Town of Seabrook Planning Board Minutes

Tuesday, October 16, 2012
NOT OFFICIAL UNTIL APPROVED

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

Members Absent; Robert Fowler, Sue Foote, Alternate; Paula Wood, Alternate; Paul Himmer, Alternate;

Hawkins opened the meeting at 6:35PM
Hawkins designated Lowry and Chase to vote at this meeting;

MINUTES OF OCTOBER 2, 2012

Hawkins had no changes or corrections to the Minutes of October 2, 2012, and asked for comments; there being none.

MOTION:	**Lowry**	**to accept the Minutes of October 2, 2012, as written.**
SECOND:	**Hawkins**	**Approved: In favor: Hawkins, Janvrin, Frazee, Chase, Lowry;** **Abstained: Khan, Sweeney;**

MOTION:	**Sweeney**	**to accept the Minutes of October 16, 2012, as written.**
SECOND:	**Lowry**	**Approved: In favor: Hawkins, Janvrin, Sweeney, Frazee, Chase, Lowry;** **Abstained: Khan;**

SECURITY REDUCTIONS AND EXTENSIONS
There being none

CORRESPONDENCE

Case # 2-11=34.11.03 Demoulas Southgate

Hawkins asked for Morgan's comments on the letter from Demoulas' engineer, Earle Blatchford of Hayner Swanson. Morgan said the Applicant had previously received the Board's ok to make changes to the lighting, and now was requesting additional lighting changes, three more parking spaces, and to add irrigation. He asked if they should return to the Board for another approval, or if he and Garand would be asked to handle this request. Garand said that irrigation would involve water use and recommended sending the plansheet to the Water Superintendent. He recalled that grandfathering was a significant issue during the original case discussions. The new request involved parking, irrigation and certain island configurations. Wood was concerned that the grasses on the islands would grow to impact the line-of-sight. Garand commented that

Market Basket takes good care of plantings and that signage would be in place. Wood suggested a speed bump in addition to striping at the main store entrance. Garand said that makes people unhappy.

Hawkins said to have the Applicant return to the Board with the request, and to send the amended plan to the Water Superintendent for review. Janvrin reported that in the last week there had been 3 motor vehicle accidents at the lights which had also been inoperative a number of times. The police were not happy with the contractors. Hawkins asked if this was the Market Basked contractors. Janvrin said Market Basket contractors were working on the lighting and that that downed the signals and blocked up Route 1 for a while.

Hawkins referred to a Garand memo re a **Walmart application to the Zoning Board of Adjustment.** Garand said this was just for the Planning Board's information at this point.

Seabrook Inn Skating Rink request
Attending: Michael Taylor, Manager of the Seabrook Inn

Taylor said they would like to put in a skating (67' x 85') rink as a value added amenity to bring in business. It would be taken down in the Spring. Garand said during an inspection he noted that they had leveled an area, which Taylor said was for a skating rink and would serve hot cocoa. Garand informed him that they needed an approved application or a waiver from the Planning Board. Hawkins asked if this was temporary. Taylor said it would be put together with screws and dismantled in the Spring. Hawkins asked if there were objections to granting a waiver of jurisdiction to the CEO. Janvrin thought that Arleigh Greene was the only abutter, and asked if he was informed. Taylor said that Greene was aware of this plan. Garand said the rink would be located near the entrance off Stard Road where the animals used to be; the animals had been relocated. It was adjacent to the parking lot and would not impact abutters.

Chase asked if this would be open to the public. Taylor asked if that would be a problem. They want to try out if a rink is attractive and would not have a problem with renting to small parties for a night or afternoon. Chase recalled an attempt to have an area near Sam's Club plowed for skating. Taylor said he did not know if there would even be a demand, but someone might want to have 10 kids for a birthday party. Garand said there is plenty of parking at the facility. It would not be a problem as long as there were no street parking or safety issues. Hawkins asked about lighting issues. Taylor said they have activities during the summer and would shut off lights about 9PM. Garand some lighting would be ok as long as it did not impact anyone else. The area is industrial – commercial. Wood asked about storage. Taylor said everything would be put on pallets in the basement of an onsite building.

MOTION:	**Hawkins**	**to waive jurisdiction to the CEO in re the skating rink request of the Seabrook Inn as presented on October 16, 2012.**
SECOND:	**Sweeney**	**Approved: Unanimous**

Hawkins opened the Public Hearings at 7:05PM

Case # 2011-31.10-22 Proposal by NextEra to amend its conditional approval of August 17, 2010 so that stipulation (iv) reads as follows: Noise shall not be discernable at the Rocks Road residences closest to the firing range. Noise level along the existing transfer station road shall be limited to 15 dBA above the measured background of 44 dBA. The indoor firing range in question is situated off Rocks Road and immediately east of the Town's Transfer Station, continued from November 15, 2011, December 20, 2011, January 17, 2012, February 21, 2012 March 6, 2012, March 20, 2012, April 3, 2012 and July 17, 2012**.**

Attending: Steven Coes, Project Manager, NextEra;

Hawkins recalled that the temporary permit had been extended for three months to see if there would be feedback over the summertime. There had been none until this day [citing rapid firing]. He asked if Coes had seen the letter. Coes had and suggesting addressing the [complaint] letter first. Hawkins said the letter writer resided at 42 Rocks Road. [The house location was pointed out.] Hess asked for comments on the letter itself. Hawkins asked Coes if there was no record of firing on the date referenced in the letter. Coes confirmed this, and thought the record would show that the range at that time had been out of commission due to the repairing of a burned out exhaust motor. He pointed out a chronological gap in the spreadsheet data submitted. Hawkins noted gaps between September 14th and the 20th, and the 20th and October 2. Coes said the exhaust was lost on September 15. It was repaired for a day and then a different repair had to be made. Coes said he would be happy to pull out all the backup; the bottom line was they weren't firing on the referenced date.

Hawkins asked if Janvrin knew about any other activity in the area. Janvrin thought it could have been by someone who lives off of Gove Road and often fires off fireworks. There were no other shooting areas unless someone had been hunting near the power plant area which he thought unlikely. Hess said it did not add up. Hawkins said it was a Saturday. Morgan said the letter writer described firing from semi-automatic weapons which would not sound like fireworks. Hawkins thought the Board should take the complaint at face value and ask Coes to confirm that there was no shooting on that date. Coes will do that and also get the repair sequence dates. Hess asked now someone would get to the firing range. Coes said they would have to go through the south guardhouse gate. Everything was within the cyclone fence enclosure. Hess asked if had had nothing to do with the new road. Coes said [the road] was outside and also inside of the fence. Hess wanted to confirm that people were not using the road as the town could not use it.

Wood asked if the 50 caliber weapon was shot off during the last week. Coes did not know. Wood asked Coes to find out that information, because people were speaking about a loud bang. She thought it was over the weekend. Coes said that the spreadsheet showed the number of rounds and the dates. Wood said for example 125 rounds were done on August 21. Sweeney recalled that at the last hearing the Board requested to know the number of hours that a particular weapon was fired. Coes recalled that Aboul Khan had asked if that weapon could be fired at 10 PM. Coes said they could not change their training schedule. Sweeney was sure that a time span for particular weapons had been requested. Hess suggested that someone from the Planning Board could listen for the effect from the outside, if they were informed when that weapon would be fired. He thought it should be checked out. Wood also thought it a good kidea to ask those who work at the transfer station how much they hear. She lives near the station and said that a lot of noise comes her way, but she had not heard firing.

Hawkins said he had been ready to move ahead until the letter was received, and proposed continuing for another three months to see if there are repeat issues and what those at the

transfer station hear. There had been a large use of the 50 caliber, and only one incident reported. He did not want to take the complaint lightly, and wanted to follow up on the timing. He was not yet ready to move for approval. Hawkins noted this had been discussed for a year. The complaint just came in and possibly the range was not in use on that day. The Board had been careful to get information to see if people are being bothered. There needed to be some follow-up and learn if this was the only time the letter writer had heard those sounds. He thought the Board should be comfortable moving ahead if nothing further surfaces, and asked if any Board member wanted to proceed differently. Janvrin said a lot of neighbors lived there when the power plant was being built, and were accustomed to the construction noise and beeps from 1972 through 2004. Further, his uncle is a neighbor who hears the firing; he is an avid hunter and it does not bother him. Another friend has heard the firing se for thisveral times but is reluctant to come forward to make a formal complaint. A great aunt lives on Rocks Road and does not hear the firing, although her daughter and a cousin say they can hear the firing; it doesn't seem to bother them. It definitely can be discerned past the property line.

