

RESOLUTION NO. 2025-46

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN, STATE OF NEW JERSEY, ESTABLISHING THE TOWNSHIP'S PRESENT AND PROSPECTIVE FAIR SHARE OBLIGATIONS FOR AFFORDABLE HOUSING FOR THE FOURTH ROUND 10-YEAR PERIOD OF 2025-2035 AND AUTHORIZING THE FILING OF A DECLARATORY JUDGMENT ACTION SEEKING A CERTIFICATE OF COMPLIANCE IN ACCORDANCE WITH THE FAIR HOUSING ACT

WHEREAS, on March 20, 2024, Governor Philip D. Murphy signed into law Amendments to the Fair Housing Act, N.J.S.A. 52:37D-301 et. seq., requiring the Department of Community Affairs to conduct a calculation of regional need and municipal present and prospective fair share obligations for affordable housing in accordance with the formulas established in N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3 beginning with the fourth 10-year round of housing obligations commencing July 1, 2025, (hereafter "Fourth Round") and to render a report with regard to the same; and

WHEREAS, the Department of Community Affairs published its report in October of 2024 (hereinafter DCA Report"); and

WHEREAS, the DCA Report calculated the Township's Fourth Round (2025-2035) fair share affordable obligation as a present need of 0 and a prospective need of 87; and

WHEREAS, the DCA Report is not binding upon the municipalities; 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 Fair Housing Act 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 also empower municipalities to secure vacant land adjustments, durational adjustment and other adjustments; and

WHEREAS, the DCA has released a Geographic Information System 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, the Land Capacity Analysis is a factor in determining the Average Allocation Factor for each municipality; and

WHEREAS, the Township of Lopatcong has reviewed the lands identified by the DCA for the land capacity factor with respect to 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, pursuant to N.J.S.A. 52:27D-304.1(3)(f)(1), with consideration of the calculation contained in the aforesaid DCA Report, each municipality must determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in sections N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3 by resolution, which describes the basis for the municipality’s determination and binds the municipality to adopt a housing element and fair share plan pursuant to paragraph 2 of N.J.S.A. 52:27D-304.1(3)(f); and

WHEREAS, the Township has reviewed the DCA Report titled Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background (hereafter “DCA Report”), and its supporting documents, and engaged planners Colliers Engineering & Design (hereafter “Colliers” or “Affordable Housing Planners”) to review the methodology and data contained in the DCA Report; and

WHEREAS, Colliers issued its report on January 28, 2025 (hereafter “Colliers Report”); and

WHEREAS, based on the foregoing, the Township of Lopatcong relies on the DCA calculations of the Township of Lopatcong’s fair share obligations as modified herein to account for the Township of Lopatcong’s review of lands identified by the DCA for the land capacity factor with respect to 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 Colliers Report, and the Township of Lopatcong seeks to commit to provide its fair share of present need and prospective need units, subject to any vacant land and/or durational adjustment it may seek as part of the Housing Element and Fair Share Plan it subsequently submits in accordance with the Amended FHA; and

WHEREAS, based on a review of the DCA Report and findings made in the Colliers Report, the Township Council seeks to adopt a binding resolution accepting the Present Need obligation of 0 contained in the DCA Report; and

WHEREAS, based on a review of the DCA Report and findings made in the Township Affordable Housing planners, Colliers, in the Colliers Report, it is recommended the Township Council adopt a binding resolution determining a reduced municipal Prospective Need obligation

of 71 based on a recalculation of the Land Capacity Factor to account for DCA's methodology errors and as supported by the Colliers report, which is attached hereto and incorporated herein as **Exhibit A**; and

WHEREAS, Colliers has determined that the Land Capacity Factor must be adjusted downward from .25% to .02% by removing land, consisting of 12.6285 acres, which was formerly included as developable land in the DCA Report calculations, based upon the DCA Report's failure to take the following into consideration or erroneously listing land as vacant land and developable which is not developable:

(1) The DCA Report includes vacant land without consideration of conservation easements and deed restrictions upon the land;

(2) The DCA Report fails to account for street frontage when designating land as subject to development;

