

Submitted: December 4 2019

ZBA Case Number:

Application for Appeal

Hearing Date:

Property Location: 1A+B Old Runnels Bridge Road

Map: 10 Lot: 31 – 1 **Acres:** 11. 457 **Zone:** Recreational and Residential Agricultural

Name of Applicant: Joseph Garruba
28 Winchester Dr.
Hollis, NH 03049

Telephone: 603-685-3394

Name of Owner: Raisanen Leasing Corp.
PO Box 748
Nashua, NH 03061

Telephone: 603-594-0060

Include: Site plan as approved

List of abutters and addresses:

Map 10 Lot 33-1
Raisanen Leasing Corp.
P.O. Box 748
Nashua, NH 03061

Map 10 Lots 8 & 19
Diane M. Urquhart Rev. Trust
Diane M. Urquhart, Trustee
2 Ferson Street
Nashua, NH 03060-4123

Map 5 Lot 16
Alan C. Archambault
25 Irene Drive
Hollis, NH 03049

Map 10 Lot 33
Patricia Archambault *rev. Trust*
~~Susan F. Hammond~~
52 Runnels Bridge Road
Hollis, NH 03049

Map 10 Lot 32
Daniel J. Brideau
15 Old Runnels Bridge Road
Hollis, NH 03049

Map 5 Lot 17
Alpine Grove, LLC
c/o Alan Archambault
19 South Depot Road
Hollis, NH 03049

Map 10 Lot 34-A
State of New Hampshire
ATTN: Tax Department
P.O. Box 401
Concord, NH 03302

Map 5 Lot 5
Marc J. Goupil
28 South Depot Road
Hollis, NH 03049

Map 5 Lot 18
Scott C. & Karen E. Brown
11 South Depot Road
Hollis, NH 03049

Map 10 Lot 7
Dreyfus Properties, LLC
175 Ridge Road
Hollis, NH 03049

Map 5 Lot 4
Thomas E. Mullin
24 South Depot Road
Hollis, NH 03049

Engineer:
Fieldstone Land Consultants, PLLC
206 Elm Street
Milford, NH 03055

Appeal from an administrative officer (Hollis Planning Board) pursuant to RSA 676:5

The undersigned alleges that the following errors have been made regarding the interpretation of the Hollis Zoning Ordinance on 11/5/2019 in relation to the sections enumerated below. These errors have caused hardship to myself.

appeal	Subject	Section	Section Title	Paragraph
1	Surface Waters	XI	Overlay Zoning Districts	C 2 b
2	Wetland	VIII	Definitions	Not App.
3	Hydric Soils	XI	Overlay Zoning Districts	C 2 h
4	Net Tract Area	VIII	Definitions	Not App.
5	Buffer zone around Hydric Soils	XI	Overlay Zoning Districts	C 2 c
6	Conservation Commission Approval of dredge and fill permits	XI	Overlay Zoning Districts	C 3 a

Appeal 1 Definition of Surface Water

The undersigned alleges that an error has been made by the planning board on 11/5/2019 to myself in relation to Sec XI Overlay Zoning Districts paragraph C 2 b of the Zoning Ordinance of the Town Of Hollis and hereby appeals said decision.

The planning board incorrectly interpreted the definition of surface water as it relates to two ponds on the subject property. The definition as provided in the section referenced above is included below.

2. **DEFINITIONS:** For purposes of the Aquifer Protection Overlay Zone, the following definitions shall apply:
 - a. **Groundwater:** Subsurface water that occurs beneath the water table in soils and geologic formations.
 - b. **Surface Water:** Those waters, which have standing or flowing water at or on the surface of the ground. This includes but is not limited to, rivers, streams, lakes, ponds and tidal waters.
 - c. **Water Related Resources:** A natural resource that is dependent on water, such as fish, amphibians and plants.
 - d. **Wetland:** Areas as defined in Section VIII of the Hollis Zoning Ordinance.

The subject property contains two ponds. The correct interpretation of the word surface water includes ponds. The language actually states that ponds are an example of water that should be considered surface water in the second sentence of the definition.

It is important that this definition be interpreted correctly since understanding that the ponds are to be considered surface water has bearing on the calculation of allowed density for the project.

