



## Town of Seabrook Planning Board Minutes Draft

September 20, 2005

**Members Present:** Sue Foote, Chair; Mark Preston, Vice Chair; Paul Garand, CEO; Tom Morgan, Planner; Mike Lowry, Paul Himmer, Patricia Welch, Secretary.  
**Zoning Board Members Present:** Dr. Peter Fowler, Chair; Robert Lebold, Teresa Rowe, Henry Therriault

**Chair Susan Foote** called the meeting to order at 6:05 PM

First item on agenda was minutes of September 6, 2005. Foote polled board for questions comments. There were none.

**Motion:** Himmer To accept minutes of September 6, 2005

**Second:** Lowry Unanimous; Preston abstains because not at meeting

Joint Meeting with Zoning Board of Adjustment regarding Katim Case 2005-27 and DiCarol Case 2005-30 opened and the meeting was turned over by Chair Foote to Dr. Peter Fowler, Chair of the ZBA to bring the Planning Board up on why we are having a joint meeting. I guess the two cases actually blend in together.

**Fowler:** it's actually the same piece of the property. Good evening everybody and thanks for having us here. What we've got is two cases, the first one being DiCarol, came to us as a Cease & Desist Order. In order to resolve the C&D, there are a number of things that have to be done at the site that require Planning Board approval. With the time frame that they have to make these changes, they probably won't be able to do it, and secondarily as soon as you start looking at the case there are some issues here that are going to end up being ZBA issues. The property is not in compliance right now. So rather than have you hear the case and kick it right back to us again, and further delay the C&D we want to meet with you tonight to see if together we can find some way to straighten this out. Secondarily case 2005-27 was brought as a variance request in front of us due to the C&D. I would like to bring the applicant forward and find out if they have made any progress towards dealing with the C&D, that's probably the best thing at this point, unless anyone has any questions.

**Foote:** is there an applicant or representative present?

**Henry Harrison Boyd, Jr.** representing both parties to try to come to a solution. So what we've done is we have essentially mapped out the existing site features with one change. And Dr. Fowler is correct, this is going to affect one of the petitions and that is the petition in for variances, one for a different use of what we had been told by the Town was an industrial use and the other because there are two primary buildings on one lot here. We are proposing to withdraw both of those variances if we can make this a workable situation, not only for the owner of the property who is selling but also for the buyer of the property and to bring it into compliance with the Town. We're showing a proposed building connection, but before I go any further and I would like a chance to come back up and explain what we have here, what's going on and the purpose of the plan, I'd like to have Dave



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Baxter come up and explain to you his involvement in this and his hope to remedy the situation and what he believes the applicants to the proposal have for rights.

**Dave Baxter, Dave Baxter Real Estate:** Paul has been through this but to just bring the Zoning Board up to speed and refresh the memory of the Planning Board; I'm going to pass around these minutes. These are the minutes from 1993

**Footnote:** I can state that none of the members that are on the Board right now were probably here in 93 so this is new to us.

**Baxter:** what we're trying to do is establish what we have and then get some direction as to where we're going. B&B Associates came forward on the first meeting of February 2<sup>nd</sup>, with a plan to have a retail store, I've highlighted the retail to make it a little easier; then on February 16<sup>th</sup>, the second page, they come back and they are adding a second retail use. So what eventually happened was that was approved. So we have two retail uses in the front building that were approved. The problem that we have is the back building, which was used back in 1993 as boat storage. Correct Paul? So that's what we have so the current owner, if he were to restore the back building to its former condition, we would have a site with two retail uses and would be in compliance. Everybody on board so far? So that's what we have. What we're trying to do is get the use of the back building and that's what Henry's doing is trying to connect it and see if we can make this thing work. I just wanted to establish where we're at and I'll turn it back over to Henry and let him finish up.

**Boyd:** another thing that is little bit unclear to everybody is that there are two uses currently in the front that have been there best I can understand since about 1993. There is also four uses in the back, which I also understand, and please jump in and correct me if I'm wrong, have been in there for a significant amount of time probably about 1993 as well. When Richards bought the place, those uses were there. So he has owned the property for about 5 years and been there for ten. I guess it was sold initially about 15 years ago. Those uses were already there. One of the variances that we have in front of the zoning board right now, we were advised that Bobby Provencher who I think everybody at the table knows, has a concrete business and has been there for about 13 or 15 years. We were instructed that he is an industrial use. I disagree with that. I believe he is a service use just like if he were a pool company. He doesn't manufacture anything on that site. He stores his trucks there; he stores his forms there. He manufactures product off site. Just as a pool company would do. Anybody that builds things offsite I believe he's a service business.

**Preston:** his portion of that building is going to be corrected because he's moving, correct?

**Boyd:** I don't know that he is moving. But he's probably trying to move in the fear that he won't be able to stay there if the ruling goes against him.

**Preston:** I'm under the belief and I think it's common knowledge around Town that he's waiting for his building to be built.

**Boyd:** and that may be. And if that's the case, then this goes away. Some of this was in loyalty to Bobby and I haven't talked to him. But nevertheless, we believe that was a permitted use in the Zone. We believe he's a service business. We're willing to pull that out



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and the only reason that we had it in there out of respect for the Building Department, Code Enforcement in saying it was that use, we said if you believe that, then do that. But we also realize that there is a problem for the Zoning Board in granting an industrial use in a commercial zone, just for one person. So we don't want to deal with that. We want to withdraw that variance request so there is no procedure here that we want to involve ourselves when asking for an industrial use in a commercial zone. I don't think it's a good idea anyhow. The second variance request that we'd like to withdraw is to have two primary buildings on what lot. We realize what a can of worms that could open up in Town because the Town has felt that way for so long, so we have proposed a connection to the buildings that you can see. In proposing the connection to the building, we've done it in such a way and in talking with Mr. Nicols (owner of Katim, new buyer) we talked about a little bit of the building design. Now we do understand that we do have to get a building permit for this and it has to be engineer and architect whatever stamped and Paul has to issue a building permit on this. But you'll notice that we are proposing an elevated dock there. Number one it makes unloading of trucks that would be delivering stuff easier and also it provides safety here. What he is proposing is to take the retail portion of his industrial gas business and have that here on this site. He sells propane, oxygen in small containers, and those types of things in the retail portion of his business. You are probably well aware he was in front of the Zoning Board on a different issue and that was to have his industrial gas business entirely within the industrial zone and it was frowned upon and I think the ZBA rightly told him that he should seek a place in the commercial zone to have the retail portion of his business and that was his thrust and his impetus to get a retail site. He's found one. We believe this is a great site. We have been told and we disagree that he needs full Planning Board site review for this. Understand, we are not adding any different uses here, it's still retail sales; it's not a change of use in the fact that it's going to residential or industrial. It's retail sales and service, currently what's there. We're not adding any impervious area, we are compliant with the parking, and we are compliant with the open space. All we simply are doing to this site is adding a connection, which does not add any impervious area, but you will notice that where the addition is proposed, I'm calling it a connection, and it's obvious why we need to connect. It's sitting on top of what is now concrete. So we are not adding anything. We are not changing the drainage patterns or flow patterns or anything. We're just trying to bring this place into compliance so that number one when Richards leaves there, there is going to be a new face on the building, it's going to be dressed up. He has also been substantially impacted by the state. If you can look at the front of the site you'll know that the state recently did a taking in there and took quite a wallop from him and they have really left it undressed in that area, it's just loose stone. He'd like to beautify that as he could possibly with some loam or grass, but he really is quite constrained as to what he could do. So to suggest that he should come to the Planning Board and meet today's standards based upon site plan review is quite harsh. I don't see how he could do it. He's compliant with his parking, he's compliant with his open space, he cannot comply with the 20-foot greenbelt, which is not a fault of his own, and he's going to beautify the site. We are here to suggest that if we withdraw our application from the Zoning Board, the Cease & Desist will go away, which will allow him to convey the property to Mr. Nichols, he gets it and



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in turn beautifies this which is right on Route 1, we would be allowed simply to get a building permit from the Building Inspector and connect the buildings.

**Preston:** originally when that was Driscoll Marine, that outback building was a dry storage and repair, totally separate from the sales room.

**Boyd:** I don't even think there was repair out there. I think there was just storage of boats.

**Garand:** just storage. It was actually a garage that was located in the front building that was for an audio installation of car stereo and they had a repair bay next to it and then they had the automobile sales in the front. There was parking allocated in the front for the sales section, and then they had parking for the boat sales area in the back for customers.

**Boyd:** one other thing that I'd just like to throw in is that those buildings in the back have Town utility connections, water sewer. It's also been taxed for those other people occupying those spaces as well.

**Garand:** regardless of the taxes that are accrued or charged to it, the assessing department only charges for what's on the property they don't look through what's legal, and what's not. It's not a point to bring up at this meeting.

**Boyd:** it is a point from my point, I have the floor sir and I believe I have given you the respect that is due to you please do the same to me. I am just pointing out that the town is aware what's in there and I'm not saying that it's okay and its grandfathered, I'm just saying that nothing has changed here for nearly fifteen years. That's the only point I try to make and it's not to be argumentative.

**Garand:** do you have personal history that it hasn't changed in fifteen years?

**Boyd:** that's what I have been told

**Garand:** exactly. So it's hearsay at that time. But at the same time no building permits were approved through the Town offices for the alterations.

**Boyd:** and I'm not arguing. I'm simply saying that there have been these occupants there for a long time, a decade if you will.

**Garand:** they have been there, but they have been using the back building without site plan approval.

**Boyd:** say that it's illicit, that's fine. What we're asking to do is bring this into compliance and beautify the place and withdraw the need for the two variances we seek because we agree ourselves that it would be ill advised for the Zoning Board to grant the variances.

**Foot:** I have a question. Even if you withdraw your request for variances, that doesn't make the Cease & Desist go away. The Cease & Desist for improper use without permit or site plan review still exists. I believe what we are going to attempt to resolve tonight is just what steps need to be taken to resolve this issue knowing that Richards Auto Sales more than likely is going to be sold, he would like to sell, knowing that there are other businesses on the site that never went through the site plan process, knowing that there is going to be a proposal to I would say change the use of the building, I mean I think it's using an extremely broad brush to say retail sale is retail sale therefore it doesn't require site review

**Boyd:** but if you look in your regulations it's non-specific



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**Foot:** it's non-specific, but if it was a restaurant changing to a restaurant it would be one thing, we would say yes, we don't need site review. But if it is changing from one type of business to another type of business we have set precedent with this Board in the past by having them come in for site review. For instance when what is now Cash for Cars place, when First & Ocean Bank came in, prior to that it was a fast food restaurant. First & Ocean came for a site review. The reason why Cash for Cars did not come in is because it's a similar type, money lending banking of sorts.

**Boyd:** understood

**Foot:** I wish they had come in because then we would have restricted the color of their building.

**Boyd:** I'm saying Madam Chairman that if you look at the zoning regulations for allowed uses in the zone, it's non-specific. It talks about retail and service businesses, now in some way I agree there is a difference in how you regulate it, but if you look at parking requirements for example

**Foot:** but different businesses require safety precautions

**Boyd:** I don't disagree. If I could just finish. If you look at that, we've actually done a parking calculation, so no matter what the retail use or service use was, he complies as the site exists now. The only thing that's non-compliant about that site is the buildings are not connected. And he has what Mr. Garand calls illicit uses in the back. But even those illicit uses qualify and are permitted in the zone; they're service businesses.

