

REGULAR CALENDAR

March 10, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Municipal and
County Government to which was referred HB 1307,**

**AN ACT modifying the authority and duties of the
housing appeals board. Having considered the same,
report the same with the recommendation that the bill
OUGHT TO PASS.**

Rep. Richard Tripp

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Municipal and County Government
Bill Number:	HB 1307
Title:	modifying the authority and duties of the housing appeals board.
Date:	March 10, 2022
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill reduces the housing appeals board authority by first eliminating verbiage permitting unlimited review powers. Subsequently, it further limits the housing appeals board review powers by enumerating those boards and commissions whose decisions it is permitted to review.

Vote 13-3.

Rep. Richard Tripp
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Municipal and County Government

HB 1307, modifying the authority and duties of the housing appeals board. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Richard Tripp for the **Majority** of Municipal and County Government. This bill reduces the housing appeals board authority by first eliminating verbiage permitting unlimited review powers. Subsequently, it further limits the housing appeals board review powers by enumerating those boards and commissions whose decisions it is permitted to review. **Vote 13-3.**

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

March 10, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Municipal and County Government to which was referred HB 1307,

AN ACT modifying the authority and duties of the housing appeals board. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Ivy Vann

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Municipal and County Government
Bill Number:	HB 1307
Title:	modifying the authority and duties of the housing appeals board.
Date:	March 10, 2022
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill attempts to make changes to the authority and scope of the Housing Appeals Board (HAB), a new entity established to provide an alternative to the Superior Court for developers who seek an additional review of decisions handed down by municipal land use boards. While the sponsor testified that the bill would limit the HAB's authority and purview, its language suggests otherwise since the entities subject to HAB review are deleted from the first part of the bill, then simply re-inserted in a subsequent paragraph but in general terms. The legislation creating the board is very specific as to which local land use decisions are subject to its review, but striking them from the exhaustive list only to replace them with the more generalized language as this bill proposes, may in fact have the opposite effect of broadening the HAB's powers.

Rep. Ivy Vann
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Municipal and County Government

HB 1307, modifying the authority and duties of the housing appeals board. **INEXPEDIENT TO LEGISLATE.**

Rep. Ivy Vann for the **Minority** of Municipal and County Government. This bill attempts to make changes to the authority and scope of the Housing Appeals Board (HAB), a new entity established to provide an alternative to the Superior Court for developers who seek an additional review of decisions handed down by municipal land use boards. While the sponsor testified that the bill would limit the HAB's authority and purview, its language suggests otherwise since the entities subject to HAB review are deleted from the first part of the bill, then simply re-inserted in a subsequent paragraph but in general terms. The legislation creating the board is very specific as to which local land use decisions are subject to its review, but striking them from the exhaustive list only to replace them with the more generalized language as this bill proposes, may in fact have the opposite effect of broadening the HAB's powers.

Original: House Clerk

Cc: Committee Bill File

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

EXECUTIVE SESSION on HB 1307

BILL TITLE: modifying the authority and duties of the housing appeals board.

DATE: February 28, 2022

LOB ROOM: 301 - 303

MOTIONS: OUGHT TO PASS

Moved by Rep. Tripp

Seconded by Rep. Melvin

Vote: 13-3

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep John MacDonald, Clerk



2022 SESSION

Municipal and County Government

Bill #: 1307 Motion: OTP AM #: _____ Exec Session Date: _____

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Dolan, Tom Chairman	13		
Piemonte, Tony Vice Chairman <i>Lascelles</i>	1		
MacDonald, John T. Clerk	2		
Tripp, Richard P.	3		
Guthrie, Joseph A.	4		
Lascelles, Richard W. <i>Johnson</i>	5		
McBride, Everett P.			
Melvin, Charles R.	6		
Ayer, Paul F.	7		
Pauer, Diane	8		
Maggiore, Jim V.	9		
Treleaven, Susan GS			
Gilman, Julie D.	10		
Stavis, Laurel			
Mangipudi, Latha D.	11		
Vann, Ivy C.		1	
Klee, Patricia S. <i>Perez</i>	12		
Gallager, Eric B.		2	
Rung, Rosemarie		3	
TOTAL VOTE:	13	3	

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

PUBLIC HEARING ON HB 1307

BILL TITLE: modifying the authority and duties of the housing appeals board.

DATE: February 7, 2022

LOB ROOM: 301 -303

Time Public Hearing Called to Order: 12:16 p.m.

Time Adjourned: 1:29 p.m.

Committee Members: Reps. Dolan, Piemonte, J. MacDonald, Tripp, Guthrie, Lascelles, Melvin, Pauer, Maggiore, Gilman, Stavis, Mangipudi, Vann, Klee, Gallager and Rung

Bill Sponsors:
Rep. B. Griffin

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Barbara Griffin - Prime sponsor of the bill. Zoning a very controversial proposal. 43 bills - Municipal received 1 bill. Judiciary received the other bills. Addressing the issue of jurisdiction. Properly deciding things. It was imposed to be all inclusive. Builders needed another avenue after the local boards modifies the proposed language for the Housing Board. Bigger applications are usually remanded back to the community. Clearly define the bases of appeals to the housing board from decisions made by planning board, zoning boards of adjustments, etc.

Rep. Guthrie: Number of bills for judiciary? ANS: I don't have those. ITL recommendation from committee.

Rep. Pauer: Bonafied applicant to appeal to board? ANS: Standards are proper for the development to go before the court. The housing appeal board was developed to expedite the development of housing.

***Senator Bob Giuda** - Opposes the bill. Prime sponsor that established Housing Appeals Board. Emailed letter to committee and also provided a Housing Appeals Board order case No: BSA - 2021-02. Bill saves towns money. Members appointed by the Supreme Court. Two channels - Housing Appeals or Superior Court. Don't like the outcome, you can go to the Supreme Court.

Rep. Pauer: 6 - 13, A - F, that is struck. They would be required to go to Superior Court.

Rep. Vann: To make it impossible for fire marshals to inspect, what is the intent of the bill? ANS: I can't speak to the intent of the filing of the bill.

Rep, Mangipudi: Housing crisis level, noun states. This bill would hinder any solution to that crisis? ANS: Yes, that is my assessment of this bill were to pass.

Rep. Tripp: Additional road, in my town can be required? ANS: 1307 would dangerously restrict the Housing Appeals Board.

Rep. Marjorie Porter - Opposes the bill. Established the Housing Appeals Board. If you follow the rules, it always goes better. The Appeals Board does not change the law. It makes the process go faster. The board uses the standards. Speedy way to get housing in this state. If the Land Use Board, or town has followed the rules, then the board should support the town's decision.

***Ben Frost, NH Housing** - Opposes the bill. Testimony attached.

Rep. Vann: Land Use Boards - getting better - learning / better decisions? ANS: A municipality has been remanded and others have not by the Housing Appeals Board. Current law final decisions of the land use boards all can be appealed if they deal with housing.

Will Stewart, Stay, Work, Play NH - Opposes the bill. We are in opposition to this bill.

Rep. Stavis: Housing Authority has nothing to do with affordability. Any decisions the board has provided? ANS: I am not aware of any.

Natch Greyes, NH Municipal Association - Supports the bill. It wasn't the board's decision on housing it was more on the placement of the road.

Rep. Gilman: Which board hears the plans first? ANS: It takes any case that deals with housing.

Rep. Tripp: Major flaw that the Housing Appeals Board is unfounded? ANS: Yes, it is.

***Elissa Margolin, Housing Action NH** - Opposes the bill. Does not support this bill.

David Juvet, BIA - Opposes the bill. The Appeals Board looks at the land regulations. We built in the language that the NH Municipal Association had asked for. We are having trouble finding housing in our community. Ask them if the amount of housing is sufficient.

