

December 11, 2022
Town of Hollis, NH
To: Planning Board and Select Board
CC: Zoning Board Of Appeals
7 Monument Square
Hollis NH 03049

RE:

Request for Rehearing of Approval to Allow Rental of Unit 7B Joe's Way

by Joseph Garruba

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Executive Summary

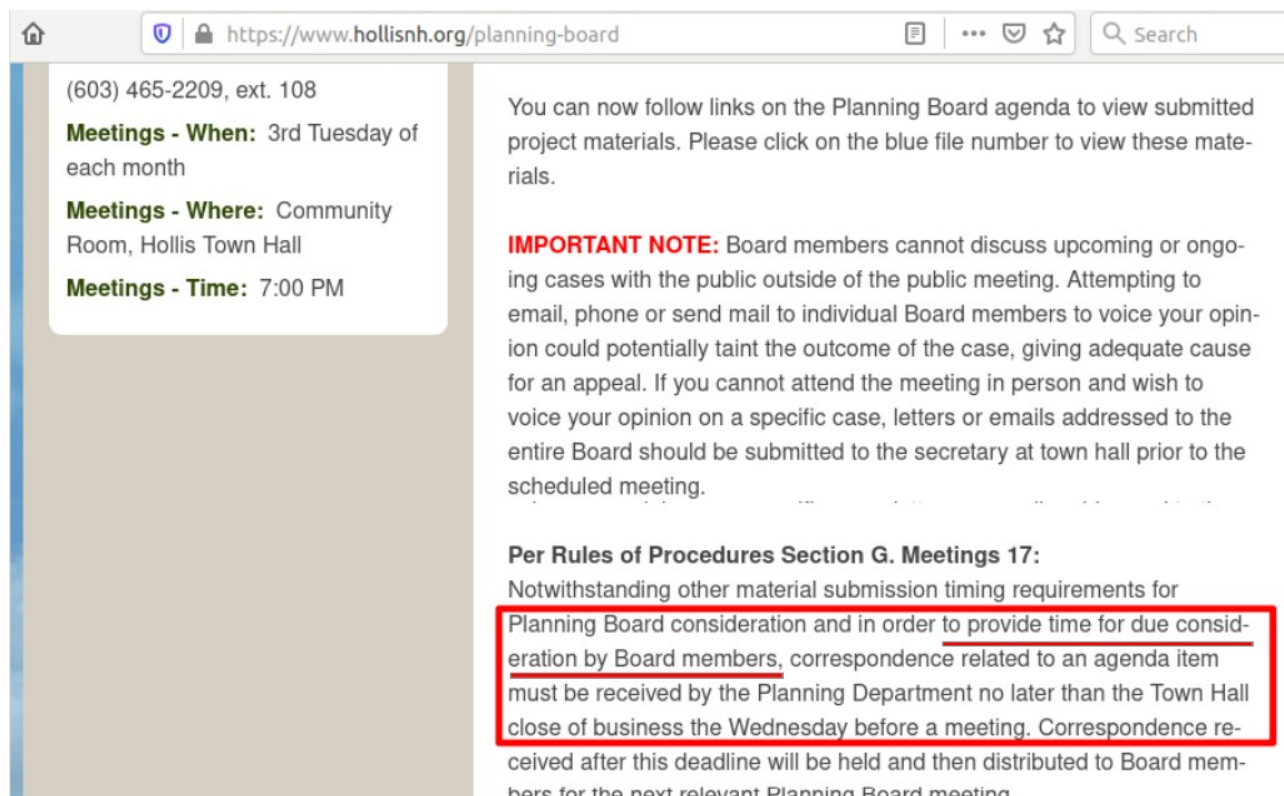
The Planning Board voted to allow conversion of an Owner Occupied Workforce Housing unit to a Rental Workforce Housing unit at its meeting on November 15 2022. There were several procedural issues with the decision including evaluation of the proposal against the **wrong version** of the Workforce Housing Administration Compliance and Monitoring Rules. **In addition, there were problems with notice as well as an apparent conflict of interest.** Lastly, due process was not observed, **written testimony was with held from some Board members.** This project's non-compliance was submitted in writing and addressed directly to Planning Board members in accordance with the Board's procedures. This critical information was with held from some of the Board members in direct opposition to language in the Board's procedures. These actions render the Board's vote in this matter defective and should result in disciplinary action and policy changes to avoid future legal concerns for the Town. The Board should vote to rehear the case to avoid the appearance of malfeasance caused by the improper actions of a few officials being attributed to individual Board members who were not informed properly on the details of this matter.

Purpose

This motion for rehearing is intended to make sure that the statutes of the State, ordinance and regulations of the town and the procedures of the Planning Board are followed. The specific details of this matter related to the rental conversion of previously approved owner occupied housing are important, but far more important is the rule of law which must be preserved. If we allow the law to be disregarded in some matters, the integrity of the entire process is diminished. It is important to consider this point in relation to this request for rehearing and to remember that it is the duty of Planning Board members to see that decisions of the Board are made in accordance with the law.

