Town of Seabrook Planning Board Minutes

November 15, 2005

Members Present: Sue Foote, Chair; Mark Preston, Vice Chair; Paul Garand, CEO; Tom Morgan, Planner; Mike Lowry, Peter Evans, Paul Himmer, Keith Sanborn, Patricia Welch, Secretary.

Chair Foote called the meeting to order at 6:00 PM on Tuesday, November 15, 2005. Since this was the first televised meeting, the Chair requested that the Planning Board members introduce themselves for the viewing audience.
First item was acceptance of the minutes from November 1, 2005.

Motion: Lowry To accept the minutes of November 1, 2005.

Second: Himmer Unanimous

Chair Foote opened the Public Hearing on the proposed amendments to the Zoning Ordinance at 6:03 PM. She prefaced the discussion by clarifying the Planning Board's job regarding zoning ordinances is proposing them from issues or items that were brought by past plans that have brought about areas that maybe need a little bit of correction or a lot of times citizens and residents talk to the Board through the year and discuss items they think ought to change. All of the items brought forward tonight will no be passed tonight, they will be discussed and some may be recommended by the Planning Board to put on the Town Warrant which the public will vote on at the next March Town Meeting. But it's up to the Planning board to work out the wording so that it is a fair ordinance by the time it goes to a public vote.
The first item is #"1) Add the following to Article II of the Zoning Ordinance:" **Light Trespass:** Light that is distributed from a permanent fixture beyond the intended target and onto adjacent properties where it creates a nuisance." Do any members of the Board have any questions, comments, or concerns about the terminology?
Sanborn: I do. Light trespass, there are people who have lights for security, how are you going to consider that a nuisance light if it shines in somebody else's yard which it probably will because it's a flood light. I think we're getting to Nazism here.
Preston: I think it's in the eyes of the beholder whether it's a nuisance. If it was your next-door neighbor and it's shining in your window.
Garand: who is going to say what a nuisance is? It's going to be a nightmare to enforce.
Foote: as we were putting this together we had several renditions of a potential definition, this was brought about by people talking to me and to other Board members that they have noticed that there are more and more security and flood lights that people are setting up for security or for backyard lighting, but that light is sometimes traveling further to an abutting neighbor's yard and it is not wanted there or the abutter does not want a flood light flooding their living room or bedroom for them. There are ways to set up lights with shielding, with a direction that doesn't aim straight out and not infringing on abutters privacy. Do you have any suggestions how to rephrase this to provide necessary security lighting but provide lack of intrusion to an abutter?
Sanborn: people pay their electricity bills they should be able to do what they want to do with their lighting system at their house.
Evans: they shouldn't be allowed to make a nuisance for their neighbors, though. If you want to shine a spotlight into someone's living room, that shouldn't be allowed.
Sanborn: what if that person lived there for fifty years and someone comes into town and says I don't like the light being there and it's been there fifty years. We can't do this.
Preston: I look at our code now, are we talking industrial, residential, commercial?
Garand: it doesn't differentiate
Preston: our code is pretty strict now; they have to have the lighting grid and limited amounts of infringement on other lots.
Foote: they are strict

Sanborn: I think a lot of this is coming because of the businesses in town.
Lowry: we control that now.
Garand: when you put this into place do I have to go out and take a picture of every house and every existing light that they have on the place and say you can't change your lighting from this day forward, and if you do then you have to come in for a permit and who's going to maintain that?
Preston: I think the code with the plans now that come in have lighting grids.
Foote: those apply to commercial and industrial, not the new residential.
Preston: how many rules are we going to make? And how many complaints are there? Is it a major problem that we want to jump into? Both code enforcement and police are probably going to be involved if there are lots of complaints. I think we're cutting hairs here.
Garand: you can still go in through the nuisance also. If it's devaluating the property values, you can address it that way.
Foote: does any other member of the Board have anything to say about it before I open it to the Public?
No. Do any of the audience members have any comments questions or concerns about adding the definition of light trespass?
Bruce **Brown:** you do have that provision in all the new site plans to limit that and this appears to apply to residential and it's going to be quite a can of worms, I think.
Foote: anyone else? We're ready to decide whether we want to work out a better definition or just not support putting this on the warrant.

Motion: Sanborn To not support putting the definition of "Light Trespass" into the 2006 warrant.

Second: Preston Himmer, Garand, Preston, Lowry for; Evans, Foote against.

Foote: Next proposal, #2 goes away because it refers to light trespass and because we don't have a definition, we can't insert it as part of the nuisance ordinance. Item #3, " In Article II of the Zoning Ordinance, replace the definition of "Nonconforming Use" with the following three definitions:
Nonconforming Use: A use of the land that is not permitted by the ordinance in the zoning district in which the use occurs.
Nonconforming Lot: A lot whose area is less than the minimum dimensional requirements for the zoning district in which it is situated.
Nonconforming Structure: A structure that does not comply with the terms of the ordinance."
These are all in the definitions section and one of the reasons we're trying to reword and rephrase non-conforming use is because our current regulations for nonconforming use leave an awful lot of vagueness and through discussions with our town planner and town counsel, the way it is written now, it could possibly create situations that would not be enforceable or non defensible so we are trying to work out new definitions of non conforming. Right now we are just changing the definition changes. Do any of the Board members have anything to say?
Sanborn: I think your non-conforming lot would create a big problem in this Town, as a lot of your houses wouldn't fit that. You'd have a lot of problems. Town in Seabrook would be in court all the time. Here again I think
Preston: I don't have a problem with the use, lot, or structure. It's not changing anything; it's just defining what non-conforming is for those three things.
Sanborn: I think you're going to run into problems on the lot.
Preston: it's either nonconforming or it isn't. It's just saying whether it's a lot a structure or a use.
We have a lot of nonconforming lots uses and structures.
Garand: inside the Zoning it says that any nonconforming use, the expansion of that must go to the Board of Adjustment. If you had a nonconforming lot and you wanted to put a porch on your house, even though it was a residential use and it's an allowed residential, you still have to go to the Board of Adjustment to even put a porch on. The expansion of anything nonconforming would require going to the ZBA.

