

**BOROUGH OF MIDLAND PARK  
RESOLUTION #049-2025  
JANUARY 23, 2025**

**RESOLUTION OF THE BOROUGH OF MIDLAND PARK, COUNTY OF  
BERGEN, STATE OF NEW JERSEY COMMITTING TO ROUND 4  
PRESENT AND PROSPECTIVE NEED AFFORDABLE HOUSING  
OBLIGATIONS**

**WHEREAS**, the Borough of Midland Park, County of Bergen, State of New Jersey, (hereinafter, "Midland Park") has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations; and

**WHEREAS**, on March 20, 2024, Governor Phil Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter "Amended FHA" or "Act"); and

**WHEREAS**, the Amended FHA requires the Department of Community Affairs ("DCA") to provide an estimate of the fair share affordable housing obligations of all municipalities on or before October 20, 2024 based upon the criteria on the Amended FHA; and

**WHEREAS**, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the fair share affordable housing obligation for all municipalities based upon its interpretation of the standards in the Act; and

**WHEREAS**, the DCA Report calculates Midland Park's Round 4 (2025-2035) fair share affordable housing obligations as follows: a Present Need (Rehabilitation) Obligation of 0 and a Prospective Need (New Construction) Obligation of 155; and

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

**WHEREAS**, the Amended FHA gives municipalities the opportunity to propose a different fair share affordable housing obligation from those reported by the DCA on October 18, 2024 based upon the standards in Sections 6 and 7 of the Act; 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 the Council on Affordable Housing ("COAH") unless those regulations are contradicted by statute, including the Act, or binding court decisions" (N.J.S.A 52:27D-311 (m)); and

**WHEREAS**, COAH regulations empower municipalities to secure vacant land adjustments, durational adjustments and other adjustments; and

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**WHEREAS**, Midland Park has accepted the Present Need (Rehabilitation) Obligation of 0 as reported by the DCA in its October 18, 2024 Report; and

**WHEREAS**, Midland Park has accepted the Prospective Need Obligation of 155 as reported by the DCA in its October 18, 2024 Report; and

**WHEREAS**, the Amended FHA provides that: “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**, Midland Park’s calculation of need is entitled to a “presumption of validity” because it complies with Sections 6 and 7 of the Act and the October 18, 2024 DCA Report ; and

**WHEREAS**, in addition to setting forth its Round 4 fair share affordable housing obligations for the reasons summarized above, substantial activity has occurred and is ongoing that warrants the reservation of certain rights to avoid any claim that it has waived them; and

**WHEREAS**, the process established by the Amended FHA creates an opportunity to object by interested parties opposing the obligations to which a municipality commits, thereby creating the potential for litigation over the obligations of the municipality; and

**WHEREAS** the court approved a vacant land adjustment (hereinafter, “VLA”) and a realistic development potential (hereinafter, “RDP”) for Midland Park in Round 3; and

**WHEREAS**, because there has been no material change in vacant land in Midland Park since the approval of its VLA and RDP, and because Midland Park provided a realistic opportunity for the satisfaction of its RDP approved by the Court in Round 3, Midland Park is entitled to a VLA in Round 4 and a minimal RDP in Round 4 that will be fully addressed and included in the HEFSP it submits by the June 30, 2025 deadline; and

**WHEREAS**, the Amended FHA requires municipalities to adopt a binding resolution no later than January 31, 2025 as to its obligations; and

**WHEREAS**, in light of the above, Midland Park finds that it is in its best interest to declare its obligations in accordance with this binding resolution in accordance with the Act; and

**WHEREAS**, in addition to the above, the Director 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 compliance certification with the Act shall file an action in the form of a declaratory judgment complaint. within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner; and

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**WHEREAS**, Midland Park seeks a compliance certification with the Act 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 23<sup>rd</sup> day of January, 2025 by the Governing Body of the Borough of Midland Park, County of Bergen, State of New Jersey, as follows:

1. The preamble of this resolution is incorporated into the operative clauses of this resolution as if set forth in full.

2. For the reasons set forth in this resolution and its attachments, Midland Park commits to a Round 4 Present Need (Rehabilitation) Obligation of 0 and a Round 4 Prospective Need (New Construction) obligation of 155, as set forth in the October 18, 2024 DCA Report and in the Exhibit to this Resolution, subject to all reservations of all rights, which specifically include, without limitation, the following:

a) The right to a vacant land adjustment, durational adjustments, and all other applicable adjustments permitted in accordance with the Act and COAH regulations;

b) The right to comply with the NJILGA Legislation if enacted, including the right to adjust its fair share obligations;

c) The right to adjust its fair share obligation in the event of any future legislation that adjusts the fair share obligations that the DCA reported on October 18, 2024;

d) The right to adjust its fair share obligations based upon any ruling in the Montvale Litigation or other litigation; and

e) The right to adjust its fair share obligations in the event of a third party challenge to the fair share obligations and Midland Park's response thereto.

