

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 766  
Judiciary III Committee Substitute Adopted 5/4/89

Short Title: Vesting Property Rights.

(Public)

Sponsors:

Referred to:

April 4, 1989

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE FOR CERTAIN VESTED PROPERTY RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-385(b) reads as rewritten:

"(b) Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries shall not be applicable or enforceable without consent of the owner with regard to lots for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) a notice of intent to develop has been filed and recorded pursuant to G.S. 160A-385.1 prior to the publication of the notice of public hearing as required by G.S. 160A-364 the ordinance making the change or changes so long as such notice of intent to develop remains valid and unexpired pursuant to G.S. 160A-385.1."

Sec. 2. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

**"§ 160A-385.1. Notice of intent to develop.**

(a) The 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 use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning.

1       (b)    Definitions

- 2           (1)   'Landowner' means any owner of a legal or equitable interest in real  
3           property, including the heirs, personal representative, successors and  
4           assigns of such owner, but shall not include any person or legal entity  
5           who holds a legal or equitable interest as security for an indebtedness.  
6           (2)   'City' shall have the same meaning as set forth in G.S. 160A-1(2).  
7           (3)   'Property' means all real property subject to zoning regulations and  
8           restrictions and zone boundaries by a city.  
9           (4)   'Notice of intent to develop' means a form in recordable format  
10          prepared by the landowner and containing the information required by  
11          G.S. 1604-385.1(d)(1).  
12          (5)   'Vested property right' means the right to undertake and complete the  
13          development and use of property in accordance with, and subject to the  
14          terms and conditions set forth in the zoning regulations, restrictions  
15          and boundaries in effect at the time of the filing of a notice of intent to  
16          develop.

17       (c)    Establishment of vested property right.

18       A vested property right is established with respect to any property upon the filing of  
19       a notice of intent to develop. Such vested property right shall attach to and run with the  
20       applicable property and shall confer upon the landowner the right to undertake and  
21       complete the development and use of said property in accordance with, and subject to  
22       the terms and conditions set forth, the zoning regulations and restrictions and zone  
23       boundaries in effect at the time of the filing of the notice of intent to develop.

24       (d)    Notice of intent to develop.

- 25           (1)   Notice of intent to develop shall include:  
26           a.    The name and address of the landowner, or of each landowner,  
27           if there is more than one;  
28           b.    A metes and bounds description of the property to which the  
29           vested property right is to attach, which is in accordance with  
30           and refers to a survey of the property made within two years of  
31           the date of the notice of intent to develop;  
32           c.    A statement of the zoning classification, including overlay  
33           zoning classification, if any, to which the property is subject, as  
34           such classification is named and described in the city zoning  
35           ordinances in effect as of the date of the notice of intent to  
36           develop;  
37           d.    The date the notice of intent to develop is filed with the city  
38           planning department, or, if there is no city planning department,  
39           then the date of filing with the city department or official  
40           having authority to issue building permits. For purposes of this  
41           section, the date the notice of intent to develop is filed must be  
42           noted on the notice.  
43           (2)   The notice of intent to develop shall be filed with the city planning  
44           department or, if there is no planning department, with the city

1 department or official having authority to issue building permits and  
2 shall continue in effect for a period of three years after the date of the  
3 notice of intent to develop; provided, however, that the notice of intent  
4 to develop shall be null and void unless, within 10 calendar days from  
5 and after the date of the notice of intent to develop, the notice of intent  
6 to develop is recorded in the office of the register of deeds for the  
7 county in which the property is located. The notice of intent to  
8 develop shall continue in full force and effect until the earlier of the  
9 expiration of the three-year period or the issuance of a building permit  
10 for the property. The three-year effective period for a notice of intent  
11 to develop shall only apply as long as the property is owned by the  
12 same persons who owned the property when the notice of intent to  
13 develop was filed. A notice of intent to develop may only be filed  
14 once by the owner or owners of property. The owner or owners of  
15 property may at any time after filing revoke a notice of intent to  
16 develop by notifying in writing the property planning official and if the  
17 notice of intent to develop has been filed with the register of deeds, by  
18 filing a renovation notice with register of deeds.

19 (e) Exceptions.

20 (1) Nothing contained in this section shall be deemed to impair or restrict  
21 the right or power of a city to amend, modify, revoke or enact any  
22 zoning regulation or restriction or zone boundary.

23 (2) Notwithstanding the existence of vested property rights, the city may  
24 amend, modify or enact a zoning regulation or restriction or zone  
25 boundary which will affect the property which is subject to the vested  
26 property rights and which will amend the terms of the vested property  
27 rights upon either of the following events:

28 a. A request by or with the written consent of the landowner for  
29 such amendment, modification or enactment; or

30 b. The discovery of natural or man-made hazards on or in the  
31 immediate vicinity of the property, which hazards could not  
32 reasonably have been discovered at the time of the filing of the  
33 notice of intent to develop, and which hazards, if unconnected  
34 by an amendment to modification of or enactment of zoning  
35 regulation or restriction or zone boundary, pose a serious threat  
36 to the public health, safety or welfare."

