



## Town of Seabrook Planning Board Minutes

Tuesday, February 21, 2012  
NOT OFFICIAL UNTIL APPROVED

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

Members Absent; Robert Fowler; Paul Himmer, Alternate; Paula Wood, Alternate;

Hawkins opened the meeting at 6:35PM.

### **MINUTES OF NOVEMBER 1, 2011**

Hawkins asked for changes or corrections; there being none.

<b>MOTION:</b>	<b>Chase</b>	<b>to accept the Minutes of November 1, 2011 as written.</b>
<b>SECOND:</b>	<b>Hawkins</b>	<b>Approved: Unanimous</b>

### **MINUTES OF JANUARY 3, 2012**

Hawkins asked for comments or changes; there being none.

<b>MOTION:</b>	<b>Khan</b>	<b>to accept the Minutes of January 3, 2012 as written.</b>
<b>SECOND:</b>	<b>Chase</b>	<b>Approved: Unanimous</b>

### **MINUTES OF JANUARY 17, 2012**

Hawkins asked for comments or corrections; there being none.

<b>MOTION:</b>	<b>Foote</b>	<b>to accept the Minutes of January 17, 2012 as written.</b>
<b>SECOND:</b>	<b>Khan</b>	<b>Approved: Unanimous</b>

### **SECURITY REDUCTON**

#### **Case #2005-27 Irene's Way**

Hawkins noted that information was needed, and continued Case #2005-27 to March 6, 2012.

### **CORRESPONDENCE AND ANNOUNCEMENTS**

Hawkins referenced a **letter from Debby Groder requesting a change of use for 2 units at 727 Lafayette Road to teach sewing**, and asked for Garand's view. Garand said this had been office space. The request was for four people at a time in a 500 square-foot clinical setting. He viewed this as a formality so that a waiver could be considered. Garand, so this is a formality for minimal use at night with plenty of parking; a day care center is downstairs.

Hawkins read the letter from Groder stating that she wants to lease 2 units as a professional setting in which to teach sewing lessons. The combined units are approximately 550 square-feet and will have an average of 4 students at a time, three days per week. Currently, Groder's business is in Haverhill, MA, but she wants to relocate to Seabrook. She is a licensed "Kids Can Sew and Fashion Design Instructor teaching kids and adults to make their own clothes using



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sewing and embroidery machines. She asked that the Board waive jurisdiction. Hawkins said this is a change of use for a very small area. He noted that in a prior similar situation there had been a problem so he wanted to make sure that the Board could either waive jurisdiction or require an expedited application. He did not see a problem for a classroom of 500 square-feet, and asked for comments or questions. Khan asked about the location; Garand said it is the old Governor Weare brick building. Janvrin noted that is where the chiropractic practice had been. Chase thought it right to save the fee.

<b>MOTION:</b>	<b>Chase</b>	<b>to waive jurisdiction for a the use of 2 units at 727 Lafayette Road for teaching sewing and embroidery as described in a letter from Debby Groder on February 21, 2012.</b>
<b>SECOND:</b>	<b>Foote</b>	<b>Approved: Unanimous</b>

### **Case # 2011-21 Smartfuel**

Attending: Brad Laslett, Managing Partner, Hunt Stehli, Smartfuel;

Hawkins recalled that Smartfuel received approval from the Planning Board on November 1, 2011 in connection with moving their operation to 15 Batchelder Road from 34 Folly Mill Road. The site plan included certain changes to the pavement. Hawkins read from the company's request letter that the purpose of the plan was to replace the pavement area surrounding the existing building to incorporate a secondary containment area in the low point of the parking area. Preliminary site plan work was completed as the seasonal temperatures have been moderate. However, at this point the availability of asphalt is scarce and cost prohibitive. Even if the asphalt was procured the project would be sub-standard due to the low temperatures. Smartfuel asked for relief from the pavement requirements of the plan as approved by the Board, until such time as the asphalt is readily available at normal market prices, and stipulated that they will do the work.

Hawkins did not have a problem at this time, noting that they are reprocessing non-hazardous cooking oil. The Board's concern was how would they contain a spill in the parking lot because big trucks would be unloading the oil and some of the processing would be done outdoors where there was no containment system. There is a containment system inside the building. Smartfuel said that they when large trucks are unloaded, they will back them into the building and unload them from the rear so that they will be inside of the indoor containment system. Hawkins questioned postponing the paving until market prices come down, and did not think that the Planning Board should be considering the costs. Getting a waiver because of the temperatures would be ok. Janvrin thought the company was seeking to gain occupancy at the new location; the paving was preventing that. He recalled that the NH Department of Environmental Services response had indicated that the floors inside and the secondary containment would work. He did not want to waive anything for anyone, but had the feeling that this is only to permit occupancy of the building.

Hawkins asked the Smartfuel representatives to explain the issue. Laslett said that the asphalt is available from Boston, but the contractor said if it goes down now the joints won't line up. As soon as the local asphalt suppliers open they would do the work. Using drawings, he showed drawings where the secondary perimeter drains had been installed and said that all of the cracks in the flooring had been sealed in accordance with the manufacturers' specifications. He confirmed that they need to occupy the building to conduct operations until such time as the pavement can be laid. Chase agreed with Hawkins that the Board is not in a position to waive



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anything because of market conditions. He agreed with a waiver for occupancy because laying down pavement at this time would not seal properly.

Hawkins asked for comments from Morgan, who said the waiver request was reasonable, but recommended picking a date certain that would work for the Applicant and the Board. Hawkins asked for the move in date. Laslett said the week of March 3; Janvrin said the asphalt plants won't open until mid-April. Foote said it could start snowing the next day. Stehli suggested May 15. Hawkins asked for Garand's view. Garand had no issues as long as they maintain the use on the inside and don't leave full trucks in the exterior of the building. Hawkins asked for other questions. Thibodeau said to be sure they comply with what the state suggested. Hawkins asked if that had been done. Stehli said they were still moving tanks into the building and would complete the gap when that was done. Khan asked when Garand had last viewed the facility. Garand had done 2 inspections two weeks ago. Khan asked if Garand was satisfied. Garand said they are moving forward with the framing, the electrical, building some concrete walls and retrofitting the inside of the building.

Janvrin asked if security had been posted. Kravitz said no security had been set. Janvrin thought security should be a condition of any waiver. Foote said that site plans do not necessarily require security. Janvrin thought there was security, but that was now moot. Foote noted that generally security is if they interact with town facilities. Chase asked if Garand would be inspecting again. Garand said he would do a full occupancy inspection for life safety, electrical and if the secondary containment is in place.

<b>MOTION:</b>	<b>Foote</b>	<b>to grant the Case #2011-21 Smartfuel requested waiver for applying the required pavement and to extend the time for applying pavement to May 15, 2012.</b>
<b>SECOND:</b>	<b>Khan</b>	<b>Approved: Unanimous</b>

## **2011 PLANNING BOARD REPORT**

**Hawkins thanked Kravitz for writing the Planning Board section of the 2011 Town Report which was well done.**

Chase asked about the **reappointments to the Rockingham Planning Commission** would be addressed. Hawkins said he would address all of the administrative appointments until a meeting to be held after the Town Meeting

## **SMHTOWN VILLAGE ZONING PROPOSAL – Update**

Hawkins called attention to the Smithtown Village proposal that the Planning Board voted to recommend for a Warrant Article. This would create a mixed-use district that would be is a combination of residential and commercial south of the lights at Home Depot. This is a proposal that will help promote smaller business development in that area as well as the potential for residential and commercial mixed use. The size of buildings would be limited which would stop the advance of big-boxes from drifting south of the Home Depot and Cains Brook. Hawkins said that anyone interesting in reading more about this concept could find it in a Channel 22 presentation and on the Town of Seabrook website. Flyers about Smithtown Village are at Town Hall, the Library, and the Recreation Center, and Members of the Planning Board and the Master Plan Steering Committee can also respond to questions.



