



## Town of Seabrook Planning Board Minutes

Tuesday, January 17, 2012  
NOT OFFICIAL UNTIL APPROVED

Members Present: Donald Hawkins, Chair; Sue Foote, Vice Chair; Jason Janvrin; Elizabeth Thibodeau; Dennis Sweeney; Robert Fowler; Aboul Khan, Ex-Officio; Michael Lowry, Alternate; Francis Chase, Alternate; Paula Wood, Alternate; Tom Morgan, Town Planner; Barbara Kravitz, Secretary; Paul Garand, Code Enforcement Officer;

Members Absent; Paul Himmer, Alternate;

Hawkins opened the meeting at 6:35PM.

### **MINUTES OF NOVEMBER 1, 2011**

Hawkins tabled the Minutes of November 1, 2011 to February 21, 2012.

### **SECURITY REDUCTIONS**

#### **Case #2010-24 Eaton 33-35 Gove Road Trust**

Hawkins referenced a letter from Attorney Keri Marshall who is the Successor Trustee for the 33-35 Gove Road Realty Trust. The letter was written as a formal request to release \$61,300 for the security reduction as recommended by Jim Kerivan of Altus Engineering. Ms Marshall authorized the Town to deduct \$5,178 in reimbursements owed to the Town, and forward the balance to her as the Successor of the Trust. Hawkins asked if the Board had the Kerivan letter. Kravitz brought forth the documentation demonstrating Kerivan's calculation to the extent the items had been completed, based on the original costing done by the town engineer. She noted that Kerivan had been doing the oversight for the Planning Board. Hawkins noted that the original security was in the amount of \$228,825. If the Board returned \$61,300 the remaining security balance would be \$167,525. Hawkins said that the Board had issued partial reductions in the past; however, an amount of \$5,178 owed as reimbursements is outstanding.

Hawkins said that the town Treasurer preferred to keep all transactions at arm's length; that is to say that the Applicant pays off what is owed to the Town, so that the security reduction amount does not change. Hawkins agreed with the Treasurer, but said that the Applicant does not have the money to pay the \$5,178 to the Town. An alternative would be to ask the Trustee to use its client account at the law firm to provide good funds to pay that amount. When the check is brought to the Town, the \$61,300 would be released so the transaction would continue to be at arm's length. Hawkins asked for Morgan's view. Morgan agreed, saying he was confident in the figure that Kerivan recommended. Hawkins called out the specific amounts to be returned. Janvrin asked if there were department sign-offs. Kravitz said there were for the amounts proposed to be returned. Janvrin asked if this was the case where a principal had passed away and the communication was with the Trustee. Kravitz said the process was that the Trustee had to provide documentation assuring that she is the successor Trustee, because the Treasurer would only release funds to the party that provided them, in this case the Trust. They were cooperative in providing this.

Janvrin asked for the amount that would remain as security. Hawkins responded \$165,525. Kravitz said there were contractors that continued to do the work, and Kerivan had been to the site about 10 times, submitting reports to the Board and relevant department heads. This has not been an easy construction process to monitor. Hawkins noted that the Treasurer has said he will do whatever the Board requests. Hawkins preferred to do as the Treasurer had requested, and to ask the law firm to provide the funds for the reimbursement; the law firm could repay itself out of the \$61,300 it would then receive. He asked if members had issues with that. Chase said it sounded like the right way to do this, and asked who would be voting. Hawkins said all of the



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active members were present and would be voting; alternates could participate in discussions, but not in votes.]

<b>MOTION:</b>	<b>Hawkins</b>	<b>to return the amount of \$61,300 to 33-35 Gove Road Realty Trust from the security held in connection with Case #2010-24, the Eaton subdivision, provided that prior to the release of those funds, the Planning Board is reimbursed the amount of \$5,178 drawn on the law firm's client account.</b>
<b>SECOND:</b>	<b>Janvrin</b>	<b>Approved: Unanimous</b>

Hawkins asked the Secretary to contact the Law Firm and ask them to arrange for the payment to the town in accordance with the Board's decision.

### **Case #2002-37 Irene's Way**

#### **Attending: Paul Lepere;**

Hawkins referenced Lepere's request for a reduction of the \$170,000 security, of which nothing had been released so far. There is no department sign-off sheet, nor is there a calculation for a partial reduction. He called attention to the minutes of the Technical Review Meeting in the Board Packet citing, among other items, that the electrical lines may be placed on top of the water lines so the Water Superintendent is not about to sign off until something is resolved. The Applicant had agreed to use a process that can identify where the power and water lines are. At this point they cannot be mapped by the surveyor because they had been covered up and the road paved. There are also other items to be done on the site. He did not think the Board was in a position to take action. Hawkins asked for Morgan's comments in re the TRC meeting. Morgan referred to Lepere's letter of January 12, 2012 which came as a result of the TRC meeting, however, the cost of the remaining items was not itemized, as asked, Those figures were needed so that they could be run by the Board's consulting engineer; a reduction was not yet ready for the Board to consider.

Hawkins asked if there was a resolution other than identifying where the power lines were. Morgan said the TRC viewed that as a first step. The Water superintendent would have a problem if there were less than a five-foot clearance between the water and electric lines, because the power would have to be shut off to the entire street every time they needed to work on the water lines. In the end, the Planning board would have to determine whether that would be an acceptable situation for any street in Seabrook. Just before this meeting, Kravitz had shown him a plan showing some clearance submitted by Lepere and prepared by Millennium Engineering, but a bigger scale and dimensions, plus professional credentials, should be submitted to detail the lines. Janvrin asked if the Board had seen the drawing that Morgan referenced. Morgan said it was a revised plan but the scale was hard to tell the distance. Hawkins thought the water line was known but not the power line. Morgan explained that at the TRC meeting, no one knew just where anything was. At this time there is a plan that is not stamped, and not to scale; it does represent some clearance.

Lepere agreed that at the last meeting he was asked to do certain things. There was a big question as to why Unitil put the lines where they did, or if there was a problem. He understood there should be about five-foot clearance. Subsequently, he and Millennium hired TMD Services, a laser company that could find exactly where the water and electric lines are; they watched the work being done and Henry Boyd did a plan. Lepere said if a larger plan or different scale was needed, that would be provided but he was told by Millennium and TDM that there is a



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minimum of five feet of clearance except for a small spot at the end where it is four-feet. Lepere said copies of the plan were provided to department heads who were pleasantly surprised and would have no problem signing off. He clarified that only a partial security reduction was being requested, and he knew exactly what had to be done in the springtime. When the work is done he would ask for a full reduction and approval as a town road. He noted that Boyd could confirm this. Hawkins said a report from the company that did the marking work and their engineer's stamp to confirm where the lines are. Morgan said it looks like about five feet, but the Board's usual practice is to have the dimension indicated on the plan, especially where it is so critical.

Lepere said he would be happy to have Boyd provide this. Morgan asked for a larger scale that would define the distance clearly. Hawkins said that partial reductions are usually dependent on a field engineer's estimate of what had been completed on a project matched up with the original engineer's costing document. The Board would want a letter from Altus detailing what had been completed and a recommended amount for a partial security reduction. Lepere said he wrote down the amounts and understood that the Board would send it to [Altus]. Hawkins said the Board would not be acting without such a letter. Kravitz said the information that had been submitted would be sent to Kerivan who could contact Lepere if needed. Kravitz noted that Kerivan was at the TRC meeting. Hawkins asked for comments or questions; there being none.

