



Town of Seabrook Planning Board Minutes

Tuesday, April 1, 2014
NOT OFFICIAL UNTIL APPROVED

Members Present: Donald Hawkins, Chair; Jason Janvrin, Vice Chair; Roger Frazee; Francis Chase, Michael Lowry, Ivan Eaton III, Aboul Khan, Ex-Officio, Paula Wood, Alternate, Tom Morgan, Town Planner; Barbara Kravitz, Secretary; Paul Garand, Code Enforcement Officer; Members Absent; Sue Foote, Alternate; David Baxter, Alternate,

ORGANIZATIONAL MEETING

Hawkins said that the Board has its organizational meeting at the first meeting in April to appoint the Chair and Vice Chair, Representative to the Recreation Commission, nominations for Rockingham Planning Commission Commissioners, and one Planning Board Alternate...

Planning Board Chair

Hawkins asked for nominations for the position of Chair. Eaton renominated Hawkins; there being no other expressions of interest.:

MOTION:	Eaton	to nominate Donald Hawkins as Chair of the Planning Board.
SECOND:	Khan	Approved: Eaton, Janvrin, Frazee, Chase, Lowry, Khan Abstained: Hawkins

Planning Board Vice Chair

Hawkins proposed renominating Janvrin for Planning Board Vice Chair; Janvrin was willing to serve.

MOTION:	Hawkins	to nominate Jason Janvrin as Vice Chair of the Planning Board.
SECOND:	Chase	Approved: Unanimous

Planning Board Representative to the Recreation Commission

Hawkins asked if Janvrin was willing to be the Recreation Commission representative. Janvrin said he would unless someone else wanted to serve. The Commission met quarterly and makes recommendations in re programs and policies in re recreation activities. Khan recognized that Janvrin was involved in the Rail Trail and other civic activities, and thought that he should continue.

MOTION:	Khan	to reappoint Jason Janvrin as the Planning Board Representative to the Recreation Commission.
SECOND:	Chase	Approved: Unanimous

Planning Board Alternate Member

Kravitz alerted the Board that Wood's term as an alternate member would expire in 2014. Hawkins wanted all officer and member appointments to be made at the same time. He asked Wood if she wished to continue as an alternate; Wood indicated that she did.

MOTION:	Hawkins	to reappoint Paula Wood as an Alternate Member of the Planning Board to serve from March 2014 to March 2017.
SECOND:	Janvrin	Approved: Unanimous



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Rockingham Planning Commission

Hawkins said that the appointments to the Rockingham Planning Commission of Aboul Khan, Commissioner, and Francis Chase and Jason Janvrin as Alternate Commissioners were expiring at this time. Khan said that he had been Seabrook's RPC Commissioner for six years, and thought that it would be better for someone else with new ideas to serve going forward. He would be willing to continue until his replacement was appointed. Hawkins asked if Chase had interest in serving as a commissioner. Chase confirmed this, noting that he was currently on the RPC Executive Board.

MOTION:	Janvrin	to recommend to the Board of Selectmen that they appoint Francis Chase to a 3-year term as a Commissioner representing the Town of Seabrook on the Rockingham Planning Commission.
SECOND:	Hawkins	Approved: Unanimous

Hawkins asked if Janvrin wanted to continue serving as an alternate commissioner. Janvrin confirmed this, and said the term for alternates would be for one year. Khan said the alternate positions were nominated every year. Hawkins thought that was a good idea so others could express interest.

MOTION:	Hawkins	to recommend to the Board of Selectmen that they reappoint Jason Janvrin to a 1-year term as an Alternate Commissioner representing the Town of Seabrook on the Rockingham Planning Commission.
SECOND:	Chase	Approved: Unanimous

Hawkins said as Seabrook could have two alternates, there was another opening. Eaton volunteered to fill this position. Hawkins noted that alternates could attend every meeting.

MOTION:	Janvrin	to recommend to the Board of Selectmen that they appoint Ivan Eaton III to a 1-year term as an Alternate Commissioner representing the Town of Seabrook on the Rockingham Planning Commission.
SECOND:	Lowry	Approved: Unanimous

Chase asked whether his original appointment to the MPO [Metropolitan Planning Organization] had expired. Kravitz explained that under the current structure, the RPC Commissioners are also the MPO members. Khan said this happens automatically.

MINUTES OF MARCH 13, 2014

Hawkins asked for corrections or changes on the March 13, 2014 Minutes. Chase pointed out a typo for "in re". .

MOTION:	Chase	to accept the Minutes of March 13, 2014 with a typo]] corrected on page 6.
SECOND:	Lowry	Approved: Unanimous



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MINUTES OF MARCH 18, 2014

Hawkins asked for comments on the March 18, 2014 Minutes, and pointed out that the reference to the workshop date on page four to March, should be May. Chase noted the typo for "master" on the same page.

MOTION:	Eaton	to accept the Minutes of March 18, 2014 with the typos on page 4 corrected.
SECOND:	Lowry	Approved: In favor: Hawkins, Lowry, Janvrin, Chase Eaton, Frazee Abstained: Khan

SECURITY REDUCTIONS, EXTENSIONS, ROADWAYS

Case #2013-22 Daniel and Johanna Lord 55 Centennial Street, 2-lot subdivision;

Hawkins asked Kravitz to explain why the Lords wanted the mylar recording of the subdivision to be held. Kravitz said that Daniel Lord came to the Planning Board office asking that the mylar not be recorded at this time, because his real estate agent had found a potential buyer who wanted to do construction according to the plan existing prior to this application. She asked if the Board was ok with holding the mylar as asked. Hawkins asked if they wanted to just hold the mylar or withdraw the case. Kravitz understood that they wanted to hold up the filing to see what would happen. Khan asked if the request was in writing. Kravitz had asked for a letter but it had not been submitted. Garand said they had not come to his office. Hawkins thought to hold the mylar and put this request back on the agenda in 60 days. Garand noted that the Notice of Decision would expire in 180 days. Hawkins noted that ordinarily he would sign a mylar after 30 days. Hawkins said to put this back on the May 6, agenda in a month and ask if they come back with a letter. He asked Kravitz to contact the Lords and ask for a letter.

