Town of Seabrook Planning Board Minutes

Tuesday, June 4, 2013

NOT OFFICIAL UNTIL APPROVED

Members Present: ; Donald Hawkins, Chair, Dennis Sweeney; Roger Frazee; Francis Chase, Michael Lowry, Aboul Khan, Ex-Officio; Paula Wood, Alternate; Tom Morgan, Town Planner; Barbara Kravitz, Secretary; Paul Garand, Code Enforcement Officer;

Members Absent; Sue Foote, Alternate; Jason Janvrin, Vice Chair;

Hawkins opened the meeting at 6:35PM.

MINUTES OF MAY 7, 2013
Hawkins asked for comments; there being none;

MOTION:	**Sweeney**	**to accept the Minutes of May 7, 2013 as written.**
SECOND:	**Lowry**	**Approved: Unanimous**

SECURITY REDUCTIONS/EXTENSIONS

Case #2002-37 Irene's Way
Hawkins referenced a letter from Paul Lepere and Morgan's memorandum. He asked about the vote at the last meeting. Morgan said the plan, as well as a minor deed revision, had been fixed. The only outstanding item was an ok from the Department of Public Works. Kravitz said that Jim Kerivan of Altus Engineers, had been following the work, but told her that the final look would have to be with the DPW Manager who had had previous concerns. This was still outstanding. Hawkins tabled this item until the June 18, 2013 meeting at 6:30PM at Seabrook Town Hall.

Hawkins recognized Kravitz for a point of information. Kravitz said that his particular situation had gone on for many years. The residents are very anxious to think that everything had been taken care of. During the last two weeks since the conditional approval, several individuals came to the office believing that everything was approved. She suggested making clear that meeting minutes required a Board acceptance vote, and that there was a 30 day appeal period. If there were an outstanding condition of approval, this meant that the case process was not over. Hawkins agreed, stating that the vote taken at the May 21, 2013 meeting was with certain conditions attached. These were that the revised deed had to be acceptable to the Town Planner, and a letter had to be provided from the DPW or Altus Engineers stating that no further action would be required. That letter had not yet been provided. This issue was not closed because the conditions of approval had not been met. Therefore, Case #2002-37 would be held over until the next Board meeting when hopefully it could be finalized because the DPW letter would have been received. No current action was required on the Planning Board's part, other than to say that the conditions had not been met.

Hawkins asked Kravitz to place Case #2007-37 on the June 18, 2013 Agenda.

ZONING INQUIRY
Hawkins asked for Morgan's view with respect to a letter from Attorney John Arnold, of Hinckley Allen asking for clarification of a zoning amendment. Morgan said the question goes back to the discussion about gas stations. Arnold was asking the Board to clarify its intent in re: "…Should a gas station cease to operate for one year, and should its New Hampshire gasoline station operator's license expire, the facility would no longer be grandfathered…". Arnold had honed in

on what the Board meant by "New Hampshire gasoline operator's license". Morgan asked for feedback saying that he had no particular expertise about this item, and that that language had come from the Board.

Hawkins noted that there were gasoline station owners in the room, and asked why this question was coming up after the Town Meeting vote on the change in language. Scott Mitchell said he had told Arnold that he thought what was written had been said at the meeting at which Arnold had not been present. Arnold did not want to take Mitchell's interpretation; he wanted to hear what was meant from the Board. Mitchell thought that what the Board said had been very clear. Hawkins said the Board's intent was to identify the document that licenses the gas station to operate by the state. If the term was wrong it could be fixed; it would have been easier to get the term right in the first place. A change could not happen until March 2014, but wanted Morgan to include this on items to discuss in re zoning; the research on the relevant RSA should be done in advance so the language can be correct. Morgan was not sure that the current statute language was wrong. Mitchell agreed saying that was his interpretation to Arnold who was his attorney. There was a lot of discussion that included Khan's thoughts; Charles Mabardy was also at the meeting. Mitchell said that the Board had it correct, but that Arnold wanted to write to the Board for an unbiased view.

Chase asked for the question to be defined. Morgan said that Arnold's letter asked if by "gasoline operator's license" the Board meant the Department of Environmental Security permit to operate a gas station. Mitchell confirmed that and recalled that the conversation had included the status of other stations, and registering the tanks; this was not tied to a business license from the town which had to be renewed every year. Khan asked why the Article's current language was hard to understand; he thought it was clear. Mitchell's opinion was the same. He thought Arnold wanted the Board to say that in writing. Khan said that it was in writing. Wood agreed, saying the Board put it in writing and it was passed by the voters. Mitchell said he was very, very clear about what it said. He thought that Arnold wanted to be sure that he [Mitchell] was not saying what he wanted it to say. Chase thought if the Board did nothing, the language would stay as it was. He asked why more discussion was needed.

Hawkins said the Board had a request for action; it needed to decide if it would take action or table it. Mitchell said that Arnold was asking if the Board meant underground storage tanks regulated by the DES. Wood noted that the request was for a confirmation that the Board wrote what it meant. She could not see how else to explain it. Wood thought that though the Board did not use the legal terms, but looking at the tape or the Minutes it would be clear. Mitchell said he'd offered to get the tapes for Arnold. Hawkins asked Morgan to take a look at the generic definition that the Board used. The objective was the New Hampshire gasoline station operator's license, whatever it is called, and to determine if the Board's language was adequate. If it was adequate, could a short response be written to Arnold stating that the Board was interested in a New Hampshire and not a Town of Seabrook business license. Garand said that a business license could also be a factor. Hawkins said the current language was what the board wrote at the time. If there were a reason to change it, that would be done; otherwise the Board would not waste its time.

Khan thought that the Board should stay with the language it wrote after discussion at more than three meetings, noting that Mitchell had been present throughout. Wood recalled that three gas station owners had contributed to the discussion. Mitchell said he was very clear about what the Board intended and what they wrote; it should be tied to the DES permit. He just asked for something in writing confirming that, noting that this had to do with actions between Mabardy and

himself. Morgan asked if Mitchell might consider telling his attorney to stand down. Mitchell thought Arnold was a young guy who never stands down. Hawkins commented that a bill could be sent for wasting the Board's time.

