

**TOWN OF BARTLETT PLANNING BOARD  
PUBLIC HEARING**

**January 3, 2022**

**Members Present:** Scott Grant; David L. Patch; Michael Galante; Kevin Bennett; Gus Vincent; David Shedd. Barry Trudeau was unable to participate remotely due to problems connecting to Zoom.

**Also Present:** This was a very well-attended meeting with approximately fifty to sixty people in the room and many more waiting in the foyer. It was reported numerous people had left because they were unable to gain entry. Not all present signed the attendance sheet.

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

**2. Public Hearing for Petitioned Warrant Articles:** The Chairman announced that the planning board was obliged to hold a public hearing on these two petitioned amendments and that they would go on the ballot as written, as the board had no authority to make any changes whatsoever to the wording.

First on the agenda was a noise petition which sought to amend Article IV. General Provisions by adding Section R. Noise Disturbances Prohibited. The Chairman asked Julia King to present, since she was the lead petitioner. Ms. King read the petition in its entirety, which asked that it be made unlawful for any person(s) to make, continue, or cause to be made or continue, 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 of Bartlett, NH Monday through Thursday from 10 pm to 6:30 am and from 11 pm to 7 am on Friday, Saturday, and Sunday. The article went on to describe some items considered unnecessary noise as being vehicles revving their engines or “laying rubber,” loud volume of amplification equipment, and shouting, loud talking or loud laughing in a public or private space, etc. Violations could result in a warning or civil forfeitures ranging from \$100 for a first offense up to \$1,000, based on the facts of the incidents as determined by a law enforcement officer of “average sensibilities.” The article went on to state that all complaints shall be addressed to the property owner of record, or to any subject renting or otherwise in control of said property.

At this time, realtor Josh Brustin spoke from the back of the room and made a strong objection about the crowded conditions and the fact that many people were unable to hear. He requested the meeting be adjourned to a time when a larger venue could be found, such as the school. The Chairman said the school was not available due to Covid concerns and suggested people in the room could trade places with those waiting outside and he would update them on the proceedings.

The Chairman then called on police chief Chris Keaton to offer his comments on Ms. King’s noise ordinance. Chief Keaton said what was being proposed pretty-much mirrored the disorderly conduct statute that his officers currently use, with the exception of the time frame. He said a time frame was not included in the state law so that noise complaints could be dealt with 24-hours a day, regardless of what time they were occurring. He said the only real difference he could see was that fines levied under the disorderly conduct statute were paid to the state, whereas fines under this local ordinance would be paid directly to the town. Chief Keaton said fines levied under the state code had legal consequences if they were not paid or if the offender failed to appear in court. If fines were imposed at the local level and the offender chose to ignore them, it was much harder to hold them accountable. Ms. King said what the state had was a criminal code, but what she was proposing was civil, which would give police an additional tool to deal with situations which did not rise to the level of criminality.

The Chairman opened the public comment period and asked if there were any questions from the audience. Multiple people spoke, but only some identified themselves and those who did were hard to hear and understand behind their masks. Several mentioned how they had called the police about noise and fireworks coming from short-term rentals, but claimed they had been told there was nothing the police could do because the town did not have a noise ordinance. In the case of the fireworks, the speaker said they were being let-off during dry summer conditions and she did not want short-term renters burning her house down. The Chief apologized if the officer had given incorrect information, as noise could certainly be dealt with without a town ordinance, but added that sometimes when police responded and the noise or fireworks had stopped, it was difficult to determine where the noise had emanated from.

A gentleman asked whether this ordinance would prohibit construction workers from starting work before 6:30 or 7 am, as heavy equipment could be noisy. Ms. King said that would not be considered unreasonable noise. Another speaker noted this ordinance imposed a deadline of either 10 or 11 pm for noise to stop, so did that mean people had a legal right to keep making a noise up until those hours and could refuse to stop their activities if they were occurring prior to the deadline.

The Chairman asked if there were any further comments. David Shedd made a suggestion to push the tables together to make more space at the back of the room. This was done, and many more people entered. The Chairman briefed them on what had transpired thus far. Discussion continued about whether this ordinance could help with noise in condominium buildings where the walls are often thin. It was felt this type of situation was probably best dealt with by the condominium or homeowner's association. Peter Gagne asked whether this ordinance had been reviewed by the Municipal Association or town counsel to determine whether it was enforceable. Julia King asked the selectmen's representative, Gus Vincent, whether that had been done. Mr. Vincent said he was not sure, but could try to find out.

