



December 17, 2021

Members of the Land Use Commission:

The American Planning Association – RI Chapter is pleased to submit the attached report addressing several areas of land use regulation. This report is the product of contributions by numerous APA-RI members and was edited by M. James Riordan, APA-RI Prior President (2018 – 2019) and Michael J. DeLuca, Narragansett Town Planner.

Our membership is represented by city and town planners, state-department planners, private-sector planners, planning boards and others. This document seeks to highlight the areas of Rhode Island Land Use Laws we find to be flawed, vague, outdated or missing key elements. In it, we identify 14 content areas of concern that we believe should be priorities for the Land Use Commission to address. For each cited passage, we provide a description of the problem and offer suggestion(s) for improvement of the law.

On behalf of the entire APA-RI membership we offer *Better Land Use 2021* as a guide to assist the Land Use Commission in achievement of its mission. Our chapter leadership represented by the Executive Board and the Legislative Committee stand ready to provide follow up assistance in any way the Commission requires.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ashley V. Sweet', written in a cursive style.

Ashley V. Sweet
Chapter President



American Planning Association
Rhode Island Chapter



Better Land Use 2021

APA RI's Recommendations for Improved Land Use in Rhode Island

Better Land Use Rhode Island presents APA Rhode Island's recommendations for improvement of land-use regulation. The purpose is to add both efficiency and efficacy. These recommendations will be provided to the Land-Use Commission and the membership of our chapter.

FINAL: December 17, 2021

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Better Land Use 2021

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Providence, Rhode Island 02908*

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Acknowledgements:

This plan was developed by the Legislative Committee of the Rhode Island Chapter of the American Planning Association. The principal editors were Michael Deluca, AICP, Elections Officer; and M. James Riordan, AICP, LEED AP, Prior President (2018 – 2019).

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Executive Summary

The State of Rhode Island has recently formed a land-use commission, enabled to consider the status of existing state land-use policy and to recommend appropriate revisions. Planners in Rhode Island will participate directly in the deliberations as members of the commission as well as indirectly through our discussions with committee members, state legislators, and other concerned parties. Each planner in the regulated community will likely have an individualized point of view on land-use regulation; however, as planners, we do have ideas and objectives in common and we are most likely to realize our objectives through a unified voice. *Better Land Use Rhode Island 2021* was written to develop and express that unified voice.

We developed the following consensus recommendations and points for consideration of the land-use commission:

Process and Procedure

- A. *State Mandated Time Periods for Completeness and Review of Applications*
- B. *Design Review Guidelines and how They are Tied to Development Plan Review (45-23-30 and 45-24-30)*
- C. *Zoning and Use Variances*
- D. *Meeting Attendance and Quorums for Board Meetings*
- E. *Training and Continuing Education for Board Members*
- F. *Virtual Meetings and Distance Participation in Meetings and Decisions*
- G. *Cross-Reference Local Law, Policy, and Plans along with State Law, Policy, and Plans*
- H. *Use of Certified Mail vs. Certificate of Mail (i.e., Postal Service Form 3817)¹ for the land development and subdivision processes as opposed to the more expensive and complicated Certified Mailing.*
- I. *Professional Peer Review of Applications*
- J. *Engagement, Diversity, and Inclusion*

Prominent and Emerging Issues

- K. *Climate Change*
- L. *Housing Affordability - Inclusionary Housing, "Middle Housing", Workforce Housing, Affordable Housing*
- M. *Energy Siting*
- N. *Transportation and Mobility*

Definitions

Land Use Committee Participants

¹ Certified Mail provides proof of delivery while a Certificate of Mailing only provides proof of mailing. (Source: <https://askinglot.com/is-certificate-of-mailing-the-same-as-certified-mail>)

Key Findings

Key findings of this white paper include the following regarding the points for consideration listed above:

State Mandated Time Periods for Completeness and Review of Applications

- Reduced the time period for certification of completeness of the application from 60 days to 25 days for recertification of completeness from 14 days to 10 days; and for the decision by the planning board from 120 days to 90 days.
- Opposed the drastic cut in time to review applications for completeness
- Provisions for comprehensive permit applications (under Section 45-53-4(4)(iv)) received no amendment to the timeframe.
- Now an application for affordable housing is provisioned with a review limit that is 30 days longer than a conventional application.

Design Review Guidelines and how They are Tied to Development Plan Review (45-23-30 and 45-24-30)

- Revisions to development law should encourage better standards for architecture, landscapes, and streets.
- Land Use Commission should explore whether there should be specific language to enable design regulations and design review outside of historic districts.

Zoning and Use Variances

- Zoning Act does not allow a community to regulate conformance once a use receive a variance.
- A use variance effectively becomes the zoning for a parcel and runs with the land regardless of whether the hardship continues to exist or whether the use is abandoned.
- Advocate for a process where a use variance can be changed to a permitted use by right if the owner agrees to record that the use variance is abandoned.
- Also, the APA RI would support a process where a use by variance can be changed to a use of lesser intensity use by special use permit.

Meeting Attendance and Quorums for Board Meetings

- Bill S-307 allows for minority decisions by allowing a majority PRESENT to make a decision

Use an approach like the Zoning Enabling Law

- Have alternate members who can sit in the place of a member who is unavailable.

Training and Continuing Education for Board Members

- We support training for local planning boards and zoning boards, but wish to ensure ample opportunities at no cost.
- Provide flexibility in the law to allow the Director of Administration (with support from the Division of Planning) to consider new areas of concern as they may arise.
- Set up a 2-year cycle.

Virtual Meetings and Distance Participation in Meetings and Decisions

- Use of virtual meetings for land-use decision making.
- Municipalities should be offered flexibility to do this under the Open Meetings Law as well.

