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# Spending Plan

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Township of Bedminster  
Somerset County, New Jersey

August 31, 2018

*Prepared by*  
*Bedminster Township*

In consultation with Banisch Associates, Inc.  
111 Main Street, Flemington, NJ 08822

**INTRODUCTION**

Bedminster Township has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.).

Bedminster Township first petitioned COAH for substantive certification on July 24, 1995 and received COAH substantive certification of its Housing Element and Fair Share Plan on May 1, 1996. Bedminster received prior approval to maintain an affordable housing trust fund on December 6, 1995, and adopted a development fee ordinance creating a dedicated revenue source for affordable housing on December 18, 1995. The development fee ordinance was approved by COAH initially on December 6, 1995 and again on February 17, 2002. The ordinance establishes the Bedminster Township affordable housing trust fund for which this spending plan is prepared.

All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund solely for affordable housing purposes. These funds will be spent in accordance with N.J.A.C. 5:97-8.7-8.9 as described in the sections that follow.

As of June 29, 2018, the balance of affordable housing development fees collected by Bedminster Township totals \$1,471,610<sup>1</sup>

**1. REVENUES FOR CERTIFICATION PERIOD**

Bedminster’s projection of revenue anticipated during the period of third round substantive certification has considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

Actual and committed payments in lieu (PIL) of construction from developers as follows: *NA*

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<sup>1</sup>Total combines development fees: previously transferred to Bedminster Hills Housing Corporation (\$1,092,099.72 as of 8/21/18 and the Affordable Housing Trust Fund balance of (\$379,510.29 as of 8/20/18).

(c) Other funding sources:

No other funds have been or are anticipated to be collected

(d) Projected interest:

Current interest on the municipal affordable housing trust fund is at the rate of 1%.

SOURCE OF FUNDS	2018	2019	2020	2021	2022	2023	2024	2025	Total
(a) Development:									
Projected Development*	30000	30000	30000	30000	30000	30000	30000	30000	240000
(b) Payments in Lieu of Construction	NA								
(c) Other Funds (Specify source(s))	NA								
(d) Interest (\$)	300	600	900	1200	1500	1800	2100	2400	10800
<b>Total</b>	<b>30300</b>	<b>30600</b>	<b>30900</b>	<b>31200</b>	<b>31500</b>	<b>31800</b>	<b>32100</b>	<b>32400</b>	<b>250800</b>

\*Note –During the period between January 1, 2008 and June 29, 2018, Bedminster collected \$305,042 for an average of roughly \$30,000 per year.

Bedminster projects a total of \$250,800 in revenue to be collected between June 2018 and July 2025, including interest. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

## 2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by Bedminster.

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with Bedminster’s development fee ordinance for both residential and non-residential developments in accordance with COAH’s rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

The Land Use Board Secretary will notify the Township Administrator whenever a preliminary, final, or other applicable approval is granted for a development which is subject to a development or payment in lieu fee. When a request for a building permit is made, the Township Administrator determines if the project is subject to the imposition of a fee.

The Township Administrator will notify the Township Tax Assessor in order to calculate the approximate value of the project and set the fee based on the equalized assessed value

for both residential and non-residential developments. In the event of a new inclusionary zoning ordinance is adopted and a new payment in lieu is established, the new fee shall take precedent.

The balance of the development fee will be paid by the developer to the Township's municipal clerk at the issuance of the certificate of occupancy. The funds are then forwarded to the Township's Financial Officer for deposit in the affordable housing trust fund.

(b) Distribution of development fee revenues:

Local procedures for distributing the affordable housing trust funds have involved preparation of a draft spending plan and presentation to the public, with specific invitation to the residents of affordable neighborhood associations. The proposed spending plan has considered this input.

The Township Administrator will forward a request to the Township's governing body recommending the expenditure of development fees as set forth in this spending plan. The governing body reviews the request for consistency with the spending plan and adopts the recommendation by resolution.

The release of funds requires the adoption of the governing body's resolution in accordance with the approved spending plan. Once a request is approved by resolution, the Financial Officer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.

### **3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS**

(a) **Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)**

Bedminster does not propose any rehabilitation or new construction programs at this time, based upon the settlement with Fair Share Housing Center.

