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To: Special Legislative Committee to Study Low- and Moderate-Income Housing Act

From: Karen Scott, Town Planner

Date: January 31, 2022

Re: Comprehensive Permit – Municipal Assessment

Overview

At the November 1, 2021 Committee meeting, members had a lengthy discussion on the procedure for approval of construction of low or moderate income housing as outlined in RIGL 45-53-4, otherwise known as the comprehensive permit process (<http://webserver.rilegislature.gov//Statutes/TITLE45/45-53/45-53-4.htm>). The original intent of the comprehensive permit process was to streamline the municipal review process for housing developments containing at least 25% low- and moderate-income units as defined in the Act. After discussion, it was concluded that a thorough assessment of the comprehensive permit process had never been completed to determine if the process as outlined has been an effective and efficient process for construction low- and moderate-income housing units. It was also unclear how many low- and moderated-income units were created through the comprehensive permit process. This is information the Commission felt it needed to assist in the assessment of the current Act. Karen Scott, Gloucester Town Planner, volunteered to complete a municipal assessment to try to determine the number and type of units constructed through the comprehensive permit process.

Methodology

The comprehensive permit process is available to any applicant proposing to build low- or moderate-income housing which totals at least 25% of all housing proposed in the development. The applicant may submit to the local review board a single application for a comprehensive permit to build that housing in lieu of separate applications to the all applicable local boards. The Act goes on to detail submission requirements, including a letter of eligibility issued by RI Housing, review process, public notice requirements and required findings.

Because there is no agency that maintained a central data base of all comprehensive permits, it was agreed that Rhode Island Housing would supply an accounting of all the letters of eligibility it has issued. Rhode Island Housing supplied that information through a series of spreadsheets and annual reports on letters of eligibility for comprehensive permits. The information contained in these reports was not consistent from year to year as to the information they supplied related to applicants/development names, types of units, income levels, etc. The information was converted to an Excel spreadsheet containing all available information.

An article was placed in the RI American Planning Association newsletter alerting municipalities that this data collection effort was underway and that they would be receiving follow up correspondence. Each municipality then received a personalized e-mail indicating that the data collection was on behalf of the Special Legislative Commission to Study the Low- and Moderate-Income Act, overviewing the purpose of the commission and its charge. It went on to state that the Commission is assessing the effectiveness of the Comprehensive Permit process for creating low- and moderate-income housing. The e-mail included the pieced together list of all the Letters of

Eligibility issued by Rhode Island Housing in order to assist in municipal efforts in providing comprehensive permit information.

The following specific information was requested:

1. For each project in their list of LOE, was an application filed with the municipality?
 - a. If so, was the application:
 - i. Approved
 - ii. Denied
 1. If denied, was it appealed to SHAB
 - a. Result
 2. Was the SHAB decision appealed to the court system
 - a. Result
 - iii. Final result
2. Were any units of the project constructed?
 - a. How many total units
 - b. How many market rate units
 - c. How many LMI units
 - i. Were the LMI units rentals or ownership
 - ii. What was the maximum income limit for the units (ex. 60% Area Median Income [AMI], 80% AMI, 100% AMI, 120% AMI)
 - iii. How many units were family, age restricted, special needs, etc.
3. Are there any additional Comprehensive Permits that were filed with the Town not on the above list of LOE?
 - a. If so, please provide the same information for those projects
4. Do you think the Comprehensive Permit process is an effective tool for creating LMI housing units?
 - a. Why or why not
5. Any additional information related to charge of the Commission that you would like to supply?

Data Analysis

As a result of this data request, information was received from **39 of 39 municipalities**. All municipalities self-reported data. This data was not cross-referenced with municipal records including building permits; therefore, it should not be interpreted as an exact accounting of units. Relatedly, since there is no central database of all comprehensive permits, there was no way to confirm that every comprehensive permit was included in this assessment. A summary of the data from the assessment is below.

