

**BOROUGH OF EMERSON
COUNTY OF BERGEN, NEW JERSEY
RESOLUTION**

NO.: 72-25

DATE: 01-28-2025

Council	Motion	Second	Yes	No	Abstain	Absent
Rice			X			
Sayers			X			
McGuire	X		X			
Argenzia			X			
Timmerman		X	X			
Ciolino			X			
Mayor DiPaola	--	--				

Carried Defeated Tabled

Approved on Consent Agenda

**RESOLUTION OF THE BOROUGH OF EMERSON COMMITTING TO
DCA’S FOURTH ROUND AFFORDABLE HOUSING PRESENT NEED AND
PROSPECTIVE NEED NUMBERS AS MODIFIED**

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, 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 Emerson’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 0 units and a Prospective Need or New Construction Obligation of 181 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

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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, Emerson 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, Emerson relies on the DCA calculations of Emerson's fair share obligations as modified herein to account for Emerson'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 Emerson's affordable housing planner, and Emerson seeks to commit to provide its fair share of zero (0) units present need and one hundred sixty-seven (167) 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, Emerson reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, Emerson 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, Emerson 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, the Mayor and Council of the Borough of Emerson finds that it is in the best interest of Emerson 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 Mayor and Council finds that, as a municipality seeking a certification of compliance with the FHA, it is in the best interests of Emerson 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;

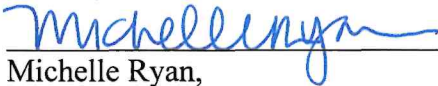
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NOW, THEREFORE, BE IT RESOLVED on this 28th day of January, 2025 by the Mayor and Council of the Borough of Emerson, County of Bergen, State of New Jersey as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. Emerson hereby commits to the DCA's Round 4 Present Need Obligation of zero units and a modification of the DCA's Round 4 Prospective Need Obligation of 181 units to 167 units, as explained above and in the attached memo from Emerson's affordable housing planner, and subject to all reservations of rights set forth above
3. Emerson hereby directs its Affordable Housing Attorney, Brian T. Giblin, Esq. 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. Emerson authorizes its Borough Attorney, Brian T. Giblin, Esq. 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.
5. This resolution shall take effect immediately, according to law.
6. The within Resolution was duly adopted by the Emerson Governing Body at a meeting on January 28, 2025.



Michelle Ryan,
Acting Municipal Clerk

CERTIFICATION

I, Michelle Ryan, Acting Borough Clerk of the Borough of Emerson, County of Bergen, State of New Jersey, do hereby certify that the foregoing is a true copy of a Resolution adopted by the Governing Body of the Borough of Emerson at a meeting held on January 28, 2025.



Michelle Ryan
Acting Borough Clerk

Via email

MEMORANDUM

To: Brian Giblin, Esq., Borough of Emerson Affordable Housing Attorney

From: Caroline Z. Reiter, P.P., A.I.C.P., Borough of Emerson Affordable Housing Planner

Date: January 28, 2025

Re: Round 4 Affordable Housing Obligation

As requested, we are providing additional information on the Borough of Emerson's Round 4 affordable housing obligation. New Jersey's Department of Community Affairs (DCA) calculated a Round 4 Prospective Need obligation of **181 units** for the Borough.

Regional Obligation and Allocation Factors

New Jersey affordable housing obligations are calculated on a regional level and then filtered down to the municipal level. There are six affordable housing regions in the state; the regions each include three or four counties. Region 1, in which Emerson is located, includes Bergen, Hudson, Passaic and Sussex counties.

The calculated affordable housing obligation, which is referred to as the prospective need obligation, for Region 1 is **27,743 units**. The New Jersey Fair Housing Act (FHA) Amendment that was the subject of the March 2025 affordable housing legislation known as P.L.2024, c.2., details how the Department of Community Affairs (DCA) should calculate the regional obligation, and how that number is filtered into individual municipal affordable housing obligations.

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

DCA calculated the following allocation factors for Emerson:

- **Equalized Nonresidential Valuation factor of 0.37%;**
- **Income Capacity factor of 0.89%; and**
- **Land Capacity factor of 0.70%.**

The above three factors are then averaged to an Average Allocation factor of 0.65%, which, when applied to Region 1's total prospective need of 27,743 units, results in DCA's calculated affordable housing for Emerson of 181 units.

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

Equalized Nonresidential Valuation: This is the municipal share of regional nonresidential valuation change from 1999-2023, based on data published by DCA's Division of Local Government Services. Emerson's Tax Assessor has confirmed the data that DCA used to calculate Emerson's Equalized Nonresidential Valuation factor of 0.37%.

Income Capacity: This is census data. We have confirmed that the data used to calculate Emerson's Income Capacity of 0.89% is correct.

Land Capacity Factor: This is developable land, primarily taken from NDJEP mapping. DCA estimates approximately 13.913 acres of land that results in Emerson's Land Capacity of 0.70%.

The DCA identified about 13.913 acres of Land Capacity in Emerson. T&M, along with Borough representatives, reviewed this acreage and determined that eight (8) of the properties included in the Land Capacity did not represent a realistic potential for future development and should, therefore, be removed from the inventory. Removal of the eight (8) lots results in the reduction of approximately 3.13 acres from the Borough's Land Capacity inventory, and reduces Emerson's Land Capacity to about 10.780 acres. Reduction of the Land Capacity to 10.780 acres reduces the Land Capacity Factor to 0.55%, thereby resulting in the following allocation factors for Emerson:

- **Equalized Nonresidential Valuation factor of 0.37%;**
- **Income Capacity factor of 0.89%; and**
- **Land Capacity factor of 0.55%.**

The above three factors are then averaged to an Average Allocation factor of 0.60%, which, when applied to Region 1's total prospective need of 27,743 units, results in DCA's calculated affordable housing for Emerson of 167 units.

Of the eight (8) properties that were removed from the Land Capacity inventory, four (4) are owned by Suez, two (2) are narrow or unusually shaped, one (1) is too small for development, and one (1) is a House of Worship. The removed lots are as follows:

- Block 305, Lot 9, which is owned by Suez;
- Block 306, Lot 23, which is owned by Suez;
- Block 515, Lot 1, which has a width of about 10 ft. and is not developable;
- Block 515, Lot 5, which has a width of about 9 ft. and is not developable;
- Block 1002, Lot 2.01, which is a House of Worship;
- Block 1016, Lot 5, which has no (zero acres) identified Land Capacity;
- Block 1101, Lot 6.02, which is owned by Suez; and
- Block 1301, Lot 3.06, which is owned by Suez.

Adoption of Binding Resolution

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

The Borough can either accept DCA's calculated obligation of 181 units or use the alternate obligation of 167 units in its binding resolution.

Finally, Emerson will most likely utilize a Vacant Land Adjustment (VLA) to address its affordable housing obligation. This process involves a review of vacant land to calculate a Realistic Development Potential (RDP) and resulting Unmet Need.

Next Steps

Once the Borough has adopted a binding resolution stipulating its affordable housing obligation, the Borough's Affordable Housing Attorney will file the resolution with the Program and file an Action of Declaratory Judgment (DJ Action).

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

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