



## Town of Seabrook Planning Board Minutes

October 26, 2006

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Members Present: Sue Foote, Chair; Aboul Khan; Peter Evans; Paul Himmer; Mike Lowry; Robert Moore, Ex-Officio; Tom Morgan, Planner; Barbara Kravitz, Secretary.

Members Absent: Mark Preston, Vice Chair; Paul Garand, Code Enforcement Officer (CEO)/Alternate (see letter).

Chair Foote called the meeting to order at 6:26PM and announced this is a special meeting to discuss the Route 1 traffic issues with DDR, and representatives of the Department of Transportation (DOT), Rockingham Planning Commission (RPC), traffic consultants and State Senate and House members.

### **CORRESPONDENCE**

Foote read the letter from the Code Enforcement Officer in the entirety. The CEO expressed great concern re the current sub-standard traffic and safety issues, that pose a threat to the well-being of the community. The intersection at Route 107 and Route 1 is sub-standard and the proposed development will add substantial traffic and further impact the area. At a minimum the developer should be held responsible for maintaining the present standards or improving the traffic flows. It is unfair to burden the entire cost of improvements on one single project. The Planning Board should look for an equitable way of dividing the cost. Several large potential sites are before the Planning Board and others could be developed in the near future. The CEO recommends DDR concentrate on the Route 107 corridor, and said a traffic study contemplating the fully developed area traffic flows, including the Route 95 intersections, is needed. Future developments could be held equally responsible for necessary Route 1 improvements. The CEO personally thinks the sub-standard Route 107 Bridge should be widened before approvals for the 700 Lafayette Road project are given. [The full text of the CEO's letter can be obtained from the Planning Board Secretary.]

### **PUBLIC HEARING**

**Case #2006-31 continued from August 15, 2006: Proposal by Developers Diversified Realty (DDR) Seabrook LLC for a 4-lot subdivision at 700 Lafayette Road, Tax Map 8, Lot 55;**

**Case #2006-32 continued from August 15, 2006: Proposal by Developers Diversified Realty (DDR) Seabrook LLC to construct a 441,290 square foot shopping center at 700 Lafayette Road, Tax Map 8, Lot 55;**

Lowry had recused himself from these case deliberations.

Attending: Stephen Pernaw, Pernaw & Company, Planning Board Traffic Consultant; Glenn Greenwood, Assistant Director, Rockingham Planning Commission; Steven Ireland, Department of Transportation, District 6 (DOT); Bill Oldenburg, highway design, DOT; Paula Wood, Chair Seabrook Budget Committee; David Currier, Police Chief; Senator Maggie Hassan, representing Seabrook, District 23; Representative Frank Palazzo, Seabrook;

Attendees for the Developer: Jim Grafmeyer, Senior Development Director, DDR; Stephen Lehmann, Project Director, Vanasse, Hangen, Brustlin (VHB); Robin Bousa, Traffic Consultant, VHB; Attorney Malcolm R McNeill Jr representing the Applicant



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Foote explained this meeting is to deal with the traffic issues raised by the DDR site and others in the area. Hopefully some sort of mutual agreement and resolution among all of the parties can be reached about the increasing health, safety and traffic issues involving Routes 95, 107 and 1. Morgan suggested first hearing the perspectives of the Planning Board Traffic Consultant and the Rockingham Planning Commission.

Greenwood said if a community declares a project to have the potential for having regional impact, the RPC has the commissioners comprising the Projects of Regional Impact Sub-committee get together and look at the project with an eye to how it would impact surrounding local communities from a regional perspective. In addition to the commissioners this meeting was attended by the RPC staff and the Seabrook Town Planner. Greenwood read the September 28, 2006 letter sent to the Planning Board after this initial meeting, at which Seabrook's Town Planner presented an overview followed by a discussion of the issues.

According to the letter, at a minimum factors to consider include, but are not limited to, (i) relative size or number of dwelling units as compared with existing stock, (ii) proximity to the borders of a neighboring community, (iii) transportation networks, (iv) anticipated emissions such as light, noise, smoke, odor or particles, (v) proximity to aquifers or surface waters which transcend municipal boundaries and (vi) shared facilities such as schools and solid waste disposal facilities. With respect to item (iii) of the proposed (DDR) project, the serious concerns were expressed in the memorandum received from RPC traffic expert David Walker who reviewed DDR's Traffic Impact Analysis. The pertinent aspects of Walker's memo indicate the development, if constructed, will result in a decline in the level of service at several intersections. The study offers too little mitigation in some instances and the declining level of service is not mitigated at all. These conditions represent an unacceptable degree of negative impact upon the regional transportation network. With respect to item (iv) RPC requests the developer provide a quantitative measure of the impact idling automobile engines will have on the area's ambient air quality. With respect to item (v) the concern is activity is planned within wetlands as well as within wetland buffer areas which could result in degradation to the wetland resource and could cause siltation for off-site wetland resources if not managed properly, and could also reach into Hampton Falls. The applicant should take protective measures to ensure that no wetland degradation occurs offsite. Also questioned is the amount of water required by the DDR proposal; if on-site wells are to be utilized, are adequate ground water supplies available. The RPC committee thanked the Town of Seabrook for letting it take part in this review which is not mandatory. Final action by the committee was tabled in order to investigate the possibility of meeting directly with the project design team. [Tonight, Greenwood and the developer have agreed to set such a meeting. The full text of the RPC's Project of Regional Impact Study Committee letter, and David Walker's memo can be obtained from the Planning Board Secretary.] Greenwood added that RPC's concern arises when an applicant's impact study displays a resulting decline in service because it's generally seen as an untenable occurrence.

