



## Town of Seabrook Planning Board Minutes

Tuesday, November 1, 2011  
NOT OFFICIAL UNTIL APPROVED

Members Present: Donald Hawkins, Chair; Sue Foote, Vice Chair; Dennis Sweeney; Elizabeth Thibodeau, Robert Moore, Ex-Officio; Paula Wood, Alternate; Tom Morgan, Town Planner; Barbara Kravitz, Secretary; Paul Garand, Code Enforcement Officer;

Members Absent; Paul Himmer, Alternate; Michael Lowry, Alternate; Robert Fowler; Jason Janvrin; Francis Chase, Alternate;

Hawkins opened the public meeting at 6: 40PM

### **CORRESPONDENCE AND ANNOUNCEMENTS**

Moore announced that after attending the next Planning Board meeting, Selectman Aboul Khan would become the Planning Board Member appointed to represent the Board of Selectmen. Moore said that Khan would be a good fit, noting that he is a Seabrook representative to the Rockingham Planning Commission. Moore will become the BOS representative to the Recreation Committee, and Brendon Kelley would sit on the Budget Committee.

### **MINUTES OF OCTOBER 4, 2011 and October 18, 2011,**

Hawkins said the October 4, 2011 Minutes had been held at the last meeting and asked for comments or corrections. .

<b>MOTION:</b>	<b>Janvrin</b>	<b>to accept the Minutes of October 4, 2011, as written.</b>
<b>SECOND:</b>	<b>Foote</b>	<b>Approved: Unanimous</b> <b>Abstained: Thibodeau</b>

Hawkins held the October 18, 2011 Minutes to the next meeting.

### **SECURITY REDUCTIONS AND EXTENSIONS**

There being none.

### **PUBLIC HEARINGS**

Hawkins opened the Public Hearing at 6:43PM

### **NEW CASES**

#### **Case #2011-27 – Proposal by 207 Ocean Boulevard LLC to establish a restaurant and associated outdoor seating at 207 Ocean Boulevard, Tax Map 23, Lot 1.**

Attending: Sam Catalano;

Appearing for the Applicant: Henry Boyd Jr, Millennium Engineering; Grace Saffie; Mike Saffie; Sam Catalano;

Boyd explained that Catalano is the new owner of the market that has been a commercial business for years, and is willing to give permission for his cousins, the Saffies, to open a barbeque business within the store located in Zone 2. There is a commercial kitchen in the back, with a large stove so it is underutilized. It will be a barbeque restaurant, take out style. They have a building setback from River Street and want to build a deck on an existing slab. Boyd



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noted that Morgan appears to believe that a restaurant isn't permitted in Zone 2. However, they did appear before the Zoning Board of Adjustment, and the Building Inspector to ask what needed to be done. Boyd said the Building Inspector assured them that it would be permitted as an expansion of the business. They did have to get relief from the ZBA re the setback from River Street.

Boyd said that Catalano would grant the town an easement around the hydrant which is on private property. Boyd said he would donate his time to get the plan and document to the Town. document this. They needed a variance because there is no way to get handicap access without it. There is no way to get access through the kitchen to the seating, so they did a grade allowing for a railing and wheelchair passage. They would use picnic tables on the deck, a portion of which would be covered. The bathrooms are in the back. The take-out window is in the back. There would be no new signage or lighting, except for a light illuminating the allowed wall sign. Morgan asked about lighting on the deck. Boyd said probably it would be lamp posts. Catalano said he had no plans for lighting on the deck at this point; maybe something small. Boyd thought there was a street light nearby. If lighting is needed it would be small. Boyd said they would not need a drainage study as there is no new grading or sealed surface. Parking can be on the crushed stone surface. Some kitchen equipment would be replaced with smokers. The restaurant would open in the spring.

Hawkins asked for Morgan's comments. Morgan said most of the useful information had been submitted, but asked about the dumpsters and how the trucks would get to them. Boyd said Catalano and his employees park in back, although he'd never seen that area full. Catalano said they move a car for the dumpster pick-up, usually around 6 – 7AM when no one is around. Boyd said the corners in front would be set, but he didn't want them to come up on the Littlefield line; an iron rod could be set, but he preferred not to. A chain-link and wooden fence would be on the line separating from Castaways. Boyd said they would do whatever the Board asked. Morgan said to depict the precinct line. Boyd said this would be added; it's at the back of the lots. Morgan asked how the Beach Zoning would apply to restaurants, the setbacks, and how they had advertised. It looks like they talked about setbacks. Boyd confirmed this, and said the Beach zoning does not speak to restaurants. They could add a letter to the file from the Beach Zoning Inspector. Morgan thought restaurants were not specified in the Beach zoning. Boyd said a letter of clarification would be provided.

Moore asked if the 6 parking spaces along River Street were full-size. Boyd said they would be 10 x 18-feet. Wood asked if parking is on the grass, and was concerned about the traffic in the summer. Boyd said they would use crushed stone where the parking begins in the back. Wood's concern was about the summertime when there are a lot of boats and cars. Boyd said there is also room behind the parking spaces. Morgan said Boyd was correct according to the zoning ordinance. Hawkins asked if the variance had been given to the Planning Board. Boyd said it wasn't finished but would be provided. Foote also was concerned about the parking, noting there is not a lot of activity in the current parking area now; there would be more with the restaurant which could add congestion and more accidents than normal in backing out onto River Street. People might be at the deck but also for pick-up. She suggested having employees park there, and to use the other spaces for the business. Boyd said people will park there and more will with the restaurant. There is now a stop sign and good people do park in the right-of-way; he did not want to stop that. People would not be going fast there. Moore said it is 15 miles per hour.

