

Supreme Court's Unanimous Decision Places Increased Housing Obligations on Municipalities

On January 18, 2017, the New Jersey Supreme Court released a unanimous decision, ruling that the State's municipalities have an obligation to provide affordable housing for residents for the period from 1999-2015. The Court's decision in this "gap year" appeal marked the end of more than 12 years of litigation, which began in 2004 when the State Council on Affordable Housing (COAH), adopted new rules to govern the affordable housing obligations of municipalities. Those rules, governing Mount Laurel's Third Round, were challenged repeatedly and ultimately struck down, creating a gap between the last enforceable rules in effect in 1999 and the present. Municipalities claimed they had no obligation to provide for affordable housing during the pending litigation; developers and housing advocates rejected this analysis as wrong.

In deciding against the municipalities, the Supreme Court found that affordable housing obligations that arose during the "gap" years of 1999-2015 could not simply be ignored, as the municipalities suggested. The Supreme Court found that such an argument was inconsistent with past practices of COAH and inconsistent with the municipalities' past voluntary participation in the same.

The Supreme Court directed that new housing need numbers be calculated for these intervening years; and characterized these calculations as "present need" within the meaning of the statute. In practice, the decision will likely result in an increase in the municipalities' housing obligations, with municipalities obligated to adopt new plans to provide for this housing, including by rezoning properties not presently approved for residential use.

This decision marks the end of a very long legal process and will impact virtually every community in the State. Anticipating this decision, many municipalities already have reached settlements in court, so their new numbers are already known. If we can assist you in evaluating the development potential for a site in any community, we would be happy to do so.

[Lori Grifa](#) is a partner at Archer and was the Chair of the New Jersey Council on Affordable Housing from 2010-2012. If you have questions about affordable housing or other related issues, please contact [Lori Grifa](#) or a member of Archer's [Land Use, Environmental Permitting & Compliance](#) in Haddonfield, N.J. at (856) 795-2121, in Philadelphia, Pa. at (215) 963-3300, in Princeton, N.J. at (609) 580-3700, in Hackensack, N.J. at (201) 342-6000, in Red Bank, N.J. at (732) 268-8000, in New York, N.Y. at (212) 292-4998, or in Flemington, N.J. at (908) 788-9700.

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