

**TOWN OF BARTLETT PLANNING BOARD  
WORK SESSION**

**April 20, 2021**

**Members Present:** Scott Grant; David L. Patch; Gus Vincent; Kevin Bennett; David Shedd. Participating remotely were Kevin McEnaney and Barry Trudeau.

Also present were: Dan Lucchetti of HEB Engineers; Scott Cameron; Norman Head; Robert Holmes; and Burke York of York Land Services.

**1. Pledge of Allegiance:** Chairman Scott Grant opened the meeting at 6:00 pm. He asked Bob Holmes to lead all present in the Pledge of Allegiance and then 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.

This application had been previously continued to the May 3, 2021 meeting. No action was taken tonight.

**3. Informal Discussion with Burke York re Robert Holmes' proposed 2-lot subdivision, Route 16A and Washington Avenue. Tax Map 11NTPK, Lot WAS-30.** Burke York presented on behalf of Bob Holmes. He recalled he had been before the board in January for an initial preliminary discussion involving this project. At that meeting, Mr. York had advised the property currently supported a house and a trailer which were separated by a gully and a stream, and Mr. Holmes would like to subdivide the parcel to allow each dwelling to be on a separate lot. One lot would have frontage on Route 16A and the other on Washington Avenue, and both lots would have municipal water. At that time, preliminary density calculations based on county soil data showed that while the lots met state density requirements for septic, they did not meet town requirements as the town's standards were stricter than the state's. Mr. York said since then, a High Intensity Soil Survey (HISS) had been performed by soil scientist Greg Howard. This study was specific to the actual soil conditions existing on the site, as opposed to being based on the more-generalized broad-based county soil data. The results of the HISS study found the soils on the two lots were of a better quality than indicated on the county map and did, in fact, meet Bartlett density standards. Mr. York said test pits had not yet been dug, but would be before the application was formally submitted.

Mr. York further advised that the trailer was connected to water coming from the house; however, Lower Bartlett Water Precinct had indicated they were agreeable to connecting the trailer to their system so that it had its own meter. David Shedd asked whether land under a stream could be used in MLAR calculations. Mr. York said this was an insignificant little brook, which was classified as a Group 5 soil which were usable in that area. Mr. Shedd said he meant, in general, could land under a floodway be used for MLAR calculations. Noting there were different categories of wetland which could be subject to flooding, Mr. York said if was a floodway which was permanently wet, then it would not be used. Kevin Bennett shared his understanding of what Mr. Shedd was asking by describing how there were different classifications of local rivers based on their size, which had different regulations. Mr. York said he typically never uses any land from the edge of high-water to the edge of high-water in his density calculations. The Chairman asked if the board had any further questions. David Patch said the lots had adequate frontage, and if Greg Howard had determined there was adequate land for density, then he saw no glaring problems with what was being proposed. Mr. York thanked the board for its time.

**4. Informal preliminary discussion with Ken Cargill.** Dan Lucchetti of HEB Engineers and Scott Cameron from Northbound Development, Inc. said they were present on behalf of Mr. Cargill. The Chairman verified with them that the property involved was located west of the former Scarecrow Pub parcel. Mr. Lucchetti and Mr. Cameron agreed, saying the property contained 19 acres and was identified as Bartlett Tax Map 1RT16, Lot 145. They produced a colored rendition of a proposed layout showing a 19-unit cluster-style residential development (PUD) with associated common land. The concept showed a looped main road with two large cul-de-sacs on either side. Mr. Lucchetti said the parcel was bounded by Route 16, the Scarecrow Pub, Fox Run development, and the railroad and was located in the town commercial district, as well as the Lower Bartlett Water Precinct general commercial district and groundwater protection district. He said each structure would be

a 3-4 bedroom detached dwelling unit, which people would own to the inside walls of. Mr. Lucchetti added that the associated open space would include cross-country ski trails which could be connected to the Ragged Mountain system and also walking trails. He said the units would be served by either individual septic systems or shared systems, and water would be provided by Lower Bartlett Water Precinct. Mr. Lucchetti said they had completed a high-intensity soil study (HISS) and were still working on completing the boundary survey and submission of an Alteration of Terrain permit, driveway permit, septic permits, etc.

