

1988--A

2009-2010 Regular Sessions

I N S E N A T E

February 10, 2009

Introduced by Sens. VALESKY, THOMPSON -- read twice and ordered printed,
and when printed to be committed to the Committee on Local Government
-- recommitted to the Committee on Local Government in accordance with
Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered
reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to vested rights
relating to land development

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The general municipal law is amended by adding a new arti-
2 cle 7-B to read as follows:

3 ARTICLE 7-B
4 VESTED RIGHTS RELATING TO LAND DEVELOPMENT

5 SECTION 150. VESTED RIGHTS RELATING TO LAND DEVELOPMENT.
6 S 150. VESTED RIGHTS RELATING TO LAND DEVELOPMENT. 1. THERE SHALL BE
7 A PRESUMPTION, REBUTTABLE BY A MUNICIPALITY ONLY PURSUANT TO SUBDIVISION
8 TWO OF THIS SECTION BY CLEAR AND CONVINCING EVIDENCE, THAT MUNICIPAL
9 ZONING, PLANNING, ENVIRONMENTAL, AND ALL OTHER APPLICABLE VILLAGE, TOWN,
10 OR CITY ORDINANCES, REGULATIONS, AND OTHER ENACTMENTS REGULATING THE
11 DEVELOPMENT OF LAND WHICH ARE APPLICABLE TO A PARTICULAR PARCEL OF LAND
12 AS OF THE NINTH MONTH AFTER THE FILING DATE OF AN APPLICATION FOR SITE
13 PLAN, SUBDIVISION, OR OTHER DEVELOPMENT PLAN APPROVAL OF SUCH PARCEL,
14 WHICH APPLICATION MEETS ALL NON-DISCRETIONARY REQUIREMENTS SPECIFIED
15 THEREFORE, AND IS ACCOMPANIED BY AN ENVIRONMENTAL ASSESSMENT FORM, IF
16 REQUIRED, OR AT THE DISCRETION OF THE APPLICANT A DRAFT ENVIRONMENTAL
17 IMPACT STATEMENT, SHALL REMAIN APPLICABLE TO THE PROPOSED PROJECT THAT
18 IS THE SUBJECT OF THE APPLICATION OR THE DRAFT ENVIRONMENTAL IMPACT
19 STATEMENT FOR A PERIOD OF SIX YEARS AFTER THE FILING DATE, AS LONG AS IT
20 IS BEING PURSUED WITH REASONABLE EFFORTS BY THE APPLICANT. IF NO STATE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 OR LOCAL AGENCY HAS DISCRETIONARY AUTHORITY OVER THE PROJECT, THE FILING
2 DATE SHALL BE THAT OF THE FILING OF AN APPLICATION FOR A BUILDING
3 PERMIT, IN WHICH CASE NO ENVIRONMENTAL DOCUMENTATION NEED BE FILED IN
4 ORDER FOR THIS SECTION TO APPLY.

5 2. IN ORDER TO REBUT THE PRESUMPTION ESTABLISHED PURSUANT TO SUBDIVI-
6 SION ONE OF THIS SECTION, A MUNICIPAL BOARD MUST ADOPT A DETAILED WRIT-
7 TEN FINDING AND HAS THE BURDEN OF PROOF TO SHOW BY CLEAR AND CONVINCING
8 EVIDENCE THAT:

9 A. A CHANGE IN APPLICABLE FEDERAL OR STATE LAWS, RULES, OR REGULATIONS
10 ALTERS THE RELEVANT REQUIREMENTS; OR

11 B. NEWLY DISCOVERED INFORMATION OR CHANGES IN CIRCUMSTANCES SPECIF-
12 ICALLY RELATED TO THE PROPOSED PROJECT OR ITS SITE, WILL ESTABLISH THAT:

13 (I) THE PROJECT IS LIKELY TO HARM OR ENDANGER THE PUBLIC HEALTH, SAFE-
14 TY, OR BIOLOGICAL HABITAT; AND

15 (II) SUCH HARM OR ENDANGERMENT WILL NOT BE PREVENTED BY EXISTING LAWS,
16 CODES, ORDINANCES, RULES, OR REGULATIONS, OR BY GOVERNMENTAL ENTITIES;
17 OR

18 C. THE MUNICIPAL BOARD IS APPLYING A NEW OR ALTERED REQUIREMENT THAT
19 HAS BEEN THE SUBJECT OF A DRAFT ENVIRONMENTAL IMPACT STATEMENT THAT WAS
20 FILED BEFORE THE FILING DATE OF THE SUBJECT APPLICATION, AND HAS SUBSE-
21 QUENTLY BECOME FINAL IN NOT SUBSTANTIALLY MORE STRINGENT FORM THAN THAT
22 DESCRIBED IN SUCH DOCUMENT, INsofar AS IS RELEVANT TO THE SUBJECT
23 PROJECT.

24 3. SUCH A FINDING SHALL BE DEEMED TO BE A FINAL AGENCY ACTION FOR
25 PURPOSES OF ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES
26 AND MUST BE CHALLENGED WITHIN FOUR MONTHS OF THE ADOPTION OF THE FINDING
27 BY A MUNICIPAL BOARD.

28 4. NOTHING IN THIS SECTION SHALL BE INTERPRETED TO PRECLUDE:

29 A. THE ADMINISTRATION OF ALL EXISTING LAWS, RULES AND REGULATIONS AS A
30 RESULT OF WHICH THERE COULD BE REQUIREMENTS IMPOSED ON THE PROPOSED
31 PROJECT; OR

32 B. CHANGES TO SUCH LAWS, RULES AND REGULATIONS THAT WOULD AFFECT
33 FUTURE APPLICATIONS.

34 5. THIS SECTION SHALL NOT APPLY TO APPLICATIONS REQUIRING CHANGES IN
35 ZONING PROVISIONS THAT ARE SOUGHT BY THE APPLICANT IN CONNECTION WITH
36 THE PROPOSED PROJECT PRIOR TO THE ADOPTION OF ANY SUCH CHANGES.

37 6. ANY SUBSTANTIAL CHANGES TO THE PROPOSED PROJECT WHICH IS THE
38 SUBJECT OF THE APPLICATION BY THE APPLICANT, WHICH HAVE NOT BEEN GENER-
39 ATED IN RESPONSE TO A COMMENT (EXCEPTING A COMMENT BY, ON BEHALF OF OR
40 AT THE BEHEST OF THE APPLICANT) DURING THE REVIEW PROCESS, WILL BE
41 DEEMED A NEW APPLICATION.

42 S 2. This act shall take effect on the one hundred eightieth day after
43 it shall have become a law.