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Attorneys at Law

The New Hampshire Workforce Housing Law (RSA 674:58-61)

A Brief Look

by

Kenneth A. Viscarello

I. Why we need the Law; A Cautionary Tale.

In 2002 I represented a very good client before a Zoning Board in a small town in northern New Hampshire. My client was proposing to build a small workforce housing development. The proposal was for a 24 unit project on a 9 acre site. Of the total 9 acres, only 3 would be developed, the other 6 would be permanently dedicated to “green space.” The unit mix was as follows: 6 buildings, with 4 townhouse units in each building, with some interesting architectural details, such as differing roof lines. The project was located at the intersection of two of the major routes running through town, so it wasn’t in a “downtown” or “historic” district. We were also in a town that by most accounts would be considered economically challenged and which had a huge demand for workforce housing. At the time in the county where the project was located, 228 people were on the Section 8 waiting list and 59 people were from the town in question. Seemed like a no-brainer.

The town had an ordinance that basically prohibited the development of economically feasible, multi-family workforce housing. It only allowed multi-family development in existing buildings, not to exceed 4 units, so we needed a variance. When we showed up at the zoning board hearing, they moved the meeting from its usual location in the Selectmen’s chambers to

1000 Elm Street
Manchester, NH 03101
603.668.0300

Two Eagle Square
Concord, NH 03301
603.223.2020

Two Maple Street
Hanover, NH 03755
603.643.9070

255 State Street
Boston, MA 02109
617.897.5600



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the town gymnasium, where more than 100 people showed up to object to our proposal. Space constraints prohibit me from disclosing all the gory details, but here's a sample: A town Selectman showed up and talked about the dangers of having 50 children (his number, not ours) move into our project from outside the town and creating a subsidized housing slum. One opponent talked about how the town didn't want "those types of people" in town, and that the poor people who live in these affordable housing projects generally have "special needs children," who will place a burden on the town's schools. We were tabled. After the meeting the executive director of the Tri-County CAP Agency (one of our few friends in the room) told me that one of our most vocal opponents lived in a ramshackle trailer surrounded by junk cars, yet he was terrified of the effect our 24 units of brand new townhouses would have on his town because they were "affordable".

When we came back a month later the town was peppered with signs that said things like "Stop the Slums" and "Save our Town." I was told that one of the signs was located on another Selectman's place of business. At the hearing we got more of the same. One opponent to the project had his eleven year old daughter beg the Zoning Board not destroy her town. The hearings culminated with the Chairman of the Zoning Board saying:

"that when this ordinance was written it was known at that time that this was exclusionary. It was written exactly for that reason.....I believe the spirit of the ordinance was to deny the opportunity for multi-family housing to go forward in this town. I believe that's the intent of the ordinance whether it is right or wrong."

We were denied.



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When it comes to answering the question, “Why do we need this new law?” need I say more?

II. The Genesis of the Workforce Housing Law.

Despite the landmark case of Britton v. Chester, decided in 1991, which held that municipalities have an obligation to provide low and moderate income families with realistic opportunities to obtain affordable housing, many builders of workforce housing projects were facing the same roadblocks I experienced. In 2008 the New Hampshire Legislature recognized that many cities and towns were placing insurmountable barriers to the development of workforce housing and enacted the Workforce Housing Law (RSA 674:58-61) (the “Law”). In the “Findings and Statement of Purpose” the Legislature eloquently stated the need for this law by saying:

“The state of New Hampshire is experiencing a shortage of housing that is affordable to working households. This housing shortage poses a threat to the state’s economic growth, presents a barrier to expansion of the state’s labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses.”

To the extent that the economy improves, the state will need more homes to support growth in the labor force. A shortage of workforce housing will constrain our ability to take advantage of any type of economic recovery. Not only will it hinder our ability to house the people who will stoke the fires of economic recovery, but it will squander and waste the crucial benefits that a vibrant building industry contributes to the state’s overall economy.



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In a 2005 study entitled “Housing New Hampshire’s Workforce” prepared for The New Hampshire Workforce Housing Council by Dr. Lisa Shapiro (and others) it is estimated that a deficient workforce housing market will annually cost New Hampshire:

- 1,300 to 2,800 fewer jobs
- \$57 to \$121million less in personal income
- \$123 to \$253 million reduction in Gross State Product; and
- \$21 to \$33 million less in state and local revenues.

Developers and builders need the ability to meet the workforce housing demands without undue restraint from cities and towns. Therefore, in simplest terms, when it comes to the production of workforce housing it is crucial that local government get out of the way. Without the contributions that the home building business brings to our economy, and the inability to house a growing labor force, the economy will stall and we’ll lose an important element of the New Hampshire advantage. The hope is that the Law will ameliorate the governmental impediments.

III. The Law.

The Law requires cities and towns to provide “reasonable and realistic opportunities for the development of workforce housing.” “Workforce housing” is defined differently depending on whether the housing is intended for purchase or for rent. For home ownership developments, “workforce housing” is defined as homes that are intended for sale to people making up to 100% of the area median income for a four-person household. For multi-family rentals “workforce housing” is defined as rental housing for households with an income of no more that 60% of median area income for a three-person household. The Law requires all municipalities to



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consider the economic costs of their land use regulations and to ensure that these regulations provide the opportunity for economically viable workforce housing development in a majority of their residentially-zoned areas. The Law also gives developers the option of an accelerated appeal in Superior Court.

IV. Municipal and Builder Responses.

Municipalities have been grappling with the nuances of complying with the Law since it went into effect on January 1, 2010, but responses by municipalities have been very promising. Starting with town meetings in 2009 and continuing into 2010, several dozen communities have adopted zoning provisions aimed at providing the opportunities required by the Law. Because of the Law's inherent flexibility, communities are developing different strategies to meet its requirements, given their own unique circumstances—such as the nature of the local real estate market, existing patterns of development, and peculiarities of the local land use regulations. To date at least forty-five communities have made regulatory changes as a result of the Law and several more are preparing changes for adoption in 2011. In my observation, the cities and towns are making good faith efforts to comply.

Builders and developers are also beginning to understand the pros and cons of the Law, and to evaluate its advantages and drawbacks. While the Law does provide developers with certain tools, such as an accelerated appeals process, it also opens up the developer to certain obligations, a major one being long-term affordability. Because the Law is elective (i.e. a developer has to file a written statement of intent to utilize the Law), some developers choose not



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to use the Law's provisions. But others are finding that their proposals for high-quality workforce housing are being approved in communities that would have previously rejected them.

V. Conclusion; Epilogue.

Even with these positive changes, much work remains to be done as many other communities face the need to make regulatory changes to allow the opportunity for workforce housing. Meeting this continuing challenge will require an ongoing commitment from public officials at state, regional, and local levels, working in concert with housing development professionals and housing advocates.

So what happened with my development in the North Country? With support from a lot of people (the seller, NHHFA, NH Legal Assistance, etc.), my client decided to stick it out and brought suit against the town. It took almost 2 years and tens of thousands of dollars, but we won. We started construction in the fall of 2005. My client informs me that the project is always rented, seventy percent of the tenants were already residents of the town (so much for the hoards of juvenile delinquents descending on the town from parts unknown), and as far as he can tell no one in the town even knows the project is there.

Progress is being made.

Ken Viscarello is a shareholder and director at the law firm of Sheehan Phinney Bass + Green PA where his legal practice focuses on the representation of developers of affordable housing.