

**SEABROOK PLANNING BOARD
JANUARY 20, 2004 – 7:00 P.M.
SELECTMENT'S MEETING ROOM**

MEMBERS PRESENT: Chairman Robert Brown, V-Chair Susan Foote, Keith Fowler, Peter Evans, Alternates Richard Dodge, Michael Lowry and Selectmen's Rep. Karen Knight. Others Present: Town Planner Thomas Morgan, PB Engineer Michael Fowler, CEO Paul Garand and Fill-in Secretary Emily Sanborn.

Meeting Opened: Chairman Brown opened the meeting at 7:00 P.M. with a quorum present.

Minutes of the January 6, 2004 meeting: S. Foote made a motion to approve the minutes of January 6. M. Lowry 2nd. Vote: K. Fowler abstained. Motion Carried. S. Foote said that the minutes of December 16, 2003 still needed work done on them.

Public Hearings:

#3-49 – Proposal by Elizabeth Rourke for a condominium conversion at 39 Pages Lane, Tax Map 7, Lot 16: T. Morgan had received a letter from Attorney Mary Ganz asking that this case be continued to March.

S. Foote made a motion to continue this application for a condominium conversion at 39 Pages Lane to March 2, 2004 at 7:00 P.M. M. Lowry 2nd. Vote: unanimous.

#3-41 – Proposal by Lafayette Realty Trust to construct a 3-unit 5,250 square foot retail plaza west of Lafayette Road, opposite Rocks Road, Tax Map 7, Lots 67 & 67-1: Chairman Brown put this case off until later in the meeting because the representative from Jones & Beach Engineering was not present.

#3-46 – Proposal by GRA Real Estate Holdings, LLC for truck sales and storage at 11 Stard Road, Tax Map 4, Lot 9-11: Surveyor H. Boyd of Millennium Engineering presented the plans for a proposed business at 11 Stard Road. H. Boyd said that this was a vacant lot and there had been some clearing done of the land. He said that the power company had not been happy with the first plan and that he had redrawn the plan. T. Morgan said he had received the letter from PSNH.

Boyd said that the site distance was a previous concern of DPW Manger John Starkey. H. Boyd said that he had viewed the site and this does not pose an issue. Boyd said that silt fencing has been installed and that the wetlands have been defined. He said that the abutters concerns had a lot to do with uses. Boyd explained this proposed project applies to the site plan regulations. T. Morgan said that the board should wait until all the issues are discussed before setting a bond amount. The Board took a few minutes to go over the correspondence in relation to this application. After reading the correspondence the

board went over the following concerns: Chairman Brown asked about the contours going from 74 to 80 to 72. H. Boyd said that this is the existing grade. S. Foote said that after viewing the plan and reading all the letters that lots of things had not been addressed. She said the most important was that the hours of operation were not on the plan and that the usual hours were 7:00 AM to 9:00 PM or 11:00 PM depending on the business type. Arleigh Greene, the owner, asked if his hours could be from 6:00 AM to 10:00 PM. Chairman Brown said no. S. Foote said that repair and storage are not allowed on this site. Greene that he has a storage lease off the site and that this site would be for retail sales and leasing not storage. He said that he might occasionally have one trailer on site containing personal items in a leased trailer because the leaser cannot be found.

S. Foote asked about the fumes coming from the trucks and how many trips a day there would be. Greene said that some days there would be five to six and some days none and average time on site would be 10 to 15 minutes. When asked about lighting, Mr. Greene said there would be no lighting on the site.

S. Foote said that the natural buffer that the board usually asks for has been removed. Greene said that he had given his abutter permission to do some plantings on the southern slope. S. Foote asked about the distance of this site to the well site. H. Boyd said that he could measure the distance. P. Garand said that this site is well outside of the wellhead protection area and that there is a junkyard between this lot and the well. T. Morgan made note that this well has been closed due to a beaver problem and this lot would be all right as long as it wasn't paved. Foote noted that this well would be used for the Hampton Fall diversion plan. Warner Knowles made comment in his review that there was to be no hot top on this site. H. Boyd suggested processed gravel without siltation. R. Lavin, developer of the site for Greene, said that a mixture of 60% stone and 40% erosion stone would stop tracking into road.

