



## Town of Seabrook Planning Board Minutes

Tuesday, December 4, 2012

revised

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

Members Absent; Robert Fowler, Sue Foote, Alternate; Paul Himmer, Alternate;

Hawkins opened the meeting at 6:35PM

Hawkins designated Lowry and Chase to vote at this meeting;

### **MINUTES OF NOVEMBER 20, 2012**

Hawkins tabled the November 20, 2012 Minutes to December 18, 2012.

### **SECURITY REDUCTIONS AND EXTENSIONS**

#### **Case #2012-18 Latium, Tropic Star, Scott Mitchell Extension of application process**

Hawkins said that the request for an extension would be discussed at the meeting of December 18, 2012.

### **CORRESPONDENCE/ANNOUNCEMENTS**

#### **11-31.10-22 NextEra Energy Request for Certificate of Occupancy**

Hawkins asked Morgan to summarize the lot-line situation. Morgan recalled that after the NextEra lot-line adjustment plan was approved by the Planning Board, Assessing found a contradiction in that there was an indication of two lots, but the plan only depicted one. The Assessing Department had been trying to resolve that issue, and had contacted an attorney whose opinion was that there was no issue or problem. Morgan did not see this the same way and had laid out the reasons why he had disagreed with the attorney's conclusions. Morgan said the implications were that until such time as NextEra deals with the lot-merger, which they had not yet done, the illegality of the lot on which the firing range was situated is subject to question.

Hawkins asked if the drawings were incorrect why would there be any other position other than that they should be fixed. Morgan said the drawings could be fixed, or the two lots could be merged to be consistent with the drawings that had been recorded. Hawkins said that currently there are recorded plans that do not agree with what is on the ground. Morgan said for both options, the onus would be on NextEra to take the next move. Morgan said this is an easy fix and he did not understand why nothing had been done other than that they are a very large organization that sometimes didn't move very quickly. Wood asked if Morgan thought that was the issue. Morgan thought so; that it [the matter] was sitting in a Florida office. Hawkins asked if there was anything that the Board had to do now, or in the future. Morgan said that the Planning Board did not have to do anything, but the Board's attorney's opinion could be sought as to whether this would affect the decision re the firing range. NextEra could make the whole thing moot by coming in with a new lot-line plan or merging the lots. Wood asked if that information had been given to them so that they quickly know. Morgan said he'd provided it to their surveyor in September and Kravitz had communicated it to Steven Coes in late October. They have the



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information but apparently don't see it as a priority. Wood asked when the firing range would again come before the Board. Kravitz said in January. Wood thought it could be made an important issue then. Hawkins noted NextEra had requested the issue [noise at the firing range] be dealt with sooner. Morgan confirmed that in a letter NextEra asked that the Board act.

### **PUBLIC HEARINGS**

Hawkins opened the Public Hearing at 6:40PM

### **PUBLIC HEARINGS**

#### **Proposed Zoning Amendments**

Hawkins said the Zoning Issues would be discussed during 2 public hearings; changes to the siteplan regulations could be taken up at any time.

***A) Re-zone the Yankee Coop Pier from Zone 4 Conservation to Zone 5 Harbor Commercial. This \_\_\_ acre area is bounded on the east by Route 1A, and on the north, west, and south by Seabrook Harbor. A graphical depiction of this proposed revision to the Zoning Map is available for public inspection at the Town Hall.***

Hawkins explained that the proposal was to rezone the Yankee Fisherman's Coop from Zone 4 – Conservation, to Zone 5 – Harbor Commercial. The rationale was that the property had had the same use for many years which was not conservation. Morgan said the purpose was to catch the zoning up with the reality on the ground. This would help make the Coop a conforming use; they are now non-conforming because they are in the conservation zone where they cannot even hang out a sign. Morgan said if the Board agreed with the change it should be very precise with the delineation, and suggested starting with the Assessor's map which showed the perimeter of what the Town owns going out toward the paved portion of Route 1A; the town parcel goes up to the State right-of-way.

Janvrin asked if this could be zoned by lot number. Morgan said if the Assessor's map is used, the lot number(s) could be described on the warrant. If another boundary makes sense, it should be discussed at this meeting. Hawkins asked if there were an issue in that the Coop only uses a portion of that town lot. It is fenced off from the intended Harborside Park project being worked on by the Department of Public Works, which now has some funding. Morgan said if the Town owned the property in perpetuity, there would be no issue. Janvrin noted that the Yankee Fisherman's Coop lease would be up in 2013.

Khan asked about the surrounding property. Morgan said there were several properties at River Street that were in harbor commercial. Hawkins said the businesses right on Route 1A were in the Beach Precinct. Both sides of River Street beginning one lot back from Route 1A were changed to the harbor commercial district. Morgan said that happened about 11 years ago. Hawkins thought it would have been logical to have the Coop in the Harbor Commercial Zone. He thought the zone change had been at the request of the property owners along River Street. Perhaps the possibility of including the Coop wasn't discussed. Morgan said to be cautious about zoning one property particularly when it is isolated. Because in this case it is owned by the Town, it probably wouldn't be a problem. For example, if the pier was privately owned, lawyers would probably raise the question of spot zoning.

Khan asked whether the lease being up next year would be affected by a change in zoning. Morgan thought it would make doing business easier to conduct; they would be allowed to do



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simple things without a variance as they would be conforming. Khan thought the lease had nothing to do with a zone change; Morgan agreed. Janvrin said there would be no problem in putting a sign at Route 1A if that were the Harbor Commercial district. Hawkins asked if there would be value in including the town parking area as well. Morgan said it would make the zoning district more defensible as there would not be two clusters; it would be one contiguous zone. Wood said it would then be contiguous from River Street through the harbor land, rather than three little islands. Morgan said this would be logical except in the unlikely event that the Town sold to a private developer, because someone would have a harbor commercial strip on the water.

Hawkins thought the harbor commercial was where the lots are, but there was some area of dunes and beach which is not listed as being owned by anyone or defined as a "lot"; the high water mark comes up to the grass at the beach area to the west of the parking lot. Garand said that area would be in the tidal marsh and unavailable. He thought it a good idea to put the parking lot into harbor commercial to make the use allowed and permitted; a bathroom facility would then be in conformance as related to the harbor or fishing industry. Morgan asked if that lot was owned by the town or the state; Garand said by both. Hawkins said the building was on the town portion of the lot; the state owned the right-of-way, a portion of which was parking lot. Garand noted the extensive deed restrictions on the Coop land – use had to be related to harbor or fishing industry to promote that kind of activity. If it were in harbor commercial it would be in compliance and allowed to continue and have signage without having to go to the Board of Adjustment. Khan asked if the proposed Harborside Park would be affected. Morgan said not as long as the Town or the state continued to own the park and surrounding land. Janvrin thought the grant required maintaining it forever.

Janvrin asked if the Beach Village District started at the Precinct Building. Hawkins said that was the first area; Castaways and the Market building are next. North of the Precinct building was the town lot. Janvrin thought the two parking lots were not in the Village District and asked if they could be included in the harbor commercial area. Hawkins said that would connect the existing harbor commercial and everything that is town-owned west of Route 1A. Janvrin recommended that the town-owned property be included and identified as town-owned property and lot number. Hawkins suggested the ordinance refer to the "property currently owned by the Coop and the two lot numbers". Hawkins asked if Morgan would change the wording accordingly, or if the Board needed to vote. Morgan said the wording could be changed and asked what, other than the pier, would go into Zone 5. Hawkins said that and the parking area would be the two lots put into harbor commercial.

