

Workforce Housing Regulations Report

Policy:

Hancock shall provide reasonable and realistic opportunities for affordable workforce housing to the extent (i) permitted by the Hancock Zoning Ordinance or (ii) required by RSA 674:59, using whichever standard is more favorable to such opportunities.

Findings:

The Board makes the following findings which are subject to review in connection with any application which comes before it in light of evidence presented at that time:

Opportunities: The principal obligation imposed by RSA 674:59 is that the Town's "ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing." Whether the opportunities provided by the Town are "reasonable and realistic" depends on the "economic viability" of such housing in the circumstances, but also provides that the Town is not liable for "economic conditions beyond the control of the municipality that affect the economic viability of workforce housing development."

Hancock's existing ordinances allow significant opportunities for the construction of new housing which meets the statutory definitions of "workforce housing" without any special provisions in the Zoning Ordinance. Thus,

- one and two-family dwellings are permitted in all districts;
- manufactured housing and mobile homes are allowed throughout the Rural and Agricultural District (ZO 7.8, 7.9);¹
- small apartment buildings (now up to five units) are permitted in the Commercial District (ZO 16.2.1.2) and, in certain circumstances, as a Conditional Use anywhere in the Rural and Agricultural District;
- accessory dwellings are widely permitted and are available for rental;

¹ Using advertised prices and costs estimates, a range of modular homes would appear to qualify as "affordable". Thus, allowing for land costs of \$70,000 and site development and construction costs of \$75,000, a family could afford to spend up to \$89,000 for a modular home; many units appear to be available in that price range.

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- Flexible Zoning provisions allow for relatively small lot sizes which could be used for “affordable” homes.

Hancock further permits changes in use of properties which could facilitate new uses through refurbishment or re-building. Area requirements are substantially relaxed for such re-use in the Village Commercial District (ZO 6.11.)

Hancock’s existing ordinances also foster opportunities to work from home, thus reducing the aggregate cost of residential and business premises. A significant percentage of residents take advantage of these provisions. The town website lists about 80 business enterprises and other employers, most of which located in or together with residences.

Hancock’s major employers include educational institutions. The zoning ordinance also contains special provisions to meet the needs for staff housing at such institutions. (ZO 16.2.10)

The Board thus believes that Hancock already provides “reasonable and realistic opportunities” for the development of Workforce Housing.

To the extent there is additional need for “affordable” rental multi-family housing, the Board believes that the Village Commercial District is the favored location because it is the only location in town within walking distance of services and is served by the town water supply; in exceptional circumstances, the Board believes that supplemental “affordable” rental multifamily workforce housing may be appropriate in the Rural and Agricultural District, especially where it is in proximity to places of employment, education or transport to such places or where such housing results from renovation of existing housing.

Existing Housing: The statute also provides a “safe harbor” for Towns based on existing housing stock. RSA 674:59, III, provides:

“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.”

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Hancock has a substantial existing stock of housing which appears to qualify at this time as “affordable” or “workforce” housing as defined in the statute. Such dwellings exist in all zoning districts. In particular, town assessment records for the year ending in fiscal 2007 indicate that

- 215 existing houses (about 28% of the total housing stock) were assessed at less than \$236,000, the relevant “affordability” standard;
- approximately 157 additional units exist which could be rented, including 40 rental units on their own lot, 48 accessory dwellings sharing a lot with another home and 69 apartments, all of which could be available on a rental market. Of these, approximately 117 (or nearly 75%) appear to meet the “affordability” standard; and
- at least one structure serves as an eight-family multiple dwelling, all units of which are rented or available for rental.

Since all of the elements of this calculation – the HUD income figures, assessed valuations and the housing market – will change over time, and since additional information may come to light, these findings will necessarily be reevaluated whenever an application is presented under these regulations.

Regional “Fair Share” Analysis

The facts as to “opportunities” and “existing housing” must be measured against the statutory standards.

We make the following observations which ought to be taken into account whenever the Board considers an application under these regulations:

The statute provides no guidance as to the meaning of the critical terms “fair share” and “current and reasonably foreseeable regional need”².

