

TOWNSHIP OF HAMILTON  
COUNTY OF MERCER, NEW JERSEY

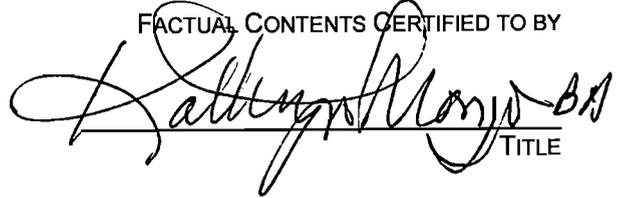
RESOLUTION

No. **25-080**

APPROVED AS TO FORM AND LEGALITY

  
TOWNSHIP ATTORNEY

FACTUAL CONTENTS CERTIFIED TO BY

  
TITLE

**RESOLUTION OF THE TOWNSHIP OF HAMILTON CONFIRMING THE FOURTH ROUND OF AFFORDABLE HOUSING OBLIGATIONS PURSUANT TO P.L. 2024, c. 2 AND THE FAIR SHARE HOUSING ACT, N.J.S.A. 52:27D-302**

**WHEREAS**, on March 20, 2024, Governor Murphy signed *P.L. 2024, c.2.* into law, amending the Fair Housing Act (hereinafter "Amended FHA") and establishing a new framework for determining and enforcing municipalities' affordable housing obligations under the New Jersey Supreme Court's Mount Laurel doctrine; and

**WHEREAS**, the Amended FHA requires that the New Jersey Department of Community Affairs ("DCA") perform a calculation of regional need, and municipal present and prospective affordable housing needs, in accordance with the formulas established in the law; and

**WHEREAS**, on October 18, 2024, the DCA released its "Affordable Housing Obligations For 2025-2035 (Fourth Round)" report ("DCA Report"), establishing the Fourth Round (2025-2035) fair share methodology and estimating non-binding calculations of low- and moderate-income housing obligations for New Jersey's 564 municipalities; and

**WHEREAS**, the final calculation and obligations for each municipality are presented in an Appendix at the end of the report; and

**WHEREAS**, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support a lower fair share calculation; and

**WHEREAS**, per *P.L. 2024, c.2*, in order for Hamilton Township to maintain immunity from exclusionary zoning litigation, it must determine its municipal present and prospective obligations in accordance with the formulas established in sections 6 and 7 of the law by binding resolution no later than January 31, 2025; and

**WHEREAS**, *P.L. 2024, c.2* permits Hamilton Township to diverge from the DCA's calculations in determining its obligations, in case local factors exist that make the calculations unreasonable, so long as Hamilton Township adheres to the methodology set forth in *P.L. 2024, c.2*; and

**WHEREAS**, Hamilton may take into consideration the calculations in the DCA Report to determine its obligations; and

**WHEREAS**, the present and prospective fair share obligations of the Hamilton Township were identified as follows:

- Present Need: 186 units
- Prospective Need: 546 units

**WHEREAS**, based on a review of the DCA Report and findings made by the Township Affordable Housing Planner, it is recommended that the Township Council adopt a binding resolution accepting the Present Need obligation of 186 units; and

**WHEREAS**, the Township's Planner possesses actual knowledge of present conditions in Hamilton which were not known to the DCA officials that evaluated Hamilton through raw data sets and land use/land cover data reflecting land uses and coverages in 2020; and

**WHEREAS**, such present day conditions, history and knowledge could not be known to DCA officials that were evaluating every municipality in the State of New Jersey; and

**WHEREAS**, the Township professionals evaluated DCA's vacant land analysis and identified land in Hamilton that should not be included as vacant and developable; and

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**WHEREAS**, the Planner tabulated these areas and confirmed that the vacant land in Hamilton is reduced from 273 acres to 166.4 acres; and

**WHEREAS**, the Township Planner has determined that the Land Capacity Allocation Factor must be adjusted from 2.41% of the region's vacant land (based on 273 acres) to 1.48% of the region's vacant land (based on 166.4 acres). The vacant land capacity was adjusted by removing the following land, which was improperly included as developable land in the DCA's calculation:

- Presence of existing development as indicated by recent aerial imagery from 2020 and/or 2024;
- Presence of existing construction activity with accompanying development approvals;
- Extreme narrowness of Vacant Land Capacity areas, which renders development unfeasible or unrealistic;
- Inclusion of properties containing Vacant Land Capacity on the current Recreation and Open Space Inventory ("ROSI");
- Location of Vacant Land Capacity areas within or on the periphery of existing drainage basins, as confirmed with recent aerial imagery from 2020 and/or 2024;
- Current use of properties with Vacant Land Capacity areas by local businesses;
- Presence of small areas of Vacant Land Capacity in yard areas of properties with an active use (e.g., church);
- Presence of Vacant Land Capacity within landlocked properties, or on properties with limited or infeasible access (e.g., only frontage is I-295 or the approach of an overpass over I-295); and
- Presence of Vacant Land Capacity areas within:
  - a. school sites;
  - b. landfills;
  - c. cemeteries;
  - d. Hamilton Train Station and associated parking areas;
  - e. swamplands; and
  - f. Grounds for Sculpture.

