

TOWNSHIP COUNCIL WORKSHOP AGENDA

MONDAY, APRIL 8, 2019

7:00 P.M.

SALUTE TO THE FLAG

STATEMENT OF PUBLIC NOTICE - TAKE NOTICE THAT ADEQUATE NOTICE OF THIS MEETING HAS BEEN PROVIDED IN ACCORDANCE WITH N.J.S.A. 10:4-10 AS FOLLOWS: A NOTICE OF THE MEETING WAS PROMINENTLY POSTED ON THE BULLETIN BOARD AT THE MUNICIPAL BUILDING, LOCATED AT 225 MAIN STREET, LITTLE FALLS, NJ ON JANUARY 2, 2019. A COPY OF THE NOTICE WAS FAXED TO THE NORTH JERSEY HERALD & NEWS AND THE RECORD ON THE SAME DATE. ADDITIONALLY, A COPY OF THE NOTICE WAS FILED IN THE OFFICE OF THE TOWNSHIP CLERK ON SAID DATE.

ROLL CALL

AUTISM AWARENESS MONTH PROCLAMATION

NATIONAL DONATE LIFE AWARENESS MONTH PROCLAMATION

PUBLIC COMMENT - GENERAL MATTERS

ANYONE WISHING TO ADDRESS THE TOWNSHIP COUNCIL MAY DO SO THROUGH THE COUNCIL PRESIDENT. PLEASE GIVE YOUR NAME AND ADDRESS FOR THE RECORD. COMMENTS ARE TO BE LIMITED TO THREE MINUTES, HOWEVER, IF APPROPRIATE, YOU MAY BE GRANTED ADDITIONAL TIME IN THE SOLE DISCRETION OF THE COUNCIL PRESIDENT.

ITEMS TO BE DISCUSSED:

MAYOR/ADMINISTRATOR:

1. ACCESSORY STRUCTURES AND SWIMMING POOLS
2. CLIFTON HEALTH SERVICE CONTRACT RENEWAL
3. MERGER/NAME CHANGE OF PROFESSIONAL INSURANCE ASSOCIATES

ACTION ITEMS:

RESOLUTIONS

BILL LIST [A]

NEW BUSINESS

INTRODUCTION OF ORDINANCE NO. 1355, AN ORDINANCE ENTITLED, ORDINANCE OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF LITTLE FALLS, COUNTY OF PASSAIC, STATE OF NEW JERSEY, AMENDING CHAPTER 57 OF THE CODE OF THE TOWNSHIP CODE ENTITLED, DEVELOPMENT FEES", WITH A SECOND READING AND PUBLIC HEARING SCHEDULED FOR MAY 6, 2019.

COUNCIL TOPICS FOR DISCUSSION

PUBLIC COMMENT - AGENDA ITEMS ONLY

ANYONE WISHING TO ADDRESS THE TOWNSHIP COUNCIL MAY DO SO THROUGH THE COUNCIL PRESIDENT. PLEASE GIVE YOUR NAME AND ADDRESS FOR THE RECORD. COMMENTS ARE TO BE LIMITED TO THREE MINUTES, HOWEVER, IF APPROPRIATE, YOU MAY BE GRANTED ADDITIONAL TIME IN THE SOLE DISCRETION OF THE COUNCIL PRESIDENT.

ADJOURN

ORDINANCE No. 1355

Development Fees: Amending Chapter 57 of the Code of the Township of Little Falls

§57-1. Purpose.

The purpose of this chapter is to establish standards for the collection, maintenance and expenditure of development fees in accordance with the Supreme Court decision in *Holmdel Builder's Ass'n. v. Holmdel Township*, 121 NJ 550 (1990) and pursuant to the regulations adopted by the New Jersey Council on Affordable Housing (COAH). Fees collected under this chapter shall be used for the sole purpose of providing low and moderate income housing either within the Borough of Saddle River or elsewhere within the northeast housing region.

57-1.2 Definitions.

As used in this section:

Affordable housing means any housing unit with a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-7.4.

COAH means the New Jersey Council on Affordable Housing, established under the Fair Housing Act of 1985, and which has primary jurisdiction for the administration of low- and moderate-housing obligations in accordance with sound regional planning considerations in the State.

Developer means 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. For the purposes of this section, references to "developer" shall mean the entity seeking site plan, subdivision or "d" variance approval of, or a building permit for, new construction or the expansion or intensification of use of an existing structure for which a development fee is permitted to be collected pursuant to subsection 57-3, and/or 57-4, or the successor in title or interest to said entity.

Development means the division of a parcel of land into two (2) or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. For the purpose of this section, references to "development" shall mean new construction or the expansion or intensification of use of an existing structure for which a development fee is permitted to be collected pursuant to subsection 57-3 and/or 57-4.

Development fees means money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in N.J.A.C. 5:97-8.3 et seq. Development fees may be imposed and collected as to new construction as well as to when an existing structure is expanded, undergoes a change to a more intense use, or is demolished and replaced. New construction fees shall be based on the equalized assessed value of land and improvements. Fees that result from additions and alterations shall be based on the increase in equalized assessed value that results only from the addition or alteration.