Morgan: wouldn't it be easier to read if the ordinance had something that stated that people with nonconforming lots have the right to do this or the right to do that and just spell it out clearly.
Garand: if it was different, but the way it is now, every lot with no frontage could not be built on.
Morgan: I agree with Mark that the definition is pretty neutral. What seems to have gotten people's attention is what the property owner's right are for that particular situation.
Foote: and we cover them in the next article. This is just trying to net down a definition. Our current definition only covers nonconforming use. And it says "A building, structure or use of premises that does not conform to the provisions of this ordinance in the district in which it is situated and which is permitted solely because it was in lawful existence as such a use prior to or at the time this ordinance took effect. Only the principal use of the premises concerned may be continued if it is nonconforming; a subsidiary, secondary, subordinate, or part-time use of premises may not be deemed nonconforming. " That's our current definition which is very difficult to apply because it doesn't talk about uses and structures. While it says a lot, it's contradictory to itself so these three definitions are intended to go into the definition section of our ordinance and replace what I just read. So you have a non-conforming use, a use of land that is not permitted by the ordinance in the zoning district in which the use occurs. A Nonconforming Lot: A lot whose area is less than the minimum dimensional requirements for the zoning district in which it is situated. Or a
Nonconforming Structure. We have to realize that throughout town and throughout every town there are certain things that are nonconforming because zoning changes from time to time. It doesn't mean that you can't do anything; it means you have to go to the Zoning variance board for a variance if you want to change something. It doesn't outlaw it.
Garand: it just makes it so there is a tremendous amount of traffic to the Board of Adjustment.
Foote: any more so than already?
Garand: if you have a lot of record that doesn't have any frontage on the road, if they want to change anything on that lot they have to go to the Board of Adjustment.
Morgan: if our intent isn't to make any substantial change, then maybe we should add a line elsewhere in the ordinance that says that if you have a nonconforming lot you do not need a variance. That's the type of thing that's simple, plain English and everybody understands.
Garand: if that was added
Preston: because building structure and use are covered and what you're looking to cover is lot? Maybe if you put in something that you wouldn't need to go for a variance for a lot just under the definition. I think the other things are covered.
Evans: I don't see any problem with the definitions. I see the concern is with the impact these definitions will have on other ordinances. In my opinion there is nothing wrong with the definitions themselves. I think they are very straight forward and plain. If anybody had any suggestions on how to define a nonconforming lot differently, I'd be happy to hear it but I think this says it.
Foote: and we know this board has already seen plans that have nonconforming lots, we use the term through this board, we send proposed subdivision plans to the ZBA because they're proposing to create a nonconforming lot. This just gives a definition to a word that we have been using.
Garand: what I'm saying is it's going to broaden the spectrum of what is nonconforming and make it an enforcement nightmare out there as far as the average homeowner who wants to put on a simple addition, porch, or a fence or any change to that lot. They'll be required to go to the Board of Adjustment to do any change. If they give an avenue of escape for that lot of reference that might be something to look at.
Evans: are you saying this definition creates nonconforming lots?
Garand: it would change any lot that doesn't have frontage; it would change every lot to nonconforming, some of the older lots in south Seabrook.
Evans: aren't they nonconforming now?

Garand: they are grandfathered lot prior to zoning. Even though they are grandfathered they are nonconforming but at the same time the way they are worded if you call them nonconforming then under the definition it has to go to the BOA for a use change or an expansion of that change.
Morgan: unless the ordinance is clear that they don't
Lowry: so if we add that in
Preston: I don't want to see you change it to nonconforming lot and a guy wants to put a deck on his house and he has to go get a variance. I wouldn't have a problem if it were further defined that they could go around the ZBA as far as the definitions themselves on all three.
Foote: Tom, do you have any recommendations on how you want it noted in the definition or in the article that talks about nonconforming uses?
Garand: basically if you are calling it a nonconforming use then Article XIV has to address that ability
Foote: so that is something we add in Article XIV as opposed to Article II that just gives you a definition. So I think is what we have to do is focus on whether the definitions are proper and substantial and then in the other areas where we refer to these definitions, we make sure we cover all aspects and ramifications of what might happen.
Preston: you're going to be asking the citizens to be going back and forth between Article II and XIV
Morgan: you are now anyways
Preston: let's make it as simple as possible is what I'm saying
Garand: you should tie them together because if one passes and one fails it going to make a mess
Morgan: absolutely. It should sink or swim as a package.
Preston: under definitions you could put in parentheses see Article XIV footnote of what it says
Foote: or move the definitions into Article XIV?
Preston: has this been a real problem in town?
Garand: it's not a problem because the old lots are grand-fathered, not nonconforming
Preston: why would we want to label them nonconforming?
Garand: that's where I have a problem: if you label them nonconforming then they have to go to the ZBA
Preston: if I had a grandfathered lot and now it becomes nonconforming I'd be bull when I go to sell it
Garand: if the zoning changes at that point, then you'd always have to look through the history of every lot
Evans: what if we added to the definition. The concern seems to be over granfathered lots. That's where the outrage is. If it's a lot whose area is less than the minimum dimensional requirements for the zoning district in which it is situated at the time when the lot was created
Foote: shall be considered a grandfathered lot?
Evans: no. It's only nonconforming if it was nonconforming at the time at which it was created
Garand: a lot of record
Foote: I think the thing is we need to come up with a definition of a nonconforming lot because we're seeing subdivision plans with proposals for nonconforming lots and we're using that term and we have to have a definition for that term because someday we could end up in court trying to defend our decision.
Preston: if that's the only issue, why are we going into all these other nonconforming uses?
Garand: maybe you should put in there a definition of a lot of record, saying that at the time the lot was established as long as it complies with the zoning regulations at that point it would be a lot of record.
Foote: so you'd recommend a lot whose area is less than the minimum dimensional requirements for the zoning district in which it was separated, not including grand-fathered lots of record that were conforming at the time of their creation?
Garand: something to that effect would protect the people.
Sanborn: no because you could change it a week later; you could change it on the next town meeting.

Garand: but they'd still be granfathered lots of record at that point also.
Preston: what do you think Tom?
Morgan: I'm seeking clarity and plain English and my intent also is not to make any significant changes to the status quo, just make the ordinance easier to read. I think the definitions themselves are fairly neutral, there are certain property rights that should be protected and maybe we should make an effort to be explicit about that. You call it an apple an orange or a lemon. To me a lot of it is semantics. What we have to do in the ordinance is spell out if your lot is whatever you want to call it, you shall have the right to build without having to go get a variance. My intent is to make it so anybody in Town can pick up this book and understand what their rights are and what they can and can't do without having to read between the lines and struggle with tough language. I prefer to have all the definitions in one section of the ordinance because hopefully you won't have to go to that section unless you stumble across a word you're not sure what it is. The place to address what your property rights are in a smaller lot are Article XIV, we'll have to be careful, you'll recall I said this is potent stuff, and we have to make sure we get it right if we do anything at all.
Foote: Any members of the Board have anything else to say about this?
Sanborn: doesn't this cut into expansion and the rest of the four? You'd better reword nonconforming use, lot and structure before you go to expansion, A, B, C, & D.
Foote: we're still working on number 3, trying to get a definition; we haven't even gotten to number 4 yet. And that's all number 3 does is create definitions to replace the current definition which is quite vague.
Sanborn: if you look at expansion that wording is still in this one and you haven't clarified it up top yet.
Foote: that's what we're trying to do
Sanborn: so you're going to have to clarify all of them
Foote: right now we are trying to get more concise and understandable definitions for nonconforming use, lot and structure in place of what is currently there which I have read before and I can read again.
Garand: use and structure seem adequate; it's just lot that I have a problem with.
Foote: but if we don't have a definition for a nonconforming lot, when we see site plans or subdivision plans and we use that terminology, without a proper definition in our code book, we could be leaving ourselves open for potential troubles.
Preston: I don't think you really are; you're using that as a word, it doesn't meet the dimensional requirements of our lots; you're just saying nonconforming lot as a matter of convenience when reviewing plans. I hate to get too nit-picky on every little thing and worrying about that down the road someone challenges you used the word non-conforming lot.
Foote: if you were to come up with a definition of non-conforming lot what would it be?
Preston: I'd have to word it something like a lot whose area does not meet the requirements. Something very simple
Evans: which is what this says. I suggest we change the wording to read: "a lot whose area is less than the minimum dimensional requirements in force at the time of its recording for the zoning district in which it is situated."
Morgan: you're really trying to describe grandfathered lots aren't you?
Evans: if a new lot is created that doesn't meet the dimensional requirements that are currently in force, then it would also fit this definition of a nonconforming lot. I think what people are concerned about is coming along after the fact and changing the rules of the game. It's a wholly separate question whether changing the rules of the game is okay. This is a compromise to the definition that addresses the citizen's concerns regarding grandfathered lots.
Foote: I agree. I think that covers the dimensional requirements in force at the time the deed was written for that lot and it was recorded. That's one of the things we encounter is that occasionally the zoning variance board does create a nonconforming lot through their decisions and it sometimes make it difficult for us as a planning

