



Town of Seabrook Planning Board Minutes

Tuesday, November 20, 2012
NOT OFFICIAL UNTIL APPROVED

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

Members Absent; Robert Fowler, Sue Foote, Alternate; Paula Wood, Alternate; Paul Himmer, Alternate;

Hawkins opened the meeting at 6:35PM
Hawkins designated Lowry and Chase to vote at this meeting;

MINUTES OF OCTOBER 2, 2012

Hawkins had no changes or corrections to the Minutes of October 2, 2012, and asked for comments; there being none.

MOTION:	Lowry	to accept the Minutes of October 2, 2012, as written.
SECOND:	Hawkins	Approved: In favor: Hawkins, Janvrin, Frazee, Chase, Lowry; Abstained: Khan, Sweeney;

MINUTES OF OCTOBER 16, 2012

MOTION:	Sweeney	to accept the Minutes of October 16, 2012, as written.
SECOND:	Lowry	Approved: In favor: Hawkins, Janvrin, Sweeney, Frazee, Chase, Lowry; Abstained: Khan;

Khan asked for clarification of the status of the proposed condominium regulation amendment on the Agenda. Hawkins said this proposal had been discussed at prior meetings and had been public noticed for this meeting for the Board's approval in the public session.

SECURITY REDUCTIONS AND EXTENSIONS

Case #2005-24 Paul Lepere requesting 1-Year extension

Attending: Paul Lepere

Lepere explained that three condominiums occupy 6100 square feet of the property. Hawkins asked if the request was due to economic conditions. Lepere said he was trying but had so far been unable to sell the units and an extension would be appreciated.

MOTION:	Chase	to grant an extension to meet the conditions of the Notice of Decision for Case #2005-24 until November 19, 2013 (1-Year).
SECOND:	Sweeney	Approved: In favor: Hawkins, Sweeney, Frazee, Khan, Chase, Lowry; Opposed: Janvrin



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CORRESPONDENCE/ANNOUNCEMENTS

Hawkins referenced a letter from Anne Bialobrzkeski indicating that the parking allocations for 920 Lafayette Road were still not correct as to her husband's 2 units. Hawkins said a lot of work had been done on the site for a good effort. Kravitz said that Tim Johnson had submitted updated plans which Morgan would review and report to the Board.

Case #2012-01 Verizon, Dawson Seabrook

Hawkins referenced a letter from Attorney Mary Ganz describing the impasse in getting Walmart to agree to allow the cross-connection from the Verizon store to the existing Walmart parking lot to be completed by Dawson Seabrook. Hawkins said that Ganz would be continuing this effort, but thought it likely that a resolution would come when an application concerning the Walmart site comes to the Planning Board. Janvrin asked if Dawson Seabrook had provided the security as well as the escrow amounts. Hawkins asked Kravitz to follow-up on this.

Poland Springs Building Use

Attending: Attorney John Sokul, Hinckley Allen Snyder

Hawkins referenced a letter from Attorney Sokul concerning the potential leasing of the Poland Springs building by the Law Warehouse operation as a liquor storage facility. He asked Morgan to outline the issue. Morgan said Sokul had talked with him and Garand because he did not think a review by the Planning Board was necessary. It was suggested that Sokul present his position in writing to the Board. Hawkins asked for the pros and cons. Morgan's concern was the potential for significant truck traffic down Batchelder Road in light of the current increasing traffic from Routes 107 and I-95, the town's new landscaping requirements, and the development of the Route 1 corridor. He thought the roadway should be looked at to see if improvements would be needed and if exaction was warranted. Janvrin's only concern would be the historic traffic increase over the last ten years and the coming development. Hawkins cited the 2100 vehicle increase to come [from the DDR shopping center]. He asked what that road system impact would be, and if a traffic impact study should be done for the Bridge and Route 1 area re the continued use and increased intensity. Janvrin asked if Sokul could demonstrate more than 50 increased trips per hour. Morgan wondered whether the traffic ten years ago would have been greater than the liquor operation.

Khan asked to hear Sokul's view before voting. Sokul disclosed that the RFP for the liquor storage had gone to a different bidder, but would look for a similar future occupant. He said that this is not a vacant building, and took note of the concern expressed about traffic. Sokul said that the LAW contract would have been for 40 years with 4 X less intensity than Poland Springs; therefore, he thought a Board review was not required. He asked that the Board waive jurisdiction. Morgan agreed that the proposal did not show a change of use, but referred to the scope as stated in the site Plan Regulations in re expansion of the future use, volume and traffic. Khan said there had been significant offsite mitigation originally; now they were talking about a quarter of that intensity. Sokul said that about \$450,000 was originally spent on offsite impacts. Janvrin said they had added a turn-lane and fire safety equipment. This is a huge underutilized facility that is bigger than the Walmart site. Khan thought that Poland Springs had done its part. Garand commented that it had been used for storage and some trucking. They had widened Batchelder Road and also a turn lane.



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Sokul said the liquor operation would have moved in as is with 4 X less volume than Poland Springs and about 414 trucks and employees per day. Janvrin asked where the liquor storage was currently. Sokul said in Nashua and Hudson. He did not know the hours of operation. Janvrin informed that no refrigeration trucks are allowed to operate between 10PM and 7AM. Khan asked about providing security. Sokul said the property is already gated, and the original use was similar to what would be proposed. Hawkins said the Board had a mitigation threshold for trips per hour. Currently mitigation is underway for 1800 – 2000 trips per day. He thought waiving jurisdiction would be appropriate as there could not be a huge amount of exaction, if at all. Janvrin thought that the site mitigation had been done previously. Khan said this would be a big operation, and asked if it should be revisited in a year. Morgan said that would mean taking jurisdiction. Janvrin thought an expedited application would require a traffic study. Morgan commented that the traffic would be way under what was originally contemplated. be expedited, and asked what the tenant outcome would be. Sokul had not been involved in the rfp process, but thought there were some deadlines. Hawkins commented that intersecting roads might need mitigation. Hawkins wanted a return to the Board if there were a change of use, expansion, or traffic involving more than 500 additional trips.

MOTION:	Chase	to waive jurisdiction on the proposed warehouse use for the Poland Springs building at 100 Ledge Road, provided (i) the conditions of the original Planning Board approval are met, and (ii) there is no increase in the traffic intensity.
SECOND:	Janvrin	Approved: Unanimous

ECONOMIC REVITALIZATION ZONE

Michael Bergeron, Business Development Manager

Justin Slattery

NH Department of Resources and Economic Development

Paul Garand, Seabrook Buildings and Health

Hawkins asked Bergeron to describe the potential for an ERZ(s) in Seabrook. Bergeron said that an ERZ can provide a tax credit incentive for the creation of new jobs in vacant, underutilized buildings. There is no impact on the Town, other than to authorize the zone(s). The State can award tax credits against the Business Tax of up to \$200,000 per zone for capital investment in industrial or retail space. For example, incentives for new jobs could be applied to the building that Teledyne had occupied. He noted that Newport, NH had used its ERZ as a marketing tool. Slattery explained that the Town would apply to DRED to authorize the zones, and an eligible business files with DRED for the tax credits in re increasing the usage or revamping of the building. Hawkins understood that the Seabrook would designate the zone(s), and asked if the town would become involved with the applicants. Bergeron said a company would apply to DRED and receive tax credits vs their business tax through the NH Department of Revenue. Khan asked if anything comes to the town. Bergeron said the application and approval is done through DRED which notifies the Revenue Bureau. A total of \$800,000 could be prorated among the existing zones.



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Janvrin asked how recipients would be chosen, i.e. did companies come to DRED and just be told about ERZ locations. Bergeron said each company is different so they ask about their needs. Usually saving money is important, where can they retain and find labor, and where is there real estate. Tax credits are a key incentive for companies looking to locate in New Hampshire. DRED looks at their square-footage needs, whether they need rail access and the like. Janvrin commented that DRED had brought SustainX to Seabrook; that meant increased revenue to the town. Bergeron said that DRED helps them find the best situation within the state. Janvrin said they are promoting the Town. Bergeron said they act as a salesperson to create interest in New Hampshire and bring companies to create jobs. Chase asked for an example of how a company would benefit. Bergeron said they look for companies that will hire for full time jobs paying at least \$13 per hour that are willing to make a capital investment in the state – at least 20 percent of the appraised value of the building as a capital investment and equipment. The tax credits of up to \$200,000 could be spread over 5 years at \$40,000 per year applied against the corporate business tax. Retail business generally employs at lower wages, often not full time, and with frequent turn-over; office and industrial are more likely to qualify for the credits.

