



Town of Seabrook Planning Board Minutes

Tuesday, August 7, 2012
NOT OFFICIAL UNTIL APPROVED

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

Members Absent; Robert Fowler; Paul Himmer, Alternate; Francis Chase, Alternate;

Hawkins opened the meeting at 6:40 PM.

MINUTES OF JULY 17, 2012

Hawkins asked for comments. Kravitz noted that the name of the representative from NextEra Sarah Gebo, supervisor of Nuclear Communication, was missing from page 17.

MOTION:	Hawkins	to accept the Minutes of July 17, 2012 with one missing name included.
SECOND:	Sweeney	Approved: Unanimous Abstained: Wood

SECURITY AND EXTENSIONS

Case #2004-50 Cabral subdivision

Hawkins referenced a letter from Paul and Lisa Cabral requesting an extension for completion of their subdivision due to financial hardship He noted that historically the Board had granted such extensions particularly after the 2008 recession and the lack of available financing. The Applicant had already been granted one 2-year extension on July 20, 2010. Hawkins asked Morgan if there were a reason not to grant the extension. Morgan noted that the approval had been granted a while ago and asked Garand for the status. Garand said some of the site work had been started with trees removed; he thought the sewer and water had been installed. They want to assure that the approvals remain in place, and therefore ask for an extension. Hawkins asked if anything had changed since the approval. Garand said this property was a minor subdivision which is no longer allowed; they want to maintain their established approval and avoid legal questions. Hawkins asked for further comments; there being none.

MOTION:	Hawkins	to approve an extension of the Case #2004-50 Cabral approval until July 20, 2014.
SECOND:	Sweeney	Approved: Unanimous

Case #2001-06 Margaret Stard for Whitaker Way subdivision

Hawkins referenced the Request by Margaret Stard's attorneys for the return of security; The Department of Public Works Manager has written that he has no issues as the roadway has been under town maintenance for a couple of years. This should allow the return of security and closing of the case.



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MOTION:	Hawkins	to approve the return of the balance of security held for the Case #2001-06 Margaret Stard - Whitaker Way subdivision, and close the case.
SECOND:	Wood	Approved: Unanimous

Case 2009-10 ACORN ASSOCIATES XCVIII LLC, CBAN

Attending: Jeff Taussig, **JTA Corporation**

Hawkins asked for the history. Tausig said the property was purchased under a 1031 Exchange. The Bank provided a letter of credit in lieu of cash. In the Company's recent refinancing efforts, the title search showed this outstanding letter of credit. The Security Reduction Checklist needed two signatures. Hawkins asked if as-built plans had been prepared and received. Kravitz would have to check the file. Taussig said the as-built was submitted on a CD; he could provide another copy. Hawkins said the amount of security was \$76,700. Hawkins asked Garand if there are any outstanding issues. Garand said there had been an issue about a streetlight; with underground utilities that could be an issue. London Lane was all set. Taussig will check with the Planning Board Office for the As-Built.

MOTION:	Hawkins	to approve the return of the balance of security offered by Acorn Associates [[XCVIII]] LLC for the Case #2009-10, conditioned on the Applicant providing the As-Built if it is not located in the file.
SECOND:	Sweeney	Approved: Unanimous

PUBLIC HEARINGS

Hawkins opened the public hearing at 6:50 PM.

PROPOSED AMENDMENTS TO THE TOWN'S SUBDIVISION AND SITE PLAN REVIEW REGULATIONS THAT WOULD GOVERN DEVELOPMENT IN THE NEW SMITHTOWN ZONING DISTRICT THAT IS SITUATED IN THE VICINITY OF TOWN HALL

Hawkins said this regulation had been on the Board's Agenda for several months. But he was hesitant about approving the revised Smithtown Village Site Plan Regulations without more members in attendance, although the originally approved regulation was in effect. He asked Morgan if there were any issues. Morgan said that the Board had made about six revisions, all of which had been made in the current draft revision. He had checked the graphics provided by the Rockingham Planning Commission and everything the board had asked had been done. Khan agreed that most members should be present for such an approval, and suggested postponing until the second meeting in September. Hawkins agreed, and **continued the amendments to the Smithtown Village ordinance until September 18, 2012 at 6:30PM in Seabrook Town Hall.**



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NEW CASES

Case #2012-22 - A Proposal By The Town Of Seabrook To Construct A Harborside Park Immediately North Of The Yankee Fisherman's Cooperative Off Of Ocean Boulevard.

Attending: John Starkey, Department of Public Works, Manager

Appearing for the Applicant: Jim Kerivan, Altus Engineers;

Starkey was very excited about opportunity with Harborside Park. During his career, most accomplishments were about a lot of work. This project is a labor of love. In 2006, Selectman Bob Moore wanted to build a park on a sliver of land near the Fisherman's Coop; funding would be needed. At that time, Starkey became aware of a grant via the US Department of Interior Park Service, and applied to it for the park. The approach was to develop a park that would provide a salt water fishing experience for disabled people, although anyone could use the park. The first phase was favorably reviewed and resulted in a \$15,673 grant administered by the State of New Hampshire on behalf of the Federal government. This was to replace the old chain-link fence that was in disrepair.

Starkey explained that achieving the Case #2012-22 Phase II grant involved approaches through the Federal government and many state agencies. In a follow up phase two grant proposal, the Department of the Interior awarded the town \$62,136, provided that the people of Seabrook would match that funds amount. In a March 2012 town warrant, the people of Seabrook were asked to approve the amount of \$50,000, with the balance of the match (\$12,136) to come from the DPW as in-kind services. The taxpayers' vote was favorable. Starkey felt that in these difficult economic times, coming up with the match was a huge vote of confidence. Kerivan's engineering drawing that the Board had received, represented the bare bones of what they told the Federal government would be done; it did not have a lot of bells and whistles. Starkey thought that the town would meet future challenges, and was confident that obstacles would be addressed one at a time. The project would be successful. He commented that people have been impatient at how long it has taken to get a park off the ground, but it takes a long time when dealing with the Federal government and state agencies.

Starkey said that with the endorsement of the Planning Board, he wanted to get started now. Embellishments could come later. If everything fell just right, hopefully, the park could be finished by Thanksgiving. However, review of a dredge and fill permit, needed from the NH Department of Environmental Services, was expected within a couple of weeks. Starkey commented that no dredging or filling was being done, but the permit had to be filed under the Shoreland Protection Act because they would be working so close to the shore. He was confident that permit would be granted.

Wood was very much in favor of the project, but questioned the layout, pointing to the 4 designated parking spots. She said the area is used a lot by many more people who would want to park there to walk, launch canoes or go to Hampton Beach. Additionally, she was concerned that people would drive over the paved walkway that goes down to the shore to get to the parking spots and the open field area. Starkey said the carry in/out ramp had to be ADA compliant i.e. comparable to a sidewalk that disabled people can navigate e.g. in a wheelchair. He pointed out the "rectangle" could change into a circle or square, or have different dimensions. If the Selectmen or the Town Manager wanted changes to get more parking, the footage was there. He believed that once the park is built, the changes would make apparent that the area is no longer a parking lot. He thought that the concern about the ramp could be addressed with bollards and/or chain so that vehicles would not go into that field area.



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Starkey said that NextEra's engineer had explained that they use the carry in/out area at the water. They take down the wooden rail fencing, and move out through the fish co-op property. He thought the only problem would be that they could damage some of the pavement; anything that NextEra damaged, they would fix. Starkey said using this area as a port-of-call was a big advantage to NextEra over a few weeks. It's possible they could cause damage, but they have to post insurance and security and would make it right before they left. There was damage about 5 years ago; a New Hampshire contractor was hired and the area made as good as new. The engineer did not think the park would be a big problem for them. Starkey said some large trucks had been parked close to Route 1A, and that would have to change. The biggest impact would be on co-op property.