Cross-Reference Local Law, Policy, and Plans along with State Law, Policy, and Plans

- Conduct a full review of development law to ensure proper and accurate cross-referencing.

Use of Certified Mail vs. Certificate of Mail

- Given the success in use for zoning hearings, of the Certificate of mailing should be allowed under RIGL 45-23 for major and minor subdivisions.

Professional Peer Review of Applications

- Codify the right for municipalities to use peer-review services for development review.

Engagement, Diversity, and Inclusion

- More expansive language to ensure as diverse and inclusive process as possible.

Climate Change

- No one can precisely predict what will come in 10, 20, or 100 years. We ask that climate change is recognized as an issue by statute and that municipalities are given the authority address it as needed.

Housing Affordability - Inclusionary Housing, "Middle Housing", Workforce Housing, Affordable Housing

- Authorize flexibility in local regulations.
- Coordinate with the Special LMI Housing Commission
- A dedicated finance package that eliminates the need for competitive application for funds.

Energy Siting

- Consider siting of alternative energy facilities, the hardening of infrastructure, and the potential relocation or abandonment of facilities in a manner ensuring appropriate public engagement and assurance of equitable solutions.
- Disincentivize solar installations in areas of the state that may be better used for housing and habitat protection.

Transportation and Mobility

- Incorporate recommendations of the LRTP, TMP, BMP, and BSDG into land use policy to the greatest extent possible while expressly ensuring Home Rule.

Preamble

Better Land Use Rhode Island 2021 has been prepared by members of the American Planning Association Rhode Island Chapter (APA RI). Land use refers to the purpose that society decides land should serve. Examples of land use include recreation, wildlife habitat, agriculture, commercial development, and residential development. Land is a limited resource, there is only a certain amount available. Land is a largely nonrenewable resource. Once it has been used for a purpose, bringing it back to its original, unaltered condition may well be impractical or impossible. While some types of land use may exist together harmoniously, most uses present a least some degree of conflict with other uses. For example, industrial uses tend to conflict with residential uses. Land that has been developed for residential properties purposes typically provide lessened habitat value and ecological function.

Land use decisions, therefore, must be made carefully and collaboratively to maximize land benefit, support social equity, and prevent externalities (e.g., degradation of resources by pollution). There is no single right or wrong way to make land use decisions. Everybody has a somewhat different idea of what is important—and maybe even what is essential. That said, we believe we can develop reasonable consensus around land use that maintains general welfare and liberty for the residents of our great state.

In the early 1990s, Rhode Island established a body of land use policy in the Rhode Island General Laws. These policies emerged from the work of the Rhode Island Land Use Commission and included the Comprehensive Planning Act, the Zoning Enabling Act, and the Subdivision Enabling Act. They were—and remain—progressive in their construction and intent. That said, their authors could not envision the full breadth of changes which have occurred in recent decades. For example:

- Technology has advanced to create an internet of communication and things with enormous implications for our economy, the way we do work, and even the way we make decisions.
- Climate change now presents what many consider to be existential threat through forces we cannot effectively control such as flooding, drought, and major storms.
- Equity, population vulnerability, and aging present us with a gathering social crisis.
- Our changing energy reliance from overseas fossil fuel to local and decentralized renewable sources present both economic opportunity as well as land use conflict.

How should we address these concerns? What does this mean for the future of land use? What implications do these dynamic changes hold for our decision making? *Better Land Use Rhode Island 2021* will begin to consider how we should answer these questions. A key recommendation is the re-establishment of the Rhode Island

Land Use Commission, which served Rhode Island in the 1990s with the creation of policies that has supported land use decision making for the last 30 years. We seek to work from this exceptionally well-considered and long-standing policy structure.

Findings Since 1988

In 1988, the State of Rhode Island passed the Rhode Island Comprehensive Planning and Land Use Regulation Act. This was followed by the passage of the Rhode Island Zoning Enabling Act of 1991 and the Rhode Island Land Development and Subdivision Review Enabling Act of 1992. Together these three laws form the basis of our modern land-use regulation in Rhode Island. This section of *Better Land Use Rhode Island 2021* discusses our findings related to the status of land-use regulation in Rhode Island.

The State-enabling legislation of the early 1990s resulted in a well-formed basis for land-use regulation, but three decades have elapsed since Rhode Island has taken a comprehensive look at its land-use regulatory structure and whether it continues to provide for a fair, open, and efficient process for the parties involved. In that time, the State's 39 cities and towns have implemented comprehensive community plans (CCPs) and updated their subdivision and zoning regulations based on the growth management objectives in their CCPs. But time has altered the nature of development as well as the issues to be addressed by local development regulations. The time is ripe to review the existing land use system, current land use regulations, examples of best practices, or other relevant state land use and planning information to identify better ways to incentivize resilient, equitable regulation of growth in our State.

The Comprehensive Planning and Land Use Act has been amended 12 times since 1988 in 16 separate sections. The Subdivision and Land Development Review act has been amended 17 times since 1992 in 28 sections. The Zoning Enabling Act has been amended 27 times since 1991 in 98 separate sections. Some changes, like the tolling law, were temporary measures, but the majority were not. In some cases, great attention was paid to adjusting related regulation through cross-referencing, but in many cases, cross-referencing did not occur. As time has passed, local planners have been faced with the inconsistencies that have resulted from the patchwork quilt of these enabling laws sometimes opening local decision making to legal challenge. This paper seeks to identify the areas of inconsistency and areas of obsolete language in need of correction.

The American Planning Association Rhode Island Chapter (APA RI) has appointed a committee of local, state, and private-sector planners to identify the most notable areas of concern, specifically those that run counter to APA RI principles.

