



Town of Seabrook Planning Board Minutes

Tuesday, November 15, 2011
NOT OFFICIAL UNTIL APPROVED

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

Members Absent; Paul Himmer, Alternate; Michael Lowry, Alternate; Robert Fowler; Paula Wood, Alternate;

Hawkins opened the public meeting at 6:32 PM

PRESENTATION OF PROPOSED ZONING AMENDMENTS FOR SMITHTOWN VILLAGE

Julie LaBranche, Senior Planner, Rockingham Planning Commission;

La Branche distributed to the Board copies of her power point presentation, the map of the proposed Smithtown Village, the zoning ordinance pages with proposed changes highlighted, and a summary of the aspects proposed zoning changes. [This material was made available to persons in attendance.] La Branche pointed out how the existing 2R commercial zone running 500 feet on either side of the center line of Route 1, from the Cains Brook Conservation area and the pond on the other side of Route 1, and then south to the Massachusetts border, would be replaced by Zone 6 – Smithtown Village. The center area, Zone 6, would be identified as 6M for mixed-use, and would be flanked by zone 6R, on either side and designated for existing and future residential use. Town owned property includes the Town Hall and the cemetery grounds near the border. Unlike the existing commercial zone, Zone 6M would be widened to encompass the parcel boundaries of certain already developed commercial lots, as well as vacant lots (beyond the current 500 feet). Zone 6R would be identified as developed or vacant areas already zoned residential. La Branche said a small residential triangle was not included because at this time its access is through Salisbury.

Hawkins explained that in meetings with townspeople during the Master Plan process, many individuals expressed the desire to return to a smaller scale type of development than currently exists along Route 1. As a result, the Master Plan Steering Committee discussed how that might work for the town, and whether a proposal looking at development over the next 20 years should be put to the voters. The Smithtown Village proposal tries to target the village feel that once may have existed, albeit in only a small area of the Town. Hawkins commented that given the large existing commercial area to the north such a proposal could not cover all of the Route 1 area, nor would the committee suggest taking away any of that capacity. Smithtown Village would expand future opportunities for developers in trying to better connect the neighborhoods and commercial areas.

La Branche said that the mixed-use area (6M) would allow for purely commercial development, or a mix of commercial and residential with stores on the first floor and living areas above. The surrounding residential areas, including areas north of Smithtown Village, could help support the businesses and the work force for the mixed-use area and encourage pedestrian access.

La Branche gave an overview of the [highlighted] mostly minor proposed zoning changes that would support the Smithtown Village concept, with changes in Sections 2 through 7 and 13.

Section 2

On page Z-2 the following was added to Section 1:



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“...any terms not defined in this section shall be accorded their commonly accepted meanings. In the event of conflict between Section 2 – Definitions, and Section 4 – Smithtown Village, Section 4 shall take precedence...”

La Branche explained that this provision addresses common terms that might have a different meaning for Smithtown Village. Proposed changes on page Z-5 address additional definitions relating to adding the Smithtown Village zone.

“...General Commercial means any retail, sales, service or office uses, not including heavy or light industrial uses...”

La Branche said this meant anything that [[[was not light industrial]]] and had a non-residential component to it. The Industrial category was broken up into two parts:

“...Heavy Industrial – any use having to do with the business of manufacturing products using regulated substances and/or heavy machinery...”

La Branche said this implies intensive use with regulated substances, which are typically hazardous substances in quantities of 5 gallons or greater, using and heavy machinery used to make products or items. This would involve the bringing of products and goods to a larger type facility that would have more impact on a neighborhood. It makes sense when contrasted with Light Industrial:

“...Light Industrial - any production and or manufacturing activity that uses moderate amounts of partially processed materials to produce finished goods or product parts and components with no significant environmental pollution or risk of contamination...”

La Branche said this would cover everything from woodworking and pottery to a small home business or an artisan or craft, or food manufacturing – everything that is not the use of heavy machinery or hazardous substances which are excluded. The Mixed-Use definition is as follows”

“...Mixed-Use – a building that incorporates some combination of residential and non-residential uses or functions. Mixed-Use also includes elements of pedestrian oriented access and or sight design, non-vehicular and transit combinations, public space and open space. A mixed-use building shall have no less that 50 percent of the gross floor area for residential use...”

La Branche said the Steering Committee and the Planning Board continue to study this definition. Some of it is specific to Smithtown Village, which at this time is ok because the Zoning only allows mixed-use in this district. If mixed-use in the future were to expand into other parts of the town, the definition might have to be adjusted to account for specific cases. La Branche said the ordinance changes bring in pedestrian elements, site design, transit accommodations and open space that defines the Smithtown Village.

Section 3

La Branche noted that Section 3 as a description and list of the zoning districts. The new Smithtown Village Zones 6R and 6M would be added to the zoning map if the voters approve.



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Section 4

La Branche described the proposed Section 4 reading selected portions. Section 4 creates the authority, purpose, and intent of the proposed new district. It allows the village kind of land use control with mixed-use zoning. There are quite a few changes, it is a bit shorter, and some of the language is consolidated. There is a reference that this is an objective, a goal and a purpose as described in the Town's Master Plan and below:

'...Purpose and Intent – The purpose of the Smithtown Village is to enhance economic vitality, business diversity, accessibility and visual feel in a manner that is consistent with the landscape and architecture of the Town's historic village tradition...'

La Branche said further provisions describe the general character, different amenities, the intent and the overarching goals of the district. She asked if the entire section needed to be called out. Hawkins said that was not necessary as members had the text and it would be passed out at future meetings. He asked La Branche to address any high points. La Branche read items 1, 2, and a consolidated section 3 on page Z-15:

"...The intent of Smithtown Village is to foster a vibrant mixed-use district with a cohesive street layout and architectural character that includes commercial, residential and civic uses and the integration of open space, transit, bicycle and pedestrian accommodations. The overarching goals of Smithtown Village are to enhance the economic development potential of properties in that area, to encourage mixed-uses that support one another, to provide services and employment opportunities, to create pedestrian and bicycle-friendly neighborhoods, to respect the historical nature of Smithtown Village, and create a gateway between New Hampshire and Massachusetts..."

La Branche noted that Smithtown Village actually existed in the selected area. She then read (or described) the development concepts stated in the proposed ordinance. If the ordinance is passed they will be used to compliment and direct the site plan review and design process affecting all applicants in this district.

"...The development shall incorporate the following concepts to preserve and compliment elements of historic tradition of Seabrook and local and regional village character. They are comprised of compact and pedestrian oriented development, mixed-use patterns of development where development specializing in a single use should be an exception, [and] encouraging a range of housing choices and price levels shall be accommodated to encourage diverse populations. Diversity of open space including parks, squares, and playgrounds shall be distributed within neighborhoods and throughout the district. Expansion and provision of public transportation facilities that promote use and access is encouraged within the district, and to provide improved visibility and access to and use of conservation lands where appropriate [e.g. the Cains Brook Recreation Area and the East Coast Greenway Rail Trail which is close to Smithtown Village], and opportunities for community gardens and other types of civic uses that promote agriculture and the growing of food. ."

La Branche described the above as the general concepts, services, and mitigation that the Village would like to provide for the community, as well as for visitors to the town. She emphasized that these are general statements that would be executed with more specific regulations, standards and examples.



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Section 5

La Branche read the Section 5 proposed change:

“...The following are exempt from the one building per lot requirement, cited above, in Zone 2 and in zone 6M...”

La Branche then talked about the proposed changes to the Zoning requirements, noting that columns had been added for Zones 6R and 6M. The uses are fairly consistent with those existing in Zone 2, with a couple of minor changes. The Light Industrial and Heavy Industrial are called out separately; they are not permitted in Zone 6, but are in Zone 2. Mixed-Use is permitted in Zone 6M, and by conditional use permit in Zone 6R. La Branche noted there are a couple of uses allowed by conditional use permit to make sure that the scale and type of proposed use is appropriate for that district.

La Branche then talked about the few proposed changes to the Dimensional requirements: mixed-use is added with a maximum number of structures; in a mixed use building with dwelling and commercial uses a maximum of 5 residential units per building is permitted; the residential setbacks are fairly consistent and equivalent with the exception of 20 feet in the rear of commercial (down from 30); in the village area the yard setbacks are slightly different from Zone 2 except that rear setbacks go down from 15 to 10 feet, and the front setback is reduced from 15 feet to 10 to encourage buildings to be closer to the road or street to avoid large parking lots in the front of a store, and being more consistent with pedestrian use and building placement in a village atmosphere. In the village the height increases to 45 feet in Zone 6M to accommodate mixed use with parking in a dwelling or small store underneath the building; without a garage the height is 40 feet. Also, floor heights for a store may be higher than elsewhere to accommodate a half-story at the top. The other significant change is the maximum building footprint of 7500 square feet even for multiple buildings on a lot, only for the Smithtown Village mixed-use zone. . This requirement is to ensure that the scale and massing of buildings is in keeping with the historic village idea and concept, avoiding very large buildings that dwarf the character of the village and the pedestrian focus.