Kravitz asked if the proposed language would have to be re-noticed. Morgan referenced the language first advertised and asked if the changes would be considered minor, or substantial changes to go to another public hearing. He noted the lack of time to public notice for the next meeting, so a hearing would be for the January 15, 2013 Agenda which would be the "drop-dead" date. Khan thought the discussed changes would be minor. Janvrin and Wood agreed because this would all be town-owned land and not affecting private landowners. Morgan said if there was consensus, the appropriate motion would be to send the proposal to the Town Meeting. Hawkins thought the Board vote should be on the final wording. The public hearing could be continued. Morgan will have the wording for review at the next meeting, with the vote on January 15, 2013. Wood said if only the wording would be changing, the vote could be at the next meeting.

**Hawkins continued the public hearing in re the proposed zoning changes for the Yankee Fishermen's Coop property and certain other town lands to December 18, 2012 at 6:30PM in Seabrook Town Hall.**



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**B) Amend Section 6 of the Zoning Ordinance, as follows:**

**P** = Permitted      **S** = Special Exception - only permitted if granted by Board of Adjustment.  
**N** = Not Permitted    **C** = Conditional Use - only permitted if granted by Planning Board

Uses	Zoning Districts							
	1	2	2R	3	4	5	6R	6M
<u>Gasoline Stations: New stations shall be at least 1,000' from existing stations; outdoor storage of more than one inoperative and unregistered auto is prohibited</u>		P	N	N	N	N	N	N
<u>Gasoline stations established prior January 1, 2013, and that were not abandoned for more than one year</u>	N	P	N	N	N	N	N	N
<u>Gasoline stations where none operated in the past, and that are at least 1,000 feet from another gasoline station</u>	N	P	N	N	N	N	N	N
<u>Outdoor storage of more than one inoperative and unregistered automobile</u>	N	N	N	N	N	N	N	N

Morgan noted that recently the Planning Board had heard from several lawyers about the existing ordinance written in 1974. The current Board could only speculate about what had been intended. He'd always been bothered by the wording anticipating a controversy. Morgan proposed cleaning up the ordinance wording to make debate on the meaning less likely. He recalled that in February 2012 the Planning Board had said what the ordinance meant as a matter of policy.

Morgan said the simplest way was to break the issue into three parts. The storage of vehicles did not belong with regulating gas stations; it could be done elsewhere in the ordinance. There were two types of gas stations – those that had been in place for a long time, and a gas station that would be proposed where none had been before. His understanding was that in February 2012, the Board had said that once a gas station had been in place for a while it should have the right to continue indefinitely. But with a site where gas had never been sold before, then it would have to be 1,000 feet from any other gas station.

Hawkins wanted to discuss whether the February 2012 discussion resulted in the Board's intent or in its interpretation of what the ordinance intended. He thought it was the Board's interpretation of the existing ordinance. He would have said ok to the existing wording but just removing the word "new" which had caused the confusion. The argument was over the designation of "new" when the intent was not to have gas stations within 1,000 feet of each other. His view was that stations should be able to continue operating, but what if closed for



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more than a year. The Board had been asked to interpret the existing ordinance, and discussed how the ordinance was created based on research into the origin of the old zoning. Hawkins asked what the Board's intent should be starting from now. He thought the ordinance had been incorrectly written to guard specific gas stations, which was fine as long as they were operating. But, was that the intention if they were closed for more than one year. He did not intend that gas stations could operate until infinity, and would strike the word "new". If closed for a year, and within 1,000 feet of another station, it should not get to reopen without a variance. Morgan thought Hawkins' proposal fine.

Hawkins asked for comments. Janvrin had previously stated that "gas station" had not been defined in Section 2; discussion had been about convenience stores and gas stations but neither had been defined. This should be done in re items that are allowed or prohibited, and the concept be of motor fuel facilities which could be gas, ethanol, lmg or other alternative technologies. Scott Mitchell stated that he'd developed a lot of gas stations, including in Seabrook: Tony Rizo's on the gateway, the Mobil Station (Monster), and the Irving station. He thought his interpretation pre-dated those of Board members. He said it was always the intent of the townspeople that gas stations could not be allowed within 1,000 square feet of another gas station. However, any existing gas station was grandfathered; the intent was to allow someone to update the facility, not that it had to stay as is forever. In the last five years, the technology had changed a lot. The real problem with the existing ordinance was to define "new". He emphasized that the Getty (north) property had been leased and was not abandoned as the lease was paid. No one could try to take over property that was under a lease.

Hawkins said according to the earlier Board discussion, about anything done before 1974, it would say a lot of land could be developed as a gas station forever even if closed for 5 or even 25 years. He did not like that wording if the Board's intent was not to have gas stations within 1,000 feet of another. He could not see allowing a gas station to reopen if it had been closed for 25 years. Mitchell had researched this issue when putting in the Mobil station, and had asked the Building Inspector whether the 1,000 feet was measured from the property lines. The response was from pump island to pump island. That determination was the same with the Irving station. At the time, the Planning Board wanted to protect any existing gas station; someone could change from a gas station to a bank, but then could not go back to a gas station. Hawkins asked where that was stated. Mitchell said it was not stated and that he understood Hawkins' point.

Garand said when Sam's Club had interest, the Board vote used property line to property line. He said that "new" did not make existing gas stations non-conforming. If it did they would have to go to the ZBA for any change at all, and there would be issues for financing. He cautioned that "new" protects a lot of people. Wood said if "new" remains, there had to be a strict definition. Garand agreed with Janvrin to define "gas stations" and "new" so the meaning would stand up in the future. Wood agreed, saying that her interpretation might differ from someone else. She felt [the Getty (north) was a new station because the tanks had been removed. Mitchell said that in most towns if tanks are registered and in the ground, then the gas station would be grandfathered. The tanks had just been removed, so there was no way that the site was abandoned; also, the rent was being paid. Perhaps a definition was needed acknowledging when the tanks come out of the ground, noting that tanks were registered by the state and not the town. He agreed defining "new" noting that gas stations used to repair cars; now this is done in specialty shops. Mitchell said maybe "new" would simply be "not previously having been a gas station".



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Janvrin thought it important that the use would not have changed, not whether abandoned e.g. become a farm stand.

Morgan referenced the language in Section 14 “...a non-conforming use ceases for a period of more than one year...” He agreed that “abandoned” would not be the best standard; rather it would be the use ceasing for more than one year. Garand’s thought was if the infrastructure i.e. pumps and tanks were removed and there was no longer the capacity to be used as a gas station; if the infrastructure remained, it would be a permitted use. The gateway station had been closed for several years; this would not be an issue because it was not within 1000 feet of another station and was still a valid gas station. Janvrin asked what if someone wanted to put in a gas station at the corner of Folly Mill Road. Garand said they gateway infrastructure was still there and they pay taxes.

Hawkins said defining intent would be first: (i) gas stations were not wanted within 1,000 feet of each other, (ii) what is on the ground would not automatically become non-conforming for purposes of dealing with banks and making changes to property etc, and (iii) to be clear on the position that for properties that close down to reopen. It would be one thing if a station closes down and still has viable tanks and pumps. If the infrastructure were removed or was so old as to be nonfunctional and had to be removed, he would look at this differently; should the grandfathered period be defined. Janvrin wondered how many people knew that in discussing the Market Basket south plaza, in 1974 there had been a gas station between that store and the Honey Bee; the tanks had been there until Demoulas dug it up. Garand said that was shy it was important that the reference be to tanks or pumps being removed for more than one year and one day.

