.TOWN OF BARTLETT PLANNING BOARD
PUBLIC HEARING
February 5, 2018

Members Present: Chairman Philip Franklin; David L. Patch; David A. Patch; David Shedd; Scott Grant; Kevin Bennett; Peter Gagne. **Members Absent:** None.

Also present: Sean Shannon; Bob Holmes; Norman Head.

The meeting was opened at 6:00 pm by Chairman Philip Franklin, who reviewed the agenda.

1. The Chairman noted we had received an email response from town counsel, Atty. Justin Pasay, answering questions asked of him by the board regarding Sean Shannon's proposed purchase of Glen Sand & Gravel. The Chairman read the email out loud. Atty. Pasay's response to the board's primary question of whether the pit would need to be reclaimed once the gravel operations ended reaffirmed the board's original position that under RSA 155-E:5, reclamation would need to occur within twelve months after the expiration date of an excavation permit, or after completion of the gravel operations, whichever occurred first. The only exception to this requirement would be if the owner submitted an application to the planning board showing good cause as to why the pit should not have to be reclaimed. Such exception could only be granted after holding a public hearing and a finding by the planning board that good cause had been shown.

Atty. Pasay responded to the board's second question which asked if the land would lose its grandfathered status once the pit was closed due to the fact it did not have 200-ft. of commercial frontage onto Route 302, by saying he would need to review additional information such as the relevant tax maps, assessment data, and underlying deeds before he would be able to offer a legal position on this issue. He referenced Article XII, Non-Conforming Uses, of the zoning ordinance which states that lots of record on the date of enactment of the ordinance which do not meet the minimum lot size and/or frontage requirement are grandfathered and can be used for any use that is permitted in the underlying zoning district. However, Atty. Pasay said he would need to review the specifics of this particular parcel further before he could confirm whether this interpretation was relevant in this case. He advised it was more-important to get the issues right than to give a quick answer, and encouraged the board to be deliberate and conservative and to let counsel know before taking action.

The Chairman said it sounds as if on one hand the lot would have to be reclaimed, but on the other hand it could be used for some other permitted use. He asked whether the lots had been purchased prior to zoning. Norman Head said, with the exception of the 25-acre lot, Mr. Holmes had purchased the land around 1982. Mr. Head said he thought he understood what the lawyer was saying in that the land would need to be reclaimed if the gravel operation ended, but asked if it didn't end whether they could get a change-of-use on a portion of the land to allow a secondary use to operate in conjunction with the gravel operations. Mr. Head was advised that was the third question asked of counsel. The Chairman read Atty. Pasay's response to that question as being he would need to have more information before answering. For example, he asked would the secondary use occur on the same lot or on distinct lots, and do the lots conform to the town's dimensional requirements? If they don't conform, did they exist at the time the zoning ordinance was adopted?

David L. Patch again expressed his opinion that these were grandfathered lots, so it didn't matter; they were still considered commercial. David Shedd noted there were five lots involved, and asked which lots we were referring to. He was told the two gravel lots. Mr. Shedd said he had another question which he felt Bob Holmes could answer. He advised Norman Head had sent him copies of some deeds, dates, and numbers which showed John Cannell sold a lot to Glen Sand and Gravel in 1982, then on the same day he sold a lot to Mr. Holmes. Norman Head said the sales involved the same lot, as it was first sold to one entity then transferred to another one. Mr. Shedd said he just heard it said that these were commercial lots and wanted to offer a caution that we can't be saying they were commercial lots unless they were both owned by the exact same entity on the day zoning came in. Mr. Head asked when had that happened? When told zoning was enacted in 1985, he said the lots were owned by Mr. Holmes well before then.

