

**TOWN OF BARTLETT PLANNING BOARD
PUBLIC HEARING**

October 2, 2023

Members Present: Scott Grant; David L. Patch; David Shedd; Michael Galante; Kevin Bennett; Joe Heuston; Vicki Garland. **Members Absent:** None.

Also Present: Alec Tarberry and Sheila Duane from AMCO; Burr Phillips of Civil Solutions; Stan and Maryellen Szetela; Steve and Erin Frackleton; Mike Morin; Jeanne-Marie Maher; Jim Wilson; Michael Pahl; Kate Briand; Steve Hempel; Colleen Ryan; Mark Dindorf of the Saco & Swift Rivers Local Advisory Committee; and Forrest Bell of FB Environmental Associates, LLC.

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

2. Continuation/Final Approval: Jason Brown, Route 302, Bartlett NH. File: 2023-1290. Application to subdivide a 12.27-acre parcel on Route 302 into a 16-unit PUD. Tax Map 2RT302-2, Lots 161L00, 165L00, and 170L00.

This application is still waiting for state approvals and for Burr Phillips' technical review. Motion to continue to the November 6, 2023 public hearing made by David Patch; seconded by Joe Heuston. Vote: All in favor.

3. Discussion with AMSCO: Alec Tarberry and Sheila Duane were present to speak of their plans to continue the length of Cave Mountain Road into Block G. Ms. Duane noted at a previous meeting, David Shedd had identified an area in Block G as being a better place to install the temporary cul-de-sac than where it is presently located in Block F. Ms. Duane said Mr. Shedd had made a great suggestion which they agreed with because the temporary ending in Block F wasn't the greatest location. Plan sets were provided, and Ms. Duane directed the board to sheet C1.3 which showed where the road would end. She said the plans were part of a 2016 submission for Block F and G and included notes from when Mark Lucy and Burr Phillips had met to review the design and that information had been added to the plan. Ms. Duane said once Mr. Lucy had checked everything on the plan again, they would be able to submit it to the planning board and to Burr for review. She said it was important to note that no additional lots were being created; that only the road was being extended.

The Chairman noted the selectmen were in charge of roads and asked Vicki Garland whether they had been in touch with Burr about this. When Ms. Garland said they had not, the Chairman asked Sheila Duane whether Mr. Phillips was okay with the proposal. She replied in the affirmative. He asked whether there were any questions from the board. David Shedd thought perhaps the planning board could make a recommendation to the selectmen indicating they had no objection. He asked whether the road was going to stop before the large culvert. Ms. Duane said it was. Mr. Shedd then expressed concern about the culvert, noting how long and how deep underground it was, and how another culvert connected with it under the center of the road. He felt it was asking a lot of the town road crew to maintain it in the event Cave Mt. Road became a town road and said he would like the planning board to have a better idea of what the culvert looks like before we approve what is happening. The Chairman said he wanted to clarify the road would be built to town specs, but would still need to go to voters before being accepted as a town road. David Shedd asked what size the culvert was and what it was constructed of. The Chairman said he believed it was 4-ft. diameter; Ms. Duane said she wasn't sure what it was made from, but thought it was a type of plastic. When Mr. Shedd said that was exactly why he had a concern, he was advised that whatever the town's regulations called for, that is what it

would be. Mr. Shedd reiterated he felt the selectmen should look carefully at the proposed depth. Vicki Garland asked why it had to be so deep underground and was told because of a gully and cut-and-fill. The Chairman suggested every board member should go up to Stillings Grant and check it out, saying the work was impressive. David Shedd recalled the board had granted several waivers for the construction of Cave Mt. Road. He specifically mentioned one waiver relative to grade and how far that grade was allowed to extend for and suggested Ms. Duane look at that to ensure the changes being proposed did not go beyond what the board had agreed to. Mr. Shedd next addressed the water tank issue and asked whether they had applied for state approval yet. Ms. Duane said they had purchased a 120,000 tank and were in the process of working with the engineers who were having conversations with the DES. Alec Tarberry shared that it was taking forever to get the engineering done and they had expected to have the application done and approved months ago. Mr. Shedd asked if the board could be provided with a copy of the application once it was submitted.