Janvrin pointed out that the Applicant is asking for a change in its conditional approval and cites sound levels. The Town of Seabrook has no way to measure the sound levels; the CEO has not been trained for this. Even if the Board were to make an approval at this meeting, the town had no way to monitor compliance. Hawkins said that probably continuous monitoring is too expensive, but it would have told whether something was discernible – if not, it would not be a problem. The Board had to consider the impact on people who lived closer than the letter writer. The decision was not for three months. It would be for a longer period of time, and houses could turn over causing new complaints about the noise. Janvrin's point was that even if there were approval of the requested amendment, there was no way the CEO could confirm that levels had not been exceeded. He did not agree with referencing sound levels; it should just be whether it bothers people. Hawkins said the Board would word the motion which could be conditioned on no complaints. Janvrin said there would be no way to determine whether the referenced sound levels had been exceeded. Hawkins thought that is why the ordinance said "not discernible past the property line"

Morgan said if the Board decided to vote no on the amendment, the original decision would remain ie not discernable at the property line. He wondered if that would be a problem for NextEra. Janvrin thought it would as they would be shut down. Morgan asked Coes if they would comply with the original approval. Coes said they are in compliance in re the neighborhood, but not at the transfer station. Therefore, they could not meet the original approval. Morgan said a lot of data had been collected since then. Hawkins asked for Lowry's comments. Lowry asked if NextEra had the data on the recording levels during the past year. Coes said they had done the original recordings, and again at the first three month extension. Hawkins said the Board had the original data and asked if anything had been done after that. Coes said they did internal recordings. Hawkins asked if the board had that data. Coes indicated it did not. Hawkins asked generally what the results were eg discernible at the property line near the houses. Coes said no. Hawkins asked if the sounds were discernible at the transfer station. Coes said they set up one meter at the last house on the left on Rocks Road near the fence at the juncture of the transfer station and Rocks Road. [Secretary's note: the effect of an earthquake was discernible at this time].

Coes said the recording was 24 hours a day and the firing range noises were indistinguishable from the background noise. They were not asked to share that information with the Board. Lowry thought NextEra could provide the recording data as to the timeframe specifics during the last three months. Coes would not make that promise, but would ask the security manager. He noted that these are training officers with loaded weapons and did not want to take their attention

away. He could not dictate the range scheduling. Lowry pointed out that individuals who were using the range at 10 PM would know what they are shooting. For example, if it were small arms at 10PM or 50 caliber at 2 AM, that data could be made known to the Board. Coes said he would ask the security manager if it was important to the Board. Lowry would be more comfortable with those readings than firing during the daytime. Hawkins asked if there had been restrictions on the 50 caliber firing. Woods and Chase said 24 hours was allowed. Cose felt that was why Khan had asked for a 10 PM firing. Sweeney recalled that Coes had offered not to fire that weapon at night. Coes said they could live with some restrictions; eg they could stop at 10PM.

Lowry asked for the status of the transfer roadway. Hess said the town had been told they would not have the road open until it supplied a $10 million insurance policy. The town's insurance agents have said that $5 million was probably all it would get. The town had been working with its agents and were told that amount was all they could get. The Town was put behind the 8-ball since it was first completed; nobody could use it yet. The taxpayers were getting very upset about paying $73,000 for the pavement, and they can't use the road. Discussion had been held that day with NextEra's top person who will not give any permission to use the road. Hess said it was a shame for the taxpayers to pay $73,000 for something and not be able to use it. Lowry asked what the bond amount was for Hannah Foods. Hess did not think it was $5 million. Coes said $10,000,000 in excess liability insurance was required in the signed agreement. Hess did not think it that amount because the town policy was for $5 million. Coes said the town had the agreement. Hess suggested the town get its $73,000 in taxpayer money back, because it cannot use the road. He thought it a shame.

Wood said that Lowry lived on Rocks Road, and asked what he heard. Lowry had heard noise in the past, but not recently. Hawkins asked if there were objections to continuing the case for three months before making the decision, and getting the information to address the complaint and whether the range was even in use on the day cited; there being none. Hawkins continued Case #11-34.10-22 to January 15, 2012 AT 6:30pm in Seabrook Town Hall. Sweeney wanted to get the data on "times". Hawkins thought the power plant had the data on every person doing the firing and how many shots they took. It was one thing if they did not want to provide that data, but they had it. It would be inconceivable that they would not be recording the time. He asked Sergeant Allen if the police kept track of when they were practicing. Sergeant Allen said he had the data for his officers.

Wood asked why NextEra would not have a record of who was using the facility and at what time. Coes said that anyone going into the facility was a NextEra employee who had a badge. The police used it for the first time the night before, and would also use it this night. NextEra trains many people multiple time per year. The qualification record is what is important. To satisfy the Board's need, he would show one of those records and show that times are not there. Wood asked if appointments were set or if people went on their own. Coes said the officers are on shift and groups are set up for qualification three times per year. There are also periods when a new hired class is there for three weeks at a time. Wood thought that sounded like a schedule. Coes did not think so, and was not trying to withhold the information. He would go back to the security manager to see if this already exists. Hawkins said the question is what time of day is the firing done so that the Board could follow-up to show when there were no complaints. He said if the Board granted approval and subsequently complaints came in about the firing, wouldn't Coes think it important to know what was being fired and at what time. this would be important to compare the complaint to what actually was fired. Coes said there was also a point of diminishing returns as they had been shooting for a year – over 200,000 rounds. Chase said the complaint could not be questioned as the Board did not know the times of firing. Coes said he would go to the security manager and ask for the information.

Hawkins continued Case #11-34.10-22 to January 15, 2012 AT 6:30pm in Seabrook Town Hall. Hawkins asked Hess if there was any resolution in sight for the roadway. Hess said not without getting the $10,000,000 insurance bond. Wood asked if that were in the contract. Hess had not seen the contract, but did not think they realized what had been signed and thought something should be able to work this out.

Case #2012-18 – Proposal by Latium, Tropic Star Development, Scott Mitchell to remodel and expand a gasoline station, and to construct a convenience store, at 663 Lafayette Road, Tax Map 7, Lot 87. Among other pending issues the Board will consider is the applicability of Section 14 of the Zoning Ordinance (abandonment) and the proposal's compliance with Section 6 of the Zoning Ordinance, continued from July 17, 2012, July 17, 2012, August 21, 2012; ;
Lowry recused himself from Case #2012-18.

Attending: Bill Pescosolido, Latium; Scott Mitchell, Tropic Star;
Appearing for the Applicant: Wayne Morrill, Jones and Beach Engineering; Attorney Richard Uchida, Hinckley, Allen, Snyder, representing Tropic Star;

Attending: Charles Mabardy, Mabardy Oil,11 New Zealand Road LLC; Attorney Chris Aslin, Bernstein Shur, representing Mabardy;

Hawkins said the outstanding relating to whether the property was grandfathered as a gas station to start up, or whether it has to go to the Zoning Board of Adjustment. At the last meeting there were a lot of statements that the gas station was in existence before the zoning changed. The Board's opinion was that if the gas station was in existence before the zoning was changed in 1974, it could reopen as a gas station. As there was no direct evidence to that effect, Garand was asked to do the research. Hawkins referenced a package from the Building Department and asked Garand to speak to what he had found.