Rep. Rung: What organization? ANS: BIA. Companies coming to NH affects of affordable housing? ANS: Is there an adequate work force to fill their jobs. If we choose to move to NH, is there going to be sufficient housing?

Respectfully submitted,

Rep. John MacDonald
Clerk

House Remote Testify

Municipal and County Government Committee Testify List for Bill HB1307 on 2022-02-07

Support: 7 Oppose: 7 Neutral: 0 Total to Testify: 0

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Kinney, Rev. Dr. Gail	Canaan, NH gailhrdi@aol.com	A Member of the Public	Myself	Oppose	No	No	2/4/2022 2:31 PM
Foster, Joanne	PORTSMOUTH, NH jocfoster@outlook.com	A Member of the Public	Myself	Oppose	No	No	2/4/2022 2:50 PM
moldoff, ross	salem, NH rmoldoff@salemnh.gov	A Member of the Public	Myself	Support	No	No	2/4/2022 2:52 PM
MaLossi Kerbyson, Liane	Henniker, NH fpgcdirector@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/4/2022 2:53 PM
Tourigny, Robert	Manchester, NH rtourigny@nwsnh.org	A Member of the Public	NeighborWorks Southern New Hampshire	Oppose	No	No	2/4/2022 3:08 PM
Feder, Marsha	Hollis, NH marshafeder@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/4/2022 3:08 PM
Ross, David	Concord, NH spinner2243@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/4/2022 3:09 PM
Pratt, Lisa	Concord, NH Lph@cityhopenh.org	A Member of the Public	Myself	Oppose	No	No	2/4/2022 3:14 PM
perencevich, ruth	concord, NH rperence@comast.net	A Member of the Public	Myself	Oppose	No	No	2/4/2022 3:14 PM
Hochberg, James	Concord, NH nhmtnbkr@netscape.net	A Member of the Public	Myself	Oppose	No	No	2/4/2022 3:15 PM
Flockhart, Eileen	Exeter, NH Hartflock@comcast.net	A Member of the Public	Myself	Oppose	No	No	2/4/2022 3:29 PM
Fries, Ellen	Bow, NH toehfries@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/4/2022 4:30 PM
Planning, Aron	deerfield, NH aron1208@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/4/2022 5:19 PM

Porter, Marjorie	HILLSBORO, NH maporter995@gmail.com	An Elected Official	Hillsborough District 1	Oppose	No	No	2/4/2022 5:34 PM
Flood Page, Julie	Rindge, NH juliefloodpage@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/5/2022 11:17 AM
Richardson, Daniel	Nashua, NH daniel6_22@cmcast.net	A Member of the Public	Myself	Oppose	No	No	2/5/2022 3:29 PM
Reed, George	Bow, NH george.reed.iv@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/6/2022 3:04 AM
QUISUMBING-KING, Cora	Dover, NH coraq@comcast.net	A Member of the Public	Myself	Oppose	No	No	2/6/2022 10:07 AM
Best, Robert	Merrimack, NH RobertLBest@comcast.net	A Member of the Public	Myself	Oppose	No	No	2/6/2022 10:23 AM
Campbell, Karolyn	Epsom, NH kkcampbell43@yahoo.com	A Member of the Public	Myself	Oppose	No	No	2/6/2022 11:25 AM
Hester, Kimberly	Nashua, NH livingboldly@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/6/2022 11:31 AM
Grossi, Anne	Bedford, NH adgrossi7982@gmail.com	A Member of the Public	Myself	Support	No	No	2/6/2022 12:06 PM
Potucek, Representative John	Rockingham 6 - Derry, NH potucek1@comcast.net	An Elected Official	Myself & My Constituents	Oppose	No	No	2/6/2022 12:19 PM
Mott-Smith, Wiltrud	Loudon, NH wmottsm@worldpath.net	A Member of the Public	Myself	Oppose	No	No	2/6/2022 1:14 PM
Bevill, Robert	Merrimack, NH bob@bevill.com	A Member of the Public	Myself	Oppose	No	No	2/6/2022 3:42 PM
Dargie, Paul	Milford, NH pauldargie@gmail.com	An Elected Official	Myself	Support	No	No	2/6/2022 5:28 PM
O'Neill, Nan	SALISBURY, NH raptorko@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/6/2022 5:57 PM
Donnelly, Ryan	Hudson, NH rdonnelly@gsil.org	A Member of the Public	Granite State Independent Living	Oppose	No	No	2/6/2022 7:19 PM
Pray, D.	Amherst, NH dapsrp@gmail.com	A Member of the Public	Myself	Support	No	No	2/6/2022 8:28 PM
Moore, Susan	Franconia, NH susan.moore.franconia@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/6/2022 9:12 PM
Hatcher, Phil	Dover, NH phil.hatcher@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/6/2022 9:23 PM

Pauer, Eric	Brookline, NH secretary@BrooklineGOP.org	A Member of the Public	Myself	Support	No	No	2/6/2022 10:11 PM
Oxenham, Lee	Plainfield, NH leeoxenham@comcast.net	An Elected Official	Myself	Oppose	No	No	2/6/2022 10:55 PM
Lucas, Janet	Campton, NH janluca1953@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/7/2022 7:04 AM
Cellupica, Joan	Laconia, NH jcellupica@laclt.org	A Member of the Public	Myself	Oppose	No	No	2/7/2022 8:36 AM
Greyes, Natch	Concord, NH ngreyes@nhmunicipal.org	A Lobbyist	New Hampshire Municipal Association	Support	No	No	2/7/2022 8:37 AM
Hackmann, Kent	Andover, NH hackmann@uidaho.edu	A Member of the Public	Myself	Oppose	No	No	2/7/2022 9:48 AM
Staub, Kathy	Manchester, NH kschofieldstaub@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/7/2022 10:17 AM
Groh, Ellen	Concord, NH ellen@concordhomeless.org	A Member of the Public	Myself	Oppose	No	No	2/7/2022 10:30 AM
Collyer, Anne	Newton, NH annicollyer34@gmail.com	An Elected Official	Myself	Oppose	No	No	2/7/2022 11:15 AM
Fuller, Lindsay	Concord, NH fullerl@waypointnh.org	A Member of the Public	Myself	Oppose	No	No	2/7/2022 12:35 PM
See, Alvin	Loudon, NH absee@4liberty.net	A Member of the Public	Myself	Oppose	No	No	2/7/2022 3:02 PM
thompson, julia	durham, NH maple371@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/7/2022 5:24 PM
Cote, Lois	Manchester, NH lcote06@outlook.com	A Member of the Public	Myself	Oppose	No	No	2/7/2022 8:44 PM
Kindeke, Grace	Manchester, NH gkindeke@afsc.org	A Lobbyist	American Friends Service Committee	Oppose	No	No	2/7/2022 11:56 PM



February 7, 2022

Representative Tom Dolan, Chair
Municipal and County Government Committee
New Hampshire House of Representatives
107 N Main St.
Concord, NH 03301

RE: Modifying the Housing Appeals Board (HB 1307)

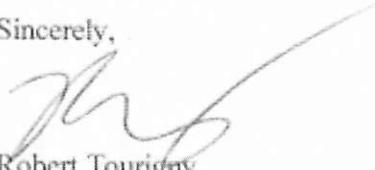
Dear Representative Dolan:

NeighborWorks Southern New Hampshire is a private non-profit community development corporation with a focus on providing affordable workforce housing. We have developed over 500 affordable units throughout our region over the past 30 years and we continue to focus on helping communities meet their housing needs.

