

**Town of Warner – Planning Board
Meeting Minutes
Monday, October 5, 2009 7:00 PM
Warner Town Hall, Lower Level**

Members Present: Barbara Annis, Paul Violette, David Hartman, Ed Mical, Rick Davies and Dan Watts (recused from Major Subdivision)

Members Arriving Late: None

Members Excused: Hank Duhamel

Members Absent: None

Alternates Present: Harold French (voting for Mr. Duhamel), Peter Wyman (voting on Major Subdivision application for Mr. Watts who recused himself and sat in the audience)

Alternates Excused: None

Alternates Absent: None

Presiding: Barbara Annis

Recording: Jean Lightfoot

Open Meeting at 7:00 PM

Roll Call

Ms. Annis opened the meeting at 7:03 p.m. The roll call was taken. Ms. Annis asked Mr. French to sit and vote for Mr. Duhamel.

1. CONCEPTUAL CONSULTATION

Property Owners: Arthur Bugbee and Cathy Derbyshire
Applicants: Arthur Bugbee and Cathy Derbyshire
Agent: Jacques Belanger, JE Belanger Surveying
Property Location: 45 Collins Road, Warner, NH
Map 12, Lot 43, R-3 and OC-1 Zoning
Description: 2-lot residential subdivision

Ms. Annis recognized Mr. Belanger who represented Mr. Bugbee and Ms. Derbyshire. He said the property is on Collins Road and the owners would like to divide their property into a 4-acre lot and a 23-acre lot. He said that the soils have been tested and the topography has been surveyed for the smaller lot. He asked if it would be possible to waive the wetland and surveying requirements for the larger resulting lot and the locus.

Ms. Annis asked what the line in the middle of the smaller lot is. Mr. Belanger said it is a tree line. Ms. Annis asked why the 4-acre lot is not extended all the way to the far line of the original lot. Mr. Belanger said that the owners wanted a 4-acre lot and that is why it was not extended. He said it would add another acre and a half or two acres to the lot to extend it to the other boundary. Mr. Mical asked how close the barn is to the proposed new line. Mr. Belanger said it is about 52 feet. He added that there is a dotted line on each proposed lot showing the required setbacks. Ms. Annis asked where the line is between the R-3 and OC-1 zones. Mr. Belanger said he did not know exactly but they will add it to the plan to be submitted. Mr. Hartman asked that they put the right name of the road everywhere on the plan. He noted that it is Collins Road. Mr. Davies asked what the buildable area of the 4-acre lot would be. Mr. Belanger said they will put something on the plan to be submitted showing the buildable area for that lot.

Ms. Annis asked if there were any other questions. There were none. She asked if the Board had any comments on the possibility of waivers. She said he is seeking two waivers. There was a discussion about whether the requirements could be met by waiving the larger resulting lot from having to show all the wetlands. Mr. Belanger said that the request to waive the locus requirement is because of the size of the lot and how the detail will be lost if the locus requirement is followed. Mr. Violette commented that so long as

the wetlands are shown on the smaller lot, he would preliminarily agree to the waiver. The Board members seemed to agree to preliminarily agree to both waivers.

Mr. Belanger thanked the Board for their time and left.

2. MAJOR SUBDIVISION

Applicants: Cersosimo Industries, Inc. /Timothy Hanson, Regional Manager

Property Owners: Cersosimo Industries, Inc.

Property Location: 454 Newmarket Road, Warner, NH

Map 12, Lot 20, R-3 and OC-1 Zoning

Description: Minor Subdivision (treated as Major Subdivision due to having been part of a Minor Subdivision in the last 5 years) – create one new residential building lot of 5.25 acres

- a. Review Application – Accept/Reject/Continue
- b. Close Meeting and Open Public Hearing
- c. Close Public Hearing and Re-Open Meeting
- d. Action Taken – Approve/Disapprove

Ms. Annis noted that the application is for 2 lots but because it is being done within 5 years of a previous subdivision of the same property, it is treated as a major subdivision. She noted that Mr. Watts has recused himself and he moved to sit in the audience. She asked Mr. Wyman to sit and vote for Mr. Watts on this application. She recognized Timothy Hanson from Cersosimo Industries. Mr. Hanson said they are proposing a two-lot subdivision on Newmarket Road. Ms. Annis asked about the authorization for Mr. Hanson to act on behalf of Cersosimo Industries. It was noted that there was a previous authorization from the Conceptual Consultation. Mr. Mical said that it was not re-submitted with the application for the Subdivision and noted that these are two different applications. Ms. Annis asked if the Board wished to accept the previous authorization for Mr. Hanson to act on behalf of the company. Mr. French said that he thought that was the intent. The majority of the other members indicated that they agreed with Mr. French. Mr. Mical said that he thought they should provide a new one for the different application. It was noted that Mr. Hanson had signed the authorization for the company and could actually fill a new one out right now. Ms. Annis asked who gives Mr. Hanson the authority to sign for the company. Mr. Hanson said he could get the vice presidents. Mr. Mical said there should be something from someone at the company that Mr. Hanson has the authorization. Ms. Annis polled the board to see if the majority agreed that the intent of the company is that Mr. Hanson will represent them. The board members agreed that it was the intent. Mr. Davies noted that there should be a letter from the company saying that the person is representing them. Ms. Annis asked Mr. Hanson to provide such a letter. Mr. Hanson agreed.

Mr. Hanson explained that the property is on Newmarket Road, Tax Map 12, Lot 20. He said that the current lot is 90.87 acres and the smaller lot to be carved out would be 5.25 acres. He said that the zoning is R-3, low density residential, and OC-1, open conservation. He said that the smaller parcel is in the low density residential district. He indicated on the lot on the plan that Ivar Martin created 3 years ago. He said the soil work has been done. He said there are 1.93 acres of wetlands in the smaller lot; the buildable area is 3.86 acres; and the total area is 5.25 acres. He added that the frontage is 250 feet. He said that the remaining parcel would have 319 feet of frontage. He showed on the plan where the access would be.