3. Midland Park hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in the appropriate venue within 48 hours after adoption of this resolution attaching this resolution.

4. Midland Park hereby authorizes its Affordable Housing Counsel to file this resolution with the Program or any other such entity as may be determined to be appropriate.

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

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Wendy Martin  
Wendy Martin, Borough Clerk

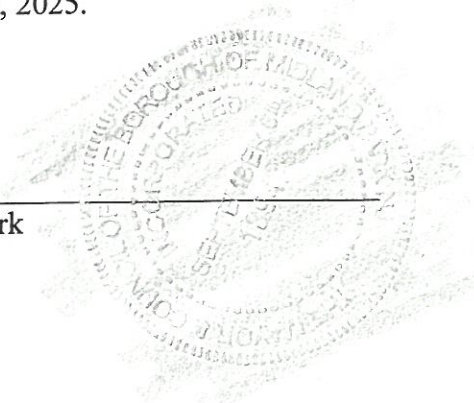
Harry Shortway Jr  
Mayor Harry Shortway, Jr.

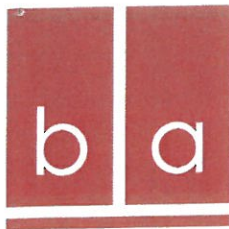
Member	Motion	Second	Aye	Nay	Abstain	Absent
Iannone			✓			
Sansone			✓			
Braunius		✓	✓			
DeBlasio			✓			
DeLuca	✓		✓			
Peet			✓			

**CERTIFICATION**

The undersigned, Municipal Clerk for the Borough of Midland Park, County of Bergen, State of New Jersey, hereby certifies the foregoing to be a true copy of a Resolution adopted by the Governing Body of the Borough of Midland Park on January 23, 2025.

Wendy Martin  
Wendy Martin, Municipal Clerk





COMMUNITY PLANNING  
LAND DEVELOPMENT AND DESIGN  
LANDSCAPE ARCHITECTURE

**B U R G I S**  
ASSOCIATES, INC.

Principals:  
*Joseph H. Burgis PP, AICP*  
*Edward Snieckus, Jr. PP, LLA, ASLA*  
*David Novak PP, AICP*

## MEMORANDUM

To: Edward J. Buzak, Esq.  
Surenian, Edwards, Buzak & Nolan LLC

From: Joseph H. Burgis PP, AICP  
David Novak PP, AICP

Subject: Borough of Midland Park  
Bergen County, New Jersey  
Resolution re: Present and Prospective Need Analysis

Date: January 9, 2025

BA#: 4150.01

### Introduction

The following Present and Prospective Need Analysis has been prepared for the Borough of Midland Park in Bergen County, New Jersey.

By way of background, P.L.2024, c.2 was enacted on March 20, 2024. This legislation overhauled the Fair Housing Act (FHA) by abolishing the Council on Affordable Housing (COAH) and splitting its duties between the Department of Community Affairs (DCA) and the Administrative Office of the Courts (AOC).

The DCA was designated as the entity responsible for calculating the state's regional needs as well as each municipality's present and prospective fair share obligations. These municipal calculations, which were released on October 18, 2024, are advisory only. Each municipality is responsible for setting its own obligation utilizing a similar methodology by January 31, 2025 through the adoption of a binding resolution. The DCA has calculated Present Need of 0 affordable units and a Prospective Need of 155 affordable units for the Borough.

As set forth in the legislation, the methodology to calculate a municipality's prospective fair share obligation consists of three factors: the equalized nonresidential valuation factor; the income capacity factor; and the land capacity factor. These factors are described in greater detail herein.

The purpose of this analysis is to review the DCA's calculation of the Borough of Midland Park's Present Need Obligation and Prospective Need Obligation for the years 2025 to 2035. In summary, and as reflected by the Council Resolution regarding this matter, this analysis finds that the methodology utilized by the DCA to determine the Borough's obligations was appropriately conducted in accordance with the new legislation.

However, and as described in greater detail herein, this analysis uncovered errors with the data that was relied upon by the DCA to calculate the Borough's Prospective Need Obligation. This includes sites and acreage which should not have been included in the determination of the Borough's land capacity factor. Despite these errors, the Borough accepts the Prospective Need Obligation of 155 affordable units for the purposes of this process. Note that the Borough reserves the right to conduct a vacant land adjustment (VLA) to determine its realistic development potential (RDP) at a later date.

