



# Town of Seabrook Planning Board Minutes

Tuesday, June 5, 2007

NOT OFFICIAL UNTIL APPROVED

Members Present: Sue Foote, Chair; Peter Evans, Vice Chair; Mike Lowry, Clerk; Aboul Khan; Paul Himmer; Robert Moore, Ex-Officio; Paul Garand, code Enforcement Officer, Alternate; Elizabeth Tibodeau, Alternate; Tom Morgan, Town Planner; Barbara Kravitz, Secretary;  
Members Absent: Mark Preston

Chair Foote called the meeting to order at 6:07PM.

## **MINUTES OF MAY 1, 2007, MAY 7, 2007, MAY 15, 2007, MAY 29, 2007**

Foote asked if everyone had the opportunity to review these minutes.

<b>Motion:</b>	<b>Lowry</b>	<b>to accept the Minutes of May 1, 2007, May 7, 2007, and May 15, 2007 as written.</b>
<b>Second:</b>	<b>Khan</b>	<b>Approved: Unanimous Abstained: Thibodeau</b>

Foote tabled the minutes of May 29, 2007 to the next meeting.

### **SEABROOK SCHOOL BOARD - proposed residential housing sub-division**

Attending: Michele Knowles, Chair, Seabrook School Board; Maureen Ward, Assistant Superintendent, SAU #21; Bob Berry, Business Administrator, SAU #21;

Ward introduced a letter expressing concern about the potential impact of the proposed 53 unit Beckman Woods residential subdivision and the issues that result from the addition of new students, including transportation, classrooms, teachers, books etc. Figures from the State website show the average annual elementary student cost at \$12,385. Seabrook spends an average of \$10,200 which Ward said demonstrates the School Board's fiscal responsibility. Adding a bus would cost about \$38,000. Ward said her calculations were based on 1.2 children per household, and noted that she also covers Hampton Falls where impact fees are built into subdivisions to offset direct school-related impacts which otherwise would be costs to taxpayers. Foote noted last year the Planning Board attempted to put impact fees in place but, due to the complexity and limited timeframe, that could not occur. The hope is to work on impact fees this year, but Beckman Woods is already on the Planning Board agenda and more than likely would be exempt. Some towns successfully key this to building permits.

Morgan asked where the children/household figures originated. Ward said this came from the State Department of Education and depends on the cost of the housing. For example, in a home costing \$600,000, the number of children might be .8/unit. Morgan estimated the increased cost for the potential additional students at about a million dollars per year, and noted the Planning Board has made clear that the developer needs to be in touch with the school department. Lowry asked how many students are enrolled. Ward said 839, of which about 500 are at the elementary school, and 339 in the middle school, and this is at capacity. Morgan asked how up to 70 additional students would be handled. Ward said realistically it would be a new building for K-2 - with a full-



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day kindergarten the State contributes fifty-percent of the cost. A K-2 building is less costly as some facilities, like science labs, are not needed. Three more classrooms, teachers, aids etc. would be needed. Foote asked about the potential location, and noted that when the middle school addition was built the Department of Environmental Services was very concerned about the wetlands impact and said further expansion would have to "go up". Ward said part of the parking lot might be used. Foote said DES would be adamant about no increased pavement use. Lowry asked if there were other space or environmental issues. Berry said there is an ongoing asbestos removal plan; if there were new construction or renovation on the existing building any asbestos removal costs not already included would have to be factored into the cost. Ward asked if the existing structure could support a second story. Garand said it would have to be an outside superstructure.

Knowles said they are trying to be more pro-active in foreseeing potential impacts as they are at capacity now. Berry said there is a need to look at existing classroom deficiencies per the State standards. Morgan said this is a useful starting off point for discussions with the developer. The Town Planner noted that enrollment figures are dropping Statewide, and recommended school officials gather information analyzing enrollment trends including students in private or charter schools. Comparative capital costs for various solutions including for example, the possibility of obtaining State aid for adding space for district wide kindergarten would be beneficial. Knowles noted the increased performance of the elementary school and said when a similar improvement occurs in the middle school Seabrook would become an even more desirable location. Khan noted the yearly increase in new homes, even without major subdivisions, and asked for the increased number of students. Knowles said it has leveled off at the elementary level, and some are transients; but this is looked at every year. Smaller classrooms would also be of benefit to students.

### **REQUESTS FOR SECURITY REDUCTIONS**

#### **Case # 03-38 - Pineo Farms Road and Carroll Lane**

Appearing for the Applicant: Wayne Morrill of Jones & Beach Engineers;

Foote referenced a letter received [today] from Jones & Beach requesting release of all but the maintenance amount of the security posted for the two roads now that issues with the deed language have been resolved to the Town Planner's satisfaction. Garand said to hold off until a drainage complaint could be investigated. Morrill said the drainage problem isn't coming from the Pineo property. Foote asked about the road deeds. Kravitz said the Town Planner is ok with them. Foote said the case file would be reviewed

### **CORRESPONDANCE**

Foote referenced a letter from the **Town Manager to the Department of Environmental Services granting Board of Selectmen permission to work on Town property in connection with the Cains Brook/Mill Brook Salt Marsh restoration project that is part of the DDR mitigation package.**

Foote referenced a letter from the **Code Enforcement Officer indicating that a proposed driveway at 1 Depot Lane would require Planning Board review.**

**Cases #2000 -23 & 24** Foote referenced a memo from the **Code Enforcement Officer to DEPA Realty Trust concerning the improper use of property on Stard Road.** Foote noted the owners



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have indicated they will return to the Planning Board with a plan revision. Garand noted the owner is looking to place an office trailer on the property because he has an offer on his Pine Street property. This would need Planning Board site plan approval.

