



## Town of Seabrook Planning Board Minutes

Tuesday, July 17, 2007

NOT OFFICIAL UNTIL APPROVED

Members Present: Sue Foote, Chair; Peter Evans, Vice Chair; Mike Lowry, Clerk; Aboul Khan; Paul Himmer; Robert Moore, Ex-Officio; Paul Garand, Code Enforcement Officer, Alternate; Elizabeth Tibodeau, Alternate; Tom Morgan, Town Planner; Barbara Kravitz, Secretary;  
 Members Absent: Mark Preston

Chair Foote called the meeting to order at 6:10PM.

**Minutes of May 1, 2007, May 29, 2007, June 5, 2007, June 19, 2007;**

<b>Motion:</b>	<b>Thibodeau</b>	<b>to restate the case reference in the vote on page 11 to "Case #2005-06/18 Stard Road" in the minutes of May 1, 2007.</b>
<b>Second:</b>	<b>Lowry</b>	<b>Approved: Unanimous</b>

<b>Motion:</b>	<b>Thibodeau</b>	<b>to accept the Minutes of May 29, 2007 as written.</b>
<b>Second:</b>	<b>Foote</b>	<b>Approved: Foote, Thibodeau Abstained: Khan, Moore, Evans, Lowry, Himmer</b>

<b>Motion:</b>	<b>Thibodeau</b>	<b>to accept the Minutes of June 5, 2007, with typographical corrections.</b>
<b>Second:</b>	<b>Moore</b>	<b>Approved: Unanimous</b>

<b>Motion:</b>	<b>Moore</b>	<b>to accept the Minutes of June 19, 2007 as corrected to substitute "low-flow" on line 11 of the last paragraph on page 14.</b>
<b>Second:</b>	<b>Lowry</b>	<b>Approved: Unanimous</b>

Khan noted the beautiful results in the energy saving "green" Portsmouth Library.

### **CORRESPONDENCE**

**Case #2007-12 - Proposal by CBAN, LLC to erect a 30,600 square foot industrial building at the corner of London Lane and Ledge Road, Tax Map 5, Lot 8-50, continued from May 15, 2007.**

Foote referenced a letter from Jones & Beach Engineers requesting a continuance without prejudice. Foote noted the matter is before the Zoning Board of Adjustment, and continued Case #2007-12 to August 21, 2007 at 7PM in Seabrook Town Hall.



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Foote noted that only one case would be heard at the Board's August 7 meeting which is otherwise scheduled as a working session.

### **Case#2007-07 ArcSource/Katim - London Lane industrial gas facility**

Foote referenced a letter from Steven Nichols requesting a Notice of Decision extension.

<b>Motion</b>	<b>Moore</b>	<b>to grant Case #2007-07 an extension until August 21, 2007 to meet the conditions of the Notice of Decision.</b>
<b>Second</b>	<b>Lowry</b>	<b>Approved: Unanimous</b>

Foote read a letter from Henry Boyd of Millennium Engineers stating that a dry moat to trap gases is not possible and that he had regraded the top edge of the granite curbing to keep gases from jumping the berm into the wetlands area. Foote said some form of deep swales as a catchment had been expected to be discernable on the plans. Garand said even if pooled and contained, there would be a back spill area. Kravitz said the Town Engineer had been asked to look at the revised plans.

### **Case #2004-50 Cabral subdivision.**

Foote said the Planning Board office had been informed that the Supreme Court has affirmed the Zoning Board of Adjustment variance, clearing the way for the Cabral subdivision to proceed before the Planning Board. She noted the need to comply with current stormwater regulations. Morgan said he will research this aspect. Kravitz said the Cabrals have provided the necessary documents and fee for the public notice. Foote said the case would be scheduled on an upcoming Agenda.

### **Case #2006-56 - Nextel Communications of the Mid-Atlantic to construct a 100' flagpole for wireless communications at 28 Collins Street, Tax Map 15 Lot 3; extended to 07-03-07;**

Foote referenced the request for a Case #2007-56 Notice of Decision extension. Garand said Nextel had posted a bond to be used to dismantle the tower in the event this became necessary. Site security in the amount of \$5,000.00 is also needed, as well as a pre-construction meeting..

