

Vested Property Rights, Development Fees, and Legislative Updates

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*Southeast Tennessee
Development District*

*Planning Commission Training
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Vested Property Rights



Howe Realty Co. vs City of Nashville (1940)

- Contractor got a permit to build a filling station in a largely residential neighborhood
- Because of the controversy of the development, the city cancelled the permit and changed the zoning from commercial to residential
- The contractors sued with the Tennessee Supreme Court taking up the case
- The court ruled that the city had the authority to cancel the permit because the developer, Shell Oil Company, had not “expended any money, incurred any obligations, or done any work on this property after the permit was issued”
- This is the first case where “vested right” was mentioned in a court case in Tennessee, “a building permit has none of the elements of a contract and may be changed or revoked any time before the party to whom it was issued has acquired a vested right thereunder”

CK Development LLC v. Town of Nolensville (2012)

- CK Development had a PUD (Planned Unit Development) approved in 2003 which would be done in phases
- In 2009, the Planning Commission approved the final approval of Phase 7 with the condition that they use the 2007 road standards
- CK Development sued arguing that they had vested rights to use the 2003 road standards
- A trial court held that CK Development had vested rights under the 2003 road standards
- However, the Tennessee Court of Appeals ruled that they did not have vested rights and had to adhere to the 2007 road standards
- The Court of Appeals ruled that Tennessee required the “issuance of a building permit, plus substantial construction and/or expenditures, before a right to develop vests” which phase 7 of the PUD had not done yet

What are Vested Property Rights?



Vested Property Rights Act of 2014 was created to establishing vesting periods for developments



Vesting periods applies to all development plans which includes preliminary plats, final plats, site plans, and building permits



Vesting means that the development of a property is held to the version of regulations that were in place at the time that the vesting period began



For example, if the vesting period began on February 1, 2020, a development cannot be held to any new standards in the development regulations that were put in place after February 1st

Vested Property Rights Timeline Prior to July 1, 2025

Type of Project	Effective Date	Vesting Period	Total Vesting Period to Maintain Vested Rights	Required Actions
Building Permit (No development plan required)	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
Development Plan				
Preliminary Development Plan	Date of Issue	3 Years	3 Years	Obtain Final Development Plan approval; secure permits; and commence site preparation
Final Development Plan	3 years from date of Preliminary Plan approval	2 Years	5 Years	Commence construction, maintain permits
	5 years from date of Preliminary Plan approval	5 Years	10 Years	Complete construction; maintain permits
Multi-phase or sections	Date of Issue of Preliminary Development Plan	Separate vesting period for each phase or section	15 Years	Complete construction for each phase; maintain permits

Vested Property Rights Timeline from July 1, 2025, and Onward

Type of Project	Effective Date	Vesting Period	Total Vesting Period to Maintain Vested Rights	Required Actions
Building Permit (No development plan required)	Date of Submission of Building Permit	Period authorized by the building permit	3 Years	Complete construction within period authorized by the building permit
Development Plan - Preliminary Development Plan	Date of submission of application	3 Years	3 Years	Obtain Final Development Plan approval; secure permits, and commence site preparation
Development Plan - Final Development Plan	3 years from date of Preliminary Plan submission	2 Years	5 Years	Commence construction, maintain permits
Development Plan - Final Development Plan	5 years from date of Preliminary Plan submission	5 Years	10 Years	Complete construction; maintain permits
Development Plan - Multi-phase or sections	Date of submission of Preliminary Development Plan	Separate vesting period for each phase or section	15 Years	Complete construction for each phase; maintain permits

How Does Vesting Work for Multiphase Developments?

- Per the new state law, vesting begins at the submittal of the preliminary development plan
- There is a separate vesting period applicable to each section or phase of the development
- The development standards which are in effect on the date of the submission of the preliminary development plan for the first section or phase shall remain the development standards applicable to all subsequent sections or phases
- However, this only applies when the total vesting period for all phases does not exceed 15 years from the date of the submission of the preliminary development plan
- Unless the local government grant extension via an ordinance or resolution, provided that the applicant maintains any necessary permits during the 15-year period

What Does this Change in Vested Property Rights Mean?

A vested property right is not established UNLESS the plan or building permit substantially complies with the requirements of local development ordinances and regulations

Per TAPA: If a local government has not adopted an ordinance or resolution specifying substantial compliance that would mean that a vested property right shall vest upon the submission of any plan, plat, drawing, or sketch.

How to Address Substantial Compliance

MTAS draft definition of “substantially compliant”: Substantial compliance means that an application includes all required documents, plans, and forms, and that each submission is complete, accurate, and conforms to the city’s zoning ordinance, subdivision provisions, and all applicable general regulations. The application must demonstrate that the proposed plan meets the intent and substantive requirements of all applicable codes, even if minor, technical, or non-material errors or omissions are present.



Zoning Ordinances and Subdivision Regulations need to be updated to address substantial compliance and when preliminary plans are considered “submitted”.

