week they had high 90 units in town, there is 3500 residents and people were impacted, many of them are far overwhelming majority. However, they get a large out of a small vote of minorities speaks up and suddenly, they are the bad guys.

•Vicki Jepson said that she joins late and heard about Short-Term Rentals as far as the affect they had on their street Georges Mills and there are a lot of contention problems on the meetings and people have different opinions, but she thinks it has been transparent because every meeting has been scheduled and sometimes changes have been made to accommodate other people. Her neighborhood is not participating, they just want to hear what is happening and she tells them what is happening, and they may disagree or not disagree. She said that they are not trying to get rid of Short-Term Rentals.

#### SELECTMEN ACTION

•Use of facilities:08/02-MacCreighton/Waller Wedding

**Motion to approve the Use of facilities:08/02-MacCreighton/Waller Wedding by Selectman Gallup seconded by Vice-Chairman Gottling. All voted in favor.**

•Trustees of the Trust Fund Appointment-Lynn Arnold-3 Year Term

**Motion to appoint Lynn Arnold-3 Year Term as a Trustee of the Trust Fund by Vice-Chairman Gottling seconded by Selectman Hathorn. All voted in favor.**



## TOWN MANAGER REPORTS

### •Come in & sign Warrant for new Tax Collector-08/01 or 08/02?

Chairman Trow mentioned that they are going to have to do a new Warrant after Betty Ramspott retires and will no longer be the Tax Collector. Town Manager Martinez said that the Audit will be done this Friday and the Warrant will be processed on Monday. Then the Board will be called in to sign the Warrant. She also reminded them that Josh cannot accept taxes until the Warrant is issued.

•Town Manager Martinez said that one of the things that they were talking on the last meeting was how she would be spending her time and what her priorities are and one of the priorities is staffing and then training that staff up and concurrently bringing that staff to implementing new systems to pre-existing systems. Because they need to train the staff and they do not have a lot of how-to manuals and regulations they are continuing to stumble on many things that just have not been taken care of. About the budget, she said that she would probably ask the Board to move money from one budget to the other in order to cover some of the costs like people they were not paid in 2021 and they are getting back paid in 2022 budget, wrong benefits or couple of cases where individuals were working for them 8-9 years ago and their benefits were not paid.

### •Crowther Chapel BOS Representative

Chairman Trow said that John had sent them email to inform them that that Dexter's Inn has been sold to a new owner with a comment that at some point in the future they are transitioning out and that they would want a different person BOS representative for the Crowther Chapel meetings. Apparently, John is their appointed person as it is quite convenient and makes a lot of sense. He congratulated John and hoped for a good future for him and the Inn but added that they would need to think what that would mean certainly. Selectmen Gallup asked John if he thinks that any of the new owners would be interested in that position as a representative to which he responded that he would ask. The Board decided that they will keep things as they are for now. On Selectmen's Wallace request via ZOOM he explained that the Board of Selectmen has an authority to appoint someone to the Crowther Chapel as the Boards representative. It could be a Selectmen member, or it could be a person that the Board thinks is good for it. In this instance it makes perfect sense that as a property owner to have that person do it and he has graciously accepted that role. But all they are talking about is the person who they have appointed to that role is going to no longer be there.

### •Staff Update

They have been optimistic for the Code Compliance Officer, and she is not sure where that sits right now because the person signed and came in one day and has not come back. She hopes that there is a legitimate reason for that and that they have some information and will update the Board. Assessment Land Use Coordinator will start August 2 and the new Finance Assistant has been hired and will start on Thursday. They are going to keep one of their Tech people because of the excellent job she has done, also that their colleague at the Highway Department had to terminate. As they already know from the last time, Barbara Vaughn will be transitioning out in January, so they have shortlisted the candidates for the Executive Assistant and will probably have somebody starting in that role as well. The process for the Police Chief is moving along, they have reviewed all the resumes and did essay questions and ZOOM interviews and that will



be their final candidate listing and then the last step will be the community interview and the recommendations to the Board.

