

New Hampshire's Workforce Housing Law

Bennington, May 5, 2009

Benjamin D. Frost, Esq., AICP

Director of Public Affairs, New Hampshire Housing



New Hampshire Housing's Background

- **Established by State Legislature under RSA 204-C**
- **Independent self-sustaining authority – not a state agency**
- **Mission**
 - To help create housing which is affordable to low and moderate income people
 - Continuum of services from rental assistance for very low income households to home ownership programs for low to moderate income households
- **New Hampshire Housing does not oversee local housing authorities**



New Hampshire Housing's Programs

- **Home Ownership**
 - Single Family Mortgages
 - 1,300 -1500 loans / year: \$200-240 Million / year
- **Multi-Family Housing Development**
 - 500+ units financed / year
- **Tenant Assistance / Supportive Services**
 - 3,000+ units of Tenant Based rental assistance
 - 5,000+ units of Project Based rental assistance
- **Housing Research / Planning / Technical Assistance**
 - Housing Awareness Program



2008 Legislative Session

- **HB 1260 (Ch. 360)—Growth Management Reform**
 - Growth management ordinances
 - Temporary development moratoria
- **HB 1259 (Ch. 391)—Local Housing Commissions**
 - A new local land use board
 - Affordable housing revolving fund
- **SB 342 (Ch. 299)—Workforce Housing**
 - Codifies & clarifies Britton v. Chester
 - Accelerated appeals



Growth Management Reform

- **RSA 674:22 and :23 (Ch. 360, Laws of 2008)**
 - Codification of judicially-imposed limits to Growth Management and Interim Growth Management Ordinances
- **Growth Management Ordinance: RSA 674:22**
 - Study demonstrating need to regulate timing of development, showing a lack of capacity to meet anticipated growth, and based on competent evidence
 - Specific termination date required
 - Directs the planning board (or CIP committee) to promptly develop plan for orderly and rational development of services needed to accommodate anticipated normal growth



Growth Management Reform (cont'd)

▪ Temporary Moratoria or Development Limits: RSA 674:23

- May only be proposed by planning board
- Unusual circumstances that affect the ability of the municipality to provide adequate services or that require prompt attention
- Ordinance must contain: Statement of circumstances giving rise to the need; Planning board's written findings; List of types of development to which the ordinance applies; Term—one year maximum; additional moratoria may be adopted for different circumstances
- Planning board's findings: describe the circumstances and recommend a course of action to alleviate them



Local Housing Commissions

- **HB 1259—Housing Commissions Enabled**
 - Optional advisory local land use board; created by vote of local legislative body (e.g., town meeting)
 - Assist other boards—master plan, zoning, recommendations on development proposals
 - Acquire and dispose of real property in the name of the municipality
 - Administration of an Affordable Housing Fund
 - Also an option for an affordable housing revolving fund



Workforce Housing

- **Britton v. Town of Chester (1991)**
 - Interpretation of the zoning power
 - Municipalities are not “isolated enclaves”
 - The obligation of every city and town: provide a reasonable and realistic opportunity for the development of affordable housing
 - “Community” means the region within which a municipality is situated—“fair share”
 - The “builder’s remedy”
- **Then what happened?**



Workforce Housing

- **SB 342: Workforce Housing In Statute**
 - All municipalities must provide reasonable and realistic opportunities for the development of workforce housing, including rental and multi-family housing
 - The collective impact of all local land use regulations shall be considered to determine if such opportunities exist (*a facial test*)
 - Workforce housing of some type must be allowed in a majority of residentially-zoned land area



Workforce Housing

■ SB 342: Definitions

- Workforce housing—housing that’s “affordable”
 - *Renter* family of 3 making 60% of Area Median Income
 - *Owner* family of 4 making 100% of Area Median Income
 - Does not include age-restricted housing; does not include developments with >50% of units having less than 2 bedrooms
- Affordable—no more than 30% of income should be spent on housing (rent + utilities; or PITI)



Workforce Housing

- **SB 342: Definitions**
 - Multi-family housing—5 or more dwelling units
 - Reasonable and realistic opportunities
 - Economically viable workforce housing
 - Collective impact of land use ordinances and regulations
 - Natural features and market considerations may be beyond the control of a municipality



Workforce Housing

- **SB 342: “Fair share” and reasonable restrictions**
 - Existing housing stock shall be accounted for to determine if a municipality is providing its “fair share” of current and reasonably foreseeable regional need for workforce housing
 - View this as an *affirmative defense*
 - Reasonable restrictions may be imposed for environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection



Workforce Housing

- **SB 342: Land Use Board Process**
 - Applicant must notify the board that a workforce housing development is being proposed
 - Planning board RSA 676:4 plat review (or other process) proceeds as normal
 - Upon approval with conditions, the board notifies the applicant of the conditions, who then has at least 30 days to identify the cost impact of the conditions upon the economic viability of the project



Workforce Housing

- **SB 342: Appeals**
 - To superior court if application is denied or has conditions that have a substantial adverse effect on the project's viability. Burden is on developer to show how the municipality's actions violated the Workforce Housing statute (*an as-applied test*)
 - Hearing on the merits within 6 months; option to appoint a qualified referee
 - "Builder's Remedy" shall include affordability restrictions on workforce housing units



Workforce Housing

- **SB 342: Practical Implications**
 - Effective July 1, 2009 (but see HB 321 below)
 - Planning boards have a lot of work ahead: evaluation of their ordinances and regulations, amendments to be proposed
 - IZIP Grants and other technical assistance to municipalities and to regional planning commissions
 - Inclusionary zoning is the single best measure, but there are many ways to comply



Pending 2009 Legislation

- **HB 321: delay the effective date of SB 342**
 - **House:** *Passed with Amendment* to extend the effective date to January 1, 2010
 - **Senate:** Referred to Public & Municipal Affairs Committee; hearing not yet scheduled
 - **Practical Implications:** Legal notices in November or December of 2009 of subsequently adopted changes will protect a municipality



What's Been the Local Response?

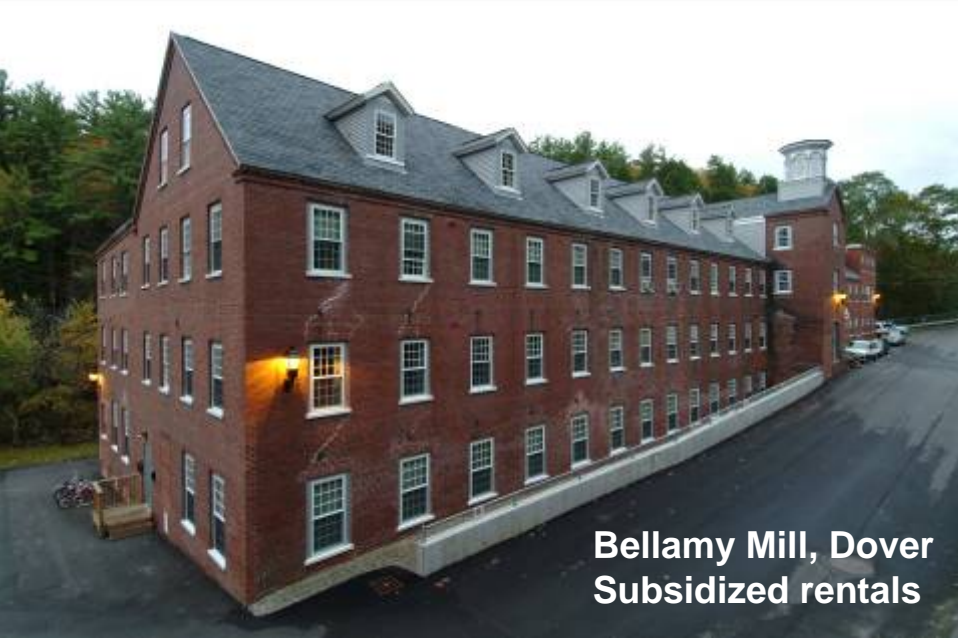
- **Town Meeting Actions**
 - A couple dozen towns took action
 - Overlay districts, inclusionary zoning, multi-family districts—solutions as varied as the towns proposing them
 - Majority were successful
 - Other towns already preparing for town meeting in 2010
 - Cities or towns with Council form more flexible



Why Do We Still Need This?

- **Housing affordability is a long-term issue**
- **A decade of dramatically increasing prices and sharply constrained supply spurred this law**
- **Economic growth depends on a ready supply of labor**
- **Despite the economic downturn, NH is still in comparatively good shape and housing prices have not come down as much as elsewhere—we're poised for success, and for even higher housing costs**





Bellamy Mill, Dover
Subsidized rentals



Belleview, Amherst
Affordable market rate condo quads



Belleview, Amherst
Affordable market rate condo duplexes



Squamscott Block, Exeter
Subsidized and market rate rentals



Shaker Heights, Chester

- **Affordable duplex and quad townhouses built on the property subject to the 1991 Britton v. Chester case**
- **An example of conservation subdivision design**

***Economic growth depends
on capital, land, and labor***

***Where does labor go to
sleep at night?***

What is fair to everyone?



Questions?

Ben Frost

bfrost@nhhfa.org

(603) 310-9361

