

Challenging Non-Residential Development Fees in New Jersey

Articles

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Pursuant to the Non-Residential Development Fee Act, municipalities are required to impose a non-residential development fee of 2.5% of the equalized assessed value on developments seeking approval. N.J.S.A. 40:55D-8.4(a) establishes two different assessments of the Non-Residential Development Fee, one for new non-residential construction on vacant land and one for structural additions on sites with existing improvements. When the land being developed is vacant, the Non-Residential Development Fee is 2.5% of the equalized assessed value of land and improvements of the final development. When the land being developed has existing improvements, the Non-Residential Development Fee is 2.5% of the equalized assessed value of the new improvements only; the equalized assessed value of the land and improvements existing at the time a construction permit was sought are excluded from the calculation of the fee.

The term "Equalized Assessed Value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated.

All developers involved in the construction of non-residential development must complete Form N-RDF prior to applying for a construction permit or requesting a Certificate of Occupancy. A Certificate of Occupancy will not be issued without proof of payment of a non-residential development fee or proof of an exemption.

When the development fee is determined, the developer can either pay the fee and take no further action or challenge the amount of the development fee by appealing the assessor's determination of Equalized Assessed Value. Under N.J.S.A. 40:55D-8.6(b), a developer may challenge non-residential development fees imposed pursuant to P.L.2008, c. 46 (C.52:27D-329.1 et al.) by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the municipality or by the State, as the case may be. Appeals from a determination of the director may be made to the Tax Court of New Jersey in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

For more information about New Jersey's Non-Residential Development Fee Act and how to challenge non-residential development fees, contact **Alex Paul Genato** in Archer's **Real Estate Tax Appeal Group** at 609-580-3706 or agenato@archerlaw.com.

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