



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

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

Members Absent; Sue Foote, Alternate;

Hawkins opened the meeting at 6:30PM. As only one case was on the Agenda, Hawkins proposed hearing that case first; by consensus, the Board agreed.

PUBLIC HEARING ONGOING CASE

Case #2013-02 – Proposal by MacKenzie Heating & Cooling to install a 30,000 gallon propane tank and to construct a 100' by 125' gravel loading area off London Lane, Tax Map 5, Lot 8-43, continued from February 19, 2013;

Attending: Scott MacKenzie, Mackenzie Heating & Cooling; Jim Kerivan, Planning Board civil engineer;

Appearing for the Applicant: Wayne Morrill, Jones & Beach Engineers;

Appearing for the Planning Board: Jim Kerivan, Altus Engineers;

Hawkins asked Morrill to proceed. Morrill said that since the last Board meeting, they had attended the Technical Review Committee meeting and made the following changes to the revised plan. A sign and address had been added, and the potential future building clearly identified. A note on the plan stipulates that any building, other than that approved in this application, must return to the Planning Board for review and approval. The only items requested in Case #2012-02 are the access drive and the yard itself. Morrill explained that the drainage ponds had been constructed as part of the permit for 4 different sites. Because the land had changed from the original design, the Department of Environmental Services requires a new Alteration of Terrain permit, for which they have applied. A note had been added requiring trucks to be parked inside the fence overnight; a bathroom facility would be unnecessary as trucks would load, make deliveries, and return to the yard at night. Morrill said in response to questions about the ArcSource drainage, additional research showed there was no impact because it all goes away from the MacKenzie property; this is now depicted on the revised plan. They will return to the Board once the AOT permit was received.

Hawkins said to address the TRC recommendations. Morrill said if the Applicant wanted a second floor, they would have to make application to the Planning Board as notated for any future building. The tree line had been updated to clarify what existed and what was proposed. They have applied for a new drainage permit. Road signage and snow storage had been added. Morrill said they believe adequate lighting was shown around the fence and asked for clarification about emergency lighting. Grounding the fence lighting had been notated. As previously explained, there would be no bathroom. A note had been added that overnight trucks would park in the fenced yard. The drainage easement had been notated, and the maintenance requirement added. Morrill was not sure about the reference to the bays; a drainage easement took care of the front and the rest of the drainage was on site. The pending AOT permit would identify what had been built. The ArcSource drainage had been depicted; erosion control was added and



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

maintenance notated. When received, the new AOT permit, which he thought was the only missing item, would be notated.

Janvrin wanted the wetland scientist stamp on each of two pages. Morrill said he was told by the DES that because a number of ponds on different sites were involved, they would not have to go through the full review, but would need to apply for the AOT permit and pay the fee. This should take about a month. Janvrin thought the reference to the "bays" had related to drainage. Morrill said that was already notated, but he would repeat the note on both pages referenced above. Chase asked how the fence lighting would be grounded. Morrill said the notation was on the plan; whomever does the installation would know this had to be included. He commented that there are a couple of gates for Fire Department use; he would look into the grounding as well. Chase thought that grounding would be done through the electrical system, and did not see that depicted. Mackenzie asked for an explanation of the purpose. Janvrin said there was ionizing radiation from the atmosphere which could be activated through nearby cell phone installations. The fence would act as an antenna that could spark if touched. This would be similar to using a cell phone while fueling at a gas station, but a little stronger. MacKenzie said the fence was set back further than the minimum requirement; cigarette smoking was ok there. That was still further than the required distance of the tanks from the building. Grounding would be in addition to the code requirements.

Kerivan said the driveway was not really a roadway. The drainage would go through the abutter's site and then back to the property; he asked about a right-of-way. Morrill said the drainage was originally done for 4 sites; the maintenance went with it. Hawkins asked for further questions or comments; there being none. He listed the following three items: AOT permit issued; Sheet C3 also signed by the Wetlands Scientist; the final plan to be satisfactory to the Town Planner. Janvrin asked for \$5000 security.

MOTION:	Chase	to approve Case #2013-02 – MacKenzie Heating & Cooling to install a 30,000 gallon propane tank and to construct a 100' by 125' gravel loading area off London Lane, Tax Map 5, Lot 8-43, conditioned on (i) issuance of the AOT permit; (ii) Sheet C3 additionally signed by the Wetlands Scientist; (iii) security of \$5000, and (iv) the final plan to be entirely satisfactory to the Town Planner.
SECOND:	Khan	Approved: Unanimous

Hawkins announced that the Board would move directly from the Public Hearing to Correspondence to address letters from DDR and Walmart. He asked Morgan if there were a logical order for discussion. Morgan recommended taking DDR first as it was most encompassing.



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

CORRESPONDENCE

DDR Retail Center, Coordination Items:

Attending: Jim Grafmeyer, Vice President, Northern Region; Paul Danszezak, Construction Manager, Developers Diversified Realty Corp;

Appearing for the Applicant: Attorney Malcolm McNeill [] McNeill, Taylor & Gallo; Gordon Leedy, project manager, and Mark Verostick, engineer, VHB Engineering; William Wilcox, Wilcox & Barton, Environmental Engineers; Attorney John Sokul, Hinckley, Allen & Snyder;

Appearing for the Planning Board: Attorney Walter Mitchell, Mitchell [Municipal] Group; Jim Kerivan, Altus Engineering;

McNeill had been representing DDR as it relates to this project for the last 7 years. This appearance before the Planning Board was requested pursuant to issues that arose after the approvals by the Town and the Court. He remarked that the Board's willingness to hear their concerns informally was very much appreciated. DDR felt there were some issues to discuss given what is at stake with a project of this size. McNeill noted that some Board members were new and had not heard the Applicant's case from the beginning. He proceeded to give a summary of the related facts and events.

McNeill explained that this project when officially approved by the Superior Court it was for a 450,000 square-foot Retail Shopping Center. All of the uses and the tenants, or the fine tuning of the site, were not known at that time. The approval was found to be in order by the Court. McNeill recalled that the intended prime tenant was thought to be the Target. It was envisioned that DDR would pay at least six million dollars for certain improvements, including for the Bridge, the widening of various roadways, upgrades along Route 107, and other infrastructure including camera traffic equipment. These improvements are now visibly progressing.

McNeill said that after the [Superior Court] project approval in 2009, the Town as well as two competing commercial businesses appealed to the Supreme Court. This culminated in a Settlement Agreement among the Town, DDR, and most importantly the Planning Board. The Settlement Agreement was signed as of December 8, 2010, and was signed by the Planning Board Chair. DDR knew that there would be some adjustments to the plan as time went on. Additionally, there had been an early requirement that all of the buildings would have to be connected. To address these matters DDR came up with a "Bubble Plan" appended to the Settlement Agreement, the effect of which was that DDR could build out the 450,000 square feet provided all of it was inside the bubble and there would be no material changes to parking, lighting, landscaping, and approved infrastructure. This meant that the project could be built out without returning to the Planning Board. They felt this was necessary to make clear that these kinds of variables existed, and that this was a negotiated settlement among the Town, DDR, and the Planning Board. DDR essentially anticipated that the issues that necessitated this hearing could come up. They wanted a vehicle to proceed inside the parameters of the bubble. All of the work that had been done in reliance on the permits could be seen.



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

Mc Neill said that a siteplan permit was issued on September 20, 2012 based on drawings, and DDR has proceeded to build out the site consistent with that permit. On November 20, 2012 DDR came to the Planning Board with a Walmart Condominium Conversion plan [Case #2012-28], because Walmart felt it necessary to have an ownership type position in their portion of the Shopping center. That condominium conversion plan was approved by the Board; this went well and was never appealed. DDR believes that any project of this size with a major tenant like Walmart would require refinements. They have tried to stay in touch with town officials as they moved through the project. The civil engineering firm had been out to look at the site as they went along. They have tried to maintain appropriate contact with the code enforcement people and Morgan where necessary.

McNeill reported that on March 26, 2013 a meeting was held with Garand and Morgan where concerns were expressed about site improvements that were not specifically part of specific building plans. The question arose whether these matters should be handled administratively, or whether it required coming back to the Planning Board. In an abundance of caution they also responded to the fact that town officials were raising these concerns and an appropriate response was needed. An April 2, 2013 letter delineated the refinements that had occurred. Many were driven by the Walmart condominium conversion plan approved by the Board; many were driven by utilities, and even moving a storm drain or a very small parking space. DDR anticipated that those types of issues would be handled by the code enforcement people. Additionally, those changes were all in the bubble. From DDR's perspective the changes were not material. The follow-up letter of April 9, 2013 tried to highlight all of the refinements, all of which were very minor in nature.

