



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
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Mark Neary
Clerk
Supreme Court of New Jersey
P.O. 970, 25 Market Street
Trenton, New Jersey 08625-0970

Re: In re Adoption of Revised Third Round Regulations the
New Jersey Council on Affordable Housing N.J.A.C. 5:96
& 5:97

Supreme Court Docket No. 67,126
Supreme Court Docket No. M- , M-
App. Div. Docket No. A-5382-07T3
App. Div. Docket No. M-2899-13

On Emergent Motion for Stay from Order of Appellate
Division entered on March 7, 2014

Sat Below: The Hon. Jose Fuentes, P.J.A.D.
The Hon. Marie P. Simonelli, J.A.D.
The Hon. Michael J. Haas, J.A.D.

Appendix to Brief of Council on Affordable Housing in
Support of Emergent Motion for Stay

Dear Mr. Neary,

Please find attached the Council on Affordable
Housing's appendix to its brief in support of the motion to stay
and vacate in part the Appellate Division order issued on March
7, 2014.



Thank you for your continuing assistance and courtesies in this matter.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/Robert Lougy
Robert Lougy
Assistant Attorney General
Bar ID No. 023012002

Dated: March 9, 2014

c: Heather Joy Baker (via email)
Supervising Attorney, Supreme Court of New Jersey

All counsel (via email)



Supreme Court Emergent Matter Intake Form

RECEIVED
JAN 27 10 21 AM '14
SUPREME COURT
CLERK'S OFFICE

Please refer to the *Supreme Court Guidelines for Emergent Matters* before submitting this form. Completion of this form does not constitute the filing of a motion or petition for certification. This form is designed to assist the Court with the provision of further instructions and the consideration of temporary relief pending disposition of a motion or petition. **No response may be filed without the Court's permission.**

General Information

Person completing this form:	Robert Lougy, AAG	Date form was completed:	03/07/2014
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Applicant Information

Name of applicant:	Council of Affordable Housing		
Applicant's attorney (or "pro se"):	Robert Lougy, AAG		
Telephone:	(609) 292-4965	Fax:	(609) 292-0690
E-mail:	Robert.Lougy@dol.lps.state.nj.us		

Case Information

Title of case:	In re Adoption of Revised Third Round Regulations by COAH		
Appellate Division docket #:	A-5382-07T3	Supreme Court docket #:	67126
Case type (brief description)*:	Agency rulemaking <small>(*e.g., bail, landlord-tenant, foreclosure, family court, etc.)</small>		

Nature of Relief Requested on Emergent Basis

1. Briefly describe the emergent relief you requested from the Appellate Division and attach a copy of its order or disposition. If that court denied your *Application for Permission to File Emergent Motion*, include a copy of that *Application* and any attachments provided to the Appellate Division, including the trial court or agency order. **No other documents may be submitted unless requested by the Court.** (If the Appellate Division accepted briefs and filed an order, further instructions will be provided.)

Stay from its order pending review by this Court, both of this order and the agency's pending motion, filed February 26, 2014, for an extension of time in which to promulgate regulations, per this Court's opinion of September 26, 2013. That request remains pending before this Court.

2. Briefly state the emergent relief you are seeking from the Supreme Court ("same as above" if applicable):

Stay of the Appellate Division's order of March 7, 2014, pending this Court's consideration of the present request for extension.

3. You must simultaneously serve a copy of this form and attachments on all other attorneys/pro se parties and the trial judge or agency. Have you served them all? Yes or No.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
APPLICATION FOR PERMISSION TO FILE EMERGENT MOTION

TO: Jospeh Orlando

DATE: 03/07/2014

FROM: Robert Lougy, AAG

TELEPHONE: (609) 292-4965 ext.

The following questions are to be answered by the attorney or pro se litigant requesting permission to file an emergent motion. This questionnaire is designed to assist the court's determination respecting its further instructions. **COMPLETION OF THIS APPLICATION DOES NOT IN ANY SENSE CONSTITUTE THE FILING OF AN APPEAL OR MOTION.** There is no right to be heard orally on an emergency application. Further instructions will come from the court.

Except by permission of the court, the only documents you may submit with this application are: a copy of the decision being appealed, any opinion or statement of reasons given by the trial judge or agency, and any order or decision denying or granting a stay. A copy of this application must be served simultaneously on both your adversary and the trial judge or agency. No answer shall be filed without permission of the court.

