



Mad River, Farmington

## Creating Housing Solutions

There are solutions to New Hampshire's housing challenges. Being actively engaged in meeting your community's housing needs is important, because a purely market-based response – that is, without public intervention through policy and funding – has the potential of risking economic stagnation due to the market's failure to respond to the needs of our entire population. Engaging with partners and looking at tools and techniques to supplement market forces can reveal strategies for reducing front-end costs and expanding housing opportunities, especially for mid- and lower-income families.

The solution to this problem will require commitment from local leaders and citizens who decide to act on behalf of their communities and allow housing to be developed on vacant land or in rehabilitated older properties, or change local zoning laws to promote a more diverse housing stock. There is not enough money available through government programs alone to create enough housing for every segment of the population. Therefore, New Hampshire communities should focus on creating a range of market rate units.

Affordability is related to the overall supply of housing, and a general increase in housing within a community will also help provide more affordable housing stock for those residents who need it.

Many of New Hampshire's successful local and regional housing initiatives possess the following:

- ▶ A vision
- ▶ A plan for implementing the vision
- ▶ Political will and support
- ▶ Effective community organizing and communication
- ▶ Regulatory and non-regulatory tools tailored to the situation
- ▶ Financial resources
- ▶ Capable development partner(s)

These attributes allow communities to work on expanding their supply and range of housing units while preserving their character and resources.

## **Developers**

In New Hampshire private and non-profit developers have been, and will continue to be, the driving force in the creation of housing units. They have been responsible for creating a large percentage of the affordable units throughout the state. Allowing a greater range of housing types in our communities without requiring special permits or zoning variances will make the creation of new units possible. Incentives, such as density bonuses, will also generate greater interest in producing a variety of housing types in different price ranges. This will give the developers in the state more flexibility to meet the market demand for starter homes, rehabilitation or conversion of existing homes, and affordable apartments.

## **Housing Organizations**

One approach to keeping the issue of housing and affordability on the table is to partner with, or establish, a housing partnership. A housing partnership can effectively keep housing issues on the local agenda. Active housing organizations can be used to raise public awareness of housing issues, work to identify the range of needs and opportunities, and access financial and technical assistance from New Hampshire Housing Finance Authority.

Successful housing partnerships have the support of local officials, create a broad network of interest groups and organizations, and involve housing professionals. A list of regional housing groups working in New Hampshire is available in the Appendix.

## **The Role of Planning**

Sound planning provides the framework for building successful communities, but questions often arise regarding the types of planning done by cities and towns, the relationship of planning to development patterns and practices, and the amount of planning necessary before it's time to take action. There are several things to learn about planning in New Hampshire before getting started:

New Hampshire statutes require that communities develop a master plan before they adopt a zoning ordinance (see RSA 674:2). The law only requires that

the master plan contain a vision section and a land use section, but 15 other sections are recommended and often included, including a chapter on housing. The master plan housing section should assess local housing conditions and project future housing needs of residents of all income levels and age groups. This section should also include housing data identified in the regional housing needs assessment performed by the regional planning commission (RPC).

New Hampshire RSA 36:47 requires each of the state's nine regional planning commissions to prepare a regional housing needs assessment and a comprehensive regional plan. For the comprehensive regional plans, the regional planning commissions are encouraged to use the same layout as the state's comprehensive development plan (RSA 9-A:1, III), the structure of which is based on the local master plan elements. A housing chapter is a required element of this state-level policy document. Housing should be a focal point in each of these documents, providing an opportunity to compare and contrast the information presented at the local, regional and state levels.

Two other important elements to be included in all three of these plans are vision and implementation sections. Without a clear vision statement it is difficult to know where the town, region or state intends to go in the future. The implementation plan is used to achieve that vision through regulatory and non-regulatory means, but must be monitored to ensure that it is in keeping with the vision and the plan as a whole.

Housing should be specifically addressed in several other sections the plans as well: The relationship between housing and the economy, transportation, and the environment are all important to understand and will shape the vision of our communities and our state well into the future.

## **Your Community's Legal Obligations**

In 1991, the New Hampshire Supreme Court decided *Britton v. Town of Chester* (134 N.H. 434), which recognized that the state's zoning enabling statute contains an obligation for every municipality to provide a reasonable and realistic opportunity for the development of housing that is affordable to low- and



South State Street, Concord

## CATCH Neighborhood Housing – Concord

Helping families become homeowners or find stable, affordable apartments means improving the families' quality of life and improving neighborhoods for the long term. Since 1989, CATCH Neighborhood Housing (formerly the Concord Area Trust for Community Housing) has done just that. CATCH accomplishes its mission by increasing the supply of affordable apartments, searching beyond city limits to expand housing choices, educating and empowering families to take control of their finances and to purchase their own homes, and nurturing neighborhoods through quality local management.

