

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 395
STATE HOUSING APPEALS BOARD

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395.401 Appeals of IHDA's Determination of a Local Government's Exempt Status

AUTHORITY: Authorized by Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805] and Section 60 of the Affordable Housing Planning and Appeal Act [310 ILCS 67].

SOURCE: Adopted at 37 Ill. Reg. 4901, effective March 29, 2013; amended at 38 Ill. Reg. 3596, effective January 21, 2014; amended at 43 Ill. Reg. 11314, effective September 26, 2019; Subpart C recodified at 48 Ill. Reg. 10949; amended at 50 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL RULES

Section 395.103 Definitions

The following terms used in this Part shall have the following definitions:

"Act": The Affordable Housing Planning and Appeal Act [310 ILCS 67].

"Affordable housing": Housing that has a value or cost or rental amount that is within the means of a household that may occupy moderate-income housing or low-income housing.~~"Affordable Housing": Housing that has a value or cost or rental amount that is within the means of a household that may occupy Moderate-Income Housing or Low-Income Housing.~~

In the case of owner-occupied dwelling units, affordable housing means housing in which mortgage, amortization, taxes, insurance and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the dwelling unit.~~In the case of owner-occupied Dwelling Units, Affordable Housing means housing in which mortgage, amortization, taxes, insurance and condominium or association fees, if any, constitute no~~

~~more than 30% of the gross annual household income for a household of the size that may occupy the Dwelling Unit.~~

In the case of dwelling units for rent, affordable housing means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the dwelling unit. In the case of dwelling units for rent, the costs of any required parking, maintenance or landlord-imposed fees are to be included in the calculation of affordable housing if available from the U.S. Census Bureau. ~~In the case of Dwelling Units for rent, Affordable Housing means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the Dwelling Unit.~~

"Affordable housing developer": A nonprofit entity, limited equity cooperative or public agency, or private individual, firm, corporation, or other entity seeking to build an Affordable housing development. ~~"Affordable Housing Developer": A nonprofit entity, limited equity cooperative or public agency, or private individual, firm, corporation, or other entity seeking to build an Affordable Housing Development.~~

"Affordable housing development": Any housing that is subsidized by the federal or State government, or any housing in which at least 20% of the dwelling units are subject to covenants or restrictions that require the dwelling units to be sold or rented at prices that preserve them as affordable housing for a period of at least 15 years, in the case of owner-occupied housing, and at least 30 years, in the case of rental housing. [310 ILCS 67/15] ~~"Affordable Housing Development": Any housing that is subsidized by the federal or State government, or any housing in which at least 20% of the Dwelling Units are subject to covenants or restrictions that require the Dwelling Units to be sold or rented at prices that preserve them as Affordable Housing for a period of at least 15 years, in the case of owner-occupied housing, and at least 30 years, in the case of rental housing.~~

~~"Affordable housing plan~~Housing Plan": ~~A plan~~The Affordable Housing Plan to be approved by ~~a non-exempt local government~~~~all Non-Exempt Local~~ as set forth in Section 25 of the Act and submitted to IHDA for review and subsequent approval.

"Appellant": Any of the following parties:

The affordable housing developer of the proposed affordable housing development;

A person who would be eligible to apply for residency in the proposed affordable housing development; or

A housing organization whose geographic focus area includes the municipality, or county if in an unincorporated area, where the proposed affordable housing development is located. [310 ILCS 67/30]

"Approving authority": The governing body of the local government. ~~"Approving Authority": The governing body of the Local Government.~~

"Area median household income": The median household income adjusted for family size for applicable income limit areas as determined annually by HUD under Section 8 of the United States Housing Act of 1937 ~~"Area Median Household Income": The median household income adjusted for family size for applicable income limit areas as determined annually by HUD under Section 8 of the United States Housing Act of 1937~~ (42 U.S.C. ~~USC~~ 1437). [310 ILCS 67/15]

"Board": The State Housing Appeals Board.

"Chairperson ~~Chairman~~": The Chairperson ~~chairman~~ of the Board.

"Contumacious Conduct": A willful disobedience of the Board's order.

"Days": Calendar days. Due dates under this Part falling on a Saturday, Sunday or a legal State or federal holiday shall be deemed to fall on the next calendar day that is not a Saturday, Sunday or a legal State or federal holiday.

"Development": Any building, construction, renovation or excavation, or any material change in any structure or land, or change in the use of a structure or land, that results in a net increase in the number of dwelling units in a structure or on a parcel of land by more than one dwelling unit. ~~"Development": Any building, construction, renovation or excavation, or any material change in any structure or land, or change in the use of a structure or land, that results in a net increase in the number of Dwelling Units in a structure or on a parcel of land by more than one Dwelling Unit.~~

"Dwelling unit ~~Unit~~": Real property located within the State upon which there is located a structure or structures that are a single family home, a condominium or a multi-unit residential structure that is the principal residence of the household ~~Household~~ that resides in the unit.

