New Hampshire Housing

Meeting the Workforce Housing Challenge

A Guidebook for New Hampshire Municipalities

June 2010

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Housing Finance Authority

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Executive Summary

A. Introduction

New Hampshire's economic growth over the past two decades has outpaced its housing growth. As the economy boomed housing developers found that the conditions for development, in particular, a labor shortage and more stringent regulatory requirements, had a significant effect on the type and number of homes that could be built. Because there was a market for large expensive single family homes and the regulatory environment encouraged their construction, much of the demand for more affordable housing was left unmet. As that demand outstripped supply, prices were driven up making living in New Hampshire expensive for all, but especially difficult for young families.

Almost a decade of study by the New Hampshire Legislature underscored the impact of local land use regulations on the cost of housing. To address this problem, in 2008 the Legislature passed a law that requires every community to provide "reasonable and realistic opportunities" for the development of affordable housing. But this obligation is not new law. In 1991 the New Hampshire Supreme Court said the same thing.

While many people are concerned about housing that is affordable to New Hampshire's labor force, most of the decisions affecting housing at the local level are made by municipal land use board members. As volunteers, these board members face significant challenges in understanding the requirements of the new law and in implementing solutions that are appropriate for their particular communities and their unique zoning ordinances and land use regulations. As they consider such solutions, board members also confront social pressures of resistance to change and common but misguided notions of what is meant by "affordable housing."

New Hampshire municipalities regulate land use independently and therefore are inclined to assess their housing supply with a local view, yet the workforce housing statute

compels them to look at housing needs on a regional basis. Without local action, the opportunity to effectively address the imbalance in New Hampshire's housing supply in a thoughtful manner may be lost, and communities may also lose control over the permitting process as frustrated developers take legal action against them.

For almost a decade, New Hampshire Housing has worked to raise awareness of the need for a more balanced supply of housing in the state. This is partly because there has been a recognized shortage of housing that is safe, decent, and affordable for New Hampshire's low- and moderate-income families; but it is also because constraints on the state's housing supply has a demonstrated impact on the performance of New Hampshire's economy. Since the Legislature enacted the workforce housing statute, many of the State's municipalities have sought the help of New Hampshire Housing as they work to understand the housing market and to provide opportunities for the development of workforce housing.

In response to this need for assistance, in early 2009 New Hampshire Housing assembled an advisory committee and hired consultants to develop written guidance for local action under the workforce housing statute. This resulting guidebook, *Meeting the Workforce Housing Challenge*, is now available to help local land use boards to address the requirements of the statute and shape future growth consistent with their vision for dynamic, healthy communities.

B. Recent History of Workforce Housing in New Hampshire

In 1991, the New Hampshire Supreme Court decided *Britton v. Town of Chester*[1], 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 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."[2]

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 on January 1, 2010.

[1] 134 N.H. 434 (1991).
[2] Id., at 443.

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 state-wide effort to resolve.

C. Requirements of the Statute

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 or 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 nor 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.

D. The Municipal Guidebook

Meeting the Workforce Housing Challenge is a guidebook designed to assist local land use boards address the requirements of the workforce housing statute. Municipalities are likely to confront several challenges as they undertake this work, including understanding the statute; reviewing the community's individual situation to determine the changes needed for compliance; and confronting the social and political pressures associated with these changes. The *Guidebook* can directly help with at least the first two challenges and, to a degree, the third, if those pressures can be eased through greater public understanding of the statute's requirements and purpose.

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 a local land use board to create a record that demonstrates its understanding of the statute and its 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, providing 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.

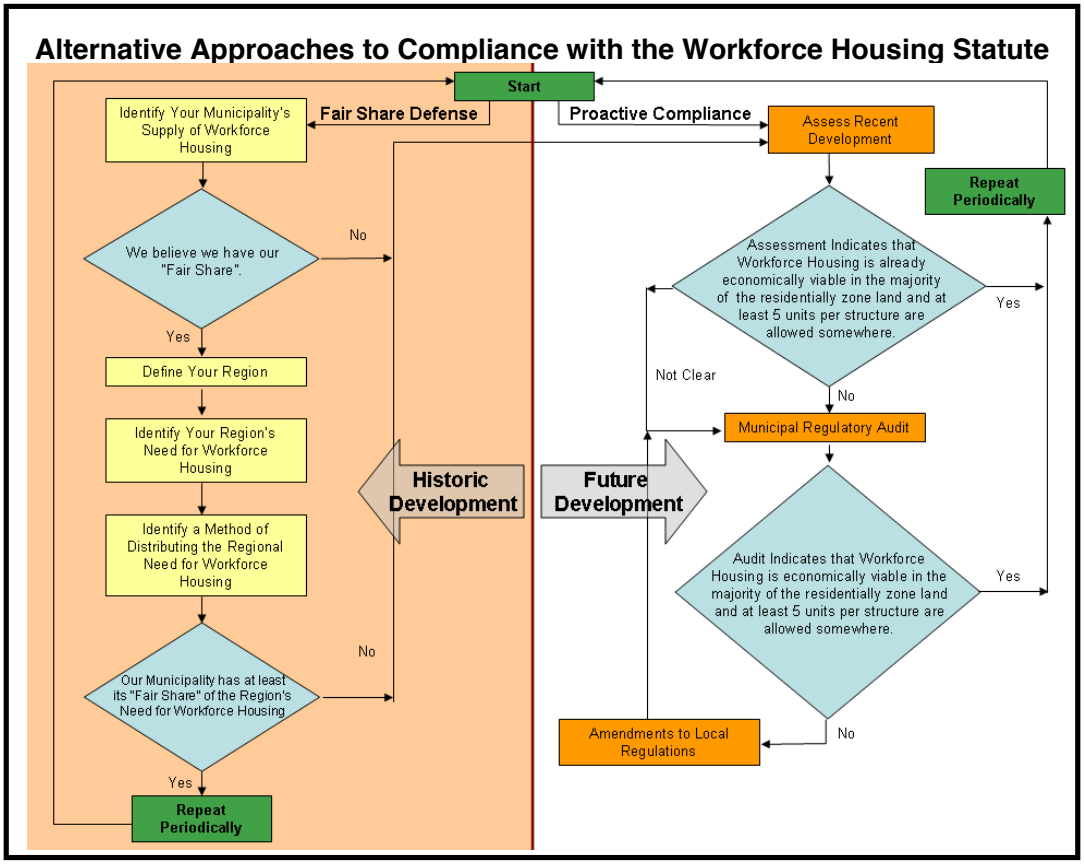
In Chapter 4, the *Guidebook* outlines the steps involved in conducting an assessment of a municipality's housing stock. The purpose of the assessment is simply to gain an understanding of the nature of the local housing market and to determine if the municipality has, in the past, been providing reasonable 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 as part of the regional housing needs assessment done by the regional planning commission, 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.

E. Meeting the Challenge

New Hampshire's new workforce housing statute presents a variety of challenges to municipalities. Some considerations, such as economic viability, may require approaches that are unfamiliar to local land use boards. For the most part, however, municipalities need to address the various regulations that add costs and, above all, uncertainty and subjectivity to the housing development process. The solution may be some simple zoning and regulatory changes, and these modifications will not alter the character of the housing in a community or fundamentally change its residents. Realizing this is an important step toward building the political will to meet the requirements of the workforce housing statute.


Alternative Approaches to Compliance with the Workforce Housing Statute
Start
Fair Share Defense
Proactive Compliance
Identify Your Municipality's Supply of Workforce Housing
Assess Recent Development
Repeat Periodically
We believe we have our "Fair Share".
No
Yes
Assessment Indicates that Workforce Housing is already economically viable in the majority of the residentially zone land and at least 5 units per structure are allowed somewhere.
Yes
Not Clear
No
Define Your Region
Identify Your Region's Need for Workforce Housing
Historic Development
Future Development
Municipal Regulatory Audit
Identify a Method of Distributing the Regional Need for Workforce Housing
Audit Indicates that Workforce Housing is economically viable in the majority of the residentially zone land and at least 5 units per structure are allowed somewhere.
Yes
No
Our Municipality has at least its "Fair Share" of the Region's Need for Workforce Housing
No
Amendments to Local Regulations
Yes
Repeat Periodically

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 report[6] 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 Gittell 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.

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[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.

- 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.

Chapter Two
A Primer on Workforce Housing in New Hampshire

A. Introduction: The Terms in the Workforce Housing Statute

The State's workforce housing statute requires all communities to provide "reasonable and realistic opportunities" for workforce housing, including rental multi-family housing. Additionally, the law requires that such housing is permitted in the majority of the residentially zoned land in each municipality. For an opportunity to be reasonable and realistic, workforce housing must be "economically viable."

To achieve this, the statute specifically states that lot sizes and densities required by local ordinances and regulations must be reasonable, but does not numerically define "reasonableness." Rather, it leaves it up to each city or town to determine what alternatives provide the best solutions in the context of the municipality's unique regulatory scheme. The Legislature clearly stated that it intended to provide communities with the "maximum feasible flexibility" to meet their workforce housing obligations.

A municipality can meet the statute's requirements in two basic ways:

- Adopt or have in place land use ordinances and regulations that permit some type of economically viable workforce housing in a majority of its residentially zoned land and that provide a reasonable opportunity for rental multi-family workforce housing somewhere in the community; or

- Demonstrate that the existing housing stock of the city or town is sufficient to accommodate the municipality's fair share of the current and reasonably foreseeable regional need for workforce housing.

B. Some Definitions

In order to properly understand the workforce housing statute, one needs to first be familiar with the terms used in it and with workforce housing in general.

1. Threshold Terms

a. Workforce Housing

Workforce housing is a term used to describe a variety of housing types that are generally affordable to people in the workforce who have earnings that range up to what might be described as "middle income." In the statute, "workforce housing" specifically refers to housing that is affordable for those families whose income is at or below the median income level for a specific region. In the statute, it is defined as:

- Housing for sale which is *affordable* to a household at or below 100% of the area median income (AMI) for a 4-person household; or
- Rental housing *affordable* at 60% of the AMI for a 3-person household.

In addition to this income-based definition, there are some limitations on what can be considered workforce housing. When a local land use board is presented with a development application, housing that is either age-restricted (elderly or senior housing) or developments in which a majority of the proposed homes have fewer than two bedrooms (e.g., studio apartments and one-bedroom homes or apartments) may not to be considered as workforce housing under the statute. This should not be construed to mean that such housing is not needed or without value to the community; it only means that a developer cannot rely on the advantages of the Workforce Housing statute for new proposals for such developments. The intent of these exclusions is to ensure that housing opportunities are made available for members of the workforce and their families – not only for seniors or other households with no children present.

b. Multi-Family Housing

Under the workforce housing statute *multi-family housing* is defined as a building or structure containing five (5) or more dwelling units, each designed for occupancy by an individual household. Correspondingly, in order for a municipality to fully comply with the workforce housing statute, the land use regulations of that municipality must permit the construction of *rental* multi-family housing structures.

Multi-family housing is a housing type that must be included in each municipality's mix of permitted uses. Although rental multi-family housing must be a component of a municipality's workforce housing development opportunities, a community does not need to provide the opportunity for multi-family housing in the majority of its residentially

zoned land—it only needs to make some reasonable provision for it to be built somewhere within the municipality.

Additionally, while the threshold number of dwelling units that define multi-family housing for workforce housing is five units or more, the jurisdictional threshold for a planning board to conduct site plan review on multi-family housing under RSA 674:43 remains three or more dwelling units. Communities only need to change their definition for multi-family housing if their regulations actually prohibit the development of multi-family housing structures with at least five units.

Multi-family housing can take many structural forms but in New Hampshire it most commonly is provided in townhouses or "garden style" apartment arrangements. See New Hampshire Housing Finance Authority's *Housing Solutions* handbook for examples.[9]

c. Affordability

The term "affordable" has often been used to describe, or has otherwise been associated with low-income housing, and often the terms affordable housing and low-income housing have been used interchangeably. Even as the statute addresses the concept of affordability, the term "workforce housing" targets a broader segment of the population than traditional notions of "low-income housing."

The workforce housing statute defines "affordable" housing as:

> housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

Affordability is a key component to how workforce housing is defined, as housing for sale or for rent which is affordable. The affordable component to workforce housing ensures that only 30% of a household's income is used in calculating the cost for a home, leaving 70% of a family's remaining income for all other expenses. This ratio has long been a standard used to determine a household's ability to pay for housing.

Although the affordability standard can apply to all income levels, people with higher incomes tend to have far more disposable income. The concept of affordability provides the potential for a range of housing types corresponding to a range of incomes. But the goal of the workforce housing statute is to ensure that an adequate supply of affordable housing is available for those families whose incomes are at or below 100% of an area's median income.

[9] *Housing Solutions* is available at http://www.nhhfa.org/rl_housinghandbook.cfm.

d. Area Median Income

Area median income (AMI) is the income which divides the income distribution of an area into two groups of equal size, half with incomes above the median and half with incomes below the median. The medians for households, families, and unrelated individuals are based on all households, families, and unrelated individuals, respectively. The medians are based on people 15 years old and over with income.[10]

The U.S. Department of Housing and Urban Development (HUD) has divided the State into regions and annually calculates median incomes for different family sizes for each region. These income standards are reported each year in the spring, and are available on New Hampshire Housing's website.[11]

The workforce housing statute uses the HUD AMI figures as the standard upon which housing affordability is calculated.

2. Compliance With the Statute's Requirements

A municipality can meet the statute's requirements in two basic ways: (1) provide reasonable and realistic opportunities for workforce housing development; or (2) demonstrate that the community is already providing its "fair share" of workforce housing.

a. Reasonable and realistic opportunities

The workforce housing statute requires that every community must provide "reasonable and realistic opportunities" for the development of economically viable workforce housing within the framework of the municipality's land use ordinances and regulations.[12] This requires consideration of the "collective impact" of all such regulations, so even if a community's zoning ordinance seems to provide adequate opportunity for workforce housing development, the planning board's subdivision and site plan regulations might contain development standards that make construction of workforce housing unprofitable, or a growth management ordinance might cause considerable delay to a project's completion, thereby adding costs that make the development economically unviable.

But the statute also recognizes that a community is not responsible for economic conditions beyond its control that affect the economic viability of a workforce housing

[10] "Housing Affordability: Frequently Asked Questions." U.S. Census Bureau, Housing and Household Economic Statistics Division, available at http://www.census.gov/hhes/www/housing/hsgaffrd/affrdfaq.html.

[11] Current HUD income figures are available from NHHFA at http://www.nhhfa.org/rl_docs/hudincome_current.pdf.

[12] In addition to the workforce housing statute, the statutory purpose statement provided under RSA 672:1, III-e, for overall land use regulation in New Hampshire requires that the opportunity for the creation of affordable housing "shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers."

development. Communities are also not responsible for the impacts of other laws administered at the state level, such as those enforced by the Department of Environmental Services. But when identifying areas within their jurisdiction where workforce housing will be permitted, municipalities must be careful to ensure that those areas are not unduly restricted by natural features, such as wetlands or steep slopes. In short, the places where workforce housing is permitted must actually be suitable for development.

The economic components of a development project that a community can influence through its land use regulations will be addressed in detail in Chapter 3 to help better illustrate those costs for which a municipality is responsible, and those for which it is not responsible.

b. Fair Share

Under RSA 674:59, III, a municipality may be exempt from providing a reasonable or realistic opportunity to build workforce housing if its existing housing stock is sufficient to accommodate its "fair share" of the current and reasonably foreseeable regional need for workforce housing.

When the New Hampshire Supreme Court ruled in 1991's Britton v. Town of Chester that every community has an obligation to provide for its fair share of a region's affordable housing need, it left that term undefined. The workforce housing statute similarly does not define what is meant by fair share. Although some models have been established for determining what constitutes fair share,[13] presently there is no required method by which to calculate a community's fair share of workforce housing based upon regional need. In 2004, New Hampshire Housing published a Housing Needs Assessment Model with the suggestion that it could be used by the State's regional planning commissions when they conduct their regional housing needs assessments, which they are required to do every five years (RSA 36:47, II).[14] This assessment model also contains a methodology for conducting a fair share analysis (also called "proportionate distribution"), recommended by New Hampshire Housing.[15]

A municipality may want to determine its "quota" of workforce housing, but the State Supreme Court and the Legislature have steered clear of mandating a specific numerical standard. It may be useful to regard fair share as a principle, not a quota, and that providing the opportunity for workforce housing development for most communities is the key to meeting the statute's requirements.

Although the workforce housing statute does not provide a standard by which to determine fair share, it is actually unnecessary for a community to identify what its fair share responsibility is. As long as the municipality is providing realistic and

[13] Some states have established a numerical standard that requires municipalities to have a minimum percentage of their as affordable, or they must take steps to allow it to be built.
[14] This model was recently updated to reflect the changing nature of available data.
[15] Available at http://www.nhhfa.org/rl_needsassess.cfm. See "Appendix 2: Distributive Models for Low Income Housing."

reasonable opportunities for the development of workforce housing, the question of fair share is irrelevant. A fair share analysis is necessary only if and when a community wishes to claim that it is exempt from providing reasonable and realistic opportunities for the development of new workforce housing.

The fair share question truly arises when a municipality is sued under the statute. The community may assert as an "affirmative defense" that because it has already met its required fair share of the regional need for workforce housing, it is not obligated under the statute to provide the opportunity for its continued development. If the framework of a community's land use regulations and ordinances provide reasonable and realistic opportunities for the development of workforce housing then conducting a fair share analysis is an unnecessary exercise.

Under the statute, fair share takes both a present and prospective view of the demand for housing in a region. What constitutes the appropriate region for a fair share analysis may vary from one community to another:

- for one, it might be the reach of a regional planning commission;
- for another it might be the labor market area;
- for yet another, it might be the HUD fair market rental area.[16]

Several of the State's regional planning commissions have provided guidance on the fair share question, and they are likely to be the best source of information for a community. Any community considering whether to undertake a fair share analysis should contact its regional planning commission (RPC) to discuss and review the data obtained from the municipality's research into its own assessing data. The findings in the RPC's reports may provide the community with enough information to make a determination of its own housing needs.

The requirement that an RPC must prepare a regional housing needs assessment does not, however, compel it to undertake a fair share analysis that would distribute the regional need among its communities. Such an analysis is done at the RPC's option and cost.

c. Inclusionary Zoning

RSA 674:59, I states that a municipality's obligations "*may be satisfied by the adoption of inclusionary zoning as defined in RSA 674:21, IV(a)*". Inclusionary zoning is an ordinance that provides a voluntary incentive or benefit to a property owner in order to induce the owner to produce housing units that are affordable to households of low and moderate income. Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined application process. This topic will be addressed further in Chapter 4.

[16] The statute does not limit what region a community may consider if it conducts its own fair share analysis, but it *does* limit the use of household income standards to those provided by HUD. See discussion of "Area Median Income," above.

C. Determining Workforce Housing Purchase and Rent Limit Values

The statute's definitions for "affordable" and for "workforce housing," with the latter's income target, when used in combination help to establish a price point for housing, the development of which is the statute's objective. New Hampshire Housing supplies a listing of communities by HUD Fair Market Rent Area (FMRA) that will assist a community in determining its area median income (AMI), included in Appendix A.[17]

New Hampshire Housing also annually updates "Workforce Housing Purchase and Rent Limits" for all HUD areas of the State. This takes the median household incomes for the HUD areas and applies a series of reasonable market-based assumptions to calculate affordable estimated purchase price and monthly rents for all areas of the State.

Using HUD Income Data to Determine Maximum Affordable Purchase Prices and Rents

As an example, for the ***Manchester*** Fair Market Rent Area (FMRA), the median income for 2010 for a family of four, as determined by the *United States Department of Housing and Urban Development* (HUD) is $75,600. The estimated maximum affordable purchase price for ownership housing in that market is $239,000 using the 2010 income. For affordable rental housing, the monthly rent is determined by taking 60% of the 2010 FMRA median income adjusted for a family of three ($40,820), which would yield a maximum a monthly rent of $1,020 (including utilities) for 2010.

Similarly, if the community were ***Plainfield,*** the FMRA would be Sullivan County. The Sullivan County FMRA median income for 2010, for a family of four as determined by HUD is $64,900. The estimated maximum affordable purchase price for housing in that market is $203,000 for 2010. For affordable rental housing, the maximum monthly rent is determined by taking 60% of the 2010 FMRA median income adjusted for a family of three ($35,050). This would yield a maximum monthly rent of $880 (including utilities) for 2010.

Both of the examples above recognize the statutory requirement that housing affordability is based on a standard of having a household pay no more than 30 percent of its income on housing costs. As demonstrated here, the differences in median income levels and consequently the price point that constitutes workforce housing can be significant depending on where in New Hampshire one lives.

[17] Also available online at http://www.nhhfa.org/bp_docs/devdocs/FMRareas-HUDmetroFMR.pdf.

Figure 2-1

2010 Workforce Housing Purchase and Rent Limits, RSA 674:58 - 61

This is an update to information that New Hampshire Housing provided to the Legislature in 2008 as it deliberated on the Workforce Housing statute. The purpose of this table is to assist municipalities in implementing the NH Workforce Housing statute, RSA 674:58 - 61. This analysis incorporates statutory requirements, and includes reasonable market assumptions for the targeted households' income levels such as interest rate, downpayment, mortgage term, taxes, and insurance.

	Ownership 100% of 2010 HUD Median Area Income Family of four		Renters 60% of 2010 HUD Median Area Income Adjusted for a family of three	
	Income	Estimated Affordable Purchase Price [1]	Income	Estimated Affordable Monthly Rent [2]
HUD Metropolitan Fair Market Rent Areas (HMFA):				
Boston-Cambridge-Quincy MA-NH	$91,800	$316,000	$49,570	$1,240
Hillsborough Co. NH (Part)	$77,500	$241,000	$41,850	$1,050
Lawrence, MA-NH	$85,300	$268,000	$46,060	$1,150
Manchester, NH	$75,600	$239,000	$40,820	$1,020
Nashua,NH	$90,500	$285,000	$48,870	$1,220
Portsmouth-Rochester, NH	$81,600	$261,000	$44,060	$1,100
Western Rockingham Co, NH	$96,100	$305,000	$51,890	$1,300
County Fair Market Rent Areas (Non Metro):				
Belknap County	$67,400	$222,000	$36,400	$910
Carroll County	$62,600	$219,000	$33,800	$850
Cheshire County	$67,100	$202,000	$36,230	$910
Coos County	$54,900	$170,000	$29,650	$740
Grafton County	$68,000	$220,000	$36,720	$920
Merrimack County	$76,700	$238,000	$41,420	$1,040
Sullivan County	$64,900	$203,000	$35,050	$880

[1] Estimated maximum price using 30% of income, 5% down payment, 30year mortgage at 5.05%, 0.7 points, PMI, and estimated taxes and hazard insurance.

[2] Estimated maximum gross monthly rental cost (rent + utilities), using 30% of income.

File: 2010 WH Purchase And Rent Limits - 2010
Print Date: 5/31/2010

The purpose of this table is to assist municipalities in implementing the workforce housing statute by incorporating statutory requirements, and also by including reasonable market assumptions for targeted household income levels. These assumptions include provision for a 5 percent down payment. If the amount of a down payment were increased to either 10 or 20 percent, the estimated purchase limit values would also increase. Conversely, the number of households that could afford the correspondingly higher home price would decrease. For households at or below the median income level for any area of the State, workforce housing is intended to be a price at which they can enter the market and start to build equity. It is unlikely that such households would have the resources at hand to afford a high down payment. Following NHHFA guidelines and assumptions can help to achieve the goal of allowing families to enter the ownership market, while also providing some assurance to communities that their workforce housing goals are aligned with the statute. NHHFA will revise this table annually to reflect new HUD income figures, and these updates will be available on the NHHFA website.

D. Identifying Who the "Workforce" Is In the Workforce Housing Statute

Over the last couple decades, even as wages have increased, these gains have been dramatically outstripped by an increase in cost of housing in New Hampshire. In many instances, people with an income close to median for a given area are simply unable to afford housing that is relatively near where they work. They then must commute ever longer distances – "drive until you qualify." This often has a negative impact on productivity, morale, family dynamics, and employees' ability to contribute to the communities in which they live and work.[18]

There is a wide range of occupations that fall within the impact of the workforce housing statute, based on the incomes they provide to the labor force. Types of careers commonly available throughout New Hampshire with corresponding income levels that typically qualify for workforce housing include:

- Education Administrators
- Accountants
- Appraisers
- Architects
- Civil Engineers/Land Surveyors
- Foresters
- Paralegals
- Teachers & Educators
- Librarians
- Police Officer
- Firefighters
- Food Prep / Food Service Workers

The *New Hampshire Economic and Labor Market Information Bureau* publishes estimated annual occupational and employment wages for approximately 600 different occupations.[19] The following table provides a list of some jobs, by county, whose median salaries represent those expected to benefit from the workforce housing statute.

[18] These price-induced commuting patterns also contribute to increased highway maintenance costs and environmental degradation, including pollution of air and water resources, and increased emissions of greenhouse gasses.

[19] More information is available from NHES ELMI Bureau at http://www.nh.gov/nhes/elmi/oesfiles.htm.

Figure 2-2

Median Annual Income for Selected Occupations - June 2008

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsb.	Merr.	Rock.	Strafford	Sullivan
Elementary Teacher	$50,670	$43,955	$46,729	$45,054	$50,753	$52,274	$51,130	$46,881	$53,427	$44,085
Nurse	-	$53,851	$55,162	$51,771	$66,290	$62,920	$59,571	$57,866	$53,206	$52,603
Police Officer	$44,200	$41,954	$34,736	$37,856	$40,622	$48,256	$42,286	$44,762	$41,475	$42,078
Accountant	-	-	$53,539	-	-	$53,414	$47,174	$58,573	$61,006	$42,120
Fire Fighter	$29,682	-	-	$40,810	$35,173	$41,954	$35,506	$45,552	$35,194	-
Chef/Head Cook	$28,621	$39,333	$28,600	$36,962	$38,542	$38,002	$34,070	$36,338	$38,459	$32,198
Plumber	-	$38,917	$39,978	$36,629	$43,576	$48,048	$44,824	$44,595	$41,142	$39,250
Mechanic	$39,062	-	$37,107	$35,797	$30,035	$39,520	$41,413	$38,709	$38,189	$30,701
Bank Teller	$24,606	$25,272	$24,440	$20,946	$23,962	$25,189	$24,981	$24,482	$24,918	$25,667

New Hampshire Employment Security - Economic and Labor Market Information Bureau.
Current wage estimates based on survey data.

From these data it is clear that there are many people employed in New Hampshire who would qualify for workforce housing when their household has only a single full-time wage earner. Even for households with two full-time wage earners, the combined hourly wage generally must exceed forty dollars ($40) in most areas of the state to be above median, and thus be sufficient for that household not to need "workforce housing" as contemplated by statute.[20]

To further illustrate the relationship between median incomes and affordable housing costs, two additional tables are provided. These tables reflect maximum affordable rents and home purchase costs based upon income data presented in Figure 2-1 and, consistent with the statute, using 30% of those incomes for housing costs. Figure 2-2 reflects maximum affordable rent applicable to each income group by county. In addition, Figure 2-3 outlines maximum affordable home purchase price values based upon this same income data.

[20] Roughly $83,000 combined income for two full-time jobs.