CATCH has effectively created 342 housing units helping more than 600 people gain access to decent and affordable housing. They have helped more than 300 families purchase their own homes, and provided financial literacy programming to more than 1,000 people. CATCH recently completed Mennino Place in downtown Concord, which features 45 affordable one- and two-bedroom apartments and offers preference to local artists.

CATCH has received local and national recognition for its work, but its staff members take greatest pride in helping local families and individuals access safe, decent, affordable housing.

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Mennino Place, Concord

moderate-income families. The court also ruled that every municipality has an obligation to provide for its “fair share” of a region’s current and prospective need for affordable housing, but the court didn’t define what the term “fair share” meant, and it specifically refused to establish “arbitrary mathematical quotas.”

In the years following the *Britton* case, there were a number of efforts in the New Hampshire Legislature to study the state’s housing supply. In 2001, the Legislature created a commission (SB 21) to develop legislation addressing the lack of workforce housing. The commission concluded that although there were other factors, the regulatory barriers created by towns had a significant impact on housing costs and were also within the Legislature’s capacity to influence. After that, several efforts were made to pass legislation that recognized the relationship between local land use regulations and the cost of housing—and also to codify the Court’s rulings in *Britton*. These efforts culminated with the enactment of SB 342 in 2008 (Chapter 299), codified at RSA 674:58 - :61, which went into effect January 1, 2010.

Even in a weaker housing market, the variety of housing that exists in New Hampshire today does not satisfy the need for workforce housing in many areas of the state. Short-term economic trends should not be regarded as a means by which a municipality might hope to avoid its obligations under the workforce housing statute. It is a law that was based on a decades-long problem that will take a sustained statewide effort to resolve.

### **Requirements of the Workforce Housing Law**

The workforce housing statute requires each community to provide a reasonable and realistic opportunity to develop workforce housing, while providing “maximum feasible flexibility” to meet the general legal obligation in a manner that is most appropriate to its circumstances. What will constitute a “reasonable and realistic opportunity” is determined by a few specific requirements: (1) the municipality’s land use ordinances and regulations cannot facially (openly) discriminate against housing for families in certain income ranges; (2) the collective impact of those ordinances and regulations must allow for the economic viability of a project to develop workforce housing; (3) workforce

housing of some type must be allowed on a majority of the residentially-zoned land in the community; and (4) multi-family housing with at least five units per structure must be allowed somewhere in this area.

“Workforce housing” and “affordability” both have been terms of art, but they now have specific statutory definitions. A home is considered “affordable” to a household if not more than 30 percent of the household’s income is spent on housing costs. “Workforce housing” is ownership housing that is affordable to a family of four earning up to 100 percent of the median income for the area, or rental housing that is affordable to a family of three earning up to 60 percent of the median income for the area. This definition of workforce housing is generally considered to include a broader range of incomes than traditional notions of affordable or “low-income” housing.

While municipalities cannot be expected to control many of the other costs associated with housing construction, they can control things such as lot sizes and densities, building setback and road frontage requirements, and road design standards, among others. For some communities, compliance with the workforce housing statute may be as simple as some technical adjustments to these standards. For other municipalities, however, compliance could also involve a more proactive approach that provides incentives for workforce housing development balanced against measures to preserve the landscape we all cherish. Innovative provisions such as dense village centers, conservation subdivision design, inclusionary zoning, and form-based codes can accomplish these dual goals. The steps that are necessary for any municipality to meet the requirements of the statute should not threaten the appearance or composition of the community, including rural landscapes, if the community engages in a thoughtful planning process.

Municipalities that do not provide opportunities for the development of workforce housing must demonstrate that they already have their regional “fair share” of affordable housing. Data from regional planning commissions may be useful in determining whether the “fair share” exists, but there is no standard methodology used to calculate it. Municipalities that determine they have satisfied the “fair share” requirement should

carefully document that finding, as it is an assertion that would need to be defended if a developer took legal action against the community under the workforce housing statute.

