

**From:** Dennis Brown <lakesideme@yahoo.com>  
**Sent:** Friday, January 18, 2019 2:37 PM  
**To:** Amanda L. Lessard  
**Cc:** Donna Chapman; Jarrod Maxfield; Bob Muir; Rebecca Cummings; Tim E. Nangle; Dennis Welch; Clayton Haskell; Donald H. Gerrish; Rosie Hartzler; Kim White; John MacKinnon  
**Subject:** Comments on Planning Board Discussion on Independent Review

Amanda,

Please pass the following comments to the Planning Board in relation to the recent discussion of the HLLT recommendation on independent review. I recognize that the comments are long, but there were a number of misconceptions expressed at the meeting that need to be addressed.

### **Comments on Planning Board Review of HLLT 3<sup>rd</sup> Party Review Recommendation**

Unfortunately neither John MacKinnon nor I were able to attend the 1/15/19 Planning Board meeting to provide more background into the request from the HLLT for an independent review on development projects within watersheds in Windham. I did watch the meeting on-line afterwards and want to offer the following clarifications/comments on the meeting:

1. It is important that the Planning Board recognizes that the HLLT is not just Highland Lake Association (HLA) members. It is an official committee authorized by the Towns of both Windham and Falmouth. It is not unlike the Mineral Extraction Committee. This organization has spent countless hours in the consideration of issues we have uncovered. The HLLT does have Highland Lake Association members on it, but it also includes the Town Managers from Windham and Falmouth, one Town Councilor from Windham, a Windham non-HLA member who lives within the Highland Lake watershed, the Falmouth Chair of their Conservation Committee, the Falmouth Energy and Sustainability Coordinator, the Windham Environmental and Sustainability Coordinator, several DEP representatives and a Cumberland County Soil and Water Conservation District representative.

Further, Ben Smith participated and recently Amanda Lessard has begun to participate on the HLLT through the Ordinance Committee, along with the Community Development Director from the Town of Falmouth. I'm sharing this detail so that it is recognized that the HLLT is not a one dimensional group, but a well represented official extension of both Windham and Falmouth.

2. What we learned through our participation in watershed development projects and in appealing a DEP stormwater permit of a specific project, is that the only qualified

environmental or engineering personnel who actually visit a site proposed to the Town are those hired by the developer. All Town and DEP reviews are paper reviews. The Director of the Bureau of Land Use of the DEP made it very clear to me that they are not understaffed in the review of developments despite the fact that only one engineer reviews all projects in Southern Maine, over 100 per year, where he can allocate less than one day to each project, given his other responsibilities. The engineer doing the reviews told us that he has no time to visit any sites, and that the land side of DEP and the water side don't communicate with each other. The Director further stated that the DEP relies on the professionals to do their job and the DEP just reviews the project to assure that the appropriate DEP procedures were utilized, not to review environmental or engineering approaches.

3. On the project we appealed, it was found that not all the developed areas on the plans were included in the phosphorus calculations, and that incorrect distances were used in determining the sheet flow of runoff through a forested buffer, overstating the amount of phosphorus mitigation. This was found after the project was reviewed by the Windham Planning department, Cumberland County Soil and Water Conservation District and the cursory DEP review.

Further, a stream that had been identified in writing by the developer's environmental professional prior to the project submittal was not shown on the site plans, and in fact, one of the roads ran directly down the stream. After a series of communications and meetings with the DEP, only then did DEP personnel visit the site and acknowledge that there was a stream right in the middle of the proposed road.

4. The assertion was made at one Planning Board hearing on the revised set of plans that there would be less phosphorus export after the site was developed than what is currently happening. When the Planning Board walked the site for the project review there was clear evidence of significant regrowth on the roads and campsites that hadn't been used in at least 10 years. In fact, the very same forested buffers that were included in the phosphorus removal in the stormwater plans were deemed to offer no buffering in the existing condition. The DEP recognized this when it was pointed out to them and confirmed that the DEP Stormwater Manual specifically addresses the minimal phosphorus contributions from unused woods roads as well as the benefits of existing forested buffers.
5. The HLA asked for and was refused a third party review for the above project by the Town Engineer, yet we still found the concerns mentioned above.

When this HLLT independent review recommendation was presented to the Town Council on December 4, 2018, the Town Engineer acknowledged that while he is a Professional Engineer, he does not have expertise in a number of related fields including hydrogeologic and geotechnical.