Hawkins commented that the area is in the dunes, and said why not make the parking spaces only for the handicapped, i.e. why bring cars in at all. Starkey said that currently the fishing area is all the way down, and the clamshell path goes into a disturbed area and then pavement. This is accessed when a packer picks up the rubbish barrels. People want to get as close as they can, and don't want to walk. Hawkins did not mind the parking for fishing, but wondered about the 4 spaces near the park gate and if people could park outside of the facility. That would make the park a little bigger and less traffic intense. Starkey said that was a possibility. Hawkins then asked about the bituminous pavement in the dunes. He thought it was out of place in the dunes, but recognized that for Starkey it was an ADA issue. Starkey said the drawings had been submitted to the federal government. After the park was completed, if there were a donation or other funding, perhaps decorative pavers could be installed in the middle area.

Starkey said the plan for Phase three would be to seek funds for a Gazebo. Since the federal government had already supported two phases, Starkey thought they would support finishing phase three. A center piece Gazebo would be pretty special together with a flagpole and perhaps memory pavers as was done at the Library. After speaking with some members of the beach civic association, all of the benches have been donated. Others also want to remember family members who have departed. In some cemeteries there are brick or granite walkways with remembrances. Starkey complemented a Newcastle park at the water, where they had implemented a lot of ideas. The park could have embellishments, but Starkey thought this proposal was the minimum requirement.

Hawkins asked if there had been any commentary from the Conservation Commission. Kerivan said the ConComm had the plans, but a meeting had not yet been scheduled for a [letter of support for the wetlands permit application. Because the dunes were very important, they went to the Historical Bureau in Concord and found aerial photographs of the property from forty years ago. The entire area had been disturbed. It was a construction lay-down area. The area intended for the Gazebo was a gravel mound with all sorts of weeds, not beach grass. There was underground electricity under the pole pad. They hope the Wetlands Bureau will see this and grant the permit. Hawkins commented that the sand blows at the Beach so the path can be fifty feet under the sand; some paths get shoveled and some don't. He asked what would keep the park from being buried in sand from storms. The full island of plantings along the whole parking area that had not been maintained and was totally overgrown, although he thought the Civic Association had hired someone to clean it.

Hawkins did not think this area would be maintenance free, and asked what kind of maintenance would be required and what would be the plan. Starkey said anytime the town adds infrastructure e.g. sidewalks there would be some more maintenance. He was optimistic that there would be a Navy "can-do" attitude -- to do the difficult right away; the impossible takes a little longer. When challenges present themselves, he believed the town would meet them.



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Starkey expressed great faith in the people he worked with at the DPW. They are hard-working and get the job done. For example, recently two rubbish trucks broke down and the DPW handled the rubbish as if it were the 1930s. His crew rises to the occasion when they are needed. When the town bought land to enlarge Weare Park, he did not anticipate never asking for more help. As sidewalks are built, as the Planning Board wants, or in trying to get grants for the Safe Routes for Schools, he could not say that he would never ask for more help. With infrastructure, the mission is to preserve the past and take care of the future.

Starkey commented that the power broom is a great invention for spring clean-up. Before that they used straw push-brooms with unstable handles. In one hour someone with a power broom could do as much as eight workers could do with a straw broom. He thought that with technology and volunteers, the maintenance would be done to take good care of the park. Hawkins asked what would surround the pavement and be on the inside. Kerivan said they would keep the dune grass around the outside edges. Starkey said because the area is disturbed, he would like to see loam and seed, even temporarily. Pavers could be used, or whatever the town wanted it to be. Kerivan said that sand did not seem to collect at the top of the hill; it was still the gravel base. He imagined that some sand would collect at the ramp and that area would have to be maintained. The area along the sheet piling wall did not seem to collect said at all.

Khan recalled that in 2008 the power plant transported some containers, and the contractors donated \$5000 which was combined with the \$15,000 that went toward the fencing. Hawkins thought they should be asked again for this year. Starkey commented that there had been difficulties lately. Khan said about three years ago, for some reason a large portion of the fence dividing the park and the Co-op was moved northward without any approval. He asked if Starkey knew why this happened. Starkey said today the east to west fence is right where the plan, gotten from a prior administration showed it. He and Selectman Bob Moore tried to follow the line on that plan. Starkey commented that the dividing line was negotiated a long time ago. Most recently, Starkey met with the Board of Directors of the fish co-op in a spirit of cooperation and trying to visualize a better use of the space. At that time, he asked if the fence could be moved, and there was some opposition. He hoped that when the park got off the ground the co-op people, some of whom are friend of his, might come to change their minds. He hoped that when they see something nice emerging, they might say to go ahead and move the fence. Starkey noted that the Town is the landlord, and believed that the Co-op paid one dollar a year. He suggested that discounting that fee might be a fair solution for moving that fence, and hoped there would be some flexibility over time.

Khan pointed to one current entrance, and asked if it were still needed. Starkey did not think so, but said the original plan was followed. He would gladly swap that entrance for a little more room for the park area. If there were such a swap, he thought it might alleviate some of the Co-op concerns. Khan asked if the plan at the table had been shown at the Board of Selectman meeting a few weeks ago. Kerivan said it was the same drawing. Khan asked what else was planned for the use of the grant money, in addition to the bituminous roadway for handicapped people who come to fish. Starkey said the plan included some benches and picnic tables in an area for passive recreation. The park would take up a pretty large area, but until there was firm pricing, he couldn't be sure how to proceed to make it even nicer. The brainstorming to decide whether there should be more benches, or picnic tables, or other amenities would happen during the winter and spring. The funds did not all have to be spent right away. Khan asked if Starkey wanted to complete the work by October. Starkey said he would like that, but the money would not go away. He thought it was possible that the work could be completed by Thanksgiving, but he could not be certain. For example, the NHDES permit is not yet in hand. If there was a delay, the project would be carried over to 2013; the funds could still be used in 2014.



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Khan wanted to see other than the 4 parking spaces on the outside. Khan commented that he had been involved in this project all along, and had discussed it with Starkey many times. He felt that the 2012 timeframe for the construction season was too fast, and wanted to pause until the spring. It is a big chunk of money. Starkey said approximately \$55,000 represented Kerivan's cost estimate for the work presented at this time. There is more funding available, but did not want to consider embellishments until he sees the pricing. Khan thought waiting until next year would not harm anything. Starkey thought it could affect the public perception. Now people ask him if [he] would ever start to do anything with this park. After six years, they want to know when it will materialize. Khan noted he was a member of the public Starkey noted the selectman was his boss. He knew how to follow selectmen's orders.

Frazeo asked if the filling in of sand in Seabrook Harbor would have an impact. Starkey said it would not. The harbor would be dredged in the fall, but it would fill in over the years as a natural phenomenon. It might become an issue with NextEra using it as a port-of-call. The facility was portrayed as carry in/out; could be a sea kayak. He could also perceive an issue with the fishing fleet. Hopefully the state government will continue to dredge the harbor as it becomes silted in. Frazeo said the sand dunes along the water were also collapsing in. Starkey said there was a bulkhead along the park area. Part of the work is with concrete to cap some of the bulkhead which is ragged and jagged – an attractive nuisance. Frazeo thought a handicapped person wanting to fish would need a long fishing string. Kerivan pointed out the area for fishing. Frazeo thought that area was becoming a sand bar. Starkey said the Army Corp of Engineers would be doing the dredging which should be taken care of by December. Sweeney asked if there would be two coats of asphalt. Starkey confirmed this.

