

TOWNSHIP OF CLARK

Resolution 25-53

January 29, 2025

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

**WHEREAS**, the Township of Clark (“Township”) has a demonstrated history of voluntary compliance meeting its affordable housing obligations 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 7, 2015, the Township filed a Declaratory Judgment Complaint in Superior Court, Law Division (“Declaratory Judgment Complaint”), seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (“Fair Share Plan”), to be amended as necessary, satisfied the Township’s “fair share” of the regional need for low and moderate income housing pursuant to the “Mount Laurel doctrine,” and

**WHEREAS**, that Declaratory Judgment Complaint was adjudicated through a Court-approved Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes builder’s remedy lawsuits against the Township until July 1, 2025; and

**WHEREAS**, on March 20, 2024, Governor Philip D. Murphy signed into law P.L. 2024, c.2 (“A4”), an amendment to the New Jersey Fair Housing Act; and

**WHEREAS**, A4 calculates the size of the regional affordable housing need as the “projected household change for a 10-year-round in a region [which] 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**, 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 the DCA provided on October 18, 2024 (“DCA Report”); and

**WHEREAS**, the DCA Report calculates the Township’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 71 and a Prospective Need or New Construction Obligation of 166; 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,” which obligation the Township has fulfilled through the annexed Memorandum, dated January 20, 2025, of the Township’s Planner, Paul Ricci, AICP, PP, made a part hereof (the “Planner’s Report”); 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**, the Township’s calculation of need is entitled to a “presumption of validity” because it complies with Sections 6 and 7 of A4; and

**WHEREAS**, the Township 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 more accurate 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; and

**WHEREAS**, in addition to the foregoing, the Township specifically reserves all rights to revoke or modify this Resolution and commitment in the event of a successful challenge to A4 in the context of the Borough of Montvale, et al. v. State of New Jersey, et al. (MER-L-1778-24), any other similar 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 Township reserves the right to take a position that its Round 4 Present or Prospective Need Obligations are lower than described herein if 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 A4 requires or can require an increase in the Township’s Round 4 Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region because the plain language and clear intent of A4 is to establish, for example, unchallenged numbers by default on March 1, 2025; and

**WHEREAS**, A4 requires that a Housing Element and Fair Share Plan must be prepared, adopted by the Township Planning Board, and endorsed by the Township Council by June 30, 2025; and

**WHEREAS**, the Township hereby commits for its professionals to prepare the necessary Housing Element and Fair Share Plan to meet the statutory deadline in A4 and address the Township’s fourth round affordable housing obligations, as determined by the Program and the Court, which includes the reservations described above; and

**WHEREAS**, considering the above, the Council of the Township finds that it is in the best interest of the Township to declare its obligations in accordance with this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** on this 29th day of January 2025, by the Council of the Township of Clark, County of Union, State of New Jersey, as follows:

1. All the **WHEREAS** clauses are incorporated into and are made a part of these **NOW, THEREFORE** paragraphs.

2. The Township Council hereby commits to the DCA Round 4 Present Need Obligation of 71 and the Round 4 Prospective Need Obligation of 166 described in this Resolution subject to all reservations of rights, which specifically include those set forth in the foregoing **WHEREAS** clauses, including without limitation, the following:

a) The right to adjust these numbers based on a windshield survey, lack of land, sewer, water, regional planning inputs, or any combination thereof;

b) All rights to revoke or modify this Resolution in the event of a successful legal challenge, or legislative change, to A4; and

c) All rights to take any contrary position in the event of a third-party challenge to the obligations.

3. The Township hereby accepts the Planner's Report.

4. The Township Council hereby directs its Clerk, Planner and Municipal Attorney to file this Resolution with the Affordable Housing Dispute Resolution Program-Implementation of L. 2024, c. 2 ("Program") pursuant to the requirements on A4 and to file an accompanying declaratory judgment action with the Program as required by Administrative Directive #14-24 ("Action") and to attach a copy of this Resolution to the Action within 48 hours of the adoption of this Resolution.

5. The Township Council hereby commits its professional to prepare the necessary Housing Element and Fair Share Plan to meet the statutory deadline in A4 to address the Township's fourth round affordable housing obligations, as determined by the Program and Court, which includes the reservations described in this Resolution.

6. This Resolution shall take effect immediately.

ATTEST:

APPROVED:

*Edith L. Merkel*

EDITH L. MERKEL, RMC  
Township Clerk

*William F. Smith*

WILLIAM F. SMITH  
Council President

Res25/1-29 53 4thRoundAffordableHousingObligations

			Motion	Second	Aye	Nay	Abstain	Absent
		Hund		✓	✓			
✓	Adopted	Mazzarella			✓			
	Adopted as Amended	Minniti	✓		✓			
	Defeated	O'Connor						✓
	Tabled	Toal			✓			
	Withdrawn	Smith			✓			
		Entire Council						
		TOTAL			5			1

State of New Jersey)  
County of Union ) ss.

