

**Town of Auburn
Zoning Board of Adjustment
August 26, 2014**

Present: Mark Wright, Chairman, Jim Lagana, Vice Chairman, Mike DiPietro, Kevin Stuart and Jeffrey Benson Alternate Members. Minutes recorded by Denise Royce.

Also Present: Carrie Rouleau-Cote, Building Inspector. Alan Villeneuve, Conservation Commission.

Absent: Peggy Neveu and Elizabeth Robidoux, Members. Robert Beaurivage, Alternate Member.

Mr. Wright called the meeting to order at 7:03 p.m. and introduced the Board Members and explained the procedure for tonight's hearing to everyone present.

Mr. Wright informed everyone present that they would be taking the cases out of sequence and began with the case that they believed would be asking for a continuance. Mr. Wright elevated both Mr. Stuart and Mr. Benson to full voting status for the first two cases due to the fact that there were a few members absent tonight and pointed out that Mr. Lagana would then chair the last case to be heard tonight as he was not present at last month's meeting. At this time, Mr. Wright asked Ms. Royce to read the first case into the minutes for the record.

**Case #14-10
Eric Mitchell
On Behalf of Strategic Contracting Company, LLC
77 Pingree Hill Road – Map 5, Lot 19
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. Mitchell presented on behalf of the applicant and respectfully requested that the Board continue the discussion until the next scheduled ZBA hearing.

Mr. DiPietro made a motion to TABLE the matter until the next scheduled hearing on Tuesday, September 23, 2014 for Case #14-10, Tax Map 5, Lot 19, seconded by Mr. Stuart. Mr. DiPietro voted to table, Mr. Benson voted to table, Mr. Stuart voted to table, Mr. Lagana voted to table and Mr. Wright also voted to table. The motion passed in the affirmative and the case was TABLED until September 23, 2014.

Mr. Wright informed everyone present that this matter will be continued until the next scheduled public hearing on Tuesday, September 23, 2014 and that this would be their only notice as no further notices will be mailed out.

**Case #14-09
Mitchell and Rebecca Delacoe
72 Donald Drive – Map 8, Lot 48-1-5
Zoned Residential Two**

Applicant is requesting a special exception to allow a private educational facility (yoga studio) which is currently allowed by special exception within a Residential Two zone. (Article 4, Section 4.06(5)(e))

Mr. Wright asked Mr. Delacoe to read his application into the minutes for the record. Mr. Delacoe read his application aloud. Mr. Wright asked Mr. Delacoe if they were currently running the business out of the property now. Mr. Delacoe said yes. Mr. Wright asked how long that has been occurring. Mr. Delacoe stated a little over a year. Mr. Wright asked what the number of clients that they have had at one time. Mr. Delacoe stated about 3 for personal preference and approximately 3 or 4 cars a day. Mr. Wright asked the applicant to explain what courses and what is occurring. Mrs. Delacoe explained that it was a personal training yoga studio that is customized and by appointment only. She does advertising on groupon but that it was personalized and by appointment only. Mr. Wright asked if it was occurring in the structure that was separate from the house. Mr. Delacoe stated that it was held upstairs if they were going to do yoga but otherwise if they were going to use lifting equipment that it would be done in their basement. Mr. Wright pointed out that this would also have to go before the Planning Board for minor site plan review for conducting a business at which time they would be asked what the hours of operation would be and signage as well as parking. Mr. Wright explained that they needed to come before the ZBA for a special exception because what they were proposing to do in that zone and that the second piece was dealing with the Planning Board for minor site plan review regarding the business. Mr. Delacoe understood what Mr. Wright was saying.

At this time, Mr. Wright asked if there were any abutters or interested parties that would like to speak. Ms. Kari Baker of 23 Donald Drive stated that the amount of traffic on Donald Drive and was unsure if it was because of the yoga studio or the other business that was being run out of the home but that her concern was the safety of her children. Ms. Baker did not like the amount of unknown vehicles entering the neighborhood and that quite honestly had she known that there was a business there she would not have moved there. Ms. Baker was concerned about the value of her home and the safety of her children.

