

4554--B

Cal. No. 541

2011-2012 Regular Sessions

I N S E N A T E

April 12, 2011

Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general municipal law, in relation to vested rights relating to land development in the counties of Dutchess, Orange, Putnam, Rockland and Westchester; and providing for the repeal of such provisions upon expiration thereof

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 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; PILOT PROGRAM.
6 151. APPLICATION OF ARTICLE.

7 S 150. VESTED RIGHTS RELATING TO LAND DEVELOPMENT; PILOT PROGRAM. 1.
8 IN THE COUNTIES OF DUTCHESS, ORANGE, PUTNAM, ROCKLAND AND WESTCHESTER,
9 THERE SHALL BE A PRESUMPTION, REBUTTABLE BY A MUNICIPALITY IN ANY SUCH
10 COUNTY ONLY PURSUANT TO SUBDIVISION TWO OF THIS SECTION BY CLEAR AND
11 CONVINCING EVIDENCE, THAT MUNICIPAL ZONING, PLANNING, ENVIRONMENTAL, AND
12 ALL OTHER APPLICABLE VILLAGE, TOWN, OR CITY ORDINANCES, REGULATIONS AND
13 OTHER ENACTMENTS REGULATING THE DEVELOPMENT OF LAND WHICH ARE APPLICABLE
14 TO A PARTICULAR PARCEL OF LAND AS OF THE NINTH MONTH AFTER THE FILING
15 DATE OF AN APPLICATION DEEMED COMPLETED BY THE MUNICIPALITY FOR SITE
16 PLAN, SUBDIVISION OR OTHER DEVELOPMENT PLAN APPROVAL OF SUCH PARCEL,
17 WHICH APPLICATION MEETS ALL NON-DISCRETIONARY REQUIREMENTS SPECIFIED

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

LBD00882-12-1

1 THEREFOR, INCLUDING, BUT NOT LIMITED TO A SURVEY PREPARED BY A LICENSED
2 SURVEYOR AND PLANS PREPARED BY A LICENSED ENGINEER OR ARCHITECT AND IS
3 ACCOMPANIED BY AN ENVIRONMENTAL ASSESSMENT FORM, IF REQUIRED, OR AT THE
4 DISCRETION OF THE APPLICANT A DRAFT ENVIRONMENTAL IMPACT STATEMENT,
5 SHALL REMAIN APPLICABLE TO THE PROPOSED PROJECT THAT IS THE SUBJECT OF
6 THE APPLICATION OR THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR A PERIOD
7 OF SIX YEARS AFTER THE FILING DATE, AS LONG AS IT IS BEING PURSUED WITH
8 REASONABLE EFFORTS BY THE APPLICANT. IF NO STATE OR LOCAL AGENCY HAS
9 DISCRETIONARY AUTHORITY OVER THE PROJECT, THE FILING DATE SHALL BE THAT
10 OF THE FILING OF AN APPLICATION FOR A BUILDING PERMIT, TOGETHER WITH A
11 SURVEY PREPARED BY A LICENSED SURVEYOR AND PLANS PREPARED BY A LICENSED
12 ENGINEER OR ARCHITECT IN WHICH CASE NO ENVIRONMENTAL DOCUMENTATION NEED
13 BE FILED IN ORDER FOR THIS SECTION TO APPLY. WRITTEN NOTICE OF SUCH
14 APPLICATION, EXCEPT IN THE CASE OF A ONE-FAMILY DWELLING, SHALL BE GIVEN
15 BY THE APPLICANT TO ALL PROPERTY OWNERS WITHIN A DISTANCE OF TWO HUNDRED
16 FIFTY FEET OF THE APPLICANT'S PROPERTY LINES BY FIRST CLASS MAIL TO THE
17 LAST KNOWN ADDRESS ON THE TAX RECORDS. THE APPLICANT SHALL FILE AN AFFI-
18 DAVIT WITH THE MUNICIPALITY OF THE MAILING OF SUCH NOTICE.

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

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

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

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

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

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

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

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

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

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

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

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

1 S 151. APPLICATION OF ARTICLE. THE PROVISIONS OF THIS ARTICLE SHALL
2 APPLY ONLY TO THE COUNTIES OF DUTCHESS, ORANGE, PUTNAM, ROCKLAND AND
3 WESTCHESTER, AND TO NO OTHER COUNTIES IN THE STATE.
4 S 2. This act shall take effect on the one hundred eightieth day after
5 it shall have become a law; and shall expire and be deemed repealed six
6 years after it shall take effect but shall continue to apply to parcels
7 for which an application has been filed pursuant to section 150 of the
8 general municipal law prior to such repeal.