State of Tennessee

PUBLIC CHAPTER NO. 686

SENATE BILL NO. 915

By Niceley, Green, Bowling, Campfield, Massey

Substituted for: House Bill No. 964

By Todd, Durham, Littleton, Evans, Rich, Casada, Curtis Johnson, Dennis, Faison, Matthew Hill, Pitts, Shepard, Hardaway, Timothy Hill, Rogers

AN ACT to amend Tennessee Code Annotated, Section 13-4-310 and Section 13-3-413, relative to development standards.

WHEREAS, the Tennessee General Assembly finds and declares that it is necessary and desirable, as a matter of public policy, to provide for the establishment of certain vested property rights in order to ensure reasonable certainty, stability, and fairness in the land development process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning and development; and

WHEREAS, the ability of a landowner to obtain a vested right at the time of approval of a development plan will preserve the prerogatives and authority of local elected officials with respect to land-use matters; and

WHEREAS, these provisions will strike an appropriate balance between private expectations and the public interest, while protecting the public health, safety, and welfare; and

WHEREAS, the Tennessee General Assembly hereby enacts the following sections which shall be known as the "Vested Property Rights Act of 2014"; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 13-3-413, is amended by designating the existing language as subsection (a) and by adding the following language as new subsections:

(b) A vested property right shall be established with respect to any property upon the approval, by the local government in which the property is situated, of a preliminary development plan or a final development plan where no preliminary development plan is required by ordinance or regulation or a building permit allowing construction of a building where there was no need for prior approval of a preliminary development plan for the property on which that building will be constructed. During the vesting period described in subsections (c) and (d), the locally adopted development standards which are in effect on the date of approval of a preliminary development plan or the date of approval of a building permit, as described by this subsection (b), shall remain the development standards applicable to that property or building during the vesting period.

(c) Unless an extension is granted by the local government, the vesting period applicable to an approved construction project for which a building permit has been issued shall begin on the date of issuance of the building permit by the local government and shall remain in effect for the time period authorized by the approved building permit, including any approved renewal obtained by the applicant prior to the expiration or termination of the permit to be renewed; provided, the applicant pursues with reasonable diligence site preparation, if applicable, and construction.

(d)(1) The vesting period applicable to a development plan shall be a period of three (3) years, beginning on the date of the local government's approval of the preliminary development plan; provided the applicant obtains local government approval of a final development plan, secures any necessary permits and commences site preparation within the vesting period. If the applicant obtains local government approval of a final development plan, secures any necessary permits, and commences site preparation within the vesting period, then the vesting period shall be extended an additional two (2) years to commence construction from the date of the expiration of the three-year

period. During the two-year period, the applicant shall commence construction and maintain any necessary permits to remain vested.

(2) If construction commences during the vesting period, the development standards applicable during the vesting period shall remain in effect until the local government has certified final completion of the development or project; provided, the total vesting period for the project shall not exceed ten (10) years from the date of the approval of the preliminary development plan unless the local government grants an extension pursuant to an ordinance or resolution; provided further, that the applicant maintains any necessary permits during the ten-year period.

(3) In the case of developments which proceed in two (2) or more sections or phases as described in the development plan, there shall be a separate vesting period applicable to each section or phase. The development standards which are in effect on the date of approval of the preliminary development plan for the first section or phase of the development shall remain the development standards applicable to all subsequent sections or phases of the development; provided, the total vesting period for all phases shall not exceed fifteen (15) years from the date of the approval of the preliminary development plan for the first section or phase unless the local government grants an extension pursuant to an ordinance or resolution; provided further, that the applicant maintains any necessary permits during the fifteen-year period.

(e) A local government may, by ordinance or resolution, specifically identify the type or types of development plans within the local government's jurisdiction that will cause property rights to vest; provided, that regardless of nomenclature used in the ordinance or resolution to describe a development plan, a plan which contains any of the information described in subdivision (k)(5) or (k)(6) shall be considered a development plan that will cause property rights to vest according to this section. Any such ordinance or resolution shall also specify what constitutes approval of a development plan within its jurisdiction. If a local government has not adopted an ordinance or resolution pursuant to this section specifying what constitutes a development plan that would trigger a vested property right, then rights shall vest upon the approval of any plan, plat, drawing, or sketch, however denominated, that is substantially similar to any plan, plat, drawing, or sketch described in subdivision (k)(5) or (k)(6).

