

APPENDIX B

VESTED PROPERTY RIGHTS

(Amended 5/11/15)

As enacted by the Tennessee General Assembly in Public Chapter No. 686, Vested Property Rights Act of 2014, statutory requirements have been established relative to development standards and vested property rights for landowners and developers. These statutory requirements are enumerated in Appendix B, Vested Property Rights.

A. Definitions of Vested Property Rights

Applicant – means a landowner or developer or any party, representative, agent, successor, or heirs of the landowner or developer.

Construction – means the erection of construction materials in a permanent manner, and includes excavation, demolition, or removal of an existing building.

Development Plan – means both a preliminary development plan and a final development plan.

Development Standards – means all locally adopted or enforced standards applicable to the development of property including, but not limited to planning: storm water requirements; layout; design; local infrastructure construction standards, off-site improvements, lot size, configuration, and dimensions. NOT included are standards required by federal or state law, or building construction safety codes.

Final Development Plan – means a plan approved by the local government describing with reasonable certainty the use of property. Such plan may be in the form of, but not limited to, a planned unit development plan; subdivision plat; general development plan; subdivision infrastructure construction plan; final engineering site plan; or any other land-use approval designated utilized. Unless otherwise expressly provided by the county, such a plan shall include the boundaries of the site; significant topographical features affecting the development of the site; locations of improvements; building dimensions; and the location of all existing and proposed infrastructure on the site. Neither a sketch plan nor other document that fails to describe with reasonable certainty the use and development scheme may constitute a final development plan.

Preliminary Development Plan – means a plan submitted to facilitate initial public feedback, and secure preliminary approvals from local government. It serves as a guide for all future improvements.

Site Preparation – means excavation, grading, demolition, drainage, and physical improvements such as water and sewer lines, footings, and foundations.

B. Vesting Rights and Periods

Vested property rights are established for any preliminary development plan, final development plan (where no preliminary development plan is required), or building permit issued to allow construction of a building to commence where there is no local requirement for prior approval of a preliminary development plan.

During the vesting period, the locally adopted development standards in effect on the date of approval remain the development standards applicable to that property or building during the vesting period as follows:

1. **Building permit projects (no preliminary plan approval)** – The vesting period commences on the date of building permit issuance and remains in effect for the period authorized by the building permit.
2. **Development plan project** – The vesting period applicable to a development plan is three years, beginning on the date of approval of the preliminary development plan; provided the applicant obtains final development plan approval, secure permits, and commences site preparation within the three (3)-year vesting period.

If the applicant obtains approval of a final development plan, secures permits, and commences site preparation within the three (3)-year vesting period, then the vesting period is extended an additional two (2) years (to a total of five (5) years) to commence construction from the date of preliminary plan approval. During the two year period, the applicant shall commence construction and maintain any necessary permits to remain vested.

If construction commences within the five (5)-year vesting period following preliminary development plan approval, the development standards in effect on the date of approval remain in effect until final completion of the project, provided however, that the vesting period shall not exceed ten (10) years unless the county grants an extension through an ordinance or resolution; and provided further that the applicant maintain all necessary permits during the ten (10)-year period.

3. **Multi-phase projects** – A separate vesting period applies for projects proceeding in two or more sections or phases (as set forth in the development plan). The development standards in effect on the date of approval of the preliminary development plan for the first section or phase remain in effect for all subsequent sections or phases; provided the total vesting period does not exceed fifteen (15) years unless the county grants an extension through a resolution; and provided that the applicant maintain all necessary permits during the fifteen (15)-year period.

<u>Type of Project</u>	<u>Effective Date</u>	<u>Vesting Period</u>	<u>Total Vesting Period to Maintain Vesting Rights</u>	<u>Required Actions Obtain:</u>
<u>Building Permit (No Development Plan Required)</u>	Date of Issuance of Building Permit	Period Authorized by the Building Permit	Period Authorized by the Building Permit	Complete Construction within period authorized by the building permit
<u>Preliminary Development Plan</u>	Date of Issue	3 Years	3 Years	Final Development Plan Approval, Secure Permits, and Commence Site Preparation
<u>Final Development Plan</u>	3 Years from Date of Preliminary Plan Approval	2 Years	5 Years	Complete Construction, Maintain Permits
	5 Years from Date of Preliminary Plan Approval	5 Years	10 Years	Complete Construction, Maintain Permits
<u>Multi-Phase or Sections</u>	Date of Issue of Preliminary Development Plan	Separate Vesting Period for Each Phase or Section	15 Years	Complete Construction for Each Phase; Maintain Permits

A vested property right attaches to and runs with the applicable property and confers upon the applicant the right to undertake and complete the development and use such property under the terms and conditions of a development plan, including any amendment thereto or under the terms and conditions of any building permit that has been issued with respect to the property.

