

**TOWN OF BARTLETT  
PLANNING BOARD  
56 TOWN HALL ROAD  
INTERVALE, NH 03845  
603-356-2226**

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**DRAFT MINUTES  
WORKING SESSION**

**June 18, 2024**

**6:00 p.m.**

**Present: Planning Board:** Scott Grant (chair); Kevin Bennett; Michael Galante; Vicki Garland (selectmen representative); Joe Heuston; David Shedd. **Zoning Board of Adjustment:** Julia King (chair) Steve Hempel (Vice Chair); Scott Grant; Peter Pelletier; Richard Plusch (alternate)

**Absent:** David L. Patch (vice chair Planning Board Phil Franklin (alternate Planning Board)

**Also Present:** Town attorney from Donahue, Tucker and Ciandella, PLLC (DTC) present- John Ratigan, Lynn Jones (AA to the Selectmen)

Meeting called to order by Scott Grant Chair Planning Board at 5:58

Members of both boards introduced themselves to the attorney from Donahue, Tucker and Ciandella, PLLC (DTC) present- John Ratigan

**1.Pledge of Allegiance**

**2.Discussion:**

- Legal training with town attorney

1. Can we write an ordinance to prevent a municipal septic system going outside their precinct? 2. Can we prevent the state from taking over local control with a state law? The attorney written response: "I believe the town can consider two zoning ordinance amendments that address this issue of limiting an expansion of water and sewer supply service beyond the boundaries of the Town's 4 existing precincts/village districts (and including the

North Conway Water Precinct) that would seek to supply water or sewer service beyond the boundaries of such precincts and village districts.

I examined the Town's Zoning Ordinance Article IV, General Provisions, that thought about addressing this issue by adding an amendment that adds a new paragraph "S" to this Article IV, as the new last paragraph of this Article IV, which could state:

S. Water and Sewer Service Supply Limitations. There shall be no expansion of Water Supply or Sewer Supply beyond the boundaries of the Town's 4 precincts/village districts, and including the North Conway Water Precinct, that supply a source of municipal water or sewer service.

Then, on pages 27-28 of the Town's Zoning Ordinance, there's a definition of the term "Essential Services", which states:

"Essential Services- The erection, construction, alteration or maintenance by public utilities, municipal or other governmental agencies of facilities reasonably necessary for the furnishing of adequate service by public utilities, municipal, or other governmental agencies and for the public health, safety or general welfare."

I suggest to clarify the import of the amendment to Article IV, S, set forth above, then the following Zoning amendment sentence should be added to the end of "Essential Services", which states:

"However, such Essential Services shall be restricted to water or sewer service to be provided to properties located within the boundaries of such precincts and village district within the Town and the North Conway Water Precinct, and not to properties located outside of such boundaries"

Should you have any other questions, please let me know. Such amendments would require property owners outside such precincts or village districts to obtain a variance to gain a water or sewer service connection."

Attorney John Ratigan stated that by putting in the second amendment the town basically let people know that the language of essential services does not prohibit that type of restriction to boundaries of precinct or districts. Without the added language someone might make the argument to say that this cannot be done because essential services protect that stuff. Vicki Garland (Selectmen representative) clarified the attorney's response by stating that we can write an ordinance to prevent a municipal septic system going outside their precinct by writing the two specific changes to the zoning ordinance. Attorney concurred stated that the board was all set with the two amendments. Peter Gagne (ZBA) asked how this zoning rule would work with the Lower Bartlett Water Precinct as they have their own zoning ordinance. The attorney stated that to the extent that the precinct has their own regulations and those regulations which apply to their precinct are prohibited. The new wording would state that if you seek to be outside the precinct and they do not have any regulations that govern zoning then these

