



## Town of Seabrook Planning Board Minutes

Tuesday, September 4, 2012  
NOT OFFICIAL UNTIL APPROVED

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

Members Absent; Paul Himmer, Alternate;

### **MINUTES OF AUGUST 7, 2012**

Hawkins had no changes or corrections to the Minutes of August 7, 2012, and asked for comments; there being none.

<b>MOTION:</b>	<b>Sweeney</b>	<b>to accept the Minutes of August 7, 2012, as written.</b>
<b>SECOND:</b>	<b>Wood</b>	<b>Approved: In favor: Hawkins, Hesse, Fowler, Sweeney, Frazee, Chase, Wood;</b>

### **MINUTES OF AUGUST 21, 2012**

Hawkins tabled the Minutes of August 21, 2012 to September 18, 2012.

### **CORRESPONDENCE**

Folder circulated.

### **NHHFA CHALLENGE GRANT**

Hawkins recalled that the Board had previously voted to accept a \$12,255 grant from the New Hampshire Housing Finance Authority. That number had been calculated incorrectly and has been changed to \$16,340. As the Selectmen have to accept grants, a motion to accept the \$16,340 was needed. The new amounts for the town to provide will be \$3,064 for work in kind, and a cash amount of \$1,021.

<b>MOTION:</b>	<b>Chase</b>	<b>to recommend that the Board of Selectmen accept the increase in the New Hampshire Housing Finance Authority Challenge Grant award to \$16,340.</b>
<b>SECOND:</b>	<b>Wood</b>	<b>Approved: In favor: Hawkins, Hesse, Janvrin, Sweeney, Frazee, Fowler, Chase;</b>

### **SECURITY AND EXTENSIONS**

There being none.



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### **INFORMAL CONVERSATION SEABROOK TRUCK CENTER**

Attending: Arleigh Greene, Seabrook Truck Center; Anton Melchionda, Doug Richardson, Waterstone Development;

Greene noted that Waterstone had developed the West Marine building in Seabrook and the Brickyard Mall in Epping. They have been negotiating with several prospective tenants and for budgetary reasons need to figure out the exaction amount for offsite mitigation. They want to pay their share, but need some guidance from the Board. The development will be approximately 150,000 square feet; all of the buildings will be demolished and a portion of Chevy Chase Road will be rerouted. While the conceptual plan is subject to change, they have decided on a cross-connect at Provident Way that would align as closely as possible with the CVS driveway and also connect to the Staples property. They want to pay their fair share. For economic purposes they are looking for some type of formula that would derive the exaction amount.

Hawkins said there would be a number of issues including traffic. There were still some problems after the DDR discussions, and the Route 107 and Route 1 intersection was rated "D" or "E" in terms of the traffic volume going through it. He thought the state would have to reexamine the improvements to account for the impact of the number of vehicles that the new development would produce according to the traffic studies. He was not sure what would have to be done, but it would have to result in an acceptable intersection after the new development was built. He thought a lot of work would have to be done at the Route 107 intersection to carry the increased traffic. He did not think that work had been designed. If the cost of the needed improvements were known, it would be easy to arrive at a fair share number.

Greene thought there was a pro rata formula depending on the number of square feet in the development. Hawkins explained that the formula is based on the number of trips, which in turn would depend on the square-footage. For example, if the objective were to bring the intersection to a "C" level, that number is not yet known. He thought a "ballpark" figure could be estimated, but then it would then depend on whether the NHDOT would want to redesign the intersection. That cost is not known. With the DDR development, their traffic engineers came up with the cost estimates. A similar exercise may be needed to determine how to bring the intersection to a "C". He recalled that the Board had not been too happy with some of the DDR levels. Greene did not expect to have a number at this meeting, but was hoping for some kind of ballpark figure so they could continue with their deal. Hawkins said with a little more information they could work toward a number, but until the engineering was done it would not be exact. Greene said if they had some idea what would be involved to get to an acceptable intersection level, they could decide whether to go forward.

Janvrin asked if they had talked with a traffic engineer. Greene said they had not. Janvrin noted that there were quite a few parking spaces, and thought consulting a traffic engineer would be useful because the Board could not make the calculations. Hawkins thought the methodology could be provided; the estimates would be more difficult. It would be a challenge to come up with numbers, because the solution would have to come from the traffic engineers. He thought a "ballpark" figure could be arrived at. Greene said if they will have 150,000 square feet and will demolish 40,000 square feet, he thought they should have to pay on the increment of 110,000 square feet plus whatever the trip generation showed. Hawkins said that currently the truck stop traffic was fairly low, compared to what a retail mall would produce. Therefore the exaction would be based on the trip generation and not on the square-footage. Greene said they need to



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find out their current trip numbers compared to those for the development. Additionally, if they present a plan as he thought they would, he would be relocating his truck business on the west side of town. Hawkins asked if there would be multiple plans presented. Greene said it would be the plan shown at this meeting, and probably two plans on his Stard Road property where the Seabrook Truck Center and its employees would be relocated.

Hawkins understood that the plan presented was conceptual. He asked if the entrance would be through the Staples driveway, commenting that the Board would like the cut-through as a means of reducing the traffic on Route 1. Greene confirmed this. Hawkins asked about the other entrance near the furniture store. Greene said that would be the other entrance where a portion of Chevy Chase Road would be relocated to tie into the cross connection. Hawkins said that was close to the Route 107 intersection. Richardson said that Chevy Chase would take a turn to the north and would then align with the CVS driveway. Janvrin asked about the granite business curb. Richardson said the plans would show all of the offsite conditions. Janvrin pointed to the cemetery, which Richardson confirmed. Richardson said that this was a conceptual plan, but the layout would have to take in the tenant needs. Janvrin asked if the drainage had been done and no more trees cut. Greene said all of the infrastructure was in for the drainage. There are still some plantings to be done in the back, but the slopes and pond vegetation was in; the ponds were fenced. He said the work came out nicely; Janvrin agreed. Greene said it was already recharging.

Wood asked about signage encouraging people to go out using the Chevy Chase Road rather than directly onto Route 1. Richardson said if that were a condition of approval, they would make sure that the site engineer notated that on the plan. He thought the Board wanted to encourage vehicles to exit toward the signal. Wood agreed. Hawkins asked that they read the landscaping ordinance closely and try to adhere to it as best they can. The Board is really trying to make Route 1 look a little nicer, and was encouraging developers to do a good job in that regard. Richardson noted that the West Marine project had been the first to work with that ordinance and they did a good job with the landscaping. Janvrin said it looked like all retail except for a small restaurant, and asked what the parking maximum would be. Hawkins said it would be 4 per thousand. Hawkins said developers always want more parking and the board looks to find some middle ground to make the development look good with adequate parking, but not have pavement all over.

Greene submitted a list of his current businesses and tenants. Janvrin asked if most would move to the Stard Road location. Greene thought that would happen, and indicated he would start looking at what the square-footage could be at that location. Wood thought the curb-cuts at the Staples driveway might bog down, and asked if they had talked with the NHDOT about the extra traffic that would be going into that area. Richardson said they had not yet engaged a traffic engineer; they first wanted to develop the concept for the area. Now they understand that it is time to start talking with the traffic engineer. Janvrin said they probably were aware that Route 1 south of Route 107 would be widened; there would be two lanes going south to the Lowe's. The middle turning lane would remain, so they would want to work with the NHDOT on that. He did not think a signal would be approved. He thought completion of the roadway widening would be in 2014. Steve Ireland said the consulting engineers were currently working on the design. Hawkins said that adding 150,000 square feet to that intersection would change things. Ireland said they would work with the developer. Hawkins suggested that work begin as there are not too many people who would know what that would mean for that intersection.

Hawkins asked for other comments. Janvrin commented that Demoulas south had made a contribution to the study of that intersection; it was not set up as an exaction. Hawkins said that



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that money was used toward defining the amount of money it would take for different projects along Route 1, so the formula would be easier to use and it wouldn't take a traffic engineer to come up with a figure to understand the implications of adding 150,000 square feet. The exaction formula hadn't been changed yet; the Board had been working on this for about a year. The goal is to make it a little easier for the layman to understand and arrive at a ballpark estimate of the cost. Greene said they want and expect to pay their fair share, but need a framework, for negotiating with tenants. Hawkins thought there was a way to assist with initial estimates; after that it would take an engineer to nail it down.

Chase asked if there had been any thought to disassembling the three buildings and placing them throughout the lot so people would not have to walk so far to get from store to store. Richardson said it was designed with a concentration to the east and the north for circulation purposes and aligning up with the DDR property. Changing the placement would make the site inefficient and they would not have enough place for parking to support the uses. The retailers want to be next to certain other tenants and want to be in the same row. They cluster based on use and the type of retail merchandise. It is tough to break it apart. Also the current configuration creates a spine for the cross-connects and keeps the heaviest traffic away from the front doors. Greene said the plan currently is very conceptual. The cross-connections and the alignment of the CVS and DDR driveways was very important. Hawkins asked for other comments; there being none. He suggested connecting with the Board's traffic expert who could walk them through the elements of the formula; the tough part would be deciding what had to be done at the Route 107 intersection.

### **PUBLIC HEARINGS**

Hawkins opened the Public Hearings at 7:02PM.

### **ONGOING CASES**

**Case #2012-16E – Proposal by Lynsey Page, Glitter & Gold Entertainment, LLC, and Timothy Johnson to: 1) allow live bands; 2) establish an outdoor seating and smoking area; and 3) install a mechanical bull at the Honey Pot Bar & Lounge at 920 Lafayette Road, Tax Map 7, Lot 91-203, continued from July 17, 2012, August 7, 2012; August 21, 2012;**

Attending: Lynsey Page and Kamnl Green, Glitter and Gold, Honey Pot; Tim Johnson, Patricia Johnson, M & K Realty;  
Appearing for the Applicant: Attorney Mary Ganz, Ganz Law; Henry Boyd Jr, Millennium Engineering;

Hawkins said the use of the Mechanical Bull inside the building, and the Smoking area out back had been previously approved. The two open issues continuing from the last meeting were parking and noise. It is the responsibility of the Board of Selectmen to issue the live entertainment license. The BOS had asked the Planning Board to review the site and make a recommendation. During the review of this plan a number of ongoing and outstanding issues were raised.