The Chairman closed the public comment period and the board deliberated. David Patch said in his opinion, the disorderly conduct code was more effective than this one was. He said Section 644:2 covered the same items as this noise ordinance did, except for the time constraints. Mr. Patch said if there was a noise problem, you called the police and they would take care of the problem and this ordinance was not going to make it any better or any different. He said if fireworks were a problem, then perhaps firework regulations were needed. Ms. King disagreed, saying there was a difference between a civil code and a criminal code, but did acknowledge that she and Mr. Patch were not likely to change each other's differing opinions. Both "agreed to disagree."

The Chairman asked if there were any further comments. With none, he closed the public hearing on the noise ordinance. Ms. King announced to the audience that they had two months to review her ordinance and to make any changes before it was voted on. David Patch quickly corrected this misinformation and informed her, and the audience, that the wording would go on the ballot as written and could not be changed. Ms. King expressed surprise to learn that.

The Chairman called for a vote to approve the noise petitioned warrant article, as written. Vote taken: 1-5, with Shedd voting in the minority. This failed vote means the amendment will appear on the ballot with the notation that it is not supported by the planning board.

The petitioned warrant article seeking to limit short-term rentals to the commercial district only was next on the agenda. The Chairman called on the lead petitioner, Lydia Lansing, to come forward and speak to the article. Ms. Lansing introduced herself, and read the wording out loud for the benefit of the audience. She said her petition had collected enough signatures to go on the town ballot in March. The Chairman again advised it was the planning board's responsibility to hold this public hearing to give people the opportunity to express their views. The board had been provided copies of multiple emails received during the past week, the majority of which were from second home owners, many of whom rented their properties as STRs. Several were in favor of this article. The Chairman asked if there were any questions from the audience. A gentleman, who identified himself only as Bob, said he was a little confused about the definitions of an ADU (accessory dwelling unit) and a STR, and asked whether they were the same thing. He asked if he built an owner-occupied apartment over his garage, would it be considered an ADU or a STR? Lydia Lansing asked if she could speak and said that by its definition, if an ADU was part of an owner-occupied dwelling unit, then she felt that satisfied what people wanted an STR to be, i.e. someone was living on-site. The Chairman noted a short-term rental was considered by the state as being a rental period of thirty days or less. A woman in the audience said she believed she remembered Gene Chandler had changed the ordinance during the time of the Volvo tennis tournament to allow people to rent rooms in owner-occupied buildings to the many tourists the tournament attracted. She asked if anyone remembered that happening. Nobody indicated they did. Julia King said she may have the answer and read the definition of a "Bed and Breakfast" in the zoning ordinance as being "an owner-occupied or manager-occupied dwelling of single-family character in which not more than 12 guest rooms are offered for rent with or without meals for overnight guests only for the primary purpose of overnight lodging to tourists. The dwelling must exist on the date of enactment of this amendment (11/8/88) and any additions or renovations must maintain the single-family character of the dwelling." She asked the speaker whether that was what she was referring to.

Bob Barnes identified himself and said that short-term rentals had been around since before Hannes (Schneider) got off the train. He said they were just more prevalent now with the advent of Airbnb. He said it wasn't a bad process; it was bad owners, and he felt regulations should be in place to deal with those offenders. Mr. Barnes did not feel short-term rentals should be banned and compared doing that to someone getting killed in a car accident and then nobody being allowed to drive any more. He said he has \$50 acoustic sensors in all his rental properties which are tied into his cell phone. Should the sensor alert him to noise coming from the rental, he calls the renters or guests and deals with the issue. He said he also has multiple cameras on his properties and feels this is something Bartlett should look into and require if they ever implement an inspection process for STRs. Mr. Barnes noted how Conway's property values had increased since STRs became prolific in their town.

A gentleman asked Chief Keaton whether the police department kept records of noise calls to short-term rental properties. The chief said that Dispatch kept a record of all calls involving incidents in Bartlett and that they could generate a log of specific types of calls. He said the PD itself also creates incident reports for calls his officers respond to and described how he himself was called out for a noise complaint at 1:30 am a few nights ago. Chief Keaton said he issued the offender a warning with the threat of a summons for disorderly conduct if he had to respond a second time. An unidentified woman said that is the type of information that STR owners should be made aware of through a STR registration program. She said if the property owner did not know there was a noise problem, then how could they deal with it.

