

Town of Westerly, RI
Comprehensive Permit Application
Submission Guidelines



Planning Department
Westerly Town Hall
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Westerly, RI 02891

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**Town of Westerly, RI
Comprehensive Permit Submission Guidelines**

Table of Contents

1. Westerly Zoning Ordinance -- § 260-50.3, Comprehensive Permits.
2. Westerly Comprehensive Permit Application Form
3. Comprehensive Permit Application, Filing Instructions & Master Plan Checklist
4. R.I.G.L. 45-53 -- Low & Moderate Income Housing (The 2004 Housing Act)
5. Rhode Island Housing -- Application for Letter of Eligibility
6. Rules of Rhode Island Housing & Mortgage Finance Corporation Relating to the Housing Act of 2004

Town of Westerly, RI

Westerly Zoning Ordinance -- § 260-50.3 Comprehensive Permits.

A. Statutory authority and purpose.

- (1) In accordance with Title 45, Chapter 53 of the R.I. General Laws, entitled "Low and Moderate Income Housing Act," an applicant proposing to build a development with low or moderate income housing may submit to the Planning Board a single application for a comprehensive permit to build that development, instead of separate applications to the local boards and officials having jurisdiction over zoning and land use who would otherwise have the authority to approve the application. This procedure is available only for proposals in which at least twenty-five percent (25%) of the housing will be low or moderate income housing.**
- (2) In keeping with the goals and objectives of the Westerly Comprehensive Community Plan, low and moderate income housing shall be provided in a manner that maintains the character of the community and is commensurate with the ability of the Town to provide good quality and cost-effective services to its residents. In meeting the needs for affordable housing, priority consideration shall be given to the retrofitting of existing dwellings and the assimilation of low- and moderate-income housing into existing developments and neighborhoods.**

B. Application procedure.

(1) Pre-application conference

- (a) When an applicant for a comprehensive permit proposes a major land development or a major subdivision, the applicant shall request a pre-application conference with the Town Planner. The purpose of the conference is to review a concept plan of the proposed development.**
- (b) To request a pre-application conference, the applicant shall submit a short written description of the project, including the number of units, type of housing, and a location map.**
- (c) The Town Planner shall have thirty (30) days from receipt of a request for a pre-application conference to conduct the conference. If the pre-application conference has not taken place within thirty days, the applicant has the right to file the comprehensive permit application.**
- (d) An applicant for a comprehensive permit application that does not propose a major land development or a major subdivision also may request a pre-application conference.**

- (2) **Submission Requirements.** Applications for a comprehensive permit shall include an original and twenty-four (24) copies of the following:
- (a) A written application for a comprehensive permit on a form provided by the Planning Department for that purpose. The application shall identify the specific ordinances and regulations from which the applicant is seeking relief, together with a specific description of what relief is needed, including the permitted and the proposed housing density.
 - (b) For applications that do not propose a major land development project or a major subdivision, the applicant shall submit all of the material required by the applicable provision of the Zoning Ordinance or the Land Development and Subdivision Regulations.
 - (c) For applications that propose a major land development project or a major subdivision, the applicant shall submit all items on the master plan checklist for major land developments and major subdivisions in the Land Development and Subdivision Regulations.
- (3) **Supporting materials.** Applications shall include the following:
- (a) A letter of eligibility or documentation of eligibility for a state or federal subsidy, or identification of the municipal subsidy sought;
 - (b) A proposed timetable for the commencement of construction and completion of the project, including a timetable for construction phasing that includes the percentage of low and moderate income housing that will be constructed during each phase;
 - (c) A sample land lease or deed restriction with affordability liens, in conformance with guidelines of the agency providing the subsidy, that will restrict use of the low and moderate income units to low and moderate income housing for ninety-nine (99) years;
 - (d) Identification of an approved entity that will monitor the long-term affordability of the low and moderate income units;
 - (e) A financial pro-forma for the proposed development, including but not limited to evidence of the acquisition price, expenses, and other economic factors that comprise the total cost for the construction and administration of the facility and the resulting rental rates or sale prices to be charged for all units constructed;

- (f) Scaled architectural drawings including floor plans of typical units, typical elevations, and sections, identifying construction type and exterior finish materials;
- (g) A list of all state and federal approvals and permits required for construction of the development;
- (h) A description of the proposed buildings by type and size (numbers of buildings, residential units, bedrooms, floor area), and percentage of the site that will be covered by structures and other impervious surfaces;
- (i) An application fee of fifteen hundred dollars (\$1,500). Additional fees for legal advertising and third-party engineering review may be assessed pursuant to Chapter A261, Land Development and Subdivision Regulations, § A261-12D and E.

C. Certification of Completeness

- (1) The town planner shall certify a new application as complete or incomplete, according to the provisions of the Land Development and Subdivision Regulations, within thirty (30) days of the day it is received. If the application is certified as incomplete, the town planner shall specify in writing the missing or incomplete items. That time period stops running if the Town Planner determines that the application is incomplete. When the application is re-submitted, the town planner shall certify it as complete or incomplete within fourteen (14) days of the date of re-submission.
- (2) When an application is certified as complete, the Planning Department shall transmit a complete copy of the application to the Town Council, the Conservation Commission, the Zoning Board of Review, the Zoning Enforcement Officer, the applicable fire district, and the Department of Public Works.
- (3) Notwithstanding the submission requirements set forth in this section, the Planning Board may request additional reasonable documentation during review of the application, including but not limited to opinions of experts, credible evidence of application for necessary federal or state permits, and opinions or recommendations from other town boards, commissions, or officials.

D. Review of application

- (1) A master plan application for a major land development project or major subdivision shall be scheduled for a public hearing as soon as practical. The Planning Board shall render a decision on the master plan application no more than one hundred twenty (120) days after the date on which the

application was certified as complete, unless the applicant and the Planning Board agree to a longer period of time. Preliminary plan review and approval and final plan review and approval shall take place pursuant to the provisions of the Land Development and Subdivision Regulations, provided, however, that the preliminary plan application shall be certified as complete within forty-five (45) days of the day it is submitted.

- (2) An application proposing any type of development other than a major land development or major subdivision, including but not limited to a minor land development, minor subdivision, Zoning Ordinance relief, or relief from any other local ordinance or regulation, shall be reviewed according to the procedures specified in the Zoning Ordinance or in the Land Development and Subdivision Regulations for that type of relief, provided, however, that a public hearing shall be conducted on each such application. The Planning Board shall schedule a public hearing on the application as soon as practical after the application is certified as complete, and shall render a decision no more than ninety-five (95) days after the date on which the application was certified as complete, unless the applicant and the Planning Board agree to a longer period of time.
- (3) If a decision is not rendered within the time periods in this section, the application shall be considered approved, and the necessary permits shall be issued immediately.

E. Decision

- (1) In a decision approving an application for a comprehensive permit, the Planning Board shall make positive findings on each of the following applicable criteria. The findings shall be supported by legally competent evidence on the record, and the decision shall disclose the nature and character of the observations on which the Planning Board members acted.
 - (a) The proposed development is consistent with local needs as identified in the Comprehensive Plan, with particular emphasis on the Affordable Housing Plan, or the proposed development has satisfactorily addressed the issues where there may be inconsistencies.
 - (b) The proposed development is in compliance with the standards and provisions of the Zoning Ordinance and Land Development and Subdivision Regulations, or where those standards and provisions have been waived or varied, local concerns that have been affected by the relief granted do not outweigh the state and local need for low and moderate income housing.
 - (c) All low and moderate income housing units proposed are integrated throughout the development, are similar in scale and architectural style

to the market rate units in the development, and will be built and occupied prior to, or simultaneously with, the construction and occupancy of the market rate units.

- (d) There will be no significant negative environmental impacts from the proposed development as shown on the final plan with all required conditions for approval.
 - (e) There will be no significant negative impacts on the health and safety of current or future residents of the community in areas including, but not limited to, safe circulation of pedestrian and vehicular traffic, provision of emergency services, sewage disposal, availability of potable water, adequate surface water run-off, and the preservation of natural, historical or cultural features that contribute to the attractiveness of the community.
 - (f) All of the proposed land development, or all lots in a subdivision, will have adequate and permanent access to a public street in accordance with the requirements of R.I. Gen. Laws § 45-23-60(5).
 - (g) The proposed development will not result in the creation of individual lots with such physical constraints to development that building on those lots according to the applicable regulations and building standards would be impracticable, unless the lots are created solely as permanent open space or are permanently reserved for a public purpose on the approved and recorded plat.
- (2) The Planning Board may deny the application for any of the following reasons:
- (a) Westerly's Affordable Housing Plan has been approved, Westerly has adopted the implementation plan contained in the approved plan, Westerly has not unreasonably denied applications made pursuant to the approved Affordable Housing Plan, and the application is inconsistent with the approved Affordable Housing Plan;
 - (b) The proposal is not consistent with local needs, including, but not limited to, the needs identified in an approved Comprehensive Plan, and/or the Zoning Ordinance and procedures promulgated in conformance with the Comprehensive Plan;
 - (c) The proposal is not in conformity with the Comprehensive Plan;
 - (d) Westerly has met, or has plans to meet, the goal of having ten percent (10%) of its year-round housing units as low or moderate income housing;

- (e) The application does not adequately address concerns for the environment and for the health and safety of current town residents.
- (3) When making its decision, the Planning Board shall have the same powers as the boards and officials who would otherwise have the authority to approve the application.
- (4) The Planning Board shall have the authority to impose conditions and requirements on the decision with respect to site plan, height, size or shape, or building materials, that are consistent with the provisions of this section, consistent with the approved Affordable Housing Plan, and supported by competent legal evidence in the record.
- (5) The decision of the Planning Board shall be by a majority vote of the membership of the Board. The decision shall be in writing and shall be posted in the office of the Town Planner and in the office of the Town Clerk. A copy shall be sent to the applicant.
- (6) A comprehensive permit shall expire unless construction is started within twelve (12) months and completed within sixty (60) months of final plan approval unless the Planning Board and the applicant agree to a longer and/or phased period for development.

F. Appeals.

- (1) Any person aggrieved by the issuance of an approval may appeal to the Washington County Superior Court within twenty (20) days of the issuance of approval.
- (2) If the application is denied, or is granted with conditions or requirements that make the construction or operation of the housing infeasible, the applicant has the right to appeal the decision to the State Housing Appeals Board. The appeal shall be made within twenty (20) days of the date of notice of the decision.

-- End --

TOWN OF WESTERLY, RI
AFFORDABLE HOUSING COMPREHENSIVE PERMIT APPLICATION

The undersigned hereby applies to the Planning Board for a **COMPREHENSIVE PERMIT** for development under the Low & Moderate Income Housing Act (RIGL 45-53) and §260-50.3 of the Zoning Ordinance, in the manner and on the grounds set forth herein.

Status: Public Agency; Non-Profit/Housing Cooperative; Private Developer

E-911 Address of Property: _____

Assessor's Plat: _____ Lot(s): _____ Zoning District: _____

Applicant Name: _____

Mailing Address: _____

Phone: _____ Fax: _____

Property Owner Name: _____

Owner's Address: _____

Phone: _____ Fax: _____

Surveyor's Name: _____

Surveyor's Address: _____

Phone: _____ Fax: _____

Engineer's Name: _____

Engineer's Address: _____

Phone: _____ Fax: _____

Represented by: _____

Representative's Address: _____

Phone: _____ Fax: _____

Area of Parcel (Sq. Ft. / Acres): _____

Present use of premises: _____

Total Number Market-Rate Units: _____ Number Low/Moderate Income Units: _____

Gross square feet all proposed buildings & accessory structures: _____

Govt. Agency Providing Subsidy: _____

Agency Point of Contact: _____

Agency Address: _____

Phone: _____ Fax: _____

Affordable Housing Monitoring Entity: _____

Monitoring Entity Point of Contact: _____

Address: _____

Phone: _____ Fax: _____

RELIEF SOUGHT UNDER THE COMPREHENSIVE PERMIT

A. Identify all sections / provisions of Zoning Ordinance and/or Subdivision & Land Development Regulations from which relief is sought (List all exceptions, variances and waivers – use additional pages if needed):

B. If density relief is sought, describe permitted market-rate density allowed per the Zoning Ordinance and Subdivision & Land Development Regulations, and proposed density including affordable units:

C. If dimensional relief is sought, describe requested relief in feet from property lines or height:

Front Yard: _____ Corner Side Yard: _____ Side Yard #1: _____

Side Yard #2: _____ Rear Yard: _____ Height: _____

Explain Rationale:

APPLICANT'S CERTIFICATION

I hereby certify that I have authorized the above-listed representatives to act on my behalf, and to prepare all required documentation in support of this Application; that such documentation is true, accurate and complete to the best of my knowledge.

Signature of Applicant

Date

COMPREHENSIVE PERMIT APPLICATION – FILING INSTRUCTIONS

- A. The Comprehensive Permit procedure is available only for proposals in which at least twenty-five percent (25%) of the housing units will be low or moderate-income housing.
- B. For applications that do not propose a major land development project or a major subdivision, the applicant shall submit all of the material required by applicable provisions of the Zoning Ordinance and the Land Development & Subdivision Regulations (See §A261-27).
- C. For applications that propose a major land development project or a major subdivision, the applicant shall submit all items on the master plan checklist for major land developments and major subdivisions in the Land Development & Subdivision Regulations (See §A261-28).
- D. Original application and twenty-four (24) copies, typed or legibly printed, filed with the Town Planner, together with all supporting materials in accordance with §260-50.3(B)(2)&(3) of the Zoning Ordinance.
- E. Application fee in the amount \$1,500 shall accompany an application to the Planning Board to cover costs of processing (Payable to “Town of Westerly”). Additional fees for legal advertising and third-party engineering review may be assessed pursuant to the Land Development & Subdivision Regulations, §A261-12(D)&(E).

CERTIFICATION OF COMPELTENESS

I hereby certify that the submitted Comprehensive Permit application is deemed complete for purposes of commencing the applicable time period for Planning Board review pursuant to §260-50.3(E) of the Westerly Zoning Ordinance, and that it contains all information required by these regulations and by the Westerly Land Development & Subdivision Regulations.