I am discouraged to see efforts that will modify and limit the duties of the Housing Appeals Board in which it was specifically created to address. The removal of "municipal growth management controls", "conservation commissions", and "municipal permits and fees" will leave the door wide open for towns to overburden a development project if those items do not remain appealable to the HAB. As an affordable housing developer, I hope that I never have to utilize or appear before the Housing Appeals Board, and that we are always successful in meeting the spirit of local municipal regulations. However, I continue to believe that the authority established under this body will create the opportunity for fair and consistent treatment of land use cases in New Hampshire.

I encourage you to dismiss any efforts that will limit the authority or purpose of the Housing Appeals Board. Thank you very much for your consideration.

Sincerely,



Robert Tourigny
Executive Director

TRUSTEES

Carolyn Benthien
Ron Boufford
Barry Brensingar
Richard M. Bunker
Dean Christon
Ellie G. Cochran
Robert Dastin, Esq.
Sylvio Dupuis
Matthew Kfoury
Mike Lopez
Claira P. Monier
Joseph B. Reilly
Dennis Ryan
Arthur Sullivan



Heather Goley

From: Robert Tourigny <rtourigny@nwsnh.org>
Sent: Friday, February 4, 2022 5:36 PM
To: ~House Municipal and County Govt
Subject: HB1307
Attachments: HB1307.pdf

Dear members of the House Municipal and County Government Committee. I am unable to attend Monday's hearing at 11:30 on HB1307 which will modify the scope of the Housing Appeals Board. Please accept the attached written testimony in my absence. Thank you for your consideration and your commitment to addressing the needs of families across New Hampshire.

Sincerely,

Robert Tourigny
Executive Director



Physical Address:

801 Elm Street, Manchester, NH 03101

Mailing Address:

P.O. Box 3968, Manchester, NH 03105

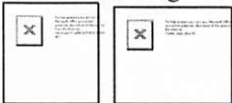
P: 603.626.4663 x. 1700

F: 603.623.8011

rtourigny@nwsnh.org

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Heather Goley

From: Jane Aitken <themaclady@comcast.net>
Sent: Sunday, February 6, 2022 10:36 AM
To: ~House Municipal and County Govt
Subject: NO on HB 1238 and HB 1307

STOP TRYING TO REGIONALIZE ZONING AND PLANNING and PUT THE STATE IN CHARGE OF WHAT TOWNS SHOULD DECIDE!

HB 1238 and HB 1307 need to be STOPPED.

Republicans who promote this stuff will be VOTED OUT.

- Jane Aitken
VC, CNHT
Founder, BRA

Heather Goley

From: revnewhall@aol.com
Sent: Friday, February 4, 2022 2:43 PM
To: ~House Municipal and County Govt
Subject: HB1307

Dear Members of the House Municipal and County Government Committee,

I'm sorry but I was not able to navigate to the way to sign-in opposition to HB1307 in your system and am resorting to sending you this email instead.

I am a minister in Nashua and, with some of my clergy colleagues, have been very concerned about the many issues about housing in our area and in the state. I was delighted and relieved when the concept of the Housing Appeals Board was introduced and have had high hopes for the many ways it can alleviate issues faced by renters and landlords in our state.

I am saddened by the moves to curtail this great idea - effectively robbing it of its very best features including the speed and ease with which housing disagreements can be addressed.

I sincerely hope that you will not be rewriting this great idea before it has even gotten off the ground.

Sincerely,
Rev. Sally Newhall

Sarah E S Newhall
33 Digital Dr. Unit 308
Nashua NH 03062

Heather Goley

From: Daniel Richardson <daniel6_22@comcast.net>
Sent: Saturday, February 5, 2022 3:22 PM
To: ~House Municipal and County Govt
Cc: Tom Lanzara; Kevin Avard; Barbara Griffin
Subject: In Opposition to HB 1307 modifying the authority and duties of the housing appeals board.

Ref: February 7, 2022 Public Hearing

Municipal and County Government Committee -

I write in opposition to HB 1307. For Housing Appeals Board (HAB) this bill would replace enumeration of functional areas of jurisdiction with appeals of any decision across all land use boards. It presupposes HAB omniscience in all functional areas, as well as within chartered municipalities. It positions HAB with far too much power in broad swath of everything housing. Its a stacked deck for insurgent developer's desires against justice to pre-existing property owners.

The HAB is a judicial board. It convenes instead of a true court for all matters of land use law or housing development. [RSA 679:7] The HAB has 3 members who have **career connections** to the income stream health of developers by virtue of the services provided by their businesses. A deadly conflict of interest to justice.

The HAB has **final judgment** to be enforced as with any final judgment of the superior court [RSA 679:16]. There is **no provision made in statute for review and rectification** of foul HAB procedure and errant understanding of law except to the case-overloaded and prohibitively expensive Supreme Court proceedings. This HAB amateur court is an inadequate substitute to true Superior Court proceedings and an experienced career judge.

HB 1216 is a much better improvement.

Please rule HB 1307 as ITL.

Daniel Richardson, Nashua NH

- The Senate Election Law and Municipal Affairs Committee recommended that SB 306 *ought to pass*, 3-2. SB 306 was then heard by the Senate Finance Committee and received an *ought to pass* recommendation, 6-0.
- Finally, the Senate passed SB 306 in a roll call vote of 18-5. As is a frequent practice during budget years, Senator D’Allesandro, chair of the Senate Finance Committee, requested that SB 306 be tabled and addressed within the budget.
- The language from SB 306 was included in House Bill 2, then House Bill 4.
- The Housing Appeals Board was discussed by conferees during the Committee of Conference for the FY 20-21 budget. Conferees agreed to the request that the appropriation for the Housing Appeals Board move to FY 21. The Housing Appeals Board and its appropriation of \$415,000 was included in the final version of HB 4.

No Impact on Local Control

The Housing Appeals Board was specifically designed to provide faster review and subject-matter expertise, but only after local reviews are exhausted (RSA 679:5 IV). In fact, as a review Board, the Housing Appeals Board only has concurrent jurisdiction with the Superior Court. As noted in a legislative bulletin from the NH Municipal Association in 2019: “The board would apply the same law and the same standards that a judge would apply, so a municipality would not be prejudiced by having an appeal brought to the board rather than to the court.”

According to RSA 679, the Housing Appeals Board cannot rewrite local municipal zoning ordinances, or subdivision regulations, or site plan regulations, or local master plans, or conservation commission rules, or historic district commission rules. It also cannot impose planning concepts such as “smart growth.” It simply reviews specific cases according to the established laws and ordinances like Superior Court. In addition, all decisions of the Housing Appeals Board can be appealed to the NH Supreme Court.

Helps Avoid Lengthy, Costly Litigation

Like the BTLA, the Housing Appeals Board helps both appellants and defendants avoid costly and lengthy litigation costs. Parties do not require legal counsel and can be represented by a project lead, site engineer, architect or pro se. (*Representation by Nonattorneys* ; Section 679:10).

It also enhances options of local landowners seeking review of local decisions impacting their private property. They too can access faster review of their cases at much less expense.

Other Myths

The Housing Appeals Board is not biased in favor of developers. It uses the same standards for case review as the Superior Court. Also, Board seats are not political appointments. Housing Appeals Board members are appointed by the NH Supreme Court.

Narrowing Jurisdiction Would Open Door to Unjust Gamesmanship

The rewrite proposed in HB 1307 of the jurisdiction of the Housing Appeals Board may seem benign at first glance. However, narrowing the jurisdiction would open the door to potential “workarounds” if a small group was looking to undermine housing development in other ways.

Narrowing the jurisdiction could also reintroduce tactical use of delays to undermine projects. Proposed housing projects that are more affordable for New Hampshire’s workforce are the most vulnerable to delay tactics due to their more complex public-private financing.

Access to review is access to justice. We should not create new barriers for applicants seeking to access the timely review offered by the newly established Housing Appeals Board. We urge you to find HB 1307 *inexpedient to legislate*.



