

**TOWN OF GLOCESTER**  
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To: Special Legislative Committee to Study Low and Moderate Income Housing Act

From: Karen Scott, Town Planner

Date: December 2, 2021

Re: Issues Related to the Low and Moderate Income Housing Act Facing Glocester and Rural Communities

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**Concern 1 - Definition of “consistent with local needs” [RIGL 45-53-3 (4)]**

**Issue:** This definition sets a one size fits all definition of local needs for most Towns requiring at a minimum, that 10% of the year round housing units meet the RIGL 45-53 definition of low and moderate income housing. This definition does not take into consideration key differences across municipalities including access to public water, access to public sewer, access to public transportation, land capacity, local growth rates, and other existing state policy.

**a. Public Infrastructure Availability and Land Capacity**

- i. Glocester is one of about a quarter of municipalities in the state that has no public water and sewer, which severely limits its ability to accept dense development. The Town functions 100% using onsite wastewater treatment systems and well water.
- ii. When accommodating development, which must include private wells and onsite wastewater treatments systems, wetlands and other constraints to development must also be considered.
  - 1. Approximately 50% of the Town’s remaining vacant land in residential zones is constrained by wetlands alone.
- iii. The Town has very limited access to public transit which is highlighted by the fact that only less than 1% of the Town’s working population commutes using public transit<sup>1</sup>.
- iv. This definition treats municipalities with access to public infrastructure, unconstrained topography and better transit service the same as those without, which is not reasonable.

**b. Growth Rate**

- i. Glocester currently has about 3,850 housing units, with 86 units meeting the definition of low and moderate income housing according to RIGL 45-53, or about 2.2%.
- ii. Over the past 10 years, the Town has averaged about 21 new homes per year. The gap between the current low and moderate income housing mandate of 10% and the current

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<sup>1</sup> ACS, 2016

units meeting the RIGL definition of low and moderate income housing units about 300 units.

iii. The Town is expected as part of its comprehensive planning process to account for how each of those 300 units will be constructed within the 20 year planning horizon of the plan.

1. According to the State's own population projections<sup>2</sup>, the Town will grow to a population of about 10,080 by 2040, the planning horizon of the Town's current Comprehensive Plan. The current population is 9,897<sup>3</sup>. The average household size is 2.75<sup>4</sup>. This translates to a housing need of about 100 total units over the next 20 years but the low and moderate income units alone total 300 units, which forces internal inconsistency into the Comprehensive Plan.
2. RI Housing Data dated 10/21/2021 notes Gloucester average around 1 LMI unit per year, which is still almost 5% of the Town's total building permits.

ii. Ignoring the growth rate in a municipality forces unrealistic and conflicting housing projections. This inconsistency between projecting actual housing needs and needing to show how the 10% low and moderate income housing number will be met forces municipalities to include unrealistic policy statements in their Comprehensive Plans, the blue print of all land use decisions, in order to obtain State approval.

### c. State Policy

i. The State's own land use guide plan, Land Use 2025, includes an urban services boundary. That Plan states "The intent of showing an urban services boundary is to denote a significant demarcation in urban pattern – the future boundary of areas that should be more urban in character versus those that should retain a more rural character. In other words, the "urban/rural" systems approach. It provides an indication for planning purposes of areas where a higher level of public services exists or is anticipated to be available to accommodate more intensive development. Conversely, public services in areas outside the Urban Services Boundary are anticipated to be more limited, and planned development intensities should accordingly be lower. Furthermore, land outside the Urban Services Boundary may be best suited for reservation as conservation areas and productive rural resource lands."<sup>5</sup>

1. Gloucester's policies have aligned with those of Land Use 2025 – just over 15% of the Town's land area is permanently protected open space.

ii. Land Use 2025 does designate potential centers, one of which is Chepachet Village but the area is severely constrained to accommodate very dense development due to lack of public infrastructure and current issues with groundwater availability. Many of the historic structures that follow a denser development pattern have wells and cesspools that do not meet the current required well and septic minimum separation distances in their existing lot configurations, causing pollution.

iii. This delineation of the urban services boundary is another reason why a one size fits all approach to establishing local needs is not only unrealistic but inconsistent with established state land use policy.

