

RESOLUTION 45-2025**BOROUGH OF EATONTOWN
COUNTY OF MONMOUTH, STATE OF NEW JERSEY****RESOLUTION ACCEPTING THE BOROUGH'S PRESENT NEED OBLIGATION AND ITS ADJUSTED PROSPECTIVE
NEED CALCULATION FOR ITS FOURTH ROUND AFFORDABLE HOUSING OBLIGATION IN COMPLIANCE WITH
THE AMENDED FAIR HOUSING ACT**

WHEREAS, the Borough of Eatontown, County of Monmouth, State of New Jersey, (hereinafter, "Borough" or "Eatontown") has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations and in fact obtained a Final Round Three Judgment of Compliance and Repose on from the Court in the matter captioned In the Matter of the Application of the Borough of Eatontown, County of Monmouth, Superior Court of New Jersey, Law Division, Docket No. MON-L-2522-15 thereby immunizing the Borough from builder's remedy litigation until July 1, 2025 (the "Third Round Litigation"); and

WHEREAS, all Third Round Litigation projects were conceived, planned, and designed through a comprehensive negotiated planning process and are currently under various stages of development from pre-construction to completion and occupancy; and

WHEREAS, the Borough continues to actively implement its Court-approved Third Round Housing Element and Fair Share Plan and will continue to do so moving forward; 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 the "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 rehabilitation 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 Eatontown's Round 4 (2025-2035) Present Need (Rehabilitation) Obligation as 20 units and its Round 4 Prospective Need Obligation as 193 units; 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 provides that, irrespective of the DCA's calculations, municipalities have the ability to either accept, or provide alternate calculations for, the DCA's "present and prospective fair share obligation(s)...by binding resolution no later than January 31, 2025", a deadline which was later extended to February 3, 2025 by the Administrative Office of the Courts ("AOC") via a directive issued on December 19, 2024; and

WHEREAS, the Borough accepts the DCA's Fourth Round Present Need (Rehabilitation) calculation of 20 units but does not accept the DCA's calculation of the Borough's Land Capacity Allocation Factor, which is a factor that is part of the DCA's calculation of the Borough's Fourth Round Prospective Need (New Construction) calculation of 193 units; and

WHEREAS, as to the Land Capacity Allocation Factor, the Borough notes that the DCA belatedly provided the data it used to establish this factor, i.e., 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 includes the following language: "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); and

WHEREAS, the Borough maintains that the areas the DCA identified as developable are overinclusive and, consequently, the Borough's Planner, has prepared an expert report, attached hereto as Exhibit A demonstrating the overinclusive land data relied upon by DCA in calculating the Borough's Prospective Need obligation; and

WHEREAS, correcting the Land Capacity Allocation Factor from .39 % to .14% results in the reduction of Eatontown Fourth Round Prospective Need (New Construction) Obligation from 193 units to 180 units; and

WHEREAS, Section 3 of 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 Amended FHA; and

WHEREAS, therefore, the Borough's determination of its Fourth Round Prospective Need (New Construction) Obligation of 180 units is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Borough specifically reserves the right to adjust its fair share obligations in accordance with applicable Council on Affordable Housing ("COAH") regulations or other applicable law based on one or more of the foregoing adjustments if applicable: 1) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment, whether predicated upon lack of sewer or lack of water; and/or 4) an adjustment predicated upon regional planning entity formulas; and

WHEREAS, in addition to the foregoing, the Borough specifically reserves all rights to revoke or amend this resolution and commitment, as may be necessary, in the event of a successful challenge to the Amended FHA in the context of the case The Borough of Montvale v. the State of New Jersey (MER-L-1778-24), any other such action challenging the Amended FHA, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Borough reserves the right to take a position that its Fourth Round Present or Prospective Need Obligations are lower than calculated herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and

WHEREAS, in addition to the foregoing, nothing in the Amended FHA requires or can require an increase in the Borough's Fourth Round 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 unchallenged numbers by default on March 1, 2025; and

WHEREAS, in addition to the foregoing, the Borough reserves the right to adjust its Fourth Round Prospective Need (New Construction) obligation if the updated State Plan is adopted and the Borough goes through the State Plan Cross-Acceptance Process; 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 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 Eatontown 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 Mayor and Borough Council of the Borough of Eatontown believes it is in the best interest of its residents to maintain immunity from builder's remedy litigation, and it therefore seeks a certification of compliance with the Act and directs the Borough Attorney to file a declaratory relief action within 48 hours of the adoption of this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Borough and Borough Council of the Borough of Eatontown, County of Monmouth, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this Resolution as if set forth at length herein.

