

**HUDSON ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
June 25, 2009**

**I. CALL TO ORDER**

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:13pm on Thursday, June 25, 2009, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Clerk Martin to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

**Members**

**Present:** Maryellen Davis, William McInerney, (9:10pm arrival)  
Michael Pitre, and J. Bradford Seabury

**Members**

**Absent:** James Pacocha - Excused

**Alternates**

**Present:** Normand Martin and Donna Shuman

**Alternates**

**Absent:** Kevin Houle – Excused, and  
Marilyn McGrath - Excused

**Staff**

**Present:** William Oleksak, Building Inspector

**Liaison**

**Present:** Ben Nadeau - Excused

**Recorder:** Trish Gedziun

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**II. SEATING OF ALTERNATES AND ANNOUNCEMENTS**

For the benefit of all attendees, Chairman Seabury noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment, were available at the door of the meeting room. He noted the outline included the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable. Chairman Seabury pointed out that the Board allowed rehearings only if collectively convinced by a written request that the Board might have made an illogical or illegal decision or if there were positive indications of new evidence that for some reason was not available at the hearing.

Chairman Seabury announced that Ms. Shuman would be seated in place of Mr. Pacocha and Mr. Martin would be seated in place of Mr. McInerney for the purpose of reviewing the minutes from the April 23, 2009, meeting as those regular members had not yet arrived.

**III. APPROVAL OF MEETING MINUTES**

The following edits were made to the minutes of the April 23, 2009, meeting:

1. Page 3, 5<sup>th</sup> paragraph – “Mr. McInerney” was changed to “Mr. Houle” as Mr. McInerney was not present at the meeting.
2. Page 6, 9<sup>th</sup> paragraph – the word “how” was changed to “what” the communication would be used for.
3. Page 8, 5<sup>th</sup> paragraph – the 5<sup>th</sup> paragraph was deleted in its entirety.
4. Page 11, 3<sup>rd</sup> bullet point – the word “he” was added to Mr. Oleksak replied that “he” would follow-up.

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Mr. Martin made a motion to approve the minutes from the April 23, 2009, meeting as amended by the Board.

Ms. Davis seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the sitting Board members were in favor of approving the minutes from the April 23, 2009, meeting.

Chairman Seabury then declared a break at 7:22pm, calling the meeting back to order at 7:32pm.

Chairman Seabury noted that the seated members were Mr. Pitre, Ms. Davis, and Mr. Seabury. Chairman Seabury also noted that Ms. Shuman would remain seated in place of Mr. Pacocha who was excused and Mr. Martin would remain seated in place of Mr. McInerney who would be tardy.

**IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS**

- 1. Case 173-012, 015, and 016 (6/25/09): Tolles Riverside, LLC, 170 Bridge Street, Manchester, NH, requests a Use Variance to allow commercial and industrial uses within the Town Residence (TR) Zoning District for property located at 4, 10, and 14 Tolles Street. [Map 173, Lots 012, 015, and 016, Zoned TR, HZO Article V, Section 334-20 (D) and (E), Table of Permitted Uses.]**

Clerk Martin read aloud the posted notice, as recorded above.

Chairman Seabury asked who was present to speak in favor with regard to the application for a Use Variance.

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Mr. Brian A. Pratt, P.E., from True Engineering, Bedford, NH, representing the applicant, addressed the Board, stating that Mr. George Kelley, Manager of Tolles Riverside, LLC was also present.

Mr. Pratt stated that Lots 12, 15, and 16 were located on Tolles Street and although the property had been used as a junkyard as well as for commercial/industrial storage for the past 40 years, that Tolles Street was zoned in the TR Zoning District.

Mr. Pratt noted that in 1996, the Zoning Administrator had informed the previous owner to clean the property up but there was not much effort put into that clean-up. He further noted that a Phase II Environmental Site Assessment was performed in 2004, and since that time, the new owner (Tolles Riverside) had made a substantial effort as well as a great deal of expense to clean the property up.

Mr. Pratt, referring to aerial photos affixed to the meeting room wall, stated that the photos represented the condition of the property before and after the clean-up. He also stated that there was “almost nothing” being stored on the property at the present time.

Mr. Pratt stated that the applicant was working with NH DES and that the ground water was being monitored.

Mr. Pratt noted that the applicant wanted to obtain a site plan to use the property as commercial/industrial rather than residential – pointing out that the applicant was not yet sure what the exact use would be.

