



# Town of Seabrook Planning Board Minutes

Tuesday, May 18, 2010

NOT OFFICIAL UNTIL APPROVED

Members Present: Donald Hawkins, Chair; Sue Foote, Vice Chair; Keith Sanborn John Kelley; Jason Janvrin; Robert Fowler; Alternate; Robert Moore, Ex-Officio; Paul Garand\*, Code Enforcement Officer, Alternate; Elizabeth Thibodeau, Alternate; Tom Morgan, Town Planner; Barbara Kravitz, Secretary; Members Absent: Michael Lowry, Alternate; Paul Garand, CEO, Alternate; Paul Himmer, Alternate;

## **MINUTES OF APRIL 6, 2010, APRIL 20, 2010 AND MAY 4, 2010**

Hawkins tabled the Minutes of May 4, 2010 to June 1, 2010.

<b>MOTION:</b>	<b>Moore</b>	<b>to approve the Minutes of April 6, 2010 with the missing date inserted on page 16.</b>
<b>SECOND:</b>	<b>Janvrin</b>	<b>Approved: Unanimous Abstained: Thibodeau</b>

<b>MOTION:</b>	<b>Moore</b>	<b>to approve the Minutes of April 20, 2010 with the typo corrected on page 6.</b>
<b>SECOND:</b>	<b>Foote</b>	<b>Approved: Unanimous Abstained: Thibodeau</b>

## **CORRESPONDENCE**

**Case #2010-01 – Proposal by Steven Carbone to construct an 11,000 square foot facility for the sale and storage of fireworks at 287 Lafayette Road, Tax Map 9, Lot 64, continued from February 23, 2010 to May 18, 2010.**

Hawkins called attention to Carbone’s request for a continuance. **Hawkins continued Case #2010-01 to June 15, 2010 at 6:30PM at the Seabrook Library, 25 Liberty Lane.**

## **SECURITY REDUCTIONS/ EXTENTIONS**

### **ROCKINGHAM PLANNING COMMISSION**

#### **Nomination of Commissioner**

Hawkins referenced the need to appoint another Seabrook representative to the Rockingham Planning Commission. Hawkins said there were three requests to fill this position; the Planning Board makes a recommendation to the Board of Selectmen. As Hawkins is a candidate for this position he recused himself and asked Foote to temporarily chair the discussion.

Foote called attention to letters from three residents asking to be considered for the position of Seabrook representative to the Rockingham Planning Commission, noting that the Board had had the opportunity to read the letters. The candidates included: Don Hawkins who serves on the Seabrook Planning Board, Budget Committee, Beach Village Precinct and the Master Plan Steering Committee; Mike Lowry who serves on the Zoning Board of Adjustment and as an Alternate and former elected Member of the Planning Board; and Max Abramson a resident with strong interest and participation in town affairs. Foote asked for discussion. Janvrin said he would nominate Hawkins and ask the selectmen to appoint him. Sanborn suggested that Lowry received the nomination as Hawkins has a full plate of participation. Foote noted that Hawkins was retired and had the time; the other Seabrook RPC representative was Aboul Khan. Kelley thought that both Hawkins and Lowry were very well qualified. Moore said that Hawkins seemed to have the time; Lowry would also be a fine candidate. Foote asked for further discussion; there being none.



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<b>MOTION:</b>	<b>Janvrin</b>	<b>to recommend to the Board of Selectmen that Donald Hawkins be appointed to serve as a Town of Seabrook representative to the Rockingham Planning Commission.</b>
<b>SECOND:</b>	<b>Kelley</b>	<b>Approved: Janvrin, Kelley, Foote, Moore, Thibodeau Abstained: Sanborn</b>

Hawkins resumed the Chair, and asked that cell phones be turned off because they interfere with the Channel 22 transmission. Foote noted that voices from the audience can be heard.

## **PUBLIC HEARINGS**

Hawkins opened the Public Hearings at 6:47PM.

**Case #2010-13/13E – Proposal by Timothy Johnson and Seacoast Poker LLC to convert Unit #3 at 920 Lafayette Road, Tax Map 7, Lot 91-203, into a function hall, continued from May 4, 2010.**

**Case #2010-16 – Proposal by Timothy Johnson to construct improvements required by a 2001 Planning Board approval, at 920 Lafayette Road, Tax Map 7, Lot 91-203.**

Hawkins said that the [new] Case #2010-16 concerning overall improvements at 920 Lafayette Road should be heard first because the improvements were approved in 2001 and were supposed to be done. It should be heard before the modifications proposed in [the continuing] Case #2010-13, concerning one unit on that site, is discussed. Foote agreed saying that according to the regulations, before hearing a new case re a parcel, the conditions of previous site plan approval need to be implemented, closed or withdrawn. Therefore, Case #2010-16 should be heard first even though it was submitted after Case #2010-13 for which action cannot occur until Case #2010-16 is resolved.

## **NEW CASES**

**Case #2010-16 – Proposal by Timothy Johnson to construct improvements required by a 2001 Planning Board approval, at 920 Lafayette Road, Tax Map 7, Lot 91-203.**

Attending: Timothy Johnson; Lester Nishi, Managing Partner, [[[Tony Capone]]], Seacoast Poker; Robert Bialobrzewski, 920 Lafayette Road One Two;

Appearing for the Applicant: Attorney Mary Ganz; Henry Boyd Jr, Millennium Engineering;

Hawkins asked Boyd to present the case. Boyd agreed that Case #2010-16 needed to be resolved, and would look to Johnson (who thought the case would be heard later on in the agenda) to explain why that had not been done. He noted that Garand had been dealing with this situation since 2001, and asked that Johnson be given the space to complete the originally approved improvements whether or not the “Poker “ business comes onto the site. Boyd referred to Garand’s memo as the “punch list” of delinquencies from the original site plan approval, and also referred to a drawing from the original site plan approval. The sidewalks, and the divider around the sign, and the crosswalks were supposed to be done but were not. They wanted Matrix Paving and Excavation to begin that installation, for which no changes are proposed, to show the Board some progress, but Garand said to wait for the hearing. Boyd said that certain catch basins were to be removed, but when the gym came on site the paving grades, including for parking, were off so the paving contractor left them in place. He asked that this be allowed to remain because nothing is helped by removing it.

Boyd said a main issue is that the grass pavers were not installed and there are jogs in the existing pavement. Boyd said because of the high costs for the grass pavers (about \$30,000) and unit vacancies, Johnson wants to leave that area unpaved; Boyd said the issue is that it needed to be graded back to



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address the run-off and ultimately the grass pavers should be installed as originally required. Boyd noted that Morgan had called attention to the striping needed in the parking lot. Boyd said he had checked the striping and represented it accurately. Hawkins asked if the number of spaces had changed. Boyd said a few had changed – they are slightly different on the Case #2010-13 plan where this would be more relevant. Boyd said to have room for the actual detention basin for the improvement of the gym and the extra parking, Johnson bought an easement from Dave Benoit. The pond was installed but needs to be repaired. . Boyd said that Matrix would do that, including reshaping the lip of the berm. Boyd said Matrix will do this work. The patriot elm and other plantings need to be done although they would like to push some back to avoid being destroyed by the snow plows. The dumpster needs to be screened and miscellaneous signage needs to be installed, although he thought that Bayside, who has done a traffic study, may have some additional signage recommendations. Boyd thought the ADA compliance was adequate but needed to be installed. Better concrete sidewalks that originally approved would be installed. also, they want to eliminate the back-side lights because the lighting has worked well for several years, and light pollution would be a concern.