According to the FSHC settlement, however, Bedminster must facilitate development of 28 affordable rental units, which may be done through inclusionary zoning or 100% affordable construction. While Bedminster anticipates working with an inclusionary developer to deliver these units, development fee revenues are currently being dedicated to assisting a 100% affordable project, if inclusionary rezoning not been adopted by July 1, 2021

(b) **Affordability Assistance (N.J.A.C. 5:97-8.8)**

Projected minimum affordability assistance requirement:

Available balance of development fees including interest earned		\$1,471,610
Development fees projected* 2018 through 2025	+	\$240,000
Interest projected* 2018-2025	+	\$10,800
Less outstanding housing activity expenditures through 7-1-18*	-	\$0
<b>Total</b>	=	\$1,722,410.00
<b>PROJECTED MINIMUM Affordability Assistance Requirement</b> 30 percent requirement	x 0.30 =	\$516,723
<b>PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement</b>	÷ 3 =	\$172,241

\*Note: Fund balances were transferred to Bedminster Hills Housing Corporation in order to prevent seizure by Governor Christie.

The administration of affordability assistance funds has been the responsibility of the Bedminster Hills Housing Corporation. Bedminster’s spending plan will render units more affordable by assisting low income buyers in meeting down payment requirements and funds to render units more affordable to very low income (<30% of regional median) households. Affordability assistance programs will include:

*\$344,482 in down payment assistance at \$5,000, per payment;  
\$172,241 to provide grants/loans for rental assistance for very low income households (Security Deposit or First Month’s Rent programs)*

(c) **Administrative Expenses (N.J.A.C. 5:97-8.9)**

Bedminster projects that roughly \$344,482 will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, include but are not limited to staff administrative services and professional services (attorney, planner, engineer, administrative agents, etc.) for:

1. Preparation of Housing Element and Fair Share Plan
2. Coordination of COAH activities, including petition for substantive certification and
3. Any other eligible expenses as may become necessary or appropriate

**4. EXPENDITURE SCHEDULE**

The FSHC agreement recognizes that the Township has no unfulfilled rehabilitation obligation, but does require the construction of 28 family rental units. Bedminster does not intend to use affordable housing trust fund revenues for the creation or rehabilitation of affordable units at this time, since the Township expects to zone for inclusionary rental housing to address this need. As noted in the Housing element, Bedminster has a substantial reserve of COAH credits based on prior performance. After allowing for affordability assistance and administrative expenses, Bedminster anticipates that the available funding for program purposes will be \$861,205.

While inclusionary zoning is expected to produce the 28 family rentals, this spending plan reserves this \$861,205 to be used in the event that such inclusionary rezoning is not adopted by July 1, 2021. In that event, the Township will engage a tax credit developer

of affordable housing to build the 28 family rental units required by the settlement with FSHC. Bedminster also reserves the right to use funds for such other purposes as deemed necessary and appropriate, consistent with COAH rules.

**5. EXCESS OR SHORTFALL OF FUNDS**

The governing body of Bedminster has not adopted a resolution agreeing to fund any shortfall of funds required for implementing the fair share plan, since it is anticipated that an inclusionary developer will provide the family rental units and no additional compliance mechanisms will be needed before 2025. In the event that the inclusionary rezoning is not accomplished by July 1, 2021, funds not committed to affordability assistance or administration will be devoted to the construction of the 28 family rental units.

**SUMMARY**

Bedminster’s affordable housing trust fund balance was \$1,471,610 as of August 21, 2018 and the Township anticipates an additional \$250,800 in revenues before the expiration of substantive certification for a total of \$1,722,410. The municipality will dedicate \$516,723 to render units more affordable, and \$344,482 toward administrative costs. The municipality will dedicate any excess funds toward eligible housing activities to be determined.