board as to how to proceed because we cannot approve a plan that creates a nonconforming lot but the granting of the variance makes it conforming for the purposes of creating and recording that lot. It still doesn't make it a conforming lot. It is still a nonconforming lot that was granted to exist because of a variance.
Garand: so that definition might cover it.
Preston: I think you have a problem and you are harming people by doing this. Let's go to nonconforming structure, before the 750 square foot family apartments, you could build any size family apartment correct. So I have a house in the west end in the zone where I'm allowed to build a 1500 square foot apartment, accepted use at the time. Now it's changed to 750 square feet so it's a nonconforming structure?
Garand: by this definition it would be.
Preston: I hate that label. But I'm grandfathered.
Foote: but you are already a nonconforming structure by the current definition in our codes. You'd be grandfathered on it here also.
Preston: I want to make sure there is no mistake about that.
Foote: either way you'd be grandfathered because it was conforming when it was created. If something changes after the fact, you're grandfathered.
Garand: you're setting a time frame too.
Foote: These definitions have absolutely nothing to do with time frames. We're still working on definition only.
Garand: if you changed the date of the recording it would give it a recording it would give it a time frame
Foote: you could easily go to the deed and see book, page and when recorded and compare that to what was in zoning regulations in force at the time and decide if it was grand-fathered or done after the fact and created an illegal lot. And if they don't have a zoning variance, then they are nonconforming. Does the board have anything else to say before I ask for audience input?
Henry Harrison Boyd, Jr: I just wanted to say that one term generally used is pre-existing non-conforming and once the variance board grants a variance, the lot conforms by every other standard so I think the term nonconforming only exists when somebody tries to clear the lot that doesn't conform. I really hope that on the lot merger thing, I think people that are going to be affected by that are Seabrook people more than anything. There are a lot of pre-existing non-conforming lots that have been owned by family people for years, created well before zoning. Some that don't have road frontage. If you choose to adopt, and what you have to say carries a lot of weight and when people see "recommended by the Planning Board," chances are they are going to be accepted. And I hope everybody sees and understands how devastating that could be to a person that has a back lot and can only give one building permit because it doesn't have road frontage. Even though it could be two acres in size, if it doesn't have road frontage to the back parcel, you're going to combine that lot and there are many lots in town that will be affected. You have to think about what you are doing and allow existing lots of record to stay in tact.
Robert Moore, 9 Moores Lane: I assume we're grouping these all together? I don't see any problems with nonconforming uses or structures. The only non-conforming lots we have in this Town are back lots that do not have frontage. That is spelled out in Article VI Dimensional Requirements (Table 2), look at footnote #1: [1].This requirement shall not apply to lots of record that were recorded at the Registry of Deeds prior to 1974. On lots of record with less than the required lot area, no more than one dwelling unit is permitted.
Lots of record are exempt from minimum dimensional requirements. So the proper terminology is sub-standard lots of record. Substandard meaning it does not comply with today's standards as per lot area or frontage requirement. The only time to use nonconforming use is when you are talking about something that doesn't have the required road frontage as in your definition of lots of record. If you take away that lot of record definition, which you would have to do if you adopt this definition, what would happen to you is you are taking away the protection for all of us for future zoning changes. Anybody that sits here and has to put up with a frontage increase, or an area increase, you could all of a sudden be a non-conforming lot under that definition. If you have a nonconforming

lot, if you want to put up a fence, you have to go to the BOA. Three things that control the growth rate and the fairness of the lot of record gives to everyone in this town.
Do not change the prohibition on mobile home parks or apartment buildings. You are talking about substandard lots of record. If you were going to group these together, don't do it. Take out the nonconforming lot. The other two are fine. You are in direct conflict with your lot of record with this definition here.
Foote: could I ask what would you give for a definition for a lot that currently doesn't exist, it's just a proposal on a plan and they go to the zoning variance board and the ZBA writes a variance allowing them to create a lot that does not conform to the minimal dimensional requirements? Is that a nonconforming lot?
Moore: no. Your zoning already allows for variances and once you are granted a variance, you conform to the system. Once you get the variance you are conforming. You need to get rid of the idea that something is nonconforming just because of its size or frontage requirement. Anything that conforms to the zoning requirement and procedures is conforming.
Foote: so it's a lot created by variance?
Moore: it's a lot created by variance because it doesn't have enough frontage, or enough area.
Foote: we do look at proposals that have variance created lots and all we can do is accept because they have variances for every single lot.
Moore: this board of adjustment has gone way beyond the scope of its authority. You have to be reasonable. You have to follow the spirit and intent of the ordinance. The terms are substandard lots of record, nonconforming lots, and back land. Variances are not nonconforming, they are substandard. They have created another substandard lot.
Foote: you recommend we throw out nonconforming lot and use that definition as substandard lot of record
Moore: no get it out totally. You'd have to remove lot of record and then put in nonconforming to do it properly.
Foote: any other members have anything to say?

Motion: Sanborn To strike nonconforming lot from the definitions

Second: Himmer Unanimous

Foote: that means we need extensive rewriting of Item #4. But I'd like to discuss it so that we can cover everything that might need a rewrite so we can cover it all at our next public hearing. So item #4) "Replace Article XIV *Non-Conforming Uses* with the following:ARTICLE XIV - *Non-conforming Property* **A - Expansion:** Non-conforming uses and non-conforming structures shall not be enlarged, expanded or extended, nor changed to another non-conforming use. **B - Cessation:** If a non-conforming use ceases for a period of one year, all subsequent uses shall conform to the terms of the Zoning Ordinance. **C – Restoration:** Nothing in this ordinance shall prevent restoration within one year and continued non-conforming use of a building that has been damaged by fire, water or other casualty **D - Merger:** If two or more adjacent lots in the same ownership do not meet the dimensional requirements of this ordinance, the land involved shall be considered to be an undivided parcel for the purposes of this ordinance."
Preston: I'll start with merger. I have a problem if you owned two deeded lots one in front of the other, a back and front lot. This means the town wouldn't consider that back lot a buildable lot, they'd erase the lot line and make it one lot?
Foote: correct
Preston: I wouldn't agree with that at all. For the purposes of this town, if I owned a lot and I wanted to leave a piece to my kids and it's two acres and it's out back and I could grant them an easement across the front of my driveway, and let them have a separate lot and put two houses on it. I don't think there are that many lots that would fall under this.