- **184** Letters of Eligibility (LOE) issued by Rhode Island Housing since the inception of the Act
- **76** comprehensive permits resulted in units constructed, or **41%** of all LOE issued
- **30** comprehensive permits are currently in some stage of review (municipal, SHAB, etc.); or **16%**
- **2,251** total market and LMI units constructed from comprehensive permits
- **1,367** of the total units constructed are LMI units, or **61%**
- **921** of the LMI units are rental units, or **67%**
- **446** of the LMI are homeownership units, or **33%**
- **56%** of units reported income levels
- **362** units were affordable at AMI at or below 60%; or **48%**
- **268** units were affordable at AMI at or below 80%; or **35%**
- **131** units were affordable at AMI at or below 120%, **17%**
- **35** comprehensive permits were 100% LMI, resulting in **1,003** units, or **73%** of all LMI units constructed

Communities with the highest **LMI unit** production using the comprehensive permit process

1. North Kingstown – 247 units
2. Tiverton – 118 units

3. East Greenwich – 112 units
4. Burrillville – 105 units
5. Cumberland – 97 units
6. Smithfield – 71 units
7. Barrington and Hopkinton – 69 units
8. Richmond and Narragansett – 57 units
9. West Warwick – 47 units
10. Bristol – 36 units

The full spreadsheet with all data received is available upon request.

Effectiveness

Municipal planners were asked if they felt the Comprehensive Permit (CP) process is an effective tool for creating Low and Moderate Income (LMI) units. Please see those comments below.

Comprehensive Permit Pros

- The CP process can be a really effective tool in dealing with odd-shaped lots or other lot constraints
- The CP is useful in creating LMI units when you have a public private partnership, when a non-profit CDC or a Habitat for Humanity is involved and will manage the LMI units for an extended period
- The CP process is effective for larger projects but not for smaller projects
- The CP process is an effective tool for creating low to moderate income housing units as it allows the applicant to streamline the approval process and it takes politics out of the picture
- The town strongly supports use of the comprehensive permit process for non-profits who are providing 100% affordable units, and at 100% area median income or less so as to actually meet housing needs
- The process works when the Town and developer are working together to achieve a reasonable density and where infrastructure such as water and sewer utilities are available and have sufficient capacity to accept the un-planned for additional units

Comprehensive Permit Cons

- Cost, site location and private sector influences play a large role within the larger umbrella of creating LMI housing in this State which is not accounted for in the Act or the CP process
- CP/LMI Act does not encourage smaller dispersed housing opportunities throughout a community
- The Act should be deleted in its entirety and replaced as it rests on a faulty premise with a prescriptive remedy that does not address immediate actual needs
- There is little to no incentive for for-profit developers to continue to use the CP process. Many are opting for inclusionary zoning, getting the extra density and choosing only the fee-in-lieu option
- The CP is not effective as a tool for creating LMI housing units as the fast tracking they offer does not seem to be working
- The CP process is cumbersome for only a few units. Consider a streamlined program for 1-4 units
- The CP process benefits the developer much more than meeting the intent of the legislation
- The LMI Housing Act as presently configured is a totally inadequate tool to meaningfully help communities achieve their 10% affordable housing goal. The incremental percentage increase in affordable housing under the Act is so small that no community can ever expect to achieve the 10% affordable housing goal based on the Act alone. Furthermore, builders have learned to “weaponize” the LMI Housing Act against towns to avoid having to comply with more rigorous local Inclusionary Zoning standards that might actually allow a town to achieve the 10% goal
- What is not helpful to neighborhoods and to the environment, and does little to meet either the 10% or actual demand for affordable housing, is to add many more market rate units of the same type of housing or to construct projects at a density that compromises the quality of life of the residents

- CP process can be an effective way to provide rental housing or housing types that may not completely align with the underlying zoning requirements - but the benefits do not always outweigh the costs to the communities
- CP process should be an option available to municipalities to voluntarily use not a mandate

Concerns with Density Permitted by Comprehensive Permits

- The production of affordable housing in rural communities is being done under conflicting state goals. The Act asks municipalities to provide 10% of their year-round housing as deed-restricted LMI units. Land Use 2025, the State Guide Plan for land use, defines these municipalities as outside the Urban Services Boundary because of the lack of public water and sewer. We are directed by that plan to acquire land for open space in the undeveloped areas and to direct development to the historic mill villages
- The state housing plan also recognizes that village centers without sewer and water can only support modest density increases. This makes achieving the 10% state goal very difficult since there are limited areas in rural communities where density can be increased either because of law (CRMC, public water) or state guidance (Land Use 2025)
- Communities that are inside the CRMC SAMP are not permitted to allow density increases on Lands of Critical Concern (1 unit per 120,000 SF) or Self -Sustaining Lands (1 unit per 80,000 SF)
- In communities that host public drinking water supplies, density increases are not feasible or desirable