Hawkins asked about the timing for the improvements. Boyd said they were ready to begin this a few weeks ago, but maybe the department heads want to see the Case #2010-16 plan. Kelley asked why after nine years anything should change now. Boyd thought that was a valid question noting it has been hard to generate income from the site. There is a good potential client now so maybe it can be done. Boyd said that question had come up often over the years. Sanborn said there are only 65 parking spaces, but Boyd claimed there are 225 spaces between both lots. Sanborn did not believe that number. Hawkins said that was a significant issue, even more for Case #2010-13, but wanted to complete the discussion on acceptance first. Sanborn said the improvements were being addressed just to get the poker place in; Johnson should have been held accountable a long time ago.

<b>MOTION:</b>	<b>Foote</b>	<b>to accept Case #2010-16 as administratively complete for jurisdiction and deliberation.</b>
<b>SECOND:</b>	<b>Hawkins</b>	<b>Approved: In favor: Fowler, Foote, Kelley, Moore, Hawkins;</b> <b>Opposed: Janvrin, Sanborn;</b>

Hawkins asked Boyd for proposed dates to address these items. Boyd said Matrix was under contract to do all the improvements, except for the grass pavers, and would have been done by the end of May. It's a matter of money as far as the grass pavers are concerned, although he was told the grass pavers could be done within six months. Everything else could be done in the current month.

Anne Bialobrzkeski asked if in the absence of Johnson another “owner” of the property could speak. Hawkins indicated she could speak later on in the meeting.

Hawkins asked if that would include the patriot elm, which he understood were to be decorative along Route 1. Foote said the NHDOT wanted disease resistant elms to be planted near and all along Route 1. Historically the grand old elms leaned out across the roadway and NHDOT asked for best efforts to on the elm placement. Morgan agreed that the intent was to recreate what was there. Boyd said this was approved but not done; he did not think the approved placement was appropriate.

Foote asked whether this is a condominium association in which case she thought the officers would have a right to speak. She asked if Johnson owns everything; from the application, the ownership was confusing. Mary Ganz said that Johnson is the controlling owner of all of the units, other than the two were sold to Robert Bialobrzkeski. Johnson was the original applicant on the site plan. Foote asked if “controlling” meant the number of square footage. Hawkins said the site plan seems to draw a line between the north and south buildings. He asked if they are separate or if there is one condominium



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association. Sanborn said as he reads the documents they have two different owners referencing the Trustees of 920 Lafayette Road One Two Realty Trust condominium units. Boyd agreed that 920 Lafayette Road One Two owned two units. Mary Ganz said there two condominium units – Seabrook Common north and Seabrook south which were initially set up with Dave Benoit. There are cross-easements between the north and south buildings for parking. The confusion is that there are four units on one side and four units on the other side. Johnson has controlling interest.

Morgan asked Ganz for the officers of the association. Ganz did not think they operated officially with meetings. Robert Bialobrzkeski said that he and Johnson are the principals and do talk. Morgan said according to state law, the officers of the association should be speaking with the Board. Anne Bialobrzkeski said there was not an issue of notification for this meeting. Morgan wanted to clarify who the correct abutters are according to state law. Ganz thought Johnson could clarify this, and said that Johnson and Robert Bialobrzkeski were the only owners; she was not sure there were officers. Ganz said she would find this out. Foote said that is what she found confusing and put the Board on very thin ice if these were two separate ownership entities just sharing parking lot cross-easements and there is no condominium association involved. If there were a condominium association the state laws for notification and how the Board deals with the situation comes under different guidelines. She agreed with Morgan that the Board is supposed to deal with the officers of the condominium association. Perhaps this was begun so many years ago and has become a casual relationship. Legal Planning Board decisions must abide by certain rules and regulations. The need is to talk with the President of the association.

Anne Bialobrzkeski said Seabrook Common north and Seabrook Common south are separate entities – they are two different condominiums ie two different entities. The north is a four unit condominium of which 920 Lafayette Road One Two Realty Trust owns two units and 51 percent interest and Johnson [M&K complex] owns 2 units and 49 percent interest. Seabrook Common south was a four unit condominium of which Johnson owns all four units. Then Johnson built a gym which is a separate piece of property, but Ganz did not know if that was a condominium unit. Ganz said she had the condominium plans. Hawkins said this issue would be more pertinent to Case #2010-13. Anne Bialobrzkeski said it is pertinent to Case #2010-16 that “we” [920 Lafayette Road Realty Trust One Two] are an owner of the land which is being applied for [at this meeting]. Tax map 7 lot 91-203 refers to the unit that the poker people are trying to go into. The parcel is tax map 7 lot 91-2 – Seabrook Common south. Seabrook Common north is tax map 7 lot 91-1. Anne Bialobrzkeski said that the improvements that Boyd is talking about are on Seabrook Common north and nobody asked Robert Bialobrzkeski as the Trustee of 920 Lafayette Road Realty Trust whether he was on board. She maintained that his signature should be on the application because he is an owner of record of the property. Foote asked if these are two separate parcels. Anne Bialobrzkeski said that they are.

Morgan asked what improvements other than the grass pavers are on the north parcel. Anne Bialobrzkeski said that would be the lighting, the sidewalks, and the signs although that is not the way the sign is oriented. She thought Boyd had the wrong property lines on the property. Boyd did not think that but said he would check. However, he was using the original site plan to show what had been approved. Anne Bialobrzkeski said she had tried to look at the original site plan but found only one sheet of five. Boyd said that was correct because it was only to show what had not been done. Anne Bialobrzkeski said as an owner of the property they would like to see the original approved plan sheets. Boyd said he had all of the sheets.

Tim Johnson arrived at this point. Hawkins explained that the discussion was about the things that he was proposing to do, and asked Johnson why he was coming back at this time to do something that was originally approved and supposed to be done in 2002. Hawkins also wanted to know what the Board should expect and when all the work would be completed. Johnson said there had been one empty unit



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since day one; there were three empty units at this time and that was probably why he hadn't done things before. He had to move on and had someone lined up to do the sidewalks and the front divider entry, Boyd said he had explained that the grass pavers were very expensive. Kelley asked Johnson whether in the event that unit #3 were to remain vacant, the Board could expect the work would be done as had been approved nine years ago or could it potentially be another nine years. Johnson said he had to do that work at this time, and would give his word that everything would be done within a timeframe. Some of the work is minor; the grass pavers are the big expense - \$35,000. He was prepared to do the rest of it and had three quotes; he would move forward. Kelley asked the timeframe for completion. Boyd commented that he did not think the Board would eliminate things that had been approved. Johnson said he did not want to commit re the grass pavers. Thibodeau asked if he was not already committed. Janvrin said that Johnson had posted a bond of \$50,000 with the 2001 approval, and asked whether Johnson or the town had control of the bond. Johnson said it had expired. Foote said it had been an insurance bond that ran out; that is why the board no longer accepts them.