The Chairman asked if there were any further questions or comments. Noting Burr Phillips was now present, he asked him whether he was good with things so far. Mr. Phillips said he was. Jim Wilson said Cave Mt. Road started at station 9 in Block F and noted that this extension is longer than what was approved for Block F. Ms. Duane agreed, but said there would be no new lots developed; it was simply a better spot to have the cul-de-sac. Mr. Wilson said he did not see any downside to the proposal and it would be a benefit to everybody if it was built in a way that could eventually be presented to the town. David Shedd asked Burr Phillips for his impression of the design of the culvert and the plastic material it was constructed with. Mr. Phillips said he had not seen the final design yet. Mr. Shedd asked whether the existing bond issued to the selectmen was adequate to cover this extra length of road. Mr. Phillips said there were no new lots being developed so it did not impact anyone buying houses along Block F, even if this extension was not built. However, he said a bond for erosion control may be required. Jim Wilson rose again to speak about fire hydrants, other infrastructure elements, and what items were covered by the bond. Steve Hempel asked whether the entire length of Cave Mt. Road would be built to town specs regardless of what grade it was. Ms. Duane said that was correct.

4. Presentation by Mark Dindorf: Mark Dindorf and Forrest Bell presented. Mr. Dindorf said he was the Chairman of the Saco Swift Rivers Local Advisory Committee, which was a component of the NHDES Lakes and Rivers Management program. Mr. Dindorf said both the Saco and Swift Rivers were protected rivers in NH and, as such, required management through a local advisory committee whose responsibility it was to prepare, update, and maintain a Corridor Management Plan (CMP). He said the river corridor was defined as being a quarter-mile from the centerline of the river on either side, or the extent of the floodplain where it exceeded a quarter-mile. Mr. Dindorf said a very exhaustive comprehensive resource analysis of the river corridor had been done in the four towns that the Saco River flows through; those towns being Crawford Notch, Harts Location, Bartlett, and Conway where it is joined by the Swift River before proceeding to the Maine border.

Mr. Dindorf said one of the purposes of the CMP was to offer a guidance document to each of the communities within the corridor towns to serve as a reference to manage the river in a consistent way, so as to not have vastly different town-by-town rules and regulations. He said the CMP was available on their website and noted there were opportunities for Bartlett to strengthen its protection of the river corridor. He asked the board to strongly consider these opportunities by either adopting the plan as a guidance document of record, or incorporate it into the master plan to help assure the resiliency of the Saco watershed for generations to come. Mr. Dindorf noted we were blessed with an incredible resource of clean, fresh drinking water for thousands of people, both here in the valley and further downstream, which we had an obligation to protect. He said he hoped the board would step-up and do

its part by doing whatever it can to protect our water resources by using the plan as a guiding principle when making permitting decisions for projects that came before it.

Mr. Dindorf introduced Forrest Bell, a consultant who had been hired to compile and present the plan through a grant from the NH Clean Water State Revolving Fund. Mr. Bell said the Saco River was 136 miles long, but the plan primarily focused on the first forty miles after it left Crawford Notch by identifying threats to the river. He described the highest-ranked threats in Bartlett as being development, riverbank erosion, flooding, recreational overuse, and impervious cover along Route 302. He also described the most-pressing management issue as being flooding and the lack of local regulations protecting land around the river. He specifically mentioned the old town dump adjacent to Bartlett Village which was exacerbated by flooding and erosion. Also contributing was heavy recreational use which included trash and litter by tourists; vegetation clearing; and concerns about adjacent development and campgrounds such as Jellystone.

