

**RESOLUTION OF THE BOROUGH OF WHARTON, COUNTY OF MORRIS, STATE OF NEW JERSEY, OPPOSING NEW JERSEY A-4 AND S-50 WHICH PROPOSES TO OVERHAUL THE NEW JERSEY FAIR HOUSING ACT IN A MANNER THAT IMPOSES NEW UNREALISTIC COMPLIANCE OEAOLINES AND OBLIGATIONS, AND INVITES OEVELOPERS TO SUBJECT MUNICIPALITIES TO REPETITIVE AND UNENOING LITIGATION.**

WHEREAS, in 1975 and in 1983, the New Jersey Supreme Court decided the landmark cases commonly referred to as Mount Laurel I and Mount Laurel II, which held that every municipality has a constitutional obligation to use their zoning power in a manner that creates a realistic opportunity for the construction of each municipality's fair share of the region's low- and moderate-income housing, and has since come to be known as the "Mount Laurel doctrine"; and

WHEREAS, pursuant to the Mount Laurel doctrine, New Jersey Court decisions established additional standards for compliance guidance to Mount Laurel Judges, and created a process allowing property developers to secure a "builder's remedy" against municipalities under certain circumstances where it has found that a municipality is determined to be constitutionally noncompliant; and

WHEREAS, the "builder's remedy" was created by the Court in Mount Laurel II for the intended purpose of bringing about municipal compliance through legal actions by developers, which if granted, would permit developers to build at higher densities and without regard to existing local zoning; and

WHEREAS, in the wake of Mount Laurel II the State exploded with "builder's remedy" lawsuits which resulted in seriously depriving many municipalities of their home rule power to zone and control their destiny; and

WHEREAS, in 1985 the Legislature statutorily recognized the Mount Laurel doctrine when it enacted the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., ("FHA") for the purpose of assisting municipal compliance with this constitutional obligation and to restore balance against unrestrained development while still meeting the needs to provide for affordable housing opportunities through each municipality's legitimate exercise of its home rule powers; and

WHEREAS, in particular, the FHA sought *to* restore home rule by imposing a moratorium on the builder's remedy litigation, and by providing an administrative process that municipalities could voluntarily pursue wherein they would be insulated from developers seeking builder's remedies to try to compel them to capitulate their zoning demands; and

WHEREAS, the FHA sought *to bring the fair share numbers back to reality* by among other things defining the prospective need as the need "based on development and growth which is reasonably likely to occur" and by calling for the fair share to be adjusted to a number lower than the fair share formula generated if the municipality lacked sufficient land to satisfy the obligation generated by the fair share formula; and

WHEREAS, the FHA sought to *reduce the burdens on municipalities* by prohibiting any requirement for municipalities to expend their own resources to comply; and

WHEREAS, the FHA created COAH and conferred "primary jurisdiction" on COAH to administer the FHA and to implement the affordable housing policies of our State; and

WHEREAS, COAH adopted regulations for Round 1 in 1986 and for Round 2 in 1994 to implement the FHA and processed applications by municipalities for approval of their affordable housing plans in accordance with the regulations it adopted; and

WHEREAS, all acknowledged, both for and against COAH, that COAH functioned just fine in Rounds 1 and 2; and

WHEREAS, the regulations COAH adopted in Round 2 made the obligations for Rounds 1 and 2 cumulative and adjusted the cumulative number downwards because the State did not grow as much as was anticipated in Round 1; and

WHEREAS, COAH's new construction obligation for Rounds 1 and 2 averaged 5,034.5 units per year, or 50,345 units for every 10 years as noted in 36 N.J.R. 5748(a) (November 22, 2004), COAH's comment regarding 5:94: Appendix A; and

WHEREAS, COAH's Round 1 and/or 2 regulations permitted a 1-for-1 rental bonus credit for up to 25% of the obligations and provided flexible standards for adjustments predicated upon lack of adequate vacant developable land; and