Motion: Sanborn To strike merger

Second:

Foote: perhaps we could ask Tom, our Town Planner, he's the one who came up with this, and it's not to be critical or anything, a lot of these proposed zoning ordinances we realize the first time through they are there to begin the discussion so we can hopefully see all the sides and work out something that will be fair and equitable to everyone without leaving loopholes that someone can jump through because we did not realize something might happen. None of these are intended to harm anyone; they are to begin the discussion.
Morgan: Henry's eloquent speech has already persuaded me to scratch this. This came on the radar screen six months ago and I got the impression at one of our meetings that the assessors are already engaged in this practice. I haven't talked to the assessing department to know whether they are or aren't' but that's where it came from.
Foote: I do know from brief interaction from the assessing office, but on the beach there are two lots with a large house that's built that covers both lots and goes over the top of the property line. In those instances, the assessing office has drawn a squiggle through the bordering property line and the assessing office considers that one lot as opposed to two separate lots because if they didn't then both lots would be in violation because they have a house straddling that and they wouldn't meet setbacks
Morgan: the merger would be absolutely inappropriate for the beach. But we're not talking about the beach.
Preston: if you have a front lot with your residence on it and you have a separate back lot that doesn't have frontage, are they just billing that as one lot?
Garand: no, two tax bills.
Morgan: D is a new element. I think we'll do well if we clarify existing regulations.
Foote: so go back to
Garand: what is wrong with the change in nonconforming use that's existing right now?
Foote: what is existing? A nonconforming use may not be changed subsequently to another nonconforming use of the same premises, nor may the nonconforming use be expanded beyond that which existed upon the adoption of this ordinance nor resumed after the lapse of one year. Uses cited in Article 5, Table 1 as permitted in Zone 3 are exempt from the provisions of this paragraph.
Preston: it says basically the same thing.
Garand: it's all in one but the information is the same
Morgan: I'll point out one problem I see with the existing A&B. In A it says you may not resume it after a lapse of one year and then B goes on to say that land or buildings that are idle or empty, they are grand-fathered. At first glance it appears to be a contradictory message. I think it would be a better ordinance if we were clearer about that.
Foote: I have a problem with what we currently have as item number B. If it's a nonconforming use, to say that if they are idle and not put to any specific use, they'll be considered conforming. If it's nonconforming, just because you are not using it, how can it be considered conforming?
Garand: they are saying the use is nonconforming. If you don't use it for a year you have lost your rights to use it
Morgan: and yet B says you're grandfathered
Foote: if you don't use it for how long it becomes conforming and you can jump in and do a non-conforming thing and something that's non-conforming because it was vacant for a year and all of a sudden it turns conforming
Morgan: ideally, we'd have an ordinance that a resident or property owner could come in and they'd know where they stand. Black and white, simple.
Evans: I would see a problem if I lived twenty years next to an idle lot and then have it; I think that falls under changing the rules after the fact. I think people ought to know where they stand.
Morgan: paragraph D is another problem. It says: **D - BOA Approval Required:** Authorization must be obtained from the Board of Adjustment before restoration of nonconforming property may be undertaken when such restoration involves structural or architectural changes in the building or changes in the use of the property. The problem is when you go to the BOA; they need some criteria in order to make their decision. BOA is in the business of granting variances, special exception, and administrative

appeals. It is not a good section in the ordinance where you throw this at the BOA and they don't know on what basis to decide.
Foote: so that should just be totally removed?
Morgan: I'd say you have a problem with the way it is worded.
Foote: what we are intending to do is remove the entire Article XIV Non-Conforming uses and replace it with Article XIV –Non-Conforming Property which spells it out fairly simply as far as nonconforming property as far as expansion, cessation and restoration whereas the current has a lot of vagaries and contradictions. So I think you decided to rewrite article XIV rather than try to tweak our current.
Morgan: with the exception of merger, I tried to capture the essence of XIV and reduce it down to fewer words and plainer English. One issue that I was able to figure out is what exactly are your grandfathered rights if you have an empty building or one where a nonconforming use ceases for a year?
Moore: once you've lost non-conforming status, anything from that point on has to be conforming.
Foote: if you start to use the property again it has to be a conforming use.
Moore: once it has been vacant for a year, they have to go to a conforming use. They cannot do a nonconforming use.
Preston: I don't have a problem with proposed A B & C. I have a definite problem with D.
Morgan: I think it is an important issue on how to handle vacant buildings and I think it's something you should give some thought to before you jump on this proposal. You could be taking away rights of people who have vacant buildings.
Foote: haven't we always if a building is vacant for a year or longer, when they begin to use it again they have to bring it to conforming regulations?
Garand: it depends on what the use is. If it was a commercial use that was there prior and they are not changing it, then in some instances we've allowed them to continue. Just like with Baker's Vet Clinic. There was a chiropractor there and we let them go in because it was a similar type use, commercial so we didn't require a full site plan review. It's per the Board. All changes are brought to the Board for review.
Foote: but in the commercial zone that's in, it would have been a conforming use anyway. It's not that it went from nonconforming to another non-conforming
Garand: it depends on how long it's been sitting idle and how much the rules and regulations change
Foote: but it still would have been allowed in that zone as a conforming use. I think what this is addressing is if it is an nonconforming use and it has been idle for a year or twenty years, can it be allowed to reopen up as a nonconforming use again? If it's the exact same use or similar use, yes; but, if it changes to some other type of use, no?
Garand: the way it's worded here in B it says, "land and buildings that are idle or not put to any specific use shall be considered to be in a conforming status." So if they wanted to go in and reopen, they would be starting from ground zero and have to go through all the boards because they have lost their rights to use that property under nonconforming standards.
Foote: that's where I get confused in our current definition B. "Land and buildings that are idle or not put to any specific use shall be considered to be in a conforming status." Does that mean while they are idle, they are conforming? So if they become non-idle, occupied and producing something, are they conforming because while they were idle they were considered conforming so all of a sudden you could start using it?
Garand: if it's been more than a year, basically they are gone.
Moore: you can't come back with a nonconforming use after a year; it's just as if that lot was vacant, everything is gone. Anything you do from that point forward has to be in the zoning allowed in that zone as a conforming use.
Foote: so if we stay with our old article XIV
Moore: Tom's new article XIV other than merger is fine. It's clear enough.

Evans: I have a question about the old paragraph E where it says Permits issued prior to adoption of ordinance. You don't have a similar paragraph in the new Article XIV.

Foote: Paragraph E reads: **Permits issued prior to adoption of ordinance:** Any industrial buildings or structures, whether or not in Zone 3, for which building permits have been issued prior to the enactment of this ordinance, shall be considered as conforming for purposes of this Article only.

Evans: has that gone by the wayside? Is this something that was put in place when we first adopted zoning?

Moore: this was added. But obviously if you had the permit in before the ordinance change you can continue with whatever you got the permit for so that's a moot point anyway. Unless this was designed to just talk to industrial uses in Zone 3.

Morgan: I was puzzled by paragraph E, Peter. I can't remember it ever coming up at this PB. And then I tried to find when it was adopted and I couldn't find that either.

Foote: what we are here to decide tonight is whether we want to propose scrapping out current Article XIV – Nonconforming Use and replace it with a new Article XIV – Nonconforming Property which nets it down to three very simple instructions that cover expansion, cessation and restoration of nonconforming property. Any other board members have anything to say towards this? Any other members of the audience?

Bruce **Brown:** I came here with the specific purpose of speaking about the merger and it appears you are going to take that away but the part of lots of record and the grand-fathered lots was sacred with the people of the Town when they voted to reinstate Zoning. Historically it has been a sacred trust with the people. I think you are doing the right thing by not going ahead with the merger of the lots.

Foote: We are ready to take action on this proposed article.

Motion:	**Evans**	**Replace the current Article XIV – Nonconforming Uses with Article XIV – Nonconforming Property, Paragraphs A, B & C, striking paragraph D – Merger.**
Second:	**Preston**	**Unanimous**

Foote: next item is #5. "Adopt a Building Code pursuant to NH RSA:675 by incorporating the entire text of Article XXI of the Zoning Ordinance, and designating that as the Building Code of the Town of Seabrook." It is better for the Building Code to be its own Chapter as opposed to being mixed in with Zoning Regulations. Basically this is a housekeeping chore, giving it it's own chapter. Anyone on the board have any questions, comments, or concerns? None.