Westerly Town Planner

Date

**Town of Westerly, RI
Comprehensive Permit Submission Guidelines**

Master Plan Checklist -- See § 260-50.3(B)(2)&(3)

Submission A. Pre-Application & Concept Plan Review – The initial stage of Comprehensive Permit review, in which proposals are discussed informally and receive comments and direction from municipal officials. The Concept Plan shall be submitted to the Town Planner, drawn to a scale of 1 inch = 40 feet (scale may be modified with permission of Planner). A sufficient number of 24" x 36" sheets shall be included to clearly show all of the information required, numbered sequentially (e.g., sheet 1 of 3, 2 of 3, etc.). All plans shall be prepared and certified by a RI Professional Land Surveyor and/or Professional Engineer. The following information shall be provided:

1. _____ Name of proposed development.
2. _____ Name and address of property owner and surveyor / engineer.
3. _____ Date of plan preparation, with revision date(s).
4. _____ Graphic scale and true north arrow.
5. _____ Assessor's plat and lot number(s) of land being developed.
6. _____ Zoning district(s). If more than one district, zoning boundary lines must be shown.
7. _____ Vicinity map, drawn to a scale of 1" = 400' encompassing the area within one-half mile of the development parcel, showing locations of all streets, existing lot lines, and zoning district boundaries. Schools, parks, fire stations and other significant public facilities shall be indicated and labeled on the locus map.
8. _____ Perimeter boundary lines and dimensions of the development parcel drawn so as to be distinguishable from other boundaries, and all other existing property lines within or adjacent to the parcel, including existing easements and rights-of-way.
9. _____ Proposed streets, lots and property lines, depicting proposed lot areas and dimensions, drawn so as to distinguish them from existing property lines.
10. _____ Building envelopes for all lots, with such lines running parallel to lot lines.
11. _____ Table stating minimum area and building setback dimensions required for the zoning district.

12. _____ Location and approximate size of existing buildings, proposed buildings and/or significant above ground structures on or immediately adjacent to the development.
13. _____ Location, width and names of existing streets within and immediately adjacent to the development parcel.
14. _____ Names of abutting property owners and property owners across adjacent streets, including Assessor's plat and lot numbers.
15. _____ Location of wooded area and notation of existing ground cover.
16. _____ Location of wetlands, watercourses and/or CRMC designated coastal features within or within 200 feet of the development parcel perimeter.
17. _____ Location of historic cemeteries on or immediately adjacent to the development.
18. _____ Location of any unique natural and/or historic features, including stone walls.

Submission B. Master Plan Review – The second stage of Comprehensive Permit review, consisting of an overall plan outlining general, rather than detailed development intentions. Additional standards as contained in §260-45 of the Zoning Ordinance may be required. Twenty-four (24) copies of plans shall be submitted to the Town Planner, at the same scale as the Concept Plan, on 24" x 36" sheets that are numbered sequentially. All plans shall be prepared and certified by a RI Professional Land Surveyor and/or Professional Engineer. Attach a written statement explaining any items marked as "N/A".

1. _____ All information as depicted on the Concept Plan, including conditions and revisions as required by the Planning Board.
2. _____ Schematic design and location of proposed roadways, private driveways, parking areas, pedestrian sidewalks, and stormwater drainage structures.
3. _____ Conceptual locations of existing and proposed water supply and sanitary sewer systems and/or proposed on-site wells and ISDS.
4. _____ Existing topography showing contour intervals of 5 feet, and proposed topographical changes showing contour intervals of 2 feet.
5. _____ Notation on plan if the development parcel(s) are located within the following areas:
 _____ CRMC Coastal Zone, including Salt Pond SAMP Boundary.

_____ Zoning Overlay Districts (List: _____).

_____ FEMA designated flood hazard zone, and FEMA base flood elevation data.

_____ FAA Part 77 Surfaces (See 14 CFR Part 77 - Objects Affecting Navigable Airspace).

6. _____ FEMA Flood Insurance Rate Map reference & elevation boundary.
7. _____ Location, dimension and area of any land proposed to be set aside as open space, or conveyed to Town of Westerly for stormwater drainage purposes.

Master Plan – Supporting Materials: The following materials shall be submitted with a Master Plan application for a Comprehensive Permit:

1. _____ Narrative report providing a general description of the existing physical environment and existing use of the property, along with a general description of the project's major elements, including uses and type of development proposed by the applicant.
2. _____ Written estimate of the approximate population of the proposed development, including an estimate of the number of school-aged children to be housed in the development.
3. _____ Narrative describing details of project phasing.
4. _____ Aerial photograph or a blue line copy of an existing aerial photograph of the proposed development parcel and surrounding area (1 copy).
5. _____ Soils map of the development parcel and surrounding area, and a general analysis of soil types and suitability for the development proposed. If any USDA-designated prime agricultural soils are within the development parcel the soils map shall be marked to show the location of said prime agricultural soils (1 copy).
6. _____ 200-foot radius map depicting Assessor's Map/Lot of project area, and name/address of property owners of record within 200 feet of development parcel (1 copy).
7. _____ Affidavit of Notice for mailed public hearing notices – refer to §A261-28(D) of Land Development & Subdivision Regulations for posting requirements (1 copy).

-- End --

Rhode Island General Laws

CHAPTER 45-53

Low and Moderate Income Housing

§ 45-53-1 Short title. – This chapter shall be known as the "Rhode Island Low and Moderate Income Housing Act".

§ 45-53-2 Legislative findings and intent. – The general assembly finds and declares that there exists an acute shortage of affordable, accessible, safe, and sanitary housing for its citizens of low and moderate income, both individuals and families; that it is imperative that action is taken immediately to assure the availability of affordable, accessible, safe, and sanitary housing for these persons; that it is necessary that each city and town provide opportunities for the establishment of low and moderate income housing; and that the provisions of this chapter are necessary to assure the health, safety, and welfare of all citizens of this state, and that each citizen enjoys the right to affordable, accessible, safe, and sanitary housing. It is further declared to be the purpose of this chapter to provide for housing opportunities for low and moderate income individuals and families in each city and town of the state and that an equal consideration shall be given to the retrofitting and rehabilitation of existing dwellings for low and moderate income housing and assimilating low and moderate income housing into existing and future developments and neighborhoods.

§ 45-53-3 Definitions. – The following words, wherever used in this chapter, unless a different meaning clearly appears from the context, have the following meanings:

(1) "Comprehensive plan" means a comprehensive plan adopted and approved by a city or town pursuant to chapters 22.2 and 22.3 of this title.

(2) "Consistent with local needs" means reasonable in view of the state need for low and moderate income housing, considered with the number of low income persons in the city or town affected and the need to protect the health and safety of the occupants of the proposed housing or of the residence of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if the local zoning or land use ordinances, requirements, and regulations are applied as equally as possible to both subsidized and unsubsidized housing. Local zoning and land use ordinances, requirements, or regulations are consistent with local needs when imposed by a city or town council after comprehensive hearing in a city or town where:

(i) Low or moderate income housing exists which is: (A) in the case of an urban city or town which has at least 5,000 occupied year-round rental units and the units, as reported in the latest decennial census of the city or town, comprise twenty-five percent (25%) or more of the year-round housing units, is in excess of fifteen percent (15%) of the total occupied year-round rental units; or (B) in the case of all other cities or towns, is in excess of ten percent (10%) of the year-round housing units reported in the census.

