



Fourth Round Housing Element and Fair Share Plan

BOROUGH OF NORWOOD | BERGEN COUNTY, NEW JERSEY

ADOPTED BY THE PLANNING BOARD:

ENDORSED BY THE COUNCIL

PREPARED BY:

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Introduction

The Fair Housing Act of 1985 (the “FHA”), provided a constitutional obligation for all municipalities in the State of New Jersey to provide affordable housing. Every municipality in the State was required to provide a “realistic opportunity for a fair share of its region’s present and prospective needs for housing low- and moderate-income families”. Through this law, a Housing Element became a mandatory part of municipal master plan. In addition, a Fair Share Plan became mandatory which illustrated the means of achieving the goals of the Housing Element.

Initially, the FHA directed the New Jersey Council on Affordable Housing (COAH) to provide regulations that permitted municipalities to prepare a comprehensive planning and implementation response to the constitutional obligation to provide a realistic opportunity for the provision of affordable housing. At the time, COAH was directed to review the municipal Housing Element and Fair Share Plan and was empowered to grant substantive certification. The Borough of Norwood entered into a settlement agreement with FSHC on February 21, 2019.

The Borough of Norwood (the “Borough”) Planning Board endorsed a Housing Element and Fair Share Plan on August 15, 2019, which consisted of modifications from the February 21, 2019, Settlement Agreement.

In the Spring of 2024, the New Jersey Legislature passed, and Governor Murphy signed Law A4/S50 which amended the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.). The amendments provided direction and deadlines for how a municipality must meet its fourth-round affordable housing obligations. This legislative effort was intended to create a more efficient, open, and transparent process for the fourth round and all subsequent rounds.

To effectuate compliance with the Fourth Round of Affordable Housing, municipalities must complete a series of steps and, if the steps are timely completed, the municipality retains immunity from all exclusionary zoning lawsuits, including immunity from builder’s remedy lawsuits. The steps are as follows:

1. **Establish Present and Prospective Need Obligation Numbers – January 31, 2025.** The legislation required municipalities to adopt a Present- and Prospective Need Obligation numbers by resolution by January 31, 2025.
2. **Period to Challenge Numbers – February 1, 2025 to February 28, 2025.** Interested parties can file a challenge to the municipality’s adopted numbers.
3. **If Challenged, Numbers Reviewed and Settled – March 1, 2025 to April 1, 2025.** The Affordable housing Dispute Resolution program will review the municipality’s proposed obligation numbers and review the challenge presented.
4. **Development of Housing Element and Fair Share Plan – June 30, 2025.** The HEFSP must contain several components which must provide a realistic opportunity for the development of affordable housing units that will satisfy the Town’s ultimate fourth-round affordable housing obligation after consideration of adjustments to the Borough’s prospective need number by factors such as insufficient vacant land on which to construct housing. The statutory components of the HEFSP include, among other things, an inventory of housing, demographic and employment analyses, and considerations of lands for suitable housing development. This document will also contain

areas recommended for rezoning, redevelopment, or other land use strategies to effectuate such housing development. This document will address all of the statutory criteria required by the legislation to achieve conformance with this step.

5. **Challenge of Housing Element and Fair Share Plan – August 31, 2025 to December 31, 2025.** Interested parties can file a challenge to the validity of the plan and the strategies to address the obligation contained therein- by August 31, 2025. Municipalities will have until December 31, 2025 to settle any challenge or provide an explanation as to why some or all the requested changes from the intervening party will not be made. If there is a settlement, it must be reviewed and approved by the Supreme Court where the assigned Mount Laurel Judge for the county issues an order approving the settlement and the equivalent of a judgment of compliance and repose which is a form of permanent immunity from exclusionary zoning lawsuits for the Fourth Round. If there is no settlement the Program will review the plan and issue a recommendation which goes to the Superior Court where the assigned Mount Laurel Judge for the county issues a decision.
6. **Final Compliance Deadline – March 31, 2026.** Deadline for municipalities to amend its HEFSP in the event the Borough needs to make any changes pursuant to a settlement or a decision of the Court in response to a challenge, and the deadline for the Borough to adopt the implementing ordinances to align with the plan.

Municipal Summary

The Borough of Norwood has an area of approximately 2.8 square miles and is located in the northeastern section of Bergen County, New Jersey. The Borough is bound by the Borough of Northvale and Borough of Rockleigh to the north, Borough of Old Tappan to the west, Borough of Harrington Park and the Borough of Closter to the south, and the Borough of Alpine to the east. Bergen County is part of Housing Region 1 as established by COAH consisting of Bergen, Passaic, Hudson, and Sussex Counties.

The Borough is completely built out with predominantly single-family residences accounting for the majority of land use types. Limited vacant parcels, public opens pace, and environmental constraints limit future residential and commercial growth.

Between 2010 and 2020, Norwood's population increased slightly from 5,711 people in 2010 to 5,752 people in 2020.

Content of Housing Element

The Fair Housing Act requires that “the housing element be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing”. As per the MLUL, specifically N.J.S.A. 52:27D-310, a housing element must contain at least the following items:

- a. An inventory of the Borough’s housing stock by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential bases for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor’s office, including but not limited to the property records cards;
- b. Projection of the municipality’s housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issues, approvals of applications for development and probable residential development of lands;
- c. An analysis of the municipality’s demographic characteristics, including but not necessarily limited to household size, income level, and age;
- d. An analysis of the existing and probable future employment characteristics of the municipality;
- e. A determination of the municipality’s present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024.c2(C.52:27D-304.1);
- f. A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing;
- g. An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021.c273(C.52:27D-329.20);
- h. For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to P.L.2024.c2(C.52:27D-304.1), and analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities. This analysis shall include the consideration of opportunities for redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and
- i. An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportations based on guidance and technical assistance from the State Planning Commission.

Housing Element

Inventory of Norwood's Housing Stock

The following housing data was sourced from the 2018-2023 five-year ACS estimates.

Housing Type

According to the 2023 ACS, there are 2,046 housing units in the Borough of Norwood. The Borough's housing stock includes single-family detached, single family attached (i.e. townhomes), multi-family dwellings. Single-family detached dwellings comprise the majority of the Borough's housing stock with a total of 1,339 or 65.4%. Single-family-attached homes comprise 361 or 17.6% of Norwood's housing stock. As the chart on the right indicates there are 34, two-unit dwellings and 208, 5 or more-unit buildings.

| Housing Type by Units in Structure | | |
|------------------------------------|-----------------|-------------|
| Unit Type | Number of Units | Percent |
| 1-unit, detached | 1,339 | 65.4% |
| 1-unit, attached | 361 | 17.6% |
| 2 units | 34 | 1.7% |
| 3 or 4 units | 106 | 5.2% |
| 5 to 9 units | 9 | 0.4% |
| 10 to 19 units | 0 | 0.0% |
| 20 or more units | 199 | 9.7% |
| Mobile home | 0 | 0.0% |
| Other | 0 | 0.0% |
| Total | 2,048 | 100% |

Source: 2023 ACS Table DP04

Occupancy Status

According to the 2023 ACS estimates, 80.2% of the Borough's occupied housing stock is owner occupied while 19.8% is renter occupied. The Borough's housing vacancy rate is estimated to be 2.1, while the rental vacancy rate is estimated to be 0.0 in 2023.

The average household size in Norwood is 2.77 persons, while the average family size is 3.29 persons according to the 2023 ACS (2023 ACS tables S1101). See the table below for additional details.

| Occupancy Status | | |
|---------------------------------------|--------------|--------------|
| | Households | Percent |
| Occupied Total | 1,981 | 96.7% |
| Owner Occupied | 1,589 | 80.2% |
| Renter Occupied | 392 | 19.8% |
| Vacant Total | 67 | 3.3% |
| For rent | 0 | 0.0% |
| Rented, not occupied | 0 | 0.0% |
| For Sale only | 34 | 50.7% |
| Sold, no occupied | 33 | 49.3% |
| Seasonal, recreational, or occasional | 0 | 0.0% |
| For migrant workers | 0 | 0.0% |
| Other | 0 | 0.0% |
| Total | 2,048 | 100% |

Source: 2023 ACS tables DP04 & B25004

Value and Rent of Housing Stock

The ACS provides value estimates for owner-occupied housing units. Norwood's estimated 964 owner-occupied housing units, the majority of homes (60.7%) are valued at between \$500,000 to \$999,999 while there are 232 homes valued between \$300,000 to \$499,999. No homes are valued between \$150,000 to \$199,999 in the Borough. See the table below for details.

| Value of Owner-Occupied Units | | |
|-------------------------------|-----------------|---------------|
| Value | Number of Units | Percent |
| Less Than \$149,999 | 61 | 3.8% |
| \$150,000 to \$199,999 | 0 | 0.0% |
| \$200,000 to \$299,999 | 76 | 4.8% |
| \$300,000 to \$499,999 | 232 | 14.6% |
| \$500,000 to \$999,999 | 964 | 60.7% |
| \$1,000,000 or more | 256 | 16.1% |
| Total | 1,589 | 100.0% |

Source: 2023 ACS table DP04

Over 48% of rentals in Norwood have rents priced of \$3,000 or more per month. Units with rents of \$2,500 or more comprise only 2.9% of rentals in the Borough. There are no units with rent between \$2,500 to \$2,999 in Norwood. See the table below for more information.

| Cost of Rentals | | |
|--------------------|-----------------|-------------|
| Cost | Number of Units | Percent |
| Less Than \$1,499 | 39 | 10.4% |
| \$1,500 to \$1,999 | 98 | 26.2% |
| \$2,000 to \$2,499 | 56 | 15.0% |
| \$2,500 to \$2,999 | 0 | 0.0% |
| \$3,000 or more | 181 | 48.4% |
| Total | 374 | 100% |

Source: 2023 ACS table DP04

Condition of Housing Stock

The Census does not classify housing units as standard or substandard, but it can provide an estimate of substandard housing units that are occupied by low- and moderate-income households. The Appellate Division upheld COAH's use of three indicators to determine substandard housing in the State. Those three indicators are houses built before 1959 and which are overcrowded with more than one person per room. The second indicator is homes lacking complete plumbing and the third indicator are homes lacking kitchen facilities.

The Census indicators available at the municipal level indicate a sound housing stock, as displayed by the following three (3) data tables. According to the 2023 ACS, 0.9% or 18 homes of occupied units within the Borough lacked kitchen, and 1.4% or 27 homes lacked telephone service. No units lacked complete plumbing facilities.

| Condition of Housing Stock | | |
|--------------------------------------|-----------------|---------|
| Fuel Type | Number of Units | Percent |
| Lacking complete plumbing facilities | 0 | 0.0% |
| Lacking complete kitchen facilities | 18 | 0.9% |
| No telephone service available | 27 | 1.4% |
| Total | 1,981 | 2.3% |

Source: 2023 ACS table DP04

Housing with 1.01 or more person per room is an index of overcrowding. In 2023, the ACS found that there were only 24 occupied housing units within the Borough that were "overcrowded". It should be noted that 98.8% of the housing units contained less than 1.00 persons per room.

| Occupants Per Room | | |
|--------------------|-----------------|---------|
| Occupants | Number of Units | Percent |
| 1.00 or less | 1,957 | 98.8% |
| 1.01 to 1.50 | 12 | 0.6% |
| 1.51 or more | 12 | 0.6% |
| Total | 1,981 | 100% |

Source: 2023 ACS table DP04

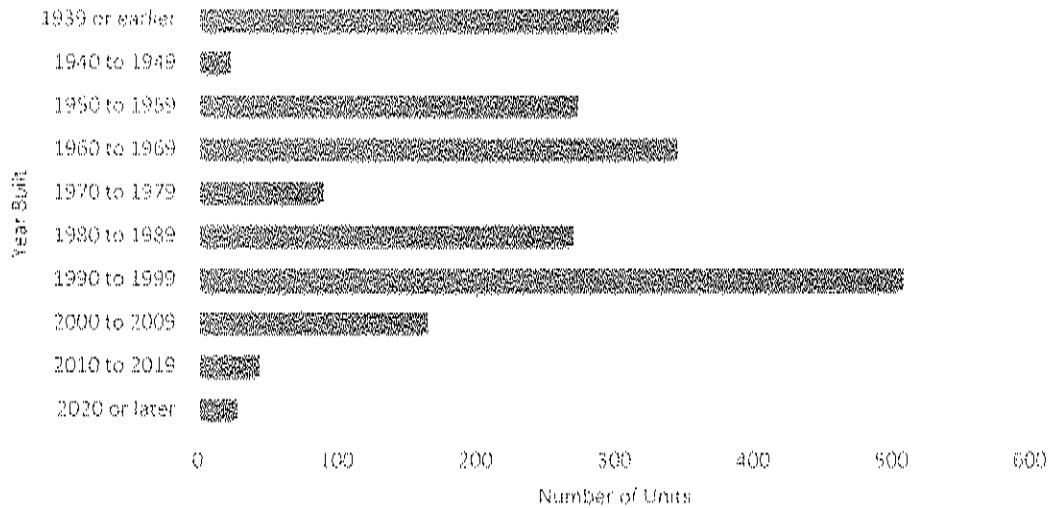
Housing units built in 1975 or earlier are flagged instead of units built in 1959 or earlier. Research has determined that units built 50 or more years ago are much more likely to be in substandard condition. Included in the rehabilitation calculation are overcrowded units and dilapidated housing. Overcrowded units are defined by the U.S. Department of Housing and Urban Development as those with more than one person living per room.

The table and bar graph on the following page provide the 2023 ACS data on the age of housing stock. Approximately 45.9% of Norwood's housing stock was built before 1970. Units built before 1975 are a factor in the determination of each municipality's rehabilitation share. In Norwood, 943 units were constructed prior to 1970. The Borough's Rehabilitation obligation is 15 units, reflecting the relatively good condition of these older homes. The largest number of housing units constructed in the Borough were built in the 1990s, with 508 units or 24.8% housing units in the Borough.

| Age of Housing Stock | | |
|-----------------------|-----------------|---------|
| Year Built | Number of Units | Percent |
| Built 2020 or later | 28 | 1.4% |
| Built 2010 to 2019 | 44 | 2.1% |
| Built 2000 to 2009 | 165 | 8.1% |
| Built 1990 to 1999 | 508 | 24.8% |
| Built 1980 to 1989 | 270 | 13.2% |
| Built 1970 to 1979 | 90 | 4.4% |
| Built 1960 to 1969 | 345 | 16.8% |
| Built 1950 to 1959 | 273 | 13.3% |
| Built 1940 to 1949 | 23 | 1.1% |
| Built 1939 or earlier | 302 | 14.7% |
| Total | 2,043 | 100% |

Source: 2023 ACS Table DP04

Age of Housing Stock



Projection of Housing Stock

As per the MLUL specifically N.J.S.A 52:27D-310, a housing element must contain a projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing for the next ten years, taking into account, but not necessarily limited to construction permits issued, approvals of applications for development, and probable residential development of lands.

The Department of Community Affairs' Division of Codes and Standards website provides data on Certificates of Occupancy and demolition permits for both residential and non-residential development. Within the Division of Codes and Standards website is the New Jersey Construction Reporter, which contains building permit, certificate of occupancy (hereinafter "CO"), and demolition data that is submitted by municipal construction officials within the State each month. The New Jersey Construction Reporter has information dating back to 2000, which can be used to show the Borough's historic development trends.

As shown in the table below, 96 new homes/units were built and issues COs between 2013 and 2023 while 22 were demolished in the Borough of Norwood. As shown in the table below, the greatest numbers of CO's issued and demolitions occurred between 2019 and 2020.

| Historic Trends of Residential COs and Demolition Permits | | | | | | | | | | | | |
|---|------|------|------|------|------|------|------|------|------|------|------|-------|
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
| COs Issued | 3 | 5 | 6 | 10 | 7 | 4 | 42 | 5 | 10 | 2 | 2 | 96 |
| Demolitions | 2 | 2 | 2 | 0 | 0 | 2 | 6 | 1 | 5 | 2 | 0 | 22 |
| Total | 5 | 7 | 8 | 10 | 7 | 6 | 48 | 6 | 15 | 4 | 2 | 118 |

Source: New Jersey Construction Reporter from the NJ DCA

Looking at historic development patterns shown in the previous table. The Borough anticipates one (1) multi-family townhome development in the next ten years.

Block 93, Lot 12, commonly identified as 400 Livingston Street received approval from the Borough of Norwood Planning Board on January 29, 2025. The Applicant was approved to construct a three-story, multi-family building. The proposed building consisted of a total of 36 units inclusive of six (6) affordable units. Of the six (6) affordable units, one (1) will be one bedroom, three (3) will be two bedroom, and two (2) will be three bedroom. A minimum of thirteen (13%) percent of the units will be very low income and no more than fifty (50%) percent of the units may be moderate income.

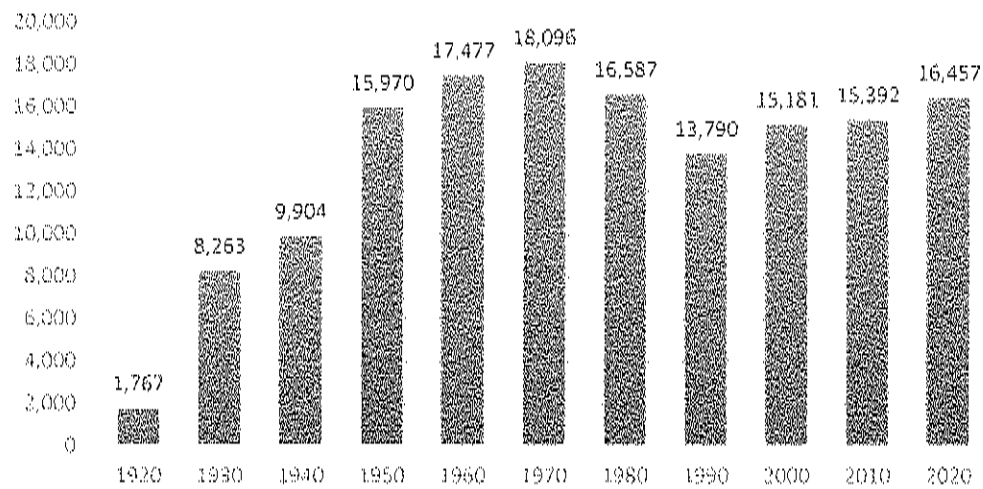
Norwood's Population Demographics

Norwood's population experienced a growth from 1920 to 1970 until a slight decline in 2010. From 2010 until present there has been a slight decline in population. The 2020 US Census Bureau reports the Borough's population to be 5,641 people. Please see the table below for additional information. It shall be noted that the five-year American Community Survey (hereinafter "ACS") data from the US Census Bureau provided estimates of population, housing and employment estimates between the major Census reports each decade. In an effort to display the most up to date information, the data used in this report is source from the 2018-2022 five-year ACS estimates.

| Population Growth | | |
|-------------------|------------|----------------|
| Year | Population | Percent Change |
| 1920 | 820 | 45.4% |
| 1930 | 1,358 | 65.6% |
| 1940 | 1,512 | 11.3% |
| 1950 | 1,792 | 18.5% |
| 1960 | 2,852 | 59.2% |
| 1970 | 4,398 | 54.2% |
| 1980 | 4,413 | 0.3% |
| 1990 | 4,858 | 10.1% |
| 2000 | 5,751 | 18.4% |
| 2010 | 5,711 | -0.7% |
| 2020 | 5,641 | -1.2% |

Source: US Census Bureau, 2000, 2010, 2020

Population Growth 1920-2020



Age Distribution of Population

The 2023 ACS estimates that 1,126 or 19.9% of the population is 65 years or older while the percentage of children aged 19 or younger comprised 1,375 or 24.3% of the Borough's population. Residents aged 45 to 54 years old comprised the largest age cohort with approximately 16.6% of residents fall in this category. The ACS indicates that the Borough's median age was 47.5 years old. See the table below for additional details.

| Population By Age Cohort | | |
|--------------------------|--------------|-------------|
| Age | Total | Percent |
| Under 5 years | 207 | 3.7% |
| 5 to 9 years | 271 | 4.8% |
| 10 to 14 years | 493 | 8.7% |
| 15 to 19 years | 404 | 7.1% |
| 20 to 24 years | 318 | 5.6% |
| 25 to 34 years | 504 | 8.9% |
| 35 to 44 years | 518 | 9.1% |
| 45 to 54 years | 950 | 16.8% |
| 55 to 59 years | 506 | 8.9% |
| 60 to 64 years | 371 | 6.5% |
| 65 to 74 years | 409 | 7.2% |
| 75 to 84 years | 504 | 8.9% |
| 85 years and over | 213 | 3.8% |
| Total | 5,668 | 100% |

Source: 2023 ACS Table DP05

Household Size and Type

According to the 2023 ACS estimates, Norwood contains 1,981 households. The Borough had a total of 1,523 or 76.9%, family households. Married-couple families with children under 18 comprised 47.1% or 656 of households within the Borough, whereas 23.1% or 458 were non-family households in 2023. Non-family households include persons living alone or a householder who is not related to any of the other persons sharing their home.

| Household Type and Size | | |
|-------------------------------|--------------|--------------|
| Type | Number | Percent |
| Family Households | 1,523 | 76.9% |
| Married couple family | 1,394 | 91.5% |
| with children under 18 | 656 | 47.1% |
| Male Householder, no spouse | 0 | 0.0% |
| Female Householder, no spouse | 48 | 3.2% |
| Non-family Households | 458 | 23.1% |
| Total | 1,981 | 100% |

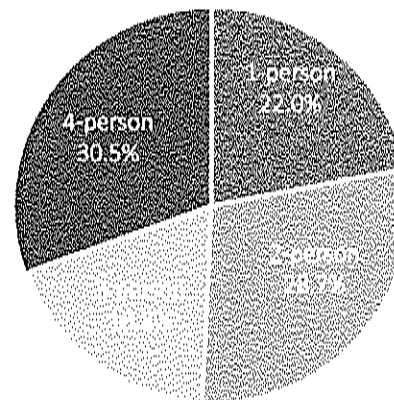
Source: 2023 ACS Table S1101

As illustrated in the table below, the most common household size within Norwood in 2023 was a 4 or more-person household, which totaled 30.5% of all households. Second most common was a 2-person household with 28.7% of all households. Households of 1-person comprised 22.0% of all households within the Borough. Finally, households of 3 persons comprised 18.8% of all households.

| Household Size | | |
|------------------|--------------|-------------|
| Size | Total | Percent |
| 1-person | 436 | 22.0% |
| 2-person | 568 | 28.7% |
| 3-person | 372 | 18.8% |
| 4 or more person | 605 | 30.5% |
| Total | 1,981 | 100% |

Source: 2023 ACS Table S2501

Household Size



Income and Poverty Status

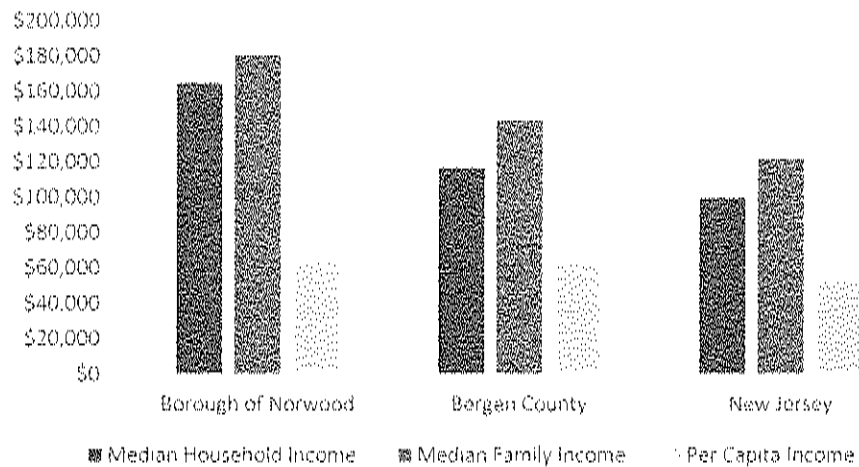
The ACS estimates that the median household income, the median family income, and the per capita income for the Borough are greater than the incomes for Bergen County and New Jersey. Norwood's median household income is \$48,057 greater than the County and \$64,985 greater than the State's. The median family income in the borough is \$36,879 greater than the County's and \$58,747 greater than the State's. The median per capita income for the borough is \$1,375 greater than the State's and \$11,419 greater than the State's.

