STATE OF NEW YORK

8806

IN SENATE

May 18, 2018

Introduced by Sen. MARCHIONE -- 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 providing for vesting of development rights for residential properties

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 RESIDENTIAL PROPERTY DEVELOPMENT

Section 150. Legislative findings and intent.
151. Definitions.
152. Governing regulations.
153. Establishment of vested property right.
154. Notice of vested property rights.
155. Duration and termination of vested property right.
156. Subsequent regulation prohibited; exceptions.
157. Application.

§ 150. Legislative findings and intent. 1. There is a continuing need for the development of housing in New York state. Landowners make significant investments to acquire real property and to obtain the required state and municipal permits and approvals to construct residential housing. To obtain financing for residential housing projects, it is necessary to have certainty regarding development rights. Vested property rights ensure reasonable certainty, stability and fairness in the land use planning process.

2. It is necessary and desirable, as a matter of public policy, to provide for the establishment of vested property rights in order to ensure reasonable certainty, stability, and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning.

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

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3. The ability of a landowner to obtain a vested property right after municipal government approval of a site specific development plan will preserve the prerogatives and authority of municipal government with respect to land use matters, while promoting those areas of statewide concern described in subdivision two of this section.

4. The establishment of vested property rights will promote the goals specified in this section and protect property, and is therefore declared to be a matter of statewide concern.

§ 151. Definitions. As used in this article, unless context requires otherwise:

1. "Landowner" means the owner of a legal or equitable interest in real property, including a developer, and the heirs, successors, and assigns of such ownership interests.

2. "Municipality" or "municipal government" means any county, city and county, city, town or village, acting through its governing body, or any board, commission or agency thereof having final approval authority over a site specific development plan, including without limitation any legally empowered urban renewal authority.

3. "Notice of vested property right" means a written document filed by the landowner in the office of the clerk of the municipality in accordance with the provisions of section one hundred fifty-four of this article.

4. "Overlay zoning" means a set of land use and development requirements designed to be applied over, or in addition to, the requirements of the underlying zone for a specific purpose without removing or modifying the underlying zone.

5. "Property" means all real property subject to land use regulation by a municipality and zoned and used for residential development or mixed use development that includes residential use.

6. "Residential development" means construction or redevelopment of one-, two- or three-family housing, including single family homes and duplexes, and townhomes, condominiums, multiple dwelling units, assisted living facilities, manufactured or modular homes and mixed use residential units.

7. (a) "Site specific development plan" means a plan that has been submitted to a municipality by a landowner or such landowner's representative describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but need not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a specially planned area, a planned building group, a general submission plan, a general development plan, a conditional or special use plan, a development agreement, or any other land use approval designation as may be utilized by a municipality. What constitutes a site specific development plan under this article that would trigger a vested property right shall be finally determined by the municipality either pursuant to ordinance or regulation or upon an agreement entered into by the municipality and the landowner, and the document that triggers such vesting shall be so identified at the time of its approval.

(b) "Site specific development plan" shall not include a variance, a preliminary plan, a sketch plan, a final architectural plan, public utility filings or final construction drawings and/or related documents specifying materials and methods for construction of improvements.

8. "Vested property right" means the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan.

§ 152. Governing regulations. 1. Except as otherwise provided in subdivision two of this section, development of a property in accordance with a site specific development plan shall be governed only by the duly adopted laws and regulations in effect at the time the landowner's property right vests as provided in section one hundred fifty-three of this article. For purposes of this section, "laws and regulations" includes any zoning law of general applicability adopted by a municipality as well as any zoning or development regulations that have previously been adopted for the particular parcel described in the plan and that remain in effect at the time of vesting of the landowner's property right.

2. Notwithstanding the limitations contained in subdivision one of this section, a municipality may adopt a new or amended law or regulation when necessary for the immediate preservation of public health and safety and may enforce such law or regulation in relation to properties for which a building permit has not been issued at the time such law or regulation is adopted.

§ 153. Establishment of vested property right. 1. A vested property right shall be deemed established with respect to a property upon:

(a) the issuance of all required state and municipal permits and approvals for residential development of the property, with the exception of a building permit, following or contemporaneously with the approval, or conditional approval, of a site specific development plan relating to the property; and

(b) the filing by the landowner with the clerk of the municipality of a notice of vested property rights in a form as prescribed in section one hundred fifty-four of this article.