Garand said the building permit history on the property was limited. At the time when the property was first developed, the zoning had been voted out so the history was very limited. He looked at tax records and found a transfer of the property during that timeframe to corporations and then back again. At that point it was noted as a gas station; that is where the record starts. Hawkins said it looked like, from the Assessor's office, the property was sold to Valley Oil in 1971. Garand said basically that is when Valley Oil came into being. It was the Pesco Fuel Corporation in 1972, and then sold back to Valley Oil in 1973. Hawkins asked if there were any records of tanks or buildings. Garand was not sure if there had been a building permit to increase the size of the tank. A person familiar with selling gas told him that at that time very small tanks were used. When automobiles started taking off, the size and number of tanks were increased for unleaded and diesel gas depending on the station, what was sold, and how advanced it was.

Hawkins noted that a plot plan without a date showed a small tank and also two 8,000 gallon tanks. Garand said the date was on the plansheet, noting that this synopsis covered 1971, 1972, 1973 and 1975 and goes all the way from 1868 to 2008. Lowry asked if the parking easement dates from then [2008]. Garand said it then showed Parcel #2. Hawkins summarized that the property was owned by a couple of oil companies dating back to 1971. There were no building permit records during the period that no zoning existed. Garand said there was a 1975 Planning Board record to build the building behind the station. Janvrin added that on November 5, 1971 Valley Oil purchased the property from Hampton National Bank. The Bank had foreclosed on the

property that had a 5 year deed restriction from 1965 that had lapsed. In 1971 the property was transferred to Valley Oil. Janvrin said the Town of Seabrook Reports reference Seabrook BP, Gulf Oil, Red's Texaco, [Jean's? Gene's] Atlantic Station, and Valley Oil Company. The Seabrook Police Department appropriations in the 1973 Report show that $7 of gasoline was purchased from Valley Oil Company. Hawkins asked Janvrin to provide his notations so everything would be in one place.

Hawkins said it appeared that the gas station was open and operating as a gas station before the zoning went in in 1974. Additionally, Sue Foote said in an email that she had worked there in 1973. Documentation existed that the property was owned by an oil company and apparently operating as a gas station before the zoning went in. At its February 2012 meeting, the Board read the ordinance re "new" gas stations, and interpreted that anything after 1974 had to be 1,000 feet away from other gas stations, but gas stations that were in existence before that were grandfathered and could reopen as a gas station ie the 1,000-foot rule would not apply to any gas stations [prior] to 1974. Janvrin read from the ordinance adopted in 1974:

> "In Zone 2, no building structure, or portion thereof, shall be erected, altered or used, and no land or building or part thereof shall be used, arranged or designed to be used except for one or the following uses…:
>
> Paragraph 7 – Gasoline Stations: not including the outdoor storage of inoperative or unregistered automobiles, provided that no new gasoline station shall be located within 1,000-foot radius of an existing gasoline station…" (March 5, 1974)

Morgan said evidently the wording changed between 1974 and the present. Janvrin agreed, and again read: "…provided that no new gasoline station shall be located within 1,000-foot radius of an existing gasoline station…" Hawkins wanted input from the audience before asking the Board to make a decision or a motion.

Pescosolido, thanked his sister, and the CEO for providing historical information including from the Assessor. The $4800 building exists on the site today. He commented that the person whom Foote worked for was named Bill Moran, and was a very good manager. Morgan noticed that in the Assessor's research 1970 and 1971 there was a very substantial tax warrant which had dropped to $4800; he asked what caused the drop. Pescosolido said that prior to his purchase a building had been removed; he bought bare land from the Bank. The $4800 was for the 1972 kiosk that they built for the gas station, which was there today. He thought that should satisfy that the building was there, although he could not say of his own memory that it was pumping gas in 1972. Morgan asked why in 1976 it jumped to $39,000. Pescosolido said that was when the building actually owned today by Charles Mabardy became Parcel 2. Wood referenced certain Planning Board Minutes. Uchida recalled that there was a revaluation as well as the building on Parcel 2.

Janvrin stated that in 1965 the property was conveyed to Hampton National Bank. The deed restriction that he had previously referenced was that for 5 years after the foreclosure the only use could be a bank or financial institution. [The restriction] lapsed 5 years from that date. His father's recollection that there had been a bank kiosk was correct. He thought that when the property was transferred to Valley Oil in 1971, the same building was used for the gas station. Hawkins asked for other comments.

Aslin referenced his comments at the last meeting as to whether a gas station existing in 1974 remains an existing station forever, regardless of what happens. Also, a question was raised as to whether it was a conforming use even if it was a conforming use of the property even if it was within 1,000 feet or whether it was a grandfathered non-conforming use. Aslin said he had submitted a letter that did not get into the Board packet. Kravitz said that letter was in the circulation folder. Aslin added that whether or not the Board decides that the gas station was within 1000 feet in March of 1974, all would agree that it would have been an existing gas station. The question was whether it would have been a conforming use because it was allowed under the change in the zoning, or a non-conforming use because it no longer conforms with the new zoning requirement. Aslin said looking at it either way, if that gas station had some protected status, ie allowed to stay because it was in existence before 1974, if the use stopped for a gas station for some period of time, they would suggest one year as the appropriate time as the ordinance recognizes for non-conforming uses, but even if not non-conforming use - if the gas station is not used as a gas station for some period of time it would cease to be an existing gas station. Aslin asked if it were not used as a gas station, how could it be an existing gas station.

Aslin said the distinction was that the gas station use was protected as existing prior to the ordinance change. It's not the property itself. If a property operates as a gas station and then as a Bank for 10 years, and then someone else comes along and wants to put a gas station back on the property, they would suggest that would be a new gas station regardless of the fact that there may have been a gas station that was deemed existing under the 1974 ordinance. The protected status was lost, whether a grandfathered non-conforming use or some other special protection as an existing station. At some point it had to stop being "existing"; otherwise there could have been a station that closed in 1975 that became a bank, a grocery market or a school, and someone now could say they want to put in a gas station and that they did not need permission from zoning even though there was another gas station 10 feet down the road. Hawkins said isn't the distinction that Aslin was referring to non-conforming. If it were non-conforming, he would tend to give Aslin's argument some weight. However, the current discussion was whether it was conforming or non-conforming. If [the board] agrees that it was conforming because it was allowed to be within 1,000 feet of another station, then did it become non-conforming just because it was closed.

Hawkins did not think so; he thought it remained a conforming property – it was being listed, had tanks in the ground, an oil company was paying a lease on the property to maintain and hold it. Hawkins wondered what would make it non-conforming so that it wouldn't continue as a gas station no matter how long it closed for. Aslin believed that it was a non-conforming use after a year and a half. Hawkins asked what that argument was based on. Aslin said that under general zoning principles the concept was to make things comply with the ordinance whenever possible. A gas station within 1000 feet of another did not currently comply with the ordinance, if there were an opportunity to make it compliant by saying that it was a non-conforming use that ceased for more than a year. Hawkins commented that in February 2012 the Board's interpretation believed that the 1974 ordinance had the purpose of saying that it would apply to all future gas stations, but would not apply to the gas stations that were in existence before 1974 Hawkins then asked for Aslin's opinion as to what would make it non-conforming if the ordinance was written to accept the stations in existence in 1974.

Aslin did not see that as a distinction. He said if a 100-foot setback were made where it was currently 50 feet, anyone who had a home 50 feet off the road would become a non-conforming, grandfathered use. Hawkins said Aslin was choosing to ignore the word "new" in the ordinance.

In February, to the Board the word ”new” in the ordinance said it intended to except the gas stations that were in existence. Otherwise, why wouldn’t the ordinance just have let the word out, meaning that what was there was grandfathered until it was not. Hawkins said the intent at the time was to exempt those gas stations going forward. They were not seeing eye to eye on something being non-conforming, because the word “new” makes the gas station conforming. Aslin acknowledged that that opinion had been expressed, but said they had a different opinion about the import of “new”. He said that if the focus on “new” created some different status other than grandfathered – non-conforming, then the question would be when does any gas station become “new”. If it were built for the first time in 1974 it would be “new”. If it ceased to be used as a gas station for some amount of time, it would seem logical that eventually it ceases to be an existing gas station.