<b>MOTION:</b>	<b>Sanborn</b>	<b>to have Tim Johnson build and complete the improvements requested in Case #2010-16 according to the original site plan for 920 Lafayette Road before the Planning Board considers any other proposal for the parcel.</b>
<b>SECOND:</b>	<b>Kelley</b>	<b>(see below)</b>

Sanborn said Johnson should fulfill his original obligation first; everyone else in town has to do that. There should be no special exception. Foote agreed except that she would be willing to give a pass on the lighting on the back side which is unnecessary and contributes to light pollution. Kelley asked if the lights were for safety. Foote said there was enough light-scatter in the area and the additional lighting wasn't needed. Hawkins asked if there were an alternative to grass pavers. Janvrin suggested permeable paving. Foote said it could be crushed stone, granite grit – something better than gravel that drips down and leads to non-function. Something has to be done to stop the erosion of the area. Anne Bialobrzkeski said that in looking through the file she found that the open space calculations were incorrectly done using condominium properties. She did not know whether that would help or hurt. Boyd said they needed the spaces to make sure that the parking wasn't diminished; there was enough for the gym. Certain parking spaces were supposed to be green.

Anne Bialobrzkeski asked if the parking spaces up front were removed in conjunction with the original siteplan. Boyd pointed out spaces on the original site plan drawing that were supposed to be removed and be grass. Moore asked if the spaces were still there. Boyd said it was still pavement at this date. Hawkins asked if that was proposed to be corrected. Boyd said it's in the poker application (Case #2010-13) and has to be done. Foote asked if that came in with the 20-foot green space at Route 1. Boyd said it was built before the green-spaces rule and would be removed which he thought would look a lot better. It was meant to be done a week and a half ago. Moore said he agreed with Foote about eliminating the unnecessary lights in the back. Foote said there are sections of Home Depot and Wal-Mart that are darker. Paula Wood said she is an abutter and asked the location of the rhododendrons they want to remove. Boyd said Johnson didn't mind putting the rhododendrons except where they would be impacted by the snow. Johnson said he could move them back further but out of the way of the snow. Wood referenced the paved area and assumed it was made to be a noise buffer. Boyd disagreed and said it was for landscaping. Wood hoped it would serve as a buffer because Seabrook Village, with 52 units, has a noise issue with the bar. She asked if they could remain.

Hawkins said that the rhododendrons on the plan were never planted. Wood said that area is a trash bin with dumpsters; the adjoining mobile home had to put up stockade fencing so the trash doesn't go onto their property. Boyd said Johnson isn't intent on eliminating them but would move some of the placement.



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Foote questioned whether any rhododendrons that would grow fast enough and large enough in New England could be a noise buffer. [[Arborvitae]] would be better in that corner. Johnson was ok with that suggestion, and said even a fence could be considered. He noted that there is a wind tunnel between the buildings. Foote said that is a Board decision. They are trying to bring a siteplan to completion and need to be careful about making changes. Morgan cautioned about the owner agreeing. Hawkins asked whether to consider a crushed stone alternative or stick to the grass pavers as in the plan. Janvrin said to stick to the plan. Foote thought that originally grass pavers were considered because the Fire Department was concerned and wanted a surface that could support a fire truck, which is expensive. They needed something that would support a truck a safe distance from the building. She did not know if crushed stone in 6-8 week mud season could support a truck like pavers. Hawkins said the Board seemed to want to stay with the grass pavers.

Hawkins asked if the Board would be ok with lighting changes. Kelley said there should be no changes from the original site plan after 9 years. Hawkins sided with Moore and Foote in re not installing lighting that isn't needed and to avoid the spill-over. Wood said only the first mobile would be affected; the chop shop has floodlights on and it does not bother those further down. Wood said there is a street light that those who live there are used to, but thought the lighting would be a good thing. When the bar shuts its lights it is extremely dark and she thought the health club lighting was minimal. Johnson said the lights would be on a timer and not on at 1PM. Hawkins asked for other comments on lighting.

Robert Bialobrzkeski noted that the discussion was about the site plan items that were not completed, and called attention to Garand's memo referencing the August 3, 2001 agreement among himself, Mr Scanlon and Johnson. He said that Johnson signed the agreement to complete some items for their part in giving him an easement so he could build the gym. He needed an easement from Seabrook Common north to get enough parking spaces, and offered some money compensation which Robert Bialobrzkeski said he did not want. Instead they came to agreement in which Johnson would (i) refinish the parking area for the entire condominium – north and south -- with asphalt, (ii) restripe the parking lot, and (iii) a center island. Robert Bialobrzkeski said that the minutes would show that he was the person who brought up these items. The parking lot was never paved, although up until 2006 he was assured that there was a bond in place and the items would have to be completed, however, he discovered the bond was released. The project would never have gone forward without the agreement to begin with. He asked if that would be discussed or if he would have to see an attorney about that. Hawkins said this seemed to be an agreement between two separate parties.

Robert Bialobrzkeski said that during the first three meetings about the gym it was repeated several times that they do not have the easement agreements from the hardware store. He said he gave an easement and has a signed document from Johnson, and minutes that say the agreement was a part of [the project]. He would not have gone forward if he did not think there was a [\$55,000] bond which he did not see, and asked if the Planning Board did not think this should be part of the discussion. Hawkins asked if someone who sat on that Board knew if the document was part of the deliberations and the final decision. Foote recalled discussion about it, but did not remember it being part of the binding resolution by the Planning Board. She had the impression that it was a civil situation between adjoining property owners that were willing to go into an agreement with each other to make the site plan before the Board a possibility.

Anne Bialobrzkeski said the agreement stipulated that the property would be connected to Eagle Landing. She did not think that ultimately the Board was responsible, but there was a condition put on the site plan by the Planning Board that there be a connection to the Eagle Landing Board. She felt the agreement was pertinent. Foote said there were a lot of things in that agreement that were also Planning Board conditions; these items ran concurrent as opposed to a Planning Board stipulation that it endorsed a private agreement. Anne Bialobrzkeski thought the Planning Board would want to know that they might



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have to take action to get completion. For example, the striping of the parking lot was supposed to be after the parking lot was paved; and Bob (Robert Bialobrzkeski) had to pay for the striping several times.

<b>MOTION:</b>	<b>Janvrin</b>	<b>to amend Sanborn’s motion to reestablish the \$50,000 security previously established for the improvements to be done at 920 Lafayette Road in re Case #2010-16.</b>
<b>SECOND:</b>	<b>Kelley</b>	<b>Unanimous</b>

<b>MOTION:</b>	<b>Janvrin</b>	<b>to amend Sanborn’s motion re Case #2010-16 to include the removal in fact of the parking in the front of 920 Lafayette Road to the west of Unit 1 that was supposed to be removed.</b>
<b>SECOND:</b>	<b>Kelley</b>	<b>(not voted)</b>

<b>MOTION:</b>	<b>Sanborn</b>	<b>to have Tim Johnson build and complete the improvements requested in Case #2010-16 according to the original site plan for 920 Lafayette Road before the Planning Board considers any other proposal for the parcel, conditioned on reestablishing the \$50,000 security previously established for the improvements.</b>
<b>SECOND:</b>	<b>Kelley</b>	<b>Approved: Unanimous</b>

Morgan asked if a specific term to the security should be added. Sanborn said it should be until the work is completed. Janvrin said the Town Treasurer would have sufficient conditions. Kravitz said the Treasurer would want a specific vote from the Planning Board before releasing security. Foote said the site plan regulations require substantial completion within two years so that would be the time frame. Janvrin said the security would be non-lapsing until completion.

