

Eliminating Barriers: Letting the Market Help Meet Illinois Housing Needs



BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST

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I. INTRODUCTION

Nobody is in favor of exclusion. Few people will tell you it is OK to have policies or laws that exclude people from towns, schools, or businesses. The supreme law of our land, the United States Constitution, paints a compelling vision of an inclusive society in which everyone has the opportunity to pursue their dreams.

Unfortunately, some laws in towns throughout Illinois exclude hard-working families. These laws are not glaring or obvious. Nothing on the books states: “*No plumbers, police officers or nurses allowed in (except to work).*” But the effect is the same. Certain zoning requirements make it very hard for developers to build affordable housing. As a result, some communities have virtually no housing affordable to families with a household income of \$60,000 or less. The consequences of this exclusion are staggering.

THE PRICE OF EXCLUSION

When we first meet Carmen Smith, she is stifling a yawn as she starts the nearly two-hour commute to her nursing job in the northern suburbs. She is not alone. Every day thousands of residents commute from neighborhoods with few jobs to areas with plenty of entry-level jobs. But these job-heavy neighborhoods lack affordable housing for people making entry-level wages. Welcome to the jobs/housing mismatch – a shorthand phrase referring to the spatial mismatch between the location of jobs and affordable housing.

Economist John Kain first launched the debate regarding the impact of the geographic separation of entry-level jobs with the communities where residents needed those jobs. Kain hypothesized that residential segregation and the decentralization of jobs contributed significantly to black unemployment.¹ Discussions of this analysis, termed the spatial mismatch hypothesis, waxed and waned, entering the policy arena in the 1990s as a result of the welfare-to-work efforts. Facing the practical realities of locating work for people leaving welfare, political leaders and planners realized that the spatial mismatch posed a significant barrier. The result has been a focus on transportation options, from improving public transportation to helping workers purchase cars.

But the solution to the jobs/housing mismatch must include more than transportation improvements. If Carmen could find housing closer to her nursing job, it would mean a shorter commute and more time with her children. It could also mean better schools, parks, and other public services. However, finding affordable housing in the booming communities of northwest Cook and DuPage counties is tough and getting tougher.

¹ John F. Kain, “Housing Segregation, Negro Employment, and Metropolitan Decentralization,” *Quarterly Journal of Economics* 82, no. 2 (1968): 175-97.

Ask the person in the street about the jobs/housing mismatch, and you will probably get a blank stare. Describe Carmen's daily commute, and you'll probably find sympathy but still no recognition that her commute is a very direct consequence of the patterns of development in the Chicago region over the last half century. The rapid growth of suburban communities exists as the most obvious development trend in the region since World War II. Between 1970 and 2000, the city of Chicago's population dropped from 3.4 million to 2.8 million people while the population of the collar counties increased by 560,000, slightly less than the population loss in the city of Chicago.²

Jobs during those two decades also moved out to the suburbs, with the city of Chicago posting an employment loss of more than 20% and DuPage County gaining more than 260%. A Chicago Metropolis 2020 report documented that between 1980 and 1990, 56% of the region's new jobs were located in just 10% of its townships.³ The median home price in these townships was 40% higher than the region's median home price. In other words, areas with the greatest number of jobs have less affordable housing. Couple this growth with the fact that most of the development has been at low densities, much of it too spread out to be served efficiently by public transportation, and you begin to understand why there are thousands of people like Carmen with long commutes every day.

THE JOBS/HOUSING MISMATCH

But the jobs/housing mismatch is more than just a byproduct of suburbanization. If jobs and households spread outward with affordable homes available in all communities, then Carmen would have the option to find housing near her nursing job. The jobs/housing mismatch is also the consequence of segregation. As households and jobs moved out of the city, zoning, transportation investment and tax policy, along with the prejudices and preferences of local residents, steered the location of residential development. The result is that the Chicago metropolitan region is one of the most economically and racially segregated regions in the nation.

A 1998 study commissioned by the Leadership Council for Metropolitan Open Communities found that while there have been significant improvements in fair housing in the last three decades, the Chicago region remains heavily segregated by race and ethnicity.⁴ Author and former mayor David Rusk argues that economic segregation is worsening, with Chicago ranking fifth in the nation for isolation of poor families.⁵ The impact of the jobs/housing mismatch extends beyond the hardships of workers like Carmen. For employers, the challenge of attracting and retaining employees who must face a long commute can be difficult and expensive. And the long work trips contribute to the traffic congestion that, according to the Texas Transportation Institute, costs the

² U.S. Census Bureau, 1990 and 2000 Summary Tables.

³ Chicago Metropolis 2020, *Recommendations for Developing Attainable Workforce Housing in the Region*. (Summer, 2002).

⁴ Leadership Council for Metropolitan Open Communities, *Black, White, and Shades of Brown: Fair Housing and Economic Opportunity in the Chicago Region*. (February, 1998).

⁵ Rusk, David. *Cities Without Suburbs*. Washington, D.C.: Woodrow Wilson Center Press. (1993).

Chicago region over \$4 billion dollars a year in wasted fuel, delayed shipments and lost work time.⁶

Beyond the issue of commuting lies the fundamental, democratic issue of what kinds of communities we wish to live in. Many residents express an interest to live in diverse communities, particularly for the sake of their children. Unfortunately, our region now grows more polarized, with exclusive communities dominating some parts of the region and communities with limited job opportunities, shrinking tax bases, and failing schools struggling to survive in others. This trend bodes ill for the region's economy and for its residents' quality of life.