McNeill also explained that Unitil had asked them to move the soundwall from the location in the approved siteplan. Accordingly, DDR proposes to move the soundwall 70 feet closer to the facility, away from the boundary lines of Rocks Road property owners. Unitil's concern was expressed in re safety and access concerns, and the utility owns the power line easement that goes through that section of the site. Evidence of how this would be done would be provided; they believe this would produce a better result for the town and the abutters. They also feel that the refinement in re the soundwall would not be material, is beneficial, and is reasonable consistent with the siteplan. McNeill said DDR's requests were:

- (i) that the refinements contained in the letter are truly administrative and should be handled by code enforcement and individual department heads. They believe that the Planning Board's tasks are to approve plans and not to approve buildings; the refinements should be delegated to administrative personnel so they can proceed with the DDR people on the ground to go forward with the plans.
- (ii) that it would not be necessary to return to the Planning Board in re the sound walls.

McNeill introduced the DDR professional team, and asked that at this time Danszezak be allowed to speak about the meeting that he and Verostick had with Garand and Morgan, and the refinements, and the soundwall. Then McNeill wanted to speak about the relief that DDR was requesting. They feel they are in compliance with all of their approvals and would like to continue to work in an affirmative manner with the Town. They had come to a point where clarification was necessary. Hawkins agreed with McNeill's approach.

Danszezak said he visited the site a couple of times a month, and had weekly conference calls with the consultants to talk about the progress. He intended to explain some of the items they



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

have had to coordinate as this project moved along. When a project of this size is initiated there is at least an idea of the desired tenants, but this is not necessarily known. The bubble plan was a device to define where the building could take place; they have stayed inside that bubble. Once the major tenant was identified, they had to coordinate all of their issues to get their building constructed on the property. Danszezak said these type of refinements and tweaks would happen again as they develop the roster of additional tenants on the site; all of these are ordinary coordination refinements. However, the lion's share of the refinements discussed at this meeting would be permanent because they involve items like the location of catch basins, the perimeter curbing, and all of the utilities. Additional tenants would have to live with what had been built; they would not break up the ground and move pipes around.

Danszezak showed the siteplan, indicating that Verostick would provide technical detail. He proposed to walk through the changes sheet by sheet, and asked the Board to let him know if or when they had heard enough about the listed refinements, as he wanted to get to the soundwall issues as soon as the Board was ready. He explained that there was an overall plan page, as well as segmented reference maps for the detail. The owner information, the geotechnical consultant, and the plan date had been updated on the cover page. There was a general note tying the contractor to work to that plan and specifications; another note tied the contractor to applicable codes and laws governing disposal of debris. Danszezak outlined the condominium parcel sold to Walmart, and stated that DDR is doing the site work while Walmart will hire its contractor to construct the building. The parking and zoning charts had been updated appropriately; they were within the necessary range for parking.

Hawkins asked for the numbers from the May 12, 2009 approved plan, as well as the revised numbers, Verostick said the approved plan had provided for 1,764 parking spaces based on the total square-footage of 449,964 square feet. As a result of the new building area of 414,167 square feet, the parking reconfiguration was now 1,629. Janvrin commented that parking was now in siteplan regulations and not zoning. Hawkins said the issue was that they went down, not up. Verostick said the building footprint and the parking went down; the ratio on the 2013 plans was 4.05 spaces per 1,000 square feet, compared to 4.04 in 2009.

Danszezak said the allowable building area envelope had been reduced in two places from what was indicated on the Settlement Plan to assure adequate vehicle circulation for Walmart. He emphasized that the building bubble got smaller; its outer boundaries got no closer to any abutters or property line. The purpose was to avoid DDR putting a building adjacent to the Walmart loading dock; the size of the bubble was reduced; the front edge and the back around the perimeter stayed the same. None of the perimeter curbing or entrances changed. The rear drive aisle (previously around the Target) was relocated for improved truck access and refined to make the truck turning possible. Janvrin asked if accessibility was for 53-foot trucks; Verostick said 67 feet with the cab. They relocated the pavement limits outside of the existing Unitil electric easement, further away from the abutting properties. Unitil now decided that it would be better to have no parking in that area. Instead a corner of the curbing cut, which moved the curb that much further away from Rocks Road abutters. Because of the reconfigurations and Walmart's layout requirements, slight revisions were made to a couple of light pole positions in the main lighting field. There would be no less light coverage; the lighting in the back would still be screened and kept away from the abutters; the refinements affected the Walmart entrance lighting and adjusting to the geometry of this store.

Danszezak said the Board had asked that the parking lot sidewalks be paved. Walmart wanted ADA-sized ramps so that someone would not have to jump a curb. Directional aisle and handicap



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

striping was added per Walmart standards. The Walmart condominium boundary is delineated. The truck spin circle was shifted to the west, modified to 120 feet in diameter instead of approximately 110 feet, and the pad surfaced with heavy-duty concrete per Walmart standards rather than the expended asphalt surface. Cart corral to Walmart standards were added. Danszezak said future coordination with tenants would also take corral space from parking, so the lease negotiations don't result in going below the required ratio.

Hawkins asked about all of the grading in light of New Hampshire (and other states) changing their requirements in re runoff. Seabrook was a town that could be significantly affected with fines if there were runoff from private property onto town property. He asked what the review process was when making grading changes to be sure there is no runoff from the site. Verostick said during the plan updating process there was a new drainage memo that went through the town to Altus Engineering which was reviewed for the stormwater ponds. A letter was received from Kerivan indicating that this was in compliance with the original approved plans. Hawkins asked about every change listed on the pages given to the Planning Board, some of which were up to the building permit issuance and others were after the permit issuance. Janvrin asked about the impervious area. Verostick said there was a reduction in impervious area which, in theory, would reduce the runoff from the site. Danszezak said a wedge of about 6,000 square feet of pavement out by removing the curbing area, so it reduced the impervious area. Within the outer curb limits of the entire property it stayed the same or, in some cases, was reduced.

Hawkins noted that Kerivan had been on site, and asked him for comments on his review process. Kerivan said his main responsibility was to see that the construction conforms with the New Hampshire Department of Transportation and the Town's requirements. He was aware of quite a few changes, but there was no formal submittal to the town or to him on what the changes would be. They seem to be keeping up on the changes and whether the water and sewer departments approve of the changes. The coordination seems pretty good between the contractor and VHB. He had not closely followed the grading since the review of the drainage report, but he believed Verostick's statements that they have reduced the impervious areas in a couple of spots. The last review was for the Route 1 drainage for the DDR detention pond. He suggested that he meet with Verostick and resolve whether it meets the requirements talked about in 2012.

Kerivan commented that there was an issue with the new Environmental Protection Agency requirements that could mean the town would have to sample all of the parking areas. This issue had not come up yet, but he believed that the town needed easements so they can get in to do sampling. Hawkins asked if this would be for private property, or only the spill-off. Kerivan said it would relate to the spill off but, for example, if sodium chloride was found in the culvert that will go under Providence Way they would want to know why it was so high. Kerivan said most of the changes were relocations or additions like a gate valve; he and the water department would look at it. Changes involving sewer and water are pretty much common sense; the relocation is understandable. However, Walmart wanted a second water service like a two-inch line to the garden center, and the Water Department did not want a second meter. Kerivan said they seem to be working out this issue. He supposed that the Water Department could refuse to install the meter. Danszezak asked if Verostick had coordinated this issue. Verostick said this was coordinated with the architect. He believed they have decided to do without the second line, and would provide Kerivan with the conformation when received.

Wood referenced the forthcoming MS-4 requirements, and said that the day before at the Selectmen's meeting there was a thick, updated set of rules. In that book there were a lot of



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

requirements, and wondered if the Public Works Manager should look at this situation in that capacity. Danszezak asked if Wood meant coming off DDR's property into offsite storm drains, because there was very little water coming off the site. The drainage system collects all of the water coming off the DDR site and carries it to the ponds on the eastern ends. Hawkins said the Board's issue would be that someone should look at the changes in the plan to confirm that the current drainage does work as described by the DDR representatives at this meeting. The Board would want to know what is involved in the changes that it should be concerned about, and how should it be dealt with. He assumed that the drainage plan currently in place could be reviewed to address the similar items in the original submission. Kerivan commented that the MS-4 rules don't really deal with NHDES rules, it is more the quality of the stormwater. At this time DDR conforms to the regulations. Everyone is wondering where the MS-4 regulations will take the towns; it is really unfair.

Khan explained that this conversation is about the new stormwater management plan that the NHDES has been sending as an unfunded mandate to small towns. The town needed to abide by the rules in force on June 1, 2013. If DDR had not come to the Planning Board, this would not have been an issue. Because DDR came to the Board, the town needs to be sure that it is not doing anything wrong i.e. had no further obligation. He asked for coordination with the DPW Manager and Sue Foote, the Conservation Commission Chairperson it would be very helpful, so that everyone could be in the same place in re potential fines etc. If DDR had not asked for this meeting, this topic would not have been raised at this time. Janvrin clarified that the MS-4 rules were coming from the EPA, and not the NHDES. Chase asked if there were a problem in getting an easement to do sampling; if this was missing, it should be achieved. Grafmeyer said this could be worked out. Chase thought that would be the response, but the question had to be asked now. The town staff had to be able to take samples; in five years DDR could refuse.

