



# Town of Seabrook Planning Board

## Minutes for December 7, 2004

**Planning Board Members Present:** Susan Foote (Chairman), Mark Preston (Vice Chair), Paul Himmer, Peter Evans, Mike Lowry (alternate), Tom Morgan (town planner), Paul Garand (CEO), Asa Knowles (selectmen's representative),

**Meeting Opened at:** 6:00 pm Tuesday December 7, 2004

**1.) Past Minutes:** Paul Garand brought to the attention of the board that the Cabral case from the previous meeting had not been given a continued date, nor was it accepted or rejected by the board, under RSA: 674:6, The Planning Board has to vote on a determination as to where the case will go from that point. The board determined that the abutters and applicant will be re-notified and the case will be brought back to the board for determination on Jan 2005 formal meeting.

**Motion:** Mark Preston To accept minutes from last meeting

**Second:** Mike Lowry All in favor except Paul Grand who abstained who was not present for the meeting

### 2.) Request for Bond Reduction:

#### a.) Ava Mae Lane:

Chairman Foote informed the board that the DPW memo noted that all concerns had been addressed.

Town Manager, Fred Welch, voiced his concerns about the maintenance bond and the fact that the developer resides out of state. Additionally the selectman cannot accept the roadway until after the 2 year maintenance period.

Chairman Foote questioned Fred Welch as to who was responsible for maintaining the road during the maintenance period. He replied the developer.

Mark Wojicki was present and asked what is the procedure for acceptance of the road by the town. F. Welch told him that it first had to pass the 2 years maintenance period before the Selectman can accept the road by the town under state law.

**Motion:** Mark Preston To release the construction bond and concurrently enact a 10% maintenance bond

**Second:** Mike Lowry Unanimous

Chairman Foote explained the procedure and directed him to contact Town Treasurer, Carol Perkins on Friday.

#### b.) Turtle Creek:

Chairman Foote read thru the paper work available for the site. The board discussed the items requested for bond reduction and the amounts recommended to be withheld by the department heads.

Mark Preston asked what the total bond amount was set at. Chairman Foote replied \$89,925.00

A letter from the Town manager, Fred Welch, suggested that the board hold the bond until after the winter months and see what problems may arise from the construction. Mark Preston asked Fred Welch what his concerns might be. He replied that a road built that quickly during the fall months may have settling during the winter.

Tom Morgan made the comment that the first winter is the most crucial.

**Motion:** Mark Preston Hold the bond till the end of March, then revisit and see if it is ready for reduction to maintenance

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**Second: Mike Lowry Unanimous**

**c.) Sandpiper Lane:**

The developer has requested a full bond reduction. Chairman Foote informed the board that, as to date, no department head inspection review as to the completion of the construction and that the bond should be held until the inspection was completed. The as-built plans were delivered to the dept. heads last Thursday. Fred Welch will follow-up with requesting the inspections. Peter inquired how this differs from Turtle Creek Terrace in building time. It was noted that this has been built for nine months as opposed to ten weeks.

**Motion: Chairman Foote Hold bond till the planning board receives dept. supervisor reviews**

**Second: M. Preston Unanimous**

**Elephant Rock Subdivision:**

Fred Welch told the board that the he was waiting for town selectman decision on a change of venue to Rockingham County Superior Court, it is set for review at the next selectman's meeting.

F. Welch also informed the board that the Lowe's site security is not yet settled due to the phrase "self calling letter of credit". The bank wants a stand-by letter of credit that they can call at any time. The bank was informed that this was not acceptable.

Chairman Foote inquired if the bond by Larry Douglas of the Jean Drive sub-division had worked out the correct phrasing for their bond. F. Welch replied that it was not submitted correctly yet.

**3.) Public Hearings: opened at 6:20 pm by Chairman Foote**

**1) Insert the following after the first sentence in the definition of Two-Family Dwelling in Article II of the Zoning Ordinance:**

**“At a minimum, the two dwellings must share a substantial structural connection in order for the building to be considered a two-family dwelling”**

Chairman Foote asked if the board had any comments or questions. M. Preston asked who determined what a substantial connection is. Chairman Foote replied that the Building Code Inspector would.

Tom Morgan commented that while this is still vague, it is less vague than what was before.

Chairman Foote explained that this was brought about due to a plan several months ago that added an addition that met on the corners only. Duplexes have a common wall.

Chairman Foote asked if any members of the public would like to speak to the proposal. Mr. Pineo suggested that the use of the phrase "common wall" should be considered. Mr. Brown agreed about the need of a better definition. Some of the buildings he sees really stretch it.

F. Welch commented that it could be problems for the building inspector because a common wall means the entire length of the wall.

Paul Garand suggested rewording to "a substantial common wall".

P. Evans noted that it is important to give the building inspector the ability to interpret the situation on a case by case basis.

Chairman Foote read the revised wording to be:

**“At a minimum, the two dwellings must share a substantial part of a common wall in order for the building to be considered a two-family dwelling”**

M. Preston questioned if a screened in porch between two structures would be accepted. P. Garand replied that right now it is not allowed. You need to bring into consideration firewalls for duplexes.

Chairman Foote asked about two structures with a garage in between. P. Garand replied that the garage is a substantial structure, unlike a screen porch.

It was noted that this would be for new construction.

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Chairman Foote asked if the changes to the wording would be considered minor, or does this change require another public hearing. Tom Morgan explained the law on public hearings. M. Preston recommended having another public hearing to insure that this would be legal.

**Motion: Chairman Foote Continue to Dec 21, 2004 for the second public hearing.**

**Second: P. Evans Unanimous**

### 2) Add the following to Article II of the Zoning Ordinance:

**“Light Trespass: Light that is distributed where it is not wanted or needed, beyond the intended target and onto adjacent properties where it creates a nuisance.**

Chairman Foote asked if the members had any comments. Paul Garand asked who would do the enforcing. There was a question about light not wanted vs. light that causes a nuisance.

Chairman Foote asked if any member of the public had any comments. F. Welch asked what kind of light, would a flashlight or car light violate this? Would a porch light? Chairman Foote replied that a porch light could. This is trying to solve residential areas with security floodlights that are motion sensitive and shine into other homes.