Pernaw said his company specializes in traffic/transportation studies. For the proposed DDR project Pernaw was asked by the Planning Board to review VHB's traffic impact study and provide comments. Pernaw's report provides a technical review of the traffic study as well as comments on the site plan and the preliminary mitigation plan. As VHB has responded to Pernaw's report, at the



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Planning Board's direction Pernaw would respond to it. It comes down to what is going to be done about mitigation. For example, the VHB study shows a very big impact at the Route 95 Northbound ramp juncture - over 1200 additional cars /hour or an over 40 percent increase. Pernaw said the Chair has been right to say no one applicant can come up with the "big fix". The challenge for the Planning Board is to come up with something that deals with the dramatic change proposed for an intersection that already has trouble. Pernaw said as VHB has provided him with a larger scale drawings, he can have other comments and mitigation suggestions on proposed improvements along Provident Way.

Moore asked if Pernaw had looked at the current Route 107 Northbound ramp loading at the Route 95 Bridge. This is the bottleneck, and Morgan asked what needs to be done to correct it. Pernaw said it appears to him that the overpass needs two lanes westbound and two lanes eastbound and probably a double left turn lane for people heading North. Ultimately, this should be a redesign for a five to six lane overpass. Moore asked about the Saturday trip estimates. Pernaw said the trip generation during the Saturday peak hour period is 2240 trips comprised of new traffic and pass-by (no net increase) traffic. The biggest net increase through the Route 107/1 intersection would be 1835. At the 107 Northbound ramp junction an increase of 1260 new cars is proposed but there is no mitigation proposed. Foote said these numbers are generated by a formula and are the average expected load. Pernaw said the consultant did use the IDE trip generation manual which is standard practice. Pernaw concurs with the particular estimate and believes the 2240 figure is the valid number to use to come up with the right number of lanes and mitigation. Evans asked if that means a car is passing by every two seconds. Pernaw said that impact really doesn't occur on any one roadway and there are two access points and referenced the summary of net increase by intersection in his report. Even though it generates 2240, on an intersection level the biggest increase is 1835 (at the 107/95 ramp].

Moore asked if the three out-parcels plus the Green development were calculated in. Pernaw said the out-parcels were not specifically accounted for in the VHB study, although in a recent response they acknowledged bumping up the square footage which should cover it. But for planning purposes it might make sense to assume a hypothetical development, or a grand scheme in which DDR pays for its fair share, a because it would not make sense to have to tear up what's been built. This development has to work on its own. Khan asked about the impact of the power plant overhauls every 18 months when about 1000 additional persons are needed. Pernaw said that would be a special event and would not be covered. Impact studies don't design for the highest hour of the year or a one-time event. Pernaw said the VHB study represents a peak month summer condition. The challenge is for the Planning Board to see what can be done with the numbers presented, or if the proposal will fall short. Pernaw's concern is a 40 percent impact with no mitigation; that is a red flag.

Morgan said Pernaw's report is very well done, but he takes issue with the cross-connections recommended between McDonalds, Pizza Hut, and CVS, and the DDR site where a chaotic situation could occur if people take short-cuts to avoid the Route 1 traffic. Pernaw said the objective is to have people in these out-parcels not go back out on Route 1 to get into the DDR shopping center, but agrees the cross-connections should not become a direct throughway.



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Ireland referred to a September 12, 2006 letter from the Planning Board to DOT requesting deferral of a curb-cut permit until the traffic issues are discussed, and requesting a meeting with DOT, particularly concerning the proposed right-in/out on Lafayette Road. DOT has stopped its review process until the Seabrook's concerns can be heard and there is an opportunity to work with the developer and the Town. DOT has no recommendations at this time. Foote said a Planning Board main concern with this site and other sites on Route 1 is that it perceives the scope of influence to be further up and down the road than what DOT has included. In a special Spring meeting with the RPC about its Route 1 Corridor Study, the Board expressed its perception of the difficulties with the interchain of Routes 1, 107 and 95, out to 150, 125 and 101. The RPC response was that west of Spur Road is out of the realm of this study. The Board is finding that you really can't put on blinders to all the feeder and access roads and just concentrate on Route 1 as has been the case with the State's prior restructuring with the assistance of WalMarts, Home Depot and Loew's. Right now, Route 1 works great from the Home Depot light to Railroad Avenue. Beyond Railroad Avenue it's turning into a nightmare. The Board is hoping the State will consider that the impact of the DDR project as well as anticipated future projects like Lowe's 2, Seabrook Trucking Center across the street from DDR on Provident Way, and the old Ames site. Given the development potential, Foote foresees Seabrook becoming like Nashua and Salem where the main roads from Massachusetts come into those towns. The Board is hoping the State will help the Town to resolve traffic issues by doing more than just looking at road frontage and up to 1000 feet on either side of a property line. New shopping centers will impact far more than just Route 1.

Ireland said the scoping for the DDR project goes a little beyond Route 1 as it considers the Route 95 ramps. It would be difficult for a single project to scope out to the 107 and 150 intersection where the impact would be insignificant. Foote said more people come out of Haverhill through Amesbury to 150 and 107 than come South on Route 1 from points North. Ireland said DOT wants to work with the Town to find its concerns and needs but they have to draw a line somewhere in the scoping meetings.

