

Non-Residential Development Fee portions of Economic Stimulus Act

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The Economic Stimulus Act of 2009, adopted by the Legislature on June 25 and signed by Governor Corzine on July 27, provides for suspension of the 2.5% Statewide Non-residential Development Fee which went into effect on July 17, 2008 ("2008 COAH Statute") and refunds of development fees paid pursuant to the 2008 COAH Statute under certain circumstances.

Suspension of the 2.5% Statewide Non-residential Development Fee:

As far as COAH relief is concerned, in very broad terms, if a project:

- (1) obtained or obtains preliminary or final site plan approval before July 1, 2010;
and
 - (2) a construction permit for the building is issued before January 1, 2013;
- the project will be exempt from the 2.5% Non-residential Development Fee.

If the bill works as intended, it will provide an incentive for developers to move forward now in an effort to obtain site plan approval for projects prior to July 2010.

The exemption subsection states that it "shall not apply to a financial or other contribution that a developer made or committed itself to make prior to [the 2008 COAH Statute]." A developer is considered to have "committed itself to make a financial or other contribution, if and only if:

- (1) the contribution has been transferred, including but not limited to when the funds have already been received by the municipality;
- (2) the developer has obligated itself to make a contribution as set forth in a written agreement with the municipality, such as a developer's agreement; or
- (3) the developer's obligation to make a contribution is set forth as a condition in a land use approval issued by a municipal land use agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)"

Refunds:

The bill provides for refunds in the case of "developments for which a fee was imposed pursuant to [the 2008 COAH Statute]."

After the bill is signed forms for requests for reimbursement should be forthcoming from the state or municipalities and those may help to narrow or define the issues which must be dealt with.

Impact on Municipalities' obligations (Refunded Amounts Replaced by Trust Fund, or Municipal Obligation reduced or eliminated):

The bill provides that "a municipality that has returned all or a portion of Non-residential fees ... shall be reimbursed from the funds available through the appropriation made into the "New Jersey Affordable Housing Trust Fund" pursuant to the new bill."

The bill provides that "the portion of the affordable housing obligation of a municipality attributable to a particular Non-residential development shall be reduced or eliminated if:

- a. the collection of fees under [the 2008 COAH Statute] is effectively suspended for a period of time pursuant to that law; and
- b. the Council on Affordable Housing, in consultation with the Department of Community Affairs, has made a determination within two years of the effective date of the new bill, that there are insufficient funds in the "New Jersey Affordable Housing Trust Fund," or through other State or federal housing subsidies available to a municipality to assist in the production of such housing units, in the same amount as would have been collected if not for the suspension thereof, pursuant to the 2.5% Non-residential development fee provisions of the 2008 COAH Statute by the date of the determination.

If you have questions, please call Anne S. Babineau, Esq.(732-855-6057).