I, Edith L. Merkel, Township Clerk of the Township of Clark, County of Union, State of New Jersey, DO HEREBY certify that the foregoing is a true and correct copy of Resolution 25-53, as adopted at the Public Meeting of the Township Council held on January 29, 2025.

*Edith L. Merkel*  
Edith L. Merkel, Township Clerk  
Date: January 29, 2025

**MEMORANDUM**

**TO:** Acting Mayor Albanese and Township Council

**FROM:** Paul Ricci, AICP, PP

**RE:** Department of Community Affairs Allocation Factors

**DATE:** January 20, 2025

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On March 20, 2024, Governor Murphy signed a revised Fair Housing Act (FHA) into law (P. L.2024, c.2.). The Legislation created a new procedural framework and substantive laws for the implementation of affordable housing in New Jersey as well as a new series of deadlines. This memorandum addresses the review of the three allocation factors used by the Department of Community Affairs (DCA) to establish Clark’s affordable housing obligation.

For the entire State of New Jersey, the DCA report indicated that a total of 84,698 new low and moderate-income housing units are needed, in which Housing Region 2, where Clark is located, accounts for a need of 20,506 units. Housing Region 2 constitutes Essex, Morris, Union and Warren counties. Using three allocation factors, DCA determined each community’s affordable housing requirement by distributing the regional need for non-urban aid municipalities.

The three allocation factors are the:

- Equalized Non-residential Valuation;
- Income Capacity; and
- Land Capacity.

The equalized non-residential valuation allocation represents the change in assessed value for commercial and industrial parcels between 1999 and 2023. The DCA calculated the change in these valuations at the housing region level. The Township’s portion of this requirement represents the change in Clark’s nonresidential valuation divided by the regional total change in valuation. Essentially, the calculation determined Clark’s percentage increase in non-residential valuation as a portion of the region’s total increase in valuation.

The income capacity factor measures the extent to which each community’s household income changed as compared to the housing region. This analysis uses US Census data for the means of making this calculation.

The land capacity factor estimated the total acreage that is developable in Clark based on 2020 aerial imagery and other data sets that eliminated development potential, i.e., wetlands, steep slopes, etc. The developable acreage was divided by Housing Region 2’s total acreage, which

produced a percentage. This percentage is the land capacity factor.

The three allocation factors were then averaged for each community. Clark's affordable housing requirement was then determined by multiplying this percentage by the total need of 20,506 housing units for Housing Region 2.

The three allocation factors in Clark are as follows:

- Non-Residential – 1.33%
- Land Capacity – 0.09%
- Income Capacity – 1.01%
- **Average Allocation – 0.81%**

Below is a summary of our findings associated with these allocation factors.

**Equalized Non-Residential Valuation**

- I provided the Township Tax Assessor with Clark's commercial and industrial valuations from 1999 and 2023 as reported by DCA.
- I received an email from the Business Administrator indicating that the Township Tax Assessor confirmed that the numbers used by the DCA to determine Clark's Non-Residential valuation were accurate.
- For these reasons, I conclude that the DCA correctly calculated this allocation factor.

**Income Capacity**

- The income capacity analysis utilizes data from the US Census.
- The identified number of households in Clark as reported by the US Census.
- The identified 2022 median income as reported by the US Census.
- The difference from the median household floor income is correct.
- The income difference percentage for the region is correct.
- The income capacity allocation calculations for Clark are correct.
- For these reasons, I conclude that the DCA correctly calculated this allocation factor.

**Land Capacity**

In consideration of the above, I have reviewed the 20 parcels in Clark identified in the DCA's Vacant Land Output Layer, which was used as the basis to determine vacant developable land in Clark (land capacity factor).

The areas identified as developable in the DCA's calculation of the Land Capacity factor are overinclusive. Our analysis determined that 0.50265 acres in Clark are developable compared to the 5.12799 acres identified by the DCA. If this correction is made, Clark's Round 4 prospective need number would be reduced from 166 to 161. In this regard, the land capacity factor represented 0.09% of the regional housing need and a small portion of Clark's total requirement.

**Summary**

Our analysis confirms that the data used to calculate the allocation factors is largely correct, noting the land capacity deviation. Accordingly, we have no objection to the acceptance of Clark's Fourth Round Housing obligation as calculated by the DCA.