

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:

1 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.

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

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

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

LBD15513-01-8

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.

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

11 2. Notwithstanding the limitations contained in subdivision one of
12 this section, a municipality may adopt a new or amended law or regu-
13 lation when necessary for the immediate preservation of public health
14 and safety and may enforce such law or regulation in relation to proper-
15 ties for which a building permit has not been issued at the time such
16 law or regulation is adopted.

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

19 (a) the issuance of all required state and municipal permits and
20 approvals for residential development of the property, with the excep-
21 tion of a building permit, following or contemporaneously with the
22 approval, or conditional approval, of a site specific development plan
23 relating to the property; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (a) with the consent of the affected landowner;

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

53 (c) to the extent that the affected landowner receives just compen-
54 sation for all costs, expenses, and liabilities incurred by the landown-
55 er after approval by the municipality, including, but not limited to,
56 costs incurred in preparing the site for development consistent with the

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

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

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

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

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

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

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

23 4. The provisions of this article shall apply only to site specific
24 development plans approved on or after the effective date of this arti-
25 cle.

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