

November 14, 2022
Town of Hollis
Planning Board, Select Board, Town Planner, Town Administrator
7 Monument Square
Hollis NH 03049

RE:

Explanation of Potential Conflicts of Interest and Improper Actions
Related to the Proposed Change of Owner Occupied Means Tested
Housing to Rental Housing at a 32 Unit High Density Development on Old
Runnells Bridge Road in Hollis, NH

by Joseph Garruba

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Executive Summary

This report explains the potential conflict of interest and the certain appearance of conflict of interest that the Hollis Town Planning Consultant Mr. Mark Fougere has related to the proposal to convert a unit of owner occupied housing to rental housing at a 32 unit development with means tested housing on Old Runnells Bridge Road. It documents decisions of the town which seem to be in violation of State Law as well as describing proposed violations of Hollis Zoning Ordinance that are well known to the applicant and to the Hollis town planning consultant. Recommendations are included in the conclusion.

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, it seems Mr. Fougere certainly has at least the appearance of conflict of interest in **this** matter and cannot reasonably advise 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 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 to fairly enforce our Hollis restrictions on high density housing when he is working to do the opposite for developers in other towns. His influence over actions here in Hollis, getting favorable decisions and precedents for developers here will surely be used by his developer clients elsewhere. The town must not allow 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 Improper Guidance

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 been 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 “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”.</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 Zoning Ordinance

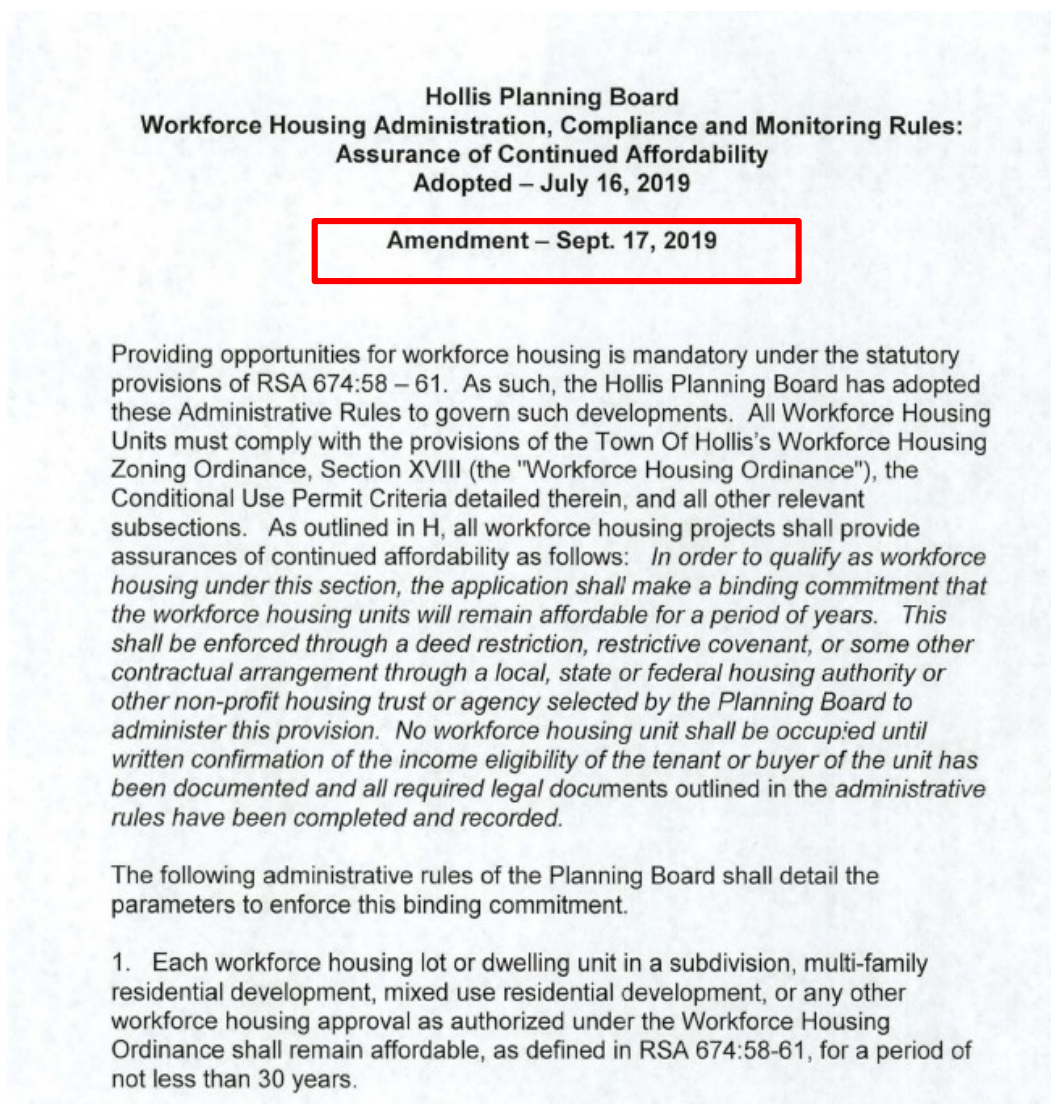
Although the Planning Board may have ability to allow the leasing of an affordable unit as claimed, this applies **if and only if** such approval does not violate the Zoning Ordinance. The Planning Board may not approve changes in violation of the ordinance. The Town Planning Consultant's position is incomplete and therefore incorrect as this proposal violates sec XI D 2 B of the zoning ordinance (see P8 of this report).

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

In addition, the Town Planning Consultant has even 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 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. Why did the Town Planner provide the earlier version of the document released on July 16 2019 to the Board for reference? Why is he proposing a condition of approval in contravention to the amended document? I hope these actions were unintentional since intentionally misadvising the Board would be a serious breach of trust. In either case a professional Planning Consultant should be capable of providing the proper documents if the Planning Board is to trust him.

