Town of Seabrook Planning Board Minutes

Tuesday, February 15, 2011
NOT OFFICIAL UNTIL APPROVED

Members Present: Donald Hawkins, Chair; Sue Foote, Vice Chair; John Kelley; Jason Janvrin; Robert Moore, Ex-Officio; Elizabeth Thibodeau, Alternate; Michael Lowry, Alternate; Paul Garand, Code Enforcement Officer, Alternate; Tom Morgan, Town Planner; Barbara Kravitz, Secretary;

Members Absent; Paul Himmer, Alternate; Robert Fowler; Keith Sanborn;
Hawkins opened the public meeting at 6:30 PM.

MINUTES OF DECEMBER 21, 2010 AND JANUARY 4, 2011

MOTION:	**Thibodeau**	**to accept the Minutes of December 21, 2010 as written.**
SECOND:	**Moore**	**Approved: Unanimous**

MOTION:	**Moore**	**to accept the Minutes of January 4, 2011 as written.**
SECOND:	**Hawkins**	**Approved: Unanimous**

CORRESPONDENCE/ANNOUNCEMENTS
Case #2010-29 Midway Utility Contractors

Hawkins read a letter from Pat Ciccariello of Midway Utility Contractors requesting the return of $5,000 of the $71,125 paid as security for this project. As the Board had waived the sidewalks for this case, the $5,000 security for that purpose was unnecessary. Kravitz said that Ciccariello decided to pay the full assessment so there would be no delay in the pre-construction meeting or initiating construction, and indicated he would request the return of the $5,000. Hawkins asked for comments. Lowry said it sounded right.

MOTION:	**Lowry**	**to refund $5,000 of the $71,125 security posted for Case #2010-29, as sidewalks had been waived for this project and therefore that amount was not needed.**
SECOND:	**Thibodeau**	**Approved: Unanimous**

Cases #2010-34 and 2010-35 – Demoulas north
Hawkins referenced letters from **the applicant stating they wish to withdraw their application and request a refund of the fees paid.** He said that the Board did not have a refund policy for cases that are withdrawn, noting that the submission fee for this case was expensive. Hawkins said that at the end of the meeting he wanted to discuss what the policy should be, ie to give or not give refunds and, if given, how should they be prorated. For example, would this be based on the amount of work that had gone into the application process. This discussion should apply to all applications, and what is decided would apply to the Demoulas north situation. By consensus, this was agreed.

Case #04-49 Almena Way
Hawkins referenced a **letter from Jim Lyons of Mity Pink Dog requesting that the Planning Board recommend to the Board of Selectmen that Almena Way be accepted as a town road.** Residents have made the same request. The Board had to decide what would be appropriate. Lyons' letter stated that all the departments had signed off, the final binder had been set in October 2009, the as-built had been submitted in the Fall of 2009, and on November 17, 2010 the DPW Manager submitted a letter to

the Planning Board stating that Almena Way conformed to the Board's requirement. Hawkins said on November 3, 2009 The Board voted that a maintenance security in the amount of $10,130 was supposed to be posted, but that had not been done.

Hawkins asked for Morgan's recommendation. Morgan thought that amount was sizable and thought that should be brought to their attention. Hawkins asked if there was a reason not to wait on this. Foote said that once construction was over there generally there was an up to two year wait before the road was formally accepted by the Town. The construction security gets reimbursed and ten percent of that amount is provided as maintenance eg if the road did not stand up to one winter's duration and the contractor for some reason does not correct the problem. In this case there was an error in not following the Planning Board's instruction for posting the maintenance security; essentially the road has gone through a whole seasonal cycle of almost 1 ½ years. There is a confirming letter from the DPW Manager, so that maintenance would have been released at the time the BOS accepts the road. Foote said she personally did not like the fact that the Planning Board's instruction was not obeyed, but it would be an unnecessary expense to tell Lyons that he had to put up the maintenance security which would be released shortly thereafter. Morgan asked if the DPW Manager made his comments recently. Garand said it was a while ago and related to a drainage issue, and the contractor corrected that issue. He explained that at this time there are three people living on the road, and agreed with Foote on moving forward.

Hawkins asked for Henry Boyd's comments. Boyd said that the letter referred to apparently said that the Board is in receipt of an as-built plan, however, he did not believe that the Board was in receipt of the final as-built plan. Boyd said he was the surveyor of record and had not been paid. He did not believe he would have stamped the final as-built and handed them to the Board as this would be his only leverage to be paid. The town was lacking the final as-built with all of the detail. Boyd said that Lyons would not return his calls, although the monuments had been set. Foote asked if the town was holding any security at all. Kravitz said no security was in place, and the letter of credit had expired several years ago. That was the circumstance in 2009 when they came back to the Board which said the maintenance security should be posted at that time. Foote said that the Board has no financial leverage. Hawkins agreed; he assumed that the homeowners don't have either. Garand said that is one of the problems. The homeowners have no leverage and don't receive rubbish pick-up, plowing, or mail delivery because it is not a public road. Kelley asked if the homeowners had recourse in the courts. Garand thought they might, but was not sure how long it would take.