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### **INFORMAL CONVERSATION YANKEE FISHERMAN'S COOPERATIVE**

Attending: Norman Moore, Ed Hess, Yankee Fisherman's Cooperative;

Hawkins said this was a continuing conversation because things had changed since the Coop last appeared before the Board. Moore said that previously the Coop had envisioned an extensive building. However, with the cut-backs and uncertainty, they decided they might be better off scaling that plan back. They now want to put an addition on the existing building to have a retail market so that their products could be sold locally. He circulated the drawing of their new 42 x 12 foot proposal along the eastern end of the building for a small retail store and dry storage of cartons and the like. Moore asked for guidance and suggestions from the Board. Khan asked if this would be an extension of the existing building and not a stand-alone facility. Moore explained that the location would be where the lobster traps are now stored. Chase asked about the parking. Moore said it is all hard top, and they would only come out 12 feet which should not have any effect on the parking. Chase asked about the little island in the area. Moore said it was about 35 feet away so there would be plenty of room to enter and park. A couple of spots would be marked off for customer parking. Janvrin asked if they would want a sign at the roadway. Moore said that would be nice but would need permitting.

Garand said the Coop was looking for some direction from the Board to find out what they needed to do to apply for the building permit so they can put up the addition. Given the uncertainty in the fishing industry and the funding they are looking for direction, and because the Town owns the property which is on a sand bar. This plan would help a lot of local people work and make a livelihood. They need to know if the Board would require a full drainage study or lighting photometric grids, and if there is anything that the Board could or would waive. Janvrin asked if the Town of Seabrook was the only abutter. Garand said that the town is the property owner so the abutters would be adjacent to the town-owned parcels; that would be the issues. Janvrin asked if the Board had the authority to waive jurisdiction. Hawkins wanted to consider if there would be any storing or preparation in the area. For example, what are the sewer hook-up requirements or any changes. Garand said they are covered by the FDA and the town sewer department. The only issue the Board would look at would be the exterior uses on the property. The expansion of the existing sewer line in the process would be covered by the industrial sewer treatment, the health department and the state because this involves food handling.

Foote asked if this could be normal expansion of a business. Garand agreed. Currently they have some retail area but it is not adequate for safe pedestrian access. This would give a defined access, parking area, retail entrance, and handicap facility. The question is what would the Planning Board require, if anything. Khan said the facility is already serving many people; the only problem would be the parking spaces because they are not marked. If customers would be invited to buy their product, they need to have designated and well-marked parking spaces, and also do a little clean-up of nets etc. Moore said they plan on having marked parking spaces and signs that say where customers park so people can feel confident and know where to go to enter the building and not wander the property aimlessly. Khan also wanted to see separate parking spaces for the fishermen who go out to sea in the morning, because those cars would stay from morning to night. Moore agreed, and said the area in front of the store would be designated for customers. Garand said they could follow on with minor down-lighting requirements that meet the criteria and he could approve those. He deferred to the Town Planner as to whether the drainage could be waived. Foote said impermeable surface wouldn't be an issue; it is already



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pavement so the drainage wouldn't really be altered. Garand said there'd be no impact to the area. Signage would go along Route 1A.

Hawkins asked for Morgan's comments. Morgan said the request is a procedural question i.e. would the Planning Board take jurisdiction in this matter or require the Coop to submit a formal application. Thibodeau said when the building was originally built, the Board did not require anything as it was on town property; they would not pay any fees. Janvrin commented they would be getting approval from the Board of Selectmen as well. Foote wondered if the Board could waive jurisdiction as a normal business expansion. Morgan said that could be done. Foote said anything that could be done to make life easier for the fishermen would be one government entity that was not beating on them. Chase asked what the Selectmen would be doing. Janvrin said they would approve the use for town property. Khan commented that the prior proposal was much bigger and would have required the Planning Board to look at it. Janvrin said if the Planning Board waived jurisdiction, the Selectmen would have town eyes on it as would the CEO for health concerns.

Hawkins' concern was about having documentation in the files for what the use is supposed to be going forward. It is one thing if it's just a store. If it is a preparation area, that is something different. Moore said one side of the building would be a retail store, and the other side is dry storage e.g. boxes and containers for shipping. Garand said it would not be a change of use at all; this is enlarging the area so they can continue the use they have now. Foote said it would be separating the retail area from then work area where the fish come in. Garand said it would be cleaner and quieter. Chase said they don't have enough room to operate and store the dry goods. Khan said they have an area for cutting fish. Garand said any waste goes right out; he's not had any complaints from the facility or for cleanliness or odor. They just want a little better operation. It would be a win-win situation for the local fishermen.

<b>MOTION:</b>	<b>Janvrin</b>	<b>to waive jurisdiction for 42 x 12 foot expansion of the Yankee Fishermen Cooperative facility as presented on February 21, 2012.</b>
<b>SECOND:</b>	<b>Thibodeau</b>	<b>Approved: Unanimous</b>

### **SECURITY REDUCTIONS**

There being none.



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Hawkins opened the Public Hearings at 7:07 PM.

### **PUBLIC HEARINGS NEW CASES**

#### **#2012-01 – PROPOSAL BY VERIZON AND DAWSON SEABROOK LLC TO ESTABLISH AN ELECTRONICS STORE AT 332 LAFAYETTE ROAD, TAX MAP 9, LOT 61.**

Attending: Dean Holt, Dawson Seabrook; Thomas Brennan, Verizon Sales;  
Appearing for the Applicant: Wayne Morrill, Jones and Beach Engineers; Attorney Mary Ganz, Ganz Law; Scott Mitchell; Jim Mitchell, Tropic Star Development;

Morrill located the building at the corner of Boynton Lane and Route 1. There is a right out only and a full in from Lafayette Road, and a full access driveway on Boynton Lane. Currently there are 40 parking spaces, a dumpster pad in the corner and a shed in the back. A retaining wall keeps the property about 3 feet higher than the adjacent property. The building is 3,220 square feet; the property is 1.08 acres. The proposal is to keep the existing building, and do upgrades of the façade for a complete facelift. The parking spaces along Lafayette road and the West Marine building would remain. A small portion of 4 spaces behind the building would be upgraded for handicap access along a level walkway, because the current designated spaces are in a decline i.e. not ADA accessible.

Morrill stated that the proposal includes the 50-foot cross section to the Wal-Mart Plaza that was promised as part of the Case 2006-61 Kohl's application. The Applicant was negotiating with the owner of the Wal-Mart Plaza to try to extend this road. The existing driveway on Boynton Lane would be shut down and access would be from the road in the back. This means 11 parking spaces will be eliminated from the 40 spaces now on the site, for a new total of 29 spaces. A waiver from the requirements has been requested for the landscaping and lighting to remain. To accommodate the drainage, the retaining wall would be taken out and the existing pavement restriped; an infiltration basin would be created in the back for the road and the existing pavement to replace a couple of shallow basins. A letter has been submitted stating they do comply with the new 4.080 drainage regulations. Morrill said that Morgan's comments were addressed in the letter submitted that day.