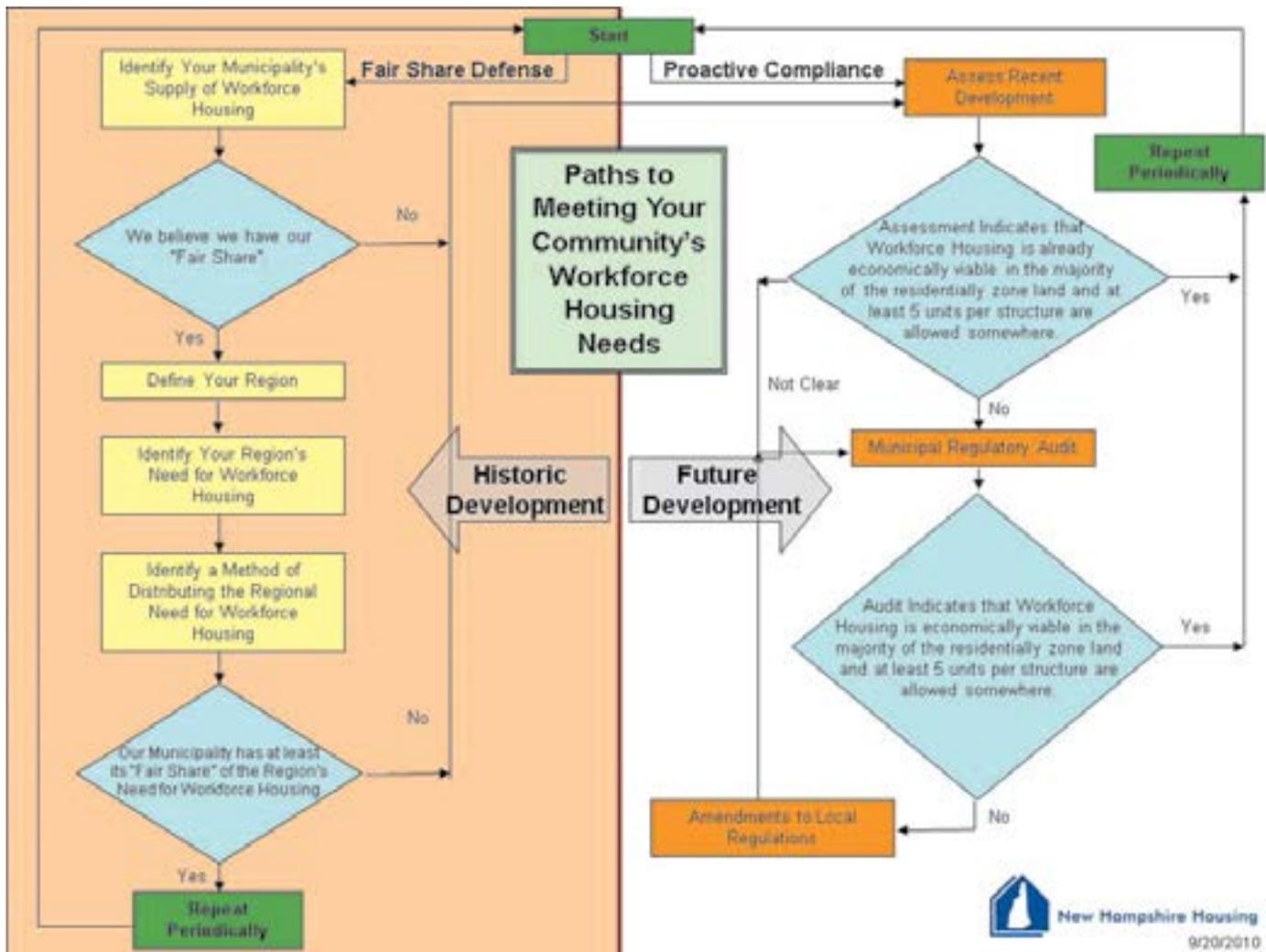
If a developer believes that the municipality's regulations do not provide the opportunity to develop workforce housing, he or she can challenge either the local board's denial of an application or the restrictions placed upon the application. Under the statute, the community can use as an affirmative defense that its housing stock contains its fair share of current and

reasonably foreseeable regional need for workforce housing. If this defense fails or if the municipality otherwise does not comply with the statute, the court can then order the "builder's remedy," in which the court allows a reasonable project to proceed without further review by local boards.

