

**Town of Milford
Zoning Board of Adjustment Minutes
December 4, 2014
Case #2014-19
Raisanen Homes Elite, LLC
Special Exception**

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice Chair
Michael Thornton
Joan Dargie
Len Harten, Alternate
Kathy Bauer, Board of Selectmen Representative

Excused: Laura Horning

Secretary: Peg Ouellette

The applicant, Raisanen Homes Elite, LLC, owner of Map 39, Lot 70 located on 129 West Street located in the Residence A district, is requesting a special exception from Article VI, Section 602.6:A to allow a total of 9,798 square feet of wetlands impact and 16,195 square feet of wetland buffer impact associated with road construction.

Minutes Approved on December 18, 2014

Zach Tripp, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board and introduced the Board. He read the notice of hearing into the record. The list of abutters was read. Chad Branon, Civil Engineer of Fieldstone Land Consultants appeared on behalf of the applicant. No abutters were present.

Applicant's presentation:

A special exception was being requested for 9,798 SF of wetland impact and 16,195 SF of wetland buffer impact. C. Branon handed out plans to the Board members. Subject property, 129 West St., is on the west side of the street across from the high school track and field complex. It is in Residence A district, requiring 15,000 SF and 150 SF minimum frontage. It is served by municipal water and sewer. The property consists of 25.1 acres with approx. 324 linear ft. frontage on West Street. Existing site is mainly woodland except for developed portions along West St., mainly an existing residence located in the northeast corner. Terrain is generally mild, with average slope ranging from 5 to 8 ft. and there are some jurisdictional wetlands on the plan. One that bisects the property in the middle and a large one out to the rear of the property. Proposal is to subdivide it into 34 lot residential subdivision. Since the proposal exceeds five lots, the development must follow the Milford Open Space Conservation District

Ordinance, Section 6.04 of the ordinances. The required open space is 15 percent of land area, which is 3.77 acres and 50 percent of that, or 1.89 acres, consisting of acceptable land, meaning land that is non-wet, no steep slopes. Proposal provides 11.5 acres of open space, or 44 percent of land area, with 2.93 acres of accessible land, exceeding the requirements. It will be served by municipal water and sewer and a 2100 linear ft. road as seen on the plan. It is designed to minimize wetland and buffer impacts. This is the reason it consists of 24 ft. paved road curb to curb with closed drainage. Alternative would have been a 22 ft. paved road with 4 ft. shoulders and ditch lines which would have increased impact. With a closed drainage you can collect and treat storm water prior to release to the existing outlet system. Storm water for site is designed to capture runoff along the road and convey it to stormwater management areas in the back. Project has been before the Planning Board a number of times and the Planning Board has confirmed and voted on the density. On the whole the feedback from town staff and Planning Board has been positive reflected in the memo from Bill Parker dated Dec. 3.

Z. Tripp commented that described how the open lot subdivision was completed.

C. Branon said the end of the memo spoke to how the town has been trying to attract similar developments to provide for a starter home market close to town. The applicants have met with nearly all department heads, who have reviewed the project. All comments have been favorable. They were before the Conservation Comm. last month which issued a letter to the ZBA. He then offered to answer any questions, or to go through the special exception requirements.

Z. Tripp asked for questions from the Board. There were none. He then referred to part of the application showing a portion of the lot on the tax map showing the north boundary with two jogs while the application only showed one. Were they not using the full lot?

C. Branon said they were. The boundary is not shown correctly on the town GIS and the tax map. He pointed out land not owned by his client but owned by property to the north.

Z. Tripp said one culvert is shown on the west brook crossing. Any reason none at the east –most crossing?

C. Branon said they had a culvert but not directing it across the road. Reason is by installing a culvert there it allows the road to be slightly lower through that wetland crossing, minimizing wetland impacts. It also makes any outlet protection, which would increase the associated wetland impact, unnecessary.

Z. Tripp asked about the wetlands in that area. Are they standing water, swamps, seasonal?

C. Branon said it was pretty standard in that you can walk through one area. Ground water starts to seep out the slope, and it meets requirements for jurisdictional wetlands. It is not standing water. It has standards for hydrologic and soil vegetation to meet the wetland criteria. Through the low area there are isolated pockets of standing water. For probably 8 to 10 months of the year you could walk through and not get your feet wet. During spring thaw and a few weeks in fall, it probably is soft.

J. Dargie asked if a box culvert was being done, per the Conservation Comm. letter.

C. Branon said they just received that letter recently. Because it is not a defined channel at the crossing they prefer to enlarge imbed culverts. They do that a lot through State permitting. It achieves goals of a box culvert. It would be a natural bottom with a larger opening at the top. It is a lot cheaper than a box culvert, which are typically only installed in more substantial crossings. This is not a stream. There is a small section on the north side which is kind of a defined channel, but it tapers out. Culvert would not be installed in a defined channel. They were hoping to compromise and do an oversize culvert and put in natural substrata rather than a box.