Danszezak asked if the Board was satisfied with hearing the nature of the changes listed in the letter. If so, he was eager to get to the soundwall issue, provided the members understood that the types of changes described so far would happen again with other new tenants. They were hoping not to have to return to the Board with every new tenant, believing that in the future reviewing minor refinements would not be a good use of the Board's time.

Hawkins explained that the plan approved by the Court in October of 2009 was the plan previously denied by the Planning Board with the revision date of May 12, 2009. That was the last official planset that the Planning Board knew about. Nevertheless, a plan dated December 8, 2009 was used to depict the Building Bubble. Furthermore, the plan that was used to issue building permits was dated June 29, 2012. Hawkins did not know what was in that plan or what had changed. A full planset revision that includes all the changes to date was now waiting for the Board to review; presumably this would include a movement of buildings and possibly newer buildings. He did not know how fixed the south side of the mall would be. Danszezak agreed. Hawkins said this would not be the last time to speak about this project. He emphasized that the Planning Board would have to look at changes from the May 12, 2009 plan because that was the last official document it had. The Board could decide that all the changes were fine, and to move forward.

Hawkins related that Morgan had asked for a listing of all of the changes that had occurred to date since May 12, 2009 plan approved by the Court. He thought that for the most part they were not very significant in light of the fact that the Settlement Agreement did allow them to build whatever building structure they wanted as long as it was inside the bubble. The reason for Morgan's letter was so that the Board could know what changed, because the building was not



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

happening according to the May 12, 2009 planset. Hawkins said that DDR had done a pretty good job in the letter identifying the items that had changed which he thought should be on a plan; if deemed significant, someone would bring that item to the Planning Board's attention. For the most part the Board did not get involved in construction. Janvrin said this was taking a snapshot in time. Hawkins said this was necessary so that there is an official document and everyone knows what it is. Right now, given all the plan dates that had been used, there were all kinds of possibilities for confusion and unintended mistakes.

Danszezak said when Walmart came on board and started to generate the building permits, there were several issues that they wanted to make sure were coordinated so their building would work the way they needed it. Bohler Engineering had asked that the VHB (DDR) set of drawings be submitted for the Walmart building. DDR declined because VHB was not the engineer of record for Walmart. DDR then offered to put together a reference set that Garand could use when reviewing the Walmart drawings. Danszezak discussed this with Garand who explained that he did not have anything to do with the site work; his area of review was for the buildings. Therefore, DDR did not send those drawings to Garand. Instead they talked about the changes with Garand and Morgan, resulting in Morgan requesting the letter enumerating the changes. They would have liked to come to the Board sooner, but had to wait until Walmart was also ready for a presentation. Danszezak said the communication had been good; he hoped it would remain that way. Individual department heads had been excellent and responsive. He asked permission to move to address the drainage issues.

Hawkins wanted to know what had been done in re the pump station and the emergency generators. Verostick pointed out their location as of the May 12, 2009 planset. Rowe said that abuts Rocks Road and .would be right in their back yard. Hawkins said this was not a public hearing; the time for comments and questions would be at the end of the discussion. He wanted to identify the issues that the Board should be looking at. The pump and generator were on the opposite side of the soundwall from the houses along Rocks Road. Danszezak said the pump station was entirely underground; the generator would be above ground. Hawkins then authorized moving on to the soundwall issues.

Danszezak

Pointed out the location of the electrical easement, power lines, and the existing chain link fence which is about 15 feet to the shopping center side of the property line. The soundwall was meant to be positioned right at the fencing, but to do that would mean disturbing back yards which they did not want to do. Additionally, Unitil presented two issues:

1. The return leg cut off their access to Route 1, which Unitil did not want; and
2. The proximity of the soundwall to the high tension wires created a safety concern for the ongoing operation as well as the construction period.

The wall is 12 feet high; the high tension lines tend to sag under load and heat. This could create a possible arching between the wires and the steel columns that support the wall. After discussions with Unitil, the resolution was to move the soundwall to the other side of the easement, away from the fence and the parking lot. They realized that there could be no parking inside the easement, nor snow pushed against the easement. By moving the soundwall, a vegetative buffer is undisturbed. It also moves the soundwall 70 feet further from the property line, which addressed his concern that a solid wall would bounce sound [e.g. cars, yard work] back from the abutter side of the wall. Moving the wall 70 feet creates a better buffer i.e. the sound would have to travel further to the property line; the wall would also be lifted 3 feet which



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

gives better coverage for the refer trucks, lights, and trucks moving at night. Wood asked if there were a sound wall along the whole length of the residential Rocks Road area. Danszezak pointed out the original location of the soundwall, stating that it did not extend for the entire length of the residences. Also, moving the wall saved about 175 feet; DDR was willing to extend the soundwall for that distance. Wood recalled that in discussions concerning the Target some traffic went to the back for deliveries. She asked if Walmart would propose a tire and battery facility. Danszezak said that issue would be brought up in the subsequent Walmart discussion. Sokul indicated that the answer would be yes. Wood asked if the vehicles would now be going along the soundwall area. Sokul indicated the answer would be no. Hawkins said this matter does somewhat tie into the soundwall, but should be discussed during the Walmart presentation when a drawing would be available. Wood's concern was delivery traffic vs tire servicing.

Khan thought that the original plan called for cutting a lot of trees which now are gone. He asked how much tree area would be cut under the revised soundwall plan. Danszezak said none would be cut. Hawkins asked if Unitil cared about vegetation in the easement area. Danszezak said that would be a question for Unitil, but they would have to maintain the right-of-way. Grafmeyer said under the revised plan, they would not be cutting trees. Danszezak commented that there was plenty of landscaping on the site, and the revisions had not taken any away. Janvrin asked if the chain link fence would remain as existing. Danszezak said if there is approval for this proposal the chain link fence would remain where it is. Lowry asked how far the 175 feet would go. Janvrin said the original soundwall would stop at Donny Chase's house; the 175-foot extension would go close to the Ailwoods' property. Town property wouldn't be covered. Derek Heap pointed out that his property, at the back corner of the Walmart abutting Dows Lane, Unitil, and the truck turning area, would not be covered. Danszezak noted a few trees.

Janvrin noted that the town was the abutter with several parcels including the transfer station. He thought the question was whether the soundwall could be extended to cover the Heap property. Wood asked how much more soundwall would then be needed. Verostick calculated another 200 feet. McNeill asked that Heap consider how much better the proposed soundwall modification effect would be compared to the original plan in re his property. Grafmeyer said the wall would go 175 feet further than the original plan specified. Wood wanted to know how much wall would be needed to go as far as the corner; that way all of the Rocks Road abutters would be taken care of. Danszezak said they had anticipated that as part of the condominium plan with Walmart, the Board might ask for more soundwall. They might want to look to Walmart to do this as part of the business deal with DDR; it could be considered. Grafmeyer suggested that issue could be put to Walmart during their presentation. McNeill said they were providing enhanced protection over that in the original approval. Danszezak said this would work out better for several reasons.

Janvrin asked if the new configuration would have Unitil come in from Route 1, and not through the parking lot i.e. Unitil would not be asking DDR for access. Danszezak said that's the way Unitil views their easement. In agreeing to the wall, Unitil is in effect cutting off access to/from the DDR site. Danszezak said that one of the first things he asked in meetings or calls with the contractor

was if there had been any complaints from neighbors including the Bank, the truck station. McDonald's, CVS. To date they were not aware of any complaints. Garand said up to this point no one had contacted him about any issues. Danszezak said he was the person to talk with, should an abutter raise any issue. Hawkins said that DDR and Garand may not have heard any complaints, a couple of weeks ago the Steering Committee met with a group of Rocks Road residents to see how they felt about their area zoning. If DDR would like to hear some of their construction complaints, it would take a long time.



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

Hawkins thought that the Rocks Road residents should have an opportunity to express their concerns about construction at another time, and recommended that DDR contact them for feedback on what they might like changed. Some items were about runoff, trash; there was no protective tree barrier for the houses. They were asked their views about what should have been different. Hawkins commented that many items already discussed were not significant enough to come back to the Board. He thought the soundwall might be significant, but perhaps could be dealt with at this meeting. Everyone acknowledged that there was a court-approved plan, and agrees that some town ordinances had since changed. He would now speak about a few items, and then give the Rocks Road residents a chance to express their views, other than in re construction.

Hawkins said a primary concern was that there was no ordinance for landscaping or buffers when the plans were approved by the Board. There was no buffer between the houses and the mall. The Board would look at noise, light, trash and trespass. For the most part, the soundwall addresses those items. He recalled the comments about sound bouncing off the soundwall, and asked for consideration of some landscape buffer on the abutter side. Hawkins thought extending the soundwall the length of the building would go a long way toward making everybody happier about the construction. It was a tiny expense relative to the total project. He commented that the neighbors concerns had been heard, but perhaps they did anything about them. He requested that the soundwall be extended for the length of the Walmart building and down to the truck turnaround. Appropriate light infiltration could be discussed. Hawkins pointed out that the Town now had a landscaping standard intended to protect abutters from the retail spaces being build right next to them, as well as to reduce hot-top. He would not ask DDR to re-landscape the parking lot, but it would not meet the current standard.