Moore said the Selectmen would not accept that road until the Planning board gives the go ahead. Kelley said to start sooner than later to do what is supposed to be done. Garand suggested that if an ok could be conditioned on the contractor meeting all the guidelines and as-built plans, it might give the contractor the incentive to bring things to closure. The site security was let go; there is nothing to hold over his head. Kelley thought if there is no final signoff the residents would probably have legal resource. Janvrin asked if the road could be accepted as soon as the as-built is in. Moore said the Board would need that as-built to sign off for the BOS accepting the road as a town road. Foote said the deed specifying the physical area of the roadway would also be needed for the transfer to the Town. Hawkins said a letter should be written telling Lyons that the as-built is missing and there is a security deposit issue and that the board is not inclined to take any action until the file is complete in terms of what he is supposed to be providing. It's the applicant's responsibility, and it is upsetting that he says the as-builts had been turned into the Planning Board. He asked Kravitz to check the file, assuming that Boyd would know this. Janvrin understood that the bond on that road was held by the DPW and not by the Planning Board. Foote said that was not the case. Morgan said the security was held by the Treasurer. Kravitz said the issue was that the "bond" itself was originally posted about four years ago; it expired and was never replaced. The Board had been good enough to offer an arrangement so that only the maintenance amount had to be posted.

Foote thought that this subdivision was actually started by a different entity and Lyons sic Mity Pink Dog bought it part-way into the construction. Boyd said that it was all Lyons'. Hawkins said if there were no objection by the Board, a letter would be sent indicating that before this request would be considered (i) the as-built was needed, and (ii) the file completed before the Board would make any move towards recommending to the BOS that Almena Road be accepted.

Hawkins referenced the **Notice of Regional Impact listing both Demoulas north and south cases,** and explained that the Planning Board decided to include Cases #2010-34 and #2010-35 for the north plaza because their withdrawal request had not yet been heard at the Planning Board. Case #2011-03, the siteplan for the south plaza, is now in the technical review phase and expected to return for the first Planning Board hearing on the merits on March 1, 2011. The Notice was sent to the Rockingham Planning Commission, Salisbury, and Hampton Falls.

Hawkins called attention to the **notice of the Town's withdrawal of the litigation concerning Case #2008-23 – DDR, noting that the New Hampshire Attorney General and the Executive Council had approved the Agreements. Kravitz informed the Board of the Supreme Court's acceptance of that motion to withdraw.** Hawkins said the interveners were still there.

Hawkins called attention to the **letter from the Seabrook Community Table thanking Board members for their contribution.**

Hawkins referenced a **letter from David Walker of the Rockingham Planning Commission outlining changes that are to be made to the draft US Route 1 Corridor Study.** He emphasized that although the Corridor Study had not yet been published it is an important document for the Town of Seabrook, the RPC, and the New Hampshire Department of Transportation to be on the same page in re how Route 1 is going to be expanded or developed. Hawkins said Walker attended a meeting at the Planning Board office and said that a couple of changes would be made so that the RPC Corridor Study would then be in line with the Seabrook Master Plan. Hawkins thought that would give the Town more leverage with NHDOT when things happen along Route 1. The biggest change is that the Corridor Study would show five lanes up to the Hampton Falls border which agrees with the 2001 Master Plan and the 2011 upgrade. Previously the Corridor Study brought five lanes up to the North Access Road. Walker's letter confirms that this change would appear in the published Corridor Study.

Hawkins said that **the person doing the Case #2011-03 peer review for the Planning Board had been asked to check on the signaling at the Routes 107 and 1 intersection,** because during the DDR hearings it was stated that part of the congestion problem was that the signals weren't all tied together properly. His firm, RSG, had been doing some work for NHDOT on some Route 1 corridor lights, and were able to look at the box for the intersection. They found that the connections were properly hooked up for coordination, but had not been timed to do this. Hawkins thought that this might persuade NHDOT to do something about it. Basically, there is apparently no change in the signaling for peak hours. He thought that if the signals were properly adjusted the peak hour traffic might not be as bad as it is now.

Case #2010-01 Carbone
Hawkins referenced a communication from Jones and Beach and said that **sidewalks along Route 1 had been discussed during the Case #2010-01 hearing. One recommendation from the Board was for the Applicant to sign the NHDOT liability statement. Since then, NHDOT has said it won't**

accept anything other than the Town taking the responsibility for sidewalks. Hawkins thought that the Board of Selectmen's position at this time is that it is too big a liability for the Town to take on. This means that sidewalks along Route 1 will have to be built on the applicant's land, and noting the State right-of-way, which is disappointing. Foote thought it was strange in that the State says there cannot be a signal light with crosswalks unless there are sidewalks coming into it; now they say take out the sidewalks on Route 1. She asked how there could be crosswalks if they do not allow sidewalks coming up to them.