Morgan asked about the feasibility of pulling various players together to make the Bridge wider. Ireland said timing would be difficult as no two developers seem to move at the same pace. For example, the DDR scoping was only a few weeks prior to interest from the trucking site off Provident Way which has yet to submit a traffic impact study. The recent Lowe's 2 scoping is likely to have a traffic impact study pretty quickly. Coordinating different developers to work together is very difficult although in some instances, for example in Rochester with WalMart, the developer put up money toward improvements and may be doing the same in Portsmouth. Morgan asked if in those instances the municipality took the lead even though it is a State road. Ireland said "yes" and the developer also provided some funding for side road improvements; DOT funds were not involved. Morgan said if sufficient funds were collected and made available to the DOT, how long would it take to get the Bridge widened? Ireland said in those examples, the Town did not provide funds to the DOT for any work. The Town put the work out for bids. DOT had input, worked with the town on issuing a drive permit but did not administer for the project. Morgan said these examples are not State highways over an interstate, and asked if widening the Bridge is feasible or a waste of time to discuss. Ireland said if the Town wanted to pursue this it is feasible, but a difficult process



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especially with the rising cost of construction. By the time Rochester got around to building, the money didn't go as far as anticipated. On a \$2 million 90 mile resurfacing project bid in Jan-Feb and built in the Summer, the asphalt and fuel adjustment costs were approximately 10 percent higher and 12 miles were cut to pay for the adjustments. As Pernaw said each development needs to function when it comes in. DOT sees DDR as the first project in the door, but has asked them to cooperate on the driveway location with the trucking company project anticipated across the street. DOT doesn't expect DDR to scope for another project with no numbers available. However, the trucking site is expected to include DDR's numbers. Foote asked if the scoping meetings look only at the physical configuration, or do they work on a percentage of ultimate project cost. Ireland said DOT looks at how to mitigate the traffic impact; cost is not the factor. If the mitigation required is more than a developer can handle, the developer just won't build.

Oldenburg said especially when mitigation is required in places where the developer doesn't control property rights, some towns have created TIF (Tax Increment Financing Districts) where a town takes out a bond for roadway improvements for all potential developments in an area. The developers don't have mitigation obligations but pay at a special tax rate to repay the bond within three to five years. This means there is no tax increase in the community for those bonds and once the bond is repaid the town sees revenues from the full 100 percent tax base. Hooksett has widened State and Interstate roads and redone interchanges; there is benefit to the developer and the Town. In going through the scoping it is realized that at some point the disbursement of the traffic is so little that it may not be able to mitigate it. If this were used in the DDR case with a forty percent traffic increase, the developer would make a cash contribution for forty percent of the cost for the bonding with other developers contributing proportionately. But that amount would cover only the developers' mitigation costs. The difficulty is accounting for the real costs that include the traffic that is already there.

Foote asked if Board members had questions for DOT. Evans asked what is the DOT stake and/or what would happen if the Planning Board said just build the project and clogged Route 1 so it doesn't work. From what the DOT has said it provides recommendations but no funds. Ireland said any funding has to come through the ten year plan - often originating with the town and going through the planning commission, which is extraordinarily time-consuming. Evans asked if the DOT has any way of preventing a town from doing harm to itself. Ireland said some cities/towns are actually hurting themselves by pushing for certain developments and not getting as much mitigation as they should. Foote said one of the major obstacles is that when Route 95 was expanded the multiple cross roads in Seabrook were cut down to one road to the West, none to the East, and really one road north and south. Hundreds of thousands of people want to come here for holiday shopping time, and the Town is trying not to discourage the development potential because it needs the tax dollars, especially since school funding and the utilities tax revenues were taken away. The objective is to solve the traffic issue so people can get from here to there, and the Board is hoping the traffic experts can help find a solution.

Wood said given that different developments proceed at different speeds, if forty percent of the cost came from DDR, how long would the Town have to put up with the traffic situation before getting the next [twenty] percent or until all the money is gathered and the Bridge repaired. That



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would not be fair to the townspeople to sit and wait. The traffic situation now is not very pleasant but ambulances and fire equipment get to where they need to be. Wood said the Town can't maintain that much traffic even for a short time. She lives in a mobile home park with a lot of elderly, and there are times she cannot get out. Emergency equipment may have to blow the whistle now, but they do get through. What about when there may be 2000 more vehicles and the Town has to wait for all the money to be accumulated. Foote said the concern is (i) [the funding is] only a percentage of the increase, and (ii) the money collected today won't be sufficient to pay for the project nine years from now due to inflation and cost of construction. So even if four or five projects write checks, by the time it gets through Federal and State highway approval it will be many dollars short and they won't be able to do the project. Wood said with budgets that have been turned down, fortunately through the creative work of the Town Manager and Department Heads, the Town has maintained itself. Increased traffic will require new services. For example, the Fire Department has already taken care of a fire on the DDR property. If default budgets continue, the services that will be cut need to be considered. It's not fair to the residents of Seabrook, even though they may vote a budget down, to put an extra burden on services and make the residents come up with the money. She said the increase in services wouldn't be taken care of by the additional taxes.

Currier commended Pernaw for his report and making key points that Currier has previously discussed with the Planning Board, as well as coming to listen to the Town's concerns. Wood is absolutely right - there is going to be a substantial demand for police and fire department services. Yesterday one elderly couple had to wait an hour for a cruiser to be free (from dealing with a burglary) to take the accident report. So there is no question the DDR project will create significant increase in calls for police service. For the DOT's perspective, there are three significant bottlenecks on Route 1. One is at the Route 107 intersection. The other two are where two lanes turn into one lane by the Getty Station South, and also North of the DDR property. There are significant complaints of road-rage at both of these locations when people are in a rush and jockeying for positions, and don't want to give way. The people on Rocks Road have a horrific time getting out now, especially on weekends when it is completely backed up through the intersections. DDR has proposed some mitigation to get people in, but not to get them out. The Route 107 Bridge which has to be widened is not in the ten-year plan but perhaps scheduled for 2027. Wood is right; we're getting by. This project will push it over the edge. The estimated increase in the number of cars is adding to the problem already existing. The three bottlenecks are substantial now and the roadway can't handle the increase now. If all the money were collected now with bids out, and we knew relief is coming we can probably get by for a short period of time. The State probably realizes those bottlenecks exist. When Home Depot and Lowe's went in some other bottlenecks were straightened out. The Baxter property at Rocks Road, which won't generate a substantial amount of traffic, paid a significant percentage of the project for traffic improvements. DDR is not attempting to mitigate the traffic problems as a result of this project.