Individual poverty is at 3.3% in Norwood compared to 6.6% in the County and 9.7% in the State. Poverty within families is at 1.8% in the Borough compared to 5.1% in the County and 7.1% in the State's. See the table and chart on the next page for additional details.

| Income Characteristics | | | |
|--------------------------------------|--------------------|---------------|------------|
| Income type | Borough of Norwood | Bergen County | New Jersey |
| Median Household Income | \$164,766 | \$116,709 | \$99,781 |
| Median Family Income | \$180,691 | \$143,812 | \$121,944 |
| Per Capita Income | \$64,002 | \$62,627 | \$52,583 |
| Poverty Status (Percent of People) | 3.3% | 6.6% | 9.7% |
| Poverty Status (Percent of Families) | 1.8% | 5.1% | 7.1% |

Source: 2023 ACS table S1901, B19301, S1701, S1702

Income Characteristics



According to the 2023 ACS data, a majority of households (35.5%) in Norwood earn \$200,000 or more per year. This compares to 27% of households in the County and 20.4% of households in the State. On the opposite end of the spectrum, 18.3% or 364 of households earn \$50,000 or less per year compared to 20.4% in the County and 25.3% in the State.

| Household Income | | | | | | |
|------------------------|--------------------|-------------|----------------|-------------|------------------|-------------|
| | Borough of Norwood | | Bergen County | | New Jersey | |
| | Total | Percent | Total | Percent | Total | Percent |
| Less Than \$10,000 | 70 | 3.5% | 12,831 | 3.6% | 152,153.70 | 4.3% |
| \$10,000 to \$14,999 | 54 | 2.7% | 8,198 | 2.3% | 99,076.80 | 2.8% |
| \$15,000 to \$24,999 | 93 | 4.7% | 14,257.52 | 4.0% | 180,461.30 | 5.1% |
| \$25,000 to \$34,999 | 71 | 3.6% | 14,257.52 | 4.0% | 183,999.80 | 5.2% |
| \$35,000 to \$49,999 | 76 | 3.8% | 23,168.47 | 6.5% | 279,538.10 | 7.9% |
| \$50,000 to \$74,999 | 140 | 7.1% | 40,633.93 | 11.4% | 467,076.30 | 13.2% |
| \$75,000 to \$99,999 | 122 | 6.2% | 38,851.74 | 10.9% | 410,461 | 11.6% |
| \$100,000 to \$149,999 | 270 | 13.6% | 64,871.72 | 18.2% | 640,460.07 | 18.1% |
| \$150,000 to \$199,999 | 381 | 19.2% | 43,129 | 12.1% | 403,384.10 | 11.4% |
| \$200,000 or more | 704 | 35.5% | 96,238.26 | 27.0% | 721,845.20 | 20.4% |
| Total | 1,981 | 100% | 356,438 | 100% | 3,538,457 | 100% |

Source: 2023 ACS table B19001 & S1901

Norwood's Employment Demographics

This chapter provides a snapshot of employment within Norwood, including the types of industries within the community. The 2023 ACS estimates that Norwood has 2,887 residents in the labor force. The labor force consists of approximately 98.8% employed person and only 1.2% unemployed persons.

The majority of works within the Borough are reported to be private wage and salary workers. Just over 2,377 or 83.3% of those employed fall into this category. Approximately 10.6% of workers are government employees and 6.1% are self-employed. The ACS estimates 0 workers are unpaid family workers.

| Class of Worker | | |
|--|-------------------|--------------|
| Class of Worker | Number of Workers | Percent |
| Private wage and salary workers | 2,377 | 83.3% |
| Government workers | 303 | 10.6% |
| Self-employed in own not incorporated business workers | 173 | 6.1% |
| Unpaid family workers | 0 | 0.0% |
| Total Employed Residents | 2,853 | 98.8% |
| Total Unemployed Residents | 34 | 1.2% |
| Total Residents in the Workforce | 2,887 | 100% |

Source: 2023 ACS Table DP03

Occupational Characteristics

The ACS estimates that 56.6% of the Borough's residents are employed in management, business, science, and arts occupations. The sales and office occupations employ 732 residents or 25.7%, of the working population. Service occupations employs 8.5% or 243 residents. Natural resources, construction, and maintenance occupations employs 118 residents or 4.1% and production,

transportation, and material moving occupations employs 145 residents or 5.1% of the working population.

| Employed Civilian Population By Occupation (Age 16 Years or Older) | | | | |
|---|---------------------------|----------------|----------------------|----------------|
| Occupation | Borough of Norwood | | Bergen County | |
| | Total | Percent | Total | Percent |
| Management, business, science, and arts occupations | 1,615 | 56.6% | 263,942 | 53.3% |
| Service occupations | 243 | 8.5% | 61,574 | 12.4% |
| Sales and office occupations | 732 | 25.7% | 101,185 | 20.4% |
| Natural resources, construction, and maintenance occupations | 118 | 4.1% | 25,740 | 5.2% |
| Production, transportation, and material moving occupations | 145 | 5.1% | 42,480 | 8.6% |
| Total | 8,951 | 100% | 494,921 | 100% |

Source: 2023 ACS Table DP03

Employment Projections

The NJTPA estimates that employment within the Borough will grow by 315 jobs by 2050. In order to achieve this projection, Norwood would need to create 9 new jobs per year during the 35-year period.

| Employment Projections | | | |
|-------------------------------|-------------|---------------|----------------|
| Year | Jobs | Change | Percent |
| 2015 | 1,810 | --- | --- |
| 2050 | 2,125 | 315 | 17.4% |

Source: NJTPA Plan 2050, Appendix E; NJTPA Plan 2040, Appendix A (for 2020 data)

Employment by Professions

According to the 2023 ACS there were 2,853 persons in the employed labor force in the Borough of Norwood and 34 were unemployed. Educational services, and health care and social assistance made up the largest component of the workforce with 612 persons or 21.6%. The second largest cohort is professional, scientific, and management, and administrative and waste management services with 486 persons or 17.0%. The table on the next page illustrates the employed person by profession in more detail.

| Employed Person by Profession | | |
|--|-------------------|-------------|
| Occupation | Number of Persons | Percent |
| Agriculture, forestry, fishing and hunting, and mining | 0 | 0.0% |
| Construction | 164 | 5.7% |
| Manufacturing | 147 | 5.2% |
| Wholesale trade | 151 | 5.3% |
| Retail trade | 424 | 14.9% |
| Transportation and warehousing, and utilities | 46 | 1.6% |
| Information | 178 | 6.2% |
| Finance and insurance, and real estate and rental and leasing | 181 | 6.3% |
| Professional, scientific, and management, and administrative and waste management services | 486 | 17.0% |
| Educational services, and health care and social assistance | 612 | 21.5% |
| Arts, entertainment, and recreation, and accommodation and food services | 121 | 4.2% |
| Other services, except public administration | 220 | 7.7% |
| Public administration | 123 | 4.3% |
| Total | 2,853 | 100% |

Source: 2023 ACS Table DP03

Capacity for Fair Share

This chapter of the HEFSP provides the following information as required by the rules:

- The Borough's capacity to accommodate its housing needs.
- A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for low- and moderate-income housing.
- Lands of developers who have expressed a commitment to provide low- and moderate-income housing.
- The location and capacities of existing and proposed water and sewer lines and facilities relevant to the proposed affordable housing sites.

Land Capacity

Norwood's capacity to construct creditable units toward satisfying its affordable housing obligation is determined by three components – available land, water capacity, and sewer capacity. Additionally, land development is limited by wetland and associated buffers, flood plains, parcel size, access to roads, and municipal regulations.

Utility Capacity

The entire Borough of Norwood has sufficient overall water and sewer capacity to serve any proposed development. However, to determine if infrastructure upgrades are required, the Borough would need to perform a detailed study of the sites and their surrounding utility infrastructure. The study would need to include sanitary sewer and water service reports for each development, the condition, size, location and existing capacities and pressures would need to be determined.

Appropriate Locations for Affordable Housing

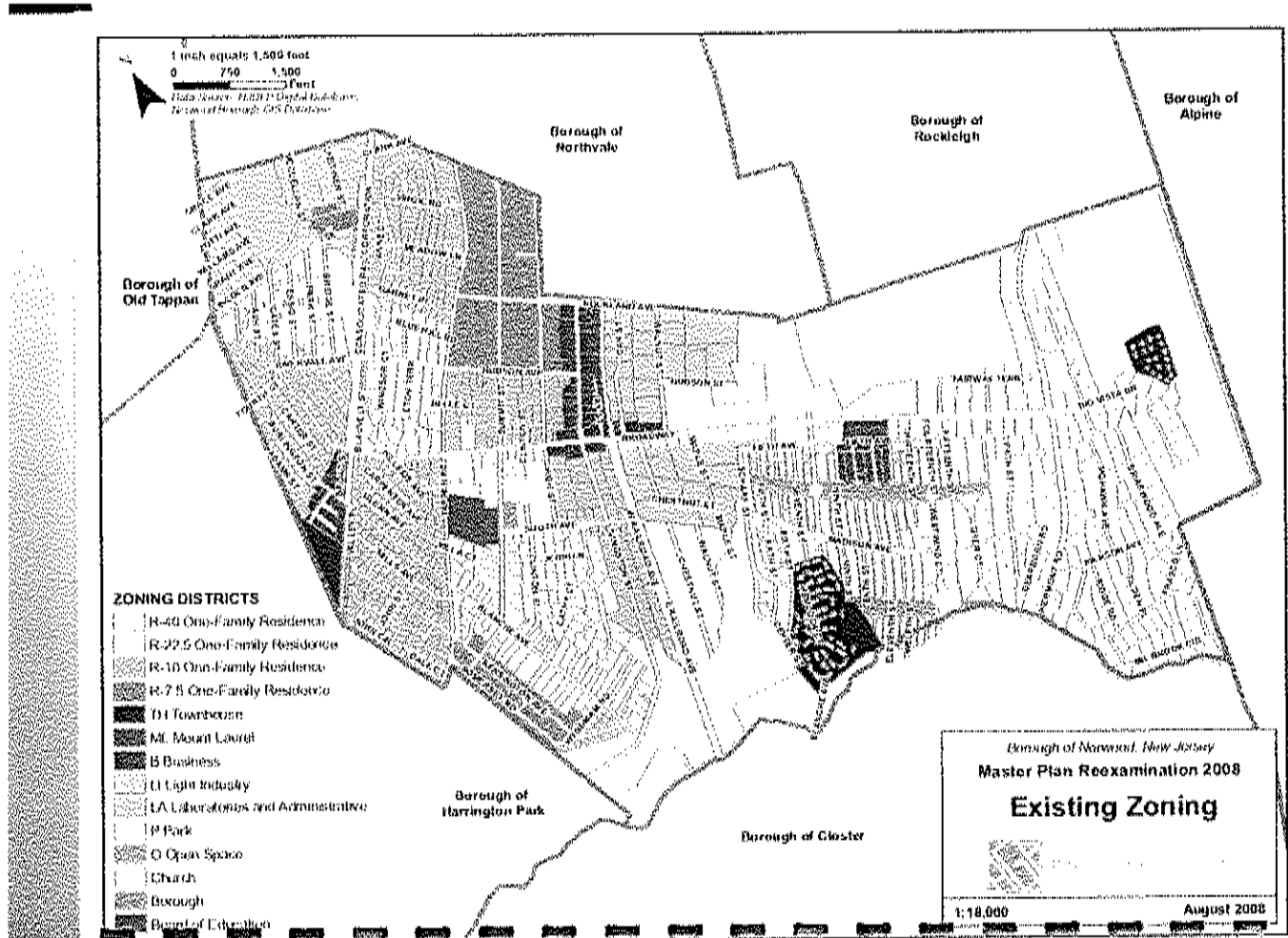
The Borough is a predominantly fully developed community with little opportunity for continued growth, except for limited infill development and redevelopment. Most of the vacant lands that exist within the Borough are not appropriate for development because they are either too small, landlocked, or environmentally constrained. The following properties would be most suited for future development:

- **Block 184, Lot 1, Block 185, Lot 1, and Block 186, Lot 1** – assemblage of these three (3) lots would result in 3.716 of site area. All three (3) lots are owned by the Borough of Norwood and have access to roadways and utilities.
- **Block 183 Lot 1.01** – This lot consists of 2.196 acres and would not require assemblage. It is privately owned but has access to roads and utilities.
- **Block 93, Lot 12** - commonly identified as 400 Livingston Street received approval from the Borough of Norwood Planning Board on January 29, 2025. The Applicant was approved to construct a three-story, multi-family building. The proposed building consisted of a total of 36 units inclusive of six (6) affordable units.

Anticipated Development Patterns

Anticipated land use patterns within the Borough of Norwood will follow the established zoning map (shown on the following page). The Borough has a variety of zoning districts including One-Family

Residential, Townhouse, Mount Laurel, Business, Light Industry, Laboratories and Administration, Park, Open Space, Church, Borough, and Board of Education.



Multigenerational Family Housing Continuity

Pursuant to the Amended FHA, an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission.

November 8, 2021, the Senate and General Assembly of the State of New Jersey adopted C.52:27D-329.20, which established the "Multigenerational Family Housing Continuity Commission" for the purpose of conducting research, obtaining public input, and adopting recommendations on how to most effectively advance the goal of enhancing multigenerational family housing continuity, which can be defined broadly as the degree to which senior citizens are able to reside at the homes of their extended families.

The bill requires each Municipality's Housing Plan Element to provide an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal as described in the recommendations of the commission.

The Borough of Norwood has a history of being committed to promoting multigenerational family continuity and will continue to do so through the Fourth Round. Norwood has diverse housing options in a manner consistent with the regulation. Additionally, the Borough is employing a variety of approaches to accomplish this task through a variety of housing types, existing senior housing options within the Borough, and affordability levels in close proximity to public transportation, shopping centers, and the community center.

Consistency with the State Development and Redevelopment Plan

The Fourth Round Housing Element and Fair Share Plan is consistent with the 2001 State Development and Redevelopment Plan (SDRP) and the proposed SDRP that is currently in cross-acceptance process as the projects will provide a realistic opportunity for the construction of affordable housing as the projects are located in State Planning area designated as PA-1, which is the Metro Planning Area. Pursuant to the SDRP, PA-1 is the preferred location for redevelopment for compact growth. The development of affordable housing in PA-1 is consistent with the overall State Development and Redevelopment Plan goal to direct redevelopment and growth into PA-1 areas as the intentions of the Metropolitan Planning Area are to provide for much of the state's future redevelopment promote growth in compact forms. The Borough's Fourth Round Plan is consistent with the 2001 SDRP.

Fair Share Plan

Content of Fair Share Plan

The Fair Share Plan contains the following information:

- Regional income limits;
- Description of existing credits intended to satisfy the obligation;
- Description of proposed mechanisms that will be used to meet any outstanding obligations; and
- An implementation schedule that sets forth a detailed timeline for units to be approved.

Regional Income Limits

Dwelling units are affordable to low- and moderate-income households if the maximum sales price or rental cost is within their ability to pay such costs, based on a specific formula. COAH historically provided income limits based upon the median gross household income of the affordable housing region in which the household is located. A moderate-income household is one with a gross household income equal to or more than 50% but less than 80% of the median gross regional household income. A low-income household is one with a gross household income equal to 50% or less of the median gross regional household income. Very-low-income households are those with a gross household income equal to 30% or less of the median gross household income. Norwood is located in Region 1, which contains Bergen, Hudson, Passaic, and Sussex County.

Using the 2024 regional income limits, a four-person household moderate-income is capped at \$96,329. Two-person households could make up to \$77,064 and be considered a moderate-income household or make up to \$48,165 and be considered a low-income household. See the table below for greater detail.

| 2024 Regional Income Limits for Region 1 | | | | |
|--|----------------|----------|-----------|-----------|
| Income | Household Size | | | |
| | 1 Person | 2 Person | 3 Person | 4 Person |
| Median | \$84,288 | \$96,329 | \$108,371 | \$120,412 |
| Moderate | \$67,431 | \$77,064 | \$86,697 | \$96,329 |
| Low | \$42,144 | \$48,165 | \$54,185 | \$60,206 |
| Very Low | \$25,286 | \$28,899 | \$32,511 | \$36,124 |

Source: https://ahpnj.org/member_docs/Income_Limits_2024_FINAL.pdf

Present & Prospective Need Obligation

The fair share affordable housing obligation consists of a rehabilitation component (present need) and a new construction component (prospective need). Pursuant to the Amended Fair Housing Act (FHA), the NJ State Department of Community Affairs (DCA) was required to calculate the rehabilitation (present need) and prospective need obligations for municipalities within the State. The Amended FHA entitled municipalities to adjust the obligation if the information used in the DCA calculation was outdated or in error. After reviewing the DCA methodology for the present and prospective need obligations, the Borough determined that the DCA calculation for prospective need (162 units) was incorrect and adopted a recalculated obligation (130 units) by the Mayor and Council (Resolution 2025-50) on January 22, 2025.

One party filed an objection to the Borough's adoption of the recalculated obligation, the New Jersey Builder's Association (NJBA). In accordance with the Amended FHA, the Affordable Housing Dispute Resolution Program ("Program") held mediation sessions between the parties and a settlement was not successful. The case was referred to the assigned Mount Laurel Judge. However, the Borough has not been appointed a Mount Laurel Judge and no official judgements have been placed on the Borough determining the official Fourth Round Prospective Need Obligation.

Therefore, the Borough of Norwood has decided to implement the following Fourth Round Obligations in an effort to meet the State's June 30, 2024 deadline:

- Present/Rehabilitation Obligation of 15-unit.
- Prospective Need Obligation of 162 units.

Third Round Compliance Status

Pursuant to the Amended FHA, the Fourth Round Fair Share Plan is required to provide an assessment of the degree to which the Third-Round fair share obligation has been met as established by a prior court approval. The municipality is required to determine to what extent the obligation is unfulfilled or whether the municipality has excess credits. If the Third-Round obligation remains unfulfilled the municipality shall address the Third-Round unfulfilled obligation in this Fourth Round Fair Share Plan. Units included as part of the municipality's unfulfilled prior round obligation shall not count towards the cap on units in the municipality's Fourth Round prospective need obligation. Additionally, the municipality must demonstrate how any unsuccessful sites from the third round continue to present a realistic opportunity for development.

The Third-Round obligation as a result of the Settlement Agreement between the Borough of Norwood and the Fair Share Housing Center (FSHC), it was determined that the Borough of Norwood had a Third-Round Prospective need of 267 units.

According to the Vacant Land Adjustment prepared by Kauker and Kauker, LLC, the Realistic Development Potential (RDP) based on lack of land was 36 low- and moderate-income units. Pursuant to the Settlement Agreement, 10 units have been added to the calculation of the RDP because of an approval of 521-525 Livingston Avenue in which 48 market-rate units were approved with no affordable housing set-aside. Therefore, the Borough had a Third Round RDP of 46 low- and moderate-income units and an unmet need of 221 units.

The Borough addressed its Prior Round RDP in the following manner:

| Third Round Status | |
|--|-------------------|
| Mechanism | Credits |
| Atria Assisted Living, Tappan Road (constructed, age restricted) | 10 credits |
| 100% affordable housing development on Borough-owned site on McClellan Street, including portions of Block 165, 168, and 169 (18 family rental units and 6 special needs units) (project never constructed) | 24 units |
| Rental bonuses from 100% affordable development | 12 credits |
| Total | 46 credits |

Although the 100% affordable housing development on Borough-owned site on McClellan Street has not been constructed, the Borough is determined to utilize other locations within the Borough that are more suitable. The site located on McClellan Street would require an extensive and costly process of tree removal and earth moving to make the site buildable. The Borough has since resubmitted a new concept plan with the structure closer to McClellan Street and a Concept Plan is included in the Appendix.

Satisfaction of the Fourth Round Housing Obligation

The Borough is addressing the Fourth Round affordable housing obligation through a variety of mechanisms including a rehabilitation program and zoning amendments.

Present Need (Rehabilitation) Obligation: 15 Units

The Borough of Norwood's rehabilitation obligation is 15 units. The Borough will address this obligation through the continuation of a Borough run rehabilitation program and participating in the Bergen County Rehabilitation Program.

All rehabilitated units will comply with the definition of a substandard unit in N.J.A.C. 5:93-5.2(b), which states "a unit with health and safety code violations that require the repair or replacement of a major system". Major systems include weatherization, roofing, plumbing, heating electricity, sanitary plumbing, lead paint abatement, structural systems. All units rehabilitated will be occupied by low- and moderate-income households and subject to 10-year affordability controls, which shall be placed on the property in the form of a deed restriction or lien. The following rehabilitation projects have taken place since 2019:

1. Norwood Gardens – Updated roof, gutters, and leaders in both buildings (12/31/2019)
2. Norwood Gardens - Rehabilitation of hallways. (3/19/2020)
3. Norwood Gardens – New doors (3/16/2023)
4. Norwood Gardens – New Windows (11/6/2023)

Norwood Gardens consists of 24 affordable units and the repair or replacement of a major system (as noted above, the rehabilitation work that was completed between 2020-2023 would be characterized as a "major system") would result in fulfilling the 15 unit present need obligation for the Fourth Round and would provide the Borough with a credit of 9 units for future rounds.

Prospective Need (New Construction) Obligation: 162 Units

The Borough of Norwood has performed a vacant land adjustment which resulted in a Realistic Development Potential of seven (7) affordable units. The Borough of Norwood Planning Board recently approved the plans for 400 Livingston, a multi-family residential building inclusive of six (6) affordable units. The six (6) units from this project and the seven (7) units equate to a total RDP of thirteen (13) units. The Borough of Norwood proposes the following compliance mechanisms for the remaining seven (7) units for the Fourth Round 2025-2035.

1. The Borough's existing affordable housing ordinances are attached and will remain in place during the Fourth Round. Additionally, the Borough will make all necessary modifications to the ordinance to comply with any forthcoming Fourth Round requirements as updated regulations and rules are released. This includes increasing the affordable housing set aside for rental units to 20%, previously the set aside was 15%.

2. The Borough will also add additional lots to the Affordable Housing Overlay Zoning District. These lots will include:
 - a. Block 184, Lot 1, Block 185, Lot 1, and Block 186 Lot 1; and
 - b. Block 183, Lot 1.01.