P. Evans noted that he sent an e-mail article that contained some helpful terms and suggestions for ordinances regarding light pollution. He feels those sort of technical measurements are more enforceable.

P. Garand noted that this could be an enforcement nightmare.

M. Preston wondered if this was needed. He noted that Bill Cox left us with a good standard. P. Garand replied that this was more for residential light.

P. Evans noted that it is a pretty technical problem and maybe we should re-look at this.

Chairman Foote reminded the board that this is a definition for light trespass.

P. Evans asked how do you define a nuisance. F. Welch agreed that this was a definition, but it goes to item number 5. Tom Morgan wanted everybody to be aware that number two and five go together.

Chairman Foote suggested that we remove it from this year and work on it during next year. M. Preston said we need to make it more specific.

Chairman Foote reminded the board that this is a zoning ordinance, and will be on the ballot for the public to vote on.

P. Garand asked if the wording would be changed to a permanent fixture light.

Chairman Foote read the proposed changes: "Light that is distributed from a permanent fixture where it is not wanted or needed, beyond the intended target and onto adjacent properties where it creates a nuisance."

Chairman Foote asked if there were any more comments from the public. Mr. Pineo observed that "where it creates a nuisance " could be changed to "if it creates a nuisance".

Grandfather status was discussed and it was noted that there could be designated cut-off date for all compliances. P. Evans suggested ten years. Chairman Foote suggested any new or replacement structures after April 1, 2005.

Tom Morgan suggested that this needs a lot more work and maybe we should move on.

**Motion: Chairman Foote Table to next year**

**Second: P. Evans Unanimous**

Chairman Foote reminded the board that she began discussing this back in July and we couldn't come up with anything better than this. If she is still chairman next year there will be monthly reports on this.

### 3) Amend Article III Section C of the Zoning Ordinance by deleting everything after the word “owner”, and replacing it with the following:

**“Grant a Special Exception pursuant to Article VII of this ordinance in order to permit a use that would be permitted in the less restrictive zoning district.”**

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Tom Morgan provided an explanation that the Zoning Board was never provided with a criteria to make a decision. Chairman Foote noted that this refers to when a parcel straddles two zoning districts, the owner has the right to request the less restrictive zone.

Chairman Foote asked if the board had any comments. No comments.

Chairman Foote asked if the public had any comments. F. Welch commented that the board should consider including an expiration date. There are variances all over town with no expiration. This leads to problems. Paul Himmer asked if two years would be acceptable. Asa Knowles asked what if it took five years. The reply was then they could ask for an extension. Tom Morgan noted that A. Knowles brought up a valid concern. A qualification for a variance remains. The hardship that allowed the variance will be there in the future. F. Welch noted that future zoning changes could negate variances. The solution is to build in time requirements. A. Knowles noted that if you had a variance for ten or fifteen years it should still be good. M. Preston notes such a situation would be grandfathered, this applies to new decisions.

AngleJean asked for clarification on a time limit. Chairman Foote replied that she agrees with F. Welch that we need to set time limits. We have too many plans that have been approved, but not built.

Tom Morgan recommended we add a sentence "A special exception shall expire if construction is not completed within two years." There was a discussion as to the word "started" or "completed". A. Knowles asked Paul Garand if a building permit expired. He replied that permits had 180 days to start the project with one extension of 90 days. If they don't start the work it is dead. If they start then cease work for 90 days, it expires.

There was a discussion as to what was more or less restrictive. It was clarified that the intent is to allow the parcel owner to declare which district they want to be in.

Paul recommended that the time limit should be controlled by the ZBA on a case by case basis.

Chairman Foote read a proposal for the final wording to be: "**Grant a Special Exception pursuant to Article VII of this ordinance in order to permit a use that would be permitted in either zoning district with expiration term to be set by the Zoning Variance Board if the special exception is not exercised.**"

It was decided that the change in wording is major and Chairman Foote continued the public hearing to December 21, 2004.

### **4.) Amend Table 2 in Article VI of the Zoning Ordinance by replacing "Road Frontage" with "Continuous Road Frontage, i.e. uninterrupted frontage".**

Chairman Foote explained that this was prompted by both a case reviewed several months ago and a discussion on Plan-Link. NHDES only considers road frontage from the road that the lot takes its address from. It was recommended that Planning Boards adopt a similar definition for road frontage.

Paul Garand suggested that we also include that frontage on a limited access highway cannot be used unless a driveway permit is issued by the DOT.

P. Evans feels that frontage isn't frontage unless the main access is taken off from it.

A. Knowles asked about lots on Blacksnake Road that also can access from Ledge Road. Paul Garand replied that they could use either access because it is uninterrupted frontage. A. Knowles was concerned about lots on Collins St and Rt. 286, and other lots that have frontage only on Rt. 286.

Paul Garand noted that this was to prevent sub-divisions from using several frontage areas.

Chairman Foote noted that this would not affect any existing lots of record, only newly created lots.

F. Welch suggested a footnote that excludes lots using frontage on limited access highways.

Chairman Foote requested to look at the table in article IV and suggested to the board that all this proposal does is change the word "road frontage" with "continuous road frontage".

**Motion: P. Evans To place amendment to number IV on the ballot**

**Second: M. Lowry All in favor except A. Knowles, who opposed.**

### **5) Insert the following in Article XI Section B of the Zoning Ordinance after the word "noise":**

**"light trespass"**

Tom Morgan reminded the board that this is linked to number two.

Chairman Foote tabled the proposal until next year.

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### 6) Replace Article XIV *Non-Conforming Uses* with the following:

#### **ARTICLE XIV - *Non-conforming Property***

**A - Expansion:** Non-conforming uses and non-conforming structures shall not be enlarged, expanded or extended, nor changed to another non-conforming use.

**B - Cessation:** If a non-conforming use ceases for a period of one year, all subsequent uses shall conform to the terms of the Zoning Ordinance.

**C – Restoration:** Nothing in this ordinance shall prevent restoration within one year and continued non-conforming use of a building that has been damaged by fire, water or other casualty.