Section 13

La Branche said the desired signage requirements for Zone 6M were added. There is a smaller cumulative limit on the surface area signs (55 square feet); a limit of one free-standing sign as in other commercial districts; the maximum height is 15 feet; wall signs are no more than 10 square feet on the side of a building, and suspended signs of no more than 8 square feet, which are usually interesting, “artsy” and could reflect the purpose of the business, may now be attached via a bracket to a Smithtown Village building as often allowed in historic districts. The Committee may also address signage heights in other districts.

La Branche explained that the above changes are all that would be required to effect the Smithtown Village proposal. The site design and other principles would be handled in the siteplan regulations to provide the Planning Board with some flexibility on the site specifics so an applicant can have the incentive to submit a more creative design that fits the site and be able to negotiate with that Board. .

Hawkins said there would be additional discussion on Smithtown Village proposal, and asked for questions or comments from the Board about what La Branche had presented. Alan Ganz asked if there had been an economic viability study for this proposal. Hawkins said there had not. La Branche said the economic viability for property in this zone had been discussed by the



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committee. The Smithtown proposal actually expands the uses currently allowed in the existing commercial zone providing more flexibility by allowing buildings to go a little higher and have more floor area to sell, rent and market, and to include residential capacity. This means there is an enhanced amount of growth potential in the new district as compared to what's currently allowed in the commercial district. Hawkins said that the scale would be smaller. Paul Lepere thought this [concept] would fit in with downtown Portsmouth or Newburyport zoning, and might have fit in with Seabrook's zoning 25 years ago. He thought that 90 percent of Route 1 was already developed with big box stores, and wondered how putting them next to something that looks old would fit in. He did not see how someone would want to live residentially next to a Lowe's or a Home Depot or Applebee's given what is left of Route 1. Lepere thought that to try to create the atmosphere of downtown Newburyport or Boston where no Route 1 was involved would be dangerous for pedestrians. This was a good idea for years ago before the big boxes came in.

Le Branche said the Planning Board had discussed how the Village concept would work next to the larger scale development to the north. The existing development in the area identified for the new zone was actually fairly old, the properties had been used many times, and were fairly small. Typically they are owned by private people, often living in the town, who had been here for a relatively long time. La Branche said the fabric is already there including a number of historic buildings, the church, although its common area is new, the Town Hall, the cemetery, and the rail trail. It needs a face lift without a business or residence in isolation. It needs more flexibility, integration of business and residential and some standards that allow for and require sidewalks, pedestrian connections, landscaping, public space for outdoor civic use, e.g pocket parks. The area identified as Smithtown Village needs to be enhanced a bit. La Branche thought that large developments like those to the north would be unlikely to be submitted, given limited heights, footprints etc. The fabric of the residential area would allow a slight increase, however, there are fairly small lots already. They are walkable neighborhoods already, but they are isolated without the appeal of being able to walk for a cup of coffee or to a dry cleaner. La Branche noted that the Steering Committee felt strongly that now is the time to act so that the area doesn't follow the pattern existing north of the Cains Brook.

Hawkins said one item that came across strongly in talks with townspeople is that the big boxes went too fast; there was nothing that could slow it down. The Steering Committee looked at whether there is any area left in the Route 1 corridor that could be developed differently as an alternative to all of the traffic that goes with the big box stores. The Committee felt that if there were such an opportunity, it had to be done soon because if it expands further south there would be no way to change anything. The town was not quick enough to deal with the rest of the corridor, this is an opportunity to create one section that would be of smaller scale, slower and easier to live in, that won't have the intensity of the traffic that goes with the northern section of Route 1. While it may be not be an ideal like Newburyport, there are sections of Route 1 that are calmer and of a little smaller scale; why can't Seabrook have something like that. This is an attempt to in the southern part of the corridor to do something a little different than what has gone on in the northern part.

La Branche said anyone could challenge the concept and the ability to execute the vision and the goals. She noted that the RPC was now finishing the Route 1 Corridor Study and was incorporating many of the suggestions and comments that were provided by the Planning Board, and in public discussions, about how to fix some of the pedestrian and traffic problems in the traffic circle area as well as along Route 1. La Branche said that the NH Department of Transportation has indicated support for some of the ideas to calm traffic and eliminate some of the pedestrian conflicts. Some of the improvements and amenities will probably evolve as part of



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development projects and also as part of the development coordination in the area. The changes in the Corridor Study are very much in line with the Smithtown Village area proposal, and could work very well together.

Hawkins asked for other comments or questions; there being none. He said that La Branche's presentation was much appreciated, and that more of these sessions would be held as the town got closer to the Town Meeting where this will be introduced for the voters to decide "yes" or "no".

Hawkins declared a five minute break at 7:15PM, returned at 7:20PM.

CORRESPONDENCE AND ANNOUNCEMENTS

Hawkins thanked Moore for his long service on the Planning Board and said that he would be very missed, especially his historical knowledge. Moore said that Selectman Aboul Khan would be taking his place and was pretty much primed as to what is happening at the Planning Board. Khan had previously served on the Planning Board, and is a representative to the Rockingham Planning Board.

MINUTES OF OCTOBER 18, 2011

Hawkins had no corrections to the October 18, 2011 Minutes and asked if there were further comments; there being none.

MOTION:	Janvrin	to accept the Minutes of October 18, 2011, as written.
SECOND:	Chase	
		Approved: Unanimous

Hawkins held the November 1, 2011 Minutes to the next meeting.

Hawkins called attention to the Circulation Packet.

SECURITY REDUCTIONS AND EXTENSIONS

There being none.

PUBLIC HEARINGS

Hawkins opened the Public Hearing at 7:25 PM

NEW CASES

Case 2011-29E – Proposal by Francis Chase and 3 D Center LLC to establish a business center fax, photocopy and internet center at 14 New Zealand Road Tax Map 7 Lot 71;

Attending: Cindy Loring, Scott Loring,

Appearing for the Applicant: Attorney Mary Ganz, Ganz Law

Ganz said 4 concerned people were also in attendance, and that she had conferred with Morgan previously. Ganz said in her and Morgan's opinion they probably did not have to come before the Planning Board in order to allow this operation. As Chase had gone through site plan approval, an expedited process was the appropriate petition. Ganz commented that a site plan regulation, called out by Garand, included a provision that buildings not occupied for a year had



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to come before the Board. In talking with Morgan, she thought that was more geared towards the offsite impact and not for something proposed by this case. Hawkins said normally this would be listed under a change of use, except that this property has not yet been used. Ganz agreed. Hawkins asked for Morgan's comments. Morgan had talked with Ganz the previous Friday at which time the ambiguity that caused this application to come to the Board had been discovered. In the near future this would be addressed. Hawkins asked when the siteplan had been approved. Chase said three years ago.

Hawkins asked if there were still open items related to the siteplan, and referred to a Garand memo. Garand said those items were related to the original site plan approval. Hawkins asked if the items referenced Garand's memo just had not been completed. Garand said the issues were with the hard top and the interior parking; the drainage was not totally complete; the dumpster had not been installed. They were small items that could be corrected, but they are still outstanding from the site plan approval, and the approval is three years old. The regulations say that anything over two years goes away, but the units are already built. He noted that when they came to his office, someone told his secretary that this would be an internet café serving coffee etc. Garand said that when he asked about this it was not described as a café, but the Planning Board needed to look at things like parking and clarify what the use would be on the site. Also, the owner should say when he plans to bring the site to completion so that occupancy could be allowed.

Ganz said one issue cited in the file was from the DPW Manager about the final coat of pavement not being put down because of Chase's financial challenges. Today she spoke with John Starkey who said there was not a problem allowing this unit to be used. It is tough times and [the units] need to be occupied; it does no good to have vacant space. Chase needs to get the place occupied and her clients need to find a place to operate their business. It is not any kind of a restaurant use. They may serve complementary coffee as in a bank. Moore asked if the binder course was down. Ganz said the first binder, but the top isn't there; the sidewalk is done. She noted that Starkey said to take a common sense approach. Also there is a cash [security] in place in the amount of \$20,807.43. She thought there would not be any problem with her clients going into the unit. There is plenty of parking. If the Board wanted clarification, her clients could speak to what they plan to do. Janvrin wanted to read Garand's memo, which was provided. Foote said enough subdivisions had gone two or three winters with just the binder course, and people living in houses. She did not see that not having the top coat should hinder occupancy in these days and times. Ganz said especially because now is not a good time to install; it would have to wait until spring. She said that Starkey wanted to bring to attention that the Home Depot got to have occupancy without having the parking lot paved.

Hawkins asked for Garand's opinion about whether the security would cover most of the cost. Garand had no issue with the Applicant occupying the building as long as the Planning Board inserts something to cover this in the Minutes. This is one of those perpetual cases that has evolved over the years, and now the top floor has been converted to residential. He acknowledged that there have been a lot of changes, and that times are tough. He wanted the Planning Board to have some factual action that says this had been approved, it goes forward, there is an outstanding issue that has to be resolved, but the Board had made a decision. Hawkins felt more comfortable knowing that the security is still in place, and there is at least recourse to making sure that things get done that have to get done, if it comes to that. He agreed that in these days [the Board] would like all of the town's businesses hitting on all cylinders. He agreed with Foote, and did not have a problem with a layer of hot top not being there if there is security in place if the siteplan does not get completed.