Foote asked about the DOT formula as other developers along Route 1 have talked about a percentage of the cost of their project for off-site mitigation, ranging up to ten percent and others less than one/half of a percent. It doesn't seem fair. If a relatively small store is asked to spend almost ten percent of the cost of their building to doing Route 1 improvements then why not



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expect the same percentage from large projects and then maybe the road would be fixed further north and south and west. Oldenburg said DOT doesn't know what the building costs for a project are. Mitigation is based on bringing the level of service at an intersection back to what it was before the project. The impact of a development on the roadway should not be felt once the project is there. One DOT measure is that a development adds no more than 100 vehicles to an intersection which is difficult to figure out in advance. The building cost percentage is not a factor because some elements, even a small gas station, restriping or signage, have greater costs than others.

Ireland said if no federal highway funds are federal highway approval isn't going to be involved, so time-wise, if there is bonding and developments repay that bond, or moneys are contributed from groups of developers, the Town would be dealing for permitting with DOT, and perhaps with both District 6 and turnpikes because Route 95 is controlled by Turnpikes. It would not be the first time that District 6 and Turnpikes have issued a joint permit for improvements.

Morgan expressed concerns that the right-in/out proposal will draw traffic that otherwise would have used the Provident Way access. Route 1 can't afford to handle unnecessary additional traffic, and Provident Way can absorb it better. Most shoppers will be coming from Massachusetts on Route 107. They will see the Target sign and want to turn left; How can this be prevented. Foote said when a right in/out is approved be sure the sweep to the turn is so extreme that someone heading Southbound on Route 1 can't take a left turn. Cobblestones are not a big enough obstruction to keep a car from broadsiding someone when they want to head South. Ireland said unless there is a median island there will always be someone making that left turn. Done correctly, right-in/out have a pretty small impact. Oldenburg said there's a benefit to keeping those people coming out from the 107 intersection. Foote said that creates more back-up from the Hampton Falls light. Ireland said there is the potential for going into the right-in/out the wrong way but a lot can be done with signage and curbing.

Morgan said another concern is the proximity of the right-in to the very busy McDonalds driveway where there would be the potential for turning conflicts. Ireland said he hasn't seen the new Corridor Study but heard there is something about signaling at New Zealand. There's no reason the Planning Board can't work with McDonalds to perhaps avoid a right-in/out and make a common 4<sup>th</sup> leg to New Zealand, and signaling it. Morgan said that would solve the McDonalds problem but could exacerbate drawing people off Provident Way. Ireland said a four-way intersection would draw off people coming from the North sooner. Ultimately the Planning Board could say "no" to a right-in/out. Bousa noted that was one of Pernaw's comments as well and VHB has submitted a concept plan to move that to the North. Wood asked if the study considered the year-round overflow of traffic from Route 95 to Route 1 to avoid the tolls. Pernaw said the existing traffic volume covered in the study would indirectly reflect that situation. Wood asked if the traffic counts were done at different times of day and days of the week or only when there is less traffic. Pernaw said for example the data for the Routes 107/1/Provident Way intersection was collected in July during the weekday peak period (late afternoon) and again on Saturday mid-day as specified at the DOT scope meeting. Wood said she tries to avoid the heavy Friday night traffic or just doesn't go out. Pernaw said generally the scoping meetings look for a set of numbers that reflect a



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typical/average weekday condition. Just as with a holiday like Easter, you don't look for the highest hour of the year. Wood said it doesn't seem they took the higher times into consideration at all. Pernaw said the counts would have gone to 6 pm on the weekdays and the study did capture the weekday peak one-hour period, and did the same thing on a Saturday mid-day peak hour. The goal is to look at a reasonable design hour condition which is set at a very high bar for this project. It's not practical to add another lane everywhere to design for the highest hour of the year. Wood said that isn't expected but this is constant, as the Town is the gateway to the mountains in every season. Pernaw said traffic consultants like himself and VHB do traffic counts year-round and are required by the DOT to adjust the data to a peak month condition. In this case it was in July, which is best. He would tell his clients not to count Hampton Beach in February. VHB has good base-line data. Moore asked about the relevance of the VHB counter in North Hampton. Bousa said North Hampton data at the outer limits of the study area was not used in the study but served as a supplemental comparison measure for seasonal variation adjustments.

With regard to the Route 107 Bridge, Khan asked DOT if there is any alternative to using either a TIF or gathering money from some developers. Ireland said as far as State funding goes there must be a ten-year plan process to get money from DOT and the Bridge is not on the current ten-year plan. RPC has a list of projects waiting to go on to the ten-year plan. The DOT could not find money to build the Bridge within the next three years. Khan said there are then two ways to go. Ireland said these are two options that have worked in other places; there may be another creative way. Foote asked how a project gets in a ten-year plan and, since it was known twenty years ago that the Seacoast was building and growing, why wasn't the Bridge and road infrastructures in a ten-year plan. Ireland said in looking at the roadway networks, and at the gas tax supporting the Federal highway funds that DOT relies on staying the same since about 1990, and accounting for inflation, the dollars don't go as far and DOT is falling behind. Oldenburg said the process is for the Town to ask the Rockingham Planning Commission to recommend to the DOT that it make this intersection a priority. The State does not chose separately to add items to the ten-year plan.

