

ORDINANCE NO. 180,2007

AN ORDINANCE OF TILDEN TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, ESTABLISHING CHAPTER XVI, ENTITLED "IMPACT FEES", OF THE TOWNSHIP OF TILDEN CODE OF ORDINANCES TO IMPOSE TRANSPORTATION CAPITAL IMPROVEMENTS IMPACT FEES UPON NEW DEVELOPMENTS TO ENSURE THE TOWNSHIP'S TRANSPORTATION INFRASTRUCTURE SYSTEM IS AVAILABLE AND ADEQUATE TO SUPPORT NEW GROWTH AND DEVELOPMENT; TO ESTABLISH A TITLE; TO ESTABLISH THE PURPOSE; TO ESTABLISH THE GENERAL FINDINGS AND CONDITIONS; TO ESTABLISH DEFINITIONS; TO IMPOSE THE IMPACT FEES TO ESTABLISH THE USES OF THE FEES; TO ESTABLISH EXEMPTIONS; TO ESTABLISH THE IMPACT FEE AT \$824.00 PER PEAK HOUR TRIP; TO PROVIDE FOR THE ADMINISTRATION OF IMPACT FEES; TO PROVIDE FOR CREDITS TO IMPACT FEES; TO PROVIDE FOR THE REFUND OF IMPACT FEES; TO ESTABLISH THAT THE IMPACT FEE IS AN ADDITIONAL REQUIREMENT; AND TO ESTABLISH SEVERABILITY

WHEREAS, Act 209 of 1990 (53 P.S. § 10501-A) amended the Pennsylvania Municipalities Planning Code to authorize Townships of the Second Class to establish an impact fee for transportation capital improvements and establishing a procedure for the adoption and requirements of such an ordinance; and

WHEREAS, the Board of Supervisors of Tilden Township, Berks County, Pennsylvania are responsible under the Second Class Township Code for the public health, safety, and welfare of the residents of Tilden Township; and

WHEREAS, Tilden Township has experienced considerable growth and development in recent years and it is anticipated that such development will continue; and

WHEREAS, it is anticipated that such future development will create a substantial impact upon the transportation infrastructure within certain areas of the township; and

WHEREAS, the Board of Supervisors finds it is in the interests of the public health, safety, and welfare of the residents of Tilden Township to adopt an impact fee for transportation capital improvements on new development directly attributable to its impact.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Tilden, Berks County, Pennsylvania, and it is hereby ENACTED AND ORDAINED by the authority of the same as follows:

SECTION 1. Chapter XVI, entitled "Impact Fees", of the Township of Tilden Code of Ordinances", is hereby established as follows:

**"Chapter XVI
Impact Fees**

Section 101. Title. This Chapter shall be known as the Tilden Township Transportation Impact Fee Ordinance.

Section 102. Purpose. The purpose of this Chapter is to establish a transportation capital impact fee program to ensure that the Township's transportation infrastructure system is available and adequate to support new growth and development. To advance this objective, there is hereby created a transportation capital impact fee (hereinafter "Fee") for new development payable to the Township at the time of building permit issuance.

Section 103. General Findings and Conditions. The Board of Supervisors hereby finds and declares that:

(a) The conditions and standards for the determination and imposition of the Fee are set forth herein and otherwise shall follow those set forth in Act 209 of 1990, as amended (hereinafter "Act"), and consist of:

(1) The analysis, advice, and recommendations of the Impact Fee Advisory Committee;

(2) The Tilden Township *Land Use Assumptions Report* as adopted by the Board of Supervisors on December 1, 2006, as may be amended from time to time;

(3) The Tilden Township *Roadway Sufficiency Analysis* as adopted by the Board of Supervisors on August 4, 2007, as may be amended from time to time;

(4) The Tilden Township *Transportation Capital Improvement Plan* as adopted by the Board of Supervisors;

(5) Such other conditions and standards as the Board of Supervisors may by resolution identify from time to time as being relevant

and material to the imposition of the Fee and consistent with the Act and any amendments thereto.

(b) The collection, disbursement, and accounting of the Fee shall be administered by the office of the Township Secretary, subject to review, oversight, and control by the Board of Supervisors.

(c) The time, method, and procedures for payment of the Fee shall be as set forth in Sections 105 and 108 of this Chapter.

(d) The procedure for credits against or refunds of the Fee shall be as set forth in Sections 110 and 111 of this Chapter.

(e) The calculation of the Fee shall be as set forth in Section 108 of this Chapter.

(f) Such exemptions of the Fee as the Board of Supervisors shall chose to enact shall be as set forth in Section 107 of this Chapter.

Section 104. Definitions. The terms and definitions set forth in §502-A of the Act are hereby adopted and incorporated into this Chapter by reference.

