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Re: Reasons not to move  
an increased density  
workforce housing  
amendment to public  
hearing

To: Members of the  
Planning Board:

From: Joseph Garruba

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## Overview

The planning board is considering moving forward with an amendment to the Increased Density Workforce Housing requirements of the Hollis Zoning ordinance. I strongly recommend against amending these sections. I will address the problems with changing the Increased Density Workforce Housing ordinance below. Our Town planner has made the claim that the changes he has proposed to our Increased Density Workforce Housing ordinance are required by state RSA. This legal claim is being used without justification to push relaxation of our ordinance.

## Planning Staff Proposed Changes

The town planner has proposed the following 15 changes to 4 sections of the Hollis Zoning Ordinance. I will explain the implications and context of each change below and why it is not in the town's interest to enact these changes.

### Hollis Zoning Ordinance, Section XI: Overlay Zoning Districts, D. Multi-family Zone

#### 1. Amend, Paragraph 1 Purpose, to read as follows

*The intent of this Section is ~~to define the requirements related to the development of multi-family housing and prevent overcrowding of land while~~ provide for the opportunity to construct multi-family housing by the provision of a 'waiver from the otherwise applicable density requirements, while complying with all applicable state and federal laws with respect to such housing and at the same time, ensuring compliance with local planning standards, land use policies, good building design, and requirements for the health, safety, and general welfare of all the inhabitants of the Town.*

The purpose of an ordinance is extremely important for 2 reasons. First, if waivers are considered, the spirit of the ordinance is the standby which they are judged. Secondly, if a variance is needed, one of the criteria that must be met is that the spirit of the ordinance is satisfied. Thirdly, in the case of legal ambiguity, a court will differ to the spirit of the ordinance in order to make judgements. The spirit of the ordinance is best captured in the purpose statement.

Since the town planner has chosen to reverse the purpose of the ordinance to state that the intent is to provide opportunity for workforce housing development this will serve to ensure that waivers and variances must be granted. In addition, it is a clear signal to developers that any legal action they take will have a strong argument to make on the spirit of the ordinance.

Why should we change this? The Zoning ordinance is the expression of the voters will. We should not allow it to be diluted with poorly written purpose statements which serve to undermine our own legal positions in future cases. The language in the present purpose statement is well supported with enabling RSA. Our present language is written in a way that maximizes the Zoning Board of Adjustment's and Planning Boards authority. In addition, it provides for a stronger legal defense of potential denials that the planning board may issue. I cannot think of any benefit to the town that the proposed language could provide.

## 2. Amend 2. General Standards, paragraph a.

*Dwelling unit density shall be no greater than four (4) units per acre, based upon the Net Tract Area of the property ~~or the minimum number of units required to make the project economically viable whichever is less.,,~~*

By removing the statement about economic viability, the town planner is striking down the key protection of our ordinance. Our present ordinance carefully maintains compliance with the workforce housing RSA and with recent case law such as Suncoast v Windham by allowing only the amount of housing needed to be economically viable. The language ensures that the town meets the legal requirements of the state without providing a windfall to developers. The town planner's stated reason for changing the ordinance is that our town is not providing for economically viable development of workforce housing, but it is clear that the present language provides for this explicitly. Why would we want to remove this language? It clearly complies with the law and it limits overcrowding to the maximum extent possible. Is there another agenda in play?

## 3. Amend paragraph i as follows:

*"Multi-family workforce housing developments submitted under this section shall be exempt from the requirement of Section IX, General Provisions, F, 1-4, Impermeable Surface and Building Coverage and Section XI, Aquifer Protection Overlay Zone (APO), A. 3. Dimensional Standards in the APO provided that all development proposals shall, ....."*

All of the other development must abide by the restrictions of the Aquifer Protection Overlay Zone. These restrictions limit impervious surface coverage on a lot to protect the Aquifer. The importance of the town's water supply cannot be understated. What is the reason for exempting Multifamily developments? There is strong legal ground supporting development restrictions based on the need to protect water resources. Allowing the most dense residential development type in town to violate the Aquifer Protections while requiring Other development types raises equal protection arguments and weakens the legal standing of the Aquifer Protection Overlay in all cases. Since it is established that zoning to protect aquifers has a strong legal foundation, why does the town planner want to remove this protection? How could removing protection for the Aquifer help our town?