"Exempt local government": Any local government in which at least 10% of its total year-round housing units are affordable housing, as determined by IHDA

pursuant to Section 20 of the Act, or any municipality with a population under 1,000. ~~"Exempt Local Government": Any Local Government in which at least 10% of its total year-round housing units are Affordable Housing, as determined by the Authority pursuant to Section 20 of the Act, or any municipality whose population is less than 1,000.~~

"Household": The person or persons occupying a Dwelling Unit. ~~"Household": The person or persons occupying a Dwelling Unit.~~

"Housing Organization": A trade or industry group engaged in construction or management of housing units, or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low- and moderate-income households.

"HUD": The United States Department of Housing and Urban Development.

"IHDA": The Illinois Housing Development Authority.

"IHDA Act": The Illinois Housing Development Act [20 ILCS 3805].

"IHDA Chairman": The chairman of IHDA.

~~"Initial Pleading": The Initial Pleading submitted by an Affordable Housing Developer as set forth in Section 395.305.~~

"Local Government": A county or a municipality, including home rule units and counties and municipalities other than home rule units, as described in Article VII of the Constitution of the State of Illinois. ~~"Local Government": A county or a municipality.~~

"Low-Income Housing": Housing that is affordable, according to HUD, for either home ownership or rental and that is occupied, reserved or marketed for occupancy by Households with a gross household income that does not exceed 50% of the Area Median Household Income. ~~"Low-Income Housing": Housing that is affordable, according to HUD, for either home ownership or rental and that is occupied, reserved or marketed for occupancy by Households with a gross household income that does not exceed 50% of the Area Median Household Income.~~

"Member": A member of the State Housing Appeals Board.

"Moderate-Income Housing": Housing that is affordable, according to HUD, for either home ownership or rental, and that is occupied, reserved or marketed for

occupancy by Households with a gross household income that is greater than 50%, but does not exceed 80%, of the Area Median Household Income. ~~"Moderate Income Housing": Housing that is affordable, according to HUD, for either home ownership or rental, and that is occupied, reserved or marketed for occupancy by Households with a gross household income that is greater than 50%, but does not exceed 80%, of the Area Median Income.~~

"Non-Appealable Local Government Requirements": *All essential requirements that protect the public health and safety, including any local building, electrical, fire or plumbing code requirements or those requirements that are critical to the protection or preservation of the environment.* ~~All essential requirements that protect the public health and safety, including any local building, electrical, fire or plumbing code requirements or those requirements that are critical to the protection or preservation of the environment.~~ [310 ILCS 67/15] Zoning, density and bulk restrictions may count as Non-Appealable Local Government Requirements if the Board finds that they qualify under the Act's definition of Non-Appealable Local Government Requirements.

"Non-Exempt Local Governments": All local governments ~~Local Governments~~ that do not meet the definition of ~~are not~~ Exempt Local Governments.

~~"Notice of Appeal": The Notice of Appeal sent to an Approving Authority by the Board as set forth in Section 395.306.~~

"Offices of IHDA": 111 E. Wacker, Suite 1000, Chicago, Illinois 60601.

"Public Building": Any building or portion thereof owned or leased by a Public Body. [5 ILCS 120/2.01]

"Public Body": All legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts, and all other municipal corporations, boards, bureaus, committees or commissions of the State, and any subsidiary bodies of any of the foregoing, including, but not limited to, committees and subcommittees supported in whole or in part by tax revenue, or that expend tax revenue, except the General Assembly and committees or commissions of the General Assembly. [5 ILCS 120/1.02] ~~"Public Body": All legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts, and all other municipal corporations, boards, bureaus, committees or commissions of the State, and any subsidiary bodies of any of the foregoing, including, but not limited to, committees and subcommittees supported in whole or in part by tax revenue, or that expend tax revenue, except the General Assembly and committees or commissions of the General Assembly.~~

~~"Reply": The Reply sent by the Approving Authority in response to an Initial Pleading.~~

"State": The State of Illinois.

~~"Vice Chairman": The Vice Chairman of the State Housing Appeals Board.~~

(Source: Amended at 50 Ill. Reg. _____, effective _____)

SUBPART B: ORGANIZATION

Section 395.202 Organization of the Board

The duties of the Board are governed by the Act and this Part. The Board shall consist of seven⁷ Members appointed by the Governor.

