

KEARSARGE LIGHTING PRECINCT

Zoning Review Committee Meeting

Minutes

September 3, 2019

Present:

Committee members - Josh Brustin, Chris Meier, Nancy Clark, *Karen Umberger via phone
Clerk - Meredith Wroblewski

Absent: Rick Jenkinson

Guests: M. Lynn Lyman, John Schellhorn, Berdine Fain, Ray Porter, Tom Irving, Dave VanNote, Brendan Battenfelder, Herb Hunt

Agenda:

1. *Review August 6th meeting minutes*
2. *Tom Irving*
3. *Next steps*
4. *Next meeting, October 1st @ 6:00 PM*
5. *Public Comment*

Call to Order: The meeting was called to order at 6:00 PM by Ms. Clark.

1. Review August 6 meeting minutes

The minutes from August 6, 2019 were motioned, seconded and unanimously approved.

2. Tom Irving: Update from Conway and questions submitted by Ms. Umberger

Tom Irving with the Town of Conway was in attendance at the request of the committee.

Committee members were asked to submit questions prior to the meeting. Mr. Irving spoke to the questions emailed by Ms. Umberger (see below). He provided a copy of the document he spoke from (see 'Irving Q and A 9.3.19').

Mr. Irving explained that many of his explanations will be non-answers because there aren't definitive answers.

- What is the tipping point between a residential property and a commercial property? How long does the owner have to occupy a home in a year before it becomes a commercial property?

- It varies from jurisdiction to jurisdiction. Mr. Irving referenced the applicable state and IBC definitions for short-term rentals, NH RSA 78-A:3, IBC Section 310. 30 days is often the number that is chosen, if looking broadly at the US and Canada.
- However, if a residence is being rented for only 2 or 3 weekends, this might not cross the threshold. He cited the Volvo tournament as an example. KLP residents surely rented

out their homes, but would this be considered commercial? The committee may want to consider being more lenient so the precinct doesn't have to regulate everybody.

- Once the precinct decides on the tipping point, they need to consider how much energy and resources they are willing to put in.
- Ultimately the 'tipping point' length of tenure would depend on local regulations and interpretations, and it is up to the KLP to determine.

- Can a place be rented to more people than the approved septic system allows? If the septic is approved for three bedrooms how many people can occupy the home.

- In NH, septic is based on number of bedrooms, not the number of people.

- Are there any requirements for sprinkler systems if the place advertised for over 20 people?

- Mr. Irving said 16 is the key number, but he would defer to the local fire chief or building inspector first. The Town of Conway inspector, Mr. Pandora, would say no, this wouldn't necessarily trigger this requirement. However, depending on the use, other safety standards may be applicable.

- Is there a definition of a residential property?

- Yes, there are many. The KLP should choose one and incorporate it into the ordinance.
- In Conway, if there isn't an existing definition for something, they would look to the definition in the adopted code (e.g. the IBC)
- Mr. Irving noted that residential properties are often called 'dwelling or residential units'.

- We have at least 2 dwellings in Kearsarge that advertise on Air B&B they can sleep between 20 and 25 people. The question I have is when does a place transition from a residence to a rooming house or lodge. One of the places advertises as K Lodge. My concern is what happens if a fire breaks out. are their sufficient exits, is there a sprinkler system, the list goes on.

- Mr. Irving said we know that this would probably overextend the system if they were there for an extended period, but there is no way to know for sure until it fails.

-Follow up questions from those in attendance:

- Mr. Meier explained that he has researched the IRC and IBC regulations. Given towns that adopt these codes, would transient rentals be considered a commercial use?
 - Mr. Irving answered no, but they probably should. In Conway, no distinction was made as to whether or not the length of tenure would constitute commercial use. If the building inspector is authorized to make that determination, you could do this. He explained that at the enforcement level his hands are tied until the selectmen change the regulations.
- Mr. Meier asked if there are any amendments currently in the works.
 - Mr. Irving said no. He has advised the planning board to wait and let the selectmen hold their public hearing first. There are a couple of bills in the works at the state level.

