

**TOWN OF BARTLETT PLANNING BOARD
PUBLIC HEARING**

November 2, 2020

Members Present: Scott Grant; David L. Patch; David Shedd; Kevin Bennett; Gus Vincent. Participating remotely were Kevin McEnaney and Barry Trudeau. **Members Absent:** None.

Also Present: Julia King.

1. Pledge of Allegiance: Chairman Scott Grant opened the meeting at 6:00 pm. He led all present in the Pledge of Allegiance and reviewed items on the agenda.

2. Continuation/Final Approval: BBSK Properties, LLC, 457 NH Route 16A. File: 2020-1267.
Application to create a residential exclusive-use area around an existing owner-occupied residence on the Swiss Chalet property. Property identified as Tax Map 1RT16A, Lot 227-L00.

With nobody present to represent this application and no new information having been received, a motion to continue to the November 17, 2020 meeting was made by Kevin McEnaney; seconded by Kevin Bennett. Vote: All in favor.

3. Continuation/Final Approval: RSM Bartlett Properties (Richard Girardin), 590 US Route 302. File 2020-1265. This is an application to subdivide a 13.07-acre parcel into six lots. Lots 1, 2, and 3 will be served by one driveway, while Lots 4, 5, and 6 will be served by a second driveway. A request to withdraw a previously-continued application for 7 duplexes on this property had also been received and accepted. Property identified as Tax Map 3RT302, Lot 53-R00.

There was nobody present to represent this application and no new information had been received. A motion to continue the application to the November 17, 2020 meeting was made by Kevin McEnaney; seconded by Kevin Bennett. Vote: All in favor.

4. Discussion with Julia King: Julia King was present to discuss a proposed noise ordinance which she would like the board to support. She said the proposal was in response to noise complaints due mainly to guests at short term rentals (STR), but was not specific to STRs. Ms. King said Article I of the zoning ordinance was intended to help preserve a rural, tranquil, and open environment free from sound, visual, air, and water pollution. She said that visual, air, and water pollution were all dealt with in other sections of the zoning ordinance, but there was no provision specifically addressing noise pollution. For this reason, Ms. King asked the board to accept her proposal for a noise ordinance and to add it to the zoning ordinance as Article IV – General Provisions, Item R.

Ms. King said board member Kevin McEnaney had directed her to several sources where towns had implemented a noise abatement ordinance. She said after reviewing those sources, she had come-up with the following proposed language which she said was intended to simply buttress up the zoning ordinance so that it contained a regulation dealing with noise. The language being proposed by Ms. King is as follows: “Article IV.R: 1) Making of certain noises declared unlawful: It shall be unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the limits of the town; provided, however, that nothing in this article shall prevent the use of loudspeakers or other sound equipment duly licensed; provided further, that the town is authorized to license any functions or activities involving public noise it deems reasonable and its determination shall be final. This ordinance shall be in effect from 9 pm to 5 am. 2) Penalty for violation: The owner of record of the property where the violation occurs pursuant to the provision of this article shall be deemed guilty of a violation and upon conviction thereof shall be fined not exceeding Five Hundred Dollars (\$500).” Ms. King said one of the reasons she was doing this was because law enforcement had told her they get many calls to “party houses” but they don’t have a tool to use once they get there to arrest or fine offenders; their only recourse being to issue a warning and request offenders to cease the noise, a request which some people chose to ignore. Ms. King felt it was time to give police the tools they needed to effectively do their job, and to give residents a chance to “push back” against noise situations which

disturbed their peace. It was felt it would be impractical to try to impose noise limits based on decibel levels, since that would require certified measurement instruments which would require constant calibration.

The Chairman asked if the board had any questions. Kevin Bennett asked Ms. King whether what she was proposing could be used control late-night fireworks, even though fireworks were legal in New Hampshire. He described how very loud fireworks had recently been let off in the early hours of the morning several nights in a row in his neighborhood. Mr. Bennett said it disturbed him enough that he contemplated calling the police. Ms. King said her short answer would be that if people were shooting off fireworks after 9 pm, then it would be a noise issue and her proposed ordinance would cover it. Kevin McEnaney said he had spoken to the police chief today seeking clarification on one issue, that being did the police need objective measurements of noise or could it just be subjective. Mr. McEnaney said the chief responded that if the town established a generalized ordinance for disorderly conduct or disturbing the peace, which would cover excessive noise, then that would be easy to enforce and any resulting fines would go directly into the town's coffer.

