WEST VIRGINIA LEGISLATURE
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ENROLLED

Senate Bill No. 41
(By Senators McCabe, Minard, Foster, Palumbo and Chafin)

[Passed March 13, 2010; in effect ninety days from passage.]
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(By Senators McCabe, Minard, Foster, Palumbo and Chapin)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §8A-5-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13E-2 and §16-13E-4 of said code; and to amend said code by adding thereto a new section, designated §16-13E-10a, all relating to generally to subdivision or land development plans or plats; extending the vesting period for certain subdivision or land development plans and plats; providing definitions relating to the development of community enhancement districts; and excepting from a utility's submission relating to petitions for the creation of a district the capacity of the district to provide its own utility services.

Be it enacted by the Legislature of West Virginia:

That §8A-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §16-13E-2 and §16-13E-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-13E-10a, all to read as follows:
CHAPTER 8A. LAND USE PLANNING.

ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.


(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.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13E. COMMUNITY ENHANCEMENT ACT.

§16-13E-2. Definitions.

1 For purposes of this article:

2  (a) "Assessment bonds" means special obligation bonds or notes issued by a community enhancement district which are payable from the proceeds of assessments.

5  (b) "Assessment" means the fee, including interest, paid by the owner of real property located within a community enhancement district to pay for the cost of a project or projects constructed upon or benefitting or protecting such property and administrative expenses related thereto, which fee is in addition to all taxes and other fees levied on the property.
(c) "Board" means a Community Enhancement Board created pursuant to this article.

(d) "Community enhancement district" or "district" means a community enhancement district created pursuant to this article.

(e) "Cost" means the cost of:

1. Construction, reconstruction, renovation and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or to be acquired by the district;

2. All machinery and equipment, including machinery and equipment needed to expand or enhance county or city services to the district;

3. Financing charges and interest prior to and during construction and, if deemed advisable by the district or governing body, for a limited period after completion of the construction;

4. Interest and reserves for principal and interest, including costs of municipal bond insurance and any other type of financial guaranty;

5. Costs of issuance in connection with the issuance of assessment bonds;

6. The design of extensions, enlargements, additions and improvements to the facilities of any district;

7. Architectural, engineering, financial and legal services;

8. Plans, specifications, studies, surveys and estimates of costs and revenues;

9. Administrative expenses necessary or incident to determining to proceed with any project; and
(10) Other expenses as may be necessary or incident to
the construction, acquisition and financing of a project.

(f) "Development concept" means the following items, to
the extent set forth or specified in the subject subdivision
or land development plan and plat:

(1) The maximum aggregate number of lots or parcels
into which the subject land is to be subdivided.

(2) The size and boundaries of the individual lots or
parcels into which the subject land is to be subdivided.

(3) The density of the land development.

(4) Designation of use of the individual lots or parcels.

(5) The location of roads, streets, parking lots, sidewalks
and other paved areas.

(6) The location of ingress and egress for the land
development.

(7) Setback lines and distances and buildable areas.

(8) The finished layout and grade of the land.

(g) "Development concept vesting period" means the
period commencing upon approval of the subject land
development plan and plat by the planning commission
and terminating on the maturity date of the subject
assessment bonds or tax increment financing obligation.
The development concept vesting period pertains only to
the vested property right in a development concept that is
established upon approval by the planning commission of
a land development plan and plat in which a development
concept is set forth or specified.

(h) "Five-year vesting period" means the five-year
vesting period for an approved land development plan and
plat provided under subsection (c), section twelve, article five, chapter eight-a of this code.

(i) "Governing body" means, in the case of a county, the county commission and in the case of a municipality, the mayor and council together, the council or the board of directors as charged with the responsibility of enacting ordinances and determining the public policy of such municipality.

(j) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; any watershed enhancement districts, soil conservation districts, sanitary districts, public service districts, drainage districts, school districts, urban renewal authorities or regional governmental authorities established pursuant to this code.

(k) "Person" means an individual, firm, partnership, corporation, voluntary association or any other type of entity.

(l) "Project" means the design, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipping, maintenance, repair (including replacements) and start-up operation of water source of supply, treatment, transmission and distribution facilities, sewage treatment, collection and transmission facilities, stormwater systems, police stations, fire stations, libraries, museums, schools, other public buildings, hospitals, piers, docks, terminals, drainage systems, culverts, streets, roads, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), public transportation, public recreation centers, public recreation parks, swimming pools, tennis
courts, golf courses, equine facilities, motor vehicle
competition and recreational facilities, flood protection or
relief projects, or the grading, regrading, paving, repaving,
surfacing, resurfacing, curbing, recurfing, widening,
lighting or otherwise improving any street, avenue, road,
highway, alley or way, or the building or renewing of
sidewalks and flood protection; and the terms shall mean
and include any project as a whole, and all integral parts
thereof, including all necessary, appropriate, useful,
convenient or incidental appurtenances and equipment in
connection with any one or more of the above.

