

ORDINANCE NO. 06-30

**AN ORDINANCE ESTABLISHING RULES, REGULATIONS AND STANDARDS
GOVERNING THE ZONING OF LAND WITH THE CITY OF OCEAN CITY, COUNTY
OF CAPE MAY, PURSUANT TO THE AUTHORITY SET FORTH AS CHAPTER 55 OF
TITLE 40 OF THE REVISED STATUTES AND AMENDMENTS AND SUPPLEMENTS
THERETO, SETTING FORTH A DEVELOPMENT FEE TO BE APPLIED BY THE
PLANNING BOARD, ZONING BOARD AND THE GOVERNING BODY IN THE
DEVELOPMENT OF LAND
THIRD ROUND CERTIFICATION**

This ordinance shall be known and may be cited as:

**DEVELOPMENT FEE ORDINANCE OF CITY OF OCEAN CITY
(THIRD ROUND CERTIFICATION)**

ARTICLE I

1. 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, 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. This ordinance establishes 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.

ARTICLE II

2. Basic requirements

- a) City of Ocean City shall not spend development fees until COAH has approved a plan for spending such fees and Ocean City has received third round substantive certification from COAH.

ARTICLE III

3. Definitions

- a) The following terms, as used in this ordinance, shall have the following meanings:
- i. "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.
 - ii. "COAH" means the New Jersey Council on Affordable Housing.
 - iii. "Development fee" means funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.
 - iv. "Equalized assessed value" means 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.

ARTICLE IV

4. Residential Development fees

- a) Within the City of Ocean City district(s), residential developers shall pay a fee of **One** percent 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 Six percent of the equalized assessed value for each additional unit that may be realized.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one percent of either the equalized assessed value, on the first two units; and six percent of the equalized assessed value for the two additional units.

ARTICLE V

5. Non-Residential Development fees

- a) Within the City of Ocean City, non-residential developers shall pay a fee of **One** Percent of the equalized assessed value for non-residential development

ARTICLE VI

6. Eligible exactions, ineligible exactions and exemptions

- a) Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees
- b) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval.
- c) Development fees shall be imposed and collected when an existing structure is expanded or undergoes a change to a more intense use. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- d) Developers of single family lots that result in the construction of a single family home shall be exempt from paying a development fee provided the single family home is not the result of a subdivision. If the single family home is the result of a subdivision, a development fee shall apply to all single family homes which are a net increase over the number of homes on the site prior to the subdivision.
- e) For the demolition of an existing residential structure with a replacement of a two or more residential structures, the development fee shall be calculated by subtracting the equalized assessed value at the time of the structure demolition from the equalized assessed value of the new residential replacements.

ARTICLE VII

7. Collection of fees

- a) The entire development fee will be collected at the issuance of the certificate of occupancy.

ARTICLE VIII

8. Contested fees

- a) Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by **City of Ocean City**. 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.

ARTICLE IX

9. Affordable Housing trust fund

- a) There is hereby created a separate, interest-bearing housing trust fund in an approved City depository for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls. All development fees paid by developers pursuant to this ordinance shall be deposited into this fund.

- b) Within seven days from the opening of the trust fund account, **City of Ocean City** shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, designated depository, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:94-6.16(b).
- c) No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by COAH. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

ARTICLE X

10. Use of funds

- a) Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, regional contribution agreements (RCAs) subject to the provisions of N.J.A.C. 5:94-4.4(d), ECHO housing, purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for implementation of the Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by COAH.
- b) Funds shall not be expended to reimburse **City of Ocean City** for past housing activities.
- c) After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the **City of Ocean City** affordable housing obligation, at least 30 percent of the balance remaining 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.
 - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.
 - ii. 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 third round 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 **City of Ocean City** to bonus credits pursuant to N.J.A.C. 5:94-4.22.
 - iii. 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) **City of Ocean City** 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. 5:94-7.
- e) No more than 20 percent of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, shall 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. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

ARTICLE XI

11. Monitoring

- a) **City of Ocean City** shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls, and the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

ARTICLE XII

12. Ongoing collection of fees

- a) The ability for **City of Ocean City** to impose, collect and expend development fees shall expire with its **substantive certification** unless **City of Ocean City** 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 the **City of Ocean City** fails to renew its ability to impose and collect development fees prior to the expiration of **substantive certification**, it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:94-6. **City of Ocean City** shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its substantive certification nor will **City of Ocean City** retroactively impose a development fee on such a development. **City of Ocean City** will not expend development fees after the expiration of its substantive certification.

