

Ord. #8-2009

An Ordinance of the Township of Mount Olive to Amend and Supplement Section 400-81 Entitled "Fences and Walls"; Section 400-100.1D Entitled "Relief for Bulk Standards for Residential Lots"; Section 400-75 Entitled "Tree Removal, Replanting and Forestry Management Plans"; and a New Article IX Entitled "Development Fee and Affordable Housing Contribution" of the Code of the Township of Mount Olive.

CLERK:

Delivered to Mayor:

Date: 4/29/09

Time: 11:00 am

Signed: Lisa M. Rushway
Township Clerk

MAYOR:

Action by Mayor:

Approved:

Date: 5/8/09

Vetoed:

Date:

(Reasons for which Mayor has withheld approval of ordinance, item or part
Thereof.)

Signed: D. M. Japich
Mayor

CLERK:

Returned:

Date: 5/8/09

Time: 4:00 PM

Not returned within the (10) days:

Date:

Signed: Lisa M. Rushway
Township Clerk

Ord. #8-2009

AN ORDINANCE OF THE TOWNSHIP OF MOUNT OLIVE TO AMEND AND SUPPLEMENT SECTION 400-81 ENTITLED “FENCES AND WALLS”; SECTION 400-100.1D ENTITLED “RELIEF FOR BULK STANDARDS FOR RESIDENTIAL LOTS”; SECTION 400-75 ENTITLED “TREE REMOVAL, REPLANTING AND FORESTRY MANAGEMENT PLANS”; AND A NEW ARTICLE IX ENTITLED “DEVELOPMENT FEE AND AFFORDABLE HOUSING CONTRIBUTION” OF THE CODE OF THE TOWNSHIP OF MOUNT OLIVE

WHEREAS, the Township Council has received various recommendations from the Planning Board, the Board of Adjustment and professionals, for the upgrading and revising of the Township’s Land Use Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Mount Olive, County of Morris, and State of New Jersey:

SECTION 1. Article VI entitled “Zoning”, Section 400-81 entitled “Fences and Walls”, Subsection A(1), is hereby amended and supplemented to provide as follows:

Section 400-81. Fences and Walls.

A. Height and construction requirements; definition

- (1) No fence or wall shall be erected, altered or constructed in any residential zone which shall exceed six (6) feet in height above ground level, except as otherwise provided by ordinance; all such fences or walls shall be located within the boundary lines of the premises intended to be fenced or walled. For pre-existing nonconforming dwellings a fence or wall no greater than four (4) feet in height may be constructed or maintained at a point no closer to the street right of way than the front foundation wall of the principal building. In the case of corner lots, the property owner may designate one front and one side yard for the purposes of locating a fence, subject to requirements for sight triangle easement as set forth in Section 400-63 of this Chapter. The fence on the side yard shall not extend beyond the plane of the house nor encroach within a required sight triangle.

SECTION 2. Article VII entitled “Zoning District Use and Bulk Regulations”, Section 400-100.1D entitled “Relief for bulk standards of residential lots” is hereby amended and supplemented to provide as follows:

Section 400-100.1D. Relief for bulk standards of residential lots.

Relief provided for herein shall be granted to new accessory structures such as garages, sheds, decks, swimming pools or porches to the extent that such structures are otherwise permitted in the applicable zone district.

SECTION 3. Article VI entitled “Zoning”, Section 400-75 entitled “Tree removal, replanting and forestry management plans” is hereby amended and supplemented to provide as follows:

Section 400-75. Tree removal, replanting and forestry management plans.

Tree removal shall be permitted and tree replanting shall be required in all zone districts subject to the provisions of this section.

A. Purpose.

The purpose of this section is to control and regulate indiscriminate and excessive removal, cutting and destruction of trees and to control, indiscriminate and excessive removal, cutting, and / or destruction of trees, and to control, regulate and prevent conditions that result in reduced water quality caused by increases in non-point source pollutant, increased rates and or volumes of stormwater runoff, increased soil erosion, reduced air quality, increased forest fragmentation, reduced habitat availability for forest-related wildlife, and a general loss of forest ecosystem function, thus resulting in potential negative impacts to public health, safety, and welfare.