Principles for support of enforcement of state policy (APA Principles)

In 2019, APA RI developed and adopted a series of principles to help govern its advocacy as well as work on policy and legislation. These principles were initially

adopted in the APA RI 2019 Annual Work Plan and are reconsidered annually as part of APA RI's work planning process. No changes have been made to the principles since 2019. In this section of the *Better Land Use Rhode Island 2021*, we list the principles as they are currently written in the APA RI 2021 Annual Work Plan. The principles provide the basis for the analysis and recommendations contained in later sections of the white paper.

1. APA RI supports enforceable policy, including legislation, that respects the importance of self-governance (i.e., home rule) at the municipal level, while acknowledging that some issues require state standards, enabling authority and guidance.

Explanation of the principle:

- Legislation and other enforceable policy adopted by the state must be consistent with the Rhode Island Constitution and must respect the right of municipalities to make policy decisions at the local level. Policy should be established in consideration of the needs and desires of all Rhode Island municipalities, whether urban, suburban or rural.
- Certain issues require goals to be set by the state. APA RI will support enforceable policy aimed at achieving state goals when municipalities are given the flexibility to achieve those goals in a way that is pragmatic and reasonable for each municipality.
- APA RI acknowledges that in some cases state standards are necessary to establish equitability and socio-economic justice. APA- RI is committed to working with the state to craft standards where setting individual municipal standards may be impracticable or counter to the state's equitability and socio-economic justice goals.

2. APA RI supports legislation that is consistent with the State Guide Plan (SGP).

Explanation of the principle:

- APA RI supports the long-term vision of the SGP and supports legislation as well as other policy that takes a long-term view of the future.
- APA RI acknowledges that some elements of the SGP may be dated, no longer providing desirable goals, policies, and actions. In such cases, APA RI supports updating the SGP, which may include interim policy corrections if needed.
- In particular, APA RI supports legislation that takes the state and all its municipalities closer to the vision of the land use element of the SGP, Land Use 2025.

3. APA RI rejects unfunded and unsupported mandates.

Explanation of the principle:

- APA RI rejects state mandates that require municipal action without offering necessary financial and technical support.

4. APA RI supports a holistic approach to legislation and policy.
Explanation of the principle:

- APA RI rejects legislation and other policy that is drafted to respond to singular situations or actions without consideration of context, repercussions, and collateral issues. Where such policy is proposed, APA RI will work through the broader implications and will promote alternatives that address the core of the issue, and not just a singularity.
- Specific to policy related to land use, APA RI acknowledges the need for an appropriate balance among competing land uses. APA RI will not support legislation that allows one land use to dominate any other.

5. APA RI supports legislation and policy that values an efficient planning process responsive to the needs of the public.

Explanation of the principle:

- APA RI will reject policy that requires actions or processes that do not account for public input or a public-planning process, or that prioritize time and money over people and communities.

6. APA RI supports policy that is technically correct and consistent with existing law. Explanation of the principle:

- APA RI will strive to do its own research and “homework” for any legislation it puts forth or promotes, to ensure that it is based on the best available data, and that it is consistent with existing policy (or points out where existing policy should be adjusted).
- APA RI will also strive to offer alternatives for proposed policy related to planning and land use that is NOT technically correct or based on the best available data.

Recommendations

Process and Procedure

The APA RI has identified the following list of areas for consideration of updated or improved wording in the State Enabling Laws.

A. State Mandated Time Periods for Completeness and Review of Applications

In 2017 the Legislature amended two sections of the Subdivision of Land (Chapter 45-23), specifically:

- Section 45-23-40. General provisions – Major land development and major subdivision – Master plan, and
- Section 45-23-41. General provisions – Major land development and major subdivision – Preliminary plan.

Revisions were made in both sections to reduce the time period for certification of completeness of the application from 60 days to 25 days for recertification of completeness from 14 days to 10 days; and for the decision by the planning board from 120 days to 90 days.

There were no corresponding changes for completeness and review of minor applications, and no changes to the time periods for certification and decision at the third and final phase of a major application.

APA RI, as well as individual communities, opposed the drastic cut in time to review applications for completeness (performed by the administrative officer, typically the planner), but also, and more importantly, the loss of 30 days for a planning board to make a decision on a major application at both the master plan and the preliminary plan phases.

These changes were made to the provisions for conventional major land development and subdivision projects, while the provisions for comprehensive permit applications (under Section 45-53-4(4)(iv)) received no amendment to the timeframe for rendering a decision. Now an application for affordable housing—which is intended to be streamlined—is provisioned with a review limit that is 30 days longer than a conventional application. This counter-intuitive policy is an example of the consequence of incremental policy change. APA RI seeks a more complete and thoughtful approach.

In the following four legislative sessions, with the help of supportive legislators, APA RI has submitted bills to attempt to further modify these changes to reclaim some of the review time and by proposing cuts in the time periods in other sections of the land development review process. The overriding goal of APA RI is to give the planning boards their needed time to review large and complex projects. The intent is to hear all testimony, undertake peer review, if necessary, to deliberate, and to make a decision in the best interests of their communities while at the same time being fair to applicants. Mandating shortened reviews might sound good on paper, but the reality is that fair and considerate reviews take time and rushed reviews create collateral damage.

APA RI has prepared text amendments that make the desired time period adjustments, while also putting parameters on when the “timeclock starts ticking” in a way that protects both the applicant and the community reviewing the project. The aim is to reduce incentives to use the state mandated time

periods to gain an advantage, which has been done by both applicants and regulators. For example, a planner will schedule the date of completeness so that it gives her board the maximum number of meetings before a decision needs to be made. Conversely, an applicant may voluntarily elect to skip a meeting after being certified complete but pay no penalty in terms of the decision date, giving the board one less meeting for their review.

APA members have done a considerable amount of work on these proposed changes to regain decision making time where it is often needed, and forgone time where it is appropriate. We are available to present these proposed changes to the Land-Use Commission.