Garand had designed four zones with good potential – commercial along Route 1, a small commercial on the west side of town, and industrial east and west. Bergeron said the state promotes office and industrial which is termed commercial, but technically retail would be ok if it met the wage and capital investment criteria. Janvrin asked why Sig Sauer had relocated from Exeter to Pease, and another Seabrook warehouse business is also moving to the Tradeport. He asked if DRED had provided incentives. Bergeron said they needed 200,000 square-feet, water, sewer, natural gas and a specific labor force; the actual availability was limited. If a facility like that existed in Seabrook, it would have been on the list.

Hawkins asked for the next step if Seabrook applied. Bergeron said the turn-around for DRED accepting the Seabrook zones would be about a week. Hawkins said that not much was needed to fill out the application. Garand asked the Board to look at the map showing the 4 proposed zones, which he thought suitable for light industrial and office operations like SustainX with good wages. Hawkins thought the zones had been well identified on the map, and said the board would welcome light industrial or offices. He asked Morgan if there were a reason not to use this program. Morgan understood there were certain thresholds for hourly wages; Bergeron confirmed approximately \$13 per hour. Morgan said to be careful to attract businesses that could meet \$13 threshold for wages, but that seemed to be covered.

Khan asked if the owner of a mill building had to do the renovations first, or could they get help from the state. He referenced an old brick building in the town that could be renovated and reused. Slattery said an owner would do the redevelopment but might get a HUD loan through CDBG. Bergeron said the business model would be a private sector driven initiative based on company funding. Janvrin asked if banks might be more amenable to make loans to a business getting help through DRED. Bergeron said there would be no relationship. A \$200,000 tax credit would have very little impact in relocating or investing in a business; for banks these would be minor investments. Chase asked if there were different criteria for industrial or commercial. Bergeron said the guidelines are the same. Kravitz asked if a company that already exists in a zone take advantage. Bergeron said they could if they are expanding into vacant space. The tax credits are good incentives for expansion or vacant space that meets the criteria and capital investment.

David Dunfee representing DJ O'Brien Real Estate, the owners of 1 Chase Way, said he had been the President of DG O'Brien-Teledyne which currently occupies that space, employing 60-



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80 people. That business will be moving to Pease for about a dollar off the rental rate. He is hoping that tax credits would help them market their 42,000 square-foot building. A \$40,000 tax credit would be the equivalent to getting a \$1 dollar off the square-foot rental rate, which would make the building more attractive and bring more good paying industrial jobs back into Seabrook. Janvrin noted there were at least 2 Seabrook businesses going to Pease. Hawkins asked Morgan about the next step. Morgan thought it was to fill out the application and forward it to Bergeron. The Planning Board could vote to recommend the 4 zones if agreed. Janvrin recommended Zones 1 and 4 on the map, but thought the others were too close to residential areas. Morgan said this might need more discussion, noting the full agenda.

Hawkins asked for Janvrin's issues. Janvrin said #2 was very close to residential, without industrial use; the density was quite high. Garand said that vacant land could qualify. Also if applicants from the industrial area came to the Planning Board, they could also qualify for the tax credits. Bergeron explained that the threshold would be higher if building a new building. The priority was to occupy existing space rather than new construction which would be more difficult. Garand said there still would be no impact to the town; Bergeron agreed. Hawkins said what would happen in 5 years could not be predicted today. This was an opportunity to get some help for filling empty spaces. Janvrin commented that in #3 Market Basket did a lot of work and maybe could get help with tenants. He withdrew objections to #2 and #3, noting that the town was trying to increase its non-power plant tax revenue. Kravitz asked if there were a minimum size of a building other criteria i.e. could it be a small business. Bergeron said it could be of any size. Chase wondered if the area around the Yankee Fishermen's Cooperative might be suitable. Morgan reminded that at present that was in a conservation zone.

Morgan asked if a zone could be changed or eliminated. Bergeron said it could be via a letter request to DRED. Khan asked what the town would have to do when an applicant goes through this process. Bergeron said the town would have nothing to do once the zones were approved. Kravitz asked if after the 4 zones were approved, a zone could be added in the future without going through the whole process. Bergeron said to write to amend the original application.

MOTION:	Hawkins	to support the Town of Seabrook's applications to the New Hampshire Department of Resources and Development to designate each of 4 zones as Economic Revitalization Zones eligible for New Hampshire business tax credits as defined on the map presented to the Planning Board on November 20, 2012.
SECOND:	Sweeney	Approved: Unanimous

INFORMAL CONVERSATION

Demoulas North – Seabrook Plaza

Attending: Jim Lamp, J & Co., representing RMD; Earle Blatchford, Hayner Swanson Engineers; Attorney Ari Pollack, Callahan, Gallagher & Gartrell;

Lamp requested that the item relating to Southgate Plaza be heard after the informal Conversation.

Lamp acknowledged the prior discussion with the Planning Board about Demoulas' original intention of doing a complete redevelopment of the site. Until 2 years ago this meant a tear-



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down of the existing building at Seagate Plaza, reconstructing it, and adding 15,000 square feet. They ran into a snag with the offsite improvements. After about a year they returned to the board with a reduced plan after talking with the state and trying to figure out a reduced plan to cover the “gap” area of Route 1 between the Demoulas property and the DDR property. Lamp said that in discussions with Steven Ireland of the NH Department of Transportation, it sounded as if there was a lot of work to be done between the town and the State to figure out what the vision was for Route 1. He did not know the status of that.

Lamp wanted feedback from the Board as to the potential for the redevelopment of the Market Basket plaza, and apply for the new “grant” from the State to see if they could get the “new money that got put on the table.” He thought it apropos that a state program was discussed earlier in the meeting, although Market Basket wages probably would have to go up and have more full-time employees before it could qualify. Lamp said the State was trying to encourage redevelopment of existing spaces. In this regard, the Demoulas plan now is to decrease pavement area, and put a new facade on the building but not changing it. They would probably redo all the pavement area and the landscaping and make this site look similar to the Southgate redevelopment, and try to revitalize the area. He thought the Town was happy with that outcome. They would keep to smart growth principles. This plan would reduce the need to go to the State or the Zoning Board of Adjustment in re wetlands disturbance. They would be willing to talk to the Town about dedicating right-of-way for the future Route 1 expansion. They had discussed providing an easement to connect to the North Access Road for future planning purposes. They are just trying to reoccupy residential [commercial] space in accord with the Site Plan Regulations Section 10.025 for non-occupied space for a year. Lamp said the question was if that was feasible or not feasible in the Board’s opinion.

Hawkins responded that a site plan review would be warranted on a project this large. He thought there might be some common ground on some items in the Lamp letter. Other items would be a little bothersome. He understood what they were trying to accomplish, and that using the existing building might be a better economic alternative than to start over with a tear-down, but some of the impacts would be similar, e.g. in terms of the increase in volume that would be going in and out of that plaza for the Ames store which has been unoccupied. He did not know where Demoulas stood in terms of the drainage. A problem for the town is that the new law on stormwater discharge makes the town responsible for anything that gets off their property. He was sure that the Public Works Manager would hammer hard on that issue in the TRC because if there are unmitigated off-site drainage impacts the town would become responsible. This meant that there would be a site review that addresses stormwater, however it had changed or not changed. The board would have to know what is going on there to assure that the town doesn’t become responsible for what happens.

Hawkins asked for Morgan’s view. Morgan asked if they would be going to the NH Department of Environmental Services for the Alteration of Terrain permit. Lamp said they had had extensive discussion with DES over the last two years over several sites. The new regulations did not incorporate the concept of redevelopment. Lamp; said the regulations were being rewritten and in the meantime waivers were being granted. It gets down to smart growth and not encouraging greenfields. He thought that at times it would be less expensive to go to a greenfields site, than to be redeveloping an existing site. It would be better to get to 50 percent improvement rather than go to a Greenfield site. Hawkins asked if there had been discussions with DES about this plaza. Lamp said that this plaza started then whole discussion with the state. Pollack said the previous proposal involved extreme costs. Lamp agreed as they were going to raise the whole center by up to five feet and there were extreme costs involved with that. Morgan surmised that



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then would be requesting a waiver. Lamp said they would be willing to work with the town on stormwater management as long as it would be reasonable and approvable at the state level. They would work with the state on how they could improve the runoff on the site; they would not be raising the site so they would not have the ability to treat the water in the way they planned previously. There may be ways to put in some active treatment system to better the runoff from what it is today. Their worry is getting into the Route 1 corridor issues to reoccupy the space and how deep would they have to get to reoccupy the space.

