

**Brentwood Planning Board
Minutes
November 18, 2021**

Members Present:	Bruce Stevens, Chairman Jon Morgan, BOS rep Kevin Johnston, Vice Chair Kristin Aldred Cheek	Mark Kennedy Doug Finan Paul Kleinman Alternate, Brian West – Not voting
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Town Planner, Glenn Greenwood

Location: The Planning Board met at the Brentwood Recreation Center at 190 Rte. 125, Brentwood, NH to accommodate a large number of attendees.

Open Public Hearing: Chairman Stevens opened the public hearing at approximately 7:10 pm.

Continued Site Plan Review Application: Applicant: Skaff Cryogenics, a division of Chart D&S; Owner: Prefontaine Properties, Inc. Property is located at 48 Industrial Drive, Brentwood, NH 03833 in the commercial/industrial zone, referenced by tax map 205.002.000. Intent is to construct an approximately 60' x 65' sq. ft., 75' in height, high bay building and a 20' x 60' sq. ft. low bay connector building expansion on the northern side of the existing Skaff Cryogenics building. The 75' high building will be utilized for the handling, erection and rehabilitation of up to 45' in height, tall cryogenic tanks. A concrete storage pad and new crane rail system is proposed to be constructed external to the high bay. *Jurisdiction invoked on 9-16-2021.*

Motion made by Kennedy, 2nd by Finan, to continue the site plan review application for Skaff Cryogenics, a division of Chart D&S to December 16, 2021, at 7:00 pm at the Town Office. All were in favor. Motion carried.

Continued Subdivision Application: Applicant S&H Walker Woods Holdings, LLC; Owner: Debra Sanborn. Intent is to subdivide lot 206.090.002, a 24.48-acre lot, into two buildable lots. Property is located on Deer Hill Road, Brentwood, NH 03833, in the residential/agricultural zone, referenced by tax map 206.090.002. *Jurisdiction invoked Oct. 7th, 2021.*

Present: Tim Lavalley of James Lavalley Associates for the applicant. No abutters were present.

Lavalley said originally the 2-lot subdivision proposal had a driveway easement for the larger 21.64-acre parcel crossing over the smaller 2.8-acre parcel to avoid going through the Public Service (PSNH) ROW and the Board asked them to change that to see if a driveway could be put the PSNH ROW. They are discussing a Joint Use agreement with PSNH now; it's in process. State subdivision approval was received.

Motion made by Johnston, 2nd by Kennedy, to continue the subdivision application hearing for S&H Walker Woods Holdings, LLC to December 16th at 7:00 pm at the Town Office. All were in favor. Motion carried.

Site Plan Review Application: Applicant/Owner: The Mastriano Group, LLC. Intent: A proposed parking lot for auto sales. Property is located at 180 Route 125, Brentwood, NH 03833, referenced by tax map 216.028.000 in the commercial/industrial zone.

Present: Tim Lavalley of James Lavalley Associates; Chris Mastriano. No abutters were present.

Motion made by Kennedy, 2nd by Morgan, to invoke jurisdiction to accept the application as complete. All were in favor. Motion carried.

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Lavalle gave an overview. There is an existing dog kennel day care and an existing dwelling on the property, which would be a car sales office with a car lot around it, around 2.77 acres. They can address Greenwood's comments (on file) but Greenwood had asked about green space within the parking lot and Lavalle is seeking direction from the Board. Greenwood said the site plan regs state that for more than 30 vehicles, there is required interior landscaping. There is a requirement for a side buffer which isn't incorporated so those 10 spaces would need to be replaced with a 25' buffer area instead. Lavalle said he can make that work, there's room to move those. Stevens asked about a display area. Lavalle said the total width of the pavement is 58'. Stevens asked about a vegetative strip between the rows, there's only 50' to work with. Maybe 10-15' of vegetation, low shrubbery. Lavalle suggested small trees like at Heavenly Donuts. 50' from edge of pavement is lawn but it's the state's ROW. Morgan asked about any future plans for service and plans for a fence. Mastriano said no to both. Stevens added TEC has a lot of comments, as does Glenn. Greenwood suggested Lavalle look at the site plan regulations on parking on page 21 and 22.