Boyd said cross-traffic would tend to be beach people who know the area, and noted that the Beach zoning does not address parking. The Safies would use one car. They could specify that



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some employees park closer to the street. Foote said that area is better for cars that will be there for several hours, than for cars coming and going. Catalano did not see a problem. Wood asked if there would have to be handicap spaces for the take-out. Boyd said they could designate some of the existing striped area, but it could be moved in the spring. Wood wanted to avoid the stop and go traffic ins and outs, and asked about handicap parking. Boyd said that would be directly in front of the restaurant which would have the room for the necessary van accessibility. He thought this would be a good solution and allow more access to the walkway and the deck. Hawkins asked if there was agreement with Castaways for parking; Boyd said he would delineate the easement. Morgan said to insert the west edge of the easement.

Hawkins asked for further questions from the Board or the public; there being none at this point.

<b>MOTION:</b>	<b>Foote</b>	<b>to accept Case #2011-27 as administratively complete for jurisdiction and deliberation.</b>
<b>SECOND:</b>	<b>Thibodeau</b>	<b>Approved: Unanimous</b>

Boyd said they were requesting a waiver for typographic lines, but the stormwater maintenance and operation manual was not applicable. Foote thought the waiver should be for topography and the Stormwater Operations and Maintenance Manual. Boyd said a waiver request for the Manual was not submitted because it was not applicable as there were no surface changes, although he would make the request if needed. Garand asked for the number of seats. Boyd said there would be five or six-foot picnic tables. Garand said that would mean parking for about 28 people; it would depend on what it took to get in wheelchairs. He noted there are no parking requirements within the Beach regulations. Morgan said there are requirements. Garand said they would need nine spaces, plus spaces for employees and two for the residence. Boyd said then 21 diners could be allowed. Wood asked if this would change the parking spots along River Street. Boyd said it would not, and actually there would be two employee cars. Catalano said he lives across the street and doesn't need a car. Boyd said some people might come from the beach with their car in the municipal lot. If the lot is full people would go somewhere else. If they park in the road it would be an enforcement problem.

Garand noted there would be a number of people on the deck. Boyd said a couple of tables could come off the plan. Garand said to notate the number of people seated on the deck. Also, a dumpster; pick-up at 6AM would be early for residential users. Catalano said so far this had not been a problem. Boyd said the dumpsters could be shared. Garand wanted this case to go to for technical review re fire, water, and sewer, and a grease trap for increased use. Hawkins said it was an existing kitchen. Boyd said there would be no dishwashing in a take-out restaurant, and did not see a lot of water use. They would have to apply for an occupancy permit. Garand said they would have a beach permit. Foote favored TRC because the department heads know more about the capacity of their departments. Someday the requirement will be for more water than can be pumped out of the ground and more sewerage than the plant can handle. Hawkins said this case would not cause that. Foote agreed, but thought the Planning Board should keep this in mind. Hawkins asked if a letter from department heads indicating whether they have any issues would suffice. He noted that the department heads won't have seen the plan as it had not yet been assigned for TRC. By consensus, Boyd will go to the department heads.

Hawkins asked if the waiver request were in writing. Morgan said it was for topography. Hawkins asked about the Stormwater Operations & Maintenance Manual. Boyd said it was unnecessary because no surface was disturbed.



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<b>MOTION:</b>	<b>Moore</b>	<b>to grant a topography waiver for Case #2011-27.</b>
<b>SECOND:</b>	<b>Thibodeau</b>	<b>Approved: Unanimous</b>

Hawkins said Boyd can submit in writing that there would be no change in the hard surface. Wood noted that the deck would have a solid surface, but would have a roof and the rest would be open. She asked if there would now be a change in the roof runoff, as previously it hit the hard surface, now would come from an angled roof. Boyd said they could direct a roof leader to direct it to the sand under the foundation. Foote noted it might otherwise run into the parking area. Wood asked if a stormwater maintenance manual was then needed. Boyd said not for a roof leader; it would be going into the same spot. Hawkins said to go to all department heads. Foote asked if there were other boundaries. Boyd will depict the fencing with a better measurement. Wood asked if letters should be from more than the water and sewer departments. Hawkins said that is all that had been talked about. Foote said when they go for the business license department heads would be contacted. Garand said at the Beach there would be no department head review with the permit, noting this was also a change of use. He referenced the parking entrance. Boyd said it was very wide and had been there for years. It is an approved commercial use.

Garand said all department heads should have the option to comment on the plan. It would be their choice if they did not choose to comment. Hawkins asked to whom it should go. Garand said it should go to those who would get it for TRC. Foote said it would be better to provide the option. Hawkins asked about marking the boundaries. Wood said there are other measurements to take. Boyd said there is a chain link fence. Foote said the fence would be easier. Boyd said markers would have to be buried very deep and a portion of a wood fence might have to be removed. Morgan said to delineate the Castaways boundary and the Beach Precinct Boundary.