WHEREAS, COAH's expert in 2014 calculated a prospective need obligation (then 2014-2024) of less than 40,000 units for the 10-year cycle, plus roughly an additional 23,000 units for the "gap" which were to be phased in between 2014-2034 due to concerns over what could be reasonably anticipated as a result of market absorption; and

WHEREAS, housing advocates attacked the regulations COAH adopted for Round 3 the first time it adopted them in 2004, the second time it adopted them in 2008 and the third time it proposed them in 2014, thereby crippling COAH's ability to certify the plans that municipalities petitioned COAH to approve because the FHA required that COAH only certify municipalities consistent with its regulations; and

WHEREAS, COAH's inability to certify Round 3 plans severely limited the production of affordable housing in Round 3 because COAH found itself fending off attacks instead of certifying affordable housing plans that municipalities could implement; and

WHEREAS, in 2015, the Supreme Court issued a decision, commonly referred to as Mount Laurel IV, in response to a motion to transfer the responsibilities of COAH back to the courts; and

WHEREAS, in Mount Laurel IV, the Supreme Court returned the task of implementing the doctrine back to the Courts because COAH had failed to do its job; and

WHEREAS, notwithstanding the foregoing, the Court emphasized that it preferred the administrative remedy created by the FHA to a judicial one and hoped that one day COAH would be effective so that towns could comply once again through the administrative process created by the FHA; and

WHEREAS, transferring the implementation of the doctrine from COAH back to the courts deprived the citizens of our State of an evenly balanced administrative body with four representatives of municipalities and four representatives of low-and moderate-income households adopting

regulations consistent with the FHA and processing petitions for substantive certification; and

WHEREAS, the judicial process the Supreme Court fashioned in Mount Laurel IV required municipalities to spend municipal resources not only on their own attorneys and planners, but also on Court appointed masters in a litigation process that was much more expensive than the administrative process the legislature established under the FHA; and

WHEREAS, the Court process proved to be far more expensive for municipalities than the COAH process because it invited developers to intervene and actively drag out the legal process for years, even after a municipality had Court approved plan, and has only caused unreasonable delays in allowing municipalities to achieve the goals of the Mount Laurel; and

WHEREAS, even when municipalities voluntarily complied, like Montville, we were still subject to intervention from developers, who were then able to leverage the process, often obtain site-specific rezoning contrary to one of the overriding public purposes of the FHA and the Mount Laurel doctrine; and

WHEREAS, the Court process following Mount Laurel IV has ultimately proved that the Court system is ill-suited for resolving comprehensive planning disputes over affordable housing; and

WHEREAS, it is against this backdrop, that over the last two approximate months that the New Jersey Assembly and Senate introduced Assembly Bill A-4 and Senate Bill S-50 ("A4/S50") with little to no input from local government officials who are now faced with dealing with its ramifications; and

WHEREAS, A4/S50 seeks to abolish the Council on Affordable Housing ("COAH") and purports to reform municipal responsibilities concerning the provision of affordable housing; and

WHEREAS, A4/S50 details the methodology to be used for determining the fair share numbers of municipalities in Round 4 and in subsequent rounds; and

WHEREAS, A4/S50 is based on the proposition that 40 percent of all households qualify as low or moderate to further increase densities; and

WHEREAS, A4/S50 calls for the determination of the prospective need by subtracting the number of households reported in the 2010 Decennial Census from the number of households reported in the 2020 Decennial Census and multiplying that figure by 40 percent; and

WHEREAS, traditional inclusionary zoning ordinances generally require no more than 20 percent of the units to be affordable; and

WHEREAS, it is mathematically impossible to satisfy a 46 percent problem with a 20 percent solution and, therefore, the number generated by the statutory formula is patently excessive; and

WHEREAS, A4/S50 purports to reduce litigation and municipal expenses, but the reality is it only gives more incentives for developers to delay building the inclusionary developments they agreed to build under Round 3 and to file challenges and lawsuits against municipalities to get even more favorable approvals by weaponizing the Mount Laurel doctrine; and

