



## Town of Seabrook Planning Board Minutes

Tuesday, June 18 2013

NOT OFFICIAL UNTIL APPROVED

Members Present: Donald Hawkins, Chair, Jason Janvrin, Vice Chair; Dennis Sweeney; Roger Frazee; Francis Chase, Michael Lowry, Edward Hess Jr, Ex-Officio; Paula Wood, Alternate; Tom Morgan, Town Planner; Barbara Kravitz, Secretary; Paul Garand, Code Enforcement Officer;

Members Absent; Sue Foote, Alternate;

Hawkins opened the meeting and the Public Hearing at 6:35PM, indicating that most of this meeting would be a work session.

### **PUBLIC HEARINGS**

**Case #2012-18 – Proposal by Latium, Tropic Star Development, Scott Mitchell to remodel and expand a gasoline station, and to construct a convenience store, at 663 Lafayette Road, Tax Map 7, Lot 87. Among other pending issues the board will consider is the applicability of Section 14 of the Zoning Ordinance (abandonment) and the proposal's compliance with Section 6 of the Zoning Ordinance,** continued from continued from July 17, 2012, August 21, 2012, September 4, 2012, October 16, 2012, November 20, 2012, January 15, 2013, February 19, 2013; May 7, 2013; May 21, 2013; June 4, 2013;

Hawkins explained that the Board had wanted to wait until the administrative appeal to the Zoning Board of Adjustment was over. Hawkins continued Case #2012-18 until July 16, 2013. The attorney had also requested an additional extension until July 16, 2013 at 6:30PM in Seabrook Town Hall.

### **FLOODPLAIN MANAGEMENT**

**Jennifer Gilbert**

**New Hampshire Floodplain Management Coordinator  
Office of Energy and Planning**

Hawkins said that Jennifer Gilbert had been invited to speak about the changes in re floodplain management and insurance that FEMA is making. Jennifer has been a planner with the NH Office of Energy and Planning for 8 years. Jennifer is the State Coordinator for the FEMA National Flood Insurance Program, offering technical assistance on floodplain regulations, mapping, and insurance. Jennifer is a Certified Floodplain Manager and an Associate for National Flood Insurance. Hawkins commented that Seabrook clearly had issues in some places. The town knows changes are coming, but not many people have any idea about how extensive they might be. The issues for the Planning Board will be what is allowed as things change. He thought that over time FEMA would get more aggressive about what they allow in re flood insurance.

Gilbert used a slide presentation for her talk about flood insurance, the Coastal Mapping Project, and Floodplain regulations, and the changes in progress. In Seabrook, the number of flood insurance policies have been declining. Morgan was surprised that there were less than 120 policy holders. Janvrin noted that once mortgages were paid off, owners might not see the need for flood insurance. Gilbert said lenders did require policies, but any resident could obtain a policy; 25 percent of the 9,000 policies in New Hampshire were outside of the floodplain. The Floodplain Insurance Reform Act was passed on July, 6 2012, eliminating subsidies for structures built prior to the first flood insurance map, and having policies going forward based on the map in



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effect when the structure was built. The rates differ for both categories. There is a bill in Congress to delay implementation.

Gilbert said that when first established in 1968 the intent was to subsidize certain premiums, however, the subsidies were being phased out. Further, if the map and elevations change, the premiums would be based on the newer maps. FEMA was trying to get back on a sound financial footing following the Katrina and Sandy storms. This meant that everyone would be paying the full risk premium amount. Previously, owners of property before the Act paid the same amount, no matter the elevation. Premiums would now be based on the potential flood elevation, based on the 100-year storm figures. For example the premium for 1 foot below the base flood elevation (first floor including basement) could increase from \$800 to as much as \$25,000 annually. This could be adjusted for an enclosed basement system built to certain specifications such as having flood openings that allow water to flow through, and being at grade on at least one side.

Gilbert said that the regulations were in effect for non principal structures built prior to the Act as of January 1, 2013, with rates rising 25 percent annually until reaching full risk amount. Unless Congress causes a delay, rates for businesses and severe repetitive loss properties would rise as of October 1, 2013. For policies in effect on July 6, 2012, the premium would go to the full risk rate after October 1, 2013 depending on the zone (1) and how the structure is built, which could be [a] significant [increase]. This means that new properties, or those that let policies lapse, would go to the full risk premium. All grandfathering would cease when the NH Coastal Mapping Project goes into effect in October 1, 2014. Janvrin asked how coastal properties were being affected in other states. Gilbert said that many properties in Seabrook were currently outside of the flood zone, but that could change with the 2014 mapping.

Gilbert showed a map of the 17 communities that would be affected under the new coastal mapping project scheduled to be final late in 2014. A preliminary look at the new maps would be available to municipal officials probably in late August. This would be held in one location; each community would be assigned a time for their viewing. About a month later, a public viewing opportunity would be available. The underlying sea level rise analysis materials would also be available. FEMA has designated this as the Risk Map Program. Janvrin pointed out that the Rockingham Planning Commission had worked with Seabrook using the UNH Granit LIDAR mapping data.

Gilbert said that Seabrook had met the minimum criteria to get into the certificate program. Many New Hampshire communities had gone above the minimum requirement to acquire the benefits of meeting higher standards [to provide discount opportunities for residents]. For example, there was a bylaws floodplain model; having the lowest floor or horizontal structural member elevated above the base flood elevation ie the freeboard would be 1, 2, or 3 feet above the base flood elevations during 100- or greater year –storms, or accounting for storm surges . Redeveloping would have to change the original design. Gilbert said the benefits would be reductions in premiums, with the amount depending on which higher standard a town adopted; the benefits outweigh the administrative burden. Building 4 feet above the base flood elevation would result in a significantly lower premium than building one-foot below. She commented that an RPC sea level rise study had suggested building 9 feet above the base flood elevation.