<b>MOTION:</b>	<b>Thibodeau</b>	<b>to approve Case #2011-27 – 207 Ocean Boulevard LLC to establish a restaurant and associated outdoor seating at 207 Ocean Boulevard, Tax Map 23, Lot 1, (i) move the handicap parking to the south end of the lot, (ii) mark the plan with the employee parking on the River Street side, (iii) a copy of the variance granted in September 2011; (iv) water and sewer department heads letters stating they do not have a problem with the plan as presented, (v) adding of a roof leader to under the deck, (vi) marking the boundaries on the back of the lot, (vii) delineating the edge of the Castaways boundary, and (viii) delineating the Beach Precinct boundaries.</b>
<b>SECOND:</b>	<b>Sweeney</b>	<b>Approved: Unanimous</b>

**Case #2011-28 – Proposal by Beach Bum Realty Trust for a condominium conversion at 179 Tilton Street, Tax Map 20, Lot 179;**

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

Boyd said the premises is at the Corner of Tilton Street and Ocean Drive, and thought the plan was complete. There is only one water shut-off valve and the town requires two, which Boyd



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thought was good for new construction. As this would require cutting up the street, Loiselle was asking for a waiver to allow one shutoff. He thought this would give the town more leverage if someone does not pay a bill. Two shut-offs would be more expensive. Foot said this would mean a shared water bill, and asked if one occupant is held hostage to pay if the other one does not pay. Boyd said they know that the condominium would always be jointly owned with common ownership rights. Boyd commented that he would favor one bill to a condominium association with 100 units, rather than the town having to chase all of them. If two shut-offs are required they will do it. Moore said to put in a new curb-stop. Boyd agreed. Loiselle asked if they would mean breaking up the driveway. Boyd said it some would have to be cut. Boyd said the sewer can be shared, but not the water.

Hawkins said that multi-family dwellings were not allowed in the Precinct unless existing in 1977, and asked if this is a legal two-family dwelling. He noted that's the way the Assessor had it listed. He asked if they had talked with the Beach Inspector who is the final arbiter; they must have a building permit. Loiselle said they are in the process of hoping to get a permit to fix the sun room because the roof line is not correct and leaks in the kitchen when it rains. Boyd said the Assessor is familiar with units that are considered two-family. Hawkins said this issue comes up often and wanted a letter from the Beach Building Inspector stating that this is a legal two-family unit and meets the code. Boyd noted Morgan's comment that there were no parking spaces shown. Boyd said they usually don't do this on a residential condominium plan. They cannot design compliant spaces; cars park about one-foot on the right-of-way. Morgan asked how many spaces could be on site. Boyd said there could be four on the lot.

Hawkins asked if the two units would have one [water] bill. Moore said if it is a split bill, a shut-off would affect both units. Although some surface would have to be cut, he would do it just for be better for the owners. Foote said this would make sense as there were two gas and electric meters. Hawkins asked if Morgan had other comments. Morgan had none.

<b>MOTION:</b>	<b>Foote</b>	<b>to accept Case #2011-28 as administratively complete for jurisdiction and deliberation.</b>
<b>SECOND:</b>	<b>Moore</b>	<b>Approved: Unanimous</b>

Hawkins asked for comments from the audience. Pamela Welsh of 99 Ocean Drive from across the street asked if the family would bring more cars. This was a concern because it's already hard for her to get out of her driveway because of the way people park, as well as a lot of foot traffic re the beach access. Welsh said sometimes people put in apartments, and there are more cars. Moore explained that his case is only about a change in ownership. Boyd said multi-family is not allowed except for those that already exist. Hawkins asked for further comments; there being none. For conditions, Hawkins wanted a second water shut-off and a letter from the Beach Building Inspector stating that this is a conforming two-family unit. Welsh asked if the unit would have more stories. Boyd said it was staying the way it is. All they wanted was to convert to the ownership so one unit could be sold if desired.

<b>MOTION:</b>	<b>Moore</b>	<b>to approve Case #2011-28 – Beach Bum Realty Trust for a condominium conversion at 179 Tilton Street, Tax Map 20, Lot 179, conditioned on (i) installation of a second shut-off for this unit, and (ii) a letter from the Beach Building Inspector stating that this is a conforming two-family residence.</b>
<b>SECOND:</b>	<b>Sweeney</b>	<b>Approved: Unanimous</b>



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## **ONGOING CASES**

**Case #2011-21 – Proposal by 1994 Seacoast Holdings Realty Trust and SmartFuel America to collect and process waste vegetable oils at 15 Batchelder Road, Tax Map 5, Lot 14-3, continued from September 13, 2011, October 4, 2011; October 18, 2011;**

Hawkins noted that Case #2011-21 deliberations had been completed on October 18, 2011.

### **Case 11-19 Charles Rosa**

Attending: Charles Rosa

Garand explained that the Board had previously approved Rosa’s application re another kitchen unit on the premises. Rosa now wants to separate the utilities for the kitchen unit and the rest of the building. His operation is non-profit and, among other things, this change would allow certain tax advantages. Hawkins asked if this presents any issues. Garand said the duplex has 2 electrical meters; this would be the third. Foote said this is in the commercial zone. Garand agreed, but said it is residential property. He was looking for clarification from the Board. Foote thought it made common sense to have a separate electrical meter for the kitchen because it would be very difficult to figure out how much was being used by the residence and how much by the kitchen unit. It would be unfair for the apartment to have to guess about the kitchen unit’s share. Also, as this involves a non-profit entity, it would be important to justify how the funds are spent. Wood noted that this is actually three units. Garand said it is a duplex and needs the Board ok so that if there were a problem down the road he would have the backup to take action. Wood said it is sensible to have three units. Moore said that the Board had allowed the extra use, the third meter should be allowed. If Rosa goes away, then the meter goes away.

Hawkins asked if it would be appropriate for the Board to waive jurisdiction. Morgan said it was.

