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September 10, 2025

Via Email
Impact for Equity
Mr. Martin Cozzola
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Re: Illinois Housing Development Authority's Response to Public Comment on State Housing Appeals Board Proposed Amended Regulations (47 Ill. Adm. Code 395)

Dear Mr. Cozzola:

Please accept this response by the Illinois Housing Development Authority ("Authority") to your public comment on the above-captioned pending administrative rulemaking ("Rules") as required by 1 Ill. Adm. Code 220.600(9), submitted to the Authority on behalf of Impact for Equity and the many other organizations, carbon copied below, who co-signed the public comment.

Under the Affordable Housing and Planning Appeal Act ("AHPAA" or the "Act"), the Authority is responsible for adopting administrative rules and regulations needed to carry out the responsibilities of the State Housing Appeals Board ("SHAB") under the Act and to provide direction to local governments and affordable housing developers. 310 ILCS 67/70. AHPAA also requires the Board to hear all petitions for review filed under the Act and that the SHAB will conduct all hearings "in accordance with the rules and regulations established by the chairperson." 310 ILCS 67/50. Importantly, while the Authority shall provide space and clerical and other assistance that the SHAB may require, the Act provides the SHAB chairperson with their own significant discretion in the conduct of hearings before the SHAB. *Id*.

This proposed amendment and recodification of the Rules was prompted by legislation passed in 2023 to change the composition of the State Housing Appeals Board ("SHAB"), including expending who is eligible to serve as its chairperson and modifying the required composition of the SHAB membership. The new legislation also expanded the pool of entities that can appeal decisions by a local government body. In addition to the proposed developer, interested housing

organizations and persons who would be eligible to apply for residency in the proposed affordable housing development can appeal to the SHAB.

In light of these statutory mandates, the Authority has reviewed each of the suggestions and comments you have raised, and its analysis and response to each is set forth below. The Authority appreciates your careful review of its proposed rulemaking and accepts many of the suggestions you have made and hopes to explain why it does not intend to incorporate certain of your suggestions in the amendment at this time.

I. Generally

You have asked that the Authority rename the heading of Part 395. You have suggested that renaming the Part from "State Housing Appeals Board" to something like "the Affordable Housing Planning and Appeal Act" would make the regulations' relationship to AHPAA clearer. The Authority agrees that the scope of its rulemaking authority provided by the Act includes "provid[ing] direction to local governments and affordable housing developers." The Authority does believe that the current SHAB rules and this proposed amendment do provide important direction. As you will see below, the Authority agrees to accept your proposed change to the definition section of this Part, which it believes will also provide significant further direction that the Rules and the Act include an explicit preemption of home rule.

The Authority's goal with this amendment is to stand up the SHAB and focus on empowering it to hear appeals effectively and bring the Rules in compliance with the 2023 legislation. The Authority still believes that it is important for prospective appellants and end users of the Rules to keep their current title. The Authority believes it is important to forecast to the public that these Rules are the applicable rules for new practitioners to a newly constituted SHAB to avoid confusion about where to find the SHAB's appellate process. The Authority is concerned that a broader title may be vague and reduce the utility of the Rules and clarity about their contents.

You have highlighted additional proposed changes that the Authority could consider without changing the title of the Part. As you have noted, the Authority does provide extensive public guidance to local governments and affordable housing developers interpreting AHPAA through various publications. Importantly, guidance is not "direction," and the Authority does intend to exercise care in imposing in the Rules what is most appropriately interpretative guidance.

You suggest the Authority has broad authority to create regulations for all of AHPAA, and you include a non-exhaustive list of four examples that are outside the scope of the SHAB. The Authority follows AHPAA itself regarding the determination of Non-Exempt Local Governments ("NELGs"). AHPAA also expresses the minimum requirements for affordable housing plans and timelines for submissions. The Authority believes AHPAA provides clear direction on these items and any regulation it added would merely restate AHPAA and would not sit logically with the appellate processes for the SHAB set forth in the current Rules.

You also suggest that the Authority use the Rules to provide "clarification regarding when the Authority will use its relatively new power to refer NELGs to the Office of the Illinois Attorney

General." The Authority appreciates that this clarification could be helpful through written guidance as it continues to work with the Illinois Attorney General, but the way the Authority exercises its referral authority as a State agency to another State agency is not something it deems an appropriate exercise of administrative rulemaking authority.

II. Section 395.103 Definitions

You have expressed a concern that the amendment does not include an updated definition for "local government" to reflect a 2021 legislative clarification that AHPAA explicitly preempts home rule. The Authority understands your concern. As mentioned below, the Authority believes your suggested change is a positive one that will better align the Rules with the Act. You have asked that definition of "local government" in the Rules state "A county or 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," and the Authority agrees to make this change.

III. Section 395.203 Meetings of the Members

You have further requested that the Authority withdraw a proposed change that would allow the SHAB to meet as necessary but without the requirement that the SHAB meet at least annually. The Authority proposed this amendment to avoid potential future audit findings, as the SHAB has not been constituted or had a quorum that would make it possible to meet for many years. The Authority always has intended to host a meeting or meetings of a newly appointed SHAB to provide training and support and enable the chairperson to consider rules and regulations for the conduct of hearings before the SHAB. However, the Authority believes that the concerns you have expressed are reasonable, and the Authority hopes that a newly appointed SHAB will have sufficient business to meet more than just annually. For these reasons, the Authority accepts this suggestion and will continue to maintain an annual meeting requirement.

