

**Brentwood Planning Board  
Minutes  
March 3, 2022**

<b>Members</b>	Bruce Stevens, Chairman	Mark Kennedy
<b>Present:</b>	Jon Morgan, BOS rep	Doug Finan
	Kevin Johnston, Vice Chair	Paul Kleinman
	Kristin Aldred Cheek	
		Town Planner, Glenn Greenwood

**Meeting Location:** Brentwood Recreation Center, 190 Rte. 125, Brentwood, NH 03833

**7:00 pm: Open Public Hearing:** Chairman Stevens opened the public hearing at 7:05 pm.

**7:00 pm:** Utility Work on a Scenic Road Application: Applicant Eversource for utility work to trim and remove trees and brush adjacent to and beneath their power lines along the following scenic roads: Pickpocket Road, Prescott Road, Haigh Road, Lake Road, and Rowell Road East & West, in Brentwood, NH 03833 on tax maps 207, 210, 211, 212, 213, 214, 218, 219, 220.

Present: Robert Berner, Eversource Arborist; Terry Cooper, work planner with Asplundh. No abutters were present.

Cooper explained that the application is for trimming and removing branches and damaged trees along the referenced scenic roads adjacent to and beneath power lines. He inspects and tags the trees to be removed starting at the bottom and working his way up. He looks at the root structure for rot, plow damage, insect damage, woodpecker holes, fungus, and dead wood over the lines and if the crown of the tree is dying off, he tags it for removal. Eversource comes through every 4-5 years to do this so if he sees a tree he doesn't think will last that long, he will tag it. They trim approximately 8 ft from the line/conductor and approximately 10 ft from the trunk; but that depends upon the lean of the tree and the crown, which could hang 70% over the line or be touching the line. They try to stay within the 8-10' but if a tree will affect the line, it gets tagged. Aldred-Cheek asked if there is supervision as NH Co-op eyeballed their cutting with little supervision. Cooper can't comment on NH Co-op, but he only supervises the work he has tagged but he supplies the crew with the list of tagged trees, so they know what to cut, who owns what and what's to be involved; they don't want any surprises and want the Town and the property owners on the same page. Berner said that Eversource supervises the work, they have a full-time foreman. Stevens said the issue with NH Electric Co-op is that they own ROWs on private property. Some residents were concerned when extensive cutting was done but Eversource doesn't own poles on public property outside of the Town's ROW. Berner said that their policy is to inform property owners of the work by sending or leaving a card about 45 days before the work begins. The property owners check off the card granting their permission or can call for a consultation; they encourage dialogue, preferably before the work starts. Cooper added that the card is for the trimming but he's out talking to the property owners regarding trees on a tree-by-tree basis, either on the phone, email or face to face. Berner reiterated that brush removal is 8 ft. on either side of the conductor. Kleinman asked if there was a mechanism for resolving any disputes. Berner said if the card isn't checked off or returned within 45 days, it's implied consent per RSA 231:172. If a property owner has a concern, they try to negotiate and reach a middle ground. If they absolutely refuse, they consider that a refusal and wouldn't do the work; their work is based on owner's permission. Berner answered Liz Faria's question that the PUC only encourages all utility companies to trim to the same standard and that they send a 45-days' notice, but the work could take place 3-4 months after that.

Motion made by Morgan, 2<sup>nd</sup> by Finan, to accept the maintenance report from Eversource and to approve and proceed with the maintenance work to trim and remove trees on scenic roads. All were in favor with Kennedy opposed. Motion carried with 6 for and 1 against.

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**7:00 pm: 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.

The applicant requested a continuation to March 17, 2022.

Motion made by Stevens, 2<sup>nd</sup> by Finan, to continue the noticed site plan review application for W.A.D. Property Management, LLC to **March 17<sup>th</sup>, 2022, at 7:00 pm at the Town Office**. All were in favor. Motion carried.

