

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:

1 Section 1. The general municipal law is amended by adding a new article 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 DEEMED
13 COMPLETED BY THE MUNICIPALITY FOR SITE PLAN, SUBDIVISION, OR OTHER
14 DEVELOPMENT PLAN APPROVAL OF SUCH PARCEL, WHICH APPLICATION MEETS ALL
15 NON-DISCRETIONARY REQUIREMENTS SPECIFIED THEREFOR, INCLUDING, BUT NOT
16 LIMITED TO A SURVEY PREPARED BY A LICENSED SURVEYOR AND PLANS PREPARED
17 BY A LICENSED ENGINEER OR ARCHITECT AND IS ACCOMPANIED BY AN ENVIRON-
18 MENTAL 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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1 CANT A DRAFT ENVIRONMENTAL IMPACT STATEMENT, SHALL REMAIN APPLICABLE TO
2 THE PROPOSED PROJECT THAT IS THE SUBJECT OF THE APPLICATION OR THE DRAFT
3 ENVIRONMENTAL IMPACT STATEMENT FOR A PERIOD OF SIX YEARS AFTER THE
4 FILING DATE, AS LONG AS IT IS BEING PURSUED WITH REASONABLE EFFORTS BY
5 THE APPLICANT. IF NO STATE OR LOCAL AGENCY HAS DISCRETIONARY AUTHORITY
6 OVER THE PROJECT, THE FILING DATE SHALL BE THAT OF THE FILING OF AN
7 APPLICATION FOR A BUILDING PERMIT, TOGETHER WITH A SURVEY PREPARED BY A
8 LICENSED SURVEYOR AND PLANS PREPARED BY A LICENSED ENGINEER OR ARCHITECT
9 IN WHICH CASE NO ENVIRONMENTAL DOCUMENTATION NEED BE FILED IN ORDER FOR
10 THIS SECTION TO APPLY. WRITTEN NOTICE OF SUCH APPLICATION, EXCEPT IN
11 THE CASE OF A ONE-FAMILY DWELLING, SHALL BE GIVEN BY THE APPLICANT TO
12 ALL PROPERTY OWNERS WITHIN A DISTANCE OF TWO HUNDRED FIFTY FEET OF THE
13 APPLICANT'S PROPERTY LINES BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESS
14 ON THE TAX RECORDS. THE APPLICANT SHALL FILE AN AFFIDAVIT WITH THE MUNI-
15 CIPALITY OF THE MAILING OF SUCH NOTICE.

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

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

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

24 (I) THE PROJECT IS LIKELY TO HARM OR ENDANGER THE PUBLIC HEALTH, SAFE-
25 TY, GENERAL WELFARE OR BIOLOGICAL HABITAT; AND

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

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

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

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

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

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

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

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

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