

BRACH | EICHLER^{LLC}

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February 27, 2026

VIA E-COURTS – Housing Element & Fair Share Plan Drop Box
To Whom it May Concern

Re: In the Matter of the Borough of Elmwood Park
Docket No. BER-L-000714-25
File No. BOR373.287753

Dear Sir/Madam:

Please be advised that this office represents Declaratory Plaintiff, Borough of Elmwood Park (“Borough”) in the referenced matter.

Enclosed please find the Borough’s proposed First Amendment to the Fourth Round Housing Element and Fair Share Plan.

Please note that the Elmwood Park Planning Board is scheduled to hear this matter at their public meeting scheduled for Wednesday, March 11, 2026 at 7:00 p.m.

Respectfully submitted,
Brach Eichler, LLC
/s/ Kenneth A. Porro
Kenneth A. Porro, Esq.
For the Firm

KAP: ek

Enclosure – Proposed First Amendment to the Fourth Round Housing Element and Fair Share Plan

c: Shanee Morris, RMC, CMR, Borough Clerk (w/enclosure)(via email)
Michael Foligno, Borough Administrator(w/enclosure) (via email)
Daniel Hauben, PP, T&M (w/enclosure) (by email)
Frank Banisch, PP, Land Use Adjudicator (w/enclosure) (via email)
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First Amendment to the Fourth Round Housing Element and Fair Share Plan

**Borough of Elmwood Park
Bergen County, New Jersey**

Prepared:
February 24, 2026

Prepared for:
Borough of Elmwood Park Planning Board

Prepared by:

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DRAFT

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Adopted on ____, 2026 by the Borough of Elmwood Park Planning Board.
Endorsed on _____, 2026 by the Elmwood Park Borough Council.

The original of this document has been signed and sealed in accordance with Law.

ELMWOOD PARK BOROUGH

Mayor and Council

Mayor Robert Colletti
Council President Lorraine Pellegrine
Councilman Francesco Fasolo
Councilman Joseph Oswald
Councilman Eric Saimson
Councilwoman Theresa Sheridan
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Eric Saimson, Councilman (Mayors Alt)
Charles Ciani, Alt. #1
Brian Knobloch, Alt. #2

Carrie Paretti, Planning Board Secretary
John Conte, Jr., Planning Board Attorney

Borough Officials

Chief Michael Foligno, Borough Administrator
Shanee Morris, Borough Clerk
Roy Riggitano, Borough CFO

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Amended Housing Element and Fair Share Plan Introduction

The Borough of Elmwood Park (“Borough”), Bergen County, adopted a Fourth Round Housing Element and Fair Share Plan (“Adopted Plan” or “HEFSP”) on June 11, 2025 as an amendment to the municipal master plan in accordance with the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq., as amended by P.L. 2024, c.2, hereinafter “FHA2”). In accordance with an Order of May 16, 2025 by the Gregg A. Padovano, J.S.C., the Borough’s Adopted Plan addressed a fourth **round prospective need obligation of 145 new affordable housing units and a fourth round present need obligation of 154 rehabilitation units**. It also reaffirmed the Borough’s strategy for addressing its prospective need obligations from the first, second, and third affordable housing rounds (hereinafter “Prior Rounds”). Furthermore, in accordance with FHA2, the Adopted Plan adjusted the 145-unit prospective need **to a 8-unit “realistic development potential”, or “RDP”,** to reflect the limited vacant and developable land in Elmwood Park. This left a **137-unit “unmet need”** (the difference between the prospective need and the RDP).

The Borough’s June Adopted HEFSP addressed the 8-unit RDP and 25% of the unmet need (35 units) with 41 approved or proposed affordable housing units and 2 bonus credits.

The Plan was challenged by Meridia Elmwood Park 871, Urban Renewal, LLC (“Meridia”) by way of submittal to the Affordable Housing Dispute Resolution Program (“Program”) dated August 26, 2025, and by Fair Share Housing Center (“FSHC”) by way of a submittal to the Program dated August 25, 2025 (collectively, “Parties”).

Multiple mediation sessions took place between the Parties and the Borough between September 29, 2025 and December 9, 2025 with the Honorable Stephan C. Hansbury, J.S.C. (Retired, appointed Program Judge) and Special Adjudicator Frank Banisch, PP, AICP in order to attempt to resolve the challenges to the Plan.

The challenges were resolved as follows:

Meridia Challenge

Meridia is the corporation created for the redevelopment of the property at 871 River Drive, formerly known as the Royal Warsaw property. A redevelopment plan was adopted by the Borough on February 16, 2023 to permit up to **149 total units** including **23 family affordable rentals**. The property was included in the June 11, 2025 adopted Fourth Round Housing Element and Fair Share Plan.

The crux of the challenge filed by Meridia to the Fourth Round Plan is that the Borough had not finalized the redevelopment agreement by the August 31, 2025 deadline to challenge the Borough's plan. Much of the delay between the adoption of the redevelopment plan for the property and the drafting of agreements between the Borough and Meridia relate to the Borough's request that the project include affordable housing, and Meridia's claims regarding the financial feasibility of providing an affordable housing set-aside in their project which has a density well in excess of 100 dwelling units per acre. Meridia sought to have the challenge resolved with either an amended redevelopment plan consisting of substantially greater density or a payment in-lieu of taxes (PILOT).

Over several mediation sessions, the Borough and Meridia were unable to settle Meridia's challenge. Notwithstanding, the Borough continues to pursue avenues to resolve the challenge, including through an interest-free loan to Meridia from the affordable housing trust fund.

FSHC Challenge

Fair Share Housing Center is a non-profit organization with a stated mission of reducing barriers to safe, healthy, and affordable housing in New Jersey. Following the statutory June 30, 2025 deadline for municipalities to adopt their Fourth Round HEFSPs, FSHC challenged the Plans of hundreds of municipalities in New Jersey, either seeking additional information about plan components or challenging the substance and constitutionality conformity of the Plans. In the case of the Borough of Elmwood Park's Fourth Round Plan, the core of FSHC's challenge was a disagreement over the methodology used to achieve the 8-unit RDP adjustment of the Borough's fourth round prospective need, and the mechanisms to address the unmet need.

During the course of the mediations, the Borough attempted to respond to the concerns shared by FSHC by increasing the RDP to 42 based on changes in densities applied to vacant lots, reconsideration of lots originally deemed ineligible for development, and inclusion of properties which are not "vacant" (as defined by the Council on Affordable Housing), but which are proposed or approved for redevelopment.

This left a 103-unit unmet need, of which the Borough is only required to provide zoning to create 25%, or 26 units. The Borough proposed to address this need through amendments to the Market Street Redevelopment Plan, which was created in 2020 with densities ranging from 25 units per acre to over 40 units per acre, but which has not resulted in any residential development to date.

