

Joseph Garruba
28 Winchester Dr.
Hollis, NH 03049
May 13, 2020

To: Members of the Hollis Planning Board

From: Joseph Garruba

RE:

Planning Board Requirement to disposition Material submitted for satisfaction of conditions imposed by the board on file 2019-020, proposing the development of 32 Condos on Old Runnells Bridge Road

Table of Contents

Purpose	3
RSA 676:4,I(i).....	3
NHMA Guidance to regarding Attaching "Conditions" to Approvals in Land Use Boards.....	3
Table of Conditions of approval.....	4
Items requiring the planning board’s discretionary judgement to disposition	6
Condition 5 NHDES permit to fill small irrigation pond obtained.....	6
Wetland fill doubled from amount approved by the board	6
Septic System changes required by NHDES	8
Plans submitted to NHDES are substantially different from those submitted to Hollis for Final Approval	10
Condition 6 Prior to the start of any construction, bonding for erosion control, drainage and landscaping shall be in place.....	10
Condition 7 The restrictive housing covenant shall be recorded with the condominium plan.....	13
Condition 9 The Plan Shall Clearly outline phasing, including matters outlined by the town Engineer.....	14
Condition 13 A note shall be added to the plan stating that the roads shall remain private	14
Condition 15 Address parking lot space width	14
Condition 16 The site plan package shall include all project drawings including elevations, landscaping, etc	14
Conclusion.....	14

Purpose

I am writing to request a compliance hearing for the project # PB 2019-020. This project was approved by the board with conditions back in November of 2019. The Board imposed 16 conditions on the applicant. The purpose of the compliance hearing is to determine if the applicant has met the conditions precedent and if the board will authorize the sign off on the final plan set. There are many conditions that the board imposed which are subjective and will require the board's judgement in order to determine if the board is satisfied with the changes made by the applicant. In addition, there are substantial changes that have been made to the project since it was approved. Finally, the material submitted in satisfaction of the imposed conditions is not compliant with Hollis ordinance or is substantially different from the material submitted to the NHDES.

The hearing I am requesting is required by state RSA 676:4I(i) which I have 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 judgement

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.

NHMA Guidance to regarding Attaching "Conditions" to Approvals in Land Use Boards

A full description of the process of verifying that the conditions precedent have been met has been documented by NHMA. The process includes notification and public hearing for all conditions requiring the discretionary judgement of the board. This hearing is not optional and serves to reinforce the board's authority to impose conditions. The NHMA explanation can be found at <https://www.nhmunicipal.org/attaching-conditions-approvals-land-use-boards>

The board imposed 16 conditions on this application. Many of those require discretionary judgement. I have included a table of all of the requirements imposed and identified whether or not each one meets the three requirements for approval without a hearing. There are several substantive changes that the board should deliberate and decide whether approval is warranted. It is in the interest of the board and the town that the board exercise its authority to review and approve the conditions it imposes on developments

Table of Conditions of approval

#	Condition	Condition Precedent or subsequent	Minor	Administrative I.E no discretionary judgement	Relating to issuance of other approval	Subject to hearing and notice	Material submitted to satisfy condition?
1	Approved Conditional Use Permit application for the proposed workforce housing project	Precedent	No	Yes	Yes	No	????
2	NHDES Subdivision approval obtained	Precedent	No	Yes	Yes	No	Permit # eSA2020050501
3	NHDOT driveway Permit obtained	Precedent	No	Yes	Yes	No	Permit # 05-223-0064
4	NHDES AOT permit obtained	Precedent	No	Yes	Yes	No	Permit # AOT-1741
5	NHDES permit to fill small irrigation pond obtained	Precedent	No	No substantive change required by NHDES	Yes	Yes	NHDES permit for 8376 Sq ft when 3365 sq ft was proposed?
6	Prior to the start of any construction, bonding for erosion control, drainage and landscaping shall be in place	Precedent	No	No value sufficient?	No	Yes	How much was bonded? In what manner are the funds held?
7	The restrictive housing covenant shall be recorded with the condominium plan	Precedent	No	No substantive changes made since the original draft was submitted	No	Yes	A 22 page document allowing unit rentals and additional designation of Workforce units was submitted
8	All lot pits shall be set prior to plan recording	Precedent	Yes	No it seems that pits should be pins	No	No	Plan Set received 5-12-2020
9	The Plan Shall Clearly outline phasing, including matters outlined by the town Engineer	Precedent	No	No, the word clearly is subjective. Also compliance with town engineer's comments is subjective	No	Yes	What changes were made to bring the plans into compliance with the town engineer's comments?
10	No parking signs shall be added to the driveway turnarounds	Precedent	No	Yes	No	No	Plan Set received 5-12-2020