The town planner worked with a developer to produce the map on the following page in an effort to support his claim that imposing the limits of the APOZ would be unduly burdensome. The map shows the recently approved 32-unit development on Old Runnels Bridge Road. It shows a rectangle representing the 15% maximum impervious surface that the Aquifer Protection Zone presently imposes. This shaded rectangle represents approx. 60,000 sq. feet of impervious surface that could be allocated to roadways and roofs throughout the site. The rectangle does not limit the placement of buildings or roads it simply serves to represent the total amount of impervious surface allowed. Since each of the developers 3-unit buildings have 4172 sq. ft of rooftop. It can be seen that the developer could have built 5 of these buildings and still had approximately 40,000 sq. feet left for parking lots and roads. Even if the sale price of all 15 units was limited to 350,000 this still yields a gross sale of 5.25 Million dollars. This certainly seems economically viable to me. If it is not, the town planner should support his claims with an analysis. The town deserves no less.

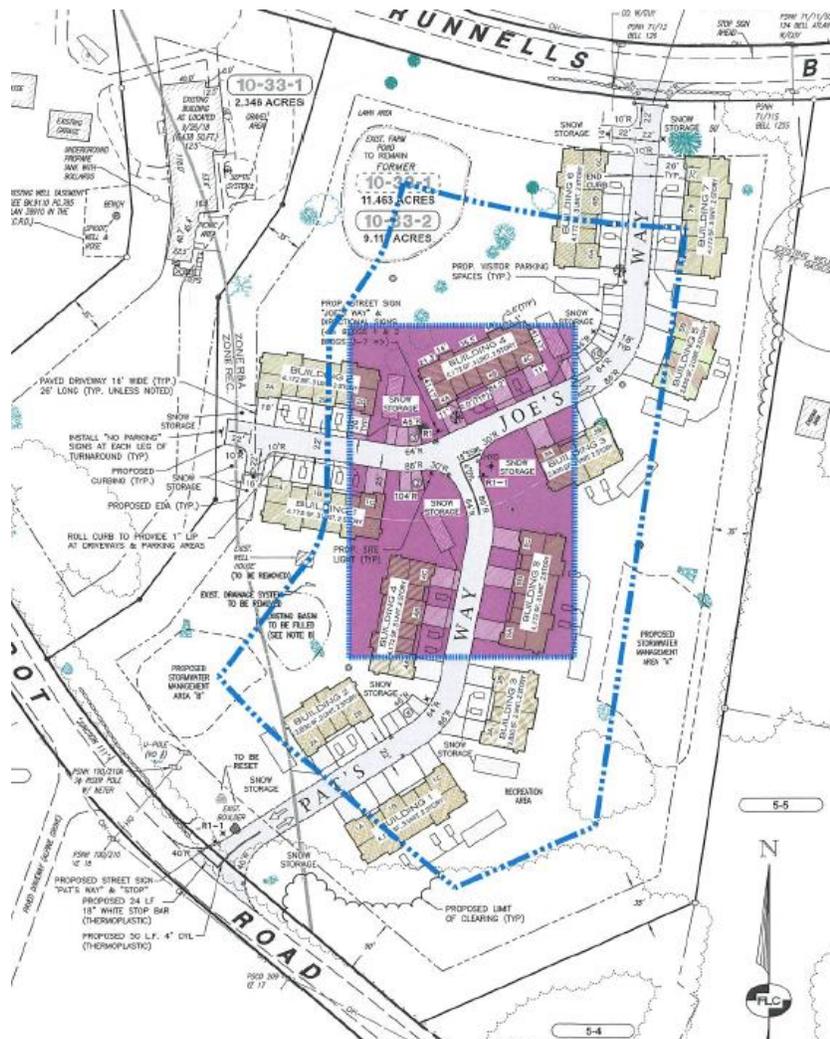


4. Amend paragraph k. as follows:

*"In order to minimize potential intrusion on neighboring land uses, the Planning Board may shall require the installation of a ~~100-foot~~ landscaped buffer strip along the perimeter of the site."*

The town planner has claimed that the 100 ft buffer in the multifamily zone is somehow in conflict with the statute and induces costs on the developer, but the ordinance is written in a way that allows density necessary to be affordable so how is this not compliant with state RSA? I'm not aware of anything in state RSA that disallows such a buffer. If such a statute exists, the town deserves a citation. In fact, the buffer is very reasonable considering the intense land use allowed in the multifamily zone. There are other 100-foot buffers implemented in Hollis Ordinance. 100-foot buffers are applied to wetlands as well as to scenic roads. Considering the density of the multifamily zone, a 100-foot buffer certainly allows for viable development of multifamily units.

