

# TOWN OF BARTLETT PLANNING BOARD

## WORK SESSION

July 19, 2016

**Members Present:** Philip Franklin; David L. Patch; David A. Patch; Scott Grant; David Shedd; Richard Stimpson; Peter Gagne. **Members Absent:** None.

**Also present:** Norman Head.

The meeting was opened at 6:02 pm by Chairman Philip Franklin, who briefly reviewed the agenda. He noted two items on the agenda pertained to Attitash Mountain Service Company (AMSCO) projects in Stillings Grant. Mr. Franklin disclosed that he was a resident of Stillings Grant and also served as director/secretary on the Stillings Grant Association, along with AMSCO president, Joseph Berry. Due to this involvement, Mr. Franklin asked if the board would like him to recuse himself from any or all deliberations of the AMSCO applications.

**1. Continuation/Final Approval: Patricia Rogerson, McKiel Pond Road, Bartlett.** File: 2016-1215. Application to subdivide a 5.66-acre parcel into three lots containing 1.69-acres, 1.94-acres, and 2.03-acres respectively. Tax Map 5VILLG, Lot MCK150.

The Chairman noted this application had been through a public hearing at the July 5 meeting. He briefly outlined the findings of that hearing and asked if the board had any further questions or comments. With none, he called for a motion to approve the 3-lot subdivision. Motion to approve made by David L. Patch; seconded by David Shedd. Vote: All in favor. A revised mylar had been supplied for recording.

**2. Preliminary pre-application review: 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.

The Chairman restated his previous disclosure and said he personally thinks he has a conflict of interest. He asked the board their thoughts on whether he needed to step aside from chairing the discussion. Scott Grant indicated he would like Mr. Franklin to participate in the discussion, but to refrain from voting on either application. David L. Patch said that he had been the chairman for many years and, as a local businessman, had done business with every developer who had come before him. He noted this was a small town where people put their faith in the chairman to act with integrity when they voted for him. Mr. Patch advised Mr. Franklin do what he felt comfortable with. David Shedd suggested to wait and ask the applicant his preference at the public hearing. Since this was only a preliminary review and did not involve any vote, Mr. Franklin proceeded to chair the meeting.

The board reviewed the plans. Peter Gagne asked about abutter notification, and was advised that AMSCO owned all the surrounding land. David Shedd asked questions regarding water lines along the road, fire protection, and on-site septic systems. Based on his personal knowledge of the area, the Chairman attempted to answer his questions. He said there was a pump station off Parker Ridge Road which supplied water to his residence, but suggested Mr. Shedd should wait and direct his questions to the developer at the public hearing. When asked, Mr. Shedd noted that he had observed twenty-eight test pits on this 40-unit subdivision in his capacity as the town's test pit inspector, and said he assumed the other twelve had been done previously. The Chairman recalled that the board had previously granted several road waivers for the design of Cave Mountain Road and asked if there was anything further related to the road that the board should be concerned about. He was advised that town engineer Burr Phillips would review the final road design prior to any approval being granted.

David Shedd asked to bring up another issue and said he believed that when the applicant comes in next month that they would be asking for conditional approval for Block G. Mr. Shedd indicated his personal preference would be that the application not be approved conditionally, but said he would be willing to grant the applicant additional time instead, if needed. Mr. Shedd said he presumed the state was a higher authority than the planning board and indicated he would like to see them have state septic approvals in hand prior to approval. He added that he did not see any issues the planning board would have that would hold the applicant up. Peter Gagne indicated he would rather wait to hear Burr Phillips' input before giving consideration to any conditional approval. David L. Patch noted the board had always been stingy to give conditional approval and only did so under extenuating circumstances. He described the incredibly busy "old days" and said when developers had people in line waiting to buy property the board tried to be accommodating if it was only a matter of waiting for approval numbers from the state. He said conditional approval was sometimes

granted to avoid holding them up, but it did not happen very often. When the Chairman asked what would state approval give the applicant, Mr. Shedd answered that he believed the only issue was state septic approval and perhaps wetlands, but he believed the wetlands were okay. Peter Gagne then asked whether the ridgeline ordinance applied to this project. He was advised the ridgeline restrictions only applied to areas above the 800-ft. elevation which were visible from Routes 16 and/or 302. The Chairman then summed-up the discussion on conditional approval by saying, barring extenuating circumstances, the board would not be looking to grant conditional approval but would prefer to wait until the applicant had obtained all their state approvals and for them to then come back in. David Shedd again reiterated his willingness to grant the applicant more time should it be needed. This application will be formally submitted for review at the August 1<sup>st</sup> public hearing.

