

# **Bond Case Briefs**

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## **ZONING & PLANNING - NEW JERSEY**

### **In re Declaratory Judgment Actions Filed By Various Municipalities**

**Supreme Court of New Jersey - January 18, 2017 - A.3d - 2017 WL 192895**

After the Supreme Court declared the Council on Affordable Housing (COAH) defunct for failing to enact new regulations relating to construction of low- and moderate-income housing in municipalities for over 16 years, 13 municipalities filed declaratory judgment actions to ascertain their fair share obligation for affordable housing.

The cases were consolidated, and the Superior Court issued an interlocutory order regarding the municipalities' obligations relating to the need that arose during gap period. Township appealed, and the Superior Court, Appellate Division, reversed. Housing center sought leave to appeal, which was granted.

The Supreme Court of New Jersey held that:

- Municipalities were required to address need for low- and moderate-income housing that arose during period during which COAH failed to promulgate viable rules for construction of such housing;
- Towns were constitutionally obligated to provide a realistic opportunity for their fair share of affordable housing for low- and moderate-income households formed during gap period and presently existing; and
- In determining municipal fair share affordable housing obligations after gap period, the trial courts were required to employ an expanded definition of present need.

Needs of presently existing low- and moderate-income households formed during period during which Council on Affordable Housing (COAH) failed to promulgate viable rules for construction of such housing were required to be captured and included in setting affordable housing obligations for towns that sought to be protected from exclusionary zoning actions while COAH was defunct; attending to that need was part of the shared responsibility of municipalities.

Towns were constitutionally obligated to provide a realistic opportunity for their fair share of affordable housing for low- and moderate-income households that presently existed and were formed during period during which Council on Affordable Housing (COAH) failed to promulgate viable rules for construction of such housing.

In determining municipal fair share affordable housing obligations after 16-year period during which Council on Affordable Housing (COAH) failed to promulgate viable rules for construction of such housing, the trial courts was required to employ an expanded definition of present need. The present-need analysis was required to include, in addition to a calculation of overcrowded and deficient housing units, an analytic component that addressed the affordable housing need of presently existing low- and moderate-income households, which formed during the gap period and were entitled to their delayed opportunity to seek affordable housing, and the trial courts was also

required to take care to ensure that the present need was not calculated in a way that included persons who were deceased, who were income-ineligible or otherwise were no longer eligible for affordable housing, or whose households may have been already captured through the historic practice of surveying for deficient housing units within the municipality.