O2024 - 22

AN ORDINANCE OF THE TOWN OF PHILLIPSBURG AMENDING CHAPTER 29, DEVELOPMENT FEES

BE IT ORDAINED by the Town Council of the Town of Phillipsburg, County of Warren, State of New Jersey as follows:

Chapter 29, Development Fees, of the Code of the Town of Phillipsburg is hereby amended as set forth below.

Section 1:

Section 29-1 b) shall be replaced with the following:

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 and/or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.

Section 29-1 c) is hereby repealed.

Section 29-1 d) shall be replaced with the following:

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.

Section 29-2 a) and b), Basic Requirements, shall be replaced with the following:

a) This ordinance shall not be effective until approved by COAH and/or a court of competent jurisdiction pursuant to N.J.A.C. 5:93

b) *The Town of Phillipsburg* shall not spend development fees until COAH and/or a court of competent jurisdiction 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

Section 29-3 a) i., ii, and iii, Definitions, shall be replaced with the following:

i "Affordable housing development" means, but is not limited to, an inclusionary development created pursuant to a local inclusionary zoning ordinance, affordable housing overlay, or redevelopment plan area, a municipal construction project or a 100 percent affordable development.

ii. "COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Fair Housing Act or such other Agency as is created by the Legislature which has primary jurisdiction for the Administration of housing obligations in accordance with sound regional planning consideration in the state.

iii. "Development fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

a. "Development fee period" means the period of time for which COAH and/or the Court specifies that the Town's Development Fee Ordinance will be in effect pursuant to N.J.A.C. 5:94-6.3.

Section 29-7 c) shall be replaced with the following:

c) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH and/or a court of competent jurisdiction

Section 29-7 d) is hereby repealed.

Section 29-8 a) shall be replaced with the following:

a) The expenditure of all funds shall conform to a spending plan approved by COAH and/or a court of competent jurisdiction. Funds deposited in the housing trust fund may be used for any activity approved by COAH and/or the court of competent jurisdiction to address the Town of Phillipsburg'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, 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.

Section 29-8 c) shall be replaced with the following:

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. 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.

Section 29-8 c) ii. Shall be replaced with the following:

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 to make them affordable to households earning 30 percent or less of median income.

Section 29-8 d) and e) shall be replaced with the following:

d) The Town of Phillipsburg may contract with a private or public entity to administer and satisfy the need to create and/or preserve affordable housing in Phillipsburg.

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. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH'S and/or the court of competent jurisdiction'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.

Section 29-9 a) shall be replaced with the following:

a) The Town of Phillipsburg shall complete and return to COAH and/or the court of competent jurisdiction 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 the Town of Phillipsburg's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH and/or the court of competent jurisdiction.

Section 29-10 a) shall be replaced with the following:

a) The ability for the Town of Phillipsburg to impose, collect and expend development fees shall expire at the end of the Development Fee Period unless the Town of Phillipsburg has filed an adopted Housing Element and Fair Share Plan with COAH and/or a court of competent jurisdiction, has petitioned for substantive certification and/or filed a declaratory judgment action seeking a final judgment of compliance

and repose, and has received COAH and/or the court of competent jurisdiction's approval of its development fee ordinance. If the Town of Phillipsburg fails to renew its ability to impose and collect development fees prior to the expiration of the Developmental Fee Period, substantive certification, or judgement of compliance 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). The Town of Phillipsburg shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Development Fee Period, substantive certification, or judgment of compliance, unless the Town of Phillipsburg has filed an adopted Housing Element and Fair Share Plan with COAH and/or a court of competent jurisdiction, has petitioned for substantive certification and/or filed a declaratory judgment action seeking a final judgment of compliance and repose, and has received COAH and/or the court of competent jurisdiction's approval of its development fee ordinance, nor shall the Town of Phillipsburg retroactively impose a development fee on such a development. The Town of Phillipsburg shall not expend development fees after the expiration of its Development Fee Period, substantive certification, or judgment of compliance unless the Town of Phillipsburg has filed an adopted Housing Element and Fair Share Plan with COAH and/or a court of competent jurisdiction, has petitioned for substantive certification and/or filed a declaratory judgment action seeking a final judgment of compliance and repose, and has received COAH and/or the court of competent jurisdiction's approval of its development fee ordinance.

Section 2:

Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

Section 3:

Repealer. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as to their inconsistencies only.

Section 4:

Effective Date: This Ordinance shall take effect upon final passage and publication as provided by law.

ATTEST:

SUSAN TURNER
Acting Municipal Clerk

TOWN OF PHILLIPSBURG

RANDY PIAZZA, JR.
Mayor

CERTIFICATION

I, Susan Turner, Acting Municipal Clerk for the Town of Phillipsburg, do hereby certify that the foregoing is a true copy of an Ordinance duly adopted by the Town Counsel at their September 11, 2024 meeting.

Susan Turner
Acting Municipal Clerk