Appendix

- A. Resolution 2025-50 Adopting Borough Prospective and Present Need Obligation
- B. Vacant Land Adjustment
- C. Supporting Maps
- D. Draft Zoning Amendments
- E. Affordable Housing Trust Fund Ordinance
- F. Affirmative Marketing Plan
- G. Draft Spending Plan
- H. Program Settlement Recommendation
- I. Third Round Concept Plan

Resolution 2025-50

BOROUGH OF NORWOOD

RESOLUTION 2025-50

RESOLUTION COMMITTING TO DCA'S FOURTH ROUND AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE NEED NUMBERS AS MODIFIED UNDER PROTEST

WHEREAS, on March 20, 2024, Governor Murphy signed into law an amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*) (hereinafter "Amended FHA"); and

WHEREAS, pursuant to the Amended FHA at N.J.S.A. 52:27D-304.1(f)(1), a municipality is required to adopt a binding resolution containing a "determination of present and prospective fair share obligation" and submit to the jurisdiction of the Affordable Housing Dispute Resolution Program, in order to avoid the loss of immunity from exclusionary zoning litigation (formerly referred to as Builder's Remedy lawsuits) immediately thereafter; and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates that the Borough of Norwood ("Norwood") has a Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 15 units and a Prospective Need or New Construction Obligation of 162 units; and

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

WHEREAS, pursuant to N.J.S.A. 52:27D-304.3, a municipality's average allocation factor is comprised of the equalized nonresidential factor, income capacity factor, and land capacity factor and shall be averaged to yield the municipality's average allocation factor; 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 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 vacant land adjustments as well as durational adjustments; and

WHEREAS, the DCA has released a Geographic Information Systems spatial data representation of the Land Capacity Analysis for P.L. 2024, c.2 containing the Vacant and Developable land information that serves as the basis for calculating the land capacity factor; and

WHEREAS, Norwood has reviewed the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development; and

WHEREAS, based on the foregoing, Norwood relies on the DCA calculations of Norwood's fair share obligations as modified herein to account for Norwood's review of the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration, and accessibility to ascertain whether these identified developable lands may accommodate development, and as further set forth in detail and explained in the attached memo prepared by Norwood's affordable housing planner, and Norwood seeks to commit to provide its fair share of 15 units present need and 130 units prospective need, subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

WHEREAS, Norwood reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, Norwood is a named plaintiff in that certain litigation captioned as Borough of Montvale v. State of New Jersey, Superior Court of New Jersey, Docket No. MER-L-1778-24 ("Litigation"), which among other things asserts constitutional and legal challenges to numerous provisions of the Amended FHA; and

WHEREAS, the actions contained in this Resolution are taken under protest and are intended to comply with the Amended FHA while Norwood continues to dispute its validity, such that Norwood does not waive any legal rights or claims that it possesses relating to the Amended FHA as set forth in the Lawsuit by virtue of the adoption of the instant Resolution and Norwood further reserves the right to alter its position contained in this Resolution based upon any rulings in the Litigation or in any other similar proceedings by a court of competent jurisdiction; and

WHEREAS, Norwood also reserves the right to adjust its position in the event of any rulings in the *Montvale* case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, Norwood reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Prospective Need Obligation should be lower than described herein; and

WHEREAS, in light of the above, Norwood's Mayor and Council finds that it is in the best interest of Norwood to commit to the modified present need and prospective need Fourth Round affordable housing fair share numbers set forth herein, subject to the reservations set forth herein; and

WHEREAS, in accordance with AOC Directive #14-24 dated December 13, 2024, the Governing Body finds that, as a municipality seeking a certification of compliance with the FHA, it is in the best interests of Norwood to direct the filing of an action in the form of a declaratory judgment complaint within 48 hours after adoption of the within resolution of fair share obligations, or by February 3, 2025, whichever is sooner;

NOW, THEREFORE, BE IT RESOLVED on this 22nd day of January, 2025 by the Mayor and Council of the Borough of Norwood, County of Bergen, State of New Jersey as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution;
2. Norwood hereby commits to the DCA's Round 4 Present Need Obligation of 15 units, with no modification of the DCA's Round 4 Present Need Obligation of 15 units, and to a Round 4 Prospective Need Obligation of 130 units, being a modification of the DCA's Round 4 Prospective Need Obligation of 162 units, as explained above and in the attached memo from Norwood's affordable housing planner (Exhibit "1"), and subject to all reservations of rights set forth above;
3. Norwood hereby directs its attorney to file a declaratory judgment complaint in Bergen County within 48 hours after adoption of the within resolution and attaching this resolution as an exhibit with the attached memo;
4. Norwood authorizes its Borough Clerk, Attorney, or both to submit and/or file the within resolution with attached memo with the Program or any other such entity as may be determined to be appropriate; and
5. This resolution shall take effect immediately, according to law

| Council Member | Motion | Second | Ayes | Nays | Abstain | Absent |
|----------------|--------|--------|------|------|---------|--------|
| Ascolese | | X | X | | | |
| Brizzolara | | | X | | | |
| Condoleo | | | X | | | |
| Foschino | X | | X | | | |
| Hannemann | | | | | | X |
| Kim | | | X | | | |

Vacant Land Adjustment

N.J.A.C. 5:93-4.2 provides a mechanism for a municipality to adjust its affordable housing obligations based on a lack of vacant, available, suitable, developable, and approvable land. To demonstrate a lack of capacity to address the Borough's municipal housing obligation, all vacant parcels in the municipality were analyzed to determine the development potential of each property, and the sum of potential units is compared to the prospective need obligation in the foregoing analysis. If there is insufficient vacant land within the municipality to meet the obligation for new affordable units, the total prospective need obligation is adjusted accordingly.

Methodology

An analysis of existing land uses and zoning the Borough was conducted to determine the Realistic Development Potential (RDP), and an estimate of potential inclusionary affordable units was derived from the RDP assuming a 20% affordable set-aside. Using data from the State of New Jersey Tax Assessment Records and New Jersey environmental GIS records of all properties within the Borough were examined to determine if they were vacant and developable. Properties reserved for public use, open space, listed on the NJ ROSI, and those that were occupied by water bodies, steep slopes, wetlands, critical habitats, and within a riparian buffer were removed as candidates for development. The remaining properties were then tested to determine their ability to accommodate a minimum of five (5) units. Public and non-profit owned properties of sufficient size to accommodate potential inclusionary development were also included as vacant and potentially developable in the analysis. All properties with sufficient buildable area to accommodate five (5) or more units were included in the determination of the RDP.

Underlying Assumptions for Realistic Development Potential

Inclusionary Development

N.J.A.C. 5:93-4.2(f) specifies that the RDP is based on an inclusionary zoning framework and available land is not assumed to be developed as 100% affordable housing. The minimum presumptive set aside for affordable housing is 20%, or one in five units. As such, suitable development sites for inclusionary development must have the capacity to provide a minimum of five units.

Density and Minimum Project Size

According to the Second Round Rules, it is important to "consider the character of the area surrounding each site" when crafting assumptions underlying the intensity of residential development. As such, the maximum density for each assemblage was determined as follows:

- The permitted density of each parcel pursuant to the Borough's Zoning Ordinance;
- Minimum presumptive density of six units per acre as required by the Second Round Rules where permitted density is below six units per acre;
- Surrounding land uses;
- The need for affordable housing; and
- Density count of approved projects by the Planning or Zoning Board.

Step 1 – Classification of Vacant Land

All properties with a tax class 1 (Vacant) and vacant properties with tax class 15C (Public) have been included in the table within the appendix. The table includes delineation of all properties with environmental constraints including wetlands, contamination, habitat location, FEMA flood area, steep slopes, and open space. In addition to environmental constraints, the table also details the acreage for each parcel.

Step 2 - Site Analysis

The sites were mapped using GIS and overlaid with Critical Habitat, Steep Slopes, Flood Hazard, Wetlands, and Waterbodies, Active Recreational lands, and Parklands and Open Space. Any properties impacted by these environmental constraints have been noted in the table and were not considered for potential development.

The Second Round Rules established by the Council of Affordable Housing in N.J.A.C. 5:93 required development potential to consider principles of sound land use planning in regard to density, and that the minimum presumptive density be 6 du/ac. In conformance with this requirement, the analysis used existing zoning densities to determine the number of units per acre that could be constructed. In cases where permitted density under the zoning ordinance did not meet the minimum presumptive density, the development potential was calculated at 6 units per acre. The acreage of the assemblages created were multiplied by the permitted number of units per acre to determine the property yield. All vacant assemblages whose yield was less than five units are noted in the table in orange.

The vacant land inventory resulted in 319 parcels listed as vacant in the tax data obtained from the Borough and GIS. Of these 319 parcels in the list 297 can be excluded because they of environmental constraints, which make the site unsuitable for development. Additionally, 17 lots were removed due to size (Pursuant to 5:93-4.2(c)2,a municipality shall exclude from the vacant land inventory any vacant contiguous parcels of land in private ownership of a size which would accommodate less than five dwellings.).

Step 3 – Calculate Realistic Development Potential

The third step in the vacant land adjustment is calculating the Realistic Development Potential (RDP). Based on the remaining vacant parcels that have been determined suitable and developable. Pursuant to N.J.A.C. 5:93-4.2(f), each remaining vacant site considered suitable and developable is assigned a presumptive density of at least 6 units per acre and a 20% set aside. There are three (3) parcels that have not been eliminated pursuant to the criteria established in the regulations. These lands are listed in the following Table.

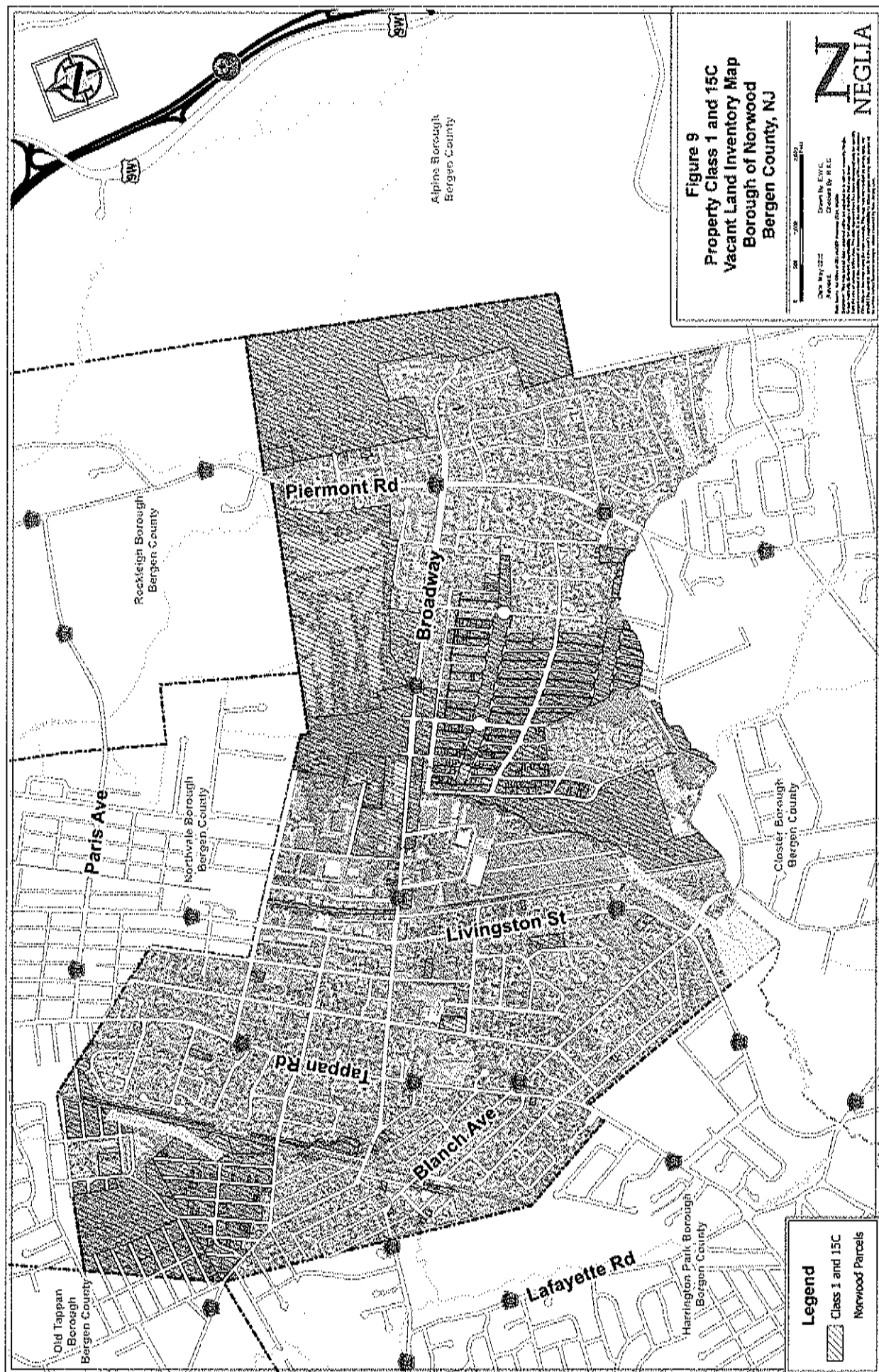
| Block | Lot | Location | Class | Acreage | Presumptive Density | Set Aside | RDP |
|--------------|------|------------------|-------|---------|---------------------|-----------|-------------|
| 145 | 11 | Blanch Ave | 1 | 1.16 | 6 units/acre | 0.2 | 1.39 |
| 183 | 1.01 | McClellan Street | 1 | 2.20 | 6 units/acre | 0.2 | 2.64 |
| 90 | 1 | R.R. ROW | 1 | 2.42 | 6 units/acre | 0.2 | 2.9 |
| Total | | | | | | | 6.93 |

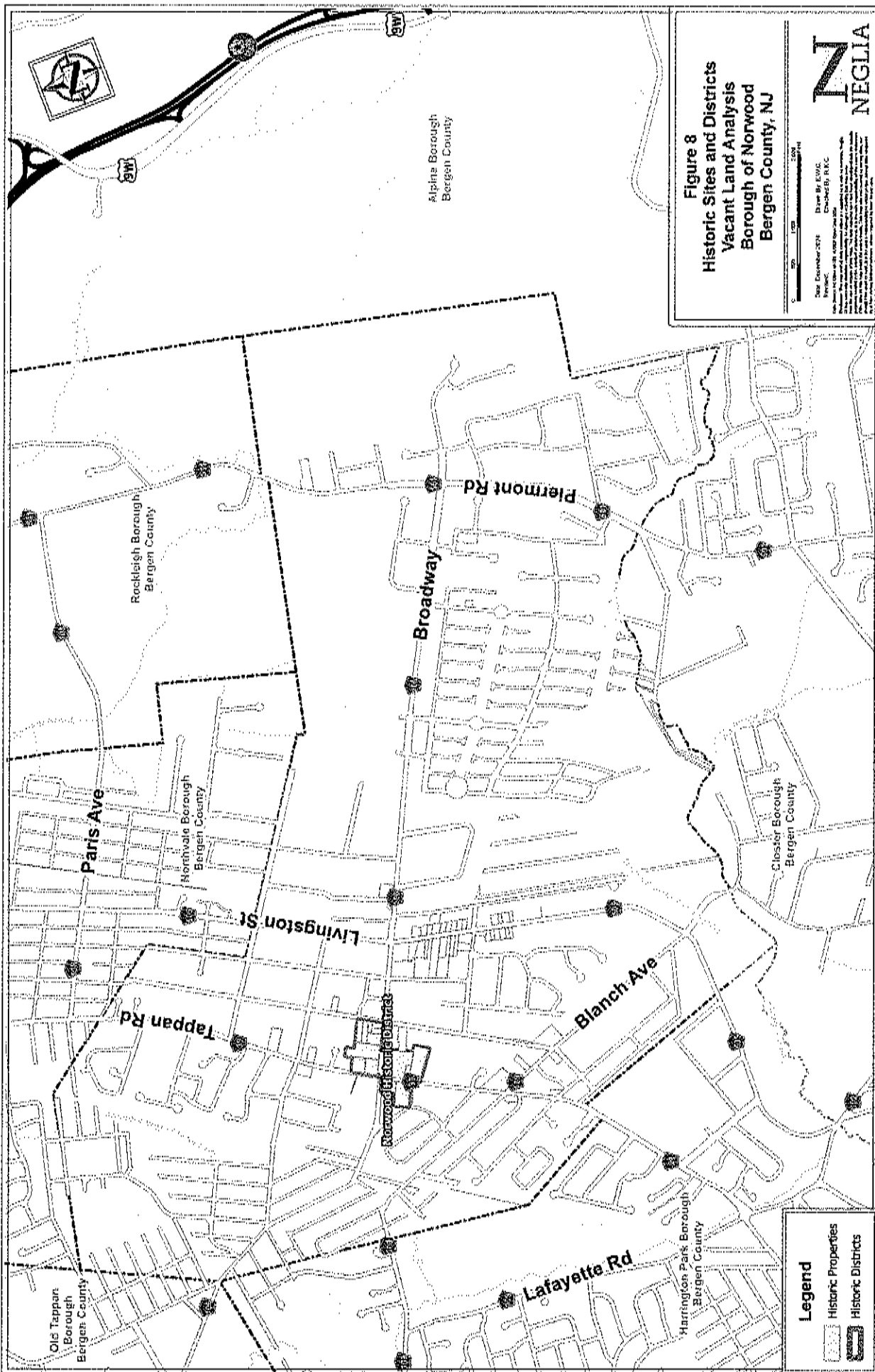
Based upon the information presented on the previous page, it is our opinion that the vacant developable lands can accommodate a total of 7 new build low- and moderate-income housing units. Therefore, the Borough of Norwood has a Fourth Round RDP of 7 low- and moderate-income units and an unmet need of 155 units.

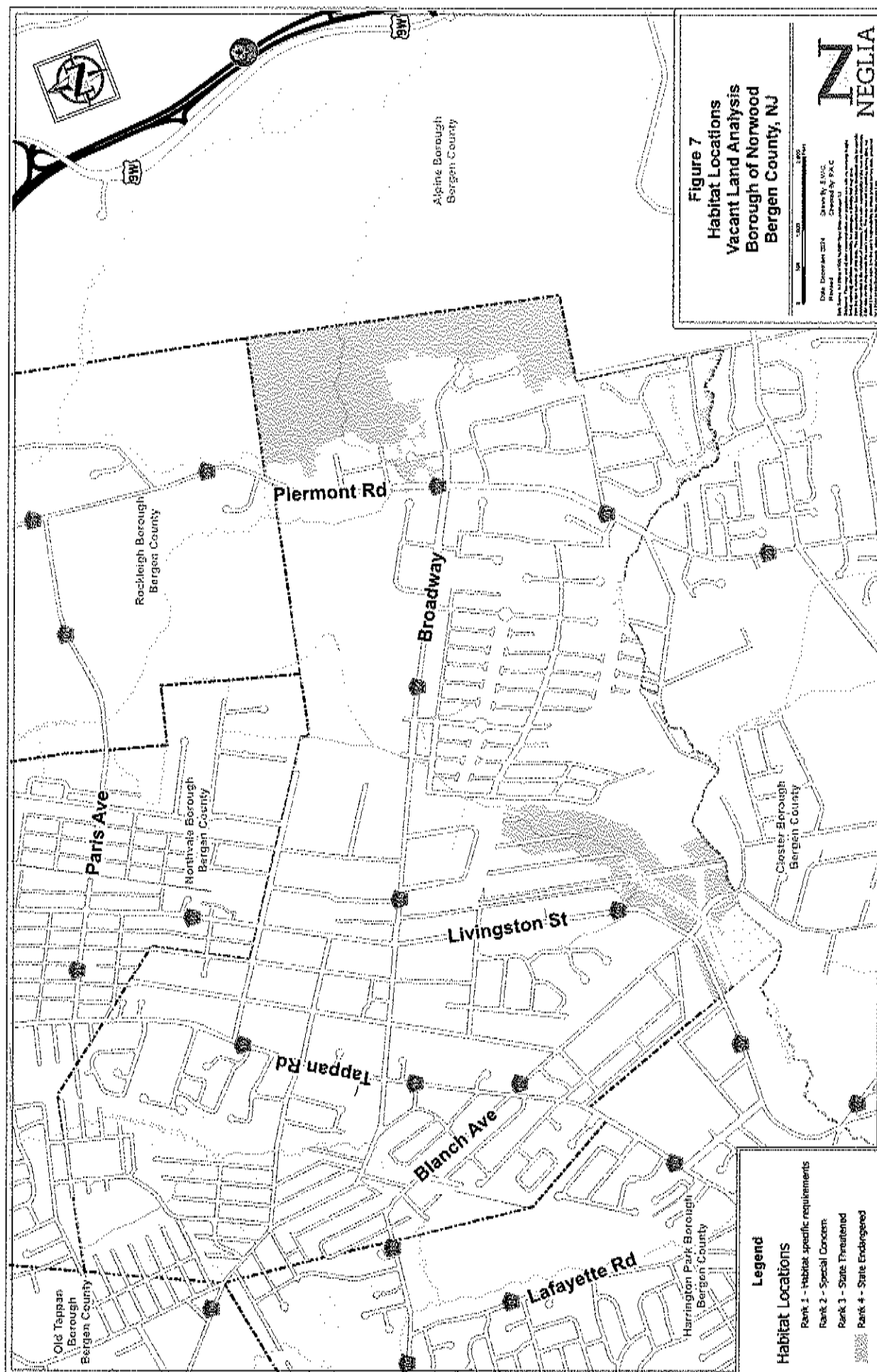
Vacant Parcels with Environmental Constraints

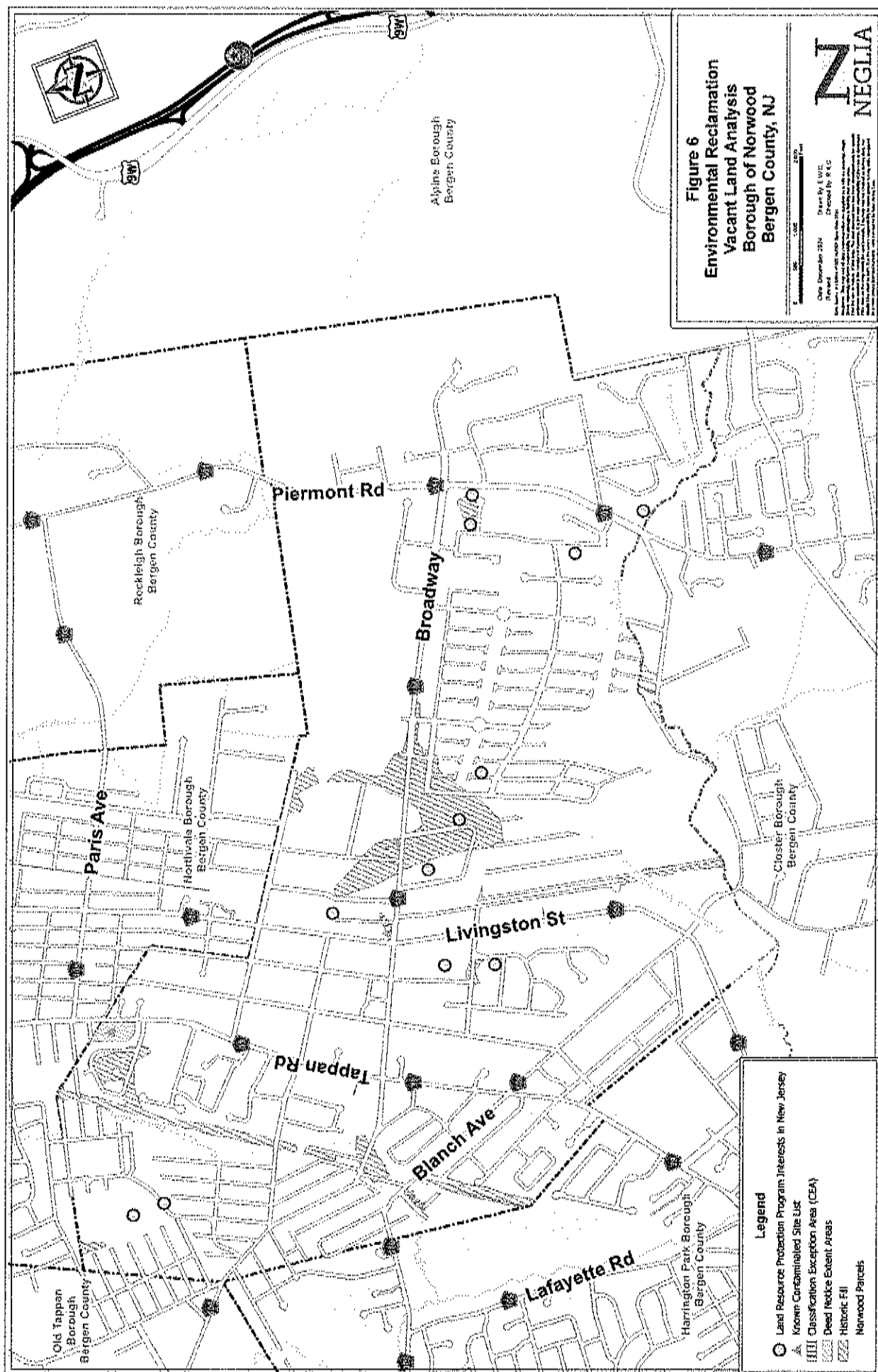
The following maps illustrate the application of the above methodology to all parcels in the Borough to identify potentially developable vacant sites based on size and yield.