## **CONTINUING CASE**

### **Case #2010-13/13E – Proposal by Timothy Johnson and Seacoast Poker LLC to convert Unit #3 at 920 Lafayette Road, Tax Map 7, Lot 91-203, into a function hall, continued from May 4, 2010.**

Attending: Timothy Johnson; Lester Nishi, Managing Partner, Tony Capone, Seacoast Poker; Robert Bialobrzkeski, 920 Lafayette Road One Two;

Appearing for the Applicant: Attorney Mary Ganz; Henry Boyd Jr, Millennium Engineering; Bruno Campea, Bayside Engineering; Attorney Alan Ganz (later on in the meeting);

Sanborn asked Morgan if discussion of this case should be conditioned on Case #10-16 being completed. Morgan said that Sanborn was referring to the following paragraph from the subdivision regulations on page 61 of the Land Use Regulations:

“Prior to plan approval by the Planning Board all prior applications for the parcel in question must be completed, withdrawn or otherwise resolved in a manner that is satisfactory to the Planning Board.”

Morgan said the first question [for Case #2010-13] is for the Board to decide whether it is permissible to proceed. Hawkins wanted to address this before going much further, noting that the Board had just



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accepted a plan where security would be placed, however, there was no guarantee that the Case #2010-16 improvements would be completed. He asked if the Board thought it appropriate to continue discussing Case #2010-13 when it isn't known if the work will be done. If the Board were to proceed, it would be conditioned on the site work required for Case #2010-16 being done. Foote said a time limit could be set beyond which Case 2010-13 would be expunged. Kelley said there is two years to complete it. Foote said that would apply to a site plan; the Board could do conditions that would accelerate it. Hawkins said that if the Board wanted to accelerate Case #2010-13 by agreeing to conditions of approval if the hearing goes forward, then nothing would occur on Case #2010-13 before the requisites for Case #2010-16 were completed. Sanborn disagreed, and wanted Case #2010-16 to be completed before talking about Case #2010-13 because in another two years he [Johnson] could come back to say the work isn't going to be done. Moore thought the Board should not be discouraging businesses in town. Hawkins agreed with Moore about a small business opportunity, and called attention to Boyd's statement that most of the work was to have been done by the end of May. There is a possibility it could be done in a couple of months and when the work was done the objections would disappear.

Thibodeau recalled that when the hardware store and the restaurant were occupied [Johnson] did nothing; before the gym nothing was done for an antique place. Thibodeau asked why they would think it will be done now. Sanborn noted the expired bond. Moore said the insurance expired on a certain date. Janvrin said the procedures had been changed since then. Kelley said not to make another mistake. Hawkins said the current security system wouldn't let that happen again. Kelley said maybe the incentive is to have everything done within a month or two and then return to the Board with Case 2010-13. Thibodeau wanted to see good faith. Boyd said that would have been shown if they hadn't been stopped by the Building Inspector. Kelley said that was hearsay, noting that the Building Inspector was not in attendance. Boyd said he had told Johnson to show "some rubber on the ground" or the Board wouldn't do anything. Kelley said they'd had nine years to put in the sidewalk. Boyd said that cost was \$25,000 – half of the money to do all the work.

Boyd said the potential tenant helps 20 different charities and 25 employees and wanted the applicant to talk about the nature of the business, and what would have to be done inside the building before opening up. He was concerned about waiting for another month or more. Hawkins explained that the Board was trying to determine whether it would accept Case #2010-13 for deliberation or follow the regulations and not approve any new plan until the original plan is completed or withdrawn. Boyd asked if there was not a mechanism to [move forward] with that bond in place, and said that would meet the intent of the regulation. Foote asked for the language of the regulation to be repeated; Morgan did so. Hawkins said the key is whether the \$50,000 security would be satisfactory to the Board in terms of providing comfort that the work will be done – if Case #2010-13 were approved contingent on any occupancy of the building being subject to completion of the Case #2010-16 work. Janvrin thought that Boyd's concern is that if they do not start working on the interior of the structure, even with the contingency, they will miss the boat. Sanborn said the problem is [following the Town of Seabrook] rules. Thibodeau asked about a traffic study. Boyd said they had spent \$9000 on a traffic study. Thibodeau thought the result would be in the applicant's favor, and did not want to assume any approval.

Hawkins said the question was whether or not to discuss the case and that there are good arguments for and against, and polled the Board as to whether the case would be discussed at this meeting. Janvrin favored discussion and making occupancy permits contingent on the Case #2010-16 work being completed with security posted. Fowler agreed. Sanborn was opposed wanting Case #2010-16 to be finished first. Foote thought a lot of money could be put into a building before an occupancy request. She wanted to look at all aspects when making decisions and the ramifications on individuals. Good faith should be mutual. She had a problem with even beginning work in the building before Case 2010-16 is completed to the satisfaction of Code enforcement inspection. Kelley agreed. Foote acknowledged that there is a very tight time constraint and was not against the principle of the business that wants to occupy



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the space. She did not want them to get way out on the limb of investing a lot of money into the interior of a building and then have everything fall through. That would be a matter between the tenant and Johnson and the Board would have no say. Hopefully, people listened to the troubles that the Board went through over the past few years. Thibodeau did not think it should be discussed until the other case is followed through. Foote did not have a problem with discussion, only with making a decision.

Moore said there is nothing to say this would pass. Having discussion would get to the critical issue of whether there would be enough parking. Kelley thought this meeting was not the time or place to go forward until Case #2010-16 is completed. He emphasized that he is for all kinds of business but thought that the Board should stick with the rules and regulations. In re requesting changes after nine years because there could be one tenant and the economy is different, Kelley thought the \$50,000 was not enough of an incentive to assure the work is completed in a timely fashion, and that a subsequent case would be welcome after that. Moore thought that the regulations allow the Board to make the decision. Hawkins agreed and said there are other significant issues associated with the case to discuss beforehand, including traffic and parking. Sanborn emphasized that Case #2010-16 had not been done. Foote did not have a problem with deliberation and discussion, only with coming to a conclusion [at this meeting]. In a month there would be a good chance that Johnson would have been motivated to get the majority of the work done. Janvrin thought waiting would penalize Case #2010-13 because of Case 2010-16. Sanborn thought the cases involved the same structure and owner, Kelley noted that if the work had been completed nine years ago there wouldn't be this discussion. Moore asked what would happen if another tenant left and Johnson could not rent up. Mary Ganz noted that it is still approved for a restaurant. Sanborn thought that would be different, suggesting that at the dog track there were 400-500 cars while there are 65 spaces at this site.

Hawkins recommended listening to Case #2010-13 and to proceed as far as the Board remained comfortable. The case could then be continued to another date. Hawkins asked for Morgan's view. Morgan said that would be the right order to proceed; a motion for acceptance was the next thing to consider. However, any issue about abutter notification should be resolved first. He asked more than two parties were involved as owners. Mary Ganz said there were not. Wood said she was an abutter and was notified by Ganz's office. Morgan said that the case under consideration [Case #2010-13] involves the south condominium, not the north. He understood that Wood was an abutter to the north. Anne Bialobrzkeski there is a question because the proposal in both cases involves the north. Morgan asked for an explanation of how the poker proposal would involve the north. Anne Bialobrzkeski referenced the gym and said that if the poker operation had nothing to do with Seabrook Common north then it would have about 15 parking spaces. Morgan said before the parking issue was discussed, the question was whether the north condominium was an abutter. Wood said she lives on land that abuts the property. Morgan said she did not abut the south condominium. Wood said she did not but there were other mobile park residents that did. Morgan said the definition of abutter was narrower. Wood asked about "across the street". Morgan said that meant Lafayette Road. Anne Bialobrzkeski said the question is if Seabrook Common north is involved in both applications, then Wood's point would be that if something is going to happen to Seabrook Common north, she would be an abutter to it. The cautious way would have been to provide notice.

