Members Present: Donald Hawkins, Chair; John Kelley; Robert Fowler; Robert Moore, Ex-Officio; Elizabeth Thibodeau, Alternate; Tom Morgan, Town Planner; Barbara Kravitz, Secretary;

Members Absent; Sue Foote, Vice Chair; Keith Sanborn; Jason Janvrin; Paul Himmer, Alternate; Michael Lowry, Alternate; Paul Garand, Code Enforcement Officer, Alternate;

Attending: Attorney Walter Mitchell, Counsel to the Planning Board; Aboul Khan, Selectman; Barry Brenner, Town Manager; Jim Grafmeyer and Attorney Malcolm McNeill, Jr; DDR;

Hawkins opened the Public Meeting at 6:37 PM and said the meeting would be suspended to meet with the Planning Board Attorney to discuss the DDR litigation. Hawkins said there was a good possibility that the Board would reconvene in the Public Meeting, but that was not certain.

Michael Kettenback of Demoulas-Market Basket raised a point-of-order, and asked if there would be no public comment. Hawkins confirmed this. Kettenback said he would withhold his comments and presented a letter from Attorney Gartrell.

Hawkins said that the Board would then retire to meet with its Attorney.

The Board returned to the Public Meeting at 7:42PM. Hawkins said the Board had completed discussions concerning the proposed Settlement of the DDR litigation and stated that after a Board vote copies of the relevant documents with the details would be available.

Hawkins explained that the original Phase I project (Case #2006-32) for approximately 137,000 square feet of retail space had been approved in March of 2008. The Phase [ll] project (Case #2008-23) for a total of approximately 450,000 square feet of retail space, inclusive of the already approved Phase I project, was denied by the Planning Board in May of 2009 primarily because of (i) the traffic bottleneck created when vehicles turned from Route 107 onto Route 1 south, which previously NH Department of Transportation had deemed a local problem, would only get worse, and (ii) the developer’s proposal for an expansion of the Route 107 Bridge over I-95 to four lanes. The Board felt it was important for the Bridge for the Town’s only east – west corridor to be five lanes with sidewalks, and thought this would be the only opportunity for that to happen. DDR challenged the Board’s denial in New Hampshire Superior Court and won a ruling that effectively gave them approval for Phase II as they had proposed it, based only on the Court’s questioning the Planning Board’s authority to consider the development’s traffic impact on a State Road (Route 1). After that ruling, the Town then appealed to the Supreme Judicial Court, which is the current status.

Hawkins said that discussions among DDR, NHDOT, and the Town of Seabrook took place during the summer of 2010. Hawkins said the changes that led to the settlement included the Legislature allocating $4,000,000 toward the Bridge improvements and the NH Department of Transportation supporting a five-lane bridge over I-95. Additionally, the NHDOT expressed interest in participating in addressing the traffic issues on Route 1 south of Route 107. The Selectmen and NHDOT will have to work out whether there will be sidewalks and, if so, who will have the responsibility for sidewalks. The Bridge will be built with five lanes and enough area for sidewalks. Under the agreements, monies for the Bridge include contributions from NHDOT of up to $4,000,000, DDR up to $2,300,000, and the Town’s portion will be $200,000 of the $800,000 which it already has from exaction fees from prior cases along Route 1, for a total of $6,500,000. The full cost of the Bridge related work is estimated at $5,600,000 so there seems to be enough monies to do the Bridge.

Hawkins said that the widening of Route 1 south of the Route 107 intersection would eliminate the bottleneck that seems to be the cause of the problem. The State is in charge of that project and will acquire whatever land is necessary to do that project, and the State is responsible for construction. DDR is providing $127,000 for the roadway design work, the Town is providing up to approximately $595,000 from existing exactions, and NHDOT is providing approximately $781,600 toward the overall cost of approximately $1,500,000, which is about what it will take to do that work. Should any additional funds be needed from the Town, up to a maximum of $275,000, will come from future exactions from developments along Route 1. Hawkins explained that DDR would also be responsible for other infrastructure improvements with a cost of approximately $3,156,000 on Route 1 North of Provident Way and from Route 1 to Spur Road, which DDR proposed to fund as a part of the original approval (Phase I).