Mr. Bell shared the results of a survey which 109 residents and visitors, including 29 from Bartlett, participated in. The survey revealed 66% to 76% of respondents would likely support the development of stricter shoreland zoning requirements; the implementation of a septic ordinance which required pump-outs/inspections; launching a long-term water quality monitoring program using mainly volunteers; green infrastructure and low-impact development building requirements; the permanent protection of floodplains; and using town resources to improve river access, such as trash cans, bathrooms, improve safety, etc.

Mr. Bell also provided a copy of a build-out analysis for the Saco River/Kearsarge Brook watershed which had been funded, in part, by the USDA Natural Resources Conservation Service. The analysis basically looked at what land was available for development in this area, and while it did not include the whole of Bartlett, it included the watershed drainage area which comprised about half the town. He noted Bartlett's population had increased threefold since 1960 which meant development was inevitable, but said the impact of that development could be somewhat controlled by looking at the areas which were good to develop while being aware of which areas were really important to protect. He said the build-out analysis contained some of that information. If the rate of population growth continues as it has over the last 50 years, Mr. Bell predicted every lot in Bartlett would be potentially developed somewhere between 2050 and 2070. He said that was a strong reason to put protective measures in place now to benefit our children, grandchildren, and generations beyond.

Mark Dindorf said he understood there was a concern in the community about the potential expansion by the Lower Bartlett Water Precinct (LBWP) involving some sort of connection to the North Conway Water Precinct's wastewater treatment plant, and how that expansion could represent a potential increase in development. He said he would like to offer a counterpoint to that concern by saying that connection to the treatment plant was actually sound management, environmentally. He noted one of the things which came-up in the study was that the soils in Bartlett did not support septic systems the way they do in other communities, so there was limited septic capacity based on soil type. Mr. Dindorf suggested hooking-up to a wastewater plant would actually be a really good decision, even though he acknowledged that raises concerns and raises hackles on people's necks. When Vicki Garland intimated it would not be a good decision, Mr. Dindorf asked why. It was explained to him how pending state legislation was likely to take density control away from local towns by requiring them to allow up to four dwelling units on any one-acre lot. Vicki Garland explained this was being done under the auspices of solving the housing crises, but noted it would only create more development and second homes in Bartlett, not affordable housing for locals.

Mr. Dindorf admitted he was not aware of the proposed legislation and characterized it as being a catastrophic disaster. He said it behooves everyone who was concerned about it to be loud and vocal to their state representatives by informing them it was not acceptable and not appropriate for the state to manage land within our towns. He noted he was the chair of Hart's Location selectmen, and this could all have an impact on their zoning regulations. He said it was certainly something he was going to look at further, but reiterated, environmentally, sewer hookups are better than individual septic systems especially in communities such as Bartlett which has poor soil capacity for absorbing septic leachate. Mr. Dindorf also reminded the board members that they had the inherit right and ability to control the destiny of their community through comprehensive local ordinances. He said if there was a state bill that's coming before the legislature that threatens that local control, then everyone should be aware, alert, and alarmed about it and the public should be informed so there could be a public outcry.

David Patch noted we had two legislators out of the 400 who were in Concord. He said we could hoot and holler all we wanted to try to convince them to vote a certain way, but the bottom line was it could still be 398 against 2. That was the major issue. Mr. Dindorf said that was all the more reason to attend the legislative session when the hearings are held and make it loud and clear that the bill was putting our environment, our livelihoods, and our communities at risk. He said while workforce housing was certainly a legitimate issue, overriding local control was overstepping bounds. Mr. Bell said he will be doing a debriefing with the NHDES in about two weeks where he had been requested to identify what concerns each town had. He said he would certainly address this concern with them, and while it may not solve the problem, it could only help if the DES commissioner got the message. Vicki Garland said the state had started to listen, and had had conversations about going from four units on an acre to two, but it still overrode local control. Mr. Dindorf thanked the board for hearing his presentation, and again urged the board to be mindful of protecting the river when dealing with any upcoming applications.

