

**BOROUGH OF MANASQUAN
RESOLUTION
378-2014**

**RESOLUTION OF THE BOROUGH OF MANASQUAN,
COUNTY OF MONMOUTH, 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 "UNNECESSARY 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 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 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 Borough; 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 these proposed regulations, COAH assigned the Borough a fair share of 17 units, consisting of a 10-unit rehabilitation obligation, a zero-unit unmet prior round obligation, and a 7-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, COAH's failure to adopt the proposed regulations has left the Borough in a continuing state of limbo despite its continuing commitment to satisfying its obligations voluntarily and 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, further highlighting the uncertainty of the framework with which municipalities must ultimately comply; and

WHEREAS, pursuant to the alternative calculations furnished by FSHC, the Borough would have an obligation of 671 units consisting of an 31 unit rehabilitation obligation, a 149 unit prior round obligation and a 491 unit Round 3 obligation; and

WHEREAS, as a result of future regulations, litigation, and/or legislation, it is entirely possible that the Borough'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 Borough under COAH's prior round regulations; and

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

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

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

WHEREAS, accordingly, the Borough wishes to be in a position to seek immunity from a trial judge if the Court should rule that trial judges should perform COAH's functions so that the Borough can complete its efforts to comply voluntarily with whatever standards the trial judge may determine are appropriate; and

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

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Borough 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 Borough 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. Once its affordable housing obligations are defined, the Borough directs its legal and planning professionals to take all reasonable and necessary action to enable it and its Planning Board to satisfy those obligations expeditiously.
4. The Borough clerk is hereby directed to place this Resolution on file in Borough Hall to put the public and all interested parties on notice of the formal commitments herein.

5. The Borough hereby authorizes its Special Mount Laurel Council to use this resolution as it sees fit to maintain the current immunity from all exclusionary zoning suits.

6. This Resolution shall take effect immediately.

CERTIFICATION

I, Barbara Ilaria, Municipal Clerk, Borough of Manasquan, County of Monmouth, State of New Jersey, do hereby certify that the foregoing resolution was duly adopted by the Borough Council at the meeting held on December 30, 2014.

B. Ilaria
 BARBARA ILARIA
 Municipal Clerk

COUNCIL	INTRODUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
BOSSONE	X		X			
SINNECK						X
DONOVAN			X			
MANGAN			X			
OLIVERA			X			
McCARTHY		X	X			
ON CONSENT AGENDA <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO						

cc: file
 Admin.
 Surenian's office.
 website.