The Chairman explained that there were two options for going ahead with this amendment. Either the planning board could adopt it and put it on the ballot, or Ms. King could submit a petitioned warrant article which the planning board could vote to either support or not support. Barry Trudeau said he would like to see a provision for a construction restraint included in the ordinance to prevent heavy equipment operations from starting too early in the morning. He acknowledged he was not sure what those hours should be, but said he had experienced heavy equipment operating at his development as early as 7 am. This elicited a discussion by the board as to what hours would be appropriate, taking into account the rights and needs of tourists and locals who desired peace and quiet and the ability to sleep-in, while not infringing on the rights of tradesmen and contractors who needed to work long hours to earn a decent living, since most were living paycheck to paycheck. The times discussed ranged from dawn to dusk, to 5 am to 10 pm in the summer, and everything in-between. Kevin McEnaney felt 5 am was far too early, while Barry Trudeau said he did not care what the hours were but the issue needs to be addressed. Ms. King noted the fact that condominiums and hotels, etc. had private covenants which provided noise protection for their guests, but regular neighborhoods did not have anything.

Selectmen's representative Gus Vincent said while he agreed with the spirit behind what Ms. King was trying to do, he felt the way it was proposed could also be double-edged. He said the same things people were trying to quell could be used against them, and cited examples of neighbors calling police after being upset because someone was starting their car at 9 o'clock, or their dog was barking, or they let off a firearm to scare a bear off their porch. David Patch said he agreed with Mr. Vincent, saying while it would be nice to keep Bartlett in a Currier and Ives setting where there was no noise, ever, he could not support this proposal as it was written. He did not agree that an individual, who was not a jury of his peers, could decide what was excessive noise or whether it disturbed the peace, etc. which could result in someone being arrested or fined. One person's opinion that something was too noisy or disturbed the peace may not raise to the same level of noise and disturbance in someone else's view. Mr. Patch reiterated he would not support something this subjective and vague, because by being vague it became all-encompassing.

Kevin Bennett said he agreed with Mr. Patch and Mr. Vincent that this amendment was too vague and wondered whether there was a way to put limitations on large gatherings of people consuming alcohol, saying that seems to be where most of the problems stem from. He said unless people had personally experienced living near an Airbnb, they probably did not appreciate how disruptive they could be and recalled having to call police at 2 am in the morning to quieten renters in a nearby home. He agreed this proposal was too vaguely written and said that police needed specific guidelines so that their arrest reports can be upheld in court by lawyers who were prosecuting the offenders. Gus Vincent noted there were other things that can help control these types of situations, even though they may not directly involve the police, such as having the fire chief break-up large gatherings by enforcing the fire and safety codes. Julie King agreed there were other things that could be done, which was to have ordinances against short term rentals which addressed overcrowding issues. She said what she was proposing was not that; she was only trying to control noise. Ms. King said while she respected the board's feedback, she did not agree with it and did not wish to respond to it. She said police did not usually get

calls about people starting cars or defending their property against bears, but what they did get were calls reporting loud parties, particularly where alcohol was involved. Ms. King suggested if the board wanted a short-term rental ordinance, then write one. Ms. King said she was trying to “close the circle” in Article 1 which deals with air, water, visual, and noise pollution. She said it is time something was done about it and she would like to see the planning board take the lead, if they agreed with that. If not, Ms. King said she would present it at town meeting herself. Gus Vincent said he agreed with the spirit that there should be something in the arsenal to deal with noise, and said he would discuss it with the other selectmen.