SIDEWALK ISSUES IN RE THE DDR DEVELOPMENT

Hawkins explained that the Planning Board did not approve this project; it went to court; the Town lost. The sidewalks were depicted on the siteplan. He thought that everyone assumed that the state was going to do what was on the plan, and that the state had approved. Now the state was coming back, as might have been anticipated, and wants the town to take responsibility for the sidewalks again. Garand said that the state was party to the Memorandum of Agreement which said that if the plan had to change it had to be with all three parties signing it. The New Hampshire Department of Transportation fully approved the DDR entrance on the New Zealand intersection, something the Planning Board had denied. Garand said that the state had to live with that agreement as well. Hawkins agreed, however, DDR had thrown it in the Planning Board's lap saying that the state won't do the sidewalks until the town signs an agreement in re the sidewalks. .

Hawkins said that the Agreement that DDR sent required the town to take liability. The town would never sign this. The town had signed sidewalk agreements where it takes responsibility for maintenance. The Planning Board's role was to make a recommendation to the Board of Selectmen; the Planning Board could not sign such an agreement; the Selectmen would make the decision. The state's current position is that they will not do the sidewalks until they get an agreement from the town. Hawkins agreed with Garand that a decision should be made in re the Settlement Agreement, because in it the state did not say there would be other attachments. . Garand said in the past sidewalks were not necessarily a problem. The state is surfacing this as an issue now. Just because the state now does sidewalk agreements to push responsibility on to communities, did not mean that they could have a second try with this project. He commented that people want to keep changing the plans to make it better for themselves. The property being used to widen Route 1 belonged to DDR; the sidewalks were being installed for the front entrance; that was part of the agreement. Everyone signed the agreement and the court mandated it; everyone had to live with it, the same as the town. .

Hawkins asked if Morgan saw things differently. Morgan liked the way Garand put it, and thought that should be forcefully conveyed to NHDOT. Hawkins asked Morgan if the Board's attorney should do that; Morgan said it should. Garand thought that if the state could change the sidewalk agreement, it could also at Spur Road for the hotel. If they are changing sidewalks and intersections, they could look at everything. Hawkins said importantly, the state signed on and now wants to change things. Also, DDR was just washing their hands of the problem, saying it was not their responsibility. Garand said similarly the town should stand on the court ordered siteplan that showed sidewalks. If the state wanted a sidewalk agreement it should have put that in the Agreement.

Hawkins said before making recommendations to the Selectmen, the contractual obligations with the state and DDR to put the sidewalks in according to the siteplan should be followed up. They are not subject to whether the town had or had not an extra agreement in re maintenance or liability. If the Board had to make a recommendation to the Selectmen, it should be about safety and to recommend that they take maintenance responsibility, but not for liability. DDR should agree to take the responsibility for the maintenance on the sidewalks in their plan. Garand asked if when sidewalks were added to the Route 107 Bridge, it included the entrance to the New

Zealand Road entrance to the DDR shopping center. He thought that should have been part of that agreement because it had been discussed by the Planning Board, and the state. He thought that agreement was supposed to carry down Route 107 from the Bridge to the intersection and around to the New Zealand Road entrance. Garand referenced the meeting minutes. Wood thought the town was to maintain that. Garand said it was for maintenance, not liability. Hawkins said the town had signed two agreements where it did not accept liability. Wood thought this had already been settled. Garand agreed, but was concerned that this would be haggled out and other things wanted.

Hawkins said that that whole situation was after the fact. When the court decided to approve the siteplan presented to them by DDR, the sidewalks were in it. There was no detail on the Bridge; that happened after the court case. He thought there could be two different situations relating to sidewalks. The first was in re the court decision to build to the plan presented to it. The second Was something negotiated about the Bridge and how it would be built; Hawkins participated in those negotiations as did the Selectmen. The requirements were understood. The state would leave a lane open to walk on that was not raised, or they would put a sidewalk in based on the decision that the Selectmen made as to whether it would accept maintenance responsibility. He thought that different from the situation in front of the DDR project where the court said it would be built to the plan in which there were sidewalks. That order was put on the town and the state, and acknowledged in a settlement agreement with all parties to do that work. He thought these were two different things, maybe with two different outcomes.

Khan asked who created the municipal agreement for sidewalks. Hawkins said that was what the state originally put in front of everybody. The town said no to the liability language. Khan said to be careful about that. Hawkins said that that old language was still floating around; he did not know if this time it came from the state. He could not find anything that the town had signed with liability language, and thought the Selectmen had accepted maintenance language, but not f or liability. He asked for Kravitz's recollection. Kravitz clarified that the proposed single page agreement [with the liability language] had been sent to the Planning Board by Gordon Leedy of VHB – DDR's engineering firm. Earlier in this week David Todd, a DDR representative, in a phone call and by email, said this had to be moved along this month to keep the construction schedule, although the DDR project manager said it was on for next month. Kravitz told them this would be on tonight's Agenda, and it was up to the Planning Board as to what recommendation they might make. When Leedy called her earlier in the day, he was told that the liability language was problematic.

Kravitz said she had researched the file and, with the help of the Town Manager's Secretary, had located the sidewalk agreement, without the liability language, that had been signed by the Selectmen and the NHDOT [for Route 1 south of Route 107]. That document was provided to the Board to show a historical option. Khan said that when Demoulas was before the Board for the Southgate Plaza, the sidewalk was placed about five feet inside on their own property. He asked if there was an agreement document, and if the town maintained it. Hawkins said Demoulas maintained it because it's on their own property. Khan said that could be an example. Hawkins said that was possible, but Garand had pointed out that any changes to the plan had to be signed off on by three parties. He thought there was not a lot of leeway, and suggested that the first step would be a conference call with the Board's attorney, who could decide that more research was needed. The Board could then discuss the attorney's recommendation for moving forward. There would be no action at this meeting. **Hawkins said to put this issue on the June 16, 2013 Agenda at 6:30 PM at Seabrook Town Hall.**

Hawkins said that after the Cases were heard, the exaction issue would be discussed so that the Board's direction would be clear.