limitations are applicable. Peter Gagne (ZBA) asked for additional clarification. As per John Ratigan if they are within the precinct it is not prohibited. If the extension of water and/or sewer are outside the boundaries of the precinct then the precincts zoning regulations do not apply it is the town's regulations. Julia King (ZBA Chair) stated to put it simply if your property is outside the boundaries of the Lower Bartlett Water Precinct, we have to abide by the town rules. The attorney concurred. Richard Plusch (alternate ZBA) asked a question- if he was applying for a variance lived on one side of the line outside the precinct and the house next to me is in the precinct. If he came before the ZBA and stated that our land is the same and there is no difference between the two properties and they have sewer and I don't do I have a case? The attorney clarified that yes there is a case as long as the variance meets the five criteria. Joe Heuston (Planning Board) asked regarding the question of density. If sewer goes in there would be increased density allowed. Richard Plusch (ZBA Alternate) answered that it would be handled by the ZBA and there would be conditions on the variance that the density would not change. Scott Grant (Chair Planning Board) voiced two concerns: One is that the state legislation may mandate that if a sewer goes by an individual whether they are inside or outside the precinct they would be mandated to hook up to it. Two the state may increase the density allowed to three or four times what we have allowed. Town of Bartlett is 75% more stringent than the state for septic. He asked that if the state mandated sewer and it is outside the precinct and the more restrictive zoning should apply, does the town have the right to say you cannot do that and will the state over ride this because it is state law. Attorney response is you can say no because the applicant has to meet the requirements of the municipality. Scott Grant (Planning Board chair) asked if there was case law on this- stated the attorney did not have to actually quote the law. No state law was quoted at this time. Attorney response is if someone was denied they might appeal the ZBA decision and if the decision is overturned there is no damages to the town. He stated that the water/sewer pipelines have to be dug along the side of the road and the roads may be dug up for long periods of time and there may be additional maintenance costs. He also replied we would have to wait and see what happens. A question was asked what if the roads are state roads. The Attorney responded that the state would have to be satisfied that the condition of the road was up to the state standard. The attorney reported in Jaffrey the state allowed for the expansion of sewer and the applicant had to extend the line to be fully consistent with the state design. Peter Gagne (ZBA) asked if this warrant article passes and is approved by the town if a large amusement park or campground would have to appear in front of the ZBA for a variance to connect to the sewer line because they are outside the precinct boundary. Attorney responded that the precinct may come to the selectmen to ask if the boundary could be extended. The selectmen could agree/disagree. He also reported that it is usually a municipality that says you have to hook up not the state. He is aware of many communities that have septic and consumers buy properties where there is septic and they don't have to hook up. Steve Hempel (ZBA Vice Chair) asked is it common practice for the state to increase density allowances when they run a sewer line? Attorney response- he was not aware of that but asked for clarification. Steve Hempel (ZBA Vice Chair) stated it would be the number of residential units on a lot size. Attorney response the