<b>Motion</b>	<b>Moore</b>	<b>to grant Case #2006-56 an extension until August 21, 2007 to meet the conditions of the Notice of Decision</b>
<b>Second</b>	<b>Lowry</b>	<b>Approved: Unanimous</b>

### **Case #2002-30 Merrimac Street/Sullivan**

Attending: Sandra Payne

Appearing for the Applicant: Attorney Karen Forbes, Shaheen & Gordan;

Foote noted various correspondence re Merrimac Street including from the Department of Public Works Manager, a dissatisfied abutter, and Altus Engineers who inspected the site for the Planning Board. Altus had expressed concern about certain patches in the road and the as-built. A final inspection is needed. Forbes believed the Public Works Manager had signed-off on the road, and



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asked why Altus would have to re-inspect. Foote noted items 4 & 5 in the Altus letter, and the May 31 letter from the DPW Manager, as well as his note on the Security Reduction checklist of February 9, 2007, which was signed-off with a note about final ditch work and erosion control measures. Forbes thought the as-built had been delivered. Kravitz said it may have gone to Public works, but did not reach the Planning Board. Forbes said another copy would be provided, and that the objective is a resolution. Forbes said she would find out about the patches and the as-built plans, and asked if the Board had the letters from one abutter. Foote noted the letters from Leary consulting complaining about certain catch-basins that appear to overflow in major storms, leaving puddles in the street, and flooding his driveway and rear yard. Altus had not been asked to return to the site.

Morgan suggested referring this to the DPW Manager. Forbes said her client wants the issues over with. Morgan asked if there were photos. Forbes said she had not seen photos and Foote said the same. Morgan noted if there is an issue and flooding results, the DPW Manager would have to deal with it. Lance Wilkerson said there may have been an issue during the recent heavy rains, but urged the Board to recognize the good work that has been done, and move on with approval so services to the residents/taxpayers can be provided. Foote said the remaining items should be identified to lead to a positive outcome. Moore said this should be conveyed to the Applicant. Foote indicated the DPW Manager has said there are two new pavement patches. Moore asked about the patches. Foote said she had no idea when they were done, but needed to be corrected and the as-built delivered; they could be for underground services. Garand suggested conditional approval could be appropriate subject to the patches being taken care of. Foote said the as-built is needed in paper and digital.

<b>Motion</b>	<b>Moore</b>	<b>to grant conditional approval for the Merrimac Street roadway pending sign-off by the Planning Board Chair and the Public Works Manager.</b>
<b>Second</b>	<b>Khan</b>	<b>Approval: Unanimous</b>

Foote said she would re-look at the repairs with the DPW Manager. When satisfactory, Foote would write the letter to the Board of Selectmen for placing Merrimac Street on their agenda. . However, the form of deed, and any utility easements for town employee access, need to be submitted for review by the Town Planner and possibly town counsel. Forbes will provide the form of easements and deed for review, and arrange for the as-built.

### REQUESTS FOR SECURITY REDUCTION

**Case #2005-48 Seacoast Bargains/Tomlinson & Urbani stating the work is complete and requesting security release.** Foote said a security reduction checklist is needed before releasing any site security. Foote asked if Garand had had problems with the site. Garand said not other than one abutter had drainage issues, although the Department of Public Works Manager had issues with the granite curbing. Garand will check with the DPW Manager.



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### **CODE ENFORCEMENT**

Foote noted correspondence from Coco Cola and the Pineos re stormwater drainage runoff. Foote said she had been apprised that the Coke detention pond was being overwhelmed in heavy storms by the sites on Whittaker Way where detention and drainage are still not properly built. Garand said the contractor was supposed to complete the detention pond work last week. Foote noted there have been a few exceptional downpours. While drainage works most of the time, once in a while it will be overwhelmed.

### **Case #2006-15 Two Guys Smoke Shop & Honey Dew**

Foote referenced the Code Enforcement report re Two Guys Smoke Shop and Honey Dew. The drainage works adequately. A letter should be sent that the Board can consider returning security when (i) the landscaping is finished; and (ii) after the silt fence and grading sticks are removed.

### **ANNOUNCEMENTS**

Foote referenced the Town Manager's letter indicating the Board of Selectmen has accepted Pineo Farms Road and Carroll Lane as public ways.

The Secretary reports that Sean Graham, the Winnacunnet student who did a senior seminar project concerning the Planning Board and DDR project, passed with honors, and is seeking employment with a company whose application to the Planning Board was recently approved.

### **CORRESPONDENCE - CONTINUED**

Attending: David Benoit

### **Case #2007-16 T Park Realty Trust asking that the Chair sign a Voluntary Lot Merger for Map 7 Lots 7-90 & 7-90-200**

Attending: David Benoit

Foote noted this voluntary lot merger request relates to confusion in a dredge and fill action by the Department of Environmental Services on a prior Planning Board case, when personnel changed. As a result, the plans incorrectly referenced conservation land when recorded in Assessing. Benoit wants to merge the two lots back. Voluntary lot mergers do not require public notice but do need the consensus of the Planning Board. Moore asked if this was all originally one lot. Foote said yes and now the owner wants to return the property to one lot. Garand said if there had been a mistake, the parcels were still one lot. Foote said the instructions from the Assessing Department to file a voluntary lot merger should be followed. Apparently, the plans should not have been recorded at the Rockingham Register. Morgan agreed with the Assessing direction.

<b>Motion</b>	<b>Moore</b>	<b>to grant the Voluntary Lot Merger for Case 2007-16 as requested by T Park Realty Trust/David Benoit.</b>
<b>Second</b>	<b>Lowry</b>	<b>Approved: Unanimous</b>

Foote said the Secretary has requested that attendees be reminded to speak one at a time to avoid inaudible segments in meeting tape recordings.