ARTICLE XIII

13. Severability

If any portion of this Ordinance is declared to be invalid by a Court of competent jurisdiction, it shall not affect the remaining portions of the Ordinance which shall remain in full force and effect.

ARTICLE XIV


14. Repealer

All Ordinances or portions thereof inconsistent with this Ordinance are repealed to the extent of such inconsistency.


ARTICLE XV

15. Effective date

This Ordinance shall take effect in the time and manner prescribed by law.




Salvatore Perillo, Mayor



Jack Thomas, Council President

The above Ordinance was passed by the Council of Ocean City, New Jersey, at a meeting of said Council held on the 28th day of **September 2006**, and was taken up for a second reading and final passage at a meeting of said Council held on the 16th day of **November, 2006** in Council Chambers, City Hall, Ocean City, New Jersey, at 7:00 o'clock in the evening.



Cindy Griffith, City Clerk

SHIRLEY M. BISHOP, P.P., LLC

Housing and Planning Consulting

Princeton Pike Corporate Center
993 Lenox Drive, Suite 200
Lawrenceville, New Jersey 08648

RECEIVED

2005 OCT -6 P 12: 58

Tel: (609) 844-7720
Fax: (609) 844-7722

Email: Shirleymbishop@aol.com

CITY CLERK'S OFFICE
204 N. BROAD AVENUE
TRENTON, NJ 08626

October 4, 2006

Lucy Voorhoeve, Executive Director
Council on Affordable Housing
101 South Broad Street
P.O. Box 813
Trenton, NJ 08625

Re: City of Ocean City/ Cape May County

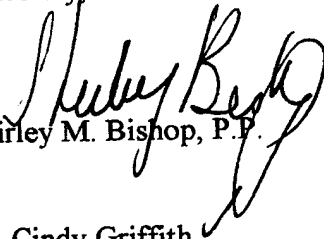
Dear Ms. Voorhoeve:

Enclosed please find a resolution from the City of Ocean City requesting that the Council on Affordable Housing (COAH) review and approve an amendment to its approved and adopted development fee ordinance. Also enclosed are the amended ordinance that was introduced on October 2, 2006 and a copy of the prior approved ordinance.

If you have any questions, please call or email me.

Thank you for your attention and the City of Ocean City awaits COAH's approval.

Sincerely,



Shirley M. Bishop, P.P.

C: Cindy Griffith
Mayor and Council
Gerald Corcoran, Esq.

file w/06-30 ord.



State of New Jersey
COUNCIL ON AFFORDABLE HOUSING
101 SOUTH BROAD STREET
PO Box 813
TRENTON, NJ 08625-0813
(609) 292-3000
FAX: (609) 633-6056
coahmail@dca.state.nj.us

C/ Cindy ✓
George ✓
Randy
John H
FYI

JON S. CORZINE
Governor

JL

SUSAN BASS LEVIN
Commissioner
LUCY VOORHOEVE
Executive Director

November 3, 2006

ADMINISTRATOR'S OFFICE

NOV 17 2006

RECEIVED

The Honorable Henry S. Knight
Mayor, Ocean City
861 Asbury Avenue
Ocean City, NJ 08226-3444

Dear Mayor Knight:

Enclosed please find a copy of a resolution that was passed by the Council on Affordable Housing (COAH) on November 1, 2006 approving the amendment to Ocean City's development fee ordinance with a revision. The revised development fee ordinance must be adopted by the governing body no later than 45 days from the grant of third round substantive certification. The revised development fee ordinance must be filed with COAH within seven days of adoption.

If you have any questions, please call James Cordingley at (609) 292-1547.

