

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 766
Judiciary III Committee Substitute Adopted 5/4/89
Third Edition Engrossed 5/11/89
House Committee Substitute Favorable 7/17/90

Short Title: Vesting Property Rights.

(Public)

Sponsors:

Referred to:

April 4, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A VESTED RIGHT SHALL BE ESTABLISHED FOR TWO YEARS, WITH PROVISION FOR EXTENSION NOT TO EXCEED FIVE YEARS, UPON CITY OR COUNTY APPROVAL OF A SITE SPECIFIC DEVELOPMENT PLAN AND THAT A VESTED RIGHT SHALL BE ESTABLISHED NOT TO EXCEED FIVE YEARS UPON CITY OR COUNTY APPROVAL OF A PHASED DEVELOPMENT PLAN.

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~~ buildings and uses 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 vested right has been established pursuant to G.S. 160A-385.1 and such vested right 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. Vested rights.

1 (a) The General Assembly finds and declares that it is necessary and desirable, as
2 a matter of public policy, to provide for the establishment of certain vested rights in
3 order to ensure reasonable certainty, stability, and fairness in the land-use planning
4 process, secure the reasonable expectations of landowners, and foster cooperation
5 between the public and private sectors in the area of land-use planning. Furthermore,
6 the General Assembly recognizes that city approval of land-use development typically
7 follows significant landowner investment in site evaluation, planning, development
8 costs, consultant fees, and related expenses.

9 The ability of a landowner to obtain a vested right after city approval of a site
10 specific development plan or a phased development plan will preserve the prerogatives
11 and authority of local elected officials with respect to land-use matters. There will be
12 ample opportunities for public participation and the public interest will be served.
13 These provisions will strike an appropriate balance between private expectations and the
14 public interest, while scrupulously protecting the public health, safety, and welfare.

15 (b) Definitions.

16 (1) 'Landowner' means any owner of a legal or equitable interest in real
17 property, including the heirs, devisees, successors, assigns, and
18 personal representative of such owner. The landowner may allow a
19 person holding a valid option to purchase to act as his agent or
20 representative for purposes of submitting a proposed site specific
21 development plan or a phased development plan under this section, in
22 the manner allowed by ordinance.

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

24 (3) 'Phased development plan' means a plan which has been submitted to
25 a city by a landowner for phased development which shows the type
26 and intensity of use for a specific parcel or parcels with a lesser degree
27 of certainty than the plan determined by the city to be a site specific
28 development plan.

29 (4) 'Property' means all real property subject to zoning regulations and
30 restrictions and zone boundaries by a city.

31 (5) 'Site specific development plan' means a plan which has been
32 submitted to a city by a landowner describing with reasonable
33 certainty the type and intensity of use for a specific parcel or parcels of
34 property. Such plan may be in the form of, but not be limited to, any
35 of the following plans or approvals: A planned unit development plan,
36 a subdivision plat, a preliminary or general development plan, a
37 conditional or special use permit, a conditional or special use district
38 zoning plan, or any other land-use approval designation as may be
39 utilized by a city. Unless otherwise expressly provided by the city,
40 such a plan shall include the approximate boundaries of the site;
41 significant topographical and other natural features effecting
42 development of the site; the approximate location on the site of the
43 proposed buildings, structures, and other improvements; the
44 approximate dimensions, including height, of the proposed buildings

1 and other structures; and the approximate location of all existing and
2 proposed infrastructure on the site, including water, sewer, roads, and
3 pedestrian walkways. What constitutes a site specific development
4 plan under this section that would trigger a vested right shall be finally
5 determined by the city pursuant to an ordinance, and the document that
6 triggers such vesting shall be so identified at the time of its approval.
7 However, at a minimum, the ordinance to be adopted by the city shall
8 designate a vesting point earlier than the issuance of a building permit.
9 A variance shall not constitute a site specific development plan, and
10 approval of a site specific development plan with the condition that a
11 variance be obtained shall not confer a vested right unless and until the
12 necessary variance is obtained. Neither a sketch plan nor any other
13 document which fails to describe with reasonable certainty the type
14 and intensity of use for a specified parcel or parcels of property may
15 constitute a site specific development plan.

16 (6) 'Vested right' means the right to undertake and complete the
17 development and use of property under the terms and conditions of an
18 approved site specific development plan or an approved phased
19 development plan.

20 (c) Establishment of vested right.