Morgan said he would go by the letter of the state law. Anne Bialobrzkeski asked how Morgan defined the property for the application. Morgan said the application as submitted defines the south as the applicant. Anne Bialobrzkeski said only that property was being used even though they're going to be using Seabrook Common north and Benoit's land. She thought other towns would have said to notify more people. Boyd was pretty sure that Wood had been notified. Wood said she had been notified by Ganz. Mary Ganz said that Kravitz had been out on a Friday, and she took it upon herself to notify the four units that might be affected. Ivan Eaton said he was an abutter but didn't get a notice. In response to Morgan, Kravitz said the certified slip was in the Planning Board office. Morgan said the notice left Town Hall but



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evidently had not reached Eaton; eventually, it may be returned to Town Hall. Hawkins asked for Morgan's recommendation. Morgan wanted to get on the record prior to the vote that all of the abutters that he believed should have been notified had been notified. Wood asked if no matter what happened at this meeting none of the vehicles would be allowed to park at the north condominium. Morgan said at the last meeting that had been some allegations that not everybody who should have been notified had been notified. He wanted to put that to rest before the Board takes the vote because state law says that there had to be notification before this vote can be taken. Wood said if no one is going to be using the north condominium and there is no easement that the north condo has given to the south condominium to use then she would not be an abutter. But if there is an easement that says the south condominium uses the north condominium as a parking lot and the north condo [parking] is used by the gym and any of the other businesses, then Wood said she is an abutter and should have been notified by the Planning Board. Morgan said he would go by the letter of the law.

Janvrin read the following portion of the portion of the state law [RSA 672:3] re abutters:

"For purposes of receiving testimony only, not for purposes of notification, the term abutter shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration".

Janvrin said under that definition Wood would be an abutter, but for purposes of notification she is not [an abutter]. Wood disagreed. Janvrin again read the above section of the statute and said, therefore, there is no legal requirement to notify her [Wood] as an abutter. However, the Board is required to listen to her testimony as an abutter. Wood wanted to read the letter she received from Ganz. Hawkins said that was not from the Planning Board. Foote said the Planning Board office does not even know what that says. Wood said according to [Morgan's] reading of the law she didn't have to be notified, but yet she got three certified letters of notification. Morgan said that from everything he had heard during the last 15 minutes he was satisfied that the Town had done everything they were required to do by the law in terms of notification. Accordingly, the Board could proceed with the vote on whether to accept the plan.

<b>MOTION:</b>	<b>Foote</b>	<b>to accept Case #2010-13 as administratively complete for jurisdiction and deliberation.</b>
<b>SECOND:</b>	<b>Janvrin</b>	<b>Approved: In favor - Hawkins, Janvrin, Moore, Foote, Fowler;</b> <b>Opposed: Sanborn</b> <b>Present: Kelley</b>

Boyd thought it appropriate for Les Nishi to speak about the Seacoast Poker business. Hawkins said that a portion of this had been heard and asked that this be brief so the Board could get to the issues for determination. Nishi said they would have to vacate their current location at 319 New Zealand Road and are looking to relocate the existing business to 290 Lafayette Road. The business is charitable funding for qualified NH charities, a few of which had appeared at the last Planning Board meeting. They had raised funds for over 120 NH based charities. In charitable fundraising via Games of Chance the maximum bet allowed by the state of NH is \$4.00. Nishi said because of that maximum concerns re professional gamblers are non-existent. They are closely regulated by NH Racing and Charitable Gaming with frequent random on-site inspections and also provide Seabrook police details on Fridays and Saturdays. Twenty percent of the workforce are Seabrook residents, many of whom have moved from other jurisdictions.



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Nishi said that over 65 percent of their players come from Massachusetts, 12 percent from Maine and 3 percent from other states or countries. This means that more than 80 percent of the players come from outside of NH and choose to spend their discretionary income in NH. This not only provide jobs for NH residents but increased revenue for Seabrook businesses such as gas stations, restaurants, retail and food stores, liquor and cigarette sales etc that would have been spent elsewhere. The ability to continue raising funds for NH charities on July 1<sup>st</sup> is in jeopardy as NH Racing and Charitable Gaming requires 60 days for licensing charities for Games of Chance. He urged the Board to take this into consideration for an expeditious decision that would allow them to continue present fundraising efforts at the new location without interruption.

Boyd said that knowing that parking and traffic considerations would be important, the applicant hired Bayside Engineering which he thought had looked at other projects on behalf of the town for peer review. He asked Campea to speak about his findings. Campea provided two copies of his report, and said the focus of the study was at the site driveway which is slightly offset to the driveway across the street. The steps in performing the study were (i) investigation, (ii) data collection, and (iii) field observation of the traffic operation resulting in the summary analysis of existing and future conditions, the conclusions and the recommendations for mitigation of impacts from the traffic. The data was collected during the evening and Saturday peak hours. Additionally, Campea said he personally observed the traffic operation for about 1 ½ hours while the data was being collected to simulate the level of service observations to compare with the data results. He did that because the engineering software used to do an analysis functions very well for signals but is not always as sophisticated for overall operations at unsignalized intersections where the important factor is the left-hand turns.

Campea said the field observations taken during the one hour period and the data and the measurements that were obtained were for the left-turn vehicles [at the Route 1 intersection] The left-turns into the driveway did not experience any problems, conflicts or delays. A 35-second waiting time is considered an acceptable waiting time and level of operation; anything above that would be considered a failure. During the peak period almost 70 percent of the he left-turn vehicles were able to exit out of the driveway within the 35-seconds; on Saturday this was closer to 80 percent. The rest of the vehicles exited above the 35-second level with a couple actually at over a minute. For the most part there were one or two vehicles leaving the site although there were some open gaps. In one or two instances there were more than two vehicles. Moore asked about the "peak" hour. Campea said the peak hour is the one hour during the rush-hour that is used for the analysis. For this instance the peak hour was between 5 and 6 PM; the total count was taken between 3- 6 PM on a Thursday. Typically counts are taken on Tuesday, Wednesday or Thursday. This past Saturday the count time was from 11 AM to 2PM – the peak was from 1-2PM. Foote asked if the peak hours coincided with the proposed business hours.

Campea said absent a specific request, normally the evaluation for a traffic impact study would be for the street peak hour because those would be the worst-case conditions for street flow. He understood that the biggest thing with this usage is that although they have tables for blackjack and roulette, the majority of the operation is the Texas poker tournaments which have scheduled times. Campea said the traffic data for a generator of this type is not readily available, so they look to the client to provide the traffic data because they have the numbers on which they base the business. [His client] provided the data of their current usage which was summarized to come up with the traffic generators. Additionally, the majority of what they found showed that the peak hour was from 5 – 6PM. However, Campea said he understood that they are planning to change their tournament schedules to 3:30 and 7PM so they do not coincide. That would be the highest counts but he did do this on a Saturday. Sanborn said that during the week the peak is between 2:45 and 3PM when the schools let out. Campea indicated the report shows a 24 hour count. Campea said based on the evidence and the counts actually there is almost a progression of traffic starting at 7 AM and increasing until about 5 – 6PM when it starts to decline. Hawkins asked how many trips per hour were assumed. Campea said it was 48 during the evening peak hour and 48 on Saturday.



