



Town of Seabrook Planning Board Minutes

December 19, 2006

NOT OFFICIAL UNTIL APPROVED

Members Present: Sue Foote, Chair; Aboul Khan; Mike Lowry; Peter Evans; Paul Himmer; Robert Moore, Ex-Officio; Paul Garand, CEO, Alternate; Elizabeth Thibodeau, Alternate; Tom Morgan, Planner; Barbara Kravitz, Secretary.

Members Absent: Mark Preston,

Chairman Foote opened the meeting at 6:07PM

MINUTES OF December 5, 2006 & December 12, 2006

Foote noted a minor correction for the December 5 Minutes.

Motion:	Lowry	To approve the Minutes of December 5, 2006 with minor correction, and to approve the Minutes of December 12, 2006, as written.
Second:	Khan	Approved: Unanimous Abstained: Evans, for December 5; Moore for December 12.

CONDOMINIUM RECORDING PROCEDURES

Foote said about a year ago the Board eliminated the waiting period for recording condominiums. Recently several applicants chose to pass papers within a day or two of the Board vote and insisted the Registry recording be made right away or the deal would not go through. Foote recommended restoring the abutter review period to allow sufficient time for the paperwork and processing which the Planning Board Office must do, and in case of a challenge. This would also make the methodology for condominium recording coincide with that of subdivisions, thereby reducing the number of trips to the Registry. Moore asked what the current waiting period is for subdivisions. Foote replied 30 days.

Motion:	Moore	To reconsider condominium recording procedures to be in line with the 30-day subdivision requirements.
Second:	Thibodeau	Approved: Unanimous

REQUESTS FOR SECURITY REDUCTION OR EXTENSION

#2002-18 Nicholas and Becky's Way

The signed-off Security Reduction checklist is in, as are the digitals and quitclaim deed for the road. The applicant requests the Planning Board recommend that Nicholas and Becky Way be accepted as a Town road. Several meetings ago the security amount was reduced to the maintenance phase because of special circumstances.



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Motion:	Foote	To recommend the Board of Selectmen accept Nicholas & Becky's Way as a Town road pending the Town Planner's review of the Deed, and allow the Chair to sign the plan and Notice of Decision.
Second:	Lowry	Approved: Unanimous Abstained: Moore

Request re Case 03-38 from Green & Company together with a letter from Jones & Beach for bond reductions for Pineo Farm Road and Carroll Lane. Signed-off checklists for both roadways have been submitted with final ditch work and erosion control measures needing about two yards of loam between the paved sidewalk and the sloped granite curbing. This will be done to the Public Works Manager's satisfaction by June 15, 2007. Security reductions for Phase One Pineo Farms Road would bring the construction maintenance bond to \$54,710, and for Carroll Lane to \$34,175. Jones & Beach has provided the digital and paper as-builts and requests Pineo Farm Road and Carroll Lane be accepted as Town roads. Certification of monumentation and deeds have also been provided.

Motion:	Foote	To reduce the construction site security to the maintenance phase leaving Pineo Farms Road at \$54,710 and Carroll Lane at \$34,175, and recommend the Planning Board request the Board of Selectmen to consider accepting Pineo Farms Road and Carroll Lane as town roads pending receipt and review of the Deed for the Roads, and allow the Chair to sign the plan and Notice of Decision.
Second:	Moore	Approved: Unanimous

Evans asked about the time period for retaining the maintenance bond. Foote said this is two years.

CORRESPONDENCE/ ANNOUNCEMENTS

Foote announced that on Tuesday, January 2, 2007 the Planning Board will hold a public hearing to consider the adoption of a Seabrook impact fee ordinance.

Case 1999-11: The Board of Selectmen accepted Austin Way as a public highway on December 13, 2006. Evans asked when the case will be closed. Foote said when the maintenance phase is done.

Case 2003-48/Route 286: Letter from Henry Boyd at Millennium Engineering re Anthony Rizzo requesting a one-year extension due to health problems and considerably more work to be done. The original request was made at the December 5, 2006, meeting when the Board agreed to extend the case to December 4, 2007 at 6PM in Seabrook Town Hall, pending receipt of an authorization to allow Boyd to represent Rizzo, which has been submitted.



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Motion:	Moore	To extend Case 2003-48 to December 4, 2007 at 6PM at Seabrook Town Hall.
Second:	Khan	Approved: Unanimous

Case 2001-34: Honor & Mason/Whittaker Way, Tax Map 4 Lot 19-50 Site Inspection Report from the Code Enforcement Officer after walk-through with Wayne Morrill of Jones & Beach found several inconsistencies with the approved drawings. Garand recommends extending this case to at least next spring. Evans asked about stabilization for the Winter. Garand said it's pretty stabilized but the work is not completed. Foote extended Case 2001-34 to June 19, 2007 at 6PM in Seabrook Town Hall.

Paula Wood requesting to present a petition re Cases #2006-31 & 2006-32/DDR

Wood read the Petition from residents and interested parties in the Town of Seabrook imploring the Planning Board to stop all proceedings with DDR pertaining to the new Mall until DDR presents a plan to keep the way of life as it is now. The Petition cites concerns with increases in traffic, emergency response delays, the Route 107/95 Bridge, and the Routes 1/107 intersection which cannot handle the increase in Northbound and Southbound traffic. The petitioners believe the developer's proposed changes allow traffic to get in but not out of Town; the petitioners believe the developer is responsible because it is bringing in the new traffic. Wood said there are 216 signatures to the Petition and she has spoken to others who are concerned and/or scared about the traffic. If not taken care of now, when will it be done and who will pay. The Petition asks the Planning Board to take this into consideration. Foote thanked Wood for providing the Petition with an extensive list of concerned people [The Petition, read in its entirety, including the signatures are attached to the Minutes.]

