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RHODE ISLAND LOW AND MODERATE INCOME HOUSING ACT: A TOOL TO SHAPE LOW-INCOME HOUSING PRODUCTION POLICY IN LOCAL COMMUNITIES

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**RHODE ISLAND LOW AND MODERATE INCOME HOUSING ACT: A TOOL
TO SHAPE LOW-INCOME HOUSING PRODUCTION POLICY IN LOCAL
COMMUNITIES**

BY

SHIRLEY MEDINA

**A RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF MASTER OF COMMUNITY
PLANNING**

UNIVERSITY OF RHODE ISLAND

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ABSTRACT

During the 1980s two goals became major components of community development policy: preservation of land for open space, and construction of low-income housing. Rhode Island as well as other states adopted a legislation to facilitate expansion of low-income housing. Unfortunately, this concern has been in conflict with open space preservation programs because preservation of land for open space can reduce the supply of land available for housing.

The "American Dream" of every family begins with a comfortable domicile in a safe neighborhood, and reasonable close to employment. But this dream has often been beyond reach because of many government regulations and environmental controls. Also the high cost of construction and land has elevated the cost of housing. Many families are without sufficient financial resources to buy their own house due to financial barriers.

Barriers to affordable housing include zoning, closing costs, construction codes, and the lengthy approval process for the projects. Other barriers are the control of land such as local ordinances, subdivision regulations, state statutes, environmental regulations, and local and state historical regulations.

In 1991 the State of Rhode Island enacted the Rhode Island Low and Moderate Income Housing Law, which carries

various provisions leading to the production of low cost housing. There is reference to this law in Chapter IV of this study and its progress in the last five years, since its inception.

For example, during the 1980's the state government of Rhode Island had produced approximately 8,055 units for low income families; in the 1990's production rose to 9,168. This was an increase of 1.3 percent over ten years. After the inception of this law, for the year of 1995 production rose to 13,095 units, a growth of four percent, projecting for the future an increase of seven percent of units produced over a period of four years. In the production of units for the elderly, for the year 1980 the State of Rhode Island had an inventory of 14,386 units. In 1990 there were 18,644 units produced, an increase of 425 units. In 1995, after approval of the law, there were 18,706 units which was an increase of 62 more units or an eight per cent increase. The total number of family units in 1980 was 22,441. In 1990 there was a total of 27,812 units, an annual increase of 537 units. After the approval of the law, the total units was 31,801, a rise of 798 units, or a difference of almost three per cent. The push for low cost housing production is quite visible, which has been reinforced by the new law. For more clarity of details please refer to Table I which shows production through fifteen years.

TABLE I: PRODUCTION OF HOUSING IN 15 YEARS

FAMILY	ANNUAL GROWTH	ELDERLY ANNUAL	ELDERLY GROWTH	TOTAL	TOTAL ANNUAL GROWTH	YEAR
8,055		14,386		22,441		1980
9,168	111.3	18,644	425.8	27,812	537.1	1990
13,095	785.4	18,706	12.4	31,801	797.8	1995

Source: Assisted Rental Housing in Rhode Island
 Division of Planning
 Rhode Island Department of Administration
 September 1991, 1995

This study contains a synopsis of the problems that low cost housing has had in past years in the State of Rhode Island, a review of a court case from the State of New Jersey, and the law in the State of Rhode Island that was adopted in 1991, and the impact it has had in the last five years. Also, four Rhode Island housing cases under the 1991 Law are reviewed. The conclusion of this study includes facts found and recommendations.

ACKNOWLEDGMENTS

There are so many people to whom I owe thanks for this accomplishment: my three children, my professors from Community Planning and Area Development, friends, more than friends, co-workers, whose names could fill a whole page. But first is God who has given me the wisdom to reach this point of my life. And then, I dedicate all my work to who I am today to a human being who gave me everything in this life without asking anything in exchange, just love, my mother, Mrs. Amparo Santos De Jesus.

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CHAPTER I: INTRODUCTION

1. Background in Housing

Policies to address low-income housing issues in the United States date back to the late 19th century. Since that time zoning and subdivision regulations, building and occupancy codes, property taxes, and municipal services have been enacted to protect the health and safety of all segments of the growing population.

During the 1930s, in response to the Great Depression, many significant efforts were undertaken to address low-income housing needs. These initiatives came from the federal government in the form of assistance programs for local public agencies to clear slums and construct low-income public housing. Federal assistance was expanded in the 1940s and early 1950s to cover the rehabilitation and redevelopment of substandard areas in local communities.

From 1950 to 1970 the expansion of federal programs was very remarkable (Nenno, 467). New local public expertise, such as land assembly, relocation assistance, re-use planning, public-private negotiated agreements, housing rehabilitation, historic preservation, and citizen participation was developed in the entire community development process (Nenno, 9). By the 1960s most of the state governments became involved in housing activities. A major breakthrough was the establishment of state housing finance agencies, which had expanded to more than 40 states by 1980. These finance

agencies focused on programs that provided below-market construction loans to single-family home developers in order to lower the costs of homeownership. Also, they financed moderate-income rental developments and were backed with federal assistance to bring the rents down for the benefit of lower income households.

The 1960s and 1970s were especially important for local housing markets and local governments. These governments were under increasing pressure to intervene in the market process to ease the housing pressures on low-income families and to counter disinvestment in declining neighborhoods. The interventions developed in response to these changes included rent control, constraints on displacement and conversions of rental properties, tax abatement for housing investment, recycling of abandoned properties, and municipal housing rehabilitation loan programs.

In the 1960s more money came from the federal government to support housing grants for different agencies to provide affordable housing. Also, the grants contain a provision for direct assistance to families in the form of rent certificates or vouchers from the federal government agencies (such as HUD) for families to rent private, existing housing. The Section 23 leasing program, initiated in 1965, was the forerunner of the Section 8 housing certificate program in the 1974 Housing Act and the voucher program initiated by the Reagan Administration in the early 1980s. The Community Development

Block Grant (CDBG) enacted by Congress in 1974 represented another significant shift in federal assistance for housing and community development (Nenno, 472). All these programs were a boost in the evolution of housing activity from locally based to multifaceted efforts involving local, state, and federal governments during the years 1920 to 1980.

In the 1980s, however, the prime causes for the new response centered increasingly on the recognition of diverse needs. The states have been compelled to respond to dynamic changes in the composition of the population, including the growth of "special needs" populations. Like the states, local governments have increased their housing and community development activity because of a new recognition of its essential role in supporting economic objectives. Most significantly, the lack of affordable rental housing for lower paid workers, as well as special-needs households, reached crisis proportions in many localities and has begun to restrain economic growth in many communities.

The affordable housing crisis is national. It affects every region of the country, including urban and rural areas. The elderly, Black and Hispanic households are facing the housing cost burdens more than other groups. There is a tremendous shortage of affordable housing in each of the four census regions of the nation, Northeast, Midwest, South and West, (American Housing Survey, 6). Like the poor renters, homeowners face serious affordability problems also. In this

category the elderly or middle aged are the poor homeowners. By 1993, 56% of poor homeowner households were headed by someone 55 years or older, compared with 25% of poor renters. Also, homeowners are more likely than poor renters to live in non-metropolitan or sub-urban areas, where housing costs tend to be lower and, in some cases, where rental housing is less available.

In the following section, a more detailed discussion of housing problems is provided.

A. General Discussion of Housing Problems

The housing needs of poor and moderate-income families are immense and still growing. For millions of American families homeownership remains a dream. During the 1950s more than 28% of the households in the U. S. were paying more than 30% of their income just for housing (Stegman, 25). During that decade the population bloomed and the affordable housing available was insufficient for this "new" population. The shortage of low-rent housing in relation to the number of households who could pay only very low rent resulted in this housing affordability problem.

In 1970, there were 900,000 more low-cost rental units than there were low-income renters (American Housing Survey, 12). This precarious surplus of affordable housing became a modest shortfall, and disappeared by the 1980s. During the 1980s the nation suffered two recessions and the number of low income renters increased markedly. By 1983, the number of

low-cost units had fallen to 6.3 million, while the number of low-income renters had jumped to 10 million, resulting in a significant affordable housing shortage of 3.7 million units (Lazere, 8). Moreover, during the years of 1983 to 1993, the gap between the supply of low-cost housing and the number of low-income renters continued growing.

Today, many states are still dealing with the issues of poverty and over-crowding in their communities. Many low-rent units have been removed from the market or have had their rents raised as a result of health and safety standards regulation, abandonment, or condemnation (Lazere, 1995). Also, housing affordability problems have increased the numbers of the homeless. Today, 59 million persons suffer from some form of shelter affordability problems (Stegman, 1991). These problems have been exacerbated by the lack of homeownership affordability.