Hawkins recalled that the proposed new square-footage would be nearly the same; there was signal at Route 1 and a proposal for widening that roadway. Those things don't go away. The occupancy level would increase by approximately the same amount. He wondered what really would change on Route 1 from the original proposal. Lamp said that this proposal is for zero changes; it is to reoccupy the space but also spend a great deal of money to revitalize the center. Hawkins said there was significant change on Route 1 in the last proposal, and asked why none of those were being proposed in the new plan. Lamp said the number one reason is financial. They could occupy the building, but it would be a negative economic deal to try to occupy that space and have to do the improvements previously proposed. It's the economy, the location and the space. Every time they talk to the Board the proposal had gotten less and less. It is a sign of their ability to lease the site and what the site is able to support. The Southgate site was probably the most expensive real estate per square-foot that they had undertaken in the last ten years. It is very difficult to reoccupy and redevelop retail space and work around existing tenants. It took quite a while and was very costly. However, they were very happy with the outcome.

Hawkins said it was clear that the Board could work together with Demoulas on the issues that were listed, but there would not be a blanket waiver. A much deeper understanding would be needed, including on the impact to the road system. Maybe it is not improving that whole length of road, but he anticipated an exaction to contribute to the improvements that would be required. It was not just renting the unoccupied store. It had been empty for some time and there have been significant changes along the roadway and more that would be required during the next ten years. There would have to be a discussion that addresses those things. Hawkins thought the Board would be willing to work out those issues with Demoulas to try and get that building redeveloped and rented again. Without in depth discussion, the Board would not be willing to go ahead with waivers. Hawkins appreciated the reduction in the hot top, and the increase in the landscaping. He thought that might be helpful for the groundwater issues. The Board would have to understand the details more than it did now.

Morgan noted that cessation would require going to the Board of Adjustment. Blatchford said the use would comply with zoning under the conditional use permit. Lamp said they looked at this proposal as tying to prior retail use; previously they had a variance for retail use but it was a new building, not a reoccupation. He thought that would be a minor issue as it is an existing building that had been occupied at one time. Lamp indicated that the previous proposal had over an acre of road right-of-way; he thought they could figure out a way to work with the Board to put a value on that to enable reoccupation.

Khan said that Demoulas is a champion for giving jobs to young people, and that will be good for Seabrook. There is a big problem because it is extremely hard for anyone to get out of the site at any time of day. He thought there should either be a traffic light or a connection to the North Access Road. Otherwise it all could be right in/out. The Ames occupancy was at a different time; he thought a signal would be needed. Hawkins commented that there would be potentially 1800 trips an hour south of this location. A good portion would be coming north which would make



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gress even more difficult. The NHDOT would have to be consulted. Lamp said they had been told by NHDOT that they did not have the ability to comment on reoccupation except for a permit in the right-of-way. A signal would mean tapers to fewer lanes in one direction and increasing to five lanes in the other direction. Hawkins recognized hose issues, but said it is the Board's responsibility to address the safety issues, especially with anticipating the large vehicle increase from the south. Khan asked if Lamp had tried to exit the site to the south lately. Lamp said his visits are usually mid-day when traffic is not so heavy. On Route 1, one had to be brave. They were looking for a logical resolution, and would work with the Board. He said that they had already spent \$500,000 on how to utilize this location and serve the public without getting into a negative financial situation..

Chase asked if the regulations were stopping them from raising the grade to make a safe entrance. Lamp said there was nothing that would stop them from flattening it out near the street; that could be resolved. Chase asked if they would be amenable to adjusting the entrances so the traffic flows better. Lamp said they would be amenable to discussions that did not get them into a half-mile on Route 1. He knew that the state would like to see a curb-cut closed. It would mean gas station lease issues. Lamp said a signal cannot be built and the road widened with the gas station where it is.

Janvrin noted the changed landscape regulations, and that they had added a lot of green area. He asked if the south and north of this site would be merged so that they could meet the green requirements. Lamp said they could do that. Janvrin asked if they would meet the drainage requirements and treatment to the north. Lamp said those were existing wetlands. The two buildings would have been on one lot; one was grandfathered and they had worked with the ZBA on the other. Since no new buildings were now proposed, that would not be needed. Janvrin asked if they would propose adding a lot to the north and one to the south. Lamp said they could consolidate all of those lots. Janvrin asked if that would help to meet the greenspace requirements. Lamp confirmed this; they might not meet the overall requirements, but they would be bettering the existing conditions non-conformity. Janvrin asked about cross-connects to access the north. Lamp referenced the non-conformity, and said they would work with the town and the state to come up with an easement for future development and consider a reasonable gift of space. Lamp thought there were a lot of positives, but the way the regulations were written it was difficult to reoccupy space vacant for more than a year. Janvrin asked if they had done anything with the traffic. Lamp said they would work with the tenant to come up with numbers for the increase over what they have currently.

Hawkins asked if Lamp had anything else to discuss. Lamp said they had gotten good feedback from the Board and would go back to the owner and see what could be done.

Case #2011-34.11.03 Demoulas Southgate Plaza Lighting Grid, Irrigation, Parking requests

Attending: Jim Lamp, J & Co., representing RMD; Earle Blatchford, Hayner Swanson Engineers; Attorney Ari Pollack, Callahan, Gallagher & Gartrell;

Hawkins said this was a fourth request for changes in the Southgate plan. Lamp recalled that some of the items were requested by the Board at the last hearing; a couple were very minor additions to the siteplan. Janvrin asked Morgan whether the plans could be signed. Morgan wanted to have a last look before he ok'd signing. Hawkins said he wanted a memo from Morgan assuring that he'd reviewed the plans and whether all his issues had been satisfied.



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Hawkins did not want to sign plans and all of a sudden find there were more changes. Morgan said that the Southgate plans were piling up.

Hawkins noted the new requests were in re lighting, parking and an irrigation sleeve for the sprinkler set-up. Lamp said the contractor had done the set up for sprinkling but had not yet built the well for irrigating the landscape areas. They would set up a new well and do irrigation without town water. Lamp said on their sites they do sleeves so that all of the pavement did not have to be ripped up. Janvrin asked if the sleeves were already there before the paving. Lamp confirmed this. Hawkins asked why they keep asking for more parking. Lamp said they had striped some wider spaces for vans. Blatchford said the layout they presented at the July meeting ended up being more efficient. The Board asked that the end islands be widened and they take back the 11 spaces. Instead they took back 12 spaces. In that adjustment they added three more accessible van spaces at the request of the Applicant. Lamp said the rule of thumb would be two percent were for handicap accessible parking, but Demoulas was increasing this to three percent to accommodate their clientele. Morgan asked if there was no increase in impermeable surface. Lamp said there was not; also the guard rail would be installed.

Khan said when customers drive in through the main entrance, they can make a left turn which is not so designated. Lamp said he had noticed that that striping was not there and it would be done. Khan pointed out where people still make a left turn. Lamp thought it was used as a quick way to turn left at the signal. Lamp said it had been changed so the actual striping directs to the right. Janvrin thought the islands make it difficult. Lamp said they will look at that. Hawkins asked about the remaining north and south plaza expansions. Lamp said they were waiting for tenants e.g. a restaurant would require certain utilities. Janvrin noted newspaper reports of a chain that opened in Dover and wanted to locate in Seabrook and Portsmouth.

Hawkins asked for Morgan's view on the action item. Morgan said if the board decided the changes were inconsequential, it could decide to take no jurisdiction. If the changes were substantial they would have to be put to a public hearing. Hawkins did not think it was significant enough for a public hearing; nothing noticeable was being changed on the ground. Hawkins asked Morgan if there were something to add on. Morgan said there was not. Kravitz noted that a final plan was needed. Lamp commented that they would probably return with new tenants for some "tweaks."

