

PLANNING AND ZONING

Definition of Agriculture. Chapter 8 (HB 1277) adds grapes to the list of crops included in the definition of “agriculture” or “farming” under RSA 21:34-a. Consequently, viticultural operations are now considered an “agricultural use” for purposes of the land use statutes, in particular RSA 674:32-a to 32-c. **E.D. July 4, 2008.**

Village Plan Alternative. Chapter 63 (HB 1157) amends RSA 674:21, VI(b), to state that a landowner wishing to use the village plan alternative shall “grant to the municipality” (rather than “provide to the political subdivision”) a recorded easement reserving the undeveloped area of the original lot solely for agriculture, forestry, and conservation, or for public recreation. It also requires the easement to specify that the restrictions contained in it are enforceable by the municipality. **E.D. July 20, 2008.**

Conservation and Preservation Restrictions. Chapter 125 (SB 409) provides that a grantee’s or contingent grantee’s interest in a conservation, preservation, or agricultural preservation restriction cannot be created or amended unless it is signed by the grantee and all contingent grantees. **E.D. August 2, 2008.**

Junk Yard Setbacks. Chapter 164 (HB 1636) removes outdated language from the junkyard statute, increases the set back from an interstate highway to 1,000 feet, and allows municipalities to establish a lesser setback from non-interstate highways. **E.D. August 5, 2008.**

Time Limits on Design Review. Chapter 229 (HB 331) allows a planning board to establish reasonable rules of procedure relating to the design review process, and allows a board to determine at a public meeting that the design review process for a particular project has ended. Notice of such a determination must be given to the applicant in writing within 10 days. This change is a response to the 2006 amendment to RSA 676:12, VI, which provides vesting against future zoning amendments for proposals that have been submitted for design review, provided that a formal application is filed within 12 months after the end of the design review process. There was concern that without a clear process for ending the design review process, that vesting protection could continue indefinitely. **E.D. August 19, 2008.**

Master Plan Energy Section. Chapter 269 (SB 422) adds an energy section to the list of optional sections municipalities may include in their master plans. The energy section may provide an analysis of energy and fuel resources, needs, scarcities, costs, and problems affecting the municipality, and a statement of policy on the conservation of energy. **E.D. August 25, 2008.**

Land Development and Wetlands Study; LCHIP Funding. Chapter 294 (HB 1579) establishes a 20-member commission, which includes a member appointed by NHMA, to study the effects of land development on surface and ground water quality and quantity, and terrestrial and aquatic habitat; the adequacy and consistency of local, state, and federal programs as they relate to the regulation and management of land development, including regulations of wetland buffers and setbacks, stormwater management, and cumulative effects of development; the opportunities for integration of land use controls, open space protection techniques, and environmental and public health protection laws to promote land development patterns that maintain ecosystem health and integrity while providing desirable communities in which to live and work; and the potential legal, fiscal, regulatory, and technical obstacles for creating an integrated approach to land development. An interim report is due November 1, 2008, with a final report due November 1, 2009.

The chapter also makes various changes to RSA 478:17-g governing the real estate recording surcharge to provide funding for LCHIP. The \$25.00 surcharge is assessed only for the recording of a deed, mortgage, mortgage discharge or plan, but not for the recording of any document where the United States or any instrumentality

thereof, the state, a state agency, a county, a municipality, a village district, or a school district is a party. For a plan, the surcharge is to be paid by the primary owner of property shown on the plan. (It is recommended to collect a check payable to the registry at the time plans are processed by the municipality.) **E.D. July 1, 2008 for LCHIP surcharge; remainder June 27, 2008.**

Workforce Housing. Chapter 299 (SB 342) establishes requirements, based on the 1991 N.H. Supreme Court decision in *Britton v. Chester*, for municipalities to allow “reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing.” The chapter defines “workforce housing,” which includes both rental housing and housing intended for sale, based on its affordability to families at stated percentages of median income for the metropolitan area or county in which the municipality is located.

A municipality must allow workforce housing to be located in a majority of the land area that is zoned to permit residential uses; the municipality has the discretion to determine what land areas are appropriate to meet this obligation. Although the municipality must allow some multi-family housing (defined as a building containing five or more units), it is not required to allow it in a majority of the area zoned to permit residential use. If a municipality’s existing housing stock is sufficient to accommodate its fair share of the regional need for affordable housing, it will be deemed to be in compliance with the law. A municipality is not required to allow workforce housing that does not meet reasonable requirements related to environmental protection, water, sewer, traffic, or fire protection. If a municipality makes the development of sufficient workforce housing feasible through the use of reasonable lot size, density, and other requirements, it will not be deemed in violation of its obligation by virtue of economic conditions (such as land prices or construction costs) that are beyond the control of the municipality.

The new law contains a provision for expedited appeal of local land use board decisions relative to workforce housing developments, under which a hearing on the merits must be held within six months after the appeal is filed. To be entitled to use the expedited appeal process, the applicant must file a written notice at the time of application stating that the development is intended to qualify as workforce housing under the new law. **E.D. July 1, 2009. CONTAINS NHMA POLICY.**

Small Wind Energy Systems. Chapter 357 (HB 310) limits municipalities’ ability to regulate the size, placement, and specifications of “small wind energy systems,” defined as “a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity consistent with the net metering specifications of RSA 362-A:9 and which will be used primarily for onsite consumption.” Municipalities are prohibited from enforcing ordinances or regulations that unreasonably limit the installation or performance of small wind energy systems. Most notably, the law limits a municipality’s use of height limitations, setback requirements, and noise limits as applied to such systems.