HB 1307

Testimony of Elissa Margolin, Director

in OPPOSITION to
HB 1307

House Municipal and County Government Committee

February 7, 2022, 2:30 pm, LOB 301-303

Mr. Chairman and Members of the Committee:

My name is Elissa Margolin and I serve as director of Housing Action NH. Housing Action NH is a statewide coalition of 80 organizations united around affordable housing policy and ending homelessness in New Hampshire. Our members include those who develop, manage, own and finance affordable housing, public housing agencies, supportive housing agencies and homeless service providers. They are key partners in the work to address the housing crisis in New Hampshire.

Housing Action NH opposes House Bill 1307 and we welcome this opportunity to address concerns, clarify the origins of the Board, and debunk some of the myths that have been circulating about the Board.

Origins of the Housing Appeals Board

Housing Action NH was one part of a larger group of stakeholders -- that included the BIA, the Homebuilders, the NH Association of Realtors -- that came together in 2017 to propose the Housing Appeals Board. Many stakeholders agreed that costly and lengthy delays in the court system were contributing to the supply side problem that is at the root of NH's housing crisis.

With the goals of efficiency and expertise in mind, the stakeholder group looked to the model of the Bureau of Tax and Land Appeals, that has been successfully providing this kind of review in New Hampshire for issues related to taxation since the mid 1970s.

Originally proposed in Senate Bill 557 in 2018, followed by Senate Bill 306 and House Bill 104 in 2019, the Housing Appeals Board was established July 1, 2020, when RSA 679 took effect.

History of the Legislation

- The Senate passed SB 557 on a voice vote on March 15, 2018. The House recommended the bill for *interim study* in a division vote of 223-91 on April 26, 2018, then *recommended the bill for future legislation* in a vote of 20-2.
- Senator Giuda, along with Senator Rosenwald, Senator Carson, Senator Feltes, Senator Fuller Clark, Senator Watters, Representative Butler, Representative Wallner, Representative Hinch, and Representative Porter, reintroduced the Housing Appeals Board in the 2019 session, in [SB 306](#).
- A House version of the Housing Appeals Board, was introduced by Representative Ober, through HB 104. The stakeholders urged support for the Senate version, rather than the House version, and the bill was *ITL'd* on January 31, 2019 through a voice vote.

without infringing on local control. No changes to local zoning or process are required by the Housing Appeals Board, and the Board applies the same legal standards as superior court in adjudicating decisions of local boards. The Board does not have the power to change or bypass local land use regulations. The Housing Appeals Board is part of a truly "New Hampshire" solution to the problems of our housing market.

Under RSA 679:5, the authority of the Housing Appeals Board is clearly defined. It states that the decisions of any local board, commission, or committee related to housing and housing development proposals that could be appealed to superior court may instead be appealed to the Housing Appeals Board. To limit the authority of the Housing Appeals Board only to the decisions of local land use boards unnecessarily reduces the Board's authority and provides an easy way for communities that want to thwart legitimate housing development proposals by continuing to maintain a "so sue us" posture. It is precisely those sorts of decisions that the Housing Appeals Board was designed and intended to address.

Since its formal establishment about 18 months ago, the Housing Appeals Board has received over thirty appeals and has made decisions in about half of those cases. These decisions reflect careful analysis and a balanced approach. As the Legislature intended, the Housing Appeals Board is doing its job to efficiently hear and decide matters in a way that neither favors developers, abutters, or municipalities. We respectfully urge your committee to recommend HB 1307 inexpedient to legislate.

Thank you for the opportunity to provide testimony to your committee. The staff of New Hampshire Housing will be happy to provide any additional information that your committee may require.

Sincerely,

A handwritten signature in black ink that reads "Rob Dapice". The signature is written in a cursive, flowing style.

Robert B. Dapice
Executive Director

cc: Committee members



NEW HAMPSHIRE
HOUSING

HB 1307

Rob Dapice
Executive Director/CEO
rdapice@nhhfa.org

February 7, 2022

The Honorable Tom Dolan, Chair
House Municipal and County Government Committee
Legislative Office Building, Room 301
Concord, NH 03301

Subject: HB 1307 – modifying the authority and duties of the housing appeals board

Dear Chairman Dolan:

I am writing to express New Hampshire Housing's opposition to HB 1307, which would significantly curtail the jurisdictional authority of the Housing Appeals Board. The Housing Appeals Board was created by the Legislature pursuant to RSA Chapter 679 to provide an alternative appeals process for local decisions on proposals for housing and housing developments.

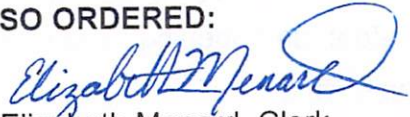
New Hampshire's housing market is increasingly unable to meet the needs of our citizens to find adequate housing in the communities where they want to live and work. The supply of housing is simply not keeping pace with demand, and this is making housing more expensive. Our statewide rental vacancy rate is under 1%, well below the 5% we consider to indicate a balanced market. For home purchasers, the median price of a home was \$385,000 in December 2021, 33% higher than two years earlier. The inventory of homes for sale is critically low.

This lack of supply is partly a reflection of the difficulty faced by property owners and developers in some communities as they have put forth proposals to create new housing. They often encounter resistance in the form of unnecessary regulations, onerous conditions of approval, or unreasonable denials. Frequently, they also face resistance from neighborhood opposition, which has traditionally been able to use the court appeals process to delay project development, often for many years. That delay either adds significantly to the ultimate cost of development, or simply discourages housing construction outright.

Some communities are effectively accommodating the needs of our citizens for more housing. However, many are not; and more housing is needed across a broad spectrum of New Hampshire's communities. The Housing Appeals Board provides a faster, easier, and less expensive appeals mechanism for housing development proposals. It provides property owners and builders with an enhanced opportunity to appeal local decisions, yet it achieves this

- 2) A review of the "occasion" factors consistent with *Green Crow*, which factors shall not include any consideration of the proposed residential project.¹²

**HOUSING APPEALS BOARD
SO ORDERED:**


Elizabeth Menard, Clerk

Date: June 30, 2021

¹² Of course, this entire discussion still has an unanswered issue: if only 300 feet of Upper Beacon Hill Road is reclassified, what happens if the Town of Pembroke Planning Board reviews the plan and, in considering the TRC comments, wants all of Beacon Hill Road reclassified to allow a through-road? Clearly, the project would need to return to the Board of Selectmen for a revised road layout starting the RSA 231:8 process anew.

addition to improved accessibility for fire and police services. Contrast one of Selectman Goulet's reasons, specifically number three (3), "[t]here is no improvement to convenience of travel," (CR at 121), with her belief that the reclassification will "improve accessibility for fire, emergency, and police." On the other hand, Selectman Yeaton and Selectman Bean felt this factor was not applicable to the project. (CR at 121). Again, while the focus appears to be on a 300-foot road opening based on the motion, the separate findings by each Selectman is problematic.

The road layout length gives pause regarding the focus of each Selectman in arriving at their individual analysis. The Housing Appeals Board chooses not to attempt "to read the minds" of each Selectman. Each approached the layout issue with diligence at the time of the final vote, but road-length and the possible weight Selectman Bean may have placed on the actual project itself is a violation of *Green Crow*. Each Selectman's clear expectation of layout road length is unknown, and deserves clarification to fairly determine the Applicant's request in light of the *Green Crow* criteria.¹¹

Selectman Bean's vote caused the failure of the motion to reclassify. While Selectman Bean had his own rationale for his no-vote, were those reasons by a balance of the probabilities influenced solely by the road layout petition requested by the Applicant, or were they influenced by the Applicant's proposed project?