Figure 2-3

Maximum Affordable Rent & Utilities for Selected Occupations – June 2008

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsb.	Merr.	Rock.	Strafford	Sullivan
Elementary Teacher	$1,267	$1,099	$1,168	$1,126	$1,269	$1,307	$1,278	$1,172	$1,336	$1,102
Nurse	-	$1,346	$1,379	$1,294	$1,657	$1,573	$1,489	$1,447	$1,330	$1,315
Police Officer	$1,105	$1,049	$868	$946	$1,016	$1,206	$1,057	$1,119	$1,037	$1,052
Accountant	-	-	$1,338	-	-	$1,335	$1,179	$1,464	$1,525	$1,053
Fire Fighter	$742	-	-	$1,020	$879	$1,049	$888	$1,139	$880	-
Chef/Head Cook	$716	$983	$715	$924	$964	$950	$852	$908	$961	$805
Plumber	-	$973	$999	$916	$1,089	$1,201	$1,121	$1,115	$1,029	$981
Mechanic	$977	-	$928	$895	$751	$988	$1,035	$968	$955	$768
Bank Teller	$615	$632	$611	$524	$599	$630	$625	$612	$623	$642

Based on 30% of household income for Rent & Utilitity Allowance

Figure 2-4

Maximum Affordable Purchase Price for Selected Occupations - June 2008

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsb.	Merr.	Rock.	Strafford	Sullivan
Elementary Teacher	$194,297	$157,720	$172,830	$163,706	$194,749	$203,034	$196,802	$173,658	$209,314	$158,428
Nurse	-	$211,624	$218,765	$200,294	$279,380	$261,023	$242,781	$233,494	$208,111	$204,826
Police Officer	$159,054	$146,820	$107,503	$124,498	$139,565	$181,148	$148,629	$162,116	$144,211	$147,496
Accountant	-	-	$209,924	-	-	$209,244	$175,254	$237,345	$250,598	$147,724
Fire Fighter	$79,974	-	-	$140,589	$109,884	$146,820	$111,698	$166,419	$109,998	-
Chef/Head Cook	$74,194	$132,543	$74,080	$119,628	$128,235	$125,293	$103,876	$116,229	$127,783	$93,679
Plumber	-	$130,277	$136,057	$117,815	$155,655	$180,015	$162,453	$161,206	$142,397	$132,091
Mechanic	$131,067	-	$120,418	$113,283	$81,897	$133,562	$143,873	$129,144	$126,312	$85,524
Bank Teller	$52,325	$55,952	$51,420	$32,388	$48,817	$55,500	$54,367	$51,649	$54,024	$58,104

Based on 36% DTI, 30 year fixed mortgage at 5.5% with $450 for taxes and insurance and 3% borrower down payment

Chapter Three
Economic Viability: The True Cost of Residential Construction

A. Land Use Regulation and the Economic Viability of Development

Local zoning ordinances influence the type and intensity of use of land. As a result, they often dictate the "highest and best use" of land both directly by limiting what can be done and indirectly by inducing owners to engage in particular uses that will maximize the value of their land, or the profit they can get from it. The value or cost of land is typically established based upon the presumption that it can and will be put to its "highest and best use," subject to the limitations of local regulations.

In addition, subdivision and site plan review regulations typically prescribe minimum design and construction standards for site development, streets, utilities, amenities and other improvements, which taken together, serve to significantly influence costs associated with both preparing and ultimately, building on land.

Considering multi-family housing may provide a useful illustration of this relationship. In a number of New Hampshire municipalities, multi-family housing is strictly prohibited despite the Supreme Court's 1991 ruling in *Britton v. Town of Chester*, and the Legislature's 2008 enactment of the workforce housing statute. In some others, multi-family housing may be allowed, but it is limited to areas that are not suitable for development. And in yet more, multi-family housing may be allowed, but the standards of site development required by the municipality – such as minimum lot sizes and road construction standards – may make it impossible for multi-family housing to be developed.

In the latter situation, for a property owner or developer who would otherwise be interested in building multi-family housing, the added costs resulting from local development standards will instead force the developer to build some other more profitable use, such as large single-family homes. These additional development costs

must be examined by municipalities as they work to provide opportunities for workforce housing development. **Communities need to determine if the standards they are requiring are truly necessary.**

B. Implications of Zoning

1. The Purpose of Zoning…

The New Hampshire statute that describes the purposes of zoning of zoning ordinances requires that they assure or encourage achievement of a series of objectives, each of which aspires to promote a specific public benefit:

1. To lessen congestion in the streets;
2. To secure safety from fires, panic and other dangers;
3. To promote health and the general welfare;
4. To provide adequate light and air;
5. To prevent the overcrowding of land;
6. To avoid undue concentration of population;
7. To facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care;
8. To assure proper use of natural resources and other public requirements;
9. To encourage the preservation of agricultural lands and buildings; and
10. To encourage the installation and use of solar, wind, or other renewable energy systems…[21]

Similarly, the statutes that enable the local use of subdivision and site plan regulations, combine to identify an additional two dozen specific goals and objectives to be addressed through the adoption of local land use regulations. [22] Despite these many statements, these statutes do not overtly require municipalities to balance the costs and benefits implicit in the development of land.

2. …and Its Unintended Consequences

While these purposes and objectives are the important underpinnings of local land use regulation in New Hampshire, all regulation of land use must assess the public benefit to be gained and balance that against the burden to be carried by the property owner. Yet in practice many municipalities have implemented zoning in a way that is unnecessarily restrictive – that is, zoning's limitations on the use of property are sometimes out of proportion with what is actually needed to fulfill its objectives. This has dramatically limited the ability of developers to build housing that is affordable to low and moderate income households.

In response, the Legislature passed the workforce housing statute, which concerns a municipality's ability to regulate such matters as:

[21] RSA 674:17, I.
[22] RSA 674:36 (subdivision regulations) and RSA 674:44 (site plan regulations).

- Minimum lot area
- Density and frontage
- Setbacks and buffers
- Design standards for roads
- Utilities and other infrastructure
- Growth management
- Impact fees

As discussed in the preceding chapters, the underlying purpose of the workforce housing law is to assure that a municipality provides reasonable and realistic opportunities for the development of workforce housing. As specified in RSA 674:58, III, this means opportunities to develop "economically viable" workforce housing within the framework of a municipality's ordinances and regulations."

This chapter focuses on the meaning of "economically viable," and to help municipalities and their local land use boards evaluate the cost implications of their ordinances and regulations and decisions made under them. The acquisition of land, the need to build infrastructure, and constructing buildings are all direct costs associated with the completion of any building. Understanding these implications and recognizing all of the cost factors of development will help a municipality find balance between the realized cost of compliance with local development standards and the public benefit sought by compliance.

C. The Real Cost of Housing Development (Figure 3-1)

In practice economic viability, and hence compliance with the workforce housing statute, is achieved when a municipality's land use ordinances and regulations enable the planning, permitting and construction of workforce housing that may be delivered at an affordable price, as determined according to the statute.

The "bottom line" cost of housing represents a sum of literally dozens of individual cost components ranging from the cost of the land upon which a finished dwelling is situated to the cost of closet shelving. In general, the overall cost of a single dwelling unit represents the resultant sum of purchasing, developing, and preparing individual sites upon which individual homes are ultimately constructed, plus the "from the ground up" cost of actual dwelling unit construction.

Figure 3-1 identifies the myriad costs typically associated with the land development process. These include:

- Costs associated with initial land evaluation, commonly referred to as "due diligence";
- Costs associated with land acquisition;
- Land surveying, engineering and architectural design fees;
- Land use application and permitting fees;

- On and off-site infrastructure improvement costs;
- Utility connection fees; and
- General and administrative costs, which may properly be viewed as "overhead" to those individuals and firms who combine to deliver finished dwelling unit sites to builders and/or directly to the public.

Developers and those who finance their work assume some financial risk with an expectation of profit. This expectation is a factor that must be included along with all others if housing is to be built, and is central to the workforce housing statute's notion of "economic viability." Given this risk, projected profit margins of twenty percent or more are typically needed in to make a developer consider a housing project. While profit margins of twenty percent or more might appear very handsome, banks and other lenders whose investment capital is at risk will require such a profit margin as an indication of a project's financial viability, offsetting their own risk in lending.

Financing is necessary because there is no inflow of cash to a residential project until its developer has identified land, gained all necessary regulatory approvals, acquired the land, built streets and infrastructure, and constructed individual homes. A residential developer is usually not "in the black" until after four-fifths of the homes in a typical residential development have been sold. The "front end loaded" nature of the industry, coupled with the need to qualify for and maintain financing throughout a project's duration add elements of risk and cost that are often overlooked by local land use boards in the overall cost of housing development. Yet financial risk and economic viability are directly related.

Figure 3-1
Land Acquisition, Approval, and Development Costs

LAND EVALUATION
Appraisal Fees
Economic Impact Opinion
Engineering Assessment
Environmental Impact Opinion
Exploratory Test Pits
Land Use Rights
Life Safety Agency Opinions
Project Due Diligence
Traffic Assessment
Other Land Evaluation Expense

PURCHASE SETTLEMENT / LEGAL / TITLE
Acquisition Legal
Land Purchase Price
Land Specific Closing Costs
- Deed Preparation
- Developer Legal
- Financing Fees
- Lender Legal
- Recording Fees
- Title Examination
- Title Insurance
- Transfer Taxes

Legal - Zoning Opinion
Lender Inspections
Loan Closing
Ownership Entity Formation
Real Estate Commissions
Real Estate Tax Escrow
Utility Easements
Other Land Purchase Costs

APPLICATIONS / PERMITS / FEES
Federal / State / Local
Bond - Land Restoration - (Cash / Ac.)
Bond - Roadway – (% or $)
Cash Bond - Other
DES Permitting (Per Lot)
Overlay Applications & Approvals
Economic Impact Study
Environmental Impact Study
Fire Department / Life Safety
Inspections/Testing
Legal - Application & Permitting
Miscellaneous Permits
Municipal Application Fees (Per Lot)
Peer Review

Impact Fees (Per Lot)
Police Details
Signage
Road Construction Inspection (Lineal Foot)
Street Opening Permits
Traffic Study
Wastewater Connection & Betterment Fees
Water Connection & Betterment Fees
Other Application & Permit Fees

SURVEY / ENG. / ARCH. / LANDSCAPE

Application Revisions
Site Plan Renderings
    As-built Site Drawings
Building Lot Drawings
Site / Civil Engineering Design (Per Lot)
Landscape Architect
Photography
Printing
    Mylar / Recording
Test Pits / Lot
Traffic Plan Approval
Water System Design (Per Lot)
    Water Storage
    Water Treatment & Certification
    Water Treatment Plant
      Testing/Startup/Pumping
Well - Potable (Per Lot)
Geo-Thermal

EARTHWORKS - ON & OFF SITE

Base Road (Lineal Feet)
Road Finish Area (Square Feet)
Blasting (Lineal Foot)
Cisterns Each (1 / 1,000 Lineal Feet)
Current Use Tax Penalty Fee @ 10.%
Cuts and Fills (Lineal Foot)
Community Space Landscape/Irrigation (LF)
Drainage Systems & Catch Basins (LF)
Electric / Telephone / Cable (Lineal Foot)
Emergency Gates/Mail Kiosk
Environmental Protection
    Hay Bales (Lineal Foot)
    Silt Fencing (Lineal Foot)
Import Fill Material (Lineal Foot)
Mobilization - Work Site Preparation
Off Site Utility Extensions
    Drainage
    Electric/Telephone/Cable
    Sewer
    Water
Road Bed Construction
    Common Gravel (Per Cubic Yard)
    Select Gravel (Per Cubic Yard)
    Base Coat (Binder) Asphalt (Per Ton)
    Wearing Coat Asphalt (Per Ton)
    Curbing (Lineal Foot)
    Sidewalks (Lineal Foot)
Septic System Installation (Per Lot)
Sewer Force Main (Lineal Foot)
    Treatment Plant Testing/Inspections
    Wastewater Treatment Plant
      Structure
    WTP Operation Mgmt.
        Chemicals
        Electric
        Licensure
Site Preparation
    Spoils Pile Mgmt (Lineal Foot)
    Strip & Stockpile Loam (Lineal Foot)
    Street Lighting (Lineal Foot)
    Tree Clearing & Stumping (Per Lot)
Water System Installation (Per Lot)
    Treatment Plant Testing/Inspections
    Water Treatment Plant
    WTP Operation / License / Elec./
      Chemicals
Other Site & Offsite Earthwork/Demo

UTILITY CONNECTION FEES

Cable Television (Per Lot)
Electric (Per Lot)
Natural Gas (Per Lot)
Telephone (Per Lot)
Other Connection Costs (Per Lot)

GENERAL & ADMINISTRATIVE

Accounting (Per Lot)
Const. Office Furn. & Fix. (Per Lot)
Telephone/Fax (Per Lot)
Office Utilities (Per Lot)
Developer Overhead
Land Construction Mgmt. (Per Lot):
Insurance
    General Liability
    Worker's Comp (Per Lot)
    Other Insurance
Laborers by Phasing Term (Per Lot)
Snow Removal (Lineal Feet)
Landscape (Per Lot)
RE Taxes / Year / Lot (Per $1,000)
Site Manager / Phase (Per Lot)
Sweeping (Per Lot)
Temp. Electric Distribution (Per Lot)
Temporary Toilets (Per Lot)
Title Updates for Disbursements
Tools & Rental Equipment (Per Lot)
Trash Removal
Other General Administration Cost

Figure 3-2
Construction Costs

PREPARATION
Architectural
Permits & Fees
Construction Services
Mech.l/Elec./Plumb/Sprinkler
Structural
Engineering
Other Preparation Costs

SITE WORK
Additional Fill/Loam/Gravel
Foundation Drains
Lot Preparation
Site Access
Tree Cutting & Clearing
Other Site Work Costs

UTILITY CONNECTIONS
Electric Connection
Electrical Connection
Gas Service
Misc. Utility Costs
Sewer Connection
Water Connection
Innovative Technology
Other Utility Connection Costs

FOOTINGS/FOUNDATION
Bulkhead
Floor - Concrete
Floor - Labor
Footings - Concrete
Foundation - Concrete
Foundation - Labor
Waterproofing/Damp-proofing
Other Foundation Costs

ROUGH STRUCTURE
Air Conditioning
Crane Charges
Electric
Entry Steps/Porch & Walkways
Exterior Doors
Frame - Labor
Frame - Material
Frame - Roof Material
Frame - Trusses
Garage Doors
Gas Piping
Heating
Plumbing
Rear Deck - Labor
Rear Deck - Material
Roof - Labor
Temporary Heat
Windows
Other Rough Structure Costs

FULL ENCLOSURE
Exterior Paint
Fireplace
Gutters
Insulation
Masonry
Masonry -Brick Veneer
Shutters
Siding (Full Wrap) - Labor
Siding (Full Wrap) - Material
Other Enclosure Costs

FINISHING TRADES
Appliances
Cabinets & Countertops
Closet Shelving
Drywall
Finish Carpentry - Labor
Finish Carpentry - Material
Flooring
Interior Doors
Interior Paint
Mirrors
Other Finishing Costs
Contract Additions
Driveway
House Cleaning
Irrigation
Landscaping
Lawn Maintenance
Loam/Final Grading
Misc. Construction Supplies
Snow Plowing
Waste Disposal
Other Completion Costs
Affordability Retention
As-built Unit Drawings
Association Reserve Funding
Community Wastewater Plant Capital Fund
Community Water Plant Capital Fund
Engineering Oversight
    Environmental
    Road Construction
    Building Construction
Master Deed/ Decl. of Trust
Misc. Common Improvements

D. Cost Analysis Tools for Municipalities (Figures 3-3, 3-4, and 3-5)

Any two identically zoned parcels situated in the same community may have very different development costs. For example, the cost of constructing roads and infrastructure over a flat, sandy parcel of land will generally be lower than constructing the same site improvements on a steep parcel having shallow soil depth over bedrock. Thus, the same body of local land use ordinances and regulations, when applied to two distinct parcels of land, may demonstrate true economic viability at one site and not at the other due to varying land quality and prevailing site conditions

And, while a parcel of land with greater development constraints may be cheaper to acquire, some pieces of land are simply unsuitable for development at any cost. Therefore, municipalities are encouraged to presume that the land upon which a hypothetical workforce housing proposal would be situated exhibits site conditions that are considered "average" for that community.

"From the ground up" building cost may be properly viewed as "portable" from one site to another.[23] Because of this, a municipality can rely upon published regional construction cost data as an example of what those costs likely are. As an example, Figure 3-3 includes excerpts of cost data for economy grade residential construction provided by R.S. Means Co., a nationally recognized publisher of construction cost data. The "bottom line" bare cost per square foot of living area estimates provided by Figure 3-3 include allocations for contractor overhead and profit, which together with material and labor expenses, combine to yield the bare cost information provided through this resource. Taken together, the delivery price of a single dwelling unit of "for sale" housing should generally be roughly equal to the sum of land development costs (see Figure 3-1) and "from the ground up" building costs (see Figures 3-2 and 3-3).

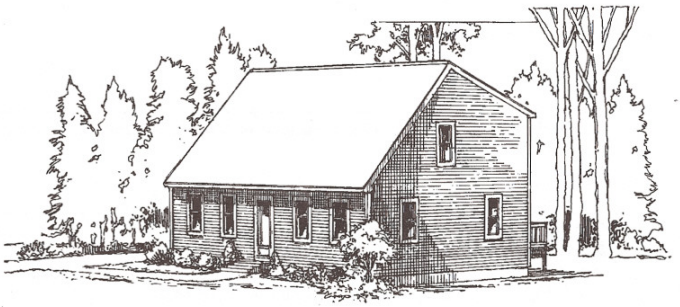
[23] Figure 3-2 provides a comprehensive list of constituent cost components typically applicable to "from the ground up" construction of individual single family homes. Unlike the component of overall construction cost associated with land and site development, building construction costs are largely predetermined by building size and choices affecting the quality of construction. Simply put, the larger the home, the higher the cost; and the higher the grade of construction, the higher the cost.

Figure 3-3
R.S. Means Sample Pages

RESIDENTIAL | Economy | 1-1/2 Story

- **Mass produced from stock plans**
- **Single family — 1 full bath, 1 kitchen**
- **No basement**
- **Asphalt shingles on roof**
- **Hot air heat**
- **Gypsum wallboard interior finishes**
- **Materials and workmanship are sufficient to meet codes**

Note: The illustration shown may contain some optional components (for example: garages and/or fireplaces) whose costs are shown in the modifications, adjustments, & alternatives below or at the end of the square foot section.



Base cost per square foot of living area

Exterior Wall	Living Area 600	800	1000	1200	1400	1600	1800	2000	2400	2800	3200
Wood Siding - Wood Frame	118.45	98.65	88.20	83.35	79.95	74.65	72.10	69.35	63.65	61.55	59.25
Brick Veneer - Wood Frame	131.85	108.35	97.20	91.80	87.95	81.90	79.00	75.95	69.40	67.05	64.35
Stucco on Wood Frame	112.50	94.35	84.20	79.65	76.40	71.40	69.05	66.45	61.05	59.10	57.00
Painted Concrete Block	118.20	98.50	88.00	83.20	79.80	74.50	71.95	69.25	63.55	61.45	59.15
Finished Basement, Add	20.10	17.05	16.25	15.65	15.25	14.65	14.30	14.00	13.35	13.00	12.75
Unfinished Basement, Add	10.35	7.95	7.30	6.90	6.50	6.05	5.75	5.55	5.00	4.80	4.55

Modifications

Add to the total cost

Upgrade Kitchen Cabinets	$ + 727
Solid Surface Countertops	+ 563
Full Bath - including plumbing, wall and floor finishes	+ 4087
Half Bath - including plumbing, wall and floor finishes	+ 2475
One Car Attached Garage	+ 9905
One Car Detached Garage	+ 12,792
Fireplace & Chimney	+ 4670

Adjustments

For multi family - add to total cost

Additional Kitchen	$ + 2975
Additional Bath	+ 4087
Additional Entry & Exit	+ 1512
Separate Heating	+ 1315
Separate Electric	+ 981

For Townhouse/Rowhouse - Multiply cost per square foot by

Inner Unit	+ .95
End Unit	+ .97

Alternatives

Add to or deduct from the cost per square foot of living area

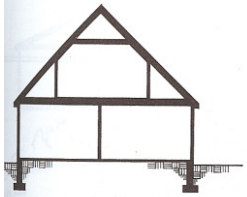
Composition Roll Roofing	– .55
Cedar Shake Roof	+ 2.50
Upgrade Walls and Ceilings to Skim Coat Plaster	+ .61
Upgrade Ceilings to Textured Finish	+ .44
Air Conditioning, in Heating Ductwork	+ 2.31
In Separate Ductwork	+ 5.18
Heating Systems, Hot Water	+ 1.54
Heat Pump	+ 2.15
Electric Heat	– 1.10
Not Heated	– 3.20

Additional upgrades or components

Kitchen Cabinets & Countertops	Page 93
Bathroom Vanities	94
Fireplaces & Chimneys	94
Windows, Skylights & Dormers	94
Appliances	95
Breezeways & Porches	95
Finished Attic	95
Garages	96
Site Improvements	96
Wings & Ells	34

26 **Important: See the Reference Section for Location Factors (to adjust for your city) and Estimating Forms**

Figure 3-3 (cont'd)
R.S. Means Sample Pages



Economy 1-1/2 Story

Living Area - 1600 S.F.
Perimeter - 135 L.F.

		Labor-Hours	Cost Per Square Foot Of Living Area		
			Mat.	Labor	Total
1 Site Work	Site preparation for slab; 4' deep trench excavation for foundation wall.	.041		.77	.77
2 Foundation	Continuous reinforced concrete footing, 8" deep x 18" wide; dampproofed and insulated 8" thick reinforced concrete block foundation wall, 4' deep; 4" concrete slab on 4" crushed stone base and polyethylene vapor barrier, trowel finish.	.073	3.66	4.21	7.87
3 Framing	Exterior walls - 2" x 4" wood studs, 16" O.C.; 1/2" insulation board sheathing; 2" x 6" rafters, 16" O.C. with 1/2" plywood sheathing, 8 in 12 pitch; 2" x 8" floor joists 16" O.C. with bridging and 5/8" plywood subfloor.	.090	4.44	6.00	10.44
4 Exterior Walls	Beveled wood siding and building paper on insulated wood frame walls; 6" attic insulation; double hung windows; 2 flush solid core wood exterior doors with storms.	.077	9.78	4.47	14.25
5 Roofing	20 year asphalt shingles; #15 felt building paper; aluminum gutters, downspouts, drip edge and flashings.	.029	.84	1.27	2.11
6 Interiors	Walls and ceilings, 1/2" taped and finished gypsum wallboard, primed and painted with 2 coats; painted baseboard and trim; rubber backed carpeting 80%, asphalt tile 20%; hollow core wood interior doors.	.204	9.00	11.08	20.08
7 Specialties	Economy grade kitchen cabinets - 6 L.F. wall and base with plastic laminate counter top and kitchen sink; 30 gallon electric water heater.	.020	1.27	.60	1.87
8 Mechanical	1 lavatory, white, wall hung; 1 water closet, white; 1 bathtub, enameled steel, white; gas fired warm air heat.	.079	2.91	2.63	5.54
9 Electrical	100 Amp. service; romex wiring; incandescent lighting fixtures, switches, receptacles.	.033	.84	1.14	1.98
10 Overhead	Contractor's overhead and profit.		4.91	4.83	9.74
		Total	37.65	37.00	**74.65**

1. The Effect of Local Land Use Regulations on the Cost of Housing

As illustrated above, only a limited number of those constituent cost components associated with residential land development and building identified in Figures 3-1 and 3-2 are influenced by local land use ordinances and regulations. Thus, for a municipality to achieve and remain in compliance with the workforce housing statute, it must identify those components.

With those components identified, a municipality may then rely upon the "regulatory audit" methodology introduced in Chapter 4 to determine whether its ordinances and regulations in fact "provide reasonable and realistic opportunities for the development of workforce housing." Several of the most common influences of municipal land use regulation effecting housing cost include: land value; design and construction standards for subdivision roads and infrastructure; impact fees; and growth management ordinances. These regulatory measures are discussed below.

a. Land Value:

The value or cost of land is affected by its location, composition, local regulation, and state environmental regulation. In the case of residentially zoned land, dwelling unit density is the single most important factor affecting the cost of land. A parcel of land that can be subdivided into single family house lots having a minimum of 1.5 acres of land area and a minimum of 150 feet of street frontage should always be expected to have greater value than if the same parcel were subject to standards requiring minimum lot area and street frontage dimensions of 2.5 acres and 250 feet, respectively. A parcel of land that can be subdivided into more lots can yield more profit, greater affordability, or both.

Aside from the simple "lot yield" consideration discussed above, minimum street frontage requirements also greatly affect construction cost. Take for example two adjacent towns, Town A and Town B. They have identical road construction standards. If the minimum frontage requirement in Town A is such that build-out of a subdivision in that municipality necessitates the construction of an additional 50 feet of street per lot above what is required in adjoining Town B, at an assumed average cost of $300.00 per linear foot of road, the cost of delivering a lot in Town A would be $15,000 more than in Town B. In addition to realizing fewer lots from the development, to make a profit the developer will likely have to build more expensive homes to account for the additional construction cost. Other dimensional standards included in municipal zoning ordinances and regulations have similar cost implications.

Less obvious are the wide range of other local regulatory standards that also serve to dictate density and hence land cost. These often include:

- Qualitative lot sizing requirements;

- "Building envelope" standards, including geometric requirements (e.g., a rectangle or circle of specific dimensions) to be contained within a building lot;
- Application of special purpose or overlay zoning districts;
- Buffering requirements for adjacent land of varying use (including other residential uses), wetlands, steep slopes and other physical attributes of land; and
- Other qualitative requirements which have the net effect of limiting residential density.

New Hampshire's statute that describes the purpose of local zoning states

> Every zoning ordinance shall be made with reasonable consideration to, among other things, the character of the area involved and its peculiar suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality. (RSA 674:17, II).

Underlying this statement is the notion that a rational nexus must exist between the extent to which land is regulated and the character and anticipated use of that land. Indeed, the concepts of "proportionality" and "rational nexus" between a limitation on a property owner's use of his or her land and the public benefit sought by that limitation are legal principles that come from both the U.S. and New Hampshire Constitutions.[24]

To the extent any zoning ordinance prescribes minimum dimensional and density standards for residential use, compliance with RSA 674:59 may require a municipality to revisit its zoning ordinance to ensure that a rational nexus in fact exists between the true character of the land and the minimum dimensional and density standards required under those ordinances.

For the past four decades, the New Hampshire Department of Environmental Services (DES) has enforced Administrative Rules governing minimum lot area and dimensions applicable to the subdivision of land. These Rules regulated the use of on-site sewage disposal and water supply wells for residential utility accommodations[25].

Under these Rules, the applicable minimum lot area for a lot intended to accommodate a single-family home is determined based upon land slope and soil conditions. Although the Rules suggest a possible range in minimum lot area of between 30,000 square feet (0.7 acres) and 90,000 square feet (2.1 acres), in most instances application of the Rules to the majority of residentially zoned land yields necessary minimum lot areas in the range of 1.0 to 1.5-acres. Further, in order to accommodate the protective radius for a residential water supply well, a lot width of approximately 150-feet is required under the Rules in most circumstances. Note that this does not necessarily translate to a need for a local minimum of 150 feet of road frontage, absent a local requirement that lots must be rectangular.

[24] *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005); *Burrows v. City of Keene*, 121 N.H. 590 (1981).
[25] See PART Env-Wq 1005 of the New Hampshire Code of Administrative Rules, available online at http://des.nh.gov/organization/commissioner/legal/rules/documents/env-wq1000.pdf.