Other aspects of the challenge from Fair Share which the Borough strived to address in the mediation process include verifying the status and creditworthiness of projects from the prior rounds, clarifying the results of the structural conditions survey conducted to adjust the Borough's present need obligation, and agreeing to update ordinances and documents required to implement and effectuate the affordable housing plan.

Program Decision Recommendation

On January 29, 2026, Program Judge Hansbury filed a recommendation that the adopted Fourth Round HEFSP be found noncompliant with Mount Laurel Doctrine and the Fair Housing Act, and that the Borough should be ordered to amend its housing plan based upon the findings and recommendations of Special Adjudicator Banisch in a memorandum dated January 21, 2026.

The Special Adjudicator’s memo concluded that the Adopted HEFSP was deficient, and that the Borough could bring itself into compliance by following the steps listed below:

1. Documentation gaps - provide all supporting documentation for the inclusionary redevelopment sites including affordability controls, unit mix, income targeting, site specific zoning, pro forma, construction schedules, and developer agreements.
2. Update as needed - affordable housing and development fee ordinances, affirmative marketing plan, appointment resolutions for the Municipal Housing Liaison and Administrative Agent, a resolution of intent to bond for any shortfall, and an affordability assistance manual.
3. Vacant Land Adjustment - provide a step-by-step presentation that tracks the definitions of approvable, available, developable, and suitable and shows the density assumptions used for RDP calculations including the densities of the inclusionary sites.
4. Unmet need and redevelopment – Recalculate the RDP and unmet need as the basis for a compliance judgment (i.e. - if the RDP is 51 units, the unmet need is reduced to 94 and the 25% requirement is reduced to 24 units for which realistic zoning is required).

Amending the Fourth Round HEFSP

Based upon the Borough’s efforts to resolve the challenges from FSHC and Meridia and the recommendations from the Special Adjudicator, the Borough hereby amends the June 12, 2025 adopted HEFSP as follows:

- The Borough revises its RDP from 8 units to **54 units**;
- The Borough intends to continue negotiations with Meridia to arrive at an amicable agreement to result in development consistent with the adopted Redevelopment Plan;
- The Borough will document the existing and proposed affordable housing developments to satisfy the 54-unit RDP;
- The **54-unit RDP** results in an “**unmet need**” of **91 units**, which the Borough will address by amending the Market Street Redevelopment Plan to incentivize redevelopment and create a realistic opportunity for a minimum of **25% of the**

unmet need, or 23 affordable units, to be created in the redevelopment area during the Fourth Round.

- The Borough will update the Fourth Round Spending Plan to reflect newly adopted regulations.

Additionally, the Borough will adopt all necessary ordinances or ordinance amendments necessary to implement the Amended HEFSP, including zoning ordinances, redevelopment plans, and ordinances concerning the administering of affordable housing and the collection and spending of affordable housing trust funds, to reflect new regulations at N.J.A.C. 5:99 and amendments to N.J.A.C. 5:80-26.1 (“Uniform Housing Affordability Controls” or “UHAC”).

Amended Fair Share Plan

Affordable Housing Obligation

A municipality’s affordable housing obligation is made up of both a present need (rehabilitation obligation) and a prospective need obligation (new construction obligation). Obligations are calculated in time periods known as “rounds.” Whereas present need obligations reset each round, prospective need obligations accumulate over time.

Pursuant to an order dated May 16, 2025 by the Gregg A. Padovano, J.S.C., the Borough has a fourth round prospective need obligation of 145 units and a present need obligation of 154 units.

Consequently, the Borough’s cumulative and current affordable housing obligations are as follows:

- Prior Round (Rounds 1 & 2, from 1987-1999) Obligation: 54 units
- Round 3 (from 1999-2025) Prospective Need Obligation: 328 Units
- Round 4 (from 2025-2035) Present Need (Rehabilitation Obligation): 154 units
- Round 4 (from 2025-2035) Prospective Need Obligation: 145 Units

Amended Plan

Vacant Land Adjustment & Realistic Development Potential (RDP)

As a mostly built-out municipality, the Borough is eligible to adjust its 145-unit fourth round prospective need based upon a lack of vacant land in order to reduce the portion of its prospective need that is required to be created by 2035, when the fourth round ends. The adjustment is determined through an analysis of geospatial data, in which the Borough is statutorily required to identify all properties in the Borough that are “vacant”

and “available”, determine the portion of those properties that are not environmentally constrained or legally encumbered, and calculate the number of affordable units that could hypothetically be produced on the unconstrained portions of those properties based upon a suitable density and a presumption that 20% of the housing units produced on the properties would be set-aside for low- and moderate-income households. The Borough followed this methodology to arrive at the original RDP of 8 units.

In order to resolve the differences in opinion with FSHC and the Special Adjudicator regarding the vacant land analysis methodology, the Borough is revising its RDP to 54 units, which also includes properties that are not vacant and available¹ but which are expected to be redeveloped and included in the housing plan.

The analysis concluded that the vacant and redevelopable lands in the Borough could produce **54 affordable units** if zoned for inclusionary development with a 20% set-aside. This is referred to as the realistic development potential, or RDP.

Historically, the difference between the prospective need and the RDP has been referred to as the “unmet need”, and has been addressed in part or in whole through mechanisms like overlay zoning or accessory apartment incentive programs which create opportunities for affordable housing, but which are not required to create that housing during the 10-year affordable housing round. The unmet need from an RDP of 54 and a prospective need of 145 units is **91 units**. FHA2 requires towns that receive a vacant land adjustment to provide for zoning or other mechanisms that provides a realistic opportunity for at least 25% of the unmet need to be created during the fourth round. For Elmwood Park Borough, that number is **23 units**.

Prior Round and Round 3 Obligations

The Borough adopted a Third Round Housing Element and Fair Share Plan in November of 2022 which addressed its affordable housing obligations from the first, second, and third rounds (“Prior Rounds”), accumulated between 1987 to 2015 and projected from 2015 to 2025 in accordance with a settlement agreement between the Borough, River Drive Development, LLC (River Drive) and FSHC executed on March 14, 2018. The agreement established the Borough’s first and second round prospective need at **54-units** and its third round prospective need at **328 units**, adjusted to a **78-unit Third Round RDP**.