municipalities get to regulate their own density. Vicki Garland (Selectmen representative) reported there are bills in the house that want to take that away from local control as a way to deal with the housing crisis. Our concern is that if we lose the ability to control density it will not help with workforce housing as we are a tourist area. She inquired is there anything we can do before that happens. Attorney response was yes and we will have to wait and see what the legislature does. Also, where the state says there is not enough housing is areas that are already defined with schools, police departments and fire departments. Vicki Garland (Selectmen Representative) reported that what we are seeing regarding legislation is statewide not limited to an area with a specific number of residents. Attorney response was to wait and see what the legislature is doing. Vicki Garland (Selectmen representative) stated that adding the zoning amendments is a good start to protect us? Attorney answered affirmative. Julia King (ZBA Chair) reclarified her understanding that density is calculated by where your sewage is going to go. She is in an area with 14 acres and 4 houses. If sewer came to her area, she stated that people are afraid that the state would require the 14 acres be developed. She understands that it is not a quid quo pro that if the sewer was there the town is still able to set its own density requirements for construction. Attorney response was yes but if the state adopts a different statute that addresses that we will deal with it then. Joe Heuston (Planning Board) stated he was watching TV and there are reports of the housing shortage in NH. He stated if he had a good amount of land on Rte. 16 with water and sewer running past it I wanted to put in apartment houses since I don't have to worry about density and if I had enough money to sue the town because they can't tell me I can't put in residential housing since there is a shortage. I was hoping you could answer the question if the state legislature decides all this nonsense is our Master Plan above the legislative acts? Julia King (ZBA Chair) replied that she thought he was thinking of what happened in Massachusetts. If the state brings services to your town the tradeoff is the state is going to control how many units you can build because they gave you the services. She believed that New Hampshire does not do that nor does she think that New Hampshire has the will to say that because you have water/sewer the state will come in and take your zoning ordinances and density requirement and throw it all out the window and they would tell you to build shotgun houses. Vicki Garland (Selectmen representative) stated that she understood the municipal association are continuing to fight to support local control. Some of the language has been somewhat disparaging to towns like ours. Some of the legislators are stating that we have to give up and join the rest of the state and allow increased density to solve the housing crisis. She agrees there is a housing crisis but not that one size fits all. Attorney response- will have to monitor the legislation but if it is adopted before December, we have time to evaluate what we need for a March amendment. Vicki Garland (Selectmen Representative) reported that we as a planning board need to get a plan together and in public in December because as soon as it is out there then it stays in effect till it is voted on.

3. Regarding procedures if the ZBA could ask on an application if the applicant will appear with an attorney or not? This question was further

refined to: Are you having an agent or legal representation coming to the ZBA meeting? Or will the town bring legal representation? The attorney response: I'm not aware that any municipalities ask such questions on their ZBA applications if an agent (like an engineer or similar information consultant) or an attorney in coming before the Board at the public hearing on behalf of the applicant. Such professionals usually present related written information as necessary in conjunction with the application submitted to the Board. If the Board receives information that it would like to have the Town's engineer or other consultants review, along with the Town's attorney, they can be asked to do so prior the public hearing, or the Board can continue the public hearing to a later date so that the Board can then refer such issues to their engineer or other consultants, and perhaps the Town's attorney, to review and advise Board prior to or at the next meeting. And, if the Board wants such Town consultants or attorney to attend the next meeting, which could include a non-public consultation with legal counsel, the Board can do so, and the Board can then aggregate all the information from the applicant and the Board's consultants so it can make its decision at the next continued meeting date. Julia King (ZBA Chair) clarified that there was a situation where the ZBA was having a hearing and the Selectmen had denied the application and appeared at the hearing with an attorney without notifying the board or the applicant. So, it was a waste of the town money and the town's time. It was a waste of the applicant's time and their money as we had to put the application off for a month. So the ZBA was wondering if there is any way we can write into the rules of procedure that a memo to the selectmen or any other board that if you are going to appear with counsel or an agent or somebody other than yourself you have to notify the applicant/board. Attorney response – he is not aware of any municipality that has done that- there is no requirement that an applicant has to tell you if there is an engineer or attorney showing up at the meeting. Ordinarily you find out that information from the engineer when they file the application for someone. As far as an attorney goes once in a while, they show up at a meeting. It does not present any problems with the board because the board can ask questions regarding the application and then they can simply continue the application because we need our engineer or attorney to review it. Julia King (ZBA Chair) reported that this is what happened. However, it did not have to happen if the applicant did know ahead of time the Selectmen were coming with council. Attorney response- if I was the applicant and the town's engineer or attorney presented information that was averse to my application, I would ask the Planning/Zoning board to continue the application so that I could assemble a response to the information presented. There is no requirement for applicants to put in names of who's going to show up because lots of times an engineer may do a project a certain way and there may come a time when there is another issue that needs looking at and will require a different engineer. You cannot require people to jump ahead of time. Peter Gagne (ZBA) asked if John Ratigan was the attorney for the ZBA? Attorney response was I give advice but if they want to ask a question, he would be happy to respond. Kevin Bennett (Planning Board) asked about STR's- he reported that last winter a proposal was made to register STR's. He thought questions went to the attorney or the municipal association he was not sure. however, there was a public hearing to discuss the registrations. The public shot down the planning board and as result it did not go forward. He reported in town there are quite a few STR's and there are no issues but there are a few that have issues with too many people or not following the rules. For example, a home with a septic system for 3 bedrooms and there are 12 people in the home. Attorney