Signed: _____

Date: _____

Appeal 2 Definition of Wetland

The undersigned alleges that an error has been made by the planning board on 11/5/2019 to myself in relation to Sec VII Definitions of the Zoning Ordinance of the Town Of Hollis and hereby appeals said decision.

The planning board incorrectly interpreted the definition of wetland as it relates to land on the subject property. The definition as provided in the section referenced above is included below.

WETLAND: A wetland is an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions, does support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, and similar areas. For the purpose of determining buffer zones for site plan and subdivision review, wetland boundaries shall be delineated by either a certified soil scientist or a professional wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987, and the Regional Field Indicators for Identifying Hydric Soils in New England, 1998.

The definition of wetland that is relevant to the Hollis Zoning ordinance includes land delineated in accordance with the Corps of Engineers Wetlands Delineation Manual, 1987. The planning board incorrectly interpreted the ordinance. The Hollis planning department requested an independent review of the wetland delineation performed by the applicant, but due to the improper interpretation of the ordinance the independent review was not conducted in accordance with the Corps of Engineers (CE) Wetlands Delineation Manual of 1987. This reference is key to understanding the correct interpretation of wetlands. Delineation of wetlands on this site is complicated by the fact that the terrain was manipulated in the course of prior development. Unauthorized disturbance of wetlands is treated differently in the Corps of Engineers Wetlands Delineation Manual of 1987 as opposed to the supplement of 2012. As a result the planning board incorrectly interpreted the ordinance allowing area that should have been delineated as wetland to be classified as uplands. For Reference, the first page of the consultant's letter is shown below. The full copy is on file for review at the Hollis Town Hall. The lack of the 1987 Corps of Engineers standard in Mr. Gove's letter is evidence of the planning board's misinterpretation of the ordinance since his review was relied upon in their decision and it was not conducted per our ordinance.



GOVE ENVIRONMENTAL SERVICES, INC.

6-25-2019

Mark J Fougere, AICP
Fougere Planning & Development, Inc.
253 Jernison Road
Milford, NH 03055

Subject: Wetland Delineation Review for the Planning Board of Hollis, NH
Bella Meadows, Tax Map 10, Lot 33-1
1 A&B Old Rannels Bridge Road
Hollis, NH

Dear Mr. Fougere:

Per the request of the Hollis Planning Board, this letter is to verify that GES, Inc., performed a site inspection to identify wetlands at Tax Map 10, Lot 33-1, in Hollis, NH. Wetlands were evaluated utilizing the following standards:

1. *US Army Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, Technical Report ERDC/EL TR-12-1 (January 2012).*
2. *Field Indicators for Identifying Hydric Soils in New England – Version 4, April 2019. New England Hydric Soils Technical Committee.*
3. *US Army Corps of Engineers National Wetland Plant List, 2018.*
4. *Classification of Wetlands and Deepwater Habitats of the United States. USFW Manual FWS/OBS-79/31 (1979).*
5. Env-Wt NH DES Rules of the Wetlands Bureau, current.

Plans and information that were reviewed prior to the site inspection:

Signed: _____

Date: _____

Appeal 3 Definition of Hydric Soil

The undersigned alleges that an error has been made by the planning board on 11/5/2019 to myself in relation to Sec XI Overlay Zoning Districts paragraph C 2 h of the Zoning Ordinance of the Town Of Hollis and hereby appeals said decision.

The planning board incorrectly interpreted the definition of Hydric Soil as it relates to land on the subject property. The definition as provided in the section referenced above is included below.

- h. **HYDRIC SOILS:** Soils that are saturated or flooded during a sufficient portion of the growing season to develop anaerobic conditions in the upper soil layers. Hydric soils consist of very poorly drained and poorly drained soil drainage classes as defined in "Field Indicators for Identifying Hydric Soils in New England", Version 2, July 1998.

The applicant conducted a site specific soil survey of the property but did not correctly identify the Pipestone soil that was found as Hydric soil. The planning board did not interpret the ordinance correctly as they did not apply the definition of Hydric Soils used in the "Field Indicators for Identifying Hydric Soils in New England Version 2, July 1998. A prior wetland delineation in 1997 found considerable area of wetland in the south of the property. One of the three requirements for wetland determination is the presence of Hydric Soil. The other two requirements are the presence of wetland hydrology and the presence of hydrophilic vegetation. Since hydric soil is a soil developed under anaerobic conditions, it remains a hydric soil even if the hydrology or vegetation growing in it changes. Had the planning board correctly applied the definition of hydric soil as called for in the ordinance, they would have identified the pipestone soils found on the site as Hydric.

