

Recommendations and Plan to Address New Hampshire's Housing Shortage

October 30, 2019

I. Executive Summary

New Hampshire's economy continues to be very strong. Among other key indicators, the unemployment rate has been below 3% since 2015¹, labor participation rates are increasing², and more Granite Staters are working than ever before³. In addition, New Hampshire is continuing a positive net migration trend, in stark contrast to other states in New England, with the highest portion of that increase being among the millennial generation. In fact, New Hampshire has the highest rate of millennial in-migration north of North Carolina and east of Texas⁴.

As a result of these strong economic and demographic trends, New Hampshire's vacancy rates, available housing, and affordability of housing are feeling the effects of constrained supply amidst increasing demand. As of the summer of 2019, New Hampshire's vacancy rate for two bedroom apartments has fallen below 1% in virtually every county in the State⁵ and the inventory of homes for sale is near record lows⁶.

The most immediate impact of this housing shortage is to the State's workforce. Our State's most valuable commodity for its employers is an educated and available workforce. Quite simply, if that workforce has no adequate housing choices, the retention and recruitment of additional workforce could be threatened.

With the above in mind, this past summer Governor Sununu formed a task force made up of Governor's Office staff, state and local officials, and industry experts, to work together on recommendations to address what has become New Hampshire's housing crisis. This group has been meeting for three months to develop the recommendations contained in this report; additionally, the group has been engaged in discussions with a bipartisan group of state legislators to draft legislation that draws from most of these recommendations. Other recommendations in this report can be addressed through executive action.

¹ Bureau of Labor Statistics Data. (n.d.). Retrieved October 28, 2019, from <https://data.bls.gov/timeseries/LASST330000000000003>

² Bureau of Labor Statistics Data. (n.d.). Retrieved October 28, 2019, from <https://data.bls.gov/timeseries/LASST330000000000003>

³ Bureau of Labor Statistics Data. (n.d.). Retrieved October 28, 2019, from <https://data.bls.gov/timeseries/LASST330000000000003>

⁴ Geier, B. (2019, July 17). Where Millennials Are Moving 2019. Retrieved October 28, 2019, from <https://smartasset.com/mortgage/where-millennials-are-moving-2019>

⁵ New Hampshire Housing Finance Authority (2019, June). 2019 New Hampshire Residential Rental Cost Survey https://www.nhhfa.org/assets/pdf/2019_Rental_Survey_Rpt.pdf

⁶ New Hampshire Housing Finance Authority (n.d.). Biennial Housing Plan 2019-2020 https://www.nhhfa.org/assets/pdf/Biennial-Housing-Plan_2019-2020.pdf

In light of the threat posed to our economy by low vacancy, inventory, and affordability, our view is that the State must acknowledge that we face a housing crisis and that, without statewide action, we put our economic sustainability under unnecessary stress and threaten the current positive trends in our economic health. Because of this, the State must take significant short and long term steps to address our housing shortage.

Our recommendations and plan fall into three key areas:

1. Enhance local control

- a. Provide greater learning opportunities to local boards
- b. Emphasize planning to define and plan for growth
- c. Enhance cities and towns' capacity by providing a toolbox of zoning/planning tools and model ordinances
- d. Enhance inclusionary zoning opportunities

2. Improve process predictability for everyone

- a. Streamline existing approval processes to ensure predictability
- b. Create a fair and predictable appeals process
- c. Require all development fees to be public and transparent
- d. Improve definition of workforce housing
- e. Ensure fairness in housing incentives

3. Accelerate investment in housing

- a. Expand use of TIF districts and Community Revitalization Tax Relief Program (RSA 79-E)
- b. Use tax restructuring to incentivize investment
- c. Establish a housing champion certification program to incentivize housing development

II. Detailed Recommendations

This section contains an outline of our recommendations and plan. Most of the below recommendations (though not all) will require legislative action (see Section III for summary of proposed bills):

A. Enhance Local Control

Local control is a staple of New Hampshire's governmental system. These recommendations have the goal of providing local communities the best possible tools to thoughtfully plan their growth however they see fit. By simply using all the tools available and planning ahead, this enhances every community's control over their future.

Coordinated State Level Support

The State should form a Joint Housing Resource Council (JHRC) made up of representatives from BEA, OSI, NHHFA, CDFA, DOT and DES. This Council would coordinate state-level efforts to address the State's housing crisis and support regional and municipal partners. Among other things, this Council would help to define statewide

and regional housing supply goals, review and identify any additional policies needed at the State level to support housing development. In order to facilitate better utilization and preparation of housing needs assessments on a regional level, the Council will review the role of the regional planning commissions and determine pathways to enhance the commissions' role in supporting state and regional housing needs.

Informed and Educated Zoning and Planning Members

Amend RSA 673:3-a to provide free training materials for appointed and elected members of zoning boards and planning boards and to create a more robust training requirement.

Enhanced Tools for Local Zoning and Planning Boards

OSI and NHHFA, working with the entire JHRC, should design and regularly update a web-based tool box for municipal planners and zoning officials. The basis for this information exists at OSI in the 2008 *Innovative Land Use Planning Techniques Handbook* prepared by DES, NHARPC, OSI, and NHMA. The toolbox would have information on planning tools such as Compact Downtown, Village Districts, Cluster Development, Form-based / Character-based historic districts, Inclusionary / density bonus overlay, Mixed-Use Zoning, and Planned Unit Developments (PUDs).

The toolbox should also detail technical assistance and grant programs for developing and utilizing planning tools which encourage housing production offered by NHHFA, OSI, CDFR, BEA, as well as other non-state agencies including UNH Cooperative Extension, Plan New Hampshire, the Northern Border Regional Commission, Regional Planning Commissions, Economic Development Corporations, and the NH Charitable Foundation.