Very high housing prices in certain regions and communities make it hard for many households to buy a first home or afford the higher rents. Meanwhile, many residential areas with older rental housing have become increasingly dominated by very poor households and by the conditions associated with extreme poverty, such as high rates of broken homes, crime, drug abuse, juvenile delinquency, unemployment, and mental illness (Stegman, 1991). One example of these social factors can be characterized in Rhode Island. A great concentration of overcrowded units is found in Providence,

Pawtucket, Central Falls, Warwick and Woonsocket (see tables II and III in the Appendices Section). In these cities and towns mental health centers and shelters for homeless people have been targeted by non-profit agencies to provide shelters and social services. Also, the overcrowded population in these towns and cities forced the local government to lobby for proposals that would provide new federal and state programs. Some of these programs are Shelter Plus Care, Thresholds, Housing for People with Aids, and HOME Investment Partnerships. Local support and federal funds help them to overcome the crisis of a big population and a low number of dwellings to serve this growing population with different needs.

Nationally, as a common result of social barriers, disproportionate numbers of the poorest households live in highly undesirable environments from which it is hard to escape. During the 1970s there was some progress. Governmental entities like the U. S. Department of Housing and Urban Development (HUD) took an active part in housing revitalization and provided federal money nationwide to accommodate the needs of the low and very low income populations. This change came in new construction of Section 8 rental housing in inner cities and suburbs and the rehabilitation of dwellings to provide housing to low and moderate income people. Although millions of American families are better housed today, than they were ten or twenty

years ago, millions more are worse off, struggling just to keep a roof over their heads. Aspects like the cost of financing housing and property taxes are also major factors in the affordability issue. Another affordability factor is the excessive, exclusionary state and local regulations, which contain standards and development controls.

B. State and Local Strategies:

Most initiatives to provide new housing opportunities involve attacking poverty. It is still the biggest cause of housing affordability problems. As an example, in the State of California, hundreds of households in the southern part of the state are now living doubled or tripled up in homes designed for one household because they cannot afford better accommodations (Downs, 420). There are families of four or five members who are living in dwellings of only one bedroom because the household cannot afford to pay rent for a dwelling of two bedrooms. Like California, there are other states such as New York, Illinois and Rhode Island that are experiencing the same housing pattern. Simple or easy solutions for local or state governments to resolve this kind of problem are not likely to occur on any large scale in the near future.

According to low income housing policies that many states adopt as mandatory, each community has an obligation to permit some affordable housing to be built within its own boundaries. Methods to reduce occupancy costs of new units in chosen areas have become important. Through inclusionary zoning, builders

may be required to include in any subdivision a certain fraction of units to be made available at below market costs, providing more affordable housing. It is important to clarify that this method does not reduce developments' costs, but rather requires builders to sell or rent at reduced costs to eligible households (see summary of case Mount Laurel in Chapter II).

Builders may be given density bonuses to make the cost of production more profitable. This means that the communities have to cope with three main obstacles. These are: most people do not want to live in neighborhoods with others poorer than themselves for social reasons; the people of communities and local officials believe it will hurt their fiscal situation, meaning that more multifamily units increase taxes or costs for municipal services; and, most people believe that allowing lower-priced homes into their communities will reduce property values (Downs, 174-175). The Narragansett Times Newspaper described an example of this obstacle. The Robin Woods Development (Women's Development Corporation is the developer) proposed a project in 1992 at the North End in Narragansett, Rhode Island. The developer is proposed to develop 37 single family units of two, three and four bedrooms for low and moderate income families. Because the project is proposed to be developed in an area of highly valuable estates, it is being opposed by neighbors and other entities (See Appendices).

Poverty has many causes. Ending or alleviating it requires many different remedies. Attempts to resolve this social issue have created a great dilemma to local and state governments. The poverty issue is directly linked to the lack of affordable housing nationwide. State and local governments have implemented many successful programs that work very effectively. New initiatives include: new sources of funding, particularly housing trust funds; developing new partnerships with private enterprise and nonprofit organizations. These initiatives fulfill state fair share requirements, providing assistance for homeless people, congregate housing for frail elderly, and group homes for chronically mentally ill people. Also these initiatives provide a plan for housing components in growth management strategies (Nenno, 476). It is important to mention that these new initiatives replaced some federal funding cutbacks and also increased state sensitivity to,

- 1) the lack of available rental housing for lower-income households, particularly the elderly, the homeless, the physically and developmentally disabled, and farm workers (i.e. low-income people);

- 2) the lack of available homeownership opportunities for first-time home buyers;

- 3) the extent of substandard housing and deteriorating neighborhoods; and

4) the lack of housing at affordable prices to accommodate the workers drawn by business development and job initiatives (Nenno, 1991).

Unfortunately, many of these programs relied on federal funds which were cut by 80% over the past few years (Down, 422). Still these local and state governments have to deal with excessive housing cost-raising regulations that effect the affordability of housing. The delivery of affordable housing is a complex activity that involves the support of many parties and the coordination of their activities and efforts.

In the next chapter a sample of a housing case is reviewed in order that the reader may better understand the complexities of affordable housing.

CHAPTER II: MOUNT LAUREL - OUTCOMES AND FINDINGS

1. INTRODUCTION:

Several states have created a general welfare requirement under state law to require local government to permit affordable housing for low-and moderate-income families. In New Jersey the obligation is an affirmative one (Mallach, 148). The law in the State of New Jersey endorses the provision of production of low-and moderate-income housing. The concept of reasonable accommodation gives the opportunity to take a look at the law's general welfare provision and provides an objective for requiring an affirmative obligation for communities to provide for their fair share of the housing needs. The following report describes a case where several organizations (NAACP) in New Jersey brought suit against the Town of Mount Laurel, to provide affordable housing to its inhabitants to the New Jersey Supreme Court. The court used "The Fair Housing Act" as a tool to induce communities to provide low and moderate housing for the State of New Jersey.

The main focus of this chapter is to show how the court's decision in the Mount Laurel case created a planning tool as a provision to reinforce the principle that all segments of the population have a right to a fair share in housing. This planning tool contains a streamlined process that assures the inclusion of affordable housing in communities where low-and moderate-income people could not afford to live before. Mount Laurel II further changed the zoning rules in New Jersey and

in the process created a significant new role for inclusionary housing programs. To this day, Mount Laurel is considered one of the most important housing cases related to a town's housing practices. Subsequently, the outcome of the Mount Laurel case set a national precedent for many housing cases.

A. Mount Laurel I:

The Supreme Court of New Jersey's decision in the case of Southern Burlington County NAACP vs. Mount Laurel (67 N.J. 151, 336 A.;2d 713), has been widely discussed since 1975. The court's decision has had a lasting impact with regard to fair share housing practices in the town of Mount Laurel, New Jersey and in other places around the country. In fact, other states have adopted Mount Laurel's case as a medium for addressing the problem of providing fair housing to disadvantaged families whether for individual cases or for class actions. In fact, more inclusionary housing programs have been adopted in New Jersey than in any other state, excluding the State of California (Overcoming Obstacles, 17).

The Mount Laurel doctrine was originated because of litigation against the Township of Mount Laurel, "a rapidly growing" rural-suburban township in Burlington County (Lamar, 1985). The doctrine is rooted in a reaction against Mount Laurel's zoning ordinance. The plaintiffs were minority poor, mostly Blacks and Hispanics seeking housing in Mount Laurel. The court opinion noted that the power to regulate the use of property must be used in accordance with "the general

welfare", (336 A.2d at 724). The court made a finding partially invalidating the zoning ordinance until the township studied and investigated ways to fulfill the indicated needs of low-and moderate-income people presently living in the community in substandard housing and those that work in the township but live elsewhere. The zoning ordinance was partially invalidated on the basis that low and moderate income families were unlawfully excluded by the zoning ordinance.

The town of Mount Laurel was at the core of a debate over existing prejudicial and exclusionary housing practices. The town of Mount Laurel was originally zoned for large single family houses on large lots and excluded apartments altogether. Thus, the town attracted only well-off families who would be substantial tax payers (Lamar, 1199), and excluded low income families.

The New Jersey Supreme Court held that the ordinance did discriminate against poor people, but found no evidence that the plaintiffs were deprived of an opportunity to live in such housing elsewhere in the county. The Mount Laurel New Jersey Supreme Court decision was made on economic rather than racial grounds and was based on state law rather than on the federal constitutional statutes. The following facts brought this case to the Supreme Court. First, the Township of Mount Laurel had an inadequate number of subsidized housing units for its poor residents, particularly in the areas known as

Springville. This area required a minimum lot size of 30,000 square feet, thus excluding low-and-moderate income families. The 1969 Master Plan Report recognized this factor and recommended more action on behalf of the streamline process (Wright, 1099). This process encouraged developers who were interested in providing low and moderate income housing in certain areas of land that presented constraints. The second fact related to this case was that the Township committee responded by specifying "moderate" income housing to be built on 20,000 square foot lots. Over the years Mount Laurel "has acted affirmatively to control development and to attract a selective type of growth" through its zoning ordinances (119 N.J. Super. at 168).