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Morgan asked if the function hall would have a seating capacity of 180 persons, while the study anticipates a maximum of 71 players on a Saturday. Campea said during the one peak hour the number is 59. Morgan noted that Campea said he got his data from his client. Campea said that was correct but it was estimated that 51 percent from the current facility would be attracted to the new facility. Morgan said it seemed the traffic study was talking about approximately half of the function hall capacity, which suggests it will be half empty. Campea estimated that the number Morgan was trying to compare relates to how many people would arrive during the peak hour, not how many people were in the facility. People may arrive before the peak hour and stay for a couple of hours. Other factors that point to his [Campea's] numbers being conservative are how many people are entered in a tournament. He used a 1:1 ratio as to the number of people entered in a tournament. It wouldn't be unusual for more than one person to arrive in the same car, but the evaluation estimated each individual as arriving in their own car.

Morgan asked about trip distribution which appeared in the study to be evenly split going north and south. However, the applicant had reported that approximately 80 percent of the players came from Massachusetts. If so, why would 50 percent of the traffic be going north. Campea said the distribution was based on the current street count distribution. Morgan said he was asking about after the facility was in operation, and was trying to reconcile the distribution numbers. Campea said the report did not necessarily mean that people were coming right out of Massachusetts into New Hampshire. Foote said more than likely 2/3 that would have to be addressed too. 3<sup>rd</sup> to 3/4ths would be going from Route 1, to Route 107 and then to Route 95, even if they are going to Hampton Beach – especially if they know the area.

Hawkins asked if Campea had other information to add. Campea said the software analysis indicates that the driveway approach has a poor to a failure level of service, but that happens now as well as in the future. Things would not get better. He emphasized that that is why he did the personal observation of the level of service which is currently poor. An extension of associating the poor level of service analysis with the actual visual observation is that it would still hold that the majority of the left-turn vehicles being able to make it within that 35-second acceptable level. Hawkins said with approximately 50 trips per hour, if one to two vehicles are queuing at 35 seconds, most likely a lot more vehicles would empty out during the peak hour and take more than 35-seconds. Campea said there would be more vehicles that would take more than 35-seconds. Hawkins polled the Board, recognizing that they had not had the time to read the traffic document. Sanborn asked why this wasn't proposed for a number of other towns; they want to shove it down Seabrook's throat. Hawkins said there is a site plan to review. Sanborn said not to review this until Case #2010-16 is done. Hawkins said he wanted to progress with the deliberations and asked if there were more questions re the traffic. Sanborn said he'd been in the Route 1 traffic every day of his life and the peak is from 2 – 4PM; the number in the current [poker facility] is more than 50 cars an hour. Foote asked about the counters for the study. Campea said there were 24-hour counters located just above and below the driveway on Thursday, Friday and Saturday – 3 continuous days. Moore said the complex is at about 60 percent capacity and would have more cars if the hardware store were filled. Also, the parking is an issue.

Hawkins said traffic will be a continuous issue on Route 1 because of previous decisions. If the count per hour falls above 50 it would have to be addressed. Campea said for projections they consider growth at 1 ½ percent per year for 10 years and accounted for already approved projects. Other developments with traffic coming in that direction would come in the future. It is difficult to consider if there are no tenants in some of the units. Hawkins said there is a capacity associated with that parking lot; buildings even if they are empty need to be considered for their capacity in a particular location. Wood said because the traffic is backed up going north she has to take a left from her home, and then the traffic is backed up to Route 107. Campea said the tubes across Route 1 were only counting the two-way traffic on Route 1; an actual person counted the turning in and out of the property. Wood asked why someone would put another car



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in there if that intersection is failing. She said she respected Campea's expertise but it would take talking with anyone in town that has to travel that road, and asking the police and fire departments about accidents at that intersection. Campea said that could be done, and added that there are vacant units in that plaza that the Planning Board is saying it wants to see with businesses. He thought Wood was saying that there is a poor level of service so nothing else could go in there. Wood said she had a heavy interest in seeing the plaza full but the businesses and residents need mediation if there will be all kinds of traffic brought in. There is more concern about other developments' traffic and vehicles coming in of Route 107 from Massachusetts.

Hawkins said another major question is how many spaces are required by the calculations, how many is there access to, and how are they allocated among the business units in that shopping area. Boyd said there is no specific parking requirement for the function hall; it falls under the same requirement as the restaurant did. Boyd did not know if that was accurate, but there is a capacity in the one unit of 180 people. They would be in violation of the fire code [if there were a higher number]. He thought that technically those calculations were done according to what restaurants would have, and believed that because this is a change of use the position could be taken that it requires more parking than a restaurant. Boyd said there is a lease agreement with Dave Benoit re the property next door for at least the employee parking. He pointed to 19 spots on the drawing, and said that Ganz would know about that. They anticipated that there might be concerns about parking. He thought this use would not be different than the restaurant so they would comply with the parking regulations. Mary Ganz said they have an option to lease adjacent space and don't want to make it uncomfortable for any of the businesses; they could use a valet. The businesses are running at different times so the scheduling would make this work. Also, there are cross-easements between the two condominiums able to use any of the spaces.

Hawkins asked Ganz if there was a condominium agreement with a parking allocation in any of the information given at this meeting. Mary Ganz said "no", but she had the easement agreements that had been recorded with Seabrook Common north being able to use any of the vacant spaces at Seabrook Common south and visa versa. Mary Ganz said the easements were recorded at the Registry in June of 1992, and that the plans recorded for each of the condominiums say total parking available for Seabrook Common north and Seabrook Common south is 180 spaces. She said they clearly are putting them together. Hawkins said if the capacity is 180 and 3 people come in a car plus 8 employees that would be 68 spaces, and asked if the applicant could account for 68 spaces. Boyd said the total was 228 spaces plus the Benoit spaces - these are non-specific [assignments]. Also, they might have to access another 30 spaces from Benoit. They are trying to mitigate cramped parking. Hawkins said that Boyd was saying that they couldn't describe how many spots there would be for the applicant's business.

Foote asked if there was a formula for how many spaces would be needed. Boyd said there was. Foote said to find out the needs of the other units and what is left over would be for unit #3. Boyd said they comply with the parking regulations because they would have what the restaurant had. Hawkins said if there was no allocation, the only way the board could determine if there was enough parking would be to do what Foote described ie take the square footage of the other units and what is left over is available. Boyd said they would do that, however, they had difficulty doing that for the gym and the Planning Board decided at that time that this was sufficient. Within the regulations the function hall has the same requirement as the restaurant. Thibodeau said people stay at the gaming for 3-4 hours; there isn't the turnover. Boyd said if they can't fit into the building they can't sit out in the parking lot. Sanborn asked if they would operate on Labor Day, Memorial Day, and July 4. Alan Ganz said one thing to understand is about the businesses that are in [the complex]. Linda's is open from 5AM to about 2PM so those spaces become available at the time the poker business would begin. They don't know what other businesses may come in; they have to deal with what is there now. When future businesses come in they can evaluate the parking and the traffic.



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Hawkins acknowledged Ganz' point about considering what is there now, but it's not realistic to think that those businesses are going to stay empty and it isn't fair to those businesses not to have equal access to their property because one business is consuming the parking. It's an allocation problem. The burden is on [the applicant] to demonstrate that there is enough parking for its proposal as well as for the other tenants. Foote referenced a similar problem for another property that was resolved by declaring which spots belong to which businesses. If a business did not need all of its spots an easement to another business was written on the plan. That way it was known that there was enough parking to cover all potential businesses. Anne Bialobrzkeski showed pictures taken the previous Saturday at the current poker location; she thought there were at least 100 cars there. Other pictures were of the cars at Linda's and the gym parking. She said there were 75 cars in that area at the time. Hawkins asked for the total number of spaces. Anne Bialobrzkeski read from the condominium declaration, which she said are the same for Seabrook Common north and Seabrook Common south, referencing all of the areas immediately in front of the buildings as follows: "...The parking spaces directly appurtenant to the front of the units as shown on the plan shall constitute limited common area, each assigned parking area being reserved for the exclusive use of the unit to which it assigned."