S. Foote said that she was under the assumption that the NH Soils did this plan but there is no certified stamp or date when it was done. H. Boyd said the he will ask the consultant to date and stamp it. Boyd said it had been done October/November and that he would have fresh flags put up. T. Morgan asked about the direction of the drainage flow. Boyd said that it is essentially flowing in the path that it does now. P. Evans said this seems to be a matter of zoning classification and that he sees it as a commercial operation like used car sales and leasing and that the abutter sees it as a storage operation. Evans asked P. Garand what he thought. Garand said that there is a sales office located on the plan

Attorney Francis X. Bruton, of McNeill, Taylor & Gallo, introduced himself and said that he was representing abutters Best Western and Cimarron Suites. Attorney Bruton described the two properties as destination locations for approximately 100,000 visitors to the Town of Seabrook annually to enjoy this resort. He said the appeal is the country setting which provides facilities geared to the families with children ages 12 and under.

Attorney Bruton said that the applicants started to cut trees and that his client asked that a natural buffer be left and in response to this request the trees were cut to the property line.

Attorney Bruton referred to Attorney Craig Solomons's letter in which Solomon voiced his concern that this site plan was an incomplete application and that what the applicant was proposing was not allowed. Attorney Bruton said that it is quite apparent that the applicant proposes a mixed use of the lot, whereby the applicant, as noted on the plan, suggests that the property will be used for retail sales, and box trailer storage. He said that what is not permitted in this zone is warehousing and storage. He said that in accordance with the zoning ordinance, table of permitted uses; any mixed use of property located in the commercial zone requires a grant of a special exception and must meet the 5-prong test. Attorney Bruton made mention of the underlying concerns of Millette, Sprague and Colwell, Inc. in their review of this plan requested by his client.

Attorney Bruton concluded that it would not be in the best interest of his client or the town to allow this application to proceed in a piecemeal fashion. He said that the plan before the board now is a sales trailer but his client has been told that down the road that there will be a 10,000 square foot building erected on the site. Attorney Bruton said that it was his opinion that a facility of this size so close to his client's property and valuable wetlands, should be a part of the initial review because of the drainage, lighting, noise, traffic patterns and other impacts. He said that the buffer hasn't been addressed and recommended that either, to table this matter and go over regulations, or deny this project and acknowledge their concerns.

Applicant A. Greene told the board that his present business is a grand fathered commercial retail sales and lease which he has been operating for 14 years. H. Boyd said that Mr. Greene was told by the town to go this way in regards to the application. M. McDonnell, proprietor of Best Western and Cimarron Suites, said, that for the record, the abutters were not heard at the last meeting. Chairman Brown told the applicant that there has to be something out there to keep the children out of the site. He said to leave it open is not acceptable. Boyd said that Mr. Greene is not disagreeable to a fence. A. Greene asked what would be feasible? Chairman Brown said something that would act as a sound barrier and control the dust. Brown suggested a chain link fence with vegetation high enough to screen the site. S. Foote said that the alteration of the property has made the area barren. She suggested an 8' top of the berm fence. She went over the grade lines with H. Boyd.

Abutter M. McDonnell said that he was concerned about the aesthetic value and that what was once a country setting with forest is now barren land. He said that a fence would keep out the children but his guest would be looking at a blank wall. McDonnell said that the dust made by the tracker trailers would settle into the pool unless the lot is paved. He said that the plan before the board is lacking in detail to avoid expense and that there is no sewer, water or paving and no toilets for customers. H. Boyd said that the ties for the water and sewer would be placed on the plan. S. Foote asked if there would

be an as-built plan for the future? Greene said that he would take responsibility for an as-built plan.

K. Knight said that there should be a sound barrier, vegetation and an as built. *H. Boyd* noted that the proposed services would be located on the as-built plan. *S. Foote* said there should be a lot maintenance plan for fencing, vegetation and surface soil. *P. Garand* asked if the fence would be located on or off the property line. *S. Foote* said that there was a stonewall in the vicinity of the lot line and it cannot be removed to put up a fence. *H. Boyd* said that it was 4' from the wall to the fence and that he would take a look at it.

T. Morgan said that the zoning issue has to be addressed for the abutters. He told the members that they had to be clear for the record in regards to what they considered the use to be. *H. Boyd* and *Chairman Brown* both stated that they considered this use to be the same as storing a used car on the lot until it is sold. *Greene* said that 95% of the business is leasing. *T. Morgan* said that the record should be clear and that the Planning Board has to interpret the zoning ordinance and if they conclude that storage is going on then a variance would be required and if they conclude it is 100% retail then it isn't needed. *Attorney Bruton* said it is clear that this is industrial use as the boxes will be stored and be picked up. One box may be for sale but there are lots of boxes being stored not sold. He said this is clearly a mixed use and voiced his concern with the units being backed up without pavement and striping. *Bruton* said that the hours of operation should be restricted.