Written Testimony For November 15 Meeting Withheld From Some Board Members

After observing the lack of discussion and the incomplete briefing provided by the Town Planning Consultant at the November 15, 2022 Planning Board meeting, a Right To Know request was submitted. The reason for this request was to determine if all Planning Board members received the written testimony that was submitted on November 9, 2022 in accordance with the Planning Board's rules of procedure. Documents provided by the town in response to the RSA 91-A information request reveal that information was withheld from Board members. The information withheld is germane to the request to convert an owner occupied housing unit to a rental unit. Take note of the Planning Board's Policy on written testimony as posted on the town website below. (Red Rectangle and red underline added for emphasis)



The screenshot shows a web browser window with the URL <https://www.hollisnh.org/planning-board>. On the left side, there is a sidebar with contact information: (603) 465-2209, ext. 108. Below this, it lists meeting details: **Meetings - When:** 3rd Tuesday of each month; **Meetings - Where:** Community Room, Hollis Town Hall; and **Meetings - Time:** 7:00 PM. The main content area contains a paragraph stating that users can follow links on the Planning Board agenda to view submitted project materials. Below this is an **IMPORTANT NOTE** in red text, which states that board members cannot discuss upcoming or ongoing cases with the public outside of the public meeting. The note further explains that attempting to contact individual board members could taint the outcome of a case. At the bottom of the page, there is a section titled **Per Rules of Procedures Section G. Meetings 17:**. The text in this section is partially enclosed in a red rectangle and underlined, indicating the specific policy being highlighted: "Notwithstanding other material submission timing requirements for Planning Board consideration and in order to provide time for due consideration by Board members, correspondence related to an agenda item must be received by the Planning Department no later than the Town Hall close of business the Wednesday before a meeting. Correspondence received after this deadline will be held and then distributed to Board members for the next relevant Planning Board meeting."

Now consider this e-mail which was returned in response to the Right to Know Request proving it was received by the town. The e-mail below was sent to the Planning Board members on **Wednesday Nov 9, 2022** in accordance with the Board's procedures on written testimony cited above. It can be seen that the Planning Board officers were aware of the written testimony and yet it was not provided to other members of the Planning Board in accordance with the policy. What could explain this? Why was this information withheld? How could the recipients expect other board members to evaluate the proposal properly if this info was withheld? The stated purpose of the Rules of Procedure is “to provide time for due consideration by **Board Members**” Why then were the board members not provided with this information. Who else was on BCC, your friends or neighbors?

From: [user1](#)
To: [Lori Radke](#); [Kevin Anderson](#); [David Petry](#); [Bill Moseley](#)
Subject: South Depot Road: Request by Raisanen Leasing, LLC to rent/lease a workforce housing unit
Date: Wednesday, November 9, 2022 10:22:01 AM

Lori,

Please confirm that you have received this e-mail and will get it distributed to the planning board members.

Kevin, David, Bill, others BCC,

I recommend that the Workforce housing item on the agenda for 11-15 be tabled until ZBA approval is obtained. The proposal seems to be in violation of section XI D of the zoning ordinance. The Planning board is not authorized to issue waivers for this. It seems such a non-compliance must go to the ZBA. Please forward this email to all Planning Board members for their consideration.

See item 7 on the agenda link below.

https://www.hollisnh.org/sites/g/files/vyhlf3271/f/agendas/plagn11-15-22_1.pdf

Regards,

Joe

It can be proven that this testimony was never delivered to the Planning Board members since the e-mailed packet sent to Board members on November 10, 2022 did not contain the e-mail above and despite the RSA 91-A request for any information related to the November 15, 2022 meeting agenda items which were sent to Board members, the town could not produce a record showing that the written legal testimony was provided to the Board as is required. In addition, an eleven-page report on the problems with the rental conversion was also sent to the Planning Board and Select Board at 11am on Nov 15, 2022. It seems that as of today, this information has not been distributed to the addressed Board members either. It is not clear why legal testimony addressed to elected and appointed officials was not delivered. Do you think it is acceptable for Town Officials to fail to provide information addressed to the Planning Board Members of the town? Shouldn't that information have been provided even if it was after the meeting? It is incumbent on Planning Board members to vote to rehear this matter, so that they can decide the issue while having access to all of the required information.

Conflict of Interest May Have Affected Decisions Related to Workforce Housing

Decisions about the composition of the Planning Board agenda as well as interpretations of town regulations are made by our Town Planning Consultant, Mr. Mark Fougere. He provides recommendations to Town staff and to Town land-use boards. It seems that Mr. Fougere may have a conflict of interest or at least certainly has the appearance of one relating to high density development projects. The conflicts or potential conflicts raise concerns about the quality of his advice to Town staff and the Planning Board and about the decisions he participates in relative to land use matters in general. In actuality, Mr. Fougere certainly has at least the appearance of conflict of interest in **this** matter and should not have advised the planning board on matters related to workforce housing. It seems he is presently generating a report in support of a developer's high density housing project in Epping. His work involves producing fiscal studies supporting high density development. An image of minutes from the Epping Planning Board is included below. (Red rectangle added for emphasis). Note: Casey Wolfe is the Town Planner in Epping. It seems Mr. Fougere is working with the developer's attorney Ms Manzelli.

PUBLIC HEARING:	Design review (this is the third such review type for this application)
Owner/developer:	46 Martin Road, LLC Workforce Housing
Location:	46 Martin Road Tax Map 036 – Lot 023

Selectman McGeough read notice of a Design Review by 46 Martin Road, LLC Workforce Housing and appointed Mike Sudak to sit in for Sean Morrison. Selectman McGeough asked for a brief overview

Vose stated the fear of most is how this will dramatically affect the school population. Vose quoted from the Harbor Joint for Housing Studies showed that out of 150 family homes, 51 will have school age children and out of 100 apartments 31 will have school aged children.

Manzelli explained there's a study by a professional planner Mark Fugere's preliminary analysis is approximately 16 to 35 students resulting from this project.

Manzelli asked for the Board's guidance on their fiscal analysis should they coordinate with the planner. The Board as a whole agreed, with the planner.