2. For the reasons set forth in this Resolution, the Borough Council hereby accepts the DCA Fourth Round Present Need (Rehabilitation) Obligation of 20 units and it rejects the DCA's calculated obligation of 193 units and instead accepts the adjusted Fourth Round Prospective Need (New Construction) Obligation of 180 units as described in this Resolution, subject to all reservations of rights, which specifically include, without limitation, the following:

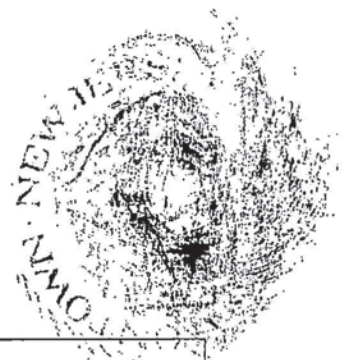
a) The right to adjust the Borough's fair share obligations based on a windshield survey or similar survey, a Vacant Land Adjustment, a Durational Adjustment, and all other applicable adjustments, permitted in accordance with applicable COAH regulations or other applicable law; and

b) The right to revoke or amend this Resolution in the event of a successful legal challenge, or legislative change, to the Amended Fair Housing Act; and

c) The right to take any contrary position, or adjust its fair share obligations, in the event of a third party challenge to the Borough's fair share obligations.

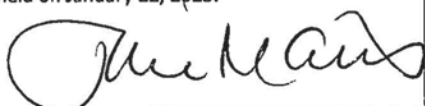
3. Pursuant to the requirements of the Amended Fair Housing Act and the Administrator of the Court's Directive #14-24, the Borough hereby directs the Borough Attorney to file a Declaratory Judgment Complaint with this Resolution and supporting expert report so the Borough may maintain its immunity from builder's remedy litigation.

4. This Resolution shall take effect immediately, according to law.



	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Council President East						X
Councilmember Jones						X
Councilmember Araman						X
Councilmember Lawson			X			
Councilmember Faust	X		X			
Councilmember Escalante		X	X			
Mayor Talerico						

CERTIFICATION
 I, Julie Martin, RMC, Borough Clerk of the Borough of Eatontown do hereby certify this to be a true and exact copy of a resolution adopted by the Governing Body of the Borough of Eatontown, County of Monmouth, State of New Jersey at the regular meeting held on January 22, 2025.


 Julie Martin, Borough Clerk

LEON S. AVAKIAN, INC. *Consulting Engineers*

788 WAYSIDE ROAD • NEPTUNE, NEW JERSEY 07753

LEON S. AVAKIAN, PE., P.L.S. (1983-2004)
 PETER R. AVAKIAN, PE., P.L.S., P.P.
 MEHRYAR SHAFI, PE., P.P.
 GREGORY S. BLASH, PE., P.P.
 LOUIS J. LOBOSCO, PE., P.P.
 GERALD J. FREDA, PE., P.P.
 WILLIAM D. PECK, PE., P.P.
 RICHARD PICATAGI, L.L.A., P.P.
 JENNIFER C. BEAHM, P.P., AICP

The methodology used by the Department of Community Affairs (DCA) yields a Fourth-Round obligation of 193 units. The DCA released additional data related to the Land Capacity Factor component that is one of three metrics used to determine a municipal Fourth-Round obligation in accordance with the 2024 Fair Housing Act (FHA). The Land Capacity Factor data was released on November 27, 2024, which was a month after the FHA deadline for the issuance of the non-binding obligation.

In releasing the data, the DCA recognized in the release of the Land Capacity Factor (LCF) information that the identified areas could be over or under inclusive depending on various conditions and a municipality may provide more detailed analysis and mapping to support a different LCF value. The DCA noted that any disputes could be resolved in the Affordable Housing Dispute Resolution process.

Leon S. Avakian, Inc., (LSA) examined the DCA parcel data for Eatontown which includes land areas identified as developable and found that the DCA was indeed overinclusive. LSA further found that when the land allocation factor was corrected, it resulted in a Fourth Round Prospective Need of 180 units.

