

TOWNSHIP OF MAPLEWOOD



RESOLUTION NO. 238-14

**RESOLUTION
DECLARING THE TOWNSHIP OF MAPLEWOOD'S 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 Township of Maplewood ("Township"); 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, the Township's affordable housing obligation is 91 units, including a 91-unit rehabilitation obligation, a zero-unit unmet prior round obligation, and a zero-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 Township in a continuing state of limbo despite its 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 Township would have an obligation of 1,549 units consisting of an 125 unit rehabilitation obligation, a 51 unit prior round obligation and a 1,373 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, the Township 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; and

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

WHEREAS, accordingly, the Township 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 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 concerned.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Maplewood, County of Essex as follows:

1. The Township 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 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 Township 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 Township clerk is hereby directed to place this Resolution on file in Township Hall to put the public and all interested parties 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 exclusionary zoning suits.
6. This Resolution shall take effect immediately.

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 December 16, 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 16th day of
December 2014.

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