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<sup>2</sup> RI Population Projections, RI Statewide Planning Program, 2013 (2020-2040)

<sup>3</sup> US Census, American Community Survey, 2016

<sup>4</sup> 2013 ACS B25010

<sup>5</sup> Land Use 2025: Rhode Island State Land Use Policies and Plan, April 2006

**Recommendation:** Rather than focusing on the 10% LMI housing figure, rural communities with consistently low growth rates and no access to public infrastructure should be able to establish their own local needs and set realistic goals for incrementally increasing affordable housing stock. These goals should reflect the public infrastructure availability, land capacity and growth rate of the municipality and be aligned with State land use policy.

## **Concern 2 - Definition of “low and moderate income housing” [RIGL 45-53-3 (9)]**

**Issue:** The current definition allows municipalities to only count housing units as low and moderate income units when they are both subsidized by a federal, state, or municipal government subsidy and deed restricted for at least 30 years. This narrow definition drastically undercounts the affordable units that actually exist within a municipality and stifles creativity when trying to increase affordable housing production in rural communities.

### **a. Mobile Homes**

i. Gloucester has 151 units of housing in 2 mobile home parks. The average value of these mobile homes is about \$45,000. These units are viable low and moderate income units and a method to recognize these units as such should be incorporated into state law.

### **b. In-law Apartments**

i. RIGL 45-24-37 was recently expanded to allow in-law apartments without a special use permit for not only the disabled but those 62 and older.

ii. New housing demand will outpace population growth because of shrinking household size. RI residents 65 and older are expected to grow by about 40% regardless of the economic growth of the state. Housing cost burdened elderly are expected to grow at a faster rate than other types of households. Having access to family and community is critical to senior households. 94% of new households will be at 120% AMI or lower and the 2 largest groups are elderly and millennials.<sup>6</sup> Both of these groups are good fits for in-law apartments.

### **c. Assessed Value**

i. The average assessed value of a single family home in Gloucester is approximately \$291,648. The income needed to comfortably afford this price home is between 80%-100% area median income for a family of four.

ii. Market conditions and the nature of the existing housing stock have built affordability into some municipalities, which affects how they articulate their housing needs.

**Recommendation:** There are other avenues to creating LMI units rather than just deed restricted and subsidized units and by focusing on just this definition of an LMI unit, other methods of creating affordable housing is stifled, particularly within a rural community. A municipality should establish its local housing need, set realistic goals related to achieving those housing needs and articulate strategies to produce the necessary units. Subsidized and deed restricted units should be one of many tools available to meet the affordable housing needs of a community. Other types of housing, including mobile homes and in law apartments, as well as inherent market conditions should all be included in the overall picture of housing affordability in a municipality.

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<sup>6</sup> Projecting Future Housing Needs Report, HousingWorks RI, 2016 (Pg. 20)

## Concern 3 - Procedure for approval of construction of low or moderate income housing [45-53-4]

**Issue:** By setting up a system by which it is nearly impossible to meet requirements for low and moderate income housing under the current definition of local needs and the definition of low and moderate income housing, rural municipalities are vulnerable to the comprehensive permit process, which puts density exactly where it can't be supported.

### a. Comprehensive Plan

- i. The Comprehensive Planning Standard Manual<sup>7</sup>, the document that outlines all requirements that a Comprehensive Plan must meet to obtain state approval, has conflicting requirements – illustrating the actual future housing need for the municipality using sound data and achieving 10% of housing as low and moderate income housing using a one size fits all approach.
  1. In the case of Gloucester, the construction of 300 low and moderate housing income units must be shown in the Plan's planning horizon while the housing needs only show 100 units needed over the planning horizon.
- ii. When a comprehensive permit comes before the municipality, all other legislated review standards (subdivision, special use permit, variance, certificate of consistency for historic districts, etc.) are removed from consideration and replaced by five standards by which a municipality can deny a permit:
  1. If city or town has an approved affordable housing plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing plan;
  2. The proposal is not consistent with local needs, including, but not limited to, the needs identified in an approved comprehensive plan, and/or local zoning ordinances and procedures promulgated in conformance with the comprehensive plan;
  3. The proposal is not in conformance with the comprehensive plan;
  4. The community has met or has plans to meet the goal of ten percent (10%) of the year-round units or, in the case of an urban town or city, fifteen percent (15%) of the occupied rental housing units as defined in § 45-53-3(2)(i) being low and moderate income housing; or
  5. Concerns for the environment and the health and safety of current residents have not been adequately addressed.