P. Evans stated that if the units were empty this would be a commercial use. *A. Greene* described his two companies on Chevy Chase Road. *K. Fowler* said that this application sounded like a commercial business to him. *H. Boyd* said that he would address the different fencing proposals and that he would have the sewer/water location on the plan. *M. Lowry* asked that note #1 be changed to state that inventory would be for sale or leasing only. *S. Foote* said that she had to take the applicant at his word that this is a retail sale of tractor-trailers and that this would put a burden on the CEO to enforce this. *K. Knight* said that a sound barrier and fencing should be addressed for the abutters. *H. Boyd* told the board that he would get some specifics on material for the dust control and the fencing. *S. Foote* said that the fencing should be left to the discretion of the abutters and that maybe they could paint a mural or something on the fence.

Attorney Bruton said that they would be looking at the revised plan, as they need to see what the applicant will be constructing. He said that a vegetation buffer is not such a big thing as it is being made out to be by the applicant. *Mr. McDonnell* said that the soil could be mounted and then trees could be planted. *S. Foote* voiced her concern with the planting not taking.

Chairman Brown said that a note be put on the plan stating "no spaces to be rented", "no renting of spaces for storage on site". *H. Boyd* suggested "on site storage not available". *S. Foote* said that there should be some documentation for vegetation on site.

S. Foote made a motion to continue this case to March 2, 2004 at 7:00 P.M. *K. Knight* 2nd. Vote: unanimous.

#3-41 – Proposal by Lafayette Realty Trust to construct a 3-unit 5,250 square foot retail plaza west of Lafayette Road, opposite Rocks Road, Tax Map 7, Lots 67 & 67-1:

Eric Saari of Jones and Beach Engineering presented the site plan for a 3-unit retail plaza off of Lafayette Road for the board's review and approval.

Mr. Saari said that this site was located on Route 1 next to Sullivan Tire and they have received a curb cut from the NH D.O.T. He said that there were several easements for the site, one for a 12' strip for the highway, one for sewer and a drainage easement across the Sullivan property. *Saari* said that there are 26 parking spaces, which meets the regulations. He said that there would be a drive-up window and the building would be either brick or clap boards. *Saari* said that he would change the notation in regards to the new floodplain maps.

M. Fowler recommended a bond in the amount of \$20,000. Chairman *Brown* asked that the applicant obtain a cross-easement from Sullivan Tire. He said that this would be safer and alleviate the traffic on Route 1. *Saari* said that this would take away one of the needed parking spaces. *Brown* said it could be replaced in some other area. *Christopher Barnard*, the owner, told the board that Sullivan Tire was not acceptable to a cross easement. *S. Foote* said that the approved Sullivan Tire plan should be pulled and looked at to see if there is an existing cross easement.

K. Fowler asked if the building would have a sprinkler system. *Barnard* said that if it was a restaurant and if it was required. *M. Fowler* said that there is an existing 6" water line and it could be downsized if needed. He said that the lighting is acceptable. *P. Evans* asked about the retaining wall setback and asked wasn't a wall considered a building structure? *T. Morgan* read the definition and a retaining wall was not. *M. Lowry* asked what the other two units would be. *Saari* said that they would be retail sales.

Abutter Sandra Sanborn voiced her concern about a ditch on the Sullivan property that is a breeding ground for mosquitoes. *Mr. Saari* said that they were not expanding the drainage and it would be a vegetation swale, which will treat the runoff

Abutter David Baxter asked if the applicant would work with future projects. He said he owns across the street on the corner of Rocks Road and Route 1. *Barnard* said that he would work with him.

S. Foote made a motion to recommend a bond of \$20,000 to be a self-calling letter of credit or cash at a New Hampshire bank as per regulation for two years. *P. Evans* 2nd. Vote: unanimous

S. Foote made a motion to continue this case to March 2, 2004 at 7:00 P.M. *K. Knight* 2nd. Vote: unanimous.

Chairman Brown called a 5-minute break at 9:00 P.M. Member *K. Fowler* left the meeting. Board returned at 9:05 P.M.