Gilbert explained that redevelopment of 50 percent or greater to repair damage of an existing structure, whether due to flood, fire , hurricane, tornado, would have to meet a higher standard. Public structures being improved at more than 25 percent would also have to be brought to a higher standard. Coming into compliance could result in a beneficial premium reduction, as could



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be increasing setbacks. The new regulations would cite the line of 1 ½- foot waves in the Coastal A Zone, where building heights would have to be higher. Janvrin asked if the town would have to adjust the building code. Garand said the town currently used the 2009 standards, and would have to adopt the later standards. Gilbert suggested keeping critical facilities eg shelters, and developments out of special flood hazard areas or 500-year floodplains, and assuring adequate access. Hawkins asked if the 500-foot zone was designated on the map. Gilbert said it was.

Gilbert's responsibility would be to review ordinances for floodplain compliance, working with the communities during the summer in evaluating the higher standards potential for mapping and ordinance in advance of the 2014 town meeting. When a town meets higher standards, residents can get a break on flood insurance premiums. Another way to achieve benefits would be to join the Community Rating System which is a voluntary incentive program to reward residents for what their communities are doing to more than meet the minimum requirements. Points are earned depending on what actions have been taken eg freeboard standard, flood warning system. The total number of points determines the discount class – from 1 to 9, and the related percentage premium discount ranging up to 45 percent. There are four New Hampshire communities in the 8 to 9 percent range. Four New Hampshire communities had achieved CRS ratings; Marlborough and Winchester at the 5 percent – Class 9 level, and Keene and Peterborough at the 10 percent - Class 8 level. Only a few California communities that had done a lot of work were in the highest level Class 1.

Janvrin commented that a couple of years ago the Town of Rye almost lost their flood insurance. Gilbert and FEMA have been working with Rye for four years; there could have been a suspension. The elevation data in re structures was being gathered, so they were now far from that jeopardy. Gilbert said the activities for garnering points included public information, mapping and regulatory, flood damage reduction, and flood preparedness. She was planning a workshop to detail these possible activities, and also doing outreach to communities such as at this meeting. She was also working with the Coastal Adaptation Work Group to develop assistance tools and resources to support the Community Rating System process. For example, providing guidance on how to read a Risk MAP flood depth map, that predicts where a flood is likely to be deeper. They are also looking to see how a community that adopts a model stormwater ordinance can automatically earn points.

Janvrin thought that some of the mitigations that Gilbert described would fall under emergency management, and asked if the state homeland security and emergency management had been involved. For example, in Seabrook some of the water line might come up as far as the railroad tracks. Gilbert said that discussion was ongoing. Hawkins asked about Gilbert's expectation for the level of change that could take place with the new maps. Gilbert could not say at this time, as the maps have not been released. Janvrin suggested getting information from other communities where the maps had been released, eg Salisbury Beach or Plum Island, MA, or Rhode Island. Chase said he was not opposed to these changes, but was concerned about people who would have to remortgage property in the floodplain. Additionally, he had just paid \$5,000 to prove that he was not in the floodplain. He felt that the vendor he hired to perform this work did a lot of unnecessary things. He thought FEMA should consider making adjustments for people for whom this would be an economic hardship, and they might lose their homes. He was not worried about people who could afford to tear down and rebuild. He wanted FEMA to think about the cost of hiring a surveyor.

Gilbert said people were waiting for FEMA to do an affordability study. Congress was looking at an implementation delay, because the insurance rates came out before the new mapping. Chase



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said he had been looking at a \$38,000 premium, so they had to hire someone to prove they were not in the flood zone. An extensive FEMA checklist had to be addressed. Gilbert thought that the key items were by much the structure was above the floodplain, and the grading. She noted that many bankers and insurance companies would accept only the FEMA standard; lenders have been subject to increasing fines for not following the standard. Garand said his office is getting many complaints that bankers say they are in the flood zone when they are not. He wondered if that happened because the maps were so old. They should be able to overlay the flood zone maps on the town maps, but the maps are not precise. Janvrin commented that homes that were not in the flood zone up to now, might be with the new maps. Morgan said most towns don't have someone with the technical expertise, so the determination had to go to a third party who sometimes is not right. Gilbert said if there was a dispute, there was a process for review without a surveyor.

Garand felt the issue seemed to be with the banks. Gilbert said it was when a loan had to be refinanced, or when it was sold to a third party. Chase asked what parts of a structure would not be covered. Gilbert said a basement or underground. Janvrin asked about a water heater. Gilbert said that would be covered, but not carpeting or walls. She pointed out that the insurance could be the best option; disaster assistance might not be available otherwise. Janvrin asked if someone could not have insurance, and still apply for disaster assistance. Gilbert said a disaster would have to be declared at the federal level; if qualified assistance was limited to \$27,000. Most people do not qualify, so a loan might be the option. Hawkins noted that participation seemed to be in the western part of the state where the losses were larger. He wondered if those towns participated because of the losses, and to get points. Gilbert thought they had been taking action since the late 1900s. Ideally, a community could get points for things it had already been doing. There was an application process that included talking with a representative to determine what might reasonably be done to earn more points. The certification would be renewed every year through the certified floodplain manager, with a FEMA review of what had been done every five years.