response was that if someone was not following the towns regulations and with approval of the board you could have a code enforcement officer or building inspector issue a violation. Since the Town of Bartlett does not have either the attorney stated he could assist us with these violations. Vicki Garland (Selectmen Representative) stated that they monitor real estate ads or public complaints are investigated. They may need to go to the home stating the owner is unable to do that or if something needs to be removed. She reported that a registration form would be helpful if made simpler and keeping it with the points that are allowed. An example would be the density capacity and how many residents are allowed. Attorney asked how are buildings inspected after going up. Scott Grant (Planning Board Chair) answered that if a residence is oil heating no one but propane the fire chief will inspect. Attorney- what if the building is commercial? Answer by the board that would be the state fire marshal. Vicki Garland (Selectmen representative) reported that both positions have been advertised for but no qualified applicants have applied. Attorney reported that it is possible to use a nearby town's inspector as a part time employee of the Town of Bartlett. The expense of this would be covered by the permit application fee. Peter Gagne (ZBA) asked if the ZBA has its own budget can we contact you directly? Attorney response was you can. Julia King (ZBA Chair) asked if there was a conflict between the Selectmen and the ZBA the attorney present is unable to represent both sides so what happens? As per the attorney he stated that he has a community he is representing that the Select board filed an administrative appeal. He looked at the appeal and explained to the ZBA how they should proceed. The ZBA told the attorney that the Select Board did not file all of the information in the statute. The attorney told the ZBA that they should review the appeal as the Select Board had an appropriate appeal. The ZBA has an obligation to deal with the appeal. Peter Gagne (ZBA) asked about the hardship rule and stated the ZBA struggles with the hardship rule. He wanted to know what the criteria was for hardship as per the RSA. The attorney pointed out the new forms that were handed out and encouraged ZBA members to use the forms when making a decision. He stated it would help the ZBA members with their memory of a project and that it is very important that members of the ZBA have the findings of fact. David Shedd (Planning Board) asked a question regarding the handout "Town of Bartlett Planning Board Training". His question was regarding the instance where a member of a planning board did research during the meeting and then the information found changed her mind regarding an application. His question evolved around the aspect of doing a site inspection. The attorney answered that if you have knowledge of a property of project (for example if you knew there was a water issue of unsafe turn around to a road the way a corner was set up) it is fine to bring that up in a meeting but it is unlawful to go out and do your own inspection of that property. The proper way is to do a site visit that has been publicly announced. The community is able to join the meeting. The attorney clarified that knowledge of a project is fine to bring up but independent research during the review process is not lawful because it is not knowledge but online research. It is important during the meeting to note that it is historical knowledge about a property not research. Richard Plusch (ZBA) asked are you saying as board members we can't go look at a piece of property? The attorney answered that board members can only go through a public site visit. When you get an application in and have the first hearing you can decide ahead of time that you want to do a site visit and notify the public however you cannot do individual site visits. It would ideal for the whole board to attend the site visit but it can be whomever can go. This needs to be noticed to the public and treated

as a meeting. Ordinarily it happens at a meeting- the board announces it will be doing a site visit and indicates what date and time the visit will be and members of the public can join you then. Julia King (Chair ZBA) clarified that under RSA 674:44 stated that for a five-member board that two people could go but not three. So, what you are saying is that if all five people went you would call it a meeting- we would go and discuss what we see. The attorney acknowledged this was correct. However, he stated that even with just two members it should be open to the public. Peter Gagne (ZBA) asked that if someone was seeking a variance for a porch that is within setback and I wanted to see the actual project we would have to set a public hearing? Julia King (Chair ZBA) informed both boards it would have to be a public meeting. The attorney concurred that this was the correct response- whether it is a meeting or hearing it has to be open to the public.