The lot dimensions that are required to conform to the DES Rules may be viewed as minimum standards, and municipalities may enact their own more stringent standards. However, when considering water supply and sewage disposal accommodations, municipalities having land use ordinances and regulations which require minimum lot area and dimensions substantially exceeding these minimum statewide standards may need to revisit their ordinances in order to comply with RSA 674:59.

b. Design & Construction Standards for Subdivision Roads & Infrastructure

Existing municipal subdivision regulations around the State incorporate design and construction standards for streets and other development infrastructure that vary significantly from one community to another. Nationally recognized design standards, such as the American Association of State Highway and Transportation Official's (AASHTO) widely accepted publication, A Policy on Geometric Design of Streets and Highways, suggest that most low volume (under 400 vehicles per day) residential streets should have a minimum paved width of 18 to 20 feet, but it is common for local subdivision regulations to require 24 feet or more of paved street width.

While most residential areas of New Hampshire are in a rural setting, it is increasingly common for municipalities to require installation of curbing and sidewalks in low to moderate density residential subdivisions. In essentially all instances, the installation of curbing brings with it the need to also construct a series of storm drains, connected with closed culvert pipes, adding significant incremental construction costs, as well as longer-term municipal maintenance costs.

This is just an example of a situation in which construction of infrastructure beyond what is truly needed to properly accommodate residential development can be seen as unnecessarily adding expense. Such standards can compromise the economic viability of a workforce housing development, and can undermine a municipality's argument that it is providing reasonable and realistic opportunities for such development.

c. Impact Fees

Today, it is common for municipalities to require payment of impact fees for residential development, with total fees sometimes exceeding $10,000 per house. While impact fee assessment and collection will likely remain a valuable tool for municipalities, payment of these fees can significantly add to the cost of housing.

Recognizing this, some communities are considering impact fee waivers for workforce housing developments. Those municipalities that continue to require them for workforce housing will need to incorporate this added development cost in their determinations of economic viability, and whether the local land use regulations provide the opportunity for workforce housing development. Such communities might find that they need to offer an additional bonus under an inclusionary zoning ordinance to account for the cost imposed by impact fees.

d. Growth Management

During years when residential development pressures peaked, many New Hampshire communities enacted some form of growth management control, including growth management ordinances (GMOs), building permit restrictions and requirements for phasing. While the continued need for growth management will vary among municipalities based upon individual circumstances, it seems that some GMOs currently in force could ultimately frustrate local compliance with the workforce housing statute.

Of particular concern is how some GMOs appear to conflict with the ability of a developer to construct multi-family housing, defined in the statute as a building containing five or more dwelling units. Because most GMOs control the rate at which building permits are issued, a GMO that limits the rate of growth within a particular development to four or fewer dwelling units per year would likely be regarded by a court as inconsistent with the statute, as the GMO would make it impossible to build a five-unit multi-family structure.

Further, the question of compatibility of some GMOs with the requirement that local land use ordinances and regulations afford "reasonable and realistic opportunities for the development of workforce housing" is a likely source of non-compliance. An important factor affecting construction cost is the manner and pace at which a development is fully built out. In addition to typical "time value of money" considerations, application of such limitations will prevent developers from realizing the advantages of economies of scale, thereby creating a measurable difference in a developer's ability to deliver workforce housing to the market.

As the foregoing discussion reveals, although local land use ordinances and regulations may not effect the price of "bricks and sticks," they certainly can influence the cost of most other "big ticket" items associated with land development and building, including the value of the land itself.

2. Workforce Housing Compliance: Pro-Forma Analysis

Given the requirement of economic viability in the workforce housing statute, its local implementation may require periodic economic analysis to:

- Determine whether a municipality's land use ordinances and regulations comply with the law (i.e., municipal housing and regulatory audits); and

- Assess the validity of a claim by an applicant of a workforce housing proposal that a local land use board's decision will have a substantial adverse effect on the economic viability of the proposed development (see RSA 674:61).

The housing and regulatory audits are likely to be done using readily available and familiar information—purchase prices, rental costs, and the municipality's own existing

regulations. But because a proper assessment of economic viability involves a series of factors that are not static, the economic viability of a municipality's regulations at any given time also will not remain static and will require a different form of analysis.

While a local land use board's application of economic analysis to measure the impact of specific land use regulations seem like a new process, the general concept of assessing the economic viability of business proposals, including those involving land development and building construction, is not. Historically, those involved in land development and building construction have undertaken a "pro forma analysis" when assessing the economic viability of a particular proposal. A pro forma analysis can also be used by a municipality to assess the economic claims of a developer who is proposing workforce housing. Furthermore, this sort of analysis can also be useful to a municipal land use board to examine the potential impacts of its regulations, or of proposed regulatory changes, even without a particular development application under consideration.

A pro forma analysis provides an analyst with a defined methodology for the assessment of economic viability. The figures in a pro forma model will generally get more definite and refined as the project continues and actual costs are obtained.

How a Developer Uses a Pro Forma

Implementation and refinement of a pro forma model for a specific housing proposal will typically involve the following process:

- An analyst will commence building the pro forma model by trying to identify all foreseeable fixed and independent variables having the potential to affect the outcome of the analysis.
- As the analysis continues, on-going research and due diligence enables the analyst to assign constantly refined values to those variables contained within the analysis until such time as the analyst is able to confidently predict an outcome. The more confidence an analyst has in the values assigned to specific variables contained within the analysis, the greater the level of confidence the analyst will have in the pro forma model's ability to accurately predict an outcome.
- In many instances, assignment of one or more independent variables may not involve a single value, but rather a range of probable values. By considering the output of a pro forma model under the range of probable values assigned to a specific variable, the sensitivity of that variable to affect the outcome may be better understood.

As an example, in the case of land development in New Hampshire, the ability to forecast the true cost of rock excavation can be a very difficult task. However, the realized time and cost associated with this task can often "make or break a deal." Therefore, a pro forma analyst may elect to apply both "best case" and "worst case" values for this item in

order to determine the actual impact of this unknown on the outcome of the analysis. As the analysis continues and the range between best and worst case values closes, as more is learned about the property, the true cost impact of rock excavation becomes better understood.

Moreover, under the provisions of RSA 674:61, appeals involving workforce housing applications are to be considered by superior court under RSA 677:4 or RSA 677:15. Given that a reviewing court must rely on the certified record of the local land use board's proceedings when hearing such appeals, a record containing a well documented economic analysis supporting a board's decision would be very valuable to the municipality's defense.

The following pages illustrate how a municipality could examine the costs associated with the development standards in a zoning ordinance and subdivision or site plan regulations. Using income and affordability standards for 2009, the fictitious Town of Frost Hollow sets the stage for utilizing a developer's pro forma financial analysis. Figures 3-4 and 3-5 represent the results of a pro forma analysis completed for the purposes of assessing whether or not the developer will elect to advance the planned subdivision under conventional zoning controls, or instead under Frost Hollow's inclusionary zoning ordinance. Under "Building Type, Quality and Pricing Table" in Figure 3-3, housing costs associated with each dwelling unit type are detailed. The developer has determined that implementation of conventional zoning would allow for the development of 46 market rate single-family homes, with 23 of the units priced to sell at $379,999 (a 3-bedroom, 2,200 square foot home); and the remaining 23 units priced to sell at $409,900 (a 4–bedroom, 2,400 square foot home). When the 20-percent density bonus is applied to the project, ten additional housing units can be constructed. These 3-bedroom homes will be priced to sell at the maximum price point of $271,000 for workforce housing.

Figure 3-5, "Project Pro Forma," combines the costs from these two development scenarios. The first segment illustrated by this Figure compares Cash Flow between the two project types over a four-year build-out period. In addition to detailing project sales, this segment details project costs including; land development, building construction, selling costs, and debt service. Funds remaining at the end of the year are assumed to be used to fund the subsequent year's construction costs. It should be noted that costs are incurred over a three-year period for land development (road and infrastructure costs) and a four-year period for building construction. The Profit and Loss segment summarizes both income and costs.

The final segment of Figure 3-5, Lot Cost Summary, provides an outline of final development costs and profit. The 46 unit standard housing development scenario is projected to yield an average finished lot cost of $92,208 and an average finished home cost (before profit) of $302,185, yielding a projected profit margin of 20.24%. The inclusionary housing project is projected to yield a finished lot cost of $83,908 and an average finished home cost of $280,474, for a projected profit margin of 22.97%.

Frost Hollow, New Hampshire – An Illustrative Example

This hypothetical example illustrates how pro forma analyses may be used to assess the economic viability of alternative zoning approaches. Here, is an analysis of two housing development scenarios, one detailing a typical subdivision and another using an inclusionary housing, based on standards adopted by the voters of the Town of Frost Hollow to encourage the development of workforce housing.

Frost Hollow is a quaint New Hampshire community with a population of approximately 6,400 persons. Frost Hollow is a desirable bedroom community and is situated within a Metropolitan Area having a median income of $90,000 per year. Correspondingly, for compliance with the provisions of RSA 674:59, Frost Hollow's planning board knows that workforce housing units must be affordable to its residents at a cost of not more than $271,000 (From NHHFA 2009 Purchase and Rent Limit recommendations).

While Frost Hollow's existing housing stock includes many homes available for purchase at or below this price, the affordability of new homes within the Town has long been an issue since many families have seen their children and grandchildren forced to move elsewhere, because the price of homes in Frost Hollow has continued to increase in recent decades.

Further, in response to market conditions, the majority of new homes constructed during the past 20 years have been larger, more expensive homes, typically occupied by professionals who work outside of the community. In an attempt to address this problem, Frost Hollow adopted an inclusionary zoning ordinance. The ordinance provides for a 20-percent density bonus for those units that are set aside as workforce housing.

A local developer has purchased a 120-acre parcel and is contemplating developing the project under either "standard" zoning controls or the town's inclusionary housing ordinance.

As such, two development options are contemplated by the applicant. Figure 3-3, "Project Development Assumptions," illustrates some basic information that is associated with these proposals, including:

- **Financial Considerations:** Funding costs 6 to 9-percent over the four-year projected build-out period; the developer's equity will be 30-percent of the project's value; and he intends to pay back 70-percent of this debt as finished homes are sold. Further, it is projected that construction costs will escalate at a rate of 1.5-percent per year over the life of the project. The developer is under contract to purchase the 120-acre parcel for $1,400,000.

- **Zoning Requirements:** The Frost Hollow Zoning Ordinance requires a two-acre minimum lot area. The ordinance also requires a minimum of 150-feet of street frontage for each platted lot. Approximately 100 acres of the 120-acre parcel are useable under other terms and conditions of the ordinance. Based upon a conceptual subdivision plan prepared by the developer's consultant, an average lot area of 2.17-acres appears feasible.

Again, Frost Hollow's inclusionary zoning ordinance provides for a 20-percent density bonus for those dwelling units set aside as workforce housing. The inclusionary ordinance requires a minimum lot area determined by soil based lot sizing (rather than a 2-acre minimum lot area); and in addition, permits a reduction in the minimum frontage requirements, thereby eliminating the need to increase overall roadway length to accommodate the increased density and reducing costs.

These two development scenarios involve several assumptions, including: that the vitality of the housing market will be sufficient to enable "sell-out" to occur within the specified time period; that the project will be completed in four years; and that project delays are avoided and all budgetary assumptions remain valid throughout the project's duration.

Figure 3-4: Project Development Assumptions

Community :	**Frost Hollow**	**New Hampshire**	
Project Name:	*Pleasant Meadow Drive*		
HUD Affordable Home Price For Frost Hollow:	$ 271,000		
HUD Median Income For: Frost Hollow, NH:	$ 90,000		
Does Frost Hollow, NH Charge Impact Fees? (Yes / No):	No		

Financing Assumptions:

Annual Cost Adjustment Factor:	1.50%		First Building Delivery - Time to Market (Beginning of Month):	4
Land And Construction Funding Rate (Year-1 & Year-5):	6.000%	9.000%	Anticipated Sell Rate - % of Units Per Year:	100%
Developer's Beginning Land Equity Interest:	30.000%		Unsold Unit Absorption Rate - % Per Year:	100%
Developer's Beginning Development Cash-to-Debt Ratio:	30.000%		Line of Credit-to-Building Cost Ratio:	70.00%
Developer Beginning Contingency Reserve:	10.00%		Revolving Credit On Maximum Units In Production:	5
Apply Sales Revenue to Reduce Interest Expense (Yes / No):	No		Available Line-of-Credit For Building Development:	$ 463,000
Rate Paid on Escrow Funds:	2.50%		**Revolving Credit Line: Equals 70% Tmes the Median Cost of 5 Buildings**	

Building Type, Quality and Pricing Table:

Cluster Zoning is On

Regional Cost Adjustment For: Frost Hollow, NH. 95%

4 Lots More Than Requisite

Single Detatched		By Right Lots	Cluster Lots	Bonus Lots	Market Price	Product Grade	Sq. Ft. / Unit	Cost / Sq. Ft.	Profit / Sq. Ft.	Adj. Base Cost	Units / Lot	Brms / Unit	Profit / Unit	Net Brms	Total Lots
Market 1 Bedroom:	No														
Workforce 1 Bedroom:	No														
Market 2 Bedroom:	No														
Workforce 2 Bedroom:	No														
Market 3 Bedroom:	Yes	23	0	0	$ 379,900	High	2,200	$ 104.05	$ 10.14	$ 196,272	1	3	$ 21,193	3	23
Workforce 3 Bedroom:	Yes	0	0	10	$ 271,000	Economy	1,850	$ 80.00	$ 4.74	$ 132,269	1	3	$ 8,331	3	10
Market 4 + Bedroom:	Yes	23	0	0	$ 409,900	High	2,400	$ 104.05	$ 10.14	$ 214,115	1	4	$ 23,119	4	23
Workforce 4 + Bedroom:	No														
Single Attached (Town House)															
Market 2 Bedroom:	No														
Workforce 2 Bedroom:	No														
Market 3 Bedroom:	No														
Workforce 3 Bedroom:	No														
Duplex/Comdex/Other															
Market 2 Bedroom:	No														
Workforce 2 Bedroom:	No														
Market 3+ Bedroom:	No														
Workforce 3+ Bedroom:	No														
Multifamily 3+ Lots:	No														
Manufactured Housing:	No														

Zoning By Right in Frost Hollow, NH:

Land Purchase Price (Land Value Appraisal): $ 1,400,000

Total Land Area (# Acres):	120	
Net Buildable Area (# Acres):	100.00	
Minimum Lot Size as Zoned (# Acres):	2.17	*An Additional 20% or 10 Bonus Lots Allowed With Regulatory Approval*
Lots Allowed As Zoned:	46	
Does Frost Hollow Regulate Bedroom Totals? (Yes / No):	No	*Bedroom Counting is Off*
Target Annual Cluster Housing Delivery Rate:	10.0%	**Percent of All Lots Designated For Workforce Housing**
Full Basecoat Road Build (Yes / No):	No	*Full Road Build-Out Is Off = Road Built Over 4 Phases*
Road Frontage Per Zoning (Lineal Feet):	150	
Adjusted Road Frontage Per Lot (Lineal Feet):	175	**A 116.7% Frontage Adjustment Will Be Used to Distribute Lots Along Street**
Paved Road Surface Required As Zoned "By Right" (Feet Wide):	26	**Paved Surface Area: 26 Foot Wearing Course**
Total Shoulder Width As Zoned "By-Right" (Feet Both Sides):	6	**Shoulder Area: 3 Feet Each Side Of The Paved Surface Area**
Common (Bank) Gravel Depth Required As Zoned (Inches):	18.0	
Select (Crushed) Gravel Depth Required As Zoned (Inches):	9.0	
Base Asphalt (Binder) Specified As Zoned - Depth (Inches):	3.0	
Finish Asphalt (Wearing) Specified As Zoned - Depth (Inches):	1.5	
Absorption Rate (Phasing) For A 46-Lot Subdivision: (Years):	4	

Additional Roadway Surface Areas w/o Utilities
Square Feet Of Additional Surface Area Per Phase

Phase 1	Phase 2	Phase 3	Phase 4	N/A
0.0	4000.0	1000.0	3000.0	

(i.e. Culdesac, Fillet, Half Circle, etc.)

Cluster Zoning in Frost Hollow, NH:

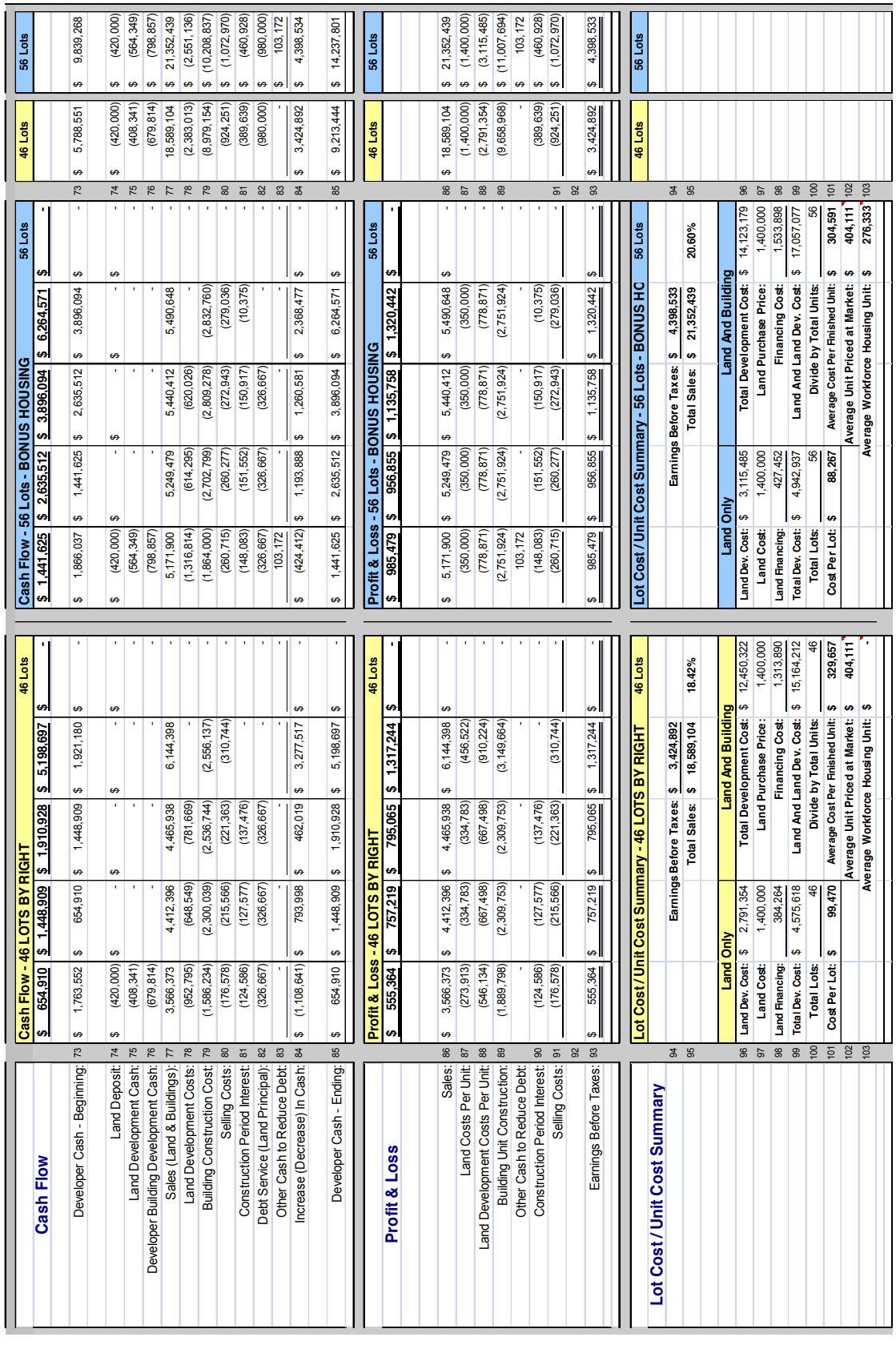
Does Frost Hollow Have Cluster Zoning? (Yes / No):	Yes	*Cluster Zoning is On*
Additional Lots That May Be Allowed Under Regulatory Approval:	10	
Maximum Number of Allowed Bedrooms:	24	
Regulated Road Frontage Per Lot (Lineal Feet):	120	
Adjusted Road Frontage Per Lot (Lineal Feet):	200	**Adjusted Road Frontage Cannot Be Less Than The 120 Lineal Feet Zoning Requires**
Lineal Feet Of Road To Reach Development Site (Lineal Feet):	100	
Road Width Allowed Under Cluster Zoning (Feet):	22	**Assumes Road Wearing Course Is 22 Feet Plus Two - 3 Foot Shoulders**
Paved Road Surface Required As Zoned "By Right" (Feet Wide):	26	
Common (Bank) Gravel Depth Required As Zoned (Inches):	12.0	
Select (Crushed) Gravel Depth Required As Zoned (Inches):	4.0	
Base Asphalt (Binder) Specified As Zoned - Depth (Inches):	2.0	
Finish Asphalt (Wearing) Specified As Zoned - Depth (Inches):	1.0	
Absorption Rate (Phasing) For A 56 Lot Subdivision: (Years):	4	

Additional Roadway Surface Areas w/o Utilities
Square Feet Of Additional Surface Area Per Phase

Phase 1	Phase 2	Phase 3	Phase 4	N/A
1000.0	1000.0	1000.0	1000.0	

(i.e. Culdesac, Fillet, Half Circle, etc.)

Figure 3-5: Project Pro Forma



Cash Flow

		Cash Flow - 46 LOTS BY RIGHT				46 Lots	Cash Flow - 56 Lots - BONUS HOUSING				56 Lots	46 Lots	56 Lots
		$ 654,910	$ 1,448,909	$ 1,910,928	$ 5,198,697	$ -	$ 1,441,625	$ 2,635,512	$ 3,896,094	$ 6,264,571	$ -		
Developer Cash - Beginning:	73	$ 1,763,552	$ 654,910	$ 1,448,909	$ 1,921,180	$ -	$ 1,866,037	$ 1,441,625	$ 2,635,512	$ 3,896,094	$ -	73 $ 5,788,551	$ 9,839,268
Land Deposit:	74	$ (420,000)	$ -	$ -	$ -	$ -	$ (420,000)	$ -	$ -	$ -	$ -	74 $ (420,000)	$ (420,000)
Land Development Cash:	75	(408,341)	-	-	-	-	(664,349)	-	-	-	-	75 (408,341)	$ (664,349)
Developer Building Development Cash:	76	(679,814)	-	-	-	-	(798,857)	-	-	-	-	76 (679,814)	$ (798,857)
Sales (Land & Buildings):	77	3,566,373	4,412,396	4,465,938	6,144,398	-	5,171,900	5,249,479	5,440,412	5,490,648	-	77 18,589,104	$ 21,352,439
Land Development Costs:	78	(952,795)	(648,549)	(781,669)	-	-	(1,316,814)	(614,295)	(620,026)	-	-	78 (2,383,013)	$ (2,551,136)
Building Construction Cost:	79	(1,586,234)	(2,300,039)	(2,536,744)	(2,556,137)	-	(1,864,000)	(2,702,799)	(2,809,278)	(2,832,760)	-	79 (8,979,154)	$ (10,208,837)
Selling Costs:	80	(176,578)	(215,566)	(221,363)	(310,744)	-	(260,715)	(260,277)	(272,943)	(279,036)	-	80 (924,251)	$ (1,072,970)
Construction Period Interest:	81	(124,586)	(127,577)	(137,476)	-	-	(148,083)	(151,552)	(150,917)	(10,375)	-	81 (389,639)	$ (460,928)
Debt Service (Land Principal):	82	(326,667)	(326,667)	(326,667)	-	-	(326,667)	(326,667)	(326,667)	-	-	82 (980,000)	$ (980,000)
Other Cash to Reduce Debt:	83	-	-	-	-	-	103,172	-	-	-	-	83 -	$ 103,172
Increase (Decrease) In Cash:	84	$ (1,108,641)	$ 793,998	$ 462,019	$ 3,277,517	$ -	$ (424,412)	$ 1,193,888	$ 1,260,581	$ 2,368,477	$ -	84 $ 3,424,892	$ 4,398,534
Developer Cash - Ending:	85	$ 654,910	$ 1,448,909	$ 1,910,928	$ 5,198,697	$ -	$ 1,441,625	$ 2,635,512	$ 3,896,094	$ 6,264,571	$ -	85 $ 9,213,444	$ 14,237,801

Profit & Loss

		Profit & Loss - 46 LOTS BY RIGHT				46 Lots	Profit & Loss - 56 Lots - BONUS HOUSING				56 Lots	46 Lots	56 Lots
		$ 555,364	$ 757,219	$ 795,065	$ 1,317,244	$ -	$ 985,479	$ 956,855	$ 1,135,758	$ 1,320,442	$ -		
Sales:	86	$ 3,566,373	$ 4,412,396	$ 4,465,938	$ 6,144,398	$ -	$ 5,171,900	$ 5,249,479	$ 5,440,412	$ 5,490,648	$ -	86 $ 18,589,104	$ 21,352,439
Land Costs Per Unit:	87	(273,913)	(334,783)	(334,783)	(456,522)	-	(350,000)	(350,000)	(350,000)	(350,000)	-	87 (1,400,000)	$ (1,400,000)
Land Development Costs Per Unit:	88	(546,134)	(667,498)	(667,498)	(910,224)	-	(778,871)	(778,871)	(778,871)	(778,871)	-	88 (2,791,354)	$ (3,115,485)
Building Unit Construction:	89	(1,889,798)	(2,309,753)	(2,309,753)	(3,149,664)	-	(2,751,924)	(2,751,924)	(2,751,924)	(2,751,924)	-	89 (9,658,968)	$ (11,007,694)
Other Cash to Reduce Debt:	90	-	-	-	-	-	103,172	-	-	-	-	-	$ 103,172
Construction Period Interest:	90	(124,586)	(127,577)	(137,476)	-	-	(148,083)	(151,552)	(150,917)	(10,375)	-	(389,639)	$ (460,928)
Selling Costs:	91	(176,578)	(215,566)	(221,363)	(310,744)	-	(260,715)	(260,277)	(272,943)	(279,036)	-	91 (924,251)	$ (1,072,970)
Earnings Before Taxes:	92											92	
	93	$ 555,364	$ 757,219	$ 795,065	$ 1,317,244	$ -	$ 985,479	$ 956,855	$ 1,135,758	$ 1,320,442	$ -	93 $ 3,424,892	$ 4,398,533

Lot Cost / Unit Cost Summary

		Lot Cost / Unit Cost Summary - 46 LOTS BY RIGHT		46 Lots	Lot Cost / Unit Cost Summary - 56 Lots - BONUS HC		56 Lots	46 Lots	56 Lots
	94		Earnings Before Taxes:	$ 3,424,892		Earnings Before Taxes:	$ 4,398,533		
	95		Total Sales:	$ 18,589,104	18.42%	Total Sales:	$ 21,352,439	20.60%	
		Land Only	Land And Building		Land Only	Land And Building			
Land Dev. Cost:	96	$ 2,791,354	Total Development Cost:	$ 12,450,322	$ 3,115,485	Total Development Cost:	$ 14,123,179	96	
Land Cost:	97	1,400,000	Land Purchase Price:	1,400,000	1,400,000	Land Purchase Price:	1,400,000	97	
Land Financing:	98	384,264	Financing Cost:	1,313,890	427,452	Financing Cost:	1,533,898	98	
Total Dev. Cost:	99	$ 4,575,618	Land And Land Dev. Cost:	$ 15,164,212	$ 4,942,937	Land And Land Dev. Cost:	$ 17,057,077	99	
Total Lots:	100	46	Divide by Total Units:	46	56	Divide by Total Units:	56	100	
Cost Per Lot:	101	$ 99,470	Average Cost Per Finished Unit:	$ 329,657	$ 88,267	Average Cost Per Finished Unit:	$ 304,591	101	
	102		Average Unit Priced at Market:	$ 404,111		Average Unit Priced at Market:	$ 404,111	102	
	103		Average Workforce Housing Unit:	$ -		Average Workforce Housing Unit:	$ 276,333	103	

What this comparative analysis demonstrates is that a developer can rely upon an inclusionary ordinance to attain essentially the same profit margin, while providing workforce housing opportunities in the Town of Frost Hollow. In this instance, this has been achieved by implementation of an inclusionary zoning ordinance that permits increased residential density and a reduced street frontage requirement.

