

TOWNSHIP OF MAPLEWOOD



RESOLUTION NO. 71-14

RESOLUTION URGING THE NEW JERSEY LEGISLATURE AND THE GOVERNOR TO ACCEPT THE INVITATION OF THE SUPREME COURT TO ENACT LEGISLATION FOR AFFORDABLE HOUSING IN OUR STATE

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, 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; 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.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey that:

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 advances the goal of creating Affordable Housing.
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 builder’s remedy litigation to enable municipalities to comply with the standards embodied in the new statute.
3. This resolution shall be immediately submitted to Governor Christie, Senator Richard Codey and Assembly Persons: Mila Jasey and John McKeon.

I, Elizabeth J. Fritzen, Township Clerk of the Township of Maplewood, in the County of Essex and State of New Jersey, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey, at a regular meeting of said Committee held on April 15, 2014.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Township of Maplewood in the County of Essex and State of New Jersey, on this 15th day of April 2014.

ELIZABETH J. FRITZEN, R.M.C.
Township Clerk