### **COMMUNICATIONS**

Hawkins called attention to information concerning the Right to Know law that had been provided by the Planning Board Attorney. He read the following:

...Boards may not meet behind closed doors to discuss the advice of their attorney is present or available for contemporaneous exchange of words and ideas by, for example, being on a speaker phone...

Hawkins said if the Board is having a closed discussion about legal matters, the Board's attorney had to be there or on a speakerphone.

Hawkins opened the Public Hearings at 6:55 PM.

### **PUBLIC HEARINGS NEW CASE**

**Case #2011-35.05-37 – Proposal by Paul Lepere to amend a 2005 subdivision approval at 27-33 Weare Road so as to eliminate the requirement to construct sidewalks and granite curbs. The property is shown on Map 1 as Lots 18-11 & 18-12, continued from January 3, 2012;**

Attending: Paul Lepere;

Hawkins asked Lepere to speak to his proposal. Lepere referenced a letter he had written to the Board on November 1, 2011 about why he thought the sidewalks should be eliminated. Hawkins noted that that letter was in the board packet, and asked Lepere to go through the circumstances. Lepere read through his letter explaining that he bought an old farmhouse in 2010, plus a duplex lot that he turned into a single lot. He said that Article 8 of the regulations said that sidewalks should be installed at the expense of the developer in all subdivisions in which 4 or more lots are created. The property in question is a two-lot subdivision approved in 2005. He did not believe that, at the time of approval, the Board was aware of a historic stone



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wall of about 264 feet at 27 Ware Road, from which he has removed debris and was restoring it to the original condition. To properly re-grade and install a sidewalk, most of the wall would have to be removed having a significant effect on these two homes. The approved plan shows the granite curbing abutting up to the existing asphalt which would cause major problems with flooding and plowing. Right now the snow can be pushed over the existing stone wall. Also the sidewalk area would be interrupted by one hydrant and 3 telephone poles, and create a major problem with drainage; there is a natural culvert that drains down the hill toward Route 107. There is no way to install a walkway with appropriate drainage. He plans to deepen the swale so it flows better. Everything is currently flowing down Weare Road to Route 107.

Lepere said he was not aware of any developer with a two-lot subdivision being asked to install granite curbing and sidewalks. The Town of Seabrook appreciates the significance of stone walls; the regulations say no person can deface. Alter the location, or remove any stone wall which was made for the purpose of creating a boundary between lots or recording lots of record...except upon written permission of the Planning Board and the Board of Selectmen. If a walkway was part of a stone wall it would have to be taken down. If there were a sidewalk installed the town would have to be responsible for maintaining, repairing, and plowing, and would have the liability. After he bought the property, he cleared old trees and debris so it is possible now for a pedestrian to walk there. His goal is to improve the stone wall and redefine the culvert; the stone wall will complement the area rather than with a walkway. Lepere lives in the area; if he were forced to put in a sidewalk, he'd be the only one in the area. Also, it would be a walkway to nowhere. The abutting land is 26 acres; he'd heard it might be turned over to the town for conservation.

Hawkins asked Morgan to comment on the two-lot subdivision question. Morgan did not recall the meeting seven years ago, but was curious why the subdivision stipulations had not been completed after seven years. Foote said that was a time when the Board wanted sidewalks everywhere. Although she did not support it at this site, the majority of the Board did. Hawkins asked Garand if there were no other sidewalks on that street. Garand said a developer across the road was thought to be moving to the other side of the street. The Board wanted sidewalks because of all that supposed activity. But it is a two-lot subdivision and there is a stone wall that goes the length of the property. He thought Lepere's restoration fit in with historical homes in the area. Hawkins recalled that a couple of years ago the Board made the change about historical stone walls. Khan said it was a Planning Board warrant article approved by the Town Meeting. Garand said that the Board had not placed security on that project so there was nothing with which to do anything. Also, there were legal issues affecting the property, as well as a bankruptcy. Hawkins asked for questions from the Board. Foote said there is also a public service easement. Janvrin asked if there were overhead wires. Foote said there were, so it limits the ability to build on the lower lot. Khan said this project was before the Board at the same time as Border Winds for which sidewalks were discussed by the Board for a very long time. That may be the reason that sidewalks were wanted in every project in the town.

Wood asked for the procedure if the Board now decided not to have sidewalks. Hawkins said the case would be accepted as administratively complete, and a motion would be made to approve Case #2011-35 to eliminate the requirement to construct the sidewalks.

<b>MOTION:</b>	<b>Foote</b>	<b>to accept Case #2011-35.05-37 as administratively complete for jurisdiction and deliberation.</b>
<b>SECOND:</b>	<b>Chase</b>	<b>Approved: Unanimous</b>



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Janvrin asked if the 2005 case had ever been closed. Foote thought this was one of the cases that never came back to the Board, and had been transferred through several different people. Janvrin thought the case should be closed at some point. Foote said that technically it would have to be closed before acting on Case #2011-35 according to the regulations. Janvrin thought it would be awkward to close a case without knowledge of completion. Morgan pointed out that it had not been completed. Foote said it was a two-lot subdivision. At the time there was the possibility that the bottom lot would be a duplex, and she applauded that squeezing in another unit was not done. The only other item was that the driveway should remain in the area where there was not a stone wall. At the time, the original plan did not show a sidewalk; the Planning Board majority decided there should be a sidewalk. Janvrin asked if the 2005 plan in front of the Board could be considered complete without the sidewalk, and asked if it had been recorded. Foote said it would be complete and had been recorded, although it appears that one marker was still to be set at the western corner between the two lots. Janvrin asked if the division of the property had been approved; Foote said it had. Janvrin asked if it would be appropriate to close Case #2005-37.

<b>MOTION:</b>	<b>Janvrin</b>	<b>to close Case #2005-37.</b>
<b>SECOND:</b>	<b>Foote</b>	<b>Approved: Unanimous</b>

Hawkins asked for comments and questions from the Board and the public; there being none.

<b>MOTION:</b>	<b>Sweeney</b>	<b>to approve Case #2011-35.05-37 – Paul Lepere to amend a 2005 subdivision approval at 27-33 Weare Road Map 1 as Lots 18-11 &amp; 18-12, so as to eliminate the requirement to construct sidewalks and granite curbs.</b>
<b>SECOND:</b>	<b>Janvrin</b>	<b>Approved: Unanimous</b>

### **ONGOING CASE**

**Case #2011-31.10-22 Proposal by NextEra Energy to amend its conditional approval of August 17, 2010 so that the stipulation (iv) reads as follows: Noise shall not be discernable at the Rocks Road residences closest to the firing range. Noise level along the existing transfer station road shall be limited to 15 dBA above the measured background of 44 dBA. The indoor firing range in question is situated off Rocks Road and immediately east of the Town's Transfer Station,** continued from November 15, 2011;

December 20, 2011

Attending: Steven Coes, Projects Manager, Richard Winn, Corporate Communications; NextEra Energy; Eric Wood, Principal, Asentech Incorporated, acoustical and noise consultant for the Planning Board;

Hawkins recalled that at the last hearing for this case the Planning Board decided to engage a sound/noise consultant to give it direction, and asked how Morgan would begin the discussion. Morgan thought the Board should first hear from Eric Wood. Wood stated that he is a principal acoustical consultant at Asentech, Inc, of Cambridge, MA, and had been involved in industrial and environmental acoustics for 40 years. His most recent firing range assignment was a few months ago working for the Town of Belmont, NH; another was in Richmond, RI. Over time, Asentech had worked on about two dozen firing ranges, private as well as law enforcement. A great majority of his work had been with the electric power industry whose upper level



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management, in his opinion, really want to do the right thing. They don't want to annoy their neighbors, and have better things to do than worry about neighborhood houses; they want to solve the problem. He thought that would be the case with NextEra. At the same time, he had a lot of experience dealing with neighbors, and had a lot of respect for them. Neighbors were generally honest people with legitimate and reasonable expectations.