Foote referenced a letter from the **Department of Public Works Manager describing stormwater issues involving the Coca Cola property**, and noting any run-off issue would be a civil matter. Garand said the expanded detention ponds need resolution. Foote noted there have been unusual downpours.

**Foote referenced a request for an alteration of terrain permit by Sunk Rock Realty. Any comments must be in by June 29, 2007.**

**Foote noted the Zoning Board of Adjustment minutes and asked if they might be provided digitally so they can be sent to the Board.**

### **Governor Ware Apartments**

Attending: Sandra Noonan, Manager

Foote noted Noonan's letter on behalf of Wing Shing LLC **requesting the Board waive jurisdiction on drainage and lighting in connection with adding parking spaces at the Governor Ware Apartments**. Garand noted that a number of parking spaces used by the Governor Ware Apartments on an abutter's lot are no longer available. The intent is to replace those lost spaces with twelve new spaces and a new driveway on-site, as shown on a submitted sketch. Noonan said the problem arose when a new owner acquired the abutting land. Garand said the area is level. Foote noted there would be some construction to remove the lawn and put in gravel and paving. Garand asked about lighting. Noonan said, if any, it would be on the building. Khan asked for the number of new spaces. Noonan said twelve.

<b>Motion:</b>	Foote	to waive Planning Board jurisdiction at this time for adding the new parking area at the <i>Governor Ware Apartments</i> , conditioned that (i) the grade stays the same, except that every effort is made to make a gentle slope to the rear toward the woodline, and (ii) the lighting meets the Town codes.
<b>Second:</b>	Lowry	Approved: Unanimous

Foote read an **email from Mike Parsont in connection with lot 8-50 on London Lane, indicating the Department of Environmental Services no longer accepts deed restrictions as wetlands mitigation**. Parsont asked for a discussion on options. Additionally, a letter from John Colliander offered options. Morgan said this matter should be heard first by the Conservation Commission. Foote suggested John Colliander's letter might also be referred to Town Counsel. Morgan noted the original restriction is missing and should be brought to Colliander's attention.



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### **Case #2002-30 Sullivan/Merrimack Street**

Foote noted a letter to the Town Manager from the **Public Works Manager re the potential for accepting Merrimack Street as a town road, and asking if permission for snow removal and snow storage might be added to the easement.** Foote said the concern would be the potential for plowing-up the dunes by pushing sand into them and/or damaging the pedestrian walkway. Evans said banking snow would cover the walkway. Foote noted the driveway could have been placed elsewhere rather than in the town right-of-way. Foote also read a **letter from Millennium Engineering stating issues with the Public Works Manager have been resolved, and requesting Merrimack Street be accepted as a town road and the maintenance reduced as two winters have passed.** In a memo from the DPW Manager, reference was made to the March 13, 2007 inspection report from Altus Engineers which cites pavement patches and asks for the as-builts for the location of the underground utilities. Additionally, there is a letter from the Sullivan's Attorney asking for the money to be returned. Foote noted prior DPW concerns with patches in new roads. Foote said these issues need to be addressed before the Board considers taking action, and asked for the Board's view on the snow storage area. Evans said residents should not have to climb a snow mound to walk the beach in the winter, and asked if the snow can be situated so as not to impede access to the boardwalk. Garand said if this wasn't on the approved plans it can't be added. Another issue is if the driveway was not added with DPW approval. Foote said the patches in the road should be repaired. She will walk the site to observe the conditions including the state of patch repairs, and review the as-built.

Foote read a request from **Millennium Engineers asking to discuss potential plans for Hannah Foods' proposed new access road, the easement, and possible future expansion of the facility and development of the new entrance.** Foote placed this item on the June 19, 2007 Agenda. Garand asked for abutters to be notified via regular mail. Morgan agreed.

### **Rockingham Planning Commission:**

Aboul Khan, the Seabrook representative on the RPC, will attend a land use training session on greenhouse gas emissions and reduction of energy costs. June 7 and the RPC Annual Meeting on June 13. A Planning Board training workshop is scheduled for June 25. Additionally, there are various DRA workshops. Foote said anyone wanting to attend any of these events should see Kravitz to make arrangements.

### **UNITIL TREE-CUT in connection with Case #2006-31 & 32 Developers Diversified Realty (DDR) Seabrook LLC for a 4-lot subdivision and a 441,290 square foot shopping center at 700 Lafayette Road, Tax Map 8, Lot 55;**

Lowry recused himself from this case.

Attending: Jim Grafmeyer, Vice President, DDR; Stephen Lehman, Project Manager, Vanasse Hangen & Brustlin; Bill Tanguay, McNeill Taylor & Gallo; Scott Shepard, Unitil;

Foote noted the site walk had been cancelled due to weather. The VHB plan of existing conditions on the plan of land for the impacted areas was distributed to the Board. Foote said the concerns were about restoration and certain trees and stumps that were cut on town property. Grafmeyer asked to make a status report. Foote said this could be brief.