Janvrin thought the reference should be to pumps licensed by the NH Department of Environmental Services. Mitchell asked how he would be treated if he requested a new station within 500 feet of the Rizo gateway as the tanks were kin the ground. Hawkins thought it important to know if the license to operate was being maintained; Mitchell did not know. Janvrin thought there were several certifications involved e.g. with NHDES. Khan said the State had very strict regulations for gas stations. It would look at whether the pumps and tanks were in good condition and functional; the Town should not get involved in that. He agreed with Hawkins that it would be important to decide what the town would do if a location is closed for many years. Mitchell thought it had to be tied to the change of use or [the length of time] Khan asked about the measurements for the Mobil and Irving stations; Mitchell measured both ways because it was not clarified. Khan said the State had all the records as to where tanks were burred. Janvrin noted there had been tank problems when the Sovereign Bank site was excavated. Wood thought that being able to run as a business would be a determination. If gas can be pumped and everything was in order, she would not consider that site “new”. If something major had to be done e.g. one could not walk on the site and pump gas it would be “new”. Janvrin disagreed if there had never been a different use on that lot. He asked if the use had not been changed, what is the threshold. Wood thought if the business could be started right away e.g. by pumping gas. Janvrin asked about being 50 percent operable. Wood asked if a pharmacy that had been dismantled and repairs were needed would be considered an existing business. Janvrin said that the Ames was a similar situation.

Hawkins said that Morgan would have to reword the proposal, but wanted to agree on the intent: (i) Did the Board intend that gas stations should not be within 1000 feet of one another; (ii) acknowledge that there were existing stations closer than that and should not be made non-conforming, and (iii) how to define continuing operation in re infrastructure, maintaining state licenses, (iv) is an operation viable if the state licenses are given up for more than one year. He wanted guidance for Morgan to express the Board’s intent. Janvrin said to define the threshold



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for when an operation had ceased. Mitchell thought the easiest way was tanks in the ground. He asked the Board for a clear definition so an owner who wants to modernize would not be in a non-conforming situation having to go back to the ZBA. Hawkins said the Board was trying not to put people in that situation. Also, it did not want closed stations to exist for an extended period of time without showing evidence of the intent to reopen. He did not think a station should be allowed to close down for five years, equipment in the ground or not.

Khan said when he renovated his station [Richdale] about seven years ago the town CFO said to deal with the State; that the town did not have jurisdiction – it was operating under state licenses. It takes thousands of dollars to maintain underground tanks and keep the permits and licenses current annually and have the inspections. He advocated revisiting the issue after getting information from the state website or elsewhere in re state licenses, which can go for 1 to 3 years. If the operator license was not renewed, the town could say the license had not been maintained. Hawkins thought that the reference could be to maintaining all state-required licenses; a trigger would be if it had been given up for more than a year. Janvrin was hesitant saying that pumps need to be certified by weights and measures, and asked what if a year was missed and would that make a non-conforming situation. Khan said 4 or 5 licenses were needed to operate a gas station, one of which was the main operator's license and could be the measuring standard if the owner did not renew kit.

Mitchell recommended looking at the Rizo station because gas had not been pumped for several years, but he thought was registered with the state and could pump gas now. Hawkins said it had been closed for more than a year. New tanks were double-walled fiberglass and had vapor recover systems; this was very expensive and a lot of people went out of business and were forced to pull the tanks because they could not comply. Garand noted that Rizo paid taxes as a gas station. Mitchell thought the best thing was to deal with registered tanks in the ground. Khan thought the state distinguished between active and inactive tanks, and that these terms should be made clear. Janvrin asked if the measure could be tied to inactive tanks for more than a year. Khan thought the state would know that a tank had been abandoned. Mitchell noted that anything buried with more than 250 gallons had to have a state permit. Khan noted that he and Lowry had attended a state workshop re even more strict regulation. Lowry said in a different town a station had been closed and turned into a take-out restaurant but the tanks were still in the ground, although there were no pumps or piping. He did not know the purpose. Garand said the reference should be to the complete infrastructure, tanks and pumps with the ability to open up. Janvrin and Wood wanted "operable" to be included. Khan noted that many European countries use "filling station" to cover more than just gas. Mitchell said other references were to "retail motor fuel outlets".

Janvrin noted the traffic discussion about "service" not gasoline stations for purposes of calculating an increase in activity, and thought to look at that language. Hawkins thought it was "convenience store and gasoline station" in the traffic book. Hawkins summarized the discussion as the infrastructure in place to make the station operable – both pumps and tanks. Wood said that operable meant to pump gas into a vehicle. Morgan asked about how long ceasing operation should be allowed, noting that elsewhere in the ordinance it was more than one year; he asked if it should be the same standard. Wood wanted the same treatment. Janvrin thought it would apply only after the state factor was determined. Wood said after they could no longer pump gas. Hawkins said that operable should be defined. Janvrin thought that if the owner shuts off the electricity the site would not be operable. Would electricity be required even if there were no tenant. Mitchell asked why it couldn't be tied to change of use if state registration and taxes are in place.



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Janvrin reminded that a gas station could have been applied for with Demoulas south; Board Members would not have known it was there. Hawkins said the change of use was a donut shop. Wood said the tanks were still there. Mitchell said that Richdale took Cumberland Farms to court opposing building a gas station. Cumberland Farms lost and sold the property to Demoulas. Mitchell repeated that the Getty north property was under lease and the rent was paid. It was never abandoned. Morgan thought this issue was worth solving but thought it might not get done for the 2013 warrant. Hawkins asked Morgan to present a rewording, and thought some of the issue could be resolved, leaving the issue of defining "closed" and "grandfathering" for further discussion.

Hawkins said no stations within 1000 feet of another station. Morgan thought that language was in the proposal. Hawkins said it was not the intent to make existing gas stations non-conforming by dint of zoning definitions; people should be able to deal with banks and upgrading operations. Hawkins said the hard issue was at what point a station would be deemed to have closed for [x] period of time and would have to go to the ZBA for permission to reopen i.e. (i) infrastructure with tanks and pumps, (ii) state licensing, (iii) no change of use, (iv) defining an operable station and how long it could be closed, and (v) paid taxes. Morgan said the dilemma was stations that were wanted to be considered as permitted uses, and those that would require variances to reopen. Hawkins said if more than 1000 feet from another station it would not be a permitted use unless already there. Khan asked Morgan to call for State licensing criteria and how they consider stations that do not renew. Morgan thought the question was is the NH license was current.

Scott Mitchell asked if he could open up the Rizo station, commenting that NHDES would allow the opening with a weights and measures inspection, a tight test, and a business license from the town. He was concerned because the way the ordinance was written would not change that a gas station that existed and had not changed the use could be considered non-conforming – it was grandfathered. Morgan said the current wording was not clear. Hawkins' issue was "how long". Mitchell asked if he had a station that was in compliance with tanks in the ground, pumps on the lot, and had a lease and was current paying rent, would it be abandoned. Hawkins thought not as there was evidence that the use was intended to continue. Mitchell agreed. Hawkins said if the pumps were out of the ground for more than a year he would argue the reverse. Mitchell asked if the gateway station were abandoned. Hawkins thought it was, but did not have all the information. Khan said compliance was the key i.e. fulfilling all the regulations and obligations. Mitchell will research the active and inactive stations at the NHDES.

**Hawkins continued the public hearing on the proposed gas station ordinance language to December 18, 2012 at 6:30PM in Seabrook Town Hall.**

### **Request To Consider Signage Changes In The Zoning Ordinance**

Paula Wood

Wood noted that the discussion of zoning items A & B had taken 1 ½ hours and requested that her memorandum re zoning signage issues be considered at this time, instead of at the end of the Agenda, as several individuals wishing to be heard were present. Hawkins said that there were deadlines for the zoning changes and a lot to work through. He asked if 15 minutes would suffice; Wood was willing to try. Hawkins agreed to interrupt the public hearing for this discussion.



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Wood had been approached by some small businesses concerned about the restrictive sign ordinances; a few of whom had been present earlier in the meeting, Wood read her memo and called attention to her photos.

“I have been approached by some small business owners who feel that the sign ordinance has become too restricting. They would like to see it become more favorable to their needs. Some of the ideas have been allowing flags, open feather flags, free standing signs and other items with reason. These would be used only during open hours. The large box stores have many more ways and much more money to advertise. Small business owners of Seabrook would just like to make sure that they get noticed. Thank you in advanced for this matter.”

