

RESOLUTION

ENDORSING AN AMENDED HOUSING ELEMENT AND FAIR SHARE PLAN

WHEREAS, on June 27, 2011, the Planning Board of the Township of Ocean, County of Monmouth, State of New Jersey, adopted under protest an amended Housing Element and Fair Share Plan, dated May 6, 2011, which includes a document entitled “Additional Documents and Corrections dated June 16, 2011;” and

WHEREAS, a true copy of the resolution of the Planning Board adopting under protest the amended Housing Element and Fair Share Plan is attached pursuant to N.J.A.C. 5:96-2.2(a)2; and

WHEREAS, the amended Housing Plan Element and Fair Share Plan addresses the Township’s rehabilitation and prior cycle affordable housing obligations in accordance with N.J.A.C. 5:97-1.1 et seq. and as per the Order signed on May 11, 2011 by the Honorable Paul A. Kapalko, J.S.C.; and,

WHEREAS, the Court’s decision to forego requiring the Township to address its Cycle III obligations is supported by the current state of uncertainty associated with the Township’s actual Cycle III obligation and by COAH’s “decisions, criteria, and guidelines”; and

WHEREAS, the uncertainty in the law arises from the Appellate Decision’s decision of October 8, 2010, wherein the Court invalidated certain aspects of COAH’s substantive regulations in In re Adoption Of N.J.A.C. 5:96 and 5:97 By New Jersey Council On Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010), certif.. granted, 205 N.J. 317 (2011); and

WHEREAS, on March 31, 2011, the Supreme Court certified the five petitions and cross petitions challenging the Appellate Division’s decision in In re Adoption Of N.J.A.C. 5:96 and 5:97; and

WHEREAS, in the cross petition filed by the Township of Middletown, County of Monmouth, Middletown asserts that, pursuant to the fundamental principles of the Mount Laurel doctrine, municipalities that can demonstrate their inclusionary nature through demographic data, housing stock, and other means should be free from any additional Mount Laurel burdens; and

WHEREAS, if the Supreme Court agrees with this argument, the Township of Ocean may be in a position to prove that it has not abused its zoning powers and thus has not violated the Mount Laurel doctrine by using its powers to exclude lower income households; and

WHEREAS, as such, consistent with the Planning Board’s decision to adopt the amended Housing Element and Fair Share Plan under protest as sanctioned by the Supreme Court in So. Burlington County N.A.A.C.P. v. Tp. Of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II), the Township Council intends to endorse the amended Housing Element and Fair Share Plan under protest; and

WHEREAS, the Township’s decision to adopt the plan under protest should in no way be construed as an intent not to comply fully with the law, but is merely a recognition that the laws are evolving and that all the requirements the Township seeks to satisfy through the current plan could easily change as a result of *inter alia* the Supreme Court decision; and

WHEREAS, the Township further acknowledges that the process of securing plan approval is a dynamic process and that changes may vary well be necessitated to address the concerns of the Court and/or the Special Master; and

WHEREAS, the Township is committed to making any changes that may be necessary and reasonable to address any gap that the Master or Court may find in the plan as a result of their analysis of the Township’s RDP analysis or evaluation of any compliance techniques included in the plan; and

WHEREAS, the Township merely seeks to preserve unto itself the ability to choose the means to address any gap that may emerge.

NOW, THEREFORE, BE IT RESOLVED that the Township Council of the Township of Ocean, County of Monmouth, State of New Jersey, hereby endorses under protest the amended Housing Element and Fair Share Plan as adopted by the Ocean Township Planning Board on June 27, 2011; and

BE IT FURTHER RESOLVED that the Council of the Township of Ocean, pursuant to the provisions of N.J.S.A. 52:27D-301 et seq. hereby authorizes its professionals to immediately file the adopted and endorsed amended Housing Element and Fair Share Plan with the Court and to submit a copy of all relevant documents to the Council on Affordable Housing (COAH); and

BE IT FURTHER RESOLVED that the Council of the Township of Ocean hereby authorizes its professionals to take any and all actions reasonable and necessary to secure a prior cycle Judgment of Compliance and Repose from the Court and to maintain the Township's immunity from any additional Mount Laurel lawsuits; and

BE IT FURTHER RESOLVED that, upon seeking its prior cycle Judgment of Compliance and repose, all known interested parties and owners of sites in the amended Housing Element and Fair Share Plan shall receive notice of the Township's intent; and

BE IT FURTHER RESOLVED that the notice of the Township's application for judicial approval of its amended Housing Element and Fair Share Plan shall be published in a newspaper of regional circulation and the Township shall otherwise provide appropriate notice concerning the date the Court sets for a hearing on whether the amended Housing Element and Fair Share Plan satisfies the Township's prior cycle and rehabilitation affordable housing responsibilities under applicable laws. Said notice shall give the public sufficient time to review the Township's amended Housing Element and Fair Share Plan and offer comments that the individual or entity may deem appropriate.

Record of Vote	Deputy Mayor Siciliano	Councilman Evans	Councilman Garofalo	Councilwoman Schepiga	Mayor Larkin
Motion To Approve					
Motion to Second					
Approved					
Opposed					
Not Voting/Recuse					
Absent/Excused					

CERTIFICATION

*I hereby certify that this is a true copy of a resolution passed by the Township of Ocean Governing Body at their meeting held on **July 6, 2011**.*

 Vincent Buttiglieri, RMC/CMC
 Township Clerk