S T A T E O F N E W Y O R K

4282

2013-2014 Regular Sessions

I N S E N A T E

March 19, 2013

Introduced by Sen. LITTLE -- (at request of the Adirondack Park Agency) -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation

AN ACT to amend the executive law, in relation to applications for minor and major projects before the Adirondack park agency

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

Section 1. Paragraphs b and d of subdivision 2 of section 809 of the executive law, as amended by chapter 428 of the laws of 1979, are amended to read as follows:

b. [On or before fifteen calendar days after the receipt of such application] WITHIN FIFTEEN DAYS OF THE RECEIPT OF AN APPLICATION, the agency shall [notify] MAIL WRITTEN NOTICE TO the project sponsor by certified mail DETERMINING whether or not the application is complete. For the purposes of this section, a "complete application" shall mean an application for a permit which is in an approved form and is determined by the agency to be complete for the purpose of commencing review of the application but which may need to be supplemented during the course of review as to matters contained in the application in order to enable the agency to make the findings and determinations required by this section. If the agency fails to mail such notice within such fifteen-day period, the application shall be deemed complete. If the agency determines the application is not complete, the notice shall include a concise statement of the respects in which the application is incomplete, AND A REQUEST FOR ADDITIONAL INFORMATION. [The submission by the project sponsor of the requested additional information shall commence a new fifteen calendar day period for agency review of the additional information for the purposes of determining completeness. If the agency determines the application is complete, the notice shall so state.] WITHIN FIFTEEN DAYS OF THE RECEIPT OF THE REQUESTED ADDITIONAL INFORMATION, THE AGENCY SHALL

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

LBD08961-01-3

MAIL WRITTEN NOTICE TO THE PROJECT SPONSOR BY CERTIFIED MAIL DETERMINING WHETHER OR NOT THE APPLICATION IS COMPLETE.

A notice of application completion shall not be required in the case of applications for minor projects which the agency determines to be complete when filed. Such applications shall be deemed complete for the purposes of this section upon the date of receipt.

d. [Immediately upon] UPON determining that an application is complete, the agency shall, except in relation to minor projects, cause a notice of application COMPLETION to be published in the next available environmental notice bulletin published by the department of environmental conservation pursuant to section 3-0306 of the environmental conservation law[, which publication shall be not later than ten calendar days after the date of such notice]. The time period for public comment on a permit application shall be stated in the notice of application COMPLETION. The agency shall at the same time mail a copy of the notice of application completion to the Adirondack park local government review board and to the persons named in paragraph a of THIS subdivision [two of this section], and invite their comments.

S 2. Paragraphs b, c, d and e of subdivision 3 of section 809 of the executive law, as amended by chapter 428 of the laws of 1979, are amended to read as follows:

b. In the case of an application for a permit for which no public hearing has been held, the agency SHALL MAIL ITS decision [shall be mailed on or before] WITHIN ninety [calendar] days or, in the case of a minor project, WITHIN forty-five [calendar] days[, after] OF (I) THE DATE the agency [notifies] MAILS the project sponsor [that the application is complete] THE NOTICE OF APPLICATION COMPLETION or [after] (II) THE DATE the application is deemed complete pursuant to the provisions of this [section] SUBDIVISION.

c. In the case of an application for a permit for which a public hearing has been held, the agency SHALL MAIL ITS decision [shall be mailed on or before] WITHIN sixty [calendar] days [after] OF receipt by the agency of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section three hundred two of the state administrative procedure act.

d. If the agency determines to hold a public hearing on an application for a permit, the agency shall [notify] MAIL WRITTEN NOTICE TO the project sponsor of its determination by certified mail [on or before sixty calendar] WITHIN SIXTY days or, in the case of a minor project, WITHIN forty-five [calendar] days [after] OF (I) THE DATE the agency [notifies] MAILS the project sponsor [that] the NOTICE OF application [is complete] COMPLETION or [after] (II) THE DATE the application is deemed complete pursuant to the provisions of this [section] SUBDIVISION. The determination of whether or not to hold a public hearing on an application shall be based on whether the agency's evaluation or comments of the review board, local officials or the public on a project raise substantive and significant issues relating to any findings or determinations the agency is required to make pursuant to this section, including the reasonable likelihood that the project will be disapproved or can be approved only with major modifications because the project as proposed may not meet statutory or regulatory criteria or standards. The agency shall also consider the general level of public interest in a project. No project may be disapproved without a public hearing first being held thereon.