² RSA 674:58, III, declares that “If the ordinances and regulations of a municipality make feasible the development of sufficient workforce housing to satisfy the municipality’s obligation under RSA 674:59, and such development is not unduly inhibited by natural features, the municipality shall not be in violation of its obligation under RSA 674:59 by virtue of economic conditions beyond the control of the municipality that affect the economic viability of workforce housing development.” The only reference in RSA 674:59 to “sufficiency” is the “fair share” test in § 59, III, discussed below.

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Fair Share: Reference to Britton v Town of Chester (*see* SB 342) - which the statute purports to codify – is similarly unhelpful since the issue was not litigated in that case and the Court provides no analysis of this issue.

To the best of our knowledge, neither the relevant state offices nor the Regional Planning Commission has published analysis or other guidance on the issue.

In 2002, the NH Housing Finance Authority was commissioned by the legislature to provide a statewide analysis of housing needs. RSA 204-C:47. In 2003, it published *New Hampshire Housing Needs Study – Technical Report* (125 pages). That report contains a comprehensive analysis of “fair share” allocation programs and thus sheds some light on the meaning of the term.

Appendix 1 of that work contains a comprehensive survey of practices in other states gathered under the rubric “fair share allocation.”³ Its analysis demonstrates that a “fair share” is not a single standard, but rather a collection of standards with some common themes. It concludes:

Id. at 13

Fair share housing allocation programs strive to motivate or require each community in a region to fulfill its obligation to assume an equitable portion of the affordable housing needed in that area. Fair share programs are an important component of housing policy for three reasons. First, they seek to distribute low and moderate-income households proportionately across a region. Second, fair share policies indirectly work to reduce regional poverty by providing lower income households with more equal access economic opportunity through access to adequate schools, decent jobs, networking and mentoring, quality health care, and financial capital. Third, they address the spatial mismatch between jobs and housing, which has become increasingly apparent over the past two decades as many employers have moved out of the central city to the outer fringes of metropolitan areas.

³ In **Oregon**, the “fair share” allocation only applied to the largest metropolitan areas, principally Portland, and was adopted to offset a restriction on development outside an urban core. **New Jersey** required detailed plans from all municipalities and offered a review of plans by the state’s Council on Affordable Housing. Certification by the body was a complete defense to builder’s remedies. **California** has a statewide system of allocating housing of all types; the principal penalty for non-compliance is the withdrawal of funding for assisted housing. Like California, **Florida** has a comprehensive statewide system of allocating housing types to communities. **Vermont** has a statewide system of allocation housing types which is mandatory at a regional level but voluntary for municipalities. State funds otherwise available for low-cost housing may be cut off for non-compliance.

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A variety of approaches to fair share allocation have been taken across the country over the past two decades. Broadly, these approaches can be divided into the following categories:

- A. Formulaic fair-share programs
- B. Negotiated fair-share programs
- C. Special appeals processes
- D. Inclusionary housing programs

In its heyday in the 1970s, traditional formulaic fair share allocation flourished as federal monies flowed readily for housing investment and regional governments experienced strong federal and growing local support. During the 80s and 90s, federal funding for housing initiatives declined dramatically, and a greater emphasis has been placed, in recent years, on local negotiated fair share initiatives and more entrepreneurial approaches such as inclusionary housing. Special appeals processes have been relied upon throughout the past 30 years, but are used almost exclusively in New England.

There are considerable variations in the allocation strategies used by each state, due in large part to their planning, development, and political cultures. New Jersey's program was litigation driven and continues to be dominated by a strong regulatory culture that supports mandatory housing development in the midst of rapid residential growth over the past decade. Places such as California, Oregon, Montgomery County, MD, and the Twin Cities, MN have long histories of regional planning and comprehensive planning mandates. There, well-established planning agencies with large staffs committed to sophisticated modeling efforts, regulatory enforcement, and ongoing comprehensive planning efforts are the norm. In New England, on the other hand, "home rule" based practices and policies abound. Growth here has been more variable than in some of the other regions of the country with fair share programs, and many New England regional planning agencies do not have the authority or staffing levels to undertake the scale of programs that have been implemented elsewhere. Thus, to date, the approaches used in New England have been more passive or local in orientation, including special appeals processes or negotiated housing compacts.

In each of these states, the share of a particular municipality – the "fair share" – was established by a process (either through state and regional planning allocations or through negotiation) which specified the particular requirements for each municipality. We could not find any instance in which the crucial "fair share" requirement was left to isolated *ad hoc* determinations by planning boards or through litigation.