B. Design Review Guidelines and how They are Tied to Development Plan Review (45-23-30 and 45-24-30)

Currently, both the Zoning Enabling Act and the Land Development and Subdivision Review Enabling Act both promote high-quality and appropriate design and construction. The enabling legislation also supports redevelopment well-integrated with the surrounding neighborhoods with regard to natural and built features. The protection of neighborhood-character protection requires attention to physical site characteristics and architectural context; however, there is little guidance in either act as to how these purposes should be carried out. Urban design and high-quality construction have increasingly been concerns of both urban and non-urban communities. APA RI planners feel that any revisions to the acts should take into consideration and encourage better standards for architecture, landscapes, and streets.

While it is clear that historic district commissions may carry out design review within local historic districts, the Land Use Commission should explore whether there should be specific language to enable design regulations and design review outside of historic districts. Currently many cities and towns incorporate standards into their zoning ordinances and subdivision and land development regulations. For the most part, these are objective dimensional standards. But concepts such as compatibility and scale cannot always be captured in a dimensional regulation. A legislative focus on objective characteristics and standards such as form-based codes and village district regulations will provide clear guidelines for consistent context-sensitive decision-making. Furthermore, design review is often delegated to a planning board or other committee as either a development plan review body or in the context of reviewing a land development project. While we believe that the enabling acts allow for design review and even waivers from regulations, the acts should be much more explicit about what is permitted in terms of regulation and process.

c. Zoning and Use Variances

The Zoning Enabling Act properly gives communities many tools to deal with nonconforming uses, which are uses of land, buildings, or structures that were lawfully established but are no longer permitted in a given zoning district. Often referred to “grandfathered uses,” The Act allows for communities to regulate them more strictly than permitted uses and may also allow their expansion or intensification if conditions warrant. Communities may also consider nonconforming uses abandoned if they are not active for a period of time. This allows a community to bring land use into closer conformance with a zoning ordinance over time.

Unfortunately, the Act does not allow a community to regulate conformance once a use receive a variance. Variances are generally granted by a zoning board of review according to specific findings of hardship and in accordance with plans approved by the zoning board. A use variance effectively becomes the zoning for a parcel and runs with the land regardless of whether the hardship continues to exist or whether the use is abandoned. This means that communities have no ability to regulate uses by variance that have become nuisances, such as automobile repair shops that may have been allowed by variance in residential zones. Even if they go away for a period of time, they can always return. It makes no sense for uses by variance and nonconforming uses to be regulated differently. Therefore, APA RI would like the commission to explore enabling communities to better regulate uses by variance.

The APA RI would advocate for a process where a use variance can be changed to a permitted use by right if the owner agrees to record that the use variance is abandoned. Also, the APA RI would support a process where a use by variance can be changed to a use of lesser intensity use by special use permit.

d. Meeting Attendance and Quorums for Board Meetings

APA RI has addressed the issue of the threshold for determination of a quorum in our recent letter to Senator McCaffrey relative to bill S-307. The proposal to allow a majority of zoning or planning board members present to establish a majority for taking votes on development applications or any important project or program under consideration runs counter to APA RI Principle 5 above. It would, in effect, allow for a minority of the board membership to approve (or deny) an application. Very clearly, this potential for minority decision making, reflecting limited deliberation and undiversified viewpoints could be used to usher in unvetted opinions and undermine the interests of the community at large.

While there have been limited instances where an applicant has been made to wait a period of time for a particular board to establish a quorum, quorums are usually established regularly and expediently. APA RI believes no board should be allowed to approve or deny a development application with less than a majority of the full membership; however, we also believe there is an established alternative approach in related legislation. The Zoning Enabling Law allows for and mandates that local Zoning Boards have alternate members who can sit in the place of a member who is unavailable. It is time that the Subdivision and Land Development act be considered for a similar provision.

(Copies of draft bills submitted in 2018, 2019, 2020, and 2021 are attached.)

E. Training and Continuing Education for Board Members

The APA RI has addressed this issue for the past three years in separate communications with the House leadership. APA RI does not object to the intent of this year's bill, (H-5392), but we believe that it could be improved with a number of complementary additions/revisions. While we are generally supportive of the expansion of training requirements for local planning boards and zoning boards, we ask the General Assembly to ensure that there be sufficient educational opportunities made available at no cost to the individuals serving on the boards. Please remember that these are volunteers who give their time and energy to their communities with little or no compensation.

It is our belief that there should be flexibility in the law to allow the Director of Administration (with support from the Division of Planning) to consider new areas of concern as they may arise and craft a training program for them in any given 2-year cycle. We also believe the bill could be improved by incorporating the expertise of a local solicitor into the membership of the proposed advisory committee.

F. Virtual Meetings and Distance Participation in Meetings and Decisions

The COVID-19 pandemic has showed us the value, usefulness, and effectiveness of virtual meetings. While face-to-face interactions allow for a quality of communication that may not be replicable virtually (e.g., loss of body language, multi-lateral conversation without stilted audio), virtual meetings do allow for engagement without travel and tend bring a broader, more representative audience. Updates to the Rhode Island land-use statutes should consider the use of virtual meetings for land-use decision making. It is critical that municipalities are offered flexibility to do this under the Open Meetings Law as well.

G. Cross-Reference Local Law, Policy, and Plans along with State Law, Policy, and Plans

The current statutes and local ordinances related to land-use decision making present a mosaic of standards and rules that were adopted and amended over the course of several decades. In places, there are inconsistencies and sometimes even broken references. As part of the Land Use Law updates, we strongly recommend that a review is performed to ensure consistency from enforceable policy to enforceable policy and that this review is extended across state and local jurisdictions.

H. Use of Certified Mail vs. Certificate of Mail (i.e., Postal Service Form 3817)² for the land development and subdivision processes as opposed to the more expensive and complicated Certified Mailing.