- SB 69 - would enable towns to license short term rentals. This bill is currently in committee.
 - HB 655 - disorderly house bill. This bill is three years in the works and would address the nuisance issues, but not the overall impact on housing.
- Mr. Irving noted that he's not sure if Conway would want a comprehensive licensing program. They are limited by staffing needs.
- Mr. Meier noted that the methods of permitting/raising funds is limited in NH.
 - Mr. Irving said this may change if SB 69 goes through.
 - Mr. Meier asked about using bonds.
 - Mr. Irving responded that this has not been specifically addressed in the bill. Conway can require performance bonds, etc. for cell towers and other types of development, but if the precinct is considering having renters post a bond for use if there is a violation, he doesn't think we can do this. Fines if permits are violated are a possibility.
 - Mr. Meier asked about the special exception process to require a performance bond,
 - Mr. Irving responded that he doesn't know about using this against the noise ordinance, but it's worthy of exploration.
- Mr. Brustin asked why there isn't a noise ordinance in Conway.
 - Mr. Irving replied that it's a case of everyone wanting these types of ordinances to apply to everyone else but not to them.
- Mr. Meier asked who would be fined under HB 655, the tenant or the owner.
 - Mr. Irving read part of the bill aloud and said the bill sponsors interpret it as not limited to the noise maker. It is written in a way that focuses on the house. He then referenced the Durham ordinance. The bill has wiggle room for working with the property owner. If there was a complaint, the police would go and are obligated to issue a warning on the first visit. They can issue a fine on the second visit.
 - Mr. Brustin asked who determines if occupants are being disorderly.
 - Mr. Irving said it would be up to the officer and not the neighbor making the call.
 - Mr. Irving noted that if he was going to back a bill, he would like to get the disorderly house bill through to address the most pressing issues. Maybe a dozen properties in town that would trigger action under this bill. Most residences are not creating any problems.
 - Mr. Brustin wondered if there would be more interest in passing a noise ordinance now.
 - Mr. Meier said it's notoriously difficult to enforce these. There are often hang ups on technicalities.

- Mr Irving cited examples of towns with ordinances in place (Durham, Bridgton, Harrison). These towns allow fees to be waived on second and third offenses and do not single out rental homes. There are few situations where you have an absentee landlord who doesn't care.
- Mr. Irving concluded by noting the date for the next Conway selectmen hearing, September 24 at 4:00 PM. The agenda will be posted on the internet. This is meant to be a public hearing/info session.

3. Next steps: *Begin to draft new ordinance*

Ms. Clark asked Mr. Brustin and Mr. Meier to report out further on the Vail example.

Mr. Brustin described his conversation with the Vail compliance manager:

- Vail has restrictions in place. A permitting process, plus taxes, pays for the full-time compliance officer. They have found some third parties to do the enforcing for them, such as Host Compliance (HC).
 - Mr. Irving noted that he has talked to HC previously and used their materials.
- Mr. Brustin said that HC is known to work well with precincts with small budgets. They can fully manage STRs for the precinct. HC acts as the 24-7 hotline, and contacts the point person if needed. It's a three strikes you're out system.
- Mr. Brustin asked if costs could be offset by a permitting process here.
 - Mr. Irving asked if the precinct has the authority to do this.
 - Mr. Meier responded that he is unsure.
 - Mr. Irving said Conway doesn't currently have the authority to do this.
- Mr. Brustin continued his summary. Vail enacted their current regulations in 2018. They have had three formal complaints since February 2019 out of thousands of rentals. If a fine is imposed, the owner can appeal to the finance director. This decision is made by this one person. Putting the property manager on the hook for the fine is probably a big factor. Mr. Brustin feels this seems to have curbed many of the problems.
- Mr. Meier asked Mr. Irving if he has an opinion from DOJ or DRA about the lack of permitting authority?
 - Mr. Irving answered that this was the consensus of the attorneys at NHMA.
- Ms. Umberger noted that she doesn't think the Vail system is sufficient to cover all the items the KLP needs to be sure the owners are in compliance. If the committee decides to go this way, we need to make sure we have tight requirements for STRs.
 - Mr. Meier expressed agreement. He said the committee has a working list of what restrictions they think are important on the shared drive (e.g. insurance, trash removal).
- Mr. Brustin continued. He has called HC to set up a consultation. The money generated from a permit/fee program can't be used to offset taxes. In general our fees can only be used to defray the cost of licensing.