The 2022 Adopted Third Round HEFSP fully addressed the Prior and Third Round obligations. However, during the process of documenting the projects addressing those obligations, the Borough’s affordable housing planner determined that some of the group home facilities were identified incorrectly. In the months leading up to its Third Round

¹ As defined by the Council on Affordable Housing at N.J.A.C. 5:93-1.3

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Fairness and Compliance hearing in 2024, the Borough documented with Fair Share Housing Center and the Special Master the creditworthiness for the following Third Round Compliance Plan, which is in compliance with the Settlement Agreement with Fair Share Housing Center:

| Projects | Type | Tenure | Total Units | Affordable Units | Prior Round | | 54 Units | R3 RDP | | 78 Units | R3 Unmet Need |
|---------------------------|---------------|--------|-------------|------------------|-------------|-----------|-----------|-----------|-----------|-----------|---------------|
| | | | | | Units | Bonus | Total | Units | Bonus | Total | Units |
| River Drive | Family | Rental | | 24 | 24 | 14 | 38 | | | 0 | |
| Center for Family Support | Special Needs | Rental | 5 | 5 | 5 | | 5 | | | 0 | |
| Spectrum | Special Needs | Rental | 6 | 6 | 6 | | 6 | | | 0 | |
| Arc of Bergen/Passaic | Special Needs | Rental | 6 | 6 | 6 | | 6 | | | 0 | |
| UJA | Special Needs | Rental | 6 | 6 | 6 | | 6 | | | 0 | |
| Devereaux | Special Needs | Rental | 6 | 6 | 6 | | 6 | | | 0 | |
| Prior Surplus | Special Needs | Rental | | | | | | | 13 | | 13 |
| Riverfront Apartments | Family | Rental | 336 | 37 | | | | 37 | 20 | 57 | |
| Riverfront Apartments | Senior | Rental | 54 | 22 | | | | 8 | | 8 | 14 |
| | Total | | 648 | 147 | 53 | 14 | 67 | 58 | 20 | 78 | |

The Adopted Fourth Round HEFSP reaffirmed the construction status and creditworthiness of the housing units addressing the obligations of the prior rounds. The only new documentation, included in the appendices, related to deed restrictions on the Riverfront Apartments.

Round 4 Present Need

As stated in the Borough’s Fourth Round, the Borough conducted a structural conditions survey in March of 2025, according to the rules and rubric created by COAH, which identified 48 “deficient” housing units. According to those rules, a municipality that conducts a structural conditions survey shall adjust the actual identified number of deficient households based upon a “deterioration share”, which was previously published by COAH for each county, and which reflected the percentage of deficient units that are likely to be occupied by low- and moderate-income households.

Neither DCA nor any other agency has published an updated “deterioration share” for the Fourth Round, and the ratios previously published by COAH are outdated and not suitable for use today. However, DCA published the percentages of low- and moderate-income

households in deficient housing at the municipal level in the Present Need calculation sheet of its October 2025 calculations of municipal housing obligations. The DCA calculated that 54.2% of overcrowded housing in Elmwood Park is estimated to be occupied by low- and moderate-income households. If this is the appropriate deterioration ratio to apply, the Borough is only obligated to fund rehabilitation for 54.2% of the 48 identified units, equaling **27 units**.

Although FSHC did not question this deterioration share in some other municipalities that conducted the survey, they did so in Elmwood Park. They have not, however, presented an alternative statistic to better replace the deterioration share. Therefore, for the purposes of this Plan, the Borough will plan to fund rehabilitation of a minimum of 27 units. Should the DCA publish an updated deterioration share, or should a court of competent jurisdiction establish deterioration share by order, the Borough will amend its rehabilitation number accordingly.

Round 4 Prospective Need

Elmwood Park's fourth round prospective need obligation of **145 units** is adjusted to a **54-unit** RDP and a **91-unit** unmet need, due to a lack of vacant and available land. Pursuant to FHA2, the HEFSP must satisfy the entire RDP and address at least 25% of the unmet need (**23 units**) with compliance mechanisms that have a realistic probability of producing affordable housing during the round ending on June 30, 2035. This amendment to the Fourth Round HEFSP amends the Borough's compliance strategy to address the RDP and unmet need as follows:

Satisfaction of the 54-unit RDP

Meridia / Royal Warsaw Redevelopment. The Borough designated the former Royal Warsaw property at 871 River Drive, and surrounding properties (Block 1602, Lots 2, 3, 4, & 26) as an area in need of redevelopment on October 21, 2021 and adopted a redevelopment plan for the properties on February 16, 2023. The Borough was in the process of finalizing redevelopment agreements with Meridia to redevelop the site with **149 units**, including a **23-unit (15%)** affordable family rental set-aside when Meridia challenged the Borough's Fourth Round HEFSP seeking a higher density. The Borough's Third Round Spending Plan committed to spending \$900,000 from the affordable housing trust fund to the developer to make the project financially feasible, with the requirement that the payment be repaid over 10 years or fully repaid at such time that the project is sold. The project continues to be in the plan as the Borough negotiates with Meridia, with the hope of arriving at an agreement to move forward. Additionally, the Borough will amend its Fourth Round Spending Plan to show a zero-interest loan of \$1,100,000 to Meridia. For the purposes of claiming bonuses, Meridia's challenge to the Borough's plan and their ongoing negotiation with the Borough is evidence of commitment on their part to develop the property. Therefore, the Borough claims the maximum number of bonuses from this site.

The property is suitable for inclusion in the HEFSP as follows:

- *“Available site” means a site with clear title, free of encumbrances which preclude development for low and moderate income housing.*

The Borough is not aware of any conditions of title or any legal encumbrances which would preclude production of affordable housing on this property.

- *“Suitable site” means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.*

The property in question is located along four-lane River Drive, across the road from commercial uses to the west, with single-family dwellings to the north, south, and east. It does not have environmental constraints that cause the site to be unsuitable for inclusionary development.

- *“Developable site” means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.*

The site has access to existing water and sewer infrastructure and is within an existing approved sewer service area.

- *“Approvable site” means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.*

The Borough is not aware of any conditions which would preclude the site from being developed consistent with applicable State regulations.

689 River Drive Redevelopment. The property at Block 1202, Lot 21, was designated as an area in need of redevelopment on May 19, 2022, and a redevelopment plan was adopted for the site in 2023. The Borough has received conceptual plans from the likely redeveloper of the property to create **16 stacked townhouse units, of which three (3) units would be affordable family rentals.**

The property is suitable for inclusion in the HEFSP as follows:

- *“Available site” means a site with clear title, free of encumbrances which preclude development for low and moderate income housing.*

The Borough is not aware of any conditions of title or any legal encumbrances which would preclude production of affordable housing on this property.

- *“Suitable site” means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.*

The property in question is located along four-lane River Drive, surrounded by office and multi-family uses to the north, east, and west, and single-family dwellings to the south. It does not have environmental constraints that cause the site to be unsuitable for inclusionary development.

- *“Developable site” means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.*

The site has access to existing water and sewer infrastructure and is within an existing approved sewer service area.

- *“Approvable site” means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.*

The Borough is not aware of any conditions which would preclude the site from being developed consistent with applicable State regulations.