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Grafmeyer said DDR is diligently continuing to work toward the traffic mitigation plan. As soon as there is a plan that can be implemented, it will go first to the Board, but at this time that date is not known. Foote noted on May 29 she, Thibodeau and the Secretary were present when it was announced, and broadcast on Channel 22, that the Board has previously determined that when it has the DDR traffic plan package, a meeting date would be scheduled for a minimum of three weeks later. A public notice to the abutters would be sent because the case cannot be continued to a date/time certain. Foote noted, a separately suggested plan from another engineering firm has been submitted to the Board and could be looked at as a potential alternative when the DDR traffic plan is addressed. Grafmeyer asked that the Board wait until the revised DDR traffic plan is submitted. The wetlands restoration work per the DES walkthrough by Eban Lewis, was done in April and Lewis' approval of the restoration activities was forwarded to the Board. DDR assumes that issue is resolved.

Grafmeyer said as the Board requested an as-cut plan relating to the wetlands in the easement, VHB has provided its survey. [The VHB as-cut survey was distributed]. The concern at the last Board meeting when this was discussed was the ordinance saying that not more than fifty-percent of the total wetlands on the property could be impacted. A chart at the bottom lower left hand corner of the as-cut survey calculates the impact of trees that were cut in the wetlands area within the easement, when compared to the total wetlands on the property, at 17.3 percent. If the calculation were to include the canopy area that sat outside of the easement area, 21.4 percent of the wetlands within that easement/canopy area were impacted, well below the fifty-percent stated in the ordinance. DDR thinks that this is no longer an issue, and said Lehman and Jake Tinis could answer further questions.

Foote said the "fifty-percent" is a density issue, not an area issue, and several cases have been heard at the Zoning Board of Adjustment for variances. Grafmeyer said at the last Planning Board meeting the Board agreed the comparison would be made to the total wetlands on the property. Foote differed, saying Evans had agreed it was a density issue, not an area issue. Evans said that is his understanding of that ordinance. There was some discussion that the ordinance failed to account for items like power lines, but that doesn't necessarily make the ordinance unenforceable. The means to find relief from that ordinance is to present that case to the ZBA. Foote said the ZBA would decide whether a variance is required or not. Lehman recollected the direction received in November, when the number of 21.7 percent was discussed, was that the easement did not require a variance. The recollection at the subsequent meeting, when the as-cut survey was requested, was different than the initial discussion in November.

Foote said she had reviewed both the minutes and twenty-seven hours of tapes; indicating that Lehman's memory and her own differ. There was a discussion in which the Board was informed by DDR personnel that the Seabrook regulation was not enforceable; there was no decision or agreement. Grafmeyer said DDR acquiesced to do an as-cut survey. Lehman said they identified that it is not prudent nor safe for there to be trees growing within a power easement; the activities are mutually exclusive activities. Thus the need for regular trimming in all Unitil easements for public safety and public good; there can't be trees that grow up to endanger public service power lines. Foote said there are vegetation that can be planted in those areas that never



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grow as tall as the power lines. Lehman said they made the assumption in the cut calculations that the entire wetlands area was denuded, which is not the case. The cut is to a specific level; vegetation is physically out there now, although it may have been changed by the cutting of the trees. In time, the ordinance will be satisfied; the area will not be unvegetated which Lehman understands is the intent of the ordinance. Then what would be the point of a variance. If the Board is saying it would like a different vegetative cover. DDR asked if that were possible and Unutil said "no". The trees had to come down to provide Seabrook with power.

Various aspects of this issue were discussed including, but not limited to, the language of the ordinance, Unutil's safety concerns about trees within the easement area, clear-cutting, whether the Board of Selectmen had approved the intent to cut, the area within which the cut took place, and whether the percentage calculations were based on the entire site. The intent of the Planning Board's April 3, 2007 vote was discussed.

Khan said at the time Unutil said if the limitation wasn't removed, Seabrook wouldn't have power. That's when the Board voted. The alternative is the power line could have gone underground without cutting all the trees. Evans said the spirit of the ordinance is to preserve vegetation in wetlands, and addresses specific types of vegetation - trees, and mentions the basal area of tree-trunks. Nobody would reasonably argue that trees can be underneath power lines; there is a very strong case to obtain a variance which appears necessary. Lehman asked for the ordinance to be read aloud, believing the reference is to "vegetative cover", which is different than basal area. Foote asked Morgan to read the pertinent ordinance. [Article XV Section B of the Zoning Ordinance was read.]

"In order to ensure that wetlands remain well-vegetated no natural herbaceous vegetation and no more than fifty-percent of trees saplings or shrubs shall be removed from wetlands. Vegetation shall only be removed during the dry season or when the ground is frozen."

Lehman said the difficulty is the Town feels that something has been done that shouldn't have been done. Unutil believes they have done what was within their rights and needs to provide power to the Town. If the solution is to identify shrubs that would not be a height issue to Unutil in its ability to maintain its easement, or some other vegetative cover consistent with what can grow in the area, that should be identified. Foote said the Planning Board cannot waive zoning regulations. More than fifty-percent of the trees were cut in that area therefore it is in the jurisdiction of the ZBA to take action. Grafmeyer said the Planning Board did agree to relocate this easement. Foote recalled the Board was told in November this had to be done quickly or Seabrook wouldn't have power through the winter. The Planning Board said that the intent to cut that had been filed was the jurisdiction of the Board of Selectmen and not of the Planning Board. The Board of Selectmen would have to decide how to handle the situation. Evans also recalled DDR saying the easement was between it and Unutil. Grafmeyer said the Planning Board agreed to the relocation which is on the plan. Garand said the intent to cut was not signed by the Selectmen who had asked for a plan to be submitted for review denoting the amount of trees to be cut and where they were located, prior to their signing the intent-to-cut. Shepard said as far as he is aware the intent-to-cut was approved. Garand said there were conditions to be met before the Board signed. Shepard said the conditions