Janvrin said that the town had just received a new EPA MS-4 requirement with the prospect of spending money for compliance. He asked if Gilbert would foresee that some MS-4 items would also qualify for CRS points. Gilbert said that could be possible, but she would have to look at the specifics. Janvrin thought that if the town was taking steps to comply with the EPA requirements, it should be awarded points for that activity. Chase asked if the points program only would help people who had flood insurance. Gilbert confirmed that was right. Hawkins said that up to a 45 percent reduction might influence a purchase; saving ten percent or \$2,000 would be worth it. Janvrin said the town wastewater treatment facility was in the flood zone, and assumed the town was paying for flood insurance. Hawkins asked for other questions; there being none.

Hawkins thanked Gilbert for the presentation, and asked if a similar presentation could be provided to the Village District Commissioners or if the slides could be used. He thought it important to know what changes were coming, although not all of the Beach was in the flood zone. Gilbert commented that this process was in the beginning stage; invitations for viewing the maps would be sent in the near future. Wood added that the Town Manager and the Selectmen could have interest. Gilbert downloaded the presentation to Morgan's computer. Hawkins commented that there were 900 houses, at the beach, of which about half would be at their limit. The ordinances would have to be changed so that people could take more action. He thought the town meeting would allow that, as flood insurance would be a pretty good argument. Saving a couple of thousand dollars annually on flood insurance, would be a good reason to raise a house.



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Janvrin said a variance could be sought to raise the height. He wondered if the 30-foot height limitation was for fire protection. Hawkins wondered about putting a lot of money into a structure if it couldn't be gotten out; this is struggle for individual dwellings. If property was in the floodplain and the insurance would rise 25 percent annually, he thought raising the floodboard could be paid for pretty quickly; the calculations could be figured.

Wood said that the economy is in the dumps. Seabrook was in the seacoast, and looking at fishing limits and floodplain insurance increases. It seemed that the town keeps getting hit more than the communities to the west. She asked how to get heads above water. Janvrin commented that historically when hurricanes hit the seacoast, Seabrook was untouched because it had the barrier, while Hampton was hit hard. He understood adaptation for sea level rise, but thought that FEMA had to give some flexibility with the lists. Hawkins though acknowledging that a few years ago Salisbury had 10-foot cuts in their dunes where people could not walk to the beach. That could happen in one storm, as the 8-foot cuts in a Seabrook storm last year. It did not take much to pull all the sand into the water; it would not come back all the way. The north end of Seabrook Beach and the south end of Hampton Beach had no protection at all from the surging water. Janvrin said that Hampton was rebuilding some walls to protect property, and allowing residents to build them on town property. He thought taxes might have to be increased for mitigating storm surge.

### **MINUTES OF JUNE 4, 2013**

Hawkins said the June 4, 2013 Minutes would be scheduled for July 16.

### **SECURITY REDUCTIONS; EXTENSIONS; ROADWAYS**

#### **Case #2002-37 - Irene's Way 7:50**

Hawkins noted that Irene's Way had been before the Board for a long time. However, John Starkey, the Department of Public Works Manager, did not seem any closer to signing off. Hawkins called attention to Starkey's June 14, 2013 letter about road shoulders which is relevant to discussions about Smithtown and subdivisions generally. Starkey's view is that (swales) are probably good to drain the runoff, but are a nightmare in the spring when the grass is torn up after the winter plowing, causing a huge expense as well as manpower to repair. Hawkins said he should have been thinking about that because he replaces the grass on his property, but the town has to do this for many properties. Starkey is asking the Board to look at Cape Cod curbs, which are an angled piece of about 4 inch bituminous which keeps the plows from tearing up the sod. He believes this curbing lasts, but Morgan said they also get torn up by the plows. Hawkins thought this hot-top layer with the finish course next to it was worth some research with Starkey, to see if the regulations should include its use. This technique is seen in the south using cement, but there is no snow. He asked for Garand's thinking. Garand said there should be standards in re no more swale drainage, and dips in driveways. He recommended addressing this quickly, and looking at berms. He thought when the curbs are poured, they still break away with the plows.

Hawkins said that since Starkey had gone out of his way to bring this to the Board's attention, it was worth learning about the experience of other towns with Cape Cod curbing. Janvrin asked if this was a problem only on Irene's Way, or if the plows cannot stay on the roadway. Hawkins thought that would happen unless stakes were put on every roadway. He thought Starkey was asking the Board to look at the system for long term maintenance as well as handling the stormwater. Janvrin asked if Starkey was looking to require the Cape Cod curbing, or only to



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allow it. Garand wanted standardizing sidewalks to be addressed at the same time. Swales and dips in driveways are poor design in one 50 lot subdivision. He favored looking at overall design issues. If berms do not work, sidewalks and drainage should be looked at now to be ready for the next subdivision.

Hawkins said that the Board could not decide the design. The objective would be to meet with Starkey and look at the benefits and drawbacks, including the relative costs, from the town's perspective. That discussion would also address what should be done in the regulations. Garand said, for example, there are different types of sidewalks at the school. People are allowed to build sidewalks any way they want. Janvrin said on Centennial Street the sidewalks are right to the curb. He asked about Beckman Woods; Garand said that had swales that would be damaged by plows. Hawkins wanted to look at the tradeoffs for various changes. Maybe granite curbs are best, but maybe not for stormwater. Garand added that many sidewalks go up and down. There should be minimal standards that account for the ADA requirements.

Wood said that the liability issues had been discussed in re Route 1. She asked if the state had specific standards when sidewalks are installed. Garand said there are no uniform standards for communities. Hawkins asked Morgan to put this subject on this year's review list, and meet with him and Starkey to discuss the pros and cons in re maintenance and stormwater and obtain a recommendation for going forward. This would include a general review of the current requirements. Janvrin asked about reducing the Irene's Way security to the maintenance amount. Hawkins explained that this was subject to getting a signature from Starkey stating that everything that had to be done was completed. That had not been submitted. Altus Engineers had been involved; Starkey was not yet satisfied, although he acknowledges that the maintenance of swales would be a headache. Janvrin understood that the vote reducing the Irene's Way security to the maintenance amount was subject to conditions. Hawkins said the Irene's Way issues would be returning to the Board. Kravitz suggested that the roadway regulations, which Morgan had said did not match the town code, also be looked at in a meeting with Starkey. Janvrin suggested that a meeting with Starkey be held during the daytime.

