

**Town of Auburn  
Zoning Board of Adjustment  
July 22, 2014**

**Present:** Jim Lagana, Vice Chairman, Mike DiPietro, Peggy Neveu and Elizabeth Robidoux, Members. Kevin Stuart, Jeffrey Benson and Robert Beaurivage, Alternate Members. Minutes recorded by Denise Royce.

**Also Present:** Chuck Joy, Alan Villeneuve and Jeff Porter, Conservation Commission.

**Absent:** Mark Wright, Chairman, Carrie Rouleau-Cote, Building Inspector.

Mr. Lagana called the meeting to order at 7:01 p.m. and informed everyone present that he would be chairing the meeting tonight in the absence of the ZBA Chairman, Mark Wright. Mr. Lagana proceeded by introducing the Board members and explained the procedure for tonight's hearing to everyone present.

Mr. Lagana elevated Mr. Stuart to full voting status for the first case which would be the Ramos continuation case and elevated Mr. Benson to full voting status for the second case which was regarding Maverick Development and asked Ms. Royce to read the first case into the minutes for the record.

**Case #14-06  
Richard and Sharyn Ramos  
530 Bunker Hill Road – Map 5, Lot 82  
Zoned Residential Two  
TABLED from June 24, 2014**

*Applicant is requesting a variance to allow the addition of an in-law apartment to an existing home within a Level One wetland setback (where 125 feet is required) and it's supporting addition to the leach bed in a Residential Two zone. (Article 5, Section 5.04(1)(a))*

Mr. Ramos informed the Board that Mr. Dingman would be speaking on his behalf. Mr. Dingman passed out copies of the proposed plan for the Board members to review and comment. At this time, Mr. Dingman began by reading the application into the minutes for the record. Mr. Dingman added that they asked for a continuation last month because he was unable to attend the June Conservation Commission meeting. Mr. Dingman then indicated that they were before the Conservation Commission on July 8, 2014 to get the approval from them to add onto the existing leach field as opposed to replacing it. At that meeting, Mr. Dingman explained that the Conservation Commission wanted them to move the leach field, however the existing leach field is not in failure and meets the criteria, and is further from the pond. The leach field was constructed in 1983 but had been dormant for quite some time. After some discussion at the Conservation Commission meeting, the Conservation Commission supported an addition to the leach field because it could not be replaced in kind. With this in mind, the Conservation Commission wanted a new plan showing the leach field outside of the 125 foot wetland setback upon failure of the existing leach field. Mr. Dingman pointed out that they were all in agreement with this decision. Mr. Lagana asked Mr. Dingman if he had a chance to review the Conservation Commission minutes for July. Mr. Dingman said no. Mr. Lagana reiterated what Mr. Dingman had said and that the Conservation Commission also added that

they suggested putting a caveat in writing in the deed that says a replacement will have to be 125 feet away and is that still the case tonight. Mr. Dingman said that they did not have a problem with making that a condition of approval. Mr. Lagana asked if one of the Conservation Commission members present tonight would like to speak tonight. Mr. Joy, Chairman of the Conservation Commission stated that they were fine with that.

Mr. Stuart asked Mr. Dingman how they were attached. Mr. Dingman stated that there would be a breezeway that would be fully enclosed so you could walk between the two. Mr. Lagana asked the Board if there were any further questions. Mr. Beaurivage asked what the age of the leach field was. Mr. Dingman said 20 years old. Mr. Benson wanted to clarify that in the meeting minutes it stated that the leach field was put in place in 1983 which makes the system 30 or so years old.

Mr. Kittridge of 260 Pingree Hill Road asked how big the pond was. A brief discussion ensued and Mr. Ramos believed it was about 14 to 15 acres.

Mr. Lagana asked if there were any abutters that would like to speak. None were noted. Mr. Lagana asked the Board how they would like to proceed.

