

RESOLUTION [G] 25-01-27 - # 7**RESOLUTION OF THE TOWNSHIP OF LITTLE FALLS ADOPTING UNDER PROTEST THE TOWNSHIP'S AFFORDABLE HOUSING PRESENT AND PROSPECTIVE NEED OBLIGATIONS FOR THE PERIOD OF JULY 1, 2025 THRU JULY 1, 2035 IN ACCORDANCE WITH P.L. 2024 C.2, AND RESERVING ALL RIGHTS**

WHEREAS, the Township of Little Falls, County of Passaic, State of New Jersey, (hereinafter "Township") has a demonstrated history of voluntary compliance with the Mount Laurel doctrine and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq.; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law, P.L. 2024, c.2, which among other things, amended various provisions of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. ("FHA" or "Amended FHA"), abolished the Council on Affordable Housing ("COAH") and established the Affordable Housing Dispute Resolution Program ("Program"); and

WHEREAS, P.L. 2024, c.2, sets forth that Fourth Round period of affordable housing obligations shall run from July 1, 2025 through June 30, 2035 ("Fourth Round" or "Round Four"); 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 provide an estimate of the present need, also referred to as the rehab obligation, and the Round Four 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 Four prospective need obligation for all municipalities based upon its interpretation of the standards in the Act; and

WHEREAS, the DCA Report calculates the Present Need (Rehabilitation) Obligation of the Township to be zero (0) and its Round 4 Prospective Need to be 285 units; and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.1e of the FHA, the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support revised calculations of Round Four fair share affordable housing obligations; and

WHEREAS, rather, pursuant to N.J.S.A. 52:27D-304.1 of the FHA, each municipality is required to determine its respective Fourth Round present and prospective need fair share obligations, and adopt a binding resolution describing the basis for the municipality's determination on or before January 31, 2025; and

WHEREAS, in accordance with P.L. 2024, c.2, each municipality shall determine its Fourth Round present and prospective need fair share obligations, with consideration of the calculations in the DCA Report, and in accordance with the formulas established in N.J.S.A. 52:27D 304.2 and -304.3 of the FHA using “necessary datasets that are updated to the greatest extent practicable”; 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 P.L. 2024, c2, or binding court decisions” (N.J.S.A. 52:27D-311 (m)); and

WHEREAS, the Township, through its professionals, has exercised its right to review the data and have carefully considered and analyzed the most up-to-date localized data pertaining to the Township, including amongst other verifiable data, local land use approvals, environmental constraints and other site specific information, construction permits, and MOD-IV data maintained and on file with the Township with regard to the land capacity and equalized non-residential valuation allocation factors; and

WHEREAS, more specifically, Heyer, Gruel & Associates has reviewed the data that the DCA used to compute the Land Capacity Allocation Factor; and

WHEREAS, the Township further notes that the link to the DCA GIS data that the DCA made available to municipalities include 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 developed 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 mapping as part of their participation in the Affordable Housing Dispute Resolution Program.**” (emphasis added)

WHEREAS, the Township accepted the DCA’s invitation to examine the data it used to compute this allocation factor and found that the DCA had indeed been over inclusive in the land it found to be developable; and

WHEREAS, more specifically, John Barree, PP, AICP of Heyer, Gruel & Associates finds that approximately 23.7 acres of land were identified by the DCA analysis that should be excluded from the Township’s Land Capacity Factor after consideration is given to the applicable preserved land, deed restrictions, environmental constraints and restrictions (including wetlands, wetland buffers, steep slopes, and floodways), land use board approvals, construction permit data, and MOD-IV data, amongst other localized data and updated verifiable information; and

WHEREAS, upon correcting the data used to determine the Land Capacity Factor, John Barree, PP, AICP has further independently calculated the Township’s Fourth Round Prospective Need affordable housing obligation based on the formulas, criteria, methodology and datasets required by sections 6 and 7 of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.2 and -304.3, and has arrived at a Fourth Round Prospective Need Obligation that accurately reflects the most up-to-date pertinent factual data specific to the Township and has determined the correct Round Four prospective need number is 174 units not 285 units; and

WHEREAS, the John Barree, PP, AICP has prepared a report setting forth this analysis, a summary of all relevant factors, and the basis for such conclusions, which are summarily incorporated by reference above and which is attached hereto as Exhibit “A”; 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, Township’s calculation of need is entitled to a “presumption of validity” because it complies with Sections 6 and 7 of the Act; and