If the court grants you permission to file an emergent motion and you have not previously filed a motion for leave to appeal or notice of appeal (whichever is applicable), you must simultaneously file one. You must also pay the applicable filing fee (\$30 for a motion for leave to appeal; \$200 for a notice of appeal), direct the charging of an account with the Superior Court, or file a motion to proceed as an indigent and supporting certification.

CASE NAME: In re Adoption of Revised Third Round Regulations by NJAC 5:96

1. What is the vicinage of the matter? (i.e., what judge, in what county or what agency entered the decision?)
n/a -- Motion in aid of Litigants' Rights
2. a) What is your name, address, including any e-mail address, phone number and fax number?
Robert Lougy, AAG, Robert.Lougy@dol.lps.state.nj.us
609-292-4965 w / 609-292-690 fax
- b) Whom do you represent?
Council on Affordable Housing
3. List the names of all other parties and name, address, including any known e-mail address, phone number and fax number of attorney for each.
Please see attached.

4. Do you have a written order or judgment entered by the judge or a written agency decision? You must attach a copy of the order, judgment or decision.

Attached.

5. Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? If so, the decision is not final, but rather interlocutory, and leave to appeal must be sought.

No.

6. Have you filed for a stay before the trial court or agency?

N/A

If so, do you have a court order or agency decision denying or granting same? Attach a copy of any such order or decision. Before you seek a stay from the Appellate Division, you must first apply to the trial court or agency for a stay and obtain a signed order or decision ruling on your stay application. (Court Rules 2:9-5 and 2:9-7)

7. If the order or agency decision is interlocutory, are you filing a motion for leave to appeal?

N/A

8. If interlocutory, are you filing a motion to stay the trial court or agency proceeding?

9. If the order, judgment or agency decision is final, have you filed a notice of appeal?

No.

10. What is the essence of the order, judgment or agency decision? Mandamus order requiring agency COAH to meet and undertake rulemaking and other discretionary acts, notwithstanding present pending motion before the New Jersey Supreme Court for an extension of time in which to do so, and on a schedule incompatible with timeframes established in the Administrative Procedures Act.

11. a) Has any aspect of this matter been presented to or considered by another judge or part of the Appellate Division by emergent application or prior appeal proceedings? If so, which judge or part?

No.

- b) Have the merits briefs been filed in this matter? If so, has the matter been calendared to a part?
No

12. What is the nature of the emergency?

The order intrudes upon the Supreme Court's consideration of the agency's pending motion for an extension of time in this very appellate proceeding. Additionally, it transgresses well-established principles of separation of powers and purports to waive statutory provisions governing notice and comment of proposed rules and the Open Public Meetings Act.

13. What is the irreparable harm, and when do you expect this harm to occur?

The irreparable harm is immediate. The harm is that the court has stepped into the shoes of the agency and is ordering the Council members to undertake discretionary action, under the threat of detention and personal liability, on a timetable inconsistent with the APA and inconsistent with the separation of powers.

14. What relief do you seek?

Stay of the order pending Supreme Court review.

15. What citation is most important for the proposition that you are likely to prevail on appeal?

N.J. Const. Art. III, N.J. Const art. V., section 1, para 1. NJSA 52:14B-1 et seq.; NJSA 52:27D-301 et seq.; Crowe v. DeGioia, 90 NJ 126 (1982); NJSA 10:4-1 et seq.; R. 2:11-3(d);

16. Have you served simultaneously a copy of this application on both your adversary and the trial judge or agency?

Yes.

17. Have any transcripts been ordered (particularly of the trial judge's challenged ruling)?

No.

If so, when will the transcript be available?

Not applicable

18. Please give a brief summary of the facts of your case.

On September 26, 2013, the New Jersey Supreme Court issued an opinion that modified and affirmed this court's 2010 decision. Contrary to this court, the Supreme Court did not prohibit alternate approaches to satisfaction of the housing obligation. The Court directed COAH to promulgate new rules by February 26, 2014. On that date, the agency sought an extension of time through and including May 1, 2014. That motion remains pending with the Supreme Court.