David Patch said he did not disagree that it was unpleasant to have noisy neighbors and there should be some way to deal with it. However, he was still concerned about the subjective nature of this whereby one person could make a decision as to what was excessive noise which could result in a fine or arrest. He asked Ms. King if she was sure the chief said there was no state law for disturbing the peace. When Ms. King said they had not discussed it, Kevin McEnaney answered as it had been he who mentioned it. Mr. McEnaney said there was a criminal code for it but it was better to have a town ordinance which specifically mentions disturbing the peace and included the things Ms. King had presented. He said he did not think it would be unreasonable to have a town ordinance enforcing a quiet time from 10 pm to 7 am which applied to everyone, and not just to short term renters which the police should have no problems enforcing. David Patch said if the police arrested him for speeding, either he was or he wasn't. If he was doing 60 mph in a 50 mph zone, or parked illegally, then there was no question about the violation; it was not subjective and was not based on someone's opinion. Mr. Patch said that is how it should be; clearly laid out in black and white. Kevin McEnaney said the state criminal code laid out guidelines to help officers make a determination when deciding when someone was making excessive noise and breaking the law. Mr. Patch recalled he had seen a lot of officers come and go at the police department and some were reasonable and some were not. He still believed it should be more concrete and one person should not be making the determination.

David Shedd said he did not have noisy neighbors but encouraged Ms. King to move ahead with this. He suggested she get more than the required 25 signatures on any petition she submits as a measure of the sentiment of the town, as this would also help the planning board see how the townsfolk felt about it. Mr. Shedd noted if Ms. King wanted the planning board to take the lead with this, there was the chance the board could vote against putting it on the ballot. If she felt strongly about it, he suggested a petition warrant article may be the better way to go as then it would go on the ballot with or without planning board approval. The Chairman suggested Ms. King take into consideration the comments she heard tonight and fine-tune her proposal to be more specific and come back at a later date. He said his personal preference for time would be dusk to dawn, but agreed whatever time was decided upon could have an influence on voters, as could the amount of the fine and who was responsible for paying it. The Chairman felt a \$100 fine would not be a deterrent and said he would not even be opposed to it being \$1,000. He said Ms. King should also address who enforces the rules. This elicited a short discussion as to whether that would be the selectmen, police, or code enforcement officer with members having differing opinions. The Chairman noted any fines collected could pay for a code enforcement officer. Ms. King said there was already a \$2,000 line item in the budget for code enforcement.

The Chairman polled the board members to see whether they would rather the planning board sponsor this article or would they rather Ms. King submit it herself as a petitioned warrant article. Most members indicated they would like to see the final language before deciding. David Shedd said he would like to see Ms. King petition it herself, as that would guarantee it went on the ballot. David Patch said he would like to first check the state laws to see whether this amendment was even necessary. Ms. King asked that draft minutes be emailed to her and asked if board members could email her their concerns so she could review them before re-working her amendment. Kevin McEnaney suggested Chief Keaton also attend the meeting. The Chairman said he would also email Ms. King a link to the ZOOM meeting which she could watch.

5. Review and Approve Minutes: The minutes of the October 5, 2020 minutes were reviewed. A motion to approve the minutes, as written, was made by David Shedd; seconded by David Patch. Vote: All in favor.

6. Mail and Other Business:

- The Chairman gave an update on the situation involving the river dredging in Bartlett and subsequent removal of material by Colemans. He said the material was being taken to the George Howard property and stored for processing and eventually taken away for resale. The Chairman said Shawn Shannon was not particularly concerned about this occurring at an unauthorized pit, but wondered why he could not be allowed to also conduct excavating on his abutting lot.
- The Chairman said Norman Head's complaint about Joe Rogerson's activities in the village had been looked into by one of the selectmen and it had been determined that no excavation was occurring and everything was okay.
- The Chairman referred back to Shawn Shannon's question and asked if the board was interested in putting an article on the ballot next year to allow existing gravel pits to expand onto abutting properties which had been purchased after zoning had been implemented. He asked if the board had any thoughts on the issue. Kevin Bennett and David Patch both supported the concept, saying there was definitely a need and it was not fair that taxpayers had to pay increased prices for their gravel and sand, etc. from out-of-town companies when it could be excavated locally at a lower price. David Shedd initially said he disagreed, but then modified his remark by saying he didn't exactly disagree, but he couldn't see how we could give just one type of industry permission to expand. He was also concerned about commercial activities expanding into residential areas. David Patch agreed that could be a problem and suggested the board give it some thought. The Chairman also agreed there was a need and supported allowing existing pits to expand. He said he would go even one step further by allowing new gravel pits to open up as well.

There being no other business, a motion to adjourn was made by David Patch, seconded by David Shedd. Vote: All in favor. The meeting adjourned at 7:15 pm.

Respectfully submitted,
Barbara Bush
Recording Secretary