

**BOROUGH OF MILLSTONE**  
**BOROUGH COUNCIL REGULAR MEETING AGENDA**  
**December 18, 2008**

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**TIME:** 7:30 PM

**CALL TO ORDER – OPENING STATEMENT:** The Regular meeting of the Borough Council, Borough of Millstone will please come to order. Adequate notice of this meeting has been noticed to the Hillsborough Beacon and Courier News. If any member of this body believes this meeting is being held in violation of the Open Public Meetings Act, please state your views at this time, stating the reason for which you feel the notice is improper. Hearing none, we proceed to the next item on the agenda.

**PLEDGE TO THE FLAG:**

**ROLL CALL:** Councilman Ciurleo  
Councilwoman Carol Halm  
Councilman Robert McCarthy  
Councilman Scott Ross  
Councilwoman Denene Smerdon  
Council President William Poch  
Mayor Raymond Heck

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**MINUTES:**

- January 3, 2008 Reorganization
- January 21, 2008 Executive
- January 21, 2008 Regular
- February 18, 2008 Regular
- July 31, 2008 Executive
- July 31, 2008 Regular
- August 18, 2008 Executive
- August 18, 2008 Regular
- September 15, 2008 Regular
- October 21, Executive
- October 21, 2008 Regular
- November 17, 2008 Executive
- November 17, 2008 Regular

**REPORTS:**

- Assessor –
- Clerk –
- Emergency Management –
- Finance –
- Historic Commission –
- Millstone Valley Fire Department -
- Recreation Commission –
- State Police –
- Tax Collection –

**COUNCIL REPORTS:**

**BOROUGH OF MILLSTONE  
BOROUGH COUNCIL REGULAR MEETING AGENDA  
December 18, 2008**

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- Buildings and Grounds -
- Planning Board –
- Traffic and Roads -

**MAYOR’S REPORT**

**PRESENTATION OF BILLS FOR PAYMENT:**

**MEETING OPEN TO THE PUBLIC:**

- Motion to Open the Meeting to the Public
- Motion to Close the Meeting to the Public

**NEW BUSINESS:**

- Resolution to renew a contract with St. Hubert’s for animal control services

**BE IT RESOLVED**, by the Borough Council of the Borough of Millstone, that it hereby authorizes the Mayor and Borough Clerk to sign an agreement for animal control services with St. Hubert's Giralda, under the terms described in the attached agreement, and in an amount not to exceed \$1,000 for the period January 1, 2009 through December 31, 2009.

- Resolution to Create the Plan Endorsement Citizens’ Advisory Committee

**WHEREAS**, the Mayor and Council of Millstone Borough desire to obtain Plan Endorsement from the State Planning Commission; and

**WHEREAS**, Plan Endorsement is a voluntary review process developed by the State Planning Commission to provide the technical assistance and coordination of the State for municipalities, counties, and regional agencies to meet the goals of the State Planning Act and State Development and Redevelopment Plan; and

**WHEREAS**, the State Planning Act recognizes that coordination of State action is necessary to help municipalities develop New Jersey’s economy while protecting the natural, historic and recreational resources, providing adequate and diverse housing, and redeveloping our cities and older suburban areas;

**WHEREAS**, the purpose of the Plan Endorsement process is to increase the degree of consistency among municipal, county, regional and state agency plans with each other and with the State Plan and to facilitate the implementation of these plans with the primary focus on where and how development and redevelopment can be accommodated in accordance with the State Plan; and

**WHEREAS**, the State Planning Rules and Plan Endorsement Guidelines establish a comprehensive and coordinated planning process in order for a municipality to consider, and update as necessary, master plans, functional plans, development regulations and capital plans to be consistent with the State Plan and achieve plan endorsement; and

**WHEREAS**, through plan endorsement, master plans, functional plans, development regulations and capital plans should be coordinated and supportive of each other; and

**BOROUGH OF MILLSTONE**  
**BOROUGH COUNCIL REGULAR MEETING AGENDA**  
**December 18, 2008**

---

**WHEREAS**, the State Planning Rules and Plan Endorsement Guidelines incorporate, and expand upon, the principles of the Municipal Land Use Law in order to help towns plan for a sustainable future; and

**WHEREAS**, pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-27, the Mayor may appoint one or more persons as a citizens' advisory committee to assist or collaborate with the planning board in its duties, including adoption of, and amendment to, the master plan to guide the use of lands within the municipality in a manner which protects the public health and safety and promotes the general welfare of the community; and

**WHEREAS**, the Plan Endorsement Guidelines and State Planning Rules require the appointment of a Plan Endorsement Advisory Committee to guide the municipality through the Plan Endorsement process; and

**WHEREAS**, the Plan Endorsement Advisory Committee shall consist of between 5 and 10 members, including one representative of the governing body, a Class IV member of the planning board; one representative of a local board, commission or committee who is not a member of the planning board; and two representatives of the public that do not hold a position, employment or office with the municipality.