**D - Merger:** If two or more adjacent lots in the same ownership do not meet the dimensional requirements of this ordinance, the land involved shall be considered to be an undivided parcel for the purposes of this ordinance.

Tom Morgan provided background for number six. He felt that the existing article was too vague. He feels that it is significant in the changes and that the board does not have sufficient time to address the far reaching consequences of the changes. He recommends that this be tabled until next year.

P. Evans feels it is worthy of discussion. Tom Morgan feels that the board cannot resolve this tonight, it will require considerable discussion.

A. Knowles questioned how this would affect people. Tom Morgan said if a lot is conforming, it would have no effect. This is for changes to already non-conforming lots.

The board agreed to table this until next year.

### 7.) In Article XX Section A of the Zoning Ordinance, replace the following:

“and the attached plan (entitled FIRM - *Flood Insurance Rate Map*, Town of Seabrook, NH, Rockingham County, Panels 420 of 681, 439 of 681, and 627 of 681, effective date May 17, 2004, hereinafter referred to as *FIRM Map*) is hereby incorporated into this ordinance.”

with the following new text:

“These regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its ‘Flood Insurance Study for Rockingham County, New Hampshire’ dated May 17, 2005 or as amended, together with the associated Flood Insurance Rate Map Panels numbered 420, 438, 439, 626 and 627, dated May 17, 2005 or as amended, which are hereby declared to be a part of this ordinance and are hereby incorporated by reference.”

Tom Morgan Provided background that FEMA requested a similar change last year. This board complied, however many other towns did not. So FEMA presented it again this year.

Paul Garand asked if we could just say "to adopt the revised FEMA flood maps".

Bruce Brown voiced some concerns about the fact that the town’s people have never had a chance or the opportunity to view or have a meeting in regards to how their property’s fall in relation to the FEMA maps. He is also concerned if there are now new lands in the flood area.

Tom Morgan agrees with Mr. Brown that FEMA's mapping is horrible and there is so much at stake for those that own property in the designated flood areas.

Chairman Foote noted that if this is not adopted then nobody in town can get flood insurance. Mr. Brown asked how many people have ever collected flood insurance. Tom Morgan stated that it goes further than that. It affects all the houses at the beach that might want to borrow money from the bank.

F. Welch noted there is a federal regulation that if you have a mortgage and your house is in the flood plain, you must have flood insurance. If you do not, the law requires them to foreclose your mortgage.

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Chairman Foote suggested that the Board invite a FEMA representative to come to an open meeting so they can explain the flood maps. F. Welch suggested that it should be held at the Community Center, this affects hundreds of people.

It was suggested by Tom Morgan that the town invite the congressional delegates. Chairman Foote stated that she would try to get the meeting as early as possible in January or February. 2005

**Motion: M. Preston Accept and place on the town ballot**  
**Second: M. Lowry All in favor except A. Knowles, who opposed**

### 8.) Add the following to the end of Article XV Section B of the Zoning Ordinance:

“For the construction of single family homes, a minimum of 7,500 square feet of contiguous uplands (non-wetlands) shall be available on the lot; For duplexes, 15,000 square feet of contiguous uplands shall be available.”

Chairman Foote asked for comments or questions. Mr. Pineo asked how this compares with the 20% of wetlands on a lot. He wanted to know if this could negate the whole lot.

Chairman Foote replied that the intent is to insure that there is sufficient buildable upland. We are starting to see very creative lot proposals that contain two or three islands of uplands with lots of wetlands. These lots meet the minimum upland requirement, but the board questions if any of those islands are large enough to suitably build a house and the deck, patio, garage. This overburdens the upland area. The person who buys the new home decides to add a pool, swing set, fill in that wet spot over the weekend. The Town cannot patrol behind the stockade fences for homeowner wetland intrusions. The Board decided that you should have a minimum of 7,500 sq. ft. to build a suitable house.

Mr. Pineo has concerns about the way a wetland is defined. Every little wet spot is called a wetland. He is concerned that this places more restrictions on land. Mr. Pineo feels we have enough restrictions to prevent abuses of the real wetlands.

Chairman Foote explained it is the future homeowner that knows or cares nothing about the wetlands. The homeowner fills those wetlands, then there are drainage and flooding problems.

Mr. Brown questioned if, as it stands now, a lot has to have 80% upland. Chairman Foote replied that of the minimum lot size no more than 20% can be wetlands. Mr. Brown wanted to know if this was more restrictive. Chairman Foote replied that the 7,500 sq. ft. was less than the 20% of 15,000. sq. ft..

Tom Morgan said that as it is now the minimum upland would be 12,000 sq. ft. but it does not have to be connected. Chairman Foote added that of that 12,000, 7,500 must be connected.

There was a discussion about the sewer project drying out a lot of the wetlands.

Chairman Foote stated the problem is with policing all the lots after the homeowner moves in. We are being forced to place items like this into our zoning ordinances and sub-division regulations. We are looking out for the future home owner.

Mr. Adams wanted to know about the 100 ft. sq. It was explained that the intent of the 100 ft. sq. is to prove the frontage and minimum lot width and depth requirement, it has nothing to do with upland.

M. Preston noted that we have only one hour before he has to leave.

**Motion: P. Evans To Accept and place on the Town Ballot**  
**Second: Chairman Foote P. Evans, Chairman Foote, M. Preston and P. Garand in favor.**  
**P. Himmer, M. Lowry and A. Knowles opposed.**  
**Motion passed, 4 in favor to 3 opposed**

### 9.) Amend Article XVIII Section C of the Zoning Ordinance by increasing the maximum penalty for violations from \$100 per day to \$275 per day, consistent with NH RSA 676:17.

Chairman Foote explained that the State now allows us to increase the fine that may be imposed by a judge if the town should take someone to court for a zoning violation.

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Chairman Foote asked if any board member or anyone in the audience had anything to say to this.  
No response

**Motion:** P. Evans                    **To Accept and place on the town ballot**  
**Second:** P. Himmer                **All in favor except A. Knowles who opposed**

### 10.) **Delete Section E in Article XXI of the Zoning Ordinance relative to Building Permit application fees, and re-number subsequent sections accordingly.**

Chairman Foote asked for comments from the board. Paul Garand explained that the fees have changed and this section causes a problem with people seeing this in the web-site then applicants submit the wrong amount.

