**FAIR SHARE HOUSING CENTER EMPLOYS FULL COURT PRESS**

**ON NEW JERSEY MUNICIPALITIES**

New Jersey municipalities have been digesting our Supreme Court’s latest ruling, which now has our Courts substituting in the role of the Council on Affordable Housing (COAH). 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). Now, they may have a bigger problem. Fair Share Housing Center (FSHC) has appointed itself the *de facto* statewide enforcer of the Mount Laurel Doctrine and the non-profit appears highly motivated to seek results.

Starting with the very first trial court decision on five-month temporary immunity (in Monroe Township, Middlesex County), FSHC has unveiled its plan to litigate and compel municipalities to get everything accomplished to meet the Supreme Court’s directives within 150 days. FSHC wants municipalities to calculate their own respective fair share obligation and adopt a housing element and fair share plan, all within five (5) months.  In pursuing this fast-track compliance, FSHC has filed (or threatened) motions to intervene in a plethora of declaratory actions filed by municipalities, particularly those in which municipalities are requesting for the Supreme Court’s “five-month clock” to commence after the municipal fair share obligation is determined by the trial court.

Where it has elected to intervene, FSHC is pushing its own projected fair share calculation for municipalities, prepared by David Kinsey, P.P., whose has been a long-time critic of COAH and, to this author’s recollection, has made claims that COAH has long underestimated the need for affordable housing in New Jersey. FSHC’s projected affordable housing numbers have caused bewilderment in the municipal community. The disparity between FSHC’s numbers and municipal projections (from this author’s particular experience in representing two municipalities on motions for temporary Mount Laurel immunity) is so significant that compromise is not part of the conversation.

Complicating the Mount Laurelroadmap further, FSHC has supplemented its intervention motions with counterclaims against municipalities pressing for an entirely new remedy that any violation of the Mount Laurel Doctrine implicates a corresponding violation of the New Jersey Civil Rights Act, entitling the affordable non-profit to attorney’s fees as a prevailing party.

In the unpublished opinion of In the Matter of the Application of Borough of Pine Beach, County of Ocean*,* (Docket No. OCN-L-1687, decided August 7, 2015), this particular issue was adjudicated for the first time. The trial court judge concluded that if the granting of temporary immunity from builder’s remedy litigation (as contemplated by our Supreme Court) is to have any meaning, no counterclaim may be pursued at this time by FSHC (or any other third-party) for constitutional violations under the New Jersey Civil Rights Act.

However, the trial court in Pine Beach did not rule out the possibility of attorney-fee shifting liability to municipalities in the event temporary Mount Laurel immunity later expires or is pierced by a successful litigation attack. The genesis of this new potential litigation tool of FSHC is the New Jersey Supreme Court’s decision last year in Tumpson v. Farina, 218 N.J. 450 (2014). In this very important, yet less heralded opinion, our Supreme Court held that a violation of a substantive right under New Jersey’s Constitution amounts to a violation of the New Jersey Civil Rights Act. In Tumpson, the Supreme Court found that a municipal clerk’s improper denial of a referendum petition violated a resident’s substantive rights under the New Jersey Constitution and warranted the imposition of attorney’s fees against the municipality.

The underpinnings of the Mount Laurel Doctrine stem directly from our Supreme Court’s interpretation of the New Jersey Constitution guaranteeing the right of citizens to pursue a realistic opportunity for affordable housing. If this legal issue is successfully litigated by FSHC, New Jersey municipalities may be susceptible to a floodgate of new Mount Laurel litigation. A new incentive will exist to pursue such lawsuits by developers and affordable non-profits.

Particularly vulnerable would be remote and lesser developed municipalities, which have relied upon fortuitous demographics (e.g. lack of public sewer and/or outside path of State’s targeted growth areas) to not pursue Mount Laurel compliance. Other municipalities, pursuing declaratory relief for temporary immunity to amend their housing plans, should be aware that if their efforts at adopting a compliance plan fall short of the constitutional mark, they could be paying the legal fees for both sides.