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Courts continue to sort out 'Mount Laurel' exclusionary zoning cases throughout the state

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In March 2015, the New Jersey Supreme Court issued an opinion removing exclusionary zoning disputes from the Council on Affordable Housing (COAH), and directed New Jersey's trial courts to resolve exclusionary zoning issues. Exclusionary zoning disputes arise as a result of the state's "Mount Laurel doctrine," which directs that New Jersey towns must provide zoning that allows for a sufficient amount of lower-income housing.

Beginning last June, many municipalities throughout the state filed declaratory judgment (DJ) cases in the trial courts, seeking the courts' rulings as to the towns' obligations imposed by the Mount Laurel doctrine.

Status of the DJ Cases

More than 300 DJ cases involving Mount Laurel issues have been filed. Judges in the counties are handling the cases in different ways, with some judges handling them more aggressively than others.

The judges in Ocean County appointed a "special regional master" to advise them on fair-share numbers issues, and that master had a health setback as well. Thus, the mid-November trial on fair-share issues did not occur, and a new schedule was put into place. The judges handling the DJ cases involving Ocean County towns have been among those "out in front" in terms of dealing with the "big issues," such as numerical fair-share obligations.

The original scheduling in Ocean County called for a countywide trial on fair-share numbers in mid-November, with fair-share plans meeting the obligations to be filed by early December. However, the fair-share expert witness retained by the municipalities had a health setback, and the towns then retained another expert.

On a statewide basis, these developments resulted in judges extending the time frames within which towns must file fair-share plans, with the judges also commensurately extending the "immunity" from builder's remedy suits as to the towns involved in DJ cases.

Other counties that are likely to be among those addressing the global issues are Monmouth, Mercer and Middlesex counties.

The New Jersey Builders Association (NJBA), aided by legal counsel and expert consultants, is actively involved in the quest for court rulings establishing reasonable fair-share numbers and the compliance standards that will guide municipalities their fair-share plans. After those global issues are resolved, hopefully, in the first half of this year, towns throughout the state will be obligated to adopt final fair-share plans providing for a reduction in exclusionary zoning, and the provision of more lower-income housing and more-affordable, market-rate housing.

Settlement Discussions Ongoing

A number of settlements of DJ cases have been reached, and settlement discussions in more towns are ongoing. Those settlements typically result in the municipal obligation to adopt rezonings, including rezonings for inclusionary developments that will provide market-rate and lower-income housing, with the goal of bringing towns into compliance with fair-share obligations. Such settlements at this early stage can result in benefits for municipalities, especially since trial courts have flexibility in making fair-share determinations as to towns that settle at this juncture. Builders are participating in the DJ cases as intervenors or "interested parties," seeking zoning relief, either by way of settlement or, if negotiations fail, litigation of the issues.

Some Towns Now Subject to Builder's Remedy Suits

Various categories of towns are potentially susceptible to builder's remedy suits. The towns most exposed to such suits are those that never filed a fair-share plan with COAH, and never filed a DJ case in the trial courts. Some towns filed fair-share plans with COAH, but never filed DJ cases. A number of towns filed DJ cases, but have since dismissed them. Such towns may be susceptible to builder's remedy suits and what the Supreme Court labeled "constitutional compliance cases," a novel category of cases in which rezonings could be pursued.

Conclusion

The next few months will be pivotal in bringing about judicial implementation of the "rules" that will guide the process going forward, and the adoption of fair-share plans that will greatly reduce the exclusionary zoning that exists in New Jersey. Builders who are not yet involved in the process are advised to explore the possibilities provided by the Mount Laurel doctrine.

These issues will be among the topics discussed during seminars presented by the NJBA at the Atlantic Builders Convention in Atlantic City on March 29-31. According to Carol Ann Short, Esq., CEO of the NJBA, "At NJBA, we are following all these issues closely, as they are critical to removing regulatory uncertainty and providing a boost to the New Jersey economy. We look forward to providing useful information to those who attend the [Atlantic Builders Convention](#) in March."

—Thomas F. Carroll III, Esq.

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