On December 13, FSHC filed a motion to enforce litigants' rights premised upon an order that preceded the Supreme Court's disposition of this appeal. On March 7, 2014, this court entered the order subject to this application.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DISPOSITION ON APPLICATION FOR PERMISSION TO FILE EMERGENT MOTION

Case Name: In re Adoption of Revised Third Round Regulations by NJAC 5:96
Trial Court or Agency Below: COAH

DO NOT FILL IN THIS SECTION -- FOR COURT USE ONLY

I. The application for leave to file an emergent motion on short notice is Denied for the following reasons:

The application does not concern a genuine emergency or otherwise does not warrant adjudication on short notice. Counsel may file a motion with the Clerk's Office in the ordinary course.

The applicant did not apply to the trial court or agency for a stay, and obtain a signed order, before seeking a stay from the Appellate Division.

The application concerns an order entered during trial as to which there is no prima facie showing that immediate interlocutory intervention is warranted.

Other reasons: _____

II. The application for leave to file an emergent motion on short notice is Granted on the following terms:

A. The applicant must file an original and two copies of the motion for emergent relief and a notice of appeal or motion for leave to appeal (plus all required fees or an indigency motion) with Judge _____ by no later than _____. On that same date, copies must be delivered to all counsel/pro se parties and to Judge _____. A copy must also be sent to the trial judge or agency whose decision is being appealed.

B. Opposition must be served and filed by no later than _____.

C. Other terms: _____

J.A.D. Date

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005382-07T3
MOTION NO. M-002899-13
BEFORE PART H
JUDGE(S): JOSE L. FUENTES
MARIE P. SIMONELLI
MICHAEL J. HAAS

IN RE ADOPTION OF REVISED THIRD
ROUND REGULATIONS BY THE NEW
JERSEY COUNCIL ON AFFORDABLE
HOUSING N.J.A.C. 5:96 & 5:97
(NJ LEAGUE OF MUNICIPALITIES)

MOTION FILED: 12/17/2013
ANSWER(S) 12/27/2013
FILED: 12/27/2013
01/02/2014
01/06/2014
01/07/2014

BY: FAIR SHARE HOUSING
BY: LEAGUE OF MUNICIPALITIES
KINGS ROW HOMES
BERNARDS TWP
ATLANTIC HIGHLANDS
COAH

SUBMITTED TO COURT: January 16, 2014

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
7th day of March, 2014, HEREBY ORDERED AS FOLLOWS:

MOTION BY INTERVENOR:

MOTION TO ENFORCE LITIGANT'S
RIGHTS

GRANTED AND OTHER

SUPPLEMENTAL: See attached.

FOR THE COURT:



JOSE L FUENTES, P.J.A.D.

UNKNOWN
STATEWIDE

SLW

At this court's request, the parties presented oral argument on March 5, 2014, to supplement their submissions in connection with a motion in aid of litigant's rights filed by Fair Share Housing Center (Fair Share) pursuant to Rule 1:10-3, to enforce this court's order in In Re N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462, 511 (App. Div 2010), aff'd 215 N.J. 578 (2013), directing the Council On Affordable Housing (COAH) "to adopt new third round rules that use a methodology for determining prospective need similar to the methodologies used in the first and second rounds." Characterizing the nature of this mandate as "straight-forward," we expected that "COAH should be able to comply with this mandate within five months without the assistance of a master or an army of outside consultants." Ibid. (Emphasis added). To date, COAH has not done anything to comply with our "straight-forward" mandate.

Fair Share seeks an order from this court appointing a special master with the authority to carry out the central requirement this court ordered on October 8, 2010, as affirmed by the Supreme Court. Alternatively, Fair Share seeks a judicial declaration from this court that COAH can no longer provide administrative protection to municipalities from Mount Laurel litigation, leaving the declaratory relief provided by the Legislature under N.J.S.A. 52:27D-313 as the exclusive means for those municipalities wishing to seek preemptive action. If we were to adopt this alternative form of relief, Fair Share further requests that this court require a municipality filing a petition for substantive certification under N.J.S.A. 52:27D-313 to provide notice to Fair Share and to other public interest entities similarly devoted to protecting the constitutional rights of low and moderate income residents of this State.

On February 26, 2014, COAH filed a motion with the Supreme Court, requesting "an extension of the time until May 1, 2014 to formally propose and publish in the June 2, 2014 New Jersey Register regulations governing the third round methodology." Thus, without specifically addressing the substantive merits or practical feasibility of Fair Share's position, COAH argues that the motion pending before the Supreme Court deprives this court of jurisdiction to enforce its October 8, 2010 mandate.

