

**Brentwood Planning Board
Minutes
March 17, 2022**

Members Present:	Bruce Stevens, Chairman Kristin Aldred Cheek Paul Kleinman Doug Finan	Stefanie Kizzer Ned Matson Brian West, Alt. – not voting Kate Locke-Parks, Alt. – not voting Town Planner, Glenn Greenwood
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Chairman Stevens opened the public hearing at 7:00 pm.

Residents Present: Liz Faria, Letty Bedard, Mark Kennedy.

Board Business:

Motion made by Finan, 2nd by Matson, to appoint Aldred-Cheek as Planning Board Chair. All were in favor. Motion carried.

Motion made by Finan, 2nd by Aldred-Cheek, to appoint Stevens as Planning Board Vice Chair. All were in favor. Motion carried.

Mark Kennedy expressed interest in becoming an alternate to the Planning Board.

Motion made by Finan, 2nd by Matson, to appoint Mark Kennedy to the Planning Board as an alternate member based on his experience. All were in favor. Motion carried. Chairman & Board signed Kennedy's 3-year appointment slip for the Town Clerk. Bickum said Kennedy will need to be sworn in by Town Clerk prior to the next meeting.

Planning Board approved the following expenditures from PB funds:

- ZBA 2-hour in person training with a NHMA lawyer: \$550.00; Printing 10-OSI ZBA books, spiral bound, from PDF. Alpha Graphics estimate: \$156.27; TOB Envelopes (used for ZBA certs): \$76.79 = **Total for ZBA is \$783.06** and 15-PB OSI books, spiral bound for Planning Board: **Total for PB is \$185.37.**

Aldred-Cheek asked if PB members could attend the ZBA training. Bickum replied yes and will let the PB members know when it's scheduled.

Motion made by Stevens, 2nd by Matson, to approve the use of Planning Board funds for the ZBA of up to \$800, to be used for 10-OSI ZBA books, professional training with a NHMA lawyer and printing of envelopes and for 15-Planning OSI books for the Planning Board in the amount of \$185.37. All were in favor. Motion carried.

The Board signed the manifest. Bickum explained that the manifest is to approve vendor payments, applicant refund checks and deposits that have come in for applications. It goes to the treasurer to sign and then the checks get mailed out.

Approval of Minutes: March 3, 2022

Motion made by Finan, 2nd by Stevens, to approve the minutes from March 3rd, 2022, as presented. Aldred-Cheek, Finan, Stevens and Kleinman were in favor with Matson and Kizzer abstaining. Motion carried.

Greenwood explained that if members didn't attend a meeting but read the minutes and have an understanding of what happened, you can vote on their approval or disapproval, if you're comfortable with it.

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7:00 pm: Continued Site Plan Review Application: Applicant/Owner: Wayne Donohue of W.A.D. Property Management, LLC. Site is located at 13 Prescott Road, Brentwood, NH 03833 referenced by tax map 210.055.000. The proposal is to show the existing improvements, to relocate the existing sign and to show the location of the proposed 50' x 100' building. Property is located within the residential/agricultural zone. *Applicant has requested a continuation to April 21st, 2022, at 7 pm at the Town Office.

Motion made by Stevens, 2nd by Finan, to continue the hearing for W.A.D. Property Management, LLC to April 21, 2022, at 7 pm at the Town Office. Bickum added if there is a meeting location change, it will be noted on the posted agenda for that meeting.

7:00 pm: Site Plan Review & Conditional Use Permit Application: Applicant Sig Sauer, Inc., 18 Industrial Drive, Exeter, NH 03833; Owner Sig Arms, Inc. with a mailing address of 72 Pease Blvd. Newington, NH 03801. A portion of this site is located in Brentwood, at 233 Exeter Rd. (Rte. 27), Brentwood, NH 03833 referenced by tax map 203.026.000. Intent is to expand the parking area for Sig Sauer near the upper deck. This area has a smaller existing gravel parking area currently, but it is undersized and messy during the wet weather. There are two man made wetlands that are located between the parking lots that will be impacted for the construction of this parking area. ***This application was withdrawn by the applicant on 3-16-2022 (letter on file). Closed, no further action.

7:00 pm: Planning Board Work Session: Discuss PB procedures, zoning, subdivision and site plan regulations and any possible proposals to discuss. Another work session is scheduled for March 31st at 6:00 pm and to review the draft impact assessment with Bruce Mayberry (emailed to Board).

Greenwood explained the importance of meeting attendance for alternates because even though the Board members may all be present, alternates can take part in the discussions, they just wouldn't be able to vote. It's important for alternates to know what is going on in case they are needed to fill a vacancy. Board discussed alternates sitting at the table, which is fine, as long as it's clear who is voting and who isn't. If it becomes confusing, alternates could sit in the front row but it's easier for alternates to participate if they are at the table. For example, at the next large meeting, alternates could sit at a separate table in the front next to the Board members.