Aslin said if someone wanted to reopen it, move the tanks, or remodel or build a new gas station, under the Board’s interpretation of the 1974 ordinance, it would be building a “new” station and would need to comply. They would argue that the amount of time that would be relevant would be the same amount of time that the ordinance applies to non-conforming uses; it was a decision that the town made about when protective status for a property is lost. Aslin said it would apply whether it was a non-conforming, grandfathered use or a distinction of “existing” vs “new”. At some point reopening a gas station that had ceased to operate, in this case no gas was sold or able to be sold and was essentially derelict for over a year. Even if opening the exact same pumps there could be considered a new gas station. Janvrin said that Red’s Texaco existed prior to Super 1 Stop coming into existence, and had ceased to operate for more than 3 years. He asked if Aslin’s interpretation” would not also apply to them since Getty was in operation and Red’s Texaco was not.

Mabardy said that the above information was not correct. He bought the property when the owner had fallen down and was in a coma. He talked with the Building Inspector at the time and asked what he could do to set it up. Mabardy said the building Inspector told him to open up for a year, and he did that. He did not know where “3 years” came from. He got dispensers and opened up the site as it was, as a Gulf Station within the time period. He did all the work and operated it by himself. It was less than a year from the time the person hit his head. He closed the site two months later. Mabardy said this was all documented, and asked what that had to do with what was before the Board at this meeting. Aslin said if there was to be discussion about whether the gas station ceased to operate for more than a year, they would have additional points to make.

Hawkins asked if the two sides of the argument were clear to the Board, and asked for any additional questions for either side before deciding how to go forward. Chase asked if the decision would be based on the one item discussed in February 2012. Hawkins said that in February the Board gave an opinion or interpretation about the ordinance. There was no decision about any individual property, although this property was talked about. There was no case in front of the Board. He recalled affirming that opinion during the summer, but was not sure anything related to this property. The Board now needed to make a decision on how it views this property ie was it in fact a piece of property that the Board considered conforming because it existed before the ordinance was written in 1974. Alternatively, was it important to move on to discuss the length of time it was closed, consider it non-conforming in which case it the question of how long it would be closed would become important to a decision. In February, the Board considered the property conforming because of the way the ordinance was written, and the length of time it was closed would not be relevant to a decision.

Hess commented that the discussion pertained to a gas station and not to adding a convenience store. Janvrin commented that in the ordinance there was no distinction between a gas station, and a gas station with a convenience store. Hawkins said they were both allowed uses in that zone. Hawkins said if it were non-conforming that might be relevant, or it might be argued that the use was too intensive for the site. Whether it should be allowed to continue as a gas station was the current discussion. Then the matter of a convenience store could be addressed. Chase asked if the Board should seek legal counsel. Hawkins said it had and counsel had confirmed they thought the decision the Board made in February was correct and, Janvrin added, defensible. The Board's attorneys look at all the arguments when an appeal was made to the Zoning board of Adjustment, and provided an opinion that what the Board did in February 2012 was in fact correct and defensible. It was only interpreting the ordinance at that time; there was no case or property involved. It was agreed to return to the case before the Planning Board and reconsider the February 2012 decision based on information received from the applicant, as well as from others arguing from a different direction. At this meeting and the last, the board was trying to get as much information on the table to make a decision.

Chase was comfortable until the question of conforming and non-conforming. If there is agreement that this is a conforming gas station and can operate as a gas station, and the opposition said it is non-conforming, Chase asked if legal counsel should be asked that question. involved. Janvrin said he and Hawkins had a conversation with the Board's attorney. Hawkins said they provided a written opinion. If they had said the Board was wrong, the path might be reversed. But the attorneys supported what the Board did in February 2012. Now information was being sought to see if there was something that was not considered at the time.

Wood's felt that at the time the gas station was running it was conforming. But once it closed and no longer operated she felt it became non-conforming so that "new" applies to what the Applicant is putting in now. Chase pointed out that that had been discussed with legal counsel. Wood understood that and had not been part of the February meeting. She wondered if legal counsel had the information that was given to the Board at this meeting. Before that she did not know that the gas station that had been the 1 Stop had to go through procedures to have that station opened within a year. If that happened, and the Board dealt with past practices, she had an issue. Wood asked for documentation of about that. Mabardy said the Building Inspector told him to open for one year and be all set. Mabardy said he had to physically open it [1 stop] as it was with the 2 pumps from the 1960s. Two years later he went to the Planning Board about the back of the site. During the whole time the site was kept open just for the gas while he was building the location in the rear. It was down for one month to pull out tanks, put in a new canopy, and open the store in December 2000. He had bought the location in about 1997-1998 and had the documentation. He opened the site a couple of months before closing just to get it open.

Hawkins said the documents sent to the board's attorneys included both sides' arguments in re "new" and conforming or non-conforming. The only thing that was missing was the historical documentation of the property which was now in hand, and was not significant to the issue. In the most recent letter that came last week the explanation is made differently but is the same argument as originally. Documents for all of the arguments and explanations that were going to go to the ZBA were included for the Board's attorneys. Wood wanted information in re a previous decision on the issue the Board is confronting. Janvrin said the ruling was from the Building Inspector, not the Board. Wood said that someone in power had made that decision. Janvrin said that was the Building Inspector. Wood asked if it was at a time that didn't have to come before some Board. Mabardy said in the 1997-98 timeframe the property was like a junk yard. He cleaned up the back, went to the Planning Board and did all the procedures, even tried to get

a variance for siteplan. Wood's view was that somewhere along the line someone had made the decision before.

Hawkins asked for Morgan's view. Morgan pointed that the then Building Inspector had served for a long time and would be in the position of applying the ordinance consistently. The situation is very confusing; the guilty party is the ordinance itself. That is why the attorneys are making arguments for both sides. It is not their fault that the poor wording of the ordinance fuels the fire. At this meeting, if the Board were ready, it would make one of two motions. It could make a finding that the use of the property is conforming, or that it is non-conforming. He thought that whatever the Board did would be appealed to the ZBA. Hawkins asked about a finding of non-conformance. Morgan said in that event the Applicant would have to seek a variance. Hawkins said if the determination were "conforming" there would be no requirement for the variance, but there could be an appeal to the ZBA of that decision. Hawkins asked for other questions from the Board; there being none. Hawkins asked for comments from the audience; there being none.

Janvrin was ready to make a motion. Hawkins first wanted to be assured that there were no levels of discomfort, other than what Wood expressed. He agreed with Morgan that one way or another this will get to the ZBA. The Planning Board needed to be comfortable with what it will decide, but thought enough time had been spent going over the facts and the arguments. Morgan said that after a motion is seconded, the maker should justify the motion with the reasons. Hawkins asked Mo0rgan for any additional instruction. Morgan said anyone opposed should also state their reason. Hawkins thought that the Minutes that had been generated clearly state both sides of the argument which had been presented clearly and concisely, and could be provided to the ZBA if necessary. He was satisfied the issue had been covered.

MOTION:	**Janvrin**	**in the matter of Case #2012-18, Latium, Tropic Star, 663 Lafayette Road, Tax Map 7, Lot 87. the Planning Board finds that the use is conforming as the lot in question (i) was in existence at the time of the adoption of what is now Section 6 of the Town of Seabrook Zoning Ordinance restricting new gasoline stations within a 1,000-foot radius of an existing gasoline station, and is not subject to Section 14 as it pertains to grandfathering and abandonment. [[[, and(ii) the use of the lot had not changed from a gas station to another use since the 1974 zoning ordinance was adopted.]]]**
SECOND:	**Sweeney**	**Approved: In favor: Janvrin, Sweeney, Chase, Hawkins** **Opposed: Hess, Wood;** **Abstained: Himmer**

Wood was opposed because she felt that once the gas station closed it became a non-conforming use. She believed that the job of the Planning Board was planning for the future. Her interpretation was that when the ordinance passed they did not want any new gas stations, so that when the gas station closed it became non-conforming. With further evidence of past practice as to how the 1 Stop was treated, received by the Board at this meeting, Wood disagreed with the motion because it became a non-conforming use. Chase wanted clarification that legal counsel had been consulted prior to the vote. Hawkins confirmed this, noting that was part of the record.