MOTION:	Khan	to approve the Case #2011-34.11-03 Demoulas Southgate Plaza request concerning lighting, parking and an irrigation sleeve as presented to the Planning Board on November 20, 2012, provided that a completed siteplan that is satisfactory to the Town Planner and suitable for signing be provided when the work is done.
SECOND:	Sweeney	Approved: Unanimous



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PUBLIC HEARINGS

Hawkins opened the Public Hearing at 8:10PM

**CONDOMINIUM CONVERSION AMENDMENT TO SITE PLAN REVIEW REGULATIONS
Proposal by the Seabrook Planning Board to amend Section 12 of the Site Plan Regulations that regulate condominium conversion. The proposal would revise provisions relative to utilities, subsequent site changes, access/egress, parking, and storm water drainage.**

Tom Morgan, Town Planner

Hawkins noted that the proposed condominium language had been previously discussed; the changes were in the underlined language. In summary the changes were maintenance and protection of utilities and some clean-up of existing language. He asked Morgan to address the balance of the changes. Morgan recalled that a few months ago Garand had called attention to a condominium conversion that had been approved and then the developer decided to put the building somewhere else. At the time, the Board had not been happy about that and asked Morgan to confer with legal counsel, who said the condominium regulations could be amended. Accordingly, the new language said that if condominium conversion had been approved, the developer or owner would have to return to the Planning Board before moving a building. Another item said would say that access or egress of other owners shall not be obstructed, which he thought was common sense. Another item requires a plan for allocating all parking on a condominium site, which became an issue at 920 Lafayette Road. Morgan's goal was to extricate the Planning Board and the Town of Seabrook from spending time on those kind of disputes; the developer should have a solid plan up front. The final item relates to stormwater drainage which is becoming a potential liability for the Town, it must be dealt with onsite. He could foresee one owner controlling a detention pond and another owner doesn't have access. Khan asked if this would have to be approved at the Town Meeting. Morgan said it did not, and would take effect immediately upon the approval vote of the Planning Board. Morgan explained that the board was ok with this language at the last meeting, but it had not yet been public noticed and adopted in a public hearing. Hawkins asked for other questions and for public comment on the recommended changes.

MOTION:	Janvrin	<p>to adopt the new language for Section 12 of the Site Plan Regulations as follows:</p> <p>Section 12 - Condominium Conversion As used in this section, "<i>Condominium Conversion</i>" shall have the following meaning: <i>The placing or conversion of real property or any interest therein presently under a developed use into the condominium form of ownership pursuant to RSA 356-B. Such conversions must be approved, in advance, by the Seabrook Planning Board. In addition to the requirements specified in these Site Plan Review Regulations for site plan review, applications for</i></p>
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		<p>condominium conversion must meet the following additional requirements:</p> <p>12.010 Documents: A complete set of site plans and floor plans, as well as a complete set of all Condominium documents must be filed with the Planning Board. The applicant's attorney shall certify that all condominium documents are consistent with the Seabrook Zoning Ordinance and with the requirements of RSA 356-B.</p> <p>12.020 Utilities: A plan shall be submitted to the Planning Board showing the location of all utilities on the site, and the plan shall indicate the locations where the shutoff valves will be located for each unit. The plan shall indicate whether or not additional meters or additional lines from the street will be required as a result of the condominium conversion. Shut-off valves shall be located on Town-owned property or in a Town-owned right-of-way. Proposed underground utilities shall provide two four-inch ducts for use of the municipality and all overhead poles shall provide space for the use of the municipality at the subdivider's expense. <u>The responsibility for maintenance, operation, replacement and protection of utilities shall be clearly established by the Condominium agreement.</u></p> <p>12.030 Legal Status: The units which are subject to the requests for condominium conversion must, at the time of the request, exist as legal units pursuant to the ordinances of the Town of Seabrook. The burden shall be on the petitioner to demonstrate that the units to be converted are legal.</p> <p>12.040 Responsibilities Clearly Delineated: The responsibility for maintenance, operation, replacement and protection of utilities shall be clearly established by the Condominium agreement.</p> <p>12.050 Wetland Protection: In order for the Condominium Conversion Regulations to be consistent with Section 14 of the Zoning Ordinance, no proposed Limited Common Area shall be allocated a disproportionate share of a lot's wetlands.</p>
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		<p><u>12.060 Subsequent Revisions: Prior to the construction of buildings or infrastructure in any location other than that which was approved, the property owners must first obtain Planning Board approval.</u></p> <p><u>12.070 The Access/Egress of other property owners shall not be obstructed.</u></p> <p><u>12.080 Parking: The application shall include a master plan to allocate all parking on-site.</u></p> <p><u>12.090 Stormwater Drainage: The long term responsibility for maintenance must be clearly defined, and binding commitments made by the developer, and a mechanism established to bind successors in title.</u></p>
SECOND:	Sweeney	Approved: Unanimous

Hawkins said that new cases are normally heard before ongoing cases, and that the Agenda had reversed the order.

NEW CASES

**Case #2012-26 – Proposal by Wal-Mart and Brixmor GA Seacoast Shopping Center, LLC for a 2-lot subdivision at 270 Lafayette Road, Tax Map 9, Lot 49-3 -
Appearing for the Applicant: Attorney Roy Tisley, Bernstein Shur;**

Hawkins referenced the letter from Attorney Tisley requesting that Case #2012-26 be withdrawn and wondered if the case would be coming back to the Board. Tisley said the applicant did not expect to return to the Planning Board on this matter. Janvrin noted the proposal was also before the Zoning board of Adjustment. Lowry noted that a request before the Zoning Board of Adjustment had also been withdrawn.

Case #2012-27E – Proposal by Jarrad Savinelli and 571 Realty Trust to sell Christmas trees at 571 Lafayette Road, Tax Map 8, Lot 9.

Attending: Jarred Savinelli

Hawkins asked for a quick summary of the proposal. Savinelli wanted to be allowed to sell XMAS trees for 15 to 30 days in a 40- x 40-foot display area on the blacktop. The fencing would be 25 feet from the roadway. The structure would be made with pallets and some guttage. The trees lean against each other. The building lighting is sufficient; the Fire Chief did not have a problem. Savinelli said after talking with Garand, he would temporarily cover some of the building signage. Janvrin asked for the number of parking spaces. Savinelli said employees and trucks would be parked on the side of the building leaving the fire lane open. Eight or ten parking spots would be controlled on sight and shift as in the fireworks season; if there were an overflow,



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he would ask the BP station to temporarily use some of their spots. Janvrin's concern was if people parked on Perkins Ave. Savinelli would put up cones. Janvrin asked if the display area would be closer to the abutter. Savanelli said Bob's Tattoo was in the next lot, but the display area would be 25 feet away. They would have ample parking in the front and more spaces at the flagpole and the dumpster station. Janvrin said it would be an influx of cars. Savinelli did not expect 25 cars at one time.

Hawkins asked about the hours of operation. Savinelli said 9AM to 9PM. Savinelli said the hours would be 9AM to 9PM. Khan said there were two entrances and asked if a Route 1 entrance could be closed during this period. Janvrin said that 2 entrances would be needed for fire safety. Savinelli would favor closing the Perkins Ave Entrance. He noted that one school bus driver will use the trailer park to turn the bus around as a courtesy. Hawkins commented this is a 30-day request.

MOTION:	Janvrin	to accept Case #2012-27 as administratively complete for jurisdiction and deliberation.
SECOND:	Sweeney	Approved: Unanimous

MOTION:	Sweeney	to approve Case #2012-27 Jarred Savanelli and 571 Realty Trust for the sale of Christmas trees on site from November 22, 2012-to December 24, 2012 conditioned on the hours of operation allowed from 9AM to 9PM.
SECOND:	Janvrin	Approved: Unanimous

Janvrin asked if this approved permit would continue annually. Garand said it would unless lapsed for a year.

Case #2012-28 – Proposal by DDR Seabrook, LLC for a condominium conversion at 700 Lafayette Road, Tax Map 8, Lot 55.