***Mr. DiPietro made a motion to vote on the application as presented with the condition that the replacement septic system has to be put out of the Level One setback as shown on the plan indicated "4K Area" when needed.***

Mrs. Robidoux wanted to make a friendly amendment to the motion above by adding, "that the appropriate BMP's for construction of the in-law, silt fence and erosion control" be added. The Board agreed with the amendment. The motion was made as amended below.

***Mr. DiPietro made a motion to vote on the application as presented with the condition that the replacement septic system has to be put out of the Level One setback as shown on the plan indicated "4K Area" when needed and that the appropriate BMP's for construction of the in-law, silt fence and erosion control for Case #14-06, Richard and Sharyn Ramos, 530 Bunker Hill Road, Tax Map 5, Lot 82, seconded by Mrs. Neveu. Mr. Stuart voted to grant as he believes they have met the criteria, Mrs. Robidoux voted to grant as she believes they have met the criteria, Mrs. Neveu voted to grant for the same reasons, Mr. DiPietro voted to grant, and Mr. Lagana also voted to grant as the criteria has been met. The motion passed in the affirmative.***

Mr. Lagana thanked Mr. Dingman and the discussion ended.

#### **Case #14-08**

**Eric Mitchell**

**On Behalf of Maverick Development**

**Between Haven Drive & Pingree Hill Road, Tax Map 5, Lots 29 & 36**

**Zoned Residential One**

*Applicant is requesting a special exception to allow clustered residential development which is allowed by special exception in a Residential One zone. (Article 4, Section 4.06(3)(a))*

Mr. Lagana began by asking Mr. Febonio if he has given Mr. Mitchell permission to present on his behalf. Mr. Febonio said yes. Mr. Mitchell passed out copies of the plan for the Board to

review and comment. Mr. Mitchell explained to the Board and everyone present at tonight's meeting that if he talks about open space development, he means cluster development. Mr. Mitchell talked a little bit about the lot which contains approximately 60 acres. Mr. Mitchell read the application into the minutes for the record. Mr. Mitchell talked about connectivity between the open space areas. Mr. Mitchell went on to go through Article 14, Section 14.14(2) "Standards Applicable to All Special Exceptions" and went through each letter within the section. Mr. Mitchell did not believe that if the property was developed either clustered development or a conventional grid subdivision that there would be no impact on the school system. Mr. Mitchell talked about the intensity of the clustered development and did not believe that by doing a cluster development would be intense and believed that the Grid development would be more intense as there would be no open space. Mr. Mitchell showed the Board members a cluster development and a grid development and the only difference was that the cluster development had 25 lots and the grid development had 23 lots. Also, by having open space development, it will allow for smaller homes which are consistent with the Master Plan. Mr. Mitchell stated that by doing the cluster development and leaving open space available would help the abutters tremendously as it would leave open space between the existing property owners and the cluster development. Mr. Mitchell pointed out that they have gone before the Planning Board for an informal discussion and that the Planning Board liked the fact that the road went through to Haven Drive as opposed to having a lengthy cul de sac.

Mr. Mitchell wanted to address the letter from Mr. Dandrade that was received just hours prior to tonight's hearing and that they are before the ZBA tonight to ask for a special exception to see if they would allow this type of use in the Residential One zone. The amount of units that they would get, the setbacks that they would get the road and storm water is a function of the Planning Board. They have not been to the Planning Board yet because to design all of the improvements without knowing they can do the special exception seems to be premature. They have been to Conservation Commission and they are not thrilled with the project and they are here tonight to comment. The reason is that there is a vernal pool impact at the entrance from Pingree Hill Road and they have mitigation for the vernal pools which is a Planning Board issue, Conservation Commission and also with the Department of Environmental Services Wetlands Bureau and the Army Corp of Engineers.

In conclusion, Mr. Mitchell respectfully asked the ZBA to grant the approval for special exception to allow for the cluster development in a Residential One zone. Mr. Lagana thanked Mr. Mitchell and proceeded to ask the Board members if they had any questions or comments. Mrs. Robidoux asked how wide the access to the lot was. Mr. Mitchell responded by saying that there is a 50 foot right of way as well as a building lot adjacent to the 50 foot right of way so they have more than 100 feet of frontage on Pingree Hill Road.

