

2010 -- H 7530

LC01210

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO TOWNS AND CITIES -- LOW AND MODERATE INCOME HOUSING

Introduced By: Representatives Newberry, and Driver

Date Introduced: February 23, 2010

Referred To: House Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 45-53-4 of the General Laws in Chapter 45-53 entitled "Low and
2 Moderate Income Housing" is hereby amended to read as follows:

3 **45-53-4. Procedure for approval of construction of low or moderate income housing.**

4 -- (a) Any applicant proposing to build low or moderate income housing may submit to the local
5 review board a single application for a comprehensive permit to build that housing in lieu of
6 separate applications to the applicable local boards. This procedure is only available for proposals
7 in which at least twenty-five percent (25%) of the housing is low or moderate income housing.

8 The application and review process for a comprehensive permit shall be as follows:

9 (1) Submission requirements. - Applications for a comprehensive permit shall include:

10 (i) A letter of eligibility issued by the Rhode Island housing mortgage finance
11 corporation, or in the case of projects primarily funded by the U.S. Department of Housing and
12 Urban Development or other state or federal agencies, an award letter indicating the subsidy, or
13 application in such form as may be prescribed for a municipal government subsidy; and

14 (ii) A written request to the local review board to submit a single application to build or
15 rehabilitate low or moderate income housing in lieu of separate applications to the applicable
16 local boards. The written request shall identify the specific sections and provisions of applicable
17 local ordinances and regulations from which the applicant is seeking relief; and

18 (iii) A proposed timetable for the commencement of construction and completion of the
19 project; and

1 (iv) A sample land lease or deed restriction with affordability liens that will restrict use
2 as low and moderate income housing in conformance with the guidelines of the agency providing
3 the subsidy for the low and moderate income housing, but for a period of not less than thirty (30)
4 years; and

5 (v) Identification of an approved entity that will monitor the long-term affordability of
6 the low and moderate income units; and

7 (vi) A financial pro-forma for the proposed development; and

8 (vii) For comprehensive permit applications: (A) not involving major land developments
9 or major subdivisions including, but not limited to, applications seeking relief from specific
10 provisions of a local zoning ordinance, or involving administrative subdivisions, minor land
11 developments or minor subdivisions, or other local ordinances and regulations: those items
12 required by local regulations promulgated pursuant to applicable state law, with the exception of
13 evidence of state or federal permits; and for comprehensive permit applications; and (B)
14 involving major land developments and major subdivisions, unless otherwise agreed to by the
15 applicant and the town; those items included in the checklist for the master plan in the local
16 regulations promulgated pursuant to section 45-23-40. Subsequent to master plan approval, the
17 applicant must submit those items included in the checklist for a preliminary plan for a major land
18 development or major subdivision project in the local regulations promulgated pursuant to section
19 45-23-41, with the exception of evidence of state or federal permits. All required state and federal
20 permits must be obtained prior to the final plan approval or the issuance of a building permit; and

21 (viii) Municipalities may impose fees on comprehensive permit applications that are
22 consistent with but do not exceed fees that would otherwise be assessed for a project of the same
23 scope and type but not proceeding under this chapter, provided, however, that the imposition of
24 such fees shall not preclude a showing by a non-profit applicant that the fees make the project
25 financially infeasible; and

26 (xi) Notwithstanding the submission requirements set forth above, the local review board
27 may request additional, reasonable documentation throughout the public hearing, including, but
28 not limited to, opinions of experts, credible evidence of application for necessary federal and/or
29 state permits, statements and advice from other local boards and officials.

30 (2) Certification of completeness. - The application must be certified complete or
31 incomplete by the administrative officer according to the provisions of section 45-23-36;
32 provided, however, that for a major land development or major subdivision, the certificate for a
33 master plan shall be granted within thirty (30) days and for a preliminary plan shall be granted
34 within forty-five (45) days. The running of the time period set forth herein will be deemed

1 stopped upon the issuance of a certificate of incompleteness of the application by the
2 administrative officer and will recommence upon the resubmission of a corrected application by
3 the applicant. However, in no event will the administrative officer be required to certify a
4 corrected submission as complete or incomplete less than fourteen (14) days after its
5 resubmission. If the administrative officer certifies the application as incomplete, the officer shall
6 set forth in writing with specificity the missing or incomplete items.

