

**RESOLUTION OF THE TOWNSHIP OF WEST WINDSOR
URGING THE NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING TO ADOPT REGULATIONS
THAT CREATE REALISTIC AFFORDABLE HOUSING
GOALS AND THAT GIVE MUNICIPALITIES THE TOOLS
TO REACH THESE GOALS WITHIN THE BOUNDS OF
SOUND PLANNING AND FISCAL RESPONSIBILITY**

WHEREAS, the New Jersey Council on Affordable Housing (“COAH”) adopted regulations for the Third Round in December 2004; and

WHEREAS, the Appellate Division struck down several of those regulations and remanded the formulation of new affordable housing rules to COAH in *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing*, 390 N.J. Super. 1 (App. Div. 2007), cert. den. 192 N.J. 71 and 72 (2007); and

WHEREAS, in response to this decision, COAH proposed amended regulations on January 22, 2008 that not only address the issues raised by the Appellate Division’s invalidation of various regulations, but also that go far beyond what the Court required; and

WHEREAS, fair share responsibilities will soar, while the means by which municipalities can provide affordable housing will diminish if COAH adopts the proposed regulations; and

WHEREAS, the Township of West Windsor is proud of its support of affordable housing, including as of the date of the last COAH report the provision of the seventh highest production of new affordable units of any suburban municipality in the State, while preserving sound planning and fiscal responsibility consistent with smart growth principle; and

WHEREAS, in this regard, the Fair Housing Act (“FHA”) provides, “**Nothing in [the Fair Housing Act] shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.**” *N.J.S.A. 52:27D-310(d)* (emphasis supplied); and

WHEREAS, similarly, the FHA at *N.J.S.A. 52:27D-302(h)* provides:

h. The Supreme Court of New Jersey in its Mount Laurel decisions demands that municipal land use regulations affirmatively afford a reasonable opportunity for a variety and choice of housing including low and moderate cost housing, to meet the needs of people desiring to live there. **While provision for the actual construction of that housing by municipalities is not required, they are encouraged but not mandated to expend their own resources to help provide low and moderate income housing.**

WHEREAS, notwithstanding the foregoing, the combination of the greatly increased fair share responsibilities created by the proposed regulations with the limitations those regulations impose on the ability to create affordable housing, will force municipalities to increase taxes to pay for the cost of compliance and will force municipalities to pay lesser attention to their legitimate planning concerns, thus making it far more difficult and costly for municipalities to create affordable housing than necessary while diminishing the incentive for voluntary compliance; and

WHEREAS, the proposed regulations radically and unrealistically increase the cost of compliance techniques, including the following:

- a. An increase of almost 100%, or more, in the costs of Regional Contribution Agreements from \$35,000 per unit to \$67,000 to \$80,000 per unit.
- b. A 100% increase in the ratio of affordable to market units, from eight to four units.
- c. An increase by almost 60% in the ratio of affordable units for new jobs, from one affordable unit for every 25 jobs to every 16 jobs.
- d. An increase in the ratio of affordable units to office space by almost 50%, from one unit for every 8,333 square feet to 5,714 square feet.
- e. An increase in the ratio of affordable units to retail by almost 170%, from one unit for every 25,000 square feet to 9,412 square feet.
- f. An increase in the ratio of affordable units to restaurants by almost 70%, from one unit for every 8,333 square feet to 5,000 square feet.

- g. An increase by over 230% in the ratio of affordable units to hotel space, from one unit for every 31,250 square feet to 9,412 square feet.

WHEREAS, implementation of the proposed regulations will clash with different policy and data sets of other State agencies, including the Department of Environmental Protection, and will undercut both smart growth initiatives and economic development; and

WHEREAS, as noted, we wish to comply with the *Mount Laurel* doctrine, which is premised upon the principle that municipalities must create a realistic opportunity for their fair share of affordable housing; and

WHEREAS, the proposed rules of COAH frustrate the *Mount Laurel* goals by establishing policies that are neither fair nor realistic; and

WHEREAS, COAH should reconsider its proposed regulations and adopt regulations that give municipalities realistic goals and the power to realistically and practically achieve these goals; and

WHEREAS, West Windsor supports sensible policies to promote the provision of affordable housing within the bounds of sound planning and fiscal responsibility consistent with smart growth principles, goals the proposed regulations will not support; and

WHEREAS, the Township Council of the Township of West Windsor wishes to express its strong concern that COAH's proposed regulations will not achieve these policy objectives and further express community's desire that COAH establish sensible state policies on affordable housing that facilitate the production of affordable housing; and

WHEREAS, the Township Council wishes to impress upon COAH that, despite the best intentions, the current regulations, if adopted, will impose increased taxes on an overburdened taxpayer and make our State an increasingly unaffordable place to live and will be contrary to the prohibition against unfunded mandates set forth in Article VIII, Section II, Paragraph 5 of the New Jersey Constitution in that the regulations that impose added costs apply solely to government entities; and

WHEREAS, the Township Council further wishes to impress upon COAH that the increased costs resulting from the proposed affordable housing regulations will substantially burden the taxpayers with even higher educational costs and related expansion construction costs.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. That COAH be notified of the Township of West Windsor's concern about the proposed regulations.
2. That we urge COAH to immediately work with the Township's professional staff, whose expertise in land use and affordable housing program implementation we invite COAH to utilize, to craft workable and sensible regulations that establish reasonable fair share goals, set reasonable per unit R.C.A. costs, and reflect the specific comments submitted to COAH by the West Windsor Planning Board, all of which are endorsed hereby. In doing so, we urge COAH to develop regulations that facilitate the ability of municipalities to meet reasonable fair share goals in accordance with principles of sound planning and fiscal responsibility, which are integral components of the Fair Housing Act and the hallmarks of sound government, so as to achieve all of the policy goals embodied in the Fair Housing Act and *Mt. Laurel* doctrine.
3. That staff be directed to petition the Council on Local Mandates for a determination that the proposed regulations that impose additional costs that pertain solely to government entities constitute an unfunded State mandate.
4. That a copy of this Resolution be provided to the New Jersey League of Municipalities as well as the 14th Legislative District representatives.

Adopted: February 25, 2008

I certify the above Resolution was adopted by the West Windsor Township Council at its meeting on the 25th day of February, 2008.

Sharon Young, Township Clerk
West Windsor Township