

**TOWNSHIP OF MOORESTOWN**

**RESOLUTION NO. 130-2015**

**DECLARING ITS INTENT TO FULLY COMPLY WITH ITS  
CURRENT AND FUTURE MOUNT LAUREL OBLIGATIONS AND  
TO SERVE AS THE "CATALYST FOR CHANGE" TO RENDER ANY  
MOUNT LAUREL LAWSUITS AS "UNECESSARY LITIGATION"**

**WHEREAS**, in So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158, 279-80 (1983) ("Mount Laurel II"), the New Jersey Supreme Court ruled, subject to several other limitations, that in order for a plaintiff to be entitled to a builder's remedy, it must "succeed in litigation;" and

**WHEREAS**, in Toll Bros. Inc. v. Tp. of W. Windsor, 173 N.J. 502, 507 (2002), the Supreme Court ruled that in order for a developer to succeed in litigation, it must not only prove that the municipality failed to create a realistic opportunity to satisfy its affordable housing obligation, but also must be the "catalyst for change;" and

**WHEREAS**, on September 26, 2013, the Supreme Court released In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 215 N.J. 578 (2013) which invalidated the Third Round regulations adopted in 2008 by the New Jersey Council on Affordable Housing ("COAH"); and

**WHEREAS**, on March 14, 2014, the Supreme Court issued an order directing COAH to propose new Third Round regulations on or before May 1, 2014 and to adopt them by October 22, 2014; and

**WHEREAS**, the March 14, 2014 Order further provided that, if COAH failed to meet these deadlines, the Court would entertain a Motion-in-Aid-of-Litigant's-Rights which could include an application for the right, on a case-by-case basis, to file a builder's remedy suit against a municipality under COAH's jurisdiction, such as the Township; and

**WHEREAS**, on April 30, 2014, in accordance with the March 14, 2014 Order, COAH proposed Third Round regulations and published them in the New Jersey Register on June 2, 2014; and

**WHEREAS**, pursuant to these proposed regulations, COAH assigned the Township a fair share consisting of a 40-unit rehabilitation obligation, a 606-unit prior round obligation for which the Township had received substantive certification, an unanswered obligation of 230 units covering the 1999-2014 time period, and a prospective obligation of 156 units for the time period 2014 to 2024; and

**WHEREAS**, COAH accepted public comments on the proposed Third Round regulations until August 1, 2014, and indeed received roughly 3,000 comments; and

**WHEREAS**, on October 20, 2014, the COAH board met to consider adopting the proposed regulations; and

**WHEREAS**, the COAH board reached a 3-3 deadlock and therefore did not adopt the proposed regulations; and

**WHEREAS**, COAH therefore failed to meet the Supreme Court's October 22, 2014 deadline; and

**WHEREAS**, COAH's failure to adopt the proposed regulations has left the Township in a continuing state of uncertainty despite its unwavering commitment to constitutional compliance with the Mount Laurel Doctrine without the need for litigation; and

**WHEREAS**, on October 31, 2014, Fair Share Housing Center ("FSHC") filed a Motion-In-Aid-of-Litigant's-Rights urging the Supreme Court, among other things, to direct trial judges instead of COAH to establish standards with which municipalities must comply; and

**WHEREAS**, FSHC's motion included an alternative fair share calculation for each municipality, which it subsequently revised pursuant to the report of its expert, David N. Kinsey, PhD, FAICP, dated April 16, 2015, further highlighting the uncertainty of the framework with which municipalities must ultimately comply because there are no standards with which to comply; and

**WHEREAS**, pursuant to alternative calculations furnished by FSHC in April of 2015, the Township of Moorestown would have an obligation consisting of a 40 unit rehabilitation obligation, a 621 unit prior round obligation, and a 1,477 unit Third Round obligation subject to a 1,000 unit limit under certain circumstances; and

**WHEREAS**, on March 10, 2015, the Supreme Court issued a decision entitled In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), in which it (1) found that COAH had violated its March 14, 2014 Order by failing to adopt new Third Round regulations by October 22, 2014, (2) held that, without new Third Round regulations, COAH could not process petitions for substantive certification for the 314 municipalities currently under COAH's jurisdiction, (3) directed trial courts to assume COAH's functions, (4) authorized municipalities under COAH's jurisdiction to file a Declaratory Judgment Action along with a motion for Temporary Immunity by July 8, 2015, or risk exposure to exclusionary zoning lawsuits and (5) ruled that municipalities would have five months to prepare and file a Housing Element and Fair Share Plan with a trial court for review; and

