



Town of Seabrook Planning Board Minutes

Tuesday, September 18, 2007
NOT OFFICIAL UNTIL APPROVED

Members Present: Sue Foote, Chair; Mike Lowry, Clerk; Robert Moore, Ex-Officio About Khan; Peter Evans, Vice Chair; Paul Himmer; 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 6:30PM.

Foote opened the meeting at 7:10PM
Minutes of September 4, 2007

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

Motion:	Evans:	to accept the Minutes of September 04, 2007 as written.
Second:	Khan	Approved: Unanimous

Foote said Tibodeau is sitting as the alternate for Preston.

SECURITY REDUCTIONS

Case # 2004-51 Ekta Patel & Ekta Patel Realty Trust to establish a tobacco store and a convenience store at 5 Main Street, Tax Map 10 Lots 3-14&15.

Foote read a letter from Henry Boyd of Millennium Engineering requesting the Board move ahead without the as-built to return the security and close the case. The work was done substantially in accordance with the plan. Although Boyd would provide an as-built, it would be a great cost to the Applicant. Foote noted the as-built requirements are long standing. Kravitz noted the security checklist is in hand. Garand would be comfortable without the as-built.

Motion:	Moore	To waive the as-built for Case # 2004-51.
Second:	Lowry	Approved: Unanimous

Motion:	Foote	To return the security for Case #2004-51 Ekta Patel & Ekta Patel Realty Trust to establish a tobacco store and a convenience store at 5 Main Street, Tax Map 10 Lots 3-14&15, and to close the case.
Second	Evans	Approved: Unanimous

CORRESPONDENCE

Foote referenced a letter from **Andrew & Lynn Pineo concerning the water run-off which it strongly believes is a Coca Cola problem.** Garand said the drainage is complete on Whitaker Way and will be reviewed during the next heavy rain and then monitored.



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Footo referenced a letter from the Town Engineer to the NH Division of Historical Resources concerning a proposed sewer installation at 360 Route 286. The Division has responded that there are no known Historic Resources. The letter will be forwarded to the Sewer Department.

Footo referenced a letter from Todd Gerrish of Port Lighting requesting an extension for the 12,000 square foot Phase II. The Phase I - 10,000 square foot building is occupied by Port Lighting. Evans asked if zoning changes would have an impact. Footo said they would not.

Motion:	Evans	to grant an extension until September 15, 2008 to Port Lighting Systems at 24 London Lane, Map 5, Lot 8-42;
Second:	Khan	Approved: Unanimous

Garand said the parcel is now stabilized; the detention pond looks complete.

Motion:	Thibodeau	to return the Port Lighting systems security held for the detention pond, and to retain the balance of security for the developing Phase II.
Second:	Moore	Approved: Unanimous

Footo read a letter from William Moodie, General Manager, and Mario Filippone, Manager of Master McGrath's Restaurant on Route 107, requesting approval for an out/door patio/deck to compete with similar establishments that accommodate smokers. Garand said the proposal is for a small enclosure and awning. Footo asked if parking is lost, and Moore asked for the addition size. Filippone said 20'x12' and takes up about 2 spaces. Garand said "no smoking" now applies to all restaurants; a deck is better than having patrons standing outside. The location is to the side of the secondary driveway. Footo recommended bollards for protection.

Motion:	Evans	to waive Planning Board jurisdiction at this time in connection with the Master McGrath's proposed patio/deck on Route 107 (8 Batchelder Road, Map 5 Lot 11), conditioned on (i) the structure taking up no more than two parking spaces, and (ii) placing protective bollards at along the deck edges.
Second:	Thibodeau	Approved: Unanimous

ANNOUNCEMENTS

Footo referenced the flyers in the Board packets for the upcoming Office of Energy & Planning conference and the Local Government Center Municipal Law Lecture Series. Footo strongly recommended that Board Members interested in attending contact Kravitz who will make the arrangements.