Foote said the Board has accepted the DDR cases for deliberation. The ongoing hearings and deliberations to negotiate and find an acceptable means cannot be stopped. It is understood that traffic is one of the large issues. Foote asked for Morgan's view. Morgan agreed with Foote's statement, saying the Board will give serious consideration to the Petition. Wood said this is not an attempt to avoid speaking with DDR. The concern is DDR will continually present small things for approval until somehow the project is done. They have already been allowed to work on the power lines. The request is to hold back on agreeing to things until there is a plan to keep [our] life the way it is. In going down Route 1 at 10AM today in two lanes the traffic flowed; in one lane it became bogged. Wood is looking for help for the people but can't say whether it is improvements to the Bridge or perhaps a smaller Mall. Foote thanked Wood for her concern.

Foote asked for brief comments limited to the Petition, indicating other comments on the DDR cases would be heard during the Public Hearings. Derek Heap asked to submit another petition which Foote allowed to be presented. Heap said his daughter is concerned about the power lines and



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wetlands woods and has circulated a petition with drawings in the elementary and middle schools to keep the existing easement for the power lines. Four teachers and several students have signed, so far. Additionally, Heap said he has collected just about every signature from people on Rocks Road to save the wetland woods leave the existing easement for power lines. His children are taught, even in school, not to take down wetlands and woods. There is no reason to take down trees that took hundreds of years to grow. Also, East of Route 1 the wildlife is disappearing. There is a need to keep these for future generations.[Heap read the two petitions in their entirety. These petitions are attached to the Minutes.] Foote thanked Heap for the petitions.

IMPACT FEES - Draft Ordinance

Foote said The Board's Legal Council is reviewing the Town Planner's draft ordinance after being out of town and would have further comments within several days. Foote asked if Board Members had anything to add, alter or change so they could be incorporated. She commended the Town Planner for his draft noting it is derived from the Model Ordinance. Moore said to let the draft stand until counsel's comments and legalities are received. Morgan asked if the Board agrees to proceed with the public hearings on January 2 and January 16, 2007, as the Public Notice needs to be posted. Foote said to go forward with posting and publishing the Public Notice.

Motion:	Thibodeau	To go forward with the January 2, 2007 and January 16, 2007 Public Hearings at 6PM at Seabrook Town Hall to consider adopting an Impact Fee Ordinance, and to authorize posting the relevant Public Notices.
Second:	Lowry	Approved: Unanimous

PUBLIC HEARINGS: Chairman Foote opened the Public Hearings at 6:40PM.PM

Case #1997-32/Laura Lane - a one-year extension continued from December 13, 2005. Foote asked if there was representation for this case. There being none. Foote noted there was disagreement among the family as to whether this should be a public or private road and apparently nothing new has emerged. Foote asked if the Board wants to consider this a private road and allow the case to be closed. If in the future there is a desire for a public road, the Board of Selectmen can be asked to consider this. Moore said this is likely a dedicated public way that is privately maintained. If the case lapses, it would remain in that state unless the next step is taken, which Foote noted could result in the Town plowing and picking up the trash. Moore asked for the Town Planner's view. Morgan said it sounds like a motion to close the case.



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Motion:	Moore	To close Case 1997-32.
Second:	Lowry	Approved: Unanimous

Case #1997-42 Benoit/Border Winds and 1999-24/ Benoit/Randall Drive continued from December 13, 2005.

Foote noted there is a third case for an alternate retrofit which has been continued to January 16, 2007. Foote recommended continuing the three cases to that date and having them run concurrently in the future because they are all on the same subdivision.

Motion:	Foote	To continue Cases #1997-42 and 1999-24 to January 16, 2007 at 6PM at Seabrook Town Hall.
Second:	Moore	Approved: Unanimous Abstained: Evans

Cases # 2002-43 and 2002-44/ Karpenko/Carbone - a one-year extension for the [site plan] continued from December 13, 2005, with security being extended to December 13, 2006.

Wayne Morrill of Jones & Beach Engineer[s] said there were a few more items being addressed for the Public Works Manager's approval. Morrill asked for a one-month extension to confer with Carbone.

Motion:	Foote	To continue cases 2002-43 and 2002-44 to January 16, 2007 at 6PM at Seabrook Town Hall.
Second:	Himmer	Approved: Unanimous

Case #2002-48/Gould's Way -a one-year extension continued from December 13, 2005, with security continued to December 13, 2006.

Foote said this is four-lot subdivision at 130-132 Black Snake Road originally approved by the Planning Board on February 13, 2003. The security is \$42,635. All other conditions of the original Notice of Decision remain in place. Henry Boyd of Millennium Engineering said there is still work to be done in the Spring and recommended a continuance to January 16, 2007 so Boyd can inform the applicant who can request the additional time needed. Foote said the security appears to be a cash account which won't be released without Planning Board approval.



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Motion:	Evans	To continue Case #2002-48 January 16, 2007 at 6PM at Seabrook Town Hall
Second:	Lowry	Approved: Unanimous

Case #2006-31 Proposal by Developers Diversified Realty (DDR) Seabrook LLC for a 4-lot subdivision at 700 Lafayette Road, Tax Map 8, Lot 55, continued from November 21.

Case #2006-32 Proposal by Developers Diversified Realty (DDR) Seabrook LLC to construct a 441,290 square foot shopping center at 700 Lafayette Road, Tax Map 8, Lot 55, continued from November 21.

Lowry recused himself from these cases, and was seated elsewhere.
 Appearing for the Applicant, Malcolm J. McNeill

Khan asked if DDR would be willing to be heard at the end of the session and allow the few other scheduled cases to be heard first. Foote described the nature of the remaining cases (other than DDR) and estimated that would take about 30 minutes. McNeill said DDR would want adequate time to consider the DDR issues presumed appropriate for this hearing. If DDR can have that time and others can go home earlier that is fine. Foote moved cases #2006-31 & 32 to the end of the agenda. Lowry returned for the remaining agenda items.

NEW CASES

Case #06-53 - Proposal by Two Dows Lane, LLC for a condominium conversion at 21 Dow's Lane, Tax Map 12, Lot 14-20.