Even in those states which relied on the concept of a builder's remedy, either the precise allocation of low income housing for each town was apparently

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specified in the legislation or the builder was required to propose housing which benefited from state or federal subsidies.

As a general matter, the “fair share” of these “traditional” states concentrated “affordable” housing around existing government-assisted housing.

Among other factors, these efforts to determine a municipality’s “fair share” considered the following factual circumstances (*see* HFA Appendix 1, page 18):

- Total regional need
- Municipality’s share of job growth in region
- Municipality’s share of regional household growth
- Presence of deficient, overcrowded or substandard units
- History of demolished units and replacement
- Vacant acreage in municipalities
- Household income distribution

Offsetting credits for recent efforts to build assisted housing

Following its multi-state survey, NH HFA published commentary specifically relating to the development of a “fair share” standard in New Hampshire. It is critical of the “traditional” fair share analysis and proposes an alternative based on the following criteria. B. Mayberry, NEW HAMPSHIRE HOUSING NEEDS ASSESSMENT APPENDIX 2: PROPORTIONATE DISTRIBUTION OF HOUSING NEEDS TO MUNICIPALITIES (New Hampshire Housing Finance Authority April 2003), page 4:

“Given that adequate housing must be produced in a region to serve all income levels (a factor that must be addressed in local master plans and regional need assessments under statutory guidelines), there are several basic propositions that most communities could probably agree on:

- Rental housing is best located close to concentrations of employment;
- Lower income rental housing is more easily supported by communities that have more commercial-industrial property valuation to enable them to offset residential service cost impacts;
- Communities with relatively high personal household income are better able to absorb the potential tax impacts, if any, from lower income housing development than communities that already have a high concentration of low

⁵ Cf Appendix 1 at page 47 where this formula is described at the “simplest available”.

income households;

- There is relatively little local resistance to the development of low income rental housing for seniors; municipal fiscal concerns tend to center on the potential impact of low income family housing;
- Distribution models should focus primarily on that part of the rental market that is most in need from an income and/or cost burden standpoint;
- The distribution of the affordable housing supply needed for these households should reflect a gradual transition in its proportionate concentration within a region.”

In the absence of other guidance on the issue, the Planning Board finds the foregoing a highly persuasive indication of what the legislature meant by a community’s “fair share”. In particular, the Board concludes:

- 1 “Fair share” does not mean an arithmetic proportion of the total regional need. If the legislature had meant that simple and easily articulated standard, it could easily have said so⁵. In fact, at least two states – Massachusetts⁶ and Connecticut⁷ - adopted statewide legislation declaring that a community’s “fair share” of assisted housing was 10% of the total housing stock.
 - a. As a baseline figure, Hancock’s arithmetic proportion of overall new-build housing needs can be calculated from data published by NH HFA and SWRPC, as follows:
 - i. In 2006, SWRPC⁸ calculated housing needs for new-build housing for the decade ending in 2010 for the southwest region of NH using three methodologies. The average of those three resulted in an overall annual need projection for the southwest region of 596 total dwellings (of which 421 would be owner occupied and 175 would be rental). Hancock comprises 1.9% of the total households in the southwest region. Thus, Hancock’s arithmetic share of this need would be for a total of 12 dwellings annually, of which 8 would be owner-occupied and 4 would be rented. Some lesser proportion of these would need to be “affordable”, say, 30% leading to an

⁶ Massachusetts Chapter 40B—1971 Anti-Snob Zoning Act

⁷ 1989 Connecticut Affordable Housing Appeals Statute – applies where less than 10% of total housing stock is publicly assisted or subject to rent control provisions

⁸ Southwest Region Planning Commission, **Housing Needs Assessment (2006)**, pages 14 through 15.

annual need for 2.4 owner-occupied “affordable” dwellings and 1.2 rental dwellings.

- ii. In 2003, NH HFA did a similar Housing Needs Assessment for, among other things, Hillsborough County⁹. On a similar basis, Hancock’s arithmetic “share” of such needs would require a total of 4 “affordable” dwellings annually, of which 2.5 would be for owners and 1.5 for renters.

