WEST VIRGINIA CODE CHAPTER 8A ARTICLE 5

WV Legislature

§8A-5-1. Jurisdiction of planning commissions.

(a) A planning commission has the authority to:

(1) Approve a minor subdivision or land development application within its jurisdiction;

(2) Exempt an application for a minor subdivision or land development within its jurisdiction; and

(3) Approve a major subdivision or land development application within its jurisdiction.

(b) The staff of a planning commission has the authority to approve a minor subdivision or land development application within its jurisdiction, if granted such authority by the governing body in the subdivision and land development ordinance.

(c) If a subdivision or land development plan and plat cannot be approved through the minor subdivision or land development process, then an applicant must use the major subdivision or land development approval process.

(d) If a governing body has adopted detailed standards for final plats as part of a subdivision and land development ordinance, the planning commission may delegate to its staff the authority to approve preliminary or provisional land development plan or subdivision plat that is consistent with the adopted standards for final plats and the requirements of the adopted subdivision and land development ordinance.

(e) The planning commission may delegate to its staff the authority to determine completeness, phasing, changes, and technical review for major subdivisions or land development applications, if a governing body has adopted detailed process provisions, procedures, or checklists for major subdivisions or land development applications: *Provided*, That a staff review does not take longer than would a planning commission review. Any applicant may request, in writing to the planning commission, that such a delegated review shall revert to a planning commission review, in which case the time required for review begins at the date of the request.

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PART I. MINOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

§8A-5-2. Requirements for a minor subdivision or land development.

(a) An application for approval of a subdivision or land development plan and plat may be considered a minor subdivision or land development if it meets the following requirements:

(1) Only creates the maximum number of lots specifically permitted by the subdivision and land development ordinance for a minor subdivision or land development;

(2) Will not require the development of new or the extension of existing off-tract infrastructure; and

(3) Such other requirements as determined by the governing body to ensure that required improvements are installed and not avoided by a series of minor subdivisions or land developments.

(b) The following can be considered a minor subdivision or land development if approved by the planning commission:

(1) Merger or consolidation of parcels of land;

(2) Land transfers between immediate family members; and

(3) Minor boundary line adjustments.

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§8A-5-3. Application for minor subdivision or land development.

(a) An applicant submits a copy of a land development plat and the fees to the planning commission having jurisdiction over the land.

(b) Within seven days after the submission of the subdivision or land development plat, the staff of the planning commission shall offer to meet with the applicant to discuss the proposed subdivision or land development and the criteria used to classify the proposal as minor: *Provided*, That if the applicant requests such a meeting, staff shall meet with the applicant to discuss the proposed subdivision or land development and the criteria used to classify the proposal as minor.

(c) The staff of the planning commission may make a site inspection of the proposed subdivision or land development.

(d) Within ten days after the submission of the subdivision or land development plat or within five days of the meeting, between the planning commission staff and the applicant, whichever comes later, the staff of the planning commission shall notify the applicant in writing whether the proposed subdivision or land development has been classified a minor subdivision or land development.

PART II. MAJOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

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§8A-5-4. Approval of minor subdivision or land development plans and plats.

(a) Within ten days after a plat has been classified a minor subdivision or land development, then the planning commission or staff, if the authority has been given by the governing body, shall approve or deny the plat.

(b) If the planning commission approves the plat, then the planning commission shall affix its seal on the plat.

(c) If the planning commission approves the plat with conditions, then the planning commission must state the conditions.

(d) If the planning commission denies the plat, then the planning commission shall notify the applicant in writing of the reasons for the denial.

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§8A-5-5. Recording of minor subdivision or land development plat.

After approval of a minor subdivision or land development plat by the planning commission and before the subdivision or development is commenced, the subdivision or land development plat shall be recorded by the applicant in the office of the clerk of the county commission where the land is located.

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§8A-5-6. Application for major subdivision or land development.

(a) An applicant for approval of a major subdivision or land development plan and plat shall submit written application, a copy of the proposed land development plan and plat, and the fees to the planning commission having jurisdiction over the land.

(b) Within 45 days after receipt of the application, the planning commission, or its staff if the planning commission has delegated such authority, shall review the application for completeness and either accept or deny it: *Provided*, That if the planning commission's next regularly scheduled meeting that would meet public notice requirements is scheduled within 60 days of receipt of the application, it may review the application for completeness and either accept or deny it at its next regularly scheduled meeting.

(c) If the application is not complete, then the planning commission may deny the application and must notify the applicant in writing stating the reasons for the denial.

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§8A-5-7. Contents of a major subdivision or land development plan and plat.

(a) A land development plan and plat must include everything required by the governing body's subdivision and land development ordinance.

(b) If a governing body does not have a subdivision and land development ordinance or if a governing body's subdivision and land development ordinance does not specify what may be included in a subdivision or land development plan and plat, then the following may be included, when applicable, in a subdivision or land development plan and plat:

(1) Show that the subdivision or land development conforms to the governing body's comprehensive plan;

(2) A method of payment to cover the cost of the water and sewer service infrastructure, which can include, but is not limited to, bonds, impact fees, escrow fees and proffers;

(3) Coordination among land development with adjoining land owners, including, but not limited to, facilities and streets;

(4) Distribution of population and traffic in a manner tending to create conditions favorable to health, safety, convenience and the harmonious development of the municipality or county;

(5) Show that there is a fair allocation of areas for different uses, including, but not limited to, streets, parks, schools, public and private buildings, utilities, businesses and industry;

(6) Show that there is a water and sewer supply;

(7) Setback and lot size measures were used;

(8) The standards used for designating land which is subject to flooding or subsidence, details for making it safe, or information showing that such land will be set aside for use which will not endanger life or property and will not further aggravate or increase the existing menace;

(9) The control measures for drainage, erosion and sediment;

(10) The coordination of streets, sidewalks and pedestrian pathways in and bordering the land development, including a letter from the Division of Highways stating that the plan provides sufficient access to state roads; and

(11) The design, construction and improvement measures to be used for the streets, sidewalks, easements, rights-of-way, drainage, utilities, walkways, curbs, gutters, street lights, fire hydrants, water and wastewater facilities, and other improvements installed, including the width, grade and location for the purpose of accommodating prospective traffic, customers and facilitating fire protection.

