



Advocacy In Action: An Impact for Equity Issue Brief

Navigating the Evolution of Illinois' Affordable Housing Planning & Appeal Act

January 2024*

Introduction


Low-income and working-class families in Illinois should have meaningful options for where they choose to live.

Unfortunately, the demand for affordable housing for both renters and homeowners in Illinois far outpaces the supply. By one estimate, Chicago and its suburbs need more than 227,000 additional rental homes to meet the needs of families living at or below 50% of the region's median income,¹ not to mention a dearth of options for working-class families looking to put down roots and purchase a home. And, because of extensive legal, procedural, and social barriers, construction of these desperately needed units beyond the communities where they already exist has been extraordinarily difficult.² Moreover, affordable housing is often concentrated in communities far from job centers, which forces low-wage workers to travel great distances for work.³

While many of the barriers to affordable housing began as explicitly racist and classist laws—like redlining and segregation—they have evolved to seemingly neutral policies since the passage of the Fair Housing Act in 1968. Nevertheless, these policies continue to uphold historical inequity, perpetuate today's affordable housing crisis, and separate low-income families from the jobs that have the potential to create social mobility.

These barriers are as pervasive now as they were 20 years ago, when Illinois' housing advocacy community (including Impact for Equity) began to advocate for a tool to increase the amount of affordable housing in job and opportunity rich communities in Illinois. As a result of that advocacy, the Affordable Housing Planning & Appeal Act (AHPAA) (310 ILCS § 67/1, *et al.*) was signed into law in 2003.

AHPAA was a hard-fought victory due to opposition from interest groups representing local governments, and the law was not without its flaws. As a result, an underwhelming amount of affordable housing has been built in communities subject to AHPAA in the two decades since its passage.




The need for affordable housing is constant, however, and housing advocates and legislators have regularly returned to the law over the last 20 years with the goal of tweaking it to make it more effective. Thanks to a slew of improvements made to the law’s planning and appeals processes in 2023, AHPAA finally has the potential to live up to expectations and create affordable housing where it is severely lacking in the state.

How AHPAA Works: Planning

The Illinois Housing Development Authority (IHDA) administers AHPAA, and much of that work happens over a five-year cycle. The most recently completed cycle ran from 2018 to 2023. At the beginning of each cycle, IHDA uses income and housing cost data from the U.S. Census Bureau to estimate the amount of affordable housing in each of Illinois’ 1,298 municipalities. Under AHPAA, rental homes are considered affordable if the total housing costs (rent, utilities, etc.) are less than 30% of annual income for a household earning 60% of the area median income (AMI).⁵ Owner-occupied homes are affordable if the total housing costs (mortgage, taxes, insurance, etc.) are less than 30% of annual income for a household earning 80% of AMI. AHPAA’s definition of affordable housing therefore includes both homes that are *designed* to be affordable (i.e., large-scale developments that rely on state and federal programs to subsidize families’ housing costs) and those that are *naturally* affordable.

While IHDA is required to determine the amount of affordable housing in every municipality in the state, the only communities subject to AHPAA’s planning and appeals provisions are the communities with the lowest “share” or percentage of affordable housing. AHPAA uses the nondescript term **“non-exempt local governments” (NELGs)** to describe these communities. Any community with more than 1000 residents and less than 10% affordable housing is considered an NELG. AHPAA publishes a list of NELGs at the start of each cycle, and in 2018 there were 46 communities on this list.

Once IHDA informs NELGs that they’re subject to AHPAA, each community must create and adopt an Affordable Housing Plan and submit it to IHDA within 18 months. AHPAA requires that these Plans include a statement on the **total number of units** needed to surpass the 10% threshold and make the community exempt, **identification of land and buildings** within the community that can be used to create affordable housing for both owners and renters, and **incentives** the community can use to lure affordable housing developers. Plans are also



required to include one of three goals to increase affordable housing: (1) a **minimum** of 15% affordable units in all new local developments; (2) an **increase** of at least 5% in the overall percentage of affordable housing in the community; or (3) a **minimum** of 10% affordable housing overall in the community. NELGs must also indicate *how* they will accomplish their housing goals in the Plan.