Stephanie Sullivan, 1 Walton Road.

Hawkins asked why Sullivan had written the letter to the Board and had not submitted a case. Garand said she occupied the first floor at 1 Walton Road with 4 offices, and was there about twice a week; currently the 8 cars a day was ok. The Notice of Decision for Medical Laser Technologies, which occupies the second floor, required coming back if the first floor was to be occupied. Actually Sullivan had never left the building. Janvrin thought there was an issue with signage. Garand said that was rectified with the sign taken off the building and repositioned on the site. Janvrin wanted Sullivan's letter to be put into the Medical Laser file. Hawkins said no action was required.

Town Manager's letter re Plovers in the Dunes area

Hawkins read from a memorandum from the Town Manager, at the request of Chairman Hess, to the effect that on April 4, 2014 the New Hampshire Fish and Game Department will be installing grade stakes and yellow twine fencing to protect plover nesting locations on the Beach from being inadvertently disturbed. Plovers set up territories and lay eggs in April. Brenden Clifford of NHF&G will discuss this at the Beach Commission meeting of May 12. Hawkins said this happens every year. This year the preferred rope fencing, rather than the wood fencing, would be installed with "do not disturb" signs until the plovers leave the area. Janvrin said that wardens monitor the plover area.



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PUBLIC HEARINGS

Case #2012-18 Latiun, Tropic Star gas station 663 Lafayette Road [

Hawkins referenced the request from SHAFRA - Tropic Star to continue the Remand Hearing for Case #2012-18.

Hawkins continued Case #2012-18 to April 15, 2014 at 6:30PM at Seabrook Town Hall.

Case #2013-14 – Proposal by Arleigh Greene, GRA Real Estate Holdings, LLC, 492 Lafayette Road, LLC, ARG Real Estate Holdings, LLC, West River Road, LLC, and Waterstone Retail Development, Inc. to consolidate six lots in the vicinity of Lafayette Road, Chevy Chase Road, Provident Way, and the South Access Road, namely Tax Map 8, Lots 54-2, 54-4, 54-5, 54-7, 54-8 and 90, and to discontinue most of Chevy Chase Road, continued from July 2, 2013, July 16, 2013, September 3, 2013; September 17, 2013; October 1, 2013, November 5, 2013; November 19, 2013, December 3, 2013, December 17, 2013; January 7, 2014; March 4, 2014;

[see below]

Case #2013-15 – Proposal by Arleigh Greene, GRA Real Estate Holdings, LLC and Waterstone Retail Development, Inc. to demolish existing buildings on Tax Map 8, Lots 54-2, 54-4, 54-5, 54-7, 54-8 and 90, and to construct a 168,642 square foot shopping complex with associated parking and access drives, continued from July 2, 2013, July 16, 2013, September 3, 2013; September 17, 2013, October 1, 2013, November 5, 2013; November 19, 2013, December 3, 2013, December 17, 2013; January 7, 2014; March 4, 2014;

Hawkins said that Cases #2014 and #2015 were waiting for response from the NH Department of Transportation which was anticipated in the next week, and also working on resolving the traffic issues.

Hawkins continued Cases 2013-14 and 2013-15 to April 15, 2013 at 6:30PM in Seabrook Town Hall,

Case #2013-24 – Proposal by GRA Real Estate Holdings, LLC to re-locate the Seabrook Truck Center and construct a 23,600 sf building (service, office & retail) and a fueling station (diesel & CNG) at 27 & 39 Stard Road, Tax Map 4, Lots 9 & 11, continued from January 7, 2014; March 4, 2014;

At the Applicant's request Hawkins continued Case #2013-24 to April 15, 2014 at 6:30PM in Seabrook Town Hall. Hawkins commented that this case was still being heard at the Zoning Board of Adjustment.



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Case #2013-27 Adams Subdivision Case #2013-27 – Proposal by Edwin Adams for a 4-lot subdivision at 97 – 111 Folly Mill Road, Tax Map 9, Lot 205, continued from January 21, 2014, March 4, 2014;

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

Morrill said since the last hearing they met with the Technical Review Committee and addressed Morgan's comments. The proposal is to create a 4-lot subdivision, with 2 single family dwellings on each lot, meeting the town regulations. The request is for the 4-lot subdivision approval only. They are not looking to do condominiums at this time. The plan will be notated as for site approval only, and to show that if condominium ownership was desired in the future, they would return to the Planning Board for that review, including grading, driveways etc. A waiver was requested re depicting the grading, because they do not know where the driveways or grading will go. As TRC requested the individual water shutoffs will be located in the landscaped area. The driveway cross-section is depicted to show that the water stays on the lots. Driveways will be 12 feet wide with a minimum of 10 feet away from the property line as the subdivision regulations require. A notation states that certain trees along Folly Mill Drive would be taken down if that would work for abutters and the Department of Public Works.

Morrill said the existing conditions plan showed the trailers. The Applicant will work with the CEO in re an oil tank that would be removed according to town and NH Department of Environmental Services regulations. An existing water well that was involved in a Salisbury oil spill has been cleaned and will be filled in and shut down according to DES regulations. The existing and proposed water shutoffs, sewer services, a proposed dwelling on each lot and curb-stops are shown as required for a subdivision for more than 3 lots. If needed, they would return for condominium changes.

Hawkins asked for Morgan's view. Morgan thought it a good idea to go through his and the TRC comments, and to focus on the stormwater. Hawkins asked about comments from Mike Fowler, engineer for the Board. Morrill said the Fowler comments including fees had not been discussed at the TRC, so he would have to confer with the Applicant before commenting. Hawkins was concerned about how sewer and water connections would be made. Morrill said water connections for each individual lot was discussed. There was a water line along the north side; the lots would tie into the south side water line. The sewer service was down the middle of the road; sewer service would have to be connected for each lot. Hawkins thought that Fowler had questioned having to rip up the pavement for 4 roadway cuts near each other, and suggested one cut in the road and having the individual connections run off a single line.