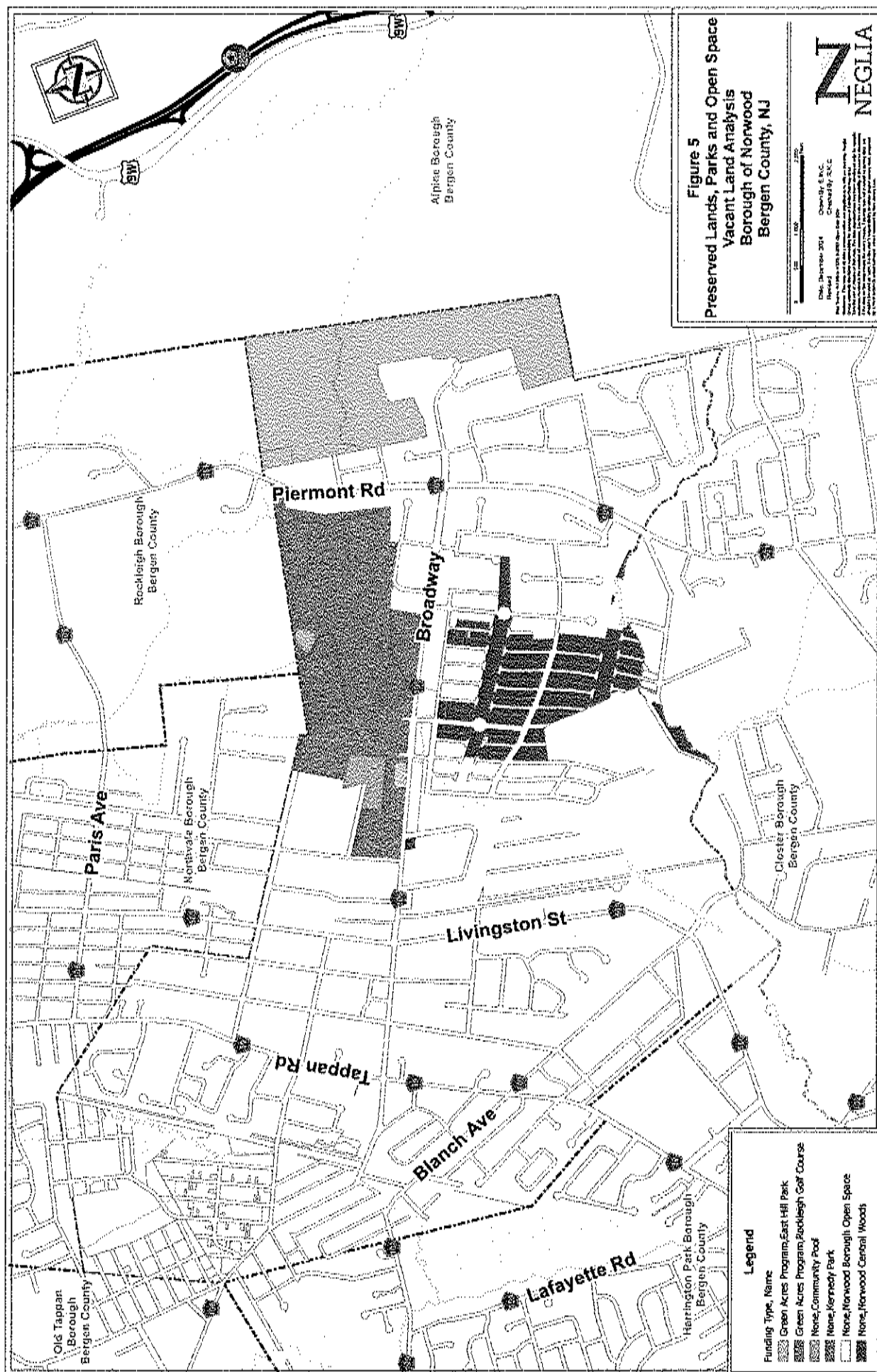
Analysis of the sites (with the ability to produce 5 or more units at 6 du/acre on the Inventory of Vacant Sites revealed that most of the vacant land within the Borough are environmentally constrained.

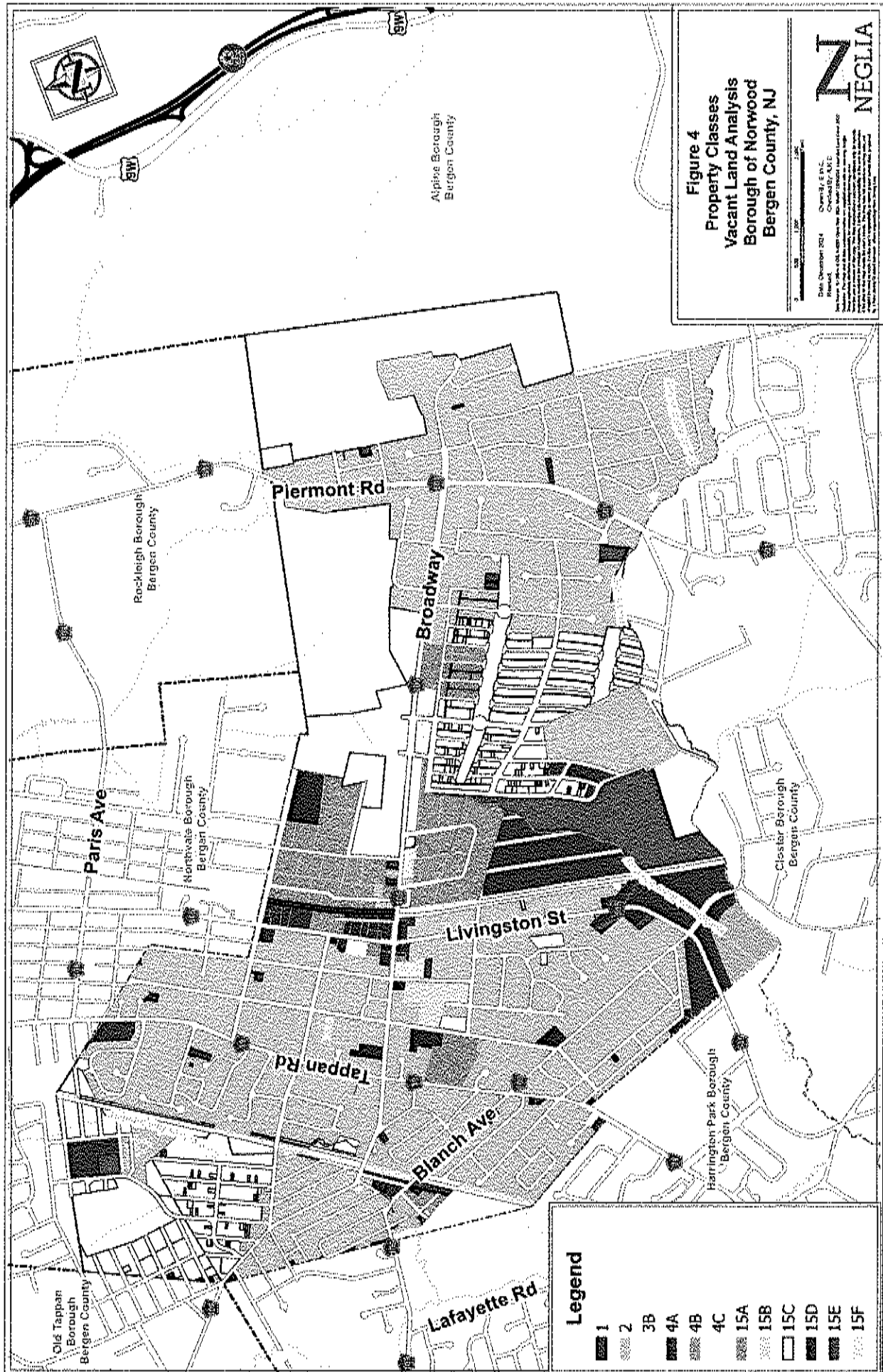


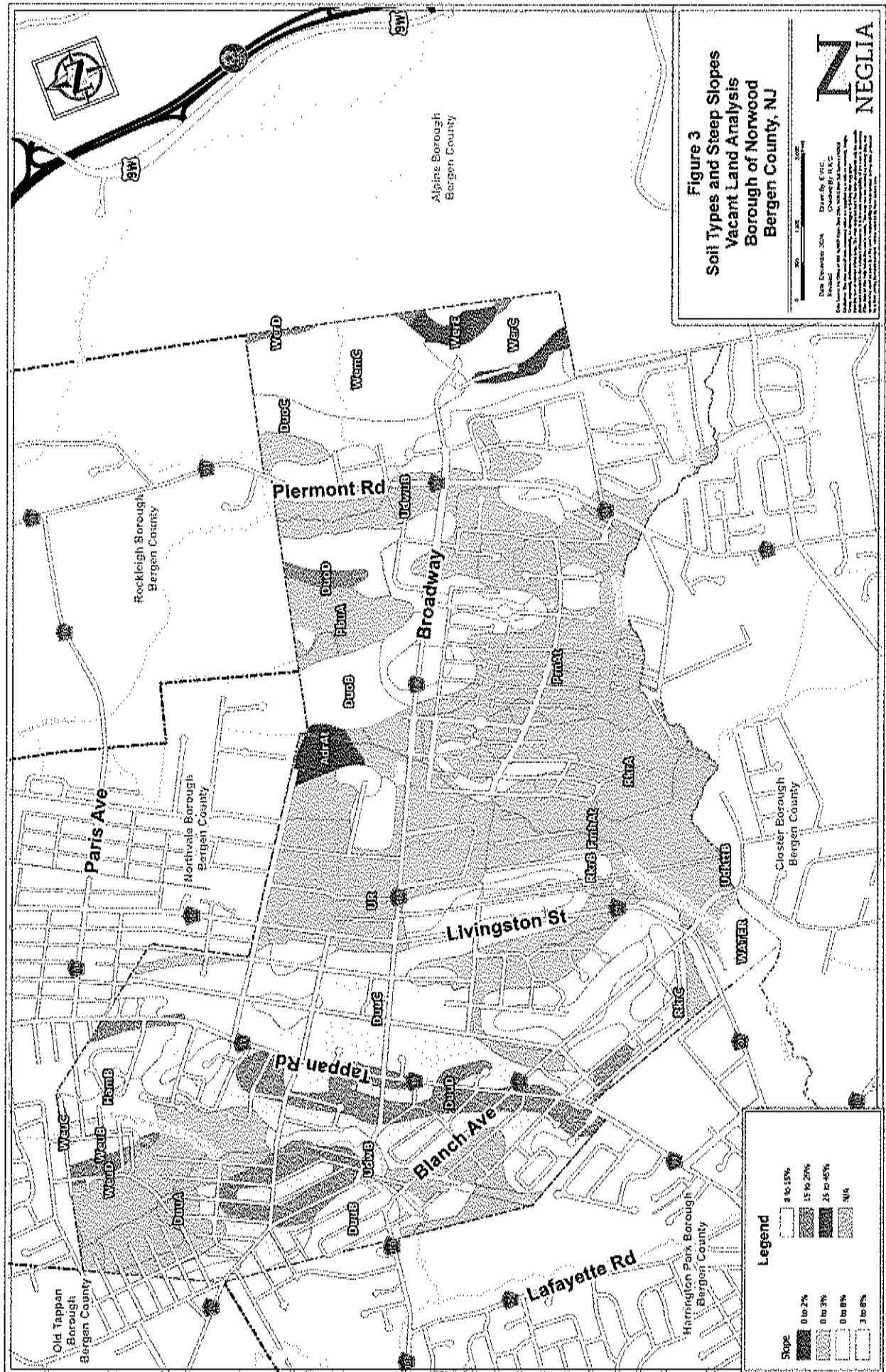


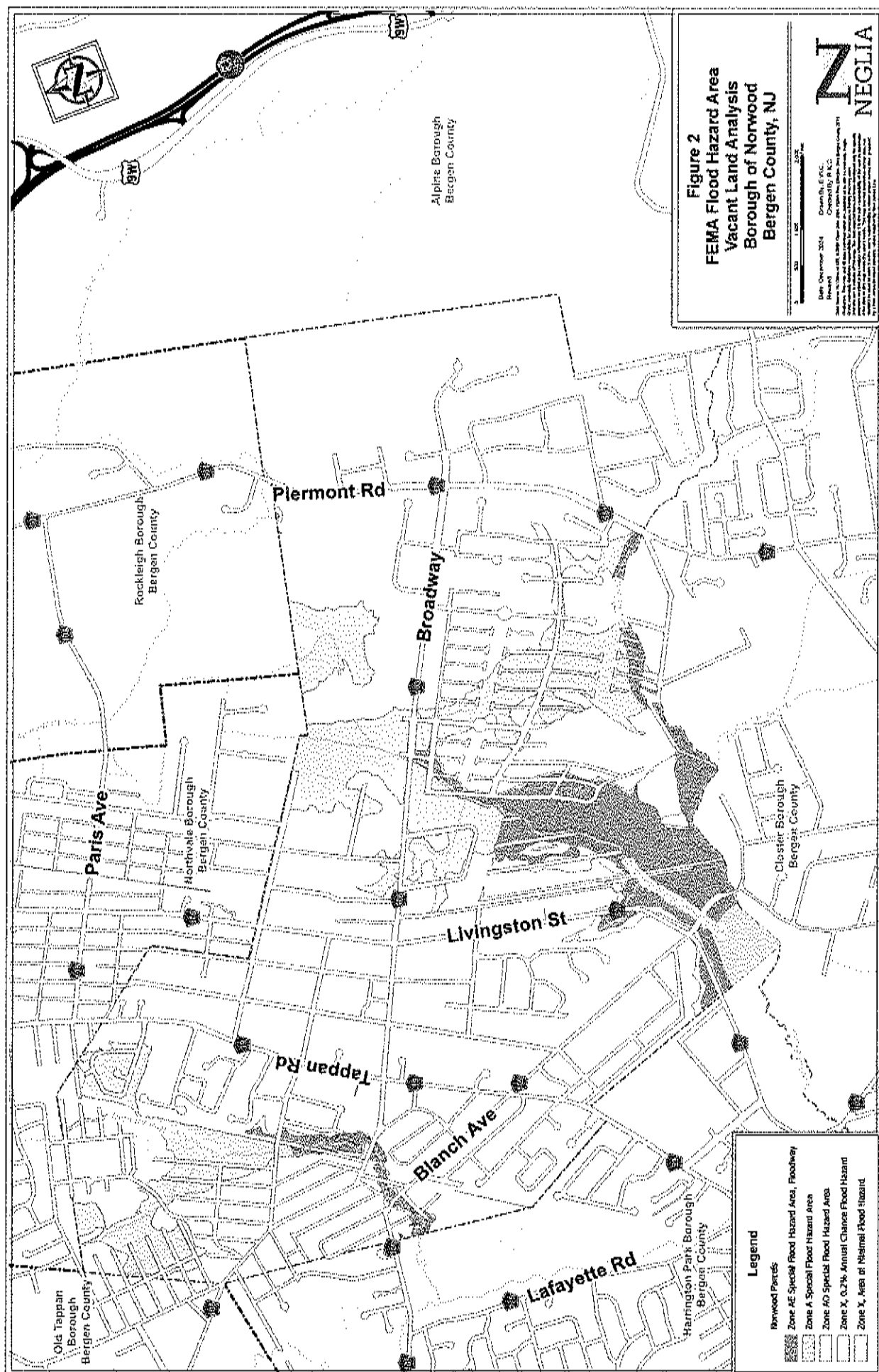


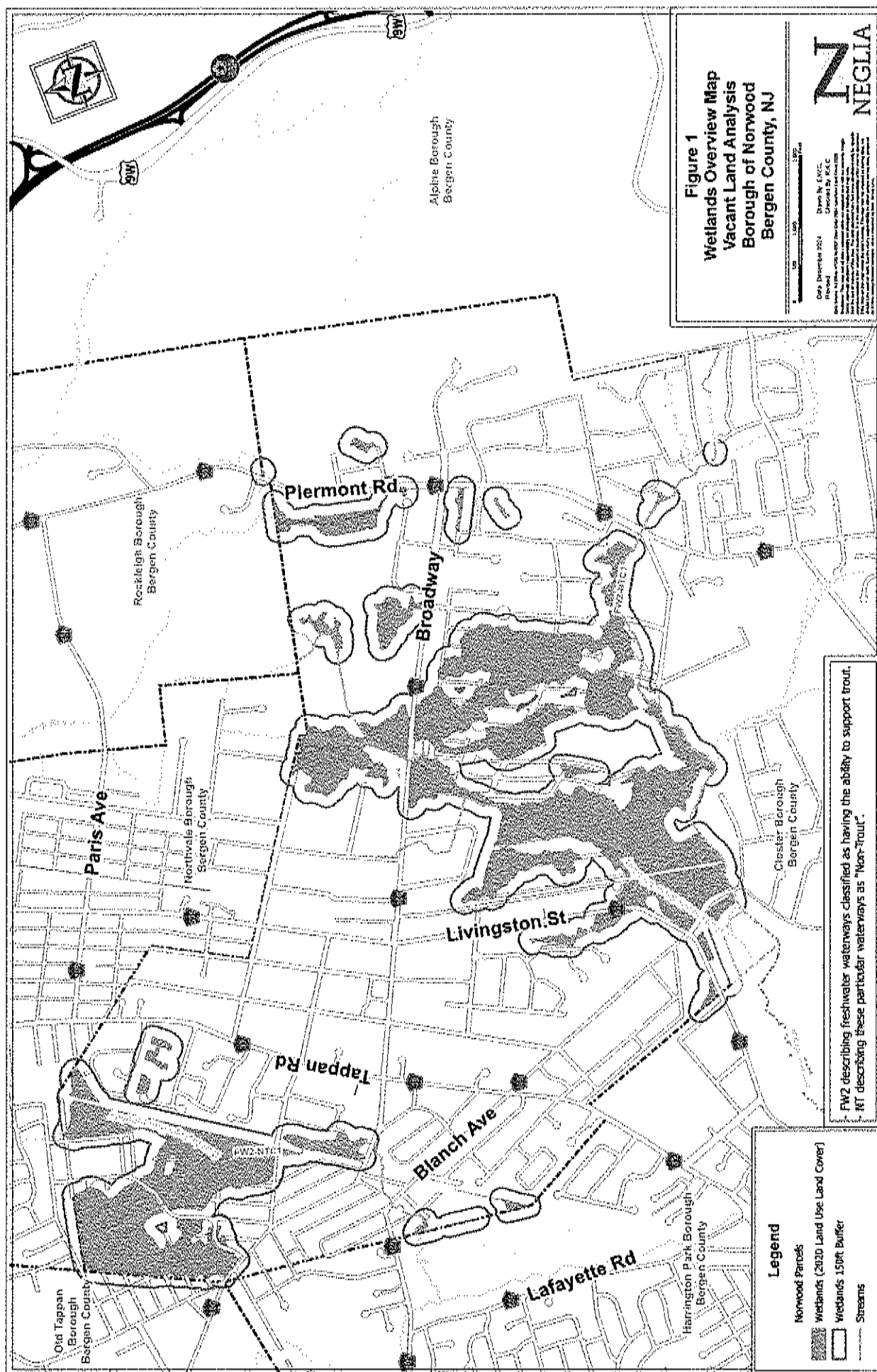












ARTICLE XI

Affordable Housing Requirements

[Added by Ord. No. 93-0-22; amended by Ord. No. 94-0-02]

WHEREAS, the Norwood Borough Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Housing Element and Fair Share Plan will be endorsed by the Borough Council. This Article implements and incorporates the Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Norwood, Bergen County, New Jersey, that the [*Borough's land development regulations set forth in the relevant Chapter and Articles*] of the Code of the Borough of Norwood (the "Code") are hereby amended, modified, and supplemented as follows:

§ 233-61. Purpose and Applicability

- A. The Code of the Borough of Norwood is hereby amended to include provisions addressing Norwood's constitutional obligation to provide for its fair share of very low-, low- and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985. This Article is intended to provide assurances that very low-, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very low-, low- and moderate-income households shall occupy those units. This Article shall apply except where inconsistent with applicable law.
- B. The provisions of this Article shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Norwood pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.
- C. Moreover, this Article shall apply to all developments that contain very low-, low- and moderate-income housing units, including any currently unanticipated future developments that will provide very low-, low- and moderate-income housing units and including any developments funded with low-income housing tax credits.

§ 233-62. Monitoring and Reporting Requirements.

The Borough of Norwood shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Court-approved Housing Element and Fair Share Plan:

- A. Beginning on August 2, 2023, and on every anniversary of that date through July 1, 2025, the Borough agrees to provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Committee on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDCA), Committee on Affordable Housing (COAH), or Local Government Services (NJLGS). The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- B. Beginning on April 9, 2020, and on every anniversary of that date through July 27, 2025, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.
- C. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough posted on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. The posting invited any interested party to submit comments to the municipality, with copies provided to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced. Any interested party could by motion request a hearing before the Court regarding these issues.
- D. By September 2, 2025, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low-income requirements, including its family very low-income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income and family very low-income housing obligations.

§ 233-63. Definitions.

The following terms, when used in this Article, shall have the meanings given in this section:

ACT — Shall mean the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

ADAPTABLE — Shall mean constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT — Shall mean the entity designated by the Borough to administer affordable units in accordance with this Article, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

AFFIRMATIVE MARKETING — Shall mean a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

AFFORDABILITY AVERAGE — Shall mean the average percentage of median income at which new restricted units in an affordable housing development are affordable to very low-, low- and moderate-income households.

AFFORDABLE — Shall mean a sales price or rent level that is within the means of a very low-, low-, or moderate-income household as defined in N.J.A.C. 5:93-7.4, and in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT — Shall mean a development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable housing development.

AFFORDABLE HOUSING PROGRAM(S) — Shall mean any mechanism in a municipal fair share plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT — Shall mean a housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

AGE-RESTRICTED UNIT — Shall mean a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that:

- A. All the residents of the development wherein the unit is situated are 62 years of age or older; or
- B. At least 80% of the units are occupied by one person that is 55 years of age or older; or
- C. The development has been designated by the Secretary of the United States Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

AGENCY — Shall mean the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

ALTERNATIVE LIVING ARRANGEMENT — Shall mean a building in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to, transitional facilities for the homeless; Class A, B, C, D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey

Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

ASSISTED LIVING RESIDENCE — Shall mean a facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

CERTIFIED HOUSEHOLD — Shall mean a household that has been certified by an Administrative Agent as a very low-income household, low-income household or moderate-income household.

COAH OR THE COUNCIL — Shall mean the New Jersey Council on Affordable Housing established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

DCA — Shall mean the State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT — Shall mean a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load-bearing structural systems.

DEVELOPER — Shall mean any person, partnership, association, company, or corporation that is the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT — Shall mean the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

DEVELOPMENT FEE — Shall mean money paid by a developer for the improvement of property as authorized by Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, et seq., and regulated by applicable COAH Rules.

EQUALIZED ASSESSED VALUE — Shall mean the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973. c. 123 (N.J.S.A. 54:1-35a through 54:1-35c).

FAIR SHARE PLAN — Shall mean the plan that describes the mechanisms and the funding sources, if applicable, by which a municipality proposes to address its affordable housing obligation as established in

the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:93.

FHA – Shall mean the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 *et seq.*

GREEN BUILDING STRATEGIES – Shall mean those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

HOUSING PLAN ELEMENT – Shall mean the portion of the Borough's Master Plan required by the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-28b(3) and other legislation.

