

RESOLUTION

RESOLUTION OF THE TOWNSHIP OF OCEAN, COUNTY OF MONMOUTH, DECLARING ITS INTENT TO COMPLY WITH ITS *MOUNT LAUREL* OBLIGATIONS.

WHEREAS, in *Mount Laurel II*, the New Jersey Supreme Court ruled, subject to various other limitations, that, in order for a plaintiff to be entitled to a builder's remedy, it must "succeed in litigation" (see *Mount Laurel II* at 279-280); and

WHEREAS, in 2002, the Supreme Court underscored that a developer must be a "catalyst for change" in order to qualify as a successful plaintiff (see *Toll Bros. v. Tp. of West Windsor*, 173 N.J. 502, 507 (2002)); and

WHEREAS, Ocean Township is a fundamentally inclusionary community consisting of in excess of 3,000 low and moderate income apartments and other modest housing and has not used its zoning powers to exclude low and moderate income households; and

WHEREAS, notwithstanding its open-door zoning policies, on or about September 3, 2009, BVB II Associates ("BVB") filed a lawsuit against the Township declaring that the Township is exclusionary, demanding that Ocean comply with its Mount Laurel requirements, and seeking a builder's remedy on a roughly 6 acre parcel of land; and

WHEREAS, since only one Mount Laurel lawsuit on one parcel is necessary to cause the Township to comply, BVB's lawsuit is the "catalyst for change" and indeed caused the Township to commit to Mount Laurel compliance; and

WHEREAS, the Township therefore concedes that BVB is the catalyst and that no other lawsuit is necessary; and

WHEREAS, therefore, while AvalonBay Communities, Inc ("Avalon") filed a second builder's remedy lawsuit against the Township on or about October 15, 2009, also seeking a declaration that the Township is exclusionary and demanding that Ocean comply with its Mount Laurel requirements, this second lawsuit on a second parcel of land, is indeed unnecessary and should not be considered the "catalyst for change"; and

WHEREAS, the Township concedes that, on the date BVB filed suit, the Planning Board had not adopted and the Township had not endorsed a Housing Element and Fair Share Plan that satisfied Ocean's obligation to provide sufficient low and moderate income housing pursuant to COAH's *current* substantive regulations; and

WHEREAS, however, the Township contends that its failure to satisfy its obligations did not arise from exclusionary zoning, but instead is a direct result of several fundamental flaws in COAH's regulations; and

WHEREAS, the Township is aware of several pending appeals to COAH's regulations, and is aware that a decision by the Appellate Division regarding these appeals will likely occur in the near future; and

WHEREAS, in addition, the Township reserves its right to comply "under protest" and to thereby exercise its independent right to demonstrate that it has not violated the principles upon which the Mount Laurel doctrine is based and that therefore the defect lies not in the land use regulations of the Township, but rather in the regulations COAH has adopted to implement the doctrine; and

WHEREAS, in view of the foregoing, there is no need to further litigate (a) whether defendants complied with the current regulations of COAH at the point BVB filed suit or (b) whether BVB was the "catalyst" for causing the Township to comply with COAH's current regulations; and

WHEREAS, other than the foregoing two issues, all other issues relating to BVB's entitlement to a builder's remedy have not been stipulated to by defendants and are properly before the Court; and

WHEREAS, the Township makes no stipulation as to Avalon other than to stipulate that its lawsuit is unnecessary and is not the cause of the Township's compliance; and

WHEREAS, despite the aforementioned lawsuits and any associated defenses thereto, the Township of Ocean now wishes to formally declare its intent to comply, to the extent that it has not already complied, with its Mount Laurel obligations in their current form and as may be further amended; and

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Township of Ocean hereby formally declares its intent to achieve constitutional compliance, to the extent it has not done so already, but reserves its right to comply "under protest".
2. The Township directs 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.
3. The Township hereby directs its professionals to furnish this Resolution to the Court and to place this Resolution on file in Town Hall so as to put the public and all interested parties on notice of the Township's formal commitment to comply with its Mount Laurel obligations.
4. The Township hereby directs its professionals to seek immunity from additional Mount Laurel lawsuits based on its stipulation that it was not in compliance with COAH's current regulations on the date BVB filed suit and that it is committed to comply.

5. The Township reserves all rights to challenge BVB's entitlement to a builder's remedy on all grounds other than the issue of whether it served as the "catalyst for change" as required under the first element of the builder's remedy test.

6. The Township denies that Avalon served as the "catalyst for change" and further reserves all rights to challenge Avalon's entitlement to a builder's remedy, including its failure to satisfy any of the three elements of the builder's remedy test and any of the other limitations to the builder's remedy created by the Supreme Court in Mount Laurel II or its progeny.

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**.*

Vincent Buttiglieri, RMC/CMC
Township Clerk