Anne Bialobrzkeski referenced the spaces on the plan that she said were limited common to the units they are in front of. She maintained that the unit the poker business would move into would have the spaces in front of it, and that the cross-easements are 25-foot strips on either side of the property line which separates the condominiums and could be used for driveways or parking. Anne Bialobrzkeski said that if everybody chose to exercise their right to exclusive use of their limited common area, the parking spaces in the middle would not exist. Because it had been manageable and everybody acted in good faith, the spaces were striped and used. She stated they are not legal parking spaces and thought they were 9 x 15 feet. Anne Bialobrzkeski asked if anyone knew how many parking spaces the Planning Board decided the gym was supposed to have. If the maximum formula was 250 spaces it would mean the gym would have 92 parking spaces. She said that Robert Bialobrzkeski gave the easement for Johnson to basically build the gym, and that the related parking spaces were for the gym. She said it might not be full all the time, but she did not think they were doing the business they wanted either, and referenced a couple of other businesses that she did not know if they were allowed. She said that in the middle area there were 42 painted spaces. Janvrin asked if she said they were not compliant.

Anne Bialobrzkeski said if a fair calculation were done for the 4 units in Seabrook Common north and the 4 in Seabrook Common south, maybe they would be allotted five spaces and there would be two left over. That would give unit #3 another five spaces for a total of 17. Alan Ganz asked if she meant everyone was non-compliant. Anne Bialobrzkeski said the gym was probably non-compliant; but the Bialobrzkeski units were compliant. She also said that the poker website showed games running every hour so even when games begin there are people leaving. Even with valet parking all of the cars have to go in and out. Additionally, she thought there would also be 14 dealers. According to their agreement with Johnson they thought he would provide access to Eagle Landing and relieve the problem. Further, she thought the people who would follow them from the track won't be able to get [to the new location]. She did not see how the poker operation could be successful there. Additionally, she thought the representation that this would not be for professional players was not upheld at the poker website which she read text from; one reference was to a 400 player event. She thought if the poker operation was successful they would want to expand into another empty unit. Alan Ganz thought the Bialobrzkeski statements were disingenuous because they were trying to get this business into their own space, and wouldn't have had a problem with the parking. Additionally, he said the cars shown in the photographs at the track location were not there for poker but for the Preakness Race event.

Alan Ganz said the restaurant had permission for 180 people, and asked where those cars would park. The Town didn't enforce whatever rights they had at the time, nor did the condominium owners enforce



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whatever rights they had by taking legal action. Clearly the Chinese restaurant had to have places to park. He thought those spaces might be grandfathered because they have been used for so many years. He said the statute of limitation was three years from the time they knew or should have known of the violations. Hawkins said this was the beginning of a new review. Alan Ganz said a new Chinese restaurant or function hall would be able to do what they want. Hawkins said the [Case#2010-13] proposal was a change of use and certainly with different intensity than a restaurant which is the reason for the current review. Mary Ganz commented that initially they had been looking at an application for the same use for the hardware building which she said [Robert] Bialobrzski had signed. Also, that they had a memo from the police department saying they had no objection. Kelley asked why that blessing for a change of use would be accepted - they have a vested interest as they are hired on Friday and Saturday. Mary Ganz said they were trying to do things to make everybody happy and they were asked about the police and fire view.

Boyd said the Board is looking for proof and no approval would happen at this meeting. The task would be to look at what exists. He thought the amount of space under current calculations may not meet the regulations. They will look and see what the allocations were in the pre existing site plan that allowed all these uses, and give a calculation and breakout. Hawkins thought it was the applicant's responsibility to do that calculation taking into account the way the easements were written and the way the lot is set up. The responsibility is to show the Board how this should be done. He did not know if 60 spaces could be identified and perhaps more than that number is needed. At this point he did not see how to get the 60. Boyd said based on the calculations discussed at this meeting there could be some non-compliant spaces. Hawkins said they need to show how many spaces might be non-compliant. Boyd said they would do that. Sanborn commented that this is a new application and the Planning Board better set it straight. Unit #3 had 12 spaces in front and 17 in back and the Board should keep it that way. They should not be taking someone else's spaces. Foote said the situation was getting even more curious. Had she known that the parking striping was not to town standards when Case #2010-16 was discussed she would have insisted that as part of the restriping, such a change would have it conform to the regulations; she thought the standards had not changed since 2001. Foote had wondered why the spaces were so hard to navigate egg at Linda's, and doubted that the travel lane was to standard.

Hawkins referenced the Case #2010-13 plans submitted and asked Boyd if they were all conforming. Boyd said not all of them. Hawkins said a plan that doesn't comply should not be turned in. Boyd said it is what exists; as a surveyor he locates what he finds on the ground. The parking is there. Foote is right that it doesn't comply. Hawkins said spaces that are not spaces are being counted. Boyd said they are spaces, although not compliant. Foote said it appeared some spaces that weren't supposed to be there got painted in later. Boyd said no one complained. Morgan referenced the condominium documents dated April 1991 and the cross-parking easement dated July 1991 indicating that they contradict each other. In one document there is parking allocation and the other document says to park where they want on the other side. He suggested a response be brought to the next meeting, and questioned the legitimacy of the cross-parking easement as it contradicts the condo regulations. Hawkins said the Board would need time to read the traffic document and then decide whether to send it out for peer review. If the lot is going to be overloaded with smaller than standard parking spaces, there are many other issues to identify. He believed the calculations of allocation with appropriately lined spaces were needed, to know that whatever the amount of additional cars coming into the lot will fit there. If the historical parking is based on just a haphazard layout, and there hasn't been a high-intensity use in the past, what are the issues when there are a lot of cars. A properly laid out plan is needed if there are to be a lot more cars on the site. He thought it not difficult to show how many cars can be there in properly lined spaces. To say there are 225 spots when some of them are under sized is misleading.



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<b>MOTION:</b>	<b>Sanborn</b>	<b>to continue Case #2010-13 to June 15, 2010 at 6:30PM in Seabrook Library.</b>
<b>SECOND:</b>	<b>Kelley</b>	<b>Approved: Unanimous</b>

## NEW CASES

### **Case #2010-15E – Proposal by Hannah Realty Trust to eliminate an approved access way at 93 Railroad Avenue, Tax Map 8, Lot 66;**

Appearing for the Applicant: Henry Boyd Jr, Millennium Engineering;

Boyd said there is a very narrow access way that also had required a wetlands permit so they thought to eliminate it. The roadway to the South Access Road is working very well. Before that, Depot Lane was built to get to the property which was zoned industrial; now Depot Lane is closed off. Boyd said that when Hannah got an extension for their approved addition, they indicated that they wouldn't be building the secondary access because the space is too tight and would require a wetlands permit. However, Boyd said that Morgan told him that according to the approval in place it would have to be built. Hawkins asked if the purpose was to get house lots. Boyd said the driveway comes through a residential lot and that is what they want to eliminate. Hawkins said the plan calls for one existing house to be removed. Boyd said it was to be moved to another location. This is a 45,000 square-foot lot capable of holding two houses. A mobile home was right in the path of the roadway. They are not creating more lots. Hawkins recalled that abutters were happy that Depot Lane would not be used and that the driveway would be used. Boyd said the only reason why Depot Lane would ever be used is in the event of a shut-down at the power plant. There is no worry if there is no emergency. The abutters on the other side were not happy either and they have been notified. Sanborn asked about fire department access. Boyd understood keys had been provided to the fire and police. Sanborn said the fire trucks would get in but they should not be blocked off. Boyd said they were going to put an electronic opening as that also provides access to Route 1.

