

## **A - 1: Draft Development Fee Ordinance**

- 1. Purpose.** 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 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.** The Borough of Old Tappan shall not spend development fees until COAH has approved a plan for spending such fees and the Borough of Old Tappan has received third round substantive certification from COAH or a judgment of compliance.
- 3. Definitions.** The following terms, as used in this ordinance, shall have the following meanings:
  - a) "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.
  - b) "COAH" means the New Jersey Council on Affordable Housing.
  - c) "Development fee" means funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.
  - d) "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 utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor.
- 4. Residential Development Fees**
  - a) Residential developers shall pay a fee of one percent of the equalized assessed value for residential development provided no increased density is permitted.

- b) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance) has been permitted, developers may be required to pay a development fee of six percent of the equalized assessed value for each additional unit that may be realized.

**5. Non-Residential Development fees**

- a) Non-residential developers shall pay a fee of two percent of the equalized assessed value for non-residential development.
- b) 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 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.

**6. Eligible exactions, ineligible exactions and exemptions**

- a) Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees unless exempted below.
- b) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval.
- c) Development fees shall be imposed and collected when an existing structure is expanded or undergoes a change to a more intense use. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- d) Developers of any house of worship, library, school, governmental facility, hospital for humans or nursing homes shall be exempt from paying a development fee.

**7. 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.

**8. Contested fees.** Imposed and collected development fees that are challenged shall be

placed in an interest bearing escrow account by the Borough of Old Tappan. 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.

## **9. Affordable Housing Trust Fund**

- a) There is hereby created a separate, interest-bearing housing trust fund in *[insert name of bank]* for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls. All development fees paid by developers pursuant to this ordinance shall be deposited into this fund.
- b) Within seven days from the opening of the trust fund account, the Borough of Old Tappan shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, *[insert name of bank]*, 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.

## **10. 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 Old Tappan 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 Old Tappan 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 the Borough of Old Tappan to bonus credits pursuant to N.J.A.C. 5:94-4.22.
  - iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d) The Borough of Old Tappan 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.

**11. Monitoring.** The Borough of Old Tappan 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, payments in lieu of constructing affordable units on site, 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.

**12. Ongoing collection of fees.** The ability for the Borough of Old Tappan to impose,

collect and expend development fees shall expire with its substantive certification on *[insert date of expiration of substantive certification or judgment of compliance]* unless the Borough of Old Tappan 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 the Borough of Old Tappan fails to renew its ability to impose and collect development fees prior to *[insert date of expiration of substantive certification or judgment of compliance]*, 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 Old Tappan shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its substantive certification or judgment of compliance on *[insert DATE]*, nor will the Borough of Old Tappan retroactively impose a development fee on such a development. The Borough of Old Tappan will not expend development fees after the expiration of its substantive certification or judgment of compliance on *[insert DATE]*.