



ORDINANCE 02-2006

SUPPLEMENTING AND AMENDING THE DEVELOPMENT REGULATIONS OF THE BOROUGH OF ATLANTIC HIGHLANDS, MONMOUTH COUNTY, NEW JERSEY, TO ESTABLISH MANDATORY AFFORDABLE HOUSING DEVELOPMENT FEES

BE IT ORDAINED by the Governing Body of the Borough of Atlantic Highlands, in the County of Monmouth, State of New Jersey, that the Development Regulations of the Borough of Atlantic Highlands, are hereby supplemented as follows:

1. Purpose

- a) The Borough Council of the Borough of Atlantic Highlands finds and declares that the creation and preservation of affordable housing in the Borough of Atlantic Highlands serves the public interest. Maintaining and improving a stock of sound affordable housing requires affirmative steps by local government working cooperatively with public bodies at all levels and with the private sector. The purpose of this ordinance is to create an Affordable Housing Trust Fund from payment of development fees to assist in the marshaling of public and private monies dedicated to affordable housing projects and programs.
- b) 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, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the New Jersey Council on Affordable Housing's (COAH's) adoption of rules. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees.

2. Basic requirements

- a) The Borough of Atlantic Highlands shall not spend development fees until the Council on Affordable Housing has approved a plan for spending such fees and the Borough of Atlantic Highlands has received third round substantive certification from COAH or a judgment of compliance.

3. Definitions

a) The following terms, as used in this ordinance, shall have the following meanings:

i. "Affordable housing development" means 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 100 percent affordable development.

ii. "COAH" means the New Jersey Council on Affordable Housing established under The Fair Housing Act of 1985.

iii. "Development fee" means funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted by COAH's rules and regulations.

iv. "Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained by the municipal Tax Assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal Tax Assessor.

v. "Spending Plan" means a plan adopted by the Borough of Atlantic Highlands to spend development fees in accordance with N.J.A.C. 5:93-5.1(c).

4. Affordable Housing Development Fee Schedule.

a) Affordable housing development fees shall be paid by all developers other than developers of exempt developments. Such fees shall consist of monies paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules. Affordable Housing Development Fees collected shall be used for the sole purpose of providing low and moderate income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees.

b) Fees shall be based on the equalized assessed value of a property determined by the Municipal Tax Assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimate at the time of construction permit may be obtained by the Tax Assessor utilizing estimates for construction costs. Final equalized assessed value and fee will be determined at project completion construction by the Municipal Tax Assessor.

c) All fees due pursuant to the formulae set forth below shall be payable as follows: 50 percent upon receipt of a building permit and 50 percent upon issuance of the first Certificate of Occupancy.

d) The following regulations shall determine the fees due for residential and non-residential development:

Residential Development fees

(1) Within the Borough of Atlantic Highlands residential developers shall pay a fee of one (1) percent of the equalized assessed value for residential development provided no increased density is permitted.

(2) In those circumstances where a developer secures the right to an increase in density pursuant to a rezoning (N.J.S.A. 40:55D-70d(5)) (known as a "d" variance), the developer shall pay a development fee of one (1) percent of equalized assessed value for all base units and six (6) percent of the equalized value of any additional housing units (bonus units) that result from the rezoning. The number of base units shall be the number of residential units permitted as of right prior to the rezoning. If there has been an ordinance adopted within two (2) years prior to the rezoning that resulted in a decrease in density on the subject property, the number of base units shall be the number of residential units permitted prior to the rezoning. The number of bonus units shall be the number of additional units the developer secures as a right to construct as a result of the rezoning.

Non-Residential Development Fees

(1) In those circumstances where a developer develops land for non-residential purposes and receives no right to increased development rights, the developer(s) shall pay a fee of two (2) percent of the equalized assessed value for non-residential development

(2) If an increase in floor area ratio is approved pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six (6) percent of the equalized assessed value for non-residential development. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.

5. Eligible exactions, ineligible exactions and exemptions

a) Development fees shall be collected for the following types of development:

(1) New and existing commercial, office, industrial or other non-residential structure that is expanded for non-residential use or undergoes a more intense non-residential use. The development fee that may be collected shall be calculated on the increase in the equalized assessed value of the improved structure.

(2) New residential structures, reconstruction of existing residential structures that results in an increased assessed value equal to or greater than fifty (50) percent of the assessed value of the original structure and conversions of existing residential structures to increase the number of housing units within the structure.

b) Developments that have received preliminary or final approval prior to the imposition of a development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval; for example, a substantial alteration in site layout, development density or types of uses within the development.

c) Developers that convert any portion of an existing residential structure to a non-residential use shall pay a development fee. The development fee shall be based on the increase in the equalized assessed value of the converted structure.

d) The Municipality exempts the following types of development from the imposition of development fees:

(1) Nonprofit organizations 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.