WAKING UP

The first step in tackling a problem is recognizing it. Fortunately, that process is well underway. Carmen's story is one of several stories told in "No Place to Live," a documentary about the impact of the current pattern of housing development in the Chicago region. The program aired in April 2002 on WTTW public television as part of the *Chicago Matters: Inside Housing* series cosponsored with WBEZ public radio, the Chicago Public Library, and the Chicago Reporter. It helped fuel a growing discussion about affordable housing in the Chicago region. The mismatch between the areas with job growth and those with affordable housing was acknowledged as a critical gap.

Clearly, local leaders can play a critical role in tackling the barriers that prevent the market from developing adequate affordable housing in job growth areas. The Metropolitan Mayors Caucus, a coalition of mayors throughout the region formed in 1997, is now grappling with the problem of affordable housing and the jobs/housing mismatch. Through a task force on housing formed last year, the Mayors Caucus began considering programs and policies to preserve and create affordable homes.

As they ponder options, the mayors can look to the City of Highland Park for inspiration. A North Shore community with little affordable housing, Highland Park passed an ambitious affordable housing plan in 2001 and is now in the process of launching a Housing Trust Fund and a Community Land Trust. In August 2003, Highland Park became the first municipality in the region to pass an inclusionary zoning ordinance that links the development of market-rate residential units with a percentage of affordable units.

⁶ 2001 *Urban Mobility Study*. College Station, TX: Texas Transportation Institute, 2001. Full text at: http://mobility.tamu.edu/2001/study/issues_measures.stm.

STATE ACTION

State leaders must also take steps to address barriers to affordable housing. While some local leaders may be willing to take the initiative to increase housing options in their communities, most hesitate. These leaders are fearful of a vocal minority of residents who consistently oppose any new housing development that is not priced higher than their own homes.

By setting policies at the state level that can bring down barriers to affordable housing, state leaders can help local leaders who want to do the right thing. These policies can also harness the power of the market to begin to produce more moderately priced homes. This can help meet the growing demand for affordable housing without requiring significant state subsidies.

II. MEASURING THE ABSENCE

Before proceeding to policy solutions, one might ask: do developers really face barriers at the local level that discourage or inhibit them from producing more affordable housing? What are these barriers? And if addressed, would developers actually build affordable housing?

Documenting exclusionary zoning practices can be challenging. A thorough analysis of the ordinances and maps of every town in Illinois would provide a detailed picture of the vast differences in zoning, but this task would be overwhelming and would not accurately capture the complex relationship of zoning, land prices, community attitudes and market demand. Another approach would be to monitor permit denials of affordable housing proposals. But the numbers of denials are not overwhelming.

The lack of dramatic stories detailing permit denials for affordable housing is easily explained: developers simply do not bother trying to develop affordable housing where they know it is not worth their time and money to propose it. Getting a residential project to the proposal stage requires time and money. Based on interviews with developers, it is clear that most cannot gamble on approvals. When local zoning will not support an affordable product, and the local community looks unfavorably on such projects, little incentive exists for developers to put forth projects that include moderately priced homes. If increasing the sales price and reducing the number of units helps win a speedy approval, why would a developer struggle to provide a range of housing options, even if there is market demand?

In order to gain a better understanding of the impact of local zoning and permit requirements on the development of affordable housing, Business and Professional People for the Public Interest (BPI) conducted a survey in August 2002 among developers and homebuilders in the Northeast Illinois region.⁷ In summary, the research revealed that:

- More than 9 out of 10 developers (93%) surveyed believe there are **local regulatory barriers** that impede the development of affordable housing,⁸ particularly:
 - Length of the approval process
 - Large minimum lot size requirements
 - Lower density requirements
- A majority of respondents identified a number of incentives that would encourage the development of affordable housing, namely:
 - A statewide housing appeals board with the power to overrule local denials of affordable housing developments

⁷ BPI designed the survey, and mailed it to 651 developers in the city of Chicago and suburbs. The respondents mailed the completed surveys back to BPI. The Coalition for Consumer Rights, a center for public interest research and education, provided tabulation and analysis of the 125 surveys completed. The findings contained in this report are indicative and not necessarily statistically significant, due to the relatively small sample size and the possibility of bias due to the reliance on voluntary responses.

⁸ The survey defined affordable housing as: a) rental developments including units that rent below \$1100 per month for a 2-3 bedroom, or b) for-sale housing that sells for less than \$125,000 per 2-3 bedroom unit or house.

- A comprehensive/unified permit process that includes all local approvals needed for development
- Density bonuses for developers who set aside affordable units

SURVEY RESULTS

More than 93% of developers surveyed believe there are local regulatory barriers that impede the development of affordable housing, such as restrictive zoning ordinances and burdensome permit requirements.

This view was consistent among all respondents, regardless of the geographic area in which they did most of their development or the types of development (e.g. single-family housing, new construction, etc.).

Developers cited the length of the approval process, large minimum lot size requirements, lower density requirements, and lack of land zoned for multi-family housing as the most significant barriers to developing affordable housing both in the city of Chicago and the suburbs. The table below details the aggregate responses.