Morrill thought that Fowler had proposed overlaying the entire section of Folly Mill Road. Chase asked for the depth of the sewer line. Morrill said about 8 feet. Janvrin thought the water lines were about 5 feet. Chase thought that Fowler's point was that with several road cuts there would be so many divots that the town would have to resurface the road. Why should the town be put in that situation. Morrill said the water lines existed; the cuts would be just for the sewer lines. Originally, there were two connections for each house, but now only one. Hawkins thought that if the Applicant did the repaving there would be a difference of \$10,000 in the security. Morrill wanted to review the Fowler memorandum with the DPW Manager to be sure that he concurs, because the pavement would be a large expense. Then he would discuss this issue with the Applicant. Perhaps a manhole with the sewer line going to it could be placed, saving a lot of road disruption. Morrill asked to return to the Board's April 15 meeting with answers about the water and sewer matters.



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Hawkins referenced a letter from an abutter requesting stockade fencing or something for privacy, and asked if Morrill had spoken with the Applicant about that. He thought a landscape buffer might be preferable. Morrill looked at a copy of the letter. Hawkins wanted this to be satisfactorily worked out with the neighbors, and to address this at the next meeting. Morrill said there were a lot of pines and brush in that area. He did not know what the Applicant had in mind and they would discuss this. Khan wanted to know about the oil spill, and asked if there was documentation that it was now clean. Morrill said a letter from the NHDES said it was clean, and that the well should be capped and covered. Khan wanted this information in the record. Morrill will submit the letter.

Janvrin asked about the requested waiver in re grading the contours. Morrill did not want to depict the contours at this time, because they did not know where the houses would be situated, and would be returning to the Board. Janvrin said depicting the contours would show the grading for the stormwater. With a subdivision, one lot could be draining onto another causing an issue. Morrill said that if a party bought two lots everything he had shown would have to be changed. Morgan referenced Morrill's statement that there would be a later condominium plan, and asked if someone changed their mind and there was no condominium. The Board was being asked to approve a plan without the contours and with limited stormwater information. Morrill said if there were two detached dwelling units there would have to be a condominium site plan. Garand said with a subdivision request only the zoning regulations would apply. Morgan suggested a plan be submitted without assuming there would be condominiums. He agreed with Janvrin that the Board wanted to avoid a stormwater problem. Morrill said the driveway cuts were shown to meet the DPW concern about keeping the water off the roadway; that was the purpose of showing the driveway cross-section. Janvrin said the MS-4 now requires tracking what comes off property onto the town property, but what if he bought a lot and found that his lot was draining onto another lot. He would appreciate the contours. Morrill felt this was not needed for an open subdivision. Hawkins asked when the contours would be in place. Morrill asked if the town required waivers. Hawkins said that was why the Applicant was asking for a waiver. Morrill said there was just frontage for the subdivision.

Hawkins said it was not thing to argue that they did not know where the houses would be, but the town also requires the existing conditions. Morrill said that was on the plan. Hawkins said with Morrill's argument, every subdivision whether 5 lots or 50 could take the position that they wanted the subdivision and put the road in with no contours on the plan. Each lot could be sold individually, so the contours would never be seen. Morrill commented that a Rocks Road subdivision had been approved with no proposed house. Morgan corrected that the houses were already placed on the lots. Morrill said they would add some contours. Chase asked if the driveways would be paved. Morrill said yes. Chase pointed out that the contours were needed for the driveways. Janvrin said an access easement would not be required until they returned to the Board. Morrill said if do condominiums, the site plan would have to be modified, and they would have to return to the Board.

Wood commented that if they were to build a single house they would return to the Board. This means that the abutter to the east would never know where any of the houses would be. Wood had raised this issue before. A plan can get approval with the houses on one part of the lot, and then come in to build in another spot, right next to an abutter who thought they knew what could happen. They would get no notice. Hawkins said as long as a house was placed according to the ordinance, it could be built. If it did not abide by the ordinance, they could go to the ZBA for permission. Individual houses never come to this Board, but subdivisions do. Garand commented that the Planning Board only reviews industrial and commercial proposals. Wood referenced a condominium conversion on Railroad Avenue which had an approval but then



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moved the houses to the edge of the lots. The abutters could find a house at their door. Garand said two single residences do not return to the Board; condominiums do. Eaton commented that privacy fencing with limited heights present a similar problem. Garand said condominium conversions return to the Board to show driveways, utilities, parking etc. These lots could be marketed as approved with two single structures on a lot.

At the Applicant's request, Hawkins continued Case #2013-27 to April 15, 2014 at 6:30PM at Seabrook Town Hall.

Morgan asked about a revised plan. Morrill said that would be submitted by April 8, 2014.

Lowry recused himself from Cases #2014-02 and #2014-03. Hawkins said both cases would be discussed together.

Case #2014-02 – Proposal by Charles Mabardy & DDR for two lot line adjustments involving three lots situated between 700 and 728 Lafayette Road, Tax Map 7 Lot 125 & 126, and Map 8, Lot 55-10, continued from March 4, 2014, March 13, 2014;

Case 2014-03 – Proposal by Charles Mabardy & DDR to construct 17 parking spaces at 720 Lafayette Road, and a connector roadway between 700 & 720 Lafayette Road, Tax Map 7 Lot 126, and Map 8, Lot 55-10, from March 4, 2014, March 13, 2014;

Attending: Michael Lowry, Manager, Mabardy Oil

Appearing for the Applicant: Mark Verostick, engineer, VHB;

Hawkins agreed to distribute case plans that had not been submitted in time for the Board packets. Verostick said the lot-line case number (Case #2014-02) and revision block were added, corrected the zoning boundary to 500 feet from Lafayette Road, the 3-foot easement boundary was clarified as included in the frontage in excess of 125 feet, a boundary rod was added, and the access easement to allow access for utilities and maintenance shown. Hawkins asked if the easement document had been submitted. Verostick said that would be done. Another easement would be created for the water connection to the DDR site (Case #2014-03). A 24-foot driveway will allow cross-access between 720 and 728 Lafayette Road. Hawkins noted the driveways on both ends of the property.

