





Town of Bethel  
*Zoning Board of Appeals*

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plan, or the maximum number of units we could get, therefore in a cluster plan. This drawing here represents the same piece of property.

Jim Crowley: Randy, so there is no confusion that is the one you want. That is the one you are here for the use variance.

Randy Wasson: Yes.

Jay Zieger: The conventional subdivision, we don't need a variance for the conventional.

Jim Crowley: So that has to go, you can do that regardless. Since we are here for a variance, let's just talk about this one, so there is no confusion.

Jay Zieger: The only reason we are showing this is because it is relevant, it is because the conservation subdivision laws direction say before you.....because if we were to build this, we can build more than fifty eight, but the limit is what you can build on a conventional subdivision, that dictates how many you can build, and then you go ahead and say okay there is a conservation subdivision, this is how we would like to build it.

Jim Crowley: How many are you building on this one?

Randy Wasson: The same amount, fifty eight. We are just clustering. The footprint is smaller. Same number of units, much closer together than on this plan. Same central water, same central sewer system, we disturb less land, and provide larger buffers to the river. One of the main concerns of the Town's comprehensive plan, at previous meetings I had read portions of the comprehensive plan to the board, where conservation subdivisions and clustering are encouraged, among other things to preserve habitat, to preserve natural buffers and natural resources and open space in the town. We believe that plan; the conservation plan does something that the town prefers, when it comes to these developments. It disturbs much less land, and preserves some of these buffer areas. Basically that is it. We are open to comments and questions.

John Sauchuck: That corner, what is the capacity of that?

Randy Wasson: Well the fifty eight units would use approximately 30,000 gallons per day.

John Sauchuck: The offsets from the river are how much?

Randy Wasson: These are about 300 ft., from the river.

John Sauchuck: The scale on that is?



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Randy Wasson: One inch to one hundred.

John Sauchuck: That is all the questions at this time

Dawn Ryder: I would like to take my town board hat off, and put my resident, love of Bethel, taxpayer hat on. I was also one of the people who spent two and a half years of her life working on the zoning changes that we have now before us. Before that the zoning went back to 1962. They have referenced the comprehensive plan, which we used as our bible to write the zoning that you currently have before you. We decided to do conservation subdivisions to keep open space, and we only put that in for the Ag districts and the forest districts. Those were the districts we went a lot higher with than one acre zoning in our town. We were trying to make it so affordable housing could still be built out in our Ag area, to still keep the open farmland and the beauty in our town. The main thing that you can find in the comprehensive plan over and over again is the characteristics of our community, and how we want to preserve our natural character, working landscapes along existing highways while promoting the safe efficient circulation of traffic. Rt 55 is addressed as one of the main gateways to Bethel. As we all know 17B and 55 are our gateways into our town. I have brought a picture; I am showing you some google maps, pictures of the road where the driveway that is on your map will be. I am a little concerned why the applicant is showing drawings that don't actually match the current code. There is one acre zoning there. In my opinion he should have twenty something houses clustered together for the Zoning Board because that is what the current zoning is. The sewer plant is not approved. No private sewer plants have been approved here. If you look we have done a lot of changes with the sewer regulations as well. I don't know why they are standing before you with fifty eight something homes, when the current law right now for their project, they have no prior approvals or anything else, it is one acre zoning. Their twenty one houses would be over here, it could be clustered that way, but I feel that if you gentleman give a variance for this, there will be more variances to come. Thank you.

Jim Crowley: No one else from the public wants to speak?

Jacqueline Ricciani: No written comments?

Bette Jean Gettel: None.

***Motion to return to regular meeting by Jim Crowley, second by Cirino Bruno***

***All in favor – 5***

***Opposed-0***

***Agreed and carried***

Jim Crowley: Does the board have any comments?



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Richard Conroy: My problem is still the sewer. It is not a public sewer that they are building. We looked at this last month, and the month before. That should be one acre zoning.

Randy Wasson: I think your regulations are very clear that you do permit sewers other than municipal sewer. We did go through this. Your definition, I am reading under Section 257-1, "common sewer controlled by a governmental agency or public utility" it doesn't mean it has to be a municipality.

Richard Conroy: Who is the government agency?

Randy Wasson: That could be a municipality.

Richard Conroy: Who is the government agency regulating this sewer?

Randy Wasson: The DEC. Let me give you a few more. It is pretty straightforward I think.

Richard Conroy: We went through this before.

Randy Wasson: We did, but I think it bears repeating.

Section 257-48 B "Design standards for new sewer systems, Any wastewater treatment system for new commercial or institutional construction, as well as conservation subdivision or multifamily dwelling developments, shall be designed and built according to the requirements of this article and the requirements, as may be from time to time be amended, of the New York State Department of Environmental Conservation (NYSDEC) standards for sewage disposal for intermediate-sized sewerage facilities. Those design requirements are found in NYSDEC manual "Design Standards for Wastewater Treatment Works: Intermediate-sized Sewerage Facilities."

Section 300 - Subdivision of lands.

Sewage disposal. The subdivider shall investigate and determine the feasibility of the following in the following order:

(1)

Connecting to an existing municipal central sewage disposal system; and

(2)

If it is determined to be unfeasible to connect to an existing municipal central sewage disposal system, then the subdivider shall consider constructing an on-site central sewage disposal system or connecting to an existing off-site central sewage disposal system, unless the lots are located within the AG or FC districts, in which case an on-site central sewage disposal system shall only be constructed if the subdivision is a conservation subdivision; in the event the subdivider constructs an on-site central sewage disposal system, the subdivider and the Town



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shall enter into a developer's agreement establishing the requirements for the ownership and maintenance of such on-site central sewage disposal system, which agreement shall be approved by the Town Board and also approved by the Town Attorney as to form and manner of execution and the Town Engineer as to sufficiency"

I think it is pretty clear that it is possible for the developer to construct a sewer system on this property. We did do a project a few years ago, the Swan and Swan Lake, which was a cluster development, or a conservation subdivision, which has, its own sewage treatment plant permitted by DEC.