**NOW THEREFORE BE IT RESOLVED** that the Mayor of Millstone Borough hereby approves and adopts the following:

Millstone Borough establishes a Plan Endorsement Citizens' Advisory Committee consisting of between 5 and 10 members as follows:

1. Carol Halm, Member of the Governing Body
2. Richard McDermott, Class IV Member of the Planning Board
3. Jessica Piat, Representative of local board, commission or committee
4. Patricia Morris, Member of the Public
5. Carol Vizzini, Member of the Public
6. Name (Optional Member)
7. Name (Optional Member)
8. Name (Optional Member)
9. Name (Optional Member)
10. Name (Optional Member)

- Resolution authorizing submission of the Borough's Plan Endorsement Assessment Report.

**WHEREAS**, a Plan Endorsement Assessment Report has been prepared by the Plan Endorsement Advisory Committee of Millstone Borough with technical assistance at Carter Van Dyke Associates; and

**WHEREAS**, the said Plan Endorsement Assessment Report has been presented to the Borough Council of the Borough of Millstone and a public hearing on the same has been conducted on October 21, 2008; and

**WHEREAS**, the Borough Council of the Borough of Millstone has reviewed the same.

**NOW, THEREFORE, BE IT RESOLVED**, that Borough Council of the Borough of Millstone, County of Somerset, State of New Jersey, that the Borough of Millstone hereby adopts the Plan Endorsement Assessment Report presented; and

**BOROUGH OF MILLSTONE  
BOROUGH COUNCIL REGULAR MEETING AGENDA  
December 18, 2008**

---

**FURTHER, RESOLVED**, that the appropriate officials of the Borough of Millstone be and are hereby authorized to submit the Plan Endorsement Assessment Report to the State Office of Smart Growth.

- Resolution approving the housing element and fair share plan

**WHEREAS**, the Planning Board of Borough of Millstone, Somerset County, State of New Jersey, adopted the Housing Element of the Master Plan on December 18, 2008; and

**WHEREAS**, a true copy of the resolution of the Planning Board adopting the Housing Element is attached pursuant to N.J.A.C. 5:95-2.2(a)2; and

**WHEREAS**, the Planning Board adopted the Fair Share Plan on December 18, 2008; and

**WHEREAS**, a true copy of the resolution of the Planning Board adopting the Fair Share Plan is attached pursuant to N.J.A.C. 5:95-2.2(a)2.

**NOW THEREFORE BE IT RESOLVED** that the Governing Body of Borough of Millstone, Somerset County, State of New Jersey, hereby endorses the Housing Element and Fair Share Plan as adopted by the Borough of Millstone Planning Board; and

**BE IT FURTHER RESOLVED** that the Governing Body of the Borough of Millstone, pursuant to the provisions of N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:95-3.2, submits this petition for substantive certification of the Housing Element and Fair Share Plan to the Council on Affordable Housing for review and certification; and

**BE IT FURTHER RESOLVED** that a list of names and addresses for all owners of sites in the Housing Element and Fair Share Plan has been included with the petition; and

**BE IT FURTHER RESOLVED** that notice of this petition for substantive certification shall be published in a newspaper of countywide circulation pursuant to N.J.A.C. 5:95-3.5 within seven days of issuance of the notification letter from the Council on Affordable Housing's Executive Director indicating that the submission is complete and that a copy of this resolution, the adopted Housing Element and Fair Share Plan and all supporting documentation shall be made available for public inspection at the Borough of Millstone municipal clerk's office located at 1353 Main Street, Millstone, NJ during the regular business hours (the first and third Tuesdays of each month, 3:00 p.m. to 4:30 p.m.) for a period of 45 days following the date of publication of the legal notice pursuant to N.J.A.C. 5:95-3.5. It is also available for inspection by appointment through the Zoning Officer, Dan Devoti, 908/874-0896.

- Resolution approving the housing element and fair share plan spending plan

**WHEREAS**, the Governing Body of Millstone Borough, Mercer County, petitioned the Council on Affordable Housing (COAH) for substantive certification on December 20, 2005; and

**WHEREAS**, Millstone Borough received approval from COAH on December 7, 2005 of its development fee ordinance; and

**WHEREAS**, the development fee ordinance establishes an affordable housing trust fund that includes development fees, payments from developers in lieu of constructing affordable units on-site, barrier free

**BOROUGH OF MILLSTONE**  
**BOROUGH COUNCIL REGULAR MEETING AGENDA**  
**December 18, 2008**

---

escrow funds, rental income, repayments from affordable housing program loans, recapture funds, and proceeds from the sale of affordable units;

