



**2018
BOROUGH OF DUMONT
ORDINANCE**

MEMBERS	AYE	NAY	ABSTAIN	ABSENT
CORREA				✓
DI PAOLO	✓			
LaBRUNO		✓		
MANNA	✓			
RIQUELME	✓			
STEWART	✓			
MAYOR KELLY				
TOTALS	4	1		1

Ordinance No. 1535

Date: February 6, 2018

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Subject: Development Fee Amendment

Purpose: Amend Chapter 209, Article III, Section 16.1

Prepared By: John Szabo and Gregg Paster, Esq.

Offered by: Manna
Seconded by: Stewart

Certified as a true copy of an Ordinance Introduced and Passed by the Governing Body of the Borough of Dumont on the above date at a Public Meeting by:

Susan Connelly

**Susan Connelly, RMC, Municipal Clerk
Borough of Dumont, Bergen County, New Jersey**

**AMENDED DEVELOPMENT FEE ORDINANCE
BOROUGH OF DUMONT, BERGEN COUNTY**

**AN ORDINANCE TO AMEND CHAPTER 209, ARTICLE III, SECTION 16.1
"AFFORDABLE HOUSING DEVELOPMENT FEES" OF THE BOROUGH OF
DUMONT, COUNTY OF BERGEN, STATE OF NEW JERSEY**

WHEREAS, the Governing Body of the Borough of Dumont seeks to increase the mandatory residential development fee to 1.0% of the equalized assessed value, which is

permitted by the State for residential development and is in accordance with the Borough's 2017 Housing Element & Fair Share Plan;

NOW THEREFORE BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Dumont, in the County of Bergen, and State of New Jersey, that:

SECTION 1. Chapter 209, Article III, Section 16.1 shall be amended as follows:

§209-16.1 Affordable housing development fees

A. Purpose.

- (1) 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 (COAH's) adoption of rules.
- (2) Pursuant to C. 46, P.L. 2008, Section 8 (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 40:55D-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 nonresidential development.
- (3) Pursuant to the Executive Reorganization Act of 1969, C. 203, P.L. 1969 (N.J.S.A. 52:14C-1 et seq.), the Governor abolished COAH and transferred all functions, powers, and duties to the Commissioner of the Department of Community Affairs, effective August 29, 2011. Any and all references to COAH shall mean the Department of Community Affairs (the Department).
- (4) This section establishes standards for the collection, maintenance, and expenditure of development fees pursuant to the Department's regulations and in accordance C. 46, P.L. 2008, Sections 8 and 32 through 38. Fees collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing. This section shall be interpreted within the framework of the Department's rules on development fees, codified at N.J.A.C. 5:97-8.

B. Basic requirements.

- (1) This section shall not be effective until approved by the Department pursuant to N.J.A.C. 5:96-5.1.

- (2) The Borough of Dumont shall not spend development fees until the Department 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.

C. **Definitions.** The following terms, as used in this section, shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT

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 one-hundred-percent affordable development.

COAH or THE COUNCIL

The New Jersey Council on Affordable Housing established under the Fair Housing Act which previously had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state. Pursuant to the opinion and order of the New Jersey Supreme Court dated March 10, 2015, in the matter of "In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing (M-392-14) 067126," any reference to COAH or the Council shall be understood to refer to the Superior Court of New Jersey, Law Division-Bergen County.

DEVELOPER

The 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.

DEVELOPMENT FEE

Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

EQUALIZED ASSESSED VALUE

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 C. 123, P.L. 1973 (N.J.S.A. 54:1-35a through 54:1-35c).

GREEN BUILDING STRATEGIES

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.

D. Residential development fees.

- (1) Imposed fees.
 - (a) Within all Borough zoning district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of ~~0.5%~~ 1.0% of the equalized assessed value for residential development, 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 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.
- (2) Eligible exactions, ineligible exactions and exemptions for residential development.
 - (a) 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.
 - (b) 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.
 - (c) Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.
 - (d) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

- (e) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, which requires the issuance of a certificate of occupancy, for example, when a single-family home is converted to a two-family home or a single-family home is converted to an apartment building. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (f) Development fees shall be imposed and collected when a certificate of occupancy is issued for a new residential unit on a newly created lot that is the result of a subdivision. The development fee shall be calculated on the equalized assessed value of the land and improvements.

