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FOR IMMEDIATE RELEASE

January 25, 2007

COURT FINDS STATE'S NEW AFFORDABLE HOUSING RULES UNCONSTITUTIONAL

Court gives Council on Affordable Housing six months to comply with Mount Laurel; major victory for state's low and moderate-income families

Trenton, New Jersey- In a sweeping 127-page ruling released today, the Appellate Division of the New Jersey Superior Court invalidated the state Council on Affordable Housing (COAH)'s new Third Round rules for determining how towns comply with their Mount Laurel affordable housing obligations. Responding to appeals brought by Fair Share Housing Center (FSHC) and three other organizations, the court found that COAH had watered down towns' affordable housing obligations through bogus calculations, arbitrary rules, and unconstitutional changes. In total, the Court found that COAH eliminated 100,000 affordable housing units without adequate reasoning—units that, if put back on the table, could meet Gov. Corzine's goal of providing 100,000 affordable housing units statewide.

The court put on hold the 297 current Mount Laurel proceedings in the state, before both COAH and state courts. COAH now has six months to come up with new rules in line with the court's opinion.

"The court sent a clear message to Susan Bass Levin and COAH: it's time to stop evading New Jersey's responsibility to provide affordable housing, and time to start getting shovels in the ground for the housing that low and moderate income families throughout the state want and need," FSHC Executive Director Peter J. O'Connor said.

"Gov. Corzine now has an opening to move forward with new Mount Laurel rules that will accomplish his goals of providing 100,000 units of affordable housing statewide. We urge him to seize this opportunity."

Fair Share Housing Center urges Gov. Corzine, Commissioner Bass Levin, and COAH to respond to the court's decision with a timely, good faith plan to meet New Jersey's affordable housing needs. Fair Share warned that without such a fair and rapid resolution, mayors could face years of continued litigation and uncertainty over their affordable housing obligations.

"The court rejected COAH's efforts to reverse three decades of progress," Colandrus "Kelly" Francis, President of the Camden County Branch of the NAACP, an original plaintiff in the Mount Laurel case, said. "Mayors and working families should call on Gov. Corzine to develop an affordable housing plan that works for New Jersey."

The decision fundamentally repudiates COAH's flawed approach to providing affordable housing in New Jersey. Among the key holdings in the case:

- **COAH eliminated 100,000 affordable housing units without adequate justification.** The court found that COAH had reduced affordable housing requirements by relying on flawed studies and inexplicable calculations. The court ordered COAH to go back and recalculate the need for affordable housing in New Jersey, requiring changes to the following provisions:
 - COAH relied on a 1990 study marked "draft – not for citation" to conclude that nearly 60,000 New Jersey families in need of housing would get housing through "filtering" – the process of existing housing becoming cheaper over time. The court noted Fair

- Share's argument that existing housing in New Jersey has rapidly increased in price, not decreased.
- The court noted its agreement with appellants' argument that COAH's recalculation of affordable housing obligations from the past "defies comprehension." Over 17,000 homes were eliminated through a mysterious process that COAH never explained.
 - COAH changed its regulations through an ad hoc announcement by its Executive Director at a board meeting, affecting 23,000 homes. The court held that agencies could not simply declare new regulations without an opportunity for the public to comment, and declared COAH's changes "moot."
- **COAH's "growth share" approach, the backbone of its Third Round, is unconstitutional; towns cannot get out of their duty to provide affordable housing through downzoning property.** COAH's rules allowed every town in New Jersey to decide whether or not to provide affordable housing based on its decisions about growth. That meant that if towns did not want to provide affordable housing, they could get out of doing so by changing their zoning code. The court agreed with Fair Share Housing Center and other appellants, who argued that such exclusionary practices violated the core holdings of the Supreme Court's Mount Laurel decisions.
 - **Towns cannot exclude families with kids from half of their Mount Laurel housing.** COAH had proposed allowing towns to satisfy half of their Mount Laurel obligation with age-restricted housing that bans kids. The court found that this rule "discriminates against low- and moderate-income households with children."
 - **COAH has six months to come up with new regulations for every town in New Jersey.** The court found the existing regulations invalid and required COAH to come up with new regulations, with a strict deadline of six months. In the interim, the court put on hold COAH's reviews of plans for meeting town's fair share obligations, as those plans were based on the methodology the court held as flawed.

While the decision provides a historic victory for people who need affordable housing in New Jersey, FSHC noted that it disagreed with some aspects of the decision and a companion case released today. The decision did not ban controversial Regional Contribution Agreements, a loophole allowing one town to pay another town to take its affordable housing obligation. However, the decision explicitly mentioned that appellants could challenge particular agreements, which will likely lead to court dates later in 2007 for three FSHC challenges to particular deals between towns as violating state law.

"Regional Contribution Agreements are the worst enemy of inner cities. Cities get short-term cash, but the long-term impact of having affordable housing only in cities like Camden is to make cities more distressed," said Francis. "This case provides an opportunity for the Supreme Court or the Legislature to take another look at ending RCAs."

Also, the companion case upheld the provision of little or no housing to households making below 40 percent of median income, roughly \$25,000 for a family of three. These families receive little or no benefit from current Mount Laurel housing. FSHC indicated that it is reviewing its options and may appeal these adverse decisions to the New Jersey Supreme Court.

Fair Share Housing Center, founded in 1975, is the only public interest organization devoted entirely to defending the housing rights of New Jersey's poor through implementing the Mount Laurel doctrine.

The decision and companion case are available on the state judiciary's website at <http://www.judiciary.state.nj.us/opinions/index.htm>.

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