OLD BUSSINESS: The Chairman signed a new mylar and plans for the lot line consolidation for Tiki Trust.

Chairman Brown stepped down and Vice Chairman *S. Foote* Chaired the next case.

#3-47 – Proposal by Seabrook Reclamation Society, Inc. and Roland Couillard for a lot line merger and a 7-lot subdivision west of Ocean Boulevard, opposite Amesbury Street, Tax Map 26, Lots 80 & 104: *H. Boyd* of Millennium Engineering presented the plans for a 7-lot subdivision off of the west side of Ocean Blvd for the board's review and approval. *Boyd* addressed *T. Morgan's* letter of comments as follows: 1) *Boyd* submitted the decision of the Beach ZBA granting the host of variance needed to do this project along with a copy of the referenced plan; 2) *Boyd* explained why the boundaries had not been depicted and the different zones; 3) plan now signed by professional engineer; 4) *Boyd* explained that the lots acreage is not depicted because of the open marshland; 5) floodplain map reference will be changed according to new scheduled change of map; 6) *Boyd* asked for waiver of box requirement; 7) curb cut from NH D.O.T. has been received and submitted to board; 8) *Boyd* explained that the first floor of the houses would be 10', which is a 1' above the flood elevation. *S. Foote* confirmed that this lot, to her knowledge, has never been under water; 9) overhead utilities to be used instead of underground; 10) *H. Boyd* said that he had submitted a drainage study to *M. Fowler* for review. He said that *Dorri* and *Christine* of the Wetlands Bureau had told him to get rid of the detention pond and to add leaching structures to eliminate any pollution to the salt marsh. *M. Fowler* said that he had gone over the drainage and that the lot was naturally graded with ditching. He said that the requirement for a drainage study could be waived. *H. Boyd* said there would be no increase in runoff and that they would get it as clean as possible before it leaves the site and goes into the marsh; 11) bound on lot #7 will be set; 12) the plan will need a waiver of the "90 degree angle on lot lines that intersects roads; 13) *M. Fowler* recommended a bond of \$113,250. *Fowler* said this would be modified by \$20,000 because of the change in the utilities. This was rounded off to \$95,000.

M. Fowler said that he disagreed with *Warner Knowles* report that the hydrant location should be on Ocean Blvd. He said that this would not be a good practice and the hydrant should be at the end of the line. He said that the 2nd detail for a special hydrant should be cross off the plan. *Fowler* said that new homeowners should install water meters to conform to the requirements of the 2003 warrant article on water meters. *Richard Dodge* informed the applicant that the mailboxes would have to be on Route 1A as per the post office. *P. Garand* questioned which zoning district this project would fall under. *Tom*

Pike said that it was under the beach district. *S. Foote* stated that there should be no intrusion into the 50' setback. She said that she would like to see a note on the plan and the deed. *H. Boyd* said that the DES would address this and that he could put it as a deed restriction as to the fertilizer used and that any destruction to vegetation be replaced with native vegetation. *P. Evans* said that he was uncomfortable with the elevation on this lot and was concerned that this might open up other areas for development.

Richard Kirsh, an abutter to the north, asked if the detention pond were gone, would the vegetation out back be staying. *H. Boyd* answered in the affirmative. *Kirsh* had questions about the ownership and he was told that there was a deed submitted with the application. *T. Pike* said that he was for the project but asked about the issuance of a building permit and would a clean, clear title to property be required. He was told that this board had no right to determine this. *H. Boyd* said that a title search was not required for the issuance of a building permit. *Pike* asked what affect this project would have on the *O'Keefe* property. *H. Boyd* said that the lot was graded toward the road, away from the property in question and if there was any overflow it would go to the marsh. *S. Foote* asked if the 50' setback line was well flagged. *H. Boyd* said that there would be silt fencing on the line. *T. Pike* asked if these surveyed plans allow for sufficient build able property. *H. Boyd* said boundaries to be set.

K. Knight made a motion to waive the box requirements for lots 1, 2, 3, 6 and 7; waive the 90 degree angle for lots 2 and 3; waive the requirement for calculation of acreage on lots 4 and 5 and waive Article VI F & G of the subdivision regulations. *M. Lowry 2nd*.
Vote: *P. Evans* opposed. Motion Carried.