In addition, said regulations are intended to complement the existing state, regional, and county forest protection and management regulations and initiatives including the Highlands Water Protection and Planning Act (Act), enacted on August 10, 2004. The Act covers 859,358 acres in the northwest part of the State, assigning lands therein to two land categories: the Planning and Preservation areas. The Township of Mount Olive is one of 88 municipalities which comprise the Highlands region. The majority of the Township 15,865 acres (80 percent) fall within the more restrictive Preservation Area. Among the nine specific goals established by the Act for the Preservation Area are the following:

- Protect, restore, and enhance the quality and quantity of surface and ground waters therein;
- Preserve extensive and, to the maximum extent possible, contiguous areas of land in its natural state, thereby ensuring the continuation of a Highlands environment which contains the unique and significant natural, scenic, and other resources representative of the Highlands Region; and
- Protect the natural, scenic, and other resources of the Highlands Region, including but not limited to contiguous forests, wetlands, vegetated stream corridors, steep slopes, and critical habitat for fauna and flora.

In accordance with the Act, a Highlands Final Draft Regional Master Plan (Plan) was prepared and released in November 2007. The Plan provides a Land Use Capability Map which assigns lands in both the Planning and Preservation areas to one of three overlay zones: Conservation; Protection; and Existing Community. The Protection Zone covers the majority of the Township based primarily on the determination that the area in question qualifies as a Forest Resource Area. The Protection overlay zone is described in the Plan as: "...high resource value lands that are important to maintaining water quality, quantity, and other significant ecological processes."

Forests within the Highlands Region, of which Mt. Olive is a part, provide many essential ecosystem functions such as surface water filtration of potable water supplies, the highest rate of stormwater runoff attenuation of any upland cover type, air filtration, and critical habitat for forest-dependent wildlife that contribute to regional biodiversity. Historical and current forest losses due to changes in land development patterns and poor management activities threaten regional wildlife populations, water quality, air quality, and overall ecosystem health (Heilman, et al., 2002; Ritters et al., 2003; Highlands Draft Ecosystem Management Technical Report 2007). Protection of forest communities as well as smaller scale groupings of trees that constitute the region's forested cover is essential to the maintenance of overall ecosystem functions and values. Tree replacement to compensate for unavoidable losses can be used to enhance water and air quality, increase the functional size of existing forests, increase biological diversity, and enhance overall ecosystem function.

B. Compliance required.

No person shall cut or remove any tree upon any land within the Township of Mount Olive unless such removal is done in accordance with regulations and provisions of this section.

C. Definitions.

As used in this section, the following terms shall have the meanings indicated:

APPROVING AUTHORITY -- The Planning Board or the Zoning Board of Adjustment of Mount Olive Township.

CALIPER -- Standard measure of tree size for trees to be newly planted. The measurement is taken six inches above the ground for trees four inches in diameter or less and 12 inches above the ground for trees over four inches in diameter.

CLEAR CUTTING -- The removal of all standing trees on a lot or a portion of a lot.

CONSERVATION EASEMENT -- The grant of a property right stipulating that the described land will remain in its natural state and precluding future or additional development or disturbance.

DIAMETER AT BREAST HEIGHT -- Diameter of a tree measured 4.5 feet (forestry method) above the ground level on the uphill side for existing trees. Diameter at breast height may appear as the abbreviation "DBH" (diameter breast height).

DRIPLINE -- A limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree, but not less than six feet from the trunk, whichever is greater; and within which no construction or disturbance shall occur.

REPLACEMENT TREE -- A nursery-grown certified tree, properly balled, marked with a durable label indicating genus, species and variety and satisfying the standards established for nursery stock and installation thereof set forth by the American Association of Nurseryman.

SELECTIVE CUTTING -- The removal of larger trees on an individual basis while leaving trees of lesser size.

SILVICULTURE -- The management of any wooded tract of land to ensure its continued survival and welfare, whether for commercial or noncommercial purposes, pursuant to a plan approved by the New Jersey Forest Service.

THINNING -- The removal of undesirable, competitive, diseased or damaged trees so as to cultivate and improve the development of remaining trees on the lot.

TREE -- Any self-supporting woody plant which reaches a typical mature height of 12 feet or more at maturity and has a typical DBH of four inches or greater.

TREE CANOPY -- The top layer or crown of mature trees.

WOODED ACRES PERMITTED FOR DEVELOPMENT -- The wooded lands within a lot or tract which are not specifically excluded from development by any federal, state, county or municipal law or ordinance, deed restriction or covenant running with the lands. For purposes of this section, those lands specifically eliminated from consideration as wooded acres permitted for development include, but are not limited to, wetlands as defined by N.J.S.A. 13:9B-1 et seq.