(ii) The city or town has promulgated zoning or land use ordinances, requirements, and regulations to implement a comprehensive plan which has been adopted and approved pursuant to chapters 22.2 and 22.3 of this title, and the housing element of the comprehensive plan provides for low and moderate income housing in excess of either ten percent (10%) of the year-round housing units or fifteen percent (15%) of the occupied year-round rental housing units as provided in subdivision (2)(i).

(3) "Infeasible" means any condition brought about by any single factor or combination of factors, as a result of limitations imposed on the development by conditions attached to the approval of the comprehensive permit, to the extent that it makes it impossible for a public agency, nonprofit organization, or limited equity housing cooperative to proceed in building or operating low or moderate income housing without financial loss, within the limitations set by the subsidizing agency of government, on the size or character of the development, on the amount or nature of the subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the public agency, nonprofit organization, or limited equity housing cooperative.

(4) "Local board" means any town or city official, zoning board of review, planning board or commission, board of appeal or zoning enforcement officer, local conservation commission, historic district commission, or other municipal board having supervision of the construction of buildings or the power of enforcing land use regulations, such as subdivision, or zoning laws.

(5) "Low or moderate income housing" means any housing whether built or operated by any public agency or any nonprofit organization or by any limited equity housing cooperative or any private developer, that is subsidized by a federal, state, or municipal government subsidy under any program to assist the construction or rehabilitation of housing affordable to low or moderate income households, as defined in the applicable federal or state statute, or local ordinance and that will remain affordable through a land lease and/or deed restriction for ninety-nine (99) years or such other period that is either agreed to by the applicant and town or prescribed by the federal, state, or municipal government subsidy program but that is not less than thirty (30) years from initial occupancy.

(6) "Affordable housing plan" means a component of a housing element, as defined in § 45-22.2-4(33), to meet housing needs in a city or town that is prepared in accordance with guidelines adopted by the state planning council, and/or to meet the provisions of § 45-53-4(b)(1) and (c).

(7) "Approved affordable housing plan" means an affordable housing plan that has been approved by the director of administration as meeting the guidelines for the local comprehensive plan as promulgated by the state planning council; provided, however, that state review and approval, for plans submitted by December 31, 2004, shall not be contingent on the city or town having completed, adopted, or amended its comprehensive plan as provided for in §§ 45-22.2-8, 45-22.2-9, or 45-22.2-12.

(8) "Letter of eligibility" means a letter issued by the Rhode Island Housing and Mortgage Finance Corporation in accordance with § 42-55-5.3(a).

(9) "Local review board" means the planning board as defined by § 45-22.2-4(24), or if designated by ordinance as the board to act on comprehensive permits for the town, the zoning board of review established pursuant to § 45-24-56.

(10) "Meeting housing needs" means adoption of the implementation program of an approved affordable housing plan and the absence of unreasonable denial of applications that are made pursuant to an approved affordable housing plan in order to accomplish the purposes and expectations of the approved affordable housing plan.

(11) "Municipal government subsidy" means assistance that is made available through a city or town program sufficient to make housing affordable, as affordable housing is defined in § 42-128-8.1(d)(1); such assistance may include, but is not limited to, direct financial support, abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal subsidies, and any combination of forms of assistance.

§ 45-53-4 Procedure for approval of construction of low or moderate income housing. – (a) Any applicant proposing to build low or moderate income housing may submit to the local review board a single application for a comprehensive permit to build that housing in lieu of separate applications to the applicable local boards. This procedure is only available for proposals in which at least twenty-five percent (25%) of the housing is low or moderate income housing. The application and review process for a comprehensive permit shall be as follows:

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

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

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

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

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

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

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

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

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

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

(2) *Certification of completeness.* The application must be certified complete or incomplete by the administrative officer according to the provisions of § 45-23-36; provided, however, that for a major land development or major subdivision, the certificate for a master plan shall be granted within thirty (30) days and for a preliminary plan shall be granted within forty-five (45) days. The running of the time period set forth herein will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than fourteen (14) days after its resubmission. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

(3) *Pre-application conference.* Where the comprehensive permit application proposal is a major land development project or a major subdivision pursuant to chapter 23 of this title a

municipality may require an applicant proposing a project under this chapter to first schedule a pre-application conference with the local review board, the technical review committee established pursuant to § 45-23-56, or with the administrative officer for the local review board and other local officials, as appropriate. To request a pre-application conference, the applicant shall submit a short description of the project in writing including the number of units, type of housing, as well as a location map. The purpose of the pre-application conference shall be to review a concept plan of the proposed development. Upon receipt of a request by an applicant for a pre-application conference, the municipality has thirty (30) days to schedule and hold the pre-application conference. If thirty (30) days has elapsed from the filing of the pre-application submission and no pre-application conference has taken place, nothing shall be deemed to preclude an applicant from thereafter filing and proceeding with an application for a comprehensive permit.

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

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

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

(iii) Review of minor projects. The review of a comprehensive permit application involving only minor land developments or minor subdivisions or requesting zoning ordinance relief or relief from other local regulations or ordinances not otherwise addressed in this subsection, shall be conducted following the procedures in the applicable local regulations, with the exception that all minor land developments or minor subdivisions under this section are required to hold a public hearing on the application, and within ninety-five (95) days of issuance of the certificate of completeness, or within such further time as is agreed to by the applicant and the local review board, render a decision.

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

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

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

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

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

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

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

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

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

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

(vii) In reviewing the comprehensive permit request, the local review board may deny the request for any of the following reasons: (A) 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; (B) 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; (C) the proposal is not in conformance with the comprehensive plan; (D) 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 (E) concerns for the environment and the health and safety of current residents have not been adequately addressed.

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

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

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

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

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

(xiii) The local review board of a town with an approved affordable housing plan shall report the status of implementation to the Housing Resources Commission, including the disposition of any applications made under the plan, as of June 30, 2006, by September 1, 2006 and for each June 30 thereafter by September 1 through 2010. The Housing Resources Commission shall prepare by October 15 and adopt by December 31, a report on the status of implementation, which shall be submitted to the governor, the speaker, the president of the senate and the chairperson of the State Housing Appeals Board, and shall find which towns are not in compliance with implementation requirements.

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

(b) The general assembly finds and declares that in January 2004 towns throughout Rhode Island have been confronted by an unprecedented volume and complexity of development applications as a result of private for-profit developers using the provisions of this chapter and that in order to protect the public health and welfare in communities and to provide sufficient time to establish a reasonable and orderly process for the consideration of applications made under the provisions of this chapter, and to have communities prepare plans to meet low and moderate income housing goals, that it is necessary to impose a moratorium on the use of comprehensive permit applications as herein provided by private for-profit developers; a moratorium is hereby imposed on the use of the provisions of this chapter by private for-profit developers, which moratorium shall be effective on passage and shall expire on January 31, 2005 and may be revisited prior to expiration and extended to such other date as may be established by law. Notwithstanding the provisions of subsection (a) of this section, private for-profit developers may not utilize the procedure of this chapter until the expiration of the moratorium.