<b>MOTION:</b>	<b>Wood</b>	<b>to waive jurisdiction as requested by Charles Rosa for installing a separate electrical meter for the kitchen unit approved for Case #2011-19E.</b>
<b>SECOND:</b>	<b>Hawkins</b>	<b>Approved: Unanimous</b>

## **OTHER BUSINESS**

### **Case #2011-03 Demoulas Southgate Plaza Re prospective application submission**

Hawkins referenced the letter from Earle Blatchford of Hayne-Swanson, the engineering firm providing the siteplans for the Demoulas properties, and asked Morgan to explain the request. . Morgan said Demoulas had a slight change to the Case #2011-03 approval. The Applicant intends to return to the Planning Board in December with a new application to bump out the front of the Market Basket building to create more space and to have seating for food prepared in the store or at least give shoppers the opportunity to consume food in the store. This expansion would involve a 1500 square-foot addition to the main building. Morgan said they were well aware that they need to return to the Planning Board. In view of the attention that stormwater had originally involved, the new retail building space would be reduced by approximately the same amount of square feet.



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Morgan said he and Kravitz had looked at the site plan fee schedule; for less than 5000 square feet the fee would be \$200. Given the context of this request, it seemed likely that the town would be spending more than that amount. There isn't really a precedent for setting the fee for this type of amendment to an approved site plan, so the Board is being asked for guidance. . Hawkins said it would not be appropriate to figure the fee from scratch (as if it were a de novo plan) although it essentially would be submitted in about 32 pages, and there would be substantial plan review and probably the Technical Review Committee as well as Altus Engineering. While an overall review might not be necessary, there is no way this should be done for \$200. Additionally, all of the plan pages would likely be altered and reviewed.

Hawkins said one way to approach this would be something similar to the Demoulas north withdrawal methodology, which would be say that the applicant would be billed for every penny the Board spends in the process (including any billings received from outside professionals).. This amount would certainly be more than \$200. Foote noted that the change actually involves about 3000 square feet. Hawkins said this meant including the time of Planning Board members and anyone else (including outside professionals) who touches this project. That way the Board would know that it will at least break-even on what is a modification to this project. Alternatively, the Board could say to start from scratch on what is a change from the existing conditions. If so, does the change start from the last thing that was approved, or does it start from the original conditions (prior to approval). Moore said the rationale was to get back what is spent. Hawkins was comfortable with that concept, as long as up front everyone is told to keep track of their time because it will be billed to the Applicant.

Thibodeau asked how many times an applicant would be allowed to do this. Once a plan is approved, if there were changes after the approval, they should be paying for it as a new plan. Hawkins was not necessarily satisfied that the Board's costs in original applications are recovered. For example, department head TRC time isn't billed to an applicant. Hawkins said this way the Board would be guaranteed its costs would be covered. Thibodeau thought this would not completely happen, and that basically this is an initial plan. Hawkins said there might not be as much work as on the original plan, but there would be a lot of additional work. A lot of plan sheets would be changed. Thibodeau how many times they could make a change and just cover the additional cost. Wood agreed with Hawkins that the Board should recover all costs, but agreed with Thibodeau's point about how many times such changes should be allowed. Moore said the applicant should know they will be billed for all costs.

Hawkins was concerned about why the Board cannot recover every penny it spends. A lot of that cost is in the significant amount of administrative work that has to be done after an approval is significant, or in the cost of work re Demoulas north plan which ordinarily would not have been recovered. Hawkins said that Kravitz will argue that small projects can take a great deal of time, but he was more concerned about the big projects that involve repeated review and processing, telephone calls and the like. Hawkins was comfortable with whichever policy the Board would select, but wanted to know that whatever the cost, the board gets to bill for it. Foote referenced the Hayner Swanson letter, asking if this would be like a bistro restaurant. Morgan understood it to be seating for consuming food. Foote noted that other Market Baskets will put food together for a customer, but if it were like a take-out restaurant with seating it could increase traffic to the area especially during the lunch or breakfast times. Garand said this would affect the parking. Foote agreed, and thought people would go to it especially for the bistro, and not just for getting a sandwich while they were shopping.

Garand noted there were a number of Board-approved large sites that are in limbo. He thought if this were accepted as a minor change, a precedent would be set and thought the Board should



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be cautious in this regard. Foote noted that new stormwater 2012 rules would be coming soon enough, and that the Planning Board should take every opportunity to bring site up to the new standards. The Board has the right whenever something comes before it to upgrade to the current standards because, soon enough, if the runoff is to town property and it is polluted the town would be deemed responsible. Hawkins asked Foote if she favored starting from the existing conditions and not what was previously approved.

Khan asked what method could be used to calculate costs for department heads. Hawkins said the methodology was established at the time Demoulas north withdrew their application, when he calculated the department rates including building overhead, time etc. That methodology pooled rates, including a rate for the Board. Hawkins noted that he is a volunteer for the Town, but not for the Applicant work. So there is a methodology in place that could be used. Thibodeau thought that applicants who want changes more than 30 days after an approval should reapply. Hawkins asked for Morgan's view. Morgan's goal was for the town to cover its costs. For example, would be told up front that in addition to the [\$200], all costs would be billed. Foote could not see making such a situation a total new application fee, but agreed with telling all department heads to track their hours. The Applicant would be told that they would be charged for any individual who touches this plan.

