



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

Members Present: Donald Hawkins, Chair; Jason Janvrin, Vice Chair; Robert Fowler; 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; Paul Himmer, Alternate; Francis Chase, Alternate;

Hawkins opened the meeting at 6:35 PM, and announced that Lowry and [[[Wood]]] would be voting members at this meeting.

MINUTES OF AUGUST 7, 2012

Hawkins tabled the Minutes of August 7, 2012 to September 4, 2012 at 6:30PM at Seabrook Town Hall.

CORRESPONDENCE

Case #2012-22 Harborside Park - Hawkins called attention to his comments at the August 7 meeting concerning certain landscape islands in the Harborside Park area that had not been kept up. The next day, the Department of Public Works Manager, John Starkey clarified that those islands were actually state property. Hawkins apologized for the misnomer, indicating that the correction would have been welcome at the meeting. The Beach Civic Association was not waiting any longer for the state to maintain this area. Wood reported that she had met with Starkey who satisfactorily explained the reasons for the ramp location. She thanked Starkey for the courtesy. Hawkins referenced two letters from Starkey in the circulation packet responding to other Board questions.

SECURITY REDUCTIONS AND EXTENSIONS

Case #2008-23.06-32 DDR Security Matters

Lowry recused himself from this case.

Attending: James Grafmeyer, Vice President of Development for the Northeast Region, DDR;

Hawkins explained that at the last meeting he had asked Morgan to summarize in a listing what monies had originally been due, and how the amounts would change, indicating that Morgan's listing was in the Board packet. He asked Morgan to summarize the circumstances before taking a vote. Morgan explained that Board had had various discussions, and the Superior Court decision had been appealed to the Supreme Court. As a result, a Settlement Agreement was reached between DDR and the Town, and a Tri-Party Agreement was reached among the Town, DDR and the New Hampshire Department of Transportation. The complexity had increased with each phase.

Morgan said originally the Board wanted to assure that DDR would be posting enough security to cover Route 1, Route 107, and Provident Way, and DDR agreed to post security with the Town in connection with those roadways, the amount of \$2,100,000. In the spring of 2012, the NHDOT informed DDR that in connection with the Route 107 Bridge expansion it would have to post \$846,000 for Route 107, and another \$850,000 for Route 1 to cover certain of the roadway work that NHDOT would be supervising. Accordingly, Morgan said in fairness the amount to be posted with the Town should be reduced to \$400,000. However, DDR hired an engineer to come up with an appropriate figure for Provident Way; the recommended amount was \$750,000.



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

Morgan said the proposal before the Board was to reduce the security to be paid to the Town from \$2,100,000 to \$750,000, with the understanding that the NHDOT will be supervising the work on Route 1 and 107. Morgan had talked with Christopher Waszczuk and Steven Ireland of the NHDOT who confirmed the amounts that DDR said were required by NHDOT, and that the funds had already or would be received from DDR.

Khan reminded that he had asked for a written communication from the NHDOT as to the amounts it would require DDR to post, and also state the work NHDOT would be supervising. Hawkins said all three parties have to agree to any changes in the agreement. In light of the litigation He wanted a summary document for the Selectmen, DDR and the NHDOT to sign. Hawkins asked Grafmeyer to confirm that the only change would be that the \$2,100,000 would be reduced to \$750,000. DDR would also post security for the Provident Way access drive (\$100,000), onsite improvements for Phase 1 (\$200,000), the SUNOCO cross-connection (\$50,000), Phase II onsite work (\$475,000), a contribution to the Conservation Commission for wetlands mitigation (\$50,000).

Grafmeyer said he would have DDR's Attorney Malcolm McNeill draft the summary agreement which would also state that DDR had already provided \$847,000 in cash as a performance bond for Route 1, and also reference the \$750,000. It would also confirm that the Town of Seabrook agrees to reduce the security amount required. The summary document would be executed by the Town, The Planning Board, DDR, and NHDOT. Hawkins asked Morgan if the Board could vote that summary document could be signed and forwarded to the Selectmen. Morgan said such a Motion would be appropriate. Khan wanted to authorize the Chair to sign the document so it did not have to return to the Board.

MOTION:	Sweeney	to agree to reduce the roadway security requirement for Route 1 going north, and Route 107 east of Spur Road, and Provident Way to be provided to the Town of Seabrook in connection with the DDR Cases #2006-32 and #2008-23 from \$2,100,000 to \$750,000, and to authorize the Planning Board Chair to execute the document when it arrives.
SECOND:	Khan	Approved: In favor: Hawkins, Khan, Janvrin, Fowler, Sweeney, Frazee, Chase;

Grafmeyer asked if the Planning Board would be a signatory; Hawkins said the signers would be the Selectmen, DDR, NHDOT, and the Planning Board.

CAPITAL IMPROVEMENT PROGRAM

Hawkins explained that annually each department turns in its capital improvement requests for the next six years, including the relative write-ups, guidance on what has to be done for the future, and the desired timeline. The CIP is published every year. The Planning Board's items, updated from last year, are mostly roadway infrastructure expected to be financed through state or federal funds, grants, and/or exactions, from private developers. Hawkins distributed a grid for 2013 to 2018, and would be asking if Board Members wanted any changes.

Hawkins said that the I-95 Exit 1 Bridge was listed at \$5,500,000. DDR provided some of that funding, as did the Town from exactions. The work had already started, so the balance of the



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

Route 107 Bridge expenditure was advanced to 2013 and may be finished in 2014. . A total of \$10,000,000 had been allocated for widening the entire length of Route 1. He called attention to the footnotes because the timeline was becoming more clear: (i) from Railroad Avenue to Route 107 - \$1,500,000 in 2014 (NHDOT), (ii) from Route 107 to the SUNOCO Station – \$3,200,000 in 2013-14 (DDR), and (iii) from the SUNOCO Station to Dearborn Road - \$2,500,000 in 2015 (Demoulas is working this out with the NHDOT). The balance of \$2,800,000 is for when/as/if something is to be done in the Town Hall area.

Hawkins said that the \$250,000 slated for the Rocks Road/ Route 1 signals was a low priority and would likely disappear because of the roadway between the Transfer Station and the North Access Road, and because the state does not want to do this. The potential for a Folly Mill Road bridge over I-95 would be a low priority. Improving Route 107 was estimated at \$10,000,000; the near term objective would be to obtain a grant to study the feasibility and best uses, including potential for gambling, along that roadway. Hopefully, the Rail -Trail project could be funded with grants beginning in 2014.

Wood recalled that the town held offsite improvement money for the Rocks Road/Route 1 signalization. Hawkins said that \$50,000 probably would have to go back to the providing developers next year; the language of the agreement would have to be looked at next year to see if the funds were specific to the signals, or if it could be used for general improvements. If the language was specific, the chances are it would have to go back. Wood hoped the wording was more general. Morgan’s recollection was for a specific allocation. The state law gives six years in which to use the money, or it had to go back. Hawkins said that eventually the completed CIP would be returned to the Planning Board for final approval. Hawkins asked for a motion to proceed to get these figures to the Town Manager. The consolidated book would come back to the Planning Board for the vote, as the CIP is the responsibility of the Planning Board. Hawkins assumed that the Department of Public Works Manager would provide for the Harborside Park project in his submission.

MOTION:	Khan	to proceed with the timetable and write-ups for the 2013-2018 Capital Improvement Program items as presented at the Planning Board meeting of August 21, 2012, and forward to the Town Manager for consideration by the Board of Selectmen.
SECOND:	Lowry	Approved: Unanimous

2013 PLANNING BOARD BUDGET

Hawkins distributed a 2013 Planning Board Budget proposal for the Board’s review, and showing the comparison to 2012. Hawkins said that the increase in compensation had been voted by the Board of Selectmen, and was the same as for non-union part-time employees. Wood asked for the percentage increase. Hawkins said this was a specific hourly amount voted by the BOS, and not a percentage. Advertising is for public notices in the newspaper. The engineering figure was for the Planning Board engineer’s review of large cases. Legal fees had slowed, so the amount was the same as last year. Telephone charges are a monthly amount. Hawkins explained that he had broken out professional services that could be billed as case reimbursements. Most of the Town Planner time goes back to the applicants, but certain fees, such as those in connection with the Master Plan and ordinance work, could not be billed to Applicants. Hawkins said it was hard to forecast these amounts because the number and size of projects, is not known. Historically, the reimbursement amounts seem to run in the \$14,000



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

range although it seems to be closer to \$17,000 this year, so that is the figure. A lot of Altus Engineer time has been spent on construction review for projects, especially for 2 big projects on Route 1 – Market Basket and West Marine. The goal would be to match that budget expense figure to a revenue line.