INCLUSIONARY DEVELOPMENT — Shall mean a development containing both affordable units and market-rate units. This term includes, but is not limited to new construction, the conversion of a nonresidential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

INCOME — Shall include revenue and receipts, actual or fairly imputed, from all sources, including but not limited to wages, interest, dividends, social security, pensions, government benefits, alimony, child support and rents from income property.

INITIAL RENTAL — Shall mean the first transfer of occupancy from a developer to a qualified renter.

INITIAL SALE — Shall mean the first transfer of title of a unit from a developer to a qualified buyer.

LOW-INCOME HOUSEHOLD — Shall mean a household with a total gross annual household income equal to 50% or less of the regional median household income by household size for the applicable housing region.

LOW-INCOME UNIT — Shall mean a restricted unit that is affordable to a low-income household.

MAJOR SYSTEM — Shall mean the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include, but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load-bearing structural systems.

MARKET-RATE UNITS — Shall mean housing not restricted to very low-, low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME — Shall mean the median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

MODERATE-INCOME HOUSEHOLD — Shall mean a household with a total gross annual household income in excess of 50% but less than 80% of the regional median household income

by household size for the applicable housing region.

MODERATE-INCOME UNIT — Shall mean a restricted unit that is affordable to a moderate-income household.

MUNICIPAL HOUSING LIAISON — Shall mean a municipal employee responsible for oversight of the municipal affordable housing program, including overseeing the administration of affordability controls, the Affirmative Marketing Plan, monitoring and reporting, and supervising any contracted Administrative Agent.

NONEXEMPT SALE — Shall mean any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a Class A beneficiary and the transfer of ownership by court order.

PRESENT NEED — Shall mean an estimate of low- and moderate-income households living in substandard housing as calculated through the use of census surrogates.

PRIOR ROUND HOUSING OBLIGATION — Shall mean the 1987 – 1999 fair share based on N.J.A.C. 5:93-1.

RANDOM SELECTION PROCESS — Shall mean a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

REGIONAL ASSET LIMIT — Shall mean the maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

REHABILITATION — Shall mean the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

RENT — Shall mean the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

RESTRICTED UNIT — Shall mean a dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHOP or MONI.

SUPERIOR COURT — Shall mean the Superior Court of New Jersey.

THIRD ROUND HOUSING OBLIGATION — Shall mean the 1999 – 2025 housing obligation as determined by the Superior Court.

BOROUGH — Shall mean the Borough of Norwood.

BOROUGH COUNCIL — Shall mean the Borough Council of the Borough of Norwood.

UHAC — Shall mean the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, *et seq.*

VERY LOW-INCOME HOUSEHOLD — Shall mean a household with a total gross annual household income equal to 30% or less of the regional median household income by household size for the applicable housing region.

VERY LOW-INCOME UNIT — Shall mean a restricted unit that is affordable to a very low- income household.

VETERAN'S PREFERENCE — Shall mean a preference for very-low-, low- and moderate-income housing that is permitted by law for people that have served in the military, pursuant to Section 311.11(j), of the FHA, which allows for a municipality to enter into an agreement with a developer to provide a preference for affordable housing to low- and moderate-income veterans who served in time of war or other emergency as defined in section 1 of P.L.1963, c. 171 (C.54:4-8.10), of up to fifty percent (50%) of the affordable units in a particular project. N.J.S.A. 52:27D-311.11(j).

WEATHERIZATION — Shall mean building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of the rehabilitation program.

§ 233-64. Mandatory Affordable Housing Set-Aside.

A mandatory affordable housing set-aside requirement shall apply to any new multifamily and single-family attached residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units. The set-aside shall be twenty percent (20%) where the affordable units are provided for sale and twenty percent (20%) where the affordable units are provided for rental.

- A. All affordable housing controls and standards are subject to the rules of the Council on Affordable Housing ("COAH") or any subsequent state agency, or as approved by the Court. The development, marketing and sale of the affordable units shall be pursuant to applicable state regulations and the applicable provisions of this article, and any subsequent amendments thereto.

- B. This requirement shall not impose any obligation on a development, or the nonresidential portion of a mixed-use development, that is subject to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 *et seq.*
- C. All subdivision and site plan approvals of qualifying developments shall be conditioned upon compliance with the provisions of the mandatory affordable housing set-aside.
- D. No subdivision shall be permitted or approved for the purpose of avoiding compliance with the mandatory affordable housing set-aside. A developer may not, for example, subdivide a project into two lots and then plan each of them to produce a number of units below the threshold. The approving authority may impose any reasonable conditions to ensure such compliance.
- E. The mandatory affordable housing set-aside shall not give any developer the right to any rezoning, variance, redevelopment designation or redevelopment or rehabilitation plan approval, or any other such relief, or establish any obligation on the part of the municipality to grant such rezoning, variance, redevelopment designation, redevelopment or rehabilitation plan approval, or other such or further relief.
- F. The requirements of this set-aside shall not apply to residential expansions, additions, renovations, replacements, or any other type of residential development that does not result in a net increase in the number of dwellings of 15 or more.

§ 233-65. Inclusionary Development.

- A. Set-aside. For inclusionary projects in which the very low-, low- and moderate-income units are to be offered for sale, the appropriate set-aside percentage is 20 percent; for projects in which the very low, low and moderate units are to be offered for rent, the appropriate set-aside percentage is 20 percent.
- B. Phasing. Inclusionary developments shall be subject to the following schedule, except where an alternate phasing schedule has been incorporated into a development or redevelopment agreement. Should a developer wish to modify this schedule, such modification must be reviewed and approved by Fair Share Housing Center and the Special Court Master prior to execution of a development or redevelopment agreement.

| Maximum Percentage of Market-Rate Units Completed | Minimum Percentage of Low- and Moderate-Income Units Completed |
|---|--|
| 25 | 0 |
| 25+1 | 10 |
| 50 | 50 |
| 75 | 75 |

90

100

- C. Fractional Units. In the event the number of affordable housing units to be provided includes a fraction, the number shall be rounded up if the fractional amount is 0.5 or greater and rounded down if the fractional amount is less than 0.5. For inclusionary projects, the developer shall provide a payment in lieu of constructing affordable units for the fraction of a unit less than 0.5. The payment in lieu shall be based on the amounts established in N.J.A.C. 5:97-6.4(c) as increased by updated development cost documentation on file in the Borough.
- D. Nothing in this Article precludes the municipality from imposing an affordable housing set-aside in accordance with applicable law in a development not required to have a set-aside pursuant to this Article.
- E. Design:
 - 1. Integration of Affordable Units. In inclusionary developments, affordable units shall be located at the same site as market units, equally and fairly interspersed throughout the entire development, not isolated from the market units in any manner and situated in locations equally accessible to common open space, recreation, and community facilities as the market units. The affordable units shall be integrated with the market units, and not situated so as to be concentrated in separate building(s) or in separate area(s) or floor(s), or in less desirable locations, than the other units in the development. In buildings with multiple dwelling units, this shall mean that the very low-, low- and moderate-income units shall be generally distributed within each building with market units.
 - 2. In inclusionary developments, the residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.
 - 3. In inclusionary developments, the very low-, low- and moderate-income units shall be no less than the largest minimum bedroom and unit square footages required under the DCA Balanced Housing and HMFA Low Income Housing Tax Credit program for bedroom sizes and unit sizes in affordable units of the same bedroom number. The exterior design of affordable housing units shall be harmonious in scale, texture, and materials with the market units in a development and shall minimize any difference in their physical appearances.

§ 233-66. New Construction.

A. Low/moderate split and bedroom distribution of affordable housing units:

- 1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13% of all restricted rental units within each bedroom distribution shall be very low-income units (affordable

to a household earning 30% or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low-income units within the development.

2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be very low- or low-income units.
3. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - i. The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - ii. At least 30% of all low- and moderate-income units shall be two-bedroom units;
 - iii. At least 20% of all low- and moderate-income units shall be three-bedroom units; and
 - iv. The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

B. Accessibility requirements:

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and the following:
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor; and
 - (b) An adaptable kitchen on the first floor; and
 - (c) An interior accessible route of travel on the first floor; and
 - (d) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and

- (e) An interior accessible route of travel between stories within an individual unit, except that if all of the terms of Subsection B(2)(a) through (d) above have been satisfied, an interior accessible route of travel shall not be required between stories within an individual unit; and
- (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - (i) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - (ii) To this end, each builder of income-restricted units shall deposit funds into the Borough's Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - (iii) The funds deposited under Subsection (f)[ii] above shall be used by the Borough for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - (iv) The developer of the restricted units shall submit a design plan and cost estimate for the conversion of adaptable to accessible entrances to the Construction Official of the Borough.
 - (v) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in the care of the Borough Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- (g) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

C. Income limits; maximum rents and sales prices:

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and the calculation procedures as approved by the Court and detailed below:
 - (a) Regional income limits shall be established for the region in which the Borough is located (in this case, Region 1) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80% of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50% of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low-income unit for a household of four shall be 30% of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
 - (b) The income limits are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the current fiscal year, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
 - (c) The regional asset limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the regional asset limit be less than that for the previous year.
 - (d) In establishing sale prices and rents of affordable housing units, the Borough's administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established pursuant to the process defined above.
 - (i) The resale prices of owner-occupied very low-, low- and

moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to the above methodology. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

- (ii) The rent levels of very low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52% of median income.
 3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate- income rental units shall be affordable to very low-income households earning no more than 30% of median income, which very low-income units shall be part of the low-income requirement.
 4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type. Low-income ownership units must be available for at least two different sales prices for each bedroom type.
 5. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four-and-one-half-person

household; and

(e) A four-bedroom unit shall be affordable to a six-person household.

6. In determining the initial sales prices and rents for compliance with affordability average requirements for restricted units in assisted living facilities and age-restricted developments the following standards shall be used:
 - (a) A studio shall be affordable to a one person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate size household, including an allowance for tenant-paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
10. The rent of very low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

- A. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- B. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

§ 233-68. Occupancy Standards.

In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

- A. Provide an occupant for each bedroom;
- B. Provide children of different sexes with separate bedrooms;
- C. Provide separate bedrooms for parents and children; and
- D. Prevent more than two persons from occupying a single bedroom.

§ 233-69. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this article for a period of at least 30 years, until the Borough takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- B. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- C. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- D. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first nonexempt sale after the unit's release from the restrictions set forth in this article, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

- E. The affordability controls set forth in this article shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- F. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

§ 233-70. Price Restrictions for Restricted Ownership Units; Homeowners' Association Fees; Resale Prices.

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowners' association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
- D. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See § 233-73.

§ 233-71. Buyer Income Eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that very low-income ownership units shall be reserved for households with a gross household income less than or equal to 30% of median income, low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- B. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Borough Council, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to

attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.

- C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- D. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is very low-income household, a low-income household, or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees, as applicable) does not exceed 33% of the household's eligible monthly income.

§ 233-72. Limitations on Indebtedness Secured by Ownership Units; Subordination.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination, in writing, that the proposed indebtedness complies with the provisions of this section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- B. With the exception of a first purchase money mortgage, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.6(b).

§ 233-73. Capital Improvements to Ownership Units.

- A. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air

conditioning installed subsequent to the initial sale of the unit, and not included in the base price, may be made a condition of the unit resale, provided the price, which shall be subject to ten-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

§ 233-74. Control Periods for Restricted Rental Units.

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this article for a period of at least 30 years, until the Borough takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- B. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be recorded by the developer or seller with the records office of the County of Bergen. A copy of the filed, recorded document shall be provided to the Administrative Agent within 30 days of the receipt of a certificate of occupancy.
- C. A restricted rental unit shall remain subject to the affordability controls of this article despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
- D. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

§ 233-75. Rent Restrictions for Rental Units; Leases.

- A. A written lease shall be required for all restricted rental units, except for units in assisted living residences, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.

- C. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this article.
- D. No rent control ordinance or other pricing restriction shall be applicable to the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this Article.

§ 233-76. Tenant Income Eligibility.

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median household income by household size.
 - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median household income by household size.
 - 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median household income by household size.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - 1. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - 2. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its continuing ability to pay;
 - 3. The household is currently in substandard or overcrowded living conditions;
 - 4. The household documents the existence of assets with which the household

proposes to supplement the rent payments; or

5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsections B.1. through B.5. above with the Administrative Agent, who shall counsel the household on budgeting.

§ 233-77. Requirements for Alternative Living Arrangements.

- A. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
 1. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the State licensing/funding agency (i.e., DHS);
 2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- B. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
- C. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§ 233-78. Municipal Housing Liaison.

- A. The Borough of Norwood shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for overseeing the Borough's affordable housing program, including overseeing the administration of affordability controls on affordable units, and the affirmative marketing of available affordable units in accordance with the Borough's Affirmative Marketing Plan, fulfilling monitoring and reporting, and supervising any contracted Administrative Agent. The position of Municipal Housing Liaison for the Borough was previously established by Ordinance No. 1279-11-09, which establishment is reiterated here. Compensation shall be fixed by the Governing Body at the time of appointment of the Municipal Housing Liaison. The Municipal Housing Liaison shall be appointed by resolution of the governing body and may be a full- or part-time municipal employee. The Municipal Housing Liaison shall be approved by the Superior Court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the

duties of Municipal Housing Liaison.

B. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Norwood, including the following responsibilities which may not be contracted out to the Administrative Agent:

1. Serving as Norwood's primary point of contact for all inquiries from the state, affordable housing providers, Administrative Agents and interested households;
2. Monitoring the status of all restricted units in Norwood's Fair Share Plan;
3. Compiling, verifying, submitting and posting all monitoring reports as required by the Court and by this Article;
4. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
5. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.

§ 233-79. Administrative Agent.

Subject to the approval of the Court, the Borough of Norwood shall designate one or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Borough in accordance with UHAC and this Article. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to the approval of the Court. The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s).

An Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. *The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required.* The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in N.J.A.C. 5:80-26.14, 5:80-16 and 5:80-18 thereof, which includes:

A. Affirmative marketing.

1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough and the provisions of N.J.A.C. 5:80-26.15;
2. Notifying the following entities of the availability of affordable housing units in the

Borough of Norwood; Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, and Bergen County United Way; and

B. Household certification.

1. Soliciting, scheduling, conducting and following up on interviews with interested households;
2. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a very low-, low- or moderate-income unit;
3. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located (Housing Region 1) comprising Bergen, Passaic, Hudson, and Sussex Counties;
6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough when referring households for certification to affordable units; and
7. Providing counseling or contracting to provide counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

C. Affordability controls.

1. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
2. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
3. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Bergen County Clerk's office after the termination of the affordability controls for each restricted unit;

4. Communicating with lenders regarding foreclosures; and
5. Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

D. Resales and re-rentals.

1. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental; and
2. Instituting and maintaining an effective means of communicating information to very low-, low- and moderate-income households regarding the availability of restricted units for resale or re-rental.

E. Processing requests from unit owners.

1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this article;
2. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air-conditioning systems;
3. Notifying the municipality of an owner's intent to sell a restricted unit; and
4. Making determinations on requests by owners of restricted units for hardship waivers.

F. Enforcement.

1. Securing annually from the municipality a list of all for-sale affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
2. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
3. The posting annually in all rental properties, including legal two-family homes, of

- a notice as to the maximum permitted rent for affordable units, together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
- 4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
- 5. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
- 6. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Borough Council and the Court, setting forth procedures for administering the affordability controls.

G. Additional responsibilities:

- 1. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.
- 2. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Article.
- 3. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

§ 233-80. Affirmative Marketing Requirements.

- A. The Borough shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court, that is compliant with N.J.A.C. 5:80-26.15 and the FHA, as may be amended and supplemented.
- B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward Housing Region 1, comprising the counties of Bergen, Hudson, Passaic, and Sussex, and is required to be followed throughout the period of restriction.
- C. The borough of Norwood hereby provides that households that live or work in Housing Region 1 shall be selected for an affordable housing unit before households from outside

this region. Units that remain unoccupied after households who live or work in the region are exhausted may be offered to the households outside the region.

- D. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Bergen County Urban league, Bergen County Housing Coalition, Supportive Housing Association and the New Jersey Housing Resource Center, <https://www.nj.gov/njhrc/>, in accordance with applicable law, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this subsection.
- E. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Borough of Norwood shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- F. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- G. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
- H. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- I. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.
- J. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Norwood, and copies of the application forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County

NAACP, and Bergen County United Way.

§ 233-81. Enforcement of Affordable Housing Regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an owner, developer or tenant of a very low-, low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action(s) against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 1. The Borough may file a court action in Superior Court pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the owner, developer or tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units, the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Superior Court:
 - (a) A fine of not more than \$500 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - (b) In the case of an owner who has rented a very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Norwood Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an owner who has rented a very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Superior Court.
 2. The Borough may file a court action in the Superior Court seeking a judgment that would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the very low-, low- or moderate-income unit.
 - (a) The judgment shall be enforceable, at the option of the Borough, by means of an execution sale by the Sheriff, at which time the very low-, low- and moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money

mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

- (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the very low-, low- and moderate-income unit. The excess, if any, shall be applied to reimburse the Borough for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Borough for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the owner or forfeited to the municipality.
- (c) Foreclosure by the Borough due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the very low-, low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the Borough may acquire title to the very low-, low- and moderate-income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the very low-, low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the very low-, low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the

maximum resale price of the very low-, low- and moderate- income unit as permitted by the regulations governing affordable housing units.

- (f) The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

§ 233-82. Appeals.

Appeals from all decisions of an Administrative Agent appointed pursuant to this article shall be filed, in writing, with the Court.

§ 233-62. Required bedroom distribution.

- A. At a minimum, 35% of all affordable housing units in a development shall have two bedrooms.
- B. At a minimum, 15% of all affordable housing units in a development shall have three bedrooms.
- C. No more than 20% of all affordable housing units in a development may be efficiency units (i.e., a unit with not more than one habitable room and with kitchen and sanitary facilities).

§ 233-63. Low-income split by unit size.

At each development that includes affordable housing units, at least 50% of all units in each bedroom distribution type shall be available for low-income households.

§ 233-64. Affordable housing shelter cost components.

In computing the shelter cost of affordable housing units, only the following components shall be included:

- A. Rental housing: rent, including an allowance for utilities (sewer, water, electricity and gas) and fees, if any, for parking at least one car.
- B. Sales units: the cost of principal, interest, property taxes, homeowner (fire, theft and liability) insurance, private mortgage insurance, sewer and water charges and condominium or homeowners' association fees, if any. Principal and interest shall be determined on the basis of a 10% down payment and a thirty-year fixed-rate mortgage realistically obtainable from at least two major lenders active in the housing region.

§ 233-65. Maximum monthly shelter costs.

The maximum monthly shelter cost for affordable housing units of the appropriate unit size for the household size shall be 28% of the household's gross annual income for sales units and 30% of the household's gross monthly income for rental units.

§ 233-66. Household size and unit size for determining maximum rents and sales prices.

Maximum sales prices and maximum rents of affordable housing units shall be determined on the basis of the following criteria on occupancy of dwelling units by household size:

- A. Efficiency units shall be affordable to one-person households.

- B. One-bedroom units shall be affordable to two-person households.
- C. Two-bedroom units shall be affordable to three-person households.
- D. Three-bedroom units shall be affordable to five-person households.
- E. Four-bedroom units shall be affordable to seven-person households.

§ 233-67. Condominium and homeowner association fees.

Condominium and homeowner association fees shall be fairly assessed based on the square footage of units for both market-priced and affordable housing units. The master deed for all affordable housing units developed as a condominium or cooperative shall specify that all condominium and homeowner association fees for affordable housing units shall be assessed at 100% of the rate for market-priced units.

§ 233-68. Age restrictions prohibited.

There shall be no age restrictions upon the occupants of affordable housing, except for publicly subsidized senior citizen housing.

§ 233-69. Controls on affordability.

- A. All conveyances and deeds of affordable housing units shall be subject to covenants running with the land which control the resale of sales units, the sublease of sales units, the rental of rental units, and the conversion of rental units for a period of not less than 25 years from either the issuance of the certificate of occupancy for the affordable housing unit or the date of closing and transfer of title for initial ownership of the unit, whichever is later.
- B. The deed restriction shall be approved by the Borough Attorney as to form and shall follow the standard restrictive covenant and mortgage lien adopted by COAH (Affordable Housing Agreement, Second Repayment Mortgage, and Second Mortgage Repayment Note, N.J.A.C. 5:92-12 - APPENDIX), or if amended, as approved by COAH.
- C. The Borough shall not issue a certificate of occupancy for initial occupancy of an affordable housing unit unless the Borough Affordable Housing Board certifies in writing that the unit is to be controlled by a deed restriction and mortgage lien as adopted or approved by COAH.
- D. The initial affordability and continuing affordability of all affordable housing units shall be governed by the COAH Substantive Rules on Controls on Affordability, N.J.A.C. 5:92-12.

§ 233-70. Certificate of reoccupancy required.

- A. A certificate of reoccupancy must be issued by the Borough before the occupancy of an affordable housing unit resulting from the resale of an affordable housing unit, and the Borough shall not issue such a certificate unless there is a written determination by the Borough of Norwood Affordable Housing Board, established by this article, that the unit is to be controlled by a deed restriction and mortgage lien as adopted or approved by COAH.
- B. Purchasers of sales affordable housing units shall execute the deed restriction prior to issuance of a certificate of reoccupancy regardless of whether the seller had executed the deed restriction and mortgage lien adopted or approved by COAH upon acquisition of the property.

- C. The certificate of reoccupancy shall not be required for sales of the units for which the affordability controls are allowed to expire or for which the repayment option is being exercised by the seller of an affordable housing unit, under COAH regulations, N.J.A.C. 5:92-12.3.

§ 233-71. Purchase options upon expiration of affordability controls; seller repayment option.

- A. After expiration of the initial period of controls on affordability (minimum of 20 years), either the Borough, the New Jersey Department of Community Affairs, the New Jersey Housing and Mortgage Finance Agency or a qualified nonprofit organization designated by COAH shall have, at the time of the first nonexempt sale, a ninety-day option to purchase an affordable housing unit at the maximum restricted price.
- B. A governmental agency that exercises the purchase option may then either:
 - (1) Extend further the period of controls on affordability by selling or renting the unit to another qualified low- or moderate-income household selected by the
Borough of Norwood Affordable Housing Board established by this article; or
 - (2) Sell the unit at fair market value and use the permitted proceeds (difference between the fair market value and the restricted unit price, after reasonable real estate broker fees have been paid) to create, rehabilitate or maintain low- and moderate-income housing in the Borough or housing region.
- C. A nonprofit organization that exercises the purchase option shall sell or rent the affordable unit to a qualified low-or moderate-income household selected by the Borough of Norwood Affordable Housing Board.
- D. If the option is not exercised by an eligible governmental agency or nonprofit organization, then the seller may either:
 - (1) Sell the unit to another low- or moderate-income household at the controlled unit sales price; or
 - (2) Exercise the repurchase option and sell the unit to any purchaser at market value, provided that 95% of the difference between the controlled unit price and the fair market value, after reasonable real estate broker fees have been paid, is paid to the Borough Affordable Housing Board at closing, in order to recapture any windfall and deposited in the Borough Affordable Housing Trust Fund. These recaptured funds shall be used for the sole purpose of creating, rehabilitating or maintaining low- and moderate-income housing in the Borough and housing region, according to a plan approved by COAH.
- E. The notice and other administrative provisions of COAH regulations, N.J.A.C. 5:92-12.3 through 5:92-12.9, effective as of the date of the adoption of this article shall govern this purchase option and repayment option for affordable units whose period of affordability controls has expired.

§ 233-72. Range of affordability for purchased and rental housing.

- A. The average price or rent of affordable housing units shall be, as best as practicable, affordable to households at 57 1/2% of the median-household income.