Ms. Annis said that waivers being requested are: V.A.4 (requesting that the plan not tie into the state grid coordinate system); partial waiver on approximate contours at 10-foot intervals, significant natural features, including perennial streams and wetlands. She asked which part he was asking for a waiver on. Mr. Hanson said it is to have this requirement waived for the larger parcel. He said it has been done on the smaller lot. Ms. Annis continued reading the waivers that are requested: V.C.3 (for the larger parcel, requesting to not be required to show the location of the water courses, wetlands, floodplains, ponds, etc.); V.C.4 (for the larger parcel, requesting not to do contours at 2- and 5- foot intervals, depending upon the grade); V.C.7 (for the larger parcel, requesting not to have to disclose cellar holes). Mr. Hanson said there appear to be several cellar holes around the larger parcel. Mr. Hartman asked where the access is to the subdivided piece. Mr.

Hanson said the access is an existing driveway that goes up to Ivar Martin's old house. He said that it is off of Newmarket Road and showed the location to Mr. Hartman on the plan. Ms. Annis asked if there were any further questions. There were none.

Ms. Annis asked the Board members to review the checklist. After the review, she asked if there were any issues. Mr. Mical asked what the purpose for requesting a waiver from tying into the state grid. Mr. Hanson said there is no control out there and asked why it would be needed. He added if it were on a state highway, it would make sense to tie into it, but not as it is. Mr. Wyman said he did not see the deed restrictions included. Mr. Hanson said there are none. Mr. Davies asked about the V.C.1 part regarding soil types and boundaries. He said he did not see that information on the plan. Mr. Hanson said it is on the first page of the plan in note #5. Mr. Davies asked if that means that the entire lot is the same soil type, so there is no boundary shown. Mr. Hanson said yes, except on the 5.25 acre lot, it is not the same soil type as the larger lot. Mr. Davies asked about the septic system and foundation. Mr. Hanson said it is on page 1 of the plan in note #8. Mr. Davies asked about wetlands. Mr. Hanson said there is a letter in the application from Robert Stewart. Mr. Davies said that information should be on the drawing. Mr. Hanson said it will be placed on the drawing. Mr. Davies asked about V.C.2 in regard to local, county and state approvals individual water service and sewage disposal systems and test results. He asked if this is covered by the Stewart letter. Mr. Hanson said yes. Mr. Davies said the letter does not have the results. Mr. Hanson said that was with the application. Mr. Davies said there should be a table showing the results and it was not with the application, adding that it should be on the drawings. Mr. Hanson said he would see that it is put on the plan, too. Mr. Davies then referred to V.C.3, location of water courses, wetlands, flood plains, etc. He said that it is shown on the smaller lot and on the setback for the larger lot, but from the setback back nothing is shown. He noted that since that is part of the waiver request, it would be consistent to not show it on the larger lot. He then noted that a waiver is being requested for V.C.4 referring to contours at 2-foot and 5-foot intervals. He noted that there are 10-foot intervals on the plan and 5-foot intervals and 2-foot intervals should not be too difficult to add on the smaller lot. Mr. Hanson agreed that it should be added, noting that it is pretty flat in the smaller lot. Mr. Davies then referred to V.C.5, location of all monuments, etc., and noted that the northwest corner of the smaller proposed lot has no indication of what the proposed marker will be. Mr. Hanson said that there is none existing there but the plan is to place one there. Mr. Davies noted that there are no granite markers shown on the front. Mr. Hanson said the pins are existing. Mr. Davies asked if they would put granite markers at the front per the regulations once the subdivision is approved. Mr. Hanson said yes. Mr. Davies asked if by asking for waiver on V.C.7 relative to cellar holes, they are indicating there are no cellar holes on the smaller lot. Mr. Hanson said yes. Mr. Davies said that concluded his and Mr. French's questions. Ms. Annis asked what the lot number would be on the new lot. Mr. Hanson said they did not know. Ms. Annis said she thought it would be 12 – 20-2. Mr. Hartman agreed. Ms. Annis said that usually on the actual survey map, there is a listing of the entire parcel and the buildable area that results after taking out the slopes. She said it is usually not on a separate piece of paper because the plan is what is recorded at the Registry of Deeds. Mr. Hanson said there is a question about whether to record all three pages or not because the plan is on two sheets because the lot is so large. Mr. Hanson said they could try to get it all onto two sheets and then file the two sheets. Ms. Annis said they could transfer the wording that is on the first sheet onto the second and third sheets and then file those sheets so the notes are right on the subdivision plan itself. There was a short discussion about this issue. It was agreed to stay with the three sheets because the wording might be too small or the scale would be too small. Mr. Mical noted that the locus is on the cover sheet but not on sheet 2. Mr. Hartman asked if the approved DES septic system area is supposed to be shown on the plan. Mr. Hanson showed him where it is shown on the plan. Mr. Hartman asked if the area marked "4-K" is that area. Mr. Hanson said yes. Mr. Hartman asked if that could be noted as something approved by DES. Mr. Hanson said that on 5 acres or larger, you do not need a state-approved septic area. He said to build a house, you would need that, but not for the subdivision. Mr. Davies said that the 4-K says it is a 4000 foot area, but it does not say what it is for. Mr. Hartman said it would help to have it identified. Mr. Hanson agreed to identify it in the legend.