The Legislature enacted the Fair Housing Act in 1985 to confer responsibility upon COAH for the administration and enforcement of the Mount Laurel doctrine.¹ COAH has the primary responsibility to determine a

¹ S. Burlington County NAACP v. Twp. of Mount Laurel, 92 N.J. 158, (1983) (Mount Laurel II); S. Burlington County NAACP v. Twp. of Mount Laurel, 67 N.J. 151, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975) (Mount Laurel I).

municipality's affordable housing obligations and to develop a mechanism for compliance with those obligations. Hills Dev. Co. v. Twp. of Bernards, 103 N.J. 1, 19-23, 31-40 (1986). In our tripartite system of governance, once a court has decided a dispute and entered a final judgment awarding relief to the aggrieved party, the executive branch is obligated to enforce the court's decree. This fundamental principle of the concept of ordered liberty applies with equal, if not greater, force when an administrative agency, as a party in a civil dispute, is ordered by the court to perform a task that is mandated by a statute that was adopted by the Legislature to fulfill a constitutional obligation. Abbott v. Burke, 206 N.J. 332, 359 (2011).

After carefully considering the record before us, WE HOLD COAH has failed to carry out this court's mandate "to adopt new third round rules that use a methodology for determining prospective need similar to the methodologies used in the first and second rounds," within the timeframe established by this court and endorsed by the Supreme Court. In Re N.J.A.C. 5:96 and 5:97, supra, 416 N.J. Super. at 511. WE FURTHER HOLD COAH has failed to offer any plausible explanation for its failure to carry out this court's order.

WE THEREFORE ORDER COAH to meet as a body on Wednesday, March 12, 2014, at 9:30 a.m., with a sufficient number of members to constitute a quorum rendering it legally capable of conducting an official meeting and taking legally binding action. At this meeting, COAH shall direct its Executive Director, and such other staff it deems appropriate, to prepare for COAH's adoption "third round rules that use a methodology for determining prospective need similar to the methodologies used in the first and second rounds." These third round rules are to be completed and presented to COAH for formal adoption by Wednesday, March 26, 2014. Copies of these proposed new third round rules shall be posted on COAH's website and copies shall be otherwise made available to the public for review at 11:00 a.m. on Friday, March 21, 2014.

WE FURTHER ORDER COAH to meet as a body on Wednesday, March 26, 2014, at 9:30 a.m., with a sufficient number of members to constitute a quorum rendering it legally capable of conducting an official meeting and taking legally binding action. At this meeting, COAH shall review and adopt the third round rules in a manner suitable to comply with the Administrative Procedures Act, including publication in the New Jersey Register.

WE FURTHER ORDER COAH to meet as a body on Wednesday, May 14, 2014, at 9:30 a.m., with a sufficient number of members to constitute a quorum rendering it legally capable of conducting an official meeting and taking legally binding action. At this meeting, COAH shall review and consider all public comments submitted by interested parties in response to the posting of the proposed third round rule in the New Jersey Register. After giving due consideration to these public comments and any proposed

amendments suggested by the Executive Director, COAH shall adopt these rules.

WE FURTHER ORDER COAH to submit to this court and to every party to this litigation bi-weekly reports detailing the actions taken to comply with this order.

WE FURTHER ORDER that in the event COAH fails to carry out any part of this court's order, each member of the COAH Board will be ordered to personally appear before this court, at a date and time designated by this court, to show cause why he or she shall not be declared in contempt of this court's authority subject to monetary sanctions, civil detention, and such other sanctions the court may deem suitable to induce compliance with this order.

WE FURTHER ORDER that until such time that new third round rules have been formally adopted, any municipality seeking to petition the Superior Court for substantive certification under N.J.S.A. 52:27D-313, must serve copies of its pleadings to Fair Share, the local chapter of the National Association for the Advancement of Colored People, and any other organization or not-for-profit entity located within ten (10) miles of the municipality that is dedicated to provide low-income or moderate-income housing to the residents of the region.

WE FURTHER ORDER that pursuant to Rule 2:9-9 this court sua sponte directs Fair Share to submit a certification attesting to the cost of professional services rendered in connection with the prosecution of this motion in aid of litigant's rights. The court thereafter will award Fair Share counsel fees commensurate with the time and professional effort it exerted in the prosecution of this motion in aid of litigant's right.