EPPING PLANNING BOARD MEETING MINUTES

How could the Select Board and Planning Board allow someone working with developers to take positions in favor of high density development to also advise our town's quasi-judicial boards regarding these matters? It is not reasonable to expect Mr. Fougere's appearance of conflict of interest not to reflect poorly on the Hollis land use Boards decisions on high density housing considering that he is working for developers to promote high density development in other towns. The precedents set using his influence over actions here in Hollis by getting favorable decisions for developers here will likely be used by his developer clients elsewhere. The town should not have allowed Mr. Fougere to participate in this case and certainly should not allow him to advise Town staff or Board members on matters related to high density development.

Town Planning Consultant's Incomplete or Biased Guidance Favoring the Applicant

The Town Planning Consultant has made the following claims and recommendation related to this case (Red rectangles added for emphasis).



Town of Hollis

STAFF REPORT

7 Monument Square
Hollis, NH 03049
Tel. 465-2209 Fax. 465-3701

MEETING DATE: 11/15/2022	APPLICANTS: Raisanen Leasing, LLC	APPLICATION TYPE Bella Meadows Workforce Housing – Rental of Workforce Housing Unit
APPLICATION NO:	APPLICANT'S REP: Raisanen Leasing ,LLC	REVIEWED BY: Mark J. Fougere, AICP
EXECUTIVE OVERVIEW:		
<p>In 2020 the Planning Board approved the South Depot Road 32 unit Bella Meadows condominium community; 10 of the units were set aside as Workforce Units. As required by Town Ordinance, these Workforce Housing units are restricted by recorded covenants with sales prices limited by Statutory definition. All market rate units have been sold and 7 Workforce Housing Units have been sold. The Applicant is requesting the ability to rent/lease one of the Workforce Housing Units; with rents/income limited to those specified under the Workforce Housing Statute. The income of the perspective tenant has already by verified by the Income Verification Agent (attached).</p>		
<p>The Planning Board has the ability to allow such a rental arrangement under provisions of its Workforce Housing Administration, Compliance and Monitoring Rules: Assurance of Continued Affordability (attached) which states <u>"The Planning Board may allow for the leasing of an affordable unit if the owner presents reasonable facts justifying such action including: job relocation, an inability to sell the unit within a reasonable time period (120 days), financial difficulties or other related facts. Any such leasing shall be overseen by a third party entity to review the income eligibility of any tenant"</u>.</p>		
<p>The applicant has submitted a letter detailing the challenges that have occurred over the last year in selling the Workforce Housing units and requests permission to rent a single Workforce Housing Unit. Out of privacy concerns, the applicant's name and address is not being disclosed.</p>		

STAFF RECOMMENDATION

If the Planning Board is inclined to approve the Plan at the 11/15/2022 meeting, I have prepared the following draft conditions of approval:

- The Applicant shall submit a new Rental Compliance Certificate to the Planning Department should lease be extended beyond November 30, 2023.

Planning Board May Not Approve a Project in Violation of the Zoning Ordinance

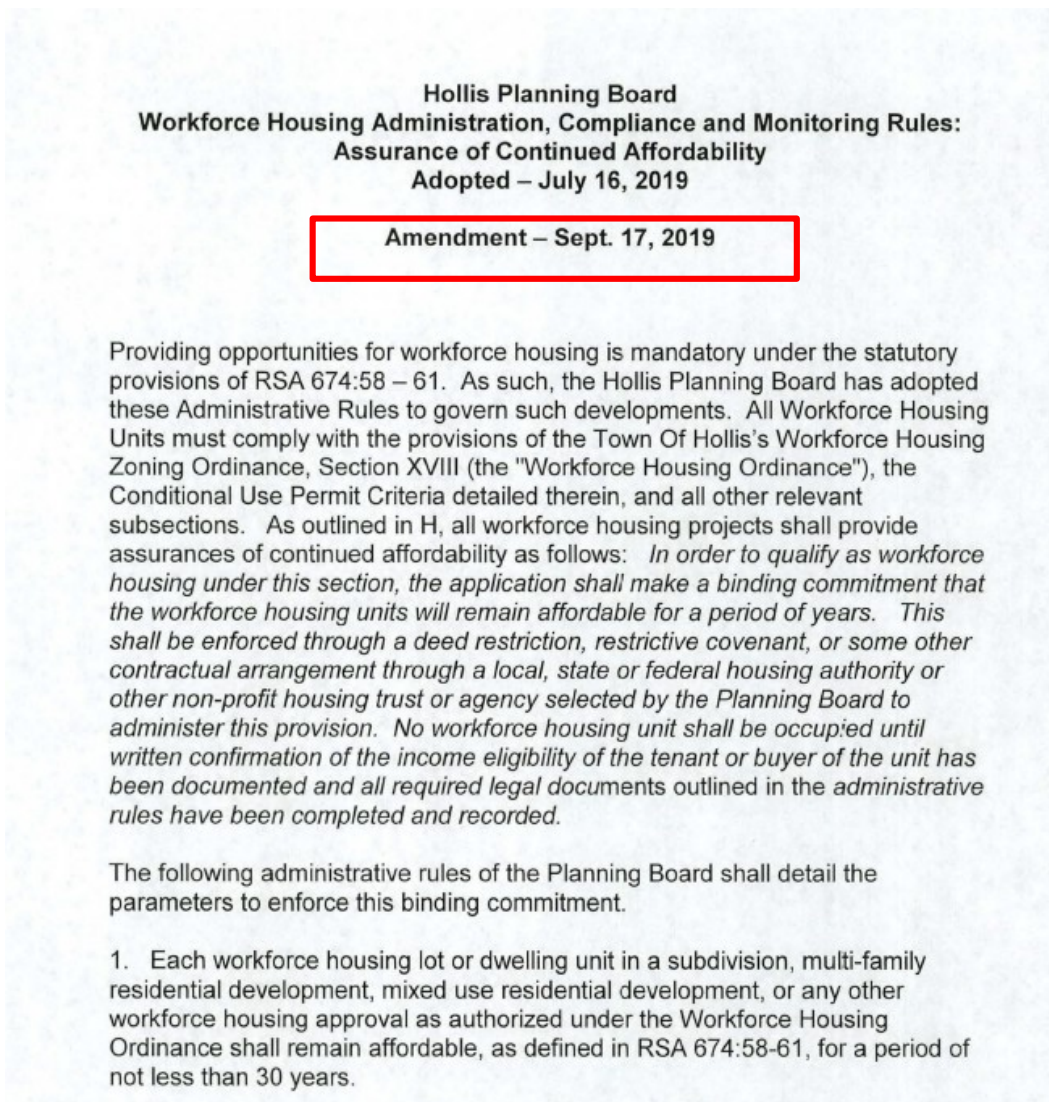
Although the Planning Board may have ability to allow the leasing of an affordable unit as claimed, this applies **if and only if** such approval does not violate the Zoning Ordinance. The Planning Board may not approve changes in violation of the ordinance. The Town Planning Consultant's position is incomplete. This proposal violates sec XI D 2 B of the zoning ordinance (See p10 of this report).