**3. Preliminary pre-application review: Attitash Mountain Service Company (AMSCO), Parker Ridge Road in Stillings Grant.** File 2016-1218. Application for an equal-area boundary-line adjustment of 0.09-acre between Lots A0038, A0042 and common land. Tax Map 5STLNG, Lots A0038 and A0042.

The Chairman reviewed the history of this project and explained the intent of this application by saying the applicant was looking to remove 3,875 sq. ft. from Lot A38 and add it to the abutting common land, and then remove the same amount from the abutting common land and add it to Lot A42. This was an equal-area adjustment which resulted in the area of the common land remaining exactly the same, while changing the configuration of the boundary line slightly. He advised a letter had been received from AMSCO's counsel, Atty. Ken Cargill of Cooper Cargill Chant, which included a copy of Stillings Grant's Declaration of Covenants, Restrictions and Easements (the Declaration). Atty. Cargill's letter cited Section VII.1, Association Land, of the Declaration which provides that Association Land, aka common land, is "identified on the plans referred to in this Declaration, as they may be amended in the future" (emphasis added by Atty. Cargill). It was Atty. Cargill's contention that this wording allowed the developer to reserve the right to amend the configuration of the common land as the project matures, since adjustment to platted common areas are often necessary to accommodate challenges presented by topographic conditions discovered in the field after approval of subdivision plans. The Chairman read aloud the full context of Section VII.1 for the board's benefit.

David Shedd said he had issues with the applicant changing the boundaries of the common land, and advocated strongly against the adjustment. He queried the timing of when the application had been submitted (July 11), when abutter notices were to go out (July 21, ten days before the public hearing), and which abutters had been notified. He cited the zoning ordinance and read the requirements of common land as being "...a minimum of 15% of the total land area shall be set aside as permanently-designated open space, which shall be owned and maintained by a homeowners or condominium association .." Mr. Shedd asked how do we get around the term "permanently designated" and how can we agree to this change of boundary? The Chairman noted the adjustment was not changing the acreage of the common land. Mr. Shedd responded that it was a presumption to say that the term referred to acreage. The Chairman said he had read the zoning wording several times and asked if there was another way to look at it. If it was based on the boundary lines of the property vs the common land the way they were established back in the 1980s, then he knew of several maps that showed various versions of what Stillings Grant looked like over the years. He noted how different his personal property originally looked. The Chairman agreed with Mr. Shedd that the wording did not specifically say "acreage", but said the fact that common land was expressed as a percentage of the total property led him to that thinking.

Mr. Shedd went on to say that there was an established plan and the open space was drawn-out on that plan. He asked why would that open space be drawn if it wasn't to be considered permanently-designated? He offered several hypothetical scenarios whereby perhaps the applicant liked the idea of building waterfront property and swapped another portion of land, say in Block H, in order to create some lots around the gravel pond. Mr. Shedd felt that was the same principle as taking common land, which the applicant felt was okay to do so long as he traded it equally. He noted the applicant retained ownership of the common land until the last lot was sold, at which time it transferred to the homeowner's association. Mr. Shedd asked what would prevent the applicant from not selling the last lot and retaining ownership of the common land indefinitely, so that he could change the configuration of it any time he wanted to for his own advantage.

As in previous discussions regarding this project, David L. Patch again advised when this development was approved back in the 1980s, it was approved for a certain number of blocks based on septic density. He noted numerous lots had changed since then and that the reason it was approved in blocks was so that the developer had the latitude to meet current market conditions. Mr. Patch said he would need to go back and look if that old plan has specific common land

on it amongst the blocks. However, he believed it was approved based on meeting the required 15% of common land being put aside, an amount which he said the developer had far exceeded. Mr. Patch said we could discuss this all night and suggested perhaps it was time to seek a legal decision from the Municipal Association. He suggested we describe the likewise change between the blocks and the common land being proposed by the developer, advise what our zoning ordinance required, and ask whether he can do it or if we, the board, can do it.

