



Town of Seabrook Planning Board Minutes

Tuesday, December 6, 2011
NOT OFFICIAL UNTIL APPROVED

Members Present: Donald Hawkins, Chair; Sue Foote, Vice Chair; Jason Janvrin Elizabeth Thibodeau, Robert Fowler; Aboul Khan, Ex-Officio; Francis Chase, Alternate; Paula Wood, Alternate; Tom Morgan, Town Planner; Barbara Kravitz, Secretary; Paul Garand, Code Enforcement Officer;

Members Absent; Paul Himmer, Alternate; Michael Lowry, Alternate; Dennis Sweeney;

Hawkins opened the public meeting at 6:35 PM

CORRESPONDENCE AND ANNOUNCEMENTS

Hawkins thanked Moore for his long service on the Planning Board and said that he would be very missed, especially his historical knowledge. Moore said that Selectman Aboul Khan would be taking his place and was pretty much primed as to what is happening at the Planning Board. Khan had previously served on the Planning Board, and is a representative to the Rockingham Planning Board.

MINUTES OF NOVEMBER 1, 2011 AND NOVEMBER 15, 2011

Hawkins asked if members had had the opportunity to review the November 1, 2011 Minutes. Thibodeau said she was first looking at it. Hawkins tabled the November 1, 2011 Minutes to December 20, 2011.

MINUTES OF NOVEMBER 15, 2011

Hawkins asked if members had had the opportunity to review the November 15, 2011 Minutes and asked for comments. Wood said that she had not been present. Kravitz' corrections were to replace the word "shotgun" with "rifle" on page 13; on page 16, to correct the last line of the second full paragraph to "...in the middle of the project all of the Town's needs and goals were ignored citing a security problem..."; and on page 18 to clarify that (i) Tom Flowers was the speaker from NextEra, and to change "all" to most towns (ii) that the problem was with Rocks Road at Route 1, and (iii) that "...someone at security decided they could go [to] North Access Road...", all in the bottom paragraph on page 18.

MOTION:	Chase	to accept the Minutes of November 15, 2011 as corrected.
SECOND:	Foote	Approved: In favor - Hawkins, Sweeney, Foote, Abstained - Khan, Wood, Fowler, Thibodeau

CORRESPONDENCE

Hawkins called attention to the Circulation Packet.

SECURITY REDUCTIONS AND EXTENSIONS

Case #2005-24 89 Ledge Road
Attending: Paul Lepere;

Hawkins asked for Morgan's comments. Morgan noted that Lepere was in attendance.



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Morgan related that he met with a prospective buyer in the commercial crane business who was very interested in this property. As time was insufficient to make arrangements before the current extension ran out, Morgan recommended granting another extension of at least a few months. Lepere did not know much about this prospective buyer and said that no pricing had yet been discussed. He asked for a one-year extension. Hawkins asked for questions from the Board; there being none.

MOTION:	Foote	to grant a one year extension for Case #2005-24 89 Ledge Road to December 20, 2012.
SECOND:	Thibodeau	(see below)

Janvrin asked if security remained. Lepere said he was not the original owner and did not know. Kravitz will check on security. Janvrin said to make that a condition. Hawkins asked if there was no security, would there have been a department head signoff. Foote thought that security might not have been set. Morgan asked if the lot were vacant. Lepere said it was. Hawkins asked if the Board would be requiring security on a 2001 case. Foote thought it would still be a standard prior to any permits for construction etc., but noted that the numbers would be from 2001. Janvrin thought that Lepere would be wanting to sell the property with the existing approval. Hawkins asked if there were any reason to hold off on an extension. Janvrin did not think so, but thought that the security should be the condition. Hawkins asked if that were necessary for an extension, as security would have to be put in place for a buyer to take advantage of approval. Garand agreed, especially because it is a past case, and wanted clarification of the status and what was being requested.

Janvrin said if the extension were not granted the approval would expire. A buyer would have to come to the Board with a new plan. Garand said this was one large site and all the drainage is interdependent. Foote said the drainage was integral to that site for all the abutting properties. Garand thought that approach would mean that sites would have to be reduced way down and nothing could happen. Hawkins asked if a buyer would be held to the original siteplan. Foote said at least to the drainage aspects, should a prospective buyer come forward. Garand said he had talked with a prospective buyer who would come back to the Board without asking for changes in the drainage. The size and structure of the building would be the key item. Boyd said that the site had been granted an extension once. He had advised the prospective buyer to build the drainage as it was designed because it was part and parcel of the entire drainage structure, and to reduce it would incur additional costs. Where the work would be mostly curbing and earth work, he said to keep the drainage oversized, even if the size of the building and the parking were reduced.

Lepere said that in his marketing of the lot, prospects were told they could build smaller, but not larger. No one will ever come to the Board with a larger plan, although they could build smaller. Boyd said nothing larger would fit. Hawkins wanted to see the current plan maintained and to grant the extension. If security is required before building, that would have to happen; the costing figures would have to be addressed. Morgan commented that the conversation would be with the new owner, and that Lepere could sell the land and approval as is, in which case the Planning Board would not be involved. Hawkins said the Board might not be involved, but the CEO would say the security would have to be in place for the permits to be issued. Janvrin asked how the figures would be adjusted to 2011. Morgan noted that technically the Building Inspector would not have the authority to impose security requirements. Hawkins said the Planning Board imposed it when the plan was approved. The conditions, including the security deposit, would stay in effect. Morgan agreed.



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MOTION:	Foote	to grant a one year extension for Case #2005-24 89 Ledge Road to December 20, 2012.
SECOND:	Thibodeau	Approved: Unanimous (with Wood voting).

Case #2002-37 Irene's Way

Attending: Paul Lepere;

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

Hawkins referenced Lepere's request to discuss the status of Irene's Way with the Board. Hawkins said that this item was not on the Agenda, but thought it would be a short discussion. He asked Morgan for his view. Morgan said recently he'd heard that the Water and Sewer Superintendents had some issues, and wondered if the best action would be to refer this to the Technical Review Committee and solicit their recommendations. Given the Water Superintendent's issues, he did not think the Board would be making decisions at this meeting.

Hawkins asked Lepere for an update. Lepere said they have ten lots, six of which are occupied. He wanted to be clear about any items remaining to be done, and had a punch list of items from two departments. A letter written by the Water Superintendent in re the proximity of the electrical installation to the water system put up a red flag. He asked Boyd to explain this. Boyd said this plan had been approved some time ago. There have been a couple of different contractors on the road. Unitil doesn't like to say where their lines will go until the project is approved. He thought this a little bit strange and applies counter to what he thought the Board wanted, ie to know the location before the plan was approved. As there was a question, Boyd said they did not show the horizontal underground utilities lines in the original subdivision as the Board requires, but did show in the cross-section that the lines would go across the street. Boyd said that Lloyd Perkins was building the subdivision at that time and did a phenomenal job on the road. It is without cracks or blemish. All of that work was done and with compaction tests. The sewer was placed; and the water was placed where it was supposed to be. Unitil decided to put the electrical lines not directly above but close to the existing water line.

Boyd said this is not uncommon, but happens in quite a few places, but the Water Superintendent is very disturbed. Lepere said that this was not a mistake by Unitil as they had the approved plans. Unitil decided to place their lines in the same place as the water lines. Boyd said Unitil puts things where they want. The problem would be if there were a water line break and to fix it someone would have to work in the trench with the electrical line. Boyd said this happens in other towns and in Seabrook, e.g. Jean Drive which is a similar condition and went through TRC and was accepted. Boyd said they'd done their best to locate lines properly and he'd encouraged Lepere to have a progress as-built done so he could isolate what the new contractor has to do to bring it up to the town's standards, and also to show the above and below ground utilities. The Water Department did their own layout so that Boyd's men could locate the marking on the ground and dig safe located the utilities lines as not directly over but are close in a trench if someone were to dig there. Boyd said that the Water Commissioner does a phenomenal job, but has said that this isn't the best condition and let the Planning Board decide what to do.