Mr. Paul Gosselin of 62 Donald Drive whose property is adjacent to Mr. Delacoe agreed with Ms. Baker's comment and that his biggest concern was the safety of the neighborhood. Mr. Gosselin asked that, when Mr. Delacoe applied for his building permit for the garage did he say if it was for personal use or business use because he was of the understanding that it would be strictly for personal use only. Mr. Gosselin pointed out a flyer that he received in the mail for a business that is operating next door to his house in which classes are offered 7 days a week. Mr. Gosselin further stated that he moved into this neighborhood because he believed that it was a safe and quiet neighborhood for his children and now he found out that there's not only one business but two businesses running out of this property. Mr. Gosselin did not believe this type of business belonged in this neighborhood and was worried about what would happen in the years to come and how big it would grow. Mr. Gosselin pointed out to the Board members that this is not the type of neighborhood that he wanted and believed that the other neighbors felt the same way. Mr. Gosselin stated that he believed when they received the permit for that garage that it was for personal use only. Mr. Gosselin believed that the garage was built for one reason only which was for business use only. Mr. Gosselin stated that he wrote a letter to the Board members back in 2012 when they came before the Board to build the garage saying that this was what would happen and they now have a yoga studio upstairs and the sound business in the garage. Mr. Gosselin believed this would set a bad precedence if this is allowed because then someone else in the neighborhood could want to run a business from

their home as well because you can't allow them to have a business and not allow anyone else that moves into the neighborhood to not run a business. That type of business compromises the neighborhood and compromises the safety of the children and believed that they built that garage for one reason only, to make money because they didn't want to rent somewhere else. Mr. Gosselin stated that this did not belong in that neighborhood. Mr. Wright wanted to answer Mr. Gosselin's question that he asked earlier about when the applicant came before the ZBA when it was approved by the ZBA when the applicant was specifically asked if he had any intention of running a business out of the garage and he answered "No". Mr. Gosselin reiterated that this was not the type of neighborhood that he wanted to move into and that he did not want his children to be raised in that type of neighborhood.

Mr. Dustin Bello of 52 Donald Drive stated that he agreed with Mr. Gosselin and Ms. Baker and with having two children in the neighborhood. Mr. Bello informed the Board that he was one of the last homes in the subdivision and that he specifically chose that neighborhood because it was quiet Auburn type traditional neighborhood especially coming from the city. Mr. Bello pointed out his concerns as being privacy and his family.

Mr. Paul Keating who lives at 44 Donald Drive and also agreed with Mr. Gosselin, Ms. Baker and Mr. Bello and reiterated that there were a lot of kids in the neighborhood and that the kids play in the street. Mr. Keating also reiterated that one car becomes three and six cars become 9 cars.

Mr. Gosselin asked how this could have happened. Mr. Wright explained that when Mr. Delacoe came before them that there was no structure there and that all the questions were asked and that Mr. Delacoe was told that if he were to try to run a business that he would have to comply with the ordinance for the zone if he were to do anything other than residential use which is stated in the minutes of October 23, 2012. Mr. Wright also added that he would have to come back before this Board to seek relief. Mr. Gosselin said that he was supposed to come back to the ZBA before he began the business and he didn't. Mr. Wright said that was correct and this is sort of asking for forgiveness instead of permission which is not uncommon. Mr. Wright went on to say that, at the time, they asked the right questions and were given answers and testimony from the applicant. A brief discussion ensued with regard to what had taken place previously.