Hawkins thought NHDOT was being hard-headed about the Town accepting liability and maintenance, and wondered what would be the difference if the Applicant accepted liability by signing the same letter of responsibility; perhaps they thought they would have to chase the landowner. He felt that it seemed that one person was making the decision and would not consider a possible solution. Moore said that sidewalks had been put on Route 1 for years and the State was just now coming to a new theory. Hawkins thought this was being done statewide, and asked if Morgan had seen this. Morgan said he had floated this concept on the Internet to see if it was widespread, but learned only that Lebanon had the same problem. With so little response, he thought the policy had not been implemented in a lot of places. Hawkins thought that a solution might have to be worked out through politicians, but this would be hard because of budget issues. Foote thought that winter snow clearance as well as maintenance might be another reason the NHDOT might not want the responsibility. Hawkins said there are sidewalks along State roads that do not get cleared. Janvrin thought that was true in a lot of towns. People walk along the road with white clothing in the winter and that wasn't safe. He questioned the State wanting the towns to accept liability. Hawkins said the State is trying to transfer liability to the towns, rather than accepting it for their own right-of-ways, noting that falling trees are also an issue.

Hawkins noted a memorandum **from the Assessor indicating her belief that the Case #2010-22 NextEra building straddles two lot lines, and a voluntary lot merger should be done.** He asked if NextEra had communicated with the Planning Board. Kravitz indicated that Garand had spoken with them. Garand said NextEra would be bringing a voluntary lot merger back to the Board, noting that the plan only showed one lot. Kravitz noted the Assessor's concern was that she needs to have the recorded information for tax rate purposes prior to April 1, so NextEra should leave sufficient time for that. .

Case # 2010-30 Charles Bagley – Cross Beach Road
Appearing for the applicant: Henry Boyd Jr, Millennium Engineering.
Hawkins referenced a letter from Attorney Mary Ganz representing Bagley. Hawkins asked Morgan to explain the issue. Morgan said when the Bagley case had been reviewed in November 2010, one stipulation advised by Town Council was that any approval be restricted so that Bagley's building could not be expanded without going to the Board of Adjustment. He commented that this case involved a lengthy review. In looking at the record in the Minutes of November [[[ ]]], as he does before the Chair signs a plan, Morgan found that the advice from the lawyer was one of the stipulations in the Motion [for conditional approval]. He said the lawyer advised that that stipulation be put on the plan. Morgan said he brought that to Hawkins' attention prior to hearing from Henry Boyd and Ganz who seemed to have a different recollection. Morgan said he used the written record. Boyd referenced Ganz" letter, but said he understood that the dwelling shown on lot #8 was to be considered a pre-existing non-conforming [structure] that could not be enlarged without appropriate approvals by the state and local authorities. Boyd said it could be enlarged. Morgan said it would need a variance and whatever the NH Department of Environmental Services would require. Boyd said they knew they would have to go to NHDES, but asked what the variance would be.

Morgan said he had not actually communicated with the Town Council who had written a letter recommending the stipulation and it is in the Motion. Garand clarified that the property in question land is

Conservation land and the discussion was that new structures are not allowed. The attorney felt it would be protective for the Town to ask for ZBA approval. Hawkins asked if that is what made it into the Motion as a condition. Morgan said what made it into the Minutes is verbatim from the attorney's request. Kravitz said she had watched the meeting CD. Notwithstanding anything discussed, the Chair had read the (2) stipulations in the Attorney's letter into the record. Boyd's concern was that the Ganz letter indicated the structure could not be enlarged, but the Minutes said it cannot be enlarged without the appropriate approvals. Morgan said that what the minutes said, and what the Planning Board stipulated was that that condition be placed on the plan and that had not yet been done. He asked if Boyd had an issue with the way the [[[vote]]]is written. Boyd said he was not sure; if it prevents Bagley from being able to improve his property. Hawkins said the situation is this is a nonconforming piece of property, and any structure would be subject to going to the ZBA to make changes. In this case, there is also the extra hurdle because it is in conservation land. Boyd said Bagley has no problem in going to the NHDES, but did not see why he'd have to go to the ZBA.