Mr. Pratt then read aloud a portion from the Application for a Use Variance as follows:

- 1. The zoning restriction of the cited ordinance(s) interferes with the plaintiff's reasonable use of the property because the restriction in the town residence zone is very*

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*restrictive in its allowed uses. The property and its surrounding uses are industrial/commercial in use. The variance is required for the re-development of the property and a site plan approval would be required by the Planning Board after the proposed variance was approved.*

- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restriction on the property because the property has always been used as a commercial/industrial site. The properties to the north and south are commercial, the Merrimack River is to the west and wetlands are to the east. The only exception is a single residential parcel which the site wraps around. A residential development would be an inappropriate use based upon the site and the neighborhood's historical use.*
- 3. The variance would not injure the public or private rights of others because allowing the variance would allow for the proper development of the property. Any site plan would require approval from the Planning Board and also require permits from NH DES thereby providing additional protection to the environment.*
- 4. No diminution in the value of surrounding properties would occur because the site has been a storage yard for trailers and miscellaneous debris. Allowing the variance would allow for the property to be further cleaned up and re-developed with more valuable uses.*
- 5. Granting the variance would do substantial justice because it would allow the owner of the land to develop*

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*the property in accordance with its historic use and most of its surrounding uses.*

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application.

Mr. George Kelley, Manger of Tolles Riverside LLC, addressed the Board, stating that the property was an absolute mess at the time Tolles Riverside purchased it. He also said that \$125,000 - \$150,000 was spent on the environmental issues alone.

Mr. Kelley stated that a substantial amount of money was also spent on renovating the existing buildings on the property.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

Chairman Seabury asked if there were anyone present who wished to speak in opposition or neutrally with regard to application. No one came forward.

Chairman Seabury declared the matter before the Board.

Mr. Pitre commented that the he would feel better if the applicant could inform the Board exactly what the proposed use would be.

Mr. Kelley replied that the applicants wish was to find potential buyers prior to the actual construction but that the intent was to cater to small businesses with a light industrial use.

Ms. Davis stated that she felt the proposed use on the property was more of an industrial use as opposed to a commercial/industrial use.

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Mr. Kelley stated that he would have “no problem” if the Board approved the request for a Use Variance but added a stipulation that there would be no automotive repair businesses on the property.

Chairman Seabury commented that he felt the property was very appropriate for a residential use.

Ms. Davis commented that she did not feel the applicant’s request was unreasonable.

Ms. Davis made a motion to approve the request for a Use Variance to allow light industrial use with the stipulations that the use had to be similar to Exhibit A entitled (Concept Six, dated February 21, 2008) and that no automotive repair, general wholesale or retail sales are to be allowed on the site.

Mr. Pitre seconded the motion.

Ms. Davis, speaking on her motion, stated that she felt it was reasonable to approve the request with the noted stipulations.

Mr. Pitre, speaking on his second, stated that he felt the case met the criteria for Simplex, there was no negative abutter testimony, and the special conditions on the property warranted a Use Variance.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the request for a Use Variance to allow light industrial use with the noted stipulations, and to record the member’s votes, which were as follows:

Ms. Davis	To approve
Mr. Pitre	To approve
Ms. Shuman	To approve
Mr. Martin	To approve

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Mr. Seabury            To approve

Chairman Seabury declared that the decision having been five votes to approve, the motion had carried.

- 2. Case 228-004 (6/25/09): WD Partners, c/o Jeff Jacobs, 7007 Discovery Blvd., Dublin, OH, requests a Use Variance to allow three additional signs on the gas station canopy for property located at 7 Wal-Mart Blvd., Hudson, NH. [Map 228, Lot 004, Zoned B, HZO Article XIII, Section 334-63, Business and Industrial Building Signs.]**

Clerk Martin read aloud the posted notice, as recorded above.

Chairman Seabury asked who was present to speak in favor with regard to the application.

Mr. Brian Lorenz, Project Planner, from WD Partners, Columbus, OH, representing the applicant, Sam's Club, addressed the Board, stating that the applicant wanted to install three additional signs – one per elevation.

Mr. Lorenz stated that after an investigation of the property, the current request for signage on all four elevations would be inappropriate. He further stated that the applicant wished to amend the request to one additional sign which would be located on the northern elevation.

Mr. Lorenz stated that the size of the proposed additional sign was 18.64 square feet.