Hawkins said a letter had been sent to the owner asking for an allocation of the parking spaces. Every time a new tenant at 920 Lafayette Road comes before the Planning Board, the parking had been an issue. The owner had been asked to do the parking allocation and submit it to the Board. There is a formula in the Condominium Documents but in most cases it is inadequate. The owner had been asked to attend this meeting to address the future parking needs for each of the units in the site. He asked Tim Johnson to address this.



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Boyd said that Johnson had asked him to speak because he'd been involved with this project almost since the original site plan had been approved. There are some outstanding items from the 2001 approval that still haven't been done. Boyd said that Johnson was ready to speak to the Board about that. Boyd said about a year ago Johnson had some economic problems and came before the Board. He'd been struggling and told the Board that he wanted to complete the work but just did not have the finances to do it. Boyd thought the Board was reluctant, because it had been so long since the approval. One item was that the town wanted sidewalks for any development on Route 1, but they could not be put into the right-of-way. There was also the issue of who would maintain the sidewalks. Johnson put the sidewalk in on his property. Boyd said he had done an as-built, but was holding on to it because there were some remaining items to be done, including the grass pavers which are now scheduled to be installed. Another item was the dumpster pads, which now have been installed.

Boyd said they were at this meeting to bring the gym project into compliance. He asked why applications for the site were being accepted when the regulations say that new applications cannot be accepted until previous cases on a particular parcel were closed. Boyd said that was right and fair; the applicant should have to finish the work. There had been a debate about how much lighting existed. Boyd thought the lighting was sufficient, but the site plan required the lighting at the easterly edge of the pavement. Additional lighting was placed on the building, but this was wall mounts which don't cast light out. Boyd commented that Johnson had done more than required on some aspects, but was not asking for any change in that. The conduits for the lights were laid under the pavement; the wire needs to be snaked through to install those lights. There is a drainage facility relating to the Benoit property, and Johnson had contracted with Matrix to clean up this work, although they still have to pull the stumps and other growth because this had not been maintained. Boyd said it was time to close that case, and asked if the Board agreed. Hawkins said they did.

Boyd said the work he described had to be done because tenants were lined up until Johnson completed what he needed to do. Boyd contended that the parking was a separate issue. Boyd asked Johnson to speak to his schedule. Ganz submitted documents related to the fencing and pavers saying that this work should be done in two weeks. Johnson said that the electrical work might take three weeks. The concrete pads also would be done. He estimated that all of this work would be done within four weeks. Hawkins and Garand had gone through a previous list of outstanding items some of which, including the sidewalk and the center divider around the pylon sign, were done. He asked for the status of the catch-basin. Boyd said the original design called for the elimination of the catch basin with different grades. The parking lot grading for the approaches to the parking lot had slight differences which would be shown in the as-built. However, when they looked at the placement, it made sense to leave the catch-basin where it was as the snow outlet to the detention pond. Hawkins asked if the ADA ramp was in compliance, noting that the way some things are accomplished could have small differences.

Boyd said at the gym there is a wide accommodation for wheelchairs. The sidewalk is concrete, rather than asphalt, which is more than was required. Boyd also noted that at the time when the gym plans were approved the board had architectural drawings, but the inside layout went to the Building Inspector. There are different levels to enter the building, as well as rocks, so there are different gradings. Hawkins said the catch-basin is not according to the plan, and asked Garand about the importance of this. Garand said the elevation change from the sidewalk to the parking area was too drastic; the coating of the asphalt should bring that up to specification. Hawkins asked if the ramp was compliant. Garand said he would have to inspect it. Hawkins asked if there were a functioning system, even if not as on the site plan, that is not a problem. Garand said that as



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occupancy had been granted that was out of his control. Changes would show on the as-built; he would look at parking lot safety and signs. He asked how far the Board would want to push any issues with handicap compliance. Hawkins wanted to handle the important issues. Garand said he would do a new inspection using the checklist and for compliance with the plan and meeting the standards. Inspections would need to be done on the lighting conduits.

Boyd suggested that when Johnson has had the work done, he should update the as-built. The catch basin could be filled and paved over to be in compliance with the site plan, but that would not be as much benefit as leaving it there as an addition for the run-off. Wood asked for the location. Johnson said it was just past the Flea Market. Boyd said if the grade is low, it would be a matter of raising the cover. Wood asked if it should stay there, and be raised if necessary. Boyd thought that Garand's concern was that it was too deep. He did not think so, but if it was it could be fixed; he would take a look.

Hawkins said based on the discussion, he understood the pavers would be put in place, and the detention pond would be finished. Hawkins asked about the Liberty Elm; Boyd said it was at the back of the building per the plans. Wood thought the elms were to replace those lost on Lafayette Road. Hawkins said the Board had approved the location. Boyd said there had been no place to put it on Route 1. Hawkins said there would be a quote on the dumpster screening and the lighting on the easterly end of the property; Johnson confirmed this. Hawkins noted there had been concerns about how dark the middle of the parking lot was in front of the Honey Pot, and asked if that was because the lights were not working. Boyd said that a number of requirements were not imposed, so he would not be surprised if some were sub-standard. That is why this discussion should be only about the gym. Garand said there were fully exposed flood lights, most of which did not work. Wood had raised concern because in the front of the lot, unless the Honey Pot light is on, there is no lighting. Boyd said the back of the lot is bright; Wood agreed. Boyd commented that there had been suggestions to come back to the Board to look at these site issues, but it was too difficult to coordinate and open the site plan again. Johnson wanted to finish this process.

Janvrin said in 2010 he'd raised concerns about the Liberty Elm and providing security, noting that the elm was no longer an issue. In 2001 there was a security bond, but Johnson did not pay for it and the town no longer had a security. In 2010 Johnson was told to have put security back in place before doing any work. To date that security had not been posted with the Seabrook Treasurer. Boyd said it was a difficult issue to tell someone they cannot do anything on private property, or work on their own property. Whether the security should have lapsed, perhaps he should have been told that he needed to repost the security; that is a different issue. Janvrin said Johnson was told to repost the security. Boyd said that was nine years after the siteplan was approved. Johnson was present, and there were people to be heard. The regulation says that the Board cannot even address this application unless he finishes the work on the site. The point of security is to be able to withdraw funds to complete the work. But Johnson was going to complete the work. Someone can't be told that they can't fix their place up. If they do it, there's no need for security. Boyd said someone could not put up security for a subdivision, but could build a road.

Janvrin said if the security had been in place the work could have been done by the town in 2005. Boyd agreed, saying that Johnson should have done the work a long time ago, but circumstances in his life and business kept him from doing it. He is here today. Wood said she had been at a Planning Board meeting, although not on the Board, when Johnson agreed to post the security. Boyd said Johnson should complete all of the work. If he wants to satisfy his



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tenants and keep tenants coming in for approved uses, then Johnson had to finish what he promised.

Hawkins said this is a 2001 case upon which other cases depended. He wanted to see the work go forward, indicating Johnson's three week period to get the work done. He asked for Morgan's comments on moving forward, and the security issue. Morgan thought if there seemed to be a chance for progress, insisting on security at this time could cause it to stop. Hawkins wanted comments from the Board on whether to proceed, noting that he was still uncomfortable that other applicants were affected. He wanted to proceed with these cases, but the Board had been down this path before. Johnson had done some work recently, so there had been some good faith effort. He asked for the Board's comments. Chase asked if there could be something stating that the vendors would do the work. The security would be moot if the owner and the vendors commit to performing the work.

Wood asked if the pad near Linda's was in the fire lane. Garand said it was not detailed on the plan, so it would be a question for the Fire Chief. He noted there were also propane tanks in that area and whether the fire lane would be blocked should be addressed now. Chase asked if that might also apply to the smoking area. Garand said the Fire Department should be asked to comment on that. Boyd pointed to photographs saying it looks like there's room to get through but he had not measured. Wood said when driving by, the propane tanks could be seen. Garand noted a dumpster or smoking area would not be a problem for the fire truck. Boyd will check out the area. Janvrin recalled the fire trucks got through during the Johnson Mathy fire, so he thought the trucks would fit. Wood asked if the dumpsters would be on the two sets of pads installed. Johnson said the Honey Pot dumpster is in the front by their back door, where the flea market starts.

Hesse asked about the parking area. Hawkins wanted to separate out the things that were required on the original plan first, which relate to the original case. He asked how Hesse felt about going forward and continuing to hear the cases. Hesse thought he was hearing that they wanted to get the things done, so they were making progress. With assurances from the vendors, it should not be a problem. Fowler agreed. Chase asked if it was legal to get something from the vendors. Hawkins wanted a purchase order or contract. Johnson said he would provide the contracts. Given the history, Sweeney wanted some sort of guarantee. Janvrin likened the situation to a teen-ager who is told to clean up his room, or no computer; he cleans up part of his room. The next night he wants ice cream, so he cleans under the bed. Janvrin was tired of kicking the can down the road on this case. The punch list is short; cleaning that up would be good, but in three weeks there'll be something else. He was not willing to forego the financial security to the town, so it has a surety that the work will be done. If it is not done then the town would take the money to make the work be done. He understood that would be penalizing, but was not willing for this to happen again on this case, and did not want to have this conversation again in 2014.

Frazee said if Johnson did not do this now, there would be more grief for everyone later. Hawkins asked about the three-week promise. Frazee hoped it would get done for everyone's sake; why add more grief in the future. Wood thought the progress was wonderful and wanted to close out the case, but the last time there were promises a little work got done. Everyone needs to move on. There can be estimates or contracts from other people, but at any time one of them can dissolve the contract. If it would take a few weeks to get this done, she wanted to wait for everything to get done, and close this. Garand called attention to the two pending cases. One is for the thrift shop with basically no changes at all, and they need to get going. He could do a conditional occupancy. Wood's view was that the parking needed to be resolved. Boyd said the



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thrift shop was a retail use in a building, that was approved about 1986. They are not adding retail floor space or anything else. The existing parking is what was required at that time, plus additional parking that had not been required. He agreed with Garand as they are not adding anything; nothing is changing. Wood recalled the last time Boyd and Johnson were at the Planning Board with the poker room case, and the Board asked both of them to straighten out the parking. The Board did not get anything. Boyd said there was only so much room on that site. There is a retail unit that had adequate parking for the use applied for. In the original plans for both the north and the south, they had the parking for those sites. There was additional parking that was not even required. Wood said that the Board did not know that. Boyd said this was known, because the Board asked them to amend the parking, and the delineation was shown on those plans.