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

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

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

(d) If any provision of this section or the application thereof shall for any reason be judged invalid, such judgment shall not affect, impair, or invalidate the remainder of this section or of any other provision of this chapter, but shall be confined in its effect to the provision or application directly involved in the controversy giving rise to the judgment, and a moratorium on

the applications of for-profit developers pursuant to this chapter shall remain and continue to be in effect for the period commencing on the day this section becomes law [February 13, 2004] and continue until it shall expire on January 31, 2005, or until amended further.

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

§ 45-53-5 Appeals to state housing appeals board – Judicial review. – (a) Whenever an application filed under the provisions of § 45-53-4 is denied, or is granted with conditions and requirements that make the building or operation of the housing infeasible, the applicant has the right to appeal to the state housing appeals board established by § 45-53-7, for a review of the application. The appeal shall be taken within twenty (20) days after the date of the notice of the decision by the local review board by filing with the appeals board a statement of the prior proceedings and the reasons upon which the appeal is based.

(b) The appeals board shall immediately notify the local review board of the filing of the petition for review and the latter shall, within ten (10) days of the receipt of the notice, transmit a copy of its decision and the reasons for that decision to the appeals board.

(c) The appeal shall be heard by the appeals board within twenty (20) days after the receipt of the applicant's statement. A stenographic record of the proceedings shall be kept and the appeals board shall render a written decision and order, based upon a majority vote, stating its findings of fact, and its conclusions and the reasons for those conclusions, within thirty (30) days after the termination of the hearing, unless the time has been extended by mutual agreement between the appeals board and the applicant. The decision and order may be appealed in the superior court within twenty (20) days of the issuance of the decision. The review shall be conducted by the superior court without a jury. The court shall consider the record of the hearing before the state housing appeals board and, if it appears to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present that evidence in open court, which evidence, along with the report, constitutes the record upon which the determination of the court is made.

(d) The court shall not substitute its judgment for that of the state housing appeals board as to the weight of the evidence on questions of fact. The court may affirm the decision of the state housing appeals board or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

- (1) In violation of constitutional, statutory, or ordinance provisions;
- (2) In excess of the authority granted to the state housing appeal board by statute or ordinance;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(e) Any appeal from the superior court to the supreme court pursuant to this section shall be by writ of certiorari.

§ 45-53-6 Power of state housing appeals board. – (a) The state housing appeals board shall have the powers to: (i) adopt, amend and repeal rules and regulations that are consistent with this chapter and are necessary to implement the requirements of §§ 45-53-5, 45-53-6, and 45-53-7; (ii) receive and expend state appropriations; and (iii) establish a reasonable fee schedule, which may be waived, to carry out its duties.

(b) In hearing the appeal, the state housing appeals board shall determine whether: (i) in the case of the denial of an application, the decision of the local review board was consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, was reasonable and consistent with local needs; and (ii) in the case of an approval of an application with conditions and requirements imposed, whether those conditions and requirements make the construction or operation of the housing infeasible and whether those conditions and requirements are consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, are consistent with local needs.

(c) In making a determination, the standards for reviewing the appeal include, but are not limited to:

(1) The consistency of the decision to deny or condition the permit with the approved affordable housing plan and/or approved comprehensive plan;

(2) The extent to which the community meets or plans to meet housing needs, as defined in an affordable housing plan, including, but not limited to, the ten percent (10%) goal for existing low and moderate income housing units as a proportion of year-round housing;

(3) The consideration of the health and safety of existing residents;

(4) The consideration of environmental protection; and

(5) The extent to which the community applies local zoning ordinances and review procedures evenly on subsidized and unsubsidized housing applications alike.

(d) If the appeals board finds, in the case of a denial, that the decision of the local review board was not consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, was not reasonable and consistent with local needs, it shall vacate the decision and issue a decision and order approving the application, denying the application, or approving with various conditions consistent with local needs. If the appeals board finds, in the case of an approval with conditions and requirements imposed, that the decision of the local review board makes the building or operation of the housing infeasible, and/or the conditions and requirements are not consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, are not consistent with local needs, it shall issue a decision and order, modifying or removing any condition or requirement so as to make the proposal no longer infeasible and/or consistent, and approving the application; provided, that the appeals board shall not issue any decision and order that would permit the building or operation of the housing in accordance with standards less safe than the applicable building and site plan requirements of the federal department of housing and urban development or the Rhode Island housing and mortgage finance corporation, whichever agency is financially assisting the housing. Decisions or conditions and requirements imposed by a local review board that are consistent with approved affordable housing plans and/or with local needs shall not be vacated, modified, or removed by the appeals board notwithstanding that the decision or conditions and requirements have the effect of denying or making the applicant's proposal infeasible.

(e) The appeals board or the applicant has the power to enforce the orders of the appeals board by an action brought in the superior court. The local review board shall carry out the decision and order of the appeals board within thirty (30) days of its entry and, upon failure to do so, the decision and order of the appeals board is, for all purposes, deemed to be the action of the local review board, unless the applicant consents to a different decision or order by the local review board. The decision and order of the appeals board is binding on the city or town, which shall immediately issue any and all necessary permits and approvals to allow the construction and operation of the housing as approved by the appeals board.

(f) The state housing appeals board shall:

(1) Upon an appeal of the applicant prior to August 1, 2004, rule on December 1, 2004, on the substantial completeness of applications as of February 13, 2004, that were affected by the moratorium established by § 45-53-4(b).

(i) The determination of substantial completeness shall be based on whether there was on or before February 13, 2004, substantial completeness of substantially all of the following:

(A) A written request to the zoning board of review to submit a single application to build or rehabilitate low or moderate income housing in lieu of separate applications to the application local boards;

(B) A written list of variances, special use permits and waivers requested to local requirements and regulations, including local codes, ordinances, by-laws or regulations, including any

requested waivers from the land development or subdivisions regulations, and a proposed timetable for completion of the project;

(C) Evidence of site control;

(D) Evidence of eligibility for a state or federal government subsidy, including a letter from the funding agency indicating the applicant and the project;

(E) Site development plans showing the locations and outlines of proposed buildings; the proposed location, general dimensions and materials for street, drives, parking areas, walks and paved areas; proposed landscaping improvements and open areas within the site; and the proposed location and types of sewage, drainage and water facilities;

(F) A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, including wetlands and flood plains, in the neighborhood;

(G) A tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas and by open spaces;

(H) A master plan, if the development proposal is for a major or minor land development plan or a major or minor subdivision;

(I) a sample land lease or deed restrictions with affordability liens that will restrict use as low and moderate income housing units for a period of not less than thirty (30) years; and

(J) The list of all persons entitled to notice in accordance with § 45-24-53.

(ii) Notwithstanding the provisions of paragraph (i) of this subdivision, if the zoning board of review determined the application to be substantially complete and/or acted in manner demonstrating that it considered the application substantially complete for the purposes of reviewing the application, the State Housing Appeals Board shall consider the application substantially complete.