To help communities create robust Plans, AHPAA includes a non-exhaustive menu of policies and tools for NELGs to include in their Plan and use to accomplish their goals. Through AHPAA, NELGs can:


- create **Housing Trust Funds** (individually or with other communities);
- **directly fund or support property** acquisition;
- create **rental and/or down payment assistance** programs;
- **preserve existing affordable housing**, weatherization, and emergency repairs;
- **support services** for residents including financial counseling;
- create a **Community Land Trust** to acquire and limit the use of land for affordable housing;
- use **Zoning Powers** to require or incentivize construction of affordable housing;
- accept **donations** of money or land for development; and
- sign **intergovernmental agreements** with neighboring communities to count affordable homes in those communities for their own goals.

NELGs in certain counties can also take advantage of new **property tax provisions** designed to encourage affordable housing development.⁵

After a Plan is submitted, IHDA is not required to evaluate the Plan or supervise implementation. If, however, a NELG does not approve and submit a Plan, IHDA must inform that community that it is out of compliance and *can* inform the Illinois Attorney General of the failure for potential enforcement.

How AHPAA Works: Appeals

To the extent that AHPAA's planning provisions can be thought of as a carrot that encourages development of new affordable housing in the communities subject to the law, the law's appeal process is the corresponding stick. The appeals process is supposed to provide a remedy when NELGs wrongly reject proposals (or approve projects with restrictions that make the development "infeasible") for developments that would include at least 20% affordable



housing. Under the law’s original language, only affordable housing developers could file an appeal, but that right was recently expanded as discussed below.

Appeals are filed with the **State Housing Appeals Board (the SHAB)**, an administrative body whose seven members are appointed by the Governor. Parties who appeal have the burden of showing that the development was denied or restricted *because of the affordable housing component*. As part of the appeal process, the NELG can defend itself against the allegations and even appeal their inclusion on IHDA’s list of NELGs. If, however, the SHAB agrees that the NELG denied or restricted the development because of the affordable component, it can order the community to issue all approvals and permits necessary for the development to move forward.

How Effective Is AHPAA?

Since AHPAA’s passage, a small number of communities have taken important steps to increase the local affordable housing stock by creating thoughtful Plans, enacting policies that incentivize creation of affordable units, and approving large-scale affordable developments. There is also anecdotal evidence to suggest that the threat of an appeal has led to productive negotiations between developers and reticent NELGs.

One recent AHPAA success story comes from the City of Geneva, which had 7.7% affordable housing at the start of AHPAA’s 2018 cycle. To address this deficit, Geneva planned for and adopted an inclusive zoning ordinance that provides multiple incentives for developers who propose for-sale or rental housing that is at least 15% affordable. Also, in April 2021, Geneva approved a 45-unit, 100% affordable rental townhome development called Emma’s Landing. This approval overcame a robust “not in my back yard” campaign from many residents, and the development opened to renters in May 2023.

Despite areas of progress, an analysis conducted by Impact for Equity suggests that from 2018 to 2022 only 167 units promoted as affordable were proposed across all 46 NELGs and just 183 units were built—including units that were proposed before 2018.⁶ All these units were proposed or built in just seven communities. In addition, of the 46 NELGs on IHDA’s 2018 list, only 17 submitted Affordable Housing Plans to IHDA. While some NELGs relied on their status as “home rule” municipalities to claim exemption from the Plan requirement, many of the Plans that *were* submitted were perfunctory or virtually unchanged from


previous cycles. Finally, the 10% affordability threshold for inclusion on IHDA's list of NELGs can lead communities *not* on that list to believe they don't need to plan or build more homes for working-class families, when the reality is that our region and state need buy-in from *every* community to address our state's affordable housing deficit.



Renderings of Emma's Landing, a 45-unit, 100% affordable rental townhome development in Geneva, IL. The development was approved in 2021 and began renting in 2023. Image sourced from Allen + Pepa Architects.