Jim Crowley: I also want to mention to the board, this is not our issue. Our issue is whether the applicant can obtain a use variance.

Randy Wasson: We did enter into a developer's agreement with the town for the Swan and Swan Lake.

Jacqueline Ricciani: Randy, I think we need a little bit of clarification here.

Jim Crowley: This is an issue the applicant needs to present to the town board.

Jacqueline Ricciani: Are you seeking a conservation subdivision, or are you seeking a use variance for a conservation subdivision with fifty eight homes in it. If you are just seeking a conservation subdivision and then it's going to go to the Planning Board, and you can work out these other issues, that is one thing. If you are asking this board for a use variance for a conservation subdivision and fifty eight homes....

Jim Crowley: All it says here is a conservation subdivision.

Jacqueline Ricciani: And then Planning Board will determine all of these other.....

Jay Zieger: That includes the number of homes. Randy is drawing this map and he is taking the position that this is a conventional subdivision that meets all of your zoning requirements; this map is going to be the first step if and when we get to the Planning Board. The Planning Board would have to approve that and then get to this. So yes, we are asking just to allow a conservation subdivision, the number of homes ultimately determined by the Planning Board.

Jacqueline Ricciani: Thank you that is all I wanted clarified.

Randy Wasson: We had to give you something so you had an idea of numbers.

Jay Zieger: Randy on the zoning, again it could be an issue, it will be an issue for the Planning Board, but it was brought up that this is one acre zoning, and I think the code reads it is half acre zoning with the essential public water and sewer. Again that issue will be resolved in terms of the density again and



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will be subject to Planning Board review.

Richard Conroy: With a public water and sewer.

Jay Zieger: That issue will be resolved

Jim Crowley: I will read the 239 review from the County. Reading into record. Their recommendation is to leave it to local determination. So they left it up to us.

Jay Zieger: At some point I would like to discuss some of the criteria for the use variance.

Jacqueline Ricciani: When you do the SEQRA, so that we don't have segmented review, because this is going to presumably go to the Planning Board, and they will do a more comprehensive review, as you are going through the questions, just keep in mind what you guys are doing for the conservation subdivision, but that ultimately, it could be expanded upon, but the point is, whatever you do here, there is going to be a further review by the Planning Board, its not going to be binding, the Planning Board because they are going to have to do one also, keep that in mind.

Daniel Gettel: So will the town board.

Jacqueline Ricciani: If they go that route.

#### SEQRA Review

#### Short Environmental Assessment Form Part 2

*1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?*

Moderate to large impact

*2. Will the proposed action result in a change in the use or intensity of use of land?*

Moderate to large.

Jay Zieger: The number of houses are exactly the same.

Jim Crowley: We are not talking about houses, you're not here for houses, and you are here for a conservation subdivision. Houses are yet to be determined. I don't know if you are putting one, fifty-eight, forty, or twenty, either does this board.



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Randy Wasson: The point is, regardless of the number, the allowable base number, what we are showing is less of an impact.

Jim Crowley: It is still more of an impact of what is there now.

Randy Wasson: Now it is vacant land.

Jay Zieger: But it is less of an impact on what we are allowed to do, is what Randy is saying.

Cirino Bruno: We're here for a conservation subdivision, for a use variance. That is all we are addressing right now, and these questions pertain to that.

Jacqueline Ricciani: I think you should also keep in mind that residential developments are permitted in this district, and I think what the applicant is trying to convey is whatever number gets approved for a conservation subdivision it won't be anything more than they can do on a conventional layout, not to say that from a Planning Board perspective they may find some impacts once they get into the nitty gritty of what the subdivision is going to be.

Jim Crowley: If that is the case Jacy, then most of these questions, we can't give an answer to them. This is like it is.

Jacqueline Ricciani: And the whole purpose of this exercise is to try to think about what is the environmental impact.

Jim Crowley: Now two questions have been answered every single member of this board came up with the same answer.

Jacqueline Ricciani: That's fine.

Cirino Bruno: So when the Planning Board.... when it gets to it, may have a different view.

*3. Will the proposed action impair the character or quality of the existing community?*

No

*4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?*

No, they don't exist.



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5. *Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?*

Small impact.

6. *Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?*

No

7. *Will the proposed action impact existing:*

*a. public / private water supplies?*

It could be small.

*b. public / private wastewater treatment utilities?*

Small.

8. *Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?*

No

9. *Will the proposed action result in an adverse change to natural resources (e.g., wetlands, water bodies, groundwater, air quality, flora and fauna)?*

No

Jay Zieger: Jacy, I think the complication is the nature of the question, and I think we are all struggling. If you view it as building fifty eight houses or any number of houses, what is the impact? I don't think this is the criteria to distinguish if you build this as a conventional subdivision or as a conservation subdivision. If you are saying we are allowed a conventional subdivision, if instead we are doing this as a conservation subdivision, would that change, conservation versus conventional, would that have an adverse effect?

Jim Crowley: We don't know that, and the board doesn't know that. Because we don't know if you could actually build that. If you could build your conventional one, we don't know if the



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town board is going to give you approval on the sewer to take it down to half-acre lots. There is a lot of what if's here.