Hawkins said the total amount of parking was approved in 2001 when the site plan was approved and all the buildings were there, including the gym. The Board was asking for the application of that parking, because it is inadequate according to the existing guidelines. Every time an application is submitted, they all seem to be sharing the same space. Boyd thought that was true. Hawkins said the Board had asked for an allocation. Boyd said the site was originally approved, whether [or not] the Board should have approved it with the number of spaces that were there. All of the parking in the center divider had been used by both sides, which is in addition and above what was initially approved. There was the additional approval for the north and south, and then the additional approval for the gym. Plus there is the additional parking shown on the amended plan for which Johnson had taken the time to do an allocation. Ganz said that Johnson had met with Morgan. The way the parking works is that different businesses use the parking at different times. She submitted information about the stores' hours.

Wood said that what one Board decided did not tie another Board's opinions, even though there are documents. A previous Board cannot stop her right to an opinion. She said that the lots were originally developed as industrial lots; they were not originally designed for restaurants and large businesses; she thought there had been two machine shops. Boyd did not know the original use or if there had been a variance for commercial zone. Wood said that had been changed many years ago. Ganz submitted photographs that Johnson had taken at different times during the day to show that it was never so crowded that people cannot park; it is working. Ganz also submitted site plans that had been approved in 1991, noting that each application before the Board was Unit #3, one in Seabrook Common South and the other in Seabrook Common north. She said that limited parking spaces were allocated to each of the units, as well as easements that had been recorded at the registry that allow additional spaces to be shared. [Tocky B ] said that those documents were already in the Planning Board files.] Ganz did not think anyone would disagree that given the hours, the parking is functioning.

Hawkins said if the open stores turned out to be restaurants operating at the same time, the Board would be faced with inadequate parking according to any of the formulas. There would be no way to make a decision because when a case is heard, the parking is said to be allocated among all of the units. The Board wanted to know how it would make a future decision on the next case, and wants the owners to provide an allocation to show how there was adequate parking for what is needed. Hawkins distributed an expanded table [from that provided at the last meeting] showing how many spaces should be assigned according to the owner's formula. The total was 211 spaces. If the number of required spaces were calculated according to the regulations, the need would be a higher number; cases had been approved knowing that so that number did not matter too much. He commented that the numbers in his table were pretty close to what Ganz had supplied. This exercise tried to break down who were the daytime users and the nighttime users, and the relative parking.



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Hawkins noted that the town's parking regulations specified a maximum number allocated to retail space not a minimum. For the restaurants, the number given in the Honey Pot case was used, and a comparable ratable number according to the square footage for the Chop Shop. Doing a break-out of the numbers that work, at night are adequate. The need during the day depends on the vehicles at the gym; he thought the daytime parking was sparser than the nighttime parking. Hawkins thought that from this exercise, it could be argued that the parking is adequate. The owners had been asked to do the allocation, so that the parking allocation is known when a unit comes before the Board. The allocation of spaces could then be anticipated for each unit. The Board cannot allocate spaces for anybody. Hawkins thought this demonstrated that [the allocation] was doable with a little thought. He wanted the property owners to say that this methodology made sense, or to say how they would do it a different way. Chase wondered why there was such reluctance on the part of the owners to do this exercise, and if there was a fear of something. Hawkins did not know, but commented that when a new tenant came in there could be a change in the allocation. Currently the Board did not know whether there was an appropriate allocation for the application submitted for approval.

Tocky Bialobrzeski, speaking for her husband Robert, said they did not object to a tenant having their day, but would really be upset if the Board closed the 2001 case without having an as-built site plan in the file. Hawkins said those cases would not be closed until everything was in. The question is whether to proceed with the other cases in the meantime. Tocky Bialobrzeski did not think that Robert Bialobrzeski would object to that. Tocky Bialobrzeski said this conversation was all well and good as long as there was a condominium. But what would happen if Johnson were to sell Unit #2 to Linda's. She thought under Hawkins' scenario such a sale would have to be with the stipulation that they could not be open for dinner, and that the Planning board would have to see that that finds its way into the condominium documents. Tocky Bialobrzeski said that is the problem with overlapping parking. Hawkins said the real problem is that there is a current condominium agreement that accepts overlap parking. Tocky Bialobrzeski disagreed, saying that the Planning Board had allowed overlap parking. Hawkins asked about the document that spoke to shared parking. Tocky Bialobrzeski acknowledged the "shared", but said that the Board had allowed uses that potentially would allow more parking than was there. Hawkins said that was the result of the very first plan that had been approved for that site.

Tocky Bialobrzeski said when the condominium was formed there was a hardware store, and a function hall. She had done the original septic design for the function hall, which was 60 seats. She said when the building was built it was all office space for public service. Hawkins said that when building owners come to the Board, they want to use their building in a certain way. Tocky Bialobrzeski said the Board asks how many parking spaces they have. She wants to be able to say "here they are". Hawkins said that is what the Board wanted. It had asked the owners of that property to sit down together and say what is assigned for each of the buildings so that the Planning Board knows and did not continue down the same path of having to guess every time there is a new application. Tocky Bialobrzeski agreed.

Hawkins said the Board did not know how to do that, nor was it in a position to do that type of allocation. The owners know when people are in the buildings, so he thought the owners were the perfect people to be assigning or allocating that parking. Tocky Bialobrzeski wanted the Board to understand there was a problem with overlapping parking which happened because none of the units had been sold. It's easy to overlap because it's one owner. Hawkins said their agreement could have whatever imagination they could put together. When they are selling the building they could go directly by the formula and say this is what the [buyer] gets in front and in the common area. Or they could do something that gives more flexibility in the future. The Board



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cannot do this, and is asking for the owners to tell it what the parking is and whom it is assigned to. The Board is not going to say that because the owners will not do the allocation, it would just guess.

Wood asked about the designations for “assigned” and “allocated”. Hawkins said at the last meeting he explained that the assigned spaces are those directly in front of the building. The allocated spaces are based on square-footage of the total site based on percentage. She clarified that the numbers table had been created by Hawkins to assist the Board; it was a way to go about the calculation. He emphasized that it was not the Planning Board’s job to do that exercise. The owners had to speak to the original formula, say how they want to tweak it, and specify the assignment for each space. He did not think this would be so hard to do. Wood said it works for the day and the night. Hawkins said the mix in the buildings gets more complicated if they want to sell a unit. That is why the owners had to work this out. Boyd strongly agreed with Hawkins, and thanked him because it was not Hawkins job to do this. He felt that the thrift store proposal was not a change from an approved use to another use; it is the same use. Boyd said that the Honey Pot situation was different. The gym is a whole separate issue.

Chase said this is a repeating issue, and asked when [the owners] would tell the Board about the parking, and asked if that could be within two weeks. Boyd did not think those plans had anything to do with this hearing; he came to close out the gym case. Boyd said he’d told Johnson that if he wanted to amend the site plan it would be a chance to amend the parking, although he thought it was pretty close, if not exact. He had made some adjustments, but was concerned with showing the Seabrook Common South site; even then the parking was changed. Boyd said he’d been criticized as showing parking that did not meet the regulations. He was asked to show the existing configuration and that is what he did, even if it was not exactly as required, the Board had given some flexibility in parking design. At one point there was no way to design a parking lot with angular spaces, which currently can be done; an aisle for angular parking can be as narrow as 11 feet. It works on a practical basis. The danger was in showing some parking that did not meet the regulations, and he was reluctant. His position was that they were dealing with the gym and what went on in the rest of the lot did not matter. That site plan shows no parking delineation west of the gym.

Hawkins said there would be more parking when the pavers go in for the full length of the gym going from north to south. He wanted to separate the owner issues from the applicants’ issues, by having the Board approve a motion that included the siteplan work, the grass pavers, the detention pond improvements, the lighting, the back of the building and the fencing around the dumpster pads as completed in 21 days. The parking allocation is to be completed and turned in to the Board in 30 days. Further that the Planning board would not accept or approve any other 920 Lafayette Road applications until the work is completed, and the parking plan is submitted. The vote would be to continue or to send applicants home. He would vote to continue. They could see a good faith effort in terms of starting the work, and getting quotes, and he thought the Board could continue ahead and give the applicant the chance. He added a 5 day requirement for delivery of purchase orders or contracts.

Kravitz asked what case would have those stipulations. Hawkins said the motion would be to proceed with those cases; the owner to complete the work within the various timeframes. Janvrin thought such a motion was unnecessary if those conditions were attached to both cases. This would be easier to enforce. Hawkins did not have a problem with that approach, commenting that there always a problem with enforcement. Janvrin noted that Garand indicated as a temporary step he could do a conditional occupancy with stipulations. Wood asked if this would mean that if these things did not happen, the people could not move in to their building.



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She thought if they had a conditional approval at this meeting they would be moving in tomorrow. Hawkins said if the work doesn't get done, would they be asked to leave the building. Wood did not want to go along with this because the Board had been down this road, where it was asked to let people in because times were tough. Even though Johnson did do some of the work, the Board was dealing with this again. She did not want this to happen again when someone else wants to be a tenant and will have to be dragged through this again. Will tax dollars be spent to ask Garand to do something. Wood felt that once the work was done, people could move in.

Janvrin wanted to be fair, saying that in 2010 the economy was terrible and Johnson had few occupants; he didn't have the money. Now nearly all the units are occupied. The situation would not get any better if the work was not done when there is income. Wood commented that when the Planning Board communicated with Johnson the work was getting done. Hesse said if Johnson he will do the work and the people go in, he wanted some kind of guarantee from Johnson that if the work did not get done they would not be out the door. Hesse said [otherwise] Johnson, not the Planning Board, would have to let them out. A guarantee would only be fair. Johnson should stand responsible for that. If and when the work is not done, there should be some recourse for them. Johnson should take care of this.