Mr. Lagana talked about the discussion about intensity and where Mr. Mitchell talked about a Grid development with 23 lots and asked if they really could get 23 lots out of it considering the amount of wetlands on the property. Mr. Mitchell indicated that it has not been approved by the Board yet so they did the concept to see what they could get. 23 lots may not get approved but believed that by doing two (2) acre lots that it would be more intense as there would be no open space as it would be owned by each homeowner instead of having open space as protection. They would have to have one (1) acre of contiguous uplands for each lot. Mr. Lagana thanked Mr. Mitchell for his response.

Mr. Stuart asked for a copy of the Grid development that shows 23 lots as well as the cluster development that shows 25 lots. At this time, Mr. Mitchell passed out copies to the Board

members. Mr. Stuart asked if the plan has been presented to the town for review. Mr. Mitchell said no as it is not a requirement of the subdivision.

Mr. Lagana asked if there were any abutters with questions or comments. Mr. Dandrade of 318 Pingree Hill Road asked to present to the Board. Mr. Dandrade began by saying that he reviewed the proposal and believed that it was an overly aggressive and disingenuous plan. Mr. Dandrade passed out copies of the letter sent earlier in the day to the Board members. Mr. Dandrade submitted an original to Ms. Royce for the file. Mr. Dandrade believed that the Board should review the conventional plan before they consider the cluster development. Mr. Dandrade explained where he is located from the property and stated that he has walked that property several times. Mr. Dandrade stated that he has highlighted the location of wetlands and pointed out that Mr. Mitchell has not. Mr. DiPietro asked if the Planning Board would be allowed to see these plans. Mr. Dandrade said yes, that he had copies for the Planning Board and the Board of Selectmen. Mr. DiPietro believed that the appropriate place to discuss the planning of the development would be with the Planning Board. Mr. Dandrade said no, that what the ZBA is being asked to approve is a special exception for cluster. Mr. DiPietro asked Mr. Dandrade what the number of units he would be happy with them getting. Mr. Dandrade explained that development on this site is allowed and discussed what he thought was a discrepancy in the number of units they could get and came up with only 13 units was the greatest number he could yield based on the conventional zoning when you look at two (2) acre lots. The Board reviewed the plan that Mr. Dandrade came up with. Mr. Dandrade talked about Article 7, Section 7.01 "Clustered Development" of the Zoning Ordinance and believed there was merit to have a cluster but not the cluster that has been submitted to the ZBA tonight. Mr. Dandrade also talked about the other connection to Cohas Drive that wasn't even mentioned. Mr. Dandrade believed all the wetlands on the property were Level One wetlands because they all had connectivity to perennial streams and significant amount of use for wildlife in the area and believed it was disingenuous for the applicant to show you something that has very lenient wetland offsets which is conveniently just a shade under 5,000 square feet. Mr. Febonio pointed out to the Chairman; Mr. Lagana that they should not be listening to this and that they should be talking about whether or not it's a good idea to do a cluster subdivision in the Residential One zone and this is getting way off key. Mr. Lagana respected his opinion and that they should allow Mr. Dandrade to speak. Mr. Febonio believed it was unfair and did not want to sit there and listen to Mr. Dandrade say that his engineer or soil scientist was lying. Mr. Lagana agreed and respectfully requested that Mr. Dandrade refrain from calling the applicants engineer disingenuous and to keep it factual. Mr. Dandrade suggested that an independent review be done because professionals can disagree. Mr. Lagana stated that he would defer this to the Planning Board and would like to keep testimony tonight regarding the merit that is before us which is whether or not to grant the special exception to have a cluster subdivision within a Residential One zone. Therefore, Mr. Dandrade requested that if you make conditions of approval for a cluster that as part of a review with the Planning Board that they contemplate a cluster development that has a comparable number of residential lots that is equivalent to what can be yielded based on usable lots when contemplating a conventional subdivision. A lengthy discussion of the uses within the cluster development as well as the buffer zone ensued. Mr. Dandrade did not believe that Mr. Febonio could achieve the number of lots he was looking to get with the cluster subdivision and also talked about the possible connection to Cohas Drive as opposed to Haven Drive. Mr. Lagana again pointed out to Mr. Dandrade that what he was talking about would be handled at the Planning Board stage and what the Zoning Board of Adjustment was here for was to determine whether or not cluster development which is permitted by special exception would be suited for this piece of property. Mr. Dandrade thanked the ZBA members for their time and ended the discussion.

