

ORDINANCE NO. 3806

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF FRANKLIN, COUNTY OF SOMERSET, STATE OF NEW JERSEY, MORE PARTICULARLY CHAPTER 112, DEVELOPMENT, ARTICLE XXXIII AFFORDABLE HOUSING DEVELOPMENT FEES.

SUMMARY

This ordinance amends Article XXXIII, Affordable Housing Development Fees, of Chapter 112, Land Development, so as to revise the fees consistent with COAH's Third Round Rules.

BE IT ORDAINED by the Township Council of the Township of Franklin, County of Somerset, State of New Jersey that the Code of the Township of Franklin is hereby amended as follows:

SECTION I

ARTICLE XXXIII Affordable Housing Development Fees [Amended 4-12-2005 by Ord. No. 3537; 7-12-2005 by Ord. No. 3554]

§ 112-252. 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 (COAH's) adoption of rules.
- B. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 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 non-residential development.
- C. This ordinance 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, codified at N.J.A.C. 5:97-8.

§ 112-253. Basic requirements.

- A. This ordinance shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.
- B. Franklin Township shall not spend development fees until COAH 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.

§ 112-254. Definitions.

The following terms, as used in this ordinance, shall have the following meanings:

- A. "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.
- B. "COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.
- C. "Development fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.
- D. "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.
- E. "Equalized assessed value" means 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 P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).
- F. "Green building strategies" means 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.

- G. “Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

§ 112-255. Residential development fees.

A. Imposed fees.

- (1) 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%) percent of the equalized assessed value of the 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 (6.0%) percent 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 units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized assessed value on the first two units; and six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

- (3) Development fees shall be imposed and collected when an existing residential structure is converted into additional dwelling units. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

B. Eligible exactions, ineligible exactions and exemptions for residential development

- (1) Affordable housing developments 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 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.
- (3) Developers of residential structures demolished and replaced as a result of natural disaster or fire shall be exempt from paying a development fee.
- (4) The expansion of a residential use that does not result in additional dwelling units shall be exempt from development fees.

§ 112-256. 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.
- (2) 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 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 as well as when an existing residential structure undergoes a conversion to a non-residential use. The development fee of two and a 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 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.

(4) The non-residential portion of a mixed-use market-rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.

B. Eligible exactions, ineligible exactions and exemptions for non-residential development

(1) The non-residential portion of a mixed-use development containing a 100-percent affordable residential component shall be exempt from the payment of non-residential development fees, as shall an inclusionary development that satisfies the COAH obligation resulting from the residential and non-residential components of the development. The development fee applicable to the non-residential portion of a mixed-use inclusionary development that does not satisfy its COAH obligation shall be determined on a pro-rata basis.

(2) The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, a change in non-residential use, reconstruction, renovation or repairs where such alterations, change in non-residential use, reconstruction, renovation or repairs do not result in an increase in non-residential floor area.

(3) Non-residential developments shall be exempt from the payment of non-residential development fees 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. Such uses include houses of worship, property used for educational purposes which is tax-exempt pursuant to R.S.54:4-3.6, parking lots and parking structures, and any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers. Any exemption claimed by a developer shall be substantiated by that developer.

(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 it at such time 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 certificate of 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 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Franklin Township as a lien against the real property of the owner.

§ 112-257. Collection procedures.

A. 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.

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" 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 local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.

D. 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.

E. The construction official responsible for the issuance of a 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.

- F. 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.
- G. Should Franklin Township 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 P.L.2008, c.46 (C.40:55D-8.6).
- H. 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.
- I. Appeal of development fees
 - (1) 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 Franklin Township. 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, R.S.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.
 - (2) 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 Franklin Township. 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, R.S.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.

§ 112-258. Affordable housing trust fund.