Morgan asked for the phase three schedule. Starkey said phase two would have to be finished in the manner that they promised, and then participate in the next grant availability session. Starkey commented that about 18 months ago they started to be in direct competition with the rails-to-trail program for the same money, and the state made clear that awarding funds needed to be diversified. Because Harborside Park had received one grant and had been signaled that the state was looking favorably on the stage two submission, rails-to-trails supporters withdrew their request to avoid internal town competition. Starkey said that program should also go forward. Perhaps asking for more money for the Gazebo should wait to give another project an opportunity to come to fruition. Janvrin said to be sure that the projects are in the Capital Improvement Program.

Khan wanted to see the Harborside Park project happen, but thought there were too many questions at this time. For example, a decision should be made about brick or hot-top to match with the environment, and the cost should be determined. He thought there were too many unanswered questions, and too much money spent in a very short time. Hawkins assumed that the final design and cost would go back to the selectmen before spending money. Starkey explained that before any contract was awarded, the Board of Selectmen would have to ok it. Hawkins said that the project would return again, if not to the Planning Board, then to the Selectmen. Starkey said no money would be spent on the park until the majority of the Board of Selectmen authorizes the expenditure. Khan said that the BOS had approved the park a few weeks ago, but he did not understand that this would be done so quickly. It seemed the desire was to complete the work before the winter, otherwise something else would happen; it seemed that the money was to be spent in a hurry.

Wood agreed with Khan, noting that she just learned that the bathrooms a little further south were not open the normal times; they were being closed. As a Budget Committee person, she



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felt that if the DPW did not have the money to keep something open that was already in place, how could in-kind services of DPW workers be used for something new instead of maintaining existing services. Wood also thought this was more of a long-term project, and did not realize it was meant to be done by Columbus Day. Starkey reported that at an earlier meeting with the Interim Town Manager it was decided to reopen the bathrooms through Labor Day, so that should no longer be an issue. Wood felt that with tight budgets, she was not sure that even "in-kind money" for digging areas should be rushed.

Janvrin asked for the year in which the project was listed in the CIP. Starkey said he would look at this, commenting that the CIP is a fluid document. Janvrin explained that the Planning Board is the final approval on the CIP, and did not want to break its designated time-line. Starkey said that by New Hampshire law the Planning Board is required to produce a CIP, and he produces 52 pages of the CIP every year, even though he did not work for the Planning Board. At the DPW, he describes the CIP as a dream, a fluid document for which he wants everyone's input before they put their document together. Every year, things move and do not stay cast in concrete because the priorities are always shifting as things change and something becomes more important. The Harborside Park had been in the CIP for some time; they had been working on it for six years. Hawkins said it is also a function of when funds became available, because the CIP called for this project to be funded through grants or a warrant article.

Hawkins said proceeding forward the Board would have the same choices as it did with a recent Water Department project. The Board could maintain jurisdiction, or to waive jurisdiction to the Selectmen. He asked for Morgan's comments. Morgan explained that [a town project] was not like a regular site plan review, and the Board would not be looking for a motion to approve or disapprove. A special statute governs because the Town is the owner and applicant. The Board could provide recommendations, which he thought had happened during this discussion, but Starkey would not be bound by them. That would be the extent of the Planning Board's authority. This could be done by a motion, or the discussion could stand as is. Hawkins asked Morgan about waiving jurisdiction to the BOS. Morgan said as a practical matter it would not make any difference. The specific RSA is 674:54. The Board could waive jurisdiction or just give recommendations. Janvrin asked for an as-built whenever the construction is done. Starkey reiterated that the Town Manager or BOS would have to approve expenditures, and noted that the Town Manager level, including the work that Kerivan had done and filing for permits. Construction would not be done without the BOS allowing it.

Hawkins said he would move to waive jurisdiction with the recommendations listed in the Motion. Frazee asked about the type of material being used long-term for the steel sheet piling seawall. Starkey said that is an existing seawall. Frazee asked about the condition of the wall. Starkey said it was not in good shape, and that is why a concrete cap was depicted to stabilize it and keep someone from being hurt. Frazee said straight steel in the ocean always suffers. Starkey said it was placed there when Seabrook Station was built [1974]; that's why it needs some patching. Hawkins noted that the whole wall needs to be looked at which is a different and big project; Starkey said that is in the CIP. Khan wanted to start in the Spring of 2013, and for signage to the bathrooms.

Wood recommended that the ramp going down to the water be constructed in a different way or place, and to leave that area for parking space. Her reason was that a lot of people, including herself, park there and walk up to the fishing ramp. It can be 5 miles, and a long walk on a road that is not in good condition. She pointed to an alternate placement for the ramp, indicating this would be out of the way of the power plant usage. Kerivan commented that used an opening rather than cut into the sheet piling. Wood said that currently there is a step to go up or down.



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Kerivan said this would fluctuate with the waves going against it. Starkey said the depiction is at a slope that opens right at the water's edge. He would look at this area with Wood. Wood loved the park idea, but there were a lot of locals who currently use that area who would not be able to use it [when the park is built]. She thought it would be a nice place for the people that want to go to Hampton Beach to stop and use the picnic tables for lunch. She wanted the Seabrook people to continue to be able to use it.

MOTION:	Hawkins	<p>to waive jurisdiction for Case # 2012-22 - The Town Of Seabrook To Construct A Harborside Park Immediately North Of The Yankee Fisherman's Cooperative Off Of Ocean Boulevard, with the following recommendations for consideration:</p> <ul style="list-style-type: none"> (i) the use of pavers possibly in place of the bituminous surface; (ii) the four parking spaces depicted be put outside the fence, or if they remain [inside] they be for handicap access only; (iii) an as-built be provided to the Planning Board Office when construction is completed; (iv) the entranceway be straight in through a new gate, with the possibility of eliminating access through the fish co-op entrance; (v) that the Conservation Commission and the Seabrook Village District be asked for their respective input; (vi) that construction begin in the spring of 2013; (vii) signage be placed inside the facility directing users to the location of the Bathrooms; and (viii) taking another look at the ramp position and parking placement with an eye to usage by Seabrook residents.
SECOND:	Janvrin	Approved: Unanimous

ONGOING CASES

Case #2012-16E – Proposal by Lynsey Page, Glitter & Gold Entertainment, LLC, and Timothy Johnson to: 1) allow live bands; 2) establish an outdoor seating and smoking area; and 3) install a mechanical bull at the Honey Pot Bar & Lounge at 920 Lafayette Road, Tax Map 7, Lot 91-203, Continued from July 17, 2012.

Attending: Lynsey Page and Kamnl Green, Glitter and Gold, Honey Pot;

Hawkins asked if the Board had seen the Applicant's letter that was submitted on August 3. Kravitz said it was in a folder circulating for the Board, as it did not arrive in time for the packet. Janvrin commented that if something is not in by the deadline, the case should be automatically continued. Hawkins said that afternoon, a letter came in from the Interim Police Chief requesting that the hearing on the Honey Pot be postponed until September 18, 2012 to allow adequate time to review the case and for inspection of weekend activities. Hawkins thought the Chief wanted to review the department file, because the Board had requested information in re noise and any other complaints relating to this location. Accordingly, the board had received a delayed response from the applicant, as well as a request for a continuance from the police department



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in re information requested by the Board. Page apologized for the late submission, explaining that she had been communicating with the Fire Chief to get his response in re the mechanical bull and the smoking area. Hawkins said having submissions be in on the Tuesday before the meeting is so that the Board members have time to read the material and prepare for the meeting. The Board packets are ready for the Friday pick-up and most members do that. Hawkins had seen Page's letter and the Fire Chief's letter, and polled the Board on whether they wanted to discuss this case at this meeting or continue it to the next meeting or thereafter.