<b>SPENDING PLAN SUMMARY</b>		
Balance as of June 29, 2018		\$1,471,610
<b>PROJECTED REVENUE 2018-2025</b>		
Development fees	+	\$240,000
Payments in lieu of construction	+	NA
Other funds	+	NA
Interest	+	\$10,800
<b>TOTAL REVENUE</b>	<b>=</b>	<b>\$1,722,410</b>
<b>EXPENDITURES</b>		
Funds used for Rehabilitation	-	NA
Funds for New Construction		\$861,205
Affordability Assistance	-	\$516,723
Administration	-	\$344,482
<b>TOTAL PROJECTED EXPENDITURES</b>	<b>=</b>	<b>\$1,722,410</b>
<b>REMAINING BALANCE</b>	<b>=</b>	<b>\$0</b>

Bedminster intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:93-8.1 et seq. and consistent with the housing programs outlined in the Housing Element and Fair Share Plan dated June 7, 2018.

**EXPLANATION:** This Resolution authorizes the adoption of an Affordable Housing Spending Plan and requests the Court's review and approval of same.

**BEDMINSTER TOWNSHIP  
RESOLUTION #2018-080**

**WHEREAS**, in accordance with applicable Council on Affordable Housing ("COAH") regulations, the New Jersey Uniform Housing Affordability Controls ("UHAC")(N.J.A.C. 5:80-26., et seq.), and the terms of a Settlement Agreement between the Township of Bedminster and Fair Share Housing Center ("FSHC"), which was entered into as part of the Township's Declaratory Judgment action entitled In the Matter of the Application of the Township of Bedminster, County of Somerset, Docket No. SOM-L-914-15, which was filed in response to Supreme Court decision In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) ("Mount Laurel IV"), the Township of Bedminster is required to adopt an Affordable Housing Spending Plan.

**WHEREAS**, the Township of Bedminster currently has an approved Development Fee Ordinance and Affordable Housing Trust Fund in place; which includes development fees, payments from developers in lieu of constructing affordable units on-site, barrier free escrow funds, rental income, repayments from affordable housing program loans, recapture funds, proceeds from the sale of affordable units, and/or funds collected in connection with the Township's affordable housing program; and

**WHEREAS**, the Township requires approval of its Spending Plan in order to utilizing any of the funds within its Affordable Housing Trust Fund; and

**WHEREAS**, the Township Bedminster has prepared a Spending Plan consistent with P.L. 2008, c. 46, Council on Affordable Housing ("COAH") regulations and the Settlement Agreement entered into between the Township and FSHC; and

**WHEREAS**, the Township desires to submit its Spending Plan to the Court for review and approval.

**NOW THEREFORE BE IT RESOLVED** that the Township Committee of the Township of Bedminster, County of Somerset, State of New Jersey, hereby approves the Spending Plan that is attached hereto as Exhibit A, and requests that the Court review and approve the Township's Spending Plan, so that it can expend funds in its Affordable Housing Trust Fund.

**BE IT FURTHER RESOLVED** that the appropriate Township officials are to take any and all actions to effectuate this Resolution.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect pursuant to law.

**APPROVED** this 17<sup>th</sup> day of September, 2018.

ATTEST:

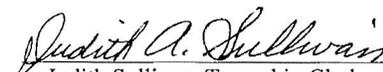
BEDMINSTER TOWNSHIP  
COMMITTEE:

By:   
Judith Sullivan, RMC  
Township Clerk

By:   
Steven E. Parker, Mayor

**CERTIFICATION**

I, Judith Sullivan, Township Clerk of Bedminster, County of Somerset, State of New Jersey, do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Township Committee at a Regular Meeting held on September 17, 2018.

  
Judith Sullivan, Township Clerk

Introduced	Seconded	Township Committee	Aye	Nay	Abstain	Absent
		Steven E. Parker, Mayor	✓			
✓		Lawrence F. Jacobs	✓			
		Staci Santucci	✓			
	✓	Douglas A. Stevinson	✓			
		R. Colin Hickey	✓			

EXPLANATION: This ordinance revises the Township's development fee ordinance in accordance with new rules issued by the NJ Council on Affordable Housing ("COAH"), and 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), pursuant to the comments provided by COAH in its review of the Township's Petition for Third Round Substantive Certification.

