**Section 395.307 Dismissal before Hearing**

a) Within 10 Days after receipt of the Notice of Appeal from the Board, the Approving Authority may file a motion to dismiss the appeal under the following circumstances:

1) pursuant to Section 20(c) of the Act, the Local Government was determined to be exempt pursuant to Section 20 of the Act in the year in which the appeal was filed. If applicable, the Local Government shall address any allegations by the Affordable Housing Developer, pursuant to Section 395.401, that the determination the Local Government is exempt from the Act is incorrect; or

2) pursuant to Section 30(d) of the Act, the Local Government has adopted an Affordable Housing Plan, has submitted that plan to IHDA within the required time frame, and has submitted documentation to IHDA that evidences the Local Government has met its goal pursuant to Section 25(b)(iv) of the Act, subject to the written approval of IHDA in its discretion; or

3) pursuant to Section 30(e) of the Act, the denial is based upon Non-Appealable Local Government Requirements.

b) A motion to dismiss before a hearing shall include the following:

1) a statement explaining why the appeal should be dismissed; and

2) if appropriate, any documents or material supporting the claim.

c) On the same day that the Approving Authority files a motion to dismiss with the Board, the Approving Authority shall serve a complete copy of the motion to dismiss on the Affordable Housing Developer and any other parties at the address or addresses specified in the Initial Pleading.

d) If the Approving Authority files a motion to dismiss prior to the hearing, the Affordable Housing Developer may file a rebuttal within 10 Days after the filing of the motion to dismiss, rebutting any of the claims made in the Approving Authority's motion to dismiss.

e) The Board shall decide the Affordable Housing Developer's rebuttal on the merits. If the Board determines that the Affordable Housing Developer has successfully rebutted the claims made in the Approving Authority's motion to dismiss, the Board shall deny the motion to dismiss and the issues raised in the motion to dismiss and the response shall be questions of fact to be resolved as part of the appeals process; otherwise, the Board may dismiss the appeal and, if dismissed, the Approving Authority shall not be required to file a Reply.

(Source: Amended at 43 Ill. Reg. 11314, effective September 26, 2019)