

AFFORDABLE HOUSING TIMELINE

1975: So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975) (**Mount Laurel I**) decided. The N.J. Supreme Court decided that developing municipalities that use the State's zoning power, given to the State by the N.J. Constitution and delegated by the Legislature to municipalities by the Municipal Land Use Law, must use the zoning power for the general welfare, not just for the welfare of the individual towns. The Court found that the only kind of housing realistically permitted in most towns consisted of relatively high-priced, single-family detached dwellings on sizeable lots.

The Court required towns to act "in the spirit we have suggested, both by appropriate zoning ordinance amendments and whatever additional action encouraging the fulfillment of their fair share of the regional need for low and moderate income housing may be indicated as moral and advisable." The Court warned that should towns not perform as it expected, further judicial action would be forthcoming.

1983: So. Burlington Ct. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) (**Mount Laurel II**) decided. Eight years after Mt. Laurel I, the N.J. Supreme Court found that towns were not complying with its Mt. Laurel I requirements, and implemented a court-administered program to require towns to accept their "fair share" of the State's affordable housing needs. In particular, the Court permitted "builders' remedy" lawsuits, in which builders are encouraged to sue municipalities to force compliance. The essence of a builder's remedy is that the builder gets to build more units at higher density in a non-compliant town, in the location where the builder wants, not where the town might want. A portion of the builder's units is required to be affordable to persons of low and moderate income.

1983-86: Mount Laurel II unleashes a flood of over 100 Mount Laurel suits. Branchburg Township is the first to be sued.

1984: Judge Serpentelli, the judge assigned to assess many towns' compliance, including Branchburg's, addresses the method for determining a municipality's fair share allocation and holds that Warren Township is obligated to provide 946 dwelling units for the period of 1980 through 1990. AMG v. Warren, 207 N.J. Super. 388 (Law Div. 1984), later partially disapproved by In re Twp. of Warren, 132 N.J. 1 (1993).

1985: The New Jersey Fair Housing Act ("FHA"), N.J.S.A., 52:27D-301 et seq., enacted, effective July 2, 1985. The purpose is to replace the court-administered Mt. Laurel system with a State administrative agency, intended to be more efficient.

February 20, 1986: Hills Dev. Co. v. Bernards Twp., 103 N.J. 1 (1986)(referred to by some as **Mount Laurel III**) upholds the constitutionality of FHA and orders transfer of most pending builders' remedy suits to COAH's jurisdiction.

August 4, 1986: COAH adopts First Round Rules addressing affordable housing need for 1987 through 1993. N.J.A.C. 5:92-2 through -5 and Appendix A, 18 N.J.R. 1527-1548 (Aug. 4, 1986). COAH uses a methodology substantially similar to that used by Judge Serpentelli in AMG v. Warren.

1993: The Supreme Court invalidates COAH occupancy preference that would have allowed municipalities to set aside 50% of fair share housing for low and moderate income people who live and work in the municipality, and finds a 1000 unit cap on housing inconsistent with FHA. In re Twp. of Warren, 132 N.J. 1 (1993)(partially disapproving of methodology in AMG v. Warren).

1993: The Legislature amends the FHA. N.J.S.A. 52:27D-307(e)(generally capping affordable obligations at 1000 units per ten years).

June 6, 1994: COAH adopts Second Round Rules, addressing cumulative need for 1987 through 1999. N.J.A.C. 5:93, Appendix A. Effective June 6, 1994 through June 6, 1999.

May 1999: COAH readopts second round substantive rules establishing an expiration date of May, 2004. In Re Six Month Extension, infra, 372 N.J. Super. at 74.

June 6, 1999: Third Round Rules are due from COAH.

2004: New Jersey's intermediate court, the Appellate Division, characterizes COAH's delay in enacting Third Round Rules as frustrating the public policies embodied in the Mount Laurel line of cases and warns that it may "free interested parties from the constraints" of the administrative process. In re Six Month

Extension of N.J.A.C. 5:91, 372 N.J. Super. 61, 95-96 (App. Div. 2004), certif. denied. 182 N.J. 630 (2005).