The Board scheduled a site walk of the property at 180 Rte. 125 for Sunday, November 21st at 9 am.

Motion made by Johnston, 2nd by Kennedy, to continue the site plan review hearing for the Mastriano Group, LLC to December 2nd at 7:00 pm at the Town Office. All were in favor. Motion carried.

Continued Design Review: Applicant Joe Falzone; Owner Gordon Wilson. A proposal for an age restricted development consisting of approx. 71 units and 3800' of proposed road. Property is located at 41A Mill Road, Brentwood, NH 03833, referenced by tax map 217.048.000.

Present: Applicant Joseph Falzone

Applicant Falzone agreed with the Board to close this continued design review hearing for the 71 units.

New Design Review: 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. 80+/- units with underground utilities, access road and on-site well and septic. Properties are located within the residential/agricultural zone.

Present: Applicant Joseph Falzone; Scott Cole, Senior Project Manager with Beals Associates for the applicant; Attorney Mark Johnson with Johnson and Borenstein, LLC, and Luke Hurley of Gove Environmental.

Abutters and Residents present: Bill Dale of 57 Fellows Rd; Ryan McCarthy 62 Fellows Rd; Mark Young 47 Fellows Rd; Carol Belliveau 46 Mill Rd; Mark Hanik 36 Fellows Rd.; Rob Wofchuck; John Huntress of 488 Middle Rd; Al Belanger; Brandie Bolduc 13 Mill Rd.; Rebecca Davis of 224 Middle Rd. *This design review was well attended but many residents spoke during the meeting without identifying themselves for the record.*

Between comments at the meeting and resident emails (on file), concerns were voiced about maintaining Brentwood's rural character, the proposed location for this kind of density, the condition of Mill Road and increased traffic, aquifer protection area with concerns about wells and ability to replenish, septic systems, water quality, wetlands, wildlife, references to the master plan, removal of older homes, and requests for an environmental impact study, hydrogeologic study, traffic study, fiscal impacts, impact on emergency services, and declaring this a project of regional impact.

Stevens opened a new design review hearing, where no decisions are made by the Board.

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Cole gave an overview. This is a new application because the size and scope has changed. Approximately 6.5 acres of an abutting parcel adjacent to Fellows Rd. has been added, making this now a 76 +/- acre proposal. The density was recalculated and yields 80 units. The units are all at least a minimum of 50' apart; two cul-de-sacs, one about 3100' and the other about 600', providing about 45 acres of open space, in conjunction with the open space and the buffer left to the Fellows Rd subdivision. Private wells and septic's. Wells are more central and septic system in the middle is at least 700' from the nearest abutter on Fellows Rd. The one at the rear, a minimum of 560' to the nearest abutter/s. There are still 2 wetland impacts; utilizing an existing impact with a small culvert, culvert to be replaced and widened, 2nd impact in second half of the project, but this is still a draft. Mr. Falzone has reached out to professionals for the following studies to be done: Hydrogeologic Study by Steve Shope with Exeter Environmental, Traffic Study by Steve Pernaw, Luke Hurley's office will do the Wetland Study and Wildlife Study that are required by the state. They are here to review and discuss what and if any additional studies would be needed and review the scope of those studies.

