

COURT ENJOINS PORTION OF GOVERNOR CHRISTIE'S EXECUTIVE ORDER IMPOSING MORATORIUM ON COAH PROCEEDINGS

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On February 9, 2010, Governor Chris Christie issued an Executive Order staying proceedings of the Council on Affordable Housing ("COAH") for 90 days, and creating a task force charged with devising a way to replace the COAH process. On February 19, 2010, the Appellate Division issued an order enjoining the halting of COAH proceedings, but allowing that task force to commence its work.

More specifically, the Executive Order ("EO 12") directed that COAH "shall refrain from taking any further action to process applications for substantive certification or to take any other actions to implement [COAH's] Third Round regulations." This would have included mediation proceedings where builders or others have filed objections to municipal fair share plans. The only exception is where "the applicant, for good cause shown, requests action on a particular item and the [DCA] Acting Commissioner determines that such action is required within the 90 day period to prevent the loss of affordable housing opportunities."

Legal proceedings seeking an injunction against EO 12 were immediately instituted, and the Appellate Division's February 19 order stayed the portion of EO 12 that halted COAH proceedings. Thus, COAH proceedings may continue apace, at least for the time being.

EO 12 also calls for the creation of a five-member "Housing Opportunity Task Force" that will evaluate the efficacy of the current laws governing implementation of the *Mt. Laurel* doctrine, and assess "the continued existence of COAH." That portion of EO 12 was not affected by the Appellate Division's February 19 stay order. The Task Force is to report to the Governor and DCA Commissioner within 90 days.

There is also an effort underway in the Legislature to come up with legislation replacing the current COAH process. That effort began with a bill introduced by Senators Lesniak and Bateman, which has been labeled S-1. Other bills and amendments will be forthcoming, and hearings have been scheduled.

It is quite possible that more builder's remedy suits will now be filed in our courts, since the future of COAH is in grave doubt, given EO 12 and the proposed legislation, and only the courts can enforce the *Mt. Laurel* doctrine if there is no effective alternate mechanism. The New Jersey Supreme Court deferred to COAH in an opinion released more than 20 years ago, since the New Jersey Fair Housing Act had created COAH to take the place of the courts as to most *Mt. Laurel* enforcement matters. If, however, COAH ceases to function, there would no longer be any reason to defer to the legislative remedy, and the necessity of judicially enforcing the *Mt. Laurel* mandate will once again become clear.

In sum, the “COAH world” is rapidly changing, and those with interests in land should consider the implications of EO 12 and the proposed legislation and monitor the unfolding events closely.