

RESOLUTION: 2025-86**RESOLUTION OF THE CITY OF LINDEN, COUNTY OF UNION, STATE OF NEW JERSEY COMMITTING TO COMPLY WITH FAIR HOUSING ACT AS AMENDED**

WHEREAS, the City of Linden, County of Union, State of New Jersey, (hereinafter, "City" or "Linden") has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations; and

WHEREAS, on March 20, 2024, Governor Phil Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter "Amended FHA" or "Act"); and

WHEREAS, the amended FHA imposes overwhelming burdens on municipalities as demonstrated by the fact that the Act calls for the imposition of a statewide affordable housing obligation of 84,690 just for Round 4 on municipalities that only issued 99,956 Certificates of Occupancy in the 2010-2020 period used to establish prospective need obligations for Round 4; and

WHEREAS, despite the substantial problems with the Amended FHA, the City shall comply with them to eliminate the risks of noncompliance; and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to estimate the Present Need, also referred to as the rehab obligation and the Prospective Need for Round 4 obligations 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 identifies the City's Present Need as 299 and its Round 4 Prospective Need as 787; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support revised calculations of the obligations the DCA reported; and

WHEREAS, the Amended FHA gives municipalities the opportunity to propose a different affordable housing obligation from those reported by the DCA on October 18, 2024 based upon the standards in Sections 6 and 7 of the Act; 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, c.2, or binding court decisions" (N.J.S.A 52:27D-311 (m)); and

WHEREAS, COAH regulations authorize municipalities to secure an adjustment to their rehabilitation obligation through a windshield survey and also empower municipalities to secure vacant land adjustments, durational adjustments and other adjustments; and

WHEREAS, the City reserves its right to prepare a windshield survey in accordance with COAH regulations and to seek an adjustment to its rehab obligation based upon the results of that survey; and

WHEREAS, the City has exercised its right to demonstrate that the data, when correctly applied, supports a lower Round 4 Prospective Need obligation than that reported by the DCA on October 18, 2024; and

WHEREAS, more specifically, Linden maintains that its Round 4 prospective need number is 738 based upon its examination of the data the DCA used to calculate the City's **Land Capacity Allocation Factor**; and

WHEREAS, the DCA belatedly provided the data it used to establish this factor, i.e., on or about November 27, 2024 instead of by October 20, 2024; and

WHEREAS, the link to the DCA GIS data that the DCA belatedly made available to municipalities includes the following language:

"The land areas identified in this dataset are based on an the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable 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 mappings as part of their participation in the Affordable Housing Dispute Resolution Program.**" (emphasis added)

WHEREAS, the City maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, Paul Ricci, PP, AICP, its Professional Planner, has prepared a report, attached hereto as Exhibit A, showing the lands that the City of Linden contends should be removed from the inventory of sites used to fashion the **Land Capacity Allocation Factor**; and

WHEREAS, it is therefore important that the City of Linden not commit to an incorrect obligation; and

WHEREAS, correcting the allocation factors results in Linden's Round 4 Prospective Need Obligation of 738 rather than the 787 obligation reported by the DCA; 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, City's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Act; and

WHEREAS, in addition to setting forth its Present Need and its Round 4 Prospective Need obligations for the reasons summarized above, substantial activity has occurred and is ongoing that warrants the reservation of certain rights to avoid any claim that it has waived them; and

WHEREAS, for example, the New Jersey Institute of Local Government Attorneys ("NJILGA") has expressed its support for proposed legislation (hereinafter "NJILGA Legislation") would reduce Linden's Round 4 Prospective Need from 787 to 135 and would give the City "90 days from receipt of revised fair share obligations from the [DCA] to provide an amended Housing Element and Fair Share Plan addressing the new number); and

WHEREAS, the City of Linden supports the NJILGA Legislation and would have the right to reduce its Round 4 obligation in the event that the Legislature enacts the NJILGA Legislation; and

WHEREAS, similarly, a number of municipalities, led by the City of Montvale, have filed suit (MER-L-1778-24) (hereinafter "Montvale Litigation") challenging the Amended Fair Housing Act and the outcome of that litigation is uncertain; and

WHEREAS, the process established by the Amended FHA creates an opportunity to object by interested parties opposing the obligations to which a municipality commits, thereby creating the potential for litigation over the obligations of the municipality; and

WHEREAS, the Amended FHA requires municipalities to adopt a binding resolution no later than January 31, 2025 as to its obligations.

