

RESOLUTION 2025-1-39

**BINDING RESOLUTION OF THE TOWNSHIP OF CHERRY HILL, COUNTY OF CAMDEN,
STATE OF NEW JERSEY COMMITTING TO PRESENT NEED AND ROUND 4 PROSPECTIVE NEED
AFFORDABLE HOUSING OBLIGATIONS IN ACCORDANCE WITH THE AMENDED
NEW JERSEY FAIR HOUSING ACT**

WHEREAS, the Township of Cherry Hill, County of Camden, State of New Jersey, (hereinafter, "Township" or "Cherry Hill") has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations; and

WHEREAS, on March 20, 2024, Governor Phil Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter "Amended FHA"); and

WHEREAS, the Amended FHA requires the New Jersey Department of Community Affairs ("DCA") to provide an estimate of the present need, also referred to as the rehabilitation obligation, and the Round 4 prospective need of all municipalities by October 20, 2024, based upon the criteria in the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the present need and the Round 4 prospective need obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates Cherry Hill's Round 4 Present Need (Rehabilitation) Obligation to be 378 and its Prospective Need (New Construction) Obligation to be 571; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support revised calculations of Round 4 fair share affordable housing obligations; and

WHEREAS, the Amended FHA gives municipalities the opportunity to propose a different fair share affordable housing obligation from those reported by the DCA on October 18, 2024, based upon the standards in Sections 6 and 7 of the Amended FHA; and

WHEREAS, the Amended FHA 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 authorize municipalities to secure an adjustment to their rehabilitation obligation through a windshield survey, and also empower municipalities to secure vacant land adjustments, durational adjustments, and other adjustments to its prospective need obligation; and

WHEREAS, the Township reserves its rights to pursue a reduction of its rehabilitation obligation through the windshield study as authorized by COAH's rules; and

WHEREAS, the Township has exercised its right to demonstrate that the data, when correctly applied, supports a lower Round 4 Prospective Need obligation than that reported by the DCA on October 18, 2024; and

WHEREAS, the Township takes the position that the DCA has indeed overstated the allocation factors, however it will nevertheless accept the DCA's number of 571 subject to the Township's right to put forth all its arguments and seek all adjustments based upon the allocation factors in the event any objection is filed by any party other than the Township to the DCA's 571 number; and

WHEREAS, the Amended FHA 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 the Amended FHA; and

WHEREAS, the DCA's calculation, which the Township accepts, is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Amended FHA; and

WHEREAS, in addition to setting forth its Round 4 fair share affordable housing obligations for the reasons summarized above, substantial activity has occurred and is ongoing that warrants the reservation of certain rights to avoid any claim that it has waived them; and

WHEREAS, for example, there is proposed legislation (hereinafter "Legislation"), which would reduce Cherry Hill's Round 4 Prospective Need to 148 and would give the Township "90 days from receipt of revised fair share obligations from the [DCA] to provide an amended Housing Element and Fair Share Plan addressing the new number;" and

WHEREAS, similarly, a number of municipalities, led by the Borough of Montvale, have filed suit (MER-L-1778-24) (hereinafter "Montvale Litigation") challenging the Amended FHA and the outcome of this litigation is uncertain; and

WHEREAS, the process established by the Amended FHA creates an opportunity to object by interested parties opposing the obligations to which a municipality commits, thereby creating the potential for litigation over the obligations of the municipality; and

WHEREAS, on June 27, 2016, Honorable Nan S. Famular, J.S.C. entered a final Judgment of Compliance and Repose for Round 3 in which she approved the Township's application and determined that the Township's realistic development potential is 1,912; and

WHEREAS, since the Township lacked sufficient land to meet its fair share quota for Round 3 and prior Rounds, it is therefore entitled to a vacant land adjustment to its Round 4 obligation; and

WHEREAS, the Township will include the basis for its vacant land adjustment in the Housing Element and Fair Share Plan ("HEFSP") it intends to submit by the June 30, 2025 deadline; and

WHEREAS, the Amended FHA requires municipalities to adopt a binding resolution no later than January 31, 2025, as to its present need and Round 4 obligations; and

WHEREAS, in light of the above, the Township of Cherry Hill finds that it is in its best interest to declare and determine its present need and Round 4 obligations in accordance with this binding resolution in accordance with the Amended FHA; and

WHEREAS, in addition to the above, the Acting Administrative Director of the Courts 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 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 of Cherry Hill seeks a certification of compliance with the Amended FHA and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution;

NOW, THEREFORE, BE IT RESOLVED on this 27th day of January, 2025, by the Township Council of the Township of Cherry Hill, County of Camden, State of New Jersey, as follows:

1. The WHEREAS preamble paragraphs of this resolution are incorporated by reference into the operative clauses of this resolution as if set forth in full.
2. For the reasons set forth in this resolution, the Township of Cherry Hill commits to a Present Need (Rehabilitation) Obligation of 378 and a Round 4 Prospective Need (New

Construction) Obligation of 571, subject to all reservations of all rights, which specifically include, without limitation, the following:

- a. The right to conduct a windshield survey in accordance with COAH standards to reduce the Present Need;
 - b. The right to a vacant land adjustment, durational adjustments, and all other applicable adjustments permitted in accordance with COAH regulations;
 - c. The right to comply with any additional amendments to the Amended FHA that the Legislature may enact;
 - d. The right to adjust its fair share obligations and/or its position in the event of any rulings in the Montvale Litigation or any other such action or litigation that alters deadlines and/or requirements of the Amended FHA; and
 - e. In the event that a third party challenges the Township's fair share obligations as set forth in this Resolution and/or its HEFSP, the right to take any such position in response thereto as it deems appropriate including, but not limited to, that its Present Need and/or Round 4 Prospective Need Obligations should be lower than described in this Resolution and/or the HEFSP.
3. The Township hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in the appropriate venue within 48 hours after adoption of this resolution, attaching this resolution as an exhibit.
 4. The Township also hereby authorizes its Affordable Housing Counsel to file this resolution with the Affordable Housing Dispute Resolution Program or any other such entity as may be determined to be appropriate.
 5. This resolution shall take effect immediately, according to law.

ADOPTED: JANUARY 27, 2025


COUNCIL PRESIDENT

ATTEST:


PATTI CHACKER, RMC
TOWNSHIP CLERK