The General Assembly approved in 2017 or 2018, the allowance to use Postal Form 3817 to certify the mailing of notifications to property owners within the local jurisdictions designated zoning notification radius. This approach should be considered for wider application to the subdivision and land development process. The reasoning at the time was to eliminate the need for return receipts, which require the owner's signature on a "green card" that the postal carrier must present personally to individuals on the notice list. When no adult is home, a notification card is left in the mailbox indicating the need for the owner to pick up certified mail at the local post office. It was recognized that the actual success rate of meeting the notice requirement has decreased over the years due to a decreasing number of homes with an adult present during the day. The result has been a decreasing number of residents being notified of pending public hearings for zoning changes, variances and special use permits.

Since adoption, several municipalities in RI have implemented use of Postal Service Form 3817 with success. While this form does not require signature at the receiving end, it does ensure that each piece of mail is certified as received by the Post Office and delivered in the same manner as all other first-class mail.

This provision is not currently extended to the land development or subdivision process today. Given the success in use for zoning hearings it is now time to consider a change in RIGL 45-23 to incorporate a comparable allowance for hearings related to major subdivisions, minor subdivisions incorporating a

² Certified Mail provides proof of delivery while a Certificate of Mailing only provides proof of mailing. (Source: <https://askinglot.com/is-certificate-of-mailing-the-same-as-certified-mail>)

roadway, and major land development projects being prepared for hearing by local planning boards and commissions.

I. Professional Peer Review of Applications

Most of the smaller and rural municipalities in Rhode Island have a limited or part-time planning staff (one planner, one assistant or clerk) and some do not have a town engineer. Certainly, most towns do not have a staff architect, landscape architect, traffic engineer, climate scientist, or even a floodplain manager. Even with a rounded professional staff, many large, complex and multi-use/planned developments require a community to have outside assistance in the form of professional peer review. This allows the town or city to have their own representation on a project that can have a major impact on neighborhood or community character. Another issue is that workload can widely fluctuate from year to year, meaning that a small staff can comfortably handle the application level one year, but be inundated and unable to respond to required timeframes, the following. This makes staffing effectively difficult over the long term. Peer review in the form of professional planning can help to alleviate workload during the more intense periods.

There is nothing that prevents a municipality from hiring their own experts, but it is the intent of APA RI that there be a mechanism in state law that enables a community to transfer the expense of peer review to the applicant presenting the project. Many communities do have a local provision, particularly in their subdivision and land development regulations, that provides for peer review at the applicant's expense. This right should be codified.

J. Engagement, Diversity, and Inclusion

Engagement represents that concept most captured in our public notice laws,³ which is grounded in the requirement of Constitutional due process related to property rights. The adoption of, changes to, or relief from land use regulations and zoning ordinances after a public hearing with public participation are *de facto* "in the public interest." The requirement for public notice seeks to ensure that the "public's interest" is not forgotten or ignored.

Historically, the public notification process has presumed a certain level of self-interest, especially by abutters and those stakeholders most affected by any public hearing, to ensure a fair and open process of public participation. Some

³ RI General Laws pertaining to this concept include: § 45-22.2-8(3)(ii) and (iii); § 45-23-53(a); § 45-23-54; § 45-23-69; § 45-24-51; § 45-24-53(a); § 45-24-45; and § 45-24-66

jurisdictions have taken more proactive steps to ensure widespread dissemination of information and taken deliberate steps to outreach to communities who may not traditionally participate. The timing, truth, and accuracy of that notice provides for the engagement of public participation, and how diverse and inclusive it is.

As noted in the Preamble to this document, the last three decades have brought forth an evolving acknowledgement of the role of land use in supporting the concept of “equity,” which suggests a deepening of engagement is required to ensure that it is reflective of a geography’s diversity and deliberately inclusive in notification and seeking public comment. In doing so, however, it is also important to distinguish the extent to which public comment (or collective action) can override zoning entitlements, discretionary approvals, or exact community benefits from developers.

The recent revisions of the Statewide Planning Division’s Comprehensive Planning Standards Guidance Handbook #1⁴ states:

An equitable comprehensive planning process is one in which input is garnered from all segments of society in an unbiased way. When crafting public participation plans, communities should attempt to solicit input from residents and business owners who represent the overall make-up of the municipality in terms of age, race, ethnicity, gender, neighborhood of residence, income level, educational attainment level, etc. And, when interpreting and using the input received from these groups, equity means that everyone’s opinion is heard and valued, regardless of differentiating characteristics.

Given the maturation of our understanding of the community impact of land use over these last decades, particularly punctuated by the last year of the pandemic, we would suggest more expansive language in those relevant sections of law, and provision of assistance (both financial and technical) to municipalities, when needed, to ensure as diverse and inclusive process as possible.

New and Emerging Issues

The APA RI has identified the following list of areas for consideration of addition to the State Enabling Laws.

⁴ Source: http://www.planning.ri.gov/documents/comp_handbook/1_CompPlan101.pdf

K. *Climate Change*

Climate change poses a tremendous threat. Sea level rise, more intense precipitation, droughts, fires, and extreme weather events increase the risk of natural disaster and endanger the state's economy as well as the safety of its citizens. Increasing coastal population and development will put more people and property in danger. If these risks are not mitigated, or plans for adaptation are not implemented, climate change could devastate. Planners are in a unique position to address climate change issues because the problem itself presents the full spectrum of the classical planning dilemma — it is long-range in nature, comprehensive in scope, and significant in impact, which will increase in intensity over time.

Leaders in Rhode Island will be called upon to address both the causes and consequences of climate change. The issue will require proactive responses including land use, transportation, natural resource management, public health and safety, and economic development. Action at both the state and local level will be essential since climate is regional while much of the change is felt locally.

