

R-43-25

**RESOLUTION COMMITTING TO DCA'S FOURTH ROUND  
AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE NEED  
NUMBERS AS MODIFIED UNDER PROTEST**

WHEREAS, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*) (hereinafter "Amended FHA"); and

WHEREAS, pursuant to the Amended FHA at N.J.S.A. 52:27D-304.1(f)(1), a municipality is required to adopt a binding resolution containing a "determination of present and prospective fair share obligation" and submit to the jurisdiction of the Affordable Housing Dispute Resolution Program, in order to avoid the loss of immunity from exclusionary zoning litigation (formerly referred to as Builder's Remedy lawsuits) immediately thereafter; and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates Wharton's Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 91 units and a Prospective Need or New Construction Obligation of 74 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 lower calculations of Round 4 affordable housing obligations; and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.3, a municipality's average allocation factor is comprised of the equalized nonresidential factor, income capacity factor and land capacity factor and shall be averaged to yield the municipality's average allocation factor, 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 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 vacant land adjustments as well as durational adjustments; and

WHEREAS, the DCA has released a Geographic Information Systems spatial data representation of the Land Capacity Analysis for P.L. 2024, c.2 containing the Vacant and Developable land information that serves as the basis for calculating the land capacity factor; and

WHEREAS, Wharton has reviewed the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration and accessibility to ascertain whether these identified developable lands may accommodate development; and

WHEREAS, based on the foregoing, Wharton relies on the DCA calculations of Wharton's fair share obligations as modified herein to account for Wharton's review of the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration and accessibility to ascertain whether these identified developable lands may accommodate development and as further set forth in detail and explained in the attached memo prepared by Wharton's affordable housing planner and Wharton seeks to commit to provide its fair share of 91 units present need and 74 units prospective need, subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

WHEREAS, Wharton reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, Wharton is a named plaintiff in that certain litigation captioned as Borough of Montvale v. State of New Jersey, Superior Court of New Jersey, Docket No. MER-L-1778-24 ("Litigation"), which among other things asserts constitutional and legal challenges to numerous provisions of the Amended FHA; and

WHEREAS, the actions contained in this Resolution are taken under protest and are intended to comply with the Amended FHA while Wharton continues to dispute its validity, such that Wharton does not waive any legal rights or claims that it possesses relating to the Amended FHA as set forth in the Lawsuit by virtue of the adoption of the instant Resolution and Wharton further reserves the right to alter its position contained in this Resolution based upon any rulings in the Litigation or in any other similar proceedings by a court of competent jurisdiction; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, Wharton reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Prospective Need Obligation should be lower than described herein; and

WHEREAS, in light of the above, the Wharton Borough Council finds that it is in the best interest of Wharton to commit to the modified present need and prospective need Fourth Round affordable housing fair share numbers set forth herein, subject to the reservations set forth herein; and

WHEREAS, in accordance with AOC Directive #14-24 dated December 13, 2024, the Wharton Borough Council finds that, as a municipality seeking a certification of compliance with the FHA, it is in the best interests of Wharton to direct the submission and/or filing of the within Resolution with attached memo with the Program or any other such entity as may be determined to be appropriate.

NOW, THEREFORE, BE IT RESOLVED on this 20<sup>th</sup> day of January, 2025, by the Borough Council of the Borough of Wharton, County of Morris, State of New Jersey as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this Resolution.

2. Wharton hereby commits to the DCA's Round 4 Present Need Obligation of 91 units and the DCA's Round 4 Prospective Need Obligation of 74 units, as explained above and in the attached memo from Wharton's affordable housing planner and subject to all reservations of rights set forth above.

3. Wharton authorizes its Affordable Housing Counsel to submit and/or file the within Resolution with attached memo with the Program or any other such entity as may be determined to be appropriate.

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

Adopted: January 20, 2025

BOROUGH OF WHARTON

ATTEST:

  
\_\_\_\_\_  
Gabrielle Evangelista,  
Borough Clerk

  
\_\_\_\_\_  
WILLIAM J. CHEGWIDDEN,  
MAYOR

CERTIFICATION

I, Gabrielle Evangelista, Clerk of the Borough of Wharton, County of Morris, State of New Jersey, do hereby certify that the foregoing is a true copy of a Resolution adopted by the Borough Council at a meeting held on January 20, 2025.

  
\_\_\_\_\_  
Gabrielle Evangelista, Clerk



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**January 16, 2025**

**MEMORANDUM TO:** Mayor William J. Chegwidden and Wharton Borough Council  
**cc:** Joe Kovalcik, Borough Administrator  
 Gabrielle Evangelista, Borough Clerk  
 Roman Hirniak, Esq., Borough Attorney  
**FROM:** Jessica C. Caldwell, PP, AICP, LEED-GA  
**SUBJECT:** Round 4 Affordable Housing Obligation

This memorandum is intended to provide you with background information and recommendations relative to Wharton Borough's proposed Fourth Round affordable housing obligations and outline next steps and actions that the Borough will need to take comply with Fourth Round regulations.