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### **PUBLIC HEARINGS**

Foote opened the Public Hearings at 7PM.

**Case #04-19. Mike Bergeron and he is also requesting a further extension on his subdivision, extended from May 15, 2007.**

Garand said the gravel is in place, the paving is scheduled for next week, and recommended a thirty-day extension. Foote asked about the disagreement between the Applicant, Carl Bergeron, and Mike Bergeron. Garand said that had been resolved. Foote continued the Notice of Decision extension to September 4, 2007 at 6:30PM at Seabrook Town Hall.

### **PUBLIC HEARINGS**

#### **ONGOING CASES**

**Case #1997-42/Border Winds/Benoit** continued from June 19, 2007

**Case #1999-24 Benoit/Randall Drive** continued from June 19, 2007.

**Case #2006-46 David Benoit for an amendment to the Border Winds Subdivision,** continued from June 19, 2007.

Evans recused himself from these cases.

Attending: David Benoit;

Jason Page and Lenny Demarais, Beechwoods Homeowners Association; several area residents;

Foote stated that the history of the controversy is well-known and should not be repeated. The purpose of this hearing is to arrive at a resolution, and asked that speakers offer new information. Page said the corrective actions plan that he received after the last Planning Board meeting, is the wrong plan. [Benoit submitted three plan pages.] The expected plan was to have some granite curbing including at the corners. Foote said she was unaware of any plan submission to the Planning Board since the last meeting. Page said the Planning Board Secretary had informed him, Boyd, and others by email that nothing had been submitted.

Page said he spoke with the Sewer Superintendent who said he was unaware of sewer connections to the perimeter lines; sump pumps could be easily corrected. Page said the Public Works Manager told him he was not aware of connections to the storm drains. Foote said the DPW Manager was not here for the build and inspections. Page said he asked the Secretary about the tapes, but she doesn't have them. Foote said she has watched the tapes; the Sewer Superintendent's voice can be heard as well as two unidentifiable voices. The Planning Board does have the tapes, but the problem is without the "key" as to the location where they begin or change direction, no specific property can be identified. Page said he has spoken with Benoit about a storm drain in the middle of where driveways are, and the run-off from Ledge Road that turns in to the entrance to the property and runs down to the storm drain. Page said Benoit told him there isn't a lot of room for digging at that



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point. Further the DPW Manager told Page he would like the Town to go with Altus' recommendation and have them supervise and sign-off when the work is done. Page said Benoit doesn't see that happening.

Foote asked for Benoit's view. Benoit thought the DPW Manager's remarks referenced London Lane where there is a problem that Benoit is straightening out, but he has never spoken with the DPW Manager about Border Winds. Benoit said another problem is the deeds are all wrong because they do not reflect certain items. [Benoit submitted a list of owners]. Foote said the Board is concerned because it was a DES requirement in the dredge and fill permit for both London Lane and Border Winds that that dredge and fill permit was to be referenced in every deed. Morgan cautioned about referencing cases other than Border Winds. Morgan asked Benoit if he had a recommendation. Benoit said in the best interest of the Board and the Town, and the people of Border Winds, he asks the Planning Board to accept the road with reservations. Do not release the bond, but at least the people should have the services.

Benoit said he's been given conflicting advice from engineers on how to fix the sidewalks, and believes he knows which one is correct. But there is no sense in fixing the sidewalks unless the DPW Manager is ok with this solution. Also, it is pointless to disturb what is working well. The original installation was a "crummy" job; he's willing to fix it and correct the problems. Morgan asked if Benoit would meet part-way on the granite curbing. Benoit said "no", and described how the perimeter drains are placed and where the shut-offs are. Morgan asked if there is any place within Border Winds where granite curbing could be placed. Benoit said it would be a checkerboard, and this is a beautiful sub-division. The runoff is there continuously, but seven perimeter drains would be crushed in installing granite curbing. The Town could pay to put steel bridges and concrete on top, which might work. This would mean digging up a lot of the road. Benoit feels this would be ridiculous when it looks so pretty now and it works.

He would engage engineer(s) to design the best way to fix the sidewalks if the Board will give some type of approval for the road, with reservations. The people are entitled to services, having spent \$1,800,000 in eight years for taxes. Benoit said that is not right, even though some homeowners have done some improvements that make the situation worse. He will make the corrections, but there will be a slight rise where the transformers are. Also he has been advised to put hardtop and binder on top of the sidewalk and not to rip up everything because there is nothing to gain, and the sidewalk should last for twenty years. He would work with Wayne Morrill and Henry Boyd who can work with the contractor and the DPW Manager. However, Benoit wants to know that town officials approve of the design in advance of the work being done. He knows he has to satisfy the DPW Manager. Page asked if the Selectmen can give a waiver on perimeter drains that are tied into the stormwater system. Foote believed that last year's stormwater ordinance states that in order to access a stormwater system, a permit is needed.

