



Town of Seabrook
Planning Board Minutes
Tuesday, November 18, 2014
NOT OFFICIAL UNTIL APPROVED

Members Present: Donald Hawkins, Chair; Jason Janvrin, Vice Chair; Roger Frazee, Michael Lowry, Francis Chase, Ivan Eaton III, Aboul Khan, Ex-Officio; Tom Morgan, Town Planner; David Baxter; Alternate, Barbara Kravitz, Secretary; Steve Zalewski, Building Inspector; Rick Friberg, Peer Review Engineer, TEC;

Members Absent: Sue Foote, Alternate; Paula Wood, Alternate,

Hawkins opened the meeting at 6:30PM.

MINUTES OF OCTOBER 7, 2014

Hawkins asked for comments or questions in re the October 7, 2014 Minutes; Janvrin abstained.

MOTION:	Lowry	to approve the Minutes of October 7, 2014 as written.
SECOND:	Chase	Approved: Unanimous Abstained - Janvrin

MINUTES OF OCTOBER 21, 2014

Hawkins asked for comments or questions in re the October 21, 2014 Minutes; there being none.

MOTION:	Janvrin	to approve the Minutes of October 21, 2014 as written.
SECOND:	Lowry	Approved: Unanimous

SECURITY REDUCTIONS, EXTENSIONS, ROADWAYS

Case #2013-13 Sea City Crossing, Mitchell, IStar 652 Lafayette Road

Hawkins said a letter was received from James Mitchell requesting the return of security for Case #2013-13 Sea City Crossing Phase 1; the required checklist signoff was not submitted. Mitchell said because they had a potential renter for the remainder of the building, the proposed restaurant would be moved to the Phase 2 building. Hawkins noted that Morgan said the applicant should request such a change in a writing to the Board. Janvrin said this change would require a grease interceptor and suggested that that change jurisdiction could be waived to the Building Inspector. Chase asked if the square footage would be the same. Hawkins believed it would.

CORRESPONDENCE AND ANNOUNCEMENTS

Potential Zoning Map Changes

Hawkins reported that Morgan was working on matching the zoning boundaries to the property lines. Under a new state requirement, the town would have to send notices to certain residents if there were more than 100 adjustments in a particular zone. It looked like about 50 notices would have to be mailed.



Case #2014-24 – Robert A. O’Keefe, Lorraine P. O’Keefe, and the R&L Realty Trust propose to re-locate an access drive along Route 1A, and to expand parking and internal drives at O’Keefe’s convenience store at the corner of Routes 1A & 286 (445 Route 286) Tax Map 17, Lot 48-1.

Attending: Robert O’Keefe;

Appearing for the Applicant: Attorney John Gillen

Hawkins noted that the approval for the new entrance required the Applicant to provide a cross-easement to the back property which should be recorded, but only O’Keefe had signed the document. Kravitz noted that item #6 specified that the document would not be recorded. Hawkins asked the Applicant to explain why it should not be recorded. Gillen said according to meeting Minutes Attorney Craig Solamon had acknowledged that there would be no recording; the easement would be inserted in the driveway permit. Accordingly they put a note on the siteplan that the easement was a side agreement. Hawkins noted that the problem was that a proposed easement was not recorded the last time so it was not enforceable. Gillen said they were asked to draft a proposed cross-access easement which O’Keefe signed, but the fence was still there and the other side did not.

Hawkins said the Board wanted the easement to be recorded and notated on the plan. That’s the only way to say it was in effect. He asked if Morgan saw it differently. Morgan said an easement was a serious property item; if it was not recorded it was useless. Hawkins said the Board wanted a recordable cross access easement with Item #6 removed. Gillen said the abutter had been provided with the document but had not signed it. Hawkins said at the last meeting the board wanted both parties to agree and sign a cross-access easement for the traffic flow. This is being done on Route 1 so that traffic did not have to go onto the highway to get from one building to another. Obviously with the fence, the access disappeared. When the abutting property next comes to the Planning Board there would be an opportunity to obtain agreement from the new owner. As O’Keefe was now before the Board for a driveway cut, this was the time to get his signature and do the recording as part of his siteplan. Gillen said the abutter would not sign it now. Chase said if the abutter would not sign at this time, that might change in the future.

