

**TOWNSHIP OF FRANKLIN  
COUNTY OF GLOUCESTER**

**RESOLUTION OF THE GOVERNING BODY OF THE TOWNSHIP  
OF FRANKLIN URGING THE NEW JERSEY LEGISLATURE AND  
THE GOVERNOR TO ACCEPT THE INVITATION OF THE  
SUPREME COURT TO ENACT LEGISLATION TO ESTABLISH A  
NEW, MORE SENSIBLE APPROACH TO AFFORDABLE  
HOUSING IN OUR STATE  
R-70-14**

**WHEREAS**, in 1983, the New Jersey Supreme Court decided Southern Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”) in which it not only created a body of procedural and substantive law to advance the creation of affordable housing, but also clearly announced its desire for a legislative alternative to the laws it created; and

**WHEREAS**, Former Governor Kean and the Legislature accepted the Supreme Court’s invitation and enacted the New Jersey Fair Housing Act (“FHA”) in 1985; and

**WHEREAS**, the FHA created the New Jersey Council on Affordable Housing (“COAH”) and charged COAH with the responsibility of periodically establishing regulations to provide guidance to municipalities and other interested parties; and

**WHEREAS**, COAH promulgated regulations for the first housing cycle in 1986; for the second housing cycle in 1994; and for the third housing cycle in 2004 and again in 2008; and

**WHEREAS**, on September 26, 2013, the New Jersey Supreme Court decided In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 215 N.J. 578 (2013) in which it (a) invalidated the round three regulations adopted in 2008; and (b) charged COAH with the responsibility of adopting a third iteration of round three regulations within five months; and

**WHEREAS**, in apparent recognition that the Mount Laurel doctrine was in danger of crumbling under its own weight, the Supreme Court in In re Adoption Of N.J.A.C. 5:96 and 5:97 invited the Legislature and the Governor, as clearly and fervently as it could, to devise a new approach to affordable housing in our state; and

**WHEREAS**, as demonstrated by the following statements, the Court promised to show enormous deference to any new legislative pronouncement and indeed went out of its way to express receptivity to legislation that plainly violates longstanding principles in Mount Laurel jurisprudence:

- a. All aspects of the remedy established in Mount Laurel II are not “indispensable components of a remedy for the future.” Id. at 610.
- b. It would be willing to consider an alternative to “a pre-fixed allocation of municipal obligations based on forecasted projected growth,” which would be a numberless approach. Id. at 611.
- c. It would be willing to consider an alternative to imposing a Mount Laurel obligation on “all municipalities of the state within fixed periods.” Id. at 605.
- d. It would be open to legislation that limits the role of the builder’s remedy: “One can envision alternative approaches that, perhaps, might relegate a builder's remedy to a more reserved status among available solutions to encouragement of construction of affordable housing, reducing the political turmoil that has plagued voluntary compliance with the constitutional goal of advancing the delivery of affordable housing.” Id. at 610-11; and

**WHEREAS**, the Supreme Court has extended the five month deadline it established in In re Adoption Of N.J.A.C. 5:96 and 5:97 and set May 1, 2014 as the deadline for COAH to propose new round three regulations, and October 22, 2014 as the deadline for COAH to adopt new round three regulations; and

**WHEREAS**, as a result of the foregoing facts, the Supreme Court has created a roughly seven month window of opportunity for the Legislature and Governor to enact new legislation to replace the FHA; and

**WHEREAS**, in the evolution of the doctrine, there has never been a greater opportunity to effectuate significant changes to the doctrine; and

**WHEREAS**, the failure to enact legislation could expose municipalities to overwhelming and unreasonable burdens; and

**WHEREAS**, in light of the above, it is essential that the Legislature and Governor seize this opportunity to enact new affordable housing laws because the present laws are fundamentally flawed.

**NOW THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWNSHIP OF FRANKLIN** as follows:

1. The Township urges the Legislature to work with Governor Christie to take advantage of the opportunity to reshape and modernize the Mount Laurel doctrine by developing and enacting legislation that better protects the interests of municipalities and more reasonably balances all the competing interests.
2. Consistent with the Supreme Court's invitation, the Township strenuously urges any new Legislation to "relegate a builder's remedy to a more reserved status among available solutions to encouragement of construction of affordable housing". Accordingly, any new Legislation should, at a minimum, impose a moratorium on all ongoing and future builders' remedy litigation to enable municipalities to comply with the standards embodied in the new statute.
3. This resolution shall be submitted to Governor Christie and our Legislators immediately.

Attest:

Township of Franklin

\_\_\_\_\_  
Barbara Freijomil, Clerk

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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, April 22, 2014.

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Barbara Freijomil, Clerk