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The Rockingham Planning Commission is holding hearings within the next week on the Ten-Year Transportation Plan. Morgan said no Seabrook projects are included. Foote said two Seabrook projects have been discussed, but never made it into the plan, although the Town has paid its dues for many years. Khan said he will raise Seabrook's issues at RPC meetings. Morgan said the Town could also appoint another representative to RPC.

PUBLIC HEARINGS

Foote opened the Public Hearings at 7:10PM. Garand recommended hearing the cases that take less time first.

ONGOING CASES

Case #1997-42/Border Winds/Benoit continued from July 17, 2007

Case #1999-24 Benoit/Randall Drive continued from July 17, 2007

Case #2006-46 David Benoit for an amendment to the Border Winds Subdivision, continued from July 17 2007;

Evans recused himself from these cases.

Attending: David Benoit; Lenny Demarais, Homeowners Association;

Foote said Benoit had signed the Notice of Decision, and Millennium had provided the required letter confirming satisfactory work completion. Morgan said the deed is undergoing third drafts And he is confident it will be acceptably fixed. Moore asked who is doing the revisions. Morgan said Attorney John Colliander. Fopote said there are several easements to be submitted re, including but not limited to, detention ponds, drainage, sewers, and the backside area off Boarder Winds and Ledge Roads. Garand said storm drains and utilities need written easements. Morgan will review the plans for easements.

Moore said the sidewalks are as good as others in town; the Town Manager and Selectmen don't foresee problems. Page said the sidewalks are better than before, but there are three road cracks that need maintenance today; the cost would probably be under \$2000. If the road is accepted he would submit a warrant article. Katherine Evans said she had been told another top-coat would be applied. Page said the top-coat discussion related only if granite curbing were installed. Demarais said things are looking good as long as it is ok with the DPW Manager.

Motion:	Moore	to recommend the Board of Selectmen consider accepting Border Winds Road [and Randall Drive] as public roadways, pending receipt of all road and easement deeds.
Second:	Thibodeau	Approved: Unanimous

Foote asked for discussion. Khan asked if Benoit is satisfied. Benoit said he did all that the Board asked of him, in a timely fashion, and maintained the roads for eight years. He hopes to pass the deeds and easements on to the Selectmen. Benoit thanked the Planning Board for the opportunity of doing this work in the Town. Moore asked if Benoit would seal the cracks. Benoit explained the cracks are about 1/8 of an inch wide. He will have PJ Cabral fix them [tomorrow] but they will



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return year-by-year because of the natural frost and contraction that occurs in New England. Page said fixing it now would be fine. Foote noted the Town is holding a \$75,000 maintenance security bond, and said the maintenance should be all done when the Board of Selectmen accept the roads.

Motion:	Thibodeau	to amend the previous motion to instruct the Treasurer to release the related insurance bond security conditioned on acceptance of the roads by the Board of Selectmen.
Second:	Lowry	Approved: Unanimous

Benoit asked if release of the lighting obligation could be added to the motion. Morgan said this should be a letter from the DPW, and Evans asked if this is needed because of the court order. Page said "yes". Benoit asked if he can cancel the liability insurance he has carried for eight years. Foote said this can be done when the Board of Selectmen has accepted the roads.

Motion:	Moore	to recommend the Board of Selectmen consider accepting Border Winds Road and Randall Drive as public roadways pending receipt of all road and easement deeds, and to instruct the Treasurer to release the related insurance bond security conditioned on acceptance of the roadways by the Board of Selectmen.
Second:	Thibodeau	Approved: Unanimous

Motion:	Foote	to close Cases #1997-42, 1999-24, and 2006-46 pending acceptance of Boarder Winds Road and Randall Drive by the Board of Selectmen, and the release by the Treasurer of the related insurance bond.
Second:	Khan	Approved: Unanimous

Evans returned to his Board seat.