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Foote did appreciate businesses, whether for the first or fifth occupancy, coming through with the expedited plan just so that the Board knows what businesses are going on in town. In the past there were difficulties on the west side of town with a lot of condo job shops. Over a weekend it went from a business office suite to automotive repair with a bunch of junk card on the lot. Especially now that the expedited application is available, she endorsed this and thought it was fairly east. It was a way that the town and the Planning Board keeping an eye on what's going on, because other aspects of town business don't necessarily keep track. So it's up to the Planning Board to make sure that when a business comes into town it understands what the town expects of the business. For example, in this case the conversation was about whether it would be a cyber café. Foote thought the Planning Board was the place to get those questions and uncertainties answered and, if it requires some sort of conditions or extra parking, the time to deal with this is before the business opens the doors.

Hawkins asked if there were further questions from the Board. Janvrin said given Garand's memo, a few things ought to be conditioned for the approval but could be omitted until the plan is finalized. One condition should be that the grease trap should be installed prior to occupancy. Garand said as there is no food, that is not needed. Janvrin wanted the handicap parking signage in place prior to occupancy for this unit. For any other use or occupancy, he would want to see the plan pretty much done. Moore said that signs would be appropriate as the top coat would not be down yet. Janvrin agreed. Ganz said that would not be a problem. Janvrin asked about the parking spaces. Garand said they are already marked; time had been taken to stripe the area. At this point the Board had to know what was not done. Janvrin asked if the dumpster was presently onsite, and asked about the financing. Chase said it was not but would be resolved once a tenant is found. Janvrin wanted this prior to occupancy. Chase agreed, and Janvrin said that should be a condition for occupancy. Hawkins asked if Morgan had other comments. Morgan said the Board had covered things.

MOTION:	Foote	to accept Case #2011-29E as administratively complete for jurisdiction and deliberation.
SECOND:	Moore	Approved: Unanimous

Hawkins called for a motion to approve with handicap signs in place.

MOTION:	Moore	to approve Case #2011-29E – Francis Chase and 3D Center LLC to establish a business center fax, photocopy and internet center at 14 New Zealand Road Tax Map 7 Lot 71, conditioned on the (i) handicap signage in place, and the (ii) dumpster and pad and fence, being in place prior to occupancy.
SECOND:	Janvrin	Approved: Unanimous

Case #2011-30E Proposal by GLO Realty Trust – Alan and Mary Ganz, and Jewelers Workbench to establish a jewelry business at 779 Lafayette Road, Unit 6, Tax Map 7 Lot 1;
Attending: Mary and Alan Ganz; Joe Nasr
Appearing for the Applicant: Paul Lepere;

Mary Ganz said that as they were about to get on a plane to Italy, Lepere was good enough to file the application for them. The unit is in the Ganz Plaza and used to be the Mattress Store which had been out of business for over a year. Nasr, the new tenant, has a cash for gold business and may use a different name. Nasr said the name will be Jewelers Workbench; it had



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been changed from J. Nasr & Company to Goldsellers, Inc. Mary Ganz said it is a low traffic business; all the applications were filled out. In talking with Morgan, they did not think they had to be before the Board, but they are and are anxious to have the new tenants. Alan Ganz said the only reason they were before the Board is there was no use for a year. Mary Ganz said the premises had been freshly painted and awaited occupancy with the Board's blessing. Hawkins asked for Morgan's comments. Morgan had no problem with this request. Hawkins asked for questions from the Board; there being none

MOTION:	Foote	to accept Case #2011-30E as administratively complete for jurisdiction and deliberation.
SECOND:	Moore	Approved: Unanimous

Hawkins asked for questions from those in attendance; there being none.

MOTION:	Janvrin	to approve Case #2011-30E - GLO Realty Trust – Alan and Mary Ganz, and Jewelers Workbench to establish a jewelry business at 779 Lafayette Road, Unit 6, Tax Map 7 Lot 1;
SECOND:	Foote	Approved: Unanimous

Ganz noted that "backflow" should be inserted as appropriate in the October 18, 2011 Minutes

Case #2011-31.10-22 – Proposal by NexrEra to amend its conditional approval of August 17, 2010 so that the 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.*

Attending: Steven Coes, Project Manager, NextEra Energy;

Hawkins noted that case had previously been before the Board. Coes said in August they got approval for construction of the Firing Range at the end of Rocks Road with one of the conditions being that the noise not be discernable beyond the property. The original construction began in September 2010 and was finished in March 2011. At that point the functional testing on the range found that the noise being issued from the range from firing of their weapons was unacceptable i.e. not as expected. They worked with the existing contractor who came up with a design to address the noise problem and went through the retrofit, placing another roof on top of the building to take care of the noise. They are done with that work. It was basically finished mid-September; they applied for a certificate of occupancy at that time. A Conditional Certificate of Occupancy was issued that required they return to the Planning Board to address the condition of the noise not being discernable at the property [line].

Coes said they applied to the Planning Board for that hearing. Morgan did his usual review of the application and wrote a letter to the Board dated October 30, 2011, basically with two questions in re the information that was provided in the Application. First – "...What are the base-line (pre-firing range sound levels) at 65-66 Rocks Road... and more to the point, "What were the base-line sound levels at the property line..." Coes said he had provided to the Secretary and had copies of additional information from the noise consultant to address those questions; he would do that to the Board's satisfaction, and then talk through both reports (the one supplied with the



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Application, and the one brought for this meeting”). Coes asked the Secretary if the Board had the [new] report; Kravitz said it had just been given to them. Coes said he intended to go through that report page by page. As it was not easy to digest, he had a color-coded version which he thought would help. First he wanted to go through his major points.

Coes said that with the installed roof-enhancement (second roof) the firing range provided the desired result contemplated in the Board's original conditions. During the daytime, the firing levels from the Firing Range during live fire are below the average background sound levels in the neighborhood. At nighttime the noise generated from the Firing Range is consistent with the average background levels in the neighborhood. Coes said the report would show the data about that, but, more importantly (for the Board) since the occupancy they actually have been using the facility and firing off 24,000 rounds in the facility of both rifle fire and distance fire using both sides of the range, and have had no complaints from anyone from any source. He offered to provide the information about that, as well.

Hawkins asked if they intended to use the facility 24 hours. Coes said they were. Hawkins asked if the 24,000 rounds had been spread through that time period. Coes said the Conditional Certificate of Occupancy only allows it to go to 6PM, basically between 6PM and 7AM. Coes said that above referred to the neighborhood; he would now talk about the noise being generated toward the side of the Transfer Station facility to the south. Coes said that live fire and noise levels [at that location] are to be considered discernible. However, Coes said those levels are basically comparable to a dishwasher at 5 feet away from it, and is quieter than normal conversation at 3 feet away. The area in question i.e. the area toward the Transfer Station itself is an industrial area and is closed at 3:30PM, so they are looking for relief from having to further reduce noise levels over there. Coes said that is the bottom line as far as what they are asking from the Board. [Coes then distributed an “easier” version for the Board]. Foote asked if that was the same thing the Board had just received. Coes said it was the same report – the verbiage was the same but highlighted in color. Foote asked if the reports dated September 26 and November 14 could be thrown out Hawkins said [what was being distributed at that time] was just a colored version of the same [November 14] report. Coes said to do what the Secretary wants; he would not tell the Board whether to throw anything out. It is the exact same report but there are so many cross-references that he color-coded it.

Coes said he would not read the report verbatim; the Board would be interested in two things from Morgan's letter: 1) “...What are the base-line (pre-firing range sound levels) at 65-66 Rocks Road... and more to the point, “What were the base-line sound levels at the property line...” Coes referred to page 2 of that [November 14] report for the sound testing that the sound consultant that did all of the sound testing put together. The first paragraph says that typical average sound levels range from 44 to 57 dBA, with the lowest sound levels occurring between midnight and 4AM. The 44 is highlighted in the Table No 3 as the green level. The 57 is highlighted in pink. Coes said he was trying to make it easier for the Board to locate these numbers. Morgan asked if the numbers reflected people shooting or not shooting. Coes said they reference the noise level in the neighborhood that existed pre the Firing Range. Morgan asked if it meant that the pre-firing range levels were 44 dBA and 57 dBA. Coes said that was correct.

Garand asked for clarification of the date and time [this testing] was taken. Coes said it was done on November 1 and 2 in 2010. Morgan said the Table showed the quiet one is 1AM and the noisy one is 2PM. Garand asked for the dBA of the quiet one. Coes said 44, noting that it splits two days to cover 24 hours. Hawkins asked if that was background noise; Coes said it was. Foote asked if the plant was refueling at that time, noting that sometimes during refueling



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they emit steam for a long time that she can hear on South Main Street. Coes said the last refueling was last spring. Foote said then they were not refueling at the time of this test. Coes confirmed this, and said that those figures confirmed the background noise in the area.

