# "The Chester Court Case"

*by Jim Rollins*

The N. H. Supreme Court ruled on July 24, 1991, in Britton v. Town of Chester, that State law prohibits a town from having a zoning ordinance which doesn't allow realistic opportunities for housing which is affordable by low and moderate income families. The Court upheld the Trial Court's use of the HUD-determined low and moderate income levels for rural Rockingham County, and the figure of 30% of gross income as the maximum a family should pay for housing.

The Chester ordinance divides the town into seven zones or districts. The vast majority of the town's 1600 acres fall into the General Residential and Agricultural district where single family and two-family dwelling units are permitted. Single family units require a minimum lot size of two acres with 290 feet of frontage, whereas three acre lots with 430 feet of frontage are required for two-family units.

Multi-family housing units are permitted only in the Medium Density Residential District, located in two relatively small areas of the town comprising about 240 acres. Single and two-family dwelling units are allowed while multi-family units are permitted, but only as a part of a Planned Residential Development (PRD) requiring a mix of other housing types.

The minimum net land area for a PRD excluding land within the Floodplain Conservation district and Wetlands Conservation district must be 20 acres with a minimum of 430 feet on an approved town road. Each single family unit requires a minimum of two acres; a two-family unit requires 1 1/2 acres, and a multi-family unit requires 0.5 acres. The development proposal must maintain an average acreage of one unit per 1.25 acres. In addition, the maximum number of bedrooms allowed is: 3.5 for a single family unit; 2.0 for two-family units, and 1.5 for multi-family units.

While recognizing that the Chester Ordinance provided for multi-family dwellings, the Court said that this opportunity was too restrictive and not realistic. The Court also found unacceptable the planning board's ability to retain, at the applicant's expense, a registered professional engineer, hydrologist, and other applicable professional to represent the planning board..." The Court "questioned the availability of bank financing for such projects, where the developer is required to submit a 'blank check' to the planning board along with his proposal, and where to do so could halt, change the character of; or even bankrupt the project".

Bernard Waugh, N.H. Municipal Association Legal Counsel, in his discussion of this decision noted that this does not mean that a planning board can no longer charge applicants fees "to cover its administrative expenses and costs of special investigative studies, review of documents and other matters which may be required by particular applications" as allowed by RSA 674:I(g). What it does mean, said Attorney Waugh, is that the USUAL applicant shouldn't have to give the town a "blank check". Any engineering or other review which the town has as part of its NORMAL procedure should be made part of the town's published fee schedule. All fees should be made PREDICTABLE by the applicant up front. The only exception should be where special problems are found AFTER the application has been accepted as complete, in cases where the board would be justified in disapproving the application unless some additional study is completed.

Mr. Waugh further noted that in towns attempting to comply with this court decision, ordinances will almost certainly be held defective unless some type of affordable housing is allowed in some zone rather that by special exception or conditional use permit.