**Garand:** can I make one statement at this point, Henry? The rear building, the parking was never proven, the traffic was never proven for that site, the flow, the drainage was never proven for that site. If they had done that prior to the Zoning changes that are in place now, then that would be one thing, but they never came before the Board, so now they have to meet today's requirements. And the rear building was approved for storage or accessory use to boat sales and not approved for commercial use and even though you may say that Mr. Provencher is a service type business, usually a service type business is where they bring something to you either to have it repaired or you are building something to sell. They are actually producing product off site and then using it as storage.

**Boyd:** you couldn't build something on site because it would be manufacturing

**Garand:** storage is not allowed in the commercial zone and that's what they are doing.

That's not what you're trying to say, though. It's not a use allowed in that zone.

**Boyd:** what do we do? We're not asking to change the drainage patterns, we're not asking to increase it, we are compliant with the parking regulations for all of these uses if they did go through the channels of today would have the adequate parking

**Preston:** so if everything is up to good standard, what would be the problem in coming in front of the Board for a site plan review?

**Boyd:** because I can't comply with some of the regulations and it's there and has been for these numbers of years. How can I comply with the green space?

**Preston:** you could plead your hardship case for a waiver

**Boyd:** we could do that but is that something the Board wants to do, grant a waiver in this case? I don't know what the remedy is and I'm really not trying to be disrespectful here.



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This is an odd case. I'm the only one to get these cases that involve both of the Boards at the same time.

**Preston:** the way I look at it is that he knew what he was getting into with the property, and he's gotten away with it with these businesses in the back, Bob Provencher's been there forever storing his stuff, not that it's the worst place to store it, you don't see it, but if it's not compliant it's not compliant and

**Boyd:** that's one way to look at it, but before we turn the man into a pedophile, we have an attorney in the audience that actually had to write a zoning opinion on this and Mary, maybe you want to throw something at this.

**Attorney Mary Ganz:** I represented Richard when he had purchased the property from Mr. Benoit five years ago and came down and looked at the records and spoke to Bob Moore and Bob said everything was compliant. And I wrote that to the bank and everything has been fine until I'm not sure what got things stirred up now. But I means, Mr. Mirreault is an innocent party in this, he really bought it, been there five years previous and no one in the Town said there was any problem and I came and did the due diligence with the Town and everything was fine. This is something that has just come up now.

**Preston:** and how did it come up?

**Garand:** it came up because they are looking into selling the property and he came up and reviewed the site plan for what was there and what was being changed and what they could use the property for

**Foote:** is there a statute of limitations on?

**Garand:** I went to the Town Manager and he said basically that if the Town had taken no action and had no knowledge of what was going on as far as what the changes in the use of the property have been, at this time I had to issue a Cease & Desist and that's what I did. Regardless if the Town connected sewer to it, it was a contract that was brought up by I believe Jones & Beach did the drawings, the Town contractors or whomever they hired installed the sewer connections. They just connected every stub that was outside every building.

**Preston:** I don't think the Town and maybe I'm speaking out of place here, but I don't think the Town didn't know what was going on back there.

**Garand:** I can't answer what the Town knew in the past. I can only go through the records and what's downstairs and go forward today.

**Preston:** as far as personal knowledge Paul, of you living in this Town and me working here 25 years and Mike Lowry running a business up the road, we know what's going on.

**Garand:** I knew personally but I have to go by the paper downstairs and what's been approved by the planning board, you can't change that.

**Boyd:** and that's the only reason I mentioned that, Paul, honest to God, I didn't say that to get in an argument with you, that was my point. Not only has the building department known about that, I think everybody has, the assessor certainly knew about it and the tax collector.

**Garand:** the assessing department records can't be used for enforcement.



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**Preston:** the sewer department knew about it because when they put in sewer they ran it out there.

**Boyd:** the water department as well, everybody knew about it

**Foote:** I think it's agreed that virtually everyone in Town knew there were multiple businesses out there that the buildings were not being used for what they were originally approved for. I think what we're here tonight for is try to figure out an agreeable and legal way to resolve the situation so we can go forward. I understand that that adding this connection between the two buildings will bring the buildings into compliance; but I'm still am going to stand with the point that whatever is achieved here tonight does not excuse the future purported purchaser and owner from coming in to the Planning Board with a site plan for review if he plans on changing the use of the building. From my knowledge right now the front part of this building is being used as a display showroom for cars with car sales out front, there is also an automotive repair shop garage, I think there is a dent repair shop and then there appears to be some other type of, yes, Richard maybe you could fill us in with what's there.

**Richard Mirreault, owner of Dicarol LLC:** the dent repair shop was in the building out back; that got approval in October of 03; it had a legal permit signed by Paul and the only hitch was he would not be able to put a sign out front. The only businesses that are out front are myself, Richards Auto Wholesale and New Image Auto, which has been there before I was. That's it.

**Foote:** so there are no other businesses out back right now just the dent repair?

Mireault: dent repair is no longer there, he got petrified when this all happened and left.

**Foote:** so there are no businesses functioning at all out back?

Mireault: the only business out back now is Provencher and Imperial Custom Auto Paint

**Boyd:** one of the things, this whole thing is sordid. He had an approved use in a detached building, which would have made it a primary use, and a second building on the same lot. And that was approved somehow. So

**Garand:** that's one of the flaws of our business license procedures that we are actually addressing at this point. The business license was issued to 609; it didn't specify which building, where it was going. The owner of the property signed it. Once it's an allowed use on that property, that's why it's approved, because we don't do physical inspection, we just basically call the owner of the land and verify that they are renting to that person so it is an allowed use.

**Boyd:** we don't really mind going to the planning board, if I can speak for Steve, if it's kind of an administrative thing and we assume that we are going to have to be granted a lot of waivers. We simply can't comply with some of these things. Let me say this without being disrespectful, but it seems almost ridiculous, the same traffic's there, it's going to be the same type of thing, I know it's a different use but with the regulations being non-specific and the fact that all we have to base our calculations on are retail service. What can we do, short of going through every point, step-by-step in the site plan because we can't comply with those? He doesn't mind applying, he really doesn't. One of the problems is we can't apply to your board either with the Cease & Desist in place. So we're

**Garand:** I believe the Cease & Desist stated they had to apply to this Board.



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**Boyd:** but we've been put in a cage and we just need to see our way out of it.

**Morgan:** Henry, question. Could you give us a little list of the items besides the greenbelt that you anticipate you can't comply with?

**Boyd:** in the past, when we've had sites before the planning Board where there were no changes for example, no adding of impervious area, we've asked for waivers on drainage. We don't hope to put drainage controls out here. Number one the site is extremely flat. Where the water is running now is ill affecting or flooding anybody. We would hope to leave that the way it is for example. The greenbelt is the other thing. Both buildings appear to encroach on the zoning setback and I know the Planning Board has no jurisdiction over that and it's probably something from a title standpoint that they should get dimensional relief equitable waiver on, we meet with the parking compliance, safety concerns, those things. We would hope not to have to do a roadway study or traffic study where we're not bringing more traffic to the site; the intersection has been upgraded. Those are the main things, I guess, the greenbelt and the drainage. There's essentially no lighting.

**Foote:** so you're not proposing any sort of improvements as far as stormwater drainage or treatment, or runoff from the buildings or anything?

**Boyd:** we don't see that it's causing a problem out there as it is now. And honestly, as flat as that site is, I'm not sure how I could get the drainage to behave any differently than it does now.

**Morgan:** where does it go now?

**Boyd:** sheets off the site in all directions; this is a flat area but I don't know what the water table is and I don't know how we would get it to work; it's a possibility, but this man has existed this way and this isn't the right way this has been done, but this is a man that was caught like a rabbit in the headlights. He's operated there for five years; then he bought it; he's owned it for a decade now and all of a sudden he has to comply with regulations. What regulations, maybe we should go back in time and see what was in place then, I don't know.

**Foote:** I think what we are looking at is two separate things. We're looking at the situation that Richard is in as far as owner of a parcel that is in non-compliance and how can we get it into compliance and the second issue is the individual who wishes to purchase this site and possibly do a change of use and I don't see how we can exempt that from a site plan review.

**Boyd:** full compliance without waivers being granted

**Foote:** no, I'm not saying that. You would have to write the waivers, the request and justification for the waivers, the Board would have to deliberate on it and decide if they would approve the waiver or not. But that comes under a complete application and abutter notices, the whole process of site plan review. I think it's the same thing we would do for any other parcel that is potentially changing their use.

**Preston:** what's the status of the, I see that Mary Ganz responded, has a court date been set?

**Garand:** no it's been postponed further because it was before the Boards.

**Foote:** what we're looking at is part A & Part B, we can't mix Part A and Part B.

**Boyd:** and it's interesting that you phrase it the way that you did, because the Cease & Desist has triggered Part A and you're saying if I may try to paraphrase what you were



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talking about is that Richard may not necessarily have to go the extent that Mr. Nichols would have in changing the use, is that fair to say? What is Richard supposed to do? To get the C & D to go away?

**Foot:** from my limited view, I would, and I don't sit on the ZBA, I don't handle everything that Code Enforcement has to handle, but I would say connecting the two buildings would go a long way toward making the rest of it go away.

**Morgan:** I agree with that.

**Boyd:** but he's been ordered to site plan review.

**Preston:** that's what the Town's asking

**Garand:** has to go to site plan review to expand the use on property and that's where I was directed to take it because the site plan was approved for two uses and it's expanded now to five or six or seven uses so it needs to have Planning Board approval before it can go.

**Boyd:** it was approved for three uses I just understood, the two in the front and the one in the back

**Garand:** the one in the back was an accessory use for the boat sales.

**Boyd:** no it was the dent master, it was the auto body

**Garand:** that was just a business license that was approved for that location; it is not a site plan approval

**Boyd:** what's the difference? He was given permit to operate there.

**Garand:** he was given a business license, that's all that was for that property because that use is allowed in that zone

**Mireault:** with a stipulation that he couldn't put a sign out front?

**Garand:** because you're only allowed one sign on the property anyway which was already there and which covered over the amount that was allowed.

**Boyd:** if everybody could agree, could Richard be issued a building permit to connect the buildings and would that satisfy

**Garand:** I couldn't issue a building permit because he would be impacting the area without the drainage studies and without the parking calcs and everything because he's expanded

**Boyd:** the parking calcs are there and it doesn't affect the drainage because it's impervious area, the drainage isn't affected

**Garand:** I couldn't issue a building application for site plan expansion without Planning Board approval.

**Boyd:** see A & B are the same

**Garand:** I sent him to the Planning Board. He was supposed to come in here with an application within 30 days and that was issued on June 28<sup>th</sup>. Instead of coming to the Planning Board, they went to the Board of Adjustment seeking relief through the Zoning Board. SO it's here anyway.

**Boyd:** he's looking at about \$7500 for us to do all of the things, if he has to do drainage and everything and I don't think Richard has that kind of money, honest to God.

