

# 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

Development Permit: Development permits for a building, use of a building, use of land, or subdivision of land establishes statutory vested rights. A development permit is valid for 1 year after issuance, unless otherwise specified by statute, and the applicant is vested in that permit for the term of validity. If the applicant fails to substantially commence authorized work within 1 year, then the development permit and vesting expire. With the substantial commencement of authorized work under a valid permit, vesting continues. The development permit and vesting also expire after substantial work commences if there is a 2-year period of intentional and voluntary discontinuance of work after commencement unless otherwise specified by statute.

### 14.3 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.

### 14.4 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 property under the terms 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 but is not limited to any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary or general development plan, a conditional or special use permit, a conditional or special use district zoning plan, or any other land-use approval designation as may be utilized by a county. For preliminary subdivision plats, the Administrator will advertise and schedule a public hearing following the same procedure used for conditional or special 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.

- 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, the level of investment, the need for 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, expenses, and other losses incurred by the landowner;
  4. Upon findings 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 County of the site specific development plan;
  5. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific development plan; or
  6. Upon findings, by the Board of Commissioners, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan.

#### **14.5 Multi-Phased Development Plans**

A multi-phased development is defined to be a development containing 25 acres or more to be developed in more than 1 phase and subject to a master development plan with committed elements showing the type and intensity of use of each phase. The entire multiphase development is vested at the time of site plan approval for the initial phase. The vesting is in the Ordinance regulations in place at the time of that initial approval, and the vesting lasts for 7 years from the initial approval.

## 14.6 Permit Choice

- A. Purpose. If a development permit applicant submits a permit application for any type of development and a rule or ordinance is amended, including an amendment to any applicable land development regulation, between the time the development permit application was submitted and a development permit decision is made, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application.
- B. Expiration. The permit choice rule may expire if an applicant delays. If an applicant puts a permit application on hold for 6 consecutive months or more, or if an applicant fails to respond to the Planning Board and/or Board of Commissioners' requests for additional information for 6 consecutive months or more, then the application is discontinued. If the permit application is resumed, it will be reviewed under the rules in effect at that time.
- C. Subsequent Development Permits. If an applicant obtains an initial development permit, that permit triggers permit choice for subsequent development permits under the rules applicable at the time of application for the initial development permit. That protection continues for 18 months after the approval of the initial development permit. The applicant must be actively pursuing that original application to maintain the permit choice rights for other development regulations. The initial development permit cannot be a sign permit or erosion and sedimentation control permit.
- D. Appeal. Any person aggrieved by the local government failing to comply with the permit choice rule can seek a court order compelling compliance. The court will set down the action for immediate hearing, and subsequent proceedings must get priority from the court.

## 14.7 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.

## 14.8 Appeal

Appeal: Refer to Section 13.6 (Appeals to Court).