

BOROUGH OF ORADELL
BERGEN COUNTY, NEW JERSEY

RESOLUTION 25-62

Offered by Staff Seconded by Gullo

Member	Aye	No	Abstain	Absent
MAYOR KOTH				
CARNEVALE	✓			
STAFF	✓			
TASHJIAN				✓
KERN	✓			
GULLO	✓			
KELLY	✓			

RESOLUTION OF THE BOROUGH OF ORADELL, COUNTY OF BERGEN, STATE OF NEW JERSEY COMMITTING TO COMPLY WITH PRESENT NEED (REHAB OBLIGATION) AND TO ROUND 4 PROSPECTIVE NEED SUBJECT TO CORRECTIONS OF DATA AND ALL APPLICABLE ADJUSTMENTS

WHEREAS, the Borough of Oradell, County of Bergen, State of New Jersey, (hereinafter, "Borough" or "Oradell") 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 present need, also referred to as the rehab obligation, and the Round 4 prospective need of all municipalities by 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 present need and the Round 4 prospective need obligation for all municipalities based upon its interpretation of the standards in the Act; and

WHEREAS, the DCA Report calculates Present Need (Rehabilitation) Obligation to be 0 and its Round 4 Prospective Need to be 186; 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 different obligations 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 P.L. 2024, c.2, or binding court decisions” (N.J.S.A 52:27D-311 (m)); and

WHEREAS, COAH regulations authorize municipalities to secure an adjustment to their rehabilitation obligation through a windshield survey and also empower municipalities to secure vacant land adjustments, durational adjustments and other adjustments; and

WHEREAS, the Borough, through its professionals, has exercised its right to review the data that is the basis for the 3 allocation factors used to determine Oradell’s share of the regional need; and

WHEREAS, more specifically, Oradell has reviewed the data that the DCA used to compute the Land Capacity Allocation Factor that the DCA belatedly provided on or about November 27, 2024 instead of by October 20, 2024; and

WHEREAS, the Borough further notes that the link to the DCA GIS data that the DCA belatedly made available to municipalities includes the following language:

"The land areas identified in this dataset are based on an the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. **It is important to note that the identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program.**" (emphasis added)

WHEREAS, the Borough accepted the DCA’s invitation to examine the data it used to compute this allocation factor and found that the DCA had indeed been over inclusive in the land it found to be developable; and

WHEREAS, more specifically, based upon a report, prepared by its expert, Caroline Reiter, PP/AICP, which is attached hereto as Exhibit A, the Borough finds that fewer acres are developable than the DCA reported in computing the Land Capacity factor; and

WHEREAS, upon correcting the data used to determine the Land Capacity Factor, the correct Round 4 prospective need number is 174 not 186; 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, Borough’s calculation of need is entitled to a “presumption of validity” because it complies with Sections 6 and 7 of the Act; 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, for example, the New Jersey Institute of Local Government Attorneys (“NJILGA”) has expressed its support for proposed legislation (hereinafter “NJILGA Legislation”) would reduce Oradell’s Round 4 Prospective Need to 38 and would give the Borough “90 days from receipt of revised

fair share obligations from the [DCA] to provide an amended Housing Element and Fair Share Plan addressing the new number); and

WHEREAS, the Borough of Oradell supports the NJILGA Legislation and would have the right to reduce its Round 4 obligation in the event that the Legislature enacts it; and

WHEREAS, similarly, a number of municipalities, led by the Borough of Montvale, have filed suit (MER-L-1778-24) (hereinafter "Montvale Litigation") challenging the Amended FHA and the outcome of this litigation is uncertain; 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 and an RDP for the Borough in Round 3; and

WHEREAS, the Borough will be entitled to an adjustment in Round 4 since it lacked sufficient land to meet its fair share quota for Round 3; and

WHEREAS, the Borough will include the basis for its vacant land adjustment in 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.