**Ganz:** it's really a matter of practicality. It's definitely going to this gentleman here who is going to be having some?????. It seems like a lot of waste of his money, time and energy, the Board's time and energy. You kind of have to take a practical approach since the Town kind of let this situation be there for so long.



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**Lowry:** because you'd be looking at two-site plan review.

**Garand:** what does the Planning Board want to see? Do they want to see a drainage study, do you want to see grease hoods because of the use on the property, when you have automotive repair and painting and so forth you're going to have pollutants that need to be addressed, you need to address the paving, on the original site plan, there was a limited paving area, they're showing paving to the rear portion to the rear building; you need to address all these changes they are proposing or that have been done on site without approval.

**Foote:** Tom, any suggestions?

**Morgan:** I had another question for Henry. Henry your withdrawal of the variances seems kind of tentative, what would it take to solidify that?

**Boyd:** I don't think it was tentative at all. We were literally caught between a rock and a hard place. And now I know Paul said the Cease & Desist was offered back in May or June

**Garand:** June 28<sup>th</sup> it was issued

**Boyd:** I think he literally didn't know what to do and we weren't involved until probably a couple of months ago, but this is an odd thing

**Garand:** but prior to the Cease & Desist being issue, I sent him a letter asking what his intentions were and he said he was going to sell the property. I had spoken with Dave Baxter numerous times. Through all the time period, they knew they had to go back and get site plan approval because they had expanded past what was approved.

**Boyd:** but we're still here tonight and we still don't know what the procedure is.

**Garand:** but you're talking now, mid to late September when it was issued in June, but the original letter if I'm not mistaken was on April 7<sup>th</sup>.

**Boyd:** spank me if you need to, I'll go out in the hall and take the punishment, but let's get this guy, this is nuts, he's going to beautify this place; it's a commercial use, he'll bring it into compliance as much as he can and I agree with Sue more than I agree with anything that I've heard so far, it is an A & B situation. But you can't expect this man to do A when B is the one who is going to own this and change it anyhow. If there is a change of use and we have to cross that bridge, let us cross that second bridge.

**Garand:** maybe he could work with the owner or the person who's going to purchase it and go through the site plan approval knowing what the other person wants

**Boyd:** I don't know what your schedule is, I honestly don't.

**Mireault:** well, to be honest with you, it's just taking so long that it's getting to be quite a hardship on me as far as funds are concerned.

**Foote:** can I ask why when the Cease & Desist letter, which we have a copy of dated June 28<sup>th</sup>, item number C states that you have to go to the Seabrook Planning Board, why did you choose to go to the Zoning Variance Board instead of the Planning Board?

**Baxter:** could I answer that? I think if you flip the page to the second page, it's somewhat confusing in the instructions, it says you also have the right to appeal to the ZBA, etc, etc.

**Foote:** you have a right to appeal the Cease & Desist to the ZBA

**Garand:** which at that point you have also the right to go to Superior Court. There are different methods of appeal but I don't believe the Zoning Board can override a site plan and that was something that was told you right in the beginning.



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**Baxter:** we're not the first individuals that have been faced with a Cease & Desist and have read that and went to the ZBA; we figured that was one of our rights and since the process is typically before you go to the Planning Board you go to the Zoning Board and get all your requirements met. So that's what we were trying to do and then there was no meeting in July which wasn't our fault, and the next meeting was August, we went in August and the conclusion was to have a joint meeting so here we are.

**Boyd:** and that was my point to Dr Fowler and the Zoning Board, I can't go to the Planning Board, they have no jurisdiction to approve a plan that needs variances and they'd kick us to the Zoning Board immediately. That's one of the reasons.

**Garand:** but it still would have resolved the Cease & Desist because once a complete application is put into the Board, the C&D would have been off and that was the only thing that was listed in here was just go to the Planning Board with a complete application for review.

**Boyd:** we can't go to the Board with a complete application if we haven't been granted a variance.

**Garand:** you have an application that is in place and is complete and they accept it as complete, and they send you back to the Zoning Board for a waiver or variance, at that point it puts it all on standstill anyway.

**Baxter:** so if we submit an application in the joint names, then you'd essentially put off the C&D and we could go through the Planning Board process.

**Foot:** and then it could be the general Planning Board process in that you show existing conditions and the proposed new conditions and the Planning Board doesn't bring into consideration whether a business is legal or not legal because it's our presumption that if we approve the plans, it's going to be a different business anyhow, so anything that is non-compliant is going away anyhow.

**Boyd:** can I get back to my point then? The proposed plan that we would be bringing to you and the existing plan that we would be bringing to you is right there. The only thing that would change is the name and possibly what those companies do. And that's why I was trying to say what do you want us to do?

**Morgan:** Henry, I think you've taken a huge step in the right direction with that code inspection. I've heard a lot of discussion tonight about what's legal and what's not legal but really the Planning Board's got to treat this just like any other site plan review.

**Lebold:** but it can be combined with the present owners and the new potential owners?

**Morgan:** as far as the greenbelt goes, we'll just have to see how the Planning Board handles that when it comes before us, but the board doesn't have an option of waiving that because it's a zoning requirement so it's conceivable this matter could fall back in your lap again.

**Fowler:** other than the greenbelt issue, Henry, are you going to need an equitable waiver for the building?

**Boyd:** both buildings, I think, Peter. But it will be one building if we connect it but each of them is over.

**Fowler:** but actually close to being compliant so it's not a big variance

**Boyd:** and it's been there and the statute says if it wasn't caught in time and it's the result of an honest mistake



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**Fowler:** so those would be probably the only two issues that you'd need variances on?

**Boyd:** at this point I would say yes, but I want to look at the code again certainly. We more than comply with the parking sizes and the number, we have more than we need on there actually.

**Fowler:** I think just to chime in from our perspective, there is obviously storage going on back there, there is actually a burned up old truck back there and that's a hard thing to bite saying that's a service business.

**Baxter:** I think we should get off Provencher. We're withdrawing that request if it's the combination of the Board's belief that that's not it, that's fine with us. They buyer was just trying to be a good neighbor and trying to keep the tenant on but if you don't want him there, he'll get his walking papers.

**Boyd:** the other thing to look at it that way, I agree. I don't think it looks good out there and one of the good things about this is all of that junk and there is more than one truck that isn't running out there, it's going to all come our of there. He'll be able to mow that. Just that in itself is environmentally friendly to be able to maintain that. Those vehicles are probably leaking fluids right now. There is just going to be a big plus to allow even if he didn't do anything for site plan review and was allowed to build this and connect that, it's going to be an improvement for the Town. So I guess we'll have to fall on your mercy when we get there at the site plan review. But I just want to let you know that I'm going to be asking for some waivers and I think that this is a unique situation. And hopefully you'll see fit to be merciful on that.

**Foote:** I can't speak for the whole Board, but when it does come for site plan review, I hope you give it your extreme best effort to bring it into compliance as best as possible. For instance, if there is going to be automotive repair anywhere on site, we would like to see preventative measures taken to prevent what has happened to the site to date.

**Boyd:** I understand.

**Therriault:** I don't know if this is required, but if so I would like to make a motion that we accept the withdrawal of those two zoning requests; do I need two separate motions or do I need a motion at all to accept the withdrawal of it?

**Fowler:** Henry, is that your intent to withdraw the variances.

**Baxter:** I think we would just like a final conclusion, I think we're almost there. If I understand you correctly Sue what you're saying is if we connect the two buildings and we go through the Planning Board process, whatever happens in that process, we can eventually work things out to your satisfaction, the buyer, Steve Nichols, his use is a use by right as long as he can comply with whatever you guys make him comply with in the planning Board process.

**Foote:** and once we get through the process and hopefully approve it, then it will be bring the site into legal compliance.

**Boyd:** and I guess I have one more question for the Zoning Board. We were in front of you with the whole package of what this gentleman plans to do and if I can say how I felt about it, I think your board was generally favorable to it as long as the retail component was there. Do you see a problem in saying that this is the retail component of his business and he is legally allowed on this site?



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**Fowler:** well, you haven't presented us anything to actually tell us what he's actually going to do in that building. I assume it's the same thing we originally talked about in the hearing of the retail of small bottles of gas and welding rods, that kind of thing. I don't have any problem with that. I think that is a retail use. That is what we didn't want to allow in the industrial.

**Boyd:** understood. I know there was some confusion and I have to say that I think a lot of people were thinking why we were asking for the industrial use so that he could have that other stuff here and that wasn't what it was at all, it really truly was for Bobby Provencher to stay out there but if he's leaving anyway, that's good for Bobby. So I guess, based upon that we don't have any problem withdrawing those two variance requests.

**Lebold:** I guess I'll second that.

**Fowler:** it's all yours to make the motion.

**Therriault:** do we need two or?

**Fowler:** actually it was done under a single heading so I think we can put them together.

**Motion:** Therriault **To accept the request for withdrawal of the application for variance of case number 2005-27 asking for a second existing building with other than accessory use and also to allow an industrial use in the commercial zone.**

**Second:** Lebold **Unanimous**

**Fowler:** we don't want to put 2005-30 in there it was actually the Cease & Desist order so we'll leave that one out of it. Just a point of clarification Paul, we can't act on an application for the greenbelt or the equitable waiver until such time as the Planning Board accepts the application?

**Garand:** that's what I would believe also because there is nothing on paper form to look at now.

**Fowler:** so we'll wait to hear from you guys on that.

**Boyd:** sue, just to let you know, we're very busy so if this application doesn't come in for the site plan for a number of weeks, it's not anybody's fault but ours. My field crew is about three weeks behind at this point. It's going to take us a little while to generate what you want so I don't know how that affects the Cease & Desist because we can't respond immediately.

**Garand:** the only thing I can say is just have the owner of the property put it in writing the time frame that you are looking towards as far as submission for a complete application and just go from there.

**Boyd:** honestly it's probably about six weeks so you're hearing it from my mouth.

**Baxter:** September 23<sup>rd</sup> is for the October meeting. We aren't going to file until the first or second week of October.

**Foote:** so you'll be looking at the first or second meeting in November.

**Boyd:** something like that

**Garand:** the best you can do is put it in writing and go from there

**Foote:** this concludes the joint meeting of the ZBA and the PB.



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**Angel:** clarification of what you just did—the present and future owner of the piece of property, I don't know the address, are going to come forward with a joint application for site plan review in order to bring the property into compliance and lift the Cease & Desist order? Did I get it right?

**Morgan:** almost. The C&D order is between the applicant and the Code Enforcement Officer. The Planning Board advised them a site plan would be appropriate.

**Angel:** to bring the properties into compliance, which will at some point in time will lift the C&D order?

**Garand:** exactly.

**Angel:** at that point in time the property can be conveyed from one order to the next?

**Baxter:** the property can be conveyed anytime

**Foote:** I think you're trying to wrap too many variables depending on each other; they can convey the property anytime they want to regardless whatever might be on it or not on it.

**Angel:** a C&D, you can still convey the property? It's not like a lien?

**Garand:** not that I'm aware of. It's just that the uses of the property right now are not approved by the Planning Board.

**Foote:** and by the proposed future owner submitting a site plan for review

**Angel:** but they are going to do it together aren't they, the new and current owner

**Foote:** that's generally the way it happens, the property owner comes forward with a site plan for whoever is buying and whatever they want to do.