Wood asked whether a bistro-restaurant type of situation would be a change of use, because at this time it is a grocery store. Morgan said that argument could be made, just to make sure everything is covered. Foote thought Blatchford's letter was vague. Morgan will write the public notice in that fashion, indicating that would not affect the cost. Moore said confirmation of the specifics was needed; sandwiches to go out the door would be one thing; sitting down could be another. Wood could see people (e.g. from Town Hall) going in to grab a sandwich and going out. She envisioned the police to be involved because people would park in the fire lane. Hawkins foresaw costs for contacting the traffic consultant and stormwater consultants, if necessary, and those costs would be billed. Hawkins wanted to establish that the costs would be covered, and to determine what the best way would be.

Wood wanted the intent clarified i.e. is it a spot for the carts or a restaurant. Hawkins said that in other locations, Market Basked has tables near the deli so someone could eat inside the store. They would have to see whether the number of vehicles would increase; the Applicant would so no. The Board would see whether our peer reviewer agreed. Foote wanted additional information e.g. if there would be tables outside in the widened sidewalk, would the runoff into parking lot be different because of spilled food that would run off and become a source for bacteria. Would there be seating inside and outside the building for eating. The question is if the Board should apply the existing model, or say they should pay as they go because it is a modification of the existing plan. Moore said that is all that needs to be decided now. Hawkins said the Board would have the chance to review all of the information, but at least it should know that it would be paid for this work. Khan wanted to be careful of the precedent because already approved plan sites would be coming back to the Board. He wanted to ensure that the Board would be paid for its costs, but make clear how this would be done.

Garand asked why the application fee should be reduced. Foote said the problem was that the fee for an amended plan was very small. Garand wanted any policy change to be clearly written. Foote said the fee structure should be revised. Garand agreed, and thought the applicable period before an entire new application was necessary should be 90 days if passed. Hawkins asked when Case #2011-03 was approved. Kravitz said July 12, 2011. Wood asked if this was the first time this had come up so what the board decided would be a precedent. Hawkins explained that the Demoulas north case was the first time for such a withdrawal, and there was



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no refund policy. The Applicant was informed that the Board would calculate its costs in connection with considering returning any of the application fees. Hawkins said the policy that was created was similar to creating a percentage scale for return of sales. The resulting approved refund policy allowed percentage returns at certain progress points; if an application had reached the Board hearing stage, nothing would be returned. This was different because it applies to a back-end situation where the Board thought some modification would be justified.

Hawkins said some requests were minor modifications that could be waived, but [Demoulas south] was something more. Garand suggested that more than 100 days from the approval date would be the trigger for a full application. Hawkins thought [whether or not something was done at this meeting re the Demoulas request] the code should be modified so there could be a standard. It could be modified again if needed. Foote said in the past another large development's plans were revised only to find out that when the original and new landscaping page was compared changes had been made. She noted that maybe the person who made the presentation thought nothing had changed, but whoever worked on that page landscaping had made changes. This means every page in the new application would have to be looked at. Hawkins liked Garand's idea of setting a timeframe during which all of the Planning Board costs would be paid by the applicant. After that would require starting from scratch with a new application. Hawkins asked about a six-month timeframe.

Morgan asked if the Board wanted him to write up this policy written. By consensus they did. Wood thought six months was too long and asked if other towns had a timeframe. Morgan said other towns could be asked, but since Seabrook was more advanced than some towns he didn't think it would be fruitful. Hawkins recommended charging for out-of-pocket expenses, and asking Morgan to write a policy giving guidance for the future. Garand suggested that Demoulas be asked for clarification in time for the public notice. Morgan wanted a specific response from the board before a public notice. Kravitz understood that Demoulas would be coming to the Board with a full application. The issue is how to calculate the fee. Also, the Planning Board application states that professional fees will be reimbursed, so that is not an issue. What would be unusual is how to account for in-house, Planning Board time etc, except that Hawkins had created a calculation methodology that is now used for withdrawals. From an administrative point of view, the question is whether to charge them only \$200 up front. For example, an escrow could be determined in advance, which the regulations already allow. The question is what is the right way to treat the up-front fees. Foote thought the application states an amount for a previously approved site plan, and did not see how that could be varied and have it defensible in a court. Garand thought the reference is to disturbed area. Morgan thought if the standard would be 100 days, Demoulas would go along with that. Wood noted that according to Kravitz, the applicant was not posing a problem.

Morgan will write up a policy that could be appropriate for Demoulas and for the Board to review. Foote thought that there previously had been a line for an amended plan on the application plus abutters fee etc. She did not see how the Board could go outside of its \$200 fee, but it could say this is an exceptional case. Morgan noted the application just refers to the siteplan fee. Kravitz noted the application would go through the ordinary course. Kravitz said the Demoulas application would be coming in prior to the next meeting, and asked for a decision to know what to tell them. Foote thought they could pay an hourly fee or the full application fee. Thibodeau noted that the letter references a hearing on December 20. Hawkins thought a decision could be made.

Thibodeau said until the case is reviewed it is not known how radical the amendment might be. Hawkins said if all the costs are paid, it might cover the Board's costs for the first time.



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Hawkins asked if the Board wanted to wait, noting that it is only how they will pay. He said once the application is in the Board could decide on an escrow amount. Hawkins asked for the next meeting date. Kravitz said November 15. Hawkins said the application could be all ready except for the fee amount. Wood suggested that someone come to answer the Board's questions as to what is going on. Foote said that would be the public hearing. Morgan pointed out that if the Board makes a decision, Demoulas could say they would have appreciated knowing [their upcoming case] would be talked about. Moore said there had to be an application submittal. Hawkins asked if the Board wanted to wait until the next meeting to review a policy proposal, and until then the response is that there isn't a policy and it is being worked out. By consensus this was agreed. Foote called attention to the last line in the letter requesting a vote on December 20. Hawkins said perhaps everything would become clear by then.