Hawkins recalled that at the last meeting the Board heard for the first time about an environmental clean-up plan for the site that was being worked on with the NH Department of Environmental Services. He asked when that plan would become available. Pescosolido said this was in the hands of NHDES. On July 3, 2012 Getty was ordered to present an environmental plan within 120 days, and submitted a copy of the order. He did not know if Getty had submitted the plan, and thought it might be a little late. He would call to inquire. He thought NHDES would be speaking more firmly about the proper remediation. He did not think there was any question about responsibility; it was just about getting the job done. As soon as the job is underway he understood that NHDES would be in full control. Pescosolido said that at that point the banks would be willing to lend Scott Mitchell the money necessary to buy the lot. Prior to NHDES being in full control the banks were reluctant to lend.

Morgan asked Pescosolido about the clean-up process. Pescosolido said he was not that kind of an engineer, although he had been involved in clean-ups before. The process varied depending on the type of contamination and spills. He understood that in this case the contamination was quite limited. It did not appear to leave the site or impact the groundwater in any way. Some time ago a NHDES person informally told him it should not be a significant issue; the clean-up would be fairly quick and easy to accommodate. The Getty engineer told him that the equipment needed would be installed in an area of the site that would not interfere with the planned redevelopment. It should be a compatible situation of building the new building, refurbishing the lot, and getting the ground cleaned-up. Sometimes it takes a few months and sometimes it takes a year. Morgan saw a very small lot with a lot going on in the proposal. Pesdosolido understood the clean-up would be confined to the area where the underground tanks were which were back on the rear left rear portion of the lot. Apparently, there would not be a significant amount of equipment on the surface and will not take up much space. It is a compatible situation with where the new storage tanks would go. The question would be when the new tanks could go in the ground as they can't go in until the site is cleaned-up; it should not be a significant complication, however, it would be out ofn his control. The NHDES was being very helpful.

Hawkins asked what type of equipment would be used. Pesdosolido did not know because the soils first had to be analyzed. Various processes could be used, for example, an aeration process. He understood the equipment was modest in size. Hawkins asked where it would be placed. Pescosolido said on or near the site of the former underground tanks in the rear left area of the site, Janvrin commented that would be at the town's property. Wood noted Pescosolido's statement that groundwater had not been impacted. She read the following:

> "…Based on our review NHDES has determined that a discharge of oil as defined in the New Hampshire Codes…contaminated site management has offered at the subject site and impacted groundwater. Discharge of oil to the groundwater was confirmed by the presence of [ ] in a groundwater sample collected from the tank grave…"

Pescosolido thought there was various ways of describing groundwater at the site He could not answer whether it true groundwater that exists on a 12 month basis, or casual water. He was not trying to deny the actual wording, but his impression on a telephone call with someone in Concord was that it was the water contained in the area and was a relatively minor matter; maybe he could be misremembering or misspoke. Mitchell said their environmental consultant, Al Bryan form All Seasons Environmental check things out. He witnessed the tank closure report when the tank was pulled. They took samples and informed the NHDES because they did not know that the tanks were being pulled. Anytime that there is a seepage of ambient groundwater levels, which means drinking water levels, a letter would say that. Mitchell said the State used to

dig out any contaminated soils and haul it to Pike Industries for burning and sold as asphalt, but the NHDES doesn't do that anymore. Bryan told him this is a very, very minor problem that won't interfere with what they are doing. If the Board wished, Bryan could attend a meeting. they have to go with underground storage tanks and comply with NHDES. Mitchell said they were pleased to move the tanks away from where they were before. Now they do not want preexisting contamination that is not theirs.

Hawkins' discomfort was not knowing the extent of what had to be done, the type of equipment that had to be used, whether it was shown on the siteplan and how long would the clean-up be 10 years or 10 months. Is there anything that the Planning Board had to worry about relating to the clean-up, and asked how could anyone know that without the plan. Hawkins wondered if a shed to store equipment or house pumps to re-circulate groundwater would be needed. He asked when the plan would be available that says what will be done, what the equipment is, and how long it will take. Mitchell said that would have to come from NHDES which would be fully aware of the construction plan. They would coordinate with NHDES and make sure there is not any issue. If it were a big contamination site they would be concerned. His people tell him this is not a big deal. He did not think this would be like the remediation at the Richfield's.

Mabardy said that when the tanks were being pulled out, he met with Mitchell on the site who told him the site was clean there was no contamination whatsoever. Two weeks ago he found out there was contamination on the site. There was no letter, information or phone call. He was very distressed as to why he wasn't noticed. Additionally, the tanks are proposed to be put in front of his property ie take a site that might be clean and bring the new contamination possibly closer to his property. His property might already be affected. Because of the activity that went on there, he wanted to find out and have them take care of it and let him know it is a clean site. Before something more detrimental occurs to the property he wanted that taken care of so it didn't affect any groundwater or drinking water. He did not know what was there or if it affected any drinking water. He asked if the Board would make a decision when they had no idea what's in front. Two weeks ago he just found out about contamination, but still had not received a notice. Contamination is now on record at the Planning Board, when it hadn't been brought up before. The Board now had a letter, and he did not have a copy. He asked if the town was aware if there were contamination on the church site. Mabardy said there was a brook there where the water funnels down by his property and goes into a drain – and then does it go to the brook. He asked if it should be made more detrimental to the town, and thought townspeople would have a big problem with that.

Pescosolido said he knew that NHDES would not let go of the site until it is properly abated. Hawkins said the Board would be counting on that. The concern was whether the Board approves a site plan that does not show whatever equipment would be on it. Mitchell said the Applicant would be happy to make that a condition. Hawkins was uncomfortable with n ot knowing what the remediation plan would be. They now know that clean-up would be done; it might be a pipe sticking out waiting for evaporation. When the Board gets the remediation plan it will know what equipment will be there, where it will be placed, and how much room it takes up. The proposal is pretty intense use for a small location. If a portion will be for a small building plus clean-up equipment, the Board needed to know that and consider whether that would be an appropriate use for the site. None of that information had been submitted to date. He would not move ahead to approve a site without having that information. Hopefully it would be submitted within the next couple of weeks.

Mitchell stated that Mabardy's accusation was untrue; he never told Mabardy that the site was clean. Their people were there with a device that took soil samples and nothing showed up in

the groundwater. Pescosolido told him about the contamination three or four weeks ago. Mitchell wanted the record to show that Mabardy had a right of first refusal on the property. They fought against the right of first refusal in court. Mitchell said that Mabardy's intentions were to make this a gas station. Hawkins appreciated the comments on both sides, and said that the Board had nothing to do with those local disputes and was told to stay out of it. That does not come into the Board's deliberations. What the Board would consider is what the site would look like, how will it be used, what is the intensity, what would the clean-up require, how long would it take, and the like.

Uchida said that as for the clean-up itself, the Applicant would not be able to get a UST permit or proceed with development of the site as far as the State is concerned, until the plan is in place, the clean-up is known, and the scope of the clean-up is understood. After it's done, there might be a monitoring program. From the NHDES perspective in re the building and the monitoring, they would need to take that into consideration. He did not say that the concerns were unjustified; only that the NHDES would have an identical concern to that of the Board. If a plan is presented to the NHDES with their underground storage tanks and the piping and the location of the station that is in the way of the clean-up NHDES would not issue any permitting to break ground and get going. Hawkins did not disagree with Uchida, but said that the Planning Board had responsibilities other than the cleaning up of the ground etc that the NHDES would worry about. The Board needed to be able to look at the site and know what would be on it, and know if there would be any issues pertinent to making a decision before or after the clean-up. How the clean-up would be done would be important to the Board. Until the remediation plan could be seen, the Board is at a loss for making a decision on whether this is an appropriate for consideration.

Uchida said that the NHDES had the very same issues to consider before a permit is granted so that they could get onto the site. Hawkins said the NHDES would determine how the clean-up would be done and the extent of the required remediation. He commented that the Board deals with state agencies and didn't always get what it expected. He wanted to see the remediation plan, what the NHDES would recommend, and how it fits into the siteplan. He had no doubt that the NHDES would require some level of remediation and dictate how it had to be done. Uchida said the work would have to be done before the Applicant could begin creating the site that thay hope the Board will approve. Chase said this is all new to him and had no idea how to clean-up a site. His concern was that the tanks were right on the property line, and questioned whether the town historical site next door had been contaminated. If so, he asked if the NHDES would be addressing that property as well, or would it draw the line just for this applicant ie would they include all the abutters in the clean-up.