Mr. Lucchetti noted the Lower Bartlett Water Precinct (LBWP) regulations also applied to this project. He said he recognized the Precinct had stricter standards than the town did as far as density was concerned, and that their groundwater protection district required a one-acre lot size, though they did not specify what density was allowed. Mr. Lucchetti said he realized the more-strict standards applied asked for guidance to understand how the two entity's regulations melded. David Patch suggested he speak to the Precinct first to determine what they would allow or require for density, since they were stricter than the town. David Shedd asked about the driveway configuration and whether it would accommodate access for fire trucks and emergency vehicles. Mr. Lucchetti said the project was still in the schematic phase and that issue had not been addressed yet, but it would be. Mr. Shedd reminded Mr. Lucchetti that Bartlett only allowed three dwellings on a driveway. Mr. Lucchetti said they were proposing a privately-owned road, and individual driveways would come off that private road. David Patch advised the road would need to be built to town road specs. Scott Cameron joined the conversation to advise he had the property under contract. Acting with due diligence, he said he had met with Gary Chandler of the LBWP who was very helpful and had offered to set-up a meeting with the fire chief to seek his input about what he would require for hydrant locations and emergency vehicle access, etc. David Patch felt that was a good idea to do.

Dan Lucchetti asked for clarification about the town only allowing three dwellings on a driveway, and asked if there was a possibility the board would entertain granting a waiver to allow more so as to retain the maximum area possible for density calculations. David Patch said he felt getting a waiver would be unlikely, as the board had never granted one in the past. The Chairman reminded Mr. Lucchetti that Bartlett did not allow applicants to take a density reduction because of off-site water. Mr. Lucchetti said he was aware of that. He asked about deeding the road ROW to the town in the event it became a town road. David Patch said the ROW for a town-spec road was 66-ft. but he did not believe that area was deeded to the town. He explained how years ago, a waiver was possible to reduce that to 50-ft. as an incentive for the road to remain private, but that was no longer offered since it had later been determined that any road could become a town road if the townsfolk voted for it at town meeting. David Shedd also commented on a deeded ROW by saying the town did not necessarily have to own the land the road was located on. It was discussed whether the land under the road could be used for density calculations. It was thought it could be, but Mr. Patch suggested Mr. Lucchetti check that information first. When Mr. Lucchetti asked about site plan review and what style of architecture the board may want to see, David Patch informed him that site plan review was not required for residential developments and only applied to commercial projects, so the architectural style of dwellings was pretty-much up to the owner. Mr. Lucchetti said he would be back before the board as the design and planning phases proceeded.

**5. Erin Brianna Frackleton, West Side Road and Highland Road.** File: 2021-1275. Application to voluntarily merge Tax Map 6WSTSD-2, Lot 92R00 and Tax Map 6SACOR, Lot 30HR0. Short discussion on where these two parcels, which contained 200-acres and 20-acres respectively, were located. Motion to approve made by David Patch; seconded by David Shedd. Vote: All in favor.

**6. Review and Approve Minutes:** Before the April 5, 2021 minutes could be reviewed, Kevin McEnaney interjected to express his opinion that the April 5 meeting was not legal, so therefore the minutes and any actions taken during that meeting should be considered null and void. This was due to a wide-spread Internet outage that night which resulted in there being no Zoom connection so the remotely-attending board members and applicants were not able to participate. The one board action Mr. McEnaney was concerned about was a denial of a subdivision. The Chairman suggested the board proceed to Mail and Other Business to discuss an email sent by the selectmen regarding Zoom meeting procedures during this time of Covid. The email included a copy of

the Governor's Emergency Order #12, which was a temporary modification of public access to meetings under RSA 91-A, and a guidance publication put out by the NH Municipal Association addressing public meetings held under Covid conditions. The selectmen's email stated if the Zoom connection of any meeting went down after the Zoom access had been publicly posted, then the meeting should have been adjourned to another time. Furthermore, there was the possibility that any matters which were acted upon could be invalid. The selectmen further advised if the public notice had not included the Zoom access information and was an in-person meeting only, then the meeting could have proceeded. David Shedd said since he made the motion to deny the subdivision, he had no objection to withdrawing his motion if that was a way of dealing with the situation. David Patch said the minutes were a record of what took place during the meeting, and should be approved if they accurately portrayed what had happened. Anything else could be dealt with after that. David Shedd agreed, as did the Chairman who suggested the board proceed with reviewing the minutes. He called for a vote to approve. Vote taken: 5-1-1, with Kevin McEnaney voting no and Barry Trudeau abstaining.