- 2 If one looks to the “traditional” “fair share” analysis, affordable housing would be concentrated around existing government-assisted housing. So far as we are aware, Hancock has no such housing.
- 3 It is likely that the NH legislature intended that, in determining a “fair share”, planning boards and the courts would look at a series of planning factors which suggest that some communities have a greater need than others for “affordable” housing and a greater capacity to provide it, consistent with good planning principles¹⁰. These factors might include:
 - i. Proximity to centers of employment
 - ii. A well-developed commercial and industrial tax base
 - iii. Relatively high personal income
- 4 Plans which promote scattered distribution of “affordable” housing in rural areas promote “sprawl” and should be avoided. *Id.*
- 5 Transitions should be gradual. *Id.*
- 6 While each community should make a contribution to the need for “affordable” housing, other things being equal, those ranking high on the foregoing factors should have a greater allocation than those ranking low. Also, other things being equal, those ranking high on the foregoing factors should have an allocation greater than strictly proportional to regional need.
- 7 How does Hancock stack up on this analysis?
 - a. Hancock is not in or near a significant employment center. According to 2000 Census Data [the most recent available to

⁹ NH HFA, Housing Needs Assessment (2003), Part B – Area Profiles, Hillsborough County, *Resident Housing Supply Needs – 2010*, page 54.

¹⁰ See, generally, Mayberry, work cited above.

us], many more workers commute *from* Hancock to work than commute *to* Hancock.¹¹

- b. The commercial/industrial assessments amount to about 3% of Hancock's total tax base; according to the 2000 Census, Hancock ranked 26th out of 36 towns in the SW Region¹².
- c. According to the 2000 Census, Hancock's Median Household Income was 7th out of 35 in the SW region.¹³

Additionally:

- d. Apart from a single row of shops and offices on Main Street, there are few shopping, services or other commercial amenities.
- e. Apart from an elementary school, a pre-school and two outdoor education facilities, there are no educational facilities in Hancock.
- f. Hancock has municipal water supply in a limited area, but that service area is now effectively fully built out. There is no public sewer or waste collection.
- g. Hancock has one, part-time Welfare Officer. Other social services are provided on a voluntary basis.

- 8 Based on the foregoing, Hancock's "fair share" of regional housing needs should be significantly less than an arithmetic average of regional needs. As applied, Hancock's "fair share" allocation should be significantly fewer than 4 "affordable" dwellings a year of which about two-thirds would be for owner occupation and one-third would be for rent.

Region: The statute also contemplates that the Board will determine the meaning of "region" as used in the statute. Several possibilities suggest themselves:

- 1. The statute, itself, refers to the "regions" defined by the federal Department of Housing and Urban Development. ("metropolitan

¹¹ In 2000, 870 Hancock residents were employed; of these, 213 worked in Hancock and the remaining 657 worked in other locations. At the same time, Hancock provided 485 employment opportunities, 213 of which were held by Hancock residents, leaving inward commuting of 272.

¹² SWRPC, Housing Needs Assessment (2006) page 39

¹³ SWRPC, Housing Needs Assessment (2006) page 34

area or county [sic]¹⁴ in which the housing is located as published annually by the United States Department of Housing and Urban Development.”). Thus defined, Hancock’s “region” would include Antrim, Bennington, Deering, Frankestown, Greenfield, Harrisville, Hillsborough, Lyndeborough, New Boston, Peterborough, Sharon, Temple and Windsor. We have not found any statistical database for this “region” containing pertinent data; or

2. The legislature has established regional planning commissions. For this purpose, Hancock is within the area of Southwest Region Planning Commission (“SWRPC”), a region comprised of 35 towns in SW New Hampshire, some of which are in Hillsborough County but the bulk of which are in Cheshire County. Arguably, SWRPC has been directed by the legislature to project housing needs for this area and some statistics exist but do not use “affordability” standards or town-by-town allocations. Thus, while substantial statistical information exists, it is not well directed to the tasks at hand; or
3. A smaller region, consisting only of surrounding towns (such as Antrim, Bennington, Greenfield, Peterborough, Harrisville and Nelson) may be relevant. At present, statistical information is not kept on a consistent basis and is scattered among the various towns involved.

¹⁴ HUD ordinarily refers to county areas as exclusive of the embedded metropolitan areas. This language makes no such distinction. HUD does not, however, publish annual figures for the entire county.

Guidelines for Handling a Workforce Housing Application¹⁵

1 The statute invites Planning Boards to make two threshold determinations, that is, (i) whether the municipality provides “reasonable and realistic opportunities for the development of workforce housing” and (ii) whether the existing housing stock is “sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing.”