Signed: _____

Date: _____

Appeal 4 Definition of Net Tract Area

The undersigned alleges that an error has been made by the planning board on 11/5/2019 to myself in relation to Sec VII Definitions of the Zoning Ordinance of the Town Of Hollis and hereby appeals said decision.

The planning board incorrectly interpreted the definition of Net Tract Area as it relates to land on the subject property. The definition as provided in the section referenced above is included below.

NET TRACT AREA: The net tract area of the parcel is determined by subtracting the total area calculated for wetlands, surface waters, hydric soils, flood plain, road rights-of-way, and altered/ unaltered slopes greater than 25% from the total (gross) tract area.

The planning board did not interpret this definition correctly. The correct interpretation of the ordinance involves determining the area of the wetlands, the area of the surface waters and the area of the hydric soils as defined in the ordinance, present on the site. This calculation is to be performed based on the existing conditions at the site since doing otherwise would subvert the purpose of the zoning ordinance entirely. The planning board incorrectly interpreted the definition as if it applied to a condition where the developer removed the northerly pond. The correct interpretation requires applying the definition to the existing conditions prior to development otherwise the concept would be meaningless. In addition, the planning board did not use the definitions of wetlands, surface waters and hydric soils set forth in the ordinance to perform the subtractions from gross tract area.

Signed: _____

Date: _____

Appeal 5 Buffer Zone around Hydric Soil

The undersigned alleges that an error has been made by the planning board on 11/5/2019 to myself in relation to Sec XI Overlay Zoning Districts paragraph C 2 c of the Zoning Ordinance of the Town Of Hollis and hereby appeals said decision.

The planning board incorrectly interpreted the definition of Buffer zone as it relates to land on the subject property. The definition as provided in the section referenced above is included below.

- c. ***BUFFER ZONE:*** An upland area adjacent to a wetland or surface water. This buffer zone, under the jurisdiction of the Town of Hollis, shall include an area of one hundred (100) feet, measured on a horizontal plane from the mean high water mark of a surface water, the delineated edge of a wetland, or the limits of hydric soils (whichever is most restrictive).

In two specific instances, the planning board incorrectly interpreted the definition of buffer zone as it relates to this project. Firstly, the Northern pond is actually an altered natural wetland. The 1997 planning board determined this to be the case and correctly applied a 100 foot wetland buffer to the prior golf course proposal. In the case for which this appeal is taken, the planning board failed to apply the 100 foot wetland buffer as is required. The northern pond is a natural wetland as can be seen on Historic USGS Quadrangle maps dating to the 1940s. The planning board incorrectly interpreted a dredging action that occurred in the 1960s to allow an exemption to be taken from this buffer. Secondly, the planning board did not consider the limits of hydric soils when determining the proper buffer zone. Hydric soils are present around each pond and in the southern area of the property as identified on the applicant's site specific soil survey.

Signed: _____

Date: _____

Appeal 6 Conservation Commission Approval of Dredge and Fill Permits

The undersigned alleges that an error has been made by the planning board on 11/5/2019 to myself in relation to Sec XI Overlay Zoning Districts paragraph C 3 a of the Zoning Ordinance of the Town Of Hollis and hereby appeals said decision.

The planning board incorrectly interpreted approval requirements as set out in the jurisdiction section. This section is provided for reference below.

3. JURISDICTION

- a. The town recognizes that the state and federal governments have regulations, including a permitting process, governing the alteration of wetlands and surface waters. However, the Town of Hollis has jurisdiction over the one hundred (100) foot buffer zone and all Dredge and Fill Applications must first be reviewed by Planning Board Staff and approved by the Planning Board and the Conservation Commission for compliance with this ordinance.

The planning board incorrectly interpreted the section above in failing to consider the approval of the conservation commission as is called for in the ordinance. The ordinance specifically calls for the approval of the Conservation Commission "**first**". The planning board's decision letter does not condition approval of the project on the approval of the Conservation Commission. The lack of this Conservations Commission's approval as a condition is evidence of the planning board's faulty interpretation of the ordinance.

Signed: _____

Date: _____