Boyd said there isn't money to move the underground line that Unitil built, and that was not necessary. He'd like it to be on the other side of the road; he didn't know why Unitil put it where it is. It doesn't make sense to move everything with the lines already feeding the transformers on the other side. Boyd said he did not think that Lepere had received any security reduction,



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and thought he should get some of his money back. If they need to confer again with the Water Superintendent, that would be fine too. The security reduction should go forward for at least what the Board can do because the clearing is done; the silt fence is installed; the drainage infrastructure is done, the sewer and all of its lateral services are done; the sewer is installed. Boyd stated that the road is beautiful, and Lepere has done a fantastic job with the subdivision. The concerns that remain before the final approval relate to the Department of Public Works Manager because some of the driveways have to be re-cut; they were not installed properly. And all of the swales on the right side of the road have to be redone as they were never finished. Lepere said they have asked Department heads to inspect it so they don't have to wait for the spring and then find out there is a problem. They want to be proactive. Boyd said tater Superintendent's objection about the utility lines above the water. Boyd repeated that this happens all over the country, and also happened at Carol Lane. He thought the chance of that utility line being moved is pretty slim.

Janvrin asked about the as-built. Lepere said it had been done to date and submitted; a final as-built would come in the spring. Hawkins noted that the Board had sent Lepere a letter in August requesting that a plan be submitted showing the actual location of the utilities for Case #2002-37. He asked if that was in the progress as-built. Kravitz noted that that had not been submitted as a new application, only the as-built. Janvrin asked if Lepere would be coming to the Board in the near future for a security reduction. Lepere said he'd been trying to do that for the past six months. Hawkins said that cannot happen until the board gets the sign-off from department heads. Janvrin thought this could be forwarded to the TRC. Hawkins said the Board would not think about a request without the department signatures. Lepere said he was not after a full reduction, only a partial reduction. Hawkins said the procedure would be the same. If they were looking for a reduction for the work that had already been done, it has to be signed off on by the department heads saying that the work described had been done and it's ok to reduce the security by the amount requested. That has to be the process. The Board can listen but won't take any action until the department heads say to go ahead, and noted that there are no board members who are engineers. Boyd said that part of the problem is that the Water Commissioner had not signed off, and he might have to "arm wrestle".

Boyd stated that there was a fundamental flaw in the security reduction process; the checklist that is distributed is not the proper way to do this. He commented that another request was coming up later in the meeting and he brought this up at this point to help with this case and others. Boyd said that the checklist was irrelevant to the particular security reduction stages. He said that what really should be done, as in most every other town he's worked with, is similar to Jim Kerivan's letter or Millennium's letter when they say that certain things had been done and the department head would refer to that letter or something else. Boyd said that the security reduction checklist that the Planning Board uses is not proper literature. Hawkins said the board would not have a problem with something that works better. He would not have a problem looking at something but not at this meeting, if there is a better procedure. Hawkins had seen the letter that Boyd had referenced, and said there isn't an engineer following up on every project. Boyd said the Jean Drive case that would be talked about later in the meeting, started with a similar letter that he wrote from his engineering firm that does the same things that Kerivan's firm does. Boyd said that letter could serve as the notification to department heads who could say they are in concurrence with what [Boyd] said.

Kravitz raised a point of information to clarify a number of items that Boyd had stated. The Jean Drive case was not on the [December 6, 2011] Agenda. Boyd asked if there was a reason it was not. Kravitz said that Boyd's letter to the Board had been discussed, and Boyd had been informed that the reductions needed to be quantified against the original engineer's [Mike



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Fowler] figures; that's exactly what happens with everyone else. In that case, just as happens with anyone else, Altus was serving as the Planning Board's representative. Altus did that calculation, in fact on a spreadsheet, and came up with different figures than Boyd which in fact favored the Applicant. Subsequent to that, Boyd was asked for the Security Reduction Checklist to be circulated ; she thanked Boyd for helping to do that.

Kravitz said that there is another step in that case. Because of the death of the Trustee of the landowner, there was a process to go through with the attorney who is the successor trustee. That is in process; only the day before the Planning Board received the trust document, so that can go back to the Board, but not for this meeting. Boyd said they were assured from the attorney's office that it would be heard at this meeting. Boyd said they really wanted this. Kravitz made the point that in this example that Boyd had raised, it went right back to the checklist which gives the Board a consistent way. Boyd said the checklist is not the proper way. Hawkins said that was not an issue for this meeting. Boyd had his opinion. There is a procedure now, and until it is changed that is what the Board will live with. It is open to a better way, but not at this meeting. Boyd said he was not there to argue, but did assume the process would be to talk about Jean Drive at this meeting.

Hawkins asked if Morgan had any other directional thoughts on the Irene's Way matter. The Applicant would be asking for a security reduction; was there anything else to be done other than try and get the Water Commissioner to agree that the situation is either livable or untenable. If his position is that it is up to the Planning Board, the Board would have to make that decision. Morgan recommended forwarding this case to TRC as water and sewer issues had surfaced, and DPW would probably have comments. The Board can ask TRC for advice on how it could resolve the issues. If they are all together it is a more holistic approach than having the Applicant chasing around for the department heads. Foote cautioned about any changes from the approved siteplan, as the Board would not want another Border Winds situation where residents living there did not like the changes that the Board approved. Morgan was looking to TRC for advice. If TRC advises there are substantial changes, then the board would have to notify the abutters. Boyd thought TRC to be a good solution; he did not think fire or police had to be there. He also thought that perhaps the checklists could be signed as sometimes it is difficult to get the signatures.

Chase wanted to have some feeling from the Board for the Applicant about the electrical issue, because it had nothing to do with the plan. It has to do with Unutil forcing the Applicant to deal with the issue that they had no control over. He felt some message should be sent and not dumping the whole issue on the TRC. Hawkins said the problem is not knowing how big the problem is to have electrical lines over the water lines when some day someone had to dig there. He agreed with Morgan that someone should tell the Board in what direction to go. Thibodeau thought the Applicant should have apprised the Board. Morgan recalled that a letter had been written to the Board some months earlier, and suggested having TRC tell the board how to move this along. Lapere noted that Boyd said this happens in other towns, and he [Lepere] expected it would happen in the future with other subdivision plans when the utility does what it wants. He asked whether the utility overrides the town or the town overrides the utility.

Foote asked how to prevent this in the future. Boyd said he had previously recommended that the engineer be required to have the utility specify the line locations as part of the plan submission. This would be better than, as in this case, forcing the Applicant to do it. Foote said ultimately it was the job boss that let Unutil come in and place the lines without talking about this with the Planning Board. Boyd wasn't sure that happened, and said that Perkins was one of the



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best road builders. He did not know how they could have spent the whole time putting lines in the trenches and installing transformers without someone in the town knowing about it. Hawkins asked if that was the town's responsibility, or just to check after the fact. It is not the Town's responsibility to tell them how to build to the plan. The Town's responsibility is to check it, and if it's not right, to tell the Applicant to fix it. It's difficult to imagine that the trench was dug right over the water pipe, and to say the Town should have stopped it. Boyd's point was that Seabrook is a small town and things are known. A sewer service can't be installed to the main without having someone from the Sewer Department on site; the same with the Water Department for certain things.

