

## **CHAPTER 10 – COAH (COUNCIL ON AFFORDABLE HOUSING)**

### **Section 10.1 - PURPOSE**

- A. In Holmdel Builder’s Association v Holmdel Township, 121 NJ 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, NJSA 52:27d-301, et seq, and the State Constitution, subject to the Counsel on Affordable Housing’s (hereafter referred to as COAH) adoption of rules.
- B. Pursuant to P.L. 2008, c. 46, Section 8 (C. 52:27D-329.2) and the statewide Non-residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development
- C. This ordinance established standards for the collection, maintenance, and expenditure of development fees pursuant to COAH’s regulations and in accordance with P.L. 2008, c. 46, Sections 8 and 32-28. 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, codified at NJAC 5:97-8

### **Section 10.2 - BASIC REQUIREMENTS**

- A. COAH initially approved Pennsville Township’s affordable housing development fee ordinance on February 27, 2006, and COAH most recently approved an amendment to the Township’s development fee ordinance (this Chapter) on April 2, 2009. Any future ordinance amendments shall not be effective until approved by COAH pursuant to NJAC 5:96-5.1.
- B. COAH initially approved the Township of Pennsville’s spending plan on June 13, 2006, and most recently approved the Township’s third round spending plan on April 13, 2009. The Township of Pennsville shall not spend development fees on compliance mechanisms not in the Township’s COAH-approved spending plan until COAH has approved an amended plan for spending such fees in conformance with NJAC 5:96-5.3.

### **Section 10.3 - DEFINITIONS**

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.

COAH or the Council means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state.

Development fee means money paid by developer for the improvement of property as permitted in NJAC 5:97-8.3.

Developer means legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

Equalized assessed value means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5 and 6 of P.L. 1973, c. 123 (C. 54:1-35a through C. 54:1-35c.)

Green building strategies means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low maintenance, resource efficient housing while making optimum use of existing infrastructure and community services.

## **Section 10.4 RESIDENTIAL DEVELOPMENT FEES**

### **A. Imposed fees**

1. Within all zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent (1.5%) of the equalized assessed value for residential development provided no increased density is permitted.
2. When an increase in residential density pursuant to NJSA 40:55D-70d(5) (known as the “d” variance) has been permitted, developers may be required to pay a development fee of six percent (6%) of the equalized assessed value for each additional unit that may be 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 density for the purposes of calculation the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, providing zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

### **B. Eligible exactions, ineligible exactions and exemptions for residential development.**

1. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
2. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
3. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

4. Developers of residential structures demolished and replaced as a result of a natural disaster shall be exempt from paying a development fee.

#### **Section 10.5 - NON-RESIDENTIAL DEVELOPMENT FEES**

##### **A. Imposed Fees**

1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half percent (2.5%) of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
2. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one half percent (2.5%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

##### **B. Eligible exactions, ineligible exactions and exemptions for non-residential development.**

1. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half percent (2.5%) development fee, unless otherwise exempted below.
2. The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L. 2008, c 46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
4. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L. 2008, c. 46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

5. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Township of Pennsville as a lien against the real property owner.

#### **Section 10.6 - COLLECTION PROCEDURES – COLLECTION OF FEES**

- A. Upon the granting of preliminary, final or other applicable approval for a development by the Pennsville Planning Board, the Board Secretary shall notify the Construction Code Office of such approval, as well as the Township's Tax Assessor.
- B. For non-residential development only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The Construction Code Official responsible for the issuance of building permits shall notify the Tax Assessor prior to the issuance of the first building permit for a development which is subject to a development fee.
- D. Within 90 days of that notice, the Pennsville Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development to the Construction Code Office.
- E. Fifty (50%) percent of the development fee shall be paid to the construction official at the time of the issuance of the building permit. The remaining portion of the development fee shall be paid to the construction official at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of the issuance of the building permit and that determined at issuance of the certificate of occupancy. Water and sewer service shall not be provided to the premises in question until such time as the final development fee is paid.
- F. The construction official responsible for the issuance of a final certificate of occupancy shall notify the Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to development fees.
- G. Within ten (10) business days of a request for the scheduling of a final inspection, the Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development, calculate the development fee, and thereafter notify the Construction Code Office and the developer of the amount of such fee.
- H. Should the Township of Pennsville fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay the estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L. 2008, c. 46 (C. 40:55D-8.6).

I. Appeal of development fees

1. A developer may challenge residential development fees imposed by filing a challenge with the County of Salem Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Township of Pennsville. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq, within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
2. A developer may challenge a non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Township of Pennsville. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of State Tax Uniform Procedure Law, R.S. 54:48-1 et seq, within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

J. Notwithstanding the provisions of this section, the Construction Code Official shall continue to collect both residential and non-residential development fees as set forth hereinabove, except that residential development fees shall only be collected for such development where an application for a building permit is submitted after October 1, 2009.

**Section 10.7 - AFFORDABLE HOUSING TRUST FUND**

A. There is hereby created a separate, interest bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units will be extinguished controls.

B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by a source and amount:

1. Payments in lieu of on-site construction of affordable units;
2. Developer contributed funds to make ten percent (10%) of the adaptable entrances in a town house or other multi-story attached development accessible;
3. Rental income from Township operated units;
4. Repayments from affordable housing program loans;
5. Recapture funds;
6. Proceeds from the sale of affordable units; and
7. Any other funds collected in connection with the Township of Pennsville's affordable housing program.

C. Within seven days from the opening of the trust fund account, the Township of Pennsville shall provide COAH with written authorization, in the form of a three-party escrow agreement between the Township, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in NJAC 5:97-8.13(b)

D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

### **Section 10.8 - USE OF FUNDS**

A. The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Township of Pennsville's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to NJAC 5:97-8.7 through 8.9 and specified in the approved spending plan.

B. Funds shall not be expended to reimburse the Township of Pennsville for past housing activities.

C. At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low and moderate income households in affordable units included in the Township's 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.

1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
2. Affordability assistance to household earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the Township's Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
3. 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 Township of Pennsville 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 NJAC 5:96-18.

E. No more than 20 percent of all revenues collected from development fees may be expended on administration including, but not limited to, salaries and benefits for Township 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. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

### **Section 10.9 - MONITORING**

A. The Township of Pennsville shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and other funds collected in connection with the Township of Pennsville's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

### **Section 10.10 - ONGOING COLLECTION OF FEES**

A. The ability for the Township of Pennsville to impose, collect and expend development fees shall expire with its substantive certification unless the township of Pennsville 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 Township of Pennsville fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any and all funds remaining in its Township trust fund. Any funds so forfeited shall be deposited in to the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L. 195, c. 222 (C.52:27D-320). The Township of Pennsville shall not impose a residential development fee on a development that received preliminary or final site plan approval after the day of expiration of its substantive certification or judgment of compliance, nor shall the Township of Pennsville retroactively impose a development fee on such a development. The Township of Pennsville shall not expend development fees after the expiration of its substantive certification of judgment of compliance.