Coes wanted to speak to the question of the noise at the residences vs the property line, and thought the best way was to look at the aerial map. They had one long term sound meter constantly recording for 24 hours that was on NextEra property and actually closer than some of a lot of the property line themselves. The other two locations were between the first two houses and then back at 61 Rocks Road. Table 3 gave the information from the 24 hour equipment and pointed out the location. Coes said this showed there is no difference in the background levels between any three of these locations, and referenced Table 5. Those blue numbers were the location of the secondary meters between the houses along Rocks Road – the average is 44. He thought it made sense for there not to be much difference for a ground distance of 100 feet as far as the background noise at the edge of the property, and thought things that might affect it would be the noise along Route 1. Coes said that responded to the first item in the paragraph under the definitions.

Coes said the next sentence recites data from Table 3 re the lowest background noise of 40 which correlates to the highlighted yellow line of 39.7. The next paragraph did not have specific information cited in it, but did explain and compare the above mentioned locations of the meters vs the 24-hour equipment. Coes summarized and explained that they concluded from the information that the average nighttime sound level was approximately 44 dBA during the quietest nighttime hours before the range existed with maximum levels as high as 60 dBA. Morgan asked where the 60 had come from, as he did not see that in the chart. Coes referenced Table 5 and said the 60 was the old max happening to occur at 61 Rocks Road, and imagined that was a car going by but he could not tell that from the data.

Morgan said it looked like the noise consultant had established the background noise, and the application was asking to go 15 dBA above that level. Coes said they are asking that the noise not be discernable at the Rocks Road residences closets to the Firing Range. They are not looking for relief in the “neighborhood”. They are asking for noise levels along the Transfer Station road be limited to 15 dBA above the background noise. Morgan wanted to phrase a question in laymen’s terms, and asked if he were standing at the closest residence would he hear any gunfire. Coes said he had stood there when the tests were taken and heard nothing when there was pistol gunfire from either range. If one sits at that place with no conversation going on, no cars passing, no nothing, and just concentrate on what is going on one could hear it when they were using the rifle range. That is where discernible comes in i.e. 3 dBA above background. That is where they are at. Morgan asked if NextEra had plans to use weapons that would be louder. Coes said they have a 50 mm rifle and have no intention of using that other than during the daytime. The vast majority of the training is pistol and small caliber m-4s.

Garand asked if the Board granted this relief and his office received a complaint, what would the town have at that point because the Planning Board would have approved the dBA use they are now requesting. A person with [very acute] hearing could all of a sudden call his office relentlessly saying they can’t sleep at night or something else. He asked what to do at that point. Morgan said that would be the problem. Moore asked for the actual numbers when they were firing. Coes said that was the information in the first report. Hawkins said it was 45 to 47 dBA. Coes said it was 45 to 47 at locations toward the neighborhood – at 5 Rocks Road. To break it out pistol-wise, Coes said the levels were not above background at all [in the first report]. He noted that his references were coming from 2 to 3 reports. Foote felt a maximum decibel limit should be specified rather than requesting 15 dBA above the 44. Years later that could be



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confusing as to what it would mean. If the Board considers this, it should be not to exceed some number of decibels.

Janvrin said he is a radio operator and knew for a fact that an increase of 3 dBA is a doubling in power, and asked if 15 dBA would be about 27 times the background noise. Coes said that was not so. Garand noted that the town does not have a sound meter, and doubted putting restraints that require a meter. He asked if Morgan would have to borrow a meter from [another town]. Coes wanted to answer Moore's question about where the noise levels are when there is firing. With a background of 44, when firing pistols it can't be differentiated from that level at the 65 Rocks Road location. When firing rifles at the same location with a 44 background, the rifle levels are 45 to 47 i.e. in the 1-3 dBA range above background. Everything known from the noise consultant indicates that that is below or right at the discernible level based on their information and experience. They've already had firing for the last month, and do not believe they will see complaints with weapon use in that timeframe and at that location.

Coes said at the Transfer Station the readings are taken on NextEra property but close to the station. Those readings would be 51 to 55 dBAs. Janvrin asked if it ever exceeded 80. Coes said it did not. Janvrin commented that OSHA had determined that above 80 requires hearing protection and that would affect employees that work in that facility. Coes said 55 is the max, but that is outside of that discernible zone. At that location, when there is firing from inside it can be heard coming off the entire wall of the Firing Range. Coes said from a practical position, this is a very busy industrial location that closes at 3:30PM. When it's not in operation, there's nothing to be concerned about as far as noise goes. Coes referenced Morgan's question and said the sound going south from the facility is where they are looking for relief. Janvrin said NextEra had replaced the roofing because it allowed too much noise to exit the building, and asked if they had determined that the bulk of the noise still coming from the roof or is it coming from the side of the building. Coes said it is coming through the 7 ½ inch concrete wall. Janvrin asked if they would be amenable to putting in evergreen vegetation like cedar or spruce that would buffer the noise. Coes would be amenable to this as a buffer for the road itself.

Garand asked if the 44 level is an average between the background high and low. Hawkins said 44 is the background low. Garand thought that 41.48 was the background low, and that an average was being used. Foote asked how 41 and 38 would yield an average of 44. Janvrin said it would go higher if there were a heavy tractor-trailer with the engine break on coming down Route 95. Garand said some variables were thrown in, even if the average was given as 44. Moore said the figure went to 67. Garand said the Board will have to make the decision on the average being used. Garand said if he understood correctly looking at Table 5, they were looking at a 14 and a 9 dBA increase in background noise at the lowest level. His concerns were the residential figures; the industrial to the Transfer Station was no big issue. That is why he issued a limited occupancy until they came before the Planning Board because the complaints would drive his office. He hadn't had complaints yet, but they hadn't had nighttime firing either. He wanted the conditional to last for a number of days to make sure that it is documented through a test phase, with the understanding that this is winter and the windows would be closed. Janvrin added there also would be no leaves.

Garand pointed out that the south wall of the facility is the noisy wall. He asked that if the shopping center is built, would the noise from a 400,000 square-foot building reverberate again to the residential area. He wanted conditions in place so that if there is construction going on down the road in a year, there would be something in place to protect the residents along Rocks Road. Foote thought that a double or triple row of fast growing evergreens would go a long ways towards muffling most of that noise. Garand agreed, but wanted conditions in place when it



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leaves [the Planning Board]. Moore thought spraying on an inch of soundproofing on the wall would probably cure the whole problem. Janvrin thought this would be sound absorbing.

Hawkins said to begin with responding to Garand's questions. Coes said the 41 and 38 dBAs referenced the L-90 which is defined as the sound level exceeded 90 percent of the time for each hour. Garand referenced the previous report that was done when he was present, saying he was trying to bring the figures together. Coes said the report referencing the L90 level means that for less than 10 percent of the instances the levels would be less than that, and 90m percent of the time the noise levels would be higher than the 28 and 41 dBAs. That is why the average is used. The noise levels as expressed in Table 3 would have the quietest times. Thus there is the 38 range which goes up to 60, and averages out at 44. Coes referenced Moore's question about the upper line in the charts, indicating that these were the sound tests that were done in March after the completion of the original building i.e. before the second roof. The lower line was after the second roof was completed. Coes said he was not a sound expert, but putting foam on the walls sounded logical. However, anything that is attached to a sound source really does not help, although at first he thought that could be done. But that was not deemed an answer and they had to go up onto the roof.

Morgan said probably Coes was better educated about sound than a year ago. Coes acknowledged that, saying he believed that the engineering firm that designed the building was just as flabbergasted as NextEra, which is why the problem was not resolved in a day. There was a lot of haggling before they could come up with a design and determine who was going to pay for it. Morgan said he was not trying to give Coes a hard time, but was observing that no one in the room had a good grasp of the sound issues. Chase said he did not see a change in the sound at 7AM, and asked if [the testing] was done on a Saturday or Sunday. He said the clunking of the rocks can be heard everywhere, and did not see how the decibels hadn't increased. Hawkins asked what day was November 1. Kravitz said it was a Tuesday. Janvrin thought that during the discussion of putting in the range he traced the sound potential to his Grandmother's wood pile. As a child he shot in the open range area with a 30.06 rifle; no one complained because they were his relatives who thought it was fireworks. Actually, this is the neighborhood he grew up in.

Janvrin asked Coes if NextEra possibly would be willing to let some of the Board stand on the road while the shooting opened up indoors so they could hear it. He said it was great to hear about the decibel levels, but when he was a kid, he was shooting down into a depression at the North Access Road so acoustically the noise was going up and not out into the neighborhood. He would like to actually hear it for himself. Foote said the noises are different for different people. For example, her mother would be very troubled by the HVAC hum, whereas she could shut it out and ignore it. Janvrin agreed. Foote was not bothered by hunters shooting out on the marsh behind her, but during basketball season the "bing" noise of the ball for hours on end was troublesome. Janvrin felt at a loss. For example, Michael Lowry lived at 59 Rocks Road which is the house [Janvrin] grew up in, and his cousin lives at #61. His great aunt at #66 would not hear the noise. Foote said to consider not just the people who live there now, but those who may move in the future, although they should know about the neighborhood before moving in.