- The Chairman brought-up the subject of zoning amendments, saying one of the things he would like to address was the definition of a structure. He noted the ZBA had dealt with this issue on three separate occasions lately, where one decision had even caused a homeowner's property to wash down onto Route 302 when the ZBA required him to remove a stone retaining wall which crossed a property line. The Chairman said removing retaining walls from the list of items identified as a structure was something he would like to have discussed. He read the zoning definition of a structure as being anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. It went on to list items considered to be structures to include garages, tennis courts, canopy garages, and retaining walls, etc. He invited Vicki Garland to explain the selectmen's position on the subject. Ms. Garland addressed a recent issue where a building permit had been denied for several shipping containers based on whether they were structures or not. She said there was not really a lot of discussion surrounding the denial as the selectmen unanimously agreed that a large metal 5,000 lb. unit is a structure and it wasn't until the applicant went to the ZBA that the decision was questioned. Ms. Garland said the misinterpretation hinged on a question of grammar; was the word "fixed" intended to be a verb, or was it intended to be an adjective which describes the noun's location. Ms. Garland added that the definition did not say "affixed" to the ground. She described how someone might put down an area of crushed gravel to place a shed on, so that would then become a "fixed location," and was thus a structure from the selectmen's point of view. The Chairman said he was also a member of the ZBA and noted the defining word in their deliberations was the word "attached." He said if something was not bolted down or not connected to plumbing or electricity, etc. and could be moved, then it was not attached to anything and was not a structure and was not required to meet setbacks. He cited the reference to sheds made by Ms. Garland by saying sheds were not included in the list of items considered to be structures. He said some sheds were attached to the

ground and some were not. He said the planning board needs to have a discussion about this to see if we need to change or clarify the definition through a zoning amendment next year. He asked whether the board had any comments. David Patch said whether shipping containers should be considered a structure and require a building permit was a question mark for him and he would need some convincing of that. Mr. Patch said they were meant to be filled-up and taken on and off sites, though agreed some acted as permanent storage. Vicki Garland noted that storage containers were not specifically mentioned in the zoning and agreed the zoning ordinance needs to be clarified so people knew exactly what they needed to get a building permit for without there being a mistaken interpretation of what it said. She said she did not think the folk who did not get a permit were trying to do something that was against the rules, but rather they had interpreted the zoning differently and were just doing something they thought was allowable. Joe Heuston asked what had brought this whole situation up? It was explained to him. Kevin Bennett said the 2015 building code required a building permit for a woodshed which was more than 120 sf, and this figure was upped to 200 sf in the 2018 code. He said sheds were not taxed if used as a woodshed, but were if used for storage.

Stan Szetela, whose storage containers had instigated this issue, said he was all in favor of the planning board defining what the definition of a structure was so that other people did not have to go through what he is going through. He agreed they were big, but they were also moveable. He said he has had shipping containers on his property for over ten years with no objections, but containers had now become a commodity and relatively less expensive than renting a unit and there were a lot more around. He encouraged the board to take a look at what a structure is and define it more solidly.

- The Chairman said he wanted to take a quick look at the STR situation. He noted people were in the audience who were interested in the subject and gave a brief overview of what the original petitioned zoning amendment had said, which was to require the planning board to write an ordinance restricting short-term rentals to the commercial zone, and what has transpired since then. He read a suggested definition and amendment he had personally written as, “To see if the town will vote to require residential short-term rentals to be registered in the town of Bartlett and require the landlord to sign an affidavit that they have read the NFPA fire code and will assume liability for said property. A short-term rental is defined as a residential rental under thirty days.” He asked if the board had any comment. David Patch said he felt the affidavit was a good way to go as it put property owner on notice that they were responsible for things such as fire code, septic, room and meals tax, etc. He said anyone with a short-term rental in the residential zone who had paid room and meals tax would be grandfathered; if they had not paid they would not be. Mr. Patch additionally felt a self-affidavit would save the town from being burdened with the expense of having to hire inspectors, which was something he did not want to see happen.