As an example, consider the recently approved development of 32 units on Old Runnells Bridge Rd. The town planner worked with the developer to produce the plan below. The blue dashed line represents the present 100-foot buffer. It can be seen that a smaller economically viable development could have easily been sited within the boundary preventing such an intense use from being located close to other residential properties. Isn't this what we want our zoning ordinance to provide? There are other properties in the multifamily zone that will allow economically viable development with a 100-foot buffer. Why should we change the restrictions? If a change is needed, the town deserves an economic analysis proving that the change is needed. The opinion of the town planner is not justification without supporting evidence.



## Amend Section XVIII Workforce Housing

### 5. Amend Section A, Purpose, as follows:

*The purpose of this section is as follows: 1. To encourage and provide for the development of affordable workforce housing; 2. To ensure the continued availability of a diverse supply of home ownership and rental opportunities for low to moderate income households; 3. To meet the goals related to affordable housing provisions set forth in the town's Master Plan; and 4. To comply with the requirements of SB 342, an Act establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay Qualified proposals for workforce housing (RSA 674:58-61).* ~~*is to define the requirements related to the development of workforce housing in compliance with RSA 674:58-61 and to prevent the overcrowding of land while complying with all applicable state and federal laws with respect to such housing and at the same time, ensuring compliance with local planning standard, land UGC policy, good building design, and requirements for the health, safety, and general welfare of all the inhabitants of the Town.*~~

The purpose of an ordinance is extremely important for 2 reasons. First, if waivers are considered, the spirit of the ordinance is the standard by which they are judged. Secondly, if a variance is needed, one of the criteria that must be met is that the spirit of the ordinance is satisfied. Thirdly, in the case of legal ambiguity, a court will defer to the spirit of the ordinance in order to make judgements. The spirit of the ordinance is best captured in the purpose statement.

Since the town planner has chosen to reverse the purpose of the ordinance to state that the intent is to **encourage** development of workforce housing development this will serve to ensure that waivers and variances must be granted. In addition, it is a clear signal to developers that any legal action they take will have a strong argument to make on the spirit of the ordinance.

Why should we change this? The Zoning ordinance is the expression of the voters will. We should not allow it to be diluted with poorly written purpose statements which serve to undermine our own legal positions in potential future litigation. The language in the present purpose statement is well supported with enabling RSA. Our present language is written in a way that maximizes the Zoning Board of Adjustment's and Planning Boards authority. In addition, it provides for a stronger legal defense of potential denials that the planning board may issue. I cannot think of any benefit to the town that the proposed language could provide. It has often been stated that the reason we have WFH in town is because it is mandated by the state. The proposed language flies in the face of that statement.

### 6. Amend Section B. Authority as follows:

*This innovative land use control section is adopted under the authority of RSA 674:21, and is intended as an "Inclusionary Zoning" provision as defined in RSA 674:21(1) (k) and 674:21(IV)(a), as well as RSA 672:1, III-e, effective July 2009, which states: "All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the State of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers". In addition, RSA 674:21 II provides the authority for Planning Boards to grant Conditional Use Permits.*

The state workforce housing law is a controversial imposition on local zoning authority. As such this RSA is likely to be changed in the future. Quoting its current language is counterproductive and will unnecessarily promote development in town if the state RSA is changed. Why does the town planner feel this

quotation is necessary? We have many other restrictions in the ordinance that do not quote state RSA specifically. Certainly, this quote is not legally required. You must ask yourself why is it being promoted to the town as if it is? Is there another agenda at play? The addition of the proposed language will serve to facilitate developer's waivers, variances and appeals. How does that benefit the town? It actually undermines the effect of the restrictions further on in the ordinance. Here again, this is clear evidence that the town planner is not acting to meet the requirements of the WFH ordinance but to go above and beyond in promoting the development of WFH.