### **CORRESPONDENCE/ANNOUNCEMENTS**

#### **Case # 2008-23 – DDR sidewalks**

Hawkins said that a message had come through DDR that the state wanted the town to sign a sidewalk agreement for liability and maintenance on the sidewalk. At the last meeting the Board asked Morgan to call DDR and ask if they would consider taking the responsibility for maintenance of the sidewalks. This would mean that if the town signed an agreement with the state, DDR would sign the same agreement with the town. He asked Morgan to report on the phone call. Morgan talked with Jim Grafmeyer of DDR, who was not receptive to sidewalk maintenance. Morgan reminded Grafmeyer that this had been a very long process, and suggested he put the question to the DDR powers, and send a response email to the Board. Janvrin recalled that the three-way agreement with the state, the town and DDR did not call for a sidewalk or address maintenance. Hawkins confirmed this, saying this was an ad hoc agreement from the state, who had signed the memorandum. The Board's position was that the state needed to live up to the agreement they signed which had nothing about sidewalk maintenance.

Hawkins said that the Board's attorney agreed with that position, but suggested taking the path of least resistance by seeing if DDR would agree to the maintenance. The Board could then recommend that the Selectmen sign an agreement, if DDR would sign the same agreement with



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the town. Basically, DDR would have the responsibility for maintaining the sidewalks in front of their site.

Hawkins had wanted to take a hardball position, but thought the best to take the issue a step at a time. He reminded that the Settlement Agreement says that no certificate of occupancy would be issued before all of the infrastructure was done. At this point, he thought the Board should wait for a response. It would be against the agreement for the state to say no sidewalk unless the town signs a maintenance agreement. Garand said the original DDR Phase I approval was for approximately 148,000 square feet; the super Walmart brought above that amount and into Phase II. Hawkins said that meant the infrastructure had to be done before Walmart got a Certificate of Occupancy. Garand did not see the Walmart construction to take too long. Hawkins said that Phase II was the wording in the agreement; Hawkins said that Walmart would open with more than the Phase I square-footage. Garand said that was why the building permit request was for the whole site.

Janvrin said the Settlement Agreement that came out of the Supreme Court case did not require the town to maintain the sidewalks. Garand asked where did the town start and stop taking responsibility for Route 1, noting that the funds were already in place. Janvrin said, for example, if Ed Hess put in a sidewalk, why would he [Janvrin] pay anything toward it if he did not live there. Garand said, similarly, if the town could not determine where the road cuts were on Route 1, why should it pay for maintaining sidewalks. Janvrin had had conversation with RPC Commissioners from Hampton, Plaistow and Kingston who have the same issue, and are angry enough to consider suing the state. Hawkins said to wait for word from the applicant (DDR).who may have more pull with the state and could remind them that there was no sidewalk maintenance requirement in the memorandum. Janvrin stated he was firmly opposed to the town taking any responsibility in re the Route 1 sidewalks. Hawkins said that the Selectmen's view was they had to take safety into account. He thought that some attorney might say that the town had the opportunity to have sidewalks, and did not take it, therefore, the liability would be no less. Janvrin maintained that it is the state's liability, not the town's.

Hawkins said that Board members had their opinions, but needed to decide on the process and what to do next. He recommended waiting for a response from DDR, and go back to the Board's attorney for his view. Although the Board believes the town had no responsibility under the three-party agreement, it wants to proceed, and see what its attorney recommends next. By way of information, Kravitz referred to the copy of an agreement in the last meeting's packet that the Board of Selectmen had signed in re Route 1 south of Route 107. Janvrin was in opposition to that as well, and asked how the town could be liable if someone falls on the state highway. Hawkins explained that there were two forms of agreement: one calls for maintenance, and the other calls for liability and maintenance. He said the town should not take any responsibility for liability, but that maintenance would come up every time there is a project on Route 1. The Planning Board would have to address this bit by bit. One strategy could be to have applicants push the sidewalks on to their own property. Hawkins referenced the sidewalks on the Demoulas property which looked great. Sidewalks might twist some, but it may not be a bad idea. Hawkins said if a solution could not be found, he would want to change the ordinance and put sidewalks on private property. For the DDR situation, the Board had to deal with the current situation and wait for DDR's response. He pointed out that this would be put to the Selectmen who would have to decide what to sign, or if the state would do its part. Hawkins asked Hess if he saw anything differently. Hess did not, but they would have to wait to see what happened. Wood commented this would mean more fees for lawyers.



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### **Letter from Gallagher, Callahan, Gartrell**

Hawkins recalled the meeting when DDR came to the Board about certain site work changes. This had not required a public hearing as the changes were within the "envelope" defined in the court ordered agreement. One of their neighbors decided that changing from a Target to a Super Walmart was a big change, therefore the traffic information was incorrect. Janvrin noted that the neighbor had expressed that opinion at the meeting. Hawkins said that the court agreement allows DDR to build retail inside that envelope. Their neighbor who disagreed, wrote a letter to the state. The state asked for the minutes of that meeting which were provided. Hawkins explained that the letter was not written to the Planning Board, so it didn't know how this would proceed in the state's hands. The Board's position was that for the most part it believed that the court gave DDR the right to build retail within that envelope of about 440,000 square feet. Janvrin commented that a restaurant would be an accessory use of the retail. Hawkins said there might be challenges along the way; the board would deal with them one at a time. The Board's attorney knows about the letter. His position was that it was not written to the Board. This was information for the Board; there's nothing to do unless something is directed to it. Hawkins asked Morgan if there was anything to add; Morgan said Hawkins had covered the situation, commenting that the NHDOT appreciated the minutes.