- ARPA Fund Options

Town Manager Martinez said she know she will have to come ask for the Board for new financial tools to make them more efficient and that there are couple of more things that will be come as a finding in some of the other work that they are doing at the Transfer Station, building permits online and so many things so they can upgrade their efficiencies and there will be better customer service to the town. She said that she had went back and read the final items on the ARPA Funding and it turned out that they cannot spend money on General Government Administration staff upgrades, but they can spend it on some of the community input, community engagements to increase the interaction of public access to the delivery of government programs and services. She has also found that there is another use in terms of fire equipment and apparatus and police vehicles. They all know that Engine Rescue 7 needs to be replaced and that the Fire Department needs a proper Fire Boat and that they need to make sure that they can get to some of their properties into the EMS that are in the lake in faster way, the equipment that is needed for the Fire Department, and they can do that because the ARPA Funding allows that. She asked the Board if they would want to combine Capital Funds with the ARPA Fund because there is more of an opportunity for them to support the other departments as well.

#### CHAIRMAN'S REPORT

- Chairman Trow said that in the future they would really investigate the scheduling for Rec programs because there have been some complaints about the swimming and soccer timings. Town Manager Martinez said she will talk about the swimming schedule with the person in charge and for the soccer training they do not make the schedule; they just make the field available for them.

- Selectmen Gallup said that he did not have anything specific to report but he wanted to talk a little bit more about the situation that they had earlier where they have been told that they need to be the leaders there, but he sees that as when they make a decision and the people that are happy with the decision are going to call them leaders and the people who are not happy with that decision are going to call them people that don't want them to do what they want to do. He said that he did get the email with the suggestions from the Committee but did not have a chance to read it and asked if that information got to the Planning Board or is it in the agenda to get presented to them. Town Manager Martinez said that it did not get to the Planning Board, but she had sent it to Mr. Marquise and the plan is to get a smaller group together and prepare a framework and read it. She was wondering is it allowed to get few members of the Planning Board with the Board of Selectmen and Chairman Trow confirmed that that is possible, and it can be run as a joint meeting. He was not sure of what kind of definitions is the Zoning Board looking for.

Selectmen Gallup said that he would like to see it being a collaboration of everybody and Chairman Trow added that the responsibility of the Zoning Board is to draft changes to the Zoning Articles and send it to the Planning Board to get reviewed.



Town Manager Martinez thinks that they have a good first step with setting the definitions, so she is planning to strengthen the group and continue with the meetings, then come back to the Board of Selectmen to make sure they do not have any concerns of what is being proposed and then work with the Zoning Board.

Meeting Adjourned 9:26PM

Respectfully submitted,

Rajmonda Selimi



SUNAPEE BOARD OF SELECTMEN  
MEETING AGENDA  
6:30PM Town Office Meeting Room  
Monday, July 25, 2022

1. REVIEW OF ITEMS FOR SIGNATURE:

CZC's:

Parcel ID: 0121-0021-0000 20 West Shore Rd, Chris & Ellen Carstensen-Caywood

AFTER-THE-FACT:

Parcel ID: 0121-0021-0000 20 West Shore Rd, Chris & Ellen Carstensen-Caywood

DRIVEWAY PERMIT:

Parcel ID: 0121-0021-0000 20 West Shore Rd, Chris & Ellen Carstensen-Caywood

INTENT TO CUT:

Parcel ID: 0239-0013-0000 329 Nutting Road, Shean Austin

2. APPOINTMENTS

7:00PM-Troy Hack-Request to Ban Boats from Loitering

7:10PM-Cordell Johnston-Short-Term Rental Presentation

3. PUBLIC COMMENTS:

4. SELECTMEN ACTION

- Use of Facilities:08/02-MacCreighton/Waller Wedding
- Trustees of the Trust Fund Appointment-Lynn Arnold-3 Year Term

5. TOWN MANAGER REPORTS

- Come in & sign Warrant for new Tax Collector-08/01 or 08/02??
- Crowther Chapel BOS Representative
- Staff Update
- ARPA Fund Options

6. CHAIRMAN'S REPORT

7. UPCOMING MEETINGS:

7/27-5:00PM-Energy Committee, Town Meeting Room

7/28-5:30PM-Water & Sewer Commission, Town Meeting Room

08/01-5:00PM-Short-Term Task Force Meeting, Town Meeting Room

08/03-7:00PM-Conservation Commission, Town Meeting Room

08/04-6:30PM-Zoning Board, Town Meeting Room

**NONPUBLIC:** The Board of Selectmen may enter a nonpublic session, if so voted, to discuss items listed under RSA 91-A:3, II