J. Dargie said the Conservation Comm. noted smaller number of lots would reduce impact. Were they looking into that?

C. Branon said they were not looking into that. Smaller number of lots has no impact on the wetland crossing they were proposing.

J. Dargie responded not so much the crossing, but the wetlands in general; because the Comm. was saying that was a very wet area and saying “because if all the properties were to bring the same impact to the surrounding wetland there would be a noticeable impact on the wetland function.” So a smaller

number would reduce the impact. It didn't sound like the Conservation Comm. was behind the proposal. She said the Comm. knows more than she does about wetlands.

C. Branon said that didn't come up at the meeting with the Conservation Comm. and he was surprised to see that in the letter. The site based on the local storm water requirements and local review, but also State Standards Bureau review this will require State alteration of terrain permit that looks at water quality. Their charge through design and planning stages is to put together a design that doesn't negatively impact surrounding areas. They believe this design accomplishes that. They are putting in more open space land than required. It meets all town regulations. They are not requesting a variance from those. He disagreed with the statement in the Conservation Comm. letter. One could make a case if all properties were developed in the same fashion where they had to mitigate all improvements re stormwater and provide for adequate buffering and had only impact required, there would negligible, if any, impacts on the wetland system as a whole. Especially from a function standpoint which their wetland scientists addressed in the criteria. Looking at the memo prepared by the Community Development Director, there is a need locally for a project like this with enough density to support the price point in the low 200's for starter homes. Taking lots away would change the dynamics and go away from those goals and his client's goals.

J. Dargie stated that didn't really satisfy Conservation Comm. concerns. She asked if someone from the Comm. was present.

Z. Tripp said yes. One question is if this is a proposal with least amount of impact to the wetlands. Looking at the map you might imagine if you didn't have lots 39-70 - 8, -7, and -6 you might be able to snake the road along the north boundary and maybe lessen the impact to the most eastward crossing and have similar across the western portion. Any reason they didn't do that?

C. Branon said they went though that with the Conservation Comm. Northern boundary is roughly 6 to 8 ft higher than current proposed location of the road. Road is designed to come down the slope at the front following the contours and keep the elevation as low as possible so they cross the wetlands as perpendicular as possible to minimize impact and as low as possible to minimize impact on the sides. They had designed it similar to what Zach mentioned, but with open drainage with 25 ft. road and 4 ft. shoulder. If it was only 18 inches elevation difference from the road to the wetland it would be an additional 4 ½ ft. out and you would have to be at least double to have cover over the culvert. The road is about 6 ft. higher but footprint of the road and improvements are much wider and had more impact in that route. They were not crossing that wetland as perpendicular as currently but were able to shift road. They are just under the impacts they had initially. They gained a couple of lots and went closed drainage with everything. Road design with open drainage would need a basin with associated impacts. Shifting the road and closed design allowed pushing the stormwater away from sensitive areas in back and treating it prior to discharging it to adjacent wetland areas. By gaining a couple of lots they felt they were improving the design and improving impacts due to the road elevation and footprint.

Z. Tripp asked the meaning of treating stormwater prior to discharging it into the wetlands complex.

C. Branon said it would be a storm water management area that settles stormwater out; it settles the sediment out. It is called a pocket point. There is a certain amount of time it sits in the pond before going out. It satisfies the State Alteration of Terrain Bureau requirements, and they review the water quality for the EPA.

Z. Tripp assumed the housing lots are sloped to provide runoff to the closed system rather than directly to the wetlands.

C. Branon said that was correct. All lots to the north are drained to the closed drainage system. Lots along the perimeter (pointing to west perimeter), front yards will drain to the closed system and back yards will drain to the wetland area. Nothing on a residential lot you technically have to treat for. It is making sure there is not increase in runoff leaving the site. They have submitted those calculations to the Planning Board and plan will go through significant local and State review. They are confident this will mitigate the proposed improvements.

L. Harten stated he didn't have a copy of the letter from Bill Parker that had been referred to.

Z. Tripp said he would be reading it into the record.

L. Harten said the road is narrower than is typical, and with the shoulders taken off. He questioned any implication re getting emergency vehicles in and out because of the narrower road.

C. Branon said the paved part of the road is wider than the required 22 ft. They have 24 ft wide. National Fire Prevention requirement is 20 ft. hard surface. Milford Fire Dept. has reviewed and he understands they are fine with this. They are supporting a waiver request for length of the dead-end street.