How a Municipality Can Use a Pro Forma

While it is common for a developer to use a pro forma—indeed, it is an essential good business practice and one that is required for bank financing—the cost implications of land and housing development variables historically have not been analyzed by local land use boards in New Hampshire. This is because local boards have not had to consider these cost implications as part of their decision, at least outside the context of constitutional "takings" claims based on such costs, known as "inverse condemnation."

But under the workforce housing law, local land use boards must understand the costs associated with their regulations and with the conditions of approval—and by extension, they can develop an understanding of what regulatory waivers or variances may be appropriate.

This does not mean that municipalities must create their own pro forma analysis tool. Rather, when an applicant declares that a proposal is a workforce housing development *and requests specific regulatory relief*, the board can require that the applicant divulge financial information that demonstrates the need for such relief. The board can use the list of development cost items in Figure 3-1 as a checklist for the applicant to complete, as a means of demonstrating the applicant's development cost assumptions.

Then the local land use board can submit these cost assumptions—the applicant's pro forma—to its own consulting engineer or another professional with experience in land development cost estimation. Based on the recommendations of its own expert, whose services should be paid for by the applicant, a planning board may choose to waive certain provisions of its subdivision or site plan regulations, or grant ordinance waivers if it has that authority under the zoning ordinance. Faced with similar information and recommendations, a zoning board of adjustment may find it appropriate to grant zoning variances necessary to ensure the economic viability of the workforce housing development.

In any case, it's important to recognize that this sort of analysis should not impose any additional costs on the municipality. If a developer is proposing a workforce housing development and wants to utilize the processes of the workforce housing statute, the cost of independent review should be seen as a cost of doing business. It's also important to recognize that if a developer is not seeking regulatory relief to build workforce housing, then this sort of pro forma analysis by the local land use board is not necessary.

The extent of regulatory relief that may be needed to provide an opportunity for the development of workforce housing will vary greatly by community, in large part because of the variable nature of local regulation. Many smaller communities may find that they only need to make simple changes to their ordinances and regulations, and the solutions they seek to implement should match the technical and administrative capacity of their staff.

It is important to remember that any workforce housing ordinance must be developed in a manner that creates the "reasonable and realistic" opportunities for the development of workforce housing mandated under RSA 674:59. If reasonable profit margins are not available to those who assume the risk associated with building construction, workforce housing will not be built. For those communities that have ordinances and regulations requiring large lot sizes, infrastructure and road design and construction standards that exceed accepted norms, and impact fees and/or growth management ordinances, the need for regulatory change to meet the requirements of the workforce housing statute will likely be greater.

3. The Cost Implications of Time After Approval

Housing markets are not static. After the planning board approves a workforce housing project, delays in construction and housing sales can have an impact on the economic viability of the project because of changed market conditions. Workforce housing prices are driven by area incomes that may change from year to year, interest rates that may change from week to week, and other considerations that influence the cost of housing. In addition, inventories of existing homes for sale and, to a lesser extent the sale of new homes, may also compete for the same potential buyers. All of these factors may reduce the economic viability of a development either by forcing prices down or reducing the developer's profit when prices of workforce housing units are capped and development costs rise.

This potential for change can be seen in what has occurred in the market over a one year period from 2009 and 2010. In the 2010 Workforce Housing Purchase and Rent Limits (Table 2-1), the 2010 Nashua area median income is $90,500, which yields a maximum affordable purchase price of $285,000. The purchase price assumes a 5% down payment, 30 year mortgage at 5.05% and .07 points, plus property taxes, private mortgage insurance, and hazard insurance. This market fluctuation can be seen in the Frost Hollow Illustrative Example (Page 33), which is a 2009 market example, which shows that over one year the Nashua area income increased by $500 and the typical interest rate dropped to 5.05% from 5.74%. These changes (income and interest rates) caused the Nashua area maximum affordable housing price to increase from $271,000 to $285,000.

In a reversing trend, if the mortgage interest rate increased to 6% during the project's construction, while keeping other conditions constant, the price of workforce housing would have to decrease to a maximum of $265,000 to maintain affordability because of the increased monthly interest payments. Because of a range of variables, delays to the production of homes for sale can change a project from one that was economically viable at the time of approval to one that cannot be built profitably. Some of these variables

include bad weather, phasing requirements, unforeseen development site conditions, or housing absorption rates to name a few risks.

To account for this possibility – and to limit the need for a developer to return to a planning board to revisit the conditions of approval and their associated costs – the planning board should help to ensure that the applicant has a development plan that can adapt to changes in the market. If the applicant relies on the highest workforce ownership price point to make the project feasible, slight changes in market conditions or unforeseen site conditions could undermine the project's economic viability.

The simplest solution to this problem is to have the applicant propose a range of workforce housing pricing. In the example above, a range of sale prices between $250,000 – $285,000 may be appropriate to ensure economic viability in the face of shifting market conditions and unforeseen physical characteristics of the development site. Selecting mid-range pricing can help ensure that what gets approved and built is equitable to the community as well. The applicant and the planning board should shape a realistic home-pricing schedule that anticipates potential market and development changes. Planning boards should consider a collaborative approach that increases the likelihood of an economically viable project that benefits the community, while also allowing the applicant an opportunity to earn a reasonable entrepreneurial return on capital investment.

Chapter Four
Tools for Compliance with the Workforce Housing Law

A. Creating Reasonable and Realistic Opportunities

The overall challenge for municipal compliance with the workforce housing statute is to determine if local land use ordinances and regulations, viewed collectively, provide a reasonable and realistic opportunity for the development of workforce housing. A recommended first step in this process is to undertake an assessment of existing housing stock. The goal of this exercise is to determine whether new homes are being sold or rented at an affordable price. Demonstration of that could serve as an indication that the community's current land use ordinances and regulations are providing reasonable and realistic opportunities for the development of workforce housing. The following information should be gathered:

- Is new housing being built that meets workforce housing statute pricing guidelines (Figure 2-1)?;
- Are there rental units in the community that meet the workforce housing statute cost guidelines?; and
- What has been the price of recent existing homes sales in the community?

A recommended second step is to conduct a regulatory audit of existing ordinances and regulations in regard to:

- Where various types of housing may be permitted in the municipality;
- Which types of housing are currently permitted in each zoning district; and
- What regulatory hurdles, if any, may be in place that impact the ultimate cost of residential construction.

These steps will provide a community with information necessary to determine if reasonable and realistic opportunities currently exist.

B. Housing Assessment: Determining a Municipality's Supply

The purpose of a municipal housing assessment is to take a snapshot of a community's supply of workforce housing.

This can be a helpful analysis to undertake because, as outlined in the statute:

> a municipality's existing housing stock shall be taken into consideration in determining its compliance with this section. If a municipality's existing housing stock is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing, the municipality shall be deemed to be in compliance with this subdivision and RSA 672:1, III-e. - RSA 674:59, III.

While a housing assessment alone is not an analysis of whether a municipality meets its fair share of regional housing need, undertaking this level of analysis could, in concert with a regional analysis, lead to a conclusion that no further action is needed in response to the workforce housing law's requirements. In other words, if most of the housing stock is affordable based on current rents and market value of owned units (for sale or not) and land values and local regulations have changed little in the past few years, then it is likely that a municipality is already in compliance with the statute. This assumes that multi-family housing is allowed in the municipality. Conversely, in instances where the analysis reveals shortcomings in workforce housing inventory, the results of the analysis will provide baseline data which the community can rely on when considering amendments to its land use ordinances and regulations.

It is also important to differentiate between all housing in a community and those homes that have been developed recently. The sales prices or rental costs of homes and apartments that have been built in the past year or two can provide an indication of the existence of "reasonable and realistic opportunities" for workforce housing development. That is, if workforce housing is being built, then that provides a good indication of the existence of such opportunities. But if workforce housing is not being built, that does not mean the opportunities do not actually exist—it is possible that there are opportunities that are not being utilized by developers. The latter situation would require a more careful analysis to determine the existence of workforce housing development opportunities, or the lack of them because of regulatory constraints.

1. Getting Started: Some Key Questions

A significant portion of the data a municipality needs to conduct a housing assessment are readily available. The best place to start answering these questions would be the community's assessing office.

These are some key questions to ask when conducting a housing assessment.

- What is the range of recent (within the last year) owner occupied primary homes sales (not 2nd homes) in the community? Of these sales, how many have been new construction and what have been their sale price ranges?

- Are there multi-family properties? If so, are these units available on a rental basis and what are the corresponding rental rates?

- What percentages of owner occupied homes and rental units qualify as workforce housing based upon statutory criteria (As outlined in Figure 2-1)?

2. Gathering and Analyzing the Data

The assessor's office should have a list of all property sales that have occurred. If the assessing data are up to date (use equalized data), community assessments should generally reflect local market conditions.[26] From these data, obtain the following:

- Over the last year, identify the sales prices of primary preexisting homes, new homes, including condominiums.

  - The statute specifically excludes housing units that are age restricted, along with housing developments in which less than 50 percent of the housing units have less than two bedrooms. These homes should be omitted from the analysis.

  - Using the NHHFA Workforce Housing Purchase and Rent Limit (discussed in Chapter 2 and shown at Figure 2-1), determine what targeted home purchase price is applicable to the community.

  - Separate analyses of these data should be conducted for existing homes and newly constructed homes, as data corresponding to new home sales will provide an indication as to the effectiveness of current land use ordinances and regulations in providing opportunities to develop workforce housing – which is the goal of the statute. Existing home sales will provide data as to the overall affordability of owner occupied housing in the community and will be useful as part of a fair share analysis, if the community chooses to undertake one.

  - Collect data on the number of rental units in the community and estimate their rental cost. Some rental developments are assessed based on their income stream and thus the local assessor may have rental cost information available for them. For the balance however, a rental survey may be required.

[26] Equalized data is a process used by an assessing department to recognize the rise and fall of property values over time. An assessing department attempts to maintain property assessments as close to 100% true market value at all time. When the difference between market and assessed values become significant, a revaluation of all of a municipality's properties must take place. Equalization attempts to recognize a property's true market value as an intermediate step between revaluations.

- New Hampshire Housing Finance Authority (NHHFA) annually collects rental data for the entire state, and posts this information along with data for larger communities on its website http://www.nhhfa.org/rl_rrcs.cfm).

    - If your community is not listed, call NHHFA (472-8623) to determine if they have collected data on your community but have not published it. For smaller communities, these data may not be available, or the sample size may be too small to be statistically reliable.

- The NHHFA rental data will be reported in gross rents (which includes utility costs), which is the current value used to determine rental affordability under the workforce housing statute. If a local survey is undertaken, average utility costs will have to be included in the rental cost.[27]

- As with owner-occupied housing, determine what percentage of the rental housing stock meets workforce housing target costs.

3. Drawing Conclusions from the Data

The information collected might help the community determine if it is meeting its "fair share" of the current and future regional need for workforce housing if that "fair share" has been determined. But more importantly, it should help determine if there is adequate availability and opportunity to construct housing that can meet the targeted price and rental figures. If developments are being approved yielding new homes that are affordable workforce housing under the definitions of the statute, then the municipality's land use ordinances and regulations may be in compliance with the statute.

As for fair share, it may best be regarded as a principle, not a quota, and providing opportunity for workforce housing development is the key to meeting the requirements of the workforce housing statute. If a community claims that its existing housing stock is adequate to meet its fair share of the region's current and future need for workforce housing, it must be prepared to defend that position if it is challenged in court. Both the regional housing need and the municipality's fair share of that need would have to be determined (see Chapter 2, II.C.).

C. Municipal Regulatory Audit: Reviewing Development Regulations

Based on the housing assessment, a picture of a community's housing stock should begin to emerge. If a determination is made that the community does not provide an opportunity for the development of workforce housing, then the municipality should undertake an audit of its zoning ordinance and land use regulations to determine how they

[27] NHHFA annually publishes rental utility allowances , available here: http://www.nhhfa.org/rl_hud.cfm.

can be altered to allow a reasonable and realistic opportunity. The following steps should be considered when performing an audit of land use ordinances and regulations:

- Initiate a dialogue with the local development community to help identify the local land use ordinances and regulations that frustrate or impede developers' ability to build workforce housing. An open meeting to obtain feedback can be very effective. Builders, land surveyors/engineers and land use attorneys may provide useful information as the municipality addresses this question.

Initiate A Dialogue With Local Developers

In Jackson, contractors and real estate agents have often served as Planning Board members or alternates. The Town actively seeks participation of local business owners as Planning Board members. One current member owns both a local restaurant and a residential and commercial construction business. With that member's awareness of local building concerns, he frequently provides helpful comments on Planning Board matters from road standards to International Building Code issues to general site development concerns.

As the Board began discussion of Workforce Housing issues and possible incentives, that Board member helpfully indicated which incentives might be most meaningful for a developer and which needn't be considered - whether as unnecessary, or as potentially detrimental to the Town (for example, lessening road standards).

Another local resident and developer, who has successfully created housing units that might have qualified as Workforce Housing with relatively minor changes, has also provided guidance on cost-saving development measures she employed, including clustering of the units, and a short driveway, and using green energy measures which lower utility costs and enable higher rental payments.

- Review local land use ordinances and regulations to ensure that the most basic requirements of the statute are met, particularly –

    - Are there opportunities for the construction of multi-family housing and specifically for the construction of buildings containing five or more dwelling units?

    - Does more than 50 percent of the area in which residential uses are permitted provide for reasonable and realistic opportunities for the development of workforce housing?

Identify those regulations that have an impact on the cost of development, and examine their purpose and their scientific foundation or cultural basis. Specific land use ordinances and regulations including those design standards contained within a municipal subdivision and site plan review regulation may need to be amended in order to provide the opportunity for the development of economically viable workforce housing.

The following are adapted from some recommendations made by planning consultant Bruce Mayberry in the Strafford Regional Planning Commission's *2009 Regional Housing Needs Assessment*[28], part of which outlines local regulatory practices or standards that can inhibit the development of workforce housing:

- **Definitions that Contain Regulatory Standards.** Zoning ordinance definitions sometimes contain "hidden" regulatory language, such as circles or rectangles of certain dimensions that must be accommodated within a lot's "buildable area," which can have the effect of substantially increasing the area needed for a single building lot. As a general rule, ordinance definitions should be limited to a description of what a particular term means, without incorporating standards or regulations within the definition. Any regulatory requirements that pertain to development should be contained in the applicable development standards of the ordinance so that the purpose of the regulation is clear.

- **Land availability by Zoning District.** Municipal zoning ordinances sometimes contain provisions that permit various forms of multi-family housing, but only in districts that are virtually built out, or which contain very little developable land. This may create the impression that multi-family housing is permitted when in fact there are no reasonable opportunities for its development. There should be an adequate supply of developable land within the districts in which multi-family housing is permitted so that a realistic potential exists for its development.

- **Maximum Structures Per Lot.** In many communities, standard zoning language often contains a general limitation of only one principal structure per lot. This can force a development of multiple buildings to be spread out across many individual lots, each with its own curb cut and road frontage even if a single lot could support multiple structures. Further, if each lot must be secured by a separate mortgage, the financing of affordable development may be made more difficult. In the case of multi-family units, or forms of condominium development, these provisions may force unnecessary inefficiencies onto an otherwise environmentally supportable development. The combination of low numbers of units per structure and the limit of one structure per lot will compound the difficulty of creating affordable multi-family housing.

- **"Inclusionary" Housing Limitations and Conflicts with Production Programs.** Many communities have incorporated voluntary inclusionary housing provisions with incentives to enable workforce housing developments. However, there are some instances where the provisions actually place upper limits on the number of affordable housing units that can be contained within a particular development. In cases where all the units in such a development might meet the income limits established under RSA

[28] Available at http://strafford.org/uploads/SRPCHousingAssessment2009Dec29.pdf. Document produced by BCM Planning, LLC.

674:58, an otherwise affordable housing development could be discouraged by a cap on the number or percent of affordable units it can contain.

In addition, placing upper limits on the number of percent of units that may be affordable within an inclusionary development may conflict with requirements of programs that financially support affordable rental housing development. For example, because of the rental income structure, available financing, and area incomes, a project financed in part with development equity from the sale of Federal income tax credits might have to be 100% affordable to be economically viable. But if a local ordinance arbitrarily caps the percentage of units that may be affordable, it could directly affect the economic viability of an otherwise achievable rental workforce housing development.

Furthermore, it is not clear how a municipality could compel a developer to make a certain portion of a development "unaffordable" – that is, to require a certain number or percentage of the units to sell or rent at higher prices than the workforce housing units that comprise the balance of the development.

- **Higher Performance Standards for Affordable Housing.** When regulations require higher performance standards for affordable housing development than other new housing, the public purpose rationale may be suspect. If the frontage, setbacks, buffers, design review or other requirements for affordable or workforce developments greatly exceed the standards applied to similar structure types in other developments, a higher development cost may be incurred per unit. When creating inclusionary incentive provisions for workforce housing development, the community should be careful not to negate these advantages with other requirements that go beyond health and safety concerns.

Regulatory Strategies for Workforce Housing Opportunities

- Remove or reduce building permit limitations (growth management ordinances) and phasing requirements. The delays imposed by such restrictions can substantially add to of a development.

- Adopt regulations allowing homes to be built on back lots with reduced road frontage requirements.

- Reduce minimum frontage requirements. With roads costing anywhere from $200 - $600 a foot, this can result in significant cost savings.

- Eliminate or reduce restrictive densities. Allow lot sizes to be dictated by soil suitability for on site subsurface sewage disposal.

- Reduce road width requirements. In most residential developments, 20 to 22 feet of pavement width is adequate for low volume residential street access.

- Address construction standards pertaining to storm water drainage and utilities. Using open drainage can significantly reduce cost when compared to curb and closed drainage conditions.

- Reduce minimum yard and setback requirements, including setbacks from wetlands.

- Eliminate or reduce restrictions on the construction of a variety of housing types, including duplex, triplex, townhome, and garden style building options.

- Waive or reduce impact fees for qualifying projects.

D. Amendments and Tools for Compliance

Implementing some of the strategies noted above will assist communities in reducing development costs and hence assist in adhering to the reasonable and realistic opportunity test contained in the workforce statute. Some suggestions for how to implement these changes are contained in this section.

To implement some of these options, a valuable resource to consider would be to review New Hampshire Housing's recently updated *Housing Solutions for New Hampshire* handbook, originally published in 2004.[29] This document contains numerous successful examples that communities can use to expand their workforce housing inventory and development opportunities.

Other resources include the websites of the NH Workforce Housing Council and the Workforce Housing Coalition of The Greater Seacoast, which contain a number of resources and successful workforce housing examples.[30] The State's Regional Planning Commissions recently completed a comprehensive handbook for local land use regulations, *Innovative Land Use (ILU) Planning Techniques*, in cooperation with the NH Department of Environmental Services. Several of the chapters in the *ILU* handbook contain provisions that will be helpful to communities as they address the requirements of the workforce housing statute, including those dealing with inclusionary zoning and density transfer credits.[31]

1. Rental Multi-Family Housing

The requirement that communities allow for the construction of rental multi-family housing is a relatively simple requirement to meet. Furthermore, development of multi-family housing can be achieved in a manner that is consistent with the character and

[29] "Housing Solutions for New Hampshire." Pub.by New Hampshire Housing Finance Authority, 2010. Available at http://www.nhhfa.org/rl_housinghandbook.cfm.
[30] New Hampshire Workforce Housing Council: http://www.workforcehousingnh.com; and the Workforce Housing Coalition of the Greater Seacoast: http://www.seacoastwhc.org/planner_info.htm.
[31] The ILU handbook is available at http://des.nh.gov/organization/divisions/water/wmb/repp/innovative_land_use.htm.

aesthetics of any community. Multi-family housing is also the best and most efficient means of providing homes that are affordable to the State's working families.

The workforce housing statute requires every municipality to allow multi-family housing, structures of five or more units per building, in some part of their residentially-zoned area. The statute does not require that this use be allowed in a majority of the land area zoned for residential uses, but it does specifically state that rental multi-family housing must be allowed. As noted in chapter 2, the requirement that ordinances allow structures with at least five units does not mean that a municipality must change its definition of "multi-family," unless such structures are specifically prohibited by the community's regulations. At the same time, restricting multi-family rental projects to only 5 units may render the proposed projects economically infeasible.

For communities with access to public water and/or sewer systems, it will be easier to comply with the statute than those without. This sort of infrastructure allows for developments of substantially higher densities. But even without public sewer and water systems, communities should be able to identify areas that are suitable for smaller multi-family developments.

Identifying multi-family housing opportunities with a size and scale appropriate for the community setting is a very achievable task. A few viable options include:

- **Adaptive Reuse.** Allow for the conversion of old factories and commercial buildings into a variety of smaller living units. In downtown areas, permitting apartments – either in a completely residential building or above a first floor non-residential use – is an efficient use of land and is the kind of regulatory flexibility that will encourage development.

  It may also be appropriate to allow to allow large, older homes to be converted to multi-family dwellings. For example, the Town of Hollis allows up to four units in older homes, provided that the existing footprint is not expanded (note, however, that this zoning standard alone would not fully meet the statute's requirement that zoning must allow multi-family rental structures of at least five units).

- **Multi-family District.** In appropriate locations, create a multi-family zoning district with a density and sufficient land area to ensure its economic viability. This may be accomplished by requiring only a portion of the units in a building to be set aside for workforce housing with the remaining percentage being left to the developer to decide how to target. This creates greater access to financing for a developer by increasing the profit margin. But if a developer is able to build a development that is exclusively workforce housing, allow that too.

- **Mixed Use Developments or Zones.** Permit the development of mixed use non-residential / residential projects. Multiple land uses can successfully co-mingle and assist in creating a financially successful development project as well as vibrant communities. Allowing residential uses above or adjacent to

commercial space not only uses land more efficiently, but also can help create a more "walkable" built environment, a stronger local economy, and a more cohesive and secure neighborhood. This can be accomplished in a manner that matches and augments the traditional layout of our historic village centers, and can be done with both ownership and rental housing opportunities.

- **Accessory Apartments.** Although accessory apartments are not multi-family housing as defined by the statute, allowing additional dwelling units within existing structures or in detached structures on the same lot can create important affordable housing opportunities in any community.

  In order to increase the housing supply available to the general public, do not restrict these units to relatives of the owner of the property's principal dwelling. Such restrictions, in addition to significantly limiting the market for the units, are also very difficult to enforce.

2. Owner-Occupied Housing

A host of options are available to communities to allow for the construction of owner-occupied workforce housing units. For example, the Town of Amherst has been a leader in this arena, permitting dozens of workforce housing units over the last two decades. Some successful examples of owner occupied housing include the following.

- **Condominiums.** Even in rural areas, use of flexible development standards that facilitate condominium development of single-family or multi-unit townhouse buildings can create the opportunity for owner-occupied workforce housing.

  These projects can be successfully built using on site water and septic systems; and with proper flexibility, they can be constructed on many types of sites.

  This development option can be created so that all of the units are workforce housing or with a requirement that a minimum percentage of units be set aside for workforce housing.

- **Inclusionary Zoning.** A common tool used to encourage the construction of workforce housing is inclusionary zoning. Under this strategy, a density bonus is provided if a minimum percentage of the proposed residential density is set aside for workforce housing. Typically, a majority of the units are sold at market rate, while the workforce housing units are sold at a maximum price based on statutory standards, but some ordinances may offer a substantially greater bonus in exchange for all of the units being held as affordable.

  The affordability of these units may be preserved by recorded deed restrictions or they may be held in some type of housing trust that administers

their sale. This may require some form of oversight by the municipality. The section on continuing compliance below addresses some methods by which communities can address this need.

In 2008, NHHFA sponsored an innovative funding program, the Inclusionary Zoning Implementation Program (IZIP), which provided competitive non-matching grants to communities to hire pre-qualified consultants to assist in the creation and adoption of inclusionary zoning ordinances. IZIP has led to the adoption of a dozen different inclusionary zoning ordinances in places such as Wolfeboro, Brookline, Atkinson, Bedford, East Kingston, Rindge, Hampton Falls, and Salem. Work in other communities continues.

An IZIP Success Story

In 2008, Bedford was one of ten communities awarded an IZIP grant, and the town hired a consultant to assist in the preparation of zoning changes. At roughly the same time, however, the new Workforce Housing statute was enacted. Bedford used its IZIP grant to create an inclusionary zoning ordinance, but also fashioned zoning changes to meet the statute's broader goals, including specifically addressing the need for multi-family rental housing.

Over a period of six months, the planning board's workforce housing committee – which included for-profit and non-profit developers, engineers, and board members – worked with the consultant to produce an ordinance that was specifically tailored to Bedford's economic environment and development patterns. The committee determined that the best place for multi-family housing was in the town's northeast quadrant, where infrastructure would support higher densities. In addition, the ordinance provides an incentive of 1/3 density bonus throughout the town's large Residential & Agricultural zone for workforce housing, which could include structures with up to 4 dwelling units. The planning board was careful to require long-term affordability as part of its approach, and the ordinance calls for a 30-year renewable affordability restriction on all workforce housing units.

Beyond the background work that went into developing the proposal, the Bedford planning board and its workforce housing committee held several public information meetings as a means of educating people about the proposed zoning amendment and addressing voters' concerns and perceptions. As a result of this comprehensive effort, the voters of Bedford approved the measure by an overwhelming margin, with 84% voting in favor.

- **Duplex Units**: Permit the construction of duplex units which can frequently appear indistinguishable from adjoining single-family dwellings in the same neighborhood. In developments where homes are larger, the same principle can apply to multi-family structures. Allowing duplexes or multi-family construction permits a developer to reduce the per-unit cost of housing.

The Town of Amherst has been a leader in this arena for a number of years, having adopted a flexible inclusionary zoning ordinance in the 1980s, through which the planning board has permitted dozens of units, including many duplexes.

A Local Example of Regulatory Change

In order to address the workforce housing statute, the Town of Hollis successfully advanced several zoning amendments that were approved by voters in March 2009. Hollis is a rural, affluent residential and farming community located immediately west of Nashua. A strong pride exists in preserving its rural character, including many of its working farms, apple orchards and horse pastures. Highlights of these amendments include:

- Previously, older homes were allowed to have up to four units located within an existing home's footprint. This provision was amended to enable three of these units be market rate and while the forth unit must meet workforce housing rental criteria.

- The ability to construct apartments above commercial space in the downtown area was expanded from 50 percent to 100 percent of the area of the first floor.

- For subdivisions containing six or more lots, a 30 percent density bonus for workforce housing units may be permitted by conditional use permit. Additional flexibility was provided including: soil based lot sizing following NHDES standards, provisions for backlots, permitting wells and septic systems to be placed in the open space areas, and an exemption from phasing requirements.

- A multi-family overlay zone was created allowing up to four units per acre. For rental projects, at least 25 percent of the dwelling units shall be designated as workforce housing units. For owner occupied units, 30 percent of the dwelling units must be available for workforce housing. Garden-style apartment buildings are limited to two stories.

- **Form-Based Codes.** As an alternative to traditional zoning, form-based zoning focuses on the design of development – including architectural attributes – and the relationship of the development to the land and to an overall plan, rather than concentrating on the separation of one land use from another. This approach to mixed-use development is currently being used in Dover and Stratham, as part of their downtown and gateway commercial districts, respectively.

