**Section 395.314 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 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 developer must prove that it is an Affordable Housing Developer and has proposed an Affordable Housing Development. In addition, the 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 Affordable Housing Developer must prove these elements with respect to only those aspects of the project that are in dispute;

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;

3) the Approving Authority has a pattern of denying applications to develop Affordable Housing;

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;

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;

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 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 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 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 43 Ill. Reg. 11314, effective September 26, 2019)