

# **OVERVIEW**

## **SUPREME COURT RULING ON AFFORDABLE HOUSING**

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- On March 10, 2015, the Supreme Court ruled that COAH failed to meet its obligation to produce Third Round rules that meet the requirements of the New Jersey Constitution.
- The Supreme Court ruled municipal affordable housing requirements will be regulated by the courts, not COAH unless COAH or the Legislature act quickly to take steps to restore a viable administrative remedy that towns can use in satisfaction of their constitutional obligation.
- Contrary to some press reports, the court did not dismantle COAH. Instead, the court encouraged both COAH and the Legislature to fashion a solution:

We note again that the action taken herein does not prevent either COAH or the Legislature from taking steps to restore a viable administrative remedy that towns can use in satisfaction of their constitutional obligation. ... It is our hope that an administrative remedy will again become an option for those proactive municipalities that wish to use such means to obtain a determination of their housing obligations and the manner in which those obligations can be satisfied.

- If COAH or the Legislature fail to act quickly to take steps to restore a viable administrative remedy that towns can use in satisfaction of their constitutional obligation, Hopewell Township must look to the courts for approval of the Township's affordable housing plan.

- The Supreme Court delayed implementation of its order by 90 days to allow for an “orderly transition” to the new system.
- After that initial 90-day period, municipalities will have a 30-day window, June 8 to July 9, to file a court action.
- The particular type of court action the municipality will file is called a “declaratory judgment action.” The process outlined by the Supreme Court is as follows:
  - To be filed no later than July 9, 2015.
  - Notice given to Fair Share Housing Center and any other interested party.
  - A judge will be assigned to hear the case .
  - The assigned judge will manage the Township’s efforts towards compliance. If the Township produces an affordable housing plan that presents a realistic opportunity for the municipality to achieve its fair share of the present and prospective need, the Township then will be protected against builder’s remedy lawsuits, for as long as it continues to implement that plan.

- Following the filing of a declaratory judgment action, a municipality should have no more than a five-month period in which to submit their supplemental housing element and affordable housing plan. Temporary immunity against builder's remedy lawsuits extend to 12/8/2015 at the latest.
- When the municipality files its declaratory judgment action it must serve notice on all interested parties, including the Fair Share Housing Center (FSHC), the advocacy group that has been the lead plaintiff in the legal challenges to the COAH rules. FSHC has developed its own affordable housing numbers, and according to the Supreme Court, having FSHC in the case will ensure that the judge hears both sides of the argument.
- A municipality is not required to file a declaratory judgment action; but if it does not, it exposes itself to a lawsuit from Fair Share Housing Center (FSHC) or from a builder.

- The declaratory judgment action requests the court to render an opinion on whether the municipal housing element is sufficient to meet the municipality's constitutional obligation for affordable housing:
  - A court reviewing the submission of a town that had participating status before COAH will have to render an individualized assessment of the town's housing element and affordable housing plan based on the court's determination of present and prospective regional need for affordable housing applicable to that municipality.
- According to the Supreme Court, the judge must be guided by the methods used by COAH in Rounds One and Two to determine the municipality's fair share for Round Three:
  - Previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need. ... The parties should demonstrate to the court computations of housing need and municipal obligations based on those methodologies.
  - Judges may confidently utilize discretion [the same type COAH utilized] when assessing a town's plan, if persuaded that the techniques proposed by a town will promote for that municipality and region the constitutional goal of creating the realistic opportunity for producing its fair share of present and prospective low- and moderate-income housing.

- The judge can also require the parties to engage in conciliation, mediation, and the use of a special master to study the case and render an expert opinion for the benefit of the court. Conciliation, mediation and appointment of a special master are all options once a case is filed. How the matter proceeds will depend on who intervenes and how the judge manages the docket.

# NEXT STEPS

- ❑ The declaratory judgment action must be filed no later than July 9, 2015. If the Township Committee decides to file a declaratory judgment action, the authorizing resolution should be adopted in open session.
- ❑ If a declaratory judgement action is authorized, the Township Planner will present his recommendation for Hopewell Township to provide a realistic opportunity to achieve its fair share of present and prospective need. That recommendation will be reviewed by the Planning Board.
- ❑ Once the number of units representing Hopewell Township's realistic opportunity to achieve its fair share of present and prospective need is determined, the Planning Board will be responsible for amending the Housing Element and the Land Use Element of the Master Plan.
- ❑ The Township Committee will be responsible for addressing the Master Plan amendments.