  Form-based codes provide an innovative way of encouraging good development that helps to reduce reliance on automobiles by creating a

"walkable" built environment in which people's most common activities – home, work, school, shopping – are all within an easy walking distance. But form-based codes will usually only induce the creation of affordable housing through the use of incentives, such as with inclusionary zoning (above).

- **Open Space or Conservation Subdivision Design.** For decades, New Hampshire communities used a standard approach to subdivision regulations and supporting zoning standards: large lots, with a single house on each lot. Local planning boards began to realize that these standards, which they hoped would "preserve rural character," were actually having the opposite effect. To help reduce the impacts of subdivisions many municipalities have adopted standards that permit reduced lot sizes and concentration of development in a portion of a land parcel, while maintaining the balance of the land as open space.

  Although open space design has commonly been cited as a means of reducing development costs and increasing affordability of housing, in reality the savings often are not enough for it to yield homes that would sell at workforce housing prices.[32] This means that, as with form-based codes, open space design standards need to contain other standards that will induce affordable housing development. This can be achieved through inclusionary zoning or other techniques, such as accessory dwelling units.

Although multi-family housing may be created for sale (typically as condominiums), owner-occupied multi-family workforce housing does not substitute for the statute's requirement that local land use regulations also must provide opportunities for rental multi-family workforce housing.

E. Continued Compliance - Meeting Statutory Requirements Over Time

Even as communities presently work toward meeting the requirements of the workforce housing statute, they must also recognize an ongoing commitment to do so in the future. Communities should evaluate all future proposals to amend land use ordinances and regulations for the impact that such amendments might have on the opportunities to develop workforce housing. They should also review local housing market data on a regular basis (annually, or once every few years, depending on the pace and variability of the market) to understand trends in housing costs and to ensure that their land use ordinances and regulations continue to provide such opportunities.

In short, once a municipality provides a reasonable and realistic opportunity for workforce housing development, it should be careful not to let that achievement slip

[32] Recognition of this led the New Hampshire Legislature to delete a reference to "cluster development" in RSA 672:1, III-e, which describes the overall municipal obligation to provide opportunities for the development of affordable housing in local land use regulations. This change was made in 2008 as part of the workforce housing statute.

away as a result of future adoption of regulations that have a contrary impact. During periods of faster housing price increases, opportunities for development of workforce housing that previously existed may disappear. In addition, as a community's housing stock grows, the percentage of dwelling units that qualify as workforce housing may diminish, so the community should seek to ensure that a portion of its new housing stock is affordable workforce housing.

By reviewing local housing market data on a yearly basis, trends can be reviewed and, if necessary, addressed to ensure that the municipality continues to meet the workforce housing statute's requirements.

A dependable and secure stock of workforce housing units should be maintained so that efforts made by the community to create these units are not lost. While amending their land use ordinances and regulations, municipalities may wish to ensure that any workforce housing created remains affordable to those whom it is intended to benefit.

A recent amendment to the workforce housing law specifically enables local boards to adopt standards in their regulations that require long-term affordability covenants as conditions of approval, including duration of affordability, terms for qualifying purchasers and renters on the basis of income, and methods of enforcement. Boards may also rely on the existence of recorded covenants administered by a state or federal entity.[33]

There are many methods by which to ensure long-term affordability, including the following.

- **Subsidy Lien:** New Hampshire Housing has created a model zoning ordinance and deed restriction and lien that preserves the affordability of ownership dwelling units over time and maintains the public benefit conferred through the use of inclusionary zoning bonus provisions, while also allowing the property owner to realize gains in equity based on market gains or property improvements. The municipality contracts with a private property management company, a local non-profit or even New Hampshire Housing to manage all sales and resales of units. The seller is charged a fee for this service, paid at the time of closing resulting in no administrative burden to the municipality. (see Appendix B for more information).

- **Resale Cap:** Together with its inclusionary zoning ordinance, the Town of Exeter has used a covenant restriction for the sales of workforce housing (see Appendix C). The Exeter model includes a provision by which the home price appreciation is tied to the Consumer Price Index, limiting the home price growth to a manageable rate over time. The Town contracts with a private property management company to manage all sales and resales of units. The seller is charged a fee for this service, paid at the time of closing and resulting in no administrative burden to the Town. The restriction has a 30-year term that renews if the property is sold prior to its expiration.

[33] Chapter 150, Laws of 2010.

- **Size Limitations:** As part of its overall inclusionary zoning ordinance, the Town of Amherst imposes a limitation on the size of housing units that are built under the ordinance's provisions. The units are restricted to 1,300 s.f. of heated living space for a period of ten years. For housing that is built under the limitations of condominium ownership, this size limit is practically perpetual.

- **Community Land Trust (CLT):** CLTs have been established across the country and in New Hampshire as a means of fostering development and long-term perpetuation of affordable housing. A CLT is a non-profit organization that owns the underlying land, either in an overall development or in separately acquired and noncontiguous parcels, and enters into a minimal cost land-lease with the purchaser of the home. Because the value of the land is removed from the cost of the sale, the home is more significantly affordable. In return, the owner agrees either to a limit on the resale price and to sharing equity gains with the CLT.[34]

- **Rental Cost Restrictions:** In addition to the variety of ownership restrictions, municipalities may also impose limitations on rents charged in workforce housing developments. This may be done in a manner that accounts for inflation and increased cost of operations. Municipalities should be careful to adopt flexible language that would generally include third-party financing and enforcement of long-term rental affordability, thereby eliminating any need for the municipality to be involved in monitoring or enforcement. For example, the Low-Income Housing Tax Credit program administered and enforced by New Hampshire Housing provides the affordability of rental units lasting 99 years.[35]

[34] Information on community land trusts is available online here: http://www.cltnetwork.org.
[35] Information on the Low-Income Housing Tax Credit program is available online here: http://www.nhhfa.org/bp_lihtc.cfm.

Chapter Five
2010 and Beyond: Procedures for Boards and Developers

A. Working Through the Statutory Process

The procedure section of the workforce housing statute (RSA 674:60) sets out a series of specific actions which must be followed, by both an applicant and a local land use board, when considering any workforce housing application. Failure to comply with these statutory requirements can have important consequences for both parties.

The appeals section of the workforce housing statute (RSA 674:61) contains provisions beyond the typical local land use board appeal process provided under RSA 677:15. Workforce housing appeals may be made to superior court if:

- An application is denied; or
- The application is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed development.

If the appeal is successful, the court may award the "builder's remedy," allowing the development to proceed without further review by local boards.

To utilize the provisions of the workforce housing statute, a developer must file a written declaration with the land use board stating that the application is for workforce housing. Failure to do so will preclude the applicant from seeking the builder's remedy under the statute and will prevent the developer from using the statute's accelerated appeal. An applicant who is challenging a local land use board's conditions as being financially onerous bears the burden of demonstrating that such conditions would render the development economically unviable.

B. Laying Out the Procedure

The workforce housing statute language from RSA 674:60 and 674:61 is presented here, together with recommended procedures to address them:

1. Application Procedures - RSA 674:60, I

> Any person who applies to a land use board for approval of a development that is intended to qualify as workforce housing under this subdivision shall file a written statement of such intent as part of the application. The failure to file such a statement shall constitute a waiver of the applicant's rights under RSA 674:61, but shall not preclude an appeal under other applicable laws. In any appeal where the applicant has failed to file the statement required by this paragraph, the applicant shall not be entitled to a judgment on appeal that allows construction of the proposed development, or otherwise permits the proposed workforce housing development to proceed despite its nonconformance with the municipality's ordinances or regulations.

This Section requires that any application filed under the statute must do so by declaring in writing, as part of the application, the intent to construct a workforce housing. If an applicant fails to adhere to this requirement, the accelerated appeals mechanism contained in RSA 674:61, II will be forfeited.

Procedurally, a community should:

a. Amend its site plan and subdivision applications to add workforce housing as a "use" box to check off when applications are submitted, and in addition provide an area on the application to describe the project.

b. Aside from information that a community commonly requests for any development proposal, the required "written statement" detailing the specifics of a workforce housing application should, at a minimum, call for the following:

    i. Identify the types of housing proposed (i.e. single family, townhome, etc.)

    ii. How many units are proposed, and how many of the dwelling units will be designated as workforce housing?

    iii. At what price point will the workforce housing units to be sold; or if rental units are contemplated, what is the anticipated monthly rent cost?

2. Board Review - RSA 674:60, II

> If a land use board approves an application to develop workforce housing subject to conditions or restrictions, it shall notify the applicant in writing of such conditions and restrictions and give the applicant an opportunity to establish the cost of complying with the conditions and restrictions and the effect of compliance on the economic viability of the proposed development. The board's notice to the applicant of the conditions and

> restrictions shall constitute a conditional approval solely for the purpose of complying with the requirements of RSA 676:4, I(c)(1). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.

Once the land use board has accepted the application as complete, it should be reviewed with the same procedures as any other land use proposal. For planning boards, this means following RSA 676:4, "Board's Procedures on Plats." As with any application, the land use board should strive to document this process intensively to provide a record for the court of its efforts to fairly and impartially review the proposal.

3. Applicant Review - RSA 674:60 III

> Upon receiving notice of conditions and restrictions under paragraph II, the applicant may submit evidence to establish the cost of complying with the conditions and restrictions and the effect on economic viability within the period directed by the board, which shall not be less than 30 days.

This Section provides a workforce housing applicant with, at a minimum, a 30-day period in which to evaluate the cost implications of conditions of approval and/or restrictions. The purpose of this evaluation is to give the applicant the opportunity to identify the conditions or restrictions that impact the economic viability of the development.

The land use board may set a longer review period, or the applicant can waive the review period (this should be in writing) in its entirety as provided in 674:60, III(d) and accept the conditions and restrictions. The land use board may either table the matter to a specific future meeting date or re-notify all required parties once the review period has concluded.

4. Additional Hearing - RSA 674:60, III(a)

> Upon receipt of such evidence from the applicant, the board shall allow the applicant to review the evidence at the board's next meeting for which 10 days notice can be given, and shall give written notice of the meeting to the applicant at least 10 days in advance. At such meeting, the board may also receive and consider evidence from other sources. (b) The board may affirm, alter, or rescind any or all of the conditions or restrictions of approval after such meeting.

After this review period, and if deemed necessary by the applicant, this section allows the applicant to claim and present cost data that the board's conditions of approval and/or restrictions impact the project's economic viability. A hearing for this specific purpose should be held, and:

- unless the project had been tabled to a specific date, notification to all relevant parties shall be required; and
- at this hearing, the land use board may consider data from the applicant or other sources.

In evaluating any applicant's claim of adverse economic impact affecting the viability of a workforce housing proposal, a local land use board should bear in mind that the cost components of a development project are numerous and that some of these costs are greatly influenced by local ordinances and regulations. This issue is discussed in greater detail in Chapter 3.

An applicant making a claim that a land use board's conditions of approval and/or restrictions adversely impact the economic viability of a development project should be able to identify specific line items contained in Figure 3-1 that gave rise to the claim. During this review, the land use board should consider the following:

a. Provide the applicant with a copy of Figure 3-1 (or request that the applicant submit a similar outline) and request that cost data for all components identified on this figure be provided for the board's consideration.

    i. The applicant should identify to the board those specific cost components that are adversely affected by the conditions imposed by the board, and state how such effects would render the development economically unviable.

    ii. If a claim is made that factors other than those found in Figure 3-1 are impacting the project's economic viability, then the applicant should provide detailed evidence supporting the claim.

b. Once received, the board may want to seek the services of a third party expert, paid for by the applicant, to review the applicant's claims. A land use board often seeks outside advice in reviewing an application, and this process would be no different. After reviewing the data submitted, along with any consultant's report, the statute provides the land use board with an opportunity to affirm, alter, or rescind any or all of the conditions or restrictions of approval. The board should be very clear when documenting any decisions that are made, noting all actions in writing to the applicant.

5. Final Alterations and Approval - RSA 674:60, III(c)

> Subject to subparagraph (d), the board shall not issue its final decision on the application before such meeting, unless the applicant fails to submit the required evidence within the period designated by the board, in which case it may issue its final decision any time after the expiration of the period. (d) If an applicant notifies the board in writing at any time that the applicant accepts the conditions and restrictions of approval, the board may issue its final decision without further action under this paragraph.

With its evaluation complete, the land use board is entitled to issue its final decision (at a public meeting) on the application.

If the applicant has failed to submit any requested data to the board within the specified time period, the board is free to vote on the application. Failure on the part of the

applicant to submit any supporting cost data should eliminate the applicant's ability to appeal the land use board's decision on the basis of lack of economic viability.

C. After the Procedures: Possibility of Appeal

1. Basis of A Workforce Housing Appeal - RSA 674:61, I.

> Any person who has filed the written notice required by RSA 674:60, and whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed workforce housing development may appeal the municipal action to the superior court under RSA 677:4 or RSA 677:15 seeking permission to develop the proposed workforce housing. The petition to the court shall set forth how the denial is due to the municipality's failure to comply with the workforce housing requirements of RSA 674:59 or how the conditions or restrictions of approval otherwise violate such requirements.

The steps of an appeal are as follows:

a. An appeal must be made to superior court within 30 days of a final decision by the local land use board, pursuant to the typical land use appeal procedures outlined in RSA 677:4 and 677:15. However, the workforce housing statute provides for the "builder's remedy" as a potential award to the applicant. As with any land use application, it is imperative that the land use board carefully analyze any application and fully document all decisions.

   RSA 674:61, I notes that at the end of the local process, an applicant proposing a workforce housing development may appeal the board's decision, alleging one of two things:

   i. That the collective impact of the municipality's land use regulations preclude the proposed workforce housing development; or

   ii. That the conditions imposed by the land use board would render it economically unviable.

b. As with any appeal, the burden of proof is upon the applicant filing the appeal. If a municipality has determined that it has provided its "fair share" of workforce housing, then the community may assert this as an affirmative defense.

2. Accelerated Appeals - RSA 674:61, II

> A hearing on the merits of the appeal shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause. If the court determines that it will be unable to meet this requirement, at the request of either party it shall promptly appoint a referee to hear the appeal within 6 months. Referees shall be impartial, and shall be chosen on the basis of qualifications and experience in planning and zoning law.

This section provides for an accelerated appeal for workforce housing applications. Unlike appeals of other land use decisions, with workforce housing cases the superior court is obligated to hold a hearing on the case merits within six (6) months, unless a later date is agreed to by both parties or extended by the court for good cause.

a. If the court is unable to hear the case within the 6 month time period, it must appoint an impartial referee qualified on the basis of experience in planning and zoning. The referee would have the authority to make a ruling on this matter.

b. The court then decides the appeal based on a few factors.

   i. If the municipality does in fact have its fair share of the current and foreseeable regional need for affordable housing, the court can accept this as a defense and affirm the municipality's decision.

   ii. If the municipality does not have this fair share and the builder has enough evidence in his favor, the court can order a "builder's remedy" or other relief deemed appropriate by the court. The "builder's remedy" is awarded in unusual circumstances, such as when a municipality has adopted blatantly exclusionary land use ordinances and regulations.

3. If the Builder's Remedy is Awarded - RSA 674:61, III.

> In the event the decision of the court or referee grants the petitioner a judgment that allows construction of the proposed development or otherwise orders that the proposed development may proceed despite its nonconformance with local regulations, conditions, or restrictions, the court or referee shall direct the parties to negotiate in good faith over assurances that the project will be maintained for the long term as workforce housing. The court or referee shall retain jurisdiction and upon motion of either party affirming that negotiations are deadlocked, the court or referee shall hold a further hearing on the appropriate term and form of use restrictions to be applied to the project.

This Section specifies that if a judgment is made awarding the builder's remedy to the applicant, then the court or referee can direct the parties to negotiate in good faith to ensure that workforce housing units will remain affordable for the long term. Failure of the parties to reach accord will cause the court to intervene and potentially impose a resolution.

D. Further Suggestions for Compliance

1. Documentation of Findings

As with any land use application, it is important for all decisions and analyses to be fully documented to ensure that a complete record is established. To avoid a challenge and/or reduce the chances that a court will rule against a board's decision, the municipality should ensure that it has fairly and thoroughly reviewed its local ordinances and regulations to allow for the construction of workforce housing.

If a local decision is made that the community is currently in compliance with the statute, this conclusion should be fully documented with facts justifying the municipality's position.

2. Recommended Site Plan and Subdivision Regulation Amendments

In order to adequately address the Procedure requirements of RSA 674:60, planning boards should amend their site plan and subdivision regulations to create a specific section that outlines the application procedure that must be followed in order to comply with the specific statutory requirements. Aside from altering the application form as recommended above, the following provisions should be noted:

1. Request a detailed written outline of the proposed project, noting how many of the units will be workforce housing, along with other relevant details.

2. State that the board will provide the applicant, in writing, a list of all conditions of approval and/or restrictions. With the issuance of this notice of decision, the application is deemed "conditionally approved."

3. The land use board must set a review period (a minimum of 30 days) in which an applicant can evaluate the economic impacts of the conditions and/or restrictions placed on the project.

4. When a conditional approval is given to the applicant, the land use board can table the matter to a specific date. Or once an applicant has submitted his/her supporting data claiming adverse economic impact (within the specified time period), a hearing date must be set that is properly noticed.

5. At the additional hearing, the land use board can review the evidence provided by the applicant and affirm, alter, or rescind any conditions of approval and/or restrictions and issue its final decision. If an applicant has not submitted written evidence within the specified time period, the land use board (at a duly notified meeting) can issue its final decision.

E. The Workforce Housing Roles of Other Local Land Use Boards

1. Local Land Use Boards

While most of the issues involving municipal responses to the workforce housing statute involve the planning board – including housing assessments, regulatory audits, development of amendments to zoning and other land use regulations, and processing of applications, there are some circumstances in which other land use boards may also play a role.

As defined in RSA 673:7, "local land use boards" include the following: planning board, zoning board of adjustment (ZBA), historic district commission, building code board of appeals, and the building inspector. The first four are regulatory boards with authority

over the use of land, and the building inspector is included to provide a route of appeal of building permit determinations and zoning interpretations. The ZBA typically also serves as the building code board of appeals. The decisions made by all of them, including the building inspector, may fall within the reach of the workforce housing statute. The same tools of economic analysis that may be used by a planning board, such as a developer's pro forma, are also suitable for any other local board.

In addition, utilizing the authority RSA 674:21 ("innovative land use controls"), a local zoning ordinance may grant to any other local body or official the authority to issue conditional use permits. To the extent that such a delegation of authority occurs, the decisions of that body or official may also be subject to the workforce housing statute.

For example, some zoning ordinances grant local conservation commissions the authority to review impacts on wetlands or wetland buffers. If this authority is greater than the advisory role of the conservation commission under the "dredge and fill" statute (RSA 482-A) and includes the ability to deny a project (as opposed to simply advising the planning board), then such a decision should include consideration of the cost implications on workforce housing proposals. This does not mean that the conservation commission could not deny such a project or impose conditions of approval. It means that the commission's decision would need to be reasonable in light of the circumstances, and that the commission would have to be aware of the substantive and procedural requirements of the workforce housing law.

2. Zoning Boards of Adjustment

Whenever the Zoning Board of Adjustment (ZBA) is dealing with a proposal that has been declared by the applicant as workforce housing, the ZBA must apply the same economic viability "sensitivity analysis" as the planning board would when faced with such an application. The ZBA may be involved in the workforce housing law in several circumstances.

Special Exceptions. A zoning ordinance may specifically authorize the ZBA to grant special exceptions for certain types of workforce housing proposals, such as accessory dwelling units in existing single family residences, some combinations of mixed uses, or multi-family developments.

Administrative Appeals. A ZBA may also hear an administrative appeal of a zoning decision made by another local board or official – such as a decision of the planning board in which a zoning interpretation is made on a workforce housing proposal, or a ruling by the local officer charged with enforcing the zoning ordinance. Note, however, that the appeal of any decision made by a planning board under an innovative land use control adopted pursuant to RSA 674:21 (such as inclusionary zoning) may only be made to superior court.[36]

Variances. Finally, the ZBA may also be presented with a request for a zoning variance that would allow a workforce housing proposal to proceed, where it would otherwise not

[36] RSA 676:5, III.

be allowed under the municipality's zoning ordinance. This might be the case where the municipality has failed to properly address the requirements of the workforce housing statute by enacting appropriate zoning amendments, or where use of a particular parcel of land might require some regulatory relief to allow a reasonable workforce housing proposal to proceed.

The purpose of the zoning variance is to provide relief in appropriate circumstances to prevent the unreasonable application of the ordinance to a parcel of land. As such, the variance is regarded as zoning's "safety valve" to eliminate unconstitutional takings of private property. Because of this, the ZBA must always consider the economic implications of the regulatory environment that has been created by the municipality's zoning ordinance, whether the ZBA is hearing a proposal for workforce housing or any other type of variance request. In fact, the New Hampshire Supreme Court has stated that "financial considerations have always been a part of variance determinations in New Hampshire."[37] As a result, the ZBA might find itself more familiar with the economic concerns presented by a workforce housing proposal than other local land use boards.

3. Historic District Commission

The Historic District Commission (HDC) occupies a unique role in local development permitting, both because its authority is geographically limited to an historic district as defined by the local legislative body, and because its concerns largely deal with the aesthetic impacts of development on the built environment and of changes to structures.

Like the ZBA or the planning board, when presented with a workforce housing proposal the HDC will be required to view that application through a filter of economic viability. Its decision must consider the impact of the local land use regulation – in this case, the historic district ordinance and regulations – on the profitability of the workforce housing development. An HDC may be able to impose certain conditions, such as requiring particular architectural details or building materials, provided that the conditions are reasonable and do not have the effect of making the workforce housing development economically unviable. As with any other local land use board decision, the burden would still be on the applicant to demonstrate the economic impact of conditions of approval.

4. Building Inspector and Building Code Board of Appeals (BCBA)

The workforce housing roles of the building inspector and the BCBA are more limited than those of other local land use boards, but the workforce housing law will have effect in any situation where the local building code contains provisions that exceed those of the state building code enacted under RSA 155-A. In those situations, the same considerations of regulatory impacts on a workforce housing proposal's economic viability must be taken into account.

[37] *Boccia v. City of Portsmouth*, 155 N.H. 84, 93 (2004)(quoting *Bacon v. Town of Enfield*, 150 N.H. 469, 477-78 (2004)(Duggan and Dalianis, JJ., concurring specially)).

APPENDICES

Appendix A
SB 21 Commission Report, 2001

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

"Decisions that may be in the interest of any one community, when repeated across an entire region or throughout the State, can and do produce results contrary to the welfare of the State… It is imperative that the Legislature take immediate steps to ensure that zoning and planning procedures at the local level, as well as the state policies and regulations that influence them, change to promote the development of workforce housing, not impede it."

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

EXECUTIVE SUMMARY

New Hampshire's strong economic growth over the last decade created many benefits for most of our communities and citizens, but it also generated a demand for housing that the marketplace has been unable to meet. The results are rising home purchase prices, record low vacancy rates and higher rents – a housing market that presents a significant affordability challenge for many of our citizens, a barrier to labor force development and a grave challenge to our state's continued economic growth and vitality.

The inability of the marketplace to respond to the housing shortage has also resulted in an unprecedented level of homelessness for New Hampshire's lower level wage earners and other low income families.

This Commission believes that a balanced supply of housing, and especially an adequate supply of workforce housing,[1] serves a statewide public interest and is a compelling public policy goal.

This Commission was created "to develop and recommend legislation aimed at reducing regulatory barriers to the creation of affordable housing and encouraging the development thereof…" After carefully examining the many complex issues involved, the Commission has concluded that local land use regulations and the municipal regulatory process have had a significant role in preventing or deterring the private sector from responding to the shortage of workforce housing. ***It is imperative that the Legislature take immediate steps to ensure that zoning and planning procedures at the local level, as well as the state policies and regulations that influence them, change to promote the development of workforce housing, not impede it.***

[1] For purposes of this report, "workforce housing" means a housing unit that is affordable to a household with an income of 80% or less of the median income of the region in which it is located, adjusted for household size. "Balanced housing" means a sufficient quantity and variety of housing types at prices or rents affordable to the entire range of household incomes in the community.

RECOMMENDATIONS

To effectively address this problem, the Commission has found a compelling need for the following Legislative action:

- ***Implement the 1991 ruling of the New Hampshire Supreme Court in Britton v Chester***, which requires that municipalities provide reasonable opportunities for the creation of workforce housing, and reaffirm that this obligation extends not only to addressing the local need for such housing but to providing for a share of the regional need as well.

- ***Create a selective mechanism for expediting relief from municipal actions***, under criteria established by the Legislature, which deny, impede or significantly delay qualified proposals for workforce housing. Establishment of an expedited relief process is vital to the effective implementation of both existing law and the recommendations included here – and it is unlikely that any real change will occur without the relief provided by this mechanism.

- ***Direct technical assistance to assist communities to carry out their responsibilities*** to offer opportunities for the creation of workforce housing.

- ***Create a study commission to identify and review state agency rules and regulatory policies*** that affect the cost of housing development or limit such development. The goals of the commission should be

  (1) to identify ways of reducing their adverse impact on housing development or cost; and,

  (2) to recommend specific legislation and regulatory changes.

  The study commission should include legislators, representatives of regulatory agencies, housing advocates, municipal and planning interests, home building industry representatives, and representatives from business generally.

We must also dispel the myths surrounding workforce housing, to change the perception that multifamily rental housing negatively impacts local budgets, property values and the quality of life more than other forms of residential development. This report recommends ways to begin to do this.

PROCEDURAL HISTORY

This Commission was established by Chapter 262 of the Laws of 2001, effective July 13, 2001, to examine the role that regulatory barriers to residential housing development plays in the statewide housing crisis and to make recommendations for remedial legislation to the 2002 Session. The Commission was initially chaired by Senator Beverly Hollingworth and subsequently by Senator Sylvia Larsen. Commission members representing a wide variety of perspectives, were appointed by the Governor, the President of the Senate, the Speaker of the House, or designated in the bill itself. The Commission met eleven times between September, 2001 and October, 2002 and, in addition to individual testimony, heard testimony from the New Hampshire Municipal Association, the Business and Industry Association of New Hampshire, the New Hampshire Housing Finance Authority, the New Hampshire Home Builders Association, the Seacoast Housing Partnership and the New Hampshire Association of Realtors. The final report was adopted on October 30, 2002 and has been filed with the Clerks of the Senate and House and delivered to the Governor's Office.

FINDINGS

- Over a decade ago, the New Hampshire Supreme Court ruled, in Britton v. Chester, 134 N.H. 492 (1991) that municipalities have an obligation to afford reasonable opportunities for the development of workforce housing and that this obligation extends to a share of regional as well as local need for such housing. Yet significant regulatory barriers remain.

- 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.

- Our housing crisis is a product of 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.

- The power to restrict the use of private property in the larger public interest is exclusively a State power that is delegated, in part, to New Hampshire's cities and towns. These restrictions[2] are necessary to protect important public interests, but they – as well as the permitting process itself – add to the cost of development and can even prevent it from occurring.

[2] As used through out this report, the term "local land use regulations" refers to the totality of local regulations enacted pursuant to the grant of legislative powers delegated to municipalities by RSA Chapter 674, including zoning ordinances, subdivision regulations, site plan review regulations, growth management regulations, and impact fee ordinances.

- The statutory delegation necessarily gives cities and towns wide discretion in adapting state law to local circumstances but in doing so can produce results beyond the expectation or intent of the Legislature.

- In exercising these delegated powers, every community not only has a duty to help house our State's growing population but also the right to know that neighboring communities are working toward the same goal.

- Decisions that may be in the interest of any one community, when repeated across an entire region or throughout the State, can and do produce results contrary to the welfare of the State.