# SIGN-IN SHEET

## BOARD OF SELECTMEN MEETING

DATE: 25 July 2022

Ed Blais  
LYNN ARNOLD  
Debra Gauder  
Melinda CULDER  
Ann Bordeian  
John Gallay  
ELLEN CORSTENET CAYWOOD  
CHRISTOPHER CAYWOOD  
DEREK HOKSTRA  
V. Jepsen  
Linc Jepsen  
John Augustine  
Pam Colanero  
Torry Heck

Mike  
  
  
  
  
  
  
  
  
  
Maple St.  
Gm  
Gm  
  
  
  
  
  
  
58 Ridgewood Rd



# SIGN-IN SHEET

## BOARD OF SELECTMEN MEETING

DATE: 7/25/22

George Newirth

RT 11

D. H. Ford

Bridgwood Rd.

Stuart Caswell

57 Ridgewood Rd.

Michael Bouchard

15 Maple St.



# **Municipal Regulation of Short-Term Rentals**

## **Presentation to the Sunapee Board of Selectmen**

July 25, 2022

Cordell A. Johnston  
Attorney at Law

### **What is a short-term rental?**

There is no broadly applicable definition of a short-term rental (STR). Each municipality may define the term as it chooses. But basically, it is the rental of one or more units for overnight lodging accommodations for up to a certain number of days, typically in a building that would otherwise be used as a residence, and which may or may not include access to cooking facilities. Some are in owner-occupied homes, some are not.

Most zoning ordinances did not define short-term rentals until recently, although they may have had other definitions that encompassed STRs. Towns have now started addressing them in their ordinances. Here are a few examples:

(1) A dwelling unit where transient lodging is provided for compensation for stays of between one and 14 consecutive nights, and where the dwelling unit would normally be considered a residential living unit not associated with regulated commercial activities such as a hotel, motel, rooming/boarding/lodging house, or bed-and-breakfast.

(2) An accessory use to an owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner's family, not more than three sleeping rooms, for the purpose of providing to the general public, for compensation, lodging, with or without breakfast, for less than 30 consecutive days.

### **Isn't a short-term rental the same as a long-term rental, just shorter?**

No. They are fundamentally different. If a landlord rents an apartment, or a house, to an individual or a family, typically for a year at a time (sometimes shorter), the tenants reside there and become part of the community. They register their cars there, they can register to vote, and their children go to the local schools. The property is their residence.

In contrast, if an absentee property owner continuously rents an apartment or a house to guests for one night or one week, the guests do not reside there. They are vacationers. The property is not being used as a residence; it is the functional equivalent of a hotel.

There are variations that lie between these two situations and are not as easy to define. One is an owner-occupied property: the owners live in the house and rent a room or an accessory

building to transient guests. Another is a seasonally occupied property: the owners live there part of the year and rent it to guests when they are not living there.

To use a stark example, imagine a 10-unit apartment building. The landlord decides he can make more money by renting each unit on a daily basis, so he evicts the tenants and begins advertising each unit for nightly rental on Airbnb or VRBO. Clearly, the building is now a hotel—there is no difference other than the absence of a Holiday Inn or Marriott sign in front of the building. (But even that difference is slowly evaporating. Marriott International is currently advertising 250 “homes and villas” in New Hampshire for short-term rental.)

Operationally, there is little difference between the rental of a 10-unit apartment building and the rental of a single-family house, other than size—especially when 20 guests are crammed into the house for a weekend. If the renters are living there on a long-term basis, it’s a home. If the rooms are rented to different guests every night or every week, it is hard to call it anything other than a hotel.