Rankings of Zoning and Permit Issues as Barriers to Affordable Housing

Zoning/Permit Issue	Significant Barrier	A Barrier	Not a Barrier	Don't Know
Length of approval process	59%	26%	12%	3%
Large minimum lot requirements	48%	22%	23%	8%
Lower density requirements	48%	26%	22%	5%
Lack of land zoned for multi-family housing	42%	32%	20%	7%
Number of permits required	36%	29%	29%	6%
Differing building codes among municipalities	33%	40%	19%	8%
Special or conditional use permit requirement for multi-family housing	31%	31%	20%	18%
High minimum parking space requirement	23%	37%	28%	13%

The survey also revealed an unfortunate trend—the number of developers planning to build affordable homes is shrinking, and zoning barriers are a factor for many of them.

While 68% of developers surveyed indicated that they have developed affordable housing in the past, only 60% indicated that they planned to do so in the future. Nearly three-fifths (60%) of those developers who do not plan to develop affordable housing in the future stated that local zoning and permit requirements were a factor in their decision.

Respondents were asked to list the three barriers that they felt were most responsible for preventing the development of affordable housing in the Chicago region. While individual responses were varied, certain commonalities are discernable. The following table indicates the most common categories into which developers' responses can be grouped.

Responses to Open-ended Question on Barriers to Affordable Housing

Barrier to Development	Percentage
Zoning ordinances	20%
Cost of land	13%
Political and bureaucratic hurdles (in general)	12%
Building codes too restrictive	12%
Permit fees are too high	10%
Length of permit application process	8%
Lack of funding	7%
Lot sizes too large	6%
Community opposition ("N.I.M.B.Y.")	5%
Other	5%
Taxes	1%

While many of the respondents' open-ended statements mirror the range of specific barriers enumerated earlier in this section, several additional factors emerge as being salient to many developers. The costs associated with developing affordable housing are clearly a major factor, including both the price of land (13%) and high permit fees (10%). In addition, developers were concerned about the political and bureaucratic process required to build affordable housing (12%) and the length of the permit application process (8%). Another 12% indicated concern with restrictive building codes.

Finally, we asked developers to evaluate several policies that could address local regulatory barriers to affordable housing. Over 50% of the developers stated that **density bonuses** for affordable housing, a **comprehensive/unified permit process**, and a **statewide housing appeals board** with the power to hear appeals of local turn-downs of affordable developments would help them build more affordable housing.

CONCLUSION

It is clear that from the perspective of developers and homebuilders, zoning and permit requirements pose significant barriers to the development of affordable housing. It is also clear that in a developer's view, the state policies outlined above could help address these barriers.

III. ELIMINATING BARRIERS

Many towns and cities in Illinois face shortages in affordable homes for moderate- and low-income residents. This shortage can hinder economic development, increase traffic congestion, and limit opportunities for hard-working residents and their children. Unfortunately, local barriers contribute to the shortage of affordable housing. Exclusionary zoning laws, slow permit processes, and a vocal minority of residents with outdated stereotypes of affordable housing can make progress very difficult.

To identify practical solutions to these barriers, BPI conducted extensive research of state statutes that address barriers to the development of affordable housing. Findings from the survey of homebuilders and developers, and interviews with housing experts and local leaders were also considered in shaping a policy response. Based on this work, BPI has identified a proven policy option that can benefit Illinois communities and residents.

A PROVEN POLICY

A “Housing Appeals” law, or override statute, is an effective tool used by several states to tackle exclusionary zoning and unnecessary bureaucratic hurdles that discourage affordable housing development. These laws make it easier to build affordable homes in communities that have little or no affordable housing. While the laws vary, the core concept of a Housing Appeals law is to provide builders or developers of affordable housing a streamlined permitting process with flexible zoning at the local level and an opportunity to appeal a local zoning board’s permit denial. These statutes generally require local interests to be balanced against larger needs for affordable housing, and, most importantly, these laws shift the burden of persuasion from the developer to the local municipality to justify its decision to deny a project that contains affordable housing.

To date, Massachusetts, Connecticut and Rhode Island have established Housing Appeals statutes. California also has a limited version of such a law.⁹ The Massachusetts and Rhode Island laws combine two policy options that Illinois developers in the BPI survey indicated could help in addressing barriers to the development of affordable housing. See Appendix A for a summary of each state’s housing appeals statute.

ONE STATE’S EXPERIENCE: MASSACHUSETTS AND HOUSING APPEALS

The Massachusetts statute, also known as Chapter 40B, was enacted in 1969 to address the statewide shortage of affordable housing. Chapter 40B gives developers two mechanisms to overcome local government obstacles to affordable housing developments. Since 1970, Chapter 40B has produced 500 housing developments with nearly 30,000 units in more than 200 Massachusetts municipalities. More than 3,600 additional units are either under construction or nearing construction. Now, 119

⁹ New Jersey has a Housing Appeals remedy through their court system. The New Jersey Fair Housing Act is credited with creating the opportunity for approximately 60,000 affordable housing units between 1985 and 2001, many of them in suburban communities lacking in affordable housing.

communities that lacked affordable housing have it. The law requires local governments to allow developers of affordable housing to apply to the local Zoning Board of Appeals for a Comprehensive Permit, which includes all the required local approvals needed for development. It also authorizes a State Housing Appeals Committee to review developers' appeals of local government denials (or approvals with conditions imposed that render the project economically infeasible).