Hawkins said that meetings and conference money is for training and conferences. Supplies are binders, etc. The postage is billed by department off the machine meter from time to time. The new equipment is for file cabinets because the board is required to keep paper copies – about 2 cabinets per year. Mileage and tolls is for travel back and forth to the Registry. Khan asked if the dues and membership line was for special services. Hawkins said that item was the Planning Board's portion of the Rockingham Planning Commission membership fee which is spread among the Selectmen, the Planning Board and perhaps other departments. He assumed this fee is the same as last year. Wood noted that the telephone charge must have been billed monthly. Hawkins agreed and said the 2012 actual was for five months.

Hawkins also looked at revenue to see if the Board is covering its cost, noting that the net figures over time represent the amount of money that the Board had not recouped. He thought the Planning Board costs should be covered by applicant fees because its function is for development in the town. The fee structure was changed a few years ago. At this time the recovery range is about 75 percent, which means that approximately \$20,000 is not covered. The fee structure would be scheduled for review at a fall workshop with the objective of improving this ratio. Hawkins said the forecast should not change as the number of cases in a particular year cannot be predicted; revenues go up when there is a big case. The town does not have a really expensive Planning Department. Hawkins explained that application fees are either a flat fee or based on how much of the property is disturbed. Recording fees are for the Registry and paid by applicants. Engineering fees is the town engineer. If an engineer is hired to review traffic or to follow construction, that is tagged to studies. There is administration revenue and fees for copies. The estimated revenue is \$62,000 and is 100 percent dependent on whether cases are submitted. If there are no big cases, it is hard to cover all of the costs.

Hawkins said the next step would be to sit down with the Town Manager, who can agree with items or make changes. It will come back to the Planning Board once more before going to the Selectmen and the Budget Committee. He asked for further questions; there being none.

MOTION:	Khan	to approve the 2013 Planning Board Budget as presented at the Planning Board meeting of August 21, 2012, and forward to the Town Manager.
SECOND:	Sweeney	Approved: Unanimous In favor – Hawkins, Janvrin, Khan, Sweeney, Fowler, Frazee, Lowry;

PUBLIC HEARINGS

Hawkins opened the public hearing at 7:10 PM.



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

NEW CASES

Case #2012-21E – Proposal by Marie & Michelle Bolster to establish a thrift shop at 920 Lafayette Road, Unit 3, Tax Map 7, Lot 91-103.

Attending: Marie Bolster and Michelle Bolster

Michelle Bolster said that their intended thrift shop business would have new and used clothing, and household supplies in Unit #3 of the North Condominium Building at 920 Lafayette. Hawkins asked for Morgan's comments. Morgan said to talk about parking, loading, and dumpsters, Bolster pointed out the 7 parking spaces on her drawing which she was told belonged to that unit. Morgan said the question was whether the unit would ever require more than 7 spaces. Khan recalled that in a prior meeting in connection with another tenant in the same complex, the Chair had asked for another tenant in the same facility to provide the Board had asked for the land owner to identify all of the parking spaces in the complex. Morgan did not see a problem if the Applicant did not need more than 7 spaces.

Hawkins referenced an email from Tim Johnson responding to some of Hawkins' comments. They spoke on the telephone about the parking and Johnson gave Hawkins the square-footage for each of the buildings, Hawkins distributed this information, saying that it should be on file because the question comes up every time there is a new tenant. The condominium documents say that the parking spaces in front of each building are allocated or assigned to that particular building. For Unit #3, eight spaces are assigned. The documents also say that all the other common spaces are to be shared amongst all the tenants based on the square-footage of their respective stores. By Hawkins' count there are 96 common spaces, which could be challenged. He pointed out the column showing the number of common spaces for each unit based on 96 spaces allocated according to the square-footage. Unit #3 has 8.5 percent of the square-footage and therefore would be allocated a total of 16 spaces. Wood recalled when the poker room was attempting to go into the space now occupied by the Honey Pot, the spaces were not lined properly. Hawkins said he counted what is there currently; a realignment could be considered at a later time. He thought that other stores might want to use more than their allocation, but probably not this store. The gym is 38,000 square-feet or 43 percent of the total. Hawkins said by his current count the number of spaces was 211; a couple of weeks ago they used a 208 figure.

Hawkins asked Morgan for the maximum retail allocation for 7500 square feet. Morgan said the retail maximum is one space for every 250 square feet of floor area i.e. 4 per 1000. Morgan thought he'd not seen a lot of cars in front of stores of this type. Hawkins asked for comments on parking. Chase agreed with Morgan that his type of business doesn't generate a lot of parking. Janvrin asked for the hours of operation. Michele Bolster thought from 9AM to 8PM, seven days a week. Hawkins asked if the dumpster would be at the end of the property. Michele Bolster said the location would be with the other dumpsters. Janvrin asked about the concrete pad and screening. Wood asked when that would be taken care of, as it was brought up when the flea market was going in. She thought that store's dumpster was in front of their building. Also the dumpsters are being taken at 5 AM; another dumpster would be a major concern without some protection. Chase asked if each facility supplies their own dumpster. Janvrin assumed that Linda's restaurant had food stuff to be taken away more often. He asked Garand about the dumpsters.

Garand said the dumpster locations were never notated for that location. The dumpster for the Unit #3 south [flea market] had not been put at the approved location, and they had non-compliant signage and expanded hours. He sent them back for Planning Board review. Janvrin



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

thought a concrete pad was approved. Garand said that was a requirement. Hawkins asked if that was an open item from the original plan. Garand said it had not been discussed on the original plan. This is a problem with past approvals. If the condominium document requirements were looked at the Chop Shop, with the corals and trucks parked, their parking would be used up. Garand said this is an enforcement issue with the absentee landowners not doing what is supposed to be done. Hawkins recalled that about 2 years ago they had come back with issues about the sign, and asked if the concrete pads had been discussed at that time. Garand said the Board had allowed them to take out a portion of the front parking; the dumpsters for Linda's were never discussed because she was not the applicant. Those dumpsters were behind the building, and had never been on a pad or screened in. At one point when the asphalt was being worked on as approved, the dumpsters were pushed over the property line, and he had them pushed back. Other uses on that lot had not been considered. Garand said these are issues because the Board had been looking at only one use and not the whole site.

Garand thought the owner had to come to discuss the whole site with the Planning Board. An outstanding site plan had never been resolved; new applicants come forward and are granted approval. He did not want to penalize the Bolsters because their proposal is a good use. The owner does not make sure that his tenants are compliant. The abutters and other tenants are being impacted. The owner had to be accountable for his approvals in the past. Janvrin asked if the owner signed the application. Garand thought he had. Kravitz said Tim Johnson and his sister signed the application as the owners. Wood said when Johnson appeared for the poker room application, she had asked about the dumpsters, the pad and screening, as well as the lighting. The parking lot area is pitch black. She noted that At that time, Johnson said she did not want the lights because they shine into the park, but the Board requested that those things be done. She did not see how the Board could allow stores and restaurants when none of the things from before had been done. Wood felt badly for the tenants, and asked what choice the Board would have. Would it keep letting businesses in when the property is not compliant, and asked how this can happen. Garand said there were a few older approvals that lacked stipulations. Wood said it is time to stop this from happening year after year.

Garand said the property owner had to come before the Board and explain why things had not been done. Janvrin thought the Board did not have the power to summon the owner. Garand said he did sign the application. Wood wanted every building to be rented. Janvrin agreed that what had happened was unfortunate, but did not want to hold the applicant's feet to the fire. That should be for Johnson. Wood asked how to hold his feet to the fire when there is no security on the property. Janvrin suggested having a punch list of what is lacking on the property, and each applicant would have to take care of one item as a condition of approval and occupancy. He did not think all of the items from the 2002 Case should be attached, but the dumpster, pad and screening should be attached to this case because they will be using dumpsters. The tenant should tell the owner that if he wants the business to open he has to do what the Planning Board said. The Board had no financial leverage as the security lapsed. The leverage is through the punch list. Wood felt that is what happened a few years ago when only a few things were done. She assured the applicants that she wanted them to be in the unit. The issue was continuing to allow rent to be collected while the owner was not compliant. Janvrin did not want to penalize the applicant, but thought the Board could obtain \$5,000 in security for the dumpster pad and screening. He wanted this as a condition and said to hear the rest of the case.