7 (3) Pre-application conference. - Where the comprehensive permit application proposal
8 is a major land development project or a major subdivision pursuant to chapter 23 of this title a
9 municipality may require an applicant proposing a project under this chapter to first schedule a
10 pre-application conference with the local review board, the technical review committee
11 established pursuant to section 45-23-56, or with the administrative officer for the local review
12 board and other local officials, as appropriate. To request a pre-application conference, the
13 applicant shall submit a short description of the project in writing including the number of units,
14 type of housing, as well as a location map. The purpose of the pre-application conference shall be
15 to review a concept plan of the proposed development. Upon receipt of a request by an applicant
16 for a pre-application conference, the municipality has thirty (30) days to schedule and hold the
17 pre-application conference. If thirty (30) days has elapsed from the filing of the pre-application
18 submission and no pre-application conference has taken place, nothing shall be deemed to
19 preclude an applicant from thereafter filing and proceeding with an application for a
20 comprehensive permit.

21 (4) Review of applications. - An application filed in accordance with this chapter shall be
22 reviewed by the local review board at a public hearing in accordance with the following
23 provisions:

24 (i) Notification. - Upon issuance of a certificate of completeness for a comprehensive
25 permit, the local review board shall immediately notify each local board, as applicable, of the
26 filing of the application, by sending a copy to the local boards and to other parties entitled to
27 notice of hearings on applications under the zoning ordinance and/or land development and
28 subdivision regulations as applicable.

29 (ii) Public Notice. - Public notice for all public hearings will be the same notice required
30 under local regulations for a public hearing for a preliminary plan promulgated in accordance
31 with section 45-23-42. The cost of notice shall be paid by the applicant.

32 (iii) Review of minor projects. - The review of a comprehensive permit application
33 involving only minor land developments or minor subdivisions or requesting zoning ordinance
34 relief or relief from other local regulations or ordinances not otherwise addressed in this

1 subsection, shall be conducted following the procedures in the applicable local regulations, with
2 the exception that all minor land developments or minor subdivisions under this section are
3 required to hold a public hearing on the application, and within ninety-five (95) days of issuance
4 of the certificate of completeness, or within such further time as is agreed to by the applicant and
5 the local review board, render a decision.

6 (iv) Review of major projects. - In the review of a comprehensive permit application
7 involving a major land development and/or major subdivision, the local review board shall hold a
8 public hearing on the master plan and shall, within one hundred and twenty (120) days of
9 issuance of the certification of completeness, or within such further amount of time as may be
10 agreed to by the local review board and the applicant, render a decision. Preliminary and final
11 plan review shall be conducted according to local regulations promulgated pursuant to chapter 23
12 of this title except as otherwise specified in this section.

13 (v) Required findings. - In approving on an application, the local review board shall
14 make positive findings, supported by legally competent evidence on the record which discloses
15 the nature and character of the observations upon which the fact finders acted, on each of the
16 following standard provisions, where applicable:

17 (A) The proposed development is consistent with local needs as identified in the local
18 comprehensive community plan with particular emphasis on the community's affordable housing
19 plan and/or has satisfactorily addressed the issues where there may be inconsistencies.

20 (B) The proposed development is in compliance with the standards and provisions of the
21 municipality's zoning ordinance and subdivision regulations, and/or where expressly varied or
22 waived local concerns that have been affected by the relief granted do not outweigh the state and
23 local need for low and moderate income housing.

24 (C) All low and moderate income housing units proposed are integrated throughout the
25 development; are compatible in scale and architectural style to the market rate units within the
26 project; and will be built and occupied prior to, or simultaneous with the construction and
27 occupancy of any market rate units.

28 (D) There will be no significant negative environmental impacts from the proposed
29 development as shown on the final plan, with all required conditions for approval.

