

BOROUGH OF RIVER EDGE
RESOLUTION #25-73

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

WHEREAS, the Borough of River Edge, County of Bergen, State of New Jersey, (hereinafter, "River Edge") 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 River Edge's Round 4 (2025-2035) fair share affordable housing obligations as follows: a Present Need (Rehabilitation) Obligation of 33 and a Prospective Need (New Construction) Obligation of 159; 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 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, River Edge has accepted the Present Need (Rehabilitation) Obligation of 33 as reported by the DCA in its October 18, 2024 Report, subject to the right to undertake a Structural Conditions Survey (hereinafter, "Windshield Survey") as part of the preparation and adoption of the Housing Element and Fair Share Plan (hereinafter "HEFSP"); and

WHEREAS, River Edge has accepted the Prospective Need Obligation of 159 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, River Edge'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, for example, the New Jersey Institute of Local Government Attorneys (NJILGA) has expressed its support for proposed legislation (hereinafter "NJILGA Legislation") would reduce River Edge's Round 4 Prospective Need to 33 and would give River Edge "90 days from receipt of revised fair share obligations from the [DCA] to provide amended Housing Element and Fair Share Plans addressing the new number); and

WHEREAS, River Edge supports the NJILGA Legislation and would have the right to reduce its Round 4 obligation in the event that the Legislature enacts the NJILGA Legislation; 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 validity of the Act and other aspects deriving from the Act, including, without limitation, Directive 14-24, issued by the Acting Director of the Administrative Office of the Courts (hereinafter, respectively, "Director" and "AOC"), as further referenced below; 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 River Edge in Round 3; and

WHEREAS, because there has been no material change in vacant land in River Edge since the approval of its VLA and RDP, and because River Edge provided a realistic opportunity for the satisfaction of its RDP approved by the Court in Round 3, River Edge 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, River Edge 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

WHEREAS, River Edge 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 23rd day of January, 2025 by the Governing Body of the Borough of River Edge, 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, River Edge commits to a Round 4 Present Need (Rehabilitation) Obligation of 33 (subject to the right to undertake a Windshield Survey as part of the preparation and adoption of the HEFSP), and a Round 4 Prospective Need (New Construction) obligation of 159, as set forth in the October 18, 2024 DCA Report, 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;

e) The right to adjust its fair share obligations in the event of a third party challenge to the fair share obligations and River Edge’s response thereto; and

f) The right to undertake a Windshield Survey as part of the preparation and adoption of the HEFSP .

3. River Edge 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. River Edge 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.

January 23, 2025

	Motion	Second	Yes	No	Abstain	Absent
Montisano-Koen			X			
Kinsella		X	X			
Malellari			X			
Benson			X			
Glass	X		X			
Dhariwal			X			
Mayor Papaleo						

CERTIFICATION

The undersigned, Municipal Clerk for the Borough of River Edge, 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 River Edge on January 23, 2025.

Anne Dodd, Municipal Clerk