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NJ SUPREME COURT PROVIDES THE PATH FORWARD ON AFFORDABLE HOUSING

By Henry L. Kent-Smith

In a 55-page opinion released March 10, the New Jersey Supreme Court broke the deadlock relative to municipal compliance with the *Mount Laurel* constitutional obligation. In an order in response to a motion to enforce litigant's rights filed by Fair Share Housing Center from the judgment issued in *In Re Adoption of N.J.A.C. 5:96 & 5:97*, 215 N. J. 578 (2013), the Supreme Court terminated any requirement to exhaust administrative remedies before the Council on Affordable Housing (COAH). Moving forward, jurisdiction of affordable housing compliance will be determined by the judiciary.

The Supreme Court provided limited blanket immunity to all municipalities to assess whether to voluntarily submit to the court's jurisdiction or to "take their chances" with potential builders remedy claims. The March 10, 2015, order does not take effect until June 8, 2015. During this 90-day immunity period, municipalities are free to determine their third round affordable housing obligation and whether they will elect to voluntarily pursue a judicial declaration of compliance with the *Mt. Laurel* fair share obligation.

Municipalities will be provided a 30-day "window" within which to file declaratory judgment actions to invoke the court's jurisdiction over the determination that the municipality has appropriately addressed the third round affordable housing obligation. This filing "window" closes on July 8, 2015. Municipalities that file declaratory judgment actions during this time will be given a **maximum** of five months to submit their third round housing elements and fair share plans.

The Supreme Court confirmed that municipalities are obligated to satisfy in full the "prior round" obligation from 1987 to 1999. Therefore, a municipality must submit an affordable housing compliance plan that addresses its affordable housing obligations from 1987 through 2024. The Court confirmed that municipal third round obligations are to be determined based upon the prior round (1987–1999) methodology as set forth in *N.J.A.C. 5:92–1 et seq.*

The Supreme Court's decision applies to every municipality in New Jersey, including those that received substantive certification of a prior third round plan and municipalities that only participated in the COAH process. A municipality that did not receive substantive certification will be provided less deference and a more qualified immunity period than those that have a certified plan.

Finally, the Court's decision does not preclude COAH from "re-emerging" and assuming control of municipal compliance. However, COAH must first adopt compliant regulations, which will undoubtedly be subject to further litigation. In the meantime, the Supreme Court has established a path forward for municipalities and housing advocates to resolve the impasse as to required affordable housing needs.

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