Case #2000-40 London Lane roadway

Attending: David Benoit, Stan Saracy

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

Morrill said the wetland markers have been set lot-by-lot as in the siteplan approval. Easements are coming from Attorneys John Colliander and Mary Ganz. The DPW Manager's remaining concerns are the wetland markers (see above) and the recording of the easements et al. Morgan asked about the swales. Morrill said they are on six lots along the roadway. The pond on Lot 50 is the CBAN lot. The as-built has been presented and they are working on the green strip that the Board requested. Morgan asked for Benoit's comments. Benoit said he will do whatever he can as soon as possible. The problems are the paperwork, and that the lots are turning over. Saracy said he is working with the DPW Manager; the swales would be removed as the lots are developed with detention ponds and underground passages. Foote said they will be either underground or in individual lots. Morrill said



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wetlands would be marked would be presented as the lots are developed. Benoit said the road is completed as in the approved subdivision, except for the DPW Manager's two items which are being addressed. It falls on the Town Planner to straighten out the deeds and easements. Evans asked if the Board approved the swales and can be repaired. Saracy said these deep swales are in the right-of-way as approved but weren't seeded as a telephone pole is in front. Evans noted easements would be needed from new purchasers. Benoit requested the Board to send the roadway to the Board of Selectmen for acceptance. Evans agreed with getting this off the docket. Foote read Attorney Colliander's written request which also recognized the DPW Manager's issues, and asked for questions from Board Members.

Motion:	Evans	to mark the wetland boundaries as the individual lots are developed.
Second:	Lowry	Approved: Unanimous

Motion:	Foote	to recommend the Board of Selectmen consider accepting London Lane as a public roadway pending receipt of all road and easement deeds, and (i) to instruct the Treasurer to release the related security conditioned on acceptance of the roadway by the Board of Selectmen, and (ii) then to close the case.
Second:	Lowry	Approved: Unanimous

Benoit said if the Town Planner would be more comfortable if Attorney Ganz worked on the document language, he would pay the cost.

Case #07-20 - Proposal by Joyce Addison for a two-lot subdivision at 2 Whittier Drive, Tax Map 8, Lot 38-2;

Attending: Joyce Addison;

Foote indicated the topography waiver request and the form of easement had been received.

Motion:	Moore	to waive the topography requirements for Case #2007-20.
Second:	Thibodeau	Approved: Unanimous

Foote asked if the Registry would accept the mylar. Garand said he would look at it to see if the lines were more crisp before it goes to the Registry. Morgan noted the easement doesn't involve the Town, otherwise the plan looks good.

Motion:	Moore	To approve Case # 2007-20 Joyce Addison for a two-lot subdivision at 2 Whittier Drive, Tax Map 8, Lot 38-2.
Second:	Thibodeau	Approved: Unanimous



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Case #2007-25 Proposal by Bruce Brown for a 2-lot subdivision at 60 Centennial Street, Tax Map 13, Lot 18.

Attending: Bruce Brown

Motion:	Evans	to accept Case # 2007-25 as administratively complete for deliberations.
Second:	Lowry	Approved: Unanimous

Morgan said this case need not go to Tech Review, and noted some of the topography had been included.

Motion:	Moore	to waive the topography requirements for case # 2007-25.
Second:	Thibodeau	Approved: Unanimous

Morgan said this case complies with regulations; there are no issues.

Footo asked for questions from the Board and then attendees; there being none.

Motion:	Evans	to approve Case #2007-25 - Bruce Brown for a 2-lot subdivision at 60 Centennial Street, Tax Map 13, Lot 18.
Second:	Lowry	Approved: Unanimous

Footo noted the siteplan would not be recorded for thirty days to allow for appeals. Brown asked about permits. Garand said to apply for water and sewer permits as soon as recorded to avoid weather hold-ups.

Case #07-26 - Proposal by 28 Locust Street Realty Trust for a condominium conversion at 19 Dow's Lane, Tax Map 12, Lot 14-100.

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

Morrill said this is part of a four-lot subdivision off Dows Lane. Morgan asked for the condominium documents. Footo noted no condominium document fee had been paid. Morrill will check for these.