#### 7. Amend Section D. Conditional Use Permit Criteria, paragraph b.

*If completed, the development in its proposed location will comply with all requirements of Section XVIII and other applicable workforce housing provisions contained in other sections of the zoning ordinance, ~~without the benefit of waivers.~~*

The town planner has proposed removing the language restricting waivers. Why has this been done? Can a citation be provided that requires this change? A quick look at the most controversial recent projects shows that waivers are issued against the interest of abutters and residents in many cases. The 52-unit development at Cobbett lane was permitted because of a waiver the planning board issued for the construction of the roadway through the hill. The 32-unit development on Old Runnels Bridge was allowed because of a waiver to our road regulations. It is clear that restricting the issuance of waivers more closely represents the will of the voters. If a change is necessary a valid legal reason should be provided. As of 12-1, the planner has provided no such evidence.

#### 8. Amend Section G. Workforce Housing General Requirements as follows:

d. The Planning Board may request additional information if, in their judgment, it is necessary to make a meaningful determination of affordability.

The WFH RSA specifically allows the town to request this cost information of developers so that the town can be sure that they are not taking advantage of the ordinance to line their pockets. Requiring the affordability as is currently the case instead of making it optional will guarantee that the town residents have insight into the profits that developers are making at their expense. It is obvious that simply having this as an option does not serve the interests of the town because in the recently approved 32 Unit WFH development on Old Runnels Bridge road, even though abutters and residents asked for this report, the planning board allowed the developer to hide the financials that state RSA allows the town to review. Why should we allow developers to build units with a density bonus without providing this financial information? This is exactly the type of information that would be needed to establish if a proposed development is economically viable or if it is a windfall for developers. Whose interests does it serve to keep this information from the voters?

#### 9. Amend item 2.

~~Documentation to establish the economic viability of the proposal. At the Planning Board's discretion, the applicant may be required to submit protect cost estimates including land, development and construction costs; financing, profit, and sales costs; and other cost factors, shall be provided. The planning board shall request updates of these cost reports as the project progresses.~~

Here again the town planner's proposed language serves to shield the developer from providing affordability information necessary for the town to judge the needed density. Consider the financials of the previously mentioned 32-unit development on Old Runnels Bridge Road. The developer paid \$775,000 for the property. The sale of the 32 approved units will be well over 11 Million dollars. The proposed ordinance

language allowed the developer to hide the true profit of this development. How is it in the interest of the town to allow this? Whose interest is served by the planner's proposed language?

10. Amend Section I. Administration, Compliance and Monitoring, paragraph 2. As follows:

*Where workforce housing applicants propose a development of single-family homes or mixed single family and multi-family homes, all provisions of the subdivision and site plan regulations shall apply unless waived by the Planning Board. Where workforce housing applicants propose a development of multi-family units or mixed commercial and multi-family units, the site plan regulations shall apply unless waived by the Planning Board.*

The town planner seeks to allow mixed single family and multifamily development. The WFH RSA does not require this. It simply requires that multifamily units be allowed. Adding this flexibility goes beyond the requirements of the RSA and serves to promote the construction of multifamily units when the requirement is to simply allow them. As of 12-1 no mention of this has occurred at any planning board meeting and this is certainly contrary to the restrictions of our present residential zone. Since this is not required by state law, why would we as a town allow it? Again, the town planner has claimed that these changes are required but he has not provided evidence to support this claim. A change as significant as this should be extensively debated and understood before being implemented without discussion. Do you think our bedroom community wants to promote multifamily units in the residential zone throughout town? Do you want an apartment building for a neighbor? Who supports this change? It is in the town's interest to follow the letter of the law and no more.

Section XX: Hollis Open Space Planned Development

11. Amend Section 3.

*Purpose, as follows: by adding c. Discourage the sprawling land-consuming form of development usually resulting from conventional subdivision and h. Provide a variety of types of living, spaces and environments.*

Single family zoning on 2 acre lots make up the overwhelming majority of the residences in Hollis. This type of development has been cherished here for more than 200 years. Many families choose to live here because of this development type where each owner is the king of his castle and owns his land fee simple. Statements that disparage the favored development in town are unnecessary, insulting and counterproductive. There are potential developments that a conventional 2 acre per unit style would be the best choice. It is not necessary to force all development to a HOSPD style which clusters houses on top of one another and saddles new owners with the potential restrictions of a home owner's association. This is the Live Fee or Die state, conventional development best embodies this statement and should not be banned in all cases.