Robert Bialobrzkeski said he bought his [2] units from Johnson. He asked if he [his 2 units] was tied to the wording that nothing could be done on his site i.e. is his empty building tied to this problem. What if somebody wants to come into his building tomorrow and he wants to get some work done. Hawkins asked if Robert Bialobrzkeski's recommendation is for a modification. Tocky Bialobrzkeski said their recommendation was that the Board consider the two applications before the Board separately because the Honey Pot was different than the thrift shop which had parking immediately in front of their building.

Bill Niland of the Chop Shop, one of the tenants in the 920 mall, said he'd watched these meetings but had never been before the Board. Time and again he hears his business name come across the table. He said that people come up to him and ask what's going on with the Planning [Board]. He read from an article that came out in the Newburyport News after the last meeting.

"The Town of Seabrook openly admitting that they're torturing tenants of a Route 1 strip mall to get the attention of their landlord, Planning Board members last week postponed acting on requests by two businesses there."

Niland said he represented four businesses in that location. On TV he saw Selectman Hesse stand up and suggest that if Johnson did not do what he's told, the board should shut his tenants' businesses down. Niland said he runs a legal operating establishment and had never had any violations or required police assistance. Yet his business had come under fire; it's in the newspaper and the town meeting. He'd never been called to the Planning Board to address anything about the Chop Shop. They are a big user of the parking lot on Friday and Saturday nights and there is no parking issue. Last week [the Honey Pot] had 10 cars in the lot. They have asked for live entertainment in the hopes that they can continue to do business, because he did not think they could hold out much longer. The two want to move in and have a thrift shop. That building had been vacant for the 4½ years that he had been at that location. Since the Marine had moved out nobody wanted to go in there. That leaves his business at the far end of a dark alleyway. This mother and daughter want to move in and start a business. Niland said this is the second month the Board considered their application and now he heard it would be pushed to a third month until Johnson does what he has to do. Putting in a dumpster pad is a small thing.



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Niland said he flicks his lights on every night at dusk to light up the parking lot at his own cost. It isn't that there is no lighting; just that Johnson hadn't installed "approved" lighting. [The thrift store business] would not affect him or Linda', or Uncle Hilde. Give them a shot for the American dream, and don't make them wait three months or pull out and leave him with no neighbor. [The Honey Pot] had the same bills as he had. Niland said he'd been operating there for three years and had yet to take a paycheck, and could only imagine what they were going through. Give them the mechanical bull. They want live entertainment and are not asking for an increase in capacity or a change of use. They just want to go forward from a DJ to kids playing live music which might bring in a couple of customers. They are nowhere near their capacity. Niland said the Chop Shop enjoys 75 to 125 customers on a big weekend. He thought if the Honey Pot had 40 people they were having a good night, and most of the time it wasn't even close to that. He asked the Board to give these people an opportunity, and asked Johnson to do what he had to do.

Page said all the buildings, except Uncle Hilde's have lights on the roof. It could be a matter of changing the bulbs and turning them on. Wood said anything would help. Janvin said it was no longer an approved lighting situation. Hawkins wanted to get the site up to what was originally approved along the side and the back which is the same that every business had to face. Janvrin felt that when cases come to the Board for a change of use or approval, lighting could be addressed on a case by case basis. He thought that would be better than lambasting Johnson every time. Dealing with lighting on a unit basis would be easier to track. Boyd corrected his statement, saying that not all the parking was shown on the original site plan.

Hawkins asked if the board was comfortable continuing with both cases. Sweeney said to get something done. Fowler wanted to move ahead. Chase asked which to case the conditions would be attached. Hawkins said that would not be a problem if it is done in three weeks. Hesse favored moving ahead. Johnson had been asked several times to straighten the matter out. That problem was solved because he was present. If he did not want to comply it would not be fair to the other tenants and something would have to be done. If the tenants wanted something to be done, they would have been on Johnson's back. [His remarks] were not meant to close businesses down; they were to get Johnson to get things done because they had tried before and he hadn't. As Johnson was there, he was sure this would go forward. Also, Hesse said he'd gotten a few comments and wanted everyone to know that at the last meeting, he was there as a private citizen in the audience and not acting as a selectman. He was there as a citizen and could not vote as a selectman. At this meeting, he was representing the Board of Selectmen, and was very happy that Johnson was there. Maybe he did a little good and wanted it known that appreciated Johnson's attendance. Moving forward was the big thing.

Wood said her opinion had changed, because Johnson would have a group of people behind him if he did not do the work. He had great tenants. She told Niland that if the Chop Shop name had been mentioned it was probably by her. It was more of a compliment as they had learned to work together. If that project could move along she would be personally be very happy. The situation was a lot better than having empty spots. She wanted to look Johnson in the eye and take his word. Hawkins said the parking allocation would be a condition of approval. He thought the Honey Pot was trying to coral the noise as there had been a number of complaints, and a vocal complaint at the last meeting relating to the base sounds. He wanted to know if the applicants had modified anything to date. Green said that that came from someone in Hampton Falls who was not considered an abutter, so he did not receive a notice as he was not a Seabrook resident. Green said the Police Chief had said that they did not enter the Honey Pot



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because by police standards it was not loud enough. The police come and no notice is given to the Honey Pot because they say it is not loud enough. The person said he could not hear the noise outside the house, but could hear it inside. Green did not know how that could happen, or if there were some type of super sound.

Green felt they had been attacked since the beginning, and it was their fourth time [before the Board]; they were attacked for things they had nothing to do with. They were being put under a microscope. All they were asking for was a band, and not for anything else. The parking did not go near what they asked for. They were not asking for more space so parking should not be an issue. They are here for the same issue for 90 days. The Board wanted to hear what the police said, and the Police Chief said there was no problem. They keep getting postponed. It almost felt like people are looking for something to stop them instead of letting it happen if there is no reason not to. He did not get it and was frustrated with the stuff that had nothing to do with their having a band. Page had spoken with the resident and said it was said it was not possible to monitor it or for the police to do so. It can't be heard from across the street. She had spoken with the Fire Chief and gotten quotes for baffles. They want to take care of what they can.

Hawkins said talking about noise meant whether it is a person right on the property line or someone a quarter of a mile away, the Board would deal with it. Whether it is a direct abutter didn't matter. Janvrin asked if people would call the CEO, the police, the BOS or the Planning Board about a noise problem. Janvrin favored a conditional approval, but asked who would be notified about noise. Hawkins said the BOS, as the license always comes back to them. Janvrin agreed and wanted that stipulated. Hawkins noted that the CEO had sent a letter (in the packet) outlining the steps. Janvrin's concern was if the Plan Board recommended that the Selectmen approve a six-month conditional license for live entertainment, then when the Planning Board revisits this in six months the Selectmen should provide some input. Wood asked about the occupancy numbers.

Hawkins noted that the applicants had indicated 250 to 275 customers, and asked if this is poster. Page said it was posted and she had talked with the Fire Chief. Hawkins said the calculations were done on 180 customers. He thought 250 would be pretty crowded, and that the number was 180. Page thought it was 150 for the dining room and another 50 for the pool room. Hawkins read from the permit -- main dining 125; 55 for the function room, for a total of 180. Page asked if that meant changes. Hawkins had asked if the Fire Chief would change the occupancy because the mechanical bull would be a designated area for one person. The Chief sent a letter saying the occupancy number would stay the same. That number is 180, not 250.

Hawkins said the Board's vote would be to recommend to the Selectmen that they issue a live entertainment license to the Honey Pot with the following conditions. (i) working with a professional sound engineer to reduce the impact of noise outside of the building; (ii) if necessary, the building will be soundproofed with baffles and, if required, the amplification levels would be turned down; (iii) the owner to finish the site plan work including installing the grass pavers, screening the dumpsters, lighting installation in the back of the building, and the detention pond work within 21 days; (iv) owners to complete the parking allocation for the future use of the Planning Board within 30 days; (v) the owner to provide proof of purchase orders or contracts for the work to be done within 5 days, (vi) no application will be accepted or approved at 920 Lafayette Road until all of the work is completed to the satisfaction of the CEO, provided that Units #1 & #2 of the North Common Condominium shall not be affected by this



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restriction; (vii) the catch basin to be acceptable to the CEO; and (viii) the Applicants to return to the Planning Board in 180 days to prove that the conditions have been met.

Robert Bialobrzkeski thought that the Honey Pot license for DJs and Karaoke had specific dates and times He did not mind if they had live entertainment at 10 PM, but was concerned if they wanted to have this at 1PM on a Saturday. He asked if the times could change. Hawkins thought they would submit a request for live entertainment that would virtually be same as they had now. He asked if Robert Bialobrzkeski was requesting that the hours be defined in this hearing rather than leaving this to the Selectmen. Hawkins asked if anyone had an issue with the same hours. Janvrin wanted to leave this up to the Selectmen. Wood said some times the applicants give the Board the hours. Hawkins said the license has certain days of the week for karaoke –8PM to 12. Janvrin thought this was from Wednesday through Saturday. Hawkins asked if the same hours should be in the recommendation, or leave it to the Selectmen. Janvrin wanted to leave it to the Selectmen. Tocky Bialobrzkeski asked how to do a parking plan if the hours were not specified.

Green asked if that meant that if they had a wedding on a Saturday they could not have it. Wood asked for the intent of the hours for live entertainment. Page said they open at 4PM Wood asked if they had this every day. Green said all but one day. Wood said that was not what the permit said. Hawkins said the permit said Thursday, Friday, and Saturday 8PM to 12:50AM. Janvrin did not want to tie the hands of the selectmen. If they wanted to have a wedding on a Saturday afternoon, they would have to get a one day event license from the BOS. Wood said another tenant had hours specified. Hawkins said that hours of operation were different from an entertainment license. Wood asked the intended nights for having live entertainment. Page said 8PM to 12:50AM. Wood said that is what the license said, but she thought they were having this every night. Hesse said if they had a wedding, all they had to do was go to the Selectmen's office for a permit for that event.

Wood asked which items would apply to both owners. Hawkins said only the provision of a parking plan which would be to both their benefits. Garand said that all other uses than parking could not occur in the lot; a dunk tank would not be allowed. Green noted that Uncle Hilde's used parking spaces for piling the wood, and unloading 18 wheeler trucks, then they use everyone else's spaces.