D. Tree cutting or removal restricted.

With the exception of the exemptions set forth in Subsection F, no person shall cut or remove, or cause to be cut or removed, any existing tree with a diameter at breast height (DBH) of six (6) inches or greater upon any lands with the Township of Mount Olive unless the cutting or removal can be accomplished in accordance with the provisions of this section.

E. Tree removal and forestry management plans required.

- (1) A tree removal plan shall be filed with every application before the Planning Board or the Board of Adjustment for approval of a subdivision, re-subdivision, site plan, planned development, conditional use or zoning

variance or prior to any other development requiring tree removal or planting, except as otherwise provided in this subsection or Subsection F.

- (2) Where preliminary approval of a subdivision, re-subdivision, site plan or planned development has been granted, a tree removal plan must be submitted to the Planning Board, incidental with filing for final approval. Nothing in this requirement shall abrogate any vested subdivision rights acquired by preliminary approval.
- (3) When final approval of a subdivision, re-subdivision or planned development has been granted by the Planning Board or the Board of Adjustment but where tree removal has not yet been undertaken on the subject property, a tree removal plan shall be filed with the relevant Board within 60 days of the passage of this section. Nothing in this requirement shall abrogate any vested subdivision rights acquired by final approval.
- (4) Where a lot is proposed to be developed for use as a single-family residence and the property is not covered by an approved plan through the operation of Subsection E(1) above, the owner must submit a tree removal and replacement plan for approval in accordance with Section I. Plans for lots of one acre (43,560 square feet) or less must be submitted to the Director of Planning and/or administrative officer. All others must be submitted to the approving authority.
- (5) No building permit shall be issued for the construction of any residential, commercial, industrial, recreational or community buildings or accessory buildings unless and until the developer, builder or owner files with the Director of Planning and/or administrative officer a tree removal plan and obtains approval thereof or submits a plan previously approved by the Board.
- (6) No certificate of occupancy shall be issued unless tree removal has been in accordance with the approved plan and all trees required to be planted have been planted in accordance with the approved plan or an approved contribution has been provided in accordance with Subsection J below or a bond guaranteeing the cost for the required planting has been posted with the Township Clerk. The bond shall be in the principal sum of \$250 per tree and \$100 per shrub involved. The posting of a bond may be waived for applications applying to the Director of Planning under Subsection E(5) above or to the administrative officer under Subsection E(4) above.
- (7) A forestry management plan in accordance with the standards of Section L herein, or tree removal plan shall be filed with the Planning Board for removal of more than five trees per year on tracts in excess of one acre (43,560 square feet) or more than 10 trees per acre on tracts in excess of five acres.

F. Exceptions.

Under this section, the following trees may be removed without filing a plan:

- (1) Any tree located on a tract of land up to one acre (43,560 square feet) in size, on which a single-family residence has already been erected and for which a valid certificate of occupancy has been issued. The tree removal must be authorized by the owner, in writing, if done by someone other than the owner.
- (2) Any tree which is part of a nursery, garden, Christmas tree plantation or orchard, provided that the subject area is being actively used as a commercial nursery, garden, orchard or Christmas tree plantation and is not a component part of a subdivision or development for building purposes.
- (3) Any tree which is part of a cemetery.
- (4) Trees directed to be removed by municipal, county or state authority pursuant to law.
- (5) Any dead or diseased tree or any tree that endangers life or property. In the case of the removal of dead or diseased trees, the dead or diseased trees shall not be turned into mulch and applied to the site, but shall be disposed of in a manner so as to not disease other trees on site.
- (6) Trees cut as part of the operation of a tree farm, according to a forestry management plan. Owners of property subject to such a program must file with the Director of Planning or to the administrative officer under Subsection E(4) above so stating, signed by the forester developing the plan. No tree clearing will be permitted under this provision until and unless the Director of Planning or the administrative officer issues a letter authorizing the proposed removal of trees. The Director of Planning or the Administrative Officer may rely under a qualified expert, including, but not limited to, the Township Engineer, a licensed landscape architect, a registered forester or a like professional with the requisite training and experience to review the forestry management plan. A fee not to exceed \$500 established in accordance with N.J.S.A. 40:55D-53.2 and with § 400-18 of this chapter may be charged to the applicant for the purpose of conducting said review.
- (7) Trees removed in the development of ponds or lakes, when supervised by the Natural Resource Conservation Service and/or the Federal or State Forestry Service. Owners of property subject to such a program must file with the Director of Planning or with the administrative officer a letter so stating, signed by the appropriate supervising agency.
- (8) Trees removed in conjunction with the clearing of land which is actively devoted to agricultural and horticultural uses.