Mr. Gosselin asked if the Board takes into consideration any of the feedback from the neighbors. Mr. Wright said yes. Mr. Gosselin pointed out that he had sent a letter back in November of 2012 that they believed that when they built the garage that this was going to occur. Mr. Lagana wanted to speak on his behalf that he had chaired that case that evening as Mr. Wright was absent and Mr. Rolfe was there that evening that the issue with the business was quite exhaustively discussed and didn't recall who wrote the letter but recalled that there was written testimony as well as verbal testimony that evening with regard to a business being run out of there. Mr. Lagana stated that the Board was reassured that the garage was going to be used for personal hobbies and storage of equipment and things like that which is stated in the minutes and read a portion of the minutes of that evening back in October 2012. Mr. Lagana informed Mr. Gosselin that they are sworn to the town to uphold the ordinance and if the criteria are met for any kind of reason they have to grant it. In part and parcel of their consideration are property values and whether or not the spirit of the ordinance remains intact. The testimony that is taken here tonight from the applicant or abutters and interested parties is taken as gospel. When the applicant stated that he had no intentions of running a business then they have to believe them. A brief discussion ensued regarding the fact that the structure

is already up and that Mr. Delacoe is running not one but two businesses out of the property. Mr. Wright agreed with Mr. Lagana's explanation and that they assume that they are getting truthful responses to their questions and the right questions were asked at the time. Mr. Wright stated that they do look back at the minutes to see what was said and what questions were asked, look at what's going on now and ask more questions and factor that into their decision so they are looking at the whole picture to make an informed decision and the abutters are a big part of that. Mr. Delacoe added that none of the neighbors have asked him any of the questions directly and agree with a majority of them and wanted it known that they do have kids as well. Mr. Delacoe stated that he is all for safety of the neighborhood and do not want more people coming into his own personal space never mind the neighbors. Mr. Delacoe added that if the Board wanted to condition it upon the number of vehicles then he would give it in writing.

Mr. Wright asked Mr. Delacoe to respond with regard to the second business and someone coming and dropping a car off and conducting a business. Mr. Delacoe stated that he has no employees and he owns his own shop and has owned his business for over 15 years but he has done installations on his property due to overflow. His business is called "Anywhere Audio" and he's doing the audio for the "Zoo" gym. A brief discussion ensued with regard to both businesses. Mr. Wright read a portion of the "About Us" page of the website which reads "Our new state-of-the-art facility is finally ready and now allows us to perform our services more efficiently than ever before". Mr. Wright asked what that was all about. Mr. Delacoe stated that they were not doing auto body and if they cannot do it onsite then they can do it in a state of the art facility. Mr. Wright asked where it was located. Mr. Delacoe stated that it was at his residence.

Mr. Wright moved on to talk about the yoga studio and asked Mrs. Delacoe what the name of the studio was and asked about the three (3) trainers that she currently has. Mrs. Delacoe stated that it was called "Blazin Fitness" and that each instructor teaches one class. A brief discussion ensued with regard to the yoga studio. Mr. Gosselin reiterated that they stated that it was for personal use only. Mr. Delacoe stated that he parks his personal vehicle every night inside the garage. Mr. Wright understood that but the piece about the new state of the art facility and telling the Board that that is what you use when you need to is different than what was stated to the ZBA back in 2012 about personal use and there seems to be some evolution and it sounds like there is some business use. Mr. Delacoe pointed out that it was approximately 5% to 10% use only as most of his work is offsite. Mr. Delacoe believed that most of the traffic came from the neighbors rather than his residence.

Mr. Wright asked Mrs. Rouleau-Cote about the letter that was sent to Mr. Delacoe and asked how she heard about the business. Mrs. Rouleau-Cote explained that the letter was a "Notice of Violation" and that she saw it on the internet and prior to that, she had done surveillance on Donald Drive and actually brought along Ms. Royce with her and did a run of the neighborhood to see if there was any activity and to be honest, on the days that she went, there was nothing evident at all. Pretty much her letter was in response to what she saw and checked the Secretary of States website to see where the business was registered too and etc... and sent a letter to owner of which he did respond. Mrs. Rouleau-Cote also commented that when she issued the original garage permit it was for a dimensional setback and noted on the building permit that it was specific to residential use. Mrs. Rouleau-Cote further explained to the Board members that in the definition of "Home Shop" would pretty much identify the audio use that he seems to be referring to and that "Home Shop" is a permitted use in the R2 zone so that it would not require zoning board action. Discussion ensued between Mrs. Rouleau-Cote and Mr. Wright with regard to the "Home Shop" and where it says "it is clearly an accessory use to the