Mr. Lorenz then read aloud from the application for a Use Variance as summarized below:



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- 1. The applicant believed that as a motorist travelling south on Route 3A, the canopy became difficult to see and it would be helpful to have an additional sign of minimal size to help indicate that there was a gas station at that location.*
- 2. The proposed sign would also prevent motorists from having to cross multiple lanes trying to pull into the gas station if the sign was missed.*
- 3. There were no other changes being proposed to the site.*
- 4. The majority of the surrounding uses on Route 3 were commercial in nature.*
- 5. The proposed sign would give the property a newer and cleaner appearance.*

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

Chairman Seabury asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application. No one came forward.

Chairman Seabury declared the matter before the Board.

Mr. Martin asked if the existing sign was obstructed by the actual building. Mr. Lorenz replied that while travelling north on Route 3, the sign was not visible for a couple of seconds.

Mr. Martin commented that 100% of the people that shopped at Sam's Club had to members and therefore knew where the gas station was

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located. He also stated that he did not see the benefit of the additional sign.

Chairman Seabury commented that he felt additional signage would not increase the amount of business and saw absolutely no justification for an additional sign.

Mr. Pitre commented that he agreed with Mr. Martin’s comments.

Ms. Davis stated that she felt there were no special conditions on the property to warrant a Use Variance and said she did not feel there was a hardship on the property.

Ms. Davis also asked Mr. Oleksak if the signs on the actual gas pumps counted in the total number of allowable signs on a property and if that should be included in the Sign Ordinance.

Mr. Martin made a motion to deny.

Ms. Davis seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt an additional sign would not be of any benefit to the general public and there was no hardship on the property that warranted an additional sign.

Ms. Davis, speaking on her second, stated that she concurred with everything Mr. Martin had said.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to deny the request for a Use Variance, and to record the members’ votes, which were as follows:

Mr. Martin	To deny
Ms. Davis	To deny

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Mr. Pitre	To deny
Ms. Shuman	To deny
Mr. Seabury	To deny

Chairman Seabury declared that the decision having been five votes to deny the Use Variance, the motion had carried.

Chairman Seabury then declared a break at 8:40pm, calling the meeting back to order at 8:44pm.

- 3. Case 175-019 (6/25/09): Chris Floyd, 78 Highland Street, Hudson, NH, requests a Use Variance to allow a landscape business within the TR Zoning District and to allow a mixed use on the property. [Map 175, Lot 019, Zoned TR, HZO Article V, Section 334-20, Permitted Uses and Section 334-10, Mixed or Dual Use on a lot.]**

Clerk Martin read aloud the posted notice, as recorded above.

Chairman Seabury read aloud a letter from the applicant's abutters, addressed to the Zoning Board of Adjustment, dated June 23, 2009, as follows:

*We are writing collectively as residents of the Highland Street area which abuts 78 Highland Street/First Choice Landscaping, LLC. Since the business began operating there has been no negative impact including: no increased traffic flow, no disruption in traffic flow patterns, or any increase in noise disturbance. The location of 78 Highland Street merely houses the landscaping equipment so there is no disruption at all during the days, nights, or weekends.*

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*Unlike other businesses, no business is conducted out of the 78 Highland Street dwelling therefore the impact for abutters is obsolete. The owner and operator of First Choice Landscaping, LLC, Christopher Floyd has demonstrated great consideration, reverence, and respect to all of his abutting neighbors. We all have no issues or reservations about First Choice Landscaping, LLC continuing to function the way it always has. Below are the official signatures of all direct abutting property owners.*

*Signed,*

*Robert and Diane Pelkey – 73 Highland Street*

*Mr. & Mrs. Richard E. Germain – 75 Highland Street*

*Mr. & Mrs. John Walsh – 76 Highland Street*

Chairman Seabury asked who was present to speak in favor with regard to the application.

Mr. Christopher Floyd and Mrs. Christine Floyd, the applicants, addressed the Board, stating that they were requesting permission to park vehicles on the back portion of the property.

Mrs. Floyd read aloud from the Application for a Use Variance as summarized below:

- 1. The zoning restriction of the cited ordinance interferes with the plaintiff's reasonable use of the property because the property had been a catering business for over thirty years and a variance was granted for a childcare facility in 2004.*
- 2. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific*

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*restriction on the property because the applicant wanted to park a total of four trucks on the property.*

*3. No diminution in the value of surrounding properties would occur because nothing on the property would change except the parking of four vehicles and storing some landscaping equipment in a trailer.*

*4. The proposed use will not be contrary to the public interest because the parking area is in the rear of the business and would not intrude on anyone else's property.*

*5. Granting the variance would do substantial justice because it would enable three people to keep their jobs and allow our neighbors to have a landscaper for their homes. It would also allow the property to remain a business.*

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

Chairman Seabury asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application. No one came forward.