J. Dargie asked what was on the other side of the stormwater management area - woods?

C. Branon said there is a small section of woods and then a gravel road that parallels the property.

Z. Tripp asked for any further questions from the board. There were none. He opened the meeting for public comment.

S. Fournier of 9 Woodward Dr. came forward. Re spirit of the ordinance, she quoted from the Wetlands Conservation District, "to protect the values and functions of wetlands, surface waters and their associated buffer zones." The Conservation Comm. pointed out there is much wetland on this property and it may not be suitable for development. Referring to the seven criteria, especially impact on wetlands, in her mind, they are so severe they begin to violate the spirit of the ordinance. Why else have criteria? She asked if the Board received her letter.

Z. Tripp said they had and asked if she would be paraphrasing it, so he wouldn't read it into the record.

S. Fournier said she was. The ordinance also says to provide vegetative cover, which is a buffer. This project wants to impact 16,195 SF of buffer. The vegetative cover is important because it helps filtration of runoff and prevention of erosion, which it is currently doing. After the construction, it would be man-made erosion. The wetlands ordinance also protects wildlife. She mentioned frogs, salamanders, dragonflies that live in the wetland and depend on it. Filling in 9,978 SF of wetland, you lose that habitat. The statement by the applicant's representative of negligible impact is biased, which he is allowed because they are trying to put their best foot forward. She is looking for objective information such as what the Conservation Comm. provided. There is not enough objective information to make a good decision. If you are not protecting the buffer you are not protecting the wetland. There is a lot of wetland. She asked the board to consider more objective information from independent scientists and answer the seven criteria re habitat and groundwater. Affecting the wetland affects the groundwater. The Conservation Comm. is saying the spirit of the ordinance may be violated if you do these things in all this wetland. She may have additional comments.

Z. Tripp asked applicant to address concern with impact on vegetation in the buffer and the species and any other issues he wanted to address.

C. Branon said many of the buffer impacts are temporary. Impact for construction of the stormwater basin will ultimately be stabilized and vegetated— nature and eventually will take its course. Permanent impacts pertain to the footprint of the road which will not have negative impact on adjacent wetland system because no runoff will be draining into the wetland. It will be captured, conveyed to the stormwater management and discharged out. There will still be buffering to the wetland. He didn't think there was any room for statement that the site is not suitable. They are meeting all regulations. They are proposing to cross a wetland area and have associated impacts to cross land that, per regulations, has a right to be developed as long as they follow all the regulations. Plan follows all regulations and has more open space than required. Because there are a lot of wetlands doesn't mean the project is bad. Almost all wetlands except the areas they are impacting and one other area will be in a permanent conservation lot at conclusion of the project, which will be managed by the Conservation Commission. The project provides permanent protection to a lot of the wetlands functions and values. They are not high value wetlands. There is no vernal pool. They are standard wetlands. The wetlands are taking on stormwater from adjacent development areas and filtering it out. It will still provide those functions and values. Re wildlife, this is not a vernal pool. They filed an NHB data check; there were no

endangered species. The State reviews concerns/issues re functions and values and wildlife. The NHB data check is tied into Fish and Game, so if there is a critical species and habitat they are dealing with Fish and Game, EPA and the State. This project doesn't have that. It doesn't have a lot of high function and value wetland. Third party review, ZBA, etc. as well as the State level. It is not taken lightly. He took offense to the statement implying he is a hired gun. He is a professional and has to abide by technical standards. The plan meets all local, state and federal standards because they want to get approved. There will be third party review through the Planning Board and permit review process. They aren't sidestepping it, but that is not something typically seen at the ZBA level.

S. Fournier responded that applicant mentioned temporary impact. That is destruction of the current value of the buffer. How many years before that value returns? He stated there is no negative impact. She understands care will be taken with road construction but the road will run through the wetland, which is negative impact. Re Chairman's question as to why not reduce the number of houses. No good answer. Applicant talked about no high value wetlands. That is the point of having an objective view. Applicant is self-reporting. They are well-meaning. They work for the client and put the best face on the application. The conclusion that impact on wildlife is negligible is in his eyes, but not hers. Statements of impact on the whole area need to be objective and verified. The NHB data at the State level is what has been reported and doesn't show up unless it is reported. Unless someone went through and documented species, you wouldn't know what wildlife is there throughout the year? Were the vernal pools checked in springtime?

C. Branon responded there are no regulatory standards requiring the application be prepared or reviewed by a third party to request a special exception to cross a wetland to access an isolated piece of property. A landowner has a right to access pieces of his property. The big picture gets reviews at a number of levels. Yes, everybody who prepared and took part in preparing the application works at his office. They are all certified scientists, certified soil and engineers, people who are objective and who have to meet and answer to regulatory people. They did flag site in spring and there are no vernal pools. Have to certify to the State as such. They plan on doing that.