Wood said the issue was that given the large infrastructure projects, all kinds of malls, Kohl's Walmart etc. The little stores in town get passed by; the wider Route 1 is made, the faster that will be. They want the opportunity to say “just come see me”. Wood noted that on the last Saturday, one local establishment donated the whole night to Toys for Tots. On Facebook there are small business owners that offer discounts to Seabrook residents only – 50 percent off their services. Wood said she had called on many of them starting many years ago with putting up the playground at the Elementary School. The small business owners are the ones that give back to the community. If there is a raffle and donations are needed, you don't go to the big guys because of the paperwork and then they don't give anything – they send it to corporate. These are the people that do for this community more than the bigger stores and the only way, without spending big money for flyers, is to grant their request. They are not asking for something big and bawdy, or 24 hours a day – only for when they are open. Wood was in support of their request, noting the CFO's remarks. These businesses give a lot to the town, and a lot of them are not voters in Seabrook, and unfortunately can't vote for these items. She noted that some restrictions were voted in 2011, and wondered if the Planning Board would entertain the thought of loosening them a little. She thought some in attendance would want to speak.

Janvrin recalled that when a request was before the Board in re flags, he had said that a citizen petition would be ok; but as a Board Member he was not looking for a change in the ordinance. He noted that December 12, 2012 was the last day to accept petitions to amend the zoning ordinance, and asked if there was such a movement. Wood said that was the original intent, but when approached, the Secretary suggested bringing it before the Planning Board in hopes that the change would be supported. A petition had been going around. Janvrin asked if 25 registered voters had signed it. Wood did not know. One business spokespersons indicated there had been 150 signatures; another planned to speak with every business owner by December 12. Janvrin was not discounting the request, but recommended a citizen petition be submitted to the Board of Selectmen by December 12, 2012 for the official ballot. The Planning Board did not have to take any action [at this time]. Wood said the Planning Board will have to take action. She was pleading that the Board recognize the needs of the small business owners that do pay taxes to the town and do support the community, rather than having to do this the petition way. Frazee seconded Wood's request; he wanted as few regulations as possible.

Wood understood that even an “open” flag sign was not allowed, and said that restricted a lot of businesses. Garand reported that there were a lot of signs were non-conforming and not in compliance. For example there were signs at Cains Brook Plaza that were not permitted, but were grandfathered. If the ordinance was changed to allow more signage, how would sites that are not in compliance at all be treated. Wood was not looking to overhaul the regulations. She brought in examples of what would be asked for, which are very nice and not gaudy. Meghan Grene, of Bob's Tattoo, said she traveled from Seabrook to Boston on Route 1 speaking to businesses, many of whom have older sign that they feel are necessary. If they had to replace



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them, they would have to get rid of them. Many tiny businesses are struggling and won't make it because of the Walmarts and Applebees because people would see "crappy" old signs and won't want anything to do with them, or they won't be allowed to put in new signs to be seen. They are in a bind as to what they can do. Maybe all that can be done now is in re the signs. She said that people are getting crushed and will go away.

Garand said about 79 signs were non-compliant. To change them, the signage had to become in conformance. Some larger signs had been allowed to exist, or had a variance. His office had photos of each sign so when a new business comes in they would know what was there and can bring about compliance. Some existing businesses have non-conforming or illegal signs, with notices of violation after an inspection. Garand noted that the ordinance allows for a temporary sign for 30-days per year; a lot of people don't take advantage of this. Some businesses actually put out prohibited signage, and have to be told to take that in. If the Board wanted to consider changes, Garand said it should look at the [entire] ordinance. A lot of sites have multiple owners and businesses; some of these are condominiums where each unit is advertised on a pylon sign. He asked how that would be dealt with. Wood did not want to finalize everything; she wanted to support the small business owners. If there is an individual in need, or a small project, she had knocked on every door. The business people attending support the town with gifts. She did not know how to express the need, and was looking for some help. Garand said that the zoning restricts everyone equally; he asked where a change would start and stop with non-conforming sites vis a vis sites that are in conformance. ...

Mark Townsend, manager of the gold store next to Bob's Tattoos, asked how some businesses could run flags in the ground all winter and summer, while he had to remove a flag or get fined at \$300 each time. He could submit photos of this. Garand said some of the existing sites had non-conforming signs that were allowed to continue as long as they did not change. For example, two sites had reader board signs. He asked where this starts and stops. Phil Lariviere, owner of Gold Store and More, had been open in Seabrook for one year to the day. He was a first time business owner and entrepreneur, and had to figure out what he could and could not do. The first thing was to advertise and he put a flag out; was told to take it down or face the fine. Next, he wanted to distinguish his store from Bob's Tattoo, other than putting a sign in his window, because if someone drives by it all looks like a tattoo parlor. His store had a side entrance, and wanted to put a sign on the roof like Bob's does. He was not allowed to do this because there was already a roof sign on the building. Even though there are two businesses, he was not allowed to put up any sign on the roof. He was also told that he could not put an electric sign outside his window, because it would not be within the square-footage for the building and would not comply because of Bob's Tattoo signage. He also couldn't put out sandwich signs. As a small business owner he had to pay someone up to \$9 per hour to stand outside with a sign saying that they buy gold, rather than a sandwich board or flag that cost \$39.95.

Townsend's frustration as a small business owner looking at other small businesses down the street, was seeing flags and being told he could not put up a banner while his next door business also buying gold, letters up a box truck, and puts up a gigantic we buy gold sign the week after he opens. He was told that his competitor's building with the banners was grandfathered and had been there longer. As a first-time business owner, he felt that he was being told that his family did not matter. He would have to open the doors and hope that spending money advertising somewhere else would help. What bothered him most was the attitude that he could try, and good luck; he could do this but it would not happen because he'd be out of compliance with the laws. Townsend came to the meeting to describe the struggle of a new business owner to try to get people in the doors. Hawkins asked if there were a main sign and if he were allowed to have a sign on it. Townsend said the main sign had the landlord's real estate business, his business, and Bob's Tattoo. He also had a flag at the corner of his door



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which was completely off the road. Perhaps he could understand the issues of flags at the road or on the sidewalk, but even an "open" flag was illegal and a blinking sign had to be turned off. He had given up and wanted to know the right thing to do, and how to get people in the doors.

Townsend said it felt like there was a lot of favoritism because party stores and liquor stores had flags all around their buildings. This is against the code; they can't have anything that blinks around their building. Garand said they are constantly told to extinguish them. Townsend ] wanted to replace the sign on the building but could not because it was too old. Everything is going new and they can't do that; if a sign is removed nothing is allowed back up. It seemed like the business owners trying to make a living were not able to do so. He'd worked in Seabrook for two years; with the new construction his income went down because others have bigger flags or signs.

Janvrin suggested applying to the Zoning Board of Adjustment for a variance, or asking that the CEO's decision be overruled. He asked if any of the businesses present had gone to the ZBA for either of those actions. If replacing a sign was not currently permitted, they could go to the ZBA to show a hardship on their lot. While he was not on the ZBA, he would see a hardship in their situation. townsend said with the expansion of Route 1 the road would be right at their door. Janvrin suggested submitting the signed petition to the BOS. If they had a specific problem, go to the 5-person ZBA for a variance, which they might not have known was an available route for a variance on the code, a conditional use permit, or for overruling the CFO's ruling.