Verostick said for the siteplan (Case #2014-03) the Case number was added to all plansheets. There are three lighting fixtures on the site; one will be added; a cut sheet of the existing light was submitted. The revision block was added. Mabardy had signed the Stormwater Operations and Maintenance Manual. A waiver was requested for the southern boundary landscape buffer. The biggest change was reducing the 17 parking spaces to 13, with the 3 of the lost spaces reserved for landscaping. The zoning boundary was corrected. The total of impervious surface and open space was added. A pedestrian crossing to the south abutting parcel (Outback) was added and will be coordinated with them. Morgan asked if the owner of the abutting parcel to the south was agreeable to the crossing. Verostick said they were.

Hawkins asked about the parking calculations, and asked for the distribution of the square footage in the restaurant and retail sections of the 4,300 square foot building. Chase thought they were bringing the calculations including for the employees. Lowry said they had reduced the parking. Morgan had not found parking calculations on the plan. Verostick had not added them. Janvrin asked for a breakdown of the parking allocations. Hawkins wanted to review the

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calculations discussed at the last meeting. The restaurant would be calculated on the number of seats – 16; with 1 space per 3 seats, that would mean 5 spaces for the patrons. Hawkins asked for the number of employees. Lowry said Dunkin Donuts (6-8), the Sub Shop (2-3), Office (3), and the Store (2-3). Hawkins said the previous calculation for compliance was 28. They had proposed 33 and now reduced it to 29.

Chase asked for the particulars of the easement. Verostick said that would be to allow the water connection to the DDR site. Chase asked who would be maintaining that area. Verostick said DDR. Chase asked if that meant that if Sunoco runs out of water, they would go to DDR and not the town. Verostick confirmed this. Chase asked if the town could shut off the service, and if there was an easement so the town could do this. Verostick said there was a shutoff. Garand said the town would want an access easement. Hawkins commented that applicants had been advised that they had to sign utility access easements. Janvrin asked if the 5-foot sidewalk between the two lots was wide enough. Verostick said it was. Janvrin asked for a sign at Route 1 saying state law requires stopping for pedestrians and some striping; this would be a courtesy for pedestrians. The current outside seating was toward the north. Janvrin wanted to know where it would be going forward. Lowry pointed out where it would be moved toward the center. Janvrin asked that be notated on the plan. Garand suggested they consider low lighting for the walkways, and even to the DDR bus stop. Verostick thought there would be sufficient light from the pole lights. Garand said people would be looking down, so low lights would be helpful.

Janvrin asked if there would be a bicycle rack and, if so, to depict the location on the plan. . Verostick said they could look at that. Janvrin wanted the bus stop to be depicted on the plan, and asked if there needed to be an access agreement for pedestrian crossing. Morgan said it would be a good idea. It was understood that DDR and SUNOCO were now cooperating, but might not be in the future. Janvrin said it would be a mutual access agreement between the lots allowing pedestrian access. Morgan said to refer to the walkway depicted on the plan. Janvrin asked if the site was currently powered by overhead wires, and if they would be coming from the back and buried. Morgan wanted a parking calculation table on the siteplan, because it was a little confusing now and in the future people should know the basis for the figures.

Hawkins appreciated the depiction of trees, but said it showed what would be lost for another restaurant. He thought that the trees helped to make McDonald's to look good. He asked if a couple of decent size replacement trees could be built into the landscape open space – about 3-inch caliper. Verostick thought a lot the trees were on the adjacent lot. Hawkins wanted to see some trees that could grow to a decent size, noting that many trees came down in the shopping center. He wanted to show that some landscaping could be done along Route 1. Janvrin noted that the liberty elm was close to Route 1 as was intended. Janvrin liked the sign up front, and suggested there be a sign going toward the DDR site, and asked if Garand could approve this based on the ordinance. Chase commented that a sign committee was now meeting.

Hawkins noted there were a number of changes at this meeting, and asked Lowry what he intended for this meeting. Lowry asked for an approval. Hawkins asked for the board's view. Janvrin had no problem with the lot-line adjustment plan, and thought the siteplan changes were relatively minor. He did not think the plan needed to come back to the Board as long as Morgan was ok with it. Morgan said to be sure that all of the changes identified were in the conditions. Verostick pointed out where the handicap spots would be. Janvrin noted that state law covers where advisory striping could be placed. Verostick suggested a standard cautionary diagram. Hawkins asked for additional changes or additions; there being none.



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MOTION:	Chase	to approve Case #2014-02 – Charles Mabardy & DDR for two lot line adjustments involving three lots situated between 700 and 728 Lafayette Road, Tax Map 7 Lot 125 & 126, and Map 8, Lot 55-10, with the following conditions: (i) the Applicant providing written driveway easements for the north and south ends of the property for town access; (ii) the final plan is entirely satisfactory to the Town Planner; (iii) all reimbursement invoices to be paid before the final approval; (iv) the approval will expire in 180 days [10-01-14] if the conditions have not been met.
SECOND:	Khan	Approved: In favor: Chase Hawkins, Khan, Janvrin, Eaton, Frazee, Wood;

MOTION:	Hawkins	to grant a waiver for Case #2014-03 to modify the 10-foot side yard landscape setback on the south side of the lot, recognizing that the Applicant gave up 4 parking spaces to accomplish the intent of the ordinance.
SECOND:	Janvrin	Approved: Unanimous

Verostick asked for guidance on the trees to be required; the Board favored red maple trees with a 3 inch caliber. Janvrin asked about the depiction of a future stormwater overflow connection pipe; Verostick said that piping was not yet in place. Chase asked about the dumpster placement. Verostick said the pad and dumpster enclosure will be moved to another location. Hawkins asked for other comments; there being none.