Jay Zieger: I know, and I'm trying to think if we view this as, we don't know how many houses you would be allowed to build on a conventional, but we do know that your conservation subdivision can't be anymore than what your conventional would be. Now we are saying whatever number is conventional, instead we are going to say okay you can do it as conservation. Whatever those numbers are, would that difference, doing conservation versus a conventional have an adverse impact on any of these things. Isn't that the analysis Jacy?

Jacqueline Ricciani: I do agree with that because that is what you are looking to do.

Jim Crowley: But I don't, because if that was the case then they would have to go, not to half acre, because we don't know whether the town board is going to approve or not approve that sewer. You would have to go with what is which is one acre zoning. And one acre zoning, I'm not quite sure all that property, depending on the topography and the slopes and whatever wetland is there if any, or if there isn't any, you want to be able to build if you have 45 acres. You won't be able to build 45 homes on it.

Jacqueline Ricciani: You are absolutely correct.

Jim Crowley: You might be down to 22. So if we take these questions based upon what you could actually build without being here, we could pick a number of say 22 houses and then all this impact if we are going for these 58 houses potentially of what you could build on a conservation subdivision, these things would all become dramatic then. Which benchmark are we going to look at here? This is confusing me.

Jacqueline Ricciani: The thing that is hard about it is because it is conceptual.

Jim Crowley: Our applicant is here for a use permit which is a very hard thing to obtain to begin with. We have no benchmark to work from, we don't know. They propose this that would only be if the town board, that's why I said at the last meeting, this whole process is backwards. That would only work if the town board would actually give them approval. Then at least we would have something to go off of. Right now we have nothing to go off of.

Jacqueline Ricciani: If this does go to the next step to the Planning Board, my suspicion is that they would require a long form EAF that gets into much more detail with respect to all of these other issues. This is just the short form.

Jim Crowley: I would think the sewer thing should be figured out before they came to any of



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these boards.

Jacqueline Ricciani: This is where they chose to start.

Cirino Bruno: So Jacy that is where I have to assume the worst case condition, and if I assume the worst case condition, then I have to answer in the negative. I didn't create the situation that it comes to the Zoning Board, and then goes to the Planning Board. You are asking me to assume the best-case condition. Here you have the variance, and then the Planning Board nixes it.

Richard Conroy: Whatever answers we are giving you are our opinions where they sit now, right?

Jim Crowley: Right.

*10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?*

Yes, moderate to large

*11. Will the proposed action create a hazard to environmental resources or human health?*

Jim Crowley: You can answer undetermined for all of these.

No

Jacqueline Ricciani: You are talking about a subdivision; subdivisions don't usually lead to hazards to human health.

Jim Crowley: Unless the sewer doesn't work.

Bette Jean Gettel: You answered moderate to large impact on the following.

1, 2, & 10

Part 3

For any question in Part 2 that was answered moderate to large impact may occur or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environment please complete Part 3. Part 3 should in sufficient detail identify the impact including any



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measures or design elements that have been included by the projects sponsors. Part 3 should also explain have the lead agency determine that the impact may or will not be significant. Each potential impact should be assessed considering its setting probability of occurring duration irreversibility geographic scope and magnitude. Also consider the potential for short term long term cumulative impacts.

Victor Kask: There is no way we can tell.

Jay Zieger: Jacy, isn't it an appropriate answer that as soon as the use variance is granted, at the Planning Board level the applicant would have to satisfy the Planning Board with detailed engineering plans, traffic studies, drainage, those type of items, and the type of detailed reports the Planning Board requires.

Cirino Bruno: Do we need to go through SEQRA since Planning Board is going to go through it?

Jacqueline Ricciani: Yes. That is why it is so difficult because based on the answers you just gave running through those ten questions, overall, taking all of that into account, will this use variance with the limited information that you have, have an adverse environmental impact?

Jim Crowley: I don't know. And how would any of us know.

Jacqueline Ricciani: Well you .....if the mitigation for these impacts are going to be in the subsequent reviews with engineering studies, and other information that is given to the Planning Board, then you can find that.

Cirino Bruno: You are asking me to give it up at the back end, and you are asking me to take a stand at the front end. Why do I have to take a stand at the front then if I can't take a stand at the back end?

Jacqueline Ricciani: The DEC says on these kinds of applications you have to go through an environmental impact review. And the only factor that you have, what they are saying is, we don't want to put in a conventional subdivision, we want to put in a cluster housing conservation subdivision so this less land disturbance, less impervious surface, more buffer to the river, and more open space. That is what they want to accomplish with this, which you could say well....that seems to have a benefit to the environment.

Jim Crowley: We don't know how many houses you are building.

Jacqueline Ricciani: You're right, but ....

Victory Kask: We can't address the environment. It is impossible for us to do here. We can address the



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first two questions how this impacts our code. It severely impacts our code.

Jacqueline Ricciani: The conservation subdivision they are proposing is always going to be less site disturbance, less impervious surface, less roadways, and those kinds of surfaces, it is always going to have more open space.

Jim Crowley: We don't know that.

Jacqueline Ricciani: That is what a conservation subdivision is.

Jim Crowley: Right, you are absolutely correct.

Jacqueline Ricciani: If they do what they are telling you they intend to do....

Jim Crowley: If it gets there.

Jacqueline Ricciani: And if they can't pass muster at the Planning Board, then they don't get their approval for that subdivision.

Victory Kask: Why don't we stand up for the code for the way it is written, as Dawn explained to us, they had intent when they wrote it. We can't make the decisions on the environment; we can make a decision on what the code says. If this track of land was adjacent to a zoning district that allowed planned unit development, I would say maybe we could expand it to that. This is an island.