WHEREAS, in light of the above, the City of Linden 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 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 City of Linden seeks a certification of compliance with the Act 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 21st day of January, 2025, by the Governing Body of the City of Linden, County of Union, 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 for the in this resolution and its attachments, the City of Linden commits to a Round 4 Present Need ("Rehabilitation") Obligation of 299 based upon the Windshield Survey attached hereto as Exhibit A; and a Round 4 Prospective Need obligation of 738 based upon the report of Paul Ricci, PP AICP attached hereto as Exhibit A, subject to all reservations of all rights, which specifically include, without limitation, the following:

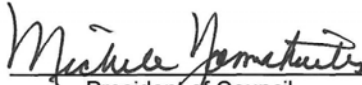
- a. The right to adjust the Present Need, also known as the rehab obligation, through a windshield survey as authorized by COAH regulations;
- b. The right to a vacant land adjustment, durational adjustments, and all other applicable adjustments permitted in accordance with COAH regulations;
- c. The right to comply with the NJILGA Legislation if enacted, including the right to adjust its fair share obligations;
- d. The right to adjust its fair share obligation in the event of any future legislation that adjusts the fair share obligations that the DCA reported on October 18, 2024;
- e. The right to adjust its fair share obligations based upon any ruling in the Montvale Litigation or any other litigation; and
- f. The right to adjust its fair share obligations in the event of a third party challenge to the fair share obligations and the City of Linden's response thereto.

3. The City hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in the County of Union regarding this resolution with the Program no later than 48 hours after adoption this resolution attaching this resolution.

4. The City shall publish the resolution on a publicly accessible internet website and the municipal website promptly.

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

PASSED: January 21, 2025


President of Council

APPROVED: January 22, 2025


Mayor

ATTEST:


City Clerk

CERTIFICATION

Erubet A**MEMORANDUM****CLIENT PRIVILEGED COMMUNICATION**

TO: Mayor Armstead and Affordable Housing Team

FROM: Paul Ricci, AICP, PP

RE: Analysis of Land Capacity Factor

DATE: January 13, 2024

The New Jersey Department of Community ("DCA") used three factors to allocate the regional need to each municipality in the region. This report addresses one of those three factors: the Land Capacity Allocation Factor.

The DCA provided the data that was the basis for the Land Capacity Allocation Factor. The link to the DCA GIS data¹, and the description section, includes the following language:

The land areas identified in this dataset are based on an (sic) the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable 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 mappings as part of their participation in the Affordable Housing Dispute Resolution Program.** [Emphasis added]

In consideration of the above, I have reviewed the 39 parcels in Linden identified in the DCA's Vacant Land Output Layer, which was used as the basis to determine vacant developable land in Linden (land capacity factor).

This brief memorandum summarizes the findings of my review.

Calculation of Adjustment

The areas identified as developable in the DCA's calculation of the Land Capacity factor is indeed overinclusive. Accordingly, we believe that the land capacity allocation factor should be adjusted from 39.87 to 1.26 acres. When this correction is made, Linden's Round 4 prospective need number should be 738 – not 787. See Exhibit A-1.

The following analysis sets forth the basis for removing land treated as developable in the DCA's calculation:

- Each property was analyzed in a geographic information system where environmental

¹ <https://njdca.maps.arcgis.com/home/item.html?id=12acdfc0a5104f8f8a2f604e96063e74>

constraints layers, lot lines and aerial photography was viewed. We also relied upon our knowledge of recent developments and the history of properties in Linden. This consisted as my knowledge of development in Linden over the past 20 years as well as information provided by the City's Engineering Department.

- Slivers of land within already developed sites were reclassified as developed and not available for development.
- Many sites were either developed or previously developed and are currently restricted from future development, these include two former decommissioned landfills, a federal highly contaminated superfund site, conservation easements on a tract of land containing 4.3 million square feet of warehouse space, etc. The notes section of Table 1 – identifies the rationale for removal as developable land. Regarding DCA sites within the Greek Property (4.3 million square feet of warehouse space), we are still awaiting the final NJDEP mapping associated with the waterfront development permit to 100% remove/validate the removal of such identified vacant land. However, we verbally verified this information with the civil engineer of record for the project.
- The mapping, attached hereto as Exhibits A-2 and A-3, shows each site with and without multiple layers, i.e., environmental constraints, etc., which further supports this analysis.