(2) Remand for hearing in accordance with the provisions of § 45-53-4 applications which are determined to be substantially complete, which hearings may be conducted (or resume) under the provisions in effect on February 13, 2004, unless the applicant and the board shall mutually agree that the hearing shall proceed under the provisions in effect on December 1, 2004, which hearings may commence on or after January 1, 2005, but shall commence not later than January 31, 2005, on applications in the order in which they were received by the town, unless a different commencement date is mutually agreed to by the applicant and the local board hearing the applications; the local review board shall not be obligated to hear, and may deny, any application affected by the moratorium unless it was determined to be substantially complete in accordance with the provisions of subdivision (1) of this subsection, and the local review board may require

such additional submissions as may be specified by the town or necessary for the review of the application.

(3) Hear and decide appeals, other than those covered by subdivision (1) of this subsection, for which it took jurisdiction on or before May 1, 2004.

(4) Continue to hear and decide appeals filed by nonprofit organizations.

(5) Conduct such other business as may be reasonable and appropriate in order to facilitate an orderly transfer of activities to the State Housing Appeals Board as it shall be constituted after January 1, 2005.

§ 45-53-7 Housing appeals board. – (a) There shall be within the state a housing appeals board consisting of seven (7) voting members to be appointed by the governor, who shall include four (4) local officials, who shall not be from the same city or town; two (2) of whom shall be from a city or town with a population of less than twenty-five thousand (25,000); and two (2) of whom shall be from a city or town with a population of twenty-five thousand (25,000) or greater, and shall include one local zoning board member, one local planning board member, one city council member and one town council member, one of the local official members shall be designated by the governor as the alternative local official member who shall be a voting member of the board only in the event that one or more of the other three (3) local officials is unable to serve at a hearing; one affordable housing developer; one affordable housing advocate; one representative of the business community; and one attorney knowledgeable in land use regulation, who should be chairperson of the board.

(2) Those members of the board as of the effective date of this act who were appointed to the board by members of the general assembly shall cease to be members of the board on the effective date of this act, and the governor shall thereupon nominate four (4) new members each of whom shall serve for the balance of the current term of his or her predecessor.

(3) All other members of the commission as of the effective date of this act shall continue to serve for the duration of their current terms.

(4) All gubernatorial appointments made under this section after the effective date of this act shall be subject to the advice and consent of the senate.

(b) All appointments are for two (2) year terms; except as otherwise provided in subsection (a)(ii) of this section, the terms of members appointed after December 31, 2004, shall be for three (3) years. Each member who is duly appointed or continued in office after January 1, 2005, shall hold office for the term for which the member is appointed and until the member's successor shall have been appointed and qualified, or until the member's earlier death, resignation, or removal. A member shall receive no compensation for his or her services, but shall be reimbursed by the state for all reasonable expenses actually and necessarily incurred in the performance of his or her official duties. The board shall hear all petitions for review filed under § 45-53-5, and shall conduct all hearings in accordance with the rules and regulations

established by the chair. Rhode Island housing shall provide space, and clerical and other assistance, as the board may require.

§ 45-53-8 Severability. – If any provision of this chapter or of any rule, regulation, or determination made under this chapter, or its application to any person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the remainder of the chapter, rule, regulation, or determination, and the application of the provision to other persons, agencies, or circumstances, shall not be affected thereby. The invalidity of any section or sections, or part of any section or sections, of this chapter shall not affect the validity of the remainder of the chapter.

§ 45-53-9 Oversight commission. – (a) There is hereby created an oversight commission to be known as "The Housing Act of 2004 Implementation Oversight Commission" to consist of eleven (11) members: chair of house corporations or designee; chair of senate commerce, housing and municipal government or designee; two (2) members of the house appointed by the speaker, one of whom shall be from the minority party; two (2) members of the senate appointed by the senate president, one of whom shall be from the minority party; two (2) designees of the president of the league of cities and towns, one of whom shall be from a municipality under twenty-five thousand (25,000) population, and one of whom shall be from a municipality of twenty-five thousand (25,000) population or over; the executive director of Grow Smart Rhode Island; the executive director of the Housing Network; and the executive director of the Rhode Island Builders Association.

(b) The purposes of the commission shall be: (1) to monitor and evaluate the implementation of the act including the preparation and review, by statewide planning, of local plans; (2) to monitor the development and adoption of the state strategic housing plan by the housing resources commission and statewide planning; (3) to review the progress reports submitted by the housing resources commission; (4) to recommend any changes that may be needed in the law; and (5) to assess the need for resources to accomplish housing objectives and to make recommendations.

(c) Forthwith upon the passage of this act [July 2, 2004], the members shall meet at the call of the speaker, and shall elect from among themselves co-chairs, who shall be legislators. Vacancies in said commission shall be filled in the manner as the original appointment.

(d) The commission is empowered to appoint committees, which may include persons who are not members of the commission. Five (5) members of the commission shall constitute a quorum. All departments and agencies of the state shall furnish such advice and information, documentary and otherwise, to said commission and its agents as necessary or desirable to accomplish the purpose set forth in this section. The speaker is hereby authorized and directed to provide quarters for the commission. The commission shall report findings and recommendations to the general assembly annually on or before February 15. The commission shall expire on March 31, 2007.



**Application for
*Letter of Eligibility***

GENERAL INFORMATION

1. Name of Development: _____
2. Address of Site: _____
3. City/Town: _____ Zip Code: _____
4. Development Entity: _____
 Name of Principal: _____
 Street Address: _____
 City/Town: _____
 Telephone: _____ Fax: _____ Email: _____
5. Name of Consultant (if applicable): _____
 Telephone: _____ Fax: _____ Email: _____
6. Type of Housing: Single Family Detached _____ Condominiums _____
7. Unit Mix: Total Units _____ Affordable _____ Market _____
 Anticipated source of subsidy: RIH _____ Program _____
 Municipal _____ Type _____ (e.g., density bonus, fee waiver, etc.)
8. Has the town previously reviewed any proposals to build on this site? Yes ___ No ___
 If yes, please explain.

9. Is this an AGE-RESTRICTED (55+) development? Yes ___ No ___
10. Narrative Project Description including building types, unit types, number of bedrooms per unit.

11. Name of Approved Monitoring Agent _____

SITE INFORMATION

1. Total Gross Area of Site: Acreage _____ Total Buildable Area of Site: Acreage _____

2. Current Zoning Classification:

Residential _____ (minimum lot size) _____
Commercial _____ Industrial _____ Other _____

3. Does any portion of the site contain wetlands? Yes ___ No ___

If yes, how many acres are wetlands? _____

If yes, attach map of site noting wetland areas.