Hawkins recognized Aboul Khan for a comment. Khan recalled that when the project first came before the Board he spoke up for a fast track in favor of the applicant. The March 2011 Town Meeting went above and beyond approving the land-swap deal. Respectfully, he said that the Rocks Road residents had been neglected for many years. With the DDR project it was a buffer zone and the speeding cars was always a problem. They have been neglected in many ways for many years. He did not know whether this case for this meeting had been publicized enough for



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Rocks Road residents, and asked for the meeting to be continued to another night so that those residents could have the chance to attend. He thought the property line issue would become a serious problem if the Planning Board did not clearly look at it at this time in light of its previous approval. It would be very difficult for the residents if they did not think it would be a good idea.

Hawkins liked some things that might work had emerged during the discussion. Right now NextEra was working on a provisional permit that allowed the range to operate during the day. Coes said it had run out the day before. Hawkins suggested the permit could be extended to a 24-hour period for six months while people got to listen and hear, and Garand could get all the feedback he could want. That way it could be determined that it was either bothering the neighbors or it was not. Foote said if there were complaints six months would be too long, and thought it should be a noise that would alert someone who was sleeping as opposed to something that would be ignored during the day. Six months could produce a lot of insomniacs. Hawkins agreed, but thought the concept of having a period where the firing could happen at night would provide the feedback to see if it is or is not a problem. Additionally, whether or not this case were approved at this meeting, he wanted to know whether the foliage barrier at the lot line or along the south side of the building road would provide the opportunity to absorb the sound. If there were no complaints that would be known, or if a vegetative barrier, that could not be planted until the spring, were necessary. That would give a chance to see what happens, just as during the day there were not complaints. It doesn't mean people aren't hearing it, but they are not complaining about it. He thought that using that methodology, the times could be expanded to get the feedback to see if it is bothering people at night. Garand could be authorized to issue another conditional permit for a period of time to see what happens at night.

Foote suggested extending the daytime permit with a three or four night block, or a Saturday and a Wednesday night, being allowed. If it should be something that can disturb sleep, people shouldn't have to suffer even for two weeks. Garand said if a person calls with a complaint they would have to cease, and go back to the daytime option until they realize what is going on. If someone said they haven't been able to sleep for a few days, that would have to be addressed. Moore preferred Khan's idea of getting the people on Rocks Road that could be affected to the Planning Board meeting. People could delay calling in. If there are no concerns they would be good to go. The hypothetical numbers could be run all different ways and won't be understood. If a problem doesn't surface, there isn't a problem. Give the people a chance. Hawkins said people needed to hear it when it is the most quiet. Right now it shuts off at 6PM. They haven't heard it and the Board needs to give them a little time to hear it. Perhaps it is through the conditional permit for a month and if Garand has a lot of complaints he can say back to the drawing board to figure it out. If there haven't been complaints and it comes back to the Planning Board for approval, then the Rocks Road neighbors are informed so they get an opportunity to be heard. If they don't attend [to voice complaints], it can be approved on a permanent basis.

Garand emphasized that this is the time when the leaves are off the trees and the windows are closed which would affect the results of the study. In the spring or early summer it could be an issue. Foote noted that then the leaves would be on the trees so it muffles more. Janvrin thought there were not many deciduous trees in the area. Chase thought there were more people at stake than the 66 Rocks Road. Hawkins did not disagree. Chase commented that Garand has no meter to enforce it, and asked if there would be a problem in granting a year's time. It did not seem that one month was a fair timeframe for the summertime people. Foote commented that no one would notice with the fireworks. Hawkins asked how the Board would feel about an extended period during which Garand had the authority to say this isn't working. He asked if anyone had a problem with this. Moore and Thibodeau would not go more than six months. Garand asked if that would mean six months without consulting the abutters. Hawkins asked if



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this would be conditional occupancy so that there would be the opportunity to say go back and say no.

Kravitz asked if the Board meant informing all of Rocks Road or only the abutters. Foote said the abutters. Moore disagreed, wanting all Rocks Road residents to be informed about a meeting. Foote suggested sending a letter to the perimeter area, not just Rocks Road, stating that there would be increased use of the shooting range and nighttime testing; to let the residents in that area know that there will be activity at night and that if there are questions or concerns to contact Garand; short of notifying by certified mail the residents of Rocks Road and Dows Lane, and possibly A & B Street. Garand thought the latter would be going out of the direction, and thought the noise would be traveling mostly to the south of the facility, and not into the area of the marsh which wouldn't have much residential. Foote said short of mailing certified mail to the residents, where is the stopping point. Janvrin said that first class mail is fine. Morgan thought they might not open it.

Hawkins asked Garand about a conditional permit for six months that includes a 24 hour period, and if he gets enough complaints that he feels it needs to stop then he would be authorized to do stop it. At the end of that six month period the Board would notify by letter or whatever it deemed appropriate that there would be a final meeting on this project and if people want their voices to be heard they should attend that meeting. That way they get the opportunity. If it is bad enough during the 24 hour period, Garand puts a stop to it and it goes back to the drawing board to figure out some other way to reduce the noise. Hawkins liked the idea of notifying everyone, and giving them a chance to put in their two cents. This would also give NextEra a chance to figure out what their normal use would be.

Khan thought the Board should put some hours for the nighttime testing, because if they do no testing no one would know how it sounds at night. Everyone should know that the night testing would occur and when – perhaps 10 hours per week. Foote explained that they could go for six months without night testing and say there were no complaints. Coes was ok with that, but would not want to say the hours for the testing. Janvrin wanted them to come back with a record of the hours that the testing occurred. Garand suggested they might have to log in with the Police Department when they are doing nighttime testing in case there are calls into the department. Hawkins assumed they kept a log of the shooting, and asked for the log. Coes showed the tracking for the 24,000 rounds already done. At whatever time they are asked to return to the Board, they could certainly provide such a tracking. Thibodeau wondered if they had sign-in sheets. Coes did not know. Hawkins could not imagine that they would not have [sign-in sheets]. Janvrin said that would be part of the training record. Thibodeau said how could they say who was trained. Coes said the record is maintained by the dedicated training staff. Janvrin said they could put a lot of information on a blank sheet. Thibodeau wanted a sign in sheet showing who was trained. Coes said they could provide the certifications, by name, during a certain period but not a sign-in sheet. Janvrin suggested the range officer could sign-off.

Hawkins asked if the Board was ready to move on. Janvrin thought they were. Coes said one of the things he had found out in his education on sound, was that everything that was reported pertains to out on the street. Once inside the house, even with an open window, about 10 dBA is lost. Hawkins asked for a motion. Foote wanted first to speak about the entire plan in front of the Board. She understood that it was under attorneys' contract and would not go there at all.

Foote referenced the many, many places throughout the Minutes for the many different times the Board had dealt with the shooting range, even just within the past month. It was always her belief and intent, and she believed the Board's belief and intent, that there would be no



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restrictions or gates or fences that would prevent the east end of Rocks Road and the residents of Rocks Road from being able to travel across the new proposed transfer station road and use the North Access Road as the lights to get onto Route 1. If that is not the intent of this new access road, she thought that the Planning Board was not properly instructed, or notified, or advised of NextEra's intent when they discussed the whole road, because it was even said in the Minutes that that was part of the benefit of the whole project. She knew it was necessary to be very careful, but if the Minutes were reviewed, multiple Minutes and multiple different people state that that was the solution to the Rocks Road lights. There was supposed to be a connection, and a relief for the residents of Rocks Road if the traffic was bad to be able to go east and then on the new connector road and then on the North Access Road so they would have their lights to be able to get out onto Route 1, because the State favored the North Access Road lights to allowing the Town to have lights at Rocks Road to benefit the citizens to be able to get onto Route 1.

Hawkins asked if this was new information that that is not the intent. Foote said she had been led to believe from several different directions that there have been negotiations and contracts that imply that even the Transfer Station will be locked and gated; it will not be open access 24/7 to even the town workers. It will be at the mercy of someone at Seabrook Station to unlock the gate to use the Transfer Station. Hawkins said that certainly wasn't presented to the Board or implied at any time during the discussions. He asked if that is where this is going. Moore said people had short memories. Foote was absolutely correct. Now there is a long trail of not remembering that, even though it is showing up now that Minutes are starting to be reviewed. They were never going to allow anyone to get out onto Rocks Road. It was going to be dead-ended. No one could get out to the Transfer Station or use it during the real heavy traffic out there which was the intent from day one. Hawkins said that never came up. Moore said it was convoluted the way it came up.

Foote said members of the Board sat in the Library because this building [Town Hall] was closed for the mold mitigation and spoke about this being a wonderful thing, and no member of the NextEra team that was at that Library ever said that was not going to happen. Moore reiterated that was right. Foote said they let [the Board] believe that that was going to happen, and let [the Board] believe that that access to the Transfer Station was going to be at no cost to the Town. Now it appears there is a hefty bill to the Town to add things. Moore said no money had been spent at this time. He said Foote is exactly right that they will not allow those people, even though they are looking out their window at the Transfer Station, to drive a refrigerator 200 yards to the dump through the gate because it's going to be closed. They will have to drive all the way around through the traffic into the North Access Road and go all the way around again to get home. Hawkins said that was never the intent. He asked how many times did the Board ask to see the road on a map so they could see where it was going. Moore said the problem is that they decided they would do all the work and there was never an engineered plan. The only engineered plan is the land swap on town property. Moore said they got the road so they could have the shooting range and somewhere in the middle of the project all of the Town's needs and goals were ignored citing a security problem.