Hawkins asked for Garand's opinion. Garand said usually as long as there is NHDES approval on one single family residence on a property and no structures are being added, increasing the footprint would be covered through NHDES. If there were no sewer or water issues, the proper applications would go to the State for approval. Hawkins read [from the NOD]]]]]…"that [under] the law is considered to be preexisting nonconforming use which cannot be enlarged without the appropriate approval and/or variance by the state and local authorities having jurisdiction thereof." If they do not need ZBA approval they do not have to go there; if they do then they need to go to the ZBA. Boyd thought that Ganz was saying that the structure cannot be enlarged. Garand said in his office, once there is NHDES approval the structure can be built according to their guidelines. Boyd said if that needed to be added to the plan he would do that. Foote said "appropriate" was the key word. Moore did not see a zoning issue -- its dunes. Boyd said that NHDES would allow the footprint to be changed, but it would probably have to stay within a certain area. Hawkins said the Board is looking for the plans to state the conditions of approval, which is the normal process. He asked for further comments; there being none. Kravitz asked Boyd if only one of the two mylars needed to be changes. Boyd thought so. Kravitz asked if Boyd would reserve some time to collate the paper plans.

Hawkins referenced **a letter from Millennium Engineering relating to application fees for a proposed Appliance Warehouse submission,** and asked Boyd for an explanation. Boyd said his client had previously applied to the Board but there were some non-compliance issues, including with the NHDES, At that time, Boyd said that Garand had properly pointed out these issues. The Board had discouraged the approval and denied the application. Hawkins asked if it was denied or not accepted, and the fees were captured. Boyd thought it was not appropriate to require his client to post all of those fees when he was not granted an audience to present what he had done. Boyd referenced the new application checklist, and said that all of the things that have been done were meant to rehabilitate the proposal. Since then they have addressed the checklist and revised the plans. They were hoping that the funds from the prior submission could be used for evaluation etc of this new proposal. The client would be willing to pay for the public and abutter notices, but it wasn't fair to require all the fees. Hawkins noted that the motion to accept the prior application did not pass; it was an incomplete application and never accepted by the Planning Board.

Hawkins said that one item to be discussed later in the meeting was how to deal with requests for refunds, noting that the Board does not have a policy in this regard. He felt it important that the Board decide whether they want to create a policy before addressing these issues. He tabled Boyd's request until after that discussion. By consensus, Members agreed.

PUBLIC HEARINGS
NEW CASES
Hawkins opened the Public Hearings at 7:15PM.

Case #2011-04 – Proposal by Bruce & Cynthia Brown for a lot line adjustment at 10 Halls Way, Tax Map 13, Lots 50, 51 & 54-50.
Appearing for the Applicant: Henry Boyd Jr, Millennium Engineering;

Boyd said that Brown owns two lots at the back of Beckman Woods subdivision and four of the newly created lots in Beckman Woods lots #47,48,49,and 50. At the time, lot #50 was left artificially wide. Brown wants to gain access to his backland by taking that piece of lot #50 – 50-foot wide and 150-foot deep and combine it with two pieces to be merged in the back. Lot #51 is about 1 1/3rd acres and lot #50 is 5 ½ acres and lot #50 would be added to them. At some future date there probably would be a subdivision, but Brown has not yet envisioned that. He just wants to be sure he can secure access to his land. It is truly a lot-line adjustment with pre existing nonconforming status because there is no frontage. The adjustments would make the parcel less nonconforming. Boyd noted that he had asked for a couple of waivers, and said that Morgan had picked up some items on the plan which Boyd thought did not apply because there no construction is proposed. He thought topography was unnecessary.

Hawkins asked if parcel #1 exists. Boyd said right now it is part of lot #50 which is artificially wide and would be reduced to a requisite lot size. Morgan agreed with the requested waiver provisions as not particularly significant. Hawkins asked if they were not necessary because there would be no building at this time. Hawkins asked for questions from the Board. Foote asked about a potential road in the future and access and utilization of the new large lot. She asked if moving parcel #1 to the other side of Lot #50 had been considered in terms of thinking out future road access and utilization. The distance was about the same, but she wondered how lots and the future roadway would be laid out. Boyd said his concept showed that would not be a good for an abutter, and it's a really flat area; pieces would be lost. Some of the topography had been done for the Beckman Woods subdivision. There being no further comments.

MOTION:	**Foote**	**to accept Case #2011-04 as administratively complete for jurisdiction and deliberations.**
SECOND:	**Janvrin**	**Approved: Unanimous**

Hawkins asked if abutters had comments; there being none.

MOTION:	**Foote**	**to approve Case #2011-04 – Bruce & Cynthia Brown for a lot line adjustment at 10 Halls Way, Tax Map 13, Lots 50, 51 & 54-50.**
SECOND:	**Janvrin**	**Approved: Unanimous**

Case #2011-05 – Proposal by Ledge Two Acre Realty Trust for lot line adjustments at 11 Ledge Road and 88-90 Allison Drive, Tax Map 2, Lots 54, 54-2 & 54-3.
Appearing for the Applicant: Henry Boyd, Jr, Millennium Engineering;

Boyd showed four lots that the McLaughlin's own, and showed the existing house which is on a preexisting very small lot. They want to build a home for themselves on the revised lot #3. Boyd showed how they want to adjust the driveway position. He said the original subdivision created some odd shapes for the lots. He noted that Morgan had picked up some overlapping, but said that in the 1970's there wasn't the standards for the box. He thought is met the intent of the width and the depth. They are trying to make one parcel less nonconforming without invading the top box. There is adequate frontage although one lot is shy within 35/100 of a foot. Foote asked if they were taking a nonconforming situation and making it less nonconforming. Boyd agreed. Hawkins asked for Morgan's comments. Morgan said it is within the intent to meet the ordinance.