Ms. Annis asked if there were further comments. Mr. Davies asked if the questions are restricted to items on the checklist. Ms. Annis said no, everything is open to questions. Mr. Davies said that under the R-3 Section in the Zoning Ordinance, it says that lots created by Major Subdivision shall be subject to requirements of the

Open Space Development. He added that typically this would be a Minor Subdivision, but because of the 5-year time requirement, it is treated as a Major Subdivision. Mr. Mical noted that the previous subdivision took place in 2006. Mr. Davies said that under the OC-1 section, it says that lots created by Major Subdivision shall be subject to the Open Space Development, too. Mr. Violette said that we are going by the R-3 requirements, though, and they are both the same. Mr. Davies said that Open Space Development is covered in Article XIV of the Ordinance. Mr. Hartman asked Mr. Hanson if he has looked at the Open Space provisions. Mr. Hanson said no. Mr. Davies said it is here that the minimum lot size is 12 acres or larger and it does not allow for anything smaller. He said the total acreage of the proposed smaller lot is 5 acres which is obviously less than 12 acres. Mr. Hanson asked how the new lot is determined. Mr. Davies said that both lots have been revised so the answer is both lots are new. He added that the 90 acre lot obviously meets the requirements. However, he noted the 5-acre portion is too small to meet the Open Space requirements. Mr. Hanson said that the spirit of the ordinance in this case is different from what they are proposing. He said it is more for a large, major subdivision, even though this does fall within the major subdivision definition. He said the spirit of open space would say that this does not fall within it. He asked if it would have to go to the Zoning Board or is it the Planning Board's prerogative to determine what the spirit of the ordinance is. Ms. Annis replied that the Planning Board cannot do any waivers of the Zoning Ordinance. She said that it is clearing the Zoning Ordinance that in an R-3 district, lots created by a major subdivision (even though it is a result of the 5-year rule) shall be subject to the requirements of Article XIV, Open Space Development. She continued and read down through the table in the Zoning Ordinance titled "Open Space Zoning Density and Dimensional Standards." She said it is a maximum 1 unit per 3 acres of Buildable Area and the minimum parcel area before subdivision in an R-3 zone is 12 acres. She said this was more than 12 acres before it was started. She said that they have determined that there is more than 3 acres in the smaller lot. She continued reading saying that the minimum lot area after subdivision is 1 acre; minimum buffer from existing highway is 75 feet; minimum frontage is 125 feet; minimum front yard is 30 feet; minimum side yard is 15 feet; minimum common open space – at least 25% of the common open space must be buildable area. She said the common open space is the problem. Mr. Hanson said the question is how much open space would be needed. He asked what is the calculation – is it based on the number of lots. Mr. Wyman said it is parcel size – if it is less than 40 acres, then it is 50% and if it is greater than 40 acres, then it is 60%. Mr. Hanson asked if 50% of the smaller lot would have to be put into open space to create a 5 acre lot. Mr. Davies said that the larger lot would have to be 60%. Mr. Hanson said that when that is done, it allows more lots in a concentrated area. He asked if the Ordinance says that if you do this, you have to do an open space development or does it say that it is an option. Ms. Annis said no, it is not an option. Mr. Wyman read from Article VII, saying that "Lots created by Major Subdivision shall be subject to the requirements of Article XIV, 'Open Space Development.'" Mr. Davies asked where the provision about the 5 year minimum is. Mr. Violette said it is on page 4 of the definitions. Mr. Mical asked what the date of the approval was. Ms. Lightfoot said it was May 1, 2006. Mr. French said that the last subdivision created a large lot of 90+ acres plus a 5-acre lot, resulting in 2 lots. He said that a minor subdivision is 3 lots or less. He asked why, when this proposal creates only 3 lots total, is it considered to be a major subdivision and not stay as a minor subdivision. Mr. Mical said it is in the definition. Mr. French said it still creates only 3 total lots which is still a minor subdivision. Mr. Hanson said that he has had this discussion and he understands that the larger lot is counted twice. Mr. French said if they had done it all at once it would be a minor subdivision. He said that clarified it for him. Mr. Wyman clarified that the applicant does not fall under the 4 lots; they fall under the phrase that follows the word "or" which is a subsequent subdivision within 5 years. Mr. Violette said that they would have to go to the Zoning Board of Adjustment for a variance. Ms. Annis said yes, the Planning Board may not waiver the Zoning Ordinance.

Mr. Hanson asked what the Board wished to do. He said he would not like to have to pay all the fees again. Ms. Annis said a continuation could be done. Mr. Violette said that they could also choose to continue this as a major subdivision and not go to the Zoning Board. Mr. Hanson said he still doesn't understand how the Open Space Development should apply for a 5 acre lot. He discussed some possibilities with the Board. Ms. Annis recommended that the Board continue the application to allow Mr. Hanson to go back to the company to decide what they want to do and notify the Board. She said if they are going to go to the Zoning Board, it will have to be soon.

Mr. Mical asked if the logging activity is still going on. Mr. Hanson said yes. He added that he thought they would be finished by now. Mr. Mical said that the other question that is raised is because an application was submitted, what effect that has. Ms. Annis said that they cannot do anything to the property once the application is submitted. Mr. Mical asked if the logging operation is included. Ms. Annis said yes. Mr. Mical said that is in the Subdivision Regulations at Section III, Paragraph A.2. Mr. Hanson said that perhaps it should be continued. Ms. Annis read from Section III, Paragraph A.2 of the Subdivision Regulations: "Once an application has been filed, no subdivision of land shall be made and no land in any subdivision shall be transferred nor any contract for sale, lease, or rental executed, no structure shall be erected and no land cleared, no fill placed, no streets constructed, and no alteration of the natural state of the land shall be made, until a plat of the subdivision has been approved by the Board and recorded at the Merrimack County Registry of Deeds. . ." Mr. Hanson said they are not clearing the land – he said they are selectively cutting. Mr. French asked if clearing would be stumping of the property. Ms. Annis said that would be up to interpretation. Mr. French said that harvesting and clearing are two different things. Mr. Hanson said that he thinks what they mean is starting a road. Mr. Mical said that it talks about "no alteration of the natural state of the land shall be made." Mr. Hanson said that he looks at cutting the trees as almost like gardening. A member of the audience said no. Mr. Hanson said that it is cutting trees and they grow back – it just takes longer.