#	Condition	Condition Precedent or subsequent	Minor	Administrative I.E no discretionary judgement	Relating to issuance of other approval	Subject to hearing and notice	Material submitted to satisfy condition?
11	Landscaping on the site perimeter shall be installed within the first year (from the beginning of construction); all site improvements including landscaping , drainage and site construction shall be completed within two years.	subsequent	No	N/A at present	No	Not at present	NA at present
12	The applicant shall provide further evidence and proof that the existing large pond on the site is manmade. Historical evidence, photos and/or a letter from the NHDES agreeing to the evidence that the large pond is manmade is acceptable	Precedent	No	Yes	No	No	NHDES letter
13	A note shall be added to the plan stating that the roads shall remain private	Precedent	No	No, Is the note written in a manner to have legal validity?	No	Yes	Is the proposed language satisfactory?
14	A wetland stamp shall be added to the plan	Precedent	No	Yes	No	No	Existing conditions with Wetland Delineation does not include the stamp
15	Address parking lot space width	Precedent	No	No, This is a vague statement. Interpretation is subjective	No	Yes	How was this condition satisfied?
16	The site plan package shall include all project drawings including elevations, landscaping, etc	Precedent	No	No, The term etc is not defined and requires judgment to interpret	No	Yes	What has been added to the site plan package since approval? Is it Satisfactory?

Items requiring the planning board's discretionary judgement to disposition

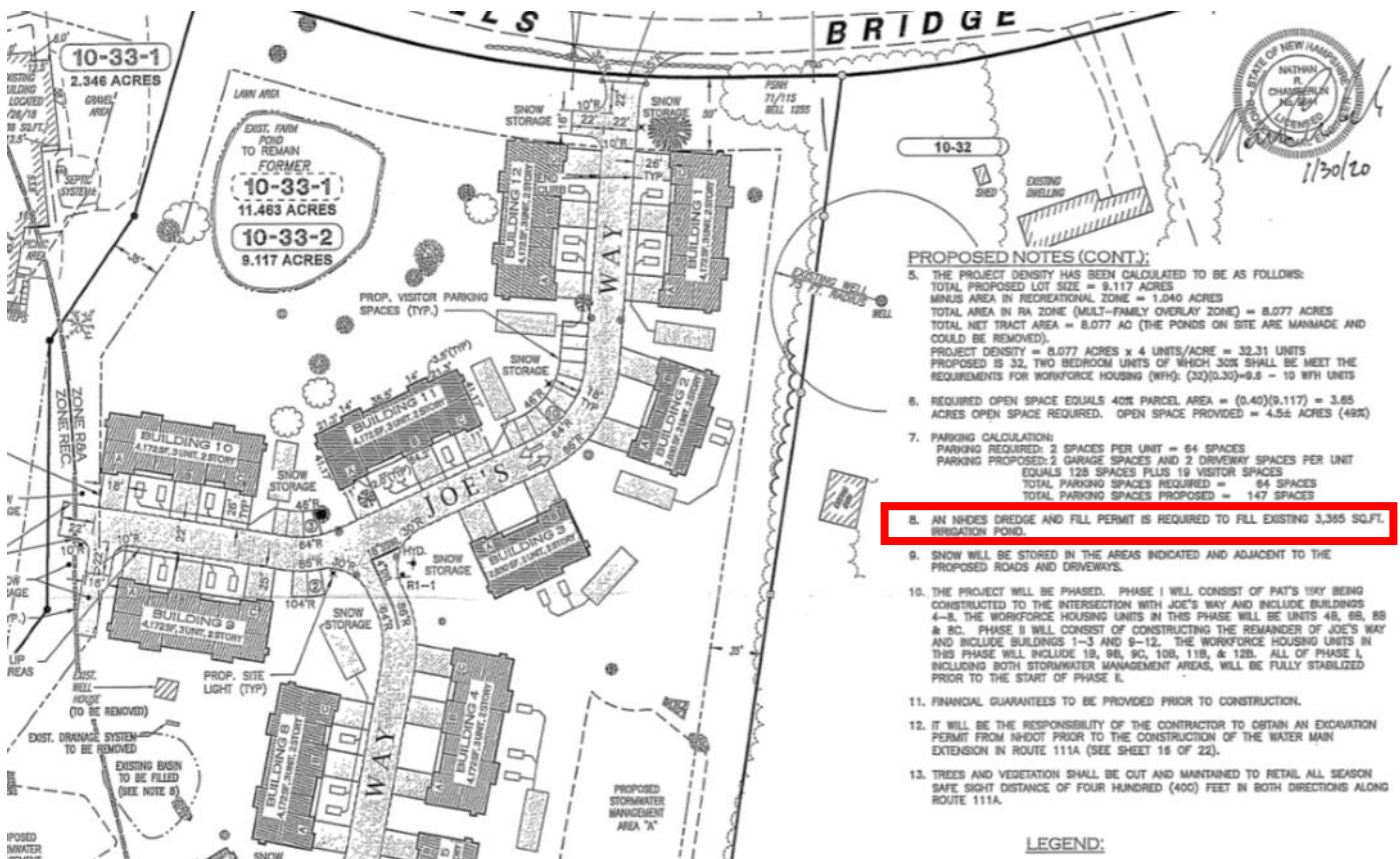
The project was approved by the planning board in November of 2019. Since that time there have been more than 4 revisions to the plan set. Many of these revisions relate to changes to the plans required for State approvals. In addition, many changes were made in order to satisfy the conditions imposed by the planning board. In fact, the latest revision was submitted on 5/12/2020. The changes are voluminous and require the planning board's discretionary judgement in order to disposition. This is a major project for the town and it is important to be sure all of the conditions have been met. In addition, it seems that some of the changes have caused a conflict with our zoning ordinance. A cursory review of the submitted material was conducted and the sections below outline changes which have caused either outright non-compliance with our ordinance or items that require the planning boards discretionary judgement and therefore require a hearing.