**WHEREAS**, N.J.A.C. 5:97-8.1(d) requires a municipality with an affordable housing trust fund to receive approval of a spending plan from COAH prior to spending any of the funds in its housing trust fund; and

**WHEREAS**, N.J.A.C. 5:97-8.10 requires a spending plan to include the following:

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 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 municipality 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. If applicable, a schedule for the creation or rehabilitation of housing units;

7. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions supporting or sponsoring public sector or non-profit construction of housing; and

8. A plan to spend the trust fund balance as of July 17, 2008 within four years of the Council's approval of the spending plan, or in accordance with an implementation schedule approved by the Council;

9. A plan to spend and/or contractually commit all development fees and any payments in lieu of construction within three years of the end of the calendar year in which funds are collected, but no later than the end of third round substantive certification period;

10. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan; and

11. 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 municipal affordable housing obligation.

**WHEREAS**, Millstone Borough has prepared a spending plan consistent with N.J.A.C. 5:97-8.10 and P.L. 2008, c.46.

**NOW THEREFORE BE IT RESOLVED** that the Governing Body of Millstone Borough, Somerset County on this 18<sup>th</sup> day of December 2008 requests that COAH review and approve Millstone's spending plan.

**BOROUGH OF MILLSTONE  
BOROUGH COUNCIL REGULAR MEETING AGENDA  
December 18, 2008**

---

- Resolution agreeing to bond for funds to cover potential shortfall in affordable housing program

**WHEREAS**, Millstone Borough in Somerset County has petitioned the Council on Affordable Housing (COAH) for substantive certification of its adopted housing element and fair share plan; and

**WHEREAS**, COAH has determined that Millstone Borough must allocate funds for its affordable housing program; and

**WHEREAS**, Millstone Borough anticipates that funding may come from developer fees; and

**WHEREAS**, in the event that the above funding sources prove inadequate to meet Millstone's funding obligation, the borough shall provide sufficient funding to address any shortfall.

**NOW THEREFORE BE IT RESOLVED** by the governing body of Millstone Borough in Somerset County, State of New Jersey, that the governing body does hereby agree to fund any shortfall in its affordable housing programs that may arise whether due to inadequate funding from other sources or for any other reason; and

**BE IT FURTHER RESOLVED** that said shortfall shall be funded by bonding if there are no other resources.

- Development fee ordinance

Ordinance No. 2008-\_\_\_\_\_

**AN ORDINANCE GOVERNING DEVELOPMENT FEES AND AMENDING THE  
DEVELOPMENT  
ORDINANCE OF THE BOROUGH OF MILLSTONE, SOMERSET COUNTY, NEW JERSEY**

**BE IT ORDAINED** by the Mayor and Council of the Borough of Millstone:

1. Section D-103 of the Development Ordinance of the Borough of Millstone, Definitions, is hereby amended by deleting the following definitions: COAH, Development Fees, Equalized Assessed Value, Judgment of Repose, and Substantive Certification.

2. Section D-103 of said Development Ordinance, Definitions, is hereby amended by adding the following new definitions.

AFFORDABLE HOUSING DEVELOPMENT 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.

COAH or the COUNCIL The New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

DEVELOPMENT FEE Money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.

**BOROUGH OF MILLSTONE**  
**BOROUGH COUNCIL REGULAR MEETING AGENDA**  
**December 18, 2008**

DEVELOPER The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

EQUALIZED ASSESSED VALUE The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

GREEN BUILDING STRATEGIES 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.

3. Article V of said Development Ordinance, Administration, is amended by repealing Section D-136.1 and adding a NEW Section D-136.1 as follows:

**D-136.1      DEVELOPMENT FEES**

**A.      PURPOSE**

(1) In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.

(2) 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.

(3) 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.

**B.      BASIC REQUIREMENTS**

(1) This ordinance shall not be effective until approved by COAH pursuant to *N.J.A.C. 5:96-5.1*.

(2) Millstone Borough 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*.

**C.      RESIDENTIAL DEVELOPMENT FEES**

(1) Imposed fees

**BOROUGH OF MILLSTONE**  
**BOROUGH COUNCIL REGULAR MEETING AGENDA**  
**December 18, 2008**

---

(a) Within all district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half 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. 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 percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

(2) Eligible exactions, ineligible exactions and exemptions for residential development

(a) 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.

(b) Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

(c) 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.

(d) Developers of residential structures being expanded, altered, or demolished and replaced as a result of a natural disaster shall be exempt from paying a development fee.

**D. NON-RESIDENTIAL DEVELOPMENT FEES**

(1) Imposed fees

(a) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (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 to existing structures to be used for non-residential purposes.

**BOROUGH OF MILLSTONE  
BOROUGH COUNCIL REGULAR MEETING AGENDA  
December 18, 2008**

---

(c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time 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.

(2) Eligible exactions, ineligible exactions and exemptions for non-residential development

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

(b) The 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.