Morrill asked Ganz to explain the status of the cross-access easement. Ganz submitted a letter from Robert Korff, manager, of Dawson Seabrook who owns the parcel, together with an email from the attorney for the Shopping Center Plaza to Dawson Seabrook's attorney, Ronald Fellman. These communications show the extent of the easement consent process through many committees, the lender, and the tenants. Ganz said the decision [re the cross-access easement] occurred at the time of the Kohl's application; an easement had been drafted based on the mutual consent of the applicant and town counsels. Ganz said she had spoken with Attorney Walter Mitchell who said he could not address the proposed easement documentation without having the guidance from the Planning Board as to whether he or some other counsel would look at this.

Ganz stated that the Applicant would do everything they could to make this roadway happen; hopefully the Wal-Mart people would not try to put restrictions on the Applicant's lot. She read the following from the above referenced email: "...Given the retail nature of this area and the need to protect our tenants' interests [people in the Wal-Mart Plaza] it's conceivable that either our asset manager or our committee may condition our consent on a use restriction attaching to your client's parcel. For example, a covenant not to change the use to compete with a principal



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use in our shopping center..." Ganz thought that neither the Planning board nor her client ever thought that would be an issue. Everyone's gone into this in good faith and will keep going with the process. Ganz said that in a meeting the previous Friday with Morrill and Morgan, Morgan suggested that the town might get involved and help put some pressure on the Shopping Center people to get them to be reasonable. She noted there had been talk of paying money for this, but said it was for their benefit, too, by going across the applicant's property to get to Wal-Mart. The town also benefited by getting traffic off Route 1. She favored anything that the town could do to help them make the [shopping center] folks be reasonable, and felt it was more of a burden to the Applicant's parcel.

Ganz said that the Applicant was working to get this done. Initially they thought the lease with the loan people was up in 2013, but it is up in 2012. That tenant is still paying rent, and computers and printers still occupy the space until the end of February. Attorney Fellman has written to them to start the process, but it would take time; probably not their highest priority. The Applicant wants to get the Verizon folks into the building so the property can get a new facelift and be occupied; it has been kind of an eyesore for a few years. Morrill said that Morgan had asked for an overview map to see where that access road would be situated. He noted that before, it had been lined up with the [Demoulas south] driveway, but perhaps not now. The 50-foot easement would lay in nicely as it actually misses the West Marine property and ties into the back corner of the Wal-Mart Shopping Center. Janvrin noted that the Demoulas driveway would be moved further down Boynton Lane as part of their new development. Foote said the main entrance would stay where it is but the delivery entrance is being moved. Morgan did not want to align with the delivery entrance. Morrill said there should not be a straight shoot across; people should come to a stop and decide where to go next. The design would be for a smooth transition across or to the Boynton Lane lights. He noted that the plan showed a 5-foot gap, but that Morgan had said it needed to go to the property line which they are willing to do.

Morrill said the big think was to get Verizon into the building and to turn it into a nice looking building on that corner. There is a mature tree line along the property line, and a lot of landscaping around the building itself. There is grass along the front, but he did not know how much visibility should be stopped. Morrill said they met with NH Department of Transportation, and that the four corners of the intersection are under contract with a maintenance agreement with the town signed on January 28, 2008. Morrill said this means there is a maintenance agreement for the Route 1 sidewalks. Morgan asked if this was for the entire length of the frontage. Morrill thought there might be about 15 feet not covered; that is the one section of the town where sidewalks are actually maintained by the town. Chase said that was news to him. He asked whether the easement was a requirement. Khan said there had been much conversation. Hawkins said that was from the Kohl's project and asked Foote to comment. Foote said this was from the Kohl's and restructuring the whole intersection and widening Boynton Lane. The owner of the Kohl's parcel owned the Applicant's parcel. Chase asked if they agreed to put the [cross-access] in; Foote said they did.

Morgan said the preference was that it be done when the Kohl's was being developed, but the developer cited a long-term lease with the loan people. The Board was anxious that the cross-connect be put in at that time, but proceeded with the understanding that when the loan people went away it would happen. Khan commended the developer for promising the cross-easement when the property had future development. It is a good think that he kept his promise. Ganz said it could not be done earlier because they did not know who the owner of the shopping center would be; it changed hands in January 2011. If they had tried to negotiate with somebody that couldn't affect anything because of the lease it would have been for nothing. Morgan understood that the easement would run with the land. Ganz agreed, but it would be for the future, but



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nothing could have been done with the lease in place because the tenant wouldn't allow it; that's why it had to be put off. The cross-easement is in the Verizon lease, and they do not want to be held up if the Wal-Mart people if they won't be reasonable or have crazy demands or for money. They are willing to go forward to be reasonable.

Morgan asked how long this negotiation might go on. Ganz thought it could take a year to go through all of the channels; perhaps the town could help. They wanted to start the process by having the town attorney and her client agree on the language to move forward. Foote said maybe the last application that Wal-Mart had before the Board should be revisited for notes in the minutes about requesting a connect-through at that time, and see if they complied with what the Board approved. Janvrin commented on the bales and cardboard that are stored outside that might be contrary to the Board's approval, and agreed with Foote. Chase asked if the cross-connect would stop before the lot-line. Morrill said they would bring it to the property line and get rid of the existing trees, so when they obtain the second part of the easement it would be 30 feet to the pavement at Wal-Mart. Morgan thought that the gap suggested that people were not in a hurry to make this happen. Chase asked about the intent of the Kohl's conversation. Foote said the intent was to go through so that people in the Wal-Mart Plaza area could get to the Southgate Plaza area without having the extra load of traffic go out onto Route 1. Hawkins said the inter-connections were a major item for getting them up and down the whole corridor, as a way to keep the Route 1 traffic down. Morgan noted that the Board had a good record in making this happen. Typically the Applicant has agreed, but there seems to be a bit of heavy lawyering here.

Scott Mitchell said that Robert Korff had asked him to speak in his behalf. He had done the Kohl's project and knew the history of the property. He recalled that Andy Lyons had property approximately where the Chili's is, near the Irving gas station. At the time there was a lease with a Mr Parker. Korff had to buy the bank out; they wouldn't move. No one thought the building would be yellow, which everyone felt was an eyesore. Mitchell confirmed that the Board wanted to have the [cross-access] built in the future. Korff confirmed this, indicating they would build to the lot-line, but could not force Wal-Mart to [continue it]. He recalled that at that time, Foote was a lot of problems with the drainage system with stuff thrown into the detention pond, as well as the outside storage. The cross-connect was a condition of approval, but there were no promises to go further than the lot-line.

Janvrin asked if the access from Boynton Lane to the lot would be closed. Morrill said it would. Morrill thought having a little time to work on this would be good, because the customers would start learning that traffic motion and be used to it when the connection open up. Janvrin suggested using Jersey barriers in the interim. Morrill pointed out that a few trees could stop vehicles. Hawkins asked if the trees were on the abutting property. Morrill said there were also trees on the Applicant's property. Foote thought it could become like the cut-through in the back of Shaw's to the Library. Morgan thought people would make their own road. Hawkins said trees would have to be cut to do that.