### **Discussion of Exaction Formula**

Hawkins recalled the extensive discussion about exactions in prior meetings. Morgan had been asked to rewrite this ordinance with a public notice which had been done for the last meeting. Also, Hawkins distributed a calculation of what the cost would be at different traffic levels. The Board's traffic consultant had provided an analysis of how he viewed the changes and made a recommendation. The Board had been discussing this for more than a year. Morgan had looked at every lot along the length of Route 1 to arrive at what could happen on a lot during the next 20 years in the worst case scenario. This work was primarily initiated in discussions pertaining to development at the north end of the roadway. Morgan's data was provided to the Board's traffic consultant who was asked about the potential traffic impact, and how to mitigate it. Hawkins emphasized that no one could tell in what order development would occur, or if it would happen at all. In any case the state would tell the developer what had to be done on the state road. Hawkins said the Board could help the state collect money to use in the process of upgrading Route 1.

Hawkins explained that in the wake of DDR trying to have a formula to get other developers to pay for part of the Bridge cost, the Board put an exaction formula into its ordinance. The calculation was done by a traffic person, and could only be interpreted by a traffic person. Since no one could come up with a calculation, the Board challenged its traffic expert to come up with a simplified way to calculate exactions in the future. The Board made commitments to at least two developers that it would come up with a way to calculate their exactions. At the last meeting, the Board had a few questions on certain elements of its traffic consultant's recommendations. One question was whether to charge for over 50 trips an hour, or 100 trips an hour which was the state standard. Hawkins wanted to go through the entire form of document with the changes discussed by the Board at the last meeting, and then see if anything had to be changed. He asked Morgan to go through the changes.



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Morgan said that since Hawkins had offered alternatives, and wanted to possibly pass this ordinance at this meeting, he had started out with a threshold of 100 for purposes of the public notice

Hawkins thought that 50 trips had been discussed. Morgan said the figure could be lowered from 100 which was used for the legal advertisement. He thought the advantage of 100 was that it targeted big retail stores. Chase asked for a definition of "trips per hour". Morgan said this would be at the peak hour for the day. For example, when the ArcSource building was before the Board for a convenience store, they hired a traffic consultant from Massachusetts who tried to manipulate the trip count lower, according to the direction the trip was coming from or going to, or how many left turns were made. This was discussed in several meetings.

Morgan said the proposal before the Board would save considerable time and discussion, because the developer would know how many trips his store would generate. Chase asked if the proposal would change from just going in, to going in and out. Hawkins said the analysis of the three big exactions showed the Kohl's \$800,000 donation for 460 trips (in and out) amounting to \$1,739 per trip; Market Basket was \$90,751 for 123 trips; DDR was 2,240 trips = 1,083 per trip. The average was average 1,175 per trip. He commented that the Kohl's did not want discussion, so they made a contribution. DDR also had off-site infrastructure costs at their front door, plus the purchase of the McDonald's site, which were not counted [for exaction]. All of those figures were gone over by the Board's traffic consultant. Although the Board's objective was to be fair, the result was that the traffic people could manipulate the counts by saying their trips did not go in one direction or another and should not be counted. Everyone said they followed the formula, but the results were wildly different. The Board felt that everyone should have the same definition of how to count the traffic to be fair. That is what Morgan's language does.

Morgan clarified that the first ordinance writing reflected the Board's traffic consultant's proposal. Subsequently, this was revised for his understanding of the changes made at the Board meeting which was posted on the Planning Board bulletin board, and included in the Packet. Hawkins noted there had been two public notices. He asked Morgan to go through the changes that would be made in the existing ordinance.

Hawkins read the proposed changes in turn.

### Section 10 – Off-Site Impacts of Development

*10.005 **Authority & Purpose:** Pursuant to NH RSA 674:21 & 674:44, land developers may be required to pay an exaction for the cost of off-site improvements that are determined by the Planning Board to be necessary for the occupancy of any portion of a new development. The exaction is intended to be a proportional share of public infrastructure improvement costs, and one that is reasonably related to the benefits accruing to the development from the improvements financed by the exaction.*

Morgan said exactions are enabled under the RSA's. The objective was to do this in a fair manner.

*10.010 **Infrastructure Improvements** shall be limited to the transportation network, stormwater treatment and drainage, culvert upgrades, and sewer and water upgrades, as determined by the Planning Board.*



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Hawkins said that the Board was creating the listing of amounts based on its traffic engineer's analysis. Payments would not come from taxpayers. The Planning Board, not the developer, would determine the exaction for a site. Developers would pay the exaction for infrastructure improvements, although some portion of the cost might come from the state. Janvrin said it was coincidental that the CIP was for a six-year period, and that is the same amount of time that exactions are held.

Chase asked if "network" meant that streets other than Route 1 itself could be involved. Hawkins said the I-95 ramps and part of Route 107 would be considered because that is where all of the traffic would come from. Hawkins said this was a road network, and the Planning Board would determine which projects would qualify for exactions. There might be several bus stops. Janvrin thought there might be alternative transportation. Morgan pointed out that the legislature limited the purposes for which exactions could be used. The Planning Board determines the scope.

*10.015 **Traffic Threshold:** Land development or redevelopment that produces more than 50 vehicle trips in any hour shall be assessed an exaction fee for the cost of ~~transportation~~ public infrastructure improvements. Traffic volumes produced by prior occupants of the site shall not be factored into the threshold calculations.*

Morgan said the only change was from "transportation" to public infrastructure.