Ms. Annis asked what the Board wants to do. Mr. Hanson said his only concern is having to pay all the fees again. He said if they would consider a waiver of the fees when he returns from the Zoning Board with a variance. Ms. Annis said her recommendation is to continue it pending the outcome of the Zoning Board decision. Mr. Hartman said that the question will be whether to give a variance on whether this is a major subdivision. Ms. Annis said it depends on what Mr. Hanson puts in – whether it's for that or for a variance on the Open Space requirements. Mr. Hartman said that if the original subdivision had included this current request, there would be a 3-lot subdivision and that would be a minor subdivision. Ms. Annis said that the original one was not done by this owner. Mr. Hartman said that if the process needs to go to the Zoning Board, then it would be a reasonable waiver to request. He said he is not asking for 20 lots or 5 lots – he's asking for what would have been considered a minor subdivision 2 or 3 years ago. Mr. Hanson said that essentially 3 lots are being created within 5 years. He said that he understands that it is up to the Zoning Board as to whether a variance will be granted. Mr. Davies asked what the background is to the amendment made to add the 5 year provision. Ms. Annis said that it went back to a person who sold off another lot whenever they needed money. She said they would come for a subdivision for each one and there was no long range plan. She said at that time the Board said that they need plans for these subdivisions and they cannot just arbitrarily continue to create single lots each year. Mr. Mical said that there was another recent applicant who came with a subdivision and then a second landowner asked for the same thing within the five year period and that was a major subdivision including the open space. He said that he thinks that that application was withdrawn based on that.

Ms. Annis asked the Board if they wished to continue or reject the application and if it comes back to the Board from the Zoning Board, then the fees will be waived. Mr. Violette MOVED to continue the application until the Zoning Board makes a decision or there is a change to the application. Mr. French seconded.

The discussion continued. Mr. Mical asked how the general requirements will be treated, as far as the logging operation goes, where it says "no land cleared." He said that it has been discussed before about not cutting trees when an application is pending. Mr. Davies said there is a comment in the regulation about changing the natural state. Mr. Hanson said that if the Board will agree to waive re-submittal fees, other than re-notifying the abutters and the newspaper ad, he said he would withdraw the application.

Mr. Violette withdrew his motion and Mr. French withdrew his second. Mr. Violette MOVED that should this subdivision application be re-submitted by the same entity within 180 days, then the application fees will be waived. Mr. Wyman seconded. There was no further discussion. The motion was PASSED unanimously.

Mr. Hanson thanked the Board and departed.

3. DISCUSSION AND VOTE ON AMENDMENTS TO PLANNING BOARD RULES AND PROCEDURES

Ms. Annis said this is the third meeting on these items and a vote will be taken. Mr. Violette MOVED to approve the amendments as presented. Mr. Hartman seconded. Mr. Davies asked what would happen if there were 7 excused absences. Ms. Annis said that the Board could ask the member to resign. There was no further discussion. The vote was taken. The motion was PASSED unanimously. Mr. Mical asked that the final be sent to the Town Clerk. Ms. Annis asked that it be sent to the Central NH Regional Planning Commission and the NH OEP.

4. CONTINUATION OF ZONING ORDINANCE CONSIDERATIONS

Ms. Annis asked the members to vote on the following list as provided by Mr. Davies, showing the different changes that have been considered this year. Following are the results:

Preliminary 2010 Warrant article list:

For the October 5 meeting, please rate the following for getting on the Warrant

Priority for 2010 Warrant Article	For 2010 Warrant if Time Allows	Postpone until 2011 Warrant	
5	1	2	1 2008 Building Code Ordinance
6	0	1	2 2008 Structure in and Building Changes in Ordinance to Agree with Definitions
5	1	1	3 2008 Make OC-1 & OR-1 Acres in Text Consistent with Tables
4	2	1	4 Zoning Hardship Definition (Respond to Changes in State Law)
7	0	1	5 Workforce Housing (Respond to Changes in State Law)
0	3	5	6 Wind Turbine Ordinance (Respond to State Law) (also maybe solar & hydro)
6	2	0	7 Building Area Revisions in C-1
5	3	0	8 Building Area Revisions in B-1
6	1	1	9 Building Height Ordinance Change
1	3	4	10 Performance Zoning (to Soften Area & Height Changes in Items Above)
0	3	5	11 Use Table Updates
0	5	3	12 Multiple Buildings on a Lot
0	6	2	13 Multi-family Buildings
1	6	1	14 Revise Existing Dwelling Changed to Multi-family (See Use Table)
4	2	2	15 Expand C-1 in Davisville
0	3	5	16 Change Davisville Commercial to C-2
0	5	3	17 Revise Ordinance to Match/Complement Shoreline Protection Act
0	1	7	18 Temporary Sign Ordinance Revision
1	0	7	19 Yurts

Ms. Annis reviewed the top items, including the totals for the first two columns. They would be as follows: 2008 Building Code Ordinance; 2008 Structure in and Building Changes in Ordinance to Agree with Definitions; 2008 Make OC-1 and OR-1 Acres in Text Consistent with Tables; Zoning Hardship Definition; Workforce Housing; Building Area Revisions in C-1; Building Area Revisions in B-1; Building Height Ordinance Change; Multi-family Buildings; Revise Existing Dwelling Changed to Multi-family; Expand C-1 in Davisville. The ones receiving the least were then considered. It was agreed to remove the following: 6, 10, 11, 16, 18 and 19. It was noted that the top 4 for column 1 are: 2, 5, 7, and 9.

Mr. Hartman said that 1, 2 and 3 are ready now with the body of those ready to be requested. He added that the next question would be strategies on how to present them on the warrant. He said that he recalled that none of them failed by many votes – he recalled that it was only 15-20 for each one in the 2009 warrant. He said a lot of the concern was that they were too long and people did not understand them. Mr. Wyman suggested that the three that don't require a lot of work be re-submitted and then the three that are about the commercial buildings could be considered, too. Mr. Violette said that Workforce Housing really has to be done.