ElmPark 401-407 Rt 46 Redevelopment. The property was designated as an area in need of redevelopment by the Borough Council in 2021, and a redevelopment plan was adopted for the site in May of 2023. The Borough is finalizing redevelopment agreements with Elm Park Development, LLC, to redevelop the property with 58 units, **of which nine (9) would be family affordable rental units.** As development of the property for inclusionary housing is underway, suitability language is not required.

Transitional – Sober Living. The Borough is home to several sober living homes operated by an entity called DB House Sober Living. The Borough will take credit toward its RDP for five (5) bedrooms in sober living facilities, per the rule that a municipality may count transitional bedrooms to up to 10% of its of its fair share obligation.

Satisfaction of the 23-unit Unmet Need Requirement

Market Street Redevelopment Plan. The Market Street Redevelopment Plan, adopted in 2020, envisions comprehensive redevelopment of properties along the Market Street corridor with mixed-use development including affordable housing set-aside of 15% for rental units and 20% for for-sale units.

At full build-out, the redevelopment plan would permit up between 260 and 366 affordable units based on a 20% set-aside. This yield represents more than three times the 91 unit unmet need and 11 to 15 times the 23 units of unmet need the Borough is required to provide for under P.L. 2024, c.2. The Borough recognizes that the Plan has not yet attracted the mixed-use redevelopment envisioned for the corridor in its over five years on the books, and that amendments are needed to demonstrate a realistic possibility for the creation of affordable units in the Market Street redevelopment area over the next 10 years. Therefore, the Borough will amend the Market Street Redevelopment Plan in the following ways:

- Reduce the minimum base tract size for mixed-use development in the Market Street Corridor Sub-Area to from 9,000 square feet to 8,000 square feet , increase the maximum base density from 25 units per acre to 30 units per acre, and increase maximum building height from 2 stories to 2.5 stories;
- Conditionally permit residential-only multi-family buildings at 25 du/ac on 10,000 square foot tracts without frontage on Market Street or Mola Boulevard;
- For development fronting on Market Street and lot frontage of less than 100 feet, reduce the active ground floor use ratio from 70% to 50%.
- Establish a residential parking ratio of 1.5 spaces per unit.

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Other Amendments

The Borough of Elmwood Park will amend its ordinance at Chapter 37, “Affordable Housing” to reflect changes to the Fair Housing Act pursuant to P.L. 2024, c.2, amendments to the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.1 et seq., and newly adopted rules at N.J.A.C. 5:99 which amend and replace portions of COAH’s rules at N.J.A.C. 5:93 and N.J.A.C. 5:97.

Zoning and Redevelopment Plans

The Borough will amend its Borough-wide mandatory set-aside ordinance and the Market Street Redevelopment Plan.

Spending Plan

Consistent with the Borough’s agreement with FSHC, the Borough will amend its Spending Plan based upon N.J.A.C. 5:99.

Minimums & Maximums

The FHA2 stipulates certain requirements within C.52:27D-311.k(10)1 which the Elmwood Park plan meets. The following is noted:

- A maximum of 30% of the affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation, may be addressed with age restricted housing. The compliance plan does not include senior units.
- A minimum of 50% of the actual affordable housing units, exclusive of bonus credits, created to address its prospective need obligation must be satisfied with the creation of housing available to families with children. At least 50% of units in the Borough’s compliance plan are family units.
- A minimum of 25% of the actual affordable housing units, exclusive of bonus credits, created to address its prospective need obligation, must be satisfied with the creation of rental housing. The plan consists entirely of rental units.
- A minimum of 13% percent of all affordable units referenced in this HEFSP addressing the Borough’s fourth round prospective need obligation shall be very low-income units for households earning 30 percent or less of the regional median income, with at least half of those units available to families. The compliance plan meets this requirement.

The Borough will ensure to the best of its ability that all affordable housing units satisfying the prior round obligations will continue to meet the applicable

minimums and maximums set forth in the third round settlement agreement with FSHC as well as any applicable regulatory or statutory requirements.

Conclusion

The adoption of this document by the Elmwood Park Planning Board and its endorsement by the Elmwood Park Mayor and Council shall constitute an amendment to the Fourth Round HEFSP adopted on June 11, 2025 to address the requirements of the Affordable Housing Dispute Resolution Program and applicable State laws and regulations with respect to the satisfaction of the Borough's fourth round obligation and its compliance the constitutional obligation to produce a realistic opportunity for affordable housing.

Appendices

This report contains the following appendices.

Appendix A: Recommendation of the Affordable Housing Dispute Resolution Program

Appendix B: Amended Vacant Land Adjustment

Appendix C: Amended Development Fee & Affordable Housing Ordinances

Appendix D: Amended Spending Plan

Appendix E: Amended Market Street Redevelopment Plan

Appendix F: Amended Administrative Manuals and Affirmative Marketing Plan

Appendix G: Updated River Drive documentation

Appendix H: Transitional Housing Documentation

Appendix I: 401-407 Rt 46 Documentation

Appendix J: June 2025 Adopted Fourth Round Housing Element and Fair Share Plan

**Appendix A: Recommendation of the Affordable Housing Dispute
Resolution Program**

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PREPARED BY THE AFFORDABLE HOUSING PROGRAM:

In the Matter of
Borough of Elmwood Park
County of Bergen

Superior Court of New Jersey
Law Division, Civil Part

Docket No. BER-L-714-25

**Program Decision Recommendation -
Housing Element and Fair Share Plan**

THIS MATTER, having come before the Affordable Housing Dispute Resolution Program (Program), pursuant to the Complaint for Declaratory Judgment filed in this matter on January 29, 2025 (DJ Complaint) by the Petitioner, Borough of Elmwood Park (Municipality), pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. (FHA), and in accordance with Administrative Directive #14-24 and its Addenda, seeking a certification of compliance with the FHA;

AND IT APPEARS that on May 16, 2025, the Hon. Gregg A. Padovano, J.S.C. entered an Order as follows:

- a. Establishing the Municipality's Fourth Round "present need" at 154;
- b. Establishing the Municipality's Fourth Round "prospective need" at 145 ;
- c. Directing the Municipality to prepare and adopt a Housing Element and Fair Share Plan on or before June 30, 2025;

AND the Municipality having timely adopted and filed its Proposed Fourth Round Housing Element and Fair Share Plan (HEFSP);

AND a challenge(s) to the Municipality's Fourth Round HEFSP having been timely filed by interested parties Meridia Elmwood Park 871, Urban Renewal LLC and Fair Share Housing Center, alleging that the HEFSP failed to comply with the FHA and/or Mount Laurel doctrine;