*10.017 **Trip Defined:** Each vehicle that enters the property shall be considered one trip. When that vehicle exits the property, it shall be considered a second trip.*

Morgan said this provision clarifies that a trip in would be considered one trip; a trip out would be one trip. Hawkins noted that a trip in did not mean a trip out within the same hour, as some people would stay more than one hour. According to the traffic engineer, the calculation figures come from the ITE Manual.

*10.020 **The Vehicle Trip Calculation of Vehicle Trips Methodology** shall derive from the latest edition of the ITE Trip Generation Manual, or from actual traffic counts at comparable facilities. In the event that more than one methodology is employed, the higher trip count will be utilized. ~~be prescribed by the Planning Board. The applicant shall submit data on vehicle origin and destination.~~*

Morgan said the developer would have the choice of deriving the number of trips from the ITE Manual, or by actual traffic counts. Janvrin commented that Market Basket used the traffic counts. Hawkins said the Board did not go back to see what the ITE Manual would say. There was ample opportunity to manipulate the calculations. He thought Morgan's idea to take the higher of the calculations was appropriate. Morgan recalled the ArcSource conjecture that vehicles making a turn did not count. Hawkins noted that submitting vehicle origin and destination data would be eliminated. Morgan thought this approach kept things simple. No matter where a car comes from, it would be a trip.

*10.025 **Redevelopment:** For the purposes of this section, the redevelopment of a property, or any portion thereof, ~~that was abandoned or unoccupied for a period of one year or more~~ shall be considered new development.*



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Morgan said this clarifies redevelopment; the one-year window would be removed. Hawkins said the Board had discussed this item many times. Hawkins said, in effect, if an existing property with 1,000 trips increased to 2,000 trips, the increase in exaction would be 1,000 trips. Janvrin asked if this would affect property that had been partially dormant. Hawkins said it would.

10.030 ~~The Amount~~ of any such exaction shall be a proportional share of improvement costs, and one that is reasonably related to the benefits accruing to the development from the improvements financed by the exaction.

10.035 **Improvements Identified:** ~~The necessary improvements shall be determined solely by the Planning Board, and after consultation with the NH Department of Transportation in cases where State highways are impacted.~~

Hawkins said this allows the Planning Board to make its determination on merits.

Hawkins said removing this provision simplifies the purpose of the ordinance by allowing the Planning Board to determine the projects subject to exactions. Janvrin asked if roadways other than Route 1 were shut off from this process. Morgan said they were; the Board should address Routes 286 and 107 separately. Hawkins said the Route 107 grant would look at what could or was likely to happen along that roadway over time. Janvrin noted that in Epping it was easier because the infrastructure was already there. Hawkins said this provision avoids overlapping with the NHDOT, as happened when DDR was ordered to expand the scope and cost by the NHDOT (see below). The Board would be coordinating with the NHDOT.

10.040 **Exaction Formula:** ~~The exaction fee shall be based upon the following formula: For development projects that utilize US Route 1 for access or egress, the exaction fee amount will be calculated by multiplying the number of peak hour site-generated trips by \$1,200.<sup>1</sup>~~

~~Exaction amount = Total Cost of Project X Fair Share Proportion~~

~~Where~~

~~Fair Share Proportion =  $\frac{\text{Additional Site Trips (expressed as Vehicles per Hour)}}{\text{(Available Resource Capacity (ARC))}}$~~

~~And where~~

~~ARC = Improvement Vehicular Capacity minus Existing Vehicular Demand~~

Morgan said the formula allows the Planning Board to determine the projects and the exactions. Hawkins said the Route 107 study would look at what could happen and what infrastructure

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<sup>1</sup> This figure is derived from an exhaustive and comprehensive analysis of the Route 1 corridor conducted by Resource Systems Group, Inc.



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should be put in place. Janvrin said the rate could be higher for Route 107 because the infrastructure was not there. Hawkins agreed. He thought that the requirements would be different than for Route 1. Janvrin commented that changing the wording made this formula applicable only to Route 1. Morgan said there was not a legal basis to include Route 107. Hawkins asked if it would be a good idea to include that when the Board determined that exactions should apply to other roadways, the same process would be used. Morgan thought that RSG would be asked to go through the same process for Route 107. Hawkins thought that first Morgan would go through the same process of envisioning what could be built along Route 107 and provide that to RSG for the traffic counts. Janvrin asked if it would be better to organize the calculations for zoning districts. Morgan did not think so, because everything in this formula would be specifically for Route 1.

Wood commented that there really wasn't anything out on Route 107. Morgan said Henry Boyd had helped them to look at the properties and come up with the worst case scenario in terms of traffic. Janvrin commented that the Route 107 area had drainage issues and included a lot of wetlands. Hawkins cautioned that wetlands could be traded and filled in, so it was important to have an idea of what should be done in that event. There wasn't enough information at this time. Janvrin thought it would be important to have someone put a dollar amount on future infrastructure. Hawkins said this would be done with the Challenge Grant money. Work on this grant has not yet begun; the grant must be completed in mid 2014.

Morgan pointed out that this paragraph also set the per trip amount at \$1,200, although the traffic engineer's analysis showed the actual figure was closer to \$1,400. He thought lowering the figure would stand up if challenged. Janvrin wanted the Board to recognize that this process would be done for other corridors. Hawkins agreed that calculations for other corridors would be done the same way. He commented that if collecting exactions from developers were left to the state, which was not always so logical, the traffic might not flow the way the town wants it to. When Demoulas wanted to redo its north plaza, the state told them they had to spend about \$2,000,000 because they wanted the infrastructure done all at once. Whether that amount was fair, or if similar amounts were charged to other developers, was not considered. Hawkins said if the town was asking for substantial amounts of money, they should all be treated the same. Since that time Demoulas said the amount was too much. Then the state said they didn't even have to put in the traffic light. These were two extremes. The project expectations should be defined by the Planning Board and provided to the state. It might give more support to the state; what the town wants would be clear.