Development Fee Justification



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- Public Chapter 140 was passed this year and requires fee justification for any development fee more than \$250
 - This applies to both counties and municipalities
 - Local governments must “Maintain documentation describing the justification and cost basis for such fee in excess of \$250”
 - Must be maintained and kept on file by the department, agency, or official;
 - Is a public record and available for public inspection upon request pursuant to title 10, chapter 7, part 5; and
 - Is subject to an annual audit by the comptroller of the treasury. The comptroller may incorporate the annual audit into any other financial audit of the municipality performed by the comptroller of the treasury.
 - Documentation is also required upon the adoption or change in existing fee that is in excess of \$250
 - This new law takes effect on July 1, 2026
 - This is only a one-time justification for existing fees, adoption or change of new fees. You don’t have to justify the fee every time someone pays a development fee.

Example of Fee Schedule

a. Single family residence and duplex	\$100.00	\$200
b. Multifamily, mobile park and commercial	150.00	\$300
c. Industrial	200.00	\$300
d. Rezoning Application	45.00	\$150
e. For a Use on Review, special exception or conditional use	75.00	\$150
Customary Home Occupation Certification.....		\$50

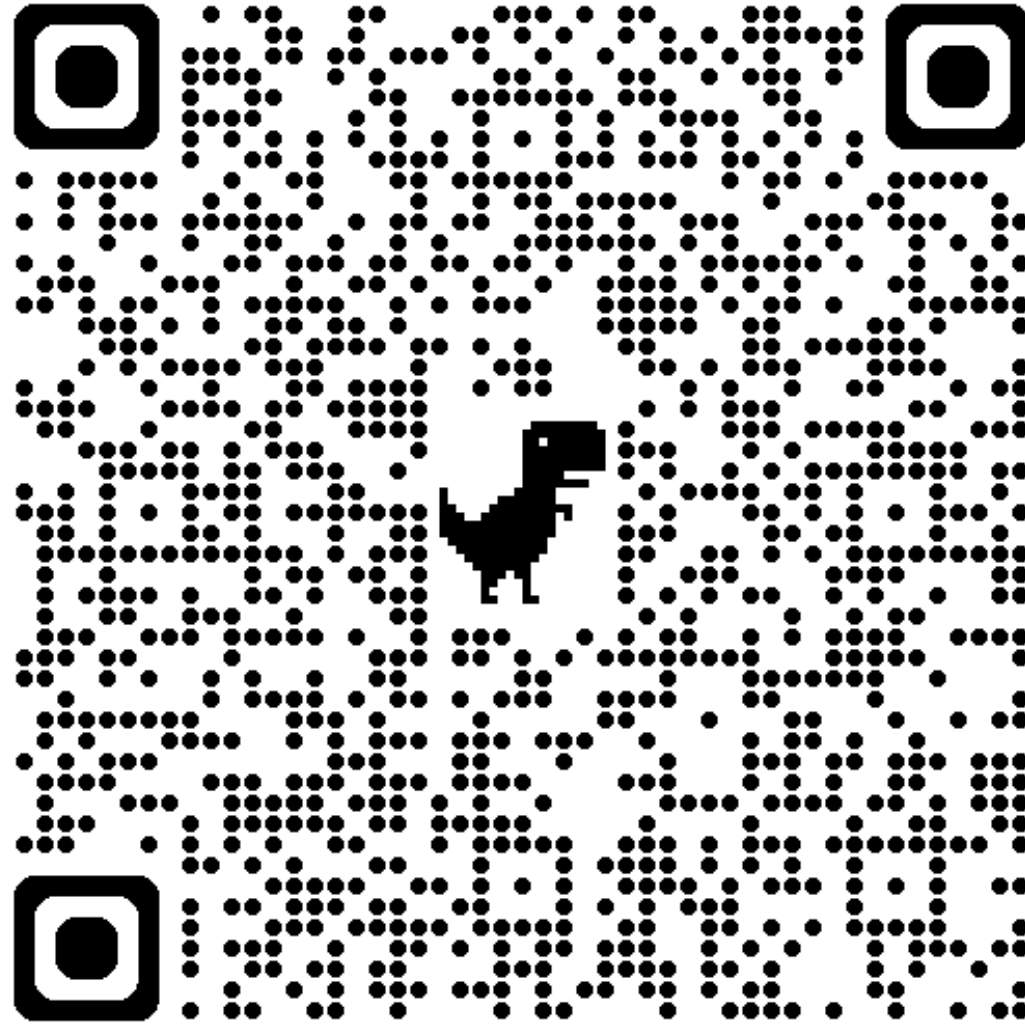
Legislative Updates: Bills that will likely return at the next legislative Session

- HB0608/SB1045
 - Prohibits local governments from requiring non-essential infrastructure for single family developments of under 300 homes or multifamily residences under 500 units
- HB0795/SB0731
 - Development Review:
 - Require approval/issuance of a report of deficiencies no later than 30 business days from receipt of application
 - Prohibit issuing more than 2 written reports of deficiencies. If a 3rd or subsequent written report of deficiencies is issued, local government shall remand to the applicant 50% of the total amount of fees paid
 - Public Contracts:
 - Prohibits local government from requiring a developer/ contractor to pay for development of nonessential infrastructure.
 - Require 30-day bond release after “independent” inspection

Questions?

A 3D rendering of a field of dark grey question marks, with one prominent yellow question mark in the center. The scene is lit from the top, creating highlights and shadows on the question marks. The background is a dense field of these question marks, receding into the distance.

QR Code for Feedback Survey



QR Code for Map