Hawkins thought that discussion about extending the soundwall to protect all of Rocks Road, as well as landscaping on the abutter side, would be appropriate at this meeting. Landscaping would also help in mitigating the sound. Danszezak pointed out that DDR had first offered plantings rather than a monolithic soundwall. At that time, it was turned down. If the soundwall had remained in its original position, there would have been no opportunity for plantings because the wall was on the property line; i.e. they could not plant on abutter property. Wood thought this could work out for everybody.

Morgan reminded that McNeill's purpose for this meeting was to determine whether the changes warranted siteplan review and notification of the abutters. It would be the board's decision as to whether any of the changes crossed that threshold. DDR was making the case that they do not believe it was. He disagreed in terms of the soundwall, because it was substantial and outside of the court agreement to some extent. He thought it would an amendment to the siteplan approval. In that event, abutters would have to be notified, although some were present at this meeting (by word of mouth). He cautioned about sliding into a de facto site plan review when everybody had not been notified. The Board's role was to decide whether a siteplan review was appropriate and, if so, what items would be subject to that review. In his opinion the soundwall qualified, but pretty much everything else did not. That would be for the Board to determine at this meeting. Janvrin asked Morgan if a waiver based on what abutters wanted, could be appropriate. Morgan said that because notices had not gone out, it was not known whether all the abutters were aware of this meeting. He advised against making some kind of change that would be a de facto amendment to the siteplan, causing an abutter to emerge next month with an objection. Wood thought Morgan was saying that the board had to decide whether this should go to a public hearing for which all of



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

the abutters would be noticed. Morgan said if that is the decision, the items to go to the public hearing should be specified; he thought 99 percent would not be necessary.

Hawkins did not necessarily agree with Morgan in this situation. The Board had discussed that the moving of the soundwall was insignificant, so that was a possible decision. It was appropriate to know how DDR would propose to address some of the issues raised. He asked for Attorney Mitchell's response. Mitchell did not see that Hawkins' view as just expressed was contradictory with Morgan's view. Morgan had offered his personal opinion as to what would require siteplan review, and what would not, and recognized that he was not the decision-maker. He had discussed the situation with Hawkins, Morgan and Kravitz. The issue had started with Garand stating that he did not know if the things being discussed really fell within the umbrella of the original approval by the Court (not the Planning Board) or was something outside of that which would require Planning Board approval. The core issue was if there was anything already discussed in this meeting, or might be discussed before its adjournment, that would require an amended siteplan review with a hearing. The Board should first make a recommendation on that question.

Mitchell said this was a strange circumstance with the plan being approved by the Court. His recollection was that the original Planning Board denial, overturned by the Court, was not based on the Board finding that something in the interior plan was lacking. Rather it was a traffic issue. Hawkins said primarily it was about safety and the project being too big for the existing infrastructure on Route 1 and across I-95 on Route 107. The Notice of Decision listed all of the concerns. Mitchell said that on appeal the core issue was the Town's ability to base its decision on its judgment of the situation on a state highway. That was resolved in the Settlement Agreement. Mitchell said the core issue now was whether anything needed to go to site plan review. Chase suggested hearing from Walmart before going further. Khan identified Mitchell as the Attorney for the Town in this matter. McNeill thought it was clear from Morgan and Mitchell that the Planning Board had discretion on this issue. He encouraged having the abutters speak as that might be a factor in how the Board exercises its discretion.

Hawkins determined that abutters could comment on the plan changes that had been presented, but not to past siteplan matters. Heap said in 2009 the discussion was about normal operating hours, but now it was a Super Walmart – 24x7. He thought the soundwall should go down further as accidental alarms and cars moving in and out was not what was agreed. Hawkins asked how Heap felt about moving the soundwall away from his property line. Heaps concern was that Walmart juts out at his property. The soundwall should go to the truck turn-around, and then a chain-link fence should be positioned to trap bags and debris. Abutters should have their soundwall, and an 8-foot chain link fence should go the rest of the perimeter to contain what gets blown toward their property, even if it can't get all of it. Theresa Rowe said she was speaking for herself and others. One of the biggest issues was the sound barrier; they appreciated that it would be 70 feet further away and cost a lot more. She asked about moving a retaining pond. Danszezak said none of the ponds had been moved.

Rowe asked if the lights had to be facing down. Danszezak said the lighting plan did not change. The lights would go toward the south, but would not be directed toward her property. She asked about hours of operation citing the town ordinance. Danszezak said they would pursue this. Hawkins asked if hours of operations were notated on the May 12, 2009 plan. Morgan said that would have been four years ago. McNeill did not think so. Grafmeyer said there was discussion about truck deliveries, but did not remember operating hours. They would have to comply with the town codes. Hawkins commented that more recently the hours of operation are notated on the



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

plans. Janvrin said that the regulations re lighting continue to be that it did not glare and could not be discernible at the property line. Rowe said in Walmart parking lots alarms go off and kids beep the horns. She asked if they close at 9PM, and was concerned about the tire place.

Hawkins said hours would be addressed in the Walmart presentation. McNeill said he had drafted the conditions of approval which the Court approved, and did not see anything about hours of operation. Hawkins reminded that the conditions that the Planning Board looked at were drawn by Morgan. Rowe said she had talked about the town noise ordinance covering 10PM to 7 AM. Hawkins recommending "requesting" rather than complaints that could go on deaf ears per the Court approval. If there were no hours of operation, the issue would have to be noise, which is a town enforcement item not a Planning Board item because the Court had made the decision. Rowe said all they want is good neighbors, understanding that the shopping center would be there. Another abutter was concerned that the higher soundwall would block out a lot of light and the sun. He agreed with Heap's view. He was also concerned about the drainage infiltration material

Danszezak appreciated hearing the abutter views, which they hadn't heard since the start of construction. Rowe did not appreciate the 7AM start, but did not think anything could be done about it. Danszezak said they do monitor the sound on the site and the dust. Rowe had taken down wall items because of the dust and shaking when the big construction trucks go by. Danszezak offered to meet with the abutters on one of his visits to the site to chat about their concerns, and asked if the town could make a room available. Rowe suggested meeting at her house. Wood thought that openness would go a long way for the Rocks Road residents. Danszezak commented that they should have set up this communication before now. Hawkins asked if there were additional comments from those in attendance.

Mike Kettenbach, of Demoulas, Delta & Delta, and RMD asked for the parking ratio for Walmart re the parcel that that they purchased. Verostick said it would be 4 spaces per 1,000 square feet – consistent with the rest of the property. Kettenbach said that normally Walmart wants a 5.5 per thousand ratio; at 4 spaces per thousand he thought they would be underparked as a traffic user. Hawkins said that was close to the current town maximum. Kettenbach said when this project was originally proposed in Phase I and II they used an ITE standard of 820 which is for a general shopping center configuration. Throughout the process everyone was led to believe that this would be a "Target" and other retail. He had talked with Target people seven years ago and knew that it was not a Target. Rather it was a stalking horse for a Super Walmart. The Town had accepted this through their agreements and the bubble.

Kettenbach said this was now a grocery anchored super center. ITE had a specific standard for a free-standing discount super store, which he said described the Walmart condominium. Kettenbach said the ITE standard for a free-standing super store was 820; an ITE rate of 820 increases traffic for up to 17 to 20 percent of the overall traffic, which would place a grater parking demand. It was the Board's decision as to whether this requires a siteplan review, or a judge to interpret it, or a siteplan review open for comment in the entirety. He was a firm believer in transparency. McNeill commented that his was not a site issue. The issue had been resolved. The Court had approved a plan. The Planning Board had approved a condominium conversion that was not appealed. DDR prevailed in the law suit and the town entered into an agreement. Those issues were gone. The soundwall could be discussed.

Hawkins said the Board looked at the condominium as an ownership matter, not a site issue. Kettenbach clarified that he had not said there was an issue with the condominium. Hawkins said



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

the Settlement Agreement did identify an envelope within which DDR could build without identifying the stores. Kettenbach thought this was a very fundamental issue as to the “bill of goods” that was approved by the Board and the Court. It was based on numbers that were grossly different today.

Hawkins wanted to hear the Walmart story because it would impact how the Board looked at the site. Ownership did not matter. The presentation could be in two parts, but the Walmart building is part of the whole site. McNeill stated that DDR could be responsive to the soundwall matters if all issues could be handled at this meeting. Wood referenced the abutter issues of noise and dust, and asked about the timing for the soundwall; it would be nice if it could be up relatively soon. Danszezak said that the soundwall had always been scheduled for late in the construction process after the curbs, asphalt and paving. They had to get some grading done to establish the base for the soundwall. The Walmart pad grading was in place, the stormwater facility was in place. The refinement was not quite ready for the wall to be installed. Now that he understands the neighbor’s priority, they will work with the contractor, CJ Mabardy, try to expedite it. There is some lead time and steel posts that take time. Rowe wondered if the dust could be watered down.