Condition 5 NHDES permit to fill small irrigation pond obtained

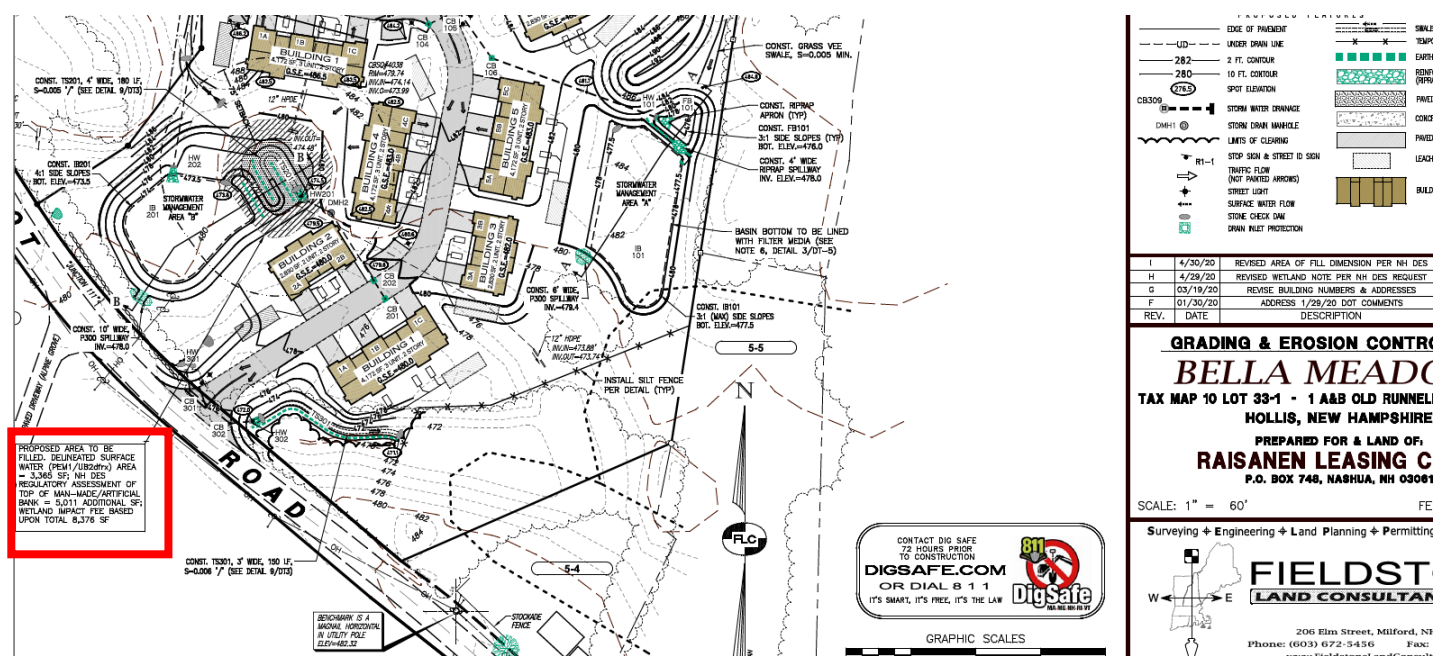
Wetland fill doubled from amount approved by the board