Kevin Kane of Bob's Tattoo asked if the problem with replacing the roof sign was the size. Garand said the sign could not be changed unless it were brought into conformance; it was already too large. Janvrin said it could be repaired but not changed. Garand thought some of the signs on that building might be wood faced, and others might be metal cabinets, but could not be a flammable substance prohibited by the fire laws. Ten percent of the wall façade and a certain size roof sign would be allowed, and one pylon sign. He commented that that site already had more than the allowed signage. [Ames] asked if flammable was the issue with flags, and the specific problem with the roof signs. Garand said flags were not allowed at all. If a new business moves in anything that was grandfathered goes away. The front sign on that building was way over what was allowed. Ames asked for the date of the ordinance disallowing that size. Garand said when the sign ordinance changes his office takes a picture of what is currently there. Morgan said that provision was adopted in 1990.

Townsend asked why a second business in the same building was not allowed to share the signage. The building owner could allocate some of the sign space, which had been discussed when he moved in. The owner had control of that site. Townsend asked if he could put signage above the bay window. Garand said if the owner wanted to give him a portion of that sign and change the front facing that would be allowed. He could not add a sign. Townsend said that was not right, as he was trying to distinguish his business from a tattoo parlor. Hawkins said the property owner was the responsible party for the signage. He thought that a renter would be entitled to advertise his business on the sign for that building; that was a negotiation between the tenant and the building owner; it is a civil matter and not a subject for the Planning Board. Townsend asked if to work within the rules, Bob's sign would have to come down and each would have to have a small sign. Garand said they would have to share the signage; he could say what was allowed, but could not get involved.

Hawkins commented that the Planning Board was trying to get Route 1 to look better. Things happened so fast and were way ahead of the ordinance being created. Currently there is an approved case wanting some changes, and this involved dealing with how big a sign could be. The Board was negotiating to have compliance with the current signage ordinance; the debate



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was whether that could be required. The focus of the Master Plan was what the town should look like in 10 years; should there be a flag sign for every store - even for malls that have more than ten stores. He wondered what stores would be noticed in that situation, and understood that the stores need to be noticed. The Board is looking for consistency; a sandwich or flag sign does not belong. He referenced the photos and asked why any of that would be allowed. The Board was trying to give developers some guidance about how the roadway should look going forward. Hawkins thought the request for sandwich boards and flags would be a step backwards. He understood the need to be noticed and the problems of small businesses on a strip overloaded with big corporations that have the wherewithal to do the advertising without doing it on their site. In looking at the photos, the only thing that would attract his attention would be a "hiring now" sign showing someone was providing jobs. A drive-by flag was not attractive. He had argued that in re McDonalds a 20-foot sign was just as effective as a 30-foot sign to get him to drive in. Yet that was most critical to that business.

Hawkins said the Board and the Town were trying not to have gigantic signs on a small property, and even trying to get the big stores to cut down on the signage they would be allowed. to slow It is a tough problem because everyone wants bigger and more; at some point it just looks awful. Phil Moore asked when they would do something for the small businesses that promote and help, although he understood the large malls and big businesses coming into Seabrook. It seemed like it was about who had more money to crush out the little stores. Hawkins said the Master Plan wanted to slow down the big box mentality along Route 1. He pointed to the square-footage limitations in Smithtown Village so that would not happen, and to foster a better environment for small business which was an objective for the community. The Planning Board did not own the land and did not have the final say on everything. It was trying to create a set of ordinances that allows both small and some large businesses, but to restrict the area that the large businesses could operate in.

Wood commented that her photos were not taken to make the stores look bad or to target compliance, but rather to show what can be done in an attractive way and not gaudy. Grene ] said they had tried sign after sign and just had a reasonable request, not to cover the site in lights or blinking; e.g. just to have one flag. Hawkins said this was the first time for the Board to listen to this problem and how there might be a resolution. If every single business were allowed to do sandwich boards, what would Route 1 look like; would anyone be able to see the signs. Grene asked if it were possible to give businesses that had existed for a period of time preferential treatment. Townsend appreciated the Master Plan and what happens if something is allowed for one person, but as a single person he wanted to find a way that drivers would see signage for his Case for Gold store entrance, as well as Bob's Tattoo. He wondered if he had to tell his landlord to take down the sign and let him have a little signage, which he did not think would happen. As an owner his hands were tied, which was not right.

Morgan agreed that following Janvrin's advice to go to the ZBA, and thought the arguments at this meeting made a good case for a variance. This would have a better chance for proceeding than to change the sign ordinance for the entire Route 1 corridor. The hardship would be that their businesses were all but invisible. Hawkins noted that there were five criteria to demonstrate for getting a yes to a variance criteria, and thought the process was pretty fair. Townsend said up to now his impression was no and no. Morgan said he could not know until he tried. Hawkins said tackling the Route 1 sign ordinance would be a long process. For quick action, Janrin's action would be best – use the ZBA and put in the citizen's petition for the ballot. Grene ] asked how to start the change for Route 1. Hawkins said that's what citizen petitions were for. Grene asked how to know what to ask for. Janvrin thought the BOS had appointed a group to assist with the writing, but did not know if they had ever met. He suggested asking the Town Manager's Secretary to put them in touch with someone for help with the writing. With 25



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signatures it can go to the BOS; they would then be directed to the Planning Board for its January 15, 2013 meeting for a recommendation or not.

Morgan referred to a question as to whether the petition should be general or specific. If general, it would go nowhere. The submission to the BOS would have to be by December 12, 2012. The law says if the Selectmen find it to be in proper form, they pass it on to the Planning Board which would hold a public hearing on January 15, 2012. At the end of the public hearing the Planning Board would vote to recommend adoption to the Town Meeting or recommend that it not be adopted. Garand asked if petition signers had to be Seabrook registered voters. Morgan confirmed this. Janvrin suggested going a lot higher than 25 signatures because they would have to be confirmed by the supervisor of the checklist. Hawkins noted that the signatures needed to be for the properly worded petition, so they might have to sign again. [M ] said she would get people to sign the petition. Morgan said the NH laws could be found online at the State of New Hampshire website, and were very particular as to how petitions get put together. Kravitz said to refer to the RSA identification designation and not to the page number, as the Land Use book only had certain sections of the RSAs. Wood thanked the Board for allowing her request to introduce this matter, for allowing those in attendance to speak, and for the guidance. Morgan said the statute to look at was RSA 675:4, and it was important to read as it would give the parameters of what could be successful.

Hawkins reopened the Public Hearing at 8:30PM.

### **C) Add the following to Section 11 of the Zoning Ordinance:**

**11.700 Holiday Lighting** – Strings of lights shall only be displayed between November 15 and January 15.

Hawkins commented that string lighting was discussed in the Smithtown Hearings. Morgan's view was the concern was with facilities that forget to take down the lights in July; they should be restricted to this time of year. Wood asked Section 11 of the zoning ordinance applied to commercial and residential. Garand said this did not affect residential at all. People put in blinking Xmas lights that are still in operation in June. Morgan said the ordinance applies town-wide. Wood thought that would impact commercial. Morgan said it could, and asked if residents have their lights on all year round. Wood said some do. Hawkins said the intention would be for commercial property only. Wood said the Board had approved a lot of outdoor smoking areas lit by string lights. Garand said they could ask the Board to waive the restriction for that reason, but people are using this for advertising purposes. Morgan noted there had not been an attempt to define holiday lighting. Wood asked to what holiday this applied; the ordinance would have to say no string lighting. Garand said to define this and say if it was or was not allowed. Hawkins said it was not intended to be for houses. Garand said all the convenience stores are leaving their holiday lights on year-round; they blink and icicles flash. He asked where this stops with site plan approval. Morgan said it could only apply to Zone 2.

Wood said there were too many rules, and was appalled that someone could not put up a flag. She understood taking care of the big things to worry about. Garand wanted not to have Xmas lights flashing in June; additional outside lighting was not permitted. Khan suggested not calling them holiday lights, and using dates as people had different holiday times. Garand suggested a limit of 30-day per year. Hawkins said the Town had spent a fortune putting together the Smithtown Village zoning partly to create an environment without the strip-mall mentality going through the center of the town. One important objective was to try and control the lighting return to a small town feeling; there should not be continuous flashing lights. He asked why going



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backwards to string lighting was being considered after the town vote. Wood wanted to support the little guy whom she felt was being constricted by votes, saying that the Walmarts and Demoulases don't need the big signs. Garand favored allowing such signs for a certain number of days per year.