Z. Tripp asked where in the process that was? In the future?

C. Branon said when they get ZBA approval; they finalize the State wetlands permit. To do it before would be presumptive in case something would change. They would be happy to supply ZBA with copy at that time. They are over the minimum expedited threshold so technically the Conservation Comm. doesn't sign this application, but the Town will be provided a copy. In summary, there has been a lot of talk about material that has no relevance. Project meets regulations; as part of his profession as a design professional they are tasked to put a plan forward that meets them or seek relief. They are not seeking any relief in the form of a variance and feel it meets all zoning criteria. It meets the regulations and criteria for submission for a special exception application.

L. Harten asked for any comments that the representative of the Conservation Commission had.

Chris Costantino of Conservation Commission, North River Rd, said the commission had no further comments. The letter is what they came to as a conclusion as their recommendation to give the information needed for Board to make a decision.

Z. Tripp said, re comment in the letter "the percentage of wetlands on this parcel is quite high. If all properties in this area were to bring the same impact to surrounding wetlands there would be a noticeable impact to wetland function. A smaller number of proposed lots would reduce the impact. In view of several comments re that statement, he asked whether that comment was geared to the number of lots or actual wetland impact being discussed.

C. Costantino responded, the number of lots.

Z. Tripp asked for any other questions from the Board. There were none.

Z. Tripp asked for further public comments. There being none, he closed the public portion of the meeting. He mentioned a letter received from Suzanne Fournier, which he didn't read as she had already spoken. There was a letter from Bill Parker, Community Development Director, mostly regarding

open space conservation subdivision re both applications on the evening's agenda. With the Board's permission, he paraphrased it.

Z. Tripp also read a letter from the Conservation Commission to the ZBA dated 12/4/14.

Z. Tripp asked the applicant to go read the application, going through the criteria for a special exception.

Description of proposed use:

The purpose of this special exception application is to construct a proposed road to meet Town of Milford regulations and safety standards. Proposed road will require a wetlands impact of 9,798 square feet and 16,195 square feet of wetland buffer disturbance. The proposed road will provide access to a 34 lot open space residential subdivision. The proposed road has been situated and designed to minimize wetland and buffer impacts.

1. The proposed use shall be similar to those permitted in the district:

The existing lot has access off West Street to service an existing residence. This request is for a proposed road to be constructed from West Street to service the rear developable portion of the lot. This lot is located within the Residence "A" District of the Town of Milford Zoning Ordinance. The proposed site is permitted and similar to others in the district. The location of a proposed road has been best situated to minimize wetland impacts and associated buffer impacts. The roadway has been located and designed to follow the existing topography to the extent possible which thereby minimizes the required grading and footprint of disturbance. [C. Branon added a comment that they went with the closed drainage system that narrowed the footprint of the road, which is a larger cost to the developer but is a more responsibly environmental design]

2. The specific site is an appropriate location for the proposed use because:

The proposed wetland crossing is in an appropriate location to minimize any impacts to the surroundings. The existing lot is approximately 25 acres in size and is bisected by a jurisdictional wetland. The roadway crossing is situated as shown due to the geometry and topography of the site. The design of the site proposed a reduced road width to minimize impacts as well as a closed drainage system to culvert and treat storm water runoff prior to out letting into adjacent wetland areas.

3. The use as developed will not adversely affect the adjacent area because:

The proposed road will incorporate erosion control measures, drainage improvements and will stabilize disturbed soils until vegetation stabilization is complete so to not adversely affect the adjacent area. [The project will employ all best management practices during construction to prevent any potential impacts. The stormwater management system has been designed to mitigate the proposed improvements to the property, also prevent impacts to the adjacent area In summary this project will not have adverse impact as it will meet all local and state permitting requirements and will provide safe and environmentally responsible access to the property]The use as developed will also not adversely affect the adjacent area because all best management practices for construction of the proposed road will provide access to the property which has been designed to minimize any erosion during construction and in the future as well as provide safe environmentally responsible access to the property.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

The proposed road will meet all local road construction regulations and safety requirements by providing safe site distance, travel surface, side slopes and access for emergency vehicles. The use will be that of residential access to single family dwellings which is similar to other uses along West Street and will not create any nuisance or serious hazard to vehicles or pedestrians.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

The proposed road design will meet all local regulations and standard engineering practices. The design will provide for safe vehicular access to and from the property. The design

implements best management practices and the development will also be serviced by municipal sewer and water [as well as natural gas]. This proposal therefore provides adequate and appropriate facilities for the proposed use.

6.02.7 Criteria for Evaluation

A. For all projects requiring a special exception the applicant shall demonstrate by plan or example that the following factors have been considered in their design:

1. The need for the proposed project. The existing wetland over the front portion of the subject 25 acre lot creates a barrier from readily accessing the upland portions of the parcel. The proposed project is typical and permitted use in order to allow landowners access to the upland portions of their property. The wetland systems throughout Milford are afforded the additional protection of the 25 ft. wetland buffer however, the crossing of wetlands in order to access ones property is an established right and permitted use supported by the State of New Hampshire Wetlands Bureau as well as the Town of Milford. This wetland crossing is needed in order to enjoy, utilize and access a significant portion of the upland area contained within the parcel boundaries.