residential purposes of the dwelling and does not change the character thereof". Mr. Wright did not agree with that tonight and pointed out that the audio business was not before the Board tonight but that the yoga studio was. Discussion ensued with regard to traffic and the like. Mr. Wright informed the abutters that anything to do with hours of operation and parking and site plan review would be dealt at the Planning Board level because the ZBA does not have the authority to dictate that. Mr. Wright further explained that the Zoning Ordinance says that there are certain things that you can do in different zones which some are permitted and you don't have to come before the ZBA and some require a Special Exception which is a lesser standard than a variance and then some require a variance and they are there to give people a way to come before the Board to ask for something that the ordinance says they cannot do and if they satisfy the factors, then they are obligated under law to permit that use.

Mr. Keating believed that the Board was duped and asked what was to prevent other applicants from doing the exact same thing like coming before the Board and telling the Board one thing and then doing something different and then coming before the Board looking for a variance. Mr. Wright indicated that it was Mrs. Rouleau-Cote's job as Code Enforcement Officer to follow up on abutters informing her of what is going on and then she will go out and investigate the situation. There is a process and a procedure should someone exceed the scope.

An abutter did not believe that a yoga studio could be considered a "Private Educational Facility". Mr. Wright read the definition for a "Private Educational Facility" – "Any school, which is not a public educational facility and is not a nursery school, such as a private school offering education for students in any grades K – 12, dance studio, music school, or craft facility. Any Private Educational Facility shall be subject to site plan review. A Private Educational Facility" shall not be permitted in the Industrial District, unless it is accessory and incidental to another permitted business." Mr. Wright pointed out the similarity to a dance studio and believed that was how Mrs. Rouleau-Cote came up with the definition for yoga studio because it was closest to it.

Mr. Delacoe was very concern with regard to traffic in the neighborhood as well and stated that if it were to increase then he would move his business out of the neighborhood. Discussion ensued between abutters and the Board regarding traffic and the types of people that are coming and going.

Mr. Wright asked if there were any further questions. Mr. Stuart asked Mr. Delacoe if he had a plan put together for the Planning Board. Mr. Delacoe said not yet.

Mr. DiPietro asked if the two story garage had a bathroom in it. Mr. Delacoe said yes.

Mr. Wright asked if there were any more questions from the Board. None were noted. Mr. Wright asked if there were any more questions from abutters or interested parties. None were noted.

Mr. DiPietro made a motion to go into deliberations, seconded by Mr. Benson. A vote was taken and the Board entered into deliberations at 7:56 p.m.

Mr. DiPietro talked about accessory hobby structures in town and that he asked about the bathroom and was thinking about where the hobby ends and the big business begins where 2 or 3 cars turns into more traffic. Mr. DiPietro believed that the bathroom kind of lends itself to something a little bigger than accessory residential use but if it were 3 or 4 cars a day or 3 or 4 classes a day would match special exceptions for private educational facilities that they've

granted in the pass.

Mr. Stuart had a concern about the application and has a little trouble saying that they have met their burden and believes that the application is insufficient because the regulations talk about them providing a preliminary plan and also going to the Planning Board which is not sufficient to meet the burden of proof and that a lot of abutters have provided credible testimony for concerns about property values and the nature of the neighborhood. Mr. Stuart did not believe they have met the burden based on the evidence tonight because they have to prove that what they are proposing will not diminish property values and it will not be contrary to public interest and it will do substantial justice. There's two businesses running there and the amount of traffic and do not believe that they've met the burden for #1, #2 and #3 of the 4 criteria tonight.