21 A vested right shall be deemed established with respect to any property upon the
22 valid approval, or conditional approval, of a site specific development plan or a phased
23 development plan, following notice and public hearing by the city with jurisdiction over
24 the property. Such vested right shall confer upon the landowner the right to undertake
25 and complete the development and use of said property under the terms and conditions
26 of the site specific development plan or the phased development plan including any
27 amendments thereto. A city may approve a site specific development plan or a phased
28 development plan upon such terms and conditions as may reasonably be necessary to
29 protect the public health, safety, and welfare. Such conditional approval shall result in a
30 vested right, although failure to abide by such terms and conditions will result in a
31 forfeiture of vested rights. A city shall not require a landowner to waive his vested
32 rights as a condition of developmental approval. A site specific development plan or a
33 phase development plan shall be deemed approved upon the effective date of the city's
34 action or ordinance relating thereto.

35 (d) Duration and termination of vested right.

36 (1) A right which has been vested as provided for in this section shall
37 remain vested for a period of two years. This vesting shall not be
38 extended by any amendments or modifications to a site specific
39 development plan unless expressly provided by the city.

40 (2) Notwithstanding the provisions of subsection (d)(1), a city may
41 provide that rights shall be vested for a period exceeding two years but
42 not exceeding five years where warranted in light of all relevant
43 circumstances, including, but not limited to, the size and phasing of
44 development, the level of investment, the need for the development,

- 1 economic cycles, and market conditions. These determinations shall
2 be in the sound discretion of the city.
- 3 (3) Notwithstanding the provisions of (d)(1) and (d)(2), the city may
4 provide by ordinance that approval by a city of a phased development
5 plan shall vest the zoning classification or classifications so approved
6 for a period not to exceed five years. The document that triggers such
7 vesting shall be so identified at the time of its approval. The city still
8 may require the landowner to submit a site specific development plan
9 for approval by the city with respect to each phase or phases in order
10 to obtain final approval to develop within the restrictions of the vested
11 zoning classification or classifications. Nothing in this section shall be
12 construed to require a city to adopt an ordinance providing for vesting
13 of rights upon approval of a phased development plan.
- 14 (4) Following approval or conditional approval of a site specific
15 development plan or a phased development plan, nothing in this
16 section shall exempt such a plan from subsequent reviews and
17 approvals by the city to ensure compliance with the terms and
18 conditions of the original approval, provided that such reviews and
19 approvals are not inconsistent with said original approval. Nothing in
20 this section shall prohibit the city from revoking the original approval
21 for failure to comply with applicable terms and conditions of the
22 approval or the zoning ordinance.
- 23 (5) Upon issuance of a building permit, the provisions of G.S. 160A-418
24 and G.S. 160A-422 shall apply, except that a permit shall not expire or
25 be revoked because of the running of time while a vested right under
26 this section is outstanding.
- 27 (6) A right which has been vested as provided in this section shall
28 terminate at the end of the applicable vesting period with respect to
29 buildings and uses for which no valid building permit applications
30 have been filed.
- 31 (e) Subsequent changes prohibited; exceptions.
- 32 (1) A vested right, once established as provided for in this section,
33 precludes any zoning action by a city which would change, alter,
34 impair, prevent, diminish, or otherwise delay the development or use
35 of the property as set forth in an approved site specific development
36 plan or an approved phased development plan, except:
- 37 a. With the written consent of the affected landowner:
- 38 b. Upon findings, by ordinance after notice and a public hearing,
39 that natural or man-made hazards on or in the immediate
40 vicinity of the property, if uncorrected, would pose a serious
41 threat to the public health, safety, and welfare if the project
42 were to proceed as contemplated in the site specific
43 development plan or the phased development plan;