- A. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Finance Department of Franklin Township 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. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (1) Payments in lieu of on-site construction of affordable units;
 - (2) Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - (3) Rental income from municipally operated units;
 - (4) Repayments from affordable housing program loans;
 - (5) Recapture funds;
 - (6) Proceeds from the sale of affordable units; and
 - (7) Any other funds collected in connection with Franklin Township's affordable housing program.
- C. Within seven days from the opening of the trust fund account, Franklin Township shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank and COAH to permit 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 COAH.

§ 112-259. Use of funds.

- A. The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address Franklin Township'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 specified in the approved spending plan.
- B. Funds shall not be expended to reimburse Franklin Township for past housing activities.
- C. At least 30 percent 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 percent or less of median income by region.
- (1) 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.
- (2) 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 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 Franklin Township to bonus credits pursuant to N.J.A.C. 5:97-3.7.
- (3) 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. Franklin Township 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.
- E. No more than 20 percent 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.

§ 112-260. Monitoring.

Franklin Township 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 Franklin Township's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

§ 112-261. Ongoing collection of fees.

The ability for Franklin Township to impose, collect and expend development fees shall expire with its substantive certification unless Franklin Township has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Franklin Township 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 P.L.1985, c.222 (C.52:27D-320). Franklin Township 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 Franklin Township retroactively impose a development fee on such a development. Franklin Township shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

§112-262.

[Reserved]

§112-263.

[Reserved]

§ 112-252. Statement of purpose.

~~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. (the "Act"), and the State Constitution subject to Council on Affordable Housing ("COAH") developing rules. The purpose of this article is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this chapter shall be used for the sole purpose of providing low and moderate income housing. This chapter shall be interpreted within the framework of COAH's rules on development fees.~~

§ 112-253. Definitions.

For the purpose of this article, the following definitions shall apply:

~~AFFORDABLE — A sales price or rent within the means of a low or moderate income household as defined in N.J.S.A. 5:93-7.4 and any additional criteria established by COAH that would qualify the dwelling unit to count towards the Township's Fair Share Housing obligation.~~

~~COAH — The New Jersey 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 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 Municipal Tax Assessor.~~

~~INCLUSIONARY DEVELOPMENT — A development containing low and moderate income units. This term includes, but is not limited to, new construction, the conversion of a nonresidential structure to a residential structure and the creation of new low and moderate income units through the gut rehabilitation of a vacant residential structure. [Amended 12-13-2005 by Ord. No. 3583]~~

~~SUBSTANTIVE CERTIFICATION — A determination by COAH approving a municipality's housing element and fair share plan in accordance with the provisions of the Act and the rules and criteria as set forth herein. A grant of substantive certification shall be valid for a period of 10 years in accordance with the terms and conditions contained therein.~~

~~TOWNSHIP — Franklin Township in Somerset County.~~

§ 112-254. Retention of certain fees.

~~Any fees collected or agreed to prior to December 13, 1990, shall be retained by the Township pursuant to COAH's rules regarding the retention of development fees.~~

§ 112-255. Residential development fees. [Amended 12-19-2005 by Ord. No. 3583]

~~A. All developers of residential subdivisions and site plans shall pay a development fee of 1% of the equalized assessed value for each residential unit constructed and of any eligible residential activity pursuant to § 112-258 of this article. This mandatory fee shall be calculated as follows: 1.0% x equalized assessed valuation x number of units.~~

~~B. 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 6% rather than the development fee of 1.0%. However, if the zoning on a site has changed during the two year period preceding 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.~~

~~§ 112-256. Nonresidential development fees.~~

- ~~A. All nonresidential developers shall pay a mandatory development fee equal to 2.0% of the total equalized assessed valuation of the nonresidential development; provided, however, that no development fee shall be required where the total equalized assessed value of the development is less than \$15,000 as established by the Tax Assessor. This mandatory fee shall be calculated as follows: 2.0% x total equalized assessed valuation.~~
- ~~B. 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 6% rather than the development fee of 2.0%. However, if the zoning on a site has changed during the two-year period preceding 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.~~

