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

1923

2009-2010 Regular Sessions

I N A S S E M B L Y

January 14, 2009

Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the town law, the general city law and the village law, in relation to authorizing towns, cities, and villages to require an applicant for a land use approval to agree to defend, indemnify, release, and hold harmless such local governments from any claim, action, or proceeding brought against such local governments in relation to land use approvals

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

Section 1. Legislative findings. The legislature hereby finds that towns, cities, and villages commit substantial time and resources to comply with necessary state and other requirements before granting a land use approval. Judicial challenges to said approvals are costly and time consuming for local government. In addition, said challenges often seek financial awards, damages, and attorneys' fees. Applicants are the primary beneficiaries of such approvals. Therefore, it is appropriate that local governments be given the authority to require applicants to agree to bear the cost of defending such claims, actions, or proceedings, and bear the responsibility for any costs, attorneys' fees and damages which may be awarded to a successful challenger.

S 2. The town law is amended by adding a new section 261-d to read as follows:

S 261-D. INDEMNIFICATION AGREEMENTS. 1. DEFINITION. AS USED IN THIS SECTION, "LAND USE APPROVAL" SHALL MEAN AN APPROVAL GRANTED BY A TOWN FOR A CHANGE OF ZONE, SUBDIVISION, SITE PLAN, SPECIAL PERMIT, SPECIAL EXCEPTION, VARIANCE, OR OTHER LAND USE PERMIT GRANTED PURSUANT TO THIS ARTICLE.

2. AUTHORITY. IN ADDITION TO EXISTING POWERS AND AUTHORITIES TO REGULATE PLANNING, LAND USE, OR ZONING, A TOWN BOARD SHALL HAVE THE AUTHORITY TO REQUIRE AN APPLICANT FOR A LAND USE APPROVAL TO FILE WITH THE

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

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TOWN, AS A CONDITION OF PROCESSING THE APPLICATION, A FULLY EXECUTED INDEMNIFICATION AGREEMENT. SAID AGREEMENT SHALL REQUIRE THE APPLICANT TO DEFEND, INDEMNIFY, RELEASE, AND HOLD HARMLESS THE TOWN FROM ANY CLAIM, ACTION, OR PROCEEDING BROUGHT AGAINST THE TOWN TO ANNUL A LAND USE APPROVAL OR ANY CONDITION OF SAID APPROVAL. SAID INDEMNIFICATION AGREEMENT SHALL INCLUDE DAMAGES AWARDED AGAINST THE TOWN, IF ANY, COST OF SUIT, ATTORNEYS' FEES, AND OTHER EXPENSES INCURRED IN CONNECTION WITH SUCH ACTION.

3. AGREEMENT PROVISIONS. THE AGREEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING PROVISIONS:

(A) THE TOWN SHALL NOTIFY AN APPLICANT OF ANY CLAIM, ACTION, OR PROCEEDING TO ANNUL A LAND USE APPROVAL OR ANY CONDITION OF APPROVAL WITHIN THIRTY DAYS. IF THE APPLICANT IS NOT SO NOTIFIED, THE APPLICANT SHALL NOT THEREAFTER BE RESPONSIBLE TO DEFEND, INDEMNIFY, OR HOLD HARMLESS THE TOWN.

(B) THE TOWN SHALL FULLY COOPERATE IN THE DEFENSE OF THE CLAIM, ACTION, OR PROCEEDING. IF THE TOWN FAILS TO DO SO, THE APPLICANT SHALL NOT THEREAFTER BE RESPONSIBLE, TO DEFEND, INDEMNIFY, OR HOLD HARMLESS THE TOWN.

(C) THE TOWN SHALL RETAIN THE RIGHT TO PARTICIPATE IN THE DEFENSE OF THE CLAIM, ACTION, OR PROCEEDING IF IT BEARS THE COST OF ITS OWN ATTORNEY AND DEFENDS THE ACTION IN GOOD FAITH.

(D) THE APPLICANT SHALL NOT BE REQUIRED TO PAY OR PERFORM ANY SETTLEMENT UNLESS THE SETTLEMENT IS APPROVED BY THE APPLICANT.

(E) THE APPLICANT SHALL INDEMNIFY THE TOWN FOR ALL OF THE TOWN'S COSTS, FEES, AND DAMAGES WHICH ARE INCURRED BY THE TOWN IN ENFORCING THE INDEMNIFICATION AGREEMENT.

