

AN ORDINANCE OF THE TOWNSHIP OF LAKEWOOD, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER XVIII, ENTITLED “UNIFIED DEVELOPMENT ORDINANCE”, BY REPEALING SECTION 18-506, ENTITLED “OAK STREET CORRIDOR IMPROVEMENT DISTRICT” IN ITS ENTIRETY, AND REPLACING IT WITH NEW SECTION 18-506 ENTITLED “OAK STREET CORRIDOR IMPROVEMENT DISTRICT”

BE IT ORDAINED by the Township Committee of the Township of Lakewood, County of Ocean, State of New Jersey, as follows:

SECTION 1. That Section 18-506 entitled “Oak Street Corridor Improvement District” of the Revised General Ordinances of the Township of Lakewood, 1999, be and hereby is repealed in its entirety and replaced with new Section 18-506 entitled “Oak Street Corridor Improvement District”, as follows:

NOW, THEREFORE, BE IT FURTHER ORDAINED, by the Township Committee of the Township of Lakewood, State of New Jersey as follows:

I. Findings and Declarations.

WHEREAS, pursuant to N.J.S.A. 40:56-1 et seq., a municipality may under take various works as a “local improvement,” the cost of which may be assessed upon the lands in the vicinity thereof benefited thereby; and

WHEREAS, the Oak Street Corridor Improvement District (“District”) is to be developed as a residential community including houses of worship, schools, shuls, and residential units, including duplex and single-family residential structures; and

WHEREAS, the District is comprised of various parcels of property identified on Schedule A attached hereto;

WHEREAS, the development of the District as a residential community will require the installation of certain improvements identified on a plan prepared by FWH entitled “Oak Street Corridor Improvements Plan,” dated August 2, 2014, as may be revised from time to time, consisting of 13 Sheets (“Improvement Plan”); and

WHEREAS, the District is to be developed as a residential community by an unincorporated joint venture comprised of persons and/or entities who are record owners of properties located in the District, which unincorporated joint venture is known as the Oak Street Core Group Joint Venture (“Developer”); and

WHEREAS, the Developer has petitioned the municipality pursuant to N.J.S.A. 40:56-3, to make various improvements as envisioned by N.J.S.A. 40:56-1 et seq.; and

WHEREAS, there are certain record owners of property located in the District who are not members of the Oak Street Core Group (“Non-Developers”);

WHEREAS, pursuant to a separate agreement entered into with between the Township and the Developer (“Developers Agreement”) dated March 17, 2016, the Developer will undertake the installation of the improvements defined herein and identified on the Improvement Plan at its cost and expense; and

WHEREAS, as a result of the redevelopment and improvement of the District, the Township has incurred and will continue to incur costs and expenses associated with same; and

WHEREAS, the purpose of adopting this ordinance is to provide a mechanism to recapture the costs associated with the improvements from Non-Developers that will benefit from same and to deliver same to the Developer and to recapture the Township Costs from Non-Developers and Developers.

II. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings respectively ascribed to them in this section, unless the context clearly indicates otherwise:

1. Township shall mean the Township of Lakewood, Ocean County, New Jersey.
2. Improvements shall mean the improvements identified on the Improvement Plan including but not limited to stormwater management facilities, appurtenances and systems, sanitary sewer lines, appurtenances and systems, water lines, appurtenances and systems, roadways, curbs, sidewalks, street lighting, recreation elements, all other utilities such as electric, cable, natural gas, telephone, off-site land acquisitions and specifically including improvements to the intersection of Route 9 and Broadway including the installation and/or improvement to a traffic signal.
3. District Yield shall mean that the potential number of residential units which could be constructed is 407.5 units, where a duplex is considered 2 units and where each detached single family dwelling unit is considered 1.25 units for purposes of calculating the pro rata share under this ordinance.

4. Developer shall mean the joint venture known as the Oak Street Core Group Joint Venture formed for the purposes of developing the District as a residential community.
5. Non-Developer shall mean any person or entity that owns property located in the District and seeks to utilize or develop that property but which person or entity is not part of the Oak Street Core Group Joint Venture. Non-Developer shall also mean any Developer in default of its obligations pursuant to the Oak Street Core Group Joint Venture agreement as determined therein.
6. Township Costs shall mean and include, but not limited to, appraisal fees, engineering costs, administrative fees, land acquisition and deed restriction costs, and bonding costs incurred by the Township as a result of the improvements to the District as contemplated by this Ordinance.
7. Developer Costs shall mean the actual costs incurred by the Developer to design and construct the Improvements, which costs shall include but not be limited to the costs associated with design, surveying, engineering, environmental studies, insurance premiums, management fees, consultation fees, land acquisition costs, remedial work for tree restoration and wildlife habitat, construction, legal fees, application fees and escrow funding.
8. Certified Developer Costs shall mean an accounting of the actual Developer Costs incurred by the Developer provided to the Township following the completion of the installation of the Improvements and the acceptance of same by Township.
9. Estimated Costs shall mean \$14,000,000.00 which amount represents the best estimate of the Developer Costs calculated by the Developer at the time of the adoption of this section.
10. Pro-rata Share shall mean an amount calculated in accordance with this section required to be paid by a Non-Developer to the Township, which funds shall be utilized to reimburse the Developer for the Developer Costs pursuant to Section III hereof or the Township for the Township Costs pursuant to Section IV hereof.
11. Developers Agreement shall mean the agreement dated March 16, 2016, entered into between the Township and the Developer pursuant to which the Developer has agreed to construct and install the Improvements and the Township has agreed recapture the Developer Costs of same from subsequent Non-Developers.