PUBLIC HEARINGS
Hawkins opened the public hearings at 7:05 PM.

NEW CASES
Case #2013-12 – Proposal by Kevin Kurland and David Benoit to establish a distillery at 894 Lafayette Road, Tax Map 7, Lot 93-2.

Hawkins said at the request of the Applicant this discussion would be tabled because there was some question as to whether the list of abutters provided by the Applicant was correct, and all of the abutters had been notified properly. Rather than proceed, the case would be tabled for a subsequent agenda. Kravitz reported that the Applicant had declared that it would provide the additional abutter list on Thursday so notices could go out for the next Board meeting, however, that was scheduled for a work session. Hawkins said if the additional listing was provided in time, the case could go on the July 2 agenda.

Case #2013-13 – Proposal by Scott Mitchell, Sea City Crossing, and IStar Seabrook LLC to demolish the McDonalds restaurant at 652 Lafayette Road and replace it with a 3,500 square foot medical office building and a 4,452 square foot retail building.

Attending: Scott Mitchell, Jim Mitchell, Tropic Star Development;

Appearing for the Applicant: Wayne Morrill, Jones and Beach Engineers;

Morrill explained that the McDonald's is currently located on this parcel. It had a right turn in, and a full exit out on Lafayette Road; there were 54 parking spots. The municipal utilities serviced the building, and the drainage was via a shared pond for all four lots. Two months ago the principals appeared before the Board for a lot line adjustment prepared by DDR to give a section of land to the parcel, because the original parking and fence is actually on the DDR entrance way. This lot had been modified to become 1.26 acres. The Applicant proposes to demolish the current building and construct a 3,500 square-foot office building, and a 4,452 square-foot retail building. This design was a little difficult because when the DDR entrance was designed, there was a set right-in right-out to access this lot. They couldn't do anything with the right-out, so they decided to drop it because the pattern for two-way traffic and the queuing did not make sense. The entrance would not be off the road and the back-up could be avoided. Additionally, there had been cross-connection easements with the CVS and Provident Bank sites for shared parking and drive lanes.

Morrill said this proposal was for 63 parking spots; there is existing pavement on the front where the driveway currently comes into the site, and one loading zone at the rear. The front parking lot would be an extension of the existing parking; green space would separate it from the building; and a connecting crosswalk for the two uses. The proposed retail shows the maximum allowed 19 parking spaces, and 44 spaces for the proposed office building which is one space for every 200 square feet. All of the lots share drainage into the rear detention pond under a recorded drainage easement #28963. The landscape plan was done by a licensed landscape architect showing deciduous trees along the front, shrubs and trees along the entrance way, more

landscaping in the rear shielding the buildings from the DDR site, and more shrubs and trees in the landscaped islands.

Morrill said this site was picked because of the streetscape capability; they consider the DDR entrance as streetscape design. There is no parking on that side, and the building had been located to use as much of the existing parking as possible. There is existing pavement next to the Pizza Hut; a waiver is requested to allow that to remain as is. The proposed medical office building would be in the front facing Route 1, and the retail split into three different users. Morrill submitted a written response to Morgan's comments by way of a letter which had not made the deadline for the Board packet. A traffic memorandum done by Vanesse & Associates was forwarded to the Planning Board office that afternoon. The Applicant assumed that this proposal would be sent to the Technical Review Committee, and was looking for the Board to accept the case at this meeting.

Khan asked if the east entrance was two-way, and if there was a left turn to go west. . Morrill said there was. Hawkins thought Morrill should check the minutes and the tape of the meeting when the entrance to the west was approved. At that time the Board was told that this was temporary. It would go away if the site was developed, and was never intended to be permanent. There were big problems about that entrance being so close to the mall entrance off Route 1. Mitchell said this was never intended to be temporary; it was always to be permanent because of reciprocal easements among four properties. Mitchell recalled that Steven Ireland of the NH Department of Transportation was at the meeting. He was positive that Ireland and the Board agreed to a right in/out. Afterwards, their traffic engineer suggested to make it only a right in. He clearly remembered this and otherwise would not have agreed.

Mitchell said that their engineer told them there was plenty of sight distance to get out and into the DDR development. In the design they felt that the right turn out did not do much for their project. The biggest concern was that with the new signal they and the other properties had lost their access, because most people did not drive to the (existing) traffic light to turn. Now they will have to stop at the new light to turn in. Mitchell said the only "temporary" discussion was about the McDonald's building. As soon as he can close the transaction, he will rip down the existing McDonald's and start construction. Wood noted that the drainage was dumping to the back pond area, and asked if the Applicant was talking about taking it out a couple of meetings ago in re the Provident Bank property. Morrill acknowledged there was a push for them to take the existing pond away and turn it into an underground detention area. If there is a need for drainage infrastructure, the suggestion was that it be chambers underground, covered with grass. Wood was concerned because it seemed confusing.

Mitchell referenced talking with Sue Foote noting how sad he was about the way that area looked. They want the new areas to be a showpiece, and went to the same landscape architects as for the Bank and CVS. The buildings would be all brick. They want to make a statement. They will size this project and, after it was done, they would subsequently go through all of the permit procedures in re the wetlands they previously created, including returning to the Planning Board in re new underground chambers. The goal was for a new underground drainage system to handle all of the related development, and make the eyesore go away so it will look as good as possible. Hawkins asked if the landscape architect's plan met the ordinance requirements. Morrill said that the architect's labeling was not clearly detailed; it does conform to the town regulations and the revised plan would be clearly labeled. Mitchell commented that he had set the landscaping standard with the Provident. They will go for technical review and return with the detail that would more than meet the ordinance. This property is really important because it would

be the entrance for all of the customers that go into the area. Pointing to a rendering, he noted a signed letter of intent for a lease with Aspen Dental and interest from several other tenants. Also, they will own the gas station across Route 1 – Sea City Gas, and call that intersection Sea City Crossings.

