

Chapter One

The Basics of Workforce Housing in New Hampshire

A. The History: Workforce Housing Legislation

The need for housing that is affordable to a variety of income groups is not a new issue in New Hampshire. During the “building boom” of the late 1980s, housing affordability began to be raised as a concern by builders, housing advocates, and some municipal planning boards. Many began to recognize the impact that local zoning ordinances and land use regulations were having on the cost of housing. At that time, discussions on the issue took place at both the state and local levels, but waned with the recession of the early 1990s. In 1991, a far reaching decision was made by the New Hampshire Supreme Court in *Britton v. Town of Chester*.³

In *Britton*, the Court recognized that New Hampshire’s statutes authorizing local zoning contain an obligation for every municipality to provide “reasonable and realistic opportunities” for the development of affordable housing. Furthermore, the Court ruled that a municipality’s obligation extends not only to providing opportunities for the development of affordable housing sufficient to accommodate demand from within the municipality, but also to accommodate its “fair share” of regional need as well. In the years that followed this decision, a number of bills were introduced in the New Hampshire Legislature that sought to address the impact of local land use regulation on housing affordability.

These efforts included the creation of a legislative commission in 2001 (the “SB 21 Commission”) that was charged with developing and recommending legislation aimed at reducing regulatory barriers to the creation of affordable housing and encouraging its development.⁴ After a careful examination, the Commission concluded that local land

³ 134 N.H. 434 (1991).

⁴ SB 21, 155th Gen. Court (N.H. 2001).

use regulations and the municipal regulatory process had created a significant barrier for the private sector to address the shortage of workforce housing.⁵

B. The Problem

The findings of the SB 21 Commission included the following:

- New Hampshire currently lacks an adequate and balanced supply of housing to meet the needs of our population. This shortage is especially acute with regard to “workforce housing” - housing which is affordable to families earning 80% or less of median income (note that the 2008 workforce housing law defines it differently).
- Our housing crisis is a product our economic success during the last decade. Unless we allow our housing markets to keep pace with our economic growth, we will kill the economic engine we are relying on to continue that success in this decade.
- While many factors impact the State’s housing supply, including increases in the population, the price of land and labor, and a shortage of contractors, it is the regulatory obstacles at both the State and local levels that are uniquely within the Legislature’s power to mitigate.
- Individual communities, each acting in their own economic self-interest, have disconnected the State’s local housing markets from the rest of our economy and created an artificial scarcity that has driven prices beyond the reach of a large and increasing number of working families.

These findings were further emphasized by another report⁶ that researched the negative economic consequences of problems of housing affordability:

Economic research confirms that there is good reason to be concerned: the lack of affordable workforce housing does have an impact on the New Hampshire economy. Demographic research shows that New Hampshire is losing its young people and its entry level workers, and the lack of affordable workforce housing is playing a substantial role. Economic forecaster Ross Gittel has “cautioned that an aging population, a lack of affordable housing, and an ever-tightening labor market could dilute the state’s fundamental business climate advantages.”⁷

Given these findings, particularly that an imbalanced housing supply is detrimental to the economic welfare of the state, the state’s business community partnered with the State’s regional workforce housing coalitions and others to respond to this vital need in the State.

⁵“Reducing Regulatory Barriers to Workforce Housing in New Hampshire,” Report of the Legislative Commission Established by Chapter 262 of the Laws of 2001, November 1, 2002. Full Text in Appendix.

⁶ Gallagher, Callahan & Gartrell, P.C. “Land Use Regulations in New Hampshire.” Prepared for New Hampshire Public Policy Alliance for Housing, Home Builders and Remodelers Association of New Hampshire, and the New Hampshire Housing Finance Authority. January 2007.

⁷ Gallagher, “Land Use Regulations,” in New Hampshire, *supra* note 3.

After several other legislative initiatives were unsuccessful, this effort culminated with the passage of the “workforce housing statute,” Senate Bill 342 in 2008 (Chapter 299, Laws of 2008).

