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December 1, 2020

Re: Reasons not to remove stormwater restrictions from zoning ordinance

To: Members of the Planning Board:

The planning board is considering moving an amendment to stormwater requirements of the Hollis Zoning ordinance forward to public hearing. I strongly recommend against amending the town's stormwater restrictions in any manner beyond what is legally required. I will address the problems with the proposal below.

### 1. [Removing requirements from the ordinance disenfranchises voters](#)

Removing stormwater requirements from the zoning ordinance is anti-democratic. By changing the restrictions from ordinance to regulation, the planning board would be taking away the ability of town residents to vote on the rules of the town. Regulations are not voted on by the residents. Only the planning board members have a vote on town regulations. Why wouldn't we allow the residents to determine such important issues? Hollis has a strong tradition of direct democracy that has served us well. We shouldn't allow our input to be diminished.

### 2. [Exceptions from regulations are easier than from ordinances](#)

It is far easier for a developer to get an exception to a regulation verses an ordinance. The process for exceptions to regulations includes a simple waiver request from the planning board. The criteria for issuing a waiver requires that the planning board agree that the requested exception is in the spirit of the regulation.

If the requirements remain in the Zoning ordinance the bar for exceptions is much higher. First off, a separate application must be made to the Zoning Board of Adjustment. The ZBA is a more formal body with stricter rules. Applicants typically choose representation by a lawyer at the ZBA and once the case is heard, the ZBA must find that 5 strict criteria are satisfied before issuing a variance. Specifically, the developer must prove that following the ordinance poses a unique hardship. This is hard to satisfy.

It is clear that the will of the voters is more directly expressed by the Zoning Board Variance Process than it could be by the Planning board waiver process. Consider the waivers that were issued to allow the construction of the Keyes Hill project or that might be issued for the 50-unit condo development on Silver lake Road. Don't we want to enforce stormwater requirements rigorously? Voting to remove the stormwater restrictions from the Zoning ordinance is a vote to reduce the influence of town residents and relax the restrictions that our town depends on to maintain its rural population density.

### 3. [Proposed regulation language has not been provided as of 11-16-2020](#)

Although planning staff has proposed removing our stormwater regulations from the Zoning Ordinance, as of yet (12-1-2020) they have not even identified what they propose to replace them with. How could anyone vote to remove the restrictions from our ordinance without knowing how such a vote would change our requirements?

#### 4. Regulations can be changed without holding a town vote

Even if planning staff were to propose the regulations that they would like to enact. There is no guarantee that those regulations would not be changed in few months since the process for changing regulations requires only 1 public hearing and a vote of the planning board. The planning department has even argued that this variability is a feature or a benefit of regulations. I see the process of amending zoning ordinance, which can occur only once per year and involves building consensus of the entire town as benefit. Even with the more rigorous process of ordinance amendment mistakes are made. This year the board is reversing 2 decisions taken in 2017 which, it turned out were detrimental to our town. It is important that residents exercise as much influence as possible to preserve the town we love.

#### 5. The EPA has recently changed the requirements due to a Supreme Court Case

The town planner has claimed that the variability of moving the restrictions to regulations is needed to comply with EPA requirements. The EPA has changed its stance on these stormwater restrictions as recently as last year and has lost a lawsuit at the US Supreme court regarding the constitutionality of this mandate. Considering the EPA's budget constraints and prior position changes it is unreasonable to expect them to enforce changing mandates on individual rural towns who aren't a large source of pollution. Especially towns like ours that are vigilant about protecting our environment. Don't let fear cloud the issue. Hollis needs to retain direct control over its stormwater ordinance.

#### 6. Hollis is a beautiful town and our present regulations have made it so.

Another weak argument pushed to support disenfranchising residents by removing stormwater restrictions from the zoning ordinance is that the developments built in town are somehow unsightly or that the present regulations require storm basins that are too large. Hollis is one of the most beautiful towns in the state do you think our existing ordinance has done a poor job of preserving the esthetics of the town? The town planner points to a basin constructed on Pine Hill Rd as an example of overdesign. That basin was built to serve a 5-unit subdivision. Its vegetated slope is not offensive to the eye and keeping stormwater on site is an important achievement of the present ordinance.

#### 7. Reducing stormwater requirements shifts costs from developers to the town

Our present ordinance requires that most stormwater be treated on site. It puts the cost of stormwater management onto the developers and not on the town. Runoff that leaves developments becomes a town problem to manage. Reducing the requirements for example to address a 10-year storm vs a 25-year storm would only serve to lower the cost of development for builders and shift that cost onto the town. Such a reduction in development cost will bring more new construction to town. Don't we have enough already?

#### 8. The ordinance's purpose is to protect the town, not enable and simplify development

The purpose of town requirements is to protect town resources. Planning staff has claimed that our ordinance is confusing and stormwater requirements are distributed across many regulations and ordinances. This unique regulatory scheme has been developed over many years by dedicated residents seeking to preserve the town. Restrictions are meant to protect town resources if they are hard to administer or unique from other towns, this is a benefit, **not a weakness**. If administration of the existing regulatory scheme is difficult, I hold that the difficulty is a worthwhile cost of the protection they provide. Compare Hollis to other nearby towns. What do you think? Simplifying things for developers will only serve to homogenize Hollis with nearby jurisdictions and **reduce costs for developers**. Is this what we want?