Stevens mentioned that the last large meeting got out of hand and in the future a microphone set up like at Town Meeting and possibly have a police officer in attendance. The Board will discuss facts with applicant and engineers first. Then audience members can put a hand up, Chair recognizes them, they come up to a separate table with a microphone. Bickum added only during the public comment session; open it and close it. Stevens offered to help set up the next BRC meeting and Bickum to email a time to set it up. Stevens said this will be a formal process, applicant will have a stenographer present.

Greenwood said all of the members and alternates should look at the disqualification standards. The NH state disqualification standard is only advisory. There is no real way to disqualify a planning board member except for malfeasance of duty; so, if you don't attend meetings, you can be disqualified. The disqualification statute says if you are a planning board member, you shouldn't sit on something if you have an interest in an issue that is different from other residents in Town. And can you meet the standards for a juror? Juror standards from The Planning Board in NH handbook (on file).

Matson said he doesn't have a financial tie to this whatsoever. Finan said that's only one of many. Greenwood said another is abutter status. If you are an abutter to the property, no matter if you feel you are unbiased, the supreme court has said you're not similarly situated; you are differently situated than other people in Town. The Town of Brentwood the abutter requirement is 200', the state's requirement is a direct abutter or across the street or a stream. Brentwood has a higher standard.

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Kleinman read a line from Buckley's NHMA email on disqualification (on file): "...should carefully consider whether it would be prudent to recuse. In making a decision, could seek the guidance of fellow board members by asking for an advisory vote..." Greenwood said he also mentions it was concerning. But an advisory vote is the only mechanism in the disqualification statute, there can be an advisory vote by the Planning Board to let a member know if the rest of the members think that their situation creates some reason for disqualification. But even if that vote is 6 to 1, it is still the decision of the member themselves as to whether they should recuse themselves. The problem being a judge on the other end of this thinks if it was a proper decision or not. If someone doesn't recuse, a judge could say they should have, and remand it back to the Town. It's an important consideration for Planning Board members to reflect on with participation on any given hearing. Finan said it's an ethical standard and if you aren't sure, you could approach the Board to get an opinion. You make that decision, but that decision could cost the Town thousands of dollars in legal fees.

Matson said he's willing to do what's best for the Town. Kleinman didn't understand the fee requirement. Kleinman referenced the NHMA email from Buckley regarding fees, "This would likely cause the Town of Brentwood to be required to pay the applicant's attorney's fees on appeal to the Superior Court..." and didn't understand the basis for these fees. Greenwood said most of the pleadings he's seen include the request by the plaintiff that there be payment of attorney's fees, in land use law it rarely happens; decisions usually say I'm not granting attorney's fees.

Matson said he's made statements on the record of expressing his opinion and his opinion is in line with the Town and with other people, but he gets it and will do what's best for the Town.

Aldred-Cheek had read something about "before a formal application, so before jurisdiction is invoked, nothing that any member says would disqualify them from considering the application." Greenwood thought that it was regarding the preliminary procedures and those are specifically non-binding discussions. Board members can ask questions and it's a give and take, it's non-binding and there are no decisions. Regardless of whether Kate asked 90 questions during design review as a Planning Board member about the environmental issues, that can't be held against her once it comes for the formal application. But that protection is to Planning Board members only, not those that aren't Planning Board Members.

Kizza asked about one of the juror standards (on file)" Is employed by or employs any party in the case". She is a civil engineer, and her company is contracted as a subconsultant to other engineers or sometimes her company contracts subconsultants. If there is a company that provides a study or report and she's under contract with them through work, would she need to recuse herself. Greenwood said if you are contracted to do work with that firm, then yes. But if they are contracted with your firm on a project that you don't have anything to do with, if you explained those circumstances, that's transparency. Kizza added would that change being a shareholder. Greenwood said yes it would, because the statute says if there is some interest gained by the Planning Board member by the result of the process. Be up front about it. Kizza will bring it up to the Board if it ever happens. Kizza said Ned and I live on the same street, one street over, not direct abutters within the 200' radius but we are friendly with people on Fellows Road, who have a group opposed to the project. One of the neighbors reached out to her for her civil engineer experience to make sense of the Traffic Impact Analysis submitted. She explained site distance etc. and never gave an opinion. Would that be a problem? Greenwood didn't believe so, a discussion between neighbors.

