

January 18, 2017

Re: Supreme Court issues Gap Ruling

Dear Mayor,

The New Jersey Supreme Court has issued its decision on the gap issue. *See [In Re Declaratory Judgement Actions filed by Various Municipalities, County of Ocean, Pursuant to the Supreme Court's Decision in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 \(2015\)](#)*, Docket No. 077565 (2017). The Court has affirmed, in part, and reversed, in part, the decision of the Appellate Division and may have expanded the Mount Laurel doctrine to include, with some important exceptions, low and moderate income (LMI) households created during the 16 year gap period.

By way of background, this past summer the Appellate Division [held](#) that municipalities were not responsible to zone for a “separate and discrete” amount of LMI households created during a 16 year gap, during which COAH did not promulgate substantive third round regulations. Rather, the only portion of those households that would be zoned for would be “present need,” i.e. LMI households living in crowded or substandard housing. In doing so, the Appellate Division focused on a clear reading of the Fair Housing Act and applicable regulations.

Today, the Court may have expanded the Mount Laurel doctrine, beyond the plain language of the FHA and applicable regulations, to redefine “present need” to include, in addition to substandard or crowded units, a “component that addresses the affordable housing need of presently existing New Jersey [LMI households], which formed during the gap period.” *Slip. op.* at 31. However the courts also put limits on calculating this component, by directing that, “the trial courts must take care to ensure that the present need is not calculated in a way that includes persons who are deceased, who are income-ineligible or other are no longer eligible for affordable housing, or whose households may be already captured through the historic practice of surveying for deficient housing units within the municipality.” *Id.*

We urge that you review this decision with your municipal attorney. A copy can be found [here](#). The League will provide more detailed analysis on this issue over the coming days and weeks.

[Please click here for the League's press statement.](#)

If you have any questions regarding this notice, please contact Mike Cerra, Assistant Executive Director, at (609) 695-3481 x. 120 or [mcerra@njslom.org](mailto:mcerra@njslom.org)

Sincerely,

Michael J. Darcy, CAE  
Executive Director

*Posted: 01/18/2017*