**WHEREAS**, trial courts must now (1) calculate the "fair share" obligations for Third Round and establish the standards with which municipalities must satisfy these obligations; and (2) process declaratory judgment actions filed by municipalities seeking approval of an affordable housing plan based upon the new judicially established standards; and

**WHEREAS**, the Supreme Court emphasized that municipalities bear no responsibility for COAH's inexcusable failure to adopt Third Round regulations, and emphasized the desirability of municipalities complying voluntarily consistent with case law that reaches back for decades; and

**WHEREAS**, the Township of Moorestown has received first and second round substantive certification from COAH; and

**WHEREAS**, the Township of Moorestown has a rehabilitation program in place, has rehabilitated many units in the past, and will continue to do so in the future; and

**WHEREAS**, even though the Township's Third Round obligation is unsettled, the Township of Moorestown remains committed to comply voluntarily with its obligations when the required number is determined by the trial court; and

**WHEREAS**, under the standard that FSHC advocated before the Supreme Court, which would require a municipality to prove that it satisfied its prior round obligation and made progress towards Third Round in order to be entitled to immunity, Moorestown would be entitled to immunity because it has satisfied its prior round obligation and has made progress towards its Third Round obligation; and

**WHEREAS**, given all that Moorestown has done to house low and moderate income households and its commitment to comply with any future obligation once that obligation is determined, it would be particularly unfair for the Township of Moorestown to suffer exposure to any additional exclusionary zoning lawsuits; and

**WHEREAS**, the Township of Moorestown brought itself under COAH's jurisdiction because all three branches of government preferred COAH's administrative process to resolve disputes over affordable housing matters rather than litigation (*see* N.J.S.A. 52:27D-303); and

**WHEREAS**, the Township of Moorestown wishes to be in a position to complete its efforts to comply voluntarily once its obligations are defined; and

**WHEREAS**, accordingly, the Township of Moorestown wishes to follow the path provided by the Supreme Court and by bringing a declaratory relief action and simultaneously bringing a motion for immunity so that the Township of Moorestown can complete its efforts to comply voluntarily with the standards the trial judge may determine are appropriate; and

**WHEREAS**, Moorestown Township intends to make its intentions inescapably clear to the public and all concerned.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. The Township of Moorestown formally stipulates that, given all the uncertainty in the law, it is entirely possible that it may not be in compliance with its affordable housing obligations once those obligations are defined.

2. The Township of Moorestown hereby reaffirms its commitment to satisfy its affordable housing obligations; however they may ultimately be defined, voluntarily and in the absence of any Mount Laurel lawsuits.

3. The Township of Moorestown hereby authorizes and directs the Township Attorney, in accordance with the Supreme Court opinion, to file a declaratory relief action between June 8, 2015 and July 8, 2015 and to simultaneously file a motion seeking to re-affirm the Township's immunity while the Court reviews the Township of Moorestown's new Affordable Housing plan.

4. The Township of Moorestown directs its legal and planning professionals in accordance with the Supreme Court's opinion to seek a judicial approval of its new Affordable Housing plan.

5. The Township Clerk is hereby directed to place this Resolution on file in Township Hall until further notice to put the public and all interested parties on notice of the Township's commitment to comply voluntarily and to take the actions set forth herein.

6. The Township Council hereby authorizes and directs the Township Attorney to take any and all subsequent reasonable and appropriate measures to maintain the Township of Moorestown's and Township Planning Board's immunity from all exclusionary zoning suits in the aforementioned declaratory relief litigation.

7. This Resolution shall take effect immediately.

Township of Moorestown

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Victoria Napolitano, Mayor

Attest:

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Patricia L. Hunt, RMC, Township Clerk

### **CERTIFICATION**

The foregoing Resolution was duly adopted at a Meeting of the Township Council of the Township of Moorestown held on the 22 day of June, 2015 at Town Hall, located at 111 West Second Street, Moorestown, New Jersey.

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Patricia Hunt, RMC, Township Clerk