**Angel:** I just want to make sure I got it right.

**Foote:** and then when it gets approved, the person that wants to do it, buys the property. A lot of property sales are contingent on approved Planning Board plans.

**Angel:** could you give me the address?

**Baxter:** 609 Lafayette

**Foote:** if the intent is to sell the property and it is going to come for site plan review because of change of use, then once this board reviews the new site plan for change of use, all the other stuff's a moot point

**Angel:** everything else goes away

**Foote:** right. But should he decide not to sell and keep it, then he has to bring the site into compliance himself. Onto request for security reduction on Stan's Way, which hopefully is in our correspondence case. A request for security reduction of \$8250 to be returned and keep \$2,025 for maintenance. Fred Welch has requested the department heads review. Warner says that everything is satisfactory, twice. John Starkey points out that there are six outstanding issues, we still need as-built drawings; minor issue at Station 2+30, construction forms and debris and spilled concrete that needs picking up, the area needs to be loamed, debris appears to be left behind after construction of headwall and three another minor issue involves backing up of the final course of pavement along both the right and left side in spots; loam and seed; extent of this is minor as those spots needing it

**Garand:** what is the date of that letter Sue?

**Foote:** September 6<sup>th</sup>

**Preston:** does he get a copy of that?

**Foote:** yes he probably does.



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**Preston:** I think just based on Starkey's thing some one ought to check with the developer first to see if he got notified of that.

**Foote:** Not only that this is one of those ones that's a little bit more confusing because there is really no cash involved; he put up one of the deeds on the lot.

**Garand:** I believe he brought cash in Sue. I believe there is just a little over \$20000. They were negotiating but they never came to an agreement of what would be secure and I believe several months ago they actually put money in and I issued all the building permits that I've been holding on all the lots. There is a letter from Stan Saracy that items to be completed are as-builts set of plans that Millennium Engineering will be working on. So I guess Stan must know about John Starkey's letter.

**Preston:** but we don't know that the other stuff has been corrected

**Garand:** I saw them down there raking the loam out and so forth, that why's I asked about the date. That was about a week and a half ago.

**Foote:** I noticed there has been work on site recently and they even repaired a patch out on South Main Street and put more

**Garand:** it's actually one of the nicer looking small developments

**Foote:** but we need the as-built drawings.

**Garand:** what is your time frame on the as-builts?

**Boyd:** I think the crew is scheduled next week and it'll probably take about a week to draw them after that.

**Garand:** do you want to continue that until the next meeting Sue

**Foote:** we can either continue or do a conditional as soon as we get the as-builts we can release the funds.

**Garand:** that sounds fine too

**Foote:** that way it's not pending on every two weeks us meeting.

**Preston:** that sounds good

**Motion:** Preston      **To release all funds but \$2,025 for maintenance security on receipt of the as-built plans on plan 98-10 and 04-27 Stan's Way.**

**Second:** Lowry      **Unanimous**

Next we go on to the continuation of the public hearings. We will open the public hearing for Case Hi Bill (former PB member Bill Cox arrives)

**Morgan:** we're short a member why don't you take a seat?

**Cox:** Don't you have any handouts any more?

**Foote:** they've snagged them all. Grab the one on that seat right there.

**Morgan:** one of them telethon photos set?

**Foote:** Case #05-40 Proposal by Seacoast Marine to demolish an existing building and construct a 7,500 square foot building, a 3,430 square foot building and add 12 parking spaces at 177 Lafayette Road for boat storage and service, Tax Map 9 Lot 150.



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**Garand:** do you have the elevations in the file proposed for the new structures that were given to my office and then given to the Planning Board office?

**Foote:** we have cut sheets for lamps and we have architectural drawings for the building. Make sure they get back to our package please.

Henry Harrison Boyd, Jr. with Millennium Engineering. First I'd like to ask Bill to turn his shirt down a little bit before we get started here. There were a number of issues with this site the first time, just to recap, the first sheet is the existing building very close to the line, it's coming down, we're making improvements to the driveway. The last time we were here, I think the most significant item to talk about was the drainage. Don Peacock, who is with us to night. I think you met Don last time and he spoke about the nature of his business and how he's going to conduct it, he had asked the Board whether he would be allowed to eliminate some of the pavement. I think Sue was most pleased with that. Based upon the nature and number of clients he will be having come to the site, I think the Board made a prudent decision to allow him to eliminate essentially this whole rectangle which was paved and allow it to be crushed stone parking instead of pavement. Normally that would have allowed us to shrink the size of the detention basin, however, I know how sensitive we all are to Cains Pond, and we've chosen to leave it the same size it was. The other reason was I don't think Don would have been happy to have us charge him another \$1500 to make the pond smaller. But having said that, the pond is larger than it needs to be. The other thing that doesn't absolutely need to be here, but I thought was a great idea that Sue had that I suggested was to put stone buffer diffuser strips at the edges of the boat storage areas which also will be grass, so we really are very friendly environmentally on the site. We're well back from the pond. We have proposed infiltration trenches so even the roof top drainage is going to be infiltrated on this site. The only other thing I think we had some issues with, number one, Paul had correctly pointed out that for the third time the lighting engineer had sent back a lighting grid that did not comply. Finally I think we have one that throws zero at the property line, so we're there now. I believe that's sheet four.

**Morgan:** we have brought out lighting consultant with us this evening

**Boyd:** he's a little light-headed we know

**Garand:** this lens right here might be considered a SAG lens; so they really shouldn't look at putting that lighting fixture up. This right here with the glass exposed and the lens could be considered a SAG lens.

**Boyd:** let me see if Bill will look at that even though that throws zero

**Foote:** I'd say you have succeeded with the numbers

**Boyd:** yes, he's got zero at the property lines

**Garand:** I'd hate to have Bill look across the pond and see that light fixture so it's a good thing he's here

**Boyd:** we know he'll be looking across the pond. The other issue that I took heart to is Mike Fowler had mentioned sight distance heading southbound at the curb there so I measured 350 feet to the first obstruction and that's the fragmites almost growing up through the pavement there

**Foote:** and hopefully next year when we dredge the pond those will be gone



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**Boyd:** those should be cut and in my opinion that would increase it by at least another 50 feet. Now I didn't get out into the roadway, which also would have increased it because of the driver's distance. I was on the curb line standing on the curb and at that point it was 350. If you get out into the southbound travel lane, my estimation is it increases to about 375 feet. So in looking at that site and seeing Syvinski where he is, dump trucks coming out and everything I think we are very compliant. I know we meet the standards and there's not a heck of a lot we can do.

**Foote:** people tend to slam on the brakes when they see a beat up old dump truck pulling out in front of them

**Boyd:** they see a boat with a trailer on it, I think that's going to have the same effect. But my point is, we're further up the road than Mike envisioned, but having him say that, I did measure it. The other thing that impacts safe sight distance is elevation and you'll notice that we are significantly higher up there than the pond is, so as you're coming up hill the tendency of the traffic study numbers dictate that the site distance would actually shorten because the car would have to apply more force because it naturally would be having the tendency to slow down as soon as they take their foot off the gas.

**Garand:** also that's where the traffic bottlenecks so they slow down there anyway.

**Boyd:** it's not really a big issue, but it was important to me because Mike did mention it. I think the only remaining thing was the water meter. For some reason Warner had it over here but Peter Evans correctly pointed out it should be here prior to any of the services coming in.

**Foote:** just where is the water meter?

**Boyd:** right here

**Foote:** but how does that? If this is the water service, and this is the water service, how does that meter what's going through this line here?

**Boyd:** because it's metering everything that's coming through the line; all of the water has to pass through here, that was the point. All of the water has to pass by that point.

**Foote:** so there is going to be a loop up and a loop back?

**Boyd:** somehow. It's going to have to be installed at the direction of the water department but Warner had us originally install it over here. And then he didn't have an objection when we put it back over here. It really has to be installed by an authorized inspector anyhow.

**Garand:** you may have new directions for water installation in a couple of weeks.

**Foote:** was it Warner that suggested the water meter be placed on the plans? Because this is the first plan that I remember seeing that specifies where the water meter is going to go.

**Boyd:** his comment was that it should be shown on the plan and I think it should be shown on the plan so that these people know they are paying for a water meter.

**Foote:** it's just that I'm concerned that if this is not drawn properly, we could have a water meter being installed at the end of a dead line that goes nowhere and all the other water flows past it because that's what it looks like to me right now.

**Boyd:** Well, Warner had it over here and I was ridiculed and Warner was that night and we made to move it here by the planning board.



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**Foote:** you were told to put it in line before any water gets used. I don't see how bringing the line in here and putting the water meter here this is going to flow by and go, this is going to flow by and go by and this is going to be dead.

**Boyd:** but the water can't get to here unless it passes by here. Your point is well taken. Maybe in the condition we say that the water has to be installed in the field per or something. I don't know. We don't design these things so we really don't know.

**Foote:** Paul, do you see what I'm questioning?

**Garand:** depicting the water services going to the buildings is correct but at the same time the placement of the water meter should be determined at the time of permitting.

**Boyd:** so they have to pull an application for the water before they can even get a building permit.

**Garand:** the issue of backflow needs to be addressed; the issue of fire needs to be addressed so it still is to be determined. It's just showing one line's a six inch but the other line is un-sized; really they should bring the six inch up in to be one building

**Boyd:** he didn't care that this one was sprinkled but he definitely sprinkled

**Garand:** that's why they are showing the water meter in the building to the south and at that point the water service should cross underground from one building back up

**Boyd:** if you want me to go and see him a third time, I will.

**Foote:** I think it's sufficient for our review. We know things get changed in the field.

**Preston:** that on the regulations that he has to put that on?

**Foote:** please not that if it gets changed in the field that it's reflected in the as-builts

**Boyd:** one of the good things the water department does take pretty accurate ties and they are getting better all the time when they have these services put in the ties are delivered immediately to RR Ave to the water department so we can afford when we're building the building, we can afford the planning board a copy of that

**Foote:** it also should reflect on the as-builts

**Boyd:** I didn't know you were requiring as-built plans for all sites now

**Foote:** if it changes from the way the plan is drawn

**Boyd:** that's more important that Warner give me the correct information in the first place

**Foote:** because what we're finding is that now the departments are coming to look at these plans that we have in our files, to find where utilities are

**Boyd:** I don't mind

**Foote:** and if we don't get the as-builts and corrections, they're putting a backhoe through the middle of a high power cable

**Boyd:** number one, if I submit you as-built drawings, that I have not personally viewed in the field, I'm not going to stamp it. I'll stamp it saying the ties shown are from the sewer department or the water department and I'll stamp it that way, but I don't think Don would mind if they're changing the water line we'll go out and take some ties to it.

**Garand:** I don't know if the Town should be responsible for taking ties on private property anyway

**Boyd:** but they do, because they inspect the installation



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**Garand:** they visually inspect the installation but at the same time the property owner should be responsible for their ties and they are responsible for the sewer and water lines on their property once they're turned on anyway

**Boyd:** that's fine; we just need to know when the contractor and the Town are going to be there. But as a matter of practice, the sewer department and the water department take the ties because they want to know where it is themselves when they need to go find it.

