

Developer's Guidance Document for Workforce Housing

DRAFT 3

Durham, New Hampshire

January 28, 2011

1. Purpose

The purpose of this document is to provide guidance to developers of workforce housing to:

- Apply for development of workforce housing in accordance with NH RSA 674: 58-61 and the Durham Zoning Ordinance, Section 175-107-II,
- Ensure that any approved workforce units in the Town of Durham shall be available only to eligible households for purchase or rent, and
- Ensure continued affordability of designated workforce housing units.

2. Application Procedures

Procedures for Applicant

- A. Notice of Intent to Build Workforce Housing -- Any applicant who applies to the Planning Board (the Board) for approval of a development that is intended to qualify as workforce housing in accordance with this Guidance Document shall follow the same procedure as outlined in Section 175-107-II (D) of the Durham Zoning Ordinance and the Durham Subdivision Regulations. Any such applicant shall also file a written statement of such intent as part of the application.
- B. Waiver-- Failure to file such a statement shall constitute a waiver of the applicant's rights under RSA 674:61 (the "builder's remedy"), but shall not preclude an appeal under other applicable laws.
- C. Any person, who has filed the written notice and whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed workforce housing development, may appeal the municipal action to the superior court under RSA 677:4 or RSA 677:15 seeking permission to develop the proposed workforce housing.

Procedures for Planning Board

- A. Notice of conditions-- If the Board approves an application to develop workforce housing subject to conditions or restrictions, it shall notify the applicant in writing of such conditions and restrictions and give the applicant an opportunity to establish the cost of complying with the conditions and restrictions and the effect of compliance on the economic viability of the proposed development. The Board's notice to the applicant of the conditions and restrictions shall constitute the Board's effort to comply with

requirements of RSA 676:4 I (i). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.

- B. Submission of evidence to establish cost of complying with condition- Upon receiving notice of conditions and restrictions as described above, the applicant may submit evidence to establish the cost of complying with the conditions and restrictions and the effect on economic viability within the period directed by the Board, which shall not be less than 30 days. Upon receipt of such evidence, the Board shall allow the applicant to review the evidence at the Board's next meeting for which 10 days notice can be given, and shall give written notice of the meeting to the applicant at least 10 days in advance. At such review meeting, the Board may also receive and consider evidence from other sources. The Board may affirm, alter, or rescind any or all of the conditions or restrictions of approval after such review meeting.
- C. Final decision-- The Board shall not issue its final decision on the application before such meeting, unless the applicant fails to submit the required evidence within the period designated by the Board, in which case it may issue its final decision any time after the expiration of the period. If an applicant notifies the Board in writing at any time that the applicant accepts the conditions and restrictions of approval, the Board may issue its final decision without further action under this paragraph.

3. Rules and Requirements for Ensuring Affordability For Designated Workforce Housing Units

Assurance of Affordability

- A. To ensure that only eligible households purchase/rent the designated workforce housing units, the purchaser/renter of any workforce housing unit shall be certified for eligibility by an a third party entity acceptable to the Town. The purchaser/renter must submit copies of their last three years of federal income tax returns and written certification, verifying that their annual income level, combined with household assets, does not exceed the maximum level as established by in Section 175-107-II (E) of the Durham Zoning Ordinance.
- B. The tax returns and written certification of income and assets must be submitted to the developer of the housing units, or the developer's administrative agent that is acceptable to the town for initial sale or future resale, prior to the transfer of title. A copy of the tax returns and written certification of income and assets must be submitted to all parties charged with administering and monitoring this ordinance, within 30 days following the transfer of title.
- C. Upon acceptance of the maximum sales price and eligible buyer determination by the developer or the developer's agent, the Town will issue a Compliance Certificate which will be recorded at the Strafford County Registry of Deeds.

Assurance of Continued Affordability

- A. Workforce housing units offered for sale shall require a restrictive covenant, granted to the Town of Durham and recorded in the Strafford County Registry of Deeds, be placed on each workforce housing unit. The value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The municipality's lien is inflated over time at a rate equal to the increase in the Area Median Income as per Section 175-107-II, Paragraph E (2). Future maximum resale values shall be calculated based on this provision. Subsequent resale values shall not be limited based solely upon income targets, but the combination of maintenance of the municipality's covenant and adherence to the definition of workforce housing for a period of 30 years as per Sections 175-107-II, Paragraph E (2) and Paragraph H (2) of the Durham Zoning Ordinance.
- B. Workforce housing rental units shall limit annual rent increases to the percentage increase in the Area Median Income (AMI).
- C. Documentation of restrictions—Deed restrictions, restrictive covenants, or contractual arrangements related to dwelling units established in accordance with this Guidance Document and under Section 175-107-II, Paragraph H (2) of the Durham Zoning Ordinance must be documented on all plans filed with the Town's Planning Board and with the Registry of Deeds.

4. Compliance and Monitoring

- A. Certificate of Occupancy—No certificate of occupancy shall be issued for a workforce housing unit without written confirmation of the income eligibility of the tenant or buyer of the workforce housing unit and confirmation of the rent or price of the workforce housing unit as documented by an executed lease or purchase and sale agreement.
- B. Ongoing responsibility for monitoring the compliance with resale and rental restrictions on workforce housing units shall be the responsibility of the developer's administrative agent or the third party property management entity acceptable to the town.
- C. Annual report—The owner, or the owner's administrative agent, of a project containing workforce housing units for rent shall prepare an annual report certifying that the gross rents of workforce units and the household income of tenants of workforce housing units have been maintained in accordance with Section 3 of this Document. Such reports shall be submitted by the property management entity, or its designee, and shall list the contract rent and occupant household incomes of all workforce housing units for the calendar year.

5. Workforce Housing Design

- A. The dwellings qualifying as workforce housing shall be compatible in architectural style and exterior appearance with the market rate dwellings of similar type in the proposed development and are reasonably consistent with the market rate dwellings as per Section 175-107-II, Paragraph G (4) (a) of the Durham Zoning Ordinance.
- B. Examples of design style for workforce housing:

