

**BOROUGH OF LEONIA
 BERGEN COUNTY, NEW JERSEY**

Date: January 22, 2025

RESOLUTION NO. 2025-78

Council	Motion	Second	Yes	No	Abstain	Absent
Zeigler			✓			
Fisher		✓	✓			
Grandelis						✓
Hesterbrink			✓			
Scarangella			✓			
Terrell	✓		✓			
Mayor Ziegler	---	---				

**RESOLUTION OF THE BOROUGH OF LEONIA, COUNTY OF BERGEN,
 STATE OF NEW JERSEY COMMITTING TO ROUND 4 PRESENT AND
 PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the Borough of Leonia, County of Bergen, State of New Jersey, (hereinafter, “Borough” or “Leonia”) has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations; and

WHEREAS, on March 20, 2024, Governor Phil Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter “Amended FHA” or “Act”); and

WHEREAS, the amended FHA imposes overwhelming burdens on municipalities as demonstrated by the fact that the Act calls for the imposition of a statewide affordable housing obligation of 84,690 just for Round 4 on municipalities that only issued 99,956 Certificates of Occupancy in the 2010-2020 period used to establish prospective need obligations for Round 4; and

WHEREAS, despite the substantial problems with the Amended FHA, the Borough shall comply with them to eliminate the risks of noncompliance; and

WHEREAS, the Amended FHA requires the Department of Community Affairs (“DCA”) to provide an estimate of the fair share affordable housing obligations of all municipalities by October 20, 2024 based upon the criteria on the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the fair share affordable housing obligation for all municipalities based upon its interpretation of the standards in the Act; and

WHEREAS, the DCA Report calculates Leonia’s Round 4 (2025-2035) fair share affordable obligations as follows: a Present Need (Rehabilitation) Obligation of 68 and a Prospective Need (New Construction) Obligation for Round 4 of 104; and

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WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support revised calculations of Round 4 fair share affordable housing obligations; and

WHEREAS, the Amended FHA gives municipalities the opportunity to propose a different fair share affordable housing obligation from those reported by the DCA on October 18, 2024 based upon the standards in Sections 6 and 7 of the Act; and

WHEREAS, in addition to the foregoing, nothing in the Amended FHA 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 since the plain language and clear intent of A4 is to establish, for example, unchallenged numbers by default on March 1, 2025; and

WHEREAS, the Amended FHA further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing ("COAH") unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions" (N.J.S.A 52:27D-311 (m)); and

WHEREAS, COAH regulations authorize municipalities to secure an adjustment to their rehabilitation obligation through a windshield survey and also empower municipalities to secure vacant land adjustments, durational adjustments and other adjustments; and

WHEREAS, the Borough has accepted the Present Need ("Rehabilitation") Obligation of 68 as reported by the DCA in its October 18, 2025 Report; and

WHEREAS, the Borough has exercised its right to demonstrate that the data, when correctly applied, supports a lower Round 4 Prospective Need obligation than that reported by the DCA on October 18, 2024; and

WHEREAS, more specifically, Leonia maintains that its Round 4 prospective need number should be 97 not 104 based upon its examination of the data used to calculate the **Land Capacity Allocation Factor**; and

WHEREAS, more specifically, as to this factor, the Borough notes that the DCA belatedly provided the data it used to establish this factor, i.e., on or about November 27, 2024 instead of by October 20, 2024; and

WHEREAS, the Borough further notes that the link to the DCA GIS data that the DCA belatedly made available to municipalities includes the following language:

"The land areas identified in this dataset are based on an the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. **It is important to note that the**

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identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program." (emphasis added)

WHEREAS, the Borough maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, Kendra Lelie, PP, AICP, LLA, its Professional Planner, has prepared a report, attached hereto as Exhibit A, showing the lands that the Borough of Leonia contends should be removed from the inventory of sites used to fashion the **Land Capacity Allocation Factor**; and

WHEREAS, it is therefore important that the Borough of Leonia not commit to an incorrect obligation; and

WHEREAS, correcting the allocation factors results in Leonia's Round 4 Prospective Need Obligation being 97 rather than the 104 obligation established by DCA; and

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

WHEREAS, in addition to setting forth its Round 4 fair share affordable housing obligations for the reasons summarized above, substantial activity has occurred and is ongoing that warrants the reservation of certain rights to avoid any claim that it has waived them; and