There was a discussion about Mr. Davies' suggested draft for workforce housing which is attached at Attachment 1. Mr. French said a lot of his concerns have been addressed with the cross-outs that Mr. Davies has added. He asked if these meet the State requirements now and suggested that perhaps this is not the time to talk about these. He said he would rather put something good in the Ordinance and wait until next year, rather than putting something in that will have to be changed. There was a discussion about how it will be tested and whether or not the Town meets the requirements now. Ms. Annis said that she and Mr. Davies worked on this and wondered who was going to govern this. Mr. Davies said that the proposal was based on Atkinson's and did not come from the State. He suggested that Mr. French read the law. He said that the law says, in general, that the town may not create roadblocks for a reasonable development of this type of housing. Ms. Annis said that they had created this draft based on the audit of the town documents and the first proposal that was done by Vanessa Bittermann from the Central NH Regional Planning Commission. Mr. French said that he liked the parts that have been removed. Ms. Annis said there are still places where there are conflicts between our current Zoning and the Workforce Housing requirements. She said that if it is not discriminatory, then there is not a problem. She said, for example, manufactured housing by state law is 320 square feet or more. She said that we require 500 square feet of ground living space in our Zoning. She wondered if because it is workforce housing, the Town has to be more lenient. She said putting a 30-year lien on the 320 square feet, then you can have that. She said that the 500 square foot one does not have the 30-year lien on it. She said they don't know if that is discriminating or if it is justifying. She said that they do not know if they are safe with the 500 in the general zoning. She said that has to be decided. In addition, she said in our Zoning, multi-family dwellings are allowed to be a total of 4 units. She said that the law is 5 units. She asked if we are going to change our multi-family limit to 5 to qualify and so it's equal and not discriminatory. On the other hand, she said we could be lenient because they must meet the income criteria, there will be a 30-year lien on the property, and they can have 5 units, but the person without the 30-year lien can do whatever they want may have only 4 units. She said that the person who has 4 units must also have 1-1/2 times the acreage that is required in that zone to have a multi-family dwelling, but the workforce person does not have to have that extra acreage. Mr. French asked if the Selectmen have to oversee the whole thing. Mr. Davies said that the language is that the Planning Board oversees but the Selectmen do the enforcing. He explained that at transfer, the lien that is placed on the property by the Town requires that they be informed and have to sign off. Mr. Violette said that he believes we are trying to whittle it down to be the least complicated as possible. Mr. Davies said that even if the Board comes up with something, an applicant can come forward with a number saying that they will need 1350 square feet as opposed to the 1300 square feet that may be in the document. He said that if the Board says no, then it could go to court and the court has to make a decision in 6 months.

Ms. Annis said there is an issue on manufactured housing and trailer parks. She said that she thinks that the town is discriminating, according to workforce housing, by not allowing a single trailer on one lot. She said that the zoning requires that it be in a trailer or mobile home park. Mr. Wyman said that it reads that you can have two on a 10-acre parcel, but you cannot have one on the 10-acre parcel. There was a discussion about the difference between modular homes and manufactured homes and Mr. Wyman explained that a modular home is treated as a stick-built home and manufactured homes are on a frame that stays with them and are treated as mobile homes.

After some further discussion, it was agreed that workforce housing needs to be put before the voters and it is the obligation of the Planning Board. Mr. Violette said there has to be wording determined for the ballot to cover the proposed articles. It was agreed that the articles will be publicized, but will not be placed on the

ballot in their entirety. The members agreed that wording will be determined to be inserted for the actual warrant.

The members discussed the timing required to do the required public hearings and get the warrant articles they want on the ballot. Mr. Mical suggested separating the next work session into two sections, inviting Vanessa Bittermann for the Master Plan for the first hour and plan to use the remainder for further consideration of the warrant articles. Mr. Violette said the plan for the first half would be the housing section of the Master Plan. It was agreed to do the Master Plan from 7:00 to 8:00 on the 19th and then use the rest of the time for the warrant articles.

There was a discussion about specifically which items from the list will be considered at the next meeting. It was agreed to eliminate numbers 6, 10, 11, 16, 18 and 19 from consideration for this year. Mr. Davies said that number 4 is a State law that needs to be addressed for the Zoning Board. He said it relates to combining the use and area variances and the wording for each criterion is somewhat different from what it is now. He said he believes that it was agreed in August that the Zoning Board would consider it but they have not met since then. Ms. Annis said she understands that under Article XVII of the Zoning Ordinance, Paragraphs D.2 and D.3 would be deleted. Mr. Davies said he had a proposal that was passed out in August. He said that D.2 and D.3 would be changed and D.1 will not be changed. He said that D.2 and D.3 will be combined into one. Mr. Violette said that the wording for the voters might be something like "Adopt the changes to Article XVII as required by State law." Mr. Davies said it could refer to the RSA or the Senate Bill.

Mr. Watts said that adding this one would result in the following being included as priorities: 1, 2, 3, 4, 5, 7, 8 and 9. Mr. Violette noted that number 15 was also high but after further discussion, it was agreed that to include this would take a lot more time than is available but could be included if time is available. Ms. Annis said that she thought it should be combined with changing the area and adding a zoning district for Davisville. However, she said she thought it would require a lot of work and suggested it be held off to another year. Mr. Violette agreed.

Ms. Annis asked Ms. Lightfoot to e-mail the Building Code with and without the cross-outs from last year to the Board members so they can consider it for the next work session.