MOTION:	Wood	to approve Case #2014-03 – Charles Mabardy & DDR to construct 17 parking spaces at 720 Lafayette Road, and a connector roadway between 700 & 720 Lafayette Road, Tax Map 7 Lot 126, and Map 8, Lot 55-10, conditioned on the following: (i) the Applicant to provide security in the amount of \$5000; (ii) the parking calculations added to the siteplan; (iii) adding pedestrian crossing signage and striping and depicting them on the siteplan; (iv) adding three large red maple trees (3 inch caliber) on the expanded island on the east side of the property;
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		<p>(v) the revised siteplan showing 13 new parking spaces where 17 had been proposed;</p> <p>(vi) showing the location of the bike rack and the area for the outdoor seating on the siteplan;</p> <p>(vii) providing a mutually agreeable cross access easement for pedestrians between the two parcels;</p> <p>(viii) all state driveway permits and DES permits submitted to the Planning Board office;</p> <p>(ix) the Applicant signing the Seabrook Standard Access Easement for utilities and stormwater management, and notating the easement on the plan;</p> <p>(x) the Stormwater Operations and Maintenance Manual signed and listed on the plan;</p> <p>(xi) all outstanding invoices paid;</p> <p>(xii) the Applicant sending a letter to the Planning Board including appropriate evidence that all conditions of approval have been met; the letter is due at least 10 business days prior to the Chair signing the final plan;</p> <p>(xiii) the final revised siteplan must meet the requirements of the Town Planner;</p> <p>(xiv) the application will expire in 180 days [10-01-14] if the conditions of approval are not met.</p>
SECOND:	Chase	Approved: Unanimous

Case #2013-26 11 New Zealand Road LLC and Charles Mabardy to establish a convenience store and restaurant at 11 New Zealand Road, Tax Map 7, Lot 87, continued from January 7, 2014, continued from January 7, 2014, January 21, 2014; []

Michael Lowry recused himself from Case #2013-26.
Attending: Michael Lowry, 11 New Zealand Road LLC;

Lowry read a letter dated April 1, 2014 from Attorney Christopher Aslin, Bernstein Shur re 11 New Zealand Road LLC and Charles Mabardy, Tax Map 7, Lot 7-87-1 (Case #2013-26);

"Dear Chairman Hawkins and Members of the Board:
I am writing as legal counsel to 11 New Zealand Road, LLC, the owner of Lot 7-87-1 and the applicant in the above referenced expedited application to establish a convenience store and restaurant use in the existing building at 11 New Zealand Road. While the Applicant accommodated the Board's desire to continue the case from the January 7, 2014 meeting, the Applicant now requests final approval of this straight forward expedited application.

It is my understanding that the Board, at its March 4, 2014 meeting, raised the Superior Court's ruling reversing the approval in Case #2012-18 during the Board's consideration of the instant expedited application (Case #2013-26). The Applicant respectfully disagrees that Case #2012-18 has any relevance to the instant expedited application and suggests that combining the two cases is improper.



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This application for approval of a restaurant and convenience store use of the existing building on Lot 7-87-1 meets all of the requirements [criteria] for an expedited application pursuant to Section 4 of the Seabrook Site Plan Review Regulations. The proposed change in use is consistent with prior approvals for restaurant and other uses that have existed at times since the 1970s without issue alongside the former Getty North gas station at 663 Lafayette Road (the "Front Lot"). As with other changes in use from one permitted use to another, in an existing building, this application should be ruled upon in an expedited manner.

In addition, it is improper for the Board to consider the proposed expanded gas station use of the Front Lot when ruling on the instant expedited application. The approval in Case #2012-18 was reversed, and any consideration of the use of the Front Lot should be in the context of the approved single-canopy Getty North station with no convenience store.

11 New Zealand Road has the right to use its property for reasonable uses that are permitted by the Ordinance. Accordingly, on behalf of Mr Mabardy and 11 New Zealand Road LLC, I hereby request that the Board rule on the pending expedited application, which has already been pending for nearly 3 months."

Janvrin asked Morgan how many days for consideration of an application. Morgan said 65 days from the date of acceptance as administratively complete, unless there was an extension from the Board of Selectmen or the Applicant. Janvrin asked for the date of the Board's acceptance of this case; Hawkins said January 7, 2014. Chase asked what would constitute the Board going to the Selectmen. Janvrin said the applicant could appeal to the Board of Selectmen if the Planning Board did not reach a decision within 65 days. Morgan said both Janvrin and Chase were right. The Planning Board could seek an extension from the Board of Selectmen; if that did not happen the Applicant could go to the Selectmen. Janvrin said if the Board failed to make the decision after the BOS granted an extension, then it could go to the Superior Court. Janvrin said while he disputed that the case [#2012-18] was reversed - it was remanded, but he did think a decision on Case #2013-26 should be made.

Wood said she had not been present at the Planning Board's March 4, 2013 meeting, and asked for information as to what had occurred in re the Court's ruling. Hawkins said the Board went over what the Court had sent to it. Hawkins read the Court's findings:

- 1) The Court found that the board erred because it did not hear any evidence on what effect traffic on the front lot would have on the traffic attempting to use the easement to the access for the Back Lot. The Court found the board's decision to be unreasonable because it approved a site plan without considering evidence about the internal traffic dynamics of the front and back lots and their impact on each other.

Hawkins said the Judge sent the case back to the board for consideration of the things he thought the board missed. He did not think it had done a good enough job in looking at the impact from the traffic from the front lot on the back lot and, if they are interactive, vice versa.

- 2) The Court found that the board erred because there was no evidence in the record that the board considered whether allowing the pavement in the parking easement to remain, but removing the parking striping in the easement, would



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lead to increased congestion and decreased safety and other impacts on patrons of both businesses.

Hawkins said the board did not want to be involved, and he was in the court when the judge said it was not in the board's bailiwick whether that easement gave one party rights. The judge did say that the striping should have been left. The Board had said not to replace the striping after the pavement was removed. The front lot was allowed only five spaces around the building, and not to use the parking in the back. The Board's thinking was the striping would come up when the Back Lot came in with an application, and the Board would still stay out. Hawkins noted that the front property is still at the Supreme Court for the next step. Hawkins said that the Board's Attorney has said it could proceed with the cases, but needed to consider the traffic situation for both. They are sharing an easement for parking, and sharing an easement for access to all over the property. The total traffic situation was a consideration.

