

# COAH Standstill Creating Havoc for New Jersey Businesses and Municipalities

by Patrick McNamara on April 26, 2012

The lack of consensus surrounding New Jersey affordable housing policy is creating havoc for municipalities and businesses struggling to make sense of the current legal landscape. While the New Jersey judicial, legislative, and executive branches have all taken a turn at crafting a solution, the state remains at a virtual standstill.

## *How Did We Get Here?*

The tangled web of court decisions and legislative action can be traced back to the 1975 New Jersey Supreme Court decision in *Southern Burlington County NAACP v. Township of Mount Laurel*, which established that municipalities were obligated to use their zoning powers to foster the development of housing affordable to low and moderate income families. After a subsequent Supreme Court decision in 1983 reaffirming the principles set out in its 1975 ruling, the State Legislature enacted the Fair Housing Act and created a new agency, the Council on Affordable Housing (“COAH”), to administer the new law.

Since its creation, COAH has faced criticism by developers, towns and from officials on both sides of the aisle. Critics argue that the regulatory procedures implemented by COAH have resulted in delays, litigation, and unreasonable costs to municipalities and businesses, without providing sufficient affordable housing throughout the State. This has grown more complicated over the last decade as COAH has tried to implement its “growth share” methodology – an approach which has been successfully challenged in the Appellate Division three times; the most recent case is now on appeal before the New Jersey State Supreme Court. Unfortunately, the State Supreme Court has not scheduled oral argument on this case; this delay only contributes to the overall uncertainty facing the business community.

## *Gov. Christie’s Attempt to Abolish COAH*

More recently, New Jersey Gov. Chris Christie offered a Reorganization Plan intended to reduce the “unnecessary complexity of affordable housing administration in New Jersey, lower the administrative cost associated with the current regulatory process and streamline the development of new housing projects”. However, his proposal to eliminate COAH and integrate its responsibilities into the Department of Community Affairs was invalidated by the Appellate Division of the Superior Court in March. The Appellate Division found that the Governor exceeded his authority by relying on his executive power to abolish the agency. Gov. Christie has appealed the decision to the New Jersey State Supreme Court, leaving COAH again in limbo.

## *The Consequences of the Standstill*

Approximately \$174 million in local trust funds must be committed to affordable housing projects by July 17, 2012 or municipalities risk forfeiture of these funds back to the State. However, at the present time COAH has not put forward a plan as to how the State would spend these funds to create affordable housing development projects.

Legislation (A-2717) is pending in the State Assembly that would extend this deadline by another four years.

In the meantime, housing providers and commercial real estate developers looking to come to the Garden State are likely to view the gridlock in Trenton surrounding New Jersey affordable housing as a thorny legal headache with potentially significant and uncertain financial exposure, and decide to take their projects elsewhere. In addition, commercial and residential developers already working in New Jersey continue to await either action by the Supreme Court or the State Legislature, a wait that has no end in the foreseeable future.

If you have questions about the legal issues surrounding New Jersey's affordable housing laws, we encourage you to speak with one of our experienced New Jersey public law or business attorneys. Although the regulatory landscape may be challenging, we can offer guidance and practical solutions for your business or municipality.