Hawkins asked for Morgan's comments. Morgan had compared the traffic study with the proposed 29 space parking area, noting that the highest peak traffic indicated was 12 trips per hour. He had asked why so much parking was needed; Jones and Beach responded in their letter that people stay at the store for more than an hour. Morgan said he'd never been at a cell phone store for more than a half hour, and did not see it as a place where people hang out for a long time. He thought the burden was on the Applicant to explain why they needed 30 spaces. Morrill said that the spaces in the front and on the side existed and they would do some reconfiguring for a row in the back. They were not adding pavement, but rather removing some



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of it and restriping it. If Verizon left the building, there would be more parking for a different use. Morrill said they were trying not to rip up the whole space as it was in. pretty good shape. The entire parking lot would be seal-coated so it would look new, and restripe the parking stalls.

Janvrin asked if a liberty elm was on the site. Foote thought if there was one, it would be in the Boynton Lane area, and not on Route 1. Morrill thought it was just behind the building. Chase asked about the proposed addition. Morrill said originally they intended a drive-in cell phone display area. However Morgan had pointed out the snow would be there and would be difficult to remove. The Applicant is not thinking of putting on two garage doors and store materials and racks that could be pulled out for use elsewhere. Janvrin asked if there would be mobile installs. Morrill said not at this store. Brennan said Verizon wants to get its store outfitted and running. He understood they had to go through site plan review because it had been empty for a year and that triggered the process. He understood that the building was still income producing i.e. the tenant still pays rent, and asked if the building was really empty for a year. Verizon recognizes the need for the road, and that the owner is doing everything possible to put it in. They would not like that to hold up their application and getting a building permit to start the remodeling. He thought the landowner had until 2013 to make the renovations to put the road in. Waiting that long to start the work would be devastating to Verizon. He asked if the Planning Board process could be moved through so they could pull the building process; if possible, in the middle of March they would start the construction.

Janvrin said if the Applicant posted security for the access-way to be built, but it took 18 months, would that hold up Verizon's occupancy. Hawkins said that is what the Board needed to decide noting that the [cross-connect] had been an issue for a long time. The application is to build the road right up to the property line. The cross-access is the one item that keeps coming up, and the Board wants to get it done. He noted that the landowner did not control both sides of the negotiation. Janvrin asked if the landowner posted security in re getting the connector done, should it hold up Verizon occupancy. He thought it should not. Morgan said that security would only guarantee that they will build the access road up to their lot line. Five years ago the Board was told that the property owner's intent was to make this happen as soon as the loan place went away. Apparently, during the five years no one gave it much thought. Now there is a tenant and they are scrambling to make it happen. A financial security would just get the roadway up to the property line, and will not be any pressure to negotiate a successful agreement with Wal-Mart and other parties. It is disappointing, but once site approval is granted for the store the board doesn't have any more leverage. Hawkins said the situation would reverse the next time the Wal-Mart came to the Board. Janvrin thought that might even be this year. Hawkins thought the Board's leverage would be gone unless the negotiations were completed. This is a difficult problem.

Hawkins felt that if there were a commitment from this landowner, the longest wait would be until Wal-Mart comes to the Board; that could be ten more years plus the five years already passed. However, the Applicant would have done their part with the construction of the driveway up to the property line. Foote said in spite of common sense the Board would need to be careful because of the involvement of big companies and their attorneys. Problems could be raised that the town was taking land by insisting on the cut-through on private land. Garand noted the next step would be the Technical Review Committee, and suggested looking at the Wal-Mart shopping area and nudging them if there is any non-compliance. By the time the TRC is over, there should be a better answer. Foote thought Wal-Mart would be the largest client of that development, and suggested getting in touch with Wal-Mart and the new owner of that development might be more effective than just talking with the developer. Garand favored calling



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attention to the scrap cardboard etc on the site; Foote added that trees were supposed to be replanted fifteen years ago. Garand said researching the original site plan might be useful.

Chase said to make sure that the hot-top comes up to the property line with Jersey barriers placed there, and have a written agreement with the Applicant that it will be opened up. That way more discussion with this landowner would be unnecessary. Scott Mitchell said that he remembered that this issue was a huge restriction on Korff, who owned property across the street and was being held hostage, in re a lease that had been transferred from Mr Parker. Mitchell said the tenant was very uncooperative' they even tried to buy [the lease]. He wondered what business they did, as there were never cars there. Foote thought there had been no activity for two years. Mitchell said if the Korff easement was in place in the conditions, he did not see how the Board could hold this up. From day 1 they said they could bring the roadway up to the property line, but could not make Wal-Mart sign the easement. Korff was fulfilling his obligation. Mitchell saw no reason that the Board could hold this up; it would not be good faith by the Board. According to Mitchell, Korff had always commented that if he did not own the property across the street, the Board couldn't have put on this condition. It was good faith on Korff's part. He asked that the Board take this into consideration.

Khan thought it was the best thing that the Applicant will build to the property line, and also that Ganz had indicated a reasonable amount of money could be offered to the Wal-Mart. Ganz said they are looking for money, and hoped that would not be the issue. The Applicant would be spending money on legal fees. Khan said most likely if the Applicant agrees to build the road, Wal-Mart might come back in 6 months with an ok, but they will not spend a dime. The Applicant would have to agree to connect through to the Wal-Mart plaza. Ganz said the Applicant had agreed to do that. Khan also asked to hear from the abutters. Hawkins asked Morgan to speak to his point about acceptance in his memorandum. Morgan said that the plan had no legend, but Morrill had advised that that had been corrected in the revision. Hawkins asked if there was any reason not to accept the plan for completeness. Morgan said not as long as the legend was inserted. Hawkins asked if Morrill had addressed Morgan's checklist about missing items. Morrill referenced a waiver request.

<b>MOTION:</b>	<b>Janvrin</b>	<b>to accept Case # 2012-01 as administratively complete for jurisdiction and deliberation. .</b>
<b>SECOND:</b>	<b>Sweeney</b>	<b>Approved: Unanimous</b>

Hawkins asked Morgan about a technical review; Morgan thought this was a good idea. Kravitz said the next TRC meeting would be March 12. Khan asked why TRC was needed. Hawkins said a drainage field would be installed in the back. Morrill commented that [for the next case on the agenda] the Department of Public Works Manager said the Department of Transportation would have jurisdiction. Hawkins said there would be many issues about new drainage and stormwater treatment, and that the DPW Manager had the right and the obligation to stay on top of that issue so that problems don't turn into the Town's problems. In any case where there is new drainage or stormwater, the DPW Manager would have to be involved. Janvrin thought the Fire Chief would also have to be involved in re getting apparatus on the property, because the entrance and exit are changing on Boynton Lane; the north side of the building turn radius looked kind of sharp. Foote noted the Route 1 entrance would not change.

**Hawkins scheduled Case #2012-01 for the Technical Review Committee on March 12, 2012 at 10 AM at Seabrook Town Hall, and continued Case #2012-01 to March 20, 2012 at 6:30PM at Seabrook Town Hall.**



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Ganz asked if the easement could be sent to Town Counsel. Hawkins said there was reason to keep pushing things through. Morgan asked what the Board thought about writing to Wal-Mart. Hawkins asked Morgan to draft such a letter.

