

RESOLUTION NO. 39-25

RESOLUTION OF THE TOWNSHIP OF RANDOLPH, COUNTY OF MORRIS, STATE OF NEW JERSEY COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Township of Randolph, County of Morris, State of New Jersey, (hereinafter, “Randolph”) 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” or “Act”); and

WHEREAS, the Amended FHA requires the Department of Community Affairs (“DCA”) to provide an estimate of the fair share affordable housing obligations of all municipalities on or before October 20, 2024 based upon the criteria on the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the fair share affordable housing obligation for all municipalities based upon its interpretation of the standards in the Act; and

WHEREAS, the DCA Report calculates Randolph’s Round 4 (2025-2035) fair share affordable housing obligations as follows: a Present Need (Rehabilitation) Obligation of 84 and a Prospective Need (New Construction) Obligation of 355; 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 Act; 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 the Act, 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 Structural Conditions Survey (hereinafter, “windshield survey”) and also empower municipalities to secure vacant land adjustments, durational adjustments and other adjustments; and

WHEREAS, Randolph has exercised its right to take advantage of that opportunity to propose a different rehabilitation obligation than that reported by the DCA by conducting a windshield survey; and

WHEREAS, based upon the windshield survey (attached as Appendix D to Exhibit A which is attached hereto), Randolph has established that its rehabilitation obligation is ten (10); and

WHEREAS, Randolph 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, more specifically, Randolph maintains that its Round 4 prospective need number is 313 based upon its examination of the data used to calculate each of the three (3) allocation factors; and

WHEREAS, as to the **Equalized Nonresidential Allocation Factor**, Randolph has examined the data the DCA used to establish this factor and concluded that DCA has accurately calculated this Factor; and

WHEREAS, as to the **Income Capacity Allocation Factor**, Randolph has examined the data the DCA used to establish this factor and concluded that DCA has accurately calculated this Factor; and

WHEREAS, as to the **Land Capacity Allocation Factor**, Randolph 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, Randolph 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 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, Randolph maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, its Professional Planner has prepared a report, attached hereto as Exhibit A, showing the lands that Randolph contends should be removed from the inventory of sites used to fashion the **Land Capacity Allocation Factor**; and

WHEREAS, it is therefore important that Randolph not commit to an incorrect obligation; and

WHEREAS, correcting the allocation factors results in Randolph's Round 4 Prospective Need Obligation being 313_rather than the obligation established by DCA; 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 Act; and

WHEREAS, Randolph's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Act; 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, the New Jersey Institute of Local Government Attorneys (NJILGA) has expressed its support for proposed legislation (hereinafter "NJILGA Legislation") would reduce Randolph's Round 4 Prospective Need to 61 and would give Randolph "90 days from receipt of revised fair share obligations from the [DCA] to provide amended Housing Element and Fair Share Plans addressing the new number); and

WHEREAS, Randolph supports the NJILGA Legislation and would have the right to reduce its Round 4 obligation in the event that the Legislature enacts the NJILGA Legislation; 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 validity of the Act and other aspects deriving from the Act, including, without limitation, Directive #14-24 issued by the Acting Director of the Administrative Office of the Courts (hereinafter, respectively, "Director" and "AOC") as further referenced below; ; 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, Randolph is entitled to a vacant land adjustment in Round 4 that will be included in the HEFSP it submits 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 obligations; and

WHEREAS, in light of the above, Randolph finds that it is in its best interest to declare its obligations in accordance with this binding resolution in accordance with the Act; and

WHEREAS, in addition to the above, the 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 compliance certification 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, Randolph seeks a compliance certification with the Act and, therefore, directs the Township Attorney to file a declaratory relief action within 48 hours of the adoption of this resolution.

NOW, THEREFORE, BE IT RESOLVED on this 23rd day of January, 2025 by the Governing Body of the Township of Randolph, County of Morris, State of New Jersey, as follows:

1. The preamble of this resolution is incorporated into the operative clauses of this resolution as if set forth in full.

2. For the reasons set forth in this resolution and its attachments, Randolph commits to a Round 4 Present Need (Rehabilitation) Obligation of ten (10) and a Round 4 Prospective Need (New Construction) obligation of 313, as set forth in the Exhibit to this Resolution, subject to all reservations of all rights, which specifically include, without limitation, the following:

a) The right to a vacant land adjustment, durational adjustments, and all other applicable adjustments permitted in accordance with the Act and COAH regulations;

b) The right to comply with the NJLGA Legislation if enacted, including the right to adjust its fair share obligations;

c) The right to adjust its fair share obligation in the event of any future legislation that adjusts the fair share obligations that the DCA reported on October 18, 2024;

d) The right to adjust its fair share obligations based upon any ruling in the Montvale Litigation or other litigation; and

e) The right to adjust its fair share obligations in the event of a third-party challenge to the fair share obligations and Randolph's response thereto.

3. Randolph hereby directs the Township Attorney to file a declaratory judgment complaint in the appropriate venue within 48 hours after adoption of this resolution attaching this resolution.

4. Randolph hereby authorizes the Township Attorney to file this resolution with the Program or any other such entity as may be determined to be appropriate.

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

CERTIFICATION

I, Donna Luciani, Township Clerk of the Township of Randolph, Morris County, New Jersey, hereby certify the above to be a true copy of the resolution adopted by the Randolph Township Council at a regular meeting held on January 23, 2025.

Donna Luciani, Township Clerk