Khan wanted the members to see the Police Chief's letter. Hawkins asked if that was in the packet. Kravitz said that letter had come in about 4 that afternoon. Page said they have three different items on the application, and the Police Chief's request for an extension relates to the entertainment and noise issues. She asked if that meant that an extension would include the mechanical bull and the smoking area. Hawkins said the Board would decide that. Green said that at the last meeting a lot of the issues were about parking. They had not asked for more capacity. He thought that waiting to September 18 to look at a noise complaint that could not be quickly determined, could not show much of a noise disturbance for their neighbors. They had put a lot of money into some of the things they want to do, and this had been sitting for months. They are not asking for something that had to be planned out; everyone that looked at it says they do not see an issue. Green said the Fire Chief did not know why this was coming to his department. They get the run-around when people do not know why this goes to a department. If they put a bull inside their building, getting insurance should be their problem.

Green said with 11,000 square feet, they are way below the capacity. Hawkins said they told the Board the capacity was 250 -275. Green said those numbers cover two rooms. Hawkins wanted to know if adding the bull area meant that the capacity that the Fire Department would allow in the building would have to be reduced. The Fire Chief had said it would not. As for the smoking area in the back, the Fire Department needed to have access. If they can run over the fence, it's not a problem. Hawkins said the parking issue had been going on for a long time. It is an issue of dealing with the other neighbors in the condominium community who have rights to parking as does the Honey Pot. The agreement clearly said that every store had parking in front of their building unit; anything outside of that area is to be allocated to the individual stores based on their square-footage. What is not clear is how many spaces and who gets them, which would not be a hard calculation for any of the stores including the Honey Pot. Hawkins said the Applicants knew about this issue when they first came in for the restaurant. He thought they were getting closer to the answer with the formula, but did not know the square-footage or the number of spaces. The landlord would know the answer, so it should not be that hard to get.

Green understood about the parking, but said when the Honey Pot was open only one other business in that parking area was open i.e. only the Honey Pot and the Chop Shop were open at night. It is a big deal about parking when no one else is open. Hawkins said that the Board considers encouraging multiple uses, as was indicated at the last hearing, and would take that in to account. For their capacity, they need a certain number of spaces. There appear to be 14 at the front of the building; everything else would have to come from common area parking. One question was whether there would be an increase in traffic because of the requested changes in use or, because when only two businesses were open there was not an added impact. The Board would consider those items in its decision. The Board's responsibility was to protect the neighbors re noise, traffic, and parking. He thought the bull was an entertainment device that is allowed in that zoning district. Also, the Board had looked at fenced in smoking areas as a good thing because they cannot smoke inside, and it wasn't a good idea to have smoking right outside the front door. The Board would give consideration to such a solution. The issues of noise and parking still had to be addressed.



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Hawkins polled the Board as to the Police Chief's [postponement] request, as well as if there are items members wanted to go ahead with at this hearing. Frazee said to keep going and take some actions. Sweeney agreed, and did not see issues with the mechanical bull or the smoking area. Janvrin agreed, as the Fire Chief did not have problems with those items. He agreed that the noise and live entertainment were issues, and thought those were the only items that the Police Chief would be addressing. If two uses could be approved while holding off on the other issues, Janvrin would be in favor. Wood did not have a problem if the bull was part of the entertainment license. Wood said the unit had been a restaurant for many years, She did not consider it a restaurant at this time. Even though it did serve food, she would not compare the Honey Pot to the "99". In her opinion, it was not a restaurant to bring the family to; that's what she would consider a restaurant, not a place to go and drink and have entertainment at night. Wood said when they opened, there was no notice to the neighbors because it was not a change of use. However, she believed it was a change of use because it went from a family restaurant to a bar – a nightclub at night.

Wood said that all of the neighbors were just notified that a thrift shop would be going into that plaza. She thought that was dry goods, like the previous tenant. Yet the Planning Board had notified all of the neighbors about that meeting. She did not think that neighbors were notified when the Honey Pot went in at all, even though she had brought it up. Now it's going from having everything inside. It plays music, there is a mechanical bull, and there is live entertainment. She was concerned that the smoking area would take up parking. Green said the smoking was in the back.

Garand had advocated that commercial changes of use to go to the Planning Board. Previously, there were often no conditions of approval for enforcement purposes. He brought this request to the Planning Board as an expansion of the previous restaurant use that was the China Buffet. There had already been vandalism. If the exterior smoking was approved, and vandalism or a noise complaint occurred, he wanted the smoking activity stopped. At a previous meeting, the applicants said they would have a security person there when it was open governing the area to ensure there are no incidents. He hoped these would be conditions for approval. Garand referenced a death that had occurred at another establishment because no one was watching, and did not want that to happen in another facility with a restaurant approval. Wood said that was part of her concern. She would not feel comfortable making an approval, if the Board had asked for the Police Chief's input, and the Chief had politely asked for a postponement. The Board went to the Chief; she graciously asked the Board to wait. Garand noted that Seabrook now had an interim Police Chief who was catching up on some items. Also, he had asked the applicants if they wanted the requests to have separate decisions, but they had chosen to save money and have one application. Green said the Secretary had said there was no reason for separate applications.

Khan agreed with Wood that if the Board had requested the Police Chief's input, it should give a little bit of time. However, the Board should address the other issues and approve them or not. Khan asked what outdoor "seating" meant. Page said they were not doing seating; they just wanted an outdoor smoking area to eliminate having smoking in front of the building, so people who want to come in to eat don't have to walk through a cloud of smoke to get in. This would be a monitored area at night in the back where patrons who come into the bar that may be underage go back and forth to their cars for a drink. They would have it regulated and monitored by a security guard to assure there is no vandalism, noise or outdoor drinking, and make sure that cigarette butts are picked up. Khan asked if they were not asking for an outdoor seating area. Page said they were not. Khan wanted that stated in the minutes. Khan said that the



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Planning Board had begun hearing this case in July; this was the second meeting. Garand said that the Town Manager had directed them by letter to come to the Planning Board several months ago. Green said they bought the bull as an amusement device which does not make them come in front of the Planning Board. Then they were told (by phone) to come to the Planning Board. Khan wanted it understood that the Planning Board was hearing this request in a timely fashion.

Page said they had held off on live bands because they were not sure they wanted to do this. They got requests from local and regional bands, and residents that follow them to have live bands at their restaurant. After looking into this, they decided they did want live bands and would come to the Board. Green said the Chop Shop does a lot of older bands. There is a ton of younger talent in Seabrook that don't get to play at other establishments. They decided to listen to what their customers wanted, came to ask the Planning Board. Green said the Honey Pot is the largest establishment in Seabrook. Garand asked what exterior lighting they would provide for the smoking area. Page said it would be based on the approval; whatever the town wanted. Garand said it needed to be discussed for any approval. Garand said there would have to be some kind of adequate exterior lighting, a shielded fixture that would be compliant and be extinguished when the facility is not operating. There can be no fixed furniture, only the smoking. Green thought they could have removable chairs. Garand said the Board had already said no chairs.