Chapter 40B expedites local review and reduces many of the barriers inherent in the local approval process. If less than 10% of the local housing stock is affordable, developers may appeal to the state Housing Appeals Committee when their projects are denied or granted with conditions that the developers view as adding unnecessary cost-generating requirements. Once a community has reached the 10% affordable housing requirement, rejections of additional developments cannot be appealed. Through 2002, 419 appeals had been filed with the Housing Appeals Committee (HAC):

- 45% of those cases were withdrawn, dismissed, or settled independently of HAC
- 24% involved a negotiated settlement
- 31% resulted in an actual decision by HAC

Of the cases that resulted in a decision, 84% were ruled in favor of the developer and 16% were ruled in favor of the municipality.

Typical developments built through Chapter 40B include:

- Multi-family housing developments
- Single-family housing
- Mixed-income condo projects
- Housing for seniors

To qualify for Chapter 40B, a development project must first be approved under a state or federal housing program, such as the Massachusetts Housing Finance Agency or U.S. Department of Housing and Urban Development.¹⁰ At least 25% of the housing must be affordable to households that earn no more than 80% of the area median income.

Alternatively, the project can provide 20% of the units to households below 50% of area median income. Affordability restrictions must be maintained for at least 15 years for rehabbed units and 30 years for new construction, though in practice, many communities are requiring units to remain affordable in perpetuity. Private developers must agree to restrict their profit on the project.

Once a project is eligible, the developer submits an application for a comprehensive permit to the local Zoning Board of Appeals. The Board has authority to grant all local approvals necessary for the project after consulting with other relevant agencies, such as the Planning Board, Conservation Commission, and Board of Health, resulting in a more streamlined review process.

¹⁰ Many of the 40B projects, though approved through a MHFA program, do not receive a government subsidy.

The Zoning Board of Appeals is also authorized to apply flexible zoning standards. For example, local zoning codes may limit development to one house per acre. Under Chapter 40B, the Zoning Board of Appeals can approve higher density development projects, making it financially feasible to develop affordable housing.

The combination of flexible rules and a right of appeal to the Housing Appeals Committee has meant that the majority of Chapter 40B proposals are negotiated at the local level and approved with conditions set by the local board of appeals. Issues such as density, buffer zones, conservation areas, and infrastructure improvements are typical items for negotiation.

While initially resistant to Chapter 40B, many municipal officials in Massachusetts now recognize the importance of the law. It gives them the opportunity to evaluate affordable housing proposals on their merits, rather than calculating the political consequence of supporting any affordable housing development. Some residents may still oppose affordable housing, but they recognize that their local leaders are simply complying with state law.

HOUSING APPEALS TAILORED TO ILLINOIS

After careful analysis of the various housing appeals statutes and research on housing markets in Illinois, BPI developed a Housing Appeals proposal for Illinois. A version of the Housing Appeals law (House Bill 220) was proposed in the 93rd Illinois General Assembly with two basic elements:

1. Comprehensive Permit

- The bill required local governments to allow developers of affordable housing to apply for a comprehensive, “one-stop” permit process to the local board or commission of the municipality’s or county’s choosing (e.g. the Planning Commission, the Zoning Board of Appeals, etc.).
- The permit would include all local approvals needed for development, thereby saving developers time and money.
- The local body chosen as the comprehensive permit body by the local government would be required to hold one public hearing on the proposed Affordable Housing Development. It would also be authorized to apply flexible zoning standards in order to make the project feasible.
- A comprehensive permit could be denied if it is demonstrated that the project would harm the environment or significantly conflict with the town’s comprehensive plan.
- The bill defined an Affordable Housing Development as a development with at least 20% of the units affordable to moderate- and low- income households (households below 80 percent of the AMI).

2. State-Level Housing Appeals Board

- The bill called for the creation of a State Housing Appeals Board that reviews developers' appeals of local government denials (or approvals with conditions that make the project infeasible) of proposed affordable housing developments.
- The Board's standard of review is deferential to affordable housing developers, requiring the municipality to justify the denial.
- The Board would have the authority to require a municipality to issue all approvals needed for an affordable housing development. The Board's order is enforceable in court.
- The State Housing Appeals Board would include representatives of local government, planning experts, appropriate state officials, developers, and affordable housing advocates.

Exemptions

- A Municipality or county would be exempt from the statute if at least 10% of its housing units are already affordable as defined in the statute. This means that the number of rental units affordable to households at or below 60% of the median household income for the county or the PMSA, and the number of owner-occupied units affordable to households at or below 80% of the median household income for the county or PMSA must equal 10% of the total housing stock in the local government. This provision provides local governments with an incentive to plan and actively promote affordable housing.

While House Bill 220 did not pass the 93rd General Assembly, Illinois lawmakers took a critical first step through the passage of House Bill 625, the Affordable Housing Planning and Appeal Act.

House Bill 625 contains important elements of a strong Housing Appeals law. It includes the creation of a State Housing Appeals Board empowered to hear appeals from developers who have been denied in their efforts to build affordable housing in communities with less than 10% affordable housing. The Board will hold hearings on an appeal and will require the local municipality to explain its local action. On the basis of the hearing, the Board could require the municipality to issue all approvals needed for the development. The Board will include representatives of local government, planning experts, and affordable housing advocates. A retired circuit or appellate judge will chair the board. The chairman of IHDA will serve as an ex-officio member.

