NEW JERSEY ECONOMIC STIMULUS ACT PUTS MONEY BACK IN THE COFFERS OF NON-RESIDENTIAL DEVELOPERS

On July 27, 2009, Governor Jon Corzine signed the New Jersey Economic Stimulus Act of 2009 (A-4048). In addition to other initiatives, the Stimulus Act suspends non-residential development fees to encourage the construction of projects that are either in the process of obtaining municipal approval or have already obtained such approval but were scuttled due to the recent economic downturn. Additionally, the Stimulus Act provides some property developers with the right to a refund of previously paid fees.

BACKGROUND
In July 2008, the New Jersey Legislature enacted the Statewide Non-Residential Fee Act (the Non-Residential Fee Act), which usurped the municipalities’ authority to impose fees on non-residential development to fund affordable housing in favor of a statewide development fee of 2.5 percent. While the Non-Residential Fee Act exempted projects that had received a Certificate of Occupancy by the Act’s effective date, the 2.5 percent fee was imposed on all other pending projects that did not meet one of the Act’s narrowly tailored exemptions.

IMPACT OF THE STIMULUS ACT ON NON-RESIDENTIAL DEVELOPMENT FEES
The Stimulus Act amends the Non-Residential Fee Act by abolishing the application of the 2.5 percent fee for a non-residential property that has received either preliminary or final site plan approval prior to July 1, 2010, provided however that a construction permit is issued by the local enforcing agency having jurisdiction prior to July 1, 2011. The same exemption applies to non-residential property that received site plan approval by the New Jersey Meadowlands Commission and capital projects that have been referred to a planning board by the state, a governing body or other public agency for review prior to July 1, 2010, provided that such projects are issued a construction permit prior to January 1, 2013. The Stimulus Act clearly states that municipalities continue to be prohibited from imposing their own fees on non-residential development to fund affordable housing.

REFUND OF PREVIOUSLY PAID FEES
The Stimulus Act further provides developers with a right to a refund of a portion of the 2.5 percent fee previously paid based on when the developer received approvals and committed monies. Developers that are entitled to a refund under the Stimulus Act must file a written claim to the entity to whom the funds were paid within 120 days of the Act’s effective date. The Stimulus Act requires that the fees paid shall be returned to the claimant within 30 days of receipt of the claim.

Providing for Affordable Housing
Finally, the Stimulus Act proposes to appropriate $15 million to the New Jersey Affordable Housing Trust Fund to replace the suspended fees required to be returned to the developers. The Stimulus Act has the dual benefit of infusing liquidity back to the developers so that once-stalled development projects can be resuscitated while assuring municipalities that funding of affordable housing developments will not be adversely impacted.

For more information about this alert or any aspect of the New Jersey Economic Stimulus Act of 2009, please contact:

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