- a. *Each of these issues is outcome-determinative.* Thus, the statute makes it clear that if the municipality satisfies either standard, it is “in compliance” and not under compulsion to permit workforce housing which does not otherwise satisfy its ordinances. A board would apparently be entitled to deny a particular application based solely on the conclusion that the town – not the applicant – meets either standard.
- b. *The two standards are independent* and, in fact, look in different directions. Thus, the former looks at the economic viability of new-built construction in today’s market while the latter looks at market conditions for “existing” housing, much of which may have been built when construction and land costs were a fraction of what they are today.
- c. *Each standard is fact intensive.* It is unlikely that a board could draw a proper conclusion on either standard without a full factual record. In any event, the Board should develop a full factual record on these issues in case any party appeals its decision to the Superior Court (RSA 677:15, II “the return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.”) and to allow the Court to determine whether the Board’s determination on the facts was “unreasonable.” *Id.* at V. (“The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review when there is an error of law or when the court is persuaded by the balance of probabilities, on the evidence before it, that said decision is

¹⁵ In “General Guidance for Workforce Housing (SB342)”, Southwest Region Planning Commission encourages towns in its region to “develop a procedure for the review of Workforce Housing applications.”

unreasonable.”)¹⁶ Moreover, because any review of a board decision will be determined in an expedited proceeding, discovery will probably be limited. The Board’s record thus takes on added significance.

- d. *The factors influencing each standard are dynamic and will require reappraisal for each application.* Thus, all of the costs of new-built housing – construction costs, land costs, financing costs – will vary from day to day and week to week. Similarly, the housing market is subject to wide fluctuations as to price and availability.
- e. *The scope of the factual questions involved may be substantially broader than customary for Planning Board matters.* Thus,
 - i. Neither standard is site specific; to the contrary, each looks to conditions, in general, throughout the town and the region.
 - ii. Neither standard is specific to a particular type of construction or ownership.
 - iii. The former standard may turn on a “pattern” of granting or denying applications and may thus present special difficulties at an early stage before any “pattern” has emerged. Thus, a single denial of a particular application would not be conclusive as to the generality of applications but ten straight denials might be.
 - iv. Similarly, the Board may have to look at its action on other applications since the grant of any application will affect both the “reasonable opportunities” standard and the “existing housing” standard.
 - v. The former standard may also turn on the Board’s ability to distinguish between economic factors “within its control” and those “beyond” its control. *See* the final sentence of RSA 674:58, III. Even among standards “within” its control – e.g., those relating to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection – there are exceptions. *See* RSA 674:59, IV.

¹⁶ RSA 674: 61, I specifically invokes RSA 677:15, including the burden of proof and standards of review sections.

- f. *As a matter of due process, all parties to the proceeding should be given notice and a full opportunity to present factual evidence on these questions, including:*
 - i. The applicant
 - ii. Abutters
 - iii. The municipality
 - iv. Other towns in the region and
 - v. The regional planning commission
- g. *Due to the complexity of the issues, the Board may require expert assistance.* Reference is made to the provision of Hancock’s Subdivision Regulations relating to Consultants and Reports. SubDivReg § 6.7.4 and § 21.
- h. *The Board should seek legal guidance on the “fair share” standard before making its determination.* At the time of this writing, little guidance is available on several critical issues but that situation may change with the passage of time.

2 The statute is clearly directed to “affordable” “workforce housing” for those requiring statutory protection. It defines both the protected class and the affordability standards. Applicants entitled to invoke the statute are those who intend to build “workforce housing”, so defined. RSA 674: 60, 1. In these circumstances, the Board should determine, as a factual matter, (i) whether the site-specific proposal is, in fact, “affordable” “workforce housing” and (ii) whether it will be offered only to those in the protected class. In this connection, the Board should consider the following:

- a. The literature on “fair share” allocations (and more generally on low-cost housing) universally recognizes a range of income levels and further recognizes that the supply of housing falls on a continuum – from low cost to high.¹⁷ In many cases, both supply and demand are frequently broken into deciles (10% units) or other market segments. In contrast, the Workforce Housing statute recognizes only two market segments divided by a single data point – housing is either “affordable” or it is not and households are either above or below the dividing line specified in the statute. Thus, any dwelling intended for private

¹⁷ In some instances, planners are encouraged to give greatest assistance to those in greatest need.