Any members of the audience have any comments? None. I believe we are ready to act on this.

Motion:	**Evans**	To adopt a Building Code pursuant to NH RSA:675 by incorporating the entire text of Article XXI of the Zoning Ordinance, and designating that as the Building Code of the Town of Seabrook.
Second:	**Preston**	**Unanimous**

Sanborn leaves at 7:15 PM.

Foote: Number 6. In Article VI (Dimensional Requirements) of the Zoning Ordinance, add a new line as follows:

Minimum Buffers	**Zone**	**1**	**2**	**2R**	**3**	**4**	**5**
No-cut, no-disturb buffer adjacent to ponds & streams:		25'	25'	25'	25'	25'	25'

This was prompted by two or three incidents over the past two years where there has been clear-cutting right to the edge of a pond or streams. We currently have a 50' setback for a primary building structure and a 10' setback from wetlands but we do not have anything that truly protects are ponds and streams and there is evidence that a no-cut, no-disturb buffer of 25' or more goes a long ways toward preventing land-borne pollutants from getting into our water ways.

Preston: as far as streams, does that include marsh streams?

Foote: what do you mean by marsh streams?

Preston: where the marsh fills in at a high tide?
Foote: yes, but I don't know what there would be to cut or disturb within 25 feet of a salt-marsh stream. You'd need a wetland permit to get in there anyhow.
Preston: let's go with Fantini's, they have four house lots there and say there was a stream that came up to the back of that. They would not be able to go within 25 feet to mow their lawn if it was there.
Foote: and that would be in the shoreline protection area and they wouldn't be able to mow anyhow.
This would prevent from new developments coming in and clear-cutting right to the edge of the pond and leaving no buffer. It would prevent clear-cutting right to the edge of the stream and leaving no buffer and realize that these are zoning ordinances, if an individual had a good and just reason as to why they should be able to disturb that buffer, they could go to the ZBA, plead their case and the ZBA could give a variance to disturb that buffer area. Anyone else on the Board have any questions or comments?
Evans: part of me wonders if 25 feet is enough but then another part of me worries about that tree in that zone that's leaning over and might fall on your house. I don't think selective cutting, logging
Foote: I would presume the Code Enforcement Officer is fair enough that if he realized a tree is in danger of falling on someone's house, that if the tree were cut, there would be no violation of this regulation. This is to prevent someone building new or moving into an existing house and saying I want a wide vista view, I don't care what it's going to do to the terrain. As far as your question about is this far enough distance, there are multiple documents written by the State, and EPA and they recommend a minimum of 100 feet to 300 feet, no cut, no disturb to protect riparian buffer areas. They also recommend 300-500 feet away from wetlands. And while that may be reasonable in a less populated area or in another state, in this Town that is more than 60% saltmarsh, pond, stream or wetland that would be unfair and prevent any future building.
Preston: what is our setback on wetlands? I don't have a problem with 25 feet, but I think maybe we should ease into it because this would be all new. We have nothing in there now and make it ten feet.
Foote: if you want to drop it to ten feet you might as well throw it away.
Evans: it would also prevent people who didn't like a particular tree from replacing them with something that requires less maintenance and destroying the virtuous qualities of the buffer between active residential use and the pond or stream.
Preston: so it's 25 or nothing?
Foote: the problem with ten feet is that as they cut down the trees and stump them all the rest of the trees topple into the stream or pond anyhow.
Garand: by the time you work up a banking on a stream or a pond, basically you are six to eight feet out of the water by the time you get to the top of the banking. You're only talking ten to fifteen feet in for the no-disturb zone. You're saying don't take the root ball out; look at the infrastructure of the banking.
Preston: let's take the stream along Walton Road and the crossing. If you have 25 feet, scrub is doing to grow up there instead of having a nice looking stream area.
Foote: that's a drainage swale; it's not a stream or a pond
Preston: doesn't it run out of Vern Small's pond?
Foote: Vern's pond goes underneath the road and out behind a couple houses
Moore: it's just seasonal runoff
Garand: it's just a seasonal drainage ditch, not a brook.
Foote: this doesn't apply to drainage swales; it applies to existing ponds and streams that flow year round. For instance, Cain's Brook, Rocky Brook, Shepherd's Brook, Willey's Pond, Partridge Pond, the Hampton Falls River. It does not apply to drainage swales. It only applies to existing brooks, streams, and ponds and I don't believe that it would be applied to perennial streams that flow for three or four months during the spring and fall but dry out during the summer. That's not a true pond or stream.

Brown: I have a few questions here. Would Vern be able to mow down to his pond as he does now?
Foote: if he currently does it, yes.
Brown: the state has certain setback from the marsh but you can clear brush and so forth but not a certain size tree, is that right?
Foote: any clearing requires a permit if you are going to do activity in the shoreline protection zone, which actually is 250 feet from the edge of mean high water
Brown: I thought it was 100.
Foote: different distances apply to different activities but the whole Shoreland Protection Zone covers 250 feet depth; within that zone, you can put in-ground septic systems up to 100 feet of the shore; you can build your primary building structure within 50 feet of the mean high; you can put a secondary building structure to within 25 feet; part of this comes out of the shoreline protection zone, they state that within 50 feet the intent is to leave a well-vegetated area. You cannot stump. You can do minimal thinning, but you cannot just totally clear-cut.
Brown: That's what I thought, but I thought you could take brush and so forth up to a certain size had to be left. Another thing is the view tax. Suppose someone has a view and they are being taxed for that and now all the bushes and weeds grow up and block that view. It works two ways.
Foote: and I believe this might require more definition and it only shows up in the Dimensional Requirements section of our ordinance and I think it requires a better definition as to what no-cut, no-disturb buffer truly is. The intent is not to prevent an already existing situation that he cannot mow the lawn down to the edge of the pond that he has to allow scrap shrub to grow. The intent is to prevent new development or a new homeowner from stripping an area next to a pond, stream, or salt marsh. We don't want clear-cutting. I think Code Enforcement or Conservation might be asked to evaluate infractions. It's intended to create a buffer without infringing on rights.
Brown: One other point: suppose you have a Wetlands permit to cross a stream, could you cut trees?
Foote: I believe it would be permissible. That would be something we would have to add to the definition that an approved permit by State and/or Federal authorities would supercede the restrictions for the
Preston: affected areas
Erik Saari: existing facilities, highway embankments, dams, retaining walls, Home Depot, the Lowe's embankment for the detention pond, these existing facilities will need maintenance in this buffer zone. You may want to leave a provision that exempts maintenance activities from the provisions of this audience. So if you don't want trees around a detention pond berm, you can cut them. You need to allow people to maintain what they have before it becomes a problem.
Foote: thank you. That's a good suggestion. This is just the beginning to work out the terminology so that by the time it gets to the Town Warrant it'll be something the people can agree on and support.
Preston: can I make a motion to postpone this to the next meeting when it has clearer language?
Foote: we are going to have to public notice it again because we are changing the definition substantially, so we will continue this to December 20th. On the sixth we will have something written out for us to talk about and polish and then we will public notice it for its second public hearing on December 20th.
Item #7, Add the following to Article IX ("Parking): "On non-residential premises, vehicle parking shall only be permitted on parking spaces that are depicted on the approved site plan."
Preston: who is going to enforce it? What is this trying to do?
Foote: the purpose of this is because as you know, in some of our industrial subdivisions and sites they are condoing the sites and what was initially intended with maybe six to nine parking spots we now have thirty-five to forty employees on site parking in the grass, down the side of the roads. This is the intent to keep the parking in the parking area and if a person is thinking about renting, leasing or purchasing a condo with insufficient parking, they better bring that into consideration before they occupy the building.