Over the past decade, substantial work has been done in Rhode Island to define and begin addressing the impacts of climate change. Plans such as *Resilient Rhode Island*, the *Rhode Island Greenhouse Gas Reduction Plan*, the *Clean Transportation and Mobility Innovation Report*, *Energy 2035* (Rhode Island State Energy Plan), and *The Road to 100% Renewable Energy by 2030 in Rhode Island* together form a comprehensive framework through which we can begin to mitigate the worst outcomes anticipated to adversely affect our communities. These plans provide a foundation from which state agencies, municipalities, and non-governmental partners can join in confronting climate change.

Unfortunately, the extent of the problem is uncertain. Consider what has changed since the work of the original land-use commission in the late 80s and early 90s. No one can precisely predict what will come in 10, 20, or 100 years. We, therefore, ask that climate change is recognized as an issue by statute and that municipalities are given the authority address it as needed.

L. Housing Affordability - Inclusionary Housing, "Middle Housing,"⁵ Workforce Housing,⁶ Affordable Housing

This committee would be remiss if it were not to address the issue of housing affordability, particularly for those in jobs/careers that are at the lowest end of the payscale, just starting out in the workforce, those with disabilities and those of our neighbors who are living alone and/or on a limited income. In the context of our three land-use enabling laws it is difficult to adopt a provision or provisions that will work universally in small towns and large cities. It is important to recognize that there is not a one-size-fits-all approach that will work. From our limited research and information gleaned from the 2018 Special Legislative Commission to Study the Low- & Moderate-Income Housing Act, their final report noted there are several areas of "low-hanging fruit" that may be implemented within a short time and on a limited budget. Communities should be encouraged to act on those elements immediately.

Other, more complex issues require in-depth analysis as well as a broad range of input. Taxation tends to be the issue in larger communities. Density and acceptability tend to be the issues in mid- and small-sized communities. Access and availability of sewers and public water service are not always as simple as one may think. All infrastructure is limited by its weakest link. System bottlenecks of any sort may severely restrict accommodation of added users. Additionally, it makes sense to rely on the individual city and town comprehensive plans to project where jobs are and will be located in the future and work toward providing an appropriate density of housing within walking, biking and busing distance.

Only some of these topic areas are appropriate to be addressed with changes to the land use enabling laws. Most can be acted upon under existing State law but require local ordinance amendments and/or dedicated sources of funding. Certainly, the General Assembly should take up the Commission's request to be reinstated in order to develop aids to the cities and towns, clarify the procedures of the SHAB, coordinate a study of affordable housing and community health, review of housing plan standards and to engage the individual communities through a series of "on the road" meetings.

What is not going to be productive is adoption of unfunded mandates charging the municipalities with sole responsibility to solve this conundrum which

⁵ Missing middle housing describes a range of multi-family or clustered housing types that are compatible in scale with single-family or transitional neighborhoods. Missing middle housing is intended to meet the demand for walkable neighborhoods, respond to changing demographics, and provide housing at different price points.

⁶ Workforce housing refers to permanent housing, intended as a primary year-round residence that is available to households regardless of age and is best provided near places of employment.

involves many more players, especially, the development industry and the banking industry.

APA RI urges the Land Use Commission to investigate elements of the Zoning and Subdivision Enabling Laws to authorize flexibility in local regulations that will enable ordinances to be drafted and tailored to each community's unique needs. Additionally, the Land Use Commission is encouraged to coordinate with the Special LMI Housing Commission to identify common objectives that will lead to crafting correlated amendments in various chapters of state law that enables and incentivizes local actions. Lastly, the APA RI strongly encourages that this issue come with a dedicated finance package that eliminates the need for competitive application for funds.

M. Energy Siting

In recent years, renewable energy has presented itself as economically viable and environmentally conscious land use in the state. Renewable energy, coming in a variety of forms, has presented opportunities and challenges alike for our municipalities. Solar and wind have become the most likely candidates for application in the state and each present their own unique set of issues. In an attempt to provide guidance and direction on a series of aggressive renewable energy goals set by the governor beginning in 2017, an advisory stakeholder group to the Office of Energy Resources and Division of Statewide Planning was formed in the winter of the same year. This group discussed a variety of issues related to renewable energy, including a focus on issues related to local land use decision making.

Ground mounted solar installations were a virtually unknown land use prior to 2017 in the state. Local municipalities were unprepared for the type and complexity of large solar installation applications, and most did not have a regulatory framework to guide local decision making at the time. The state offers a variety of economic incentive programs and the introduction of these programs helped drive what many residents and municipal officials dubbed the "solar rush." During this time some municipalities were seeing upwards of 10 to 15 applications for large solar installations at a time, and many municipal planning departments were overwhelmed.

State incentive programs unintentionally contributed to incentivizing solar installations in areas of the state that were rural and forested. This combined with lower construction costs and lower land costs, created a contentious situation where solar installations were competing with land for available for housing, as well as conservation and wildlife habitat. Residents began to push back and implored the local municipalities and state to restrict the number of solar installations in some of the state's most rural and forested areas.

While many municipalities have now adopted local ordinances that regulate the development of solar installations, the state incentive programs still lack a holistic approach to guiding the development of these installations in a way that does not unintentionally compromise the state's natural resources. We would encourage the Land Use Commission to request that the solar programs are revisited and amended to disincentivize solar installations in areas of the state that may be better served to contain much needed housing and habitat protection.

With regard to land use, a variety of issues including the siting of alternative energy facilities, the hardening of infrastructure, and the potential relocation or abandonment of facilities all will need to be addressed in a manner ensuring appropriate public engagement and assurance of equitable solutions.