¹⁹ In our experience, private developers will strive to plan a price structure which “hits” the top of the permissible market, but only a narrow range of

ownership which costs less than X dollars [readily calculated from a table published by the US Department of Housing and Urban Development] to build or buy is, by definition, “affordable” as is any rental unit which rents for less than Y dollars. This bifurcation of the market both simplifies the analysis (thus, the Board can calculate a single figure for dwellings available for sale and a single figure for rentals) and greatly reduces the chances that housing satisfying the statute will be of any practical benefit.¹⁹

- b. Designing and administering legally enforceable procedures for maintaining the “affordability” standards over time will be challenging. Our regulations leave it to applicants to propose appropriate legal documents – subject to review by the Board and its counsel - to achieve these objectives.

the protected class will be able, in fact, to afford housing at this level. Developers, of course, have the option of providing affordable housing in lower price ranges, but the Board has little latitude.

Workforce Housing Regulations

The Hancock Planning Board hereby adopts of the following regulations which shall be known as the “Hancock Workforce Housing Regulations”.

Authority:

These regulations are adopted pursuant to the authority vested in the Hancock Planning Board by the voters of the Town of Hancock on March 14, 1967 to adopt site regulations and in the authority vested in the Hancock Planning Board in Article 3.7A of the Hancock Zoning Ordinance to adopt Workforce Hosing Regulations, and in accordance with the provisions of RSA 674:35 *et seq.* of the New Hampshire Revised Statutes Annotated, as amended.

Purposes:

To provide reasonable and realistic opportunities for affordable workforce housing by supplementing existing opportunities provided by the Hancock Zoning Ordinance.

To furnish information which will allow the Board and any reviewing authority to determine whether Hancock satisfies the requirements of RSA 674:35 *et seq.*

To insure that the result of any proposal under these regulations will provide “affordable housing” to qualified families at the time of first sale or rental and will continue to provide “affordable housing” to qualified families for thirty years thereafter.

To insure that the result of any proposal under these regulations will be consistent with Hancock’s Zoning Ordinance and other pertinent land use regulations.

General Plan of Regulation:

Any Applicant may apply for permission to subdivide properties or build housing or refurbish structures intended as affordable workforce housing under the existing regulations (excepting those set out in the Workforce Housing Regulations) without any special requirements.

Any application for subdivision, site plan review, building permit or other permission which contains the statement referred to in RSA 674:60, I shall be deemed to be an application for approval of “affordable workforce housing” and must meet the following requirements in addition to those set out in other regulations:

- A. a Preliminary Conference with the Planning Board is mandatory;
- B. the application shall be accompanied by a report which addresses those issues hereinafter identified as a Workforce Housing Report;
- C. the Board may determine, based upon evidence received at a hearing on the application, (i) whether Hancock provides “reasonable and realistic opportunities for the development of workforce housing,” *see* RSA 674:59, I and (ii) whether Hancock’s existing housing stock is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing within the meaning of RSA 674:59, III. Based upon such determinations, the Board may deny the application;
- D. the applicant must demonstrate that:
 - a. the housing proposed by the applicant will be “affordable” (see RSA 674:58, I) and will be offered only to persons qualified by reason of income to the protection of the statute at the time first offered to the public
 - b. the housing proposed by the applicant will continue to be “affordable” (see RSA 674:58, I) and will be offered only to persons qualified by reason of income to the protection of the statute for thirty years following first occupancy;
 - c. the housing proposed by the applicant will satisfy the general conditions of a Conditional Use Permit; and
 - d. any “affordable” multi-family housing will be available as rental units.

Workforce Housing Application Report²⁰

1 Purpose:

RSA 674:59 requires the Board to make a series of factual determinations which are dynamic (in the sense that as relevant circumstances change, the factual analysis may change) and beyond the ordinary scope of determinations made by the Board. Thus, in certain circumstances, the statute requires the Board (among other things) to make an economic analysis, determine building costs, examine existing circumstances in other communities in the region and the like. The purpose of the Workforce Housing Application Report is (i) to assist the Board in gathering and interpreting the necessary facts to make such determinations and (ii) to create a record for review of any Board decision.