Mr. Wright liked where Mr. Stuart was going with the burden of proof and the factors and which ones but wants to make it clear that it's not the applicants responsibility to come with a site plan that would have been for the Planning Board if they were to approve this and that it is not the ZBA's job to assess that and that the ZBA needs to focus on the 4 factors and should they approve it then it would go to the Planning Board for site plan review and at that time it would give the abutters the opportunity to speak out.

Mr. Benson stated that his concern was the size and have they put conditions on any of them as far as the size and number of vehicles and the advertising on Groupon does lead everyone to believe that you're not talking about a small home based class which is his concern.

Mr. Lagana reminded the Board members that he did chair the hearing the first time Mr. Delacoe came before the ZBA on October 23, 2012 and reiterated that the discussion about a home business was exhaustively discussed that evening and was told that a business would not be run out of the structure especially since the abutters were so vehemently opposed to it. Mr. Lagana believes that the application was granted back in October 2012 on inaccurate testimony so to afford any additional relief this evening would be either condoning or endorsing that strategy and would be hard pressed to do that. Mr. Lagana further stated that based on what they've heard tonight that it appears to be inaccurate testimony from the applicant and very credible testimony from the abutters and believes the applicant fails to meet all 4 of the factors. Mr. Lagana pointed out that if a year ago the applicant decided to use the facility as a yoga studio or dance hall or anything else then it would have been incumbent upon the applicant to come back before us asking for a Special Exception. Mr. Lagana added that, to go ahead and do it and then come back before us and ask for forgiveness simply flaunts the ordinance and believes the applicant went about it the wrong way. Mr. Lagana further stated that he would have a very difficult time supporting this application this evening.

Mr. Wright stated that Mr. DiPietro has made some good comments about the types of cases that they have had before them which were accessory use. Discussion ensued with regard to previous request for Special Exceptions that have been before the Board previously. Mr. Wright believed that the other cases were different than this one and that all the points brought up previously were all good points but that the character of this location and street and what is occurring is different. Mr. DiPietro brought up the fact of interest advertising and that he hears what the neighbors are saying and that they see it happening more and more.

Mr. Wright asked if the Board if they had any other thoughts or comments. Mr. Benson agreed with Mr. DiPietro about the internet and when you go to Groupon it gets bigger and to have this in a neighborhood as accessory. Mr. Wright agreed and that it doesn't necessarily tell you

about the business. Further discussion ensued with regard to the applicant not informing the Board about the business and doing it after the fact and that the Board needs to focus on the factors. Mr. Lagana pointed out that the growth thing was irrelevant and whether there were 2 students or 20 students the Board granted the approval based on a certain set of facts which included absolute denial for any type of business and the fact that the business has been operating for over more than a year and understands that we all change our minds but still believed that the applicant should have come before us to seek relief. Mr. DiPietro stated that he was doing that now. Mr. Lagana said yes but it was a year after the fact and it was not done prior to. Mr. Wright agreed and understood what Mr. Lagana was saying. Mr. DiPietro stated that it didn't mind what happened in the past that they had to look at the factors. Discussion ensued with regard to how the business came about. Mr. Wright and believed that they had to focus on the factors. Mr. DiPietro indicated that the Planning Board would take care of the site plan review. Mr. Stuart believed that the prior testimony that they heard was relevant to the testimony heard tonight and when you have conflicting testimony is when it comes into discussion. Mr. Stuart pointed out that the application said that it would not affect property values and abutters saying it will affect the property values which are conflicting evidence.

Mr. DiPietro made a motion to come out of deliberations, seconded by Mr. Lagana. A vote was taken and the Board entered into deliberations at 8:20 p.m.

