

## RESOLUTION

**RESOLUTION RESCINDING RESOLUTION NO. 09-173 DUE TO SUBSEQUENT CLARIFICATION OF FACTS CONCERNING THE AVALONBAY BUILDER'S REMEDY LAW SUIT**

**WHEREAS**, on October 19, 2009, the Township Committee of the Township of Ocean, County of Monmouth, adopted Resolution 09-173, attached hereto for ease of reference; and

**WHEREAS**, Resolution 09-173 was premised upon certain information, subsequently determined to be incorrect, regarding property upon which AvalonBay Communities, Inc. ("AvalonBay") seeks a builder's remedy pursuant to the Mount Laurel doctrine; and

**WHEREAS**, by way of background, as early as October, 2008, a representative of AvalonBay initiated negotiations with the Borough in an effort to develop not only a roughly six acre site that is owned by BVB II Associates ("BVB"), but also a portion of the adjacent site owned by the Township; and

**WHEREAS**, in September of 2009, BVB brought a builder's remedy lawsuit on its six acre parcel; and

**WHEREAS**, in order to insulate itself from additional – and unnecessary -- builder's remedy lawsuits, the Township prepared a Resolution to formally express its commitment to comply with its Mount Laurel obligations, with the intent to adopt same on the evening of October 19, 2009; and

**WHEREAS**, earlier in the day of October 19, 2009, the Township received a letter from AvalonBay enclosing a copy of its builder's remedy lawsuit, the second such lawsuit filed against the Township; and

**WHEREAS**, upon initial review of this second lawsuit, the Township thought that AvalonBay was seeking a builder's remedy on the same property that was the subject of its negotiations with the Township late last year and earlier this year: namely, the BVB parcel, as well as a portion of the adjacent site controlled by the Township; and

**WHEREAS**, indeed, the same attorney that filed the BVB suit filed the AvalonBay suit; and

**WHEREAS**, in view of the foregoing, the Township initially understood that AvalonBay was the contract purchaser of the property that was the subject of BVB's builder's remedy suit; and

**WHEREAS**, as such, the Township anticipated that the two lawsuits, although filed separately, would either be prosecuted as one or the BVB suit would be dismissed, since the Court cannot issue two builder's remedies on a single site; and

**WHEREAS**, the premise upon which Resolution 09-173 was based, however, was incorrect inasmuch as AvalonBay is seeking a builder's remedy on an entirely separate site within the Township; and

**WHEREAS**, only one builder's remedy suit is necessary to serve as the catalyst for change; and

**WHEREAS**, in view of the manner in which the facts unfolded, BVB filed the only suit that could reasonably be construed as necessary to cause the Township to comply and therefore is the "catalyst for change" as that term is construed in the Mount Laurel arena; and

**WHEREAS**, in light of the above, the Township wishes to rescind Resolution 09-173, and adopt a replacement Resolution correcting and clarifying the Township's positions in these matters.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. The Township of Ocean hereby rescinds Resolution 09-173 except as follows:

(a) The Township does not rescind its concession that it was not in compliance with COAH's current regulations at the point BVB filed its builder's remedy suit.

(b) The Township does not rescind its declaration that it is committed to comply with its Mount Laurel obligations to the extent that it has not already complied, subject to its right to comply "under protest".

(c) The Township does not rescind its direction to its professionals to review the current state of Mount Laurel compliance and to take whatever actions may be necessary to achieve a formal judgment of constitutional compliance by the Court or a grant of substantive certification by the Council On Affordable Housing

(d) The Township does not rescind the direction to its professionals to seek temporary immunity from any Mount Laurel lawsuits, other than BVB, as quickly as possible.

This Resolution shall take effect immediately.

**ROLL CALL:** Garofalo, Hiers, Schepiga, Siciliano, Larkin

**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 **October 26, 2009**.*

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Vincent Buttiglieri, RMC/CMC  
Township Clerk