R-038-21

DEMANDING THAT THE NEW JERSEY STATE LEGISLATURE ACCEPT ITS RESPONSIBILITIES TO ADMINISTER THE PROVISIONS OF THE AFFORDABLE HOUSING ACT AND STAY FURTHER ACTION UNTIL SUCH TIME AS IT HAS PROMULGATED RULES GOVERNING ITS IMPLEMENTATION

WHEREAS, in 1975, the New Jersey Supreme Court in Mount Laurel I, decreed that every municipality in New Jersey "must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefor." Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151, 174 (1975); and

WHEREAS, in 1983, the New Jersey Supreme Court in Mount Laurel II, expanded the Mount Laurel doctrine, saying that:

> **… proof of a municipality's bona fide attempt to provide a realistic opportunity to construct its fair share of lower income housing shall no longer suffice. Satisfaction of the *Mount Laurel* obligation shall be determined solely on an objective basis; if the municipality has *in fact* provided a realistic opportunity for the construction of its fair share of low- and moderate-income housing, it has met the *Mount Laurel* obligation to satisfy the constitutional requirement; if it has not, then it has failed to satisfy it. Further, whether the opportunity is 'realistic' will depend on whether there is in fact a likelihood – to the extent economic conditions allow – that the lower income housing will actually be constructed. Plaintiff's case will ordinarily include proof of the municipality's fair share of the regional need and defendant's proof of its satisfaction. Good or bad faith, at least on this issue, will be irrelevant.**

Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158, 220-22 (1983); and

WHEREAS, the New Jersey Supreme Court in Mount Laurel II, suggested that builder's remedies should be used to force compliance by municipalities, reasoning that:

> **[e]xperience … has demonstrated to us that builder's remedies must me made readily available to achieve compliance with *Mount Laurel*. We hold that where a developer succeeds in *Mount Laurel* litigation and proposes a project providing a substantial amount of lower income housing, a builder's remedy should be granted unless the**

> **municipality establishes that because of environmental or other substantial planning concerns, the plaintiff's proposed project is clearly contrary to sound land use planning. We emphasize that the builder's remedy should not be denied solely because the municipality prefers some other location for lower income housing, even if it is in fact a better site.**

Id. at 279-80; and

WHEREAS, the New Jersey Legislature responded quickly to the Court's Mount Laurel II decision, by enacting the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., which created the Council on Affordable Housing ("COAH"), which, as the Court noted in Mount Laurel IV, "was designed to provide an optional administrative alternative to litigating constitutional compliance through civil exclusionary zoning actions." In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1, 4 (2015); and

WHEREAS, it has been five years since the Mount Laurel IV decision was issued and, to the detriment of each municipality in New Jersey and the future viability of the State, neither the Legislature nor the Governor have taken any action to remedy the situation; and

WHEREAS, if the Governor and the Legislature continue to ignore their responsibilities, municipalities will once again face a burdensome, time-consuming and expensive process to obtain Fourth Round Mount Laurel compliance, starting in 2025.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Wharton, in the County of Morris, State of New Jersey, that is does hereby demand that the Governor and the Legislature cease their unconscionable disregard of this most important provision of the State constitution and take immediate and decisive action to restore a viable administrative remedy that municipalities can use in satisfaction of their constitutional obligations to provide affordable housing.

Dated: January 18, 2021

ATTEST: **BOROUGH OF WHARTON**

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Robin Ghebreal,
Deputy Borough Clerk

WILLIAM J. CHEGWIDDEN,
MAYOR