Sincerely,

Lucy Voorhoeve
Executive Director

enclosure

c: attached service list
Bonnie Flynn, COAH



**RESOLUTION APPROVING MANDATORY DEVELOPMENT FEE ORDINANCE
AMENDMENT
CITY OF OCEAN CITY/ CAPE MAY COUNTY**

WHEREAS, the City of Ocean City, Cape May County, received second round substantive certification of its Housing Element and Fair Share Plan from the Council on Affordable Housing (COAH) on October 4, 2000; and

WHEREAS, Ocean City's second round substantive certification included a development fee ordinance approved by COAH on March 10, 1998; and

WHEREAS, on October 4, 2006, Ocean City submitted to COAH an amended development fee ordinance and spending plan with the City's petition for substantive certification; and

WHEREAS, Ocean City proposes to impose on residential developers mandatory development fees of one percent (.01%) of the equalized assessed value of new residential developments, provided no increased density is permitted; and

WHEREAS, Ocean City also proposes to impose on residential developers who expand existing structures mandatory development fees of one percent (.01%) of the increase in the equalized assessed value of the residential structures; and

WHEREAS, if Ocean City grants a "d" variance pursuant to N.J.S.A. 40:55D-70d(5), the additional residential units realized (above what is permitted by right under the existing zoning) will incur bonus a development fee of six percent (.06%) on the equalized assessed value; and

WHEREAS, Ocean City proposes to impose a mandatory fee on non-residential developers of one percent (.01%) of the equalized assessed value of new non-residential developments; and

The Honorable Salvatore Perillo
Mayor
City of Ocean
861 Asbury Avenue
Ocean City, New Jersey 08226-3444

Shirley M. Bishop, PP
Shirley M. Bishop, PP, LLC
993 Lenox Drive
Suite 200
Lawrenceville, New Jersey 08648

Gerald Corcoran, Esq.
Municipal Attorney
Cornerstone Commerce Center
1201 New Road, Suite 230
Linwood, New Jersey 08221-1159

Cindy Griffith
Municipal Clerk
City of Ocean
861 Asbury Avenue
Ocean City, New Jersey 08226-3444

James Rutala
Administrator
City of Ocean
861 Asbury Avenue
Ocean City, New Jersey 08226-3444

George Savastano
Municipal Engineer
115 12th Street
Ocean City, New Jersey 08226-3444

Courtenay Mercer
Office of Smart Growth, Dept of Community Affairs
101 South Broad Street
PO Box 204
Trenton, New Jersey 08625

Cape May County Planning Board
4 Moore Road
DN309, Court House
Cape May, New Jersey 08210

ARTICLE IV

4b. 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] **shall** be required to pay a development fee of six percent of the equalized assessed value for each additional unit that may be realized; and

BE IT FURTHER RESOLVED that all development fees paid by developers pursuant to the mandatory development fee ordinance shall be deposited into a separate interest bearing housing trust fund account; and

BE IT FURTHER RESOLVED that the ability to collect development fees is conditioned upon COAH's continued authorization from the governing body to the bank in which the housing trust fund is located that allows COAH to direct expenditure of development fees if the municipality is not in conformance with rules on development fees; and

BE IT FURTHER RESOLVED that the imposition and collection of the increased fees may commence upon adoption of the development fee ordinance; and

BE IT FURTHER RESOLVED that Ocean City shall file the adopted ordinance with COAH within seven days of adoption; and

BE IT FURTHER RESOLVED that the approval of Ocean City's development fee ordinance only empowers Ocean City to impose and collect development fees and does not empower Ocean City to expend monies without COAH's approval of a spending plan; and

BE IT FURTHER RESOLVED that Ocean City will require COAH's approval of a spending plan prior to third round substantive certification; and

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING



DEVELOPMENT FEE ORDINANCE AMENDMENT REVIEW

CITY OF OCEAN CITY/CAPE MAY COUNTY



REGION # 6

Prepared by James Cordingley, Supervising Planner

October 25, 2006

I. BACKGROUND

Ocean City, Cape May County, received second round substantive certification of its Housing Element and Fair Share Plan addressing its total 1987-1999 fair share obligation on October 4, 2000. On March 10, 1998, the Council on Affordable Housing (COAH) approved Ocean City's development fee ordinance. On October 4, 2006, Ocean City petitioned COAH for third round substantive certification. The City included a proposed development fee ordinance amendment and spending plan with its petition. The development fee ordinance amendment is the subject of this review pursuant to N.J.A.C. 5:94-6.