Gillen asked if the Board wanted a cross-access agreement that was signed by one party and recorded. He did not see how that affected the abutting property owner if it did not sign. Hawkins said it would not be effective now, but it would be on the plan and could be addressed with a new owner in the future. Gillen agreed that only O’Keefe would sign [for recording purposes].

Hawkins said that the NHDOT had agreed to replacement of the sidewalk that had to be ripped up for the driveway cut, but wanted the town to sign the Sidewalk Maintenance Agreement. He thought the Board should motion to recommend that the Selectmen sign the Agreement for that portion of the sidewalk, as was done near the Verizon building on Route 1. Khan noted that for some property the Board asked that the sidewalk be moved inside the lot. Hawkins said that was not practical for this property. Morgan said the property line was well inside the lot. Khan felt that the document detail was insufficient, lacking the dimensions of the part of the sidewalk to be covered by the Agreement (length and width of that part of the sidewalk along Route 1A). Khan said this situation was different from other sidewalk agreements; the town would not be liable for everything. Hawkins said there was no liability, only maintenance. Morgan said the document did not have any limits. Hawkins said this was the same agreement, without dimensions, that had been signed with the NHDOT in re other sidewalk maintenance. He favored Khan’s suggestion that the Town Manager negotiate terms e.g. the number of feet, but thought that at this time the



Planning Board could recommend that the Selectmen deal with the situation. Khan agreed that the motion should reference going to the Town Manager. Chase said to let the Selectmen send this to the Town Manager. Hawkins said the BOS would not deal with this without a recommendation from the Planning Board; the driveway cut was dependent on the town signing a maintenance agreement.

Hawkins said that ultimately the Selectmen would have to decide whether the town should support maintaining sidewalks. Many towns had fought this but he knew of none that prevailed; the State was firm on this. Baxter thought no new sidewalk was involved. Hawkins said they would move some of the sidewalk and replace it. Chase commented that handicap access would be addressed. There was a granite curb and some grass. This was similar to moving sidewalk at the DDR project. Hawkins wanted to move ahead with the recommendation and leave the language to the Town Manager to modify if he felt it necessary.

MOTION:	Hawkins	to recommend that the Board of Selectmen approve the Case #2014-24 Sidewalk Agreement between the Town of Seabrook and the NH Department of Transportation in re the O'Keefe gas station property at the intersection of Route 1A and Route 286, it being understood that the Town Manager will be allowed to negotiate with the NHDOT and modify the language as he deems appropriate.
SECOND:	Chase	Approved: In favor – Hawkins, Khan, Lowry, Eaton, Frazee, Chase; Opposed: Janvrin

Case #2013-22 Johanna Lord 2 lot subdivision 55 Centennial Street

Hawkins recalled that the Lords had previously asked the Board to hold up recording the mylar approved for their property. The Board agreed to delay until December 17, 2014. He called attention to the letter from the Lords in the Board packet asking that the mylar now be recorded. The fees had been paid previously, and the \$25 LCHIP fee had been provided. By consensus, the Board agreed to go ahead with the filing.

FEMA FLOODPLAIN ORDINANCE LANGUAGE SUBMISSION

Hawkins referenced the draft language for changes to the floodplain zoning ordinance in the Board packet. Morgan explained that the NH Office of Energy and Planning served as the agent for FEMA, and had submitted new ordinance language to the Town so that the option for flood insurance could be retained. This proposed language would be reviewed with other 2015 proposed warrants at the December 2, 2014 workshop. Morgan had provided a short form for the [December 16, 2014] newspaper ad, and referenced the flood studies and sea level definitions, providing new data. Chase asked if certificates were referenced. Hawkins said the proposed flood maps were available in the Building Department. Kravitz said they were also available online via an OEP link.



PUBLIC HEARINGS

Hawkins opened the Public Hearings at 7PM.

Capital Improvement Program

Hawkins referenced a further request from the DPW Manager to add \$17,500 to the CIP for the proposed repairs to the historic cemetery wall. An additional \$10,000 was available if the Town approved the additional \$17,500 in the CIP. Hawkins asked for comments; there being none.

