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

1988--B

2009-2010 Regular Sessions

I N S E N A T E

February 10, 2009

Introduced by Sen. VALESKY -- 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 -- 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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

ARTICLE 7-B
VESTED RIGHTS RELATING TO LAND DEVELOPMENT

SECTION 150. VESTED RIGHTS RELATING TO LAND DEVELOPMENT.

S 150. VESTED RIGHTS RELATING TO LAND DEVELOPMENT. 1. THERE SHALL BE A PRESUMPTION, REBUTTABLE BY A MUNICIPALITY ONLY PURSUANT TO SUBDIVISION TWO OF THIS SECTION BY CLEAR AND CONVINCING EVIDENCE, THAT MUNICIPAL ZONING, PLANNING, ENVIRONMENTAL, AND ALL OTHER APPLICABLE VILLAGE, TOWN, OR CITY ORDINANCES, REGULATIONS, AND OTHER ENACTMENTS REGULATING THE DEVELOPMENT OF LAND WHICH ARE APPLICABLE TO A PARTICULAR PARCEL OF LAND AS OF THE NINTH MONTH AFTER THE FILING DATE OF AN APPLICATION DEEMED COMPLETED BY THE MUNICIPALITY FOR SITE PLAN, SUBDIVISION, OR OTHER DEVELOPMENT PLAN APPROVAL OF SUCH PARCEL, WHICH APPLICATION MEETS ALL NON-DISCRETIONARY REQUIREMENTS SPECIFIED THEREFOR, INCLUDING, BUT NOT LIMITED TO A SURVEY PREPARED BY A LICENSED SURVEYOR AND PLANS PREPARED BY A LICENSED ENGINEER OR ARCHITECT AND IS ACCOMPANIED BY AN ENVIRONMENTAL ASSESSMENT FORM, IF REQUIRED, OR AT THE DISCRETION OF THE APPLI-

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

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CANT A DRAFT ENVIRONMENTAL IMPACT STATEMENT, SHALL REMAIN APPLICABLE TO THE PROPOSED PROJECT THAT IS THE SUBJECT OF THE APPLICATION OR THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR A PERIOD OF SIX YEARS AFTER THE FILING DATE, AS LONG AS IT IS BEING PURSUED WITH REASONABLE EFFORTS BY THE APPLICANT. IF NO STATE OR LOCAL AGENCY HAS DISCRETIONARY AUTHORITY OVER THE PROJECT, THE FILING DATE SHALL BE THAT OF THE FILING OF AN APPLICATION FOR A BUILDING PERMIT, TOGETHER WITH A SURVEY PREPARED BY A LICENSED SURVEYOR AND PLANS PREPARED BY A LICENSED ENGINEER OR ARCHITECT IN WHICH CASE NO ENVIRONMENTAL DOCUMENTATION NEED BE FILED IN ORDER FOR THIS SECTION TO APPLY. WRITTEN NOTICE OF SUCH APPLICATION, EXCEPT IN THE CASE OF A ONE-FAMILY DWELLING, SHALL BE GIVEN BY THE APPLICANT TO ALL PROPERTY OWNERS WITHIN A DISTANCE OF TWO HUNDRED FIFTY FEET OF THE APPLICANT'S PROPERTY LINES BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESS ON THE TAX RECORDS. THE APPLICANT SHALL FILE AN AFFIDAVIT WITH THE MUNICIPALITY OF THE MAILING OF SUCH NOTICE.

2. IN ORDER TO REBUT THE PRESUMPTION ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, A MUNICIPAL BOARD MUST ADOPT A DETAILED WRITTEN FINDING AND HAS THE BURDEN OF PROOF TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT:

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

B. NEWLY DISCOVERED INFORMATION OR CHANGES IN CIRCUMSTANCES SPECIFICALLY RELATED TO THE PROPOSED PROJECT OR ITS SITE, WILL ESTABLISH THAT:

(I) THE PROJECT IS LIKELY TO HARM OR ENDANGER THE PUBLIC HEALTH, SAFETY, GENERAL WELFARE OR BIOLOGICAL HABITAT; AND

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

C. THE MUNICIPAL BOARD IS APPLYING A NEW OR ALTERED REQUIREMENT THAT HAS BEEN THE SUBJECT OF A DRAFT ENVIRONMENTAL IMPACT STATEMENT THAT WAS FILED BEFORE THE FILING DATE OF THE SUBJECT APPLICATION, AND HAS SUBSEQUENTLY BECOME FINAL IN NOT SUBSTANTIALLY MORE STRINGENT FORM THAN THAT DESCRIBED IN SUCH DOCUMENT, INSOFAR AS IS RELEVANT TO THE SUBJECT PROJECT.

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

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

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

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

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

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

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