Richard McCann, speaking as a citizen, said when an ordinance is passed it is not retroactive. The installations have been there for about seven years. Foote noted this is not yet a town road. Moore's suggestion was to do a conditional letter of acceptance with the caveat that homeowners



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can't come back to the Town because of a back-up, Fixing the sidewalks and several drainage/catch-basin problems is a reasonable compromise.

Moore said the Board of Selectmen won't accept a road unless the work is done satisfactorily, nor would the \$75,000 security be released. McCann said there has not been one shovel of dirt turned on the site. Until the point where the direction is understood, what is being compromised, and what is in the conditional letter of acceptance, nothing will happen. Benoit will be returning to Argentina in October, and intimates he won't maintain the roads etc. But the taxpayers have paid taxes over seven years; rubbish pick-up has been appreciated. The situation needs a resolution document with specifics. Foote said that has been the objective. The problem is there doesn't seem to be a neighborhood consensus. The Planning Board should not act as mediator for a written document that not all residents will agree with. McCann asked about the role of the Planning Board which is charged with adopting and accepting plans, and showing the plans are fulfilled. In this situation there were errors of commission or omission along the way. Foote said the Board should not be mediators between a homeowners association and a developer; that requires a trained professional. McCann said the Board can accept and agree to almost anything.

Morgan said it sounds like the parties are not far apart. McCann asked if it is not the Board's function to try to end this situation which has been going on for years. How likely is it that a solution will appear otherwise. He said Moore's suggestion at the last meeting was a compromise. Morgan suggested seeing how that compromise would be received by the people at this meeting, and if McCann and Benoit are not far apart. McCann agreed, noted curbing at the corners appeared to be a dead issue because of the pipes. Morgan said there also seems to be close agreement on the sidewalks, and asked Benoit if there would be problem about fixing the catch basins. Benoit said "no"; and that the biggest thing is to disturb as little as possible. Lowering a catch-basin is easy and he has always been willing to do that. Page referenced an August 2003 letter from Garand, and asked if perforated pipe in the drainage system needs to be replaced. Morgan noted Benoit's stating that the drainage in this neighborhood is one of the better places in Seabrook, and to let it be. Lowry asked the Chair to poll the residents attending the meeting.

Morgan said he understands Benoit is willing to fix the sidewalks, take care of the catch-basins that are a little too high, and leave the perforated drains where they are because they are not a problem. Page referenced the plan given to the Board at the meeting and asked what is the finish plan, citing issues with gravel at a fourteen-foot driveway on one plan. Moore said the plans are not helping. The sidewalks are there; the bad spots need to be fixed, covered with an inch and a half of asphalt, and side dressing put in place. That will result in a nice sidewalk. Benoit is willing to reset the catch-basins and attend to a couple of low spots on the back side, and help with some grading. Moore said an as-built plan is needed. Benoit said that is pretty easy to do. Page said some mandated handicap ramps which were on the original plan are missing at some of the corners, and also asked about an extension of sidewalks on the right hand side of the Randall Drive extension. Benoit said the answer on Randall Drive extension sidewalks is "no", because it was not approved on any sub-division. If the Town wanted to pay for that, he would do it. Benoit noted that town



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officials have pointed out that every driveway is a handicap access, although he would put in the hardtop ramps.

Morgan asked if anyone attending had something necessary to say. Foote repeated the call for persons who want to speak. Benoit said Jones & Beach and Millennium would work with the DPW Manager who will be the one to sign off, and will want an engineer's approval. Page said the DPW Manager told him he was happy with Jim Kerrigan of Altus Engineers and would like to see him be the one to oversee this project. Benoit said the original drawings were done by Jones & Beach; corrections were done by Millennium Engineering. These engineers know the project and should do the work. Benoit asked for a letter that this would be acceptable. Foote said the DPW Manager has requested the Planning Board revert back to its procedure where an outside engineering firm is hired to oversee construction of a project. He is not a licensed engineer and has his hands full running the DPW. Repeated requests to inspect projects takes away from time needed for his job work. This is not specific to Altus. Benoit said Millennium Engineers would do the as-built/mylar and hoped the DPW Manager would sign-off if done to an engineer's specs. Foote noted all engineering firms must be licensed and bonded; there are actions to take to resolve something that is incorrect.

Garand said there ought to be something in writing submitted describing the work to be done, the length of time, etc. Foote said these are the items the Board is trying to ascertain at this meeting. Benoit believed the DPW Manager would sign off if the work is done to an engineer's specifications. Garand said Jones & Beach and Millennium have been involved. This should be in writing to the Board which has to make decisions, but also people may not be happy. If there is an overlay on the sidewalks, in a high snowstorm they will be plowed up or damaged when snow is pushed up on them. Benoit said there is a problem if someone can't get out of the driveway. McCann thought the problem occurs if a road grader is used.