MOTION:	**Foote**	**to accept Case #2011-05 as administratively complete for jurisdiction and deliberations.**
SECOND:	**Thibodeau**	**Approved: Unanimous**

Hawkins asked for comments from the Board. Moore commented that this is cleaning up the corner. Hawkins asked for comments from abutters.

Linda Fletcher said she lives directly behind the two properties and fears that they are going to expand Shamrock Paving, a commercial small business on their property. She read a statement indicating the following:

[Fletcher stated she owns the property at the Crossing directly behind and bordering on where they do business as Shamrock Paving. Both properties behind her home at the property lines are located directly behind [her home]. She wanted to be a good neighbor, but finds that she does need to address the issue. When she purchased her property in January of 2001 she never realized that a commercial business would be behind her property. Their intrusions have become more invasive as the years have gone on. She found the necessity to install a border fence that cost her $10,000 in an attempt to obscure her view of all their trucks, heavy equipment, front loaders, back loaders and undesirable units that are visible to her property. A fence only goes so high, so her view of the unattractive and cluttered properties remains. The property is an eyesore in the neighborhood. She feels it certainly has diminished the retail value of her home and of other homes in the neighborhood. This is a residential neighborhood and the noise created from the property inhabited by Shamrock Paving should not exist in a residential neighborhood. Their trucks unload piles of heavy materials with a loud and unwelcome noise throughout the day and/or during the early morning hours including weekends. This goes on 7 days a week. The fact that they also have many chickens and roosters on their property is also a nuisance. During spring, summer and fall the noises of the birds crowing is annoying and unending. It begins a little before 5AM and is non-stop[throughout the day and evening hours. She feels her quality of life has been compromised and diminished the valuation of my property if and when she chooses to sell. To allow them to expand would be a hardship on her, and that's what she thinks they want to do to have more room to put their trucks, equipment, dump trucks. She pleaded with the Planning Board to not allow their request to be granted:. She thanked the Board for hearing her statement."

Garand asked Morgan if he had the Planning Board minutes of the last subdivision that went through at the McLaughlin's in re the conditions that were put in place. He said the business was nonconforming and thought it had been there prior to the zoning. There were conditions on the property at the first subdivision. Moore said they had been there prior to Alyson Drive and Deer Crossing. Garand said that historically they always had a paving business, so it was an existing use when [Fletcher] bought her property in 2001. As for the roosters etc, it is in the rural zone so the crowing can't be stopped. Fletcher said it is the eyesore that she is concerned about. Garand said then eyesore was already there. He said that his office tells potential purchasers to review the abutting property. Fletcher said when she moved in the trucks were not unloading all the time. Garand said he would have pulled the files for her. He thought the paving business was restricted to one lot.

Hawkins asked where the paving business is located. Garand said he would have to review the record, but thought it was on a corner lot where they proposed to build his residence. The back lots had two mobile homes that were originally on the property. At this point, Garand recommended that the Board look into and review the stipulations that were on the last subdivision case. Fletcher said that the trucks and heavy equipment go way beyond the property. Garand commented that they own three lots. Fletcher said it goes way beyond where their home is. Garand said historically the whole lot was used as Shamrock Paving. Lil Townsend said that they park behind her house and not at the corner. Garand said there was another section where a barn recently burned and equipment had been around that building. Townsend asked if there is anything that said the business can't expand. Garand said they [[[can can't]] expand because the business is nonconforming and existed prior to the zoning.

Hawkins asked for Morgan's view. Morgan said the discussion was interesting but not relevant to the request before the Board. there is no proposal to expand anything or establish any other use or build anything. The only request is to move some lot lines. Foote asked if altering the lot lines could in any way be impacted by or impact or negate the previous stipulations. Morgan said it would not negate anything because there is no proposal on this plan to negate. Foote recommended that if there any stipulations from a previous subdivision, they show up on this case plan, noting that in trying to do records across lot history it's easy to lose the links to stipulations. Morgan said if there are questions about conformance with the zoning ordinance they should be taken up by the CFO. Hawkins agreed with Foote that if there were things of importance in the last plan that was approved, it is much easier to deal with plans historically if there is no misunderstanding that whatever was approved the first time around was still in place. He wanted to see the original plan stipulations (2001) also be listed on this plan. Janvrin asked if there was a prior plan reference with the application. Garand said that when the prior plan was approved it was not mandated that the conditions be put on a plan. The minutes would have to be searched. Janvrin noted that the stipulations would not have been recorded at the Registry. Boyd said he would put them on this plan.

