

MEMORANDUM

DATE: October 31, 2014

TO: Honorable Margaret Wood Hassan, Governor
Honorable Terie Norelli, Speaker of the House
Honorable Chuck W. Morse, President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Honorable Tammy L. Wright, Senate Clerk
Michael York, State Librarian

FROM: Representative Ed Butler, Chairman

SUBJECT: Final Report on SB 185 (Chapter 233, Laws of 2013)

Pursuant to SB 185 (Chapter 233, Laws of 2013), enclosed please find the Final Report of the Commission on Housing Policy and Regulation.

If you have any questions or comments regarding this report, please feel free to contact me.

Final Report of the Commission on Housing Policy and Regulation

The Commission was established by the New Hampshire Legislature pursuant to SB 185, (Chapter 233, Laws of 2013) for the following purpose: “to identify and reduce legislative and administrative barriers to the creation of affordable housing and to encourage the development thereof, including possible incentives to build such housing, in order to maintain safe, healthy, and diverse communities for all residents of New Hampshire.”

A Commission website was developed. It contains all minutes and many resources from presentations made to the Commission. It will be accessible for the foreseeable future.

<http://www.nhhfa.org/housing-data-state-planning-commission.cfm>

Members:

Bob Odell - Senate	David Watters - Senate
Edward Butler - House	James Grenier - House
Steven Lewis - Governor	Peter Throop - Governor
Robert Tourigny - Governor	Susan Slack - Office of Energy & Planning
Benjamin Frost - NH Housing Finance Authority	Maureen Ryan - DHHS
Rene Pelletier - NH DES	William Watson, Jr. - NH DOT
Ronald Anstey, Jr. - NH Dept. of Safety	Nadine Peterson - NH Div. of Historical Resources
Lynn Christensen - NH Municipal Assoc	Eric Chinburg - Home Builders & Remodelers Assoc. of NH
Bill Weidecher - NH Assoc. of Realtors	Kenneth Ortmann - NH Assoc Reg Planning Comm
Richard Minard - NH Community Loan Fund	Debbie Valente - NH Property Owners Assoc.
Jeff Dickinson - Granite State Independent Living	Bill Caselden - Housing Action NH
Mark Kaufman - NHMMHA	John Hoyt Jr. - NH Housing Authorities Corp.
Sarah Marchant - NH Planners Assoc.	Keith Thibault - NH Community Action Assoc.
Chris Wellington - NH DRED	

The Commission held its organizational meeting on September 3, 2013 and elected Rep. Butler as chairman and Sen. Odell as vice chairman. Commission members identified their top priority issues.

Commission Overview

The Commission developed and supported two legislative initiatives in the 2014 session.

- SB 387 (Chapter 291, Laws of 2014) amended the Land Sales Full Disclosure Act, RSA 356-A, extending the Act’s exemptions to a larger range of municipalities. This change will help to reduce costs of development and eliminate redundancy of review between the Attorney General’s office and local planning boards.

- SB 393 (Chapter 323, Laws of 2014) amended the enabling statute of the New Hampshire Housing Finance Authority, eliminating anachronistic standards and providing NHHFA with greater flexibility to address developers' anticipated return on investment.
- The Commission developed a fact sheet for use by local officials regarding administration and enforcement of the State Building and Fire Codes, to help overcome misunderstanding about the overlap between the two.

Commission Recommendations

The Commission makes the following recommendations:

- The Legislature should enact legislation allowing local permit applicants to choose from among different consulting engineers identified by the municipality who provide independent third party review to planning boards to improve accountability of engineers' review and to foster price competition. Such legislation should not preclude a municipality from contracting with other parties for non-engineering services, such as economic impact analysis and analysis of developments of regional impact. Such legislation should also provide for municipalities that have staff civil engineers and conduct development review "in-house."
- The Legislature should enact legislation identifying DES rules for low-impact development standards as an acceptable default for local permits in appropriate circumstances, and when such standards are used, then to prohibit any local requirements for redundant standard designs, subject to an appeals process for municipalities.
- The Legislature should make capital appropriations to the Affordable Housing Fund (RSA 204-C:56-59) for as long as the need for affordable housing is not met by supply. The Legislature should regularly assess the housing needs of the state and determine whether policy, regulatory or funding initiatives are necessary to support the economic development needs of the state and its communities.
- The Legislature should monitor pending state court litigation over taxation of abandoned units in manufactured housing communities, and depending on the outcome of that litigation should work to resolve the conflict between municipalities and owners of manufactured housing communities on this issue.
- The New Hampshire Planners Association should work collaboratively with the NH Building Code Review Board, the NH State Fire Marshal's Office, the NH Association of Fire Chiefs, and the NH Building Officials Association to widely disseminate the Building Code/Fire Code Fact sheet.