For number 2, Mr. Violette suggested the wording as follows for the warrant: "To correct the existing Zoning Ordinance or Building Code so that definitions are consistent throughout the Ordinance." He suggested working some more on getting the right wording to cover exactly what is being done since Mr. Davies suggested that perhaps it is not as simple as just changing definitions. He said he would work with someone on any one of the items being considered to arrive at the right wording. Mr. Davies said he would volunteer to work with Mr. Violette to come up with proposed wording. Mr. Violette said that they could e-mail the proposed wording to the members, and Ms. Annis said that they could not respond until the announced meeting. Ms. Annis said that the workforce housing discussion will be on the agenda for the 19th. She said that the suggested wording for the warrant articles could be sent out by Mr. Violette and whoever wants to help and that could be discussed then, too. Mr. Mical suggested reviewing the Building Code and include any suggestions from the members to change that. Ms. Annis said that the Workforce Housing, Building Code and the Zoning Hardship (which should not take too much time) should be on the agenda for the 19th. The Board agreed. She added that the other things could be worked on before and handed out at that meeting in preparation for discussion in November.

Mr. Davies said he would volunteer to put together some of the warrant article language proposals to start the discussion. He said he would do the 8 items that have been identified. Ms. Annis said she would like to have all the changes written up and the warrant articles written up by the first meeting in December because it should be sent to Don Gartrell to see if it meets the legal requirements. Then, she said, he can get it back to the Board by the third meeting of December. She said that her primary legal concern is the wording that will be proposed to add to the Zoning Ordinance, and not so much the specific wording for the warrant. She said the public hearing is in December. There was a discussion about the timing of everything in order to get things ready for the ballot and still include the public hearing or hearings as required.

5. MINUTES

Mr. Mical MOVED to approve the minutes for September 14 and September 21, 2009. Mr. Hartman seconded. Mr. Davies said that he can't vote because he was not here for one of the meetings. Ms. Annis asked if there was discussion on either one of the minutes. There was none. The vote was taken. The motion was PASSED with Mr. Davies and Mr. Violette abstaining.

6. SUBCOMMITTEE REPORTS

Mr. Mical said that there was a discussion about revising the priorities of the CIP projects. He said he thought this should be done prior to the start of the CIP. He said he will put a proposal together for the Board to consider. Ms. Annis said all right.

Mr. Violette said he will contact Vanessa Bittermann to come for the first hour of the October 19th work session.

7. COMMUNICATIONS AND MISCELLANEOUS

Ms. Annis said she has heard nothing from the Local Government Center about their annual meeting which usually takes place in November. Ms. Lightfoot said she would check on the LGC website for the announcement.

Mr. Davies said that it concerns him that his comment about not being at one of the meetings when the minutes were being approved was not considered. He requested that when there are multiple meeting minutes, they should be voted on separately. Ms. Annis agreed.

Mr. Hartman MOVED to adjourn. Mr. Watts seconded. The motion was PASSED unanimously. The meeting was adjourned at 9:40 p.m.

ATTACHMENT 1

This is a third DRAFT of a Workforce Housing Ordinance for a possible Warrant Article.

Add to the Zoning Table of Contents: Appendix A – Workforce Housing

Add to Zoning Ordinance page #9 item 'S': If Workforce Housing is under consideration, Appendix A – Workforce Housing shall be used per State of New Hampshire RSA#674:58-61.

**Warner Zoning Ordinance
Article ~~XIV-A~~
Appendix A – Workforce Housing
INCLUSIONARY HOUSING ACCOMMODATION INCENTIVE SYSTEM**

A. Purpose Statement

The purposes of this Article are as follows:

1. To encourage and provide for the development of affordable workforce housing within Warner;
2. To ensure the continued availability of a diverse supply of home ownership and rental opportunities for low to moderate income households
3. To meet the goals related to affordable and workforce housing provisions set forth in the town's Master Plan
4. ~~To comply with the requirements of SB 342, An Act establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing (RSA 674:58-61).~~

In the course of implementing this ordinance, the Town of Warner has considered the region's affordable housing needs as described in the Central New Hampshire Planning Commission's Housing Needs Assessment and the Regional Fair Share Analysis.

~~Warner's existing housing stock shall be taken into consideration in determining its compliance with this Article. If Warner's existing housing stock is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing, Warner shall be deemed to be in compliance with this Article and RSA 672:1, III-e, and developers are not eligible for consideration for this Article.~~

B. Authority

This innovative land use control Article is adopted under the authority of RSA 674:21, and is intended as an "Inclusionary Zoning" provision as defined in RSA 674:21(I)(k) and 674:21(IV)(a).

C. Definitions

1. **Affordable:** means housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income. The calculation of housing costs shall be based on current taxes, a 30 year fixed rate mortgage, a 5 percent down payment, and prevailing mortgage rates within the region.
2. **Workforce Housing:** means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department

of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

3. **Area Median Income (AMI):** the median income of the greater region HUD Fair Market Area to which Warner belongs, as is established and updated annually by HUD.
4. **Assets:** As defined as "Net Family Assets" by 24 CFR Part 5 Subpart F, and as amended from time to time.
5. **Income:** As defined as "Annual Income" by 24 CFR Part 5 Subpart F, and as amended from time to time.
6. **Market Rate Housing:** any dwelling unit within a development, whether the unit is to be owner or renter occupied, this is intended to be available for sale or occupancy at the prevailing market value for the area similar to comparable real estate transactions.

D. Affordable Housing Categories and Incentive System:

Warner Zoning Districts eligible for consideration under this Article are shown on Overlay Map on at the end of this Appendix.

