

**TOWN OF BARTLETT PLANNING BOARD**  
**WORK SESSION**  
**November 21, 2023**

**Members Present:** Scott Grant; David L. Patch; David Shedd; Michael Galante; Joe Heuston; Vicki Garland. **Members Absent:** Kevin Bennett.

**Also Present:** Bill Fabrizio.

**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 had been continued to the December 4, 2023 meeting. No action required.

**3. Review and Approve Minutes:** The minutes of the October 2, 2023 meeting were reviewed. Motion to approve made by Joe Heuston; seconded by David Patch. The Chairman asked whether there were any corrections or comments. David Shedd had a question regarding commentary about the culvert at Stillings Grant, which he felt did not make sense the way it was written. Mr. Shedd did not ask for any corrections to be made. Vote taken to approve the October 2, 2023 minutes, as written: All in favor.

The minutes of the November 6, 2023 minutes were reviewed. A motion to approve, as written, was made by Michael Galante; seconded by Joe Heuston. With no comments or corrections, vote was taken: All in favor.

**4. Discussion on Short-Term Rentals:** The Chairman updated the board on his meeting with the selectmen. He said he had discussed the best way for the planning board to communicate with a lawyer when it was felt a conference call may be convoluted and not be as effective as submitting a list of written questions would be. The Chairman said we had permission to use the town's attorney, but we could also get one of our own choosing. It was felt the first question to ask was what the ramifications would be if two different zoning amendments went on the ballot and both passed at town meeting? The New Hampshire Municipal Association (NHMA) had advised that the more-strict one would apply, but David Patch noted that each ordinance was restricting different things and whichever was "more strict" could be a matter of interpreting terminology. He said determining whether a 25-ft. setback was more strict than a 50-ft. setback was easy, but that was not the case here. Vicki Garland felt that requiring registration could perhaps be regarded as more strict since it affects everyone who owns a short-term rental, whereas ones in a commercial zone only affects a subset of people.

The Chairman read the wording of his suggested amendment as being, "To see if the town will vote to require residential STRs 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 any residential rental under 30 days." He asked if people were in favor of that wording. David Patch said he definitely favored having an affidavit rather than inspections. Michael Galante thought the wording was a good start. Vicki Garland wondered whether the wording limited us to only having them sign off that they have read the fire code, without addressing some of the other things we may want them to sign off on, such as septic compliance. Joe Heuston said he had heard nothing mentioned about insurance. He cited a hypothetical situation whereby a STR had a fire pit which got out of control and burned the house and neighboring homes, and the owner did not have adequate insurance to cover all the losses. Ms. Garland said that would be something to include later,

i.e. the owner has notified his insurance carrier that the property was being used as a short-term rental. She said the question would be, did the owner have a fire permit and if he did not, then he would be liable for anything that happened because he had an illegal fire.

Mike Galante said his question to the lawyer would be to ask whether we can do this. When asked to clarify “this” he said to write an ordinance and add other things such as insurance and septic later. David Patch asked if we were going to ask the attorney whether we could accomplish this through a signed affidavit instead of having to hire an inspector. He was told yes. David Shedd wondered whether we could ask the voters to make a choice on the ballot as to which ordinance they would prefer to have: something restricting STRs to the commercial zone, or something allowing them anywhere with regulations and registration. Michael Galante once again warned about the threat of lawsuits should they be restricted to the commercial zone. The Chairman asked if the board had any other questions for the lawyer on this particular subject. Vicki Garland said she would like to ask if this passes, can we then come-up with the wording of the affidavit or would the affidavit need to be finalized prior to the vote?

