

Statewide Non-Residential Development Fee Act Moratorium

Lorissa Whitaker, Senior Associate, Triad Associates

On July 27, 2009 Governor Jon S. Corzine signed the New Jersey Economic Stimulus Act of 2009 into law. This law, authorized to improve State economic conditions, provided considerable modifications to various legislative economic development initiatives, including amendments to the Urban Transit Hub Tax Credit program, replacement of the Revenue Allocation District (RAD) program with the newly introduced Economic Redevelopment Growth Grant (ERGG) program and supplementary revisions intended to affect higher education financing and the technology business tax certificate transfer program. More importantly, the law amended Sections 32 through 38 of P.L. 2005, c.46, known as the Statewide Non-residential Development Fee Act.

The Statewide Non-residential Development Fee Act (N-RDF), enacted approximately a year prior to the effective date of the Economic Stimulus Act of 2009, provided various reforms to New Jersey State affordable housing laws. In fact, its major intention was to provide a continuous source of funding for the creation and development of the New Jersey's constitutionally mandated affordable housing responsibility – an important aspect of providing affordable housing to a portion of New Jersey's 8 million plus residents.

Established by the widely-known A-500 bill in July of 2008, the N-RDF imposed a 2.5% development fee on all new non-residential development throughout the State. This act also exempts certain types of development from the fee, such as houses of worship, non-profit buildings and developments located within Transit Villages and hubs as identified by the State. The fee, which must be paid in full prior to obtaining a certificate of occupancy, is calculated utilizing the project's determined equalized assessed value, as provided by a municipality's tax assessor. However, the fee is structured differently based on certain conditions of the development (improved, unimproved, additions and etcetera) and may be appealed by a developer. It is important to note that these fees can only be retained by eligible municipalities – defined as having an affordable housing trust fund approved by the New Jersey Council on Affordable Housing (COAH) or a court of competent jurisdiction. As of June of 2009, there are about 355 Municipal Affordable Housing Trust Funds, while the other 211 municipalities collecting these fees would have to direct those resources to the New Jersey Affordable Housing Trust Fund.

In response to what many have called the "Great Recession", the Economic Stimulus Act of 2009 targeted the N-RDF by placing a temporary moratorium on the collection of these fees by municipalities. It also authorized reimbursement of these fees, either in part or in full, that were collected under P.L. 2008, c. 46.

More specifically, the Economic Stimulus Act provides for the following scenarios:

1. Municipalities that collected monies under Sections 32 through 38 of P.L. 2008, c. 46 (N-RDF) are to be reimbursed at an amount equivalent to the difference between what was paid under said provision and what would have been paid under any ordinance or agreement in place **prior to July 17, 2008**;

2. Municipalities that collected monies at 2.5% **on or after** July 17, 2008 under Sections 32 through 38 of P.L. 2008, c. 46 (N-RDF) are to be reimbursed that amount in full; and
3. Effective July 27, 2009, non-residential development is exempt from all fee collection provided the development meets **both** of the following stipulations:
 - It must receive preliminary or final site plan approval prior to July 1, 2010; **and**
 - Building permits must be issued prior to January 1, 2013.

A developer seeking reimbursement must file a claim to the governmental entity, which collected the fee (state or local) by **November 30, 2009**. The governmental entity will have **30 days** from the developer's request to pay the reimbursement. Any claims received after close of business November 30, 2009 will be denied.

A municipality that has returned all or a portion of non-residential fees to a developer in accordance with the Economic Stimulus Act shall be reimbursed from the funds available through the \$15 million appropriation made into the New Jersey Affordable Housing Trust Fund. A municipality that seeks reimbursement from the New Jersey Affordable Housing Trust Fund must submit its request to COAH by the close of business on **March 30, 2010**. The reimbursement will be provided by COAH and shall be made within **30 days** of the municipality providing written notice. COAH and the New Jersey Department of Treasury have provided N-RDF claim forms for both developers and municipalities seeking reimbursement. They can be found at the following website: <http://www.state.nj.us/dca/affiliates/coah/regulations/nrdf.html>.

The amendments also provide that the affordable housing obligation generated by a project exempted by Section 40 of the Economic Stimulus Act of 2009 may be "eliminated or reduced" if replacement revenues "available to the municipality" are identified by COAH. There may be instances to potentially reduce and/or eliminate any given obligation generated by a project that would have otherwise provided financing for the construction of affordable housing. Although the New Jersey Department of Community Affairs has projected \$60 to \$80 million in fee generation for the first year alone, it has been estimated that the Statewide Non-residential Development Fee has only generated \$10 million – a likely reflection of the "Great Recession".

Proof of request for reimbursement is necessary for municipalities that seek to have their affordable housing obligations reduced or eliminated. COAH has two years from the effective date of the Economic Stimulus Act to make this determination, or by **July 28, 2011**.

Triad Associates is currently the League's Grant Consulting Firm. Their firm, which is known for its expertise in community and economic development, including strategic planning, redevelopment, acquisition, relocation and funding, has brought diverse plans and projects to life by generating more than \$580,000,000 for over 120 public, private and nonprofit clients throughout the Northeast region since 1978. Every member of the Triad team is personally committed and dedicated to the success of its clients and the projects that benefit communities.