Mr. Febonio asked the Chairman if he could speak to the Board members and began by saying that basically all they are trying to do is maximize the use of this property as any developer would. Mr. Febonio stated that he is very respectful to the abutters and that he has a right to build homes on this property and whether they are single family homes that are conventional or if they are in a cluster development which is what they are trying to determine tonight. They are trying to come up with a plan that is balanced nice and good planning for the town. They understand Conservation Commissions concerns and did not know what Mr. Dandrade's aggressiveness to this project was and did not understand it. Mr. Febonio pointed out to the Board members that a lot of what Mr. Dandrade talked about had nothing to do with the ZBA but had to do with the Planning Board and that all they are asking for from the ZBA is would you like to see a clustered subdivision in the Residential One zone based on the scenario. The abutters all commented that they were against anything being done on the property. Mr. Febonio again pointed out that the visual shows it all, it shows all the green space that would be available and that there would be great connectivity and if they do the conventional subdivision then there would be no green space and all the land would be owned independently and would back up to everyone's homes and they will be able to utilize their own property. Mr. Febonio reiterated that they are only trying to preserve the property and it's not about them trying to get 50 units when they can only get 25. They are only before the Board to try to present a good project and they think that the clustered development is valuable. Mr. Lagana believed what he was hearing is that everyone would prefer the clustered development. Everyone said correct. Mr. Lagana believed there would be a lot less impact on the wetlands with a cluster development. It seems that the number of lots and drainage accommodations and culverts are truly something that would be worked out at the Planning Board stage. Tonight, the ZBA is here to talk about the special exception only. Mr. Lagana said that he appreciates the testimony heard tonight and understands that Mr. Febonio has money invested in this and personal property invested next to it but there is that common thread for the cluster development. Mr. Gould of 21 Steam Mill Road stated that he was not an abutter but had a question as to ZBA versus Planning Board and who had the authority with the roads. Mr. Lagana stated that Planning Board had the authority and that the ZBA was here to uphold the ordinance. Mr. Lagana pointed out that the cluster development was allowed by special exception in this zone. Mr. Lagana also pointed out to everyone present tonight that this proposed subdivision has not gone to Planning Board yet.

Mr. Lagana asked that someone from Conservation Commission respond to this request. At this time, Mr. Joy, Chairman of the Conservation Commission reiterated that this was for a clustered subdivision and that the Board should take a look at page 68, Article 7, Section 7.01 on down and all the nature and why we have a cluster subdivision and it's all about protecting the natural resources and realistically a grid layout would do that if not better. Mr. Joy believed that there was actually more open space with a conventional subdivision because it was not all shoved into one spot and as the Conservation Commission, they would rather not have the town own the property and to have to police it but rather controlled by an association to have them deal with it. Mr. Joy believed that the clustered subdivision should go by the first five and that he did not believe this leads to the intent of what a cluster subdivision should be. Mr. Lagana asked Mr. Joy if this was his opinion or the opinion of the whole Conservation Commission. Mr. Joy stated that the Conservation Commission was unaware that this was coming to the ZBA at this point in time seeking a special exception to do a cluster subdivision and Mr. Villeneuve sent him an e-mail a few days ago and that's how they found out. They have not had a chance to speak as the Conservation Commission on this as they ended their meeting last time. Mr. Joy further added that when Mr. Dandrade asked for a wetland scientist for a peer review as this was actually part of the ZBA authority as a condition for special