The Housing Appeals Board VACATES the Board of Selectmen's decision to deny the Applicant's request, and REMANDS the case back to the Board of Selectmen who shall conduct a public hearing within 45 days of this order for further review and determination of:

- 1) The road length being considered for reclassification to ensure clear application of the "occasion" criteria; and

¹¹ In addition to road length, the scope of the project was highlighted by the public notices of the 14 November 2020 site walk meeting, (CR at 73), and the 04 January 2021 Board of Selectmen meeting. (CR at 108). This set the stage for a discussion of the project at various meetings, culminating in the 21 January 2021 vote.

- 4) The entire Class VI portion of Beacon Hill Road that differed from the plan by an estimated 600-700 feet, which scaled it at 1,100 feet.⁹ (CR at 46, 67, 79, 87).

As an example, at the 16 December 2020 Board of Selectmen meeting, (CR at 60), the following exchange occurred:

“David stated that it is his understanding that if it was decided that the whole road needed to be opened, the petitioner would do that. Selectman Bond asked if he has said at any point that he would definitely be willing to open the whole road and assume all the costs associated if he was asked to. David said he it was his understanding that he would but he can’t say for certain.”

This caused Selectman Bean to withdraw his motion to deny the layout petition, which was then tabled until the next Board of Selectmen meeting.

Layout road-length likely was on the minds of some, if not all, the Selectmen.¹⁰ The final motion was to reclassify 300 feet of Beacon Hill Road, but there was apparently little additional discussion regarding layout road-length options. This is problematic since the Town of Pembroke Roads Committee recommended traffic access include Lower Beacon Hill Road to Pembroke Street. (CR at 23). Later, the Certified Record reflects that the Applicant would improve that portion of Beacon Hill Road as well. (CR at 79).

This raises the question of how much, if at all, the layout road-length and location impacted each Selectman’s layout “occasion” analysis. The Certified Record reveals the Selectboard’s collective comments indicating this may have been an issue. As an example, one factor was improved accessibility to the business district and employment centers, in

⁹ This distance was confirmed by the Applicant’s counsel during oral argument. In fact, the Applicant’s request filed with the Selectboard on 30 July 2019 and 07 November 2019, (CR at 37, 72), refers to an attached plan for length guidance. Various plans do not carefully define the requested layout length.

¹⁰ At the 02 December 2019 Board of Selectmen meeting, Selectman Bean referenced a possible reclassification length of 140 feet. (CR at 52).

This likely is not an unusual occurrence since if one is appearing before any municipal board with a road reclassification request that board will likely ask the question: *for what purpose do you need a road layout?* It would be illogical to think the requesting party would say: *"I'm not going to tell you, since it isn't relevant, nor should it be considered when reviewing my request."* Obviously, there must be a middle ground, and that requires all Board members to focus on the facts—and the law—in making a decision. As most judges will point out: "this is not easy." Vice-Chair, Selectman Goulet, was on target when she opined: "In other words, our job is to be laser focused on only the question of whether to make this part of Beacon Hill Road Class V." (CR at 122).

Deliberations regarding the requested layout occurred at the 19 January 2021 Board of Selectmen meeting. (CR at 118-122). That meeting reveals thoughtful discussion by the four (4) Selectmen who participated in layout discussion. Each gave their opinions regarding the "occasion" criteria they had been provided.

While three (3) Selectmen generally adhered to the proper "occasion" standards, one did not. Selectmen Bean, in his review of the "public interest factors," specifically points 3, 4, and 8, clearly brought the proposed multi-family residential use into the mix. This is not consistent with *Green Crow*.⁷ While parenthetical, collateral reference to the project might not be considered fatal to Selectman Bean's analysis,⁸ there are three (3) distinct references to the proposed use which likely influenced his consideration and negative vote. In addition to the foregoing issue, the Selectmen's discussion and motion refers to opening "300 feet of Beacon Hill Road." (CR at 122). Prior to the 19 January 2021 vote, the Certified Record references in no particular order:

- 1) 140 feet; (CR at 52)
- 2) 200 feet; (CR at 46)
- 3) 250 feet; (CR at 18, 35)

⁷ Points 3, 4, and 8 were project-related: 3)...number of people who will be in the development; 4) no one in the complex will have a child; 8) up to two people in each apartment...(CR at 121).

⁸ See, *Oakley Merriam v. Town of Salem*, 112 N.H. 267 (1972). While a Zoning Board of Adjustment case, the Supreme Court felt that the subjective comments of one member is not relevant to the question of whether the Board's decision is one that could be reached by reasonable people given the evidence presented.

judicially interpreted. The New Hampshire Supreme Court in *Green Crow Corp. v. New Ipswich*, 157 N.H. 344 (2008) provided standards in evaluating whether “occasion” exists in road layout requests. *Green Crow* provides guidance in evaluating “occasion,” especially since *Green Crow’s* genesis was an interlocutory appeal from the Superior Court requesting rulings on two questions:

“(1) Does RSA 231:28 require a petitioner requesting permission from the Selectmen to upgrade and reclassify an existing Class VI road to Class V standards to show occasion exists for the layout?”

The answer of the Supreme Court was “yes.”

“(2) If the Court finds that the occasion analysis applies to the upgrade and reclassification under RSA 231:28, may the Selectmen consider as part of the occasion analysis the anticipated impact associated with the development that may result from the upgrade of the Class VI road to Class V status?”

The answer of the Supreme Court was “no.”⁶

Therefore, in reviewing and considering the *Green Crow* factors itemized by the Supreme Court, the project itself is not a material criteria or condition and should play no role in evaluating “occasion.” However, the Certified Record is at odds with this directive. At every turn, starting with the Planning Board discussions in March of 2019 through the final vote on 19 January 2021, the project was front and center.

⁶ While *Green Crow’s* statutory premise was RSA 231:28, RSA 231:8 is the proper procedural statute in this case since all highway improvements were to be paid by the Applicant. Like RSA 231:8, RSA 231:28 allows the Town Selectmen to layout a Class V highway over a Class VI highway subject to betterment assessment. RSA 231:28 does not state whether “occasion” is required for a conditional highway layout. *Green Crow* applied the “occasion” requirement of RSA 231:8 to RSA 231:28 and created criteria to assist with the “occasion” analysis.

Interestingly, this notice includes 250 feet to be reclassified, not the 300 feet prior mentioned. After further citizen and Applicant discussion, the matter was again tabled with the Chair looking for a full board in attendance prior to voting.⁵ (CR at 113).

At the 19 January 2021 Board of Selectmen meeting, the Selectmen were provided a checklist for their use in determining if “occasion” existed to reopen/reclassify a portion of Beacon Hill Road. The Vice-Chair, Selectman Goulet, read a proposed statement to the other Selectmen highlighting the fact that many concerns are zoning and planning related, and should not be the focus of the Board of Selectmen. “In other words, our job is to be laser focused on only the question of whether to make this part of Beacon Hill Road Class V.”

Each of the four (4) members present at the meeting itemized the factors in an effort to support their respective positions. (CR at 117). After this review upon motion duly made and seconded to approve the Beacon Hill Road motion, the motion was denied on a 2-2 vote. (CR at 122). This appeal followed.

LEGAL STANDARDS:

As both parties are aware, the Housing Appeals Board does not sit as a substitute for the Board of Selectmen and ordinarily may not substitute its judgment in rendering a decision in the case. *Wolfeboro Neck Prop. Owners Ass’n v. Town of Wolfeboro*, 146 N.H. 449 (2001). The Board of Selectmen’s factual findings are to be treated as prima facie, lawful, and reasonable in reviewing any appeal, unless there are “...errors of law or if the [housing appeals] board is persuaded by a balance of the probabilities, on the evidence before it, that said decision is unreasonable.” RSA 679:9, II.

DISCUSSION:

In accordance with RSA 231:8: “[t]he Selectmen of a town, upon petition, may lay out any new...class V or VI highway or alter any such existing highway within their town for which there shall be occasion.” Unfortunately, “occasion” is not a defined statutory term but has been

⁵ A theme throughout the many Selectmen meetings was to wait in order to have a full board (five (5) members) for voting. That never occurred as the 19 January 2021 vote reflects.

of 600-700 feet was advanced at the meeting. The matter was again tabled without a vote. (CR at 67).

At the 23 January 2020 Board of Selectmen meeting, the Applicant stated his willingness to wait for a road-reclassification vote until after the upcoming Town elections. (CR at 7). Then, on 30 July 2020, an application for road layout/reclassification identical in substance⁴ to the prior 07 November 2019 application (CR at 37) was filed with the Town of Pembroke Board of Selectmen. (CR at 72).

Prior to the Board of Selectmen hearing on 16 November 2020, the Board of Selectmen noticed a scheduled site walk (Public Hearing) for 14 November 2020 at 10:00 AM. This notice in the Certified Record on page 73 is important because it focuses on the proposed “age restricted housing,” including the proposed development plan. The Board of Selectmen’s focus was to “...merely do a site walk and listen to the project.” Then, at the 14 November 2020 site walk, the minutes reflect the purpose “...is to hear a presentation from Mr. Evans on his proposed elderly housing project.” (CR at 74).

At the 16 November 2020 Board of Selectmen meeting, the proposal starts with a 300-foot reopening discussion. Interested citizens provided input, but most of the concerns were project related—not road related—to be heard in the future by the Town of Pembroke Planning Board. At that meeting, the Applicant’s representative again commented on road reopening length and appeared to concede that, if required, the entire Class VI portion would be upgraded by the Applicant. To wit: “The opening of the road all the way is not something Bill Evans is requesting but is something the Fire Department will likely require but that isn’t Bill Evans making the argument to open it.” No vote was taken. (CR at 79-80).

The Town of Pembroke Selectmen met on 04 January 2021. Again, the Public Hearing Notice not only included the Beacon Hill Road reclassification request but also the notice of the project, “...to construct approximately 101 units of phased age and income restricted housing on the property in conjunction with New Hampshire Housing Finance.” (CR at 108).

⁴ Only the word “recent” was omitted.

indicated the property was marked for the Selectmen to see if they visited the site. No further action was taken at that meeting by the Board of Selectmen. (CR at 46).

On 02 December 2019, the Board of Selectmen again discussed the Applicant's reopening request. At that meeting, the Applicant shared with the Board of Selectmen that when he purchased the parcel in 1985, Beacon Hill Road was a Class V town road and that a portion of the road, including his road frontage, was reclassified to Class VI in 1990. No one clearly recalled the rationale for this town action. The Selectmen also discussed entering the parcel from a different road, specifically the "3rd Range Road," but all agreed that a portion of Beacon Hill Road would still need to be opened, and the alternate access point could impact the proposed conservation area. In addition, there was discussion by Selectman Bean about creating a "double driveway" 140 feet from existing pavement in order to reduce the length of the reclassification request. The Applicant agreed to "look at that." No vote was taken. (CR at 52).

At the 16 December 2019 Board of Selectmen meeting, and after further discussion about the proposed length to be reclassified, a motion was made by Selectman Bean to deny the Applicant's petition. After the motion was seconded there was discussion about opening the "whole road." Selectman Bond questioned whether the Applicant would be willing to open the "whole road." Mr. Jodoin responded by saying he thought that was the case but was not certain. Interestingly, at that point, Selectman Bean withdrew his motion to deny the petition and the matter was tabled to get an answer to the question regarding the opening of the entire Class VI portion of Beacon Hill Road. (CR at 60).

At the 06 January 2020 Board of Selectmen meeting, Beacon Hill Road was again on the agenda. Further discussion ensued over the length of the proposed Beacon Hill Road reclassification. Although not categorically stated, the minutes reflect that the Applicant would dedicate any of his land needed for Beacon Hill Road reopening and would meet any federal or state requirements for the road. Although the submitted plans seem to indicate 1,100 feet of Beacon Hill Road would need to be reclassified to connect it to existing Class V roads, a length

Road using the 4th Range Road as the access point. Comments from the Pembroke Department of Public Works and Ambulance services proposed the opening of the "lower section" of Beacon Hill Road to connect with Pembroke Street since emergency response time would be reduced from that point rather than the 4th Range Road. All participants agreed that the road reclassification would need to "go before the Selectmen." (CR at 19).³

Prior to filing a formal request with the Town of Pembroke Board of Selectmen to layout/reclassify a portion of Beacon Hill Road, on 21 October 2019 the Applicant met with the Town of Pembroke Board of Selectmen to discuss the possibility of reopening approximately 250 feet of Beacon Hill Class VI Road. (CR at 26). Although Beacon Hill Road was discussed, a significant part of the comments were directed to the proposed project. (CR at 26-27). However, there was brief discussion about the portion of Beacon Hill Road to reclassify, specifically Upper Beacon versus Lower Beacon; also discussed was the fact that government funding for the project might require opening the entire Class VI portion, about 1,100 feet as calculated from the later plans submitted to the Housing Appeals Board. Likely, because of Board of Selectmen comments made on 05 November 2019, the Town of Pembroke Roads Committee again reviewed the Beacon Hill Road layout/reclassification issue. At that meeting, the proposed project was discussed along with the prior TRC comments regarding the opening of Beacon Hill Road. (CR at 35).

On 07 November 2019, the Applicant submitted a formal request for the layout of a portion of Beacon Hill Road for project access. No specific length was specified, but the application directed the Selectmen's attention to a conceptual plan indicating the proposed location for access to the site. (CR at 37). At the Board of Selectmen meeting on 18 November 2019, the petition to reopen was discussed under "New Business." The Town of Pembroke Town Administrator, David Jodoin, echoed thoughts advanced by the Town of Pembroke TRC; "...they would like to see the entire [Class VI portion] of the road opened." Mr. Jodoin then

³ The day before the TRC meeting, the Town of Pembroke Roads Committee met and recommended "...that traffic access should include Lower Beacon hill Road to Pembroke Street and necessary upgrades be made." (CR at 23).

HB 1307

**THE STATE OF NEW HAMPSHIRE
HOUSING APPEALS BOARD**
Governor Hugh J. Gallen State Office Park

Johnson Hall, Room 201
107 Pleasant Street
Concord, NH 03301
Telephone: (603) 271-1198
TDD Access: Relay NH 1-800-735-2964
Email: clerk@hab.nh.gov
Visit us at <https://hab.nh.gov>



CASE NAME: William Evans, Trustee v. Town of Pembroke
CASE No.: BSA-2021-02

ORDER

The matter before the Housing Appeals Board is the Town of Pembroke ("Town") Board of Selectmen's 19 January 2021 denial of the Applicant's (William Evans, Trustee of the William Evans Irrevocable Trust and the Mary Lou Evans Irrevocable Trust) request to reclassify or return a portion of Beacon Hill Road from Class VI status to its former Class V status to allow for the development of the Applicant's abutting, 45-acre property.

FACTS:

On 26 March 2019, the Applicant, William Evans, Trustee, along with Steve Lewis had a conceptual review¹ with the Town of Pembroke Planning Board regarding a 96-unit, multi-family affordable housing proposal to be located on 45 acres of land in the Town's Medium-Density Residential (R-1) zone² and the Wetland Protection District. (Certified Record (CR) at 3). Although the size and scope of the project was discussed, there was no specific discussion of the need to reclassify a portion of Beacon Hill Road from Class VI status to Class V status to meet the Town's road-frontage requirements for development on the parcel.