- a) ~~Chairperson~~**Chairman:** ~~A retired~~**A retired** Illinois ~~circuit judge, retired~~ Illinois ~~appellate judge, a current or retired administrative law judge or a practicing or retired attorney with experience in the area of land use law or related field~~**circuit judge or retired appellate judge** who is a Member. [310 ILCS 67/50]
- b) ~~Vice Chairman: The Board shall annually elect from its Members a Vice Chairman. In the absence of the Chairman or in the event of his or her inability or refusal to act, the Vice Chairman shall perform the duties of the Chairman. In the event of the absence of the Chairman or the Vice Chairman from a meeting of the Board, or in the event of their inability or refusal to act, the Chairman shall designate some Member to act in his or her place and stead, and that designated Member shall have the powers of and be subject to all the restrictions upon the Chairman.~~
- be) Other Members: Other Members, who are appointed from time to time by the Governor, are as follows:
 - 1) Four Members selected from the following categories:
 - A) County or municipal zoning board of appeals members;
 - B) County or municipal planning board members;
 - C) A mayor or municipal council or board member; and
 - D) A county board member.

2) An Affordable Housing Developer; and

3) An affordable housing advocate.

1) ~~a zoning board of appeals member;~~

2) ~~a planning board/commission member;~~

3) ~~a mayor or municipal council or board member;~~

4) ~~a county board member;~~

5) ~~an affordable housing developer;~~

6) ~~an affordable housing advocate.~~

cd) Ex Officio Member: The IHDA Chairman, ex officio, shall serve as a non-voting Member.~~Ex Officio Member: The IHDA Chairman, ex officio, shall serve as a non-voting Member.~~

de) At least 2 of the appointments under subsection (b) shall be from Non-Exempt Local Governments.~~No more than 4 of the appointed Members may be from the same political party. Appointments under subsections (c)(1), (c)(2), and (c)(3) shall be from Non-Exempt Local Governments.~~

ef) Beginning January 1, 2024, initial terms of four Members designated by the Governor shall be for two years and initial terms of three Members designated by the Governor shall be for one year. Thereafter, Members shall be appointed for two years. After a Member's term expires, the Member shall continue to serve until a successor is appointed. There shall be no limit to the number of terms an appointee may serve. The terms of Members serving before January 1, 2024~~expire on January 1, 2024. Initial terms of 4 Members designated by the Governor shall be for 2 years. Initial terms of 3 Members designated by the Governor shall be for one year. Thereafter, Members shall be appointed for 2 years. After a Member's term expires, the Member shall continue to serve until a successor is appointed. There shall be no limit to the number of terms an appointee may serve.~~

fg) A Member shall receive no compensation for his or her services; however, Members shall be reimbursed by the State for all reasonable travel and administrative expenses actually and necessarily incurred in the performance of the Member's official duties.~~A Member shall receive no compensation for his or~~

~~her services; however, Members shall be reimbursed by the State for all reasonable travel and administrative expenses actually and necessarily incurred in the performance of their official duties.~~

gh) The Board shall hear all petitions for review filed under the Act and shall conduct hearings in accordance with this Part.

hi) The principal office of the Board shall be the Offices of IHDA with office hours that are coterminous with the office hours of IHDA. IHDA shall provide space, clerical assistance and other assistance that the Board may require. [310 ILCS 67/50]~~IHDA shall provide space, clerical assistance and other assistance that the Board may require.~~

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 395.203 Meetings of the Members

- a) Compliance with Open Meetings Act: All meetings of the Board shall be in compliance with the Illinois Open Meetings Act [5 ILCS 120].
- b) Regular Meetings: The regular meetings of the Board shall be held at the Offices of IHDA when there are appeals, other applicable context, or other business to come before the Board, at least annually, with the specific date for the annual meeting to be set no later than January 1 of each calendar year. The Board may hold a regular meeting *simultaneously* at the Offices of IHDA *and one or more other locations in a Public Building through an interactive video conference if public notice and public access are provided for all meeting locations. Members physically present in those locations shall count towards determining a quorum.* [5 ILCS 120/2.01]~~If there are no appeals, other applicable context, or other business to come before the Board, the Chairman may cancel a regular meeting. Notice of cancellation shall be provided to Members in the same manner as notice of special, emergency and reschedule meetings, as set forth in subsection (f), and shall also be posted at the Offices of IHDA and on IHDA's website.~~
- c) Rescheduled Meetings: A regular meeting of the Board may be rescheduled as determined by the Chairperson~~Chairman~~, in which event notice of the rescheduled meeting shall be given in accordance with the Open Meetings Act.
- d) Special Meetings: Special meetings of the Board may be called at any time by the Chairperson~~Chairman~~ or upon request of any two~~2~~ Members of the Board. *Public notice of the special meeting, except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting described in subsection (c), or of a reconvened meeting shall be given at least 48 hours before the meeting.*

Notice of the special meeting, and the agenda for the meeting, *shall be posted at the Offices of IHDA and on IHDA's website.* [5 ILCS 120/2.02]

- e) Emergency Meetings: Emergency meetings of the Board may be called at any time by the ~~Chairperson~~~~Chairman~~ or upon request of any ~~two~~² Members of the Board. Public notice of the emergency meeting shall be given as soon as practicable, but in any event, prior to the holding of the meeting.~~Public notice of the emergency meeting shall be given as soon as practicable, but in any event, prior to the holding of the meeting.~~
- f) Notice of Meetings: The Board, through IHDA, shall publish a schedule of its regular meetings by January 1 of each calendar year listing the dates, times and places of the meetings, if any. The schedule shall be posted at the Offices of IHDA and on IHDA's website. No notice of regular meetings, as provided for in subsection (b) need be given to any Member. Notice in writing of all special, emergency and rescheduled meetings shall be delivered personally or via electronic mail, or shall be mailed to each Member at the Member's~~his or her~~ business or home address. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope addressed to the Member, with postage prepaid. Any Member may waive notice of a special, emergency or rescheduled meeting and attendance at the meeting shall constitute a waiver of notice of the meeting except when a Member attends for the express purpose of objecting to the meeting because the meeting was not lawfully called or convened.
- g) Quorum: A majority of the appointed Members of the Board shall constitute a quorum. A quorum must be physically present at any meeting of the Board. A Member attending a meeting via video conference as provided for in subsection (b) will be considered physically present for the purposes of determining a quorum and voting. The affirmative vote of a majority of the appointed Members shall be necessary for any action taken by or in the name of the Board at any meeting. If less than a quorum is present at a meeting, a majority of the Members present may adjourn the meeting from time to time. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Board.
- h) Attendance By Means Other Than Physical Presence:
 - 1) If a quorum is physically present at a meeting of the Board, a Member may attend the meeting via audio or video conference only if the Member cannot attend because of:
 - A) personal illness or disability;~~personal illness or disability;~~

B) employment purposes or other business of the Board;~~employment purposes or other business of the Board; or~~

C) a family or other emergency; or

D) unexpected childcare obligations. (~~5~~ ILCS 120/7).

2) The Member must notify the Chairperson~~Chairman~~ of the Member's~~his or her~~ intention to attend the meeting via audio or video conference at least 48 hours before the meeting unless impracticable. A Member cannot attend more than one regularly scheduled meeting of the Board for that calendar year via audio or video conference unless the Member presents a document from the Member's~~his or her~~ physician attesting to the Member's inability to physically attend a meeting or meetings. If one or more Members attend via audio or video conference, the Board, through IHDA, shall issue a written notice at the meeting stating the names of the Members present by audio or video conference, the electronic means that the Members will use to attend the meeting, and the location of the speakerphone or monitor receiving and transmitting the communications from the Members present by audio or video conference. The Member must then identify himself or herself by name and be recognized by the Chairperson~~Chairman~~ or other presiding officer before communicating. The minutes of the meeting shall reflect which Members were physically present and which Members were present via video or audio conference.

i) Records: A full and complete record shall be kept of all Board proceedings. IHDA shall be the official custodian of the records. Oral proceedings shall be recorded electronically, stenographically or by other means that will adequately ensure the preservation of the testimony or oral proceedings and shall be transcribed on the request of any party to a case. Transcription costs, if any, shall be borne by the party requesting the transcript. Other records shall consist of the following:

1) *all pleadings, including all notices and responses to those pleadings, and all motions and ruling;*

2) a transcript of the hearing, if any;

3) *all evidence received;*

4) *a statement of matters officially noticed;*

- 5) *any offers of proof, objections and rulings on that proof;*
- 6) *any proposed findings and exceptions;*
- 7) *any decision, opinion or report of the Board;*
- 8) *all staff memoranda or data submitted to the Board by IHDA in connection with the consideration of a case before the Board; and*
- 9) *Any prohibited ex parte communications. [5 ILCS 100/10-35(a)]*

(Source: Amended at 50 Ill. Reg. _____, effective _____)

SUBPART C: APPEALS TO THE BOARD BY APPELLANTS

Section 395.301 Service of Documents

All ~~initial pleadings~~*Initial Pleadings* and all documents in connection with any hearing before the Board under this Subpart shall be served by the party filing the document on the Board, the Approving Authority, the ~~appellant~~*Affordable Housing Developer* and all other parties to the proceedings. Service of any document upon any party may be made personally, by certified or registered mail with return receipt signed by the person or their registered agent, or by private delivery service. If service is made by United States mail, service shall be presumed complete 3 days after mailing, if proof of service shows the document was properly addressed. This presumption may be overcome by the addressee with evidence establishing that the document was not delivered or delivered at a later date. A party's failure to accept or claim a document served by mail shall not be grounds for overcoming the presumption. Proof of service shall be made by affidavit of the person making personal service that includes the name and address of the party served and the date and manner of service, or by a properly executed registered or certified mail receipt.

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 395.305 Initial Pleadings by ~~Appellants~~*Affordable Housing Developers*

~~Appellants~~*Affordable Housing Developers* must submit written ~~initial pleadings~~*Initial Pleadings* to the Board and must serve written ~~initial pleadings~~*Initial Pleadings* on the Approving Authority and all other parties within 45 ~~days~~*Days* after the final action or decision of an Approving Authority to deny an application for an Affordable Housing Development. *In the case of Local Governments that are determined by IHDA under Section 20 of the Act to be a Non-Exempt Local Government for the first time based on the recalculation of the United States Census Bureau data after January 1, 2024, no Appellant shall appeal to the Board until 6 months after the Local Government has been notified of its non-exempt status. [310 ILCS 67/30]* ~~In the case of~~

~~Local Governments that are determined by IHDA to be a Non-Exempt Local Government for the first time after August 9, 2013, no Affordable Housing Developer shall appeal to the Board until 60 months after the Local Government has been notified of its non-exempt status.~~ An initial pleading~~Initial Pleading~~ may be submitted to the Board electronically by submitting an email to legalnotices@ihda.org~~in paper form or on compact disc~~. An initial pleading~~Initial Pleading~~ shall contain ~~3 copies of~~ the following:

- a) a clear and concise statement of the prior proceedings before all Approving Authorities, including the date of notice of the decision the appellant~~Affordable Housing Developer~~ is appealing;
- b) a clear and concise statement of the appellant's~~Affordable Housing Developer's~~ objections to the Approving Authority's decision, indicating why the appellant~~Affordable Housing Developer~~ believes the application to develop Affordable Housing was unfairly denied, which may include an appeal of IHDA's determination of the exempt status of the Local Government as set forth in Section 395.401, or what conditions, if any, were imposed that the appellant~~Affordable Housing Developer~~ believes were unreasonable;
- c) a clear and concise statement setting forth the relief sought;
- d) the complete name and address of the appellant~~Affordable Housing Developer~~ for the purpose of service of papers in connection with the appeal;
- e) the name and address of the attorney or attorneys representing the appellant~~Affordable Housing Developer~~, if any; and
- f) a complete copy of the application for the Affordable Housing Development, as it was submitted to the Approving Authority, including sufficient information to determine whether the proposal that is the subject of the appeal is Affordable Housing.

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 395.306 Notice of Appeal

- a) Within 5 days~~Days~~ after the Board has received the initial pleading~~Initial Pleading~~ filed by the appellant~~Affordable Housing Developer~~, the Board shall send a notice~~Notice~~ of appeal~~Appeal~~ and a courtesy copy of the initial pleading~~Initial Pleading~~ to the Approving Authority identified in the initial pleading~~Initial Pleading~~.

- b) Upon receipt, the Approving Authority shall post the ~~notice~~~~Notice~~ of ~~appeal~~~~Appeal~~ in the Approving Authority's office and on the Approving Authority's website. The Approving Authority shall continue to post the ~~notice~~~~Notice~~ of ~~appeal~~~~Appeal~~ for a period of not less than 10 ~~days~~~~Days~~. If the Approving Authority fails or neglects to post the ~~notice~~~~Notice~~ of ~~appeal~~~~Appeal~~ in the Approving Authority's office or on the Approving Authority's website, the appeal shall proceed and shall not be impaired.
- c) A ~~notice~~~~Notice~~ of ~~appeal~~~~Appeal~~ shall include the following:
- 1) the time, place and nature of the appeal;
 - 2) the legal authority and jurisdiction under which the hearing is to be held;
 - 3) a reference to the particular Section of the Act involved;
 - 4) the consequences of a failure to respond and the official file or other reference number; and
 - 5) the name and mailing address of the Board and all parties.

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 395.307 Dismissal before Hearing

- a) Within 10 ~~days~~~~Days~~ after receipt of the ~~notice~~~~Notice~~ of ~~appeal~~~~Appeal~~ from the Board, the Approving Authority may file a motion to dismiss the appeal under the following circumstances:
- 1) pursuant to Section 20(c) of the Act, the Local Government was determined to be exempt pursuant to Section 20 of the Act in the year in which the appeal was filed. If applicable, the Local Government shall address any allegations by the ~~appellant~~~~Affordable Housing Developer~~, pursuant to Section 395.401, that the determination the Local Government is exempt from the Act is incorrect; or
 - 2) pursuant to Section 30(d) of the Act, the Local Government ~~has~~ adopted an Affordable Housing Plan, ~~has~~ submitted that plan to IHDA within the required time frame, and ~~has~~ submitted documentation to IHDA that evidences the Local Government ~~has~~ met its goal pursuant to Section 25(b)(~~vi~~~~iv~~) of the Act, ~~subject to the written approval of IHDA in its discretion~~; or

- 3) pursuant to Section 30(e) of the Act, the denial is based upon non-appealable local government requirements~~Non-Appealable Local Government Requirements~~.
- b) A motion to dismiss before a hearing shall include the following:
 - 1) a statement explaining why the appeal should be dismissed; and
 - 2) if appropriate, any documents or material supporting the claim.
- c) On the same day that the Approving Authority files a motion to dismiss with the Board, the Approving Authority shall serve a complete copy of the motion to dismiss on the Affordable Housing Developer and any other parties at the address or addresses specified in the initial pleading~~Initial Pleading~~.
- d) If the Approving Authority files a motion to dismiss prior to the hearing, the Affordable Housing Developer may file a rebuttal within 10 days~~Days~~ after the filing of the motion to dismiss, rebutting any of the claims made in the Approving Authority's motion to dismiss.
- e) The Board shall decide the appellant's~~Affordable Housing Developer's~~ rebuttal on the merits. If the Board determines that the appellant~~Affordable Housing Developer~~ has successfully rebutted the claims made in the Approving Authority's motion to dismiss, the Board shall deny the motion to dismiss and the issues raised in the motion to dismiss and the response shall be questions of fact to be resolved as part of the appeals process; otherwise, the Board may dismiss the appeal and, if dismissed, the Approving Authority shall not be required to file a reply~~Reply~~.

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 395.308 Reply to the Initial Pleading by Approving Authority

- a) If an appeal is not dismissed before the hearing pursuant to Section 395.307, within 15 days~~Days~~ after the Board's decision to deny the motion to dismiss, the Approving Authority shall file a reply~~Reply~~ to the initial pleading~~Initial Pleading~~ with the Board and shall provide a copy of the reply~~Reply~~ to the initial pleading~~Initial Pleading~~ to the appellant~~Affordable Housing Developer~~ and all other parties. If no motion to dismiss is filed, the Approving Authority shall file a reply~~Reply~~ to the initial pleading~~Initial Pleading~~ with the Board and shall provide a copy of the reply~~Reply~~ to the initial pleading~~Initial Pleading~~ to the appellant~~Affordable Housing Developer~~ and all other parties within 15 days~~Days~~ after the notice of appeal~~Notice of Appeal~~.

- b) The reply~~Reply~~ to the initial pleading~~Initial Pleading~~ shall include the following:
- 1) a statement explaining why the application that is the subject of the appeal was denied or conditions were applied, which may include an appeal of IHDA's determination of the non-exempt status of the Local Government under the Act as set forth in Section 395.401. If the Approving Authority denied an application or imposed conditions because it concluded that the Affordable Housing Developer did not comply with all Non-Appealable Local Government Requirements, the reply~~Reply~~ to the initial pleading~~Initial Pleading~~ must specify the requirements that justify the denial or the imposition of changes;
 - 2) a record of the vote on the Affordable Housing Developer's application that is the subject of the appeal; and
 - 3) any findings of fact related to the application; and;
 - 4) a statement clarifying which local, state, or federal law, if any, the Local Government relied upon as a basis for denying, or applying conditions to the application that is the subject of the appeal.
- c) The failure to file a reply~~Reply~~ to the initial pleading~~Initial Pleading~~ shall be deemed a general denial of matters asserted in the initial pleading~~Initial Pleading~~ and a waiver of all affirmative defenses.
- d) A party may participate in the hearing without forfeiting any jurisdictional objection, if the objection is made within 15 days~~Days~~ after receipt of the notice~~Notice~~ of appeal~~Appeal~~. Any party may file a response to the objection within 15 days~~Days~~ after service.

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 395.310 Conduct of Hearings

- a) Hearings may begin within 45 days~~Days~~ after the initial pleading~~Initial Pleading~~ is filed, unless the Board determines that a settlement conference is underway and is likely to resolve the matters in dispute to the satisfaction of both parties.
- b) The appellant~~Affordable Housing Developer~~ shall present its case first, followed by questions from the Board.

- c) The Approving Authority shall present its case second, followed by questions from the Board.
- d) In the event that a Local Government's exempt or non-exempt status under the Act is appealed and the issue has not been disposed of by motion of either of the parties, then, pursuant to Section 395.401, IHDA shall produce all written guidance and any other relevant materials regarding the Local Government's exempt or non-exempt status for the Board's review.
- e) With respect to Non-Appealable Local Government Requirements, if there is disagreement between the Approving Authority and the ~~appellant~~~~Affordable Housing Developer~~ as to whether a particular requirement is a Non-Appealable Local Government Requirement, the Board may make that determination based on whether the specific requirement in question meets the statutory definition of Non-Appealable Local Government Requirements.
- f) Both parties shall be permitted to cross-examine witnesses; however, the scope of any such cross-examination shall be limited to the scope of the direct examination.
- g) Both parties shall be permitted to make closing statements; closing statements shall not include facts not previously introduced.
- h) The Board, upon motion of any Member or on the motion of a party, may amend a complaint to conform to the evidence presented in the hearing or to include uncharged allegations supported by the evidence at any time prior to the issuance of the Board's decision and order.