Another unidentified woman questioned why this ordinance was being proposed, and why it targeted short-term rentals and why in the commercial district. She said people rented their properties in the residential district to full-time renters and some condo associations were situated in the residential zone and some in the commercial zone, which meant only some of those owners could rent their condos for income. Lydia Lansing admitted she had only become involved with this petition shortly before the submission deadline. She said it was a group effort and she was not the sole person involved. She said, for her, the bottom line was if someone was running a business and was charging rent, then they should be (a) legally paying room and meals tax to the state and be in the radar of the Dept. of Revenue to pay business enterprise taxes, and (b) from the town's perspective, there should be some type of regulations to ensure compliance with life safety codes, etc. Ms. Lansing acknowledged not all STR owners were irresponsible, but enough were to warrant some kind of action being taken. She said she personally favored the type of licensing Jackson had implemented, which she felt was very reasonable. She said just on the first point alone, paying NH room and meals tax made it a commercial venture.

Another unidentified woman at the back of the room spoke saying she did not like this being regulated by zone. She said there were a lot of second homes in town and that was what they were made for: people coming in-and-out. They were not really intended as residential, and she felt that is what the problem was: residential people living next to people who are moving in-and-out. In a response to Ms. Lansing's comment that paying rooms and meals tax constituted a commercial venture, Josh Brustin asked for a point of clarification by noting that room and meal taxes were only paid on rentals of 181 days or less. He said his question was if something was rented for more than 181 days, would it still be considered a commercial business? Ms. Lansing admitted she did not know the answer to that, but said she owned a condominium which she rented on a seasonal basis and she paid taxes on that. She could not say whether they considered her commercial or not, but she assumed they did.

A gentleman spoke and said he had done a little research and found that there were more than 400 STR properties in Bartlett. He said he was now a full-time resident after visiting and staying in an Airbnb and falling in love with the area. He said he owns a full-time home here as well as a short-term rental and also develops rental properties all over the country so has an understanding of the full gamut of things. He advised he supports the town developing short-term rental regulations, but did not want to see them banned as that would have a detrimental affect on local taxpayers. Ms. Lansing quickly informed the speaker that this amendment was in no way attempting to ban short-term rentals.

The meeting continued with many other people speaking, with the majority being short-term rental owners who professed to being responsible owners who vetted their renters and took care of their properties. Most cited the fact that they would be unable to afford their second home if they were unable to rent it out, and of their intention to live here on a permanent basis once they retired. One gentleman noted the town should be grateful for second home owners, saying they increased property values for everyone and generated income for local business owners. He felt what was being proposed was the wrong tool to address the situation, as opposed to regulations. Ms. Lansing said she wished she had written something different, but said she was encouraged by the input she had heard tonight that people were in favor of some kind of regulations. She acknowledged the petition would be on the ballot, but said people had two months to campaign against it and persuade people to vote no.

Peter Gagne asked if the petition could be withdrawn. He was informed that every single person who signed the petition would need to retract their signature if a withdrawal was even possible. Mr. Gagne asked whether the petition had been reviewed by town counsel or the New Hampshire Municipal

Association as to whether it was legal, saying he knew there were other parts of the zoning ordinance which could apply to short-term rentals. Josh Brustin also questioned whether town counsel had reviewed the actual petition article procedures to see whether it had been legally submitted. He recalled how the Kearsarge Lighting Precinct had experienced unexpected legal problems in the midst of trying to enforce their ordinances because they did not have a planning board. He again asked whether this particular warrant article was legal. Ms. Lansing said she had followed all the requirements set forth by the RSA and had collected enough signatures of registered voters to enable it to go on the ballot. The Chairman explained that if this article passed, all it did was to require the town and/or the planning board to draft an ordinance which limited STRs to the commercial zone. He said that is where the legal reviews would take place.

A gentleman said he agreed with having a lawyer review, not only for this amendment but for any others down the road. He felt this was a good discussion tonight and noted that there were local people who ran short-term rentals who did a good job and he had no problem with those people. Referring to the 400 figure quoted earlier, he said the NH Supreme Court in the Portsmouth case ruled that short-term rentals were similar to motels and hotels and they were a commercial operation. He said having 400 of these in our community was disruptive to our quality of life. His comments drew protests from some of the audience which the Chairman moved to quell, but with limited success.