Mr. Delacoe stated Mrs. Delacoe came into Town Hall and spoke with someone regarding what she needed to do to conduct a business which was done before the garage was done. Mr. Lagana asked who he had spoken to at Town Hall. Mr. Delacoe stated that it was not Mrs. Rouleau-Cote but was just a conversation with someone at Town Hall. Mrs. Delacoe explained that the advertisement on Groupon specifically states "By Appointment Only". The abutters reiterated their concern for the safety of the children in the neighborhood.

Mr. Wright asked the Board if they were ready to make a motion.

Mr. DiPietro made a motion to vote on the application as presented subject to Planning Board review for Case #14-09, Tax Map 8, Lot 48-1-5, 72 Donald Drive, seconded by Mr. Stuart. Mr. DiPietro voted to grant based on Planning Board Review, Mr. Benson voted to deny based on the facts regarding property values and it was contrary to public interest, Mr. Stuart voted to deny based on the evidence they heard and did not believe the applicant met the factor in no diminution in surrounding property and granting the permit would be contrary to public interest and by granting this permit substantial would be done and there was conflicting testimony and did not believe the applicant presented enough evidence to meet their burden and found the abutters to be credible, Mr. Lagana voted to deny as he believed the application fails to meet the 4 factors for Special Exception, and Mr. Lagana also voted to deny based on factors #1, #2 and #4 not being satisfied. The application was DENIED by a vote of 4 to 1.

Mr. Wright informed the applicant that they had 30 days to file a motion for rehearing to ask them to rehear the case and if they did decide to file a motion for rehearing then they should be prepared with any additional information and evidence. Mr. Wright thanked everyone present tonight for their patience.

Case #14-08

Eric Mitchell

On Behalf of Maverick Development

Between Haven Drive & Pingree Hill Road – Map 5, Lots 29 & 36
Zoned Residential One
Continued from July 22, 2014

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. Wright explained that he was going to excuse himself because he was not here last month to hear the case but that he has read the minutes. Mr. Wright further stated that Mr. Mitchell caught him before he was leaving and noticed that the Board was a little light this evening and that with only 4 members that they usually give the applicant the opportunity to postpone the hearing until there was a full Board or proceed with the thought that it could be a 2 to 2 vote and would be back here the following month. Mr. Wright pointed out that Mr. Mitchell indicated that he was going to go through the case in detail almost a fresh start and would like a 5th member and agreed to stay.

At this time, Mr. Lagana asked Ms. Royce to open the case for which Ms. Royce read the application into the minutes for the record. Mr. Lagana began by saying that he understood the request and was going to open by saying the same, however, Mr. Lagana did not believe that Mr. Mitchell had to start all over again and that it was pretty thorough and that the Board members were prepared to vote on the application except for the fact that the opinions of various Conservation Commission members were just that because they had not yet met to discuss this proposal. Mr. Lagana wanted to hear from Conservation Commission to determine if they had any final comments and to not really take this from the beginning again. Mr. Lagana believed that they covered it pretty heavily last month and did not think they had to go through that again. It was of the understanding that abutters understood that there would be development on the property.

Mr. Mitchell began by saying that he did recognize that the reason it was continued was to give the Conservation Commission time to sit together and come up with a decision and have submitted that to the Board members of which shows that they are not in favor of a clustered subdivision on the property. Mr. Mitchell informed the Board members that they did not have any new information and that the plans were the same but that they did have Mr. Long present tonight and that they were before the Board tonight to obtain a Special Exception for cluster development. Mr. Lagana asked Ms. Royce to read the e-mail from the Conservation Commission that was sent to the ZBA. Ms. Royce read the e-mail from Mr. Joy, Chairman of the Conservation Commission had sent to the ZBA which read as follows: *"The conservation commission met with Eric Mitchell and discussed the proposed special exception for a cluster development for the Haven Drive extension subdivision. After full presentation and long discussion the commission does not feel that the proposal for special exception meets Auburn Zoning Ordinance 7.01, sections 1, 2, 3 or 5. Thank you for again considering our opinion."*

