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AFFORDABLE HOUSING - NEW JERSEY

In the Matter of Adoption of N.J.A.C. 5:96

Supreme Court of New Jersey - September 26, 2013 - A.3d - 2013 WL 5356807

In this matter, the Supreme Court of New Jersey reviewed the Appellate Division's invalidation of the most recent iteration of Council on Affordable Housing (COAH) regulations applicable to the third round of municipal affordable housing obligations (Third Round Rules). In the Third Round Rules, COAH proposed a new approach—a "growth share" methodology—for assessing prospective need in the allocation of a municipality's fair share of the region's need for affordable housing.

In invalidating the Third Round Rules, the Appellate Division expressed doubt about whether any growth share methodology adopted by COAH could be compatible with the Mount Laurel II remedy that "appears to militate against the use of" a growth share approach for determining a municipality's affordable housing obligation.

The Supreme Court of New Jersey concluded that, unless the Legislature amends the Fair Housing Act (FHA), which tracks the judicial remedy in its operative provisions, the present regulations premised on a growth share methodology cannot be sustained. The changes in the Third Round Rules are beyond the purview of the rulemaking authority delegated to COAH because they conflict with the FHA, rendering the regulations ultra vires.

"Moreover, due to COAH's failure to enact lawful regulations to govern municipalities' ongoing obligations to create affordable housing under the FHA, we have no choice but to endorse the remedy imposed by the Appellate Division in order to fill the void created by COAH. COAH shall adopt regulations, as directed by the Appellate Division, without delay. As modified by this opinion, we thus affirm the Appellate Division's judgment with respect to the invalidity of the Third Round Rules under the FHA."

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