2. A vested property right shall attach to and run with the applicable property and shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan including any amendments thereto. A municipality may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested property right, although failure to abide by such terms and conditions will result in a forfeiture of vested property rights. A site specific development plan shall be deemed approved upon the effective date of the municipality's legal action, resolution, or ordinance relating thereto and issuance of all permits and approvals relating thereto, with the exception of a building permit. Such approval shall be subject to all rights of referendum and judicial review; except that the period of time permitted by law for the exercise of such rights shall not begin to run until the date of publication, in a newspaper of general circulation within the jurisdiction of the municipality granting the approval, of a notice advising the general public of the site specific development plan approval and creation of a vested property right pursuant to this article. Such publication shall occur no later than fourteen days following approval.

3. Zoning that is not part of a site specific development plan shall not result in the creation of vested property rights.

§ 154. Notice of vested property rights. 1. Upon issuance of all required permits and approvals as specified in paragraph (a) of subdivision one of section one hundred fifty-three of this article, a landowner shall file a written notice of vested property rights in the office of the clerk of the municipality stating:

(a) the identity and address of the landowner claiming the vested right or rights;

(b) the full address of the property as to which the vested right is claimed or sufficient information to reasonably identify the parcel of land as to which the vested right is claimed;

(c) a listing of and the identifying numbers of all permits and approvals issued relating to the property;

(d) information sufficient to identify the site specific development plan;

(e) a statement of the landowner's declaration of vested rights in the property; and

(f) the date upon which the landowner's rights in the property vested as provided in this article.

2. A municipality, through a law or resolution passed by its governing body, may adopt a standard form for a notice of vested property rights, provided that such standard form shall include all of the information set forth in subdivision one of this section; provided, however, that a landowner's failure to utilize such standard form shall not be deemed fatal to the vesting of the landowner's property right if the landowner has filed a notice in accordance with subdivision one of this section.

§ 155. Duration and termination of vested property right. 1. A property right which has been vested as provided for in this article shall remain vested for a period of five years. If substantial construction is not commenced on the property or, in the case of a multi-unit parcel, on each parcel, within such five year period, the vested property right shall expire. This vesting period shall not be extended by any amendments to a site specific development plan unless expressly authorized by the municipality.

2. Notwithstanding the provisions of subdivision one of this section, municipalities are hereby authorized to enter into development agreements with landowners providing that property rights shall be vested for a period exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of a development, economic cycles, and market conditions. Such development agreements shall be adopted as legislative acts of the governing body of the municipality subject to referendum.

3. Nothing in this article shall exempt a site specific development plan from subsequent reviews and approvals by the municipality to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are not inconsistent with said original approval.

§ 156. Subsequent regulation prohibited; exceptions. 1. A vested property right, once established as provided in this article, precludes any zoning or land use action by a municipality or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property as set forth in a site specific development plan, except:

(a) with the consent of the affected landowner;

(b) upon the discovery of natural or man-made hazards on or in the immediate vicinity of the subject property, which hazards could not reasonably have been discovered at the time of or before the vesting of the property right as provided in subdivision one of section one hundred fifty-three of this article, and which hazards, if uncorrected, would pose a serious threat to the public health, safety, and welfare; or

(c) to the extent that the affected landowner receives just compensation for all costs, expenses, and liabilities incurred by the landowner after approval by the municipality, including, but not limited to, costs incurred in preparing the site for development consistent with the

site specific development plan, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultants' fees, together with interest thereon at the legal rate until paid. Just compensation shall not include any diminution in the value of the property which is caused by such action.

2. The establishment of a vested property right shall not preclude:

(a) the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by a municipality, including, but not limited to, building, fire, plumbing, electrical and mechanical codes; or

(b) the application to the property of overlay zoning which does not impact the allowable type or integrity of the use.

§ 157. Application. 1. The provisions of this article shall apply to development rights for residential developments only.

2. A vested property right arising while one local government has jurisdiction over all or part of the property included within a site specific development plan shall be effective against any other local government which may subsequently obtain or assert jurisdiction over such property.

3. Nothing in this article shall preclude judicial determination, based on common law principles, that a vested property right exists in a particular case or that a compensable taking has occurred.

4. The provisions of this article shall apply only to site specific development plans approved on or after the effective date of this article.

§ 2. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law and shall apply to applications for residential development filed with municipalities after such date. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such date.