Michael A. Kelly, Esq.
mkelly@ksplawpc.com

September 21, 2023

Re: Major Changes in Rhode Island Land Development Laws

Governor Dan McKee signed several new Legislative changes on June 24th related to land development in Rhode Island. They include changes to zoning, planning, affordable housing, and dimensional regulations. The changes to these regulations will have an impact on both developers and municipalities, both neutral and negative. The new laws will have a positive effect on the development process and Zoning laws. These laws will go into effect on January 1, 2024.

- **S1032** amends certain general laws relative to zoning ordinances, variances, special use permits, as well as substandard lots of record and the merger of such lots. A substandard lot of record will no longer be required to seek any zoning relief based solely on the failure to meet the minimum lot size requirements. The merger of lots shall not be required when the substandard lot of record has an area equal to or greater than the area of fifty percent (50%) of the lots within two hundred feet (200') of the subject lot. The granting of a variance will no longer require that the hardship does not result primarily from the desire of the applicant to realize greater financial gain and that the relief to be granted is the least relief necessary.

- **S1033** amends the required contents of a comprehensive plan to include specific goals, implementation actions, and time frames for development of low- and moderate-income housing. The future land use map in a valid comprehensive plan updated in accordance with the law shall govern all local municipal land use decisions and should not take longer than eighteen (18) months to be brought into compliance with the future land use map. If a municipality fails to fully update and re-adopt its comprehensive plan within twelve (12) years from the date of the previous plan's adoption, such municipality shall not be able to utilize the comprehensive plan as a basis for denial of a municipal land use decision.

- **S1034** amends the provisions relative to subdivision regulations and the application process requesting relief from zoning ordinances and the review process thereof. Of significance, this bill adds the definition of "Development plan review" as the design or site plan review of a development of a permitted use. A municipality may utilize development plan review under limited circumstances to encourage development or comply with design and/or performance standards of the community under specific and objective guidelines. The local regulations and/or ordinances shall provide for specific categories of projects that may review and approve an

application administratively as well as categories which are required to be heard by the designated planning board, or authorized permitting authority. There are now seven (7) categories in which a Minor Land Development Project will now be considered a Land Development Project

- **S1035** provides that adaptive reuse for the conversion of commercial property into residential or mixed-use developments shall be a permitted use and allowable by specific objective provisions of a zoning ordinance, subject to certain restrictions. This bill adds the definition of "Adaptive Reuse", as defined in § 42-64.22-2, to be the conversion of any commercial building, including offices, schools, religious facilities, medical buildings, and malls into residential units or mixed use developments which include the development of at least fifty percent (50%) of the existing gross floor area into residential units, shall be a permitted use and allowed by specific and objective provisions of a zoning ordinance, except where such is prohibited.

- **S1037** provides amendments to low- and moderate-income housing and modifies and clarifies the procedure for the review of applications to build such housing. Municipal government subsidies are to be made available to applications to offset the differential costs of the low- or moderate-incoming housing units in a development. A municipality shall provide an applicant with a "density bonus" of more dwelling units than allowed by right under its zoning ordinance to allow an increase in the allowed dwelling units per acre (DU/A). The term "Infeasible" was amended to be 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.

- **S1038** amends certain notification procedures relating to comprehensive planning and land use, subdivision of land, and zoning ordinances.

- **S1050** amends several sections of law relating to low- and moderate-income housing and the application, appeal, and judicial review process. Effective January 1, 2024, the decision of a local review board may be appealed by the applicant or an aggrieved party to the superior court for the county in which the property is situated. Effective January 1, 2024, all matters pending before the state housing appeals board shall be transferred to superior court for the county in which the property is situated by the applicant filing a complaint in superior court and providing a copy of the complaint to the attorney representing the local review board within ten (10) days of filing. An applicant with an appeal pending before the state housing appeals board shall have until March 1, 2024, to file the complaint transferring the matter to superior court for the county in which the property is situated.

- **S1051** increases the amount of allowable units per acre for all projects subject to inclusionary zoning as well as other incentives and subsidies to offset costs of affordable units. A zoning ordinance requiring the inclusion of affordable housing as part of a development shall provide that the affordable housing will constitute not less than twenty-five percent (25%) of the total units in the development and in no event shall a minimum threshold triggering the inclusion of affordable housing be higher than ten (10) dwelling units. Larger density bonuses for the provision of an increased percentage of affordable housing in a development may be provided by a municipality in the zoning ordinance. To the extent a municipality provides an option for the payment of a fee-in-lieu of the construction or provision of affordable housing, such fee shall

be the choice of the developer or builder applied on a per-unit basis and may be used for new developments, purchasing property and/or homes, rehabilitating properties, or any other manner that creates additional low-or-moderate income housing.

- **S1052** creates a transit-oriented development pilot program to encourage denser residential housing near convenient public transportation.

- **S1053** establishes a land use court within the superior court to exclusively hear and decide all eligible land use matters. All matters assigned to the land use calendar shall be expedited.