Evans said there is no real incentive for the State to get involved because it's not generating sales tax or the like. But Seabrook is not like towns that are bypassed. It is a small Town that everyone wants to come to for the beach or merchandise. DDR represents a traffic increase of apparently forty percent at one location. Given there is a huge amount of traffic to begin with, if money were no object what would be the solution to handle Seabrook's kind of traffic and its growth opportunities. Oldenburg said that is the purpose of RPC's Corridor Study. Foote said the Corridor Study stops at Spur Road. Ireland said it is only for Route 1. If Seabrook's Master Plan addresses traffic, it can expand on the Corridor Study. Foote said Seabrook's Master Plan has said that for twenty years. Ireland said the Town can work towards that end with developments and pools of money that come in. Default budgets in New Hampshire will bite us. Evans asked about putting a turnpike on route 107. Ireland said he didn't know the legalities of a toll-booth. A lot of people look to toll-booths as a solution for funding but don't realize they cost a lot to run.

Senator Hassan asked how and when projects get decided. Ireland said the developer comes to the District office with a project that has impacts and asks for a scoping meeting. The Town , developer, DOT and others are invited to decide the limits of the scoping study. Hassan asked if



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that includes representatives from Regional Planning Commissions. Hassan, a resident of Exeter, said after watching area traffic for seventeen years she would have thought the scope to be at least to the intersection of Routes 107/150 as any time there is an accident on route 95 North, 107 traffic is blocked up to Route 150 as everyone tries to get around it. The same is true in bad Summer traffic. Most of the folks in Seabrook, East Kingston & Kensington would say there is a much bigger impact. She wonders how the State DOT goes about evaluating that, and if things need to be done differently. Ireland said he believes RPC would have been invited (to the scoping session) but couldn't confirm without the Bureau of Traffic list of invitees. Hassan asked if it is too late in this project to relook at the scope. Ireland said this might be a negative for the Developer but it wouldn't set a precedent for a Town to request another scoping - Nottingham did that recently for an out-of-date study. The Planning Board has the right to approve and request a larger scope. Hassan said she is not here to tell people what to do, but is hearing a lot of concern about how the State functions.

Representative Palazzo said if they don't enlarge the overpass, the Westbound traffic merging with Route 95 is already impossible and the problem up to Hampton Falls hasn't been solved. Foote said hopefully there are enough influential ears in the room to turn this around. Everyone wants the stores without a 1 mile, 5 hour drive. Seabrook wants to welcome the shopping experience and must try to resolve this issue. Palazzo asked how the Town will cope with more big stores. Foote said the best case scenario would be for developers to find a solution together. Evans asked about the potential for the existing Bridge. Pernaw said it's possible to physically restripe to ten-foot travel lanes as an interim configuration, but the DOT likes twelve-foot lanes and paved shoulders. Ireland said in general DOT is no longer fixed on twelve-foot lanes as it would be on a higher speed road. There is some value in narrower ten- or eleven-foot low speed lanes as they tend to have a traffic calming effect to some degree. DOT is open to other lane configurations. Bousa said with forty-four feet, you could legitimately have four lanes - two in each direction which addresses that Westbound flow. The questions would be how that would affect the left-turn lane going onto the Northbound ramp, and what would happen for snow storage. Ireland said in general no snow is stored on a bridge. DOT doesn't stockpile snow on bridges; most of the snow is pushed through the chain fence to the road below or back to the curbing. Khan asked what the interim period would be. Ireland said if someone wanted to propose changing the lane configuration over the bridge DOT would look at that, whether it was permanent or temporary.

McNeill said DDR appreciated the State officials and Pernaw attending the meeting. DDR has attempted to follow the usual and customary practice of going through a scoping process with DOT and expected to be treated like other New Hampshire developers when it comes to these issues. The site is both commercially zoned by an act of the Town and has existing access on onto Route 1 and Provident Way, and the State always knows DDR has a reasonable right to use its property. There used to be 700 employees on the site. The balancing act is that DDR seeks no free ride for this project. DDR seeks to comply with the provision of Article [12] of the offsite improvement ordinance indicating such offsite improvements shall be limited to any necessary highway drainage and sewer and water upgrades pertinent to that development. The amount of any such extraction shall be a proportional share of municipal improvement costs, not previously assessed against other developers, that is necessitated by the development and which is reasonably related to the benefits



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accruing to the development for the improvements. McNeill said this is called the "reasonable, rational, nexus" rule. All of the discussion this evening speaks to an existing condition not generated by DDR which now seeks to utilize the usual and customary practices to mitigate the effects that it directly causes. DDR hired VHB because of their familiarity with the State process in terms of the scoping and other issues raised. It's always the developer that's before [the Planning Board] that they can assess to make the improvement. DDR is responsible for what it creates and the next project is responsible for what it creates. Of interest is the comment from the State official about TIF Districts which DDR has been speaking about as a vehicle to consider with regard to DDR paying its reasonable fair share, estimated to be in the range of \$2,500,000 to \$3,000,000. At no meeting has anyone said DDR is responsible solely for fixing the Route 95 Bridge or that its conduct is the sole reason Seabrook has an existing problem. The issue is how to effectively balance the private property development rights of an applicant on an appropriately zoned piece of property for which the State cannot deny access for a reasonable business use, and for which the Town cannot deny reasonable use of the property as long as the applicant complies with its regulations.

McNeill said this is not the first time he's been involved with major projects, including the Rochester WalMart and the Flatly project on the Spaulding Turnpike. These kinds of discussions are part and parcel of the system of fear allocation of requirements among developers and communities that occur at every planning board. Additionally, as to the non-State controlled issues, the Planning Board did the right thing in hiring Pernaw. DDR needs to effectively respond to Pernaw's concerns and those of the Police Chief and others. The applications were accepted approximately seventy days ago and DDR has provided every study asked for by the Planning Board. DDR believes the Planning Board is a position to review those and DDR would like to proceed with the State, which has held off, and go through its normal process. DDR would like to be treated consistent with the law at the Town and State level. Listening to some of the arguments advanced from Seabrook with regards to traffic, if one believed all of this could not be mitigated, the Town should be shut down immediately and a new Kohl and Arleigh Green project should not be allowed. To say a project on property where there were previously 700 employees with access onto Route 1 could not go forward would be a pretty Draconian decision. DDR is attempting to do with consistency what the State expects it do and what Pernaw expects to do when he represents Towns and developers, which is to be fair and reasonable and consistent with customary practice.