G. Data required for tree removal and replanting plans.

Every plan shall be provided on a landscape plan prepared by a registered landscape architect, approved forester or licensed professional engineer and

submitted with the application for tree removal and replanting. Maps and exhibits shall provide the following:

- (1) The Tax Map and lot and block numbers.
- (2) The area of the tract.
- (3) Location of existing tree canopy within the property boundaries.
- (4) The number of trees or percent of stocking (trees per acre) and location of individual trees with a DBH equal to or greater than six (6) inches identified by size and species within the area of development/limit of disturbance. The approving authority shall reserve the right to accept an inventory of the required information based upon an acceptable sampling method to be established between the applicant and the approving authority as a prerequisite for administrative completeness of any development application in accordance with Section M.
- (5) Location of individual trees with a DBH equal to or greater than 10 inches identified by size and species measured 50 feet beyond the area of development/limit of disturbance.
- (6) Location of individual existing trees and theft driplines noted for preservation within the area of development/limit of disturbance identified by size and species. Where clusters of trees exist on the site or are contiguous with adjacent sites, fragmentation of the cluster shall be avoided where possible.
- (7) Location of all required replacement trees and identification by species.
- (8) Clear labeling of the area(s) intended for tree/vegetation removal.
- (9) Tree protection material details and limit of disturbance line.
- (10) Location of existing and proposed buildings/structures, parking areas, roadways and driveways.
- (11) All bodies of open water, streams and freshwater wetlands and all existing and proposed stormwater retention and detention areas.
- (12) Location of all existing and proposed driveways, parking areas and subsurface disposal systems.
- (13) Location of soil stockpiles and existing and proposed utility easements.
- (14) The general slope and topography, taken from a recognized map of such features.
- (15) A map of locations and surrounding properties showing wooded areas.
- (16) A grading plan.

- (17) A schedule for tree removal and planting.
- (18) Provision for removal of excess stumps and branches from the property.

H. Site protection.

- (1) Tree protection measures and the limit of disturbance line shown on the landscape plan shall be provided in the field with snow fencing or other durable material and verified by the Township Engineer or his designee and/or Natural Resource Conservation Service official prior to soil disturbance.
- (2) Protective barriers shall not be supported by the plants they are protecting, but shall be self-supporting. Barriers shall be a minimum of four feet high and shall last until construction is complete.
- (3) Chain link fence may be required for free protection if warranted by site conditions and relative rarity of the plant.
- (4) Snow fencing used for tree protection shall be firmly secured along the dripline, but shall be no less than six feet from the trunk.
- (5) No soil stockpiling, storage of building materials, construction equipment or vehicles shall be permitted within the dripline or within six feet of any remaining trees, whichever is greater.
- (6) Any clearing within the dripline, or within six feet of the trunk of a remaining tree, whichever is greater, shall be done by hand-operated equipment.
- (7) Where a tree that has been noted for preservation is severely damaged and unable to survive, tree replacement shall occur as provided in Subsection F.

I. Tree replacement and reforestation.

- (1) The replacement of removed trees shall occur as prescribed below or in an alternative reforestation plan subject to review and approval by the reviewing authority:
 - (a) The replacement requirement for trees removed to facilitate the construction of a residential dwelling on an existing lot or for a minor residential subdivision or a site plan on a parcel less than one acre in accordance with the applicable zone district shall be on a one-for-one basis.
 - (b)(i) For all groups of trees whose collective canopies are estimated to cover one (1) acre or more, estimate the number of trees to be removed and use the replacement formula in Tree Replacement

Schedule A to calculate the quantities of trees and shrubs required for replacement.

Schedule A
Tree Replacement

Quantity per acre	Size (minimum)
50	2.5"-3" caliper B&B trees
50	1" caliper B&B trees
100	6-9' whips (container grown 3gal.+ trees)
100	3 gal. shrubs
See specification	Native shortgrassgrass / wildflower mix*

* The native shortgrass meadow mix is used in conjunction with the tree and shrub replacements to provide soil stabilization on areas greater than .02 acres. Alternate seed specifications can be accepted but are subject to review and approval by the reviewing authority.