Improper Documents Provided to Planning Board In Support of Disallowed Lease Terms

In addition, the Town Planning Consultant proposed a condition of approval that violates the Workforce Housing Compliance and Monitoring Rules of our town.

"The applicant shall submit a new rental Compliance Certificate to the Planning board should the Lease be extended beyond Nov 30, 2023"

It can be seen from section B of the Hollis Planning Board Workforce Housing Administration Compliance Monitoring Rules: Assurance of Continued Affordability **amended on Sept 17, 2019** that **"a single lease term shall not exceed one year"**. Images of the document section are included for reference below.



or document and to renew or cause renewal of such covenant or document for the purpose of extending for as many times as necessary the continuing affordability of lots or dwelling units as originally approved by the Planning Board.

B. Rental Workforce Housing:

1. The property owner, successor, or assign, shall be responsible for the continued affordability of Rental Workforce Dwelling Units consistent with RSA 674:58-61 and aforementioned covenants and documents. Annual reports shall be submitted to the Planning Board by December 31st of each year, certified by the owner or a qualified third-party entity, that all occupants of workforce housing units meet maximum income guidelines. Leases may be renewed if all other requirements are met **but a single lease term shall not exceed one year.** Tenants whose income should increase to a point where they exceed workforce housing income limitations shall be able to remain in the unit until their existing lease expires.

The Town Planning Consultant **provided an incorrect revision of the relevant document to the Board** and it happens that the change adopted on September 17, 2019 added the restriction against lease terms exceeding a year. This is known since the RSA 91-A request revealed that the Planning Board received only the July 16, 2019 version. Why did the Town Planner provide the earlier version of the document to the Board for consideration? Why did he propose a condition of approval in contravention to the amended document? Since this information was provided to the Town prior to the meeting on the November 15, 2022, one must question why the board was not advised regarding the correct version of the document to be used in evaluating the proposal. Incorrect guidance to the Board is serious breach of trust. The professional Planning Consultant should have provided the proper documents to the Planning Board particularly since this issue was pointed out to the Town in writing prior to the meeting.

Below is an image of Section B of the document dated **July 16, 2019** provided to Board members by Town staff. Note the version provided by the Town Planning Consultant does not include the prohibition on leases extending beyond one year. (Red rectangle, added for emphasis, shows where the Sept 17, 2019 text was added).

B. Rental Workforce Housing:

1. The property owner, successor, or assign, shall be responsible for the continued affordability of Rental Workforce Dwelling Units consistent with RSA 674:58-61 and aforementioned covenants and documents. Annual reports shall be submitted to the Planning Board by December 31st of each year, certified by the owner or a qualified third-party entity, that all occupants of workforce housing units meet maximum income guidelines. Tenants whose income should increase to a point where they exceed workforce housing income limitations between lease periods, shall be able to remain in the unit until their existing one year lease expires.

Keep in mind that the restriction of our compliance document does not prevent a renter from residing at the unit for more than one year. Instead, it simply prevents lease terms from exceeding one year. Leases can be renewed on an annual basis.

Due Process Notice Rights of Abutters and Town Residents Have Been Disregarded

The Hollis Planning Board inappropriately added an item to the agenda for the November 15, 2022 meeting. The agenda included item 6.a. "Workforce Housing waiver request for unit rental". An image of the agenda emailed to residents is included below. (Red rectangle added for emphasis). Note that this item is not included as a case and does not include the property, owner or description of the proposed change. This decision was made based on advice from the Town Planning Consultant. Such a precedent in this matter resulted in preventing input by abutters and Hollis residents from exercising their due process rights and may continue to thwart property rights of residents in town unless the Planning Board votes to rehear the case.