Attending: Jim Grafmeyer, DDR Vice President, Northeast Region; Attorney Malcolm McNeill, McNeill, Taylor & Gallo; Mark Verostick, VHB;

McNeill said the project is going forward and they were requesting a condominium conversion. He said they had complied with all of the changes to the condominium regulations made by the Board earlier in the meeting. McNeill said he would address the minor comments made by the town planner. He had spoken with the Board's attorney who expressed no issues, but had not seen the written report. He believed there were not issues of any substance in re this project. McNeill said this was a very important matter for DDR which was in the process of completing a transaction with Walmart. They wanted to complete the transaction this year for tax and other purposes, and to finalize the permitting this year. Grafmeyer was in attendance and Verostick could respond to engineering questions.



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McNeill referred to a drawing showing the siteplan prior to the condominium conversion which he said completely complies with the town's regulations. He said the plan after depicting the condominiums was exactly the same except for the condominium lines. Nothing of substance changed on the ground or in the operation of the Shopping Center which had been through the Planning Board process and the Court system for many years. They just wish to change the form of ownership of the project because the major user of the shopping center had made that request.

McNeill said in his experience there were a few large users that want to have a condominium interest in shopping centers. Sometimes this is done by ground or other leases. Sometimes there is one owner. There are no modifications to the plan, no variances, no change to the infrastructure, and no changes relating to the operation of the shopping center. The Declaration of Condominium which had been looked at by the Board's attorney. It establishes the condominium under state law. He pointed out the one condominium unit with 13.46 acres that Walmart will control. The remainder of the site would be controlled by DDR which will lease shopping center space to various tenants. The easements, covenants and restrictions also submitted, will control the operation of the facility to provide for cross-easements, all parking, all infrastructure and all systems previously approved. Anything that is reciprocal or overlapping is controlled by a document that furthers and complies with the regulations. McNeill said a 1.5 acre segment would be in the condominium for a short time but will be withdrawn because it is to be assigned to an abutter later on. It needed to be shown to perfect the condominium. That applicant would have to return to the Board for conveyance purposes.

McNeill said that Unit #1, the Walmart component, was 13.46. the balance of 32.43 acres is the land to be occupied by DDR. He said the Declaration was a standard document – nothing unique. It also said that in re the cross-easements that exist on the property in the easements, covenants and restrictions. Wherever there is a dispute between the simplistic condominium documents and the ECR, the ECRs control. To establish the condominium, it had to be appropriately filed, and then the Walmart unit would be conveyed, and the remainder of the site would stay with DDR.

McNeill said that Morgan had raised issues relating to a waiver request required because the shut-off valve for water, which had been a problem in some of the other condominiums, was not on public property. He noted that Morgan had said that the waiver request was reasonable. McNeill proposed that every user on the site would have its own shut-off valve. DDR would have an easement to allow the town to have access to the shut-off valves at any time for any public purpose. The shut-off valves would be on the outside of all of the buildings. In terms of access there would not be an issue.

Morgan had asked McNeill to walk the Board through the ECRs which are the ground rules for how the shopping center would operate. They exist in small and large shopping centers. The documents indicate the types of uses that can exist so that potential tenants would know what can be on the site and what is not on the site, the types of cross-easements that exist all across the area to control all of the common areas. The common areas are everything except the buildings. There is no assigned parking anywhere on the site, unlike the 920 Lafayette Road property. No one would be calling to say someone is parking in their space because no one would have control over a particular parking space. McNeill said as for the site approved in its entirety, the cross-easements permit parking in any location. Wherever there is a common facility on the site e.g. drainage there are cross easements in the ECR. DDR is the majority owner and will maintain the area and will charge Walmart and any other users for any of the common area expenses that exist on the property. It won't be the town's problem. McNeill



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commented that if the condominium documents did not reference the ECRs, they would not be discussing them; it would be a private management issue. McNeill repeated that there are no assigned parking spaces, which is a frequent source of problems in condominiums which is a frequent source of problems. Common utilities or and surface easements are shared between the properties by agreements which run with the land for an indefinite period of time.

McNeill said there are some controls in the shopping center. For example, they do not allow exotic dancing, billiard parlors, other types of objectionable uses are excluded from the site. With regard to the common areas, the breakdown of the interests would be 50.1 percent for DDR and 49.9 percent for Walmart. The agreements provide that if there are any inconsistencies between the documents, and the ECRs, the ECRs, which are far more specific, control. McNeill thought that in re the 920 Lafayette Road parking problems, they probably did not have ECRs. He noted that there are no markings for common area maintenance because they are called [[KAMS]]. They did not feel the need to show them because it is in the ECRs. McNeill said the town is in control on the basis of prior approvals. Morgan had also asked for the purpose of the 1.5 acre parcel being withdrawable. McNeill said this is because an agreement with an abutter had been reached. He said the project had been approved in the community. The current request is for a major user that wishes to have condominium control for their part of the project. The condominium would be controlled by state law. The ECRs were about in final form; before they are done he would expect Morgan to approve them administratively.

McNeill said the condominium documents would be filed with the state and at the Registry of Deeds. There could not be modifications that affect the Board's approvals without the Board's approval. He noted that the town provides a kind of expedited approval procedure. They would like to file by the end of 2012 and could just make if the approval were given at this meeting. There is a 30-day appeal period and any reasonable party would not close until that appeal period is done, so they hoped for an approval at this meeting. McNeill said he would be happy to go through any part of the documents. He commented that if one did not know it was a condominium, it would be just as had been approved. Garand said the utilities on the plan were as originally approved, and do not show the water shut-offs. Grafmeyer said there would be shut-off valves at each tenant. Garand said they are not in the public right-of-way re the condominium documents and the town requirements. McNeill said a waiver had been requested for the water items. Garand did not think the Board could do that because it was a water department regulation.

McNeill said there was a blanket easement for representatives of the Town of Seabrook to come onto the property to go to the shut-off valves. Garand thought the Water Superintendent would have to approve this; they would contact him if the Board wanted. Hawkins said it would be impractical to have the water shut-offs on town land. It was not an issue when there was only one building to have a main shut-off on town land. He thought the objective was having individual shut-offs to the individual buildings. If there is an easement to get at those shut-offs, the Board would have accomplished this. It's not a matter of ownership. Rather it is the town's leverage if someone is not paying their bills; the town has to be able to shut off the water. Garand said normally a condominium conversion would go to the Technical Review Committee for review and comment. He understood the time restraints, but said the town should not have to worry about that. Hawkins asked if the Water Superintendent had commented on this. Morgan did not know, but was not sure about going to technical review; he could not recall sending condominium conversions to technical review.

McNeill said the proposal is a better situation. If the concern would be that a particular user did not pay its water bill, the town would have an absolute right to go onto the property from the



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source of the water line into the site to shut it off. McNeill said they would do what would be needed to give adequate assurances in this regard. He thought the documentation would go to the intent of the regulations. Chase thought shut-offs had been approved for a Ledge Road condominium. Garand said that at certain times with condominium conversions separate utilities were required because common utilities were not allowed on the property. The town ordinance was pretty strict. Normally all condominium conversions going before technical review have comments from department heads. Chase thought that for the recent Ledge Road condominium the shut-offs were put in after the fact and they were not on town property. Garand said there were easements with language that the Water Department wanted. Chase thought that Attorney Mary Ganz had also done something. Garand said there would be manholes for industrial property. This is commercial use. Janvrin said this had been industrial land; Hawkins said not any more. McNeill was not sure it would make a difference given the investment in this project.

McNeill commented that the regulations would require a waiver. The Applicant had submitted one, and Morgan had said it was reasonable. McNeill gave assurances that if there was any further follow-through necessary with the Water Department, they would do this. He requested that this not hold up a multi-million dollar closing. Khan noted that previously the Applicant had not wanted to return to the Planning Board. McNeill commented that whenever he engages in litigation in a community he uses a one-year cooling off period, but this project had never cooled off. They were trying to bring it to closure. Khan recalled that in the beginning, about six years ago, they were talking about acquiring some land to have an entrance from South Access Road. He asked if there were any plan for that or for Rocks Road. McNeill said there was not. Hawkins asked for Morgan's comments. Morgan said his comments had been covered in the memo. Hawkins asked if Morgan's issues had been addressed by the comments during this discussion. Morgan was comfortable but thought it prudent for DDR to call the Water Superintendent the next day to make sure he is ok with this. He thought the Board could separate the Water Superintendent's responsibility from the question now before the Board.