WHEREAS, in light of the above, the Borough of Oradell 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 Acting Administrative 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 a certification of compliance 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

WHEREAS, the Borough of Oradell seeks a certification of compliance 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 28th day of January, by the Governing Body of the Borough of Oradell, 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.

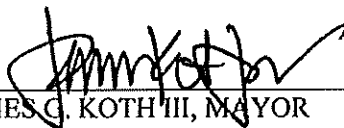
2. For the reasons set for the in this resolution and its attachments, the Borough of Oradell commits to a Round 4 Present Need ("Rehabilitation") Obligation of 0 and a Round 4 Prospective Need ("New Construction") obligation of 174, as set forth in the Exhibit to this Resolution, subject to all reservations 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 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 the Borough of Oradell's response thereto.

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

4. The Borough also 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.

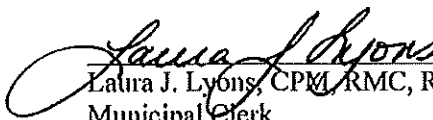


 JAMES C. KOTH III, MAYOR

Passed on a roll call vote at the Reorganization of the Mayor and Council of the Borough of Oradell held on January 28, 2025.

(SEAL)

ATTEST:



 Lalra J. Lyons, CPM, RMC, RPPO
 Municipal Clerk

CERTIFICATION



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Via email

MEMORANDUM

To: Borough of Oradell

From: Caroline Z. Reiter, P.P., A.I.C.P., Borough of Oradell Interim Planner

Date: January 28, 2025

Re: Round 4 Affordable Housing Obligation

New Jersey's Department of Community Affairs (DCA) calculated a Round 4 Prospective Need obligation of **186 units** for the Borough. This report examines the calculation and provides a correction based upon issues with the data used to determine the Land Capacity Allocation Factor.

Regional Obligation and Allocation Factors

New Jersey affordable housing obligations are calculated on a regional level and then allocated to each municipality in the region that is not a Qualified Urban Aid Municipality (QUAM). There are six affordable housing regions in the state; the regions each include three or four counties. Region 1, in which Oradell is located, includes Bergen, Hudson, Passaic and Sussex counties.

The Amended FHA

The Amendment to the New Jersey Fair Housing Act (Amended FHA) signed into law in March 2024 details how the regional need for Round 4 must be calculated and how the regional need must be allocated to all non-QUAM municipalities in the region. More specifically, the Amended FHA directs that the regional need be allocated through three allocation factors: (1) Equalized Nonresidential Valuation factor, (2) Income Capacity factor, and (3) Land Capacity factor. After calculating each allocation factor, they are then averaged, and that average is applied to the regional prospective need to calculate a municipality's share of the regional need.

The DCA's Application of the Standards Set Forth in the Amended FHA to Oradell To Create A Non-Binding Obligation

Applying the standards in the Amended FHA, the New Jersey Department of Community Affairs ("DCA") established nonbinding obligations for all municipalities and reported them on October 18, 2024.

In this regard, the DCA determined the prospective need obligation for Region 1 is **27,743 units** for Round 4. The DCA calculated the following allocation factors for Oradell:



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- Equalized Nonresidential Valuation factor of 0.41%;
- Income Capacity factor of 1.45%; and
- Land Capacity factor of 0.15%.

The DCA averaged these three factors to establish an Average Allocation factor of 0.67%, which it applied to Region 1's total prospective need of 27,743. This resulted in DCA's assignment of a nonbinding prospective need to Oradell for Round 4 of 186.

A brief description of each of the three factors, and how the DCA applied them to Oradell, follows.

Equalized Nonresidential Valuation: This is the municipal share of regional nonresidential valuation change from 1999-2023, based on data published by DCA's Division of Local Government Services. Oradell's Tax Assessor has confirmed the data that DCA used to calculate the Borough's Equalized Nonresidential Valuation factor of 0.41%.

Income Capacity: This is census data. We have confirmed that the data used to calculate Oradell's Income Capacity of 1.45% is correct.