Hawkins asked for comments from the public. Richard Eaton asked if they would be removing the retention wall, because he was concerned about the area that both properties have used for snow removal. Morrill said the wall would be removed, and asked Eaton to point out his location. Eaton thought the road would go through his fence. Morrill said the new paving would be about 13 feet from his property line. Eaton noted that this year hasn't been an issue, like last year. Laurie Eaton said she and he husband [Richard] own the Autoworks property, and asked the advantage of closing the driveway off of Boynton Lane. Morrill said once the new roadway was constructed, two driveways would be too close together. Foote said this would be just a relocation. Morrill asked if they could apply for the building permit now to get the work going e.g. upgrading the façade. Hawkins asked for Garand's view. Garand said there is an existing building on the site. If the Planning board had no issues with that work starting, he would have no problems. Hawkins asked if Board members had a problem with the building work proceeding; by consensus, the Board did not. Hawkins said allowing that might move this along faster. Chase asked if the TRC would be informed that the new roadway would go up to the property line, and not leave a 5-foot gap. Foote agreed, even if a couple of trees would have to be cut; there were shrub trees in the Wal-Mart area. Chase wanted to clarify that the Applicant would have to do work on some trees on the Wal-Mart property to finish the connection. Hawkins said if Wal-Mart eventually agrees, they would be asked to ok going on their property; hopefully in two months, not two years.

### **CASE #2012-02 – PROPOSAL BY EDWIN & MAUREEN ADAMS AND WATERSTONE RETAIL DEVELOPMENT TO CONSTRUCT A 13,000 SQUARE FOOT STORE AT 337 LAFAYETTE ROAD, TAX MAP 9, LOT 62. ONGOING CASES**

Appearing for the Applicant: Robert Clarke, Allen & Major Associates, civil engineers; Wayne Morrill, Jones and Beach Engineers; Attorney Mary Ganz, Ganz Law; Scott Mitchell, Jim Mitchell, Tropic Star Development;

Mitchell introduced Clarke, and said that Morrill had worked on the Kohl's project. A 5,495 square-foot building had been permitted for a restaurant with about 114 parking spaces as part of the Kohl's project. At that time, casual dining was a good business; today casual dining is MacDonald's. Ruby Tuesday was very interested and wanted to sign before the Kohl's was built, but there were too many issues with the Kohl's project. Subsequently they were unable to sign another restaurant. Olive Garden was the first choice but they would not come to Seabrook; they have stores in Manchester and Newington. Now they have a tenant that is already in Seabrook. Mitchell said he had permitted two West Marine stores, one of which was now closed. The boat industry is back on its feet, and West Marine wants to relocate and build a bigger building and facility. They contacted Mitchell, who had worked on other Adams' property site development.

Clarke repeated that the site had been previously permitted for a 5,495 square-foot restaurant. The Applicant's proposal is for an approximately 13,000 square-foot retail pad which meets the building setbacks, with 52 parking spaces (1 space for every 250 square feet). The plan shows a reduction of 6,500 square feet of impervious space from what was originally approved. They are matching the two previously approved curb cuts aligning with Boynton Lane, the entrance drive, as well as the walkway are in. Clarke said they had met with the Fire Department, NH Department of Environmental Services, and Water Department, and had a conference call with



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the Sewer Department. Clarke said they had requested to speak with the DPW Manager, but were referred to District 6 [NHDOT] which advised them to apply for a change of use for going to a retail pad instead of the restaurant, which they will do. They were not concerned about drainage because they were not discharging onto Lafayette Road. Clarke said there was an existing drainage channel where the wetlands had been filled and a letter submitted says there are no wetlands to be filled. They have requested an expedited permit from the DES and have received the Alteration of Terrain permit which will be provided. The Water Department comments had been addressed

Clarke asked that Case #2012 02 be accepted at this meeting, as they have a tight schedule, and hope to be at the Technical Review Committee possibly in the next week. Their client was locked in to supply a building by July 1, and want to break ground on April 1. He understood that their urgency was not the Board's issue. Clarke said the 4 waivers being requested relate to the landscaping; Morgan asked them to list the reasons. One waiver request concerns the 15-foot buffer zone for an access drive and a 10-foot parking lot zone which are not supposed to overlap. The request for a waiver from Section 12.40 is because they do not comply with the 10-foot buffer zone. Another waiver request concerns Section 12.5.10 re the 20 percent; they are at 3,000 instead of 6,000 square feet, for a total of 31,000 of impervious space. This is to provide sufficient parking for the tenant. A third waiver is for the 10-foot wide planting strip in two locations including some display area in front of the building. The last waiver request is in re 12.530 requiring two shrubs on an island, because two of those spaces do not have enough room to do so. Clarke summarized that they are at 33 percent open space with a reduction in impervious space.

Clarke said one benefit is that before the ALT permit they determined that there was no infiltration required; they dug test pits and showed the seasonal high water table. All of the impervious surface infiltrates into an underground filtration system on site. He commented that on reason NHDES approved the project is because they brought it up to current standards; Clarke identified certain of the removal standards levels. There is also a large pipe that brings the water from the gas station; they will be installing a water quality unit and raising the site as was the previous intention, which did not happen because of the economy. Clarke said they had a tenant and a short window.

Clarke said there was a traffic report done previously and asked Morrill to comment. Morrill said that at the time of the restaurant pad approval during the Kohl's project, Kohl's contributed \$800,000 in connection with traffic impacts. He stated that in the Case #2012-02 plan, the traffic actually goes down because there is a less intense use and less impact to the roadway. He talked with Steve Ireland [of District 6], who said they do not get any refund as the money is already allocated toward the Route 107 Bridge [over I-95], which is coming up soon. According to Clarke, Ireland had no further comments on the traffic analysis. Mitchell asked Morrill how long it would take to get the permit. Morrill said that Ireland indicated ten days.

Hawkins asked for Morgan's view. Morgan said he had not seen a lot of cars at the West Marine current location. Scott Mitchell said they want to change that so they are moving to this site. Morgan wondered if they really needed 52 parking spaces; if they did not, it would solve the landscaping problem. Scott Mitchell had talked with the Waterstone people who have done West Marine stores and have one under construction. They feel that they do need the 52 spaces. He said that Jim Mitchell had worked for West Marine for 5 years. One of the biggest problems was not enough parking. Jim Mitchell said they operate classics on an annual basis and that brings people to the site. Also, their volume is up. Janvrin asked how many spaces are in the existing parking area, noting that in the summertime that is full. Scott Mitchell said that is about half the



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size of the proposed parking area. Morgan said that the Board has been criticized for allowing paving of a lot of territory in the past. Hawkins said the best example of that is sitting behind this site. Scott Mitchell agreed. Hawkins said there had been a huge amount of landscape that became hot-top, and he'd never seen it half full. That is part of the reason for the putting the landscaping standard to avoid hot-top along Route 1 into the regulations. Jim Mitchell asked the Board to consider that West Marine used to have two stores that were consolidated into the current store. Scott Mitchell said when the Lowes went in they did not know that Kohl's would be there. The same situation happened at the Home Depot. Scott Mitchell said another business could be on that site; it is a sea of pavement. Hawkins said it would have been an opportunity to make that part of Route 1 look good with a little bit of money and imagination in the parking area. Now it's a big sea of pavement, which he thought was ugly.