Since then, the housing market has experienced significant difficulties. But the problem of housing affordability does not go away with a slumping economy, which only temporarily masks the impact of local land use regulations. A shortage of housing that is affordable to our workforce is a symptom of several factors that influence the cost of housing. The impact of local regulations is one that can be addressed directly through proactive measures.

C. The Statute’s Requirements

1. Reasonable and Realistic Opportunities

With the passage of the workforce housing statute codifying and clarifying the Court’s 1991 *Britton* decision, local municipalities must ensure that their land use ordinances and regulations provide for “reasonable and realistic opportunities for the development of workforce housing.” Compliance with the workforce housing statute is not optional. The law clearly states that

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.

RSA 674:59, I (emphasis added).

The Legislature’s use of the word “shall” has mandatory implications and is consistent with the Court’s ruling in *Britton*. The only exemption under the statute is for municipalities that can demonstrate that their existing housing stock is “sufficient to accommodate its fair share of current and reasonably foreseeable regional need for such housing,” in which case the community is deemed to have met its obligation and is relieved from any other obligation under the statute. Ultimately it is the responsibility of each municipality to individually ensure that it complies with the workforce housing statute. This is the “challenge” that all municipalities now face.

2. The Workforce Housing Challenge

For many communities, meeting the statutory requirements will initially require changes to regulations and ordinances. In the long term, municipalities will need to monitor the local real estate market to ensure that local land use ordinances and regulations continue to provide workforce housing opportunities. The real estate market is not a static environment; it is constantly changing, influenced by local and national economic forces. Conversely, communities should not count on short-term economic trends to demonstrate that they have met their workforce housing obligation; the statute was based on recognition that high housing costs and an imbalanced housing supply have been long-

term problems in New Hampshire that will require a diligent and concerted effort to overcome.

Communities should regularly review the local real estate market to monitor local trends. In most municipalities the assessor's office monitors records of real estate sales and will be a reliable source for market data. Keeping track of the current local housing market will help local land use boards identify what workforce housing is for their communities, and will facilitate review of workforce housing developments that may be proposed for their review.

If a municipality does not meet the requirements of the workforce housing statute, it faces an increased risk of litigation, exposes the community to the accelerated appeal provisions contained in RSA 674:61, and increases the likelihood that a reviewing court will impose the "builder's remedy." Under the accelerated appeal provision, an applicant challenging a municipality's ordinances or conditions of approval is entitled to an expedited hearing within six months in superior court. This process is available to those workforce housing proponents whose applications have been denied, or who claim that their proposals have been approved with conditions that frustrate the ability to develop workforce housing. The court has the power to grant the "builder's remedy," through which it allows the development to proceed without further review by local land use boards.

3. Steps to Get Started

One of the initial tasks that a municipality should undertake in order to address the requirements of the workforce housing law is to conduct a housing assessment and regulatory audit. The housing assessment includes reviewing the local real estate market for recent home sales (with a focus on newly constructed units) and rental unit costs. The regulatory audit is an objective evaluation of the local regulatory landscape to review the impact that local ordinances and regulations have on the cost of housing. The purpose of this regulatory evaluation is to determine if reasonable and realistic opportunities exist to construct workforce housing in the community.

Although a municipality does not have control over the cost of building materials, it does control many other factors through its zoning ordinance and land use regulations that can increase development costs and can contribute to making housing unaffordable. These factors include lot sizes and density of development, road frontage, building setbacks, road design criteria, and others that a local land use board might require.

Although presented in further detail in Chapter Four, it is recommended that the housing assessment and regulatory audit should include the following steps:

- Review housing sales information and local or regional monthly rental costs on a regular basis, perhaps as often as annually.⁸

⁸ NHHFA publishes housing market data for rental and ownership housing, available at http://www.nhhfa.org/demographic_housing.cfm.

Meeting the Workforce Housing Challenge

- Maintain a dialogue with the local development community for the purposes of obtaining feedback concerning what, if any, local land use ordinances and regulations frustrate or impede the ability to advance workforce housing proposals within that community. Builders, land surveyors/engineers local realtors and land use attorneys may also provide useful feedback on this question.
- Local real estate agents can also provide a significant source of timely information on the local housing market, particularly selling prices and market activity.