(2) Federal, state, county and local governments.

(3) Public utilities under the jurisdiction of the New Jersey Board of Public Utilities to the extent that the construction for which approval is sought is of a facility which shall house equipment only and not to be occupied by any employees.

(4) Developers of projects with 9 or more units, which project(s) shall be subject to the requirement that one unit out of every nine be reserved for low and moderate households pursuant to a growth share ordinance being adopted on or about December 1, 2005.

(5) Public uses including public educational and cultural facilities and outdoor and indoor recreational facilities.

(6) Residential and Non-Residential Construction Permits of \$50,000.00 or Less. Residential and non-residential construction permits which involve construction costs of \$50,000.00 or less shall be exempt from paying development fees, provided however, that if a property owner applies for two (2) or more construction permits within a five (5) year period, the combined total costs of which exceeds \$50,000.00, then the property owner shall a pay a development fee calculated by using the combined construction costs. For third and any subsequent application within five years, the development fee due would be based upon the combined construction costs less the development fees already paid.

As an example, if in Year One, a property owner constructs and addition, the cost of which is \$50,000.00 (which is exempt from the payment of a fee) and in Year Three, the same property owner seeks to construct

another addition, the cost of which is \$15,000.00, the owner, prior to obtaining a construction permit in Year Three, would have to pay a development fee based upon the combined costs. In this case, the fee would be based on a cost of \$65,000.00. If the same property owner constructed another addition in Year Four, the cost of which was \$10,000.00, the development fee due in Year Four would be based on the combined construction cost of \$75,000.00 less the development fee already paid.

6. Collection of fees

Fifty percent of the development fee will be collected at the time of issuance of the building permit. The remaining portion will be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

7. Contested fees

Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the Borough of Atlantic Highlands. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

8. Affordable Housing trust fund

- a) Upon approval by COAH and the Division of Local Government Services, the Borough of Atlantic Highlands will invest development fee revenue and proceeds from the sale of units with extinguished controls into an interest-bearing housing trust fund. The development fees placed in the housing trust fund shall be deemed "dedicated revenues" as such term is defined in N.J.S.A. 40A:4-36. In establishing the housing trust fund, Atlantic Highlands shall provide the bank utilized by the Municipality with express written authorization in order to permit COAH to direct the disbursement of development fees pursuant to Subsection 8 of this ordinance. No money shall be expended from the housing trust fund unless the expenditure conforms to a spending plan approved by COAH.
- b) Within seven days from the opening of the trust fund account, the Borough of Atlantic Highlands shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank used by the Borough of Atlantic Highlands and

set forth in its' cash management plan, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:94-6.16(b).

c) No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by COAH. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

9. Use of funds

- a) Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, RCAs subject to the provisions of N.J.A.C. 5:94-4.4(d), ECHO housing, purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for implementation of the Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by COAH.
- b) Funds shall not be expended to reimburse the Borough of Atlantic Highlands for past housing activities.
- c) After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the Borough of Atlantic Highlands affordable housing obligation, at least 30 percent of the balance remaining shall be used to provide affordability assistance to 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 those households earning 30 percent or less of median income by region.
 - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.
 - ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the third round municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall entitle Borough of Atlantic Highlands to bonus credits pursuant to N.J.A.C. 5:94-4.22.
 - iii. Funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

- d) The Borough of Atlantic Highlands may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:94-7.
- e) No more than 20 percent of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

10. Monitoring

The Borough of Atlantic Highlands 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 non-residential developers, and funds from the sale of units with extinguished controls, and the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

11. Ongoing collection of fees

The ability for Borough of Atlantic Highlands to impose, collect and expend development fees shall expire with its substantive certification on January 1, 2014 unless Borough of Atlantic Highlands has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Borough of Atlantic Highlands fails to renew its ability to impose and collect development fees prior to January 1, 2014, it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:94-6. The Borough of Atlantic Highlands shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its substantive certification on January 1, 2014, nor will the Borough of Atlantic Highlands retroactively impose a development fee on such a development. The Borough of Atlantic Highlands will not expend development fees after the expiration of its substantive certification on January 1, 2014.

12. Invalidity. If any part or parts of this Ordinance are for any reason held to be invalid, such adjudication shall not affect the validity of the remaining portions of this Ordinance.

13. Inconsistency. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

14. Effective Date. The Ordinance shall take effect upon final passage and publication according to law and filing with the County Planning Board in accordance with N.J.S.A. 40:55D-16.