- Individual communities, each acting in its 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.

- Although balanced housing benefits the State as a whole, the benefit to individual communities is often much less clear while the costs are immediate and apparent. For example, it is often argued at local planning board hearings that the creation of new housing imposes a fiscal burden upon the community because of the local cost to educate additional children, but that same new housing could also provide reasonable living opportunities for people providing services locally, such as firefighters, police officers, teachers, and shop owners. Despite widely-differing testimony about local practices and motivations in implementing delegated zoning power,[3] Commission members agreed that the perceived disparity between costs and benefits significantly influences the way our cities and towns respond when workforce housing is proposed for their community and requires a response at the state level.

[3] There is a widespread perception within the housing and business communities that local zoning and planning powers are often used as vehicles for preventing development of residential, and especially workforce housing. While acknowledging the challenge that residential development poses for communities, they charge that the devices for discouraging housing development are well known and widely used. They point to zoning that eliminates most (or all) feasible sites for multifamily or manufactured housing; requirements that exceed state standards without a corresponding justification**;** subdivision and site plan review regulations that, when superimposed on the zoning ordinance, render properly zoned sites infeasible for affordable housing; selectively imposed impact fees; development moratoria unsupported by actual growth rates; and "social engineering" that excludes average working families from communities where requirements for minimum lot size, frontage and even building size artificially raise the final price of a home. They also point to the practice of dragging-out the decision making process, particularly site plan review, until the cost of additional reports required by the planning board and the cost of delay render the project no longer feasible, sending a message to potential future developers as well – and to the irony that the high price of land that some communities explain makes affordable development impractical is itself, in part, the product of exclusionary practices.

Local officials respond that what appears to be purposeful behavior to discourage residential development is often nothing more than the conscientious exercise of their duties under RSA 674:1. Mitigating the many adverse impacts they are obligated to consider before allowing a development to become a permanent part of their community unavoidably introduces costs and delay into the development process and the more intensive the proposed use (as with multifamily development) the greater the scrutiny the proposal will face. They point out that communities are also expressly permitted to make regulations to preserve their "character." While opponents may object to the outcome of such decisions, these efforts are entirely lawful and appropriate in a state struggling to preserve its rural character.

- Local officials – who are often volunteers – are caught between a "rock and a hard place" as they try to responsibly carry out their statutory duties which include consideration of housing needs beyond their own municipal borders and, at the same time, accommodate the concerns of their constituents about the impact of growth on their community. Public hearings on development proposals typically draw mostly opponents of the proposed development; and, regardless of how representative they may be of the larger community, their opposition is typically very vocal and well publicized and influences the outcome of local decision-making.

- To enlist local support for workforce housing we must demolish the myths that feed local opposition. Multifamily rental housing typically has no greater negative effect on local budgets, property values and the quality of life than other forms of residential development yet this type of workforce housing is often strongly resisted.

- We must also eliminate unnecessary delay in the local permitting process. Regulatory practices that are used principally to introduce delay (or the threat of delay) into the development process for the purpose of discouraging residential development are neither an appropriate nor a legal substitute for the careful planning required by Law.

- State regulatory policies and practices and related activities that may have an indirect but significant impact on land use (i.e. environmental and transportation policy) also have an effect on the amount and cost of housing produced by the private market. Therefore, it is equally important that such state regulatory actions be balanced so that they also support the goal of an adequate and balanced supply of housing without compromising legitimate environmental, health and safety concerns.

- Although it is not within the scope of the Commission's statutory mandate, no strategy for dealing with our housing shortage can be successful that does not deal with the perception that every new housing development that brings school-age children is an assault on the school budget. The belief that residential development should pay its own way – especially the false belief that workforce housing burdens school budgets even more than other forms of housing – by turning children into economic liabilities significantly reinforces the unwillingness of communities to accommodate residential development and especially workforce housing. This accounts for the greater community willingness to accept over-55 or 62 housing communities. While this concession may address the "affordable housing" needs of one segment of the population, the housing requirements of working families with children remain inadequately addressed.

- Responding effectively to this challenge requires the Legislature, and each Legislator, to assume responsibility for acting in their constitutional role as caretaker for the State of New Hampshire as a whole and not simply as representatives of the individual cities and towns that elected them. The current imbalance in our local housing markets demonstrates that an "everyone for himself" strategy will only create more problems.

- A number of other issues not part of this study have contributed to this problem. The lack of workforce housing will not be resolved easily or by any single action or by action at any single level of government. It requires state and local governments to work cooperatively, and in concert with the private sector to address the many and varied roots of the problem. The complexity of this problem should not discourage the Legislature from taking the initial steps required to tackle the problem.

- While there is no "silver bullet" to end this crisis, there are a number of concrete, well-defined responses within the power of the Legislature to make that will substantially diminish the obstacles currently faced by workforce housing. These responses are detailed in our Recommendations.

- Restoring balance to New Hampshire's local housing markets does not have to put at risk either our environment or our quality of life. Indeed, the danger lies in the other direction: failing to act will have serious consequences not only for those working families and seniors who are struggling in our current housing market but for our State's economy and our collective future as well.

ADDITIONAL RECOMMENDATIONS

The Commission's recommendations are intended to begin to restore balance and flexibility to the State's housing markets by addressing the complex factors that have given rise to this problem. Although some of these recommended actions may be controversial and many will require further discussion and analysis, the Commission believes that it is vital that the Legislature act now to address this critical challenge.

In addition to the recommendations contained in the Executive Summary, the Legislature should also consider the following action which the Commission believes will result in expanding workforce housing options.

- ***Direct the New Hampshire Housing Finance Authority and the Office of State Planning to***

  (1) ***analyze the impact of residential development***, especially of workforce housing, and actively disseminate this information to local decision-makers and the general public with the goal of establishing the broadest possible common understanding of the true costs and benefits to individual communities; ***and,***

  (2) ***establish a uniform methodology for the development of the regional housing needs assessment*** required by RSA 36:47, II;

- ***Link allocation of State and Federal discretionary resources*** (i.e., community development tax credits, land conservation funds and infrastructure improvement funds) ***to municipal performance in reducing barriers*** to workforce housing development;

- ***Give priority to workforce housing in allocating State funding for water, sewer and other infrastructure*** needed to support housing development;

- ***Provide direct financial incentives*** to encourage communities to meet regional workforce housing needs;

- ***Encourage the Department of Resources and Economic Development and other state agencies*** involved in promoting the state's economic development – and specifically the expansion of employment opportunities – to integrate such activities with efforts to ensure the availability of adequate housing to support job growth; and,

- ***Further expand the authority of cities and towns to explore innovative land use techniques*** under RSA 674:21 to deliver workforce housing in the quantities and diverse forms required by our economy.

_____

SENATOR SYLVIA LARSEN, CHAIR
For the Commission

COMMISSION TO STUDY THE CREATION OF AFFORDABLE HOUSING

The Honorable Sylvia Larsen, Commission Chair (2002)	*Member, New Hampshire State Senate*	*Appointed by Senate President*
The Honorable Beverly Hollingworth, Commission Chair (2001)	*Member, New Hampshire State Senate*	*Appointed by Senate President*
The Honorable Theodore Gatsas	*Member, New Hampshire State Senate*	*Appointed by Senate President*
The Honorable Christine Konys	*Member, New Hampshire House of Representatives*	*Appointed by Speaker of the House*
The Honorable Joan Schulze	*Member, New Hampshire House of Representatives*	*Appointed by Speaker of the House*
Kenneth Ortmann	*Director, Rochester Planning & Development Department, Public Member*	*Appointed by Governor*
Marge Webster	*Director of Development, Tri-County Community Action, Public Member*	*Appointed by Governor*
Elliott Berry	*NH Legal Assistance, Public Member*	*Appointed by Governor*
William Klubben	*Representing the Executive Director, NH Municipal Association*	
Steve Lewis	*Representing the Executive Director, Homebuilders and Remodelers Association of NH*	
Ben Frost	*Representing the Executive Director, Office of State Planning*	
Dean Christon	*Representing the Executive Director, NH Housing Finance Authority*	
Kathy Corey Fox	*Representing the Executive Director, NH Association of Realtors*	
Phil Smith	*Salem Board of Selectmen*	*Appointed by Senate President*
Anne Rugg	*Representing The Housing Partnership (community-based, non-profit housing developer)*	*Appointed by Governor*
Mark Tay	*Representing the President, NH Manufactured Housing Association*	
Michael LaFontaine	*Representing the President, NH Community Loan Fund*	
Gene Gayda	*Representing the NH Property Owners Association*	
Paul Newman	*Representing the Mayor of the City of Nashua/Nashua Planning Department*	*Appointed by Senate President*
JoAnn Maynard	*Representing the Commissioner, NH Department of Health & Human Services*	
Tom Dowling	*Keene Chamber of Commerce*	*Appointed by Governor*

CHAPTER 262
SB 21 - FINAL VERSION

2001 SESSION

01-0869
05/09

SENATE BILL **21**

AN ACT establishing a commission to develop recommendations for legislation to reduce regulatory barriers to and possible incentives for the creation of affordable housing in order to encourage the development of such housing

SPONSORS: Sen. Hollingworth, Dist 23; Sen. McCarley, Dist 6; Sen. Larsen, Dist 15; Rep. Konys, Hills 33

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill establishes a commission to develop recommendations for legislation to reduce regulatory barriers to the creation of affordable housing.

- -

Explanation: Matter added to current law appears in ***bold italics***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 262
SB 21 - FINAL VERSION

01-0869
05/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT establishing a commission to develop recommendations for legislation to reduce regulatory barriers to and possible incentives for the creation of affordable housing in order to encourage the development of such housing.

Be it Enacted by the Senate and House of Representatives in General Court convened:

262:1 Declaration of Purpose. The general court has recently recognized that an acute shortage of housing affordable to a large number of working households, individuals with disabilities, and families with members with disabilities in this state is approaching crisis proportions and that for households on fixed or low incomes, the shortage of affordable housing, with the resulting increase in housing costs, presents an immediate threat of homelessness. The general court has also found that this situation threatens to undermine the state's capacity for economic growth by limiting the ability of employers to attract and retain workers. The general court has further found that local land use ordinances and other government regulations may create barriers to a response by the market to the demand for affordable housing. The general court now finds that it is necessary to act to encourage the private and non-profit sectors to address the critical shortage of affordable housing by reducing unnecessary regulatory barriers and encouraging the development of such housing. The commission established by this act is intended to recommend legislation that can accomplish this important goal without compromising the legitimate environmental, health, and safety concerns of local communities.

262:2 Commission Established. There is established a commission to develop and recommend legislation aimed at reducing regulatory barriers to the creation of affordable housing, and encouraging 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.

262:3 Membership.

I. The members of the commission shall be as follows:

(a) Two members of the senate, appointed by the senate president

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(c) Three public members, appointed by the governor

(d) The executive director of the New Hampshire Municipal Association, or designee

(e) The executive director of the Home Builders and Remodelers Association of New Hampshire, or designee

(f) The director of the office of state planning, or designee.

(g) The executive director of the New Hampshire housing finance authority, or designee

(h) The executive director of the New Hampshire Association of Realtors, or designee

(i) The chair of a town board of selectmen, appointed by the senate president.

(j) The executive director of a community-based, non-profit housing developer, appointed by the governor.

(k) The president of the New Hampshire Manufactured Housing Association, or designee

(l) A professional planner from a regional planning commission, appointed by the speaker of the house.

(m) The president of the New Hampshire community loan fund, or designee.

(n) The president of the New Hampshire Property Owners Association, or designee
(o) The mayor of a city or designee, appointed by the senate president.
(p) The commissioner of the department of health and human services, or designee.
(q) The director of the Granite State Independent Living Foundation, or designee.
(r) A president of a local chamber of commerce, or designee, appointed by the governor.

II. The legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the committee.

262:4 Duties. The commission shall:

I. Identify unnecessary local and state regulatory policies and practices which create barriers to the production of affordable housing; and

II. Recommend state legislation and local policy changes which will encourage the creation of affordable housing, including possible incentives to build such housing, in order to maintain the health, safety, and diversity of local communities and residents of the state.

262:5 Chairperson; Quorum. The members of the commission shall elect a chair from among themselves. The first meeting shall be called by the first-named member of the senate within 45 days of the effective date of this act. Nine members of the committee shall constitute a quorum.

262:6 Report. The commission shall reports its findings and recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2001.

262:7 Effective Date. This act shall take effect upon its passage.

(Approved: July 13, 2001)
(Effective Date: July 13, 2001)

CHAPTER 50
SB 411 - FINAL VERSION

2002 SESSION

02-3144
04/01

SENATE BILL **411**

AN ACT extending the reporting dates of certain study committees.

SPONSORS: Sen. Hollingworth, Dist 23

COMMITTEE: Internal Affairs

ANALYSIS

This bill extends the reporting dates of certain study committees from November 1, 2001 to November 1, 2002.

- -

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 50
SB 411 - FINAL VERSION

02-3144
04/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Two

AN ACT extending the reporting dates of certain study committees.

Be it Enacted by the Senate and House of Representatives in General Court convened:

50:1 Affordable Housing Commission; Reporting Date Extended. Amend 2001, 262:6 to read as follows:

262:6 Report. The commission shall reports its findings and recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, [~~2001~~] ***2002***.

50:2 Juvenile Shelter Care Facilities Commission; Reporting Date Extended. Amend 2001, 97:6 to read as follows:

97:6 Report. The commission shall report its findings, which shall include any reports from any independent consultants, and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, [~~2001~~] ***2002***.

50:3 Temporary Assistance to Needy Families and Postsecondary Education Study Committee; Reporting Date Extended. Amend 2000, 122:6 to read as follows:

122:6 Report. The commission shall file an interim report of its findings no later than November 1, 2000, and shall file a final report, including any recommendations for proposed legislation, to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, [~~2001~~] ***2002***.

50:4 Effective Date. This act shall take effect upon its passage.

(Approved: April 26, 2002)
(Effective Date: April 26, 2002)

Appendix B
List of HUD Fair Market Rent Areas by Municipality

NH Municipalities By HUD Fair Market Rent Area

Municipality Name	HUD Fair Market Rent Area Name
Acworth	Sullivan Co., NH FMR Area
Albany	Carroll Co., NH FMR Area
Alexandria	Grafton Co., NH FMR Area
Allenstown	Merrimack Co., NH FMR Area
Alstead	Cheshire Co., NH FMR Area
Alton	Belknap Co., NH FMR Area
Amherst	Nashua, NH HMFA
Andover	Merrimack Co., NH FMR Area
Antrim	Hillsborough Co., NH (part) HMFA
Ashland	Grafton Co., NH FMR Area
Atkinson	Lawrence, MA-NH HMFA
Atkinson & Gilmanton Grant	Coos Co., NH FMR Area
Auburn	Western Rockingham Co., NH HMFA
Barnstead	Belknap Co., NH FMR Area
Barrington	Portsmouth-Rochester, NH HMFA
Bartlett	Carroll Co., NH FMR Area
Bath	Grafton Co., NH FMR Area
Bean's Grant	Coos Co., NH FMR Area
Bean's Purchase	Coos Co., NH FMR Area
Bedford	Manchester, NH HMFA
Belmont	Belknap Co., NH FMR Area
Bennington	Hillsborough Co., NH (part) HMFA
Benton	Grafton Co., NH FMR Area
Berlin	Coos Co., NH FMR Area
Bethlehem	Grafton Co., NH FMR Area
Boscawen	Merrimack Co., NH FMR Area
Bow	Merrimack Co., NH FMR Area
Bradford	Merrimack Co., NH FMR Area
Brentwood	Portsmouth-Rochester, NH HMFA
Bridgewater	Grafton Co., NH FMR Area
Bristol	Grafton Co., NH FMR Area
Brookfield	Carroll Co., NH FMR Area
Brookline	Nashua, NH HMFA
Cambridge	Coos Co., NH FMR Area
Campton	Grafton Co., NH FMR Area
Canaan	Grafton Co., NH FMR Area
Candia	Western Rockingham Co., NH HMFA
Canterbury	Merrimack Co., NH FMR Area
Carroll	Coos Co., NH FMR Area
Center Harbor	Belknap Co., NH FMR Area

Municipality Name	HUD Fair Market Rent Area Name
Chandler's Purchase	Coos Co., NH FMR Area
Charlestown	Sullivan Co., NH FMR Area
Chatham	Carroll Co., NH FMR Area
Chester	Lawrence, MA-NH HMFA
Chesterfield	Cheshire Co., NH FMR Area
Chichester	Merrimack Co., NH FMR Area
Claremont	Sullivan Co., NH FMR Area
Clarksville	Coos Co., NH FMR Area
Colebrook	Coos Co., NH FMR Area
Columbia	Coos Co., NH FMR Area
Concord	Merrimack Co., NH FMR Area
Conway	Carroll Co., NH FMR Area
Cornish	Sullivan Co., NH FMR Area
Crawford's Purchase	Coos Co., NH FMR Area
Croydon	Sullivan Co., NH FMR Area
Cutt's Grant	Coos Co., NH FMR Area
Dalton	Coos Co., NH FMR Area
Danbury	Merrimack Co., NH FMR Area
Danville	Lawrence, MA-NH HMFA
Deerfield	Western Rockingham Co., NH HMFA
Deering	Hillsborough Co., NH (part) HMFA
Derry	Lawrence, MA-NH HMFA
Dix's Grant	Coos Co., NH FMR Area
Dixville Township	Coos Co., NH FMR Area
Dorchester	Grafton Co., NH FMR Area
Dover	Portsmouth-Rochester, NH HMFA
Dublin	Cheshire Co., NH FMR Area
Dummer	Coos Co., NH FMR Area
Dunbarton	Merrimack Co., NH FMR Area
Durham	Portsmouth-Rochester, NH HMFA
East Kingston	Portsmouth-Rochester, NH HMFA
Easton	Grafton Co., NH FMR Area
Eaton	Carroll Co., NH FMR Area
Effingham	Carroll Co., NH FMR Area
Ellsworth	Grafton Co., NH FMR Area
Enfield	Grafton Co., NH FMR Area
Epping	Portsmouth-Rochester, NH HMFA
Epsom	Merrimack Co., NH FMR Area
Errol	Coos Co., NH FMR Area
Erving's Location	Coos Co., NH FMR Area

Municipality Name	HUD Fair Market Rent Area Name
Exeter	Portsmouth-Rochester, NH HMFA
Farmington	Portsmouth-Rochester, NH HMFA
Fitzwilliam	Cheshire Co., NH FMR Area
Francestown	Hillsborough Co., NH (part) HMFA
Franconia	Grafton Co., NH FMR Area
Franklin	Merrimack Co., NH FMR Area
Freedom	Carroll Co., NH FMR Area
Fremont	Lawrence, MA-NH HMFA
Gilford	Belknap Co., NH FMR Area
Gilmanton	Belknap Co., NH FMR Area
Gilsum	Cheshire Co., NH FMR Area
Goffstown	Manchester, NH HMFA
Gorham	Coos Co., NH FMR Area
Goshen	Sullivan Co., NH FMR Area
Grafton	Grafton Co., NH FMR Area
Grantham	Sullivan Co., NH FMR Area
Greenfield	Hillsborough Co., NH (part) HMFA
Greenland	Portsmouth-Rochester, NH HMFA
Greens Grant	Coos Co., NH FMR Area
Greenville	Nashua, NH HMFA
Groton	Grafton Co., NH FMR Area
Hadley's Purchase	Coos Co., NH FMR Area
Hale's Location	Carroll Co., NH FMR Area
Hampstead	Lawrence, MA-NH HMFA
Hampton	Portsmouth-Rochester, NH HMFA
Hampton Falls	Portsmouth-Rochester, NH HMFA
Hancock	Hillsborough Co., NH (part) HMFA
Hanover	Grafton Co., NH FMR Area
Harrisville	Cheshire Co., NH FMR Area
Hart's Location	Carroll Co., NH FMR Area
Haverhill	Grafton Co., NH FMR Area
Hebron	Grafton Co., NH FMR Area
Henniker	Merrimack Co., NH FMR Area
Hill	Merrimack Co., NH FMR Area
Hillsborough	Hillsborough Co., NH (part) HMFA
Hinsdale	Cheshire Co., NH FMR Area
Holderness	Grafton Co., NH FMR Area
Hollis	Nashua, NH HMFA
Hooksett	Merrimack Co., NH FMR Area
Hopkinton	Merrimack Co., NH FMR Area

Municipality Name	HUD Fair Market Rent Area Name
Hudson	Nashua, NH HMFA
Jackson	Carroll Co., NH FMR Area
Jaffrey	Cheshire Co., NH FMR Area
Jefferson	Coos Co., NH FMR Area
Keene	Cheshire Co., NH FMR Area
Kensington	Portsmouth-Rochester, NH HMFA
Kilkenny Township	Coos Co., NH FMR Area
Kingston	Lawrence, MA-NH HMFA
Laconia	Belknap Co., NH FMR Area
Lancaster	Coos Co., NH FMR Area
Landaff	Grafton Co., NH FMR Area
Langdon	Sullivan Co., NH FMR Area
Lebanon	Grafton Co., NH FMR Area
Lee	Portsmouth-Rochester, NH HMFA
Lempster	Sullivan Co., NH FMR Area
Lincoln	Grafton Co., NH FMR Area
Lisbon	Grafton Co., NH FMR Area
Litchfield	Nashua, NH HMFA
Littleton	Grafton Co., NH FMR Area
Livermore	Grafton Co., NH FMR Area
Londonderry	Western Rockingham Co., NH HMFA
Loudon	Merrimack Co., NH FMR Area
Low and Burbank's Grant	Coos Co., NH FMR Area
Lyman	Grafton Co., NH FMR Area
Lyme	Grafton Co., NH FMR Area
Lyndeborough	Hillsborough Co., NH (part) HMFA
Madbury	Portsmouth-Rochester, NH HMFA
Madison	Carroll Co., NH FMR Area
Manchester	Manchester, NH HMFA
Marlborough	Cheshire Co., NH FMR Area
Marlow	Cheshire Co., NH FMR Area
Martin's Location	Coos Co., NH FMR Area
Mason	Nashua, NH HMFA
Meredith	Belknap Co., NH FMR Area
Merrimack	Nashua, NH HMFA
Middleton	Portsmouth-Rochester, NH HMFA
Milan	Coos Co., NH FMR Area
Milford	Nashua, NH HMFA
Millsfield Township	Coos Co., NH FMR Area
Milton	Portsmouth-Rochester, NH HMFA

Municipality Name	HUD Fair Market Rent Area Name
Monroe	Grafton Co., NH FMR Area
Mont Vernon	Nashua, NH HMFA
Moultonborough	Carroll Co., NH FMR Area
Nashua	Nashua, NH HMFA
Nelson	Cheshire Co., NH FMR Area
New Boston	Hillsborough Co., NH (part) HMFA
New Castle	Portsmouth-Rochester, NH HMFA
New Durham	Portsmouth-Rochester, NH HMFA
New Hampton	Belknap Co., NH FMR Area
New Ipswich	Nashua, NH HMFA
New London	Merrimack Co., NH FMR Area
Newbury	Merrimack Co., NH FMR Area
Newfields	Portsmouth-Rochester, NH HMFA
Newington	Portsmouth-Rochester, NH HMFA
Newmarket	Portsmouth-Rochester, NH HMFA
Newport	Sullivan Co., NH FMR Area
Newton	Lawrence, MA-NH HMFA
North Hampton	Portsmouth-Rochester, NH HMFA
Northfield	Merrimack Co., NH FMR Area
Northumberland	Coos Co., NH FMR Area
Northwood	Western Rockingham Co., NH HMFA
Nottingham	Western Rockingham Co., NH HMFA
Odell Township	Coos Co., NH FMR Area
Orange	Grafton Co., NH FMR Area
Orford	Grafton Co., NH FMR Area
Ossipee	Carroll Co., NH FMR Area
Pelham	Nashua, NH HMFA
Pembroke	Merrimack Co., NH FMR Area
Peterborough	Hillsborough Co., NH (part) HMFA
Piermont	Grafton Co., NH FMR Area
Pinkham's Grant	Coos Co., NH FMR Area
Pittsburg	Coos Co., NH FMR Area
Pittsfield	Merrimack Co., NH FMR Area
Plainfield	Sullivan Co., NH FMR Area
Plaistow	Lawrence, MA-NH HMFA
Plymouth	Grafton Co., NH FMR Area
Portsmouth	Portsmouth-Rochester, NH HMFA
Randolph	Coos Co., NH FMR Area
Raymond	Lawrence, MA-NH HMFA
Richmond	Cheshire Co., NH FMR Area

Municipality Name	HUD Fair Market Rent Area Name
Rindge	Cheshire Co., NH FMR Area
Rochester	Portsmouth-Rochester, NH HMFA
Rollinsford	Portsmouth-Rochester, NH HMFA
Roxbury	Cheshire Co., NH FMR Area
Rumney	Grafton Co., NH FMR Area
Rye	Portsmouth-Rochester, NH HMFA
Salem	Lawrence, MA-NH HMFA
Salisbury	Merrimack Co., NH FMR Area
Sanbornton	Belknap Co., NH FMR Area
Sandown	Lawrence, MA-NH HMFA
Sandwich	Carroll Co., NH FMR Area
Sargent's Purchase	Coos Co., NH FMR Area
Seabrook	Boston-Campridge-Quincy, MA-NH HMFA
Second College Grant	Coos Co., NH FMR Area
Sharon	Hillsborough Co., NH (part) HMFA
Shelburne	Coos Co., NH FMR Area
Somersworth	Portsmouth-Rochester, NH HMFA
South Hampton	Boston-Campridge-Quincy, MA-NH HMFA
Springfield	Sullivan Co., NH FMR Area
Stark	Coos Co., NH FMR Area
Stewartstown	Coos Co., NH FMR Area
Stoddard	Cheshire Co., NH FMR Area
Strafford	Portsmouth-Rochester, NH HMFA
Stratford	Coos Co., NH FMR Area
Stratham	Portsmouth-Rochester, NH HMFA
Success Township	Coos Co., NH FMR Area
Sugar Hill	Grafton Co., NH FMR Area
Sullivan	Cheshire Co., NH FMR Area
Sunapee	Sullivan Co., NH FMR Area
Surry	Cheshire Co., NH FMR Area
Sutton	Merrimack Co., NH FMR Area
Swanzey	Cheshire Co., NH FMR Area
Tamworth	Carroll Co., NH FMR Area
Temple	Hillsborough Co., NH (part) HMFA
Thompson & Meserves	Coos Co., NH FMR Area
Thornton	Grafton Co., NH FMR Area
Tilton	Belknap Co., NH FMR Area
Troy	Cheshire Co., NH FMR Area
Tuftonboro	Carroll Co., NH FMR Area
Unity	Sullivan Co., NH FMR Area

Municipality Name	HUD Fair Market Rent Area Name
Wakefield	Carroll Co., NH FMR Area
Walpole	Cheshire Co., NH FMR Area
Warner	Merrimack Co., NH FMR Area
Warren	Grafton Co., NH FMR Area
Washington	Sullivan Co., NH FMR Area
Waterville Valley	Grafton Co., NH FMR Area
Weare	Manchester, NH HMFA
Webster	Merrimack Co., NH FMR Area
Wentworth	Grafton Co., NH FMR Area
Wentworth's Location	Coos Co., NH FMR Area
Westmoreland	Cheshire Co., NH FMR Area
Whitefield	Coos Co., NH FMR Area
Wilmot	Merrimack Co., NH FMR Area
Wilton	Nashua, NH HMFA
Winchester	Cheshire Co., NH FMR Area
Windham	Lawrence, MA-NH HMFA
Windsor	Hillsborough Co., NH (part) HMFA
Wolfeboro	Carroll Co., NH FMR Area
Woodstock	Grafton Co., NH FMR Area

Appendix C
NHHFA Subsidy Retention Model

(Consult with New Hampshire Housing for updated materials)

DRAFT 4/28/2007

Model Ordinance Provision For A Homeownership Affordability Retention Lien

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INTRODUCTION

The following model zoning ordinance provision was drafted to implement a technique for retaining the affordability of owner-occupied housing units that have been designated as affordable by a developer as a condition of approval by a local planning under an "inclusionary zoning" ordinance. This model is not a complete ordinance for implementing "inclusionary zoning" as defined in New Hampshire RSA 674:21, IV(a). It only defines one technique (among many) for retaining the affordability of a housing unit approved under such an ordinance.

