

# HB 1661: What Local Land Use Officials Need to Know!



**Natch Greyes**

**Government Affairs Counsel**

**New Hampshire Municipal Association**

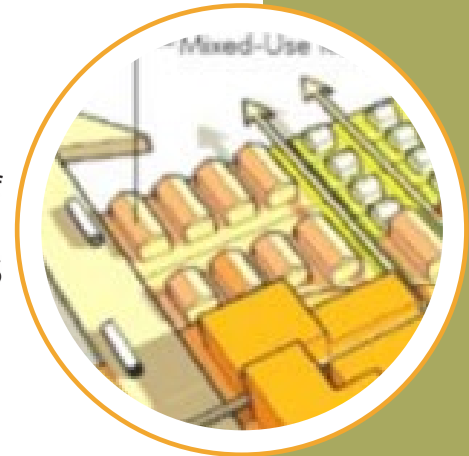


New Hampshire Department of  
**BUSINESS AND  
ECONOMIC AFFAIRS**

**Noah Hodgetts**

**Principal Planner**

**NH Office of Planning & Development**



**August 10, 2022**

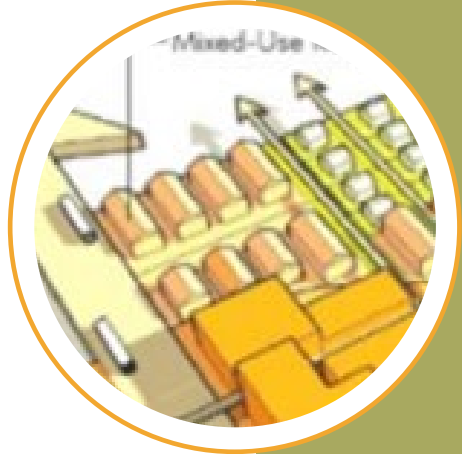
# Today's Presenters



**Natch Greyes**  
Government Affairs Counsel



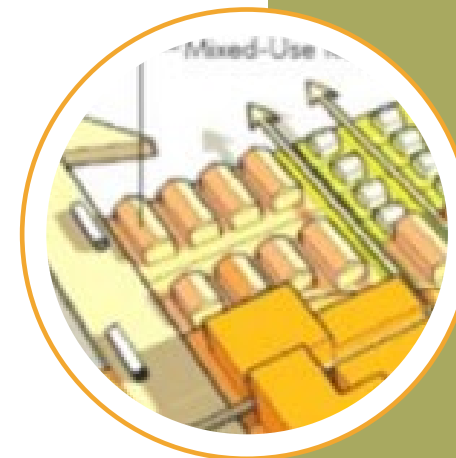
**Noah Hodgetts**  
Principal Planner



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# Agenda

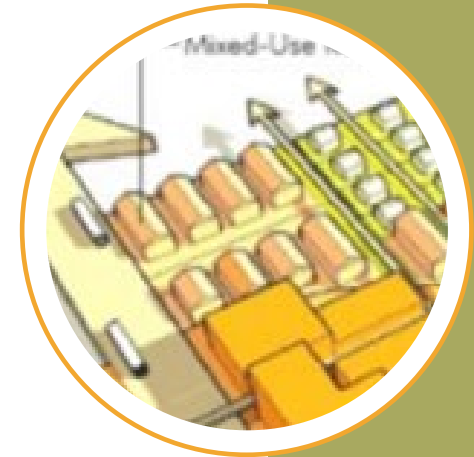
- Summary of HB 1661 by Section
- Summary of HB 1021



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# SB 400/HB 1661: Introduction