**7:00 pm: Site Plan Review Application:** Applicant Joseph Falzone; Owner Gordon Wilson, 41A Mill Rd, Brentwood, NH 03833, tax map 217.048.000; and Owner Conrad Marcotte Trust, off Mill Rd, tax map 217.052.000. A proposal for an age restricted development consisting of approx. 75+/- units (single family detached dwellings) condominium ownership with associated drainage, roads, utilities, and other amenities; active and passive (foot trails) recreation areas within the proposed development and a club house. Properties are located within the residential/agricultural zone.

Present: Applicant Joseph Falzone; Scott Cole, Senior Project Manager with Beals Associates for the applicant; Attorney Donald Borenstein of Johnson and Borenstein, LLC out of Massachusetts for the applicant. *Other professionals were in attendance as well but weren't identified.*

Abutters & Residents present: Mark Young 47 Fellows Rd; Bill Dale of Fellows Rd; Jill Dehetre of 50 Mill Rd.; Eric Turer of Peabody Dr.; Corey Beem of 172 S. Rd; Kate Locke-Parks; Bob Stephens, Chairman of the Conservation Commission; Ward Byrne; Steve Hamilton of Scrabble Rd; Liz and Bill Faria; Kim Leo. *The site plan review application meeting was well attended but many residents spoke during the meeting without identifying themselves for the record.*

Stevens opened the hearing. Greenwood said he's reviewed the application and plan set submitted. There are zoning issues that can be addressed but are not addressed in these plans. RCCD, who views wetlands & soils and proves out the density calculations and the Town Engineer's reviews have not been received yet. He doesn't think the application and plan should be considered for acceptance yet, which is what invoking jurisdiction does. There are a lot of abutters present but without invoking jurisdiction, the application isn't formally before the Board and a lot of discussion shouldn't take place, other than addressing the administrative items. Kleinman responded that the Town regulations provide in section 7.4.1 that *should an application be found incomplete, the Board shall notify the applicant requesting the necessary documentation be submitted and informing the applicant that no further consideration of the application can be made until the application is complete.*

One of Greenwood's comments was regarding regional impact (on file). Greenwood said the Board should consider whether the project could be of regional impact per the RSA's, determine why the project is of regional impact and which municipalities are potentially impacted. Then notice has to go to those communities allowing them abutter status and give them an opportunity to provide comments. The notice requirement is 14-days, not including the day it's sent out or the public hearing date so it's actually, 16 days and that notification, upon the Board determining who it impacts, should happen quickly per the statute. The Board could discuss that tonight. Kleinman disagreed with Greenwood and felt that invoking jurisdiction should happen first. Greenwood disagreed and said the statute says upon receiving an application and as soon as possible, the Planning Board should make that determination, it doesn't reference jurisdiction. Greenwood read the RSA on page 45 in the NH Planning and Land Use Regulation Book.

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**36:56 Review Required. –**

- I. *A local land use board, as defined in RSA 672:7, upon receipt of an application for development, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact.*

Greenwood continued this doesn't tie this to RSA 676:4 the Boards procedures on plats. The minutes of the meeting where the Planning Board determined it of regional impact, also have to be submitted to those communities. Stevens suggested some towns which could be affected, Kingston, Fremont and Exeter.

Bob Stephens said this project in all likelihood will impact the Exeter River which flows to the Squamscott River which flows into Great Bay, which is on the national list of impaired waterways, the most polluted on the East Coast. Everyone along the Exeter River to Great Bay should be involved. Many abutters and residents agreed. Stevens said it's unusual to involve the entire southern part of NH; there is development in other towns along that same area and Brentwood isn't notified in that process. There should be some reasonableness but agreed that it should be noticed as a project of regional impact. Abutter Young said but Brentwood is upstream. All the other towns that border the Exeter and Squamscott rivers to Great Bay should be notified as there will be an increase in nitrogen from the development; 80 houses. Abutter Dale agreed, adding it's a shared aquifer, river, and nitrates and water quality will have impacts in Great Bay. Stevens said every town in the watershed has an impact on Great Bay, but Brentwood doesn't receive regional impact notices from the entire watershed area, again, what is reasonable and if the RPC feels it's important to let Newmarket, Newfields and Portsmouth know, they will most likely inform us once they've examined the project. NHDES will also review and govern wells, septs and test pit data is reviewed by RCCD (*Rockingham County Conservation District*).