Meeting Summaries

September 24, 2013. Attorneys James Boffetti and David Rienzo of the Attorney General's Office addressed the Commission and reviewed the requirements of the Land Sales Full Disclosure Act, RSA 356-A. To further review this issue, a subcommittee was established consisting of Commission members Thibault, Chinburg, and Marchant. Dan Smith, Director of Housing Research at New Hampshire Housing, made a presentation on housing affordability in the state.

October 15, 2013. The Commission reviewed draft language for two bills to be introduced by Senator Watters on behalf of the Commission. One bill would amend RSA 356-A, the Land Sales Full Disclosure Act; the other would amend RSA 204-C and 204-D, related to New Hampshire Housing Finance Authority. Commission members Rick Minard and Mark Kaufman reviewed problems faced by owners of manufactured housing parks who seek to demolish and replace abandoned units where property taxes are in arrears. Some communities refuse to issue a demolition permit until the taxes are paid, but the taxes owned on the unit prior to foreclosure by the park owner are not his/her legal responsibility. A subcommittee was established to further review this consisting of Commission members Minard, Kaufman, Slack, Grimbilas, and Rep. Grenier. Rene Pelletier and Ridgeley Mauck of the Department of Environmental Services addressed the Commission and reviewed the requirements of the DES Alteration of Terrain permitting process.

December 10, 2013. The Commission received a presentation by Joe Coronati of Jones & Beach Engineers regarding the impact of recent changes to the Administrative Rules for the Alteration of Terrain (AoT) Permit Program administered by the Department of Environmental Services. The Commission created a subcommittee to review the AoT Program and to recommend any necessary changes. The Commission received a report from the Subcommittee on Taxation of Abandoned Manufactured Homes.

February 11, 2014. The Commission received presentations from the following on issues related to enforcement of and conflicts between the state building code and the state fire code:

- Shawn Bergeron – NH Building Code Review Board
- J. William Degnan – NH State Fire Marshal
- Jason Lyons – New London Fire Department; NH Association of Fire Chiefs
- Wayne Richardson – NH Building Officials Association

The Commission concluded that while the conflicts are largely the result of communication issues at the local level, it could nonetheless facilitate the creation of a fact sheet that would help to inform local officials of their different responsibilities and roles in enforcing and interpreting the codes. Sarah Marchant agreed to lead that effort.

May 5, 2014. The Commission received a presentation from Dan Smith, Director of Research at New Hampshire Housing, outlining data on housing supply and demand for extremely low- and very low-income people.

The Commission also received presentations from the following on matters detailing the opportunities, barriers, and strategies to the development of housing for low-income people.

- Linda Harvey, Laconia Area Community Land Trust
- Greg Payne, Maine Affordable Housing Coalition and Avesta Housing

Sarah Marchant reported that the Building and Fire Codes Work Group had completed an fact sheet for distribution to local officials. The fact sheet will be distributed widely to municipalities and the development community to help increase understanding of the interplay between the two codes and how they should be administered and enforced.

June 16, 2014. The Commission received a presentation on housing issues relevant to the state's "Olmstead" settlement (*In re: Amanda D.*) from Ry Perry and Michelle Harlan of the Department of Health and Human Services. Presentations were also made by Chris Miller and Bill Guinther, both of New Hampshire Housing, concerning the Low Income Tax Credit Program and the HUD 811 funding, respectively. Both programs have been adjusted to directly or indirectly aid the state in meeting its obligations under the Olmstead settlement.

September 30, 2014. The Commission receive presentations from the following, regarding funding sources for the development and of affordable housing.

- Dean Christon, New Hampshire Housing
- Kevin Flynn, NH Community Development Finance Authority
- Marty Chapman, The Housing Partnership
- Maureen Beauregard, Families in Transition
- George Reagan, New Hampshire Housing/BIA Strategic Economic Plan

October 16, 2014. The Commission reviewed and adopted the final report after discussing recommendations.