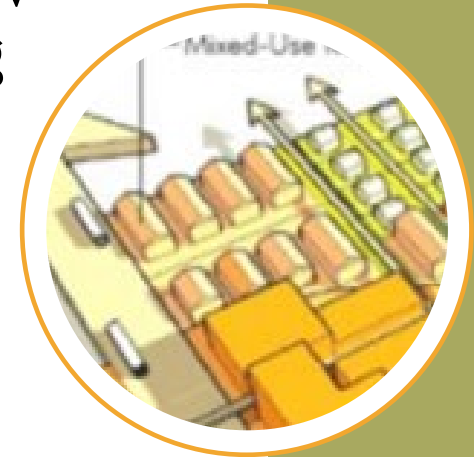
- Although not identical, SB 400 as introduced was substantially similar to **HB 1629** and **HB 1632** from 2020 and **HB 586** from 2021.
- Cited by Governor Sununu in his State of the State speech as an important measure to address the state's housing crisis.
- Portions of the bill ended up attached to HB 1661 after the House committee considering the bill recommended adding unrelated matters to the original bill, and the surviving portions underwent additional modification in the Committee of Conference.



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# Section 70: Training

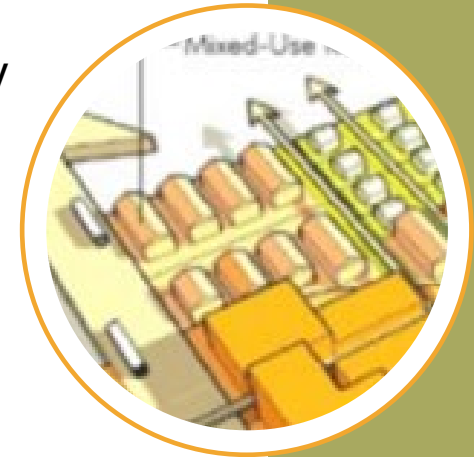
- Replaces existing language on permissible training offered by the Office of Planning and Development (OPD) with new language which clarifies that any planning board or zoning board of adjustment (ZBA) member (including alternate members) may receive training from OPD or another organization, such as NHMA, which offers such training.
- Requires OPD to develop specific, optional training materials and corresponding tests for planning board and ZBA members.
- This change goes into effect on August 23, 2022.



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# Planning Board Handbook Optional Test and Certificate

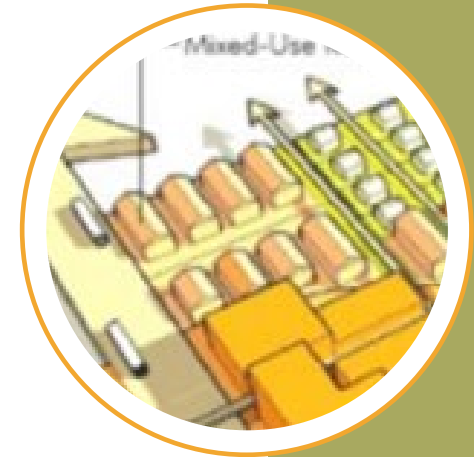
- 30-question Planning Board test was developed as an optional learning check based on the information contained in the current [Planning Board Handbook](#), published by OPD.
- Individuals have the option to receive an emailed certificate showing that they passed the test by receiving a score of 65% or higher.
- To receive a certificate, individuals are required to submit their name and email address.
- The test is located on the [Planning Board Handbook webpage](#) of the OPD website and at the links below:
  - [Planning Board Test with No Certificate](#) (does not require name and email address)
  - [Planning Board Test with Certificate](#) (requires name and email address)



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# Zoning Board Handbook Optional Test and Certificate