Jacqueline Ricciani: Those are the kinds of things you will take into account when you go through the criteria for the use variance and determine whether it should be granted. Before you can get to that, you have to assess the environmental impacts.

Cirino Bruno: You really have to do that Jacy, when in fact you may deny it? If you can theoretically deny it why would you have to go through the environmental impact for something you are going to deny?

Jacqueline Ricciani: Even though there may be no adverse impact on the environment, they still may not meet the criteria for the use variance. It just might be, and I understand your problem, because there is overlap with respect to character of the neighborhood, and some of those other things you take into account with the use variance, and there is overlap without question. I know it sounds like a cop out to you but the DEC regulations say you need to do this, because it is a use of land.

Bette Jean Gettel: Let me read the two options. Reading Options 1 & 2. #1. Based on the information and analysis above, in any supporting documentations, the proposed action may result in one or more



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potential or significantly large or adverse impact, an environmental impact statement is required.

# 2, based on the information and analysis above, in any supporting documentation that the proposed action will not result in any significant adverse environmental impact.

Jim Crowley: Option #1.

Jacqueline Ricciani: Then they are going to have to draft an environmental impact statement about what these impacts are, and what they plan to do to mitigate it.

Cirino Bruno: And they don't even know what they are going to be doing yet.

Randy Wasson: That is the problem.

Jacqueline Ricciani: If you are going to go with option #1, then we need to go back to the other thing that BJ had read about.....

Jim Crowley: What is the feeling of the rest of the board?

Richard Conroy: To take care of the three items. To take care of those three items, I like that they had said to go on to the Planning Board, and come up with engineering reports. We could say that, and pass it on to the Planning Board.

Jacqueline Ricciani: The moderate and large impacts will be addressed by the Planning Board review to address the issues that have been identified.

Jay Zieger: As a condition to the variance, the Planning Board needs to specifically address these three items which we believe need to be focused on.

Jacqueline Ricciani: Can we have that in the form of a motion please?

Jim Crowley: So we are going with option #1, right?

Jacqueline Ricciani: One is they need to do an environmental impact statement, and then come back. We are stalled at the environmental part and we can't move forward on the use variance. Or #2 that there is ...

Jay Zieger: You can make it part of your resolution, granting the negative declaration under the condition that the items that you addressed and flagged, be specifically addressed at the Planning Board level once the design of the project becomes certain.



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Cirino Bruno: I vote for #1. I am being asked here as a member of the Zoning Board to basically take a lot of work that was done and give a variance. I am not prepared to do that in the blind, and I am not prepared to give up my responsibilities to the Planning Board. I would vote for #1.

Richard Conroy: They are still going to have to come back.

Jacqueline Ricciani: You can't move on to the use variance criteria .....

Jim Crowley: So we can pick option #1, or option #2.

Jacqueline Ricciani: If you are going to choose #1, for them to come back to create an environmental impact statement, then they are going to have to produce that, and that will be the next step. And then once the environmental stuff is resolved, then you can move onto to the criteria for the use variance.

Jay Zieger: The problem Jacy is we can't do an environmental impact statement at this stage, because we don't know what the project is going to look like.

Jim Crowley: And we can't give you a negative declaration because we don't know what the project is.

Cirino Bruno: It's not that you can't, you won't. The other alternative is you look at all the codes and you decide what it is what you can reasonably build, and present that to us.

Jay Zieger: That is what Randy presented.

Jim Crowley: Do you want to come back with not just a conservation subdivision, but also a conservation subdivision for 58 homes?

Randy Wasson: No. And that is what I was just going to get at. 58 homes is what I am saying to you is my opinion, the worst-case maximum home development. You had said you can't evaluate for 58 or 22.

Jim Crowley: We could if we had a number.

Randy Wasson: Well, I can't tell you the number. I can only give you the highest number.

Jim Crowley: That is the one we have to go with.

Randy Wasson: That brings us back to comparing this drawing to that drawing. That is what we are talking about.



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Cirino Bruno: That is going to make it harder for you.

Jim Crowley: We have to go with 58 homes that is the benchmark then.

Cirino Bruno: That is what he is insisting on. I don't see it that way. If I were he, I wouldn't be looking at it that way. I would be looking at something to plan around 20, and try to get the variance from us.

Randy Wasson: I think I have all the leeway in the world based on what you said tonight. I could go with 10. What does that do for you in terms of an impact statement? That is not realistic.

Cirino Bruno: That makes it less, which makes it potentially in favor for you.

Randy Wasson: I'm not going for 10 units; I am just going to go for an impact study for ten that say...

Jim Crowley: It is very impossible for us as a board to come up with this when we don't know what we are coming up with.

Richard Conroy: Put conditions on the negative declaration that our items are going to be addressed with later studies. When we get down to the end, it might not matter anyway.

***Motion to go with option #2, as long as the three items are addressed by the Planning Board, with more detailed reports, engineering studies, more information than the board has now by Richard Conroy, second by Jim Crowley***

***Roll call vote***

***Daniel Brey – No***

***Richard Conroy – Yes***

***Cirino Bruno – No***

***Victor Kask – No***

***Jim Crowley – Yes***

***Motion failed.***

Jacqueline Ricciani: Keep in mind; no subdivision is going to get Planning Board approval unless it has no adverse environmental impact. They are not going to build a subdivision when there is an adverse environmental impact. There is always going to be mitigation or something to minimize it to allow it to get built. It is all speculation.



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Jim Crowley: I know. The board voted.

Richard Conroy: I don't see how they are going to do an environmental impact statement when they don't know what they are doing.

Cirino Bruno: They are going to decide what they want to do. Isn't that a good idea?

