

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1989

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

1 investment-backed expectations of landowners, and foster cooperation between the
2 public and private sectors in the area of land use planning.

3 (b) Definitions

4 (1) 'Landowner' means any owner of a fee simple interest in real property,
5 including the heirs, devisees, and personal representative of such
6 owner, but shall not include any person or legal entity who holds a
7 legal or equitable interest as security for an indebtedness.

8 (2) 'City' shall have the same meaning as set forth in G.S. 160A-1(2).

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

11 (4) 'Notice of intent to develop' means a form in recordable format
12 prepared by the landowner and containing the information required by
13 G.S. 1604-385.1(d)(1).

14 (5) 'Vested property right' means the right to undertake and complete the
15 development and use of property in accordance with, and subject to the
16 terms and conditions set forth in the zoning regulations, restrictions
17 and boundaries in effect at the time of the filing of a notice of intent to
18 develop.

19 (c) Establishment of vested property right.

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

26 (d) Notice of intent to develop.

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

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

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

34 c. A statement of the zoning classification, including overlay
35 zoning classification, if any, to which the property is subject, as
36 such classification is named and described in the city zoning
37 ordinances in effect as of the date of the notice of intent to
38 develop;

39 d. The date the notice of intent to develop is filed with the city
40 planning department, or, if there is no city planning department,
41 then the date of filing with the city department or official
42 having authority to issue building permits. For purposes of this
43 section, the date the notice of intent to develop is filed must be
44 noted on the notice.

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

1 department or official having authority to issue building
2 permits, is considering whether amendment, modification or
3 enactment of a zoning regulation or restriction or zone
4 boundary which will affect the property which is subject to the
5 vested property rights should be recommended. For purposes
6 of this provision, public notice shall include the issue being on
7 the agenda of a public body either appointed or elected.

8 (3) Nothing contained in this section shall be deemed to impair or restrict
9 the right or power of a city to amend, modify, revoke or enact any
10 zoning regulation or restriction or zone boundary and apply the
11 changes to property which is subject to a notice of intent under this
12 section, if required by rules or regulations adopted by the
13 Environmental Management Commission to protect water supply
14 watersheds, to the extent allowed by the common law and the
15 constitutions of North Carolina and the United States.

16 (4) A notice of intent filed concerning property located in a historic
17 district established under Part 3A of Article 19 of Chapter 160A of the
18 General Statutes shall have no effect on property in the district."

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

20 "(b) Amendments, modifications, supplements, repeal or other changes in zoning
21 regulations and restrictions and zone boundaries shall not be applicable or enforceable
22 without consent of the owner with regard to lots for which either (i) building permits
23 have been issued pursuant to G.S. 153A-357 prior to the enactment of the ordinance
24 making the change or changes so long as the permits remain valid and unexpired
25 pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii) a notice of
26 intent to develop has been filed and recorded pursuant to G.S. 153A-344.1 prior to the
27 first publication of the notice of public hearing as required by G.S. 153A-323 the
28 ordinance making the change or changes so long as such notice of intent to develop
29 remains valid and unexpired pursuant to G.S. 153A-344.1. The foregoing are not
30 mutually exclusive."

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

33 **§ 153A-344.1. Notice of intent to develop.**

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

40 (b) Definitions

41 (1) 'Landowner' means any owner of a fee simple interest in real property,
42 including the heirs, devisees, and personal representative of such
43 owner, but shall not include any person or legal entity who holds a
44 legal or equitable interest as security for an indebtedness.

- 1 (2) 'County' shall have the same meaning as set forth in G.S. 153-1(3).
2 (3) 'Property' means all real property subject to zoning regulations and
3 restrictions and zone boundaries by a city.
4 (4) 'Notice of intent to develop' means a form in recordable format
5 prepared by the landowner and containing the information required by
6 G.S. 153A-344.1(d)(1).
7 (5) 'Vested property right' means the right to undertake and complete the
8 development and use of property in accordance with, and subject to the
9 terms and conditions set forth in the zoning regulations, restrictions
10 and boundaries in effect at the time of the filing of a notice of intent to
11 develop.