Chairman Seabury declared the matter before the Board.

Chairman Seabury asked the applicant to testify that the only request was to park four vehicles and store equipment in a trailer on the lot. The applicant testified that was the only request and the trailer was an enclosed trailer that was 20 x 8 ½ feet in size. He further testified that the trailer housed tools such as hand tools, blowers, weed-wackers, and lawn mowers.

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Chairman Seabury asked why the landscaping materials needed for the business were not stored on the applicant's property. Mr. Floyd replied that any and all materials were shipped directly to the job site. Mr. Floyd further replied that any materials stored on his property were used for his personal use.

Mr. Martin asked if the business would require a Home Occupation Special Exception. The applicant replied that there was no aspect (aside from bookkeeping) of the business operating out of the home.

Mr. Martin asked the applicant if the dirt path located on the property was used to gain access to the backyard. Mr. Floyd replied that it was being used and that PSNH had been contacted about the possibility of using that dirt path as a right-of-way.

Ms. Davis asked if the dirt path was considered a second driveway. The applicant replied that it was not because he did not own the dirt path. Chairman Seabury commented that although the applicant did not "own" it, the applicant was still "using it."

Mr. Oleksak informed the applicant that Mr. John Cashell, Town Planner for the town should be contacted for further information regarding the dirt path which was being used as a makeshift driveway.

Mr. Oleksak asked the applicant where the yard waste was dumped. Mr. Floyd replied that although he used to dump the waste in his backyard, that presently the waste was dumped at Regis Landscaping in Hudson, NH.

Mr. Pitre asked the applicant to clarify how many employees there would be. Mr. Floyd replied that the company's employees consisted of himself and two other employees.

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Mr. Martin made a motion to approve the request for the Use Variance with the following stipulations:

- 1. That the approval of the Use Variance is limited to allow for the parking of four landscape business vehicles and one trailer and any further expansion to the use or business would require ZBA approval.*
- 2. No landscaping material is allowed to be dumped on the property.*
- 3. No outside storage of landscaping material that is used for the business is allowed.*

Ms. Davis seconded the motion.

Mr. Martin, speaking on his motion, stated that he felt it was a good use for the property and there was no negative abutter testimony.

Ms. Davis, speaking on her second, stated that she felt the request met the criteria of the ordinance, there was no negative abutter testimony, and there was actually positive abutter testimony.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the request for a Use Variance, with the noted stipulations, and to record the members' votes, which were as follows:

Mr. Martin	To approve
Ms. Davis	To approve
Mr. Pitre	To approve
Ms. Shuman	To approve
Mr. Seabury	To deny

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Chairman Seabury declared that the decision having been four votes to approve the Use Variance and one vote to deny, the motion had carried.

Chairman Seabury stated that Mr. Martin would return to his seat as a non-voting alternate member of the Board as Mr. McInerney had arrived at 9:10pm.

- 4. Case 201-003, 206-032, 207-003, 004, 005, 007, 008, 213-001 (6/25/09): Michael and Rebecca Jarry, 143 Bush Hill Road, Hudson, NH, requests a Wetland Special Exception to allow 7,180 square feet of wetland impact for construction of a proposed road, 1,762 square feet of wetland impact for construction of a driveway for proposed lot 4-10, Map 207, a 5-foot walkway adjacent to the proposed driveway, and 67,733 square feet of permanent wetland buffer impact for the construction of the proposed road, storm water detention basins, storm water treatment swales, and access to proposed lots 4-10 and 4-2. Properties located at 113, 123, 131, 143, 143R, 145 Bush Hill Road, and 157 Wason Road. [Map 201, Lot 003; Map 206, Lot 032; Map 207, Lots 003, 004, 005, 007, 008; and Map 213, Lot 001; Zoned G-1, HZO Article IX, Section 334-35 (B) and (C), Uses within the Wetland Conservation District.]**

Clerk Martin read aloud the posted notice, as recorded above.

Chairman Seabury read aloud a portion from the Decision to Recommend a Wetland Special Exception from Robert Haefner, Chairman of the Conservation Commission as summarized below:



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*Recommendation for approval with the following stipulations and recommendations for Project #06-0414-4 dated August, 2008; last revised on 10/01/08: **Jarry Sub Division.***

- *Section six, Recreation Activities and section eight, Forestry Management of Open Space Covenant; to include; to section six “shall be approved by the Conservation Committee.” For section eight, any forestry with best management practices shall be “approved by the Conservation Committee.”*
- *Due to fragmentation of wetlands due to road construction Map Lot sections 4-40 and lot 4-8, the Conservation Committee feels strongly that the Planning Board consider a 3,000 foot waiver for a cul-de-sac on the north side of Moose Hill Road to eliminate three crossings on the south side of the planned road; recommendation by the Conservation Committee as this would be the preferred way to minimize the wetland impact.*
- *Area on/at the three crossings on the proposed road shall incorporate “turtle fencing addition.”*
- *Addition of stipulation for; “public access in open space covenant and restrictive forestry with Best Management Practices after Conservation Committee approval.*

*Motion as approved with amendments by Jim Battis, seconded by Michelle Champion.*

*Motion passed; 5-0 on October 20, 2008.*

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Chairman Seabury noted that he had received subsequent information from Mr. Battis and Ms. Champion that they had forgotten to include their standard stipulation that there would be wetland protection markers at 50-foot intervals along the easement line.

Chairman Seabury also read aloud a letter addressed to the Zoning Board of Adjustment dated February 13, 2009, from John Cashell, as summarized below:

*At its February 11, 2009, meeting, the Planning Board voted to forward correspondence to the Zoning Board of Adjustment that the Planning Board has no planning concerns with regard to the wetlands crossings on Moose Hill Road as proposed on Plan Map 207/Lots 3,4,5,8 and Map 206/Lot 32. However, the Planning Board does have concerns regarding environmental impact, but believes those concerns have been addressed by the applicant.*

*The Planning Board also moved to forward correspondence to the Zoning Board of Adjustment that the Planning Board has both planning concerns and environmental concerns for the driveway crossing on Map 207/Lot 4-10.*

Chairman Seabury asked who was present to speak in favor with regard to the application.

Mr. Tony Basso from Keach-Nordstrom Associates, Inc., representing the applicant, stated that the proposal was for a 39-lot open space residential subdivision located on Bush Hill Road.

Mr. Basso stated that the project entailed the consolidation and re-subdivision of six different tracks and that there was a total combined

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land area of 194 acres. He also stated that 99 of those 194 acres would be dedicated to open space and conservation easement as well as another 10.5 acres that would remain private land that would be dedicated to conservation easement – noting that a total 109.5 acres of the total 194 acres would be protected from any further development.

Mr. Basso read aloud for the Application for a Wetland Special Exception as summarized below:

- 1. The proposal is essential to the use of the land located outside of the Wetland Conservation District. The land that forms the overall tract for the subject project extends a distance of approximately 3,000 feet west of Bush Hill Road. Under the current Town of Hudson Development Regulations, the length of a dead end roadway is limited to 1,000 feet. To construct a town road in excess of 1,000 feet requires a second point of access from Bush Hill Road. To provide reasonable access and use of the land outside of the Wetland Conservation District, a loop roadway with two separate points of access is required.*
- 2. There is no reasonable alternative to the proposed use that does not adversely affect the Wetland Conservation District because in order to reasonably access the remote land area of the consolidated tract, a public roadway longer than 1,000 feet is needed. The horizontal layout of the proposed road has been designed such that it crosses wetlands and associated wetland buffers at the narrowest points. The proposed alignment minimizes the extent of impact to lands within the Wetland Conservation District.*
- 3. The design, construction methods, and maintenance methods for the project, including those involving the*

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*wetland and wetland buffer impacts, have been designed by the applicant's project engineers, Keach-Nordstrom Associates, Inc. General construction sequencing and erosion control practices have been implemented according to the State of New Hampshire, DES Best Management Practices as described in the manual for Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire.*

*An Alteration of Terrain Permit would be required from DES which protects the surface waters, drinking water supplies, and groundwater by controlling soil erosion and managing stormwater run-off from developed areas.*

- 4. The proposed wetland buffer impact is based entirely on design criteria and planning consideration. The wetland crossing and associated wetland buffer impacts are strictly the result of providing reasonable access to the 194 acre consolidated tract. The proposed impact to land within the Wetland Conservation District is based primarily on providing public safety in the design of the project.*
- 5. As a consideration in the design intent of the proposed open space subdivision, wildlife interests were at the forefront of the planning process. Of the 194 acres, approximately 99 acres (51%) of the overall tract area will be dedicated as open space/conservation land. In addition, to further protect the on-site wetlands, 16 of the proposed lots will be encumbered by a conservation easement.*

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Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

Chairman Seabury asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application.

Mr. Dave Clark, 151 Bush Hill Road, Hudson, NH, stated that his initial concern was with one of the driveway crossings acting as a dam but that he was no longer concerned because the wetland flowed in two different directions, and there was a large amount of acreage dedicated to conservation.

Ms. Shirley Bergeron, 117 Bush Hill Road, Hudson, NH, asked what the results were from the soil testing done at the apple orchid located at Sky Farm and further, when that testing was completed. Ms. Bergeron also asked if the Conservation Commission was aware of the test results.

Mr. Basso stated that the applicant was not under any obligation to perform a soil test or an environmental assessment for the apple orchid which Ms. Bergeron had referred to. He also stated that soil testing was performed for the leech fields.

Chairman Seabury asked if the result of the soil testing that was done was provided to the Conservation Commission. Mr. Basso replied that the results were not provided because the Conservation Commission never asked for them.

Ms. Karen Fitzpatrick, 138 Bush Hill Road, Hudson, NH, and asked what the line of sight was. Mr. Basso replied that there were some lines of sight that were better than others and it fixed the location of the driveways. – noting that this issue was a Planning Board matter not a ZBA matter.

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Chairman Seabury asked if there were anyone else present who wished to speak in opposition or neutrally with regard to the application. No one else came forward.

Chairman Seabury declared the matter before the Board.

Ms. Davis asked why the applicant chose to combine so many lots. Mr. Basso replied that the applicant had acquired the parcels separately over a number of years.

Ms. Davis asked if the applicant planned on installing a fire pond. Mr. Basso replied that either a cistern or individual fire suppression systems would be installed.

Mr. Pitre asked if all of the lots were at least 1 acre in size or larger. Mr. Basso replied that they were.

Mr. McInerney asked if the applicant would be willing to perform a Level I Site Assessment on the former herb tract at the apple orchid. Mr. Basso agreed to perform the site assessment.

Ms. Davis asked if all of the homes would be single-family homes. Mr. Basso replied that they would all be single-family homes.

Chairman Seabury asked the Board if anything should be done regarding the Planning Board's concern regarding the 24 acre lot – 4-10.

Mr. Pitre suggested that a stipulation could be applied stating that there shall be no further subdivision of the lot.

Ms. Davis made a motion to approve the request for a Wetland Special Exception with the following three stipulations:

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- 1. An environmental Level I Site Assessment be conducted on of Map 207/Lot 8 and the results to be reported to the Planning Board.*
- 2. That Map 207/Lot 410 could not be further subdivided and said restriction would be included in the deed.*
- 3. All of the recommendations from the Conservation Commission including the conservation easement markers in accordance with the designation by the town's engineers office be applied at 50-foot intervals on Lots 4-8, 4-10, 4-29 through 4-37, 4-39, and 4-40.*

Mr. Pitre seconded the motion.

Ms. Davis, speaking on her motion, stated that she felt the applicant met all of the criteria for the Wetland Special Exception and the plan had the least amount of impact to the wetlands and the wetland buffers.

Mr. Pitre, speaking on his second, stated that he felt it was a reasonable use of the land and there was a good deal of acreage dedicated to the conservation easement.

VOTE: Chairman Seabury asked the Clerk to poll the Board on the motion to approve the request for the Wetland Special Exception, with the noted stipulations, and to record the members' votes, which were as follows:

Ms. Davis	To approve
Mr. Pitre	To approve
Mr. McInerney	To approve
Ms. Shuman	To approve
Mr. Seabury	To approve

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Chairman Seabury declared that the decision having been five votes to approve the Wetland Special Exception, the motion had carried.

**V. OTHER BUSINESS**

Chairman Seabury informed the Board that the By-laws still needed to be reviewed.

Ms. Davis commented that she felt a separate meeting should be held to review the By-laws.

Chairman Seabury pointed out that Mr. Oleksak had sent out letters to the town residents who had an ALU reminding them that permission had to be obtained from the ZBA for the ALU to remain if the home sold or if the situation surrounding why the ALU was approved in the first place changed.

**VI. ADJOURNMENT**

All scheduled items having been processed, Mr. Pitre made a motion to adjourn the meeting.

Mr. McInerney seconded the motion.

VOTE: All members voted in favor. The motion passed unanimously.

Chairman Seabury declared the meeting to be adjourned at 10:55pm.

Date: July 06, 2009

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun