

ARTICLE 17. VESTED RIGHTS AND MORATORIA

Table of Contents

13.1 VESTED RIGHTS AND PERMIT CHOICE..... 1

13.2. MORATORIUMS.....6

17.1 VESTED RIGHTS AND PERMIT CHOICE.

17.1.1. Purpose. The purpose of this Section is to ensure reasonable certainty, stability, and fairness in the development regulation process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in land-use planning and development. This purpose is based upon the General Assembly’s recognition that local government approval of development typically follows significant investment in site evaluation, planning, development costs, consultant fees, and related expenses. The General Assembly has found that it is therefore necessary and desirable to provide for the establishment of certain vested rights. These provisions strike an appropriate balance between private expectations and the public interest.

Statutory Reference - § 160D-1014(a)

17.1.2. Permit choice. When an application made in accordance with local regulation is submitted for a development approval required pursuant to NCGS Chapter 160D-1014 and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. This section applies to all development approvals issued by the Town. The duration of vested rights created by development approvals are as set forth in **Section 13.1.4**.

Statutory Reference - § 160D-1014(b)

17.1.3. Process to claim vested right. A person claiming a statutory or common law vested right may submit information to substantiate that claim on a form approved by the Town Board of Commissioners to the Zoning Administrator who shall make an initial determination as to the existence of the vested right. The Zoning Administrator’s determination may be appealed under G.S. 160D-405. On appeal the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-405(c).

Statutory Reference - § 160D-1014(c) and 160D-108.1

Figure 17-1: Certificate Process for Vested Rights



Article 17. Vested Rights and Moratoria

17.1.4. Types and duration of statutory vested rights. Except as provided by this section and subject to **Section 17.1.2.** of this Article, amendments in local development regulations shall not be applicable or enforceable with regard to a development that has been permitted or approved pursuant to this Article so long as one of the approvals listed in this Article remains valid and unexpired. Each type of vested right listed below is defined by and is subject to the limitations provided in this section and the cited statutes. Vested rights established under this section are not mutually exclusive. The establishment of a vested right under one Section does not preclude vesting under one or more other Sections or by common law principles.

- (A) Six months -- Building permits. Pursuant to G.S. 160D-11-9, a building permit expires six months after issuance unless work under the permit has commenced. Building permits also expire if work is discontinued for a period of 12 months after work has commenced.
- (B) One year -- Other local development approvals. Pursuant to G.S. 160D-4-3(c), unless otherwise specified by this section, statute, or local ordinance, all other local development approvals expire one year after issuance unless work has substantially commenced. Expiration of a local development approval does not affect the duration of a vested right established as a site specific vesting plan, a multiphase development plan, a development agreement, or vested rights established under common law.
- (C) Two to five years -- Site specific vesting plans.

- (1) Duration. A vested right for a site specific vesting plan shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific vesting plan unless expressly provided by the Town. The Town may provide that rights regarding a site specific vesting plan shall be vested for a period exceeding two years, but not exceeding five years, if warranted by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. This determination shall be in the discretion of the Town and shall be made following the process specified by **Section 17.1.4.(c)(4)** below for the particular form of a site specific vesting plan involved.
- (2) Relation to building permits. A right vested as provided in this Section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed. Upon issuance of a building permit, the provisions of G.S.160D-11-9 and G.S. 160D-11-13 shall apply, except that the permit shall not expire or be revoked because of the running of time while a vested right under this Section exists.
- (3) Requirements for site specific vesting plans. For the purposes of this section a “site-specific vesting plan” means a plan submitted to the Town which identifies with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a site plan, a preliminary or general development plan, a special use permit, a conditional zoning, or any other development approval as may be used by a local government.

Article 17. Vested Rights and Moratoria

- (a) Unless otherwise expressly provided by the Town, the plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways.
 - (b) What constitutes a site specific vesting plan shall be defined by the relevant development regulation and the development approval that triggers vesting shall be so identified. At a minimum, the regulation shall designate a vesting point earlier than the issuance of a building permit. In the event the Town fails to adopt a regulation setting forth what constitutes a site specific vesting plan, any development approval shall be considered to be a site specific vesting plan.
 - (c) A variance shall not constitute a “site specific vesting plan” and approval of a site specific vesting plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site specific vesting plan.
- (4) Process for approval and amendment of site specific vesting plans. If a site specific vesting plan is based on an approval required by a local development regulation, the local government shall provide whatever notice and hearing is required for that underlying approval. If the duration of the underlying approval is less than two years, that shall not affect the duration of the site specific vesting established by this Section. If the site specific vesting plan is not based on such an approval, a legislative hearing with notice as required by G.S. 160D-6-2 shall be held.
- (a) The Town may approve a site specific vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights.
 - (b) The Town shall not require a landowner to waive vested rights as a condition of developmental approval. A site specific vesting plan shall be deemed approved upon the effective date of the Town’s decision approving the plan or such other date as determined by the Town Council upon approval.
 - (c) An approved site specific vesting plan and its conditions may be amended with the approval of the owner and the local government as follows:
 - (1) Any substantial modification must be reviewed and approved in the same manner as the original approval:
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Article 17. Vested Rights and Moratoria

- (2) Minor modifications may be approved by staff, if such are defined and authorized by local regulation.