MOTION:	Hawkins	to add \$27,500 to the Town of Seabrook 2015-2020 Capital Improvement Program as described by the DPW Manager for the repair of the historic cemetery wall, of which \$10,000 will be provided through grant funds; this change will not require the republishing of the CIP.
SECOND:	Janvrin	Approved: Unanimous

ONGOING CASE UPDATES

Concerning Pineo Farms Culvert Issues

Hawkins recalled the discussion at the last meeting concerning the Pineo Farms culvert which neighbors said was an open drainage outfall, and requested the Planning Board support a \$9000 repair. This is a Town Manager issue. Khan said if the Board wanted he would bring the issue to the Board of Selectmen to discuss with the Town Manager and the DPW Manager whether the repair was essential.

Concerning Case #2010-24 Gove Road, Jean Drive

Eaton recused himself from Case #2010-24.

Hawkins explained that the cul de sac on Jean Drive had been eliminated and the road thereby extended, however, the work was not complete. The Board had feedback from several neighbors at the October 21 meeting, at which time Henry Boyd Jr had agreed to set up a meeting with the neighbors, Bill Walsh, and Jim Kerivan, the Board's consulting engineer. According to the letter from Boyd in the Board's packet, that meeting had not occurred. Hawkins had talked with the DPW Manager who referenced Kerivan's 14 item punch list. He wanted a meeting to address the punch list including needed drainage improvements, moving mailboxes, and notifying residents of land that might be transferred to them; they could say yes or no. Morgan had looked at the deeds some time ago and said language was ok. Hawkins asked Morgan to draft a letter to residents explaining the deeds procedure and their option to say yes or no to a conveyance. Chase said there should be no cost to the abutters.

Hawkins will set up a meeting together with Boyd in the next few weeks to address what had been completed, what remains to be done, and the timeframe, as well as the options if the work was not completed. He asked Morgan if the time period was 2 years. Chase asked if there was a 5 year period; Morgan thought applicants would be protected from ordinance changes for 5 years, but he would check the regulations. Hawkins said at the last meeting Janvrin's concern about the town doing the plowing being tantamount to accepting the road was discussed. The



Town of Seabrook
Planning Board Minutes
Tuesday, November 18, 2014
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Board and had voted to recommend Janvrin's emergency lane proposal under RSA 239:59 (a). He asked if this had been discussed by the Selectmen. Khan said it had not yet been before the BOS; he would discuss this with the Town Manager. Kravitz said the Minutes were provided for the Town Manager. Chase noted that other towns go to the Fire Chief to declare an emergency. Khan commented that the BOS acted a few weeks ago to pick up the trash and plow that roadway. He did not know if any other action would change that. Hawkins reminded that taking action without declaring an emergency lane could basically mean that the town had accepted the road.

AnneMarie Kegan said Boyd had not set up a meeting to deal with mailboxes, paving driveways only half way, and never giving neighbors notice about street paving. A couple of patch jobs were done, but not the length of the driveways. She lost a day's pay because of the paving; they should have had notice. Hawkins said that would be discussed with the people who were doing the work. Cindy Mahan asked if no meeting occurred before the next Board meeting, would they have to call again. Winter was the concern. Kegan asked how long it would take for the repairs. If this could not occur because paving could not happen now, they just wanted to know. Hawkins agreed to call Boyd for a meeting date and a schedule for what remains to be done. The case would remain on the agenda to address the technical and neighbors' issues. Kegan asked if Boyd would be given a deadline. Hawkins said that was not how it worked. Mahan was concerned because of a big ditch and drainage that had to go out to the road. Hawkins would look for what still had to be done, and a schedule of when [the Applicant] thought it would be done. He would address the outstanding issues.

Chase asked what the town could do about a completion date. Hawkins said it would depend on what the ordinance allowed. He thought it had been 5 years until the Planning Board counsel clarified that the 5 year period applied to protection from changes in the ordinance. Morgan was asked to research the ordinance. Khan asked if it would be helpful to have a representative from the neighbors at the Boyd meeting. Hawkins intended that to happen. Gina Laughton said she had expected a call about the status, but no one called her. The Laughtons wanted to be at the meeting as did Tanya Herman. Morgan said the town's limitation on subdivisions was 180 days. State law allowed for rescission of an approval, which he did not think would accomplish the Board's purpose. There was always the security. Hawkins asked Morgan to research this issue so the Board would know what action(s) it was allowed.

Hawkins continued Case #2010-24 to December 16, 2014 at 6:30PM in Seabrook Town Hall.