6. The issues above led the HLLT to recognize that the expectation of the towns and residents that developments are being appropriately reviewed is not based in fact. We all have perceptions of what the DEP reviews included, but those perceptions are wrong. With so many lakes/ponds in Windham vulnerable to development, and already on the DEP list of Lakes most at risk of new development, it is appropriate for the Town to take the necessary steps to assure that a proper review is conducted on all projects with respect to impact on Town watersheds, because no one else is doing it.
7. There were concerns expressed about the existing watershed residents not taking actions to address the lake issues, and contributing to the actual cause of water quality. Rosie shared several examples of what has been and is being done to address existing phosphorus export to the lake. Additionally, the following is a list of recent and pending actions within the watershed:
  - a. The HLA conducted a Watershed Survey in May of 2018, with over 40 volunteers as well as representatives from the DEP and Cumberland County Soil and Water Conservation District. The results of this survey will provide the basis for ongoing mitigation strategies to be employed within the watershed, and to provide the data essential for the HLA in collaboration with CCSWCD to apply for EPA funding to mitigate the most problematic sites.
  - b. At least \$75,000 of personal contributions was spent on either water quality testing or road improvements/buffers to address water quality.
  - c. In 2018, The HLA applied a \$10,000 grant from the Town of Windham toward mitigating two sites at Highland Lake that were determined to be contributing harmful levels of NPS pollution in to Highland Lake. This grant was matched dollar for dollar by collaborating road association groups and demonstrated a commitment by each road association to mitigate a phosphorus export issue, as well as a commitment to the ongoing maintenance of the sites that had been repaired.
  - d. A septic review program is being developed and will be done in the near future utilizing funds from the EPA.
  - e. A gravel road maintenance seminar was conducted last year and a follow on will be done in the coming year to help educate the watershed residents about the lake impact from poorly maintained roads.
  - f. A 2019 yardscaping seminar is planned and follow up volunteer buffer projects will be conducted.

- g. During the summer of 2018, volunteers kept the fishway open through the out-migration periods to facilitate alewives, both adults and young of year leaving the lake as part of their anadromous cycle.
  - h. New regulations are being explored in both Windham and Falmouth to address shortcomings in existing manure management.
  - i. Proposals have been submitted to both Windham and Falmouth to photograph the lakeshores to provide a tool to the Code Enforcement personnel to use in addressing complaints and new permit applications.
  - j. We are attempting to address BMP inspections that do not go through the Planning Boards to assure that past efforts aren't diminished because of poor or no maintenance.
  - k. In March, 2018, a Highland Lake Public Forum was held to educate Windham residents regarding the situation at Highland Lake and to reach out to the community with concrete measures that residents can implement in the effort to improve water quality. Another Public Forum is planned for the spring of 2019.
  - l. The Town of Windham, since early 2018 has ordinance requiring Highland Lake watershed permit applicants for new construction or other requests for property changes to satisfy the "point system" for phosphorus mitigation. Prior to this very important change, unlike the Falmouth side, the Windham side of the lake had no requirements for phosphorus controls on individual houses. There are no similar provisions on any other watersheds in Town.
8. It was expressed that our request was requiring new developments to be engineered twice. That is not the intent in either the ordinance proposed or the specific recommendations from the HLA of what should be included in the review. The recommendation is looking to assure that a thorough review is actually performed, not re-engineering.

If this rigorous review is implemented, developers will recognize that they have to really do their homework in the design phase to assure compliance or their project will be stopped until the design does meet compliance criteria. Word will spread quickly within the development community that Windham is paying close attention to protect its natural resources.

Additionally, the lake protections that were approved for Highland Lake should be put into place on the other water bodies in Town. With the Town's Comprehensive Plan, there is no sound reason not protecting the other lakes and ponds in Town that are "at risk".

Lastly, I was disappointed that strong personal opinions were expressed at the very opening of the discussion of this recommendation before even taking the opportunity to listen to the thoughts and logic that went into this recommendation. Objectivity and open mindedness are essential in considering and then making recommendations back to the Town Council, and any perception on the part of the Planning Board contrary to that is inappropriate. If there is disagreement after presentations and discussion, I accept that, but not before demonstrating professional courtesy in listening to a Town authorized committee.

Dennis Brown

Chair HLLT