4. AGREEMENT APPROVAL. THE FORM OF THE INDEMNIFICATION AGREEMENT SHALL BE APPROVED BY THE TOWN BOARD BY RESOLUTION.

5. PAYMENT ON DEMAND. THE APPLICANT SHALL PAY TO THE TOWN UPON DEMAND ANY AMOUNT OWED TO THE TOWN PURSUANT TO THE INDEMNIFICATION AGREEMENT REQUIREMENTS PRESCRIBED IN THIS SECTION.

S 3. The general city law is amended by adding a new section 81-g to read as follows:

S 81-G. INDEMNIFICATION AGREEMENTS. 1. DEFINITION. AS USED IN THIS SECTION, "LAND USE APPROVAL" SHALL MEAN AN APPROVAL GRANTED BY A CITY FOR A CHANGE OF ZONE, SUBDIVISION, SITE PLAN, SPECIAL PERMIT, SPECIAL EXCEPTION, VARIANCE, OR OTHER LAND USE PERMIT GRANTED PURSUANT TO THIS ARTICLE.

2. AUTHORITY. IN ADDITION TO EXISTING POWERS AND AUTHORITIES TO REGULATE PLANNING, LAND USE, OR ZONING, A CITY LEGISLATIVE BODY SHALL HAVE THE AUTHORITY TO REQUIRE AN APPLICANT FOR A LAND USE APPROVAL TO FILE WITH THE CITY, AS A CONDITION OF PROCESSING THE APPLICATION, A FULLY EXECUTED INDEMNIFICATION AGREEMENT. SAID AGREEMENT SHALL REQUIRE THE APPLICANT TO DEFEND, INDEMNIFY, RELEASE, AND HOLD HARMLESS THE CITY FROM ANY CLAIM, ACTION, OR PROCEEDING BROUGHT AGAINST THE CITY TO ANNUL A LAND USE APPROVAL OR ANY CONDITION OF SAID APPROVAL. SAID INDEMNIFICATION AGREEMENT SHALL INCLUDE DAMAGES AWARDED AGAINST THE CITY, IF ANY, COST OF SUIT, ATTORNEYS' FEES, AND OTHER EXPENSES INCURRED IN CONNECTION WITH SUCH ACTION.

3. AGREEMENT PROVISIONS. THE AGREEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING PROVISIONS:

(A) THE CITY SHALL NOTIFY AN APPLICANT OF ANY CLAIM, ACTION, OR PROCEEDING TO ANNUL A LAND USE APPROVAL OR ANY CONDITION OF APPROVAL WITHIN THIRTY DAYS. IF THE APPLICANT IS NOT SO NOTIFIED, THE APPLICANT

SHALL NOT THEREAFTER BE RESPONSIBLE TO DEFEND, INDEMNIFY, OR HOLD HARMLESS THE CITY.

(B) THE CITY SHALL FULLY COOPERATE IN THE DEFENSE OF THE CLAIM, ACTION, OR PROCEEDING. IF THE CITY FAILS TO DO SO, THE APPLICANT SHALL NOT THEREAFTER BE RESPONSIBLE, TO DEFEND, INDEMNIFY, OR HOLD HARMLESS THE CITY.

(C) THE CITY SHALL RETAIN THE RIGHT TO PARTICIPATE IN THE DEFENSE OF THE CLAIM, ACTION, OR PROCEEDING IF IT BEARS THE COST OF ITS OWN ATTORNEY AND DEFENDS THE ACTION IN GOOD FAITH.

(D) THE APPLICANT SHALL NOT BE REQUIRED TO PAY OR PERFORM ANY SETTLEMENT UNLESS THE SETTLEMENT IS APPROVED BY THE APPLICANT.

(E) THE APPLICANT SHALL INDEMNIFY THE CITY FOR ALL OF THE CITY'S COSTS, FEES, AND DAMAGES WHICH ARE INCURRED BY THE CITY IN ENFORCING THE INDEMNIFICATION AGREEMENT.

4. AGREEMENT APPROVAL. THE FORM OF THE INDEMNIFICATION AGREEMENT SHALL BE APPROVED BY THE CITY LEGISLATIVE BODY BY RESOLUTION.

