

Resolution of the Demarest Governing Body

Resolution No. 035-25

January 27, 2025

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang		✓	✓			
Fox			✓			
Marks			✓			
Slowikowski	✓		✓			
Reiss			✓			
Collins			✓			

TITLE: RESOLUTION OF THE BOROUGH OF DEMAREST, BERGEN COUNTY, COMMITTING TO THE BOROUGH’S FOURTH ROUND AFFORDABLE HOUSING OBLIGATION

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WHEREAS, the Borough of Demarest, County of Bergen, State of New Jersey, (hereinafter the “Borough”) has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations and obtained a Third Round Judgment of Compliance and Repose thereby immunizing the Borough from builder remedy litigation until July 1, 2025, In Re Petition of the Borough of Demarest, Bergen County, Superior Court of New Jersey, Law Division, Bergen County, Docket No.: BER-L-6301-15; and

WHEREAS, on March 20, 2024, Governor Philip D. Murphy signed P.L. 2024, c.2 into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter “Amended FHA”); and

WHEREAS, the Amended FHA abolished the Council on Affordable Housing, also known as COAH, and delegated its responsibilities to the New Jersey Department of Community Affairs (hereinafter “DCA”), the New Jersey Housing and Mortgage Finance Agency, and the Affordable Housing Dispute Resolution Program (hereinafter “Program”), created by the same law; and

WHEREAS, the Amended FHA requires the DCA to calculate non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA employed three (3) factors to allocate the Regional Need to each applicable municipality: equalized non-residential valuation, income capacity, and land capacity; and

WHEREAS, the DCA Report calculates the Round 4 (2025-2035) obligation of the Borough as follows: a Present Need or Rehabilitation Obligation of 0 and a Prospective Need or New Construction Obligation of 106; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of Round 4 affordable housing obligations; and

WHEREAS, the Amended FHA further provides that “[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions” (N.J.S.A. 52:27D-311(m)); and

WHEREAS, COAH regulations authorize vacant land adjustments, durational adjustments, windshield surveys and other adjustments; and

WHEREAS, Borough employees and professionals have reviewed the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development, and

WHEREAS, while the Borough does not challenge the methodology to determine the Borough’s Round 4 affordable housing obligations, the Borough believes that a recalculation of the Land Capacity Factor was necessary in order to account for land use data errors in the DCA’s calculation that identified five (5) developable areas within the Borough when only one (1) areas are developable; and

WHEREAS, after excluding lands that were inaccurately determined by the DCA to be developable, the Borough calculated its Round 4 obligation to include a Present Need or Rehabilitation Obligation of 0 and a Prospective Need or New Construction Obligation of 94. The basis for that conclusion is attached hereto as Exhibit A; and

WHEREAS, the Amended FHA provides the “municipality’s determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7” of the Act; and

WHEREAS, the Borough’s calculation of its Round 4 obligation was calculated in accordance with sections 6 and 7 of the Amended FHA and is therefore entitled to a presumption of validity; and

WHEREAS, the Borough reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, the Borough also reserves the right to adjust its position in the event of any rulings in the Montvale case (MER-L-1778-24) or any other such litigation or legislative action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Borough reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Present or Prospective Need Obligations should be lower than described herein; and

WHEREAS, in addition to the foregoing, nothing in the Amended FHA requires or can require an increase in the Borough’s Round 4 Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of the Amended FHA is to establish, for example, unchallenged numbers by default on March 1, 2025; and

WHEREAS, in light of the above, the Mayor and Borough Council of the Borough of Demarest finds that it is in the best interest of the Borough to declare its modifications to the obligations reported by the DCA on October 18, 2024, subject to the reservations set forth herein; and

WHEREAS, in addition to the above, the Acting Administrative Director of the Administrative Office of the Court issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located... "within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner"; and

WHEREAS, the Borough seeks a certification of compliance with the FHA through participation in the Program and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution.

NOW, THEREFORE, BE IT RESOLVED on this 27 day of January, 2025 by the Mayor and Borough Council of the Borough of Demarest, Bergen County, New Jersey as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.

2. For the reasons set forth in this resolution, the Borough of Demarest hereby accepts the DCA methodology and commits to a modified Round 4 Present Need Obligation of 0 units and Prospective Need Obligation of 94 units based on the calculations set forth in Exhibit A, subject to all reservations of rights set forth above.

3. The Borough of Demarest hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in Bergen County within 48 hours after adoption of this resolution, attaching this resolution.

4. The Borough of Demarest authorizes its Affordable Housing Counsel to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and/or file this resolution with the Program or any other such entity as may be determined to be appropriate.

5. The Borough of Demarest hereby directs its Borough Clerk to post this resolution on the Borough website within 48 hours after adoption of this resolution.

6. The Borough of Demarest shall undertake all acts necessary to adopt a housing element and fair share plan to address its present and prospective need obligations as provided for by the Amended FHA, for filing by June 30, 2025 as part of the declaratory judgment action authorized herein.

7. This resolution shall take effect immediately, according to law.

APPROVED:



Mayor Brian Bernstein

CERTIFICATION

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey, do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on January 27, 2025



Julie Falkenstern, Acting Borough Clerk