5. **Cases:**

- a. **File PB2022:016 – Final Review:** Proposed development of an existing 40.4 acre gravel pit on Depot & Rideout Road into a Major HOSPD Subdivision with 13 single family lots, Owner: Douglas A. Orde, Applicant: CFC Development, Map 9 Lots 47, 48, & 51, Zoned R & A and Recreation.
Continued Board Discussion

6. **Other Business –**

- a. Workforce Housing waiver request for unit rental

7. **WORKSHOP DISCUSSION**

- a. Potential Zoning Changes
- b. Master Plan Update

ADJOURN

NOTE: Any person with a disability who wishes to attend this public meeting and who needs to be provided with reasonable accommodation, please call the Town Hall (465-2209) at least 72 hours in advance so that arrangements can be made.

A fundamental tenet of due process related to property rights is that abutters and Town residents must be notified of changes so that they may provide testimony related to the decision at hand. When the lack of notification was brought to the attention of the Town, a change was made to the agenda. However, the change was not emailed to residents on the list to receive public notices, as the original was, and the matter was not set as a case for adjudication. The abutters were not sent notification by mail as is required.

Image of the changed agenda below. (Red rectangle added for emphasis).

5. **Cases:**

- a. **File PB2022:016 – Final Review:** Proposed development of an existing 40.4 acre gravel pit on Depot & Rideout Road into a Major HOSPD Subdivision with 13 single family lots, Owner: Douglas A. Orde, Applicant: CFC Development, Map 9 Lots 47, 48, & 51, Zoned R & A and Recreation.
Continued Board Discussion

6. **Other Business –**

7. Bella Meadows- South Depot Road: Request by Raisanen Leasing, LLC to rent/lease a Workforce Housing Unit under provisions provided by the Hollis Planning Board, Workforce Housing Administration, Compliance and Monitoring Rules; Assurance of Continued Affordability.

Speech and Testimony Was Suppressed Based on Content

During the proceeding on November 15, 2022, **no one was permitted to speak against the proposed change**. The applicant was invited to the podium and was permitted to speak in favor of his own proposal but no opportunity for abutters or town residents was provided to offer their verbal testimony against the proposal. Whose interest is served by this? Do you expect a fair result if only the applicant is permitted to speak? **Such restriction on the content of speech is certainly not supported legally**. Why was opposing speech suppressed for this proposal? Would you want your property rights abrogated like this?

The Proposal is a Violation of Zoning Ordinance

From the description provided on the updated agenda, the proposal was to allow rental of a unit in the 32 unit condominium complex on Old Runnells Bridge Road. Such a change would result in a violation of Section XI D 2 B of the Hollis Zoning Ordinance Reference image below. (Red rectangle added for emphasis).

- b. For any multi-family workforce housing development proposal, a minimum of 25% of the total number of rental units (market rate and affordable) shall be designated as workforce housing/renter occupied units.
For any multi-family workforce housing/owner occupied development proposal, a minimum of 30% of the total number of owner occupied units (market rate and affordable) shall be designated as workforce housing/owner occupied units.

Since this project was approved as an owner occupied development, the zoning ordinance requires 30% of units to "be designated as workforce housing/owner occupied". This is why the approved development required a minimum of 10 units to be designated in this manner.

$$32 \times .3 = 9.6$$

Rounded to the nearest unit this **requires 10 units minimum** to be **workforce housing/owner occupied**

The proposal for November 15, 2022 to change one unit to rental reduces the number of owner occupied units to 9. This leaves only 28% of units designated as workforce housing/owner occupied. **This is a clear violation of our Zoning Ordinance. The Planning Board does not have authority to waive this requirement of the Zoning Ordinance** and no such waiver request to the ZBA has been submitted by the applicant. The Town Planning Consultant's role is to be sure the that accurate information is provided to the Planning Board so that they may evaluate compliance of proposals. Why did the town planning consultant fail to point out this obvious violation? Why wasn't the written testimony submitted prior to the deadline and identifying this deficiency provided to the board for their consideration? It is certain Mr. Fougere is aware of this concern.

Town Planning Consultant and Applicant Are Both Aware of the Proposed Violation

Section XI D 2 B was reviewed and discussed **at length** during the approval process for the property. The requirement is well known to our Town Planning Consultant and the developer's engineer. In fact **both of them are on record** citing the requirement for 30% of units to be designated "workforce housing /owner occupied units". In addition written testimony was submitted on November 9, 2022 identifying the violation. **That written testimony was never provided to some Board members.**

On the following page is a staff report written by the Hollis Town Planning Consultant. It indicates that for Owner Occupied Workforce Housing developments, 30% of units must be designated as affordable and **owner occupied**. This shows that the Town Planning Consultant was certainly aware of the restriction in the **Zoning Ordinance and did not advise the Planning Board of the violation**. The Town Planning Consultant did not advise the Board of the written testimony received. Additionally he did not address the concerns over Section XI D 2 B to the Planning Board. They voted without being given the necessary information to evaluate the project completely. It is the role of the Planning Board members to evaluate if projects comply with the Zoning Ordinance. They cannot fulfill that role if the Town Planning Consultant withholds information from the Board.



