

New Hampshire's Workforce Housing Law

***Central New Hampshire
Regional Planning Commission***

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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 and self-sustaining**
 - *Not a State department (an instrumentality of the State)*
- **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
- **Does not oversee local housing authorities**



New Hampshire Housing's Programs

■ Home Ownership

- Single Family Mortgages
- Typically: 1,300 -1500 loans / year: \$200 Million / year (only 800 in '08)

■ Multi-Family Housing Development

- 300+ units financed / year
- NH Housing finances multi-family housing construction, it does not develop or own housing
- NH Housing depends on developers (for-profit & non-profit) to find opportunities to build or rehabilitate housing



New Hampshire Housing's Programs

- **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
 - NH Workforce Housing Council

www.workforcehousingnh.com



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—HB 1260

- **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



Affordable / 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

- **RSA 674:58 - :61 Workforce Housing In Statute**
 - All municipalities must provide reasonable and realistic opportunities for the development of workforce housing, including rental and multi-family housing (674:59, I)
 - The collective impact of all local land use regulations shall be considered to determine if such opportunities exist (*a facial test*) (674:58, III)—this is a call for a regulatory audit by the planning board
 - Workforce housing of some type must be allowed in a majority of residentially-zoned land area—but not necessarily multi-family (only needs a reasonable opportunity *somewhere*) (674:59, I)
 - Lot size and density must be reasonable (674:59, I)



Workforce Housing

- **Definitions RSA 674:58**
 - 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

- **Definitions RSA 674:58**
 - 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

- **“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 (674:59, III)
 - View this as only an *affirmative defense*
 - Reasonable restrictions may be imposed for environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection (674:59, IV)



Workforce Housing

■ Inclusionary Zoning

- The best way to address the law (RSA 674:59, I)
- Defined: RSA 674:21—incentives to voluntarily induce developers to create affordable housing
- Don't inadvertently create barriers with unrealistic requirements (e.g., 10% density bonus, but all units must be affordable)—it has to be “economically viable” (see RSA 674:59, II)
- Model created by DES and RPCs
 - http://des.nh.gov/organization/divisions/water/wmb/repp/innovative_land_use.htm



Workforce Housing

- **Land Use Board Process—RSA 674:60**
 - 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

- **Appeals—RSA 674:61**
 - 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” imposed by court as a remedy shall include affordability restrictions on workforce housing units



Workforce Housing

- **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
 - Technical assistance to municipalities and to regional planning commissions



Passed 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:** *Passed* (with a non-germane amendment) (House concurred)
 - **Governor:** signed into law on July 8, 2009
 - **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
 - Solutions as varied as the towns proposing them—zoning changes, master planning
 - Majority of zoning proposals were successful
 - Other towns already preparing for town meeting in 2010
 - Cities or towns with Council form more flexible



Workforce Housing

■ Local Approaches

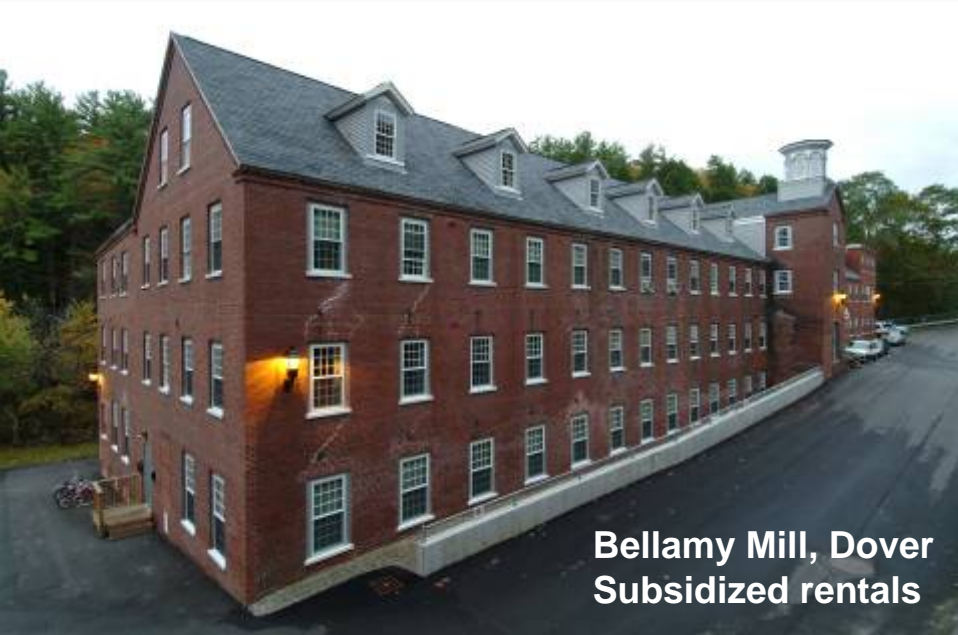
- Inclusionary zoning is the single best measure, but there are many ways to comply
- Increased Density; reduced lot size, frontage, setbacks, environmental standards that exceed state minimums
- Accessory dwelling units
- Multi-family and Workforce Housing overlay zones
- Flexible development standards
- Talk with developers to find out what they need to build economically viable workforce housing



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



Peacock Brook, Amherst
Affordable market rate condo single-family



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**

Questions?

Ben Frost

bfrost@nhhfa.org

(603) 310-9361