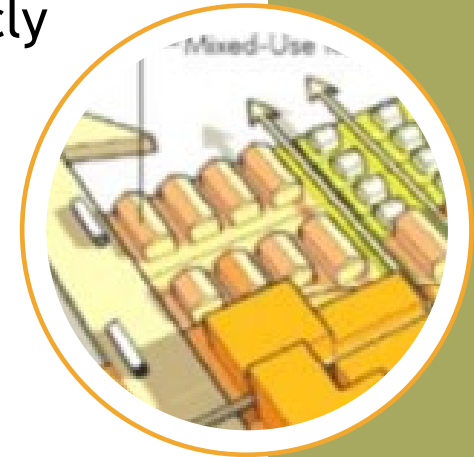
- 30-question Zoning Board test was developed as an optional learning check based on the information contained in the current [Zoning Board of Adjustment Handbook](#), published by OPD.
- Individuals have the option to receive an emailed certificate showing that they passed the test by receiving a score of 65% or higher.
- To receive a certificate, individuals are required to submit their name and email address.
- The test is located on the [Zoning Board of Adjustment Handbook webpage](#) of the OPD website and at the links below:
  - [Zoning Board Test with No Certificate](#) (does not require name and email address)
  - [Zoning Board Test with Certificate](#) (requires name and email address)



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# Section 71: Publication of Fees

- Requires that any fee which a city or town imposes on an applicant shall be published in a location accessible to the public during normal business hours or the fee shall be waived.
- A city or town may comply with the publication requirement by publicly posting a list of fees at the city or town hall or by publishing a list of fees on the city or town's Internet website.
- ***Practice Pointer:*** A separate document labeled as “Notice of Land Use Board Fees under RSA 673:16, III” should be created that provides a complete listing of fees charged for land use board applicants.
- This change goes into effect on August 23, 2022.

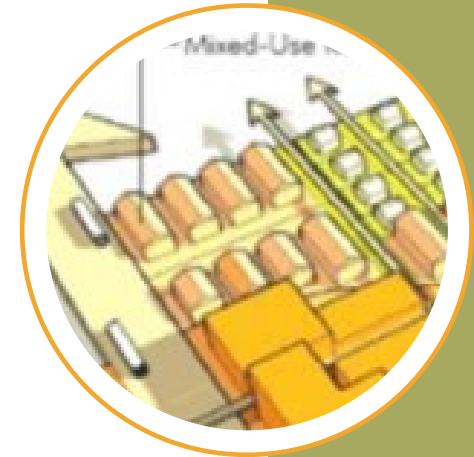


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# Section 72: Incentives

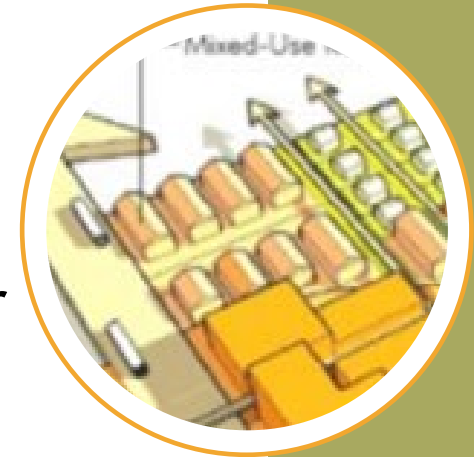
- Gives municipalities that offer increased density, reduced lot size, expedited approval, or other dimensional or procedural incentives to housing for older persons until July 1, 2023, to make any adjustments to those incentives before they automatically apply to developments of workforce housing.
- ***Practice Pointer:*** Municipalities that given incentives to housing for older persons should review those incentives this fall to determine whether amendments should be proposed at town meeting 2023.



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# Section 73: Written Findings

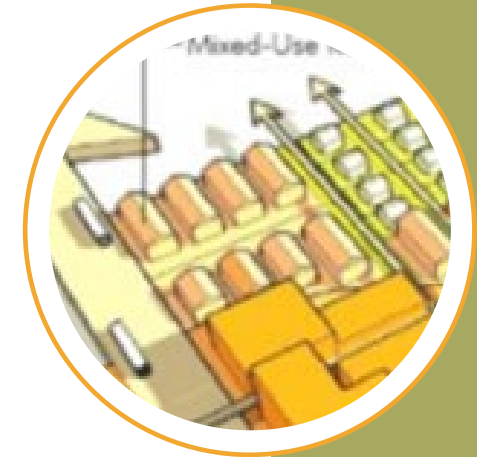
- Expands language requiring local land use boards (planning boards, zoning boards of adjustment, historic district commissions, building inspectors, and building code boards of appeal, agricultural commissions, and housing commissions) to provide specific written findings of fact that support an approval or disapproval.
- ***Practice Pointer:*** The degree to which a board should make detailed findings of fact in support of an approval may vary based on the level of controversy associated with the application but, for denials, a board should consider what the things are about the application that is preventing it from saying “yes.”
- This change goes into effect on August 23, 2022.