F. Welch explained his comment was about renumbering a letter.

**Motion:** P. Evans                    **To correct letter, accept and place on the town ballot**  
**Second:** M. Lowry                    **All in favor except A. Knowles who opposed**

### 11) **Adopt a Building Code pursuant to NH RSA 675 by incorporating the entire text of Article XXI of the Zoning Ordinance, and designating that as the Building Code of the Town of Seabrook.**

M. Preston asked if this is just a designation. Tom Morgan explained that the building code does not belong in the zoning code. This is a housekeeping article.

F. Welch noted this would be a technical problem. The Town has already adopted a building code. You can have the State regulations, or adopt your own. You can't have both.

Tom Morgan suggested we re-look at this on December 21, 2004

**Motion:** Chairman Foote    **To continue to December 21<sup>st</sup>.**  
**Second:** Paul Himmer        **Unanimous**

### 12) **Add the following to Article III Section M of the Subdivision Regulations after the word "required":** **"and all monies owed to the Town by the applicant"**

Chairman Foote explained the reason for this is we have several outstanding bills from projects and this would insure those bills get paid.

Tom Morgan noted it was a typo, it should be section L.

Chairman Foote added that this will get the bills paid prior to a plan being recorded.

F. Welch asked if that included parking tickets and all other monies owed to the town.

Tom Morgan admitted that, as he was writing it, he felt it should be reviewed by the board's attorney.

Chairman Foote described a recent incident where a tax lien was on a parcel that the board approved for a sub-division. Because new lots were created and the old lot no longer existed, it created a problem on how to collect the tax lien.

Paul Garand asked if it could just be the associated project fees.

**Motion:** Chairman Foote        **To continue to December 21<sup>st</sup> and send to the Attorney Mitchell for comment immediately.**  
**Second:** M. Preston                **Unanimous**

- 5 Minute Break – returned at 8:10pm -

### 13.) **In Article IV of the Subdivision Regulations delete the words "and term" from the first paragraph, and add a new paragraph B as follows, and re-number subsequent sections accordingly:**

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**“B - Project Completion Deadline: All construction bonds shall be for a term of two years, and all project improvements shall be completed within two years of plan approval by the Planning Board.”**

Chairman Foote explained that currently there are not exact deadlines for approved plans. There is a need to set a deadline for an approved plan. If a project is not started during the two years after approval, it will expire. We have too many plans that no longer comply with current regulations, specifically the EPA Stormwater regulations.

Chairman Foote polled the board for questions or comments. M. Preston asked if we would have to set a specific date for completion. T. Morgan replied the date of approval would set the date.

Chairman Foote asked the public for questions or comments. F. Welch suggested we change the word "bond" to "security". It was noted that a bond is only one type of security, the board accepts several types of security. It was agreed to use the word security.

There was a discussion regarding the ability of the applicant to return to the board and request an extension on an unfinished project.

**Motion: P. Evans Change the word bond to security and adopt item 13 into the sub-division regulations.**

**Second: M. Lowry Unanimous**

**14.) Replace Section I in Article V Section E of the Subdivision Regulations with the following:**

**I - State & Federal Requirements: Prior to Planning Board review, the applicant shall submit evidence that applications for all applicable State & Federal permits have been filed with the respective agencies.**

P. Garand inquired if it should say "to accept a complete application" otherwise it would affect informal reviews. The board decided to insert the word "formal" before review.

Public attendant P. Stockbridge asked how this differs from the existing wording. Chairman Foote explained that the board's legal council advised the board that requiring approved State and Federal permits prior to review could be challenged successfully.

**Motion: M. Preston To approve change**

**Second: P. Himmer Unanimous**

**15.) Add a new section to Article V of the Subdivision Regulations, as follows:**

**"L - Water Meters:** The plan shall include specifications for water meter installation in every new home in the subdivision, and a note stating that such meters are mandatory and to be installed at the property owner's expense."

Chairman Foote inquired if member of the board had comments or questions. P. Garand stated that the "L" should be changed to "M".

Chairman Foote asked if the public had any comments or questions. No response.

**Motion: P. Evans To correct letter and adopt new section into the sub-division regulations.**

**Second: M. Lowry Unanimous**

**16.) Add the following to Article V Section F of the Subdivision Regulations:**

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**“In order to demonstrate that a proposed lot can support development without unduly impacting nearby wetlands, the above referenced rectangles shall be situated so as to enclose land that is 100% upland, i.e. not wetland.”**

Chairman Foote polled the board for comments or questions. P. Evens noted that in his brief experience there had never been a 100 ft. box stop a project.

There was a discussion about: the intent of the 100 ft. box, how often it was waived, the possibility of creating a perimeter to area ratio instead of the box, if this was a backdoor wetland ordinance, if the 100 ft. box should be in building permits.

T. Morgan suggested we should table this until we can decide on more suitable wording.

**Motion: M. Preston To table this article**  
**Second: M. Lowry All in favor except Chairman Foote and A. Knowles**

**17.) Amend Article VII Section H of the Subdivision Regulations and Article IX Section L of the Site Plan Review Regulations relative to granite curbs by replacing the term “sloped (45 degree)” with “vertical”.**

Chairman Foote explained that this would make our requirements conform to State standards. Additionally the current curbing is cut for vertical and being placed on the required slope resulting in the concrete breaking away on the edge.

P. Evens noted a concern that this could prevent someone from using the more costly sloped curbing. It was noted we could waive the vertical for sloped if the situation should arise.

Bruce Brown commented that it could be a safety situation. He thought the vertical curb would be safer for pedestrians. P. Garand noted that the purpose of a sidewalk is to provide protection to the pedestrian.

**Motion: M. Preston To adopt this regulation**  
**Second: M. Lowry All in favor except P. Evens who abstained**

**18.) Add the following to Article VIII of the Site Plan Review Regulations:**

**“Site approval shall also expire upon a subsequent site plan approval by the Planning Board for a project on the same site.”**

Chairman Foote explained that right now there are sites out there with multiple plans for a single site and this amendment would limit a site to one active plan.