Eric Wood understood that the Planning Board had been involved with NextEra in re the firing range for a long time, and was told that the noise would not be heard beyond the property line. That must have sounded good; couldn't have a better assurance or promise. Apparently, someone dropped the ball along the line. He also understood that [NextEra] had taken corrective action that reduced the noise significantly, and that they are operating only during daytime hours and not 24/7. They would like to extend the operating hours. People are more sensitive to noise at night because traffic and other daytime noises are quieter, and because it would be nice for people to have quiet when they come home. He respected [the Board] wanting to protect the neighbors, and also respecting that the company has a job to do. Eric Wood offered to answer questions, or to give an opinion as to one way to move forward that would be a win-win for all of the parties.

Hawkins was uncomfortable in getting a bunch of town data and being told what it means, when he did not know if it was right or not. The Board would be looking to its consultant for an interpretation of what that data means. Additionally, the Board had not seen information about all of the calibers that will be fired, and there was one large caliber firing arm for which no data had been received. Eric Wood said that even if that data had been received, three years from now there might be even larger or even quieter equipment. Hawkins was not sure about test data because they'd only been allowed to use it in the daytime. They did not know the ambient noise level at other times of the day, or the difference between pistols or rifles. The Board was looking for information to know whether 24/7 operation should be allowed. If there were no noise past the property line, the Board would say yes. But if noise does pass the property line, the Board would have to make a decision on whether to say yes.

Eric Wood said the Board would have to make a judgment as to whether the noise level would be reasonable or acceptable in this community. Hawkins said another factor would be if there are differences in the summer or winter when people are out of doors. He also wondered if "no noise at the property line" would be an industry standard meaning that people cannot hear it. Wood said that would be pretty strict. Another concern is that a very large shopping center would be going up near that area, so if noise were allowed at the property line would it bounce back to the neighbor's yards. The Board is looking for an understanding and recommendations both in testing and interpretation of those tests. Wood respected Hawkins perspective.

Janvrin explained that he grew up near the [Rocks Road] neighborhood in question and had done shooting in the area without complaints. His concern was that if they could not hold the standard of "no noise at the property line", they would need a measurable standard, noting that the Enforcement Officer has no means of measuring sound. Janvrin had suggested some mitigation that could be taken by NextEra on its property, e.g. evergreens to lessen the noise, and get it to a level that the Applicant could maintain and the Board could say to neighbors would be acceptable. There are also other neighborhoods such as Dow's Lane that could be affected. His concern was that the initial sound measurements were done to Rocks Road and were said to lower that near the Transfer Station which is toward Dow's Lane. Janvrin stated he was a lifelong member of the National Rifle Association and understood [NextEra's] need to shoot and had a difficult job to do. At the same time he did not think the CFO should be required to have sound monitoring equipment. An agreed level of mitigation should be maintained.



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Eric Wood did not want people to think that just because his career was in acoustics, he wanted the world to be peaceful and quiet. He'd worked with generators, had been a member of the NRA, and also held permits to fire concealed weapons, although he did not do shooting anymore. He understood both sides of the problem. Janvrin also commented that when the power plant was being built there was lots of noise, and the neighborhood dealt with it.

Sweeney thought a couple of nights of firing data was needed to see if it impacts the residents of Rocks Road, with testing and data for all of the sound levels including the 50 caliber. Eric Wood thought that while operating in daytime only, many, many thousands of rounds had been fired with no complaints coming in. At least some people would have been at home. With allowing shooting at night, there would be the potential for complaints. Chase asked why 24 hour-shooting was necessary, and asked Eric Wood if other facilities did that. He asked if it might be mandatory, or government regulations, or a funding issue, noting that dumpsters can't be moved before 7 AM. Wood said that law enforcement people work 24/7 and thought the owner might speak to that. Hawkins asked Coes to respond. Coes said they have trimester training with two shifts all day every day; people train when they get off their shifts. Fowler wanted to hear the noise level for himself; a bunch of numbers meant nothing without hearing the shooting. Eric Wood agreed.

Fowler recalled that at one meeting [NextEra] said there would be no noise out of the building, let alone at the property line. Janvrin commented that he'd asked a relative in the rocks Road area, who is an avid hunter, if he heard the shooting. The response was that he could, but that it had to be done. Janvrin thought this was a Yankee ingenuity response i.e. leave them alone. But his next door neighbor said it was aggravating to hear when she was gardening. He thought there would be a wide range of attitudes. Many would not come to a meeting, but might respond if someone went to them and asked if [the noise] bothered them. So far it's been no complaints to the CFO and Police, but the night may be a different story. There has not been feedback from residents; one alternate Planning Board Member recused himself because he lives in the area. Eric Wood agreed that there are people who are very tolerant about noise at their property; others are extraordinarily sensitive even to sounds that others cannot hear. Fowler added that it isn't just the noise; the vibrations can be felt with a 50 caliber.

Thibodeau did not see the need for 24 hour activity. Training people could be done at the beginning or the end of shifts; not all night when children are sleeping. There's nothing worse than hearing fireworks at 11 PM, particularly if young children are trying to sleep. Eric Wood said that the theory was that it would not be heard. His understanding is that the Board did not make this up or impose it; NextEra came to the Board and said this. The Board was expecting that NextEra would do what it was expected to do, and their CEO would say that's what they had to do. Khan said that when the project first came to the Planning Board, reference was made to a state-of-the-art, soundproofed firing range in Connecticut, and that the same engineers would work on this project. There was the desire to move the Seabrook project quickly as NextEra is a large property taxpayer. He wanted to know what went wrong during this construction, so that the same result did not occur. Also, the shopping center expected to be built soon would be inviting a very large number of shoppers to Seabrook by 2013. He was concerned about the potential effect on neighbors and shoppers from noise levels from both the firing range and the shopping center. Eric Wood's question would be whether the shopping center would increase the steady background sounds, for example from HVAC and refrigeration equipment on the roof.



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Paula Wood expressed concern for recent noise impacts on the Rocks Road people with the hotel etc. that wasn't there before. She thought people would hear testing during the daytime, but what about on a nice July night with open windows. She wondered how far the noise would travel, noting that she lives on the other side of the power plant and could hear loud speakers as well as feel the vibrations from the road construction. She agreed with Janvrin that people living on streets other than Rocks Road would be affected, especially by 50 caliber equipment. Paula Wood asked what NextEra is doing for training if it is not using the range off Route 107. Coes said they are currently training from 7AM to 6PM, and also at a facility in Epping. Paula Wood asked if that could be used for the nighttime training in the future. She was concerned that the people on Rocks Road would become inundated by the time the shopping center was built.