N. Transportation and Mobility

Nurturing the interdependent relationship between land use and transportation is vital to achieving and maintaining the prosperous, sustainable, and livable communities we all desire. The vision for Rhode Island's future multimodal transportation system is set within Rhode Island's Long-Range Transportation Plan (LRTP), *Moving Forward Rhode Island 2040*, which was adopted by the State Planning Council in December 2020. Embedded within the LRTP are *Transit Forward RI 2040*, the state's first-ever *Transit Master Plan* (TMP) as well as the state's first ever *Bicycle Mobility Plan* (BMP).

Enabling legislation defining mobility hubs as a beneficial use and providing guidelines for their siting and development should be developed. Both the LRTP and TMP recommend the siting, development, and construction of a network of regional and community mobility hubs statewide. These facilities were envisioned to serve as focal points for multimodal mobility options (i.e., public transit, bikeshare, carshare, and walking). Those located in communities remote from the fixed-route network can offer residents the opportunity to connect to local services including senior transportation to suburban flex zones, and the broader transit network. Municipalities should be enabled to incorporate mobility hubs into their local regulations.

Regarding fixed route transit, development along state and local roads should be planned to ensure accommodations for bus rapid transit (BRT), and light rail transit (LRT), as appropriate and consistent with the TMP. Accommodations such as dedicated bus lanes, transit signal priority, and sufficient bus turnout spacing should be provided, and development should be encouraged to aid in improving ADA accessibility and passenger comfort at bus stops as detailed in the *Bus Stop Design Guide* (BSDG) developed jointly by RIPTA and RIDOT. As municipalities update their development standards to include complete streets

standards, they should be encouraged—for purposes of consistency—to include reference to the TMP and BSDG.

The levels of service recommended by the TMP is based on existing and projected demand throughout Rhode Island, which is the nation's second most densely populated state. To efficiently deploy and sustain the recommended increases in service frequency and span, and to meet the ambitious goals set by the Act on Climate, development should be directed to support dense, mixed-use transit-oriented development (TOD) in both existing designated TOD districts as well as potential future districts in Growth Centers, along high frequency and high-capacity transit routes, and in proximity to intermodal facilities and mobility hubs.

APA-RI encourages the Land Use Commission to identify opportunities to incorporate both the intent and the specific recommendations of the LRTP, TMP, BMP, and BSDG into land use policy to the greatest extent possible while expressing ensuring Home Rule.

Land Use Committee Participants

Members of APA RI participated in preliminary discussions in 2019, organized by Rhode Island Statewide Planning, regarding update of general law and other state policy related to land use law. Discussions were put on hold during the latter half of 2019 and then further deferred due to the COVID-19 pandemic in 2020; however, the Land Use Law Discussion Group did review potential membership for a Special Legislative Commission on Land Use Law and related topics. Membership was proposed to include members of the Rhode Island House, Senate, Governor's Office, Lieutenant Governor's Office, and ex-officio representation from Division of Planning, Economic Development Corporation, Department of Environmental Management, and the Coastal Resources Management Council. Public stakeholder representation was to include building trades, real estate, and planning professions along with environmental organizations, local zoning boards, and the League of Cities and Towns. We supported this stakeholder involvement approach at the time, and we continue to support it now.

Better Land Use 2021 APA-RI



American Planning Association
Rhode Island Chapter

Land Use White Paper

Jim Riordan
President (2018 – 2020)

Mike DeLuca
Elections Officer

January 2022

Better Land Use Rhode Island presents APA Rhode Island's recommendations for improvement of land-use regulation. The purpose is to add both efficiency and efficacy. These recommendations will be provided to the Land-Use Commission and the membership of our chapter.

Our APA-RI Principles

Process and Procedure

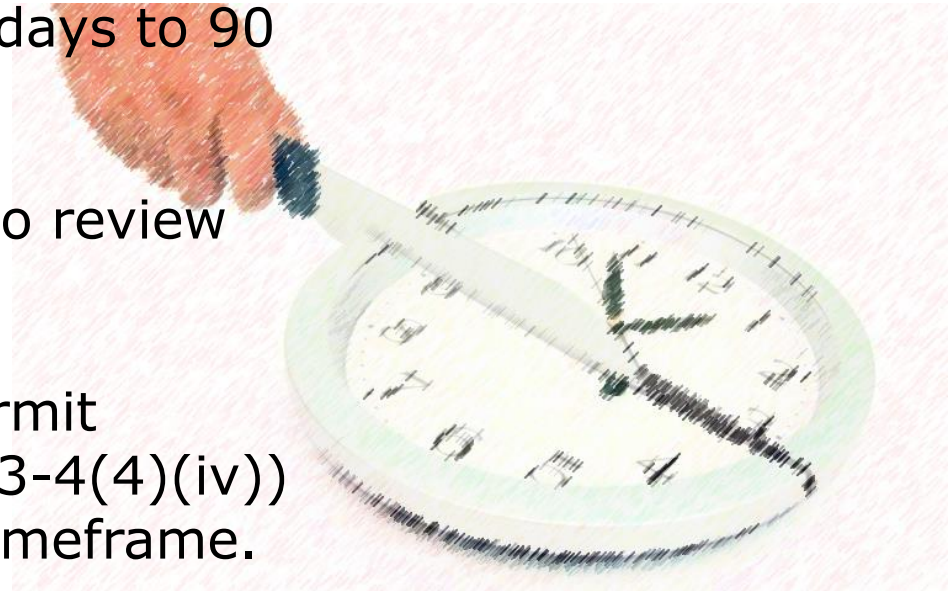
Prominent and Emerging Issues

- Municipal self-governance (Home Rule)
- Consistency with the State Guide Plan
- Rejection of unfunded mandates
- Holistic approach to policy
- Efficiency in response to the needs of the public
- Technical accuracy and correctness

