

**TRIARSI, BETANCOURT,
WUKOVITS & DUGAN, LLC**
Centennial Plaza
Counselors at Law
186 North Avenue East
Cranford, New Jersey, 07016-0985
(908) 709-1700
Mark P. Dugan, Esq.
(Attorney Identification Number 024621984)
Attorneys for Plaintiff Township of Clark

<p>IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF CLARK, COUNTY OF UNION, STATE OF NEW JERSEY</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CIVIL PART UNION COUNTY</p> <p>DOCKET NO. UNN-L-</p> <p>CIVIL ACTION</p> <p>AFFORDABLE HOUSING ADMINISTRATIVE DIRECTIVE #14-24</p> <p>COMPLAINT FOR DECLARATORY RELIEF</p>
--	--

Plaintiff, Township of Clark (“Township”), a municipal corporation of the State of New Jersey with principal offices at 430 Westfield Avenue, Clark, New Jersey 07066 by way of Declaratory Judgment Action as authorized by Administrative Directive #14-24 of the Administrative Office of the Courts, alleges and states:

JURISDICTION AND VENUE

1. This action is brought pursuant to the New Jersey Declaratory Judgments Act, N.J.S.A. 2A:16-50, *et seq.*
2. This action is also filed in accordance with P.L. 2024, c.2., the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to 329, and Administrative Directive #14-24, dated

December 13, 2024 (“Directive”), implementing the affordable Housing Dispute Resolution Program (“Program”).

3. Venue is proper in Union County, pursuant to the Directive, because the Township is situated in Union County.

FACTUAL BACKGROUND

4. The Township repeats and realleges each allegation as set forth in the previous paragraphs *verbatim* and incorporates the same as if set forth at length herein.

5. The Township is a municipal corporation of the State of New Jersey.

6. The Planning Board of the Township is a municipal agency created and organized under the Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq.* and, among other duties and obligations, is responsible for adopting the Housing Element and Fair Share Plan of the Township Master Plan.

7. Through this Declaratory Judgment Action, the Township seeks the following relief regarding its Fourth Round (2025-2035) Affordable Housing Obligation:

(a) To secure the jurisdiction of the Program pursuant to P.L. 2024, c. 2 (“Act”), and the Court, pursuant to the Directive;

(b) To have the Program and the Court approve the Township’s present and prospective affordable housing obligations as set forth in the binding Resolution adopted by the Township Council and attached as Exhibit A, made a part hereof;

(c) To have the Program and the Court approve the Housing Element and Fair Share Plan to be adopted by the Planning Board and endorsed by the Township Council and issue an unconditional or a conditional “Compliance Certification” pursuant to the Act or other similar declaration;

(d) To the extent a judgment, an order or other adjudication is not automatically granted pursuant to the Act, through the filing of this action, and the binding Resolution, to have the Program and the Court confirm the Township's immunity from all exclusionary zoning litigation, including without limitation, builder's remedy lawsuits, during the pendency of the process outlined in the Act for the duration of the Fourth Round, i.e., through June 30, 2035; and

(e) To have the Program and the Court take such other actions and grant such other relief that may be appropriate to insure that the Township receives and obtains all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burden of unnecessary third-party litigation.

COUNT ONE

ESTABLISHMENT OF JURISDICTION UNDER P.L. 2024, c.2

8. The Township repeats and realleges each allegation as set forth in the previous paragraphs *verbatim* and incorporates the same as if set forth at length herein.

9. The Act represents a substantive amendment of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 to 329.

10. Among other things, the Act abolished the Council on Affordable Housing and replaced it with retired, on-call judges designated as the Program and authorized the Director of the Administrative Office of the Courts to create a framework to process applications for a Compliance Certification.

11. On or about December 13, 2024, the Director issued the Directive which, among

other things, required municipalities seeking Compliance Certification to file an action in the form of a Declaratory Judgment Complaint with a Civil Case Information Statement, case type 816 (Affordable Housing), in the county in which the municipality is located within 48 hours after the municipality's adoption of a binding Resolution as authorized under the Act and attach a copy of that binding Resolution to the Declaratory Judgment Action Complaint.

12. On January 29, 2025, the Township adopted a binding Resolution establishing its present and prospective affordable housing obligations within the statutory period and in accordance with the methodology and formula set forth in the Act, a copy of which Resolution is attached as Exhibit A.

13. Based upon the foregoing, the Township has established the jurisdiction of the Program, and the Court for a Compliance Certification as set forth hereinafter.