exception. Mr. Lagana agreed and read an e-mail sent earlier in the day that states "The conservation commission does not feel that plan as presented meets with 4 out of 5 items in ordinance 7.01 Authority and Purpose and would be better suited for traditional grid development." Mr. Lagana wanted to be clear and wanted to know if that was the opinion of the Conservation Commission. Mr. Joy stated that it was a discussion that they had and it should be in their minutes. Mr. Villeneuve added that when Mr. Mitchell came before them that they basically discussed the wetlands for the most part and very briefly touched base it being a cluster. There was no discussion about going and seeking a special exception. They were unaware that they were coming before the ZBA tonight. Mr. Villeneuve talked about it being a cluster and did not believe that this is how the Town of Auburn envisioned a cluster subdivision. Mr. Lagana thanked the Conservation Commission for their comments.

Mr. Lagana wanted to proceed with abutters comments. Mr. Stuart had a question and asked Mr. Joy if he preferred a traditional subdivision as opposed to a cluster subdivision. Mr. Villeneuve said that in their discussion they talked about the complexity of the lots and the wetlands and how they stretch around the property and talked about the wildlife corridor and believed that it would happen whether it was a traditional subdivision or cluster subdivision. Mr. Villeneuve indicated that they walked the crossing and walked the vernal pool at the beginning and thought that would be the best place to cross that section of water. They had very limited discussion on whether cluster was the best way to go. Mr. Villeneuve stated, would you want 23 homes approximately 50 feet apart which will have no wildlife corridor or would you want 15 homes that would be spread apart and have about 150 feet between them which is the difference between the cluster and the grid. Mr. Villeneuve did not believe any engineering had occurred so no one really knows how many homes Mr. Febonio can get. A brief discussion ensued on why they would want a grid as opposed to a cluster and Mr. Villeneuve asked does it really meet the spirit of the ordinance of which he believed it did not. Mr. Lagana further added that he would like to suggest that everyone put aside the number of homes they are asking for and look at the cluster development. Mr. Lagana asked the Conservation Commission if there were less homes would they be for the cluster. Mr. Villeneuve did not answer the question. Mr. Lagana pointed out that when a cluster subdivision is approved and tucked into these wetland areas it becomes a nightmare to the ZBA because any time someone wants a porch, pool or shed it becomes an issue. Mr. Lagana pointed out that the ZBA respects the input and comments from the Conservation Commission and it would be nice if all three (3) parties that spoke tonight could agree on that. Mr. Joy stated that there is no value to the town on the way this cluster is set up. Mr. Febonio commented that if they do not do the cluster they will not be giving back any land. Mr. Febonio said that the Planning Board has said to him on numerous occasions that one of the things with a cluster is that they do not own that portion of the land and so people are more than likely not to go beyond the property line. Mr. Febonio wanted to protect the land by doing the cluster. A brief discussion ensued with regard to the wildlife corridor.

Mr. Lagana asked if there were any abutters present. Mr. Newell of 15 Vici Drive asked the ZBA, is it his understanding that one way or another that property will be developed. Mr. Lagana said if the owner decides to go ahead with it. Mr. Lagana further informed everyone present tonight that anything to do with roads, drainage and culverts would be done at the Planning Board level which would also be a Public Hearing at which time the abutters would get notified and at that time, they would be able to give input with regard to what is to occur.