Danszezak said there is an active watering program, and asked Willcox to comment on the watering and sound monitoring. Wilcox said his firm is the environmental consultant on site full time. The contractor uses two watering trucks; the dust kicks up with 8 mile per hour winds. Frequently, the truck runs full time; dust measurements are taken. There are 9 noise monitors stationed around the site, two of which are on Rocks Road. The permissible level is 80 decibels; the highest they’ve detected was 72. Hawkins commented that although the OSHA limit won’t damage ear drums, it was still loud. Danszezak said they would consult with the contractor to see what might be done. It wasn’t a problem with the snow, but at this time of year it could be troublesome. They would put a binder course down later in the month which should help.

Walmart Superstore

Appearing on behalf of Walmart Real Estate Business Trust: Attorney John Sokul, Hinckley Allen & Snyder; Steve Decoursey, civil engineer, Bohler Engineering:

Sokul asked for a short recess to obtain a response to the questions raised about the soundwall. Hawkins called for a 10 minute recess, and then resumed the hearing.

Hawkins asked Sokul to address the Walmart letter. Sokul said the Walmart concerns were similar to, but not quite the same as, that of DDR. Walmart had submitted a formal building permit application for the construction of a store on the property. During the review process, the code enforcement Officer noted that there were a couple of uses that he believed would be allowed on the site, but should be brought to the attention of the Planning Board. Sokul did not believe these accessory uses within the building required any formal review. One was a food service area that might be occupied by Subway, or a similar establishment. It would be approximately 1,333 square feet equal to 0.7 percent of the Walmart store area, and 0.3 of the overall shopping center area. He commented that nearly all big box retailers had similar food areas for customer convenience, typically treated as an accessory retail customer use.

Sokul said the other use would be for a tire and lube area as they have in other Walmart stores, including the existing store in Seabrook. Using an overhead view, Sokul pointed out the location of that service area on the eastern side of the building facing the old town dump. It would occupy



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

about 1 percent of the store space and 0.5 percent of the overall shopping center. Such facilities are found in Walmart as well as Costco, Sam's Club, Sears, BJ's, the Malls of New Hampshire and Newington, and similar facilities throughout New England. Walmart believes these are usual and customary uses anticipated in a shopping center of this size, particularly if a Walmart is located there.

Sokul believed that no further review was necessary, and that the Building Inspector could issue the permit with these auxiliary, accessory uses, noting that these were the only two such uses mentioned by the CEO. For example, a beauty parlor and ATM would also be located within the store as they are in other similar retail centers. Sokul believed that such uses were consistent with the Settlement Agreement. Hawkins said the Board would look at the potential impact e.g. whether it would be a restaurant. He personally agreed that it was only a little food service area. As for the tire and lube center, he wanted to know the direction of the doors because there would be the opening and closing of the doors, and the sound of the air wrench in the summer. He wanted to know if a different type of parking was needed, other than had already been discussed for the whole site. The question of how oil spills would be cleaned up and the area maintained had never been anticipated. Sokul said used tires, batteries, and oil were picked up weekly across the nation by Quest Industries. Tires and other materials are stored in secured, screened, caged areas that are not exposed to the elements; there would be no opportunity for exterior pollution or runoff.

Hawkins asked if the storage areas were inside or outside. Decoursey said there were two waste oil containers, one was inside for oil that was being changed. The outside container(s) were fenced in, with a roof, for used oil that the public brings for disposal. Hawkins asked if these were shown on the plan. Decoursey showed the fenced location. Janvrin asked about the tires. Decoursey said there would be two or three containers for new and used tires. Janvrin commented on the similarity to the way such items were handled at the transfer station. Janvrin asked where batteries would be stored. Decoursey said new and used batteries would be stored inside the building. Janvrin asked about the noise level outside the Tire and Lube Center building area. Decoursey said that a formal noise study had not been done, but he thought the biggest sound would be the wrench that was used to change the bolts on the tires. He'd been told that the sound inside close to the source of the noise would be about 86 decibels, which would dissipate going outside away from that source to about 40 decibels at 300 feet from the source.

Janvrin noted that the nearby power station was regulated to not being discernible at the property line. He acknowledged that Decoursey was not a sound expert, but asked if that town standard could be reached. Decoursey thought it could not be met at the property line, but would be faint at the nearest residence. Janvrin's concern was for the chickens that his uncle raised. Wood thought they were on the other side. Janvrin said these kinds of concerns were for the abutters. If the soundwall stopped part way, it meant that some of the abutters would not have the same protection as others. Sokul discussed the soundwall distances with Danszezak who said that when DDR installed the extra 175 feet, there would still be about 200 feet to the truck turnaround. Sokul asked if the 200 feet were necessary in re the sounds coming from the TLE. Janvrin thought those sounds would extend even more. Sokul asked how the Board felt about further Planning Board review for the two minor accessory uses.

Janvrin said the Stormwater Maintenance Plan needed to be updated. There was a sewer issue re a grease trap for the food area which would have to be reviewed by the appropriate departments. Sokul thought that was being done as part of the building plan submissions. Janvrin reminded that that was what prompted the return to the Planning Board. He felt that as long as



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

the stormwater protection, lead acid batteries, mosquito management with the tires out of water, and containment for oil were being properly addressed to the satisfaction of the department heads, he did not see a need for formal review by the Planning Board. However, if there was an insufficient soundwall distance, he would find it tough to proceed. Sokul said if it would help the Board come to the conclusion that no further formal Planning Board review would be necessary because the impacts were not material in the way contemplated by the Settlement Agreement, he could offer to extend the soundwall. He did not want to subject his client to unnecessary regulatory risk.

Wood asked how if the traffic to use the TLE would be directed somehow around the back of the building. Decoursey said there wasn't anything to prevent that, but he thought the logical way was out to Route 1 or Provident Way. Wood was concerned if there would be enough room for a driveway; Decoursey said there was. Chase suggested a sign to deter the average person from traveling behind the building. Janvrin asked about the onsite truck circulation – clockwise or counterclockwise. Danszezak said it would be primarily clockwise, except that trucks would have to use the turnaround to exit. Chase asked about the chain link fence to stop the debris. Hawkins asked for the location of the existing fence. Danszezak said the original plan had a piece of chain link the connected to the soundwall; that would not be needed now. Hawkins said the issue would be the track blowing around the parking lots into the town land and to residences. Danszezak said there is an existing fence separating DDR's property from the power plant. Hawkins said that to the east the soundwall would not be an issue, but they still wanted to control the trash. Janvrin asked for the height of the fence; Danszezak said it was at least six feet, and on DDR property.

Janvrin explained that the importance of this issue had to do with how the current Walmart site had been maintained. There was a cut through to the Library over a track designated for a rail trail; school children would be working the next week to clean up the mess that blows onto the trail from the Walmart, Shaws, and other mall tenants; there are shopping bags high up in the trees. He did not want that issue on the new site. Wood said that this meeting was to decide whether to move forward to a public hearing. If the Board chose to take everyone's word, and not go to a public hearing, what would bind the parties to this conversation. McNeill proposed the following language: "No Planning Board review is required for the refinements and soundwall changes referred to in DDR's correspondence of April 2 and April 9, 2013, and in the future similar refinements shall be handled administratively in the Town of Seabrook and not the Planning Board. The Board determines that these types of changes are not material. The above finding is conditional upon the soundwall being revised and built in accordance with Exhibit "A". A similar referral to the Walmart letter would be part of the record".

Wood said that proposed language would have to be discussed with the Planning Board attorney. It would bother him to bind future boards from not taking a look at future changes that might occur. She thought that would be up to the standing Board to decide at the time. Hawkins wanted to address the DDR and Walmart letters separately, and to determine procedurally how the Board would determine what is significant or not significant in the future. He said that the initial reaction to the DDR letter was that the items were every day construction matters. This was not clear, because no one knew what planset could be the basis. He wanted to identify the operating planset and how to determine whether making changes to that plan was significant or not. These questions should be put to the town planner, the CEO, the department heads, and the engineering company watching the daily activity on behalf of the Planning Board. If something is just a construction issue and not significant enough for the Board to be involved, this should be worked out among the people involved in the construction process.



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

Hawkins thought that the testimony during this meeting was that the department heads were working issues out fairly well. He did not want to say that absolutely no change would be considered significant, because that could not be known. All the building permits had not been issued; other tenants were unknown. Future items should not be closed off. Leedy commented that he had been participating in all of the DDR discussions for a number of years. His view was that the approved plans set up a geometry for the site with the external curb line, the circulation system, and the bubble within which the buildings could comply. The zoning in place at the time of the approval set forth what the allowable uses in that bubble might be. Leedy thought that within that context, the rest was not material to the siteplan once the core issues being discussed at this meeting were dealt with. Discussing the soundwall and the extent of where it might be, landscaping on the site, the utility changes, and some of the grading changes were not really material to the siteplan. Hawkins said there was a system in place where the CEO and the engineer had no question about how to deal with an issue and what the Planning Board's expectation was.