December 20, 2004: COAH adopts a set of Third Round Rules calculating affordable housing needs from 1999 to 2014 and establishing criteria for meeting the needs between 2004 and 2014. N.J.A.C. 5:94 and 5:95; 36 N.J.R. 5748(a).

January 25, 2007: **The** Appellate Division affirms a portion of COAH's Third Round methodology, but invalidates other aspects of the Third Round Rules, i.e., the "growth share" methodology. In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super 1, 86-87 (App. Div.), certif. denied, 192 N.J. 71 (2007).

January 22, 2008: COAH proposes a revised set of Third Round Rules, generating over 5000 comments. 40 N.J.R. 237(a)(Jan. 22, 2008); 40 N.J.R. 515(a)(Jan. 22, 2008).

May 6, 2008: COAH adopts revised Third Round Rules essentially as proposed. N.J.A.C. 5:96 (procedural rules); N.J.A.C. 5:97 (substantive rules). Rules are published in the June 2, 2008 New Jersey Register. 40 N.J.R. 2690. They calculate the State's affordable housing needs from January 1, 1999 through December 31, 2018.

July 17, 2008: Effective this date, amendments to the FHA eliminate Regional Contribution Agreements, N.J.S.A. 52:27D-312, among other changes.

September 22, 2008: COAH adopts amendments to the Third Round Rules, effective October 20, 2008.

February 2010: Gov. Christie issues Executive Order Number 12 establishing a task force to review existing affordable housing laws, assess COAH's continued existence, and issue a report within 90 days.

March 19, 2010: The Task force issues its report and concludes that there should be a new model for affordable housing.

October 8, 2010: **The** Appellate Division concludes that COAH's revised Third Round Rules suffer from "many of the same deficiencies as the original Third Round Rules" and invalidates

substantial portions of COAH's second set of Third Round Rules. In re Adoption of N.J.A.C. 5:96 & 5:97, 416 N.J. Super. 462 (App. Div. 2010).

June 29, 2011: Gov. Christie issues Reorganization Plan No. 001-2011, which abolishes COAH and transfers its functions to the Department of Community Affairs ('DCA').

August 1, 2011: Effective date of order abolishing COAH.

July 10, 2013: The Supreme Court holds that the Governor has no authority to abolish COAH. In re Plan for Abolition of Council on Affordable Housing, 214 N.J. 444 (2013).

September 26, 2013: The Supreme Court affirms the Appellate Division's invalidation of the Third Round rules and directs COAH to adopt rules by February 26, 2014. In re Adoption of N.J.A.C. 5:96 and 5:97, 215 N.J. 578 (2013).

February 26, 2014: COAH moves for an extension of time to promulgate Third Round Rules.

March 14, 2014: The Supreme Court grants COAH's motion for an extension for enacting the Third Round Rules and orders that if COAH does not adopt Third Round Rules by November 17, 2014, the Court will entertain applications for relief, including requests to lift the protection provided to municipalities through the Fair Housing Act. In re N.J.A.C. 5:96 and 5:97, 220 N.J. 355 (2014).

April 30, 2014: COAH's Board meets and votes to introduce new Third Round Rules.

June 2, 2014: Proposed Third Round Rules addressing Statewide affordable housing need from 1999 to 2024, and prospective need from 2014 to 2024, are published in the New Jersey Register. 46 N.J.R. 912(a)-1051 (June 2, 2014).

October 20, 2014: COAH members split 3-3 on the adoption of the proposed Third Round Rules, and they are not adopted.

March 10, 2015: The Supreme Court sets up declaratory judgment process for evaluating constitutional compliance. In re Adoption

of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing,
221 N.J. 1 (2015)(sometimes called **Mount Laurel IV**).

June 8, 2015: Effective date of Mount Laurel IV.

July 8, 2015: Deadline for filing the declaratory judgment actions authorized by Mount Laurel IV.