

# STATE OF NEW YORK

2495

2019-2020 Regular Sessions

## IN SENATE

January 25, 2019

Introduced by Sen. JORDAN -- 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

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

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1 cooperation between the public and private sectors in the area of land  
2 use planning.

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

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

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

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

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

21 3. "Notice of vested property right" means a written document filed by  
22 the landowner in the office of the clerk of the municipality in accord-  
23 ance with the provisions of section one hundred fifty-four of this arti-  
24 cle.

25 4. "Overlay zoning" means a set of land use and development require-  
26 ments designed to be applied over, or in addition to, the requirements  
27 of the underlying zone for a specific purpose without removing or modi-  
28 fying the underlying zone.

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

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

37 7. (a) "Site specific development plan" means a plan that has been  
38 submitted to a municipality by a landowner or such landowner's represen-  
39 tative describing with reasonable certainty the type and intensity of  
40 use for a specific parcel or parcels of property. Such plan may be in  
41 the form of, but need not be limited to, any of the following plans or  
42 approvals: a planned unit development plan, a subdivision plat, a  
43 specially planned area, a planned building group, a general submission  
44 plan, a general development plan, a conditional or special use plan, a  
45 development agreement, or any other land use approval designation as may  
46 be utilized by a municipality. What constitutes a site specific develop-  
47 ment plan under this article that would trigger a vested property right  
48 shall be finally determined by the municipality either pursuant to ordi-  
49 nance or regulation or upon an agreement entered into by the munici-  
50 pality and the landowner, and the document that triggers such vesting  
51 shall be so identified at the time of its approval.

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

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

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

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

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

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

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

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

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

53     § 154. Notice of vested property rights. 1. Upon issuance of all  
54 required permits and approvals as specified in paragraph (a) of subdivi-  
55 sion one of section one hundred fifty-three of this article, a landowner

1 shall file a written notice of vested property rights in the office of  
2 the clerk of the municipality stating:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) to the extent that the affected landowner receives just compen-  
2 sation for all costs, expenses, and liabilities incurred by the landown-  
3 er after approval by the municipality, including, but not limited to,  
4 costs incurred in preparing the site for development consistent with the  
5 site specific development plan, all fees paid in consideration of  
6 financing, and all architectural, planning, marketing, legal, and other  
7 consultants' fees, together with interest thereon at the legal rate  
8 until paid. Just compensation shall not include any diminution in the  
9 value of the property which is caused by such action.

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

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

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

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

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

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

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

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