Eaton resumed his seat.

NEW CASES

Case #2014-27 George and Linda Filippone – proposal by George & Linda Filippone for a condominium conversion at 19-20 Whittier Drive, Tax Map 8, Lot 37-30.

Attending: George and Linda Filippone;

Appearing for the Applicant: Attorney Mary Ganz; William Edwards, Edwards Survey and Design;

Ganz said this was a simple condominium conversion. The surveyor would add the two water shutoff valves recommended by the Town Planner. Ganz asked for approval with the stipulation that the plan be revised to show the two shutoffs and resubmitted to the Board. Hawkins said this was a condominium conversion enabling an ownership change. The town's concerns were



the utilities with the 2 water shutoffs in the public right-of-way; no construction was involved. There being no further questions;

MOTION:	Chase	to accept Case #2014-27 as administratively complete for jurisdiction and deliberation.
SECOND:	Lowry	Approved: Unanimous

Khan asked if these were existing houses. Filippone said they were about 90 percent complete, waiting for final inspection. Khan asked about the shed. Filippone said it was moved slightly. Zalewski said they did not have an occupant yet. Janvrin asked if the shed was common area. Filippone said it was intended that the shed be divided with a wall, and would not be common area. Hawkins asked if the shed had to meet the setback requirements. Morgan said it did. Zalewski will address this.

MOTION:	Khan	to approve Case #2014-27 George and Linda Filippone for a condominium conversion at 19-20 Whittier Drive, Tax Map 8, Lot 37-30 conditioned on two water shut-offs to be placed in the public right-of-way being satisfactory to the Water Superintendent and depicted on the plan.
SECOND:	Lowry	Approved: Unanimous

Case #2014-28E Proposal by Cabinet Real Estate Holdings, and Nick & Irene Havas to establish a cabinet showroom outlet for kitchens and baths at 308 Lafayette Road (the former West Marine building), Tax Map 9, Lot 49-2.

Attending: Jordan Shallow

Shallow proposed carrying on his business in the building previously occupied by West Marine. Hawkins asked if this was for sales and inventory. Shallow said this would be a showroom with manufacturing and shipping done from a different New Hampshire location. Khan asked if shallow had a showroom anywhere else; he did not. Morgan asked about landscaping, lighting, parking and signage. Shallow said they would use the existing signs and needed a few parking spots for up to 4 customers, and no additional lighting in the front. They will clean up what is overgrown; they did not intend to add shrubs or trees. Janvrin asked about deliveries. Shallow said this would likely be through the front door. Eaton asked if the lease allowed access in the back. Shallow said they would keep this as beneficial. Janvrin was concerned about the dumpster falling down and litter, as well as skateboarding. Chase cited the lack of sidewalks. Hawkins said this was not a rehab or siteplan review.

Zalewski asked if the operation was retail with stocking and sales. Shallow said it was essentially a display store without inventory for shipping. Janvrin wanted the driveway spaces stripped, and had concern about the sight visibility. Eaton said the parking spots in front should be more than enough. Shallow commented that he wanted safety, too. Eaton asked about the hours of operation. Shallow said the store would be open 7 days weekly from 9AM to 7PM. Zalewski thought they could reuse the sign. Janvrin noted that signage could be on the building if compliant.



MOTION:	Janvrin	to accept Case #2014-28 as administratively complete for jurisdiction and deliberation.
SECOND:	Eaton	Approved: Unanimous

Hawkins said the dumpster enclosure needed repair; Janvrin said no outside storage or displays.

MOTION:	Lowry	to approve Case #2014-28 Cabinet Showroom, Nick and Irene Havas 308 Lafayette Road (the former West Marine building), Tax Map 9, Lot 49-2, conditioned on (i) repairing the dumpster enclosure, and (ii) no outside storage or displays.
SECOND:	Chase	Approved: Unanimous

ONGOING CASES

Lowry and Baxter recused themselves from Case #2013-26E

Case #2013-26E – Proposal by 11 New Zealand Road, LLC and Charles Mabardy to establish a convenience store and restaurant at 11 New Zealand Road, Tax Map 7, Lot 87, continued from January 7, 2014, continued from January 7, 2014, March 4, 2014, April 1, 2014, April 15, 2014, May 20, 2014, June 3, 2014; June 17, 2014; July 15, 2014, August 5, 2014 August 19, 2013; September 16, 2014, October 7, 2014;.October 21, 2014