A municipality may not restrict tower height through the application of a general height limitation in its zoning ordinance—it must adopt an ordinance or regulation that specifically addresses small wind energy systems; it may not require a setback from property boundaries greater than 150 percent of the system height; and it may not set a noise limit lower than 55 decibels, as measured at the site property line. The Office of Energy and Planning is directed to develop a technical bulletin by September 30, 2008, relative to model municipal ordinances for the construction of small wind energy systems.

A municipal building inspector will be required to notify all abutters upon the receipt of an application to construct a small wind energy system. Abutters will be afforded a 30-day comment period prior to the issuance of the building permit, and they may appeal issuance of such a permit to the building code board of appeals or zoning board of adjustment. The building inspector also must determine whether a small wind energy system constitutes a development of regional impact and, if so, follow the procedures set forth in the statute governing such developments. **E.D. July 11, 2008 for OEP technical bulletin; July 11, 2009 for remainder.**

Growth Management Ordinances. Chapter 360 (HB 1260) codifies existing judicially created limitations on the adoption and application of growth management ordinances (GMOs). Under the new law, a municipality may adopt a GMO only if there is a demonstrated need to regulate the timing of development, based on the municipality's lack of capacity to accommodate anticipated growth. This need must be demonstrated by a study performed by or for the planning board or the governing body, or submitted with a citizens' petition to adopt a GMO. A GMO must include a termination date and restrict growth no more than necessary to allow for development of needed municipal services. If a GMO is adopted, the planning board or capital improvements program committee must develop a plan for the orderly and rational development of municipal services needed to accommodate anticipated normal growth. The planning board must review the plan and the GMO annually to confirm that reasonable progress is being made to carry out the plan.

Alternatively, a municipality may adopt a temporary (not longer than one year) moratorium or limit on building permits or subdivision or site plan approval "in unusual circumstances that affect the ability of [the] municipality to provide adequate services and require prompt attention and to develop or alter a growth management process . . . , a zoning ordinance, a master plan, or capital improvements program." Such an ordinance must be based on written findings by the planning board that describe the unusual circumstances that justify the ordinance and recommend a course of action to alleviate those circumstances. Successive temporary ordinances may be adopted only if they are based on circumstances that did not exist at the time the prior ordinance was adopted.

Any municipality that adopted a GMO prior to the effective date of this chapter will have until June 1, 2010, to amend its ordinance to conform to the new law (if necessary). If a municipality adopted an interim GMO under RSA 674:23 prior to the effective date, that ordinance may remain in effect until one year after its passage or until the next annual meeting. **E.D. July 11, 2008.**

Outdoor Wood-Fired Boilers. Chapter 362 (HB 1405) places limitations on the sale, installation, and operation of outdoor wood-fired boilers (referred to in the chapter as outdoor wood-fired hydronic heaters, or OWHHs), and specifically recognizes municipal authority to apply local ordinances and regulations to such devices. Beginning January 1, 2009, any OWHH sold in the state will have to meet a specified emission requirement. The standard becomes stricter on April 1, 2010. Further, any OWHH installed after the effective date of the law must meet specified setback and stack height requirements, which vary depending on the EPA-certified emission level of the OWHH. Municipalities may apply stricter setback and stack height requirements than those contained in the law, may prohibit the installation of OWHHs in one or more zoning districts, and may prohibit the continued use of an OWHH that is operated in such a manner as to create a public nuisance or cause injury to public health; but they may not "unreasonably limit the installation of or hinder the operation of OWHHs." **E.D. August 10, 2008.**

Housing Commissions. Chapter 391 (HB 1259) authorizes municipalities to establish housing commissions "for the proper recognition, promotion, enhancement, encouragement, and development of a balanced and diverse supply of housing to meet the economic, social, and physical needs of the municipality and its residents, viewed in the context of the region within which the municipality is situated." A housing commission, which is created at the municipality's option, is established by the legislative body in the same manner as a historic district commission, heritage commission, or agricultural commission, and is subject to most of the same statutory provisions as those commissions. It is authorized, among other things, to conduct a housing needs assessment, promote the development of affordable housing, and assist the planning board in the development and review of the master plan, zoning ordinance, and planning board regulations that affect housing. The chapter also authorizes the establishment of revolving funds under RSA 31:95-h for the purpose of creating affordable housing and facilitating transactions related thereto. **E.D. September 15, 2008**

RIGHT TO KNOW

Update to Right to Know Law. Chapter 303 (HB 1408) amends RSA chapter 91-A, the Right to Know Law, to clarify how the law applies to electronic records and communications, and to clarify a number of other matters under the law. Among other things, the chapter (1) defines, for the first time, the “governmental records” that are subject to the law; (2) clarifies what constitutes a “public body” and a “public agency” under the law; (3) clarifies that the law’s open-meeting provisions apply whenever a quorum of a public body is convened for the purpose of discussing official business, regardless of the form of communication; (4) establishes an optional procedure for allowing a member of a public body to participate in a meeting by telephone when attendance in person is not reasonably practical, subject to safeguards that ensure the public’s ability to hear everything that is said by a member not in attendance; (5) includes an explicit prohibition on conducting meetings by e-mail; (6) clarifies that “sequential” communications may not be used to circumvent the law; (7) establishes standards for the retention, disclosure, and disposal of electronic records; and (8) provides that a Right to Know Law request cannot be used to require a public body or agency to compile information into a form in which the information is not already kept or reported. **E.D. July 2, 2008.**