The State Housing Appeals Board will not begin to hear appeals from developers until 2009 in order to give local governments the opportunity to produce more affordable housing on their own.

In addition to the State Housing Appeals Board, House Bill 625 also requires non-exempt local governments (communities where less than 10% of the housing stock is affordable as defined by HB 625 in section 15) to adopt an affordable housing plan. This plan must identify:

- The number of affordable units a community must produce to reach the 10% exemption level.
- Land or preexisting structures that are most suitable for affordable housing development.
- Incentives that local governments can provide to affordable housing developers.

Each local affordable housing plan must also contain one of three very specific goals:

- 1) 15% of all new development or redevelopment will be affordable.
- 2) The community will increase the overall percentage of affordable housing by three percentage points (e.g. from 2% to 5%).
- 3) The community will reach the 10% affordable housing exemption level.

This plan must be submitted to the Illinois Housing Development Authority by July 2004.

There are three ways to gain exemption from the requirements of HB 625. Any local government in which at least 10% of its total year-round housing units are affordable is exempt. Any municipality with a population of under 1,000 is also exempt. Finally, the state Board of Appeals will dismiss any appeal brought against a municipality if that municipality can prove that it has adopted and implemented its affordable housing plan and met the required statutory goal outlined in that plan.

The Affordable Housing Planning and Appeal Act offers important new strategies for overcoming local government obstacles to affordable housing. However, this act can be strengthened in a number of ways to assure that new affordable units are produced in job-rich communities:

- Include a comprehensive permit process.
- Outline clear standards delineating when a local community can and cannot deny an affordable housing development.
- Shift the burden of persuasion from the developer to the local municipality during the appeals process, or at the very least, provide for a “burden-shifting” procedure where both sides bear some responsibility for proving certain pieces of their case.

See appendices B, C, and D for a fact sheet for House Bill 220; a fact sheet for House Bill 625; and a profile of an ideal Housing Appeals law for Illinois, respectively.

ACTING NOW TO LET THE HOUSING MARKET WORK

The evidence that Illinois is experiencing a housing crisis is compelling. The Regional Rental Market Analysis, coordinated through the Metropolitan Planning Council, documented that 37% of renter households in the Chicago region spend more than 30% of their income on rent.¹¹ An affordable rent – which is considered 30% of income – for someone earning the federal minimum wage is \$257. This is far below the fair market rent for a one-bedroom unit in every area of the state, including the Chicago area where fair market rent is now \$778.¹²

Without quick action, this crisis is likely to worsen, causing more traffic congestion and threatening the economic development and quality of life of our region. As a result, more families will be forced to make terrible choices:

- ❑ Crowd in with family or friends.
- ❑ Spend most of the household income on rent and skimp on food, medicine, or school supplies.
- ❑ Find an affordable home, and then endure long and expensive commutes to distant jobs.
- ❑ Move often in search of an affordable home, disrupting school progress, friendships, and community ties.

Clearly, more resources are needed to address Illinois' housing crisis. Yet resources alone will not solve the problem. Leaders must act now to bring down barriers and allow the housing market to meet the market demand of working families for decent affordable housing. The Housing Appeals approach provides state leaders with a proven tool to help meet the growing need for affordable housing without an enormous strain on state or local funds. To make Housing Appeals a reality in Illinois requires the leadership and commitment of responsible citizens, businesses, local government, and state officials.

¹¹ A regional rental market analysis prepared for the Metropolitan Planning Council by the University of Illinois at Chicago. *For Rent: Housing Options in the Chicago Region*. (November, 1999).

¹² Fair market rent data obtained from U.S. Department of Housing and Urban Development.

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Appendix A: Summary of “Housing Appeals” State Statutes

State	Title (year passed)	Background/Concept	Administration/ Enforcement	Outcomes
Connecticut	Affordable Housing Land Use Appeals (1989)	Allows developers to appeal local decisions rejecting affordable housing proposals.	Creates a state level appeals process available in towns with less than 10% affordable housing. The appeal is heard in Superior Court.	The courts have ruled in 27 cases in favor of developer. Seven developments have been completed, producing over 800 units. ¹³ As of October 2001, 32 Connecticut cities and towns exceeded the minimum requirements of the law. ¹⁴
Massachusetts	Comprehensive Permit Law (or Anti-Snob Zoning Act) (1969)	Requires municipalities to provide an expedited hearing and review process for affordable housing proposals and creates a state-level appeals process.	Sets conditions for a comprehensive permit process at the local level and creates the Housing Appeals Committee to review appeals of permit denials (with the burden of proof on the municipality).	Approximately 30,000 units of housing have been built with comprehensive permits. Another 3,600 units are under construction.
Rhode Island	Low and Moderate Income Housing Act (1991)	Establishes a streamlined permitting process for affordable housing developments and creates a state-level appeals process.	Developers of affordable housing in communities with less than 10% affordable housing may apply for a comprehensive permit. The State Housing Appeals Board was created to review local permit denials.	The supply of affordable housing in Rhode Island has increased by 19% from 1992 to 2001. Since the law’s inception, 12 local decisions have gone to the Housing Appeals board. Together these cases represent almost 300 units of housing. ¹⁵

¹³ Connecticut General Assembly Office of Legislative Research. *Housing Projects Developed Under the Affordable Housing Land Use Appeals Procedure*. (2000).