Hawkins had no idea of what DDR's plan was, because it was different than the last plan he had looked at it. If the buildings shift around but are still in the envelope, the Board could look at it and say there was nothing of concern to it. If there were changes that any of the professionals thought the Board should talk about – the Board should talk about it. Hawkins emphasized that the Board had no intention to manage the construction of that site. The Board's intention would be to try and see that the neighbors had a voice in whatever changes were to be made, and that there was some level of protection afforded to them. Additionally, the town should not be taking on MS-4 liabilities, or future liabilities, that it should not be taking on. Professional input was needed; no one but perhaps Chase, had that type of experience; the Board had to depend on the professionals. If they say it's important, the Board would have to accept that and bring the issue back. Hawkins thought that was a common sense approach.

McNeill said that DDR agreed with the commonsense approach, but thought the "devil" was in the wording provided which had to be worked out as an accommodation to try to bring some finality to this matter. They needed some standards in place to know that DDR won't be coming back to the Board except under defined circumstances. Hawkins asked if it made sense to handle this in pieces to get rid of what was on the table. McNeill agreed. Hawkins said they could agree to use a [specific] set of plans as the new standard going forward. Then they agree on the things that needed to be addressed to make sure that things that would come back to the Board were significant, and not insignificant.

Hawkins wanted to list the items raised at this meeting, which were not just the soundwall. He thought there was probably a lot of agreement on addressing the following items in re the DDR portion of the letter:

1. The Town needed an easement to sample runoff. If it were to leave DDR's site, the town would have to sample it; access would be needed to get to the point for a sample. An easement would be required for that sampling. Grafmeyer said that would be fine. Janvrin said the easement should include the detention ponds.

2. Hawkins wanted the DPW Manager and Altus Engineering to re-review the drainage plan. There have been a lot of changes to contours. He thought that had been reviewed along the way, but according to Kerivan apparently it had not.



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

3. The 2-inch water service needed to be removed at the request of the Water Department. Verostick said in a discussion, DDR's architect indicated that they did not need it. He was waiting for that confirmation; the intent was to remove it.

4. The soundwall would be extended to the furthest east end of the concrete turning path. McNeill wanted to mark that location on a plan sheet as an Exhibit. Leedy marked sheet C-1 – Overall Site Plan, Bohler Engineering (Exhibit A).

5. Address lack of landscaping in northern site area; add plantings along the entire sound wall to reduce the amount of sound that will bounce back and forth; keep back graffiti, and relieve neighbors from looking back at a 12-foot side of a building. Danszezak said that at some points such trees would impose on the Unitil easement. Chase thought that was no clear-cut. Grafmeyer said Unitil would not allow plantings inside their easement. Hawkins only wanted shrubbery that would grow to 6 to 8 feet high. Leedy said potentially there were options e.g. vines, but they would be significantly restrained where they are paralleling the easements. Janvrin thought this could be resolved with a meeting with abutters. Hawkins thought this would go a long way to keeping the wall looking good, and free of graffiti, with sound benefits as well. If Unitil won't cooperate, vines in part of it might produce about the same results. Neighbors live on the other side of the soundwall 24 x 7; the Board would like something decent for them to look at. Chase asked for the color of the wall. Leedy thought "woodish". Danszezak said that had not yet been decided; probably earth tones; they were looking at the recycled plastic panels used at the Kohl's. Janvrin commented that would be similar to what was used along I-95.

Mc Neill clarified that DDR had committed to an extension of the soundwall up to a certain point. He asked for a clarification of what DDR would do, and what Walmart would do. Hawkins commented that this was an issue between Walmart and DDR. Janvrin said this was an ownership issue. Chase said how the two parties handled it would be immaterial to the Board. McNeill understood, but said it should be shown for DDR's benefit.

Wood said a meeting had previously been held with Rocks Road residents, some of whom were present. That group was brought together by word of mouth. Therefore, not all of the Rocks Road residents were aware of the changes under discussion. Now the Board knows there would be a tire and lube area. She was concerned about the abutters not knowing about it until they hear the pneumatic sound, which would be too late. Hawkins said when the town signed the agreement to build inside of the envelope, the use was retail; nothing was said about one type of retail would be allowed, and another not allowed. There would be an issue in going back to reopen a site plan. If there were issues that normally would be brought up in a site plan – noise, parking and the like – perhaps the door could be opened, but not very wide. He thought the developers were cooperating with the Board's approach at this meeting, which was to express its long held concerns in re light, noise, trespass, and dust. It was within the Board's purview to find things significant or insignificant, requiring a review, or not requiring a review. However, there was also the Settlement Agreement which was fairly clear that within the envelope the buildings would be DDR's choice, and not to open up again. Maybe the soundwall was a different issue, it certainly would affect the neighbors; moving 70 feet, not 2 feet. Hawkins asked Attorney Mitchell if that had been correctly expressed.

Mitchell said the language in the Settlement Agreement provided an extra element of uncertainty. There was the more normal issue of whether these uses, a Subway and a tire area, fall within what was approved by the Court. Also to be considered was what effect the language in the Settlement Agreement had. While that language provides some uncertainty, he did not believe



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

that either side had any enthusiasm for litigating that issue further, spending the money to take it back to Court. McNeill agreed. Mitchell thought this was a reasonable approach, given that uncertainty.

Chase asked about testing for the MS-4. Hawkins said the town needs access to test what it had to. Chase asked if the town would be liable if there were an issue in contention about runoff coming from the site. Hawkins said the town would be liable but they have not given any guidelines on how this would be handled. It would be a violation; somebody would be responsible for it. He thought if it were on town land, they would first come to the town. It's not clear how this would be enforced, only that they [EPA] intend to. Janvrin said Applicants were being required to do a stormwater protection plan. If that did not address MS-4, perhaps the DPW Manager should look at this and make sure it was compliant with the MS-4. If not, make sure the applicants were included e.g. if there were contamination, how would they deal with it. Khan said that was requested. Janvrin said if they satisfy the DPW Manager, he did not think the Board should be involved. Hawkins emphasized that the MS-4 had not yet passed, so this would be a potential future happening. This case had already been decided. He was not sure where there would be an opportunity for the Board to change things.

Khan recalled that about seven years ago he was a new member of the Planning Board, participating in all of the DDR discussions. He said that DDR had already spent \$5,000,000 to \$6,000,000 for the Bridge project. They deserve some consideration for how to make their project go forward, and not stop at this point. Janvrin agreed as long as the town was protected. Hawkins said the above were his issues in re DDR.

Hawkins wanted to address the following items concerning the Walmart plan:

1. Create an oil-spill plan and asked Morgan who should review and approve it. Morgan said Altus could be asked if that was within their area of expertise. If not, another engineering firm could be found. Hawkins said the oil spill plan should be approved by the Planning Board engineer of choice. Wood asked if that would be a hazmat issue. Hawkins said this would just be a review because Walmart must know the standards.

2. Extend the soundwall as shown on Exhibit A. How Walmart and DDR split the responsibilities was up to them.

3. Include practical plantings along the length of the soundwall e.g. vines, shrubbery vegetative, but not invasive.

Hawkins asked if there were any additions or comments.

4. Janvrin wanted a Stormwater Protection Plan which DDR and Walmart would work out.

Wood asked if there was anything to be required for the small restaurant area. Hawkins asked if that was a significant change. He thought it's really more of an eating area as in a Target or the current Walmart, not a restaurant. It is a small area for customers to get a bite to eat while shopping; people did not go there for a restaurant. He thought it would be a stretch to deem those types of eating areas were anything more of an attraction than a supplemental use of their space.



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

It's a retail store. The Board's would be concerned about traffic and parking. Wood was more concerned about the water and sewer aspects. Danszezak said the water and sewer departments were reviewing the construction plans. Wood thought there would be more water usage. As Kerivan was no longer in attendance, Kravitz explained that he had described the procedure during his construction oversight: when he had a suggestion or concern it goes to the water and/or sewer department who in turn provide their comments to him. .

5. A stormwater protection plan to detail how to handle oil spills. Hawkins reminded that a spill might be caused by the tire and lube operation.

Lowry asked if there would be other accessory uses in that building. Sokul said there would be, and some might be indicated on the plan; the CEO did not have any issues with them. e.g. hairdresser, bank, such as might be usual in any similar facility. Hawkins asked for Garand's view. Garand said there might be a small fish center, and a hairdresser – common place uses that weren't that impacting or a nuisance. His concerns were restaurant parking, and the oil matters; he wanted that clarified by the Board. Garand said outside use was another issue, and asked if campers would be allowed on the site. Janvrin said there was a town ordinance in effect since approximately 1978 that there be no outside camping in an area that was not an approved camping ground; the fine was \$25 per night, per offence. He said that Walmart did not pay attention to this, and the police department did not enforce it. Garand asked if the dumpsters were still shown. Danszezak said there was a compactor in one of the truck wells that takes trash and food items out from the building; to the rear are the bales and cardboard that are stored until removed from the site. Garand said the Board should look at that also. Janvrin said last summer a resident on a nearby street raised this issue. Janvrin went back to the original siteplan for Walmart about 15 years ago, and found there was no restriction re the outdoor bales, but there was a restriction on outside storage.