The applicants plans which were approved in November indicate the required area of wetland fill to be **3365 sq ft**. Subsequent analysis by the NHDES has revealed in incorrect delineation of wetland surrounding the southerly pond on the property. The NHDES found that the correct delineation of wetland includes the bank of the pond. As a result, the NHDES required a fill permit for **8376 sq ft**. This is more than double the figure reported to and approved by the board. It is clear that the board needs to consider this change and deliberate on it. I have included an image of the plan as approved by the board and the changes that were required by the NHDES

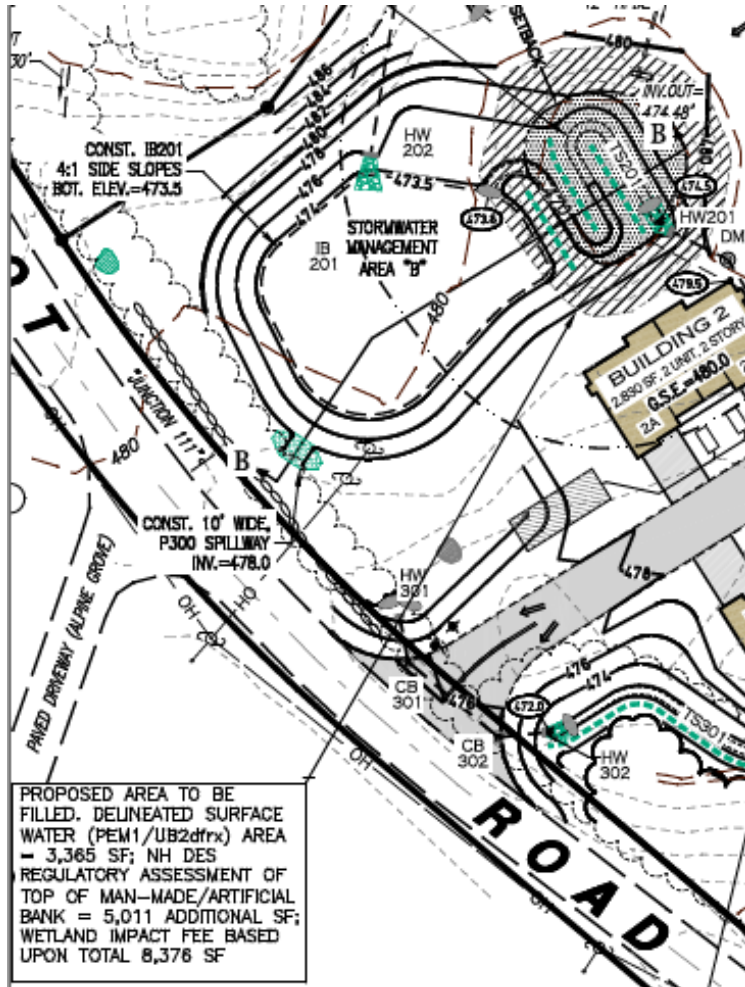
The drawing below shows the plan as approved. See note 8 indicating a **3365 sq ft** fill permit was approved. Red Rectangle added for emphasis



In order to get NHDES approval to fill the southerly pond the drawing below was submitted to the NHDES. Observe the note added in the lower left corner and the hatched area showing the increase in wetland area requiring fill. Red rectangle added for emphasis.