Ms. Cloutier of Haven Drive stated that she has lived in the same house for 36 years. Ms. Cloutier further stated that, the reason she has lived there was because of the woods and water

and wildlife and is in favor of the Conservation Commissions recommendation not to approve the special exception and would like the Chairman to take a vote from the abutters who live in that area before they make their decision so they understand how they feel. Mr. Lagana explained to Ms. Cloutier that he appreciated the comment and asked her if she was aware as Mr. Febonio stated that should the ZBA deny the special exception request and not allow the cluster development that the land owner can still go ahead with his development with a conventional grid. Ms. Cloutier said yes she understands. Mr. Joy said that it will be addressed either way, either they get a special exception to do a cluster development or they go forward with a conventional subdivision. One way or the other they will develop the property. Ms. Cloutier asked if the special exception is denied, will the road go through to Haven Drive. Mr. Lagana said that most likely it would but it would be left up to the Planning Board. Ms. Cloutier was confused and thought that it could not go forward if the special exception was denied and asked Mr. Lagana to explain it to her. At this time, Mr. Lagana explained that basically the landowner that is present tonight wishes to develop his property and the development of that property is allowed, first of all by virtue of his rights and also the town ordinance. What he's seeking here tonight is how he can develop it and should he develop it in a regular grid type subdivision as has been very common in New Hampshire or whether he is going to develop it in a cluster subdivision which has become more popular over the last 20 years. Mr. Lagana went on to say that whereby the same amount of homes in a grid development is concentrated into a much smaller portion of the property to allow for a buffer of open space around it. Mr. Lagana said that it's not whether or not the land will be developed because it appears that the land will be developed, it's a matter of how it will be developed. Mr. Lagana pointed out that in our Zoning Ordinance, the Residential One zone a conventional subdivision is already approved but that a cluster subdivision is allowed by special exception by the ZBA. Mr. Lagana believed that each person prefers a cluster subdivision although our Conservation Commission is very important in his decision is against it at this point. Mr. Lagana stated that they need to have the Conservation Commission come up with a motion and a voted upon measure on whether or not they will endorse a cluster subdivision or not endorse the cluster before they can go further. Ms. Cloutier had an issue with the amount of homes being proposed, the increase in traffic and the school overload. Mr. Lagana believed that Ms. Cloutier had very valid points but wanted to reiterate that it was not an approved plan and that the Planning Board may come back with a lesser number of homes. We cannot get held up and bound up on the number of homes but what is important is whether or not this Board will allow a special exception for the cluster subdivision.

Mr. Dandrade believed that the density was important and talked a little bit more about the buffer area and that he liked the idea of a cluster but just not this cluster that is shown tonight. Mr. Lagana stated that he sees a lot of merit in the cluster and understands the point that the Conservation Commission talked about the grid subdivision and explained that they have seen people clear cut all the way up to the wetlands. Unfortunately it's not always the case that the homeowner will protect the wetlands because this Board has seen this happen numerous times where a homeowner has planted grass right up to the wetlands. Mr. Joy added that he has still seen this within a cluster subdivision. Mr. Febonio pointed out that the Planning Board seems to like the cluster and believed that the Planning Board thought this would be a balanced plan. Mr. Stuart asked who would hold the easement for the Conservation Land. Mr. Febonio said that he did not know yet. M Febonio said that this was not about the density but was about whether or not to have a cluster subdivision. Mr. Febonio indicated that they had a long way to go and understand that they have a long way to go. Mr. Lagana thanked Mr. Febonio for his time.

Mr. Beaurivage asked the Conservation Commission about the impact on the town and policing the open space and wetland buffers and how it was problematic. Mr. Villeneuve pointed out the easement that is owned by the town on Nutt Road and all the problems they have had and that this property abuts this property. Now they have third parties hold the easements so that they are the ones that police these easements. Mr. Villeneuve reiterated that he did not believe this met the vision of a cluster. Mr. Villeneuve also noted Illsley Hill Subdivision, Wethersfield and Tilton Place Subdivisions.

Mr. DiPietro made a motion to enter into deliberations. Mrs. Robidoux believed there was an abutter who wanted to speak first. At this time, Mr. Cloutier of Haven Drive asked the Board what happens to the land if the town doesn't want it. Mrs. Robidoux commented that it depended on how the association is written. If the association in the cluster retains it, like the lots off of Cambridge Drive, the homeowners association polices it. It depends on what Mr. Febonio does and if he decides to grant an easement to the town. Mrs. Robidoux pointed out that these were Planning Board issues and would be decided at the Planning Board approval level and not something that is dealt with here. An abutter asked if they would be notified by mail when this goes to the Planning Board. Mr. Lagana said yes if they were an abutter that they would properly be notified.