Morgan said the parties appear very close to agreeing; the only issue is whose engineer will help out on the sidewalks - Millennium or the Town Engineer. Benoit asked for Moore's view. Moore said to work with those who have been working with the plans all along; they know the plans and what's out there. Benoit agreed, and said a new engineer would want to do their own survey, etc. Millennium has all the drawings; they just need to be fixed, unless the Planning Board intends on paying for the as-built. Foote said that's why all engineering firms have bonds and have to stand by their work. It seems logical that the company that has already produced plans has what is needed, and can do the as-built, rather than hiring another engineering company to start from scratch. Morgan asked if anyone has a problem with Millennium working on the sidewalks. Lenny Demarais said Millennium did the engineering and all the work - look at the result. They did the road and it has numerous cracks. Benoit said Jones & Beach did the road. Demarais said Henry Boyd said this is the best road in Seabrook.

Foote said the Planning Board has already purchased two engineering studies, and asked if members want to vote to overextend the Board's budget to hire Altus again. Lowry wanted to go with Millennium as they did the bulk of the work, and asked Benoit if he believed in the DPW. Benoit said



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that doesn't matter; all he wants to do is satisfy the DPW Manager who wants an engineering group to write a letter saying what needs to be done; when it is done he will inspect it and sign off. Lowry asked if Benoit would fix any deficiency in the road, Benoit said "no"; the road is eight years old and \$1,800,000 has been paid in taxes. Khan proposed taking time to think this through, have the Planning Board walk the site to look at the ramps, driveways, sidewalks and catch-basins, set a special meeting in about ten days, and request the DPW Manager to attend. Morgan thought the situation could be solved at this meeting; the only difference seems to be which engineering firm should supervise the work. Thibodeau said it is up to the Board to decide who does the engineering. As Jones & Beach did work originally, and Millennium is doing it now, Thibodeau thought Millennium should do the work. Foote said basically the Board is looking for the as-built, and the digital as-built with the mylar, when the Board gets ready to accept it as a town road. Show the changes to the original plan to what it finally ended up, in reality. The as-built would reflect the condition and location of the utilities and the sidewalk with the details of how the sidewalk is built on the side.

McCann said time is of the essence. After about seven years getting on common ground is close. Something should be happening so this is corrected before the fall/winter as opposed to waiting again to next year to get something resolved. As Moore suggested at the last meeting, a conditional letter of acceptance, with the exceptions written up, would force Benoit to do what he says. Any engineer's license would be on the line. He would not want the project held up because of arguing over which engineer to use, and wants to see the shovel in the ground before contractors are all booked making it necessary to wait to next year. Benoit said McCann is right. At least one contractor has said they could not do the work until next year. Benoit said he needs an engineer to say how to fix the sidewalks - whether to overlay or dig out. Benoit thinks overlay is a better deal for everybody including the Town and himself, because it gives a better job and the dirt on both sides (lawns and driveways) is not disturbed. He would ask Henry Boyd or Wayne Morrill the correct way to do it and make sure the DPW Manager agrees before anything is done.

Page asked if the idea is an emulsion on top of the hardtop. Benoit said emulsion is glue that goes on top. The asphalt is first, then the binder, then the finish coat, with loam along the side and the grass will grow and deter runoffs; not a lot is disturbed. Morgan said Benoit wants the Planning Board to recommend road acceptance to the Board of Selectmen. The Planning Board wants some assurance that the sidewalks (and elevations and catch basins) are going to be done correctly with a sound project that will last. It appears at least half of the Board members are comfortable with Millennium doing the engineering. Moore said it doesn't make a difference. It might be appropriate for the Planning Board is to assure Benoit that the recommendation will be made to the Selectmen upon completion of the sidewalks and the catch-basins, with a letter from [Millennium] certifying that the work has been done properly.

Khan asked Page whether he also wants to have a town road. Page said after the work is done, absolutely. Khan's concern is whether the request would return to the Board at that point. Foote said this is an official, binding motion that once it is done the Planning Board will follow-through. Page said that is his understanding. Benoit said the \$75,000 bond is being held by the Town and will not be released until the work is done.



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<b>Motion:</b>	<b>Thibodeau</b>	To assure David Benoit that the Seabrook Planning Board shall (a) recommend that the Board of Selectmen consider accepting the Border Winds subdivision as a public way, and (b) notify the Treasurer that the balance of security held by the Town in connection with Cases #2006-46, [1997-42, and 1999-24] may be released, provided that (i) the Seabrook Planning Board has received a "Certificate of Completion" from the supervising engineering firm stating that the repair work on the sidewalks and catch basins have been satisfactorily completed, and (ii) an as-built plan and mylar together with the road deed have been submitted to the Planning Board when the work is done.
<b>Second:</b>	<b>Moore</b>	<b>Approved: Unanimous</b>

Katherine Evans wanted to confirm that the reference is not to creating new catch-basins. Foote said it is just adjusting the elevation of the ones that are too high. Page asked if there is a time-frame. Benoit said it is dependent on how it is decided to fix the sidewalks. He could use help in finding a contractor who can do the work now.