We conclude with the following explanation concerning our decision to reject Fair Share's application for the appointment of a special master. In In Re N.J.A.C. 5:96 and 5:97, we specifically acknowledged that a number of litigants had requested "that in light of COAH's failure to adopt valid third round rules in a timely manner, this court should divest COAH of the authority to perform this statutory responsibility and adopt third round rules itself with the assistance of a master." 416 N.J. Super. at 510. We declined to adopt this approach for two principal reasons. First, we noted that our colleagues had rejected a similar request for relief made by Fair Share and the New Jersey Builders Association in In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 87-88 (App. Div.), certif. denied, 192 N.J. 71 (2007). Writing for this court in that case, Judge Cuff explained the reasons for denying this relief:

Appointment of a special master by this court is unprecedented relief.

The Legislature has granted COAH considerable authority to adopt policies and to fashion regulations that will provide a realistic opportunity for the construction of affordable housing. The Court has stated repeatedly that it is better for COAH to address the issue than the courts. We also recognize that rule making is a dynamic process. COAH has already amended some of the third round rules, see N.J.A.C. 5:94-2.4(a)(4), and has recently proposed several others. Thus, we conclude that it is appropriate to remand to the agency to commence the process to amend N.J.A.C. 5:94, the third round rules, to conform to the constitutional and statutory mandate. Time, however, is critical. The second round rules expired in 1999. The third round rules apply from 1999-2014, but effectuation of these rules has been compressed to a ten-year period and three years have already elapsed. We, therefore, direct that the rule-making process required by this opinion must be completed within six months.

[Id. at 87-88.]

Second, and perhaps most relevant here, we noted in In Re N.J.A.C. 5:96 and 5:97 that despite COAH's continued reliance on a growth share methodology to calculate and allocate prospective, we had no basis "to conclude that COAH failed to make a good faith effort to adopt this round rules in conformity with our prior opinion." 416 N.J. Super. at 510. (Emphasis added). Unfortunately, the record of inaction by COAH since we wrote those words in 2010 has cast serious doubts about this agency's good faith in complying with this court's order.

Despite these misgivings, we remain reluctant, at this time, to take the extraordinary action of declaring that this government agency is utterly incapable or unwilling to carry out its core statutory mission. We remain hopeful, however, that reasonable minds will prevail, and that the members of the COAH Board will see that this course of intransigence serves only to needlessly undermine the public's confidence in the effectiveness of public institutions. We have invalidated these rules in two prior opinions in the past seven years. In this order, we have laid a clear path for COAH to follow to fulfill its statutory obligation. If these measures prove to be ineffective, we may have no other choice but to declare that event to be COAH's third and final strike.

SERVICE LIST
IN RE ADOPTION OF THIRD ROUND REGULATIONS, N.J.A.C. 5:96
AND 5:97, BY THE COUNCIL ON AFFORDABLE HOUSING

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ORDER ON EMERGENT APPLICATION

IN RE ADOPTION OF REVISED
THIRD ROUND REGULATIONS BY
THE NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING N.J.A.C.
5:96 & 5:97 (NJ LEAGUE OF
MUNICIPALITIES)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5382-07T3
MOTION NO. M-
BEFORE PART: H
JUDGE(S): FUENTES
SIMONELLI
HAAS

EMERGENT APPLICATION
FILED: 3/7/2014

BY: COAH

ANSWER(S) FILED: 3/7/2014

BY: FAIR SHARE HOUSING

APPEARANCE ONLY:

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON
THIS 7TH DAY OF MARCH, 2014, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION
FOR

MOTION FOR A STAY OF ORDER
DATED MARCH 7, 2014 TO ENFORCE
LITIGANT'S RIGHTS

GRANTED DENIED OTHER
() () ()

SUPPLEMENTAL:

This court has jurisdiction to enforce its own order.
Asbury Park Board of Education v. New Jersey Department of
Education, 369 N.J. Super. 481, 486 (App. Div. 2004). R. 2:9-
5(b). In the event COAH cannot meet the deadlines ordered by
this court in its March 7, 2014 order in aid of litigant's
rights consistent with the APA, N.J.S.A. 59:14B-4 requirements,
it may seek relief from this court to modify these deadlines on
a showing of extraordinary circumstances.

FOR THE COURT:



JOSE L. FUENTES, P.J.A.D.