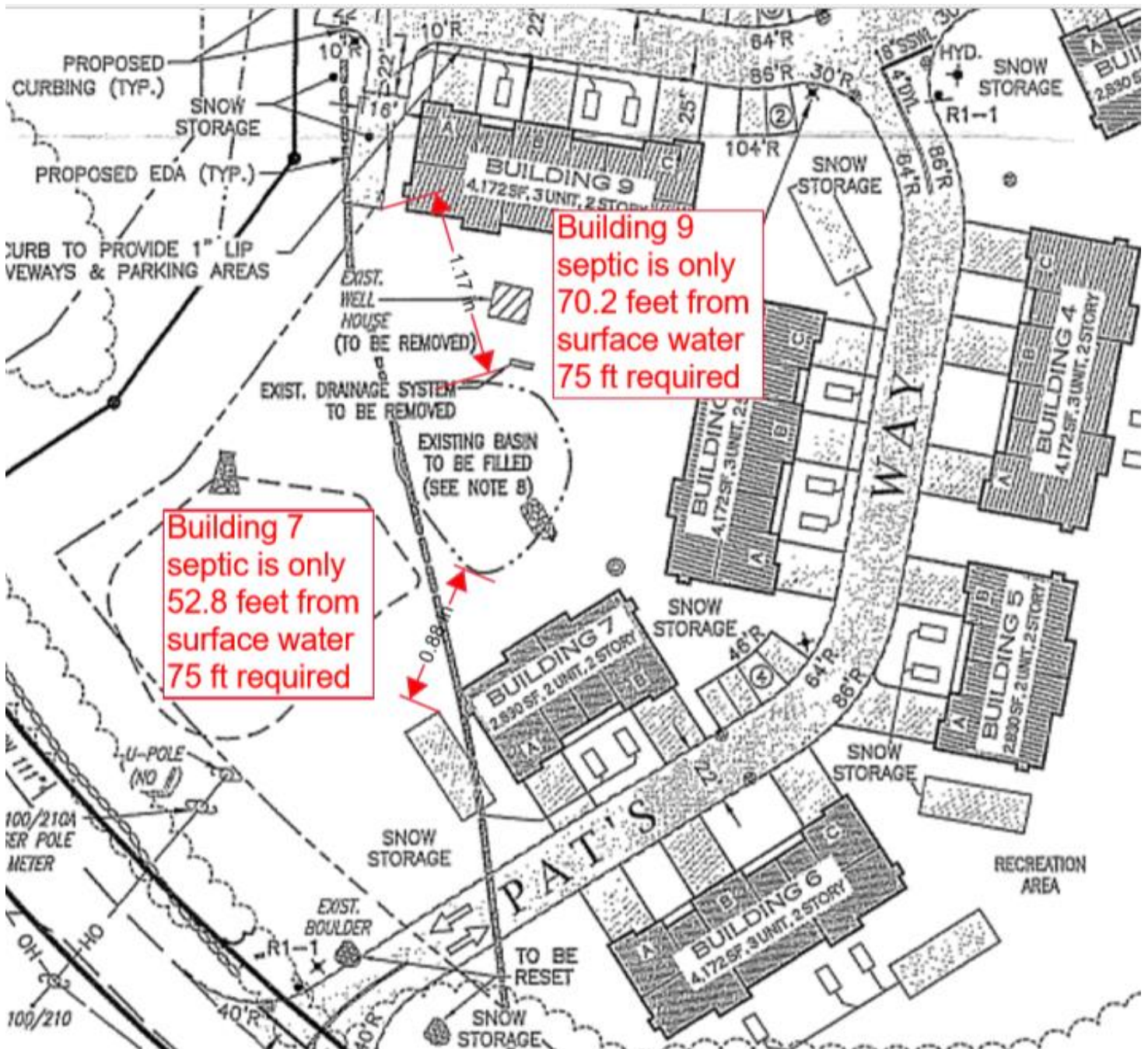
Enlarged view of note and additional wetland impact submitted by applicant to NHDES on 5/1/2020



Septic System changes required by NHDES

In order to obtain approval of the NHDES, the septic systems of buildings 1 and buildings 2 were required to be moved more than 75 feet from the southerly pond. The applicant made this change and submitted drawings to the NHDES for approval. The changes to the septic design are substantive and require the board's discretionary judgement