K. Knight made a motion to recommend a bond of \$95,000 per regulations be posted for 2 years. *M. Lowry 2nd*. Vote: unanimous.

S. Foote made a motion to stipulate that there shall be no intrusion in to the 50' setback; no landscape alteration; any vegetation planting on lots shall be natural vegetation and fertilizer to be only pot ash of lime. *P. Evans 2nd*. Vote: unanimous.

K. Knight made a motion to approve the 7-lot subdivision with the above-approved waivers, bond and stipulations. *M. Lowry 2nd*. Vote: unanimous

Chairman Brown resumed his position as Chairman for the next cases.

Old Business: Appliance Warehouse – deficiencies

P. Garand asked the board to address the deficiencies for Appliance Warehouse, which he said, would take only a brief moment. *Norman Jutrus*, owner of Appliance, Warehouse asked the board to accept a bond of \$10,000 to cover the remaining things that have to be done as part of his previously approved site plan expansion. *P. Garand* asked PB Engineer *Michael Fowler* to look over a list that he had prepared of the deficiencies

that he had found upon inspection of the site. Fowler said that he would and get back to the board with his review. Mr. Jutrus thanked the board.

#3-48 – Proposal by Anthony & Carleen Rizzo to erect a 10,000 square foot retail store at 443 Route 286, Tax Map 17, Lot 48: Henry Boyd of Millennium Engineering presented the site plan for a 10,000 square foot retail store to replace the existing stores at 443 Route 286 for the board's review and approval.

Paul Garand said that the area of the fireworks sales could not be expanded. Chairman Brown said that the storage trailers would have to go. (K. Knight left the meeting at 10:30 P.M.)

Boyd addressed T. Morgan's letter of recommendations as follows: 1) a stipulation to limit the fireworks sales to its present floor area; 2) sidewalk has been done already; 3) monument locations along property's perimeter have been depicted on plan; 4) one parking space added for a total of 40; 5) T. Morgan informed H. Boyd that the floodplain map has been adopted and the plan should show this; 6) H. Boyd said that they did not need a curb cut because the use is not changing. T. Morgan said that the building would be bigger; 7) M. Fowler said that in regards to a drainage study, that this lot has only a puddle on the southeast corner of the lot and any increase from the roof into the drip spaces; 10) all lighting and landscaping will be as per requirements; 11) locust post with plastic wetland signs will be used to depict wetland boundaries; 12) adequate off-street loading areas are delineated on the plan; 13) dumpster hours are on plan, Monday thru Saturday, 7:00 AM to 7:00 PM.; 14) M. Fowler set the bond at \$15,000. Fowler said that there was a 6" water service to the fireworks store and a 1" to the pizza place.

P. Evans made a motion to recommend a \$15,000 self-calling letter of credit or cash bond, to be at a bank located in New Hampshire, for 2-years as per regulations. M. Lowry 2nd Vote: unanimous

S. Foote made a motion to approve the plan with the stipulations that the plan shows a 6" water line, locust post with plastic wetland badges, square footage of fireworks area shall not be expanded and the revised plan to be signed by the Chairman. M. Lowry 2nd Vote Unanimous.

#3-50 – Proposal by Jesse S. Fowler, Jr. for a condominium conversion at 15 & 17 True Road, Tax Map 2, Lot 15: Henry Boyd of Millennium Engineering presented the plans for a condominium conversion at 15 & 17 True Road for the board's review and approval.

S. Foote made a motion to approve the condominium conversion in so far as it complies with the state and town regulations and the chairman to sign mylar and plans. M. Lowry 2nd. Vote: unanimous

PUBLIC HEARING: INTERNATIONAL BUILDING CODES

Chairman Brown made a motion to send the International Building Codes to the town warrant with the “ Planning Board Recommendation”. S. Foote 2nd. Vote: unanimous

Correspondence: T. Morgan distributed the correspondence and Chairman Brown signed the expenditures.

Driveway Permit applications: None

Meeting adjourned: Chairman Brown adjourned the meeting at 11:00 P.M.

Minutes taken by Fill-in Secretary Emily Sanborn

Secretary’s Notations: Mylars recorded on 1/21/04: Tiki Trust lot line consolidation, D-31283; Jesse Fowler Jr. Condo Conversion, D-31282 – By-laws #5129 and road deeds for BRN, Viola Circle-Kaleb’s Court #5131, Seabrook Shores #5132.