C. Termination of Vesting Rights

During the vesting period, the locally adopted development standards which are in effect on the date of approval of a preliminary development plan or the issuance of a building permit, whichever applies, remain the development standards applicable to the property described in such preliminary development plan or permit, except such vested property rights terminate upon a written determination by the county under the following circumstances:

1. When the applicant violates the terms and conditions specified in the approved development plan or building permit; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the county may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;
2. When the applicant violates any of the terms and conditions specified in the local resolution; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the county may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;
3. Upon a finding by the county that the applicant intentionally supplied inaccurate information or knowingly made misrepresentations material to the issuance of a building permit or the approval of a development plan or intentionally and knowingly did not construct the development in accordance with the issued building permit or the approved development plan or an approved amendment for the building permit or the development plan; or

4. Upon the enactment or promulgation of a state or federal law, regulation, rule, policy, corrective action or other governance, regardless of nomenclature, that is required to be enforced by the county and that precludes development as contemplated in the approved development plan or building permit, unless modifications to the development plan or building permit can be made by the applicant, within ninety (90) days of notification of the new requirement, which will allow the applicant to comply with the new requirement.

A county may allow a property right to remain vested despite such a determined occurrence when a written determination by the county is made that such continuation is in the best interest of the community.

D. Development Standards Enforcement

A vested development standard shall not preclude county enforcement of any development standard when:

1. The county obtains the written consent of the applicant or owner;
2. The county determines, in writing, that a compelling, countervailing interest exists relating specifically to the development plan or property which is the subject of the building permit that seriously threatens the public health, safety or welfare of the community and the threat cannot be mitigated within a reasonable period of time, as specified in writing by the county, by the applicant using vested property rights;
3. Upon written determination by the county of the existence of a natural or man-made hazard on or in the immediate vicinity of the subject property, not identified in the development plan or building permit, and which hazard, if uncorrected, would pose a serious threat to the public health, safety or welfare and the threat cannot be mitigated within a reasonable period of time, as specified in writing by the local government, by the applicant using vested property rights;
4. A development standard is required by federal or state law, rule, regulation, policy, corrective action, order or other type of governance that is required to be enforced by the county, regardless of nomenclature; or
5. A county is undertaking an action initiated or measure instituted in order to comply with a newly enacted federal or state law, rule, regulation, policy, corrective action, permit, order or other type of governance; regardless of nomenclature.

E. Development Plan Amendment

An amendment to an approved development plan by the applicant must be approved by the county to retain the protections of the vested property right. An amendment may be denied based upon a written finding by the county that the amendment:

1. Alters the proposed use;
2. Increases the overall area of the development;
3. Alters the size of any nonresidential structures included in the development plan;

4. Increases the density of the development so as to affect traffic, noise or other environmental impacts; or
5. Increases any local government expenditure necessary to implement or sustain the proposed use.

If an amendment is denied by the county based upon such a written finding, then the applicant may either proceed under the prior approved plan with the associated vested property right or, alternatively, allow the vested property right to terminate and submit a new application. Notwithstanding the foregoing, a vested property right shall not terminate if the county determines, in writing, that it is in the best interest of the community to allow the development to proceed under the amended plan without terminating the vested property right.

F. Waiver Rights Prohibited

A county may not require an applicant to waive the applicant's vested rights as a condition of approval, or as a consideration of approval, of a development plan or the issuance of a building permit.

G. Extension of Rights

The vesting period for an approved construction project may be extended as deemed advisable by the county.

H. Zoning with Vested Property Rights

A vested property right, once established, precludes the effect of any zoning action by a county which would change, alter, impair, prevent, diminish, or otherwise delay the development of the property, while vested, as described in an approved development plan or building permit. With said exception, nothing shall preclude, change, amend, alter or impair the authority of a county to exercise its zoning authority.

I. Development Moratorium

In the event the county enacts a moratorium on development or construction, the vesting period established by this act shall be tolled during the moratorium period.

J. Eminent Domain with Vested Property Rights

A vested property right does not preclude, change, amend, alter or impair the authority of a county to exercise its eminent domain powers as provided by law.