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# Section 74: ZBA Timeline

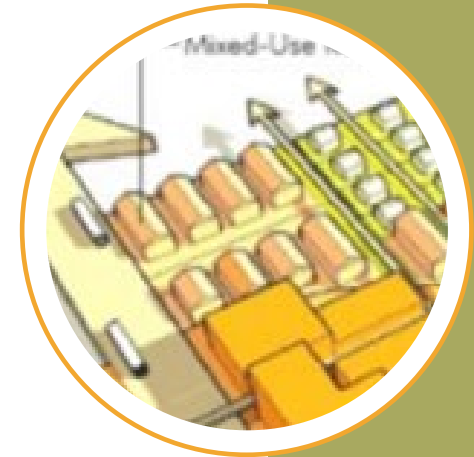
- Provides that a ZBA has 90 days to begin consideration and approve or disapprove an application, unless the applicant agrees to an extension.
- If the ZBA determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the board may deny the application without prejudice, allowing the applicant to reapply for the same relief.
- This change goes into effect on August 23, 2022.



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# Section 75: Planning Board Timeline (Part 1)

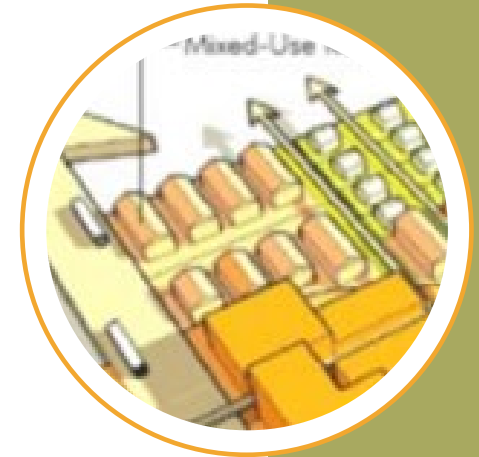
- Continues to allow a planning board to have 30 days to determine whether an application is complete but clarifies that the statutory timeframe for acting on a completed application is 65 days.\*
- \*2021's **HB 332**, which was signed into law, extended the planning board's deadline to act by 30 days where the board determined that the development was one of regional impact. HB 1661 introduced a grammatical error into the statute. There was no intent on the part of the drafters to remove the additional 30 days for developments of regional impact, and the statute should continue to be read to *include* the additional 30 days in the case of developments of regional impact.
- This change goes into effect on January 1, 2023.



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# Section 75: Planning Board Timeline (Part 2)

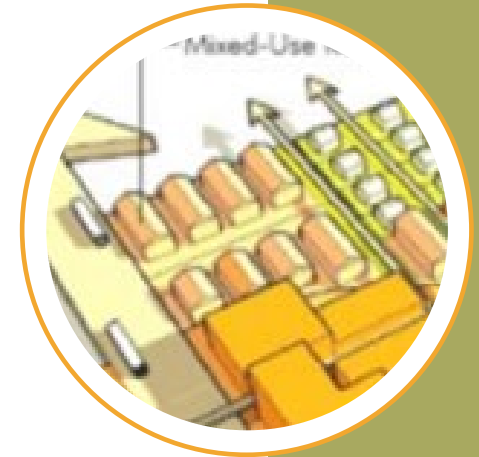
- If the planning board determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the board may deny the application without prejudice, allowing the applicant to reapply.
- If the planning board does not act on the application within the 65-day period, then the governing body is required to approve the application.



