

October 12, 2011

Ms. Laura Scott; Director
Town of Windham – Community Development Department
3 North Lowell Road
Post Office Box 120
Windham, New Hampshire 03087

Subject: **Workforce Housing Statute Compliance Assessment**
 Windham, New Hampshire – 2011
 KNA Project No. 11-0811-1

Dear Ms. Scott:

At the request of the Windham Planning Board and your Department we have completed a Workforce Housing Statute Compliance Assessment on behalf of the Town of Windham. As you are aware, on January 01, 2010 New Hampshire RSA 674:58 through 674:61, known collectively as New Hampshire’s Workforce Housing Statute, became effective. RSA 674:59, I stipulates: “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, including rental multi-family housing*”. Since the Town of Windham has in fact adopted and periodically amended a zoning ordinance, as well as a variety of land use regulations for several decades, the cited statutory provision compels compliance.

In this letter report, we outline and discuss the scope of study that was undertaken in order to perform the current assessment; briefly revisit the text of RSA 674:58 through 674:61 in order to reinforce the reader’s understanding of applicable provisions of the Workforce Housing Statute; present and discuss the outcome of an assessment of Windham’s existing housing stock; present and discuss the outcome of a regulatory audit of Windham’s current land use ordinances and regulations; and lastly, offer discussion relative to a series of conclusions and recommendations which were generated upon completion of this assignment.

Scope of Study

As an initial step in completing the current assignment, we performed an objective assessment of Windham’s existing housing stock. Based upon an examination of recent sales information, it is fairly easy for one to determine if new and existing re-sale homes are currently being sold at an affordable price. Obviously, if examination of current sales information for a municipality’s existing housing stock were to reveal a significant number or percentage of new and existing

homes recently sold at an affordable price, that determination alone may serve as an indication that the municipality's current land use ordinances and regulations in fact provide "reasonable and realistic opportunities" as required by statute. Conversely, if an examination of recent sales information reveals a scant number or percentage of recent sales, especially those involving the sale of new homes, occurred at an affordable price, such a determination would generally suggest lack of compliance with the Workforce Housing Statute. In order to complete this portion of the assessment we evaluated sales information for all qualifying residential sales consummated and reported during 2010 and that portion of 2011 for which data is available. Assessment findings are presented and discussed later in this report.

Since the cited statute also speaks to rental housing, consideration of market rent information was warranted. In completing an assessment of Windham's current rental stock we viewed a number of web-sites operated and maintained by local realtors as well as by multiple-listing services. In addition, we interviewed a local realtor, who identified herself as both a long time local realtor and Windham resident. Information we obtained from this interview provided us with a valuable overview of the realtor's professional experiences and observations concerning supply, demand and cost of rental housing in the Town of Windham. These sources, coupled with information obtained from the Assessor's Office, enabled us to develop an understanding of Windham's current residential rental market conditions discussed in this report.

A second step involved completion of a regulatory audit of Windham's current land use ordinances and regulations for compliance with applicable provisions of the Workforce Housing Statute. Again, RSA 674:59, I stipulates: "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." This provision alone may be properly viewed as the summation of the Workforce Housing Statute's primary purpose and intent. In order to arrive at a conclusion as to whether or not the collective body of Windham's current land use ordinances and regulations complies with this requirement we relied upon a methodology introduced in Chapter 4 of a publication entitled Meeting the Workforce Challenge – A Guidebook for New Hampshire Municipalities; published by the New Hampshire Housing Finance Authority in June 2010 (hereinafter referred to as the Guidebook). Application of the cited methodology enabled us to arrive at conclusions relative to the collective body of the Town's land use ordinances and regulations. In addition to this broad form analysis, the regulatory audit also evaluated the Town's land use ordinances and regulations with other specific requirements of the Workforce Housing Statute such as the mandate contained in RSA 674:59, I that the construction of multi-family housing (defined under RSA 674:58, II, as "a building or structure containing 5 or more dwelling units") be permitted on at least a portion of all land zoned for residential use.

The Workforce Housing Statute

Prior to drawing meaningful conclusions relative to compliance with the Workforce Housing Statute, a proper understanding of applicable provisions of the statute itself is essential. For the benefit of the reader the following statutory provisions are revisited and discussed:

- Pursuant to RSA 674:58, I “Affordable” means “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.”
- Pursuant to RSA 674:58, II the term “Multi-family Housing”, for the purposes of workforce housing development means “a building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household.”
- Pursuant to RSA 674:58, III the term “Reasonable and Realistic Opportunities for the Development of Workforce Housing” means “opportunities to develop economically viable workforce housing within the framework of a municipality’s ordinances and regulations adopted pursuant to this chapter (RSA 674) and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic. 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 effect the economic viability of workforce housing development.”
- Pursuant to RSA 674:58, IV “Workforce Housing” means “housing which is intended for sale and which is affordable to a household with an income of no more than 100-percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. ‘Workforce Housing’ also means rental housing which is affordable to a household with an income of no more than 60-percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20-percent of the units, or in which more than 50-percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.”