LMI Unit Preservation

- Look at two prong approach one to focus on creation and one to focus on preservation
- Address the issue of foreclosures negating affordability deed restrictions
- The legislation should place more emphasis on unit rehabilitation, loan programs for fixing up properties, with subsequent restrictions of the sale of those properties. We need to keep the aging population in their homes longer
- There is little oversight of affordable housing that has been created and action to protect these from foreclosure. RI Housing (RIH), even when holding the mortgage does not provide any help in protecting existing units. It would be helpful if RIH would take the loss and sell the units to the town so they are not lost from the inventory

RI Housing Letters of Eligibility

- There needs to be a higher bar for Letters of Eligibility in areas with no public water or sewer or that are outside the State's urban services boundary
- RI Housing should require a pro forma as a condition of a Letter of Eligibility and have that pro forma reviewed by an independent reviewer

Definition of LMI units

- Broaden definition of LMI housing to include mobile homes, section 8 vouchers, in-law apartments, average (or median) assessed value, tax abatements, local housing bonds, other services offered by the town (meals, transportation, etc.) that allow residents to age in place
- Amend the definition of affordable housing so that units provided by private funds are exempt from being deed restricted

Definition of Local Need

- Look at incremental approach for the applicability of a comprehensive permit based on recent increased in LMI stock – rolling 5-year average
- Allow municipalities that show significant gains in any one year to be able to refuse comprehensive permits for the next year
- Conduct a needs analysis of every municipality to determine actual need and then address those needs
- One solution does not fit all communities

- The LMI Act should include a state certification process for local Inclusionary zoning ordinances that exempts communities from the LMI Act if they enact local Inclusionary zoning standards that exceed the requirements of the LMI Act in terms of increasing the percentage of affordable housing
- Areas with no sewers makes the engineering for the required density to make LMI housing viable is limiting and expensive
- For rural communities, conversion of existing housing to deeded affordable is our best bet, but there is no state program or funding to assist with that.
- The current law is not working. We need a holistic approach that takes into consideration the variations between communities and their range of abilities to provide housing close to services in an affordable and efficient manner
- We have a lot of work to do regarding how we define and regulate affordable housing in a way that it meets the actual needs of the market

Area Medium Income (AMI)

- Lower the AMI for units to count as LMI units
- Developers get projects approved with lower AMI unit levels and return later to ask for an increase to 120% AMI as they are not finding buyers who want to live in rural areas without other support amenities like shopping, public transportation, etc.

State Housing Appeals Board (SHAB)

- There should be clear findings established for SHAB to grant density increases when a municipality as found a project inconsistent with its affordable housing plan
- The SHAB is an unnecessary review body. The statute's "Required findings for approval" should be applied the same way that similar findings are applied to all land developments and subdivisions. If that were to happen, then a denial or approval with conditions should be appealed directly to the superior Court. The reasons for denial establish clear policy and the Superior Court will have no problem reviewing the record of the Planning Board on this account

Fee in Lieu of Construction of Affordable Housing

- The "Fee in Lieu" amount in the Inclusionary Zoning law, 45-24-46.1, needs to be increased to a much more realistic figure and/or eliminate or enlarge the 2-year period to expend such fees. Towns have no control over how fast fees come in or how often viable applications to use the fees for affordable projects are received
- There is little to no incentive to create a fee-in-lieu program because the fee is so small that the town may never be able to accumulate enough money within the 2-year time frame to use the money in a meaningful way
- The fee-in-lieu should be a formula, rather than an amount, that calculates an appropriate fee-in-lieu on a town-by-town or county-by-county basis based on actual market rate home prices

Additional Comments

- Piecemeal legislative changes alter the system and have a ripple effect and unintended consequences. Consider coordination with the Land Use Commission that is looking at the zoning and subdivision legislation
- Developments in suburban areas that will significantly add to the State's LMI inventory and that are consistent with local plans are passed by in order to fund developments in the urban areas, leaving suburban communities with developments that are not consistent with the Comprehensive Plan

Conclusion

The Commission should utilize the data contained in this report to assist in determining if the CP process has been an effective and efficient way to produce LMI units.