(f)(1) During the vesting period described in subsections (c) and (d), 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, shall remain the development standards applicable to the property described in such preliminary development plan or permit, except such rights shall terminate upon a written determination by the local government under the following circumstances pursuant to subdivision (f)(2):

(A) 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 local government 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;

(B) When the applicant violates any of the terms and conditions specified in the local ordinance or resolution; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the local government 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;

(C) Upon a finding by the local government 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

(D) 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 local government 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.

(2) A written determination by the local government of the occurrence of any of the circumstances provided in subdivision (f)(1) shall cause the vested property rights to terminate; provided, however, a local government may allow a property right to remain vested despite such a determined occurrence when a written determination is made that such continuation is in the best interest of the community.

(g)(1) A vested development standard shall not preclude local government enforcement of any development standard when:

(A) The local government obtains the written consent of the applicant or owner;

(B) The local government 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 local government, by the applicant using vested property rights;

(C) Upon the written determination by the local government 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;

(D) 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 local governments, regardless of nomenclature; or

(E) A local government 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.

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

(3) This section shall not preclude, change, amend, alter or impair the authority of a local government to exercise its zoning authority, except a vested property right, once established as provided for in this section, precludes the effect of any zoning action by a local government 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.

(4) In the event the local government enacts a moratorium on development or construction, the vesting period authorized pursuant to this section shall be tolled during the moratorium period.

(h)(1) An amendment to an approved development plan by the developer must be approved by the local government to retain the protections of the vested property right. An amendment may be denied based upon a written finding by the local government that the amendment:

(A) Alters the proposed use;

(B) Increases the overall area of the development;

(C) Alters the size of any nonresidential structures included in the development plan;

(D) Increases the density of the development so as to affect traffic, noise or other environmental impacts; or

(E) Increases any local government expenditure necessary to implement or sustain the proposed use.

(2) If an amendment is denied by the local government 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 under this section. Notwithstanding this subsection (h), a vested property right shall not terminate if the local government 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.

(i) A local government shall 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.

(j) A vested property right shall attach to and run with the applicable property and shall confer 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 amendments thereto or under the terms and conditions of any building permit that has been issued with respect to the property.

(k) As used in this section:

(1) "Applicant" means a landowner or developer who is responsible for filing with the local government an application for a building permit, a development plan or application for a permit requisite to a development plan, or the representatives, assigns, successors, transferees, heirs or agents of such landowner or developer;

(2) "Construction" means the erection of construction materials in a permanent position and fastened in a permanent manner. Where excavation, demolition or removal of an existing building has been substantially begun prior to rebuilding, such excavation, demolition or removal shall be deemed to be construction; provided, that work shall be carried on diligently and complies with all applicable requirements;

(3) "Development plan" means both a preliminary development plan and a final development plan;

(4) "Development standards":

(A) Means all locally adopted or enforced standards, regulations or guidelines applicable to the development of property, including, but not limited to, planning; local storm water requirements, layout, design; local construction standards for buildings, streets, alleys, curbs, sidewalks; zoning as provided for in subsection (g); lot size; lot configuration; yard dimensions; and off-site improvements, including public or private infrastructure, in which an applicant may acquire vested rights or vested property rights according to this section; and

(B) Does not include standards required by federal or state law; or building construction safety standards which are adopted pursuant to authority granted under § 68-120-101;

(5)(A) "Final development plan" means a plan which has been submitted by an applicant and approved by a local government describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals:

(i) A planned unit development plan;

(ii) A subdivision plat;

(iii) General development plan;

(iv) Subdivision infrastructure construction plan;

(v) Final engineered site plan; or

(vi) Any other land-use approval designation as may be utilized by a local government.

(B) Unless otherwise expressly provided by the local government, such a plan shall include the boundaries of the site; significant topographical and other natural features affecting development of the site; the location on the site of the proposed buildings, structures, and other improvements; the dimensions, including height, of the proposed buildings and other structures or a building envelope; and the location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. A variance shall not constitute a final development plan, and approval of a final development plan with the condition that a variance be obtained shall not confer a vested property right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type of use, the intensity of use, and the ability to be served with essential utilities and road infrastructure for a specified parcel or parcels of property may constitute a final development plan;

(6) "Preliminary development plan" means a plan which has been submitted by an applicant and that depicts a single-phased or multi-phased planned development typically used to facilitate initial public feedback and secure preliminary approvals from local governments. Examples of information found on development plans include proposed land uses, density and intensity of development, public utilities, road networks, general location of off-street parking, building location, number of buildable lots, emergency access, open space, and other environmentally sensitive areas such as lakes, streams, hillsides, and view sheds. An approved preliminary development plan serves as a guide for all future improvements within defined boundaries; and

(7) "Site preparation" means excavating, grading, demolition, removing excess debris to allow for proper grading, or providing a surface for a proper foundation, drainage, and settling for a development project, and physical improvements including, but not limited to, water and sanitary sewer lines, footings, or foundations installed on the site for which construction permits are required.

