

BOROUGH OF MANASQUAN
ORDINANCE NO. 1821 -2000

AN ORDINANCE SUPPLEMENTING CHAPTER 107
(ZONING) TO ESTABLISH MANDATORY AFFORDABLE
HOUSING DEVELOPMENT FEES IN THE BOROUGH OF
MANASQUAN, MONMOUTH COUNTY, NEW JERSEY.

BE IT ORDAINED, by the Borough Council of the Borough of Manasquan, in the
County of Monmouth and State of New Jersey, as follows:

Section 1 Purpose. The purpose of this ordinance is to adopt mandatory
affordable housing development fees for new and replacement residential development
and new and expanded non-residential development in the Borough of Manasquan and
to create an affordable housing trust fund to provide for the rehabilitation and
development of affordable housing in Manasquan and other authorized affordable
housing uses in accordance with the Housing Plan and Fair Share Plan for Affordable
Housing.

Section 2. A new Article entitled "Affordable Housing" is established as follows:

AFFORDABLE HOUSING

Mandatory Affordable Housing Development Fees

a. Findings and Purpose.

1. The Borough Council finds and declares that the creation and preservation
of affordable housing in Manasquan 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.

2. The New Jersey Supreme Court, in Builder's Assn. v. Holmdel Township,
121 N.J. 550 (1990), determined that mandatory development fees are both statutorily
and constitutionally permissible. The Court further anticipated that the Council on
Affordable Housing would promulgate appropriate development fee rules specifying,
among other things, the standards for these development fees. The purpose of this
ordinance is to provide such rules in accordance with the Fair Housing Act,
N.J.S.A. 50:27D-301, and New Jersey Council on Affordable Housing Procedural and
Substantive Regulations contained in N.J.A.C. 5:91, 5:92 and 5:93 et seq.

3. The purpose of the Mandatory Affordable Housing Development Fee regulations is to provide revenues with which to fund rehabilitation of housing units occupied by low and moderate income households, to construct housing for low and moderate income families and/or to fund other programs for low and moderate income housing in order for Manasquan to meet its responsibility for providing affordable housing pursuant to Mount Laurel II, the Fair Housing Act and other applicable laws. The funds collected pursuant to this ordinance shall be used exclusively for the production of low and moderate income housing and to offset municipal expenses in developing and administering the program(s) under which low and moderate income housing will be produced to meet Manasquan's fair share need of affordable housing. No funds shall be expended except in accordance with a Spending Plan approved by the New Jersey Council on Affordable Housing and as provided by N.J.A.C. 5:93-8.15.

b. Definitions.

1. "Affordable Housing" means any deed restricted housing unit with an acquisition price or rent level not exceeding the maximum resale or rent level for low and moderate income housing as set forth in N.J.A.C. 5:93-7.4.

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

3. "Development Fees" means money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted by COAH rules and regulations, N.J.A.C. 5:93-8, Development Fees.

4. "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 Manasquan is assessed at the same assessment ratio or ratios required by law. Estimates at the time of a construction permit may be obtained by the Tax Assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Tax Assessor.

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

c. Affordable Housing Development Fee Schedule.

1. 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.

be determined at project completion construction by the Municipal Tax Assessor.

3. 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.

4. The following regulations shall determine the fees due for residential and non-residential development:

(a) Residential Development Fees.

(1) In those circumstances where a developer develops land for residential purposes and receives no right to increased density, the developer shall pay a development fee of one-half of one (0.5) percent of the equalized assessed value.

(2) In those circumstances where a developer secures the right to an increase in density pursuant to a rezoning, the developer shall pay a development fee of one-half of one (0.5) 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.

