RES 2025-40

RESOLUTION OF THE BOROUGH OF MOUNT ARLINGTON ESTABLISHING THE BOROUGH'S FOURTH ROUND PRESENT AND PROSPECTIVE AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the New Jersey Supreme Court declared that the discriminatory use of zoning powers was illegal and provided, as a matter of constitutional law, that each developing municipality "must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income," In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 6 (2015) ("**Mount Laurel IV**"), citing S. Burlington County. NAACP v. Township of Mount Laurel ("**Mount Laurel I**"), 67 N.J. 151, 179, 187, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975), and that this constitutional obligation requires that towns must provide "a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing," Id., citing S. Burlington County NAACP v. Township of Mount Laurel ("**Mount Laurel II**"), 92 N.J. 158, 205 (1983), (together with Mount Laurel I, the "**Mount Laurel Doctrine**"); and

WHEREAS, pursuant to Mount Laurel IV, the Borough of Mount Arlington (the "**Borough**") filed a declaratory judgment action on July 7, 2015, entitled "In the Matter of the Application of the Borough of Mount Arlington" Docket No. MRS-L-1657-15, seeking a judicial declaration that its Housing Element and Fair Share Plan ("**3rd Round HEFSP**") satisfied the "fair share" of the regional need for very low - low- and moderate-income housing, pursuant to the Mount Laurel Doctrine; and

WHEREAS, that culminated in a settlement agreement with Fair Share Housing Center ("**FSHC**") on June 13, 2018; and

WHEREAS, on April 30, 2020, the Court entered a Final Judgment of Compliance and Repose, granting the Borough immunity from Builder's Remedy lawsuits until July 1, 2025; and

WHEREAS, on March 20, 2024, Governor Murphy signed P.L.2024, c.2. (hereinafter "**A4**") into law, amending the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to -329 (the "**Act**") and establishing a new framework for determining and enforcing municipalities' affordable housing obligations under the Mount Laurel doctrine for the years 2025 – 2035 (the "**Fourth Round**"); and

WHEREAS, A4 required the New Jersey Department of Community Affairs (the "**DCA**") to produce non-binding estimates of need for present and prospective need for low- and moderate-income housing in each municipality for the Fourth Round on or before October 20, 2024; and

WHEREAS, on October 18, 2024, in furtherance of such requirement, the DCA issued a report entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" (the "**DCA Report**") which report established the final calculation and obligations for each municipality in New Jersey, including the Borough; and

WHEREAS, the DCA Report calculated the Borough's Fourth Round obligation as follows: a Present Need or Rehabilitation Obligation of 38 and a Prospective Need or New Construction Obligation of 60; and

WHEREAS, Section 3 of A4 provides "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, the Borough's professionals, including legal counsel and affordable housing consultants, utilized the formulas established in sections 6 and 7 of A4 and have determined to accept the DCA estimate of need as described in the DCA Report; and

WHEREAS, A4 provides that a municipality shall adopt a binding resolution determining the present and prospective fair share obligation no later than January 31, 2025; and

WHEREAS, the Borough's calculation of need is entitled to a "presumption of validity" as it complies with Sections 6 and 7 of A4; and

WHEREAS, the Borough specifically reserves the right to adjust the Fourth Round Obligation calculated by DCA based the following adjustments or others identified during the process of promulgating a Fourth Round Housing Element and Fair Share Plan ("**4th Round HEFSP**"): 1) a "windshield survey" or similar survey which accounts for a lower 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 or both); 4) an adjustment to the Land Capacity Factor; and/or 5) an adjustment predicated upon regional planning entity formulas, inputs, or considerations, including, but not limited to the County and State Regional Master Plan; and

WHEREAS, in addition to the foregoing, the Borough specifically reserves all rights and positions, without prejudice, to revoke this resolution and commitment in the event of a successful challenge to A4 in the context of Borough of Montvale, et al. v. State of New Jersey, Docket No. MER-L-1778-24 or any other such action challenging A4 or calculations of Fourth Round Present or Prospective Obligations, or any legislation adopted and signed into law by the Governor of New Jersey altering the deadlines and/or requirements of A4; and

WHEREAS, in addition to the foregoing, nothing in A4 requires or can require an increase in the Borough's Fourth Round 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 A4 is to establish, for example, unchallenged numbers by default on March 1, 2025; and

WHEREAS, pursuant to the Administrative Directive #14-24, dated December 13, 2024 (the "**Directive**"), implementing the Affordable Housing Dispute Resolution Program (the "**Program**"), a municipality seeking certification with the Act, shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located; and

WHEREAS, the Borough authorizes the filing of a declaratory judgment action pursuant to the Directive within forty-eight hours after the adoption of this resolution to seek compliance with the Act; and

WHEREAS, the Borough further authorizes its professionals to prepare the 4th Round HEFSP and present the same for adoption prior to June 30, 2025; and

WHEREAS, in light of the above, the Borough finds it is in the best interest of the Borough to declare its Fourth Round Present and Prospective Need Obligations, authorize the filing of a declaratory judgment action pursuant to the Directive, and direct its professionals to prepare a 4th Round HEFSP, all in accordance with A4.

NOW THEREFORE BE IT RESOLVED by the Borough Council of the Borough of Mount Arlington, in the County of Morris, New Jersey, as follows:

Section 1. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

Section 2. The Borough's Fourth Round obligation is adopted as follows: a Present Need or Rehabilitation Obligation of 38 and a Prospective Need or New Construction Obligation of 60, as described above, and subject to all reservations of rights, including but not limited to:

A. The right to adjust the number based on one or any of the following: a windshield survey, vacant land assessment, durational adjustments, variations in the Land Capacity Factor, and/or regional planning inputs; and
B. The right to revoke this resolution in the event of a successful legal challenge to A4 or the Act, any legislative changes to A4 and signed into law by the Governor, or to the calculations of Fourth Round Present or Prospective Obligations.

Section 3. The Borough authorizes its professionals to file a declaratory judgment action within forty-eight hours after the adoption of this resolution in order to comply with the Directive.

Section 4. The Borough further authorizes its professionals to prepare the 4th Round HEFSP and present the same for adoption prior to June 30, 2025.

Section 5. This resolution shall take effect immediately.

I HEREBY CERTIFY this to be a true and correct Resolution of the Mayor and Borough Council of the Borough of Mount Arlington and adopted on January 21, 2025.

Ashley N. Todd, Acting Borough Clerk