Mount Laurel exhibited economic discrimination by denying the opportunity to secure construction of subsidized housing for the poor by restricting housing opportunities for residents who cannot afford the single family detached dwellings that are on sizable lots. It is clear that there were many problems due to the lack of subsidized housing for the town of Mount Laurel's low and moderate income families, elderly, and minority residents. The low income households were not able to live in this community. Therefore, "...the effect of Mount Laurel's land use regulation has been to prevent various categories of persons from living in the township because of the limited extent of their income and resources." (Wright, 1097).

The NAACP brought the Township to court on the grounds that low-and moderate-income families have been unlawfully excluded from the municipality. The court found the Township's ordinance totally invalid. Two orders were granted: first, the court asked the municipality to make studies of the housing needs of low-and moderate-income people, and second, the court asked the Township to present a plan of affirmative public action. The Township appealed to the Appellate Division. The plaintiffs cross-appealed on the basis that the judgment should include a fair share plan of the regional housing needs of low-and moderate-income families. The Appellate Court found that the Township must: make available, a realistically appropriate variety and choice of housing, and must affirmatively provide for a fair share of the present and prospective regional need.

The advocates (Babcock, 1985) who supported inclusionary housing claim that the town measures merely extend the well-established regulatory powers of the state regarding the use of land. They contend that the geographical redistribution of lower-income households would create a whole series of social benefits: the children in these households would have access to better schooling and workers would have better employment than they had being excluded from Mount Laurel. On the other hand, the Mount Laurel measure has been very unpopular because it is viewed as an usurpation of local land use powers by the courts (The National Law Journal, v2). Furthermore, the

opponents assert that the regulations imposed by the court represented uncontrolled judicial activism that usurps private property regulations and undermines the tradition of home rule in local affairs. In addition, the developers point out that the measures reduce the effective advantage of local land markets while creating few benefits for the poor (Schwemm, 3).

Comparing both sides of the argument we notice that each part has a plausible argument. The supporters of the court's decision on Mount Laurel are correct in that local zoning often creates severe equity problems for low-income citizens. The opponents' point is zoning helps solve an important market failure in local land markets. Not only is fair share a factor involved in the controversy but also the "fair location".

B. Mount Laurel II:

In 1983 the case returned to the Supreme Court of New Jersey as Mount Laurel II (92 N.J. 158, 456 A.2d 390) when HUD discovered that the doctrine needed to be reinforced. Not one unit of affordable housing had been built in that township in the intervening eight years (Lamar, 1202). The township did not achieve the variety and choice of housing and did not provide an affirmative fair share for the present and prospective regional need.

Mount Laurel did not allow for low-and moderate-income housing within its zoning ordinance and the NAACP brought Mount Laurel back to court on the grounds of non-compliance.

Further judicial action was brought against the Township. The court found that the Mount Laurel I doctrine was limited and that they had to provide a realistic opportunity for housing, not litigation. The analysis of this second case is that the land use regulations that conflict with the general welfare are an abuse of police power and are unconstitutional. Also, since 1973 the proof of a bona-fide attempt is no longer sufficient. The municipality must, in fact, provide a realistic opportunity for the construction of its fair share of low and moderate income housing. All the municipalities must remove all barriers to allow the construction of a fair share of lower income housing. Municipalities must create affirmative measures through other municipal actions related to land use regulations by first, encouraging use of state and federal housing subsidies, and second, providing incentives to private developers to build developments for lower income housing.

The decision still did not provide a solution for assessing the fair share in a particular township. This two-step case only brought to the court methods to develop new burdens of proof, procedures and standards intended to lead to faster and more effective remedies.

After more than a decade of litigation, efforts to increase the supply of affordable housing in New Jersey culminated in the New Jersey Fair Housing Act, which will be explained in more detail in the next section.

2. THE NEW JERSEY FAIR HOUSING ACT of 1985 (N.J. Stat. Ann. & 52:27D-305 (West 1986)):

The Fair Housing Act was signed into law in 1985. The State of New Jersey assumed full responsibility for the administration of the Mount Laurel Doctrine. Three main provisions were established in this Act. The first one was that this doctrine established an administrative agency called the Council on Affordable Housing (COAH). This body determined the "fair share" obligations of all the municipalities in the state and sets up a process of certification for municipalities which developed acceptable fair share plans (N.J. Stat. Ann & 52:27D-301, 1985). The participation of the municipality is voluntary but if it agreed to participate because the municipality would be guaranteed protection from further exclusionary zoning suits for six years.

Fair share means that all municipalities have a constitutional obligation to respond to regional housing needs. In other words, fair share is the allocation of sufficient land for the provision of low and moderate income housing. Fair housing is interpreted in different ways by different people (including the judges). The New Jersey court defined that obligation using two provisions: First, the court decided that municipalities would be required to provide for a specific number of low and moderate-income housing units. Moreover, the court held that to meet these goals,

housing had to be specifically affordable for low and moderate-income families; that is, those with income no greater than 80 percent of the median income of the region, see **Table II**, (476 Pa. 182, 382 A.2d 105,110 n.10, 1977). The court specified in the case of Mount Laurel that these "fair share" tasks were essential. The court's choice of the fair share issue to regulate municipal obligations to the region did not by itself resolve the problem. The fair share concept itself is susceptible to many applications that have widely varied results in terms of housing obligations, partly due to the vagueness and the general use of the concept "fair share".

Recognizing this issue, the court proceeded to stipulate a series of remarkable procedural steps designed to insure fair obligations such as: a state development plan, assessing regional housing needs, ordinance changes and allowing municipalities opportunities for low income housing, affirmative action (set asides and mobile home zoning), low cost housing, and revision of procedures for dealing with cases on an individual basis.

The second provision of the Act allowed towns to meet 50% of their share obligation by paying for the construction or rehabilitation of low-and moderate-income units in another municipality in the same region (52:27D-312); and providing some funding for affordable housing construction or rehabilitation. This process was called Regional Contribution Agreements (RCA's). In most of the cases the transfers would

be arranged between a suburban community and an older urban municipality in its region. The process was to be supervised by COAH and the New Jersey Housing and Mortgage Finance Agency, the principal housing agency in the State of New Jersey. In addition, the Act established a State level financial commitment to affordable housing.

The third provision was to provide some funding for affordable housing construction or rehabilitation (Rutgers Law Review, 1989).

The cycle of acceptance is extremely difficult because many of the ways in which we can solve housing problems making housing more affordable, and more acceptable, are being contested by conflicts over the objectives of the law.

3. OUTCOMES OF THE MOUNT LAUREL CASE:

The creation of evolving housing policies are an important outcome of the Mount Laurel case. A series of recommendations with respect to future housing policies were created by the New Jersey Fair Housing Act. These recommendations were based on the fundamental premise that all citizens should be provided with adequate living conditions. The lack of affordable housing and overcrowded housing displaces lower income families and individuals, and in many cases results in homelessness. Now a state must commit itself to the need for a comprehensive housing policy by enforcing affordable housing, providing more dwellings, setting aside proper housing developments and other methods. In addition,

better monitoring systems were set up to protect on-going compliance with the Fair Housing Act. Agencies should be established that will supervise all type of activities addressing housing matters. These agencies shall evaluate the proper use of financial funding and their allocations in housing projects (Lamar, 1269). At the time this Act was passed, there was virtually no scrutiny of developer activity by well qualified individuals to review developer submissions. There were no application forms or other relevant materials throughout the planning, development, and marketing processes.

4. FINDINGS:

Babcock and Siemon, in their book "The Zoning Game Revisited" attack the Mount Laurel Case. They concluded that this case only generated bills in the New Jersey Legislature, provoked moratorium on implementation, and cost the municipalities millions of dollars. For example, Babcock stated that Mount Laurel did not work because of the delay from decision to the implementation which lasted eight years.

Yet over the course of twenty years Mount Laurel had worked (Urban Affairs Quarterly, 438-439). Unlike Mount Laurel I, Mt. Laurel II set specific standards and methods for determining fair-share obligations. The decision of the court was direct and decisive. Due to this last decision, the majority of the communities have tried to comply with the provisions of the ordinance. The greatest problem facing the three Mount Laurel judges was determining a methodology for

calculating the specific numerical size of each municipality's "fair share" obligation. They were worried about the kind of population they were integrating in their municipalities, and how to finance the great number of low and moderate income units. A descriptive housing study discussed by Lamar indicates that the population which was purchasing Mount Laurel housing was made up of several groups with very different needs: working class, lower-income households, the temporarily poor (young people), and the elderly. The Mount Laurel housing was good quality (Rutgers Law Review, 1989). Production took place in spite of the lack of a coordinated state housing policy, adequate state funding for housing, and a monitoring system to assess what was happening.

