

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

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.