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 395.313 Evidence

- a) A party shall be entitled to present its case by testimonial or documentary evidence, to submit rebuttal evidence, *and to conduct cross-examination as may be required for a full and fair disclosure of facts.* [5 ILCS 100/10-40(b)]
Testimonial evidence shall be taken only on oath or affirmation. Any cross-examination shall be limited to the scope of the direct examination.
- b) *The rules of evidence and privilege that apply in civil cases in Illinois circuit courts shall be followed. However, evidence not admissible under those rules may be admitted (unless precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.* ~~The rules of evidence and privilege that apply in civil cases in Illinois circuit courts shall be~~

~~followed. However, evidence not admissible under those rules may be admitted (unless precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.~~ [5 ILCS 100/10-40(a)]

- c) The ~~Chairperson~~~~Chairman~~ shall have the discretion to determine whether evidence being offered is reliable and whether the evidence should be admitted. The ~~Chairperson~~~~Chairman~~ may exclude evidence that is irrelevant, immaterial or unduly repetitious. (See 5 ILCS 100/10-40(a).)
- d) *Subject to the requirements of this Subpart, when a hearing will be expedited and the interest of the parties will not be prejudiced, the ~~Chairperson~~~~Chairman~~ may allow evidence to be received in written form.* [5 ILCS 100/10-40(a)]
- e) If a party objects to the admission or rejection of any evidence or to the limitation to the scope of any examination or cross-examination, or to the failure to limit that scope, that party shall state briefly the grounds for the objection. Rulings on all objections shall appear in the record.
- f) Official Notice: *Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of the fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing of the material noticed, including any memoranda or data prepared by IHDA staff, and the parties shall be afforded an opportunity to contest the facts noticed. The experience, technical competence and specialized knowledge of the Board and IHDA may be utilized in the evaluation of the evidence.* [5 ILCS 100/10-40(c)]
- g) Types of Evidence: The Board shall hear evidence only as to matters actually in dispute. Factual areas in which evidence may be heard if it is relevant to issues in dispute include, but are not limited to, the following:
 - 1) ~~Health~~~~health~~, safety and the environment;
 - A) structural soundness of the proposed buildings;
 - B) adequacy of sewage arrangements;
 - C) adequacy of water drainage arrangements;
 - D) adequacy of fire protection;

- E) adequacy of the Affordable Housing Developer's proposed arrangements for dealing with traffic circulation within the site, and feasibility of arrangements that could be made by the Local Government for dealing with traffic generated by the proposed housing on adjacent streets;
- F) proximity of the proposed site to airports, industrial activities or other activities that may affect the health and safety of the occupants of the proposed housing;

2) Site~~site~~ and building design;

- A) height, bulk and placement of the proposed housing;
- B) physical characteristics of the proposed housing;
- C) height, bulk and placement of surrounding structures and improvements;
- D) physical characteristics of the surrounding land;
- E) adequacy of parking arrangements;
- F) adequacy of open areas, including outdoor recreational areas, proposed within the building site;

3) Open~~open~~ space;

- A) availability of existing open spaces in the Local Government;
- B) current and projected utilization of existing open spaces and consequent need, if any, for additional open spaces, by the Local Government's population, including occupants of the proposed housing;
- C) relationship of the proposed site to any Local Government open space or outdoor recreation plan officially adopted by the applicable corporate authorities of the Local Government, and to any official actions to preserve open spaces taken with respect to the proposed site by the Local Government prior to the date of the Affordable Housing Developer's initial submission; the inclusion of the proposed site in the open space or outdoor recreation plan shall create a presumption that the site is needed to preserve open

spaces unless the appellant~~Affordable Housing Developer~~ produces evidence to the contrary;

D) relationship of the proposed site to any regional open space plan prepared by the applicable regional planning agency;

E) current use of the proposed site and of land adjacent to the proposed site;

F) inventory of site suitable for use as open spaces, and available for acquisition or other legal restriction as open spaces, in the Local Government, provided that the Board shall admit no evidence of any open space plan adopted only by the local conservation commission or other local body but not officially adopted by the planning board/commission;

4) Municipal~~municipal~~ planning;

A) a Local Government's master plan, comprehensive plan or community development plan; and

B) the results of the Local Government's efforts to implement those plans;

5) The uniform application, or lack thereof, of any impact fees, building permit fees and any other local fees.

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 395.314 Appellant's~~Affordable Housing Developer's~~ Burden of Proof

a) Denial: Pursuant to Section 30(c) of the Act, in the case of a denial of an Affordable Housing Developer's application, the appellant~~Affordable Housing Developer~~ bears the burden of demonstrating that the Approving Authority unfairly denied approval of the Affordable Housing Development. To meet this burden, the appellant~~developer~~ must prove that it is an Affordable Housing Developer and has proposed an Affordable Housing Development, or is a person who would be eligible to apply for residency in the proposed Affordable Housing Development, or is a housing organization whose geographic focus area includes the municipality, or county if in an unincorporated area, where the proposed Affordable Development is located. In addition, the appellant~~Affordable Housing Developer~~ shall demonstrate that:

