



## THE NJ APPELLATE DIVISION BREAKS THE COAH LOGJAM

By Henry L. Kent-Smith

Five months ago, on September 26, 2013, the New Jersey Supreme Court upheld the 2010 Appellate Division order invalidating the Council on Affordable Housing (COAH) Third Round regulations. *In Re: Adoption of N.J.A.C. 5:96 and 5:97*, 215 N.J. 578 (2013). In doing so, the New Jersey Supreme Court endorsed Judge Skillman's remedy requiring that COAH adopt new regulations following the First (1987-1993) and Second (1987-1999) round methodology, within five months of the court's order. *In Re: Adoption of N.J.A.C. 5:96 and 5:97*, 416 N.J. Super. 462 (App. Div. 2010). The deadline for COAH to adopt these new regulations expired on February 27, 2014.

Following the Supreme Court's decision, nothing happened. COAH did not meet, no regulations were proposed, and no motion was filed seeking an extension of time to adopt new regulations until the day the regulations were to have already been adopted. Recognizing this inaction, the Fair Share Housing Center (FSHC) filed a motion to enforce litigants' rights with the state Appellate Division, seeking appointment of a master to undertake COAH's rulemaking job or otherwise directing COAH to do its job.

In a scathing opinion following oral argument on FSHC's motion, on Friday, March 7, 2014, an Appellate Division panel directed COAH, as a body politic through its members still on the COAH Board, to meet and to take the following actions:

- On March 12, 2014, COAH, through its duly appointed Council members, must meet at a duly authorized and properly noticed meeting of the Council, and direct staff to prepare Third Round Regulations conforming with the Supreme Court's guidance.
- No later than March 26, 2014, the Council shall adopt the proposed Third Round Regulations for publication in the *New Jersey Register*.
- Finally, by no later than May 14, 2014, the Council must meet to consider public comment on the draft Regulations and adopt final Third Round Regulations.

The appellate panel did not stop there. The court provided that failure of the Council to meet the above schedule would result in the court's further issuance of an order to show cause against the individual members of the Council as to why they should not be held in contempt of

the court. The court further ordered that any municipality seeking a declaratory judgment pursuant to N.J.S.A. 52:27D – 313 must serve copies of its declaratory judgment action to FSHC, the NAACP and any other organization or not-for-profit entity located within 10 miles of the municipality that is dedicated to providing low-income or moderate-income housing to the residents of the region. Finally, in an abundance of caution, the court required that COAH submit biweekly reports detailing its actions in compliance with the order.

Finally, the court has taken action to compel COAH to do its job. For 14 years, New Jersey has been without valid regulations to assure that rampant exclusionary zoning does not prohibit housing opportunities for the poor.

For a copy of the Appellate Division's Order or for more information on the status of COAH's Third Round Regulations, please contact Henry Kent-Smith at 609.896.4584 or [hkent-smith@foxrothschild.com](mailto:hkent-smith@foxrothschild.com), or any member of the firm's Real Estate Practice.



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