In addition to the disbursement of housing throughout a substantial number of suburban communities, stereotypes about affordable housing have begun to soften. Without minimizing the continued existence of total opposition in some municipalities, many municipalities are accepting the responsibility and are trying to administer their affordable housing programs efficiently and fairly (APA, 1992).

It seems that while other courts may not go as far as the Mount Laurel II case, this opinion may serve as a benchmark for other courts in other jurisdictions to measure their willingness to intervene in local housing and planning decisions (Bauchsbaum, 1985). The principal remedial innovation that resulted from the court's determination

enforced the doctrine inducing the construction and ended the reluctance of entities to accept the doctrine. Furthermore, the impact of Mount Laurel should increase the supply of middle income housing.

The result is that Mount Laurel will have more middle income housing rather than low- and moderate-income housing. This is because communities that never had low income housing are slower to implement low income housing programs. It will be easier for a developer to invest in housing developments which offer middle income dwellings rather than low income housing at first. The objective of Mount Laurel is to have proper planning, and governmental cooperation to prevent suburban sprawl and slums, and assurance of the preservation of open space and local beauty. (67 N.J. at 151, 336 A.2d at 733).

Since 1985, Mount Laurel II has served as a catalyst for six separately tried cases that were consolidated for argument and decision by the New Jersey Supreme Court. The cases involved a total of twelve communities in five counties around the states. These cases established some definitive guidelines which could resolve the varied litigation, while providing statewide guidance.

5. CONCLUSION:

In the State of New Jersey (Lamar, 1268) it is hard for the poor people to live there because of the high cost of living. Further, discrimination and segregation in housing

adversely affects urban renewal programs and the growth, progress and prosperity of the state. For these reasons the State made a policy that assures that all individuals could live in peace, health, safety and general welfare and may be protected and insured.

In June 1992, New Jersey's planning commission completed its "cross-acceptance" process and adopted the final statewide plan. The plan, which was initiated by the passage in 1985 of a state planning law, is another indirect result of the two much-heralded Mount Laurel decisions of the court. (Statutes for States, 45). Its key goal is to channel growth into five types of population centers: urban, towns, regional, villages, and hamlets.

Many amendments are being made to the law, but there are still gaps to fill. These gaps are both intentionally and unintentionally ignored by the developers, politicians and agencies of the state (Rutgers Law Review, 1989).

Perhaps the worst burden overhanging the Mount Laurel process is the manner in which it was conceived. "Without the courts, there would have been no Mount Laurel and it is doubtful that there would be 22,703 affordable housing units on the books in New Jersey today" (Rutgers Law Review, 1277).

Therefore, it can be concluded that Mount Laurel is working and it sets a model for effective cooperation between public and private forces. This model can be applied in other states across the country.

As a result of this, knowledge of the Mount Laurel cases may have encourage Rhode Island affordable housing advocated to propose a similar legislation in the State of Rhode Island. There has been much effort for developing different activities such as group advocators, new housing policies, organizations and new programs to follow a low and moderate-income housing law, which was enacted in 1991 and are mentioned and discussed in the next Chapter.

TABLE II: MOUNT LAUREL FAMILY INCOME

CATEGORIES: Family size	MEDIAN INCOME Moderate 50%-80%	LOW INCOME 48% (<50%)
1 Person	\$24,990	\$11,995
2 Persons	\$28,560	\$13,709
3 Persons	\$32,130	\$15,422
4 Persons	\$35,700	\$17,136
5 Persons	\$37,930	\$18,206

Source: U.S. HUD
Mahwah, New Jersey, 1983

As described in Section II of this Chapter, this figure presents the family income limits for the year 1983. For example, for a family where three people were living together in a dwelling, the median income for the State of New Jersey was \$32,130. The low income family was \$15,422 for the year 1983. These were the salaries that families in Mount Laurel had to qualify for affordable housing.

CHAPTER III: RHODE ISLAND HOUSING LAW AND ITS OUTCOMES

1. RHODE ISLAND LOW AND MODERATE INCOME HOUSING ACT (R. I. G. L. c. 53, 45-53-1 THROUGH 8)

The Low and Moderate Income Housing Act (R.I.G.L. 45-53) was adopted in 1991 and is similar to a Massachusetts Act that operates in essentially the same fashion (M.G.L.). The main purpose of the Massachusetts Act is to promote housing opportunities in the State for low and moderate income individuals and families. The aim of the legislation is to encourage every city and town to have at least ten (10) percent of its housing available for low or moderate income individuals or families. This law was enacted upon legislative findings that there exists in Rhode Island an acute shortage of affordable, accessible, safe and sanitary housing for citizens (individuals and families) of low-and moderate-income. The Law states that each citizen enjoys a right to such housing and the Act is designed to provide such opportunities. The Act establishes a streamlined permitting process that enables developers to apply for a comprehensive permit from a Zoning Board of Review to develop subsidized low and moderate income housing (R.I.G. Law, 2).

The Rhode Island Act primarily governs local response to proposals of developers to create low and moderate income housing in a community (see RI Act in Appendices Section). The Act establishes a streamlined permitting process that enables eligible entities to file one application for the

construction or rehabilitation of low/moderate income housing. The eligible entities are any public agency, nonprofit sponsor, limited equity housing cooperative or private developer proposing low/moderate rental housing that will remain affordable for not less than 30 years from initial occupancy.

The Act also establishes an appellate body called the State Housing Appeals Board. If a comprehensive permit is denied or granted with conditions that renders the proposed project infeasible, the housing developer/sponsor can appeal such a decision of the zoning board of review to this body.

To make a comparison with the Massachusetts Law is a little difficult since both Laws are very similar and the differences are only in the way they were created. Massachusetts Law (M.G.L. 1969) is a long document while the Rhode Island Law is very condensed. However, both laws pursue a similar goal to target provisions for the low-and moderate-income population.

A portion of the Rhode Island Law has some specific similarities and differences between the California Law (bill 2011, Section 65589.5). This section will clarify how the Law emerged in the State of Rhode Island. The similarities between Rhode Island Law and California Law are:

- 1) Both cite the following as standards for compliance:
 - a) housing elements in the land use plan
 - b) current development policies, such as the

state Comprehensive Land Use Plan and the Zoning
Enabling Act

2) Both use a standard for local units of government to meet their fair share of low and moderate income housing as a criteria for non-compliance with the legislation or denial of an application. In California it is "to meet its share of the regional housing need of low and moderate income housing." (C.G.L. Section 65589.5). In Rhode Island it is 10% of the housing units or a housing element which provides for 10% of the housing units to be low and moderate income (R.I.G.L. 45-53-1).

3) Both establish as policy the concept that it is the responsibility of local government to provide its fair share of low and moderate income housing opportunities.

The differences are:

1) The California legislation does not create a streamline local permitting process. Its emphasis is on the need to base any local disapproval or approval which lowers density on specific conditions which it goes on to define.

2) The California legislation does not have an intermediary appeals process to take a denial or imposition of infeasible restrictions to court (where the burden of proof is on the local jurisdiction).

3) The California legislation requires all developments to be low income for 30 years. The Rhode Island legislation uses that criteria for private developers only (probably on

the assumption that a non-profit agency would keep the development low income in perpetuity).

4) The California legislation uses adverse impact on public health and safety as a major criteria for denial even if the project otherwise complies with development regulations or policies and if there is no feasibility to mitigate the adverse affects of the development on public health and safety.

For each one of the laws there is a part in which definitions are provided. In California's law for example, the word "feasible" means "capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, social and technological factors." (C.G.L. Section 65589.5). In Rhode Island, the law uses the word "infeasible" to mean "conditions that make it impossible to proceed with the development without financial loss because of limitations and restricitons placed on the development by the funding sources that cannot comply with special local zoning requirements." (R.I.G.L. 45-53-1).

Another word that is defined by the California law is "affordable housing" that means "twenty percent of the total units must be affordable to lower income households as defined by various California codes; also it sets some standards for percentages of housing costs versus income for persons and families below 80% of area median income and those between 80% and 120% of area median." (C.G.L. Section 65589.5). In the

state of Rhode Island the word "affordable housing" is defined as "any housing subsidized by state or federal programs to assist the construction of low-and moderate-income housing." (R.I.G.L. 45-53-1).

In both laws, there are specific allowable conditions of denial or approval. These are:

1) As a condition of approval to adopt and implement an adequate housing element project that does not need to meet regional share of low-and moderate-income housing - In California and Rhode Island the provision is similar.

2) A project has a specific, adverse impact on public health or safety that cannot be mitigated without rendering the development unaffordable. In both states the provision is similar.

3) The state or federal law requires denial or special conditions that cannot be met without rendering the development unaffordable. This provision is infeasible in the California legislation.

4) If the project substantially fails to meet standards imposed by a state or federal plan. This is a provision in California. In Rhode Island it has to be regulated by the Comprehensive Plan or the Zoning Enabling Act.

