

1 (1) A minor subdivision or land development process, including
2 criteria, requirements and a definition of minor subdivision;

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

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

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

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

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

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

17 (8) An approval process for subdivision or land development
18 plans and plats by the planning commission, including the authority
19 to approve subdivision or land development plans and plats with
20 conditions;

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

23 (10) A requirement that before development of the land is
24 commenced, subdivision and land development plans and plats must be

1 approved by the applicable planning commission, in accordance with
2 the comprehensive plan, if a comprehensive plan has been adopted;

3 (11) A requirement that after approval of the subdivision or
4 land development plat by the planning commission and before the
5 subdivision or development of the land is commenced, the
6 subdivision and land development plat shall be recorded in the
7 office of the clerk of the county commission where a majority of
8 the land to be developed lies;

9 (12) A schedule of fees to be charged which are proportioned
10 to the cost of checking and verifying proposed plats;

11 (13) The process for granting waivers from the minimum
12 standards of the subdivision and land development ordinance;

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

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

19 (16) The process for cooperating and coordinating with other
20 governmental agencies affected by the subdivision and land
21 development and use; and

22 (17) Penalties for violating the subdivision and land
23 development ordinance.

24 (b) A subdivision and land development ordinance may include

1 the following provisions:

2 (1) Establishing a board of subdivision and land development
3 appeals with the same powers, duties and appeals process as set out
4 for the board of zoning appeals under the provisions of article
5 eight of this chapter;

6 (2) Requirements for green space, common areas, public
7 grounds, walking and cycling paths, recreational trails, parks,
8 playgrounds and recreational areas;

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

11 (4) Vested property right, including requirements;

12 (5) Exemptions of certain types of land development from the
13 subdivision and land development ordinance requirements, including,
14 but not limited to, single-family residential structures and farm
15 structures; and

16 (6) Any other provisions consistent with the comprehensive
17 plan the governing body considers necessary.

18 (c) All requirements, for the vesting of property rights
19 contained in an ordinance enacted pursuant to this section that
20 require the performance of any action within a certain time period
21 for any subdivision or land development plan or plat valid under
22 West Virginia law and outstanding as of January 1, 2010, shall be
23 extended until July 1, ~~2012~~ 2015, or longer as agreed to by the
24 municipality, county commission or planning commission. The

1 provisions of this subsection also apply to any requirement that a
2 use authorized pursuant to a special exception, special use permit,
3 conditional use permit or other agreement or zoning action be
4 terminated or ended by a certain date or within a certain number of
5 years.

6 **ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.**

7 **§8A-5-12. Vested property right.**

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

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

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

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

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

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

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

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

15 (f) Any subdivision or land development plan or plat, whether
16 recorded or not yet recorded, valid under West Virginia law and
17 outstanding as of January 1, 2010, shall remain valid until July 1,
18 ~~2012~~ 2015, or such later date provided for by the terms of the
19 planning commission or county commission's local ordinance or for
20 a longer period as agreed to by the planning commission or county
21 commission. Any other plan or permit associated with the
22 subdivision or land development plan or plat shall also be extended
23 for the same time period: *Provided*, That the land development plan
24 or plat has received at least preliminary approval by the planning

1 commission or county commission by March 1, 2010.

(NOTE: The purpose of this bill is to extend 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 from July 1, 2012 until July 1, 2015.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)