Preston: I have no problem with that, I know what you are saying and if you drive up Ledge Road, you'll see it. But you didn't specify on plans that are approved as condos or anything else. You painted everyone else. Chili's for example might tell its employees to park on the grass so we leave the spaces for customers.
Foote: but if that grass is part of the green space on Route 1, they shouldn't be.
Preston: say it wasn't.
Garand: on non-residential premises that's saying down at the beach if it's not a defined parking area then you get a ticket; it should say per site approval but I' m not sure how to word it;
Preston: if it's private property why is that our problem?
Evans: to me it boils down to an issue of public safety; if people are parked in places that they shouldn't be, it impedes access of emergency apparatus
Preston: and it could be dealt with on a case by case basis; if you get into an eight unit condo and you use your two spaces and your two visitor spaces and the other seven units cover the parking lot, that isn't a Town problem; that is the condo association problem
Garand: it becomes a Town problem when they are parking down the road
Preston: down the road's different; if they're parked on a public way you can deal with it; but that shouldn't be addressed in the zoning ordinance. It's up to the condo owners to enforce their own property rules.
I recommend we scrap it.
Foote: anyone else want to speak to why we should keep it?
Garand: we need to define parking spaces for industrial site approval
Foote: intent of this is after the fact repair of site plans gone awry
Preston: what do you do now that the building is complete and people are calling the code enforcement office? It's private property you have nothing to do with it. And the police have nothing to do with it. If there is a specific problem…
Foote: when it's in the public right-of-way, fire lane, or access
Garand: instead of going to this extent, we could set a number for industrial requirements that would clarify this issue. That's where it's running amok is industrial site plans.
Foote: site plan regulations are vague and parking shall be determined by the Board and the applicant tells us one use, gets the approved plan, builds the building and does another use. So we recommend scrapping #7.
#8) Add the following definition to Article II of the Zoning Ordinance: "**Substantially Complete:** A project is considered **substantially complete** when all utilities and stormwater infrastructure are installed, the ground surface is stabilized, and the foundations, outside walls, and roof are constructed." The reason we need a definition for substantially complete is because a lot of the state regulations and our own zoning regulations refer to "substantially complete" and we have no definition. So this is our first attempt at defining "substantially complete."
Garand: I agree with everything except the outside walls and roof because that is past substantially. It's almost complete. The site should have requirements for site, drainage, and foundation and stabilize site.
Foote: so you want to skip outside walls and roof? Should we say any areas indicated to be paved should be at least the first layer of pavement? Ground stabilized could mean packed gravel to the developer. While that is stable to drive on, it's not stable for stormwater runoff,
Evans: I like the definition. I think the concern is more to do with the security for the site and "substantially complete" with respect to that would mean the items covered by the site security have been completed and there is no need for security for those items because they are done.
Preston: the infrastructure, the road
Evans: drainage
Preston: tough to do one lump sum on substantially complete because if it's an industrial building, it's going to be different from a subdivision because the security on the subdivision only deals with the infrastructure and the road and not the lots, houses and foundations.

Garand: take the building out of the equation and just the lot development should be addressed
Preston: catch all of things that the security covers because that's all that we're concerned about
Foote: but if we do everything that security covers that includes monumentation and digitals
Garand: leave it to drainage, infrastructure, road and leave building out of the equation and final requirements for as builts and digitals; substantially complete needs to hold developers accountable so work is done in a timely fashion.
Foote: so how about "when all utilities, stormwater infrastructure is installed, ground surface stabilized and any roads if applicable are to the binder course"? We've seen stormwater infrastructure go in and the road is years behind it.
Garand: I think ground surface stabilized covers that because you are saying no erosion will occur. If you get the parking lot to a hard pack and everything else is stabilized around it, the site is self-sufficient.
Foote: some contractors may say packed gravel is stabilized, whereas for stormwater and runoff and the fines and the silt that are going to wash off that packed gravel and fill the stormwater infrastructure, I don't consider that substantially complete.
Evans: aren't we the arbiters of what is substantially complete currently? It's difficult to pin it down in one neat sentence and there are many exceptions. It may make sense to leave it on a case-by-case basis and leave it to the Planning Board to decide what substantially complete means for the particular case.
Foote: I think we need guidance so there is continuity from board to board, otherwise, depending upon the case and the mood of the board for the night, they might decide one thing is substantially complete when it's barely begun. I don't think we can leave it at the whims of the Board to decide.
Preston: could we continue this for more language changes and definition on December 6th?
Foote: we've got to work it out because I don't want to keep public hearing notice it every time we change a word. We're almost there and I think we ought to finish it tonight.
Garand: I think you are just striking out foundation, outside walls, and roof.
Foote: and add binder course
Preston: I have no problems with either of those. It still comes down to the Planning Board on a case-by-case basis. It just gives a little guidance.
Garand: gives a contractor a place to start and we can still say it's not substantially complete
Foote polled audience members for comments, concerns, and suggestions. No response.

Motion:	**Preston**	**Adopt adding to Zoning Ordinance, Article II: Substantially Complete: a project is considered substantially complete when all utilities, and stormwater infrastructure are installed, the ground surface is stabilized and all pavement binder course is constructed.**
Second:	**Lowry**	**Unanimous**

Five-Minute Break Taken.

Board resumed meeting at 8:00 PM.
Foote: Next item is Capital Improvement Program 2006-2011 final acceptance. Has everyone had a chance to review the changes?
Preston: a lot of them were just rescheduling to spread cost over a number of years
Foote: the Planning Board added projects looking forward to traffic concerns. We can approve this tonight if the Board is pleased with the changes so we can get copies out to Department Heads, it's late for the Selectmen for their review of the budget, but maybe the Budget Committee will read it before they continue on with their analysis of the budget.

Motion: Preston To approve the Capital Improvement Program 2006-2011

Second: Lowry Unanimous

Planning Board members sign signature page for CIP.

Public Hearing opens for case **#05-52** proposal by Harley Real Estate Development LLC for site plan review Lot 70-Ledge Road, Tax Map 5, Lot 8-70.

Erik Saari, Jones & Beach Engineers: This is a project that was approved two years ago on Ledge Road. Mr. Bagley, the developer, let his site plan approval expire and has decided to amend the plan slightly, which is why we only added two sheets. Nothing changed in terms of the building, utilities, drainage, nothing changed. That's why we didn't bother submitting everything, as we didn't want to waste the tech committee's time. The site is located with Poland Springs up here and Border Winds on the right. This is Karpenko & Carbone's in the back. The proposal as it was last time is for a 25,200 square foot building to be cut into condos with all individual water and sewer services; the design of the utilities didn't change a bit. Lighting is all wall packs and that didn't change. The only thing that changed is the addition of parking on this side. He felt this parking was not enough for what his needs were so he added 21 spaces.

Foote: he didn't expand the square footage of the building?