Equalized Assessed Value means the value of a property determined by the Township Tax Assessor through a process designed to ensure that all property in the Township is assessed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the Tax Assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Tax Assessor.

Judgment of Repose means a judgment issued by the Superior Court of New Jersey approving the Township's plan to satisfy its fair share obligation.

Substantive Certification means a determination by COAH approving the Township's housing element and fair share plan in accordance with the provisions of the Fair Housing Act and the rules and criteria as set forth in N.J.A.C. 5:93-1.1 et seq. A grant of "substantive certification" shall be valid for a period of six (6) years in accordance with the terms and conditions contained therein, in accordance with N.J.S.A. 52:27D-322.

§ 57-2. Development fee assessment.

A.

Unless otherwise excluded by § 57-5 of this chapter, all residential and nonresidential developments shall be assessed a development fee as a condition for securing preliminary subdivision or site plan approval.

B.

Unless otherwise excluded by § 57-5 of this chapter, construction activity that does not require subdivision or site plan approval shall be assessed a development fee as a condition for securing a building permit.

§ 57-3. Residential development fees.

A.

Development fees for residential development shall be 1.5% of the equalized assessed value of the development except that, where a zoning change or density variance may be approved which provides for an increase in the residential development permitted on a site, the development fee for each additional or bonus dwelling unit realized shall be 6% of the equalized assessed value of each such incremental dwelling unit.

B.

Fees exceeding those permitted under this section may be collected where an agreement is entered into with the developer which offers a financial incentive for paying higher fees. All such agreements are subject to approval by COAH.

§ 57-4. Nonresidential development fees.

A.

Development fees for nonresidential development shall be 2.5% of the equalized assessed value of the development.

B.

Fees exceeding those permitted under this section may be collected where there is an agreement with the developer that offers a financial incentive for paying higher fees. Such agreements may include, but are not limited to, tax abatement, increased commercial/industrial square footage, and/or increased commercial/industrial impervious coverage in return for an increased fee. The fee negotiated must bear a reasonable relationship to the additional commercial/industrial consideration to be received. All such agreements are subject to approval by COAH.

§ 57-5. Eligible exactions and exemptions.

A.

Inclusionary developments shall be exempt from paying development fees.

B.

Developers that expand an existing nonresidential structure shall pay a development fee as required in § 57-4 of this chapter. The development fee shall be calculated based on the increase in the equalized assessed value of the improved structure.

C.

Improvements to and expansions of existing residential structures which increase the living space by less than 20% and/or the volume of the existing structure by less than 20% shall be exempt from paying a development fee.

D.

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

E.

Developers of churches, synagogues, schools, public nonprofit uses or hospitals shall be exempt from paying development fee(s).

§ 57-6. Collection of fees.

A.

Developers shall pay 50% of the calculated development fee at the time of the issuance of building permits. The development fee shall be estimated by the Tax Assessor prior to the issuance of a building permit.

B.

Developers shall pay the remaining fee at the time of the issuance of certificates of occupancy. Upon the issuance of a certificate of occupancy, the Tax Assessor shall calculate the applicable equalized assessed value and the appropriate development fee. The developer shall be responsible for paying the difference between the fee calculated at the time a certificate of occupancy is issued and the amount paid at the time the building permit was issued.

C.

Imposed and collected development fees that are challenged shall be placed in an interest bearing account by the municipality. 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.

§ 57-7. Affordable housing trust fund.

A.

There is hereby created an interest bearing affordable housing trust fund in an official bank of the Township for the purpose of receiving development fees from residential and nonresidential developers. All development fees paid pursuant to this chapter shall be deposited in the affordable housing trust fund. No money shall be expended from the affordable housing trust fund unless the expenditure conforms to the municipality's spending plan approved by COAH.

B.

Should COAH determine that the Township of Little Falls is in violation of any requirements set forth in N.J.A.C. 5:93-8.17 and N.J.A.C. 5:93-8.18, COAH shall direct the manner in which all development fees collected pursuant to this chapter shall be expended, pursuant to a written authorization from the governing body to the official bank of the Township, which shall be filed with the bank upon the establishment of the affordable housing trust fund as provided in § 57-7A above.

§ 57-8. Use of funds.

A.

Moneys deposited in the affordable housing trust fund may be used for any activity approved by COAH for addressing the Township's low and moderate income housing obligations. Such activities may include, but are not necessarily limited to: new affordable housing construction; the funding of 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 Little Falls Housing Element. The expenditure of all moneys shall conform to the Spending Plan approved by COAH.

B.

At least 30% of all revenues collected which are not targeted for a regional contribution agreement or a municipal construction project, shall be devoted to render units more affordable. Examples of such activities include, but are not limited to: down payment assistance; low interest loans; and rental assistance.

C.

No more than 20% of all revenues collected shall be expended on administrative costs necessary to provide, revise or implement the Housing Element. Examples of eligible administrative activities include: additional personnel; consultant services; space costs; consumable supplies; and rental or purchase of equipment directly related to the development, revision or implementation of any portion of the Township's Housing Element. Administrative funds may also be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements.

§ 57-9. Disbursement of funds.