Town of Hollis

+ response

STAFF REPORT

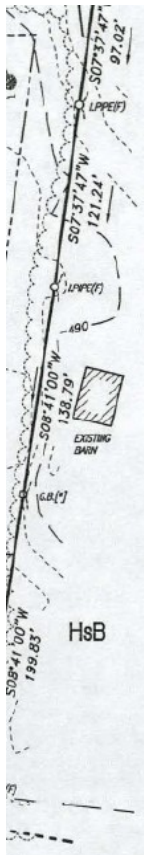
7 Monument Square
Hollis, NH 03049
Tel. 465-2209 Fax. 465-3701

May 21 table

MEETING DATE: 4/16/2019	APPLICANTS: Raisanen Homes Elite, LLC	APPLICATION TYPE: Design Review
APPLICATION NO: PB2019-05	APPLICANT'S REP: Fieldstone	REVIEWED BY: Mark J. Fougere, AICP
EXECUTIVE OVERVIEW:		
<p>This Design Review plan outlines a proposal to construct 36 townhomes units under the multi-family zone Workforce Housing ordinance. As these units will be owner occupied, 30% of the units will be restricted for workforce housing, with covenants included in the deeds restrictions maximum sale price.</p> <p>The zoning ordinances related to this use are attached to the staff report, detailing provisions and requirements. Public water will be brought to the site. A minimum of 40% open space is required, 3.7 acres and 4.5 acres will be provided.</p>		

In addition, the image on the following page is taken from the plan submitted by the developer's engineer. See Proposed Note 4, which states "This zone also requires that 30% of owner occupied units and 25% of rental units be workforce housing". It is obvious that the developer is aware of the Zoning Ordinance requiring the applicant to choose between owner occupied or rental units and furthermore that it requires 30% of owner occupied units be affordable. Why has the applicant not submitted a ZBA application? The Town Planning Consultant incorrectly indicated that one was not needed! These actions do not serve town residents or justice in general! It is not acceptable to ignore the language of the Zoning Ordinance. The Planning Board members who were deprived of the necessary facts should make a motion to rehear the case fairly. By allowing officials to withhold information from Board members, the integrity of all members is called into question. This information was distributed widely in the community. In effect, the reputation of all Board members who were not given proper information is now likely to suffer negatively due to the improper action of officials who did not share crucial information as was required.

See Note 4 of the image below which was provided to the Town by the developer during the application process for this development. It is clear that the applicant is aware that 30% of units must be owner occupied.



10-32
DANIEL J. BRIDEAU
 15 OLD RUNNELLS BRIDGE ROAD
 HOLLIS, NH 03049
 BK 7691 PG 1157 6/15/2006
 (15 OLD RUNNELLS BRIDGE ROAD)

PROPOSED NOTES:

1. THE PURPOSE OF THIS PLAN IS TO DEPICT A TWO (2) LOT SUBDIVISION BREAKING OFF THE EXISTING COMMERCIAL BUILDING AND DEVELOPING THE REMAINDER OF THE PROPERTY INTO A MULTI-FAMILY RESIDENTIAL HOUSING DEVELOPMENT.
2. THE PROPOSED COMMERCIAL LOT WILL CONSIST OF APPROXIMATELY 2 ACRES AND WILL INCLUDE ALL OF THE ASSOCIATED IMPROVEMENTS TO THE PROPERTY AS SHOWN.
3. THE REMAINDER OF THE PROPERTY (9.427 ACRES) WILL BE DEVELOPED INTO A MULTI-FAMILY HOUSING PROJECT.
4. THE SUBJECT PROPERTY IS PARTIALLY LOCATED IN THE MULTI-FAMILY ZONE. THIS ZONE ALLOWS FOR AN INCREASE IN DEVELOPMENT DENSITY CONSISTING OF 4 UNITS PER NET TRACT ACRE. THIS ZONE ALSO REQUIRES THAT 30% OF OWNER OCCUPIED UNITS AND 25% OF RENTAL UNITS BE WORKFORCE HOUSING.
5. THE PROJECT DENSITY HAS BEEN CALCULATED TO BE AS FOLLOWS:
 TOTAL PROPOSED LOT SIZE = 9.427 ACRES
 MINUS AREA IN RECREATIONAL ZONE = 0.399 ACRES
 TOTAL AREA IN RA ZONE = 9.029 ACRES
 TOTAL NET TRACT AREA = 9.029 AC SINCE THE PONDS ON SITE ARE MANMADE AND COULD BE REMOVED.
 PROJECT DENSITY = 9.029 ACRES x 4 UNITS/ACRE = 36.12 UNITS
 PROPOSED IS 36 UNITS.

5-5
MARC J. GOUPIL
 28 SOUTH DEPOT ROAD
 HOLLIS, NH 03049
 BK 7251 PG 1644 8/4/2004
 (28 SOUTH DEPOT ROAD)

NRCS SOILS LEGEND:
 SOURCE: USDA NRCS WEB SOIL SURVEY

----- SOIL BOUNDARY

CmC	CANTON FINE SANDY LOAM 8 TO 15% SLOPES, VERY STONY
HsB	HINCKLEY LOAMY SAND 3 TO 8% SLOPES
HsC	HINCKLEY LOAMY SAND 8 TO 15% SLOPES
PIA	PRESTONE LOAMY SAND 0 TO 3% SLOPES
WdA	WINDSOR LOAMY SAND 0 TO 1% SLOPES

3. THE TOTAL AREA OF TAX MAP PARCEL 10-33-1 IS 11.457 ACRES OR 499,061 SQ. FT. PER THE REFERENCE PLAN CITED HEREON.
4. CURRENT ZONING IS RECREATIONAL ZONE (R) 600 FT. FROM THE NASHUA RIVER
 - LOT SIZE: 2 ACRES
 - SETBACKS: FRONT = 50 FT., SIDE = 35 FT. AND REAR = 35 FT.
 - FRONTAGE: 200 FT.

 CURRENT ZONING IS ALSO RESIDENTIAL & AGRICULTURE DISTRICT (R&A)
 - LOT SIZE: 2 ACRES
 - SETBACKS: FRONT = 50 FT., SIDE = 35 FT. AND REAR = 35 FT.
 - FRONTAGE: 200 FT.