WHEREAS, the Township, however, specifically reserves the right to adjust its Present Need and Prospective Need Obligations, including for any of the foregoing adjustments: 1) a Structural Conditions Survey or similar exterior survey which accounts for a lower resolution 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, inputs or considerations; and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke this resolution and commitment in the event of: (1) a successful challenge to P.L. 2024, c.2 as a result of the pending litigation entitled: Borough of Montvale et al, v. State of New Jersey, et al., Docket No.: MER-L-1778-24; (2) any other successful challenge to P.L. 2024, c.2, or any directive or regulation adopted pursuant thereto; and/or (3) any subsequent legislative or regulatory enactment which alters or changes the deadlines, calculations, methodology and/or other requirements of P.L. 2024, c.2; and

WHEREAS, the Township further specifically reserves the right to take a position that its Round Four Present or Prospective Need Obligations are lower than described 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 P.L. 2024, c. 2 requires or can require an increase in the Township’s Round Four 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 P.L. 2024, c.2, is to establish, for example, unchallenged numbers by default as of March 1, 2025; and

WHEREAS, Township 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 Township continues to dispute its validity, such that Township 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 Township 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, 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, the Township 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 no 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 Township seeks a certification of compliance with the Act and, therefore, directs its Township Attorney to file a declaratory relief action within 48 hours of the adoption of this resolution.

NOW, THEREFORE, BE IT RESOLVED on this 27th day of January 2025, by the Governing Body of the Township of Little Falls, County of Passaic, 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, the Township of Little Falls commits to a Round Four Present Need (“Rehabilitation”) Obligation of zero (0) units and a Round Four Prospective Need (“New Construction”) obligation of 174 units, as set forth in the Exhibit to this Resolution, subject to all reservations of all rights, which specifically include, without limitation, the following:

a) The right to adjust, modify, cancel, withdraw or revoke the Township’s commitment to its Fourth Round Present Need and/or Prospective Need Obligations, and/or to otherwise revoke, repeal, suspend, amend, or modify this Resolution should additional information or evidence become available or discoverable to the Township in the future;

b) The right to adjust the Township’s Present Need Obligation based on the results of a structural conditions survey;

c) The right to adjust the Township’s Present and/or Prospective Need Obligation based on lack of available vacant and developable land, sewer, water, and/or due to regional planning inputs, formulas or considerations, or any combination of the above;

d) All rights to revoke this Resolution in the event of a successful legal challenge to P.L. 2024, c.2, a legislative change to P.L. 2024, c. 2, or any successful challenge to any directive or regulation adopted pursuant to P.L. 2024, c.2, or any change or amendment to such directives or regulations;

e) All rights to take a position that the Township's Fourth Round Present and/or Prospective Need Obligation(s) are lower than described herein in the event that a third party challenges the calculations provided for or relied upon in this Resolution; and/or

f) All rights to take a position that the Township's Fourth Round Present and/or Prospective Need Obligation(s) is/are lower than described herein in the event a third-party claims the Township's Round Four Present and/or Prospective Need Obligations require an increase based on a reallocation or modification of the Regional present or prospective Need Obligations allegedly due from successful reduction of the allocated present and prospective need obligations assigned to another municipality in the Region.

3. The Township's calculation of Present and Prospective Need Obligations is/are entitled to a "presumption of validity" because the calculations comply with sections 6 and 7 of P.L. 2024, c.2.

4. In accordance with N.J.S.A. 52:27D-304.1, the Township hereby directs the Township Attorney to file an action with the Affordable Housing Dispute Resolution Program along with this Resolution and to take all necessary and proper steps to address any challenges to same by any interested parties.

5. The Township further commits to adopt its housing element and fair share plan pursuant to N.J.S.A. 52:27D-304.1f(2) based on this determination on or before June 30, 2025, and hereby further directs the Township officials to begin taking steps to prepare same.

6. A copy of this resolution, along with filing date of Township's action with the Program, shall be placed on the Township's website.

7. A copy of this resolution shall remain on file in the Township Clerk's office and available for public inspection.

8. This resolution shall take effect immediately, according to law.

APPROVED: January 27, 2025

cc: Township Attorney; Building Department; Finance Dept.

Certified To Be A
True Copy Of The Original


Township Clerk
Little Falls, N.J. 07424