RESOLUTION #2025-35

RESOLUTION PURSUANT TO THE AMENDED FAIR HOUSING ACT COMMITTING THE BOROUGH TO ROUND 4 PRESENT AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Borough of Flemington (the "Borough") has a demonstrated history of voluntary compliance with its "Mount Laurel" affordable housing obligations as evidenced by its substantive certification in the First and Second Round and its Final Judgement of Compliance and Repose in the Third Round; and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the Borough 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 an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter the "Amended FHA"); and

WHEREAS, the Amended FHA required the Department of Community Affairs ("DCA") to produce non-binding estimates of municipal fair share obligations on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 the ("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 the Borough's Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 74 units and a Prospective Need or New Construction Obligation of 25 units; 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 4 affordable housing obligations; 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 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 vacant land adjustments as well as durational adjustments; and

WHEREAS, Section 3 of 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, Borough's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Amended FHA; and

WHEREAS, the Borough specifically reserves the right to adjust the aforementioned obligation numbers based on, inter alia, any one or more 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; and

WHEREAS, in addition to the foregoing, the Borough specifically reserves all rights to revoke this Resolution and commitment in the event of a successful challenge to the Amended FHA in the context of the Montvale case (MER-L-1778-24), any other such action challenging the Amended FHA, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Borough reserves the right to take a position that its Round 4 Present and/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 addition to the foregoing, nothing in the Amended FHA requires or can require an increase in the Borough's Round 4 Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of the Amended FHA is to establish, among other things, unchallenged numbers by default on or before March 1, 2025; and

WHEREAS, in light of the above, the Mayor and the Borough Council find that it is in the best interest of the Borough to declare its obligations in accordance with this Resolution and commits to its fair share of 74 units of present need and 25 units of prospective need, subject to any vacant land and/or durational adjustments it may seek as part of the Housing Element and Fair Share Plan it subsequently submits in accordance with the Amended FHA; and

WHEREAS, the Borough reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; 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 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 Borough seeks a certification of compliance with the FHA and, therefore, directs its Affordable Housing Counsel to file a declaratory judgment action within 48 hours of the adoption of this Resolution in Hunterdon County;

NOW, THEREFORE, BE IT RESOLVED on this 27th day of January, 2025 by the Borough of Flemington as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this Resolution.

2. The Borough hereby commits to a Round 4 Present Need Obligation of 74 units and Prospective Need Obligation of 25 units units described in this Resolution, subject to all reservations of rights set forth above

3. The Borough hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in Hunterdon County within 48 hours after adoption of this Resolution.

4. The Borough authorizes its Affordable Housing Counsel to attach this Resolution as an exhibit to the declaratory judgment complaint that is filed and to submit and/or file this Resolution with the Program or any other such entity as may be determined to be appropriate by such counsel.

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

Adopted: January 27, 2025

ATTEST:

Marcia A. Karrow, Mayor

Carla Conner, Borough Clerk

CERTIFICATION

I, Carla Conner, Borough Clerk of the Borough of Flemington, County of Hunterdon, State of New Jersey, do hereby certify the foregoing to be a true and correct copy of a resolution duly authorized by the Mayor and Council on this 27th day of January, 2025.

Carla Conner

Conner Conner, Borough Clerk