## Section 1: Present Need Obligation

The following section reviews the Borough's Present Need as calculated by the DCA. The Borough finds that the methodology and the data utilized by the DCA to calculate its Present Need Obligation is acceptable.

### Background Information

As per the adopted legislation, a municipality's Present Need Obligation shall be determined "by estimating the deficient housing units occupied by low- and moderate-income households in the region, following a methodology similar to the methodology used to determine third round municipal present need, through the use of most recent datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof."

The "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" workbook released by the DCA (herein referred to as the "DCA Workbook" or the "Workbook") noted that the Present Need calculations used three factors to calculate its present need: the number of housing units lacking complete kitchen facilities, the number of units lacking complete plumbing facilities, and the number of overcrowded units.

The analysis employed by DCA utilizes data from HUD's Comprehensive Housing Affordability Strategy (CHAS) dataset, which has municipal-level data on the number and percentage of low- and moderate-income households from a special tabulation of the US Census's American Community Survey (ACS) data. For a full explanation of how this data was utilized, see the DCA Workbook.

The DCA determined by the Borough's Present Need number is 0 units.

Analysis

The Borough has reviewed the data and the methodology utilized by the DCA for this calculation and finds both to be acceptable.

Section 2: Equalized Nonresidential Valuation Factor

The following section reviews the equalized nonresidential valuation factor calculated by the DCA. The Borough finds that the methodology and data utilized by the DCA to calculate its nonresidential valuation factor are acceptable.

Basis of Calculation

As per the adopted legislation, a municipality's equalized nonresidential valuation factor shall be determined as follows: "to determine this factor, the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be calculated using data published by the Division of Local Government Services in the department. For the purposes of such, the beginning of the round of affordable housing obligations preceding the fourth round shall be the beginning of the gap period in 1999. The change in the municipality's nonresidential valuations shall be divided by the regional total change in the nonresidential valuations to determine the municipality's share of the regional change as the equalized nonresidential valuation factor."

Analysis of Calculation

The calculation conducted by the DCA determined that the Borough has a 0.40% share of the region's equalized nonresidential valuation.

Table 1 summarizes the DCA's calculation of the Borough's equalized nonresidential valuations from 1999 and 2023. As shown, the DCA calculated an equalized nonresidential valuation change of \$180,073,988 between 1999 and 2025. When divided by the region's total calculated nonresidential valuation change of \$32,549,128,394 for that same time period, this results in a regional share of 0.40%.

*Table 1: DCA Equalized Nonresidential Valuation Calculation Summary*

Year	Non-equalized Nonresidential Valuation	Equalization Ratio	Equalized Nonresidential Valuation
1999	\$102,564,300	0.8304	\$123,511,922
2023	\$182,099,100	0.7139	\$255,076,481
<i>Difference</i>			<i>\$131,564,559</i>

*Source: DCA Fair Share Housing Obligations for 2025-2035 (Fourth Round) Workbook*

The Borough has reviewed the methodology and data utilized by the DCA for this calculation and find both to be acceptable.

### Section 3: Income Capacity Factor

The following section reviews the income capacity factor calculated by the DCA. It finds that the data and methodology utilized by the DCA relating to the Borough’s income capacity factor are both acceptable.

#### Basis of Calculation

As per the adopted legislation, a municipality’s income capacity factor shall be determined by calculating the average of the following measures: “The municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of \$100 below the lowest median household income in the region; and the municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality.”

#### Analysis of Calculation

The calculation conducted by the DCA determined that the Borough has a 0.87% share of the region’s income capacity factor. Table 2 summarizes the methodology utilized by the DCA to determine this share. The Borough has reviewed the data and the methodology utilized by the DCA for this calculation and finds both to be acceptable.

Table 2: Income Capacity Factor

Number of Households	Median household income in the past 12 months (in 2022 inflation-adjusted dollars)*	\$100 Below Regional Median HH Income Floor	Diff. from Median Household Income Floor with Household Weight	HH Weighted Income Difference % of Region Total	Diff from Median Household Income Floor	Income Difference % of Region Total	Income Capacity Factor
2,893	\$136,326	\$51,992	\$243,978,262	0.7%	\$84,334	1.0%	0.87%

### Section 4: Land Capacity Factor

The following section reviews the land capacity factor calculated by the DCA. The Borough finds that the methodology utilized by the DCA to calculate its land capacity factor is acceptable. However, an analysis of the lands identified by the DCA as being “developable” includes several errors. In summary, these errors regard undeveloped segments of developed properties that were identified as developable as well as the rear yards of residential dwellings located in an adjoining municipality.