Boyd acknowledged that Hawkins was right, but people did know that that's where Unitil would go. He suggested that the Board should help the engineers in forcing Unitil's hands. If it is required in the regulations that the lines have to be shown on the plans, they'll have to do it and there won't be any confusion. The TRC would know where the lines would be prior to the approval. Foote said years ago they tried to get underground utilities put on the plans, and were told it couldn't be done. Boyd said it can be done. The needed hammer would be if it's in the regulations, so he can ask them if they will hold up their future customers. Janvrin asked if Boyd's recommendation was to say in the regulations that water lines must be a certain number of feet from electrical lines. Boyd wanted the intended utilities to be shown on the plan. Currently it says the Applicant has to provide for the lines but they aren't depicted on the plans. He commented that in Border Winds the entire location of the lines was changed and it never came back to the Board. Utility companies have great power.

Thibodeau suggested writing to Unitil emphasizing that the Board wants the lines put where they are shown on the plans, and not by their own decisions. Janvrin said the regulations could say the lines must be placed where they are approved, and if there must be changes it has to come to the Planning Board. Hawkins asked Morgan to note this. Morgan thought there should be something from Unitil saying they will abide by such a regulation. Thibodeau said they would have to be noticed first. Morgan thought to put the responsibility on the Applicant for getting the letter before an approval. Hawkins wanted the regulations to state that the Applicant is responsible for getting the utility lines where they are shown on the plan, and if they don't they have to come back to the Board. He noted that the Board has no strong position to tell them to move lines. It would be lone thing if the road wasn't paved, but now it would be a big thing. Boyd said in the cross-section they did show that the power lines were supposed to be on the right hand side of the road; that's not where they are. Hawkins said the issue is what is the developer's responsibility to stick to the plan while having the road built.

Hawkins suggested a motion to send Case #2002-37 to TRC re the electrical, water lines, and drainage. Janvrin asked if there was a security reduction request on file. Kravitz related that many months ago Lepere wrote to the Planning Board asking for a reduction, but did not think an amount had been stated. The response had been that the department head signoffs on the checklist were needed first. The situation had been discussed during the interim. Janvrin said if this is on the table, then sending it to TRC for a recommended solution and amount of reduction would be appropriate. Kravitz commented that the process for arriving at the security reduction amount goes back to the original costing by the Planning Board Engineer. Janvrin thought the department heads would determine that amount. Thibodeau wanted to have the department heads signoff. Hawkins said that would occur before any money is released. Wood thought that the DPW Manager had other issues. Morgan said any time a case goes to TRC, all of the comments are provided to the Board in one list.



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MOTION:	Thibodeau	to forward Case #2002-37, Irene's Way, to the Technical Review Committee for its recommendation on how to deal with the issue of the electric utility lines being so close to the water lines, which meeting will take place on January 9, 2012 at 10 AM in Seabrook Town Hall
SECOND:	Janvrin	Approved: with Wood voting

PUBLIC HEARINGS

Hawkins opened the Public Hearings at 7:25PM.

NEW CASE

Case #2011-32 – Proposal by the Moore Family Trust, Robert & Jean Moore, Trustees, for a 2-lot subdivision at 10 Moore's Lane, Tax Map 9, Lot 41-2.

Attending: Robert Moore

Moore proposed a 52,000 square-foot subdivision on Moore's Lane. There is a long lot for which he got a variance for frontage from the Zoning Board of Adjustment. A waiver was submitted for the square in the lot, but Morgan told him that with the variance it was not needed. Moore said that a topographical survey was not needed because the lot is almost flat; the surveyor said a two-foot contour to determine elevations wouldn't be found until a neighbor's lot. He would provide a waiver if the Board wanted it. Now that two granddaughters are old enough, he's giving the land to them. Hawkins asked for Morgan's view. Morgan said the ZBA took care of the zoning issue. Two waivers are requested; the topography is a technicality on the checklist because it is pointless to try to get this. Other than the waivers, it is a simple proposal. Foote commented that the topo actually is on the plan. Janvrin asked about the waiver for the zoning box. Moore said the ZBA really took care of that.

MOTION:	Janvrin	to accept Case #2011-32 as administratively complete for jurisdiction and deliberation.
SECOND:	Foote	Approved: Unanimous

MOTION:	Janvrin	to grant the waiver requested by Case #2011-32 Moore for submission of a Stormwater Operations and Maintenance Manual.
SECOND:	Foote	Approved: Unanimous

Hawkins asked Morgan if the topography waiver was necessary; Morgan said it was not. Hawkins asked if there would be any difficulties in getting utilities to the back lot. Moore said there was not as they would go along with the driveway. Moore commented that the Board should go to Unitil first to get a commitment on the placement of electrical lines. He thought there could be code violations re the separations for underground water, gas, etc. Chase recalled a situation where he asked Unitil to commit to the placement of poles, and they refused. They have been stubborn to deal with. Thibodeau agreed. Moore said this should be decided before security money is returned, so they can't come in after the fact. Hawkins said it is a no-



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win situation for an applicant who can't control anything. Hawkins thought there probably is a code violation when paving over roads. Janvrin asked if Moore's intent was to run the utilities underground. Moore said the sewer and water mains are lined up well for that. Janvrin asked about the waiver request for the topography. Janvrin recalled Foote's thought that the topography survey wasn't needed. Morgan had been unaware that the land is so flat. Foote recommended that a topography survey was not needed because the land is so flat. Hawkins asked for further comments; there being none.

MOTION:	Foote	to find that the waiver for the topography submission would not be required on the Case #2011-32 plan because there is no change in the elevations.
SECOND:	Wood	Approved: Unanimous

MOTION:	Janvrin	to approve Case #2011-32 – The Moore Family Trust, Robert & Jean Moore, Trustees, for a 2-lot subdivision at 10 Moore's Lane, Tax Map 9, Lot 41-2.
SECOND:	Wood	Approved: Unanimous - with Wood voting;

MASTER PLAN CHAPTERS **Land Use Chapter**

Hawkins emphasized that the number of lots for future residential development, barring any zoning changes, was 450, roughly a ten percent growth from the approximately 4900 existing homes. It could be increased by mixed use development, but it is a pretty small number. Most of the Steering Committee was shocked at this limitation. He called attention to the Future Land Use map showing that there are potentially two types of changes that could occur – the Smithtown Village concept under discussion, and the same idea for the northern end of Route 1. This means that there is not a lot of land for future residential growth other than the two mixed use areas. Janvrin commented on the large amount of work that the Committee put in. There are no major actions that would be required, other than getting the maps up to date with the Assessor's data and on one database. Thibodeau wanted to know about voting for the villages. Hawkins said they had not yet been voted, saying this is a Master Plan looking forward. The Smithtown Village concept had been discussed at several Planning Board meetings, and would come up for potential approval at the March 2012 Town Meeting.

Khan said before the Master Plan Steering Committee discussions, there had not been much talk about "Smithtown", and asked if in the future people could proudly say that they lived in Smithtown or if the name would go away. Foote explained that that whole area had always been known as Smithtown, even on the GS maps. Janvrin said in the 1930s the US Postal Service opened three offices, one of which was Smithtown; another was in the Industrial Plaza, and one was at the Beach. The areas were known as Smithtown, Chasetown, and Crowtown. He did not think people would want to designate themselves as living in "Crowtown". There was also an area known as Brown's Park just over the Salisbury line. Historically, Smithtown is accurate for the zoning area being discussed today. Khan noted the hard work that went into reviving the area, and wanted to see the name used more often. Morgan suggested a sign for entering Smithtown. Janvrin said it is more of a village. Janvrin asked if it could be called "Smithtown Village Zoning District". Hawkins commented that the Committee was hesitant about calling it a district because of potential legal distinctions, like a beach district. Kravitz said it's being called Smithtown Village.