12. Escrow Agent shall mean the Law Firm of Heilbrunn Pape, LLC, with offices at 516 Route 33, Millstone Township, New Jersey 08535.

III. Reimbursement Required as to Developers

1. Any Non-Developer seeking to develop property located in the District shall be required to pay its Pro-rata Share to the Escrow Agent. The Pro-rata Share collected by the Escrow Agent shall be transferred to the Developer as provided for herein.
2. The Pro-rata Share of Developer Costs to be paid by a Non-Developer pursuant to this section shall be an amount equal to a fraction of the Certified Developer Costs incurred by the Developer. The Pro-rata Share shall be calculated by multiplying the Certified Developer Costs by a fraction, the numerator of which is the number of residential units proposed by the Non-Developer (“Non-Developer Units”) and the denominator of which is the District Yield. For purposes of this calculation a duplex shall be considered 2 residential units and a single-family detached dwelling shall be considered 1.25 residential units. The formula for same shall be:

$$\frac{\text{Non-Developer Units}}{\text{District Yield}} \times \text{Certified Developer Costs} = \text{Pro-rata Share}$$

The foregoing calculation of the Pro-rata Share for Developer Costs is subject to the following:

- a. Upon the completion of the Improvements, the Developer shall provide the Township with the Certified Developer Costs incurred by the Developer pursuant to this section.
- b. Until such time as the Developer has provided the Township with the Certified Developer Costs following the completion of construction, the Escrow Agent shall utilize the Estimated Costs to determine the Pro-rata Share of a Non-Developer.
- c. All Pro-rata Shares collected by Township based upon the Estimated Costs shall be held in escrow by the Escrow Agent until such time as the Developer provides the Township with the Certified Developer Costs at which time the Pro-Rata Shares shall be distributed as follows:

- i. In the event the Certified Developer Costs exceed the Estimated Costs, the Escrow Agent shall release all of the funds held pursuant to the above and shall notify all Non-Developers that paid a Pro-rata Share based upon the Estimated Costs of the additional Pro-rata Share that must be paid. Non-Developers notified pursuant to this subsection and required to pay an additional Pro-Rata shall pay same as directed by the Escrow Agent within 60 days of such notice. In the event that a Non-Developer fails or refuses to pay the additional Pro-Rata share required by this subsection, same may be treated in the same manner as failure to pay a municipal tax and shall become a lien on the property of the Non-Developer which is the subject of this section.
 - ii. In the event the Certified Developer Costs are less than the Estimated Costs, the Escrow Agent shall release to the Developer the Pro-rata Share to which it is entitled pursuant to this section and return the balance of same to the Non-Developer.
3. In order to encourage funding by Non-Developers of their Pro-rata Share as early as possible in the installation and construction of the improvements the Pro-rata Share shall include interest in the amount of four (4%) per annum, which interest shall accrue from the date of final adoption of this section until the date of payment.
4. A Non-Developer required to pay a Pro-rata Share pursuant to this section shall pay same to the Escrow Agent upon the earlier of any of the following occurrences:
 - a. Within 60 days after the issuance of a final approval for the proposed development of the Non-Developer to which this section applies. In the event the Non-Developer fails to timely pay the Pro-rata Share, the final approval shall become null and void. The condition of the final approval requiring the payment of the Pro-rata Share shall include the amount of the Pro-rata Share; or

b. As a condition of the issuance of a certificate of occupancy, or earlier as elected by the Non-Developer.

5. The payment of a Pro-rata Share pursuant to this section shall not relieve a Non-Developer from paying any other charges or fees required by the Township pursuant to any other statute, ordinance or regulation.

IV. Reimbursement Required as to Township Costs

1. Any Developer or Non-Developer seeking to develop property located in the District shall be required to pay its Pro-rata Share to the Township to reimburse the Township for the Township Costs.

2. The Pro-rata Share of Township Costs to be paid pursuant to this section shall be an amount equal to a fraction of the Township Costs. The Pro-rata Share shall be calculated by multiplying the Township Costs by a fraction, the numerator of which is the number of residential units proposed by the Developer or the Non-Developer making application for a building permit (“Project Units”) and the denominator of which is the District Yield. For purposes of this calculation a duplex shall be considered 2 residential units and a single-family detached dwelling shall be considered 1.25 residential units. The formula for same shall be:

$$\frac{\text{Project Units}}{\text{District Yield}} \times \text{Township Costs} = \text{Pro-rata Share}$$

In the event a house of worship, a private educational facility, or any other non-residential use is proposed to be developed on any property within the Oak Street Core in lieu of residential development, by either a Developer or a Non-developer, it will be designated as having the maximum number of residential units developable on the property in question based upon its area, and shall be required to pay its pro-rata share for Township’s Costs in accordance with this ordinance.