2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers. The proposed road location is located within the narrowest feasible part of the wetlands in order to minimize wetland and buffer disturbance areas and still provide safe and reasonable access in accordance with Town of Milford road construction requirements. The proposed road also has been oriented to exit the wetland buffer as soon as possible after the wetlands crossing area. [C. Branon commented this was an area where it could be stated that they were using a reduced footprint to try to minimize impact]

3. The impact on plants, fish and wildlife. Since the proposed crossing has been designed to minimize the wetland and buffer impact to the best extent possible the impact on plants, fish and wildlife will be negligible. The vegetation in the area is a varied mixture of pioneer species which grew up in the previous open field area. Wetland and buffer areas are dominated by Poplar, Rosebush, Russian olive, Dogwood, Greenbriers, Sumac, Honeysuckle, etc. Evidence of wildlife in the buffer area consisted of birds, chipmunks, red squirrels, rabbits, coyote and some white tailed deer. Due to the proximity to Route 101 and the developed residential nature of the surrounding properties, the area of proposed buffer disturbance adjacent to the highway will have negligible impact on wildlife. The proposed road will install 1 culvert crossing to allow for improved drainage flow. The plants and wildlife within the buffer area are common in southern NH and according to a requested review by the New Hampshire Natural Heritage Bureau; there were no recorded occurrences for rare species nor exemplary natural communities mapped in the project vicinity.

4. The impact on the quantity and/or quality of surface and ground water. The proposed road will be conducted in accordance with the Town design regulations, the Milford Storm Water Management and Erosion Control Ordinance, as well as standard best management practices. The proposed road construction will not adversely affect the quantity or quality of surface and/or groundwater. The required grading will not redirect the flow of runoff or storm water to any other area than where it currently drains. The proposed project will maintain gentle grade slopes and vegetation along the slopes of the roadway area which serves to decrease the energy of any storm water thus allowing for infiltration into the soil thereby reducing erosion potential. The temporarily disturbed area during construction will be isolated by properly installed silt fence and will be seeded, and stabilized with straw or jute matting until vegetation can be established [This project also requires an alteration of terrain permit through NH DES which will consist of a thorough review insuring this project will not have detrimental impact on water quality]

5. The potential to cause or increase flooding, erosion, or sedimentation. The proposed road and the remainder of the lot are not within the 100 year flood zone. Due to the forested nature and previous use as farm fields and pasture the watershed and flow through the wetland area is not expected to be significant. The subdivision will employ closed drainage and be designed in accordance with Local Storm Water Management Regulations as well as NHDES Alteration of Terrain requirements and will not pose any additional risk for erosion, flooding or sedimentation.

6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, complex and/or buffer area were also permitted alterations to the wetland and buffer proportional to the extent of their property rights. Every case would need to be taken on an individual basis and evaluated on the individual conditions and merits through the Conservation Commission and Zoning Board of Adjustment. The subject property is surrounded by forested areas, farm fields and residential development. Assuming that all abutting properties are designed in accordance with Local and State requirements [are designed to minimize permanent impact, provide for mitigation and provide for open space conservation] there should be no significant impact to property or the community as a whole. Portions of the abutting properties are already developed and should the remaining abutting properties also be permitted alterations, the cumulative impact should be negligible, and would not adversely affect the wetland functions and values of the existing wetland system. The proposal meets local and state regulations and provides mitigation for the development. 47% of the land is in open space, which exceeds the local regulations. C. Braden noted that this paragraph does not pertain to the project as a whole but to the wetland crossings and the impact proposed for the wetlands. For someone to say if this project was proposed all around the site, would it have an impact on the associated wetland system, isn't what this question asks. It asks if someone came in with the same proposal to impact the wetlands, would that have an impact on the wetland complex. Applicants say it would not. He thinks they would say no even if it was the whole project because they are designed to meet all the requirements. He mentioned this for clarification.

7. The impact of the proposed project on the values and functions of the total wetland or wetland complex. The subject parcel has been utilized and manipulated by humans in the recent past for farming and excavation activities. The land use and land cover has changed over the years and this proposed change will be designed to maintain much of the existing conditions within the wetlands and the open space around the development. The main function and value of this wetland system is primarily storm water treatment and storage from nearby developed areas. The proposed development will not change the functions or values of the wetland. The site will be designed to mitigate all improvements in accordance with local and State regulations. Being in close proximity to NH Rte 101 and residentially developed areas the wetland also provides storm water treatment such as sediment, nutrient and pollutant removal. The proposed project as designed should have no significant impact on the functions and values of the total wetland complex. The project proposes to place approximately 11 acres of land into a protected permanent open space which would include the preservation of the wetlands and associated values and functions.