Hawkins did not agree with Attorney Aslin that a convenience store on the front property could not be considered. There is an application so how not could it be considered; the application had already been approved but was sent back by the judge asking the Board to do two specific things. The Board would have to decide if it had enough information to make a decision on these two properties. One property could not be considered without the other. The judge has said in his decision that the impact of one on the other had to be considered. Hawkins did not understand how Aslin did not acknowledge that. Janvrin said that Aslin's position was that the Court reversed the approval. Actually, the case was remanded back to the Board to reconsider its approval. The Board had to consider the two cases. Khan asked if the parties were talking. Hawkins understood that the party in re the front lot had proposed a solution which was provided in the Board's packet. He asked Lowry if there had been any response to that. Lowry said they were waiting for that response.

Lowry said these were two separate cases, and that Case #2013-26 met the criteria for an expedited application. He said that technically the up-front lot [Case #2012-18] did not have an approval. Hawkins said that the Board's counsel recommended to proceed as with a normal case. Both cases could be done at the same time. However, there was no reason to hold up one for the other. He thought that should be done at this meeting, and was what the applicant requested. The issues to discuss were related to identifying the parking. Janvrin asked whether the entrance to the building was ADA compliant. Garand would look for the building to be fully or partially ADA compliant, but the existing code did not require redoing the whole building. Any parking previously approved in re the restaurant had not been constructed. Janvrin asked if there were a walkway between the garage door and the side door. Lowry said not directly. There was a walkway to the side door which would become the main entrance.

Chase asked if it would be ADA accessible from New Zealand Road; he thought there was a step and it would have to be made accessible. Lowry said there were three steps from the parking. The NH Lottery would require ADA accessibility. Chase asked if the parking stops were for a period of time or just drop-offs. Garand said they would have to return to the Board for drop-off and pick-up. Wood asked if any of the parking spots that would have to be striped had to be handicap. Hawkins said that the plan from 2005 had handicap designated for two parking spots. The parking calculations would be 4 for the restaurant, 3 for employees, 4 for 1000 feet of retail (max); this would mean somewhere between 7 and 11 spaces. Eight spaces were shown plus 3 for the driveway. Lowry said the driveway ramp was for 3 employees; Chase thought one would be double parked. Hawkins asked if they would fit there, and if any would be in the easement area. Lowry said they would fit with without going into the easement area. That would



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give room to back out of the spaces. Hawkins said a minimum of 8 spaces was needed. Lowry said that technically only two cars would be at the ramp, but there could be one more.

Janvrin asked if it were the intent to construct the handicap spaces on New Zealand Road. He thought they were approved in a prior plan. Garand commented that those spots would have expired. Lowry said there were "no parking" signs so people could not park there. Hawkins said that the site did meet the parking requirement for a minimum of 7 and a maximum of 11. Chase again asked about the handicap spots. Hawkins pointed out two handicap spots; the question was if they would have access to the building. Garand said they would need to review the site for compliance. Hawkins asked what that process would be. Garand said they would do a site walk, look at the landing outside the doors, and the walkways. Hawkins asked if that was the CEO's responsibility. Garand said it could be the CEO, or an engineer.

Janvrin said normally the ADA compliance had to be notated on a new plan. Garand said to do work to improve an existing building, it would have to be made ADA compliant with a lift or a ramp. At this time the 7 inch step up to the building could have a ramp as long as it did not change the grading. Janvrin thought this would not have been expedited if there were a change in the lighting. Janvrin asked if the back lot did any of the illumination on the parking spaces. Lowry said it gave a limited light source.

Wayne Morrill of Jones & Beach Engineering, who represents Tropic Star, the developer of the gas station parcel, said that when he was last at the Board they were asked to look at all of the numbers for the circulation. They had requested a continuance to April 15, 2014 because the attorneys for both cases, Uchida and Aslin could not attend. The Board had to look at the circulation report as the court had instructed it to do. Morrill thought it important that Case #2013-26 be continued to April 15 to hear the circulation report from a traffic engineer to understand it clearly as the Court said to do. Hawkins did not disagree, but other items were being discussed first. Then the focus could be on the most contentious issue that needed to be discussed i.e. what the Board had to do to deal with the court decision. The Court was clear that the Board had to consider the interaction of the two sites. Usually judges were not involved in an expedited application. The Board would have to follow the instructions and go through what it thinks would be appropriate for this site. It was not always easy to get everyone in the same room. The case would be reviewed, not necessarily waiting for lawyers to attend; those were the instructions and that was all that the Board could do.

Hawkins asked Morgan if there were other issues relating to the plan. Morgan had reviewed the Minutes of January 7, 2014. At that time the Applicant said there would be 30 trips per hour. Hawkins said the Court decision was to consider the interaction of the two sites. He thought that the Board had done that, but the Court did not think the traffic levels from the back lot had been considered. There is a circulation pattern around a proposed building. The back lot had an easement giving it access to the front lot and 8 parking spaces on that lot. The question was what did the Board have to do to consider the interaction of the two lots. Morgan wanted to know the status of the back lot in relation to New Zealand Road. Hawkins recalled that the easement agreement gave the back lot access through the front lot or any portion thereof. He assumed that meant from New Zealand Road or from Route 1. Morgan asked if that meant through the [town] recreation lot. Hawkins said there was no access. Morgan asked if it was feasible. Hawkins said the letter proposal was to build 10 parking spots on the back lot and also reserve 3 spaces on the front lot for the back lot, and rewrite the easement accordingly.

