

BOROUGH OF RED BANK

COUNTY OF MONMOUTH

RESOLUTION NO. 15-124

A RESOLUTION AUTHORIZING THE BOROUGH ATTORNEY TO FILE A DECLATORY JUDGMENT ACTION TO HAVE THE BOROUGH OF RED BANK'S AFFORDABLE HOUSING PLAN DECLARED CONSTITUTIONALLY COMPLIANT

Councilman Zipprich offered the following resolution and moved its adoption:

WHEREAS, in its recent decision *In The Matter of The Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing*, the New Jersey Supreme Court held that the Council on Affordable Housing ("COAH") had failed to comply with its obligation to adopt updated regulations (the "Third Round Rules") for the present period of municipal housing obligations pursuant to the authority granted to COAH under the Fair Housing Act ("FHA"), N.J.S.A. 52:27D-301-329; and

WHEREAS, as the result of COAH's failure to adopt Third Round Rules, the New Jersey Supreme Court has ordered that the Courts may resume their role as the forum of first resort for evaluating municipal compliance with *Mount Laurel* affordable housing obligations; and

WHEREAS, the Supreme Court has established a process by which municipalities can have their housing plans reviewed by the courts for constitutional compliance;

WHEREAS, the Supreme Court has identified two classes of towns that had sought to make use of the administrative remedies offered through the FHA before earlier versions of the Third Round Rules had been invalidated: (1) towns that had obtained substantive certification from COAH; and (2) towns that were "participating" in the COAH Process in connection with the Third Round Rules; and

WHEREAS, Red Bank is among the class of towns that was "participating" with COAH regarding its Affordable Housing Plan for the proposed Third Round Rules; and

WHEREAS, although Red Bank did not obtain substantive certification from COAH, the Borough adopted and submitted its Master Plan Housing Plan Element and Fair Share Plan Amendment to COAH for approval;

WHEREAS, the Fair Share Housing Center ("Fair Share") filed an objection to the Borough's Housing Plan;

WHEREAS, through mediation, Fair Share and the Borough reached an agreement regarding the Borough's Housing Plan; and the Borough has adopted ordinances in furtherance of its Housing Plan and Agreement with Fair Share; and

WHEREAS, the Supreme Court stated in its decision regarding "participating" towns, that it would expect a reviewing court to look more favorably upon those participating towns that devised a housing plan element and took action toward adopting ordinances in furtherance of its plan, in contrast with participating towns that merely submitted a resolution of participation with COAH regarding the Third Round Rules; and

WHEREAS, the process adopted by the Supreme Court allows "participating" towns to file a declaratory judgment action within the 30 day period following the 90 day stay of the Supreme Court's order to obtain constitutional compliance and immunity from a builder's remedy lawsuit. If a municipality chooses to not file such an action during the required period, then an action solely focused on whether the municipality's housing plan meets its Mount Laurel

obligations may thereafter be brought by any party against the municipality; and

WHEREAS, it is the recommendation of the Borough Attorney and the Borough's Affordable Housing Planner that the Borough take affirmative steps to file the declaratory judgment action during the 30 day period to seek a determination that the Borough's housing plan is constitutionally compliant;

NOW, THEREFORE, BE IT RESOLVED that Borough Attorney is authorized to prepare and file a declaratory judgment lawsuit, with the assistance of the Borough's Affordable Housing Planner, seeking to have the Borough's Affordable Housing Plan declared constitutionally compliant.

Seconded by Councilman DuPont and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Councilman Murphy	(x)	()	()	()
Councilwoman Burnham	(x)	()	()	()
Councilwoman Horgan	(x)	()	()	()
Councilwoman Schwabenbauer	(x)	()	()	()
Councilman Zipprich	(x)	()	()	()
Councilman DuPont	(x)	()	()	()

Dated: May 27, 2015