Because RSA 674:21, IV(a) requires that affordable housing incentives can only be voluntary on the part of the developer, a community may wish to provide a variety of options for what is meant by "affordable housing." Which option should be utilized for a particular development can be discussed and finalized by the planning board and developer during the process of board review. These issues, as well as your community's overall strategy for addressing the affordability of housing, what part an "inclusionary" zoning provision might play in that strategy, what type of incentives would be most effective in your community, and what construction standards should apply – require serious and thorough consideration, but are beyond the scope of this model.

Of the methods that are available to municipalities to retain affordability of a home for more than one buyer, this method:

- requires the least amount of interaction with and oversight of buyers/owners,
- is designed to work easily with the existing real estate, financial, and legal systems,
- allows the buyer/owner access to any appreciation or risk of depreciation (most like normal ownership),
- requires the least amount of administrative effort,
- allows for easy conversion to other forms of affordability retention if desired, and
- provides for increasing the subsidy or cashing-out if the home becomes unaffordable to the target clientele.

The administration of this model can be contracted out by a municipality and funded by each transaction. New Hampshire Housing is prepared to offer this service to municipalities that adopt the recommended model. Other entities are also qualified to administer a program based on this model, or the municipality may choose to administer it by itself.

Model Ordinance Provision For A Homeownership Affordability Retention Lien

ORDINANCE SYNOPSIS

Through an inclusionary zoning approval, new homes are created and subsequently sold to low or moderate income households for a price that is lower than the value of the units. It is not adequate to simply require the building of lower cost units. A portion of the benefit that the municipality is providing to the developer through the inclusionary zoning ordinance must be passed to the first buyer, creating a municipal interest in the property. Otherwise, the buyer would be, in effect, penalized with resale encumbrances for purchasing a home at its *full market value*.

The initial sale price is based on what would be affordable to a household with an income no greater than 80% of the area's median. The difference between the value and the price becomes a property interest in the form of a lien or second mortgage held by the municipality. The lien is generally not payable and increases in value with the Consumer Price Index.

Future resale of the property is governed by a covenant that requires an appraisal of the unit's value, a reduction of the sale price by the amount of the lien, and a calculation of the income required to buy the property at this reduced price. The income limit of the intended beneficiaries shifts with the difference between real property appreciation in the local market and household income growth in the area. Should the income shift outside of the range that is intended, the municipality may recover the value of its interest in the property.

The municipality retains a right of first refusal in most property transfers. The value of the municipal lien is limited to prevent over-subsidization, and the lien is not payable except in limited circumstances. Over-subsidization can erode the concept of home ownership, jeopardize the maintenance of the home, and potentially over-burden a low income household which while qualifying for the purchase, would build less equity in the home. Keep in mind that the owner cannot pay down the subsidy. Only the municipality can reduce the subsidy and only upon sale.

On each transaction, a fee is paid by the seller to cover program administration costs. The municipality may administer the program, or it may contract with a qualified entity of its choosing. Conventional mortgage financing can be used by the buyers, and the buyers retain property value appreciation and assume the risk of ownership. Incomes of owner-occupants are not monitored once they have purchased a home. As an alternative to ongoing municipal participation and to facilitate the use of other mechanisms to retain affordability, the model also provides for the municipality to direct sales of units to non-profit organizations whose primary purpose is to provide affordable housing.

Model Ordinance Provision For A Homeownership Affordability Retention Lien

Because this is a model, it is not specifically tailored to fit into any particular zoning ordinance; rather it is intended to complement in general terms an inclusionary zoning provision adopted under RSA 674:21, IV(a). Some modification of either may be necessary for them to work together within the format and structure of a particular municipal zoning ordinance.

SECTION __: RETENTION OF HOUSING AFFORDABILITY

A. Authority and Purpose

1. Authority: This ordinance is adopted as an "innovative land use control" pursuant to RSA 674:21.

2. Purpose: The purpose of this ordinance is to provide a means by which the Municipality may promote the long-term affordability of housing units built as part of a development approved by the planning board under the terms of the Municipality's inclusionary zoning provisions, or which might have been promised as affordable as a condition of some other Municipal approval. It is intended to ensure that the units remain affordable to households of low- and moderate-income, while also facilitating homeowners' capacity to benefit from property value appreciation. It creates a lien interest in the property held by the Municipality, enforceable by the Municipality as a mortgage.

Note that the population targeted by this model ordinance is low- and moderate-income households. Although statutes freely use the terms "low-income" and "moderate-income", there is no standard definition of what that means. For the purposes of this ordinance, and to meet the terms of RSA 672:1, III(e), this model targets households that earn up to 120% of AMI, with an initial target of 80% AMI.

B. General Provisions

1. Definitions. For purposes of this section:

(a) "Affordable Housing Unit" means a residential dwelling unit intended to be affordable to persons of low or moderate incomes, which an applicant agrees to produce as a condition of approval of an "inclusionary" development as described in Section_____ of this Ordinance. More particularly an "Affordable Housing Unit" means the following, as determined by the planning board at the time a particular development is granted approval by the Board: A unit of housing which – in addition to any other specific conditions of approval imposed by the planning board at the time of approval – is required to be administered in accord with the general provisions as set forth herein; which is subject to the procedures set forth in Subsection C below at the time of its initial conveyance; and which is conveyed subject to a contingent subsidy lien and covenants in favor of the Municipality, as set forth in Subsection D below.

(b) The "Developer" means the person or entity which applies for and receives planning board approval for an "inclusionary" project as set forth in Section _____ of this Ordinance, any person or entity to which rights to construct such a project under such an approval have been conveyed, or any person or party acting as contractor or agent for such a party, or who otherwise performs acts in furtherance of constructing or implementing the approval, or fulfilling any conditions thereof.

(c) "Housing Cost" means the estimated monthly cost to an Owner of an Affordable Housing Unit, including mortgage principal and interest, property taxes (municipal, school, county, and state), homeowner's insurance, mortgage insurance, and any applicable homeowner's association fees. Interest calculations shall be based upon the prevailing market interest rate at the time of conveyance for a 30-year fixed-rate conventional mortgage. Schedules used to determine Housing Cost may be adopted and revised as needed by the _____ [the local governing body or planning board].

(d) The "Municipality" means the [Town/City] of _____; provided that, however, and except where responsibilities are specifically assigned herein or where statute creates a non-delegable responsibility, the tasks and functions required herein to be performed by the Municipality shall be performed by _____ [the local governing body] or its designee, or may be delegated in whole or in part by vote of _____ [the local governing body] to a third-party designee such as a nonprofit organization or quasi-governmental agency, subject to the supervision of _____ [the local governing body] or its designee.

(e) The "Owner" shall mean the person(s) who initially separately purchases and occupies the completed Affordable Housing Unit, under the procedures set forth in Subsection C below, as well as any person(s) who subsequently purchases the unit under the procedures required under Subsection D below.

(f) The "Fair Market Value" of the Affordable Housing Unit, at the time of the initial or any subsequent conveyance shall be the price which such unit would command at that time in an arm's-length transaction on the open market if the unit were not subject to any of the restrictions of this Section, and the Owner were to purchase the property in fee simple absolute.

(g) "First Mortgage" means a recorded mortgage which is senior to any other mortgages or liens against the Affordable Housing Unit (other than the lien for real estate taxes and homeowner assessments, if any), and which is used to secure a loan to an eligible buyer to purchase the unit.

(h) "Qualified Purchaser" means a purchaser who has been certified by the Municipality as meeting income standards to purchase an Affordable Housing Unit. It also includes a non-profit organization, the primary purpose of which is to provide or to facilitate the acquisition of housing that is affordable to low- and moderate-income households.

Remember that in many cases where the "Municipality" is identified to take some action under this model, that task can be performed by the municipality's designee, who can be an employee or a third-party contractor. See the definition of "Municipality" above.

(i) "Area Median Income" means Area Median Income ("AMI") for a family of four as established and updated periodically by the U.S. Dept. of Housing and Urban Development for the Fair Market Rent Area where the Municipality is located.

The Median Area Income is not the published income limit for various HUD programs. Those limits have additional rules applied to them. The Median Area Income is usually published with the program income limits.

2. The planning board shall, as a condition of approval, make an initial determination of the following with respect to all included Affordable Housing Units which, unless modified pursuant to C.3 below, shall serve as the basis for conveyance by the Developer:

(a) An estimated projected Fair Market Value for the Affordable Housing Units to be constructed by the Developer, using Developer projections or such other available information as the planning board may require. Construction details shall be provided in sufficient detail to enable a reasonable projection of such Value, and compliance with such details shall be deemed a condition of approval.

(b) An initial target income level for the initial conveyance of the Affordable Housing Units, which shall not be greater than 80% of the Area Median Income ("AMI").

AMI figures are available from New Hampshire Housing at www.nhhfa.org.

(c) A corresponding initial selling price for each Affordable Housing Unit, which shall be set at a level that is projected to require a Housing Cost no greater than 30% of the initial target income determined in (b) above.

(d) A corresponding projected initial subsidy for each Affordable Housing Unit, which shall be the difference between the estimated projected Fair Market Value and the initial selling price. The projected initial subsidy shall be between fifteen and thirty-three percent of the estimated projected Fair Market Value of the unit, inclusive.

The subsidy range limits are established so that the Municipality's interest in the property isn't so great as to discourage the owner-occupant from making improvements or maintaining the property, or so little as to be within the margin of error for appraisals.

3. Except as expressly set forth in this Section, in the conditions of Development approval by the planning board, or in a lien and covenant document recorded pursuant to Subsection C below, an Owner shall have the same rights and privileges with respect to the Affordable Housing Unit as would any person who owned the unit in fee simple absolute, including but not limited to the right of quiet enjoyment, the right to make improvements, and the right to convey a First Mortgage interest, as detailed below.

C. Procedures At Time Of Initial Conveyance. An Affordable Housing Unit shall not be separately conveyed, or initially occupied, except in accordance with the following procedures:

1. During construction and upon completion of construction, the Municipality shall inspect the unit to confirm that all applicable codes, ordinances, conditions of approval (including construction details presented at the time of approval) and all other legal requirements have been met.

This inspection should be done as part of the building inspection process that normally occurs during construction.

2. Upon successful inspection, the Municipality at the Developer's expense shall cause an independent appraisal to be performed to determine the Fair Market Value of the unit.

As early as possible in the application process, the developer should be made aware of this expense and others incurred in accordance with C.9. below, This is to recognize that there may be significant changes to the market or to construction costs between the time of planning board approval and the completion of the Affordable Housing Unit. This helps to protect the Developer from unexpected change; compare with C.10 below.

3. The initial selling price shall be as set by the planning board at the time of plan approval under (B)(2) of this Section; provided, however, that under unusual circumstances the Developer may petition the planning board, which may for good cause and following a hearing for which reasonable notice is provided to the Developer and such others as the planning board may require, amend the initial selling price, the projected initial subsidy, and/or the initial target income level.

4. The Municipality or its agent shall be responsible for certifying potential purchasers as meeting the relevant target income requirements and eligible to purchase the unit and for ranking Qualified Purchasers. Any potential buyer identified by the Developer or its agent must be referred to the Municipality. If, after the impartial application of objective criteria for priority eligibility have been applied to all persons wishing to purchase the unit, there exists more than one top priority income-eligible purchaser ready, willing, and able to execute a purchase and sales agreement at the initial selling price, then the final choice of purchasers shall lie with the Developer.

Remember, certification and ranking of potential purchasers can be done by the Municipality or by its agent, pursuant to B.1(d) above.

Real estate agents acting on behalf of the Developer can deal directly with the Municipality by identifying potential purchasers.

5. The _____ [local governing body] shall from time to time establish rules and procedures for determining income-eligibility and priority for ranking Qualified Purchasers, such rules and procedures to be consistent with U.S. Dept. of Housing & Urban Development Program Requirements at 24 CFR Part 5, Subpart F. Such rules may give priority to persons who are already residents of the Municipality, or who are or will be employed in the Municipality. There shall be no requirement for continuing Owner income-eligibility, and no Owner shall, subsequent to purchase, be deemed in violation of this Section or of the Subsidy Lien and Restrictive Covenant for lack of income-eligibility, unless false or fraudulent information is found to have been provided by said Owner at the time of initial eligibility determination.

Because the price of the Affordable Housing Unit is fixed, the Developer should have no concern over how the Municipality ranks the potential purchasers.

6. The Developer shall not convey, or agree to convey, the Affordable Housing Unit for a total consideration any higher than the initial selling price as set by the planning board. The Developer shall not convey, or agree to convey, the unit except to the top priority Qualified Purchaser; provided, however, that if the Municipality fails to identify a Qualified Purchaser, or if the Developer, after exercising a good faith effort, fails to produce a purchaser who is subsequently certified by the Municipality as a Qualified Purchaser and who is ready, willing and able to execute a purchase and sales agreement at the initial selling price within 120 days after the Municipality grants a Certificate of Occupancy in (C)(1) above, the Developer may convey the unit to any purchaser of the Developer's choosing; nevertheless such conveyance shall remain subject to the initial selling price, as set by the Board, and the recording of a Subsidy Lien and Restrictive Covenant, as set forth below. The Developer shall not use these provisions to avoid selling the unit to any Qualified Purchaser, including one identified by the Municipality.

The municipality is responsible for setting the Initial Sale Price and has assumed that there will be sufficient buyers that will buy all the restricted units in the development. If income-qualified buyers cannot be identified, the developer cannot be left unable to sell the units. At the same time the municipality should not give up its subsidy interest in the units. If not resolved under C.10. below, the units may be sold to buyers with incomes higher than the limit. With the Subsidy Lien and Covenant in place the unit is, in effect, reserved for a future income-qualified buyer.

7. The initial Owner shall, at the time of closing, execute and convey to the Municipality a covenant document, to be called a "Subsidy Lien and Restrictive Covenant", which shall be recorded in the _____ County Registry of Deeds together with the Owner's deed. This document shall contain the initial value of the Municipality's subsidy lien, and all the elements required under (D) below.

8. The initial value amount of the Municipality's subsidy lien shall be the difference between the appraised value reached under (C)(2) above, and the unit's initial selling price. The burden of the creation of the subsidy shall fall upon the Developer as a condition of approval.

The developer has the most control over the cost to construct the units and the ultimate appraised value of the units. The Developer must manage these in order to achieve an appraised value that is between 17.65% and 49% higher than the Initial Sale Price, thus creating the subsidy.

9. In addition, the Developer shall, at the time of the closing, pay to the Municipality an administrative fee for each unit, which shall be used by the Municipality to fund the administration of the unit under this Subsection, including appraisals, drafting of documents, costs incurred for program administration by an independent agent of the Municipality, and other expenses relating to the Municipality's subsidy lien. The amount of the administrative fee shall be two percent (2%), or as otherwise determined by the _____ [governing body], of the unit's initial selling price, provided however that the _____ [governing body] may if warranted, pursuant to RSA 41:9-a, prospectively alter the rate of the fee to more accurately reflect actual administrative costs. The fee shall be accounted for in the same manner as an impact fee, as provided in RSA 674:21, V(c).

As noted above in C.2., the developer should be made aware of these expenses early in the application process. This will allow the developer to judge whether the incentive offered will cover those expenses as well as provide the subsidy to the buyer.

10. Notwithstanding the foregoing, the initial selling price, the projected initial subsidy, and/or the initial target income as conditions of approval may be reviewed and recalculated by the planning board as needed between the date of approval and conveyance by the Developer, for the purposes of ensuring that the objectives of this ordinance are met. Amendment of any such condition shall only be made following a hearing for which reasonable notice is provided to the Developer and such others as the planning board may require.

This helps to protect the Municipality's interest in the project; compare with C.3 above.

D. Subsidy Lien And Restrictive Covenant. The "Subsidy Lien and Restrictive Covenant" required under (C)(7) above shall set forth the initial value amount of the subsidy lien as determined under (C)(8) above, shall incorporate all of the requirements for subsequent conveyances of the Affordable Housing Unit as set forth in (E) through (H) below, shall provide that any and all of such requirements shall be subject to enforcement pursuant to (I) below, and shall, in addition, incorporate the following conditions and restrictions:

1. The unit shall be the primary residence of the Owner, and shall be occupied by the Owner.

2. The unit shall at all times be maintained in conformity with all applicable building or housing codes, land use ordinances or conditions of approval, and any other applicable provisions of federal, state, or local law. The Owner shall immediately notify the Municipality of any existing or anticipated violation of any such requirement, or of any provision of the Subsidy Lien and Restrictive Covenant.

3. The Owner shall not, without the prior written consent of the Municipality, convey any mortgage or other lien interest in the unit, other than a First Mortgage interest. The Municipality's Subsidy Lien interest shall generally be deemed the equivalent of a second mortgage interest subordinate to any such First Mortgage, and shall entitle the Municipality to the right to notice as a lienholder for all purposes, including foreclosure notice under RSA 479:25. The Municipality may consider an alternative lien position on a case-by-case basis, based on a reasonable assessment of risk and an appraisal of value.

Treatment of the Municipality's interest as a second mortgage affords the Owner ready access to conventional mortgage financing.

E. Subsequent Conveyances Of The Unit. Except in the cases of purchase of a unit by the Municipality in accordance with (F) or (G) below, or release or termination of the Subsidy Lien and Restrictive Covenant by the Municipality in accordance with (H) below, no Owner of an Affordable Housing Unit shall convey the unit except in accordance with the following procedures:

The subsidy lien stays with the property, thereby reducing the cost to future purchasers.

Model Ordinance Provision For A Homeownership Affordability Retention Lien

1. An Owner may at any time notify the Municipality in writing of an intent to convey the unit. The Municipality shall, as soon as practicable, cause an appraisal to be conducted to arrive at a current Fair Market Value of the unit (including the value of any fixtures or improvements made by the Owner). If the Owner disagrees with or has doubts or questions concerning the accuracy of the appraisal, the Owner may choose to fund a second appraisal, and the current Fair Market Value shall be deemed to be the average of the two appraisals unless otherwise agreed. If the Owner does not convey the unit within one year after providing written notice of intent to convey the unit or otherwise rescinds its notice of intent to dispose of the unit either directly in writing to the Municipality or constructively by either failing to market the property or withdrawing it from the market, the Owner shall reimburse the Municipality for the cost of its appraisal of the unit. Subsequent notices of intent to convey the unit shall require a new appraisal.

The Owner is free to make improvements to the property and to realize all of the value added to the property because of such improvements; there is no equity sharing requirement in this model.

One consequence of this approach is that an Owner who makes substantial improvements to his/her property may cause the property to become unaffordable in future sales. This will require the Municipality to either enhance the subsidy (making the property affordable to the Qualified purchasers) or to retire the subsidy and use its value in other housing units.

Even if the subsidy is retired, the municipality receives the benefit of an improved property.

2. The Municipality shall set the maximum resale price of the unit by adjusting the recorded initial value amount of its subsidy lien by the change in the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for Boston, Brockton-Nashua, MA-NH-ME-CT for Shelter or a comparable housing cost index should the CPI-U be discontinued, calculating from the time of such recording, then subtracting that adjusted subsidy lien amount from the current Fair Market Value determined under (E)(1) above. The Municipality shall also, based upon that maximum resale price, determine a revised target income level for which the unit would be affordable at such a resale price, such that the unit's Housing Cost would be no greater than 30% of the revised target income. If the revised target income level is greater than 120% of the Area Median Income or if the adjusted subsidy lien amount is not between fifteen and thirty-three percent of the Fair Market Value, the Municipality may retire or modify the subsidy lien in accordance with (H) below. An increase to the subsidy lien will result in a corresponding decrease to the maximum resale price; a decrease to the subsidy lien will result in a corresponding increase to the maximum resale price. In neither case will the Owner's equity be affected, if any.

By adding to the value of the subsidy lien, the municipality will reduce the maximum purchase price, thereby making the housing unit more affordable. Alternatively, the municipality can "cash out" or retire the lien if the price of the housing unit no longer meets affordability targets. The municipality then can reinvest the value of the retired lien in other units, if it has previously established a fund for that purpose.

When increasing the value of a subsidy lien, the municipality should be careful not to "over-subsidize" the housing unit by making the lien be greater than 33% of the unit's fair market value.

When decreasing the value of a subsidy lien, the municipality should be careful not to "under-subsidize" the housing unit, such that the difference between the maximum selling price and the fair market value is within the margins of error for an appraisal. The model uses 15% as a minimum lien value.

3. The Municipality or its agent shall be responsible for certifying potential purchasers as meeting the revised target income requirements, in the same manner set forth in (C)(4) above, and for ranking Qualified Purchasers. Any potential buyer identified by the Owner or its agent must be referred to the Municipality. If, after the impartial application of objective criteria for priority eligibility have been applied to all persons wishing to purchase the unit, there exists more than one top priority income-eligible purchaser ready, willing, and able to execute a purchase and sales agreement at the maximum resale price, then the final choice of purchasers shall lie with the current Owner.

Real estate agents acting on behalf of the Owner can deal directly with the Municipality by identifying potential purchasers.

4. The Owner shall not convey, or agree to convey, the Affordable Housing Unit for a total consideration any higher than the maximum resale price as determined under (E)(2). The Owner shall not convey, or agree to convey, the unit except to persons who have been certified as income-eligible under (E)(3); provided, however, that if the Municipality fails to identify a Qualified Purchaser, or if the Owner, after exercising a good faith effort, fails to produce a purchaser who is subsequently certified by the Municipality as a Qualified Purchaser and who is ready, willing, and able to execute a purchase and sales agreement at the maximum resale price within 120 days after the Owner's written notice of intent to convey the unit, the Owner may convey the unit to any purchaser of the Owner's choosing; nevertheless such conveyance shall remain subject to the maximum resale price, to the purchaser income qualification procedures for subsequent conveyances, and to the Subsidy Lien and Restrictive Covenant, and such a conveyance shall permit, but shall not obligate, the Municipality to modify or retire the adjusted subsidy lien in accordance with (H) below. Nothing in the foregoing shall be construed to relieve or limit the Owner's obligation to engage in good faith and energetic efforts to market the unit for purposes of identifying a purchaser who is likely to meet the income qualification standards herein. The Owner shall not use these provisions to avoid selling the unit to any Qualified Purchaser, including one identified by the Municipality.

In the absence of a qualified purchaser, the 120-day limit is designed to protect the Owner and the holder of the First Mortgage by allowing the Unit to be sold to buyers who are not income qualified. However, the subsidy lien continues to restrict the property and future sales will continue to be subject to the Maximum Price limit and its corresponding target income.

5. At the time of closing, the new Owner shall execute a Subsidy Lien and Restrictive Covenant, substantively similar to that executed by the prior Owner, and the Municipality shall execute a certification of compliance with the conveyance procedures required by the Subsidy Lien and Restrictive Covenant. Both of these documents shall be recorded together with the new Owner's deed. The seller shall also, at the time of the closing, pay to the Municipality an administrative fee of two percent (2%), or as otherwise determined by the _____ [governing body], of the resale price, but such fee shall be subject to adjustment, as set forth in (C)(9) above.

The certificate represents the Municipality's recognition that all procedures required by this ordinance and by the lien and covenant document were following during the transaction.

6. Notwithstanding (E)(1) through (E)(5) above, the following types of conveyances are exempt from the Owner Conveyance provisions set forth in this Subsection:

(a) A conveyance to a first mortgagee resulting from foreclosure, or

(b) Any of the following, provided, however, that the unit shall, subsequent to such an exempt conveyance, remain subject to the provisions of the Subsidy Lien and Restrictive Covenant:

The purpose of these exemptions is to maximize the property rights of the Owner while also protecting the Municipality's interest, by allowing the Owner flexibility to deal with significant life events.

(i) A conveyance resulting from the death of an Owner where the conveyance is to the spouse who is also an Owner.

(ii) A conveyance to the Owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof during a limited period of time.

(iii) A conveyance resulting from the death of an Owner when the conveyance is to one or more children or to a parent or parents of the deceased Owner.

(iv) A conveyance by an Owner where the spouse of the Owner becomes the co-Owner of the Property.

(v) A conveyance directly resulting from a legal separation or divorce, by which a co-Owner becomes the sole Owner of the unit.

F. Right of First Refusal in Subsequent Conveyances. Upon receipt of a notice of intent to convey an Affordable Housing Unit under (E)(1) above, the Municipality shall have the right to purchase the property at the maximum resale price, as determined according to (E)(2) above. If the Municipality elects to purchase the unit, it shall exercise the purchase right by notifying the Owner, in writing, of such election ("Notice of Exercise of Right") within forty-five (45) days of the receipt of the Intent to Convey Notice, or the Right shall expire. Within seven (7) days of the Municipality exercising its purchase right, the Municipality and the Owner shall enter into a purchase and sale contract. The purchase by the Municipality must be completed within forty-five (45) days of the Municipality's Notice of Exercise of Right, or the Owner may convey the property as provided in (E) above. The time permitted for the completion of the purchase may be extended by mutual written agreement of the Owner and the Municipality. If the Municipality has in writing waived its purchase right, or if the Purchase Right has expired, or if the Municipality has failed to complete the purchase within forty-five (45) days of its Notice of Exercise of Right, the Owner may convey the unit according to (E) above for no more than the maximum resale price as calculated therein.

G. Municipality's and Owner's Rights in Foreclosure

1. The Owner shall give immediate written notice to the Municipality upon the first to occur:

(a) the date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the unit under the First Mortgage, or

(b) the date when the Owner becomes twenty-one (21) days late in making a payment on any indebtedness encumbering the unit required to avoid foreclosure of the First Mortgage.

2. At any time within sixty (60) days after receipt of any notice described in (G)(1)(a) above, the Municipality may, but shall not be obligated to, proceed to make any payment required in order to avoid foreclosure or to redeem the unit after a foreclosure. Upon making any such payment, the Municipality shall succeed to all rights of the Owner to the Property and shall assume all of the Owner's rights and obligations under the First Mortgage, subject to the terms of the Subsidy Lien and Restrictive Covenant. In such event the Owner shall forthwith quit the unit and relinquish possession thereof to the Municipality, which shall assume ownership of the property.

3. The Owner may redeem his or her interest in the unit by payment to the Municipality of all sums paid by the Municipality in connection with the First Mortgage and all other sums reasonably expended by the Municipality in relation to the unit, plus eighteen percent (18%) simple interest from each date of expenditure. This redemption may only occur within forty-five (45) days after the Municipality succeeds to the Owner's rights to the unit, after which the Municipality may proceed to convey the property to an eligible buyer. Notwithstanding such redemption, the property shall nonetheless remain subject to the Subsidy Lien and Restrictive Covenant.

4. If the Municipality conveys the property it may recover all incidental and consequential costs as are reasonably incurred or estimated to be incurred by the Municipality in connection with its ownership and disposition of the property, including but not limited to insurance, maintenance, repairs or improvements, and marketing expenses. If after conveyance of the property by the Municipality there are excess proceeds above the Municipality's costs, then within 60 days of settlement by the purchaser or purchasers of the property conveyed, the municipality shall reimburse the Owner from whom the Municipality acquired the property in the amount of such excess proceeds.