Jay Zieger: I am listening to this, and if I hear correctly, I think the chairman in particular is concerned, I'm not sure what I'm voting on because I don't know how many houses are here, and I think Cirino is thinking the same. We can't get Planning Board approval unless we get the variance.

Jim Crowley: You don't have to convince me. I voted for your negative... You need to speak to the rest of the gentleman, but the board already voted.

Jacqueline Ricciani: Can I try something. We all agree conventional subdivisions are permitted in this district. Like they said, they can come in; make the application for whatever number of houses that would be permitted. What they are saying we don't want to lay out our subdivision that way. We want to cluster our subdivision. So the use variance.....

Jim Crowley: Only permitted if they can get the sewer, half acre zoning.

Jacqueline Ricciani: Try this. They could do a conventional subdivision, we all understand that. What they are saying is rather than doing the conventional subdivision, whether it is two houses or two hundred houses, we want to do a conversation subdivision. And the reason we want to do it, as a conservation subdivision is to have greater open spaces, less land disturbance, and all those other things they talked about. So when you are looking at the environmental impact, I think that your environmental impact should look like, this is what I was trying to convey before. I think you should look at it, will there be an adverse environmental impact from doing it as a conservation subdivision, clustering, as opposed to the conventional. The conventional they can do, and what they are saying is what is the environmental impact of putting the houses in a different configuration.

Cirino Bruno: I have a larger problem then the one we are dwelling on right now. And that larger problem is, if we were to give them a cluster subdivision, what I would advocate that this board extract from them is a detail of how much land is going to be put in conservation, and it is going to be an iron clad agreement that we can't come back to again, otherwise my vote, is going to be against taking and putting cluster housing in this zone. In order to get to that point, and Mr. Zieger is a very competent attorney, and Mr. Wasson has been here many times in front of us already. They need to decide, looking at the entire picture, what they are going to want to do. Because I don't think that I am here on the Zoning Board to meet DEC requirements, to meet SEQRA requirements, I am here to take the current zoning law and change it for their benefit. They want the luxury of not having a clue of what they want



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to do tomorrow, and I need to know, personally, and I may be overruled by this board, but I need to know before I give them that variance, exactly what is going to be in there. That is assuming that the Planning Board and the Town Board approves it after we give it to them.

Jacqueline Ricciani: That is why I asked for clarification in the beginning. They are just looking for a conservation subdivision, or are they looking for a conservation subdivision for x number of houses. And they said they just want the ability to present a plan to the Planning Board that is clustered, and then at planning level we will hash out how many houses we can have.

Cirino Bruno: But I have to make a decision in my own mind whether I want to grant them that. I can't make that decision without knowing what is going to happen. If this is a chicken and egg problem, maybe they need to have informal meetings with the Planning Board, make a determination of what is going to be give and take, make a decision, come up with their environmental impacts, come up with their plan, be prepared to tell me how much acreage is going to be put in conservation, be prepared to represent they are going to sign off on it and they are not going to come back for any changes, and then I may be inclined to give them and go against what the comprehensive plan called for that area, which is namely one acre zoning. It's not a debate, you don't have to agree with me, but that is my position.

Jacqueline Ricciani: I can appreciate that but I think that you also want to be mindful of the role that the Planning Board has in all of this.

Cirino Bruno: No, I don't have to be mindful of that with all due respect. I have to be mindful of what my obligations are, not what the Planning Board may or may not improperly do down the road. That will be on their heads. I have to worry about my responsibility here on the Zoning Board. Not what is going to happen after I decide on this issue?

Jacqueline Ricciani: I'm not trying to tell you to pass off on your responsibilities here. But are you suggesting here that if you granted a use variance, it would be a use variance for a particular number of homes that could not be deviated from? Because I think that puts the Planning Board, because we all know these variances run with the land, and I'm just not sure that would be.....

Cirino Bruno: Part of what is being sold here is a positive thing. It is a positive thing because it is going to be conservation, and everyone understands that conservation is a wonderful thing. I don't understand conservation in the back end. I understand it in terms of acreage, number of trees, and amount of ground cover. In order to do that, you have to limit what you are going to develop. On one level they are coming in looking to do us a favor, but on the other hand when we ask the tough questions, it is all subject to change. The question is right now, give me my variance right now, and let me go on with my business. If I am going to give them a variance, what am I considering here?

Richard Conroy: You are going to consider the four items in the test for the Use Variance. I'm saying



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those things....

Cirino Bruno: I'm told that's not the way you do it, you don't address those first so therefore I am forced to take the position I am taking.

Richard Conroy: If you compare a regular subdivision to a conservation subdivision, as far as the environmental impacts, everything that I have learned over my years in dealing with real estate and developments, is that the cluster in the conservation development is more desirable. It is more desirable because it does have less of an effect on the environment.

Cirino Bruno: Based on my dealings with human beings, I need a conservation agreement. They are not going to be able to begin with that agreement.

Richard Conroy: It is not part of the tests that we have to use.

Cirino Bruno: If they want to turn around and do an impact study, I don't know how they are going to do it without basically listening to what I am saying, they will do something, and we'll address it later.

Jacqueline Ricciani: Again, if you are going to require them to do an environmental impact study...

Jim Crowley: Well we are, the board already voted on it.

Jacqueline Ricciani: However, for every question you answered in part two moderate to large, it is up to this board, for every question that was answered moderate to large, or if there is a need to explain why a particular element of the action will or will not result in adverse impact which you found it would be, in part three, in sufficient detail, you have to identify the impact including any measures or design elements that have been included to avoid those impacts, of course we don't have any of those design elements here.