Section 105. Imposition. The Fee is hereby enacted and imposed upon new development for the purpose of off-site public transportation capital improvements authorized by the Act and outlined in this Chapter. Said Fee shall apply, and be uniformly applicable to, all new development and/or subdivisions within the transportation service area(s) identified herein. The Fee shall be a condition precedent to final approval of a land development/subdivision plan or the issuance of a building permit.

No building permit shall be issued for new development within a transportation service area unless the Fee, as imposed by and calculated pursuant to this Chapter, has been paid. The fee shall apply to an expansion of an existing use only if that expansion shall increase the number of PM peak hour trips.

The geographical areas of the Township for which the Fee shall be collected is generally characterized as the northern portion of the Township as depicted on the Impact Fee Study Area Plan within the *Land Use Assumptions Report*, and as more fully set forth in Section 114 of this Chapter.

Section 106. Uses. The Fee collected pursuant to this Chapter shall be expended for costs incurred for transportation capital improvements attributable to new development and designated in the *Transportation Capital Improvements Plan* within the

Impact Fee Study Area in which the new development is located. The Fee may also be used for the acquisition of land and rights-of-way, engineering, legal and planning costs, debt service related to road improvements, and all other costs allowed under the provisions of the Act.

Section 107. Exemptions. The Fee shall not be collected for subdivisions or developments under the following conditions:

(a) New growth that has been determined by the Board of Supervisors to serve an overriding public interest shall be provided a credit against the Fee of up to 100%. Some examples of this could include, but shall not be limited to, municipal uses, educational uses, or non-profit uses. To qualify for the credit, applicants shall be required to submit a exemption request in writing to the Board of Supervisors outlining their proposed use and describing the overriding public interest served.

(b) De minimus applications shall be exempted from the Fee. De minimus applications shall mean those subdivisions and developments that can be shown to generate less than two (2) additional PM peak hour trips, without rounding, using the most current version of the Institute of Transportation Engineers publication, *Trip Generation*, or mutually agreed upon traffic study. To qualify for the exemption, applicants shall be required to place a waiver request on their final plat and submit information to support their request.

Section 108. Calculation of Impact Fees.

(a) The Fee in the Impact Fee Study Area Plan is Eight Hundred Twenty-Four and 00/100 Dollars (\$824.00) per PM peak hour trip as set forth in the *Transportation Capital Improvements Plan*, subject to such exemptions and credits as determined by the Board of Supervisors and/or allowed as required by Pennsylvania law.

(b) The amount of the Fee may be amended from time to time by Resolution of the Board of Supervisors in accordance with the procedures set forth in the Act.

(c) The Fee is hereby imposed upon all new subdivision and development including expansion and change in use and shall be determined as of the date of preliminary land development or subdivision approval by multiplying the per trip cost established for the designated Impact Fee Study Area by the estimated number of PM peak hour trips to be generated in accordance with the most current version of the Institute of Transportation Engineers publication, *Trip Generation* manual. The provision of this Ordinance

may have retroactive application for a period not to exceed eighteen (18) months after the adoption of the Resolution creating an Impact Fee Advisory Committee for preliminary or tentative application for land development, subdivision or PRD to the fullest extent permitted by law.

(d) In the event that the trip generation characteristics of a use are not sufficiently documented in the *Trip Generation* manual, the Fee shall be determined by the information contained in the required Traffic Impact Study per the Township Subdivision and Land Development Ordinance as approved by the Township Transportation Engineer.

Section 109. Administration of Impact Fee.

(a) The Township Secretary, or his/her designee, shall collect the Fee prior to the issuance of a building permit.

(b) The Township Treasurer, or his/her designee, shall establish an impact fee fund where the Fee shall be deposited. This fund shall be deposited in an interest bearing account(s) in a financial institution authorized to receive deposits of the Township. Interest earned from this fund shall be credited to that account and shall be used solely for the same purpose as the original Fee.

(c) The impact fee fund shall be reflected in the Township Budget and show expected credits and payments for each project.

(d) The Township Secretary or Treasurer shall maintain and keep adequate financial records for each account that shall show the source and disbursement of all revenues. He/she shall ensure that the disbursement of funds shall be used solely and exclusively for the provision of projects specified in the *Transportation Capital Improvements Plan*.

Section 110. Credits. Any applicant who shall perform, at his own expense and with the consent and agreement of the Board of Supervisors, off-site improvements shall be eligible for a credit towards the Fee in the amount of the actual cost of such improvements as verified by the Township. The Board of Supervisors shall not be obligated to accept an offer of improvement construction by an applicant.