Morgan asked about the possibility of parking across the street on the few days the parking might be full. Scott Mitchell did not think there were reciprocal easements. It's a separate parcel added on to the Jeweler. Foote asked if he thought that the Kohl's Manager would be running across the parking lot to say "no parking". Scott Mitchell said West Marine wanted to move to a bigger facility; their business model had changed. Now they are building a nice building and street-scaping it, which he thought was the first time in Seabrook. It's a good-looking building for a business that is already here. Chase asked if this lot were not part of the Kohl's lot. Foote said it was partially approved as a restaurant except that the building configuration was changed. Morgan commented that there had been two owners. Mitchell said there were 114 parking spaces. Janvrin noted there were to be two liberty elms along Route 1, which was intended. Hawkins asked if there might be line-of-site issues from the driveway with the building being close to Route 1. Hawkins asked if Morgan had other issues. Morgan had not see Adams' signatures in the file. Kravitz said they were there, and it was resigned earlier in the day. Morgan recommended the Board find this case complete.

<b>MOTION:</b>	<b>Foote</b>	<b>to accept Case # 2012-02 as administratively complete for jurisdiction and deliberation.</b>
<b>SECOND:</b>	<b>Chase</b>	<b>Approved: Unanimous</b>

Hawkins asked if Morgan had any other issues. Morgan said the proposed building is unusual as it brings the building close to Route 1 where it is more prominent than what the town is used to. It's all the more important that the building look attractive. Yet the best foot forward is toward the Kohl's with the back of the building facing Route 1. Clarke pointed out the placements in the drawings. Hawkins thought there was confusion among the back and side renderings. Clarke pointed out the windows and also high windows that let in light. Janvrin asked if they anticipated showcasing product in the route 1 windows. Jim Mitchell said they have some display at the front doors, but did not know if they would have window displays. Scott Mitchell said they wanted to make it look like a "two-faced" building and to look good. They wouldn't want the building to look like a back side along Route 1, which would not be good for the retailer. Morgan commented that however it comes out, the building will be very prominent and close to the road. Hawkins asked for other questions.

Khan asked how close Chili's was to Route 1. Morrill said 35 feet. Khan asked about the proposed building. Morrill said 30 feet from Route 1. Khan said that Chili's looks very close to Route 1. The town is talking about matching other businesses like in the Smithtown Village proposal. His concern is that the building is too close to Route 1. Janvrin commented that other communities, like in Peabody, MA, have put parking fields in the rear which he thought was more attractive. Hawkins noted that the Master Plan Steering Committee had had a lot of



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discussion about that. There are pros and cons but he would like to see what a few buildings like that would look like. Scott Mitchell said the first venture he did like that was for the CVS in Salisbury, MA; he had to find out what "streetscape" meant. He was told it meant parking is in the rear. Portsmouth put in a streetscape ordinance which they will follow for developing the Yokum's site. Hawkins said it changes the feel of a strip-mall area at lot. Scott Mitchell agreed, and said he is also concerned about how the building will look on Route 1.

Scott Mitchell asked how the drive cut is working out at the Recreation Center, and if there were problems. Foote said it works out good; there is enough of a sweep. Khan agreed. Hawkins said the next step would be the Technical Review Committee on March 12. Mitchell asked if the week before would be possible, as their application is complete and they've already talked to most of the people. Foote asked if a tech review was really necessary. Scott Mitchell also wondered about that. Clarke said that the next day he would be submitting materials including his summary of meeting with various departments. They addressed Water comments and the superintendent said to get the plans to the Board and he would review the latest plans. Sewer was also addressed. They met with District 6 regarding the curb cut, also NHDES. Clarke said the only one he hadn't talked to was the engineer. Morgan said if anyone had been to a TRC meeting, they would see that the department heads had a lot of exchange and communication with one another, that they would not be having if they are sitting in their office looking at plans by themselves. Hawkins said this is a fairly good sized project with drainage issues addressed in the plan that need to be reviewed. It has to have department heads' input.

Hawkins question is whether it is too much to ask for plans to be reviewed in less than a week. Kravitz said that the department heads have been very clear that they want at least a week to review plans. Scott Mitchell asked the Board to consider that this deal is very time sensitive because of the nature of it. Khan commented a check had not been offered. Janvrin asked if they were looking for a conditional approval. Hawkins said this application had to go to TRC. The question was whether to do it the meeting in less than a week away, or abide by what the department heads have stated. Foote noted that the Planning Board office is closed on Wednesday, so the soonest department could get anything would be on Thursday. Hawkins said that the next Monday was not practical. Thibodeau said a sooner date is not the Board's problem and March 12 had been set for another case. Hawkins said that March 12 is appropriate; there would be two cases that day. Clarke said as the AFT permit was in, was there any problem with starting to fill the site at their own risk. Morgan asked if there were underground pits. Clarke said there were. Scott Mitchell said they wanted to start that and make the Board aware of this. He asked if there were any issues. Janvrin said they already have permission from other sources. Hawkins asked Garand's view about starting to fill. Garand asked if the NHDES permit was in place and up to date. Clarke said it was. Garand said starting the fill would be up to the Board. As long as the permit was in place and they followed the prior approval and have the pre-construction go forward with the proper phasing and security posted.

Hawkins said this would be putting the cart in front of the horse; it's not an existing building. Garand agreed. Scott Mitchell said that one thing they were going to do before, was to fill the site. If they could have gotten the deal they wanted on the fill, it would already have been done. Foote said the fill should be in the site within time to be compressed and compacted before excavating to put in the footings and the drainage. Janvrin said that another entity had given them permission to put in the fill. Scott Mitchell said they wanted to make the Board aware of this up front. Chase asked if a building permit was required for that. Janvrin said they are doing the ground work. Foote said they would be doing it at their own risk and if the Board decided to make them do it differently they would have to rip it up. Mitchell commented that that had been done elsewhere. Janvrin asked if the distance from the Irving site was about 12 feet. Mitchell



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thought that about right. Hawkins asked for Morgan's view about starting. Morgan did not have a problem as long as they knew they are operating at their own risk. He was sure the DPW was going to pay attention to drainage, so he cautioned about painting themselves into a corner. Scott Mitchell said they knew the DPW Manager.

Chase asked who would be doing the inspection. Hawkins said that work hadn't yet been assigned. The engineer needed to make his report. Chase said wouldn't it have to be inspected as it is put in layers. Foote did not understand why when an application comes in that is known to have to go to TRC, it has to wait until the Board sends it to TRC. She asked why not give the department heads and the engineer the plans as soon as the application comes in as used to be done. Scott Mitchell said they had tried to go to TRC, but Kravitz wouldn't go to the department heads. They wanted to just "go". He said they used to go to TRC first, get their comments implemented into the plans so when they went to the Planning Board it was a nice plan, with all their comments. They agreed with some comments and not others. Foote said somewhere down the line it got reversed. Scott Mitchell thought that may have happened when Fred Welsh left. Foote thought it might have happened when she stopped being the Chair. Foote noted that she is retiring. Thibodeau asked if there would be a woman on the Board. Foote said she would be available as an alternate, and asked Thibodeau if she would do the same. Thibodeau said she would not.

**Hawkins said Case #2012-02 would go to the TRC on March 12, 2012 at 10 AM in Seabrook Town Hall, and be continued to March 20, 2012 at 6:30PM in Seabrook Town Hall.** He noted they could start on their own. Janvrin said they had permit from another entity. Hawkins asked for any other comments; there being none.