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Hawkins asked for comments on the Land Use Chapter

Thibodeau was not happy about the way Smithtown had been divided up, because the whole section where she lives might as well be in Massachusetts. Janvrin responded that there is no physical roadway connection to her neighborhood. Thibodeau agreed; they are not even connected to New Hampshire. She did not see the need to separate that section. Janvrin noted that only the zoning requirements would be changed. Hawkins said early in the process there had been multiple discussions about how people would feel about the way the lines were drawn. Surveying people on the perimeters was talked about, but wasn't done. Janvrin said the same would be true for the Brooks Road neighborhood. Morgan suggested that Thibodeau might want to be part of Smithtown. Thibodeau said there is no way to get into New Hampshire and they were cut off from the rest of Seabrook; the same was true in the Moore's area. Morgan said the Smithtown boundaries were vague, and might better be part of the Smithtown agenda discussion. Hawkins said Thibodeau's point was well-taken; there would be people who don't like how the lines were drawn even though they made sense to the Committee. Thibodeau commented that the whole section of her street was in Massachusetts.

Foote said an additional reason that the small triangle west of the railroad track didn't really fit into the proposed Smithtown area was because that area already had greater residential density than the new zone would allow. They are not completely cut off from Seabrook; that would be like saying South Main Street was not part of Seabrook. Thibodeau said she cannot get to Seabrook without going through Massachusetts; the railroad tracks are too slippery. Foote said even if they were part of Smithtown, the lines would not change. Fowler noted that his brother lives down the street from Thibodeau and lives in Seabrook. Hawkins said that the Master Plan, not the ordinance, was being voted on at this time. The discussion about whether Thibodeau's area would be included could be part of the Smithtown discussion. The Master Plan is only an idea looking forward, without the details. From an inclusion standpoint when looking at the proposal for the rail trail, it might be not to long before Thibodeau's area might be connected and should be discussed later.

MOTION:	Janvrin	to accept the Master Plan Land Use Chapter as presented at the December 6, 2011 Planning Board Meeting.
SECOND:	Foote	Approved: Unanimous - with Wood voting; Abstained: Thibodeau

Population and Housing Chapter

Hawkins said three charts in the Population and Housing Chapter were supposed to be updated and were not, and wanted to have the vote, and asked members to bring their copies to the next meeting. Foote wanted to vote at this meeting, if it were only a few numbers to change. Hawkins said on page 1-1 the right hand column changed from 2008 to 2010, and the number at the top changed from 8,477 to 8,693. Wood asked if a vote were needed. Hawkins said it was not as these were just corrections. Foote commented that when the Master Plan update was started in 2008, the number were correct. Hawkins continued that on page 1-2, in figure 1-2 the bars that are a combination of the population divided by the land area have to be readjusted. Seabrook and Rockingham County will change slightly but the relative size will stay the same. On page 1-4 the percentages in the pie chart on age distribution are all wrong and need to be redone to the correct numbers. Morgan said that on page 1-3, Table 1.2 has the wrong source for the data – it



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is from the Town Clerk, and not from the census. Janvrin wanted to approve pending the changes. Hawkins had no problem with that. Janvrin said that would save a lot more paper in reprinting for the Board, and the Master Plan updating could be concluded.

MOTION:	Janvrin	to accept the Master Plan Population and Housing Chapter as presented and corrected at the December 6, 2011 Planning Board Meeting, conditioned on the corrections being made.
SECOND:	Foote	Approved: Unanimous - with Wood voting;

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

Tom Morgan, Town Planner

Julie La Branche, Senior Planner, Rockingham Planning Commission

Zoning Ordinance

Smithtown Village

Hawkins said the Smithtown Village notice had not been posted. The proposed ordinance could be discussed at this meeting and the vote posted for the subsequent meeting. Morgan said it could be discussed but the final vote could be on the next meeting agenda. Hawkins saw no reason the discussion could not take place with the final vote in January, and asked if there were a problem with that. Morgan said that would not be a problem.

Hawkins asked LaBranche why the triangle raised by Thibodeau had not been included in the proposed Smithtown Village area. LaBranche said that the reasons given in the earlier discussion were correctly stated. The density is already high. Currently there is no access to Seabrook, and that could only come along the rectangular lots where there are wetlands, so it would be difficult to create a road structure. Thibodeau commented that the town of Salisbury created the wetlands in the last 15 years through drainage changes. It was dry as a bone before that. LaBranche referenced the proposed map showing that that area is zoned 2R and is contiguous with other 2R areas on the other side of the East Coast Greenway (Rail Trail). Potentially, there could be crossings over the trail or through other areas. Also, the small lot sizes do not lend themselves to any additional development in the area. While some of the lots in the two proposed 6R zones are small, the majority are larger with some large enough to potentially be subdivided. That was the basis on which the lines were drawn. In the future, a proposal might come to the Board with the potential of annexing the area to Smithtown Village.

Thibodeau pointed out where the southern delineation for New Hampshire was not correct so that a whole section of Route 286 shown on the map, was actually in Massachusetts. LaBranche said that was a problem with the GIS layer and she would call that to attention. Hawkins commented that some of the GIS layers were not yet correct. Garand said there was a part of Brooks Road that also was in Massachusetts. Fowler said it was in the bridge area. Thibodeau pointed to parts of properties that were in Massachusetts. Moore said the boundary goes right through some of the houses. Thibodeau said it even goes right through the bridge. LaBranche said the problem could be rectified at this time by using the line in the existing zoning map. If they have to, a change on the GIS map could be made.

Morgan said that the white line on the map came from the Assessor's consultant; it is more precise and should be relied on. Janvrin thought the US geological survey map might be on a different scale. Morgan said they were the same datum scale, but the US GIS mapping was



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being done for the entire country, while the Assessor's consultant was mapping Seabrook and was more precise. He noted that the GIS mapping was adopted by the state. Thibodeau showed one house with 30 feet in Massachusetts, so the white line was not entirely correct either. Morgan reminded that the Planning Board was in the process of correcting all of the zoning maps. Hawkins said the level of accuracy was important, but not a deterrent for adopting the ordinance. Morgan wanted to be clear that the map designation goes to the Massachusetts border. Janvrin noted that it follows the lot lines from there. Morgan said there was no intention to bisect any property.

LaBranche said they will check the lines against the official Seabrook map and make needed corrections, but will have to be done in a different process. It doesn't affect the proposed boundaries of the Smithtown area. The intent was to extend the three zoning areas down to the state boundary. This could be stated in the zoning and/or in the warrant article. Hawkins said the town zoning is defined in a map. The Board is in the process of getting a more accurate map. Foote said the definition is in the zoning ordinance as well as the map; the written description is the one to follow. Hawkins asked if the draft ordinance language was where it should be. Morgan wanted it to clearly state that the intent is to go to the state line. Hawkins said the intent to follow the lot lines and the Massachusetts border was clear.

Hawkins asked LaBranche if there were changes in the draft Smithtown Village ordinance since the Board's last discussion. LaBranche had removed the strike-through text done by the Steering Committee. On page Z-8, the last line of the Mixed Use definition was corrected to state that no less than 50 percent of the gross floor shall be for non-residential use. On page Z-13, LaBranche will fix the reference number of zones to eight. LaBranche referenced the previous discussion about precincts and districts, and clarified that these zones are "use" districts where the areas of the town are divided according to permitted uses, and are not political or subdivision designations. LaBranche asked if the Board wanted to go through all of the changes again. In this regard she called attention to the multi-family use item in the residential section of the Table of Uses on page Z-17. This item was extensively discussed by the Steering Committee, because currently multi-family use is not allowed under the zoning. There would be a new multi-family definition for no more than five dwelling units that would be allowed in a stand-alone building only in the mixed use zone. This recognizes that a developer might not want to have residential and commercial in the same building, so non-residential or commercial buildings could be separated from multi-family buildings on the same parcel. This would be a very substantial change in a very limited area of the Town.