Foote continued Cases #2006-46, 1999-24, and 1997-42 to September 18, 2007 at 7PM in Seabrook Town Hall, with the expectation that the work will be done and the mylars presented, so that the Board can make the official motion to the Selectmen re accepting the road. Benoit asked for a letter stating what the Board has done.

Foote declared a recess at 8:05PM and resumed the public hearings at 8:25PM. Evans returned with his seat.

**Case #2006-61 - Proposal by Edwin F. Adams and Griffey Seabrook LLC to construct a 89,911 sf Kohl's Department Store, a 12,500 sf retail establishment, and a 5,495 sf restaurant off Lafayette Road, between Lowe's and the Seabrook Recreation Center, Tax Map 9, Lots 62, 238-1, and 240, - Traffic Impact and Site Access Study, continued from June 5, 2007.**

Attending: Robert Korff, Mark Investments, Griffey Seabrook; Stephen Pernaw, traffic consultant, Pernaw Associates; Nick Sanders, Gordon Leedy, VHB  
 Appearing for the Applicant: Wayne Morrill, Jones & Beach Engineers; Scott Mitchell;



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Mitchell asked Morrill to address the Technical Review Committee comments. Morrill introduced the revised plans and reviewed the changes made following the prior Planning Board meeting and another meeting of the Technical Review Committee. Items addressed included adding the wetlands permit date, the Altus certification, north arrow placement, licensed land surveyor stamp, revised existing and proposed wetlands impact notes, guardrails removed or modified, notes on the Community Center site, compactor pick-up three times in a two week period, stewards at the end of each drive aisle as requested by Kohl's, lane descriptions at Lafayette Road area, emergency vehicle preemption at traffic signals and pedestrian crossing equipment installed, unobstructed width of five feet along sidewalks, emergency access at all times, five-foot width at any time along the front of the building, unloading of dumpsters and refrigeration trucks prohibited between 11PM and 7AM, a crosswalk between Kohl's and Lowe's sidewalks has been authorized, updated multi-stage discharge element for inverts and drain manholes, retaining wall now extends from the front of the 12,500 square foot retail to the entire back of the Kohl's building, the soundwall extended to 735 feet in length and eight and one-half feet high, updated details on detention pond, grading, erosion control, and vegetative treatment swales stabilization measures, revised silt fence, and a small detention pond for Community Center overflow.

Morrill said a note has been added about the reconnection to the existing hydrant creating a continuous loop of water around the development area for better fire suppression. A note has been added for the Kohl's hours of operation: 8AM to 10PM Monday through Saturday; 9AM to 9PM on Sundays; 5AM to 12AM on holidays - three to four days per year. Kohl's landscape restrictions were added, and the number of liberty elms adjusted. Detention ponds are shaded to allow cooler water discharge into Mary's Brook. More detail on the KFC and West Marine property has been added. As requested by the Police Department, a sidewalk has been added on the easterly side of Route 1 up to WalMart. Garand said the WalMart sidewalk is about 15 feet in from the road.

Foote noted the Department of Transportation comments received a few days ago. Foote emphasized that the applicant and developer are proceeding at their own risk because of the Rockingham County Superior Court action taken by an abutter challenging the Zoning Board of Adjustment ruling. Mitchell said they were aware of that, and believed that they were done with the site plan. The open items are "yellow building" access, and the DOT comments. Merrill asked Pernaw to summarize the DOT comments. Thibodeau said the Town Engineer's comments on the DOT and DDR letters is essential, and doesn't see how discussion can go on until the issues are resolved. Mitchell noted the Town Engineer's expertise is in site plans, and said the letters are self-explanatory.

Pernaw said the DOT's letters recommended consideration of (i) a financial contribution to overall Route 1 improvements from the Traffic Circle up to Route 107, (ii) the drive way at Boynton Lane and Route 1 be converted to a right-in right-out driveway - this is what the traffic signal does. Foote noted that is not what occurred at Wendy's. Pernaw continued with (iii) a connection from the Recreation Center for left turn access, which has already been provided, (iv) adding a right turn lane at Boynton Lane/ Route 1 northbound and southbound. Pernaw said this could apply northbound where there is higher volume, but at present there is no right-of-way to do that and wasn't



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warranted southbound, and (v) relocate the Southgate Plaza driveway on Boynton Lane at Market Basket further back from the signal, which has already been accomplished. Evans asked if the traffic southbound would change after development. Pernaw said that is already accounted for, as the southbound traffic is the smallest volume. There are three access points and most people will take the first access they reach. From the north it would be at the Lowe's light; from the south it would be at Boynton Lane.