5) In California the project increases the concentration of low-income households in neighborhoods which already have a disproportionately high number of low income households and the development cannot be relocated without making it

unaffordable. In the state of Rhode Island it is different. Because it is a small state the project targeted scattered areas in which development is feasible for the target population.

As an example of how the Act has been used in the State of Rhode Island, a table was prepared and a summary of findings of the housing production is provided in Chapter Four-Findings and Recommendations.

2. RHODE ISLAND STATE HOUSING APPEALS BOARD

The State Housing Appeals Board (SHAB) is comprised of nine (9) members and one alternate who have professional experience in the fields of law, housing, planning, land use, zoning and public policy. According to the Legislation the members should be: one District Court Judge (Chair), one local planning board member, one local zoning board member, two city and town council members, one alternate (a city or town council member), one affordable housing developer, one affordable housing advocate, the Director of the State Division of Planning or designee, and Director of Rhode Island Housing or designee. Board members are appointed for two year terms. Hearings are on a case-by-case basis and are scheduled when the Board receives a completed application from an eligible applicant. Usually, a fee is required from both the applicant and the Zoning Board to pay for the transcription of the hearing proceedings. At the hearing, both the applicant and the opponents have an opportunity to make a brief oral

presentation before the Board and submit written documentation amplifying their position. To date, the Board has heard four appeals including one from the permitting process, i.e. Women's Development Corporation for the Town of Narragansett, (see article included in Appendices). Decisions of the Board may be appealed to the Rhode Island Superior Court. By law, decisions of a local Zoning Board can only be appealed in communities where the supply of low and moderate income housing is less than 10% of the total housing stock.

The Appeals Board is an appellate body and its role is to determine whether the findings made by a local zoning board are supported by substantial evidence. As an appellate body, the Board reviews the record of the zoning board's examinations, findings of fact and decision and then determines whether a zoning board's decision was reasonable and consistent with local needs. An appellate board does not substitute its judgment for that of the zoning board's on the credibility of witnesses nor is it required to hear additional testimony unless it deems it necessary. However, since the board must determine consistency with local needs, there may be times when it may need to hear additional evidence and make certain factual findings of its own.

A. Appeals Process

The applicant submits required material to the Board within twenty (20) days after the date of the zoning board's decision. This may include a copy of application for a

comprehensive permit, evidence of site control, evidence of eligibility for state or federal subsidy including a letter from the funding source, or preliminary site plans.

Then SHAB notifies the local Chairman of the zoning board of the filing of the appeal. The zoning board has ten days to submit a transcript of the zoning hearing to the Board. Then the Board has 20 days from the date it receives a petitioner's completed application to hear the appeal. It must then render a written decision and order 30 days after the close of the hearing. Finally, the Zoning Board must carry out the Board's decision within 30 days of receiving the written order. The decisions of the Board can be appealed to the RI Superior Court.

A discussion of four cases is presented in the following section that were reviewed by the court since the Rhode Island Law was signed.

3. HISTORY OF THE ACT IN RHODE ISLAND

In 1989 the Bill was initiated by the Rhode Island Coalition for the Homeless "Homeless Shelters and Low Income Housing". This Bill was sponsored by Senator Sean Coffey. The bill consisted of two parts: the first was a part where housing advocates were trying to get transitional housing defined into law. They wanted better siting of transitional housing in communities. The second part of the bill stated that an acute shortage of affordable, accessible, safe and sanitary housing for low-and moderate-income people was a

reality in the State of Rhode Island. The bill was not passed.

In 1990 the bill was reintroduced again by Senator Coffey and by Rep. Nicholas Tsiongas on the House side. The transitional housing component was taken out. Advocates felt that the new zoning enabling legislation, which did not pass until 1991, would be a better vehicle for addressing the issue of transitional housing. Also Senator Peter Bouchard from the City of Woonsocket introduced a bill very similar to Coffey's. Both bills were based on Massachusetts's "Anti-Snob Zoning" legislation.

In 1991 Senator Coffey left the Senate. Therefore, the Rhode Island Coalition for the Homeless turned to Senator Bouchard to reintroduce Coffey's bill. The bill was only introduced in the Senate, but Rep. Robert Weygand was a strong supporter in the House. The Statewide Housing Action Coalition (SHAC) was organized. SHAC and RI Coalition for the Homeless were the two primary advocates for the bill. The bill passed both Senate and House (60%/40% vote). The bill passed on May 2 in the Senate and June 7 in the House. The Governor signed the Bill on June 16, 1991.

During the Summer of 1991 a task force convened to develop the Rules and Regulations of the Act. In February 1992 the regulations implementing the Act were promulgated.

To understand better what provisions are included in the Rhode Island Act, the following section explains the Comprehensive Permit Process and its criteria.

A. The Comprehensive Permit Process

The Comprehensive Permit Process is similar in some respects to a request for a variance before a local zoning board of appeals. Both procedures allow for existing zoning by laws to be waived under certain conditions. An applicant seeking a variance has to show hardship. Whereas an applicant filing for a comprehensive permit has to meet four basic criteria, namely:

1. low and moderate income housing is being developed,
2. the applicant is a public entity, a non-profit organization or a limited dividend entity. If it is a profitable entity, a 30 years rental feasibility is required.
3. the applicant has some form of site control over the property in question,
4. the applicant has a letter indicating potential eligibility for funding from the financing agency involved with the low/moderate income housing program being proposed.

The comprehensive permit is issued at the local level, through the Zoning Board of Review, but a denial can be

appealed to the State Housing Appeals Board by the developer. Also the comprehensive permit decision can be appealed by the developer/applicant only in communities which have not met the threshold criteria of having 10% of the housing stock for low or moderate income housing use.

The Zoning Board of Review may deny a permit for a project which would have serious adverse impact on the health and safety of the community and which could not be mitigated by modifying the project through conditions on the permit.

4. RHODE ISLAND CASE STUDIES

The four cases that are presented below are the only ones that have been forced since the installation of the Law.

- 1- Union Village Development Associates v. Town of North Smithfield (August 22, 1991)

Travel of the Case: A private developer (limited partnership) proposed constructing 80 rental units. The applicant petitioned the Town Council for a zone change to RU-20. The Council granted the zone change with 10 stipulations. One of the stipulations limited the construction to not more than 40 single family homes. The applicant petitioned Town Council to rescind three of the stipulations and allow construction of 80 unit apartment building. The Town Council denied petition.

Decision: The appeal was not properly presented before the Appeals Board and the application was denied without prejudice. (Application was not filed under RIGL 45-53). The

petitioner did not submit an application for a special exception to the North Smithfield Zoning Board of Review, therefore, there was no record for the board to review.

2- South County Community Action, Inc. v. Town of Richmond (June 22, 1992)

Travel of the Case: SCCA requested special exception to construct 10 duplexes on approximately 21 acres. Only one single family home per two acres was allowed under existing ordinance. The application was denied by the Zoning Board for environmental and traffic/highway safety issues.

Decision: Court remanded the application back to the Zoning Board for the purposes of taking additional testimony and/or evidence on issues relating to traffic safety (re access onto Route 138). The following month, the Richmond Zoning Board of Review unanimously voted to approve SCCA's application and it was unnecessary for the defendant to appear before the Board again.

3- Russell and Harry DePetrillo vs. the City of Cranston Zoning Board of Review (June 18, 1992)

Travel of the Case: The petitioner requested a variance to construct 24 single family units in five buildings with restricted off-street parking in a S-1 zone (Farmland/Cemetery). Significant issues included: no secondary emergency access; 36 parking spaces proposed instead of the 48 required for 24 units; only 36,000 square feet

buildable area due to flood zone instead of the 91,000 square/feet required under the existing code.

Decision: The Cranston Zoning Board (CZB) denied the petitioners' variance. Petitioners files a complaint with the SHAB as an appeal from the decision fo the CZB. SHAB remanded the application to the CZB for reevaluation and reconsideration consistent with the standards and procedures established in R. I. G. Law 45-53-1. The application for variance was denied again. Petitioners filed a complaint with SHAB because of the appeal decision of the CZB. The appeal came on for hearing before SHAB with a request from this body that parties present offer specific documentation to visualize the proposed site. After hearing all additional evidence and argument requested by the petitioner and the respondent, the Board voted by majority vote to affirm the decision of the CZB to deny the petition for variance (State Housing Appeals Board, 1992).

4- United Cerebral Palsy of R. I., Inc. and George A. Calcagni v. Town of Johnston Zoning Board of Review (95-116-A)

Travel of the Case: The petitioner submitted a Comprehensive Permit Application (CPA) to the Town of Johnston Zoning Board of Review for approval pusuant to RI General Laws. A hearing was held by the Zoning Board on Petitioner's CPA. The application was denied on two bases:

1) The Town Council had previously denied petitioner's application for a zone change and therefore, the Zoning Board did not have jurisdiction to hear petitioner's application.