Note: State law recognizes the difference between long-term and short-term rentals in several contexts:

- The meals and rooms tax statute (RSA 78-A) distinguishes between an “occupant” (someone who occupies an establishment for less than 185 days) and a “permanent resident” (someone who rents for 185 days or more). The M&R tax is imposed on “occupancy” of a “hotel,” which includes a short-term rental; it does not apply to long-term rentals.
- The hotel statute (RSA 353) applies to “rental units,” defined to include “residential property rented for one month or less.” It does not apply to long-term tenancies.
- The landlord-tenant statute (RSA 540), which gives legal rights to residential tenants, excludes “dwellings rented for recreational or vacation use” and rooms in rooming or boarding houses that are rented to transient guests for less than 90 consecutive days.

Summary: A long-term rental is a residential use, the same as an owner-occupied residence. Although the residents are paying rent to a landlord, the use is exactly the same as if they owned it. In contrast, a short-term rental is the functional equivalent of a hotel—guests do not “reside” there. It is a purely commercial use. It competes for the same business as hotels and B&Bs, and it is treated as a hotel under state law.

### **Do towns have authority to regulate short-term rentals?**

Yes. There is no question about this. RSA 674:16, the zoning enabling statute, authorizes municipalities to “regulate and restrict . . . the location and use of buildings, structures and land used for business, industrial, residential, or other purposes.” Even if a short-term rental were considered a residential use, which it is not, it would still be subject to regulation.

### **Should the town regulate short-term rentals?**

That is a purely local decision. Many towns, especially those in popular vacation areas, have amended their zoning ordinances to regulate STRs, but some have not. It is up to the town.

Reasons to regulate or restrict STRs include concerns about noise, disorderly conduct, trash, parking, safety, lack of code compliance, strain on municipal resources, and effects on the long-term housing market. (Houses converted to STRs are not available as permanent housing for local residents.)

### **Where to begin: Identify the town's issues.**

What problem is the town trying to address? Here are the most common:

- Illegal STRs (not permitted by the zoning ordinance).
- Historical non-enforcement is now becoming a problem.
- Unclear whether STRs are permitted.
- STRs are permitted but are causing problems.

### **Different types of STRs may call for different rules.**

Not all STRs are the same. The principal categories are:

- Owner-occupied: The owner is a full-time resident who rents one or more rooms in the house or an auxiliary building (garage, carriage house). This is the least likely to create problems.
- Seasonally occupied: "Snow birds" or other seasonal residents live at the property part of the year and rent it when they are not living there.
- Non-owner-occupied: An absentee owner rents the property full-time to short-term guests..
  - This is the most likely to create problems, because the owner treats the property only as an investment, not a home.

### **What does the existing ordinance allow?**

#### **Permissive zoning ordinances.**

Most towns have a "permissive" zoning ordinance, meaning that any use that is not expressly permitted by the ordinance is prohibited.

#### **Work through the ordinance.**

Begin by determining what uses are permitted in each district. Then check the definition of anything that might be deemed to include a short-term rental.

Until recently, most ordinances did not use the term “short-term rental”; but the absence of that term from your ordinance does not, by itself, mean STRs are prohibited. There may be other permitted uses whose definitions are broad enough to include STRs.

Example:

- An ordinance permits “single-family dwellings” in residential districts.
- The ordinance defines “single-family dwelling” as “a detached **residential dwelling unit** designed for and occupied by one family.”
- The ordinance defines “dwelling unit” as “one or more habitable rooms arranged for the use of one or more individuals living as a single housekeeping unit, together with cooking, living, sanitary and sleeping facilities.”
- The ordinance does not define “residential.”

Does this ordinance allow STRs in residential districts?

Answer: Unclear! Consider amending the ordinance.

**Enforcement/amendment.**

If the ordinance clearly disallows STRs (or some STRs), it should be enforced. This is the responsibility of the code enforcement officer and/or governing body. Enforcement requires gathering evidence of violation, seeking voluntary compliance, and, if necessary, issuing a notice of violation, possibly followed by court action.

Note that a town’s failure to enforce its ordinance in the past does not prevent it from enforcing it now against existing violators. No one acquires a vested right to continue an illegal use just because the town has never taken action. If the use existed before the ordinance was adopted and was legal at the time, that is a different story—it is “grandfathered.” But a use that was illegal at the time it was established does not become legal by the passage of time.

Alternatively, if STRs are disallowed but are not causing significant problems, the town might consider amending the ordinance to allow what is already being done.

