



## Testimony on House Bill 459

Housing Committee

Feb. 4, 2025

Dear Chairman Alexander and members of the committee:

Thank you for taking our testimony on House Bill 459, an act relative to acreage requirements and zoning regarding sewer infrastructure and single-family residential uses. I'm Drew Cline, president of the Josiah Bartlett Center for Public Policy, New Hampshire's free-market think tank.

We've studied the state's housing shortage for years, and in our view HB 459 addresses one of the most important factors contributing to New Hampshire's current housing shortage: excessive minimum lot sizes.

RSA 674:16 grants local governments the power to use zoning "for the purpose of promoting the health, safety, or the general welfare of the community...." For decades, local governments have abused this authority not to achieve those limited goals, but to raise the price of entry into the community. The primary means of achieving this goal is the misuse of minimum lot size requirements.

When creating a minimum lot size mandate, there are two questions to ask.

1. What public health, safety or welfare problem does this solve?
2. How much land does a home require?

The answer to the first question most often is: none. This is especially true in municipalities served by water and sewer infrastructure. A tiny home on a tiny lot harms no one. Small lots themselves harm no one.

The question is not whether municipalities should be allowed to take limited actions to prevent a particular land use from causing harm to neighboring properties and property users. This bill does not remove that authority. The question is whether arbitrary minimum lot size mandates are the correct tool to achieve that narrow goal.

New Hampshire has enough experience with the negative consequences of minimum lot size mandates to know the answer to that question. Municipalities have spent decades abusing their discretionary authority, increasing lot size minimums for the purpose of inflating home values, inflating land values, and pricing newcomers out of their jurisdictions.

The New Hampshire Municipal Association claims that HB 459 “would create stress on city and municipal services and infrastructure. Additionally, the onus would be on municipalities and cities to show they can’t handle the increased stress on their services and infrastructure.”

This is backwards. Municipal services and infrastructure exist to serve residents and property owners, not the other way around. Municipalities should not be in the business of artificially inflating the price of land just to avoid making upgrades to their infrastructure or offering additional services to coincide with population growth.

One long-standing argument in favor of larger lot size mandates is that more homes will lead to crowded schools. Again, this is backwards. Public schools exist to serve residents; residents don’t exist to serve schools. You design a school to fit your town, not a town to fit your school. Furthermore, the state’s demographic decline has rendered this fear largely unfounded. Enrollment in New Hampshire public schools has fallen by about 46,000 students this century. The vast majority of districts have excess capacity in their school buildings.

Minimum lot sizes that are larger than 0.5 acres for properties with water and sewer hookups and larger than basic environmental standards for single-family homes based on soil conditions serve no public health, safety or welfare purpose. They exist solely to raise a barrier to entry. And in that they are extraordinarily successful.

The answer to the second question (how much land does a home require) is: very little. The square footage needed to safely site a septic system depends on the size of the home and the land and soil conditions. Those concerns can be addressed on a case-by-case basis. Imposing a universal acreage requirement is a clumsy, inefficient and extremely costly way of addressing this concern, and one that winds up needlessly taxing property owners.

Homes with septic systems built safely, on lots of less than one acre exist throughout New Hampshire. My own home, built in the late 1700s, is one of them. My four-bedroom, two-bath home sits on a lot of 0.7 acres, and I have a well and a septic system. My town currently has a 1.5 acre minimum lot size, more than double the size of my lot. If my home hadn't been built before the creation of the town zoning ordinances (construction of the first portion of my home might actually predate the town itself), it likely would be illegal. Certainly a developer would struggle to get a permit to build the same size house on a lot of less than one acre in my town and in much of New Hampshire today.

And that is a major contributor to New Hampshire's housing shortage, which in turn is the primary cause of the state's astronomical surge in home prices and rents.

Maine has roughly the same population as New Hampshire (1.405 million vs. 1.409 million). Yet Maine has almost 106,000 more housing units than New Hampshire does. As a consequence, its median home value from 2019-2023 was \$100,000 lower than New Hampshire's. As of this January, the median sale price for a home in Maine was \$412,200 vs. \$493,800 in New Hampshire.

The median size of a home in New Hampshire is 1,869 square feet, according to the Federal Reserve. The median size in Maine is 1,669 square feet.

It don't have to be this way.

The demand both here and nationally for more modest homes on small lots far exceeds the supply of such homes. In much of the rest of the country, that's changing, as governments are relaxing regulations to allow more construction.

In 2013, 36% of new homes in the United States were built on a lot of 7,000 square feet or less. By 2023, it had risen to 46%, according to U.S. Census figures.

The average size of a newly built home is slowly shrinking. It has fallen from 2,535 square feet in the second quarter of 2022 to 2,375 square feet in the second quarter of 2024.

The demand for smaller homes is clear. The market is trying to respond to this demand, but municipalities are slowing the transition, particularly in the Northeast.

In the South, 53% of homes sold in 2023 were smaller than 2,400 square feet. In the West and Midwest it was 60%. In the Northeast it was just 46%. That's not entirely caused by zoning, but zoning is a major factor.

Nationally, 26% of home buyers want a home less than 1,600 square feet, but only 16% of single-family homes started in 2023 were that small, according to the National Association of Home Builders. There's a mismatch between demand and supply, and that mismatch is driven in large part by minimum lot size requirements. Smaller legal lot sizes would facilitate the creation of the smaller homes that consumers demand.

Ultimately, this is an issue of private property rights. Zoning laws exist to prevent what economists call negative externalities. That is, their purpose is to prevent one property owner from directly harming his or her neighbors. Minimum lot size mandates do not serve this purpose. Instead, they restrict legitimate uses of private property not to prevent harm, but to cause it. Again, a small home on a small lot harms no one. But minimum lot size mandates do.

Minimum lot sizes that exceed basic public health and safety standards artificially reduce the supply of housing, drive up home prices, separate families by forcing the elderly and young to move out of town to find smaller homes they can afford, worsen sprawl and traffic congestion, and encourage overdevelopment by forcing builders to develop much larger footprints to house the same number of people who could fit easily in smaller areas.

Smaller lots allow for smaller, more affordable homes. Municipalities have shown that if they have the power to use minimum lot sizes to prohibit small homes on small lots, they will. The abuse of this power has created numerous economic problems for New Hampshire and has helped to put the classic American starter home out of reach of young Granite Staters. If the state wants to prevent these abuses from continuing, the best option would be to limit the power of local governments to commit them. HB 459 would do that.