Respectfully Submitted,



Representative Ed Butler, Chair
October 31, 2014

Attachments

- Report of the Subcommittee on Alteration of Terrain Program
- Report of the Subcommittee on the Problem of Abandoned Homes in Manufactured Housing Communities
- Building Code/Fire Code Fact Sheet

Commission on Housing Policy and Regulation
Subcommittee on the Problem of Abandoned Homes in Manufactured Housing Communities

October 16, 2014

Final Report and Findings of the Subcommittee

Background:

At the October 2103 meeting of the Commission on Housing Policy and Regulation, the issue of abandoned homes in manufactured housing communities was discussed. Chairman Butler appointed a subcommittee of the Housing Commission to look at the issue of abandoned homes in manufactured housing communities. The members appointed were Representative Jim Grenier, Rick Minard (NH Community Loan Fund), Susan Slack (NH Office of Energy and Planning), and Mark Kaufman (NH Manufactured and Modular Housing Association). Jodi Grimbilas, Director of Government Affairs for Bianco Professional Association, and lobbyist for NHMMHA, offered to provide assistance to the subcommittee.

A report of the Subcommittee was given to the Commission on December 10, 2013. (Attachment A). The subcommittee met two additional times (February 4, 2014 and May 5, 2014) and was joined by Lynn Christensen, representing the NH Municipal Association. Since the subcommittee's last meeting, the subcommittee members have learned that Mr. Minard is no longer with the NH Community Loan Fund.

Discussions:

The subcommittee's discussion focused on several issues:

- **Increasing Communication Between Parties.** The subcommittee members agreed that there needs to be clear communication between municipalities and manufactured housing communities in order to resolve issues relating to abandoned homes before they go on too long. Notification requirements in statute should be considered. For example:
 - o Municipalities should inform parks if a resident is delinquent on taxes (years)
 - o Parks should inform municipalities if a home has been abandoned.
- **Establishing Timeframes for Action.** The subcommittee believed that swift action was needed. It was found in some cases, it took too long to resolve an issue and therefore the back taxes and costs become an impediment to finding a solution. The subcommittee discussed establishing a time frame for a municipality to act on abandoned home (i.e. to either take the home for taxes, or give it to the park for the park to dispose of it.) The Committee discussed a time frame of 60 – 90 days. The subcommittee also discussed stopping the accrual of taxes and fees once a property has been found to be abandoned.
- **Addressing Unpaid Taxes and Liability.** Municipalities do not want to abate taxes. Park owners, by law, are not responsible for the taxes owed by a resident. Municipalities do not want the liability of taking over an abandoned home. Park owners want to dispose of the property and quickly as possible so that a new home can be placed. These issues have been

the most challenging for the subcommittee. The subcommittee discussed the following concept to resolve this ongoing issue:

- If a Municipality does not wish to take the deed to the abandoned manufactured home, it should transfer the property to the park owner without the payment of back taxes. The home can then be disposed of by the park owner at the park owners' cost. The municipality would not be required to "abate" the taxes, but instead could continue to seek payment of the back taxes from the resident from which it is owed. The Municipality would not accept liability for the abandoned home, as it will be transferred to the park owner.

Since its last subcommittee meeting in May, efforts have been made to discuss these concepts with the broader groups. With the loss of Rick Minard's participation, efforts to reengage cooperatives will need to be reestablished.

Discussions with private manufactured housing community owners have raised a couple of issues for the subcommittee to consider:

- 1) Litigation. An issue related to abandoned homes in a manufactured housing community is currently being litigated in the Court system. It was suggested that the introduction of legislation consider the outcome of such litigation so as not to confuse the issue.
- 2) Communication is key, however, some community owners remarked about how some tax collectors are easy to work with and some are very difficult.
- 3) Can a municipality transfer a property if they choose not to take over the property? (These are legal questions that will need to be addressed)
- 4) Need to clearly define an "abandoned" home – some abandoned homes have value, some homes do not. Need to be clear on the assumptions being made.
- 5) What if a manufactured housing community does not want to take over the abandoned home? The concept assumes the park owner wants to take over the home to dispose of it.
- 6) Does the solution require legislation? Could there be an MOU or protocol between municipalities and manufactured housing communities?

Discussions with the NH Municipal Association were also had over the summer/fall.

Conclusions:

The subcommittee has come a long way from where the initial discussions started. Addressing the issues of communication, timeframes, taxes and liability are key to finding a solution that is fair to all parties. Ultimately, a new home with a tax paying resident is what both the municipalities and manufactured housing communities want to achieve.