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 17th text was added)

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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 Rights of Abutters and Town Residents Are Being Disregarded

The Hollis Planning Board has inappropriately added an item to the agenda for the November 15th meeting. The agenda included item #6a "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. Was this decision made based on advice from the town planning consultant? Would such a precedent here in Hollis be used by developers here and in other towns to avoid input from abutters?

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 this 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. Additionally, the abutters were not sent notification by mail as is required, and no one will be permitted to speak either for or against the proposed change. Who's interest is served by this? Who made the decision and why should this project not follow the same rules for all other cases? Image of the changed agenda below (red rectangle added for emphasis).

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- 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.

Government Records Have Been Withheld Illegally

More troubling is that public records, which were submitted to begin this process have been withheld in contravention to state law. A request to inspect the records on 11/4/2022 was denied. No reason has been given to explain why these records could not be inspected by the public once they were received or even after the agenda had been posted. This deprives residents of due process related to this proposed change in this project. Why would the town not allow inspection of public records?

Proposal is a Violation of Zoning Ordinance

From the description provided on the updated agenda, it seems that the proposal is to allow rental of a unit in 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 zoning ordinance voted on by resident's is enforced. Why didn't the town planning consultant point out this obvious violation? It is certain he 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".

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 is certainly aware of the restriction in the **Zoning Ordinance and yet has not advised the Planning Board of the violation.**



Town of Hollis

STAFF REPORT

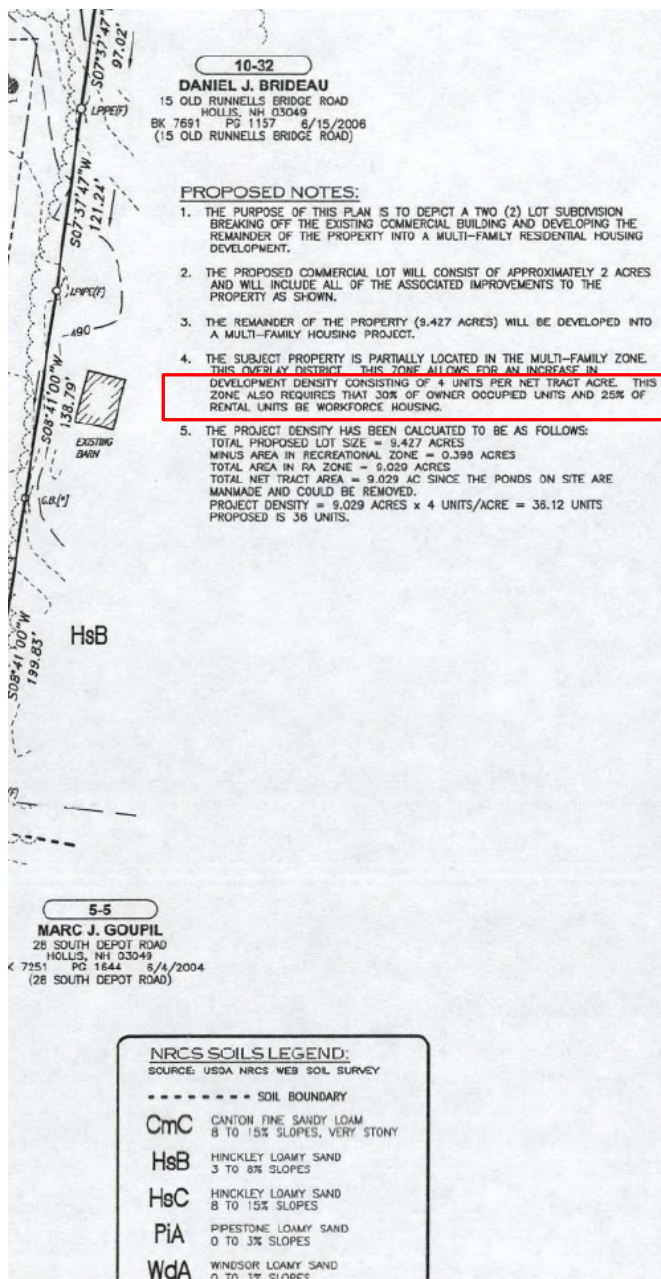
7 Monument Square
Hollis, NH 03049
Tel. 465-2209 Fax. 465-3701

+ response

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: 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. 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.		

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 further requiring that 30% of owner occupied units be affordable. Why has the applicant not submitted a ZBA application? Has the Town Planning Consultant incorrectly indicated that one is not needed? How do these actions serve town residents or justice in general? Do you think that it is acceptable to ignore the language of the zoning ordinance?



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, OPENSPACE, 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" = 60' NOVEMBER 26, 2018

Surveying ♦ Engineering ♦ Land Planning ♦ Permitting ♦ Septic Designs

FIELDSTONE

No Application Has Been Provided for Review

New applications to be heard at the planning board must be received 21 days prior to the meeting they are scheduled to be heard at. 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. Who saw fit to include a case on the agenda without having the developer submit an application?

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

It seems that the process was originated by a letter from the developer dated on November 4 2022. The deadline for accepting new applications passed on October 25 2022. Why has this item been scheduled for the Nov 15th meeting? A Submittal on Nov 4th does not provide adequate time to review the application and certainly does not provide due process for abutters 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?

Conclusion

Based on the points raised above it is recommended that the Planning Board table this item and have the developer submit a request for relief from zoning ordinance prior to considering a rental conversion. The town should also verify that other changes to the site plan have not been made without approval prior to considering any further actions related to this development.

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 and is certainly on notice now. 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. Keep this in mind at the voting booth in March.

Regards,
Joseph Garruba