- A. *State Mandated Time Periods for Completeness and Review of Applications*
- B. *Design Review Guidelines and how They are Tied to Development Plan Review (45-23-30 and 45-24-30)*
- C. *Zoning and Use Variances*
- D. *Meeting Attendance and Quorums for Board Meetings*
- E. *Training and Continuing Education for Board Members*
- F. *Virtual Meetings and Distance Participation in Meetings and Decisions*
- G. *Cross-Reference Local Law, Policy, and Plans along with State Law, Policy, and Plans*
- H. *Use of Certified Mail vs. Certificate of Mail (i.e., Postal Service Form 3817)¹ for the land development and subdivision processes as opposed to the more expensive and complicated Certified Mailing.*
- I. *Professional Peer Review of Applications*
- J. *Engagement, Diversity, and Inclusion*

- K. Climate Change*
- L. Housing Affordability - Inclusionary Housing, "Middle Housing", Workforce Housing, Affordable Housing*
- M. Energy Siting*
- N. Transportation and Mobility*

- Reduced the time period for certification of completeness of the application from 60 days to 25 days for recertification of completeness from 14 days to 10 days; and for the decision by the planning board from 120 days to 90 days.
- Opposed the drastic cut in time to review applications for completeness
- Provisions for comprehensive permit applications (under Section 45-53-4(4)(iv)) received no amendment to the timeframe.
- Now an application for affordable housing is provisioned with a review limit that is 30 days longer than a conventional application.



- Revisions to development law should encourage better standards for architecture, landscapes, and streets.
- Land Use Commission should explore whether there should be specific language to enable design regulations and design review outside of historic districts.



- Zoning Act does not allow a community to regulate conformance once a use receives a variance.
- A use variance effectively becomes the zoning for a parcel and runs with the land regardless of whether the hardship continues to exist or whether the use is abandoned.
- Advocate for a process where a use variance can be changed to a permitted use by right if the owner agrees to record that the use variance is abandoned.
- Also, the APA RI would support a process where a use by variance can be changed to a use of lesser intensity use by special use permit.



- Bill S-307 allows for minority decisions by allowing a majority PRESENT to make a decision
- Use an approach like the Zoning Enabling Law
- Have alternate members who can sit in the place of a member who is unavailable.



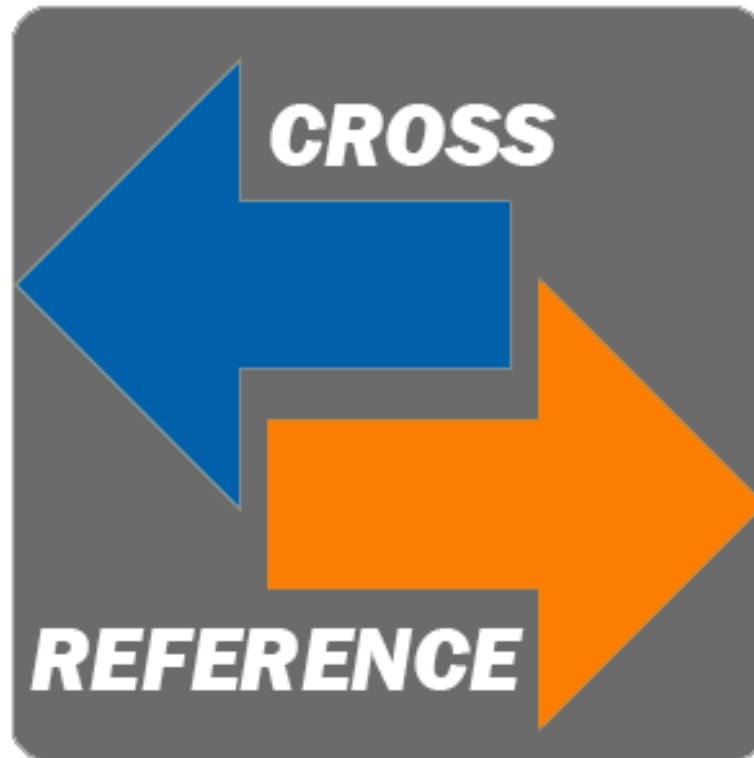
- We support training for local planning boards and zoning boards, but wish to ensure ample opportunities at no cost.
- Provide flexibility in the law to allow the Director of Administration (with support from the Division of Planning) to consider new areas of concern as they may arise.
- Set up a 2-year cycle.



- Use of virtual meetings for land-use decision making.
- Municipalities should be offered flexibility to do this under the Open Meetings Law as well.



- Conduct a full review of development law to ensure proper and accurate cross-referencing.



Given the success in use for zoning hearings, of the Certificate of mailing should be allowed under RIGL 45-23 for major and minor subdivisions.



**UNITED STATES
POSTAL SERVICE**

Certificate Of Mailing

This Certificate of Mailing provides evidence that mail has been presented to USPS® for mailing.
This form may be used for domestic and international mail.

From:

To:

To pay fee, affix stamps, or
meter postage here.

Postmark Here

Codify the right for municipalities to use peer-review services for development review.



More expansive language to ensure as diverse and inclusive process as possible.



No one can precisely predict what will come in 10, 20, or 100 years. We ask that climate change is recognized as an issue by statute and that municipalities are given the authority address it as needed.



- Authorize flexibility in local regulations.
- Coordinate with the Special LMI Housing Commission
- A dedicated finance package that eliminates the need for competitive application for funds.

THE GAP THE PROBLEM:

The U.S. has a shortage of more than **7.2 MILLION** rental homes affordable and available to extremely low income renter households.



©2018 National Low Income Housing Coalition

- Consider siting of alternative energy facilities, the hardening of infrastructure, and the potential relocation or abandonment of facilities in a manner ensuring appropriate public engagement and assurance of equitable solutions.
- Disincentivize solar installations in areas of the state that may be better used for housing and habitat protection.



Incorporate recommendations of the LRTP, TMP, BMP, and BSDG into land use policy to the greatest extent possible while expressly ensuring Home Rule.



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