Hawkins said the contribution amounts and schedule are detailed in a Memorandum of Agreement among the NHDOT, DDR and the Town of Seabrook. Under the Settlement Agreement each party will contribute funds on the schedule set forth in the MOU. The Town would withdraw its appeal to the Supreme Court which means that the decision of the Superior Court approving Phase II would stand. DDR would have 18 months to determine the commercial viability of the Phase II project. At that time, if it chooses not to move ahead, Hawkins said the [Superior Court] approval would expire and the Bridge and Route 1 work would be placed in jeopardy. However, Phase I could still be built. Hawkins commented that it is unusual for two open projects to run concurrently on the same site. AngelJean Chiramida of the Newburyport News asked if there was a date after which the Phase I approval would no longer be valid. Hawkins said that the Planning Board had approved extensions for the cases during the litigation. Those extensions start after the litigation is over. Morgan said according to the site plan regulations, if the project hasn’t started within two years, the approval would expire. State statutes govern how long they have for completion. Hawkins said The NHDOT has responsibility for construction so the Town has no responsibility for that work. DDR’s participation will be to fund the engineering and design work. The town’s financial responsibility toward that work would be zero. If DDR sells the property, the agreement would be binding on its successors. There is no exposure for the taxpayer in any of the agreements. If money is needed to pay cost overruns, the Town’s participation will be through exaction fees as set up in the site plan regulations, so there is no impact on the taxpayers.

Hawkins said for years the Town has been struggling with a narrow bridge going from east to west, so the Town benefits by the widening of the Route 107 Bridge at the only Route I-95 exit in Seabrook. Hopefully it will have sidewalks. Additionally, everyone has been caught-up in the Route 1 south traffic, and this project also addresses improving that situation. Hawkins said this is a window of opportunity for all sides to take advantage of a win/win settlement agreement where the NHDOT is providing more participation; and the Town’s exposure is minimal. He noted that exaction money that hadn’t been used after six years must be returned. Hawkins said he would support the agreement. He asked for comments from the Board.

Moore said it had taken four years to get to this point, and this is the only opportunity to get something done; the traffic will only get worse when the economy comes back. The State has no plans to do anything about Route 1 south from Route 107 for 20 years. Getting the Bridge is critical. Vehicles can get into town, but Route 1 south and the Bridge are the only exits from the town. Kelley could not see a reason to withhold support. He was fine with the proposal and said you can’t get everything. This is the best opportunity to please the most people for the most good. Thibodeau’s main concern had always been the traffic which is always backed-up. She saw this as a great opportunity and would go along with the Bridge as well. Fowler said this would keep the traffic moving AM and PM. Hawkins asked Attorney Mitchell if he had left anything out. Mitchell said Hawkins had not left anything out; emphasizing that the negotiators did an excellent job. The aerial concept map was left with the Planning Board.

Hawkins said if there were no further comments he would call for a motion. He asked that the Board be polled.

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| **MOTION:** | **Kelley** | **I move that the Planning Board Chair, Donald Hawkins, and the Board’s Attorney be authorized to sign a Memorandum of Understanding and Settlement Agreement with the State of NHDOT and with DDR, withdrawing the Planning Board’s appeal to the Supreme Court of the Rockingham County Superior Court decision dated October 29, 2009, provided that the final documents are in substance the same as those presented by counsel to the Board at its November 4, 2010 meeting.** |
| **SECOND:** | **Thibodeau** | **Approved: Unanimous** **Polled vote in favor: Hawkins, Moore, Kelley, Thibodeau, Fowler.**  |

Hawkins announced that the Settlement documents were now available.

There being no further business, Hawkins adjourned the meeting at 8:03PM.

Respectfully submitted

Barbara Kravitz, Secretary

Seabrook Planning Board