Janvrin asked if the waiver request could be conditionally approved for the Water Superintendent's ok. Hawkins agreed on getting comments from the Water Superintendent, but said the Board's objective was pretty narrow- to deal with the issues that affect the town. The ownership issues that don't affect the town were not the Board's business. It was up to the owners as to how they want to own the property. The Board needs to say that the town can't shut off the water to the whole complex if one tenant decides not to pay its bill. There also needs to be a vehicle to say what that bill is. He assumed that the Water Superintendent would say that it was how the water was measured, not just shutoffs. He thought these were issues that would be dealt with during construction. The Board would be focused on things that would affect the town or traffic or the way the land was being utilized in re what the neighbors had been told in the public hearing, not the ownership issues. He agreed with Janvrin that the Board could probably approve the waiver with the condition that they talk with the Water Superintendent to make sure he did not have any significant problems with the proposal, and approve the case.

Morgan advised attaching the condition to the condominium conversion approval and not to the waiver. McNeill said the waiver would be within Section 12 of the regulations re condominiums. Hawkins asked if the Morgan's recommendation was to approved the waiver and then approve the condominium conversion with the condition. Morgan commented that the condominium regulations are inside the Site Plan Regulations so there is an established procedure for dealing with what might happen afterwards. He was unsure of the Board's standing if the condition was attached to a waiver. Janvrin wondered if it should be on both. McNeill said that customarily the waiver would be approved and then go to the final question.



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MOTION:	Janvrin	to accept Case #2012-28 as administratively complete for jurisdiction and deliberation.
SECOND:	Sweeney	Approved: Unanimous

Hawkins asked for discussion in re the waiver request; there being none. Hawkins asked if the waiver request was a part of the application latter. McNeill said it had been addressed in his letter and it was also a part of the application.

MOTION:	Janvrin	to grant the Case #2012-28 waiver request as submitted with the application.
SECOND:	Sweeney	Approved: Unanimous

Hawkins asked if the original plan called for individual water metering. Grafmeyer said they were not shown, but they would install separate metering. Grafmeyer asked if they could make modifications if the Water Superintendent required, without coming back to the Board. Hawkins said in that event, to bring Morgan into that discussion, and Morgan and the Water Superintendent could work that out. The purpose is to be sure that the town can get at the shutoffs. McNeill said it is a blanket easement as it is but they would modify it if needed. They will contact the Water Superintendent the next day and will ask him to contact Morgan. Janvrin said Morgan would have to see that the condition is met.

MOTION:	Janvrin	to approve Case #2012-28 – DDR Seabrook, LLC for a condominium conversion at 700 Lafayette Road, Tax Map 8, Lot 55, conditioned on meeting the satisfaction of the Water Superintendent in so far as it applies to the water shut-offs and metering, as well as access thereto.
SECOND:	Sweeney	Approved: Unanimous

ONGOING CASES

Lowry recused himself from Case #2012-18

Case #2012-18 – Proposal by Latium, Tropic Star Development, Scott Mitchell to remodel and expand a gasoline station, and to construct a convenience store, at 663 Lafayette Road, Tax Map 7, Lot 87. Among other pending issues the board will consider is the applicability of Section 14 of the Zoning Ordinance (abandonment) and the proposal's compliance with Section 6 of the Zoning Ordinance, continued from continued from July 17, 2012, August 21, 2012, September 4, 2012; October 2, 2012; October 16, 2012.

Attending: Scott Mitchell, Jim Mitchell, Tropic Star;
Appearing for the Applicant: Attorney Richard Uchida for Hinckley, Allen & Snyder, representing Tropic Star Development; Wayne Morrill, Jones & Beach Engineers;



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Appearing: Michael Lowry for Charles Mabardy; Attorney Roy Tinsley, Bernstein Shur for the abutter 11 New Zealand Road (Mabardy);

Garand asked if the Administrative Appeal to the Zoning Board of Adjustment had been given to the Planning Board. Kravitz said the notice was distributed to Planning Board members at the beginning of this meeting.

Hawkins wanted to review the outstanding issues, commenting that some could be addressed at this meeting and others probably could not. There is an administrative challenge to the Planning Board October 2, 2012 decision that the gas station was conforming. An administrative challenge to that decision had been made to the Zoning Board of Adjustment. He thought it would not be logical to do a lot of work on something where the Planning Board decision might be reversed. He recommended letting the challenge come to a conclusion before making any final decision in re this project, and asked if anyone saw this differently. Janvrin asked if there were items that could be addressed. Hawkins said there were, but a decision should be made as to whether to continue on without regard to the decision the ZBA may make.

Hawkins referenced the parking issue; there are 5 spaces allowed on the site, and there is a waiver request to grant access to 9 spaces in the back. Another issue was the request for a clean-up plan from NH Department of Environmental Services; the response had been distributed. NHDES had been monitoring 4 wells on the site for conflicting readings and wanted another reading in March 2013, so that issue would be open until then. The Board would have to decide how involved it would become on that issue. Traffic Impact was another outstanding issue that the Board would have to decide. Traffic consultants had come to Board meetings; the Board's Consultant was asked to relook at that question in light of how the Board wants that ordinance to be read. He asked for Morgan's view. Morgan said of the four issues, the parking concerned him, because the Board could get burned. He suggested that the Board confer with its legal counsel in a face-to-face conversation and exchange of views. Hawkins said there were two potential decisions: One was a waiver request for 9 spaces involved in an easement; he could understand the associated hardship. On the other hand granting the waiver would take the site over the maximum parking of 5 spaces.

Morgan was not bothered by being challenged; but losing the challenge would be. A more informed decision would come after conferring with the Board's counsel. Hawkins thought counsel could make a recommendation and asked if he had heard the discussion about the parking spaces. Morgan did not think so, but he envisioned going into a non-meeting. Janvrin said they had had some discussion but counsel had not been with the entire Board. Hawkins asked if that was the most effective approach or if counsel should first be asked for an opinion; if there were questions he could be asked to meet with the Board. Morgan thought if there were a couple of straight-forward questions an opinion could be requested. He thought that the more questions asked, the more complex this would become. Hawkins commented that the Board was in the middle of something it should not be in. Morgan said that might be counsel's advice.

Khan asked as the NHDES letter cites March, if the Board should wait to March before making a decision. Janvrin asked how many days the Board had to make a decision or get a waiver from the Selectmen. Morgan said the applicant could provide a waiver; without a waiver it could be 65 days. The applicant could extend indefinitely. Hawkins said there was a waiver extension request, but the thought the existing waiver to December 18 would be satisfactory. Kravitz said that was the 90 day extension and the Board would have to make a decision on that date. Hawkins said the waiver could be 180 days to give some time. Janvrin noted the next meeting would be December 4. Hawkins said that would be a worksession, and asked when the ZBA



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meets. Janvrin said that would be January 23, 2013. Frazee asked when the board could meet with legal counsel. Morgan said in the past the Board just goes into another room. Typically it is the night of a Board meeting; the board adjourns and goes into another room for a non-meeting with counsel. Hawkins wanted to first get a comment on how counsel sees the issue and if the Board deems it necessary he can be asked in to speak with the Board. If the ZBA is not until January 23 there is time to do that.

Janvrin said the Board could not fully approve the site until the ZBA made a decision. Hawkins said there could be an approval that could be reversed. He preferred to hear the ZBA decision before getting legal guidance. Janvrin asked if this meant waiting for the ZBA decision before working further on the case. Hawkins felt there was not a lot more that could be done. Janvrin said the first meeting in February would be the 5th. Hawkins said the application could be for 180 days. Morgan said that could be with the Applicant's consent. Janvrin thought the Board could be forced to make a decision. Hawkins asked if the Applicant had a problem with an extension. Mitchell said he would not be happy. The Board had asked for an environmental letter from NHDES, and it had been obtained. Mitchell said there was no contamination on the site. There are 4 wells on the property. The letter says there is no remediation required; it was just monetary. In re the appeal, Mitchell said they could act or could wait. He understood that the Board might want to wait, but thought that Mabardy was just trying to buy time, which was his right. When the property was under a lease, he could not see how any Board could see it as abandoned. If there is a lease it would be impossible to take back possession of the property that is for the ZBA to determine.