#### **Fourth Round (2025-2035)**

The process for Fourth Round affordable housing compliance and the criteria, methodology and formulas each municipality must rely upon to determine its present and prospective need obligation are now set forth within N.J.S.A. 52:27D-304.1 thru -304.3 of the Fair Housing Act. On October 18<sup>th</sup>, 2024, the New Jersey Department of Community Affairs (DCA) published the report titled, "Affordable Housing Obligations for 2025-2035 (Fourth Round): Methodology and Background" (hereinafter "DCA Report") pursuant to P.L. 2024, c.2. The DCA report implemented a new framework for determining each municipality's affordable housing obligations under the New Jersey Supreme Court's Mount Laurel doctrine and the State's Fair Housing Act. The Borough's Prospective Need Obligation, as set forth in the DCA Report, is calculated at **74 units**. The Borough's Fourth Round Present Need/Rehabilitation Obligation is **91 units**.

#### **Background**

Wharton Borough had a Prior Round (Rounds 1 and 2, 1987-1999) obligation of 42 units, which was met through a senior housing development, inclusionary zoning and group homes. The Third Round (1999-2025) present need obligation was 138 units and the prospective need obligation was 174 units. The prospective need was addressed through a variety of mechanisms including inclusionary zones, redevelopment zones, group homes and 100% affordable housing. A total of 188 units were completed or zoned for, leaving a 14-unit surplus to carryover to Round 4. The present need obligation is being addressed by a rehabilitation program being funded by the Borough's Affordable Housing Trust Fund.



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### **Review of DCA Obligations**

To determine each municipalities' fair share of affordable housing units, the DCA report utilized the following three (3) factors:

**Equalized Nonresidential Valuation Factor:** This factor is described as, "...the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated..." per the Affordable Housing Law.

*Wharton Borough's Equalized Nonresidential Valuation Factor was determined to be 0.58%.*

**Income Capacity Factor:** This is the average of, "...the municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of \$100 below the lowest median household income in the region," and "...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."

*Wharton Borough's Income Capacity Factor was calculated at 0.43%.*

**Land Capacity Factor:** This factor is the total acreage that is developable, calculated utilizing the most recent land use/land cover (LULC) data from the New Jersey Department of Environmental Protection (DEP), the most recently available (released in 2024) MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs.

*Wharton Borough's Land Capacity Factor was calculated at 0.08%.*

The DCA Report then averages the three (3) factors to determine an Average Allocation Factor (AAF), which was 0.36%. The AAF is then multiplied by the total obligation for Region 2, which includes Essex, Morris, Union, and Warren Counties. The obligation assigned to Region 2 was 20,506 units. This resulted in a prospective need obligation of 74 units for Wharton Borough.

The only factor in the DCA Report calculations that is readily adjustable based on municipal review is the Land Capacity Factor. This is because the identification of vacant available land was completed on a statewide basis and individual municipal information can often refine the amount of vacant available land that is calculated. However, for Wharton, the Land Capacity Factor was very low at 0.08%, which equates to 4.26 acres of land. If the Land Capacity Factor were zero, it would result in a reduction of five units. While it's possible that some of the land could be discounted from the total, it would likely only result in a reduction of one or two units. Because of the minimal impact of the Land



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Capacity Factor on Wharton's obligation, we recommend accepting the prospective need obligation.

### **Next Steps**

By January 31, 2025, the Borough Council must adopt a resolution either accepting the Fourth Round obligation numbers as identified above, or provide alternative numbers. Challenges by any interested party may be made through February 28, 2025. By June 30, 2025, the Planning Board must prepare and adopt a new Housing Element and Fair Share Plan as an element to the Borough Master Plan to demonstrate how its obligation will be met.

### **Proposal to Address Obligations**

Wharton Borough has very limited vacant land remaining such that an adjustment of most of the proposed obligation through a Vacant Land Adjustment is likely. A review of potential locations for overlay zones or programs to provide for additional affordable units will be undertaken as part of the Housing Element and Fair Share Plan. A Housing Element and Fair Share Plan must be adopted by June 30, 2025.

## **Timeline for Fourth Round Compliance**

### **January 31, 2025**

Deadline for a municipality to adopt their obligation numbers via "Binding Resolution" with or without using the DCA's published report.

### **February 15, 2025**

Reporting due to DCA on the status of all Non-Residential and Residential Development Fees collected and expended from the previous year.

### **February 28, 2025**

Deadline for interested party to challenge a municipality's adopted obligation numbers.

### **March 1, 2025**

If no challenges, the municipality's obligation numbers are established by default; immunity remains in effect.

### **April 1, 2025**

Deadline for the Affordable Housing Dispute Resolution Program (AHDRP) to settle the municipal obligation number challenge(s).

### **June 30, 2025**

Deadline for a municipality to adopt and endorse a Housing Element and Fair Share Plan and file with the Program to maintain immunity.

### **August 31, 2025**

Deadline for interested parties to challenge the validity of a municipality's Housing Element and Fair Share Plan.



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**December 31, 2025**

Deadline for the municipality to settle any challenge or provide an explanation as to why it will not make all or some of the requested changes.

**March 15, 2026**

Deadline for a municipality to amend its Housing Element and Fair Share Plans and to adopt the implementing ordinances to comport with the amended obligation numbers.