Hawkins recalled the early discussions about workforce housing, and stated that the Town is in compliance except for one not allowing multi-family housing. Allowing this in the mixed use zone would bring the Town into 100 percent compliance with the state statute. It was important to allow multi-family dwellings somewhere in the town, and the Smithtown Village zoning does just that. The state minimum is five units; the Committee did not want to allow structures larger than that. Janvrin asked if that would be allowed only in the new Zone 6M, which is in the Town Hall area. Hawkins confirmed that, noting that area is currently in the commercial zone. Janvrin asked if it ought to be allowed by conditional use in other areas. Hawkins said the law requires it be in one defined area, although in the future the northern area along Route 1 could be looked at for mixed use. At this time a conditional use in any other area was not being proposed. The objective is to entice developers to go to the smaller scale and still build value. Foote said it also has to comply with all the other limiters for the mixed use area. Someone can't just build a five-unit building, because at least 50 percent of the floor space on the lot must be commercial; that is why more than one building would be allowed on a lot. Potentially, all of the commercial and



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light industry could be in one building, and an adjacent building with apartments could be residential. A developer cannot build just apartments.

Janvrin's point was that it is being permitted only in Zone 6M, and asked if it should be a conditional allowance in some other areas. For example, an applicant recently came before the Board for permission to have five residential units in an existing building near Route 1. This was a five step process which Janvrin thought should have been unnecessary, and asked if it should be a conditional use in 2R and other places at some point. Hawkins concern was that 2R is a very big area, and every section would have to be looked at. Janvrin was not proposing that be done at this meeting, but thought that at some point multi-family should be looked at for conditional use in more than the Smithtown and northern Villages; any proposal would have to come before the Planning Board for approval or disapproval. Moore emphasized the importance of not overwhelming the infrastructure, for example, in 2R. Hawkins added that there are existing residences on those streets; he would be hesitant to tell owners that now the Board would be creating multi-family residences in the area. Thibodeau doubted that privacy was a concern in the Weare Park area. It would have made sense in that district.

Foote commented that 2R is everywhere. Janvrin said multi-family is not allowed there at all, and could be by a conditional use. The facts could be presented and a decision to allow it could be made. Foote said the Board had been fortunate that there have not been many requests for conditional use; those that did come before the Board have been logical. If someone came up with a request, the Board couldn't just say they did not like it. A denial would have to be defensible. It is better to test the waters with the Smithtown Village, than to open it to all of 2R on a conditional basis. Janvrin did not mean to open the use, but to make it conditional to have to come before the Planning Board for an approval. Foote said years ago the Board was loaded with developers; fifteen years from now the Board could have a different mindset. Hawkins said it is a discussion for the future, but looking at the pros and cons was useful. He asked LaBranche is she had other points to make. In light of the above discussion, LaBranche recommended clarifying the definition of mixed use on Z-8 to reference mixed use site rather just a building so that it could apply to an entire site with more than one building. Hawkins said the intention was to allow multiple buildings on a single site. Janvrin said there could be accessory buildings. Foote said the reference should be to "parcel". LaBranche said that would be fine, and was agreed by consensus.

LaBranche commented that in the 6M area it would not be likely that someone who wanted to live there would always want to live above a commercial use. For example, they might want gardens or open space types of amenities that would be difficult to provide if the residences were only above commercial use. This allows those uses to be pushed to the edges of a development with landscaping and giving more of a residential feel, with the commercial across the way. This minimizes traffic and noise conflicts, and allows more flexibility in the site design. Janvrin added that would allow repurposing parking spaces for residential at night. LaBranche agreed that parking could be shared. She thought this kind of creativity and separation of uses would have more chance of success. Khan asked if it would be acceptable if someone in the roofing business kept ladders and equipment downstairs and lived above. LaBranche said that would be encouraged in the mixed use area; it is often difficult for someone to establish a business if they are living elsewhere. This would allow someone to establish a business and live in the same building.

Foote commented that that was the old mercantile way. Janvrin said currently someone cannot rent space in their house for a business unless they own the business. This would allow that space to be rented to someone else's business. Today, a home business has to be owned by



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the owner of the building. In the new zone it doesn't have to be that way. LaBranche said it would act as an incentive for someone to consolidate their business and living arrangements in the same location for tax and revenue purposes. It is one of the advantages that the new mixed use zoning in Smithtown Village would provide.

LaBranche called attention to the page Z-18 dimensional use requirements which the Committee discussed extensively in re setbacks etc. The Committee has asked several people in the development business to weigh in on the maximum building footprint in 6M. The objective was to limit the size of buildings to a smaller footprint, as opposed to the larger buildings to the north on Route 1. The number that seemed comfortable for the building design and footprint was 7,500 square feet, which she thought was pretty large at 80 x 74 square feet. There was some thought to make it 6,000 square feet, but the discussion hinged on what would be economically viable for a developer to engage tenants interested in occupying the building. Janvrin noted there could be more than one building on a lot, so conceivably there could be two buildings with footprints of 7,500 square feet each. Foote confirmed this as a small village look.

LaBranche called attention to the building heights as 45 feet with parking on the first floor, and 40 feet without parking. This would allow for 2 ½ stories with the residential use over the commercial use. Foote said it would encourage parking. Chase said the discussion was about allowing pitched roofs, otherwise they would have to be flat. Moore said the measurement would be to the bottom of the pitch. LaBranche said it would be rectangular and not a square box, which is what the village is trying to promote with character, gables and interesting visage that can conform to a site. She agreed with Janvrin that if potentially someone could put together a large enough parcel to have several buildings amass, they would have to include open space, landscaping etc which could limit going up to 7,500 square feet. Wood asked if there is parking the first floor, how many stories could be above it. Chase said two. Wood asked if this meant there could be a parking floor, then a business floor and then a residence floor. LaBranche said the middle floor would be a full height and the top floor would be smaller with a gable and be under the roof with other architectural features that would let light and air in.

Janvrin asked if heights were a factor of the fire code and the ability to fight fires from above. Morgan had seen height requirements for many small New Hampshire towns; they all seem to be getting those dimensions from the state and not the local fire department. Moore commented that the commercial heights in Zone 3 go up to 50 feet. Janvrin said at 50 feet the roof would be a large flat expanse. Moore commented that some day the Fire Chief may get the million dollar equipment with the tall ladder. Foote noted that some say sprinklers would take care of that. Hawkins asked if there were other questions for LaBranche. Max Abramson said he'd talked with fire fighters about building heights, and the aerial limit is 75 feet. It is not just getting to the top; sometimes there is landscaping or other features, like angles, that can limit how far the ladder can reach. That is why the Fire Department is looking for a 100 foot aerial ladder. Hawkins said 50 feet is allowed in Zone 3, but the footprint restriction in the mixed use area means there are smaller buildings that would be easier to get at with the equipment, than what had already been approved for other zones. He did not see this as a huge departure. Janvrin said plans for such a project would go to the Fire Department. Foote said a portion of the potential Zone 6M currently has a 50-foot limit so the proposal reduces that to 45 feet.

Kravitz suggested that the definition of light industrial on page Z-6 say and "production and/or manufacturing" to be clear that it could be one or the other. She asked if there should be definitions for conditional use and special exceptions, as variance is defined. Morgan said those were defined by state law. Janvrin noted where it said that terms were as in common usage if they were not defined in the ordinance. Morgan said that variance was defined years ago, and



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noted that the state law keeps changing. Referencing Janvrin's point about common terms, LaBranche wanted to add "or elsewhere in the ordinance". LaBranche said overall the zoning changes are minimal and address boundaries, uses, and dimensional requirements, with a minor change to accommodate suspended signage. Hawkins encourage the Board to read the highlighted changes again before the meeting for the Smithtown Village vote, because any zoning change would have to back to voters. The Board needs to be satisfied that the text is correct, because if the Board votes to push this forward that is what the Town Meeting will see. Foote said at best it would be a year before any changes could be made; a big loophole could be taken advantage of in a year.