AND the Program having appointed Special Adjudicator Francis J. Banisch III, PP/AICP to the matter;

AND the Program Member having conducted a settlement conference(s) on September 29, 2025, October 27, 2025, November 19, 2025, and December 9, 2025, during which no settlement agreement was reached;

AND the essential components of the Municipality's HEFSP include, but are not limited to, the following:

- a. The Municipality's Present Need (Rehabilitation) Obligation is 154, reduced through a Structural Conditions Survey to 48;
- b. The Municipality's Prospective Need Obligation (2025-2035) is 145 with an RDP of 8;
- c. The Municipality's Prior Round Obligation (1987-1999) is 54;
- d. The Municipality's Third Round Obligation (1999-2025) is 328;

e. The 2022 Settlement between FSHC and the Borough acknowledged that the Borough had an RDP of 78;

f. The Municipality's Fourth Round Realistic Development Potential (RDP) is 8. The Municipality shall satisfy its Fourth Round RDP as follows:

| NAME | TYPE | UNITS | BONUSES | TENURES | STATUS |
|-----------------------------|--------|-------|---------|---------|----------------------------|
| Rt 46 Redevelopment Project | Family | 9 | 2 | Rental | Redevelopment Plan adopted |
| Total | | 9 | 2 | | |

g. The Municipality's Unmet Need is 137. The Municipality shall satisfy its Fourth Round Unmet Need as follows:

| NAME | TYPE | UNITS | TENURES | STATUS |
|-----------------------------|--------|-------|---------|---|
| Royal Warsaw Alt Option | Family | 23 | Rental | Redevelopment Plan adopted |
| River Road Townhouses | Family | 3 | Rental | Redevelopment Plan adopted |
| Rt 46 Redevelopment Project | Family | 3 | Rental | Redevelopment Plan adopted |
| Demase Nursery Townhomes | Family | 3 | Sale | Designated as area in need of redevelopment |
| Trust Fund Subsidy | Family | 3+ | TBD | |
| Total | | 32+ | | |

AND the Program Member having considered the filings by the parties, the written recommendation of the Special Adjudicator (attached) and oral argument and for the reasons more fully set forth in the attached Statement of Reasons hereby recommends an ORDER directing that:

- a. The HEFSP of the Municipality is not in compliance with the FHA and the Mount Laurel doctrine;
- b. The challenges of the interested parties are upheld;
- c. The Municipality shall amend its HEFSP in accordance with the Program's recommendations set forth within the attached Statement of Reasons;
- d. In accordance with N.J.S.A. §52:27D-304.1(f)(2)(c), on or before March 15, 2026, the Municipality adopt and file its amended HEFSP well as the implementing ordinances and resolutions proposed within the amended HEFSP;
- e. Thereafter, the court schedule a HEFSP Confirmation Hearing (or, if and as may be deemed necessary by the Mt. Laurel judge, a Fairness and/or Compliance Hearing) to consider approval of the Municipality's amended HEFSP and the issuance of a Certification of Compliance and Repose; and
- f. Grant the Municipality continued immunity from exclusionary zoning litigation for the duration of the compliance process conditioned upon the Municipality's compliance with its order and good faith implementation of the amended HEFSP and good faith participation in the compliance process.

Respectfully Submitted by the Program:

By:

/s/ 

Hon. Stephan Hansbury, J.S.C. Ret.

Dated: 1/29/26

PREPARED BY THE AFFORDABLE HOUSING PROGRAM:

| | |
|--|--|
| <p>In the Matter of <u>the Borough of</u> Elmwood Park</p> | <p>Superior Court of New Jersey Law Division, Civil Part Bergen County</p> <p>Docket No. BER-L-714-25</p> <p>STATEMENT OF REASONS</p> |
|--|--|

Statement of Reasons

New Jersey's Fair Housing Act (FHA) was amended, in part, due to a recognition of the need to "establish definitive deadlines for municipal action and any challenges to those actions" to ensure timely municipal compliance with their constitutional and statutory housing obligations. See N.J.S.A. §52:27D-302 (m).

The FHA set forth a streamlined procedure whereby municipalities can secure a compliance certification. That process states that after adoption and filing of a municipality's housing element and fair share plan (HEFSP), an interested party may file a response, or challenge, alleging with specificity that the municipality's HEFSP is not in compliance with the FHA or the Mount Laurel doctrine. N.J.S.A. §52:27D-304.1(f)(2)(b).

The FHA declared that the State's "preference for the resolution of existing and future disputes involving exclusionary zoning is the mediation and review process set forth in this act and not litigation, and that it is the intention of this act to

provide various alternatives to the use of the builder's remedy as a method of achieving fair share housing." N.J.S.A. §52:27D-303. To that end, the FHA directed the Program to facilitate settlement between a municipality and any interested parties that filed a challenge to the municipality's HEFSP and give the municipality until December 31, 2025, to commit to revise its HEFSP or provide an explanation for why it will not make all or some of the requested changes. N.J.S.A. §52:27D-304.1(f)(2)(b). If a settlement cannot be reached, to resolve a challenge, the Program is to apply an objective assessment standard to determine whether the municipality's HEFSP complies with the FHA and Mount Laurel doctrine. Ibid. Upon resolution of a challenge, the Program shall issue a compliance certification conditioned upon the municipality's "commitment, as necessary, to revise its fair share plan and housing element in accordance with the resolution of the challenge." Ibid. The Program may also terminate immunity if it finds that the municipality is not in constitutional compliance at any point in the process. Ibid.

On January 29, 2025, the Borough of Elmwood Park filed its complaint seeking to participate in the settlement program. On May 16, 2025, Judge Gregg Padovano entered an order providing that Elmwood Park must present a need of 154 and a fourth round prospective need of 145. On June 16, 2025, Elmwood Park filed its proposed Housing Element and Fair Share Plan. On August 26, 2025, Miridia Elmwood Park 871, Urban Renewal, LLC filed a challenge to the town's plan. On September 2, 2025, Fair Share Housing counter filed its own challenge.

Mediation sessions were heard on September 29, October 27 and November 19, 2025. No resolution was reached and so a session was held on December 9, 2025. On January 21, 2026, David Banisch, III PP/AICP issued his report outlining the deficiencies in the HEFSP. The Program has reviewed that report and acknowledges that a mediated settlement was not reached. The Program incorporates that report and recommends it be followed by the Mt. Laurel Judge.

Despite the Program's efforts to facilitate communication between the Municipality and interested party/ies Fair Share Housing Center and Miridia Elmwood Park 87, no settlement was reached. Therefore, it is incumbent upon the Program to resolve the challenge (s) and determine whether the Municipality's HEFSP enables it to satisfy its fair share obligation and is compliant with the FHA and the Mount Laurel doctrine. See N.J.S.A. §52:27D-304.1(f)(2)(b). The Program is mindful of the fact municipalities are permitted to use a variety of means and techniques to provide for its fair share of affordable housing as set forth in NJ's.A. §52:27D-311 and that courts should employ flexibility in assessing a municipality;s HEFSP for compliance with the FHA and Mount Laurel doctrine. In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 29-33 (2015).

