

TOWNSHIP OF GREEN BROOK
County of Somerset, State of New Jersey
Resolution 2025-01-04

**RESOLUTION OF THE TOWNSHIP OF GREEN BROOK, SOMERSET COUNTY,
COMMITTING TO THE TOWNSHIP'S FOURTH ROUND AFFORDABLE HOUSING
OBLIGATION**

WHEREAS, the Township of Green Brook, County of Somerset, State of New Jersey, (hereinafter the "Township") has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations and obtained a Third Round Judgment of Compliance and Repose thereby immunizing the Township from builder remedy litigation until July 1, 2025, In the Matter of the Application of the Township of Green Brook, Somerset County, New Jersey for a Declaratory Judgment, Superior Court of New Jersey, Law Division, Somerset County, Docket No.: SOM-L-929-15; and

WHEREAS, on March 20, 2024, Governor Philip D. Murphy signed P.L. 2024, c.2 into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter "Amended FHA"); and

WHEREAS, the Amended FHA abolished the Council on Affordable Housing, also known as COAH, and delegated its responsibilities to the New Jersey Department of Community Affairs (hereinafter "DCA"), the New Jersey Housing and Mortgage Finance Agency, and the Affordable Housing Dispute Resolution Program (hereinafter "Program"), created by the same law; and

WHEREAS, the Amended FHA requires the DCA to calculate 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 employed three (3) factors to allocate the Regional Need to each applicable municipality: equalized non-residential valuation, income capacity, and land capacity; and

WHEREAS, the DCA Report calculates the Fourth Round (2025-2035) obligation of the Township, as follows: a Present Need or Rehabilitation Obligation of 26 and a Prospective Need or New Construction Obligation of 120; 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 Fourth Round affordable housing obligations; 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, durational adjustments, windshield surveys and other adjustments; and

WHEREAS, Township employees and professionals have reviewed the lands identified by the DCA for the land capacity factor with respect to the DCA GIS data, construction permit data, environmental constraints data, mapped utility easements, land use board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development, and

WHEREAS, while the Township does not challenge the methodology to determine the Township's Fourth Round affordable housing obligations, the Township believes that a recalculation of the Land Capacity Factor was necessary in order to account for land use data errors in the DCA's calculation that identified twenty-eight (28) developable areas within the Township when only five (5) are developable; and

WHEREAS, after excluding lands that were inaccurately determined by the DCA to be developable, the Township calculated its Fourth Round obligation to include a Present Need or Rehabilitation Obligation of 26 and a Prospective Need or New Construction Obligation of 106. The basis for that conclusion is attached hereto as Exhibit A; and

WHEREAS, the Amended FHA provides 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, the Township's calculation of its Fourth Round obligation was calculated in accordance with sections 6 and 7 of the Amended FHA and is therefore entitled to a presumption of validity; and

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

WHEREAS, the Township also reserves the right to adjust its position in the event of any rulings in the Montvale case (MER-L-1778-24) or any other such litigation or legislative action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Township reserves the right to take such position as it deems appropriate in response thereto, including that its Fourth Round Present or Prospective Need Obligations should be lower than described herein; 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, for example, unchallenged numbers by default on March 1, 2025; and

WHEREAS, in light of the above, the Township Committee of the Township of Green Brook finds that it is in the best interest of the Township to declare its modifications to the obligations reported by the DCA on October 18, 2024 subject to the reservations set forth herein; and

WHEREAS, in addition to the above, the Acting Administrative Director of the Administrative Office of the Court 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 FHA shall file an action in the form of a declaratory judgment complaint . . . in the county in which the municipality is located . . . “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 of Green Brook seeks a certification of compliance with the FHA through participation in the Program and, therefore, 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 on this 27th day of January, 2025 by the Township Committee of the Township of Green Brook as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. For the reasons set forth in this resolution, the Township of Green Brook hereby accepts the DCA methodology and commits to a modified Fourth Round Present Need Obligation of 26 units and Prospective Need Obligation of 106 units based on the calculations set forth in Exhibit A, subject to all reservations of rights set forth above.
3. The Township of Green Brook hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in Somerset County within 48 hours after adoption of this resolution, attaching this resolution.
4. The Township of Green Brook authorizes its Affordable Housing Counsel to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and/or file this resolution with the Program or any other such entity as may be determined to be appropriate.
5. The Township of Green Brook hereby directs its Township Clerk to post this resolution on the Township website within 48 hours after adoption of this resolution, attaching this resolution.
6. The Township of Green Brook shall undertake all acts necessary to adopt a housing element and fair share plan to address its present and prospective need obligations as provided for by the Amended FHA, for filing by June 30, 2025 as part of the declaratory judgment action authorized herein.
7. This resolution shall take effect immediately, according to law.

Resolution offered by: Van Arsdale Supported by: Benscoter

ROLL CALL: Benscoter-Aye, Conway-Absent, Martins -Aye, Searfoss-Aye, Van Arsdale-Aye

CERTIFICATION

I, Kelly G. Cupit, Green Brook Township Administrator/Municipal Clerk, of the County of Somerset, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution adopted by the Township Council at a meeting held on January 27, 2025.



Kelly G. Cupit, Township Administrator/Municipal Clerk