

ORDINANCE 36-2007

ORDINANCE OF THE COUNCIL OF THE BOROUGH OF MADISON AMENDING CHAPTER 195 OF THE MADISON BOROUGH CODE ENTITLED "LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF MADISON" TO REPLACE ARTICLE VIII, ENTITLED "AFFORDABLE HOUSING DEVELOPMENT FEES"

WHEREAS, the Madison Planning Board recommended that the Madison Land Development Ordinance be amended to provide for the collection of affordable housing development fees in regard to eligible development projects within the Borough; and

WHEREAS, the Borough Council adopted Ordinance 19-2005 which was codified as Article VIII of the Madison Borough Code entitled "Affordable Housing Development Fees", Section 195-46; and

WHEREAS, Ordinance 19-2005 contained inconsistencies and did not fully comply with the provisions of N.J.A.C. 5:94-6.1 et seq.; and

WHEREAS, the Borough Attorney has recommended that the Borough adopt a replacement for Section 195-46 that will comply with the requirements of N.J.A.C. 5:94-6.1 et seq., and that such Ordinance shall be submitted to the Council on Affordable Housing for their approval pursuant to law.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Madison, County of Morris, State of New Jersey that:

SECTION 1: Article VIII, Section 195-46 of the Borough Code, entitled "Affordable Housing Development Fees" be completely replaced with the following:

ARTICLE VIII

Affordable Housing Development Fees

Section 195-46: Affordable Housing Development Fees

A. Purpose.

(1) In *Holmdel Builder's Ass'n 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) rules. The purpose of this ordinance is to establish standards for the collection, maintenance and expenditure of development fees in accordance with COAH's rules. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low and moderate income housing. All fees collected shall be used for the express purpose as stated above and

be administered by the Borough of Madison. This ordinance shall be interpreted within the framework of COAH's rules on development fees.

(2) The Borough of Madison ("Borough") Governing Body recognizes there is a need for low and moderate income housing in the Borough. This ordinance will enable the Borough to collect affordable housing development fees in connection with eligible development projects in the Borough to allow it to better meet the low and moderate income housing demands in the community.

B. Non-residential development fees.

(1) Developers of commercial development within the Borough shall pay a fee of two (2) percent of the appraised value on the document utilized for construction financing.

(2) When the Borough approves an increase in floor area pursuant to *N.J.S.A. 40:55D-70d(4)*, the Borough may assess a development fee of six (6) percent of the appraised value on the document utilized for construction financing on the additional floor area realized. 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.

(3) The imposition of development fees shall not be construed as a condition of preliminary or final site plan approval or as a stipulation included in a developers agreement for the purposes of calculating growth exclusions pursuant to *N.J.A.C. 5:94-2.4(a)5*.

C. Mixed-use development fees.

(1) Developers of mixed-use development within the Borough shall pay a fee of two (2) percent of the appraised value on the document utilized for construction financing. For purposes of this ordinance, mixed-use development shall be defined as the development of a tract of land, building, or structure with a variety of complementary and integrated uses, such as, but not limited to, residential, office, manufacturing, retail, public, or entertainment.

(2) When the Borough approves an increase in floor area pursuant to *N.J.S.A. 40:55D-70d(4)*, the Borough may assess a development fee of six (6) percent of the appraised value on the document utilized for construction financing on the additional floor area realized. 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.

(3) The imposition of development fees shall not be construed as a condition of preliminary or final site plan approval or as a stipulation included in a developers

agreement for the purposes of calculating growth exclusions pursuant to *N.J.A.C. 5:94-2.4(a)5*.

D. Residential development fees.

(1) Developers of new residential housing, which shall include any residential development on an existing lot on which a former residential structure was located, within the Borough shall pay a fee of one (1) percent of the coverage amount of the Home Owner Warranty document of a for-sale unit, or the cost of construction where the HOW Warranty does not apply for a non-rental unit, or the appraised value on the document utilized for construction financing for a rental unit, provided no increased density is permitted.

