

SB 595

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010



ENROLLED

Senate Bill No. 595

(BY SENATORS McCABE AND MINARD)

[Passed March 11, 2010; in effect from passage.]

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CITIZENSHIP DIVISION
SECRETARY OF STATE

ENROLLED

Senate Bill No. 595

(BY SENATORS MCCABE AND MINARD)

[Passed March 11, 2010; in effect from passage.]

AN ACT to amend and reenact §8A-4-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-5-12 of said code, all relating to subdivisions; extending the approval term of certain uses and permits associated with a subdivision plan or plat and extending the vesting period for a subdivision or land development plan or plat.

Be it enacted by the Legislature of West Virginia:

That §8A-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-5-12 of said code be amended and reenacted, all to read as follows:

ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.

§8A-4-2. Contents of subdivision and land development ordinance.

- 1 (a) A subdivision and land development ordinance shall
- 2 include the following provisions:
 - 3 (1) A minor subdivision or land development process,
 - 4 including criteria, requirements and a definition of minor
 - 5 subdivision;

6 (2) The authority of the planning commission and its
7 staff to approve a minor subdivision or land development;

8 (3) A major subdivision or land development process,
9 including criteria and requirements;

10 (4) The authority of the planning commission to approve
11 a major subdivision or land development;

12 (5) The standards for setback requirements, lot sizes,
13 streets, sidewalks, walkways, parking, easements, rights-
14 of-way, drainage, utilities, infrastructure, curbs, gutters,
15 street lights, fire hydrants, storm water management and
16 water and wastewater facilities;

17 (6) Standards for flood-prone or subsidence areas;

18 (7) A review process for subdivision or land development
19 plans and plats by the planning commission;

20 (8) An approval process for subdivision or land develop-
21 ment plans and plats by the planning commission, includ-
22 ing the authority to approve subdivision or land develop-
23 ment plans and plats with conditions;

24 (9) A process to amend final approved subdivision or
25 land development plans and plats;

26 (10) A requirement that before development of the land
27 is commenced, subdivision and land development plans
28 and plats must be approved by the applicable planning
29 commission, in accordance with the comprehensive plan,
30 if a comprehensive plan has been adopted;

31 (11) A requirement that after approval of the subdivision
32 or land development plat by the planning commission and
33 before the subdivision or development of the land is
34 commenced, the subdivision and land development plat
35 shall be recorded in the office of the clerk of the county
36 commission where a majority of the land to be developed
37 lies;

38 (12) A schedule of fees to be charged which are propor-
39 tioned to the cost of checking and verifying proposed
40 plats;

41 (13) The process for granting waivers from the minimum
42 standards of the subdivision and land development
43 ordinance;

44 (14) Improvement location permit process, including a
45 requirement that a structure or development of land is
46 prohibited without an improvement location permit;

47 (15) The acceptable methods of payment to cover the
48 cost of the water and sewer service infrastructure, which
49 can include, but are not limited to, bonds, impact fees,
50 escrow fees and proffers;

51 (16) The process for cooperating and coordinating with
52 other governmental agencies affected by the subdivision
53 and land development and use; and

54 (17) Penalties for violating the subdivision and land
55 development ordinance.

56 (b) A subdivision and land development ordinance may
57 include the following provisions:

58 (1) Establishing a board of subdivision and land devel-
59 opment appeals with the same powers, duties and appeals
60 process as set out for the board of zoning appeals under
61 the provisions of article eight of this chapter;

62 (2) Requirements for green space, common areas, public
63 grounds, walking and cycling paths, recreational trails,
64 parks, playgrounds and recreational areas;

65 (3) Encourage the use of renewable energy systems and
66 energy-conserving building design;

67 (4) Vested property right, including requirements;

68 (5) Exemptions of certain types of land development
69 from the subdivision and land development ordinance
70 requirements, including, but not limited to, single-family
71 residential structures and farm structures; and

72 (6) Any other provisions consistent with the comprehen-
73 sive plan the governing body considers necessary.

74 (c) All requirements, for the vesting of property rights
75 contained in an ordinance enacted pursuant to this section
76 that require the performance of any action within a
77 certain time period for any subdivision or land develop-
78 ment plan or plat valid under West Virginia law and
79 outstanding as of January 1, 2010, shall be extended until
80 July 1, 2012, or longer as agreed to by the municipality,
81 county commission or planning commission. The provi-
82 sions of this subsection also apply to any requirement that
83 a use authorized pursuant to a special exception, special
84 use permit, conditional use permit or other agreement or
85 zoning action be terminated or ended by a certain date or
86 within a certain number of years.

ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.

**PART I. MINOR SUBDIVISION OR
LAND DEVELOPMENT PROCESS.**

§8A-5-12. Vested property right.

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

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

10 (c) The vesting period for an approved land development
11 plan and plat which creates the vested property right is
12 five years from the approval of the land development plan
13 and plat by the planning commission.

14 (d) Without limiting the time when rights might other-
15 wise vest, a landowner's rights vest in a land use or
16 development plan and cannot be affected by a subsequent
17 amendment to a zoning ordinance or action by the plan-
18 ning commission when the landowner:

19 (1) Obtains or is the beneficiary of a significant affirma-
20 tive governmental act which remains in effect allowing
21 development of a specific project;

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

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

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

34 (f) Any subdivision or land development plan or plat,
35 whether recorded or not yet recorded, valid under West
36 Virginia law and outstanding as of January 1, 2010, shall
37 remain valid until July 1, 2012, or such later date provided
38 for by the terms of the planning commission or county
39 commission's local ordinance or for a longer period as
40 agreed to by the planning commission or county commis-
41 sion. Any other plan or permit associated with the subdivi-
42 sion or land development plan or plat shall also be

43 extended for the same time period. *Provided, That* the
44 land development plan or plat has received at least
45 preliminary approval by the planning commission or
46 county commission by March 1, 2010.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *22nd*
March
Day of , 2010.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 19 2010

Time 4:00 pm