12. Amend Section 4. Applicability and Procedures in a HOSPD as follows: A.

*Applicability: To facilitate achievement of the goals of the Hollis Master Plan, all major subdivisions shall be presented to the Planning Board in accordance with the Hollis Open Space Planned Development (HOSPD) standards as specified in this section and in the Land Subdivision Regulations. In all cases it shall be assumed that a HOSPD plan is necessary to meet the goals and objectives of this section and of the Master Plan, unless the contrary is demonstrated by the applicant.*

The Master plan is a document that is currently written by the Nashua Regional Planning Commission and approved by the planning board. The town Ordinance is voted on by all residents. Adding a reference to the Master Plan serves to weaken the language of the zoning ordinance and promote the Master Plan as ordinance. To preserve the most authority for the town residents, the Zoning Ordinance should not dilute its authority by referring to a document that is approved only by the planning board. What justifies its inclusion here? It can only serve as a basis for waivers, variances and appeals. Why should town residents bestow more importance onto a document that they do not directly control? As of 12-1, no justification for this has been provided.

13. Amend Section 6. Workforce Housing Units/Owner Occupied, paragraph 1. Density:

*The maximum number of allowable dwelling units that could be developed under the provisions outlined in Section 5.a shall be determined following the standard practice for a Market Rate Housing development. Once the number of HOSPD lots has been determined and agreed to by the Planning Board then that lot figure may be increased by up to ~~10-25%~~ if it is shown that construction of workforce housing would otherwise not be economically viable. These additional lots shall be designated as workforce housing units/owner occupied.*

Here again, the planner proposes removing language that provides the town with the affordability information needed to judge whether a proposal is economically viable. What is the reasoning for this? It is certainly allowable for the town to receive this information per the WFH RSA. What benefit could removing this requirement provide to the town? The planner has claimed his changes are required to be in compliance with state law but he has provided no evidence supporting the removal of this clause. A rational discussion between peers requires that this claim be supported with facts or withdrawn.

The state WFH RSA 674:59 I specifically require that WFH be allowed in a majority of the residential land area. It does not require how much WFH be allowed in any single project. The present density bonus of 10% satisfies the RSA. Here again, the planner has claimed that the present ordinance is not compliant with state law but has not provided a factual argument to support his claim. Don't we deserve better. His claims should be verified with the town attorney or other expert qualified in these matters.

Considering a hypothetical proposed conventional development of 14 Single family units on 15 Acres, the present ordinance would allow for a single extra unit to be developed for a total of 15 units. If the planner's proposed change is approved, that same hypothetical 15-acre property would then be subject to a by right development of 17 units. Why would we burden the town's resources to add additional unnecessary units? Why would we burden the abutters and users of the roads unnecessarily? The 2-acre minimum is wildly popular in town why should we approve this change to diminish its benefits? Such a change certainly deserves a strong justification. Why has none been offered?

14. Amend paragraph 2. Lot Size, by amending as follows:

*There is no minimum lot size for workforce housing units. The proposed site shall have adequate soils to accommodate on-site wastewater treatment and an adequate water supply adhering to both local and state requirements. A Building Area shall not be required; ~~and~~ however, at least 50% of the lot shall be Acceptable Land. In addition, wells serving both workforce housing and market rate housing lots may be located in designated Open Space areas.*

The purpose of a building area per its definition in the Zoning Ordinance is to “ensure that the lot is capable of meeting all Town Zoning Requirements” It also ensures that “driveway access from the lots frontage can be provided without the need for waivers” and that the “driveway lie entirely on the subject lot”. Why should workforce housing units be exempt from the requirements that are imposed on all other residences in town? Why should the town allow substandard units to be permitted? Surely developer’s proposing these units should be held to the same standards that other residences are required to meet? The state WFH does not require WFH units to be permitted in substandard locations. Why should we make specific relaxations in our ordinance that are not required?