Stevens said there were a number of emails sent in with concerns, an environmental impact study was a common theme (on file). Greenwood explained that the Town's ordinances address many of the major concerns: environmental impact study, aquifer protection ordinance, groundwater protection, floodplain ordinance, shoreland protection ordinance, wetland protection ordinance, and this proposal will require a hydrogeologic study. The ordinances in place address a lot but not wildlife, some sort of study that investigates the existing wildlife would be beneficial. The last time one was required was Robinson and Mohawk, one of Falzone's projects. This is 66+ acres with a long amount of Exeter River frontage in Town with no protection on it. The Town has conserved a lot of other land along the Exeter River. The Town has a good shoreland protection ordinance and will work with the developer on that. Letters also indicated a fiscal impact study, very seldom done, but it looks at the cost benefit for development. Lucy St. John had done one for Mohawk which involved interviewing the Town departments, budgets to determine a total impact. Impact fees are a set cost to new development; new lots or units are developed are charged an impact fee to raise capital for police, fire, schools and library. In this instance, the school portion is exempt but still offsets costs the community can incur from new development. Stevens said that money has to go to capital expenditures. Septic and wells are reviewed by the state.

Cole said NHDES will review approximate 125 gallons per day based on 2- bedroom units x the number of units. Brentwood also has a lot size by soil type and state reviews that, along with well radii requirements. This project will require an AOT (alteration of terrain) permit which NHDES now requires a full wildlife study for AOT and that will be provided.

Hurley explained that AOT permitting now requires every project before the AOT bureau have a wildlife habitat study to be reviewed by Fish & Game and is has to be done by a state approved wildlife biologist, he's on the list. It's a full assessment of the parcel of the wildlife habitat with the species lists from Fish and Game. It accounts for any potential species, 2-3 days to survey, report goes to Fish and Game, they peer review. AOT won't issue a permit until Fish & Game is satisfied with the wildlife report. Stormwater goes to AOT, wildlife goes to Fish & Game, wetland impacts go to the wetland bureau for review. Fish & Game likes open space, large corridors along the rivers and wetland systems, large buffers for travel ways for wildlife and considers migratory birds. It's also accounts for the potential of wildlife that could be there, not just the existing wildlife. A resident asked if this was a conflict of interest for Mr. Hurley, a consultant, to be hired by the applicant to do the report. Hurley said no, he's a private consultant. Some don't like the reports and Fish & Game peer reviews it. If there are any changes in the design due to Fish & Game's review, that would go back to AOT, back to Beals to make changes, then back to AOT, back to Fish & Game. Once F&G is satisfied, then an AOT permit can be issued.

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Greenwood referenced a Newfield's wildlife report Hurley had done. The Town was skeptical of everything presented by the applicant. Newfield's did a 3rd party review, even though Fish & Game had reviewed the report and it came out the same as Fish & Game. The Town has the right to go to a 3rd party reviewer if they feel it's necessary. A transportation impact study will be done, and the Town will have another transportation engineer review the study. Stevens said the Town's engineer, TEC, will peer review a lot of the engineering reports.

Kleinman was struggling with how 80 units conform to the "rural character" of the Town as set forth in the regulations. There's significant frontage along the river, the heart of Brentwood. How does 71 to 80 units conform to the "rural character." The Town of Hanover defines it as quiet, keeping building to a minimum, no traffic, environmental protection, farms. Cole said there are a lot of concerns and people don't like to see change but as an engineer, he's bound by the Town's regulations and there are strict criteria of what can and can't be done on a piece of land and the density it provides; the uplands with the added 6+ acres allowed for more units but these are preliminary numbers.

Aldred Cheek said there's a study called a health impact assessment; environmental impacts the human part is missing, how does it affect people's mental and physical health; lifestyle, potential accidents, it's about people, she can provide more information.

Abutter John Huntress is a realtor and said this will significantly change the character of the neighborhood. The value of the abutting properties will diminish in his opinion. How does the Town benefit? There a few places left in Town with this frontage on the river, why use it in this way? 80 units is greed. It will be streetlights, pavement, traffic, he can develop his land but thinks this is excessive; it comes down to rural character and the interpretation of it. Stevens is looking for the framework in place to determine rural character, which may be the problem.