Hawkins said that Garand's previous letter was pretty complete. He commented that when stores were empty, the owner claimed he had no money. The Board agreed to keep the property moving ahead. At the time, a couple of things were done. Hawkins was torn between holding the renters responsible for the owner's commitments that were not kept. Also, another security



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

deposit was never made; it seems never ending. But there are two people who want to start a business who had nothing to do with the site issues; he was reluctant to hold them responsible because the landlord is unresponsive. Wood asked where the rent money was going. She thought the Board couldn't say to go ahead with the business, when there is a lack of compliance. She did not think other people in town had been allowed to do this. If the Board said "no", maybe the landlord would do what's needed. She wasn't sure that she'd want such a landlord. Janvrin asked who signed the application. Kravitz said the company is K & K but is Johnson's signature and his sister's. Morgan said the policy is that the owner signs the application.

Sweeney agreed with Janvrin to make the concrete pad and dumpster screening a condition of approval. Janvrin asked how many units would be vacant. Wood said only one, which was a different owner. Hawkins said an alternative for this case would be to post \$5000 security. Janvrin would agree if the CEO was ok with this. Wood called attention to the previous security request that he did not post, and was reluctant to give the applicants hope if the landlord did not come forward. Michele asked if they could put in a dumpster and concrete pad on their own – they would do this. Khan said the whole plaza had such poor condition of the parking space markings, that people don't know where to park. Hawkins said the spaces are painted, but was not sure they were the right width. He counted spaces painted in yellow. Wood asked about one of the areas. Hawkins pointed out some double spaces. Wood pointed out where spaces are blocked at night. Hawkins commented that there are other spaces in the complex that are being used for storage. The assigned parking along the buildings is the responsibility of those tenants. The common are is what should be shared; no storage should be allowed there. Today the area was empty. Wood said that fencing blocked off some spaces.

Garand said he had written notices of violation, but the property owner does not respond or make the tenant follow through. The whole site is not complaints. If the site were brought into compliance with past approvals it would be a lot easier, safer, and have lighting. Hawkins asked for a recommendation. Garand said the owner needs to come to the Board to be told either to come into compliance or not bring cases to the Board. When the owner previously said he would take care of items and return to the Board, he was allowed to move ahead. Janvrin said work was done and there was no security. Garand said there were no inspections for Linda's dumpsters or on deliveries in the front instead of the loading bays in the back. Things were done blindly. Khan said if the Board approved the two applicants the owner would not come back. Garand said it would be difficult to hold up this application; this is a great business for that location and it should be allowed. But, how could the Board call the landlord back. He is a signor on this application. He wanted Johnson to come to the next meeting so this applicant could move forward. Khan commented that the town had been waiting for a long time. Garand said the owner did nothing and gets his approvals.

Hawkins didn't want to penalize the applicant, but there had to be a way to get the owner's attention. He wanted to continue the case to September 4 and ask Johnson to attend to address some of the property issues. It is not fair to the tenants, but because there is no security, in spite of the request the Board has had no leverage to get things done. The issues keep compounding. Ed Hesse, Selectman, speaking from the audience, asked if the Board had the right to tell him to pay the security or else. Hawkins said that had been done to no avail. Unfortunately, the leverage is only with the tenants. Hesse thought that if the pressure is put on for the security, the tenants would also apply the pressure. The security needed to be paid, or the property and the businesses could be shut down. If someone doesn't pay taxes they lose out; why should this owner get away with this. Hawkins said the struggle is that the tenants were not at fault. Hesse



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

thought the security should be paid because he would not want to lose his rent if the tenants have to leave because he is not compliant.

Janvrin asked how the owner would be notified. Hawkins said it would be by letter indicating that there would be no action until he shows up at the Planning Board and is ready to deal with the issues. Michele Bolster asked if the case is continued to September 4, did that mean she could do nothing inside the building until then. Her concern was an overabundance of items to be moved in. Garand said a conditional permit to do the work could be granted, but unless there is compliance, occupancy would not be granted. Hawkins said that would be at the applicant's risk. If the case doesn't go forward she could lose whatever she spent on the building. Michele Bolster said she had spent about \$500 for the application and put down security rent. She'd already waited 2 months, and lost wages because she left her job to start a business. Marie Bolster said they were going broke. Michele Bolster said when she applied there was nothing wrong with the parking lot or the building as long as she was not going to change anything. She marked her parking and the dumpster, and hadn't known there were issues. Khan was concerned that the owner would do nothing. Michele Bolster said she would light her parking area and put a pad and fence for the dumpster. She just wanted to start her business; she would call Johnson.

Garand said the only way he could issue occupancy is if the Planning Board allowed it as one of the conditions. Previously, this unit was previously occupied by a retail furniture store, so it was up to life-safety standards with emergency lighting and egress. The only issue is Planning board approval for the use of the property. Janvrin asked if the retail had ceased for more than a year. Garand confirmed this. Khan said at this point the applicant spent \$500. If she was allowed to spend more money and then the application was not approved that would be more devastating. Garand said the owner had been well aware of the issues on the property. Michele Bolster said \$500 was a lot to her. Khan understood, but this was not the Board's fault. The Applicant knows this goes through the Planning Board which has to hear the whole story. Michele Bolster said she was not hearing a different story. Khan asked if the Applicant could do work on the store. Hawkins did not have a problem if the CEO issued a permit for work inside, as long as they understood that the cost of any improvements might never come back to them. Michele Bolster asked about doing something on the outside. Wood did not think that was her responsibility to go to that great expense, because all the dumpsters needed a pad and fencing.

Janvrin estimated that the needed improvements might cost as much as \$600,000. Wood noted that lighting the parking lot had major issues; the owner should have told them about the issues. Hawkins said the Board's issue was not with the Applicant. The only way to get the owner's attention would be to affect the rent.

MOTION:	Janvrin	to continue Case #2012-21E to September 4, 2012 at 6:30PM at Seabrook Town Hall, and to send a letter to the property owner requesting that Tim Johnson attend that meeting.
SECOND:	Hawkins	Approved: Unanimous

Hesse said that if the owner was asked to appear and did not, he thought it the Board's duty to shut the place down. That would only be fair to every business that is there, or wanting to be there, because he'd been told to do work a long time ago and let everything go; he's not compliant. The Board should take this upon itself and the Building Inspector should go in there and get this stuff done. The owner is not going to lose the rent the tenants are paying if he is told



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

to shut down for a week because he is not compliant with what he is supposed to be doing. It's not right for him to get away with it. He must pay the security deposit.

Case #2012-23 – Proposal by the Bruce G. Brown Revocable Trust of 2009, Bruce & Cynthia Brown, Trustees, for a 2-lot subdivision at 132 Lower Collins Street, Tax Map 15, Lot 101.

Appearing for the Applicant: Henry Boyd Jr, Millennium Engineering;
Janvrin recused himself from this case. Hawkins said that Chase would be voting.

Boyd described a minor subdivision creating two lots out of the 30,000 square-foot parcel. There is adequate frontage; Morgan had noted there is no wetlands on the site; Boyd will add a note to that effect. A waiver was requested for the topography, contours and future dwelling because they do not know the location, size or shape. When they apply for the building permit, this will have to be satisfactory to the Building Inspector. Boyd will correct spelling errors on the plansheets. A note states that a water meter and sewer service for the new home will be installed to the town specifications. There is water service for the existing dwelling, but the owner may take that structure down. Because of the way the owner wants the lot cut that water service cuts across a corner of the lot, so a water easement and detail was provided. New utilities will be needed for a new house, although there are not plans for this in the near-term. The boxes are shown but one slips over the line, however, there is more than adequate depth and frontage

Hawkins asked for Morgan's comments. Morgan noted that the lots are not rectangular; they taper back in the rear. The zoning ordinance requires 100-foot frontage on the road, and also that the lot be 100 feet wide. He suggested that the Board discuss whether it thinks this complies with the lot width. If the Board concludes that it does not, Boyd will have to go to the Zoning Board of Adjustment. Hawkins asked if it would be appropriate to discuss the intent of the box. Morgan said the box requirement was intended to help the Board make such an analysis. Some lots were tough to figure; the box makes it easier. In this instance, the case could be made either way. The Board should decide this so the surveyor would know what to do. Chase commented that there used to be circles before the boxes. Hawkins asked if there was enough room to build a house. Morgan said Article 7 of the Zoning Ordinance says the box had to be 100 feet wide. Khan thought it was not much short. Boyd said the beginning of the lot was 136 feet wide. At times in the past, the Board has used its jurisdiction to say that a lot like this was compliant. They could go to the ZBA, but Boyd thought these lots looked better than some lots that had been approved.