Cirino Bruno: We will say non-applicable, etc.

Jacqueline Ricciani: You can't say non applicable, if you already determined....the first one for example.

*1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations*

That is obvious. They are looking for something that they are not permitted to do.

*2. Will the proposed action result in a change in the use or intensity of use of land?*



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You said that would be a moderate to large impact. So that needs to be flushed out a little bit more because you identified the impacts, you give it back to the applicant they have to go out and do their study and they have to come back and combat it and say this is how we are going to address that what you have identified as a moderate to large impact.

Jim Crowley: I guess you are going to have to tell us what you are building.

Jay Zieger: You made your point, before you are comfortable moving on, you want to know more about the project. If you will, just to get a consensus, do you feel the same way (addressing the board), what is it that we need to present to you that is going to gas mask this issue. Because I don't know how we can prepare an environmental impact statement on something that doesn't exist.

Richard Conroy: I made my motion, and it was defeated.

Jay Zieger: We can sit here today and say we will never bring to the Planning Board or to anyone else no more than 58 houses. We will also say that the conservation subdivision regulations of the town address all of the issues, or the biggest concern and that is the land area that is permanently green, under a conservation subdivision we can't come back ever again to develop it. That is part of the subdivision regulations, without any agreement being necessary, because the conservation regulations tell you for this particular site, the most you are allowed to build, is whatever that number we come up with. Randy thinks it is 58. It will never be more, it will potentially be less when we get to the Planning Board, but whatever area the Planning Board determines has to be permanently green, is permanently green and that is in the conservation regulations.

Jacqueline Ricciani: It's like any other subdivision, once the map is signed, that is what you build. If you want to change it you have to come back to the Planning Board.

Jay Zieger: We can't change it. We can't build more.

Jim Crowley: You want a variance then for a conservation subdivision for 58 houses?

Jay Zieger: Or such lesser amount.

Cirino Bruno: Jay, I am confused. You have 45 acres, one acre zoning, how are you building 58 houses?

Jay Zieger: It is half acre zoning with central sewer and water.

Jim Crowley: And that is a what if.



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Jacqueline Ricciani: Again, they are coming to you with the concept. They don't want to do a conventional layout; they want to do a cluster layout. Whatever that number turns out to be.

Jay Zieger: If the Planning Board knocks us down to 40, then that is a number we are stuck with. I have committed that we will not exceed 58.

Jacqueline Ricciani: This board doesn't need to decide that, that is what the Planning Board does.

Jim Crowley: Right, but in order to go through.....it was already voted down, it is a moot point. I don't know how you change that. Let me just explain to the board then, if we go back through this again, we are going through a conservation subdivision based upon 58 houses or less.

Jacqueline Ricciani: Will a conservation subdivision have any greater impact in terms of traffic or noise and everything else then a conventional one would?

Jim Crowley: A conventional one would be one acre zoning, therefore if you took out that property, you could probably build 28 houses if it was a conventional subdivision. That is really what you have to look at, that one right there is only based upon getting approval for a sewer plan. What is permitted is one acre. That is how you have to look at that property.

Jacqueline Ricciani: And that is one way to look at it. But what this board could also say is we are assessing the environmental impact of a conservation subdivision versus a conventional subdivision.

Jim Crowley: With 58 homes compared to 25 or 30?

Jacqueline Ricciani: Whatever. I mean if it is 58 homes, and now they want to do those same 58 as a conservation or cluster. Is the cluster housing going to have a greater environmental impact then the conventional layout?

Jim Crowley: Correct.

Jacqueline Ricciani: Whether it is 2 houses or 20 houses. I understand that with more houses it will have more of an impact. What this applicant is looking for is just to arrange their homes in a different pattern. That is all they want to do, whatever number on a conventional subdivision, this is what the traffic will be, and this is what the erosion, flooding, and drainage on a conventional subdivision will be. If it is done as cluster housing, will the environmental environment be greater? That is the way I would think that you would look at it, whether it is 10 houses or 20 houses?

Jim Crowley: But you might not want to look at it that way.



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Jacqueline Ricciani: I personally think.....

Jim Crowley: On a conventional one though Jacy, according to the zoning right now, it is one acre zoning. This would be if he could get approval for that subdivision with sewer.

Jacqueline Ricciani: What if they came to you and said it is one acre zoning.

Jim Crowley: He would never have to come to us for that.

Jacqueline Ricciani: Let me finish my thought. If they were standing here and said we want to put in 20 homes, this is how many we can have on one acre zoning, 20 homes, and we are going to take those 20 homes and cluster them and it's going to look like that. Your environmental impact should be, this is the impact of 20 homes, laid out the conventional way, they want to do it in the cluster way, is it a greater impact?

Jim Crowley: No

Jacqueline Ricciani: That is what I was trying to say to you to ..... I don't think you need to be so concerned about the number, I think because this is a use variance; you are just looking at the impact of the way it is configured.

Jim Crowley: I voted for it.

Jacqueline Ricciani: I got that.

Richard Conroy: We are talking about the environment here. If we give them a neg dec, it's not giving them the approval to do this. It is just saying that the conservation easement is less of an environmental impact than a conventional.

Cirino Bruno: Based on further discussion, can we have a revote?

Jacqueline Ricciani: Do we want to reconsider any of the answers that we have given in our....

Cirino Bruno: I think so.

Jim Crowley: I don't know about 1 and 2.

Jacqueline Ricciani: It isn't permitted.



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2. *Will the proposed action result in a change in the use or intensity of use of land?*

It will.

#10, go for it BJ.

10. *Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?*

Jacqueline Ricciani: Are you going to have greater flooding with your drainage with conservation then you would with a conventional?

