

RESOLUTION
TOWNSHIP OF FRANKLIN
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"

R-217-2014

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 completely invalidated the Round 3 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 Round 3 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 the deadlines, the Court would consider allowing developers to file builder's remedy suits against municipalities under COAH's jurisdiction and thereby allowing trial judges to determine the affordable housing standards with which those municipalities must comply in lieu of COAH; and

WHEREAS, on April 30, 2014, in accordance with the March 14, 2014 Order, COAH proposed Round 3 regulations and published them in the New Jersey Register on June 2, 2014; and

WHEREAS, pursuant to the proposed regulations, the Township's affordable housing obligation is 520 units, consisting of an 89-unit rehabilitation obligation, a 326-unit unmet prior round obligation, and a 105-unit prospective Round 3 obligation; and

WHEREAS, COAH accepted public comments on the proposed Round 3 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, 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, further highlighting the uncertainty of the framework with which municipalities must ultimately comply; and

WHEREAS, pursuant to the alternative calculations furnished by FSHC, the Township would have an obligation of 785 units consisting of a 44 unit rehabilitation obligation, a 166 unit prior round obligation and a 575 unit Round 3 obligation; and

WHEREAS, as a result of future regulations, litigation, and/or legislation, it is entirely possible that the Township's obligation may indeed differ from those proposed by COAH or advocated by FSHC; and

WHEREAS, indeed, new laws may reduce the obligations of the Township under COAH's prior round regulations; and

WHEREAS, in light of all this uncertainty, it is possible that the Township may not be in compliance with its affordable housing obligations; and

WHEREAS, regardless of whatever its obligation is ultimately assigned, **the Township remains committed to comply voluntarily with its obligations**; and

WHEREAS, although the Township has already secured court-ordered immunity from exclusionary zoning lawsuits via an order entered in conjunction with a builder's remedy lawsuit brought by Greenways of Franklin, LLC, the Township wishes to make it clear during this time of such extraordinary uncertainty that it is committed to comply with its Mount Laurel obligations; and

WHEREAS, this commitment to comply extinguishes any credible claim from any additional plaintiff in any type of Mount Laurel lawsuit that it qualifies as the "catalyst for change;" and

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

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Township of Franklin 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.
2. The Township hereby affirms its commitment to satisfy its affordable housing obligations, however they may ultimately be defined, voluntarily and in the absence of any additional Mount Laurel lawsuits.
3. Once its affordable housing obligations are defined, the Township directs its legal and planning professionals to take all reasonable and necessary actions to enable it and its Planning Board to satisfy those obligations expeditiously.
4. The Township clerk is hereby directed to place this Resolution on file in Township Hall to put the public on notice of the formal commitments herein.
5. The Township hereby authorizes its Special Mount Laurel Council to use this resolution as it sees fit to maintain the current immunity from all Mount Laurel lawsuits.
6. This Resolution shall take effect immediately.

ADOPTED at a regular meeting of the Township Committee of the Township of Franklin on December 29, 2014.

Attest:

Township of Franklin

Barbara Freijomil, Clerk

Edward Leopardi, Mayor

CERTIFICATION

I, Barbara Freijomil, Clerk of the Township of Franklin, do hereby certify that the foregoing Resolution was presented and duly adopted by the Township Committee at a meeting held on Tuesday, December 29, 2014.

Barbara Freijomil, Clerk