

# SUMMARY OF THE 2016 LEGISLATIVE SESSION

Legislation that Affects Local, Regional and Statewide Planning

Several bills were enacted during the 2016 legislative session that will have an impact on local, regional and statewide land use planning. Below is a brief synopsis of the bills identified by the Division of Planning that may need your attention, accompanied by links to the associated bills and the affected Rhode Island General Laws. If you should have any questions regarding the enactments listed below, please contact Parag Agrawal, Associate Director of the Division of Planning, at [parag.agrawal@doa.ri.gov](mailto:parag.agrawal@doa.ri.gov) or 222-7901, or Jared Rhodes, Chief of the Statewide Planning Program, at [jared.rhodes@doa.ri.gov](mailto:jared.rhodes@doa.ri.gov) or 222-5731.

## UNIFIED DEVELOPMENT PLAN REVIEW

Municipalities now have the option of enabling a unified development review process. When enacted by the municipality, unified development review allows the Planning Board or Commission to review and decide on variances and special-use permits for projects that are already under their review.

The optional unified development review is highly customizable; each municipality that chooses to implement unified development review would determine which types of variances and/or special-use permits the Planning Board or Commission would be authorized to grant for which types of projects. Municipalities also have the option of using the unified development review process to incentivize development that offers benefits to the community, by adopting design, use, public benefit or other criteria that would trigger the availability of the more streamlined process.

Planning Boards or Commissions will be required to use the same findings used by the Zoning Board in making their determinations. Zoning Boards will retain the authority to review and make determinations on all variance and special-use permit requests that are not related to subdivisions or land development projects under review by the Planning Board or Commission.

Requests for variances and/or special-use permits would be submitted as part of the application for the land development project or subdivision during the first stage of review. The applications would require only one public hearing per stage of review, and would follow the same notice timeline as major subdivisions and land development projects. The notice area is to be specified within the local regulations, to be no less than within 200' of the property perimeter. Appeals of variance and special-use permit decisions made by the Planning Board or Commission will go to the Zoning Board.

To utilize unified development plan review, a municipality must amend its local zoning ordinance and local subdivision and land development regulations.

**Bills:** [S-2829 Sub A](#) and [H-7833 Sub A](#)

**Amended Rhode Island General Law Sections:**  
 “Local Planning Board or Commission” section [45-22-7](#); “Rhode Island Land Development and Subdivision Review Enabling Act,” sections [45-23-38](#), [45-23-40](#), [45-23-41](#), [45-23-61](#), and [45-23-63](#); “Rhode Island Zoning Enabling Act,” sections [45-24-41](#), and [45-24-42](#)

## COMPREHENSIVE PLAN CONFORMANCE DEADLINE

The deadline by which comprehensive plans must be brought into conformance with the requirements of the RI Comprehensive Planning and Land Use Regulation Act, as amended in 2011, has been extended to July 1, 2017.

**Bills:** [S-2581 Sub A](#) and [H-7696 Sub A](#)

**Amended Rhode Island General Law Section:**  
“Rhode Island Comprehensive Planning and Land Use Act”, section [45-22.2-2](#)

## WETLAND BUFFER AREAS & DEVELOPMENT CALCULATIONS

Municipalities are now required to include wetland buffer areas “in the calculation of a minimum lot area and in the total number of square feet or acres of a tract or parcel of land before calculating the maximum potential number of units or lots for development.” These requirements do not apply to lots “directly abutting surface reservoirs with direct withdrawals used for public drinking water.”

**Bills:** [S-2591 Sub A](#) and [H-7651 Sub A](#)

**Amended Rhode Island General Law Section:**  
“Rhode Island Land Development and Subdivision Review Enabling Act,” section [45-23-44](#)

The definition of “buildable lot,” found within RIGL subsection 45-23-32(5), remains “a lot where construction for the use(s) permitted on the site under the local zoning ordinance is considered practicable by the planning board, considering the physical constraints to development of the site as well as the requirements of pertinent federal, state and local regulations.” Also, pursuant to RIGL subsection 45-23-60(a)(4), Planning Boards and Commissions are still required to make a positive finding that the proposed subdivision will not result in the creation of individual lots with any physical constraints to development that building on those lots would be impracticable.