- (ii) For all groups of trees whose collective canopies are estimated to cover less than one acre, provide estimate of the number of trees to be removed and use the replacement formula in Tree Replacement Schedule B to calculate the quantities of trees required for replacement.

Schedule B
Tree Replacement

Caliper of Existing Tree Removed	Number of replacement trees (minimum 3" cal.)
Between 6" and <10"	3
Between 11" and <18"	4
Between 19" and <24"	5
Between 25" and <30"	7
Between 31" and <35"	10
36" and greater	DBH of removed tree divided by 3

- (2) The type of replacement tree(s) and shrubs shall be the same as the species originally found on the site, if replacement is to take place on the same site in similar soils with similar slope and aspect. If replacement is to take place off site, the composition of replacement trees and shrubs shall include native species found in the forest ecotype typical of the soils, slope and aspect of the replacement site. For replacement of forest interior or "climax" species such as eastern hemlock and American beech, and where such replacement will take place in relatively full-sun locations (e.g., a field edge on the south side of an existing woodlot) substitute early successional species (appropriate to the soil type) such as white pine, eastern red cedar, oaks and hickories that are tolerant of these conditions. Similarly, use early successional shrubs where use of forest understory shrubs is inappropriate.
- (3) The planting of all replacement trees shall be done by or supervised by a person with horticultural training in tree care and planting methods.

- (4) Newly planted replacement trees shall be monitored for a period of two years to ensure the health of the trees. If the replacement trees die within the two-year period, the developer/applicant shall replace the dead tree.

J. Tree banking.

- (1) The approving authority or the administrative officer in the case where Subsection E(4) is applicable shall have at its discretion the option of permitting a contribution of equivalent value and/or tree plantings off tract in lieu of replacement plantings on site where the applicant can demonstrate that replanting on the development site is impractical due to existing undisturbed wooded areas or environmental constraints, including, but not limited to, freshwater wetlands, slopes in excess of 25 percent streams, rivers or bodies of open water. The applicant shall bear the burden of demonstrating that such alternate measures are necessary. A report by a licensed landscape architect, professional engineer or registered forester shall accompany any such request. Equivalent value shall be based upon the current edition of the publication known as the Guide For Plant Appraisal published by the International Society of Arboriculture or a similar recognized academic and/or industry source.
- (2) Funding for trees deposited into the community tree bank shall be utilized for planting in accordance with the ranking schedule set forth in subsection J (3), subject to the approval by the Township Council upon recommendation by the approving authority and the Environmental Commission. Recommendation may also be provided by the administrative officer where Subsection E(4) is applicable.
- (3) The ranking system set forth in (a) through (d) is intended to guide the Township Council with regard to the expenditure of funds from the community tree bank for the purpose of reforestation and replanting efforts. The Council may utilize, Figures 20 and 21, entitled Land Use / Land Cover and Open Space and Preserved Land, respectively in the Mount Olive Township Natural Resource Inventory adopted by the Planning Board on January 18, 2007 as a component Element of the Township's Master Plan for this purpose.
 - (a) Public open space or land utilized for public uses, as defined in §400-6 where they can be added to increase the acreage of existing forest;
 - (b) Private land within and existing or proposed conservation easement where they can be added to increase the acreage of existing forest;
 - (c) Public or private land as in (a) and (b) above to create "new" forest;
 - (d) Public land where they will be used for ornamental purposes.

- (4) All tree banking funds shall be deposited in a separate, interest-bearing Community Tree Bank Trust Fund. Said funds shall be used exclusively to implement the reforestation and planting objectives set forth in subsection J(3) of this Ordinance.
- (5) A permanent record in the form of reports, plans, maps, photographs or other similar documentation shall be maintained of each project funded, in whole or in part, by the Community Tree Bank Trust Fund. Said record shall be maintained by the Township Clerk and the Secretary to the Planning Board. An annual report on the status of the Fund and reforestation and planting projects shall be provided to the Township Council and the Planning Board by the Director of Planning and/or the Planning Administrator.

K. Conservation easements.

The approving authority shall reserve the right to require a conservation easement to protect preserved tree areas and new plantings in any site plan or subdivision. If private land is utilized for reforestation and/or new plantings pursuant to the tree bank provisions set forth in J(3) of this Ordinance, the Township Council shall reserve the right to require a conservation easement as a condition of approval for the project.