Morgan explained that the reason for requiring the box was to assure there is not overcrowding. The question was if the creation of the new lot would make it too crowded. Morgan's opinion was there was not a width issue. Boyd noted that up to 3000 square feet could have been allowed for wetlands, although there were none. This is all good soil. Wood noted that the ordinance did not define the width. Morgan said ordinance s in some towns get quite specific. Wood thought that a pie shape would make it more difficult. Morgan thought Boyd should get some credit for the 136 feet at the front even though it tapers down. Boyd said that the box on the other lot was 104 feet and fit ok. He commented that the origin of the box was to show sufficient width when the house was built; some had even been 25 feet wide and odd shaped. He thought the lots in Case #2012-23 were ok. Wood asked about the varied setback distances. Boyd said they wanted the lot to be as compliant as possible. He noted that the ZBA was partial to splitting lots down the middle. In this case that would have made the boxes more non-conforming. He did not see an issue because of an abundance of setback and 15,000 square feet on each lot. Hawkins asked for questions or comments; there being none.



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

MOTION:	Khan	to accept Case #2012-23 as administratively complete for jurisdiction and deliberation.
SECOND:	Sweeney	Approved: Unanimous

MOTION:	Sweeney	to approve Case #2012-23 – Bruce G. Brown Revocable Trust of 2009, Bruce & Cynthia Brown, Trustees, for a 2-lot subdivision at 132 Lower Collins Street, Tax Map 15, Lot 101.
SECOND:	Lowry	Approved: Unanimous

Case #2012-24E – Proposal by Darlene Reynolds to establish a hair salon and tanning booths at 14 New Zealand Road, Unit 2, Tax Map 7, Lot 71.

Chase recused himself from this hearing.
Attending: Darlene Reynolds, Split Ends;

Hawkins asked Reynolds for a description of her proposal. Reynolds said that she had owned and operated Split Ends in Seabrook and was relocating the business to a new location. They cut hair, do perms, and have 2 tanning beds and 1 tanning booth. Hawkins asked for Morgan's comments. Morgan said the building exists, and wanted to know about the parking and provision for trash. Chase represented the property owners, saying there is an existing dumpster and ample parking. Hawkins asked if there were assigned parking. Chase said there was assigned parking for the upstairs apartments; 4 spaces at one end and 6 at the other end. Janvrin asked for the square-footage of Unit #2. Chase said 1,100 square feet. Janvrin thought that meant 5 parking spaces plus three employees for a total of 8 spaces. Garand asked for the number of parking spaces in the current location. Reynolds said it was supposed to be 12. Garand asked for the staffing and number of chairs. Reynolds said 5 staff with 5 chairs, plus 3 for tanning – total 13.

Garand said other tenants had taken up all the spaces. He wanted Reynolds' spaces protected and not used by others. Chase said the other tenant had moved out. There was plenty of parking. Hawkins asked for the total number of spaces. Chase said 58 plus three handicap. Hawkins figured there were about 10 spaces per unit. Garand said the first unit was a real estate office that did not use many spaces. He wanted to be assured there would be sufficient parking for all the units into the future. Janvrin recalled that when this location was last discussed, the parking was not complete. Chase said all requirements, including the sprinkler system, have been completed; the finish coating for the parking lot still needs to be completed. Hawkins asked for the hours of operations. Reynolds said 9AM to 6PM for six days. Chase said there is an outside sign; all signs on the building will be the same. Khan asked if there were issues from abutters in the back. Garand said odors like from nail polish through ventilation would be an issue. Chase said the air conditioning had a filter system. Garand did not want an issue in the future, and commented that Reynolds' business had been in Seabrook for a few years and had been good to deal with.



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

MOTION:	Janvrin	to accept Case #2012-24E as administratively complete for jurisdiction and deliberation.
SECOND:	Sweeney	Approved: Unanimous

MOTION:	Sweeney	to approve Case #2012-24E – Darlene Reynolds to establish a hair salon and tanning booths at 14 New Zealand Road, Unit 2, Tax Map 7, Lot 71.
SECOND:	Lowry	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, August 7, 2012;
 Attending: Lynsey Page and Kamnl Green, Glitter and Gold, Honey Pot;
 Appearing at the request of the Planning Board: Interim Police Chief Lee Bitomske

Hawkins noted that at the last meeting the mechanical bull was discussed as an entertainment device allowed in the zoning district. The smoking area in the back had been allowed, as at other locations, with conditions. The outstanding issues were containing the noise, and the parking. Hawkins distributed a table showing the building square-footage as provided by the owner. He asked the Applicant if they'd had any other information from the owner. Page did not. Hawkins called out a discrepancy in the Honey Pot Unit #3 square-footage which the owner said is 8,000, and the applicants have said is 11,000. Hawkins said the Applicant should look at their lease to check the record. Hawkins asked if the occupancy permit was 250; with 1 space for every three patrons in a restaurant and 5 employees, that would mean about 88 spaces; the total site is about 211 spaces. The Board could think about how shared spaces and common parking might be accommodated. There appeared to be adequate parking by the formula, but actually there were many empty spaces last Saturday and today. Most of the units were day businesses, closing at 8PM or earlier. By the formula this Unit #3 in the south building would have 14 spaces in the front plus 9 more allocated for a total of 23 spaces which is a short-fall from the 88 needed spaces. When spaces are being used has been a consideration. The Board had encouraged shared parking so as to reduce the amount of pavement.

Wood asked Tocky Bialobrzkeski, representing the north building Units #1 and 2, to explain whether the parking is all common and what spots belong to the north and the south buildings respectively. Hawkins had used the agreement that divides up the parking area and the methodology. The spots in front of each store are assigned to that store. The common area parking spots in the middle are to be allocated based on the percentage of the square footage for each store. He had counted the spaces in front of each building and counted the common spaces in the middle and in the back of the gym which is not marked. The spaces along Lafayette Road in front of Unit #1 in the north are assigned to that unit. Janvrin was concerned that any off-site parking must have a permanent recorded parking easement. He understood that the parking easement in re the north and south buildings was only for the middle spaces. He wondered if north and south spaces were being in the 88 space count. Hawkins said the



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

allocated spaces number 96. Anything in the assigned spaces is supposedly not available for someone else to use.

Janvrin thought that the only spaces that currently can be considered for off-site parking for the south building are in the middle. He thought this meant that only the spaces in the south and the middle could be taken into account for the Honey Pot parking. Janvrin thought there were a total of 56 + 67 (gym) parking spaces for the south buildings. This appeared to be sufficient for the 88 spaces that could be shared. Additionally, for the regulations to be satisfied, none of the assigned parking spaces for the north, only, could be taken into account for this case's parking. Hawkins said that there was a condominium agreement that allowed for sharing of parking spaces that are not assigned to a particular store. Given the parking shortages, Hawkins wanted to get the Board's feelings about the shared aspect, noting that the gym had the biggest allocation if the agreement is still in effect. Janvrin assumed that Unit 1 closes at 4PM; Linda's (Unit #2) closes at 2PM; Unit #3 is Honey Pot, Unit #4 is only open for limited hours on Friday, Saturday and Sunday; and the gym is open to about 9PM. In that event, Janvrin thought the 88 parking spaces could be met.

Khan referenced the lengthy discussions on parking at this meeting and on August 7, 2012, and thought that for the hours the Honey Pot was open, there would be plenty of parking. He had no issues around that timeframe. Wood added that although there may not be anything else open in the south, there was a very similar facility open on the north at the same time. On the south end, the same spots would be taken up by Unit #4 on the north end at the exact same time. She had issues with the lighting that the owner was supposed to put in; the area is pitch black. Other than a few lights on the front of the buildings, there are no lights. She had respect for the people who were trying to run businesses, but it would not be fair to hold the Case #2012-21 to it, but let others do something else. Hawkins noted that the owner was already collecting rent from the Honey Pot. Wood said if they are not allowed to expand as requested, they would be giving the owner a call.

Wood noted that the Applicant was requesting live bands, and asked what activity took place on the previous Saturday night. Page said they had a DJ. Wood asked if that would have been live entertainment. Page said they were approved for DJs and Karaoke, and that everything they do for entertainment falls into that category. Green said they do not do live instruments. Khan asked why the license approved by the Board of Selectmen said "no live bands or other live entertainment". Garand said that license was issued a few years ago, and that was the last time the Applicant had come forward for an approval for any activity on that site. Wood asked for a supporting document. Page said the entertainment license was for Karaoke and DJ.