WHEREFORE, the Township of Clark seeks Declaratory Judgment for the following relief:

A. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding Resolution attached as Exhibit A or to adjust such determination consistent with the Act and applicable law;

B. Declaring the present and prospective affordable housing obligations of the Township under the Act;

C. Declaring approval of the Township's Housing Element and Fair Share Plan subsequent to its adoption by the Planning Board and its endorsement by the Township Council, including, as appropriate and applicable, 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 a lack of sanitary sewer or a lack of water); 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations as applicable; 5) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 6) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 7) any other applicable adjustment permitted in accordance with the Act or applicable law;

D. Declaring that the Township continues to have immunity from all exclusionary zoning litigation or litigation related to its affordable housing obligations as established under the Program;

E. Declaring and issuing a Compliance Certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive to the Township for the period beginning July 1, 2025, and ending June 30, 2035; and

F. Declaring such other relief that the Program and Court deem just and proper within the parameters of the Act.

COUNT TWO

DETERMINATION OF THE PRESENT AND PROSPECTIVE NEED OF THE TOWNSHIP OF CLARK

14. The Township repeats and realleges each allegation as set forth in the previous paragraphs *verbatim* and incorporates the same as if set forth at length herein.

15. The Act adopted the methodology to calculate each municipality's present and prospective affordable housing need for the Fourth Round and beyond. It directed the Department of Community Affairs ("DCA") to apply the methodology and to render a non-binding calculation of each municipality's present and prospective affordable housing

obligations to be contained in a report to be issued not later than October 20, 2024.

16. The DCA issued its report on October 18, 2024.

17. Pursuant to the report, the DCA calculated the Township's present and prospective affordable housing obligations as a present need of 71 units and a prospective need of 166 units.

18. Pursuant to the Act, a municipality desiring to participate in the Program is obligated to adopt a binding resolution determining its present and prospective affordable housing obligations to which it will commit based upon the methodology set forth in the Act.

19. On January 29, 2025, the Township adopted a binding Resolution which included an Expert Planning Report. A copy of the Resolution with the Expert Planning Report is attached as Exhibit A.

20. The binding Resolution maintains the present need obligation of the Township is 71 and its prospective need obligation is 166, and the Township is entitled to a presumption of validity of the same.

21. The Township seeks the approval of and confirmation by the Program and the Court of the present and prospective affordable housing obligations as set forth in the attached binding Resolution and made a part hereof as Exhibit A, or the adjustment of those obligations consistent with the Act and applicable law.

22. Pursuant to the Resolution, the Township reserves all rights to amend its affordable housing obligations in the event of a successful legal challenge, or legislative change, to the Act.

23. Pursuant to the Resolution, the Township specifically reserves the right to seek and obtain a) a windshield survey or similar survey which accounts for a more accurate estimate

of present need; b) a vacant land adjustment predicated upon a lack of vacant, developable and suitable land; c) a durational adjustment (whether predicated upon a lack of sanitary sewer or lack of water); d) an adjustment predicated upon regional planning entity formulas, inputs or considerations as applicable; e) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; f) an adjustment based upon any ruling in litigation involving affordable housing obligations; and g) any other applicable adjustment permitted in accordance with the Act and applicable law.

WHEREFORE, the Township of Clark seeks Declaratory Judgment for the following relief:

A. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding Resolution attached as Exhibit A or to adjust such determination consistent with the Act;

B. Declaring the present and prospective affordable housing obligations of the Township under the Act;

C. Declaring approval of the Township's Housing Element and Fair Share Plan subsequent to its adoption by the Planning Board and its endorsement by the Township Council, including, as appropriate and applicable, 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 a lack of sanitary sewer or a lack of water); 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations as applicable; 5) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 6) an adjustment based upon any ruling in litigation involving affordable housing

obligations; and 7) any other applicable adjustment permitted in accordance with the Act and applicable law;

D. Declaring that the Township continues to have immunity from all exclusionary zoning litigation or litigation related to its affordable housing obligations as established under the Program;

E. Declaring and issuing a Compliance Certification and immunity from exclusionary zoning litigation in accordance with the Act and the Directive to the Township for the period beginning July 1, 2025, and ending June 30, 2035; and

F. Declaring such other relief that the Program and Court deem just and proper within the parameters of the Act.

COUNT THREE

HOUSING ELEMENT AND FAIR SHARE PLAN

24. The Township repeats and realleges each allegation as set forth in the previous paragraphs *verbatim* and incorporates the same as if set forth at length herein.

25. Pursuant to the Act, a Housing Element and Fair Share Plan must be prepared and adopted by the Planning Board and endorsed by the Township Council by June 30, 2025.

26. The Township hereby commits for its professionals to prepare the appropriate plan to address its affordable housing obligations, as determined by the Program and the Court which plan shall apply as appropriate, any applicable adjustments, including, without limitation, a) a windshield survey or similar survey which accounts for a more accurate estimate of present need; b) a vacant land adjustment predicated upon a lack of vacant, developable and suitable land; c) a durational adjustment (whether predicated upon a lack of sanitary sewer or lack of water); d) an adjustment predicated upon regional planning entity formulas, inputs or

considerations as applicable; e) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; f) an adjustment based upon any ruling in litigation involving affordable housing obligations; and g) any other applicable adjustment permitted in accordance with the Act and applicable law.

