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Tax Court Clarifies Exemption from Non-Residential Development Fee

New Jersey's Non-Residential Development Fee (NRDF) is a fee paid by non-residential developers toward a municipality's affordable housing obligation. The fee can be substantial, but certain types of projects are exempt from payment of the NRDF under N.J.S.A. 40:55D-8.4(b). In a decision reported on July 29, the New Jersey Tax Court clarified the exemption provided for payment of the NRDF for projects located within a specifically delineated urban transit hub pursuant to N.J.S.A. 40:55D-8.4(b)(4).

In *Jaguar Land Rover North America v. Director, Division of Taxation et al.,* the Tax Court affirmed the director's denial of an exemption from the NRDF, holding that to be exempt from the NRDF, a project must be within a specifically delineated urban transit hub *and* must be located within a one-half-mile radius surrounding the midpoint of a New Jersey Transit Corp., Port Authority Transit Corp. or Port Authority Trans-Hudson Corp. rail station platform area. The taxpayer claimed that because the subject property was within one-half mile of a New Jersey Transit rail station platform (in Suffern, New York), it was exempt from payment of the NRDF on its project. The director ruled that it was not sufficient that the project be within a one-half-mile radius of a train station of one of the transit entities, but the project also had to be in an area that the New Jersey Economic Development Authority (NJEDA) named as an urban transit hub under the authority granted by N.J.S.A. 34:1B-209(e)(1). The taxpayer appealed, claiming the project could meet either one of these requirements to qualify for the exemption. The taxpayer conceded for purposes of the case that the municipality where the project was located was not a specifically delineated urban transit hub designated by the NJEDA. The Tax Court found that the plain language of N.J.S.A. 34:1B-208 (defining an urban transit hub) was unambiguous and that to meet the definition of an urban transit hub, a project needed to be both within a one-half-mile radius of a transit corporation rail platform and delineated by the NJEDA. The Tax Court therefore held that although the project was within a one-half-mile radius of the New Jersey Transit Corp. Suffern Station, it had not been specifically delineated by the NJEDA as an urban transit hub, and therefore it was not exempt from the NRDF. The Tax Court noted that the NJEDA provided a list of 10 large, urban New Jersey municipalities eligible for urban transit hub classification on its website, although the Tax Court indicated that the statutory definition under N.J.S.A. 34:1B-208 might include other municipalities.

The upshot of the Tax Court's decision is that a developer should not assume, simply because a project is being developed within one-half mile of a rail transit platform, that it will be exempt from payment of the NRDF. Further investigation at the municipal and the NJEDA levels is necessary to determine if a particular municipality in which a project is located has been designated as an urban transit hub pursuant to N.J.S.A. 34:1B-209(e)(1).

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