The foregoing calculation of the Pro-rata Share of Township Costs is subject to the following:

a. The Township Costs shall be established by the Township Committee and amend from time to time with recommendations from the Township

Engineer, Planner and Attorney as determined necessary by the Township Committee.

- b. The data upon which the Township Costs are determined shall be adjusted from time to time as is reasonably deemed appropriate by the Township Committee to account for modifications to the development of the District and the costs incurred by the Township relating to same.
 - c. The Township Costs shall be subject to the following:
 - (1) The costs and expenses incurred by the Township to date have been calculated at \$250,000.00;
 - (2) The total Township Costs shall be the \$250,000.00 referenced in Paragraph 2(c)(1) above, plus the value of the lands made available by the Township of Lakewood for storm drainage improvements and tree preservation, which valuation shall be made effective January 24, 2014, as set forth in the Gagliano and Company appraisal dated July 28, 2016, in the amount of \$1,705,000.00, plus any other costs or expenses incurred by the Township from the date of the adoption of this Ordinance forward. In no event shall the total Township Costs, inclusive of the \$1,955,000 referenced in this Paragraph, exceed an amount equal to \$10,000.00 per dwelling unit benefitted by said improvements. In the event the cost per dwelling unit exceeded \$10,000.00, said additional cost would be borne solely by the Oak Street Core Joint Venture Group.
3. The Pro-rata Share of Township Costs pursuant to this section shall be paid to the Township upon the earlier of any of the following occurrences:
- a. Within 60 days after the issuance of a final approval for the proposed development to which this section applies. In the event the Developer or Non-Developer fails to timely pay the Pro-rata Share pursuant to this section, the final approval shall become null and void. The condition of the final approval requiring the payment of the Pro-rata Share shall include the amount of the Pro-rata Share; or
 - b. As a condition of the issuance of a Certificate of Occupancy, or earlier as elected by the Developer or Non-Developer.

4. The payment of a Pro-rata Share pursuant to this section shall not relieve a Developer or Non-Developer from paying any other charges or fees required by the Township pursuant to any other statute, ordinance or regulation, including, but not limited to the Detention Facilities: Maintenance and Repair fees required by Section 18-815(B)(4) of the Township Land Development Ordinance. Section 18-815(B)(4) requires that the following fees shall be paid in addition to the Pro-rata Share paid pursuant to this section:

For all proposed drainage basins serving a residential community, the Township shall be responsible for all maintenance (both annual and perpetual). The following one-time maintenance fees shall be assessed per unit and put in a separate and dedicated fund, which shall be used by the Township exclusively for maintenance and repair of such drainage facilities within the Township:

- a. Single family detached dwellings: \$750.00
- b. Single family attached dwellings: \$500.00
- c. multi-family dwellings: \$300.00

V. Miscellaneous

1. All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.
2. If any section, subsection, paragraph, sentence, or any part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance not directly involved in the controversy in which such judgment shall have been rendered.
3. This Ordinance shall take effect immediately upon final passage and publication as required by law.

IV. Escrow Agent Requirements. All funds payable by a Non-Developer pursuant to this Ordinance, shall be delivered to the Escrow Agent. The Escrow Agent shall maintain said funds in a non-interest bearing segregated trust account. No funds, other than funds collected pursuant to this Ordinance, shall be held in said account. The Escrow Agent, by this Ordinance, be required to provide notice to the Township Manager and Chief Financial Officer within five (5) days of receipt of any funds. Said notice shall expressly identify the parties paying same, the amount paid, and the calculation that supported the amount paid. In the event that there is any dispute with regard to the amount to be paid,

the Escrow Agent shall bring same to the attention of the Township Manager and Chief Financial Officer and shall be bound by their final determination as to the amount that should be paid.

All monies shall be held by the Escrow Agent, in trust, unless and until such time as: (a) the Certified Developer Costs, as same are defined herein, have been determined; and (b) the Escrow Agent shall have received express written authorization from the Township of Lakewood governing body in the form of Resolution, expressly authorizing the release of funds to the Developer.

Absent express authorization from the Township governing body by Resolution or by Order of a Court of competent jurisdiction, the Escrow Agent shall have no authority to disburse funds.

NOTICE

PUBLIC NOTICE is hereby given that the foregoing ordinance was introduced at a meeting of the Township Committee of the Township of Lakewood, in the County of Ocean and State of New Jersey on the **18th day of August, 2016**, and was then read for the first time. The said Ordinance will be further considered for final passage by the Township Committee in the Town Hall at 7:30 p.m. on **September 15, 2016**. At such time and place or any time or place to which said meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning said ordinance.

KATHRYN HUTCHINSON, RMC, CMR
Township Clerk