

When COAH is Abolished, What's Next?

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On May 13, 2010, Governor Chris Christie outlined his plan for affordable housing, including the abolition of the Council on Affordable Housing (“COAH”). The proposals in the outline are largely derived from the report of the Housing Opportunity Task Force created by the Governor in February, while other parts of the proposal are similar to well publicized legislative proposals. The common thread running through all of these plans, and echoed by municipal officials throughout New Jersey, is that COAH must be abolished.

So when COAH is abolished, what comes next? The answer is uncertain. Like it or not, the Fair Housing Act, COAH and all the regulations and court decisions that have come in the past 25 years have created what may be considered a flawed system, but it has been functional and somewhat predictable. Since the obligation of all New Jersey municipalities to provide for their share of the region’s affordable housing needs was effectively created by the State Supreme Court in the Mt. Laurel decisions, it will be the courts that decide whether the new legislation that emerges from this proposal escapes unscathed, is thrown out altogether or, more likely, gets changed by the legislature and courts several times over the next several years.

Some parts of the proposal should not create an issue for the courts, such as elimination of the current 2.5% tax on commercial development. However, the new system will succeed or fail on the issue of new affordable housing construction.

The Governor's proposal generally calls for a 10% affordable housing unit set-aside requirement and for projects between two and 10 units, a payment to a municipal affordable housing trust. In other words, new affordable housing construction will be tied to future housing development without a quantified obligation.

A municipality seeking protection from legal challenges and court-imposed remedies must develop and adopt a housing element similar to a COAH plan as part of their municipal master plan. State involvement in the new process will be substantially reduced, in that the Department of Community Affairs (DCA) will only file municipally-approved housing plans and make them publicly available. If challenged, DCA will conduct a review of the municipal plans only to determine whether the plan is factually accurate and consistent with the law. Both the lack of “quotas” and the new DCA role may prove to be problematic.

The McGreevy administration tried to eliminate quotas through regulations which failed to be upheld in court. Another problem is that courts have regularly held that municipalities can not be trusted to determine their own compliance with the obligation. The Fair Housing Act created a system where COAH essentially became the substitute for the courts. With that role abolished, the courts will likely re-assume their role as the affordable housing policy maker in New Jersey.

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