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# Section 76: 90-Day Extension Eliminated

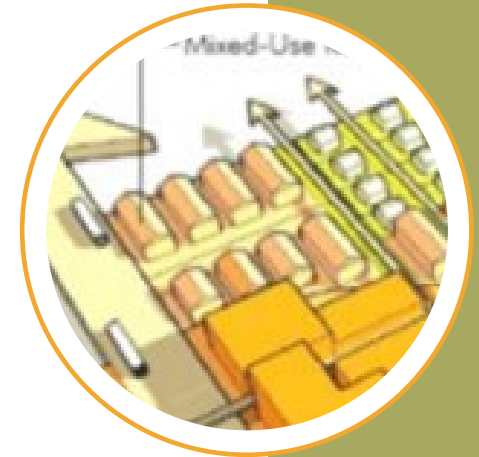
- Eliminates the ability of the planning board to request an extension to act on an application from the governing body.
- (Prior law allowed the planning board to petition the governing body to extend the time to act on an application by 90 days.)
- This change goes into effect August 23, 2022.



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# Section 77: Fee Shifting & Bond

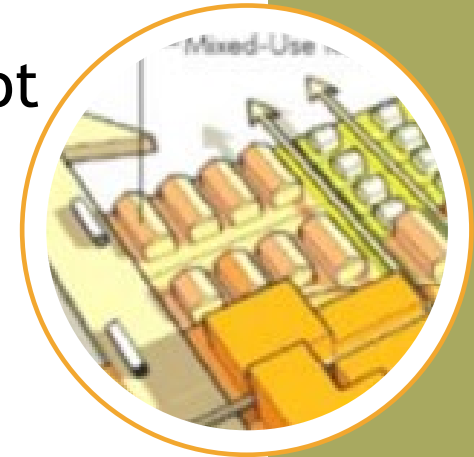
- Allows the superior court to require a bond from the appealing party whenever an appeal is filed and allows the court to award attorney's fees and costs to the prevailing party.
- However, gross negligence, in bad faith, or with malice must be found by the court for attorney's fees and costs to be awarded.
- This change goes into effect August 23, 2022.



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# Section 78: Properties for Workforce Housing

- Expands the definition of “public use” under the Tax Increment Finance (TIF) statute to allow any party including a municipality to acquire real property - except by eminent domain - for the purpose of constructing housing units which meet the statutory definition of workforce housing.
- Construction may occur either through private development or private commercial enterprise.
- This change goes into effect August 23, 2022.

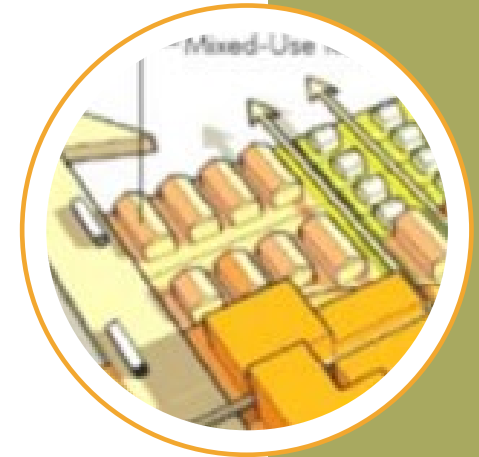


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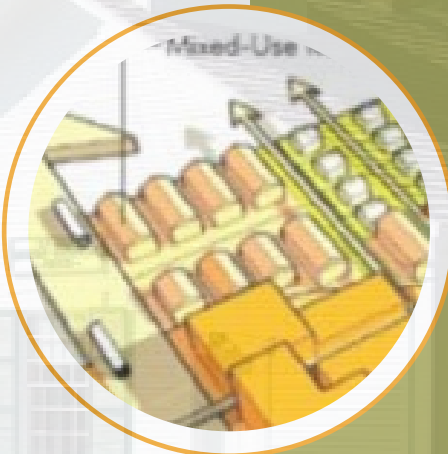
# Section 79: TIF Districts for Housing

- Allows municipalities to designate municipal economic development and revitalization districts (TIF districts) for the purpose of acquiring, constructing, reconstructing, improving, altering, extending, operating, maintaining, or promoting residential developments aimed at increasing the available housing stock within the municipality.
- ***Practice Pointer:*** These districts are not limited to workforce housing.
- This change goes into effect August 23, 2022.