The majority of the standards that are available to municipalities that do not meet the current state law requirement of meeting local need (10% of housing stock) are based on the comprehensive plan, which has, for the reasons outlined above, inherent inconsistencies when dealing with the actual local housing need and the required number of low and moderate income housing units. This puts municipalities in a difficult position to defend the unrealistic estimates of production of low and moderate income housing units mandated to be shown in the Comprehensive Plan versus what has actually occurred in line with actual local growth, available infrastructure, land capacity, etc.

### b. Comprehensive Permits

- i. Full results of municipal comprehensive permit survey will be distributed when complete.
- ii. The State Housing Appeals Board (SHAB) is not proceeding in the expedited fashion that was originally envisioned.
  1. Many appeals to SHAB have taken years to conclude.

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<sup>7</sup> RI Comprehensive Planning Standards Manual, State Planning Council, 2016.

**Recommendation:** Determine if the number of LMI units created by the Comprehensive Permit process is a success. If not, we need a better method for production. If we do keep the Comprehensive Permit process, it should be re-examined so that municipalities can realistically implement their own context-sensitive vision for low and moderate income housing that accurately reflects the local conditions and needs. Comprehensive permits should be one tool available to municipalities to utilize voluntarily in developing affordable housing but it should not be a mandate or a consequence for not reaching an arbitrary number that is not based on actual local needs. Additionally, the SHAB should be examined for effectiveness.

## Concern 4 – Related Low and Moderate Income Housing Legislation

**Issue:** Related Legislation has a strong impact on the implementation of the Low and Moderate Income Housing Act

- a. **RIGL 44-5-13.11 – Qualifying low income housing** - Assessment and taxation states that low and moderate income rental units are subject to a tax of 8% of the previous year gross scheduled rental income instead of the full and fair value of the property. This can create a large financial burden on municipal budgets.
  - i. For municipalities without public infrastructure and with other constraints to development, a large commercial and industrial tax base is nearly impossible to build, making those municipalities disproportionately dependent on the residential tax base.
    1. Gloucester’s land use is 3% commercial and industrial. Limiting the taxes the Town can collect on residential development hinders the Town’s ability to provide basic services (education, public safety, etc.). The Town’s taxes are high and only cover the most basic services – no garbage pick-up, no municipal fire, etc.
  - ii. For municipalities with the public infrastructure in place, this reduced assessment acts as a disincentive for density as municipalities must provide the same services with significantly lower funds.
- b. **RIGL 45-24-46.1 – Inclusionary Zoning Fee in Lieu Construction Provision** – A zoning ordinance can require the inclusion of affordable housing as part of a development and that inclusionary zoning may provide that the affordable housing must be built on-site or utilize one of more alternative methods of production, including off-site construction or rehabilitation, donation of land suitable for development of the required affordable units, and/or the payment of a fee in lieu of the construction or provision of affordable housing units.
  - i. The amount of the fee in lieu of construction, which is the choice of the developer or builder applied on a per-unit basis, is not sufficient to cover the cost of an affordable housing unit. The minimum amount is \$40,000. As of 2020, the maximum amount as computed by 45-24-46.1 (c) 1 was \$75,000.
  - ii. This fee insufficient for constructing an actual unit of affordable housing, particularly for a rural community with no redevelopment agency or Community Development Corporation.

**Recommendation:** Find a more equitable way to accommodate low and moderate income rental developments without creating an undo tax burden on the entire community’s tax base. Revise the fee to a higher more realistic amount that could actually be used to construct an LMI unit or remove the fee in lieu option and require the developer to produce an affordable unit on-site, off-site or in partnership with a non-profit organization.

**Conclusion:**

Glocester fully supports the development of low and moderate income housing but the current law does not take into account the diversity among the State's municipalities. By using a one size fits all approach to establishing local needs, the current law forces communities to set unrealistic low and moderate income housing policies that are not based on actual development factors such as availability of services, growth rates and environmental constraints. In addition the current law removes the ability to count units that are actually satisfying low and moderate housing needs that a more rural community can accommodate and does not take into consideration the overall affordability of the housing stock within the community. The current law also opens up the opportunity for comprehensive permits, while limiting the ability of the Town to make local decisions based on local conditions. It has not proven to be an effective tool for providing low and moderate income housing opportunities in the rural areas and should be modified so that the interests of rural communities are more accurately reflected in its requirements.