A-5382-07T3

FILED
APPELLATE DIVISION
January 18, 2011
JLD
CLERK

ORDER ON MOTION

IN RE ADOPTION OF REVISED THIRD ROUND REGULATIONS BY THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING NJAC 5:96 & 5:97 (NJ LEAGUE OF MUNICIPALITIES)	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-005382-07T3 MOTION NO. M-002337-10 BEFORE PART A JUDGE(S): JOSE L. FUENTES MARIE P. SIMONELLI STEPHEN SKILLMAN
--	--

MOTION FILED:	12/22/2010	BY:	FAIR SHARE HOUSING
ANSWER(S)	01/10/2011	BY:	KINGS ROW HOMES
FILED:	01/10/2011		COAH

SUBMITTED TO COURT: January 13, 2011

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS,
ON THIS 14th day of January, 2011, HEREBY ORDERED AS FOLLOWS:

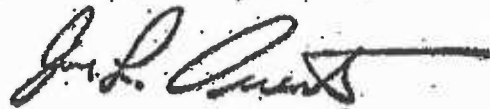
MOTION BY INTERVENOR

MOTION TO APPOINT SPECIAL MASTER
OR IN THE ALTERNATIVE REQUIRE BI-
WEEKLY REPORTING

GRANTED IN PART AND OTHER

SUPPLEMENTAL:
SEE ATTACHED

FOR THE COURT:



JOSE L. FUENTES, J.A.D.

UNKNOWN STATEWIDE
ORDER - REGULAR MOTION KMC

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

JLD
CLERK OF THE APPELLATE DIVISION

ORDER ON MOTION

RE: IN RE ADOPTION OF REVISED THIRD ROUND REGULATIONS BY THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING N.J.A.C. 5:96 & 5:97 (NJ LEAGUE OF MUNICIPALITIES)

The mere pendency of a motion for stay to the Supreme Court does not provide justification for COAH's failure to comply with this court's order of October 8, 2010 requiring COAH to adopt revised third round regulations within five months. Therefore, COAH is directed to immediately comply with that order. In addition, the court grants the part of Fair Share's motion that seeks an order requiring COAH to submit bi-weekly reports regarding its compliance with the October 8, 2010 order. This report shall be submitted in the form of an affidavit or certification by the Chair of COAH. The first such report shall be filed no later than January 28, 2011, with copies to be sent directly to the chambers of the judges hearing this appeal and service to be made upon all parties to the appeal. The court defers consideration of any other relief, including appointment of a master or other relief in aid of litigant's rights, pending receipt of that first report.



JOSE L. FUENTES, J.A.D.

SUPREME COURT OF NEW JERSEY
M-643 September Term 2010
067126

IN THE MATTER OF THE ADOPTION OF
N.J.A.C. 5:96 AND 5:97 BY THE NEW
JERSEY COUNCIL ON AFFORDABLE HOUSING

FILED
O R D E R

JAN 18 2011

Stuart Rabner
CLERK

This matter having been duly presented to the Court, it is
ORDERED that the motion of the Attorney General of New Jersey
for a stay of the Appellate Division decision is granted pending
further Order of the Court.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at
Trenton, this 14th day of January, 2011.

Stuart Rabner
CLERK OF THE SUPREME COURT

ORDER ON MOTION WHEN CROSS MOTION FILED

FILED
APPELLATE DIVISION
April 13, 2011

ADD

CLERK

A-5382-07T3

IN RE ADOPTION OF REVISED THIRD
ROUND REGULATIONS BY THE NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
NJAC 5:96 & 5:97
(NJ LEAGUE OF MUNICIPALITIES)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005382-07T3
MOTION NO. M-003132-10
BEFORE PART A
JUDGE(S): JOSE L. FUENTES
MARIE P. SIMONELLI
STEPHEN SKILLMAN

MOTION FILED: 01/28/2011
ANSWER(S) FILED: 02/23/2011

BY: COAH
BY: FAIR SHARE HOUSING

SUBMITTED TO COURT: February 28, 2011

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
12th day of April, 2011, HEREBY ORDERED AS FOLLOWS:

MOTION BY RESPONDENT

MOTION FOR RECONSIDERATION OF THE DENIED AND OTHER
COURT'S JANUARY 14, 2011 ORDER

SUPPLEMENTAL:

On this court's motion, the implementation of our ruling In
Re Adoption of Third Round Regulations, N.J.A.C. 5:96 and
5:97 by the Council on Affordable Housing, 416 N.J. Super.
462 (App. Div. 2010), is stayed pending the outcome of the
Supreme Court's ruling.