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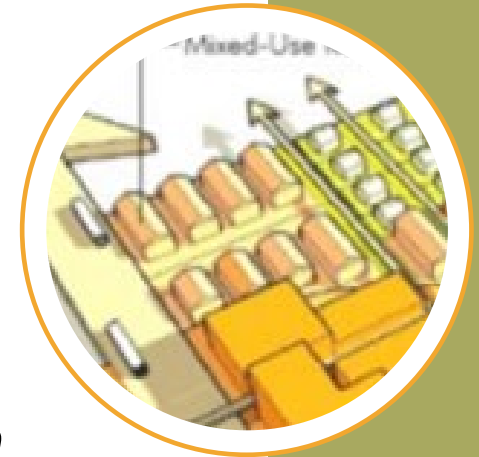
# HB 1021: Primarily Religious Use of Land



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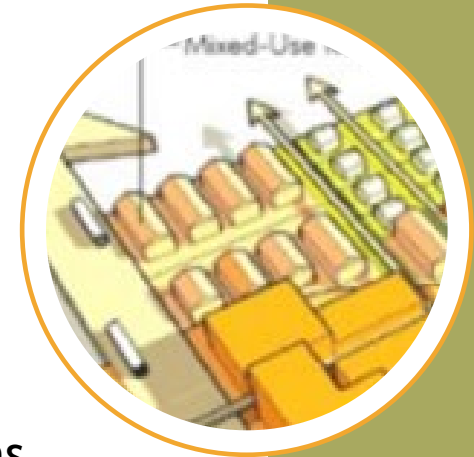
# History of Statute

- HB 1021 was modeled after [Massachusetts's Dover Amendment](#) which was enacted in 1950 in response to local zoning bylaws that prohibited religious schools within a town's residential neighborhoods. However, the exact wording of the two statutes differs.
- New Hampshire's reads, in relevant part:
  - *“No zoning ordinance or site plan review regulation shall prohibit, regulate, or restrict the use of land or structures primarily used for religious purposes...”*



# What Does the Statute Do?

- The new statute would override any municipal limitations - but is silent on state and federal regulations, meaning those would still apply - for land or structures used primarily for religious purposes.
- The new law would likely permit site plan review that is limited to controlling the heights of structures, yard sizes, lot area, setbacks and building coverage requirements provided such requirements apply equally to non-religious and religious uses and do not substantially burden religious exercise.
  - \*Planning boards should be aware that other site plan review requirements, such as lighting, signs, noise, on-site and off-site drainage, erosion and sediment control, layout of streets and sidewalks, utility design and installation, open space, pervious/impervious area, landscaping, and parking/access management requirements, *etc.*, would not be applicable to qualifying religious properties.
  - However, legally authorized enforcement of state and federal laws, such as compliance with the state building and fire codes, local driveway regulations, septic and sewer regulations, shoreland protection requirements, wetlands, *etc.*, would continue to apply to qualifying properties.



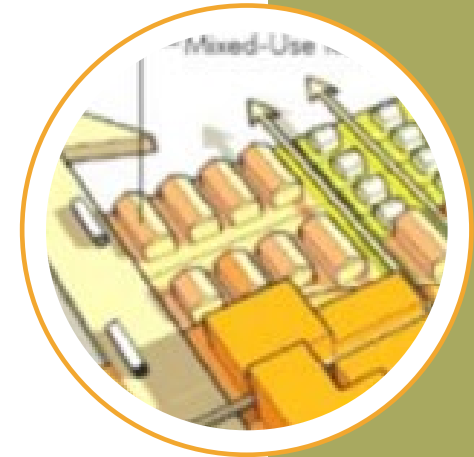
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# What is a “Primarily Religious?”