Hawkins thought it might be appropriate for the Planning Board to hold on to [this case] until all this gets settled. Moore thought so too. Foote's perspective was that if the Minutes to the original approval for the site plan and the paragraph just before the approval were read, and the substance above it and the motion to approve were read, it talks about Rocks Road access to Route 1 through North Access. She believed that the Planning Board was under the impression at the time that the site plan was approved, that the Town was going to finally have Route 1 traffic light relief for the residents of Rocks Road and the residents that go to the Transfer



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Station. Moore said that when this was initiated, the Town did not go after them. NextEra brought this to the Town saying they could help the Town out on this problem; they did all the mechanics, but it couldn't go through the South Access Road. Someone within their organization suggested going to the North Access Road, even though more money was involved. Moore did not have a problem with the person doing the work, but after the rainstorm a couple of weeks ago there was a lake at the end of the road where it connected to the North Access Road; the drainage was not engineered. All these things will pop up. Janvrin referenced what would happen when he leaves his grandmother's house and turns east on Rocks Road toward the Transfer Station. Chase said he would hit a block. Moore said he would hit a gate that doesn't get opened. Janvrin asked people to remember what happened in 1978 when the power plant put up gates. Moore asked for Coes to tell the way the solution is possible with the NRC.

Coes said he had his own opinion and his own facts as far as everything that had been said by Board members, and that Moore had brought his concern to NextEra in September. They said "No" that's never been the understanding; that's never been the way the documents had been written; that's not reflected in any of the Town Meeting votes, or anything else. The answer was "No" that basically came back at that point. But Bob [Moore] was persistent, so Coes said he went back to his management saying he understood the answer was "No" and understood why. They met out on the road with Bob, and the Town Manager, and the Town's attorneys to explain all that stuff. But they did say to give them a period of six months to see how the road work goes – see what happens when the access road is open. Based on the experience that they would see in that six months, and how the town police force and selectmen react to any problems that occur there, then they would initiate what's called the 50.54Q process. Coes said [this] is a little known process and procedure that their emergency planning folks have to determine the impact of further access to the site and whether that would be detrimental to their emergency planning process.

Coes said that what they offered was to finish the road, do the documents as they have been in existence for two years, and then take six months to see how that goes. Assuming they don't have problems, or maybe there are problems but at least they are addressed in a satisfactory manner, then they go ahead and do this 50.54Q. That work as far as that process goes is done by Dave Currier who is the driving force; he is their emergency planning manager.

Hawkins said to Coes that he had been in every single one of the meetings at the Planning Board level for this project and for the land transfer, and never was there any inkling that that road was not going to be open to coming down Rocks Road and taking a left or making that turn onto the road. That never occurred to us, and he was feeling pretty misled at this point that this is coming up at this late hour. Foote said they got their shooting range and [the Town] got nothing. Hawkins commented that they were not tied together. Janvrin added that they got the end of Rocks Road. Foote agreed. Hawkins said the land transfer was done with the assumption that those roads were going to be connected. There was never a statement, and [Coes] was asked for drawings to show where the road was going, that oh by the way you can't use these if you come down Rocks Road. Never. Foote said it was in good faith that it was connecting the roads. Hawkins said he did not know where...

Coes said they were in total disagreement. There are Town Meeting votes, documents that had been worked on by [NextEra's] attorneys and [the Town's] attorneys for two years. Hawkins said there were tapes of every meeting and wanted Coes to show him where it was that he said that oh by the way you can't use these. There are tapes of all the meetings that Coes made presentations to the Board; they can be gone over and Coes can point out where he said [you] won't be able to use this road if you come down Rocks Road. Coes said he would never make



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that statement. Also, a statement would never be found that [he] said that you could. Coes said that the agreements are things that had been worked on by [our] attorneys and [your] attorneys long before [we] ever came to the Planning Board. Hawkins asked Coes whether he did not think the Planning Board had a right to know what those are. Coes said that was not [NextEra's] decision. [Secretary's notation: the Town's electronic records are on video discs.]

Chase said he was a brand new member of the [Planning Board] and he was in on that meeting. If that was a condition of that approval that [we] were giving them that piece of land, he thought that should have been stated right then and there. He was not privy to other meetings, but he was privy to that meeting in which they were granted that piece of land. If that was going to be one of the conditions - that [we] can't enter [our] facility until they unlock a gate, he thought that should have been disclosed. Foote agreed. Chase said he voted to give them that piece of land, and that was never mentioned that there would be a gate and it would be closed. Foote said as little as a month ago the Board voted on a lot-line adjustment, and never was it said that [we] could not use that road. Janvrin referenced the October 18, 2011 meeting. Coes said that he had never made a statement that [you] could use it. Chase said that was misleading. Foote said the discussions were saying that this is wonderful, that it provides relief to the residents of Rocks Road. No one ever spoke up and said oh no it doesn't. Thibodeau said she did not know. Foote said silence is not golden; silence is deceit.

Khan wanted to add an important factor. Two months ago the Town got a message that it needs to repave the North Access Road in order [to use it], and there was no money available for this. Foote commented that this is the road that cannot be used. Khan said they went to a different fund to take that money in order to bring this project going. Khan said he voted against this, and two other Selectmen voted for it, but that was not the point. Khan said that the Seabrook taxpayer went beyond and above any other project that the town ever saw, just to see that little piece of road. He wanted to remind the Board Members of this. Thibodeau asked if the ability to use the range ran out a day ago. Hawkins said it did.

MOTION:	Thibodeau	that the conditional occupancy permit issued to NextEra for the use of the Firing Range not be renewed until the controversy is straightened out and the townspeople can use the access road.
SECOND:	Foote	[see as restated below]

Coes asked the Chair if he could add something, and said that admittedly no one there, except maybe for Bob, had been in on what's going on between attorneys for two, or more than two years. He also did not know what was said in initial tax negotiations where the Town made the initial request.

Moore said the Town did not make the request; it was an offer that it accepted. The Town did not request anything. During a lunch Tom Flowers [from NextEra] said that they do projects for most towns around, like ball parks. He asked if the Town had anything it would like done in Seabrook. Moore said he responded that there was a problem with Rocks Road at Route 1, and the Town would like to get those people out at a light by coming in off of Provident Way and off of South Access Road. Flowers asked Moore what he thought it would cost, and made some phone calls back and forth. Moore responded probably about \$100,000 because it was right close to the dump. The person came back and said "you got it". But when they got back, the highway agent talked to someone in security and then said that South Access Road couldn't be done because of some security reason. Moore thought the opportunity was gone, but someone at security decided they could go North Access Road which is three or four times further, but what would



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that cost. The response was that they will take care of it - no problem, and they will do the work themselves.

Moore said the work has commenced, and all of a sudden this agreement that started off with [Tom Flowers] that the town would get relief to those people to get out at Rocks Road along with getting [town] trucks out, disappeared somewhere. He did not know where because it got hung up in lawyers hands for a couple of years and [NextEra] decided they wanted to have the shooting range which muddied the water and slowed it down. They got what they wanted, but what did the Town get. Moore said he appreciated the road even without that access coming around it is a big help just to get [town] traffic off it. But it makes no sense whatsoever to have those people be trapped in that place even to the point they can't get to their own dump that they can see. He believed they are not terrorists, and did not think they would come in there and blow the place up. They are the same people that can go all the way around and dump, that can't go 200 yards and dump. It doesn't make any sense.

Janvrin added that last summer he wanted to take his stuff to the dump down Rocks Road and couldn't understand if there was a gate. So he dumped at the end of Rocks Road as had been done for 30 years, and that's why there were Jersey barriers at the end of Rocks Road because the DPW got sick and tired of picking up what people dumped there. Moore said there was no logical reason that came forward as to why [townspeople can't use the road].

Hawkins called attention to other business on the Agenda for this meeting. He thought it would probably be best to continue this Case #2011-31 until getting some clarification on how the rest of this is going on. There was a land exchange agreed to at a [prior] meeting, that the Board was operating without complete information when they agreed to it. He said the board needs some clarification on 1) what the Board's options are, 2) the Board's responsibilities are to the people of Seabrook who, as far as he knew, don't know any more about this project than what the Board knows. Hawkins said that at this meeting was the first time he had heard about the change in use for that property. He thought that before the Board proceeds ahead with other projects, it should get clarification on where this whole thing is and where it's going and what the Board's responsibilities are. Janvrin asked if the lot-line adjustment had been recorded yet. The Secretary said it had not. Thibodeau called attention to the motion on the floor. Hawkins asked That it be repeated. Morgan asked to speak to the motion.

Morgan said that the Building Inspector has the authority and the autonomy to issue occupancy permits. Thibodeau commented that he came to the Board. Morgan understood that, but said it is in his hands as to how he wanted to handle the occupancy permit. He felt that as a courtesy the Building Inspector was engaging the Planning Board. The Planning Board did not have an occupancy permit in front of it. The request was to amend the prior site plan approval, and that's what any motion the Board might want to make should address. Janvrin wanted to see a more appropriate motion. Hawkins agreed with Morgan, and was uncomfortable tying items together. He thought the route of denying this request at this time was well within the Board's authority, but was uncomfortable with how the motion had been stated. Thibodeau thought members should vote against the motion because she would not restate it. Hawkins asked for other discussion on the motion. Morgan said the same message could be sent to NextEra in a way that would be more defensible; they would get the message. Moore wanted Morgan to write the motion.