No.

Richard Conroy: We still have two.

Jacqueline Ricciani: But they may not result in a significant adverse environmental impact. After further discussion is there a new motion?

Jim Crowley: Do we want to get rid of the last motion?

Bette Gettel: No, you are just going to restate the motion.

***Motion is for a finding no significant adverse environmental impact based upon the condition that the two items addressed as being potentially moderate to large will be resolved at the Planning Board level based upon more technical complete plans being presented to that board by Richard Conroy, second by Jim Crowley.***

***Roll call vote:***

- Dan Brey – No***
- Richard Conroy – Yes***
- Cirino Bruno – Yes***
- Victor Kask – No***
- Jim Crowley – Yes***

***Motion passed***

Jim Crowley: The Tests for a **Use Variance**:



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A use variance may be granted by ZBA's only if certain tests are met by the applicant. The statutory rules, which are easy to understand, specify what must be proved. In order to obtain use variances, therefore, applicants must now demonstrate that the zoning regulations have caused them **unnecessary hardship**. To show such a hardship, they must prove that:

- 1) *They cannot realize a reasonable return, provided such lack of return is substantial as demonstrated by competent financial evidence;*

Randy Wasson: What we have provided are construction costs based on similar projects, constructed in recent years. The conventional subdivision column to the left, the conservation to the right with the costs. The conventional subdivision, the infrastructure cost is \$33,000; the conservation is \$25,000 per unit. That makes sense; the only two constants there are your water supply and your sewer. Everything else is less roads, less waters mains, less sewer mains, so your infrastructure is less for the conservation subdivision. The home costs, the market for the conventional subdivision is not what it is for the conservation subdivision. These types of projects with this configuration tend to build fairly quickly. They are easier to sell. These are second homes, seasonal homes.

Richard Conroy: Home costs; is this cost to build? So why is the conservation subdivision house more than a conventional subdivision house?

Randy Wasson: Because they make the houses a little bit larger, because they can get a higher price for them. I'll work backwards to that in a second. What I am saying to you is the construction cost basically for the houses and infrastructure is about \$133,000 for the conventional, and about \$140,000 for the conservation. The selling price is quite a bit less on the conventional subdivision. It is harder to market these so you have to come down in price, and because you are coming down in price you are reducing the cost of the basic home. So conservation sells for about \$190,000, that is pretty typical, so you can see the difference in return, there is \$27,000 versus \$50,000. What is not included there obviously is the land cost, he already owns the land, and he has for a number of years. This was, I should have said first, when the land was purchased in 2007, conservation subdivisions were permitted throughout the town, with permission from the Planning Board or at the urging of the Planning Board. That is why I say now.....

Richard Conroy: Back up a second, you said 2007?

Jay Zieger: That's when the property was purchased.

Richard Conroy: No it wasn't. It was purchased by Forest River, July 26, 2013.

Jay Zieger: It transferred to the same owner.



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Randy Wasson: Same principle.

Richard Conroy: You've got two parcels here. You've got 13-1.9.2, and 10. 9.2 was purchased July 26, 2013, \$37,500 purchased at a tax sale. 10 was bought from UTS in December 4, 2014, for \$430,000. So where are you getting 2007?

Randy Wasson: They were purchased in 2007.

Richard Conroy: I looked it up today.

Randy Wasson: Well if we track the owners back, I think we can make the case....

Richard Conroy: Are you going to tell me UTS and Forest River are the same people?

Randy Wasson: Yes

Jacqueline Ricciani: I thought only 50%.

Randy Wasson: It's an LLC now.

Richard Conroy: Are you going to tell me Forest River paid \$430,000 to themselves? Is that what happened?

Randy Wasson: Mr. Landau was at your meeting, he spoke to this matter about ownership, and I thought we resolved it.

Richard Conroy: We did, but now you are saying it was purchased in 2007, when the record indicates it wasn't.

Jacqueline Ricciani: Mr. Landau purchased the property in 2007. He is still 50% owner of the LLC.

Richard Conroy: Okay, not according to what I looked up today. You're not telling me I was wrong the last time either.

Randy Wasson: Yes I am. The filing wasn't completed.

Jacqueline Ricciani: Mr. Landau only owns the five acres.

Richard Conroy: Forest River owns all of it. Forest River purchased this property from UTS in 2014. And now you are saying UTS and Forest River is the same company?



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Randy Wasson: I'm not saying it's the same company.

Richard Conroy: Well then they didn't buy it in 2007.

Randy Wasson: Mr. Landau purchased it in 2007.

Richard Conroy: Forest River is not a person. The sale is listed for Forest River, 2014.

Jay Zieger: They are affiliated entities.

Cirino Bruno: Mr. Zieger, what happens to us here, we ask questions, and we get, sorry if I am ruffling feathers.....this is maybe the 4<sup>th</sup> 5<sup>th</sup>, 6<sup>th</sup> time the property is in front of us. In all fairness, this isn't your first appearance, but I have been putting up, and Randy has been doing a great job for his client, giving us whatever closely fits to an answer he thinks we need. Maybe he doesn't anticipate all of the questions, maybe his client should be here with the facts to testify, I don't know, but I for one get a very uncomfortable feeling every time I'm here, and questions get asked, and the answers are far from clear, crisp, and can be relied on.

Jim Crowley: Let's go back to the question.

*They cannot realize a reasonable return, provided such lack of return is substantial as demonstrated by competent financial evidence*

Richard Conroy: This is not substantial evidence to me. This is a list you made up. \$27,000 per unit profit is a substantial profit, not quite as substantial as \$50,000, but it is a substantial profit. This is not an accountant statement, it's nothing. It doesn't list the initial costs; it doesn't list the number of units. These are just numbers. This is not a financial statement to bring. You are asking us to take this and say this okay.