§16-13E-4. Petition for creation or expansion of community
enhancement district; petition requirements.

(a) The owners of at least sixty-one percent of the real
property, determined by acreage, located within the
boundaries of the area described in the petition, by metes
and bounds or otherwise in a manner sufficient to describe
the area, may petition a governing body to create or
expand a community enhancement district.

(b) The petition for the creation or expansion of a
community enhancement district shall include, where
applicable, the following:

(1) The proposed name and proposed boundaries of such
district and a list of the names and addresses of all owners
of real property within the proposed district;

(2) A detailed project description;

(3) A map showing the proposed project, including all
proposed improvements;

(4) A list of estimated project costs and the preliminary
plans and specifications for such improvements, if avail-
able;

(5) A list of nonproject costs and how they will be
financed;
(6) A consultant study outlining the projected assessments, setting forth the methodology for determining the assessments and the methodology for allocating portions of an initial assessment against a parcel expected to be subdivided in the future to the various lots into which the parcel will be subdivided and demonstrating that such assessments will adequately cover any debt service on bonds issued to finance the project and ongoing administrative costs;

(7) A development schedule;

(8) A list of recommended members for the board;

(9) If the project includes water, wastewater or sewer improvements, written evidence from the utility or utilities that will provide service to the district, if any, that said utility or utilities:

(A) Currently has adequate capacity to provide service without significant upgrades or modifications to its treatment, storage or source of supply facilities, except facilities which the community enhancement district will provide as described in the petition;

(B) Will review and approve all plans and specifications for the improvements to determine that the improvements conform to the utility's reasonable requirements and, if the improvement consists of water transmission or distribution facilities, that the improvements provide for adequate fire protection for the district; and

(C) If built in conformance with said plans and specifications, will accept the improvements following their completion, unless such projects are to be owned by the district;

(10) If the project includes improvements other than as set forth in subdivision (9) of this subsection that will be transferred to another governmental agency, written
evidence that such agency will accept such transfer, unless such projects are to be owned by the district;

(11) The benefits that can be expected from the creation of the district and the project; and

(12) A certification from each owner of real property within the proposed district who joins in the petition that he or she is granting an assessment against his or her property in such an amount as to pay for the costs of the project and granting a lien for said amount upon said property enforceable in accordance with this article.

(c) After reviewing the petition presented pursuant to this section, the governing body may by order or ordinance determine the necessity and economic feasibility of creating a community enhancement district and developing, constructing, acquiring, improving or extending a project therein. If the governing body determines that the creation of a community enhancement district and construction of the project is necessary and economically feasible, it shall set a date for the public meeting required under section five of this article and shall cause the petition to be filed with the clerk of the county commission or the clerk or recorder of the municipality, as the case may be, and be made available for inspection by interested persons before the meeting.

(d) Notwithstanding any other contrary provision of this article, nothing in this article shall modify:

(1) The jurisdiction of the Public Service Commission to determine the convenience and necessity of the construction of utility facilities, to resolve disputes between utilities relating to which utility should provide service to a district or otherwise to regulate the orderly development of utility infrastructure in the state; or

(2) The authority of the Infrastructure and Jobs Development Council as to the funding of utility facilities to the
§16-13E-10a. Extension of vesting period for land development plans and plats; approval of phases.

(a) The five-year vesting period is extended to the development concept vesting period with respect to the development concept if: (i) The land development will be wholly contained within a community enhancement district; and (ii) either:

(A) Such community enhancement district has been created and is in existence, and such facts have been communicated to the planning commission, at the time the planning commission approves the subject land development plan and plat (whether such plan and plat is designated final, preliminary, phased preliminary, concept or otherwise); or

(B) Such community enhancement district is created after the initial approval of the subject land development plan and plat and the planning commission subsequently ratifies the approval of such plan and plat with the knowledge of the existence of the community enhancement district; and (iii) assessment bonds or tax increment financing obligations payable from or secured by, in whole, or in part, assessments against real property located within the district are issued within the five-year vesting period.

(b) Nothing herein shall be deemed to extend or otherwise modify the five-year vesting period with respect to items other than those included in the development concept.

(c) When a land development will be wholly contained within a community enhancement district, a land development plan and plat that otherwise pertains to and seeks
approval of only a portion or phase of the land develop-
ment may also contain the development concept for a
greater portion, multiple phases or the entirety of the land
development if the plan and plat expressly so provides.
Approval of a land development plan and plat by the
planning commission constitutes approval of, and the
establishment of a vested property right in, the entire
development concept contained in the land development
plan and plat.

(d) This section shall apply to all community enhance-
ment districts, regardless of whether created prior or
subsequent to enactment of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill approved this the 2nd Day of _________________, 2010.

Governor
PRESENTED TO THE
GOVERNOR

APR 01 2010

Time 11:25am