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Gouveia, Susan

From: Lashway, Lisa
Sent: Wednesday, March 11, 2015 12:03 PM
To: Canning, Sean
Cc: Gouveia, Susan
Subject: FW: Client Alert: COAH CHAOS CONTINUES

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CLIENT ALERT MARCH, 2015

COAH CHAOS CONTINUES: FHA LITIGATION OPENED IN THE COURTS

Yesterday, the New Jersey Supreme Court issued a bellwether decision significantly affecting Fair Housing Act ("FHA") litigation. The Court held that litigants seeking to enforce their Mount Laurel rights are not required to exhaust their FHA administrative remedies. Instead, New Jersey's Supreme Court voted 6-0 that lower courts must now decide on a case-by-case basis how many homes municipalities should make available to low- and moderate-income residents within their limits.

For nearly forty years, New Jersey has recognized a constitutional obligation for municipalities to exercise their zoning power in a way that realistically permits the development of low and moderate income housing. Since 1985, exclusionary zoning cases proceeded through the Council on Affordable Housing's ("COAH") administrative process.

Under the FHA, COAH is required to promulgate substantive rules which outline the ways in which a municipality can fulfill its Mount Laurel obligations. Municipalities that satisfied COAH's substantive guidelines received robust protections from exclusionary zoning litigation in the courts. COAH, however, failed to adopt its Third Round Rules in a timely fashion.

The Court found that COAH was not properly fulfilling its statutory mandate to promulgate substantive rules. The Court thus dissolved the FHA's exhaustion of administrative remedies requirement, because that requirement "is premised on the existence of a functioning agency, not a moribund one." The Court therefore authorized the state courts to hear and decide exclusionary zoning cases, as they did before the FHA was enacted.

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The Order will not take effect for 90 days, thus allowing the courts to establish a system to deal with the cases. Furthermore, a transition process has been established for municipalities that achieved substantive certification or "participating" status under COAH's earlier iterations of its Third Round Rules. Such municipalities may file a declaratory judgment action within 30 days of the Court's Order (i.e. 120 days from March 10, 2015), seeking judicial approval that the municipality's housing plan satisfies its Mount Laurel obligations. Following the 30 day window, courts are authorized to hear lawsuits from individuals or entities seeking to enforce their FHA rights. These lawsuits may arise, for example, from developers seeking to build housing at higher densities than a municipality's zoning law would otherwise allow.

This process signals a substantial change in a municipality's FHA practices, and the practical impacts are still evolving. The Court, however, specifically noted that COAH can regain control of FHA litigation if it passes new substantive rules. The Court also noted that the state Legislature may also come up with a new affordable housing law.

If you have any questions regarding your municipality's rights and obligations under the new framework, please contact one of our Municipal Law attorneys: Tom Ryan, Esq. (tryan@lclaw.com); Ursula Leo, Esq. (uleo@lclaw.com); Tom Prol, Esq. (tprol@lclaw.com); or Richard Stein, Esq. (rstein@lclaw.com). Our attorneys can also be reached by phone at (973) 729-1880 or visit www.lclaw.com.



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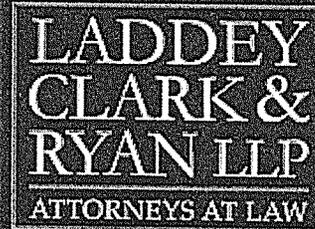
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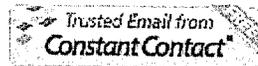
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