

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 49 - 2025**

**RESOLUTION OF THE COMMITTEE OF THE TOWNSHIP OF  
UPPER COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE  
NEED AFFORDABLE HOUSING OBLIGATIONS**

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**WHEREAS**, the Township 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 Township of Upper (hereinafter "Upper" or the "Township") 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 Township’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 0 units and a Prospective Need or New Construction Obligation of 47 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**, 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 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 Cape May County planning documents to include any document from the County which could affect the Township’s planning, the Pinelands or Meadowlands regulations and planning documents; and

**WHEREAS**, in addition to the foregoing, the Township 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 Township 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 Committee finds that it is in the best interest of Township 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 Township reserves any and all rights and remedies in relation to the AOC Directive; and

**WHEREAS**, the Township 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 27<sup>th</sup> day of January, 2025 by the Committee of the Township of Upper, Cape May 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 Committee hereby commit to the DCA Round 4 Present Need Obligation of 0 units and the Round 4 Prospective Need Obligation of 47 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 Township hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint within 48 hours after adoption this resolution attaching this resolution.

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

5. The Township hereby directs that this Resolution be published on the municipal website within forty-eight (48) hours of its passage, pursuant to A4.

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

  
CURTIS T. CORSON, JR., Mayor

JOANNE R. HERRON, Township Clerk

Resolution No. 49 -2025

Offered by: Nappen

Seconded by: Z. Palombo

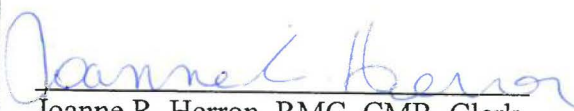
Adopted: January 27, 2025

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo	X			
Z. Palombo	X			
Corson	X			

### CERTIFICATION

I certify that the foregoing Resolution was duly adopted by the Committee of the Township of Upper at a regular meeting held on the 27<sup>th</sup> of January, 2025, a quorum being present and voting in the majority.

  
Joanne R. Herron, RMC, CMR, Clerk