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NJ Appellate Division Rules in Favor of Day Pitney Client in Builder's Remedy Lawsuit Against Livingston Township

The New Jersey Appellate Division on Friday ruled in favor of Day Pitney client Squiretown Properties, LLC, upholding the award of a builder's remedy against Livingston Township in an affordable housing litigation. Day Pitney Partner Craig M. Gianetti, who represented Squiretown Properties at the trial court level, successfully defended against the appeal by Livingston Township, which sought to have the trial court's award of a builder's remedy overturned.

Squiretown Properties, along with two other developers, sued Livingston Township in November 2007 for failing to comply with its affordable housing obligation. The original Council on Affordable Housing (COAH) third round regulations had been invalidated earlier that year, and COAH was in the process of adopting new regulations. A fourth developer, Hillside-Northfield Partners, joined the suit in 2008.

After several motions and a trial in 2010, the trial court awarded Squiretown Properties a builder's remedy for 220 apartments with 20 percent set aside for affordable housing. Hillside-Northfield was also awarded its own builder's remedy.

On appeal, Livingston argued that the builder's remedy should not be awarded to Squiretown Properties because (1) Livingston remained in compliance with its adjusted second round obligation, (2) the need for builder's remedies has waned in light of today's realities and subsequent case law since the original Mount Laurel decision, and (3) the Squiretown site was not appropriate for a higher density, multi-family development. Livingston also challenged the award of a builder's remedy to Hillside-Northfield.

In a 52-page decision, the Appellate Division rejected all of Livingston's arguments and upheld the award of a builder's remedy.

"This was not only a great victory for our client, but a great victory for developers and affordable housing advocates in New Jersey," said Gianetti. "This decision stands for a few important things: builder's remedies are alive and well despite the chaos with COAH and its regulations; towns that received vacant land adjustments in the second round still have a responsibility in the third round to address that obligation, including 'unmet need'; and there are a number of towns in New Jersey that have still not prepared an affordable housing plan for the third round, or second round for that matter, and remain susceptible to a builder's remedy suit."

About Day Pitney

Day Pitney LLP is a full-service law firm with 300 attorneys in Boston, Connecticut, New Jersey, New York, and Washington, DC. The firm offers clients strong corporate and litigation practices, with experience on behalf of large national and international corporations as well as emerging- and middle-market companies and individuals.