Kravitz noted that the reimbursement invoice for Case #2011-03 was still outstanding. Foote asked about how Demoulas paid their invoices. Hawkins said that the Board needed to address payment terms in such a way as to give it leverage in collecting money, and about when to sign plans. Foote thought recording was not an issue for siteplans. Hawkins said to lay down some important deadlines, noting that the Planning Board lays out payments. Moore noted that they may not come in until the next year. Hawkins said that Morgan would take that forward.

Garand asked that the following situation be heard.

### **Hampton Courthouse – 130 Ledge Road**

Attending: Michael Fecteau, Stephen Thompson;

Fecteau explained that he and Thompson are the owners of the building behind Sam's Club in which the Hampton Courthouse has been located since 2005. The building had been built in 1998 for Dinsmore Communications with 120+ employees. In 2005 the Court leased 2500 square feet – half the building. Upstairs there is 5000 square feet of office and engineering space, and downstairs is 2500 square feet of warehouse and 2500 square feet of office space which is the Court. Fecteau's office is upstairs in space formerly occupied by a business that closed in 2010. The Court currently has some offices and space that is not currently being used; the courtroom is downstairs. For a couple of years the Court has been asking the State for money to have better security to hold persons awaiting trial. That money was not forthcoming. Currently they sit on a bench with other prisoners. Last week he found another tenant for upstairs that makes and assembles semi-conductor circuit boards. They are mostly sales and don't need the warehouse space. The Court wants to use part of that space for a couple of holding rooms, and a conference room and moving records upstairs in the warehousing space. The change is turning some warehouse space into Court space. Nothing changes upstairs. When they went for a building permit, Garand wanted them to see the Planning Board re the changing the warehouse space into office space and installing a few doors. There are already ADA bathrooms downstairs. Hawkins asked if there were changes to the outside of the building. Fecteau said there was not. He noted that full staffing would be about 12 people. Hawkins asked for Garand's view. Garand asked the Board to waive jurisdiction so the changes can go on and the town is aware of that is going on. The contractors are ready to do the work and are in a hurry to get this done by December 15.

Foote said basically this is about accommodating the Court. Garand said this is about accommodating the Court with functional internal public space, and is not really having other impact. Foote said it is making a more secure Court. Fecteau said the Sherriff, the Judge and the state department in charge have viewed the space and indicated that this is what they had been hoping for. Hawkins asked for Morgan's comments. Morgan had none. Hawkins asked for questions from the board. Wood said it seemed like just a logistical move within the space.



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Fecteau said they already had made handicap accommodations in the bathrooms and the outside ramps. Hawkins asked for a motion to waive jurisdiction to the Building Inspector.

<b>MOTION:</b>	<b>Moore</b>	<b>to waive Planning Board jurisdiction to the Building Inspector for the expanded use of the Hampton District Court located at 130 Ledge Road.</b>
<b>SECOND:</b>	<b>Foote</b>	<b>Approved: Unanimous</b>

### **PUBLIC HEARING ON PROPOSED AMENDMENTS TO ZONING ORDINANCE AND LAND USE REGULATIONS**

#### **Tom Morgan, Town Planner**

Hawkins invited Khan to participate in the discussion. Moore again indicated that Khan would become the Selectmen's representative to the Planning Board in December. He noted that Khan had previously served one term on the Planning Board and also represents the Town on the Rockingham Planning Commission. He thought Khan would be a good fit for this Board. Moore said that Selectman Brendan Kelly would be going to the Budget Committee and he would serve on the Recreation Board. Hawkins again welcomed Khan.

Morgan called attention to 17 non-zoning items listed in the Board packet that had been previously discussed. He'd written the language for the 15 items with which the Board had been satisfied, indicating that they were posted for a public hearing. Three of the 15 would require Town Meeting approval -- home occupations and open space. Morgan said he had reformatted the home occupation provision which had been distributed. He noted that the document with the parking would go to Town Meeting, and made copies of the wetlands table and the 12 amendments that do not require Town Meeting vote. In the interim, Kravitz called attention to the revised subdivision regulation dated July 12, 2011 which was in the Board packets.

Morgan suggested addressing the three amendments that would require Town Meeting vote, as the other amendments did not. The first proposal was to move the parking regulations from the Zoning Ordinance to the Site Plan regulations. Morgan said that the draft ordinances re open spaces, and home occupations needed substantial discussion before being drafted as a Warrant Article for the Town Meeting.

#### **1) move the parking regulations from the Zoning Ordinance to the Site Plan Regulations;**

Morgan explained that the procedure would be to delete the Section 8 Parking Ordinance from Zoning, and to add that text to the site plan regulations. Hawkins asked how the Warrant Article would be written. Morgan said it would be clear that the parking provisions were not being deleted, only moved to site plan regulations. Morgan said that the proposal for this meeting was just to move the parking.

<b>MOTION:</b>	<b>Foote</b>	<b>to forward to the Town Meeting a Warrant Article to delete Section 8 re parking requirements from the Zoning Ordinance and to renumber the subsequent sections.</b>
<b>SECOND:</b>	<b>Wood</b>	<b>Approved: Unanimous</b>

Khan noted that he was sitting in on this meeting but not voting. Hawkins asked if Morgan had any other comments on parking. Morgan said there would be opportunities to tweak the regulations in the future.