Chase asked if the landscaping requirements along the Pizza Hut side were met. Morrill said they were asking for a waiver. He clarified that the trees and the landscape shown on the plan would meet the intent of the regulations. Mitchell said the Pizza Hut side would stay as is, but their area would more than make up for it. Hawkins said as this would go to tech review, the first order would be acceptance. Although it did not come in with a traffic plan, that had been submitted at this meeting, and asked Morgan if there were any issues for completeness. Morgan said that the regulations require that a rationale be provided with a waiver request; that had not been submitted. Morrill said the waiver request called out that the existing pavement would be kept as is, and asked if Morgan was asking for the "why". Morgan said that had not been presented as the Board wanted. Morrill explained that the existing parking grades and drains into a low spot going into the catch basin network. He thought that adding landscaping to the parking area would be a detriment to the existing infrastructure. Morgan noted the regulation requirements.

Khan referenced the discussion about sidewalks noting this project is in the same area. He asked for the status of this project's sidewalk. Morrill said that the sidewalk shown on this plan was that of the DDR plan. The Applicant would not be constructing the sidewalk. Mitchell said they understand the town policy, and would maintain the sidewalks in front of their building. Morrill said they would not maintain the DDR sidewalks. Hawkins asked who owns that land. Morrill said some sidewalk was on the NHDOT land, and some on private property entering the mall. Khan asked which sidewalk Mitchell had referred to. Morrill said that would be in front of the project buildings. Wood noted that sidewalks connect to the road. Hawkins asked for other comments; there being none.

MOTION:	**Sweeney**	**to accept Case # 2013-13 as administratively complete for jurisdiction and deliberation.**
SECOND:	**Chase**	**Approved: Unanimous**

Wood recalled discussion about the lighting behind the CVS, and observed that one light overhangs, but the lights on the CVS did not flow onto the street because there is a dumpster with a large fence and a pod storage container. Morrill asked if those wall-mounted lights on the side of the building did not shine on the road. Chase said that was why it was so dark. Wood agreed. Mitchell asked if the Board wanted them to add another light on the Provident Bank side. Morrill noted that the Board required all wall-mounted lights to be shielded and directed downward. Wood thought that would be fine. Hawkins said the ordinance would be required until it was changed. Morrill suggested taking off one of the shields. Wood thought the problem was that if the light was not behind the dumpster and the container, it would be sufficient to flow on to the street. Mitchell said they would be doing work on the Bank site, and asked if the board wanted another light. Hawkins said these were separate properties and should be handled that way. Jim Mitchell said that Scott Mitchell had control over the Provident Bank, but not the CVS. Hawkins said the issue is with the CVS and not with the Provident Bank. Chase commented that if the shield were not there, it would flow and enhance the area.

Hawkins scheduled the Technical Review Committee for June 24, 2013 at 10 AM in Seabrook Town Hall, and continued Case #2013-13 to July 16, 2013 at 6:30PM in Seabrook Town Hall.

OTHER BUSINESS

DISCUSSION OF EXACTION FORMULA

Hawkins said that the exaction formula had been discussed for about three years; it is difficult to determine an offsite traffic exaction amount, except by a traffic engineer. At this time, the Board felt it worthwhile to see if the formula could be simplified, so that a developer could calculate the traffic exaction cost up front. Assistance would be needed from the Board's traffic engineering firm, RSG. The Board did not have the funds to assess the traffic capacity on Route 1. However, the Board of Selectmen had agreed that the Planning Board could use funds from the economic development account for such purposes; additional funds had been contributed by an applicant. Hawkins distributed a summary of the work in re exactions done by RSG. He explained that the goal was to develop an offsite traffic exaction method to replace the current formula in the Site Plan Review Regulations, which is difficult to calculate without the help of a traffic engineer. . The new method should aim to recover the approximate cost of necessary road improvements, be easy to understand, and fair to all applicants. The methodology should also be transferrable to other road networks e.g. Route 107 if significant improvements were required based on new development. Also, Morgan had insisted that the methodology had to be legally defensible.

Hawkins referred to his summary document and said the first step was to define the covered area. He felt it important to include the whole corridor of less than two miles, and not just a particular area where traffic might be turning. In the past traffic engineers were allowed to say whether vehicles would be traveling north or south, and not consider the rest of the corridor. The Board did not think this was right. The study area was defined as the Route 1 corridor in Seabrook from the Home Depot to the Hampton Falls town line. The traffic circle near the Town Hall was not included at this time because the approach to calculate that area was not known. The objective was to calculate the traffic capacity of the roadway today, and then to calculate the future potential. Morgan was asked to go through every lot along the defined area of Route 1, and what might go into a lot if it were to be developed. The big malls would stay as is, but some lots could be grouped together to become bigger stores. Morgan came up with likely uses for all of the lots. This became the scenario for a potential Route 1 build-out during the next 20 years; basically this would be retail development.

Hawkins said that the RSG letter specifies the lot sizes and square footage of what they could be used for if that property were redeveloped. Using traffic manuals, the peak hour traffic load for each property could be identified. With the usage the information supplied by Morgan, the traffic engineer and Morgan assembled the table for the calculations. Morgan said they were also assisted by Henry Boyd. Hawkins said the traffic engineer then did the calculations for peak hour trips per lot for likely future use, subtracted the current trips, and arrived at 4900 possible new trips which the new road system would have to be designed to handle. By comparison, the DDR project was 2200 trips. This means that it would be a significant amount of work if a full build-out were to happen. RSG estimated the natural traffic growth to be one percent annually without new development. They also estimated what roadway improvements would be needed to accommodate 4900 new trips, and costs out those potential projects for a total of $10,000,000 (not including any right-of-way purchases).