**Amending an unclear ordinance.**

If the ordinance is unclear, or if it clearly allows STRs but the town wants to restrict them, there are many options:

- Prohibit all STRs.
- Allow all STRs.
- Allow some (owner-occupied) but not others (non-owner-occupied).

- Allow them in some districts but not others.
- Allow them by special exception or conditional use permit—possibly with different requirements depending on whether they are owner-occupied.
- “Grandfather” existing STRs if they are not causing a problem.

And there are many possible variations on these options.

Understand that if STRs are currently permitted under the ordinance, you can’t shut down existing STRs by amending the ordinance to prohibit them. Whatever is legal at the time an ordinance provision is adopted will remain legal.

If STRs are allowed by special exception or conditional use permit, there are many possible criteria/conditions that could be applied. Here are a few:

- Building code/fire inspection
- Owner occupancy requirement
- Limit on the number of unrelated guests
- Limit on the number of days rented per year
- Registration with the town
- Parking limits
- Trash disposal requirements

Remember that land use approvals like special exceptions and conditional use permits run with the land—once granted, they stay with the property even if it is transferred. The ZBA cannot grant a special exception that expires when the property is sold.

#### **Other tools: beyond the zoning ordinance.**

There are other ways to regulate short-term rentals, without amending the zoning ordinance.

Business permit. The selectmen may establish “regulations relative to businesses obtaining municipal permits.” RSA 41:11-c. The town could require STR owners to obtain a permit with appropriate conditions.

This is within the selectmen’s power—it does not involve amending the zoning ordinance and therefore does not require town meeting approval.

Unlike a special exception or conditional use permit, it does not run with the land. The town can require that the permit be renewed periodically and that a new permit be obtained when the property is transferred. The new property owner would still have a right to operate an STR, but only after obtaining a permit.

Site plan review. Even if a use is permitted under the zoning ordinance, it may be subject to site plan review. Under RSA 674:43, site plan review is required for “development or change or expansion of use of tracts for ***nonresidential uses.***”

Is a short-term rental a “nonresidential use”? Almost definitely, at least for non-owner-occupied STRs.

State law does allow a town, by vote of the town meeting, to establish thresholds, based on the size of a project or tract, below which site plan review is not required. Alternatively, the planning board itself can establish such thresholds in its regulations. See RSA 674:43, IV. In the absence of such provisions, site plan review is required, at least for non-owner-occupied STRs.

#### **Legislative and case law developments.**

Organizations representing STR owners have made several efforts in recent years to get the state legislature to prohibit regulation at the local level. Those efforts, thankfully, have failed.

There have been several superior court cases in which property owners challenged municipal regulation of STRs. There is no need to get into the details of those cases here, because the lesson from each of them is that it all depends on the language of the ordinance. The clearer your ordinance is about what is and is not permitted, the better the town will be able to apply and enforce it.

## APPLICATION FOR USE OF TOWN OF SUNAPEE FACILITIES

Area (Circle One) Ben Mere/Bandstand - Coffin Park - Dewey Beach - Georges Mills Harbor - Safety Services Building--Sunapee Harbor-Tilton Park

Name of Organization:

Weddings with AL

This Organization is: Non-Profit - Political - Private (N/A for profit companies)

AL ST. AUBIN

Name of Duly Authorized:

Mailing Address: 110 ABEI RD RINDGE NH 03461

Daytime Phone: AL ST AUBIN (603) 765-9108

Evening Phone:

CHARLES MACLEIGHTON (603) 748-4345  
MELISSA WACLER 603 748 5085

I/We hereby apply for permission to use the above circled Town facility on:

Event Date: AUG 2 2022 Time: From: 3:45 To: 5

Please describe the complete details of the event: (If advertising please include ad or flyer)

\*include a list of outside vendors that will be part of your event.

A small wedding

I/We acknowledge understanding the following restrictions:

N/A

(1) If this event will likely bring more than 50 people or 20 cars to the area, the applicant must first submit this application to the Chief of Police. The Chief of Police may require the applicant to hire police officer(s) for crowd or traffic control.

(2) I/We agree to abide by the Town of Sunapee's Recreation Area Ordinance, which controls conduct and uses of this area.