Hawkins asked Morgan to reword the language. Morgan's summary of the Board's sense was to refer to string (not holiday) lights, confine this to Zone 2, and restrict the use to no more than 60 days continuously. Garand added that his would apply only to exterior lighting, and exclude outdoor smoking or private seated areas where the lighting is used for atmosphere. Morgan thought that would be difficult, Hawkins said the exception should be for safety, although Wood thought that would be dealt with in the site plan.

**Hawkins continued the String Lighting discussion to December 18, 2012 at 6:30PM in Seabrook Town Hall.**

### ***D) Revise Section 16 of the Zoning Ordinance re Aquifer Protection as follows:***

**16.300 Prohibited Uses:** The following uses are not permitted in the Aquifer Overlay Protection District ~~without proper approval from NH Department of~~ **Environmental Services (NHDES) – Water Bureau:**

16.301 All handling, disposal, storage, processing or recycling of hazardous or toxic materials;

16.302 Disposal of solid waste. Brush and stumps may be disposed of only if generated from clearing land and are buried on the same site from which they were cleared. When buried they must be at least 4 feet above the existing water table;

16.303 Disposal of liquid or leachable wastes without approval from NHDES;

16.304 Dumping of snow containing de-icing chemicals brought from outside the Aquifer Protection Overlay District;

16.305 Storage of road salt or salted sand except in enclosed, covered storage constructed in accordance with the standards of the U.S. Environmental Protection Agency (EPA);

16.306 Subsurface storage of petroleum and other refined petroleum products, except as regulated by the NHDES. The placement of residential underground storage tanks for petroleum and other refined petroleum products shall be allowed only in conformance with NHDES underground storage tank guidelines for commercial uses;

16.307 Automotive service and repair shops, filling stations, car washes and junk and salvage yards;

16.308 Industrial uses which discharge contact type process waters on site;

16.309 Commercial animal feedlots;

16.310 Mining of land and excavation of sand or gravel;

16.311 Septage lagoons.



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Morgan asked Garand to speak to this issue, indicating that he'd had advice from Attorney Simmons. Garand explained that the SmartFuel had located in the Aquifer Protection Zone on the west side of the town. The company was not granted relief from the Zoning Board of Adjustment to store certain hazardous chemicals; however, the ordinance said this would be allowed with written approval from the NH Department of Environmental Services. NHDES wrote to the company that they did not grant approval, but as long as it was maintained in accordance with the Best Management Practices they would be allowed to have those chemicals onsite. In essence this overruled the town's aquifer protection zone and allowed them to store hazardous materials onsite. The intent of the proposed ordinance was to remove the state reference so the decision would be solely with the ZBA. Wood asked if the state could supersede a ZBA decision and allow such storage. Garand said the proposal would say that chemicals in a certain amount, or deemed as hazardous materials, could not be stored in the water aquifer protection zone. The ZBA could then say yes or no, or distinguish between internal and exterior storage on a case by case basis. It would require more than just NHDES approval.

Hawkins said to look at how much money had been spent during the last several years on testing let alone clean-up activities. The question was whether to risk anything in the aquifer field that would affect the town's drinking water. Even though the site in question was tiny, if there were an accident the town would be again be faced with the problem. It was important that anything that could be done to restrict chemicals in that field was done. Garand said that the NHDES has no BMP guidance and does not grant approval. Khan recalled that when Sam's Club came before the Planning Board to sell gasoline, the then Chair, Sue Foote, had been very concerned about the proposed location of tanks and where snow would be stored. Khan cited the enormous cost to the town of remediating certain wetlands. Garand commented that that location was not in Seabrook and that the town was dependent on the water supply and had to do what was needed to protect its water supply. Hawkins noted the possibility of large development in the Route 107 area; this needed the town's attention.

Wood was surprised at the decision because any [spill] would drain into the town's. Garand said the company was approved to bring the chemicals onsite; the next step would be prove to the Planning Board the protection and containment on the site; the Board would have to look at secondary containment, safety, traffic, site use. Morgan suggested a motion to adopt the proposed amendment to the Water Aquifer Protection section.



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<b>MOTION:</b>	<b>Hawkins</b>	<p><i>to Revise Section 16 of the Zoning Ordinance as follows:</i></p> <p><b>16.300 Prohibited Uses:</b> The following uses are not permitted in the Aquifer Overlay Protection District <del>without proper approval from NH Department of Environmental Services (NHDES) - Water Bureau:</del></p> <p><b>16.301</b> All handling, disposal, storage, processing or recycling of hazardous or toxic materials;</p> <p><b>16.302</b> Disposal of solid waste. Brush and stumps may be disposed of only if generated from clearing land and are buried on the same site from which they were cleared. When buried they must be at least 4 feet above the existing water table;</p> <p><b>16.303</b> Disposal of liquid or leachable wastes without approval from NHDES;</p> <p><b>16.304</b> Dumping of snow containing de-icing chemicals brought from outside the Aquifer Protection Overlay District;</p> <p><b>16.305</b> Storage of road salt or salted sand except in enclosed, covered storage constructed in accordance with the standards of the U.S. Environmental Protection Agency (EPA);</p> <p><b>16.306</b> Subsurface storage of petroleum and other refined petroleum products, except as regulated by the NHDES. The placement of residential underground storage tanks for petroleum and other refined petroleum products shall be allowed only in conformance with NHDES underground storage tank guidelines for commercial uses;</p> <p><b>16.307</b> Automotive service and repair shops, filling stations, car washes and junk and salvage yards;</p> <p><b>16.308</b> Industrial uses which discharge contact type process waters on site;</p> <p><b>16.309</b> Commercial animal feedlots;</p>
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		<p><b>16.310 Mining of land and excavation of sand or gravel;</b></p> <p><b>16.311 Septage lagoons; and</b></p> <p><b>to forward this warrant article language to the Board of Selectmen for inclusion in the 2013 Town Meeting vote.</b></p>
<b>SECOND:</b>	<b>Wood</b>	<b>Approved: Unanimous</b>

***E) Add the following to the definition of Home Occupation in Section 2 of the Zoning Ordinance:***

**Home Occupation is a home-based business that has no noticeable impact on the quality and character of Seabrook’s residential districts. In order to qualify as a Home Occupation, the business must meet all of the following standards:**

- 1) no more than two non-resident employees; 2) it is not a nuisance; 3) it is conducted within a pre-existing building; 4) parking is located off the street, and the vehicles are subject to zoning setbacks for structures; 5) no emission of odor, smoke, dust, vibration, or noise that is discernable from the property line; and 6) no on-site storage of hazardous, flammable, or explosive materials other than small quantities of products that are intended for normal household use, 7) no more than [#] vehicles may be parked on the property at any one time, and 8) no more than [#] delivery vehicles may visit the property on any one day.**

Morgan noted that the home occupation issue had been raised often during the past year. The Board had a conversation about whether it would be advisable to restrict the number of vehicles on site. Hawkins asked if this was a problem or if there had been complaints. Garand said whenever there is business activity on a residential lot there are complaints. A better definition of Home Businesses would protect abutters. Some sites work very well and others are problematic over the years. He felt the town should promote home businesses and people making a living, but the abutters needed to be protected. Hawkins agreed but did not understand if this was a problem, and how to fill in the vehicle numbers. For example, if the limit was 2 delivery trucks a day, would that put someone out of business. Garand thought that would be unrealistic, noting that delivery trucks come onto residential sites where no business operates. If there were more than one residence on a site, would two vehicles be non-compliant.