(2) When the Borough approves an increase in residential density pursuant to *N.J.S.A. 40:55D-70(d)(5)*, the Borough may impose a development fee of six (6) percent of the coverage amount on the Home Owners Warranty document for each additional for-sale unit, or the appraised value on the document utilized for construction financing for each additional rental unit. If the zone on a site has changed during the two-year period preceding the filing of such a variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

(3) No fee shall be charged pursuant to this section for any addition or improvement to an existing residential structure, so long as such addition or improvement does not increase the value of the existing structure, as of the date hereof, by more than 50%.

E. Eligible exactions, ineligible exactions, and exemptions.

(1) Affordable housing developments shall be exempt from development fees. All other forms of new construction, unless otherwise excluded as set forth herein, are subject to development fees.

(2) The Borough shall impose and collect development fees when an existing structure is expanded or undergoes a change to a more intense use (except as otherwise set forth herein). The development fee to be imposed and collected shall be calculated based on the increase in the equalized assessed value of the improved structure.

(3) 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.

F. Collection of development fees.

The Borough of Madison may collect up to fifty (50) percent of the development fee on any specific development at the time of issuance of the building permit. The remaining portion shall 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

G. Contested development fees.

Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the Borough. 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. If the development fees are retained by the Borough, the developer shall immediately reimburse the Borough for all costs incurred by the Borough in defending such challenge, including but not limited to all attorneys' fees and court costs.

H. Housing trust fund.

(1) All development fees shall be deposited in a separate, interest-bearing housing trust fund in a bank or other financial institution chosen by the Borough (the "Bank"). The Borough shall provide written authorization, in the form of a three-party escrow agreement between the municipality, the 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)*. This authorization shall be submitted to COAH within seven (7) days from the opening of the trust fund account. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

(2) With the approval of COAH and of the Division of Local Government Services, the Borough may invest development fee revenue in a cash management fund, provided that the amount of money in the cash management fund that comprises the funds and income attributable to such funds shall at all times be identifiable. The Borough shall provide written authorization, in the form of a two-party escrow agreement between the municipality and COAH to permit COAH to direct the disbursement of development fees as provided for in *N.J.A.C. 5:94-6.16(b)*. This authorization shall be submitted to COAH within seven (7) days from the opening of the trust fund account. All interest attributable to such funds shall only be used on eligible affordable housing activities approved by COAH.

I. Use of development fees.

(1) The Borough may use revenues collected from development fees for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to:

(a) Rehabilitation;

(b) New construction;

(c) Regional Contribution Agreements ("RCA"), as subject to the provisions of *N.J.A.C. 5:94-4.4(d)*;

- (d) Elder Cottage Housing Opportunities;
- (e) Purchase of land for affordable housing;
- (f) Improvement of land to be used for affordable housing;
- (g) Purchase of housing;
- (h) Extensions or improvements of roads and infrastructure to affordable housing sites;
- (i) Financial assistance designed to increase affordability; or
- (j) Administration necessary for implementation of the Housing Element and Fair Share Plan.

(2) Funds shall not be expended to reimburse the Borough for past housing activities.

(3) After subtracting development fees collected to finance an RCA, a rehabilitation program, or a new construction project that are necessary to address the Borough's affordable housing obligation, the Borough shall use at least thirty (30) percent of the balance remaining to provide affordability assistance to low and moderate income households in affordable units included in the Borough's Fair Share Plan. The Borough shall use one-third (1/3) of the affordability assistance portion of development fees collected to provide affordability assistance to those households earning thirty (30) percent or less of median income by region.

(a) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.

(b) Affordability assistance to households earning thirty (30) percent or less of median income may include buying down the cost of low income units in a municipal Fair Share Plan to make them affordable to households earning thirty (30) percent or less than median income.

(4) No more than twenty (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:

(a) Salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program;

(b) A Housing Element and Fair Share Plan; and/or

(c) An affirmative marketing program.

In the case of a rehabilitation program, no more than twenty (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 monitoring requirements. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

SECTION 2: This ordinance shall take effect as provided by law.

ADOPTED AND APPROVED

May 30, 2007

ELLWOOD R. KERKESLAGER, Mayor

Attest:

MARILYN SCHAEFER, Borough Clerk

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