(3) The applicant shall indemnify and hold the Town of Sunapee, its employees, agents, and representatives harmless from any and all suits, actions, claims, in equity or at law, for damages asserted by any attendees at such function, or other third parties, resulting from the use of the premises, or from



the food and beverages served at the above-described function. In addition, in the event that the town is required to respond to any claims of any nature arising in connection with the function or the applicant's use of the premises, the applicant agrees to pay to the Town all costs, fees, charges and attorney's fees which may be incurred by the Town concerning such claims.

I/We plan on 6 # of people and 4 # of vehicles attending our event.

Signature of Responsible Individual Charles MacLigthen Date 7/11/22

[Signature] Date 7/12/22  
Approved by Chief of Police

0 # of Officer(s) will be assigned to event at applicant's expense.

Approved by Recreation Director (if applicable) Date

[Signature] Date 7/12/22  
Approved by Fire Chief (if applicable)

Approved by Highway Director (if applicable) Date

Signature of Approving/Denying Authority (Chairman of the Board of Selectmen) Date

**Insurance:** At least ten (10) days prior to such scheduled function, the applicant shall furnish to the Office of the Sunapee Board of Selectmen written confirmation that the applicant has secured adequate liability insurance covering the event in an amount not less than \$300,000.

**\*Suggested \$50 contribution for non-residents**

**NO ALCOHOL ALLOWED ON TOWN PROPERTIES WITHOUT A  
ALCOHOLIC CONSUMPTION ON TOWN PROPERTY PERMIT**





# TOWN OF SUNAPEE

## Volunteer Interest Form

### For Town Committees, Boards, and Commission

Name: Arnold Lynn Date: 7/18/2022  
 (Last) (First)

Sunapee Registered Voter: ☒ Yes ( ) No

Mailing Address:

Street Address (if different):

22 Burma Rd  
Sunapee 03782

/

Lived in Sunapee Since: 2019 Home Phone: 603 763 7040 Work Phone: cell 860 989 4517

E-mail: lfarnold2@aol.com Fax: /

1. Please indicated the Board/Commission/Committee you would like to serve on in order of preference.  
 (1-First Choice, 2-Second choice, etc.)

/ Abbott Library Trustee

/ Advisory Budget Committee

/ Capital Improvement Committee

/ Conservation Commission

/ Crowther Chapel Committee

/ Fireward

/ Planning Board Alternate

/ Recreation Committee

/ Thrift Shop

/ Upper Valley Lake Sunapee Regional

/ Zoning Board Alternate

/ Highway Safety Committee

/ Energy Committee

Trustee of Trust Fund

2. For consideration:

a. Occupation: Retired Sr Proj Mgr b. Employer: AT&T

c. Length of current employment: / d. Education: MASTERS Educ

e. Relevant Experience: /

f. Do you feel there may be any *conflict of interest* with your personal beliefs, occupation, or employer if appointed to serve on any of the above boards, commissions, or committees? / Yes / No

g. Volunteer Time Available / hours per week (daytime) / hours per week (evenings)  
/ hours per week (weekends)

h. Did you previously serve on any Municipal or School District Board/Committee/Commission? / Yes / No



i. If yes, please indicate Town/Position: Ch. BOS / Holland MA, Ch. Planning Bd,  
Ch. Lake Oversight Committee / Holland, MA  
Commissioner Pioneer Valley Planning Commission, Exec Bd, PVPC  
j. Are you willing to serve as an Alternate? ☒ Yes ☐ No Various sub com. / Holland  
k. Are you willing to serve on a Sub-Committee? ☒ Yes ☐ No SSTRA / Sunapee

3. Why do you want to serve on this board/committee? \_\_\_\_\_

4. What attributes and/or qualifications can you bring to the Board/Committee/Commission? \_\_\_\_\_

5. Your reasons for wanting this/these appointments /appointments are:

6. Additional Comments: \_\_\_\_\_

Lynn F Arnold  
(Signature)

7/18/2022  
(Date)

*Please send completed application form and resume, if available, to the Town Manager's Office, 23Edgemont Road, Sunapee, NH 03782 (telephone 603-763-2212, fax 603-763-4925)*

“considered **public information** and may be distributed or copied”