Several months later on 02 October 2019, the Applicant met with the Town of Pembroke Technical Review Committee ("TRC") to further discuss the multi-family affordable housing proposal to be located on Beacon Hill Road. (CR at 17). At the TRC meeting, the issue of improving 250 feet of Beacon Hill Road was briefly discussed. The Applicant indicated he would be meeting with the Selectmen regarding improvements to a portion of Beacon Hill

¹ Conceptual discussions are allowed under RSA 676:4, II (a).

² Multi-family dwellings are allowed in this zoning district.

Respectfully,

Bob Giuda
State Senator
NH District 2
603-219-9643
bob.giuda@leg.state.nh.us

Daley Frenette
Legislative Aide to Senator Bob Giuda
Legislative Aide to the Senate Energy & Natural Resources Committee
Phone: (603) 271-3042
E-mail: daley.frenette@leg.state.nh.us

Heather Goley

From: Daley Frenette
Sent: Monday, February 7, 2022 8:18 AM
To: Bradley Greenland; Charlie Melvin; Diane Pauer; Eric Gallager; Heather Goley; Ivy Vann; Jim Maggiore; John MacDonald; Joseph Guthrie; Joseph Guthrie; Julie Gilman; Latha Mangipudi; Laurel Stavis; Patricia Klee; Paul Ayer; Richard Lascelles; Richard Tripp; Rosemarie Rung; Susan Treleaven; Tom Dolan; Tony Piemonte
Subject: Letter from Senator Giuda on HB1307

Honorable Members of the House Municipal and County Government Committee,

As you consider HB1307, I ask you to begin by reading the 15 rulings that the HAB has issued since it began operations. In 13 of the 15 cases on which it has ruled, the HAB found that the municipalities had violated state law and/or associated case law, violated their own local land use ordinances and/or associated case law, or had issued arbitrary decisions with no basis in law whatsoever.

The HAB does not usurp local control. It does, however, ensure that local land use decisions are consistent with existing state law and local ordinances, and remands back to the municipality for reconsideration those decisions that are not in compliance with either or both, as well as any applicable case law.

All HAB decisions can be found at the [HAB website](#). The HAB uses the same standard of proof as the Superior Court, and you'll find that their rulings are logical, instructive, and when all is said and done, can be appealed to the State Supreme Court by either party. Remember that the Supreme Court selects the members of the HAB just as it selects the members of the Board of Tax and Land Appeals after which the HAB is modeled.

Passing this legislation will block the HAB from considering any local decisions in which local boards, departments, or job titles which exist in a community aren't specifically named in the proposed legislation. I call your attention to HAB Order #2021-013_BSA-2021-02_20210630 (William Evans vs. Town of Pembroke), which can be found on the [website](#). In this case, the Selectboard's decision was inconsistent with case law, and the matter was remanded back to the town for reconsideration. Under HB1307, this case wouldn't have been eligible for consideration because Boards of Selectmen aren't named in the bill. Incidentally, there is also no mention of any participation by local Conservation Commissions/Committees, or any other boards, committees, or positions that may be specific to particular communities.

The HAB was established as a quicker and less expensive alternative to the slower and more costly Superior court appeals process that was causing developers and investors to either decide not to begin, or to abandon housing construction projects during the worst housing shortage in our state's history. And it's working as planned, as its rulings clearly demonstrate, without in any way diminishing or usurping local control.

Please help alleviate NH's critical housing shortage by allowing the Housing Appeals Board to continue to do its work across the spectrum of local land use boards, agencies and personnel that are not named in this legislation. When you read the Board's decisions; you will see that it takes nothing away from local control. Rather, it ensures that decisions rendered by those boards and other municipal agencies and personnel are in compliance with our state laws, case law, and the ordinances enacted by the citizens of our NH communities and it does so at significantly less cost than a Superior Court case would incur.

For the above reasons, I ask you to please vote ITL on HB1307.

Thank you for your consideration.

Testimony on HB1307

By way of background, I've been the Planning Director in Salem for the past 38 years. In that time, the Salem Planning Board has approved over 3500 units of housing. The Town has allowed accessory apartments since 1989. Salem adopted a workforce housing ordinance in 2010 and approved the 3 projects under it so far. Our Zoning Board regularly approves variances for construction of new homes on undersized lots. Recently, the Planning Board approved 1200 units of multi-family housing at the new Tuscan Village project. We've seen a lot of housing development in Salem.

The Housing Appeals Board legislation has many problems.

First, the legislation is too broad. It allows appeals of any local decision relating to housing and housing development made by the Planning Board, Zoning Board, Conservation Commission, or Historic District Commission. The appeals do not have to relate to affordable housing, so every denial of any aspect of a housing unit, whether a variance for reduced side setbacks for a single house or a site plan for a 200 unit apartment project, is subject to an appeal. This will lead to many more appeals than current conditions. Local Boards and staff will be constantly collecting certified records and working with (and paying) our attorneys to defend the appeals. At the very least, the NH Legislature should consider restricting the Housing Appeals Board jurisdiction to only affordable/workforce housing projects.

Second, the Housing Appeals Board members will be acting as judges, interpreting regulations and balancing the interests of various parties to a lawsuit, but they will be unqualified for the job. Membership on the Board will include an attorney and a professional engineer or land surveyor. They will be charged with deciding whether a community's land use regulations provide a reasonable opportunity for workforce housing development, whether conditions of approval render a project economically unviable, and whether a Board was unreasonable or unlawful. But Board members will have no experience weighing the many factors that go into a local Board's decision. This job is best left to judges.

Third, the Housing Appeals Board will not accomplish the goal of increasing affordable housing since the market and construction costs set the price of housing. Some have argued that local regulations and local Board practices make housing unaffordable. In Salem, almost all housing applications are for market rate housing. Builders and developers make more money from market rate projects and that is clearly what they want to build. In fact, recent higher density housing (such as our senior housing projects or the new Tuscan Village apartments and townhouses in Salem) is even more expensive than existing lower density housing, due to high land values and construction costs, not local regulations.

Thank you for considering my comments on this bill. Please contact me if you have any questions.

Ross Moldoff, Planning Director
Town of Salem, NH
33 Geremonty Drive
Salem, NH 03079
603-890-2083
rmoldoff@salemnh.gov



February 7, 2022

Representative Tom Dolan, Chair
Municipal and County Government Committee
New Hampshire House of Representatives
107 N Main St.
Concord, NH 03301

RE: Modifying the Housing Appeals Board (HB 1307)

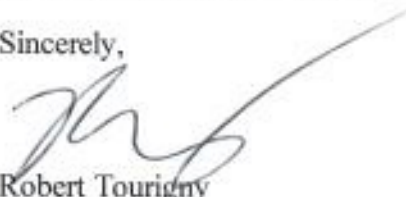
Dear Representative Dolan:

NeighborWorks Southern New Hampshire is a private non-profit community development corporation with a focus on providing affordable workforce housing. We have developed over 500 affordable units throughout our region over the past 30 years and we continue to focus on helping communities meet their housing needs.

I am discouraged to see efforts that will modify and limit the duties of the Housing Appeals Board in which it was specifically created to address. The removal of "municipal growth management controls", "conservation commissions", and "municipal permits and fees" will leave the door wide open for towns to overburden a development project if those items do not remain appealable to the HAB. As an affordable housing developer, I hope that I never have to utilize or appear before the Housing Appeals Board, and that we are always successful in meeting the spirit of local municipal regulations. However, I continue to believe that the authority established under this body will create the opportunity for fair and consistent treatment of land use cases in New Hampshire.

I encourage you to dismiss any efforts that will limit the authority or purpose of the Housing Appeals Board. Thank you very much for your consideration.