WHEREFORE, the Township of Clark seeks Declaratory Judgment for the following relief:

A. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding Resolution attached as Exhibit A or to adjust such determination consistent with the Act and applicable law;

B. Declaring the present and prospective affordable housing obligations of the Township under the Act;

C. Declaring approval of the Township's Housing Element and Fair Share Plan subsequent to its adoption by the Planning Board and its endorsement by the Township Council, including, as appropriate and applicable, 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 a lack of sanitary sewer, a lack of water); 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations as applicable; 4) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 6) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 7) any other applicable adjustment permitted in accordance with the Act and applicable law;

D. Declaring that the Township continues to have immunity from all exclusionary zoning litigation or litigation related to its affordable housing obligations as established under the Program;

E. Declaring and issuing a Compliance Certification and immunity from exclusionary zoning litigation in accordance with the Act and the Directive to the Township for the period beginning July 1, 2025, and ending June 30, 2035; and

F. Declaring such other relief that the Program and Court deem just and proper within the parameters of the Act.

COUNT FOUR

CONFIRMATION OF IMMUNITY

27. The Township repeats and realleges each allegation as set forth in the previous paragraphs *verbatim* and incorporates the same as if set forth at length herein.

28. Pursuant to the Act, a municipality that complies with the statutory deadlines in the Act for both determining present and prospective affordable housing obligations and for adopting an appropriate Housing Element and Fair Share Plan shall have immunity from exclusive zoning litigation.

29. The Township met the deadline for the adoption and filing of its Resolution and has committed to the adoption of a Housing Element and Fair Share Plan by June 30, 2025.

20. Without waving any judicial immunity from exclusionary zoning litigation that the Township possesses because of any applicable judgment of compliance and repose entered in favor of the Township in Round Three, the Township qualified for continued immunity under the Act while pursuing a Compliance Certification in this matter.

WHEREFORE, the Township of Clark seeks Declaratory Judgment for the following relief:

A. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding Resolution attached as Exhibit A or to adjust such determination consistent with the Act and applicable law;

B. Declaring the present and prospective affordable housing obligations of the Township under the Act;

C. Declaring approval of the Township's Housing Element and Fair Share Plan subsequent to its adoption by the Planning Board and its endorsement by the Township Council, including, as appropriate and applicable, 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 a lack of sanitary sewer, a lack of water); 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations as applicable; 5) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 5) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 7) any other applicable adjustment permitted in accordance with the Act and applicable law;

D. Declaring that the Township continues to have immunity from all exclusionary zoning litigation or litigation related to its affordable housing obligations as established under the Program;

E. Declaring and issuing a Compliance Certification and immunity from

exclusionary zoning litigation in accordance with the Act and the Directive to the Township for the period beginning July 1, 2025, and ending June 30, 2035; and

F. Declaring such other relief that the Program and Court deem just and proper within the parameters of the Act.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Mark P. Dugan, Esq. has been designated as trial counsel in connection with the above-captioned matter.

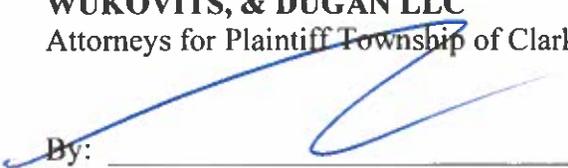
CERTIFICATION OF COUNSEL

1. Pursuant to Rule 4:5-1, the undersigned hereby certifies that at the time of filing this Complaint, the matter in controversy is not the subject of any other action pending in any court and/or arbitration proceeding. The undersigned is unaware of any non-party who should be joined in this action.

2. Pursuant to Rule 4:5-1(b)(3), the undersigned hereby certifies that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

3. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**TRIARSI, BETANCOURT,
WUKOVITS, & DUGAN LLC**
Attorneys for Plaintiff Township of Clark

By: 

MARK P. DUGAN

(Attorney Identification Number 024621984)

Dated: January 30, 2025

EXHIBIT A

Binding Resolution

[See Attached]

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, RMC
 Township Clerk


 WILLIAM F. SMITH
 Council President

Res25/1-29 53 4thRoundAffordableHousingObligations

			Motion	Second	Aye	Nay	Abstain	Absent
		Hund		✓	✓			
<input checked="" type="checkbox"/>	Adopted	Mazzarella			✓			
<input type="checkbox"/>	Adopted as Amended	Minniti	✓		✓			
<input type="checkbox"/>	Defeated	O'Connor						✓
<input type="checkbox"/>	Tabled	Toal			✓			
<input type="checkbox"/>	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, 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

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.

Civil Case Information Statement

Case Details: UNION | Civil Part Docket# L-000415-25

Case Caption: IN THE MATTER OF CLARK TWP

Case Initiation Date: 01/30/2025

Attorney Name: MARK PETER DUGAN

Firm Name: TRIARSI BETANCOURT WUKOVITS & DUGAN
LLC

Address: 186 NORTH AVENUE EAST

CRANFORD NJ 07016

Phone: 9087091700

Name of Party: PLAINTIFF : Township of Clark

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: AFFORDABLE HOUSING

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Township of Clark? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO
Medical Debt Claim? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

01/30/2025
Dated

/s/ MARK PETER DUGAN
Signed