Broadly speaking, there are 6 steps to determine the obligation for each municipality. Each step and commentary regarding the potential for alteration of the data input follows:

1. Identify the housing region. Eatontown Borough has been and continues to be, as per the FHA, in Region 4. This region includes Monmouth, Ocean, and Mercer Counties.
2. Determine the regional (affordable housing) need. The FHA sets forth that the regional need for the 10-year round (2025-2035) shall be based on the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. The resulting change in households is divided by 2.5. The affordable housing need in Region 4 is determined to be 13,822 dwelling units.
3. Determine the regional and each municipal equalized nonresidential valuation factor. This step requires that the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be divided by the regional total change in nonresidential valuation. The FHA states the data input shall be that which is published by the Division of Local Government Services. The division annually publishes a summary of municipal tax data, including a *Non-Residential Summary of Non-Residential Value*. This data addresses the value of all commercial, industrial, and apartment properties in the municipality. However, the value of the apartment properties are not included in the nonresidential valuation factor.
4. Determine the municipal and regional income capacity factor. This step is an average of 1) the municipal share of the regional sum of the differences between the median municipal household income and an income floor of \$100 below the lowest median household income in the region and 2) 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. The FHA states the data input shall be American Community Survey (“ACS”) five-year estimates. The ACS publishes municipal median household incomes as part of its five-year estimates.

5. Determine the municipality’s land capacity factor. Estimate municipal developable land using the most recent land use land cover data and weighing such land based on the planning area type in which such land is located. The FHA sets forth one of three weighting factors for a variety of planning areas across the state. Developed areas of the State, such as Planning Areas 1 and 2, Centers, etc. have a weight of 1.0. Rural and environmentally sensitive planning areas have a weight of zero; the remaining areas have a weight of 0.5.

The parcels identified as developable in the DCA’s calculation of the LCF for Eatontown is overinclusive. Accordingly, I believe the developable land should be adjusted from 44.1227 acres to 16.427 acres. The following criteria were utilized to exclude parcels as developable:

- Areas or portions of areas <25’ wide (because DCA’s methodology report states that a 25’ by 100’ area was their minimum threshold for developability).
- Areas within the regulatory floodway.
- Open space/parkland properties with deed restrictions and/or on ROSI.
- Properties under construction or recently developed.
- Sites with site plan approvals for development and/or permits issued for development.
- Public utility parcels, NJDOT/NJ Turnpike Authority parcels, DRPA parcels, railroad properties, rights-of-way, stormwater management, etc.
- Properties with easements restricting development within developable area.
- Properties that are within PA4 or PA5.

It is important to note that the LCF analysis is different from the analysis to determine a municipality’s entitlement to a vacant land adjustment. While the analysis to correct the LCF focuses on developable land, the vacant land analysis focuses on developable land suitable for inclusionary development. Therefore, just because a parcel may not be removed for purposes of calculating the LCF has no bearing on whether it should be removed for purposes of calculating a vacant land adjustment.

6. Determine the municipal obligation. The three factors (nonresidential value, income, and land capacity) are averaged and then applied to the regional need to determine how the need shall be allocated to each municipality.

As indicated below in the Methodology Summary table, the reduction in the developable acres for the LCF leads to a Fourth Round prospective need number of 180 not 193.

**Eatontown Borough Fourth Round Obligation
Methodology Summary**

	DCA	LSA
Household Change (Region 4)	34,554	34,554
Low & Mod Home Estimate (Region 4)	13,822	13,822
Nonresidential Valuation Factor	3.14 %	3.14%
Regional Income Capacity Factor	0.66%	0.66%
Land Capacity Factor	0.39%	0.14%
Average Factor	1.40%	1.31%
Gross Prospective Need	193	180