The board had been provided copies of NHMA literature dealing with municipal regulation of short-term rentals. One of the first suggestions made by the MA was for the planning board to perform a thorough review of its zoning ordinance to determine whether short-term rentals were covered, and if so under what classification. This raised questions, since Bartlett has a permissive zoning ordinance which generally prohibits all uses that are not expressly permitted. The term “short-term rental” was not around when zoning was adopted, so is not mentioned anywhere in the master plan nor the zoning ordinance. The board decided to seek legal advice from town counsel as to whether short-term rentals were allowed in Bartlett based on our current zoning, or whether there may be other defined uses in the ordinance that could be interpreted to include short-term rentals, particularly in the residential zone. Possibilities included inns and lodging houses, but these were both required to be owner-occupied or manager-occupied and to exist on the date the amendment was enacted. The board went on to formulate a short list of other questions they would like answered by town counsel. Discussed was how to best deal with the short-term rental problem; any proposed zoning amendments; establishing a definition for a STR; grandfathered rights since only legal uses can be grandfathered, etc. Discussion will continue once we have answers back from legal counsel.

## **5. Mail and Other Business:**

- The Chairman noted he had seen an article in the Conway Daily Sun regarding the Lower Bartlett Water Precinct’s (LBWP) proposed expansion plan. Bill Fabrizio was in the audience and said he recalled in the early days of zoning, about thirty five to forty years ago, there had been talk about a concept called transfer of development rights. Mr. Fabrizio described it as a win-win concept which allows cluster development on land that is better suited for development after that land got transfer rights from some other property in town which was less-suitable for development or which had sensitive areas that were better-off being preserved. As a theoretical example, he said the 84-acre Howard property would have the right to develop twenty or more units, but they could also sell the rights for those twenty units to Attitash to build cluster housing on their property. This would preserve forever the open land and forest of the Howard property. Mr. Fabrizio said one reason this concept fell by the wayside was that it required sewer. David Patch recalled at the time, someone from the state came-in and said that the nearby Harry Rogers’ farm was the best piece of property in the valley to put a sewer on, but it was shot down and never done. Also shot-down was transfer of development rights, which Mr. Patch described as being one of our biggest failures.

Mr. Fabrizio said the concept was valid and could do a lot to preserve both the town and a lot of the good space we have left. He said there were a lot of places where this concept made sense, such as at Attitash. He also felt the new development next to the old Scarecrow could perhaps be a perfect spot to put a lot of housing on. Mike Galante asked for the concept to be explained to him. Mr. Fabrizio said it allowed increased density in areas which were served by a sewer in exchange for preserving natural open space on some other property which had sold, or given-up, its development rights. The owner would retain ownership of that land, but would not be able to develop it. Mr. Fabrizio said former planning board chairman Jim Chadbourne had put an awful lot of research and work into implementing transfer of development rights, but what killed it was the fact we did not have a sewer system.

This prompted comment from the Chairman and Vicki Garland about how the sewer being proposed by LBWP would result in increased density when pending state legislature would require towns to allow up to four houses on any one-acre lot if they were served by a sewer. Ms. Garland said if this legislature passed, it would override any local ordinances we had. She further noted while it was an attempt by the state to deal with the housing crises, everyone knew it would just make developers really happy. Mr. Fabrizio said his argument would be that while it may increase density in some areas, it would be preserving a lot of other properties in their natural state. He said he understood where the board's objection was coming from, but still felt transfer of development rights was a perfect compromise. He further noted we have a major aquifer which was worth protecting, and he felt the state would go along with doing that. David Shedd wondered if the zoning could be evolved to the point where we could say to the state, okay we are not going to prevent you from building all these houses but you are going to have to buy development rights from someone who wants to sell them. That way, we don't contradict the state ordinance. Mr. Fabrizio asked if the town had any say in where and how far the Precinct's sewer would go. When the Chairman said if it went outside the Precinct limits we did, Mr. Fabrizio's response was, "well, that's what I am thinking."

Mike Galante asked Vicki Garland what kind of response had been received from the joint letter the planning board/selectmen had sent out. Ms. Garland said there had not been an overwhelming response, and she had received at least one phone call.

There being no other business, the Chairman called for a motion to adjourn. Motion seconded by David Patch; seconded by Joe Heuston. Vote: All in favor. The meeting adjourned at 6:59 pm.

Respectfully submitted,  
Barbara Bush  
Recording Secretary