2) Conformity with the Town of Johnston's comprehensive plan had not been established.

An appeal was filed with the State Housing Appeals Board (SHAB). The Zoning Board of Review of the Town of Johnston met and heard the petition of United Cerebral Palsy and George Calcagni to build an eleven unit multi-family dwelling to be occupied by physically handicapped persons. The petition was denied again, supported by the following findings:

1) No evidence was submitted that the proposed structure be used strictly for low and/or moderate income housing for a period of not less than thirty years.

2) The Town's Comprehensive Plan has provisions to meet the ten percent low and moderate income housing requirements.

3) Adequate protection for the health and safety of the residents had not been addressed.

Decision: After hearing from petitioners, SHAB deliberated and voted by unanimous vote to remand the CPA to the Zoning Board. SHAB reviewed the documentation submitted by the petitioners and determined that the CPA was not reviewed or considered by the ZB as required by the R. I. Law (State Housing Appeals Board, 1994).

The case came before the Supreme Court by a motion of an appeal from the Johnston Zoning Board of Review. This Court found that SHAB acted within its statutory authority in granting approval of the project. The reasons to approve this project were first, the construction of the housing will assist the Town in achieving its comprehensive plan of ten percent low-and moderate-income housing in accordance with the Act, and second, the housing is consistent with the need to protect the health, safety, and welfare of the Town residents. This project was supported by substantial, reliable and probative evidence.

5. FINDINGS

To understand how Rhode Island Law has impacted the housing production over the last four years, a variety of questions were asked to key players of the four cases presented. In Chapter IV the findings, outcomes and recommendations will be discussed and a final overview is presented.

CHAPTER IV: FINDINGS AND CONCLUSIONS

1. FINDINGS AND OUTCOMES OF RHODE ISLAND GENERAL

LAW 45-53-1

A. Introduction

The Chapters that proceeded this last part of the study focused on the housing policy and affordability history, the Rhode Island General Law 45-53-1 and how it has been working since its implementation. For the last part of this study of Rhode Island General Law 45-53, a table called Distribution of Affordable Housing is discussed. This table shows how the ten percent goal for affordable housing has been reflected in changes in towns and cities in Rhode Island since implementation of Law 45-53-1.

The second part of this chapter, recounts nine interviews to capture the main opinions of several key players in the State of Rhode Island. The Chapter concludes with observations and major opinions of people involved in one way or another in this housing law. These outcomes are important to close out this study. The interviews illustrate in a general way how this Law has been meeting its goals.

B. Summary and Distribution Table

The Law establishing the State Housing Appeals Board was implemented over the past four years. Changes in affordable housing counts for each town or city in the State of Rhode, have been slow. However, participants such as developers,

TABLE III DISTRIBUTION OF AFFORDABLE HOUSING (10%)

CITIES/TOWNS	Total Units	Total Units Assisted '92	% Assisted	Total Units Assisted '95	% Assisted	% CHANGE
Barrington	5,822	33	0.57	33	0.57	0.00
Bristol	7,959	252	3.17	313	3.93	24.21
Burrilville	5,751	390	6.78	401	6.97	2.82
Central Falls	7,337	939	12.80	939	12.80	0.00
Charlestown	4,256	16	0.38	43	1.01	168.75
Coventry	11,788	497	4.22	509	4.32	2.41
Cranston	30,516	1,642	5.38	1,651	5.41	0.55
Cumberland	11,217	603	5.38	603	5.38	0.00
East Greenwich	4,663	206	4.42	215	4.61	4.37
East Providence	20,808	2,263	10.88	2,318	11.14	2.43
Exeter	1,919	18	0.94	24	1.25	33.33
Foster	1,525	37	2.43	41	2.69	10.81
Glocester	3,460	50	1.45	72	2.08	44.00
Hopkinton	2,662	141	5.30	153	5.75	8.51
Jamestown	2,517	79	3.14	82	3.26	3.80
Johnston	10,384	747	7.19	757	7.29	1.34
Lincoln	7,281	521	7.16	558	7.66	7.10
Little Compton	1,850	0	0.00	-0-	0.00	0.00
Middletown	5,846	509	8.71	527	9.01	3.54
Narragansett	8,206	192	2.34	193	2.35	0.52
New Shoreham	1,264	16	1.27	16	1.27	0.00
Newport	13,094	2,019	15.42	2,064	15.76	2.23
North Kingstown	9,348	727	7.78	782	8.37	7.57
North Providence	14,134	1,149	8.39	1,153	8.16	0.35
North Smithfield	3,835	198	6.78	260	6.78	31.31
Pawtucket	31,615	2,558	8.13	2,589	8.19	1.21
Portsmouth	7,235	127	1.87	135	1.87	6.30
Providence	66,794	7,755	11.61	8,001	11.98	3.17
Richmond	1,874	20	1.81	34	1.81	70.00
Scituate	3,520	39	0.99	35	0.99	-10.26
Smithfield	6,308	271	4.50	294	4.66	8.49
South Kingstown	9,806	434	4.88	467	4.76	7.60
Tiverton	5,675	83	1.60	91	1.60	9.64
Warren	4,786	191	4.16	191	3.99	0.00
Warwick	35,141	1,729	4.89	1,707	4.86	-1.27
West Greenwich	1,370	0	0.00	6	0.44	600.00
West Warwick	12,488	841	6.73	927	7.42	10.23
Westerly	10,521	459	4.36	489	4.65	6.54
Woonsocket	18,739	3,107	16.58	3,128	16.69	0.68
STATE	423,314	30,858	7.47	31,801	7.69	3.06

Sources: Assisted Rental Housing in Rhode Island
 Division of Planning
 Rhode Island Assistance Program
 Rhode Island Housing
 1990 U. S. Census
 May 1995

planners, key players, are showing noticeable interest with this new Law.

The Distribution Table shows the percentages of affordable housing for each town or city of the state during 1991 when the Law was first enacted and then in 1995. Also, this table shows the increases or decreases in assisted units in numbers and percentages at the same time. These are the findings for the four year time period:

1- The Town of West Greenwich had the greatest percentage increase in affordable housing if we take into consideration that by the year 1992, this town had a 0.00% assisted units. By 1995 the town had six units meaning that it had an increase of 600%

2- The Town of Charlestown is the second highest percent increase of 169%. In 1992 the town had 16 assisted units and in 1995 had an additional 43 units.

3- The Towns of Richmond (70%), Gloucester (44%), Bristol (24%), North Smithfield ((29%) and Exeter (33%) had the next greatest increases in affordable housing having between 24 per cent and 70 per cent increases.

4- Thirty towns and cities had modest increases in affordable housing with changes fluctuating between 11 per cent and one half per cent during the four year period.

5- Only two communities registered no change, New Shoreham and Little Compton.

6- The Town of Scituate had a loss of 10.26% and the City of Warwick had a loss of 1.27% reflecting a decrease in group homes. There are several factors that contribute to the declining of group homes. The elderly population are enjoying better health with lower morbidity and mortality rates (RI Nursing Home Bed Need Assessment, 1995). In addition, the move to community based services and alternative residential options is another factor that contributed during these past years to the loss of group homes.

7- The table also reflects that statewide, after the implementation of the law, affordable housing increased three per cent. This is a good indicator that despite the fact the law is still in its beginning stage, the implementation is working. It is particularly salient that increases in affordable housing have taken place in the suburban and rural communities which have traditionally shunned affordable housing development.

2. INTERVIEWS

A. Profile of Participants

A description of the participants (list provided at the end of the Chapter) who were interviewed is vital for the reader. Their actual roles and their participation during the implementation of the Law is important to understanding the findings of this study. The people interviewed were involved with the Law and permitting process for various reasons: their personal involvement with applications for zoning

variances for their projects; because as municipal officials, they were responsible for the town or city Comprehensive Plan; and depending on the outcome of the application process, the interviewers experienced frustrations or satisfactions.

Some respondents to the survey had an active role in the implementation of the Act; others were direct observers. Their participation came following a denial of a use of variance application by the local Zoning board of Review, or simply that the project that they were involved with, was denied by the local Zoning Board the first time. Or, they were appointed to the State Housing Appeals Board. Other respondents were individuals who had been retained by private land owners and developers of affordable housing projects to provide expert planning testimony. These people had been involved in housing issues for a space of eight to sixteen years. Their experience and knowledge provides them with a firm concept of housing issues that are affecting the productivity of affordable housing in Rhode Island. Most of them are involved in planning which enabled them to have a broad overview of the real matters, needs, and other kind of barriers that still have to be overcome in a way that the low and moderate income population can be served.