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were for the plan for trees on Seabrook's property which was supplied. Garand believed the request was to see the plan for the area to be cut which was never submitted to the Board for review or approval. Shepard said they already had a siteplan showing the easement on the DDR property. Garand said that was for the intent-to-cut prior to any cutting. The cutting occurred and the trees on the town property were impacted. Shepard said the trees on the town property were impacted after the supplemental intent-to-cut. Garand said then Unitil cut knowing there was no intent-to-cut signed. Shepard said Unitil did the cut knowing the intent-to-cut was signed. Garand said that was not his understanding. Foote asked if Unitil has a signed copy. Shepard said he has a signed copy by the legal owner. Garand asked if it was signed by the Selectmen, and if there is now correspondence with the Assessing Department in regard to the intent-to-cut. Shepard said "yes".

Grafmeyer said they wouldn't be going through this if they got a notice of tax exempt. Garand said the intent to cut was not approved. Shepard said the recorded cut will be in before June 15. Garand said the Assessor will go after dooamage; the intent to cut was not signed. Shepard said he is not aware of that. Grafmeyer said the correspondence says they will go after that if the final numbers are not to them by June 15. Garand said the point is there was nothing signed because if an intent-to-cut was signed you don't go after dooamage. It seems the property line was clearly denoted on the plan. The cut went beyond the property line. Grafmeyer said there isn't an argument over that. Foote said it went beyond Dow's Lane. Garand said he wrote to the Board stating that once the trees are cut they can't be replaced, and that this easement was site development. At that point, because it was said they needed to provide the easement before they could actually provide the town with power, the Board said it would allow the cutting. An after the fact clarification with the ZBA, or to satisfy the zoning, is a simple issue. Evans said the Planning Board approving the easement doesn't absolve anyone from obeying the rest of the zoning laws. Grafmeyer asked what variance could be needed. Lehman said they believe they conform, and asked if the Planning Board is directing them to go to the ZBA through formal action. Foote asked if fifty-percent of the trees n in the area were left for a density issue. Lehman said "trees, saplings, and shrubs" can be included in the fifty-percent. Garand said it says fifty-percent of trees, saplings or shrubs shall be removed from wetlands, but doesn't say everything can be removed. Lehman said everything wasn't removed; the trees were removed. Foote said everything was removed.

Lehman asked if there is a formal direction that the Board believes they are not in conformance and need to go to the ZBA. DDR believes it is conforming to the plan provided. If the Board disagrees that is their required action, as this is at an impasse. Tanguay said in April [2007] the Board decided the calculations would be done considering the site as a whole; that was done by vote. Then DDR did what the Board asked them to do using that guideline, and came up with number that clearly satisfy the ordinance. If the Board thought at that time that there was a zoning problem, that was the time to send them to the ZBA. Not after giving DDR directions as to what to do, spending the time and money, developing the plan, having the plan come in within the guidelines and the regulation. They did everything right and came in with numbers that fit. If the Board says this doesn't work not, everything was a waste of time and money.

Foote said all along she has said this goes contrary to the zoning, and asked for other Board Member positions. Tanguay asked for the April [3] minutes and if they had been approved.



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Foote read the April 3 motion.

"to consider the entire DDR site when computing the impact of the tree-cutting in wetlands areas for determining whether there has been a zoning violation. "

Lehman said many of the wetlands are standing water, or channelized drainage swales. Many of the impacts were detention basins. Foote said just because DES grants a permit to impact wetlands that does not exclude the town zoning regulations if tree cover is being removed in wetlands for development of the property. Evans said the question is what is the number if the property as a whole is considered, taking into account what has been and will be taken down. Grafmeyer said there is no problem yet; it is unfair to look at what could happen down the road. Lehman referenced the plan and said it would not be over fifty- percent based on the areas to be impacted. Also there is a large forested wetland that will remain untouched. Foote asked how the Board wants to proceed.

Evans initiated the following motion: In light of having agreed to consider the entire parcel area partly to avoid having the easement separated out when it came to computing overall wetlands impact area, and because it is unlikely they will impact greater than fifty-percent of the entire area:

Foote said this is getting back into area vs density. The [April 3] motion said to consider the entire area, but it is one large parcel and, in essence, the Unitil impact is being separated out rather than considering the cumulative total impact. This is what also occurred with the Dredge & Fill application when the wetlands impact for the retail portion was figured without mentioning the Unitil portion. If the two areas were added together Foote believed it would go over one acre which would result in a different wetlands class of permit and bring in the Army Corps of Engineers. From the Town's perspective, that would remove the site from the aquatic mitigation and allow the town to decide where the mitigation money goes rather than DES. Foote asked for Evans proposed motion to be read.