 THE SITE LIES WITHIN THE AQUIFER PROTECTION OVERLAY ZONE (APO). IMPERMEABLE SURFACES MAY COVER NO MORE THAN 15% OF THE LOT.
5. PORTIONS OF THE SITE ARE ALSO LOCATED IN WETLAND PROTECTION OVERLAY ZONE.
 - A 50-FT. WETLAND BUFFER AREA MUST BE MAINTAINED FROM ALL WETLANDS OVER 10,000 SQ. FT.
 - NO MORE THAN 50% OF ANY WETLAND (EXCLUDING THE BUFFER) MAY BE USED TO SATISFY THE MINIMUM LOT SIZE REQUIREMENTS FOR THE UNDERLYING ZONING DISTRICT
6. THE BOUNDARY INFORMATION SHOWN IS BASED ENTIRELY ON THE REFERENCE PLAN CITED HEREON AND IS NOT THE RESULT OF A BOUNDARY SURVEY BY THIS OFFICE.
7. THE SURFACE FEATURES AND SITE TOPOGRAPHY SHOWN ARE THE RESULT OF AN ONSITE FIELD SURVEY PERFORMED BY THIS OFFICE DURING THE MONTH OF SEPTEMBER, 2018 TOGETHER WITH THE REFERENCE PLAN CITED HEREON.
8. THE UNDERGROUND UTILITIES SHOWN HAVE BEEN COMPILED IN PART FROM PLANS OF RECORD AND FIELD LOCATION. THE LOCATION OF UNDERGROUND UTILITIES SHOULD BE CONSIDERED APPROXIMATE AND SHOULD BE FIELD VERIFIED PRIOR TO ANY EXCAVATION OR CONSTRUCTION ACTIVITIES.
9. THE HORIZONTAL ORIENTATION IS PER THE REFERENCE PLAN CITED HEREON; A MATHEMATICAL CORRECTION TO THE CURVE ON SOUTH DEPOT ROAD WAS MADE TO THE REFERENCE PLAN. VERTICAL DATUM IS ASSUMED.
10. THE SITE IS CURRENTLY SERVICED BY OVERHEAD UTILITIES WITH INDIVIDUAL SEPTIC AND WELL.
11. THE SUBJECT PARCEL IS NOT LOCATED IN A FLOOD HAZARD AREA AS DETERMINED FROM THE FLOOD INSURANCE STUDY (FIRM), HILLSBOROUGH COUNTY, TOWN OF HOLLIS, NEW HAMPSHIRE, COMMUNITY NO. 330091, PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, MAP NUMBER: 33011C06330, DATED: SEPTEMBER 25, 2009.
12. TO THE BEST OF MY KNOWLEDGE AND BELIEF, THERE ARE NO KNOWN RECORDED EASEMENTS OR RESTRICTIONS ON THE PROPERTY OTHER THAN THOSE SHOWN HEREON.
13. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL PUBLIC AND PRIVATE TRAILS, PARKS, OPENSAPCE, AND UTILITIES WITHIN 100 FT. AND ALL EXISTING ROADS, DRIVEWAYS, WELLS, AND BUILDINGS WITHIN 200' OF THE SITE, HAVE BEEN PROPERLY LOCATED AND SHOWN HEREON.

REV.	DATE	DESCRIPTION	C/O	DR	CK

CONCEPTUAL DEVELOPMENT PLAN
RAISANEN LEASING CORP.
 TAX MAP 10 LOT 33-1 - 1 A&B OLD RUNNELLS BRIDGE ROAD
 HOLLIS, NEW HAMPSHIRE
 PREPARED FOR & LAND OF:
RAISANEN LEASING CORP.
 P.O. BOX 748, NASHUA, NH 03061

SCALE: 1" = 80' NOVEMBER 26, 2018

Surveying ♦ Engineering ♦ Land Planning ♦ Permitting ♦ Septic Designs


FIELDSTONE
 ENGINEERS & ARCHITECTS

No Application Has Been Provided for Review

New applications to be heard at the Planning Board must be received twenty-one days prior to the meeting at which they are scheduled to be heard. In this case, apparently, the developer did not file an application. The required application has been requested by a concerned citizen for review but no such application has been provided to the public. It seems that the Town Planning Consultant deemed fit to include an item on the agenda without having the developer submit an application. Please make sure this request for a rehearing is approved so that the process errors can be rectified.

The Developer's Letter Was Submitted After the Deadline for New Applications

Apparently, information included in a correspondence from the developer dated on November 4, 2022 was used to add this item to the agenda. The deadline for accepting new applications passed on October 25, 2022. Why did the Chair and Town Planning Consultant allow this matter to be scheduled for the Nov 15, 2022 meeting? The correspondence on Nov 4th is not an application and does not provide adequate time for review of the proposal. It certainly does not provide due process for abuters and town residents nor has it met the written deadline! **What drives the Planning Board to accommodate developers at the expense of Town residents?** Why was the required notice not given? Whose interest is served by improperly pushing this change through without allowing public input? This is your chance as a Planning Board member to be sure that this matter is reheard properly. A fair rehearing will ensure that Planning Board members are not responsible for damaging the process they are appointed to conduct.

Legal Representation

Board Members may need or want legal advice in this matter. Considering the differing circumstances that some Board members find themselves in and the fact that key information was not provided to them by Town Staff, independent legal council may be appropriate for members who were denied access to written testimony. The Town Attorney may have difficulty ethically representing potentially opposing interests of different groups of Board members. In addition, Mr. Fougere's actions in this matter are intertwined with the request for a rehearing. The conflict of interest this creates relating to the question of whether or not to grant a rehearing should preclude his participation, at a minimum, in matters related to this request.