- 1) the proposed Affordable Housing Development complies with all Non-Appealable Local Government Requirements and all relevant federal and State statutes and regulations. The ~~appellant~~~~Affordable Housing Developer~~ must prove these elements with respect to only those aspects of the project that are in dispute; or
 - 2) Non-Appealable Local Government Requirements or federal or State statutes or regulations have been applied differently to proposals that do not include Affordable Housing; or
 - 3) the Approving Authority has a pattern of denying applications to develop Affordable Housing; or
 - 4) the Approving Authority changed the zoning of an area regarding a specific Affordable Housing Development that, but for the change in zoning, is otherwise able to proceed, or has a pattern of changing zoning of an area in regards to Affordable Housing Developments that, but for the change in zoning, are otherwise able to proceed; or
 - 5) the Approving Authority unreasonably or intentionally delayed its decision regarding a specific Affordable Housing Development that, but for the lack of timely decision by the Approving Authority, is otherwise able to proceed, or has a pattern of unreasonably or intentionally delaying its decisions on applications for Affordable Housing Developments that, but for the lack of timely decisions of the Approving Authority, are otherwise able to proceed; or
 - 6) IHDA's determination that the Local Government is exempt from the Act is incorrect based on the counting protocols set forth in Section 20 of the Act ~~and any written guidance published by IHDA~~; or
 - 7) the denial of the application for the Affordable Housing Development was unfair because it otherwise inhibits the construction of Affordable Housing.
- b) Approval with Conditions: Pursuant to Section 30(c) of the Act, in the case of an approval with conditions, the ~~appellant~~~~Affordable Housing Developer~~ bears the burden of demonstrating that the Approving Authority imposed unreasonable conditions on the proposed Affordable Housing Development. To meet this burden, the Affordable Housing Developer must prove the developer is an Affordable Housing Developer that has proposed an Affordable Housing Development. The ~~appellant~~~~Affordable Housing Developer~~ shall also demonstrate:

- 1) the Approving Authority has generally not imposed unreasonable conditions on similar developments; or
 - 2) the conditions are not necessary to further the asserted Approving Authority interest; or
 - 3) less costly conditions can be imposed on the proposed Affordable Housing Development that sufficiently address the asserted Approving Authority's interest.
- c) The failure of a Local Government to submit an Affordable Housing Plan as set forth in Section 25 of the Act shall not prevent an appellant~~Affordable Housing Developer~~ from filing an appeal with the Board. The Board may take into consideration the failure to submit an Affordable Housing Plan in connection with any appeal before the Board.

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 395.317 Enforcement

- a) The Board shall immediately notify the parties of its decision by delivering the decision at the hearing, or by certified or registered mail with return receipt signed by the person or the person's~~his or her~~ registered agent, or by private delivery service.
- b) In cases in which the appellant~~Affordable Housing Developer~~ has met its burden of proof as set forth in Section 395.314, the Approving Authority shall carry out the decision and order of the Board within 30 days~~Days~~ after the Board's decision. However, if the Approving Authority can demonstrate that a longer time period is necessary, the Board shall consider a longer time period to carry out the decision of the Board so long as the Approving Authority began to carry out the Board's decision within the initial 30 day~~Day~~ period.
- c) The decision and order of the Board are binding on all parties. The Board can interpret or clarify its decision or order for the purposes of resolving any procedural ambiguities or disputes that may arise.
- d) If the Approving Authority does not carry out the decision and order of the Board within the time limits prescribed in Section 395.317(b), the Board may seek representation by the Attorney General's office, pursuant to the Attorney General Act [15 ILCS 205], and may file a complaint in the circuit court for the district in which the Approving Authority subject to the appeal is located.

- e) If the Approving Authority does not carry out the decision and order of the Board within the time limits prescribed in Section 395.317(b), the ~~appellant~~~~Affordable Housing Developer~~ may seek legal representation and file a complaint in the circuit court for the district in which the Approving Authority subject to the appeal is located.

(Source: Amended at 50 Ill. Reg. _____, effective _____)

SUBPART D: APPEALS OF LOCAL GOVERNMENT EXEMPT STATUS

Section 395.401 Appeals of IHDA's Determination of a Local Government's Exempt Status

In connection with an appeal under Subpart C, a Local Government or an ~~appellant~~~~Affordable Housing Developer~~ may appeal IHDA's determination of the Local Government's exempt or non-exempt status under the Act to the extent that the appealing party can demonstrate that IHDA's determination was not made in accordance with the counting protocols set forth in Section 20 of the Act ~~and any written guidance published by IHDA~~. The parties shall introduce evidence to support their positions consistent with the requirements of Subpart C. IHDA shall produce ~~all written guidance~~ and any other relevant materials regarding the Local Government's exempt or non-exempt status for the Board's review. The Board shall review the evidence provided by the parties and by IHDA and shall issue its decision on the matter in connection with the appeal filed under Subpart C. The Board may decide the matter during motion practice before the Board or during the hearing.

(Source: Amended at 50 Ill. Reg. _____, effective _____)