Hawkins said an approval would have conditions. He asked Morgan about the differential between the restaurant approval and the license from the selectmen for the current level of entertainment. He thought that was a change of use without the Planning Board involvement. He asked if going to live music was another change of use, or if was not because it was already a bar, lounge. Morgan thought the Board should focus on the three items that had been advertised. Hawkins thought any change of use should figure into the notice to abutters. This was submitted as an expedited plan because there is no change to the building exterior. It might go from one type of commercial activity to another, but the use would be fairly close. If there is no impact on the neighbors, there could be an approval. The Planning Board last saw this location as a restaurant. Now it is a restaurant with entertainment that never came before the Planning Board, and possibly a different level of noise or entertainment is being asked. He asked Morgan about the Board's responsibility in this situation. Morgan said the town's obligation would have been to flag it as moving from a restaurant to nightclub, but that is not the Planning Board's role. Hawkins said the Town Manager sent it to the Planning Board first.

Morgan said the Board should address the three requests. If it believes something had been overlooked, a conversation with code enforcement could fashion an additional request to consider. Khan was a selectman in 2010 when this establishment came to the BOS. The selectmen do not sign off on anything without a recommendation from the CEO. The feeling throughout the town administration was relief that the proposed poker room did not go into that location because of the parking problem. The poker room would have brought a lot more cars and traffic than the current use [Honey Pot].

Janvrin said there is nothing in the zoning regulations about "bar", or "lounge", or "nightclub", or "restaurant with live bands" vs a "restaurant", or "restaurant for 18 and above" or "restaurant where a 14 year old can sit at the bar". He recommended that at some point the zoning and use table should be expanded, although it could not apply to this case. There could be more of a refined description(s). He noted that the NH Liquor Commission considers any place that serves alcohol in the state to be a restaurant because they must serve food. The town could be more stringent by specifying 18 or 21 and above as not a family restaurant in the zoning. He did not



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think the Board should be doing “reactive” zoning. The definitions should be refined and brought to the Town Meeting.

Garand said that the original application for the China Buffet delineated tables and seating for its occupancy. The current configuration had altered all the seating and a stage area installed. The buffet area was relocated or removed without a permit; there had been a sewer back-up issue. There have been repeated ongoing issues. One factor is that Garand’s office closes at 4 PM and weekends when he is not around; he cannot be out 24 x 7. It is the obligation of the person that is renting the space to come forward to ask for changes. The zoning is there to protect the people. To alter plumbing requires a permit. Garand learned about this when a complaint about a grease-trap back-up was filed in his office. Also, there are plans on record notating the seating and when it was granted, and the occupancy, which never had been approved otherwise. Green said when the liquor license is renewed, the seating is the same. Garand said that it with the state and has nothing to do with the town requirements.

Green said that their liquor license states that if they change the occupancy or seating, the license will not be approved without a new approval from the town. He stated the license had been approved, which means there is the same seating. The state is stringent with liquor licenses. Green said the stage was built before they got their license. He said the Chop Shop and Prime Time are zoned as restaurants and all have bands plus everything the Honey Pot has. They are asking for the same thing. Janvrin said if he wanted to go into Prime Time for a meal, his 15 year old son can go with him. Green said they could also go to the Honey Pot. Page said they only do age restrictions after 9PM. Green asked if Janvrin had been in the Honey Pot. He thought there was a perception that strippers were running around in the bar. It looks like a regular restaurant with couches and tables for people to congregate. Wood said the restaurant before had no couches. Green said they are not the China Buffet. The name itself tells people they do not want to be a family restaurant.

Hawkins wanted to deal with common items – the issues of the bull and the smoking area. Wood asked if that meant holding off on the parking area. Hawkins said he had not gotten an answer about the allocation of the parking to the different businesses. The methodology had been given, but not the numbers. The question still is how many spaces and how are they allocated; the condominium document is clear about how this is supposed to be done. He also wanted to know the real use, for example, that afternoon at 3PM the whole place was empty. But there are also empty stores, and the gym fills up from about 5PM to 8PM. The other Bar also has high and low occupancy times. These are considerations. Each one of the condominium associations has a right to a certain amount of parking, and there is common shared area to be allocated to two different buildings. The Board can acknowledge this, but also understand that certain uses take place in the morning, or afternoon, and there are restaurants and lounges that have their capacity at night. The Board has an opportunity to consider how the area is used, and not just the numbers. They have a right to understand what the numbers and the allocations are according to the condominium documents. The building square-footage is needed.

Wood was concerned about the very dark common parking area for the two restaurants. When the Chop Shop has its floodlights on that is the only area that is lit. Kids have fun in dark areas. Wood said she lived behind the area and did not have complaints about the noise. She drove by late on a Saturday night and did not like what she saw. Janvrin asked if there were several police cars. Wood said there were not police. Kids were standing on the lumber outside the north condominium property. She watched from across the street; the kids did not do any damage except drove cars around fast. Page asked if the Honey Pot was open. Wood said it was. That was the common area in which they were “legally” allowed to park. She thought there were



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about 30-50 kids there. Wood said all it would take is one kid horsing around. It was too dark to take pictures. She said the Honey Pot was in businesses and would be looking to raise their capacity by adding "draws". Green said no matter how much they might draw, they can't go above their capacity. Tocky Bialobrzkeski said the area that Wood was referring to is not common area. It belongs to a different unit on different property.

Hawkins said every unit had assigned spaces in front. According to a map, Unit 1 in the north had 26 assigned spaces, Unit #2 had 10 spaces, Unit #3 had 8 spaces, and Unit #4 had 10 spaces for a total of 54 spaces against the north building. The common area is the spaces in the middle of the parking area which should be allocated according to square-footage. Wood said this meant there should be no parking in front of Bialobrzkeski's building at night. Bialobrzkeski agreed. Hawkins said the Agreement states that other businesses are not to use the spaces in front of any other business. They can use the spaces in the common areas. The Honey Pot had 14 assigned spaces. Hawkins said at night when the gym was closed there would be a lot of parking space at the east end of the parking area. He did not know how many spaces were used by the Chop Shop, but there was a lot of parking available on the site. Open stores would become filled and the Board wanted to know how the [common area] spaces would be allocated to each unit.

Janvrin reminded that every time this issue comes up in a case, the dimensions of the parking spaces are not to town requirements. Garand reminded that some parking near Lafayette Road that was meant for the south condominium had been removed. The gym location also took up some of the common area parking, and was approved with a certain amount of parking. Hawkins commented that there were a lot of spaces at the eastern end. Hawkins said the Board would decide if it was appropriate to share parking in the common areas, and/or what spaces are specifically allocated to a unit. According to the Agreement, the common area is available to be used by anyone. Bialobrzkeski thought that at a previous meeting Green had said that by his lease they could park anywhere they wanted. Green said they were told that in front of their building were dedicated spaces; anything in the middle was community parking. They do not open until 4 PM. Before that Uncle Hilde's has massive trucks taking up parking. In the morning, the whole front of the parking lot is filled by Linda's. As the Honey Pot is not open then, they do not complain. Yet others complain about parking in their spaces after 4PM when those stores are not open.

Tocky Bialobrzkeski said the problem is created because there are only two owners in the double complex. She asked what would happen if Tim Johnson were to sell a unit with the parking according to the condominium plan. Bialobrzkeski believed that the Seabrook south condominium no longer existed because the Planning Board allowed him to build another building – that there is a four unit condominium with five buildings. She questioned whether someone would buy a condominium unit knowing they do not own the parking they are supposed to, if Johnson sells the unit having told other people they could park in front of it. Bialobrzkeski said if all of the units were owned by different people it would be a very different story. Page understood this matter and felt that the tenants were getting the brunt of this issue, when it is the owners that had to figure this out. Tocky B said they had been trying to do this. Green commented that all of the businesses wish they were fighting for parking space because business was that good. There has never been a problem finding a place to park.