Kevin McEnaney spoke again, and asked for clarification of what the minutes meant relative to how the motion to deny had been made. The Chairman explained by saying an original motion had been made and seconded to deny the application, but was rescinded and then re-made and seconded to approve the application. This was done because motions were usually made in the positive, which the board then voted against if the intent was to deny the application. Barry Trudeau joined the discussion via Zoom and agreed with Mr. McEnaney's contention that, based on the information provided by the selectmen, the meeting was illegitimate and thus the minutes and any action taken were also illegitimate. He said the board was missing the point, and while the manner in which the vote to deny was made was likely correct, the meeting was illegal, any decision made was null and void, and the meeting should be held over again. David Shedd said he had no objections to the information provided by the selectmen regarding the appropriateness of having made a decision, and said he was willing to reconsider that decision. However, he said we still held a meeting and needed to approve the minutes, as they portrayed what actually happened. Barry Trudeau insisted again that the meeting was not a real meeting and that it did not happen. The Chairman disagreed with the remark and said it did happen since a quorum of the board actually met and held a meeting. He said he saw nothing in the information provided by the NH Municipal Association that said an in-person meeting had to adjourn if the Zoom link went down and people could not participate remotely. Kevin Bennett noted that the applicant affected by the board's decision to deny the subdivision had contacted the board to say they had tried to attend the meeting remotely but had been unable to. Neither had they attended the meeting in person, as they had done on all previous occasions. If that particular applicant objected to the actions the board took last meeting, then the situation will be addressed and dealt with at that time.

The Chairman said regardless of these differing opinions, what he would like to do was to poll the board members to see whether they felt the meeting was legal or not. Once that was known, a decision about using Zoom at future meetings could be made. Kevin McEnaney continued his objections, saying it was a public hearing which did not allow members of the committee nor the general public to participate. He asked whether selectmen's representative Gus Vincent was present and, if so, he would like to hear his opinion. Mr. Vincent said the meeting was lawful because it was open to the public. If people could not attend by Zoom, they had the opportunity to attend in person. When Mr. McEnaney and Mr. Trudeau expressed that was unreasonable for some people to do on short notice, Mr. Vincent said the bottom line was that the meeting was open to the public and people could have shown-up in person. Kevin Bennett made the observation that nowhere in the NHMA guidelines was the word "shall" used, but instead it suggested or encouraged certain actions be taken. David Shedd said in his opinion, the issue was not whether the meeting did or did not happen, but whether we made a decision that maybe we should not have made under the circumstances. We took a vote, and maybe that vote needs to be taken over again. Barry Trudeau said he did not disagree with Mr. Shedd's comment and had he been able to attend the meeting remotely and vote, he would have voted against the application. Kevin McEnaney said he would have done the same. The Chairman said in that case it was not the vote which was the problem, as a re-vote would produce the same outcome, but the issue was whether the meeting was lawful. He again said he wanted to poll the board for their opinion on that issue. David Patch spoke against doing that, saying nobody on the board had the legal expertise to make such a decision. Gus Vincent also advised against

the Chairman's suggestion, saying the meeting was already lawful and there was no need for such a poll. Barry Trudeau insisted once again that the meeting did not happen and suggested a lawyer be consulted before proceeding any further. He acknowledged it was way above members' pay grade to make such a legal determination. Mr. Trudeau subsequently made a motion that the board consult a lawyer to obtain a legal opinion. Motion seconded by Kevin McEnaney. Vote: 2-5-0, with McEnaney and Trudeau voting in favor.

