

RESOLUTION 185-16

RESOLUTION AUTHORIZING AN AMENDMENT TO THE BOROUGH OF CLAYTON'S AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

WHEREAS, a Housing Element and Fair Share Plan was prepared and adopted by the Planning Board in 2008 after notice pursuant to applicable law, which plan received substantive certification by the New Jersey Council on Affordable Housing ("COAH") on October 14, 2009 ("Substantive Certification"); and

WHEREAS, as part of the grant of Substantive Certification, COAH approved a spending plan previously prepared by the Borough of Clayton detailing the manner in which the development fees collected by the Borough will be expended ("Spending Plan"); and

WHEREAS, a development fee ordinance creating a dedicated revenue source for affordable housing was previously approved by COAH in 2009 and adopted by the municipality on December 10, 2009 by way of Ordinance 21-2009 ("Development Fee Ordinance"); and

WHEREAS, the Development Fee Ordinance directed that the expenditure of all funds received by the Borough under the Development Fee Ordinance will be in conformance with a spending plan approved by COAH; and

WHEREAS, the New Jersey Supreme Court, In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 6 (2015) ("2015 Case"), declared that the Substantive Certification granted to the Borough of Clayton, and the substantive certifications granted to other municipalities, by COAH was no longer valid, and established a transitional process for municipalities, like the Borough of Clayton, that received substantive certification from COAH to file a declaratory judgment action with the trial courts seeking to reaffirm their substantive certification; and

WHEREAS, on April 9, 2015 the Appellate Division issued a Decision divesting COAH of jurisdiction to administratively effect a forfeiture of Affordable Housing Trust Funds not spent or committed in accordance with the requirements of the FHA and enjoining COAH from taking any such administrative action, In re Failure of Council on Affordable Housing to Adopt Trust Fund Commitment Regulations, 2015 WL 1582908 (App. Div. 2015) (the "Trust Fund Case"); and

WHEREAS, in the Trust Fund Case, the Appellate Division further transferred jurisdiction over such actions and matters to the 15 Mount Laurel Judges designated to hear the declaratory judgment actions regarding compliance with affordable housing obligations as set forth in the 2015 Case; and

WHEREAS, on July 8, 2015, the Borough filed a Declaratory Judgment action, captioned In Re Affirmation of the Borough of Clayton's Substantive Certification Granted on October 14,

2009, Docket No.: L-936-15, in accordance with the 2015 Case and the Trust Fund Case, upon notice to all interested parties ("Litigation"); and

WHEREAS, in order to amicably resolve the Litigation in a way that all parties to the Litigation agree complies with the Mount Laurel Doctrine, the Borough of Clayton and Fair Share Housing Center have negotiated a Settlement Agreement ("Settlement Agreement"); and

WHEREAS, part of the Settlement Agreement calls for Court approval of the Borough's Spending Plan; and

WHEREAS, because the Spending Plan was originally prepared in 2009, it needed to be updated to reflect the current Third Round cycle for which it is applicable; and

WHEREAS, an amended spending plan was prepared and submitted to Fair Share Housing Center for its review and approval as part of settlement negotiations, and which has, in fact, been approved by Fair Share Housing Center, a copy of which is attached hereto as Exhibit A ("Amended Spending Plan"); and

WHEREAS, no other person or entity has appeared in the Litigation as an interested party and no other person or entity has presented any objections; and

WHEREAS, the adoption the Amended Spending Plan is in the best interests of the citizens of the Borough of Clayton as it will assist the Borough in satisfying its affordable housing obligations.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Clayton, County of Gloucester, and State of New Jersey:

1. That the Borough Council does hereby approve and adopt the amended spending plan attached hereto as Exhibit A ("Amended Spending Plan").
2. The Amended Spending Plan shall be attached to the Settlement Agreement as the spending plan for which Court approval is sought pursuant to the Settlement Agreement, and upon Court approval, shall be considered as the equivalent to a COAH-approved spending plan.
3. This Resolution shall take effect immediately.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Attest:



CHRISTINE NEWCOMB, Borough Clerk

BOROUGH OF CLAYTON

AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

INTRODUCTION

The Borough of Clayton, Gloucester County 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 as agreed upon in the Settlement Agreement between the Borough of Clayton and interested party, Fair Share Housing Center. A development fee ordinance creating a dedicated revenue source for affordable housing was previously approved by COAH in 2009 and adopted by the municipality on December 10, 2009 by way of Ordinance 21-2009. Said development ordinance established the Borough of Clayton affordable housing trust fund.

As of January 1, 2015, the Borough of Clayton, had a balance of \$15,902* in the affordable housing trust fund. Over the remainder of 2015, there were no receipts other than interest in the amount of \$44.00; there was one expenditure of \$3,180.00 yielding an end-of-year balance of \$12,766.00. Through August 2016, there have been no receipts other than interest in the amount of \$26.00 and no expenditures. Thusly, the account balance as of August 2016 stood at \$12,792.00. 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 in the First National Bank of Elmer for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:93-8.16 as described in the sections that follow.