**Foote:** Paul, do you have any other questions or comments?

**Garand:** on the cut sheet on the lights I just noticed it had SAG glass and I thought the fixture should be looked at a little closer.

**Boyd:** what do you think, Bill? (addressing Bill Cox in audience)

**Cox:** I think it's the angle that they took the photograph at. If you look right here, the little engineering diagram of it inside it is pretty close to 90 degrees. I think these will be all right. You might want to circle the 50M since that is the one they call out for in the plans.

I don't know what the other ones look like so I can't comment on those.

**Garand:** the other one is completely compliant.

**Foote:** Paul Himmer any other questions comments concerns?

**Himmer:** no

**Foote:** Mike?

**Lowry:** did you move that gate back, Henry?

**Boyd:** yes we did. That was the other thing, that's right. I did meet with the Police Chief. I talked about security on the site. The only thing he was really interested in was moving the gate back a little bit further. The gate was his main concern. It is fenced on all sides except for the pond side. There is existing fence all along each of the sides except for here and if you come in this way, boy, you better have some hip boots.

**Foote:** and climbing gear. So where is the gate moved back to now?

**Boyd:** it doesn't show on that sheet, it may show on the next one.

**Foote:** any thing else, Mike?

**Lowry:** no looks good

**Foote:** Mark?

**Preston:** I will make a comment on the gate. That means the property is not going to get checked at all at night. So if kids just climb over it, they'll be in there raising hell.

**Boyd:** we'll electrify it! No just kidding.

**Foote:** Tom?

**Morgan:** looks fine

**Foote:** any abutters, any one in the audience who has questions, comments, or concerns?

**Cox:** I wasn't an abutter for the purpose of notices, although I question that logic. But I am an abutter for the purpose of providing testimony. William Cox, 37 Lakeshore Drive. I'm curious about whether it's going to look like Savinski's.

**Foote:** No.

**Cox:** so I see a tree line that's marked, and it looks like as close as it gets is about 10 feet?

**Boyd:** a minimum of 10 feet

**Cox:** so the edge of the bank is non-disturbed



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**Boyd:** you'll notice there is no-cut on that bank even though there is some fill to tie in the grade, but there's no cutting.

**Cox:** so is that going to be flagged?

**Boyd:** the proposed tree line. I'm sure he's going to have us lay out the fence and those things before we start.

**Cox:** that would be my biggest concern and I would hope that would be a condition of your approval that if the applicant's engineer is going to flag the tree line so people aren't going to be over zealous. Because once you take it, it's hard putting it back.

**Foote:** no excessive cutting

**Cox:** one other question. Did DOT require a right of easement for this?

**Boyd:** we've got an application in to them and they haven't granted permit yet, but we have plans in to them.

**Cox:** I would hope that the Planning Board would be repeatedly on record with DOT that whenever an application comes in for Lafayette Road we get that easement because it's only a matter of time before we have to widen that road and that's going to be the issue.

**Boyd:** if you look at Sheet 1, I've actually drawn a proposed easement on there. We were pro-active in that way and they were sent that showing that we plan on granting them that easement.

**Cox:** okay.

**Boyd:** so I just have to do the mylar and record it showing the front.

**Cox:** so if you showed them this, this will be coming back in your permit.

**Boyd:** it will come back in the permit; they'll not it absolutely.

**Cox:** thank you very much

**Foote:** we missed you

**Cox:** I don't think Paul missed me.

**Foote:** anyone else in the audience who has questions, comments, or concerns? Then I guess we're ready to take action.

**Preston:** is it already an accepted plan?

**Garand:** conditional until you get the driveway approval from the state?

**Foote:** I don't see anything from Mike for security?

**Morgan:** why would you want a bond?

**Foote:** because our regulations say we'll have a minimum security of \$5000 for site plans.

**Garand:** you'd have to bond the sidewalk that's proposed on it, the water service, the granite curbing, and the planting.

**Morgan:** that should be entered into the record so there is a connection between the bond And what's being secured

**Foote:** wait a minute, yes there is. Mike has estimated \$17,250 for detention pond, silt fence, granite curbing, cut/cap of existing water/sewer, construction entrance, and as-built plans.

**Morgan:** sounds good

**Motion:** Preston      To approve case #05-40 with the conditions of receiving the curb cut from the State of NH DOT, a security amount of \$17,250 for detention pond, silt fencing, granite curbing.



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cut/cap existing water/sewer, construction entrance and as-built plan and applicant's engineer to layout wetlands and delineate tree line prior to any activity on site and water to be installed per direction of Water Superintendent.

**Second:** Lowry Unanimous

**Footnote:** as soon as we have the DOT permit, we'll sign the plan.

Five minute break taken.

**Footnote:** reopen public hearing at 7:40 PM. Next case is #04-50 Proposal by Paulo & Lisa Cabral and Cheryl Wills for a 5-lot subdivision at 94 Blacksnake Road, Tax Map 3, Lot 4-1.

**Boyd:** I'm here to ask for a continuance. We would have probably houses up there before now if it hadn't been for

**Preston:** October 4<sup>th</sup> sound good?

**Footnote:** continue to October 4<sup>th</sup> at 6:00 PM. You'll be ready?

**Morgan:** do you have the variances and things you need?

**Boyd:** you really don't want to go through this do you?

**Morgan:** I don't want the history. What are you missing at the present time?

**Boyd:** we have to have a rehearing because the Zoning Board erred in their decision to rescind the variance.

**Footnote:** that's continued to October 4<sup>th</sup>. Next case 05-42 Proposal by Marianne Gibbons for a 4-lot subdivision on Dow's Lane, Tax Map 12, Lot 14.

**Preston:** you didn't want to continue this Wayne?

Wayne Morrill, Jones & Beach Engineers: No I want to go over this with the Board because I've met with Mr. Boyd and I want to go over with the Board exactly what we came to a determination on for the boundary and what's going on out there so we can move forward with the plan and I think I need to show the Board this so that you all understand what went on and why I didn't present it the last time. What we had proposed was a four-lot frontage subdivision on Dow's Lane for Marianne Gibbon's parcel, which is right here (pointing to plan). I continued last meeting to sit down with Henry Boyd and we went through the whole scenario of where's Dow's Lane, who has frontage and all those kinds of things. What we did is we went through all the documentation and what we found was the actual right-of-way for Dow's Lane is our front property line. But, the State came through and did a layout of Dow's Lane and Dow's Lane, you can actually see the pavement that's down like this. The Eaton's own this piece of property and also this shaded triangle on the opposite side of Dow's Lane. So they actually have a strip of land that doesn't allow us to go across their land to tie into the road where we were showing the crossing the last time. So what we're proposing to do is to move our common drive up the road to get away from not having to, because we don't have any access on Dow's Lane in here. So what we're doing is moving the common drive up to where we have actual, we can touch the road and then using the existing culvert that crosses the wetland and do our crossing at the existing crossing going across the wetlands not touching any of this. All the trees will remain. Wetland will



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remain. All the trees and everything that's currently out on Dow's Lane would stay where it is at this point and there wouldn't be any impact down on that area.

**Foote:** so, is this going to be a road or a common driveway?

**Morrill:** common drive with no Town implications at all. But we're going to do all this

**Foote:** but those lots don't have frontage on a road.

**Morrill:** they have frontage on Dow's Lane but the road is not in the right-of-way.

**Morgan:** we're advertised as a four-lot subdivision. I don't see enough frontage for four lots.

**Morrill:** I have 409 feet of frontage.

**Foote:** but if the Eaton's own the west side of Dow's Lane, they abut the Eaton's property not

**Morrill:** they own a strip of land on the west side of the pavement, not on the west side of Dow's Lane. But Dow's Lane is underground.

**Morgan:** I understand that. But you just drew only three frontages

**Morrill:** (drawing on plan), one two three four.

**Morgan:** and how many dwellings?

**Morrill:** these are lots over one acre meeting in that zone the detached duplex criteria

**Morgan:** I wish you wouldn't use that term detached duplex

**Morrill:** detached dwelling; two single two-family units

**Foote:** question to Tom and prompted by several topics that have been on plan-link lately, are you aware of any State regulations that limit how many houses can share a driveway? When does a driveway become a road?

**Morgan:** I am not because that is not very common in this part of the State but it's a hot issue up north. It's something that will have to be researched.

**Foote:** I did a search on the State RSA's and I couldn't find any regulations that address any amount of residences on roads.

**Boyd:** Whoever's spreading that rumor and I think I know who it was, he wasn't even considering places that allow apartment buildings, that you could have a hundred dwellings sharing the same driveway. It's non-existent.

**Morrill:** so basically I'm here tonight if any of the abutters want to ask any questions about this, but we've sort of worked it out and I know Henry has done work for a lot of the abutters around here and one of the things that this abutter had problems with was we were going to be cutting a road right next to them. That's gone away now. I'll leave the trees. We understand that these people, Dean's do own a strip of land that's right in the middle there. We are going to have to give some land back to the Town because actually Dow's Lane comes onto our property in this section. So we are going to have to give some right-of-way back up in this area to make sure that Dow's Lane can still function on Town land

**Foote:** you were at the tech review when we reviewed the initial as far as potential widening of Dow's Lane and the whole request for box culvert instead of dual

**Morrill:** right now we don't have a box culvert going here or anything

**Foote:** no, but you'll be having a culvert going in up there

**Morrill:** we'll replace the twenty-four inch culvert that's out there right now



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**Foote:** there's already a culvert out there? There's already a road out there?

**Morrill:** the reason why we picked this spot is there is an existing woods road that runs right along there and we're keeping our driveway right on that woods road and it crosses on a twenty-four inch culvert

**Morgan:** Wayne, it looks like about half the land is wet. Have you calculated how much dry land you're working with?

**Morrill:** I don't have it on here Tom. I just wanted to go over the premise with the Board tonight.

**Preston:** so there are eight units going down there?

**Morrill:** yes. Not neck right on top of each other, butterfly

**Preston:** those are all those nice square lots that we like?

**Morrill:** they meet your frontage requirement and the law. This little strip of land, we're going to give land here back so that this road can be widened but we really don't have any

**Preston:** on paper the Town owns it anyway, so you're not giving anything, right?

**Morrill:** the triangle?

**Preston:** no, where you're bringing that loop?

**Foote:** no Dow's Lane actually goes onto their property

**Preston:** oh, it goes onto your property, okay

**Foote:** thank Albanese for relocating Dow's Lane

**Morgan:** what makes me a little bit nervous about this plan is that it kind of reminds me of Elephant Rock just the whole layout

**Morrill:** our layout is very similar to Bradku, the Katie Lane subdivision that we did off Adams Ave, which is a common drive servicing three frontage house lots

**Boyd:** that's a beautiful development down there and I have to say you should go and see Elephant Rock lately since there is a quality home still left to go in there and buy it and if that person had got those lots in the first place, none of this would have been mentioned. You have a situation where the Town doesn't have to maintain 600 or 800 feet of road, a private person does.

**Foote:** I prefer to see it a private driveway for that reason only. The Town isn't going to have to maintain that road. So long as it's legal that you can have multiple dwellings sharing a common driveway, I'd much rather see that than see fifty-foot wide right-of-way with twenty-four foot of asphalt.