B. Acquiring the Information

Fifteen questions were prepared to approach the persons who participated in these interviews. All these interviews were performed by a written survey followed up by a phone

call. The objective of the survey was to understand the extent of knowledge of how the Law is working in the State of Rhode Island, which are:

1- Gather the opinions and thoughts of different key community players and other people involved in the four cases mention before in Chapter III;

2- Find out how the streamlined process affected their proposed projects; and

3- Understand how their own experience during their respective projects will have an impact for future developments which will need to comply with the Law.

The questions are provided at the end of this chapter, (Appendices) so the reader can have a clear idea of the summary and results discussed in this portion of the chapter.

C. Findings

Four main findings emerged from these interviews. These represent housing issues that still impact on the production of affordable housing in this state and others.

The first finding is what we called "NIMBY" from the phrase "Not-In-My-Back-Yard," that makes our attempts sensitive or vulnerable as a society to be able to build healthy and progressive neighborhoods. Local nonprofit groups, government agencies and charities, with few resources, constantly struggle to provide affordable housing, services and emergency care. Too often their efforts are obstructed by community refusal to cooperate. The fears based on

"affordable housing" conjures up views of irresponsibility among the beneficiaries. The society still has a lot of people who believe that having or expanding new neighborhoods, will be the cause of loss of their own property values, or at least a perception of loss. The political resistance from people in the general neighborhood, social incompatibility, higher burden on schools, crime are other issues involved when a community has to share its land.

Another misconception of the word "affordable" is that the residents in upscale neighborhoods will "go ballistic" because many cannot afford to pay their existing mortgages and real estate taxes. Residents of a high income neighborhood may attempt to exert whatever political pressure they could at the local level to reject affordable housing projects in their area. If that failed, they would pool resources for a legal battle.

The irony is that the groups advocating for more programs have the same concern for safe, clean and healthy neighborhoods as residents do, if not more so. There is a lack of dialogue about these shared concerns which would dispel misconceptions and temper antagonisms. It is worth learning ways to encourage communication. When opposition and the concern to protect property values is too great, however, other avenues need to be explored.

The second finding is related to environmental disputes. When projects are proposed, factors such as problematic sites,

with protection of wetland areas, and land zoned as open space primarily are to be taken into consideration. Another factor is sites requiring excavations because of archaeological concerns of the town or city. The density variances also are another barrier when the projects are proposed. For example, the density of a development could be too great for the site and if the site is surrounded by any kind of pond would be a hazard for children. Drainage, sewage and gas trap systems for some developments should be taken into consideration when developments are proposed in certain areas.

A third finding is related to the lack of access to some proposed projects. Traffic should be studied to prevent road problems. The impact of overcrowded roads in the proposed area should be dealt with. Increased traffic creating more accidents must be avoided.

The last finding is about the high costs many developers could incur when a project is proposed. To implement the legal process there are very high costs to pay attorneys and experts, and time delays to prepare the comprehensive permit application and to hold the hearings. The attorney and experts have to testify, for example, at hearings before the local zoning board to ensure the feasibility of the project in that specific area. Proving their case and presenting their whole case again incurred a lot of expenses. This may cause increases in prices for the dwellings at the end.

D. Extent of Streamlining

Despite the vague language of the law, the streamlined process plays an important role in reading issues of NIMBY, traffic, high costs and environmental issues. The process telescopes planning and zoning procedures for a particular project. For example, when a local opposition, based on NIMBY, is present, the streamlined process is important because an estimated of 8-10 months are saved. In the case of a subdivision, for example, an applicant could go directly to a zoning board, rather than a planning commission and it could be less time consuming.

In the case of environmental issues, the process can be relatively streamlined because the developer can move forward in the meantime on their project after a state hearing in spite of a denial of the local zoning board. So, the second time the the project is appealed, the zoning board will recommend changes in the zoning area, and their plans can be approved. A "normal" zoning process would take from twelve to eighteen months. When the process is applied, it takes about three to six months when the proposed project does not show major risks. The time frame in the Rhode Island Law seems reasonable although further clarification of time requirements would be helpful. For example, how long can the public hearings process be extended by the Zoning Board Review. (See Robin Woods articles on the Appendices Section as a sample).

On the other hand, the streamlined process could be questionable because of the consistency with local needs in the communities. If one accepts the figures and methods established by the guidelines, then the process is totally consistent with local needs, but if other forms of "affordable housing", for example, Section 8 Vouchers, FMHA (Federal Mental Health Assistance) were considered, it might not be.

3. CONCLUSIONS

The following conclusions about the Rhode Island Housing Act findings emerged from these interviews. These are:

1- To educate the neighborhood first - community-based strategies are actions which can be taken by service providers, housing developers and advocates, with or without the support of government. These actions include education campaigns, community organizing, and planning program designs. Also, these actions include educating the public to dispel misconceptions about the efforts to incorporate neighborhood concerns into the design of the facility and program.

2- Different types of community outreach strategies that go beyond public education are needed. They might involve building a coalition of support or cultivating the interests of residents and government officials at the outset of program planning. Some groups research the community before they begin a project to identify strengths and weaknesses or controversies in the past. This can help the group anticipate obstacles and target its energies.

3- Public hearings are another vehicle to use to demonstrate support for program goals. It is important that supporters outnumber the opposition for voting purposes. Various members of the community may be called in to testify. This can include testimony from traffic engineers to appease concerns regarding congestion, police department representation to respond to crime concerns, a fire marshal to explain the adequacy of the proposed structure.

4- To have political support for their projects by lobbying for funds to convert special needs of the population in certain areas they represent. Submit proof of reliable funds for the project and how their support of the project can enhance the community targeted.

5- Since the neighborhood perceives that they are bearing a burden due to the establishment of the facility, it is important to offer positive benefits to counter the costs. These benefits can include: community services such as planting flowers and trees or conducting litter cleanups; agreement to give priority to serving members of the community; use of local builders and services; or improvement in the quality of the neighborhood by revitalizing the property.

A. Summary

The information presented in these previous chapters has been derived from several sources up to June 1995. Almost a year has gone by since the last statistics report on low

income housing in Rhode Island. It is important to mention at the end of this chapter that some towns in the State of Rhode Island like the Town of Little Compton, continues to pursue the the quota of 10 per cent as the law stated. The town already has sources to start construction of two single family units which were approved for the year 1996. Furthermore, there are other developers who continue to develop projects in towns where NIMBY is a barrier. This is the case of the Town of Barrington which is trying to start a project for elderly housing during this year. The other case is the Women's Development Corporation which is still fighting to develop a project in the Town of Narragansett. This developer currently is before the Coastal Resources Management Council to pursue approve as a last factor to start construction.

To conclude this study I can say that this housing tool is something which the people or agencies interested in producing affordable housing can rely on. But at the same time is premature to have real conclusions as to the long term value of the Act. Because there are only four cases that have been approved or denied, the future is still uncertain. One other point that should be highlighted is that because this law is in its infancy, there is no completed research or any criticisms regarding how it has been working until now. Also, no other sources of information were found only one housing agency in the state who was working on the creation and

implementation. Developers and state officials are moving slowly when this expedited tool was supposed to be the magic wand. Because this is a small state it could be possible it is committed to the application of the provisions, but it is still not fully productive because no state agency is ready to handle applications due to the time it takes to adopt the necessary regulations.

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APPENDICES

GLOSSARY

- 1- Affordable Housing - is generally defined as housing where the occupant is paying no more than 30 percent of gross income for gross housing costs, including utility costs.
- 2- Below-market - rents that fall below the Fair Market Rents (FMR) within the U. S. Housing and Urban Development regulations.
- 3- CDBG - Community Development Block Grants - federal money allocated to the states for the production of housing.
- 4- Exclusionary - term used in land use as an exclusion of certain types of housing due to lot size requirements on a portion of land.
- 5- First-Time Homebuyer - an individual or family wwho has not owned a home during the three-year period preceding the HUD-assisted purchase of a home that must be used as the principal residence of the homebuyer.
- 6- Great Depression - name gave to the 1930s and 1940s after the Second War in which all the main goods were scarce such as food, clothing, housing, etc.
- 7- Inclusionary - term used in zoning referring to an inclusion of certain types of housing in a portion of land.
- 8- Overcrowded - a housing unit containing more than one person per room.
- 9- Slums - name given to particular places characterized by gross over-crowding, dilapidation, poverty, vice and dirt.
- 10- Welfare shelter grants - money available to cover needs of certain population and promote the well being of low income people.