Aldred-Cheek asked about having the Town's attorney present on April 7th. Stevens said it's expensive, let's lay out the facts of the case first. Greenwood mentioned that when he met with Mr. Falzone and his engineer on March 16th, Mr. Falzone offered to pay for the Town's legal fee to have representation

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present. We have professionals at his expense now reviewing the hydrogeological study etc. It would be the same thing, a peer review. Stevens said the invoice comes to the Town. Kleinman was against it. If someone was paying my fee and I was counsel to the Town and potentially had an adversarial relationship, and that other party is paying my fee, he wouldn't be able to accept that, a violation of the rules of professional responsibility. Stevens said but there is separation. The Town may engage agents, an attorney can be an agent, an engineer, fire consultants etc. are agents and do peer reviews. The bill comes to the Town of Brentwood. Bickum clarified that the money would be paid to the Town by the applicant and then the attorney's bill comes to the Town and is paid by the Town. Aldred-Cheek said the obligation is still to your client, the Town. Stevens agreed. Kleinman said there's an appearance of impropriety. Greenwood and some Board members disagreed. Kennedy asked how do we pay other professionals then? Aldred-Cheek tabled this and wanted to talk to Walter and see what he thinks. Greenwood will call Walter Mitchell. Stevens asked so if Walter sees no conflict does the Board want Walter at the meeting or not? Greenwood values having Walter participating. Why not early on, have someone counsel us. Kleinman didn't disagree but not at Falzone's expense. Greenwood said and Walter may agree with that. Stevens asked if the Board want to assume the cost. Other legal questions come up and we don't have that kind of money. Aldred-Cheek said whatever we do, we need to document, and she would like someone there to represent the Board. Stevens suggested Greenwood speak to Walter about how he feels about it and if he is available on April 7th to attend. Then it can be confirmed at the March 31st work session. Greenwood will call Walter tomorrow. Stevens added it would be good to have Walter there to advise the Board.

Zoning:

Board discussed zoning items from notes taken in late 2021 and YTD (on file). Kennedy asked about #1.

#1. Define rural character?

Aldred-Cheek wanted to do a mini-research project for something supportable and she can come back to the Board with some ideas on how to quantify or write something. Stevens added and that would pass legal muster. Locke-Parks read her document: Rural area is a geographic area outside towns and cities. Low population density, agricultural areas and forested areas, resource extraction. Subject to boom-and-bust cycles. Rural areas in the U.S. definitions vary in different parts of the U.S., tend to be older population and poorer areas. This was Brentwood 30 years ago. Aldred-Cheek said rural character is something different and the economy has changed. We're not Montana or a mining town. That will be the challenge, the character part. Stevens added it's a process and any final verbiage would need legal review prior to going on the ballot. Finan said it's subjective; compared to a larger city, it seems rural but if you're from Colebrook NH, it might seem busy. Kizza asked about discussing this with the Economic Development Committee. Kennedy said be careful with that definition because then every decision is tied to that definition. Embed it into the ordinance or it will be a noose. The definition will be so gray, rural character has to be in the ordinance. Aldred-Cheek said how do you use it as a measuring stick. Kennedy asked how does economic development meet rural character? Faria said they want stars, not sidewalks and streetlights. Kennedy said 2 acres 200' of frontage is a good start. Locke-Parks wanted to leave some trees in developments. Aldred Cheek mentioned dark sky compliant tied to rural character. Stevens said there is usually a lighting page in an application, you need some for safety. Board to review again.

#2. Discuss Multi-Family ordinance and workforce:

Aldred-Cheek suggested waiting on workforce housing because the Regional Planning Commission is doing a housing study, economic development will look at it, interns are doing research and gathering some facts. Stevens said it means greater density and people don't want greater density. Affordable = greater density. There needs to be some education on this, but some will say it's not rural character.

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Board discussed. Kennedy said workforce it's restricted to only selling if for about 15% more than what you paid for it. And a neighbor that isn't in a workforce home, can sell it for a lot more. Stevens said the issue is people see developments coming in as lowering their net worth. Kennedy said it doesn't though. Greenwood said as a result, we're not in compliance with state law. A developer could come in and say you don't have workforce, take us to court and a judge could provide a builder's remedy to allow them to do it disregarding the current zoning ordinance. Stevens said workforce is tied to consumer price index. Greenwood said at the time, affordable was about \$289,000. The problem is this is one of the areas with the most heated housing market, since 1987. We don't have the infrastructure for truly affordable housing because we rely on septic and wells and incorporate those costs. Unless you can get a developer that sees the value of smaller homes, we will chase our tails forever. Stevens said kids working at Highland can't even afford to rent in this area. Greenwood some towns, the community purchases the land so if you remove the land cost, you have defeated the affordability issue. But in NH we don't do that, but in lots of places, do a bond, purchase 200 acres of land and work with a developer who will build 1,100-1,200 sq. ft. houses. In the 60's you probably lived in one. Aldred-Cheek commented that in Exeter, they built 1,200 sq. ft. condos but they're over 800k.