30 (E) There will be no significant negative impacts on the health and safety of current or
31 future residents of the community, in areas including, but not limited to, safe circulation of
32 pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability
33 of potable water, adequate surface water run-off, and the preservation of natural, historical or
34 cultural features that contribute to the attractiveness of the community.

1 (F) All proposed land developments and all subdivisions lots will have adequate and
2 permanent physical access to a public street in accordance with the requirements of section 45-
3 23-60(5).

4 (G) The proposed development will not result in the creation of individual lots with any
5 physical constraints to development that building on those lots according to pertinent regulations
6 and building standards would be impracticable, unless created only as permanent open space or
7 permanently reserved for a public purpose on the approved, recorded plans.

8 (vi) The local review board has the same power to issue permits or approvals that any
9 local board or official who would otherwise act with respect to the application, including, but not
10 limited to, the power to attach to the permit or approval, conditions, and requirements with
11 respect to height, site plan, size, or shape, or building materials, as are consistent with the terms
12 of this section.

13 (vii) In reviewing the comprehensive permit request, the local review board may deny
14 the request for any of the following reasons: (A) if city or town has an approved affordable
15 housing plan and is meeting housing needs, and the proposal is inconsistent with the affordable
16 housing plan; (B) the proposal is not consistent with local needs, including, but not limited to, the
17 needs identified in an approved comprehensive plan, and/or local zoning ordinances and
18 procedures promulgated in conformance with the comprehensive plan; (C) the proposal is not in
19 conformance with the comprehensive plan; (D) the community has met or has plans to meet the
20 goal of ten percent (10%) of the year-round units or, in the case of an urban town or city, fifteen
21 percent (15%) of the occupied rental housing units as defined in section 45-53-3(2)(i) being low
22 and moderate income housing; or (E) concerns for the environment and the health and safety of
23 current residents have not been adequately addressed.

24 (viii) All local review board decisions on comprehensive permits shall be by majority
25 vote of the membership of the board and may be appealed by the applicant to the state housing
26 appeals board.

27 (ix) If the public hearing is not convened or a decision is not rendered within the time
28 allowed in subsection (a)(4)(iii) and (iv), the application is deemed to have been allowed and the
29 relevant approval shall issue immediately; provided, however, that this provision shall not apply
30 to any application remanded for hearing in any town where more than one application has been
31 remanded for hearing provided for in section 45-53-6(f)(2).

32 (x) Any person aggrieved by the issuance of an approval may appeal to the superior
33 court within twenty (20) days of the issuance of approval.

34 (xi) A comprehensive permit shall expire unless construction is started within twelve

1 (12) months and completed within sixty (60) months of final plan approval unless a longer and/or
2 phased period for development is agreed to by the local review board and the applicant. Low and
3 moderate income housing units shall be built and occupied prior to, or simultaneous with the
4 construction and occupancy of market rate units.

5 (xii) A town with an approved affordable housing plan and that is meeting local housing
6 needs may by council action limit the annual total number of dwelling units in comprehensive
7 permit applications from for-profit developers to an aggregate of one percent (1%) of the total
8 number of year-round housing units in the town, as recognized in the affordable housing plan and
9 notwithstanding the timetables set forth elsewhere in this section, the local review board shall
10 have the authority to consider comprehensive permit applications from for-profit developers,
11 which are made pursuant to this paragraph, sequentially in the order in which they are submitted.

12 (xiii) The local review board of a town with an approved affordable housing plan shall
13 report the status of implementation to the housing resources commission, including the
14 disposition of any applications made under the plan, as of June 30, 2006, by September 1, 2006
15 and for each June 30 thereafter by September 1 through 2010. The housing resources commission
16 shall prepare by October 15 and adopt by December 31, a report on the status of implementation,
17 which shall be submitted to the governor, the speaker, the president of the senate and the
18 chairperson of the state housing appeals board, and shall find which towns are not in compliance
19 with implementation requirements.

