



STATE LEGISLATURE PASSES BILL FOR MORATORIUM ON THE 2.5% NONRESIDENTIAL DEVELOPMENT FEE

July 1, 2009

On June 25, 2009 the New Jersey State Legislature passed Bill A4048 known as the New Jersey Economic Stimulus Act. The Bill, in part, amends the New Jersey Non-Residential Development Fee Act adopted into law on July 17, 2008 by expanding certain exemptions from the fee. The Bill has to be presented to and signed by Governor Corzine before it will become law.

The new Bill expands the exemptions from the Non-Residential Development Fee (“Development Fee”) and in essence places a moratorium on the charging of the Development Fee until July 1, 2010. In particular, if nonresidential development received or receives preliminary and / or final site plan approval prior to July 1, 2010 and the developer obtains a building permit prior to January 1, 2013, the development is exempt from the Development Fee. It is important to note that the exemption does not apply to any fee or contribution a developer paid or committed to pay prior to the effective date of the Non-Residential Development Fee Act (July 17, 2008).

A developer that received preliminary site plan approval prior to July 17, 2008 and that already made a Development Fee payment is entitled to a return of the money paid that represents the difference between monies “committed” prior to July 17, 2008 and the monies paid on or after that date. In other words, if a developer “committed” to make a payment prior to July 17, 2008 pursuant to a municipal development fee ordinance, the developer would not receive a return of that money. Unfortunately, the term “committed” is not defined.

Any developer seeking a return of monies paid must make a written request within 120 days of the effective date of the Bill. The effective date will be the date that Governor Corzine signs the Bill into law.

The Bill further provides that the municipal affordable housing obligation attributable to nonresidential development can be reduced or eliminated if the development is not subject to the Development Fee and COAH determines that there are insufficient funds in the State Affordable Housing Trust Fund or other State and federal subsidies to assist municipalities in addressing that obligation.

If you have any questions concerning the expanded exemptions to the Development Fee, the process for requesting a return of monies, or the status of the Governor’s signing of the Bill into law, please do not hesitate to contact me. This memorandum is not to be considered as legal advice but a notice to make you aware of the constantly changing area of affordable housing.



About the author:

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Craig Gianetti, Esq. is an attorney in the firm’s Land Use & Real Estate Development practice. Mr. Gianetti has experience in advising and representing private developers on affordable housing matters before COAH and municipalities, in either a cooperative or adversarial capacity. Mr. Gianetti further represents developers in prosecuting builder’s remedy lawsuits in court.

Mr. Gianetti has authored articles on affordable housing and clerked for Judge Eugene Serpentelli, who is considered an authority on land use and affordable housing matters in New Jersey.