**TOWNSHIP OF BEDMINSTER  
ORDINANCE NO. 09-010**

**AN ORDINANCE AMENDING SECTION 13-904 ENTITLED  
"AFFORDABLE HOUSING DEVELOPMENT FEES" OF  
ARTICLE 13-900 ENTITLED "FEES, GUARANTEES,  
INSPECTIONS, OFF-TRACT IMPROVEMENTS AND  
DEVELOPER'S AGREEMENTS" OF CHAPTER XIII  
ENTITLED "LAND MANAGEMENT" OF THE REVISED  
GENERAL ORDINANCES OF THE TOWNSHIP OF  
BEDMINSTER.**

**WHEREAS**, this Ordinance further amends Ordinance No. 08-33, previously adopted by the Township, pursuant to comments received from COAH in connection with its review of the Township's Petition for Third Round Substantive Certification.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Bedminster, in the County of Somerset, State of New Jersey, as follows:

**Section 1.** Section 13-904 entitled "Affordable Housing Development Fees" of Article 13-900 entitled "Fees, Guarantees, Inspections, Off-Tract Improvements and Developer's Agreements" of Chapter XIII entitled "Land Management" of the *The Revised General Ordinances of the Township of Bedminster*, is hereby deleted in its entirety and replaced to read as follows: [Deleted text ~~strikethrough~~, additional text underlined.]

**13-904                      Affordable Housing Development Fees.**

13-904.1     *Findings and Purposes.*

1. The Township Committee of the Township of Bedminster finds and declares that the creation and preservation of affordable housing in the Township serves the public interest. Maintaining and improving a stock of sound affordable housing requires affirmative steps by local government working cooperatively with public bodies at all levels and with the private sector.
2. The New Jersey Supreme Court, in *Holmdel Builder's Ass'n v. Holmdel Township*, 121 N.J. 550 (1990), 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.
3. 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.
4. The purpose of this subsection is to establish standards for the collection, maintenance and expenditure of development fees in accordance with COAH's rules and regulations, and in accordance with P.L. 2008, c.46, Section 8 and 32-38. Fees collected pursuant to this subsection shall be used for the sole purpose of providing low- and moderate-income housing. This subsection shall be interpreted within the framework of COAH's

regulations on development fees, including N.J.A.C. 5:97-8, and as may be amended.

13-904.2 *Basic Requirements.*

1. This subsection shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.
2. The Township of Bedminster 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

13-904.3 *Definitions.* For the purposes of this subsection, the following terms shall have the following meanings:

1. AFFORDABLE means a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9.
2. AFFORDABLE UNIT means any housing unit proposed or created pursuant to the Fair Housing Act of 1985, credited pursuant to N.J.A.C. 5:97-4., or funded through the Township's affordable housing trust fund.
3. 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.
4. COAH or COUNCIL means the New Jersey Council on Affordable Housing established under the Fair Housing Act of 1985, which has primary jurisdiction for the administration of affordable housing obligations in accordance with sound regional planning considerations in the State.
5. DEVELOPMENT FEES means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.
6. 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 individual, person, partnership, association, company, or corporation having an enforceable proprietary interest in such land.
7. EQUALIZED ASSESSED VALUE means the assessed value of a property divided by the current average ration of assessed to true value for the Township 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). 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.
8. 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.
9. SUBSTANTIAL CHANGE means a modification or elimination of a significant condition or conditions in a memorializing resolution or any significant modification in the design or layout of the subdivision plan previously approved which require a revised or amended subdivision plan application.

13-904.4 *Development Fee Schedule.*

1. *Residential Development.*

- (a) Within all zoning districts in the Township of Bedminster, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half (1.5%) percent of the equalized assessed value for the 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 shall pay a development fee of six (6%) 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 one-half (1½) percent of the equalized assessed value on the first two units; and the specified higher percentage up to six (6) 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.