Evans asked the Town Planner if it is the Board's function to interpret the zoning. Morgan said Lehman's request for clarification tonight was reasonable and that should be done. Foote asked Morgan for his position. Morgan said it would be helpful to expound on the density approach vs the area interpretation. Evans said a certain number of trees or saplings per unit of area, and before and after the number of trees for that unit area should be greater than or equal to one-half x the predevelopment density. Foote said the phrase "in order to maintain a well-vegetated wetland" should be added. If one-half of an acre of wetland is clear-cut (denuded to the ground) and the other half is not touched, that is not leaving a well-vegetated area. Grafmeyer said they relied upon a motion and did what was asked. The interpretation was gone through in April. Lehman asked last November if the Board always requires Dredge & Fill applicants to go before the ZBA for filling more than fifty-percent by density. Foote said that had not been so. It had come to light during a sitewalk with Frank Richardson of DES on various sites when he asked to look at the Unitil cut. Richardson said a State Dredge and Fill Application or permit doesn't excuse an applicant from town regulations addressing cutting in wetlands as most towns do. Since that date any Dredge and Fill Application coming before the Conservation Commission that involves clear-cutting trees in



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wetlands has been advised to go to the ZBA for a variance. Lehman asked if the Board is now revising its process from when DDR first applied to the Planning Board, and saying they have to go back to the ZBA to for the density issue created by the filling. The difficulty is if the town has changed its methodology since DDR began the process and believed it has been marching forward in conformance with zoning and the Board understanding. It is difficult to post-apply a process that didn't come about until DDR's process was done. Grafmeyer said the April 3 meeting was clear. Tanguay said on April 3 it was known that all the trees had been cut. If it wasn't going to work because of the sitewalk with Richardson, why send DDR to count trees. That count was done in accordance with the motion. To now say there is a violation means the time has been wasted. If that was the case, they should have gone to the ZBA two months ago. Foote said actually since 2002 everyone should have been going to the ZBA. Grafmeyer said DDR relied on the Planning Board's motion. Foote said this is about a variance, not about a violation. Tanguay said one doesn't go to the ZBA unless relief is needed. Grafmeyer said a variance is not needed.

Foote asked how the Board wants to proceed. Evans said the Board wishes to interpret the ordinance using the density formula., and thinks the Board doesn't have the liberty to change it in this situation. It is not fair to those who have had to go through the ZBA. Tanguay said once the Board accepts a plan as complete and begins processing, any subsequent changes in the zoning ordinance don't apply to that application. Foote said the ordinance was enacted ion 2002. Tanguay said it sounds like the approach/analysis/interpretation of the ordinance has changed. Evans disagreed. The ordinance was never really tested as in this particular situation. Lehman said it was tested with each Dredge and Fill application. The town had not commonly been requesting the applicant before the Conservation Commission with a dredge and fill application to the ZBA. The rules for DDR are being changed. DDR made a good faith effort and made no secret about the Dredge and Fill Application. No one said to go to the ZBA for this dredge and fill application. This is mid-process; making changes in the interpretation now is akin to enacting a new governing ordinance. It is difficult when DDR has been following what it thought were the rules based on input from all of the town Boards.

Evans said in his opinion the Planning Board effectively agreed to the interpretation presented by the applicant at that [April 3] meeting , but the ability to apply the density interpretation of the ordinance to future cases would be jeopardized. It would appear the motion of April 3 is in error. Garand asked Morgan if the Board is required to correct a decision that is contrary to the zoning. Morgan said Grafmeyer made a good point that there was reliance on the Board's directive. Both sides are making a lot of good points and applauded the efforts of Evans and Foote to apply consistency across the Board. He regretted that insufficient clarity in the ordinance was causing this lengthy discussion, because the Board's intent was very clear. But it is necessary to give DDR direction at this meeting and suggested a motion as to whether a variance is needed be made. Garand asked for Morgan's advice to the Board. Morgan said to provide DDR with direction the proper procedure is to have a motion and then discuss it. Grafmeyer said DDR relied upon a motion by the Board, did what was asked, provided the calculation, and is not in violation of that ordinance. Garand said he had indicated in November that this was site development. In the future the Board should consider any activity onsite to be viewed as site development and not approve anything on the site prior to the final approval. Foote recalled that during that discussion it was presented that



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the lines had to go in then, or the Town would be without power; it's an urgent situation. There was pressure to let things happen that might not normally be allowed because of the onset of winter and power to the Town. Garand said there was a question of a seventy-five foot strip of where the transformers were where there was not an easement, but there was not an emergency at that point. Even though he does not agree, the Board has to go with the April vote to protect the Town from legal action, unless the Board wants to ask for legal advice. If it turns out the site impacts more than an acre a site specific discussion would happen then; if more than fifty-percent of the trees in the wetlands is impacted, they will have to go to the ZBA. Thibodeau recommended a new motion.

<b>Motion:</b>	<b>Evans</b>	<b>in light of the Planning Board April 3, 2007 vote, and because of the public safety implications, the Planning Board considers this situation does not need to go before the Zoning Board of Adjustment; the prior vote stands and Article XV has not been violated.</b>
<b>Second:</b>	<b>Thibodeau</b>	<b>In favor: Evans, Himmer, Thibodeau Opposed: Foote, Khan Approved: 3-2</b>

Derek Heap asked how future wetlands maintenance would be done, and whether Unitil or DES had been consulted. For example, some portions of the land don't freeze during the winter. Also, now that the trees are cut, sanitation stations are coming down and pushing over the fence into the marsh. Additionally, stakes with hay is spread out fifty-feet wide and hundreds of feet long before it goes out toward the marsh. A main concern is the cut goes in a circular motion and created a berm which ruins his wetlands between his property and the entrance to the sanitation station and the drainage isn't happening properly. Garand said his office had received another complaint about drainage that is going under the South Access Road and behind the elderly housing, causing flooding in residential homes. Heap said his pond is not rising, even with the heavy rains, and wondered if he can fill his wetland pond if it dries up. Heavy pine needles are covering a large dirt area. Foote said there are concerns about household flooding from several people that live southeast of the South Access Road. Dragging the trees has shifted the flow. Lehman said such information should be forwarded to Grafmeyer as there is a plan to address interim conditions or deficiencies; construction people will fix it. Evans referenced the abutter concerns about maintenance of the power lines in the wetlands areas, and asked if the intent is not to enter those lands except in an emergency or if the ground is frozen. Shepard said Unitil would work when it was dry; in an emergency the wetlands would be considered.