15. Amend paragraph 6 to read as follows:

*Workforce housing units shall contain no more than three ~~two~~-bedrooms.*

Per RSA 674:58 IV “Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.” This specifically means that housing units with 2 Bedrooms do qualify as WFH. Our present ordinance was written to match this requirement and not go beyond. What justification does the town planner have to claim that 2-bedroom units are not compliant? By increasing our max from 2 to 3 bedrooms, we will be drawing more students to our school district further increasing the cost of complying with the state WFH ordinance. Here again this change is not needed and not supported with any legal argument. If town residents are being asked to take on an additional tax burden, they are owed the due diligence of understanding what the actual requirements are. This change is clearly not required.

## Problems with the town planner's arguments

### 1. Summary of Increased Density Workforce Housing and present ordinance compliance

Below is an objective summary of the requirements of the state's increased density Workforce Housing statutes. The entire statutes are available on the state website for your review. The first sentence of the increased density Workforce Housing Statute (RSA 674:59) States the following

*"In every municipality that exercises the power to adopt land use ordinances and regulations such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing including rental multifamily housing.*

It goes on to say: This paragraph may be satisfied by the adoption of inclusionary zoning as defined in RSA 674:21, IV(a)

The referenced language of RSA 674:21, IV(a) below defines inclusionary zoning as:

*"Inclusionary zoning is land use regulations which provide a voluntary incentive or benefit to a property owner in order to induce units which are affordable to persons of low and moderate income."*

For example, our density bonus of 10% additional units if WFH is produced or our Multi-family WFH zone

The state guidebook [Meeting the Workforce Housing Challenge](#) serves to inform municipalities on the legal implementation of the Increased Density Workforce Housing Statutes. It indicates that compliance is achieved if:

*"Workforce Housing is economically viable in the majority of residentially zoned land and at least 5 units per structure are allowed somewhere"*

Present Hollis Zoning Ordinance clearly meets this requirement.

### 2. Precise Requirements of State Law and NH Supreme Court *Suncoast v Windham* case

State Law Requires that workforce Housing be economically viable to construct in the majority of residentially zoned land and at least 5 units per structure are allowed somewhere. What specifically about our present ordinance does not comply? The town planner has cited the NH Supreme Court case *Suncoast vs Windham* (available online) in support of his argument but the decision in this case points out that a town must only provide **"reasonable and realistic opportunities for workforce housing"** Which our present ordinance certainly does. Why hasn't this been explained to you?

### 3. Builder's Remedy does not eliminate local control

Another misleading argument is that the threat of a builder's remedy somehow eliminates the town's influence on other project aspects. It is true that in the case of *Suncoast vs Windham* the NH supreme court issued a builder's remedy to allow the construction of 5 units however the court specifically remanded the project back to the planning board for approval of all other project aspects.

A direct quote from the decision is included below. Bold emphasis added.

"The Court **GRANTS** Sun Coast's request for a "builder's remedy" as follows: Sun Coast shall be permitted to build its project without meeting the pertinent zoning requirement, **but it must now return to the Planning Board** (which shall accept its site plan/subdivision applications as complete) **and obtain from this Board requisite approvals."**

The town planner has often claimed that a builder's remedy is a terrible outcome to be avoided at all costs. As I have demonstrated, his claim is not founded and is misleading. The process of a builder's remedy still allows the town input on other project aspects. Why should we weaken the zoning ordinance we have in fear of this?

#### 4. There are realistic opportunities to Develop multifamily units under the present WFH ordinance

To comply with the state RSA, there must be reasonable and realistic opportunities to develop economically viable multi-family units. The present ordinance allows for such development on larger parcels located in the multifamily zone. This claim that it does not is not supported with facts. Making changes based on this would be irresponsible. Why would the town proceed with this change without sound reasoning? How will this be perceived by the residents of the multi-family zone. What is the town doing to protect their interests? Shouldn't they expect that the best effort would be made to reduce the impact of the State RSA on them?

### Recommendation not to amending the Increased Density Workforce Housing Ordinance

In conclusion, it is imperative for the planning board to question all 15 of the potential changes proposed. No further action should be taken until an explanation of why each change is needed is provided and justified. The town's residents deserve the due diligence to confirm that the proposed changes are indeed required as has been stated so many times without evidence. We all deserve a transparent process and justification of any proposed changes. Please do not move the proposed changes forward to public hearing unless a sound justification is provided as to why this must be done. Please be sure to challenge the unsupported assertions of experts on behalf of the town's residents.

Regards,

Joseph Garruba