Hawkins said that Tocky Bialobrzkeski could make her comments at this time. Bialobrzkeski said that when the Planning Board approved the construction of the gym, it effectively undid the condominium; the gym had nothing to do with the original condominium agreement. Bialobrzkeski said the agreements on record, the plans and the declaration that she sent [to the Board] were for the Seabrook Common South without the gym. Then Johnson wanted to build a gym and the Board approved the construction of the gym but did not require revised condominium documents. Bialobrzkeski said at this point [Johnson] doesn't have anything to sell there. He wants to do a revised condominium plan, but has not satisfied the original site plan. Secondly, Bialobrzkeski said that based on agreements with [us] that the Planning board was fully aware of at the time of the 2001 site plan, they are very close to initiating action to terminate the easement for parking on Seabrook Common North that was granted when the gym was built. She said that their attorney suggested that the Planning Board would want to be aware of that.



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

Hawkins asked if Bialobrzkeski's position was that there was no agreement in place since the gym was built. He asked if in Bialobrzkeski's opinion there was a condominium agreement in place. Bialobrzkeski said in her opinion there was not. The declaration actually says that if [you] invade the common area it terminates the condominium. She said it was a little complicated because Johnson still owns [all of] the units; theoretically he has the right to form a new condominium, but he hasn't done it yet because he can't get the original site plan approved. Bialobrzkeski said she was not an attorney. In her opinion, he hasn't got the condominium; he has no unit; he can't sell anything; he can't sell unit(s) until he comes back for a condominium conversion.

Hawkins said he was not talking about [Johnson] breaking up existing units and selling them to somebody else. He's talking about the sharing of common area between the two buildings. Bialobrzkeski said that would not apply. What's in the declaration for Seabrook Common South wouldn't apply to the gym parking necessarily – [you] could agree to apply it for some things, but it doesn't apply. She said the gym effectively screws up Seabrook Common South as a condominium. Janvrin asked if Bialobrzkeski was saying that the 41 spaces would not be allocated to the gym – they would be reverted back to the other units. Bialobrzkeski said if the easement that they obtained to have parking for the gym were terminated, it would become common area for Seabrook Common North. She referenced the "L" shaped property line. Bialobrzkeski said they own the westerly units #1 and #2 of Seabrook Common north and they have a controlling vote.

Janvrin asked if parking adjacent to the gym in the eastern most part of the parking lot was attached to the North. Bialobrzkeski said it was on Seabrook Common North property. Chase asked if when they got permission to build the gym, it violated the whole condominium documentation. Bialobrzkeski said 920 Lafayette Road One Two owns two units of four and controlling interest in Seabrook Common North. 920 Lafayette Road One Two gave an easement to Seabrook Common South for parking subject to an agreement that had not been fulfilled. Robert Bialobrzkeski wanted to Johnson to come to the next Board meeting before anything else was done.

Morgan's observation was that much time and energy was being spent on what Johnson needed to do. He recalled that at the last meeting Hawkins had an excellent proposal that the owner is really responsible for coming in with a master plan, a professional parking layout that showed where everybody parks and who gets what. Then the Board could decide whether it was reasonable, conforms with the condominium documents, and whether the abutters are ok with it. Then a decision can be made. It can't be done on an aerial photograph with crayon markings which is not up to standards. He agreed with Wood that if Johnson had to come in two weeks for a discussion in re the Case #2012-21, it should be the same for this case. He thought Johnson should be asked to come in in two weeks with a professional site plan done by a surveyor or engineer, and make an effort to divvy it up. It's a little complicated because if everybody were there at the same time there wouldn't be enough spaces, but everybody is not there at the same time and they might be able to make it work. The Board can't know this until Johnson does his job; he had to be told that.

Green said the [Honey Pot] capacity would be the same as it is currently. Whatever entertainment they had, the capacity would stay the same. They were not asking for more capacity, so having a band shouldn't have anything to do with parking. The same amount of parking now being used would be the same with a band. He did not see where the parking had anything to do with having bands at all, because they were not changing the capacity. The talk is



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

about parking, but they are just asking to have bands, not more people. It would be the same amount of people that they have now. He did not see that what happened ten years ago had any bearing on them. They were not asking for more space, so how would that affect them having a band with people listening to music. Garand said that they had a restaurant approval which did not include live entertainment. They were asking for a change of use, and that is what is prompting the parking review. Green said there is only one zoning that applies to them; the Chop Shop, and Prime Time are restaurant. There is not another zoning for Honey Pot. He asked how they were changing the use if the restaurant was the only zoning for them. Page said they did not want more parking spaces. Green said the use is the same – a restaurant.

Garand said the zoning did not differentiate between live entertainment and restaurant. It should but at the same time it is a change of use. Green said it is the same use in the same parking lot, and did not understand why parking was being discussed if they were not asking for more space. Wood said if they were not looking for more people to come into the restaurant, they wouldn't have live bands. They are in it to do business and everyone understands that. They would not be paying what it would cost for a live band vs the cost of a DJ, if they weren't going to make that money back. She asked the Applicants to confirm that. Wood's other concern was that the square-footage in the grid looked at earlier was totally different than what had been submitted. She wanted to know which figure was correct and how many people should be in there. If the grid was correct, she thought they should have less people there. Page said they have a lower capacity than some of the other businesses, and they are bigger. They were not asking to expand the capacity. They are looking for business; people have requested local bands, and people that play in local bands would like to play in their establishment because they are larger. Page said the capacity would stay the same on a Saturday night with a DJ or a band. They could not add more people to their establishment, or go over the capacity. Green said that parking was not a factor in this request.

Hawkins said parking is a factor because the Board was doing a site review. The parking that should be allocated to their business is way short, according to the condominium document, of what should be there. That was passed over when they came in as a restaurant. Every time they come back to the Board everything is subject to being looked at again. This is the process. The discussion described the Board's feeling about sharing parking. There are other considerations. Another application was discussed earlier in the meeting. If that had been a restaurant, where would those people park. Sooner or later the parking issue in this condominium would have to be dealt with. The Board doesn't know what businesses would go in there. Approvals to go ahead have been passed out, as with the gym. More parking was given out than was available. At some point the Board had to determine what the parking is for each business. Page said the owners had to figure that out. Hawkins agreed. Green said they are not asking for more parking, and asked how this had become a parking issue; they could have 250 people there to eat.

Hawkins said this issue was being discussed, because at this time it would show they had 23 allocated spaces and the requirement was 88 spaces. Green said they are the only ones open on their side. Hawkins said the discussion was about sharing and how it was supposed to be done. They were also committing other businesses to do certain things and this can't be done in a vacuum. The owner had to tell the Board his plan. Tocky Bialobrzkeski said they are in a position to have their usage restricted. If they want to find a tenant for their empty unit which is now which is almost the last unrented unit, they would have to restrict their tenants because the Planning Board wants to have their allotted parking used by someone who needs too many parking spaces during their hours. If they wanted to have a business open to 10 PM they could do this. The idea about sharing was very nice and Christian, but it did restrict them.



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

Hawkins said the Board had previously asked how a parking area would be shared. The objective is not to spread hot-top all over the town. The Board had acknowledged that in this case it had a responsibility to the other tenants. If another restaurant came in, the board could not deal with it; there is not enough parking. The owner would have to come in with a parking plan that shows the allocations to the businesses, so that when there is an application to rent a different unit, the Board would know how much parking goes with that unit. Now it was a free-for-all – whoever gets there first. Towing might happen in front of their building. There is no reason to go through this every time a new tenant comes to this location. There should be a parking plan that is established by the owners on how the allocation of parking will be handled.

Tocky Bialobrzkeski said that is why in her letter she asked why this case got expedited review. Hawkins asked if this looked like the Board was expediting the [process]; it was the third session. Tocky Bialobrzkeski said to solve the parking problem they should have a conversation with the Technical Review Committee. Hawkins said the TRC would not solve the allocation problem; this is an owner issue. The owner had to address its plan; the Board could then agree or disagree. He thought the heads of the water, sewer and fire departments would not have an issue with a properly laid out parking plan. However, if there were 5 restaurants and each had to have a space for every 3 customers, that couldn't be done. It had to be some other plan that says how this would be handled. For example, it might say there would be no more restaurants. There had to be something that would give guidance to the Planning Board, otherwise the Board would be continuing to play referee with every application.

Hawkins recalled that the Board had requested comments from the Police Department in re whether there had been any problems at the site, and also asked if the Chief would attend the meeting. He asked if there were outstanding issues at the site. Chief Bitomske said he did not, and apologized that he could not attend the August 7 meeting due to an out of town commitment. He agreed with Hawkins. The Police Department will not be referees to tell people where they can and cannot park, unless there is a layout and there are signs that specify the hours for parking and/or the restrictions e.g. no parking 24 x 7. Without that, the police cannot determine who can park where. They cannot be used as a resource to play referee.