(NOTE: this is Option #1. Option #2 would be an overlay district with specifically mapped location where Workforce Housing would be allowed— see attached DRAFT Overlay Map)

- a. ~~See Use Regulations in Table 1 of this Zoning Ordinance for eligible Districts for single and two dwelling units.~~
 - b. ~~Multifamily Housing shall be eligible in R-1, R-2 and B-1-R-3 where municipal water and sewer is available or made available by the developer with the approval of the Water Department and Fire Department.~~
 - c. ~~Local, State, and Federal parks and forest areas are not eligible for Workforce Housing.~~
 - d. ~~Conservation land and conservation easements are not eligible for Workforce Housing.~~
1. A site plan or subdivision plan that will guarantee a designated percentage of dwelling units, reserved as affordable housing, may be approved with an increase in the density of the site and a reduction of the minimum site frontage as is set forth in the appropriate section of the Zoning Ordinance. The Planning Board may allow a reduction of the minimum lot size to accommodate the increased site density. ~~(NOTE— paragraph 'd' below is similar but more specific— one or the other, but not both will be considered).~~
 2. A site plan or subdivision plan can mix affordable housing types and accumulate density bonus to a maximum bonus equal to 30 percent where municipal sewer and water are available or in areas without water and sewer service to the maximum density permitted by on-site well and septic standards of the New Hampshire Department of Environmental Services as applied to the site. When mixing affordable dwelling unit types, the designated affordable percentage for each individual affordable housing type may be less than that required but shall total at least 30%. The density bonus is then proportioned to the actual percentage of designated affordable dwelling units provided, so that if the applicant provides only one-half of the required designation of one type of affordable housing they will receive one-half of the density bonuses. The combined total of all affordable housing types must equal a 15 percent designation of affordable dwelling units, at a minimum.
 3. ~~Developments qualifying for consideration under this Article shall be granted the following modifications in design considerations:~~
 - a. ~~The maximum number of dwelling units permitted shall be determined by the Model Subdivision Regulations Incorporating Soil-based Lot Size Determination per NHDES.~~
 - b. ~~Frontage may be reduced by 15%.~~

- c. ~~Reduce setback at frontage by 10 feet.~~
 - d. ~~Required amount of common land in cluster developments may be reduce by 20 percent for the percentage of Affordable dwelling units on the development.~~
 - e. ~~Each building may contain up to 6 dwelling units.~~
3. Planning Board and Zoning Board application fees except direct expenses may be waived at the discretion of the Board.
4. Building Standards:
- a. Dwelling units designed and designated for the accommodation of affordable housing shall meet the use provisions of the underlying zoning district.
 - b. Where acreage meets size requirements, the development ~~must be eligible for review shall be reviewed~~ as an Open Space Development. Manufactured housing is acceptable for affordable housing accommodation provided they meet current local, state, and federal codes and regulations.
 - c. Each dwelling unit shall not exceed 1300 square feet of living space including the basement area.
 - d. ~~A minimum of 20 feet of landscaping shall be provided at perimeter of development.~~
 - e. ~~Development shall have direct access to a paved street.~~
 - f. ~~A determination of the number of bedrooms in workforce housing shall be reviewed by the Planning Board. In order to assure reasonable family accommodations, the following breakdown of bedrooms per workforce housing dwelling units shall be adhered to:~~
 - 1. ~~One bedroom 25% or less~~
 - 2. ~~Two or three bedrooms 65% or more~~
 - 3. ~~Four bedroom 10% or less~~
 - 4. ~~The above may be varied only by requirements of a housing assistance program.~~
 - d. All developments qualifying for review as workforce housing shall be compatible but need not be identical in architectural style and exterior appearance with the market rate dwelling units. The work force housing dwelling units must be interspersed with market rate dwelling units of the same type.

E. General Requirements of Affordable Dwelling Units:

- 1. All developments qualifying for review as workforce housing shall be compatible but need not be identical in architectural style and exterior appearance with the market rate dwelling units. The work force housing dwelling units must be interspersed with market rate dwelling units ~~of the same type.~~
- 2. To ensure that the project is completed as permitted, the dwelling units qualifying as affordable housing shall be made available for occupancy on approximately the same schedule as a project's market dwelling units, except that the certificates of occupancy for the last 10 percent of the market rate units shall be withheld until certificates of occupancy have been issued for all the affordable dwelling units. The first third of the market rate dwelling units may be completed first to assist in the viability of the project. A schedule setting forth the phasing of the required affordable housing dwelling units shall be established prior to the issuance of a building permit for any development subject to the provisions of this Article.
- 3. To ensure that only eligible households purchase/rent the designated affordable housing dwelling units, the purchaser/renter of an affordable dwelling unit must submit copies of their last three years' federal income tax returns and written certification verifying their annual income level, combined with household asset, does not exceed the maximum level as established by this Article. The tax returns and written certification of income and assets must be submitted to the developer of the dwelling units, or the developer's agent, prior to the transfer of title with a copy

given to the Planning Board. A copy of the tax return and written certification of income and assets must be submitted to all parties charged with administering and monitoring this ordinance, as set forth in sec sections of this Article, within 30 days following transfer of title.

4. All applicants under this Article must submit the following data to ensure project affordability:
 - a. Calculation of the number of Workforce Housing dwelling units provided under this Article and how it relates to the Ordinance provisions.
 - b. Project Cost Estimate including land, development and construction costs; financing, profit, and sales costs; and other cost factors.
 - c. Description of each dwelling unit's size, type, estimated cost and other relevant data.
 - d. Documentation of household eligibility as required in sections of this Article.
 - e. All agreements established as part ~~of section~~ of this Article
 - f. List of required variances, conditional use permits, and special exceptions including justification of their necessity and effectiveness in contributing to affordability.

F. Assurance of Continued Affordability:

In order to qualify as affordable housing under this Article, the developer must make a binding commitment that the affordable housing units will remain affordable for a period of 30 years. This shall be enforced through a deed restriction; restrictive covenant; or a contractual arrangement through a local, state or federal housing authority or other non-profit housing trust or agency. The 30-year term, the deed restriction, restrictive covenant, or contractual arrangement established to meet this criterion must make the following continued affordability commitments:

1. Affordable housing dwelling units offered for sale shall require a lien, granted to Warner, be placed on each affordable unit. The value of the dwelling unit and its reduced "affordable" sale price, which is indexed according to the qualifying income standards. The municipality's lien is inflated over time at a rate equal to the Consumer Price Index (CPI). Future maximum resale values shall be calculated as the fair market value minus the CPI adjusted lien value. Subsequent sales are not limited based on income targets, but the combination of maintenance of the municipality's lien and adherence to the Articles' Definition of Affordable Owner-Occupied Housing for a period of 30 Years.
2. Affordable housing rental dwelling units shall limit annual rent increases to the percentage increase in the area median income, except to the extent that further increases are made necessary by hardship or other unusual conditions.
3. Deed restrictions, restrictive covenants, or contractual arrangements related to dwelling units established under this Article must be documented on all plans filed with the Warner Planning Board and the Merrimack County Registry of Deeds.