There was a question about the application fees. It was explained that the application fees cover the costs of processing the application. A new proposal would be required to include new application fees.

**Motion: M. Preston To adopt this regulation**  
**Second: M. Lowry Unanimous**

**19.) Replace the Driveway Regulations with new regulations. The full text of the proposal is available for public inspection at the Planning Board Office in the Town Hall.**

Chairman Foote explained that the current regulations are not adequate. F. Welch provided the proposed regulations. The new regulations will allow the DPW to approve driveways. The Planning Board will only get involved if an application is denied and the applicant appeals.

It was noted that there were a few typos.

C. Pineo inquired how this would impact woods access points and areas such as the area that he uses to enter his barn with his tractor. T. Morgan explained this would only apply to new driveways and just involves the area where the driveway intersects with a Town road right of way.

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**Motion:** Chairman Foote To adopt and correct the typos

**Second:** M. Preston Unanimous

- 20.) **In Article V of the Subdivision Regulations, replace “D – Size: Plan size...” with “D - Plan Specifications: Plans...” shall conform to the recording requirements of the Rockingham County Registry of Deeds.**

T. Morgan explained that this will bring us into compliance with the current recording requirements. Chairman Foote asked the board for questions or comments. None She then asked the public for questions or comments. H. Boyd provided a bit more detail about the new requirements.

**Motion:** P. Evans To adopt this change

**Second:** M. Lowry Unanimous

- 21.) **In Article V Section A of the Subdivision Regulations, remove “14” so as leave the AutoCAD version of digital plans unspecified.**

T. Morgan explained that this will update our requirements to the changing technology. By leaving out the specific version of software, it creates less confusion.

Chairman Foote commented that the regulation should be that the digitals submitted should be in a format compatible and importable to the software the town currently uses and should not be linked to “AutoCAD” as a format.

P. Evans stated that we should not specify any particular software. The engineers can ask us what format we need.

**Motion:** Chairman Foote To table

**Second:** Mike Lowry Unanimous

- 22.) **In Article VII Section B of the Subdivision Regulations, change the minimum grade of streets from ½% to 1%.**

Chairman Foote explained to the board has been told by the town's DPW head and by local engineers that it is virtually impossible to grade to a half of a percent. A 1% grade would be more attainable.

The board discussed if "grade" should be changed to "cross section". H. Boyd suggested we add "slope" after "cross section".

Chairman Foote read the new wording to be " ... change the minimum cross section slope of streets from ½% to 1%."

**Motion:** M. Preston To Adopt change in regulations

**Second:** Paul Himmer Unanimous

- 23.) **Add a new Article XVIII to the Zoning Ordinance, and re-number subsequent articles accordingly:**

### **Article XVIII – Off-Site Impacts of Development**

Tom Morgan explained that this new article would allow the planning board to enforce the off site impact fees. He explained the newly enacted state law that allows this.

Mr. Brown requested further explanation. T. Morgan used the example of Lowes affecting the traffic on Rt. 1. If they had not been cooperative in providing off site improvements, we would not have been able to force them to provide those improvements.

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Scott Mitchell voiced some concern about this ordinance. He wanted to know what else more Lowes should have done.

Chairman Foote noted that so far the big projects in town have been very cooperative and generous. However, we may encounter a project in the future that may say no to our request. This ordinance will give us the legal ability to require off site improvements.

B. Brown asked if this would pertain to just commercial, or would it also include residential development. Chairman Foote stated that it could apply to residential developments if it had sufficient impact. The fee amount would be proportional to the amount of impact caused by the development.

M. Preston said that the state already has a law in place that is enforceable by the state and this ordinance is not necessary. T. Morgan explained that by putting it in our ordinances it would put the developer on notice that we may require off site improvements.

S. Mitchell said that any big developer knows that they may be required to do off site improvements.

F. Welch suggested that instead of placing this in our zoning ordinances, we place a reference to it in our subdivision and site plan regulations. Then we don't have to amend the zoning every time the state legislature changes the wording.

**Motion: Chairman Foote To table and reconsider in January**

**Second: M. Preston Unanimous**

### 24.) Add the following (underlined) Special Exception criteria to Article VII Section A of the Zoning Ordinance:

**A - Special Exceptions shall be granted by the Board of Adjustment, if in the board's judgment, the proposed use does not:**

- have an adverse effect on surrounding properties;
- cause a significant increase in motor vehicle traffic;
- cause erosion or the discharge of chemicals and other pollutants from storm water;
- emit odors, noise, dust, vibration, smoke or fumes which travel beyond the boundary lines of the subject property; or threaten the safety of nearby residents

T. Morgan provided a bit of background on numbers 24 through 31 were originally drafted by EarthTech. He reworded them a bit to fit our ordinance structure. They all relate to the EPA Phase II Stormwater regulations.

Chairman Foote explained that these proposals would help the town comply with the EPA mandates for stormwater treatment. She has met several times with John Starkey and Joe Boccadoro of Earth Tech in regards to compliance issues. Pro-Active ordinances and regulations are in the town's favor.

Chairman Foote asked the board and public if there were any questions or comments.

Mr. Pineo asked what would be the result of not enacting these proposals. Chairman Foote explained that these proposals would require the developer to design stormwater treatment that complies with the EPA requirements. The alternative would be that the town would have to rebuild the structures to bring them into compliance.

Mr. Brown asked what are we trying to prevent. P. Evans replied that we are trying to prevent the Zoning board from excusing people of having to comply with the EPA stormwater discharge regulations.

Mr. Brown asked what are those requirements. Chairman Foote said they relate to design of detention ponds, discharge from detention ponds, catch basin design. This requires that any variance granted complies with the EPA requirements.

P. Evans notes that Mr. Brown makes a good point that the ZBA shouldn't be granting variances that have detrimental effects on abutting property. He feels this appears to be a redundancy.

Chairman Foote reminds the board and public that all we are trying to add is the phrase pertaining to stormwater discharge.

