

RESOLUTION 25-69

RESOLUTION OF THE TOWNSHIP OF HOWEL, COUNTY OF MONMOUTH, IN COMPLIANCE WITH THE AMENDED FAIR HOUSING ACT ADJUSTING ITS PROSPECTIVE NEED CALCULATION FOR ITS FOURTH ROUND AFFORDABLE HOUSING OBLIGATION

WHEREAS, the Township of Howell, County of Monmouth, State of New Jersey, (hereinafter, "Township" or "Howell") 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 Township of Howell, County of Monmouth, Superior Court of New Jersey, Law Division, Docket No. MON-L-2525-15 thereby immunizing the Township 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 Township 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 Howell's Round 4 (2025-2035) Present Need (Rehabilitation) Obligation as 63 and its Round 4 Prospective Need Obligation as 338; 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 Township accepts the DCA’s Fourth Round Present Need (Rehabilitation) calculation of 63 units but does not accept the DCA’s calculation of the Township’s Land Capacity Allocation Factor, which is a factor that is part of the DCA’s calculation of the Township’s Fourth Round Prospective Need (New Construction) calculation of 338; and

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

WHEREAS, correcting the Land Capacity Allocation Factor from 2.45 % to 1.99 % results in the reduction of Howell Fourth Round Prospective Need (New Construction) Obligation from 338 to 276; 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 Township’s determination of its Fourth Round Prospective Need (New Construction) Obligation of 276 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 Township 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 Township 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 Township 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 Township 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 Township’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 Township reserves the right to adjust its Fourth Round Prospective Need (New Construction) obligation if the updated State Plan is adopted and the Township 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 Township of Howell 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 Township Council of the Township of Howell 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 its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Township Council of the Township of Howell, 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 Township Council hereby accepts the DCA Fourth Round Present Need (Rehabilitation) Obligation of 63 units and it accepts the adjusted Fourth Round Prospective Need (New Construction) Obligation of 276 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 Township'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 Township'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 Township hereby directs its Affordable Housing Counsel to file a Declaratory Judgment Complaint with this Resolution and supporting expert report so the Township may maintain its immunity from builder's remedy litigation.

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

COUNCIL	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Councilwoman Fischer</i>			X			
<i>Councilman Nadel</i>		X	X			
<i>Councilwoman O'Donnell</i>			X			
<i>Deputy Mayor Gasior</i>	X		X			
<i>Mayor Leggio</i>			X			

I, Diane Festino, Municipal Clerk of the Township of Howell, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Mayor and Township Council, at its Meeting held January 21, 2025. WITNESS my hand this 22nd day of January 2025.

Diane Festino

Diane Festino, RMC
Municipal Clerk
Township of Howell