2. *Nonresidential Development.*

- (a) Within all zoning districts in the Township of Bedminster, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one half (2.5%) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- (b) Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one half (2.5%) percent of the increase in equalized assessed value resulting from any additions ~~or alterations~~ to existing structures to be used for non-residential purposes.
- (c) Development fees shall be imposed and collected when an existing non-residential structure is demolished and replaced. The development fee of two and one half (2.5%) percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements 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 non-residential development fee shall be zero.
- ~~(d) When an approval is granted for an increase in floor area pursuant to N.J.S.A. 40:55D-70d(4) (known as a "d" variance), developers shall pay a development fee of six (6%) percent on the additional floor area realized (above what is permitted by right under the existing zoning). However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.~~

13-904.5 *Eligible Exactions, Ineligible Exactions and Exemptions.*

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. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
3. Residential developments that have received preliminary or final site plan approval prior to the effective date of the initial development fee ordinance codified in this subsection shall be exempt from paying a development fee, 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 and final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
4. Development fees shall not be imposed when an existing residential structure is expanded (including additions, alterations, renovations or reconstruction work).
5. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one half (2.5%) percent development fee, unless otherwise exempted below.
6. The two and one half (2.5%) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs to non-residential developments.
7. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-residential Development Fee Act, P.L.2008, c.46 (N.J.S.A. 40:55D-8.1, *et seq.*, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Specifically, all non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, which is tax exempt pursuant to N.J.S.A. 54:4-3.6, shall be exempt from the imposition of a non-residential development fee, provided that the property continues to maintain its tax exempt status under the statute for a period of at least three (3) years from the date of issuance of the certificate of occupancy. In addition, the following shall be exempt from the imposition of a non-residential development fee:
  - A. parking lots and parking structures, regardless whether the parking lot or parking structure is constructed in conjunction with a non-residential development, such as an office building, or whether the parking lot is developed as an independent non-residential development;
  - B. 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, as defined by the Statewide Non-residential Development Fee Act, which are developed in conjunction with or funded by a non-residential developer;
  - C. non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;
  - D. projects that are located within a specifically delineated urban transit hub, as defined pursuant to N.J.S.A. 34:1B-208;
  - E. projects that are located within an eligible municipality, as defined under N.J.S.A. 34:1B-208, which a majority of the project is located

within a one-half mile radius of the midpoint of a platform area for a light rail system; and

- F. projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the Department of Transportation.
8. Any exemption claimed by a developer shall be substantiated by that developer. 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 final certificate of occupancy of the non-residential development, whichever is later.
9. 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 forty five (45) days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Township of Warren as a lien against the real property of the owner.
10. Owner-occupied residential structures demolished and replaced as a result of fire, flood or natural disaster shall be exempt from paying a development fee.

13-904.6 *Collection of Development Fees.*

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 or other designated Township official responsible for the issuance of a building permit.
2. 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.
3. The construction official or other Township official responsible for the issuance of a building permit shall notify the Township Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
4. Within ninety (90) days of receipt of that notice, the Township 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 shall notify the Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
6. Within ten (10) business days of a request for the scheduling of a final inspection, the Township Tax 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 Township fail to determine or notify the developer of the amount of the development fee within ten (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).
8. The Township may collect up to fifty (50%) percent of the calculated development fee at the time of the issuance of the building permit, with the remaining portion to be collected at the issuance of the certificate of occupancy. Regardless of the time of collection, the development fee shall be based on the percentage that applies on the date that building permits are issued. The developer shall be responsible for paying the difference between the fee calculated at the issuance of the building permit and that determined at the issuance of the certificate of occupancy.
- ~~9. The failure of the developer to make timely payments of the aforesaid deficiency shall entitle the Township to file, without notice to the developer, a lien against the subject development. In the event the Township shall file such lien, the Township may add to the aforesaid deficiency amount reasonable attorney fees to file and discharge such lien, together with any and all costs incurred to file and discharge said lien. In the event that the estimated equalized assessed value proves to have been too high, the Township shall promptly refund the difference between the estimated development fees actually paid by the developer and the development fees required to be paid by the developer once such final equalized assessed value has been determined.~~

910. Appeal of development fees.

(a) A developer may challenge residential development fees imposed by filing a challenge with the Somerset 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 Township of Bedminster. 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 ninety (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 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 forty five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Township of Bedminster. 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 ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

13-904.7 *Affordable Housing Trust Fund.*

1. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer of the 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, which shall be designated as the "Affordable Housing Trust Fund."
2. The following additional funds may 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 ten percent (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 Township of Bedminster's affordable housing program.
3. Within seven days from the opening of the trust fund account, the 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).
  4. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

13-904.8 *Use of Money.*

1. The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by COAH to address the Township of Bedminster'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.
2. Funds shall not be expended to reimburse the Township for past housing activities.
3. At least thirty (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 (1/3) of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty (30%) percent 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 thirty (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 thirty (30%) percent or less of median income. ~~The use of development fees in this manner shall entitle the Township of Bedminster to bonus credits pursuant to N.J.A.C. 5:97-3.7.~~

- (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 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.
- 5. No more than twenty (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 twenty (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.