Mr. Mitchell also commented that they are before the Board tonight to see if the cluster development would work here and that the lot layout, setbacks and the buffers around the outside are all a function of the Planning Board. They prefer to do a cluster but can't get there without a special exception from the Zoning Board of Adjustment. Although, the Conservation Commission said that they would prefer a grid, they would be willing to talk to them about that and do an open space. Mr. Mitchell pointed out that someone owns a piece of property and the buffer of wetlands are in their back yard will say "well I own the land why can't I cut down the tree." Mr. Mitchell further stated that if it's a two (2) acre lot and there's 200 feet that is in the wetland buffer, the same person will do the same thing. If it's protected with a Conservation Easement, which is what they propose then the easement would be held by another so it's not in private ownership. A brief discussion ensued with regard to a third party holding the easement and not have a homeowners association. Mr. Lagana thanked Mr. Mitchell and reminded the Board members that there was a motion made to go into deliberations.

***Mr. DiPietro made a motion to go into deliberations, seconded by Mrs. Robidoux. A vote was taken and the Board entered into deliberations at 8:55 pm.***

Mr. Lagana started out by saying that you have heard from both sides and they seem to agree on the concept of a cluster. Mr. Lagana pointed out that a lot of the discussion heard tonight should have been heard at the Planning Board level and because of the importance of this development and it was not very often the Board has a full house present at these meetings that he thought it was very important to let the applicant and other speakers vent all their concerns. Mr. Lagana further pointed out that both the applicant and Mr. Dandrade seem to agree on the cluster. However, Mr. Lagana wanted to remind the Board that not long ago they did act contrary to the Conservation Commission which was coincidentally on the Ramos case that finally wrapped up this evening where the case was appealed. Mr. Lagana commented that he would be very lax to act contrary to their wishes unless and until they came back to the ZBA for an official response from the Conservation Commission. Mrs. Neveu pointed out that even if the Board approves it, it does not mean that they will end up doing a cluster it just means that they have that option. Mr. Beaurivage believed that they could Table the case until they receive an official response from the Conservation Commission. Mr. Lagana agreed with



Mr. Beaurivage. Mr. DiPietro did not believe the cluster would detract from the wildlife corridor and the like. Mr. Lagana commented that, the number of homes is irrelevant and would be dealt with at the Planning Board level. Mrs. Robidoux added that it was not the ZBA's purview to design the development whether its cluster or it's a grid. Mrs. Robidoux believed that Mr. Febonio was getting the benefit of a free peer review which was a good thing. Mrs. Robidoux reiterated that they were asked to approve the cluster and whether we allow it or not and we are not asked about the number of units, steep slopes and what they can fit and what they can't fit. Mrs. Robidoux noted that Mr. Dandrade asked about putting a condition on uses within the buffer zone and wanted it known that the ZBA is not the Board that creates the Zoning Ordinance, it's the Planning Board and the residents of this town and that the ZBA only enforces it and interpret it. Mrs. Robidoux did not believe the ZBA could put a condition on it if they did approve the concept of a cluster subdivision. Mrs. Robidoux believed they've met all the factors for the special exception. Both Mr. DiPietro and Mrs. Neveu agreed with Mrs. Robidoux and believed they've met the factors for the special exception. Mr. Lagana agreed and believed that the Planning Board may think that they've overstepped their bounds if they were to attach anything. Mr. Lagana stated that he does vote with his conscience and that he is concerned about acting contrary to the Conservation Commission. Mrs. Robidoux reiterated that they are only asking for the special exception to do a cluster and when they go before the Planning Board, they may not get the number of lots they are seeking. Mr. Lagana agreed. Mrs. Robidoux believed they should have a conversation with the Conservation Commission but did not think that their decision would sway her one way or the other as she believes they have met the factors for the special exception.