Hawkins noted the motion on the floor, and wanted to know if there was more discussion. Janvrin moved the question. Kravitz asked that the motion be restated. Hawkins asked Thibodeau to do that. Thibodeau said she would make it a little clearer:



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MOTION:	Thibodeau	to request that the Building Inspector not reissue an occupancy permit to the NextEra power until the issue of the road is satisfactory to the Board.
SECOND:	Foote	[see below]

Garand asked that the building and the road be addressed separately because now there was a request for relief from the decibels and the discernability at the property line. That is the question that Morgan pointed out. Garand said at this point the road is a separate issue; the Board had the option to not allow the nighttime use, or to continue the option the way it is currently; He would not advise anything other than the building and the noise. Morgan said he was sympathetic to the Board's expressions at the table. In the unlikely event that lawyers get involved, he would like to see the Board be in the strongest possible position. He suggested sending the message by way of the Agenda.

Foote said the reason she was justified in bringing up what she had recently become aware of is because this case that references Case #2010-22 is the site plan case that involves the creation of that road connect-through. The case got reopened by this request. In the past when siteplans got reopened, it reopens the case and certain times things were allowed because other things were happening. It was proper to bring this up at this meeting because of the case in front of the Board. Hawkins said if Foote hadn't brought it up, he wouldn't have been aware of it, and thought he would have been proceeding along and thinking that the Town would be getting a connector road. Foote said that until 48 hours ago so was she. Hawkins was upset and disappointed at what's going on at this point. Chase asked if the case could be continued. Hawkins said there was a motion on the floor to deal with first. Chase said he wanted to know about continuing before he voted. Hawkins said the Board could continue the case.

Morgan said in the interest of putting the Planning Board in the strongest position, he thought there were three choices when referencing what's on the Agenda. The Board could 1) approve it, 2) deny it, or continue it. Those are the three positions the Board could take that are unassailable. Foote said that could be done but first the Board had to deal with Thibodeau's motion and [Foote's] second. Hawkins asked if everyone understood the motion on the table, and asked for the vote:

MOTION:	Thibodeau	to request that the Building Inspector not reissue an occupancy permit to the NextEra power until the issue of the road is satisfactory to the Board.
SECOND:	Foote	Denied; In favor: Thibodeau, Sweeney, Foote Opposed: Chase, Janvrin, Moore, Hawkins;

The Secretary announced that the vote was 4 opposed, 3 in favor.

MOTION:	Janvrin	to continue Case #2011-31.10-22 to December 20, 2011 at 6:30PM in Seabrook Town Hall
SECOND:	Moore	[see below]



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Coes asked to make a statement. Hawkins invited him to do so.

Coes said he had been the mainstay as far as the representative of NextEra Energy at the Planning Board meetings talked about at this meeting. He basically had been accused of [[lying]] to the members and that is not the case whatsoever. As he had told the Board, he had not been in on this since the beginning in 2009, but based his knowledge on the agreements that he had seen that had been negotiated and passed back and forth between the Town's attorneys and NextEra's attorneys multiple times over the past two years based on the Town Meeting votes in 2010 and 2011. Foote said all of those Town Meeting votes were with the idea that they were going to provide relief. Hawkins asked Coes to continue. Coes said all of those documents that he had seen indicated the reason which was two-fold: Most important was to get Transfer Station traffic off of Rocks Road. The secondary benefit which NextEra always saw was to reduce the amount of traffic at the Route 1 and Rocks Road intersection therefore reducing the pressure, time, aggravation involved in trying to get on Route 1 in different times. Coes said that none of the documents that he referred to had ever talked about access once this roadway was in access for Rocks Road residents to the end of Rocks Road and on to the new access road. It's just not there.

Coes said he had been approached by Bob Moore, and they were in actual construction of the road probably at the end of September, and asked how are the Rocks Road residents going to get to the light at the North Access Road. Coes answered that they would not. It had never been the understanding. Everything in the documents had always said that Rocks Road blocked off. Coes said he knew everyone was shaking their heads, but he'd seen the documents. NextEra did not share them with the Board but certainly the Selectmen could have shared them. For two years The documents have said the Rocks Road gets closed off. They said no to that because it was a totally new concept. They did come back to the Selectmen saying they would be happy to finish off the road, sign all the agreements, and try it out in six months. At that point they would entertain the request to open Rocks Road. But he can honestly tell the Board that he had never heard anything about opening Rocks Road once the new access road was constructed until Bob Moore approached him at the end of September. They are going to be in a severe disagreement.

Hawkins said the Board appreciated Coes' comments but he thought every Board member had been taken by complete surprise because their understanding, however they got to it, was nothing like that. The Board hadn't seen any documents that told them that in fact that the Rocks Road residents were not going to be able to have access. Foote said the site plan does not indicate gates or fences blocking off roads. Hawkins agreed. Janvrin said as a resident of Rocks Road for 35 of his 39 years NextEra would never gotten the townspeople of Seabrook to sign over ownership of Rocks Road from the Transfer Station to the barricades as they stood six months ago if the understanding had been what Coes was demonstrating to the Board.

Janvrin said to continue this case to mid-December. Kravitz said the regular meetings were on December 6, 2011 and December 20, 2011. Foote thought December 6 would be a worksession. Kravitz said there would be at least one case on December 6; a worksession could follow it, however, there would also be items public noticed for the zoning hearings. Janvrin did not want this case to interfere with discussion of the items that were public noticed for December 6. Foote noted this would be a regular meeting. .

MOTION:	Janvrin	to continue Case #2011-31.10-22 to December 20, 2011 at 6:30PM in Seabrook Town Hall
SECOND:	Moore	Approved: Unanimous



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Coes asked for clarification on the Certificate of Occupancy and if it was Garand's decision as far as what happened on the next day. Hawkins said that Garand is responsible for that. The Planning Board is considering the case on whether to change the original conditions. Garand said that the permit would be extended to the date that this meeting is extended to. The occupancy would be extended to run concurrently.

Hawkins thanked Foote for bringing up the NextEra issues. Chase asked if the Planning Board would get documentation. Hawkins assumed the Board would have to talk with the Selectmen to get any further information. Foote thought attorneys should be sitting in the audience to hear what the Board intends. Hawkins did not want to have every meeting with an attorney. Foote said obviously they had misinterpreted the intent if they had gone that far down the road in the negotiations. Morgan asked who was representing the Town. Moore said it was Cindella's office. Janvrin asked for a recess. Hawkins said there were several agenda items to address and the meeting would continue.

CAPITAL IMPROVEMENT PROGRAM

Hawkins said the CIP was revised by the Selectmen who made a couple of changes from what the Planning Board originally saw. Those changes were to (i) modify the replacement of equipment for the Sewer Department, (ii) defer the DPW Governor Weare Park expansion project, and (iii) to add roof repairs to the Recreation Department Community Center in the year 2012. Other than that the CIP is in the same condition and order as in the original book. Modification pages, and a new summary that lays out spending for 2012, were included in the Board Packet. This is fairly light when compared to the history and will go as Warrant Articles to the voters at the Town Meeting who will ultimately decide if the Town will spend this money or not. It is the job of the Planning Board to approve the CIP and that is the function for this meeting. Hawkins asked if there were questions relating to the CIP indicating it was in the same format that it was in for the last few years, and is pretty complete in terms of definitions included and what is involved in it.

Janvrin asked about the Fire Department request and the Chief's explanation that the whole reason why [something] hadn't happened was because the Planning Board failed to implement impact fees. Janvrin said if the CIP is truly the Planning Board's "baby", because the RSA's said it is, he did not think the Board should be publishing a product that was slamming the Planning Board. This is a problem. Foote agreed, saying an impact fee would not justify or negate a purchase of an item; an impact fee might prevent a purchase. Janvrin said there was justification for certain purchases over the next six years in the CIP, not just for the fire department, that he did not agree with. However he did not have a problem with the meat and bones as what would be spent over the next few years. But some of the verbiage was upsetting. Foote said it should not be editorialized in the write ups of justifications and some things were slipped in that did not apply or were not required. Janvrin agreed. Moore said there were only a few adjustments.

Hawkins asked if the offensive statement was that ...Several attempts had been made to have developers pay for this project, but the Planning Board did not require their cooperation. Janvrin said that was one of the statements. Foote said the other referenced the failure of the Board to institute impact fees. Morgan pointed out that that was a Town Meeting decision. Hawkins was proud of the fact that the Board did not do that, and had no problem with [the Chief] stating that the Planning Board disagreed with the approach he wanted to take, and leaving the language the way it was. The statement was correct because the Planning Board did disagree with the



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premise of going that route [impact fees]. Janvrin said he would also be comfortable. Foote did not think that the statement was justification for not approving the CIP. Hawkins did not believe there was a need to modify it. The Board had good reasons for not approving it.