Khan recalled a situation within the last few years where a proposal came before the Board, and the developer said people could park in a big lot next door. He said that if this zoning ordinance is passed, that should not be allowed. Morgan said that a few meetings before the Board had voted to take parking out of zoning so that that kind of change could be made at any time by the Board. Hawkins said this depends on voters approving that change, but the intent is to be able to deal with those changes more easily. Right now, issues like that have to go to the Zoning Board of Adjustment.

Hawkins wanted this to fit into the regular December 20, 2011 agenda at 6:30 in Town Hall. Kravitz said including it then would make sense because it had been talked out. If any further change to the language was still needed it could be done in January, but then there would not be time for more changes. Chase said the Board had talked about how to educate the public, and asked if that would be done in January. Hawkins said the next step is to decide how to get the presentation on to the website and Channel 22. Janvrin asked if there is money for advertising. Hawkins said there is not enough for advertising like this. What's in the budget is for notices. The public outreach had to be done by this group or a subcommittee, along with the Town Planner and LaBranche. LaBranche said that part of the planning grant funds, 20 percent of which was contributed by the Town, was allotted to developing outreach material including a fact sheet, posters, and website content. Once the Board votes, final versions can move forward, although she has been working on them in the interim. Some of the power point presentations can be combined into a slide show on the website. Materials can be distributed to town facilities including the Library. Hawkins said if Board members meet with groups the presentation can be made.

Hawkins thanked LaBranche for all the work she had done, and said the Board looked forward to helping her with the presentations. Abramson asked if there were a detailed plan. LaBranche said there wasn't a build-out plan. There would be graphics in the zoning ordinance, and details in the site plan regulations if the Town Meeting votes approval. There are so many combinations and hypotheticals; it is a scenario. Abramson asked if there was a visual end result. Hawkins said individual property owners will make decisions for what they own, rather than dictating a particular outcome. The Committee was more sensitive to the scale and recommended types of buildings within the mixed-use zone, and staying within the parameters described in the site plan regulations. The zoning changes would allow for mixed use and a different type of development which is not currently allowed. Abramson asked whether the Planning Board would have enough authority under the site plan review, which he thought would have more limited power. Hawkins said the site plan changes that would be required to go along with a mixed use development zone were being worked on. It won't go anywhere unless the zoning gets passed in March.

Additional Zoning Changes

Hawkins referenced the long agenda listing for regulation changes and asked which were zoning changes. Morgan said the first 5 items [including Smithtown] were for zoning; the other items



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were not. He called attention to the amended site plan issue another also on the Agenda. Hawkins said attending to that item was essential at this meeting. Foote recommended hearing that item first, and then returning to the regulations. Hawkins said there was not pressure on the zoning items, because they could be done within the next two meetings. Morgan said the drop-dead date [for zoning] was early January to be in time for the Town Meeting. Hawkins agreed with Foote, because there were only 4 other zoning items to discuss.

Hawkins determined that the balance of proposed amendments to the Land Use Regulations as continued from the November 15, 2011 meeting would be heard at the Planning Board Meeting on December 20, 2011 at 6:30PM in Seabrook Town Hall.

OTHER BUSINESS

POLICY FOR AMENDING APPROVED APPLICATIONS

Hawkins said issues relating to amending approved applications came up a few weeks ago because of an applicant wanting to revise an approved site plan, and the Board not having an adequate policy. Morgan was asked to recommend a policy for setting the fees. An initial response was to pay the same fee as for the original submission. Janvrin observed that they could not do that until they complete the first submission. Hawkins said they could withdraw the first submission. The other approach that he felt strongly about, was that the taxpayers should not have to pay for any part of that secondary review. Recovering costs should include measuring the actual amount for all of the costs that the town incurs, and that is the amount that the applicant should pay. This was not addressed anywhere in the regulations, and the applicant was told that the Board wanted to address this beforehand. The applicant wanted to get their job moving, and had been allowed to submit an application with a letter indicating it will pay according to whatever policy the Board decided. Foote asked for the agenda reference. Morgan said it was item (M). Kravitz explained that the application would be on the December 20, 2011 agenda.

Janvrin assumed that there would be up front administrative costs for Kravitz and Morgan. Hawkins asked Morgan to go through his recommendation; there could be comments or changes. Morgan said the goal was that the taxpayers not foot the bill for any of the costs, and that the Planning Board expenses are borne entirely by the developer. He thought that 25 percent up front, might be a ball park figure. Subsequently, Kravitz had suggested that rather than guess what the amount might be, the developer could be asked to provide an escrow amount up front e.g. 25 percent of all of the potential costs. Morgan said that that percentage might be too low, but the basic concept was to get an appropriate amount up front. As the project goes on the costs can be determined and the Board could vote on the actual amount. For example, the Board could decide that all but \$3000 of the escrow was used, and return the balance to the applicant. The Board would remain in control, and at the end of the day the developer will pay for all of the costs. The Town would not lose money on the submission so long as the percentage is high enough.

Janvrin wanted to add ...“so long as the security had been posted by applicant for the original approved site plan...” Chase noted that the project had not been started. Morgan said they cannot get a building permit without security. Foote did not want to tie security to the application fee. Janvrin’s point was that an applicant might have started work and then decided to come to the Board for an amendment. He thought that the Board should not be talking to such an applicant unless the security had been posted. Foote said there shouldn’t be a shovel in the ground with posting security. Morgan said that would be the case with any commercial development. Janvrin said they could do things like cut trees that do not require a permit without



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security; he did not want them to return to the Board if the security wasn't there. Garand said commercial developers know their plan months in advance; why would they have to amend their plan. Their choice should be to go forward with the plan they submitted or pay the full fee again; why should the town incur review costs and have to track time when they knew months ago what they wanted. Foote agreed; they should resubmit.

Janvrin recalled the 920 Lafayette Road project where the applicant wanted to change 2001 the approval and the Board said not until they complete the approved plan. Now the Board would be saying to them to come in to talk about an amendment; he was apprehensive about this. Hawkins noted that Morgan's proposal stipulated within one year. Morgan said the focus on the table is how much money to collect. Garand asked how to guess when dealing with money. Janvrin assumed that this had already been approved and that the Board was trying to capture the costs for Morgan and Kravitz, and maybe TRC. Morgan said it would be all of the costs. Thibodeau suggested starting at 50 percent; whatever isn't needed could be given back. Foote wondered if Kravitz kept a time sheet from every 5, 10, 3 or 15 minutes of work, or a phone call interruption that took 15 minutes to get back to the work at hand to accurately way what it cost. She asked if Garand kept a time sheet when he's on an inspection and someone comes to him for 10 minutes to ask about another project. She did not see how to figure out what it will cost; it would have to be a flat fee because the Board won't get it back and it will be challenged. It can not be an escrow to draw down as it is used. She asked how much Kravitz or Garand could say to draw down.

Thibodeau did not see how a flat fee could be charged for something like DDR or a small project. Morgan said a flat fee would be less defensible. Foote said she was talking escrow vs non-escrow. Morgan said that a draw down would be the most defensible way. Foote said it would if everyone involved in the project keeps a time-sheet. Morgan said even the time it takes to calculate that should be charged to the Applicant. Janvrin's concern was with a developer that with an approved project who has gone out to do the work and is a long way to being complete and then wanting to amend the plan for utility locations. Khan thought Foote's point about how to calculate an amount for Demoulas was well taken. Morgan said that was the advantage of the escrow. A flat fee of \$10,000 or \$20,000 was indefensible if the applicant challenges it. With an escrow, Kravitz, and Garand, and other department heads would have to keep track of their hours, but it would be defensible.