Wayne Morrill of Jones & Beach appearing for the applicant. Morgan asked what has been done since the Technical Review meeting. Morrill said the deck that encroached over the building setback is noted to be removed and reconstructed to meet the setbacks. The five water lines that go through the easement to the other lot and the water and sewer service into the convertible land have been added. The notation about trash and mailbox easement has been removed. Foote said that addresses the items brought up at Tech Review. Foote polled the Board for comments. There being none:

Motion:	Evans	To accept the Case #2006-53 proposal for a condominium conversion as administratively complete for deliberations.
Second:	Lowry	Approved: Unanimous

Foote asked for questions or comments from the Board or abutters. There being none,



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Motion:	Evans	To approve Case #06-53 - Proposal by 2 Dows Lane, LLC for a condominium conversion at 21 Dow's Lane, Tax Map 12, Lot 14-20, in so far as it complies with the condominium rules of the State of New Hampshire and the requirements of the Town of Seabrook.
Second:	Himmer	Approved: Unanimous

Case #06-52 - Proposal by Donald Felch for a 2-lot subdivision at 34 Farm Lane, Tax Map 13, Lot 14;

Attending: Donald Felch

Henry Boyd Jr of Millennium Engineering, appearing for the applicant, referenced the revised plans before the Board, and said a variance for frontage relief is noted in Note 3 of Sheet 1 as approved by the Zoning Board of Adjustment. A pending wetlands crossing application is referenced in Note 5. This is a simple two-lot subdivision of 3.41 acres with an existing house and garage occupied by the Felches. The proposal is to divide this lot into 1.6 and 1.8 acres; there is adequate uplands area. Some abutters have previously expressed concerns about the wetlands crossing and there are additional details on Sheet 2. Three eighteen-inch culverts are proposed. At Tech Review there was a concern about the placement of the culverts and not harming the wetlands area. The culverts are oversized and placed at the lowest area. and would not function if they were moved up slope because, when fully charged, water might move up onto abutter property. The water shut-offs and sewer services are shown and are adequate for the lots. Boyd said this conforms to zoning and subdivision regulations and requested approval, conditional on receiving the wetlands permit.

Motion:	Foote	To accept the Case #2006-52 proposal for a two-lot subdivision as administratively complete for deliberations.
Second:	Evans	Approved: Unanimous

Morgan asked for the storm designation for the culverts. Boyd said he would provide such information but it could change based on the State's review. Evans asked if a drainage study was done. Boyd said "yes". Evans said he is interested in the Town Engineer's comments on the drainage and his recommendation for any necessary security. Foote said this is a shared, private driveway. It is before the Planning Board as a subdivision and she remembers the ZBA wanted the calculations to be as if it were a future town road to ensure proper drainage. Evans said if improperly installed it may affect abutters. Boyd said the culverts need to be sited properly. Evans said due to the sensitive nature it is prudent for the Board to take some action to assure the installation is done



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correctly. Foote said DES is now requesting drainage studies and its own hydric engineer studies for crossing wetlands. Morgan asked if Evans is suggesting a security. Evans said "yes". The Secretary said the Town Engineer's comments are not yet in but he should review the revisions. Boyd suggested conditional approval which can't be recorded for thirty days and if the Town Planner has comments they can be reviewed. Moore asked if the culverts are thirty feet apart because this is a low swale area. Boyd said it is very low as the wetland permit material shows; it's very flat and there is no defined stream channel. Foote asked if this is part of the wetlands area that turns into Sheppard's Brook. Boyd said this goes right to the marsh. Boyd said DES is now reviewing. He would meet with the Town Engineer to meet any recommendations. Evans said he wants the Town Engineer's recommendations on security for the culvert work. There being no further comments from the Board, Foote asked for Abutter comments.

Tom Willwerth, 14 Linda Lane, said he objected to this plan before knowing about the culverts. After seeing the proposed drainage, he favors the plan as the area needs to be addressed. There was talk at the ZBA that an as-built would be done and that would be satisfactory. It appears there is adequate ground-cover and 18 - 12 inches of cover over the pipes is adequate. He does not recommend moving the culverts upstream. He disagrees about a little slice of land between the Willwerths and another abutter where there is a defined brook appearing to head into the culverts. If there is to be a lot made in the backlands there should be restrictions on the grading. Foote clarified that the placement of boxes on the plan shows the lots meet the zoning requirements for length and width; the proposed dwellings are in the uplands.

Evans recommended comments from the Town Engineer should be in place before approving, and recommended continuing to the next meeting. Boyd said he would have to bill the applicant for another meeting and the Chair would not sign the plan until the town Engineer has signed-off. Evans said if the Town Engineer had not signed-off the Board would not have approved. Foote said if part of the conditions of approval is the Town Planner's ok she cannot sign the plan until that occurs. A costing estimate for the culvert installation set as site security can also be made a condition, although how would it work on private property. Garand said this is still a driveway before the DES; the ZBA wanted indication it would meet the drainage requirements. The Planning Board's issue is a subdivision. The driveway would be taken care of with the DPW Manager and the Code Enforcement Officer. Boyd agreed some neighbors have problems. He will seek a letter from the Town Engineer and won't do the mylar until all approvals are in. Evans said his concern is to protect the interests of the Abutters. Foote said the Town would have a hard time coming onto private property to do anything. There being no further comments: from Abutters:



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Motion:	Khan	To approve Case #2006-52 - proposal by Donald Felch for a two-lot subdivision at 34 Farm Lane Map 13 Lot 14, pending written approval of the DES permit and the Town Engineer's review of security issues.
Second:	Moore	Approved: Unanimous

Case #06-54 - Proposal by Erik & Sandra Gove for a re-submittal of plan for 33 Gove Road, Tax Map 7, Lot 50

Francis Chase and Attorney Michael Chubrich appearing for the applicant Chase said the Goves want to amend the original plan to build a home at the rear of the lot. According to prior Planning Board approval, a road needs to be built before developing the land. Chase said this is just adding another home to the 3.5 existing acres, not building a subdivision. Morgan asked how the plan would be changed. Chase said he just wants a building permit for the house. Morgan said Note 6 says if the property is developed a 50-foot right-of-way needs to be granted to the Town. Chase said another home is not developing the property. Morgan said that would be development and asked if there is a willingness to grant the right-of-way. Foote clarified this isn't a request to build the road, only for the easement.

