



American Planning Association
New Jersey Chapter

Making Great Communities Happen

October 11, 2024

Jacquelyn A. Suárez, Commissioner
Department of Community Affairs
State of New Jersey
P. O. Box 800
Trenton, New Jersey 08625-0800

Re: Issuance of Affordable Housing Allocations for
New Jersey Municipalities in Accordance with the Fair Housing Act

Dear Commissioner Suárez,

The passage of Assembly Bill A-4 and Senate Bill S-50, subsequently signed by Governor Murphy on March 20, 2024, marked the most significant legislative change in the NJ Fair Housing Act since its inception in 1985. Designed to address the “Fourth Round” of municipal affordable housing obligations under the *Mt. Laurel Doctrine*, its implementation is of more than passing interest to the members of the New Jersey Chapter of the American Planning Association. The 1100 professional planners of the Chapter will be interpreting, researching, analyzing, and advising governing bodies and planning boards, and ultimately writing the housing element and fair share plans for each municipality based on the new legislation.

Since your department has a vital role in the new legislation, the Chapter has written this letter to speak of the need for transparency in its work. The New Jersey Department of Community Affairs (“DCA”) role, as the legislation states in Section 3.d, is to “prepare and submit a report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature providing a report on the calculations of regional need and municipal obligations for each region of the State within the earlier of seven months following the effective date of P. L. 2024, c. 2, or December 1, 2024.” By calculation, that date is October 20, which is fast approaching. It is our understanding that the DCA will publish the numbers per the statute. In the Chapter’s view, however, it would be a mistake to publish the numbers without the DCA showing how they arrive at their results in as precise a manner as possible.

A significant departure from earlier rounds of affordable housing obligation is that the allocation of the numbers by the DCA to municipalities in the fourth round is advisory only. Municipalities must now declare their present need and prospective need numbers by January 31, 2025. If they are to rely upon the DCA’s numbers for their declarations, they must be able to check each step of how the allocations were derived. APA New Jersey believes this is necessary for the DCA’s allocations to have legitimacy with municipalities and with the Dispute Resolution Program in any challenges filed by interested parties.

Turning to some unavoidable technical issues, in the Jacobson decision, which became the *de facto* third round allocations for municipalities and is specifically referenced in P. L. 2024, c. 2, there was a complex set of steps that were taken for present and prospective need by two different sets of experts. Judge Mary Jacobson, A.J.S.C.

(retired), decided at each stage of the calculations which experts' results to accept. While the new fourth round legislation provides a straightforward calculation of how the regional prospective need is calculated – totaling 84,697 dwellings – it does not provide the formulas for assigning the demand to municipalities or determining present need. Instead, the legislation indicates that present need shall be determined through the use of the U.S. Decennial Census, American Community Survey and the Comprehensive Housing Affordability Strategy datasets.

For prospective need, these three datasets, plus the MOD IV property tax assessment and NJDEP Land Use/Land Cover datasets are to be utilized in determining the allocations. The legislation points to the Jacobson decision to be used in determining the fourth round numbers; however, the experts in the trial did not use either the Comprehensive Housing Affordability Strategy or MOD IV property tax assessment datasets. Furthermore, it is not widely known that the Jacobson decision requires choices at many stages of calculation as to how to address data inadequacies or contradictions.

As one example, the Public Use Microdata Area (PUMA) has a geographic boundary that combines portions of housing regions 4, 5, and 6 that differed from one ten-year period to the next – how do we account for this change in the boundary? This affects several parts of the calculations, including determining deficient housing units and, hence, present need. In addition, this also affects whether a municipality remains a qualified urban aid municipality or not in the fourth round and consequently receives a present need allocation. This issue was not directly addressed in the Jacobson decision.

A second example is that in examining the MOD IV database, there are approximately 600,000 parcels of land in the New Jersey Department of Environmental Project's ("NJDEP") state parcel data layer that have not been assigned a property classification by municipal tax assessors. In the Jacobson decision during the trial, it was decided not to utilize this data resource, so a decision was not made to account for this data inadequacy.

Understanding the DCA's rationale in allocating affordable housing numbers, as seen from these two examples, is critical. Providing links to the datasets used in the DCA's calculations would explain the choices made in developing its model. The DCA should provide the spreadsheets it uses that result in the allocation of present need and prospective need numbers, just like the experts in the Jacobson decision made their spreadsheets available for review.

On behalf of our membership, I would like to thank you for considering these points and our request for transparency in the issuance of the fourth round of municipal affordable housing obligations.

Please contact me should you have any questions or need clarification about this letter.

Sincerely,



Sheena Collum
Executive Director

cc: APA New Jersey Executive Committee
APA New Jersey Chapter Members