- 1 c. To the extent that the affected landowner receives
2 compensation for all costs, expenses, and other losses incurred
3 by the landowner, including, but not limited to, all fees paid in
4 consideration of financing, and all architectural, planning,
5 marketing, legal, and other consultant's fees incurred after
6 approval by the city, together with interest thereon at the legal
7 rate until paid. Compensation shall not include any diminution
8 in the value of the property which is caused by such action;
- 9 d. Upon findings, by ordinance after notice and a hearing, that the
10 landowner or his representative intentionally supplied
11 inaccurate information or made material misrepresentations
12 which made a difference in the approval by the city of the site
13 specific development plan or the phased development plan; or
- 14 e. Upon the enactment or promulgation of a State or federal law or
15 regulation which precludes development as contemplated in the
16 site specific development plan or the phased development plan,
17 in which case the city may modify the affected provisions, upon
18 a finding that the change in State or federal law has a
19 fundamental effect on the plan, by ordinance after notice and a
20 hearing.
- 21 (2) The establishment of a vested right shall not preclude the application
22 of overlay zoning which imposes additional requirements but does not
23 affect the allowable type or intensity of use, or ordinances or
24 regulations which are general in nature and are applicable to all
25 property subject to land-use regulation by a city, including, but not
26 limited to, building, fire, plumbing, electrical, and mechanical codes.
27 Otherwise applicable new regulations shall become effective with
28 respect to property which is subject to a site specific development plan
29 or a phased development plan upon the expiration or termination of the
30 vesting rights period provided for in this section.
- 31 (3) Notwithstanding any provision of this section, the establishment of a
32 vested right shall not preclude, change or impair the authority of a city
33 to adopt and enforce zoning ordinance provisions governing
34 nonconforming situations or uses.
- 35 (f) Miscellaneous provisions.
- 36 (1) A vested right obtained under this section is not a personal right, but
37 shall attach to and run with the applicable property. After approval of
38 a site specific development plan or a phased development plan, all
39 successors to the original landowner shall be entitled to exercise such
40 rights.
- 41 (2) Nothing in this section shall preclude judicial determination, based on
42 common law principles or other statutory provisions, that a vested
43 right exists in a particular case or that a compensable taking has

1 occurred. Except as expressly provided in this section, nothing in this
2 section shall be construed to alter the existing common law.

3 (3) In the event a city fails to adopt an ordinance setting forth what
4 constitutes a site specific development plan triggering a vested right, a
5 landowner may establish a vested right with respect to property upon
6 the approval of a zoning permit, or otherwise may seek appropriate
7 relief from the Superior Court Division of the General Court of
8 Justice."

9 Sec. 3. G.S. 160A-31 is amended by adding a new subsection (h) to read:

10 "(h) A city council which receives a petition for annexation under this section may
11 by ordinance require that the petitioners file a signed statement declaring whether or not
12 vested rights with respect to the properties subject to the petition have been established
13 under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights
14 have been established, the city may require petitioners to provide proof of such rights.
15 A statement which declares that no vested rights have been established under G.S.
16 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested
17 right shall be terminated."

18 Sec. 4. G.S. 160A-58.1 is amended by adding a new subsection (d) to read:

19 "(d) A city council which receives a petition for annexation under this section may
20 by ordinance require that the petitioners file a signed statement declaring whether or not
21 vested rights with respect to the properties subject to the petition have been established
22 under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights
23 have been established, the city may require petitioners to provide proof of such rights.
24 A statement which declares that no vested rights have been established under G.S.
25 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested
26 rights shall be terminated."

27 Sec. 5. G.S. 153A-344(b) reads as rewritten:

28 "(b) Amendments, modifications, supplements, repeal or other changes in zoning
29 regulations and restrictions and zone boundaries shall not be applicable or enforceable
30 without consent of the owner with regard to ~~lots~~ buildings and uses for which either (i)
31 building permits have been issued pursuant to G.S. 153A-357 prior to the enactment of
32 the ordinance making the change or changes so long as the permits remain valid and
33 unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii)
34 a vested right has been established pursuant to G.S. 153A-344.1 and such vested right
35 remains valid and unexpired pursuant to G.S. 153A-344.1."

36 Sec. 6. Part 3 of Article 18 of Chapter 153A of the General Statutes is
37 amended by adding a new section to read:

38 "**§ 153A-344.1. Vesting rights.**

39 "(a) The General Assembly finds and declares that it is necessary and desirable, as
40 a matter of public policy, to provide for the establishment of certain vested rights in
41 order to ensure reasonable certainty, stability, and fairness in the land-use planning
42 process, secure the reasonable expectations of landowners, and foster cooperation
43 between the public and private sectors in the area of land-use planning. Furthermore,
44 the General Assembly recognizes that county approval of land-use development

1 typically follows significant landowner investment in site evaluation, planning,
2 development costs, consultant fees, and related expenses.

3 The ability of a landowner to obtain a vested right after county approval of a site
4 specific development plan or a phased development plan will preserve the prerogatives
5 and authority of local elected officials with respect to land-use matters. There will be
6 ample opportunities for public participation and the public interest will be served.
7 These provisions will strike an appropriate balance between private expectations and the
8 public interest, while scrupulously protecting the public health, safety, and welfare.

9 (b) Definitions.