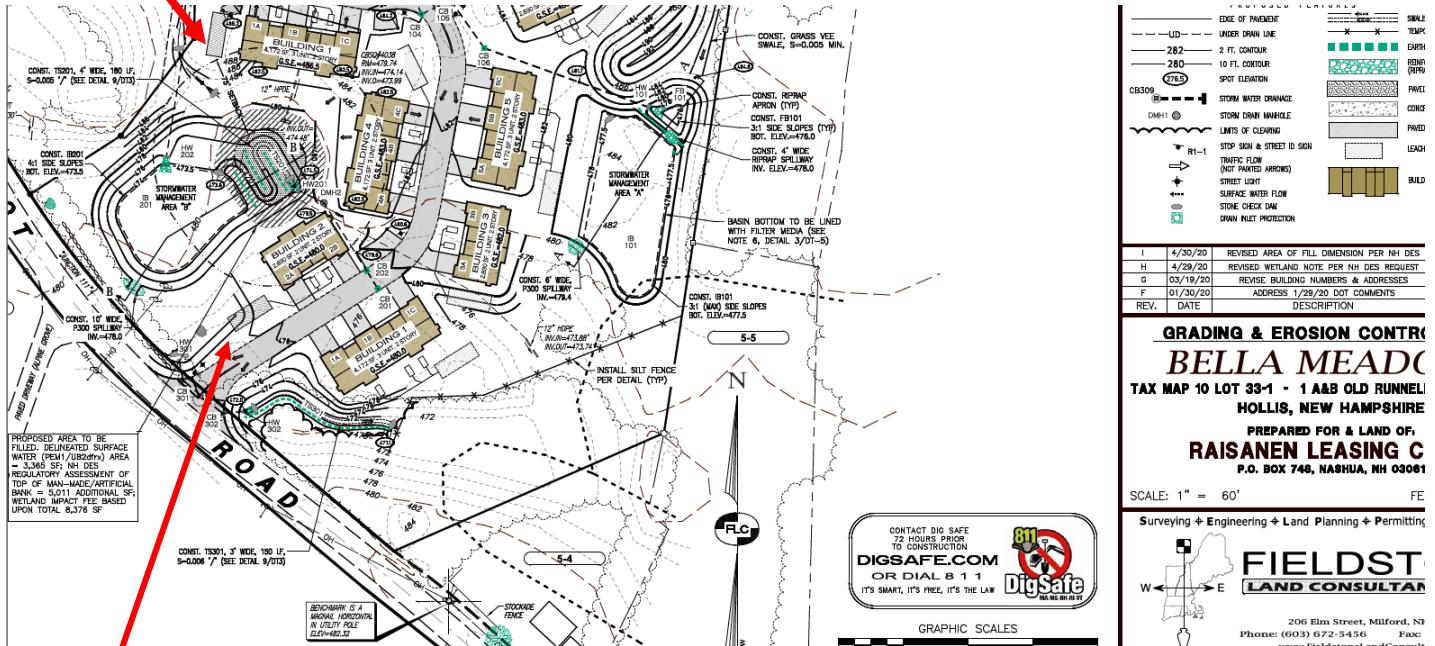
Septic design approved by the planning board in Nov of 2019.



The drawing below was submitted to the NHDES as a condition of approval for the wetland permit. Note the location of the two leach fields for building 1 and building two to the north and south of the southerly pond. The leach field for building 1 was moved west into the Recreational Zone.

Septic design required by NHDES wetland permit 2020-00183

Leach field was required to be repositioned as a condition of wetland permit



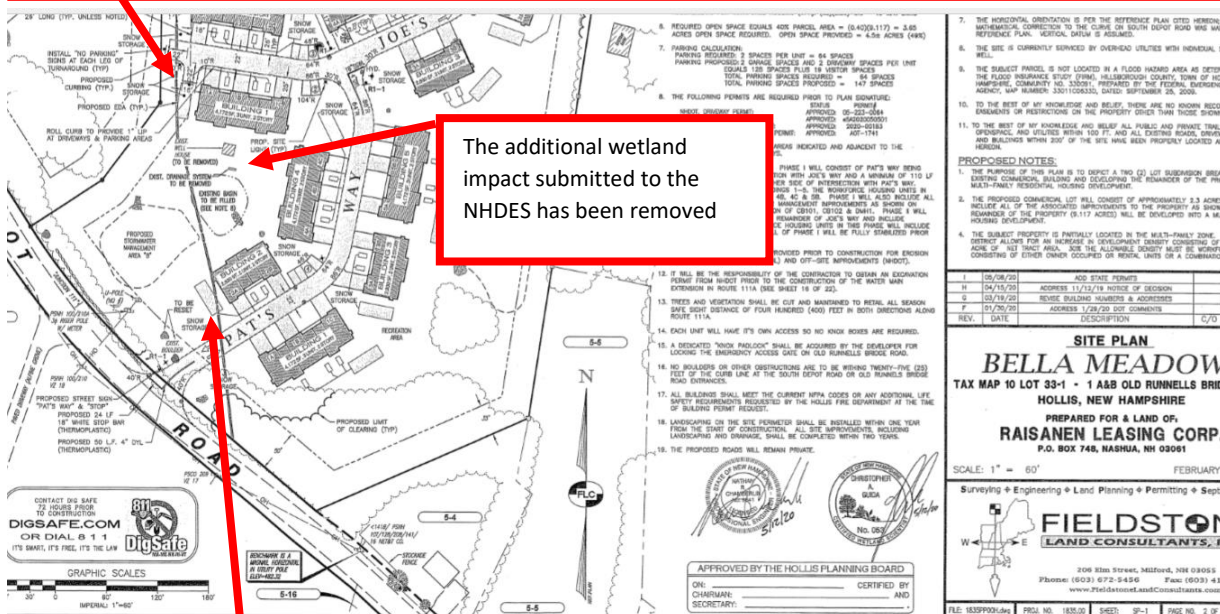
Leach field was required to be repositioned as a condition of wetland permit

Plans submitted to NHDES are substantially different from those submitted to Hollis for Final Approval

The changes above were conditions of approval for the state wetland permit and were provided to the NHDES on 5/1/2020. Both the septic system redesign and the increase in wetland fill area are conditions of the wetlands permit. It is unclear why the applicant submitted plans to the town of Hollis which reverse the changes that were incorporated in order to achieve NHDES approval. In either case, the Plans submitted to Hollis on 5/12/2020 are not compliant with the conditions imposed by the NHDES

Site Plan submitted to Town of Hollis on 5/12

This Leach field was required to move west to satisfy NHDES why is it back at its original Location



This Leach field was required to be reoriented to satisfy NHDES why is it back at its original Location?