~~§ 112-257. Eligible exaction, ineligible exaction and exemptions.~~

- ~~A. Affordable dwelling units, as defined herein, shall be exempt from paying development fees.~~
- ~~B. Inclusionary developments, as defined, are exempt from development fees.~~
- ~~C. Development that expands a nonresidential existing structure shall pay a development fee. The development fee shall be calculated based on the increase in the equalized assessed value of the improved structure.~~
- ~~D. The expansion of a single family dwelling shall be exempt from development fees. [Amended 8-14-2007 by Ord. No. 3708]~~
- ~~E. Developers that have received preliminary or final approval prior to the effective date of this article shall be exempt from paying a development fee unless the developer seeks a substantial change in the approval.~~
- ~~F. Nonprofit and tax exempt organizations, such as Houses of worship are exempt.~~

~~§ 112-258. Collection of fees.~~

- ~~A. Fifty percent of the total mandatory development fee owed to Franklin Township, whether for residential or nonresidential development, shall be paid prior to the issuance of any building permit required in connection with the development, and shall be calculated as follows:
 - ~~(1) For residential developments, the payment of 50% required prior to the issuance of any building permit shall be calculated using an estimated equalized valuation of each residential unit as determined by the Franklin Township Tax Assessor.~~
 - ~~(2) For nonresidential developments, the payment of 50% required prior to the issuance of any building permit shall be calculated using an estimated total equalized assessed valuation of the nonresidential development as determined by the Franklin Township Tax Assessor.~~~~
- ~~B. The remaining portion of the development fee shall be paid prior to the issuance of any certificate of occupancy for any development or any part thereof, whether residential or nonresidential, and shall be calculated using the actual assessed valuation of the development as determined by the Franklin Township Tax Assessor.~~
- ~~C. Because the initial payment required prior to the issuance of a building permit is calculated using an estimated assessed valuation based on estimates for construction costs, the following adjustments are permitted to compensate for differences between the estimated assessed valuation and the actual assessed valuation: If the estimated assessed valuation used to calculate the initial payment of 50% was overestimated or underestimated, causing the actual assessed valuation to be less than or greater than the estimated assessed valuation used to calculate the initial payment of 50%, the developer's certificate of occupancy payment shall be equal to the difference between the actual assessed valuation and the initial payment of 50% as determined by the Franklin Township Tax Assessor.~~

~~§ 112-259. Housing Trust Fund.~~

- ~~A. There is hereby created an interest bearing Housing Trust Fund in an approved bank or other approved depository of the Township for the purpose of receiving development fees from residential and nonresidential developers. All development fees paid by developers pursuant to this article 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.~~
- ~~B. If COAH determines that the Township 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 article shall be expended. Such authorization is pursuant to this article, COAH's rules on development fees, and the written authorization from the governing body to the approved bank or other approved depository of the Township in which the Housing Trust Fund is located.

§ 112-260. Use of funds.

- A. Money deposited in a Housing Trust Fund may be used for any activity approved by COAH for addressing the Township'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 to be more affordable to low and moderate income people; and administrative costs necessary to implement the Township's housing element. The expenditure of all money shall conform to a spending plan approved by COAH.
- B. At least 30% of the revenues collected from development fees pursuant to this article shall be devoted to rendering units more affordable unless exempt as per this article. Examples of such activities include, but are not limited to, down payment and closing costs assistance, low interest loans, and rental assistance.
- C. No more than 20% of the revenues collected from development fees 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 and directly associated with plan development or plan implementation.
- D. Development fee revenues shall not be expended to reimburse the Township for housing activities that preceded substantive certification.

§ 112-261. Contested fees.

Pursuant to N.J.A.C. 5:94-6.10, imposed and collected development fees that are challenged shall be placed in an interest bearing escrow 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.

§ 112-262. Expiration of ordinance.

