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March 26, 2026

To: Chair McEntee and Members of the House Municipal Government and Housing Committee

RE: House Bill H8004

LandUse.co is the state's largest land entitlement consultancy, currently advising clients on hundreds of real estate developments throughout the state. The vast majority of our recent work is creating housing to address the state's housing crisis. We have recently been involved in the approval of the largest housing development in Providence's history and the state's first single-family attached housing development under the law (H5798) enacted last year. We also worked on the oversized lot law included in H5794 heard by this committee last year. I am a land use attorney and practicing municipal land use planner and have the honor as serving on this chamber's Commission to Study the Entire Area of Land Use, Preservation, Development, Housing, Environment, and Regulation. I provide the following testimony in support of H8004, and respectfully request additional consideration be given to the following provisions:

We are grateful for the revisions to the administrative subdivision process to bring reviews and appeals inline with reforms made by the General Assembly in recent years. The modified findings for an administrative subdivision are well-meaning, but may prove problematic. Rep. Speakman's Bill H8039 legitimizes a process presently existing in municipalities to utilize administrative subdivisions where two buildings exist on one lot (this bill contains several other proposed land use amendments that will clarify development processes and are worthy of close consideration by this chamber). The present definition of administrative subdivision in RIGL § 45-23-32 (48) (i) permits the creation of lots when those lots are not for development, and administrative subdivisions have been a frequently utilized tool for land trusts to set aside land without the additional costs of a minor subdivision. Administrative subdivisions were also never explicitly enabled for unified development review under RIGL § 45-23-50.1, resulting in some municipalities continuing to send variance requests for administrative subdivisions to their zoning boards, which does not make much sense when more complicated minor and major subdivision unified development review is conducted by planning boards, who are more familiar with the subdivision

process. Accordingly, I humbly suggest the following amendments be made to the proposed administrative subdivision findings:

(1) That the application does not create additional lots for development;

(2) That the subdivision has secured necessary variances in the instance of an ~~moving of lot lines does not~~ increase of any pre-existing dimensional nonconformity or creation of ~~create~~ a new nonconformity;

(3) That the application does not remove any required pre-existing adequate physical or permanent access to a street without sufficient replacement.

While on the topic of unified development review, I wish to bring to the General Assembly's attention that RIGL § 45-24-46 references denied and objected to modifications must go to the municipality's zoning board of review. This language should be updated to reflect changes made in recent years to § 45-24-46.4, which permit the "authorized permitting authority" (i.e. planning board) to consider denied and objected to modifications as part of unified development review under §§ 38, 39, 50, and 50.1. in RIGL Ch. 45-23.

Further, I wish to bring particular attention to proposed amendments to RIGL § 45-24-38 (c), otherwise known as the substandard lot merger provision. This law has been has been an extremely challenging part of our practice in recent years and is routinely misapplied by municipalities to merge lot ownership, as the present definition of lot is utilized across RIGL Chs. 45-23 and 45-24 for ownership and zoning purposes. RIGL Ch. 45-24, the Zoning Enabling Act, has no control over *lot ownership*. RIGL § 45-24-38 (c) provides provisions for the merger of a lot for *zoning purposes*. By operation of law, lots are freely merged and unmerged for zoning purposes as the law is amended, as it has been each year for the last four years (just as property becomes compliant or noncompliant as zoning ordinances are amended at the local level). RIGL § 45-24-38 (c) should be further amended to make clear the limitations of a municipality to merge lots for zoning purposes only:

> Except as set forth otherwise in this chapter and in chapter 23 of this title, provisions may be made for the merger of contiguous unimproved, or improved and unimproved, substandard lots of record in the same ownership to create dimensionally conforming lots or to reduce the extent of dimensional nonconformance. Such merger has no ability to control ownership of the lots, as those powers have been historically and continue to be reserved to Chapter 23 of this Title; however the development of the merged lots may be limited by the provisions of this section, including in the event of future change in ownership across the lots, merged for the purposes of this chapter. The ordinance shall specify the standards, on a district by district basis, which determine the mergers. The standards shall include, but are not to be limited to, the availability of infrastructure, the character of the neighborhood, and the consistency with the comprehensive plan. Substandard lots of

record ownership shall not be considered merged for the purposes of this chapter ~~The merger of lots shall not be required~~ when a ~~the~~ substandard lot of record ownership has an area equal to or greater than the area of fifty percent (50%) of the lots of record ownership located within two hundred feet (200') of the subject lot, as confirmed by a compilation plan of record ownership confirmed by the most recent recorded deed description, signed by a professional land surveyor as such term is defined by the rules and regulations for professional land surveying. Upon submission of the compilation plan as provided for in this section, a zoning certificate identifying the lot of record ownership as a lot for purposes of this chapter shall be provided in accordance with section 54 of this chapter.

Finally, I disagree with my fellow members of the Rhode Island Chapter of the American Planning Association Legislation Committee about the usefulness of legal documents and state and federal approvals at the preliminary stage. I support the proposed amendment to RIGL § 45-23-38 (b) assigning these requirements to the final plan stage. Oftentimes this work is not started until the minor application is vested under preliminary plan approval, due to the uncertainty of securing zoning relief at the preliminary plan stage. The application amendment process is sufficient to handle any changes to the proposed development after the public hearing due to state, federal, or other legal requirements.

Thank you for your time in considering this testimony in support of our collective important work to clarify and ease development in Rhode Island as we move to address the housing crisis while limiting impact on other important issues, like job creation and environmental protection.

Sincerely,

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Partner
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