Foote asked about the psychological impact of "trigger sounds" such as a mother hearing a baby crying 5 rooms away when no one else hears it. Eric Wood said it would wake her up immediately. Foote thought people exposed to certain experiences might be put into a different mental state – more than someone that had never had a gunfire incident. Her concern was for current as well as future residents, or customers to a coffee shop, and asked if there is any way to mitigate the noise so it has the least impact on someone who might be driven over the edge. In other words, there are different types of noises. Wood had read that some returning soldiers find loud noise disturbing and brings back bad memories. Foote spoke of someone who had to move out of the area because helicopters traveling the coast to the Bush compound brought back his experience in Vietnam. Wood noted that he had worked on a helicopter facility.

Hawkins said the Board is looking for a path forward to make a recommendation on this case, and asked Coes for any comments. Coes said they are squeezing by at night, and commented that the outdoor range in Epping allowed two nights weekly for firing from 6 to 9PM, but that doesn't really help NextEra which at this time is in a low mode. When a new security class is to be trained, which happens often, then extensive night training is needed. Coes commented that respectfully NextEra is getting beat to death on this issue. He said that the sound measurements were taken at the junction of Rocks Road at the Transfer Station, and did not know what could make the firing noise louder than at that point. He was hard pressed to believe that noise was being heard at the Holiday Inn. To Hawkins the situation was that a facility exists very close to a neighborhood, so he would not be comfortable not doing whatever could be done for them. It was necessary for the Board to look at this knowing that it had done the right thing, and this might make Coes uncomfortable. Coes agreed, and said he sits on a zoning board and knows that when help is needed you get it. He was concerned that when things are thrown out there, people can think that's what actually happened. Thibodeau commented that the Board had to live in Seabrook, and he did not.

Khan commented that the people living on Rocks Road live there for a long time, and asked why the [firing range] was built so close to the neighborhood when there are plenty of other places on the property that it could have been built. Because it isn't working, why not move the building to a different location where it would not disturb the neighbors. The residents have no other place to go, or have the money to do something for themselves. The town is trying to be accommodating to a big taxpayer, but he thought in two or three years the problem will just be ongoing. Would it be possible to build the facility deep inside where it would not disturb neighbors. Fowler mentioned they might look into sound technology that actually cancels out sounds to a great extent. Eric Wood knew about this technology and thought it not a good idea in this situation. He was surprised that Coes felt he was being beaten up, as he had great respect for NextEra and their management as hard working people who want to do things the right way. Further, he did not hear anyone on the Board beat him up; they had to be tough but [NextEra people] got off easy.



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Garand said in the NextEra study the background noise is established at 44 decibels, and asked how that would change at night and how it would impact the neighbors. Eric Wood believed that the "44" was one nighttime measure based on what he read; it is not clear how the measurement was made as technically there are a lot of different ways to measure sound. There would also be seasonal differences. Garand agreed that some seasons windows are closed, and in others they are open; variables including leaves on trees have to be considered. Eric Wood agreed. In the summer the noise can go up due to insects; generally at this time of year when it freezes it is quieter. Garand did not want to be inundated with a lot of complaints for which he had no answers about the noise level, what to expect, and how the neighbors and NextEra can all work together.

Winn stated that NextEra had nothing but respect for the Board and for listening to all the comments. They may disagree with some things, but they understand the process. Coes gets "beat up" by the management in Florida, because he is the project manager, to try and get things going. NextEra wants to make sure that they don't put the local residents in a position where they are unduly concerned about the rifle range and the noise. They are trying to work with the town and think the idea of having a noise consultant was the right thing to do, and will support whatever they need to do to give the Board the assurances it needs that NextEra's commitment is to be a good neighbor for the Rocks Road people and is appreciative of what is happening. They very much want to cooperate and support this process going forward. They do have to meet federal requirements and want their security officers to be the best trained, day and night, so they want to see what they can do to get the whole process moving along. To the extent that the consultant is here and the Chair sets a direction going forward, NextEra will support that effort. Hawkins said that everyone has a vested interest in the power plant being safe.

Hawkins asked Eric Wood to give a path forward to the next step. Wood said that if the Board were inclined to allow extended hours into the nighttime, Acentech could place 2 or 3 continuous sound monitors at selected residences and at the firing range that would measure sound continuously, every second, minute, and hour – 24/7. The reason to have one at the range was so that it would show peaks at every shot and the time would be known, and that could be compared with the sound at the residential area. The data would be transmitted in real time to Acentech, so there is no need to have someone monitoring the sounds. If, as hoped, the neighbors do not complain, there would be no reason to dig into the data. If neighbors complained that one night at 2 AM it was horrible, that's when they would look at that section of the measurements and compare those at the residences with those at the range. He thought that this technique would give the owner the noise levels when they were firing and the background levels when they were not. It would help the neighbors because they would have the datasets from someone who would be impartial -- not working for the owner or the neighbors -- working for the Planning Board giving honest answers. It would give the Board confidence that if they allowed shooting at extended hours, data would be collected at the start and be available to the Board, the neighbors, and the owner to know what is happening when NextEra uses or is not using the firing range.

Eric Wood thought this would be a better approach than going out and getting 20 minutes of measuring with some gun with the wind at a certain level on a given night. Hawkins asked how long a period would be needed for the data gathering. He thought it wouldn't be fair to pay for such measurements for the life of the facility, particularly if no one is complaining. At a point the measuring would be shut down, or the facility would be shut down. He suggested up to two years and not to look at the data every day. That would give two seasons and many types of guns firing. Perhaps they already keep track of what guns they do shoot and when. Another



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advantage is that a particular day's activity from any time during the data gathering can be recalled. Wood said the numbers would be available, but hearing the sound makes all the difference for making a judgment. This was the best idea he had for satisfying all three parties.

Janvrin said NextEra was trying to meet a certain decibel level. Eric Wood pointed out that that was a goal at the transfer station, but no discernable noise for the neighbors for which a meter isn't needed. Janvrin said if he throws a rock into water it ripples and they widen as they go out. He asked if the same principle applies to the sound i.e. it would be intensified as it goes out toward Route 1. He thought that if necessary, NextEra would be willing to mitigate the noise further. For example, they had done the roof and put foam into walls, but it is still an issue. He asked if there is a way to further mitigate the noise, such as secondary berms that push noise up instead of out. He wondered if there were a way to say that would or would not work. Wood had no reason to believe that the acoustic design of the building could not be improved. It is not intuitively obvious that such improvement is needed, if the Town and the neighbors are not hearing it. If the neighbors are complaining and the data supports that, then he thought NextEra would have to be committed to fix it because that's what they said they would do. Janvrin commented that his grandmother had died and they were selling her house. What if someone came in who was more sensitive to sound. Wood said that is why gathering data for more than 20 minutes at a time is important.

Thibodeau did not understand why a year would be necessary. Paula Wood thought the objective was to give NextEra some type of occupancy permit, and asked if the equipment would stay for two years to get answers. Eric Wood said there would be answers immediately if people are complaining, and thought two years would be a reasonable period of time. Hawkins thought that Garand could write a conditional permit that would say he could stop the firing. If it is moving ahead without complaints, that's one thing. If there are complaints then the issue comes back to the Board as it would not want people in those homes listening to rifle shots all night long for a year. The Board would deal with that through Garand's permit which could be modified. Eric Wood agreed, and said NextEra did not want the neighbors to complain. Khan said the neighbors should not have any burden. He wanted Eric Wood to find out why the firing range is not working as promised, and what could be done to meet the promise. Eric Wood said if the Board gives him that assignment, he can try to do that e.g. indicate where the weak links are. Khan wanted to know what it will take.