David Shedd recalled between the time of the submission of the zoning petition and the town vote, the planning board had unanimously disagreed with the language of the petition. He acknowledged the board had a responsibility to the voters but said, personally, he felt we were waiting for the dust to settle when different towns were doing different things and they were all having trouble. He said he was hoping for time so the board could write something itself, and not simply do what the petition had demanded. David Patch noted a Conway case was before the supreme court at the time and we did not want to write an ordinance which may end-up being illegal. Kate Briand spoke from the audience and said the Conway case pertained exclusively to the wording of the Conway zoning ordinance and had nothing to do with Bartlett. This fact had later been confirmed by the Municipal Association. Another lady in the audience asked how many people a three bedroom septic would support. Vicki Garland said the state did not define that. Ms. Briand described how STR owners in Alpendorf were cramming

twenty-five people into a three-bedroom home. She asked at what point did that become a fire or sewer problem, noting how a previous presenter had just said Bartlett's soil was not conducive to supporting septic systems. She described her area as being flooded and overflowing with renters who were polluting the Saco while the property owners added to the problem by adding more and more people. David Patch said it was generally-accepted that a three bedroom house could have two people per bedroom, plus two others, i.e. eight people total. He said when people signed their affidavit they were agreeing not to exceed that limit, and if someone saw twenty people in a three-bedroom house, they should call and report it as a violation. An audience member asked how would a reporting party know how many bedrooms were in a house, and what the septic capacity was. She was told the information was available from the tax card at town hall. Vicki Garland said the town has inspected and shut-down rentals who over-exceed their septic capacity. She also noted that life safety codes requires a sprinkler system in any property being rented to more than sixteen people. Ms. Garland said the town checks online rental properties, and when they see that is happening a letter goes out to the owner telling them to remove some of the beds and to stop the activity and the rental is then monitored for compliance. She told Ms. Briand she should report any violations she sees happening in her neighborhood. Another audience member suggested Ms. Garland drive up her neighborhood on a weekend where she would see little chalets with ten cars parked in every driveway.

Jeanne-Marie Maher said she lived on the East Branch River, and on her very short road there were three short-term rentals and another one being developed. She said they turn-over every three or four nights and there are six to seven cars in every driveway. She described it as ridiculous, and no longer a neighborhood. She said people were taking over Bartlett because it was prime picking due to there being no regulations and lamented there was no communities left. She asked if we had some way, as a community, of saying how many of these were allowed on a given street? She said what was happening to our communities was shameful. The Chairman said he did not disagree it was a problem, but noted everyone on the planning board had an opinion about short-term rentals. He further said someone could go out and make a petition and get twenty-five registered voters to sign it which basically said short-term rents are only allowed in the commercial zone – period, and let the voters vote on it. He said the planning board was intending to write something as well, and felt if different amendments passed that the more-stringent one would apply. When Kate Briand said the voters had already voted on it, the Chairman agreed but said a caveat was added that required the planning board to write the ordinance but there was no time limit stipulated so it was left open-ended, and that was the problem. Kate Briand confirmed that any wording of a new petition warrant should simply say we don't want short-term rentals in a residential zone. The Chairman quickly added "period," while also stating he was not advocating either way but was just trying to make things clear and saying what had previously happened.

Mike Galante said everyone should understand the reason the board had not moved forward with this was because we had been waiting for legal advice. He said had the board gone ahead with what we had been told to do we would have been inundated with lawsuits, which is why it was suggested to regulate and license them instead. Mr. Galante said he had also suggested three-strikes-and-you're-out also be implemented, whereby the license would be revoked for repeated violations.

There being no other business, the Chairman called for a motion to adjourn. Motion made by David Patch; seconded by Kevin Bennett. Vote: All in favor. The meeting adjourned at 7:35 pm.

Respectfully submitted,
Barbara Bush, Recording Secretary