Janvrin noted that other communities have had problems with state roads. Morgan said the state cannot be counted on. Wood asked if the state were to collect exactions, would there be a requirement that job, the money would be spent on the related roadways. Morgan thought that was a good question. Seabrook knew where its exactions would go. Wood agreed with Janvrin that the town would be doing the state's job, but she did like that, so far, exactions set by the Planning Board would be utilized in the town. Hawkins said that Seabrook's projects show up on the Rockingham Planning Commission's priority lists much faster than those in other towns. They like Seabrook's projects. The state says they don't have the money to fix the roads. The exaction work in Seabrook gets done.

Morgan thought the \$1200 factor would be appreciated. The biggest problem for developers is to know what they have to pay. They will know right up front and can decide if they want to go forward. Janvrin recalled that developers have asked what they would pay under the current formula. The Board could not give an answer because it could not figure out the formula. Hawkins



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said with a trip count they can have a ball park amount by multiplying the number of trips by \$12,000. Wood said that Demoulas went through the site plan preparation process and then found out that the state wanted \$2,000,000 more. Morgan recalled that Kohl's did not want a negotiation, so they offered \$800,000, and got predictability. Wood thought that developers in other towns expect to be paying a good amount of money. Hawkins recalled that Demoulas said if they had to spend \$2,000,000 they might go elsewhere. For the Market Basket in Epping, it was inexpensive because the infrastructure was already there. That would not have been the case ten years ago. He thought that Seabrook's location on the Massachusetts border was very valuable for retail shopping.

Morgan said the current formula was devised for fixing the Bridge. Hawkins noted the real objective was to get the Kohl's to contribute. The reality was that the Bridge is being built, and the formula is hard to understand except for a traffic engineer. The proposed formula is much simpler.

**10.042 Credits:** The Planning Board, at its sole discretion, may credit the applicant for up to 50% of the fair market value of land donations that would facilitate future improvements along US Route 1 in Seabrook. Improvements required by the NH Department of Transportation shall not be credited toward the exaction required by the Planning Board.

10.045 **Planning Board Costs:** The applicant shall reimburse the Town for all costs incurred by the Planning Board's traffic consultants.

10.050 **Payment Due:** The exaction fee shall be paid by the developer prior to the issuance of an occupancy permit.

10.055 **Escrow:** Any exaction collected by the Planning Board shall be held by the Town of Seabrook in an interest-bearing escrow account.

10.060 **Project Construction:** As an alternative to paying an exaction, the developer may elect to construct the necessary improvements, subject to the posting of a financial security that is acceptable to the Planning Board.

10.065 **Refunds:** Any exaction collected by the Planning Board shall be refunded if the funds have not been appropriated for their dedicated purpose within six years of the date of collection.

10.070 **Donations:** In lieu of submitting an exaction fee, the applicant may elect to make a donation amounting to 90% of the exaction fee. A donation shall be utilized for the same purposes as an exaction fee, however unlike the fee, a donation would not be subject to refund pursuant to Section 10.065 above.

Morgan noted that this provision was structured by the Planning Board to give a developer a discount for being willing to make the exaction a direct contribution, ie not subject to being returned in six years. Wood recalled the funds collected from developers for a signal light at Rocks Road, and wanted to avoid such a situation again. Hawkins said even when the state was told that Seabrook had the funding, it still would not agree to install the light. This would be targeted for use in the roadway system, but not for a specific project. He asked the Board if 90



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percent was the right figure, acknowledging Morgan's point that developers probably proceed assuming that funds will not go back to them. Janvrin asked about the Rail Trail. Hawkins thought that part of the system might be the bike paths. Kravitz suggested that providing a donation should be with the approval of the Planning Board. Janvrin said that would leave it to the Board's discretion. Kravitz said that would be consistent with everything else.

Wood asked why the Board should go along with this. Hawkins said the Board might have a project but not the money to fund it. Janvrin said that Route 107 would need culverts for drainage. A developer could get a discount for providing the money sooner. The language could be consistent with the proposed 10.042. Kravitz was concerned about the mystery of the unknown ie the Board cannot foretell when there might be a situation that requires negotiation. A developer might decide on something – take it or leave it. Hawkins thought there was not much downside for the Board. Lowry said a developer could offer funds only for what it wanted. If denied, it could go elsewhere. Janvrin noted Morgan's view that the editorial change could be made and voted on at this meeting. He described the change as to a flat rate, and asked how this would apply to smaller businesses. Hawkins referenced his charts showing the relative costs, noting that the Master Plan advocates supporting smaller businesses, as well.

Hawkins was concerned that the new formula would discourage smaller businesses, like a local restaurant, and result in all national chains. One way to address this would be to lift the threshold to 100 trips. Janvrin thought the Board could waive a financial hardship eg a small restaurant with 50 customers at lunch (100 trips) who could not pay the trip cost. Hawkins asked how the hardship could be justified. Alternatively, businesses could not pay the \$1,200 trip rate until they reached 50 trips. Based under the option just reviewed, Market Basket would have paid more; Kohl's would have paid less; DDR's exaction would not materially change. A different way would be to set the threshold at 100 with ratable reductions for fewer trips per hour eg 75 percent (\$900), or 50 percent (\$600). That way even stores with fewer trips would at least pay something. Janvrin was concerned that even in six years there might not have been enough raised to finance a project. Hawkins said that monies for substantial engineering costs could be advanced. He saw no lack of infrastructure problems in the near future. For example, the Routes 1 and 107 intersection will remain a big problem; if there were monies available, the design engineering could be done rather than waiting for a developer to do this.