## AMENDMENTS TO THE DEFINITION OF BUILDING HEIGHT

“Building height,” as defined by RIGL subsection 45-24-31(12) shall now be calculated differently for vacant and developed parcels, as well as in special flood hazard areas. On vacant parcels, building height “shall be measured from the average existing grade elevation where the foundation of the structure is proposed.” For parcels with existing structures, building height “shall be measured from average grade taken from the outermost four (4) corners of the existing foundation.” In both cases, spires, chimneys, flag poles, and other similar features are excluded from the calculation.

**Bills:** [S-2561 Sub A](#) and [H-7695 Sub A](#)

**Amended Rhode Island General Law Section:**  
“Rhode Island Zoning Enabling Act”, section [45-24-31](#)

Additionally, for parcels and/or structures located in special flood hazard areas, as identified on the official Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs), where freeboard is utilized or proposed, the freeboard area shall be excluded from the height calculation, up to a maximum exclusion of five (5) feet.

## ACCESSORY DWELLING UNITS FOR FAMILY MEMBERS

The RI Zoning Enabling Act now stipulates that “an accessory family dwelling unit in an owner-occupied, single-family residence shall be permitted as a reasonable accommodation for family members with disabilities or who are sixty-two (62) years of age or older. Previously, this allowance was established only for family members with a disability.

**Bills:** [S-2297](#) and [H-7456](#)

**Amended Rhode Island General Law Section:**  
“Rhode Island Zoning Enabling Act”,  
section [45-24-37](#)

## TOLLING OF EXPIRATION PERIODS

The expiration of approvals given pursuant to local zoning ordinances and/or land development and subdivision regulations, have been tolled until June 30, 2017. Tolling shall only apply to approvals or permits in effect on November 9, 2009 and those issued between November 9, 2009 and June 30, 2017. Tolling has not been extended for development-related approvals issued by the RI Department of Environmental Management or by the RI Coastal Resources Council, as has previously been the practice. Tolling on such approvals expired June 30, 2016.

**Bills:** [S-3046](#) and [H-7215](#)

**Amended Rhode Island General Law Sections:**  
“Rhode Island Land Development and Subdivision Review Enabling Act,” section [45-23-63.1](#); “Rhode Island Zoning Enabling Act”,  
section [45-24-61.1](#)

The expiration dates for all permits and approvals issued before the tolling period began will be recalculated as of July 1, 2017 by adding thereto the number of days between November 9, 2009 and the day on which the permit or approval would otherwise have expired. The expiration dates for all permits and approvals issued during the tolling period will be recalculated as of July 1, 2017 by adding thereto the number of days between the day the permit or approval was issued and the day the permit or approval otherwise would have expired. See the examples, below, using different issuance dates for a permit that has a 1-year expiration period.

### EXAMPLE TOLLING FOR APPROVALS ISSUED PRIOR TO NOVEMBER 9, 2009

Date Permit Issued	Original Expiration Date (365 Days)	Days between	
		November 9, 2009 and Original Expiration Date	New Expiration Date
12/01/2008	11/30/2009	21 days	July 1, 2017 + 21 days, or July 22, 2017
11/01/2009	10/31/2010	356 days	July 1, 2017 + 356 days or June 22, 2018

### EXAMPLE TOLLING FOR APPROVALS ISSUED AFTER NOVEMBER 9, 2009

Date Permit Issued	Original Expiration Date (365 Days)	Days between Issue Date	
		and Original Expiration Date	New Expiration Date
03/01/2014	02/28/2015	365 days	July 1, 2017 + 365 days, or June 30, 2018
06/01/2016	05/31/2015	365 days	July 1, 2017 + 365 days, or June 30, 2018