Bedard asked why the multi-family district is a limited area. Greenwood said it came about because the Town got involved in a lawsuit with a developer who wanted to build apartments and the Town didn't allow it. He took us to court. Greenwood, then a new planner, had said we have to provide a range of opportunity and have to do a multi-family district. It doesn't work because what we allow in the ordinance works against the density. Why doesn't the Town get into the land development process and buy land and work with developers, so the land cost is taken out. Community sewer systems can be done but it's the land cost \$130,000 or more for 2 acres with nothing on it. Board discussed bedrooms by soil type, state has 6 units, we have 3 and 6 makes the economics work. Greenwood said children are the enemy in municipal planning because the method for paying for schools in NH, only one, property tax. Your children become the enemy of the municipal mindset and that's wrong. Bedard said the school costs are fixed even with fewer students. Kennedy said senior housing offsets the school costs. Aldred-Cheek would like to get more facts, density, and education.

Aldred-Cheek next time around, need to propose something for workforce housing. Greenwood said state standards have to be followed. Stevens said it has to be an overlay area across Town; all zones; the multi-family zone isn't large enough to meet the state requirement. Aldred-Cheek wanted to focus on workforce and rural character for now.

#6. Reduce 2-acre lot size and 200' of frontage? 1 acre with 100' of frontage for example. Implications? Stevens said lot size by soil type is still referenced in book. Bring back lot size by soil type is supportable; 2-acre minimum, why is this necessary? Kennedy likes 2 acres and 200' of frontage.

#9. Board discussed some of the Fire Chief's suggestions (on file). Stevens said Conservation Commission should review. Stevens doesn't agree with 40' or more wide road widths. West agreed with 2nd egress. Board discussed road width, hammerheads, cul-de-sac and emergencies. Aldred-Cheek asked if the Fire Chief could come in to discuss in a couple of months.

#11. Revisit 50' ROW on lots formerly agricultural use and only buildable with a road put in. Address that it is corrective on lots with 50' only pre-date 2000' on these marked non-buildable, flag lots. Greenwood said bring forward those lots that exist, about 8, and brainstorm about how to deal with them. Stevens said but the Town attorney had said it was spot zoning. They didn't pre-date zoning, so that's why they were marked unbuildable; if they did this, you understood the terms, non-buildable with a 50' row for back land, agriculture or when you put a road in., Stevens owns a lot like this. Greenwood said he hopes they can find options.

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Locke-Parks mentioned farm and ranch programs, grants. Stevens suggested she check with the Conservation Commission. Bickum said there is a new paragraph to RSA 674:16, short term and vacation rentals (on file). There is nothing about short term rentals in the ordinance. Stevens suggested Kleinman review.

Discuss any changes/additions to Subdivision and Site Plan Regulations / Excavation Permit. Anything to be changed or added would need to be legally notice in paper for adoption at a later date.

1. **Revise Site Plan Regulations** and application requirements to include”
 - a. Aerial photo of the site? From the Skaff/Chart Industries approval minutes Feb. 17th, 2022: *Kennedy and Greenwood discussed the aerial plan and thought it may be a good idea to incorporate that into the regulations at some point. Cheney confirmed that an aerial drone was used to do it, Doucet Survey did it.* Note: This would be an extra cost for the applicant to a survey company that can do this. Kizza said it could be done with a drone, not sure of costs. Greenwood mentioned Google Earth images, within one year, for representation of the site. Greenwood to put the language together and it would have to be voted on at a public hearing.
2. **Review subdivision and site plan regulations** about registry requirement to have registry preview plans. Registry isn't doing this anymore. Greenwood wanted to hold off on any changes.
3. **Excavation permit fee.** Change from \$50 to \$250. BOS collect the money. Greenwood said PB does startup for a gravel permit request. Change to be noticed with aerial photo language.

Aldred-Cheek gave an update on Economic Development with interns to meet with Greenwood. Stevens said RPC maps, have better lot lines and then blow them up to be reviewed by the interns; look at soils and wetlands.

Board discussed if there was a need for an officer at the April 7th meeting or not. Most of the Board wanted to have an officer, Kleinman and Matson were against it. Aldred-Cheek said the new chief expressed interest in the EDC she could reach out to him and see if he wants to stop by that night, introduce him to people. Aldred-Cheek will call the police chief. Board discussed rules for a productive meeting, applicant presents first, then Board asks questions, then open up to public comment, come up one at a time, state name and address for record, close public comments and Board continues any discussion.

Matson asked about fiscal impact studies, how do you determine if a project needs it. Greenwood said it's up to the Board to decide that. We have only required one, Falzone's project on Mohawk. It's a series of interviews with department heads and the Board could request it. Stevens said ambulance service calls in senior developments were less than 9% of the calls in Town, Finan has the data. Kennedy said 64% was residential.

Motion made by Finan, 2nd by Stevens, to adjourn at approximately 9:02 p.m. All were in favor. Motion carried.

Respectfully submitted,

Andrea Bickum,
Administrative Assistant,
Brentwood Planning Board