Attending: Michael Lowry;
 Appearing for the Applicant: Attorney Roy Tilsley, Bernstein & Shur;
 Appearing for the Abutter - Tropic Star: Attorney John Arnold, Hinckley Allen;

Hawkins noted the need for a waiver request probably to year end. Tilsley said this was a change of use to a 1,000 square foot convenience store, and a 13,000 square foot restaurant. The requested weekly trip counts were provided by Woodland Design Group showed a maximum of 45 trips in the AM, and 48 trips in the PM, which Tilsley said were not significant enough for an exaction fee. The majority of convenience store traffic would be pass-by or impulse stops. The 8 spaces in the 663 Lafayette Road easement would be sufficient for the restaurant – convenient store purpose.

Hawkins said ease of movement required 1 space for 3 restaurant seats = 4 spaces, but no minimum for retail spaces were required by the previous ordinance. However, Woodland’s trip generation figures were for weekdays and did not show the Saturday peak hours. Given the allowed trip generation exemption of 50 trips per peak hour, Hawkins estimated a recalculation for the restaurant would show the number of trips at more than the exaction base, because both the figures of 13 and 18 were shown in the report. Tilsley will have Woodman redo the figures to include the Saturday peak hour calculation. Morgan asked if Table 1 includes the pass-bys. Tilsley said Table 1 had all the traffic; Table 2 breaks out pass-bys and new trips. Khan wanted to view the drawing with the building entrance and the dumpster. Tilsley showed the drawing. Lowry said there would be no dumpster on sight; trash would be kept inside and removed. There were two entrances – one from the walkway, and one from New Zealand Road. Chase noted



Town of Seabrook
Planning Board Minutes
Tuesday, November 18, 2014
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there was no parking on New Zealand Road. Hawkins thought that with the Saturday trip figures there would be some exaction. The Board could allow him to work that figure out, or bring the case back.

Arnold representing the abutting property questioned the whether the criteria for an "expedited" review were met, referencing Attorney Richard Uchida's April 2014 letter to the Board. In particular, the traffic study acknowledged an increase in traffic, where expedited criteria required no increase in traffic. He thought an increase in traffic would mean an increase in intensity of use. He said the 1966 and 2005 siteplans that were submitted were unclear as to the lighting, signage, and landscaping and vegetation. Arnold said other regulation requirements were the dimensions for the building lot and driveway, and the Liberty Elm which he did not see on those plans. Arnold asked the Board to look at whether this application met the requirements for an expedited application in re the submission of Case #2013-26E. From what they had seen, it did not.

Hawkins asked for Morgan's view. Morgan thought Arnold made a good case about meeting the criteria for an expedited review, noting that this had been one of the longest running of the Board's expedited applications. The difference between an expedited and a regular review were the amount of detail shown on the plan, and the fee. Morgan suggested that the Board could eliminate the discrepancy by assessing a siteplan review fee.

Hawkins said there was no building or change in impacted area, so there would be no difference in the fee. Janvrin said the difference would be the burden of evidence. Hawkins said this was a building to be repurposed and at least one of the uses was the same. He did not see significant changes. The traffic information was requested to look at the impact on the gas station as the Judge had required in the remand case. The exaction figures were close and needed to be completed. The basis for expedited applications was that if nothing on the property changed except the use, should an Applicant be asked to hire an engineering company to redo the plan to present the same application for a decision. The Board did not feel spending the money was necessary to produce the same siteplan.

Tilsley said the 2005 plan was approved and presumably had the required detail at the time. the Board held a lengthy meeting on May 1, so it already had been through what Uchida said in his April letter. The Board concluded to see traffic counts; they had been given. He did not think the time was right to say this was not an expedited application. Chase said the expedited status had already been approved; why change. Hawkins said [Attorney Arnold] thought that certain items required in the ordinance for an expedited application indicated to him that Case #2013-26 should have been a full application. Hawkins thought nothing more would be required for a full application than had already been presented. The parking was defined; there was no dumpster. He was not sure any information was missing. Arnold said even if the Board thought it had enough information, it would be the mandate of the regulations as to whether the application met those regulations. Hawkins asked for questions. Janvrin said the case had been accepted as administratively complete [as an expedited case]. Hawkins asked for Morgan's view. Morgan said redoing the plan would be of no consequence.