e. If the agency has notified the project sponsor of its determination to hold a public hearing, the sponsor shall not undertake the project

during the time period specified in paragraph c of this subdivision. The notice of determination to hold a public hearing shall state that the project sponsor has the opportunity within fifteen days to withdraw his application or submit a new application. A public hearing shall commence [on or before ninety calendar] WITHIN NINETY days, or in the case of a minor project, WITHIN seventy-five days, [after] OF THE DATE the agency [notifies] MAILS NOTICE TO the project sponsor [that the application is complete or after the application is deemed complete pursuant to the provisions of this section] OF ITS DETERMINATION TO HOLD A PUBLIC HEARING. In addition to notice of such hearing being mailed to the project sponsor, such notice shall also be given by publication at least once in the environmental notice bulletin and in a newspaper having general circulation in each local government wherein the project is proposed to be located, by conspicuous posting of the land involved, and by individual notice served by certified mail upon each owner of record of the land involved, and by mail upon: the Adirondack park local government review board, the persons named in paragraph a of subdivision two of this section, any adjoining landowner, to the extent reasonably discernible from the latest completed tax assessment roll, and the clerk of any local government within five hundred feet of the land involved. Public hearings held pursuant to this section shall be consolidated or held jointly with other state or local agencies whenever practicable.

S 3. Paragraph c of subdivision 6 of section 809 of the executive law, as amended by chapter 428 of the laws of 1979, is amended to read as follows:

c. At any time during the review of an application for a permit or a request by a permit holder for the renewal, reissuance, or modification of an existing permit pursuant to subdivision eight of this section, the agency may request additional information from the project sponsor or permit holder with regard to any matter contained in the application or request when such additional information is necessary for the agency to make any findings or determinations required by law. Such a request shall not extend any time period for agency action contained in this section, UNLESS THE AGENCY DETERMINES THAT SUCH RENEWAL, REISSUANCE, OR MODIFICATION WOULD CONSTITUTE A MATERIAL CHANGE, IN WHICH CASE AT THE AGENCY'S DISCRETION SUCH RENEWAL, REISSUANCE, OR MODIFICATION SHALL BE TREATED AS A NEW APPLICATION WITH NEW TIME PERIODS. Failure by the project sponsor or permit holder to provide such information may be grounds for denial by the agency of the application or request.

S 4. Paragraph a of subdivision 7 of section 809 of the executive law, as separately amended by chapters 428 and 578 of the laws of 1979, is amended to read as follows:

a. A PROJECT AUTHORIZED BY A permit or certificate issued by the agency pursuant to subdivision five or six of this section shall [expire within sixty days from the date thereof unless within such sixty-day period such permit or certificate] NOT BE UNDERTAKEN UNLESS AND UNTIL IT shall have been duly recorded in the name of the landowner in the office of the clerk of the county wherein the project is proposed to be located. Where a permit OR CERTIFICATE involves action in concert by two or more landowners as described by paragraph c of subdivision ten of this section, the permit OR CERTIFICATE shall be recorded in the name of each landowner. ANY SUCH PERMIT OR CERTIFICATE, WHETHER OR NOT RECORDED, SHALL BE EFFECTIVE AND SHALL BE ENFORCEABLE AGAINST ANY PERSON UNDERTAKING THE PROJECT PERMITTED AND SUBSEQUENT LANDOWNERS.

S 5. Paragraph b of subdivision 8 of section 809 of the executive law, as added by chapter 428 of the laws of 1979, is amended to read as follows:

b. A permit holder may make written request to the agency for the renewal, reissuance, or modification of an existing permit. Such a request shall be accompanied by sufficient information supporting the request for the agency action sought.

(1) UPON RECEIPT OF SUFFICIENT INFORMATION, THE AGENCY SHALL MAIL WRITTEN NOTICE TO THE PROJECT SPONSOR THAT SUFFICIENT INFORMATION HAS BEEN PROVIDED.

