HBRA
Home Builders & Remodelers Association
MASSACHUSETTS

May 20, 2019
Honorable Karyn E. Polito
Lt. Governor of the Commonwealth of Massachusetts
Suite 360, State House
24 Beacon Street
Boston, Massachusetts 02133

Re: Housing Working Group

Dear Lt. Governor Polito

On behalf of the Home Builders and Remodelers Association of Massachusetts (HBRAMA), I want to again thank you for the time you spent with us recently discussing the challenges confronting the Commonwealth in attempting to address the chronic shortage of housing to meet the needs of our fellow citizens. We are grateful for the Baker-Polito Administration's commitment to identifying ways to encourage and facilitate new home production.

By reducing the vote of a city council or town meeting from 2/3rds to a simple majority to adopt pro-housing zoning, the Governor's Housing Choices Bill has the potential of being the most significant change to the Zoning Act since its enactment in 1975. And, yet, despite enjoying the support of a broad spectrum of organizations, public officials and organizations, it has been inexplicably difficult to convince the Legislature to act on it. While our association will continue to vigorously lobby for the passage of the Housing Choices Bill, we agree with your assessment that identifying regulatory barriers to housing production for possible reform is likely to be a more fruitful undertaking over the course of the next two years.

In that regard, we respectfully suggest the following main areas for consideration, recognizing that a regulatory solution to many of these issues is achievable to advance housing production, without sacrificing environmental protection:

Title 5 -- On-Site Sewage Disposal Systems

Housing production suffers in areas where no public sewer is available, so a developer must either limit unit production to the 40-unit range to stay within current Title 5 design flow guidelines with approval by the local board of health, or obtain a package wastewater treatment plant approval through a state groundwater discharge permit costing over $1.2+ million to construct, plus annual operating and maintenance costs. To justify such a treatment plant cost, the developer is forced to build over 100 units. Consequently, there is a housing development gap between 40 to 100 units where there is no cost effective treatment technology allowed under current state regulations to allow housing projects in this unit range gap.

The Department of Environmental Protection (MassDEP) has suggested there may be technology

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readily available to address concerns, primarily over nitrogen, that has been proven effective at lower flows, but that there may be no data for higher level flows using such technologies. We feel this is a perfect opportunity to partner with our state universities to develop an acceptable scope of study to implement the analysis to prove the technology, and as a pilot program, implement that technology to demonstrate effectiveness. The HBRAMA stands ready to jointly develop a scope of study, and we would hope the Commonwealth would devote resources to fund the implementation of such a program as well as researching the effectiveness of these larger systems already in use in other states. Armed with the proven technology, housing production can be advanced in these unsewered municipalities that have traditionally been unable to attract housing density to the levels where this housing development gap exists. This proposed change would require action at MassDEP level.

Dept. of Housing and Community Development (DHCD) Age Restricted Housing (55+) Policy

DHCD issued a policy early last year preventing affordable units from being listed on the department's Subsidized Housing Inventory in an age-restricted (55+) project if the community prevents children under 18 years of age from residing in such units for both Chapter 40B Projects and projects approved by municipalities under conventional zoning such as through inclusionary zoning. Prior to this policy, it was understood that federal and state fair housing laws did not prevent such a restriction and typical restrictions, for example, would allow children to visit their grandparents for a limited duration but not reside in these units full-time. This policy is currently enforced by some, but not all, of the state housing agencies.

While we understand the department is attempting to promote family housing, the HBRAMA feels the 55+ policy is misplaced and should be terminated because: (a) history has informed us that very few children live in 55+ projects, so the department's policy should not apply to this type of housing where children are not intended to reside; and, (b) the policy changes longstanding practice of many senior housing developers who have historically developed 55+ housing, and thus impacting the marketing of these 55+ housing units, including affordable housing for seniors; and, (c) federal fair housing regulations intended to create these age-restricted communities not to encourage children to reside in these communities, but to encourage the creation of housing for seniors. A termination of this policy would simply require action at the DHCD level.