On the enforcement side, while IHDA has had discretion to report non-compliant NELGs to the Illinois Attorney General for possible enforcement since 2021, it has not done so publicly. Consequently, communities that have approved and submitted Plans to IHDA are effectively not required to follow through on those Plans.

More critically, there has never been a single appeal filed with the SHAB even though affordable developments regularly meet local resistance and developers face pressure to reduce or withdraw their proposals.⁷ Even if an appeal had been filed during the 2018 cycle, it's not clear what would have happened because the SHAB has not met in five years and currently only has one member. As the



SHAB’s former chairperson stated, without any complaints to rule on, members of the board “just sit and stare at each other.”⁸

Fixing AHPAA

In 2023, a small coalition of organizations led by Housing Action Illinois worked with State Senator Ann Gillespie (27th District) and State Representative Abdelnasser Rashid (21st District) to overhaul portions of AHPAA that were clearly not working as intended. The result of that advocacy was Senate Bill 1476, which went into effect at the start of 2024, and contains some—but not all—of the changes sought by housing advocates.⁹

On the planning side of the law, NELGs must continue to include all the Plan components that the law originally required. Thanks to SB 1476, Plans must *also* include a description of any local laws, market conditions, and local government policies that do not affirmatively further fair housing (as defined under the federal Fair Housing Act) and other factors that may constrain the development or preservation of affordable housing. This provision is intended to capture a wide range of ostensibly race- and class-neutral laws and policies that often restrict affordable housing development including zoning, minimum lot sizes, and other land use restrictions. In addition to naming these restrictive policies, NELGs will be required to lay out strategies to eliminate or mitigate them.

There are also several new portions of the law designed to compel NELGs to implement their Plans. These new provisions include the submission of a progress report to IHDA mid-cycle, and a requirement for communities that have been on the NELG list for multiple cycles to provide updates on whether they accomplished any of their *past* goals when they submit a *new* Plan.

The amendments also address the lack of appeals by expanding who can file cases with the SHAB. The expansion was necessary to address a tension best summarized by Jeff Leslie, director of the Housing Initiative Clinic at the University of Chicago Law School in 2015: “Most developers are repeat players and they’re looking to do repeat transactions in [NELGs]. And to bite the hand that feeds you by suing them over a rejection is a big step for a developer to take.”¹⁰ In order to ensure business considerations aren’t keeping bad decisions from being appealed, the law will allow anyone “who would be eligible to apply for residency in the proposed affordable housing development” and housing advocacy organizations to file appeals in addition to the affected developer.¹¹

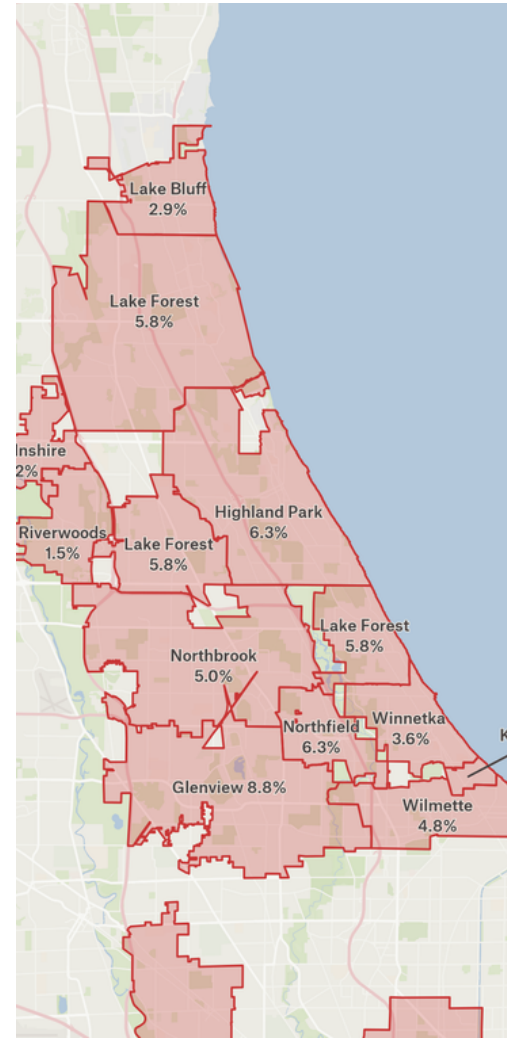
Further, the Governor now has greater discretion about who they can appoint to the SHAB, which means vacancies can be filled quickly. Taken together, these changes will mean improper denials are more likely to be appealed in the years to come and there will be a fully seated SHAB ready to review those claims.

