

March 10, 2015

Re: NJ Supreme Court Council on Affordable Housing (COAH) Ruling

Dear Mayor:

The New Jersey Supreme Court issued a ruling in response to the Fair Share Housing Center's (FSHC) motion to enforce litigant's rights. FSHC, as well as the New Jersey Builders Association (NJBA) and representatives for other private developers, asked the Court to declare that municipalities are no longer protected from litigation by the COAH administrative process. This request was made following COAH's failure to comply with a previous Court ruling, requiring the agency to adopt Third Round regulations. Essentially, FSHC and the NJBA asked the Court for a return of the pre-Fair Housing Act years, which were marked by significant "builder's remedy" litigation against municipalities. The League, represented by Edward J. Buzak, Esq., opposed the FSHC motion. Jonathan Drill, Esq. and Jeffrey R. Surenian, Esq. also represented municipalities. The Office of the Attorney General represented COAH.

While the Court did order that exclusionary zoning disputes will be heard by the Courts, effectively bypassing the Council on Affordable Housing (COAH), the Court agreed with the League and other municipal advocates that municipalities should not be punished for COAH's failure to act. Accordingly, the Court's ruling established a process and timeline for municipalities to voluntarily go to the Courts via "declaratory judgment actions." Effectively municipalities will have 120 days to go to the Courts voluntary and seek protection from builders remedy actions.

To summarize:

- Until and unless COAH adopts new regulations or a new statute is passed, trials courts will be the exclusive forum for municipalities to gain the equivalent of substantive certification.
- The order itself is delayed 90 days to allow an "orderly transition."
- During the first 30 days following the effective date of the order, the courts shall only consider declaratory judgment actions filed by municipalities.
- Temporary immunity from builder's remedy litigation can be granted following notice and the opportunity to be heard. Such notice must be provide to, at the very least, the Fair Share Housing Center and "presumptively" the League, and the New Jersey Builders Association and all "entities" on the service list for this case.
- Municipalities that have third round substantive certification based upon the growth share methodology and file declaratory judgment actions within the 30 day window appear to have advantages over those that have not received substantive certification and had plans before COAH ("participating municipalities").
- Participating municipalities that affirmatively file their declaratory judgment action but have generally not implemented their plans as yet (because they had not been approved

by COAH) obtain an additional five months to prepare the "new" Housing Element and Fair Share Plan. This will be a difficult task without an established methodology.

- A court can only permit builder's remedy after it has the opportunity to fully address constitutional compliance and found it to be "wanting."

The Court again invited the State Legislature to address the issue. While the Court agreed with the League that municipalities should not be punished for COAH's failure to act, going back to the Courts will still be costly and is not a long-term solution; a viable solution can only and must be offered by the Administration and the Legislature in a timely fashion.

Therefore, we ask you to do the following:

- Contact the Governor's Office, the Office of the State Senate President and the Office of the Speaker of the General Assembly and urge them to work with the League to craft rational reforms to the Fair Housing Act.
- Contact your State Senator and General Assembly Representatives and urge them to push for meaningful, rational reforms to the Fair Housing Act. Please do this at every opportunity.
- If your municipality has not yet done so, please consider the draft resolution prepared by the League calling for reforms to the Fair Housing Act. The resolution is available at: <http://nj-njslom.civicplus.com/DocumentCenter/View/6509>

If you have any comments or questions on this decision or the issue generally, please contact Mike Cerra at either mcerra@njslom.org or 609-695-3481 x120.

Very truly yours,

Brian C. Wahler, President, League of Municipalities
Mayor, Piscataway Township

Colleen Mahr,
Co-Chair, Mayors Housing Committee Mayor,
Fanwood Borough

Janice S. Mironov, Past President
Co-Chair, Mayors Housing Committee
Mayor, East Windsor Township