Hawkins said the first step is to decide whether this would be accepted as an expedited application. The rules at this time are: (i) no discernable impact on abutters, (ii) no adverse impact on the public or environment, and (iii) no building expansion. He thought (i) might be questioned in re eliminating the driveway and going back to Depot Lane as the secondary access. The Board's decision is whether to allow them to take a portion of that plan out, and what would happen subsequently. Moore thought the abutters would have a sigh of relief to not have the problem of eighteen wheelers making the turn. Kevin Borges said he'd had that problem for 22 years and did not want that again. Hawkins said at this point if the south Access Road got shut off for any reason the trucks will go somewhere – either as shown on the approved plan or down the driveway. There is always the possibility of homeland security issues. Janvrin asked if Chevy Chase were an option. Boyd said that would not be suitable. Hawkins asked what would happen if they abandoned the driveway. Foote asked what would happen if for some reason the South Access Road is not open for Hannah's use and the driveway is abandoned. Would that revert back to the restrictions still valid on Depot Lane in the times that they can travel and the number of trucks, and asked what that would do to Hannah's business. Boyd said the power plant never said they would shut it down but would reserve the right in the event of a national emergency.

Hawkins asked Morgan what would happen if they abandoned the approved site plan. Morgan said they would not be obligated to build a driveway. Foote said they couldn't abandon the whole site plan as that included the addition and roadway. They just want to sever a very small section. Hawkins asked what the impact would be. Kevin Borges said he still has eighteen wheelers going by his house because the power plant doesn't let them know about roadway changes. He asked that the Board not vote to remove the driveway, build 25,000 square feet of building, and then close the road. Hawkins asked if this should be



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an expedited process and what would be the procedure for a revised plan. Morgan said it would mean a full application and fees. Hawkins thought this proposal had the potential to affect the abutters. Thibodeau said to show the mobile home if it is not to be removed. Boyd said a 45,000 square-foot lot can have two homes. Foote commented that the road goes through the house. Hawkins said if this is just about the road, the plan should show the road. Boyd said he will take the as-built to show the road removed. Borges suggested getting the power plant to say they would not close their road.

<b>MOTION:</b>	<b>Janvrin</b>	<b>to not accept Case #2010-15E as an expedited application and to return with a formal full application.</b>
<b>SECOND:</b>	<b>Kelley</b>	<b>Approved: Unanimous</b>

**Case #2010-17E – Proposal by Ivan Eaton, Jr. to establish a towing business at 817 Lafayette Road, Map 7, Lot 48;**

Attending: Ivan Eaton;

Eaton said he had started a towing company and needed the space to hold vehicles for about three days. He had purchased the property at 817 Lafayette Road which has 7 parking spaces for storage of cars, and would put up fencing. His office would be at 919 Lafayette Road. Hawkins asked if this was north of the Papa Gino property. Eaton said it was and it met the criteria for parking. Thibodeau asked about the number of trucks and the hours of operation. Eaton said he would have three trucks and hours from 9AM to 5PM. Hawkins asked if the fencing was to keep the vehicles in a secure area. Kelley asked if there were room for other business. Eaton said there is one apartment. There are no assigned spaces and plenty of parking.

Hawkins noted that expedited applications can be used if there is no impact on abutters, no impact on the public or environment, and no new building. Foote asked about the condition of the cars. Eaton said he must meet the specifications if they are wrecks. Hawkins said Zone 2 doesn't allow for storage and wondered if "wrecked" car storage was close to a junk yard. Eaton said this would be a holding site for customers in cooperation with Seabrook Police and would not be a junk yard. Vehicles would be moved off the site within four days. Foote commented that a gas station with a wrecker would be allowed to tow and store a vehicle, as could a tow business. Hawkins was concerned that wrecked cars would be close to junk storage. Foote did not think of this as "storage". Hawkins said there couldn't be unregistered cars. Eaton said there wouldn't be unregistered vehicles, and no salvage sales.

<b>MOTION:</b>	<b>Foote</b>	<b>to accept Case #2010-17E as administratively complete for jurisdiction and deliberation of an expedited application.</b>
<b>SECOND:</b>	<b>Moore</b>	<b>Approved: Unanimous</b>

Hawkins said wrecker (trucks) and a few cars would be ok; wrecks or junk impounded cars would be a problem. Eaton said he could be holding up to five cars at a time. Moore asked about the timeframe. Eaton said not over five days. Sanborn said the fenced off area should keep the cars from been seen (from the street). Kelley was concerned about the effect of flashing lights on neighbors. Eaton said the one neighbor is ok with this use. Hawkins asked if abutters were present; there being none. Janvrin asked about the height of the fencing and suggested it be green. Foote wanted a container on site for caustic damage or fluid leaks as a condition. Eaton noted it was a requirement that vehicles be towed to an in-town location. Hawkins enumerated a number of proposed conditions: (i) to avoid the "junk yard" syndrome, (ii) no more than five days storage, (iii) return to the Planning Board if there is a neighbor complaint, (iv) no emergency flashers on the property, (v) maximum of five cars at a time, (vi) no additional lighting on site, (vii) storage for no more than five days, (viii) six-foot fencing with lattice, (ix) no



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storage of cars off-site, (ix) a spill kit on site, and (x) no more than three wrecker trucks. Hawkins asked for Morgan's comments. Morgan thought the issues had been discussed. Janvrin commented this is a retail service. Eaton said this cannot involve the area near the house. Kelley was concerned about 24-hour service. Eaton said he must release a vehicle when the customer asks.

<b>MOTION:</b>	Janvrin in	to approve Case #2010-17E – Ivan Eaton, Jr. to establish a towing business at 817 Lafayette Road, Map 7, Lot 48, conditioned on: (i) avoiding the “junk yard” syndrome, (ii) no more than five days storage, (iii) returning to the Planning Board if there is a neighbor complaint, (iv) no emergency flashers on the property, (v) a maximum of five cars at a time, (vi) no additional lighting on site, (vi) storage for no more than five days, (vii) six-foot fencing with lattice, (viii) no storage of cars off-site, (ix) keeping a spill kit on site, and (x) no more than three wrecker trucks.
<b>SECOND:</b>	Kelley	Approved: Unanimous

Wood protested certain remarks at the meeting that she considered sneers or snickers. She felt insulted and said that abutters don't want to put up with abuse or inappropriate rudeness. Kelley would look at things differently if residents were treated with disrespect.

### **OTHER BUSINESS**

Hawkins called attention to the June 1, 2010 meeting which, except for one case for acceptance, would be a Planning Board work session. Kravitz listed the work session topics. Hawkins commented that a Route 1 capacity analysis item needed to be initiated by the Board. Another important discussion item would be effecting charges for submission of incomplete applications. Foote noted there is a difference between the Board asking for changes and when required items are not submitted in the application packet.

Hawkins adjourned the meeting at 10:40 PM

Respectfully submitted

Barbara Kravitz, Secretary  
Seabrook Planning Board