- B. Affordable housing units shall be priced or rented so that for every 20 low- and moderate-income units containing the same number of bedrooms sold or rented at a development, the units are affordable to low- and moderate-income households, as best as practicable, in the nine categories of median-household income, as follows:

Low Income

- 1 unit at 40% through 42.5% of median income
- 3 units at 42.6% through 47.5% of median income
- 6 units at 47.6% through 50% of median income
- 1 unit at 50.1% through 57.5% of median income
- 1 unit at 57.6% through 64.5% of median income
- 1 unit at 64.6% through 68.5% of median income
- 1 unit at 68.6% through 72.5% of median income
- 2 units at 72.6% through 77.5% of median income
- 4 units at 77.6% through 80% of median income

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§ 233-73. Annual indexed increases in rents or sales prices.

The price of an owner-occupied affordable housing unit and the rents of affordable housing units may be increased annually based on the annual percentage increase in the median household income.

§ 233-74. Affordable Housing Board established.

A. Members.

- (1) There is hereby established the Borough of Norwood Affordable Housing Board which shall be composed of five members appointed by the Mayor with the advice and consent of the Borough Council:
 - (a) One municipal employee.
 - (b) One member of the Borough Council.
 - (c) Three 3 citizens of the Borough.
- (2) Members shall serve for two-year terms with two of the initial appointments, as determined by the Mayor, to be for one year.

B. The Mayor shall appoint the Chairperson of the Board from among its members. The Board shall organize and conduct its activities under the supervision of the Mayor.

§ 233-75. Duties of the Affordable Housing Board.

- A. The Board shall be the administrative mechanism responsible for assuring that affordable housing units developed or rehabilitated in the Borough continue to remain affordable to low- and moderate-income households, as required by COAH regulations, N.J.A.C. 5:92-12.11.

- B. The Board shall design and implement an affirmative program to market the designated affordable housing units to eligible households in the Borough and its housing region, or the developer of the affordable housing units may, at its discretion, enter into an agreement with a nonprofit organization or a governmental agency to perform this duty.
- C. The Board shall issue, on an as-needed basis but at least annually, a call for applications for prospective purchasers and tenants of affordable housing in Norwood, particularly for resales and rentals.
- D. The Board shall screen and qualify prospective purchasers and tenants of designated affordable housing units, or the developer of the affordable housing units may, at its discretion, enter into an agreement with a nonprofit organization or a governmental agency to perform this duty.
- E. The Board shall review and comment to the Planning Board on the Developer's Affordable Housing Plan submitted with an application for development that

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provides for affordable housing units.

- F. The Board shall enforce the controls on resales and rerentals of designated affordable housing units.
- G. The Board shall, at a minimum, provide an annual written report to the Mayor, Borough Council and Planning Board on its activities and the progress and problems, if any, in providing affordable housing and assuring the continued affordability of this housing. The Board shall also prepare and submit the reports required by COAH, including the progress and summary reports on the actual experience of the Board's affirmative marketing program, as required by N.J.A.C. 5:92-15.2(g) and (h) and the annual monitoring report on the local housing rehabilitation program, as required by N.J.A.C. 5:92-17.2.
- H. The Board shall meet quarterly and may meet more frequently as needed. The Chairperson of the Board may call special meetings of the Board.
- I. The Board may adopt its own rules and guidelines, consistent with the provisions of this article and the regulations adopted by COAH, N.J.A.C. 5:92-1 et seq.

§ 233-76. Municipal Housing Officer.

The Municipal Housing Officer shall be appointed by the Mayor and shall serve as staff to the Affordable Housing Board. The Municipal Housing Officer may be a municipal employee or the Borough may enter into an agreement with a nonprofit organization, governmental agency, consultant or private entity to assist the Board in the performance of its duties.

§ 233-77. Affirmative marketing program.

- A. The Affordable Housing Board shall provide for the affirmative marketing of all affordable housing units, or the developer of the affordable housing units may, at its discretion, enter into an agreement with a nonprofit organization or a governmental agency to perform this responsibility by taking all appropriate steps which shall include but not be limited to:

- (1) Identifying representative groups operating in the Borough and its housing region, including community-based and civic organizations, councils of religious organizations, welfare and social service agencies, etc.
 - (2) Marketing actively the affordable housing units with the assistance of these representative groups.
 - (3) Ensuring that low- and moderate-income persons of all races and ethnic groups are informed of the affordable housing opportunities in the development, feel welcome to buy or rent such housing and have the opportunity to buy or rent such housing, subject only to the purchaser and tenant selection procedures defined in this article.
- B. The affirmative marketing program shall include publishing notices and display advertisements announcing the availability of the designated affordable housing units in newspapers of general circulation in the Borough and its housing region. It shall also include preparation and distribution of appropriate brochures. Notices shall also be published in newspapers, periodicals and other media aimed at black and Hispanic populations.
- C. The affirmative marketing program shall include advertising and other outreach activities realistically designed to reach:
- (1) Low- and moderate-income persons of all races and ethnic groups in municipalities in the Borough's housing region that have higher than statewide average proportions of blacks, Hispanics or low- and moderate-income households.
 - (2) Low- and moderate-income persons of all races and ethnic groups who work in Bergen County but do not live within Bergen County.
- D. The affirmative marketing program shall begin at least 90 days before issuance of either temporary or permanent certificates of occupancy for an affordable housing unit and shall continue until all affordable housing units are under contract of sale or lease.
- E. The affirmative marketing program shall specify that applications for affordable housing units be submitted to the Board or to the designated nonprofit organization or governmental agency responsible for affirmative marketing for a specific development. The Board shall promptly transmit copies of any applications it receives to such an affirmative marketing entity.
- F. The Board shall develop and maintain a register of applicants for purchase or rental of affordable housing in Norwood. At least annually, the Board shall conduct an affirmative marketing program, as specified in this article, to establish and update this pool of applicants for affordable housing units that may become available through initial sales, initial rentals, resales or rerentals. The Board shall require annually in writing that applicants file with the Board, by a specified deadline (at least 30 days from the date of the Board's notice), current information on gross household income, in order for the Board to maintain its register of eligible applicants. The Board shall promptly notify all applicants in writing of their eligibility or ineligibility, with stated reasons for a finding of ineligibility.

§ 233-78. Occupancy preferences.

Affordable housing units shall be available to all income-eligible households, without any preference for place of residence or work.

§ 233-79. Purchaser and tenant selection procedures.

- A. The Affordable Housing Board shall screen and determine whether prospective purchasers and tenants qualify and are eligible for the designated affordable housing units built in a development within the Borough, unless the developer of the affordable housing units, at its discretion, enters into an agreement with a nonprofit organization or a governmental agency to perform this responsibility. The qualification criterion shall be gross household income.
- B. The Board or an entity performing this task on behalf of a developer shall also prequalify prospective purchasers of affordable housing units prior to submission of applications for mortgages and provide credit/debt counseling as needed.
- C. Prospective purchasers and tenants of affordable housing units shall be selected from the pool of eligible applicants on a random basis, and applicants shall be matched with available units appropriate to the household's size and income, within the constraints of the range of affordability of this article.
- D. The Board shall recommend eligible prospective purchasers to the developer of affordable housing units for purchase, unless the developer of the affordable housing units, at its discretion, enters into an agreement with a nonprofit organization or a governmental agency to perform this responsibility. The Board shall recommend eligible prospective tenants to the owner-manager of affordable housing units for rental. In any case, the purchaser and tenant selection mechanism shall be independent of the developer of sales units or owner of rental units.
- E. A housing applicant who declines three offers to lease or purchase units appropriate to the applicant's household size and income shall lose all preference and must submit a new application to the Board to again become eligible to purchase or lease affordable housing units.

§ 233-80. Developer's affordable housing plan.

The developer shall submit to the Planning Board and the Affordable Housing Board a developer's affordable housing plan that demonstrates compliance with the affordable housing requirements of this article, including the affirmative marketing, purchaser and tenant selection procedures and controls on affordability.

§ 233-81. Conversion of rental affordable housing.

Rental affordable housing units may be converted to condominium or cooperative units for sale after 10 years, but the prices of the converted units shall be established following the pricing procedures and standards of this article. Low-income rental units shall be converted to low-income sales units; moderate-income rental units may be converted to low-income or moderate-income sales units. Resale restrictions shall apply for at least a total of 25 years from the issuance of the certificate of occupancy of the unit or the date of closing and transfer of title for initial ownership of the unit, whichever is later.

§ 233-82. Procedures for resales.

- A. Persons wishing to sell affordable housing units after initial occupancy and during the period of controls on affordability shall notify the Borough Affordable Housing Board of the intent to sell and shall offer a contract of sale to the housing applicant selected by the Board, which shall follow the purchaser selection procedures of this article.

- B. If the housing applicant selected by the Board fails to enter a contract to purchase the unit at the permitted price within 10 days after being offered such a contract, then the seller shall request that the Board select randomly another eligible housing applicant. The seller may not independently obtain an income-eligible purchaser until the Board has exhausted its pool of eligible applicants.
- C. If no eligible buyer enters a contract of sale within 90 days of notice of intent to sell, the seller may apply to the Board for a hardship waiver and the Board shall have the option to purchase the affordable housing unit for the maximum price permitted based on the percentage increase in the median household income since the previous transfer of ownership. If the Board does not sign an agreement to purchase the unit within 30 days after the ninety-day notice period expires, the seller may apply to the Board for permission to offer the unit to a nonincome eligible household at the maximum price permitted. The Board may transfer this option to the New Jersey Department of Community Affairs, the New Jersey Housing and Mortgage Finance Agency or a qualified nonprofit organization designated by COAH. The seller shall document efforts to sell the unit to an income eligible household as part of this application for a hardship waiver. If this request is granted, the seller may offer a low-income unit to a moderate-income household and may offer a moderate-income unit to households with incomes in excess of 80% of the median income. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall a resale under this section eliminate the resale controls on this unit or permit any subsequent seller to convey the unit, except in full compliance with the terms of this article and COAH regulations, N.J.A.C. 5:92. In all cases, the seller shall file a copy of the contract of sale with the Board within 10 days of its signing and shall file a copy of the deed with the Board within 10 days of the closing of title.

§ 233-83. Price increase for eligible capital improvements.

- A. Property owners of single-family, owner-occupied housing may apply to the Board for permission to increase the maximum resale price to account for eligible capital improvements. Eligible capital improvements shall only be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved affordable housing unit exceed the limits of affordability for the larger household.
- B. At resale, all items of property which are permanently affixed to the unit and/or were included when the unit was initially restricted as to price (for example, refrigerator, range, washer, dryer, dishwasher and wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items of property may be sold to the purchaser at a reasonable price that has been approved by the Board at the time of the signing of the purchase agreement. Only the purchase of central air conditioning installed after the initial sale of the unit may be made a condition of the unit resale.

§ 233-84. Transfers of ownership or leases exempt from resales and rental procedures.

- A. Five types of transfers of ownership or leases of an affordable housing unit shall be exempt from the resales and rental procedures of this section:
 - (1) Transfer between spouses.
 - (2) Transfer between former spouses ordered as a result of a judicial decree of separation or divorce, but excluding transfers to third parties.
 - (3) Transfer, upon death of the owner or tenant, to a family member who had resided in the unit by will or intestate succession.

- (4) Transfer of ownership through an executor's deed to any person.
- (5) Transfer of ownership by court order, if such order expressly renders the transfer exempt from these procedures.
- B. An exempt transfer of ownership or lease shall not, however, terminate the resale or rental restrictions or existing liens on the property for any future transfers for the full term of the affordability controls.

§ 233-85. Procedures for rentals.

- A. Owners of rental affordable housing units shall promptly notify the Borough Affordable Housing Board, in writing, of vacancies and prospective vacancies of designated affordable housing units. The Board shall then follow the tenant selection procedures of this section, select randomly and recommend a qualified prospective tenant to the owner within 30 days.
- B. Owners of low- and moderate-income rental units shall not offer rental units to nonincome eligible households without prior written approval of COAH and compliance with the requirements and procedures of the COAH regulations, N.J.A.C. 5:92-12.15(c), effective as of the date of adoption of this article.

§ 233-86. Reporting requirements for rental affordable units.

- A. The owner of rental affordable housing units shall notify the Borough Affordable Housing Board of the address of each affordable housing unit rented and the name of each new tenant within 10 days of making any lease for a unit.
- B. The owner of rental affordable housing units shall file with the Board an annual report no later than January 15 of each year, listing the following information for each unit, as of January 1 of such year:
 - (1) Address of the unit and number of bedrooms.
 - (2) Name of tenant and household size.
 - (3) Actual monthly rent, parking fees, if any, and actual, if known, or estimate average utilities.

§ 233-87. Rental of affordable units purchased and owned by low- and moderate-income households.

Designated affordable housing units purchased by low- and moderate-income households may not be rented without the prior written permission of the Board. Such affordable housing units may only be rented to eligible low or moderate-income household tenants selected and recommended by the Board.

§ 233-88. Location and design of affordable housing units.

- A. Affordable housing units shall be located at the same site as market-priced units in a development, equally and fairly interspersed throughout the entire development, not isolated from the market-priced units in any manner and situated in locations equally accessible to common open space, recreation and community facilities as market-priced units.
- B. The exterior design of affordable housing units shall be harmonious in scale, texture and materials with the market-priced units in a development and shall minimize any difference in their physical appearances.

ARTICLE XII

Affordable Housing Development Fees and Trust Fund

[Added by Ord. No. 93-0-22; amended 11-5-2008 by Ord. No. 08:12; 3-8-2017 by Ord. No. 17:03']

§ 233-90. Purpose.

- A. In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the "FHA"), N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's ("COAH's") adoption of rules.
- B. Pursuant to P.L. 2008, c. 46, § 8 (N.J.S.A. 52:27D-329.2) and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7) ("Development Fee Act"), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring, and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities, such as the Borough of Norwood, that were under the jurisdiction of COAH, or a court of competent jurisdiction, and that are now before a court of competent jurisdiction and have Court-approved spending plans, may retain fees collected from nonresidential development.
- C. This article establishes the standards for the collection, maintenance, and expenditure of development fees in the Borough pursuant to COAH's regulation developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). All fees collected pursuant to this article shall be used for the sole purpose of providing very low-, low- and moderate-income housing. This article shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

§ 233-91. Basic requirements.

- A. This article shall not be effective until approved by the Court or a successor agency to COAH.
- B. The Borough will continue to spend development fees in accordance with its approved plan for spending these fees in conformance with N.J.A.C. 5:97-8.10.

§ 233-92. Definitions.

The following terms, as used in this article, shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT — A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project, or a one-hundred-percent (100%) affordable development.

BOROUGH — The Borough of Norwood.

¹. Editor's Note: This ordinance provided that it "is intended to be in effect retroactively to the expiration date of the applicable regulations at N.J.A.C. 5:97-8."

COAH — The New Jersey Council on Affordable Housing established under the Fair Housing Act.

CONSTRUCTION — New construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).

DEVELOPER — any person, partnership, association, company, or corporation that is the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT FEE — Money paid by a developer for the improvement of property in the Borough as authorized by *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and regulated by applicable COAH Rules.

EQUALIZED ASSESSED VALUE — The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with §§ 1, 5, and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35c).

GREEN BUILDING STRATEGIES — Those strategies that minimize the impact of development on the environment, and enhance the health, safety, and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

MIXED USE DEVELOPMENT — Any development which includes both a nonresidential development component and a residential development component, and shall include developments for which:

- A. There is a common developer for both the residential development component and the nonresidential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or nonresidential development, or both, or otherwise to contribute resources to the development; and
- B. The residential and nonresidential developments are located on the same lot or adjoining lots, including but not limited to lots separated by a street, a river, or another geographical feature.

NONRESIDENTIAL DEVELOPMENT —

- A. Any building or structure, or portion thereof, including but not limited to any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code promulgated to effectuate the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.), including any subsequent amendments or revisions thereto;
- B. Hotels, motels, vacation timeshares, and child-care facilities; and

- C. The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, P.L. 1986, c. 103 (N.J.S.A. 52:27D-330 et seq.).

NONRESIDENTIAL DEVELOPMENT FEE — The fee authorized to be imposed pursuant to the Development Fee Act.

RESIDENTIAL DEVELOPER — Any person obtaining approval for a residential development in the Borough.

RESIDENTIAL DEVELOPMENT — Any development in the Borough that includes one or more residential dwelling units and that is not a mixed-use development.

§ 233-93. Residential development fees.

A. Imposed fees.

- (1) Within the Borough of Norwood, all residential developers, except for developers of the types of developments specifically exempted below and developers of developments that include affordable housing, shall pay a fee of 1.5% of the equalized assessed value for all new residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- (2) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) is permitted, developers shall be required to pay a "bonus" development fee of 6% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units, and 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

- (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half (2.5%) percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure, i.e. land and improvements, and such calculation shall be made at the time a final Certificate of Occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

B. Eligible exactions, ineligible exactions, and exemptions for residential development.

- (1) Affordable housing developments and/or developments that produce affordable units shall be exempt from development fees.
- (2) Developments that have received preliminary or final site plan approval prior to the adoption of this article, and any preceding article permitting the collection of development fees, shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that Building Permit is issued.
- (3) Any repair, reconstruction, or improvement of a structure, the cost of which is less than 50% of the market value of the structure before the improvement or repair is started shall be exempt from the payment of development fees. For purposes of this section, "market value" shall mean the equalized assessed value of the existing improvement as established by the Borough Tax Assessor. The cost of the repair, reconstruction, or improvements shall be determined by an itemized construction cost estimate prepared and submitted to the Construction Official. The estimate shall be signed and sealed by an architect or professional engineer licensed by the State of New Jersey, or where no such professionals are retained, signed by the contractor or the homeowner. Where prepared by the homeowner or contractor, the Borough Engineer may review such estimates for accuracy. "Substantial improvement" is considered to commence when the first alteration of any wall, floor, or other structural part of the building commences, whether or not the alternation affects the external dimensions of the structure. The term does not, however, include either:
 - i Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
 - ii Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places, but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.
- (4) Structural alterations that do not increase gross floor area of a building

or structure or increase the equalized assessed value of a property shall be exempted from paying a development fee.

- (5) Nonprofit organizations constructing residential projects which have received tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.
- (6) Federal, state, county, and local governments shall be exempted from paying a development fee.
- (7) Homes replaced as a result of a natural disaster such as a fire or a flood shall be exempt from the payment of a development fee. (This exemption applies only for the owner of record at the time of the fire, flood, or natural disaster.)

§ 233-94. Collection procedures.

- A. Upon the grant of a preliminary, final, or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a building permit.
- B. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Residential Development Certification/ Exemption" to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided by Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The Construction Official responsible for the issuance of a building permit shall notify the Municipal Tax Assessor of the issuance of the first building permit for a development that is subject to a development fee.
- D. Within 90 days of receipt of that notice, the Municipal Tax Assessor, based on the plans filed, shall prepare an estimate of the equalized assessed value of the development.
- E. The Construction Official responsible for the issuance of a final certificate of occupancy will notify the Municipal Tax Assessor of any and all requests for the scheduling of a final inspection on a property that is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the Municipal Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. If the Borough fails to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer

may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of § 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).

H. Except as provided in § 233-93A(3), fifty percent of the initially calculated development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the time of the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the building permit and that determined at the time of issuance of the certificate of occupancy. No certificate of occupancy may be issued until the developer pays the required development fee.

I. Appeal of Development Fees.

(1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of Norwood. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 *et seq.*, within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

(2) A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough of Norwood. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 *et seq.*, within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§ 233-95. Nonresidential development fees.

A. Imposition of Fees.

- (1) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted below, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot or lots.
- (2) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted below, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e.,

land and improvements, and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

B. Eligible exactions, ineligible exactions, and exemptions for nonresidential development.

- (1) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the nonresidential development fee of 2.5%, unless otherwise exempted below.
- (2) The fee of 2.5% shall not apply to an increase in equalized assessed value resulting from alterations, changes in use within existing building footprint, reconstruction, renovations, and repairs.
- (3) Nonresidential developments shall be exempted from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in the Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
- (4) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to the Statewide Non-Residential Development Fee Act, shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
- (5) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property will remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough as a lien against the real property of the owner.
- (6) Federal, state, county, and local governments of nonresidential developments shall be exempted from paying a development fee.

§ 233-97. Affordable Housing Trust Fund.

- A. There has previously been created a separate, interest-bearing affordable housing trust fund that will continue to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential developers in the Borough and the proceeds from the sales of units with extinguished controls.
- B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (1) Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the Borough of Norwood;

- (2) Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (3) Rental income from municipally operated units;
 - (4) Repayments from affordable housing program loans;
 - (5) Recapture funds;
 - (6) Proceeds from the sale of affordable units; and
 - (7) Any other funds collected in connection with the Borough's affordable housing program.
- C. Within seven days from the opening of the trust fund account, the Borough shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH, to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).²
- D. All interest accrued in the affordable housing trust fund shall only be used to fund eligible affordable housing activities approved by the Court or a successor entity to COAH.
- E. In the event of a failure by the Borough of Norwood to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Norwood, or, if not practicable, then within the County or the Housing Region. Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund or impose such other remedies as may be reasonable and appropriate to the circumstances.

§ 233-98. Use of funds.

². Editor's Note: In accordance with N.J.S.A. 52:14B-5.1b, N.J.A.C. Title 5, Chapter 97, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 2, 2008, expired on June 2, 2015. See 43 N.J.R. 1203(a).

- A. The expenditure of all funds shall conform to the Borough's approved spending plan. Funds deposited in the affordable housing trust fund may be used for any activity approved by the Court to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, housing rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, and/or any other activity as previously permitted by the Court and specified in the approved spending plan.
- B. Funds shall not be expended to reimburse the Borough for past housing activities.
- C. At least 30% of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low-income households earning 30% or less of the regional median income by household size for housing region 1, in which Norwood is located.
 - (1) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
 - (2) Affordability assistance to households earning 30% or less of regional median income by household size

may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income. The specific programs to be used for very low-income affordability assistance shall be identified and described within the Spending Plan.

- (3) Payments in lieu of constructing affordable units on site, if permitted by Ordinance or by Agreement with the Borough of Norwood, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- D. The Borough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance, in accordance with N.J.A.C. 5:96-18.³⁴
- E. No more than 20% of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or rehabilitation program. In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20% of collected development fees that may be expended on administration. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the Court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Affordable Housing Trust Fund.
- F. Court approval of Norwood's spending plan constitutes a "commitment" on the part of the Borough of Norwood for expenditure of funds pursuant to *N.J.S.A.* 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions to commence with the entry of a final Judgment of Repose in accordance with the provisions of *In re Tp. Of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (Aff'd 442 N.J. Super. 563.)

§ 233-98.1. Monitoring.

The Borough shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Borough's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

Beginning on [August 2, 2023], the Borough of Norwood shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the

³⁴ Editor's Note: In accordance with N.J.S.A. 52:14B-5.1b, N.J.A.C. Title 5, Chapter 96, Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning on June 2, 2008, expired on June 2, 2015. See 43 N.J.R.

⁴ (a).

municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and nonresidential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

§233-98.2. Ongoing Collection of Fees.

- A. The ability for the Borough of Norwood to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its Judgment of Compliance unless the Borough of Norwood has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for substantive certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.
- B. If the Borough of Norwood fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (C.52:27D-320).
- C. The Borough of Norwood shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance, nor shall the Borough of Norwood retroactively impose a development fee on such a development. The Borough of Norwood also shall not expend any of its collected development fees after the expiration of its Judgment of Compliance.

§ 233-40.1. Affordable Housing Overlay Zoning District. [Added 8-11-2021 by Ord. No. 21:05]

A. Purpose. The purpose of the Affordable Housing Overlay District is to provide development that contributes to the Borough of Norwood's municipal affordable housing obligation, while allowing developers increased flexibility to provide residential units set on selected properties located in the Borough's Light Industrial Zoning district.