¹⁴ Stuart Meck, et al. *Regional Approaches to Affordable Housing*. The American Planning Association. (2003).

¹⁵ Stuart Meck, et al. *Regional Approaches to Affordable Housing*. The American Planning Association. (2003).

APPENDIX B: HB 220: THE BUILDER’S APPEAL ACT

MAJOR COMPONENTS:

(1) Comprehensive Permit

- HB 220 (as introduced) called for the creation of a streamlined comprehensive permit process at the local level for developers of affordable housing. A development with at least 20% of the units set aside as affordable to moderate- and low-income households would be entitled to a “one-stop” permit process guided by the local Zoning Board of Appeals. The permit includes all local approvals needed for development.
- The local body chosen as the comprehensive permit body by the local government would be required to hold one public hearing on the proposed Affordable Housing Development. It would also be authorized to apply flexible zoning standards in order to make the project feasible.
- A comprehensive permit could be denied if it is demonstrated that the project would harm the environment or significantly conflict with the town’s comprehensive plan (unless it conflicts with provisions in the comprehensive plan that make it infeasible to develop affordable housing while allowing for the creation of other types of housing).

(2) State-Level Housing Appeals Board

- HB220 called for the creation of a State Housing Appeals Board that would review developers’ appeals of certain local government decisions affecting proposed affordable housing developments.
- An Affordable Housing Development is defined as a development in which at least 20% of the housing is set aside as affordable to moderate- and low-income households (households below 80% of the AMI). Under HB220, units must remain affordable for at least 15 years.
- The State Housing Appeals Board includes unpaid representatives of local government, regional planning boards, the development community, and the affordable housing advocacy community.
- The Board’s standard of review is deferential to affordable housing developers. The municipality bears the burden of demonstrating that it correctly denied or conditionally approved an affordable housing development.
- 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.

EXEMPTIONS:

- Any local government in which at least 10% of its housing units have been subsidized by the federal or state government, by a private entity, and in which occupancy is restricted or intended for low- and moderate-income households is exempt.

COMMUNITIES AFFECTED:

- Based on preliminary calculations, about 85 communities in Illinois would be affected by HB 220 as introduced. About 90% of those communities are located in the northern and western suburbs of Chicago.

APPENDIX C:

HB 625: THE AFFORDABLE HOUSING PLANNING AND APPEAL ACT

MAJOR COMPONENTS:

(1) State-Level Housing Appeals Board

- The law creates a State Housing Appeals Board that reviews developers' appeals of certain local government decisions affecting proposed affordable housing developments.
- Such developments are defined as those in which at least 20% of the housing is set aside as affordable to households at 80% of the county median income. Rental units must remain affordable for at least 30 years, and owner-occupied units must remain affordable for at least 15 years.
- The State Housing Appeals Board includes governor-appointed representatives of local government, zoning boards of appeals, plan commissions, developers, and housing advocates and will be chaired by a retired judge. The Board will be effective January 1, 2006 and will be able to hear cases on appeal beginning January 1, 2009. The State Housing Appeals Board will be housed at IHDA.
- 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.

(2) Affordable Housing Plan

- Municipalities and counties with less than 10% affordable housing in their housing stock must approve an affordable housing plan that states the total number of affordable housing units needed to reach the goal of 10% affordable housing within its jurisdiction. This plan must be completed by July 1, 2004 and submitted to IHDA within 60 days.
- The affordable housing plan must also identify what lands within the local government's jurisdiction are most appropriate for the development of affordable housing, and what incentives can be provided to developers that would attract affordable housing to their jurisdiction.
- The plan must contain one of three very specific goals for increasing the stock of affordable housing in a community: 1) a minimum of 15% of all new development or redevelopment must be affordable as defined in the statute; 2) the community will increase its overall percentage of affordable housing by three percentage points (e.g. from 2% to 5%); or 3) the community will increase its overall percentage of affordable housing to 10% of the total housing stock.

EXEMPTIONS:

- Any local government in which at least 10% of its total year-round housing units are affordable is exempt.
- Any municipality with a population of under 1,000 is exempt.
- Communities that can prove that they have adopted and implemented their affordable housing plan and met the goal outlined in their plan will be exempt.

COMMUNITIES AFFECTED

- The law calculates the 10% exemption using census data to count the number of units that are affordable to households at or below 60% of the median household income for rental units and 80% of the median household income for owner-occupied units.
- Based on preliminary calculations, about 85 communities in Illinois would be affected by this law. About 95% of those communities are located in the northern and western suburbs of Chicago.

APPENDIX D: A MODEL HOUSING APPEALS LAW FOR ILLINOIS

MAJOR COMPONENTS:

(1) Comprehensive Permit Process

- A model Housing Appeals law should include the creation of a streamlined comprehensive permit process at the local level for developers of affordable housing. A development with at least 20% of the units set aside as affordable to moderate- and low-income households would be entitled to a “one-stop” permit process guided by the local Zoning Board of Appeals. The permit would include all local approvals needed for development (except a building permit).
- The local body chosen as the comprehensive permit body by the local government would be required to hold one public hearing on the proposed Affordable Housing Development. It would also be authorized to apply flexible zoning standards in order to make the project feasible.