Morgan said that the two parties might continue to fight each other for the foreseeable future, and therefore make it difficult for the town to satisfy the Judge. If the Back lot could have access

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from New Zealand, then the Board could take the position that the back lot store and restaurant were still viable because they could have access from New Zealand Road, even if the fighting continued. Hawkins thought that access to the back lot was not the problem; it was whether the parking spaces were to be shared with the front lot. The Board's decision was whether the parking was adequate on the lot, or had the applicant made arrangements with another lot for more spots. Clearly the back lot had made arrangements for parking on another lot; so parking should not be an issue. Morgan agreed. Hawkins said the only thing to consider was the flow of traffic and stripe the parking spots to satisfy the Judge's decision. Morgan said that the "flow" was elusive. If the Board can assume that the back lot can enjoy access to New Zealand Road and a signalized intersection, then the flow back and forth would be less important.

Wood referenced the proposal letter and asked if the parking spots on the back lot would be built in the front. Hawkins said only the letter had been received. Wood questioned whether there was enough land to build those spots. There was a retaining wall and then grass in front of the building. She did not think there was enough land to put in a row of parking spots and a driveway to have that property have its own access i.e. that was not a possibility Morgan's concern was to try and separate the two lots. Morrill said as part of the gas station proposal, they showed 10 parking spots up against the front of the building with an ADA compliant sidewalk and a 24-foot driveway – they would have their own access to New Zealand Road. Janvrin remembered this and that the front lot Applicant would pay for these changes. The spokesperson for the back lot flatly said no. Hawkins said that was a proposal to solve their ongoing issue, but did not think it solved the Board's problem because parking was not its issue. The back lot Applicant had made satisfactory arrangements for the parking, so that issue was off the table. The dispute was whether the easement was exclusive, which did not concern the Board. The front lot had 5 spaces; using the additional spaces would put them over the number of spaces allotted. The Board's dilemma was how to consider the flow of traffic from both lots through the front lot, and if this was a problem to solve at this hearing.

Garand asked about the advise of the Board's counsel. Hawkins said it was to continue the cases and not hold them up to do together. Garand explained that these lots were at one time together (one lot). There was a subdivision which divided the lots and gave the back lot access and deeded parking on the front lot. He felt it was a bad plan to begin with; they were looking to the Planning Board to solve their problem. The back parcel had the parking and access. The front parcel had to prove out how it was burdened by the back lot.

Hawkins said to remember that the Judge said that the front parcel had been considered without the traffic that the back lot would bring. The back lot had an allowed use and not an approved use because it had been closed for a year. He commented that that was part of what was now in the Supreme Court. At the time, the Board did not have a case on the back lot before it. Garand said the front lot was burdened by the back lot. Hawkins said the Board had to figure out the level of that burden i.e. what amount of traffic gets generated by a 2,300 square foot store. That is the information that is lacking. Garand said for parking proposed on the back lot the drainage, open area, and road access would have to be considered.

Hawkins did not think the Board could review a plan that was not in front of it. The request [for the back lot] was to reopen an existing facility. Normally, the Board would consider the parking and whether a contribution to Route 1 improvements was appropriate or was the traffic flow too small per hour. The Board now had a court order to look at the two lots together. To do that required information about the traffic generated by the back lot. Without it, the Board would end up with the same litigation in reverse i.e. that it did not consider the other lot where there is an approved plan that got remanded for more information. The back lot gets their use because they



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have an easement deed for that use. Hawkins did not see how one plan could be reviewed without considering the other plan. Wood asked if the Board had an expert who could do this work. Hawkins said that could easily be done. Normally, the Board would want a traffic study showing the traffic flow and impact on other properties. However, an expedited application was accepted. Janvrin commented that an expedited application could not have traffic consequences.

Khan agreed with Garand that the Board should not be deciding on private issues. If the Board agrees that this is an expedited case, it should focus only on that, and not think about the parking on the other lot. One way or another the Board is getting more involved than it should in a dispute, because it would not be resolved in the foreseeable future. Hawkins said the consequence would be the legal fees when the Board was sued from the other direction. Khan noted that the attorney advised the Board to go ahead with the expedited case. Although he did not often favor bringing in the attorney, he thought it would be beneficial for the Members to hear directly what the attorney means by going forward with the expedited case. Chase agreed on having a meeting with the Board's attorney, and asked if this was an expedited application. Hawkins said the Board could change the case status based on information it gets during the review process. Hawkins explained that an expedited application was for reopening an existing facility without making changes, so there was not a need for the expense burden for engineered plans to review the proposal. However, in this situation the Board had to deal with the Court comments concerning the abutting properties.

Chase was concerned about the flooding that takes place on the front lawn. The case could go on for ten years without a resolution. Hawkins asked if the pavement had been dug up. Hawkins said only when the tanks were taken out. Janvrin wanted to know who signed off on the expedited application when it came to the Planning Board. Hawkins said the Board had accepted an expedited application. Janvrin said the regulations say an expedited application would be signed by one of two people. Garand said it was forwarded to the board because the document requirements were met, and they were not changing the building, drainage or lighting. Hawkins said the Board could require additional information. "Expedited" was not the issue; information was needed to make a decision correctly. [Secretary's Note: the expedited application had been signed.)

Hawkins said the Board can make a review as it wanted. Khan said the Board could decide the expedited question. Hawkins said the expedited application was to save the applicant money. The Board could look at what was existing without an engineer, even with a hand sketch. The issue was whether the Board would consider the impact of the front lot on the back and vice versa. When the back lot case is again before the Board, that would have to be done. For Case #2013-26 the question was whether to take the risk of a reverse litigation. Morgan asked if both cases impact the other in re circulation. i.e. a case could be made that the back lot impacts the front lot, but not the reverse. Janvrin said the needed information would be about trips per hour and circulation on the site. Hawkins said the traffic engineers were asked to look at the front lot taking note of the cars that would park there, and the turning radius for trucks. What was not considered was the impact of the use of the back lot i.e. the traffic volume in and out. The Judge was saying there was a use in the back for which the traffic volume was not considered. The back applicant who bought the suit said that the use on the front lot. The back lot trips per hour for the intended use were needed. Janvrin said that would have to be in writing from the traffic engineer. Chase said data from both cases would have to be analyzed.