13-904.9 *Monitoring.* The Township shall complete and submit to COAH all monitoring reports included in the monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of construction 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 Township's affordable housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH.

13-904.10 *Spending Plans.* The Township shall submit to COAH a spending plan for the development fees collected by the Township pursuant to this subsection. The Township will identify the funds on its monitoring report pursuant to N.J.A.C. 5:97-8.12 and include a plan for the use of the funds in its spending plan pursuant to N.J.A.C. 5:97-8.10. The spending plan shall be subject to the review and approval of COAH pursuant to N.J.A.C. 5:96-5.3. The plan to spend development fees shall consist of the following information:

- 1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;
- 2. A projection of revenues anticipated from other sources, including contributions from developers as a result of negotiated agreements, payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;
- 3. A description of the administrative mechanism that the Township will use to collect and distribute revenues;
- 4. A description of the anticipated use of all affordable housing trust funds pursuant to N.J.A.C. 5:97-8.7, 8.8 and 8.9;
- 5. A schedule for the expenditure of all affordable housing trust funds;
- 6. A schedule for the creation or rehabilitation of housing units, if applicable;

7. In the event the Township supports or sponsors public sector or nonprofit construction of housing, a proforma statement of the anticipated costs and revenues associated with the development, consistent with the standards required by the New Jersey Housing and Mortgage Finance Agency in its review of funding applications;
8. As to the existing affordable housing plan maintained by the Township, a plan to send the trust fund balance as of the date of its third round petition within four years of COAH's approval of the spending plan, or in accordance with an implementation schedule approved by COAH;
9. The manner through which the Township will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan; and
10. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the Township's affordable housing obligation.

13-904.11 *Ongoing Collection of Development Fees.*

1. The Township's ability to impose, collect and expend development fees shall expire with its substantive certification unless the 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 this subsection. If the Township fails to renew its ability to impose and collect development fees prior to the expiration of its substantive certification, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing 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). The 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 the Township retroactively impose a development fee on such a development. The Township shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

**Section 2.** If any article, section, subsection, sentence, clause or 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 and they shall remain in full force and effect, and to this end the provisions of this ordinance are hereby declared severable.

**Section 3.** All other ordinances in conflict or inconsistent with this ordinance are hereby repealed, to the extent of such conflict or inconsistency. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Bedminster, the provisions hereof shall be determined to govern. All other parts, portions and provisions of *The Revised General Ordinances of the Township of Bedminster* are hereby ratified and confirmed, except where inconsistent with the terms hereof.

**Section 4.** The Township Clerk is directed to give notice at least ten days prior to a hearing on the adoption of this ordinance to the Somerset County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63(if required).

**Section 5.** After introduction, the Township Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Township of Bedminster for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Township Committee, within 35 days after referral, a report including identification of any provisions in the proposed ordinance

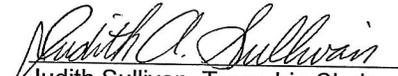
which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

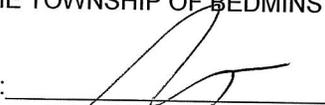
**Section 6.** This ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; (3) filing of the final form of adopted ordinance by the Clerk with (a) the Somerset County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Township Tax Assessor as required by N.J.S.A. 40:49-2.1; and (4) approval from COAH pursuant to N.J.A.C. 5:96-5.1.

Introduced by: Committeeman Finn Caspersen  
Passed: April 20, 2009  
Published: April 23, 2009  
Adopted: May 18, 2009

ATTEST:

TOWNSHIP COMMITTEE OF  
THE TOWNSHIP OF BEDMINSTER

  
Judith Sullivan, Township Clerk

By:   
Robert F. Holtaway, Mayor