

NEW LEGISLATION TO IMPACT REAL ESTATE DEVELOPMENT IN THE STATE OF NEW JERSEY

On June 23, 2008, the New Jersey Legislature passed two pieces of legislation which will have a significant impact upon residential and nonresidential development in the State of New Jersey. Developers that are in the approval process or have approvals but no certificate of occupancy will likely be impacted and should consult legal counsel.

The first piece of legislation is the Affordable Housing Reform Law, Bill A500. This Bill no longer permits regional contribution agreements (RCAs) as a means of satisfying an affordable housing obligation and imposes a state-wide nonresidential development fee of 2.5% on all nonresidential development. The Governor signed this legislation into law on **July 17, 2008**, P.L. 2008, c.46 and it took immediate effect.

The second piece of legislation was the Permit Extension Act, S1919, which extends most approvals to July 1, 2010. S1919 was also passed on June 23, 2008 by an overwhelming majority of the Legislature. On **September 6, 2008**, the Governor signed the Permit Extension Act into law and it took immediate effect.

Below is a brief summary of the two pieces of legislation.

Affordable Housing Reform Law (P.L. 2008, c.46)

Originally, under the New Jersey Fair Housing Act and COAH regulations, towns were permitted to transfer up to 50% of its affordable housing obligation to another municipality. P.L. 2008, c. 46 no longer permits RCAs. 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.

The new law also imposes a state-wide development fee of 2.5% charged on all nonresidential development regardless of whether the municipality has a development fee ordinance. 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).

Many projects that have paid a portion of a 1% or 2% development fee under a town's existing fee ordinance will be required to pay the 2.5% fee at certificate of occupancy, less what they already paid. Based upon the Affordable Housing Reform Law, the recently adopted new COAH regulations and proposed amendments thereto will have to be revised yet again.

This is just a brief summary of the Affordable Housing Reform Law and its impact upon the municipalities and nonresidential development. For a more detailed summary, please visit the Affordable Housing section of our firm's website at www.ghclaw.com/coah.shtml.

Permit Extension Act (P.L. 2008, c. 78)

The Permit Extension Act of 2008 (“PEA”) was signed into law on September 6, 2008 and became effective immediately.

The PEA provides for an extension period which is January 1, 2007 to July 1, 2010. Any permit / approval in existence during the “extension period” is tolled (meaning the running of the approval is suspended) for the extension period; however, the tolling shall not extend the approval / permit beyond six months past the extension period. Thus, if you received a permit / approval that was set to expire on September of 2008, the permit / approval would have a new expiration date of January 1, 2011 because as of January 1, 2007, the permit / approval was tolled. The duration a permit / approval would have regardless of the extension will not be shortened by the PEA.

The PEA covers almost all permits / approvals, but there are several not covered, in particular those involving “environmentally sensitive areas.” For a complete list, please visit our firm’s Real Estate, Land Use & Development section of our firm’s website at www.ghclaw.com/realestatedev.shtml, under the “Permit Extension Act” link.

This information is not to be construed as legal advice. Please contact one of the following attorneys if you have any questions or need further information.

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