David L. Patch attempted to clarify the issue by asking a series of pertinent questions. He asked whether both the gravel lots had frontage onto Route 302. Mr. Shannon said one lot did and one did not. Mr. Patch then asked whether both lots were owned by the same person, and was told they were; in fact, the same person owned all five lots. He asked whether they were owned collectively prior to zoning, and if they were contiguous lots. This fact was confirmed by Mr. Holmes. Mr. Patch said, based on that information, he thought both lots would be commercial. Scott Grant asked whether Mr. Holmes was doing gravel excavation on both lots on the day zoning went in. Mr. Holmes said that was correct. When David L. Patch confirmed with Mr. Holmes that both lots were being

commercially mined as a gravel pit before zoning was enacted, he again said in his opinion that probably made them grandfathered commercial lots. Norman Head noted we were dealing with five lots, total. He asked what the status of the other lots was; the ones which had not been mined, if there were any. Since they weren't being used as a gravel pit, would they also be considered commercial lots since they abutted ones which were. Sean Shannon advised he thought one of the lots had been previously mined.

The Chairman asked whether the lots on the property had ever been merged. Bob Holmes said they had not; he had purchased them in the same configuration as they are today, but asked whether that was something that he could do. He produced a map and shared some of the history of the lots, going back to his original purchase of a 22-acre lot from Ray Cannell in 1981. The Chairman asked whether this lot had access to Route 302. Sean Shannon said it had no road frontage but did have a deeded ROW. David L. Patch said it was his understanding that if one lot had frontage onto Route 302 and the other lots were contiguous lots under the same ownership, he believed that all the lots could be considered commercial. David Shedd said they had to be under the exact some ownership. David L. Patch said he was going by memory, and would need to check the zoning ordinance. It was also noted the 25-acre lot would not be included since it was not part of the original purchase, with Mr. Holmes having assumed ownership of it after zoning had come in. The zoning ordinance was found for Mr. Patch and he read the section out loud, as follows: "For lots of record on the date of enactment of this ordinance, the Commercial District shall include the total land area of any lot which fronts on Routes 302 and/or 16 and meets the access criteria. For the purposes of this section, a lot of record shall include all contiguous lots under single ownership where one of the contiguous lots fronts on Routes 302 and/or 16 and meets the access criteria. The bisection of any lot by a railroad shall not destroy the contiguity of the lot."

Norman Head said it was clear to him, but to correct him if he was wrong, that this was a pre-existing, grandfathered gravel pit, which was entirely a commercial lot because it abuts a lot which has frontage onto Route 302, and when/if the gravel pit closes that reclamation will be due then. Sean Shannon added that he would only need to reclaim it to the standards required under RSA 155-E. David Shedd said it appeared as though the planning board was not inclined to require a bond for reclamation, and asked about a reclamation plan. He asked whether the board had the right to request a reclamation plan, or even require it, or could we chose not to. David L. Patch said we can do both. We can ask for a reclamation plan showing how the property would be reclaimed, but if we gave him a pass on anything that was required under 155-E, we may have to hold a public hearing. Sean Shannon referenced Mary Pinkham-Langer's letter by saying the letter stated the pit was grandfathered and the only areas which could require a reclamation bond were those not yet disturbed. However, Mr. Shannon pointed-out the board had reiterated to him last meeting that there were obligations under RSA 155-E which required reclamation in terms of slopes, soils, etc., and he acknowledged he would have to do those.

David Shedd said there were two issues involved: one being a bond and the other being a reclamation plan, and said Mr. Shannon was trying to say that Ms. Pinkham-Langer was suggesting maybe a bond was not necessary. Mr. Shedd said he believed she did not address the issue of a reclamation plan. He said he would prefer that the planning board at least do something, as he felt at this point the planning board was just backing-out and saying, "fine." Mr. Shedd said he was not looking to have a bond or a plan to continue the gravel operations, but he would like to think if Mr. Shannon wanted to change it to a commercial activity that he should at least have a reclamation plan in place. Mr. Shannon responded if he was going to put something else in there, then he would clean it up and make it nice. David L. Patch said he didn't consider the planning board felt things were fine, but rather he felt that the planning board should stick to the rules. Whether something was good for a certain person, or not good for them, everyone who comes before the board should expect equal treatment by the rules and by the zoning ordinance.