FOR THE COURT:

Jose L. Fuentes

JOSE L. FUENTES, J.A.D.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

ADD
CLERK OF THE APPELLATE DIVISION

STATEWIDE
ORDER - REGULAR MOTION
KMC

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondent,
Council on Affordable Housing
Richard J. Hughes Justice Complex
25 Market Street
PO Box 112
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By: Geraldine Callahan
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Attorney ID 030071983

SUPREME COURT OF NEW JERSEY
DOCKET NO.: 67,126

IN RE ADOPTION OF N.J.A.C. 5:96
and 5:97 BY THE NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING

:
: Civil Action

:
: NOTICE OF MOTION FOR
: EXTENSION OF TIME FRAME

TO: CLERK OF THE SUPREME COURT
Mark Neary, Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625-0006

Kevin D. Walsh, Esquire
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

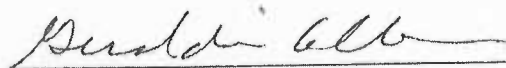
Attached Service List

PLEASE TAKE NOTICE that respondent, Council on Affordable Housing, hereby moves before the Supreme Court of New Jersey, for an Order extending the time frame set forth In Re Adoption of N.J.S.A. 5:96, 215 N.J. 578(2013) until May 1, 2014 to allow the

regulations to be formally proposed and published in the June 2, 2014 New Jersey Register.

PLEASE TAKE FURTHER NOTICE that the Respondent shall rely upon the annexed certification of Richard E. Constable, III, in support of the within motion.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Geraldine Callahan
Deputy Attorney General

Dated: February 26, 2014

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondent,
Council on Affordable Housing
Richard J. Hughes Justice Complex
25 Market Street
PO Box 112
Trenton, New Jersey 08625-0112

By: Geraldine Callahan
Deputy Attorney General
(609) 777-3442
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Attorney ID 030071983

SUPREME COURT OF NEW JERSEY
DOCKET NO.: 67,126

IN RE ADOPTION OF N.J.A.C.
5:96 AND 5:97 BY THE NEW
JERSEY COUNCIL ON AFFORDABLE
HOUSING

Civil Action

CERTIFICATION OF
RICHARD E. CONSTABLE, III

I, Richard E. Constable, III, of full age, hereby
certifies:

1. I am the Commissioner of the Department of
Community Affairs. In that capacity, I am the chairperson of
the Council on Affordable Housing.
2. In its opinion in this matter, the Court recognized
that "[m]ore than thirty years have passed since this Court
outlined a framework through which municipalities could satisfy"
their fair share obligations and "[w]e now have decades of data on

the creation of affordable housing in New Jersey." In re Adoption of N.J.A.C. 5:96, 215 N.J. 578, 606 (2013). The Court noted, among other things, data reflects "general trends in population size and the production of housing units" and significant changes in transportation patterns. Id. at 607-08. Additionally, the "economic collapse of 2008 has had a significant impact on home prices." Id. at 608. Thus, while the Court accepted the Appellate Division's five-month time frame, the Court's opinion also underscores the need to evaluate carefully the available, recent data in developing a third round methodology.

3. Consistent with the Court's opinion, recent, available, and reliable data has been reviewed and continues to be analyzed and evaluated to develop a third round methodology. Those data sources are diverse and varied. They include the 2010 United States Census data and data available from the Department of Labor Workforce Development. Also relevant and subject to the analysis is data concerning building permits and certificates of occupancy. The analysis also includes evaluating data used to develop the prior third round regulations to determine whether and to what extent it can assist or is relevant to the development of the new third round methodology.

4. This data also has been and is being used to project population and household growth. The data was extrapolated to a municipal level to estimate the number of households to be formed.

The data, including data on relative household income by municipality, then allowed for a determination of how many of those households are predicted to be low and moderate income.

5. The United States Census data has been, and continues to be, analyzed to identify deteriorated units that presently are crowded, have incomplete kitchens, and/or have incomplete baths. The identification of these deteriorated units together with United States Census public use microdata sample then permits the determination of the low and moderate income share of those deteriorated units at both a county and municipal level.