H. Retirement Or Modification Of Subsidy Lien. At the time of any transfer of an Affordable Housing Unit, the Municipality may, but is not obligated to, retire or modify the subsidy lien if, in accordance with (E)(2) above, the revised target income level is greater than 120% of the Area Median Income, or if the adjusted subsidy lien amount is not between fifteen and thirty-three percent of the Fair Market Value. Upon making a determination that any such condition has been met, the Municipality may notify the Owner in writing of its intention to retire or modify the subsidy lien. The notice shall indicate the value of the subsidy lien to be retired, or the amount by which the Municipality will reduce or enhance the subsidy lien. Such notification shall be made within 45 days of the Owner's Notice of Intent, as provided under (E)(1) above.

By adding to the value of the subsidy lien, the municipality will reduce the maximum purchase price, thereby making the housing unit more affordable. Alternatively, the municipality can "cash out" or retire the lien if the price of the housing unit no longer meets affordability targets. The municipality then can reinvest the value of the retired lien in other units, if it has previously established a fund for that purpose.

Reduction or retirement of the subsidy lien shall be accomplished at the time of closing by payment from the Owner to the Municipality, such payment to be deposited in the Municipality's Affordable Housing Revolving Fund [if one exists at the time]. Enhancement of the subsidy lien shall be accomplished at the time of closing by payment from the Municipality to the Owner. Retirement of the subsidy lien shall be accompanied by release of the restrictive covenant by the Municipality and shall eliminate the need to calculate a maximum resale price, allowing the unit to sell at its Fair Market Value.

When increasing the value of a subsidy lien, the municipality should be careful not to "over-subsidize" the housing unit by making the lien be greater than 33% of the unit's fair market value.

When decreasing the value of a subsidy lien, the municipality should be careful not to "under-subsidize" the housing unit, such that the difference between the maximum selling price and the fair market value is within the margins of error for an appraisal. The model uses 15% as a minimum lien value.

I. Default And Other Enforcement. Failure of the Owner to comply with the terms of this ordinance, with any condition of planning board approval, or with the terms of the recorded Subsidy Lien and Restrictive Covenant shall constitute default, which shall entitle, but which shall not obligate, the Municipality to undertake the following actions:

1. Foreclosure on the Subsidy Lien, in accordance with RSA 479:19 et seq., provided that the Owner shall have 60 days after receiving written notice of default from the Municipality to fully correct the reasons for default identified by the Municipality in its notice; and

2. Enforcement under RSA 676:17, 676:17-a, and 676:17-b.

Model Ordinance Provision For A Homeownership Affordability Retention Lien

J. Conveyances to Non-Profit Housing Organizations. Notwithstanding the foregoing, the Municipality may require that initial or subsequent conveyances of Affordable Housing Units be made to a non-profit organization of the Municipality's choice, where the primary purpose of the organization is to provide or facilitate the acquisition of housing that is affordable to low- and moderate-income households. The Municipality shall release its Right of First Refusal under (F) above upon such conveyance, provided that upon subsequent conveyance the organization acquires a similar right of first refusal. The Municipality shall also release its Subsidy Lien and Restrictive Covenant upon conveyance to such an organization. Conveyance to such an organization shall be made at the initial selling price in C.3 or at the maximum resale price in E.2, as appropriate.

The intent of allowing the Municipality to require sales to non-profit housing organizations is to allow housing created under this ordinance to be converted to other mechanisms that provide for long-term affordability, such as community land trusts.

Appendix D
Town of Exeter Resale Restriction Covenants

NOTE: this document was used by the Town of Exeter in association with and as a condition of approval for the "Watson Woods" development. Its inclusion in this Guidebook is not an endorsement of any of the terms or methodologies it contains, but only an indication of how one community has approached the matter of long-term affordability restrictions. Also observe that some of the terms do not reflect definitions used in the workforce housing statute, as this covenant predates the law.

Municipalities should consult with legal counsel when creating documents that legally bind the rights of property owners and developers. As municipal planning boards develop long-term affordable restrictions, they are strongly encouraged to seek the input of impartial professionals with experience in affordable housing development and administration to ensure that such restrictions are realistic and enforceable.

AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

This Affordable Housing Restrictive Covenant and Agreement (the "**Covenant**") dated this _____day of _____, 200___, is entered into between the Monitoring Agent as defined in Section 1 of this covenant, currently, and hereafter referred to as MB, referring to **MB Management Company**, a Massachusetts company, with a mailing address of 220 Forbes Road, Suite 205, Braintree, Massachusetts 02184 ("**MB**"); **Watson Woods Unit Owners' Association** of 8 Newmarket Road, Ste. 2, Durham, NH 03824; and _____ of _____, (the "**Owner**") of the property known as Unit _____, Watson Woods Condominium, Exeter, New Hampshire. This Covenant applies to the Condominium Unit (the "**Home**"), described on **Exhibit A** attached hereto.

WHEREAS, Oakland Road, LLC (the "**Developer**"), will be constructing or has constructed homes in a new subdivision named Forest Ridge, of which the Watson Woods Condominium is a component, according to the final subdivision plan recorded in the Rockingham Registry of Deeds as Plan No. D32025 (the "**Development**");

WHEREAS, as a condition of the Town of Exeter (the **"Town"**) approving the Development under its affordable housing zoning ordinance adopted in accordance with RSA 674:16 and RSA 674:21, the Town has required a certain percentage of the homes within the Development be maintained as affordable housing;

WHEREAS, this Covenant is designed to satisfy the conditions of the Town, to the fullest extent allowed by law, by requiring that the Home be maintained for a term of 30 years as affordable housing;

WHEREAS, Developer has declared Watson Woods Condominium by Declaration recorded in the Rockingham County Registry of Deeds at Book _____, Page _____; by By-laws recorded at Book _____, Page _____; and by Site Plan recorded as Plan

_____, consisting of six buildings and not more than 28 units, 20 of which are restricted in accordance with this Covenant as follows:

Building #	Unit #	Restricted to Eligible Buyer with income at or below the % of AMI stated below:
1	1	120
1	2	120
1	3	80
1	4	120
1	5	120
2	6	120
2	7	120
2	8	80
2	9	120
2	10	120
3	11	120
3	12	120
3	13	80
3	14	120
3	15	120
4	16	120
4	17	120
4	18	80
4	19	120
4	20	120
5 and 6	21-28	unrestricted

WHEREAS, this Covenant shall apply to and be enforceable by the Town, Monitoring Agent, and the Watson Woods HomeOwners' Association against all current and future owners of the Home, and shall RESTRICT THE SALE, RESALE, RENTAL, MORTGAGING AND USE of the Home;

WHEREAS, the Owner recognizes the special nature of the terms and conditions of this Covenant and, with the independent and informed advice of legal counsel, freely accepts the terms and conditions of this Covenant, including, without limitation, the terms and conditions that affect the marketability and the resale price of the Home; and

WHEREAS, MB, or its designated agent or successor, shall have responsibility for monitoring and enforcing this Covenant in compliance with the Town's requirements for affordability.

NOW THEREFORE, as further consideration from the Owner to the Developer and the Town for the conveyance of the Home at a reduced price in accordance with the Town's zoning approval, the Owner and Developer and their respective heirs, successors, assigns, hereby agree that the Home shall be subject to the following rights and restrictions which are hereby imposed for the benefit of, and shall be enforceable by the Town and MB and their respective heirs, successors and assigns.

THEREFORE, in consideration of the foregoing recitals and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

DEFINITIONS

The following terms shall have the following meanings for purposes of this Covenant:

1.1 **"**Area Median Income" or "AMI**" means the current Area Median Income for single**
persons and households of various sizes by the United States Department of Housing and Urban Development (HUD) or by any successor United States Government department, agency, or instrumentality, for the metropolitan statistical area which includes the Town of Exeter, New Hampshire.

1.2 "Consumer Price Index" or "CPI" **means the Consumer Price Index for Urban Wage Earners and Clerical Workers All Items (CPI-W), Boston-Brockton-Nashua-MA-NH-ME-CT (November 1982-84 index of 100)" published by the Bureau of Labor Statistics of the United States Department of Labor or any comparable successor or substitute index designated by HUD appropriately adjusted in the event the Consumer Price Index ceases to use the November 1982-84 index of 100 as the basis of calculation or if a substantial change is made in the terms or number of items contained in the Consumer Price Index, then the Consumer Price Index shall be adjusted to the figure that would have been arrived at had the manner of computing the Consumer Price Index in effect at the date of this Covenant not been changed.**

1.3 **"Cumulative CPI"** means the percentage difference between the CPI on the date of purchase (calculated by taking the average of monthly price indexes for each of the twelve months prior to the date of purchase) and the CPI on the date of the sale (calculated by taking the average of the monthly price indexes for each of the twelve months prior to the date of the sale).

1.4 "Development**" has the meaning set forth in the above recitals.**

1.5 "Eligible Buyer**" means a natural person, who is certified by MB to be qualified to buy. For purposes of determining who is an Eligible Buyer for purposes of this Covenant, Eligible Buyers shall include only those**

individuals whose gross income, as defined by the U.S. Department of Housing and Urban Development's 4350.3 guidelines, Handbook No. 4350.3, Rev-1, Occupancy Requirements of Subsidized Multi-Family Housing Programs, published on July 23, 2003, as the same may be revised from time to time, or if the same shall be discontinued, a comparable publication, is at or below that percent of Area Median Income at the time of purchasing the Home, as set forth in the chart in the preamble to this Covenant.

1.6 **"**First Mortgage**" means a recorded mortgage which is senior to any other mortgages or liens against the Home (other than the lien for real estate taxes and homeowner association assessments, if any), and which is used to secure a loan from an Institutional Lender to an Eligible Buyer to purchase a Home.**

1.7 **"**Home**" means the real property described on** Exhibit A **attached hereto, together with other structural improvements now or hereafter located thereon.**

1.8 **"**Institutional Lender**" means any bank, savings and loan association, or any other lender that is licensed to engage in the business of providing purchase money or mortgage financing on residential real property.**

1.9 **"**Maximum Resale Price**" means not more than the Purchase Price plus two times the accumulated Consumer Price Index or CPI, times the original purchase price (expressed as a formula: Maximum Resale Price = Original Purchase Price + [2(accumulated CPI) x Original Purchase Price], calculated in accordance with** Exhibit B. **No adjustment to the Maximum Resale Price will be made if the CPI on the date of sale is less than the CPI on the date of purchase.**

1.10 "**Monitoring Agent"** shall mean authorized agency approved by the Town, from time to time, to monitor and enforce this covenant in compliance with the Town's requirements for affordability. At date of execution the Monitoring Agent shall be MB Management, until further written notice.

1.11 **"**Owner**" means the record title owner of a Home. Prior Owner means the Seller of the unit. New Owner means the Buyer of the unit who will execute this document.**

1.12 "Primary Residence**" means the residence a person occupies for a minimum of eight (8)**
full months out of any twelve (12) month period.

1.13 **"**Purchase Price**" means any and all consideration paid for the Transfer of a Home, either at or outside of closing, but not including any pro-ration amounts, taxes, costs and expenses of obtaining financing, the fair market value of furnishings or personal property, lender's fees, title insurance fees,**

closing costs, inspection fees, or other normal and customary financing and closing costs.

1.14 "Transfer**" means any sale, assignment or transfer, voluntary or involuntary, by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any ownership or possessory interest in a Home, including but not limited to, a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, leasehold interest, mortgage, or lien.**

2 NOTICE OF INTENT TO SELL

2.1 Intent to Sell Notice**. Owner shall notify MB in writing of Owners' intent to sell a Home (the "**Intent to Sell Notice**") at the address listed in paragraph 7.1. The Intent to Sell Notice shall have attached to it the Maximum Resale Price of the Home calculated in accordance with** Exhibit B**.**

2.2 Concurrence of Maximum Sales Price**. Within 15 days of the filing an Intent to Sell Notice, MB shall confirm the Exhibit B calculations, adjust it as may be necessary, and advise Owner of the Maximum Resale Price.**

2.3 **Qualification of Eligible Buyer.** All sales contracts for the sale of a Home shall be subject to certification by MB that buyer is an Eligible Buyer in accordance with this Covenant. If buyer is not certified as an Eligible Buyer, all deposits shall be returned to buyer and the sales contract shall be null and void. Within five days of the execution of a sales contract, Owner shall deliver said contract to MB which shall within 15 business days based on full cooperation of the buyer thereafter certify, if qualified, that buyer is an Eligible Buyer. Failure of the buyer to provide full cooperation and complete income verifications required to certify buyer eligibility will result in extension of the 15 day certification timeline until such verifications can be completed.

2.4 **Inability to Find An Eligible Buyer.** If after ninety (90) days of the issuance by MB to Owner of a Concurrence of the Maximum Sales Price as defined in Section 2.2 hereof, and upon a showing of a continued good faith effort throughout the full ninety (90) days to find such an Eligible Buyer, Owner is unable to find an Eligible Buyer, Owner shall then be free to sell the property to any buyer, whether an Eligible Buyer or not, at a price not to exceed the Maximum Resale Price. Such a sale, however, will not serve to release that buyer of the Home, or subsequent owners of the Home, or the Home, from this Covenant.

3 RESALE AND TRANSFER RESTRICTIONS

3.1 Maximum Resale Price/Eligible Buyer**. Except as set forth in** Section 3.4**, a Home shall not be Transferred, and no attempted Transfer will be valid unless:**

A. MB issues a certificate (the "Transfer Certificate**") stating that the Purchase Price is equal to or less than the Maximum Resale Price, the buyer is an Eligible Buyer, the proposed terms of the Transfer are in compliance with this Covenant, and the Transfer Certificate is recorded at the appropriate Registry of Deeds.**

B. New Owner executes a new covenant in the same form as this Covenant and the new Covenant is recorded at the Rockingham County Registry of Deeds.

C. Any good faith buyer of a Home, Institutional Lender or any other third party may rely upon a Compliance Certificate or Transfer Certificate as conclusive evidence of the matters stated in the Certificates and may record the Certificates in connection with the Transfer of the Home.

D. Within ten (10) days of the closing, the new Owner shall deliver to MB a certified copy of the recorded deed of the Home and new Covenant.

3.2 Administrative Fee**. An Owner shall pay MB one-half percent (1/2%) of the lesser of the Maximum Resale Price or the actual Purchase Price, as an administrative fee to process a request for a Compliance Certificate or Transfer Certificate at the time either Certificate is requested.**

3.3 NO GUARANTEE. NOTHING IN THIS COVENANT SHALL BE CONSTRUED OR GIVE RISE TO ANY IMPLIED REPRESENTATION, WARRANTY OR GUARANTEE. THE OWNER WILL INDEMNIFY AND HOLD HARMLESS MB, THE DEVELOPER, AND DEVELOPER'S AGENTS WHO EXPRESSLY DISCLAIM, THAT AN OWNER WILL BE ABLE TO RESELL A HOME FOR THE MAXIMUM RESALE PRICE OR RECOVER HIS OR HER INITIAL PURCHASE PRICE.

3.4 Exempt Transfers**. The following Transfers shall be exempt from the rights and restrictions in this Covenant, provided that the new Owner (other than an estate) shall use the Home as his or her Primary Residence:**

A. Transfer resulting from the death of an Owner where the Transfer is to the Owners' spouse;

B. Transfer to the Owners' estate following his or her death for the purpose of administering the estate and distributing the assets of the estate.

C. Transfer resulting from a decree of dissolution of the marriage or legal separation or from a property settlement agreement incidental to such a

decree, by which a spouse who is an Owner becomes the sole Owner of the Home.

3.5 **Transfers To A Buyer Other Than An Eligible Buyer.** A transfer may be made to a buyer, other than an Eligible Buyer, only under the provisions of Section 2.4 hereof, when an Eligible Buyer cannot be found within the designated timeframes, or pursuant to the provisions of Section 5.3 hereof resulting from a foreclosure sale, or deed in lieu of foreclosure. For a sale made pursuant to Section 2.4, the Eligible Buyer provision of this Covenant is waived, but the Maximum Resale Price is not, nor are any provisions of this Covenant waived for the new Owner. For a sale made pursuant to Section 5.3, the Eligible Buyer provision is waived, the Maximum Resale Price is not (but see Section 5.4); however, the Home will thereafter be forever free of this Covenant (See Section 5.5).

4 RESTRICTIONS ON USE, RENTAL AND JUNIOR ENCUMBRANCES

4.1 Occupancy**. The Owner shall maintain the Home as Owners' Primary Residence, occupying that Home for a minimum of eight (8) full months out of any twelve (12) month period, unless otherwise agreed in writing by MB. Occupancy by children or other immediate family members or dependents of the Owner, who have been occupying the Home for a period of at least nine (9) consecutive months before the start of the Owners' absence, shall be deemed occupancy by the Owner. Upon written request of MB, the Owner shall provide MB with such information as MB may reasonably request to satisfy itself that the Home is being used as the Owners' Primary Residence.**

4.2 Residential Use**. The Owner shall use, and shall cause all occupants thereof to use, the Home only for residential purposes and such incidental activities related to residential use as are currently permitted by then existing zoning codes, Town ordinances, and restrictive covenants governing the Development. The Owner shall not use or occupy, nor permit any use or occupancy of the Home in violation of this Covenant.**

4.3 Maintenance/Improvements**. The Owner shall maintain the Home in a good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, homeowner covenants, and rules and regulations set forth in the Declaration and By-Laws of Watson Woods Condominiums, Exeter, New Hampshire and by any governmental authority with jurisdiction over matters concerning the condition and use of the Home.**

4.4 Restrictions Against Leasing and Junior Encumbrances**. The Owner shall not lease, refinance, encumber (voluntarily or otherwise), or grant a mortgage on the Home without the prior written consent of MB, provided, however, that this provision shall not apply to a First Mortgage granted to acquire the Home. The written consent requested by MB shall be governed by the following standards and shall not be unreasonably withheld:**

A. **Encumbrances.** The maximum amount of all encumbrances shall not be in excess of the amount of the Maximum Resale Price. (For example, there shall be no limitation on a refinance of a junior encumbrance, such as an equity line of credit, so long as the total of all of those encumbrances shall not be in excess of the Maximum Resale Price.)

B. The maximum rent shall not exceed 175% of the annual published Fair Market Rent for the Portsmouth-Rochester, NH-ME PSMA, as determined and published by the U.S. Department of HUD.

5 MORTGAGEE PROTECTIONS

5.1 **Subordinate Lien.** The lien imposed by this Covenant shall be subordinate to a First
Mortgage on the Home.

5.2 **Notice of Foreclosure.** An Institutional Lender holding a First Mortgage shall give MB the same notice provided to "any person having a lien of record" in accordance with RSA 479:25,II of its intent to conduct a foreclosure of its First Mortgage. An Institutional Lender is not required to provide MB with any further or greater notice and is not required to provide MB with any rights other than those of a holder of a subordinate lien of record.

5.3 **Waiver of Obligation to Sell to an "Eligible Buyer".** An Institutional Lender foreclosing its First Mortgage may sell the home to any buyer, which buyer need not be an Eligible Buyer. An Institutional Lender which has acquired title to the Home as a result of a deed in lieu of foreclosure may sell the Home to any buyer, which buyer need not be an Eligible Buyer.

5.4 **Excess Proceeds.** If an Institutional Lender conducts a foreclosure or other proceedings enforcing its right under its First Mortgage, or acquires title under a deed in lieu of foreclosure, and subsequently sells the Home, and the Home is sold for a price in excess of the greater of:

A. the outstanding principal balance of the Note secured by such First Mortgage
plus all future advances, accrued interest and all reasonable costs and expenses, including reasonable attorney's fees, which the Institutional Lender is entitled to recover pursuant to the terms of its mortgage; or

B. the Maximum Resale Price applicable on the date of sale.

The excess shall be paid to MB which may retain said excess funds in order to build up a reserve in order to be able to purchase other properties or may, in the alternative, after deducting its reasonable costs, transfer said excess proceeds to the Watson Woods Homeowners Association which may then use said excess proceeds for improvements or betterments to the restricted units.

5.5 **Home Free of this Covenant.** Any Home transferred by an Institutional Lender pursuant to a foreclosure or other proceeding enforcing its right under its First Mortgage or upon transfer after acquisition under deed in lieu of foreclosure, shall be free of terms and conditions of this Covenant for all time.

6 COVENANT TO RUN WITH THE HOME

6.1 Duration**. It is intended and agreed that all of the agreements, covenants, rights and restrictions set forth in this Covenant shall be deemed to be covenants running with the Home and shall be binding upon and enforceable against the Owner, the Owners' successors and assigns and any party holding title to the Home, for the benefit of and enforceable by the Town and MB, and their respective agents, successors, designees for a period of 30 years from the date hereof and shall be renewed by each subsequent Owner for the same period of time, except under the provisions of Section 5 hereof. (For example, if the initial sale of the Home is in 2005, that Owner must sign an Affordable Housing Restrictive Covenant and Agreement binding the Property to those restrictions for a period of 30 years. If that Home is sold in 2010, the new buyer must sign a new Restrictive Covenant binding the Property for an additional 30 years until 2040.)**

6.2 Zoning**. This Covenant and all the rights and restrictions contained in this Covenant shall be deemed to be a condition of the zoning permits granted by the Town of Exeter under the affordable housing zoning ordinance adopted in accordance with RSA 674:16 and RSA 674:21.**

6.3 **Covenant to Run with the Home**. The Owner intends, declares and covenants on behalf

of Owner and Owners' successors and assigns (i) that this Covenant and the rights and restrictions contained in the Covenant shall be covenants running with the land, encumbering the Home for the term of this Covenant, and are binding upon the Owners' successors in title, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner, its successors and assigns and ensure to the benefit of the Town and MB and their respective agents successors and assigns for the term of this Covenant. Grantee hereby agrees that any and all requirements of the laws of the State of New Hampshire to be satisfied in order for the provisions of this Covenant to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full.

6.4 Enforcement**. Without limitation on any other rights or remedies of MB or MB's agents, successors, designees and assigns, any sale or other transfer or conveyance of the Home in violation of the provisions of this Covenant shall, to the maximum extent permitted by law, be voidable by MB, the Town, the Watson Woods Unit Owners' Association, and their respective agents, successors, designees and assigns. The Owner shall be liable for all court costs and reasonable attorneys' fees incurred by MB in connection any enforcement action brought by MB.**

7 MISCELLANEOUS

7.1 Notices**. Whenever this Covenant requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:**

If to MB*:*	**If to Owner*:***
MB Management Company	_____
220 Forbes Road, Suite 205	_____
Braintree, MA 02184-2709	_____

with a copy to Town of Exeter

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

7.2 Homestead Waiver**. This Covenant is prior and superior to the Owners' right to a homestead exemption under RSA 480:1, or any successor statutes. Each Owner waives his or her homestead rights to the fullest extent that they conflict with or impair the Developer, the Town's or MB's rights and remedies under this Covenant.**

7.3 Severability**. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid or unenforceable; the remaining provisions shall survive and their validity, legality and enforceability shall not in any way be affected or impaired thereby; and the court may, but shall not be required to, fashion a substitute for the provision held to be invalid or unenforceable.**

7.4 Headings**. The headings of the sections in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.**

7.5 Arbitration. **Any disputes arising under this covenant between Developer, Town, MB and/or Owner shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association or such other rules or agreements for binding arbitration as the parties to such arbitration may mutually agree. Notwithstanding the foregoing, nothing set forth herein shall preclude the Declarant, the Town or the Owner from obtaining temporary relief pending an arbitrator's decision or injunctive relief to enforce an arbitrator's decision. Each party shall pay their respective attorney's fees, but the prevailing party shall pay the cost of the arbitrator and the arbitration.**

7.6 **Amendments.** The parties agree to amend this Covenant for the specific purposes of (i) making minor, clerical or factual corrections or (ii) complying with requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any other governmental agency or any other public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities in order to induce any of such agencies or entities to make, purchase, sell, insure or guarantee mortgages covering the Home; provided the amendment does not materially impair the Owners' rights and value in the Home. This Covenant can also be amended by agreement between the Town and the Owner of the Home provided the amendment complies with the Town's governing laws. The Town and/or the Developer reserve the right to themselves and their successors and assigns to amend the terms of this Covenant as applied to future Owners of other units in the Condominium for, but not limited to, the general purposes of (i) making minor, clerical or factual corrections, (ii) complying with requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any other governmental agency or any other public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities in order to induce any of such agencies or entities to make, purchase, sell, insure or guarantee mortgages covering the units in the Condominium, or (iii) complying with applicable local, state and federal ordinances, rules and regulations.

Executed as of the date first written above.

OWNER:

_____

_____

Witness

_____ _____

Witness

MB MANAGEMENT COMPANY

_____ By: _____

Witness

Duly authorized

WATSON WOODS UNIT OWNERS'

ASSOCIATION

_____ By: _____

Witness

Duly authorized agent

State of New Hampshire
County of _____

Personally appeared the above named _____ and _____, this ____ day of _____, 200_ and acknowledged the foregoing to be her free and voluntary act and deed, before me.

_____

_____

Justice of the Peace/Notary Public
My commission
expires:_____

State of New Hampshire
County of _____

On this, the _____ of _____, 200__, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of MB Management Company, a Massachusetts company, and that he/she, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as _____.

_____

_____

Justice of the Peace/Notary Public
My commission
expires:_____

State of New Hampshire
County of Strafford

On this, the _____ of _____, 200__, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of Watson Woods Unit Owners' Association, and that he/she, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Association by himself/herself as _____.

_____

_____

Justice of the Peace/Notary Public
My commission
expires:_____

Master 3-03-05

EXHIBIT A

LEGAL DESCRIPTION OF THE HOME

EXHIBIT B

MAXIMUM RESALE PRICE CALCULATIONS

Pursuant to Section 1.9 hereof, the Maximum Resale Price shall be not more than the Purchase Price plus two times the accumulated Consumer Price Index (CPI), in accordance with the following formula (Maximum Resale Price = Original Purchase Price + [2 (accumulated CPI) x Original Purchase Price], calculated as follows:

Date of Current Sale (DOS) _____

Date of Purchase by Prior Owner (DOP) _____

Original Purchase Price on Date of Purchase _____

DOS CPI _____

DOP CPI _____

Accumulated CPI = $\frac{\text{DOS CPI – DOP CPI}}{\text{DOP CPI}}$ _____

Two times accumulated CPI _____

Two times accumulated CPI x Purchase Price _____

Maximum Resale Price _____

Certified this _____ day of _____, 200___.

_____
MB Management Company

Example:

Date of Sale		1997
Date of Purchase		1993
Original Purchase Price		74,175
DOS CPI		160.5
DOP CPI		144.5
Accumulated CPI	$\frac{160.5 - 144.5}{144.5} =$	.1107266
Two times accumulated CPI		.2215
Two times accumulated CPI x Original Purchase Price		16,430
Maximum Resale Price		90,605

Owner:
Unit _____, Watson Woods Condominium, Exeter, NH

TRANSFER CERTIFICATE

Prior Owner:
Owner:
Date of Sale:

MB hereby certifies:

A. That the actual Purchase Price of $_____ for the Unit described above is equal to or less than the Maximum Resale Price of $_____.

B. That the owner is an Eligible Buyer

C. That the terms of transfer of the Unit described above are in compliance with this Covenant.

D. Owner has executed a new Covenant to be recorded in the Rockingham County Registry of Deeds, binding the Property to the Covenants for a period of 30 years from the date of transfer of the Unit.

E. This Transfer Certificate is to be recorded in the Rockingham County Registry of Deeds.

F. Any good faith buyer of the Unit, institutional lender, or other third party may rely on this Transfer Certificate for the matters contained herein.

Dated this ____ day of _____, 200__.

_____
MB Management Company

_____
Owner