The next step was to identify the developers' share and the state's share of the cost. The state would be responsible for the mitigating the natural traffic growth, but would say that developers should be making a contribution to that roadway system. The traffic engineer calculated the state's potential cost, including for the natural growth, at 37 percent over 20 years; the developers' share would be at 63 percent; i.e. the developers' share would be approximately $7,200,000, which equals $1,482 per trip, whether going in or exiting. The traffic engineer then compared that calculation to what developers had already paid. Kohl's paid $800,000 for 460 trips = $1,739 per trip (as a donation). Market Basket south paid $90,000 for 123 trips = $738 per trip; he thought the disparity probably was not fair. DDR paid $2,400,000 for 2240 trips = $1,083 per trip, which was just for the offsite improvements – the Bridge and the engineering on Route 1 south of Route 107. All this meant that the average per trip exaction for these three big projects was $1,175. Hawkins added that when the additional front door (Provident Way, Route 1, and Route 107 intersection) and on-site work was accounted for, DDR paid a total of approximately $10,000,000 or $1,900 to $2,400 per trip.

Hawkins said that the Board's objective was to establish a cost per trip that would be the same and fair for all applicants, rather than the wide range that the current formula produces. Then, using the traffic manuals, a developer could figure out their exaction cost per trip. The starting estimate for discussion would be $1,200 per trip, although this figure would be less than the actual cost. If the full build-out did not occur over time, less roadway work would be necessary and the exaction amount would be less. Hawkins thought it would be easy for the developers to calculate, and to figure their offsite requirements. Khan asked if everyone would pay, without regard to how small a lot was. Hawkins noted that the basis now was 50 trips. Everyone would be treated the same. He felt there was too much manipulation when the factor included the direction that vehicles would take. Garand noted that some of the properties are in the industrial zone. Hawkins said if there were a worst-case, full build-out, the highest traffic would be from a traffic mall, unless they were all restaurants.

Garand supposed an industrial business could have three shifts, with 3X the number of vehicles, and impacts on school children and people traveling to and from work. Hawkins thought that industrial traffic would be lighter than commercial traffic; also there could be an impact from a Zoning Board of Adjustment decision. Garand thought that a developer could say that the Planning Board did a study in 2013 anticipating an industrial parcel would become commercial, and want the ZBA to grant a variance to accomplish that. He wanted a disclaimer indicating that this was a study only, and not parcel determinations by the Planning Board. Hawkins said that could be footnoted. A drawback to this approach was that right-of-way purchases were not figured in. It also might be very expensive for small businesses; the Master Plan seeks more small businesses and less big box national chains. Also, it did not account for what NHDOT might require of a developer. For example, NHDOT said that DDR's original proposal was not good enough, and added requirements. This also happened with the Market Basket north proposal, which was then withdrawn; the Market Basket south was requirement was increased by NHDOT.

Hawkins said the traffic consultant said to consider increasing the trip threshold from 50 to 100, which is what the state uses. That would lessen the impact on small businesses, but could the amount be more than a small business could afford. An alternative would be to pick 100 and ratio it down for small businesses - for example to 50 percent. The goal would be to have a universal methodology, while not inhibiting small business growth. Garand suggested having the state collect the money, rather than the town. They want the town to maintain sidewalks, while it collects money for the state. Hawkins said that the state is thrilled with the very successful

Seabrook exaction method, which he thought was one reason the town was getting speedy cooperation to get things scheduled and completed. Other towns might not have the ready financing required for roadway changes. Garand said that Seabrook was promoting the growth in the Town which would help with the tax base, but also builds up the town quicker. Hawkins thought that Seabrook's location next to a state with a six percent sales tax was key to the town's fast growth, not collecting money from developers. One might think that the exactions that developers are required to pay would be slowing growth down. Garand emphasized that the town was collecting money for the state while being told to maintain sidewalks it had approved. Hawkins thought that would be an appropriate position for Seabrook to ask how many towns were making the same kind of contribution toward financing roadways. Developers paid for this; now the state wants the town to take over the responsibility. Exactions might slow some things down, but were not large amounts for some developers doing large size projects and are paid. Garand feared that this was making it so difficult for the small businesses to build locally; this is a hard hurdle.

Khan commented that Route 1 property owners paid a lot more taxes than anywhere else in the town; in the last 10 years the tax had doubled. Hawkins commented that his taxes had tripled; so it wasn't just Route 1. It's based on property values. Chase saw this as a kind of fee for new projects. Hawkins said the objective is to tell developers what would happen going forward. The Board had promised two developers a proposed number so that they could make their decisions. Chase commended the exaction analysis which provided a basis to work from, that could be tweaked or adjusted in the future. Discussion of what could or might go wrong could go on endlessly. Hawkins recalled Morgan's mandate that whatever methodology the Board used had to be defensible. The Board's traffic consultant put together this level of detail as a guide for deciding on appropriate, fair amounts that account for goals in the Master Plan. One goal is to try to encourage smaller businesses.

Garand asked if this could be applied to a residential project e.g. a 12 lot subdivision on a per house basis. Morgan said the underlying specifications were based only on the Route 1 Corridor. Hawkins thought the methodology would be usable absent something in the subdivision plan that did not allow it. The state regulations allow exactions for roadway and certain related improvements, such as drainage. Garand commented that a large parcel off New Boston Road came before the ZBA looking for a variance for zoning relief. If 40 homes went into that parcel, he wondered how there could be protection in re the schools and the town infrastructure. The Board was just doing things for Route 1. Hawkins looked at this as a kind of impact fee. Establishing an impact fee capacity had been discussed repeatedly and never enacted. He thought this should be looked at about every 2 years. Garand recalled that when DDR first came to the Board, the Fire Chief asked for the needed ladder truck, without success. Nothing had been done with a residential subdivision in re schools. Garand clarified that his issue was for multiple lot subdivisions, not for individuals. Hawkins said the same methodology could apply; the future uses would have to be envisioned. For example, with housing, impact on schools, police and fire services would be factors.