Condition 6 Prior to the start of any construction, bonding for erosion control, drainage and landscaping shall be in place

It is unclear from reviewing the file what amount of bond will be held by the town. The file includes a Bond estimate worksheet in the sum of \$79,981. In addition, there is a letter in the file from the Town Engineer dated 4/28/21020 indicating that the Bonding Estimate is at a minimum \$10,000 too low. It seems that estimates for landscaping were used to establish the proper cost of the landscaping line item, however, there is no substantiation for the values of 5 other line items to be bonded. In addition, there is no documentation to support the fact that the \$79,981 has been provided. How has the required bonding for the NHDOT been addressed? These questions require the discretionary judgement of the planning board to adjudicate.

TOWN OF HOLLIS BOND ESTIMATE WORKSHEET
EROSION CONTROL AND LANDSCAPING

(March 2020)

PROJECT NAME: <u>Bella Meadows</u> OWNER/DEVELOPER: <u>Raisanen Leasing Corp.</u> PREPARED BY: <u>Nathan R. Chamberlin</u> REVIEWED BY: <u>Chad E. Branon, PE</u>	TAX MAP NO.: <u>10</u> LOT NO.: <u>33-1</u> RELEASE NO.: _____ DATE: <u>April 15, 2020</u>
--	---

Items	Quantity	Unit	Unit Price (see note 1)	Total Price	% Complete (to date)	Total Release	Previous Release Amount	Release (This Est.)	Value Remaining
EROSION CONTROL									
Silt Fence	670	lf	\$3.00	2,010.00		-		-	\$ -
Check Dams (Erosion Stone)	20	cy	\$40.00	800.00		-		-	\$ 800.00
Rip Rap (Stone Fill - Type C)	60	cy	\$50.00	3,000.00		-		-	\$ 3,000.00
Stabilized Construct. Entrance	1	ea.	\$1,500.00	1,500.00		-		-	\$ 1,500.00
LANDSCAPING									
Turf Establishment w/o mulch	5	ac	\$1,480.00	7,400.00		-		-	\$ 7,400.00
Landscaping	1	U	\$58,000.00	58,000.00		-		-	\$ 58,000.00
SUBTOTAL:				72,710.00		-		-	\$ 72,710.00
CONTINGENCY (10%)				7,271.00		-		-	\$ 7,271.00
TOTAL:				79,981.00		-		-	\$ 79,981.00
10% RETAINAGE AMOUNT				-		-		-	\$ -
TOTAL LESS 10% RETAINAGE				79,981.00		-		-	\$ -
VALUE REMAINING INCLUDING RETAINAGE									\$ 79,981.00

Notes:

1. Unit Prices, where applicable, are to be based upon latest NHDOT weighted Unit Prices.

April 28, 2020

Mr. Bill Mosely, Chair
Hollis Planning Board
7 Monument Square
Hollis, NH 03049

Review of Landscape Bond Proposal
Bella Meadows (Raisanen Co.)
Old Runnell's Bridge Road, Hollis

Dear Bill,

I received a copy of a proposal for the landscaping of the above-named property prepared by Daignault Property Service and dated March 30, 2020, for a total of \$58,000.00.

I believe the bond proposal is inadequate for the following reasons:

1. The proposal shows all of the plants to be installed, including for landscaping the buildings. Because such landscaping isn't required for Planning Board purposes, these plants should be removed from the amount of the bond. Plants to be bonded are those around the perimeter of the site, to provide screening and buffering of the development. A list follows.
2. To see if the proposed bonding would be sufficient, I priced out the plant list on the proposal using the current pricing of two of the largest wholesale nurseries in New England: one in New Hampshire, and one in Massachusetts. I believe the proposed amount would be at a minimum \$10,000.00 too low. While perhaps a good deal for the developer, I believe the contractor doesn't have enough labor and other costs factored in to both complete the project in a professional way, following the planting standards shown on Sheet LA-2 of the approved plan set, as well as to warranty his work for one year (with no apparent mark-up on plant material.)
3. Further, I am unfamiliar with this contractor – which isn't exceptional – but when I went to his company's web site to find out more about him, there is no "Installation" or "Planting" under the menu of services they provide – only landscape maintenance. If this contractor lacks experience in installing a project of this size, it may lead to problems in terms of matching plants with their proper locations on the ground and carrying out the planting operations in conformance with the provided standards to help ensure quick establishment leading to a successful outcome. We've had problems in the past with inexperienced landscape companies whose background is primarily landscape maintenance, so I'm getting a red flag here.