(a) If an applicant makes such improvements, he must enter into an agreement with the Board of Supervisors prior to the issuance of any building permit. The agreement must establish the estimated cost of the improvement, the schedule for the initiation and completion of the improvement, a requirement that the improvement shall be completed to Township and Pennsylvania

Department of Transportation standards and criteria and any other terms and conditions that are deemed necessary by the Board of Supervisors.

(b) Any credit shall not exceed the amount of the Fee for each development. However, provided that the applicant has other developments within the Impact Fee Study Area that are in the same ownership and have received preliminary approval, credits calculated to be greater than the Fee due may be applied to the Fee for the applicant's other developments.

(c) Applicants shall be required to post financial security, sufficient in the judgment of the Township Engineer, to cover the cost of any improvements installed by the applicant for which a credit is sought.

(d) An applicant, seeking a credit and with Board of Supervisors approval, shall be entitled as a credit against the Fee in the amount equal to the fair market value of land dedicated by the applicant and accepted by the Township for future right-of-way, realignment, or widening of existing roadways provided that any on-site land dedication shall not be counted unless it exceeds the requirements of the Township Subdivision and Land Development Ordinance.

(e) An applicant, seeking a credit and with Board of Supervisors approval, shall be entitled as a credit against the Fee in the amount equal to the construction value of any road improvement that is contained in the *Transportation Capital Improvements Plan* that was performed at the applicant's expense.

Section 111. Refunds. Fees collected pursuant to the Chapter shall be refunded, together with earned accrued interest thereon, to the payor of the Fee under the following circumstances:

(a) In the event that the Township completes or terminates an adopted capital improvements plan for an Impact Fee Study Area and there remains at the time of termination or completion undispersed funds in the accounts established for that purpose, the Township shall provide written notice by certified mail to those persons who previously paid the fees which remain undispersed of the availability of said funds for refund of the person's proportionate share of the fund balance.

(b) If the Township fails to commence construction of any Impact Fee Study Area improvements within three years of the scheduled construction date set forth in a transportation capital improvements plan, any person who paid the Fee pursuant to that transportation capital improvements plan shall, upon

written request to the Township, receive a refund of that portion of the Fee attributable to the contribution for the uncommenced road improvement, plus the interest accumulated thereon from the date of payment. However, no refund shall be paid for any improvement project actually begun prior to the receipt of such refund request.

(c) If, upon completion of any road improvements project contained in the *Transportation Capital Improvements Plan* by the Township, the actual expenditures of the capital project are less than 95% of the costs properly allocable to the fee paid, the Township shall, upon written request to the Township, refund the pro rata difference between the budgeted costs and the actual expenditures, including interest accumulated thereon from the date of payment, to the applicant.

(d) If the development for which the Fee was paid is not commenced prior to the expiration of building permits the Fee with accumulated interest shall be refunded, upon written request to the Township, to the applicant. If the building permit as issued for the development is altered and the alteration results in a decrease in the amount of the Fee due, the difference between the new Fee and Fee previously paid shall be refunded, upon written request to the Township, to the applicant. The applicant, at his option, may roll over the Fee paid to cover a renewal of, or new building permit.

The allocation of refunds shall be determined by generally accepted accounting practices. In the event that any of the funds remain unclaimed following one year after the notice, which notice shall be provided to the last known address provided by the payor of the fees to the Township, the Township shall transfer any funds so remaining to the Township Capital Fund without any further obligation to refund said funds. It is the responsibility of the payor to provide the Township with, and to maintain, his current address of his place of business.

Section 112. Transportation Impact Fee as an Additional Requirement. The Fee is additional and supplemental to, and not in substitution of, any other requirements or fees imposed by the Township on land development and building permit issuance. Nothing herein contained shall alter or affect the Township's existing ordinances and regulations regarding on-site improvements. However, in no event shall an applicant be required to pay for off-site transportation capital improvements in addition to, or in excess of, the required Fee.

Section 113. Severability. Should any sentence, section, clause, part or provision of this Chapter be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Chapter as a whole, or any part thereof, other than the part declared to be invalid."

SECTION 2. Any and all Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

SECTION 3. This Ordinance shall be come effective five (5) days following the date of adoption.

SECTION 4. The Code of Ordinances, as amended, of the Township of Tilden, Berks County, Pennsylvania, shall be and remain unchanged and in full effect except as amended, supplemented and/or modified by this Ordinance. This Ordinance shall become a part of the Code of Ordinances, as amended, of the Township of Tilden, Berks County, Pennsylvania, upon adoption.

DULY ENACTED AND ORDAINED into law this 6th day of October, 2007 by the Board of Supervisors of the Township of Tilden, Berks County, Pennsylvania.

TOWNSHIP OF TILDEN
BOARD OF SUPERVISORS

Troy R. Neff

Russell H. Haly

Judy E. Romig

Attest:

Cheryl A. Haus
Secretary