Footo continued Case #2007-26 to October 16, 2007 at 6:30PM at Seabrook Town Hall, noting it is not administratively complete.

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ONGOING CASES - Continued

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 July 17, 2007.

Attending: [David Walker, Rockingham Planning Commission;] [Steven Ireland and] NH Department of Transportation; Paula Wood, Seabrook Budget Committee Chair; Jim Grafmeyer, Developers Diversified Realty; Robin Bousa, VHB, Attorney Richard Uchida, State Representative Jim Webber;

Appearing for the Applicant: Robert Korff, Griffey Seabrook LLC; Wayne Morrill, Jones & Beach Engineers; Scott Mitchell; Attorney Ron Fellman, Attorney Mary Ganz; Jeff [Gaeta], Pernaw & Associates;

Footo said this case had been returned to the Technical Review Committee for minor issues which it is believed have been answered in the revised plans. She asked if there is concurrence. Morgan asked for the Applicant's response to the Tech Review. Morrill said the sewer, water issues were taken care of; irrigation for the front landscape maintenance is shown in the utilities plan. Morgan asked about the 2000 gallon grease receptor. Morrill pointed out this detail and said the water and sewer cross-over had been removed; the water main behind the building is cut-back and a "blow-off" installed; the hydrant assembly is replaced; and addressed the Demoulas driveway issues. Footo noted the spare conduit is a good idea. Morrill said there are now six-inch water lines. Khan called attention to the traffic light area and asked for two-way access for the Rec Center. Morrill said the concern is stacking of vehicles and cross lane traffic. Footo noted the Police Chief's concerns about potential vehicle short-cutting across parking areas, especially at the Rec Center. Garand said it will be safer for those turning in from the south. Mitchell said northbound traffic will take the first traffic light entrance. Khan said he is not satisfied, but will live with the single lane to from the Rec Center. Morrill said there will be greater use and better visibility with the two traffic lights, especially for trucks.

Moore asked about the Autoworks sign. Mitchell said the cash business has refused space for it. Korff suggested this might be addressed when Demoulas comes in for other approvals. Garand asked about the sidewalks and the back access. Morrill said the DOT felt the right-turn lane would be more important. Korff said there is not a material impact for the additional lane, but the legal opinion re back access is that there would be a material adverse impact. Morgan said the back access and sidewalks along Lafayette Road could cause disapproval. Korff said the right turn-lane takes up the landscaping leaving no room for sidewalks. Adding traffic in back has a big impact, noting the cash business access is already a right in/out. Mitchell noted here is already signage.

Morgan referred to the sidewalk discussion, and said to take into account that pedestrians don't go away. Fellman asked if there is room for sidewalks and the turn lane. Korff said he can handle the [sidewalks and back access] in 2013. Garand said safety issues with the elevations. Morrill suggested a guardrail and restriping. Feldman said they can't re-stripe. Korff said they don't want a court fight over reconfiguring for sidewalks. Footo said sidewalks are more important than a right-turn lane. Morgan commented the project brings more traffic which would make it less safe for



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pedestrians. Garand said the people matter most, the driveway access wasn't build correctly. Mitchell said they do not have the right to install sidewalks; the right turn lane was recommended by Pernaw. Fellman said correspondence from officials of the cash business in Georgia say there is no benefit to them. Korff believed they are posturing for the long-term at a discounted rate; this is not economically feasible for him. Foote said the back access would bring more traffic to the cash business. Evans said there will be four-way pedestrian traffic, and agreed with Foote that the sidewalks are of more value to the Town. Morgan said the Board seems to favor cross-walks, and asked if there would be pedestrian buttons. Mitchell said there would. Korff said if the Board would take the sidewalks, perhaps he could negotiate to get both sidewalks and a right-turn lane. Foote said the sidewalks are the priority, and Moore emphasized pedestrian traffic from the Rec Center. Thibodeau said without sidewalks they would use the cutthrough to WalMart. Korff said if both sidewalks and the right-turn lane are ok, he would go back to the tennant and try to get both. Garand said that would make it the safest.