Gail Olsen asked if would be possible to identify people who owned STRs by having them to raise their hand. The Chairman said that was irrelevant to the discussion, but said if anyone wanted to identify themselves as being STR owners they were welcome to raise their hand. Nobody did. Lydia Lansing said her petition was not intended as a personal issue, but rather as a legal one.

Bill Fabrizio said he agreed with getting legal advice. He said based on his business experience, there were far more than 400 short-term rentals in Bartlett and said probably 90% of them were in the residential zone. He agreed the bad actors needed to be weeded-out and said there were ways to do that, but cautioned the board not to eliminate or restrict them to the commercial zone as they brought business to the town.

Dave Owen said he lived on Rolling Ridge, an area which has experienced water shortage problems for a long time. He said many second homes around him were rented to 10-12 people, all staying in a house that was meant for 4. He said the local people were outnumbered when it came to sharing the water. He said he understood the need for regulations, but felt that an overall ban was a bad idea.

Another lady spoke of how STRs provided cleaning income for her employees and she did not want to see them banned.

Josh Brustin spoke about the grandfather aspects of homes currently being used as STRs and indicated he would like to have some meaningful dialogue in order to come to a resolution which satisfied everyone, as opposed to restricting them through this amendment. A lady reminded him that only owner-occupied or manager-occupied STRs were allowed in the residential areas. Bob Chase said another way to limit the number of people renting a STR was to look at the septic capacity to see how many people were allowed to be in the house. He said many of these rentals had a 3-bedroom septic, but were being over-advertised as sleeping 20 people. Mr. Chase said he realized monitoring that type of situation would entail more work on the town's part and they would likely need to hire extra staff.

Lydia Lansing agreed, and noted that the details of who would be responsible for enforcing these regulations would need to be worked-out down the road.

Several people lamented the loss of their neighborhoods due to being overrun by STRs. Charles Olsen said he used to have neighbors who looked out for each other, but now strangers were moving in and out and he had no idea whom he could trust. Michael Dewar spoke and said he seconded Mr. Olsen's comments. He said the second homes and STRs were changing the neighborhood from where he raised his children. He said there were now transients who came in and out and who often left liquor bottles laying around. He admitted that wasn't a great problem and he picked them up, but said they still did not belong in a residential neighborhood. Mr. Dewar said he was a builder and the influx of second homes had raised property values to a level where local people could no longer afford to own a home. A woman referred to a previous comment about STRs overburdening septic systems, and asked where she would find information on her system as the town did not appear to keep records. Lydia Lansing told her the NHDES should be able to help. Kevin Bennett advised her that septic designs were based on the number of bedrooms in a house, and that information is available from the town's tax records.

The Chairman asked if anybody had anything new to say. A gentleman spoke, saying it was very evident there were two camps in the room, but it was a good start to have a moderate discussion to deal with the issue. He said there seemed to be short-term rental owners in attendance who lived in the community and who were invested in the community, not just financially but personally. However, he said the vast majority of short-term rental owners do not live here and, in fact, many of them do not even live in the state of New Hampshire. He said at some point in this discussion, we have to decide how do we keep the sense of community that we love about Bartlett, and how to keep businesses flourishing and the tourism industry going, but not be destroyed by it as he feared that was the direction we were heading. His remarks drew a round of applause from a lot of people, and disagreement from others. During a loud exchange among attendees over the remarks, the Chairman attempted to prematurely adjourn the public comment session, but the conversation continued.

Ann Walsh said she was from Massachusetts and has owned a second home in Bartlett for twenty years. She said she hires a maintenance company to care for her property, her neighbors love her and keep her informed of what is going on, she takes good care of her property, and pays room and meals tax and real estate taxes. Ms. Walsh stated as a responsible owner, she should be able to do whatever she wants with her property. Her remarks also drew a round applause from the other side of the room.

The Chairman asked if there was anyone who had not previously spoken who would like to do so. A lady who said she was from Bartlett said she would like to respectfully disagree with the notion that there were two separate camps here. She said while she felt the majority of people in town agree there is an issue which needs to be addressed, it was not a zoning issue. She encouraged people to look at Jackson's website to view how they dealt with STRs, which she felt was reasonable and made sense. She said instead of two camps, we should come together as one community with a common cause.

A final gentleman spoke at length about how he was the responsible owner of several STRs, who had recently moved here and gave back to the community as much as he could. He said he carefully vets his guests and has never had problems with them as far as noise complaints were concerned, and said the police had never been to any of his properties in response to any other issues. He acknowledged there were STR owners everywhere who were only in the business to make a big profit, but said he was not one of them. He agreed with Lydia Lansing when she asked him if he was in favor of some

type of STR regulations which would be fair to the residents of Bartlett, as that is all she was trying to achieve.