WHEREAS, for example, the New Jersey Institute of Local Government Attorneys ("NJILGA") has expressed its support for proposed legislation (hereinafter "NJILGA Legislation") would reduce Leonia's Round 4 Prospective Need to 21 and would give the Borough "90 days from receipt of revised fair share obligations from the [DCA] to provide an amended Housing Element and Fair Share Plan addressing the new number); and

WHEREAS, the Borough of Leonia supports the NJILGA Legislation and would have the right to reduce its Round 4 obligation in the event that the Legislature enacts the NJILGA Legislation (see exhibit B); and

WHEREAS, similarly, a number of municipalities, led by the Borough of Montvale, have filed suit (MER-L-1778-24) (hereinafter "Montvale Litigation") seeking to stay the

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implementation of the Amended FHA for a number of reasons and the outcome of this litigation is uncertain; and

WHEREAS, the process established by the Amended FHA creates an opportunity to object by interested parties opposing the obligations to which a municipality commits, thereby creating the potential for litigation over the obligations of the municipality; and

WHEREAS COAH approved a vacant land adjustment and an RDP for the Borough in Round 1 and 2; and therefore it is clear that the Borough will be entitled to an adjustment in Round 3 which will be set forth in the Housing Element and Fair Share Plan the Borough submit by the June 30, 2025 deadline; and

WHEREAS, the Amended FHA requires municipalities to adopt a binding resolution no later than January 31, 2025 as to its obligations.

WHEREAS, in light of the above, the Borough of Leonia finds that it is in its best interest to declare its obligations in accordance with this binding resolution 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, the Borough of Leonia 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.

NOW, THEREFORE, BE IT RESOLVED on this 20th day of January, 2025, by the Governing Body of the Borough of Leonia, County of Bergen, State of New Jersey, as follows:

1. The preamble of this resolution is incorporated into the operative clauses of this resolution as if set forth in full.

2. For the reasons set for the in this resolution and its attachments, the Borough of Leonia commits to a Round 4 Present Need (“Rehabilitation”) Obligation of 0 and a Round 4 Prospective Need “(New Construction)” obligation of 104, corrected to 97, based upon the report of Kendra Lelie (Exhibit A)subject to all reservations of all rights, which specifically include, without limitation, the following:

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- a. The right to a vacant land adjustment, durational adjustments, and all other applicable adjustments permitted in accordance with COAH regulations;
- b. The right to comply with the NJILGA Legislation if enacted, including the right to adjust its fair share obligations;
- c. The right to adjust its fair share obligation in the event of any future legislation that adjusts the fair share obligations that the DCA reported on October 18, 2024;
- d. The right to comply with any future Legislation that changes its obligations under current law;
- e. The right to adjust its fair share obligations based upon any ruling in the Montvale Litigation or any other litigation; and
- f. The right to adjust its fair share obligations in the event of a third party challenge to the fair share obligations and the Borough of Leonia's response thereto.

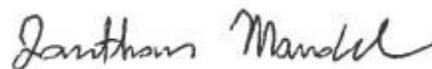
3. The Borough hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in the appropriate venue within 48 hours after adoption this resolution attaching this resolution.

4. The Borough also hereby authorizes its Affordable Housing Counsel to file this resolution with the Program or any other such entity as may be determined to be appropriate.

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

CERTIFICATION

I hereby certify that the above resolution was duly adopted by the Mayor and Council of the Borough of Leonia at a meeting of said Borough Council on January 22, 2025.



Jonathan Mandel, RMC
Borough Clerk



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To: Leonia Borough Council

From: Kendra Lelie, PP, AICP, LLA

Re: Leonia Borough Fourth Round Prospective Need

Date: January 2, 2025

The methodology used by the Department of Community Affairs (DCA) yields a Fourth-Round obligation of 104 units. The DCA released additional data related to the Land Capacity Factor component that is one of three metrics used to determine a municipal Fourth-Round obligation in accordance with the 2024 Fair Housing Act (FHA). The Land Capacity Factor data was released on November 27, 2024, which was a month after the FHA deadline for the issuance of the non-binding obligation.

Kyle + McManus Associates recalculated the Land Capacity Factor (LCF) as indicated below and recommends the Borough adopt a Fourth Round Prospective Need of 97 units. Our office reviewed the DCA parcel data for Leonia which includes land areas identified as developable. The DCA recognized in the release of the LCF information that the identified areas could be over or under inclusive depending on various conditions and a municipality may provide more detailed analysis and mapping to support a different LCF value.