B. Location. The affordable housing overlay district contains all of the parcels of land designated on the Tax Assessment Map of the Borough of Norwood as Blocks 88 and 89, excluding Block 89, Lots 1, 2, and 3.

C. Principal permit use.

(1) Multiple-family dwellings, in the form of a townhouses or apartments.

D. Required minimum lot area.

(1) Less than one acre (15,557 square feet to 43,559 square feet).

(2) More than one acre (43,560 square feet or more).

E. Maximum permitted density.

(1) Sites less than one acre, 12 units per acre.

(2) Sites more than one acre, 14 units per acre.

F. Minimum lot width.

(1) One hundred feet.

G. Minimum lot depth.

(1) One hundred fifty-six feet.

H. Minimum front yard setback.

(1) Thirty feet.

I. Minimum side yards.

(1) One side yard, 15 feet; both side yards, 35 feet.

J. Minimum rear yard.

(1) Sixty feet.

K. Maximum building coverage.

(1) 28%.

L. Maximum improved lot coverage.

(1) 82%. Borough of Norwood, NJ Downloaded from <https://ecode360.com/NJ01735> on 2025-05-23

M. Maximum building height.

- (1) Three stories or 42 feet.

N. Required number of parking spaces.

- (1) The Residential Site Improvement (RSIS) parking standards will apply in this overlay district.

O. Affordable housing requirements. The Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) and other requirements and standards for affordable housing units that are set forth in this Code will apply in this overlay district, except to the extent that they are inconsistent with any of the terms of this section.

P. Location. The affordable housing overlay district contains all of the parcels of land designated on the Tax Assessment Map of the Borough of Norwood as Block 184, Lot 1, Block 185, Lot 1, Block 186, Lot 1.

- (1) Principal permit use.

- (a) Multiple-family dwellings, in the form of a townhouses or apartments.

- (2) Maximum permitted density

- (a) 24 units, 100% affordable

- (3) Minimum Yards

- (a) Front 30 feet
 - (b) Side 24 feet
 - (c) Rear 15 feet

- (4) Maximum Height

- (a) 2 stories

Q. Location. The affordable housing overlay district contains all of the parcels of land designated on the Tax Assessment Map of the Borough of Norwood as Block 183, Lot 1.01.

- (1) Principal permit use.

- (a) Multiple-family dwellings, in the form of a townhouses or apartments.

- (2) Maximum permitted density

- (a) 24 units, 100% affordable

- (3) Minimum Yards

- (a) Front 30 feet
 - (b) Side 24 feet
 - (c) Rear 15 feet

- (4) Maximum Height

- (a) 2 stories

Affirmative Marketing Plan

This affirmative Marketing Plan applies to all developments that contain low- and moderate-income units.

The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer/sponsor, municipality and/or designated administrative agency or affordable housing. The plan addresses the requirements of N.J.A.C. 5:94-7 and N.J.A.C. 5:80-26. In addition, the plan prohibits discrimination in the sale, rental, financing or other services related to housing on the basis of race, color, sex, affectional or sexual orientation, religion, handicap, age familial status/size or national origin.

Norwood is in Housing Region 1 consisting of Bergen Hudson, Passaic, and Sussex Counties.

The affirmative marketing program is a continuing program and will meet the following requirements:

- The affirmative marketing process for available and affordable units shall begin at least four months prior to expected occupancy. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all available units have been leased or sold.
- One advertisement will be published in the following newspaper(s) of general circulation within the housing region:
 - o The Record, Newark Star Ledger, the Ridgewood News, the Jersey Journal, The Herald News and the New Jersey Herald.
- The advertisement will include the following:
 - o The location of the units;
 - o Directions to the housing units;
 - o A range of prices for the housing units;
 - o The size as measured in bedrooms, of the housing units;
 - o The maximum income permitted to qualify for the housing units;
 - o The business hours when interested households may obtain an application for a housing unit; and
 - o Application fees, if any.
- One advertisement will be broadcast don the following regional radio and/or cable television station(s):
 - o Cablevision of New Jersey, WXXW 101.5
- Additionally, all newspaper articles, announcements and requests for applications for low- and moderate-income housing will appear in the following:
 - o The Record, Newark Star Ledger, the Ridgewood News, the Jersey Journal, The Herald News and the New Jersey Herald.

- Applications will be mailed to prospective applicants upon request.
- The following is the location of applications, brochures, signs, and/or posters used as part of the affirmative marketing programs:
 - o The county administrative building and/or the county library for each county within the housing region;
 - o The municipal administrative building and the municipal library;
 - o The developer's sales/rental office.
- The following is a list of community and regional organizations that will aid in soliciting low- and moderate-income applicants:
 - o Religious Groups
 - o Tenant Organizations
 - o Civic Organizations
 - o Fair Share Housing Center
 - o New Jersey NAACP
 - o Latino Action Network
 - o Bergen County NAACP
 - o Bergen County United Way
 - o Bergen County Board of Social Services
 - o Bergen County Housing Authority
 - o Hudson County Office on Aging
 - o Sussex County Office on Aging
 - o Passaic County Office on Aging
 - o Bergen County Housing Coalition
 - o Urban League of Bergen County
 - o Urban League of Sussex County
 - o Bergen County Dept. of Senior Services
 - o Bergen County Housing, Health, and Human Services center
 - o Latino Action Network
 - o New Jersey Community Development Corporation
 - o Habitat for Humanity
 - o Interreligious Fellowship for the Homeless of Bergen County
- The following is a description of the random selection method that will be used to select occupants of low- and moderate-income housing:
 - o Each applicant upon submission of an application will be designated a number. Two categories will be created: one for a low-income household and one for moderate-income household. A blind drawing will be undertaken; one each for low- and moderate-income households who are eligible for the specific affordable units.
- A waiting list of all eligible candidates will be maintained in accordance with the provisions contained in N.J.A.C. 5:80-26 et. Seq.
- Household who live or work in Housing Region 1 shall be given preference for sales and rentals units constructed within this Housing Region. Applicant living outside this Housing Region will have an equal opportunity for units after regional applicant have been initially serviced.

Norwood is ultimately responsible for administering the affordability controls and the Affirmative Marketing Plan.

Norwood will create the position of a Municipal Liaison and delegate the responsibility to a municipal employee, who shall administer the affordable housing program, including administering and enforcing the affordability controls and this Affirmative Marketing Plan, in accordance with the provisions of the ordinance creating the position of the Municipal Liaison, the regulations of the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26 et. seq.

Subject to approval, Norwood may contract with one or more administrative agents to administer some or all of the affordability controls and/or the Affirmative Marketing Plan in accordance with the provisions of Norwood's Code and the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26 et. seq. If Norwood enters into such a contract, the Municipal Liaison shall supervise the contracting administrative agent(s) and shall serve as liaison to the contracting administrative agent(s).

Developers of low- and moderate-income units may assist in the marketing of the affordable units in their respective developments if so designated by the Governing Body of Norwood in accordance with the provisions of Norwood's Code and the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26 et. seq. If Norwood enters into such a contract, the Municipal Liaison shall supervise the contracting administrative agent(s) and shall serve as liaison to the contracting administrative agent(s).

Draft Spending Plan

Introduction

The Borough of Norwood, Bergen County, New Jersey has prepared a Housing Element and Fair Share Plan in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the affordable housing regulations of the New Jersey Department of Community Affairs (the Department) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing was adopted by the municipality on March 8, 2017 (Ordinance No. 2017-03). The ordinance establishes the Borough of Norwood affordable housing trust fund for which this spending plan is prepared.

Revenues for Certification Period

As of December 31, 2024, the Borough of Norwood has a balance of \$262,057.62. As stated below if applicable, all development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by fees are deposited in a separate interest-bearing affordable housing trust fund in the Spencer Savings Bank for the purposes of affordable housing. These funds will be spent in accordance with N.J.A.C. 5:97-8.7 to 8.9 as described in the sections that follow.

A Development Fee Ordinance creating a dedicated revenue source for affordable housing and establishing an Affordable Housing Trust Fund was adopted on March 8, 2017 (Ordinance No. 2017-03). To calculate a projection of revenue anticipated during the fourth round period, the Borough of Norwood considered the following:

Development fees:

Non-residential projects which have had development fees imposed upon them at the time of preliminary or final development projects. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and Future development that is likely to occur based on historical rates of development.

Payment in lieu (PIL): Payments in lieu have not been collected or assessed.

Other funding sources: No other funds have been or are anticipated to be collected.

Projected interest:

Interest on the projected revenue in the Affordable Housing Trust Fund at the current average interest rate.

| Projected Revenue | | | | | | | | | | | | |
|--|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Source of Funds | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 | Total |
| Development Fees ~ Projected Development | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Payments in Lieu of Construction | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Other Funds | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Interest | 6,000 | 6,000 | 6,000 | 6,000 | 6,000 | 6,000 | 6,000 | 6,000 | 6,000 | 6,000 | 6,000 | 60,000 |
| Total | 268,057 | 274,057 | 280,057 | 286,057 | 292,057 | 298,057 | 304,057 | 310,057 | 316,057 | 322,057 | 328,057 | 334,057 |

The Borough of Norwood projects a total of \$60,000 in revenue from interest to be collected between January 1, 2025, and December 31, 2035. The projected amount, when added to the Borough of Norwood's trust fund balance as of December 31, 2024, results in an anticipated total revenue of \$334,057 available to fund and administer its affordable housing plan. All interest earned on the account shall be used only for the purposes of affordable housing.

Administrative Mechanism to Collect and Distribute Funds

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough of Norwood:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with the Borough of Norwood's development fee ordinance for non-residential developments in accordance with rules and P.L. 2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

A maximum of twenty (20) percent of the affordable housing trust fund revenues may be utilized to address administrative costs. The remaining eighty (80) percent will be used to fund various affordable housing programs and for affordable housing assistance.

Housing trust fund revenues will be distributed under the same procedures as used for the payment of any bill or purchase by the Borough. Purchase orders will be requested and processed.

Description of Anticipated Use of Affordable Housing Funds

The following is the description of the anticipated use of affordable housing funds by the Borough of Norwood:

- (a) Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7) The Borough of Norwood will dedicate affordable housing trust fund monies to rehabilitation or new construction.

Administrative Expenses (N.J.A.C. 5:97-8.9)

| Administrative Expense Calculation | |
|---|-------------|
| Actual development fees and interest thru December 31, 2024 | \$21,697.26 |
| Projected Development Fees and interest January 01, 2025 through 2035 | \$60,000.00 |
| Total for Administrative. Calculation, January 01, 2025 through 2025 | \$334,057 |
| 20% Maximum for Administrative Expense | \$66,811.40 |
| Available for Administrative - January 01, 2025 Through December 31, 2035 | \$66,811.40 |

The Borough of Norwood projects that a maximum of \$66,811.40 will be available from the Affordable Housing Trust Fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, include the following:

Salary and expenses for the Municipal Housing Liaison and other employees and consultants in connection with development and implementation of affordable housing assistance programs, affirmative marketing plan and other affordable housing administration activities.

Expenditures for consultant and professional fees and other expenses in connection with preparation of the Housing Element and Fair Share Plan and future amendments thereto.

Legal fees in connection with the preparation of the Housing Element and Fair Share Plan and future amendments thereto and development and implementation of affordable housing assistance programs and affirmative marketing plan, not including any legal fees related to opposition to specific affordable housing sites.

Excess or Shortfall of Funds

Implementation of the affordable housing program in the Spending Plan will satisfy Norwood's current affordable housing obligation. In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used for a future round of municipal affordable housing obligation and additional affordability assistance funding. In the event of a shortfall of funds, the Borough would use municipal funds through bonding. It shall be noted that the affordability assistance funding would be allocated to security deposit assistance, rental assistance, and emergency repair assistance associated with the five accessory apartment units proposed.

Summary

The Borough of Norwood intends to spend affordable housing trust fund revenues pursuant to N.J.A.C 5:97-8.7 through 8.9 and consistent with the Housing Element and Fair Share Plan and described in this Spending Plan subject to limited amendments.

The Borough of Norwood had a balance of \$274,057 as of December 31, 2024 and anticipates \$60,000 in revenues (including interest) through 2035 for a total of \$227,250. The Borough will dedicate \$66,811.40 to administrative costs, all pending actual projected revenues and interest received. Any shortfall of funds will be offset by municipal bonding if necessary based upon actual projected revenues and interest received. The municipality will dedicate any excess funds or remaining balance toward any future rounds and additional affordability assistance funding. It shall be noted that the additional affordability assistance funding would be allocated to security deposit assistance, rental assistance, and emergency repair assistance associated with the five accessory apartment units proposed.

| Spending Plan Summary | |
|----------------------------------|-----------------|
| Balance as of December 31, 2024 | \$274,057 |
| Projected REVENUE 2025-2035 | |
| Development Fees | + \$ 0.0 |
| Interest | + \$ 60,000 |
| TOTAL AVAILABLE FUNDS | = \$334,057 |
| PROJECTED EXPENDITURES 2025-2035 | |
| Accessory Apartment Program | +\$ 0.00 |
| Affordability Assistance | +\$ 0.00 |
| Administrative Expenses | +\$ 66,811.40 |
| TOTAL EXPENDITURES | = \$66,811.40 |
| REMAINING BALANCE | = \$ 267,245.60 |

Township of Norwood
BER-L-543-25
STATEMENT OF REASONS

This matter came before the Affordable Housing Program pursuant to a complaint for declaring judgment brought by petitioner (Norwood) pursuant to NJSA 52:270-304.2-304.3 and 304(1)(f)(1)(c) of the New Jersey Fair Housing Act, NJSA 52:27D-301 et seq. (collectively, the FHA) and in accordance with Section II.A of Administrative Directive #14-24 (Directive 14-24) of the Affordable Housing Dispute Resolution Program (“the Program”).

On October 18th 2024, pursuant to the FHA (as amended) the New Jersey Department of Community Affairs (“DCA”) issued its report entitled, “Affordable Housing Obligations for 2025-2035 (Fourth Round)”. The report set forth the “Present Need” and “Prospective Need” obligations of all New Jersey municipalities for the Fourth Round cycle.

With regards to the Petitioner, the “Present Need” obligation of the Petitioner has been calculated and reported by the DCA as 15 affordable units. Its “Prospective Need” obligation was calculated and reported by the DCA as 162 affordable units. The DCA calculations are “presumptively valid” for purposes of the FHA.

Previously the Petitioner adopted a resolution seeking a deviation from its assigned Prospective Need obligation based upon recommendation of its counsel and/or experts. In this case, the municipality requests that its Prospective Need obligation be reduced to 130 units. The municipalities complaint was timely and properly with the Program.

The municipalities position has been challenged by the New Jersey Builders Association (“NJBA”).¹ Their application was supported by its own expert report.

The program assigned this case to program member Thomas C. Miller, A.J.S.C. (ret.) to address the case in accordance with the Statute and AOC Directive. The Program member

¹ This municipal challenge was not objected by the Fair Share Housing Center (“FSHC”).

convened a settlement conference, but when settlement negotiations failed, a session was held in order that each party present its position. The session was held “on the record”. At that time, the record that was before the program member was established and the parties were permitted to present arguments concerning their positions.

The following statement of reasons has been prepared to support the recommendation that is made by the program member to the locally assigned and designated “Mount Laurel Judge”.

A. IN GENERAL

In order to properly understand the issues presented, some historical background and context is appropriate.

In Mount Laurel I, Justice Hall described the duty of a developing municipality stating that it:

[M]ust, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income. It must permit multi-family housing, without bedroom or similar restrictions, as well as small dwellings on very small lots, low cost housing of other types and, in general, high density zoning, without artificial and unjustifiable minimum requirements as to lot size, building size and the like, to meet the full panoply of these needs and Southern Burlington County N.A.A.C., DV Mount Laurel Township 67NJ 157, 179, 787 (1975).

As a result, the Mount Laurel Doctrine was born. The Doctrine was upheld and extended in 1983. Mount Laurel II, 92 NJ 158 205 (1983). The broad challenge to the persistent abuse of the zoning power turned out to be difficult to enforce, however, so in 1983, Chief Justice Wilentz focused the bright line standard of compliance on the provision specifically of homes for low and moderate-income households. With “low and moderate income” defined by the Court as households making less than 80% of the median income in their area, the Mount Laurel doctrine directly affects approximately 40% of New Jersey’s population. Under the direction of Mount

Laurel II, the needs of the future lower-income population would be numerically estimated and allocated to municipalities. Mount Laurel II, *supra*, 92 N.J. at 205. This framework was developed in case law and set the foundation for the New Jersey Fair Housing Act.

Since Mount Laurel II there have been five (5) allocation models adopted and implemented:

a. The Consensus Methodology addressed need from 1980 to 1990 and was created under Court direction. See *i.e.* AMG Realty Co. v. Township of Warren 207 NJ Super 388 (1984). The four (4) allocation factors were covered employment, the change in covered employment, a wealth measure using the municipality's median income as a share of the region's aggregate of all medians,² and the gross acres (developed or vacant) in the growth area under the old State Development Guide Plan.³ As this model was developed in the context of town by town litigation, the "region" for each town was an area around that town and unique to itself. The projected need was based on the ODEA Economic/Demographic Model.

b. First Round, prepared by COAH, was the first allocation model created by that agency and addressed the need from 1987-1993, although it and all subsequent models allow units created after 1980 to be credited. N.J.A.C. 5:92, especially Appendix A (1986). This model used the same four (4) factors as the Consensus Methodology except that the wealth factor was changed to the 1983 per capita income of the municipality times its population and then taken as a share of the regional total for that figure.⁴ This had the effect of shifting some of the obligation from small wealthy communities to larger suburban communities. The major innovation for this round was the creation of the six (6) permanent regions for determining the regional share for each municipality. The projected need was still based on the ODEA Economic/Demographic Model.

c. Second Round, prepared by COAH, merged two 6-year compliance periods together and covered, in the aggregate, the 12-year period from 1987-1999. This allowed COAH to reduce

² The formula was the 1980 median divided by the regional median and that ratio was multiplied by the average of the two employment factors.

³ State Development Guide Plan, Division of State & Regional Planning, Department of Community affairs, 1980.

⁴ New Jersey Legislative Data Book: 1986, Bureau of Government Research, Rutgers,

retroactively the First Round obligation as part of a cumulative 12-year model. At the time, this was referred to as Cumulative Need. COAH's various unsuccessful rule-making efforts to cover the third round have referred to this obligation as the Prior Round (sometimes also called the Prior Obligation). N.J.A.C. 5:93, especially Appendix A (1994). The model introduced significant changes. First, the population projection used was the average of two models – the Economic/Demographic Model and the Historic Migration Model by ODEA. This has the effect of dampening need in edge areas and shifted some of the allocation towards the regions that had grown in the past. The economic component saw a shift from employment to the nonresidential real estate valuation and the change in the valuation of the prior 10-year period. This also tended to reallocate units from suburban employment centers to inner ring suburbs with older factories and shopping areas that still had real estate value even if employment was lower. The land factor was changed to an estimate of “vacant” land using remote sensing taking advantage of the then relatively new Geographic Information Systems (GIS) technology. The totals were then weighted based on the new State Plan's area designations. This greatly shifted portions of the obligation from developed communities in the growth area to greenfields communities. At that point, it was still a 4-factor model.

d. The third Round was delayed and ultimately addressed in what has been called the Jacobson methodology, reflecting the work of Judge Mary Jacobson to oversee a 40+- day trial in the case of *In the Matter of the Application of the Municipality of Princeton* L-1550-15 (Law Div. March 8, 2018) (“Princeton Decision”). Judge Jacobson authored a comprehensive decision that was adopted throughout New Jersey for the Third Round. Judge Jacobson analyzed and worked through all of the many issues in developing that methodology. In fact, Judge Jacobson's decision is specifically referenced in the amendments to the FHA as a point of guidance.⁵ The projection of need was again based on the average of the two projections prepared by the NJDOL, but required significant adjustment procedures due to changes in the way the data was published by NJDOL. The primary change to the allocation model was that the Third Round model followed the choice of the various COAH-published models for the round which reduced the allocation factors from four (4) to three (3),

⁵ The quantitative outcome of that trial was published as *Statewide and Municipal Obligations Under Jacobson Opinion*, dated March 18, 2018, prepared by Econsult Solutions.

using non-residential valuation change alone and without a stock or total factor.

e. The fourth or current round is governed by the revisions to the FHA reflected in P.L. 2024, c.2 which covers the time period from 2025 to 2035. and has been implemented through the work of the DCA pursuant to the specific In the statute, the New Jersey Department of Community Affairs (DCA) was charged with implementing the methodology directives now contained with the Act.⁶ The Act currently provides for a three factor allocation model.

B. FACTUAL BACKGROUND

1. On March 20, 2024, Governor Murphy signed into law revisions to the FHA that introduced a number of significant revisions to the FHA.

2. First, the revisions created the Program as the body intended to oversee municipal compliance with the Mount Laurel Doctrine.⁷

3. The FHA also now provides for each municipality to calculate its own present and pProspective Need. See N.J.S.A. 52:27D-304.1.a.

4. However, in calculating such need, a municipality, such as Plaintiff, is required to abide by the statutory formula set forth in the FHA, specifically N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3.

5. The calculation of regional need and the allocation of that need involves the compilation, review and analysis of a substantial amount of regional data in order for a municipality's prospective need to be determined. See N.J.S.A. 52:27D-304.3.

6. Given the magnitude of that task, the FHA directed the DCA to prepare "a report on the calculations of regional need and municipal obligations for each region of the State." See N.J.S.A. 52:27D-304.1.d.

⁶ *Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background, Fourth Round Calculation Workbook, Consulting Report by Mercaden, PC essentially auditing the DCA work.*

⁷ *The Mount Laurel Doctrine is collectively embodied by the judicial precedent established in Southern Burlington Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975) ("Mount Laurel I"), Southern Burlington Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 92 N.J. 189 (1983) ("Mount Laurel II") and their judicial progeny, the Legislature's enactment of the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., (the "FHA") and the regulations adopted by the New Jersey Council on Affordable Housing ("COAH"), N.J.A.C. 5:91-1, et seq., N.J.A.C. 5:92-1, et seq., and N.J.A.C. 5:93-1, et seq. (the "COAH Rules").*

7. The DCA, one of the largest departments in the State, with a 2024 operating budget of \$1.485 billion, was allotted a period of seven (7) months to develop the report.

8. On October 20, 2024, the DCA issued its report entitled “Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background” (hereinafter the “DCA Report”).

9. The DCA Report was also peer reviewed by the firm of Mercadien, P.C., that “confirmed the accuracy and consistency of the calculations and methodology required under the relevant public law.”

10. The DCA Report both calculated the regional present and prospective need for all six (6) housing regions within the State (as required by N.J.S.A. 52:27D-304.2) and then allocated those regional need totals to the municipalities within each region (as required by N.J.S.A. 52:27D-304.3).

11. The calculation of regional prospective need was modified and simplified by the March 20, 2024 revisions to the FHA. In calculating that need, the FHA provides:

Regional prospective need for a 10-year round of low- and-moderate-income housing obligations shall be determined through the calculation provided in this subsection. 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. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective need shall be zero.

See N.J.S.A. 52:27D-304.2.b.(2).

12. Consistent with the above, the DCA Report calculated the Statewide prospective need as follows:

Regional Obligations Calculations - 2010 and 2020 Census

| Region | Regional Prospective Need | 2010 Households - Decennial Census | 2020 Households - Decennial Census | Change | Change Divided by 2.5 (Assumed Low- and Moderate Income Household Growth) |
|--------------|---------------------------|------------------------------------|------------------------------------|----------------|---|
| 1 | 27,743 | 803,704 | 873,062 | 69,358 | 27,743 |
| 2 | 20,506 | 693,844 | 745,108 | 51,264 | 20,506 |
| 3 | 11,604 | 446,114 | 475,123 | 29,009 | 11,604 |
| 4 | 13,822 | 588,249 | 622,803 | 34,554 | 13,822 |
| 5 | 9,134 | 461,569 | 484,404 | 22,835 | 9,134 |
| 6 | 1,889 | 220,880 | 225,602 | 4,722 | 1,889 |
| TOTAL | 84,698 | 3,214,360 | 3,426,102 | 211,742 | 84,698 |

13. None of the parties to this matter dispute the DCA's overall calculation of regional need. Although the municipality contends that the regional need would be adjusted by any exclusions that it seeks to receive credit for.