Having reviewed all the submissions of the parties (including the original HEFSP and any proposed amendments to the HEFSP.), the written recommendation

of the Special Adjudicator and having presided over the settlement conference(s) and oral argument, this Program member concludes that the Municipality's HEFSP fails to provide a realistic opportunity for the construction of its fair share of low and moderate income housing and is not in compliance with the FHA and the Mount Laurel doctrine. See S. Burlington Cnty. NAACP v. Mount Laurel, 92 N.J. 158, 220-22 (1983).

Respectfully Submitted by the Program:

Dated: 1/29/26

By: /s/ [Signature]
Hon. Stephan C. Hansbury, J.S.C. Ret.

Memorandum

To: Hon. Stephan Hansbury, J.S.C., Ret.

From: Francis J. Banisch III, PP/AICP

Date: January 21, 2026

Re: Adjudicator's Program Recommendation for Elmwood Park Borough
Docket No. Ber-L-714-25

Pursuant to the Program's request, I have prepared this memorandum to provide my assessment and recommendations as Special Adjudicator regarding the sufficiency of the Elmwood Park Borough submission to the Affordable Housing Dispute Resolution Program ("AHDRP" or "Program") including the Borough's Housing Element and Fair Share Plan ("HEFSP") and the challenge by the Fair Share Housing Center.

The Borough and the FSHC entered mediation before the AHDRP, with sessions conducted on September 29, October 27, November 19 and December 9, 2025. Based upon the results of the Program mediation, Elmwood Park and FSHC were unable to reach an agreement that would endorse certification of Elmwood Park's Round 4 Housing Element and Fair Share Plan (HEFSP) to be consistent with New Jersey's constitutional and statutory framework for affordable housing compliance as established by the Mount Laurel doctrine and the Fair Housing Act (FHA).

New Jersey's unique constitutional and statutory framework for affordable housing, established by the Mount Laurel doctrine and the Fair Housing Act ("FHA"), requires the application of an "objective standard" for review of a municipal housing element and fair share plan. The review ensures that a municipality's plan provides a "realistic opportunity" for the actual production of its fair share of affordable housing.

In accordance with C.52:27D-304.1 3.f. (2) (b), the Fair Housing Act provides that the Affordable Housing Dispute Resolution Program shall apply the "objective standard" to review of the HEFSP for consistency and "to determine whether it enables the municipality to satisfy the fair share obligation, applies compliant mechanisms, meets the threshold requirements for rental and family units, does not exceed limits on other unit or category types, and is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine."

Assessing whether this standard is met requires a multi-factor, evidence-driven inquiry to determine if a municipality's Housing Element and Fair Share Plan meets the objective standard and is constitutionally compliant.

Summary of the Housing Element and Fair Share Plan

By Order of May 16, 2025, Judge Gregg Padovano established the Fourth-Round obligations of the Borough at 154 units of present need (rehabilitation) and a 2025 to 2035 prospective need of 145 units. The Borough seeks adjustment to the present need from 154 to 27 units, based on a Structural Conditions Survey conducted during March of 2025.

The HEFSP includes the following summary of the mechanisms deployed to address the prior round, third round and fourth round obligations:

Elmwood Park Borough Housing Element and Fair Share Plan
June 2025

Chart 4. Fourth Round Compliance Mechanisms

| | | | | | PRIOR ROUND | | | ROUND 3 RDP | | | ROUND 3 UNMET NEEDS | | |
|--|------------|--------|-------------|------------|-------------|-----------|-----------|-------------|-----------|-----------|---------------------|----------|-----------|
| | | | | | 54 | | | 78 | | | 250 | | |
| PROJECT | TYPE | TENURE | TOTAL UNITS | AFF. UNITS | UNITS | BONUS | TOTAL | UNITS | BONUS | TOTAL | UNITS | BONUS | TOTAL |
| RIVER DRIVE | Family | Rental | | 24 | 24 | 14 | 38 | | | 0 | | | 0 |
| CENTER FOR FAMILY SUPPORT | Supportive | Rental | 5 | 5 | 5 | | 5 | | | 0 | | | 0 |
| SPECTRUM | Supportive | Rental | 6 | 6 | 6 | | 6 | | | 0 | | | 0 |
| ARC OR BERGEN/PASSAIC | Supportive | Rental | 6 | 6 | 6 | | 6 | | | 0 | | | 0 |
| UJA | Supportive | Rental | 6 | 6 | 6 | | 6 | | | 0 | | | 0 |
| DEVEREAUX | Supportive | Rental | 6 | 6 | 6 | | 6 | | | 0 | | | 0 |
| PRIOR SURPLUS | Supportive | Rental | 336 | 37 | | | | 13 | | 13 | | | 0 |
| RIVERFRONT APARTMENTS | Family | Rental | 54 | 22 | | | | 37 | 20 | 57 | | | 0 |
| RIVERFRONT APARTMENTS | Senior | Rental | 149 | 23 | | | | 8 | | 8 | 14 | | 14 |
| BOROUGH-WIDE SET-ASIDE ORD | Mix | Mix | 16 | 3 | | | | | | | | | |
| TOTAL CREDITS TOWARD RDP AND UNMET NEED | | | 419 | 112 | 53 | 14 | 67 | 50 | 20 | 78 | 14 | 0 | 14 |

Chart 5. Fourth Round Compliance Mechanisms

| | | | | | ROUND 4 RDP | | | ROUND 4 UNMET NEEDS | | |
|--|--------|--------|-------------|------------------|-------------|----------|-----------|---------------------|----------|------------|
| | | | | | 0 | | | 36 | | |
| PROJECT | TYPE | TENURE | TOTAL UNITS | AFFORDABLE UNITS | UNITS | BONUS | TOTAL | UNITS | BONUS | TOTAL |
| ROYAL WARSAW ALT OPTION | Family | Rental | 149 | 23 | | | 0 | 23 | | 23 |
| RIVER ROAD TOWNHOUSES* | Family | Rental | 16 | 3 | | | 0 | 3 | | 3 |
| RT 46 REDEVELOPMENT PROJECT | Family | Rental | 58 | 9 | | | 9 | 2 | | 11 |
| DEMASE NURSERY TOWNHOMES | Family | Sale | 14 | 3 | | | 0 | 3 | | 3 |
| TRUST FUND SUBSIDY | Family | TBD | | | | | | 3+ | | 3+ |
| TOTAL CREDITS TOWARD RDP AND UNMET NEED | | | 237 | 38 | 9 | 2 | 11 | 32+ | 0 | 31+ |