MOTION:	Thibodeau	to approve the Capital Improvement Program for 2012-17 as revised by the Selectmen at their recent meeting.
SECOND:	Chase	Approved: In favor- Hawkins, Moore, Foote, Thibodeau, Sweeney. Chase
		Opposed: Janvrin;

ADOPTION OF MASTER PLAN CHAPTERS

Economic Development Implement Guide

Economic Development Chapter

Hawkins said the Economic Development Chapter was coming to the board for the second time. The first time the Board was uncomfortable because it kind of required actions that the Town was supposed to take. The discussion at the Master Plan Steering Committee then focused on "responsibility" to lay out what could and should be done vs what has to be done. The Committee felt this would be a good thing to do, but the Town did not have the resources, so it could go to the next master plan and not have anything done with it. Hawkins said the committee's discussions were that could be the likelihood, but did that mean there weren't good ideas that could help Seabrook develop economically if the resources could be found to actually do some of it. Only a few minor things were changed. So the committee is returning to the Board acknowledging that the likelihood of this part of the Plan actually having a lot of time and effort put into it isn't very high because of the resource restrictions, and there isn't really anybody in town who's responsible for economic development; the function doesn't exist in Seabrook, but it would be helpful to the town if it did So this is a bit of a road map to follow to make things happen. Hawkins asked that this chapter be approved as a part of the 2011 Master Plan.

Janvrin liked what is currently [done in this chapter]. He commented that businesses could go to the Hampton Beach area Chamber of Commerce , but there is not one for Seabrook. In the next 10 years he would like to see something like that develop. Foote said that several people had approached the National Chamber of Commerce which issues licenses and allows operation and they have been denied a Chamber of Commerce Chapter specifically for the Town of Seabrook specifically because the Hampton Area of Commerce is for Seabrook, Hampton Falls, Hampton and North Hampton. Janvrin thought that if Seabrook business persons removed themselves from the Hampton group, they could have their own. Foote disagreed and said it is a regional thing; some people had had a three year battle over this. Hawkins said there is an action item to establish an economic development function within the town's government and provide funding within the budget to support economic development and assign a single point of contact. He thought that would be a great thing to do if there were money to do it with, and it would lead to opportunities for greater participation from the businesses and some guidance for the town on what to promote.

Hawkins said the big problem is always: where does the money come from to do these things. Foote said this would take the support of the businesses. The municipality cannot be expected to do it all. Hawkins agreed. Thibodeau said there had been an economic development committee. Foote said that existed for five years and sponsored two different Seabrook organizations each of which lasted 3 and nine months respectively. Moore said a champion is



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needed. Hawkins said someone to step up was needed supported by either the town or some of the businesses. Foote said the main thing was to get the businesses to want it. Hawkins said they had to see some value in it for them, and what can the town bring to the town that could be useful and helpful to bring jobs. But if individual businesses don't see the value for themselves, they won't be leading the way. The Master Plan acknowledges that fact. He believed that this is something that has to be addressed in a Master Plan, and needs to be worked on down the road.

MOTION:	Foote	to accept the Economic Development Chapter of the 2012-17 Master Plan as presented to the Planning Board on November 15, 2011.
SECOND:	Janvrin	Approved: Unanimous

Chase commented that at some of the commercial real estate meeting he attends, there are people who show up from other towns who only do economic development. One is a part-time lady who is really good. Hawkins said Seabrook is not doing this but there are towns in our area that are. Foote asked if the person that Chase referred to was part of the EDAC. Chase thought she was funded by a grant. Foote mentioned a new banking organization backed by federal economic development and their job is to attend all the business meetings and facilitate the businesses and help them get financing. Khan thought the same people came to the fisherman's conference at the Library. Janvrin asked if Kravitz was involved in an economic development council; he thought it extended from the Seacoast into Nashua. Kravitz said that is the Regional Economic Development Corporation (REDC) which does the 5-year CEDS for the region. They have a Steering Committee on which she serves. Janvrin asked if there was anyone there representing Seabrook. Kravitz said service on that Committee was by invitation.

Kravitz noted that REDC was Seabrook's partner doing the facilitation for the federal visitation. REDC assisted Seabrook by placing both the Bridge and Route 1 south potential projects on the CEDS list. If federal money is involved it's important to be on the list. She commented that there are only two economic development corporation of this nature in New Hampshire. REDC is watching very carefully to see if the Yankee Fishermen will move aggressively forward and the Town is in touch with them. Foote understood that like RPC in planning and land use, REDC is one of those polymorphs that's not really municipal, private business, or volunteer; they flow in between and have a lot of municipal, state and federal background and guidance; they do get paid for supporting business and facilitating growth in economic development. Kravitz added that in particular for infrastructure there are funds that flow through that entity.

Implementation Guide

Hawkins explained that the Implementation Guide is comprised of the action items that need to take place as stated in the Master Plan. While it is a summary, the Committee made an attempt to prioritize them. Some things will be at the top of the priority list and others will drop down if they cannot be addressed. Additionally for each action item the Committee tried to assign a lead e.g. board of Selectmen., Planning Board; Town Planner. So for each item there is a lead, a priority level, and a current status indication e.g awaiting action. There are definitions at the end for the abbreviations used. Hawkins said if someone doesn't want to read the entire Master Plan book, they could quickly find the things that the Committee things need to be done in the Implementation Guide. Janvrin asked if this is the first time that this was compiled. Hawkins said other Master Plans had summary lists, but this was the first time that responsibility was assigned. Janvrin liked the way it was structured because progress could be tracked two years from now. Hawkins wanted to use some of the Board's worksessions to work on some of the items. Foote said it would be good if some items could be marked as completed.



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MOTION:	Janvrin	to accept the Implementation Guide of the 2012-17 Master Plan as presented to the Planning Board on November 15, 2011.
SECOND:	Chase	Approved: Unanimous

PUBLIC HEARING ON PROPOSED AMENDMENTS TO ZONING ORDINANCE AND LAND USE REGULATIONS Tom Morgan, Town Planner

Hawkins called attention to the proposed amendments and indicated that these were the easier ones because they had already been discussed. He asked if the Board wanted to continue at this point or address them at the December 6, 2011 meeting. Janvrin asked if they had already been public noticed. Hawkins said they had. Foote said some had been discussed. Hawkins asked Morgan if there would be any problem if the Board decided to continue this discussion to December 6, 2011. Morgan said it was up to the Board, but he thought they would take longer than thought. Hawkins asked if the underlined language was the only changes. Garand said that the 180 days issue needed clarification, and also the conditions. Foote said the board does not make good decisions late at night. Morgan recommended distinguishing between those amendments that require Town Meeting and those that did not. The items the board was looking at now did not need Town Meeting approval. Foote said to bring these up in the worksession. Hawkins continued the proposed discussion of the Land Use Amendments to the December 4, 2011 meeting at 6:30PM at Seabrook Town Hall.

- 1) move the parking regulations from the Zoning Ordinance to the Site Plan Regulations;**
- 2) afford protection to vernal pools;**
- 3) establish criteria for Conditional Use Permits – Section 7;**
- 4) require certification from an engineer that a project is complete;**
- 5) increase water quality standards for stormwater discharge;**
- 6) limit the use of hay bales in erosion control;**
- 7) encourage LEED design;**
- 8) adopt definitions by reference in the Site Plan Regulations;**
- 9) define “interior parking area;”**
- 10) require performance securities to be non-lapsing;**
- 11) adopt a policy governing the signing of mylars;**
- 12) require origin and destination data in traffic studies; and**
- 13) extend conditional approvals from 180 days to one year.**

Morgan s the items that would require Town Meeting approval were 1) Home Occupations, 2) Open Space, and 3) Vernal Pools. Thibodeau asked about parking. Morgan said parking had been done. Hawkins asked if there would be a heavy load of cases for December 6. Kravitz said not on the 6th. Kravitz asked about the letter from Paul Lepere who left the meeting earlier. Foote said he needed to come to the Board for an amended site plan. Chase asked about this. Foote said Lepere was looking for relief from a sidewalk that is designated on a site plan. Hawkins asked for Morgan’s view about putting it on the agenda for the next meeting. . Morgan said it did not have to be dealt with at this meeting. Foote said if the site plan is to be amended, don’t the abutters have to be notified. Morgan said they did. Janvrin noted this was a 2005 case, and asked if the security were in place. Garand said Lepere was the second



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owner of that parcel. He was not sure if the security was resolved. Kravitz said Lepere posted it. Morgan said that the Board wanted an application from Lepere. Kravitz said that Lepere understood that the Board might shed some guidance, but submitting an application might be the outcome. Janvrin asked if that could be expedited. Morgan said expedited was only for site plan review. Foote explained this was a sidewalk from a subdivision. Hawkins asked if it were a two-lot subdivision and asked if it required sidewalks. Garand said at the time it came before the Board it was required. Foote noted that Board members had been adamant about sidewalks, which could now turn into the next big white elephant that the town has to feed.

Hawkins adjourned the meeting at 9:40 PM.

Respectfully submitted

Barbara Kravitz, Secretary
Seabrook Planning Board