

1 AN ACT relating to land use.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Applicant" means a property owner or developer, or the representative or*  
7 *agent of any property owner or developer, who has filed an application;*

8 *(b) "Application" means the filing of an application for a building permit,*  
9 *development plan, or subdivision plat, provided the application substantially*  
10 *complies with the requirements of local development ordinances and*  
11 *regulations;*

12 *(c) "Approval" means:*

13 *1. The approval by a planning unit of a preliminary development plan;*

14 *2. The approval by a planning unit in which a property is located of a*  
15 *final development plan submitted by an applicant where no*  
16 *preliminary development is required; or*

17 *3. The issuance of a building permit to an applicant where neither a*  
18 *preliminary development plan nor final development plan is required;*

19 *(d) "Development standard":*

20 *1. Means any standard adopted by a planning unit or local government*  
21 *that is applicable to the development of property, including but not*  
22 *limited to those relating to:*

23 *a. Planning and zoning;*

24 *b. Storm water;*

25 *c. Construction or building, including of streets, alleys, curbs, and*  
26 *sidewalks;*

27 *d. Layout or design; and*

- 1                    *e. Lot size or dimension; and*
- 2                    *2. Does not include standards required by federal or state law;*
- 3                    *(e) "Final development plan" means a plan which has been submitted by an*
- 4                    *applicant and approved by a relevant authority describing with reasonable*
- 5                    *certainty the type and intensity of use for a specific parcel or parcels of*
- 6                    *property, and may be in any form, including but not limited to a subdivision*
- 7                    *plat or development plan;*
- 8                    *(f) "Local government" means any city, county, consolidated local*
- 9                    *government, urban-county government, charter county government, or*
- 10                    *unified local government;*
- 11                    *(g) "Planning unit" has the same meaning as in KRS 100.111;*
- 12                    *(h) "Preliminary development plan" means a plan which has been submitted by*
- 13                    *an applicant and that depicts a single-phased or multiphased planned*
- 14                    *development typically used to facilitate initial public feedback and secure*
- 15                    *preliminary approvals from a relevant authority;*
- 16                    *(i) "Relevant authority" means a local governmental entity enforcing any*
- 17                    *development standards and includes a planning unit; and*
- 18                    *(j) "Site preparation" means the:*
- 19                    *1. Excavating, grading, demolition, removing excess debris to allow for*
- 20                    *proper grading, or providing a surface for a proper foundation,*
- 21                    *drainage, and settling for a development project; and*
- 22                    *2. Physical improvements, including but not limited to water and*
- 23                    *sanitary sewer lines, footings, or foundations installed on a site for*
- 24                    *which construction permits are required.*
- 25                    *(2) (a) On the date of application to a relevant authority, the applicant shall have a*
- 26                    *vested property right for any property that is the subject of the application.*
- 27                    *The vested property right shall:*

1           1. Grant the applicant the ability to use the development standards in  
2           effect on the date of application except as set out in subsection (4) of  
3           this section;

4           2. Be retained by the applicant during the vesting periods established in  
5           paragraph (c) of this subsection; and

6           3. Only be terminated as set out in subsection (3) of this section.

7           (b) A relevant authority shall consider an application using the development  
8           standards in effect on the date the application was submitted. A relevant  
9           authority shall not deny an application due to a change in a development  
10           standard that occurs after the submission of the application.

11           (c) A vested property right under this section shall be subject to the following  
12           time periods:

13           1. a. When the right is established due to the issuance of a building  
14           permit, it shall begin on the date of application for the building  
15           permit and shall remain in effect for the time period authorized  
16           by the building permit, including any approved renewal obtained  
17           by the applicant prior to the expiration or termination of the  
18           permit to be renewed.

19           b. The right shall terminate if the applicant fails to pursue site  
20           preparation or construction with reasonable diligence; and

21           2. a. When the right is established due to the submission of a  
22           preliminary development plan, the vesting period shall be for a  
23           period of three (3) years following the approval.

24           b. To maintain a vested right, an applicant shall:

25           i. Obtain approval of a final development plan if one is  
26           required by the relevant authority;

27           ii. Secure all necessary permits; and

1 iii. Pursue site preparation or construction with reasonable  
2 diligence.