Despite these errors, the Borough accepts the income capacity factor calculated by the DCA.



### Basis of Calculation

As per the adopted legislation, a municipality's land capacity factor shall be determined by: "estimating the area of developable land in the municipality's boundaries, and regional boundaries, that may accommodate development through the use of the 'land use / land cover data' most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs and weighing such land based on the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality and in the region shall be determined. The municipality's share of its region's developable land shall be its land capacity factor. Developable land that may accommodate development shall be weighted based on the planning area type in which such land is located."

The legislation identifies the primary data sources and weighing factors to utilize in calculating a municipality's land capacity factor. However, unlike the equalized nonresidential valuation factor and the income capacity factor, the legislation did not establish a delineated process to combine the aforementioned data sources into one comprehensive and coherent formula.

The DCA subsequently released a workbook entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" (herein referred to as the "DCA Workbook" or the "Workbook") which established that department's interpretation on how to calculate the land capacity factor. In summary, that workbook identified the following steps:

1. First, the DCA divided the weighting regions established by the legislation by municipality.
2. Next, land use/land cover areas were used to identify vacant, developable lands. The workbook identifies the codes and descriptions of the land use/land cover data used in this process. In short, they include: cropland and pastureland; orchards/vineyards/nurseries/horticultural areas; deciduous forest areas; coniferous forest areas; plantations; mixed forest areas; old field areas; phragmites dominate old field areas; deciduous brush/shrubland; coniferous brush/shrubland; mixed deciduous/coniferous brush/shrubland; severe burned upland vegetation; and undifferentiated barren lands.
3. These initial vacant, developable lands were then refined to remove rights-of-way as well as developed properties. For the latter, the DCA utilized MOD-IV tax data and selected underlying tax parcels with property class codes for residential, commercial, industrial, apartment, railroad, and school.
4. Construction permit data was then analyzed to capture more recent development activities that may not have otherwise been reflected by the land use/land cover data or MOD-IV tax data.

5. Other limiting factors were utilized to remove initial vacant, developable lands. These include: open space, preserved farmland, category 1 waterways and wetlands (and associated buffers based on special area restrictions), steep slopes exceeding 15 percent, and open waters.
6. Due to limitations resulting from inconsistencies between data sources, the resulting mapping included instances of small land areas caused by an incongruous alignment of geospatial layers. To eliminate these "slivers" of leftover land, the DCA eliminated any feature part with an areas of less than 2,500 square feet. This presumed that a 25' by 100' foot area could be a developable property.
7. Finally, the resulting land area for each municipality was summed with the land areas for all other municipalities within each housing region to then determine the municipal percentage of land capacity for the housing region.

### Analysis of Calculation

The calculation conducted by the DCA determined that the Borough has 7.880 acres of developable land which accounts for 0.40% share of the region's developable land. Overall, the Borough finds the general methodology utilized by the DCA to calculate its land capacity factor acceptable. However, an analysis of the DCA's resultant mapping discovered the following:

1. One significantly sized area of land identified as "developable" by the DCA is located on the rear yard of a property presently developed with a house of worship. To eliminate "developable" lands on developed properties, the DCA removed any lands where the underlying tax parcels had property class codes for residential, commercial, industrial, apartment, railroad, and school. However, parcels with property tax codes for houses of worship were not included.
2. One area of land identified as "developable" is located on the rear yards of residential properties located in Wyckoff.
3. Two areas of land identified as "developable" are located on property presently developed with an age-restricted multifamily development. These areas should have likely been eliminated by the DCA. However, the underlying parcel has a tax code of 15F for "other exempt properties."

Despite these errors, the Borough accepts the land capacity factor calculated by the DCA for the purposes of this process. Irrespective of the land capacity factor analysis, the Borough reserves the right to conduct a vacant land adjustment (VLA) to determine its realistic development potential (RDP) at a later date.

## Section 5: Conclusions

This analysis does not find fault with the methodology utilized by DCA in determining municipal affordable housing obligations. However, the analysis did uncover data that was relied upon by the DCA which incorrectly includes sites and acreage which should not have been included in the determination of the Borough's Prospective Need Obligation. Nevertheless, the Borough accepts the Present Need Obligation of 0 affordable units and the Prospective Need Obligation of 155 affordable units calculated by the DCA. Note that the Borough reserves the right to conduct a vacant land adjustment (VLA) to determine its realistic development potential (RDP) at a later date.



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David Novak, AICP, PP  
Professional Planner #6269