The subcommittee did not get the opportunity to meet prior to the final meeting of the Housing Commission in order to discuss potential recommendations such as:

- Holding the discussion until the result of litigation is known?

- Meeting again to discuss further the broader stakeholder views?
- Establishing a placeholder for legislation?
- Working up another draft for legislation with more detail?
- Other?

Further discussions may happen in an ad hoc basis as more information becomes available.

Submitted By:

The Honorable Jim Grenier

Susan Slack (NH Office of Energy and Planning)

Mark Kaufman (NH Manufactured and Modular Housing Association).

Lynn Christensen (NH Municipal Association)

Commission on Housing Policy and Regulation (SB 185)

Alteration of Terrain (AoT) Subcommittee

Minutes, September 8, 2014

Location: Room 113, DES, Hazen Drive, Concord

Present: Rene Pelletier, Ridgely Mauck, Robert Tourigny, Steve Lewis, Bill Caselden, Ben Frost

The meeting began at 2 pm.

Rene reported that DES has adequate statutory flexibility, as its rules may be waived in appropriate circumstances, and where proposed design alternatives provide protection that is at least equal to standard design. No waivers are granted for treatment or stormwater control standards. The recent statute creating the integrated permit in RSA 489 will be helpful, but the deadline for creation of the rules has been extended to 2017 because DES does not have sufficient personnel to create them. The AoT statute requires DES to review applications within 50 days of submission. He said that they didn't have the financial capacity to maintain full staffing levels that would be necessary to get actual permit review time down to below 30 days, due to seasonal fluctuations in permit applications and the fees generated. The fee is statutory, and it is a fee-funded program.

Steve stated that projects that are nearly complete must get a new permit if the permit expires. Rene responded that under a 2012 statutory change, if the local planning board deems a project to be substantially complete then a new permit would not be required. Steve said he hadn't heard about this before. Ben indicated that this information would be another opportunity for agencies to collaborate with the NH Planners Association to inform local officials of their role in state permit processes.

Robert asked about the quality of the applications, noting that the applicants have 120 days to respond to initial DES comments. Ridge replied that the applications are getting better, the DES has 50 days to approve an application or provide review comments, and then applicants have 120 days to provide a complete response. If a response is incomplete, the DES may deny the application but denials are rare as DES tries to work out technical issues with the applicants. If an application is denied, the reasons for issuance of a denial must be very detailed. In 2007, there were 380-400 applications; now there are 150-170 applications annually, with only a handful of denials. Bill asked how many applications get approved without comment. Ridge will research that question. [Follow-up information from Ridge: "In response to the question of the number of AoT applications approved without a comment: Since January 2009, an average of 25% of applications are approved without significant comment (i.e. without issuance of a Request for More Information letter), with a range between 8% (2010) and 34% (2011)."]

Ridge said that the AoT rules identify nine criteria that allow for modification of approved plans without a permit amendment, provided notification and as-built plans are submitted to DES.

Beyond that, amendments to approvals are required, generally are handled in two weeks, and require a minimum \$250 fee.

Steve stated that local third party review can be a barrier to creativity. He said that while a development will be built using low-impact development (LID) standards approved by DES, some planning boards' consulting engineers will also require fully engineered plans based on standard design because they don't understand or dislike LID. They may also require redundant construction of standard designs where LID designs have already been built, significantly adding to construction costs. He observed that some local third party reviewers require things that DES prohibits.

Recommendations:

- The Legislature should enact legislation allowing local permit applicants to choose from among different consulting engineers who provide independent third party review to planning boards to improve accountability of engineers' review and to foster price competition.
- The Legislature should enact legislation identifying DES rules for low-impact development standards as an acceptable default for local permits in appropriate circumstances, and when such standards are used, then to prohibit any local requirements for redundant standard designs.

The meeting adjourned at 4 pm.



NH BUILDING & FIRE CODES

Local Building and Fire Codes

What is a local building code?

Counties, towns, cities and village districts may adopt by ordinance pursuant to RSA 674:51 or RSA 47:22 any additional regulations provided that such regulations are not less stringent than the requirements of the state building code and state fire code. (RSA 155-A:2 (V))

The minimum requirements for all buildings and structures within the State of NH are those listed above in the state building code and state fire code. A locality may adopt more stringent requirements only.



What is a local fire code?

