

## CHAPTER 14

### VESTED RIGHTS

#### 14.1 Common Law

- A. Applicability. A common law vested right establishes the right to undertake and complete the development and use of property on substantial expenditures in good faith reliance on a valid governmental approval. Such approvals include, but are not limited to zoning permits, sign permits, building permits, conditional use permits, certificates of zoning compliances, and preliminary plat approvals. A request for a determination of a common law vested right will be reviewed and acted upon by the Planning Director in accordance with the requirements and procedures set forth in this Chapter.
- B. Application. The applicant shall provide satisfactory proof that each of the following standards are met, and is entitled to recognition of common law vested rights.
  - 1. The applicant has, prior to the adoption or amendment of an ordinance, made expenditures or incurred contractual obligations substantial in amount relating to the proposed development.
  - 2. The obligations and/or expenditures were incurred in good faith.
  - 3. The obligations and/or expenditures were made in reasonable reliance on and after the issuance of a valid governmental permit, if such permit is required; provided however, a mistakenly-issued governmental permit shall not give rise to a common law vested right.
  - 4. The amended or newly-adopted ordinance is a substantial detriment to the applicant.
- C. Appeal. An appeal of the Planning Director's determination of the existence of a common law vested right may be taken to the Board of Adjustment pursuant to Chapter 13 and shall be heard in a quasi-judicial hearing.

#### 14.2 Valid Building Permit

- A. Applicability. The owner has a vested right only as long as the building permit remains valid and only for the work approved by the building permit.
- B. Duration. The building permit shall expire 6 months after issuance if work has not commenced. The building permit also expires after work commences if there is a 12 month period of no work. Building permit may also be revoked for any substantial departure from the approved plans, failure to comply with any applicable local or state law (not just the building code and UDO), and any misrepresentations made in securing the permit. Building permits mistakenly issued may also be revoked. If the building permit expires or is revoked, the vested right based on it is also lost.

### 14.3 Site Specific Development Plans & Phase Development Plans

- A. Applicability. The ability of the applicant to obtain a vested right after County approval of a site specific development plan or a phased development plan presents an appropriate balance between private expectations and the public interest, while also protecting the public health, safety, and welfare. A statutory vested right is a right established pursuant to NCGS 153A-344.1 to undertake and complete the development and use of a property under the term and conditions of an approved site specific development plan or phased development plan.
- B. Vesting Established. Statutory vesting shall be deemed established with respect to any property on the same day upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the County.
- C. Site Specific Development Plan. A site specific development plan includes any of the following plans or approvals: planned unit development, preliminary major subdivision plat, conditional use permit, or conditional zoning district. For preliminary subdivision plats, the Administrator will advertise and schedule a public hearing following the same procedure used for conditional use permits.
- D. Phased Development Plan. A phased development plan includes any approvals for a phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan determined by the county to be a site specific development plan. The County may require the landowner to submit a site specific development plan for approval with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classifications. Multi-phased developments as approved and defined in NCGS 153A-344.1(b)(7) shall remain vested for a period of 7 years.
- E. Duration. The site specific development plan or phased development plan vested rights is valid for a minimum of 2 years from the date of approval. The Board of Commissioners may authorize the approval for a period not exceeding 5 years where warranted in light of all relevant circumstances including, but not limited to, the size and phasing of the development, economic cycles, and market conditions. The vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the County.
- F. Termination. A vested right shall terminate:
  - 1. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
  - 2. With the written consent of the affected landowner;
  - 3. To the extent that the affected landowner receives compensation for all costs and losses;
  - 4. Upon finding by the Board of Commissioners, by Ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate

- information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan; or
5. Upon the enactment of a State or federal law or regulation that precludes development as contemplated in the site specific development plan.

#### **14.4 Permit Choice**

Per NCGS 153A-320.1 and 143-755, if a permit applicant submits a permit application for any type of development and a rule or ordinance changes between the time the permit application was submitted and a permit decision is made, the permit applicant may choose which version of the rule or ordinance will apply to the permit.

#### **14.5 Development Agreements**

Development agreements refer to the contracts that vest rights to develop a specific project for an extended period of time subject to the terms and conditions specified in the agreement. When the governing board approves the rezoning of any property associated with a development agreement, the provisions of NCGS 153A-341 shall apply.