*American Planning Association, Rhode Island Chapter*
*PO Box 2335 – Providence, RI 02906*

March 18, 2025

Honorable Chairman Robert E. Craven, Sr.
House Judiciary Committee
Rhode Island State House
Providence, RI 02903

RE: H-5794 – An Act Relating to Towns and Cities – Subdivision of Land / Zoning Ordinances

Dear Chairman Craven and Committee Members:

Thank you for this opportunity for the RI Chapter of the American Planning Association (APA-RI) to comment on H-5794, a bill which proposes significant amendments to the Land Development and Subdivision Review Enabling Act as well as to specific sections of the Zoning Enabling Act. Our concerns are principally with Sections 45-23-32, 45-23-35, 45-23-36 and 45-23-39 of the Subdivision Act, while supportive of the amendments to 45-24-37 (related to adaptive reuse) and 45-24-38 (related to setbacks for substandard lots of record) of the Zoning Act.

**Section 45-23-32. Definitions.**

Changes are proposed in the definitions of minor subdivision and major subdivision: minor would be any number of lots without a street creation or extension, or up to nine lots with street construction. A major would be ten or more lots and include street construction. A subdivision would not be considered major unless there is some form of street construction.

Expanding the definition of a minor subdivision to include a greater number of lots adds to the concern expressed by the planning community in recent years about moving land development review from a public process to an administrative process. This means not only added burdens and responsibilities on municipal planning departments, which are already understaffed and often playing catch-up, but an administrative process removes the ability of the public to review and comment on significant projects that occur in their neighborhoods or their communities, including ones that directly impact their lives. Our organization was not previously supportive of allowing up to nine lots to be approved in an office instead of a public meeting; this change would allow an unlimited number of lots to be approved in this manner, meaning that proposals will be submitted that are larger in size and scope than is appropriate for the minor subdivision review procedure.

**Section 45-23-35. General provisions – Pre-application meetings and concept review.**

Pre-applications for major applications would become optional, scheduled only at the request of the applicant. Most applicants do see the benefit of a pre-application review meeting, as it allows local input (and knowledge), and a mutually beneficial discussion. It can ensure that the developer and the

community are at least on the same page regarding density and design, which can clearly save time and resources later. Almost all local ordinances which provide for, or mandate, cluster-style developments require a pre-application meeting, as it is a necessity when reviewing different options for a cluster over a conventional subdivision lay-out. At these meetings, the developer and the planning board discuss different options for clustering, including lot sizes and locations, road design and areas of protected open space.

Avoiding a pre-application would only potentially benefit an applicant who has already designed a project and has no interest in amendments and wants to proceed despite the interests or concerns of the community. This sets the stage for an adversarial relationship with the municipality.

**Section 45-23-36. General provisions – Authority and application for development and certification of completeness.**

Language added to the subsection (c) only allows an application to be deemed incomplete due to a missing checklist item. This means that even if the reviewing authority has requested a specific item to be submitted as a condition of a previous approval, or if the information is inadequate or even faulty, there is no recourse for the administrative officer to certify the application incomplete.

**Section 45-23-39. General provisions – Major land development and major subdivision review stages.**

The submission of all legal documents and state permits for major applications would only become a requirement at the final plan phase, which is now typically approved administratively (by the town planner or appointed administrative officer).

Moving state permits to the final plan phase (as allowed now for comprehensive permit applications) was proposed in a major bill amending the Subdivision Act in 2023 but not included in the final bill then for good reasons. Our comments as submitted then are still valid today:

State permits are now required at the preliminary plan phase, which is when the subdivision or development is submitted as a fully engineered project. Final plan is usually done administratively just to tie up loose ends or make minor adjustments as needed. What mechanism would be in place to make changes to an approved preliminary plan if a state permit is later denied or approved for an alternate design? Instead of saving the applicant a meeting, this change would cause planning boards to require a return to the board for final review and approval. Having the permits in hand at the phase when the project is designed and engineered is an advantage to the developer.

In addition, for those communities that require the construction of roadways and other public improvements prior to final plan approval, it is not possible for the developer to delay the receipt of state permits, since they are necessary prior to construction taking place.

A similar situation applies to legal documents, particularly those related to common open space management and restrictions, homeowners' association documents, and specific deed language. It makes no sense to leave these important documents to the final phase, which again may require the planner or administrative officer to call another meeting with the board for approval or clarification purposes.

**Other comments:**

The bill would become effective upon passage, with no time for making the necessary amendments to local regulations. For the third consecutive year in a row, municipalities must undertake significant changes to their Land Development and Subdivision Regulations, an effort that will require resources, time and staff, as well as education on revised procedures for planning board members, and outreach to the development community and the public.

Our organization would request instead that the concerns that led to these amendments be discussed more openly between the drafters and representatives of the municipalities. In working with the amended state land use laws over the past couple of years, planners in the APA-RI chapter have identified a number of other adjustments that could be made. It would be best to work together on a collaborative bill.

**Section 45-24-37. General provisions – Permitted uses.**
(h) Adaptive reuse

APA-RI supports these amendments, as they address concerns with how allowable density is determined, relative to the percentage of LMI units, but would suggest the following changes:

- In the prohibitions section require that the industrial or manufacturing building be vacant for a period of two years rather than one year.
- In the density section clarify that the LMI unit percentage is only applicable for projects with more than 4 units (rather than less than 4 units).

**Section 45-24-38. General provisions – Substandard lots of record.**

In the subsection governing minimum setbacks, frontage and widths for lots nonconforming in area, APA-RI supports the amended language giving communities the option to apply the dimensional requirements of a compatible zoning district. This also addressed a concern relayed by our organization.

Thank you for your consideration.

Sincerely,

Jane Weidman
Legislative Committee Chair

cc RI League of Cities and Towns