Hawkins agreed, and said the Planning Board's job is to approve or not approve the Applicant's request to be allowed an increase in decibels along the road to the transfer station; they say there is no discernable noise near the neighbors. The Board's job is to say yes or no – not to re-engineer the site to solve the problem for NextEra. If the Applicant wants to continue as outlined for a period of years, they would say yes. Or at some point they may say they have a different mitigation road to take, and withdraw the case. The Board's decision is based on the case in front of it. He wanted to make that decision with information that he could understand and feel comfortable with. The path that is being proposed would allow the neighbors to say that there is noise that they don't want to put up with. In that event, they would call Garand who could say it cannot be continued. He asked Morgan to get the Asentech proposal [from Eric Wood] with the things the Board wants. Also, he thought that the occupancy permit should be written so that if there are complaints, Garand has the authority to stop it. Thibodeau asked if the Board was being asked to give an ok at this meeting. Hawkins said the purpose of having the consultant at this meeting was to get feedback as to what to do next.

Foote was very reluctant to give even one 24 hour day. The normal sound limitation is from 7 AM to 10 PM. She thought there were two 12-hour shifts at the firing range. Coes confirmed this.



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Foote thought that 7AM to 9PM would give a lot more flexibility to get the shifts in and out, and give 3 to 5 hours of after work quiet night time and, if the noise was heard, still allow the residents to get at least a good 4 hours of sleep that night. She was reluctant to allow a week or a month at 24/7. She wanted some after 5 PM numbers actively using the range with all the different armaments, before allowing 24/7. Chase asked if the permit would be limited to a caliber, as later there could be new items. Hawkins thought an occupancy permit could limit the weapons those for which information had been provided. The question would be whether to go through the same process when a larger weapon is introduced. Foote said the same caliber weapons would be equivalent. Janvrin said the size of the barrel would make a difference; Fowler agreed. Chase asked for Eric Wood to comment on how other facilities he's worked at handled this. Eric Wood said if there is numerical sound limit, or not discernable, it wouldn't matter what the weapon was as long as they continue to be compliant. If the sound were too great, it wouldn't take long for neighbors to complain. Thibodeau commented that the Board has to live in the town.

Hawkins asked for Morgan's comments. Morgan liked the proposal for letting the Building Inspector be creative in issues arising under the certificate of occupancy. The Planning Board's concerns were with complying with state law, and also that the Applicant sign an extension waiver to extend the hearing timeframe. He recommended continuing the hearing to a time certain for further discussion. Hawkins suggested allowing NextEra to continue the daytime firing, getting a proposal from Eric Wood [Asentech] on how to proceed to consider at the next Planning Board meeting and amend if needed, and then move forward. The discussion would include a time period for data gathering, whether it should be a gradual approach, and the like. Also to get the waiver extension from the Applicant. Khan asked if the next meeting were time enough for Eric Wood to submit a proposal. Wood said he'd get it out quickly. Kravitz suggested working through the Planning Board office; Hawkins agreed. Eric Wood would be speaking with Morgan. By consensus this procedure was agreed. **Hawkins continued case #2011-31.10-22 to February 21, 2012 at 6:30PM in Seabrook Town Hall.**

**Case #2011-34,11-03 – Proposal by Delta & Delta Realty Trust to amend a site plan approval granted on July 12, 2011 (Case #2011-03) for the expansion of the Southgate Plaza at 380 thru 458 Lafayette Road, Tax Map 9, Lots 1 & 2, and Map 8, Lot 111. The applicant proposes the addition of restaurant-style seating in front of Demoulas, and several other site plan modifications, continued from December 20, 2011;**

Appearing for the Applicant: Earle Blatchford, Hayner-Swanson civil engineers;

Hawkins recalled that on December 20, 2011 the Board granted a conditional approval to Case #2011-34.11-03, and sent the siteplan to the Technical Review Committee, the Minutes of which are in the Board Packet. He also called attention to Morgan's memorandum and asked Morgan to speak to it. Morgan said that the nine recommendations for the Planning Board to consider were spelled out in the TRC Minutes, and suggested that Blatchford address them. Additionally, all of the stipulations in the July 12, 2011 approval of Case #2011-03 would become incorporated into the Case #2011-34.11-03 conditions of approval. So there is no misunderstanding, everything that was expected in the July 12, 2011 approval would still apply. Both the Sewer and Water Superintendents had some recommendations, but he did not think they had seen the revisions that Blatchford had submitted. Kravitz said the Water Superintendent had worked with Blatchford and agreed on certain language. Blatchford explained that the language in Note #22 will be changed and the curb stop will be structured to



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satisfy the Water Superintendent. Those changes are not yet in the revised plan before the Board.

Hawkins asked Blatchford to go through the TRC recommendations and their response to them. Blatchford said in addition to the TRC items, at the December 20, 2011 meeting the Applicant agreed to look at the plantings in the employee parking area. Accordingly, their landscape consultant recommended replacing 13 white pines with red cedar which resemble a tall juniper and form a hedge. The plantings go in at 5 – 6 feet which initially is tall enough to knock down the headlights; they should fill in as a good solid 8-foot high hedge. Foote asked if this is one row or staggered. Blatchford said it would be one row with staggered vegetation behind. Hawkins explained that that was just to address the employee vehicle lights shining directly into bedroom windows. Blatchford also pointed out a swale with vegetation recommended by the Board's consulting engineer. He stated that the Deputy Fire Chief had indicated they have no problems with any changes and would be sending a letter, and that the Sewer Superintendent had no problems with the technical construction changes on the sewer detail sheet. Blatchford said they had addressed Glen Kelly's abutter concern about truck headlights coming off Boynton Road, by putting in a second row in the 70 feet of plantings.

Morgan had looked for assurance of vegetation in the back to intercept the headlights. Blatchford said that Norway Spruce would fill in; planting height would be 6 feet, enough to block the headlights, and they would grow much higher. Foote said that Norway Spruce could be as high as 50 feet; if planted close to each other, the bottom branches eventually fall off leaving trunks that would have a strobe effect at ground level. If they are staggered rather than in a row, the Norway Spruce would be more likely not to choke the low branches. They need room to get air and light. Blatchford had no problem staggering those plantings. Hawkins agreed staggering is best; someone can walk through but can't see through the trees. Alternatively, plantings similar to those on the north side could be used. Foote noted that it is the same for all evergreens. Wood said they may be great at the start, but as soon as the tops grow the bottoms are gone. She wanted to see the evergreens on page 26 of 31 staggered as well. Blatchford thought a 5-foot stagger might be possible.

Blatchford said that notes had been added to several sheets to clarify the sidewalk sales area, as requested by Garand. Morgan said outdoor sales would be allowed close to the building, but the sidewalks would have a clear area. Janvrin asked about flowers. Blatchford said they would use seasonal flowers. Garand said the planters seemed close to the building but weren't clearly defined. Morgan asked about the reserved space for police. Blatchford thought that was not really called for; he'd offered to have a fire and police lane but did not take that item seriously. Morgan noted it is in the TRC Minutes. Janvrin thought that police can park in a fire lane, so it would not be an issue. Morgan noted that the Water Superintendent asked about place for customer pick-up. Janvrin asked if that might have referenced the mini-vans that wait around, and commented that currently the elderly housing vehicles park right where the bump-out would be. Foote commented that they keep the engine running so the exhaust goes into the building. Blatchford thought the police space and mini-van comments were tongue-in-cheek. Garand said still they are there.