Z. Tripp said lots 39 -70--9, and 39-70-8 have a good portion of wetland on the residential lot. How is that handled? When the lot is sold how is the wetland protected from the use of the owners of the lots?

C. Branon said like any lot in town with wetlands. Wetland still has 25 ft protected buffer area which will be shown on all the plans submitted to the Town. It is a natural feature and regulations still hold. Hopefully future owners would abide by them.

Z. Tripp asked if the currently forested lots in wetlands will be kept that way after construction.

C. Branon said the buffer and wetland would be forested.

Z. Tripp asked the Board if there were any other questions.

M. Thornton asked where the best management practices are written.

C. Branon said in Vol. II of the Alteration & Terrain manual published by the State for erosion and sedimentation control practices.

Z. Tripp moved on to discussion of the seven criteria from 6.02.7 Special Exception for Wetlands.

1. The need for the proposed project.

M. Thornton thought there was a need. If it is going to be developed, they need a plan. He didn't see anything against developing the area.

F. Seagroves said there was a need for this. There is a need for a road to get to the back of the lot where much of the housing will be.

L. Harten agreed there was need. He is assuming there are State permits to be obtained which applicant addressed. But they will not go forward with that until after they get through the Zoning and Planning Boards to answer this question, he believed there was need for the project.

J. Dargie agreed. There is a need if they want to get to the back.

Z. Tripp agreed with the Bd. There is a need to discharge wetland and buffer if construction over the road is needed to access the back portion of the lot.

2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers.

F. Seagroves felt this was the best plan to get across. Z. Tripp had questioned going up 39-70-88 and 39-70-9. He couldn't see the contours, but if that is higher it would get more drainage coming down. Applicants have taken that into consideration. This is the best plan.

L. Harten saw a question when comment was made of moving the road up but they have no elevations; assuming applicants have done their homework to the best of their ability. They are experts.

F. Seagroves and L. Harten saw the contour lines on the plan and could see it was much higher.

L. Harten said probably has the least impact on wetlands.

J. Dargie disagreed. She would defer to the Conservation Commission's better knowledge about wetlands. She was not convinced this was the best plan with the least impact on wetlands, waters and buffers. Looking at the elevation it was gradual, but she would have to say no.

M. Thornton was not convinced it was the best plan and would like to know how many others were considered and why this alternative was chosen. It seemed it was to make a price point for sale of the houses. That is important, or the project would not go forward. But, the question directly relates to the least impact to the wetlands. From everything presented, and now they know where the best business practices are, he would say it was probably the best among the best.

Z. Tripp said it was the proposal with the least amount of impact to the wetlands. The impact is the road. Any other project layout was to the north side of the lot; applicant testified that had greater impact. This is lower in the wetlands, following contours of the land better. They are trying to traverse the wetland area in a better manner. Applicant testified that previous road design further north had an open culvert which had greater impact than the closed design. It is probably the design with the least impact to the wetlands at the road crossing locations.

3. The impact on plants, fish and wildlife.

M. Thornton believed they had been considered and in this plan are probably the least intrusive possible.

L. Harten agreed. They have made a best effort to minimize impact on wildlife, fish, wildlife and plants as can be expected for this to go forward.

J. Dargie was not sure. Something about the culvert and crossing with the wildlife. Not sure if that was the request for the box culvert brought up by the Conservation Comm. it's whether it's been considered. She felt it had been considered. She can't answer whether it was the best consideration. The question is whether it's been considered.

F. Seagroves said no big impact to plants, fish and wildlife. If you put a road and houses in, the chipmunks and squirrels won't go away. Allowing this road will not impact wildlife. Re fish, as stated, there is not that much running water there and there will not be many fish there.

Z. Tripp agreed with the rest of the board. The area where the road intersects the buffer should have minor impact on plants, fish and wildlife. Construction in previously forested area will have some impact. The question is whether disturbing buffers and wetlands will have additional impact. The design has a culvert. It appeared some fine tuning could be done with best culvert design. He suggested a condition that, if approved, the applicant visits Conservation Commission again and gets final approval of a best culvert design in this application.

F. Seagroves said if they specify applicants would have to come back before the ZBA.

Z. Tripp said something along the lines of getting final agreement on a final design, as long as they are able to come to agreement on a final design. He wanted the Board to think about wording they would or would not want.

4. The impact on the quantity and quality of surface and ground water.

J. Dargie was concerned with the Conservation Comm. comments re high percentage of wetlands, impacting on quality and quantity of groundwater and surface water. But they have seen stormwater management areas. That may go to the other question.

Z. Tripp said they are evaluating the proposed impact to the buffer and wetland area, not necessarily the plan as a whole.

J. Dargie said no. She thought there was impact on the quality and quantity of groundwater.

M. Thornton said there was impact but it had been addressed. The quantity of groundwater is low, but not insignificant. The quality of groundwater, with still pools and flow characteristics as explained, is acceptable.