14. After calculation of regional prospective need, the DCA Report then allocates that regional need in accordance with the provisions of N.J.S.A. 52:27D-304.3.c.

15. On the basis of its allocation methodology, the DCA established Plaintiff's Fourth Round prospective need at 485 units.

16. Pursuant to the FHA, on or before January 31, 2025, a New Jersey municipality was required to adopt a binding Resolution that both expressed its intention to participate in the Program and "determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in [N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3.] See N.J.S.A. 52:27D-301.f.(1)(a).

17. On or before the January 31, 2025 deadline, more than 440 municipalities filed their respective, binding resolutions with the Program with approximately 2/3 of the participating municipalities accepting and adopting the prospective need allocations established by the DCA Report.

18. Approximately 159 municipalities deviated from the prospective need allocations of the DCA Report and each of those 159 municipalities contends that the DCA Report contained errors in its calculation of the municipal land capacity factor as that calculation is to be performed pursuant to N.J.S.A. 52:27D-304.3.c.(4), leading all 159 of those municipalities to contend that their prospective need allocation should be less than that calculated in the DCA Report. No municipalities contended that their allocation should be higher than the calculation in the DCA Report as a result of their respective land capacity analyses.

19. Plaintiff is one of the 159 municipalities that deviated from the prospective need allocations set forth in the DCA Report, as Plaintiff maintains that its prospective need should be 130 units as opposed to the 162 units as set forth in the DCA Report. See Plaintiff's January 21, 2025 Resolution and supporting documents.

20. In support of its proposed reduction from the prospective need allocation as determined by the DCA Report, Plaintiff has cited to the Program a number of municipal parcels that the DCA Report included as part of DCA's calculation of the land capacity factor pursuant to N.J.S.A. 52:27D-304.3.c.(4). *Id.*

21. While Plaintiff has identified municipal parcels that it contends have been improperly included within the DCA Report's land capacity analysis for purposes of calculating the land capacity factor, Plaintiff has not provided any similar land capacity analysis for the region as a whole.

22. With respect to the land allocation factor, the FHA provides, in relevant part:

A municipality's land capacity factor shall be determined. This factor shall be determined by estimating the area of developable land in the municipality's boundaries, and regional boundaries, that may accommodate development through the use of the "land use/land cover data" most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the

Department of Community Affairs and weighing such land based on the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality and in the region shall be determined. The municipality's share of its region's developable land shall be its land capacity factor.

N.J.S.A. 52:27D-304.3.c(4), emphasis added.

C. REGARDING THE FOURTH ROUND MODEL

The 2024 amendments to the New Jersey Fair Housing Act (the Act), established a process by which quantifies each municipalities 2025-2035 (Fourth Round) Prospective Need. The statute explicitly states that each municipality has the opportunity to calculate its own Fourth Round Prospective Need based on the criteria outlined in the Act.

In devising a statutory framework for the Fourth Round, the legislative had the benefit of the past history of prior models as well as court decisions and administrative regulations that had been developed over a 40 year span. The legislature presumably considered the historical background and experience when it enacted the current legislation. The new legislation was meant to streamline the process by providing for a model that would give clear direction to all concerned and to minimize disputes that previously resulted in protracted litigation.

In doing so, the legislature recognized that the new model was not perfect. In fact no model can be perfect.

Every court and/or agency that has been required to confront the calculation and allocation of fair share methodology pursuant to the Mount Laurel Doctrine has recognized that perfection is not attainable. The Supreme Court in Mount Laurel II acknowledged as much when it observed:

The most troublesome issue in Mount Laurel litigation is the determination of fair share. It takes the most time, produces the greatest variety of opinions, and engenders doubt as to the meaning and wisdom of Mount Laurel. . . . Each of these issues (region, regional need and allocation) produces a morass of facts, statistics, projections, theories and opinions sufficient to discourage even the staunchest supporters of Mount Laurel. The problem is capable of monopolizing counsel's time for years, overwhelming trial courts and inundating reviewing courts with a record on review of superhuman dimensions.

See Mount Laurel II, 92 N.J. at 248.

Methodology issues were presented to Judge Serpentelli in AMG Realty Co. v. Warren, 207 NJ Super 388 (Law Division 1984) to the New Jersey Council on Affordable Housing (COAH) in developing the First and Second Round methodology and to Judge Jacobson in developing a Third Round methodology in Application of Municipality of Princeton, 480 NJ Super 70 (Law Division 2018).

In the FHA, the legislature provided that after the DCA developed and provided its calculations, that the municipalities would have a short and limited period to provide its own analyses of the calculations and their challenge to DCA's calculations.

If a municipality challenged the DCA calculations, the statute contemplated a Dispute Resolution Program ("The Program") in order to address and resolve the disputes between the municipal calculations with that of the DCA. Other interested parties were allowed to participate in the process as long as their challenges met the Program criteria.

A remarkably short thirty-day period was allocated for the resolution of those disputes. It is clear that the legislature believed that the statutory methodology was so clear that the number of disputes would be minimal. In order for the Legislature to believe that any and all challenges could be effectively addressed and resolved within that short time frame by the seven retired judges

who were assigned to mediate those disputes. It surely anticipated that the number of challenges would be few.⁸

A review of the model that was statutorily adopted for this round is an important step in determining how challenges to the statute should be addressed. The first step in the Fourth Round model is the determination of how much low and moderate income housing will be needed to meet the expanding population of our State.

As DCA explained and calculated in its October 2024 report:

The Affordable Housing Law requires that “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.” The most recent federal decennial census is the 2020 Census, and the second-most recent census is the 2010 Census. DCA collected household data at the county level from the Table H14 of the 2010 Census Summary File 1 and Table DP1 of the 2020 Census Demographic Profile. These figures were aggregated to the Housing Region level and the difference between the two was computed, representing the increase in the number of households on the Final Summary tab of the Excel calculation model. The Affordable Housing Law requires that “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.” Pursuant to this requirement, DCA divided the household change for each Housing Region by 2.5, producing Regional Prospective Need figures totaling 84,698 statewide.

In allocating the regional need to individual municipalities, the four prior models had the same overall structure, with an allocation of that need to individual municipalities through the use

⁸ The Program was eventually confronted with over 160 challenges as well as challenges from the Fair Share Housing Course (FSHC), the New Jersey Builders Association (NJBA) and others.

of factors correlated with economic capacity, relative wealth and a land capacity factor. The specific data sets that have been used to calculate the component parts of the calculation that is inherent in the methodology have varied over time in an effort to use the best available data and create fair distributions. It is the land capacity factor that has caused the vast majority of consternation and resultant challenges by the towns.

It is not disputed by the parties that each municipal obligation is merely a share of a regional obligation. The regions are established at Section 306(b) of the Act. The housing regions are prescribed by the Act. The regional need is based on actual growth as measured by census data. Again, the regional need is assigned to increase in non-residential valuations; (2) an income factor; and (3) a land capacity factor. Each regional share is the calculation resulting from dividing a municipal value by a total value for the housing region.

The methodology to calculate the municipal fair share and the municipal obligation has always been determined to be a share of the regional obligation.

At section 306(b)(2), the Act established the required formula for calculation the regional affordable housing obligations. It is calculated by subtracting the number of households as of the 2010 federal decennial census from the number of households as of the 2010 federal decennial census from the number of households to be divided by 2.5 to calculate to 2010-20 growth in low and moderate income households.

The land capacity factor was closely examined by the Legislature. It received submissions and testimony suggesting that redevelopment had played a stronger role in recent housing development, and it was suggested by some commentators that the use of simply the gross acres in the growth area (weighting by category) as had been done in the COAH's First Round model was again more appropriate than the "vacant land" approach adopted by COAH for the Second Round.

The Act provides a list of data sources that can be used for calculating the land capacity factor: the most recent DEP land use/land cover data; data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset; The MOD IV Property Tax List data from the Division of the Treasury; and construction permit data from the Department of Community Affairs.

The DCA Report describes its methodology to calculate the properties included in the land capacity factor. The methodology was uniform for each municipality in the State. Each undeveloped parcel was weighted as required by Section 307(c)4. These factors are designed to direct more of the regional housing need to places in which the State is encouraging growth. So, for example, vacant land in the State Development and Redevelopment Plan's (SDRP) Planning Areas 1 and 2 are weighted (multiplied) by a factor of 1. Undeveloped land in Planning Areas 4 and 5 are weighted (multiplied) by a factor of zero. There has been no challenge to the DCA's Land Capacity Factor.

Historical context is illuminating in this instance. In the second round, COAH realized that its first round allocations resulted in many large housing allocations to areas that had very little undeveloped land. To reduce the problem, COAH estimated undeveloped land through satellite (Landsat) imagery. The satellite imagery was used because there was no comprehensive database of undeveloped land in the State in the late 1980s/early 1990s. The satellite interpreted the data for developed versus undeveloped land in the same way throughout each region. The satellite imagery resulted in comprehensive estimates of undeveloped land by municipality. COAH was able to overlay the estimates of undeveloped land with the outline of SDRP Planning Areas and weight the undeveloped land based on Planning Area. The weighted municipal estimates were summed for each region to calculate each regional total estimate of undeveloped land; and the regional totals were divided into the estimate of undeveloped land for each of the

region's municipalities to calculate each municipality's regional share of undeveloped land. COAH found the satellite data an acceptable way to estimate regional shares of undeveloped land.⁹

New Jersey Department of Environmental Protection (DEP) developed imagery and coded it into polygons that do not match municipal lot lines. The minimum mapping unit, for non-water and non-wetland polygons is one acre.¹⁰ The coded data are classified into 18 land use codes that DCA identified as vacant, developable land.¹¹ DCA then used MOD-IV tax data to eliminate a perceived problem associated with forested areas that were not vacant; but were actually residential rear yards. The remaining undeveloped land was then reduced based on recent construction permit data. The remaining undeveloped land was further reduced based on GIS mapping of open space, preserved farms, category 1 waterways, wetlands (and associated buffers based on special resource area restrictions), steep slopes and open waters. Clearly the process is not perfect as it is a more "broad brush" approach.

DCA, like COAH, has developed a consistent methodology for the entire region. The prior round undeveloped land factor was based on digital satellite imagery. The DCA land capacity factor is also based on digital imagery. In both cases, the imagery is interpreted consistently throughout the housing region. In both cases the imagery is being read the same way for each municipality in the housing region.

In both cases, the imagery does not coincide with municipal lot lines. In fact, it is not necessary for the imagery to coincide with municipal lot lines. It is only necessary for the methodology to use a consistent database to estimate undeveloped land within the municipal limits; then add the municipal estimates to calculate regional totals; and to divide the regional totals into the municipal totals to develop consistent regional shares of undeveloped land.

⁹ 25 NJR 1120.

¹⁰ <https://www.arcgis.com>

¹¹ Page 15 of DCA's *Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background*, October 2024.

In this case the NJBA charges that the municipality has attempted to lower its land capacity factor by focusing on perceived or identified errors in calculations in developed land in their town (the numerator). In its challenge, the NJBA contends that the municipality has not addressed any of the perceived errors that are unique to the region that it is located. In other words, the NJBA argues that the challenging municipality has not shown how the DCA calculations of the regional total of the land capacity would change if the same perceived errors were corrected for the housing region (the denominator).

As noted above, for the Fourth Round, the DCA determined the Regional Obligations for the Found Round to be as follows:

Regional Obligations Calculations - 2010 and 2020 Census

| Region | Regional Prospective Need | 2010 Households - Decennial Census | 2020 Households - Decennial Census | Change | Change Divided by 2.5 (Assumed Low- and Moderate Income Household Growth) |
|--------------|---------------------------|------------------------------------|------------------------------------|----------------|---|
| 1 | 27,743 | 803,704 | 873,062 | 69,358 | 27,743 |
| 2 | 20,506 | 693,844 | 745,108 | 51,264 | 20,506 |
| 3 | 11,604 | 446,114 | 475,123 | 29,009 | 11,604 |
| 4 | 13,822 | 588,249 | 622,803 | 34,554 | 13,822 |
| 5 | 9,134 | 461,569 | 484,404 | 22,835 | 9,134 |
| 6 | 1,889 | 220,880 | 225,602 | 4,722 | 1,889 |
| TOTAL | 84,698 | 3,214,360 | 3,426,102 | 211,742 | 84,698 |

The Act, which has effectively adopted the Jacobson methodology, requires total prospective need must then be allocated to each non-urban aid municipality within the State in accordance with the allocation factors set forth in the FHA. It is clear that the DCA performed that allocation on a regional basis consistent with the provisions of the FHA.

The NJBA theorizes in its challenge that the municipality has effectively sought to reduce its individual allocation of prospective need as assigned by the DCA without placing their obligation in a regional context. The NJBA argues that the municipality has not even considered or addressed what their suggested approach would do to the allocation factors of the other

municipalities in the region or the region as a whole. Further, the municipality has not reallocated the proposed decrease in the prospective units to the other towns in the region.

The municipal and region totals are based upon the same imagery. As a result, the NJBA postulates that if one municipality disagrees with a specific lot it has only addressed the municipal total (numerator). If a challenge were to challenge the regional share, it would have to address any change in the denominator as well.

The importance of allocating the entirety of regional prospective need was first articulated by Judge Serpentelli in the AMG Realty Co., supra, decision. In that matter, Judge Serpentelli, one of the three Mount Laurel judges designated in the wake of the Mount Laurel II decision, was tasked with setting forth an appropriate fair share methodology for Warren Township (Somerset County). The first step was establishing the prospective need for the region. In doing so, Judge Serpentelli was cognizant that there would be municipalities within the region that would lack sufficient vacant land to meet their fair share allocations. To avoid the potential loss of prospective need in light of those anticipated adjustments, Judge Serpentelli calculated present and prospective need and then applied a 20% increase of that number prior to allocating the fair share numbers. In response to the municipal criticism for doing so, Judge Serpentelli explained:

Certain criticisms raised by defendant relate to both the present and prospective need methodology. Specifically, the defendant objects to the 20% adjustment for vacant developable land and the three percent adjustment for vacancies.

As discussed above, the methodology increases the surplus present and prospective need number of each municipality by 20% across the board. Underlying the concept of this adjustment is the desire to avoid the loss of housing units which occurs by virtue of the reduction of fair share obligations due to the absence of adequate land or credits given for prior Mount Laurel compliance. If the fair share methodology generates a number which a town cannot accommodate because it has inadequate land or if the town is entitled to a credit against that number because it has already built

some lower income housing, the obligation of the town must be reduced. However, the regional need remains. That need is not a theoretical number. It represents housing required for lower income households. Unless that responsibility is transferred elsewhere, it is lost.

AMG Realty Co., 207 N.J. Super at 428-429, emphasis added.

Interestingly, Judge Jacobson also wrestled with the challenge of theoretically more accurate local data using tax information provided by Dr. Peter Angelides of Econsult as a potential change to the model as compared to the fairness of the remote sensing approach, even though it embodied known inaccuracies:

Mr. Reading (the court master) concluded that, although Dr. Angelides' reliance on municipal block and lot classification of land use instead of aerial surveys could offer a more accurate and up-to-date method, his approach depended upon classifications performed by individual municipal assessors, and therefore lacked statewide uniformity. Mr. Reading further concluded that any inaccuracies in the land imagery data due to recent development could be addressed by adjustments made in each town's compliance process. Mr. Reading once again recommended Dr. Kinsey's methodology as it conformed more closely to COAH's Second Round methodology.

The court concurs with Mr. Reading's assessment that, given yet another choice between two imperfect alternatives, following the Second Round approach is the best option, especially since the approach relied on data derived from a single consistent source that can be corrected during the compliance process. See in the matter of the Applicable of the Municipality of Princeton, Superior Court of New Jersey, Law Division Mercer County, *supra*.

Judge Jacobson's approach was consistent with forty (40) years of Mount Laurel jurisprudence. The DCA's methodology is consistent with Judge Jacobson's approach, and as such, with the statutory mandate.

While COAH's methodology differed from that set forth by Judge Serpentelli in that it did not apply a 20% surplus, COAH's insistence that the totality of the prospective need be allocated remained. To that point, similar to Plaintiff's criticism of the DCA Report's handling of the land capacity factor, COAH faced criticism for errors in its vacant land analysis such that it was suggested that COAH should revise its allocation models to account for errors that could be deciphered at the municipal level. COAH rejected such an approach and concluded that any errors that may be uncovered could be addressed as part of the compliance process:

COMMENT: The Council has generated estimates of undeveloped land based on a land satellite. The Council should develop a mechanism to alter the municipal housing allocations based on errors made by the satellite.

RESPONSE: The Council used the satellite data in order to direct housing need into areas that could accommodate the need in a manner that was sensitive to the SDRP. The satellite does not result in precise estimates of undeveloped land; but it classifies land consistently based on the image reflected from the Earth. Because these measurements are uniform throughout the State, the Council has determined that the satellite is a reasonable and fair tool with which to calculate reasonable regional shares that may be used to allocate housing need to municipalities in each housing region (see Appendix B). Therefore, the Council will not accept challenges to a particular municipality. Rather, based on an error in the calculation of undeveloped land, a party in the process seeking to alter the Landsat calculation must demonstrate that the regional share of undeveloped land is incorrect. In other words, the focus in such a determination must not be on the estimate of undeveloped land for any one municipality; but rather on the relationship defined by the undeveloped land in a specific municipality divided by the undeveloped land in the housing region.

See 25 NJR 5765, Comment 15, emphasis added.

Criticism of the imprecision of vacant land models within the prospective need allocation model continued into the Third Round. However, as had Judge Serpentelli and COAH, Judge Jacobson determined that choosing between the two options provided to her in the In re Princeton

matter presented the choice between “two imperfect alternatives.” See *In re Princeton*, supra, at p. 106. However, Judge Jacobson, as had COAH, determined that any alleged vacant land errors that may have been identified by a municipality would be more appropriately addressed during the municipal compliance phase without any alteration to the allocation of the entire prospective need for the region. As Judge Jacobson explained:

The court concurs with Mr. Reading’s assessment that, given yet another choice between two imperfect alternatives, following the Second Round approach is the best option, especially since that approach relies on data derived from a single consistent source that can be corrected during the compliance process.

Id., emphasis added.

A review of all of the challenges that have been filed and now referred to the Program, there have only been a few that challenge the DCA regional calculations. There are also very few challenges to the DCA’s calculations of the income factor.

The Program member’s recommendation in determining the land capacity factor it must be recognized that the allocation factors are crude tools that are designed to allocate a housing obligation to each municipality. In determining the land capacity factor, the inclusion of a parcel does not mean that every site included in the land capacity factor should, could or must be developed. Again as the DCA Report acknowledges, none of the data sets prescribed by the Legislature are perfect. In fact, the DCA has tried to eliminate masses of land that are included in the calculation of the vacant land factor. Notably, there is a vacant land adjustment process built into the rules that allows a municipality to actually calculate how much of its affordable housing obligation it can actually accommodate with its undeveloped land based on the actual undeveloped land remaining in the Borough as modified based on environmental restraints and land that is

precluded from development (such as land purchased for open space). At Section 24(m), the Amended Fair Housing Act states that all parties may rely on COAH's adjustment process.

The need assigned to any municipality is *not* based on the *municipal total* of undeveloped land calculated by DCA. *It is calculated based on a regional share*: the municipal total of undeveloped land divided by the regional total of undeveloped land (the sum of each municipality in the housing region). The calculation involves a numerator (municipality) and a denominator (housing region). As a general proposition, one cannot recalculate a credible fair share unless the municipality can apply a perceived error to the numerator (municipal total) and the denominator (regional total). Otherwise, the calculation of the land capacity factor is the functional equivalent of dividing apples into oranges (a meaningless calculation). The Act does not provide for or permit the alternate methodology that has been employed by the municipality.

Any party who seeks to challenge the DCA's municipal calculation of undeveloped land, is required to provide the rationale for the change. When a party seeks to challenge and change the DCA methodology throughout the region it is also required to recalculate a new regional share based on the change requested. In other words, all of the municipal fair shares in the housing region would have to be adjusted.

While the FHA Provides each municipality with the opportunity to calculate its own present and prospective need and to challenge the DCA numbers, the FHA requires the plaintiff to abide by the statutory formulas set forth in the FHA. NJSA 52:27D-304.2 and 304.3. In this case, for the reason set forth above the plaintiff has failed to do so.

D. PROGRAM MEMBERS RECOMMENDATION

It is the opinion of this Program member that for the reasons set forth above, when a municipality fails to provide information or analysis that allows one to calculate the regional share of the land capacity factor, the municipality's effort to reduce its 2025-2035 prospective must fail.

As such, it is the recommendation of this member that the standards set forth in NJSA 52:27D-304.2 and 304.3, and other applicable law, that the Fourth Round Prospective Need for Norwood should be established at the DCA calculated number of 162 units.

In this case, at the session held before this Program member, the Borough relied upon an analysis done for it by the Neglia Group to challenge the Land Capacity aspect of the DCA formula. Norwood's expert acknowledged that the Land Capacity Factor was calculated by dividing the total developable land for the housing region (Regional) by the developable land in the municipality.

In order to determine the developable land in the municipality, the Borough's expert planner conducted a parcel by parcel study mostly to analyze the DCA's determination of developable land. As a result, Norwood's planner excluded certain parcels for reasons identified in its report. The developable land was shown to be reduced from 7.835 acres to 1.652 acres, thereby, in its opinion, reducing the Prospective Need from 162 units to 130 units by their analysis.

Even though the information provided in the Negri report lacked some detail regarding the specific parcels, the NJBA did not object to the findings made by the Negri Group. As such, those assertions are not contested for the purpose of this matter.

The parties do disagree upon the basic methodology, however. As noted the NJBA criticizes the Borough's analysis as fatally flawed for not having addressed the effects of their findings on the regional need as part of its calculations. That proposition appears to be true.

It appears to this Program member that the Borough's analysis failed to consider or make adjustments were not made to the Regional Share. For the reasons set forth in this recommendation, the Borough's methodology and as such it is fatally flawed. The Program member recommends that the DCA number for the Prospective Share of 162 units be adopted.

In this Program Member's view, the adjustment process that is offered in its vacant land analysis must be reserved for the compliance phase. In fact, that reservation is integral to support its recommendation in this matter. The municipality has provided certain compelling and credible objections that may allow the municipality for credits or adjustments that can and should be addressed in the Compliance phase. The Township has provided documentation to support the proposition that the Program members' recommendation is specifically based upon the assumption that the municipality will be able to raise those issues, if applicable, as part of the vacant land analyses that it will offer during the compliance phase.

While there certainly are imperfections within the DCA report and it is very possible that the DCA may have included parcels within the plaintiff's municipal boundaries which are arguably or potentially not developable. Both the FHA and forty (40) years of Mount Laurel jurisprudence requires that the means to address any such errors is through the vacant land adjustment process that is part of the municipal compliance process. If the municipality can demonstrate that when its particular circumstances are considered that its ability to actually accommodate affordable housing is limited, it is recommended that relief and adjustment be considered and possibly implemented at the compliance phase.

Lastly, this program member has permitted the NJBA to participate in this matter effectively providing it with standing. In fact the NJBA has been recognized to have standing in the context of a wide variety of housing land use and affordable housing matters, including in matters of fair share methodology. See, e.g. In Declaratory Judgment Actions Filed by Various Municipalities, 227 NJ 508 (2017).

This program member has also proceeded with the view that the NJBA has filed a valid objection pursuant to NJSA 52: 27D-304.1(f)(1)(b) and (c).

However, this program member's view and recommendation remains the same whether the NJBA is a participant or not.

