TOWNSHIP OF VERONA
COUNTY OF ESSEX, STATE OF NEW JERSEY

RESOLUTION No. 2022-045

A motion was made by Councilman Tamburro; seconded by Deputy Mayor McGrath that the following resolution be adopted:

DEMANDING THAT THE NEW JERSEY STATE LEGISLATURE ACCEPT ITS RESPONSIBILITY TO PROVIDE AFFORDABLE HOUSING

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" (10 S. Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp., 67 N.J. 151, 174 (1975)); and

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

> *"Therefore, 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." (S. Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158, 220– 22 (1983)); and*

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

> *Experience . . . has demonstrated to us that builder's remedies must be made more 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. (S. Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158, 279–80 (1983)); and*

WHEREAS, the New Jersey Legislature responded quickly to the Court's Mount Laurel 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 Hous., 221 N.J. 1, 4 (2015); and

WHEREAS, COAH, pursuant to the authority granted to it by the Fair Housing Act, then adopted procedural and substantive rules which provided clear guidance to municipalities as to how they could meet their affordable housing obligation; and

WHEREAS, in its rules, COAH assigned a fair share number to each municipality and set forth various mechanisms that a municipality could use in order to satisfy that obligation; and

WHEREAS, the Township of Verona, like many other municipalities throughout the State of New Jersey, met its First and Second Round Affordable Housing Obligations through the COAH process; and

WHEREAS, COAH adopted the First Round Rules for the period from 1987 through 1993 and the Second Round Rules for the period 1993 to 1999 and then extended to 2004; and

WHEREAS, COAH was obliged by the Fair Housing Act to adopt Third Round Rules to take effect in 2004, however, but never adopted rules that were acceptable to the Courts; and

WHEREAS, in 2015, the Supreme Court again stepped in, finding that COAH's failure to adopt Third Round Rules forced the Court to intervene; and

WHEREAS, the Supreme Court designated Mount Laurel judges in each of the fifteen court vicinages to hear all Mount Laurel cases; and

WHEREAS, instead of providing clear guidance, like the COAH rules did, the Supreme Court in Mount Laurel IV set forth the following vague standards:

> *"As we said in In re Adoption of N.J.A.C. 5:96 & 5:97, supra, previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective State-wide and regional affordable housing need. 215 N.J. at 620. . . . The parties should demonstrate to the Court computations of housing need and municipal obligations based on those methodologies.*
>
> *Second, many aspects to the two earlier versions of Third Round Rules were found valid by the appellate courts. In upholding those rules the appellate courts highlighted COAH's discretion in the rule-making process. Judges may confidently utilize similar discretion when assessing a town's plan, if persuaded that the techniques proposed by a town will promote for that municipality and region the constitutional goal of creating the realistic opportunity for producing its fair share of the present and prospective need for low- and moderate-income housing. In guiding the courts in those matters, we identify certain principles that the courts can and should follow." In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Hous., 221 N.J. 1, 30 (2015); and*

WHEREAS, as a result of the Supreme Court's decision in Mount Laurel IV, municipalities no longer were assigned fair share numbers, no longer had clear and concise procedural and substantive rules to follow, and no longer had one tribunal to decide these issues, which meant that even the threshold issues of regional need and local fair share obligations had to be litigated before fifteen different Mount Laurel judges, and as a result, municipalities were forced to spend tens of thousands, and in some cases hundreds of thousands of dollars, to negotiate fair share numbers with the Fair Share Housing Center ("FSHC")and to gain court approval of settlement agreements negotiated with FSHC; and

WHEREAS, the Supreme Court in Mount Laurel IV concluded its opinion by encouraging the Legislature to once again assume responsibility in the area of affordable housing, saying:

> *"In conclusion, we note again that the action taken herein does not prevent either COAH or the Legislature from taking steps to restore a viable administrative remedy that towns can use in satisfaction of their constitutional obligation. In enacting the FHA, the Legislature clearly signaled, and we recognized, that an administrative remedy that culminates in voluntary municipal compliance with constitutional affordable housing obligations is preferred to litigation that results in compelled rezoning. (Citation omitted.) It is our hope that an administrative remedy will again become an option for those proactive municipalities that wish to use such means to obtain a determination of their housing obligations and the manner in which those obligations can be satisfied" (In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Hous., 221 N.J. 1, 34 (2015)); and*

WHEREAS, it has been five years since the Mount Laurel IV opinion was issued and neither the Legislature nor the Governor nor COAH have taken any action to remedy the situation; and

WHEREAS, if the Governor, the Legislature and COAH 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 that the Township Council of the Township of Verona, in the County of Essex, State of New Jersey, does hereby demand that the Governor and the Legislature take appropriate steps to restore a viable administrative remedy that municipalities can use in satisfaction of their constitutional obligations to provide affordable housing.

ROLL CALL:
AYES: Holland, Tamburro, McEvoy, McGrath, Roman
NAYS:

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF A RESOLUTION ADOPTED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF VERONA AT THE REGULAR MEETING HELD ON FEBRUARY 7, 2022.

JENNIFER KIERNAN
MUNICIPAL CLERK

TOWNSHIP OF VERONA COUNTY OF ESSEX SEAL 1907 NEW JERSEY