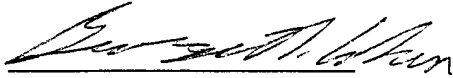
II. PROPOSED ORDINANCE

Ocean City's revised development fee ordinance proposes to impose on residential developers mandatory development fees of one percent (.01%) of the equalized assessed value of new residential developments and on the increase in the equalized assessed value for expansions of existing structures provided no increased density is permitted. Unchanged from the City's second round development fee ordinance, 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 (6%) on the equalized assessed value for each additional unit. The ordinance also applies a mandatory fee of one percent (.01%) on new non-residential developments and on the increase in the equalized assessed value for expansions of existing structures.

Ocean City has exempted affordable housing or developments and developers that have received preliminary or final approval prior to the effective date of the development fee ordinance unless the developer seeks a substantial change in the approval. Also exempt are developers of single family lots that result in the construction of a single family home, provided the single family home is not the result of a subdivision. If the single family home is the result of a subdivision, a development fee shall apply to all single family homes which are a net increase over the number of homes on the site prior to the subdivision. For the demolition of an existing residential structure which is replaced by the construction

The City must receive approval of a development fee spending plan prior to the grant of third round certification and before it may disburse any of these funds. In the event Ocean City withdraws its petition, fails to obtain substantive certification, allows its certification to lapse, or its substantive certification is revoked by COAH, this ordinance is null and void.

Reviewed by:


Deputy Attorney General

10/26/06
Date

CITY OF OCEAN CITY
CAPE MAY COUNTY, NEW JERSEY

RESOLUTION 06-43-243

**City of Ocean City Resolution Requesting Review
and Approval of Development Fee Ordinance Amendment**

WHEREAS, the Governing Body of the City of Ocean City, Cape May County petitioned the Council on Affordable Housing (COAH) for third round substantive certification on October 2, 2006; and

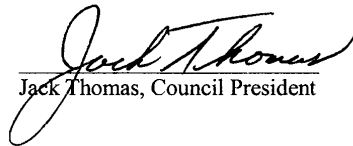
WHEREAS, N.J.A.C. 5:94-6.1 permits a municipality to amend a development fee ordinance for review and approval by the Council on Affordable Housing; and

WHEREAS, the City of Ocean City has prepared an amendment to its adopted development fee ordinance that is consistent with N.J.A.C. 5:94-6 and increases the residential development fee to one percent; and

WHEREAS, the City of Ocean City has also amended its previously approved development fee ordinance to impose a new one percent fee on non-residential development; and

WHEREAS, the City of Ocean City has incorporated new sections to the previously approved development fee ordinance so as to be consistent with COAH regulations.

NOW THEREFORE BE IT RESOLVED that the Governing Body of the City of Ocean City, Cape May County requests that COAH review and approve Ocean City's development fee ordinance amendment.

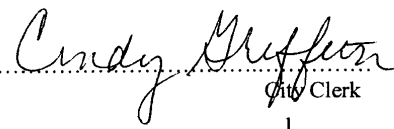

Jack Thomas, Council President

/files/COAH Res.doc

Offered by COUNCILMAN JOHNSON Seconded by COUNCILMAN PING

The above resolution was duly adopted by the City Council of the City of Ocean City, New Jersey, at a meeting of said Council duly held on the 2ND day of OCTOBER 20 06

NAME	AYE	NAY	ABSENT	ABSTAINED
Alessandrine	<u>X</u>			
Allegretto	<u>X</u>			
Hartzell	<u>X</u>			
Johnson	<u>X</u>			
Ping	<u>X</u>			
Thomas	<u>X</u>			
Wagner	<u>X</u>			


Clerk