DHCD LIP Local Action Unit Process

For many years, the HBRAMA has urged the DHCD to revise its LIP Local Action Unit (LAU) process for qualifying individual affordable housing units for the department's Subsidized Housing Inventory (SHI). This LAU process has continued to be particularly cumbersome and expensive to administer for qualifying affordable units in the non-Chapter 40B context when affordable units are approved under conventional zoning such as, for example, inclusionary zoning or cluster zoning bylaws and ordinances. The current process requires the negotiation of a regulatory agreement, development of an affirmative fair housing marketing plan, and a lottery plan, as well as the implementation of a lottery process.

While the cost and time for administering this affordable unit qualifying process is routine for projects approved under Chapter 40B, the same process can become prohibitively expensive when

requirements dictate that the same qualifying process must be used for projects where only 1 or 2 affordable units must be qualified for the SHI in the non-40B process. HBRAMA reaffirms its request that the DHCD form a working group to implement a streamlined process for qualifying affordable units under the LAU process to incentivize the creation of affordable units under the conventional zoning process. A change in this approach would simply require action at the DHCD level.

Starter Home Program

The Department of Housing and Community Development adopted the current regulations governing the Starter Home Program (G.L. c. 40R) in December 2017. At the time, the HBRAMA raised concerns that the regulations were so burdensome for developers and the incentives for municipalities so modest, that the program would not be successful. Given that not a single application for approval of a Starter Home District has been submitted to DHCD, we believe our position has been validated. Moreover, the Housing Choices Program offers an easier path for municipalities to access the incentives offered by your administration. Consequently, a major overhaul of the Starter Home Program regulations is necessary if the program is ever going to achieve its goal of producing smaller homes on smaller lots that young families can afford.

Department of Public Utilities (DPU)

The Interconnection Working Group established under former DPU Chair Angela O'Conner was successful in addressing many issues impeding the development community's ability to build projects in a timely and cost effective manner. Nevertheless, there remains much more to be done and this Group needs to be promptly reestablished by new Chair Matthew Nelson. The HBRAMA continues to commit its resources to continue the excellent dialogue created through this Working Group to date, and respectfully requests you to consider requesting quarterly updates on progress being made by the DPU on the same.

State Building Code

The adoption by the Board of Building Regulations and Standards (BBRS) of provisions mandating solar ready roofs on all new homes and electric vehicle charging in certain buildings will add substantial cost to these projects. The cost-benefit of these and similar energy provisions must be taken into account. The potential home energy savings over 20 or 30 years are of little consequence to a family if they cannot afford to purchase that house in the first place. The HBRAMA believes the Department of Energy Resources must be required to better account for the impact their recommendations are having on housing affordability.

Concluding Thoughts

To advance any or all of the above suggestions will require a sustained effort. Therefore, we would be excited to participate in an informal Housing Working Group comprised of appropriate departmental officials and housing stakeholders to be chaired by you. Regular meetings of this Group will ensure that ideas to advance housing production be can be raised, discussed and acted upon in a timely fashion, well before proposals reach the implementation stage so that proposals

can be vetted to ensure they will advance, and not hinder, housing production. We also believe good policy begins with having good data. In that regard, we suggest that an Office of Housing Data be established within EOHED to collect and analyze relevant housing data from the state housing agencies, the U.S. Census Bureau, the Massachusetts Association of Realtors, the Warren Group, the Joint Center for Housing Studies at Harvard University, local building departments, as well as other credible sources for housing demographics.

Finally, you mentioned that your administration is considering filing a second Omnibus Municipal Modernization Bill in the near future. We do believe that legislation could serve as an appropriate vehicle for reform of municipal practices that hinder housing production. For example, nearly every municipality imposes a moratorium on street openings during the winter months that delay the installation of underground utilities to new homes and subdivisions. That antiquated policy is frustrating and costly to both real estate developers and utility companies. Allowing work to be done when weather permits would be an important reform and should be considered a "best practice" under both the Community Compact Program and the Housing Choice Program. We can provide you with examples of other non-zoning municipal practices that unnecessarily hinder housing production that could be evaluated.

In closing, we are most appreciative of your personal commitment to expanding housing opportunities for individuals and families of all incomes.

We look forward to hearing from you.

Very truly yours,

Hunter Marosits
President