(3) In those circumstances where a developer secures the right to increased density resulting from a variance granted pursuant to N.J.S.A. 40:55D-70d (a "d" or "use" variance), then the additional residential units realized (above what is permitted by right under the existing zoning at the time of the adoption of this Section), the developer shall pay a fee of one-half of one (0.5) percent of equalized assessed value for all base units and six (6) percent of equalized value for all bonus units. If there has been an ordinance adopted within two (2) years prior to the filing of the "d" variance application that decreases the density permitted on the subject property, the base density, for the purpose of calculating the six (6) percent bonus shall be the highest density permitted by right during the two (2) years preceding the filing of the "d" variance application.

(4) In the event that sites are zoned so as to require a percentage of housing units to be set aside for low and moderate income

the internal rate of subsidization shall be deemed to be not less than \$20,000.00 for each low and moderate income housing unit not constructed.

(b) 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 shall pay a development fee of one (1.0) percent of the equalized assessed value.

(2) In those circumstances where a developer secures the right to an increase in development rights pursuant to rezoning or through the granting of a "d" variance, the Borough may secure a higher fee than set forth in section (1) above. The increased development rights that may warrant a higher fee include, but are not limited to, the following: (a) an abatement, increased commercial, industrial or other non-residential square footage, increased commercial, industrial or other non-residential lot coverage, increased commercial, industrial or other non-residential impervious coverage, and/or a change in the non-residential use of the property that enhances the value of the property. The right to collect a higher fee shall be subject to: (a) the Borough and the developer entering into an agreement with respect to the increased fee/increased development right(s); (b) the increased fee bearing a reasonable relationship to the increased development right(s); and (c) the agreement being approved by COAH.

d. Eligible Exactions, Ineligible Exactions and Exemptions.

1 Development fees may be collected for the following types of development:

a. 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.

b. 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.

2. The Municipality shall not reduce densities from pre-existing levels and then require developers to pay development fees in exchange for an increased density

4. 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.

5. The Municipality exempts the following types of development from the imposition of development fees:

(a) 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.

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

(c) 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.

(d) Developers of low and moderate income housing units provided that the required minimum percentage of residential units in the development are affordable units in accordance with all applicable COAH regulations including but not limited to those establishing minimum set-asides for low and moderate sales and rental housing. Where affordable housing units are required to be constructed and where the developer has been authorized to pay a development fee in lieu of building the affordable housing units, developers shall pay a fee related to the internal rate of subsidization. For purposes of this ordinance, the internal rate of subsidization shall be no less than \$20,000 for each affordable unit not built.

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

(f) 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 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.

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.

Housing Trust Fund.

1. All development fees shall be deposited with the Chief Financial Officer in a separate designated 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, Manasquan shall provide whatever express written authorization that may be required by the bank utilized by the Municipality in order to permit the Court to direct the disbursement of development fees pursuant to subsection j. of this ordinance. No money shall be expended from the housing trust fund unless the expenditure conforms to a spending plan approved by COAH.

2. If COAH determines that Manasquan is not in conformance with COAH Grant of Substantive Certification, COAH is authorized to direct the manner in which all development fees collected pursuant to this Section shall be expended. The Borough shall enter into an Escrow Agreement with the Bank in which the fees are to be deposited to enable COAH to enforce the Spending Plan approved by COAH.

g. Use of Funds.

1. Manasquan shall use revenues collected from development fees for any activity approved by COAH for addressing the Municipality's fair share obligation. The expenditures of all money shall conform to a Spending Plan approved by COAH.

2. Funds shall not be expended to reimburse Manasquan for housing activities that preceded a Grant of Substantive Certification by COAH.

3. At least thirty (30) percent of the revenues collected from development fees shall be devoted to render units more affordable. Examples of such activities include, but are not limited to, down payment assistance, low interest loans, and rental assistance. This requirement may be waived in whole or in part when Manasquan demonstrates to COAH the ability to address the requirement of affordability assistance from another source. Development fees collected to finance an RCA, indigenous need rehabilitation or new construction of deed restricted affordable units shall be exempt from this requirement.

