

RESOLUTION #28-2025

RESOLUTION OF THE COUNCIL OF THE BOROUGH OF BEACH HAVEN COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Borough has a demonstrated history of voluntary compliance as evidenced by its Round 3 record; and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on July 2, 2015, the Borough of Beach Haven (hereinafter “Beach Haven” or 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 P.L. 2024, c.2 (hereinafter “A4” or “Amended FHA”); 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, this is exacerbated by the fact that certain other municipalities in the region have an allocation of 0% of the prospective need (new construction obligation), 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 Borough’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 1 unit and a Prospective Need or New Construction Obligation of 48 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, this resolution satisfies the requirements of A4 by accepting the DCA estimate of need as described in the DCA 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, Borough’s calculation of need is entitled to a “presumption of validity” because it complies with Sections 6 and 7 of A4; and

WHEREAS, the Borough 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, including, but not limited to the Highlands Regional Master Plan and its build out, the Pinelands or Meadowlands regulations and planning document; and

WHEREAS, in addition to the foregoing, the Borough specifically reserves all rights to revoke or amend this resolution and commitment, as may be necessary, 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 Borough 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 finds that it is in the best interest of Borough to declare its obligations in accordance with this binding resolution and in accordance with the Act 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 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, nothing in this Resolution shall be interpreted as an acknowledgment of the legal validity of the AOC Directive and the Borough reserves any and all rights and remedies in relation to the AOC Directive; and

WHEREAS, the Borough seeks a certification of compliance with the Act and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution; and

NOW, THEREFORE, BE IT RESOLVED on this 13th day of January 2025, by the Council of the Borough of Beach Haven, Ocean County, State of New Jersey, as follows:

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

2. The Mayor and Council hereby commit to the DCA Round 4 Present Need Obligation of 1 unit and the Round 4 Prospective Need Obligation of 48 units as 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) As described in the WHEREAS section, all rights to revoke or amend 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 Borough hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint within 48 hours after adoption this resolution attaching this resolution.

4. The Borough hereby directs its Affordable Housing Counsel to file this Resolution with the "Program" pursuant to the requirements on A4.

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

CERTIFICATION

I certify that the foregoing Resolution was duly adopted by the Council of the Borough of Beach Haven at a regular meeting held on the 13th of January, 2025, a quorum being present and voting in the majority.



Sherry Mason, Manager/Clerk

Approved: 1/13/25