

RESOLUTION

RESOLUTION OF THE COUNCIL OF THE TOWNSHIP OF BRIDGEWATER COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS AS REQUIRED BY THE MARCH 24, 2024 LAW SIGNED BY GOV. MURPHY (P.L.2024 c.2) HEREINAFTER ABBREVIATED AS “A4”

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the Township of Bridgewater (hereinafter “Bridgewater” 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, the Township has a demonstrated history of voluntary compliance as evidenced by its Rounds 1-3 record; 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”); and

WHEREAS, the Township is forced to participate in the affordable housing process set forth in A4 or risk losing immunity from the builder’s remedy and exclusionary zoning litigation; and

WHEREAS, A4 was signed into law without consideration of how it would impact individual municipalities or where development should occur; and

WHEREAS, A4 provides a process and calculations that disadvantage municipalities; 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”; and

WHEREAS, inclusionary zoning most typically requires a 15% or 20% set aside; 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, A4 provides that certain other municipalities in the region have an allocation of 0% of the need, 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; and

WHEREAS, this is a substantially higher annual number than was imposed by COAH 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 130 units and a Prospective Need or New Construction Obligation of 474 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, the Township has calculated its own Round 4 Present and Prospective Need affordable housing obligations, independently, and commits itself to the following obligations: 130 unit Round 4 Present Need or Rehabilitation Obligation and 417 Prospective Need or New Construction Obligation. The basis for that conclusion is a report prepared by Graham Petto, P.P., AICP of Topology, dated January 24, 2025, and attached hereto as Exhibit A (“Topology 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 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; and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke this resolution and commitment 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 Mayor and Council find that it is in the best interest of the Township to declare its obligations in accordance with this resolution.

NOW, THEREFORE, BE IT RESOLVED on this 30th day of January by the Council of the Township of Bridgewater, Somerset County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this resolution.
2. In accordance with the Topology Report, the Mayor and Council hereby commit to the DCA Round 4 Present Need Obligation of 130 units and the Round 4 Prospective Need Obligation of 417 units 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) All rights to revoke 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 this Resolution with the “Program” pursuant to the requirements of A4.
4. This resolution shall take effect immediately, according to law.

Introduced	Seconded	Council	Aye	Nay	Abstain	Absent
		Kirsh				✓
	✓	Kurdyla	✓			
		Pedroso				✓
✓		Ring	✓			
		Norgalis	✓			

Adopted: January 30, 2025