SECTION 2. Tennessee Code Annotated, Section 13-4-310, is amended by designating the existing language as subsection (a) and by adding the following language as new subsections:

(b) A vested property right shall be established with respect to any property upon the approval, by the local government in which the property is situated, of a preliminary development plan or a final development plan where no preliminary development plan is required by ordinance or regulation or a building permit allowing construction of a building where there was no need for prior approval of a preliminary development plan for the property on which that building will be constructed. During the vesting period described in subsections (c) and (d), the locally adopted development standards which are in effect on the date of approval of a preliminary development plan or the date of approval of a building permit, as described by this subsection (b), shall remain the development standards applicable to that property or building during the vesting period.

(c) Unless an extension is granted by the local government, the vesting period applicable to an approved construction project for which a building permit has been issued shall begin on the date of issuance of the building permit by the local government and shall remain in effect for the time period authorized by the approved building permit, including any approved renewal obtained by the applicant prior to the expiration or termination of the permit to be renewed; provided, the applicant pursues with reasonable diligence site preparation, if applicable, and construction.

(d)(1) The vesting period applicable to a development plan shall be a period of three (3) years, beginning on the date of the local government's approval of the preliminary development plan; provided the applicant obtains local government approval of a final development plan, secures any necessary permits and commences site preparation within the vesting period. If the applicant obtains local government approval of a final development plan, secures any necessary permits, and commences site preparation within the vesting period, then the vesting period shall be extended an additional two (2) years to commence construction from the date of the expiration of the three-year

period. During the two-year period, the applicant shall commence construction and maintain any necessary permits to remain vested.

(2) If construction commences during the vesting period, the development standards applicable during the vesting period shall remain in effect until the local government has certified final completion of the development or project; provided, the total vesting period for the project shall not exceed ten (10) years from the date of the approval of the preliminary development plan unless the local government grants an extension pursuant to an ordinance or resolution; provided further, that the applicant maintains any necessary permits during the ten-year period.

(3) In the case of developments which proceed in two (2) or more sections or phases as described in the development plan, there shall be a separate vesting period applicable to each section or phase. The development standards which are in effect on the date of approval of the preliminary development plan for the first section or phase of the development shall remain the development standards applicable to all subsequent sections or phases of the development; provided, the total vesting period for all phases shall not exceed fifteen (15) years from the date of the approval of the preliminary development plan for the first section or phase unless the local government grants an extension pursuant to an ordinance or resolution; provided further, that the applicant maintains any necessary permits during the fifteen-year period.

(e) A local government may, by ordinance or resolution, specifically identify the type or types of development plans within the local government's jurisdiction that will cause property rights to vest; provided, that regardless of nomenclature used in the ordinance or resolution to describe a development plan, a plan which contains any of the information described in subdivision (k)(5) or (k)(6) shall be considered a development plan that will cause property rights to vest according to this section. Any such ordinance or resolution shall also specify what constitutes approval of a development plan within its jurisdiction. If a local government has not adopted an ordinance or resolution pursuant to this section specifying what constitutes a development plan that would trigger a vested property right, then rights shall vest upon the approval of any plan, plat, drawing, or sketch, however denominated, that is substantially similar to any plan, plat, drawing, or sketch described in subdivision (k)(5) or (k)(6).

(f)(1) During the vesting period described in subsections (c) and (d), 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, shall remain the development standards applicable to the property described in such preliminary development plan or permit, except such rights shall terminate upon a written determination by the local government under the following circumstances pursuant to subdivision (f)(2):

(A) 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 local government 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;

(B) When the applicant violates any of the terms and conditions specified in the local ordinance or resolution; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the local government 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;

(C) Upon a finding by the local government 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

(D) 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 local government 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.

(2) A written determination by the local government of the occurrence of any of the circumstances provided in subdivision (f)(1) shall cause the vested property rights to terminate; provided, however, a local government may allow a property right to remain vested despite such a determined occurrence when a written determination is made that such continuation is in the best interest of the community.

(g)(1) A vested development standard shall not preclude local government enforcement of any development standard when:

(A) The local government obtains the written consent of the applicant or owner;

(B) The local government 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 local government, by the applicant using vested property rights;

(C) Upon the written determination by the local government 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;

(D) 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 local governments, regardless of nomenclature; or

(E) A local government 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.