5. PAYMENT ON DEMAND. THE APPLICANT SHALL PAY TO THE CITY UPON DEMAND ANY AMOUNT OWED TO THE CITY PURSUANT TO THE INDEMNIFICATION AGREEMENT REQUIREMENTS PRESCRIBED IN THIS SECTION.

S 4. The village law is amended by adding a new section 7-703-b to read as follows:

S 7-703-B INDEMNIFICATION AGREEMENTS. 1. DEFINITION. AS USED IN THIS SECTION, "LAND USE APPROVAL" SHALL MEAN AN APPROVAL GRANTED BY A VILLAGE FOR A CHANGE OF ZONE, SUBDIVISION, SITE PLAN, SPECIAL PERMIT, SPECIAL EXCEPTION, VARIANCE, OR OTHER LAND USE PERMIT GRANTED PURSUANT TO THIS ARTICLE.

2. AUTHORITY. IN ADDITION TO EXISTING POWERS AND AUTHORITIES TO REGULATE PLANNING, LAND USE, OR ZONING, A VILLAGE LEGISLATIVE BODY SHALL HAVE THE AUTHORITY TO REQUIRE AN APPLICANT FOR A LAND USE APPROVAL TO FILE WITH THE VILLAGE, AS A CONDITION OF PROCESSING THE APPLICATION, A FULLY EXECUTED INDEMNIFICATION AGREEMENT. SAID AGREEMENT SHALL REQUIRE THE APPLICANT TO DEFEND, INDEMNIFY, RELEASE, AND HOLD HARMLESS THE VILLAGE FROM ANY CLAIM, ACTION, OR PROCEEDING BROUGHT AGAINST THE VILLAGE TO ANNUL A LAND USE APPROVAL OR ANY CONDITION OF SAID APPROVAL. SAID INDEMNIFICATION AGREEMENT SHALL INCLUDE DAMAGES AWARDED AGAINST THE VILLAGE, IF ANY, COST OF SUIT, ATTORNEYS' FEES, AND OTHER EXPENSES INCURRED IN CONNECTION WITH SUCH ACTION.

3. AGREEMENT PROVISIONS. THE AGREEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING PROVISIONS:

A. THE VILLAGE SHALL NOTIFY AN APPLICANT OF ANY CLAIM, ACTION, OR PROCEEDING TO ANNUL A LAND USE APPROVAL OR ANY CONDITION OF APPROVAL WITHIN THIRTY DAYS. IF THE APPLICANT IS NOT SO NOTIFIED, THE APPLICANT SHALL NOT THEREAFTER BE RESPONSIBLE TO DEFEND, INDEMNIFY, OR HOLD HARMLESS THE VILLAGE.

B. THE VILLAGE SHALL FULLY COOPERATE IN THE DEFENSE OF THE CLAIM, ACTION, OR PROCEEDING. IF THE VILLAGE FAILS TO DO SO, THE APPLICANT SHALL NOT THEREAFTER BE RESPONSIBLE, TO DEFEND, INDEMNIFY, OR HOLD HARMLESS THE VILLAGE.

C. THE VILLAGE SHALL RETAIN THE RIGHT TO PARTICIPATE IN THE DEFENSE OF THE CLAIM, ACTION, OR PROCEEDING IF IT BEARS THE COST OF ITS OWN ATTORNEY AND DEFENDS THE ACTION IN GOOD FAITH.

D. THE APPLICANT SHALL NOT BE REQUIRED TO PAY OR PERFORM ANY SETTLEMENT UNLESS THE SETTLEMENT IS APPROVED BY THE APPLICANT.

E. THE APPLICANT SHALL INDEMNIFY THE VILLAGE FOR ALL OF THE VILLAGE'S COSTS, FEES, AND DAMAGES WHICH ARE INCURRED BY THE VILLAGE IN ENFORCING THE INDEMNIFICATION AGREEMENT.

4. AGREEMENT APPROVAL. THE FORM OF THE INDEMNIFICATION AGREEMENT SHALL BE APPROVED BY THE VILLAGE LEGISLATIVE BODY BY RESOLUTION.

5. PAYMENT ON DEMAND. THE APPLICANT SHALL PAY TO THE VILLAGE UPON DEMAND ANY AMOUNT OWED TO THE VILLAGE PURSUANT TO THE INDEMNIFICATION AGREEMENT REQUIREMENTS PRESCRIBED IN THIS SECTION.

S 5. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 6. This act shall take effect immediately.