The board continued to engage in a long discussion where differing opinions were expressed. Some members would like to see the planning board better-enforce its authority to ensure adequate provisions were in-place for reclamation of the pit should it cease operation or change to another commercial activity. These could include requiring a bond and a reclamation plan. Peter Gagne added that if any portion of the pit changed to another use, he felt that area should then be reclaimed. Other members reminded the board we could only require what was permitted under 155-E, which provided a certain protection to grandfathered operations. It was agreed it did, to a certain extent, but it did not totally absolve pit owners of their responsibilities. It was noted the other gravel pits in town had not been required to submit reclamation plans or bonds, and it was felt it was important to treat all gravel pits in town equally. David Shedd was concerned that if we didn't require a bond from Mr. Shannon, then we wouldn't be able to require a bond

of anybody. David L. Patch pointed-out if the town allowed gravel pits by special exception, then we would have better control over them and more authority to impose stricter standards than those required by 155-E, but since we don't, then the requirements of 155-E are the only standards we can go by. Peter Gagne asked Bob Holmes when his pit was last inspected by the board and the state. Mr. Holmes said he thought it was approximately two years ago.

Sean Shannon then addressed the board to ask that a decision be made regarding his "due-diligence" request for a written administrative finding regarding the items listed in his letter dated October 26. The Chairman read Mr. Shannon's letter and said the board would deliberate and vote on each. Mr. Shannon's letter stated that during several meetings in town hall he had been advised that there are no bond or reclamation requirements on file and none would be required, and the only other mandates necessary to operate the pit would be payment of the gravel tax and to not operate or enlarge the gravel operations onto the property purchased in February, 2000 from John Cannell. Mr. Shannon wanted written confirmation that his understanding was correct, as well as written confirmation of the items in his letter, as documented below:

The board discussed item a) of Mr. Shannon's letter which said, "*That upon purchasing Glen Sand & Gravel, Inc. from its present owner, the "grandfathering" remains in place and no new requirements will be imposed on me as the new owner of that corporation and/or the real estate and ongoing gravel business to operate the gravel pit business."* The Chairman said this means Mr. Shannon can basically continue to operate as-is, and asked if the board agreed with this. The board did, with the exception of David Shedd. Item b) said, "*That the ordinance governing the operation of the gravel pit is the regulation that adopts NH RSA 155-E, and there is no other "Gravel Pit Ordinances" in effect except for the regulation adopting RSA 155-E, and that the pit is grandfathered under 155-E:2(I)"* The board agreed unanimously that was an accurate statement. Item c) of Mr. Shannon's letter read, "*That there is no reclamation bond in place, and none will be required after I purchase Glen Sand & Gravel, Inc. to continue operating the presently grandfathered gravel pit."* This item resulted in a very long discussion. David Shedd was reluctant to agree, saying Mary Pinkham-Langer's letter had said that a bond could be required for those areas not yet excavated, but didn't say we couldn't require one for the other areas. He again expressed his concern that if we agree legally with Mr. Shannon to not require a bond, that it would then be hard to require one of anyone else. Norman Head offered a hypothetical scenario where, if the 25-acre parcel was ever allowed to be excavated, that a bond could be required in that instance. David L. Patch noted that Ms. Pinkham-Langer had indicated that there was likely only a minimal area which had not yet been excavated and offered a suggestion that the board's response to Mr. Shannon simply say, "at the time that you begin operations we will not require a bond, however if you cease operations you will have to conform to 155-E." The Chairman noted this would allow a bond to be required later on, not just of Glen Sand & Gravel but of everyone. David Shedd was asked what he thought about the offered wording, but was hesitant to embrace it saying he was trying to be careful. He asked Mr. Patch to repeat the qualification he was adding to "no reclamation bond in place and none will be required." Mr. Patch repeated, ".. none will be required to begin operations and to continue operating the presently grandfathered gravel pit." The Chairman then asked whether the board agreed that we were moving forward without a reclamation bond in place while the pit continues to operate under the present grandfathered situation. Board agreed unanimously. Item d) of Mr. Shannon's letter read, "*That there is no reclamation plan in place and none will be required after I purchase Glen Sand & Gravel, Inc., except for compliance with RSA 155-E:5-a and 155-E:5 upon closing of the gravel pit operation."* Another long discussion took place whereby the board felt this was a redundant issue since compliance with 155-E was already required, and if/when the gravel operations ceased a reclamation plan would be required at that time. It was noted that if a reclamation plan was developed at this time, by the time the gravel operations ended the conditions of the land would have changed and the plan may not accurately reflect the condition of the areas requiring reclamation.

Mr. Shannon said he was more-interested in the first part of Item d) which asked for verification that there was no reclamation plan currently on file with the town. Mr. Shannon said he wanted to know he was not buying some obligation that he was not aware of. He said Mr. Holmes had told him he had never submitted one, but he would like that fact verified by a written statement from the board. He said he was willing to change the wording of Item d) to reflect just the first part of the sentence that there was no reclamation plan in place. Long-time board member David L. Patch said he had no recollection of one ever being required, and the Chairman noted Mr. Holmes had no recollection of one, either. It was suggested the board's response include the caveat, "to the best of the board's knowledge there is no reclamation plan on file" just in case something was "lurking" that we were not aware of. Mr. Shannon indicated he would like the board to be more certain than that. The Chairman said Mr. Shannon was looking for 100% certainty, which he felt the board could not give. The Chairman asked whether the board was in agreement

with Item d). David Shedd spoke-up and said he was going to take exception again. He said he thought we had dropped Item d), but somehow, just through a little bit of conversation, it comes back just in the way it was originally written. Mr. Shedd was assured that Item d) had not been dropped and was not back as it was originally written, rather it had been revised and the last portion of the sentence which said "no reclamation plan will be required except for compliance with RSA 155-E" was removed, since that was already required by the state upon the pit closing. Mr. Shedd asked how could the pit could be reclaimed if there was not a plan in-place? It was advised that the reclamation would have to adhere to the requirements of RSA 155-E. The Chairman again asked if the board agreed with the modified Item d). Agreement was unanimous. The Chairman said he would write a letter responding to Mr. Shannon's due diligence request per the decisions made by the board tonight which the board could review next meeting. Mr. Shannon indicated he would also like a copy of the response the board had received from town counsel, but the board declined to provide it at this time. David Shedd again mentioned the transactions regarding the 1982 land purchase where a lot was sold to both Glen Sand & Gravel and to Robert Holmes, and cautioned Mr. Holmes and Mr. Shannon to be certain that all lots were under the exact same name, as it was an important factor when it came to the grandfathered status of the property. Norman Head said he would check copies of the deeds and Sean Shannon said he was conducting a title search. The parties thanked the board for their time.

2. Continuation/Final Approval: Attitash Mountain Service Co., (AMSCO), Block G, Stillings Grant: File: 2013-1187. This is an application to reconvene review of a continued application to subdivide Block G into 40 residential units. Tax Map 5STLNG, Lot G00. This application has been continued indefinitely until a review by the town engineer is completed**..**

3. Review and approve minutes: The minutes of the January 16, 2018 meetings were reviewed. Motion to approve was made by Scott Grant; seconded by David Shedd. Vote: 6-0-1, with Peter Gagne abstaining since he had not attended the meeting.

4. Mail and Other Business:

- A letter and location sketch from NHDOT Bureau of Environment, requesting comments regarding a planned upgrade to the railroad crossing near the intersection of Alpine Village Road (Rogers Crossing) was discussed. The letter asked ten specific questions, mainly regarding environmental issues, which the board discussed individually. The Chairman noted the board's findings on the letter and requested the secretary respond to the DOT accordingly.
- The Chairman advised he would not be available to attend the February 20 work session.
- Short discussion on workforce housing, with Peter Gagne expressing he felt the town should offer incentives by at least allowing septic density to be what the state allowed, and not imposing the 25% reduction required by the town.

With no further business, a motion to adjourn was made by Scott Grant; seconded by David L. Patch. Vote: All in favor. The meeting adjourned at 8.05 pm.

Respectfully submitted,
Barbara Bush
Recording Secretary