Town of Seabrook
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MOTION:	Eaton	to approve Case #2013-26E 11 New Zealand Road LLC and Charles Mabardy to establish a convenience store and restaurant at 11 New Zealand Road, Tax Map 7, Lot 87, conditioned on the Applicant (i) providing an update of the traffic count that includes the Saturday peak hours and which is satisfactory to the Planning Board Chair; and (ii) providing the exaction fee negotiated with the Applicant by the Chair.
SECOND:	Janvrin	Approved: In favor: Hawkins, Eaton, Frazee, Chase, Khan Recused: Baxter, Lowry;

Janvrin noted that the ordinance required a \$5,000 minimum security, but as nothing offsite was involved the security should be set at \$0.0.

MOTION:	Eaton	to set security for Case #2013-26E 11 New Zealand Road LLC at \$0.0.
SECOND:	Janvrin	Approved: In favor: Hawkins, Eaton, Frazee, Chase, Khan Recused: Baxter, Lowry;

Case 2014-13 – Proposal by M & K Complex and Timothy Johnson for a condominium conversion at 920 Lafayette Road, Tax Map 7, Lots 91-201 thru 91-205, continued from May 20, 2014, July 15, 2014; August 19, 2014, September 16, 2014, October 7, 2014; October 21, 2014;

Attending abutters: Robert and Anne Bialobrzkeski;

Hawkins noted that the Applicant did not appear and had not been heard from. Kravitz said that there were communications between Johnson’s attorney and the Bialobrzkeskis, some of which were in the Board packet and showed some disagreement. Hawkins said no case would be reviewed without the Applicant being present, and asked Kravitz to contact Johnson to be sure he understands **that Case #2014-13 would be continued to December 16, 2014 at 6:30 PM at Seabrook Town Hall.**

Janvrin asked if the Board’s fee schedule had been changed to include unnecessary delays. Hawkins’ proposal for basing some fees on the number of times the Board discussed a case had not been adopted. Hawkins did not want to make a decision without the Applicant being present; rather to let him know that the Board would take some action on December 16 and he should attend. Janvrin wanted the record to show that abutters were present. Tocky

Janvrin asked why the Case #2013-15 Waterstone retail center was on the Agenda. Hawkins said a couple of items were still needed, so it would remain there.



OTHER BUSINESS

2015 POTENTIAL WARRANT ARTICLES

Hawkins set December 2, 2014 as the Planning Board Work Session for the discussion of potential Warrant Articles for the Town Meeting.

1. Updated Zoning Map – Morgan is revising the map by moving the zoning boundaries to correspond with the lot lines. He will use a power point to display the existing and proposed lines and bring a large scale paper map to the work session. The Steering Committee had continued this work with Morgan, Hawkins, Janvrin and bob Moore.

2. Aquifer Protection Overlay Zone – Hawkins is working on this with Morgan and Janvrin.

3. Impact Fee Ordinance – Hawkins reported that Bruce Mayberry had drafted an Impact Fee Ordinance to be presented to voters before undertaking the work and cost to calculate the individual fee structure. Hawkins will provide this language. Khan said this should be promoted to the townspeople. Hawkins commented that people had strong feelings, for example, developers might be opposed while voters might say yes if fees reduced taxes.

4. FEMA Ordinance for Insurance Relief Measures – Hawkins called attention to the draft floodplain regulation changes in the Board's packet. If not approved, FEMA could suspend the Town's access to flood insurance. He recommended doing what FEMA has set forth, noting that the full text would be in the Warrant, but the Ballot would be very condensed.

5. Drive-throughs as a conditional use permit – the question was whether to permit drive-throughs for restaurants in Zone 6M.

Janvrin wanted the town to get outside assistance for writing grants. Khan suggested a warrant article for the cost. Hawkins, Morgan, Janvrin and Khan will consider this matter with the Town Manager.

Morgan reminded that LED signage had to be addressed. Zalewski asked about prohibiting such signs in the regulations.

Hawkins adjourned the meeting at 8:23 PM.

Respectfully Submitted
Barbara Kravitz, Secretary
Seabrook Planning Board