## Planning Staff's Proposed Deletion of the Stormwater requirements from Our Zoning Ordinance

Planning staff has proposed deleting the stormwater requirements in the following sections of the zoning ordinance:

1. Amend Section XI, Overlay Zoning Districts, C, Wetland Conservation Overlay Zone (WCO) by deleting the following from Section 5. Drainage

### **Drainage**

~~a. There shall be no net increase in peak flow or overall volume of Stormwater runoff in the WCO Zone as a result of any development,  
b. Calculations shall be based on 2, 5 and 25 year storm events in accordance with NRCS Technical Release 55 or Technical Release 20, or other calculation methods as approved by the Planning Staff, and  
c. Drainage design shall be in accordance with the Town of Hollis Subdivision and Site Plan regulations.~~

a. The existing requirement that there be no net increase in peak flow volume in the WCO Zone has served to protect the town for many years. Why would it need to be removed? If the planning board seeks to make additional stormwater ordinance do they plan to remove this restriction? Why not leave it in place? Moving this restriction to the planning board regulations facilitates the exception process for developers since planning board waivers are easier to obtain than Zoning board variances. How is this in the best interest of the town?

b. By including specific technical references in the ordinance, strong objective arguments can be made opposing developments that do not comply. The referenced methods may be older, but they have a proven track record of providing stormwater designs that serve the rural character of our town. Removing these requirements from ordinance and substituting an as yet undefined (12-1-2020) alternative as a regulation will most likely serve to reduce developer's costs and increase the rate of development as well as possibly allowing for more offsite stormwater which is a further burden on the town. Any change of this nature must undergo a thorough cost benefit analysis before implementation. The town deserves nothing less. Residents do not make personal decisions without a careful analysis why would we allow the town to operate this way?

c. The key here is that the zoning ordinance includes the regulations as a reference. This specifically empowers the ZBA to interpret appeals of the stormwater regulations, not the planning board. In addition, this means that developers who want exemptions must follow the variance process for all of the stormwater regulations, not just the ones contained in the Zoning Ordinance. This is a large change to the ease of access to exceptions and it removes authority from the ZBA and empowers the planning board to solely interpret the regulations. Again, this change serves to benefit developers in lowering the bar for them to acquire exceptions since the planning board waiver process is much less stringent than the ZBA variance process

2. In addition, amend Section 7. Special Exception in the Wetlands Conservation Overlay Zone, b. Application Procedure,

~~(i) hydrological calculations based on drainage requirements in accordance with Section XI.C.4.b. of this Ordinance.~~

The item proposed to be deleted is a condition that is imposed on developers in order to get a special exception in the Wetland Conservation Overlay zone. This amendment has been pitched by the town planner as a means to comply with the EPA stormwater permit yet, I can find no reason to make special exceptions in the wetland conservation overlay zone easier to achieve. Why should we as a town allow this? Our town's water resources are vital to maintaining our rural population density. There is no reason to weaken the exception process that I can see? Who would be the beneficiaries of such a change? How could the planning board consider relaxing this requirement without understanding what if any regulation would replace it? How can town residents relinquish control of such a vital process to an unelected board?

3. In addition, amend Section XV, Hollis Rural Character Preservation Ordinance, section F. Design Standards, 6. Erosion Control, paragraph a.

~~a. Restrict the post development runoff rate and volume to match the pre-development rate or volume for each offsite flow area based upon a ten-year rainfall event. The first 1/2 inch of runoff from all impervious area is to be retained on site. Treated runoff should infiltrate into the ground in an amount approximately equaling pre-development runoff conditions. Roof runoff is considered "treated" for the purpose of infiltration. If, after a recommendation by the Town Engineer, the Planning Board makes the determination that strict adherence to the above rate and volume regulations may cause more environmental harm than good, then offsite rates and/or volume may be increased above pre-development conditions by as much as 25%. However, drainage in wetland conservation overlay (WCO) zones must adhere to the standard provided in Section XI.C.4 of the Hollis Zoning Ordinance, which requires that there be no net increase in peak flow or overall volume of stormwater runoff in the WCO zone as a result of any development. At no time shall offsite flow increase be allowed onto an objecting abutter's property.~~

The above language contains a mixture of restrictions and relaxations. It is impossible to evaluate the effect of its removal without seeing the proposed replacement regulation. In general, however, the language proposed to be removed strongly defends the Wetland Conservation Overlay Zone, as such, removal could result in relaxed protections for wetlands in town. In addition, as previously stated moving restrictions from the ordinance to regulations only makes exceptions easier for the developer

## Recommendation not to remove stormwater restrictions from ordinance

In conclusion, in order to preserve the right of residents to direct growth in town and to preserve our town's resources, it is your responsibility to see that the stormwater restrictions that have protected our town for years remain in our zoning ordinance and squarely in the hands of the town's residents. Blindly moving forward with a change when no problem exists is a recipe for disaster. The simple adage applies "Don't fix it if it is not broken". The present regulatory structure is one of the reasons for Hollis unique character. Please do not allow development interests to diminish the special characteristics of Hollis.

Regards,

Joseph Garruba