Mitchell said the parking had been discussed for a while. They had filed a waiver request because of the way the zoning ordinance is written. They had offered to put the parking on [Mabardy's] land and pay the cost. He asked if the Board had seen that plan. Hawkins said it had; it was not the Board's issue. The only reason the Board for the Board to consider approving that parking, since the allowed 5 spots were already identified on the site, would be because the easement is part of the property. The hardship is understood, but it puts the Board in the middle of a dispute over parking. Mitchell thought it was a civil matter and that was what the attorney would say. Mitchell had done many projects in Seabrook and said he was not trying to give anyone in town a hard time. He thought the issues had all been resolved. The appeal about the abandonment of the gas station had been filed. Everyone knows what a lease means. When they are paying rent, how can someone take back possession of the property – it would be impossible. This is a stall tactic with the ZBA, but the environmental matter was off the table. The parking easement had been known for some time, and they had answered all the questions. Hawkins reminded Mitchell that the Applicant had been asked to deal with the parking issues and that had not been done. They should not say that the responsibility for the parking is the Board's, because the Board did not want to be involved. They had not come to agreement with the other party about how it would be dealt with.

Attorney Uchida said the Applicant did not need a waiver request for their parking. He understood that the parking was approved for the Mabardy site pursuant to a site plan approval a number of years ago i.e. the Board had already ruled that parking could be on the site. Uchida withdrew the parking waiver request and the Applicant would use the 5 spaces permitted by ordinance that don't involve the 9 spaces in the back. The Applicant did not need the waiver because the Board had already approved the off-site parking for the site in the rear. He thought that should make it unnecessary to go to counsel on that issue. Uchida said that Mitchell was right in terms of the environmental issue. If there was a need to conduct some monitoring in the Spring even if the site goes forward they have to preserve those wells and provide the monitoring to the state. He thought if there was a chance that it comes up clean, they would get



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a certificate of no action which the state said in the letter. If it does come back and needs more monitoring they would be required to preserve some wells or install new wells, which would be natural under the circumstances. He agreed with Hawkins and Mitchell that it is the Planning Board's right to determine whether it wants to wait to see if its interpretation of the ordinance was correct, noting that there is always the possibility of a challenge to an ordinance when the Board makes a decision in a case. He would not say that the Board would be wrong in waiting for a ZBA decision.

Hawkins said that part of the approval process is to have in hand the decisions that are tied into it. It's known that a decision is coming. If the ZBA decides against the Board's interpretation, the Board would say to get a variance from the ZBA. The process on this case would then continue and the Board could make a decision with the variance in hand. If the ZBA said no to the variance, then anything the Planning Board had done would go by the wayside.. Hawkins said that was part of the thought process in waiting to see what the ZBA said. Uchida understood this, and did not think differently.

Hawkins asked if the Applicant wanted to extend the case beyond December 16, 2012 since the Board would not make a decision until after January 23, 2013. Mitchell understood the logic that the Board had the power of voting at this meeting or waiting. If the Board wanted to wait it would be fine with him. However, Mitchell said they had answered all of the engineering questions, and had been to technical review, for a very simple application. He said that questions about the environmental had never been asked before, and that was handled. Hawkins said that the Board had had no clue about what the issues were on the property; they were not brought up until very late in the application process. To request some kind of response or plan from NHDES was appropriate as the Board would not want to see paving that they are going to tear up and remediate by taking the dirt away and burn it. Mitchell said they would be happy to continue, and asked if they could be first on the Agenda. They feel they have answered all the questions that had been asked. He did not know of anything that was outstanding. He asked Morrill if there were any outstanding engineering issues; Morrill indicated there were not. Mitchell said they would withdraw the parking waiver request. Janvrin's concern was the time lines and thought if the case were approved at this meeting, they would not get a building permit until the ZBA case were decided.

Mitchell had no problem with the Board's decision to wait, but wanted to be sure that more issues were not being opened i.e. that only the ZBA issue was left to deal with. He said that the Board had already decided that the use had not been abandoned. If that is the decision then waiting would be fine. Janvrin said the first meeting after the ZBA would be February 5 Mitchell asked if a written request was needed. Morgan said it was. Uchida will write a formal extension request and withdraw the waiver request. Hawkins asked if the Board had issues other than those identified at this meeting so that the Board could take action on the 5th. Morgan wanted to take a last look at the traffic impact on Route 1. Mitchell asked if there were a dollar amount for the impact. Morgan said the impact had to be determined and, if warranted, it would have to be mitigated. Mitchell asked if it was only dollars. Hawkins said it would be all about money. Janvrin noted that the Applicant had requested a landscaping waiver. Hawkins said the property was less than an acre so that did not apply. Hawkins said the issues are the use of the property and the mitigation fee, and providing the extension request.

Hawkins continued Case #2012-18 to February 5, 2013 at 6:30PM in Seabrook Town Hall.



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Case #2012-25 – Proposal by McDonald's and DDR Seabrook, LLC to expand the approval for a proposed McDonald's restaurant from 4,036 square feet to 4,500 square feet, and to reconfigure the drive-thru lanes for property at 700 Lafayette Road, Tax Map 8, Lot 55, continued from October 2, 2012.

Attending: Tessa Bernstein, Construction Manager, McDonald's; Jim Grafmeyer, Vice President, Northeast Region, DDR;

Appearing for the Applicant: John Kusich, Bohler Engineering; Attorney John Sokul, Hinckley Allen Snyder, representing McDonald's; Attorney Malcolm McNeill, McNeill, Taylor & Gallo representing DDR;

Attorney Sokul asked if the Planning Board had heard from its counsel as to whether this case was vested against subsequent changes to the zoning ordinance and site plan regulations since the time of the original application. Hawkins asked for Morgan's recommendation. Morgan said the Planning Board Members had its counsel's response. Hawkins asked for Morgan's summary. Morgan said that Kusich had attended the Technical Review Committee meeting and suggested he address TRC's points. Also, the Board needed to address the vesting issue Sokul said there were also questions about the substantive nature of the requested change, as well as the traffic impact. A memorandum had been submitted by VHB, who did the original traffic study, indicating that the traffic impact would be diminimus. Also Steven Ireland of the NH Department of Transportation wrote that he did not think this proposal would actually create a new trip, but would more likely draw vehicles from the DDR site. [Ireland letter submitted; Kravitz noted it was in the board Packet].

Sokul said the response to the TRC comments would depend on what regulations would apply. The Applicant believes that the exiting McDonald's site plan (Case #2009-01) was vested against subsequent changes in the zoning ordinance. They had proposed some small changes to that site plan. He referenced a recent Supreme Court decision that in some cases changes can be so substantive and material that the vesting exemption would be void, and some are small enough so that the project would remain vested. The Applicant believed that its changes were very small, that traffic impacts had been considered, and the other issues were very minor. Therefore the original zoning ordinance and site plan regulations should apply. Sokul had not seen what the Board's counsel had written, but assumed he had given some guidance as to whether the changes were substantive enough as to void the vesting protection, or minor enough to remain vested. Sokul thought that the Board's counsel had left that decision to the Board.

Hawkins said the TRC comments would be the starting point. If the Board were to determine that the changes were insignificant, the TRC recommendations would be unimportant because the applicant would say it did not have to do them. If the Board decided that the changes were significant, then some of the TRC items would be back on the table. He agreed that counsel stated that the Board would have to decide on the significance, and if significant to give the reasons. Sokul reminded that the proposal involves a small addition to the building adding about 450 square-feet, with 10 additional seats in the restaurant. Given the comments of VHB and NHDOT, Sokul said the traffic impact associated with those 10 seats would be diminimus. Hawkins noted that the proposal was for 20 additional seats. Sokul said it had been reduced to no more than 10 seats. Hawkins said that would make the total seating 90. Kusich said that was in the traffic memorandum.



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Sokol quoted the Court's applicable language: "...revisions to a site plan which substantially change the plan or replaces a previously approved use with a not previously approved use results in a change that would require the current ordinance to be applied". He said in looking at whether there was a substantial change the court looked at whether the proposed change would still be in accordance with the original approval. Sokol said there was nothing being proposed that would change the terms of the original approval, or test any of the assumptions that were made in the traffic study. Hawkins said going from 80 to 100 seats would be a 25 percent increase, and he might consider that significant. He would reconsider if it was going from 80 to 90. Hawkins said it comes down to what is significant and the Board would have to decide that. . It is a 10 percent increase in building size, and approximately 12 ½ percent increase in seating. Janvrin recalled that the kitchen area was to be enlarged. Kusich said a small notch added in the rear squares off the building plus the additional dining space. The main reason for the proposal is that the kitchen is much larger because so many items have been added to the menu.