As for the process, McNeill said Pernaw has received Bousa's last comments and DDR asks he continue that review. DDR also asks that the State move forward with review. DDR continues to encourage consideration of a TIF and wants to extend the 65-day deadline until November 21 for a TIF discussion, if possible. McNeill said developers generally don't work well together because even good people like Green, want as much of the work they would have anticipated doing (in a subsequent development) done by [DDR]. If timing was reversed, DDR would probably hope for the same. Cooperation during the scoping process for the Kohl's project is unlikely without a reasonable process. If a TIF were to be done as in Hooksett and Newmarket, the State statute provides a means of accomplishing this collective result in a controlled manner. If a TIF is not considered DDR requests that if it complies with the Planning Board ordinance and regulations, the permit be granted. DDR also understands this is a big project but there have been other big project impacts allowed in Seabrook that didn't result in the Town being shut down or a new bridge being built. DDR



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wishes to make commitments to developers such as the TARGET, whose representative is present, that this project can be done within a reasonable time. DDR needs response from the Planning Board and the State on the studies it believes are completed, so it can be responsive both to the desired types of stores as well as to the traffic related concerns. DDR never expected to make it in 65 days and would be happy to extend to November 21 and on that date discuss if there is a need to extend further. DDR's goal is to move forward.

Morgan asked if it would be reasonable for the Planning Board to ask DDR to mitigate the offsite traffic impacts in such a fashion that the level of service remains the same. McNeill said that's a standard frequently applied but would want to discuss that more with his clients in terms of what their experience has been with the State and other communities in terms of some flexibility on that issue. Khan referenced McNeill's statement that the Selectmen don't want to hear about TIFs. McNeill said DDR has tried twice for a hearing. Khan also referenced McNeill's statement that developers don't work together very well. Khan asked McNeill what the residents of the Town should do if the Board allows DDR's permit to go through and there is the traffic increase. McNeill would ask the Board to listen to the State in terms of their usual and customary way of considering areas within this jurisdiction, and to listen to the Board consultant's comments and hopefully an agreement can be reached. If DDR complies with them and complies with the Town's regulations, the Board should issue the permit. Mitigation has been discussed and DDR is the developer on the scene attracting the attention. DDR has not made the community's problems but will try to mitigate them as pertinent to its development, but not in an adverse fashion.

Palazzo said the Board of Adjustment gave a special exception to change from industrial to commercial and asked if that has to go before the Town meeting. Foote said no - that is what the Zoning Board of Adjustment does. McNeill said this was unique to Seabrook but also was affirmed by the Superior and Supreme Courts. Moore asked if there were conditions. McNeill said there were conditions to get the special exception. It would not have been granted by the Zoning Board of Adjustment if the conditions had not been met. Moore said one condition was there couldn't be a significant increase in traffic. McNeill said the hearing was conducted and appealed to the Superior Court which confirmed the result and the Supreme Court said both the Superior Court and the Supreme Court were reasonable. Moore said that would not exempt DDR from meeting that condition. McNeill said currently the law is they are permitted to rely on the special exception, but DDR has to deal with the Planning Board. Moore believes DDR is still bound by the conditions that were going to be taken care of when the special exception was granted, and asked if the Traffic Study had been presented to the Board of Adjustment; that was a condition to comply with at the time. McNeill said the Zoning Board of Adjustment unanimously agreed to the provisions and never presumed that would exclude the Planning Board from making the traffic decisions that planning boards always make.

Wood disagreed with the statements about closing down the Town now. The Town is dealing with the traffic situation as it is. It's not perfect, but there's never been an issue where an ambulance or a cruiser or a fire truck could not get to where it needs to be. If this development goes through that is not guaranteed, The other developments are not going in right now. If DDR wants to come into this Town it needs to leave the Town the way it is now, even if the traffic is a problem. The



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overload being discussed would be created by DDR's mall, not by any future malls. McNeill said they have to reasonably mitigate. Wood said that traffic is not there now but it will be when DDR comes in and it is responsible for leaving the Town the way it is even if that takes an enormous amount of money to build a bridge that's the passage to the mall. The Town should not be punished because Massachusetts people are wanted to come in and spend money. Seabrook residents pay taxes and should have the right to go from point A to point B in a reasonable amount of time. If DDR is creating the problem it is its responsibility. McNeill said DDR has to reasonably mitigate its impact.

Angeljean Chiamida of the Newburyport News said she is hearing DDR has to reasonably mitigate, yet Oldenburg said their impact on the roadway should not be seen - it should not be any better than it was when they came and should not be any worse. She asked Oldenburg if that is what he would consider to reasonably mitigate or is there a differentiation between that and how McNeill would define it. Oldenburg said what they would like to see and reality might be two different things. The goal would be for an intersection to be mitigated so there is no decrease in level of service, but sometimes this can't be reasonably done. For example, if two left turn lanes are needed and that can't be done there needs to be a compromise to get as close as possible, but not down to something that fails. It's a judgment call. Chiamida asked what the level of service is at the Route 107 ramp light. Ireland said according to the study submitted, it has a PM level of service of a "C" and a Saturday peak level of "B". Chiamida asked if it is the hope that should DDR come in the impact on that intersection remains a "C". Oldenburg said that is the goal but there sometimes extenuating circumstances. For example, a left turn lane could be an "F" but the average still be a "C". Morgan asked for the post-build grade. Bousa said the 2007 no build to build is "D". Today there are 550 cars making a left turn off that Northbound off ramp, that strains the signal significantly. The threshold with two left turn lanes would be 300 cars; adding a lane to the Bridge would be needed. DDR doesn't add anything to that left turn traffic and shouldn't be expected to mitigate that movement.

