



January 31, 2013

The Honorable Marjorie Porter, Chair
House Municipal & County Government Committee
Legislative Office Building, Room 301
Concord, NH 03301

Subject: HB 215, relative to workforce housing and the definition of community.

Dear Representative Porter:

HB 215 seeks to amend the state's workforce housing law by establishing a quota for municipal compliance, by requiring affordability covenants, and by establishing a definition of "community." The New Hampshire Planners Association, representing over 200 land use planning professionals in our state, working at all levels of government and in the private sector, takes this opportunity to express its opposition to this legislation as it did last year with HB 368 which was also designed to make workforce housing optional.

The NHPA believes that an adequate supply of workforce housing is essential to creating balanced and economically prosperous communities. The workforce housing statute (RSA 674:58 through 674:61) succeeds in establishing a reasonable framework for communities to provide workforce housing, while at the same time balancing certain realities such as land constraints and market considerations, that can and do influence the amount of affordable housing that is produced. The workforce housing statute ensures that opportunities for workforce housing are available and that the market can respond to the demand for housing throughout the entire state.

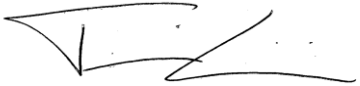
Under the changes proposed in HB 215, the workforce housing statute would require that 5% of a municipality's housing must be "allocated" as workforce housing. It is unclear how such an allocation would be made and what the implications would be if a community did not meet its quota. HB 215 would also eliminate local planning board discretion by mandating that affordability covenants must be used with workforce housing. This proposal fails to recognize that in some circumstances affordability covenants are not only unnecessary, but are actually counterproductive. Finally, the addition of a definition of "community" seeks to circumvent part of the decision of the NH Supreme Court in *Britton v. Chester*. This proposal fails to understand the broader context of the Court's *Britton* decision – a long line of cases from the Court in which it consistently stated that communities cannot treat themselves as isolated enclaves, and that to do so would violate constitutional principles of due process and equal protection.

Under state case law, communities in fact have an obligation to take affirmative steps to ensure they provide opportunities for affordable housing. The workforce housing statute codifies many of the principles espoused by the Supreme Court in *Britton v. Chester*. The codification of these legal principles has significantly helped our communities to meet their legal obligations. What appears in *Britton* as somewhat vague and uncertain appears more concrete and understandable in the statute.

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The changes proposed by HB 215 will reduce local control, will introduce ambiguity in the statute, and will create confusion among local planning boards. For these reasons, we urge your committee to recommend that HB 215 be found “inexpedient to legislate.” Thank you for this opportunity to provide comment on the bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy J. Corwin', with a stylized flourish at the end.

Timothy J. Corwin, Esq.
NHPA Legislative Liaison