Janvrin said the traffic seemed not to be too much impact on the site, and or on the property, or abutters or the community; drainage and lighting had been addressed in the TRC, If they are vested he would be really upset that the sign would stay at 35 feet and hoped for a compromise on that issue. He understood that everything would be ADA certified; even if not on the plan; that would have to be done by the code; also that there would not be lighting on the roof. Kusich said that the lighted arches are not part of the new architecture. There is some up-lighting, but no advertising on the roof. Janvrin noted that the current arches were backlit which is what the Board is trying to avoid as in the Smithtown Village. If the Applicant were willing to meet in the middle, he did not see a huge impact. Khan commented that nearly every department head was present at the TRC, and asked for the most important item for review or if they were small comments. Morgan said it would depend on the particular department head. Janvrin noted that the Sewer Department had quite a few concerns. Hawkins said the case went to TRC to have one more look at what was changing. It seemed that in the original plan review those items did not come up, and asked why not. Janvrin noted that Water, Sewer, Fire and Police now had different department heads. As a punch list, he thought the comments were very minimal, and asked if the Applicant would at least discuss them at this meeting. He did not see problems going forward.

Hawkins asked for the TRC items to be addressed. Kusich said the Applicant would have no issue with satisfying the items addressed by department heads, The asphalt would not change so the drainage was the same as on the approved plan. The concern was the signage which they would not be able to change. Hawkins asked why a 35-foot sign would be needed as it would not be seen from the highway. Kusich said this is impulse business and signage is very important. The new architecture doesn't really jump out as advertising as the previous red and yellow roof lighting did, so the sign was important as proposed. Hawkins asked what they would do if the question issue was being addressed now. Kusich said they would evaluate the situation. Hawkins disagreed saying it would be next to a 400,000 square-foot mall and they would keep it there. The business would live off the people going in and out of the mall; the signage was not the attraction. The Town is trying to create a roadway that is a little bit nicer looking for everyone in the area. Having the enormous signs along the road makes no sense. . Janvrin added that it is contrary to the Master Plan requisites adopted by the Board, as well as for the Route 1 corridor. Even the Master Plan approved ten years ago wanted to get away from obtrusive signage.



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Morgan asked how a motorist traveling on Route 1 could miss a 20-foot sign. Kusich repeated the Applicant's impulse driving criteria. Morgan thought the impulse would be reflected at 20 feet as well as 25. Kusich referenced McDonald's study. Morgan said on a different type of highway 35 feet might make sense, but not for Route 1. Janvrin commented that from the top of the water tower, this would be the only thing sticking up to see, other than telephone poles. Chase asked if the case had to come back for review. Hawkins said if the Board determined that the change is significant they would have to return and comply with existing ordinances. Morgan explained that one ordinance that had changed was the allowable height of signs; in 2009 35 feet was allowed. Sokul said the sign was not changing and had nothing to do with the proposal. Hawkins said the town ordinance had changed; the question is whether it was significant enough to have to comply with the changed ordinance. Sokul said that the size of the sign had not changed and should not be a consideration as to whether the case is vested. Hawkins said the sign is not a consideration.

Sokul thought that what regulations apply to the site plan should be identified and review it. Hawkins said all of the regulations would apply to the site plan if the Board decided that change was significant. If not significant, then the existing plan would be the determinant about what would be acceptable. He asked if the Applicant would make it easy and give consideration to changing the sign height to 20 feet. Sokul said that they would consider almost everything else other than the sign height. They would do additional landscaping to bring it closer to the regulation, and everything that the TRC said. They had no flexibility on signage. Chase thought the proposal could be a significant change. Sokul thought that sounded a little mean-spirited than applying the case law to the facts at hand. Hawkins asked if they were worried that the sign would be right behind DDR's 35-foot sign; a change of height might make it easier to see.

Hawkins said the first decision would be about a ten percent change in building size, noting that the drawing still had 102 seats. He asked if the board had the right drawing. Kusich said they had not revised the drawings but would forward them on approval. He noted that the area did not change, only the number of tables to make the spacing more open. Morgan suggested continuing the hearing until there were drawings that reflect the adjusted proposal. Sokul asked for a determination of what regulations apply. He asked if there were other changes to the drawing. Kusich said the site plan changes they showed were minor. They would make the changes in re the water line and the shut-off valves and incorporate them into the plan. Janvrin asked about the exit from the rear and if there were cross-easements to share that entrance. Kusich said it was part of the cross-easements. Hawkins said an alternative would be to request that the Applicant's representatives go back to the Applicant and say that it is very important to the Planning Board that the existing ordinance for signage be followed, and that the Board would appreciate consideration. Janvrin added that even without regard to the ordinances, a sign of the proposed height is contrary to the town of Seabrook Master Plan as adopted by the Planning Board.

Hawkins asked for Morgan's comments; there being none. He asked for other Board comments. Chase thought asking for reconsideration of the sign height was a smart move. Hawkins made a formal request to ask the Applicant to reconsider its position relating to sign height, and consider complying with the Town's Master Plan and the current town ordinance. Sokul asked if the Board would be doing that as a condition to considering whether the changes were material. Hawkins said this is a request that the Applicant reconsider, noting that they had agreed to comply with everything else that the TRC recommended. He really wanted to know whether the applicant was just going to dig in and say they did not care what the ordinance was, they would do it their way. The Board would like to think that people doing business in the town would want to follow



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the Master Plan and ordinances. The advertising is understood, but the Board is making a request that the Applicant reconsider. Sokul said it was simple, because that is why the statute was written [as it was], so that once people go through the application process and create investment expectations it can be maintained. Hawkins said a reconsideration was being requested. Sweeney commented that with the amount of traffic on Route 1, no one would miss [seeing] the McDonald's. Hawkins commented that was not the Applicant's opinion. The request was to ask the Applicant to reconsider and get a response.

Sokul said they would not have any flexibility on the sign issue, and asked that the Board vote at this meeting as to whether the changes were significant. Hawkins requested that they go back and ask the Applicant. The assumption that they had no flexibility might be a good one or it might not. This is important to the Board. It said so in the Master Plan and everyone else had agreed to abide by the local ordinance. The Board would like a major player in the town to say it would abide by it too. Sokul said they had been put off from the original hearing for two months and had already asked the question. He asked if they were wanted to ask again. Hawkins said the Board would like the question to be asked again. Sokul asked if there was anything else needed from the Applicant to make a decision on whether the changes were material. Hawkins and Chase had none. Sokul asked why they could not vote on the [material] question and continue in the review process. Hawkins said everything would be dealt with at one time. Sokul asked for a conference with his client. Chase commented that this was why the sign ordinance had to be enforced.

Hawkins authorized a break at 9:45 PM and resumed the meeting at 9:50PM.

Sokul had nothing to add at this time.

Hawkins continued Case #2012-25 to December 18, 2012 at 6:30PM in Seabrook Town Hall.

**OTHER BUSINESS –
11-31.10-22 NextEra Energy
Request for Certificate of Occupancy**

Hawkins noted that NextEra had entered a letter asking that the trial period be reconsidered as the complaint letter referenced a day when the firing range was not in use. He noted another complaint in the packet. Hawkins noted the other complaint and said to **continue this item to December 18 2012 at 6:30PM at Seabrook Town Hall**. Janvrin asked that this date be communicated to NextEra.



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RECORDING SITE-PLANS –DRAFT LANGUAGE

Tom Morgan, Town Planner

Hawkins continued this item to December 18, 2012, 6:30PM at Seabrook Town Hall

Janvrin asked if this could be discussed at the December 4 Work Session. Hawkins said that session would be devoted to zoning. The fee schedule would be discussed if there were time. Any other site plan items that Morgan had could then be discussed, noting there was a long list of items to be discussed, a little at a time.

B) Add the following to Section 5:

5.200 The site plan shall meet the recording requirements of the Rockingham County Registry of Deeds.

PLANNING BOARD - MEMBERSHIP

Hawkins said this would be discussed at a future meeting.

Hawkins adjourned the meeting at 10 PM.

Respectfully submitted,

Barbara Kravitz, Secretary, Seabrook Planning Board