Hawkins said the Board had to consider not just today's situation. The review and questions were to look at what might happen in the future and ask if they were making the right decision or could have created a problem. He noted that the Board had gone through these discussions previously with other tenants in this plaza. One application, for the Honey Pot unit was denied for



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the reasons being discussed at this time. It is a difficult subject. The Board's decision would be based on how all of the tenants, including the Honey Pot, are affected. Today, there is space available at certain times of the day. But not if every unit was a restaurant open at the same hours. The considerations are impact on the neighbors, as well as on the parking needs of potential tenants in the future. Green said they've had their license for two years and are still talking about issues. The parking was supposed to be decided ten years ago; they have nothing to do with that. Hawkins said they are not being asked about open items from prior plans, because that is the responsibility of the owners. They are being asked about other items that are the responsibility of the tenant. The Board will go through the process and make a decision, although not necessarily at this meeting.

Angeljean Chiaramida of the Newburyport Daily News said that with another restaurant in the condominium complex, she was confused as to how people can say they see people coming from the Honey Pot and they do not like what they are doing. How could they know that those people were not from the other bar that was open at the same time. Further, she referred to a telephone discussion with the Chair concerning this issue and the Chop Shop which is a similar establishment that has a live band in the very same [mall]. Chiaramida said she asked if the Board went through the same questions about parking before they got their "live" music license, or if they were even referred to the Planning Board when they got their license. The situation is of two very similar businesses in the same area that are open only at the same time at night. She thought this a symbiotic relationship with the other businesses that are open during the daytime. Yet only one is being scrutinized. Hawkins said he had followed up on that question and asked Garand to respond because he had the historical information.

Garand said the facility now known as the Chop Shop started as a pool hall, lounge, bar, so there was no change of use. If there had been a change of use they would have had to go to the Planning Board. When he took over as code enforcement officer, that facility was known as the Players or Bull Pen. They had a liquor license from the Liquor Commission, and a ballroom license for 500 people. They have approval for live entertainment, the bar, the restaurant, the function hall on the site. If they wanted to change that, they would have to come to the Planning Board for review. Chiaramida asked if there was no problem with noise or parking with the Chop Shop. Hawkins noted that no one had said that. Garand said there had been noise issues, a back door use, before the Planning Board. Currently there is a smoking area issue. Garand said the Honey Pot is before the Board trying to get their use legally. Khan said that when the Chop Shop came before the Board re noise, Wood was not a member. She came with her neighbors to the meeting. Wood commented that the Chop Shop had worked with the neighbors. Wood said the Honey Pot clientele was a younger rap type, very different from the motorcyclers at of the Chop Shop. She can tell the difference. Green said they split 50 percent of their customers. He suggested coming into his restaurant before judging it.

Hawkins asked for other comments. Bialobrzkeski wanted all to acknowledge that the town made a mistake to issue an entertainment license without considering that it was a use change, which she thought it was. She thought there was not a difference between a DJ or a Rapper. She said they [the Honey Pot] were coming to get permission to get the same amount of noise that they have been making since they had opened. A DJ is a "live" entertainment. With a rapper or karaoke they are inviting people to come and perform all the time; there is a standing invitation for Tuesdays. They have cover charges and standing room only events. Hawkins said there was an opportunity to look at these things, but was not sure what was there now could be changed. the Planning Board did not get the opportunity to look at going from a restaurant to a nightclub environment. He recalled that the Board looked at a restaurant. The Planning Board did not have any input to review any change of use that was going to take place. Garand called attention to



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the license that was issued. Hawkins read "...license shall be valid only for the event, date, places and time as specified above..." Garand said that is the only license that had ever been issued for that establishment in 2010. Hawkins asked if it was a single-event license. Garand said the BOS approved that license which he thought confusing because it referenced every Tuesday and Wednesday, every Thursday Friday and Saturday. Hawkins thought it clear that the intent was to allow this on those days.

Garand said that in 2011 the Town Manager sent a letter stating they should go to the Planning Board. Page said that was for live bands. Garand commented that live entertainment does not go on forever with an establishment. Page said they were approved to have the same license they already had, and were told to go to the Planning board for the live band. Green said that guitars, drums would be a live band. Garand said that in 2010 they had live bands on UTube. Page said then they were told they weren't allowed to do that. Green said they have the same license that the TANG had. Hawkins said that TANG did not have the event license they have now. Maybe that could have gotten a different type of review, but it was issued. Now they are before the Planning Board re live bands, and the Police Chief is requesting more time to review this. The Board had asked them to deal directly with the noise and parking issues. Page asked how to do this. Green said they cannot fix the parking. Hawkins said that Johnson was the owner on the application so it is his responsibility, as well, to provide the information. Hawkins wanted the information at this time so that it would not have to be requested again.

Morgan thought Hawkins' approach to getting a parking plan for the site would resolve the issue for the future. The word should get to Johnson that he doesn't get what he wants without a parking plan. Morgan commented that this would not be the last time the parking would be an issue. Page agreed. Hawkins asked if the Board wanted to take action on individual items or wait to do them all at one time. Janvrin asked for confirmation that the Board has deadlines on submissions to the Board which is the Tuesday prior to the Board Meeting. Kravitz said at noon. Janvrin asked if certain documents had been submitted by that time. Kravitz said they had not. Janvrin said because those documents were not submitted before the deadline, he maintained that should trigger an automatic continuance to the next meeting. Hawkins said that the bull was a permitted use in this area; other than capacity, he did not see anything to keep that out. Morgan agreed that some last minute information should be discarded, but there are three different requests: the bull, the smoking area, and the live band entertainment. He thought the bull and the smoking requests could be addressed at this meeting because the new information had nothing to do with them. Janvrin agreed. Bialobrzski said she had consulted a professional on occupancy who said the mechanical bull does figure into the calculations. Hawkins said the town hires professionals to run their departments; unless there was something in hand otherwise, he would listen to the town professionals whether it is lawyers or department heads. If the Fire Chief doesn't believe the capacity changes, Hawkins would listen to that.

MOTION:	Sweeney	to approve the Case #2012-16E request to install a mechanical bull at the Honey Pot Bar & Lounge at 920 Lafayette Road, Tax Map 7, Lot 91-203;
SECOND:	Janvrin	Approved: Unanimous



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Hawkins noted the recommendation that the smoking area be gravel and non-flammable, trash is to be picked up on a daily basis including abutting properties, no food or drink allowed outside the building, security guard on site when being used, lighting per the Building Inspector to be on only in open hours. Hawkins assumed there would not be vandalism if a security guard were there. Garand wanted no seating; it is to be a stand-up area. Hawkins asked what was done with other restaurants. Garand said it is either standing only, unless the smoking is in an outside eating area. Chiaramida said that the smoking issue in restaurants was related to OSHA protections for employees that have to serve food. Hawkins said the state allows smoking in open areas. Wood said the area in back had not been in good shape. Garand said the abutter cleaned up behind the building and removed some trees. If there is no eating or drinking, no seating is necessary. It is a controlled area to allow smoking; the drinking would be inside.

