

# H O U S I N G



# N E T W O R K

February 4, 2022

Representative June Speakman, Chair  
Representative Anastasia Williams, Vice-Chair  
Special House Commission to Study the Low and Moderate Income Housing Act

Sent via e-mail

To Chair Speakman, Vice Chair Williams, and Members of the Commission -

In late December 2018, the Housing Network of Rhode Island (HNRI) convened an informal Working Group of stakeholders to discuss issues related to Rhode Island's ongoing housing crisis, specifically relating to challenges of growing Rhode Island's stock of low and moderate income housing. The Working Group consisted of individuals who have high levels of expertise and interest in housing issues, and who bring different perspectives on these issues. Stakeholders represented interests that included municipalities, planners, homebuilders and housing developers (both for profit and nonprofit), housing finance, land use, smart growth, housing advocacy, and more. The goal of the Working Group as it was established was to identify areas of common interest in and consider opportunities to strengthen the State's current Low and Moderate Income Housing Act. At the time of the initial group convening, the preceding LMIHA Study Commission enacted under former Speaker Nicholas Mattiello and chaired by former Representative Shelby Maldonado was active and working to produce a report on findings related to the Act's implementation.

The Working Group continued to meet over the course of 2019 and discussed in detail the topics that are presented in this letter to the current Commission. The coronavirus pandemic disrupted our regular sequence of meetings throughout 2020 and we reconvened in May 2021. This letter serves as an informal "report out" from the group, recognizing the current LMIHA Study Commission is moving quickly to identify potential changes to the statute. Our intention is for the Commission to use the content of the letter, in particular, the "Ideas Generated," for informational purposes as you consider testimony from various stakeholders and deliberate on proposed changes to the LMIHA.

While all members of the working group agreed that Rhode Island is experiencing a housing crisis, the wide range of interests and perspectives often made it difficult to agree on exactly *how* different aspects of the larger crisis should be addressed. Some of the "Ideas Generated" are provided below and illustrate these differences of opinion within the Working Group. These ideas do not necessarily represent the viewpoints of any individual or organization involved with the Working Group. Several members of the Working Group (or affiliated organizations) may submit their own recommendations as part of the Commission's

process. Regardless, the numerous meetings of this group provided a platform to debate these issues in depth and better articulate some of the nuance associated with them.

## **1. Designation and Oversight of Approved Monitoring Agents**

### *Under the Current Law*

- Developers are required to include in their comprehensive permit application “Identification of an approved entity that will monitor the long-term affordability of the low and moderate income units” (R.I.G.L. 45-53-4(v)). However, the entity responsible for approving these monitoring agents was not specified.
- To allow municipally subsidized developments to proceed, RIHousing approved an initial round of monitoring agents over a decade ago.

### *The Issue*

- Ongoing oversight and approval of monitoring agents is needed to ensure that municipally subsidized developments remain affordable, that income eligible buyers and tenants are living in these units, and to ensure that all Approved Monitoring Agents are meeting threshold requirements for the monitoring services they provide.

### *Ideas Generated*

- It is appropriate that responsibility for approving monitoring agents and defining a consistent standard for monitoring agent responsibilities rest with the State, specifically the Housing Resources Commission.
- Responsibilities should include:
  - Setting threshold standards for the responsibilities of approved monitoring agents.
  - Formalizing procedures for approving monitoring agents, removing that designation if needed, and establishing reporting requirements.
  - Periodically certifying approved monitoring agents.

## **2. Administrative Support for the State Housing Appeals Board (SHAB)**

### *Under the Current Law*

- The SHAB hears appeals of comprehensive permit decisions. RIHousing is responsible for providing “space, and clerical and other assistance, as the board may require” (R.I.G.L. 45-53-7(b)).
- The cost of providing this support is partially offset by fees paid by developers bringing appeals of comprehensive permit decisions to the SHAB.

### *The Issue*

- In an effort to consolidate functions related to oversight of the LMIHA, responsibility for providing support to the SHAB should be transferred.

### *Ideas Generated*

- Consistent with having the Housing Resources Commission take on the designation and oversight of Approved Monitoring Agents, the Housing

Resources Commission could also provide administrative support to the SHAB.<sup>1</sup>

### **3. Mobile Homes Counted on the Local LMIH Inventory**

#### *Under the Current Law*

- There are no special considerations specifically for mobile home parks under the law. Like other housing types, mobile homes can count as low- and moderate-income housing as long as they are deed-restricted for at least thirty years or are in a park that has received a subsidy for such restrictions.