The United States Department of Housing and Urban Development (HUD) identifies the Town of Windham as being situated in the Lawrence Massachusetts-New Hampshire Metropolitan Fair Market Rent Area (HMFA). For 2011, 100-percent median area and 60-percent median area income values for this HMFA, as published by HUD, are \$87,100 and \$47,030 respectively. Based on these median income values, the New Hampshire Housing Finance Authority estimates a maximum “affordable” purchase price of \$275,000 for owner occupied housing and a maximum “affordable” monthly rental cost of \$1,180 for the HMFA within which Windham is situated.

With the foregoing terms understood and defined, two Paragraphs of RSA 674:59, entitled “Workforce Housing Opportunities”, must be considered. The text of these operative Paragraphs read as follows:

- I. “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, including rental multi-family housing. In order to provide for such opportunities, lot size and overall density requirements for workforce housing shall be reasonable. A municipality that adopts land use ordinances and regulations shall allow workforce housing to be located in a majority, but not necessarily all, of the land area that is zoned to permit residential use within the community. Such a municipality shall have the discretion to determine what land areas are appropriate to meet this obligation. This obligation may be satisfied by the adoption of inclusionary zoning as defined in RSA 674:21, IV(a). This Paragraph shall not be construed to require a municipality to allow for the development of multi-family housing in a majority of its land zoned to permit residential uses.”

- III. “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.”

Assessment of Windham’s Existing Housing Stock

In order to obtain a proper understanding of conditions related to Windham’s existing housing stock the database of the Town’s Assessing Department was analyzed. Specifically, analysis of sales data for the period of January 01, 2010 through September 19, 2011 revealed the following:

- A total of 296 sales of single family dwelling units, available for year-round occupancy, were recorded. Of this total, evidence suggests 19 of these sales represented “short sales” or other “non-arms-length” transactions involving mortgage holders. Of the 296 total sales, records suggest 61 homes sold at a value of \$275,000 or less. This total number of “affordable” sales included each of the 19 “short sales” described above. Expressed as a percentage of all sales, the 61 “affordable” homes represent 20.6% of all sales. If the 19 apparent “short sales” that occurred within this period are discounted, 42 of the 277 reported sales, or 15.2% involved conveyance of a single family dwelling at an “affordable” price. The median sales price value for the all reported sales of single-family homes was \$400,000. If all apparent “short sales” are excluded, the median sales price rises to \$435,000.

- During this same period a total of 42 condominium units were conveyed. Only one of these sales appears to have involved a “short sale”. Of this total, 23 sales occurred at an “affordable” price, including the one apparent “short sale”. Expressed as a percentage

the 23 “affordable” transactions represent 54.7% of all condominium sales. If the single apparent “short sale” is discounted, that percentage drops to 53.6%. The median sales price of all reported condominium transactions during this period was \$260,000.

- No sales of two-family, three-family or structures containing four or more dwelling units were reported during the period of time in question.
- Taken together, a total of 338 homes were conveyed during the period in question. Of this total, 84 dwelling units, or 24.9% sold at an “affordable” price. Again, if all apparent “short sales” are discounted, the data suggests that 64 of 318, or 20.1% of all reported sales involved the conveyance of an “affordable” home.
- During the period in question, a total of 30 newly constructed dwelling units were conveyed. Of this total, 3 dwelling units, all condominiums, were sold at an “affordable” price.

Assessment of rental opportunities revealed that most monthly rentals which occur in the Town of Windham involve occupancy of single-family homes and condominiums rather than multi-family housing. In fact, the Assessor’s data base suggests only 3 multi-family residential structures having 5 or more dwelling units per structure exist within the Town’s borders. A recent inquiry of the NNEREN multiple-listing web-site revealed only five properties, all single-family homes, were presently available for rent at a cost ranging from \$1,600 to \$2,800 per month, excluding utility costs. This observation fully supports the advice we received from the local realtor we interviewed who described the supply of available rental units in the Town of Windham as very limited and the cost as very high.

