
BISGAIER HOFF

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Bisgaier Hoff Upcoming Events

Representatives of Bisgaier Hoff will be available to answer your questions at this year's 63rd Annual Atlantic Builders Convention being held at the Atlantic City Convention Center from March 28-30, 2012. Stop by Booth 832 and see us.

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Municipalities Are to Continue Providing Affordable Housing Despite the Existing "Void" in the Law Quantifying the Post-1999 Fair Share Obligation

On March 14, 2012, the Appellate Division issued an unreported decision [\[available here\]](#) which requires municipalities to address their post-1999 fair share obligations, while recognizing that those obligations are currently undefined. As stated by the Appellate Division:

COAH has yet to adopt amended third round rules and thus there is no "present law" to apply in place of the rules invalidated [by the Appellate Division in an earlier decision]. However, in the face of this void, doing nothing is simply not an option. We cannot see how the goals of the [Fair Housing Act] are advanced by declining to reevaluate a certification decision[] made by COAH under rules subsequently deemed antithetical to those goals. This is not a mere academic conundrum. [Opinion at 25-26 (emphasis added)].

The Appellate Division then determined that, on the specific facts of the case, the municipality had effectively cured its defective Fair Share Plan, which relied in part upon a so-called phantom site, by purchasing a suitable property to construct an affordable housing project needed to address its fair share obligation. As a result, the municipality was no longer relying upon the "amorphous plan" that COAH had granted substantive certification but had, in fact, created a realistic opportunity for the housing. The Court also made clear that the municipality will be required to address any increases in its fair share obligation when revised regulations are adopted in the future.

The decision may affect developments across the State because it suggests that the common municipal strategy of delaying the implementation of needed affordable housing may not withstand judicial scrutiny.

News from Bisgaier Hoff, LLC - NJDEP Waiver Rule

Robert Kasuba, now with Bisgaier Hoff, LLC, represented the Appellant, Valley National Bank, in the appeal. The caption of the decision is In re Grant of Substantive Cert. to Readington Twp., Hunterdon County by the New Jersey Council on Affordable Housing, Docket No. A-1046-09T2.

Please contact Bisgaier Hoff, LLC at (856)795-0150 if you have any questions regarding this decision.

The Bisgaier Hoff newsletter is provided as general information about the firm and current events/issues pertaining to land use and the construction industry. Although this information may be considered advertising under the rules of some courts, this newsletter is not intended to advertise our legal services, to solicit clients, or to provide legal advice.