Mr. Mitchell turned the discussion over to Mr. Jamie Long of GZA Environmental who was a wetland scientist to discuss each of the purposes in Article 7, Section 7.01 Authority and Purpose of the Town of Auburn Zoning Ordinance. At this time, Mr. Long went through each of the 5 areas for the Board members. Mr. Long indicated that it allows for less impact and more open space and less impervious. Mr. Lagana thanked Mr. Long for his presentation. Mr. Lagana asked if anyone from the Conservation Commission would like to speak. Mr. Villeneuve began by asking Mr. Long if he had a chance to walk the property. Mr. Long said no, not yet. Mr. Villeneuve pointed out that the project may not be laid out the way it's being

presented tonight. Mr. Villeneuve stated that there are going to not only be putting homes but all the accessory things that go with the home, the swing sets, the play yards, the fences which will create a giant barrier through there. Mr. Villeneuve did not believe it met the scope for a cluster subdivision and do not believe there would be more preserved by doing a cluster subdivision than doing a grid subdivision. Mr. Lagana pointed out what Mr. Villeneuve previously stated which was that the layout presented tonight could possibly change once it goes before Planning Board review. Mr. Villeneuve said correct. Discussion ensued with regard to the proposed cluster subdivision and the 5 purposes for cluster development. Mr. Long said that whenever he works on development he tries to avoid any impact to the resources such as wetlands. Mr. Long talked about the connectivity between the open space areas and talked about who would be policing the wetlands when the property is owned by a landowner. Ms. Jarlene Cornett submitted a plan to the Board members that showed the wetlands colored in.

At this time, Mr. Lagana explained that Mr. Benson and Mr. Stuart were both elevated to full voting status at the last hearing held last month pertaining to this case and elevated both Mr. Benson and Mr. Stuart to full voting members for tonight's hearing.

Mr. Villeneuve stated that if people owned their property then they would police their own property.

Mr. Dandrade talked about Article 7, Section 7.01 of the ordinance and pointed out that Mr. Villeneuve said it best that by going to a cluster you more or less double the density to create that barrier. No matter what you want to call it, it doesn't change the function that there are wetlands and buffers. Further discussion ensued with regard to the density and the cluster. Mr. Dandrade did not believe they met the intent for Section 7.01 as the Conservation Commission has outlined for the Board and asked the Board to deny the request for Special Exception. Mr. Mitchell reviewed the Grid plan with the Board members and pointed out that if it were a Grid plan then all the land would be privately owned. Mr. Mitchell pointed out that the Planning Board, Zoning Board as well as the Conservation Commission have had problems with people going into the wetland buffers because they believe they own it and don't see a problem. Mr. Mitchell pointed out the benefits of having a cluster subdivision in this development. Discussion ensued with regard to the difference between a Grid development and a cluster development. Types of housing would be smaller than what would be placed on a two acre lot. Mr. Mitchell further talked about how the Planning Board wanted the connectivity of roads and liked the road to go through to Haven Drive. Mr. Mitchell indicated that the property will be developed whether it's a Grid development or Cluster development. Discussion ensued with regard to cluster as opposed to grid development. Mr. Lagana pointed out what concerns him with a Grid development was that when someone wants to put on a porch or an addition or a swimming pool or deck they'll be faced with some kind of wetland issue and would have two acres to do their thing whereas with a cluster development people would be a lot more confined with what they can and cannot do. Mr. Lagana believed that the discussion was getting much too involved with planning issues and that everyone needs to look back on what the intent of the case is and that is whether or not we can allow this cluster development by Special Exception. Mr. Lagana pointed out that this development may look nothing like this in two or three months when it goes through the Planning Board stage and these are the issues that will be dealt with at the Planning Board. Mr. Lagana reiterated that they have heard testimony from Mr. Villeneuve and Mr. Long, a wetland scientist with different opinions and there's a reason to consider the cluster development and bring it to a vote amongst the Board. Mr. Villeneuve stated that by placing a cluster development that you would be significantly

bisecting the green space and essentially eliminating the top part of the cluster to the bottom part. A brief discussion ensued with regard to cluster and grid development.