Dick Winn of Seabrook Station asked what "reasonably mitigate" means. If the State and Pernaw's comments are satisfied, when could the specifics for a four lane bridge be laid out. McNeill said the State and the Town will say what mitigation they expect and DDR will either build it or write a check. Pernaw said the proposal should be coming from the applicant. McNeill said the applicant will make the suggestion for review by DOT and Pernaw. Every community in the county is trying to get their favorite project done and there is no money from the State. So local communities endeavor to work with the developer under the legal criteria of reasonable mitigation. The vast majority of the cases tend not to involve any State money and there is occasion where the Town may view it in its interest to spend some money. Mostly those who want the project bear the vast majority of the expense and that's probably the right way to do it.

Foot's concern is the limited scope of the Route 1 Corridor Study. The Board is trying to learn just how far these "scopes" go and how come Seabrook has no control over the State and Federal roads that put Seabrook in its current condition. The National Tire and Battery project on Route 1 was only required to give an easement in case in the future the road should be developed by someone else. It's not fair that just because there is limited frontage not much is required but they may not be drawing as much traffic because of the type of business even though they might be in a



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position to contribute financially. Ireland said DOT looks to mitigating level of service and there is value in that easement in the event a subsequent developer needs that right-of way and couldn't take it by eminent domain. Mc Neill said the US Supreme Court says eminent domain taking is possible but most states have recoiled at this so legislation is likely to limit eminent domain for private property purposes, even though the use may be in the public interest. Senator Hassan said the last legislative session passed a law that limits the right of taking for private development purposes. As some believe the statute wasn't clear enough a constitutional ballot question requiring a two-thirds vote is on the November 7, 2006 ballot.

Oldenburg said as long as a property owner has the right to access a State road, it is very difficult for DOT to deny that right. The Town Planning Boards actually have more control over access than the State does, and what can be built or developed and how. The correlation between land use and transportation is not clear. If a road is developed there are traffic problems. Trying to develop access management plans and getting master plans to create development areas is another issue. Roads don't generate traffic, only the land around it. It's a joint responsibility. Foote said a difficulty in the planning process is generally the developer is in negotiation with the DOT months before a project is submitted to the Planning Board -- which often knows nothing about the project until the application is presented with the DOT permit, although not in this case. If the driveway cut already has DOT approval, this pulls the rug out when the Planning Board is trying to design a suitable entrance or mitigation. Ireland said the Town is invited to scooping meetings and is encouraged to attend. Foote said the Planning Board has only been getting those notices during the past eighteen months., and even so it is difficult to respond without an active plan in front of the Board.

Morgan asked the applicant to help with visualizing what it would take to have this project go forward and not see a decrease of service. Evans said that seems to be the missing piece of information. Ireland said it's the applicant's responsibility to propose the mitigation and Pernaw, as the Town's expert, would review it and make recommendations. Foote referenced Bousa's prior presentation when it was noted there appear to be several lanes bringing people in but only one going out, and asked if there have been any changes because the revised site plans have nothing about traffic. Bousa said no changes have been made to date because they are waiting for DOT's review. Responses, mostly technical, were made to Pernaw's comments which she termed a very good job, and requested any response Pernaw may now have. DDR is continuing to move forward working with some of the abutters on Provident Way in re right of way issues and other possible changes to address their concerns.

Foote asked for serious consideration to traffic control by paint on the roadways, which does not work in Seabrook. Ireland asked if this was for right-in/out. Foote said this applies to efforts to paint on divided highways eg Provident Way and Spur Road. Bousa said with striping for the left turn lane was proposed for Provident Way. The proposal to limit left turns at Spur Road is a policy decision for the Board to look at. Ireland said a true right-in/out has been proposed to significantly address accidents. Foote said as an existing road that decision rests with the Board of Selectmen. Ireland said this would be an issue for the hotel on the corner and a light at New Zealand could be considered. This depends on how the Town wants to move traffic on town roads. If



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there is a positive response to DOT it would try to make that happen. Bousa said the right-in/out would be the ideal solution, but VHB has proposed some relief. Ireland said creating a left turn lane should reduce rear-end accidents. Foote repeated that people will drive over yellow paint on a road and suggested looking at the Route 1 area near Phantom Fireworks.

Moore said on the next review to make every effort to find ways to get traffic out of the DDR project (like two lanes going West to Route 95) and figure out how to run two lines of traffic out of Route 107 through that dual lane going over the Bridge. That's as much as sixty percent of the traffic and would go a long way toward alleviating the problem. Somehow, more traffic has to get over the Bridge going West. Ireland said before going through the review process DOT wants to know if the Town is adamantly opposed to the right-in/out on Route 1 because that will change the numbers going out on Provident Way, or whether it needs just to physically recognize the opposition to the left turn. Morgan said another option is to maintain the proposed egress. Palazzo asked about a light at Spur Road and Route 107. Ireland said that has not been proposed. Palazzo said the DOT isn't going to spend a dime on Seabrook. Foote said DDR has proposed a light West of Route 95 at the Southbound entrance.