This article shall expire if:

- A. COAH dismisses or denies the Township's petition for substantive certification.
- B. COAH revokes substantive certification or its certification of this article.
- C. Substantive certification expires prior to the Township filing an adopted housing element with COAH, petitioning for substantive certification or receiving COAH's approval of this article.

§ 112-263. Land use types subject to development fees.

The following table identifies the land uses that are subject to or exempt from the imposition of development fees for affordable housing:

Use Type	Subject to Fees	Exempt from Fees
A. Agricultural (A, AC)	X	
B. Residential uses (A, CP, RR3, RR5, R 40, R 20, R 15, R 10, R 10B, R 10A, R 7, C-R, H, RC, NRPC)	X	
Single family residential	X	
Condominium	X	
Duplex	X	
Townhouse duplex	X	
Townhouse	X	
Garden apartment	X	
Cluster residential	X	
Mobile home park	X	

Residential conversion	X	
Elderly housing	X	
Assisted living	X	
Group home	X	
Bed and breakfast	X	
C. Municipal, religious, educational, recreation and institutional (All)		X
D. Office use (ROL, OP)	X	
E. Retail and consumer services (N-B, G-B, C-B)	X	
F. Common carriers, utilities, and public service organizations (All)	X	
G. Industrial uses (M-1, M-2, M-3)	X	
H. Accessory uses (All)	X	

SECTION II

Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION III

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as the extent of such inconsistency.

SECTION IV

This ordinance shall take effect immediately upon adoption and publication according to law.

ORDINANCE NO. 3806

This is a true copy of an ordinance adopted by the Township Council,
Township of Franklin, Somerset County, New Jersey.

Introduced: November 25, 2008

Public Hearing: January 6, 2009

Adoption:

Published:

Effective:

Ann Marie McCarthy, Township Clerk

November 26, 2008

NOTICE

TO: Bridgewater Township Hillsborough Township Manville Borough
 Millstone Borough Montgomery Township New Brunswick City
 North Brunswick Township Piscataway Township Princeton Township
 Rocky Hill Borough South Bound Brook Borough South Brunswick Twp.
 Somerset County Planning Board

FROM: Ann Marie McCarthy, Township Clerk

RE: *Amendment to Franklin Township Development Ordinance*

As per NJSA 40:55D-15 a&b, enclosed please find the following ordinance that was introduced at a meeting of the Franklin Township Council on November 25, 2008 and is scheduled for public hearing and further consideration at a meeting to be held on January 6, 2009 at 7:00 p.m. at the Franklin Township Municipal Complex, 475 DeMott Lane, Somerset:

ORDINANCE NO. 3806: AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF FRANKIN, COUNTY OF SOMERSET, STATE OF NEW JERSEY, MORE PARTICULARLY CHAPTER 112, DEVELOPMENT, ARTICLE XXXIII AFFORDABLE HOUSING DEVELOPMENT FEES.

Should you have any questions regarding any of the aforesaid matters, please do not hesitate to contact this office.

Enclosures

Memorandum

TO: Christine Woodbury, Administrative Officer/Secretary
Vincent Dominach, Zoning Officer
Mark Healy, Planner

FROM: Ann Marie McCarthy, Township Clerk

DATE: November 26 2008

RE: Ordinance No. 3806

Attached please find a copy of the following ordinances:

ORDINANCE NO. 3806

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF FRANKIN, COUNTY OF SOMERSET, STATE OF NEW JERSEY, MORE PARTICULARLY CHAPTER 112, DEVELOPMENT, ARTICLE XXXIII AFFORDABLE HOUSING DEVELOPMENT FEES.

SUMMARY

This ordinance amends Article XXXIII, Affordable Housing Development Fees, of Chapter 112, Land Development, so as to revise the fees consistent with COAH's Third Round Rules.

The Planning Board needs to review said ordinance and send any comments or recommendations back to Council before its public hearing on January 6th. I will need a memorandum stating the date of the meeting and action taken.

Your anticipated cooperation in this matter is greatly appreciated.