Pernaw added another DOT comment (vi) re the Market Basket driveway at Route 1 which is supposed to be a right-in/out but has many left turns both ways. Foote said the Board would like that access to go away, or only be a right-out. Pernaw suggested either inserting a median on Route 1, which will not work, redesigning the driveway, or finding a different solution. Foote suggested tire shredders if vehicles go the wrong way. Pernaw said this involves private property not under the applicant's jurisdiction. Mitchell said with the traffic light going in, the development team thinks vehicles will use the traffic lights. In conversation, it is clear Demoulas does not want to close that driveway, and can't be forced to do so. Foote said wouldn't Demoulas want two light access. Garand said can't Demoulas be informed that right-in/out as demonstrated for Lowe's 1 isn't working or installed correctly per the original plans. Foote said even if it is just moving the triangle up six inches. Garand said to go back to the original plans. Korff said he would make the request, but cannot force Demoulas to make changes. Foote referenced the letter from Richard Eaton's attorney about relocating the Autoworks business sign now on the Town right-of-way. Mitchell said he has explained the situation to Demoulas representatives and requested the sign be allowed on its property. There is not yet a response. Foote said right now this is an approved sign at that location.

Evans asked about the potential for interconnections behind the "yellow building". Korff said the current tenant leases the entire premises, and cannot agree to a cross-connection without their consent. Foote asked if this had been discussed with the tenant. Korff said it had; he has no response one way or the other. The lease term expires in 2012, and he is willing to discuss the possibility of allowing cross-connections then. The concerns are the traffic potential as well as that this would devalue the parcel when the current tenant's lease is up, noting he paid excess value for that property and wants to recover his investment. They would have to do an analysis of the impact to the property overall and the restrictions. Garand said the Kohl's is taking away the center turn-lane used for Route 1 access that KFC and West Marine were previously granted and paid their dues. The interconnects are needed. Currently the KFC site is overwhelmed with traffic. Enabling the interconnects is the price to pay for that impact.

Korff asked what would be happening if he did not own the "yellow building" property. Garand said the Planning Board has had a cross-connect policy. Korff said there is also the competitive issue when he sells or leases in 2012. For example, could it attract a bank if it would learn traffic that is cutting through the property. Garand said a turning-lane was put in front of the Mobile gas station, which is now out of business because access was impaired. Korff asked if he could give conditional approval subject to this being acceptable to a new tenant. Garand said the issue is to alleviate the traffic from Walmart to Lafayette Road. Korff said there are hundreds of thousands of dollars



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involved. Garand said there are kids crossing to the Community Center, and Kohl's is adding lanes of traffic and moving the crosswalks. The traffic light may improve the situation, but traffic will increase overall. The Board is trying to look at shifting traffic away from Route 1.

Morgan said the property wouldn't be devalued and it would improve Lafayette road congestion and make it easier to access the "yellow building". Foote noted the turning lane could remain with the lane next to it going straight, and the other lane as a right turn. This is not a good solution, but would leave the access to West Marine in place. Garand said this project is responsible for providing safe access for neighboring businesses as well as its own, and noted the traffic study points to increased delays. Morgan said the Board's interconnect policy has been in place for fifteen-years, and when asked for it has happened. Korff noted they are already doing a cross-connect for the Rec Center which is not part of the development. Foote asked if Pernaw had a recommendation for southbound traffic access to West Marine and KFC. Pernaw said the functionality of left-turn lanes depends on the time of day and traffic volume.

Korff asked if the inter-connection would be common and reciprocal. Garand said it would be an open way, once the easement from WalMart is granted. Morgan said it would. Korff said subject to the legal documentation verifying common and reciprocal access, he would agree to such action in 2012, and will see if the current tenant would agree, because he would rather do the work now. Foote said the interconnects would be drawn onto the Kohl's siteplan as part of this approval. After further discussion about the Boynton Lane and Demoulas access points, Korff said he would discuss the Board's concerns with Demoulas. Garand said if Demoulas has an issue with the Eaton sign, would Korff allow it to be posted on his property. Korff said he would look at that. Foote noted that previously vegetation at that corner was better trimmed for visibility. Moore said if the cut-through is allowed, that will bring a lot of traffic to Kohl's. Korff said the concern would be too much traffic. Foote suggested considering aligning the Demoulas and cross-connect driveways. Morrill said this had been discussed and there had been some issues, but they will re-look at it. Garand said they might be able to improve truck access. Morrill said they will discuss this with Demoulas. Garand said, in any event, to get the paperwork to the Planning Board showing an effort had been made.