L. Data required for forestry management plan.

Every forestry management plan submitted for approval shall include the following:

- (1) The Tax Map and lot and block numbers.
- (2) The area of the tract.
- (3) The location of trees or wooded areas.
- (4) The species involved.
- (5) A map showing the number of trees to be harvested, the location of the proposed loading dock, staging areas, area to be harvested and streams with crossings.
- (6) A schedule for tree removal and planting.

M. Criteria for plan approval and compliance.

- (1) Tree removal shall be limited to the building footprint and a reasonable and customary distance surrounding the building footprint to accommodate construction activities.
- (2) Trees may be removed where the proposed paved portion of a parking area is planned. In off-street parking areas, other than for a single residential dwelling, islands of trees must be left in the manner provided for by § 400-57 of this chapter. No paving of any impervious nature shall be placed around the base of the trunk of the tree within 10 feet, and the grade shall be such that drainage of rainwater will keep the root area watered without pooling or exceeding the requirements of the species. If it can be demonstrated that improved vehicular or pedestrian circulation will result

or if an improved site design can be accomplished by reducing the ten-foot distance for impervious coverage, the approving authority may permit an alternate design to allow trees to be encompassed within smaller curbed islands. Excess water shall be admitted to dry wells or storm sewers on the parking lot or drained by acceptable means.

- (3) Trees may be removed in private rights-of-way and driveways within 10 feet of each side of the planned paved area. Alignment of the driveways should be planned to save as many trees as possible.
- (4) If no area other than a wooded area or area with trees can be found to accommodate the sewage system and disposal field meeting the approval of the Sanitary Inspector, necessary tree removal shall be permitted.
- (5) Where more than three inches of fill is required around trees, the trees must be protected by an air well six feet in diameter or as needed around the trunk to prevent the intrusion of soil. Tile pipe must radiate like spokes from the well to provide oxygen to the roots. The top of the well must extend six inches above the graded level. If the tree is of a species that will eventually die due to root disturbance or change in drainage or the owner prefers to remove the tree, it may be removed and replaced with another tree from the preferred trees in another or the same area after the fill has stabilized.
- (6) Any grading must protect standing trees from machine operation, soil storage or material storage by a distance equal to or greater than the dripline of the tree. Any tree damaged must be replaced.
- (7) Any tree used in a required planting or to replace a damaged tree must be at least 2 1/2 inches in diameter measured 4 1/2 feet from the ground (DBH) and must be nursery stock, balled and burlapped.
- (8) A buffer zone of trees and shrubs shall be established according to the requirements of § 400-37 of this chapter.
- (9) Cluster development, commercial development and industrial development shall consider the use of treeless areas, if possible, for building sites. If it is necessary to develop wooded areas or remove trees for proposed building sites in the case of such developments, the approving authority may require tree planting in treeless areas, if feasible.
- (10) Trees in the area between the street line and the setback line of the buildings shall be preserved to the greatest extent possible.
- (11) Tree removal from any slope or environmentally sensitive area is prohibited if it will contribute, in the opinion of the approving authority, to extra runoff of surface water onto adjoining property and erosion and silting, unless other means approved by the Natural Resource Conservation Service are provided to prevent runoff and erosion.

- (12) No tree removal is permitted that will expose vacant land, backs of existing billboards, utility substations, transmission towers, warehouses, junkyards, landfill operations and other similar structures or operations, except where trees are dead or diseased and/or endanger life or property. However, vacant land may be exposed if it is necessary to remove trees for building sites or sewerage sites and if more aesthetic values are established.
- (13) No healthy tree that is special by virtue of history, unusual size or age or of a rare species shall be removed, except as may be required for the protection of health, safety or public welfare.
- (14) No trees on public rights-of-way, parks or public areas are to be removed by private individuals or utilities, except as approved by the approving authority. The removal of trees shall not be permitted from the established road right-of-way unless trees are dead or diseased or endanger life or property or a letter of approval is obtained from the Township Council.
- (15) Trees may be removed to clear for soil removal or landfill, provided that the same amount of wooded area or the same number of trees is replaced according to an approved plan. If the finished operation is planned to be used for other development, the replacement of trees shall be a part of the subdivision plan or a site plan submitted for approval by the approving authority.
- (16) Unless proven necessary, staging areas shall not be closer than 150 feet to any public road center. "Necessary" shall mean that no other area is available due to topography, soil conditions or unfavorable effect on the woodlot is certified by the consulting forester. The loading of trucks is permitted at the roadside, and a loading area must be constructed off the roadway, where possible. After the cutting operation is complete, any road modifications and changes in the right-of-way must be restored.