Kennedy asked Bob Stephens how far he considers it of regional impact. Stephens said all the way to Great Bay; downstream where surface water will be impacted. This will impact surface water in the Exeter River, Squamscott River and Great Bay, under the law, reasonable or not. We aren't on Great Bay so other towns wouldn't notify us and if towns don't notify us out of negligence, it doesn't mean we shouldn't notify them. This is on the river, the drainage will go to the river, it's different from development done decades ago downstream in Exeter and Stratham. This is right on the river.

Stevens commented to say the drainage goes into the Exeter River is inaccurate; the plan shows surface water treatment. Stephens replied, it still goes into the river. Hamilton added that the Planning Board with Rob Wofchuck was instrumental in a 4-year water monitoring system which checked the water in and out of Brentwood. The push for that was the cleanup in Great Bay and the costs in Exeter, Portsmouth; millions of dollars on treatment plants and it was to protect Brentwood showing we weren't adding to it. He agrees that anyone along the Exeter River should be notified about this; 80 houses on the river, it will impact the river greatly and impact Exeter and Stratham and what is our cost down the road to have to clean up Great Bay, it could come back to bite us. Many residents agreed.

Morgan asked about the proposed senior housing ordinance to be removed, currently on the ballot, so if the Town votes to remove the 55+ language, wouldn't this be moot? Several members said no. Stevens explained again that it wouldn't impact this project because there were two design review hearings on it already. There is an RSA; within 12 months of the notice for discussion, including design review, the applicant is held harmless from any zoning changes.

Stevens replied the RPC (Rockingham Planning Commission) will also be involved as they will be notified of regional impact and Greenwood added that they would contact only those communities that have

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been determined to be impacted by the project; a projects of regional impact committee help in the review. Greenwood believes there are two areas in the regional impact statute that apply here; 1) impact on transportation networks and 2) the proximity to aquifers or surface waters which transcend municipal boundaries. Those are the two for a declaration. Impacted towns would be Exeter (river and drinking water), Fremont (transportation network) and possibly Kingston.

Falzone said the ordinance requires a hydrogeological study, that scientist is here. You're going to send it out for review. They have to look at the septic systems, which are not anywhere near the river. They all exceed 250' feet. Why are we waiting to get those studies that would tell us to do X, Y and Z. Maybe we have to do more or maybe it proves scientifically something different that we don't know. Stevens agreed that they don't have all of that information yet, but Glenn's thought was to start and give these towns notice but they could hold off; it would extend the process. Falzone says it doesn't hold up the acceptance of the plan. Turer asked how much latitude there was for the developer to make modifications before this is finalized and should the other towns receive regional impact notification on a plan that is not settled, could expand or shrink. Stevens said it only grants the communities affected abutter status so the more notice the better; they could be involved in the entire process, which could take 3 or 4 months.

Motion made by Kennedy, 2<sup>nd</sup> by Stevens, to deem the Mill Falls Road, "River Run" 55+ housing project, proposed by Joseph Falzone, a project of regional impact with any and all towns bordering the Exeter River down into Great Bay being notified and the Board is doing this even though jurisdiction has not been invoked. All were in favor. Motion carried.

Falzone said felt that the points in Greenwood's review should be discussed for when they come back. They don't need to satisfy any of these conditions to be accepted. The Board could invoke jurisdiction and he would request an additional 65-days then they could discuss what needs to be addressed. Greenwood didn't believe that the plan set provided complied with the requirements for this application and for those reasons considering the application in the public forum is premature. Stevens agreed with Greenwood and suggested Falzone and his engineers come see Glenn on Wednesday. Stevens explained the process again to the residents. Brentwood's engineers will need to review the applicant's submission and reports. There needs to be time to evaluate everything before the Board makes a decision. Invoking jurisdiction, accepting or receiving the application (not making a decision on the project) as complete starts the 65-day clock, a state statute, to get the facts, discuss the application, evaluate, determine if additional reviews or studies are necessary. The applicant can request another 65-days but doesn't need to start all over, it can be continued. Stevens asked for a motion to continue the hearing and confirmed that a mocked-up plan provided by a resident in the audience, that the Magnusson property is not part of this application. Someone asked about disclosure on potential conflicts. Stevens answered it would be vetted in front of the Board, put your issue in writing, sign it and present it to the Board for discussion.