AN

The Borough asserts entitlement to a Vacant Land Adjustment to reduce the prospective need of 145 units to an RDP of 8 units, yielding an unmet need of 137 units. The HEFSP describes the Round Four affordable family rental developments in the Fair Share Plan as seen below:

ROYAL WARSAW REDEVELOPMENT - 871 RIVER DRIVE - BLOCK 1602, LOTS 2, 3, 4, & 26

The Borough designated the former Royal Warsaw property at the above listed address as an area in need of redevelopment on October 21, 2021 and adopted a redevelopment plan for the property on February 16, 2023. The Borough is finalizing redevelopment agreements with Meridia Elmwood Park 871, Urban Renewal, LLC, to redevelop the site with 149 units, of which 23 (15%) will be affordable family rental units. The Borough's Third Round Spending Plan committed to spending \$900,000 from the affordable housing trust fund to the developer to make the project financially feasible, with the requirement that the payment be repaid over 10 years or fully repaid at such time that the project is sold. That commitment is restated in the spending plan accompanying this housing plan.

ELMPARK - 401-407 ROUTE 46 WEST - BLOCK 1808, LOT 7 & 9

The property was designated as an area in need of redevelopment by the Borough Council in 2021, and a redevelopment plan was adopted for the site in May of 2023. The Borough is finalizing redevelopment agreements with Elm Park Development, LLC, to redevelop the property with 58 units, of which nine (9) would be family affordable rental units.

689 RIVER DRIVE - BLOCK 1202, LOT 21

The property was designated as an area in need of redevelopment on May 19, 2022, and a redevelopment plan was adopted for the site in 2023. The Borough has received conceptual plans from the likely redeveloper of the property to create 16 stacked townhouse units, of which three (3) units would be affordable family rentals.

EAST 64TH AND MAIN - BLOCK 1103, LOTS 3, 7

The site was designated as an area in need of redevelopment and a draft redevelopment plan was prepared. The Borough has received conceptual plans from the likely redeveloper of the property to create 14 duplex units, of which three (3) units would be affordable family sale units.

TRUST FUND EXPENDITURE

The preliminary spending plan prepared with this Housing Element and Fair Share Plan anticipates a substantial surplus in affordable housing trust funds which the Borough will utilize to either increase the set-aside on one of the projects in the plan or to assist a special needs housing provider to acquire and operate a deed restricted group home for income-qualified special needs adults to address any gap between the units identified in the above four projects and the cumulative 43-unit Fourth Round RDP and unmet need.

FAIR SHARE PLAN

Round 4 Fair Share Plan Components

| Mechanism | Type | Affordable units |
|--------------------------------|----------------|------------------|
| Royal Warsaw | Family rentals | 23 |
| Elmpark | Family rentals | 9 |
| 689 River Drive | Family rentals | 3 |
| East 64 th and Main | Family rentals | 3 |
| Group home | Group home | 5 |
| | TOTAL | 43 |

FSHC Challenge to Elmwood Park's Housing Plan

Fair Share Housing Center (FSHC) submitted a challenge on August 30, 2025, citing deficiencies in the HEFSP, including inadequate documentation for affordable housing opportunities and other arguments noted below. FSHC demands revisions to the realistic development potential (RDP) and vacant land adjustment (VLA) to comply with legal standards.

Objective Compliance Standard in Housing Plans

The New Jersey Supreme Court established that compliance is determined solely on an objective basis. The objective compliance standard requires municipalities, in order to prove compliance with the Fair Housing Act and the Mount Laurel doctrine, to provide a realistic opportunity to address the municipal fair share of the regional need for housing for low- and moderate-income persons. The statute mandates that municipalities receive compliance certification only if objective standards are met.

Inadequate Assessment of Previous Housing Obligations

FSHC claims that Elmwood Park's HEFSP fails to adequately evaluate its progress in meeting prior round fair share obligations on unbuilt prior round sites or demonstrate how they remain realistic opportunities. Municipalities must show compliance with prior obligations to ensure adherence to the Fair Housing Act and Mount Laurel doctrine.

Flawed Vacant Land Adjustment Process

Elmwood Park requested a VLA to reduce its Fourth Round prospective need from 145 to an RDP of 8. FSHC claims that the Borough's vacant land adjustment significantly undercounts its realistic development potential, does not comply with legal standards and fails to account for redevelopment opportunities.

Unmet Need Mechanisms and Compliance

FSHC claims that the Borough's vacant land adjustment significantly undercounts its realistic development potential and that Elmwood Park's approach misapplies the requirement to address 25% of unmet need through redevelopment. Municipalities must identify potential sites for development and methods to generate additional affordable units.

Borough's Affordable Housing Plan Compliance

FSHC claims that the Borough's affordable housing plan lacks sufficient documentation and concrete mechanisms to meet its unmet housing needs. FSHC notes that the Borough claims 35 credits toward an unmet need of 137 units, "which is only 25% of the total", implying that this is not sufficient. While unmet need does not "go away", the affirmative obligation is to provide for 25% of the prospective need obligation that has been adjusted, considered "unmet need" by the Program.

Compliance with Mount Laurel requires enforceable zoning provisions and concrete mechanisms for housing production and while redevelopment plans are submitted, they lack documentation to ensure implementation, rendering them speculative.

Required Updates and Compliance Measures

FSHC claims that the Borough's Housing Element and Fair Share Plan (HEFSP) contains several deficiencies that need to be addressed for compliance. Draft zoning ordinances for Fourth Round fair share plan sites must be provided and the HEFSP must clarify how it will meet various micro-requirements.

The Boroughs attempt to reduce its present need obligation from 154 units to 27 units through a structural conditions survey and a deterioration ratio requires review for compliance with COAH regulations. A new Affirmative Marketing Plan and other administrative documents must be adopted and updated according to forthcoming regulations.

The Borough must implement several updates and compliance measures including adoption of a Spending Plan in compliance with N.J.A.C. 5:99 and the Borough must update its Affirmative Marketing Plan, Affordable Housing Ordinance, Development Fee Ordinance, and other administrative documents.

Meridia Elmwood Park 871, Urban Renewal, LLC Challenge to Elmwood Park's Housing Plan

Meridia Elmwood Park 871, Urban Renewal, LLC ("Meridia") alleges non-compliance, suggesting that the HEFSP does not adequately address the Borough's fair share obligations, violates statutory requirements, lacks necessary mapping and detailed information as required by N.J.S.A. 52:27D-310 and fails to provide an analysis of land suitable for low- and moderate-income housing and a realistic opportunity analysis for low- and moderate-income housing.