37 Sec. 3. G.S. 153A-344(b) reads as rewritten:

38 "(b) Amendments, modifications, supplements, repeal or other changes in zoning  
39 regulations and restrictions and zone boundaries shall not be applicable or enforceable  
40 without consent of the owner with regard to lots for which either (i) building permits  
41 have been issued pursuant to G.S. 153A-357 prior to the enactment of the ordinance  
42 making the change or changes so long as the permits remain valid and unexpired  
43 pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii) a notice of  
44 intent to develop has been filed and recorded pursuant to G.S. 153A-344.1 prior to the

1 first publication of the notice of public hearing as required by G.S. 153A-323 the  
2 ordinance making the change or changes so long as such notice of intent to develop  
3 remains valid and unexpired pursuant to G.S. 153A-344.1. The foregoing are not  
4 mutually exclusive."

5 Sec. 4. Part 3 of Article 19 of Chapter 153A of the General Statutes is  
6 amended by adding a new section to read:

7 **"§ 153A-344.1. Notice of intent to develop.**

8 (a) The General Assembly finds and declares that it is necessary and desirable, as  
9 a matter of public policy, to provide for the establishment of certain vested property  
10 rights in order to ensure reasonable certainty, stability, and fairness in the land use  
11 planning process and in order to stimulate economic growth, secure the reasonable  
12 investment-backed expectations of landowners, and foster cooperation between the  
13 public and private sectors in the area of land use planning.

14 (b) Definitions

15 (1) 'Landowner' means any owner of a legal or equitable interest in real  
16 property, including the heirs, personal representative, successors and  
17 assigns of such owner, but shall not include any person or legal entity  
18 who holds a legal or equitable interest as security for an indebtedness.

19 (2) 'County' shall have the same meaning as set forth in G.S. 153-1(3).

20 (3) 'Property' means all real property subject to zoning regulations and  
21 restrictions and zone boundaries by a city.

22 (4) 'Notice of intent to develop' means a form in recordable format  
23 prepared by the landowner and containing the information required by  
24 G.S. 153A-344.1(d)(1).

25 (5) 'Vested property right' means the right to undertake and complete the  
26 development and use of property in accordance with, and subject to the  
27 terms and conditions set forth in the zoning regulations, restrictions  
28 and boundaries in effect at the time of the filing of a notice of intent to  
29 develop.

30 (c) Establishment of vested property right.

31 A vested property right is established with respect to any property upon the filing of  
32 a notice of intent to develop. Such vested property right shall attach to and run with the  
33 applicable property and shall confer upon the landowner the right to undertake and  
34 complete the development and use of said property in accordance with, and subject to  
35 the terms and conditions set forth, the zoning regulations and restrictions and zone  
36 boundaries in effect at the time of the filing of the notice of intent to develop.

37 (d) Notice of intent to develop.

38 (1) Notice of intent to develop shall include:

39 a. The name and address of the landowner, or of each landowner,  
40 if there is more than one;

41 b. A metes and bounds description of the property to which the  
42 vested property right is to attach, which is in accordance with  
43 and refers to a survey of the property made within two years of  
44 the date of the notice of intent to develop;

- 1           c.    A statement of the zoning classification, including overlay  
2           zoning classification, if any, to which the property is subject, as  
3           such classification is named and described in the county zoning  
4           ordinances in effect as of the date of the notice of intent to  
5           develop;
- 6           d.    The date the notice of intent to develop is filed with the county  
7           planning department, or, if there is no county planning  
8           department, then the date of filing with the county department  
9           or official having authority to issue building permits. For  
10           purposes of this section, the date the notice of intent to develop  
11           is filed must be noted on the notice.
- 12       (2)   The notice of intent to develop shall be filed with the county planning  
13       department or, if there is no planning department, with the county  
14       department or official having authority to issue building permits and  
15       shall continue in effect for a period of three years after the date of the  
16       notice of intent to develop; provided, however, that the notice of intent  
17       to develop shall be null and void unless, within 10 calendar days from  
18       and after the date of the notice of intent to develop, the notice of intent  
19       to develop is recorded in the office of the register of deeds for the  
20       county in which the property is located. The notice of intent to  
21       develop shall continue in full force and effect until the earlier of the  
22       expiration of the three-year period or the issuance of a building permit  
23       for the property. The three-year effective period for a notice of intent  
24       to develop shall only apply as long as the property is owned by the  
25       same persons who owned the property when the notice of intent to  
26       develop was filed. A notice of intent to develop may only be filed  
27       once by the owner or owners of property. The owner or owners of  
28       property may at any time after filing revoke a notice of intent to  
29       develop by notifying in writing the property planning official and if the  
30       notice of intent to develop has been filed with the register of deeds, by  
31       filing a renovation notice with the register of deeds.
- 32       (e)    Exceptions.
- 33       (1)    Nothing contained in this section shall be deemed to impair or restrict  
34       the right or power of a city to amend, modify, revoke or enact any  
35       zoning regulation or restriction or zone boundary.
- 36       (2)    Notwithstanding the existence of vested property rights, the county  
37       may amend, modify or enact a zoning regulation or restriction or zone  
38       boundary which will affect the property which is subject to the vested  
39       property rights and which will amend the terms of the vested property  
40       rights upon either of the following events:
- 41       a.    A request by or with the written consent of the landowner for  
42       such amendment, modification or enactment; or
- 43       b.    The discovery of natural or man-made hazards on or in the  
44       immediate vicinity of the property, which hazards could not

1                                   reasonably have been discovered at the time of the filing of the  
2                                   notice of intent to develop, and which hazards, if unconnected  
3                                   by an amendment to modification of or enactment of zoning  
4                                   regulation or restriction or zone boundary, pose a serious threat  
5                                   to the public health, safety or welfare."

6                   Sec. 5. This act shall become effective October 1, 1989.