Garand said deliveries to homes would go on, but home businesses should not impact the abutters by opening too early, causing noise, signage, nuisance, or off-street parking. The objective was not to stop people from having home businesses that are very important. Currently there were businesses existing for a number of years, and people who just moved in are



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complaining. Khan recalled a big problem a few years ago in South Seabrook. Garand said that was still going on, and noted that when some home businesses grow they move to commercial sites. Also, someone moving in next door should not be able to force a home business away. Morgan asked for Garand's recommendation on the numbers. Garand was looking for guidance from the Board. Janvrin said there were two prevalent types of home based businesses that have been problematic – clam houses and pavement companies. Janvrin cited one example of a company with 9 commercial, and 3 home vehicles plus trailers and pavers parked on one site. Garand said that property is in Zone 1 which does not allow home businesses.

Janvrin asked how much is too much. Garand said sometimes there was no impact on the neighbors, and it's best to let it go. But what if there is a complaint from a new house that is built next to someone who does fishing and there is an odor in the rubbish; or a machine shop that is vibrating and noisy at 6AM. Garand wanted the Board to define the parameters of how to support and work with home businesses in residential areas, noting that Seabrook is not the only town with this problem. Hawkins' discomfort was if the number, e.g. of trucks was 4 or 10, and did not want to arbitrarily pick a number that would put someone out of business. Garand agreed on being cautious. The big thing would be noise, a nuisance, tractor trailer deliveries and the like; he thought tractor-trailer truck size, and idling box trucks at 6AM should be limited and defined – UPS trucks were not the issue. Janvrin asked it would be easier to limit the delivery hours as in the commercial district. Garand asked what if UPS was running late, for example, at Christmas time. Wood said that would be a rare instance. Garand wanted the Board to set the hours to protect the residential areas. He also thought that no more than 2 non-resident employees in a quilt shop could be restrictive, as long as there was not a nuisance, but a machine shop or vibrating process at night could be a problem.

Morgan asked about the number of complaints in 2012. Garand thought approximately 8 or 9, 3 of which were from the same abutter. The complaints were delivery vehicles, hours of operation, number of employees on site. Morgan noted the proposal would address the number of vehicles parked on site and the number of deliveries. Garand's issue would be as long as they were parked off town property and they are not causing a traffic issue.

Wood asked how many home-based businesses in the town. Garand had approved 3 in the last week – one for a snow-plow removal business needing an office address for checking purposes and parking their truck at the house. Wood wondered how deep to go if there were hundreds of home businesses and few complaints. Garand said given the way the ordinance is written, a complaint could put someone out of business. He wanted to protect the business and the abutter with clearly defined criteria, such as hours of not more than 7AM to 6PM, or limited hours or not at all on Saturday or Sundays. What about a doll business on Sunday. Neighbors might not want to look at businesses during their home cook-out. Wood would include no nuisance, conducted in a pre-existing building, parking off the street, and no emissions. She was also concerned with the number of employees. Morgan noted that according to the previous discussion, the proposed changes addressed only the number of parked on site and delivery vehicles. He wondered if that was at all needed, as the problems seemed to under nuisances which is already in the ordinance. Garand was looking for the number of vehicles parked on the property that could be considered a nuisance. Wood said if the limit is two non-Seabrook resident employees, how could there be more than that number of parked vehicles. Garand said employees living in town would be ok. Hawkins said the language was confusing.

Morgan asked about complaints re vehicle deliveries, Garand had 3 such complaints, both for time of day and idling noise. Morgan thought the issues raised could be enforced as in the nuisance category and that the existing language was sufficient. Garand noted that his office is not open after hours or on the weekend and asked if that were a police issue. Janvrin said that recently after a Rec Commission meeting at night, he called the police about a tractor-trailer was



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idling behind Home Depot; a unit was dispatched and the driver shut off the engine. That was a site plan approval restriction for commercial property. He asked if this happened after hours in front of a home business would the police enforce it; he thought it would be difficult to enforce without a definition of delivery hours. Hawkins felt that hours made sense. Khan asked about Garand's biggest problem. Garand said there was nothing to define hours of operation and people making noise when coming early to work. Khan thought the nuisance regulations were already there. Garand asked how to differentiate something caused by a home business from a resident's issue. Janvrin was hesitant about dealing with the number of vehicles. Hawkins agreed, saying that more information would be needed to avoid mistakes.

Janvrin thought the consensus was to remove #7, and keep #8 with time restrictions. Khan asked if 8 or 9 complaints rose to the level of needing to change the zoning. Garand wanted clear guidelines for enforcement of nuisance complaints and to protect the home businesses. Morgan asked if there had been complaints about light trespass. Garand did not want to touch that issue in re residences. Wood was concerned that more laws keep being added. Garand said he wanted clarity because every time there is a new regulation something existing becomes non-conforming which is an enforcement issue. Wood asked why things cannot be brought up to date to avoid creating non-conforming status, like with signage. Garand described the problems with grandfathered uses predating the zoning. Garand wanted enforcement to be town-wide for consistency and to avoid being accused of treating people differently. Khan said some issues with grandfathered lots sounds like they were violations and are not supposed to be there. Garand noted the enforcement would be after one year. Garand said vehicles couldn't be counted. Wood said to keep the number of ordinances down and let Garand catch up. Garand said people are always trying to bend the zoning – just as with the extra signs.

**Hawkins continued the Home Occupation discussion to December 18, 2012 at 6:30PM in Seabrook Town Hall.**

### ***F) Amend Section 1.300 of the Seabrook Building Code, as follows:***

~~1.300 The New Hampshire Building Code (see NH RSA Chapter 155-A) is hereby adopted as it now exists and as it may be amended from time to time by state law.~~

### **1.300 National Codes – All building shall adhere to the 2009 editions of the following:**

- ✦ International Building Code;
- ✦ International Mechanical Code;
- ✦ International Plumbing Code;
- ✦ International Residential Code (for One and Two-Family Dwellings);
- ✦ International Energy Conservation Code;
- ✦ National Electrical Code.

Additional codes adopted by reference herein, pursuant to NH RSA 674:51 and NH RSA 674:51-a, include:



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- ⤴ International Property Maintenance Code;
- ⤴ International Fuel Gas Code, published by the International Code Council;
- ⤴ NFPA 101 Life Safety Code, published by the National Fire Protection Association; and,
- ⤴ New Hampshire State Fire Code NFPA 1 Uniform Fire Code, published by the National Fire Protection Association.

Garand said for simplicity the town codes are tied to the state or federal updates. It has come to his attention that the 2012 codes are almost impossible to follow. A lot of homeowners could not come into compliance. He asked to keep the 2009 codes and pick and choose future updates. The energy portion is about 30 percent more stringent and requires blower door upon occupancy or for an addition test on every portion of the house at a cost of about \$900 each. This involves using a fan to measure energy loss, which is great to conserve energy but is not efficient or effective for citizens. It's hard enough to keep up with the current codes for building permits; he did not want further punishment. Hawkins had heard of this in re electricity. He asked at what point upgrades would be adopted. Garand said that could be decided in the future. For example, now beach property have to have hurricane proof windows at a cost of \$600 each. At what point do energy consumption audit costs prevent additions or new houses. Hawkins understood that at some point FEMA would dictate the standards. People would meet this or not get insurance coverage. Garand said to let FEMA dictate that, not the town.

Garand pointed out that the 2012 National Codes could require residential sprinklers, pump systems and back-flow protectors for holding tanks. It was for life safety, but should not be mandated by the town. This would be an issue for remodeling. Hanging windows was one thing, but mandating blower tests was not a good thing at this time. Wood said the codes were designed for a reason. Garand agreed, but said there were houses in the town at minimal standards. If brought into compliance with the 2009 code or the 2011 electric code, they would be 100 times better. They may not be able to follow the next code series. This can be discussed in future years, but with an automatic adoption there would be no choice when the 2012 code is adopted.

