

2565

2013-2014 Regular Sessions

I N   S E N A T E

January 22, 2013

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Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

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  
18    THEREFOR, INCLUDING, BUT NOT LIMITED TO A SURVEY PREPARED BY A LICENSED  
19    SURVEYOR AND PLANS PREPARED BY A LICENSED ENGINEER OR ARCHITECT AND IS  
20    ACCOMPANIED BY AN ENVIRONMENTAL ASSESSMENT FORM, IF REQUIRED, OR AT THE  
21    DISCRETION OF THE APPLICANT A DRAFT ENVIRONMENTAL IMPACT STATEMENT,  
22    SHALL REMAIN APPLICABLE TO THE PROPOSED PROJECT THAT IS THE SUBJECT OF  
23    THE APPLICATION OR THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR A PERIOD  
24    OF SIX YEARS AFTER THE FILING DATE, AS LONG AS IT IS BEING PURSUED WITH

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

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1 REASONABLE EFFORTS BY THE APPLICANT. IF NO STATE OR LOCAL AGENCY HAS  
2 DISCRETIONARY AUTHORITY OVER THE PROJECT, THE FILING DATE SHALL BE THAT  
3 OF THE FILING OF AN APPLICATION FOR A BUILDING PERMIT, TOGETHER WITH A  
4 SURVEY PREPARED BY A LICENSED SURVEYOR AND PLANS PREPARED BY A LICENSED  
5 ENGINEER OR ARCHITECT IN WHICH CASE NO ENVIRONMENTAL DOCUMENTATION NEED  
6 BE FILED IN ORDER FOR THIS SECTION TO APPLY. WRITTEN NOTICE OF SUCH  
7 APPLICATION, EXCEPT IN THE CASE OF A ONE-FAMILY DWELLING, SHALL BE GIVEN  
8 BY THE APPLICANT TO ALL PROPERTY OWNERS WITHIN A DISTANCE OF TWO HUNDRED  
9 FIFTY FEET OF THE APPLICANT'S PROPERTY LINES BY FIRST CLASS MAIL TO THE  
10 LAST KNOWN ADDRESS ON THE TAX RECORDS. THE APPLICANT SHALL FILE AN AFFI-  
11 DAVIT WITH THE MUNICIPALITY OF THE MAILING OF SUCH NOTICE.

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

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

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

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

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

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

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

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

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

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

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

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

48 S 151. APPLICATION OF ARTICLE. THE PROVISIONS OF THIS ARTICLE SHALL  
49 APPLY ONLY TO THE COUNTIES OF DUTCHESS, ORANGE, PUTNAM, ROCKLAND AND  
50 WESTCHESTER, AND TO NO OTHER COUNTIES IN THE STATE.

51 S 2. This act shall take effect on the one hundred eightieth day after  
52 it shall have become a law; and shall expire and be deemed repealed six  
53 years after it shall take effect but shall continue to apply to parcels  
54 for which an application has been filed pursuant to section 150 of the  
55 general municipal law prior to such repeal.