3 c. If the applicant maintains the vested right as set out in division b.  
4 of this subparagraph, the vesting period shall extend for an  
5 additional two (2) years beyond the date of expiration of the  
6 initial three (3) year period, during which time the applicant  
7 shall commence construction of the development.

8 d. The vesting period shall continue during the construction of the  
9 development and until the relevant authority has certified final  
10 completion of the development, but shall not exceed ten (10)  
11 years from the date of the initial approval.

12 e. Developments that proceed in two (2) or more sections or phases  
13 as described in a development plan shall have a separate vesting  
14 period for each section or phase, and the development standards  
15 applicable for the first section or phase shall be applicable for  
16 any subsequent section or phase. The vesting period for  
17 developments that proceed in sections or phases shall not exceed  
18 fifteen (15) years following an initial approval, regardless of the  
19 commencement of a particular section or phase of the  
20 development.

21 (d) A relevant authority may grant an extension for any of the vesting periods  
22 set out in paragraph (c) of this subsection.

23 (e) A relevant authority shall not require an applicant to waive the applicant's  
24 vested rights as a condition of approval or as consideration for an approval  
25 under this section.

26 (3) (a) A relevant authority may terminate an applicant's vested rights during the  
27 vesting period set out in subsection (2)(c) of this section by providing notice

1 to the applicant that the planning unit has found that:

2 1. An applicant has materially violated the terms and conditions specified  
3 in the approved development plan or building permit;

4 2. An applicant has materially violated a local ordinance established by  
5 the relevant authority;

6 3. The enactment of any state or federal law, administrative regulation,  
7 rule, or other similar device would preclude the development as  
8 approved; or

9 4. An applicant intentionally supplied inaccurate information or  
10 knowingly made misrepresentations material to the issuance of an  
11 approval.

12 (b) The termination of a vested right under paragraph (a)1. to 3. of this  
13 subsection shall occur only after the applicant has been given ninety (90)  
14 days from the date of notice to cure any violation or modify any plan.

15 (c) A relevant authority may, despite reaching a finding as set out in paragraph  
16 (a) of this subsection, allow the property right to remain vested upon a  
17 written determination that doing so would be in the best interest of the  
18 community.

19 (4) (a) A vested right shall not preclude enforcement of a development standard  
20 contrary to that secured by a vested right when:

21 1. The relevant authority obtains the written consent of an applicant or  
22 owner;

23 2. The relevant authority determines that a compelling countervailing  
24 interest exists specifically relating to a prior development standard  
25 secured by a vested right, where use of that prior development  
26 standard would seriously threaten public health, safety, or welfare of  
27 the community and the threat cannot be mitigated by the applicant

1                   within a reasonable time;

2                   3. The relevant authority determines that a natural or man-made hazard  
3                   on the property subject to an approval that was not identified in the  
4                   development plan or building permit would pose a serious threat to  
5                   public health, safety, or welfare of the community and the threat  
6                   cannot be mitigated by the applicant within a reasonable time; or

7                   4. A new development standard is required by the enactment of any state  
8                   or federal law, administrative regulation, rule, or any other similar  
9                   device.

10                  (b) The findings under paragraph (a)2. and 3. of this subsection shall be made  
11                  in writing and provided to the applicant.

12                  (5) A vested property right does not alter, amend, impair, or change the eminent  
13                  domain powers of a relevant authority as set out in the Eminent Domain Act of  
14                  Kentucky.

15                  (6) (a) This section shall not alter, amend, impair, or change the authority of a  
16                  planning unit to exercise its planning and zoning authority, except a vested  
17                  property right shall preclude the effect of any planning and zoning action  
18                  which would alter, amend, impair, change, diminish, or otherwise delay the  
19                  development of the property in accordance with an application.

20                  (b) If a planning unit enacts a moratorium on development or construction, a  
21                  vesting period authorized under subsection (2) of this section shall be tolled  
22                  during the period of the moratorium.

23                  (7) (a) An applicant seeking to amend an approved development plan shall seek the  
24                  approval of the relevant authority. The relevant authority may deny an  
25                  amendment if it finds that the amendment:

26                   1. Substantially alters the proposed use;

27                   2. Increases the overall area of the development;

1            3. Alters the size of any nonresidential structures included in the  
 2            development plan;

3            4. Increases the density of the development in a way that would have a  
 4            substantial impact on traffic, noise, or the environment; or

5            5. Substantially increases any expense of the relevant authority  
 6            necessary to implement the changes sought by the amendment.