[text continues on next page]



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<b>MOTION:</b>	<b>Janvrin</b>	<p><b>In re Case #2012-16E: to recommend to the Board of Selectmen that a live entertainment license be issued to Glitter &amp; Gold Entertainment, LLC – Honey Pot Bar and Lounge at 920 Lafayette Road conditioned on:</b></p> <p><b>(i) working with a professional sound engineer to reduce the impact of noise outside of the building;</b></p> <p><b>(ii) if necessary, the building will be soundproofed with baffles and, if required, the amplification levels would be turned down;</b></p> <p><b>(iii) the owner to finish the site plan work including installing the grass pavers, screening the dumpsters, lighting installation in the back of the building, and the detention pond work within 21 days,</b></p> <p><b>(iv) owners to complete the parking allocation for the future use of the Planning Board within 30 days,</b></p> <p><b>(v) the owner to provide proof of purchase orders or contracts for the work to be done within 5 days,</b></p> <p><b>(vi) no application will be accepted or approved at 920 Lafayette Road until all of the work is completed to the satisfaction of the CEO, provided that Units #1 &amp; #2 of the North Common Condominium shall not be affected by this restriction;</b></p> <p><b>(vii) the catch basin to be acceptable to the CEO; and</b></p> <p><b>(viii) the Applicants to return to the Planning Board in 180 days to prove that the conditions have been met.</b></p>
<b>SECOND:</b>	<b>Sweeney</b>	<p><b>Approved: In favor: Hawkins, Hesse, Fowler, Sweeney, Frazee, Chase, Janvrin;</b></p>

**Case #2012-21E – Proposal by Marie & Michelle Bolster to establish a thrift shop at 920 Lafayette Road, Unit 3, Tax Map 7, Lot 91-103.**

Attending: Marie Bolster and Michelle Bolster

Hawkins recalled that parking had been discussed at the last meeting and there was not anything for this applicant to do about it. The hours of operation would be from 9 AM to 8PM. The dumpster pad had been poured, the fencing was needed. The parking lot lighting was the owner responsibility. He was not aware of any open items for this case, but asked about the reference to an existing sign. Michele Bolster said that referred to the sign at the entrance to the plaza. Hawkins understood they would be on the pylon sign. Wood asked if they would have a sign on the building. Michele Bolster said not at this time Garand said they would be allowed one roof sign and the pylon sign. Michele Bolster asked if she had to come back for a roof sign. Garand said she did not; it was allowed. Hawkins said to check with the CEO to be sure the size is right, so as not to spend money on a sign and told it was too big. Wood asked if a trailer truck was gone. Michele Bolster said that was not hers. Hawkins said a motion was needed to accept the application as administratively complete



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<b>MOTION:</b>	<b>Sweeney</b>	<b>to accept Case #2012-21 as administratively complete for jurisdiction and deliberation.</b>
<b>SECOND:</b>	<b>Hesse</b>	<b>Approved: In favor: Hawkins, Hesse, Sweeney, Frazee, Chase, Wood; Janvrin not voting;</b>

Hawkins said the approval would be with the same conditions as for Case #2012-16E, although this applicant did not have responsibility for the individual items.

<b>MOTION:</b>	<b>Wood</b>	<b>to approve Case #2012-21E – Marie &amp; Michelle Bolster to establish a thrift shop at 920 Lafayette Road, Unit 3, Tax Map 7, Lot 91-103, conditioned on:</b> <b>(i) working with a professional sound engineer to reduce the impact of noise outside of the building;</b> <b>(ii) if necessary, the building will be soundproofed with baffles and, if required, the amplification levels would be turned down;</b> <b>(iii) the owner to finish the site plan work including installing the grass pavers, screening the dumpsters, lighting installation in the back of the building, and the detention pond work within 21 days,</b> <b>(iv) owners to complete the parking allocation for the future use of the Planning Board within 30 days,</b> <b>(v) the owner to provide proof of purchase orders or contracts for the work to be done within 5 days,</b> <b>(vi) no application will be accepted or approved at 920 Lafayette Road until all of the work is completed to the satisfaction of the CEO, provided that Units #1 &amp; #2 of the North Common Condominium shall not be affected by this restriction;</b> <b>(vii) the catch basin to be acceptable to the CEO; and</b> <b>(viii) the Applicants to return to the Planning Board in 180 days to prove that the conditions have been met.</b>
<b>SECOND:</b>	<b>Sweeney</b>	<b>Approved: In favor: Hawkins, Hesse, Fowler, Sweeney, Frazee, Chase ; Janvrin not voting;</b>

### **CHOP SHOP**

Attending: Bill Niland

Garand said that the Chop Shop was directly abutting a neighbor and there was no room for smoking in the back. The police had commented that people drive down the road and there is no protection for smokers. Niland was looking for direction from the Board. Niland wanted to use a temporary wooden separator with ropes, not attached to the building or the ground, between Friday night and Sunday when it would be taken down. He did not think a permit was needed



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because it is temporary and portable. Hawkins said the board had encouraged locations where people would smoke outside to have an enclosed area. A number of different cases were handled that way. He asked if the Board would agree with such a temporary structure on limited days. Garand asked if the Board would waive jurisdiction on that corral. Hawkins thought jurisdiction could be waived to the CEO. Chase asked if there were a safety issue. Garand favored having this made legal because he sees it. Niland added that there is no existing approved site plan that he could ask to modify. Garand said this would be similar to smoking areas at Pal's Pub, Sharon's Sea Grill, and Master McGrath's.

<b>MOTION:</b>	<b>Hawkins</b>	<b>to waive jurisdiction to the CEO on a smoking corral at the Chop Shop, 920 Lafayette Road.</b>
<b>SECOND:</b>	<b>Sweeney</b>	<b>Approved: In favor: Hawkins, Hesse, Sweeney, Frazee, Chase, Wood; Janvrin not voting;</b>

**Case #2012-18 – Proposal by Latium Management Corporation, Tropic Star Development, LLC, and Scott Mitchell to demolish the Getty North station and replace it with a 1,200 square foot “retail” building and two gasoline dispensing islands at 663 Lafayette Road, Tax Map 7, Lot 87,** continued from July 17, 2012; August 21, 2012;

Attending: Scott Mitchell, Jim Mitchell, Tropic Star Development LLC;

Appearing for the Applicant: Wayne Morrill, Jones and Beach Engineering; Attorney Richard Uchida, Hinckley, Allen, Snyder, representing Tropic Star; Jeffrey Dirk, Vanesse Associate, Traffic consultant;

Appearing: David Saladino, RSG Associates, Planning Board traffic consultant; Steven Ireland, New Hampshire Department of Transportation, District 6; Charles Mabardy, 11 New Zealand Road LLC; Attorneys Chris Aslin and Gregory Michaels, Bernstein Shur, representing Charles Mabardy;

Hawkins said the primary topic would be traffic relating to the gas station site. If there were other issues relating to the parking easement they would also be heard. He wanted to hear about the revised traffic report, and then hear from the professionals.

Morrill said they had made some modifications – reducing the northern entrance to right-in only with a sweeping curve to get the traffic off Route 1 into the site with a gentle motion, and then to the back or to the front pump. The southerly driveway was reduced from about 45 feet to 30 feet in width to allow the trucks to exit the site. Working with the NHDOT, they pulled the stop bar back so as not to interfere with pedestrians. Arrows were added on the site; the existing curb cut on New Zealand Road is the same. Hawkins referenced a drawing of how the traffic flowed on the site, and said it interfered with the back parking. The Board wanted that addressed more closely because it looked like they were taking off the rear end of the cars. Morrill said a truck could go along the back of the site without going into the parking stalls. At New Zealand Road there should then be no conflict with a car coming out of the site. Janvrin asked about the line of site on New Zealand Road toward Spur Road. Morrill said there was nothing there at this time.

Hawkins asked if Saladino had looked at the flow through the site. Saladino said the fuel truck would come close to the corner of the pump. Janvrin thought they might have to prohibit use of one pump when the truck is there. Morrill said there would be the ability for a car to bypass the pump during the fueling. They would have to do a remote type of fueling so as not to affect the parking. Hawkins asked for the anticipated times per week that there would be a fuel truck on



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the site. Scott Mitchell said it would depend on the volume. He would give a synopsis at the next hearing. Janvrin commented that the Irving Station [Lafayette Road] could have deliveries twice a day. Mitchell commented that he had done that station. He did not think they would do anywhere near that volume, although he hoped so. The intent was to bring the competitive prices down. Janvrin asked if there would be a 30,000 gallon tank, and a smaller tank as well. He thought they had proposed only one product. Mitchell said they would have three products – high, low, and mid range.

Chase asked if the tank fill would be in a different location. Mitchell said it would be on the side where the old tanks were before. Janvrin thought the onsite flow would be counterclockwise coming in from Lafayette Road. He asked if it would cause an issue if someone pulled in and went clockwise. Morrill said they would go around or straight to the pump. Janvrin asked if they would dictate which way people drive. Morrill said that people coming in could go to the front pump or to the rear. He said that would get the traffic off of Route 1 quickly and they could go around to park. Mitchell said they picked this site because of the traffic lights to be installed going in to DDR; he'd been negotiating with them. Also there is a raised median that can't be crossed; they will only get half of the traffic. Janvrin asked if there would be a queuing issue at the signalized intersection and the right-in. Ireland did not anticipate that and thought it better there than further down. He thought people coming down Route 1 would be looking at the front pumps. If they had to make a 180 degree turn they might back out onto Route 1 which would be a worse situation. They had quite a bit of room on the site. He thought some people would bypass the site if the front pumps were full and the price were similar; it's all about convenience and price. He was ok with this coming out of the signal, and was concerned about someone wanting to back out on to Route 1.

Hawkins referenced the Memorandum of Understanding between the Town and NHDOT, saying that one item was the distance from a signal. He asked how this configuration fit that standard. Ireland said this site did not fit the standard, but the MOU did allow the state and the town to agree on the best overall solution. The two compliance issues would be minimizing the use of right in-outs, and applying improving the use on Route 1. He thought pushing out a 180 degree turn would be a much bigger issue. He thought that Jones and Beach had addressed a lot of his concerns. The right-out also helps Lafayette Road because it would not force people to come out of New Zealand Road to the signal, requiring more time to get them out to Route 1. People can't go left from the right-out; they have a free right turn; any hang-up would be on the site. Any other scenario doesn't flow as well internally, or impacts safety for pedestrians. The only way to get the 150 feet from the intersection would be to have joint access with the next parcel which he thought was a historic site owned by the town. Ireland thought a gas station and an historic site were not conducive for a joint access. It could be done by taking a fair amount of the town property. Hawkins did not think moving closer to the Route 107 intersection made much sense.