Kleinman thought it shouldn't be continued. Stevens said we just continued W.A.D. Property Management. He didn't have everything, so the Board just voted to continue that hearing to March 17<sup>th</sup>, 2022. Aldred-Cheek thought it would be helpful to have it re-noticed due to the number of attendees. Stevens said they were noticed and are here tonight. Kleinman reiterated the regulations on incomplete applications, not invoking jurisdiction, then applicant resubmits, and it's noticed again. That formalized process should happen.

Motion made by Kleinman, 2<sup>nd</sup> by Morgan, that it should not be a motion to continue the hearing. The application should be found incomplete; therefore, no jurisdiction is being invoked, and the application should be resubmitted and noticed again; the formal process. Morgan, Kleinman and Aldred-Cheek were

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in favor; Stevens, Johnston, Finan and Kennedy were opposed to having it resubmitted and re-noticed and wanted the hearing continued to a later date. Motion failed. (3 for and 4 against).

Attorney Borenstein, for the applicant, said that last motion about not continuing the public hearing session on the completeness of the application would be very unusual in his experience. You've already continued other matters and suspects that you routinely continue matters of the same circumstance. Stevens said it's been their history of 20+ years to continue hearings. Borenstein said you've already voted on regional impact to notify every town between here and Portsmouth, and suspects that's something the Board hasn't done before. Before the Board takes a 2nd step for something else the Board hasn't done before because of this project, consider that. To require this applicant to re-notify again, when it's never been done before, is an unusual step that will be noted. Kleinman said it's not unusual to follow the regulations. Borenstein said he would direct his comment to the Chair. Stevens agreed, having been on the Board for many years, that has been the practice (*to continue hearings*). Greenwood agreed. Stevens said the notification requirements are well laid out by statute. Morgan said Boards change and now there is have a legal expert on the Board. Borenstein asked if Town Counsel was present. Stevens said no.

Aldred-Cheek was concerned that there were a number of people here, it's not usually held in this location and usually there isn't a large turn-out, so it is different. Kennedy understood her point but said we've always done this. It's not illegal to do it the way we have always been doing it. Greenwood agreed. Kennedy continued I respect Paul but is he doing this just because of this application? Finan said that's a precarious road. Kennedy said doing something strictly because of who he is and what he's doing and I'm not doing it for some other application, I need to be consistent and can't treat this applicant any differently than any other applicant. Aldred-Cheek wanted it on record that it's not because of this particular project or the person applying but in terms of a public process and listening to stakeholders. She respects the fact that there are a lot of people here and we should do what we can, so people are aware; it's different.

Steven's opinion was that it's not contrary to state law to proceed with a continuation and it's been the way it's been done for over 20+ years.

Falzone asked to be on the March 17<sup>th</sup> hearing. Greenwood said the regional impact notification needs to go out first. Stevens said those notice requirements have to be met so it would be April 7<sup>th</sup>.

Stevens reiterated to the residents of the process, an administrative decision. The Board is not discussing the details of the project tonight, no votes on the project, we're not formally accepting the application to start the 65-day clock. This vote was to say whether or not the applicant should resubmit or not and go against our standard process of continuing the hearing, which has been done for 20+ years. An unidentified resident was upset that the motion was made, there is further discussion amongst the group that's present, and the motion should be delayed until such time as the discussion is completed; you did not do that. Greenwood said that's not true. The only discussion that happens when a motion is on the floor is between the members of the Board, not between the members of the public. Dale asked if the hearing is continued how do abutters that aren't here know about it. Bickum said it's posted on the agenda. Someone commented it's also online.