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§8A-5-8. Approval of major subdivision or land development plans and plats.

(a) Upon written request of the applicant for a determination, the planning commission must determine by vote at the next regular meeting or at a special meeting, whether or not the application is complete based upon a finding that the application meets the requirements set forth in its governing body's subdivision and land development ordinance. The planning commission may delegate this review to planning commission staff.

(b) If a governing body's subdivision and land development ordinance does not specify what may be included in a land development plan and plat, then the planning commission must determine that an application is complete if the application meets the requirements set forth in subsection (b), section seven of this article.

(c) At a meeting where the application is determined to be complete, the planning commission must set a date, time and place for a public hearing and a meeting to follow the public hearing to vote on the application. The public hearing must be held within 45 days: *Provided*, That if the planning commission's next regularly scheduled meeting that would meet public notice requirements is scheduled within 60 days of receipt of the application, it may hold the public hearing at its next regularly scheduled meeting. The planning commission shall notify the applicant of the public hearing and meeting in writing unless notice is waived in writing by the applicant. The planning commission must publish a public notice of the public hearing and meeting in a local newspaper of general circulation in the area at least 21 days prior to the public hearing.

(d) At a meeting at the conclusion of the public hearing or a meeting held within fourteen days after the public hearing, the planning commission shall vote to approve, deny or hold the application.

(e) The application may be held for additional information necessary to make a determination. An application may be held for up to forty-five days.

(f) The planning commission shall approve the application after the planning commission determines that an application is complete and meets the requirements of the governing body's subdivision and land development ordinance; or if the governing body does not have a subdivision and land development ordinance or if the subdivision and land development ordinance does not specify what may be included in a subdivision or land development plan and plat, that the application meets the requirements set forth in subsection (b) section seven of this article.

(g) If the planning commission approves the application, then the planning commission shall affix its seal on the subdivision or land development plan and/or plat.

(h) If the planning commission approves the application with conditions, then the planning commission must specify those conditions.

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(i) If the planning commission denies the application, then the planning commission shall notify the applicant in writing of the reasons for the denial. The applicant may request, one time, a reconsideration of the decision of the planning commission, which request for reconsideration must be in writing and received by the planning commission no later than ten days after the decision of the planning commission is received by the applicant.

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§8A-5-9. Recording of major subdivision or land development plat.

After approval of a major subdivision or land development plat by the planning commission and after the conditions of the planning commission are met, the subdivision or land development plat shall be recorded by the applicant in the office of the clerk of the county commission where the land is located. If the land is located in more than one county, then the land development plat shall be recorded in the county of the initial land development and subsequently recorded in the other counties when there is land development in that county.

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§8A-5-10. Appeal process.

(a) An appeal may be made by an aggrieved person from any decision or ruling of the planning commission to:

(1) The circuit court, pursuant to the provisions of article nine of this chapter; or

(2) A board of subdivision and land development appeals, if the governing body has established a board of subdivision and land development appeals by ordinance.

(b) Within thirty days after the date of the denial, the petition, specifying the grounds of the appeal in writing, must be filed with:

(1) The circuit court of the county in which the affected land or the major portion of the affected land is located; or

(2) The board of subdivision and land development appeals that has jurisdiction over the affected land.

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§8A-5-11. Effect of approval of land development plans and plats.

A land development plan and plat that has not been approved by the planning commission is without legal effect: Provided, That failure to comply with this article shall not invalidate or affect the title to any land within the area of the land development plat.

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§8A-5-12. Vested property right.

(a) A vested property right is a right to undertake and complete the land development. The right is established when the land development plan and plat is approved by the planning commission and is only applicable under the terms and conditions of the approved land development plan and plat.

(b) Failure to abide by the terms and conditions of the approved land development plan and plat will result in forfeiture of the right.

(c) Subject to section ten-a, article thirteen-e, chapter sixteen of this code, the vesting period for an approved land development plan and plat which creates the vested property right is five years from the approval of the land development plan and plat by the planning commission.

(d) Without limiting the time when rights might otherwise vest, a landowner's rights vest in a land use or development plan and cannot be affected by a subsequent amendment to a zoning ordinance or action by the planning commission when the landowner:

(1) Obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project;

(2) Relies in good faith on the significant affirmative governmental act; and

(3) Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

(e) A vested right is a property right, which cannot be taken without compensation. A court may award damages against the local government in favor of the landowner for monetary losses incurred by the landowner and court costs and attorneys' fees resulting from the local government's bad faith refusal to recognize that the landowner has obtained vested rights.

(f) Any subdivision or land development plan or plat, whether recorded or not yet recorded, valid under West Virginia law and outstanding as of January 1, 2010, shall remain valid until July 1, 2012, or such later date provided for by the terms of the planning commission or county commission's local ordinance or for a longer period as agreed to by the planning commission or county commission. Any other plan or permit associated with the subdivision or land development plan or plat shall also be extended for the same time period: Provided, That the land development plan or plat has received at least preliminary approval by the planning commission or county commission by March 1, 2010.

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