N. Sampling

For project involving removal of less than 0.5 acres of trees, each tree larger than 6 inches dbh should be identified and recorded. The replacement formula in Section I herein is then applied to determine the number of replacements required.

For projects involving the removal of one (1) acre of trees or more, the applicant may use a stratified random sampling procedure to determine the estimated quantities and size distribution of trees to be removed.

- (1) **Stratified Random Sample:** Identify individual stands (i.e., a group trees representing a single age class and forest type [e.g., mature northern hardwoods]) of trees that will be removed. Randomly sample from within each identified stand using standard forestry practices to determine the estimated quantities and size distribution of trees to be removed. The proposed sampling procedure must be acceptable to the reviewing authority. If the applicant is not using the services of a licensed forester

and so chooses, the reviewing authority can provide a recommended sampling procedure.

O. Tree removal criteria.

In addition to the design requirements stated above, the Director of Planning or the administrative officer may issue a tree removal permit based upon one or more of the following circumstances:

- (1) Where the location of an existing tree provides no other alternative but to place a structure outside the permitted building setbacks.
- (2) Where the location of an existing tree negatively impacts on an existing septic field.
- (3) Where no other alternative exists for the placement of a building, building addition, structure, septic field, driveway, deck, patio or lawn area for the recreational use by the inhabitants of the building or dwelling, or any other authorized improvements, but in the vicinity of an existing tree.
- (4) Where the location or growth of a tree inhibits the enjoyment of any outdoor pool, patio or deck.
- (5) Where the location, angle or growth of an existing tree makes it a hazard to structures or human life.

P. Protection of trees.

Whenever an application for tree removal is granted under the terms and conditions of this section, the following protective measures shall be observed:

- (1) No material or temporary soil deposits shall be placed within the dripline of any existing tree to be preserved.
- (2) Except while engaged in tree removal, no equipment shall be operated within six feet of any tree protected by this section nor shall such equipment be operated at any time in such a manner as to break, tear, bruise, decorticate or otherwise injure any living or dormant tree.

Q. Permit approval.

The Director of Planning and/or Planning Administrator shall establish a permit application pursuant to Subsection O in this section.

R. Duration of permits.

Permits granted for the removal of trees under the terms and conditions of this section shall run with the land and shall remain in force and effect for the following periods of time, and not thereafter. Once the permit has expired, a new application must be submitted for review and a new permit issued.

- (1) One year from the date of issuance if granted for a lot or parcel of land for which no building permit is required.
- (2) Until expiration of the building permit granted with such tree removal permit if granted for a lot or parcel of land for which a building permit is required, but for which no site plan approval is required by the approving authority.
- (3) Until expiration of the site plan approval, or expiration of the building permit issued after such site plan approval if granted for a lot or parcel of land for which site plan approval from the approving authority is required as a condition precedent to obtaining a building permit.
- (4) One year from the date of granting such minor subdivision if granted for a lot or parcel of land for which minor subdivision is sought.
- (5) Until expiration of an approval granted for a lot or parcel or land for which preliminary approval of a major subdivision is sought.

S. Inspection.

- (1) Prior to any tree removal, all trees must be marked and areas to be cleared identified for inspection by the Director of Planning and/or the Township Engineer.
- (2) The Township Engineer or his designee shall periodically inspect the site throughout the duration of construction in order to ensure compliance with this section. Such inspection shall be made of the site referred to in the application and, to the extent possible, of contiguous and adjoining lands, as well as of lands in the vicinity of the application, for the purpose of determining drainage conditions and physical conditions existing thereon.

T. Notice of commencement of tree removal.

- (1) The holder of a tree removal permit shall notify the Director of Planning or the administrative officer in writing at least four business days in advance of when the tree removal activity will commence.
- (2) The notice shall also include information as to the manner of disposal of the removed trees.

U. Fees.

Fees shall be in accordance with § 400-18 and with Subsection F in this section.

V. Enforcing officer.

The Director of Planning and/or the Township Engineer shall be the enforcing officer for all plans approved by the approving authority. The administrative officer shall be the enforcing officer for all plans approved pursuant to Subsection E(4) of this section.