Kravitz recalled that the comment was about where people would drive up to put their packages in their car, right where the bump-out would be; the question was if that would be a problem in the future. Blatchford said nothing would change as the fire lane follows the bend in front of the storefront. He thought the comment was that people sit in their cars in the fire lane waiting to pick up customers and their packages. Janvrin commented that fines could occur. Garand asked if there would be more carrels than are depicted on the plan. Blatchford had not been told that.



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Garand also asked about donation boxes; if that could occur it should be put on the plans. He asked about the number of seats in the café area. Blatchford thought it would be 46 seats. Foote asked if there could be an area where a car could wait while someone's spouse ran in for ten minutes, or enforce that those vans park in a space. Foote said at the north entrance, people park with the engine running for more than 45 minutes, right in front of the ramp. The fumes are caught in the canopy and the ramps are blocked to the carts. Blatchford did not know how the store management could handle this. Janvrin said it would have to be a no parking or standing sign; a violation could cost \$200 by town ordinance. Blatchford said people ignore the signs. Foote said with a van for senior citizens nothing is done.

Wood commented that some restaurants have a couple of 10 minute spots for take-out, and wondered if that might be done. Blatchford thought shopping in supermarkets takes more than 15 minutes, and did not know how practical that would be. Blatchford noted that the Sewer Superintendent said if there were to be a restaurant in the stand-alone retail building, a grease trap would have to be installed. Blatchford said the parking requirement was for a dry-goods retail use; nothing else had been proposed. Janvrin asked if such a use would have to come before the Planning Board. Blatchford said it would; the parking would change. Morgan said this was a reminder to the Applicant for the future, as a store manager might not understand this. He asked about the revised language for Note #22. Blatchford said there had been two emails from the Water Superintendent. Kravitz noted that the email was in the circulation packet. Morgan liked the new language.

Janvrin asked about a starting timetable. Blatchford thought as soon as possible, hoping to be done by June. Site plans had been sent out for contractor bids; he thought the work would start as soon as the weather allowed. Kravitz informed that the traffic engineer had sent a copy of the signalization design changes at the driveway entrance that went to the NH Department of Transportation. Morgan would be looking at this; a pdf is to come so that the Planning Board's traffic consultant can also review it to see if it reflects what the Board expected. They do not yet have response from the NHDOT. Khan said that when this proposal initially came to the Board, he was not yet a member, but recalled the concerns about the south right in/out on Route 1 with all different traffic coming from all directions. The same problem would happen on Route 1 at the stand-alone retail building to the north, because there wouldn't be enough space to get out. Blatchford said the NHDOT had reviewed and approved all of this. Khan's concern was inside the parking lot for a car as to sight distance, and the space is very narrow. Blatchford said they did turning templates, and it works. Khan wanted his concern on the record. Foote noted that she had always been against right in/out. Janvrin said the right in/out opposite the Irving Gas Station had been considerably changed, but that morning he'd observed six people utilizing that entrance coming from the north; it continues to be an issue.

Hawkins said the Board's objective is to get the NHDOT to sign an agreement that they will listen to some of the things the Board would like to see on Route 1. Foote commented that the NHDOT would sign something when Route 1 was 100 percent built-out. Thibodeau said the light changes so slowly that people go into the parking lot to get to Boynton Lane. Janvrin commented that some areas use tire shredding devices. Hawkins asked for Morgan's recommendation. Morgan wanted to add the staggered plantings in two areas, the revised Note #22, replacing the curb stop and inserting the written detail from the Water Superintendent per his email ok. Janvrin asked if the Fire Chief had responded. Kravitz thought that had been resolved. Morgan said the new Case #2011-34.11-03 stipulations would be to add all of the conditions of approval from Case #2011-03, and the three identified at this meeting. Hawkins asked Morgan to detail the conditions, which Morgan then stated:



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1. the applicant remains subject to all 14 stipulations the Planning Board specified in conjunction with the approval of Case #2011-03 on July 12, 2011;
2. the staggered plantings in two locations;
3. the Water Superintendent's revised wording for Note #22;
4. using the curb stop detail provided by the Water Superintendent;

Blatchford said the Case #11-03 conditions were on the cover sheet. Chase asked about writings from the Fire Chief and the Sewer Superintendent. Kravitz did not have the Sewer Superintendent's written submission. Morgan added: #5, written concurrence from the Sewer Superintendent. Hawkins asked for any other comments. Abutter Kelly had attended the TRC meeting, and appreciated the opportunity that the Board addressed re the headlights. Another concern, not addressed, was the noise of the trucks when they pull into the driveway [from Boynton Lane], because the current raised leaching field is about 6 feet high and deadens the lights and the noise from the driveway. When that is leveled the driveway would be 20 feet closer to his house. He thought the lights would be taken care of but not the noise when the trucks power up after turning the corner which would happen right at the hedge where his house is. Originally, he'd asked for hedges along the driveway up to the end of his house, although he recognized that the Applicant doesn't want to hedge off a piece of the property so. He did not want the Applicant to have to do something it did not want to, and asked about what his action would be if the noise became a nuisance because the driveway is closer to his house and the hill is not there i.e. if the noise became intolerable. Hawkins asked Morgan if the prior discussion was about another row of trees.

Morgan thought that Foote's suggestion for staggered trees was a good one. The Applicant objected to additional vegetation because he felt it the visibility in that corner of their property would be cut off, and they want to keep it open. Hawkins asked how high the septic field was. Janvrin said he couldn't see over the top of it; Morgan thought 6 to 7 feet. Blatchford said the same pond removals would occur on the north end of the property. Kelly pointed out a separation in the hedges which is at the beginning of his house, and showed how the bank interrupted the lights and the noise. When the area would be leveled, that would travel across toward his house. Blatchford said the entire back of the property had existed as is for a year.

Morgan said that TRC thought that they had taken a step in asking the Applicant to plant additional vegetation, and the Applicant had cooperated. It will help a little bit with the noise; evidently the abutter is looking for more. Janvrin asked if this would come under the town noise ordinance as a nuisance. Morgan said the Board of Selectmen could declare it a nuisance, but that is not an easy call because it is subjective. Janvrin asked if the BOS would be Kelly's only recourse. Morgan said it would. There wouldn't be anything for the Planning Board to do after approval was granted. Wood asked if trucks go in at all hours. Janvrin asked if there were any restrictions, and referred to sheet 31. Blatchford said the hours of operation were 7AM to 10PM, noting that this discussion to place for Case #2011-03. Janvrin said that did not prevent a refer truck from going onto the property even if the refrigeration would not operate. Blatchford noted he was not a part of operations but deliveries had to be done [at night]. Janvrin agreed, and asked if it would be too much to ask for a similar treatment as in the north, and to restrict trucks at the [Boynton Lane] entrance to certain hours so that during that time deliveries would come in through the north entrance.

Blatchford said the Boynton Lane driveway would be mostly an exit for trucks that came in through the main, signalized entrance. Morgan suggested a sign could limit entry hours at the Boynton Lane entrance. Janvrin noted that there would be a stockade fence at the north corner, and thought the exiting might not affect Kelly. Blatchford said he could not make operational



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decisions. Janvrin asked if the Board could place that condition. Morgan said it could if it did not want to have another hearing. Janvrin felt that should be done, and thought that it would nullify Kelly's concern, - i.e. restricting access for trucks from 11PM to 7AM hours at the Boynton Lane driveway. Thibodeau said why not just say exit only. Janvrin asked what if a truck were exiting at 3 AM. He wanted to strike a satisfactory balance between the abutter and the Applicant. Foote said the difficulty with signs is that individuals ignore them, pointing to the left turns going into the right in/out. Although Market Basket might be able to control their trucks, they couldn't control those for the other stores. Janvrin said that the Town of Seabrook had the jurisdiction to limit access to Boynton Lane as it was a town roadway; the town did not have jurisdiction for the Applicant's driveway. Morgan asked what if the driver lived on Boynton Lane. Janvrin said a home occupation couldn't have a tractor-trailer. Blatchford thought even if there were a sign, a truck driver would use the driveway. Thibodeau said if such a restriction were in place, would she have to freeze and wait a day to get an oil delivery. Restriction proposals need to be thought through.