20 (xiv) Notwithstanding the provisions of section 45-53-4 in effect on February 13, 2004,
21 to commence hearings within thirty (30) days of receiving an application remanded by the state
22 housing appeals board pursuant to section 45-53-6(f)(2) shall be heard as herein provided; in any
23 town with more than one remanded application, applications may be scheduled for hearing in the
24 order in which they were received, and may be taken up sequentially, with the thirty (30) day
25 requirement for the initiation of hearings, commencing upon the decision of the earlier filed
26 application.

27 (b) (1) The general assembly finds and declares that in January 2004 towns throughout
28 Rhode Island have been confronted by an unprecedented volume and complexity of development
29 applications as a result of private for-profit developers using the provisions of this chapter and
30 that in order to protect the public health and welfare in communities and to provide sufficient
31 time to establish a reasonable and orderly process for the consideration of applications made
32 under the provisions of this chapter, and to have communities prepare plans to meet low and
33 moderate income housing goals, that it is necessary to impose a moratorium on the use of
34 comprehensive permit applications as herein provided by private for-profit developers; a

1 moratorium is hereby imposed on the use of the provisions of this chapter by private for-profit
2 developers, which moratorium shall be effective on passage and shall expire on January 31, 2005
3 and may be revisited prior to expiration and extended to such other date as may be established by
4 law. Notwithstanding the provisions of subsection (a) of this section, private for-profit developers
5 may not utilize the procedure of this chapter until the expiration of the moratorium.

6 (2) No for-profit developer shall submit a new application for comprehensive permits
7 until July 1, 2005, except by mutual agreement with the local review board.

8 (3) Notwithstanding the provisions of subdivision (b)(2) of this section, a local review
9 board in a town which has submitted a plan in accordance with subsection (c) of this section, shall
10 not be required to accept an application for a new comprehensive permit from a for-profit
11 developer until October 1, 2005.

12 (c) ~~Towns and cities that are not in conformity with the provisions of section 45-53-~~
13 ~~3(2)(i) shall prepare by December 31, 2004, a comprehensive plan housing element for low and~~
14 ~~moderate income housing as specified by section 45-53-3(2)(ii), consistent with applicable law~~
15 ~~and regulation.~~ That the secretary of the planning board or commission of each city or town
16 subject to the requirements of this paragraph shall report in writing the status of the preparation of
17 the housing element for low and moderate income housing on or before June 30, 2004, and on or
18 before December 31, 2004, to the secretary of the state planning council, to the chair of the house
19 committee on corporations and to the chair of the senate committee on commerce, housing and
20 municipal government. The state housing appeals board shall use said plan elements in making
21 determinations provided for in section 45-53-6(b)(2).

22 (d) If any provision of this section or the application thereof shall for any reason be
23 judged invalid, such judgment shall not affect, impair, or invalidate the remainder of this section
24 or of any other provision of this chapter, but shall be confined in its effect to the provision or
25 application directly involved in the controversy giving rise to the judgment, and a moratorium on
26 the applications of for-profit developers pursuant to this chapter shall remain and continue to be
27 in effect for the period commencing on the day this section becomes law [February 13, 2004]and
28 continue until it shall expire on January 31, 2005, or until amended further.

29 (e) In planning for, awarding and otherwise administering programs and funds for
30 housing and for community development, state departments, agencies, boards and commissions,
31 public corporations, as defined in chapter 18 of title 35, shall among the towns subject to the
32 provision of section 45-53-3(ii) give priority to the maximum extent allowable by law, to towns
33 with an approved affordable housing plan. The director of administration shall adopt not later
34 than January 31, 2005, regulations to implement the provisions of this section.

1 SECTION 2. This act shall take effect upon passage.

=====
LC01210
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TOWNS AND CITIES -- LOW AND MODERATE INCOME HOUSING

1 This act would relieve those towns and cities which have not prepared a comprehensive
2 plan housing element for low and moderate income housing by December 31, 2004, from the
3 state mandated requirement to do so.

4 This act would take effect upon passage.

=====
LC01210
=====