The plant list follows on the next page. Thank you. Please let me know if I can be of further assistance.

Condition 7 The restrictive housing covenant shall be recorded with the condominium plan.

The restrictive covenant is required by Hollis Zoning ordinance. The applicant has submitted a 22 page heavily redlined Covenant which I do not believe has ever been seen, or reviewed by the board. This particular project includes **owner occupied** workforce housing only as has been stated by the applicant on many occasions. The covenant provided allows for rental units which were specifically not approved by the planning board. The town of Hollis zoning ordinance Section XI, D Multifamily zone item 2 b requires designation of the units as Owner Occupied or renter occupied. This proposal has designated 10 units as owner occupied. This precludes the possibility that these units could be rented.

Hollis Zoning Ordinance Sec XI, D, 2 Below. Rectangle added for emphasis

2. GENERAL STANDARDS

In order to provide for a variety of workforce housing units in the community, which includes both owner and renter occupied units, the following criteria shall be required for developments proposed in the Multi-family Zone:

- a. Dwelling unit density shall be no greater than four (4) units per acre, based upon the Net Tract Area of the property.
- 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.

It is not clear why the applicant amended the Affordable Housing Restrictive covenant submitted to specifically allow rental of the units. This is not permitted since the units were designated owner occupied. The Affordable Housing Restrictive covenant is not compliant with our ordinance and should be corrected before approval.

Below is an image of P7 of the Affordable Housing Restrictive Covenant the submitted by the applicant on May 11 2020. This document has been changed to allow rental of the units and is not in compliance with our ordinance. It seems that planning staff requested this change. Such a change is contradictory to information disseminated at public hearings and needs to be addressed by the Planning Board directly.

P7 of Affordable Housing Restrictive Covenant with redlines as submitted by applicant

- 3.1 **Maximum Rental Rate/Eligible Renter.** An Affordable Unit shall not be rented unless (i) written approval is issued by the Town's Planning Board or its designee pursuant to applicable provisions of the Town's Zoning Ordinance and rules and regulations adopted by the Town's Planning Board and (ii) the Income Verification Agent issues a Rental Compliance Certificate, after making a determination that the prospective renter is an Eligible Renter, the proposed rental rate is equal to or less than the Maximum Rental Rate, and. Prior to the execution of a lease for the Affordable Unit, the Owner shall provide to the Town's Planning Board or its designee a copy of the Rental Compliance Certificate will be provided to the Town of Hollis.
- 3.2 **No Rental By Individual Owners.** ~~Notwithstanding Section 4.1 above, no Owner, except for the Developer, may rent an Affordable Unit to a third party.~~

Condition 9 The Plan Shall Clearly outline phasing, including matters outlined by the town Engineer

The language of this condition is unclear. Which matters were outlined by the town engineer? What changes were made to the drawings to address them? Determining satisfaction of this condition will require the discretionary judgement of the planning board to adjudicate.

Condition 13 A note shall be added to the plan stating that the roads shall remain private

The following note was added to sheet SP-1. "The proposed roads will remain private". The language of the note should be presented to the town attorney since he may have other preferred language or recommendations to achieve the planning board's desired outcome. Considering these questions, a legal review and further hearing is required.

Condition 15 Address parking lot space width

What is meant by this condition. What changes were made to the plan set? Do the changes meet with the satisfaction of the board? Considering these questions, a further hearing is required.

Condition 16 The site plan package shall include all project drawings including elevations, landscaping, etc

What project drawings were expected in addition to elevation and landscaping? Have they been added to the plan set as required? It is not clear. Considering these questions, a further hearing is required.

Conclusion

This project seeks approval for 32 units in a single application. It is reasonable to expect that such a large project would require careful scrutiny by the board. Based on RSA 676:41(i), in order for this project to proceed to final approval, notice and a hearing is required. There are many items related to the conditions that were imposed which are either not compliant with Hollis Ordinance, or not compliant with the submittals made to the state to acquire permits. It is hoped that the Hollis planning board will exercise its authority to protect the interests of town residents by requiring a compliance hearing to ensure the conditions imposed by the board in November are met before issuing final approval for this project.