(2) In the case of a request TO THE AGENCY FOR A MODIFICATION TO THE PERMIT which does not involve a material change in permit conditions, OR THE PROJECT, the applicable law, environmental conditions or technology since the date of issuance of the existing permit, the agency shall [on or before] WITHIN fifteen [calendar] days [after the receipt of a request] OF THE DATE OF THE NOTICE PROVIDED PURSUANT TO SUBPARAGRAPH ONE OF THIS PARAGRAPH mail a written determination to the permit holder of its decision [on] TO GRANT OR DENY the request. If the decision is to deny the request, the permit holder shall be afforded an opportunity for hearing and notice of such decision shall be given by the agency in the next available issue of the environmental notice bulletin.

[(2)] (3) In the case of a request which may involve a material change as described in subparagraph [one] TWO of this paragraph, the agency shall [on or before] WITHIN fifteen [calendar] days [after the receipt of a request] OF THE DATE OF THE NOTICE PROVIDED PURSUANT TO SUBPARAGRAPH ONE OF THIS PARAGRAPH mail a written determination to the permit holder that the request shall be treated as an application for a new permit.

If pursuant to subparagraph [one] TWO or [two] THREE of this paragraph, the agency fails to mail a written determination to the permit holder within such fifteen [calendar] day period, the provisions of subdivision six of this section shall apply.

S 6. Paragraph c of subdivision 10 of section 809 of the executive law, as amended by chapter 578 of the laws of 1979, is amended to read as follows:

c. The project would be consistent with the overall intensity [guideline] GUIDELINES for the land [use area involved] INCLUDED IN THE PROJECT. A landowner shall not be allowed to construct[, either directly or as a result of a proposed subdivision,] more principal buildings on the land included within the project than the overall intensity [guideline] GUIDELINES for [the given land use area in which the project is located] SUCH LAND. [In determining the] THE land area upon which the intensity guideline is calculated [and which is included within a project, the landowner shall only include land under his ownership and may include all adjacent land which he owns within that land use area irrespective of such dividing lines as lot lines, roads, rights of way, or streams and, in the absence of local land use programs governing the intensity of land use and development, irrespective of local government boundaries] MAY INCLUDE ALL LAND WITHIN THE PROJECT IN THE GIVEN LAND USE AREA IRRESPECTIVE OF SUCH DIVIDING LINES AS LOT LINES, ROADS, RIGHTS OF WAY, OR STREAMS AND, IN THE ABSENCE OF LOCAL LAND USE PROGRAMS GOVERNING THE INTENSITY OF LAND USE AND DEVELOPMENT, IRRESPECTIVE OF LOCAL GOVERNMENT BOUNDARIES. PRINCIPAL BUILDINGS PROPOSED AS PART OF THE PROJECT SHALL NOT BE COUNTED IN APPLYING THE INTENSITY GUIDELINES PROVIDED THAT: (1) EACH SUCH PRINCIPAL BUILDING SHALL CORRESPOND TO A PERMANENT REDUCTION BY ONE PRINCIPAL BUILDING OF THE LAWFULLY AVAILABLE

DEVELOPMENT INTENSITY OF LANDS, WHETHER OR NOT THEY ARE LANDS INCLUDED IN THE PROJECT, THAT ARE IN THE SAME OR ANY MORE RESTRICTIVE LAND USE AREA AND WITHIN THE SAME LOCAL GOVERNMENT BOUNDARY; AND (2) NO SUCH PROPOSED PRINCIPAL BUILDING SHALL BE LOCATED WITHIN ONE-QUARTER MILE OF ANY LAKE, POND, NAVIGABLE RIVER OR STREAM. Principal buildings in existence within the [area included within a project, as such area is defined by the landowner,] LAND OWNERSHIP PROPOSED FOR THE PROJECT shall be counted in applying the intensity guidelines. [As between two or more separate landowners in a given land use area the principal buildings on one landowner's property shall not be counted in applying the intensity guidelines to another landowner's project, except that two or more landowners whose lands are directly contiguous and located in the same general tax district or special levy or assessment district may, when acting, in concert in submitting a project, aggregate such lands for purposes of applying the intensity guidelines to their lands thus aggregated.] The area upon which the intensity guideline is calculated shall not include (a) bodies of water, such as lakes and ponds, (b) any land in the same ownership that is directly related to any principal building in existence on August first, nineteen hundred seventy-three, which land is not included in the project, and (c), in the case of any principal building constructed after August first, nineteen hundred seventy-three, any land in the same or any other ownership that was included within the area of any previous project in order to comply with the overall intensity guideline.

S 7. This act shall take effect immediately and shall apply to all applications received after it shall have become a law.