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<b>MOTION:</b>	<b>Foote</b>	<b>to add the parking regulations deleted from Section 8 of the Zoning Ordinance to the Site Plan Regulations and renumber the subsequent sections accordingly.</b>
<b>SECOND:</b>	<b>Wood</b>	<b>Approved: Unanimous</b>

Foote wanted to clarify that the reason for moving the parking regulations is that currently if anyone wants to do any changes to the parking requirements they are required to go to the Zoning Board of Adjustment which is very limited as to what they can do in re hardship; they can approve or deny. With parking being moved to the site plan regulations, the Planning Board can review it for the plan that is submitted and be more creative as to the true need for the number of spaces requested or needed.

**2) afford protection to vernal pools in the Zoning Ordinance;**

Morgan described vernal pools as supportive of a specific character, vegetation, and micro-biotic animal life, important for a woodland habitat. He reminded that at the last discussion the Board had recommended requiring setbacks and buffers of 25 feet. Foote asked if the vernal pools draft language should have a comma after it, to greater than 5000 square feet. Hawkins wanted to define vernal pools, and asked if a setback of 25 feet was too much. Foote said vernal pools would be defined by wetlands scientist as a specific type of area with certain types of vegetation in it or near it. Also to have certain types of animals such as go shrimp. It is very well defined as to the difference between a vernal pool and a wet spot on the ground. Vernal pools are very important for woodland habitat. Hawkins had a problem with not defining the scope of what people can do on their property. He noted that wetlands are defined and that vernal pools should be too. He did not know if 5000 square feet was the right number, but thought that problems would arise without using a number in telling someone where they cannot build on their land. .

Morgan agreed with Foote about the placement of a comma, and recommended citing vernal pools of any size so there is no doubt as to clarity. He asked whether the Board wanted setbacks and buffers for vernal pools. Foote said they should be there and that vernal pools were more important than wetlands. Wood's view of the last discussion was that the Board wanted to save vernal pools even if they were small. Foote responded to Hawkins that all someone had to do was go to the ZBA. Hawkins wanted to be logical and reasonable about what someone can and cannot do with their property. He would have a problem if someone told him that there was a vernal pool in the middle of a 3000 square-foot lot so he could not put a building on it. Foote thought it unlikely for there to be a vernal pool very far away from an established large wetlands area. Most vernal pools are contained within wetlands area.

Hawkins wanted to be sensitive as to what property owners have the right to do on their property and did not want to be overly aggressive. If vernal pools are within wetlands areas, there is no issue. Foote it is rare for vernal pools to be found or located more than about 20 feet of wetlands buffers and about 98 percent would be within the wetlands or on the edge of wetlands. Khan asked how many vernal pools were within the Beckman Woods development. Foote said none of those were required to be identified at that time. That is why she is so keen to get vernal pools noted on plans. The bottom layer of woodlands is dependent on vernal pools in the spring; that is where peepers lay their eggs; go shrimps live there. The difference is that ponds and streams stay there in the winter and have the predators that depend on vernal pools for their life cycle. Some may be as big as a table and some as big as the room, but they lay there and some puddles of 3 to 12 inches remain even in July; they dry and disappear in August. Wood asked how many vernal pools were in Beckman Woods. Foote said up to 12 mostly in the conservation wetlands location. Wood said if they were covered, why is it so important to specify. Foote said it is good to know where vernal pools are as they are most endangered by



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dredge and fill permits. If they were designated it would give the ConComm and Planning Board that know about wetlands the opportunity to say e.g. there would be a benefit to moving a potential road a few feet away from a vernal pool so there is a lot less impact on the wetlands.

Footo said there are different kinds of wetlands and vernal pools over recent years seem to be the most endangered in re turtles and dragonflies. Moore said that if vernal pools are lost, everything is lost; they are the start of everything. Like the shrimp in the ocean. The quality of the streams is dependent on them. Footo commented they are at the bottom of the food chain. The regulation is not saying someone cannot build, only that they ought to be identified on plans and protected from building within 25 feet. Footo noted that the majority are in wetlands and couldn't be built on anyhow. Wood wanted the location requirement on the plans to be noted. Morgan will do this in the draft he prepares, noting the language is as to the 25 foot buffer. Hawkins asked how the change will read. Morgan proposed to reference vernal pools of any size. Khan asked if there is an official definition. Footo said she could live with a 25-foot buffer, although DES and others would say it should be 100 feet from the wetlands; ponds and streams would be 200 feet. The 25 foot- standard gives that space around an area. But the scientific journals recommend 100 -200 feet buffers.

Khan asked if there is a clear definition. Footo said not in Seabrook's regulations but a licensed wetlands scientist would be doing the delineation and they know it well. Khan asked if an applicant would have to bring the delineation to the ConComm and the Planning Board. Footo said generally most people doing development already know about this or someone from the Town NHDES has alerted them to it. Garand suggested adding the definition of vernal pool or a reference to where it can be found e.g. in Army Corps documentation so it can be found. Morgan will add a definition. Hawkins said for the Seabrook zoning the definition location will only be referenced. Morgan said he will draft the changes and return to the Board for a subsequent zoning vote.

Hawkins said the discussion could be continued to November 15, 2011. Footo preferred to take the vote and do the definition later. .