Utilizing the correct identification of developable parcels results in the City's Round 4 Prospective Need being 738, not 787. Exhibit B shows that calculation.

Exhibit A-1 - Analysis of DCA Vacant Land Output - City of Linden, Union County, New Jersey

DCA Vacant Acre	DCA ACRE	ID	NOTES	DEVELOPABLE
0.64678	0.64678	1	Developed property - Edge of property	NO
0.11481	0.11481	2	Part of a decommissioned former landfill	NO
0.45311	0.45310	3	Former Merck Landfill	NO
5.85406	5.85403	4	Former Merck Landfill	NO
0.09346	0.09346	5	Former Linden Landfill	NO
0.30645	0.30645	6	Conrail right-of-way	NO
1.42692	1.42696	7	Former Linden Landfill	NO
0.41846	0.41846	8	Former Linden Landfill	NO
0.74765	0.74765	9	Developed marine construction property.	NO
0.97531	0.97531	10	Property is located in the flood hazard area	NO
0.08106	0.08106	11	Property is a developed roadway	NO
0.20661	2.20790	12	All but approximately 9,000 sq. ft. is in the flood hazard	YES - Partially
0.10520	0.10520	13	Undevelopable LCP Superfund Site	NO
1.29572	1.29571	14	Property is already developed with industrial use	NO
0.67276	0.67276	15	Undevelopable LCP Superfund Site	NO
0.92521	0.92521	16	Undevelopable LCP Superfund Site	NO
0.15751	0.15751	17	Undevelopable LCP Superfund Site	NO
0.08587	0.08586	18	Sliver of a right-of-way property.	NO
0.33098	0.33112	19	Developed portion of Linden Sewerage Authority treatment facility.	NO
0.52429	0.52429	20	Long narrow property that adjoins Conrail right of way	NO
0.70208	0.70208	21	Buckeye oil pipeline easement traverses. Adjoins conrail line and irregular shape.	YES - But unsuitable
0.28706	0.28705	22	Developed property - Edge of property	NO
0.14602	0.14602	23	Developed property - Edge of property	NO
0.24108	0.24107	24	Conservation area of a 4.3 million square foot warehouse development	NO
3.63973	3.63972	25	Conservation area of a 4.3 million square foot warehouse development	NO
0.35122	0.35122	26	Conservation area of a 4.3 million square foot warehouse development	NO
6.66329	6.66325	27	Property is already developed with a warehouse	NO
0.25675	0.25675	28	Conservation area of a 4.3 million square foot warehouse development	NO
0.39089	0.39088	29	Conservation area of a 4.3 million square foot warehouse development	NO
1.78299	1.78296	30	Developed and portion of Linden Airport.	NO
6.60360	6.60359	31	Conservation area of a 4.3 million square foot warehouse development	NO
0.23957	0.23957	32	Within the flood hazard area adjoining a stream	NO
0.06751	0.06751	33	Within the flood hazard area adjoining a stream	NO
0.22650	0.22650	34	Isolated area of a developed site located in a regulatory floodway	NO
0.14418	0.14418	35	Landlocked, isolated and partially located within flood hazard	NO
0.24412	0.24412	36	Developed with a warehouse.	NO

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DCA Vacant Acre	DCA ACRE	ID	NOTES	DEVELOPABLE
0.10469	0.10469	37	Unimproved land	YES
0.20263	0.20263	38	Located within a regulatory floodway	NO
0.15358	0.15358	39	Unimproved land	YES
1.26490	39.87099			

Developable Acres 1.26 Acres

Exhibit A-2 - Vacant Land Output Key Map
City of Linden, New Jersey



Legend
 Vacant Land
 City of Linden
 DCR
 Municipal Boundary
 Boundary

December 2024

0 1,250 2,500 Feet

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Exhibit B - Adjusted Affordable Housing Obligation

	Equalized Nonresidential Valuation Factor	Land Capacity Factor	Income Capacity Factor	Average Allocation Factor	Total Municipal Vacant Developable Land	Total Regional Vacant Developable Land	Prospective Need	Regional Need
Calculated by NJDCA	9.75%	0.74%	1.02%	3.84%	39,87100	5,358,483394	787	20,506
Adjusted by Ricci Planning	9.75%	0.02%	1.02%	3.60%	1,26490	5,319.88	738	20,506