Korff said even though Demoulas today said no to the Autoworks sign, he would remove the shrubs that interfere with it. Mitchell asked if the owner could install a roof sign. Garand suggested making the- sign smaller and finding some space as the intersection is reconfigured, especially if there is not a turning lane. Mitchell suggested a letter from the Planning Board to Demoulas. Garand said the issue is expanding the right-of-way, but he would speak with the store manager.

Morgan referenced DDR's letter proposing an expansion of the Route 95/107 Bridge, and said a meeting had been set for Friday 9/21 with representatives of Kohl's, DDR, the Rockingham Planning Commission and the DOT. Since Steve Pernaw today said he cannot be there, perhaps another date can be arranged. Mitchell said the Kohl's developer doesn't want any part of a DDR proposal. Therefore, it would make an offer for offsite improvements "that would not be extended after tonight", although they understand that the Wetlands and DOT permits are outstanding. The Kohl's developer would pay the amount of \$800,000 (capped) if the Planning Board approves the project at this meeting. Otherwise, they request an "up or down" decision at this meeting. Foote asked if this is over and above other offsite improvements. Korff said "yes" but it does include the \$200,000 stated in the DOT letter. Khan asked if the Board had ever been asked to do a "take it or leave it" offer before. Mitchell said they do not want the back and forth, and there is a powerful peer review letter. Further, Mitchell said he had not before seen a figure [\$200,000] from the DOT. Morgan said the answer to Khan's question is "no". Evans said the project went through Tech Review for minor issues with nothing in writing about such a proposal. Holding up a project is not fair, but he is not comfortable until there is written detail on the plan about the sidewalks and the changes Korff is willing to make in 2013. Mitchell said to include (i) sidewalks, (ii) the driveway at Demoulas, and (iii) the sidewalks, and if possible, the right-turn lane, as conditions to approval.

Korff said the \$800,000 could be used where the Board wants for roadway mitigation; he is out of time and can't put the project in suspension with his time constraints while waiting. Garand said if the \$800,000 is accepted, where does it go, and Moore asked how the monies will be handled. Korff said that would be wherever the Town says. The [DDR] proposal needs thought and effort and would take too long. Evans said the deliberations are at an end but there is no measuring stick for the \$800,000.



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Garand asked Grafmeyer why DDR had not returned with a Traffic Study. Grafmeyer said DDR is not against the Kohl's project. However, the Planning Board placed the obligation on DDR to mitigate the Bridge traffic, and it is fair and equitable for others to share. Also, in the Board's peer review, Bayside Engineering asked for further Bridge study. Evans asked for the formula basis for \$800,000. Mitchell said it came from Grafmeyer's figures. Foote explained the Bridge estimate in the memo is \$4,100,000 - the Kohl's \$800,000 is approximately 20 percent. Grafmeyer noted the State had already set \$200,000, so the additional amount is \$600,000. Evans commented that what the State meant is not known. Korff said his figure is \$800,000, not the State's \$200,000. Garand said the Planning board must protect the Town. Mitchell said the intended tenant wants an answer tonight. Korff said the project is very approvable using the State's figure.

Uchida said the objective is to make sure the offsite impacts are taken into account. \$800,000 may or may not be fair to the Town. The Bayside letter is clear that the I95 Bridge should have been studied. Materials providing information about the fair-share formula have been provided to Morgan. DDR wants to get beyond the Friday workshop. It is willing to be part of the solution. Mitchell asked if the Board has properly required that other developers participate. They don't want to fight about trip generation. Garand said that would be resolved late for a project. Foote said the Applicant has the right to ask for a decision. Wood identified herself as a resident, taxpayer and the Budget Committee Chair. She has asked for but has not received the Traffic Study, and asked if it is fair at the last moment to have other businesses pay for DDR's project. Grafmeyer said DDR wants to perfect the traffic plan which would include how to fix the Bridge. One developer shouldn't bear the full cost. Evans said it is out of order to discuss DDR's project, and Foote said it would require public notice. Mitchell said the \$800,000 is the best solution for "us" and the Board. Khan said the honesty is appreciated. Mitchell said Kohl's wants to be here and to vote it up or down. Angeljean Chiramida of the Newburyport News asked for Kohl's list of other improvements [This was provided].

