

**RESOLUTION COMMITTING TO DCA'S FOURTH ROUND
AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE NEED
NUMBERS AS MODIFIED UNDER PROTEST**

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, pursuant to the Amended FHA at N.J.S.A. 52:27D-304.1(f)(1), a municipality is required to adopt a binding resolution containing a “determination of present and prospective fair share obligation” and submit to the jurisdiction of the Affordable Housing Dispute Resolution Program, in order to avoid the loss of immunity from exclusionary zoning litigation (formerly referred to as Builder’s Remedy lawsuits) immediately thereafter; and

WHEREAS, the Amended FHA requires the Department of Community Affairs (“DCA”) to produce non-binding estimates of fair share obligations 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 Wharton’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 91 units and a Prospective Need or New Construction Obligation of 74 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, pursuant to N.J.S.A. 52:27D-304.3, a municipality’s average allocation factor is comprised of the equalized nonresidential factor, income capacity factor and land capacity factor and shall be averaged to yield the municipality’s average allocation factor, 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, 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, Wharton 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, Wharton relies on the DCA calculations of Wharton's fair share obligations as modified herein to account for Wharton'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 memo prepared by Wharton's affordable housing planner and Wharton seeks to commit to provide its fair share of 91 units present need and 74 units prospective need, subject to any vacant land and/or durational 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, Wharton reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, Wharton is a named plaintiff in that certain litigation captioned as Borough of Montvale v. State of New Jersey, Superior Court of New Jersey, Docket No. MER-L-1778-24 ("Litigation"), which among other things asserts constitutional and legal challenges to numerous provisions of the Amended FHA; and

WHEREAS, the actions contained in this Resolution are taken under protest and are intended to comply with the Amended FHA while Wharton continues to dispute its validity, such that Wharton does not waive any legal rights or claims that it possesses relating to the Amended FHA as set forth in the Lawsuit by virtue of the adoption of the instant Resolution and Wharton further reserves the right to alter its position contained in this Resolution based upon any rulings in the Litigation or in any other similar proceedings by a court of competent jurisdiction; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, Wharton reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Prospective Need Obligation should be lower than described herein; and

WHEREAS, in light of the above, the Wharton Borough Council finds that it is in the best interest of Wharton to commit to the modified present need and prospective need Fourth Round affordable housing fair share numbers set forth herein, subject to the reservations set forth herein; and

WHEREAS, in accordance with AOC Directive #14-24 dated December 13, 2024, the Wharton Borough Council finds that, as a municipality seeking a certification of compliance with the FHA, it is in the best interests of Wharton to direct the submission and/or filing of the within Resolution with attached memo with the Program or any other such entity as may be determined to be appropriate.

NOW, THEREFORE, BE IT RESOLVED on this 20th day of January, 2025, by the Borough Council of the Borough of Wharton, County of Morris, State of New Jersey as follows:

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

2. Wharton hereby commits to the DCA’s Round 4 Present Need Obligation of 91 units and the DCA’s Round 4 Prospective Need Obligation of 74 units, as explained above and in the attached memo from Wharton’s affordable housing planner and subject to all reservations of rights set forth above.

3. Wharton authorizes its Affordable Housing Counsel to submit and/or file the within Resolution with attached memo with the Program or any other such entity as may be determined to be appropriate.

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

Adopted: January 20, 2025

BOROUGH OF WHARTON

ATTEST:

**_____
WILLIAM J. CHEGWIDDEN,
MAYOR**

**_____
Gabrielle Evangelista,
Borough Clerk**

CERTIFICATION

I, Gabrielle Evangelista, Clerk of the Borough of Wharton, County of Morris, State of New Jersey, do hereby certify that the foregoing is a true copy of a Resolution adopted by the Borough Council at a meeting held on January 20, 2025.

**_____
Gabrielle Evangelista, Clerk**