Hawkins said this would not be the first time that NHDES addressed this type of problem, and was sure they don't stop looking at the property line. This is an excellent question to look for in the NHDES remediation report. If it isn't there, the Board would ask how the NHDES would know the extent of the problem. They had to have taken core drillings to understand the extent of the contamination. Perhaps everything stopped if they found contamination just where the tanks were pulled out. Pescosolido agreed that the NHDES would go as far as they needed to address any contamination which may have left the property. Anything that left the property would be within the purview of the spill and would all be cleaned up. He'd seen that approadh in two other states. They would not be protecting just a tank field; it would be the whole contamination area. Hawkins asked for other questions relating to the clean-up. Wood noted that the abutter had concerns about the placement of the tanks, and asked what requirements the Board would have in that regard eg how many feet from the property lines. Janvrin said the tank placement was moved from within the setback to 15 feet from the property line. Hawkins asked for Morgan's

view. Morgan said the setback would be the concern. Wood asked if abutter protection was 15 feet. Morgan said whether above or below the ground the structural setback would be the same.

Wood asked for the location of the drain that had been referenced. Janvrin pointed thisnout; Chase said the Applicant would be taking care of that. Hawkins said that had been part of the technical review. Wood asked if there were a spill, would it flow toward that drainage or the stream. Janvrin said the Applicant had been told it had to have some way to remediate surface spills. As previously discussed, the NHDES had jurisdiction for anything underneath the pavement.

Hawkins said the other outstanding issue was the parking, noting that for a 1250 square-foot building the maximum would be 5 parking spaces. The Applicant had requested a waiver. He wanted the Applicant to explain the waiver request focusing on the hardship that had been created and how the waiver would address this, and asked Morgan to read the waiver requirement. Morgan said it mimics the statute that Uchida referenced in his letter. Janvrin said it would rest on the hardship created. Hawkins said that is what changed last summer, and asked for Uchida's explanation.

Uchida said the statute mirrors the state statute ie that any portion of the siteplan may be waived If the Board finds by majority vote either (i) strict conformity would be a hardship to the Applicant and waiver would not be contrary to the spirit of the regulations ordinance, or (ii) specific circumstances relative to the site plan or conditions of the land in such siteplan indicate that the waiver will properly carry out the spirit and intent of the regulation…" Uchida said that the regulation allows up to 5 parking spaces, and pointed out the area they would be located. There is also a parking deal [at the rear of the site] that is covered by an easement that exists for the benefit of the 11 New Zealand Road site. The Applicant's position, contrary to Mabardy's position, has been that this was not an exclusive easement and that the Applicant had rights in the property as well. The waiver was requested to allow the Applicant to utilize additional spaces during those extreme peak periods that might occur. In that vain they sought the waiver so that patrons would who would not be picking up gas could park in those spaces to dash into the store for a minute or two, and leave the site.

Uchida recognized the concern that Mabardy was hoping to utilize those spaces for his building next door. The Applicant proposed a plan whereby the Applicant, at its expense, would build a 10-space parking lot on Mabardy's property, plus an additional 3 spaces which would accommodate everybody under the waiver. Uchida said that obviously the ordinance intends there to be adequate parking for each site. In planning for an extreme peak overload, they thought it appropriate to provide that kind of parking for the site. He added that the reason the ordinance specifies the "maximum" spaces is to reduce the amount of impervious surfaces on the site. In this regard, the Applicant had succeeded in reducing the amount of impervious surface on the site. (see Uchida letter). Uchida said that even if the waiver were not granted there would still be reduced impervious surface. The waiver request referenced (ii) above, in re the conditions of the land carrying out the spirit of the ordinance. The spaces exist; the Applicant hopes to utilize them in extreme parking demand. That area would not go away if the waiver were not granted.

Hawkins asked for Morgan's comments. Morgan pointed out that the convenience store does not yet exist; he was looking for circumstances in re the land. Uchida thought that the waiver provision anticipates what it is about the siteplan that requires a waiver of the regulations. Morgan did not read the waiver provision on page 16 of the subdivision regulation that way,

commenting that that provision applied by way of reference from the site plan regulations. Hawkins asked for Morgan to read the provision:

> "…Whereas the provisions of these regulations may be granted if the Board finds by majority vote that (i) strict conformity would pose an unnecessary hardship to the Applicant and waiver would not be contrary to the spirit and intent of the regulation, or (ii) the specific circumstances or conditions of the land indicate that the waiver will properly carry out the spirit and intent of the regulations…"

Morgan said that Uchida was relying on (ii). Morgan's issue was that by creating the convenience store there would be more demand for parking; he had trouble buying the argument of either (i) or (ii).

Uchida said he was not making a hardship argument, and thought that the context of a waiver of siteplan regulations was waiving a regulation in re a project being proposed; was there something about the project proposal, in a siteplan not a subdivision context, that would justify a waiver. He said that the very nature of siteplan regulation waivers is that there is a proposed siteplan before the Board. Based on that siteplan, the applicant would seek a waiver of the regulation for something that was proposed, not something existing. He agreed that what was proposed did increase the amount of parking. Based on what was proposed, they want to create an area for extreme peak demand that utilized spaces in an area that was there anyhow for parking of some kind, whether the site plan was approved. They would still accomplish the purpose of the ordinance which is to cut down on the amount of impervious surface, because the project does that. Uchida said that waivers would not make sense if they only could be granted as to the existing conditions on the property.

Hawkins said the Board had to start with a site that had no tanks; the parking would then not be existing because it would be torn up. Why would the Board grant that parking before the lot in the back argues to use that parking ie why would the 9 parking spots be allowed in the plan except to service the property in the back. Uchida said that there was a parking easement that needed to be accommodated in some way as it had been accommodated in the past. It is both a private and public issue. Suppose the Board said that it would not grant the spaces requested in the waiver, and also that the spaces would have to go away under the siteplan approval. In that event Uchida would not say that he thought it would not be within the Board's purvue, but would say that it would cause an additional issue because. with respect to Mabardy, there is a parking easement of some kind. It probably would create a private rights problem. Hawkins said if that easement was not there the Board would not approve 9 spaces at the back of the lot. Uchida said he appreciated that. Hawkins said when talking about why waivers should be allowed, the board would not get into who had what rights to use them. Allowing them to be built according to the siteplan because it is an easement for the use of the property in the back, but had that easement not been there the Board would say "no" to those parking spots and probably to much of the hot top around it.

Hawkins asked for Morgan's comment about how to deal with this dilemma. Morgan agreed with Hawkins' characterization of the issues, and advised the Board to proceed slowly and think about it. Lowry said when the property was the Brick Oven Express, the then Planning Board had approved all of those back parking spaces for that use; they were not shared. Hawkins asked if that was before the property was split and sold with an easement. Lowry said at that time it was two separate properties. Janvrin also thought it had been two separate lots. Hawkins asked if the easement went with the property when it was first subdivided.

Mabardy, owner of the back property (Parcel 2), clarified that Pescosolido leased the property to Getty Oil for a number of years – probably 20. He had a separate agreement with Getty Realty that said the spots in the rear belonged to the building in the back; it was all one lot. He understood that originally the lot was one lot, then subdivided in 1973. For some reason it was merged back into one lot. It was a gas station and subsequently separated as a glue factory that had the parking spots. The Brick Oven had those spots. Mabardy said the easement was in the Getty lease showing a line drawn [in the sand], even though it was one parcel, identifying the area that belongs in the back and the area that belonged to Getty. Mabardy said that he tried to but the whole property, but Pescosolido did not want to sell him the whole property because he was getting income from Getty Realty. Mabardy had been the lessee of the front part of the property and ran the gas station. In the interim he bought the rear piece, and tried to buy the whole property. He thought he had a right-of-first refusal in the deed, but that was deemed incorrect when it was challenged.

