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Housing Initiative Clinic Briefs

Illinois Affordable Housing Planning and Appeal Act
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January 2012

This Housing Initiative Clinic Brief reviews the Illinois Affordable Housing Planning and Appeal Act and makes recommendations for improving its effectiveness.

Overview

Municipalities with a population of more than 1,000 people, in which less than 10% of the existing housing stock constitutes affordable housing, are subject to the Affordable Housing Planning and Appeal Act. Currently 49 communities in Illinois are “nonexempt” from the Act. Nonexempt communities are required to submit an affordable housing plan. The Act also creates a State Housing Appeals Board, allowing developers to appeal local government decisions affecting affordable housing, in particular the denial of zoning permits in some circumstances.

The Affordable Housing Plan

Nonexempt municipalities are required to create and ratify an affordable housing plan. Municipalities determined to be nonexempt after the census will have 18 months from the date of notification to submit a plan. All affordable housing plan must include the following:

- The total number of affordable housing units necessary to reach the goal of 10% affordable housing within its jurisdiction
- A list of lands and buildings within the municipality that would be most appropriate for development or redevelopment as affordable housing
- A list of incentives that may be provided to attract affordable housing development
- One of the following goals:
 - At least 15% of all new development or redevelopment must be affordable
 - A 3% increase in the availability of affordable housing within the municipality
 - An increase in the percentage of affordable housing to 10% of the total stock

State Housing Appeals Board

The Board has the authority to hear appeals from developers whose efforts to create affordable housing have been thwarted by local governments in nonexempt municipalities that have failed to submit or implement an affordable housing plan and achieves its goals. Such reviews are conducted de novo. The developer bears the burden of proving that the application was unreasonably denied.

- This board includes governor-appointed representatives of local government, zoning boards of appeals, planning commissions, developers, and housing advocates. The board will be chaired by a retired judge.
- The board may review denials of affordable housing developments. The board may require a municipality to issue all approvals needed for an affordable housing development. The board's order can be enforced in court. A developer may not appeal a denial based on local government regulations concerning public health and safety.

Affordable Housing Developments

In order to be eligible for the appeals process, the proposed development must be subsidized by the federal or state government. Alternatively, 20% of the units must be subject to covenants that preserve them as affordable housing for at least 15 years in the case of for-sale housing, and 30 years for rental housing. Affordable housing is defined as any housing whose annual costs are no more than 30% of the gross annual household income for low (50% of area median income) or moderate (80% of area median income) income households. Any developer seeking to build affordable housing is able to appeal.

Additional Powers and Regional Sharing

The amended Act grants municipalities the authority to create housing trust funds and community land trusts, to use its zoning powers to encourage affordable housing, and to accept donations of money or land for the purposes of affordable housing.

The Act also enables nonexempt local governments to enter intergovernmental agreements with other municipalities within 10 miles of its border that have less than 25% affordable housing.

The agreements can specify what portion of any newly created affordable housing may be attributed to one municipality or the other under the Act.

Impact

Twelve of the original 49 nonexempt municipalities have yet to submit an affordable housing plan, despite the fact that the statute required such plans to be submitted by April 1, 2005.¹ The percentage of affordable housing in each community will be recalculated with the 2010 census figures. The results of that calculation are expected to be ready by 2013. Until that time, it is impossible to determine which communities have made progress and which have not.

Municipalities that have not submitted an affordable housing plan, or that have submitted a plan but have failed to implement it or meet its goals, are subject to developer's appeals to the State Housing Appeals Board.

The Current Board

Only three of the seven seats on the State Housing Appeals Board have been filled.² IHDA and the Governor's office are currently in the process of accepting nominations.³

Resources

The Housing Initiative at the Mandel Legal Aid Clinic has represented tenants, owners and developers in the process of creating and maintaining affordable housing, all with the aim of helping communities meet their affordable housing needs. Please contact us if we can be of any assistance to you.

¹ Figures on IHDA's website: http://www.ihda.org/government/docs/OHCS/2011_Annual_Update.PDF (last visited January 4, 2012)

² <http://www.appointments.illinois.gov/appointmentsDetail.cfm?id=138> (last visited Jan. 4, 2012)

³ <http://www.appointments.illinois.gov/appointmentsDetail.cfm?id=138> (last visited January 4, 2012)

Recommendations

The Housing Initiative is committed to promoting and improving housing policy in the state of Illinois to benefit low- and moderate-income families. With respect to the Illinois Affordable Housing Planning and Appeal Act, the Housing Initiative supports:

- Allowing a streamlined, comprehensive permitting process for developers of affordable housing,⁴
- Shortening the amount of time for notice and decisions in the appeals process,⁵
- Eliminating the de novo appellate review and basing it instead on the record of the permitting processes,⁶
- Shifting the burden of proof in the appeals process from developers to the municipal agency denying the permit,⁷ and
- Creating penalties for municipalities who fail to submit an affordable housing plan or otherwise fail to comply with the Act.

⁴ Rhode Island and Massachusetts allow comprehensive permitting. See Jennifer Deavitt, “Note: Illinois’ Affordable Housing Planning and Appeal Act: An Indirect Step in the Right Direction – A Survey of Housing Appeals Statutes,” 18 Wash. U. J.L. & Pol’y 267, 270 and 273 (citing Massachusetts’ Comprehensive Permit and Zoning Appeals Act, Mass. Gen. Laws ch. 40B, 21., and Rhode Island’s Low and Moderate Income Housing Act, R.I. Gen. Laws 45-53-2.)

⁵ Both Rhode Island and Massachusetts have shorter appeal and decision times. See Ibid.

⁶ Connecticut, Rhode Island, and Massachusetts all base their appeals on the record. See Ibid and Connecticut’s Affordable Housing Land Use Appeals Procedure, Conn. Gen. Stat. Ann. 8-30g.

⁷ The three other states with a similar builder’s remedy place the burden of proof on the municipality and not on the developer.