Mr. DiPietro stated that he would support Tabling this case. Mr. Lagana asked Mr. Benson and Mr. Stuart for their opinion. Mr. Benson commented that it has made it more difficult than it should have been by seeing the lots laid out and believes that the Planning Board will want to see it laid out as a grid as well. Mr. Benson believed that Conservation Commission made some good points and would they rather see 10 houses rather than the grid. Mr. Lagana believed if they went with the cluster that there would be less repeat visits back to the ZBA as they would be working with a much smaller envelope. Mr. Benson also stated that nobody is certain that they will get 25 lots and all they know from an informal visit to the Planning Board is that they would like to see the road go all the way through.

Mr. Stuart added that it was very rare that the cluster development was not the better way to go within a development because when you have the big lot developments it seems like the land will be open but you see people expanding and cutting down trees and putting in lawns and fire pits. Mr. Stuart agreed that it's a lot of work for a town to try to police and believed if you have an easement by someone is really important which seems what they want to do that is positive. Mr. Stuart believed that maps are good and that it was the Planning Board in the end that would decide the number of lots and what it would look like and the road layout. Mr. Stuart did believe from the evidence that the cluster development would be better and that if the Conservation Commission can do a site walk and give the Board a reason why it should not be a cluster then it might be relevant. Mr. Stuart requested a formal opinion from the Conservation Commission because he would be very interested in what they have to say and reiterated that he believed that cluster development was the better way to go because it keeps the land from getting developed and securing open space is really important both from an ecological perspective and even from the town's standpoint. Mr. Lagana believed that the Conservation Commissions input is very useful to the Board. Mr. Beaurivage also believed that a formal response from the Conservation Commission was critical and it gives the Conservation Commission, Mr. Febonio and Mr. Mitchell to get together and see if they can discuss some of these issues and maybe

there's some resolution to some of those issues that the Conservation Commission has that can be addressed in the association documents.

***Mr. DiPietro made a motion to come out of deliberations, seconded by Mrs. Robidoux. A vote was taken and the Board entered into deliberations at 9:13 pm.***

Mr. Lagana asked the Conservation Commission members present when they would be meeting next. Mr. Joy stated August 13, 2014 which was a Wednesday. Mr. Lagana explained that they have heard testimony and input from abutters and interested parties, they've been in deliberations and suggestions were made and asked the Board how they would like to proceed. Mr. Lagana explained that they could proceed to a vote or Table the case until such time an official response from the Conservation Commission is available if they feel it is relevant to their decision this evening.

***Mrs. Robidoux made a motion to TABLE the matter until such time the Conservation Commission is able to respond for Case #14-08, Tax Map 5, Lots 29 & 36 until our next meeting which will be held on Tuesday, August 26, 2014, seconded by Mrs. Neveu. Mr. Benson voted to grant, Mrs. Robidoux voted to grant, Mrs. Neveu voted to grant, Mr. DiPietro voted to grant and Mr. Lagana also voted to grant. The motion passed in the affirmative and the case was TABLED until August 26, 2014.***

Mr. Lagana explained that this will not be noticed again and that the case has been TABLED until the next ZBA meeting which will be held on Tuesday, August 26, 2014.

## **General Business**

Mr. Lagana asked the Board members if there was any new business to discuss. None was noted.

The Board asked Ms. Royce to put the ZBA Rules of Procedure back on the agenda for next month as they wanted to wait for Mr. Wright, Zoning Board of Adjustment Chairman to be present. Ms. Royce understood and would place this on the agenda for August.

## **Minutes**

***Mr. DiPietro made a motion to accept the minutes of June 24, 2014 as written, seconded by Mrs. Robidoux. The motion passed in the affirmative.***

## **Adjourn**

***Mrs. Robidoux made a motion to adjourn, seconded by Mrs. Neveu. All were in favor, the motion passed unanimously and the meeting stood adjourned at 9:50 p.m.***

**The next ZBA Hearing is scheduled for August 26, 2014 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.**