WHEREAS, in stark contrast to current laws that preserve a municipality's immunity in the absence of proof that the municipality is "determined to be constitutionally noncompliant", A4/S50 creates multiple opportunities to strip municipalities of immunity and expose them to litigation; and

**WHEREAS A4/S50 subjects' municipalities to litigation not only as they seek approval of their Housing Element and Fair Share Plans, but even after they secure approval of those plans; and**

**WHEREAS, all municipalities should be able to cure any violations of the prohibition against exclusionary zoning with inclusionary zoning; and**

**WHEREAS, in addition, COAH's Round 2 regulations had flexible standards, Regional Contribution Agreements (RCAs), an achievable bonus structure, waivers and other flexible standards to further mitigate the problem; and**

**WHEREAS, the A4/S50 Bill reduces, and in some cases completely eliminates affordable housing bonus credits, and creates an overcomplicated and difficult process to obtain the bonus credits that are still available; and**

**WHEREAS, the A4/S50 Bill creates a judicial entity made up of 3-7 retired Mount Laurel judges called "The Program", which, unlike COAH, is not comprised of an equal number of municipal and housing representatives, and is not made up of an equal number of Republicans and Democrats, thereby depriving the citizens of our State of the carefully crafted COAH Board that included a diversity of interests and that was the centerpiece of the FHA adopted in 1985; and**

**WHEREAS, the A4/S50 Bill does not require the promulgation of affordable housing obligations, or the adoption of substantive regulations, in a way that utilizes an open and transparent process that COAH used and that gave all interested parties an opportunity to comment and receive COAH's response to their comments; and**

**WHEREAS, the initial version of the A4/S50 Bill allowed for municipalities to utilize age - restricted affordable units to satisfy up to thirty-three percent (33%) of its Fourth-Round obligation in recognition that roughly 33 percent of the demand for affordable housing came from this age group; however, the current version of A4/S50 unfairly reduced the cap on age-restricted housing down to twenty-five (25%); and**

**WHEREAS, the Legislature previously capped the fair share of any municipality down to 1,000 in recognition that any obligation above 1,000 would be "onerous"; A4/S50 applies the 1,000-unit cap only to a component of the municipality's fair share -- the prospective need - and authorizes the imposition of an obligation that is onerous; and**

**WHEREAS, A4/S50 creates unfair requirements and ambiguity when it comes to the Vacant Land Adjustment process, which could lead to municipalities that lack sufficient vacant land being required to produce more affordable housing units than is practical; and**

**WHEREAS, the A4/S50 Bill includes many other provisions and changes to the FHA that are impractical and devoid of any consideration of the burdens created by the statute; and**

**WHEREAS, the Office of Legislative Services (OLS) has not evaluated the formula required by the A4/S50 Bill for calculating a municipality's Fourth Round or Prospective Need Obligation for its magnitude or reasonableness.**

**NOW THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Wharton, in the County of Morris, and State of New Jersey, that for all of the above reasons, the Mayor and Council objects to and strongly opposes Assembly Bill No. 4/Senate Bill No. 50, and requests that the bill be tabled, re-written and re-introduced in a way that achieves the goals of Mount Laurel in a reasonable manner and a balanced approach that does not leave our community prey to**

**developers and housing speculators; and**

**BE IT FURTHER RESOLVED** that the Township Administrator is hereby directed to forward a copy of this resolution to Governor Phil Murphy, Senate President Nicholas Scutari, Assembly Speaker Craig Coughlin, Senator Joseph Pennacchio, Assemblyman Jay Webber and Assemblyman Brian Bergen.

A copy of this Resolution shall remain on file in the Borough Clerk's Office and available for public inspection.

This Resolution shall take effect immediately.

**Adopted: February 26, 2024**

**BOROUGH OF WHARTON**

**ATTEST:**

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**WILLIAM J. CHEGWIDDEN,  
MAYOR**

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**Cheryl Muzzillo,  
Deputy Borough Clerk**