Garand said there had been a court case with the Town of Seabrook because of the activities behind the existing Walmart building and the issues with abutters. The Court declared that the use of the back of the building was shut off from 10PM to 7AM. There was a history with the town and Walmart, in re the noise ordinance, and a 24 hour facility. This plan review was the only opportunity to protect abutters. He wanted to make sure there would be no oil pollution or leak on the site, and that storage and tires are covered, not a fire hazard, and not in the middle of things, no campers. For example, one company stores used appliances in a box car. Garand said these things need to be known for enforcement, so that he can go to the site and say something cannot be done. Danszezak thought these types of items were reviewed in the preconstruction plan. Garand said this site never had that type of review because the Planning Board had never seen the plan that is now before them.

Garand said the last plan that the Planning Board saw showed the approved Target, it was one contiguous building all the way around, there were all kinds of conditions and discussions on parking, pedestrian safety, limited access to the back of the building etc. The Town never really put their conditions on the plan. Currently a town ordinance covers refrigeration trucks. Walmart would do most of their unloading on the site. He asked what stop this site from having that at night. Hawkins said there was the town ordinance. Garand said this was a 24 hour site; there was no restriction as to the time. Hawkins reiterated that the site plan had been approved by the Court; the Board was not there to open it up and re-review it. Garand said this would not be re-reviewing it. It was to make sure that it meets the approved guidelines exactly. Garand felt that these items needed to be reviewed by the Planning Board at this meeting.



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

Hawkins said if there were a plan in front of him that showed storage of the oil and cardboard under a roof, why would that need an approval in the parking area. Garand said it was not on the site plan, Hawkins said if it was not on the siteplan, why would they be allowed to do it. Garand said this was not reviewed for the current site. Hawkins said there was not a use on the plan that said they would store outside. Janvrin said it was not permitted, but it was not restricted. Decoursey said rather than have bales and palettes strewn around the site, they designated an area. If they ran into a situation where they were doing something other than that, it would be an easy enforcement option for non-compliance. Janvrin asked if what had been depicted was the storage area for those items, and not in the parking area. Garand also remarked that a dumpster was to be moved around the site. Hawkins said there was a dumpster pad near the soundwall. Garand said the plan did not show the dumpster; he received a plan that showed two dumpsters. Decoursey pointed out the dumpster areas. Wood noted that none of the Board had seen [newer] plans. Garand said those were outside of the bubble area, therefore it would be a change of use for abutter notice. What would happen if they put food out there resulting in a rancid dumpster.

Lowry asked where they would put their grease dumpster. Decoursey did not know if there would be a grease dumpster; there would be grease traps on site to comply with Board of Health regulations. They would follow the applicable codes. Lowry thought that waste oil from cooking was usually put into an outside container. Wood asked how they would get rid of the grease if there wasn't a dumpster. Decoursey did not have the answer to that operational question, but whatever the state or local codes were that would dictate how those that was done. They wanted to be as straightforward as possible to state exactly what would be there. Chase asked if this was stored inside; a truck comes to suck out that grease. Garand noted that with Sam's Club it was stored and then goes through a pumping system to the outside. It would depend on how much grease they would produce. If there was a chicken rotisserie, that would produce a lot of grease. Khan asked if it could go into the sewer. Garand said it would not go into the sewer; it would go into a grease dump maintained on the property outside, usually a distance from the kitchen.

Garand said there were a lot of uses that had not been looked at when the Planning Board approved the Target plan. For example, would there be a condition that an oil facility on site would be operated under Best Management Practices. That was a condition that would be put on any site that had any waste oil on site. Garand said all of these items should have been added on to the plan, if this was to be approved. Hawkins said the Board was approving things in steps; first were the conditions related to the letters. Then the task was to come up with a planset that everyone would agree to work off of. He thought it appropriate to set up some system of review, so that if there were concerns they could be noted on the plans. If that point were reached, these were items that every super Walmart would face because they all have food. Those things should be addressed in the building permit to assure that they are done to meet the codes. On a site review, the Planning Board did not look at the details other than if something is brought to its attention. They are going to do cooking, they need to store the grease somewhere, and why wasn't it shown on the plan.

Hawkins said the next step would be to come up with the definitive plan, noting that a new plan had been delivered to the Planning Board. Garand said those were sent to department heads. Hawkins asked that comments come back to the Board. He thought that everyone needed to agree that there needs to be something to work off of. Hawkins understood that Garand needed guidelines on plans for construction types of issues, but questioned the need for a Planning Board review of minor issues that should be added but the Board had not had the opportunity to review the changes in plans at this point. Garand asked if Hawkins was recommending that the department do the review. Hawkins would send them back to department heads, and ask for



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

comments going forward. The engineers and department heads to work out whatever issues they had. If they need to be noted on the plan, the Planning Board would ask them to be noted on the plan.

Garand noted that that was Hawkins' recommendation. His office does enforcement; he builds to what the Planning Board had approved on the site. Two years from now with an enforcement issue he would look at what was on the plan. That is how he wanted to function. Hawkins thought his proposal was the most practical for this situation. DDR's list of changes served as a guide from May 12, 2009 to the present, but no one had sat down to check it page by page. Department Heads ought to have that opportunity, but Hawkins did not think the items were big enough to stop construction. He thought Department Heads should set forth the preferred way, even if it comes in on the as-built. This discussion would be the next step. After that the Board should discuss how to keep this plan from coming back to the Board every time there would be a change. Garand said the issue was how many changes would there be, and how many stores would be coming in. [Walmart] was about 1/3 of the site. It would be controlled by the condominium declaration and the plan approved at this meeting. The balance of construction would be coming down the road. Hawkins assumed that similar discussions would happen again, but wanted a procedure in place for something of this level of importance to return to the Board. Garand agreed.

McNeill said that Walmart and DDR were in the same position with regard to the Settlement Agreement; both are the beneficiaries of that agreement, and are not to be treated differently. Hawkins did not think that was happening; rather there were issues that under a normal condition would have been expected to be dealt with and appear on the plan. This discussion should not be that nothing ever changes; they are asking for changes every day. To make things right, the Board should be entitled to ask for a couple of things as well. It did not have to come back to the Planning Board every time. It should be worked out with department heads when they think there is an issue that had to be dealt with, and put the resolution on the plan. Hawkins did not think the Board was trying to steal any rights that DDR and Walmart had to build. He just wanted to make sure there was a methodology in place. McNeill asked if they were working off the plans of April 2, 2013. Hawkins recommended that be reviewed next so everyone could make their comments and work out with department heads if there were new issues, and then decide if something is a big issue that would have to involve the Planning Board. If they are building inside the envelope, then it would be the details of how that construction is to be done. He felt this would be done by code enforcement, but agreed with Garand that guidelines were needed in the plan so that he would have a means of enforcement. McNeill said they [DDR] were in agreement. .

Hawkins referenced the conditions earlier identified. Janvrin asked if these could be labeled "stipulations" to differentiate them from the conditions in a full site plan review. Hawkins asked Mitchell whether the language mattered. Mitchell did not think it mattered, unless one or the other word made the Board members feel more comfortable.



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

MOTION:	Hawkins	<p>to find that the items listed in the DDR April 9, 2013 letter to the Planning Board do not constitute significant changes to the shopping center site plan dated May 12, 2009 and do not require site review approval, with the following stipulations:</p> <p>(i) an access easement for town employees is submitted;</p> <p>(ii) Altus Engineering and the DPW Manager review the drainage plan for the whole site;</p> <p>(iii) that the soundwall be fully extended to the corner of the turnaround as depicted on Exhibit A incorporated herein;</p> <p>(iv) that landscaping be planted along the north side of the soundwall for its entire length, preferably in the form of shrubbery that is esthetically pleasing and ; and sound buffering</p> <p>(v) that the documentation and performance for the items described above be entirely satisfactory to the Town Planner.</p>
SECOND:	Janvrin	<p>Approved: Hawkins, Janvrin, Khan, Chase, Sweeney, Frazee; Abstained: Lowry</p>

Chase asked for the hours of operation of the Tire and Lube Center.

