

**BEDMINSTER TOWNSHIP
RESOLUTION NO. 2015-084**

RESOLUTION OF THE TOWNSHIP OF BEDMINSTER, COUNTY OF SOMERSET, DECLARING THE INTENT TO FULLY COMPLY WITH ITS CURRENT AND FUTURE AFFORDABLE HOUSING OBLIGATIONS AND TO SERVE AS THE “CATALYST FOR CHANGE” THEREBY RENDERING ANY MOUNT LAUREL LAWSUITS AS “UNNECESSARY LITIGATION” AND AUTHORIZING THE FILING OF A DECLARATORY JUDGMENT APPLICATION AND A MOTION FOR TEMPORARY IMMUNITY DURING WHICH TO SUBMIT THE TOWNSHIP’S AMENDED THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN AND OBTAIN A THIRD ROUND JUDGMENT OF COMPLIANCE AND REPOSE

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 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 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 Bedminster Township (the “Township”); and

WHEREAS, the State of New Jersey retained Rutgers University to prepare a fair share methodology for the first and second rounds (collectively the "Prior Round" — from 1987 to-1999) for COAH; and

WHEREAS, the Center for Urban Policy Research ("CUPR") of Rutgers University prepared a methodology in 2014, for Round 3, which COAH (a) incorporated into the

regulations it proposed for adoption on April 30, 2014 and (b) caused to be published in the New Jersey Register on June 2, 2014, thereby triggering a public comment period; and

WHEREAS, on October 20, 2014, the COAH Board met to consider adopting the proposed regulations, but reached a 3-3 voting 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 left New Jersey municipalities including Bedminster Township in a continuing state of limbo despite the Township's unquestionable commitment to voluntary constitutional compliance; 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 prepared by its expert David N. Kinsey, FAICP, who updated his initial report on April 16, 2015; and

WHEREAS, the existence of a second set of fair share numbers from FSHC further highlighted the uncertainty of the framework with which municipalities must ultimately comply because there are no standards with which to comply; and

WHEREAS, the Bedminster Township Planning Board (the "Board") adopted a Third Round Housing Element and Fair Share Plan ("HPE&FSP") on December 1, 2005 and December 18, 2008;

WHEREAS, COAH had previously approved on December 9, 2009, the Township's petition for Third Round substantive certification;

WHEREAS, the New Jersey Supreme Court held in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) (the "2015 Decision") that COAH's administration process had become futile so that parties concerned about municipal compliance with constitutional affordable housing obligations, as well as municipalities that believe they are currently compliant or are ready and willing to demonstrate such compliance, would process exclusionary zoning and/or affordable housing matters in the courts commencing on June 8, 2015;

WHEREAS, the 2015 Decision further provided that municipalities which had received Third Round substantive certification from COAH such as Bedminster Township ("Approved Municipalities") would be permitted a period of thirty (30) days, beginning on June 8, 2015, and ending on July 8, 2015, within which to file declaratory judgment actions in the Superior Court in order to obtain the judicial equivalent of the substantive certifications that they had either received or that they had applied for under N.J.S.A. 52:27D-313 but had not yet received;

WHEREAS, the 2015 Decision also recognizes that Approved Municipalities would have five (5) months from either the effective date of the 2015 Decision (June 8, 2015) or from the date in which the municipality filed a Declaratory Judgment action (but no later than July 8, 2015) to submit an amended or supplemental HPE&FSP to revise the municipal fair share number which has been based on COAH's "growth share" methodology and to revise the plans to show how the municipality proposed to comply with its Mount Laurel affordable housing obligations based on a "fair share" methodology, so that an amended or supplemental HPE&FSP would have to be submitted to the court by either November 8, 2015 or December 8, 2015;

WHEREAS, trial courts must now (1) calculate the "fair share" obligations for Round 3 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 new judicially established standards (not yet determined); and

WHEREAS, the Supreme Court emphasized that municipalities bear no responsibility for COAH's inexcusable failure to adopt Round 3 regulations, and emphasized the longstanding preference for municipalities to comply voluntarily; and

WHEREAS, the Township's commitment to voluntary compliance is clearly demonstrated by the recent fair share calculations set forth by COAH's experts; and

WHEREAS, regardless of whatever affordable housing obligation the courts, COAH, or the Legislature ultimately assign, the Township remains committed to comply voluntarily with those reasonable obligations; and

WHEREAS, given all that Bedminster Township has done to provide housing for 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 Bedminster to suffer exposure to any exclusionary zoning lawsuits; and

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

WHEREAS, accordingly, the Township wishes to follow the path provided by the Supreme Court and by filing a Declaratory Judgment Complaint and simultaneously or subsequently filing a Motion for Immunity so that the Township can complete its efforts to comply voluntarily with whatever standards the trial judge may determine are appropriate; and

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

NOW, THEREFORE, BE IT RESOLVED as follows:

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

2. The Township hereby authorizes John P. Belardo, Esquire, Township Attorney, to prepare and file a Declaratory Judgment action in the Superior Court of New Jersey, Somerset County, to be accompanied by such exhibits and certifications as deemed necessary and appropriate for the purposes of obtaining temporary immunity from all exclusionary zoning lawsuits so that the Township can submit its an Amended HPE&FSP to the Court for review and approval as part of the Declaratory Judgment action process.

3. The Township hereby authorizes Frank Banisch, AICP, PP, Township Affordable Housing Planner, to prepare such exhibits, certifications and documents as are needed by Mr. Banisch, as well as to prepare any amendments and/or supplements to the Amended HPE&FSP as are required and with sufficient time for such Amended HPE&FSP to be timely adopted and submitted to the Court.

4. The Township hereby authorizes submission to the Court of a copy of this resolution, along with a copy of the previously adopted Amended HPE&FSP and any other materials required by the Court in connection with the Declaratory Judgment action and the Court’s review of the Township’s Plan.

5. This Resolution shall take effect immediately.

ATTEST:

BEDMINSTER TOWNSHIP
COMMITTEE:

By: _____
Diane F. Gibson
Deputy Township Clerk

By: _____
Steven E. Parker, Mayor

CERTIFICATION

I, Judith Sullivan, Township Clerk of Bedminster, County of Somerset, State of New Jersey, do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Township Committee at a Regular Meeting held on June 29, 2015.

Diane F. Gibson, Deputy Clerk

| Introduced | Seconded | Township Committee | Aye | Nay | Abstain | Absent |
|-------------------|-----------------|------------------------------------|------------|------------|----------------|---------------|
| | | Steven E. Parker, Mayor | | | | |
| | | Bernie Pane | | | | |
| | | Lawrence F. Jacobs | | | | |
| | | Staci Santucci | | | | |
| | | Kenneth Olsen | | | | |