

# Could towns be on the hook for more affordable homes?



Karen Yi, @karen\_yi

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(Photo: THOMAS P. COSTELLO)

A recent ruling by an Ocean County judge in the legal tangle over affordable housing could drastically boost town quotas for low- and moderate-income units and become the benchmark throughout the state, housing advocates say.

Superior Court Judge Mark Troncone ruled that towns must meet housing needs that have accumulated over the last 16 years, during which the process for establishing affordable housing obligations stalled and, eventually, disintegrated.

“This ruling shows that towns’ fair housing obligations are much larger than they have been claiming,” said Kevin Walsh, executive director of the Fair Share Housing Center, a nonprofit advocating for housing for the poor. “We are going to continue to fight hard for the right of New Jersey families, seniors and those with disabilities to live in thriving neighborhoods. This ruling is an important step in that fight.”

Michael Cerra, assistant executive director of the New Jersey League of Municipalities, said there was no fair way to account for needs between 1999 to 2015, a span known as the “gap period.” Towns are also waiting on their affordable housing quotas for the next 10 years.

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“How do you assign a retrospective obligation and how do you determine it?” he asked. “It’s pure speculation.”

The ruling does not allocate any numbers and is not binding outside Ocean County. But housing advocates say it could be echoed elsewhere and significantly spike housing quotas. The same town planner used by Judge Troncone to make recommendations to the court is working in seven other counties.

Cerra said it was still anybody’s guess. “We’re probably going to see some conflicting court rulings.”

## How did we get here?

The Ocean County ruling settles one of several ongoing disputes among developers, town officials, housing advocates, nonprofit leaders and builders in the long, knotty battle to determine how much affordable housing New Jersey must provide.

The Council on Affordable Housing (COAH) was created under the Fair Housing Act in 1985 and tasked with determining each town’s affordable housing obligation and reviewing plans to meet those aims. The process sputtered in 1999, when COAH twice failed to agree on a third round of quotas and rules. Towns were left without any housing obligations or guidelines.

New Jersey’s Supreme Court intervened last March and ordered the lower courts to take over the process.

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Now, 15 Superior Court judges across the state are deciding how many affordable units each municipality — working with builders and developers — must accommodate. They will also set up methods to meet those numbers.

All sides have submitted numbers on how much low- and moderate-income housing is needed. Statewide estimates range from 37,000 (according to experts hired by towns) to 200,000 units (according to housing advocates).

“Hold on to your hats, it’s going to be a bumpy ride,” said Gary Forshner, an attorney who represents builders but is not active in the affordable housing case.

## The “gap period”

Judge Troncone's ruling addressed a key question: whether housing needs, typically calculated for the next 10-year period, should be retroactively considered to 1999 — the last time COAH issued quotas.

Municipalities argued there was no fair way to calculate prior obligations since any ongoing needs would be counted in the next 10 years. They called it an onerous requirement that risked double counting need.

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Advocates maintained towns could not ignore the needs of poor residents.

"As for ignoring that need it's a bit misleading," said Cerra. "Market forces addressed housing need, families found housing. We're also dealing with a period of time where we saw the worst economic recessions in our lifetimes; we saw a huge downturn in our economy. Maybe not as many units were going to be built as they seemed to think."

The judge did not issue housing numbers or a formula to calculate gap period needs. That will be argued in court.

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Forshner said the court acknowledged formulas for calculating affordable housing obligations were "not necessarily anything more than a fair estimate." But the court also maintained the method, though imprecise, can and has been used in the past.

Thirteen municipalities are involved in the court process in Ocean County. Those that are not risk being sued by developers in what are called a "builder's remedy" — an enforcement mechanism created by the Supreme Court to ensure towns provide housing for the poor. If builders can show that a municipality is not complying with affordable housing quotas, they can sue for the right to build more units than allowed on a specific plot, in exchange for including affordable housing.

Some towns do not participate "because they don't think they have a great deal of exposure" to such lawsuits, said Forshner.

Cerra said neighboring towns could see housing requirements applied unevenly if courts rule differently on the gap period.

"If we're dealing with contradictory court rulings on the gap issue then you're having different standards applied statewide," he said. "It does create a uniformity issue."

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Karen Yi: 732-643-4277; [kyi@gannettnj.com](mailto:kyi@gannettnj.com)

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