



Resolution of the Township of Bernards

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Resolution #2025-0107

Resolution Committing Bernards Township To
DCA's Fourth Round Affordable Housing Present
Need And Prospective Need Numbers As Modified

WHEREAS, on March 20, 2024, Governor Murphy signed 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 requires the Department of Community Affairs ("DCA") to produce non-binding estimates of affordable housing need 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 Report calculates Bernards Township's (the "Township") Round Four (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of **24** and a Prospective Need or New Construction Obligation of **218**; 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 Round Four affordable housing obligations; and

WHEREAS, the Amended FHA specifically 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-311m. ; and

WHEREAS, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

WHEREAS, the DCA has released a Geographic Information Systems 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 Township has reviewed the lands identified by the DCA for the land capacity factor with respect to the 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, based on the foregoing, the Township relies on the DCA calculations of the Township's fair share obligations as modified herein to account for the Township's review of the lands identified by the DCA for the land capacity factor with respect to the 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 January 20, 2025, memorandum prepared by Kendra Lelie, PP, AICP, LLA, the Township's affordable housing planner, and the Township seeks to commit to provide its fair share of **24** units present need and **171** units prospective need, subject to any vacant land, durational and other adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

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

WHEREAS, the Township also reserves the right to adjust its position should it participate under the Highlands Water Protection and Planning Act, L. 2004, c. 120; 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 action that alters the deadlines and 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 Round Four Present or Prospective Need Obligations should be lower than described herein; and

WHEREAS, in light of the above, the Mayor and Township Committee find that it is in the best interest of the Township to commit to the modified present need and prospective need Fourth Round Affordable housing fair share numbers set forth herein; 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 Amended 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 seeks a certification of compliance with the Amended FHA and, therefore, directs its Township Attorney, John Belardo, to file a declaratory relief action within 48 hours of the adoption of this resolution in Somerset County.

NOW, THEREFORE, BE IT RESOLVED on this 28th day of January, 2025 by the Township as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. The Township hereby commits to the DCA's Round Four present need of **24** Units, and a modification of the DCA's Round Four Prospective Need obligation of **218** Units to **171** Units, as explained above and in the attached January 20, 2025, memorandum from Kendra Lelie, PP, AICP, LLA, the Township's affordable housing planner, and subject to all reservations of rights set forth above.
3. The Township will conduct a housing survey of existing dwelling units to determine whether the municipal housing stock includes the **24** present need units identified by the DCA for Round Four, or should be adjusted to a lower unit number. The Township will conduct the field inspection and prepare the documentation in accordance with the procedures set forth in N.J.A.C. 5:93-2.2(b).
4. The Township hereby directs its Township Attorney, John Belardo, to file a declaratory judgment complaint in Somerset County within 48 hours after adoption of the within resolution, and attaching this resolution as an Exhibit with the attached memorandum.
5. The Township authorizes its Township Attorney, John Belardo, to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and file this resolution with the Program or any other such entity as may be determined to be appropriate.

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

Agenda and Date Voted: 01/28/2025