Improve Local Inclusionary Zoning Options

Inclusionary zoning is a tool which communities may use to incentivize development of affordable housing units. Currently, communities may only adopt voluntary inclusionary zoning, which allows municipalities to grant density bonuses and other incentives to developers in exchange for building affordable housing units. RSA 674:21 should be amended to allow municipalities, if they so choose, to adopt mandatory inclusionary zoning. This would allow municipalities to require, and not just incentivize, construction of affordable housing units if certain safeguards are in place to ensure such a requirement doesn't render a development economically infeasible.

B. Improve Process Predictability for Everyone

Decision Timeline and Findings of Fact for Planning Boards

Set planning board timelines for final decision within 65 days, after which approval will be deemed granted and the Board of Selectmen or equivalent must issue an approval of the project in question (while there is currently a 65-day timeline in statute, the process for enforcing it is complicated and there are no real consequences for planning boards if they don't meet the timeline). The deadline could be extended with agreement of the

applicant. Also, when denying an application, require planning boards to clearly state why and make specific written findings of fact.

Decision Timeline and Findings of Fact for Zoning Boards

Set standard zoning board timelines for final decision within 90 days (currently there is no required time period for zoning boards). Also, when denying an application, require zoning boards to clearly state why and make specific written findings of fact.

Timelines for Court Review

Amend RSA 677 to require courts to prioritize reviews of planning board and zoning board decisions and to issue a final decision within a specified time period. We recommend 120 days.

Fee Shifting in Court Reviews

Amend RSA 677 to provide for fee shifting in appeals of planning board and zoning board decisions if the court finds that an appeal was frivolous.

Fairness in Appeals

Amend RSA 677 to allow a court, in its discretion, to require the person or persons who appeal a planning board or zoning board decision to file a bond with sufficient surety, for such a sum as shall be fixed by the court, to indemnify and save harmless the person or persons in whose favor the decision was rendered from damages and costs which he or they may sustain in case the decision of the planning board or zoning board is affirmed.

Transparent Costs and Fees

Require all local fees for development to be published in a single schedule, so that they may be readily and easily calculated by any applicant. This should include (but is not limited to) all local land use board application fees, building permit fees, impact fees, and sewer and water connection fees. As part of the application acceptance process, municipalities should be required to assess all such fees, which will then be fixed for the proposed project, unless the project is changed during the approval process. If the project is changed, the municipality must recalculate the assessments at the time of approval. Failure to publish such fees should void the fee requirement for applications that are filed during the time fees are not publicly posted.

Update Statutory Definitions

Amend RSA 674:58, IV to expand the scope of workforce housing to include affordability for incomes of no more than 120 percent (currently 100%) of median income for 4 person households. Also, remove housing that is subject to age restrictions from the definition of workforce housing.

Ensure Fairness in Housing Incentives

Amend RSA 674:21 to ensure fairness in the awarding of development incentives to all types of housing development including workforce housing.

C. Accelerate investment in housing

Update TIF District Rules to Allow for Residential Development

Amend RSA 162:K to allow TIF districts to be used for residential development.

Strengthen the 79-E Community Revitalization Tax Relief Program

Amend the length of the tax relief extension set forth in RSA 79-E:5. This is enabling legislation enacted in 2006. The provisions have been adopted by many communities statewide. Once adopted locally, municipalities can grant relief to certain rehabilitation projects for a limited time period. We recommend expanding the length of time that relief can be granted, with the longest period of relief being for workforce housing.

Incentivize Private Investments in Workforce Housing

Amend RSA 77-A:4 to provide tax deduction for gross business profits derived from certain workforce housing developments.

Grow Lower Cost Housing Market

Amend RSA 78-B:2 to provide a five year reduction in RETT for certain sales of homes under \$300,000.

Address Local Housing Impacts

Create a new program which gives municipalities the opportunity to be certified as “housing champions”, which gives them access to special treatment for state resources. The program would be voluntary, and municipalities will be able to apply to OSI to receive the certification. In order to receive the certification, municipalities will have to demonstrate that their zoning ordinance contains certain provisions that encourage housing production, including the development of workforce housing. We recommend that this program be enabled through legislation, and that the criteria and other aspects of the program be further built out through rulemaking.

Incentives for this program should include opportunities for communities to share in business profits tax revenue derived from new housing development and access to a new State bonding program for economic development projects.

III. Implementation Plan – Legislation and Executive Action

The task force and the Governor are working with a bipartisan group of legislators to introduce two bills next session to address many of the recommendations in this report. The final text of the bill is being finalized and will be available within the next two weeks. The recommendations in this report which do not require legislation will be addressed through executive action. The outline of each proposed piece of legislation is as follows:

Bill #1 – Enhancing Local Control and Process Predictability. This bill will:

- Require free training materials for zoning and planning board members and create a more robust training requirement
- Enhance inclusionary zoning
- Streamline the decision making process for planning boards and zoning boards
- Create a mandatory decision timeline for courts in appeals of local land use board decisions
- Provide for fee shifting and posting of bonds in appeals of local land use board decisions
- Require all fees to be published and publicly posted
- Update and expand the statutory definition of workforce housing
- Ensure fairness in the awarding of development incentives

Bill #2 – Accelerate Investment in Workforce Housing. This bill will:

- Allow TIF Districts to be used for residential development
- Expand the use of the Community Revitalization Tax Relief Program (RSA 79-E)
- Create a business profits tax incentive for development of workforce housing units
- Provide a five year reduction in RETT for the sale of new homes under \$300,000
- Create a voluntary housing champion certification program to incentivize municipalities to create a friendly regulatory environment for housing production, including the development of workforce housing. Incentives will include opportunities for communities to share in business profits tax revenue derived from new housing development and access to a new State bond program for economic development projects.

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