Regulatory Audit of Windham’s Land Use Ordinances and Regulations

Obviously, the most fundamental conclusion which needs to be reached in regard to this or any other similar workforce housing statute compliance assessment involves the question or whether or not it is believed that the municipality in question is presently fulfilling its statutory obligation to “provide reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing”. In the case of Windham the answer to this question appears to be clear. As acknowledged above, RSA 674:59, III stipulates that “a municipality’s existing housing stock shall be taken into consideration in determining compliance” before going on to specify that “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”. Although the statute mandates consideration of both “for sale” and “rental” housing, for the purposes of this analysis it is most useful to evaluate each of these two varieties of housing separately. In the case of “for sale” housing, the fact that sales data for the past 21 months suggests a total of 84 dwelling units, or 24.9% of all reported sales for that period, occurred at an “affordable” price invites one to draw the conclusion that since one in four homes recently sold at an affordable price, the Town is presently fulfilling its obligations under the statute. While advancement of an argument to that affect is always possible, there are several facts that serve to quickly dilute such an argument. Specifically:

- Although the text of the statute includes reference to what is termed: “fair share of the current and reasonably foreseeable regional need”, at present neither the New Hampshire Legislature, nor the Courts have provided the public with a “working definition” of that term. That is to say, there is no quota. The authors of the Guidebook recognized this and in doing so offered the following advice: “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 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.” To that end, any conclusion that the Town of Windham is presently affording the public with an adequate supply of affordable housing by virtue of its existing housing stock alone would likely prove to be ripe for legal challenge unless the Town was confident that its land use ordinances and regulations collectively afford reasonable and realistic opportunities for the development of *new* workforce housing.
- RSA 36:47 requires that “for the purpose of assisting municipalities in complying with RSA 674:2, III(m), each regional planning commission shall compile a regional housing needs assessment, which shall include an assessment of the regional need for housing for persons and families of all levels of income”. In fulfillment of that requirement, on October 31, 2008 the Rockingham Planning Commission published a document entitled Regional Needs Assessment. Within Table 10 of that document, the Planning Commission concluded that in order to satisfy anticipated need, an additional 4,385 units of new workforce housing must be constructed within its region through 2015. Based upon the assessment’s methodology, the Rockingham Planning Commission estimated Windham’s fair share of those workforce housing units needed within the region to be 249 dwellings. Correspondingly, conclusions presented in the Regional Needs Assessment, coupled with language contained within RSA 674:59, III, which suggests the concept of “fair share” must include consideration of “regional need” would seem to be contradictory to any claim that Windham has fulfilled its obligations under the statute by virtue of the fact that one in four homes conveyed within the Town over the past 21 months sold at a price deemed “affordable” under the statute.
- Obviously it does not take a trained economist to recognize the fact that recessionary times which have plagued the nation and the region over the past few years have resulted in an “across the board” diminution of local real estate values. Although sales data for the past 21 months demonstrates one in four homes conveyed during this period sold at an “affordable” price, is it reasonable to expect attainment of such a favorable ratio would prove sustainable in more prosperous economic times?
- Lastly, despite a recent relaxation in real estate market values, and to some extent in construction costs, 30 sales involving *new* residential properties were reported during the past 21 months. Of these new homes, only 3, or 10% of all new construction sales occurred at an “affordable” price.

As acknowledged above, compliance with the workforce housing statute also necessitates providing “reasonable and realistic opportunities” for the development of affordable non-age restricted multi-family housing which can be delivered to the public on a rental basis. Despite the fact that this type of housing is recognized as a permitted use in both the Residence B and Village Center Districts under the current zoning ordinance, multi-family housing, as defined under RSA 674:58, II is essentially non-existent in the Town of Windham. In order to insure the Town’s land use ordinances and regulations in fact afford reasonable and realistic opportunities for the construction of new multi-family housing, we recommend the Planning Board consider advancing an amendment to the Zoning Ordinance which would identify multi-family housing as a permitted use in one or more additional districts. Given the continued expansion of businesses and industries, within Windham’s Commercial A, B & Gateway Commercial, Limited Industrial and Professional Business & Technology Districts, who often employ those most likely to reside in lower cost residential housing, we recommend thought be given to permitting multi-family housing on parcels either within or immediately adjacent to those non-residential districts.

In order for the Town of Windham to enjoy assurance that it has fulfilled and will continue to fulfill its obligations under New Hampshire’s Workforce Housing Statute to the extent that its land use ordinances and regulations unquestionably “provide reasonable and realistic opportunities for the development of workforce housing”, we recommend the Planning Board revisit its efforts of 2010 and 2011 to cause a “Workforce Housing Overlay District” zoning ordinance amendment to be adopted on behalf of the Town of Windham.

Sincerely:

Steven B. Keach, P.E.
President
Keach-Nordstrom Associates, Inc.