Bitomske said they had issues at the Honey Pot in the past. They had not had many issues lately; he thought they were resolving some issues. He asked if they had 5 employees and asked if that included security personnel. Page said it did. Green said employees are not there all the time. Page said 5 would be the most. He asked if the capacity was 250; Page said it was. Bitomske's concern would be that if there would be a smoking area in the back, obviously they would need security there. There had been some issues with people at closing at night e.g. some fights. If some people were starting to get out of line, he asked that they call the police; their security should get them a taxi but not let them drive. Bitomske said the police were there to help them and in the long run that was better for everyone. As of late they had not had any issues.

Janvrin said a major concern was noise. Bitomske said they'd had a couple of calls about noise. When the officer arrived the level was mediocre, and not to appoint where they had to shut them down. He had talked with some property owners who were in attendance and could choose to speak. Bitomske asked if there were questions.

Khan asked if this business was in the category that some in the town would hire a detail officer from time-to-time for events. Bitomske said that would be up to the owners, and thought at one time a detail officer had been requested. He recommended that if there was going to be a large crowd, they could request a detail officer and the police would try to accommodate them. If that



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

could not be done, an officer would stop in and out to monitor the situation. Hawkins asked how noise enforcement was dealt with, and if they went to the site after a complaint. He did not think the police would sit outside to see if the ordinance was being met i.e. no noise passed the property line. Bitomske said if they are there they would speak to the people. Usually it is the officer's discretion upon arrival as to what they hear and see. Janvrin on their Facebook site in early spring and summer, there were pictures of patrons in the parking lot with open containers. He asked if the police had encountered that. Bitomske said they had and made arrests.

Wood could not say with certainty whether the two gentlemen she had encountered some nights ago were from the Honey Pot, They were walking down her street which does not go anywhere. She was walking her dog as normal when she got home from work, and was startled to see them. She asked where they were going, and they responded to see a friend. Her dog was getting upset; the men turned around and went through the parking lot. While she could not say they came from the Honey Pot, she was concerned about the amount of activity that in the recent past had migrated down that street and across the street. She did not follow them to their doorstep, but they came and returned to the area. Wood said that is one reason she is so concerned about the lights, because there are a lot of elderly people living there. Bitomske commented that in the past, as with any establishment, people go there from out of town and don't know where they are going. The police deal with them if they get a call.

Tom Brown said he was a property owner about 100 yards down the road; the average was four nights a week starting at 8:30PM until 12:30AM. From some areas outside of the house you can't hear [noise] very well. Inside their home it is like someone playing music down the hallway. Brown said he gets up between 4:40 and 5AM and had called the police. The police cannot be a referee. They are right on the Hampton Falls line. Hawkins asked for Brown's address. Brown said Pages Lane, Hampton Falls. It was ongoing. His neighbor and he had filled out a complaint. He'd called the police about 20 times; sometimes he doesn't want to call and turns the TV way up. That's how they had to live until 1AM. When it was Tang, it was just a Chinese place, not a nightclub with loud music. Brown said it should be soundproofed which he thought was easy enough to do – he's in construction. He had talked with Garand. There are 3 neighbors who hear the same thing; the others have small kids. Janvrin asked if they had this issue when it was Tang's. Brown said they did not. For him, it was nothing to do with the parking. Everyone should be able to run a business. There should be soundproofing. They lived there 20 years, and are about ready to sell. They can't live on 4 hours of sleep. The neighbors aren't happy.

Wood asked if copies of any of the complaints had been submitted. Janvrin asked if the complaints had been made to the Seabrook Police. Brown said to the Seabrook police, Garand, and the Board of Selectmen. Garand said they are on file in his office. Complaints are not ordinarily filed with the Planning Board. Hesse said he was on the Board of Selectmen and had received 2 or 3 calls and talked with Brown and about the next door neighbors, they are all quite concerned with the noise, He did not blame them; the walls have vibrated. They need to think about doing something, or tone it down to stop that type of noise. He couldn't tell what a live bank would do to this if they cannot take care of this somehow, in some manner. It wouldn't help one bit if it vibrates even more. He came to the meeting because he had received some calls about this. Bitomske suggested having Johnson make the repair.

Hawkins said the owner would be asked for a parking plan. He must deal with the issue one way or another. Also the Honey Pot needs to acknowledge that they are affecting neighbors and figure out a way to do something about it. The Board wants the businesses in Seabrook to be successful. The Board had the responsibility to acknowledge the neighbors, and to assure that those businesses are not affecting those neighbors. At this meeting the neighbors had made a



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

passionate plea that they are being affected. Although they had given comments relating to what they could do for soundproofing, the Applicant should supply more detail. The Board would not say to hire a sound engineer, but the Applicant would have to deal with this and probably satisfy the Board that they had done enough to be sure the neighbors are not being driven out at 12:30AM. He thought it would be easy to turn down the amplifiers and keep the sound under control; or soundproof the whole building. He did not think this would be that complicated. If the bands are allowed to play loud enough to affect the neighbors half a mile away, that wouldn't do it. Janvrin wanted the record to reflect that even though Brown lived in Hampton Falls and was not a direct abutter to the Applicant, under the RSAs he was still considered an abutter. Hawkins said Brown is one of the neighbors even if he lived in Hampton Falls.

Hawkins had discussed getting the owner to attend a Board meeting to address some of these issues. The parking allocation needed to be added to the letter that would be written to him. He recommended continuing the case to September 4 to get feedback from the owner. Wood said the neighbor's statement that they were considering taking back the easement for the parking had to be considered. Hawkins said a parking plan had to take into consideration all the units in the area including the gym – the south condominium, north condominium and the shared parking in between. This all needs to be defined for the Board. Right now it is guesswork for decisions without hard facts. That is not the Board's job to do this. The Board's job is to take the information the Applicant provides, and make a decision as to whether that is satisfactory or not. Janvrin's view was that a decision made at this meeting more than likely be a denial. .

Hawkins continued Case #2012-16E to September 4, 2012 at 6:30PM in Seabrook Town Hall, at which time he hoped the property owner would appear.

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, August 7, 2012;

Hawkins referenced a letter from the Applicant requesting that **Case #2012-17E be withdrawn from consideration.**

Case #2012-18 – Proposal by Latium Management Corporation, Tropic Star Development, LLC, and Scott Mitchell to demolish the Getty North station and replace it with a 1,200 square foot "retail" building and two gasoline dispensing islands at 663 Lafayette Road, Tax Map 7, Lot 87, continued from July 17, 2012;

Attending: Scott Mitchell, Jeffrey Gove, Jim Mitchell – Tropic Star Development LLC;
Appearing for the Applicant: Mike Kerivan, Jones and Beach Engineering; Attorney Richard
Appearing: Charles Mabardy; Attorney Richard Uchida, Hinckley, Allen, Snyder, representing Tropic Star; Attorney Chris Aslin, Bernstein Shur, representing Charles Mabardy;

Mitchell introduced Uchida, Gove, Jim Mitchell, and Kerivan, stating that Kerivan was representing Jones and Beach Engineers, as Wayne Morrill was on vacation. Using a drawing, Kerivan addressed the following recommendations in the Technical Review Committee Minutes of July 30, 2012. The Title Block positioning and information had been moved to the required right corner of the plansheets. The underground tank location was in place; the date of removal would be inserted. The area where pavement had been removed was now shown. A sign, guardrail, and jersey barriers would be removed from town property. An oil-water separator with a sediment chamber will be installed for the drainage. Any other drainage items that the town



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

wants would be installed. Kerivan stated that the procedures in the Memorandum of Understanding between the Town and the NH Department of Transportation were followed. However, with the concurrence of Steven Ireland of NHDOT District 6, the right in/out on Lafayette Road would be acceptable.

Hawkins noted that Ireland could not attend this meeting, and had requested an opportunity to speak to this plan. There were some questions, e.g. the proximity of the driveway to the traffic signal at the corner of New Zealand Road, and the queue going down to Route 107, which did not fit in with the MOU. He was interested in Ireland's reasoning. As Ireland would be attending the September 4 Planning Board hearing, Hawkins wanted to hold questions about traffic until that meeting. Mitchell said they would also have their traffic engineer present at that meeting.

Mitchell said that the tanks would be placed outside of the original setbacks. Kerivan said the signal to be installed as part of the DDR shopping center construction was shown on the plan. Kerivan said there were no wetlands on the site, ergo no need for prevention measures. A landscape plan showed the position of the Liberty Elm. A waiver had been submitted in re the landscape requirements. He pointed out the handicap spaces and said the design would be ADA compliant. Kerivan said that according to the current design, they would need a variance from the Board of Adjustment. Janvrin asked if this would be for the canopy closets to Lafayette road. Kerivan confirmed this, and said they would follow the state standards for underground tanks. The submitted waiver also covered aspects of the back lighting. A traffic report had been submitted. They would be contacting the Historical Society to see what could be done about a connection to their abutting building.