David Shedd then read verbiage from the Local Land Use Planning handbook, Section: Development - Restrictions Enforceable. The section essentially stated that "... any open space designation or other development restrictions, as part of a cluster development, planned unit development, village plan alternative, subdivision, or other proposals approved under innovative land use control or directly imposed by a local land use board as a condition of subdivision, site plan variance or other types of approval and which has been filed in the records of the local land use board in accordance with established procedures, shall be deemed to create a conservation restriction as defined in RSA 477.45 which shall run with the land and shall be enforceable by the municipality or by any owner of any property which would be potentially damaged by the violation of this restriction." Mr. Shedd said that not only is this in our zoning ordinance, but the state also has an opinion. The Chairman said he didn't hear anything in those words that related to this situation. Mr. Shedd said that the board was able to enforce the fact that this was a conservation easement restriction. He asked what else would it be and what was the purpose of conservation land if not for conservation? David L. Patch reiterated his feeling that if we have to make a decision to decide whether the developer can or can't do this, that we need to seek a legal opinion from the Municipal Association.

David Shedd again mentioned that he had a problem with timing and abutter notification. Peter Gagne asked about the completeness of the application and wanted to know how many abutters were being notified. The Chairman read aloud the names on the abutter envelopes provided, while Mr. Gagne checked them off against the plan. He indicated he was satisfied that envelopes had been provided for all the immediate abutters around the subject lots as well as the applicant, engineer, and the Stillings Grant Association. The Chairman also shared his personal knowledge of the surrounding homeowners by describing where each residence was located. He said the topography of the land being adjusted was similar in nature, and that the area immediately across the common land from the subject site was undeveloped. Mr. Shedd noted this was an adjustment involving three lots, and asked why wouldn't everybody touching the common land also be notified. A discussion ensued as to whether notifying the association sufficed as proper notification to common land abutters. Mr. Shedd stated it was not association land. David L. Patch agreed with Mr. Shedd, and suggested this should be another question to ask the Municipal Association. He said he appreciated David Shedd's diligence and dedication, and felt if we got a concrete answer from the Municipal Association about the common land it would guide our decisions in the future if this situation arose again. He acknowledged while it was the board's responsibility to uphold the town's regulations, it also had a responsibility to be fair to the applicant who was only trying to accommodate the needs of a potential buyer of the lot being adjusted. Scott Grant said he was expressing his personal opinion and asked why didn't the developer figure-out that he needed to increase the size of Lot 42 eleven years ago when he purchased the property. He described it as "very fishy waters." David L. Patch said by not doing it eleven years but doing it now, was an example of the developer managing his large block of land for current market conditions because it was impossible to foresee the future and to know what future buyers would like.

David Shedd asked the Chairman for a sense of what he was going to ask the Municipal Association. He said it was one thing to ask whether the developer was able to do it, but he would also like to know whether the developer could do it over the objections of the board if the board did, in fact, object. The Chairman read the gist of the questions he would ask the Municipal Association. Mr. Shedd asked him to also advise them of the conservation restriction information he had spoken about earlier and further suggested that he contact David Publicover, the former planning board chairman, for his input.

Richard Stimpson left the meeting at 7:11 pm.

**4. Preliminary pre-application review, Range View Cabins LLC (Roger & Maureen Lemay), 1069 US Route 302, Bartlett.** File: 2016-1217. This is an application to amend a previously-approved and recorded subdivision plan to permit a single driveway to serve three dwelling units. The amendment would involve the granting of a waiver by the planning board. Tax Map 3RT302, Lots 285L00 and L01.

The Chairman explained the history of this application and advised how a lot merger and 3-lot subdivision had previously been approved by the board after a driveway permit had been issued by the NHDOT. The DOT later reneged on that approval and the applicant is now back before the board seeking to amend the previous plan and to request a waiver to allow a single driveway to serve three dwelling units. The board briefly looked at the plan and discussed whether there were appropriate distances between the new driveway and the neighboring ones. Since this matter is under the jurisdiction of the DOT, the applicant will need to provide an updated DOT driveway permit. This application is scheduled to be heard at the August 1 public hearing.

**5. Minutes:** The minutes of the July 5, 2016 meeting were reviewed. Motion to approve, as written, made by David Shedd; seconded by Peter Gagne. Vote: 4-0-2 with David A. Patch and Scott Grant abstaining since they were not present at the meeting.

**6. Mail and Other Business:**

- The mail listed on the agenda was reviewed.
- The Chairman asked the board's thoughts on submitting a letter to the Sun requesting volunteers to serve as alternates.
- The Chairman indicated he would like the board to begin thinking about proposed changes to the zoning ordinance. Peter Gagne suggested local engineers be asked to meet with the board in order to seek their input.

With no further business, a motion to adjourn was made by Scott Grant; seconded by David Shedd. Vote: All in favor. The meeting adjourned at 7:45 p.m.

Respectfully submitted,  
Barbara Bush  
Recording Secretary