10 (1) 'Landowner' means any owner of a legal or equitable interest in real
11 property, including the heirs, devisees, successors, assigns, and
12 personal representative of such owner. The landowner may allow a
13 person holding a valid option to purchase to act as his agent or
14 representative for purposes of submitting a proposed site specific
15 development plan or a phased development plan under this section, in
16 the manner allowed by ordinance.

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

18 (3) 'Phased development plan' means a plan which has been submitted to
19 a county by a landowner for phased development which shows the
20 type and intensity of use for a specific parcel or parcels with a lesser
21 degree of certainty than the plan determined by the county to be a site
22 specific development plan.

23 (4) 'Property' means all real property subject to zoning regulations and
24 restrictions and zone boundaries by a county.

25 (5) 'Site specific development plan' means a plan which has been
26 submitted to a county by a landowner describing with reasonable
27 certainty the type and intensity of use for a specific parcel or parcels of
28 property. Such plan may be in the form of, but not be limited to, any
29 of the following plans or approvals: A planned unit development plan,
30 a subdivision plat, a preliminary or general development plan, a
31 conditional or special use permit, a conditional or special use district
32 zoning plan, or any other land-use approval designation as may be
33 utilized by a county. Unless otherwise expressly provided by the
34 county such a plan shall include the approximate boundaries of the
35 site; significant topographical and other natural features effecting
36 development of the site; the approximate location on the site of the
37 proposed buildings, structures, and other improvements; the
38 approximate dimensions, including height, of the proposed buildings
39 and other structures; and the approximate location of all existing and
40 proposed infrastructure on the site, including water, sewer, roads, and
41 pedestrian walkways. What constitutes a site specific development
42 plan under this section that would trigger a vested right shall be finally
43 determined by the county pursuant to an ordinance, and the document
44 that triggers such vesting shall be so identified at the time of its

1 approval. However, at a minimum, the ordinance to be adopted by the
2 county shall designate a vesting point earlier than the issuance of a
3 building permit. A variance shall not constitute a site specific
4 development plan, and approval of a site specific development plan
5 with the condition that a variance be obtained shall not confer a vested
6 right unless and until the necessary variance is obtained. Neither a
7 sketch plan nor any other document which fails to describe with
8 reasonable certainty the type and intensity of use for a specified parcel
9 or parcels or property may constitute a site specific development plan.

10 (6) 'Vested right' means the right to undertake and complete the
11 development and use of property under the terms and conditions of an
12 approved site specific development plan or an approved phased
13 development plan.

14 (c) Establishment of vested right.

15 A vested right shall be deemed established with respect to any property upon the
16 valid approval, or conditional approval, of a site specific development plan or a phased
17 development plan, following notice and public hearing by the county with jurisdiction
18 over the property. Such vested right shall confer upon the landowner the right to
19 undertake and complete the development and use of said property under the terms and
20 conditions of the site specific development plan or the phased development plan
21 including any amendments thereto. A county may approve a site specific development
22 plan or a phased development plan upon such terms and conditions as may reasonably
23 be necessary to protect the public health, safety, and welfare. Such conditional approval
24 shall result in a vested right, although failure to abide by such terms and conditions will
25 result in a forfeiture of vested rights. A county shall not require a landowner to waive
26 his vested rights as a condition of developmental approval. A site specific development
27 plan or a phased development plan shall be deemed approved upon the effective date of
28 the county's action or ordinance relating thereto.

29 (d) Duration and termination of vested right.

30 (1) A right which has been vested as provided for in this section shall
31 remain vested for a period of two years. This vesting shall not be
32 extended by any amendments or modifications to a site specific
33 development plan unless expressly provided by the county.

34 (2) Notwithstanding the provisions of subsection (d)(1), a county may
35 provide that rights shall be vested for a period exceeding two years but
36 not exceeding five years where warranted in light of all relevant
37 circumstances, including, but not limited to, the size and phasing of
38 development, the level of investment, the need for the development,
39 economic cycles, and market conditions. These determinations shall
40 be in the sound discretion of the county.

41 (3) Notwithstanding the provisions of (d)(1) and (d)(2), the county may
42 provide by ordinance that approval by a county of a phased
43 development plan shall vest the zoning classification or classifications
44 so approved for a period not to exceed five years. The document that

1 triggers such vesting shall be so identified at the time of its approval.
2 The county still may require the landowner to submit a site specific
3 development plan for approval by the county with respect to each
4 phase or phases in order to obtain final approval to develop within the
5 restrictions of the vested zoning classification or classifications.
6 Nothing in this section shall be construed to require a county to adopt
7 an ordinance providing for vesting of rights upon approval of a phased
8 development plan.