David Patch said he felt everyone here feels there needs to be some type of regulations on STRs as there were a few bad apples who made the good folks look bad. He reminded the audience that this amendment was going to the town to be voted on and the planning board had no say in the matter since it was a petitioned article. Mr. Patch said if it passes as written, and that is the only thing people have to vote on, STRs will be banned from anywhere other than the commercial zone. Mr. Patch said he was not quite sure that was the best way to deal with it and we may be better off asking how do we fix things that are wrong. A woman addressed Lydia Lansing, saying Ms. Lansing had admitted she did not agree with what she had written. Ms. Lansing said that was correct, but that the town still had the option of voting it down. The speaker expressed concern saying that was nuts, and said if the town didn't vote it down and it passed, then STR owners were out of luck, as was the town if regulations were a better solution. Lydia Lansing reminded the speaker she still had two months to change people's minds. Ms. Lansing said she wrote it the way she did to get a conversation started, since people had a lot of concerns about STRs, so she has achieved everything she wanted to.

Peter Gagne warned if this passed that it would result in lawsuits being filed by people not in the commercial district. When the Chairman said they would be grandfathered if they could prove they were doing that business as a non-conforming use, an audience member asked him to clarify his comments and explain what he meant. He started to explain then deferred to David Patch who noted that grandfathering is a federal law. He said you can't make a law after-the-fact which resulted in someone not being able to do something with their property that they had done previously. The gentleman asked how someone could prove that had happened, and was told some things would be by showing room and meals receipts, or receipts from Airbnb or a property management company, etc.

The Chairman closed the public comment session and said there would be board discussion before a vote was taken whether to support this amendment or not. David Shedd said his understanding was that this petition is directing the planning board to create an ordinance to limit STRs to the commercial zone. He said if it passes, the planning board would work to develop such an ordinance during the next few months; however, it would not go into effect until after it was voted on by the town next year. He said this would give the planning board time to write its own ordinance which did not limit STRs to the commercial zone. He said that ordinance would go into effect the same time as this one would have, if it had been approved by the town. He said public input would be welcomed during the process. Peter Gagne asked if a committee should be formed to do that, but it was decided to wait until after town meeting to see what the voting resulted in. Mr. Shedd said he was inclined to support this amendment, saying we don't know how the towns feels about it. He said up until two weeks ago we did not even know how many STRs were in town and took a guess of 250.

David Patch said he was inclined to not support the amendment because it was not fair to everybody to limit STRs to the commercial zone. He said he learned many years ago that the planning board's actions should affect the fewer number of people negatively, and the greater number of people positively.

The Chairman called for a vote to support this petition article, as written. Vote was taken, with members voting unanimously 0-6 not to support it. The article will go on the ballot showing it was not supported by the planning board.

The board continued chatting informally for some time about what the legal ramifications will be if this article passes or does not pass; how it now gives people a heads-up to buy up the residential district if they think they will be grandfathered; David Shedd said he would be willing to serve on a committee to draft a planning board ordinance and said two people had offered their names tonight as committee candidates; and there was talk about who had the authority to investigate complaints of STR overcrowding or life safety violations, etc. It was felt the police could probably respond, but perhaps the fire chief may need something more concrete to base an inspection on, such as some type of alarm activation.

**3. Continuation/Final Approval: Ledge View Lodges, LLC (Scott Cameron), Route 16/302, Intervale.** File: 2021-1278. This is an application for a 19-unit planned unit development (PUD) on a 19.30-acre parcel identified as Tax Map 1RT16-2, Lot 145L00.

This application was still under review by the town's engineer, Burr Phillips of Civil Solutions and there was nothing new to discuss tonight.

**4. Review and Approve Minutes:** The minutes of the December 21, 2021 meeting were reviewed. A motion to approve the minutes was made by David Patch; seconded by Michael Galante. The Chairman asked if there were any comments or corrections. With none, the board voted unanimously to approve the minutes, as written.

There being no other business, the Chairman called for a motion to adjourn. Motion was made by David Shedd; seconded by David Patch. Vote: All in favor. The meeting adjourned at 7:50 pm.

Respectfully submitted,  
Barbara Bush  
Recording Secretary