### **ONGOING CASE**

**Case #2011-31.10-22 Proposal by NextEra Energy to amend its conditional approval of August 17, 2010 so that the stipulation (iv) reads as follows: Noise shall not be discernable at the Rocks Road residences closest to the firing range. Noise level along the existing transfer station road shall be limited to 15 dBA above the measured background of 44 dBA. The indoor firing range in question is situated off Rocks Road and immediately east of the Town's Transfer Station,** continued from November 15, 2011; December 20, 2011, January 3, 2012; [[January 17, 2012,

Attending: Steven Coes, Projects Manager, [[[[[[[[

Hawkins called attention to the proposal from the acoustical consultant who could not make this meeting; he will be at the March 6, 2012 Planning Board meeting. He commented that the proposal is for a significant amount of money, and asked if NextEra had received a copy. Kravitz said they had not. At Hawkins' instruction, Coes was provided with the up-front part of the proposal [what the Board received in its packet]. Hawkins said the proposal is extensive and would take a year. The Board would have to decide if that extent is what it would want, noting that the discussion had been that at different times of the year, noise could be more discernable. Additionally, the Board had not been provided with information about all the different weapons that have been or might be fired. A lot of pieces are missing to make a legitimate decision. Hawkins thought that a two-year program was more than the Board should undertake. However, the holes in the data need to be filled in. Hawkins wanted the consultant to return to discuss the proposal with the Board before signing anything. This is a lot of money, even though the Board will not be paying this cost. Thibodeau thought even a year is a long time. Hawkins agreed, and



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wondered if that is really necessary or if there were a way to do the work in stages that would provide a similar outcome.

Hawkins said if there were no comments or questions he would continue Case #2011-31.10-22 until March 12 when the consultant could attend the meeting and address some of the issues. Hawkins said the cost was a lot higher than he expected. Janvrin wanted the Applicant to have a copy, but noted that there was no mitigation measure mentioned in the proposal. Hawkins said the data is needed before mitigation can be determined, although the board had asked for some examples or ideas of what could be done. Khan asked if NextEra was still trying to mitigate any of the sound to bring it to an acceptable point. Coes said they had done nothing further at this point, they continue to monitor the training and have shot more than 100,000 rounds, and stick to the 7AM to 6PM timeframe. Hawkins asked if the range is in continuous use during the daytime. For example, if he drove to the firing range, would he be able to hear the firing if he got out of the car. Coes thought not, explaining that about 2200 rounds was the higher number during a day, but they tend to come in spurts. Further if the Transfer Station is in use it would not be heard.

Janvrin asked if there had been complaints from the neighbors. Garand said there had not. Chase asked about the "per selected location" designation in the proposal. Hawkins wanted to wait for the consultant for those answers. Derek Heap, who lives on Rocks Road, said he could hear rounds going off with his windows closed. Not all of the time; he thought wind direction mattered and if could be heard more if the ground was frozen when it sounds like it is firing in a tin can. Heap's main concern was that they are planning on doing things at night. He did not mind trucks or other noise during the day; hearing some rounds going off during the day did not bother him. But it shouldn't be at night when his kids are sleeping. It should come under the regular noise ordinance, because it can be heard. Hawkins said the town ordinance does not allow noise past their property line. He explained that this case involves a request for a waiver, but not in re Rocks Road because they say there is nothing heard there. The request is for along the property line that goes to the Transfer Station. The Board has agreed that none of the members are experts in this field. There haven't been feedback or complaints from neighbors, but the Board does not want to be into this in a year to find out that a waiver had been approved and everyone is upset hearing the guns firing all night long. NextEra is looking for a 24 hour permit to use the range. The Board needs to be clear that they are not creating a problem in the neighborhood if they approve this. The case is whether the Board will allow the request, or if they would have to do more work on mitigating the noise.

Heap did not know how long NextEra had been there since the last owner, but they have been getting along not having to go 24 hours daily. They used to use the local Route 107 shooting range. Hawkins said if they want 24 hours and there is no sound leaving the property, they could do that. The question is what has to be done if the sound is leaving their property, or will it be permitted. Heap said the sound can be heard. Foote had heard complaints about hearing the shooting during the day from several people living on Rocks Road, one of whom lives 4 houses from Route 1. They can hear it but it doesn't bother them during the day. Foote asked these individuals to contact the Planning Board because board members have no idea as they do not live there. Heap said that is why it didn't bother him during the day. Hawkins thought most people would say that. Hawkins said at some point the noise at night would have to be measured. Should it be from 6PM to 9PM? There needs to be a game plan. That's the Board's responsibility. Heap commented that there is more noise during the day with traffic, etc, but at night there are only crickets to hear. **Hawkins continued Case #2012-31.10-22 until March 6, 2012 at 6:30PM in Seabrook Town Hall.** Foote noted that if a resident is saying they can hear the shooting during the day, then NextEra is already not complying with the stipulation of not



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having the noise not go over the property line. Hawkins thanked Heap for the feedback. Foote said the two people she knew from Rocks Road don't are reluctant to file a complaint because it's not a problem, during the day, which is probably why they told her about it. Janvrin commented that kids have to sleep and get up for school.

**PUBLIC HEARING ON NON-TOWN MEETING AMENDMENTS AND LAND USE REGULATIONS**, continued from December 20, 2011 ,January 3, 2012, and January 17, 2012;  
Tom Morgan, Town Planner

***O) Precede Section 10.025 of the Site Plan Review Regulations with the following: "For the purposes of this section,"***

Hawkins asked Morgan to explain this proposed change. Morgan said this pertains to off-site traffic impact. There was confusion about how the ordinance was being interpreted and whether a change of use guaranteed going to the Planning Board. If that is the Board's intent then that type of language belongs at the beginning of the ordinance. Morgan wanted more discussion from the Board. Hawkins asked if it would impact any current cases. Morgan said it would not, but it has in the recent past. He could see where people could take two different meanings, and that should be clarified. There is also a policy decision as to whether the Board wants to spend time on this. Janvrin wanted to know if the Selectmen could notify the Planning Board said when a new business owner files for a business application and approve the new use at the same time. Foote said usually they talk with the CEO long before. Janvrin thought the information the board would want would be in the business license application. Foote thought that puts the cart in front of the horse; the Selectmen should handle it last. After the Selectmen are done is too late for the Planning Board place any requirements.

Garand added that a lot of these sites never went to the Planning Board in the first place, so there is no site plan or regulations on the site. Then it is difficult to follow the enforcement. Also, if a property is unused for a year, it allows the Board to look at the prior files and brings everyone up to speed. It tells the neighbors what's happening and the Board can place conditions based on the current regulations. Garand said that when commercial and residential properties are side by side, possible in a mixed use situation, it is a way to get notice to the abutters of what's coming forward. It's a fresh set of eyes and allows some restrictions, or as correction of non-conforming. Applicants know what they can and cannot do so everyone is on the same page. Hawkins said the Board can always waive jurisdiction or accept an expedited application. Morgan said the potential harm is that the board will have to deal with a lot more cases. Foote said there is a difference between a change of use and a change of ownership. A simple change of ownership e.g. a retail book store that wants to become a retail fishing gear store, is not a problem. It's when that retail store wants to turn into a restaurant or movie theater. Janvrin said or an adult oriented business.