2.0 Contents

Threshold Questions: As noted above, the Board may determine, based upon evidence received at a hearing on the application, (i) whether Hancock provides “reasonable and realistic opportunities for the development of workforce housing,” *see* RSA 674:59, I and (ii) whether Hancock’s existing housing stock is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing within the meaning of RSA 674:59, III, and, based upon such determinations, the Board may deny the application. Detailed notes on the relevant issues are given in the Board’s Workforce Housing Regulations Report. Applicants are invited to present probative evidence which will assist the Board in making these determinations.

Site-Specific Questions: Each Workforce Housing Application Report shall address the following issues in sufficient detail so that the Planning Board or other relevant authority may determine the following questions:

- 1. Will the housing proposed in the application be “affordable” within the meaning of RSA 674:58 when it is first offered to the public?
To establish the affordability standard, specifically state:*

²⁰ For convenience of reference, these requirements may be reprinted as an appendix to the Hancock Subdivision Regulations (2008).

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- a. “100 percent of the median income for a 4-person household” in the non-metropolitan area of Hillsborough County as published by the United States Department of Housing and Urban Development;
 - b. “60 percent of the median income for 3-person household” in the non-metropolitan area of Hillsborough County as published by the United States Department of Housing and Urban Development;
 - c. maximum combined mortgage loan debt services, property taxes and required insurance that do not exceed 30% of item 2(a)(i)
 - d. maximum combined rental and utility cost that do not exceed 30% of item 2(a)(ii).
2. *Will the proposal lead to “affordable workforce housing”.*
Specifically state:
- a. Will each unit of the housing proposed be sold or rented?
 - b. If “sold”, state
 - i. the price at which each unit will be offered upon first sale?
 - ii. the itemized costs of development including
 1. land costs,
 2. site preparation and infrastructure costs,
 3. construction costs,
 4. financing costs,
 5. administrative overhead,
 6. developer’s profit,
 7. other overhead?
 - c. If “rented”, state
 - i. the monthly rental at which each unit will be offered upon first rental?
 - ii. the itemized costs of development including
 1. land costs,
 2. site preparation and infrastructure costs,
 3. construction costs,
 4. financing costs,
 5. administrative overhead,
 6. developer’s profit,
 7. other overhead?
 - iii. the itemized costs of management during the first thirty years of occupancy including
 1. rental or agency fees,
 2. maintenance costs,
 3. administrative overhead,

4. manager's profit,
 5. other overhead?
- iv. the number and percentage of units which have two or more bedrooms?

[Any application made or sponsored by (i) the Town of Hancock or (ii) the Hancock Housing Authority (hereinafter referred to as "Community Sponsored Housing") may, in lieu of item 2.c.ii, undertake or guarantee, in a form reasonably acceptable to the Town and its counsel, that rental units will be offered at the monthly rentals indicated in the response to item 2.c.i.]

3. *Will the proposed housing be administered as "affordable workforce housing" for a period of not less than thirty years following first occupancy. Specifically, the report should show that:*
- a. *Eligibility:* Such housing will be offered for sale or rental only to persons whose family income is not greater than the limits stated in RSA 674:58 IV, applied at the time of such sale or rental;
 - b. *Affordability:* The cost of such housing shall not be greater than the limits of "affordability" established by RSA 674:58 I, as applied at the time of such sale or rental.

The applicant shall propose a plan to document purchaser/renter eligibility which includes collection and retention of data relating to eligibility which includes at least three years' federal income tax returns and a current written income certification for each person residing in the proposed housing units showing that such income does not exceed the income limits established by RSA 674:58 I.

The applicant shall further propose a plan to document the continuing "affordability" of each unit of proposed housing.

Such documents shall specifically address potential improvements to dwellings in a manner which does not breach "affordability" limits.

The costs of administering these provisions shall be estimated and shall, in any event, be borne by the applicant.

The foregoing restrictions shall be set forth in one or more legally enforceable, recordable deed restrictions, restrictive covenants or agreements, the form and content of which shall be approved by the Town of Hancock and its counsel. Said restrictions shall run with the land, shall be adequately reflected in deeds and leases and on all plats filed with the Registry of Deeds, Hillsborough County.

Applicant shall (i) maintain all such records for not less than three years following receipt and (ii) upon request, deliver copies of the same to the Town of Hancock and (iii) make such records available not less frequently than annually for audit by the Town of Hancock.