Falzone said he understands they will need to address rural character; there can be a section in the by-law that says something different, and have it voted in but how would anyone understand it, a lot of master plans state what the Town should be, but a lot isn't put into the zoning. Falzone also sent a letter to the Board about this; when you have 50 people sending comments, there's no way to satisfy all individual's needs. When there are these rural character questions for example, pick 2-3 people from the group to sit down and work with him on the plan. It will never work when people duplicate the same email but working together will change it; maybe the unit count isn't there and maybe there's another way.

Kennedy said if density calculation is the problem, which can be changed but not for this project. If you want to change the density and work on definitions of rural character, do that. Rural character is subjective and gray, maybe define it better. Regarding the plan, Kennedy would like to see the number of shared driveways cut down and the fire department will want to weigh in when there's a plan and it should show how the rural character has been emphasized. Aldred Cheek read design and site layouts should emphasize the rural character of the town and maximize the privacy of the housing units, preserve the natural character of the land and consider orientation, views and recreational activities. Falzone said rural character, push these units closer together to create open space. They can be farther apart but then there won't be as much open space. Aldred Cheek said but it's the maximum number. People were clear at the last meeting with their concerns and even with adding 6 acres, this plan is in the same spirit as what was presented previously.

Stevens said the density is laid out in the zoning so the number of units and scope can't be limited, he has a right to do it. Kleinman disagreed due to the rural character component. Stevens said you need a definition of what rural character is.

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Bill Dale thinks the aquifer is constrained. Kennedy wants to see a hydrogeologic study first. Stevens reiterated that until studies come back, they won't know and can't answer some of these questions yet; need some science first. The Town's attorney could come in and talk about constitutional law, land use, landowner rights and how the Town ordinances apply, what authority Boards have in administering those rules that have been voted on.

Abutter Hanik said that not all the people on Fellows Road were notified per Steven's request for that at the last meeting. Abutter Bolduc also mentioned abutter notices. Bickum confirmed that the parcel of open space for the Fellows Road HOA referenced ownership of MDR, Corp. and that the applicant included the four HOA officers of the Mill Falls HOA in the abutters list for this hearing. Stevens said anyone within 200' of the subject parcel. Bolduc mentioned 41 and 41A; "old, sandy road, alleyway and the Eggers. Falzone said that's false and that sandy driveway path, is on the Wilson's property; he has the titles. Stevens said the Eggers are in support of this (letter on file). Bolduc asked about the bridge and if the traffic study would also address the industrial entryway from United Machine; there's Firefly, Mill Pond and now this and how can we define rural, no more than 1 cluster within 1 acre? Johnston said you can vote this senior housing out, but it won't affect this proposal.

A resident said there is some leeway for decisions that aren't black and white based on a written by-law. Belanger is a member of the historical society and asked if the Wilson's house could be preserved and not be demolished but confirmed that it's not on the historical register. Stevens reiterated that grants and bonds have conserved a lot of property along the river corridor and the Town tried to buy the Wilson's property, but they didn't want to sell. Wofchuck discussed the conservation process, highest use appraisals, market value at the time. The grants and open space bonds can take 2-3-year process. Greenwood said the RPC did a buildout analysis of the Town. It doubled the number of residential houses in Town. Stevens suggested a warrant article to do an open space bond and Falzone might sell.

A resident asked about their comments being read into the record and Stevens said if there is a formal application, the letters can be read at that time. Greenwood asked about the wells, will they constitute a large groundwater withdrawal. Falzone said no, it's a small community withdrawal. The gallons are based upon 2 people, 80 units, double capacity. Two wells side by side.

A resident asked about this being a project of regional impact; proximity to neighboring towns, aquifers or surface waters which transcend municipal boundaries; Fremont, Kingston and Exeter. Greenwood said the Planning Board could make that determination when a formal application comes in but there are specific statute reasons why a Board could declare it a project of regional impact, which would then provide to that Town or region declared and to the RPC, status as an abutters; a resident mentioned RSA 36:55. Greenwood said the statute does have a statement that says if there's a question that the project could be regional impact, the Planning Board should declare it as such.