Hawkins thought many more local communities used impact fees, and not exactions. Charles Mabardy said that several years ago in Massachusetts, impact fees were used for housing projects – e.g. $6000 per lot for building permit; $12,000 per use, implemented by the zoning board. It was done for every home. Chase thought that towns did not have this level of justification; they picked a number. Hawkins said in the past some Board Members wanted impact fees, and others were adamant against it; perhaps it should be looked at again. Khan wanted to know if the money Seabrook collects goes right to the state.

Hawkins said one developer asked if credit could be given to developers who donated rights-of-way in re widening a roadway. For example, it could be 50 percent of the market value. . Hawkins thought this should be discussed because land donation was valuable, although fair market value was subject to variation. Another concept would be to consider a discount for existing buildings that had been empty for more than one year. The traffic engineer did not recommend this if the new use resulted in an increase in traffic. Hawkins said if there were no increase, no exaction would be due. Another concept was to offer a discount to a developer if they made a donation that could be held until needed, whereas an exaction that had no action in six years would have to be returned. For example, money held for a specific traffic light that was never acted upon, had to be returned. In retrospect, the purpose for the exaction could have been for improvements in the Route 1 Corridor.

Hawkins said that at a given point in time there may not be sufficient funding, so he wanted to list all of the needed improvements, and move forward asking the state to do all of the engineering. That way, money would not have to be refunded. Perhaps developers could be offered a discount for making a contribution, rather than an exaction. This had worked well for more than six years in a past situation, and gave the town more flexibility in how the monies would be used. It was more prudent than leaving the funds with the state to use on a current project. Then consider allowing the NHDOT required “front door” work to count toward the offsite exaction, which has not been done up to now. The Kohl’s, Lowes, and Market Basked south paid for their front door work that the state requires. Under the proposed methodology, the list of projects could include all front door work; possibly funds then could be collected faster than anticipated when the formula was first established. Morgan commented that the formula did not include right-of-way. Hawkins added that the $1,200 exaction was less than the full $1,400 calculation.

Morgan explained that DDR had already contributed $1,000,000 to NHDOT for front door work, and would claim that they had paid their exaction fee. Hawkins said that would always be a problem because the Board did not know the off-site cost figures. Morgan noted that over time personnel changes and could have different attitudes. Hawkins said that the town was not supposed to be paying for work on state roads. So far the cost had been to the developers; it had not been a taxpayer responsibility, nor should it be. If the town had not exacted sufficient monies to make the improvements required by the state, the developer could choose to pay for the improvements required by the state to move the project faster, or wait until the town collects sufficient funds. Hawkins noted that when DDR proposed an exaction figure, the state added about $1,000,000 toward the Bridge. That was the developer’s decision.

Hawkins thought that the ordinance had to be clear that the town was not taking responsibility for funding improvements. It was collecting money from developers, not taxpayers, for improvements the state would make. The exaction formula showed the minimum that a developer should be paying. Also, everyone should be going by the formula, and treated the same; there should not be waivers, exceptions, or the like. A developer coming in with a project would know the amount [up front]. The Master Plan should as followed as to the maximum number of lanes on Route 1. The town did not want six-lane roadways with fence medians. This is a way to finance some of the improvement projects. Morgan thought that Hawkins had described a very comprehensive proposal. Khan asked about the funding procedures. Hawkins said contributions would be held by the Town until there was an agreement to provide funds to the state. The town holds exactions until the state agrees to do a project. Khan asked if one hundred percent of these monies would be spent in Seabrook. Hawkins said it would go to a particular project that the state wants, or that the town wants, to keep the traffic flowing. It will only be spent on the projects that have been

designed. Up to now the scope of the work has been the Route 1 Corridor; the money will be spent i.e. on the needs of the next project in the Corridor. It would not require that funds be raised for a particular project.

Hawkins said for Route 107, the analysis and forecasting would have to be done again. Hypothetically, Khan asked whether a developer for the Staples parcel could be asked to pay toward the widening of Route 1 scheduled for 2014. Hawkins said this would apply to everyone that develops in the Route 1 area. Money is not asked for things that have already been financed, e.g. the Bridge, and widening Route 1 south of Route 107. The Route 1/107 intersection improvements have already been financed, although that may not be adequate for the future development so exactions might have to be applied to that intersection again. Developers would have to come up with ideas for that intersection to be discussed with the Board and the NHDOT, because, so far, a suitable design has not been proposed. Projects already financed would not appear on the list.

Khan asked whether the town had to acquire the funds for the Route 1 widening south of Route 107. Hawkins explained that the under the Settlement Agreement, the town is only committed for the money it already had. The town's responsibility in re the Bridge was $200,000 which came from the Kohl's escrow; $600,000 remained from the original $800,000. The maximum cost to the town for the Route 1 south widening would be $595,400, as stated in the Settlement Agreement. DDR had already given $127,000 toward the engineering costs. The balance comes from the state. Khan had thought that the town had to raise and contribute up to another $150,000. Morgan said that Khan's recollection was of an earlier draft; Hawkins was reading from the signed agreement. The state recognized that the amount from the town would not be higher than what it would have in hand. Khan asked if that meant that in any event that work would commence. Morgan confirmed this. Khan had no other issues as long as the money the Planning board collects will be spent in Seabrook. Morgan added that it would be spent in the corridor.

Chase said if the monies are to be spent in Seabrook, why weren't the costs to maintain sidewalks put into the exaction fee so the town, and not the state, would collect that money instead. Hawkins commented that no one thought of that. Chase questioned that the town would collect the money and give it to the state. Hawkins said that the easier way would be to put into the town ordinance that there would be a sidewalk in front of Route 1 property, and that the business [property owner] would have to enter into an agreement with the town agreeing to maintain that sidewalk. It would not reference "liability" because the town would not accept liability from the state. As of this time, unless a solution is found, the state would insist on an agreement with the town re sidewalk maintenance. This would have the effect of transferring the responsibility through an agreement with the town, rather than collecting more money. This should be a requirement in the site plan review. Garand said that would take the responsibility off the town.

