

GOVERNOR SIGNS INTO LAW AFFORDABLE HOUSING REFORM LAW

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On July 17, 2008, Governor Corzine signed new legislation, P.L. 2008, c. 46, which will reform the Affordable Housing Laws of the State of New Jersey concerning regional contribution agreements (“RCAs”) and nonresidential development fees. This law will have an impact on the recently adopted new Council on Affordable Housing (“COAH”) Third Round Regulations which became effective June 2, 2008, as well as the proposed amendments to those regulations which are presently in the public comment period. Therefore, one can expect yet another round of revised COAH Third Round Regulations.

Regional Contribution Agreements

Originally, under the New Jersey Fair Housing Act and COAH regulations, towns were permitted to transfer up to 50% of their affordable housing obligation to another municipality. P.L. 2008, c. 46 eliminates RCAs as an affordable housing compliance mechanism for municipalities. This will obviously impact municipalities since they will no longer be able to transfer up to half of their affordable housing obligations to another municipality. Thus, many of the suburbs that transferred a portion of their affordable housing obligation to more urban areas will now have to provide for that affordable obligation within its borders.

This law does not apply to an RCA already entered into between two towns and approved by COAH.

Nonresidential Development Fee

The new law also imposes a state-wide development fee on all nonresidential development of 2.5% of the equalized assessed value (“EAV”) of the development regardless of whether the municipality has a development fee ordinance. The fee is also imposed on the increase in the EAV of additions to existing non-residential buildings. A separate State fund has been set up for the deposit of these fees to be collected by the township.

The fee is paid at the time of certificate of occupancy. When the construction official issues a building permit for nonresidential development, he must notify the tax assessor of the issuance. Within ninety (90) days of that notification, the tax assessor must provide an estimate to the developer of the fee. Within ten (10) days of a request for final inspection, the tax assessor must confirm or modify the fee estimate. Prior to issuance of the certification of occupancy, the fee must be paid.

There are certain exemptions from the fee such as tax exempt churches, houses of worship and property used for educational purposes, provided they keep that tax exempt status. There is also an exemption for parking lots or parking structures as well as the relocation or on-site improvement to nonprofit hospitals and nursing home facilities.

The law also does not apply to certificates of occupancy issued on nonresidential development prior to the law's effective date (July 17, 2008). In addition, the law does not apply to any nonresidential planned development that is the subject of a general development approval, or nonresidential development with an executed developer's agreement or a redevelopment agreement that was in place as the time of the effective date, so long as that general development plan or agreement provides for a development fee payment of at least 1% of the equalized assessed value.

In certain instances where a developer has already paid a portion of or the entire development fee under a municipality's development fee ordinance, the 2.5% fee will be reduced by the amount already paid or committed to be paid. For instance, if a developer received an approval subject to a 1% development fee under a town's development fee ordinance and already paid half that fee or .5% at building permit, the developer would have to pay the remaining 2% of the nonresidential development fee. One essentially receives credit for payments already made.

The new law further *voids* any ordinance that imposes a fee on non-residential development or an obligation for affordable housing as a condition of nonresidential development. If the zone provides for mixed use development, with an affordable housing set-aside, the affordable obligation is only the set-aside; a fee is not charged on the nonresidential development. If the zone provides for mixed used development, *without* an affordable set-aside, then the 2.5% fee is charged on the nonresidential portion of the development.

Towns that have petitioned COAH for substantive certification are still permitted to collect development fees on residential development in accordance with COAH regulations. These towns are permitted to collect the nonresidential development fees in their own affordable housing trust fund; however, if that money is not spent within four (4) years, or some other time set by COAH, the money is then forfeited to the State's fund.

As with the new COAH regulations, there will be initial confusion and lack of uniformity by municipalities as to how to apply this new fee. Further, as stated above, the recently adopted revised COAH regulations will have to be revised yet again. Continue to visit our website for further updates on this evolving issue. This information is not to be constructed as legal advice.