What's Next?

These changes to AHPAA are well-timed, as IHDA published an updated list of NELGs on December 15, 2023, kicking off a new cycle of planning.¹² All but one of the 44 communities on this new list were part of the last AHPAA cycle, and these repeat NELGs will need to explain what progress towards they've made since 2018. And, thanks to a change in the 2021 Housing Omnibus bill, all 44 communities should draft and submit a Plan, regardless of their home rule status.

Now is the time for communities covered by AHPAA to purposefully plan to increase affordable housing. The need is great, and the tools provided by AHPAA provide opportunities for communities to craft meaningful Plans. Those Plans will be due in June 2025. Communities that do not address their obligations under the law will face new scrutiny in 2026 as housing advocates and families in desperate need of affordable housing begin tracking impacted developments and filing appeals. And advocates will continue to press—as they did in 2023—for the law to be further strengthened and expanded to cover more communities.

It has taken twenty years to get here, but AHPAA's future finally looks a bit brighter.



Nearly 1/3rd of the communities on the 2023 list of NELGs are part of the affluent region just north of Chicago known as the North Shore. Image created in Felt.



Notes

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1. <https://nlihc.org/gap/state/il>
2. <https://www.wbez.org/stories/despite-mandate-affluent-suburbs-fail-to-build-affordable-housing/6977652e-6737-4e88-8d1e-394ed0c96cfe>
3. <https://www.urban.org/features/too-far-jobs-spatial-mismatch-and-hourly-workers>
4. IHDA typically uses the AMI for an entire Metropolitan Statistical Area (MSA) to in its affordability calculations, even though there can be vast differences in wealth and incomes in NELGs within an MSA. In addition, regional trends can mean a community becomes more affordable without making any legislative or policy changes. See, e.g. <https://www.shawlocal.com/kane-county-chronicle/news/2022/12/18/st-charles-affordable-housing-grows-thanks-to-rising-incomes>
5. <https://housingactionil.org/blog/2023/12/19/new-state-law-creates-property-tax-incentive-to-create-and-preserve-affordable-rental-homes/>
6. These figures are based on an analysis by Impact for Equity conducted in July 2023. The analysis looked at developments where affordable units were affirmatively identified in proposals submitted to an NELG, which typically means construction of those units would have been subsidized by the state or local government. It does not include new “naturally” affordable housing, which *is* counted under AHPAA as discussed above.
7. <https://www.chicagobusiness.com/commercial-real-estate/affordable-housing-cropping-some-unlikely-areas>
8. <https://www.wbez.org/stories/affordable-housing-appeals-board-we-just-sit-and-stare-at-each-other/Odf73be7-1c34-4ae8-86e7-70f5f7ff92c5>
9. One key change that *did not* make it into the final bill would have made it so communities with less than 20% affordable housing were subject to the law instead of the current 10% cut off.
10. <https://www.wbez.org/stories/affordable-housing-appeals-board-we-just-sit-and-stare-at-each-other/Odf73be7-1c34-4ae8-86e7-70f5f7ff92c5>
11. These changes will go into effect at the start of 2026 to ensure NELGs have enough time to put together robust Plans that comply with the law’s new requirements before facing a potential appeal.
12. <https://www.ihda.org/wp-content/uploads/2023/12/2023-AHPAA-NELG-List.pdf>

Impact for Equity (formerly BPI) is a public interest law and policy center that has been at the front lines of social justice in the Chicago region and Illinois for over 50 years. Known for its innovative and effective advocacy for racial and economic equity, today Impact for Equity is deeply engaged in advancing systemic change in housing, community building, and criminal legal system reform.

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