4. *Does the application meet the standard criteria for a Conditional Use Permit?*

The Hancock Zoning Ordinance sets out a series of general criteria which pertain to all Conditional Use Permits. See, Zoning Ordinance ¶ 16.1.²¹ It is incumbent on applicants to provide sufficient evidence to allow the Board to make relevant findings and to determine appropriate conditions of approval. To assist the Board, the Report should address each of the general criteria and, in particular, the following:

²¹ At present, the relevant language of the Zoning Ordinance reads:

No Conditional Use Permit shall be granted unless the Planning Board finds that:

1. the specific site is an appropriate location for the proposed use;
2. the proposed use would not adversely affect property values of neighboring property;
3. the proposed use and the associated plans for parking, access and egress would not create a nuisance or serious hazard to pedestrian or vehicular traffic or excessive traffic congestion nor create excessive wear and tear on public Streets;
4. the proposed use, following installation of visual and noise screening measures by natural or structural means to the extent and in the manner as may be specifically determined by the Board, would not create a nuisance to neighboring properties by reason of noise, odors, fumes, smoke, dust, vibrations, light, sound, or electromagnetic or communications interference or the storage or dissemination of hazardous materials or otherwise be injurious, obnoxious or offensive;
5. adequate and appropriate facilities will be provided for the proper operation of the proposed use, including (where applicable) facilities for potable water and disposal of waste;
6. the proposed use is consistent with the purposes and intent of the Zoning Ordinance and the Hancock Master Plan.

1. *Appropriate Location:*
 - a. Except in extraordinary circumstances, permission will not be granted to applications for “affordable” Workforce Housing unless the proposed site is located in a place where access is provided via a Class II or paved Class V road. In general, and in order to avoid excessive wear and tear on neighboring streets and roads, relatively high-intensity traffic associated with multi-family dwellings should not be directed over gravel roads.
 - b. Applicants are also invited to address the means, if any, by which residents will have access to work, education and services (especially groceries, general merchandise, library, entertainment) without dependency on private automobile transportation.

2. *Effect on value of Neighboring Properties:* Except in extraordinary circumstances, permission will not be given for applications for “affordable” workforce housing unless the proposal is compatible with the existing uses of a property and neighboring properties and has no adverse effect on the value of neighboring properties. These circumstances will not ordinarily exist unless:
 - a. the proposal constitutes a re-use of an existing structure without material changes to exterior appearance; or
 - b. the bulk and general design and appearance of a new-build proposal is in general conformity to the bulk, general design and exterior appearance of neighboring properties.

To assist the Board, the Report accompanying any application which relies on subparagraph (b) should address the bulk and appearance of abutting properties.

3. *Effect on Traffic and Parking.* Except in extraordinary circumstances, permission will not be granted to applications for “affordable” workforce housing unless the application deals sensitively with issues relating to movements and storage of vehicles. The Report should address resident and non-resident parking, facilities for on-site screening from neighboring properties, control of the use of joint access driveways and related matters.

4. *Potential Nuisances:* Except in extraordinary circumstances, permission will not be granted to applications for “affordable” workforce housing unless the applicant provides assurances that

potential nuisances, especially those relating to noise and light, will be curtailed by physical means.

5. *Water and Sewer:* The Board will require assurances that the proposed “affordable” workforce housing has a guaranteed supply of potable water and an adequate septic system, together with suitable long term arrangements for management of those facilities which adequately protects residents and the Town from potential public safety issues and financial liability.

Preparation; Filing; Peer Review

The Workforce Housing Application Report shall be subject to the standards set out in Hancock Subdivision Regulations, Section 21 *Reports Generally*, relating, among other things, to standards of preparation and peer review at the expense of the Applicant.

Procedure following conditional approval

If any application for Workforce Housing is approved subject to conditions or restrictions, the applicant may proceed in accordance with RSA 674:60 II *et seq.*

Site Plan Review

Where so required by the Hancock Site Plan Review Regulations (e.g., multi-family housing; *see* Site Plan Review Regulations, “Purpose,” for the scope of those regulations), the Applicant must apply for Site Plan Review and satisfy the pertinent requirements. Applications for a Conditional Use Permit and Site Plan Review should be filed together and will ordinarily be heard simultaneously.