Development fees shall be disbursed consistent with the Township's Spending Plan adopted pursuant to N.J.A.C. 5:93-5.1(c).

§ 57-10. Monitoring.

The Township shall complete and return all monitoring forms related to the collection of fees, expenditure of revenues and implementation of the plan certified by COAH. Quarterly financial reports, and annual program implementation and auditing reports shall be completed on forms designed by COAH.

57-10.1 Spending Plans.

a. The Township shall submit to COAH or the court (whichever has jurisdiction) a spending plan for the development fees collected by it prior to the granting of substantive certification by COAH or the issuance of a Judgment of Repeal by the court (whichever has jurisdiction). Plans to spend development fees shall consist of the following information.

1. A projection of revenues anticipated from imposing fees on development, based on historic activity;

2. A description of the administrative mechanism that the Township will use to collect and distribute revenues;

3. A description of the anticipated use of all development fees;

4. A schedule for the creation or rehabilitation of housing units using development fees;

5. In the event the Township envisions being responsible for public sector or nonprofit construction of housing, a pro forma statement of the anticipated costs and revenues associated with the development;

6. The manner through which the Township will address any expected or unexpected shortfall for the activities set forth in paragraphs 4. and 5. above if the anticipated revenues from development fees are not sufficient to implement the plan.

57-10.2 Penalties.

a. In the event that any of the conditions set forth in paragraph b. below occur, COAH or the court (whichever has jurisdiction) shall be authorized, on behalf of the Township, to direct the manner in which all development fees collected pursuant to this section shall be expended. Should any such condition occur, such revenues shall immediately become available for expenditure at the direction of COAH or the court (whichever has jurisdiction) upon the Township Clerk's receipt of written notification from COAH or the court (whichever has jurisdiction) that such a condition has occurred. In furtherance of the foregoing, the Township shall, in establishing a bank account pursuant to subsection 30-1.6, ensure that the Township has provided whatever express written authorization which may be required by the bank to permit COAH or the court (whichever has jurisdiction) to direct disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by COAH or the court (whichever has jurisdiction) to the Township Clerk and Chief Financial Officer.

b. Occurrence of the following may result in COAH or the court (whichever has jurisdiction) taking action pursuant to paragraph a. above:

1. Failure to submit a spending plan pursuant to 57-1.9 above within the time limits imposed by COAH or the court (whichever has jurisdiction);

2. Failure to meet deadlines for information required by COAH or the court (whichever has jurisdiction) in its review of this section, the Township's housing element, or its spending plan;

3. Failure to proceed through COAH's administrative process or any administrative process imposed by the court (whichever has jurisdiction) toward substantive certification in a timely manner;

4. Failure to address COAH's or the court's (whichever has jurisdiction) conditions for approval of a plan to spend development fees within the deadlines approved by COAH or the court (whichever has jurisdiction);

5. Failure to address COAH's conditions for substantive certification within the deadlines imposed by COAH;

6. Failure to submit accurate monitoring reports within the time limits imposed by COAH or the court (whichever has jurisdiction);

7. Failure to implement the spending plan for development fees within the time limits imposed by COAH or the court (whichever has jurisdiction), or within reasonable extensions granted by COAH or the court (whichever has jurisdiction);

8. Expenditure of development fees on activities not permitted by COAH or the court (whichever has jurisdiction);

9. Revocation of the Township's substantive certification or Judgment of Repeal; or

10. Other good cause demonstrating that the revenues are not being used for the intended purpose.

§ 57-11. Expiration of chapter.

This chapter permitting the collection of development fees shall expire as a result of any of the following:

A.

An action of a court with competent jurisdiction or COAH's dismissal or denial of a petition for substantive certification.

B.

An action by a court with competent jurisdiction or COAH's revocation either of substantive certification or of its approval of this chapter.

C.

The expiration of substantive certification unless the Township has adopted and filed a new Housing Element with COAH, petitioned for substantive certification, or received COAH's renewed approval of this chapter.

57-12. Consistency, Severability and Repealer

(A) If any provision or portion of a provision of this ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

(B) All ordinances or parts of ordinances, which are inconsistent with any provisions of this ordinance, are hereby repealed as to the extent of such inconsistencies.

(C) No provision of this ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy there from, of any person for injury or damage arising from any violation of this ordinance or from other law.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the Township of Little Falls, Passaic County, State of New Jersey, as follows:

1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The Municipal Council hereby amends Chapter 57 of the Code entitled Development Fees of the Code of the Township of Little Falls.
3. It is the intent of the Municipal Council to replace the entire Chapter 57 Development Fees with this Ordinance in to the Code. All other ordinances enacted and inconsistent herewith are hereby modified pursuant to the terms of this Ordinance.

4. If any section, paragraph, subdivision, clause, sentence, phrase or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

5. A copy of this Ordinance shall be available for public inspection at the offices of the Township Clerk.

6. This Ordinance shall take effect after twenty (20) days of its final passage by the Municipal Council, upon approval by the Mayor and publication as required by law.

PASSED: _____

ATTEST:

APPROVE:

Cynthia Kraus, Municipal Clerk

Mayor