Garand said this is just a lot-line adjustment and was not changing the number of lots or the original conditions. Hawkins asked for other comments or questions. Max Abramson asked if anything was violating the town's rural ordinance. Morgan said if there were, it would be a matter for the Board of Selectmen; typically those police powers are administered by the Selectmen. Garand said a written complaint to his office is required to look at the zoning and how the property was treated historically. He noted that zoning and uses change over time. Foote asked if technically the, lots as they existed, preexisted zoning changes. Once the lot dimensions are changed or altered, does it mean that a lot has to comply with current zoning, or is it still grandfathered. Garand said the only thing it doesn't meet is the width and depth. A new building would have to meet the setbacks. Once the use was changed or the lots were sold the new owner would lose the grandfathered status. Foote asked about changing the physical lot lines. Garand said it is still owned by one person. If a non-conforming use ceases for one year it must thereafter conform. Janvrin asked about change of ownership. Garand said it can be from a father to a

son. Hawkins asked if change of use triggers a change in conditions. Garand said his reading is that the zoning says the use has to cease for one year.

Kelley wanted to see what the other conditions were. It wasn't known if they would be adversely affected or affecting the lot line change. He thought the case should be postponed until that information was available. Said he was on the Board when the [original Subdivision] was approved. The conditions as stated in the minutes should be added to this plan and then move forward. Janvrin asked if he meant to have then physically placed on the plan. Hawkins asked if the Board wanted to see the prior conditions before voting. Moore said it ought to be cleaned up; if there is something out there from many years ago it should be resolved. He agreed that the situation being discussed had been there a long time, even before Alyson Drive. Hawkins asked if the Board wanted to continue Case #2011-05 to the next meeting.

MOTION:	**Janvrin**	**to continue Case #2011-05 to March 1, 2011 at 6:30PM at Seabrook Town Hall and that the relevant stipulations from Case #[[[2001-20]] be researched and included on the plan.**
SECOND:	**Kelley**	**Approved: Unanimous**

PROPOSED AMENDMENTS TO LAND USE REGULATIONS

1) Amend Section 4 of the Subdivision Regulations as follows:

4.603 Waivers to the provisions of these regulations may be ~~permitted when, in the opinion of the Board, topography or other consideration warrants such waiver, provided that public convenience, safety, health and welfare will not be affected adversely.~~ granted if the board finds, by majority vote, that:

(1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or

(2) Specific circumstances or conditions of the land indicate that the waiver will properly carry out the spirit and intent of the regulations.

The applicant shall submit a written request detailing the rationale for each waiver request. The basis for any waiver granted by the planning board will be recorded in the minutes.

Hawkins said that Morgan had prepared the revised waiver language because the State had modified the requirements, and asked Morgan to explain this. Morgan said that the Rockingham Planning Commission had provided new regulation language and recommended that this change be included in the Land Use Regulations to reflect what the Legislature had done. He thought it made sense to insert the language used in the State statute in the Town's Subdivision Regulations. Janvrin asked if this needed to be posted as a public hearing. Morgan said that had been done. Hawkins said at this point the Board could adopt the new language. Janvrin noted that the language came from the State regulations, and proposed adoption.

MOTION:	**Janvrin**	**to Amend Section 4 of the Subdivision Regulations as follows;**

		4.603 Waivers to the provisions of these regulations may be granted if the board finds, by majority vote, that: **(1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or** **(2) Specific circumstances or conditions of the land indicate that the waiver will properly carry out the spirit and intent of the regulations.** **The applicant shall submit a written request detailing the rationale for each waiver request. The basis for any waiver granted by the planning board will be recorded in the minutes.**
SECOND:	**Kelley**	**Approved: Unanimous**

2) Reformat and Reorganize the Subdivision and Site Plan Review Regulations.

Hawkins noted that both the Subdivision and Site Plan Review regulations were in the Board's packet. Morgan recalled that some months ago he had circulated a revised form for the Subdivision Regulations that put things in a more logical order; a few minor changes were made. At that time the Board had requested that the order be displayed numerically, and that has now been done. The Board had also asked that the same type of reformatting be done for the site Plan Regulations, which has been provided to the Board. Morgan added that the landscaping regulations that the Board adopted in December 2010 were now included in the siteplan regulations. Hawkins asked if there were any changes to the subdivision Regulations other than the reordering and renumbering of the text. Morgan said only a few minor semantic changes, but nothing of substance or content was changed.

Hawkins noted the regulation audit that the Master Plan Steering Committee was currently reviewing, and asked if that would have an impact. Morgan hoped that it would. Hawkins asked if the reformatted regulations should be adopted at this time or postponed. Morgan said there was no reason to postpone because the content is largely the same as it was. Moore asked about the eleven pages of landscaping regulations. Hawkins thought that was supposed to be shortened [within the body of the regulations] with the rest in an addendum at the end of the section. Morgan said it is at the end of the regulation. Hawkins asked if there were questions for Morgan. Janvrin asked that if this [new formatting] were adopted at this meeting, could it be posted on the website the next day. Kravitz said it could be done quickly. Hawkins said the objective was to make everyone self-sufficient [in re the regulations]. Hawkins asked for comments from those in attendance; there being none.

MOTION:	**Foote**	**to accept the reformatting of the Subdivision and the reformatting of the Site Plan Regulations dated February 15, 2011, as written**
SECOND:	**Janvrin**	**Approved: Foote, Hawkins, Kelley, Janvrin, Thibodeau, Lowry;** **Abstained: Moore**

Moore commented that the subdivision formatting was fine, but the site plan was too busy. Foote noted the landscaping was in the Site Plan Regulations and could be changed in the future. Moore thought it would put pressure on homeowners. Morgan explained that it did not apply to residential property; only commercial and residential.

OTHER BUSINESS
Application Refund Policy

Hawkins said that not many applications are withdrawn, but now there is such a request for Cases 2010-34 and Case 2010-35 – Demoulas north. Also, Henry Boyd has asked for forgiveness of some of the fees that would be due for a prospective case. He noted that Morgan had pointed out that rather than addressing [such requests] considering this one as a time, it would be better to have a policy. Further, if the Board were to decide it would give refunds, (i) how would that be done in a consistent way, and (2) how would the Board assure that its costs would be covered. He noted that Kelley appears to be adamant about not returning any fees at all. Kelley proposed that for anyone who comes forward and pays the fee, the Board should do the due diligence and keep the application on file for up to five years. If they later return to the Board [for the same parcel] they would have a credit based on the previous fees. Hawkins asked if Kelley was in favor of maintaining the funds and when and if , they returned to the Board to apply them to the next project. Hawkins recalled that when DDR did not like the increased fee for a subsequent filing on the same property, they thought the fee was too high and an amount was negotiated. Kelley said perhaps the funds had already been expended. If not, to give the applicant the chance to regroup and return, and the Board might then show good faith and grant some sort of credit. Moore commented that in a lot of places the applicant just goes away. He thought there should be some cut-off point for getting money back, perhaps if the Board doesn't accept the case, but after the Board had accepted the case nothing is returned. Kelley liked that approach as well.

For discussion purposes, Hawkins distributed a draft demonstration grid based on refunding various percentages of the total fee paid at points of progress during the application process. He said that the Board spending money really starts on the first day the application comes into the Planning Board office. Foote said this is essentially because that's when the Secretary's time, and the Town Planner's time is spent on the case, public and abutter notices go out, and the like, long before the Board ever sees the case. Thibodeau thought that if there were a no refund policy people would take a little more time before submitting a case. Janvrin said maybe the Board could be more staunch on incomplete application packages. Hawkins said the board did not know the full reason behind the Demoulas cases withdrawal request. He did not think this had anything to do with the Planning Board because the Board had not done any deliberations at all; the Board wasn't involved at that point. Hawkins said he would go over his grid so there would be a couple of alternatives to discuss.

Hawkins explained that his grid accounted for the various types of applications eg lot-line adjustments, minor subdivisions up to five lots, subdivisions, siteplan review, condominium conversions [see form of applications]. Some of these cases and fees are really small; fees for applications for large projects can

be much higher. Hawkins said the first step for the Board process is that the Secretary receives the application in the Planning board office. Next is an initial review by the Town Planner – before the Board ever sees the proposal. The current billing policy is that the applicant is responsible for all expenses for the Town Planner, Planning Board Engineer, special studies, abutter notices etc and are to be paid for in any event. His theory is to pay for these fees as expended. If a case was withdrawn before the town Planner reviewed the plan, and there were no other expenses, there wouldn't be a charge. There are public notices and abutter notices about the meeting. Then there is the Board's initial review and sometimes small cases are done in one night. [After Board acceptance] come technical and engineering reviews. And then back to the Board. By way of example, Hawkins thought that once there is an initial deliberation no money is refunded; after tech review there is still 25% of the process still to be done; if there is a withdrawal before the Town Planner's review only 10% would be retained; for a withdrawal after the Town Planner review only 20% would be retained; a different amount would be returned after the public notice. He noted that in his examples the Secretary's time and other expenses were not accounted for. Hawkins wondered if any one case would actually be so different. There were a huge number of pre application and/or other meetings for the Demoulas cases, and that takes a lot of time. He did not think that tracking telephone calls and the like should be done; it would be a waste of time and effort, for the [small] number of times this might happen.

Hawkins said if [this policy] were posted applicants would know what, if anything, could be returned. He emphasized that applicants have to pay for every out-of-pocket costs (see above) the Board incurs. Beyond that, a portion of fees might be returned. Janvrin asked if a test case could be done. Hawkins said he had done a few of them. For example, the lot-line adjustment fee is $200; getting 25% back would be $50 and so on. Hawkins suggested there could be a minimum fee of $100 for every case. For a subdivision over 5 lots plus a road for a total of 10 lots, the fee would be $3000, (Hawkins did the same percentage calculations in this instance and also for a $20,000 fee as for the lot line above). Hawkins noted that big cases always have a lot of money spent up front in big cases for the Secretary and the Town Planner's time). Kelley said Hawkins had done a lot of work and thought it fantastic. Foote thought the percentages should be scaled differently. Kelley said to change the percentages so this would be done once, or the percentages could be out of balance in a short time. Thibodeau wanted the percentages to be changed and across the board, and a note added that any return would be after costs were deducted. She thought keeping only $50 was insufficient, and said to do it right the first time. Hawkins said there could be a base minimum amount or the percentages could be changed. Hawkins asked if she wanted refunds to be after costs, and asked if time spent should be tracked or only out-of-pocket costs.

Hawkins emphasized that the grid he presented was so he could explain the concept to the Board. He asked Thibodeau how she would handle the percentages. Kelley said 80% across the top line (earliest amount to be returned). Thibodeau thought that should be 50%, Foote agreed. Then Thibodeau said to have only 25%, 50%, 75% as the retention percentages. Moore asked if it was known how some other towns do this. Morgan said he was not aware of any, but there could be. Morgan agreed with Hawkins that everyone should be treated the same. Hawkins did not want lawsuits over refunds. Having a policy was important before such decisions are made. It may not solve the problem but would be a lot better. Aboul Khan said that countless times developers come in with big plans and all kinds of paperwork that has to be gone through, plus the tech review. He suggested there might be a time limit eg 30-45 days after which there would be no refund. He thought that would benefit the town and account for taxpayer dollars. Applicants for big projects should know [the policy] before they apply. He suggested there might be a policy just for smaller cases where a lot of manpower might be needed.

Kevin Ryan said he had been sitting through the Demoulas South Gate hearings, spending a lot of time and effort. If there were a withdrawal, he would not be reimbursed for that. He thought there should be a distinction between residential and commercial policy. Max Abramson said the enabling statute was

RSA:676:4. Morgan said this section did not refer to refunds; he liked Kelley's idea of a credit. Foote liked Thibodeau's idea that the percentages should be across the board, and that once a case had been accepted as administratively complete, or if not withdrawn prior to the first public hearing, nothing should be returned. She thought that the finance department and the auditors would "scream" about a credit.

Garand said the applicant takes the risk of applying before all other permits are in. Technical review is not just the TRC. There should be reimbursement for everyone who reviews the submission. Foote asked if there could be a credit of fees if the applicant returned within 90 or 180 days of the withdrawal. Kelley " disagreed. Garand suggested that the Board could fashion some refund for the Demoulas north cases, but have a firm policy after that. He noted that a huge amount of time had been spent up front. Kelley said there should be no favors for Demoulas north. Foote noted the amount of time and labor spent before the initial public hearing. Thibodeau thought the cut-off should be before the public hearings begin. Khan emphasized that the applicant should be informed. Hawkins pointed out the footnotes at the bottom of his grid. Garand said there should be a disclaimer that applicants agree to in the application document.

MOTION:	**Kelley**	**to adopt the Application Refund Policy presented by Donald Hawkins at the February 15, 2011 as adjusted.**
SECOND:	**Lowry**	**Approved: Hawkins, Foote, Kelley, Moore Thibodeau, Lowry;** **Opposed: Janvrin,**

Morgan asked if this should be put into the site plan regulations at this time. Hawkins said it would be necessary to reply to the requests. Moore noted that the Board is supposed to collect costs unless there is a policy. Kelley said there should be a justification for a refund. Thibodeau said the policy was now in place. Foote noted that the fee schedule had increased before DDR returned to the Board. Thibodeau thought applicants should be more careful before submitting an application. Khan suggested that as the policy wasn't previously in place, the Chair could negotiate with Demoulas. Foote agreed as the policy was after the fact. Kelley said to also be fair to Boyd's client. Hawkins noted there would have to be a public hearing. Foote said to ask Department Heads to ball park the amount of time their departments put into these cases. Hawkins said he will work on the details.

Hawkins adjourned the meeting at 8:40PM.

Respectfully submitted

Barbara Kravitz, Secretary
Seabrook Planning Board