Mitchell said the last issue is the DOT suggested contribution. There is a difference between two DOT departments as to the recommended contribution ranges from \$65,000 to \$200,000. Foote said one figure considers from Route 107 south to Railroad Avenue; the other extends to the Seabrook Circle. Foote noted the Police Chief has reiterated the traffic concerns stated at Tech Review, and agrees with the DOT recommendations. Morgan noted the DOT says the Town can establish an escrow. Foote said escrows must be spent within six years or returned to the donor; this is a burden on the town Treasurer. Morgan said this should be checked with counsel. Moore noted the State wants the Town to develop Route 1. Khan asked if the Rec Center access could be two-way. Mitchell said only one lane will fit without going across the back. Foote said this would give relief to those leaving the Rec Center and going north. Angel Chiramida of the Newburyport News asked if this is the first time the DOT set dollar amounts for major improvements on Route 1, and asked for an escrow account. Foote said this had been done for a potential light at Rocks Road



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and Route 1, and involves the hotel, restaurant, and tire store area. Chiramida said it appears this is the first time the DOT has suggested setting aside moneys for Route 1 road improvements. Foote said usually when funds are escrowed there is a designated purpose and at least a sketch of the planned improvements.

Foote asked for Board Member questions. There being none, abutters were asked for questions.

Cheryl Karinen said if the DOT is looking from Route 107 to the Seabrook Circle, that will impact many businesses. Foote said it is all very vague. Karinen said it appears the DOT is not offering solutions, but is looking to the Town to do the research which is much more involved. For example, there are poisons in the pressure treated retaining wall at Lowe's. Evans said the reformulation for pressure treated wood has no arsenic. Karinen said this should be ascertained before installation. Himmer said this is the job of engineering companies who are licensed. Mitchell said the Lowe's people gave the fence. Foote said there wasn't discussion about the pressure treated material being changed. Karinen asked if Kohl's will not be having Christmas sales and opening at 5AM. Evans noted four days had been stated earlier. Robert [Doyle] said the wall should be 10 feet high to protect the view and reduce the light casting for the people on Timber Court. Morrill said at the Zoning Board of Adjustment hearing the presentation was for an eight and one-half foot wall. The lights will be mounted on the wall and cast toward the building. So no light is coming from the site itself. Only the top of the building will be visible. Morgan asked about how the elevations compare with Timber Court. Morrill said the bottom of the wall is about five feet above the sill. They will be returning to the Planning Board for matters pertaining to the 12,500 square-foot section. Korff said they will take another look at a ten-foot height. Evans said the sound wall can't do what neighbors want; perhaps ten-foot height isn't needed everywhere. Khan asked Pernaw to take another look at the area near Lake Shore Drive, which is a major issue for this project. Pernaw said it doesn't make much difference if there will still be two lanes funneling into one. Foote noted the Board had previously asked about impact up to the State line.

Foote referenced a letter from DDR and the memo provided from VHB. Attorney Dean Eggert of Wadleigh, Starr & Peters, said he is now representing DDR's interest in the Kohl's project and introduced Don Herman of DDR, and Nick Sanders and Gordon Leedy of VHB. Eggert said DDR is asking for fairness as to the scope and treatment of other Seabrook projects, and has asked VHB to comment on the Pernaw study. DDR feels the Kohl's scoping is disproportionately smaller compared to the burden placed on the DDR site. Morgan said the DOT doesn't have the Town's perspective. Eggert said as to Routes 107/95, fairness and equity means "fair-share" contributions at the Town level, and disagrees with the Kohl's impact figures. He noted there is a difference between counting actual trip generations and taking an average. DDR rarely comments on other projects, however, a comprehensive approach is needed to impose a fair-share contribution. The Town doesn't have to accept the DOT numbers, but a range of \$65,000 to \$200,000 is way off proportionately. Morgan asked what figures DDR would consider equitable. Eggert said that is not yet determined. The Board has suggested Route 107 and even Route 95 Bridge improvements.

Leedy asked the Applicant to look at restating seasonal adjustments and the future interaction of trip generation between Kohl's and DDR to establish agreement on those numbers so percentage



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allocations can be determined. Morgan asked if VHB had taken the Route 95 Bridge into consideration. Leedy said not yet - these VHB comments were directed to the Kohl's study. Morgan said VHB had good comments, and asked if Pernaw and Korff would consider them. Korff said they will address this at the next Kohl's hearing. Mitchell said he had never seen a developer do a peer review on another developer's project, and felt it most inappropriate.

Evans said the Board would take VHB's comments as a friend of the Planning Board, but would need to engage an outside engineer for evaluation. Morgan said turning to the Route 1 Corridor Study and David Walker of the Rockingham Planning Commission would be more efficient. Evans asked the meaning of "fair-share", and said everyone's input is needed before making an informed decision about Route 1. The State and developers have left the Planning Board out of the picture. Garand noted VHB did the Route 1 Corridor Study; information demonstrating the whole picture is needed. Khan, who represents Seabrook at the RPC, said representatives from several towns spoke negatively about the Corridor Study.

Foote continued Case 2006-61 to September 4, 2007 at 7PM.

Foote closed the Public Hearing at 10:15PM, and the Public Meeting at 10:16PM.

Respectfully submitted,  
Barbara Kravitz, Secretary  
Seabrook Planning Board