



Township Council

c/o Township Clerk
Teaneck, NJ 07666

Meeting: 01/28/25 06:30 PM
Department: Township Clerk
Category: Authorization
DOC ID: 8862

RESOLUTION 42-2025

**COMMITTING TO ROUND FOUR PRESENT AND PROSPECTIVE NEED
AFFORDABLE HOUSING OBLIGATIONS**

TOWNSHIP OF TEANECK
BERGEN COUNTY, NJ

42-2025

**COMMITTING TO ROUND FOUR PRESENT AND PROSPECTIVE
NEED AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the Township has a demonstrated history of voluntary compliance as evidenced by its Round Three record; 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 9, 2015, the Township of Teaneck (hereinafter “Teaneck” or 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, that culminated in a Court-approved Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes 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”); 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, 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 Four (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of **214** units and a Prospective Need or New Construction Obligation of **431** units; and

WHEREAS, the Township accepts the conclusions in the DCA Report, except regarding the land capacity allocation factor; and

WHEREAS, as to the **Land Capacity Allocation Factor**, the Township notes that 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 Township further notes that 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 [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); and

WHEREAS, the DCA maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, the Township’s Professional Planner, has prepared a report, attached hereto as **Exhibit A**; and

WHEREAS, correcting the allocation factors results in the Township’s Round 4 Prospective Need Obligation being **384** units rather than the **431** units the DCA calculated; 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 windshield survey or similar survey which accounts for a higher-resolution 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, including, but not limited to the Highlands Regional Master Plan and its build out, the Pinelands or Meadowlands regulations and planning document; 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 Four 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, that reservation of all litigation rights shall include, but is not limited to, taking a position that the Equalized Non-Residential Valuation Factor erroneously captures

substantial mixed-use multifamily developments and mischaracterizes them entirely as non-residential; and

WHEREAS, in light of the above, the Mayor and Council finds that it is in the best interest of 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 forty-eight (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 forty-eight (48) hours of the adoption of this resolution; and

NOW, THEREFORE, BE IT RESOLVED on this 28th day of January 2025, by the Council of the Township of Teaneck, Union County, State of New Jersey, as follows:

- . All of the Whereas Clauses are incorporated into the operative clauses of this resolution.
2. The Mayor and Council hereby commit to a Present Need Obligation of **214** units and the Round Four Prospective Need Obligation of **384** 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) In furtherance of the WHEREAS clause reserving the Township’s rights to adjust its number to a lower number if the Township’s number is challenged, the Township specifically reserves the right to seek a downwards adjustment due to a correction of the Equalized Non-Residential Valuation Factor; and
 - d) All rights to take any contrary position in the event of a third party challenge to the obligations.

3. The Township hereby directs its Counsel to file a declaratory judgment complaint within forty-eight (48) hours after adoption this resolution attaching this resolution.

4. The Township hereby directs its Counsel to (a) 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 forty-eight (48) hours of its passage, pursuant to A4.

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