*All dollar amounts herein are rounded; amounts of \$0.50 are rounded to the next higher dollar amount.

1. REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the third round prospective need period (2015-2025), the Borough of Clayton 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.

Due to the moratorium on development fees imposed under the Economic Stimulus Act of 2009, P.L. 2009, C. 90, and as extended by P.L. 2011, C. 122, no development fees have been collected by the Borough since 2009.

(b) Payment in lieu (PIL):

No payment in lieu (PIL) funds has been collected. Currently, there are no actual or committed payments in lieu of construction from any developer.

(c) Other funding sources:

Funds from other sources have not been collected.

(d) Projected interest:

Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

2. REVENUE PROJECTION

The Borough of Clayton anticipates issuing over the third round prospective need period (2015-2025) new housing construction permits authorizing the construction of approximately 764 units; which number is reasonable to presume given: (i) approvals have been granted for the Berks Walk inclusionary project having a total of 350 units, (ii) approvals have been granted for the 100% affordable Camp Salute project having 74 units, (iii) approvals have been granted for the construction of 8 in-fill units at Rustic Village, (iv) the borough has issued permits for the construction of 70 - 1 & 2 family dwelling units for the period January 1, 2015 through September 30, 2016, and, (v) the borough anticipates issuing approximately 262 permits for new housing units beyond the number of permits expected to be issued for the aforementioned approved projects for which permits have not as yet been obtained.

The projection of development fees realized from residential development requires the application of the borough's equalization rate and establishment of an average value for housing.

The borough's equalization rate for 2017 will be 100.17%. Average equalized assessed value for housing is derived from the division of average value of housing in the borough by the equalization rate: $\$153,250.00/1.0017 = \$152,990$.

Of the 602 market rate units (764 projected units minus 162 projected affordable units) anticipated to be developed over the third round prospective need period, 304 will result from the inclusionary development known as Berks Walk for which a new zoning classification has been established to accommodate the development pursuant to adoption of Ordinance 11-09 on August 13, 2009. As the development is inclusionary, no development fees will be realized. As such, this plan assumes the development of 298 units (602 market rate units minus 304 Berks Walk market rate units) for which a development fee will be collected. Multiplying the average equalized value (\$152,990.00 by 298 market rate units by 1.5% yields a collection of \$683,865.00.

The Borough anticipates the receipt of nonresidential development fees pursuant to N.J.S.A. 40:55D-8.1 et. seq, under which a fee equal to (i) 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots; or (ii) 2.5% of the increase in equalized assessed value, of the additions to existing structures to be used for non-residential purposes, is to be paid.

The Borough of Clayton, as of August 31, 2016, has an amount of \$12,792.00 in the affordable housing trust fund; when added to the potential developer fee collection amount of \$683,865.00, a potential total developer fee revenue of \$696,657.00.

SOURCE OF FUNDS	PROJECTED REVENUES-HOUSING TRUST FUND - 2016 THROUGH 2025										
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	Total
(a) Development fees:											
1. Approved Development											
2. Development Pending Approval											
3. Projected Development		\$75,985	\$75,985	\$75,985	\$75,985	\$75,985	\$88,649	\$88,649	\$88,649	37,993	\$683,865
(b) Payments in Lieu of Construction											
(c) Other Funds (Existing)	\$12,792										\$12,792
(d) Interest*		\$38	\$38	\$38	\$38	\$38	\$44	\$44	\$44	\$19	\$341
Total	\$12,792	\$76,023	\$76,023	\$76,023	\$76,023	\$76,023	\$88,693	\$88,693	\$88,693	\$38,012	\$696,998

*Table assumes a 0.50% fixed interest rate

Borough of Clayton projects a potential total of \$696,998.00 in revenue collected between January 1, 2016 and June 30, 2025. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

3. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough of Clayton:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with the Borough of Clayton'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).

Pursuant to a development approval by the board having jurisdiction, the Planning and Zoning Department will notify the construction official of the approval. At the time of construction permit application, the construction official will notify the tax assessor and request an initial calculation of the equalized assessed value (EAV) of the proposed development and the resulting fee to be posted. One-half of the fee will be due at the time of issuance of the first building permit. For non-residential development only, the developer will be provided a copy of Form N - RDF "State of New Jersey Non-Residential Development Certification/Exemption." This form will be used by the tax assessor to verify exemptions and to prepare estimated and final assessments.

At the time of request for the final inspection, the construction official will notify the tax assessor and request confirmation of, or modification of, the initial (EAV) as the case may be. The final (EAV) will be provided to the developer within ten (10) days of the request for final inspection. Payment of the fee will then become a condition of issuance of the certificate of occupancy.

(b) Distribution of development fee revenues:

Collected development fees will be distributed for the underwriting of the programs described herein by the designated Borough of Clayton housing liaison official, in this instance, the Borough Manager.

4. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) **Rehabilitation projects** N.J.A.C. 5:93-8.16(a)

The Borough of Clayton will dedicate \$412,899.00 as hard costs for the rehabilitation of owner occupied and rental units.