IV. Section 395.305 Initial Pleadings by Appellants

The Authority notes that for your suggestions for Sections 305, 308, 313, and 314 delve into the specifics of how appeals will be heard by the SHAB. Pursuant to the Act, the chairperson of the SHAB will establish rules and regulations for the conduct of all hearings. The Authority has generally sought to exercise deference to that statutorily prescribed process, with the expectation that when the SHAB is fully appointed, it will develop appropriate rules of procedure for parties before it, while the Authority itself will provide the clerical and other assistance appropriate for its role in the appellate process. The Authority expects that development of the rules and regulations for the conduct of hearings will be an initial significant responsibility of the SHAB.

Regarding Section 305, you suggest that because "final action or decision" lacks a definition, that potential appellants and NELGs may be left to guess what action is appealable. The Authority does not believe it is appropriate to be overly prescriptive in the Rules regarding what a "final action or decision" may be before the SHAB has had a chance to convene, develop its rules and regulations, and hear any appeal. The SHAB may need to hear threshold issues on its jurisdiction to hear an appeal on the question of whether a final action or decision has been

made, as well as other threshold jurisdictional issues that may come to it. As your examples highlight, these will be highly fact-specific inquiries that in the estimation of the SHAB, may not lend themselves to any one comprehensive definition.

Further, in the draft definition you suggest, you reserve that the list of what may constitute a final action or decision is not exhaustive, likely in recognition of the unknown cases the SHAB may face. A non-exhaustive list can actually create ambiguity rather than reduce it, where potential appellants may overlook the reservation that a definition includes "but is not limited to" a specific list, and where they and the adjudicatory body focus only on the enumerated list. The Authority believes that the appointees of the SHAB appointed to be experts on these issues will be best positioned to develop a definition for this term if any is needed, and the SHAB will be able to provide helpful information via practitioners' guides, other guidance, and the record of appeals it hears and its subsequent opinions on these issues.

For these reasons, the Authority does not believe amending the Rules to define the term "final action or decision" is appropriate at this time.

V. Section 395.308 Reply to the Initial Pleadings by Approving Authority

You suggest the Authority add language to Section 308 to require "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." Notwithstanding the concerns the Authority expressed above – that it is most legal requirement for the SHAB and its chairperson to determine the appropriate conduct of hearings before it – the Authority has reviewed your comment and believes this is a straightforward suggestion that does not appear to circumscribe the SHAB's ability to fully investigate issues before it, but may more efficiency permit its review. For these reasons, the Authority accepts this comment and will incorporate this change.

VI. Section 395.313 Evidence

You suggest that the Authority add to the types of evidence the SHAB will hear to include a new subsection G for "Potential measures that could improve local sewage, water drainage, and/or fire protection, and measures by the Local Government to make such improvements or prevent such improvements from being made." The Authority believes this suggestion goes far beyond the scope of what may be deemed admissible evidence in a regular judicial or quasi-judicial proceeding.

The SHAB is an adjudicatory body. The Authority believes that you are highlighting a potential problem with how NELGs may seek to skirt AHPAA compliance, but it does not seem this problem can properly be addressed through an appellate process. You suggest that "[p]ractically and philosophically, SHAB members should understand what potential a properly developed municipality could hold when making decisions," but a quasi-judicial body making findings of law and fact cannot properly opine on such speculative information and deem it evidence that could be "relevant to issues in dispute." These practical and philosophical concerns are policy considerations, but they are not tangible legal issues.

That being said, the Authority also relies on the analysis that it provided above. The SHAB itself through its chairperson shall develop rules and regulations for the conduct of hearings before it. The SHAB appointees through their pre-appointment experience and the appeals they will hear will develop their own jurisprudence, and the SHAB may agree with the reasoning you set forth here and adopt related rules or adopt other guidance on the scenario you describe that drives your comment. At this time, however, the Authority does not believe such a change is appropriate in the Rules and believes it could be unworkable and impossible for the SHAB to implement as suggested.

Further, the current definition of "Evidence" is non-exhaustive. To the extent that what a municipality could do and refused to do may be relevant to a matter before the SHAB, such information could still be presented to the SHAB, and the SHAB can determine whether it is appropriately deemed evidence.

VII. Section 395.314 Appellant's Burden of Proof

You have suggested two additional changes to the pending amendments for Section 314. First, you have asked that the SHAB will evaluate the "geographic focus area" on a case-by-case basis, and that the SHAB can include multiple municipalities or counties or even be statewide. The Authority appreciates the concern that questions of standing can extend the time for an appeal. Standing, however, is the predicate determination that any quasi-judicial body must make, and such determination cannot be averred. The suggested change that you offer would not seem to reduce standing questions. It still creates the need for a threshold case-by-case analysis. The Authority returns to its analysis above. The SHAB, once appointed, will develop jurisprudence appropriate for these appeals, and the Authority does not seek to substitute its own judgement for the SHAB's before it has a chance to develop its own analysis.

Second, you suggest the Authority amend subsection 314(a) to add the word "or" after each prong of this subsection, such that the language may be made clearer for practitioners. The Authority accepts this suggestion and will incorporate this change.

Thank you for your public comments. The Authority wants to see the SHAB succeed, and the Authority will support that success in all the ways it can. The Authority believes with careful consideration to the concerns you have raised in your comments, the SHAB will develop thoughtful, practical, and fair rules and regulations governing its hearings.

Sincerely,

Christina McClernon
General Counsel

cc:

Abundant Housing Illinois
Chicago Area Fair Housing Alliance (CAFHA)
Chicago Lawyers Committee for Civil Rights
Connections for the Homeless
CUrbanism Club
Housing Action Illinois
Housing Opportunities and Maintenance for the Elderly (H.O.M.E.)
HOPE Fair Housing Center
Illinois Housing Council
Impact for Equity
League of Women Voters of Illinois
Open Communities
Metropolitan Planning Council
NAMI Illinois
Rockford Area YIMBY
Supportive Housing Providers Association (SHPA)
YIMBY Law