**Boyd:** or multiple driveways. If I can Wayne, I've just got to say something about Dow's Lane. The only reason I'm here and I don't generally do this work to contest a competitor's plan or anything, but we did meet and it appears Charlie (Bagley) was amenable to having them change the plans, but it's my belief that historically that this line ran all the way from the beginning where Railroad Ave is all the way down to the end where the Bowden's are, Charlotte's Circle. In fact there are bounds down there, stone bounds and they all line up. I believe that Dow's Lane ran across this ownership on these pieces and the only question is about whether it was a private way. There was a document that in 1954 the Town accepted Dow's Lane as a public way but it never specified as far as I could see whether it was the whole road or a portion of it. What the local lore says is it was the beginning portion of it. So I still believe that the Eaton's not only own this piece that's between here but that they



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also own all the way to the Gibbons piece. The question is whether this is still private in here or not. That point kind of goes away. This section in here what shifted the road out of the way was a WPA project that actually dug a fire hole in there and shifted the alignment for Dow's Lane. If you read that deed it says westerly by a drift-way. The drift-way is now called Dow's Lane. It used to be called the road to the camp meeting house. There used to be a religious retreat all the way down here where the dump is. Fact, before the power plant was there, Dow's Lane went all the way to the dump. So what's happening is we've come to an agreement that the Eaton's own to at least here, the rights of Dow's Lane where the State has laid it out which is the most logical place, whether they have ownership or not there is no way that Dow's Lane will ever get over here in the future because of the wetland impact. But this is what we've come to an agreement on, that at least they have this strip and I think Wayne did a great job and represented your company and you had a lot of concern and sensitivity to the abutters and it's a better situation having to cross here when there is already impact out here. That was the whole concern anyway that it was private property. Dow's Lane is not where Dow's Lane is supposed to be and that's what happened.

**Morgan:** what was the State doing down there?

**Boyd:** the State was doing some alignment work for Railroad Ave when they were removing the bridge. There used to be a railroad bridge here. And they took this out so it's in that grade crossing right now but there's no railroad track there. So they changed here and put some drainage in and created a baseline, which Jones & Beach has recreated and laid on here. I think the State's right in this case. Usually they don't do very good survey work but it was very logical because of the plan that was done for the Gibbons and some of the other work that we had done through here. Right now, just to give you a little bit more, Dow's Lane has been mapped through here by Dick Millette for Joe Perkins and since that's been subdivided out. But where this is, is not where it historically was either. That's the history.

**Morrill:** Dow's Lane just moves all the time. So what I'd like to do, doing that, I'd like to be continued for at least until the next meeting, if not the one after that.

**Preston:** the 18<sup>th</sup>?

**Morrill:** is that the 18<sup>th</sup> of this month?

**Preston:** no October. What's today's date?

**Morrill:** I don't know they all run together

**Preston:** it was two days ago, you missed it

**Morrill:** I need a couple days to put all the plans together and we have to revise the dredge & fill permit because now we have to get it away from being out front. I don't know when the ConCom is meeting; I'd like to come in

**Foote:** Monday

**Morrill:** Monday coming up? Is there a way I can get on the ConCom's agenda?

**Foote:** you have a choice of the 26<sup>th</sup> or the 10<sup>th</sup>

**Morrill:** I'll try and be here for the 26<sup>th</sup>. So we need to revise Dredge & Fill permit and revise all the plans that come in front of you.

**Preston:** October 18<sup>th</sup>.

**Morrill:** October 18<sup>th</sup> is fine. Thank you.



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**Foote:** Case 05-42 is continued to October 18<sup>th</sup> at 6:00 PM. Before we finish with this. Eaton's do you have any questions, comments, concerns that you'd like to say?

**Boyd:** yes she does. She wants to make a statement for the record.

We just want to make sure that's where the driveway is going.

**Morrill:** the driveway that we are proposing is before the actual clearing, right where the trees are now

**Boyd:** she knows where it is she just wants to make sure that there is no plan to put it back

**Morrill:** no, we'll stake this out as a common driveway and there will be easements for that common driveway so it's going to have to stay there.

**Foote:** and now that this whole board has seen where he intends to put the driveway, we'll make sure it is there.

**Boyd:** the only other person that had asked me to help with this was Rob Christensen and he has no objections to the subdivision at all other than he'd like a little screening around his two corners, the southerly line and the east to westerly line.

**Foote:** okay. Very good. On to the next case, **04-59** Proposal by Border Winds LLC to erect a 2,400 square foot contractor's job shop at 7 London Lane, Tax Map 5, Lot 8-10.

**Preston:** is this a continuance?

**Morrill:** this is a continuance.

**Foote:** you want to go until October?

**Morrill:** I want to go until the second meeting of November if possible.

**Foote:** continue until November 15<sup>th</sup>.

**Morrill:** perfect. Thank you.

**Foote:** Next item. **04-60** Proposal by CBAN LLC to erect a 30,600 square foot industrial building at 8 London Lane, Tax Map 5, Lot 8-50.

**Morrill:** last time we were in front of the Board, the Board asked for a couple comments to be looked at. The first one was the water line size was asked by Paul to check and make sure that six inch is adequate. We've kept it at six inch but we've added a note to C2 that the contractor is to verify the size of the proposed water connection with the developer prior to the start of construction, just in case for some reason when they do their architectural there's no fire rating for a twelve-inch or something like that. So we're just making sure they are aware of it. Second thing was that Handicapped spots be added to sheet. We have two in the back and two out in the front trying to service all the doors we have depicted on the architecturals. Next thing was the wetland markers to be added and Note 21 has been added to the plan about the permanent wetland markers to be installed at the edge of the delineated wetlands prior to the start of construction. Also that note that you like to see on the plans now, note 20 got added that parking is limited to the number of spaces on this plan any changes in the units requiring more than the allotted spaces requires site plan review from the Town of Seabrook Planning Board. Next thing that the Board asked for last time was snow storage and we've depicted the snow storage all along the sides of the building where we don't have any landscaping going in and a small spot near the entrance. And dumpster, we had a note on the plan about the dumpster hours,



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**Foot:** you might want to warn them if they should dump their snow storage to the point where it starts pushing down the trees in the no-cut zone, we're going to get really nasty to them.

**Morrill:** okay. Hopefully there won't be too much there. We figured it was a push more towards north-south. And the dumpster, what we've done is that is note number 18. Dumpster is not to be picked up between 7PM and 7 AM. We've added a footnote there for dumpsters located within the proposed buildings. They don't plan on having an outside dumpster. People are responsible for their own trash so if someone requires a roll-off dumpster, they'll have to have it inside and have a company come and pick it up. We understand that we're going to be responsible for Mike's sidewalk allotment for this site. And I believe that's \$18,770. Other than that if the Board has any questions...

**Garand:** on Sheet C4, it still shows the sewer line going out through the no-cut zone.

**Morrill:** sewer line? That is the existing stub.

**Garand:** through the no-cut?

**Morrill:** if you look at Sheet C2

**Garand:** no on Sheet C4 it shows it here and on C2 it shows it here.

**Morrill:** C4 that shouldn't have been on the plan at all. All utilities are planned to come through London Lane on this site. The sewer line shown on Sheet C4 was a misprint. That plan is only used for lighting and landscaping only.

**Garand:** I just wanted to bring it up.

**Morrill:** good catch.

**Garand:** also on Sheet D1, I thought we had changed that to vertical curbing on this site? It still shows sloped.

**Morrill:** I think this plan set was put together way back before we even started. So the sloped granite depicted on the plans will be changed to vertical granite curb. And also, back when Mike and everybody did their initial reviews, Mike had a security estimate for this site at \$39,500.

**Morgan:** what about inflation?

**Morrill:** gone down.

**Garand:** did your tenants say anything about the building elevations and changing it to make it a better-looking building?

**Morrill:** they said they are going to look into a split face four foot shelf at the bottom to try and spruce it up a little bit. Any plans modified would have to go in front of the Building Inspector. But I told them your displeasure about the actual blahness of the building so they said they are going to take a look at it, but who knows.

**Garand:** it makes for a better project overall.

**Morrill:** I agree. But sometimes every penny counts.

**Preston:** I'd like to say London Lane looks a lot better lately.

**Lowry:** the building is going to be yellow right?

**Morrill:** I'm just glad I heard Sue say that was a similar use and didn't have to come in front of the Board. And I know they just went one night and pulled a business license and moved over there. We did an as-built of the site, but we never modified anything on the site. It just changed from one financial institution to another.



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**Preston:** from a beautiful looking building to a

**Garand:** we actually considered the traffic flow would go down on that site

**Morrill:** did you see what happened today?

**Garand:** when they almost kicked the paving company out of Town? I heard about that.

**Morrill:** was Ben down there or were you?

**Preston:** did you deal with the State engineer? Get along with him?

**Morrill:** at times.

**Foote:** one thing I want to bring up from talking with other people about the sidewalks on Ledge Road. I know this Board last time talked about sidewalks and starting an escrow account for sidewalks.

**Garand:** the Town Manager has shown displeasure in that

**Foote:** not just the Town Manager. Several Department Heads have also voiced displeasure on the wisdom in placing sidewalks in an industrial zone. Primarily because they say if you build them they will come. It will encourage people.

**Garand:** they are already doing it anyway.

**Foote:** but there is a wide breakdown lane shoulder that they can safely walk in. But it does not imply that it is a place to park your car at one of these places on a weekend and take your dog for your mile and a half walk that you got to walk. When you build sidewalks, it implies a different level of safety for the street. That the Town is liable for. If someone decides to walk, that's why there are no sidewalks on 286 as hard as the Town tried to campaign for sidewalks and a bike lane.

**Garand:** there is a bike line now presently isn't there?

**Foote:** no, there is no bike lane. There is a wide shoulder.

**Garand:** but Route 1A had a bike lane correct?

**Foote:** not that I'm aware of. It isn't designated bike lane—it's a shoulder line.

**Garand:** it's a project and they are adding sidewalks along Route 1A also in certain sections at the intersections and crosswalks. I think as the Town changes and grows, and I believe that Ledge Road where it abuts a residential and where you have a commercial mix down, you're always going to have pedestrian traffic regardless. And at the same time the Town has been installing sidewalks town-wide, are we going to stop because one section of one road is industrial but it continues into residential? I don't think you'll ever see that. The vertical granite stops a car from hopping up off the roadway into pedestrians. I think it gives a little bit of safety and at the same time yet does add maintenance but does afford a little bit of safety into that area that you're saying they can walk in. It makes it so a car hits the granite curbing before they hit the pedestrian. They are out there walking. I see them right now.

**Preston:** that road's narrow enough anyway.

**Garand:** on each side of that road it drops down into a drainage ditch and it's always wet. You're not going to have them walking off the side of the road. I see kids on bikes down there; they're riding all around everywhere. It's already happening.

**Foote:** Paul, sidewalks doesn't mean that kids are going to, believe me, I know. There are sidewalks on my street and what it does is pushes the kid out into the road.

**Garand:** no they like the sidewalks, the up and down.



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**Foote:** not down where I live.

**Garand:** As far as the sidewalks, I think that limiting the small amount that you're talking about, the Town will eventually install them anyway because voters will push for it because there is a lot of pedestrian traffic everywhere in Town now. The Town has changed.