7            (b) If a relevant authority denies an amendment under paragraph (a) of this  
 8            subsection, the applicant may proceed under the prior approved plan and  
 9            retain the vested right or allow the vested right to terminate and apply for a  
 10           new approval under this section.

11           ➔Section 2. KRS 100.347 is amended to read as follows:

12           (1) (a) Any person or entity claiming to be injured or aggrieved by any final action of  
 13           the board of adjustment who meets the criteria in subsection (6) of this  
 14           section, ~~and that owns real property within the same zone where the property~~  
 15           ~~that is the subject of the final action is located~~ shall appeal from the action to  
 16           the Circuit Court of the county in which the property that is the subject of the  
 17           action of the board of adjustment lies.

18           (b) The appeal shall be taken within thirty (30) days after the final action of the  
 19           board.

20           (c) All final actions which have not been appealed within thirty (30) days shall  
 21           not be subject to judicial review.

22           (d) The board of adjustment shall be a party in any appeal filed in the Circuit  
 23           Court under this subsection.

24           (2) (a) Any person or entity claiming to be injured or aggrieved by any final action of  
 25           the planning commission who meets the criteria in subsection (6) of this  
 26           section, ~~and that owns real property within the same zone where the property~~  
 27           ~~that is the subject of the final action is located~~ shall appeal from the final

1 action to the Circuit Court of the county in which the property that is the  
2 subject of the commission's action lies.

3 (b) The appeal shall be taken within thirty (30) days after the action of the  
4 commission. Such action shall not include the commission's recommendations  
5 made to other governmental bodies.

6 (c) All final actions which have not been appealed within thirty (30) days shall  
7 not be subject to judicial review. Provided, however, any appeal of a planning  
8 commission action granting or denying a variance or conditional use permit  
9 authorized by KRS 100.203(5) shall be taken pursuant to this subsection. In  
10 such case, the thirty (30) day period for taking an appeal begins to run at the  
11 time the legislative body grants or denies the map amendment for the same  
12 development.

13 (d) The planning commission shall be a party in any appeal filed in the Circuit  
14 Court under this subsection.

15 (3) (a) Any person or entity claiming to be injured or aggrieved by any final action of  
16 the legislative body of any city, county, consolidated local government, or  
17 urban-county government, relating to a map amendment who meets the  
18 criteria in subsection (6) of this section, ~~and that owns real property within~~  
19 ~~the same zone where the property that is the subject of the final action is~~  
20 ~~located~~ shall appeal from the action to the Circuit Court of the county in  
21 which the property that is the subject of the map amendment lies.

22 (b) The appeal shall be taken within thirty (30) days after the final action of the  
23 legislative body.

24 (c) All final actions which have not been appealed within thirty (30) days shall  
25 not be subject to judicial review.

26 (d) The legislative body shall be a party in any appeal filed in the Circuit Court  
27 under this subsection.

1 (4) The owner of the subject property and applicants who initiated the proceeding shall  
2 be made parties to the appeal. Other persons speaking at the public hearing are not  
3 required to be made parties to such appeal.

4 (5) For purposes of this chapter, final action shall be deemed to have occurred on the  
5 calendar date when the vote is taken to approve or disapprove the matter pending  
6 before the body.

7 **(6) Only the following persons or entities shall have standing to challenge a final**  
8 **action under this section:**

9 **(a) An applicant who initiated the proceeding that is subject to the final action;**

10 **(b) An owner of the property that is the subject of the final action; or**

11 **(c) A third party who:**

12 **1. Owns real property within the same zone where the property that is the**  
13 **subject of the final action is located;**

14 **2. Would sustain actual damages that are personal to the third party and**  
15 **distinct from damages that would impact the public generally; and**

16 **3. Participated in the approval process prior to the final action by:**

17 **a. Submitting a written statement to the relevant body; or**

18 **b. Speaking at a public hearing of the relevant body.**

19 **Other persons or entities shall not have standing to challenge a final action under**  
20 **this section.**