

**SIGNIFICANT DECISION ISSUED IN OCEAN COUNTY AFFORDABLE  
HOUSING LITIGATION**

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On February 18, 2016, the Honorable Mark A. Troncone, J.S.C., issued a ruling in the consolidated *Mount Laurel* declaratory judgment lawsuits involving Ocean County municipalities which decision is being heralded by fair share advocates and developers as both positive and significant. As characterized by the Court, the primary issue was whether the Court had the authority to impose an obligation upon municipalities to satisfy the affordable housing need which arose from 1999 to the present, the so-called “gap” which started at the end of the second round housing cycle and continued through 2015.

The Ocean County fair share litigation arose as a result of the New Jersey Supreme Court’s March 10, 2015 decision *In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015)*, which returned to the courts the determination of municipal compliance under the *Mount Laurel* doctrine. As a result, trial courts throughout New Jersey are faced with the challenge of determining municipalities’ fair share of the statewide and regional affordable housing demand. Although the Supreme Court gave some guidance regarding the methodology to be followed in establishing overall need and fair share numbers, many issues relative to those undertakings remain unresolved. Among these issues is the question addressed by Judge Troncone.

The Court was required to decide whether the municipalities were correct in their assertions that the “gap” period demand need not be calculated because it was not contemplated under controlling statutes or regulations, that a rational methodology to calculate the “gap” period need cannot be lawfully established and that the “gap” period

demand would be reflected in present need or whether Fair Share Housing Center (FSHC) and New Jersey Builders Association (NJBA) and others were correct that the housing demand of the “gap” period cannot be ignored, that a methodology can be established to ascertain that demand and that the demand must be reflected in the municipality’s fair share obligation.

Judge Troncone largely accepted the arguments of FSHC and the NJBA finding that the affordable housing need which arose during the gap period can be calculated and must be included in municipality’s third round cycle fair share number. The Judge also issued rulings with regard to the “1,000 unit cap” whereby limitations are placed upon the maximum affordable housing obligation that any municipality can be required to satisfy during a 10-year period affordable housing cycle. The Court addressed the interplay between the “gap” period obligation and the applicability of the 1,000 unit cap and also determined that there may be an opportunity for municipalities to “defer” up to one-half of their “gap” period need to a future round which would commence following the expiration of the third round in 2025.

While the Judge’s rulings are technically only binding within Ocean County and in the consolidated litigation, many judges throughout the state will likely look to Judge Troncone’s ruling on the “gap” period issue as each of these judges attempt to resolve the numerous issues that will have to be addressed in the determination of fair share obligations for each municipality.