

January 6, 2015

Re: COAH Update – Recap of Today’s Supreme Court Oral Argument

Dear Mayor,

Today the New Jersey Supreme Court held oral argument on the Fair Share Housing Center’s (FSHC) motion to enforce litigant’s rights. FSHC, 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. Rather, FSHC is asked that:

1. Litigation against municipalities proceed on a case-by-case basis;
2. The Court give “general guidance” to the lower courts by designating certain judges to handle the cases regionally;
3. Consolidate the builders’ remedy lawsuits into regional proceedings;
4. The Court direct the lower courts to abide by the previous COAH methodology;
5. The courts should proceed with dispatch.

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. Ironically, it was the proliferation of litigation and the ensuing costs placed upon municipalities which led to the passage of the Fair Housing Act in the mid- 1980s.

The League, represented by Edward J. Buzak, Esq., opposed the FSHC’s motion by asking that:

1. The Court should afford COAH the opportunity to complete the task it started and either adopt the regulation as proposed, simultaneously propose any amendments or develop new regulations;
2. In no event, should municipalities that have filed with the agency be stripped of the protection from builder’s remedy litigation; and
3. If the Court determines that this issue must be resolved outside the agency, it should do so surgically, beginning with the body of regulations developed by COAH, and then return enforcement to the agency.
4. If the Court does allow for court involvement, it should first allow municipalities to seek immunity from a trial court.

Jeffrey Surenian, Esq. and Jonathan Drill, Esq. also represented individual municipalities before the Court today.

The League’s response brief to FSHC’s motion is online at:

http://www.njslom.org/legislation/NJLM_PDF111314.pdf. It is unclear when the Court will rule.

However, one issue is clear. **Legislative action is the only remedy for this impasse.** We would like to draw your attention to League Conference Resolution 2014-19

(<http://nj-njslom.civicplus.com/DocumentCenter/View/6442>) which calls for, "...a new, more sensible approach to Affordable Housing." In the upcoming days, we will make available to you a model resolution for your consideration which urges the Legislature and the Administration to craft sensible, rational reforms to the Fair Housing Act. We also urge you to reach out to your Legislators and implore upon them to advocate for such necessary reforms.

The League will continue to advise you of all developments. Please bring this notice to the attention of your land use attorneys and planners.

Contact: Mike Cerra, mcerra@njslom.com or 609-695-3481 x120.

Very truly yours,

William G. Dressel, Jr.
Executive Director