- Ms. Clark asked Mr. Brustin to ask HC for 2-3 other communities they work with besides Vail.
- Ms. Lyman asked how HC could enforce better than what the Commissioners and Town of Conway are already doing for building violations.
 - Ms. Clark responded that we need to let Mr. Brustin consult with HC.
- Mr. Meier asked Mr. Brustin to ask if HC works with anyone in NH.

Mr. VanNote asked when there is going to be a public debate.

- Ms. Clark responded that the committee is not at that point yet.
- Mr. Meier added that the committee process was not designed for public debate.
- Ms. Clark said the committee always wants public input.
- Discussion continued between those in attendance and the committee. There was some confusion about the committee process, including the number of possible recommendations the committee will generate and when public input is going to happen.
 - Ms. Clark explained that the committee needs to have the time to generate some options for the community to consider before seeking input.
 - Commissioner Lyman noted that when the Commissioners formed the committee, it wasn't with the idea that they would meet only one hour per month. It was meant to be as much time as needed to get it done.
- Mr. VanNote stated he is in support of having the committee generate numerous options.

Ms. Clark reviewed the remainder of the committee timeline.

Mr. Meier noted the committee needs to review the viability of the options that have been generated so far. They need to contact NHMA.

4. Next meeting, October 1

The committee agreed to start drafting language for what they think there is consensus on.

They will look into picking a day to have a public discussion to present the options and have facilitated comments.

Ms. Umberger recommended they revisit what Mr. Meier had to say in the document he already posted on the drive.

Mr. Brustin will follow up with Host Compliance.

Mr. Meier will consult with NHMA.

Mr. Irving suggested holding public information gathering sessions that are not hearings. He also encouraged the committee members to attend and/or view the video of the Conway meeting on the 24th.

5. Public Comment

Mr. Ray Porter stated he would like to bring attention to the following:

- An email has been circulating about the Boston STR regulations passed in January.
 - Mr. Meier added these regulations made STRs unlawful except for owner occupied.
- The Conway Daily Sun had an editorial last week about renting, saying enforcement is the easy part. Mr. Porter doesn't believe that to be true. The most recent Tele-talk was also about rentals.
- He is receiving constant advertisements from local companies about renting his home.
- Mr. Porter would like to see the committee allow more public discussion time. Then maybe more people would attend.
- He would like to see more discussion about the current zoning law and how it is currently written, and reiterated his previous suggestion that the precinct wait until the court decision before making changes. He asked Commissioner Lyman if the recommendations from the committee will be put forth by the commissioners if the court decision hasn't happened in time to be on the warrant for the next annual meeting.
 - Ms. Lyman said she feels the case will be settled soon.
 - Mr. Meier responded that he doubts this. The Superior Court hearing may happen by the end of the year, but then there would another 90 days for a decision, and then appeals.
 - Ms. Clark asked, if the case isn't settled in time for the 2020 meeting, can the commissioners still change the zoning?
 - Mr. Meier answered yes, the court decision doesn't have any bearing on their ability to recommend changes to the ordinance. He recommended that the committee consult with the commissioners about their plans and then decide how to proceed.
 - Mr. Brustin noted there are some things the committee can still present that the commissioners will likely accept for next year's meeting.

Mr. John Schellhorn asked about hotel tax collection on short term rentals in the KLP.

- Mr. Brustin and Ms. Umberger explained that Air B'nB does collect the tax, and that each house has to register with the state and declare each month.

Adjourned: The meeting was adjourned at 7:25 PM by Ms. Clark.

Respectfully submitted,
Meredith Wroblewski, KLP Clerk and Recording Secretary