**Morgan:** we're not really stuck making a final call tonight because we're talking about collecting funds and if the Planning Board a year or two from now thinks it's a bad idea, you just give their money back.

**Foote:** to continue on with this, we can only hold these escrow funds for a maximum of six years. That means that at the very latest, four years out, we are going to have to sponsor a warrant article to build the sidewalks because it's going to have to go through Town review, Town appropriation and that gives us only one chance. If the Town denies it, we refund the funds because we won't have time to build them before we have to give the money back.

**Garand:** What the Town Manager stated to me, if you're going to make them put the sidewalks on that are required by site plan review anyway, have them install them. If they need to have a wetland application approved by the Town, have them go through the procedure, the Town will sign it.

**Lowry:** so we're going to have all these dead-end sidewalks?

**Garand:** you're going to end up having them anyway. Put the onus on the property owner don't put it on the Town. Have them put the sidewalk in and just make it a condition of approval that they have to put the application in and have it signed, the money has to be in as site security. Have them put it in. When they put London Lane in we should have, they did some quick talking, they said oh, it's an industrial you don't want sidewalks and we listened and now we have a bunch of office workers and workers out there walking up and down it a hundred times during lunch time because the company says oh go out and exercise your heart, we want you out there. Now they're walking down Ledge Road and going to Sam's Club for lunch to pick up samples and....

**Preston:** that's unbelievable

**Lowry:** we know where he goes for lunch

**Garand:** you've got

**Bill Cox:** I would think the idea is that eventually they all get connected. I don't think building sidewalks is necessarily a bad idea if they look like islands to start, as they develop out it makes more sense to have somebody else do it than to fund it from taxes. But I question if you really need to go to warrant for something that's already funded.

**Foote:** the thing is, they're only putting into. What happened at our last meeting is a plan got approved and decided to do an escrow account for the sidewalk with the idea that the Town would eventually build it but that they would fund it. I have since found out that.

**Cox:** that might be a bad idea. But if you are holding a bond to build a sidewalk, it's already funded. And you don't have to go to warrant to get approved by the voters to build the sidewalk.

**Foote:** it's to continue the sidewalk along all of Ledge Road.

**Cox:** that's different. For the sidewalk that was bonded in the approval, you don't need to go to warrant. You've already gotten the money all you have to do is hire somebody, take the money, and hire somebody to do it.



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**Garand:** that's the whole thing. We looking to start the sidewalk at the end of Bachelder Road or down at the other end towards Black Snake, at some point we have to say they funded it for in front of their building and it must go in front of their building. So if it's required, if it's part of their approval, let's put the responsibility on the part of the developer. We're doing it for residential subdivisions up off Weare Road.

**Foote:** the other complication that comes in is the Dredge & Fill application as far as the applicant having to do it but it's Town right-of-way, I know the Town will support it and sign it, and go forward with it, but it was explained by Fred and Ollie from his Selectman's experience that if the Town is going to promote a sidewalk along Ledge Road, the Dredge & Fill application should be for the entire length of Ledge Road. DES is not going to be happy if we nickel and dime it with each place as it gets developed.

**Garand:** well, we could go after the full application for it and just submit it and at that point as they develop Ledge Road, they could just put their little puzzle piece together. We could have the approval; it's good for several years anyway.

**Foote:** once it's approved it's good for five years.

**Garand:** I think you're going to see a substantial portion of Ledge Road built out in five years.

**Morrill:** the problem is Paul, you're going to have one person at the end that wants to do site development and you're going to make him do the permit for the higher roadway?

**Garand:** we're going to make the developer's engineer do the whole thing, because they are the person who did the major subdivision and they should have had the sidewalk when the built London Lane

**Morrill:** we're talking about this one case now. You're going to set precedent for the entire Town. So if you go into a subdivision and all of a sudden you've got a piece of property in the middle and you're going to tell this one developer you're going to do a dredge & fill permit to connect the sidewalk from Railroad Ave to Walton Road and that's your responsibility.

**Garand:** I think it's case by case. I don't think you can

**Morgan:** that's ?????? In this case, it was one developer that did all the way from Border Winds all the way down here.

**Morrill:** but now we're talking ten different owners and now you're going to say that the owner that bought 50

**Garand:** CBAN is still Colliander

**Morrill:** CBAN is not Colliander; CBAN is Boston Barricade.

**Garand:** there is a bunch of them that he still owns in there.

**Morrill:** all I'm saying is don't push the owner or one person that they have to take care of their entire street.

**Garand:** we'll put it on the engineer that's developing all the projects.

**Morrill:** I agree. When we came in the first time, it should have probably been done at that point.

**Garand:** London Lane and the full length of Ledge Road

**Morrill:** London Lane does have a sidewalk. There was a big discussion

**Garand:** we should have forced them to do off site all along the frontage there.

**Foote:** shoulda, woulda, coulda, it isn't getting this meeting going forward.



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**Garand:** and as we're developing each site that's what we have to do, nickel and dime them.

**Foote:** so how do we want to resolve this issue here and now today as opposed to what should have been done?

**Lowry:** and what do we do with the ones that are already approved?

**Morgan:** can't take those back, that's done.

**Preston:** someone just stopped sweating.

**Garand:** I don't know. I think we should actually ask the Town Manager what his preference is and make them put site security in there for it in their approval and if it's a condition of approval say that it has to meet the approval of the Town Manager as to what method they want the sidewalk installed

**Preston:** I don't know if the Town Manager has the authority over the Planning Board and the Subdivision Regulations.

**Foote:** the Board of Selectmen have controls over the sidewalks with Town roads

**Garand:** it is a town right-of-way

**Preston:** Selectmen, not Town Manager

**Foote:** it has been selectmen that have also talked with me. I've been talked by probably fifteen people since our last meeting and in no uncertain terms how I allowed this Board to screw up.

**Preston:** let them run for it them

**Lowry:** I don't see any body here. Can't be that concerned.

**Foote:** that still doesn't resolve the issue as to whether there is or isn't sidewalks and how we move forward.

**Garand:** I think we're making residential subdivisions put sidewalks in. I think an industrial subdivision can afford it also or an industrial site plan.

**Preston:** I think it looks nicer anyway.

**Garand:** exactly, it dresses up the Town. You've got a crappy looking building, they may put split block on, but you know something, we'll have a sidewalk to go look at that crappy building.

**Lowry:** people can walk by and look at it

**Foote:** so, are we ready to move forward with this?

**Morgan:** two issues. Are sidewalks advisable and if so how do we implement them?

**Foote:** I've got a question.

**Morgan:** what I heard tonight is that everybody seems to be on Board with the idea of sidewalks where the confusion seems to be is what's the wisest way of implementing that?

**Garand:** what does our Town Planner recommend?

**Lowry:** maybe they should come up with a sidewalk committee for the Town

**Preston:** they have one

**Garand:** they haven't met in six years

**Morgan:** I will put some wait on some of the conversations Sue says she's had since our last meeting and try to please these various Town officials and recommend rather than the escrow, you make it a condition of approval that the developer builds the sidewalk.

Tomorrow, you'll hear from all the other Town officials you haven't heard from yet.

**Foote:** okay that makes it easy for me.



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**Preston:** any other issues on this?

**Foote:** not that I am aware of outside of I'm trying to find the list that Mike gave us as to how much the number for the sidewalks

**Morrill:** Mike has a number for sidewalks on Ledge and then London Lane. London Lane already has a sidewalk going in by a bond by Dupere Corporation. Basically Mike's number for a sidewalk

**Foote:** is that Mike's letter? There is not a copy in the folder here.

**Morrill:** I brought one for you. It's basically 250 linear feet times 35.00 per linear foot. He's got 501 on London, which is already being built. It's really 250' x \$35.00 a linear foot.

**Preston:** approximately \$9500.

**Foote:** so you want to say \$9500 for sidewalks and allow for inflation?

**Preston:** it's half of the total

**Morgan:** have we specified the sidewalk material?

**Morrill:** granite and asphalt is what's on his list

**Foote:** Ledge Road will be asphalt with granite curb; London Lane will be asphalt sidewalk only. Because I think on London Lane it's set off with a green strip in between and on Ledge Road that's not possible because of the ditch.

**Morrill:** before we go any further, I just want to caution the Town that once all this granite curb goes up on Ledge Road,

**Foote:** there are going to be drainage problems on Ledge Road

**Morrill:** you've got it.

**Foote:** because there is not going to be any place for it to go if it's all outside of down the driveways

**Preston:** better make sure they are installed right

**Morrill:** install the sidewalks six inches above the road, but where does the water go once it drains off Ledge Road? It's going to pile up right against the sidewalk.

**Garand:** new drains that this guy is going to install

**Preston:** that's what I was thinking

**Morrill:** how are you going to do that when there is no daylight?

**Foote:** that's part of what DPW's concern was. Plus it's going to limit them being able to push the snow.

**Garand:** at this point they've installed granite curbing all up and down all these roads with the drainage that was existing and they've lived with the problem that they've created and they just push it around and plow it out. As far as the granite curbing, if they hit it with the plow, the next time they'll push over a little bit and they'll know where they're going.

**Foote:** my concern isn't so much the snowstorm and snowmelt; it's the heavy rainstorms.

**Preston:** it might dry out Ledge Road

**Foote:** once they put in the granite curbing down on 1A near the parking lot, you wouldn't believe the erosion down into the sand dunes on the harbor side

**Garand:** we'll have to look at the planning at the time they install it and make sure they have someone there to oversee the installation



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**Foot:** overlooks what installation? If you're going to put a sidewalk that's got six-inch curb, except for where the driveways are, where is the water going to go? It's going to go down the driveways.

**Garand:** can I ask a question? When we put in the sidewalk on Weare Road, did we worry about the drainage at that point? We just recommended that they put in three hundred foot of granite curbing, correct? Was there an issue as to the water draining down Weare Road into 107? No.

**Foot:** the water runs down Weare Road into 107 anyhow.

**Garand:** and the water runs down there and it floods the drains all the time anyway. If the Town needs to install catch basins or infrastructure at some point here and there to relieve the drainage, then that's what they'll have to do. At least they won't have to install the granite curbing.

**Foot:** how does the rest of the Board feel?

**Preston:** I think it feels fine.

**Foot:** Pat doesn't hear headshakes.

**Preston:** I'd rather see the developer pay for it rather than me.

**Foot:** okay. Are we ready to move forward with this?

**Cox:** comment. It's too bad that Henry's not here. Just commenting on the lighting plan for this site. I must say this is a very professional presentation with the cut sheets right on the plan. I think all your applicants should do it because this way there is no question what was called out for. These are also an excellent choice of lighting fixtures to combat light trespass.

**Garand:** thank you. The vice president of Jones & Beach the third thanks you.

**Foot:** are there any other questions, comments from any of the audience? Back to the Board. Are we ready to try to come to some sort of decision on this?