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**Motion:** P. Evans                      **To put item number 24 on the ballot**  
**Second:** M. Preston                      **All in favor except A. Knowles who abstained**

*M. Preston excused himself the meeting at 9:13 PM*

**25.) Add a new Article XVIV to the Zoning Ordinance, and re-number subsequent articles accordingly:**

“Article XVIV – Pollution Control

Developers of all land activities that disturb 1 acre or more (or are a part of a larger development that disturbs 1 acre or more) shall submit to the Building Inspector a plan for erosion and pollution control measures that meet the EPA’s National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges from Construction Activities. These projects shall be subject to review, inspection, and enforcement by the Town. The project plan shall include appropriate storm water and erosion BMP’s (Best Management Practices), provisions to provide minimized land disturbance, an outline of measures to control construction wastes, and a spill control plan.”

It was noted that the Roman numeral was incorrect; it should be "XIX". (19)

P. Evans noted that this is another one of those unfunded mandates. Chairman Foote agrees but it is something that we have been requesting, including the site maintenance manuals. We are now requiring the manual that must be provided to the EPA, also must be provided to the town.

Mr. Brown asked don't we already require this. Aren't we were just adding more layers to what we are already have? Chairman Foote replied that it isn't in our ordinances, so they don't have to supply it. This puts the responsibility on the developer.

F. Welch noted that this year the town spent over \$30,000.00 on enforcement and elimination, and in a few years it will jump to over \$300,000.00. The town has two choices require the developer to do it, or put the cost on the taxpayer.

Mr. Pineo asked if this would apply to all the existing catch basins in town. F. Welch replied the EPA regulations already do, what this will do is require the developer to build to the requirements so the town doesn't have to rebuild it at a cost to the town.

There was a general discussion about the ever expanding volumes of rules, regulations, and unfunded mandates of the State and Federal governments.

**Motion:** P. Himmer                      **To put this to the voters**  
**Second:** M. Lowry                      **Unanimous**

**26.) Amend Article XII Section B of the Zoning Ordinance (Gravel Removal), as follows:**

**B – BOA Findings:** The Board of Adjustment must first find that such use is not detrimental, injurious or dangerous to public health and the welfare of the district or town and shall not constitute a nuisance due to noise, vibration, erosion, the discharge of chemical and other pollutants from storm water runoff, smoke, odor or other objectionable features nor adversely affect the economic status of the district or town. The Board shall consult with the Planning Board of the town as a resource for making these findings.

Chairman Foote noted that this is similar to the previous in that all it does is add the words relating to stormwater run-off.

Neither board or public had any comments or questions.

**Motion:** P. Garand                      **To Add to Ballot**  
**Second:** M. Lowry                      **Unanimous**

**27.) Add a new section D to Article XII of the Zoning Ordinance (Gravel Removal), as follows:**

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**“D - Inspections:** The Code Enforcement Officer will arrange inspections of the site to ensure that the Board’s requirements and those of the NPDES Construction Permit are being followed. If an outside consultant is necessary to make a report, the cost shall be paid by the permit holder.”

Mr. Brown asked if we had any gravel pits in town. The reply was none that we know of.

F. Welch discussed the State’s gravel removal regulations and suggested that the town needs to enact their own gravel removal regulations to protect the town’s resources. This proposal would only insure that the NPDES permit is complied with.

**Motion: P. Garand To place on the warrant**

**Second: P. Himmer Unanimous**

**28.) Add the following definitions to Article II of the Subdivision Regulations:**

**“Best Management Practices (BMPs)** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practice to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage, and measures recommended by Stormwater Management and Erosion & Sediment Control for Urban & Developing Areas in New Hampshire, published by the Rockingham County Conservation District in 1992.

**Storm water:** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.”

Chairman Foote asked for comments or questions and received none.

**Motion: P. Garand To add to Subdivisions regulations**

**Second: M. Lowry Unanimous**

*M. Lowry excused himself from the meeting at 10:05 PM. Chairman Foote noted we still had a quorum and could continue with the meeting.*

**29.) Add a new section M to Article III of the Subdivision Regulations (Procedures), and re-number subsequent sections accordingly:**

**“M – A Pre-Construction Meeting** shall be held between the contractor and Town officials designated by the Planning Board to discuss the proposed subdivision construction. The contractor shall ensure that a copy of the SWPPP (Storm Water Pollution Prevention Plan) required by the NPDES (National Pollution Discharge Elimination System) Construction Permit is on-site at all times. The contractor shall present the phasing of the work to implement said plan, and shall submit an anticipated work schedule, telephone numbers, and 24-hour emergency contact information.”

Chairman Foote stated that a pre-construction meeting would be beneficial to all parties involved with a project. She asked for questions or comments from the board or public. There was a discussion about English grammar conventions re: name vs. abbreviated letters

**Motion: P. Garand To add to Subdivision Regulations**

**Second: P. Himmer Unanimous**

**30.) Add the following to Article V Section E (Required Exhibits & Data) of the Subdivision Regulations:**

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- Erosion and pollution control measures that meet the EPA's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges from Construction Activities;

Chairman Foote asked for comments from the board and received none, then asked the public and received none.

**Motion: P. Garand To add to Subdivision Regulations**

**Second: P. Evans Unanimous**

### **31.) Add the following new sections to Article V (Required Exhibits & Data) of the Subdivision Regulations, and re-number subsequent sections accordingly:**

**"M - A Storm water Pollution Plan** is required by the NPDES Construction Permit for all activities that disturb 1 acre or more of land, or is a part of a larger development that disturb 1 acre or more. The plan shall include a narrative describing :

- storm water management methods;
- erosion and sediment controls;
- BMP's (Best Management Practices) that will be used;
- when and where the BMP's will be used;
- who will install and maintain the BMP's; and
- Measures to be used by the contractor to control waste, such as discarded building materials, concrete truck washout, chemicals, litter and sanitary waste at the construction site that may cause adverse impacts to water quality.

**N – An Erosion and Sediment Control Plan** shall be submitted which details:

- Soil stabilization practices to preserve existing vegetation and to re-vegetate open areas after grading.
- Structural BMP's to divert flows from exposed areas, to store flows, or to otherwise limit runoff from exposed areas.
- Control practices to reduce tracking of sediment and wind erosion."