Rehabilitation program expenditure: **\$412,899.00**

(b) **Affordability Assistance N.J.A.C. 5:93-8.16(c)**

Projected minimum affordability assistance requirement:

Actual development fees through 8/31/2016		\$12,792.00
Development fees projected 2016-2025	+	\$683,865.00
Interest projected 2016-2025	+	\$341.00
Less housing activity expenditures through 9/30/2016	-	\$00.00
Total	=	\$696,998.00
30 percent requirement	x 0.30 =	\$209,099.00
Less Affordability assistance expenditures through 9/30/2016	-	\$0.00
PROJECTED MINIMUM Affordability Assistance Requirement 1/1/2015 through 6/30/2025	=	\$209,099.00
PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 1/1/2015 through 6/30/2025	÷ 3 =	\$69,700.00

Borough of Clayton will dedicate \$209,099.00 from the affordable housing trust fund to render units more affordable. This amount of \$69,700.00 will be utilized to encourage private sector provision of very low income units through the offering of a subsidy for the development of said units.

Total Affordability Assistance Expenditure: \$209,099.00

(c) **Administrative Expenses N.J.A.C. 5:93-8.16(e)**

Borough of Clayton projects that will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

- 1) Consulting fees for the preparation of housing element/fair share plans,
- 2) Fees for other consulting activity as may be found necessary supportive of affordable housing provision, and
- 3) Fees for the administration of affordability assistance programs by qualified entities retained by the Borough of Clayton.

Total Administrative Expenses Expenditure: \$75,000.00

5. EXPENDITURE SCHEDULE

The Borough of Clayton intends to use affordable housing trust fund revenues for the creation and/or rehabilitation of housing units. Where applicable, the creation/rehabilitation funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

PROJECTED EXPENDITURE SCHEDULE 2015 - 2025														
Program <i>(Individually list programs and projects e.g. Rehab, Accessory Apartments, for-sale and rental municipally sponsored, etc.)</i>	Number of Units Projected	Funds Expended and/or Dedicated												
			2015-2025	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	Total
<i>[Rehabilitation]</i>														
	44			\$45,878	\$45,878	\$45,878	\$45,878	\$45,878	\$45,878	\$53,524	\$53,524	\$53,524	\$22,937	\$412,899
				</										

6. EXCESS OR SHORTFALL OF FUNDS

The Borough acknowledges that the actual amount of the development fees collected may be less than what is projected in this Spending Plan for a variety of reasons, including but not limited to: (a) a moratorium on collection of fees may be imposed by law; (b) the actual amount of development in the Borough of Clayton may be less than what is anticipated; and (c) developers may choose to provide inclusionary developments in lieu of development fees. As the Borough has already provided more than enough units to satisfy its prior round and prospective need obligations through already constructed and/or approved projects (as set forth in the Housing Element and Fair Share Plan, as amended), in the event of a shortfall of funds, any shortfall will first be deducted from the Affordability Assistance Program.

In the event that the shortfall exceeds the amount devoted to the Affordability Assistance Program, any shortfall in funds necessary to fund the rehabilitation program shall be supplemented through the Borough's participation in Gloucester County's Owner Occupied Rehabilitation Program. The Borough will take the steps necessary to apply for and obtain funds from the Gloucester County's Owner Occupied Rehabilitation Program in the amount necessary to cover any shortfall in funds collected through the development fees, which are needed to satisfy the Borough's rehabilitation obligation as set forth in the Housing Element and Fair Share Plan.

Should there be a shortfall of funds, the Borough agrees that in no event shall it utilize more than 20% of the development fees collected for administration.

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to underwrite the affordability assistance programs described herein.

SUMMARY

The Borough of Clayton intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:93-8.16 and consistent with the housing programs outlined in the Housing Element and Fair Share Plan.

The Borough of Clayton had a balance of \$12,792.00 as of January 1, 2016 and anticipates an additional \$683,865.00 in revenues over the third round prospective need period with interest in the amount of \$341.00 for a total of \$696,998.00. The municipality will dedicate \$412,899.00 towards a rehabilitation program, \$209,099.00 to render units more affordable, and \$75,000.00 to administrative costs. Any shortfall of funds will be offset by the Borough's participation in the Gloucester County's Owner Occupied Rehabilitation Program. The municipality will dedicate any excess funds toward the affordability assistance programs described herein.

SPENDING PLAN SUMMARY	
Balance as of 8/31/2016	\$12,792.00

PROJECTED REVENUE 9/1/2016 – 6/30/2025	
Development fees	+ \$683,865.00
Payments in lieu of construction	+ \$00.00
Other funds	+ \$00.00
Interest	+ \$341.00
TOTAL REVENUE	= \$696,998.00
EXPENDITURES	
Funds used for Rehabilitation	- \$412,899.00
Affordability Assistance	- \$209,099.00
Administration	- \$75,000.00
TOTAL PROJECTED EXPENDITURES	= \$696,998.00
REMAINING BALANCE	= \$0.00