17.1.5. Seven years -- Multi-phase developments. A multi-phased development shall be vested for the entire development with the zoning regulations, subdivision regulations, and unified development ordinances in place at the time a site plan approval is granted for the initial phase of the multi-phased development. This right shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

- (A) For purposes of this Section, “multi-phased development” means a development containing 100 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

17.1.6. Indefinite -- Development agreements. A vested right of reasonable duration may be specified in a development agreement approved under Article 10 NCGS Chapter 160D.

Statutory Reference - § 160D-1014(d)

17.1.7. Continuing review. Following approval or conditional approval of a statutory vested right, the Town may make subsequent reviews and require approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

- A. The Town may revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable local development regulations.

Statutory Reference - § 160D-1014(e)

17.1.8. Exceptions.

- A. A vested right, once established, precludes any zoning action by the Town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved vested right, except:
- (1) With the written consent of the affected landowner;
 - (2) Upon findings, after notice and an evidentiary 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, and safety, and welfare if the project were to proceed as contemplated in the approved vested right;
 - (3) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant’s fees incurred after approval by the Town together with interest

Article 17. Vested Rights and Moratoria

as is provided in G.S. 160D-1-6. Compensation shall not include any diminution in the value of the property that is caused by such action;

- (4) Upon findings, after notice and an evidentiary hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the Town to the vested right; or
 - (5) Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the approved vested right, in which case the Town may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, after notice and an evidentiary hearing.
- B. The establishment of a vested right under this section shall not preclude the application of overlay zoning or other development regulation that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to development regulation by a local government, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property that is subject to a vested right established under this section upon the expiration or termination of the vested rights period provided for in this section.
- C. Notwithstanding any provision of this section, the establishment of a vested right under this section shall not preclude, change or impair the authority of the Town to adopt and enforce development regulation provisions governing nonconforming situations or uses.

Statutory Reference - § 160D-1014(f)

17.1.9. Miscellaneous provisions.

- A. A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a vested right under this section, all successors to the original landowner shall be entitled to exercise such rights.
- B. Nothing in this section shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

Statutory Reference - § 160D-1014(g)

- 17.1.10. ***Vested Rights Certificate.*** A Vested Rights Certificate allows an applicant with an approved and unexpired Site Plan, Subdivision Plan, or Final Plat to “vest” the plan or plat, in accordance with the ordinance. Such “vesting” allows development to continue on an approved plan even if certain
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Article 17. Vested Rights and Moratoria

deadlines are not met and/or there are code changes that might otherwise affect continued development of the property.

- A. An application for a Vested Rights Certificate may be filed concurrently or following approval of a Site Plan, Subdivision Plan, or Final Plat application. **(See APPENDIX C)**

17.2. MORATORIUMS

- 17.2.1. Authority. The Town may adopt temporary moratoria on any development approval required by law, except for the purpose of developing and adopting new or amended plans or ordinances as to development regulations governing residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions.

Statutory Reference – N.C.G.S. Chapter 160D-107(a)

- 17.2.2. Hearing required. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance, a development regulation imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public legislative hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160D-6-1.60.

Statutory Reference - N.C.G.S. Chapter 160D-107(b)

- 17.2.3. Exempt projects. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160D-11-1461 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted as complete, to development set forth in a site-specific or phased development vesting plan approved pursuant to G.S. 160D-1-14, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or development approval, or to preliminary or final subdivision plats that have been accepted for review by the Town prior to the call for public a hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the Town prior to the call for public a hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium. Notwithstanding the foregoing, if a complete application for a development approval has been submitted prior to the effective date of a moratorium, G.S. 160D-1-14(b) shall be applicable when permit processing resumes.

Statutory Reference - N.C.G.S. Chapter 160D-107(c)

- 17.2.4. Required statements. Any ordinance development regulation establishing a development moratorium must expressly include at the time of adoption each of the following:

- A. A clear statement of the problems or conditions necessitating the moratorium and what

Article 17. Vested Rights and Moratoria

- B. courses of action, alternative to a moratorium, were considered by the local government and why those alternative courses of action were not deemed adequate.
- C. A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- D. An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- E. A clear statement of the actions, and the schedule for those actions, proposed to be taken by the Town during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

Statutory Reference - N.C.G.S. Chapter 160D-107(d)

- 17.2.5. *Limit on renewal or extension.* No moratorium may be subsequently renewed or extended for any additional period unless the Town shall have taken all reasonable and feasible steps proposed to be taken by the Town in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this Section, including what new facts or conditions warrant the extension.

Statutory Reference - N.C.G.S. Chapter 160D-107(e)

- 17.2.6. *Expedited judicial review.* Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down scheduled for expedited immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such actions, the Town shall have the burden of showing compliance with the procedural requirements of this Section.

Statutory Reference - N.C.G.S. Chapter 160D-107(f)