(2) State-Level Housing Appeals Board

- A model Housing Appeals law should include the creation of a State Housing Appeals Board empowered to hear appeals from developers who have been denied in their efforts to build affordable housing in communities that lack it. Affordable housing should be defined as developments in which at least 20% of the housing is set aside as affordable to moderate- and low-income households (households below 80% of the median income). Units should remain affordable for 40 years.
- This State Housing Appeals Board should include representatives of local government, zoning boards of appeals, plan commissions, developers, and housing advocates. The Board should be able to hear cases on appeal beginning January 1, 2006.
- The Board could require a municipality to issue all approvals needed for an affordable housing development. Further, the Board’s Order could be enforced in court.
- The Board’s standard of review should be deferential to affordable housing developers. The municipality should bear the burden of demonstrating that it correctly denied or conditionally approved an affordable housing development.

(3) Affordable Housing Plan

- A model Housing Appeals law should require municipalities and counties with less than 20% affordable housing in their housing stock to approve an affordable housing plan that states the total number of affordable housing units needed to reach the goal of 20 percent affordable housing within its jurisdiction. This plan should be completed and submitted to IHDA within one year of the passage of the state legislation.
- The affordable housing plan should also identify what lands within the local government’s jurisdiction are most appropriate for the development of affordable housing, and what incentives can be provided to developers that would attract affordable housing to their jurisdiction.
- The plan should contain one of three very specific goals for increasing the stock of affordable housing in a community: 1) a minimum of 15% of all new development or redevelopment must be affordable as defined in the proposed legislation; 2) the community will increase its overall percentage of affordable housing by three percentage points every 5 years (e.g. from 2% to 5% in 5 years, from 5% to 8% in another 5 years); or 3) the community will increase its overall percentage of affordable housing to 20% of the total housing stock.

- A comprehensive permit could only be denied if it is demonstrated that the project would harm the environment or significantly conflict with the town's comprehensive plan (unless it conflicts with provisions in the comprehensive plan that make it infeasible to develop affordable housing while allowing for the creation of other types of housing).

(4) Home Rule Pre-emption

- A strong Housing Appeals law should include a home rule pre-emption to ensure that home rule communities could not ignore any decision made by the State Housing Appeals Board and to ensure that such communities could not ignore the planning requirement.

EXEMPTIONS:

- Any local government in which at least 20% of its total year-round housing units are affordable would be exempt.
 - 1) Currently, the law calculates the exemption using census data to count the number of units that are affordable to households at or below 60% of the AMI for rental units and 80% of the AMI for owner-occupied units. As a result, all units within these price ranges, regardless of whether they are subsidized or restricted to remain affordable over time, may count as affordable housing. This calculation is less stringent than other Housing Appeals laws. Massachusetts, for example, requires a stricter standard to reach 10%; only homes that are subsidized or deed restricted count as affordable. In fact, by Massachusetts standards, even the City of Chicago would be hard pressed to meet the 10% exemption. With a less stringent standard in Illinois, a 20% exemption level seems quite reasonable.
 - 2) Families earning 80% of the Area Median Income account for approximately 40% of an area's households. A 20% exemption level would mean that communities must ensure that 20% of their housing stock is affordable to 40% of the area's households in order to gain exemption.
- Any municipality with a population of under 1,000 would be exempt.
- Communities that can prove that they have adopted and implemented their affordable housing plan and met the goal outlined in their plan would be exempt.

COMMUNITIES AFFECTED

- A model Housing Appeal law would calculate the 20% exemption using census data to count the number of units that are affordable to households at or below 60% of the AMI for rental units and 80% of the AMI for owner-occupied units.
- Based on preliminary calculations, about 168 communities in Illinois would be affected by a law that included the exemptions outlined above. About 90% of those communities would be located in the Chicago region.

Appendix E:

The Affordable Housing Planning and Appeals Act (HB 625) Versus the Massachusetts Housing Appeals Law (Chapter 40B)

Major Components	The Affordable Housing Planning and Appeals Act (HB 625)	Massachusetts Chapter 40B	A Model Housing Appeals Law for Illinois
State Housing Appeals Board	<p>Illinois Law:</p> <p>HB625 established a State Housing Appeals Board that reviews developers' appeals of certain local government decisions affecting proposed affordable housing developments.</p> <p>Affordable housing developments are defined as those in which at least 20 percent of the housing is set aside as affordable to households at 80 percent of the county median income.</p>	<p>Massachusetts Chapter 40B:</p> <p>The statewide Housing Appeals Committee (HAC) has the power to override local zoning decisions that deny affordable housing developments or impose conditions that make such developments "economically infeasible."</p> <p>Affordable housing developments are defined as those in which 25 percent of the housing is set aside as affordable to households below 80 percent of the median household income for the area.</p>	<p>Ideal Illinois Law: Includes same provision for a State Housing Appeals Board outlined in HB 625 with one exception.</p> <p>HB625 defines an affordable housing development as those in which 20% of the housing is affordable to 80 percent of the <i>county</i> median income. A model bill would define such developments as those in which 20 percent of the housing is set aside for households at 80 percent of the <i>area</i> median income.</p>
<p>Comprehensive Permit Process</p> <p>A Comprehensive Permit provides developers of affordable housing with a streamlined, "one-stop" permit process that includes all local approvals needed for development.</p>	<p>Illinois Law:</p> <p>Contains no comprehensive permit process.</p>	<p>Massachusetts Chapter 40B: Includes a Comprehensive Permit Process</p> <p>Qualified applicants file an application for a single "comprehensive permit" with the local Zoning Board of Appeals (ZBA). The local ZBA notifies all relevant boards and commissions then holds a public hearing within 30 days of the receipt of the application. The ZBA:</p> <ul style="list-style-type: none"> a) can provide approval for all necessary permits. b) can override local zoning and development regulations that are not "consistent with local needs." c) must rule within 40 days of the end 	<p>Ideal Illinois Law: Includes A Comprehensive Permit Process</p> <p>A comprehensive permit process is a critical component of a strong Housing Appeals law for two reasons: 1) <u>Incentive</u>: the comprehensive permit provides an incentive for developers to include affordable housing in their developments by saving them time and money. 2) <u>Certainty</u>: the comprehensive permit provides certainty by ensuring that local governments cannot use the permit process to delay or prevent the development of affordable housing.</p>