Cirino Bruno: Put in a different way, #1, you haven't shown us that there is going to be a poor or unreasonable return. So we have to assume there is going to be a return, and we can't conclude that you're not going to have a reasonable return.

Jay Zieger: We will need to fix that, because the land costs are not on there, the \$430,000 land cost...

Richard Conroy: Today is the day.

Jacqueline Ricciani: Can I just interrupt you for a minute please, in the code it does define what competent financial evidence must include, and there are actually several pages in the code under the



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use. For each of these four criteria that you are going to go through the code expands upon it.

Cirino Bruno: It doesn't contradict what we have been saying does it?

Jacqueline Ricciani: No. Competent financial evidence must include "dollars and sense proof" Such as .....

Cirino Bruno: Jacy, it is for them to study. You are not disagreeing with us, right?

Jacqueline Ricciani: No, I was just giving you more examples.

Section 345-50

Bette Jean Gettel: What is your consensus on number one, gentleman?

Cirino Bruno: #1, they failed the test.

Richard Conroy: They failed to provide adequate financial evidence.

*Board in agreement*

Jim Crowley: #2

Randy Wasson: Mr. Chairman, I'm going to save you the trouble; we wish to withdraw our application. No sense spending any more time on this.

Jay Zieger: I think what we need to do is, get a better map to you; get a better detail on some of these issues, and resubmit. I'm sorry we spent the time we did. I appreciate your time.

Jacqueline Ricciani: That is going to be part of the record for these minutes that this application is being withdrawn.

*Bette Jean Gettel: At this time does the board wish to take a five-minute break?*

***Motion to take a five-minute recess by Richard Conroy, second by Cirino Bruno***

***All in favor – 5***

***Opposed-0***

***Agreed and carried***

8:50 pm



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***Motion to return to regular meeting by Richard Conroy, second by Cirino Bruno***

***All in favor – 5***

***Opposed-0***

***Agreed and carried***

8:55 pm

***2) Application for an Area Variance for a Bungalow Colony located at 212 Mount Hope Road, known as Bethel Tax Map #: 8-1-3.2, proposed by Camp Kasho. (Fisher)***

Jim Crowley: We have a typographical area; the application should read it is for an interpretation.

Bette Jean Gettel: Rabbi Fisher is here tonight. Because the way your zoning code reads, they currently have a casino building in the middle of the property. It is a two-story firetrap. They want to tear it down, rebuild two one-story buildings. One of which will be decreased in size. Currently in that two story building the bottom floor consists of the kitchen, the bathrooms, freezers, small luncheonette, storage, classrooms, canteen and offices. The second floor consists of six classrooms, a shule, and two offices. I will pass this around so you can see. Because of the way the code reads, it is an interpretation as to whether or not I can break it out into those two one story buildings or is this considered additional lot coverage.

Jim Crowley: Square footage is not changing?

BJ Gettel: Square footage is not changing, it is less.

Richard Conroy: The same place?

Bette Jean Gettel: Same place for the one building, the other one you can see according to the map is right here on the bottom, 105 x 55 two story. Instead of having a two-story building, they are going down to two one-story buildings built to today's codes and standards.

Jacqueline Ricciani: The result will be less than that. 61 x 85. Is the casino footprint staying the same?

Rabbi Fisher: The same

Bette Jean Gettel: The kitchen, luncheonette will be decreasing.

Jim Crowley: BJ, what are the sizes of the new buildings?

Jacqueline Ricciani: 61 x 85.



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Jim Crowley: And the other is going to be 55 x 100?

Richard Conroy: The current building has two floors.

Bette Jean Gettel: It is a serious firetrap.

Jacqueline Ricciani: The kitchen dining will be in the new building?

Jim Crowley: It will be 610 square feet less.

Bette Jean Gettel: It is in the RS district.

Cirino Bruno: What is the setback from the road?

Bette Jean Gettel: 50 ft.

Cirino Bruno: Can they move the building back at all?

Jim Crowley: Can you move it back 25 ft?

Rabbi Fisher: Yes

Richard Conroy: You want to know if you can go ahead and authorize this.

Jacqueline Ricciani: It is an expansion.

Cirino Bruno: It is an expansion, but square footage wise, it is not. The trade off is we are getting new buildings. I am in favor of it

***Motion to allow the Building Department to approve the application by Richard Conroy, second by Jim Crowley***

***Roll call vote***

***Daniel Brey – Y***

***Richard Conroy- Y***

***Cirino Bruno – Y***

***Victor Kask – Y***

***Jim Crowley- Y***



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***Motion passed***

Jim Crowley: Since we still have a vacancy on the Zoning Board, I would like to have Victor (Kask) be a member rather than an alternate.

***Motion to recommend to the Town Board that Victor Kask be a member of the Zoning Board of Appeals by Cirino Bruno, second by Daniel Brey***

***All in favor – 5***

***Opposed-0***

***Agreed and carried***

Jim Crowley: We need to ask the town to advertise for an alternate.

***Motion to advertise for alternate by Cirino Bruno, second by Richard Conroy***

***All in favor- 5***

***Opposed-0***

***Agreed and carried***

Dawn Ryder: Thank you gentleman for your hard work and time.

***Motion to adjourn by Jim Crowley, second by Cirino Bruno***

***All in favor – 5***

***Opposed-0***

***Agreed and carried***

9:05 pm

Respectively submitted,

Gannetta MacArthur  
Recording Secretary