Motion made by Johnston, 2<sup>nd</sup> by Finan, to continue the public hearing for Joseph Falzone's Mill Road 55+ development project to April 7<sup>th</sup>, 2022, at 7:00 pm at the Brentwood Recreation Center. All were in favor with Morgan opposed. Motion carried. (6 for and 1 against).

Stevens closed the public hearing.

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**7:00 pm: Lot Merger:** Applicant/Owner Sarah Gay, 19 Sherman Ave., Brentwood, NH. Intent is to merge her two lots into one lot represented by 19 Sherman Ave, tax map 214.104.000 for tax purposes. The single-family dwelling is lot 214.104.000 with approximately 3.1 acres. Tax map 214.103.000 is approximately .75 acres with a shed on it. The lot merger would create one lot with approximately 3.85 acres. Bickum said Sarah Gay would like to merge them in order to receive one tax bill. Stevens said they are lots of record and it wouldn't meet the dimensional requirement to add another house, it's not large enough. It cleans up the deed, one inclusive tax bill.

Motion made by Finan, 2<sup>nd</sup> by Kennedy, to approve the lot merger for Sarah Gay for lots 214.104.000, 19 Sherman Ave. and lot 214.103.000 with only a shed, creating one lot referenced by tax map 214.104.000. All were in favor. Motion carried. Stevens signed the lot merger form. Morgan signed the lot merger form on behalf of the BOS and the Assessor. Bickum will mail it to the registry of deeds.

**Board Business:**

The Board signed the manifest.

**CA Extension:** Request for a 30-day ext. for Callahan 30-seat restaurant, set to expire on March 13, 2022. *Chris Berry email 2/28/2022 (on file).* Tax map 209.004, site address 292 Rte. 125. *Originally approved at the Feb. 20<sup>th</sup>, 2020, PB meeting for a 120-day CA to June 19<sup>th</sup>, 2020, with subsequent CA extensions requested.*

The Board discussed a 60-day extension and that it should be the last extension since this is now over 2 years old.

Motion made by Johnston, 2<sup>nd</sup> by Finan, to grant a final and last conditional approval extension, for 60-days to May 12, 2022, for the Callahan's 30-seat restaurant conditionally approved site plan proposal. All were in favor. Motion carried.

**Sig Sauer:** Bickum handed out the Brentwood Abutter Notice Received from the Town of Epping–March 10<sup>th</sup> Sig Sauer zoom meeting on a parking area. Brentwood has also received a SPR application, and it's been noticed for the March 17<sup>th</sup> hearing. Bickum will also email this Epping PB hearing notice to PB on Monday, 3/7/2022.

**PB Alternate:** Kathleen Locke-Parks would like to become an alternate to the Planning Board; she has attended a few hearings and submitted an email of interest.

Motion made by Stevens, 2<sup>nd</sup> by Finan, to appoint Kathleen Locke-Parks as an alternate to the Planning Board for a 3-year term. All were in favor. Motion carried. The Chairman and the Board signed the appointment slip for the Town Clerk.

**Approval of Minutes:** February 17, 2022

Motion made by Aldred-Cheek, 2<sup>nd</sup> by Morgan, to approve the minutes from February 17, 2022, as presented. All were in favor. Motion carried.

Board discussed the EDC interns to present to the PB for May 5<sup>th</sup>. Bickum said Bruce Mayberry will attend the March 31<sup>st</sup> 6 pm work session via zoom to present the draft impact fee assessment first. Once a final is received and okayed, it can be noticed to be adopted at a later date. Greenwood suggested they ask Mayberry if he can recommend another consultant since he is retiring.

Motion made by Johnston, 2<sup>nd</sup> by Aldred-Cheek, to adjourn at approximately 9:05 p.m. All were in favor. Motion carried.

Respectfully submitted,

Andrea Bickum, Administrative Assistant, Brentwood Planning Board