Green said they wanted removable plastic chairs that would be taken inside each night, nothing built in. Hawkins thought if it's just for a cigarette people could stand. It's not supposed to be an area where people hang out. There is no food or drink, and smokers would not be hanging out at the front door or in the parking area. This is a good idea for smokers; providing seating just invites people to stay out there. This is not a congregation area. Green said for women with heels gravel is a problem. They just wanted to have them able to sit down for a few minutes. Garand said a hard-pack gravel should be ok. Wood did not think they would want to encourage sitting down because the idea is for them to be in the establishment. Green said that Linda's' has two or three chairs in the back. Janvrin asked what the ground is like now. Page said it is dirt and grass. Janvrin thought the Fire Chief's concern was combustible material. He thought stone dust sufficient, or a concrete pad. Garand said the Fire Chief did not want a concrete pad, which would not be allowed in the building set-back. There are also back doors and propane tanks for other stores. This is a fire access lane. This should be a gravel area with a small chain around it.

Khan noted that Green had said no seating outside. Green said they meant no outdoor seating for eating. Hawkins polled the Board on seating. Frazee was ok with seating. Sweeney said this was for a quick smoke, so the sooner they return inside, the better; Seating was not needed. By consensus there would be no seating

MOTION:	Sweeney	<p>to approve the Case #2012-16E request to establish an outdoor smoking area in back of the building, conditioned on:</p> <p>(i) the floor be gravel pack and non-flammable material,</p> <p>(ii) contain trash and butts within the smoking area to be picked up on a daily basis including on abutting properties,</p> <p>(iii) no food or drink allowed outside the building,</p> <p>(iv) a security guard being on site whenever the smoking area is being used,</p> <p>(v) shielded lighting as specified by the Building Inspector, and</p> <p>(vi) no seating allowed.</p>
SECOND:	Hawkins	Approved: Unanimous

Hawkins said that the Police Chief asked for a continuance to September 18, 2012. Garand said the Chief could not make this meeting due to a prior commitment, and could make any meeting after September 8. Hawkins asked if the Chief would give responses in a letter. Garand did not know, but said there was information in police reports that would have to be blacked out.



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Hawkins said the reports were not needed, only to know if there are an unusual number of complaints. Khan said whatever happens in the Honey Pot, the town has regulations and its police and enforcement departments to do what the law allows. Hawkins wondered if it was necessary to wait until September 18. He did not want to read the police reports, and thought a discussion with the Chief as to whether there is anything out-of-the-ordinary that would impact his recommendation could, suffice. Janvrin asked how far September 18 would be into the window for approval or disapproval. Morgan said that would be 65 days. Green thought the police report would only something be about noise. Garand said it would be about police issues on that site.

Hawkins decided to continue this case to the next meeting. In the interim, he would have a discussion with the Police Chief as to his perspective. The Board would not be looking for detailed police reports; only if there have been any unusual problems in this area that would affect the Planning Board decision one way or another. Wood wanted to ask for a report or to invite the chief to a meeting. Hawkins said if the Chief preferred to come to a meeting that would be scheduled. He assumed that something could be learned within two weeks, or the continuance would be as the Chief requested.

Hawkins asked that the Applicant's response re the noise issue be included in the next Board Packet. Kravitz suggested that the whole folder of late submissions could be reproduced for the next packet. Hawkins said that they have to get the property owner to provide the allocation numbers, noting that with the square-footage the calculation was not hard. Green said he knew the square-footage. Bialobrzkeski said the Honey Pot square footage was 8,000 not 11,000. Green said it was 8,000 square-feet in the dining room; when the kitchen etc is added it is 11,000 square feet. Hawkins said the differential is why it would be really good to have a site plan with the building sizes, including floor plans and the gym on it. Bialobrzkeski said she would supply this.

Hawkins said the owner should have it. Chiaramida said at the last meeting she thought the Police Chief had been asked about noise complaints. Now the Board is talking about noise and parking. In addition, there seems to be a call for every problem that ever came up. She asked if that had anything to do with the Planning Board. Hawkins said those are issues of enforcement in re their license. It does not mean that the Planning Board cannot take those things into account when making decisions.

Hawkins said he would try to be clear about what the Applicant is asking the Board to do, and what are the things the Board should consider when it is trying to decide yes or no. Those things are, how does it affect neighbors - noise and parking. Chiaramida said at the last meeting she heard about complaints from a neighbor across the street about hearing noise. Hawkins said that had been in the packet. The Board was asking if there were other complaints. Sometimes the applicant is asked to get information, as with the Fire Chief. Today, the Police Chief asked for a little bit more time. Bialobrzkeski said the Board does have its rules and regulations. They say that for restaurants there have to be one parking space for every three persons. She believed the Honey Pot had an occupancy permit for 180 persons plus staff which she said equated to 60 parking spaces plus spaces for staff. The rules also say that noise cannot cross the property line. Bialobrzkeski said in the files she read that the noise isn't a problem because it bounces off Uncle Hilde's. She stated that Uncle Hilde's is on a different property.

Hawkins said the Board would make a decision and appreciated the input. He noted that the town doesn't have many sites where a restaurant shares other available parking as part of a condominium agreement. The Board was trying to figure out how much of the other available parking they are trying to share. The Board had been asking for that number every time an



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applicant comes in on either the north or the south condominium. The Board wants to see if there is enough available parking for what they are trying to use. That takes in the available parking that is shared as well as that a lot of the businesses are daytime businesses, whereas the Honey Pot is a nighttime business. The Board had a history of approving shared parking. There is enough hot-top. Bialobrzewski said the Board rules say the number of spaces they must have. Hawkins said the factor is does that number fit into the site. Ciaramida asked if the zoning regulations referred only to "restaurants" so there is no other use for which this applicant could apply. Hawkins said restaurants and lounges are permitted in Zone 2, and restaurants that do not have drive-up windows. Janvrin had suggested expanding those definitions. Chiaramida asked if there was anything they could have applied for other than a restaurant. Hawkins said there was not, other than a more detailed description of the change of use. For example, most restaurants are done by 9PM; that is the starting point for the Honey Pot. If there is no entertainment, the number of patrons goes down.

Khan asked what other businesses in that plaza operate after 7PM. The Chop Shop is open. The gym closes about 9-10PM. The uses of the buildings needs to be balanced out. There is nothing the records as to what they can and cannot do. Khan asked if there was empty space between the Honey Pot and the gym. Garand said that was occupied by the flea market. The south building is all rented; there are two empty units in the north building. Wood noted a new application for lone of them.

Hawkins continued case #2012-16E to August 21, 2012 at 6:30PM in Seabrook Town Hall.

Page asked if they needed to do any more about the mechanical bull i.e. listing it as an amusement. Janvrin referred them to the Board of Selectmen. Hawkins reminded that on every case there is a 30 day appeal period where someone could challenge a Board decision. This is a period of risk with any approval

Case #2012-17E – Proposal by Harborview Entertainment, LLC and John Dussi to extend business hours to as late as 12AM at Castaways' Seafood & Grill at 209 Ocean Boulevard, Tax Map 26, Lot 91, continued from July 3, 2012, July 17, 2012;

Hawkins announced that at the request of the Applicant, **Case #2012-17E would be continued to August 21 2012 at 6:60PM in Seabrook Town Hall.**

[Prior to the meeting opening, one resident asked about the current hours of operation and was referred to the Planning Board Office for the previous case file.]

OTHER BUSINESS

Case #2008-23 DDR Security Matters

Hawkins asked Morgan to explain the issue. Morgan said in 2008 when the Planning Board approved Phase I, they wanted to make sure that the offsite improvements were correctly done in a timely fashion. For roadway improvements, they identified Route 107 east of Spur Road, Route 1 north of the DDR site, and Provident Way. At the time, the security amount for those items was determined to be \$2,100,000. This became more complex during the litigation and the resulting settlement and memorandum agreements among the Town, DDR and the NH Department of Transportation so everyone would understand their financing responsibilities.