Hawkins thought Garand's point that because no other agreements were specified in re the DDR Settlement Agreement, perhaps such a maintenance agreement might not be needed in that case. Chase commented that this issue keeps coming back to the Board, so there had to be a way to address it. Garand said applicants could have the option of maintaining sidewalks in the right-of-way, or put the sidewalks on their property. Hawkins commented that that would result in a zigzag pathway. Garand thought that the Market Basket south sidewalk that was moved inside their property was nice looking. It's away from the cars and safer for the pedestrians. Chase added that if the sidewalk were on the owner's property, there would be greenery between it and the street. Wood noted that green strips were being discussed for the North Village. Chase

thought that perhaps an impact fee could avoid the town having to buy equipment to maintain sidewalks. Kravitz questioned whether those monies could be used for equipment. Hawkins explained there were a lot of rules. For example, funds could not be used to replace a police car, only if it were an addition to the fleet. Otherwise it would be a charge to a new owner for what had to be replaced anyway. Wood noted that at present the town had no sidewalk maintenance equipment.

Khan asked how the exaction fee changes could happen. Morgan asked if he should rewrite the proposal according to this discussion. Hawkins wanted to know whether the Board thought the $1200 trip figure was reasonable or onerous. Some developers had paid significantly higher exaction fees, but some smaller businesses had struggled with the fees. Khan asked if this document was a model used in any other town. Morgan said that similar methodologies had been used elsewhere. RSG was hired because they have this kind of experience. Mabardy asked how there could be a transition from 100 trips to 50 trips, and suggested 75 trips. Hawkins said 100 vehicle trips per hour was a pretty big load; the threshold would then be $120,000. Garand thought 100 was pushing too high, noting that 50 trips per hour was the current basis and a number of smaller businesses had not approached that level. Hawkins said 50 cars an hour would be $60,000.

Wood asked what would bring in 50 cars per hour. Morgan recalled that there had been a convenience store proposed for the ArcSource building on Route 1. Although there had been disagreement on the exact number of cars, it was close to 50 per hour. Most convenience stores would have a little under 50 cars per hour. Garand said that m most convenience stores would not be at the threshold. Hawkins thought that the current gas station proposal was 53 trips per hour.
Garand thought 50 should be the base figure, because the convenience store/gas station would attract more cars than a convenience store alone. Hawkins said that the traffic engineer indicated that the state figure is 100, where Seabrook currently used 50. The decision is whether to leave it at 50 or go to 100. Chase asked if 50 would be deducted from 75 trips per hour. Hawkins said the issue is whether to be fair, means that everyone should pay something. He called attention to one option he presented that, for example, if the number were 25 instead of 50, the fee would be reduced to 50 percent ($600). Another option would be to have everyone pay for at least 1 trip per hour. Small businesses under 50 trips per hour would pay less; the bigger businesses would be financing the work.

Wood asked if this would be a one-time charge when the project was built. Morgan confirmed this. Wood said this would be more of a developer fee, rather than on the small business or owner. Morgan said it could be someone opening up in a different building. Hawkins said the $1200 figure was not challenged by the larger projects; at 25 trips per hour that would be $30,000. Morgan thought that amount could pour cold water on small projects. Wood agreed. Mabardy asked about the state standard. Chase said it was 100. Mabardy suggested compromising at 75. Morgan said it was not known how the state got their standard, but that highway system was intended to bring people from one part of the state to the other. Seabrook was looking at more local shopping. He thought the state did not pay attention to local small businesses. Mabardy thought about four-lane highways like Routes 9 or 125. Morgan did not want to go lower than 50 trips per hour as the base, to avoid impact on people starting a business. Garand agreed, recalling that the proposed store at 609 Lafayette Road proved it was under the 50 standard. The Planning Board could consider the figures and decide that an applicant would be under 50 trips per hour.

Mabardy asked what 100 trips per hour would cost. Hawkins said $120,000. Morgan said the business heard earlier in the meeting would fit that standard. Wood commented that would be a dental office plus three other retail stores, which she thought was a big developer. Mabardy thought a square footage factor would be better. Hawkins said a 26,000 square-foot lot would be 246 trips. A 13,000 square-foot building, i.e. the size of the West Marine, would be 182 trips which they did not mention. Morgan thought that according to the ITE Manual, it was a lot less than 182 trips per hour. Hawkins said the issue was picking and choosing what the applicant's business was. Traffic people were allowed to ignore pass-bys, which the proposed formula would not allow. The travel direction would not matter. Some of the figures might be higher than a smaller business anticipated. Morgan reminded that the numbers were based on a full build-out. When an applicant flower seller comes before the Board, they will say only 20 trips. Wood said that would have to be considered.

Garand asked if the Board would set aside a whole meeting for this discussion with a public notice, as this was very time-consuming. Hawkins intended to take this topic up at the next meeting; other than cases, this would be the priority. Garand noted the late hour, and said the topic had hardly been touched. Mabardy said he was a small business person. He could see the exaction with most developers. A small business person paid taxes for the location. A developer would have one project, flip it, and they're gone. They don't pay taxes, or hire locally, and don't care about or have a commitment to the community. They just want the approval. He did not think someone opening a three or four thousand square-foot building should pay an exaction. Mabardy thought that DDR had flipped the shopping center site to Walmart; they would be gone and not pay taxes on the shopping center. The development would be done. Maybe the town did not get the right amount of exaction, but small businesses should be provided an incentive. He did not see small businesses trying to do anything if there is a $120,000 exaction on top of the project costs.

Hawkins suggested taking a range of square-footages and calculating the amount of a 3,000 or 5,000 square feet exaction, so the Board could consider the amounts for businesses of those sizes. Morgan said to take a look at the ITE Manual. Garand said that would be good for the next meeting. Morgan thought the Manual would show that many small businesses were under 50 trips per hour. Garand pointed out that Mabardy's gas station also had a Dunkin Donuts, a Subway, a convenience store and an office, and asked now many trips per hour that generated. Morgan commented that Mitchell's proposed gas station was 53. Hawkins did not know whether that figure included pass-by trips; he thought that would be much higher. Mabardy noted that there would be a cross-connection easement to his property from DDR, and asked now that would be calculated. Hawkins said in such a situation the ITE Manual would be used to come up with an exaction calculation that would have nothing to do with the direction vehicles took. In the current formula, direction is an important factor; he thought that was an open door to manipulation of the outcome.