- The new statute provides no definition for what constitutes “primarily used for religious purposes.”
- However, [RSA 72:23, III](#), which exempts religious real estate from property taxation, includes some information which may be helpful:

“Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state and the personal property used by them for the purposes for which they are established.”

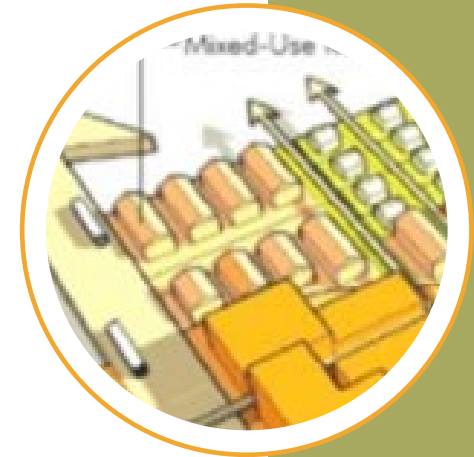
- Note, however, that it is likely that the exemption from zoning and site plan review could apply to other uses that have not yet qualified or might not be eligible for the real estate tax exemption.



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# Other Complications & Compliance

- Complicating matters, the statute does not define “*substantially burden*,” either.
  - Municipalities looking to impose the allowable local site plan regulations on qualifying religious land or structures should carefully consider whether the local regulations would impermissibly “substantially burden” the exercise of the religion.
- It is recommended that any existing or proposed use of land for religious purposes claiming the protection of RSA 674:76 be required to provide an affidavit included as an attachment to the guidance document provided as part of this presentation.
- However, A careful analysis of each use seeking the zoning and site plan review exemption is warranted, and we encourage you to consult with legal counsel on these matters.



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## Changes to Planning & Zoning Laws in 2022: *A Guide for Municipalities*



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*A Joint Advisory of the New Hampshire Municipal Association and the New Hampshire Office of Planning and Development at the Department of Business and Economic Affairs*

July 2022

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In the fall of 2019, the Governor's Housing Task Force published a set of recommended legislative changes to address the housing shortage including additional training and tools for communities. These recommendations were incorporated into HB 1629 and HB 1632 in 2020, HB 586 in 2021, and SB 400 in 2022. After much negotiating, some provisions of SB 400, were attached to HB 1661 and became law.

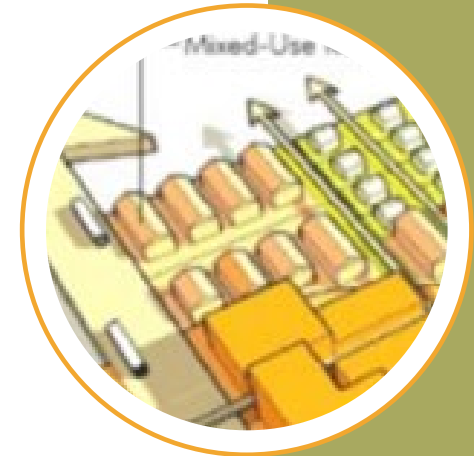
The new law will have significant effects on how municipal land use boards conduct business. In addition, a new law was passed relative to local regulation of properties used primarily for religious purposes. That bill, HB 1021, is also summarized below.