- Master Plan- postponed discussion at this time
- Letter re: Website Vicki Garland (Selectmen Representative) abstained from looking at the letter stating she felt it would be better for her to see the letter with the Selectmen because she was not involved in the process. She felt that she would be better not having any prior knowledge or influence of the contents of the letter. Peter Gagne (ZBA) asked Vicki Garland (Selectmen Representative) what her opinion of the issue was. Vicki Garland (Selectmen Representative) answered that anything that will need funds from the town will have to be put into the budget for next year, anything that does not require any funds is actively being worked on. The Selectmen are proud of running a tight budget and as a result have to frequently tell “no” to people. She replied that everyone now has access to the wireless here and the town is very close to making WIFI available to the public and getting a booster. Peter Gagne (ZBA) stated that for one member of the constituency to not be able to get a phone call or get on the internet at town hall is embarrassing. He reported he planned on being at the next Selectmen’s meeting and he wants to poll each of the Selectmen regarding the issue of internet and the website. Scott Grant (Chair Planning Board) stated as a member of the Planning Board and the ZBA there has been discussion of the boards attending the Selectmen meeting. However, if all the members show up it would be considered a meeting. He suggested that two members of the ZBA and three members of the Planning Board show up and that would be a quorum. The next Selectmen meeting is to be June 26, 2024 at 4 PM in the meeting room. It was suggested that Lynn Jones be contacted that the members of the board want to be added to the agenda.
- Motion made by Scott Grant Seconded by Michael Galante to dismiss the ZBA from the rest of the meeting. Voted: Passed unanimously by members of both

boards. Scott Grant thanked the ZBA members for attending the meeting to this point and stated they could stay for the rest of the meeting if they wished.

- Pat Roberts- Scott Grant stated that Pat Roberts expressed interest in being an alternate on the Planning Board. Scott spoke with Phil Franklin and he is very busy with the Historical Society and has no issue with Pat being the first alternate and he will be the second alternate. Scott spoke to David Patch (Vice chair Planning Board) via telephone and it is their understanding that the planning board can appoint Pat Roberts as an alternate and keep Phil Franklin as a second alternate. Scott reported he did not believe that Pat Roberts had to be sworn in by town hall because he was not voted in by the public and secondly it is within the prevue of the Planning Board to select their alternates. Motion made by Joe Heuston (Planning Board) seconded by David Shedd to appoint Pat Roberts to the planning board as an alternate. Voted unanimously to accept the nomination. Pat Roberts asked to clarify when alternates can vote. Scott Grant stated he can vote when he is asked to step in for a voting member but he is more than welcome to come to the meeting and share his opinion.

**5. Review and approve minutes of June 3, 2024 Public Session** – Motion made by Vicki Garland (Selectmen Representative) seconded by Joe Heuston (Planning Board) to accept the minutes of June 3, 2024 as written. Vote: Unanimous

#### **6. Mail and other business**

- Triple K Properties, Ltd.- Intent to excavate Tax map/Block/Lot 1RT016/10510- duplicate application.
- Link for the Office of Planning and Development- Vicki Garland (Selectmen Representative) thanked the clerk for sending the link and stated she has completed the Planning Board course and is in the process of doing the ZBA. She reported there was a lot of information available

**7. Next meeting: Public Session July 1, 2024 at 6 PM, Work session if needed July 16, 2024 at 6PM-** Scott Grant stated the July 16, 2024 meeting may be cancelled as he had a conflict with school board meeting that evening. This will be definitely decided at the next meeting.

Motion made by Michael Galante to adjourn seconded by Vicki Garland vote passed meeting adjourned at 7:30 PM

Respectfully submitted

Louise B. Burns

Planning Board/ZBA Clerk

603-356-2226



Planning Board  
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Approved