Chubrich said the owners are happy to grant the right-of-way but don't want to build the road as they don't intend to sell-off or develop any lots. They intend to make a family compound. The road would be a play area. Morgan said it sounds like everyone is on the same page, but a plan showing the right-of-way to the Town is missing. Chubrich said that can be done, and could be a condition of granting the permit. Morgan said the usual chronology is to come in to the Planning Board first with that plan and then secure the building permit. Foote noted the only encumbrance now is the twenty-foot wide sewer easement. A right-of-way easement granted to the Town and recorded should clear the way. Ch asked if this is a formal easement. Morgan said it would state the right-of-way in favor of the Town of Seabrook which would be held in the event it is needed in the future.

Evans asked for abutter comments. Cynthia Mahan, 27 Jean Drive, said her property abuts the back of the Gove property. If there is not a road where the right-of-way is, how would the tenants get to the proposed house. Also land is already dug-up on the property line with piles of dirt so she only sees construction from her back door and believes a house right behind her would affect her property value. Foote said that is an assessor matter and others were previously affected by the subdivision. Mahan said there would no longer be a cul-de-sac.

There being no further questions or comments from the Board or Abutters:



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Motion:	Evans	To continue Case #2006-54/Gove to January 2, 2007 at 6 PM at Seabrook Town Hall, for the presentation of a new plan showing the right-of way, and the easement documentation for the right-of way.
Second:	Thibodeau	Approved: Unanimous

The Chair declared a recess at 7:40PM.

The Chair resumed the Public Hearings at 7:55PM

Case #2006-31 - Proposal by Developers Diversified Realty (DDR) Seabrook LLC for a 4-lot subdivision at 700 Lafayette Road, Tax Map 8, Lot 55, continued from November 21.

Case #2006-32 - Proposal by Developers Diversified Realty (DDR) Seabrook LLC to construct a 441,290 square foot shopping center at 700 Lafayette Road, Tax Map 8, Lot 55, continued from November 21.

Lowry again recused himself from these cases, and was seated elsewhere.

Attending: James Grafmeyer, Senior Development Director, DDR; Stephen Lehmann, Project director, VHB].

Appearing for the Applicant, Malcolm J. McNeill Jr

Footo said this agenda would concentrate on site plan review. McNeill agreed on the focus saying prior minutes have reflected a number of outstanding site issues not related to traffic. The initial site plans were introduced in July and significant response letters addressing Town officials' comments were supplied in September and October, however, some items have been left directly for the Board. An extension of these proceedings to January 16, 2007 was agreed, and the Minutes reflected the Chair and Morgan would speak about site plan issues. Steve Pernaw has provided his latest traffic report to which DDR has not responded awaiting the response from the State [DOT] because there are some overlapping issues. DDR requests Pernaw be available on January 16, 2007, and it will respond to the State and Pernaw's reports in advance of that date.

As to the Petitions, DDR understand this to be a very open and transparent process and believes interested parties with legitimate interest about what happens at this site should have an opportunity to be heard. DDR believes this is best done as part of the Planning Board hearing where it is possible to know who the persons are, where they live and how they would be affected, so DDR can respond appropriately. He noted petitions are not commonly used in Planning Board cases but they do relate to traffic issues the Board needs to address. The wetlands reviews at the local and State level are ongoing and issues will be addressed. DDR asks only that whenever issues are raised about the project it have the opportunity to appropriately respond.



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McNeill said in DDR's September and October letters it has tried to presume what issues are still open. If there are no further issues raised after DDR's review and response to technical experts, a sign-off is presumed, and that there is no further issue unless raised by a Board member. Similarly, DDR is ready to address those issues the Town Planner has left open to the Board. DDR requests the Board's permission to articulate what it thinks are the outstanding issues, go through that process, and then ask the Board to identify any additional issues for DDR to address. DDR believes that the on-site issues are not far from being concluded and hopes to get through that process at this meeting. It recognizes and fully appreciates that this is a traffic case, although, other than Arleigh Green and Scott Mitchell, there has not been a significant abutter presence for a project of this size. DDR believes that by January 16, 2007 the traffic issues should be synthesized and ready for the Board's consideration.

Foote allowed McNeill to proceed, but said the Board would probably go through a listing. McNeill said after a number of months of hearings there is a real learning curve for a new Board Member. whose involvement and background is not known. Foote asked Thibodeau to introduce herself and her experience. Thibodeau said she had served twelve years on the Board of Selectmen, twelve years on this Planning Board, and at least seven years on then Zoning Board of Adjustment. Recently she completed two terms as a Library Trustee. Thus, she believes she has a pretty good knowledge of what goes on in Planning and Zoning Boards and the Board of Selectmen. Foote asked if Thibodeau had the minutes relating to DDR. Thibodeau said she has the minutes and has been watching on Channel 22. She would review the plans together with the Board, and would not recuse herself. McNeill said DDR would reserve judgment as to whether to request recusement.

McNeill said because these are engineering and not legal issues, Lehmann would go through DDR's open issues with the Board, and then seek to address other items that may be raised by the Board. Morgan asked if everyone agrees to address traffic on January 16, 2007 so Pernaw can be asked to attend. Garand asked what else is on that Agenda. Foote indicated there are many other items. Garand asked if there is another night which could be dedicated to DDR traffic issues. Morgan asked if DDR would rather have another night. McNeill said that would depend on the timing as there is already an extension. Foote recommended Tuesday, January 30 and noted the Board's first meeting in February has been cancelled in favor of the deliberative session when a Planning Board quorum is difficult to obtain. DDR would be at the top of that Agenda; other continued items, if any, would follow DDR. Grafmeyer said DDR might also want to be placed on the January 16 agenda for on-site issues depending on the outcome of this meeting. Pernaw is to be invited to attend on January 30. The Secretary noted the extension is through January 16. McNeill said DDR would extend through January 30.