Foote referenced the previous letter from McNeill, Taylor and Gallo stating the hope that the Unitil cut survey would bring closure to the Unitil cutting issue, and that DDR would be returning to the Planning Board to address the remaining issues. At the time the Board still had questions about the cutting issue. It was necessary to address the issue so as not to imply that there could never be further discussion. Foote asked if the Board was satisfied with the issues discussed or had questions, and how it wanted to proceed. Himmer asked if the Board needed to direct DDR to satisfy the drainage problems. Garand asked if the DES said there was a corrective plan for impacted land outside the easement. Grafmeyer confirmed this. Foote said the plan discussed by



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Eban Lewis was for filling in the ruts and planting grass, overtopping it with hay. It did not address drainage issues or replanting. Grafmeyer said DDR will address the problem and asked to receive the pertinent information. Morgan asked for a report to be provided to the Board. Grafmeyer agreed.

Foote asked for further comments. Angeljean Chiramira of the Newburyport News asked about the tree cut on town land. Foote said that is a Board of Selectmen matter. Foote recessed the meeting at 8:05PM.

Foote recessed the Public Meeting at 8:05 PM.

### **PUBLIC HEARINGS**

Foote resumed the Public Meeting and opened the Public Hearing at 8:25PM.

Lowry resumed his Board seat.

### **ONGOING CASES**

**Case #2007-09 - Proposal by Waterline Industries Corporation and Borderwinds Development LLC to construct a 12,800 square foot industrial building at 7 London Lane, Tax Map 5, Lot 8-10. continued from May 15, 2007**

Attending Ralph Dumke, President, Waterline Industries;

Appearing for the Applicant: Wayne Morrill, Jones & Beach Engineers;

Morrill said the Zoning Board of Adjustment had approved the variance request. Referring to the revised planset, he enumerated the changed items. Planset items modified since Tech Review were adding the dumpster pad; no outside storage; no outside lights on the west end of the building other than security lighting; Foote noted Morgan's May 28 memo indicating the specific changes were not identified, and a wetlands restriction stipulated in the original Department of Environmental Services Dredge and Fill, permit is not inserted in the new deed. Morrill said the attorney is aware of this and the original deed, indicated who was in charge of the drainage easement - that is Ledge Road Realty Trust. Once the road gets accepted for the residential subdivision, it would be turned over to the town of Seabrook. That there is to be no further wetlands impacts needs to be added to the transfer deed. Kravitz asked for the updated form of transfer deed. Garand said that was to have been a part of the original deed. Morgan asked who owns the property now. Morrill said the current owner of the property is Border Winds Development LLC, and believed Colliander would follow-through with the amendments in both deeds. Garand complimented the Waterline plan as creating a better neighborhood, but said the deed(s) amendments should be a condition of approval. Dumke commented they would not take a deed unless those provisions were there, and know it's part of the Planning Board approval.

Foote noted the ZBA granted the variance on condition that a DES permit be obtained. The Town Engineer recommends site security of \$35,000, and says the major issue for review will be the functional preservation of the proper management of the offsite runoff from the Border Winds subdivision. The Stormwater Management plan has been revised and updated as individual parcels



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are developed. Also, the Stormwater Operations and Maintenance Manual now complies with federal EPA and NHDES requirements for perpetual care on the property. The executive summary indicates the post-construction peak runoff will be less than the pre-construction runoff. The DPW Manager requests that the Stormwater Operation and Maintenance Manual be filed in the Rockingham County Register. Foote read the waiver requests.

Evans stated his appreciation for the applicant's consideration in the placement of the lighting and restriction on outside storage. He asked the Board to clarify its position on sidewalks going down Ledge Road. Foote said this has not been discussed with the current Town Manager, but previous town managers said the problem would be the nature of Ledge Road and fitting a sidewalk in as there are virtually no shoulders. The area would need to be widened with an extensive DES dredge and fill permit because wetlands are on both sides of Ledge Road. Evans said the public safety needs to be balanced against the desire to preserve the environment. Foote said the cost of the fill to widen the road is the issue. Morrill said one issue if a sidewalk/curbing is installed is how will the water drain off Ledge Road. Thibodeau recalled the drainage was a big engineering problem because of the wetlands, and didn't see how sidewalks could be put in. Dumke said it is a long straight-away and suggested flattening out the shoulder a little bit with a white stripe, leaving some room. Foote said this would widen the pavement. Evans said the effect of the fifty-foot no-cut zone on the already developed properties is minimal and favored laying the ground-work for possible future improvement. If sidewalks are explicitly waived they may never occur. Morgan said the issue would be if the Board were to ask Waterline to make a contribution in cash or land. Foote said the Board was admonished by the previous Town Manager about escrows because they must be spent within six years. Morgan said to clarify the Board's policy on whether to have sidewalks on Ledge Road and, if so, how that would be done and how it might affect Waterline.