**WHEREAS**, vacant land is one of three allocation factors to be considered; and

**WHEREAS**, the three allocation factors (land capacity factor, nonresidential valuation factor, income capacity factor) are averaged to find the "average allocation factor", which is multiplied by the regional prospective need to get the Township's obligation; and

**WHEREAS**, using the DCA's vacant land analysis Hamilton's average allocation factor was 3.95% and with the new vacant land number the average allocation factor is 3.64%; and

**WHEREAS**, this reduces the Township's round 4 prospective need obligation from 546 units to **504 units**.

**WHEREAS**, the Amended FHA 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 the Act; and

**WHEREAS**, the Township's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Act; and

**WHEREAS**, within 48 hours of adoption of this resolution, the Municipal Clerk of Hamilton shall file this resolution on its official website and with the Affordable Housing Dispute Resolution Program.

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**WHEREAS**, pursuant to the Directive #14-24, a municipality seeking a certification in compliance with the FHA shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located within 48 hours after the adoption of the municipal resolution of the fair share obligations, or by February 3, 2025, whichever is sooner; and

**WHEREAS**, the Township of Hamilton seeks a certification of compliance with the FHA and, therefore, directs its affordable housing counsel to file a declaratory relief action within 48 hours of the adoption of this resolution in Mercer County.

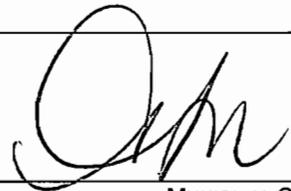
**NOW, THEREFORE, BE IT RESOLVED** on this 21<sup>st</sup> day of January, 2025, by the Township Council of the Township of Hamilton, in the County of Mercer, and the State of New Jersey that, pursuant to P.L.2024, c.2:

1. All of the Whereas Clauses set forth above are incorporated into the operative clauses of this resolution.
2. This resolution rescinds and replaces any prior resolutions concerning Fourth Round obligations.
3. The Township Council of the Township of Hamilton hereby accepts a Present Need obligation of 186 and a Prospective Need obligation of 504 as its Fourth Round (2025-2035) affordable housing obligation pursuant to P.L. 2024 c.2 and the Fair Housing Act, N.J.S.A. 52:27D-302 et. seq. These findings are to be documented in the Township's housing element and fair share plan.
4. The Township Council hereby directs its Affordable Housing Counsel to file a declaratory judgment attaching this resolution in Mercer County within 48 hours after adopting this resolution.
5. The Township reserves its right to adjust its Fourth Round Affordable Housing obligation subject to any vacant land adjustments and other amendments as may be provided for by law.
6. This resolution shall be posted on the Township's official website and with the Affordable Housing Dispute Resolution Program within 48 hours of adoption.
7. This resolution shall take effect immediately, according to law.

ADOPTED BY COUNCIL ON \_\_\_\_\_ JANUARY 21, 2025 \_\_\_\_\_  
DATE



PRESIDENT



MUNICIPAL CLERK

RECORD OF VOTE						
COUNCIL	AYE	NAY	N.V.	A.B.	RES.	SEC.
ANTHONY P. CARABELLI, JR.	✓				✓	
NANCY PHILLIPS				✓		
CHARLES F. WHALEN	✓					
PASQUALE "PAT" PAPERIO, JR.	✓					✓
RICHARD L. TIGHE, JR.	✓					

X – Indicates Vote    A.B. – Absent    N.V. – Not Voting    RES. – Moved    SEC. – Seconded

*Via email*

## MEMORANDUM

**To:** Fred Dumont, Director - Hamilton Township Community and Economic Development

**From:** Caroline Reiter, P.P., A.I.C.P., Hamilton Township Affordable Housing Planner

**Date:** January 17, 2025

**Re:** Round 4 Affordable Housing Obligation

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As requested, we are providing additional information on the Township of Hamilton's Round 4 affordable housing obligation of **546 units**.

### **Regional Obligation and Allocation Factors**

New Jersey affordable housing obligations are calculated on a regional level and then filtered down to the municipal level. There are six affordable housing regions in the state; the regions each include three or four counties. Region 4, in which Hamilton is located, includes Mercer, Monmouth, and Ocean counties.

The calculated affordable housing obligation, which is referred to as the prospective need obligation, for Region 4 is **13,822 units**. The New Jersey Fair Housing Act (FHA) Amendment that was the subject of the March 2025 affordable housing legislation known as P.L.2024, c.2., details how the Department of Community Affairs (DCA) shall calculate the regional obligation, and how that number is filtered into individual municipal affordable housing obligations.

The Fair Housing Act directs the DCA to allocate the regional need to each municipality in the region through the three allocation factors: Equalized Nonresidential Valuation factor, Income Capacity factor, and Land Capacity factor. After calculating each allocation factor, they are then averaged, and that average is applied to the regional prospective need to calculate a municipality's affordable housing obligation.