12 (c) Establishment of vested property right.

13 A vested property right is established with respect to any property upon the filing of
14 a notice of intent to develop. Such vested property right shall confer upon the
15 landowner the right to undertake and complete the development and use of said property
16 in accordance with, and subject to the terms and conditions set forth, the zoning
17 regulations and restrictions and zone boundaries in effect at the time of the filing of the
18 notice of intent to develop.

19 (d) Notice of intent to develop.

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

- 21 a. The name and address of the landowner, or of each landowner,
22 if there is more than one;
23 b. A metes and bounds description of the property to which the
24 vested property right is to attach, which is in accordance with
25 and refers to a survey of the property made within two years of
26 the date of the notice of intent to develop;
27 c. A statement of the zoning classification, including overlay
28 zoning classification, if any, to which the property is subject, as
29 such classification is named and described in the county zoning
30 ordinances in effect as of the date of the notice of intent to
31 develop;
32 d. The date the notice of intent to develop is filed with the county
33 planning department, or, if there is no county planning
34 department, then the date of filing with the county department
35 or official having authority to issue building permits. For
36 purposes of this section, the date the notice of intent to develop
37 is filed must be noted on the notice.
38 e. A preliminary development plan describing in general terms the
39 nature of the proposed development.

40 (2) The notice of intent to develop shall be filed with the county planning
41 department or, if there is no planning department, with the county
42 department or official having authority to issue building permits and
43 shall continue in effect for a period of three years after the date of the
44 notice of intent to develop; provided, however, that the notice of intent

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

16 (e) Exceptions.

- 17 (1) Nothing contained in this section shall be deemed to impair or restrict
18 the right or power of a city to amend, modify, revoke or enact any
19 zoning regulation or restriction or zone boundary.
- 20 (2) Notwithstanding the existence of vested property rights, the county
21 may amend, modify or enact a zoning regulation or restriction or zone
22 boundary which will affect the property which is subject to the vested
23 property rights and which will amend the terms of the vested property
24 rights upon any of the following events:
- 25 a. A request by or with the written consent of the landowner for
26 such amendment, modification or enactment; or
- 27 b. The discovery of natural or man-made hazards on or in the
28 immediate vicinity of the property, which hazards could not
29 reasonably have been discovered at the time of the filing of the
30 notice of intent to develop, and which hazards, if unconnected
31 by an amendment to modification of or enactment of zoning
32 regulation or restriction or zone boundary, pose a serious threat
33 to the public health, safety or welfare.
- 34 c. The initial zoning of any property which has not previously
35 been subject to zoning regulations, restrictions and districts.
- 36 d. If at the time notice of intent to develop is filed, the planning
37 department, or if there is no planning department, the
38 department or official having authority to issue building
39 permits, is considering whether amendment, modification or
40 enactment of a zoning regulation or restriction or zone
41 boundary which will affect the property which is subject to the
42 vested property rights should be recommended. For purposes
43 of this provision, public notice shall include the issue being on
44 the agenda of a public body either appointed or elected.

- 1 (3) Nothing contained in this section shall be deemed to impair or restrict
2 the right or power of a county to amend, modify, revoke or enact any
3 zoning regulation or restriction or zone boundary and apply the
4 changes to property which is subject to a notice of intent under this
5 section, if required by rules or regulations adopted by the
6 Environmental Management Commission to protect water supply
7 watersheds, to the extent allowed by the common law and the
8 constitutions of North Carolina and the United States.
- 9 (4) A notice of intent filed concerning property located in a historic
10 district established under Part 3A of Article 19 of Chapter 160A of the
11 General Statutes shall have no effect on property in the district."
- 12 Sec. 5. This act shall become effective July 1, 1990.