<b>MOTION:</b>	<b>Footo</b>	<b>to add a regulation protecting vernal pools of any size to the buffers and setbacks section of the Zoning Ordinance.</b>
<b>SECOND:</b>	<b>Thibodeau</b>	<b>Approved: Unanimous</b>

### **3) establish criteria for Conditional Use Permits – Section 7;**

Morgan said the Board had previously enabled conditional uses with Planning Board approval. At this time he recommended establishing the same criteria for the Planning Board granting conditional use (e.g. in the mixed use area) as applies to special exceptions. Footo said this was just adding conditional use to the section identifying special exceptions. Morgan agreed. Kravitz asked if conditional use and special exception would be covered in the same provision. Morgan said it would.

<b>MOTION:</b>	<b>Thibodeau</b>	<b>to add reference to conditional use permits by the Planning Board, to Section 7 of the Zoning Ordinance, and retitle as conditional use and special exceptions.</b>
<b>SECOND:</b>	<b>Footo</b>	<b>Approved: Unanimous</b>

Hawkins said the discussion of Zoning Amendments would be continued to November 15, 2011 at 6:30PM at Town Hall.



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Morgan asked if the Board wanted to address subdivision amendments, or consider home occupations and open space. By consensus the Board agreed to discuss the proposed Home Occupation amendment.

**3) Home occupations** Morgan said after the Board's prior discussion, he had pared the language down and simplified it. He suggested the Board address what it wanted to limit. Foote cited explosives/ Morgan said other than small quantities intended for house hold use. Hawkins asked how descriptive and how easy was it to define nuisance. Morgan said there was a long history of case law on this. Moore said there were multiple enforcement actions by the BOS, or Code Enforcement officer depending on the type of annoyance. Sometimes it would be the Health Officer. Foote questioned Item # 4 re not being visual from the street. Foote asked if that meant that she could not bring her farm back because it could be seen from the street, or that the lobstermen could not store their traps. Hawkins asked for Morgan's comments. Morgan said this would go to Town Meeting so if it was not a comfortable position; #4 should be removed. Garand said people would be calling his office on this. Hawkins asked if everyone was in agreement to strike #4; they were.

Wood asked about "noise" etc in #6 and how to define it. Garand said this had to be in re a home occupation. Sometimes noise could be as a nuisance, but it was hard to enforce. He suggested adding ..."shall not be discernable at the property line". Foote agreed. Morgan will add that. Hawkins asked if Morgan had given thought about safety. Morgan pointed to #7. Hawkins said it seemed to reference hazardous or flammable material that can't be going on at a property to affect the safety of a neighborhood. Garand wanted to restore the reference to "federal" standards. Morgan did not think guns per se were a problem, but thought to add "explosives". Garand disagreed A ham radio operator might not be problematic but someone selling several dozen guns might be an issue. It might be under nuisances, but it would be hard to enforce because people hear noise differently. Wood agreed, but said that "discernable at the property line should be added. This was agreed by consensus Hawkins pointed to the revision that referenced hazardous equipment and flammable material. Garand said there was a difference between commercial firearms and firearms in the home. Hawkins thought the application should be to detrimental events in a neighborhood. Morgan asked what, other than explosives, the Board wanted to limit. Wood said suppose someone used a soldering irons in the home, and asked if that could be a fire hazard. Foote thought "owner occupied" was important to add, because then a single owner could be cited. Moore commented there is a difference between collectors and owners. Morgan thought to focus on limiting specific actions, and asked what other safety types of events could be cited. Khan thought keeping firearms would be one. Foote recalled that in Morgan's original draft there had been a reference to single residential occupancy, and that would prevent someone in an apartment house from doing a home occupancy. Garand thought that owner occupied should be the standard. Foote agreed, saying someone would have no idea what their tenant might be doing and be putting property in jeopardy. Morgan disagreed as that was getting away from the impact. Hawkins said if he were a renter, he should be able to have a home business. Foote said firearms would be covered under state and federal licensing. Moore said what about collectors. Wood said they think it's guns but it is the ammunition. Foote said it was the person behind the gun, and asked what about a knife collection. Thibodeau wanted to add a reference to poisons. Foote thought that would come under hazardous, and said the language was that it have no impact on the quality and character if a residential neighborhood. Thibodeau noted that so many people are buying and selling on the internet. Morgan noted that the UPS person shows up many times a day. Hawkins asked if the Board was satisfied. Morgan will construct the public notice for December 6, 2011.

### **Open Space**



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Morgan asked if the Board wanted to discuss open space. Foote thought there were only a couple of items on this: the minimum lot size, the optional procedure, and underground utilities. Hawkins said open space was important. He wanted to continue that discussion, as well as that on the regulations below, at the November 15, 2011 meeting at 6:30 PM Town Hall.

- 4) require certification from an engineer that a project is complete;
- 5) increase water quality standards for stormwater discharge;
- 6) limit the use of hay bales in erosion control;
- 7) encourage LEED design;
- 8) adopt definitions by reference in the Site Plan Regulations;
- 9) define "interior parking area;"
- 10) require performance securities to be non-lapsing;
- 11) adopt a policy governing the signing of mylars;
- 12) require origin and destination data in traffic studies; and
- 13) extend conditional approvals from 180 days to one year.

Also, Hawkins said the Board should bring their CIP books to the next meeting. The details of the changes would be made known for the next meeting. Also two chapters of the Master Plan would be on the next Agenda. Hawkins noted that items for that meeting had already been public noticed

Hawkins adjourned the meeting at 9:25 PM.

Respectfully submitted

Barbara Kravitz, Secretary  
Seabrook Planning Board