DCA calculated the following allocation factors for Hamilton:

- **Equalized Nonresidential Valuation factor of 6.85%;**
- **Income Capacity factor of 2.60%; and**
- **Land Capacity factor of 2.41%.**

**The above three factors are then averaged to an Average Allocation factor of 3.95%, which, when applied to Region 4's total prospective need of 13,822 units, results in DCA's calculated affordable housing for Hamilton of 546 units.**

A brief description of each of the three factors, and their applicability to Hamilton, follows.

Equalized Nonresidential Valuation: This is the municipal share of regional nonresidential valuation change from 1999-2023, based on data published by DCA's Division of Local Government Services. Hamilton's Tax Assessor has confirmed the data that DCA used to calculate Hamilton's Equalized Nonresidential Valuation factor of 6.85%.

Income Capacity: This is census data. T&M has confirmed that the data used to calculate Hamilton's Income Capacity of 2.60% is correct.

Land Capacity Factor: This is developable land, primarily taken from NDJEP mapping. DCA estimates approximately 273 acres of land that results in Hamilton's Land Capacity of 2.41%.

The NJDCA identified about 273 acres of Vacant Land Capacity in Hamilton. T&M, in coordination with the Township, conducted a thorough review of this acreage and determined that several areas represented no realistic potential for future development and should, therefore, be removed from the inventory of Vacant Land Capacity. After removal of such areas, the Township's adjusted Vacant Land Capacity totals approximately 166.4 acres.

Reduction of the Vacant Land Capacity to 166.4 acres reduces the Land Capacity Factor to 1.48%, thereby resulting in the following allocation factors for Hamilton:

- **Equalized Nonresidential Valuation factor of 6.85%;**
- **Income Capacity factor of 2.60%; and**
- **Land Capacity factor of 1.48%.**

**The above three factors are then averaged to an Average Allocation factor of 3.64% which, when applied to Region 4's total prospective need of 13,822 units, results in an alternate affordable housing for Hamilton of 504 units.**

Lots, or portions thereof, were removed from the inventory of Vacant Land Capacity for a variety of reasons, including:

- Presence of existing development as indicated by recent aerial imagery from 2020 and/or 2024;
- Presence of existing construction activity with accompanying development approvals;
- Extreme narrowness of Vacant Land Capacity areas, which renders development unfeasible or unrealistic;
- Inclusion of properties containing Vacant Land Capacity on the current Recreation and Open Space Inventory (ROSI);
- Location of Vacant Land Capacity areas within or on the periphery of existing drainage basins, as confirmed with recent aerial imagery from 2020 and/or 2024;



- Current use of properties with Vacant Land Capacity areas by local businesses (e.g., Anthony Yaros Industries, which is a landscape supply company);
- Presence of small areas of Vacant Land Capacity in yard areas of properties with an active use (e.g., church);
- Presence of Vacant Land Capacity within landlocked properties, or on properties with limited or infeasible access (e.g., only frontage is I-295 or the approach of an overpass over I-295); and
- Presence of Vacant Land Capacity areas within:
  - school sites;
  - landfills;
  - cemeteries;
  - Hamilton Train Station and associated parking areas;
  - swamplands;
  - Grounds for Sculpture.

### **Adoption of Binding Resolution**

Hamilton's Mayor and Council is tasked with adopting a binding resolution stipulating the Township's affordable housing obligation. The FHA requires that this resolution be adopted no later than January 31, 2025. Failure to adopt the resolution can result in the Township losing protection from exclusionary zoning litigation, i.e. builders' remedy lawsuits.

The Township can either accept DCA's calculated obligation of 546 units or use the alternate obligation of 504 units in its binding resolution. Based on T&M's review of the DCA calculation, in particular the land capacity data, we recommend that the Township utilize the alternate obligation of 504 units because it represents a more accurate land capacity for Hamilton Township.

### **Next Steps**

Once the Township has adopted a binding resolution stipulating its affordable housing obligation, the Affordable Housing Attorney will file the resolution with the Program and file an Action of Declaratory Judgment (DJ Action). The FHA Amendment includes a "challenge" option. Interested parties can challenge a municipality's Round 4 affordable obligation through February 28, 2025. All challenges are to be resolved by March 31, 2025.

In February, we will continue to work with the Township in the development of Hamilton's Housing Element and Fair Share Plan, which the Planning Board must adopt at a public hearing with required notice no later than June 30, 2025. This process may include calculation of a Vacant Land Adjustment, with an associated Realistic Development Potential (RDP) and Unmet Need. The Housing Element and Fair Share Plan will also list the Township's completed, planned and proposed affordable housing mechanisms to meet Hamilton's Prior Round, Round 3 and Round 4 affordable housing obligations.

Please let us know if there are further questions on Hamilton's Round 4 affordable housing obligation and the required timeline.