Municipalities may adopt local bylaws or ordinances in accordance with RSA 47:22 or RSA 155-A:3, provided that such regulations are not less stringent than the requirements of the state building code and fire codes. (RSA 153:5)

What codes make up the state building code?

The International Building Code 2009, the International Existing Building Code 2009, the International Plumbing Code 2009, the International Mechanical Code 2009, the International Energy Conservation Code 2009, and the International Residential Code 2009, as published by the International Code Council, and the National Electric Code 2011, as amended by the NH State Building Code Review Board. (RSA 155-A:1 (IV))

What codes make up the state fire code?

The Life Safety Code 2009, Saf-C 6000 Rules, and the Uniform Fire Code NFPA1, 2009 edition. (RSA 153)

What do the building codes and fire codes apply to?

The Building Code Applies to:

All buildings, building components, and structures constructed in NH shall comply with the state building code and state fire code. The construction, design, structure, maintenance, and use of all buildings or structures **to be erected and the alteration, renovation, rehabilitation, repair, removal or demolition of all buildings and structures previously erected** shall be governed by the provisions of the state building code. (RSA 155-A:2)

The Fire Code Applies to:

All persons constructing, reconstructing, modifying, maintaining or **occupying any building or structure** and all owners or occupants of existing structures or premises shall comply with the requirements set forth in the State Fire Code "PART Saf-C 6008 through 6015" as adopted and amended by the State of NH except as amended in Sections 2 and 4.
All new construction and existing buildings, even if not in renovation. Pre-existing, occupied buildings are **not exempted**, but may not have to comply with standards for new construction.

NH Planners Association

<http://www.nhplanners.org/>

NH Association of Fire Chiefs

<http://www.nhafc.org/>

NH Building Officials Association

<http://nhboa.net/>

NH Building Code Review Board

<http://www.nh.gov/safety/boardsandcommissions/bldgcode/>

NH Fire Prevention Society

<http://www.nhfps.org/>

New Hampshire Division of Fire Safety

<http://www.nh.gov/safety/divisions/firesafety/index.html>



What is the local process for appealing the state building code or state fire code?

The local Building Code Board of Appeals can be one of the following organizations (RSA 673:1 and 673:4):

- A separate appointed board of 3 or 5 members; or
- The appointed or elected ZBA; or
- If no appointed board and no ZBA, then it is the Board of Selectmen

The local Building Code Board of Appeals shall only hear appeals of decisions made by the local building official or local fire official **as to the application and interpretation** of the state building code or state fire code (RSA 674:34).

The Standard of Review (RSA 674:34) for the local Building Code Board of Appeals is:

- The true intent of the code or the rules adopted thereunder have been incorrectly interpreted; or
- The provisions of the code do not fully apply; or
- An equally good or better form of construction is proposed.

The local appeal process decision is not a variance or a waiver. The local appeal process has no authority to waive or vary requirements of the state building code or state fire code. Decisions of the local Building Code Board of Appeals, whether related to the state building code or state fire code, are reviewable only in Superior Court. (RSA 677:16)

Is there any way to seek a variance or exemption from the state codes?

A variance or exemption can be requested from the state fire code through the state Fire Marshal pursuant to Saf-C 6005.04 Consideration of Variances or Exceptions for any code or rule provision. Any request for an exception or variance shall contain an alternative method of achieving the same level of code compliance as outlined in the code section, or rule provision item.

The State Fire Marshal may exempt a building, structure, or equipment from the state fire code if he or she finds that such exemption does not constitute a hazard to the public welfare and safety (RSA 153:5 (IV)). There is no agency, individual, or municipal official empowered to grant a variance or exemption from the state building code.

What happens when a conflict arises between the building and fire codes?

To the extent that there is any conflict between the state building code and the state fire code, the code creating the greater degree of life safety shall take precedence, subject to the review provisions contained in RSA 155-A:10. If the municipal building and fire code officials cannot agree which code creates the greater degree of life safety, the property owner may notify the 2 officials in writing that if agreement is not reached within 2 business days of delivery of said notification, that the decision shall be made by the property owner to comply with either the applicable building code or fire code. Such decision by the property owner after proper notification shall not be grounds for the denial of a certificate of occupancy. (RSA 155-A:2)

Decisions of landowners as to which code will apply under RSA 155-A:2, II are not reviewable, since the decision is not a ground for denial of a certificate of occupancy.

NH Planners Association

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