The meeting continued with strong opinions expressed and people speaking over each other, which these minutes will not attempt to document. The Chairman said the use of Zoom was not mandated anywhere and was up to individual boards. However, he had procured the laptop for the planning board's use so Zoom could be used as a supplement to the in-person meeting. It was never intended to be used as a legal form of meeting which had the possibility of prematurely adjourning that meeting. He noted that applicants expected the board to act in a timely manner regarding their applications, and rescheduling meetings because of a Zoom failure and adjournment had the potential to negatively affect sales agreements or real estate closings, etc. if plans could not be approved and recorded in time. He said he did not want the applicant's rights overridden by not having a Zoom link and if it came down to that, then he would prefer to do away with Zoom. Kevin McEnaney spoke against that idea and said the problem was with the town's refusal to invest in proper technology. He said if Zoom was run correctly, then it worked well. This discussion went on for some time. David Patch agreed Zoom could be a helpful tool, but that was all it was – just a tool and there was no guarantee the tool would always work. He said it should not be a mandate which could cancel the meeting, because we are not closed-door; we are wide open to the public. If we can keep Zoom up-and-running, then great, but he did not think we should have to guarantee that, to be a legal meeting, Zoom had to be available all the way through it. Barry Trudeau said it was a tool which enabled people to participate in things they normally wouldn't be able to do. Citing health reasons, he said he was not prepared to meet in-person and if the board did not have Zoom, then they did not have him either.

The Chairman called for a motion that if the Zoom link went down at any future public hearings or work sessions when a quorum was present, then that meeting would still be considered a legitimate meeting. Gus Vincent said he did not understand why the Chairman was trying to legitimize something that should have already been legitimate. When the Chairman said he was speaking about future meetings, Mr. Vincent responded that it did not matter whether it was future or past, it was already legitimate and should be legitimate in the future. There was no motion or second made. He asked if someone would like to make another motion to see if the board wanted to keep using Zoom. There was no motion or second on that, either. Gus Vincent said he did not feel that Zoom should be a legal meeting, and said meeting in-person was an undeniable way to present yourself. He said if you were relying on something as intangible as Zoom, then you could be shut-up or quieted. He said he did not agree with Zoom. David Shedd said he was wondering if one of the issues is that we indicate on our agenda that the meeting will be linked to Zoom. He asked if it would be possible to have a meeting without notification that it would be a Zoom meeting. The Chairman said that was a good question, as that appeared to be a sticking point according to the selectmen's email which indicated if that information was not on the agenda, then the meeting could have proceeded. Based on that, Mr. Shedd made a motion that the Zoom link information be removed from all future agenda notices. Motion seconded by David Patch. Kevin McEnaney and Barry Trudeau objected, saying that indicated we did not want the public to participate and asked how people would know what the link was if it wasn't advertised. The Chairman said it was the same every meeting. A vote was taken, resulting in a 5-2-0 decision with McEnaney and Trudeau voting against. The Chairman informed Mr. McEnaney that he would still be able to Zoom-in and be part of the next meeting. Mr. McEnaney confirmed his understanding that the agenda would still be posted in public places, but that the Zoom link would not be included. He said that was illegal. Barry Trudeau said it was unbelievable. The Chairman reminded them that the NHMA information provided by the selectmen said if the Zoom link was shown and Zoom went down for some reason, that the meeting was illegal. However, if the link was not provided then the meeting could have proceeded. Norman Head spoke from the floor and urged the board to reconsider their decision. He said you can't post an agenda and not have Zoom on it, and then have Zoom at the meeting just for the board. When the Chairman said the public could still watch and listen in, Mr. Head asked how could they do that if they did not have the link. When the Chairman said it was the same link every month, Mr. Head said people did not

remember or retain that information from month to month. The Chairman said he did not want people showing-up and having a meeting and then all of a sudden it became a non-meeting. Mr. Head said, in that case, don't have a link at all. The Chairman and Mr. Head then engaged in a discussion about whether people who had not attended a meeting could vote on minutes for that meeting. The Chairman said they could; Mr. Head disagreed and asked to be shown the RSA which permitted that. The Chairman said Roberts Rules of Order allowed a vote to be made by members who had not been in attendance. Mr. Head said Roberts Rules of Order were not legal and binding

**7. Mail and Other Business:**

- A courtesy copy of NHDES Wetlands Permit prepared for Yogi Bear's Yellowstone park Campground by SFC Engineering Partnership, Inc. was noted.

There being no other business, a motion to adjourn was made by David Patch, seconded by Kevin Bennett.  
Vote: All in favor. The meeting adjourned at 7:38 pm.

Respectfully submitted,  
Barbara Bush  
Recording Secretary