Saari: he didn't expand the square footage of the building or anything like that. Did not expand the footprint of the impact to the lot either. It did change a little bit of grading. This edge pushed off toward the pond a little bit, which made the pond smaller and added some impervious surface to that. However, this lot here recently came in with Millennium Engineering and they did their own drainage design. I had a concept on here pretty much paving the whole lot or whatever I could pave that was to be handled by Charlie's pond. Now that that requirement is alleviated because Millennium did its own analysis, pond, and system, there is additional capacity in the pond. The pond got smaller but it didn't need to be as big as it was. As a result of that we submitted a waiver request for the drainage analysis. I did some quick calcs to make sure and it didn't change.

Preston: nothing has changed on the lot you said, but it has changed

Saari: the only thing that has changed is this edge of pavement and we added some.. smaller pond, yes, minor grading revisions. The pond is where it was.

Garand: prior to any judgment or ruling or Board we should send it out to the engineer

Saari: it's already been reviewed once before

Lowry: but you've got changes on it

Garand: the pond is smaller now, the calcs for the parking, just to make everything is covered for the Planning Board, it should go to review.

Foote: I notice on both sides of the lot there are grading and drainage easements. One in favor of lot 8-60 and one in favor of lot 8-70. Were those existing on the original plan?

Saari: yes. Like the rest of Ledge Road, all the site plans meld together. The drainage ditch is down between them so the side slope of this one will meld with the side slope of the next one.

Foote: the reason I question is because you were talking about the smaller lot on Ledge Road to the east that Millennium has come in with. It could be that it was there but I do not remember seeing, on that parcel any indication of grading and drainage easement encumbered on that lot for the favor of this lot and I believe that the building goes very close to what is now indicated as grading and drainage.

Saari: I believe it should be on his plan. I will call Mr. Boyd and find out. It's minor grading that shouldn't affect his site plan at all. If anything he's filling onto us or at least right up to the lot line. We're sloping down, he'll slope down to us, and it's something that can easily be addressed.

Foote: at the very least that plan must show the easement that's in favor of this parcel.

Saari: that's right, it should.
Foote: and conversely there is a cross grading and dredging in favor of lot 8-80 which is the lot above it?
Saari: that was something to allow this lot to tie into this pond. Millennium did its own drainage and now he doesn't need to tie in anymore. So we pulled that out.
Preston: I think it should go in front of tech review and the engineer before we go any further on it.
Foote: I agree because it changes the amount of impervious surface, size of the detention pond.
Lowry: I consider it a major change.
Foote: the first pond dropped to 50, this one only goes to 52
Garand: I had Dave Price from DES with me on a site walk. You have an application in to DES to change this.
Saari: we did file for an amendment to site specific and I have a copy for the Board.
Garand: has that been approved at this point?
Saari: no, it has not been approved, but they have received it.
Garand: we can't take any action until that point also because of the amendment that you are doing.
Saari: it would be a conditional approval.
Garand: Price has been on the site several times because of misuse of the
Saari: the construction sequence. He wasn't following that, but now he's back on track.
Garand: he is back on track, but the infrastructure is there but there are no pipes leading to it so you have a lot of work to do to stabilize. On the areas where there are no construction changes and the drainage is built in the back portion, he should really tie that all together before he moves any further.
Saari: I agree. He should be doing that anyway.
Foote: we have a motion to continue this until it goes to Tech Review. Our next meeting is on the 21st. Is it too late to get in or will it go to the next?
Saari: if you'd like a drainage analysis and you are not going to entertain the waiver request, then there is no way we can get it done by then.
Foote: continue this to the next tech review on December 12th; we'll continue this hearing to December 20th

Motion:	**Preston**	**To continue case 05-52 to December 20, 2005 at 6:00 PM and to have case 05-52 reviewed at 12/5/05 Tech Review**
Second:	**Lowry**	**Unanimous**

Saari provides copy of correspondence to State DES asking re-issuance with amendments.
Foote: next item is case **#04-59** Proposal by Border Winds LLC to erect a 2,400 square foot contractor's job shop at 7 London Lane, Tax Map 5, Lot 8-10.
Saari: we are requesting a continuance on this plan as there are outstanding issues on the site specific trying to get the permit. The site plan may also be changing so we may want to amend that.
Foote: we have January 3rd and January 17th.
Saari: we'll go to the 17th.
Foote: next item **#05-13** Proposal by GRA Real Estate Holdings, LLC, for a site plan review to expand site at 27 & 39 Stard Road, Map 4, Lots 9 & 11. Henry Boyd of Millennium is representing this case and asked me to continue until our first meeting in January. So that will be continued until January 3, 2006 at 6:00 PM. Now back to **#05-51** Proposal by 286 Seabrook Realty Trust, Lori Dunlap, Trustee for site plan review to add a 1,000 square foot structure for walk-up pizza at 418 & 418A Route 286, Tax Map 17, Lots 44 & 44-1. So we have already looked at this?
Saari: this was revised pursuant to your requests. You are already familiar with the plan. One of the requests was that we apply for a wetland permit to allow for construction within a 100-foot wetland tidal buffer. The proposed building is on gravel and paved surfaces to begin with but we did file for the permit pursuant to state regulations and here is a copy for the records.

Foote: when was this dropped off to Town Clerk? We never received one in the Conservation mailbox for review on Monday night.
Secretary: she just handed them out on Monday afternoon.
Saari: there was an issue with the sign on the adjacent lot. The Board asked that it be removed and it has.
Preston: I have a comment on that: was that a non-conforming sign?
Garand: there were showing the other sign on the adjacent lot. You are not allowed off-site signage.
Preston: it would be grandfathered?
Garand: no they were showing a brand new sign. The sign that is there is a grandfathered sign. When they join the sites together, they are allowed only one pylon sign, and this is an adjacent site so there is no off-site signage allowed.
Preston: either it's a grandfathered sign or not; if it's there it's there. Billboards you are allowed to put new information on, same as a sign off-site.
Garand: the plans depicted signage for this use, which you can't do.
Saari: the board asked that the parking calculations be removed and they have been. Construction sequence was added to sheet D1. A spelling error was corrected. We added a revision to the drainage. We've added no impervious surface to the site plan at all and as such I believe there is a waiver request in front of the Board. There was a request for roof drainage to be piped into a leaching facility so we have taken some roof leaders and dumped them into a leaching drain manhole which will decrease the amount of run off from the site because all the clean water from the roof will be infiltrating directly. There is a note that goes along with that. Dry sprinkler system was a question that was brought up and the architect is looking into it and if it's something they can do, need to do, should do, they will. If not, it'll be a normal system.
Garand: it's actually a wise system since the building is seasonal they would only have to heat the small room and it will be very cost-effective.
Saari: aside from that. We need some action on the previously requested stormwater waiver. The amount of impervious and gravel surfaces is not changing and we are infiltrating the roof, which is a good chunk of the site there will be less runoff from the site. There is removal of impervious surface draining into the marsh.

Motion: Foote **To waive the drainage calculations on case #05-52 because they are connecting roof drainage to underground infiltration there is going to be less leaving the site than prior and the building addition is an area that was previously paved.**

Second: Preston **Unanimous**

Foote polled Board and audience. No questions or comments from anyone.
Saari provides copy of DOT application for change of use.

