



GOVERNOR SIGNS INTO LAW MORATORIUM ON THE 2.5% NONRESIDENTIAL DEVELOPMENT FEE

July 30, 2009

On July 27, 2009 Governor Corzine signed into law Bill A4048 known as the New Jersey Economic Stimulus Act of 2009 (the “Law”). The Law, in part, amends the New Jersey Non-Residential Development Fee Act adopted on July 17, 2008 by expanding certain exemptions from the fee.

The new Law in essence places a moratorium on the charging of the Non-Residential Development Fee (“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 monies paid representing the difference between those funds “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 and creates some ambiguity.

Any developer seeking a return of monies already paid must make a written request for a refund within 120 days of the effective date of the Law, July 28, 2009. That sets the deadline at November 25, 2009.

The Law 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 or the process for requesting a return of monies, 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.