

RESOLUTION #2025-076

RESOLUTION OF THE TOWNSHIP OF MARLBORO, COUNTY OF MONMOUTH, ADOPTING ITS PRESENT NEED AND PROSPECTIVE NEED FOR THE FOURTH ROUND OF AFFORDABLE HOUSING OBLIGATIONS AS REQUIRED UNDER THE NEW JERSEY FAIR HOUSING ACT AS AMENDED BY P.L. 2024, C.2

WHEREAS, on March 20, 2024, Governor Murphy signed into law Bill A4/S50, codified as P.L. 2024, c.2 (the "Amended FHA"), which amends the New Jersey Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-301, et seq.) and other related housing laws; and

WHEREAS, pursuant to the Amended FHA, municipalities are required to determine the Present Need obligation (Rehabilitation) and Prospective Need obligation (New Construction) of their fair share of the regional need for affordable housing ("Fair Share Obligation") during the 10-year period beginning on July 1, 2025 (the "Fourth Round"); and

WHEREAS, pursuant to the Amended FHA, should a municipality determine its Fair Share Obligation by January 31, 2025, the municipality's determination shall be established by default and shall bear a presumption of validity beginning on March 1, 2025, unless challenged by an interested party on or before February 28, 2025; and

WHEREAS, pursuant to the Amended FHA, any challenge to a municipality's determination must be initiated through the Affordable Housing Alternative Dispute Resolution Program (the "Program"), explain with particularity how the municipality's calculation fails to comply with N.J.S.A. 52:27D-304.2 and 52:27D-304.3, and include the challenger's own calculation of the fair share obligations in compliance with said sections; and

WHEREAS, on October 18, 2024, the New Jersey Department of Community Affairs (the "DCA") published a report with an estimate of the fair share affordable housing obligations of all municipalities, which, pursuant to the Amended FHA, may be taken into consideration by a municipality but shall not be binding on a municipality when calculating a municipality's respective Fair Share Obligation; and

WHEREAS, the DCA determined that the Township of Marlboro's (the "Township") present need to be 5 units and prospective need 579 units based in substantial part upon erroneous assumptions about vacant properties or otherwise developable properties within the Township; and

WHEREAS, more than 93% of the area deemed to be vacant in the analysis by the DCA was in fact not vacant or otherwise developable as affordable housing; and

WHEREAS, the Township of Marlboro, with the assistance of its professionals, has calculated its Fair Share Obligation for the Fourth Round based upon the methodology set forth in the Amended FHA, which included consideration of the DCA's calculations and analysis; and

WHEREAS, the Township Council of the Township of Marlboro (the "Township Council") has reviewed the findings of the Township's professionals, which are described in the attached Exhibit A, and adopts a Fair Share Obligation for the Fourth Round consisting of a Present Need obligation of 5 units and a Prospective Need obligation of 279 units; and

WHEREAS, in accordance with N.J.S.A. 52:27D-311(m) of the Amended FHA, the Township reserves its right to take a vacant land adjustment, which may result in a reduction to the new construction portion of its Fair Share Obligation; and

WHEREAS, the Township reserves its right to revise its Fair Share Obligation in the event that a decision of a court of competent jurisdiction, or an action by the New Jersey Legislature, would result in a lower calculation of an obligation for the Township; and

WHEREAS, the Amended FHA requires municipalities to satisfy various administrative and procedural requirements in connection with the adoption of a municipality's Fair Share Obligation, including but not limited to the publication of this Resolution to the Township's publicly accessible Internet website and the filing of an action with the Program through the Judiciary's electronic filing systems, within forty-eight (48) hours of the adoption of this Resolution; and

WHEREAS, the Township Council directs the Municipal Clerk to satisfy all required notice and publications requirements, and authorizes the Township and its professionals to take all actions required to file the necessary action with the Program.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Marlboro that the:

1. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.
2. The Township of Marlboro's Fair Share Obligation for the Fourth Round of affordable housing obligations consists of a Present Need obligation of 5 units and a Prospective Need obligation of 279 units.
3. The Township reserves its right to take a vacant land adjustment, which may result in a reduction to the new construction portion of its Fair Share Obligation.
4. The Township reserves its right to revise its Fair Share Obligation in the event that a decision of a court of competent jurisdiction, or an action by the New Jersey Legislature, would result in a lower calculation of an obligation for the Township.
5. The Municipal Clerk be and is hereby directed to forward a copy of this Resolution to the Department of Community Affairs and to publish a copy to the Township's publicly accessible Internet website within forty-eight (48) hours of the adoption of this Resolution.
6. The Township be and is hereby directed to file an action with the Affordable Housing Alternative Dispute Resolution Program regarding this Resolution in compliance with the Amended FHA, and the Mayor and Municipal Clerk are authorized to execute any and all documents required for said purpose.
7. This Resolution shall take effect immediately.

SO RESOLVED, as aforesaid.

OFFERED BY: SCALEA

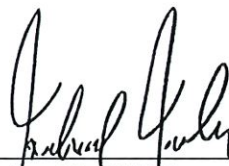
AYES: 5

SECONDED BY: VIRDI

NAYS: 0



SUSAN A. BRANAGAN,
MUNICIPAL CLERK
012325



MICHAEL J. MILMAN,
COUNCIL PRESIDENT

CERTIFICATION

I hereby certify the above to be a true and exact copy of a Resolution adopted by the Township of Marlboro at a meeting held on January 23, 2025.



SUSAN A. BRANAGAN
MUNICIPAL CLERK

LEON S. AVAKIAN, INC. *Consulting Engineers*

788 WAYSIDE ROAD • NEPTUNE, NEW JERSEY 07753

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 PETER R. AVAKIAN, P.E., P.L.S., P.P.
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 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 579 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 Marlboro 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 279 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. Marlboro Township 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 Marlboro is overinclusive. Accordingly, I believe the developable land should be adjusted from 513 acres to 35.84 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 279 not 579.

Marlboro Fourth Round Obligation (Rainone)
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	2.25%	2.25%
Regional Income Capacity Factor	3.30%	3.30%
Land Capacity Factor	7.02%	0.49%
Average Factor	4.19%	2.01%
<i>Gross Prospective Need</i>	579	279