Evans asked what happened with the first Ledge Road condominium. Morrill thought it was approved with a sidewalk with security put in place and then returned. Foote said the Town Manager and Board of Selectmen overruled the Planning Board's intent. Morgan said it seems a little late but it can be discussed at a work session. Himmer asked if any other technical advice is needed.

<b>Motion:</b>	<b>Foote</b>	<b>to grant the waivers requested for Case #2007-09 re the location of the revision block, and the photometric grid.</b>
<b>Second:</b>	<b>Lowry</b>	<b>Approved: Unanimous</b>

<b>Motion:</b>	<b>Lowry</b>	<b>to require posting for Case #2007-09 construction site security in the amount of \$35,500.</b>
<b>Second:</b>	<b>Khan</b>	<b>Approved: Unanimous</b>



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<b>Motion:</b>	<b>Foote</b>	<b>to ensure the Stormwater Operations and Management manual for Case #2007-09 is recorded at the Rockingham Register of Deeds.</b>
<b>Second:</b>	<b>Lowry</b>	<b>Approved: Unanimous</b>

Morrill said they would do the recording and give the Board a copy. Morgan said the motion should be structured to approve the siteplan with the stipulations.

<b>Motion:</b>	<b>Himmer, amended by Foote as to item (iv).</b>	<b>to approve Case #2007-09 - Waterline Industries Corporation and Borderwinds Development LLC to construct a 12,800 square foot industrial building at 7 London Lane, Tax Map 5, Lot 8-10 provided (i) the deed revision includes the language reflecting the prior Department of Environmental Services restrictions (ii) construction site security in the amount of \$35,500 is posted prior to construction, (iii) the Stormwater Operations and Maintenance Manual is recorded at the Rockingham Register of Deeds, and (iv) pending approval of the current wetlands application before the DES.</b>
<b>Second:</b>	<b>Lowry, Tibodeau as to item (iv).</b>	<b>Approved: Unanimous</b>

**Case #2006-61 - Proposal by Edwin F. Adams and Griffey Seabrook LLC to construct a 89,911 sf Kohl's Department Store, a 12,500 sf retail establishment, and a 5,495 sf restaurant off Lafayette Road, between Lowe's and the Seabrook Recreation Center, Tax Map 9, Lots 62, 238-1, and 240, - Traffic Impact and Site Access Study, continued from May 1, 2007.**

Attending: Scott Mitchell, representing the Applicant; Mary Ganz, Attorney; Stephen Pernaw, Pernaw & Associates, traffic consultant;

Appearing for the Applicant: Wayne Morrill, Jones & Beach Engineers

Garand noted that the Town was served today with a suit challenging the Zoning Board of Adjustment decision concerning a variance for a commercial structure over one-thousand square feet in zone 2R. Mitchell asked Morrill to go through the changes requested at the last meeting. Referencing the revised siteplan and his letter enumerating the changes, Morrill indicated the revision block has been updated, the locus scale has been adjusted, a highway grading and drainage sheet has been added to the planset, abutters information updated, and additional detail relating to the Recreation Center, the demolition plan added, a hydrant relocated for the transfer between Lowe's and Kohl's, pavement removed for the egress road from the Community Center, sidewalk removal for the upgrade of Boynton Lane, and all abandoned cullys to be cut and capped at the property line. Additionally, a sidewalk from Route 1 to the crosswalks and Kohl's front door has been added, and extended into the Lowe's property, snow storage has been relocated to the parking lot, no outsales is notated, signage as to no overnight parking will be installed, the egress drive



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from the Community Center is shown with signage, the traffic lanes on Lafayette Road and Boynton Lane are modified, and unloading of dumpsters and refrigeration trucks referenced. Abutter notification for each use is to be by certified mail through the Planning Department. There is additional runoff treatment at the Community Center site due to the egress driveway, a comparative chart of the Kohl's and Lowe's drainage system is shown. The ground water for the proposed restaurant is approximately five feet below grade, and the drainage and guardrail at the Community Center was modified.

Morrill said some planting along the Town's property at the pond is planned. Foote said there used to be a line of evergreen bushes and trees that was dug out by the DOT. Morrill said they would work with the Community Center to provide flowers and shrubs. A shut-off for domestic water use is outside the building; and water usage by each building is shown; a sewer manhole added on the future restaurant site; an adjustment to the hydrant on the west side of Lafayette Road; the existing sewer easement along Lafayette road was added; lights at the building corners were moved to the fence and some poles are now at twenty-feet. Hours of operation are 10AM to 10PM except on holidays when hours are 5AM to midnight. Kohl's will address the Board's question about prosecution of minors by letter. Foote said there are reports of Seabrook police prosecuting shoplifters and requesting jail time because it is so costly. Sidewalk access and crosswalks go from the Community Center to Boynton Lane where is extended into the Southgate Plaza. Morgan asked if Southgate is on board with this. Morrill said they thought it a good idea and a letter to this effect is hoped for. Morrill said this plan has been submitted to the Department of Transportation as part of the traffic movement permit, and a formal acceptance letter is expected. Morrill said minor changes were also made per department heads. The architecture and elevations blend into the plaza.