Legal Basis for Planning Board to Rehear a Matter

The New Hampshire Supreme Court in *Dziama v. City of Portsmouth* stated "...the local board should have the first opportunity to pass upon any alleged errors in its decisions so that the court may have the benefit of the board's judgment in hearing the appeal." The court was hearing an appeal of a Board of Adjustment decision, however the concept can be reasonably be applied to planning boards as well. On the topic of planning board rehearsings Paul Sanderson Esq. supports this argument below.

See for example, In re Jamar, 145 N.H. 152 (2000), where in the context of a workers' compensation case the court noted, "...because the legislature cannot anticipate all of the problems incidental to the carrying out of administrative duties, administrative entities generally have the implied or incidental powers reasonably necessary to carry out the powers expressly granted to them." The court allowed the board in that case to consider a request to review its own decision for errors in the first instance. The courts themselves, as adjudicative bodies, use their rulemaking powers to require litigants to seek reconsideration of the decision of a court as a precondition to filing an appeal of that decision.

It is recommended in the interest of justice and in the interest of proving that the Planning Board conducts its business fairly, that this request for rehearing be heard by the Board. The New Hampshire Supreme Court in *Richmond Co. v. City of Concord* has stated "...we recently reminded municipalities that it is not only their function, **but it is their obligation, to provide reasonable assistance to their citizens in such cases.**" (Bold emphasis added.) Thus, the motion should not be ignored, it should be considered and ruled upon by the Planning Board.

Procedure Required By RSA 676:4,I(i) Was Not Followed.

It seems from the Town Planning Consultant's e-mail obtained by an RSA 91-A request that the Consultant has claimed "This an Administrative matter overseen by the Planning Board". This claim is incorrect since this project does not meet the conditions enumerated in RSA 676:4 section I(i). The section is quoted below (Bold emphasis added). The language indicates that final approval may be issued by the board only for those conditions which are minor, are related to other agency approvals and which **do not involve discretionary judgment.**

RSA 676:4,I(i)

(i) A planning board may grant conditional approval of a plat or application, which approval shall become final without further public hearing, upon certification to the board by its designee or based upon evidence submitted by the applicant of satisfactory compliance with the conditions imposed. Such conditions may include a statement notifying the applicant that an approval is conditioned upon the receipt of state or federal permits relating to a project, however, a planning board may not refuse to process an application solely for lack of said permits. Final approval of a plat or application may occur in the foregoing manner only when the conditions are:

*(1) Minor plan changes whether or not imposed by the board as a result of a public hearing, compliance with which is administrative and **which does not involve discretionary judgment**; or*

*(2) Conditions which are in themselves administrative and **which involve no discretionary judgment on the part of the board**; or*

(3) Conditions with regard to the applicant's possession of permits and approvals granted by other boards or agencies or approvals granted by other boards or agencies, including state and federal permits.

*All conditions not specified within this subparagraph as minor, administrative, or relating to issuance of other approvals **shall require a hearing, and notice** as provided in subparagraph I(d), except that additional notice shall not be required of an adjourned session of a hearing with proper notice if the date, time, and place of the adjourned session were made known at the prior hearing*

This matter does not meet any of the three conditions above. This means that notice and a hearing are required. It can be seen from the actions of the board that judgment was required in reaching their decision. Firstly, the board had to evaluate the proposal against the Workforce Housing Administration Compliance and Monitoring Rules and determine if the information presented warranted allowing the conversion. This action alone requires judgment, but the board went further to impose conditions of approval. Certainly deciding upon conditions to be imposed required judgment. The Board could have chosen to impose other conditions such as allowing rental only for a specified time limit or for the duration of a single tenant's stay. It is clear that judgment was required to weigh the options for approval conditions and to select a condition to impose. Finally, had the board evaluated the proper version of the Workforce Housing Administration Compliance and Monitoring Rules, a waiver would be required to allow leases of more than one year as was imposed as a condition. There can be no question that the board exercised judgment to decide upon

their vote in favor or against the decision taken on November 15, 2022. Based on this, and the requirements of RSA 676:4,I(i), the matter should have been noticed and a public hearing should have been held. The Town Planning Consultant was advised of the requirement but never provided justification for not following the statute. It is incumbent upon board members to vote to rehear this case to prove their commitment to a fair process.

Conclusion

Based on the points raised above it is recommended that a Planning Board member motion to rehear this item and that another member second the motion to allow a vote. The Board should consider the language of Section XI D 2 B when deciding whether approving the request requires relief from zoning ordinance prior to considering the matter at the Planning Board. In addition, the Board must consider the language of the correct version of the Workforce Housing Administration Compliance and Monitoring Rules. It is recommended that the Town provide independent legal council to those Board members who were deprived of access to written testimony of Town residents. The Planning Board should ensure that the matter is noticed and reheard in accordance with state law.

In addition, Mr. Fougere should not be permitted to advise or participate in any way in cases involving high density development. Legal matters related to items such as this should be handled between the Town Planner, Kevin Anderson and the Town Attorney who presumably do not have such conflicts of interest. Our town Select Board has been made aware of potential conflicts of interest in the past. It is a travesty that this most recent incident was kept from them. Their **action or inaction** in this matter will serve as a means to judge their commitment to the rule of law and to a transparent, fair town government.

Regards,
Joseph Garruba