Foote announced a Special Planning Board Meeting would be held on January 30, 2007 at 6PM at Seabrook Town Hall. Scott Mitchell asked if there was need for him to remain this as traffic is postponed. Foote said resolving outstanding issues in site plan review might be relevant and traffic issues pertaining to Provident Way as a Town road might be raised. Mitchell said he and Green have serious concerns to voice relating to Provident Way and want to return on January 16 and January 30. Morgan suggested remaining at this meeting because some site issues could affect their



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properties. McNeill said DDR's traffic person, Robin Bousa, is not in attendance because after speaking with Morgan he understood traffic would not be discussed at this meeting. Had he known that traffic might be discussed, Bousa would have been here. Morgan said in his mind the only outstanding issue with the subdivision is the cross-connects which affect Mitchell, and asked if DDR would prefer not to discuss that at this meeting. McNeill said he perceived traffic differently and discussing cross-connects is fine..

Lehmann said he would go through the categories of open items that require Planning Board input. Everything raised in the Town Engineer's review of November 9 can be accommodated, including the extra amounts requested. (Morgan asked for copies of Lehmann's letter. The Secretary said it is in the Board's packet). Lehmann said clarification is needed from the Board on ownership of the water and sewer lines in Provident Way, which DDR prefers be public as they are in the right-of-way. The Town Engineer also asks that a hydrant be considered. The Sewer Superintendent has asked for the sewer to be tied into Provident Way and this redesign will be made. To provide a loop system as requested by the Water Superintendent the on-site connection will be reused, looping the system through the site, and putting the main extension and tie-in out into Route 1. DDR believes the water line for the new hydrant should be public, not a private line in the public right-of-way. DDR would make these changes and also provide additional looping characteristics, as the Water Superintendent may see fit for future development to connect into the water line, and also for better access for future sewer connections. Morgan asked if the Sewer Superintendent has expressed an opinion on this. Lehmann said not on public or private ownership. The Water Superintendent has asked for the looping described., which Lehmann assumes is to provide a better infrastructure for the Town. There are private lines in various places, including one in an easement on Green's property and another on the CVS/Provident Bank property, but the Town would not have access to placing a hydrant.

Moore referenced the Water Superintendent's report commenting that it would be inappropriate to have private fire hydrants in a public right-of-way. Lehmann agreed, saying the lines for a hydrant should be public from the time it enters the right-of-way. Moore asked for the Fire Chief's view, and thinks looping the water lines is a good idea. Lehmann said DDR would also install additional valves etc. Foote said it is reasonable for DDR to do the installation and for the Town to be responsible for the public right-of-way maintenance thereafter. DDR would be responsible for the interior piping, which is the way it has worked in the past for subdivisions and large retail projects.

Wood asked how many hydrants are on the site plan. Foote said this quick question would be allowed but stated abutter questions would be heard later on. There are multiple hydrants and DDR has conferred with the Fire Chief who is satisfied with the hydrants in front and behind the building. Lehmann asked if both water and sewer lines on Provident Way would be public. Morgan said he wants to hear from the Sewer Superintendent on this. Grafmeyer asked about items the Sewer Superintendent has said he is still reviewing. The Secretary said those are related to the pumping details. Lehmann said DDR has the wastewater discharge/connection permit from the State. Typically the mains in the public right-of-way are maintained by a town; if there are to be differences, Lehmann needs to know for the documentation Moore said it is standard practice for



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the Town to maintain what is on public property. McNeill said the usual custom and policy is consistent with that articulated by Foote and Moore, and asked if this could be the Board's recommendation, absent disagreement by the department head(s). Evans asked if a motion is needed. Foote said this has always been Town policy.

Lehmann said the Town Planner has raised questions about cross-access points. DDR is committed to that process as referenced in several of its letter submissions. With reference to drawings, Lehmann said access from the out-parcels will be through the main property, and not along Route 1, with easement agreements allowing vehicular and pedestrian traffic. The outstanding issue is how to interact with abutters. Discussions have been initiated with Mitchell for Provident Bank and with the owners of McDonalds and the intent is to work out a mutually agreeable plan. DDR would be responsible for the infrastructure getting to the property line, and the abutter(s) would be responsible for the interaction on its property. McDonalds is agreeable in concept; the only issue is how to adjust for the bus-shelter. Morgan asked for an overall view and Evans asked to begin with McDonalds. With reference to the drawings, Lehmann described the conceptual traffic patterns believed to have the least impact on traffic, and also address open space issues. Morgan asked for the goal of that cross-access. McNeill said to be responsive to Morgan's request. Morgan said he had requested a careful examination of traffic circulation and cross-access easements, and asked for DDR's overall "best plan" for access ways. Lehmann said there are inherent issues as with the wetlands detention basin that prevent placing a central access point. DDR's proposal is in two pieces, and is based on not having to pay for a fee easement as part of this cross-access.

McNeill asked Lehmann to show where the access points would be. Morgan asked that reasons for the placement be given at the same time. Lehmann said some people might try a bad left turn out of McDonalds to go South once but would then use the provided alternative. This would also mean allowing access without having to go back on Route 1. Evans said this is the most compelling reason; the concern would be that an egress would be used for a right/in. Lehmann then described the desired parking lot traffic pattern indicating it might take slightly longer. Morgan asked what McDonalds thinks of this. Grafmeyer said he spoke with the owner of that McDonalds and with their Vice President of Operations, about the preliminary drawings. Conceptually they agree, and would attend a Planning Board meeting. Lehmann said circulation on the CVS property is more difficult as the wetlands limit where the tie-in can occur, and described alternatives using the site plan. Morgan asked if the use for out-parcel #3 is known. Grafmeyer said it hasn't been marketed yet. Lehmann said direction from the Board is needed so that commitments can be made.

McNeill said from a planning perspective the cross-connects are desirable within malls and to keep traffic off the main thoroughfare. But this is not an inherent necessity for DDR's traffic mitigation. DDR is not in a position to be held hostage by abutters., but is happy to provide connection points consistent with what has been discussed, and work with abutters on a reasonable basis. Morgan said ordinarily cross-connections are a "no-brainer". In this configuration the Board should think it through carefully, because good intentions could create a bigger problem. McNeill said DDR is proposing cross-connections because it presumes that to be Morgan's request. Morgan asked the Board to look hard at the plan and figure out what makes sense. Moore said his main



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concern is not to funnel traffic out onto the highway and back into one of these businesses. People will travel back and forth [to the stores]. With this plan they do not have to go out on Route 1, only onto Provident Way. The mitigation for the center turning lane on Provident Way is still a question. Lehmann said the plan connects everyone, including bank access, to a center point, even though it is not necessarily the most direct route. The intent is to discourage [shoppers] from going out on to Route 1. Morgan acknowledged mutual goals and asked Lehmann for the recommendation. Lehmann said he likes the McDonalds pattern because it puts people into the area where traffic is entering and distributes it as part of the normal operation. This pattern allows retaining the bus shelter/stop, gives good bus access, and by closing one small part of the parking lot area, it improves safety and avoids conflicts and back-ups. Morgan asked for options. Lehmann showed one that could be done if the Board preferred, but said the tenant's needs should be known before taking that step. Moore asked about the space between McDonalds and the egress points. Lehmann said it is sufficient to allow clean traffic movement.

Evans said the McDonalds cross-connect would get more traffic than the Bank and suggested planning for both, but only building the McDonalds' at this point. Mitchell, who owns the Bank and CVS property, respectfully disagreed saying DDR doesn't want to go through the logical middle of the site because the wetlands would be more than an acre which would make it an Army Corps matter. The current cross-connection works great now. The service road should go between Pizza Hut and CVS, and should have a skew so people don't use it as a short cut. Pernaw should look at this. Moore asked if Mitchell means this to go right through the detention pond. Mitchell said "yes" and the detention pond should be put elsewhere. Morgan asked if the detention pond is already on public land. Mitchell said "no". The owners have reciprocal easements, and Mitchell owns the majority. Morgan asked Mitchell why it is a good idea to go from Pizza Hut. Mitchell said it would get traffic away from the Route 1 entrance and is the most logical place. Morgan asked if Mitchell doesn't like the McDonalds proposal. Mitchell said he does not like it.

Lehmann said another easement could be considered. Dick Winn, of Seabrook Station, asked what would keep people from exiting the McDonalds driveway out on to Route 1. Lehmann said if the McDonalds' piece is not pursued as described, there is an aspect to be addressed after there is a formal discussion with McDonalds. An amiable, effective solution re the left turns can be found. If it involves going through the center, the question is who bears the costs. Morgan again asked why the center would be a better cross-connect. Mitchell said the pattern which Seabrook people already use for the existing stores and the bank works very well and would move the traffic along. He believes Pernaw would say going through the center is best. Cross-connection is good planning and would be a mistake not to do. Morgan asked about two cross connections to avoid the wetlands issue. Mitchell said that would be more confusing. Also, this wetlands was created for drainage. Evans asked Mitchell where it should be moved. Mitchell said perhaps after the bank on Provident Way which would give plenty of stacking area.

Charlie Mobardy of the Sunoco station said someone leaving his station can't make a left turn to go South on Route 1. The same is true of Rocks Road, and all the Route 1 businesses. All should be interconnected to a light at Rocks Road. Morgan asked about a cross-connect between out-parcel



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#1 and Sunoco. Lehmann said if the Board wants to pursue that direction, he would be happy to confer and suggest a cross-connect pattern. Mobardy said his goal is whatever works best for his customers. Morgan said it sounds like a good idea but cautioned Mobardy that his property might be viewed as the Northbound shopping center exit. Lehmann said he doesn't see obstacles if it is just for passenger vehicles. Foote asked if Mobardy and the Auto Parts store had had any cross-connect discussion. Mobardy said "no". Evans expressed concern that a lot of the cross-connect discussion gets into Route 1 issues. This is moving in the right direction; other topics should be addressed. Mitchell said the right thing is to talk with the traffic engineer. Lehmann asked if the Board is comfortable with DDR pursuing this design. Foote said as many cross-connects as possible to keep the traffic off of Route 1 and off Provident Way are desirable.

Morgan said he likes the orientation for the out-parcels, but what if a parcel is sold to a third party. Lehmann said this is commercial use and would have to come back to the Board for site plan review. Foote said once a building is up and running a Route 1 driveway access can be applied for from the State. Morgan asked if there is something DDR would be willing to do to prevent that from happening. Grafmeyer said there will be a recorded Operations Easement Agreement (OEA) that will address all the interior cross-connects that would include the out-parcels and condominiums. Access from the interior would be required. Morgan asked if DDR would be willing to insert something into the deed. McNeill said this would be considered. Moore asked if a sale would be a fee sale. Grafmeyer said either that or a ground lease. McNeill asked if this could be a condition of approval. Morgan said that could be done but would DDR object. Foote said the cross-connects involving the out-parcels should be a good connection but not so convenient that they avoid Provident Way when exiting. Lehmann said the design would attempt to inhibit "short-cutting" but it can't prevent someone from trying to do so when off-site traffic is stopped. McNeill said DDR will bring proposals on January 16.

Wood commented the cross-connect to McDonalds would make three lanes at the drive through. Lehmann said he understands this issue but would want first to further discuss additional site circulation details with McDonalds. Conceptual direction now has been given by the Planning Board. The issues are safety, circulation and appropriate use. Foote said the direction from the Board is to work on the best alternative for cross-connects.

Lehmann said the detention basins currently are surrounded with chain-link, which will remain to avoid a liability issue. If the Board directs the chain-link to be removed, that will be done. The Town Planner has raised safety issues if a curious child climbs a fence which is a liability to be assessed. The bigger liability would be that of a wondering toddler. Evans said a fence is a good idea where there is water. Moore said all can agree. Khan asked for the location of the ponds which Lehmann showed. Foote said a section of fencing with the Lowe's detention pond be elevated with thorny plantings to allow wildlife passage. Lehmann said a wildlife passage can be looked at.

Lehmann showed how Morgan's questions about pedestrian access had been addressed by sidewalks and painted crosswalks within the interior and in connection with the out-parcels. Morgan asked if pedestrians would have to walk through parking areas to reach the shopping center from the out-



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parcels. Lehmann indicated where sidewalks and cross-walks could be placed Morgan said crosswalks would give people the right-of-way. Lehmann said the issue is getting people to use the crosswalks. Lehmann asked what more the Board would like to see and asked Morgan to walk through the detail. Foote said additional striping on the road for crossing areas, but not necessarily more sidewalks. Evans suggested placing them around the loop and tying into the bus-stop. After further discussion, Lehmann indicated alternatives on the drawings that have the effect of connecting the loop. Evans said people shouldn't have to drive because of safety reasons. Thibodeau said some people would have to drive from one store to another because of the distance. Lehmann said in his experience that is what people do. Morgan asked if it is feasible to directly connect the Senior Housing site. Foote said that would be a lot of work to hike through the woods and swamp, across the brook. Morgan asked if outer sidewalks could be upgraded. Lehmann said for safety, pedestrians should not be behind the stores. If South Access Road were public there could be a sidewalk.

Lehmann said calculations of prior use were provided to the Water Superintendent. Foote said as the Planning Board has no jurisdiction over the amount of water usage this issue should go to the Board of Selectmen. Lehmann said a letter has been provided to the Board of Selectmen without a formal response. He is bringing this up because the Water Superintendent's letter to the Planning Board speaks to an acceptable amount of water usage, upon which DDR will rely unless it hears otherwise from the Board of Selectmen.

Lehmann said the following items are believed to be completed and asked for the Board's concurrence. A waiver re certain lighting changes has been requested. The Board's consultant has reviewed the overall lighting and DDR is in agreement with the requested changes, and would rely on that. Foote said the Board generally follows the consultant's advice. The Town Engineer's letter with regard to the landscape amount, refers to both "bond" and "escrow". Foote said the Board prefers to use "site security". McNeill said site security is fine. Morgan said the figure of \$80,000 is used for the landscaping. Lehmann said this is meant for the area adjacent to or in the vicinity of public improvements. Morgan asked for documentation concerning this landscaping amount. Moore asked if this included the soundwall. Lehmann said this is already accounted for. The Water Superintendent questioned the three inch water meter for the Target. DDR is willing to pay the additional amount and the Town could keep the meter. Foote said so long as the meter is compatible with the Town's meter reading apparatus and software she did not see this as a problem. Lehmann said that is understood.

Lehmann said that concludes his open item list, and said the memo of October 16 goes through a comprehensive list of what has been changed over time which he believes adequately addresses the items that have been raised to date. Owen Latham asked about the water requirement for this type of sewage. Foote said that would be a Board of Selectmen issue and could not be discussed at this meeting.

Morgan asked where the wetlands setback referenced in his September 25 comment #5 is placed. Lehmann said all of the pavement impacts are at least ten feet away and the rationales for compliance or adjustments are in the memos. Morgan asked about the soundbarrier . Foote said this



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is important especially in light of the utility easement. Where it is shown to be fully treed as is the surrounding property, it will be clear-cut or stumps. The sound wall would provide added protection for the neighbors. Evans said there should be protection for the abutters throughout. Lehmann said at the last meeting DDR had indicated the soundwall would be put in to address the issue in the utility easement area. Morgan asked for the location, which Lehmann showed on the plan. Lehmann said if an extended noise buffer is needed that would be considered. Morgan asked when that would be decided. Lehmann said he would take the Board's direction, but thinks it wouldn't be needed where there is seventy-five feet of natural buffer. Moore said it should be beyond the last residence because the tree buffer is being taken away. The location of residences was discussed. Lehmann said where there is one hundred fifty feet of woods that seems satisfactory to provide natural attenuation of sound. He asked if more than seventy-five feet of natural attenuation would ever be required. Evans said it wouldn't be good to create a funnel effect and trespassing.

Foote said at the request of an abutter, the Code Enforcement Officer and she did a site-walk in the Unitil area, walking from Rocks Road inward and along the dirt path that is the Dows Lane right-of-way as far as the Town of Seabrook Transfer Station. On the Eastern side of Dows Lane there are lots of trees marked with bright orange slashes very similar to those marked within the right-of-way. Some trees are targeted as "cut" and Foote asked if there any reason for the tree markings on the eastern side. Lehmann said he did not, and is confident of the stake locations placed by VHB surveyors. The many stakes identify both pole locations and the guide ties. VHB did the flagging and stakes but did not do the markings on trees. The surveyors did stake the easement to be cleared on the DDR property. Foote asked if the west side of Dows Lane is to be cleared. Lehmann referenced the plan to show the bounds. Heap said there is not a fifty-foot buffer and big trees are marked. It is a short distance and will be wide open in the Winter. Grafmeyer said he is unaware of any spraying by VHB or Unitil, but it is easy enough for someone from VHB to verify. McNeill said DDR will only do what the Board has given permission to do. Grafmeyer said DDR will follow-up.

Heap also asked whether the water that will no longer be taken up by the trees will further flood his yard, which is lower. Also, wetlands vary from cattails to trees, and aren't more wetlands being used. Foote said in the past month considerable communications among Unitil, the Code Enforcement Officer, Foote as Chair of the Conservation Commission, and the DES Wetlands Board concerning the wetlands impact. DES is the regulating authority. Unitil has placed the supports for the towers in uplands. The high-tension wires will travel over the wetlands that have been cleared of high trees and periodically cut back. There will be shrub scrub growth. DES says the type of vegetation on a wetland does not matter. The owner of the property has the right to clear-cut wetlands provided that they do it in the dry season or once the ground is frozen to avoid ruts and tracks that breed mosquitoes. So DES does not consider the clear-cutting a wetlands impact. Further, the State has a general permit from the Army Corp for impacts of less than an acre of wetlands. Above an acre requires DES and Army Corps review. For example, Lowe's impacted greater than one acre and went through the Army Corp review.