Hawkins said that for the Demoulas north withdrawal the Board said it would issue a refund, but would go back to find the cost to the town to review the application. There was feedback from department heads about how many hours they spent on the review e.g. 6 hours. Then a calculation was done as to the pool rate for the overhead for each department, including the cost for the building, the secretaries etc, and the overall amount was billed. A good job is not done in recovering costs, including those that occur after an approval. The Board does not recover the amount of time that Kravitz spends on submissions. He wanted to go back next year and look at the fees all over again because the Board recovered costs only one time in the last six years. He said that if Garand were asked how much time he put in on a project, including the time spent thinking about it, that would be the cost number. He did not believe that the taxpayers should be paying for all the review time, and this calculation should be tracked. For example, time spent in the Technical Review Committee work currently isn't recovered.

Garand asked what was the justification for breaking down time and giving it to the developer. Hawkins recalled the type of project that Janvrin brought up. They started the project and were half way done, and then they decide on a modification. In that event, the engineers might have to look at again. Garand said that would not be a minor change, so the Board would say no.



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Janvrin disagreed, saying that the original approval was still open and they had acted on it. Garand said that is not the case with the current situation. Morgan thought that if the full original fee were charged for the case coming before the Planning Board in a few weeks, they would scream it was extortion, and he thought they would be right. Wood referenced the pros and cons and thought that when an applicant gets an approval the fee it paid was accounted for. If they want to do something else, why should the fee be cut. Foote likened it to buying a jacket and after a year wanting a different color; they wouldn't get their money back. Morgan said for some project this is big money. Wood understood the desire not to kill a project, or no developers doing anything. Morgan said the concern was being able to defend the fee process.

Janvrin asked if the fee would be as with expedited applications, when modifying an existing approval. Hawkins said no. Kravitz said in the case at hand they are changing the footprint so an expedited application could not be used. Janvrin asked if the fee could be the same. Kravitz said that would be \$200. Garand said that wouldn't even cover the review. Kravitz suggested a hybrid approach with an initial fee perhaps based on square-footage, noting that the applicant had tried to do that, and adjust the fee later on. Janvrin asked if the fee should be negotiated. Hawkins did not like Kravitz' approach because there was virtually no fee until 5,000 square feet was reached. Kravitz said that factor could be eliminated. Hawkins' concern was that the case had been reviewed once and he did not want to leave any door open to not recover all of the costs. He thought that was a possibility and didn't want that to happen. Garand thought some applicants would come in with a partial plan and then want the same thing that the Board did for another applicant. He said that applicants pay a lot of money for engineers, so why shouldn't the town take the plan as having been completed.

Hawkins said there might be an approved plan for 35,000 square feet. A modification could be submitted for 5,000 square feet that would have drainage and other items that have to be reviewed again. In that situation, the Board would not come close to covering its cost. If the Board could say that the initial plan could be abandoned, he would be more confident about recovering costs. A change in the fees would have to apply to all future projects. If someone was halfway through a project, what should the Board do. Garand added that items could be grandfathered, and then what does the Board do. Hawkins said the Board could say no, and also that they would have to pay to review it again. He liked the factor to be paying 100 percent of the costs, and did not think accountants would have to be hired to do this. Each department head would be asked for the amount of time spent on a project review; they would have to do the technical review again. Fowler asked why they would have to go through all the people that did the review the first time. Foote said it would take just as long to review the new plan as it did to review the original plan because the Board would have no idea what had been changed, even if the applicant provides the list of the changes.

Hawkins asked whether an applicant that comes with a small modification on a big plan would have to go through the whole process again. Janvrin asked if they would be eligible for the refund policy. Hawkins said they would not because the case had already been heard at the Planning Board level. Hawkins said once it gets to the Board, nothing is returned. Foote said an application would have to be withdrawn before it gets to the Board hearing to get anything back. Janvrin said if a plan were withdrawn, it would have to be resubmitted. He thought the adjusted fee proposal would become an easy out. Garand said other applicants would say they hadn't put something into the ground and would want the same treatment. The Board went to court on this. Also, smaller applications would say this is unfair. Garand asked why the Board keeps readjusting the regulations. As the CEO and a taxpayer, applicants knew what they did and what they wanted.



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Janvrin said if an applicant had started the work they cannot abandon it or say it is substantially complete or close it out and start from scratch. Another applicant might have an approval but not started the work, in which case a new owner might want to scrap the plan and start over. He thought the amended plan scenario would apply in both cases. Hawkins said the Board cannot make someone start from scratch. Janvrin thought an original plan would have to be withdrawn to talk about a modification. For example in the 920 Lafayette situations, they cannot even talk about amending the plan because the original approval hasn't been completed. Hawkins did not agree. Garand said this depends on the makeup of a particular Board. Morgan said an applicant had every right to ask for an amended plan. The Board had to figure out what fee to charge to cover the costs.

Khan said if someone wants to amend their plan the Board can set an application fee, as well as a fee for going to the TRC. Janvrin thought this meant there would be a fee that goes up depending on what had to be done, rather than decreasing the amount. Morgan said that an escrow would allow the Board to collect whatever the cost is and make sure that it got back 100 percent of the cost. Foote said with an escrow the Board gets paid up front and makes sure it covers the costs. The question is how much to charge them. Hawkins clarified that the Board had to charge whatever it costs. The upfront amount could be a percentage of the original submission fee e.g. 50 percent. Thibodeau said if it costs more they have to pay more. Janvrin said if the costs run more than what had been submitted, they receive a bill.

Wood thought that there are fees submitted with an application, so the costs are already known ie there is a basis for Kravitz' fees and filing fees. Kravitz clarified that the Board had established a series of arbitrary fees paid up front, for example, the base site plan fee is \$200. With regard to the application that the Board will hear in two weeks, the applicant figured out a fee based on the square footage they are disturbing, and paid that fee with the understanding that they would pay whatever fee the Board decided would be appropriate. The actual cost is not known. Morgan and she could work for 30 hours before the Board ever sees anything; for another case it might be 4 hours. Wood asked if there were a set hourly cost for the combined time for her and Morgan. Kravitz said that is what Hawkins had established for the refund policy which is very sophisticated methodology. This cannot be done in advance, which can only be an estimate. Wood said it would have to be estimated and take more hours than expected.

Hawkins said one issue with the fees is thinking that everyone does just as good a job as they can on the application, when in fact that isn't so. There is a lot of hand-holding and preliminary work that goes on for application submittals, which can involve several meetings. He was bothered that sometimes the applicant never comes to the office, and sometimes it can be six or seven times before the application even gets to the Board. Someone may meet with Morgan twice, and that is billed. If they meet with Kravitz six times, that cost as well as the overhead is not recovered. Foote said if the town planner meets with an applicant, Kravitz would also be involved so that time could be factored in. Janvrin asked about the TRC. Hawkins contended that that cost was unpaid, and noted that Khan was proposing to tier such cost, or make the TRC cost by the hour whenever it is used.

In terms of the mechanics, Morgan said one problem is that the town has had to chase applicants that owe money. With an escrow, the town would have the money and be in control; figuring what might have to be returned would be a matter of mathematics. Wood liked the idea of an upfront fee of 50 percent of the original application fee. Foote said before going to any kind of escrow, the Finance Director or Treasurer should say what is involved with handling a few hundred escrows monthly, as some go on for years. Morgan said to charge the applicants for those costs as well. Kravitz said that Foote had a point because they did not have the staffing.