F. Seagroves agreed. He liked the two storm management areas where the water is captured by the road goes into the areas and captured and liked the idea that salt from the road going to that area. As stated, water, sediment and salt will stay for quite a while and be captured. They have taken into consideration that it will not run off into someone else's property.

L. Harten agreed. Reading from their answer to the question it will be consistent with town design regulations, Milford stormwater management and road ordinances as well as best management practices. He's not sure what that is but it looks like they made their best effort. The two stormwater management areas should minimize any affect as far as he could see. He's not sure he's qualified to make that decision, but the engineer is.

Z. Tripp agreed. The design minimizes impact on quantity and quality of surface and groundwater. All new subdivisions have some impact, with rooftops and roads directing water that wouldn't have been there. As mentioned, it is a closed system to storm runoff areas. Focusing on wetland buffer impact, some are temporary. There is no long term impact in quality and quantity in that area. Re road crossing the wetland area, applicant testified there was not a lot of standing water year round. He had no reason to believe that a road would change the flow of the water. He testified there was a naturally occurring low spot in that lot. He believed applicant could prove there was minimum impact to the quality and quantity of groundwater.

5. The potential to cause or increase flooding, erosion, or sedimentation.

L. Harten saw no problem. It appeared they addressed it in the proposal. Applicants refer to local stormwater management regulations and the NH DES Alteration of Terrain requirements. It will not cause any additional risk for erosion, flooding or sedimentation.

F. Seagroves said yes. He didn't see any increase flooding or erosion. As he said in the previous question, they have taken care of runoff.

M. Thornton said, as addressed in the presentation, it is within the 100 year flood zone and will not flood frequently. Settling pools to take care of sedimentation were addressed. With the road at the lowest possible elevation they have a low flow rate of water, therefor you get low erosion.

It has been adequately addressed.

J. Dargie said yes, agreeing with what was stated that it has been addressed.

Z. Tripp agreed. The subdivision and impacts to the wetland and buffer have been designed in accordance with local stormwater management regulations and NH DES Alteration of Terrain requirements.

6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer area were also permitted alterations to the wetland and buffer proportional to the extent of their property rights.

F. Seagroves didn't see a problem. He calculated 25 acres and disturbing less than ¼ of an acre of land. As stated, every case is different. If you did the same thing on the next lot over it may be more or less, but in this case he didn't think it would have any effect.

M. Thornton thought if abutters were held to the same criteria, it would not be a problem. He would say it was addressed.

L. Harten agreed that if abutters were to do a similar proposal, probably not on this scale, they would have to appear before the Zoning Bd. which would have to consider it individually for impact. He didn't see a problem.

J. Dargie answered no. She thought not knowing what is available for the abutter which is why she questioned about what was along there. She was going by the Conservation Comm. statement that percentage of wetlands on the property is quite high. Not having enough information, she can't say yes.

Z. Tripp answered yes. There is a certain disturbed wetland area in this application and if surrounding properties have similar amount of disturbance at the same ratio and percentage and in similar manner, what would cumulative impact be? If surrounding properties had this much wetland and only disturbed it for the road crossing points and took into the same design considerations as this application, he thought there would be minimum impact on the rest of the wetlands. Looking at some maps on the Town website, he referred to a residential development to the southwest that appears to be either in the wetland or buffer. To the southwest the proposed site bordered by Rte. 101 and to the south by a large parcel that looks undeveloped at this time. If they did some of the same disturbance just for the road and in the same percentage, he didn't think there would be a large impact.

7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.

F. Seagroves said impact is minimal. It is 25 acres, not all wetland. They are discussing ¼ of an acre. He didn't see a major impact on this type of wetland. It was stated that most of the year it is standing water. Water is below the surface.

L. Harten agreed with Fletcher. The impact of the proposed project on the values and functions of the total wetland and complex has been handled in the best way it could be done. Fletcher and others mentioned there really isn't standing water. In spring there are vernal pools.

Z. Tripp said the applicant didn't say there were vernal pools. Just regular pools.

L. Harten said vernal pools are not necessarily permanent. In the wet season you will get them but they wouldn't exist on a continual basis. He had no problem with this criteria.

M. Thornton said he believed the impact of the proposed project would be low. They examined it very well. Development of only 53 percent of the property; obviously almost every dry spot has been developed, which would be expected. He saw some good proportioning in the north end where they have done a set aside.

J. Dargie said not knowing the impact on value and functions of the total wetland, she said no. They don't have to have as large a development and that could possibly reduce impact.

Z. Tripp said yes. He looked at impact of this wetland and buffer and disturbance by the road. It is being designed in accordance with all regulations, with adequate thought put into the location of the road to impact the wetlands and the entire wetland complex. The rest of the subdivision is designed for water management with stormwater drain. Wetlands are designated as keep out areas and there are buffers

beside those. The plan keeps out of those areas except for temporary disturbance of the pools which is why they are there. If they are staying out of wetlands for the rest of the development that should be adequate to protect the wetlands for the rest of the wetland complex. He didn't believe it would have additional affect.