Land Capacity Factor: This is developable land, primarily taken from NDJEP mapping. DCA estimates approximately 3.059 acres of land that results in Oradell's Land Capacity of 0.15%.

The DCA identified about 3.059 acres of Land Capacity in Oradell.

In recognition that the data it used to create the Land Capacity Factor was suspect, the DCA invited municipalities to offer corrections:

"The land areas identified in this dataset are based on the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. It is important to note that the identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program." (emphasis added)

Oradell accepted the DCA's invitation.

Oradell's Correction Of The Land Capacity Factor And The Resulting Prospective Regional Need For Round 4

T&M reviewed the twelve properties that the DCA used to conclude that there were 3.059 acres and determined that 2.654 of the 3.059 acres are not developable. Said another way, T&M concluded that only 0.405 acres are developable based upon the examination set forth below. Reduction of the Land Capacity to 0.405 acres reduces the Land Capacity Factor to 0.02%, thereby resulting in the following allocation factors for Oradell:



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- Equalized Nonresidential Valuation factor of 0.41%;
- Income Capacity factor of 1.45%; and
- Land Capacity factor of 0.02%.

The above three factors are then averaged to an Average Allocation factor of 0.63%, which, when applied to Region 1's total prospective need of 27,743 units, results in DCA's calculated affordable housing for Oradell of 174 units.

Basis for Finding That 2.654 of the 3.059 Acres Are Not Developable

Of the 10 properties that were removed from the Land Capacity inventory, seven (7) are part of the Borough's recreation and open space inventory, one (1) is a Round 3 affordable housing site, and two (2) should be excluded due to size. The removed lots and the reason for the removal are set forth below:

- Block 109, Lot 11, for which less than 135 square feet was identified as developable by DCA. Per the DCA Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background, areas less than 2,500 square feet were removed from the analysis. Therefore, Lot 11 should not be included in the Land Capacity;
- Block 223, Lot 5. This site is the location of the Bergen County United Way property, which is a Round 3 affordable housing site. Therefore, it is not available for development.
- Block 504, Lot 38. We note that the DCA identified approximately 1,150 square feet of Lot 38 as developable. Per the DCA Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background, areas less than 2,500 square feet were removed from the analysis. Therefore, Lot 38 should not be included in the Land Capacity;
- Block 1205, Lot 1. The NJDEP has recommended that the Borough add this site to the Borough's pending application for sites to be included the ROSI. Accordingly, the Borough is in the process of amending its pending application to include this property on the ROSI.
- Block 504, Lots 39-44. These sites are adjacent to the Doug Parcels Athletic Complex (DPAC). These sites have always been considered a part of the adjacent athletic complex and the Borough is in the process of going through the formality to make these sites part of the athletic complex. More specifically, the Borough has committed to vacating the portion of Wannamaker Ave. on which these lots front, and that vacated portion will also be added to the ROSI. In addition, while it is amending its application to the NJDEP for sites to be located on the ROSI, it will add these lots.

The process for determining the correct Land Capacity Factor is different than the process for securing a vacant land adjustment. The Court awarded a vacant land adjustment in Round 3 and, therefore, adding additional obligations for Round 4 will necessarily result in a vacant land adjustment for Round 4. That vacant land analysis will be included in the Housing Element and Fair Share Plan the Borough submits by the June 30, 2025 deadline established by the Amended FHA.



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Conclusion

Upon applying the standards in the Amended FHA and accepting the DCA's invitation to evaluate whether the sites it determined are developable, there are only 0.405 acres that are developable, not the 3.059 acres that the DCA proposed. Reduction of the Land Capacity to 0.405 acres reduces the Land Capacity Factor from the 0.15% reported by the DCA to 0.02%. Averaging the corrected Land Capacity Factor with the other two allocation factors and applying the average to the regional need results in a reduction of the Round 4 prospective need from 186 to 174.