E. Nonresidential development fees. (Note: It should be noted that pursuant to P.L. 2009, c. 90 and P.L. 2011, c. 122, the nonresidential statewide development fee of 2.5% for nonresidential development is suspended for all nonresidential projects that received preliminary or final site plan approval subsequent to July 17, 2008, until July 1, 2013, provided that a permit for the construction of the building has been issued prior to January 1, 2015.).

(1) Imposed fees.

- (a) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot or lots.
- (b) Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting 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 nonresidential development fee shall be zero.

- (2) Eligible exactions, ineligible exactions and exemptions for nonresidential development.
 - (a) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the development fee of 2.5% unless otherwise exempted below.
 - (b) The fee of 2.5% shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - (c) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to C. 46, P.L. 2008, 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.
 - (d) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to C. 46, P.L. 2008, shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
 - (e) If a property which was exempted from the collection of a nonresidential 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 nonresidential development fees under these circumstances may be enforceable by the Borough of Dumont as a lien against the real property of the owner.

F. Collection procedures.

- (1) Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- (2) For nonresidential developments 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 developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information

submitted by the nonresidential 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.

- (3) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- (4) Within 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.
- (5) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- (6) Within 10 business days of a request for the scheduling of a final inspection, the municipal 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 developer of the amount of the fee.
- (7) Should the Borough of Dumont fail to determine or notify the developer of the amount of the development fee within 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 C. 46, P.L. 2008, (N.J.S.A. 40:55D-8.6).
- (8) Fifty percent of the 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 building permit and that determined at issuance of certificate of occupancy.
- (9) Appeal of development fees.
 - (a) 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 Dumont. 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 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 nonresidential 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 Borough of Dumont. 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 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

G. Affordable Housing Trust Fund.

- (1) 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 nonresidential developers and proceeds from the sale of units with extinguished controls.
- (2) The following additional 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 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 the Borough of Dumont's affordable housing program.
- (3) Within seven days from the opening of the trust fund account, the Borough of Dumont shall provide the Department with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and the Department to permit the Department to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

- (4) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Department.

H. Use of funds.

- (1) The expenditure of all funds shall conform to a spending plan approved by the Department. Funds deposited in the housing trust fund may be used for any activity approved by the Department to address the Borough of Dumont'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 nonresidential 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 5:97-8.9 and specified in the approved spending plan.
- (2) Funds shall not be expended to reimburse the Borough of Dumont for past housing activities.
- (3) At least 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 30% or less of median income by region.
 - (a) 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.
 - (b) Affordability assistance to households earning 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 30% or less of median income.

- (c) 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.
 - (4) The Borough of Dumont 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.
 - (5) No more than 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% 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 the Department'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.
- I. **Monitoring.** The Borough of Dumont shall complete and return to the Department all monitoring forms included in monitoring requirements related to the collection of development fees from residential and nonresidential 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 the Borough of Dumont's housing program, as well as to the expenditure of revenues and implementation of the plan certified by the Department. All monitoring reports shall be completed on forms designed by the Department.
- J. **Ongoing collection of fees.** The ability for the Borough of Dumont to impose, collect and expend development fees shall expire with its substantive certification unless the Borough of Dumont has filed an adopted Housing Element and Fair Share Plan with the Department, has petitioned for substantive certification, and has received the Department's approval of its development fee ordinance. If the Borough of Dumont 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 Section 20 of C. 222, P.L. 1985 (N.J.S.A. 52:27D-320). The Borough of Dumont 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 the Borough of Dumont retroactively impose a development fee on such a development.

The Borough of Dumont shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

SECTION 2. All Ordinances of the Borough of Dumont, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, sentence, clause of phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

ATTEST:

Susan Connelly, RMC
Municipal Clerk

James J. Kelly, Mayor

Introduced: February 6, 2018
Public Hearing:
Adopted: