

ORDINANCE 17 – 2013
ORDINANCE OF THE BOROUGH OF WOODBURY HEIGHTS, COUNTY OF
GLOUCESTER, NEW JERSEY ESTABLISHING STANDARDS FOR THE
COLLECTION, MAINTENANCE AND EXPENDITURE OF DEVELOPMENT FEES
PURSUANT TO REGULATIONS OF THE COUNCIL OF AFFORDABLE HOUSING
REGULATIONS AND P.L. 2008, c.46, SECTION 8 and 32-38

BE IT ORDAINED, by the Borough Council of the Borough of Woodbury Heights,

County of Gloucester, New Jersey, as follows:

§ 1. Authority and 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 (the Act), *N.J.S.A. 52:27d-301 et seq.*, and the State Constitution, subject to the Council on Affordable Housing's adoption of rules.
- B. Pursuant to *N.J.S.A. 52:27D-329.2* and the Statewide Non-Residential Development Fee Act, *N.J.S.A. 40:55D-8.1* through *-8.7*, the NJ Department of Community Affairs 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 COAH or a court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- C. This Article establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance *P.L.2008, c.46, Sections 8 and 32-38*. 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, *N.J.A.C. 5:97-8*.

§ 2. Limitations on Enactment

- A. This ordinance shall take effect upon approval by the Court pursuant to *N.J.A.C. 5:96-5.1*.
- B. Borough of Woodbury Heights shall not spend development fees until COAH or the Court has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10* and *N.J.A.C. 5:96-5.3*.

§ 3. Residential Development fees

- A. Imposed fees.

- (1) Within any zoning district, 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 *N.J.S.A. 40:55D-70d(5)* (known as a "d" variance) has been permitted, developers shall 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 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.

Example: If an approval allows four (4) units to be constructed on a site that was zoned for two (2) units, the fees could equal one and a half percent (1.5%) of the equalized assessed value on the first two units; and six percent (6%) of the equalized assessed value for the two (2) additional units, provided 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 date of the first adoption of the Woodbury Heights 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 otherwise not exempt from the payment of a development fee. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (4) Non-profit 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 Borough Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay at established, existing charges, shall be exempted from paying a development fee.

- (5) Federal, state, county, local governments and agencies of the same shall be exempted from paying a residential development fee.
- (6) Residential dwellings destroyed due to fire, flood, or natural disaster and rebuilt by their owners shall be exempt from paying a development fee.

§ 4. 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 the 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-one-half percent (2.5%) development fee, unless otherwise exempted below.
- (2) The two-and-one-half percent (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) Any exemption claimed by a developer of non-residential development shall be substantiated 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". Non-residential development exempt from the development fee (exempted categorically, not exempted by statutory moratorium), include the following:
 - (a) State, county and local government buildings;

- (b) Houses of worship and ancillary structures and buildings exempt from real property taxation;
 - (c) Non-residential development that is an amenity made available to the public, including but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer; and
 - (d) Non-residential construction resulting from a relocation of or an on-site improvement to a non-profit hospital or skilled nursing facility.
- (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 the fee at such time as 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 for 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 forty-five (45) days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Woodbury Heights as a lien against the real property of the owner.

§ 5. Collection Procedures.

- A. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct the combined Planning Board Secretary to notify the construction official responsible for the issuance of a building permit.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption Form" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the 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 official responsible for the issuance of a building permit shall notify the municipal tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within ninety (90) days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

- E. The construction official responsible for the issuance of a final certificate of occupancy shall notify the municipal tax assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within ten (10) business days of a request for the scheduling of a final inspection, the municipal tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements in the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Borough of Woodbury Heights 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 that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (*N.J.S.A. 40:55D-8.6*).
- H. Fifty percent (50%) of the total estimated development fee shall be collected 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 the issuance of the building permit and that determined at the issuance of the certificate of occupancy.

§ 6. Appeal Procedures.

- A. Appeal of development fees. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Borough of Woodbury Heights. 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, *N.J.S.A. 54:48-1 et seq.*, within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- B. A developer may challenge 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 Borough of Woodbury Heights. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, *N.J.S.A. 54:48-1, et seq.*, within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§ 7. Borough Affordable Housing Fund

- A. Establishment of Fund. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer of the Borough of Woodbury Heights for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

B. General Provisions.

- (1) The following funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of affordable units;
 - (b) Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - (c) Rental income from municipally operated units;
 - (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and
 - (g) Any other funds collected in connection with Woodbury Heights's housing program.
- (2) The Mayor and Council, in the name of the fund, shall have the right to apply for and receive grants from any source to further the purposes of the fund.

- C. Within seven (7) days of the opening of the trust fund account or change to a different bank, the Borough of Woodbury Heights shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank of deposit and any bank in successor, and COAH to direct the disbursement of the funds as provided for in *N.J.A.C. 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 the COAH. Funds shall not be expended to reimburse the Borough of Woodbury Heights for past housing activities.
- E. Use of Funds. The expenditure of all funds shall conform to a spending plan approved by the Court and COAH. Funds deposited in the housing trust fund may be used for any activity approved as part of the spending plan to address the municipality'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 *N.J.A.C. 5:97-8.7* through *-8.9* and as otherwise specified in the approved spending plan.

- (1) At least thirty percent (30%) 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 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 thirty percent (30%) or less of median income by region.
 - (2) 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.
 - (3) Affordability assistance to households earning thirty percent (30%) or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning thirty percent (30%) or less of median income.
 - (4) 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.
- F. **Administrative Expenditures.** No more than twenty percent (20%) of all revenues collected from development fees, may 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. 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.
- G. **Monitoring Requirements.** Woodbury Heights Borough 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 any other funds collected in connection with Woodbury Heights's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.
- H. **Collection Coterminous with Certification.** The ability for the Borough of Woodbury Heights to impose, collect and expend development fees shall expire with its substantive certification or judgment of repose unless the Borough of Woodbury Heights has filed an adopted Housing Element and Fair Share Plan with COAH or the court, has petitioned for substantive certification or judgment of repose, and has received the Court and COAH's approval of its development fee ordinance. If the Borough of Woodbury Heights 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 or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to *N.J.S.A. 52:27D-320*. The Borough of Woodbury Heights shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Borough of Woodbury Heights retroactively impose a development fee on such a development. The Borough of Woodbury Heights shall not expend development fees after the expiration of its substantive certification or judgment of repose.

- I. The Borough of Woodbury Heights 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. 5:96-18*.

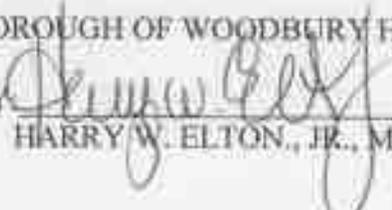
BE IT FURTHER ORDAINED, as follows:

1. **Repealer.** Any and all other Ordinances or parts of Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistency.

2. **Saved from Repeal.** Any and all other Ordinances or parts of Ordinances not inconsistent with the terms and provisions of this Ordinance are hereby saved from repeal.

3. **Filing.** Upon adoption, a copy of this Ordinance shall be forthwith filed with the Gloucester County Planning Board via Certified Mail.

4. **Effective Date.** This Ordinance shall take effect immediately upon its final adoption and publication and as otherwise provided by law.

BOROUGH OF WOODBURY HEIGHTS
BY: 
HARRY W. ELTON, JR., MAYOR

ATTEST:

BY: 
JANET PIZZI, CLERK/ADMINISTRATOR

NOTICE

Notice is hereby given that the foregoing ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Woodbury Heights, held on the 9th day of October, 2013 and will be considered for final passage at a meeting of the Borough Council of the Borough of Woodbury Heights, to be held on the 26th day of November 2013 at 7:30 pm, at which time and place any interested party will be given the opportunity to be heard.



JANET PIZZI, CLERK/ADMINISTRATOR

PUBLIC NOTICE

ORDINANCE 17-2013

ORDINANCE OF THE BOROUGH OF WOODBURY HEIGHTS, COUNTY OF GLOUCESTER, NEW JERSEY ESTABLISHING STANDARDS FOR THE COLLECTION, MAINTENANCE AND EXPENDITURE OF DEVELOPMENT FEES PURSUANT TO REGULATIONS OF THE COUNCIL ON AFFORDABLE HOUSING REGULATIONS AND P.L. 2008, c.46, SECTION 8 AND 32-38

I, Janet Pizzi, Clerk of the Borough of Woodbury Heights, hereby certify that the above Ordinance was duly adopted by the Borough Council of the Borough of Woodbury Heights at the Regular meeting of Mayor and Borough Council held on November 26, 2013.


Janet Pizzi, Clerk/Administrator