Hawkins wanted to know the distance to and from the right-out to the intersection. Ireland said the distance was 300 feet. Exiting would not interfere with the right lane to I-95. Hawkins asked about the truck exiting. Ireland thought that would be fine, as the trucks would wait for multiple lanes to be free. Hawkins asked if it would be better if the entrance to the property was on New Zealand Road., with the in driveway closed off. Ireland did not think it would affect New Zealand, but would affect the internal circulation. Cars would have to go out the way they came in, or do two loops to get to the southern exit and cross the cross-walk. With the right-in some people will go to the front pumps. Chase said that the New Zealand Road driveway would be a left or right out. Ireland said that the DDR plans, which have just achieved their permit, did not depict the striping on New Zealand Road. There would be full access on New Zealand. Ireland said unless



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the tank and the fuel station were on the same side with a dedicated flow of traffic, striping would be difficult.

Ireland said under Article 4.5 of the MOU either the town or the department could waive a provision of the MOU if there were a better way to deal with the traffic. Ireland noted that the applicant had made his requested changes. He could not see a better way unless the town wanted to mix with the historic site. Janvrin commented that the applicant would provide a cross-connect with the historic site. Ireland encouraged this in the event something changed on the historical site in the future. Ireland commented that earlier in the meeting Arleigh Greene talked about development close to the intersection; such improvements might need some land. He wanted the town to continue to move in the direction of cross-connects for all parcels on Route 1 even if the current uses don't seem to make a lot of sense at this time. Morgan noted that he did not see that cross-connect on the plan. Mitchell said Bruce Brown had referred him to Eric Small Hawkins said a sub-committee was working on a map that identified increasing cross-connects, and where driveways could be combined.

Hawkins expressed concern about Greene's proposal for 150,000 square feet near that intersection, and that it would affect plans of others. He asked how big that intersection could take. Ireland said they would have to see what volume that development would call for. It would be the next applicants' responsibility to make appropriate improvements for their impact. Hawkins asked if those applicants would have to make improvements on the intersection on their plans and submit them to Ireland, or would it work the other way around for that level of traffic. Ireland said it would be a little of both. After a scoping session, they would come in with a traffic study that would be reviewed and upgraded. That happened with the current case and he was confident in the numbers now. He thought that with the MOU the town would be working together with NHDOT than ever before.

Saladino said there had been some analysis of the intersection in re potential exaction fees. Hawkins said that Saladino had provided some figures which would be the basis for feedback from that site. The bridge over Route 107 was taken care of and financed, and most of the area in front of the DDR site was underway. If 150,000 square feet would be added, then he did not know if the intersection would be adequate. Also, there are plans for Route 1 south of Route 107. There is a lot that could be impacted because the area is so congested now. He recalled that the numbers for that intersection had been D's and E's. If that's true more work would have to be done. Hawkins said that when Demoulas had made a \$5,000 contribution, Saladino had been asked to visualize what else had to be done there as the area grows, because any increase in traffic would impact that intersection. The objective was to envision future projects in the area and come up with ballpark figures as the basis of contributions toward the potential improvements along Route 1, and not just in front of a particular site.

Janvrin said they were talking about improvements to Lafayette Road, and he thought the Town and the NHDOT had done a good job, but nothing was said about New Zealand Road He did not know if bringing a tanker truck would mean the need for a stronger road. He thought it all well and good to create exactions for Lafayette Road, but what about New Zealand Road. Hawkins said then whole area needed to be looked at, noting that with DDR the objective was to reduce the amount of traffic heading in that direction. The smaller side streets were important, but Route 1 was where the money would be. Frazee wondered if this was an accident waiting to happen. Hawkins said that was why professional traffic people had been hired. That was the reason for these reviews. Frazee thought the distance from the road to the gas pumps was pretty small would be bad news if someone hit them in an ice storm. If a number of cars were trying to turn to I-95 from multiple directions one could back out or hit the pump. He thought there were so many



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chances of a problem. Hawkins asked Ireland if the distances involved were unusual, or if they worried about the pass through area being in front of the building. Ireland said it is outside of the right-of-way which is what he looks at. He commented that for one gas station in Hampton they actually have to use the sidewalk to get the vehicle on that side of the pump. At the applicant's station they would have to jump the curve. Frazee said on an icy day that was possible. Ireland said they would have to clean the site, just as the state and the town clean the roads. Janvrin asked if there would be bollards at the pumps, Mitchell said probably stainless steel. Frazee said on a summer evening when a bunch of people would try to get in at the same time, someone would back out of the site and someone would be hit. Hawkins asked for Saladino's view. Saladino agreed with Ireland that the configuration made sense; the grid seemed to work. Ireland commented that if an accident happened on the site would be at a slow speed. It would be a matter of someone not paying attention.

Wood referenced the front pumps. Mitchell said it had always been a gas station. Janvrin comment that it had once been a bank. Wood was more concerned about the new pumps out back. She thought there was a lot going on for a little lot. Now there was an overhead and a little building. It would become a convenience store as well. Wood did not remember a problem at the front pumps. Her concern was that adding another set of islands was a lot for a small space. Mitchell said that this site was bigger than the X-tra Mart down the street. It was very similar to the Getty Station which he thought Mabardy ran. The Prime station at Demoulas was a very small lot. Half of the Rizzo site was in Salisbury. He'd done a lot of gas stations that are on small lots. The technology had changed; they wished they had a bigger lot. This lot is attractive because of the signals. Hawkins said that station will be the second smallest in Seabrook. Only the X-tra Mart would be smaller. Wood said that site was small but had an adjoining parking lot. Mitchell said this station would be similar, but asked people to imagine putting a light in front of Ganz Law.

Wood asked about pedestrian traffic and a sidewalk. Morrill said they would add to the sidewalk and bring pedestrians up to the store, and would extend the sidewalk on New Zealand Road. Ireland said he was comfortable with the sidewalk design. Wood commented that at the light there would be a lot of pedestrian traffic. Chase referenced the apartment complex and asked if the road crossing should be striped. That is where the school children pick up the bus. Hawkins commented they would go to the convenience store. There would not be a sidewalk on the other side. Ireland commented that NHDOT tends to put cross-walks at intersections and not at driveways because the drivers do not expect it there. Also, pedestrians then think they are safe crossing in the middle of the road. They need to pay better attention when crossing two lanes of traffic. Morgan asked about the school kids crossing. Ireland said the kids cross wherever they want.

Hawkins asked Saladino for further comments. Saladino noted that the driveway on New Zealand was more than 20 feet wide as the regulations stipulate, indicating that this might be waived. Hawkins asked if that was needed for the commercial site. Saladino agreed. Hawkins thought the ordinance should be looked at for 30 feet for commercial. Janvrin noted an exception had been made for the Market Basket. Hawkins noted a pretty big truck would be coming on to the site. Saladino asked Ireland for confirmation that the signal would be installed or, if not, that the traffic would not be an issue. Ireland said all of the paperwork for DDR had been issued last week, and was waiting for original signatures to be returned. The bond had already been provided to NHDOT. Mitchell noted that the Route 107 work had started. Ireland confirmed this. The new permit is for DDR's front door and on Route 1. Hawkins asked about Saladino's comment on trip generation. Ireland said there is not a code for gas in the ITE. It is either with service, or convenience store. He had asked that they change the code for trip generation



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because it was a better comparison to what had been asked before. Gas and service had more trip generation than a convenience store. Another factor was the additional number of pumps. The pass-by factor was also a little higher. He thought the 945 code was more apples to apples.

Hawkins said he and Saladino had talked about trip generation as the number of times cars drive in or out; he did not care where the vehicle came from. He wanted to make the exaction calculation to be much easier than having to use all of the detail spelled out in a traffic study, but that would require a change in the formula. A new formula for roadway improvements would be based on the changes that would have to take place that should be financed by the developers. Saladino said that some pass-by trips might have been already counted. Hawkins noted that other trips might have also been counted elsewhere. If every instance is counted the same way, it would be fair. He did not see how there could be certainty about the reason a vehicle comes to the store or where it came from. Ireland said it is based on studies and general guidelines. He agreed that Saladino's point about pass-bys already being on Route 1. Ireland did not think many people go out just to the gas station unless they are going away. That's why the pass-by comes in. Janvrin asked about traffic on the site for signal avoidance. Ireland thought the flow design was as good as it could get; it would be difficult for someone to avoid the signal, and a right turn was pretty easy to make. Maybe if the timing was poor.

Hawkins asked Saladino to explain his exaction calculation. Saladino said the regulations say that 50 trips triggers the exactions. They went through the trip generation and calculated the exaction. This was based on the capacity of the intersection being another 431 trips at the peak hour. With 53 new trips, the gas station would pay 12.6 percent or \$18,000 for of the cost of the signal, and \$0 if the signal was already going in. Hawkins asked if any of the trips would go south of Route 107, noting that 50 trips is in and out of the driveway. Saladino said the question is how far does one chase that. Hawkins said not every car will take a right turn onto Route 107, some would go straight. The Route 107 intersection might need more than what is out there now. Route 1 south is a project that had to be done. There was a cost estimate, and he did not see why that would not be included in this calculation. Morgan agreed, and asked about the 53 trips. Saladino's interpretation of the trigger of 50 trips would be that the exaction amount would apply to all of the places that saw 50 or more trips. He noted that it doesn't specify that in the regulations. Morgan read that the regulations state that the improvements shall be specified by the Planning Board.