Pernaw suggested the DOT continue with its review of the report as submitted and have a short memo prepared analyzing what happens if the right-in is eliminated on Route 1, and the effect that would have on the traffic signal. Morgan's theory is it would be very easy for people to head straight across Route 1 but Pernaw wants to see the analysis. Moore said if the left-turns off Spur road are taken away, the ninety-six apartment dwellers who want to go North or South will have to come down to New Zealand Road and will never get out. Ireland said a light at New Zealand can be looked at. Foote said this had been discussed with RPC and she understood the State would not allow a light at New Zealand Road because it is too close to the Route 107 lights. The Board definitely wants a light at Rocks Road, which is the entrance to the Town dump, and for which money is already in escrow. Palazzo asked how the traffic at Spur Road will be handled. Ireland said DOT has made a recommendation for a right-in/out on Spur Road and DDR plans to make a dedicated left lane onto Spur Road. Palazzo asked how they get across the two lanes of traffic. Ireland said cars still have to yield to the oncoming traffic. Palazzo asked what is the objection for a light there. Ireland said it doesn't meet signal criteria and would have to be explained by the traffic bureau. Palazzo said there is a law against lowering a person's business and that's what is happening to the motel. If the problem is brought from Spur Road to New Zealand Road traffic will have to cross three lanes - does that make sense. Foote said that is part of what the off-site mitigation is trying to address with a left turn area, but with just paint on the road it won't protect a car. Some curbing is needed.

Chiaromida asked how far away are abutters notified and if the motel would be notified. Foote said the State statute is for notice to direct physical abutters plus the surrounding towns and RPC because of the regional impact. Chiaromida asked if the objective is to put two lanes over Route 95 West and no physical option for turning left out of the right-in/out. Moore said the problem is public safety and trouble if you can't get emergency vehicles to the West side of town when it's backed up bumper to bumper. A couple of minutes means a lot. Foote added that is the only access to the West side of town. Chiaromida asked if DDR is being asked to consider a light at Rocks Road



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. Evans said other developments at that intersection have agreed to put in a light. Foote said this is about fifty percent funded, but the number arrived at four years ago may not be enough. Chiaramida asked if the bottlenecks at the Getty Station South of Route 107 and the merge at McDonalds are also concerns with this development. Foote said only the McDonald's entrance for this project. Chiaramida asked if the merge at Cains Brook is a concern. Foote said Cains Brook is even farther out of the scope.

Morgan said he would like DDR to design a program that maintains the same level of service and would not design it for them. Foote said the known trouble spots have been highlighted. Chiaramida asked if the items she questioned are the four trouble spots. Foote said they are the primary ones. McNeil said if that's the case, let the State do their study and have Pernaw respond to DDR's most recent traffic comments.

McNeill said DDR will agree to an extension to November 21 and would attend an intervening meeting if progress can be made. Senator Hassan asked if she is correct to assume that when the State does its review and looks at level of service it includes access information about the receiving hospitals which for Seabrook are Portsmouth, Exeter and Anna Jaques. Oldenburg said not normally. Hassan said if she were a resident of Seabrook her first concern would be how fast can she get to the hospital. Moore said the Selectmen are also concerned about the hospitals as well as the evacuation loop for the power plant. Ireland said they do evacuation drills periodically -- it can take three days, but people would start to leave on their own. Hassan said this is dealing with a National, State and Local population. Things don't just happen according to plan as seen recently with a major hurricane. Hassan said she recognizes the competence at the power plan and on the part of those attending this meeting, and also understands the developer's point about being treated like everybody else according to what the law requires. But the reality is the impact on people's lives and their perceptions about what is happening here is important to address. Complicated decision making requires trust and this kind of conversation. Everyone has done a terrific job at this meeting. Hassan said her interest is in what the State does and doesn't do so she can be of help. Oldenburg said whenever signals are installed signal pre-emption for emergencies must be included.

Morgan said the law allows two options re extensions. The Board can negotiate an extension with the applicant or the Board can request the Selectmen to grant an extension not to exceed ninety days. Moore said there wouldn't be an objection from the Selectmen. Foote said the applicant has offered to sign through November 21, which is only two more meetings and a resolution by that date is unlikely. McNeill said DDR would be reasonable on November 21 but if a ninety-day extension is granted this will not get resolved for ninety days. Foote said not necessarily. McNeill said if DDR doesn't grant an extension on November 21 the Board would deny the plan. Morgan said if there is an extension at this meeting there will no longer be the option to go to the Selectmen. McNeill disagreed saying at the time DDR disagrees to extend the Board can go to the Selectmen. Morgan asked if that would be for ninety days. McNeill said yes. Foote said in other cases applicants have signed extension waivers. Morgan said other projects have been simpler and smaller. Moore didn't foresee any problem either going to the Selectmen or to November 21. Foote said no firm decision on traffic was expected at this meeting. This was a very productive discussion among the Board, the



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townspeople, the State, the State Senator and State Rep, RPC and the experts, about our concerns, fears, and best hopes to come out with a decision that makes everyone happy and the shoppers can go shopping. Evans was glad to see the DOT participating and getting a look at the big picture for Seabrook, and as these projects come along more needs to be done. The RPC is a help but there isn't a technical picture of what the overall grand scheme of traffic in Seabrook should be. The Board's consultant is only commenting on this one piece. The Board should consider a study that covers the entire town.

There being no further comments from the Board, Chairman Foote opened the floor for other comments. Wood said the developer wants to build a nice Mall and get money for the businesses. But would they look at it differently if a Mall of this size and the traffic impact were coming into their town instead of Seabrook. Ireland said DOT will proceed with the review of the traffic impact study. Mc Neill presumed Pernaw continues his work and for site review issues to work with the Town Planner. Morgan said the site plan reviewing should continue and recommended continuing to the Planning Board's Agenda of November 21, as the November 7 Agenda is quite full. Foote continued Cases # 06-31 & 32 to November 21, 2006 at 6PM at Seabrook Town Hall. Grafmeyer signed the extension to November 21, 2006.

Foote adjourned the meeting at 9:15PM

Minutes Respectfully Submitted by  
Barbara K. Kravitz, Secretary  
Seabrook Planning Board