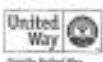
Sincerely,



Robert Tourigny
Executive Director

TRUSTEES

Carolyn Benthien
Ron Boufford
Barry Brensinger
Richard M. Bunker
Dean Christon
Ellie G. Cochran
Robert Dastin, Esq.
Sylvio Dupuis
Matthew Kfoury
Mike Lopez
Claire P. Monier
Joseph B. Reilly
Dennis Ryan
Arthur Sullivan



Subject: In Opposition to HB 1307 modifying the authority and duties of the housing appeals board.
From: Daniel Richardson <daniel6_22@comcast.net>
Date: 2/5/2022, 3:21 PM
To: HouseMunicipalandCountyGovt@leg.state.nh.us
CC: Tom Lanzara <tomlanzara@gmail.com>, "Senator Kevin Avard (R)" <Kevin.Avard@leg.state.nh.us>, Barbara Griffin <barbara.griffin@leg.state.nh.us>
BCC: "Jane (Coalition of NH Taxpayers) Aitken" <themaclady@comcast.net>

Ref: February 7, 2022 Public Hearing

Municipal and County Government Committee -

I write in opposition to HB 1307. For Housing Appeals Board (HAB) this bill would replace enumeration of functional areas of jurisdiction with appeals of any decision across all land use boards. It presupposes HAB omniscience in all functional areas, as well as within chartered municipalities. It positions HAB with far too much power in broad swath of everything housing. Its a stacked deck for insurgent developer's desires against justice to pre-existing property owners.

The HAB is a judicial board. It convenes instead of a true court for all matters of land use law or housing development. [RSA 679:7] The HAB has 3 members who have **career connections** to the income stream health of developers by virtue of the services provided by their businesses. A deadly conflict of interest to justice.

The HAB has **final judgment** to be enforced as with any final judgment of the superior court [RSA 679:16]. There is **no provision made in statute for review and rectification** of foul HAB procedure and errant understanding of law except to the case-overloaded and prohibitively expensive Supreme Court proceedings. This HAB amateur court is an inadequate substitute to true Superior Court proceedings and an experienced career judge.

HB 1216 is a much better improvement.

Please rule HB 1307 as ITL.

Daniel Richardson, Nashua NH



February 7, 2022

RE: HB 1307: Modifying the Authority and Duties of the Housing Appeals Board

To the Honored Members of the House Municipal and County Government Committee

I submit this testimony in **opposition** to HB 1307 on behalf of the Concord Coalition to End Homelessness.

Concord Coalition to End Homelessness (CCEH) is non-profit organization that provides many crisis response services to people struggling with homelessness, including:

- A year-round, daytime Resource Center where people struggling with homelessness can get a shower, do laundry, get their mail, and work with a case manager to help them access other resources such as mainstream benefits, medical and mental health care, housing and jobs. We serve anywhere from 30-60 people each day, and about 600 unique individuals over the course of the year.
- An Emergency Winter Shelter where some of the most vulnerable individuals who are homeless, those living in the woods around Concord or in their cars, can have a warm, safe place to sleep each night. Our Winter Shelter has been averaging about 30 people per night this winter, and typically serves 140-190 unique individuals over the course of a winter season.
- A new Outreach program that goes out to encampments to connect directly with anyone who, for whatever reason, does not come in to our Resource Center or Winter Shelter, and which helps to coordinate the outreach efforts of other local agencies.

While these crisis services are critical, they do not actually end homelessness. Permanent housing is what ends someone's homelessness. For the past several years, CCEH has become increasingly focused on providing "permanent supportive housing" opportunities for individuals coming from long-term, or "chronic" homelessness. We can currently serve 22 people in our different permanent supportive housing programs. Most of our participants survive on very limited disability payments as their only source of income, usually around \$800 per month. Permanent supportive housing provides rental assistance to make the apartment affordable to someone on disability, coupled with on-going case management support to help the person stay stably housed.

The current housing shortage in New Hampshire has had a devastating impact on our ability to move people from homelessness into permanent, stable housing. We have about six clients right now who have a rental assistance voucher in their hands, but they cannot find a place to use it. Besides the

incredibly low vacancy rate in Concord, very often when an apartment is available, the rental rate is above the maximum amount their voucher will cover.

CCEH stepped into becoming a housing development ourselves a couple of years ago when we converted a downtown office building into 4 one-bedroom apartments for people coming from homelessness. We had to get several variances for the project, mostly pertaining to parking requirements. These variances were granted, and no one appealed the decision.

If anyone had appealed the zoning board decision, CCEH would not have had the financial resources to afford a long, protracted legal process in Superior Court that could have easily resulted from the appeal. Additionally, the subsidized funding we were using for the project had specific deadlines that had to be met, and a protracted appeals process would have put that funding in jeopardy. Finally, the seller of the property very likely would not have been willing to wait to close the sale while a protracted appeal process, with an uncertain timeline, was carried out. It is very likely that our project would have died had someone appealed the zoning board's decision, and the four people who are now living in those apartments might still be living, literally, in the woods or under a bridge in Concord.

CCEH is embarking on our second small housing development project, to create 8 units this time, and we'll be appearing before the zoning board soon. Knowing that the Housing Appeals Board exists, and that if there is an appeal of the zoning board's decision, we can get a result with 150 days, gives us, and our funding sources, the confidence to move forward with the project, and make the required financial investments in such things as a survey, environmental reports, and the other required due diligence.

Housing development is a long and complex process and keeping the jurisdiction of Housing Appeals Board as it currently stands will make the process more predictable and more affordable, and will encourage more developers to take the necessary risks to develop affordable housing. While CCEH has not yet needed to appear before anything other than the Zoning Board and Planning Board, all of the commissions, committees, and boards that have a hand in making housing development-related decisions should fall under the purview of the Housing Appeals Board for the reasons stated above.

As a state, we need to use every tool available to encourage the development of more affordable housing, and the Housing Appeals Board, with the authority and duties that it currently has, is one of our very important tools.

Respectfully submitted by,



Ellen Groh
Executive Director

HB 1307 - AS INTRODUCED

2022 SESSION

22-2629
08/11

HOUSE BILL **1307**

AN ACT modifying the authority and duties of the housing appeals board.

SPONSORS: Rep. B. Griffin, Hills. 6

COMMITTEE: Municipal and County Government

ANALYSIS

This bill modifies the authority and duties of the housing appeals board.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT modifying the authority and duties of the housing appeals board.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Housing Appeals Board. Amend RSA 679:5 to read as follows:

2 I. It shall be the duty of the board and it shall have power and authority to hear and affirm,
3 reverse, or modify, in whole or in part, appeals of final decisions of ~~[municipal boards, committees,~~
4 ~~and commissions regarding questions of housing and housing development. This includes, but is not~~
5 ~~limited to:~~

6 ~~(a) Planning board decisions on subdivisions or site plans.~~

7 ~~(b) Board of adjustment decisions on variances, special exceptions, administrative~~
8 ~~appeals, and ordinance administration.~~

9 ~~(c) The use of innovative land use controls.~~

10 ~~(d) Growth management controls and interim growth management controls.~~

11 ~~(e) Decisions of historic district commissions, heritage commissions, and conservation~~
12 ~~commissions.~~

13 ~~(f) Other municipal permits and fees applicable to housing and housing developments.~~

14 ~~(g)~~ ***planning boards, zoning boards of adjustment, building code boards of***
15 ***appeals, historic district commissions, and heritage commissions on applications for the***
16 ***development of housing.*** Matters subject to the board's authority may include mixed-use
17 combinations of residential and nonresidential uses. Such different uses may occur on separate
18 properties, provided such properties are all part of a common scheme of development.

19 2 Effective Date. This act shall take effect 60 days after its passage.