W. Violations and penalties.

Any person violating any of the provisions of this section shall be subject to a fine not to exceed \$1,000 or to imprisonment for a term not to exceed 90 days, or both, upon conviction, in the discretion of the judicial officer before whom such matter is heard. If the violation is of a continuing nature, each day which it continues shall constitute an additional, separate and distinct offense.

SECTION 4. Chapter 400 entitled “Land Use”, Article 1X entitled “Development Fee and Affordable Housing Contribution”, is hereby amended and supplemented to provide as follows:

Section 400-105. Purpose

- a) 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.
- b) Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH’s regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH’s rules on development fees, codified at N.J.A.C. 5:97-8.

Section 400-106. Basic requirements

- a) This ordinance shall not be effective until approved by COAH pursuant to *N.J.A.C. 5:96-5.1*.
- b) *Mount Olive Township* 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*.

Section 400-107. Definitions

- a) The following terms, as used in this ordinance, shall have the following meanings:
- i. **"Affordable housing development"** means 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.
 - ii. **"COAH"** or the **"Council"** means 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.
 - iii. **"Development fee"** means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.
 - iv. **"Developer"** means 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.
 - v. **"Equalized assessed value"** means 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).
 - vi. **"Green building strategies"** means 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.

Section 400-108. Residential Development fees

- a) Imposed fees
- i. Within the *RR-AA, RR-A, R-1, R-2, R-3 and R-4 zone* districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of *1.5 percent* of the equalized assessed value for residential development provided no increased density is permitted.
 - ii. 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 shall be required to pay a development fee of *6 (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 and a half 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.

Section 400-109. Eligible exactions, ineligible exactions and exemptions for residential development

- i. 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.
- ii. 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.
- iii. 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.
- iv. No development fee will be assessed where a new residential dwelling replaces a lawfully existing residential dwelling that is demolished and reconstructed due to a fire or a natural disaster.

Section 400-110. Non-residential Development fees

a) Imposed fees

- i. 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.
- ii. 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.
- iii. 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.

Section 400-111. Eligible exactions, ineligible exactions and exemptions for non-residential development

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.
- v. 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 Mount Olive Township as a lien against the real property of the owner.

Section 400-112. Collection of fees

- a) 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.
- b) 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.

- c) 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.
- d) 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.
- e) 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.
- f) 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.
- g) Should Mount Olive Township 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).
- h) 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.
- i) Appeal of development fees
 - 1) 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 Mount Olive Township. 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.
 - 2) 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 Mount Olive Township. 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.

Section 400-113. Affordable Housing trust fund

- a) 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.
- b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - 1. payments in lieu of on-site construction of affordable units;
 - 2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - 3. rental income from municipally operated units;
 - 4. repayments from affordable housing program loans;
 - 5. recapture funds;
 - 6. proceeds from the sale of affordable units; and
 - 7. any other funds collected in connection with Mount Olive Township's affordable housing program.
- c) Within seven days from the opening of the trust fund account, Mount Olive Township shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank linked to the Cash Management Fund, 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).
- d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

Section 400-114. Use of funds

- a) 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 Mount Olive Township'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.

- b) Funds shall not be expended to reimburse Mount Olive Township for past housing activities.
- c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households 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.
 - i. 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.
 - ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
 - iii. 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.
- d) The Township 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.
- e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees 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.

Section 400-115. Monitoring

- a) Mount Olive Township 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 *the Township'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.

Section 400-116. Ongoing collection of fees

- a) The ability for Mount Olive Township to impose, collect and expend development fees shall expire with its substantive certification unless Mount Olive Township 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 the Township 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). Mount Olive Township 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 the Township retroactively impose a development fee on such a development. The Township shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

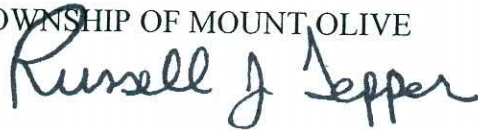
SECTION 5. All ordinances of the Township of Mount Olive which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 6. If any section, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid by any court or competent jurisdiction, such decision shall not affect the remaining portion of this ordinance.

SECTION 7. This ordinance may be renumbered for purposes of codification.

SECTION 8. This Ordinance shall take affect in accordance with law.

TOWNSHIP OF MOUNT OLIVE



RUSSELL J. TEPPER

Mount Olive Township Council President

ATTEST: 4/28/09



LISA M. LASHWAY

Mount Olive Township Municipal Clerk