4. Is the site located within a designated flood hazard area? Yes ___ No ___

5. Are there any hazardous waste sites within a 1/2-mile radius of the site? Yes ___ No ___

If yes, describe: _____

6. Describe the prior uses of the subject site: _____

Existing buildings on site? Yes ___ No ___

If yes, describe plans for these buildings: _____

7. Is the site or any building located on the site listed, nominated or eligible for listing on the National Register of Historic Places? Yes ___ No ___

8. Is the site within a Historic District? Yes ___ No ___

SITE INFORMATION (continued)

9. Describe the current status of site control and attach copies of relevant executed agreements:

a.) Owned by Developer: Yes ___ No ___

b.) Under Purchase and Sale Agreement: Yes ___ No ___

Seller: _____ Buyer: _____

Date of Agreement: _____ Expiration Date: _____

Extensions granted: Yes ___ No ___ Date of Extension: _____

Purchase Price \$: _____

c.) Under Option

Seller: _____ Buyer: _____

Date of Agreement: _____

Expiration Date: _____

Purchase Price \$: _____

10. Most Recent "Arms Length" Sale:

Date: _____ Price \$: _____

Parties involved: Seller: _____

Buyer: _____

11. Availability of Utilities (indicate which utilities will be available to this site)

Public Sewer _____ Private Septic _____

Public Water _____ Private Wells _____

Natural Gas _____ Electricity _____

12. Is the site located near public transit? Yes ___ No ___

If yes, please indicate specific type of transit and distance from the site: _____

PROJECT INFORMATION

1. Size of Development

a.) Total Number of Units: _____

b.) Number of Handicapped Accessible Units: _____

c.) Number of Buildings: _____

d.) Number of Stories in Buildings: _____

2. Total Gross Square Footage of Building Space: _____

3. Project Type:

New Construction _____ Rehabilitation _____ Conversion _____

4. Construction Type:

Single Family Detached _____ Townhouse _____ Other _____

5. Is this a Condominium development? Yes ___ No ___

If yes, estimated condo fees: Market Units: _____ Affordable Units: _____

PRICING OF AFFORDABLE UNITS

In order to attract a sufficient number of qualified buyers for the deed restricted affordable units, the following assumptions should be considered when determining maximum sales prices for these units:

- Average Median Incomes shall be based on the HUD area median income
- Assume a 0% down payment
- Assume the buyer will use conventional mortgage financing at Freddie Mac interest rates for a 30-year fixed rate loan. Rates are published weekly at www.freddiemac.com
- The borrower's total monthly housing payment should not exceed 30% of the borrower's gross monthly income
- The total monthly payment is comprised of principal, interest, taxes, insurance, mortgage insurance and condo fees

Complete the following table for each type of unit, (.g. 2br townhouse, 3br single lot house, etc.)

Type 1 unit _____

Income Target	# of Units	# of BR's Per Unit	# Baths Per Unit	Sq. Footage Per Unit	Sales Price Per Unit	Buyers Max Income
Affordable @ __% AMI						
Affordable @ __%AMI						
Affordable @ __% AMI						
Market						
Total						

Type 2 unit _____

Income Target	# of Units	# of BR's Per Unit	# of Baths Per Unit	Sq. Footage Per Unit	Sales Price Per Unit	Buyers Max Income
Affordable @ ___% AMI						
Affordable @ ___%AMI						
Affordable @ ___% AMI						
Market						
Total						

PRELIMINARY CONSTRUCTION BUDGET

Development Item	Total Cost Low Mod Component	Total Cost Market Rate Component		Total Project Cost
Site Acquisition:	\$	\$		\$
Hard Costs:				
Site Preparation	\$	\$		\$
Landscaping	\$	\$		\$
Residential Construction	\$	\$		\$
Hard Cost Contingency	\$	\$		\$
Total Hard Costs:	\$	\$		\$
Soft Costs:				
Permits/Surveys	\$	\$		\$
Architectural	\$	\$		\$
Engineering	\$	\$		\$
Legal	\$	\$		\$
Insurance	\$	\$		\$
Security	\$	\$		\$
Construction Manager	\$	\$		\$
Property Taxes	\$	\$		\$
Construction Loan Interest	\$	\$		\$
Application/Financing Fees	\$	\$		\$
Appraisal	\$	\$		\$
Utilities	\$	\$		\$
Accounting	\$	\$		\$
Marketing & Commissions	\$	\$		\$
Consultant	\$	\$		\$
Soft Cost Contingency	\$	\$		\$
Total Soft Costs:	\$	\$		\$
Total Development Costs:	\$	\$		\$
Sales Revenue:				
Affordable # _____ x \$ _____ = \$ _____	\$	\$		\$
Market # _____ x \$ _____ = \$ _____	\$	\$		\$
Total Revenue:	\$	\$		\$

RULES OF RHODE ISLAND HOUSING AND MORTGAGE FINANCE
CORPORATION RELATING TO THE HOUSING ACT OF 2004

I. INTRODUCTION/ PURPOSE

These rules are established to comply with Chapter 53 of Title 45, and Chapter 55 of Title 42 of the Rhode Island General Laws as amended by the Housing Act of 2004 regarding;

- 1) the issuance of Letters of Eligibility and accompanying reporting requirements;
- 2) the establishment of Approved Monitoring Agents; and
- 3) the calculation of Low and Moderate Income Housing units for each community.

II. DEFINITIONS

As used in these Rules and Regulations:

- 1) "Applicant" means an owner or authorized agent of the owner submitting an application for a Comprehensive Permit;
- 2) "Approved Monitoring Agent" means an entity approved by the Corporation to act as a monitoring agent as set forth in 45-53-4 of Rhode Island General Laws;
- 3) "Area Median Income" or "AMI" means area median income as determined and published by HUD;
- 4) "Comprehensive Permit" means a permit to build housing secured through a single application to a designated local review board in lieu of separate applications to the applicable local boards as set forth in 45-53-4 of Rhode Island General Laws;
- 5) "Corporation" means the Rhode Island Housing and Mortgage Finance Corporation;
- 6) "Development" means unit (s), site (s), or entire building (s). Development includes all the activities associated with the site and building.

- 7) "Executive Director" means the Executive Director of the Rhode Island Housing and Mortgage Finance Corporation;
- 8) "Letters of Eligibility" means letters of eligibility as set forth in 42-55-5.3 of Rhode Island General Laws;
- 9) "Low or Moderate Income Housing" means any housing that;
 - A. (i) Is subsidized by the federal or state government under any program to assist the construction or rehabilitation of housing as low or moderate income housing as defined in the applicable federal or state statute; or
 - (ii) Is subsidized by a municipal government subsidy under any program to assist the construction or rehabilitation of housing as affordable housing, as defined in 42-128-8.1(d)(1) of Rhode Island General Laws; and
 - B. Will remain affordable for no less than thirty (30) years from initial occupancy through a land lease and/or deed restriction.

7) "Municipal Government Subsidy" means assistance that is made available through a city or town program to assist in the construction or rehabilitation of housing sufficient to make that housing affordable, as affordable housing is defined in subsection 42-128-8.1(d)(1) of Rhode Island General Laws.

III. LETTERS OF ELIGIBILITY

The Corporation shall issue all Letters of Eligibility for Low and Moderate Income Housing for applications made pursuant to 45-53 of Rhode Island General Laws.

1) Requests for Letters of Eligibility

- A. All Applicants shall make a written request to the Corporation for a Letter of Eligibility, with a copy to the administrative officer of the local review board of the city or town in which the project would be located.
- B. Requests for Letters of Eligibility shall include, at a minimum, the following information.