9 (4) Following approval or conditional approval of a site specific
10 development plan or a phased development plan, nothing in this
11 section shall exempt such a plan from subsequent reviews and
12 approvals by the county to ensure compliance with the terms and
13 conditions of the original approval, provided that such reviews and
14 approvals are not inconsistent with said original approval. Nothing in
15 this section shall prohibit the county from revoking the original
16 approval for failure to comply with applicable terms and conditions of
17 the approval or the zoning ordinance.

18 (5) Upon issuance of a building permit, the provisions of G.S. 153A-358
19 and G.S. 153A-362 shall apply, except that a permit shall not expire or
20 be revoked because of the running of time while a vested right under
21 this section is outstanding.

22 (6) A right which has been vested as provided in this section shall
23 terminate at the end of the applicable vesting period with respect to
24 buildings and uses for which no valid building permit applications
25 have been filed.

26 (e) Subsequent changes prohibited; exceptions.

27 (1) A vested right, once established as provided for in this section,
28 precludes any zoning action by a county which would change, alter,
29 impair, prevent, diminish, or otherwise delay the development or use
30 of the property as set forth in an approved site specific development
31 plan or an approved phased development plan, except:

32 a. With the written consent of the affected landowner;

33 b. Upon findings, by ordinance after notice and a public hearing,
34 that natural or man-made hazards on or in the immediate
35 vicinity of the property, if uncorrected, would pose a serious
36 threat to the public health, safety, and welfare if the project
37 were to proceed as contemplated in the site specific
38 development plan or the phased development plan;

39 c. To the extent that the affected landowner receives
40 compensation for all costs, expenses, and other losses incurred
41 by the landowner, including, but not limited to, all fees paid in
42 consideration of financing, and all architectural, planning,
43 marketing, legal, and other consultant's fees incurred after
44 approval by the county, together with interest thereon at the

- 1 legal rate until paid. Compensation shall not include any
2 diminution in the value of the property which is caused by such
3 action;
- 4 d. Upon findings, by ordinance after notice and a hearing, that the
5 landowner or his representative intentionally supplied
6 inaccurate information or made material misrepresentations
7 which made a difference in the approval by the county of the
8 site specific development plan or the phased development plan;
9 or
- 10 e. Upon the enactment or promulgation of a State or federal law or
11 regulation which precludes development as contemplated in the
12 site specific development plan or the phased development plan,
13 in which case the county may modify the affected provisions,
14 upon a finding that the change in State or federal law has a
15 fundamental effect on the plan, by ordinance after notice and a
16 hearing.
- 17 (2) The establishment of a vested right shall not preclude the application
18 of overlay zoning which imposes additional requirements but does not
19 affect the allowable type or intensity of use, or ordinances or
20 regulations which are general in nature and are applicable to all
21 property subject to land-use regulation by a county, including, but not
22 limited to, building, fire, plumbing, electrical, and mechanical codes.
23 Otherwise applicable new regulations shall become effective with
24 respect to property which is subject to a site specific development plan
25 or a phased development plan upon the expiration or termination of the
26 vesting rights period provided for in this section.
- 27 (3) Notwithstanding any provision of this section, the establishment of a
28 vested right shall not preclude, change or impair the authority of a
29 county to adopt and enforce zoning ordinance provisions governing
30 nonconforming situations or uses.
- 31 (f) Miscellaneous provisions.
- 32 (1) A vested right obtained under this section is not a personal right, but
33 shall attach to and run with the applicable property. After approval of
34 a site specific development plan or a phased development plan, all
35 successors to the original landowner shall be entitled to exercise such
36 rights.
- 37 (2) Nothing in this section shall preclude judicial determination, based on
38 common law principles or other statutory provisions, that a vested
39 right exists in a particular case or that a compensable taking has
40 occurred. Except as expressly provided in this section, nothing in this
41 section shall be construed to alter the existing common law.
- 42 (3) In the event a county fails to adopt an ordinance setting forth what
43 constitutes a site specific development plan triggering a vested right, a
44 landowner may establish a vested right with respect to property upon

1 the approval of a zoning permit, or otherwise may seek appropriate
2 relief from the Superior Court Division of the General Court of
3 Justice."

4 Sec. 7. This act shall become effective on October 1, 1991, and shall apply
5 only to site specific development plans or phased development plans approved on or
6 after that date.