### Summary of Changes Pursuant to HB 1661

- **Section 70: Training** – Replaces existing language on permissible training offered by the Office of Planning and Development (OPD) with new language which clarifies that any planning board or zoning board of adjustment (ZBA) member (including alternate members) may receive training from OPD or another organization, such as NHMA, which offers such training. Also requires OPD to develop specific, optional training materials and corresponding tests for planning board and ZBA members. This change goes into effect on August 23, 2022.
- **Section 71: Publication of Fees** – Requires that any fee which a city or town imposes on an applicant shall be published in a location accessible to the public during normal business hours or the fee shall be waived. A city or town may comply with the publication requirement by publicly posting a list of fees at the city or town hall or by publishing a list of fees on the city or town's internet website. A separate document labeled as "Notice of Land Use Board Fees" under RSA 673:16, III" should be created that provides a complete listing of fees charged for land use board applicants before the planning board, zoning board of adjustment, historic district commission, building inspector, and building code board of appeals. This change goes into effect on August 23, 2022.

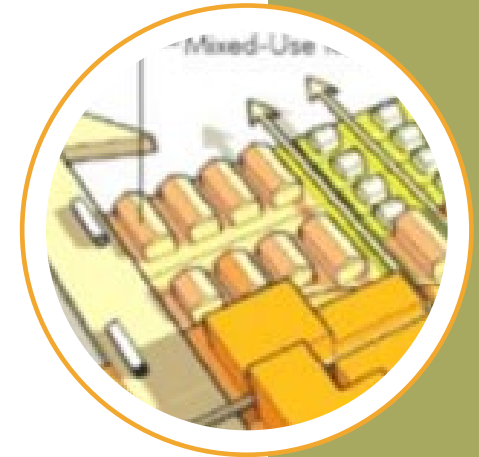
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[Download Joint Advisory](#)



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# Questions?



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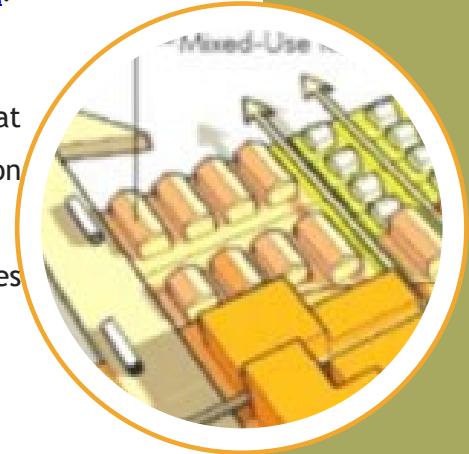
Informational Webinar  
12:00 noon, Tuesday, August 16

**[REGISTRATION NOW OPEN!](#)**

Last week, the InvestNH Municipal Planning & Zoning Grant Program launched. See full information at [www.NHHOPgrants.org](http://www.NHHOPgrants.org).

Two different grant programs are available:

- **Community Housing Navigators** - a limited number of grants for municipalities to hire staff to help advance regulatory change that is intended to increase housing supply, and to undertake community engagement efforts and assist developers with the application process.
- **Housing Opportunity Planning (HOP) Grants** - grants are available for municipalities to hire consultants to help with three phases of regulatory change to increase housing supply:
  - Needs assessment and planning;
  - Regulatory audit; and Regulatory development



This program is administered by NH Housing under contract with the NH Department of Business and Economic Affairs. NH Housing is collaborating with Plan NH, which will administer the municipal grants, and UNH Cooperative Extension, which will provide extensive community engagement training to grantees. If you have questions about this grant program, please send them to [info@NHHOPgrants.org](mailto:info@NHHOPgrants.org).



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# Thank you for joining us today!



25 Triangle Park Drive  
Concord, NH 03301  
[www.nhmunicipal.org](http://www.nhmunicipal.org)  
[nhmainfo@nhmunicipal.org](mailto:nhmainfo@nhmunicipal.org)  
603.224.7447



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NH Office of Planning & Development  
100 North Main Street, Suite 100  
Concord, NH 03301  
[www.nh.gov/osi/planning/](http://www.nh.gov/osi/planning/)  
[planning@livefree.nh.gov](mailto:planning@livefree.nh.gov)  
603.271.2157