Hawkins said that the estimate that Saladino was asked to do, which was mostly financed by Demoulas, was to identify all the things that had to be done to the roadway during the next several years as this roadway develops. Saladino had done that work and those numbers should apply in this situation. They could take about going north but that seems to be taken care of by NHDOT. Ireland said that work is on hold and he did not think they would be done. Hawkins said that work is not yet needed. Hawkins said that to say that Market Basket would have to finance all of that work was not right either. A small project like this would not have a huge impact going north. Hawkins was thinking about all of the work that would have to be done over time, and ask the developers to share that cost. He wanted to deal with more than just one intersection as the deliberations proceeded. He noted that Morgan and he had agreed in discussing a small project just south of Route 107. Janvrin asked if the (future) projects had been identified. Hawkins said that Saladino had done this work; it should be for the next work session. Janvrin said the projects should be in the CIP. He noted that there would be six years to do projects once the money was in. There had to be projects in mind that would go forward.

Janvrin agreed with Hawkins. Hawkins said that DDR had designed the original calculations which were challenging, but they were only dealing with one intersection. Saladino said that the



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Planning Board had the right to define the improvements, and he would be happy to relook at the calculations. Hawkins said they needed to clarify the exaction calculation methodology for everyone, so that the calculations could be done without resorting to the myriad of detail. Janvrin asked about coordinating the Route 1 south signals. Ireland said the ability is there but it had never worked well. They could go all the way down to the Home Depot. They will have to put in some equipment, and would not be surprised if it didn't work perfectly at first. It wouldn't be good until the Route 1 south project is advertised. When they get to Railroad Avenue they have to do some widening for the new lane. When DDR is done in 2013, things will be better but not the way they want it. Ireland thought that by 2015 when the Route 1 widening is done, it might all work smoothly. Janvrin said that should help with the current traffic signal avoidance at the Richdale. Ireland commented that there is a crosswalk at the New Zealand intersection. Hawkins said the traffic would need another discussion, and thanked Ireland and Saladino for their participation.

Hawkins said that the Board had agreed to hear some matters concerning the easement and a Zoning Board of Adjustment challenge to a Planning Board decision. In February 3012 DDR asked the Board for clarification on whether this gas station was considered a "new" gas station according to the regulations, in which case it would be within 1000 feet of another gas station and would require a variance from the ZBA before anything started. After a long discussion, the Board found that the meaning of "new" in the ordinance referred to a non-existing gas station. Morgan said the gas station section of the ordinance went way back. Hawkins said the discussion brought out that the intent of that ordinance was to slow down future gas stations in every other store, but not to affect those that were in existence, including this station. This Board agreed with that way of looking at the ordinance rather than say it had been closed and had to start from scratch. The Board decided that that was not what the ordinance was originally based on. A challenge to that decision had been made to the ZBA. He asked that speakers identify themselves for the record when making comments.

Attorney Gregory Michael of Bernstein Shur said he represents 11 New Zealand Road LLC, which owns the parcel to the rear of the gas station site. Pointing to a drawing, Michael said the Chair was correct; they had filed an appeal with the ZBA regarding the Planning Board's February decision which was made without notice to his client. Also, Attorney Aslin would be speaking to the parking easement itself, and said they had an access easement across the lot as well as for the parking. There are other movements that could occur coming back to the roadway. It is not an isolated situation as had been described by some of the traffic people. . Another traffic issue that they had an analyst look at is the talk about ITE and about generalized numbers for the specific use. They were concerned that to their knowledge, there had been no traffic counts or review in re the current status. Further, Michael said the lot is too small for this proposal. The traffic people did not talk about what happens when things back up; people slow down and come out and merge and stop and go. Already the level of traffic service movement is D or E. It is not a convenient stream of traffic flowing through. The vehicles coming in and out of the site impede traffic and the level of service issue had not been adequately discussed. He thanked the Board for consideration and turned to Attorney Aslin for further comments. .

Attorney Aslin referenced their letter describing their issues, and said there were two zoning issues. First, the problem was that a general discussion about interpreting the ordinance turned into a specific discussion about this lot, and should have been a noticed meeting. They did not know about the February meeting until last month, and they then filed the appeal to the ZBA. To the extent that the discussion was about this lot being non-conforming, there needed to be notice to abutters so they would have the opportunity to comment. The second issue was because they were not at the meeting, information was provided to the Board that they believe



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was inaccurate concerning when the last use of this gas station was. This played a role in the grandfathering issue that was considered. The Minutes referenced the site being used in May of 2011. Aslin noted that Mabardy used to operate the site, and that that the site was closed in March of 2010. The permits lapsed in June of 2010. There was an indication that a subsequent tenant might have sold a little bit of gas, but after October of 2010 the site had essentially been derelict with no operation, and no permits from the state to operate pumps. They would contend that the site was derelict for more than one year and that the non-conforming use within 1000 feet from another gas station went away. In this regard, they felt this was a zoning issue and the ZBA needed to make a ruling in re this site. If the Planning Board's position was that it was interpreting the ordinance generally, the ZBA could review this. If the Planning Board was relying on a misconception because of incorrect information about the site not being closed for more than a year, they would ask that the Board reconsider that decision.

Aslin said there had been discussion at the last meeting by Attorney Uchida that the [Mabardy] parking easement was non-exclusive and could be shared by the gas station with the overlapping use of the tanks underneath the parking area. He thought there was misconception about the non-exclusive vs exclusive use of the easement. Under the deed and the plan, the parking easement is for the benefit of parcel #2, the rear parcel. It was not a parking easement to benefit Parcel #1. It was negotiated by Mabardy when he purchased parcel #2 to give additional parking. He pointed out the retaining wall that prevents access and there was no parking on the back lot for the restaurant or retail use. Whether the parking is or is not exclusive was not the point. The parking easement gives Mabardy and Parcel #2 the absolute property right to use the parking at his discretion. If it was used for storage, it could be 24 hours a day. they have a property right to use those spaces. Parcel #1 in front cannot interfere with that property right that the owner of the lot deeded to Parcel #2. They are concerned that trucks will rush across the back of the easement, with a considerable amount of traffic moving across the back and rotating to get to the pumps. Also, more vehicles coming in from New Zealand Road would interfere with the parking spaces. With the addition of the larger convenience store, the spaces would be crunched. They are also concerned about the internal circulation and cars backing out from the pumps.

Aslin said they were concerned about the internal circulation, and did not believe it accurate to say that the easement could be used for the benefit of Parcel #1. Parcel#1 could use the spaces if Parcel #2 was not. Parcel #2 had the property right to use the parking easement whenever needed for the use. Aslin thought the Applicant had said they have sufficient parking for their [gas station] use. The extent to which that [Applicant] were to infringe on the parking easement in any way would be an issue. Additionally, there had been talk about "allocation of parking" which he did not think was pertinent, because Parcel #2 had the right to use the parking whenever they want it. If someone from the gas station were to use it, they would have to move their vehicle.car. He did not think it accurate to describe the easement as "shared", as the applicant's attorney had done. Aslin had spoken with surveyor Henry Boyd of Millennium Engineering who said his understanding of the parking easement was that it was for the benefit of Parcel #2 and not for shared usage. Aslin said that Attorney Shines, who had submitted a letter to the Board, had not actually been privy to the discussion; it was a prior attorney who was involved with the parking easement. Aslin thought that Shains had spoken with the current property owner, and not when the deal was made.

Aslin reiterated that there was also an access easement across Parcel #1 to get to Parcel #2 which plays an important role in understanding his client's the ability to use to use Parcel #2. Aslin said the Planning Board could reconsider their administrative decision. If not the ZBA would address this.



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Hawkins asked Morgan to speak to the issue of whether the Board had to notify abutters, noting that Morgan had disagreed with the prior statements that there was such a requirement. He recalled that there had not been an application in front of the Board, said tasked what the notification requirement was in that case. Morgan said he was not aware of any requirement to notify abutters. The statute that had been recited was RSA 676:4 which governs Planning Board review of subdivisions, lot-line adjustments, and site plans, in which case there is a notice requirement for abutters. The discussion had been a response to Attorney Malcolm McNeil's request for an interpretation. Hawkins said that the Board said that "new" meant not in existence under the interpretation of the zoning ordinance.

Hawkins referenced the Minutes of the February 2012 meeting when the discussion had been about grandfathering. After the discussion, the Board had specifically stated that they believed that the meaning of the ordinance in re "new" gas stations was for something that was not in existence; how long it had been shut down was therefore irrelevant. The site had been identified as a gas station and was assessed and being taxed as a gas station. That was part of the discussion and the reasoning used for that specific decision that that particular piece of property was not considered "new" under the Board's interpretation of the ordinance. He thought that the decision was not necessarily based on how long the shutdown was. Hawkins said the new information was appreciated, but they had not seen any documentation as to the dates. Any such information that could be provided would be appreciated. Aslin said there was a record from the state in terms of the permitting for the weights and measures re the pumps. The reference was to a closing in June of 2010, and that was the last update that the State had for the site. He said there had been no pulling of a state permit since then.

Janvrin asked if they had any records from the NH Department of Environmental Services, because it was still permitted as a gasoline station. He was the second on the February motion and recalled that the spirit and legislative intent of the Planning Board was through that zoning ordinance was to delineate that the gas station, whether a filling station or a Mom and Pop convenience store did not fit the definition of the word "new" gas station in the ordinance. The Board had interpreted its own ordinance that it wrote and had been passed by the voters of the Town of Seabrook [he thought in 1986]. Thus the Planning Board interpreted its own ordinance that if the gas station was in existence prior to that vote, it was not to be considered new. There was no grandfathering issue; this lot did not meet the definition of "new" gas station under the intent of the Planning board in the ordinance.

Aslin respected the Board's opinion and did not have a problem with its right to interpret its own ordinance. He thought that discussion from the Minutes went beyond the general to the specific determination on this lot. Because they were an abutter and directly affected by what happens on the gas station lot, they should have been given notice for the opportunity to participate in the discussion. If the Board had simply said that new means this or that, without deciding anything about this particular lot, they would have no quibble with the procedure. That is how they thought the discussion should have occurred, rather than morphing into a discussion of the specific lot. Further, Aslin said if the old gas station was undoubtedly grandfathered or not a new station under the ordinance, they believe the current gas station proposal is a "new" station because it was discontinued for over a year. Now the application is for a new gas station and convenience store, which they feel triggered the 1000 foot restriction in re this particular lot. They were not trying undo all gas stations, but there was no debate that it had been unused for more than a year. He supposed that the exact same station could have been reproduced. This applicant presented a new gas station which should trigger the zoning issue for a ZBA variance.