Kerivan said that Uchida would be speaking to the parking issues. A truck turning plan had been submitted; he pointed out the truck turning movement. They will work with the Water and Sewer Departments for permits. A new water line was proposed for fire suppression and sprinkler connections. The construction entrance would be off New Zealand Road, and there would be fencing for the abutters. Khan asked about the southern lot line. Kerivan pointed out where they would be straightening out the area and providing a green buffer. Khan thought the sidewalk existed, and asked if it would remain. Kerivan said that was correct, except along a proposed island where pedestrians would have to walk around it. Morgan expressed surprise because pedestrian safety along Lafayette had always been ensured. Some type of amenities should be out front. Janvrin noted that one property along Lafayette Road could not have a sidewalk but did have zebra striping that went through the site for safety. He wondered if that would be a possibility. Wood noted that everywhere in that area had or would have sidewalks; without some kind of pedestrian way, she would be very concerned. Janvrin pointed out that a sidewalk did exist.

Hawkins wanted the Planning Board Engineer to review the Truck Traffic circulation plan. Wood pointed out the importance of keeping landscaping anywhere near Route 1 low for sight purposes. She commented that at some intersections in the town this is a difficulty. Chase assumed that when filling the tanks trucks would go over the 9 parking spaces, and asked how they would handle this in the afternoon. Kerivan said they would be required to fill tanks at night and not in the afternoon. Chase commented that he could easily see the site from his office. He also expressed concern about the drainage pipe going across the street that is plugged up with sand and floods the parking area. He wondered if the pipe was too narrow. Kerivan was not planning to touch that. Mitchell said they would inspect the 12 " pipe with a camera and take care of the problem. Kerivan thought that would not be a problem coming from their site once the sediment is treated, and noted that the calculation say this will work.



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

Wood asked about the building that is near the rear of the site and asked if it would not be used. Hawkins noted there were issues related to an easement that would be addressed after the TRC responses. He asked to hold that question, noting that another individual would address that. Kerivan said the Applicant would work with the Fire department re fire suppression and the dedicated sprinkler line. Janvrin understood the space constraints on the site. However, the concept of the Liberty Elm was to replace the trees that were along Lafayette Road in 1863. That might not be possible based on sight clearances etc, but he did not think it appropriate to place it on the Town property. Janvrin was concerned about the truck turning radius, but even more so that the rear tires would drag across New Zealand Road by about 3 feet. He did not want to see the rear tires of a tractor trailer being dragged across an oncoming traffic lane. Perhaps adjusting the curb cut or the width of the lanes could address this overlapping. He had great concern that if a car needed to exit, the truck might have to back up which he said would be too dangerous. Janvrin recalled a similar situation in which the Market widened a curb cut.

Janvrin thanked the Applicant for addressing the TRC items, including a cross connect to the Old South Meeting House. He had been approached by Historical Society individuals who are interested in discussing this. Mitchell said they would meet with Bruce Brown and Eric Small about creating access to the historical abutting building. Mitchell said snow would be hauled offsite. Hawkins asked for other questions relating to the TRC issues; there being none.

Hawkins asked the Applicant to address the parking easement. Attorney Uchida said the easement is for the benefit of the property in back of the site - further up New Zealand Road. However, his firm had determined that it did not give parking space exclusivity solely for that property in the back alone. Uchida referenced a letter from the seller of the property which also indicated that this easement was not exclusive. They want to be sure that the Applicant could use those spaces during the course of their operation. He also pointed out the location of the new underground tanks. Khan asked if those parking spaces would be shared by the Applicant. Uchida said the easement is non-exclusive, meaning by its nature that the area would be shared by one or more property owners. Not only is the area to be shared, but they needed to make sure that in their operation they do not materially interfere with the use of those spaces either for themselves or the adjoining property owner. Based on their experience, they would be able to control the time of deliveries, commenting that was becoming a more and more important issue for a lot of municipalities.

Wood asked if the property line for the building in back did not include the parking spaces; that the parking spaces belonged to the property out front. Uchida said that the spaces that the property in back gets the benefit of are located on the property before the Board. Wood asked if that is usually done i.e. that the property in the back [does not have spaces]. She asked if the properties were once a single property and then separated and, if so, when did that occur. She thought there was a building on New Zealand Road that did not own any parking spaces; it only had an easement on someone else's property. Janvrin thought that still satisfied the regulations. Hawkins said the issue had to do with potential future use. It was similar to the issue at 920 Lafayette Road in that whatever goes into that building would have to satisfy a parking need that would have to come from these spaces, but are these spaces also being allocated to the Applicant's site. Wood said what if a new use was a restaurant.

Chase asked for the hours of operation and what time the deliveries would be made. He thought large trucks would not be allowed in the area after a certain time at night or in the morning. He explained that his building across the street cannot have the dumpster picked up in the middle of the night. Hawkins first wanted to have a game plan as to how the Applicant would deal with the



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

future requirements of the business in the back. Uchida said that would be speculative until it was known what business might occupy the building in back because the hours might be very different. Hawkins thought that was putting the problem into the Board's lap for when a new business might come in when there might not be enough spaces to share. He wanted the Applicant to tell the Board how the spaces would be shared so that when the business in the back comes to the Board the space allocation would be known. Uchida said that is hard to do if the uses are not known simultaneously. Hawkins wanted a more specific plan, noting that the requirement is 4 spaces per 1,000 square feet. He asked where these spaces would be, and would they be allocating the other spaces to the other business. Uchida said they could talk about how that would happen, but until the use, the parking needs, the hours, and the trip generation were known, it would be a speculation on which to build a formula.

Hawkins said the Applicant and not the Planning Board should build such a formula. The Board's maximum allowable parking was known. Uchida said the Applicant needed 5 spaces, based on the experience that when a person fills the gas tank they do not then move to another space. They have plenty of space on the site where the gasoline is being dispensed, even without using any of the 9 spaces [in the easement]; they have the 5 spaces without them. Hawkins asked if the maximum was covered. Uchida said it was. Hawkins asked if the maximum for retail was 4 per thousand; Morgan said it was. Hawkins said if the site needed 5 spaces, why not allocate the other easement spaces for the business in the back so there is a plan available in the future as to which spaces are allocated to the building in the back and which to the building in the front. Uchida understood the request for an allocation plan, but was not prepared to do that at this meeting. Hawkins did not want that done at the meeting, The Board wanted the Applicants to deal with the parking allocation issues on their property. Hawkins asked for other questions at this time relating to the easement; there being none. Uchida asked if the Board had the letter from the property owner. Hawkins did not think so. Mitchell offered to make copies. Uchida said he would send it to Kravitz.

Chase asked about the hours of operation and for deliveries. He assumed that if a business is in operation using the spaces, then the deliveries cannot be during that business' hours of operation. Mitchell said he was very familiar with operating in Seabrook and owned real estate themselves. They had also been before the Board before, and understood the town had hours of operation, and limits for tractor trailers and to empty trash. They are very familiar with, and will abide by the zoning regulations. They had not yet determined the hours of operation, but he thought that the ordinance had limits for truck deliveries. Morgan confirmed this. Janvrin said that the building in the back has the right to use the easement spaces, and asked how they would protect the easement during the construction. They would have to dig up the area to install the tanks.

Janvrin asked if there were a plan in place for the easement holder to protect their parking. Mitchell said they had not thought about this in re the construction phase, but if it concerned the Board they would do so. Right now the building in the back was empty. Mitchell said there was plenty of room for the [abutter] to put parking on his own site. He said the property had been on septic and now was on sewer and could have its own parking. Mitchell said they would provide a letter for the Board stating that this is not an exclusive easement. Janvrin felt it was a moral duty to protect the easement rights during construction. Uchida said that as part of the construction plan they would have to provide some temporary parking; the site work would be done first so there would be plenty of room for this. Janvrin wanted to avoid this issue for the abutter.

Khan's experience was that Mitchell had built some of the good projects in the town, and kept them very nicely. It seemed that for this project he wanted to put everything in a very small



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

space. He thought this was not Mitchell's style, and wondered why. Mitchell responded that they were buying the property to get into the gas station business. It was a decision that his family made and which he and Gove had decided to do. They love Seabrook and have done a lot of projects in the town. This is a small piece of property. When they put it under agreement, the intention was to try to buy the back abutting piece. After the property was under contract, they found out that Mabardy owned that property. When Mabardy learned they were going forward, through the broker or otherwise, they ended up in court over a right-of-first refusal that Mabardy had on the front piece that wasn't exercised properly. They went to Court and won. They offered to buy Mabardy's property, but he did not want to sell to them. They will work with the footprint that they have.