G. Administration, Compliance and Monitoring

1. This article shall be administered by the Planning Board. Applications for the provisions provided under this article shall be made to the Planning Board and shall be part of the submission of an application for site plan or subdivision plan approval.
2. No certificate of occupancy shall be issued for an affordable housing unit without written confirmation of the income eligibility of the tenant or buyer of the affordable housing dwelling unit and confirmation of the rent or price of the affordable housing dwelling unit as documented by an executed lease or purchase and sale agreement.
3. On-going responsibility for monitoring the compliance with resale and rental restrictions on affordable dwelling units shall be the responsibility of the Board of Selectmen or their designee.

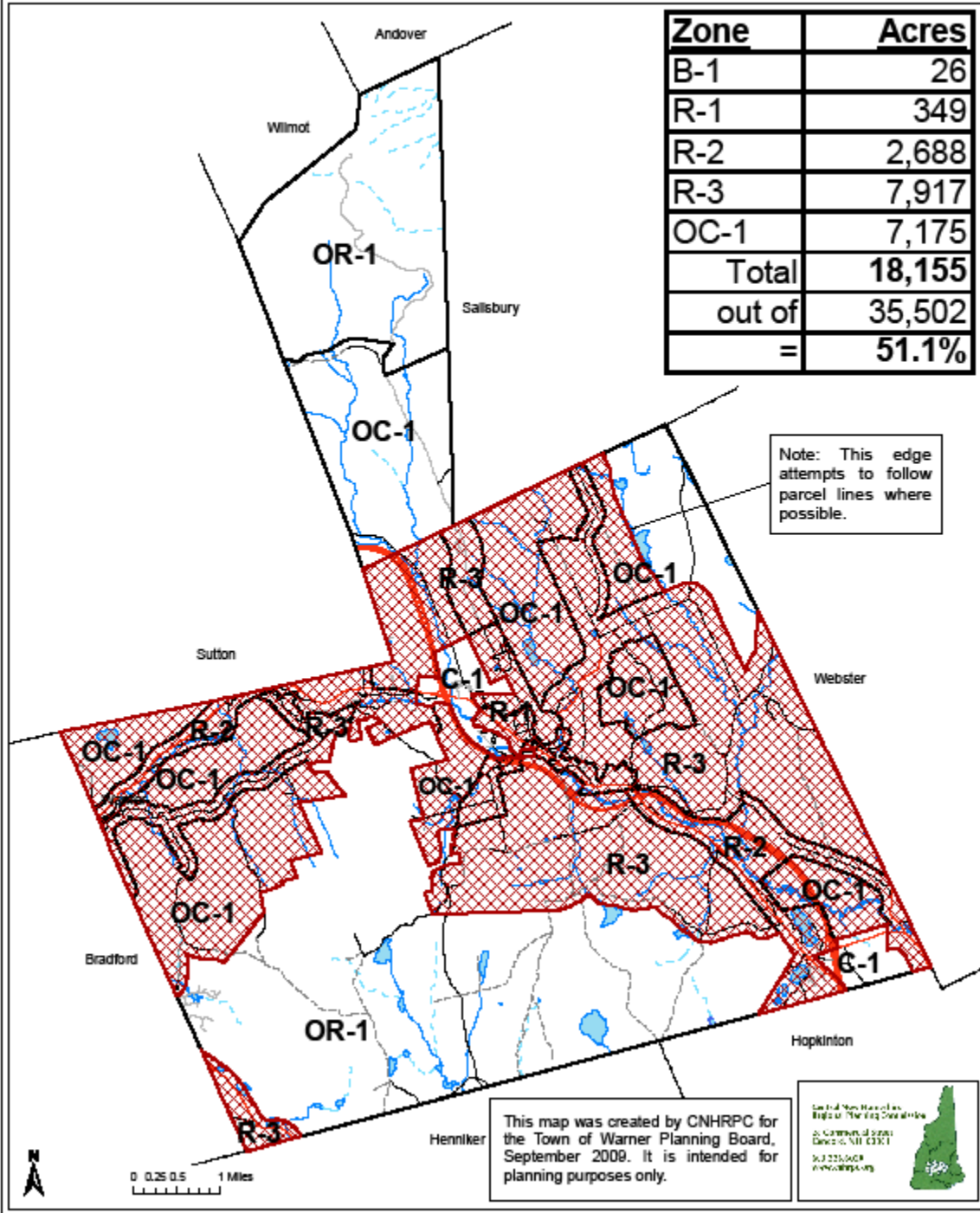
4. The owner of a project containing affordable dwelling units for rent shall prepare an annual report, due on April 30, certifying that the gross rents of affordable dwelling units and the household income of tenants of affordable units have been maintained in accordance with this article. Such reports shall be submitted to the Board of Selectmen or their designee and shall list the contract rent and occupant household incomes of all affordable housing units for the calendar year.

H. Relationship to Other Ordinances and Regulations:

1. No portion of this Article shall nullify the provisions of any other Town ordinance provisions which relate to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life protection.
2. If any provision of this Article is in conflict with the provisions of other Ordinances, the more restrictive provision shall apply, except for any provision relating to lot size, setbacks, or density, in which case the provisions of this Article shall apply.

I. Attached Workforce Housing Overlay Map

**Warner - Workforce Housing Overlay
Proposal #2 (Remove C-1 zones and add to northeast OC-1 area)**



**Warner - Workforce Housing Overlay
 Proposal #3 (remove C-1 zones and add part of OC-1 up Kearsarge Mtn. Rd.)**