Cities/Towns	Family Poverty	Assisted Family	Elderly Poverty	Assisted Elderly	Other Assisted	Total Units	Households at Very Low Income	Total Units Assisted	Assisted Family	Assisted Elderly	Other Assisted	Total Units Assisted	% assisted
Barrington	38	17	93	0	33	5,822	641	50	17	0	33	50	0.86%
Bristol	196	61	390	220	23	7,959	1,620	304	61	220	23	304	3.82%
Burrillville	183	387	140	189	8	5,751	1,048	584	387	189	8	584	10.15%
Central Falls	816	213	547	631	95	7,337	2,714	939	213	631	95	939	12.80%
Charlestown	93	14	57	0	16	4,256	479	30	14	0	16	30	0.70%
Coventry	266	345	337	321	26	11,788	2,133	692	345	321	26	692	5.87%
Cranston	999	572	1116	1306	108	30,516	6,597	1,986	572	1,306	108	1,986	6.51%
Cumberland	192	55	307	519	84	11,217	1,795	658	55	519	84	658	5.87%
East Greenwich	105	63	98	105	86	4,663	753	254	63	105	86	254	5.45%
East Providence	680	984	860	1398	73	20,808	5,142	2,455	984	1,398	73	2,455	11.80%
Exeter	43	18	38	0	18	1,919	273	36	18	0	18	36	1.88%
Foster	34	38	33	0	7	1,525	273	45	38	0	7	45	2.95%
Glocester	111	55	45	0	10	3,460	549	65	55	0	10	65	1.88%
Hopkinton	62	68	87	114	4	2,662	453	186	68	114	4	186	6.99%
Jamestown	86	24	85	47	12	2,517	413	83	24	47	12	83	3.30%
Johnston	358	96	461	624	47	10,384	2,455	767	96	624	47	767	7.39%
Lincoln	203	128	240	366	47	7,281	1,545	541	128	366	47	541	7.43%
Little Compton	21	0	53	0	0	1,850	225	0	0	0	0	0	0.00%
Middletown	187	422	138	138	35	7,104	1,284	595	422	138	35	595	8.38%
Narragansett	104	214	100	104	16	8,206	1,259	334	214	104	16	334	4.07%
Newport	642	1876	477	367	234	13,094	3,042	2,477	1,876	367	234	2,477	18.92%
New Shoreham	14	16	17	0	0	1,264	97	16	16	0	0	16	1.27%
North Kingstown	243	478	169	278	39	9,348	1,403	795	478	278	39	795	8.50%
North Providence	346	422	701	829	12	14,134	3,088	1,263	422	829	12	1,263	8.94%
North Smithfield	75	124	191	60	28	3,835	701	212	124	60	28	212	5.53%
Pawtucket	1554	945	1596	1525	88	31,615	9,143	3,179	1,566	1,525	88	3,179	10.06%
Portsmouth	162	25	190	110	17	7,235	1,003	152	25	110	17	152	2.10%
Providence	6461	2746	3835	4593	416	66,794	23,344	9,390	4,381	4,593	416	9,390	14.06%
Richmond	15	15	7	0	20	1,874	225	35	15	0	20	35	1.87%
Scituate	58	31	37	0	15	3,520	432	46	31	0	15	46	1.31%
Smithfield	119	53	270	244	27	6,308	1,040	324	53	244	27	324	5.14%
South Kingstown	194	84	146	323	27	9,806	1,450	434	84	323	27	434	4.43%
Tiverton	143	48	178	45	38	5,675	1,120	131	48	45	38	131	2.31%
Warren	169	182	200	153	38	4,786	1,166	373	182	153	38	373	7.79%
Warwick	742	71	1091	1604	89	35,141	6,669	1,764	71	1,604	89	1,764	5.02%
Westerly	266	265	320	359	40	10,521	1,834	664	265	359	40	664	6.31%
West Greenwich	26	7	39	0	0	1,370	197	7	7	0	0	7	0.51%
West Warwick	507	226	594	593	22	12,488	2797	965	350	593	22	965	7.73%
Woonsocket	1354	1607	1042	1482	117	18,739	6133	3206	1,607	1,482	117	3,206	17.11%
STATE	17867	12995	16325	18647	2015	414,572	96535	36037	15,375	18,647	2,015	36,037	8.69%

Rhode Island Population by Race and Ethnicity, Poverty and Public Assistance

Community	1990 Population Total	Race and Ethnicity						Minority %	Below Poverty Level	Elderly 65+
		White non- hispanic	Black non- hispanic	Native American	Asian	Other non- hispanic	Hispanic			
Barrington	15,849	15,502	51	6	152	13	125	2.19%	280	2,168
Bristol	21,625	20,988	93	22	100	12	410	2.95%	1,152	3,099
Burrillville	16,230	16,096	17	21	21	4	71	0.83%	862	1,495
Central Falls	17,637	11,437	493	47	136	405	5,119	35.15%	3,853	2,463
Charlestown	6,478	6,259	39	101	42	0	37	3.38%	386	872
Coventry	31,083	30,587	78	32	115	11	260	1.60%	1,483	3,624
Cranston	76,060	71,323	1,657	139	1,346	63	1,532	6.23%	4,715	13,539
Cumberland	29,038	28,368	66	11	116	37	440	2.31%	1,078	4,109
East Greenwich	11,865	11,560	49	20	159	0	77	2.57%	554	1,343
East Providence	50,380	45,815	2,149	241	294	1,036	895	9.16%	3,356	8,814
Exeter	5,461	5,333	41	36	17	4	30	2.34%	407	401
Foster	4,316	4,257	18	12	13	0	16	1.37%	255	383
Glocester	9,227	9,119	32	13	16	1	46	1.17%	441	797
Hopkinton	6,873	6,740	18	53	17	0	45	1.94%	296	763
Jamestown	4,999	4,900	30	12	10	2	42	1.92%	437	650
Johnston	26,542	26,044	149	23	150	1	175	1.88%	1,754	4,208
Lincoln	18,045	17,599	40	14	189	20	183	2.47%	859	3,194
Little Compton	3,339	3,301	1	6	18	2	11	1.14%	122	545
Middletown	19,460	17,592	871	56	410	0	531	9.60%	883	1,990
Narragansett	14,985	14,442	119	137	132	0	155	3.62%	1,945	1,647
Newport	28,227	24,561	2,188	210	399	80	789	12.99%	3,228	3,528
New Shoreham	836	815	5	1	7	0	8	2.51%	67	146
North Kingstown	23,786	22,886	306	105	236	0	253	3.78%	1,073	2,518
North Providence	32,090	30,751	326	33	378	31	571	4.17%	2,040	5,607
North Smithfield	10,497	10,346	16	5	69	5	56	1.44%	415	1,551
Pawtucket	72,644	62,047	2,330	203	472	2,381	5,211	14.59%	7,632	11,485
Portsmouth	16,857	16,293	151	41	178	19	175	3.35%	730	2,002
Providence	160,728	103,698	20,259	1,495	9,547	747	24,982	35.48%	34,120	19,935
Richmond	5,351	5,204	23	42	34	0	48	2.75%	129	397
Scituate	9,796	9,679	15	2	47	0	53	1.19%	283	1,071
Smithfield	19,163	18,789	103	24	128	6	113	1.95%	715	2,159
South Kingstown	24,631	22,773	350	320	595	287	251	7.32%	1,341	2,624
Tiverton	14,312	14,053	31	20	46	1	161	1.81%	799	2,055
Warren	11,385	11,150	34	11	45	8	137	2.06%	792	1,754
Warwick	85,427	83,005	655	183	713	26	845	2.84%	4,078	13,588
Westerly	21,605	21,000	129	71	225	0	180	2.80%	1,400	3,385
West Greenwich	3,492	3,438	10	6	21	4	13	1.55%	137	308
West Warwick	29,268	28,169	218	53	281	5	542	3.75%	2,578	3,974
Woonsocket	43,877	40,190	1,123	77	1,309	22	1,156	8.40%	5,995	6,534
STATE	1,003,464	896,109	34,283	3,904	18,183	5,233	45,744	10.70%	92,670	140,725

* Unduplicated Public Assistance Recipients as of 6.93 includes AFDC, GPA, and Food Stamp recipients

STREAMLINED PROCESS-SHAB SURVEY

1- Type of agency for whom you work.

2- Position that you occupy in that agency.

3- Years working on housing issues (if applicable).

4- When was the first time you heard about the streamlined permitting process?

5- During the implementation stage of the Rhode Island Housing Act, how do you define your participation? (Or how did you get involve?).

Active ___ inactive/observer ___ direct involved ___

Please explain.

6- Was this Law related to any project in particular in your geographic area? If your answer is yes, please explain.

7- Name of the project. (If applicable)

8- Do you consider the permit process really streamlined? If your answer is yes, please explain.

9- What are the main barriers the developers faced in the

process? Please explain.

10- How much time did it take from the beginning to the end of this process in your situation? Please explain.

11- Do you think the time required in the process was too long or too short? Please explain.

12- Is the streamlined process consistent with local needs in your community? (e.g. population). Please explain.

13- Is the process feasible for the developers? Please explain.

14- Is mixed-use a permitted development alternative within your community's land regulations? Please explain.

15- If your community had an affordable housing proposed planned for a high income neighborhood, what would be the main concerns and obstacles presented by the existing residents? Please explain.