Chairman Foote asked for questions or comments. F. Welch suggested that under "N" first bullet insert "non-paved" between re-vegetate and open.

**Motion: P. Evans To add to Subdivision Regulations**

**Second: P. Garand Unanimous**

### **4.) Voluntary Lot Merger:**

Submitted By George w. Staples of 26 Brooks Rd Seabrook NH,  
Voluntary Lot Merger of 192 Walton Rd. Tax Map 14, Lot 23;and 168 Walton Rd. Tax Map 14, Lot 6;

**Motion: P. Garand To accept voluntary lot merger**

**Second: P. Himmer Unanimous**

### **5.) Request for Private Road: Phoenix Way**

Chairman Foote explained that this is a request to keep Phoenix Way a private road and is signed by all the property owners that abut Phoenix Way. This means that the town would not be responsible for any services to this road. She explained that the initial intent of this sub-division was to keep it a private road.

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P. Evans asked if they have trash pick-up. P. Garand replied they bring it to the end of Phoenix to Worthley Ave.

Chairman Foote recommended that the document be notarized by the Town Clerk and placed in all pertinent files in the Assessor's Office. It would be preferable to have it also recorded in Rockingham County Deeds, but it may be difficult to do.

F. Welch noted this was approved as a sub-division and the only way to change this is to have a public hearing. There should be covenants created for these lots. We need to amend the original sub-division.

Chairman Foote suggested we use caution on how we do this because there are other private roads in town and what we do here may apply to them.

T. Morgan asked if this sub-division is completed. The answer was everything but the pavement. T. Morgan asked F. Welch how we should resolve this with Jeff Brown. He replied that we need to discuss the issues and hold a public hearing.

Chairman Foote tabled this until February.

### 6.) Informals:

Proposed revisions to the Seabrook Equipment Leasing site  
- Engineer or applicant not present –

Proposal by Zach Peel to convert a convenience store to a pub at 26 Collins Street  
- Engineer or applicant not present –

P. Garand noted that it would be a change of use and had concerns about parking, abuts a residential area, need to know hours of operation. He asked what the board's pleasure would be. Chairman Foote replied that if it is a change of use he would have to submit a site plan for review.

### 7.) Mylar Recording Policy:

Chairman Foote noted this is in regards to holding approved plans for 30 days prior to recording.

Chairman Foote redirected the board's attention to back to item number 5. There is a request in the packet from Mr. Perkins to keep Bowley Way a private road. It was suggested that we address the private road issues together. If we can get one done, then we will have a model to go by.

Returning to the mylar recording issue:

T. Morgan advised the board that this was brought about due to the most recent lawsuit against the Planning Board and our Attorney's question as to why we didn't hold recording the plan for the 30 day appeal period. T. Morgan's rely was that in the past the board saw no need to hold up the process on the rare chance of a law suit.

Chairman Foote noted to the board that if a plan is contested the appeal must be filed within 30 days. She asked if our new policy should be to hold all Mylar for 30 days. T. Morgan replied that he did not advise that, the board should decide if that is what they want to do.

There was a discussion about if this applied to our signing the Mylar or posting of the Notice of Decision. An abutter that doesn't attend the meeting will only know of that decision by the posting of the notice of decision. The 30 days should be from the date the notice was posted.

S. Mitchell had a lengthy discussion with F. Welch about notice requirements and the time requirements for an appeal. F. Welch notes the major problem was expunging a recorded Mylar.

Chairman Foote asked the board how they wanted to proceed with this issue. P. Garand asked T. Morgan and F. Welch how did other towns they worked for deal with this situation. The reply: it depended on the town, some held it for the 30 days other recorded it the next morning.

Chairman Foote asked, regardless of the courts, should we change our policy and hold mylars for 30 days, or should we continue on as we have in the past.

T. Morgan advised that it is a balancing act where if we change the policy it could inconvenience applicants unnecessarily, on the other hand in one out of ten thousand you could have the situation of expunging a recorded plan.

Chairman Foote asked what was recommended to the board.

P. Evans said that if we wait the 30 days it would protect us and an inexperienced developer.

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The board came to the conclusion that they would begin the policy of holding Mylars for 30 days until they could obtain better advice from legal council.

### 8.) Proposed Forms:

#### **Bond Reduction Checklist**

Chairman Foote opened the public hearing for the Bond Reduction Checklist. She explained that this is intended to streamline the process of bond reduction requests.

P. Evans asked if the streetlight committee should be included for the streetlights. F. Welch replied that the DPW would check the streetlights.

Chairman Foote requested removing Conservation Commission and Planning Board secretary from this checklist. It is not fair to expect a non-paid appointed official to dedicate the time require for the inspections, and the Planning Board secretary generally does not have the background knowledge for this responsibility.

T. Morgan asked who should do it. It was decided that the DPW could inspect for wetland and erosion control at the same time as other inspections.

The Planning Board would be responsible for confirming as-builts, etc.

Chairman Foote asked the public if there were any comments.

**Motion: P. Evans To accept the Bond Reduction Checklist as amended**

**Second: P. Himmer Unanimous**

#### **Application Form**

Chairman Foote directed the attention of the board to the minor changes to this form, adding, "re-submittal of plans for minor corrections" and changing the order of some items.

There were no comments from the board or public.

**Motion: P. Evans To accept the changes on the Application Form**

**Second: P. Himmer Unanimous**

#### **Example draft of "Letter of Credit"**

Chairman Foote explained that F. Welch has provided the board with a sample of what should be expected in a letter of credit. In the past there has been considerable confusion by the project owner and their bank as to what the town requires.

P. Garand asked if this would be part of the approval package we will provide to the applicant. Chairman Foote replied in the affirmative.

There was no public comment.

**Motion: P. Garand To approve use of the draft letter of credit**

**Second: Chairman Foote Unanimous**

### 9) Proposed zoning amendment: Sign Ordinance

P. Garand recommended that the board postpone this indefinitely, until there is a more suitable proposal to present. He is still consulting with Attorney Mitchell.