Hawkins said that developers want a fair system. Under the second option businesses with fewer than 50 trips an hour, would contribute a little bit, whereas in the first option they would pay nothing. Janvrin commented that a store with one customer an hour would pay for two trips; an engineer would have to be hired. Hawkins said starting the exaction at 50 trips would mean that the stores with fewer trips would not have to go through that process. Kravitz believed that the standard for the six year return of funds was that funds had to be committed. Janvrin added not necessarily spent. Kravitz said that was her understanding and suggested that Morgan could check the RSA. Wood liked the option under which everyone paid some amount, which she thought would be fair, and asked Hawkins to explain the reduction calculation. Hawkins said both the trip amount and the number of trips were reduced eg at 50 trips the rate would be 50 percent of the maximum. That is how the rate can be quickly lowered to be affordable. Wood asked if 50 trips equaled 25 in and 25 out. Hawkins confirmed this. Janvrin thought that could be a gas station at a good location. Hawkins said the calculation would be determined by the number of trips per hour and the size of the store as stated in the ITE Manual. Morgan thought that the type of business that the Board would want to protect would be those with the fewer trips.



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Hawkins said a third option would be to calculate every trip at \$1,200, and then deduct 50 trips to get the exaction amount. That would mean that a business with 50 trips would pay nothing; a business with 62 trips would pay 12 x \$1,200. Everyone would get the 50 trips deducted, even the malls. This might be fairer because everybody gets the same discount, and those with under 50 trips would pay nothing. This option, as well as the first option, were different ways of helping to ease the contribution from the smaller merchants. Janvrin maintained that the Planning Board would have the option of waiving any fee or exaction at its discretion. Hawkins said alternatively, the Board could create a public notice for discussing a different way to apply discounts. Janvrin would agree with option one as in the public notice for this meeting, based on the Board being able to approve waivers. Adjustments could be considered later on. Chase looked at the third option, saying that numbers could be changed for the larger stores. Hawkins said that the third option treated everyone the same way – everyone gets the discount.

Hawkins noted that some work would be forced at the front door of the developer by the state, while the town would be exacting for the roadway system ie the traffic impact. That's why it did not bother him to give a discount. Wood did not want to force an engineering study on the "little guys". It would be a good idea to have a copy of the ITE Manual available. Morgan agreed, but cautioned that it was very expensive. By consensus, Morgan was asked to look into the cost of the Manual. Chase said the proposal would have the exaction money paid prior to the certificate of occupancy, and wondered how that would occur. He asked if Garand had any problems with that. Morgan pointed out that only the language underlined in the public notice was new. Hawkins suggested it could be the signing of plans by the Chair, or some other factor. The six-year clock starts ticking when the money is received, unless the state said it must be paid sooner. Janvrin commented that security was being held for some cases for many years; it wouldn't go back until the project was done.

Wood asked Garand if the occupancy permit would be the best deadline for paying the exaction. Garand said it depended on the project; sometimes the occupancy permit would be best, other times it would be the building permit. He thought it should be discussed at the Planning Board hearings. He commented that the \$5,000 security requirement is not always accounted for. Janvrin noted that Garand had not issued the DDR building permit until the security was provided. Wood favored option three; Chase agreed. Janvrin said that the public notice did not include option three. Morgan said a public notice would be needed. Janvrin thought this could be easily talked through at the next meeting. Morgan suggested that option 1 could be voted for at this meeting, and option three discussed at a later meeting. Wood agreed with this approach, commenting that there were two applicants waiting for the Board to decide this issue. Janvrin thought this would avoid a problem if an application was submitted before then, and thought that one application had been submitted after the first public notice. Hawkins said that they were waiting to see what the Board would decide about exactions. Wood wanted to know which formula would apply. Morgan said it would be the formula in place at the time of the case acceptance.

<b>MOTION:</b>	Janvrin	<b>to adopt the revision of Section 10 of the Site Plan Regulations as advertised in the Newburyport News and presented at the Planning Board Meeting on June 18, 2013, provided that (i) the exaction shall be calculated as the number of trips per hour less 50 X \$1,200; and (ii) "at the descretion of the Planning</b>
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		<b>Board” shall be inserted in Paragraph 10.070</b>
<b>SECOND:</b>	<b>Sweeney</b>	<b>Approved: Unanimous</b>

### **OTHER BUSINESS**

#### **CASE PROCEDURAL CALENDAR AND COMPLIANCE**

Hawkins had a number of recommendations, and said that Kravitz had provided recommendations in re administrative matters. He would also meet with Garand to define the points at which the developer would have to have completed certain requirements before the next step could occur (either in the permitting process, or before applying again on the same property). Janvrin said that if there was an issue with a property approved ten years ago, they would have to deal with the ordinance in effect at that time. Garand said that extensions can cause problems. Hawkins said the objective would be to address the procedural shortcomings. Janvrin thought that period for holding security should be extended if there were extensions. Hawkins said these types of items could be made clearer as to where they are in the process. Hawkins thought that if security had expired before items had been completed, the case could be closed. He agreed with Garand that there were too many projects that were continuously continued; very few projects were actually closed. Hawkins said the focus should be on the follow-up. Perhaps applicants should be invited back to see where they are in the process. Hawkins said this would be reviewed at a future meeting, perhaps in a summer work session.

Hawkins adjourned the meeting at 9:35 PM.

Respectfully submitted,

Barbara Kravitz, Secretary,  
Seabrook Planning Board