

May 25, 2010

New Jersey Governor Outlines Affordable Housing Plan

Governor Christie of New Jersey held a press conference May 13 in Trenton to outline a "realistic and achievable plan for affordable housing that creates a standards-based, municipally controlled system with minimal involvement from the state." The recommendation included the abolishment of the Council on Affordable Housing and state-imposed affordable housing obligations.

By virtue of rulings in 1975 and 1983 involving the township of Mount Laurel, the New Jersey Supreme Court determined that all New Jersey municipalities have the constitutional obligation to provide for their fair share of affordable housing. This set of rulings, known as the Mount Laurel decisions, ultimately resulted in the New Jersey Legislature's adoption of the Fair Housing Act, the creation of the Council on Affordable Housing ("COAH"), and an increasingly complex and controversial body of regulation and affordable housing allocations. Those regulations and numerical allocations placed the burden of providing affordable housing predominantly on residential and commercial real estate developers, and generated extensive litigation among municipalities, environmentalists, affordable housing advocates, COAH, and developers.

The governor's recent announcement recommends that all municipalities have an obligation to provide an opportunity for affordable housing based on their sole determination of how much additional residential housing their zoning laws will permit. Municipalities are to conduct an inventory of existing affordable housing stock and create a plan to rehabilitate any substandard units. New residential construction will trigger an obligation to provide additional affordable housing, where developments with more than two units must provide for affordable housing. According to the governor's outline, a 1.5 percent development fee can be imposed in lieu of constructing the affordable units for residential developments proposing two to 10 units. Developments with 11 or more units must set aside at least 10 percent of the total units for affordable housing or pay a 2.5 percent development fee. For developments with 11 or more units, the affordable units can be built either on-site or at another location in the municipality if the developer does not opt to pay the 2.5 percent development fee. No obligation is generated for residential developments of less than two units. The commercial development fee of 2.5 percent, which was earlier adopted to help fund affordable housing, is to be repealed. In addition, the recently repealed RCA (regional contribution agreement) has been resurrected to allow for the transfer of funds in lieu of in-town construction of affordable housing units.

A municipality must adopt a master plan that demonstrates how it intends to meet its affordable housing obligations and ensure that residentially zoned vacant land provides for a variety of housing types. The plan must be filed with the Department of Community Affairs. Municipalities that adopt the necessary master plans in accordance with the new standards will enjoy a legal presumption of validity and be protected from challenge. Development fees collected by municipalities to provide for off-site affordable housing must be used within two years of the enactment of the law, and any unspent balances will be transferred to the State Affordable Housing Trust Fund.

According to press accounts, the governor anticipates that a consensus will be reached on his plan by the end of June, as various lawmakers who have sponsored pending affordable housing legislation have been working with the governor's task force, which was created by Executive Order No. 12 earlier in his term.

The governor's recommendation has been met with criticism from environmental groups and affordable housing advocates, but hailed by municipalities who see the current system, including the COAH process, as unreasonable and unduly

burdensome. It is anticipated that any new legislation will be the subject of further extensive litigation.

All property owners and developers in New Jersey should remain abreast of the changing political and regulatory landscape regarding affordable housing, and zoning laws affecting residential and nonresidential development, as significant changes and developments are likely in the upcoming months. We invite property owners interested in affordable housing and zoning regulations and their impact on properties in the state to contact us.