Mr. Febonio wanted to point out that it was true that they did not know what the layout would be and they don't know which way it will go but they do know for a fact that there is more open space. Mr. Febonio pointed out the differences between having a grid development and a cluster development and the benefits of having open space. Mr. Febonio further pointed out that people don't usually go beyond their own property and that if you have a grid development, the people would own the wetlands and they will encroach within the wetlands. In conclusion, Mr. Febonio asked the Board that the question before the Board tonight is whether or not a cluster subdivision is a good fit for this Residential One zone. Mr. Febonio stated that he is very respectful to abutters and believed it made sense to do cluster development on this property.

Mrs. Rouleau-Cote spoke with regard to the enforcement end of it and that she has spoken with Mr. Mitchell about when there's a portion of the wetland buffer on the individual properties that she would like it if the lot lines actually incorporated the wetland buffer so that the lot lines don't cross the wetland buffer and that people would have to literally go onto conservation land to do that disturbance. Mrs. Rouleau-Cote did not believe it was a big issue with some of the lots in this cluster development and this would make the Conservation Commission, the ZBA and her job a little easier and then we wouldn't be dealing with people encroaching upon the wetlands. Mr. DiPietro said it would be innovative. Mrs. Rouleau-Cote agreed with Mr. DiPietro.

Mr. Benson asked who would give the land away and who would be managing it. Mr. Mitchell talked about putting it into a conservation easement or a homeowners association who would have restrictive covenants and the homeowner would still own it but it would be overseen by a different entity that would enforce the rules of what you can and cannot do. What they would be doing is taking it out of private ownership and preserving it forever so that corridor would remain. A brief discussion ensued with regard to working with the Planning Board as to actually who would own it and who would enforce it.

Mr. Lagana asked if there were any further questions. None were noted.

Mr. DiPietro made a motion to vote on the application as presented for Case #14-08, Tax Map 5, Lots 29 & 36, seconded by Mr. Stuart. Mr. Benson voted to grant based on the two of the four factors #2 & #4 and based on the Conservation Commissions testimony voted to deny, Mr. Stuart voted to grant as he believed it met the four criteria and appreciated testimony from everyone, Mr. DiPietro voted to grant based on the information from the Conservation Commission and the wetland scientist and believed it met all four criteria for a cluster development, Mr. Wright voted to grant as he believed it met all four of the criteria for a cluster development, Mr. Lagana also voted to grant as he believed it met all four of the criteria for a cluster development. The motion passed by a vote of 4 to 1.

Mr. Lagana pointed out that it was a very tough case and thanked everyone for their testimony and believed that Mr. Febonio would do a great job in the development as he has done in the past in other developments within the Town of Auburn.

Mr. Lagana further stated to Mr. Febonio and Mr. Mitchell that there was a 30 day appeal period that someone could appeal the ZBA decision. Both Mr. Mitchell and Mr. Febonio thanked the

Board members for their time and the discussion ended.

**Zoning Board of Adjustment
Town of Auburn
Rules of Procedures**

Due to the absence of several members of the Zoning Board of Adjustment, the Board decided to postpone the discussion of the Zoning Board of Adjustment Rules of Procedures until the next scheduled meeting to be held on September 23, 2014 at 7:00 p.m.

General Business

No new business was discussed.

Minutes

Mr. Benson made a motion to accept the minutes of July 22, 2014, seconded by Mr. Wright. All were in favor, the motion passed in the affirmative.

Adjourn

Mr. Stuart made a motion to adjourn, seconded by Mr. Wright. 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 September 23, 2014 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.