Mitchell said he'd done the Irving station and understands the gas business. He'd done a hundred stations and was not a newcomer at this business. There are a lot of small stations in Seabrook like the BP and Tony Rizzo's stations. The XtraMart was smaller than this site. It can work. They have had it laid out and are happy with it. They know the traffic light would be going in, and that they would be across from a super Walmart. That is why they want to come. He'd like more land, but did not think that Mabardy would sell to them.

Khan said there is nothing wrong with a gas station there; a realistic plan could be made. He did not think this very realistic for the amount of land they have. They want to have two canopies and a whole convenience store, and they have issues with their abutter. Khan's view was that at this point it seemed not realistic. He said that Mitchell was a good planner and that maybe they could do something nice at that corner. Mitchell said they want to make a statement and will build a showpiece. He called attention to the site as it is today. They believe in the site and in the Town; also it is right before the access. He thought that Khan was correct that the station would do "X" amount of gallons and could not handle much more than that. He thought that Mabardy would get one side of the road and they would get the other side. Khan said there was enough business for everybody.

Hawkins noted that the Applicant did have to go back to the ZBA. The traffic people would be coming on September 4. The primary concern would be the traffic. If there was time, other things could be discussed. He thought the Applicant's traffic consultant should be at this meeting. The Board's traffic consultant would be attending. Ireland would be attending and some of the issues with entrances and exits would be addressed. Janvrin asked if the Board's traffic consultant would have reviewed the traffic report. Hawkins said Kravitz would look to arrange that. Wood understood that Mitchell was familiar with the regulations. At the next meeting she wanted an explanation as to how the trucks would get onto the site and at what time; she wanted to know how the spaces would be taken care of. She thought this would be tight. Mitchell explained that they would go to the ZBA for the front canopy if they feel it necessary. This is an aesthetics issue. They don't have to do it, but probably would. Hawkins did not want to hold up the process, but wanted this matter resolved before a Planning Board decision.

Mitchell asked for a determination from the Board as to whether this would be necessary. Hawkins said the Board tries not to usurp someone else's responsibility. If they are building over the setbacks, that is a zoning issue, not for the Planning Board. Mitchell wanted to ask Garand. Hawkins asked for Morgan's view. Morgan had raised the question, but did not have the answer for this meeting. Hawkins said whether the overhang was included in the setback when he built his house; the answer was yes. Hawkins thought this situation was the same. Anything inside the setback was outside of the Planning Board's purview and inside of the ZBA. Janvrin said this was an existing non-conforming structure that they were modifying. He thought they should go to the ZBA who may say there is no problem. Mitchell said they would take that under advisement.



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

Aslin, representing Mabardy, had responses to present concerning some of the easement issues. He also wanted to address an issue of non-conformity that the Planning Board dealt with in February that they have filed an administrative appeal. Aslin was prepared to speak at this meeting or reserve the right to address this at the next meeting. He did not want to lose the opportunity to address the Board. Hawkins asked how much time was needed. Aslin thought about 15 minutes. Hawkins noted that the Board had another case to deal with. He explained that the next meeting would deal with traffic exclusively, but Aslin's discussion could be put at the end of that conversation if he wanted, so Aslin would have the opportunity to get his remarks on the record and questions might be asked. Janvrin suggested that Aslin provide a brief that the Board could read before the meeting. Aslin will do so. He informed the Board that the administrative appeal had been filed with the ZBA the previous day, although it did not address some of the easement issues. He did want the opportunity to present his remarks to the Board. Hawkins said the Board would try and discuss Aslin's issues along with the traffic discussion. Kravitz said anything for the Board's packet was needed by the following Tuesday.

Hawkins continued Case #2012-18 to September 4, 2012 at 6:30PM at Seabrook Town Hall.

OTHER BUSINESS

Case #11-34.11.03 Demoulas south - amended lighting request

Lowry resumed his seat.

Appearing for the Applicant: Jim Lamp, J & Co; Earle Blatchford, Hayner Swanson;

Blatchford referenced his letter in which they requested an additional field change. The Applicant wanted to amend the previous request for changes in the site lighting to LED lighting on new poles holding to the existing 7 ½ feet. This would give the site a more linear look in keeping with the Applicant's newer design criteria. Using a drawing, Blatchford pointed out the pole locations. Some new landscaping islands would be included, and some would be removed. New bases would be needed for fixtures and poles that that would be moved. Unintentionally, they would pick up 11 parking spaces and reduce the open space by 900 square feet. The intention was to clean up the site. A new photometric plat had been submitted that conforms to the previous approval and the regulations.

Hawkins said the Board granted the existing tall poles because they did not want to move them. The Board had pressed on landscaping and open space, and now they want a reduction in open space and an increase in parking. Lamp said it was not about the spaces. Hawkins said they had decided the size of the islands. Blatchford said the reduction in the islands is 5 ½ parking spaces. They could widen some of the islands which would add landscaping. Lamp did not want to keep coming back for such matters. When Demoulas gets out on the site they see small changes. In this instance they wanted the poles lined up on the center line of the stripe; they were off by 4 feet. Lamp said that the open space and landscaping could be restored which would give back the 11 parking spaces. Hawkins asked if the poles could be all the same height. Lamp said this actually gives better spacing and lights up the lot more consistently. The poles and the fixtures would not change from the last approval.

Hawkins did not have a problem converting to the LED lights. He wanted the 11 spaces to be given back in landscaping for more greenery and bigger islands, as this is a pretty sparse site. . . , suggesting bigger islands. Lamp agreed to this proposal, and asked if Morgan could sign off on the plan. Wood wanted more greenery because a lot of area to the north was lost; a lot of people did not realize how much green space would be lost. Khan said the cars come from the parking



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

area into the new north entrance. He expressed concern about the narrow cross-walk at the new entrance doors. Lamp noted the area is still under construction and would be cleared. Hawkins said people come into the store from all directions. He thought that would be an ideal for a very wide striped area to alert cars to slow down. Lamp said they would make the path as wide as the doorway.

Ed Hesse said that trees were cut down along Railroad Avenue so that the lights shine across to the neighbors. He thought the lights would be shining forever if something was not done. Lamp said that no trees were cut that were not on the siteplan. Hesse said that might be so, but it made a big difference in the way the light shines at the neighbors. Lamp said the new lights with the cutoffs were not yet in. When they were, the new lighting would not go over the property line. The old lights did not have the benefit of the cut off boxes. Also, they were putting in more fencing than first proposed, and were ordering the guard rail. Garand had received calls from abutters who were concerned about the ponds, mosquitoes and the habitat. He asked if there were a plan for mosquito control Lamp said they would put in plugs and bat houses. Janvrin said the Lafayette Road right in/out was bad, and asked that the reconstruction be done as soon as possible. Blatchford asked if he could resubmit the plansheet commented that this lighting was vastly improved over what was available a few years ago. Sweeney asked whether the curbing that had been removed would be put back. Lamp said it would be completely reconfigured. Blatchford said the island had been redone, but not the entrance.

MOTION:	Hawkins	to approve the lighting changes requested for Case #11-34.11-03 as presented to the Planning Board on August 21, 2012, provided that (i) the fixtures are changed to LED, (ii) the pole heights remain as approved, (iii) the islands are depicted as in the revised plan dated July 3, 2012, (iv) the proposed 11 extra spaces are eliminated and replaced with landscaping, (v) and the revised plan to be submitted and be entirely satisfactory to the Town Planner. To be submitted
SECOND:	Janvrin	Approved: Unanimous

Khan asked whether the tenant for the stand alone building was known. Lamp said this was not yet known. They would probably be returning for minor changes.

Hawkins said the remaining agenda items would be continued to the next meeting.

CURRENT ZONING MAP FUTURE ZONING CONSIDERATIONS

Tom Morgan, Town Planner



Town of Seabrook Planning Board Minutes

Tuesday, August 21, 2012
NOT OFFICIAL UNTIL APPROVED

CONDOMINIUM REGULATION CONSIDERATIONS

Tom Morgan, Town Planner

CONSIDERATION OF RECORDING SITE-PLANS

Tom Morgan, Town Planner

PLANNING BOARD - MEMBERSHIP

Hawkins adjourned the meeting at 10:20 PM.

Respectfully submitted,

Barbara Kravitz, Secretary
Seabrook Planning Board