(3) The DCA Report does not take into consideration block and lot lines and identifies portions of existing developed sites as developable, and further fails to take into consideration rear and side yard setback areas;

(4) The DCA Report fails to account for area shape and size and including an area as narrow as 9 feet as developable;

(5) The DCA Report also does not take into account utility easements; and

WHEREAS, applying the adjusted Land Capacity Factor per the Colliers Report in determining the Township's Average Allocation Factor, the same is reduced from .42% to .34%; and

WHEREAS, upon adjusting the Land Capacity Factor per the Colliers Report downward from .25% to .02%, resulting in a reduction in acreage of 12.6285, and thus resulting in a reduction

of the Township's Average Allocation Factor from .42% to .34%, the Township's Prospective Need obligation is 71 based upon the Fourth Round Methodology contained in the DCA Report and as modified by the Colliers Report; and

WHEREAS, the Township is aware of certain litigation before the Courts and potential additional changes to the Fair Housing Act, and therefore reserves the right to adjust its obligation based upon any adjudication in the Courts, change in legislation, change in methodology or DCA Report, in the event of a Third-Party challenge, and commits to the within obligation numbers subject to all reservations of rights; and

WHEREAS, in light of the above, the Township Council of the Township of Lopatcong finds it is in the best interest of the Township of Lopatcong to declare its commitment to the Present Need obligation reported in the DCA Report and Prospective Need obligations reported in the Colliers Report, subject to the reservations set forth herein; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certificate of compliance with the Fair Housing Act shall file an action in the form of a declaratory judgment complaint in which the municipality is located within 48 hours after adoption of this resolution which is Warren County; and.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Township Council of the Township of Lopatcong, County of Warren, State of New Jersey, as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. Pursuant to N.J.S.A. 52:27D-304.1(3)(f)(1) and in conformance with the formulas set forth in N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:37D-304.3, the Township Council of the

Township of Lopatcong commits to the present fair share obligation for affordable housing of 0 units based upon the DCA Report and the Township's prospective fair share obligation for affordable housing of 71 units based upon the DCA Report as modified by the Colliers Report, for the Fourth Round, subject to all reservation of rights, including but not limited to the following:

a. The right to a vacant land adjustment, durational adjustments, and all other applicable adjustments permitted ;

b. The right to comply with any future changes in legislation that changes its obligations under current law including any additional changes to the FHA;

c. The right to adjust the fair share obligations in the event of any future legislation that adjusts the fair share obligations as set forth in the DCA Report calculations;

d. The right to adjust its fair share obligation based on any future adjudication by a court of competent jurisdiction; and

e. The right to adjust its fair share obligation in the event of a Third-Party challenge to the fair share obligations and the Township of Lopatcong's response, including that its prospective need obligation should be lower than described herein;

3. The Township Attorney is hereby authorized to file a Declaratory Judgment complaint in Warren County seeking a certificate of compliance as to the Township's Fourth Round Affordable Housing obligation, which action shall be filed within 48 hours of the adoption of this resolution and attaching this resolution as an exhibit with the Colliers Report.

4. A certified copy of this resolution with attached Colliers Report, along with the filing date of the Declaratory Judgment action shall be submitted and/or filed with the Alternate

Dispute Resolution Program or any other such entity as may be determined to be appropriate. A certified copy of the resolution shall also be posted on the municipal website.

5. The Township shall adopt a housing element and fair share plan based upon the determinations set forth in this Resolution and as may be adjusted by the Alternate Dispute Resolution Program in accordance with N.J.S.A. 52:27D-304.1(3)(f)(2) or as may be subsequently adjusted based upon the reservation of rights.

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

CERTIFICATION

I, Margaret B. Dilts, Clerk of the Township of Lopatcong, County of Warren, State of New Jersey do hereby certify that the foregoing is a true and exact copy of the resolution adopted by the Township of Lopatcong Council at a meeting held on January 29, 2025.

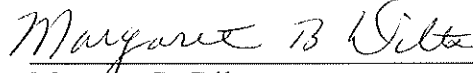

Margaret B. Dilts
Township Clerk

EXHIBIT A