

SUPREME COURT OF NEW JERSEY

In re the Adoption of N.J.A.C.

220 N.J. 355 (2014) · No. M-847-13; M-848-13 · Decided March 14, 2014

SUMMARY

The New Jersey Supreme Court grants the Council on Affordable Housing an extension to prepare and formally approve proposed Third Round Rules. The order establishes deadlines for publication, public comment, adoption, and transmission of the rules, and provides for possible enforcement relief if the rules are not adopted by the specified deadline. The Court vacates an Appellate Division order, retains jurisdiction to enforce its prior judgment, and dismisses the Council's stay motion as moot.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Per curiam; Justice LaVecchia; Justice Patterson; Justice Fernandez-Vina; Judge Rodriguez; Judge Cuff
JURISDICTION	New Jersey
DECIDED	March 14, 2014
DOCKET	M-847-13; M-848-13
DISPOSITION	other
PROCEDURAL POSTURE	The Council on Affordable Housing moved for an extension of the five-month period imposed by the Supreme Court for promulgating Third Round Rules and separately moved to stay an Appellate Division order.
PRECEDENTIAL VALUE	Published New Jersey Supreme Court opinion and order

TOPICS

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QUESTIONS PRESENTED

1. Whether the Council on Affordable Housing should receive an extension of the deadline to prepare and formally approve proposed Third Round Rules.

2. What conditions and schedule should govern the Council's extended rulemaking period.
3. Whether the Council's motion to stay the Appellate Division's March 7, 2014 order remained justiciable.
4. Whether the Appellate Division's March 7, 2014 order should remain in effect.

HOLDINGS

1. The Council on Affordable Housing was granted an extension to complete and formally approve proposed Third Round Rules, subject to specified deadlines for publication, public comment, adoption, and transmission of the adopted rules to the Office of Administrative Law.
2. If the Council did not adopt the Third Round Rules by November 17, 2014, the Court would entertain applications for relief, including a request to lift statutory protection for municipalities and permit case-by-case actions or builders-remedy challenges.
3. The Council's motion to stay the March 7, 2014 Appellate Division order was dismissed as moot.

KEY QUOTATIONS

"The Council shall adopt the proposed Third Round Rules on or before October 22, 2014, and transmit the adopted Third Round Rules to the OAL to permit publication of the adoption notice in the November 17, 2014, edition of the New Jersey Register." (356)

"The publication of the proposed rules shall commence the following schedule, pursuant to which the Council shall complete the adoption process:" (356)

"It is further ORDERED that the Appellate Division Order filed March 7, 2014, is vacated in its entirety;" (357)

FACTUAL BACKGROUND

The Council on Affordable Housing was responsible for preparing and formally approving new Third Round Rules pursuant to the Supreme Court's prior decision. Its chairman certified that the Council needed additional time but would approve proposed rules by May 1, 2014, for publication in the New Jersey Register. The Court considered the Council's motion, the parties' responses, and the related motion to stay the Appellate Division's order.

PROCEDURAL HISTORY

In an earlier decision, the Supreme Court directed the Council on Affordable Housing to promulgate new Third Round Rules within five months. The Council sought additional time based on its chairman's certification that proposed rules would be prepared and approved for publication by May 1, 2014. The Court granted the extension subject to a detailed rulemaking schedule, vacated the Appellate Division's March 7, 2014 order, retained jurisdiction to enforce its judgment, and dismissed the stay motion as moot.

DISPOSITION

other

CASES CITED

- In re Adoption of N.J.A.C. 5:96 and 5:97, 215 N.J. 578, 74 A.3d 893 (2013)

OPINION

PER CURIAM.

ORDER This matter having come before the Court on motion by the Council on Affordable Housing (Council) seeking an extension of time (M-847-13) from the five-month period for the promulgation of Third Round Rules that this Court directed as part of its holding in In re Adoption of N.J.A.C. 5:96 and 5:97, 215 N.J. 578, 74 A.3d 893 (2013); and The Council having submitted the sworn certification of its Chairman, the Commissioner of Community Affairs, Richard E. Constable, III, see N.J.S.A.

52:27D-305; and The Chairman, having informed this Court that work has progressed on the development of new Third Round Rules so that he has certified, based on personal knowledge, that a proposed set of Third Round Rules will be approved by the Council by May 1, 2014, or earlier, for publication in the New Jersey Register, as prescribed in the Administrative Procedure Act (APA), N.J.S.A.

52:14B-1 to-15; and This Court having accepted the representation of the Council, certified by its Chairman, that the Council requires additional time to complete its preparation and formal approval of new proposed Third Round Rules for publication; and The Court further having accepted the representation of the Council, certified by its Chairman, that the Council will complete its preparation of a Third Round Rules proposal and will approve for publication the proposed new Third Round Rules by May 1, 2014; and The Court having also received and considered the answers submitted by the other parties in response to the Council's motion *356for an extension of time as well as the moving papers and answers filed in connection with the Council's motion for stay (M-848-13); Therefore, it is ORDERED that the motion for an extension of time, is granted, subject to the following conditions: The Council shall, by May 1, 2014, complete its actions preparing and formally approving the proposed Third Round Rules as required by this Court's decision in In re Adoption of N.J.

AC. 5:96 and 5:97; The Council shall promptly forward the proposed rules to the Office of Administrative Law (OAL), in accordance with the OAL's Rule Publication Schedule, available at <http://www.state.nj.us/oal/rules/schedule/>, so that the proposed rules are published in the June 2, 2014, edition of the New Jersey Register, The publication of the proposed rules shall commence the following schedule, pursuant to which the Council shall complete the adoption process: The comment period shall extend to August 1, 2014, during which time the Council shall conduct a public hearing, if such a request is made to the Council within thirty (30) days following publication of the proposed Third Round Rules in the New Jersey Register; and The Council shall

adopt the proposed Third Round Rules on or before October 22, 2014, and transmit the adopted Third Round Rules to the OAL to permit publication of the adoption notice in the November 17, 2014, edition of the New Jersey Register.

The adopted Third Round Rules transmitted to the OAL shall be accompanied by a report prepared by the Council listing all parties offering written or oral comments concerning the proposed Third Round Rules, summarizing the content of all comments and' submissions, and providing the Council's response to the data, views, and argument contained in the submissions as required by N.J.S.A 52:14B-4(a)(4).

It is further ORDERED that in the event that the Council does not adopt Third Round Rules by November 17, 2014, then this Court will entertain applications for relief in the form of a motion in aid of litigants' rights, including but not limited to a request to lift the protection provided to municipalities through N.J.S.A. 52:27D-313 and, if such a request is granted, actions may be commenced on a case-by-case basis before the Law Division or in the form of "builders remedy" challenges; and It is further ORDERED that the Appellate Division Order filed March 7, 2014, is vacated in its entirety; and It is further ORDERED that from this date the Court is retaining jurisdiction for the sole purpose of entertaining any and *357all future applications to enforce the judgment of this Court requiring the adoption of new Third Round Rules as prescribed in our decision in In re Adoption of N.J.

AC. 5:96 and 5:97 and the terms of this Order; and It is further ORDERED that the motion by the Council for a stay (M-848-13) of the March 7, 2014, Order of the Appellate Division, is dismissed as moot. Justices LaVECCHIA, PATTERSON, and FERNANDEZVINA, and Judges RODRIGUEZ and CUFF (both temporarily assigned) join in this Order. Justice ALBIN filed a dissent.

Chief Justice RABNER did not participate.