Wood commented that an abutter had had the privilege to have that noise buffer, and that the town could make certain restrictions. There are dumpsters near her property; no dumpster truck driver abides by the hour rules. Blatchford said he could try to get an answer from Jim Lamp by phone. Hawkins agreed. Blatchford reported that he could not reach Lamp. Hawkins said the alternative would be to continue the case to February 21, 2012. Blatchford said he was not authorized to do that. Hawkins thought that Blatchford would not want to have the case rejected. Blatchford if it were a stipulation the case could move forward. Hawkins said that if it is a stipulation, that would be a condition. Blatchford said if the Applicant had an objection, he could come back before the Board. Hawkins asked if Blatchford wanted to move forward rather than wait for a response from Lamp. Blatchford confirmed this, indicating he was not authorized to agree. Garand said that would not limit snow removal activities or maintenance on the site. Janvrin agreed it would only affect delivery trucks. Kravitz commented that the signalization details needed to go to the Board's traffic consultant. Hawkins said that could be done outside of the motion because it related to Case #2011-03.

<b>MOTION:</b>	Janvrin	<p><b>to approve Case #2011-34,11-03 – Delta &amp; Delta Realty Trust to amend a site plan approval granted on July 12, 2011 (Case #2011-03) for the expansion of the Southgate Plaza at 380 thru 458 Lafayette Road, Tax Map 9, Lots 1 &amp; 2, and Map 8, Lot 111. The applicant proposes the addition of restaurant-style seating in front of Demoulas, and several other site plan modifications, conditioned on (i) the applicant remains subject to all 14 stipulations the Planning Board specified in conjunction with the approval of Case #2011-03 on July 12, 2011; (ii) the staggered plantings at the Boynton Lane entrance and the employee parking lot; (iii) the Water Superintendent's revised wording for Note #22; (iv) the new depiction of the curb stop detail provided by the Water Superintendent; (v) written concurrence from the Sewer Superintendent, and (vi) delivery trucks not be allowed to enter the service driveway from Boynton Lane between the hours of 10 PM and 7 AM with signage posted to that effect.</b></p>
<b>SECOND:</b>	Thibodeau	<b>Approved: Unanimous</b>



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### OTHER BUSINESS

#### **Case #2010-01 Carbone site plan.**

Morgan reported that Carbone had been issued a driveway cut from the NH Department of Transportation. He recalled that in March of 2011 the Planning Board asked Carbone to consider putting the sidewalk on NHDOT property; NHDOT said "no". The Case #2010-01 site plan is approved in every respect except that the sidewalk had been up in the air. A revised site plan had been submitted that shows no sidewalks on NHDOT or private property. He asked the Board for guidance on how to proceed. Hawkins said the Board was told they would put the base in place to support sidewalks so it could easily be dug up and surfaced if the town or the state changed its mind in the future. He thought that issue had been handled. Morgan agreed, except that the State hadn't taken any action at that time; he wanted to be sure to move in the right direction.

Hawkins asked if what the state did affected what the Board did at its last review of the case when Wayne Morrill of Jones & Beach presented the proposal for the piece right in front of the property to be ready for finishing a sidewalk if the issue was ever resolved. Morgan said that Morrill had made those assurances verbally, but the plan revision did not look like that. Chase recalled that the substructure would be in place covered by a thin coat of loam and seeded. Wood asked if this is in writing. Chase asked if there would be granite curbing. Morgan said there would not. The last revision was in March 2011; the detail sheet shows up to the curb but the siteplan does not show physically where it is on any of the property. Janvrin thought the reference was in a notation. Morgan read Note #22: "...contractor to install sidewalk base material along Lafayette Road; vertical granite curbing is shown on Sheet D 1...". Hawkins asked what was needed to go forward.

Morgan asked if the Board was ok with the plan as it was. Hawkins asked if this would be recorded, Morgan said it was not. Hawkins asked if the note was enough to hold the Applicant responsible to actually do what the note and detail say. Morgan's answer was "marginally". Hawkins wanted the drawing to agree with the notes. Morgan said the curb is depicted. Hawkins said to have the note corrected to Morgan's satisfaction. Morgan asked how wide the sidewalk would be. Janvrin said 5 feet for ADA. Chase said there is a 5-foot wide rock base and 3 inches of loam on the plan. Foote said that the note works because it says per the detail. Janvrin asked if the state would allow the curbing. Hawkins thought it was already there, and asked for Morgan's view. Morgan recommended the Chair sign the plans and to close the case. Khan wanted to view the plan sheets.

<b>MOTION:</b>	Janvrin	<b>to allow the Chair to sign the site plan for Case #2010-01 – Steven Carbone to construct an 11,000 square foot facility for the sale and storage of fireworks at 287 Lafayette Road, Tax Map 9, Lot 64, approved on October 19, 2010 as revised on January 11, 2012, and close the review and approval procedure.</b>
<b>SECOND:</b>	Thibodeau	<b>Approved: Unanimous</b>



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### **PUBLIC HEARING ON NON-TOWN MEETING AMENDMENTS AND LAND USE REGULATIONS**, continued from December 20, 2011, January 3, 2012, and January 17, 2012

**Tom Morgan, Town Planner**

#### ***O) Precede Section 10.025 of the Site Plan Review Regulations with the following: "For the purposes of this section,"***

Hawkins continued proposed Amendment O to February 21, 2012 at 6:30PM in Seabrook town Hall.

### **OTHER BUSINESS**, continued

#### **Case #2008-23 DDR Shopping Center re Route 107 Bridge Sidewalks**

Hawkins reported that on January 11, 2012 a meeting had been held at Town Hall with representatives of DDR and the NH Department of Transportation highway division to discuss the details of the construction of the Route 107 Bridge. It was described as 5 lanes and looked like the additional 2 lanes would be built on the south side. The State is also going to do work on the deck for the other three lanes immediately following the construction of the new lanes. The Applicant wanted to find out if that would restrict the opening of the shopping center, and would I be providing a proposal about this.

Once again, the subject of sidewalks came up. The State is going to install curbing, as in the [Carbone] application, in case the Town ever wants to put in sidewalks. They will not put in sidewalks unless the Town agrees to the maintenance and the liability. Foote asked what will be on the Bridge itself. Hawkins said it will have a curb with the area filled in and grassed over. Foote did not believe they would put a 5-foot strip of grass on the Bridge over I-95. Hawkins repeated that that is what NHDOT said; whether they put grass or not, it will have a curb. NHDOT said they are still willing to do the signals, cross lights for pedestrians, and sidewalks the full length if the Selectmen agree do the maintenance. Hawkins explained that Selectmen have said that they will consider that if the Planning Board considers it. Hawkins wanted the Board to go over this and decide whether it wants to do this. The issues that were identified were acknowledging that there is only one way across I-95 in the Town of Seabrook, and that is the Bridge.