Motion: Preston **To approve case #05-51 conditioned upon receiving site security of $5,000.00 and the approved wetlands permit or a letter from DES stating that a permit is not necessary.**

Second: Lowry **Unanimous**

Correspondence: letter received tonight from Douglas Hersey case #03-23, 38 Rocks Road, Map 7, Lot 116 requesting a one-year extension because the process is taking longer than expected. Plan on finishing within the upcoming months if the extension is granted. It was a two-lot subdivision that allowed single-family residences.

Motion: Preston **To grant an extension for one year on case #03-23 to November 15, 2006.**

Second: Lowry **Unanimous**

Foote: you also need to extend your site security through the treasurer to the expiration date we gave you.

Next we have a site security release request for Provident Bank. We have a signoff from the water superintendent, Michael Jeffers; he has no objections; letter from Warner Knowles to Fred Welch that states please be advised that no water or sewer exists on Provident Way. John Starkey writes that this project substantially conforms to the Planning Board requirements. I do not know if an as built drawing has been submitted to the Board yet.

Motion: Preston **To return security of $21,000, plus interest, to Provident Bank (case #04-15) on receipt of as-built plan in proper digital format with layers identified.**

Second: Lowry **Unanimous**

Now we have a request for security reduction on Gove Road (Jean Drive), case #04-07. Bottom line is we can refund $54,293.

Lowry: how much will we be holding?

Foote: $89,982.00 will be retained.

Motion: Preston **To reduce security on case #04-07 by $54,293.**

Second: Lowry **Unanimous**

Next we have a letter from Anthony Rizzo from the Gateway Beverage Center. He is also asking for an extension on his site plan. It appears he has run into difficulty with the State Fire Marshall and adhering to the fireworks code. He's asking to extend his plan for, he doesn't say how long.

Preston: when does it expire?

Foote: case 03-48 and the original notice of decision was dated January 20, 2004 so it would expire January 20, 2006. He also has to extend his security.

Preston: I would say that a condition of his extension that starting on January 20, 2006, his site security must be posted for the final year.

Motion: Preston **To grant a one-year extension for case #03-48 to January 20, 2007 conditioned on the Planning Board receiving proof of posting of security of $15,000. by January 20, 2006.**

Second: Lowry **Unanimous**

CBAN LLC is requesting an extension to the above referenced project and conditional approval of site plan decided on September 20, 2005 until such time as we have been granted NH DES site specific permit. We approved it in September and they are already asking for an extension. They figure site specific is not going to get to them in 18 months?

Secretary: it's because we granted one to Scott Mitchell for putting up his security; they want to extend the whole approval so they don't have to meet the conditions.

Foote: our approval says that they must meet all the conditions within 90 days or the site plan is revoked. So they are asking, but they are not saying how long they want it extended for, it's date and time uncertain, we can't do that. They knew they needed a site-specific permit; they should have applied in a timely fashion before they took up our time.

Garand: it's four to six weeks for review for site specific so basically when did they put the application in?

Preston: write back and say what are you looking for and what is your timetable?

Foote: so it's due to expire December 20, 2005. So if they just said extend it until March 2006, we'd have a date to shoot for not just leaving us hanging until DES gives their permit.

Garand: do you want to just extend it 90 days so we have a time certain

Evans: what is the purpose of the 90 days deadline?

Preston: so they wouldn't have those conditions out there hanging and then we forget about the conditions and fifteen months down the road they start building
Foote: we've got some plans that are four and five years old just sitting down there waiting to get built.

Motion: Preston **To extend the plan approval date on case #04-60 an additional 90 days to March 20, 2006.**

Second: Lowry **Unanimous; Evans abstains**

Secretary: do you want me to collect an additional fee if we have to reissue this packet?
Evans, Preston, **Garand:** absolutely, they are requesting the extension, not us.
Foote: just give them a letter of extension with the new date to add to their packet. Letter of information about Bowley Way pump station from Warner Knowles to Fred Welch for our information. Letter from Fred Welch writing in regard to assessing department's memo about conservation easements. Easements are not completed in proper form or not recorded properly. Discussion followed as to whether Conservation or Planning should review this information.
Morgan: Is he saying there are technical defects in these easements?
Foote: another document is needed. None have a conservation restriction assessment application according to Scott Bartlett. Three properties do not have a recorded deed. One is the industrial site behind Ames. We know that went away. That plan is no longer there. Arliegh Green we have to follow up with because he gifted the Town 25 acres and proposed a conservation easement on an additional 30-35 acres so we have to track him down to make sure deed and easement are recorded before we can review his new case. The other is the Conservation easement behind Staples and landowner recorded something that no one in the Town had anything to do with. The majority goes back to the assessing office or to the Selectmen.
Preston: once we close out cases most of this should go away.
Foote: compliancy hearing is going to be December 13th 6:00 PM. A lot is just closing them.
Evans: I would like to ask the board if they would consider putting a provision in the Building Code or the appropriate Zoning Ordinance chapter to specify dry fire suppression systems in cases where fire suppression is required. Eliminates the need to flush out the piping, water breaks.
Morgan: is that already addressed in International?
Garand: you have a choice.
Preston: can we strongly encourage?
Foote: we can demand it as requirements of building or for site plan just like we require granite curbing.
Evans: my second item is that I miss Tom's executive summaries. I like the technical review, but I also like the little local flavor of Tom's notes and I'd like to propose we ask Tom to reinstate those.
Preston: I did like those because it was a quick synopsis cheat sheet.
Lowry: and we were able to get more out of the developers putting different things in the plans. I think it was very useful.
Foote: we can continue doing the tech review and ask you to write up a summary as you did in the past
Morgan: no problem.
Evans: and my last item is the length of the minutes. Forty pages of minutes isn't working for me. I'd like to reconsider going back to summarized minutes rather than verbatim.
Preston: you're going to have the disk from Channel 22 if you need to check what was said.
Foote: are you going to be saving copies, Carrie?
Brown (from booth): yes I will. One stored here and one in Concord. Lifetime.
Foote: could you provide a copy to the Planning Board to put in our records?
Brown: sure.

Preston: that's available to the public too, at a cost.
Secretary: are you authorizing me to summarize what is said at the meetings?
Morgan: some discussion is more significant and we'll trust your judgment.
Secretary: the public notice that you got in your packets, are we going to include that in the next public notice, do you want to change the wording, or even bother with it?
Board reviews Tom's write-up of allowing apartments over commercial. Board decides this is not practical.
Foote: minimum lot width and depth requirement and zoning boxes that aren't really there we just make them put them there: "In order to demonstrate the minimum required lot depth and lot width, lots in Zones 2R & 5 must be able to accommodate a 100' square; lots in Zones 1, 2 & 3 must be able to accommodate a 125' square" and remove the terms average depth and width from the table. Eliminate from "Article II, the definitions of Lot Depth and Lot Width shall be eliminated." This is for discussion on December 6th and Public Notice for the 20th. Also Route 286 Motel Condo is resurfacing. There has been a volley of communication between attorneys and if you wish to review this confidential information it's in the office for your review.
Preston: if you are even going to discuss issues like this, we should do it in Executive Session. Don't even bring it up here. Under RSA 91A we make a motion to go into executive session, talk about it and come out.

Meeting adjourned at 9:07 PM.

Respectfully submitted,
Patricia Welch, Secretary

MYLARS RECORDED		
2002-42	Hunter Logan Trust Seabrook Beach Village Hotel Condominium, 419 Route 286, Tax Map 17, Lot 47	D33280
2003-19	Azoury Family Trust site plan, 209 Ocean Blvd, Tax Map 26, Lot 91	D33281