Mabardy maintained that the (9) parking spots were made for the back lot. Where he could not buy the whole lot he put in a right-of-first refusal so as not to go through this controversy. His intention was not to have a leased use other than a gas station, as he had a gas station across the street. In the lease the parking easement all went with the back parcel. Mabardy said when he walked the property he was told where the line and he thought he was getting the parking spots in the deed. After the property was surveyed, he was told the line was the grass line, and he did not see how the town would approve anything without the parking. The surveyor, Henry Boyd Jr put in the parking spots and they made the easement, including the metes and bounds, for the spots and access for that purpose. Mabardy said he would not have bought the building without the use of parking. Janvrin said that in his deed research, the reason the property was subdivided into two lots was that the front was the gas station and the back had been the oil company headquarters. Mabardy confirmed this.

Mabardy said that since 1987 when it was leased to Getty Realty, the lot was kept the same except it was two lots, then one lot, and then two lots again. The lease noted the parking spots for the back building; the metes and bounds were very close to those in the easement. The purpose of the easement was there was no parking [for the back lot]. Pescosolido wanted to correct some misunderstandings. He said that at the title closing, Mabardy's then attorney gave the opinion that they were two lots that had never been joined ie they bought two separate lots and had never joined them. They had given Getty only a portion of one lot, not the entirety, and that was why Mabardy saw a dotted line on the Henry Parker deed showing the two lots side-by-side. Pescosolido said that Mabardy bought the smaller, rear lot, and they gave him the right to parking access to the rear portion of the front lot; Mabardy's discussion was not fully in accord with the facts. Hawkins repeated that the easements would not generally be the Board's issue, except in re this siteplan it became important because without the easement the Board would say "no" to that parking. With the easement, they understood why [the parking] might need to be there, but the Board was trying to determine whether to approve the waiver request on the parking spaces.

Hawkins asked Morgan for his view of the alternatives in the path forward. Janvrin asked if the Board could determine if the parking on the lot was pre-existing, non–conforming. Chase said the burden for clarifying the situation should be on the Applicants. Why would the Board be put in a position of judge and jury. Morgan suggested that given the hour the Board might not want to make a decision at this meeting, and give everyone the opportunity to think about this or make their case. Hawkins wanted an opinion of the options for the Board. For example, what would denying the waiver mean; he thought the parking spaces would exist unless the Board said to take them out. The parties could fight it out or come back to the Board with a plan for the back

lot. Morgan said it would depend on how the Board rules on the waiver request, and how many parking spaces are approved on the site. Hawkins' question was if the Board acknowledged the easement for the parking area in the back and allowed the spaces to be built, for whom would they would be built. If the waiver were denied and the gas station got 5 spaces, what would that mean in reality. He asked if that were even the Board's issue. In that event, Janvrin's question was whether the parking issue became a hardship on the lot.
Aslin said that to the extent that the Board would consider removing the parking, his client had a deeded property right to use that space for parking. If the Board were to take that position, it would necessarily create a legal fight with the Board. Hawkins did not think the Board would take that position; he had been trying to clarify the issues. Additionally Aslin said that if they have the right to use the 9 spots; if they were in use the gas station could not move their cars. To the extent that the Applicant wants to have some right to use those spots, which his client does not believe they have the right under the easement, the Board could not rely on the availability of spots for any store need, that his client has the absolute right to use. Hawkins said when his client were to come to the Board in re the back lot they would ask for certain parking,The Board would have to decide if what they asked for was adequate or inadequate. If they had all 9 spots filled by the 8 AM opening time so that there were none left, what would the Board be supposed to do. Hawkins said this would not now be an issue for the Board, but would become an issue as soon as an application for the back lot were submitted. The Board was trying to get some clarification from the two parties to come to some kind of agreement as to how things would work. Not a lot of progress was being made. The parties could fight that out, but the Board needed to figure out what direction to take in re the application before it.

Hawkins asked if Morgan had any other thoughts. Morgan said another advantage of taking no action at this meeting was to give the board a chance to speak with its legal counsel. Chase said in a dispute like this, why did they not just put it aside and come back when the parties had resolved it. Wood liked that idea. Hawkins said that may be part of what they do. Wood commented that in the future Mabardy would want to do something on the back lot. Mitchell wanted it on the record that they had Morrill draw [nine] spaces on Mabardy's property, and that they were willing to pay to put those spaces in so those problem goes away. Hawkins asked if that meant eliminating them on [the gas station] property. Mitchell thought this information was not in the Board's package. Janvrin noted that Uchida's letter was in the Board packet. Hawkins said that was not the Board's issue. The Board's issue was what had been presented to it.

Hawkins called attention to the following outstanding issues: (i) parking, (ii) the NHDES issue, (iii) the waiver request, and (iv) the exaction calculation in re the traffic. He asked if there were other items that the members felt were outstanding because their questions had not been answered. Chase asked about the drainage; Hawkins said it had been taken care of during the technical review. Hanvrin agreed. Uchida said in addition to the parking and waiver, there were also other written waiver requests, separate from the parking. Morrill said these were for landscaping, and another about light trespass on the town property.

Hawkins asked if it were practical to meet at the next Board meeting if there was not anything from the NHDES. Mitchell said he would request that the NHDES representive attend the next meeting. Their environmental [consultant] found no readings at all. Apparently, the reading was recently found in a water sample. Mitchell said the NHDES would not be using air striping. Hawkins wanted to have a written report from NHDES, and did not care if they orally testified. Hawkins said there was supposed to be a plan showing equipment – the Board wanted to know where it would be put, how long it would be there, and the like. Mitchell will follow-up on that. He asked that the case be continued; it he did not have that evidence he would write for an extension. Uchida recalled that the Board's next meeting would be a month off because of the

election, and that might be ample time. Hawkins said if there was not anything, if might be pushed off again. He did not know how far people traveled to the meeting, but If there were nothing to talk about they wouldn't again have the same discussion.

Hawkins continued Case #2012-18 to November 20, 2012 at 6:30PM at Seabrook Town Hall.
Hawkins recessed the meeting at 9:10PM, and resumed at 9:15PM. Lowry resumed his seat.

OTHER BUSINESS

PROPOSED AMENDMENTS TO THE TOWN'S SUBDIVISION AND SITE PLAN REVIEW REGULATIONS THAT WOULD GOVERN DEVELOPMENT IN THE NEW SMITHTOWN ZONING DISTRICT THAT IS SITUATED IN THE VICINITY OF TOWN HALL, continued from July 3, 2012, July 17, 2012; August 7, 2012 , September 18, 2012

Hawkins noted that the Board had reviewed this language a couple of times and there had been a few amendments. The vote had been delayed until more Board members were available. He asked if the members wanted to review the changes from, the July 12, 2012 draft at this time; it did need to be approved. By consensus the Board wanted the discussion. Hawkins said that the Board had made certain changes at the last meeting and Julie LaBranche made the changes and underlined them. Hawkins reminded that the Board had already adopted the section and at this meeting would adopt the following changes, unless there was a reason to hold off:

Page 4 - 8.123: the applicant selects colors from paint chips kept in the Planning Board office, or brings colors to the Board;

Page 5 – 8.123, paragraph 5: Mixed Use – shall (must) was changed to should (would like the applicant to) to be consistent throughout the document;

Page 7 – (f) add in all instances the Planning Board shall consider parking lot safety;

Page 8 – 8.135: conform with the latest edition in re stormwater management;

Page 9 – captions added;

Page 10 – digital display signs and internally illuminated signs are prohibited; [Hawkins asked about Xmas stream lighting. Garand did not mind this lighting around the Holiday, but not as general outside lighting use. Hawkins proposed that no Xmas style stream lighting except from December 1 to January 31.Garand thought this should be town-wide in zoning, not just Smithtown. Hawkins said for town-wide it should be changed in the lighting section.

