

Ordinance No. 2005-005

AN ORDINANCE GOVERNING DEVELOPMENT
FEES AND AMENDING THE DEVELOPMENT
ORDINANCE OF THE BOROUGH OF

BE IT ORDAINED by the Mayor and Council of the Borough of Millstone:

1. Section D-103 of the Development Ordinance of the Borough of Millstone, Definitions, is hereby amended by adding the following NEW definitions thereto:

COAH Council on Affordable Housing.

DEVELOPMENT FEES Money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.

EQUALIZED ASSESSED VALUE 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.

JUDGMENT OF REPOSE A judgment issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation.

SUBSTANTIVE CERTIFICATION A determination by COAH approving a municipality's housing element and fair share plan in accordance with the provisions of the Fair Housing Act and COAH rules and criteria. A grant of substantive certification shall be valid for a period of six years in accordance with the terms and conditions therein.

2. Article V of such Ordinance, Administration, is amended by adding a NEW Section D-136.1 as follows:

D-136.1 DEVELOPMENT FEES

A. PURPOSE

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 COAH's adoption of rules. The purpose of this ordinance is to establish 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.

B. RESIDENTIAL DEVELOPMENT FEES

(1) Within all zoning districts, developers shall pay a development fee of one percent of the equalized assessed value for residential development provided no increased density is permitted.

(2) If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(5), then the additional residential units realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six percent rather than the development fee of one half of one percent. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" 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 "d" variance application.

The fee may be realized on the equalized assessed value.

C. NONRESIDENTIAL DEVELOPMENT FEES

(1) Developers within all zoning districts shall pay a fee of two percent of the equalized assessed value for non-residential development.

(2) If a "d" variance is granted 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 percent rather than the

development fee of one percent. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" 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 "d" variance application. The development fee shall be based on the equalized assessed value for nonresidential development.

D. ELIGIBLE EXACTION, INELIGIBLE EXACTION AND EXEMPTIONS

(1) Developers of low and moderate income units shall be exempt from paying development fees.

(2) Developers that have received preliminary or final approval prior to the effective date of this ordinance shall be exempt from paying a development fee unless the developer seeks a substantial change in the approval.

E. COLLECTION OF FEES

(1) Developers shall pay 50 percent of the calculated development fee to the Borough of Millstone at the issuance of building permits. The developer shall be responsible for paying the difference between the fee calculated at building permit and shall pay same at issuance of certificate of occupancy.

F. HOUSING TRUST FUND

(1) There is hereby created an interest bearing housing trust fund in Bank of America, Manville, New Jersey, for the purpose of receiving development fees from

residential and nonresidential developers. All development fees paid by developers pursuant to this ordinance shall be deposited in this fund. 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 the Borough of Millstone is not in conformance with COAH's rules on development fees, COAH is authorized to direct the manner in which all development fees collected pursuant to this ordinance shall be expended. Such authorization is pursuant to: this ordinance, COAH's rules on development fees and the written authorization from the governing body to the Bank of America, Manville, New Jersey.

G. USE OF FUNDS

(1) Money deposited in a housing trust fund may be used for any activity approved by COAH for addressing the Borough of Millstone's low and moderate income housing obligation. Such activities may include, but are not necessarily limited to, housing rehabilitation, new construction, regional contribution agreements, the purchase of land for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units more affordable to low and moderate income households and administrative costs necessary to implement the Borough of Millstone's housing element. The expenditure of all money shall conform to a spending plan approved by COAH.

(2) At least 30 percent of the revenues collected shall be devoted to rendering units more affordable unless exempt as per N.J.A.C. 5:93-8.16(c). Examples of such activities include, but are not limited to, down payment and closing cost assistance, low interest loans and rental assistance.

(3) No more than 20 percent of the revenues shall be expended on administrative costs necessary to develop, revise or implement the housing element. Examples of eligible administrative activities include personnel, consultant services, space costs, consumable supplies and rental or purchase of equipment directly associated with plan development or plan implementation.

3. This Ordinance shall take effect upon its filing with the Somerset County Planning Board and its passage and publication, as provided for by law.

I, Gregory J. Bonin, Borough Clerk of the Borough of Millstone, in the County of Somerset, State of New Jersey, do hereby certify the foregoing to be a true and correct copy of an ordinance adopted by the Millstone Borough Council during their regular meeting of December 19, 2005.



Gregory J. Bonin, Millstone Borough Clerk