Attorney Johnson suggested a continuation of the design review hearing and see if the Town's legal counsel, Walter Mitchell could attend in the early stages as it appears a lot of the issues are legal issues. Falzone offered to pay for this. Stevens said costs are borne by the applicant and Mr. Falzone is agreeing to pay for Mitchell's services.

Abutter Young said they aren't against the senior housing but the impact on Mill Road and the aquifer and water. A resident asked about a fire and police study. Greenwood replied, a fiscal impact analysis is something the Planning Board would need to require but, in this forum, it's just bringing it to Mr. Falzone's attention that this could be a possibility. This is a non-binding discussion. A resident asked about having the transportation study, beyond vehicles, study pedestrian traffic on Mill Rd. Stevens said that can be a part of a formal application.

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Stevens mentioned again that Mr. Falzone has offered to meet with a small number of residents, a small group to work with him, provide input. Residents didn't seem to be in favor of meeting with Mr. Falzone outside of this meeting.

Motion made by Kennedy, 2nd by Johnson, to continue the design review hearing for Mr. Falzone for the 80-unit proposal to December 2nd, 2021, at 7:00 pm at the Brentwood Recreation Center location and have the Town's attorney, Walter Mitchell, come to the meeting. All were in favor. Motion carried.

Continued hearing for Master Plan Chapter adoption: Consideration of adopting the Community Profile chapter of the Master Plan.

Motion made by Stevens, 2nd by Johnston, to continue the hearing for the consideration of adopting the Community Profile chapter of the Master Plan to December 16th, 2021, at 7:00 pm at the Town Office. All were in favor. Motion carried.

Board Business:

The Board signed the manifest.

Brentwood Surplus update, tax map 209.067, 309 Rte. 125: A letter was sent with a 30-day deadline for Greg Lambert of Brentwood Surplus to clean up the site or come in to talk to the Board regarding the excess of materials on the site. Board discussed a cease & desist enforcement action. Greenwood to draft a letter to the BOS.

- **Motion** made by Finan, 2nd by Johnston, to have Greenwood send a letter to the BOS requesting enforcement action, a cease & desist for Brentwood Surplus. All were in favor. Motion carried.

Board discussed that Mr. Bruce Gilday, the wetland consultant for the mitigation for 209.010, was planning on coming back on Nov. 18th to update the Board re: the wetlands remediation for 324 Rte. 125 but Gilday hasn't heard back from the surveyor, Lavallo or Mr. Rullo. Morgan said fines are \$275 per day enforced through the court. Board decided to revoke his site plan, requiring notice to Mr. Rullo and abutters and a public hearing to explain why, and he would also have to remove the dumpsters; possible court action as he was already issued a cease & desist.

- **Motion** made by Johnston, 2nd by Finan, to start the hearing process to revoke the site plan on file for 324 Route 125, as the site is in violation due to wetlands infringement. All were in favor. Motion carried.

The Board discussed Brentwood Fence, tax map 209.067, 300 Rte. 125 again due to excessive storage up to the state ROW. Greenwood reached out to him and discussed it two times. It's still not cleaned up.

- **Motion** made by Kennedy, 2nd by Finan, to have Greenwood send a letter to the BOS requesting enforcement action, a cease & desist for Brentwood Fence, tax map 209.010. All were in favor. Motion carried.

Board to hold a **work session** to discuss proposed zoning amendments on Monday, December 6th, 2021, at 6:30 pm.

Approval of Minutes: November 4th, 2021

Motion made by Kleinman, 2nd by Stevens, to approve the minutes from November 4th, 2021, as presented. All were in favor. Motion carried.

Motion made by Johnston, 2nd by Finan, to adjourn at approximately 9:55 p.m. All were in favor. Motion carried.

Respectfully submitted,

Andrea Bickum,
Administrative Assistant, Brentwood Planning Board