The HEFSP is also criticized for not including essential documentation and analyses including detailed site suitability analyses and documentation of existing affordable housing units to demonstrate compliance with Third Round obligations and address unfulfilled prior round obligations.

Noting that municipalities must demonstrate realistic opportunities for low- and moderate-income housing development, Meridia proposes a multi-family inclusionary development on specific properties that are claimed to be suitable for a development of at least 260 units, including 39 affordable units.

Municipalities seeking vacant land adjustments must demonstrate a lack of land capacity for affordable housing and identify realistic sites for inclusionary development to calculate their fair share. Meridia details deficiencies in the HEFSP that violate statutory requirements, including a lack of necessary mapping and detailed information as required by N.J.S.A. 52:27D-310 and failure to provide an analysis of land suitable for low- and moderate-income housing.

The HEFSP is also criticized for not including essential documentation and analyses, such as a realistic opportunity analysis for low- and moderate-income housing, detailed site suitability analyses and documentation of existing affordable housing units.

Meridia also claims that the HEFSP fails to demonstrate compliance with Third Round obligations and does not adequately address unfulfilled prior round obligations.

Analysis of Sufficiency of 2025 Elmwood Park HEFSP

As noted, the governing legal framework for the Program's review is the statutory "objective assessment standard." Under the Fourth Round amendments, the Program evaluates whether a municipal housing element and fair share plan is compliant with the Fair Housing Act and the Mount Laurel doctrine and, in doing so, whether the plan enables the municipality to satisfy its fair share obligation, applies compliant mechanisms, meets statutory threshold requirements for rental and family units, does not exceed statutory limits on other unit or category types, and otherwise satisfies the objective standards for certification.

In addition, the AOC Directive #14-24 details the minimum necessary elements for housing element and fair share plan submissions. Among other items, the Directive requires (i) detailed site suitability analyses for each un-built inclusionary or 100 percent affordable site, (ii) identification of sites considered and rejected with reasons for rejection, and (iii) concept plans overlaid on current environmental constraint mapping so the municipality can confirm the selected sites can actually yield the planned unit counts or adjust zoning and mechanisms to address a shortfall. The HEFSP must also document existing affordable housing units and compliance with all rounds along with an assessment of unfulfilled prior round obligations and how previously planned sites continue to present realistic opportunities. Consistent with these requirements, the record should include site-specific constraints overlays and a rejected-site inventory; where those items are absent from the filing, or not clearly incorporated by reference, the deficiency is objective and curable through supplementation.

The Elmwood Park HEFSP indicates that the Borough's plan employs redevelopment and group home bedrooms to provide 43 total affordable units in Round 4, which it intends to fully satisfy the Round Four RDP of 8 and the requirement to provide realistic zoning for 25% (35 units) of the unmet need. No overlay zoning is provided to address unmet need.

Determining the sufficiency of the HEFSP in a municipality utilizing a vacant land adjustment requires evaluation of several factors. Where a municipality seeks a VLA, the substantive rules require a transparent accounting of the vacant land analysis (5:93-4.2). At a minimum, the submission must include an existing land use map at an appropriate scale, an inventory of vacant parcels by lot and block (including acreage and ownership), and transparent overlays (drawn to the same scale as the land use map) depicting areas the municipality contends are inappropriate for development, along with documentation supporting any eliminations from the inventory. In addition, the rules explain that the Council considers the character of the surrounding area in establishing densities and set-asides for sites remaining in the inventory, which underscores the need for the plan to clearly explain and document its density assumptions and how they relate to site context and are not intended as "one size fits all".

FSHC claims a significant undercount of RDP by Elmwood Park that does not comply with legal standards and fails to account for redevelopment opportunities. Meridia concurs, noting a lack of necessary mapping and detailed information as required by N.J.S.A. 52:27D-310 to demonstrate that the Round 4 sites meet suitability criteria and failure to provide an analysis of land suitable for low- and moderate-income housing.

Elmwood Park's VLA assigns a density of 10 units/acre to the vacant parcels but does not account for the increased density in the redevelopment plan parcels – another 43 units. When these are added to the 8 units in the VLA, it appears that the RDP is probably at least 51 units, against which the HEFSP provides 43 units, as noted above.

The challengers identify specific Addendum elements (site suitability overlays, rejected-site list) that must appear in a *final* HEFSP. To the extent that those items are absent in the plan filing, that is a curable noncompliance; if present elsewhere, the plan should point to them clearly.

Regarding site suitability of the inclusionary sites, compliance turns on whether each site meets 5:93 suitability definitions and includes analyses (constraints overlays, rejected sites). The report should expressly connect the plan's site-level omissions to the controlling standards for "realistic opportunity." If the HEFSP does not provide site-specific constraint overlays and concept-level feasibility support for the selected inclusionary or redevelopment sites, it becomes difficult to determine whether the plan can yield the affordable unit counts claimed, or whether zoning adjustments or replacement mechanisms are needed to address likely shortfalls. The HEFSP does not provide site-specific constraints information for the selected sites and, therefore, does not meet the objective assessment standard.

Summary and Recommendations

Based upon my review of the HEFSP, the challenge filed by FSHC, and my participation in the mediation process, without the required site suitability exhibits, rejected-site documentation, and the underlying vacant land inventory and overlays that support the asserted lack-of-land adjustment, the record is insufficient to confirm the RDP and that the HEFSP's mechanisms constitute a realistic opportunity. The RDP is underestimated and the plan does not fully address the anticipated RDP. Therefore, the HEFSP is insufficient, on the current filing, to satisfy the Program's objective assessment standard.

While the current submission cannot be certified by the Program, I believe Elmwood Park would be eligible for a conditional compliance certification to the Mount Laurel Court with the following conditions:

1. Documentation gaps - provide all supporting documentation for the inclusionary redevelopment sites including affordability controls, unit mix, income targeting, site specific zoning, pro forma, construction schedules, and developer agreements.
2. Update as needed - affordable housing and development fee ordinances, affirmative marketing plan, appointment resolutions for the Municipal Housing Liaison and Administrative Agent, a resolution of intent to bond for any shortfall, and an affordability assistance manual.
3. Vacant Land Adjustment - provide a step-by-step presentation that tracks the definitions of approvable, available, developable, and suitable and shows the density assumptions used for RDP calculations including the densities of the inclusionary sites.
4. Unmet need and redevelopment – Recalculate the RDP and unmet need as the basis for a compliance judgment (i.e. - if the RDP is 51 units, the unmet need is reduced to 94 and the 25% requirement is reduced to 24 units for which realistic zoning is required).

I trust that this report will assist you in developing your recommendation in this matter. If you have any questions, please advise.

Appendix B: Amended Vacant Land Adjustment

DRAFT