### Workforce Housing Guidebook

Recognizing that many local planning boards would have some difficulty understanding what they need to do to meet the requirements of the Workforce Housing Law, New Hampshire Housing developed a

## Alternative Approaches to Compliance with the Workforce Housing Statute



guidebook for municipalities, *Meeting the Workforce Housing Challenge: A Guidebook for New Hampshire Municipalities*. Information on the guidebook can be found in the Appendix.

Under the workforce housing statute, developers' legal challenges to local land use regulations and to the decisions made under them will be viewed by a court in light of a municipality's efforts toward compliance with the law's requirements. An underlying purpose of the *Guidebook* is to serve as a standard to guide municipal actions, and against which a reviewing court may measure those actions. The steps outlined in the *Guidebook* will help local land use boards create records that demonstrates their understanding of the statute and their efforts in meeting the law's requirements.

The *Guidebook* is divided into major substantive sections: after an introduction of the statute and the history behind it, Chapter 2 discusses and explains the terms used in the workforce housing statute. Chapter 3 explains how local land use boards should approach the difficult question of "economic viability." This section reviews the complete costs of housing development, and provides land use board members with an overview of the complex array of cost factors faced by developers to help board members distinguish those factors that they can influence from those they cannot. A developer's "pro forma" is provided, along with illustrative examples.

In Chapter 4, the *Guidebook* outlines the steps to conduct an assessment of a municipality's housing stock. The purpose of the assessment is simply to gain an understanding of the nature of the local housing market and to determine if the municipality has, in the past, provided reasonable and realistic opportunities for both ownership and rental workforce housing. Gathered by the assessment, an inventory of affordable housing could also be compared to a municipality's "fair share" allocation of the region's need for affordable housing.

A fair share allocation may have been created by the regional planning commission as part of its regional housing needs assessment, but this allocation is not required by statute. It is important to understand that a fair share allocation is relevant only if a community's regulations do not provide reasonable and realistic

opportunities for workforce housing development, and the regulations are challenged in court. In that sense, the notion of fair share should be regarded as an "affirmative defense." The better alternative, and safer from a legal standpoint, is to ensure that reasonable workforce housing development opportunities are provided. Chapter 4 reviews changes that should be considered to zoning ordinances and land use regulations as a means of providing such opportunities. See the flowchart below for alternative conceptual approaches to the law.

Chapter 5 concludes the *Guidebook* with a discussion of how local boards should deal with applications for workforce housing. The statute contains a variety of procedural provisions that must be observed, but there are additional steps that may be particularly useful to land use boards as they seek to provide an impartial review of proposals in a manner that is consistent with the statutory requirements.

### **Local Housing Commissions**

Your community must continually work to ensure that it is responding appropriately to affordable housing needs. A local housing commission can advocate for the development of affordable and workforce housing and can serve as a resource to local land use boards on matters affecting housing resources. A commission can provide feedback on the progress of affordable housing efforts and recommend if changes should be made. The creation of local housing commissions is enabled by RSA 674:44-h, enacted by the Legislature in 2008.

Local housing commissions are advisory only, and have no regulatory or enforcement powers. Commission members work cooperatively with other municipal boards to ensure that affordable and workforce housing concerns and interests are better understood and considered in decision-making.

A housing commission may:

- ▶ Assist the planning board in the development and review of those sections of the master plan that address housing and local land use ordinances and regulations that have the potential to affect the cost or availability of housing.

- ▶ Advise local agencies and other local boards in their review of requests on matters affecting or potentially affecting housing resources.
- ▶ Hold meetings and hearings necessary to carry out its duties.
- ▶ Conduct a housing needs assessment, which as a starting point, may use the regional planning commission's housing needs assessment conducted under RSA 36:47, II.
- ▶ Publicize and report its activities.
- ▶ Hire consultants and contractors.
- ▶ Receive gifts of money and property, both real and personal, in the name of the city or town, to assist in carrying out the purpose of this section.
- ▶ Acquire and dispose of real property interests in the name of the town, subject to prior approval of the local governing body, for the purpose of maintaining or improving housing affordability.

When a municipality establishes a housing commission, an affordable housing fund is also created, to be administered by the commission. While there is no requirement for the community to appropriate money to it, the fund allows the housing commission to act as the municipality's agent to receive funds and make expenditures that support affordable housing. Fund monies can accumulate from year to year and do not lapse to the municipality's general fund. Unlike the conservation fund's use in permanently acquiring property, however, the housing fund typically will only serve the purpose of facilitating transactions relative to affordable housing. 🏠



Millview, Laconia