### 10) Public Hearing on applications:

#### **#4-52 Proposal by Jean K. Gove 1987 Trust for a 5-lot subdivision and lot line adjustments between Foggs Lane and Gove Road, Tax Map 7, Lot 50**

Chairman Foote opened the public hearing at 10:25 PM.

Wayne Morrill of Jones and Beach Engineers represented the application to the board. He presented to the board a letter of authorization for representation from the property owner. He then addressed the recent changes to the plan and read the notes on the plan regarding continuity of the phases on the Gove parcel. He identified one duplex and 4 single lots.

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P. Garand asked about the sewer easement that was created in previous phases. W. Morrill said the easement would stay as was and the sewer would be in the road ROW.

T. Morgan asked if any lot lines from previous plans had been changed. W. Morrill replied only due to the removal of the cul-de-sac in phase I.

There was a discussion about the buildable uplands in several lots and the location of the drainage easements and detention pond.

Chairman Foote voice concerns about the potential wetland impact by future homeowners in several lots. W. Morrill said that there is 15 ft. between the back of the proposed house and the wetland. Chairman Foote replied that almost guaranteed the homeowner would impact the wetlands with normal lot usage.

T. Morgan said his point was that these lots were poorly designed, eventually the backyard would be filled. He suggested moving the roadway 20 ft. to the north.

W. Morrill said the grave monument on the northern lot would restrict where they could put the road. He had to allow a 20 ft. buffer to it. Chairman Foote asked how much distance currently existed between the road and the monument. He replied over 50 ft. but he would lose the duplex lots.

There were several comments from the board that if this was better planned during phase I we would not be dealing with these problems now. Scott Mitchell replied that the owner originally did not wish to develop the entire lot, but now she does. The board voiced their skepticism about the long-range plans.

Chairman Foote said that, not directing it towards any specific individual, a landowner has got to realize that if they sell their property for sub-division and development, eventually it will be sub-divided until the town reaches total build-out. Plans must take that into consideration and provide for further development. From her view point it appears there is too much take the money and run and leave the town with a mess to live with.

W. Morrill described how he could move the road north a bit but it would put several curves in the roadway. It was commented that curves could help prevent speeders using this as a through road.

Scott Mitchell said he would try to re-work the roadway as suggested by the board, and see if he could accommodate board's request. However he is not in a position to lose a lot.

Chairman Foote said she would like to see a conservation easement with the right to pass and re-pass to insure that the wetlands are not being infringed on.

S. Mitchell stated that he didn't think the developer would go for a wetland easement.

Chairman Foote said the board has learned from past developments that lots with wetlands always impact the wetlands. The stockade fence goes up and the wetlands get filled.

W. Morrill continued to go over the changes on the other sheets per T. Morgan's comments. ie: wetland boundary markers, lot numbers, plant list, abutter notification, stamps by wetland scientist and engineer, and spelling errors corrected. He then addressed the department head comments: conditions of approval from Phase I, utility continuity and responsibility of contractors, bond amount is in question.

Chairman Foote questioned if Mike Fowler had even reviewed this plan, there are no comments from him in the folder.

**Motion: Chairman Foote To continue to the Dec 21<sup>st</sup> for further review**

**Second: P. Garand Unanimous**

Chairman Foote noted while W. Morrill is still in front of the board that the board had received a letter from Bradford Jones requesting that the Planning Board accept Whitaker Way as a town street. She then noted that the board had reviewed several memos over the past several months regarding this issue but nothing was resolved.

W. Morrill said that the road was complete and John Starkey was satisfied with the road.

Chairman Foote said we needed to pull the package to see what the status was. T. Morgan suggested that the board was not in a position to take action on this tonight.

Chairman Foote said that the board would look into this.

### **Lowes Plan changes**

W. Morrill asked if the board would accept and approve the revisions to the Lowe's plans as a result of the pre-construction meeting.

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Chairman Foote explained to the board the minor changes noted during the meeting and recommended acceptance.

W. Morrill explained to the board the changes and why they were done.

**Motion:** P. Evans                    **To allow the Chairman to sign the revised plans**

**Second:** P. Himmer                **Unanimous**

12) **Driveway Permit** applications - none

13) **Other Business**

Chairman Foote informed the board about the court case that is coming up in regard to the Carrillo site subdivision.

Tom Morgan informed the board that there is a letter of notice from NHDOT for a scoping meeting on a proposal for a 200,000 sq. ft. box retail. Date: December 10, 2004

The meeting was officially closed at: 11:10

Minutes respectfully submitted by:

William L. Fowler Sr.

*Secretary, Town Planning Board*

Minutes revised and corrected by:

Susan Foote, chairman

<b>MYLARS RECORDED</b>		
#4-54	11/22/2004 Proposal by John E. O'Keefe for a lot line adjustment at 128 Ocean Boulevard, Tax Map 22, Lots 23-100 & 23-200;	D-32184
#4-56	11/22/204 Proposal by the Alice P. & Corydon F. Perkins, Sr. Revocable Trust for a condominium conversion at 6 Walton Road, Tax Map 10, Lot 48;	D-32186
#3-38	12/09/2004 Proposal by Carroll & Faye Pineo for a 27-lot subdivision between Stard Road and Mill Lane, alongside the Hampton Falls town line, Tax Map 4, Lot 14;	D-32229
#4-55	11/22/2004 Proposal by Jeffrey G. Leblanc and James L. Armstrong for a condominium conversion at 8 & 10 Linda Lane, Tax Map 13, Lot 8-3	D-32185
#4-55	12/09/2004 Proposal by Jeffrey G. Leblanc and James L. Armstrong for a condominium conversion at 8 & 10 Linda Lane, Tax Map 13, Lot 8-3	101037
#4-56	12/09/2004 at 1:02 pm Proposal by the Alice P. & Corydon F. Perkins, Sr. Revocable Trust for a condominium conversion at 6 Walton Road, Tax Map 10, Lot 48	101038
#	12/09/2004 at 1:07 pm Voluntary lot merger, 192 Walton rd Tax Map 14 Lot 23; and 168 Walton Road, Tax Map 14 Lot 6	101039