Mitchell said another issue is moving or replacing Eaton's sign so it doesn't disappear and asked for some direction from the Board. Garand said signage is outlined in the zoning ordinance and a request for non-conforming signs would go to the Board of Adjustment, and then to the Planning Board as to the location. Garand asked about limiting a driveway and asked if the owner would appear to discuss it. Mitchell said he talked to Robert Korff about making the bank property a right-in only and putting an access easement to the back to service West Marine and Kentucky Fried Chicken. Korff would have been at this meeting but is out. Mitchell submitted a letter from Korff indicating that cannot be done; it would have serious impact with an existing tenant and for future development. Garand said Korff is asking owner/developers to give up their turning lane and should be giving them something to hold the value of their property. When the Home Depot lights were installed it impacted the Mobil site that had to close; the cross connections weren't put in. Those property owners should be protected, or the project shouldn't go through.

Morgan said in his experience at DOT scoping meetings Korff is a very reasonable person; a direct dialog with Korff at a Planning Board meeting would be much more productive. Mitchell said a great effort was made to get agreement on the traffic light, If Korff didn't own the [bank] parcel he wouldn't be asked to do this. Morgan thought progress could be made with Korff if he were here. Mitchell said he would relay the request. Garand said a property owner applying to the Board should be at the meetings. Foote said the change in turning lanes has adversely impacted West Marine and



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KFC. Garand said the Board owes approved parcels the full use of their property. If Korff thinks a connector at the back of his property is out of the question, maybe the project is too big. Foote said especially when it is the one parcel and it is owned by the Applicant; leases can be rewritten. Garand said this is the time for the town to look to then future.

Evans asked if Lowe's would be amenable to painting of a crosswalk to Kohl's. Mitchell said Korff doesn't own the Lowe's now. Mitchell said they will contact Lowe's. Khan said including sidewalks and accommodating the Rec Center is a very good thing, and asked if there is a crosswalk to the Irving property. Mitchell said there is not. Lowry asked how long it would take to get a response from Demoulas. Mitchell said they are on Board and have been great to work with; a letter is expected. Their only concern was for the request to shut the right-in/out. Evans asked if department heads have commented on the revised planset. Foote said not yet as the revisions were only received on Friday.

Morgan asked if Korff was aware the Board would like to meet with him. Mitchell said he is. Kravitz was asked to send a letter inviting Korff to meet with the Planning Board. Khan asked if the Police and Fire Chiefs could be asked to attend the next meeting. Foote said alternatively they could send letters. Foote asked for comments from abutters. Richard Eaton of Autoworks said Boynton Lane appears in the preliminary stage, and asked how far back it would be widened. Eaton was given a site plan. Foote said the overgrown hedges at the Boynton Lane corner which affects the visibility of Autoworks. Eaton was more interested about how far back the widening is to be. Everyone on Boynton Lane is complaining about the traffic. Morrill said Demoulas wanted to keep a rear driveway for the truck turns. The assumption is the improvements would end where the curb ends. Garand noted all the Market Basket trucks are redirected to Boynton Lane and there are a lot of residential people beyond it. Morrill said they are working on making the drainage in that area work better, and avoid running down Boynton Lane. Garand said that would be a good point for a detention pond.

Thibodeau suggested consulting counsel about how far the Board can go until the court case is resolved. Mitchell asked to be continued to July. Their permits are pending but they have responded to site-specific comments. Garand asked if there is a proposed location for the Eaton sign. Morrill said an easement would be needed from Demoulas, probably to the Town of Seabrook, and the Autoworks sign would be in the right-of-way. Garand said the application to the ZBA should be advanced so the sign can be moved prior to construction. Mitchell said the concerns about signage and visibility would be discussed with Demoulas representatives concerning Boynton Lane. . Foote continued Case # 2006-61 to July 17, 2007 at 7PM in Seabrook Town Hall.

Cheryl Karinen asked to make a statement because the value of her property is at stake. She asked which holidays would have midnight hours. Garand said at the Board meeting she attended, the Kohl's representative said during the Christmas season they would look to open extended hours. Karinen said at this meeting the reference was just to "holidays". This means car alarms, other noise, and the closest abutter has small children which is a huge infringement on their lifestyle. Crossing Route 1 is so difficult for a vehicle or motorcycle and she does not see how there could be a crosswalk. The project is too close to the residential properties. Foote asked if she did not want



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crosswalks. Karinen said people would be killed, and asked what the average speed on Route 1 is clocked at. Kids are coming from the Recreation Center. Foote said that is why crosswalks are requested because kids run across now. Lowry said kids can get killed now running across Route 1 because there is no crosswalk. Foote said the light will be as at Home Depot where you cross by pressing the button and waiting for the light to stop traffic. Kerrinan expressed concern at the noise of emptying trash. Foote said there would be no dumpsters before 7AM or after 10PM. Karinen said they would violate the hours, hear the traffic even closer than now, have the exhaust, hear the plowing, and generators. Foote said the outside equipment would be shielded and on the Lowe's side if possible, and asked what the conditions are now. Karinen said fifteen years ago the area was quiet. Now there is noise from Lowe's, the trees will be gone, The Planning Board should protect the townspeople. Route 107 will be blocked at Route 1. There's nothing good about this, and asked why a corporation would go where it is not wanted. The convenience is for MA shoppers.

<b>Motion:</b>	<b>Lowry</b>	<b>to adjourn the June 5, 2007 Planning Board Public Meeting and Public Hearing at 9:45PM.</b>
<b>Second:</b>	<b>Himmer</b>	<b>Approved: Unanimous</b>

Respectfully submitted,  
Barbara Kravitz, Secretary  
Seabrook Planning Board