4. No more than twenty (20) percent of the revenues collected from development fees shall be expended on administration costs necessary to develop, revise or implement the Housing Plan Element, including, but not limited to, salaries and

not be used to defray the costs of existing staff, except that COAH may consider permitting fees to defray the cost of staff whose sole responsibility is to implement the housing element.

h. Monitoring and Reporting Requirements.

1. Manasquan shall collect information on each applicant for low and moderate income housing on forms approved by COAH. Such report shall include:

(a) Monitoring forms approved by COAH.

(b) An evaluation of the income and demographic characteristics of each applicant of low and moderate income housing, as well as the occupants of the units; and

(c) An evaluation of any necessary adjustments in the affirmative marketing program as a result of the evaluation in subsection (a) above.

2. Manasquan shall evaluate the results of its affirmative marketing activities and file a report with COAH annually.

i. Spending Plan. Manasquan shall submit to COAH a Spending Plan for the development fees collected by it prior to the expiration of its Grant of Substantive Certification. Plans to spend development fees shall consist of the following information:

1. A projection of revenues anticipated from imposing fees on development based on historic activity;

2. A description of the administrative mechanism that Manasquan will use to collect and distribute revenues;

3. A description of the anticipated use of all development fees;

4. A schedule for the creation or rehabilitation of housing units;

5. In the event Manasquan envisions being responsible for public sector or nonprofit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development; and

6. The manner through which Manasquan will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan.

j. Penalties.

1. In the event that any of the conditions set forth in subsection i 2. below

foregoing, the Municipality shall, in establishing a bank account pursuant to subsection f. of this Section, ensure that Manasquan has provided whatever express written authorization which may be required by the bank to permit COAH to direct disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by COAH to the Municipal Clerk.

2. Occurrence of the following may result in COAH taking an action pursuant to subsection j.1 above:

(a) Failure to submit accurate monitoring reports within the time limits imposed by COAH;

(b) Failure to implement the spending plan for development fees within the time limits imposed by COAH, or within reasonable extensions granted by COAH;

(c) Expenditure of development fees on activities not permitted by COAH;

(d) Revocation of Manasquan's Grant of Substantive Certification.

(e) Other good cause demonstrating that the revenues are not being used for the intended purpose.

k. Expiration of Affordable Housing Development Fee Regulations. The regulations in this ordinance shall expire if:

1 COAH revokes Manasquan's Grant of Substantive Certification;

2. The Grant of Substantive Certification expires prior to Manasquan filing an adopted Housing Plan Element with COAH seeking approval of the Housing Plan Element filed with COAH or receiving COAH's approval of this ordinance.

Section 3. 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.

Section 4. All Ordinances or parts of Ordinances which are inconsistent herewith are repealed, but only to the extent of the inconsistency. All other parts of Chapter 107 of the Code of the Borough of Manasquan not inconsistent herewith are ratified and

Section 5. This Ordinance shall become effective immediately following its final passage, publication as required by law, and filing with the Monmouth County Planning Board.

NOTICE

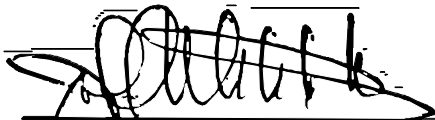
PUBLIC NOTICE IS GIVEN that Ordinance No. 1821 -2000 was introduced at a meeting of the Borough Council of the Borough of Manasquan, in the County of Monmouth and State of New Jersey, on the 3rd day of April 2000, and was then read for the first time. This Ordinance will be further considered for final passage by the Borough Council at Borough Hall at 8:00 p.m. on the 17th day of April, 2000. At such time and place, or at any time or place to which said meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning this Ordinance.



COLLEEN SCIMECA
Municipal Clerk

KENNETH B. FITZSIMMONS
Municipal Attorney
501 Trenton Avenue
Point Pleasant Beach, NJ 08742

APPROVED: April 17, 2000


JOHN D. WINTERSTELLA
Mayor

First Reading and Introduction: April 3, 2000
Passed on First Reading: April 3, 2000
Second Reading and Final Hearing: April 17, 2000
Approved: April 17, 2000