(c) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

(d) 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.

(e) If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by West Windsor Township as a lien against the real property of the owner.

**E. COLLECTION PROCEDURES**

(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 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.

**BOROUGH OF MILLSTONE**  
**BOROUGH COUNCIL REGULAR MEETING AGENDA**  
**December 18, 2008**

---

- (3) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- (4) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- (5) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- (6) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- (7) Should the Borough of Millstone fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D- 8.6).
- (8) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- (9) Appeal of development fees
  - (a) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by Millstone Borough. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  - (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 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Millstone Borough. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**F. AFFORDABLE HOUSING TRUST FUND**

- (1) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

**BOROUGH OF MILLSTONE**  
**BOROUGH COUNCIL REGULAR MEETING AGENDA**  
**December 18, 2008**

---

(2) The following additional funds shall 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 Borough of Millstone affordable housing program.

(3) Within seven days from the opening of the trust fund account, the Borough of Millstone 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.

**G. USE OF FUNDS**

(1) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Millstone Borough'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 Millstone Borough for past housing activities.

(3) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.

(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 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

**BOROUGH OF MILLSTONE  
BOROUGH COUNCIL REGULAR MEETING AGENDA  
December 18, 2008**

---

affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall entitle Millstone Borough 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) Millstone Borough 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 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

**H. MONITORING**

(1) Millstone Borough shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Millstone Borough's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

**I. ONGOING COLLECTION OF FEES**

(1) The ability for Millstone Borough to impose, collect and expend development fees shall expire with its substantive certification unless Millstone Borough 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 Millstone Borough fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). Millstone Borough 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 Millstone Borough retroactively impose a development fee on such a development. Millstone Borough shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

**J. RESERVED**

3. This Ordinance shall take effect upon its filing with the Somerset County Planning Board and its passage and publication, as provided for by law.

**BOROUGH OF MILLSTONE  
BOROUGH COUNCIL REGULAR MEETING AGENDA  
December 18, 2008**

---

- Resolution re development fee ordinance

**WHEREAS**, the governing body of the Borough of Millstone, Somerset County petitioned the Council on Affordable Housing (COAH) for substantive certification on December 20, 2005; and

**WHEREAS**, 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), permits municipalities that are under the jurisdiction of COAH or of a court of competent jurisdiction and that have a COAH-approved spending plan to impose and retain fees on residential and non-residential development; and

**WHEREAS**, subject 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), N.J.A.C. 5:97-8.3 permits a municipality to prepare and submit a development fee ordinance for review and approval by the Council on Affordable Housing (COAH) that is accompanied by and includes the following:

1. A description of the types of developments that will be subject to fees per N.J.A.C. 5:97-8.3(c) and (d);
2. A description of the types of developments that are exempted per N.J.A.C. 5:97-8.3(e);
3. A description of the amount and nature of the fees imposed per N.J.A.C. 5:97-8.3(c) and (d);
4. A description of collection procedures per N.J.A.C. 5:97-8.3(f);
5. A description of development fee appeals per N.J.A.C. 5:97-8.3(g); and
6. A provision authorizing COAH to direct trust funds in case of non-compliance per N.J.A.C. 5:97-8.3(h).

**WHEREAS**, the Borough of Millstone has prepared a draft development fee ordinance that establishes standards for the collection, maintenance, and expenditure of development fees consistent with COAH's regulations at N.J.A.C. 5:97-8 and in accordance with P.L.2008, c.46, Sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

**NOW THEREFORE BE IT RESOLVED** that the Governing Body of the Borough of Millstone, Somerset County on this 18<sup>th</sup> day of December 2008 requests that COAH review and approve Borough of Millstone's development fee ordinance.

- 3 ordinances from November meeting intro?

**OLD BUSINESS:**

- None

**EXECUTIVE SESSION (if necessary):**

**WHEREAS**, the law commonly known as the "Sunshine Law" requires that Borough Council meetings be open to the public except for the discussion of certain subjects; and

**WHEREAS**, the "Sunshine Law" requires that a closed session be authorized by Resolution;

**BOROUGH OF MILLSTONE  
BOROUGH COUNCIL REGULAR MEETING AGENDA  
December 18, 2008**

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**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Millstone that the balance of this meeting shall be closed to the public; and

**BE IT FURTHER RESOLVED**, that the meeting shall be adjourned at the end of the closed session; and

**BE IT FURTHER RESOLVED**, that the subjects to be discussed and the time of public release of the minutes of the closed session are indicated below:

| <u>SUBJECT MATTER</u> | <u>TIME WHEN AND THE CIRCUMSTANCES<br/>UNDER WHICH THE SUBJECT MATTER<br/>CAN BE DISCLOSED</u> |
|-----------------------|--|
|-----------------------|--|

**ADJOURNMENT:**