**Preston:** you've got \$9500 for sidewalk

**Foot:** and \$39,500 for detention pond, construction entrance, granite curbing, and the as-built plan.

**Garand:** so \$50000.

**Foot:** \$50,000 is close enough. That accounts for inflation.

**Motion:** Preston      **To approve case #04-60 with a site security of \$50,000 and a change from sloped granite curb to vertical granite curb.**

**Second:** Himmer      **Unanimous**

**Morrill:** there is one condition, Madam Chair, change from sloped granite to vertical granite curb.

**Preston:** what's that mat you put down in those swales?

**Morrill:** jute mat

**Preston:** does it bring up the grass quick?

**Morrill:** yes. Stabilize the slope so we don't have any erosion

**Preston:** in a couple days a big difference



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**Morrill:** did you see Chili's denied all the gravel and made the contractor pull all the gravel off the site and replace it

**Garand:** they're installing drainage around the sidewalks, did you notice it? Three extra drainage pieces that go from the middle planters in front of the restaurant is going u to meet the outside of the sidewalk, just discharging day lighting which aren't on the plan. I brought that to Mike's attention saying he was going to change some of the drainage calcs for that whole area moving the water from one area to another. You might want to look at those.

**Preston:** what have we got for correspondence?

**Morrill:** thank you everyone.

**Foote:** here's a rough draft of the notice of decision and don't forget your sidewalk calcs

**Cox:** do you vote on that?

**Preston:** do we didn't vote. You signed the decision but we didn't vote.

**Foote:** all in favor.

**Himmer:** aye

**Foote:** anyone opposed? SILENCE. So it's unanimous.

On to correspondence. I have a letter from an attorney regarding 136 Walton Road request for an extension of time as to substantial completion, please be advised this office represents a duly organized limited liability company, which pursuant to a purchase and sale agreement has become the successor in interest to the captioned property which was the subject of a planning board approval. The conditions associated with this Planning Board subdivision approval require substantial completion on or before early January 2006. In anticipation of roadwork delays due to weather conditions on behalf of my client I hereby request that the Planning Board grant an extension of time within which to perform substantial completion as defined by the Board for an additional six months. Where's 136 Walton Road?

**Garand:** if I'm not mistaken that might be the subdivision that was approved residential on the left hand side going down the road past where Faye Tiffany's house used to be.

**Morgan:** who's the property owner?

**Garand:** I'm not sure

**Foote:** is it Tucker?

**Garand:** no, Tucker's not a subdivision he's just a, well, he was, but there is no road so there is no substantial approval

**Morgan:** why doesn't the lawyer tell us who his client is?

**Preston:** does he give a case number of anything?

**Foote:** no case number, no nothing, just 136 Walton Road, Seabrook NH

**Preston:** write back and say who the hell are you talking about?

**Garand:** if you want I can actually pull up the tax card

**Morgan:** I like Mark's idea better

**Foote:** please give us a little more detail.

**Preston:** and who are you?

**Foote:** David W. Carr, Esquire, Arlington MA So we have a couple months. Let me do the memos first. A memo to Fred Welch from Paul **Garand:** about Lafayette Road, Market



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Basket's south entrance. Spoke with Steve Ireland of DOT state that south entrance at Market Basket across from Lowe's was built as designed by after reviewing the area agreed that signage along the entrance needed to be changed. He could not promise to what extent the changes would be at this time, but the issue would be addressed before the project was signed off. That's the south entrance?

**Garand:** yes, you know the right in right out? There is a lot of confusion of people making lefts going in and out; there's a lot of turning from Route 1 left going across the turning lane.

**Preston:** I think that's leftover habit

**Foote:** yes. That's the problem I see is people heading south cutting across

**Garand:** and also people taking the right turn into the parking lot, there's now the roadway which is right directly there, they're almost side swiping the cars inside the parking lot because the people aren't expecting someone to come in off Route 1 so quickly.

**Foote:** I think that entrance ought to be closed and changed over to Boynton

**Garand:** when we do the intersection of Boynton lane I really think we should address that

**Cox:** that was my comment

**Foote:** we have site security that we must take action on because they are about to expire. I'm only going to list the ones we must take action on starting with the most recent ones. One has already gone by. Brad Kutcher, that was for Katelyn Way.

**Garand:** I believe I contacted Mr. Kutcher; he contacted the Treasurer and extended that until we could go through the proper channels for reducing the security. I will agree with Henry that was one of the nicer subdivisions with a private road and if you have been looking at plan-link, Sue there is some good verbiage on adopting maintenance plans for private roads.

**Foote:** that's something I'd like to get into before

**Garand:** we approve any more

**Foote:** yes. Next is Colliander Imke, actually the two of those while they are called Colliander, Imke, they are actually Port Lighting for the detention pond and their site plan for his building. That's due to expire 9/28.

**Preston:** looks like it's almost done, too, the detention pond

**Garand:** the detention pond is in really poor shape over there and I have already had Dave Price down there from DES

**Foote:** and it's a letter of credit and the reason why we must address this tonight is because Ollie asked me does he call the bank and tell them to pull the letter of credit because he's got to do it immediately?

**Garand:** let me do a site inspection and see exactly what has to be done and I'll go to Ollie and give him a yank or not to yank on that.

**Foote:** or to have this guy extend his letter of credit for another six months

**Garand:** exactly. I'm going to tell him if it's not substantially complete I'm going to tell him we're going to yank your letter of credit or extend it and bring it up to what we accept

**Foote:** and conversely along with it, they also have to write a letter to us asking for a six month extension on their project and show project that they are also extending their letter of credit. They extend their letter of credit, photocopy that, and send us a letter asking



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for a six-month extension. They don't have to come to the Board; we have to vote on giving them an extension otherwise their site plan is going to expire on the 28<sup>th</sup> of September also. And if they are not finished...

**Garand:** they have substantial completion. They are not finished 100% but substantial completion is there.

**Foote:** Langis Sliker, Elephant Rock, the \$5000 for the vegetation replacement in the no-cut buffer zone out in the back side of Langis'

**Garand:** that has been sold. There was a court case settlement that the Sliker had to sell off, no Langis had to sell off, excuse me, and at this point there is a new person living in that back unit. They have not done any work to the land. It's just re-growing and scrub. Maybe a letter from the Planning Board to revisit that and notify the new owner of what they can and cannot do on that site.

**Foote:** okay. And then coming up in November, Oldfield, Joseph, Seabrook International, 15 Woodworker's Way

**Garand:** that was for the expansion of the industrial building of 15 Woodworkers. He's actually secured a new bond for the new addition we just approved.

**Foote:** says this is a savings account for \$5000 at Bank North.

**Garand:** I believe it's been extended already.

**Foote:** Karpenko, Carbone, site plan, Bank North Savings account. They're due in December.

**Preston:** I think they just put their topcoat on. Everything looks pretty good.

**Garand:** they just put the topcoat on and I have to go down and walk the site. It looks good.

**Foote:** (To **Garand:**) so if you are in communication with these people, could you ask them to please write letters to the Planning Board when they believe their site is finished?

**Garand:** I've been actually doing the site walks and so forth on a few of these projects just to bring them up to speed with what needs to be completed.

**Foote:** and what they get it complete and want their money back in the letter that they send asking for the money released, ask us to officially close the case as well. Chase Heirs, Benoit Colliander, 7-lot subdivision.

**Preston:** keep a close eye on that one

**Garand:** that's the industrial I believe.

**Foote:** This says Border Winds but it's London Lane.

**Garand:** that's the one we already demanded an extension already. Is it fifty or sixty thousand?

**Foote:** it comes due December 2005. So those are the only ones we have to pay attention to right now. So am I safe in

**Garand:** I've been inspecting these to help out the Planning Board and also the Treasurer so we can keep everything current and I will continue moving forward so they don't lapse and have to be called and if they need to be called, we can take action. So we are working on it together.

**Foote:** one of the things the treasurer is going to start doing is 90 days prior to these coming due, he's going to send a notice to both the Planning Board, the contractor/developer



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whoever is in charge of the project, and the Building and Code Enforcement that there is 90 days before it's due and you either have to wrap it up or start asking for an extensions.

**Garand:** one thing I'd like to note that on Merrimac Street, this Board made a motion to call the bond. That bond was never called. No action was taken on that. They have issued the last building permit for that last lot on the left hand side of the road. But I don't know where the walkway going up

**Foote:** from my understanding after we made the motion to call the bond, and the word got back to the developer, property owner, they said oh no wait please we're going to finish the project and I'm sure you can see the benefits in allowing them to finish the project as opposed to us calling the bond and having the Town do the project.

**Garand:** at the same time, if we had called the bond, it would have put one lot hanging over their heads. So now we're at a standstill. They haven't taken any action. Winter is almost here.

**Foote:** also from an inspection there is a problem with the road; every single driveway exceeds the 20' limit; they still haven't built the boardwalk.

**Morgan:** what's the procedure when the Board votes to call the bond? Who actually implements that?

**Garand:** the Board sent a letter and it's in the Planning Board file downstairs; it was received by the Treasurer, but no action was ever taken. I don't know who is responsible for it after that. If the Board sends a letter and says we want you to pull that bond and nothing is ever done, whose responsibility is that?

**Foote:** and that's where we have to get it straightened out at that point as to just how far can this Board go versus when do the Selectmen have to do something. I know that the Borges were in front of the Selectmen at their last meeting, I believe this Board has instructed the Selectmen multiple times to take action and resolve the problem. We've even written them letters. The Selectmen do nothing and the Borges finally went to the Selectmen and it appears that the Selectmen's meeting it was decided they have to come back to the Planning Board or there has to be a joint meeting of everyone.

**Garand:** from what I understand there is going to be a joint meeting between the Selectmen, the Borges, Hannah, the Town Manager and all their attorneys are going to sit down at the table and discuss everything and if they can't come to some sort of decision, then, other than what has already been approved, then they have to come back to the Planning Board. This is only hearsay. I'm not sure what's really going on.

**Foote:** and it wasn't the Planning Board that put the limitations on it, it was the Zoning Variance Board, so they are blaming the Planning Board for things the Planning Board never did.

**Preston:** and we're getting off track again.

**Garand:** exactly let's get out of here

**Foote:** right. Realize there is going to be a special meeting and we've got to find out when we instruct someone to do something, how do we get it done?

**Garand:** there should have been a letter sent back saying the Treasurer had called the bond and if it hadn't been

**Preston:** we're not the enforcement arm



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**Cox:** other business, other business. Yeah, I have a question.

**Morgan:** you want to join the board again.

**Cox:** the first and second Tuesday of the month, I've got boat club. I'm the secretary of the boat club and I've got to be there. I can't make it.

**Garand:** what Tuesday is this right now?

**Cox:** this is the third.

**Garand:** so you can show up on the third Tuesday?

**Cox:** yeah. I've got to ask my wife though. But that's not the other business. Don't leave yet. I want to know what the proper way is to advise the Board and the Code Enforcement Officer of a possible violation. There is no form to fill out or anything?

**Garand:** there's a complaint form downstairs in my office.

**Cox:** there is?

**Garand:** you can do an anonymous complaint and mail it

**Cox:** I don't care about being anonymous.

**Garand:** there's one down on my desk.

**Cox:** is there an electronic one? I'll type it up and attach pictures to it.

**Footte:** You can't send pictures to the Town, their network kicks it back.

**Garand:** stop in and talk to me.

Meeting adjourned at 8:45 PM

Respectfully submitted,  
Patricia Welch, Secretary