		of the public hearing to grant the permit unconditionally, grant the permit with conditions, or deny the permit.	The comprehensive permit requires local governments to approve or deny an application within a specified time period.
Period of Affordability	Illinois Law: 15 years for owner-occupied units; 30 years for rental units.	Massachusetts Chapter 40B: 15 years for rehab; 30 years for new construction, though many communities are requiring units to remain affordable in perpetuity.	Ideal Illinois Law: Units should remain affordable for 40 years.
Exemptions	Illinois Law: Communities with 10% Affordable Housing are Exempt <ul style="list-style-type: none"> Any local government in which at least 10 percent of its total year-round housing units are affordable is exempt. (Affordable units are defined as those which are affordable to households at or below 60 percent of the AMI for rental units and 80 percent of the AMI for owner-occupied units). Any municipality with a population of under 1,000 is exempt. Communities that can prove that they have adopted and implemented their affordable housing plan and met the goal outlined in their plan will be exempt. 	Massachusetts Chapter 40B: <ul style="list-style-type: none"> Any municipality in which 10 percent of the dwelling units are affordable to families making at or less than 80 percent of the AMI is exempt. To count towards the 10 percent standard, units must be either subsidized or deed restricted. Any municipality in which 1.5 percent of its total zoned land is used for affordable housing is exempt. A municipality is exempt if the application in question would result in the commencement or construction of low- and moderate-income housing on 3/10 of one percent of the municipality's zoned land or 10 acres, whichever is larger. 	Ideal Illinois Law: Communities With 20% Affordable Housing Would Be Exempt Currently, the law calculates the exemption using census data to count the number of units that are affordable to households at or below 60 percent of the AMI for rental units and 80 percent of the AMI for owner-occupied units. As a result, all units within these price ranges, regardless of whether they are subsidized or restricted to remain affordable over time, may count as affordable housing. This calculation is less stringent than other Housing Appeals laws. Massachusetts, for example, requires a stricter standard to reach 10%; only homes that are subsidized or deed restricted count as affordable. In fact, by Massachusetts standards, even the City of Chicago would not meet the 10% exemption. With a less stringent standard in Illinois, we believe a 20% exemption level is reasonable.

	<ul style="list-style-type: none"> The law calculates the exemption using census data to count the number of units that are affordable to households at or below 60 percent of the AMI for rental units and 80 percent of the AMI for owner-occupied units. As a result, all units within these price ranges, regardless of whether they are subsidized or restricted to remain affordable over time, may count as affordable housing. 		
Burden of Persuasion at the Housing Appeals Board	<p>Illinois Law: Places The Burden Of Persuasion On The Developer</p> <p>Currently, the law states that in any proceeding before the State Housing Appeals Board, the developer bears the burden of demonstrating that he/she has been unfairly denied or that unreasonable conditions have been placed upon the approval.</p>	<p>Massachusetts Chapter 40B:</p> <p>Burden lies with municipality.</p>	<p>Ideal Law: Places Burden Of Persuasion On Local Government</p> <p>An ideal Housing Appeals law would place the burden of persuasion on the municipality or county to prove that they had acted correctly in denying an affordable housing development. Local decisions and regulations are presumed valid under Illinois law; without shifting the burden to the municipality, or at the very least providing a balancing test, the developer will continually face an uphill battle in overcoming this presumption.</p>
Standards Governing the Local Review of Affordable Housing Developments	<p>Current Law: Contains No Standards Governing the Local Review Of Affordable Housing Developments.</p>	<p>Massachusetts Chapter 40B:</p> <p>Contains strong standards governing the local review of affordable housing developments.</p>	<p>Ideal Law: Contains Clear Standards Outlining When A Community Can and Cannot Deny an Affordable Housing Development</p> <p>A strong Housing Appeals law would not permit local governments to deny</p>

			an affordable housing development unless 1) the development has adverse effects on the environment, or 2) the development conflicts with stated goals or policies in the government's comprehensive plan (provided that the goals or policies in that plan do not render the development of affordable housing infeasible while permitting other forms of housing).
Home Rule Pre-emption	Current Law: Does Not Include A Home Rule Pre-Emption	Massachusetts Chapter 40B: Not applicable.	Ideal Law: Includes A Home Rule Pre-Emption Without a home rule preemption clause, home rule communities may choose to ignore both the planning provisions of this law as well as any ruling from the State Housing Appeals Board, if they are ever subject to its authority.