

TOWNSHIP OF MOORESTOWN

RESOLUTION NO. 75-2025

**COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE
NEED AFFORDABLE HOUSING OBLIGATIONS
IN COMPLIANCE WITH P.L. 2024, c.2**

WHEREAS, even prior to the New Jersey Supreme Court’s landmark 1975 Mount Laurel decision declaring that municipalities had a constitutional obligation to provide a realistic opportunity for the development of affordable housing, the Township of Moorestown (hereinafter “Moorestown” or the “Township”) had a demonstrated history of ensuring there were opportunities for the development of affordable housing; and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on July 7, 2015, the Township filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”), to be amended as necessary, satisfies its “fair share” of the regional need for low and moderate income housing pursuant to the “Mount Laurel doctrine,” and

WHEREAS, the litigation culminated in a Court-approved Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which immunized the Township from builder’s remedy lawsuits until July 1, 2025; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2 (hereinafter “A4” or “Amended FHA”) which provided a framework for how a municipality will satisfy its Round 4 obligation; and

WHEREAS, A4 calculates the size of the regional affordable housing need as follows “projected household change for a 10-year round in a region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. This household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region, and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations...”; and

WHEREAS, this means that the regional need equates to 40% of regional household growth; and

WHEREAS, the 1985 version of the Fair Housing Act and A4 both prohibit a result that would compel a municipality to spend its own money on compliance; and

WHEREAS, the theory which permits a municipality to meet its obligations without municipal subsidy is zoning for “inclusionary zoning” which requires that a certain percentage

(usually 15% or 20%) of the total number of dwelling units be set aside as low or moderate income units; and

WHEREAS, it is not clear how a regional need predicated upon 40% of anticipated growth can be met with 15-20% set asides and without municipal subsidy; and

WHEREAS, this is exacerbated by the fact that certain other municipalities in the region have an allocation of 0% of the prospective need (new construction obligation), irrespective of the growth in that particular municipality; and

WHEREAS, A4 yields a statewide new construction obligation of over 8,400 affordable units per year which is a substantially higher annual number than was imposed by the former Council On Affordable Housing in the “Prior Round” or any iteration of its Round 3 regulations; and

WHEREAS, A4 determines the size of the regional need, but does not calculate allocation of the need to individual municipalities; and

WHEREAS, instead, A4 required the Department of Community Affairs (“DCA”) to produce non-binding estimates of need on or before October 20, 2024, which it did provide on October 18, 2024 (“DCA Report”); and

WHEREAS, the DCA Report calculates the Township’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 20 units and a Prospective Need or New Construction Obligation of 250 units; and

WHEREAS, A4 further provides that, irrespective of the DCA’s calculation, municipalities are to determine “present and prospective fair share obligation(s)...by binding resolution no later than January 31, 2025”; and

WHEREAS, this resolution satisfies the requirements of A4 by accepting the DCA estimate of need as described in the DCA Report; and

WHEREAS, Section 3 of A4 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 A4; and

WHEREAS, Township’s calculation of need is entitled to a “presumption of validity” because it complies with Sections 6 and 7 of A4; and

WHEREAS, the Township specifically reserves the right to adjust those numbers based on one or any of the foregoing adjustments: 1) a existing conditions survey or similar survey which accounts for a lower estimate 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 or amend this resolution and commitment, as may be necessary, in the event of a successful challenge to A4 in the context of the Montvale case (MER-L-1778-24), any other such action challenging A4, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of A4; and

WHEREAS, in addition to the foregoing, the Township reserves the right to take a position that its Round 4 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 light of the above, the Township Council finds that it is in the best interest of the Township to declare its obligations in accordance with this binding resolution and 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, nothing in this Resolution shall be interpreted as an acknowledgment of the legal validity of the AOC Directive and the Township reserves any and all rights and remedies in relation to the AOC Directive; and

WHEREAS, the Township 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; and

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Moorestown, Burlington County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this resolution.

2. The Mayor and Council hereby commit to the DCA Round 4 Present Need Obligation of 20 units and the Round 4 Prospective Need Obligation of 250 units as described in this resolution subject to all reservations of rights, which specifically include:

a) The right to adjust the number based on a windshield survey, lack of land, sewer, water, regional planning inputs, or any combination thereof;

b) As described in the WHEREAS section, all rights to revoke or amend this resolution in the event of a successful legal challenge, or legislative change, to A4;

c) All rights to take any contrary position in the event of a third party challenge to the obligations.

3. The Township hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint within 48 hours after adoption this resolution attaching this resolution.

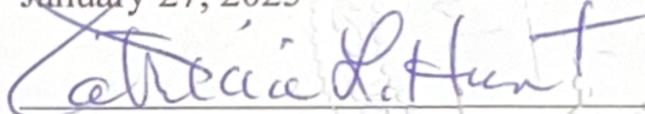
4. The Township hereby directs its Affordable Housing Counsel to file this Resolution with the "Program" pursuant to the requirements on A4.

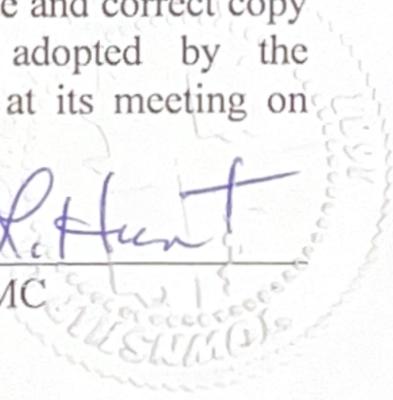
5. The Township hereby directs that this Resolution be published on the municipal website within 48 hours of its passage, pursuant to A4.

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

<u>VOTE:</u>	
LAW	YES
MAMMARELLA	YES
KEATING	YES
GILLESPIE	YES
BARRY	YES

Certified to be a true and correct copy of a Resolution adopted by the Township Council at its meeting on January 27, 2025


Patricia L. Hunt, RMC
Township Clerk



TOWNSHIP COUNCIL AGENDA REPORT

Meeting Date: January 27, 2025

Subject: 75-2025 Committing to Round 4 Present and Prospective Need Affordable Housing Obligations in Compliance with P.L. 2024, c.2

Submitted by: Kevin E. Aberant

RECOMMENDATION

Adopt.

PREVIOUS ACTION

N/A

BACKGROUND

P.L. 2024, c.2 requires a municipality to adopt a resolution on or before 1/31/2025 accepting the DCA's estimate of that municipality's allocation of the region's prospective need for affordable housing or rejecting the DCA's calculation and setting forth the municipality's own calculation. The DCA calculated the Township's number to be 250 units. The Township Affordable Housing Planner has recommended the Township accept the number set by DCA.

FISCAL IMPACT

None at this time.

CONCURRENCES

Damian Gil, Community Development Director
Michael Edwards, Esq., Affordable Housing Special Counsel
Brian Slauch, PP AICP, Affordable Housing Planner

FOLLOW UP

Manager's office to submit copy of adopted resolution to Mike Edwards for filing of Declaratory Judgment Complaint and submission to the "Program". Manager's office to also have posted on the township website.