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NHDOT took a more prominent role when they took charge of the Route 107 Bridge over Route I-95, and determined DDR's share of costs for the Bridge, and Route 1 south of Route 107. DDR paid that amount to NHDOT.

In March of 2012 the NHDOT asked DDR to pay another \$800,000 to combine the Route 107 east of Spur Road with the Bridge and the Route 1 south of Route 107 work. This was a conversation between DDR and NHDOT. DDR paid this amount to NHDOT. This meant that DDR had assumed responsibility twice for the same section of roadway, because originally some of that amount was to have been paid to the Town. Janvrin asked if NHDOT is doing the work. Morgan said they are the supervisor.

Earlier today, DDR informed the Board that NHDOT wanted another \$850,000 for the work from the Route 107 intersection northward [to the Sunoco Station]. Morgan said the Planning Board counsel agrees that we cannot ask DDR to pay twice for the same work. This means that Provident Way work would have to be covered. DDR then hired an engineering firm to determine the appropriate amount to cover the Provident Way work, which was determined to be \$750,000.

As of this afternoon, DDR is proposing to provide security in the amount of \$750,000 to the Town, and is asking that the security requirement for Route 1 and Route 107 be removed as they have already paid those amounts to NHDOT. Because this was a part of the Phase I approval in 2008, only the Planning Board can amend the stipulation by reducing the security for off-site improvements from \$2,100,000 to \$750,000. Janvrin asked if those numbers came from the Phase I approval. Morgan confirmed this. These are the two changes that would require a Board vote. Kravitz said this applies only to the roadways. Morgan said other items are still in place: \$100,000 for the Provident Way access drive, \$475,000 for onsite improvements, \$50,000 toward the conservation fund for wetlands damage by Unutil, and \$200,000 for on-site Phase I improvements.

Garand said the Memorandum of Agreement was a three-party Agreement, and asked if the state, the town, and the Planning Board would have to sign off. He wanted to be sure that everyone was covered. Morgan said that the state's action was accepting a large sum from DDR. He thought Phase I went away with Phase II. Morgan said that during the Supreme Court Appeal, DDR and the Town made a settlement agreement which the Selectmen signed. Then there is a separate Memorandum of Understanding among the Town, NHDOT, and DDR. Morgan said that the NHDOT plowed ahead and DDR made the payments to them. Garand wanted the Town covered in a release. Morgan said NHDOT told him that they do have the sum first requested of DDR. He was not sure about the \$850,000 that was brought up today. He would like to verify that with Steven Ireland of NHDOT.

Hawkins said this is a lot of money involved. He called attention to Morgan's memorandum explaining this situation, and asked him to restate it in terms of what would be provided before they get a building permit, in letters of credit or other legal tender. He wanted Garand to clearly understand what the target number is, and that once that amount is in with all the paperwork in the Treasurer's hands, then Garand can issue the building permit. He did not want to take any action until there is a clear summary. He wanted to see the comparatives of what was originally committed and what would now be provided. Janvrin asked if this holds up the utility permit. Garand was waiting for the water and sewer applications and the site security before issuing a permit. Hawkins said that DDR is anticipating this Board discussion and would not be surprised if no action were taken at this meeting. He did not see any issues. With the amount of money involved and the risk of getting it wrong, the Board should take the time to understand this. Khan



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agreed with Hawkins, and wanted a letter from NHDOT acknowledging the money they received and what they are responsible for, so the document will be on file.

CURRENT ZONING MAP FUTURE ZONING CONSIDERATIONS

Tom Morgan, Town Planner

Garand said there were still questions about areas that are not correct. Hawkins agreed, and wanted to see a digital copy to look at the lot-lines. Morgan noted that the map came from the Rockingham Planning Commission. Garand thought the first objective was to get a map that was more accurate. Hawkins said that is in hand, but the question is whether it is colored in correctly. He thought that at the Beach it was not. Garand said that the colors for the Beach Commercial and the Yankee Fisherman's Coop weren't correct. Hawkins said that the map objective is to be accurate about what the voters have already approved. It is very close, and includes the Smithtown Village, but doesn't seem to be as clear as what he viewed via computer. He thought the problem might be the way the printer works. Morgan agreed, and asked if Kravitz could send the Board a pdf to view because the colors come up much better.

Morgan explained that the mapping is being done in two phases. First, to digitize the existing map to make it currently accurate, reflect that with a Board vote, and file it with the Town Clerk. The second phase is to make whatever adjustments the Board thinks are necessary or desirable which would need to go to the Town Meeting. Hawkins wanted to confirm that the current digital version is accurate on the screen. Garand thought that the ink at the Beach was a little off. Garand thought the River Street area was a little off. Morgan commented that the map had come a long way with the RPC cartographers, who are not familiar with Seabrook.

CONDOMINIUM REGULATION CONSIDERATIONS

Tom Morgan, Town Planner

Hawkins continued this item to the next meeting.

CONSIDERATION OF RECORDING SITE-PLANS

Tom Morgan, Town Planner

Hawkins continued this item to the next meeting.

PLANNING BOARD - MEMBERSHIP

Hawkins said there is an open seat on the Planning Board. He proposed that the Board fill that seat with one of the alternate members. The term would be only until the March 2013 election. He asked that Kravitz poll the alternates to see if anyone is interested. If there is more than one interested member, he suggested the decision could be for the most senior alternate. Janvrin suggested looking at the attendance record. Another decision factor might be prior service on the Board. Janvrin thought that if an alternate is appointed as a full time member until the March 2013 Town Meeting, and did not choose to run, or runs and was not elected, that individual would be off the Board. Hawkins said that individual could be reappointed as an alternate. Janvrin said there would be no guarantee, and noted that Fowler and he would be up for reelection. However, if the status quo were kept, there are alternates who do attend the meetings and can act in the place of an elected member at a meeting. Janvrin suggested



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leaving the position open until the March 2013 Town Meeting, and have designated alternates sit in. His point was that if an alternate was appointed and did not run for the seat, or ran and lost, they would be completely off the Board. They could be considered as an alternate, but they would be in competition for an alternate position.

Hawkins asked Morgan for the pros and cons of leaving the position open. Garand asked what the town Meeting situation would be. Hawkins said two people would come up for reelection, and there would be a two year term as well it three seats to fill. Hawkins said that would be an easy solution, but he asked Morgan if there were issues, legal or otherwise, that would say the Board should or must appoint to open positions. Morgan consulted the RSAs, in re vacancies in membership [673:12] which state the position shall be filled; it is mandatory. Hawkins asked if there were a timeframe. Morgan said the position is to be filled by appointment by the remaining Board members until the next regular municipal election. He thought that Janvrin had made a good case, but it was not in sync with the RSAs. Hawkins did not have a problem with any of the qualifiers mentioned.

MOTION:	Janvrin	to appoint Paula Wood to fill the vacant seat on the Planning Board until the March 2013 Town Meeting.
SECOND:	Sweeney	Placed on the table

Hawkins said to be fair to other alternates, it would be appropriate to find out if any other alternate has interest. Hawkins asked if the alternates would be voting. Morgan said as long as not more than seven members voted. Janvrin said to put his motion on the table. Khan wanted thought that the most senior member among the alternates should be considered. He felt that attendance in the summertime was not a good indicator. Hawkins said the discussion could be continued at the next meeting.

Hawkins adjourned the meeting at 10 PM.

Respectfully submitted,

Barbara Kravitz,
Secretary Planning Board