

**BOROUGH OF BERNARDSVILLE
RESOLUTION #25-30**

**RESOLUTION COMMITTING TO DCA'S FOURTH ROUND AFFORDABLE
HOUSING PRESENT NEED AND PROSPECTIVE NEED NUMBERS
AND AUTHORIZING THE BOROUGH ATTORNEY TO FILE A DECLARATORY
JUDGMENT ACTION WITH THE SUPERIOR COURT OF NEW JERSEY SEEKING
A CERTIFICATION OF COMPLIANCE WITH THE FAIR HOUSING ACT**

WHEREAS, P.L. 2024, C. 4 enacted on March 20, 2024 amended the Fair Housing Act, N.J.S.A 52:27D-304, et seq.; and

WHEREAS, P.L. 2024, C. 4 abolished the Council on Affordable Housing (COAH) and instead provides that:

“Prior to the beginning of each new 10-year round of housing obligations beginning with the fourth round on July 1, 2025, the Department of Community Affairs shall conduct a calculation of regional need and municipal present and prospective obligations in accordance with the formulas established in sections 6 and 7 of P.L.2024, C. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3).” 2024 N.J. ALS 2 ; 2024 N.J. Laws 2 ; 2024 N.J. Ch. 2 ; 2024 N.J. A.N. 4 (codified as N.J.S.A. 52:27D-304.1); and

WHEREAS, P.L. 2024, C. 4 goes on to provide that:

“With consideration of the calculations contained in the relevant report published by the department pursuant to this section, for each 10-year round of affordable housing obligations beginning with the fourth round, a municipality shall determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in sections 6 and 7 of P.L.2024, C. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3) by resolution, which shall describe the basis for the municipality’s determination and bind the municipality to adopt a housing element and fair share plan pursuant to paragraph (2) of this subsection based on this determination as may be adjusted by the Program as set forth in this subsection.” 2024 N.J. ALS 2 ; 2024 N.J. Laws 2 ; 2024 N.J. Ch. 2 ; 2024 N.J. A.N. 4; and

WHEREAS, P.L. 2024, C. 4 further provides that:

“For the fourth round of affordable housing obligations, this determination of present and prospective fair share obligation shall be made by binding resolution no later than January 31, 2025. After adoption of this binding resolution, the municipality shall file an action regarding the resolution with the Program no later than 48 hours following adoption. The resolution, along with the date of filing with the Program, shall be published on the Program’s publicly accessible Internet website. The municipality shall

also publish the resolution on its publicly accessible Internet website, if the municipality maintains one. If the municipality does not meet this deadline, it shall lose immunity from exclusionary zoning litigation until such time as the municipality is determined to have come into compliance with the “Fair Housing Act,” P.L.1985, C. 222 (N.J.S.A. 52:27D-301 et al.) and the Mount Laurel doctrine. A determination of the municipality’s present and prospective obligation may be established before a county-level housing judge as part of any resulting declaratory judgment action pursuant to section 13 of P.L.1985, C. 222 (N.J.S.A. 52:27D-313), as amended by P.L.2024, C. 2 (N.J.S.A. 52:27D-304.1 et al.), or through exclusionary zoning litigation. If the municipality meets this January 31 deadline, then the municipality’s determination of its obligation shall be established by default and shall bear a presumption of validity beginning on March 1, 2025, as the municipality’s obligation for the fourth round, unless challenged by an interested party on or before February 28, 2025. 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 P.L.2024, C. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3), in any challenge initiated through the Program. An interested party may file a challenge with the Program, after adoption of the binding resolution and prior to March 1, 2025, alleging that the municipality’s determination of its present and prospective obligation does not comply with the requirements of sections 6 and 7 of P.L.2024, C. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3). “2024 N.J. ALS 2 ; 2024 N.J. Laws 2 ; 2024 N.J. Ch. 2 ; 2024 N.J. A.N. 4; and”

WHEREAS, 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 P.L. 2024, c.4; and

WHEREAS, the DCA Report calculates Bernardsville’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 0 affordable units and a Prospective Need or New Construction Obligation of 113 affordable units; and

WHEREAS, P.L. 2024, c.4 provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that P.L. 2024, c.4 would support lower calculations of Round 4 affordable housing obligations; and

WHEREAS, P.L. 2024, c.4 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 biding

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, based on the foregoing, Bernardsville accepts the DCA calculations of Bernardsville’s fair share obligations and commits to its fair share of 0 units present need and 113 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 it subsequently submits in accordance with P.L. 2024, c.4; and

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

WHEREAS, Bernardsville also reserves the right to adjust its position in the event of any rulings in any action that alters the deadlines and/or requirements of P.L. 2024, c.4; and

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

WHEREAS, in light of the above, the Council finds that it is in the best interest of Bernardsville to declare its commitment to the obligations reported by the DCA on October 18, 2024 subject to the reservations set forth herein; and

WHEREAS, pursuant to the statute, the Administrative Director of the Courts issued Directive #14-24 on November 12, 2024 promulgating the procedures and guidelines implementing the Affordable Housing Alternate Dispute Resolution Program created by P.L. 2024, chapter 2; and

WHEREAS, that Administrative Directive provides in relevant part that:

“A municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint and civil case information statement (Civil CIS) in the county in which the municipality is located.

This declaratory judgment action must be filed within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner.

Copies of the municipal resolution must be included with the initial filing.

Actions that are not filed by the statutory deadline will not be considered by the Program.”

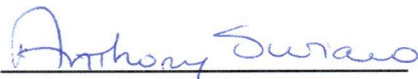
NOW, THEREFORE, BE IT RESOLVED by the Council of the Borough of Bernardsville, in the County of Somerset, State of New Jersey, as follows:

1. The Borough of Bernardsville hereby commits to the DCA Round 4 Present Need Obligation of 0 units and the Round 4 Prospective Need Obligation of 113 units described in this resolution, subject to all reservations of rights set forth above.
2. This resolution binds the Borough to adopt a Housing Element and Fair Share Plan based on this determination as may be adjusted by the Program.
3. The Borough Clerk is hereby directed to publish a certified true copy of this resolution, along with the date of filing on the Affordable Housing Dispute Resolution Program website and the Bernardsville Borough website.
4. The Borough Attorney is hereby authorized and directed to file a Declaratory Judgment Complaint and Civil CIS in the Superior Court of New Jersey, Law Division, Somerset

County in accordance with the procedures set forth Directive #14-24.issued by the Administrative Director of the Courts.

5. The declaratory judgment must be filed within 48 hours after adoption of this resolution.
6. Copies of this resolution must be included with the initial filing.
7. The Borough Attorney, the Borough Planner and other Borough officials are authorized and directed to take all steps necessary to defend and protect the Borough's interests in meeting its affordable housing obligations.

I, **Anthony Suriano**, Clerk of the Borough of Bernardsville, hereby certify the foregoing to be a true and exact copy of a resolution adopted by the Governing Body at a duly convened meeting held Monday, January 27, 2025.


Anthony Suriano
Anthony Suriano, Clerk