Page 15 – 8.16: sidewalks shall be encouraged on private property; sidewalks shall be maintained by property owners when practical; (c): sidewalks shall be a minimum of 5 feet; Janvrin asked if 5 feet was ADA compliant. Garand said it was;

Page 18: - 8.171: public space shall be no less than 100 square feet of contiguous land or the entire 20 percent area, whichever is the greater';

Hawkins asked if members or Morgan had other comments; there being none.

MOTION:	**Janvrin**	**to adopt the changes to the Smithtown Village Section of the Siteplan Regulations as presented to the Planning Board on October 16, 2012.**
SECOND:	**Wood**	**Approved: Unanimous**

DRAFT CONDOMINIUM CONVERSON LANGUAGE

Morgan said that from time-to-time various issues relating to the language of this regulation have been discussed, often when raised by Garand. Legal counsel had been provided with a list of these issues and asked if there was a problem in addressing them in the regulations. Counsel said there was not. Morgan then drafted the language shown on the October 16, 2012 Agenda and made the following notations for the Board's information. .

12-020 – all the language pertaining to utilities had been merged into this paragraph;

12.060 – this is in response to an issue that arose when a building was moved 50 feet after the Board had approved a plan; the change is that if someone changes their mind after the building approval, the owner had to return to the Planning Board;

12.070 – access – egress shall not be obstructed;

12.080 – intended to get condominium owners and tenants to agree on parking allocation to avoid having the Planning Board getting involved; and

12.090 – long-term stormwater maintenance had often been addressed in siteplan review, with other regulations.

Morgan said if the Board was ok with the new language, a motion similar to that made in re Smithtown Village regulations would be in order. Chase said a question had previously been raised about requiring floorplans to be recorded. He had been told that the floorplans had to be depicted on the siteplan to be recorded, which meant that when build the unit had to be just as in the recorded plan. He suggested that the outside perimeter be required to avoid being locked into the placement. Garand asked if the floorplan was always filed with the declaration; Kravitz said it was. Garand said that a condominium conversion had to show the room placements etc. Chase said that as a developer, he had to declare the style of the building and the room placement before he can sell it; that person might want a different style. Garand said that the Town of Seabrook zoning allows two separate homes on one lot; it was important to show the buildings placement. If it were not to be a condominium conversion it would not matter to the town, noting that condominium was just a form of ownership outlined by the State. It is confusing but there have been issues with convertible land, or common space. The condominium conversion is different from selling two lots. Morgan asked for the purpose of putting the requirement in the town regulations. Garand said it was a state compliance issue, and said if it wan not a requirement, owners and engineers would not do it because it costs money.

Kravitz asked for clarification in re convertible land. Garand understood that if convertible land was not developed within a certain time frame it would become common area. Hawkins said that would be 5 years. Hawkins said in that case the building could not be shown and the owner would have to return to the Planning Board. Garand recalled one property using convertible land that did not provide the Board with information. In another situation two lots were condo converted, while area across a stream remained as convertible so it might be subdivided at a later date. Hawkins referenced Chase's question, and asked if a developer wanted to sell a particular convertible land, he would have to come back to the Board with each building during the five year period. Garand said all of the abutter notices would have to be made, and said that the floor plan was part of the State requirements. Morgan commented that it would also be the town's requirement. Hawkins asked if it would have to be done anyway, even if not removed from the regulations. Hawkins said that item could be done in the future after Morgan researched this issue. He agreed that it was hard on the developer to do convertible land and then a future building. It would have to return to the Planning Board.

Janvrin recalled when someone got floorplan approval and then sold the property to be built by a new owner. They would not have been able to sell the property unless it had been approved by the Board. Hawkins asked for further comments. Janvrin thought that the language that Morgan recommended stood on its own.

MOTION:	**Janvrin**	**To adopt the changes to Section 12 of the Siteplan Regulations re Condominium Conversions as presented to the Planning Board on October 16, 2012 as follows:.** **Section 12 - Condominium Conversion** **As used in this section, *"Condominium Conversion"* shall have the following meaning: *The placing or conversion of real property or any interest therein presently under a developed use into the condominium form of ownership pursuant to RSA 356-B.* Such conversions must be approved, in advance, by the Seabrook Planning Board. In addition to the requirements specified in these *Site Plan Review Regulations* for site plan review, applications for condominium conversion must meet the following additional requirements:** **12.010 Documents: A complete set of site plans and floor plans, as well as a complete set of all Condominium documents must be filed with the Planning Board. The applicant's attorney shall certify that all condominium documents are consistent with the Seabrook Zoning Ordinance and with the requirements of RSA 356-B.**

		12.020 Utilities: A plan shall be submitted to the Planning Board showing the location of all utilities on the site, and the plan shall indicate the locations where the shutoff valves will be located for each unit. The plan shall indicate whether or not additional meters or additional lines from the street will be required as a result of the condominium conversion. Shut-off valves shall be located on Town-owned property or in a Town-owned right-of-way. Proposed underground utilities shall provide two four-inch ducts for use of the municipality and all overhead poles shall provide space for the use of the municipality at the subdivider's expense. The responsibility for maintenance, operation, replacement and protection of utilities shall be clearly established by the Condominium agreement. **12.030 Legal Status: The units which are subject to the requests for condominium conversion must, at the time of the request, exist as legal units pursuant to the ordinances of the Town of Seabrook. The burden shall be on the petitioner to demonstrate that the units to be converted are legal.** ~~**12.040 Responsibilities Clearly Delineated: The responsibility for maintenance, operation, replacement and protection of utilities shall be clearly established by the Condominium agreement.**~~ **12.050 Wetland Protection: In order for the Condominium Conversion Regulations to be consistent with Section 14 of the Zoning Ordinance, no proposed Limited Common Area shall be allocated a disproportionate share of a lot's wetlands.** **12.060 Subsequent Revisions: Prior to the construction of buildings or infrastructure in any location other than that which was approved, the property owners must first obtain Planning Board approval.** **12.070 The Access/Egress of other property owners shall not be obstructed.**

		[continued on next page] **12.080 Parking: The application shall include a master plan to allocate all parking on-site.** **12.090 Stormwater Drainage: The long term responsibility for maintenance must be clearly defined, and binding commitments made by the developer, and a mechanism established to bind successors in title.**
SECOND:	**Wood**	**Approved: Unanimous**

OTHER BUSINESS

Recording Site Plans
Hawkins tabled that discussion until November 20, 2012.

Railtrail Agreement
Hawkins called attention to several communications in re the Railtrail. Janvrin explained that after studying John Starkey's comments, he realized that the Board had been given an early draft. A subsequent draft that addresses many of Starkey's concerns would be forwarded to the Board of Selectmen. He thought that at some point the BOS, Friends of the Railtrail, and Departments Heads would discuss the project before providing comments back to the State. He noted that the Planning Board stated that the proposal was consistent with the Master Plan and was in the CIP and recommended that he draft document be sent to Town Counsel. Hawkins noted that the Planning Board did ask for comments from Department Heads.

Planning Board Membership
Hawkins said this would be discussed at a future meeting.

Review of Zoning Regulations
Hawkins said that the Board would begin the review of regulations. Zoning was most important at this time because of the Town Meeting deadlines in January. He had a list of items and asked that members provide any provisions they would like to address in writing. The Fisherman's Coop needed to be in Harbor Commercial, not Conservaton. He did not want to forget items like this because they would have to wait another year. Chase wanted to discuss signs.

Janvrin reminded that the next meeting would be November 20. Hawkins said there would be a lot on the Agenda and some items would have to wait. The following meeting would be a work session. Janvrin thought most of that would be for zoning; Hawkins agreed, and said that votes needed to be done before Xmas so that any open items could be handled in January. Janvrin .

reminded that a request would be made to the Zoning Board of Adjustment for any comments or suggestions in re the Zoning Regulations. He offered to attend a ZBA meeting re this correspondence; agreed by consensus.

Safe Routes to School
Chase said their grants should be coming through.

Seabrook North Village
Wood said that she and Hawkins [Bob Moore and Kravitz] met with Julie LaBranche to discuss the North Village District which she found very interesting. The next meeting would be November 15.

Hawkins adjourned the meeting at 9:42 PM.

Respectfully submitted,

Barbara Kravitz, Secretary
Seabrook Planning Board