#### *The Issue*

- Many housing professionals and community planners believe that mobile home parks can represent a viable affordable housing option regardless of whether a deed-restriction is present.
- Resident-owned mobile home parks represent the most stable model for mobile home parks and provide a platform for long-term stability for these neighborhoods.
- Resident-owned mobile parks also have built-in incentive to keep costs for pad fees and other expenses low.

#### *Ideas Generated*

- Consider making resident-owned mobile home parks eligible to be added to the local LMIH unit count.

### **4. Include All Multi-Family Rental Units for Comprehensive Permits on the Local LMIH Inventory**

#### *Under the Current Law*

- In multi-family (rental) comprehensive permits, the housing units that are set aside as “affordable” are the housing units counted toward the host community’s LMIH inventory.

#### *The Issues*

- In Massachusetts, where a multi-family (rental) residential building is constructed as part of a Comprehensive Permit, all of the units count to the local inventory regardless of whether they are deed-restricted for affordability or not. The Commonwealth uses this as an incentive for constructing more housing.

#### *Ideas Generated*

- Some advocates believe only deed-restricted units should count.
- Others believe this may be an effective incentive for more production volume and greater housing diversity in communities primarily zoned for single-family homes.

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<sup>1</sup> This would be consistent with the process in Massachusetts, upon which Rhode Island’s law was modeled, in which the Department of Housing and Community Development is tasked with administering their Housing Appeals Commission.

## 5. Consider Weighting Some Housing Units More Than Others for the LMIH Inventory

### *Under the Current Law*

- Any single housing unit that qualifies to be counted toward a municipality's LMIH inventory counts as one unit. Apartments count the same as single-family homes. Rental counts the same as ownership. Units with deed restrictions for households that make 100% of the area median income (AMI) count the same as units restricted to households that make 60% of the AMI.

### *The Issue*

- This situation may provide an opportunity to drive production of homes more toward families at the low to very low income levels

### *Ideas Generated*

- Consider weighting units set aside for lower income households more strongly than those higher on the moderate income scale. For example, a sliding scale might look like this:

120% AMI – 0.5 unit count  
100% AMI – 0.75 unit count  
80% AMI rental – 0.75 unit count  
80% AMI homeownership – 1.0 unit count  
60% AMI – 1.5 unit count  
≤ 50% AMI – 2.0 unit count

- There may also be a way to weight rental versus home ownership, but if the previous suggestion (#5) is adopted, the incentive to do more rental housing may be adequately covered.

## 6. Fee-in-Lieu of Developing Affordable Housing

The Working Group acknowledges this specific issue is not related to the LMIH Act but rather to the Zoning Act, but would be remiss in not calling out that that a correlation exists. The results of our discussion are included here as they are germane to affordable housing legislation. This issue has been raised with the Land Use Commission.

### *Under the Current Law*

- The statute requires the Production Cost Method for single-family homes and condominiums, with the necessary values regularly set by Rhode Island Housing. Notably, the statute is silent on the methodology that should be used for rental situations.
- Where fee-in-lieu is offered in a local ordinance, the developer has the power to determine whether the option is used.

### *The Issues*

- The current calculation methodology is flawed in that it does not suit the diversity of housing types that may be proposed nor the economic/market

diversity of the communities to which it applies. It is a “one size fits all” solution for a very diverse collection of markets.<sup>2</sup>

- The fees assessed would need to be layered with other funding sources to reach the point where housing could actually be built.
- Municipalities will not offer the option if the applicant has the power to decide whether or not it is used.

Ideas Generated

- Consider removing the fee-in-lieu payment option from the legislation. The working group generally agreed with this approach.
- Another option discussed is retaining the fee-in-lieu option only for partial units calculated as a percent. However, we recognize that keeping the fee-in-lieu option for this narrow application still requires considerable work to repair the issues discussed above.

We thank the Chairs Speakman, Williams, and members of the LMIHA Commission for their consideration. Some members of our Working Group overlap with the Commission’s membership and may be able to provide more detail regarding these suggestions if desired. Our Working Group will continue to convene in the coming months and we will be discussing issues related to affordable housing that are more complex and were more challenging for our group to find agreement on. This is the challenge our group has embraced for many months and we welcome the opportunity to work further with the Commission to share our insights.

Sincerely,



Nathan E. Kelly, AICP  
Working Group Chair



Melina Lodge  
Executive Director, Housing Network of RI

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<sup>2</sup> A written summary of research on this topic was developed for the Working Group and can be shared with the LMIH Commission upon request.