Foote said if it's been closed for more than a year, more than likely there's a lot to bring up to code. Garand agreed, commenting that the Loan-Max store had been closed for more than a year. There are issues with snow storage, drainage, lighting, that can be revisited; it can go back to TRC. If something is just a small use change, basically signage and hours of operation are the items to review, and there are no changes to the exterior. It would go a long way to solving the problem in the industrial area when there were a lot of condo job shops and there was no way to know what was going on. Garand said a box was built and it's been empty – never occupied. Who's to say that something won't go in that isn't allowed by the town. Also the board should



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look at such property to see that they meet the guidelines of the original approval and to be sure it won't be a hazard. Khan said this has been working out well for the town and the board for many years; Garand sends people to the Planning Board, for example the Methadone clinic and the gambling place. They didn't come into the town because they came before the Board. Khan said this policy should be intact. Garand agreed. It's not just him that is looking at something. Khan said it is the neighbors and the abutters that get to see what is coming first hand. Foote said it documents a file so that 10 years from now a CEO will have the history of a file and to know that in 2011 something was there. Hawkins asked Morgan to draft the appropriate language.

Morgan understood that the Board wanted to take jurisdiction when changing from one type of use to another, going from an empty space to something that will be used, and for something that's been empty for one year or longer. Hawkins asked if that is different than what happens today. Morgan said it is not in writing, so it should be clarified. Khan suggested stating that the Board has the right to waive jurisdiction. He will draft the ordinance.

### **ZONING INTERPRETATION**

Tom Morgan, Town Planner

Attending, Attorney Malcolm McNeill, McNeill, Taylor & Gallo;

Morgan said a letter had been received some weeks ago from Attorney Malcolm McNeill asking how to interpret a particular section of the zoning ordinance in re gas stations. Section 5 (page 5) says "new" stations shall be set at least 1,000 feet from existing stations. Morgan said that language had been in place for a long, long time. He had rarely been called upon to interpret or deal with it. McNeill had contacted him about how to read that section; Morgan told him he was not sure. In talking with people at Town Hall the opinions were all over the lot; there was no agreement. Morgan said someone who asks about this ordinance deserves an answer. There was agreement that whatever the Planning Board ruled would be the interpretation that the town would hold. Morgan said the word "new" is making the ordinance more ambiguous. Foote said before the word "new" was emphasized, she thought gasoline stations had to be 1000 feet apart, primarily for safety reasons, and commented that when the ordinance was written it seemed that every other site was going to be a gas station. Morgan said in his view the word "new" should be eliminated from the ordinance in the future. In the meantime, McNeill is owed an answer. Foote said this cannot be judged based on a particular site. Morgan advised the board to interpret this as best as they could, knowing that it had to apply to anyone coming in with the same question.

Garand said there are now several gas stations that are within the 1000 square-foot distance and would become non-conforming. This would mean that a new owner would have to seek relief from the ZBA. Foote said that if gas stations became non-conforming it would be a nightmare for the owner with banking, mortgages and insurance. Garand said the Getty north, Sunoco, and the station at the Ganz plaza are all within 1000 feet of each other. The Sunoco site plan had been approved for expansion without going to the ZBA. Janvrin asked when this zoning was adopted. Garand said 1986. Janvrin thought that gas stations built prior to that date already existed, so it would apply to stations after that. Garand said that when Sam's Club wanted to do the gas stations the board looked at the distance to Master McGraths. It didn't meet the clearances and had to go to the ZBA. It withstood the test of time. But for this situation the issue is about making a property non-conforming and he thought that is why the word "new" is in the ordinance.

Hawkins asked how the board would interpret a station that was closed for more than a year. Janvrin thought it would be existing. Garand said the Assessor would still tax it as a gas station



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because the infrastructure was still there. If the pumps were taken out so there was no ability to pump gas, then it would not be taxed as a gas station. Garand thought “new” was included in the ordinance because they did not want to make existing stations non-conforming. Janvrin thought the ordinance would be applied from the date it was enacted. Garand said a new gas station could not be built within 1000 square feet of an existing station. Taking out the word “new” would make several of the stations non-conforming. Janvrin thought if a station existed prior to 1986 it would be conforming. Garand said all of the stations are conforming because they are an allowed use in Zone 2. If they were non-conforming, how would he pick the station to allow [or disallow], or would all three be disallowed. Janvrin thought some actions in the 1970s would apply. Thibodeau said in the 1970s zoning was voted out.

McNeill clarified his interest as the BP Station across from MacDonald’s and CVS. A client wants to buy that existing station. He thought the ordinance was clear – this was not a new gas station. Thibodeau agreed. Mc Neill said it was general policy that communities do not turn conforming uses into non-conforming uses. He asked Morgan, who said there was confusion within the community and spoke about the possibility of it becoming non-conforming because it was not operating, although it is a permitted use. McNeill asked the real estate agent how long the station had been closed. McNeill did not know that the real estate agent had contacted Garand, who sent her an email to the effect that the statute clearly applied to “new” stations. It was his opinion that the station would be permitted to continue as the station was in place prior to the adoption of the regulation. McNeill agreed that if the property owner wanted to alter, expand, or modify the footprint, they would be required to make application to the Planning Board. Garand said the lot-line could not be modified. McNeill thought the Sam’s Club Station was a new station. Garand said it was. McNeill agreed with that interpretation. His client wants to buy the gas station, not an appearance before the ZBA.

McNeill stated that in the event his client wanted to modify the station, he’d have to come to the Planning Board. He could not explain to himself or his client why there should be any limitation – the station is not new. However, there was an interpretation from, Garand that was inconsistent with Morgan’s. His client would not invest in the town with that ambiguity. Mc Neill said he was not appearing as an advocate, but just wanted an answer. He thought the logic of Garand’s opinion was compelling, and did not think someone who invested in the town, is in compliance, and wants to sell a business should be told he cannot do it, even if it was shut down for a short time. Garand said he had documented that the property had sold gas in May of 2011, so it had not been vacant for more than a year. Hawkins said his original question was whether it was non-conforming because it is within 1000 square feet of another station, and had been shut down for a year, and therefore had to go to the ZBA. In many situations in that circumstance, people had to go to the ZBA. There was some inconsistency in the approach, but he understood that the way the ordinance was written it made sense in terms of what would be done going forward. He thought the Board was saying not to change the ordinance i.e. retain the word “new”. Foote agreed; this is not a new gas station.

Janvrin thought that a station existing before the ordinance would not be considered new. Garand said all existing stations would not be new. Thibodeau said the only way there would be a problem, is if the underground tanks were torn up and removed. Janvrin agreed. McNeill thought a new user is likely to replace the tanks. Morgan asked if the Board wanted to revisit the “new” issue at a later date; at this time it was ok. The other question was whether Getty north required a variance. Hawkins said it had not been shut down for a year, and the board has said the ordinance had been written correctly. Foote asked why they would need a variance. Hawkins said the only way it could be considered new is if it was considered non-conforming and shut down for more than a year. That is not the case. Garand said it is not non-conforming because it is an



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allowed use in Zone 2. Chase said any alterations would have to return to the Board. Morgan suggested the consensus should be in a motion. McNeill wanted to confirm that he could rely on Garand's opinion. Khan added that to change the footprint or create an expansion would require an application to the Planning Board. Chase noted that the DPW Manager had a problem with that lot.

<b>MOTION:</b>	<b>Thibodeau</b>	<b>to find that the Getty north Station on Lafayette Road is not non-conforming and is not considered a new station.</b>
<b>SECOND:</b>	<b>Janvrin</b>	<b>Approved: Unanimous</b>

Hawkins adjourned the meeting at 9:05 PM

Respectfully submitted

Barbara Kravitz, Secretary  
Seabrook Planning Board