Z. Tripp then proceeded to discussion of the Special Exception criteria.

A. The proposed use shall be similar to those permitted in the district:

F. Seagroves – yes. At the end of West St. which is just across the street there is development.

L. Harten agreed. It would be similar to any other areas of similar wetland and buffer zone.

M. Thornton believed it was. If something came before the Bd. with a similar challenge they would ask for a similar solution.

J. Dargie – yes, the proposed use is similar

Z. Tripp – the proposed is similar to one in District A. Subdivision is allowed. It is conforming. Re letter from Bill Parker, it conforms to the open space requirement.

B. The specific site is an appropriate location for the proposed use:

L. Harten – yes, the location minimizes impact to the surrounding area.

M. Thornton believed the location of the building sites and the layout minimize impact.

J. Dargie asked if question referred to the proposed use of the road or the whole complex.

Z. Tripp said the questions are generic. As he saw it, it was what the application was for, which was the road.

J. Dargie – no, not convinced it is the best location to not impact the wetland.

Z. Tripp I- yes. Per his previous statements, this design minimizes impact.

F. Seagroves agreed. It has minimum impact.

C. The use developed will not adversely affect the adjacent area:

F. Seagroves – yes. Going back to answers to other questions re stormwater management, it won't adversely affect adjacent area.

M. Thornton – it would not affect adjacent area.

J. Dargie – no. She still thought they had to do something different.

L. Harten – it will not adversely affect adjacent area. Enough time and effort has been put into minimizing any problem to the area. Applicants have done their homework. Doesn't believe any adverse effect. Believed there was enough protection in proposal so that adjacent area will not be affected.

Z. Tripp agreed with Len. This is repetitive from question re cumulative impact of similar buffer and wetland disturbance. He doesn't see adverse effect.

D. There will be no nuisance or serious hazard to vehicles or pedestrians:

M. Thornton –there will not be any problem with a hazard, so his answer is no.

J. Dargie said yes.

L. Harten didn't believe there would be any nuisance to vehicles or pedestrians. Road will meet all construction regulations and safety requirements providing safe site distances, side slopes and access to emergency vehicles.

F. Seagroves –yes. He didn't see any nuisance or serious hazard to vehicles or pedestrians.

Z. Tripp – road is being designed accordingly and gaining appropriate approvals. Didn't believe there would increase hazard or nuisance.

E. Adequate appropriate facilities will be provided for the proper operation of the proposed use:

M. Thornton – yes. Believed it was laid out and planned fairly well. Without much elevation change there isn't much migration of water. Didn't believe it would affect other sites, so believed it was done right.

L. Harten - yes. Believed appropriate facilities will be provided for the proper operation of the proposed use.

F. Seagroves – yes. It meets all local regulations and standard engineering practices.

Z. Tripp agreed. Culvert and stormwater management practices being put in. Applicants testified they would be getting approvals through the state.

Z. Tripp asked the Bd. for thoughts on a conditional approval. A brief discussion followed, with J. Dargie agreeing, because of the Conservation Comm. memo, that they find they agreed with approval, and a previous case where it was approved pending Planning Bd review. Z. Tripp wanted to be specific along the culvert because the Conservation Comm. mentioned a box culvert. F. Seagroves concerned at it coming back before the ZBA. It was agreed that, with conditional approval, it would not need to come back before the ZBA.

Z. Tripp suggested approval conditioned on Conservation Comm. approval of culvert design. He requested a motion.

J. Dargie moved to approve as a condition.

M. Thornton seconded.

Vote on condition:

F. Seagroves – yes L. Harten – yes J. Dargie – yes M. Thornton – yes Z. Tripp – yes

Board proceeded to vote on the criteria for Special Exception.

Is a special exception allowed by the ordinance?

F. Seagroves – yes L. Harten – yes M. Thornton – yes J. Dargie – yes Z. Tripp - yes

Are the specific conditions present under which a special exception may be granted?

L. Harten – yes M. Thornton – yes J. Dargie – yes. Z Tripp said she voted no during discussion. J. Dargie said yes, with the condition - F. Seagroves – yes Z. Tripp – yes

Z Tripp asked if there was a motion to approve the application.

F. Seagroves made the motion to approve Case # 2014-19

L. Harten seconded the motion to approve Case #2014-19

Final Vote:

Fletcher Seagroves – yes Len Harten – yes J. Dargie – no M. Thornton yes Zach Tripp – yes

Case # 2014-19 was approved by 4 to 1 vote.

Z. Tripp informed the applicant the case was approved and reminded the applicant of the 30 day appeal period.