Hawkins asked Lowry if he wanted to get that information and have it peer reviewed, or did he want the Board to have its traffic engineer do this work based on the size of the property and its Town of Seabrook Planning Board Minutes
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use, in which case the Applicant would be billed. Lowry said the application was accepted as expedited, so it meets all the requirements. Hawkins said the traffic issue was outstanding and had to be addressed. The Board could call its traffic engineer who already did the front lot and had been present at a meeting. Hawkins said the other option was to wait for the next meeting when the front lot case would be on the Agenda and their traffic information would be discussed. Lowry said the back lot already existed and no changes were being made. Hawkins agreed, but said the Board wanted the traffic impact analysis so that the town did not end up in the very same court case from the other side. Chase said he could also agree with Lowry, but this was a very unusual case. Janvrin said under Section 14 of the Zoning the approved use ceased. It was an allowed use before the Board at this meeting because they want to obtain approval for another allowed use. Han was concerned that whatever the board did, one party would go to court.

Hawkins said the Planning board had the responsibility to what it could to protect the town. This means it had to see a traffic count for the back lot; otherwise it could not comply and would be opening up the same court case from the other side because the traffic volume for both lots had not been considered. Eaton asked about Khan's view of bringing in the Board's attorney to see what was advised for going forward. Janvrin suggested a 91-A non-meeting. Hawkins said the Board's responsibility was to try to stay out of court. He said doing the best job it could meant looking at the traffic figures. He asked Lowry to decide how that information should be obtained. He could have it done, the Board could get the information, or he could wait to see what the front lot would say. Garand wanted to see what the proposed parking option could do; he and several members could not recall it. Hawkins asked if the Board could dictate that parking. Lowry again raised the question of the easement parking. Hawkins' opinion was that the parking had been dealt with; the spaces provided in the easement were adequate. He agreed with Garand that the alternative would be an opportunity to resolve the issues, but did not see that happening. To stay out of court meant looking at the traffic impacts of each both lot on the other, and then to make the decision.

Lowry called attention to Aslin's letter, and said that the front lot was remanded back to the Planning Board, so technically the front lot did not have an approved site plan. Hawkins said that the court said that the Board did not take into account the possible uses and the impact of the property in the back on the flow of traffic through the front lot. Why wouldn't the court say that the Board did not consider the possible uses of the property in the front, which the Board already approved, and the impact from the sharing of access and space for the back lot. The court had scolded the Board for not looking at the flow of traffic for the two properties sharing an easement.

Lowry said the Applicant had submitted an expedited application; it had been before the Board for three months. The Applicant wanted a determination. Morgan asked Lowry if the Applicant would consider an extension. Lowry said it would not. Morgan said the Board should ask the Selectmen for a 90 day extension. Khan asked for a letter to the Board of Selectmen. Hawkins asked Morgan to do the letter. Janvrin said he would attend next Monday's BOS meeting.

MOTION:	Janvrin	to petition the Board of Selectmen to grant a 90 day extension to Case #2013-26 - proposal by 11 New Zealand Road, LLC and Charles Mabardy to establish a convenience store and restaurant at 11 New Zealand Road, Tax Map 7, Lot 87.
SECOND:	Eaton	Approved: Unanimous



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Hawkins said the Board would ask the BOS for an extension. He asked Lowry how he wanted to handle getting the traffic data. He did not think this would be an intensive process. The Board did not want to do this if the Applicant wanted to handle it. Lowry would leave this for Mabardy. Hawkins said this would be discussed at the next meeting and a decision would be made.

Hawkins continued Case #2013-26 to April 15, 2014 at 6:30PM in Seabrook Town Hall.

Chase asked if all the Members would speak with counsel. Janvrin said it could be done telephonically under an RSA 91-A meeting. If the Chair sets that up, the Secretary could notify them. Hawkins said usually he's part of a call with counsel in which several questions are asked, and the attorney follows-up with an email confirming his advise. If 7 people were on the phone, there would be more questions. He would rather look at the value there would be if the whole Board on the call. So far the attorney has said the Board could proceed as it normally would. The other question was if the two lots had to be considered together. Legal counsel could not see how not to consider them together, so that had to be pushed forward. Khan suggested providing the new members with the court documentation. Hawkins said this was in the last packet. Kravitz said that Eaton had been given several packets. Eaton had read the material.

Case #2014-07 – Proposal by 33-35 Gove Road Realty Trust to amend a subdivision approval so as to restrict the sale of lots at 33-35 Gove Road, Tax Map 7 Lot 50.

Hawkins said the case was brought because of disputes between DPW and the applicant about how the road was done, and the plan had not been signed. After further discussion it was to sign the plan, which had been approved, and allow one house owner to avoid a foreclosure. Kravitz said the plan had been recorded. The application was submitted in case the plan could not be recorded. The applicant should officially withdraw the plan. Eaton said he was one of the beneficiaries of the Trust. He called William Walsh who said the case was not needed. Janvrin said to put this in writing. Eaton submitted the written withdrawal.

OTHER BUSINESS

Lowry resumed his seat.

Janvrin asked if Eaton had gotten the RSA book. The Planning Board Manual was on the OEP Website.

Janvrin asked if the Board had received notice of the annual OEP conference. Morgan referenced the flyer for May 3, 2014 in Whitfield NH. Janvrin asked if there is money in the budget for this. Hawkins said there was.

Janvrin said the Friends of Seabrook Rail Trail would have their annual meeting on April 9, 2014 from 6:30 pm to 8 pm.

Hawkins asked Morgan to get the new map from RPC.

Hawkins asked Morgan to address the road standards so that the Board and the Town coincided. Morgan noted that the DPW was likely to have Altus work on this. Hawkins wanted a recommendation that all agree to.



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Chase said the Sign Committee met at the Water Department. It was a good meeting; they addressed two definitions and will meet again.

Kravitz reminded that the Treasurer was willing to chat with the Board, and asked if Hawkins wanted this at the workshop meeting.

Hawkins will develop an agenda for the May 6 workshop.

Hawkins adjourned the meeting at 9:25 PM.

Respectfully Submitted

Barbara Kravitz, Secretary
Seabrook Planning Board