Broadly speaking, there are 6 steps to determine the obligation for each municipality. Each step and commentary regarding the potential for alteration of the data input follows:

1. Identify the housing region. Leonia Borough has been and continues to be, as per the FHA, in Region 1. This region includes Bergen, Hudson, Passaic and Sussex Counties.
2. Determine the regional (affordable housing) need. The FHA sets forth that the regional need for the 10-year round (2025-2035) shall be based on the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. The resulting change in households is divided by 2.5. The affordable housing need in Region 1 is determined to be 27,743 dwelling units.
3. Determine the regional and each municipal equalized nonresidential valuation factor. This step requires that the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be divided by the regional total change in nonresidential valuation. The FHA states the data input shall be that which is published by the Division of Local Government Services. The division annually publishes a summary of municipal tax data, including a *Non-Residential*



Summary of Non-Residential Value. This data addresses the value of all commercial, industrial, and apartment properties in the municipality. However, the value of the apartment properties are not included in the nonresidential valuation factor.

4. Determine the municipal and regional income capacity factor. This step is an average of 1) the municipal share of the regional sum of the differences between the median municipal household income and an income floor of \$100 below the lowest median household income in the region and 2) the municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality. The FHA states the data input shall be American Community Survey (“ACS”) five-year estimates. The ACS publishes municipal median household incomes as part of its five-year estimates.
5. Determine the municipality’s land capacity factor. Estimate municipal developable land using the most recent land use land cover data and weighing such land based on the planning area type in which such land is located. The FHA sets forth one of three weighting factors for a variety of planning areas across the state. Developed areas of the State, such as Planning Areas 1 and 2, Centers, etc. have a weight of 1.0. Rural and environmentally sensitive planning areas have a weight of zero; the remaining areas have a weight of 0.5.

The parcels identified as developable in the DCA’s calculation of the LCF for Leonia is overinclusive.

Accordingly, I believe the developable land should be adjusted from 3.2 acres to 1.6 acres. The following criteria were utilized to exclude parcels as developable:

- Areas or portions of areas <25’ wide (because DCA’s methodology report states that a 25’ by 100’ area was their minimum threshold for developability).
- Areas within the regulatory floodway.
- Open space/parkland properties with deed restrictions and/or on ROSI.
- Properties under construction or recently developed.
- Sites with site plan approvals for development and/or permits issued for development.
- Public utility parcels, NJDOT/NJ Turnpike Authority parcels, DRPA parcels, railroad properties, rights-of-way, stormwater management, etc.
- Properties with easements restricting development within developable area.
- Properties that are within PA4 or PA5.

It is important to note that the LCF analysis is different from the analysis to determine a municipality’s entitlement to a vacant land adjustment. While the analysis to correct the LCF focuses on developable land, the vacant land analysis focuses on developable land suitable for inclusionary development. Therefore, just because a parcel may not be removed for purposes of calculating the LCF has no bearing on whether it should be removed for purposes of calculating a vacant land adjustment.



Below is the developable land analysis for Leonia that supports the revised LCF value:

Block	Lot	Property Location	Property Class	Developable Acreage	PA Weight	Not Developable Criteria
204	5	GRAND AVE	15C	0.101	1	Easement
303	24	BROAD AVE N10 OVERLOOK	15C	0.165	1	ROSI
305	8	JONES RD	1	0.073	1	
503	24	SCHOR AVE	1	0.251	1	
601	73	317 CHRISTIE HTS ST	1	0.468	1	
1501	12	150 GRAND AVE REAR	15D	1.316	1	Developed
1501	23	108 GRAND AVE	1	0.748	1	
1501	26	GRAND AVE OAKDENE AVE	15C	0.065	1	
Developable Acreage				1.605		

- Determine the municipal obligation. The three factors (nonresidential value, income, and land capacity) are averaged and then applied to the regional need to determine how the need shall be allocated to each municipality.

As indicated below in the Methodology Summary table, the reduction in the developable acres for the LCF leads to a Fourth Round prospective need number of 97 not 104.

Leonía Borough Fourth Round Obligation Methodology Summary

	DCA	KMA
Household Change (Region 1)	69,358	69,358
Low & Mod Home Estimate (Region 1)	27,743	27,743
Nonresidential Valuation Factor	0.31%	0.31%
Regional Income Capacity Factor	0.65%	0.65%
Land Capacity Factor	0.16%	0.08%
Average Factor	0.37%	0.35%
Gross Prospective Need	104	97