Block	Lot	Owner	Property Class	ghfFa	Weighted Acres
301	1.04	BOROUGH OF EATONTOWN	15C	1	4.475463687
301	1.04	BOROUGH OF EATONTOWN	15C	1	0.428270913
301	26	BOROUGH OF EATONTOWN - SEWER AUTH	15C	1	0.299810812
301	26	BOROUGH OF EATONTOWN - SEWER AUTH	15C	1	1.232931722
301	27	JCP&L c/o FIRSTENERGY SERVICE CO.		1	0.057841542
1201	2	ST. DOROTHEAS R C CHURCH	15D / 4A	1	1.145472426
1201	27.01	EATONTOWN SENIOR HOUSING CORP.	15C	1	0.216381324
1201	27.01 & 27.02	EATONTOWN SENIOR HOUSING CORP.	15C	1	0.460045949
1801	22	NJDOT	15C	1	0.105019642
1801	24	NJDOT	15C	1	1.075700177
1801	25	NJDOT	15C	1	1.478961167
1803	1	PHILIBOSIAN, A c/o R&S HEKEMIAN		1	6.88856751
1803	1	PHILIBOSIAN, A c/o R&S HEKEMIAN		1	1.528132753
2801	1.04	JTV ASSOCIATES LLC		1	0.078477563
2801	1.04	JTV ASSOCIATES LLC		1	0.212165588
2902	5.03	DCH INVESTMENTS INC & LITHIA MOTORS		1	0.31430703
3103	12	35 LAND ASSOC LLC c/o STEINER		1	0.208934053
3201	27	JBL ENTERPRISES		1	0.599555248
3401	36	WESTWOOD OAKS INC		1	0.573178821
3402	13	BOROUGH OF EATONTOWN	15C	1	0.059034709
3402	20	WESTWOOD OAKS INC		1	1.496039356
3502	7	246 IND LLC c/o EISENSTEIN, RE		1	1.040364212
3505	2	WOLF, WILLIAM	4B	1	0.237738557
3505	5	RUGGIERI, RITA ALEXANDREA		1	0.84197633
3601	22	DONATO, JOHN JR c/o DONATION GROUP		1	0.618820107
3701	15.01	YESHIVAT KETER TORAH INC	1 & 15B	1	0.094756369
3701	15.01	YESHIVAT KETER TORAH INC	1 & 15B	1	0.190544846
3701	15.01	YESHIVAT KETER TORAH INC	1 & 15B	1	1.235710726
3801	17	CBYW EATONTOWN PROPCO LLC		1	0.463238643
3901	2	MONMOUTH COUNTY SPCA	15D	1	0.233327173
3901	3	MONMOUTH COUNTY SPCA	15D	1	1.025670555
3901	5	EATONTOWN REAL ESTATE ASSOC LLC		1	1.901833255
3901	18	BOROUGH OF EATONTOWN	15C	1	0.288854153
4001 8 & 9		ANTONELLI, ANGELINA TRUSTEE OF TRUST		1	0.324869497
4002	22.01	SHAARE TEFILAH BEN MOSHE INC.	15D	1	0.136627598
4002	37	M B PARTNERS		1	1.116603425
4101-44, 46.01, 47		REGAN, JOHN D. & RUTH Z. TRUSTEES (L.44)	3B	1	7.801172311
3502 & 3402 7 & 13		BOROUGH OF EATONTOWN & 246 IND LLC c/o EISENSTEIN, RE	1 & 15C	1	3.63627121
Total Acreage:					44.12267096

VacantAcres	Notes
4.475463687	Next to 41200
0.428270913	Next to 41199
0.299810812	Land Locked + shared with B:301/L:27
1.232931722	Land Locked Lot
0.057841542	Land Locked/ small
1.145472426	Church parking lot
0.216381324	senior housing parking lot
0.460045949	Land locked and Split between Lots 1, 27.01 & 27.02.
0.105019642	highway
1.075700177	Highway
1.478961167	highway
6.88856751	included
1.528132753	included
0.078477563	common open space
0.212165588	common open space
0.31430703	back portion of car dealership.
0.208934053	included
0.599555248	thin sliver of land
0.573178821	common open space
0.059034709	Land locked
1.496039356	common open space
1.040364212	Office building parking lot
0.237738557	Industrial Use
0.84197633	included
0.618820107	Landlocked. Contains cranberry Brook
0.094756369	Yeshiva/ parking lot
0.190544846	Yeshiva/ parking lot
1.235710726	Yeshiva/ parking lot
0.463238643	included
0.233327173	part of SPCA
1.025670555	SPCA building and parking lot here
1.901833255	included
0.288854153	
0.324869497	Land locked and split with B:4001/ L:9&L8
0.136627598	land/parking lot for a synagogue
1.116603425	Landlocked
7.801172311	included
3.63627121	Land locked and split between B:3402 L:13 & B:3502/ L:7