

July 27, 2026

Day Pitney Secures Appellate Victory Preserving Affordable Housing Development and Municipal Infrastructure Commitments

Day Pitney, on behalf of Seta Realty Corp., and Fair Share Housing Center secured a significant victory before the New Jersey Appellate Division against Colts Neck Township., preserving a court-approved affordable housing settlement and reaffirming municipalities' obligations to support infrastructure necessary to create realistic opportunities for affordable housing under New Jersey's Mount Laurel doctrine.

Seta owns property in Colts Neck Township designated for inclusionary development under the Township's court-approved Third Round affordable housing settlement with Fair Share Housing Center. The settlement required the Township to support efforts to obtain sanitary sewer service for the area designated for affordable housing and contribute up to \$2 million toward the extension of sewer infrastructure.

After determining that its originally contemplated sewer connection through a neighboring municipality was no longer feasible, Colts Neck sought to eliminate its obligations relating to the Seta property, including the overlay zoning and its commitment to fund the sewer infrastructure, arguing that those obligations were tied to a durational adjustment waiver that was no longer being pursued. Following a contested Third Round compliance hearing, and various motions, the trial court rejected the Township's argument and ordered that the overlay zoning remain and that the Township was still obligated to commit \$2 million for sewer infrastructure under the settlement agreement. On July 24, 2026, the New Jersey Appellate Division affirmed the trial court's ruling in full, holding that the affordable housing settlement contemplated alternative sanitary sewer providers and connection points and that the failure of one proposed connection did not relieve the Township of its obligations under the settlement agreement.

Significantly, the court reaffirmed that municipalities have an affirmative obligation under the *Mount Laurel* doctrine to facilitate the infrastructure necessary to create a realistic opportunity for affordable housing. The Township argued that it could not be required to expend municipal resources for sanitary sewer based upon a provision of the Fair Housing Act that states, "nothing [in the Act] shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing." N.J.S.A. 52:27D-311(d). The Appellate Division rejected this argument stating that "interpreting this to mean that municipalities do not have to contribute to any affordable housing-related costs would be contrary to established rules and precedent", emphasizing that sewer infrastructure is often essential to making an affordable housing site realistically developable.

The decision preserves Seta's inclusionary development opportunity and confirms that negotiated affordable housing and infrastructure commitments remain enforceable even when implementation circumstances evolve.

Day Pitney represented Seta Realty Corp.. The Day Pitney team was led by partner Craig Gianetti, Co-Chair of the firm's Real Estate, Environmental and Land Use Business Unit and Associate Chelsea Turiano.

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