MOTION:	Hawkins	<p>to find that the request for accessory uses for a food area, and a tire and lube center area (TLC) as described in the April 9, 2013 letter on behalf of Walmart to the Planning Board do not constitute significant changes to the shopping center site plan dated May 12, 2009, and that the Board approves their request with the following stipulations:</p> <p>(i) an access easement for town employees is submitted;</p> <p>(ii) the soundwall be extended to the corner of the turnaround as depicted on Exhibit A incorporated herein;</p> <p>(iii) that landscaping be planted along the north side of the soundwall for its entire length, preferably in the</p>
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Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

		<p>form of shrubbery that is esthetically pleasing and sound buffering;</p> <p>(iv) the doors of the tire and lube center will be shut between the hours of 7 pm and 7AM, and notated on the plan;</p> <p>(v) the stormwater protection plan (SWPP) and the Stormwater Operations and Maintenance Manual be updated to include a contingency oil spill abatement plan for the TLC; and</p> <p>(vi) the documentation and performance for the items described above be entirely satisfactory to the Town Planner.</p>
SECOND:	Sweeney	<p>Approved: Hawkins, Janvrin, Khan, Chase, Sweeney, Frazee;</p> <p>Abstained: Lowry</p>

Hawkins said that an updated DDR siteplan was in the Planning Board Office, and thought it had been distributed to department heads. Kravitz said that planset had not yet been distributed. Hawkins asked if that siteplan was accurate for everything that had transpired as of April 2, 2013. Verostick and Danszezak said that was correct. Hawkins said that planset includes all of the items that were in the letter from DDR dated April 9, 2013. If that plan was exactly as had been presented is the basis for going forward. However, construction on the south side of the mall was not yet settled; things could go through and change again. He wanted to set up a review of these plans by the existing department heads so they can identify the issues they need to work out with the construction team, also reviewed by Morgan, to see if they can be resolved without coming back to the Board. Janvrin called this a pre-construction procedure during construction. Hawkins asked how much the revision that had been used for the pre-construction meeting of June 29, 2012 had changed to date. Grafmeyer responded that those changes were the highlighted items listed in the April 9, 2013 letter. Hawkins thought that was pretty much up to date, but not final. Grafmeyer said there would be other changes.

Hawkins noted that there had been six sets of plans; even last week it wasn't clear which ones to deal with at this time. He wanted to be able to say that the plans to work off of were those of April 2, 2013. When there were enough changes to warrant a revised plan, there needed to be some process of notifying everybody to work off the next revised plan. It might not have to come back to the Planning Board, but there had to be a process. Leedy said if they issued a new planset it would have a different [revision] date. Hawkins said the construction people could not be working off a different planset that department heads had not yet seen. It was important that the people given the responsibility by the Board for monitoring activity, know what the intent is. If it were significantly different the Board had to talk about it; if not, it should be noticed on the next updated planset. There needed to be a procedure that guarantees that the Seabrook people are looking at the same plans as the construction people at any given time. Hawkins thought that the Planning Board did not have to look at every change, but the department heads and the building inspection persons did need to know.



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

Grafmeyer thought that as work went along and there were changes, DDR would issue a draft set of drawings that would be reviewed by the department heads and Morgan for comments. If all the issues were resolved, they would issue a revision set with a new date. Hawkins added that a list of what had changed would make this a lot easier to follow.

Khan said that in going through the review of the entire project, he thought that about 40 percent was done, with about 60 percent still to be done. He noted that Morgan's time would be reimbursed to the Town of Seabrook, and thought that Morgan should do a review and decide if it had to go to department heads. He did not know how much time Morgan would have to take; he was concerned about how much the town would have to pay. It seemed like a lot of small things that Morgan would be busy with. Hawkins thought that department heads did not generally want to wait to get Morgan's comments; they like to go through their part of it to see what had changed. Grafmeyer said they would send the plansets simultaneously to department heads. Hawkins said the Board needed to know that department heads were informed. He asked what Morgan wanted to see in terms of a process for getting a new set of approved plans. Morgan said to send the revisions to the department heads for their comments. He thought the preference expressed at the meetings was for the department heads to work out the issues with the contractor. Hawkins noted that at that point it was a building review, not a siteplan review. Morgan said if for any reason there was an issue that could not be reconciled, then it would have to come back to the Board. Hawkins hoped that the issue would be worked out before that happens.

Chase had sensed that everything had been working smoothly; if there was a sewer change, everyone was notified that the change was being made. Grafmeyer said there would have been discussion. Chase asked if all department heads were notified via email or some other means that a particular change would happen. Danssezak said there had been very few of those kinds of changes. He had notified department heads in the past. At this meeting the Board was seeing everything pulled together. In the future there would be fewer changes because given how far along they are in construction, the only type of change would be where they tap into a water line or the sanitary for a particular tenant. There would be coordination issues as they get the requirements for each tenant; they go through that with the appropriate department heads. Ultimately that will culminate in a set of drawings that would go to Garand for the building perm it review. Janvrin asked if there should be a trigger point, or perhaps meeting every three months.

Hawkins wanted the plans reviewed by everyone who had a stake in the process – water, sewer, DPW, Morgan and Garand to identify the things that need to show on the plan; keeping a list would create an enforcement capability when construction was done. Water and sewer departments would know where things were, and that what was needed on the site would be there. For example, if Garand raised an issue because storage for a grease trap had not been discussed, he would expect the construction group to listen to what his requirements are and do it and put it on the plan. There is no desire to have to come back to the Board to deal with every change item. Janvrin asked if there would be a time element, and for Walmart, would it be tenancy. He felt that a time line or a trigger point or a phase review point by department heads, should be set to assure the plan represents what was on the ground. Janvrin asked Danssezak what significant event would trigger a review by department heads. Danssezak said it would be the meeting for the next tenant. Janvrin agreed, saying that the Board would be ok as long as that was happening,

Danssezak said DDR had had a preconstruction meeting with department heads. He thought Walmart would also have a preconstruction meeting; he did not know if that had occurred. When



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

the construction company was hired for the next tenant, he assumed that as part of the town's requirements Garand would review the drawings, but they sit down and meet with all of the department heads and discuss the needs for that tenant. Janvrin said that made sense as long as they are using the April 2, 2013 planset as the basis and the notes are updated on the as-built when the construction is substantially complete. Janvrin commented that the Board was trying to leave the process in its hands, but to have a process in place as the phases go forward.

Hawkins said that the April 2, 2013 planset should be adopted as the basis going forward. He asked Garand if he would have pre-construction meetings for each of the new sections (tenants) as they come in. Garand said that because the infrastructure was in place they would come forward for a building permit only. Hawkins asked if other department heads would require input at that point. Garand said it would all depend if it was connected to an existing e.g. sewer. Hawkins asked that if Garand would involve the department heads as he normally did, and that if he felt that a pre-construction meeting was needed, he would call for it. Garand agreed. Hawkins asked if that would take place for each section as it presented.

Hawkins asked what permits had so far been issued. Garand said only for the site work in re the infrastructure, and the McDonald's. Garand said the Walmart plan was distributed within the last few days. Sokul clarified that McDonald's was not part of this project. He asked for other comments; there being none.

MOTION:	Hawkins	<p>to adopt the DDR shopping center VHB planset dated as revised as of April 2, 2013 with the following stipulations:</p> <p>(i) department heads will be given the opportunity to review that planset for their area of responsibility;</p> <p>(ii) DDR will assure that changes, as and when appropriate, are added to future, updated plansets; and</p> <p>(iii) pre-construction meetings will be called for when the Building Inspector deems it necessary.</p>
SECOND:	Janvrin	<p>Approved: Hawkins, Janvrin, Khan, Chase, Sweeney, Frazee;</p> <p>Abstained: Lowry</p>

Hawkins asked Morgan for recommendations on how to keep this project from coming back to the Board every month. Morgan said that he and the department heads could create a paper trail for the Board, which could call attention to an item of interest. Hawkins asked if that would work for Garand. Garand said that would work fine; as long as there were a trail. Hawkins asked if department heads would be asked to identify issues. Garand said normally when he receives a plan in the Building Department, if it was complete he forwards it to department heads and asks for comments within 14 days. If they have issues and want a pre-construction meeting, he will schedule it as is normally done. The paper trail would be given to VHB. Hawkins' preference was that the Planning Board and departments get a listing of the changes not on the basic plan, That way department heads could review changes as they occur and say what was important and what was not important to them. The feedback would be provided to Morgan to summarize for the



Town of Seabrook Planning Board Minutes

Tuesday, April 16, 2013

NOT OFFICIAL UNTIL APPROVED

Board. Probably these are construction issues. The intent is not to have to return to the Board. Janvrin added that this would keep the Board in the loop.

MOTION:	Hawkins	to require that DDR will cause VHB to provide timely listings of intended changes to department heads, and the Town Planner who will provide to the Planning Board a summary of such changes together with any comments received from department heads.
SECOND:	Sweeney	Approved: Hawkins, Janvrin, Khan, Chase, Sweeney, Frazee; Abstained: Lowry

Khan asked if DDR knew the names of any potential tenants. Grafmeyer said at this point he could not provide tenant information. When he is released to do so, he will inform the Board. Khan asked when Walmart would open. Grafmeyer said in spring or summer of 2014. The Bridge would be done in August 2013. Khan said many people had asked about this; it was good to have the word from DDR.

Hawkins adjourned the meeting at 10:10 PM.

Respectfully submitted,

Barbara Kravitz, Secretary,
Seabrook Planning Board