Moore said the Town won't take the \$800,000 without going through legal counsel, and there are serious public safety issues. DDR and Kohl's are working very hard for approval. He asked about the status of Kohl's court case, which is pending. Mitchell said a formula is needed and they don't know the scale. DOT actually had two numbers. The \$800,000 is the easiest way. Moore asked why they can't wait for the Friday meeting. They can vote on what's been heard. The State owns the highway and won't help. Evans said by accepting twenty percent of the estimated Bridge cost would set a precedent; the need to run this through counsel is imperative. Foote said if the Applicant wants a decision at this meeting, the case can be denied without prejudice. Korff said they are out of time, and to vote on the merits. Moore said that Grafmeyer's proposal does have merit. Garand asked if the Board of Selectmen can grant a ninety-day extension. Morgan said they can. Foote said if the Applicant wants a decision, that must be done. Korff said if everything is considered, the Kohl's is approvable. Evans said what's missing is the rationale. Korff said to grant approval on \$800,000, not \$200,000. Uchida said at the last meeting the board set up a mechanism; 72 hours is needed. If the Board doesn't have all the information to act, denial without prejudice is fine - not a denial on substance. Khan likened the proposal to a "little TIF". Grafmeyer said this is a fair-share



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arrangement; DDR would get the project done. Foote said the Friday meeting is not DDR vs Kohl's - it pulls in the experts and gets the minds to work out a formula.

<p>Motion:</p>	<p>Evans</p>	<p>to approve Case #2006-61 - 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, conditioned on (i) sidewalks on a portion of Route 1, Tax map 9, Lot 61; (ii) four-way cross-walks at the Boynton Lane and Route 1 intersection, (iii) sidewalks and/or sidewalks and a right-turn lane at the Route 1 intersection and the proposed site driveway, (iv) reflect 2013 cross-connects on Tax map 9 Lot 61 subject to mutually agreed easements between the Applicant and Town Counsel, (v) receipt of permits from the Department of Transportation and Department of Environmental Services, (vi) use reasonable efforts to identify a suitable location for offsite signage for the Autoworks [Eaton] business, (vii) provision by the Applicant of \$800,000, to be used for offsite roadway improvements on Route 107 and/or the Route 1 Corridor, to be administered by the Seabrook Board of Selectmen, pending approval by the Town Counsel and the Applicant's attorney, (viii) favorable decision on the Zoning Board of Adjustment court case, (ix) any change of use on the front parcel to require Planning Board approval, and (x) Planning Board review of plans for the 12,500 square-foot retail tenants.</p>
<p>Second</p>	<p>Himmer</p>	<p>Approved: In favor - Himmer; Evans;Khan, subject to Town Counsel approval; Thibodeau; Lowry; Foote. Abstained - Moore</p>

Moore said he abstained because of his seat on the Board of Selectmen.

Uchida said DDR will gladly attend the Friday, 9/21, meeting of technical experts. Foote declared great disappointment that the State has not been of help to Seabrook. Grafmeyer said DDR will make a proposal on Friday. Uchida commented he has worked well with Pernaw. Foote suggested getting Pernaw's statistics, including the graph scaling from his work on Lowe's, Home Depot and Irving Gas.



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Foote reminded all that the Planning Board October 2 meeting is primarily a policy and procedures worksession. Garand asked if Morgan had word from the impact fee expert. Morgan said they were playing phone tag. Foote introduced Jim Webber, Seabrook's new State Representative.

Foote adjourned the Public Hearing at 10:05PM and the Public Meeting at 10:06PM.

Respectfully submitted,
Barbara Kravitz, Secretary
Seabrook Planning Board