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

(3) This section shall not preclude, change, amend, alter or impair the authority of a local government to exercise its zoning authority, except a vested property right, once established as provided for in this section, precludes the effect of any zoning action by a local government 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.

(4) In the event the local government enacts a moratorium on development or construction, the vesting period authorized pursuant to this section shall be tolled during the moratorium period.

(h)(1) An amendment to an approved development plan by the developer must be approved by the local government to retain the protections of the vested property right. An amendment may be denied based upon a written finding by the local government that the amendment:

(A) Alters the proposed use;

(B) Increases the overall area of the development;

(C) Alters the size of any nonresidential structures included in the development plan;

(D) Increases the density of the development so as to affect traffic, noise or other environmental impacts; or

(E) Increases any local government expenditure necessary to implement or sustain the proposed use.

(2) If an amendment is denied by the local government 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 under this section. Notwithstanding this subsection (h), a vested property right shall not terminate if the local government 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.

(i) A local government shall 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.

(j) A vested property right shall attach to and run with the applicable property and shall confer 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 amendments thereto or under the terms and conditions of any building permit that has been issued with respect to the property.

(k) As used in this section:

(1) "Applicant" means a landowner or developer who is responsible for filing with the local government an application for a building permit, a development plan or application for a permit requisite to a development plan, or the representatives, assigns, successors, transferees, heirs or agents of such landowner or developer;

(2) "Construction" means the erection of construction materials in a permanent position and fastened in a permanent manner. Where excavation, demolition or removal of an existing building has been substantially begun prior to rebuilding, such excavation, demolition or removal shall be deemed to be construction; provided, that work shall be carried on diligently and complies with all applicable requirements;

(3) "Development plan" means both a preliminary development plan and a final development plan;

(4) "Development standards":

(A) Means all locally adopted or enforced standards, regulations or guidelines applicable to the development of property, including, but not limited to, planning; local storm water requirements, layout, design; local construction standards for buildings, streets, alleys, curbs, sidewalks; zoning as provided for in subsection (g); lot size; lot configuration; yard dimensions; and off-site improvements, including public or private infrastructure, in which an applicant may acquire vested rights or vested property rights according to this section; and

(B) Does not include standards required by federal or state law; or building construction safety standards which are adopted pursuant to authority granted under § 68-120-101;

(5)(A) "Final development plan" means a plan which has been submitted by an applicant and approved by a local government describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals:

(i) A planned unit development plan;

(ii) A subdivision plat;

(iii) General development plan;

(iv) Subdivision infrastructure construction plan;

(v) Final engineered site plan; or

(vi) Any other land-use approval designation as may be utilized by a local government.

(B) Unless otherwise expressly provided by the local government, such a plan shall include the boundaries of the site; significant topographical and other natural features affecting development of the site; the location on the site of the proposed buildings, structures, and other improvements; the dimensions, including height, of the proposed buildings and other structures or a building envelope; and the location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. A variance shall not constitute a final development plan, and approval of a final development plan with the condition that a variance be obtained shall not confer a vested property right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type of use, the intensity of use, and the ability to be served with essential utilities and road infrastructure for a specified parcel or parcels of property may constitute a final development plan;

(6) "Preliminary development plan" means a plan which has been submitted by an applicant and that depicts a single-phased or multi-phased planned development typically used to facilitate initial public feedback and secure preliminary approvals from local governments. Examples of information found on development plans include proposed land uses, density and intensity of development, public utilities, road networks, general location of off-street parking, building location, number of buildable lots, emergency access, open space, and other environmentally sensitive areas such as lakes, streams, hillsides, and view sheds. An approved preliminary development plan serves as a guide for all future improvements within defined boundaries; and

(7) "Site preparation" means excavating, grading, demolition, removing excess debris to allow for proper grading, or providing a surface for a proper foundation, drainage, and settling for a development project, and physical improvements including, but not limited to, water and sanitary sewer lines, footings, or foundations installed on the site for which construction permits are required.

SECTION 3. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 4. For purposes of local government adoption of a vested property rights ordinance or resolution, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on January 1, 2015.

SENATE BILL NO. 915

PASSED: April 2, 2014

RON RAMSEY
SPEAKER OF THE SENATE

BETH HARWELL, *SPEAKER*
HOUSE OF REPRESENTATIVES

APPROVED this 15th day of April 2014

BILL HASLAM, *GOVERNOR*