

Ordinance #2007-1047

1. Purpose

- a) 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

- a) The Borough of Manville shall not spend development fees until COAH has approved a plan for spending such fees and the Borough of Manville 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.
 - iii. "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.
 - 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 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) Within all zoning districts, developers shall pay a fee of one (1) percent of the equalized assessed value for each residential unit constructed, 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 (6) percent of the equalized assessed value for each additional unit that may be realized.
- c) Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one percent of the equalized assessed value for the two units and six percent of the equalized assessed value for the two additional units. However, if the zoning 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.

5. Non-residential Development fees

- a) Developers within all zoning districts shall pay a fee of two (2) percent of the equalized assessed value for all 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 (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.
- c) In addition to new non-residential construction, development fees shall be imposed and collected when an existing structure is expanded, or the equalized assessed value is increased .

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
- b) The expansion or improvement of an existing residential structure shall be exempt from any development fee requirement, unless the expansion or improvement creates an additional dwelling unit.
- c) 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.

7. Collection of fees

- a) The amount of the development fee shall be calculated based upon the difference in the equalized assessed value of the property before and after the development activity which is subject to the development fee.

- b) Fifty percent of the development fee will be collected at the time of issuance of the building permit. Payment shall be made to the Borough Treasurer. The amount of the development fee shall be based initially on an estimate by the Tax Assessor of the increase in equalized assessed value attributable to the improvements to be constructed. Prior to requesting a building permit, the developer shall submit to the Tax Assessor a request for a calculation of the development fee amount.
- c) The remaining portion will be collected at the issuance of the certificate of occupancy. At that time the Tax Assessor shall calculate the actual equalized assessed value, which may differ from the estimate provided prior to the issuance of the building permit. The amount of the fee is recalculated, and the developer shall be responsible for paying the difference between the development free amount and the amount paid prior to issuance of the building permit.
- d) No building permit or certificate of occupancy shall be issued unless or until such development fee, as set forth above, is paid to the Borough.

8. Contested fees

- a) Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by Borough of Manville. 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 the Somerset Valley 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, Borough of Manville shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, Somerset Valley 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 Borough of Manville 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 Borough of Manville 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 Manville 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) Borough of Manville 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

- a) Borough of Manville 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 approved by the court. All monitoring reports shall be completed on forms designed by COAH.

12. Ongoing collection of fees

The ability for Borough of Manville to impose, collect and expend development fees shall expire with its judgment of compliance on July 12, 2010 unless Borough of Manville has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification or filed a Round Three Plan and filing for declaratory relief in Court in accordance with NJSA 52:27D-313 and applicable COAH regulations, and has received COAH's approval of its development fee ordinance. If the Borough of Manville fails to renew its ability to impose and collect development fees prior to July 12, 2010 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 Manville shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its judgment of compliance on July 12, 2010 nor will Borough of Manville retroactively impose a development fee on such a development. Borough of Manville will not expend development fees after the expiration of its judgment of compliance on July 12, 2010.

Borough of Manville

Angelo Corradino, Mayor

ATTEST:

Philip E. Petrone, Borough Clerk

STATEMENT OF PURPOSE

This Ordinance sets the affordable housing development fees for residential and non-residential development.

ORDINANCE #2007-1047

FIRST READING:

Introduced	Seconded	Council	Yes	No	Abstain	Absent
√		ASHER	√			
		OTRIMSKI	√			
	√	PETROCK	√			
		PETRONE	√			
		QUICK	√			
		SZABO	√			
		MAYOR CORRADINO				

PASSED this **22nd** day of **January** , 2007.

Attest:

Philip E. Petrone, Borough Clerk

SECOND READING:

Introduced	Seconded	Council	Yes	No	Abstain	Absent
		ASHER	√			
		OTRIMSKI	√			
		PETROCK	√			
√		PETRONE	√			
		QUICK				√
	√	SZABO	√			
		MAYOR CORRADINO				

PASSED this **12th** day of **February** , 2007.

Attest:

Philip E. Petrone, Clerk