Garand was also at the meeting. One item was there are two high speed lanes that have no coverage – the off ramp to access I-95 heading north, and the ramp that comes off I-95 [to Route 107]. The sidewalk has to change sides of the road, so there would be no coverage for pedestrians. If they don't build the sidewalks, they won't put in lights or cross-walks. This means there would be a sidewalk that is 5-feet wide going across the Bridge but then the sidewalk is on the other side and there would be no pedestrian coverage whatsoever. At this point the NHDOT is willing to build the sidewalk but only if the Town signs a written agreement. Hawkins said NHDOT will pay for it now. If the Town decides to do this later, NHDOT would not pay for anything – it will be the Town's responsibility. Hawkins said that Morgan also was at the meeting and brought up the following question: Can the Town avoid liability if a court case were brought and the NHDOT would say that it offered to put sidewalks in for the Town, and the Town declined. Did that sound like the Town would be off the hook at that point. Hawkins thought probably not and the Town would get dragged into the litigation along with the State.



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Foote said it is the State's road – why should the town be liable. Hawkins said there have been some pretty crazy jury decisions. If someone were on the jury and the State said, the juror would think twice about it. Practically, the Town should say it's not Seabrook's liability and won't take on the responsibility. However, the Selectmen are giving consideration to what is their moral responsibility, it not their actual responsibility to the townspeople for safety in issues like that. At the January 11 meeting it was agreed to ask the Planning Board if it would approve sidewalks only for the Route 107 section that crosses the Bridge and goes down to Route 1. Hawkins said it would be for that location only considering (i) it is the only Route across I-95, and (ii) there will be a big shopping center built right at the end, so for pedestrians coming across that Bridge that traffic is more likely to increase than decrease. Khan said it is also the evacuation route. Hawkins thought this is the last chance to make this decision which would be needed by February 14 when the bids are expected to go out for the Bridge. This is the last chance to have the State pay for those sidewalks. Hawkins commented he'd heard the State was digging in on the Hampton Beach sidewalks. Unless something changes in the Legislature, he thought the State will stick to its guns in terms of their position on sidewalks. Janvrin thought the exception would come if any town were to sue the State of New Hampshire.

Foote believed that if the State would not support sidewalks anywhere, then it should be totally statewide; the sidewalks are done in Exeter. Janvrin said it is statewide, but that Exeter is an urban compact community. Foote asked for an explanation as to why a state truck was plowing the sidewalk. Morgan said that people think maintaining the sidewalks will be a burden to the Town. He asked whether, realistically, any of the sidewalks up and down Route 1 had ever been plowed. He thought there would be a 10-20 year window when the sidewalks would be in decent shape and would require nothing at all from the town. Janvrin raised the liability. Morgan said the liability is if someone trips or slips. Janvrin said that the New Hampshire constitution states that the State cannot mandate something of the municipalities without funding it. They cannot mandate that [the town] take over their right-of-way and maintain it on their behalf without funding it. Hawkins said they are not forcing the town to do anything, only saying they would not put in sidewalks unless the Town signs the agreement.

Foote said the federal highway entity states that if there is any federal money coming into the State for any roads, there will be sidewalks. Janvrin understood that the funds are coming from the NH Turnpike Authority, and not from the US Department of Transportation. Hawkins said this is the highway department that is doing the Bridge. Hawkins said NHDOT are also stretching down Route 107 and taking that on under an agreement with District 6. Morgan commented that the turnpike Authority is a department within the NHDOT. Thibodeau thought that at least having the sidewalk is better than not having anything at all, whether it gets plowed or not. Foote agreed, if the State puts it in at their cost. Garand noted this is a limited area and was actually on the plan. Morgan thought all the Board members had seen pedestrians making their way down Route 107. Foote said the most important place to have the sidewalk was on the Bridge. Garand said it was also important to have the signal lights at the decal lanes coming off and on the highway. If the lights are in and people are crossing the highway and the ramps, it would be safer than nothing at all. Hawkins explained that the NHDOT drawings showed sidewalks all the way from Route 1 to the lights at Batchelder Road intersection.

Khan was also at the meeting and wanted to remind everyone that the Town fought about this issue for a year and a half with letter going back and forth from the BOS and the Town Manager's office, and the Planning Board, and NHDOT. At the last meeting when the two high officials from NHDOT said it would be a grass area on the Bridge the Seabrook people all panicked. They asked many questions about what other towns have such agreements and what was in the agreements. After the NHDOT people left, the discussion continued. Everyone



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thought that this is such a big item, that it should be brought to the Boards. If the Town misses the boat now, it would have to spend a big amount of money in the future because the townspeople will ask what kind of deal was made with the NHDOT to get a grassy area on the Bridge. The thinking was to have the NHDOT do the sidewalks now; perhaps in the future some town will take it to court or the legislature will make change the policy and Seabrook will get the benefit as well. Khan said to let the NHDOT build it now. Morgan said the Town could accept the gift from the NHDOT to build the free sidewalks, and at the same time continue to write letters and talk with others who are just as concerned. Hawkins said it isn't exactly free because the Town has to sign the agreement with NHDOT; the subject of this sidewalk won't be open to debate.

Janvrin said he and Kravitz sit on the RPC Legislative Policy Committee, and this issue is now a priority. He also learned that Portsmouth and Seabrook are having the same dilemma. So there are other towns that have the same issue. Morgan was confident the Towns would prevail at some point. Chase asked if there is a copy of the MOA. Hawkins said it the standard agreement that the Board had looked at before. It is short and says the Town will take responsibility for maintenance and liability on this stretch of sidewalk. Morgan said the language is that the Town will use its usual practices. Wood liked that language. Morgan said the town doesn't have a sidewalk plow and doesn't plow, so that is the usual practice. Foote said the town does plow on some streets. Wood thought that Garand had said this goes from Route 1 to Batchelder Road, but now thought she heard it was the Bridge to Route 1. Hawkins said it is the entire length. Morgan said the NHDOT would build only where there was no existing sidewalk area i.e. west of Spur Road.

Wood cited the safety issue for people walking today and what would happen when there is a great deal of more traffic. She thought it would be inappropriate for sidewalks not to be there; the safety of the pedestrians had to be completely kept in mind. Morgan said because of the high speed ramps getting onto I-95 are especially dangerous for pedestrians to cross because that is where vehicles are picking up speed to the Interstate. The State has designed a system that comes down one side of Route 107, have a cross-walk, go across the Bridge, and then cross over to the other side of Route 107. That way the pedestrian will not interact with those two on-ramps. Hawkins said this is providing a safe place to walk, especially on a five-lane Bridge. Hawkins asked for a motion to support building sidewalks on the Bridge over I-95 and along 107 according to the map provided by the NHDOT. This would be a recommendation to the Selectmen to sign the Agreement with the NHDOT. Janvrin thought this should go to court.

<b>MOTION:</b>	<b>Thibodeau</b>	<b>to support the NH Department of Transportation building sidewalks on the Bridge over I-95 and along Route 107 in accordance with the map provided to the Selectmen by the NHDOT on January 11, 2012.</b>
<b>SECOND:</b>	<b>Sweeney</b>	<b>Approved: In favor – Hawkins, Foote, Khan, Thibodeau, Sweeney, Fowler; Opposed – Janvrin;</b>

Hawkins adjourned the meeting at 9:35 PM.

Respectfully submitted

Barbara Kravitz, Secretary  
Seabrook Planning Board