Wood asked if the codes are mandated. Garand said some towns are still on the 2003 codes. If it is state codes the town could pick and choose what to enforce. The town needs to slow things down. The issue is the compliance level for issuing occupancy permits. Hawkins asked if this affected shopping malls. Garand said next year the town could decide whether and which codes to accept from the 2012 codes for commercial buildings. Right now it would automatically be whatever the state said. Hawkins asked how long these codes were in place. Garand said the adopted code series were 2003-2006, and 2009. Now it would be looking at the 2012 codes coming into effect early in 2013. Khan asked if there was liability for the town if the [2012] codes were not adopted. For example, if there were damage because of a seaside storm would insurance companies deny coverage because the town did not have [the latest] codes. Garand said there are some exceptions in the short term. Hawkins asked his insurance company would still cover his property if he did not upgrade. Garand said if a home were built in 2005 that would be the code applied. It would be different for new construction. He did not want to be forced to use the 2012 code because it would be a hardship on townspeople who are struggling with the current requirements. The code language could be looked at next year. Frazee said if Garand's suggestions were not followed, it would kill business and stop people from expanding and repairs. It would affect the economy.



# Town of Seabrook Planning Board Minutes

Tuesday, December 4, 2012

revised

NOT OFFICIAL UNTIL APPROVED

<b>MOTION:</b>	<b>Janvrin</b>	<p><b>to Amend Section 1.300 of the Seabrook Building Code, as follows:</b></p> <p><del><b>1.300 The New Hampshire Building Code (see NH RSA Chapter 155-A) is hereby adopted as it now exists and as it may be amended from time to time by state law.</b></del></p> <p><b><u>1.300 National Codes – All building shall adhere to the 2009 editions of the following:</u></b></p> <ul style="list-style-type: none"> <li>⤴ <b>International Building Code;</b></li> <li>⤴ <b>International Mechanical Code;</b></li> <li>⤴ <b>International Plumbing Code;</b></li> <li>⤴ <b>International Residential Code (for One and Two-Family Dwellings);</b></li> <li>⤴ <b>International Energy Conservation Code;</b></li> <li>⤴ <b>National Electrical Code.</b></li> </ul> <p><b>Additional codes adopted by reference herein, pursuant to NH RSA 674:51 and NH RSA 674:51-a, include:</b></p> <ul style="list-style-type: none"> <li>⤴ <b>International Property Maintenance Code;</b></li> <li>⤴ <b>International Fuel Gas Code, published by the International Code Council;</b></li> <li>⤴ <b>NFPA 101 Life Safety Code, published by the National Fire Protection Association; and,</b></li> <li>⤴ <b>New Hampshire State Fire Code NFPA 1 Uniform Fire Code, published by the National Fire Protection Association; and</b></li> <li>⤴ <b>to forward the warrant article language to the Board of Selectmen for the Town Meeting Warrant.</b></li> </ul>
<b>SECOND:</b>	<b>Hawkins</b>	<b>Approved: Unanimous</b>

**OTHER BUSINESS**

**FEE STRUCTURE**



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### **Don Hawkins, Planning Board Chair**

Hawkins said because the fee structure was a site plan issue, there was not a time frame, except that the overall issue is revenue to pay bills. Janvrin commented that the BudComm had already approved the Planning Board budget. Hawkins said the important number is that which is sent to the state in November re how much is actually collected and expected to be collected for the balance of the year. The Board is not generating enough revenues to pay its own bills. Hawkins distributed his analysis and recommendations, and said the discussion would be at the next meeting. He had tried to define the issues and further define the gap between the Budget of \$82,500 and the revenues, noting that billables are passed on to the Applicants for payment. However, \$59,500 needed to be collected in application fees to cover the costs that could not be reimbursed. The shortfall is \$43,000 and the application revenue so far this year is \$15,727 which doesn't make it for expenses.

Hawkins said that without a big project the costs cannot be covered. One suggestion is to charge for the Technical Review Committee; department heads' time is not charged. Hawkins' view was that the taxpayers were eating that cost. Another part of his analysis involved the current and recommended fee schedule, and the comparative backup information re the fees paid by several Applicants. He suggested changing the application fee schedule for site plans, as well as the formula for subdivisions over 5 lots, and addressing how to handle remodeling or redevelopment. Costs for abutter notices would stay the same. Hawkins said if only one application in each category were submitted in a year, under the current system revenue would be \$34,700; under Hawkins' proposal the collection would be \$71,000. It is clear that if no big project (i.e. 100,000 – 400,000 square feet) comes in, the collection is not enough to cover the cost of pay for the office. The recommendations represented other ways of collect revenue.

Hawkins also called attention to examples of application fees for several cases, noting that for the Honey Pot the fee was \$200. He recommended that expedited applications be done in one night; if they take longer, an extra fee should be charged. The Board had several meetings with LoanMax because it took a long time to get agreement. 920 Lafayette Road was another lengthy process for \$200. Another aspect is that cases like the Demoulas south came back several times with changes. In this case the billing calculation is yet to be made on how much it cost for the several reviews. SustainX also returned to the Board. Hawkins said the fee schedule did not deal with remodeling; impacted area needed to be refined. The Board could be facing a big remodeling project for a small fee.

Janvrin asked if there was data on what surrounding towns did. Hawkins said Seabrook is way ahead of Portsmouth, Stratham and Epping who have full-time planner functions. These towns have not faced the type of development that Seabrook has. If there is not big development the cost of doing all this work is unknown. He wanted to arrive at who should be paying the bills. Hawkins said the Planning Board would not exist if not for development; therefore the developers should pay for the Planning Board costs, not to make money; the taxpayers should not be paying shortfalls. . Khan added that the Board members volunteer hours and hours for the taxpayers, not for the applicants; perhaps there should be a payment. He suggested that if there had been an additional fee each time LoanMax did not return with a satisfactory color for their sign, perhaps there would have been agreement at the second or third meeting. He suggested it be clear that no matter how small the case, if the Board is ready to take a vote there should be a fee for additional work. Hawkins suggested a 3 meeting maximum for site plan review and then have an additional meeting fee. He noted that the Board was still dealing with DDR after many years. Part of the cost that had not been recovered was all of the time and work that goes on after something had been approved. There is no vehicle to assign that cost. Khan asked if DDR paid a fee for the recent DDR condominium conversion. Kravitz said they did.



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Hawkins said that there should be an additional site plan provision so the CEO could be authorized to hire additional help for certain projects e.g. the DDR shopping center. This would be as is done for outside construction engineering oversight. Janvrin described the process involving the Treasurer, the Planning Board Secretary and himself to work through the security documentation for the DDR shopping center, which took about 16 hours. Hawkins believed the costs for applicant services should become free to the town and be borne by the developers or other applicants. Wood reminded that there is a cost for lights, heat and for covering the meeting for the channel 22 broadcast. Hawkins said a Planning Board meeting cost could be designated; he already calculated pool costs for department heads so the entire cost for running the Planning Board could be covered. .

**Hawkins said the discussion in re the fee structure and the remaining items on this agenda would be continued to December 18, 2012 at 6:30 PM in Seabrook Town Hall.**

### **RECORDING SITE-PLANS –DRAFT LANGUAGE**

Tom Morgan, Town Planner

*B) Add the following to Section 5:*

5.200 \_\_\_\_\_ The site plan shall meet the recording requirements of the Rockingham County Registry of Deeds.

### **PLANNING BOARD - MEMBERSHIP To be discussed at a future meeting.**

Hawkins adjourned the meeting at 10PM.

Respectfully submitted,

Barbara Kravitz, Secretary, Seabrook Planning Board