- (i) the name, address, phone number and email address of the Applicant;
- (ii) the address of the site and site description including plat and lot numbers, a locus map, assessor's tax map, property acreage and current zoning designation;
- (iii) the number and type of housing units proposed, the number of bedrooms per unit, and the square footage of each unit;
- (iv) identification of the housing program to which the applicant intends to apply for a state, federal or municipal subsidy;
- (v) in the case of a Development utilizing a municipal subsidy, a copy of the local ordinance establishing the municipal subsidy;
- (vi) the name and address of the Approved Monitoring Agent for the Development, and a letter from the Approved Monitoring Agent confirming their interest in acting as the monitoring agent for the Development;
- (vii) a copy of the proposed deed restriction or land lease;
- (viii) percentage of units to be reserved for low or moderate income households;
- (ix) the duration of restrictions requiring Low or Moderate Income Housing;
- (x) a proforma which includes all estimated development costs, funding sources, operating budgets in the case of rental developments, fees, etc.;
- (xi) evidence of site control;
- (xii) the proposed unit prices or rents as applicable for all units, including condo fees if relevant; and
- (xiii) the projected income of purchasers or renters as applicable for Low or Moderate Income Housing units.
- (xiv) a written statement from the Applicant indicating the extent to which the proposed Development is consistent with the Approved Affordable Housing Plan of the municipality in which the proposed Development is located.

- C. The Corporation reserves the right to request additional information as needed to evaluate Development eligibility.

2) Evaluation of Requests for Letters of Eligibility

- A. Upon receipt of a request for a Letter of Eligibility, the Corporation shall determine whether:
 - (i) the proposed project appears generally eligible under the requirements of the housing program, subject to final review of eligibility and to final approval;
 - (ii) the subsidizing agency, or the Corporation, has performed an on-site inspection of the site and has reviewed pertinent information submitted by the applicant;
 - (iii) the project appears financially feasible on the basis of submitted documentation and any other information that the Corporation deems relevant; and
 - (iv) the Applicant controls the site.
- B. Upon determination that the conditions in section 2)A. above have been met, the Corporation shall provide the Applicant with a Letter of Eligibility and provide a copy of the Letter of Eligibility to the administrative officer of the local review board of the city or town in which the project would be located.
- C. A Letter of Eligibility may only be used to establish that the Development, as proposed, meets the eligibility requirements of the housing program under which eligibility is sought. A Letter of Eligibility does not constitute a commitment of funds and in no way obligates the Corporation or any other agency or municipality to provide financing for the Development.

IV. APPROVED MONITORING AGENTS

1) Designation of Approved Monitoring Agents

- A. The Corporation shall be responsible for the certification of Approved Monitoring Agents as set forth in 45-53-4 of Rhode Island General Laws.
- B. An entity shall be certified as an Approved Monitoring Agent if:

- (i) It is designated as the entity responsible for monitoring compliance with income and affordability restrictions by the state or federal program subsidizing the project; or
- (ii) It is approved by the Corporation through the process set forth in Section 4 below.

C. The Corporation shall be considered the Approved Monitoring Agent in the event that another Approved Monitoring Agent is not available, or the Approved Monitoring Agent designated for a project is unable to fulfill the monitoring role and the owner of the project, in the case of rental developments, does not designate another Approved Monitoring Agent.

2) Eligible Monitoring Agents

- A. To be eligible for certification as an Approved Monitoring Agent, an entity must;
 - (i) be a public or nonprofit housing agency with a long term commitment to the development, rehabilitation, and preservation of affordable housing in Rhode Island;
 - (ii) have the resources and capacity to meet the responsibilities of an Approved Monitoring Agent, as set forth in Section 3 below, over the period of affordability restrictions;
 - (iii) be familiar with state and federal fair housing laws;
 - (iv) meet any other requirements set forth by the Corporation in the Request for Qualifications.
- B. An entity may not act as an Approved Monitoring Agent for Developments in which it substantially participated in the development or management or in which other conflicts of interest exist.
- C. On a case-by-case basis, for good cause shown, the Corporation may waive the requirements of Section 2)B above and expressly waive it for itself.
- D. An Approved Monitoring Agent must receive written approval from the Corporation to act as the monitoring agent for a specific Development.

3) Responsibilities of Approved Monitoring Agents

Approved Monitoring Agents shall be responsible for certifying the following;

A. for rental Developments;

- (i) determine eligibility of potential tenants at the time of rent-up to occupy housing units according to relevant subsidizing program restrictions;**
- (ii) determine consistency of proposed rents with relevant subsidizing program restrictions; and**
- (iii) conduct annual recertification of compliance with relevant subsidizing program restrictions.**

B. for homeownership Developments;

- (i) determine eligibility of potential homebuyers at the time of purchase to occupy housing units according to relevant subsidizing program restrictions; and**
- (ii) determine consistency of proposed purchase prices with relevant subsidizing program restrictions; and**
- (iii) over the term of the affordability restrictions, certify buyers and purchase prices at the time of resale to ensure compliance with deed restrictions.**

C. work with in-place and prospective tenants or owners to understand ongoing subsidizing program requirements and restrictions; and

D. comply with all requirements of state and federal fair housing laws.

E. The deed restriction on Low and Moderate Income Housing units must name the designated Approved Monitoring Agent and must list the Corporation as the alternate Approved Monitoring Agent should the Approved Monitoring Agent be unable to exercise its responsibilities under this Section.

4) Application Process

- A. The Corporation shall periodically issue a Request for Qualifications for certification as an Approved Monitoring Agent.**

- B. Certification as an Approved Monitoring Agent shall remain in effect until the next Request for Qualifications is issued and Monitoring Agents approved.
- C. Entities may submit an application for certification as an Approved Monitoring Agent at any time.
- D. The Corporation shall review all complete applications from eligible monitoring agents as they are received to determine the capacity of the applicant to fulfill the responsibilities of an Approved Monitoring Agent as set forth in Section 3 above.
- E. Eligible monitoring agents that are determined by the Corporation to have the capacity to fulfill the requirements set forth in Section 3 above shall be certified as Approved Monitoring Agents.
- F. The Corporation shall publish and maintain a current list of all Approved Monitoring Agents.

5) Denial of Certification or De-Certification of Approved Monitoring Agents

- A. The Corporation reserves the right to deny certification as an Approved Monitoring Agent or to de-certify an Approved Monitoring Agent at any time if it determines that;
 - (i) the entity does not meet the eligibility criteria set forth in Section 2 above, or is not able to fulfill the responsibilities set forth in Section 3 above; and/or
 - (ii) in the case of an Approved Monitoring Agent, the Approved Monitoring Agent has carried out these responsibilities in a way that is not consistent with state or federal fair housing laws.

V. CALCULATION OF LOW AND MODERATE INCOME HOUSING UNITS

- A. The Corporation shall annually calculate, as of January for each year, for every municipality in the state the number of Low and Moderate Income Housing units as defined in Part II of these regulations, and their percentage of the total number of non-seasonal housing units in the municipality as determined by the most recent U.S. Decennial census.

- B. In addition to the percentage calculation for each community, the Executive Director shall publish a chart showing the number of Low and Moderate Income housing units for each community, the basis for the determination of each type of unit and any other information the Executive Director deems relevant.
- C. The Corporation shall forward the chart to each community, which shall have thirty days to suggest modifications or revisions. Thereafter and after review of any proposed modifications, the Executive Director shall, in writing, certify the chart for that year.
- D. The chart, together with supporting documentation shall be kept in the possession of the Corporation and shall be available for public inspection and copying, and shall be forwarded by the Corporation to the municipal clerk of every Rhode Island community.