

BOROUGH OF HILLSDALE
RESOLUTION 15114

**RESOLUTION AUTHORIZING THE FILING OF A
DECLARATORY JUDGMENT ACTION IN THE
SUPERIOR COURT OF NEW JERSEY, LAW DIVISION
AND A MOTION SEEKING TEMPORARY IMMUNITY FROM
THIRD PARTY LAWSUITS WHILE PURSUING THE
DECLARATORY JUDGMENT ACTION
AND TAKING ALL ANCILLARY ACTIONS ASSOCIATED
THEREWITH TO ACCOMPLISH THAT OBJECTIVE**

WHEREAS, the Supreme Court of New Jersey rendered decisions in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975), (“Mount Laurel I”) and in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983) (“Mt. Laurel II”); and

WHEREAS, in 1985, the New Jersey Legislature adopted the Fair Housing Act (“FHA”) which provided municipalities with the ability to comply with their Mt. Laurel obligations by establishing a Housing Element & Fair Share Plan (“HE&FSP”) that would satisfy its obligations through the Council on Affordable Housing (“COAH”); and

WHEREAS, the Borough has received Second Round Substantive Certification; and

WHEREAS, COAH adopted various growth share regulations in 2004 which were subsequently invalidated by the Appellate Division; and

WHEREAS, the Borough filed its Third Round Housing Element & Fair Share Plan with COAH and petitioned for Substantive Certification in accordance with the third round regulations; and

WHEREAS, subsequent third round regulations were invalidated by the Appellate Division in 2010, which determined, among other things, that the growth share methodology was invalid, which decision was affirmed by the Supreme Court of New Jersey which directed COAH to adopt new regulations; and

WHEREAS, COAH failed to do so and the Fair Share Housing Center (“FSHC”) filed a motion with the Supreme Court to enforce litigant’s rights and on March 10, 2015 the Supreme Court issued its decision on FSHC’s motion to enforce litigant’s rights and established a procedure for municipalities to transition their applications pending before COAH to the judicial system in order to achieve similar protections that the municipality would have received had the COAH process proceeded; and

WHEREAS, the procedure established by the Supreme Court requires that by July 8, 2015 a participating municipality bring a Declaratory Judgment action in the Law Division of the Superior Court before the designated Mount Laurel judge on notice to interested entities, to declare the municipality’s HE&FSP as being constitutionally compliant; and

WHEREAS, the Supreme Court gave the Borough the right to seek temporary immunity from third party lawsuits while it pursues its Declaratory Judgment action; and

WHEREAS, on April 9, 2015 the Appellate Division issued its decision in the case entitled In re Failure of the Council on Affordable Housing to Adopt Trust Fund Commitment Regulations, Docket No. A-5257-11T4 and Docket No. A-0122-13T3 wherein they divested COAH of jurisdiction to effect a forfeiture of Affordable Housing Trust Funds not spent or committed to be spent within four years of their receipt and transferred jurisdiction to the judges who would also be hearing the Declaratory Judgment actions; and

WHEREAS, there remains pending before COAH unapproved Spending Plans potentially preventing municipalities from utilizing their Affordable Housing Trust Funds in an appropriate manner; and

WHEREAS, in light of the transition of jurisdiction to effect a forfeiture of Affordable Housing Trust Funds to the Court, it is appropriate to seek approval for any unapproved Spending Plan by the Court as part of the Declaratory Judgment action, if circumstances warrant; and

WHEREAS, the Borough desires to authorize the initiation of a Declaratory Judgment action in order for the Borough to proceed to validate a HE&FSP to be prepared by the Borough Planner; to seek temporary immunity while it pursues the Declaratory Judgment action; and to take all ancillary actions associated therewith to accomplish that objective.

NOW, THEREFORE, BE IT RESOLVED by the governing body as follows:

1. Mark D. Madaio, Esq. is hereby authorized and directed to initiate a Declaratory Judgment action in the Superior Court of New Jersey, Law Division, Bergen County, to seek a declaration that the Borough's HE&FSP, to be prepared by the Borough Planner, is constitutionally compliant and satisfies the Borough's affordable housing obligation for the period ending in 2025, or such other time period as may be determined by subsequent proceedings and to seek approval of its Spending Plan, if appropriate.

2. Said Declaratory Judgment action shall be filed no later than July 8, 2015, the deadline set forth in the Supreme Court decision above referenced, for the filing of such an action.

3. Simultaneous with the filing of the Declaratory Judgment action, Mark D. Madaio, Esq. is hereby authorized and directed to seek and obtain temporary immunity from any third party lawsuits associated with the Borough's affordable housing obligation, for a minimum period of five months or such other time as the Court may direct, in order to allow the Borough and its Planner to complete a revised HE&FSP to reflect and accommodate the Borough's affordable housing obligation through 2025, or such other time period as may be determined by subsequent proceedings.

4. The governing body requests the Planning Board to authorize the Borough Planner to prepare a revised HE&FSP as part of the Master Plan of the Borough which, among other things, will establish the affordable housing obligation of the Borough through 2025, or such

other time period as may be determined by subsequent proceedings, and further establish a mechanism to satisfy that obligation.

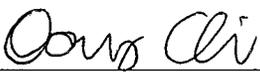
5. The Borough requests that the governing body representatives participate in the review of the HE&FSP prior to its public hearing and disposition by the Planning Board inasmuch as the Borough will be required to endorse the same as part of its proceedings to obtain the protections to be afforded to it through the Declaratory Judgment action abovementioned.

6 Mark D. Madaio, Esq. and all other appropriate Borough professionals, employees, elected, and appointed officials are hereby authorized and directed to take any and all steps necessary to effectuate the purposes of this Resolution.

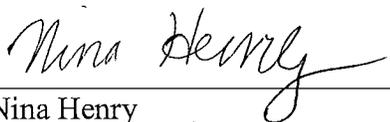
7. This Resolution shall take effect immediately.

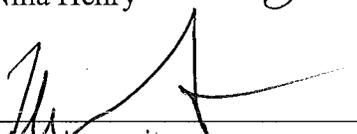
Council member	Motion	Second	Yes	No	Absent	Abstain	Recuse
Rezen, Calven/ DeGise, Jason		X	X				
Rossi, Mia/ DeRosa, Anthony			X				
Schubert, Jennifer/ Looes, Chrisoula			X				
Collier, Greg/ Meyerson, Lawrence	X		X				
Toledo, Allison/ Pizzella, Frank			X				
Insley, Jacob/ Ruocco, John			X				
Henry, Nina/ Arnowitz, Max							

Adopted: May 12, 2015

Attest: 
Dong Choi


Susan Witkowski
Municipal Clerk


Nina Henry


Max Arnowitz
Mayor