Mabardy said that he owned property next to his station. In the future, hypothetically he could expand by putting vehicle repairs on that site, although there was no current intention to do that. He asked how that would be treated when customers would already be on the gas station site. Hawkins hoped that the Manual would address a combination of gas station/lube center. Mabardy thought if it added $120,000, he probably would not do that. Morgan commented that Mabardy would be doing pretty good business if it generated 100 trips. Wood commented that Mabardy's business example subsequently could become something else. She noted that an exaction was a one-time fee. Hawkins said if there was redevelopment, the exaction would only be applied to the increment. Mabardy commented he would have to be careful about enhancing his business.

Hawkins asked how much detail Morgan would need to draft ordinance language to post this proposal properly. Morgan asked if the Board was ok with a threshold of 50. Garand thought the drafting could just refer to a threshold for the public notice, and pick the number at the next meeting. Morgan said then the hearing would have to be continued. Lowry asked if there could be a range for the threshold. Hawkins thought the Board would be covered if ranges were expressed. Wood said the open discussion would be at that time. Morgan said to advertise at 50; the Board could then change to 100. Hawkins thought a range on any of the factors could be used to cover whatever the Board decided. Morgan said the public notice would be short, and advise that the full text of the proposal was in the Planning Board office.

Khan asked about the cost for the traffic engineer's report. Hawkins said the full amount was not known yet; he had spent three hours with the traffic engineer the previous week. He commented that the initial draft was done a year ago, but he felt it needed redrafting. There was a $5,000 contribution from a developer, and the Board of Selectmen had allowed the Planning Board to use certain economic development funds for projects like this. He hoped this project would be in the $5,000 to $6,000 range, but was not sure because the cost for rewriting the report was not in yet. However, the funds were available, and it would not be from taxpayer money. Rather it would be some combination of contribution and the economic development line. Khan asked about the money collected from Demloulas; Hawkins said that is the contribution to be used. Demoulas was told that their funds would be used to establish capacity for Route 1. That is what was done, and Demoulas should be thanked for that contribution.

Hawkins asked for any other guidance or comments for Morgan. Kravitz asked about the timing for the public notice; this was not a case. Morgan said he would research this to see if there was time to advertise for June 18, otherwise it would be for July 2, Once it was advertised, it would go into effect. Garand asked if the Board would meet on July 2 during the holiday week. Kravitz said the agenda already had several items

OTHER BUSINESS

Neighborhood meeting with DDR Representative**.**

Hawkins asked Wood for an update on the meeting with Rocks Road neighbors and DDR. She said it was a very pleasant meeting with Paul Danszczak, DDR's project manager and Wilcox, the environmental consultant. The meeting was held in a neighbor's home and more people were there. They were very pleased with the architectural design of the sound barrier, and that it would be moved 70 feet to the south. Danszczak walked the property line with the neighbors, and suggested meeting again when Walmart starts construction to see if there are any issues. Wood said the relationship was very different now; it's come a long way.

CHALLENGE GRANT

Crowtown – Route 107

Hawkins asked Kravitz for the update. Kravitz said that the contract with NHHFA is fully signed. The next step is the consulting contract with the Rockingham Planning Board. The schedule needs to be created to meet the grant deadline.

Hawkins asked for other business. Kravitz asked if the May 21, 2013 Minutes could be addressed as a quorum from that meeting was now present.

MINUTES OF MAY 21, 2013

MOTION:	**Wood**	**to accept the Minutes of May 21, 2013 as written.**
SECOND:	**Chase**	**Approved: In favor: Chase, Wood, Lowry, Frazee; Abstained: Hawkins, Khan, Sweeney;**

Case #2012-18 Latium, Tropic Star Development

Kravitz called attention to the letter from Attorney Uchida to place Case #2012-18 on the July 2, 2013, and to continue the case to July 16, 2013 at 6:30PM in Seabrook Town Hall. Hawkins wondered if they would be ready for July 2. Morgan thought he might be anticipating unfavorable action from the ZBA when the appeal is heard. Mabardy said they would decide the next step after the ZBA meeting. Hawkins said July 2 would be the first opportunity for the Planning Board; perhaps they were anticipating one meeting after that.

Hawkins wanted to act on this request at the next meeting when looking at the July 2 agenda. Kravitz said the Arleigh Greene, Waterstone project, for a lot-line adjustment and 168,000 square feet of construction would be on the July 2, 2013 Agenda. Hawkins anticipated this would go to the TRC.

JUNE 18, 2013 MEETING

Chase asked how the new cases would be affected by the exaction work being done. Morgan said there should be a public meeting no later than July 2, if possible, and how the agenda is ordered. Kravitz pointed out that a public notice for June 18 had been posted. Wood asked if the work session could be continued. Hawkins thought that the vote could be on July 2. Kravitz asked Morgan if another public notice was necessary given the significant discussion at this meeting. Morgan confirmed that a public notice was necessary.

DDR SITE WALK

Wood commented that Danszczak had walked the site with her. She was amazed at how much work had already been done e.g. the detention ponds, the tarring to bring down the dust, the Walmart pad. She thought the building plans would be put out to bid. McDonald's and the other equipment were using Provident Way and not Route 1. Wood thought they were trying to be good neighbors during the construction. Garand said he had to close the Route 1 driveway down. Walmart has the condominium. She was told there is good interest from other potential tenants. They are very willing to give a site tour; it was very interesting to see how massive the shopping center will be.

Hawkins asked for other comments; there being none; Hawkins adjourned the meeting at 9:05 PM.

Respectfully submitted,

Barbara Kravitz, Secretary,
Seabrook Planning Board