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Foote said that every month the bank statements arrive and have to be reconciled and a statement sent to the owner of the escrow. Foote said to talk with the Treasurer about state laws on holding money. Hawkins said the fee can come into the general fund current account and be refunded out of the same account, just as was done for the [Demoulas] refund. Wood liked that idea. Thibodeau said if the cost is more, the applicant would be billed. Foote said it is still an account that someone would have to keep track when the deductions are made. Fowler asked why the amount for the second time around would differ from the first fee. The money could be given back if appropriate.

Hawkins said the issue was how to compile the fee amount to bill, and thought that Kravitz would send a query to department heads and ask how much time they spent on reviewing a case. Foote said at one time the Planning Board sent out sheets with the plans with a place to track their estimated hours. The decision was made to go to the TRC format because some department heads wouldn't fill them out, or come to a meeting, or would say the project is not big enough. In TRC the department heads come and address the plan. Morgan asked for Foote's preferred method. Foote said if there is to be a charge that is different from what the application says, if had to be backed up with documentation of an hourly rate. Morgan thought the members were saying the same thing. Khan suggested there be a fee for the first Board meeting and additional fees for a second meeting, or TRC, etc., so the applicant will know the fee scale ahead of time. Janvrin said two people, the CEO and the Town Planner, were authorized to decide if an application could be expedited. He would be comfortable allowing them to decide if an application should go to TRC. They pay up front and get money back if they do not go to TRC.

Morgan concern was to avoid having an application fee of \$40,000, where the actual cost would be \$7,000. In that scenario, the applicant could say that taking more than \$30,000 in for nothing was extortion. The Board would want to avoid a lawyer saying the Board took all that money. Wood said it had to be reasonable. Kravitz added that they would say the Board tied up their funds and they did not have the use of their money. The procedure needed to be that the town doesn't lose a cent, and the fee can be defended. Wood said they could do the second time, just as the first time Khan thought most of the time people would work together for the second time. Hawkins said for a big project, almost certainly it would go back to TRC. Thibodeau said maybe to leave the fee as is – the second time the same as the first. Fowler agreed, and said the money could be given back if not used. Foote agreed, and said to build to the site plan. If they changed their mind, withdraw the plan and submit a new plan. There is always the option of pleading the case to the Board to waive or reduce fees because fewer resources were used. Hawkins asked how that would be calculated, because it would be the same situation. Janvrin noted that if a project is 80 percent done, they cannot withdraw a plan. Hawkins asked how to measure the fee in that situation.

Hawkins said the best way was to say that if the Board spends money on an application it will be reimbursed 100 percent. Each department would have to be asked how much time they spent on an application, which is just what happened with the refund. This included the time Planning Board members spent on the review. Hawkins said he donates his money for the town, not the developer. The Board needs to be very careful to recover everything that is spent on a development. It's the Board's obligation to make sure it is not giving away town services for nothing, and did not know any other way to track this. Janvrin called attention to Morgan's proposal of 25 percent plus reimbursement for [professional services]. Hawkins did not agree with that language. Chase asked if the cost plus proposal could be used once to see now it would work, because it sounded as if the Board were trying to take care of all future "what if" possibilities. He asked if it could be used for this one case so if there were mistakes it could be



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corrected. Khan said that the Board had used this approach recently. Hawkins said it was for the refund so the methodology of applying all overheads is known. It would be a lot simpler the next time, because the rates are known and only the hours spent would be requested.

Hawkins said that only Kravitz will have a hard time because it her time is spent in sometimes small increments; that is the toughest calculation. When the Water Superintendent sits down to review plans, he can relate the number of hours spent; TEC hours would be added in. Hawkins agreed there is no harm in trying this and seeing how it works, and noted that the applicant had already agreed to pay whatever the costs are in a letter submitted to the Board. They've also made a partial payment. Hawkins said an applicant will pay 100 percent of the costs incurred. Up front they will pay an amount equal to 50 percent of their original application fee, and then the overage, if any. At least money will have been collected up front. Janvrin agreed to this. Hawkins said at the beginning of nest he would recommend that the Board add a provision that plans do not get signed until all moneys are paid. Thibodeau and Foote agreed. Hawkins said it took too long to get paid from DDR and Demoulas. Janvrin said some things had to be done before the building permit, and the occupancy permit; payment of the Board's fees would have to be done before the plans are signed. Hawkins confirmed that as his proposal. All of those steps need to be reviewed. Kravitz asked why one year was chosen by Morgan. Morgan said it was to start the discussion.

Wood asked how many times this situation came up. Hawkins said that modifications did come up. Foote said usually with big projects. Janvrin said this ruling would not apply to 920 Lafayette, but wondered if it would apply across the street. Foote said the Board can't think about how this applies to individuals, only across the Board and now everyone must comply. Hawkins said this would be a policy. Foote said when making rules and regulations, by state standards the Board looks at the benefit to the town and the townspeople, not the ramifications on or the cost to the individual with a plan. Janvrin then asked why the Board was having the discussion. Hawkins said because the issue is covering the costs. Wood asked what happens if the request is after more than one year. Janvrin said it would have to be a new application.

Hawkins proposed, and by consensus the Board agreed, that the policy will be reevaluated in three months. Janvrin said this would be a site plan regulation and could be amended. Wood noted that it could be amended at any time; it did not have to go to Town Meeting. Chase asked if three months would be enough time for the project at hand. Hawkins did not think so. Kravitz asked if the intention was for projects that are submitted within three months of the policy. Hawkins said it would be reviewed in three months, but probably there wouldn't be sufficient feedback at that time. Wood said to look at the progress in three months. Hawkins thought at least the review process would be done in three months. Wood said in that time the Board may know if the policy was working; there might be some red flags by then.



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MOTION:	Hawkins	<p>to add the following to Section 3 of the Site Plan Review Regulations as follows:</p> <p style="text-align: center;">In those instances in which an applicant seeks to amend an approved site plan less than one year after the date of the Planning Board's vote to approve, and in which the proposed amendment impacts less than ten percent (10%) of the lot area, the applicant will (i) pay one hundred percent (100%) of all Town expenses as determined by the Planning Board to review the amended plan, and (ii) pay an upfront application fee in the amount of fifty-percent (50%) of the original approved site plan application fee to be used for review expenses.</p>
SECOND:	Janvrin	Approved: Unanimous with Wood voting

Hawkins said the zoning matters would be continued at the December 20, 2011 Board meeting at 6:30PM at Seabrook Town Hall. Morgan commented that board meetings proceed well until about 9PM, and that the next meeting would have two challenging agenda items. Hawkins noted that the zoning ordinances could be addressed in January. Morgan said then time would have run out for making changes. Foote added that the Board would be stuck with what had been published. Morgan suggested doing the zoning ordinances on at a special night meeting. Hawkins said he would rather do the zoning items first at the December 20 meeting; cases could be continued if necessary. The zoning was the most important task so they should be at the head of the meeting; he thought they would go easily. Khan asked if starting at 6PM would solve the problem. Hawkins commented that he would have 4 meetings the next week and wanted to stick to the schedule. Thibodeau said that tentatively a meeting could be scheduled for December 27, and would rather that day than another day before Xmas. Hawkins said the zoning would begin at 6:30PM on December 20 and cases could be accepted and continued if necessary. Wood noted that the Budget Committee would be meeting on December 27. Chase asked if the applicants should be notified of the agenda schedule. Janvrin said they should be here at 6:30PM. Hawkins repeated that the zoning would be finished first.

Hawkins adjourned the meeting at [[[9:40]]] PM.

Respectfully submitted

Barbara Kravitz, Secretary
Seabrook Planning Board