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Janvrin said there would be a difference between development and redevelopment. Aslin said they respected the Planning Board's decision, but would give the Board an opportunity, before the ZBA meeting, to adjust or not adjust its prior decision.

Hawkins referenced the comments about allocating parking, and the problems it creates when it was supposedly shared. The Planning Board's intent was not to make those decisions. If the owners agree to share, to tell the Board how. On this site, the building would be 1200 square-foot. the maximum parking would be 4 spaces per 1000 square feet, or 5 spaces at the most. The Board wanted the Applicant to show how the parking would be done for the gas station and the building to the rear. It is not the responsibility of the Planning Board to make those decisions. It is the responsibility of the owners of the property who agree to share something, to tell the Board how the spaces would be shared. The Board cannot do this, let along make a wrong decision that would end up in court. The owners should sit down and try to work something out.

Michael said they were not willing to allocate any parking because they would maintain [Mabardy's] rights to use all of it – 8 -10 cars could be there all day or 24 x 7. That is what they are allowed to do and intend to do. He wanted it to be clear that whatever happens, his client's use of the spaces cannot be blocked; it is their parking, not the Applicant's. They cannot be used in any way to satisfy any parking criteria. Vehicles need to be able to back out of those spaces and get out onto New Zealand Road. It is not the Board's role to make a decision about who is going to use what with respect to an easement re property that was being developed. Michael said the concern is that the site stands on its own for whatever legal rights it has. It would be unacceptable to decide that the site [must] meet a standard using that parking. Janvrin said the gas station had a maximum of 5 spaces by ordinance, and that's all that was on the plan.

Wood's belief was that all the needed parking should be on its own lot, although she understood that in this case there were easements. She hears that if [a lot] was abandoned for more than a year it is as if it were non-existent and people had to come back in and apply for a new use. That applied even for the people who came in for the thrift shop. Wood asked if there were different laws for gas stations. Morgan said 920 Lafayette Road is an established use – just changing one retail use for another. Another section of the zoning says that if a use is discontinued for more than a year, it loses whatever grandfathering it had. The abutter was making the case that that had happened on this site. Therefore the only way they could operate a gas station would be if it was more than 1000 feet from another station. Janvrin said alternatively they could have gotten a variance from the ZBA, which they did not. Wood said the Board had gotten information that it wasn't closed for more than a year. Morgan said the question was whether the gas station had been closed for more than a year. This was not an issue for the thrift shop because the location was a permitted use. Wood asked if the station had to be considered as "new". Morgan thought if it was gone for a year, and was less than 1000 square feet from an existing station, it would not be permitted.

Hawkins said when the Board was sitting interpreting the ordinance, they had the discussion of the history and the meaning of the word "new" in that particular ordinance. According to persons who had some knowledge of the origin of the ordinance, "new" meant an addition to the existing fleet of gas stations, and not by stopping use for more than a year. The two sides of the argument were discussed at the February meeting, when the Board decided that "new" meant not existing before [the 1986 ordinance]. Morgan thought the ordinance dated form the 1970s; at some point the ordinance had been adopted. Janvrin thought the town meeting vote had to be researched. Wood asked for clarification of that vote. Morgan said at some point the Town Meeting adopted the regulation about gas stations. Ordinarily the Board that wrote the ordinance could interpret it, but no one was around who could remember when the section was enacted.



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Hesse asked who granted the easement. Janvrin thought that at one point both lots were owned by the same owner. Aslin said that both lots had been comprised in a single lot, until the owner sold Parcel #2 (the back lot) to Mabardy (11 New Zealand road LLC). At that time of the property transfer, the original owner granted a deed to benefit the back parcel. Chase asked if this was a lot-line adjustment; Aslin did not know. Hesse asked if the original owner had agreed to let both lots use it. Aslin said that is the current debate; the easement said it was for the benefit of Parcel #2. Hesse asked if that meant for the benefit of Parcel #2 only. Aslin explained that it was for the benefit of Parcel #2 and did not reference Parcel #1 or sharing. Hesse asked who would determine that. Aslin said it is a question of interpreting the deed. Janvrin thought that might be a judge. Hawkins thought they would go to the ZBA and, after that, it would be a judge who decides the matter. Hawkins said the Board cannot ignore the fact that it was there, and had to make decisions based on that awareness e.g. re trucks driving over the parking spaces. It is a consideration for reviewing the site plan because it was there.

Hawkins said the Board did not want to be a referee, but the site plan stands on its own in terms of providing its own parking – the 5 slots maximum allowed for this lot. He thought the Board might have said there were too many parking spots if there were not the easement that says those spots were assigned to someone else. Janvrin said the construction sequence would impact access to those spaces. The parties needed to work out some arrangement. He thought it had been a silly thing to do at the time this was recorded. If he had a back yard and someone could use part of it and he could not, that would be absurd. Morgan did not see the Planning Board's signature block. Wood wanted to have the information when the traffic experts were appearing. She thought it gave a whole new look of the traffic flow, as she had not realized it was a restaurant, with constant traffic in and out, before. She viewed the Planning Board's job as planning for the future, not just what is currently there. Janvrin added that the site trips per hour had not calculated the usage of parcel #2. Frazee asked about the 5 parking spaces, and was concerned that cars would have to back out [on to Route 1].

Hawkins asked Morgan for recommendations as to a path forward. Morgan thought the Board might give some thought as to what information it might provide for the ZBA hearing. Morgan said an administrative appeal was unusual; there was no history. Janvrin had not found precedent in case law. Morgan said an appeal was legitimate. Wood asked if updated information for the traffic should be requested, although she did not think the NHDOT would be concerned. It seemed to Wood that there was now a different scenario; there was a lot in the area. Hawkins said it would depend on the use of the back building as to how much traffic there would be when a project comes forward. Then the consideration would be how much traffic it added to Route 1 or New Zealand Road, and would there be an exaction requirement. If the Parcel #2 building were used for offices, cars would be parked all day; if for a restaurant, they would be in and out. The key would be to consider that the use of the back site would not be hampered by the gas station proposal. That is the reason the Board had considered truck radiuses and how close they were to the parking spaces.

Wood thought originally the spaces would be shared, and that there should be no vehicles [in the spaces] during the truck delivery. Hawkins said if the applicant said that it would use the 9 spaces, then the discussion would be about maximum parking requirements for site approval. Hesse asked how the Applicant could use the spaces legally. Hawkins said it had been thought the allocation would be easy to figure out, but perhaps it is not. It is not the Planning Board's role. Wood would be concerned because it would depend on the amount of area and whether it was a restaurant or an office building. Frazee added the concern about icy weather. Janvrin asked why there was no parking on the back lot site. Mitchell said it had to do with a septic



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system, although now the sewer is there. Hawkins thought it had been one lot. Mitchell said it had been subdivided quite a few years ago. Janvrin pointed out that the owner of Parcel #2 conceivably could put parking on that lot, now that there is not a septic system. Wood thought that would be a big undertaking. .

Hawkins asked Kravitz to ask the Assessor about when the lot was subdivided; perhaps there was a case or some history. Morgan said when a site plan comes before the Board, he often looks at assessing files to check if numbers are correct and there are no surprises. However, the assessing file was not an ordinary file. It is a large folder showing a long history that is not too clear. Hawkins thought there should be a date when a lot goes from one size to another. Morgan said there was not a clear trail. For example, he found two subdivisions, a merger, and a letter from Attorney Ganz saying she had checked the file and it was fine. Hawkins thought it would be worthwhile to understand the dates when events occurred. Morgan thought a little research would probably be a good idea.

Hawkins said the other option for this meeting would be for the Board to reconsider the February Vote. Janvrin was not willing to do that Hawkins had been considering that, but after reading the February minutes it became evident that the Board's intent at that time was pretty clear on how they interpreted the meaning of a "new" gas station, and was identified when the change to the ordinance took place. If the information that the Board was dealing with in [February] was correct, then he agreed with Janvrin that it should go through the process and see if the ZBA agreed with the Planning Board. Hesse said the shared parking was an obstacle for everything. Hawkins said the ZBA would have to work through the review at their next meeting. If the ZBA says this should be considered a new applicant, maybe this goes through the process of seeking a variance from the ZBA, which would slow down the process. When Morgan first brought this up he thought this might be a grandfathering issue, but a review of the discussion in the February Minutes made clear what "new" meant. At this point, Hawkins agreed with Janvrin to let the process go forward. Chase recalled sitting in on the February meeting and that Sue Foote had clarified the "new" situation. He did not recall whether the grandfathering had been discussed i.e. if the closing of the gas station had been more than a year, did they have to return to the Planning Board. Hawkins said the question was whether the gas station was "new", and the Planning Board decided it did not meet that definition. The case needed to go through the process and then return to the Planning Board. Janvrin said it was very seldom that an elected Board of 7 would be reviewed by an [appointed Board of 5. Hawkins said the Planning board's option was to reverse what was done in February, or let it flow through the process. By consensus the Board decided not to reconsider.

Hawkins thanked those who commented, and said it would be appreciated if anyone having further information on the closure provided it to the Secretary. Attorney Uchida wanted the opportunity to provide comments. Hawkins said that traffic was scheduled for this meeting. The Mabardy representatives specifically asked to address the easement issue knowing that the ZBA meeting was coming up. He did not think it would be a problem to have Uchida speak to any issues at the next meeting. Uchida asked for the date of the next Planning Board meeting in light of the upcoming ZBA hearing. Hawkins said both the roof overhang of the setback, and the appeal of the Planning Board February vote were ZBA matters. He thought it would be time wasted before that occurred. Mitchell agreed they did not want to take the Board's time unnecessarily.

**Hawkins continued Case #2012-18 to October 2, 2012 at 6:30PM at Seabrook Town Hall.**



## **Town of Seabrook Planning Board Minutes**

Tuesday, September 4, 2012  
NOT OFFICIAL UNTIL APPROVED

Janvrin commented that he would chair the September 18 meeting which he thought would be a quick one. Morgan noted that he was responsible for the remaining items.

Hawkins adjourned the meeting at 11:08 PM.

Respectfully submitted,

Barbara Kravitz, Secretary  
Seabrook Planning Board