6. The databases for certificates of occupancy and demolition allowed for a determination of net housing growth. Information on the secondary sources of supply - filtering, conversions and demolitions - has been, and continues to be, reviewed to determine the effect of those secondary sources on housing availability. Additionally, available land - both vacant and redevelopable - has been, and continues to be, reviewed to determine its effect on housing.

7. The completion of this process will permit calculation of statewide low and moderate income need and affordable housing figures for all municipalities. The affordable housing figures for municipalities, however, is just one step in the rulemaking process. The methodology must then be put in proper regulatory form. Those efforts include not only the new

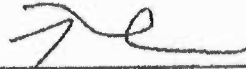
regulations, but also require reviewing the existing regulations, both procedural and substantive, to determine how the new methodology affects them and what changes may need to be made.

8. The new and/or revised regulations also must comply with the substantial requirements of the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq. The APA requires not only the regulations, but also a summary of the regulations, which in this case will be significant given the magnitude of the subject matter, as well as various statements. The schedule for publication in the New Jersey Register must be adhered to as well. Thus, while substantial progress has been made to develop a new third round methodology, considerable work still remains to translate that work into a format that can be published in the New Jersey Register.

9. Substantial progress has been made in terms of the review and analysis of the most current data sources and the crafting of the various components of the proposed methodology incorporating those data sources. That process now must be completed so that affordable housing figures for all municipalities can be generated, translated into regulations, and published in accordance with APA requirements.

10. Accordingly, an extension of time until May 1, 2014 is requested to allow the regulations to be formally proposed and published in the June 2, 2014 New Jersey Register.

I certify that the foregoing statements made by me are true to the best of my knowledge.



Richard E. Constable, III

Dated: February 26, 2014

2014 New Jersey Register Publication Schedule

Publication Day*	Proposal Deadline (Noon)	Adoption Deadline (Noon)	30-Day/60-Day Comment Periods End
January 6, 2014	December 4 (Wednesday)	December 11 (Wednesday)	February 5/March 7
January 21 (Tuesday)	December 18 (Wednesday)	December 26 (Thursday)	February 20/March 22
February 3	January 2 (Thursday)	January 9 (Thursday)	March 5/April 4
February 18 (Tuesday)	January 16 (Thursday)	January 24 (Friday)	March 20/April 19
March 3	January 30 (Thursday)	February 6 (Thursday)	April 2/May 2
March 17	February 13 (Thursday)	February 21 (Friday)	April 16/May 16
April 7	March 7 (Friday)	March 14 (Friday)	May 7/June 6
April 21	March 20 (Thursday)	March 27 (Thursday)	May 21/June 20
May 5	April 3 (Thursday)	April 10 (Thursday)	June 4/July 4
May 19	April 17 (Thursday)	April 25 (Friday)	June 18/July 18
June 2	May 1 (Thursday)	May 8 (Thursday)	July 2/August 1
June 16	May 15 (Thursday)	May 22 (Thursday)	July 16/August 15
July 7	June 5 (Thursday)	June 12 (Thursday)	August 6/ September 5
July 21	June 19 (Thursday)	June 26 (Thursday)	August 20/ September 19
August 4	July 3 (Thursday)	July 11 (Friday)	September 3/ October 3
August 18	July 18 (Friday)	July 25 (Friday)	September 17/ October 17
September 2 (Tuesday)	August 1 (Friday)	August 8 (Friday)	October 2/ November 1
September 15	August 14 (Thursday)	August 21 (Thursday)	October 15/ November 14
October 6	September 5 (Friday)	September 12 (Friday)	November 5/ December 5
October 20	September 18 (Thursday)	September 25 (Thursday)	November 19/ December 19
November 3	October 2 (Thursday)	October 9 (Thursday)	December 3/ January 2
November 17	October 15 (Wednesday)	October 22 (Wednesday)	December 17/ January 16
December 1	October 29 (Wednesday)	November 6 (Thursday)	December 31/ January 30
December 15	November 12 (Wednesday)	November 19 (Wednesday)	January 14/ February 13
January 5, 2015	December 3 (Wednesday)	December 10 (Wednesday)	February 4/March 6
January 20 (Tuesday)	December 17 (Wednesday)	December 24 (Thursday)	February 19/ March 21
February 2	December 31 (Wednesday)	January 8 (Thursday)	March 4/April 3
February 17 (Tuesday)	January 15 (Thursday)	January 23 (Friday)	March 19/April 18

*MONDAY, unless otherwise indicated.