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Foote said the new aquatic resource mitigation fund ruling of August 18 applies only if the impact is less than an acre. It seems DES's ideas about what should be done in Seabrook are different than Seabrook Conservation Commission goals. Apparently the wetlands mitigation being exercised by DES is being directed to salt marsh restoration rather than Cains Brook. Heap asked if he can seek redress. Foote said the run-off after development cannot exceed the run-off pre development, if Heap can prove a run-off is directly related. Heap said if more water than normal comes down he will get water in his home. Foote said at this point this is speculation, and summarize Heap's concern that future activity will exacerbate the current situation. Heap said his home has been in the family for more than one hundred years. Lehmann said the plan to be submitted on January 16, 2007 will show a buffer of seventy-five feet and the Unitil easement in a lighter green. Evans asked what the soundwall will look like. Lehmann showed the diagram in the plan-set. Evans said this shows a twelve-foot height, metal posts and panels with sound deadening materials in between. Foote suggested a neutral color. Garand recommended a light color that doesn't attract heat. Foote commented she personally would prefer a lilac and arborvitae buffer, but the Rocks Road people want a soundwall.

Garand asked that the anchors on the utility poles also be shown. Lehmann said the anchors, no matter the form, will be within the easement. Moore asked if Unitil may have tagged high trees to keep the branches away from the wires. Foote said going onto private property is the issue. Lehmann said it may be that limbs have to be trimmed. Moore suggested someone else could be doing this. Lehmann said this will be clarified against the survey.

Evans asked if the parking spaces comply with regulations. Lehmann said they do. Morgan asked to be shown the proximity and height of the light placements in relation to Rocks Road. Lehmann said if there is a concern about spillover a cut-off fixture can be used and are or will be identified. The cut-sheets are available on pdf. Foote said a CD with good resolution is available. Foote asked if the name has been chosen. Grafmeyer asked for suggestions. Khan asked if there is one delivery entrance. Lehmann showed where the truck traffic enters the site and goes around the back of the building. Grafmeyer noted DDR is discussing a potential easement from Florida Power and Light for a secondary truck entrance off its private drive. Moore said that would be much more desirable. Evans noted the need for a turn-around. Lehmann said there is provision for this. Morgan asked what would become of the Provident Way drainage detention if that road is to be widened. Lehmann understands this to be infiltration along the roadway edge. Morgan said part of the detention may be on public land. Lehmann agreed, and said if that is the case the off-site design will include some mitigation measure to deal with the water. The swale could be pushed in or some subsurface detention could be explored; detail is not yet available.

Foote polled the Board for further questions. There being none, Foote asked if there were questions from attendees. Wood referenced her earlier remarks, and said citizens have a right to do a petition. She said with more cordiality perhaps they would be willing to speak at a meeting. McNeill said he's never had such an allegation and resented it. Glenn Chase, of Rocks Road, asked how many more stores are needed or planned for the Town. Will the mall benefit the Town or is it a downfall. He opposes this project as would his grandfathers and wants to pass the land on to his heirs. Foote said it is troubling that the Planning Board is controlled by State regulations and the



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zoning regulations passed by the Townspeople. If restrictions are not passed, the Planning Board cannot do anything to enforce. If the plan in front of the Board complies and addresses all of the regulations the Board cannot tell someone what they can and cannot do on their property. It can only address compliance, which can be frustrating.

Chase asked if this would benefit the Town in twenty years and would the income remain if the economy comes to a halt. The traffic can't be controlled now. Chase hopes the Board makes the right decision. Foote said that is the purpose of the deliberations.

Lowry asked about security such as a gate to keep trucks/vehicles from the back of the building after hours. Lehmann said this is a life/safety issue. DDR will comply with restricted hours of operation. If there are violations there would be enforcement. Foote said there could be a traffic bar to drop down to prevent trucks on the road all night from sitting out back with referees running. The Fire Chief is clear he will get through to any fire site. Lehmann asked not to presume a violation and address an issue if one occurs. Foote said Seabrook's experience is unless the area is well-signaged and preventative measures taken there will be complaints from neighbors. Lehmann said retail buildings don't close because they need to be stocked and cleaned overnight. Those service employees park in the rear and encountering a gate would be a safety nightmare. If conditions to the site plan are not complied with, the Town can take all appropriate action. Foote asked if that would be sufficient. Lowry asked if DDR will supply its own security. Grafmeyer said he wasn't sure yet as it can depend on what the anchors do; an answer will be provided. Lehmann said some employees will park in the front. DDR's intention is to comply with all conditions of site plan approval. Garand said signage rather than a gate would be appropriate. Lehmann said whatever signage is requested will be installed.

Wood asked if there is only one entrance out back and would police or fire vehicles have to go all the way around the back of the building in an incident. Lehmann said the Fire Chief said he would go on grass. Wood said that should not be an option in the plan. Lehmann said DDR would entertain mechanisms for secondary egress at the Planning Board's direction. Grafmeyer said they are addressing secondary access with FP&L. Wood said the parking lot in the back would be out of the way for employees and employers late at night, and would be a major safety issue. Foote said when WalMart was built back parking was demanded. Now there is a huge area with garbage and abandoned pallets. Employees park out front.

Foote asked for any further discussion. There being none, she noted the waiver is through January 16, 2007 and DDR would extend to January 30, 2007. She asked if DDR wants the option of also being scheduled on the January 16, 2007 Agenda. McNeill said this is desired with the hope that DDR has responded to the Board's issues with regard to the site. Lehmann will make the alterations and DDR would like to be done with site review on January 16. Morgan asked when the revised plans will be ready. Lehmann said in about one week as a summary sheet. Morgan said the changes should be specific. McNeill said DDR will provide traffic responses once there it hears from the State in preparation for the meeting on January 30, which Pernaw will hopefully attend. Foote continued Cases 2006-31 & 32 to January 16, 2007 at 6PM at Seabrook Town Hall. McNeill confirmed this and



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noted the need on that date to continue the cases to January 30. Foote noted another waiver would be needed before January 16.

There being no other business, Foote adjourned the public hearing and public meeting at 10:15PM.

Minutes Respectfully Submitted by
Barbara K. Kravitz, Secretary
Seabrook Planning Board

MYLARS RECORDED		
0-21-06	Declaration of Condominiums - .	
0-21-06	Declaration of Condominiums - .	