

**ARTICLE IX: STATUTORY ZONING VESTED RIGHTS**

**DIVISION 80 PURPOSE & DEFINITIONS**

**Section 80.01 Purpose**

The purpose of this article is to implement the provisions of North Carolina General Statutes 160D-108.1 pursuant to which a statutory zoning vested right is established upon the approval of a site-specific vesting plan.

- A. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare.
- B. These provisions recognize the concept of vested right, which provide the right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific vesting plan or an approved phased vesting plan.

**Section 80.02 Definitions**

Unless otherwise specifically provided or unless clearly required by the context, the following terms shall have the meaning indicated, when used in this article Terms not specifically defined herein shall have such definition as set forth in N.C.G.S. 160D.:

- A. Landowner or owner. The holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.
- B. Property. Any real property subject to the regulations and restrictions of this Ordinance as well as the zoning district boundaries established by this Ordinance and depicted on the official zoning map.
- C. Approval Authority. Board of Commissioners, Zoning Administrator, or the Board of Adjustment designated as being authorized to grant the specific land use permit that constitutes a site-specific vesting plan.
- D. Site-Specific Vesting Plan. A plan which has been submitted to the Town by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of any of the following plans or approvals: a planned unit development plan, a subdivision plat, a special use permit, or any other land use approval designation as may be utilized by the Town unless otherwise expressly provided by the Town, such a 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 building, 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. What constitutes a site specific vesting plan under this section that would trigger a vested right shall be finally determined by the Town pursuant to an ordinance, and the document that triggers such vesting shall be so identified at the time of its approval. However, at a minimum, the ordinance to be adopted by the Town shall designate a vesting point earlier than the issuance of a building permit. 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. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specific parcel or parcels of property may constitute a site specific vesting plan.

- E. “Vested right” means the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific vesting plan or an approved phased development plan.
- F. Phased development plan. A plan which has been submitted to the Town by a landowner for 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 Town to be a site specific vesting plan.

**DIVISION 84            ESTABLISHMENT & APPROVAL**

**Section 84.01            Establishment of a Zoning Vested Right**

(a) A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the permit issuing authority (Board of Commissioners, Zoning Administrator, or Board of Adjustment) of a site specific vesting plan, following notice and legislative hearing. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific vesting plan or phased development plan including any amendments thereto.

(b) The permit issuing authority 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 forfeiture of vested rights.

(c) Notwithstanding paragraphs (a) and (b) above, approval of a site-specific vesting plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.

(d) A site-specific vesting plan shall be deemed approved upon the effective date of

the approval authority's action relating thereto.

(e) The establishment of a zoning vested right shall not preclude the application of overlay zoning that impose 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 land use regulations by the Town. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site-specific vesting plan upon the expiration or termination of the vested right in accordance with this article.

(f) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific vesting plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

(g) A property owner may request in writing an administrative determination of vested rights. The administrative determination shall be issued in writing and may be appealed by the property owner to the board of adjustment in accordance with the requirements for appeal set forth in this ordinance.

**Section 84.02 Approval Procedures and Approval Authority**

(a) Except as otherwise provided in this section, an application (special use permit, subdivision plat, planned unit development, rezoning) for site-specific vesting plan approval shall be processed in accordance with the procedures established by the Zoning Ordinance and Subdivision Regulations and shall be considered by the designated approval authority for the specific type of land use permit for which application is made.

(b) Notwithstanding the provisions of subsection (a) of Section 80.04, if the authority to issue a particular land use permit has been delegated to the Zoning Administrator, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the Board of Commissioners or the Board of Planning and Adjustment, following notice and a evidentiary hearing as provided in the applicable section of this ordinance.

(c) In order for a zoning vested right to be established upon approval of a site-specific vesting plan, the applicant must indicate at the time of application that a zoning vested right is being sought. This can be done by letter or a statement on the site plan.

(d) Each map, plat, site plan, or other document evidencing a site-specific vesting plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under North Carolina General Statutes 160D-108.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

(e) Following approval or conditional approval of a site-specific vesting plan, nothing in this article shall exempt such a plan from subsequent reviews and 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.

(f) Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the land use ordinance.

**Section 84.03            Duration**

(a) A zoning right that has been vested as provided in this article shall remain vested for a period of two years. This vesting may be extended by any amendment or modification to a site-specific vesting plan approved by the original approval authority.

(b) Notwithstanding the provisions of subsection (a) of Section 80.05, the Town may provide that rights be vested for a period exceeding two years, but not exceeding five years, where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sole discretion of the Town.

(c) Notwithstanding the provisions of (a) and (b) above, the Town may provide by ordinance that approval of a phased vesting plan shall vest the zoning classification(s) so approved for a period up to but not to exceed five years. The document that triggers such vesting shall be so identified at the time of its approval. The Town still may require the landowner to submit a site specific vesting plan for approval by the Town with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification(s). The Town may require the completion of certain aspects of initial or preceding phase(s) as a condition of vesting subsequent phase(s). Nothing in this section shall be construed to require the Town to adopt an ordinance providing for vesting of rights upon approval of a phased development.

(d) Following approval or conditional approval of a site specific vesting plan or a phased vesting plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the Town to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the Town from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the Zoning Ordinance.

(e) Upon issuance of a building permit, the expiration provisions of North Carolina General Statutes 160D-403(c) and the revocation provision of North Carolina General Statutes 160D-403(f) shall apply, except that a building permit shall not expire or be revoked because of the running out of the time while a zoning vested right under this section is outstanding. A building permit is valid for six months as under prior law.

(f) Development approvals are valid for 12 months, unless altered by statute or extended by local rule.

(g) Multi-phase developments (long term projects of at least 25 acres) are vested for a period of five years.

**Section 84.04 Termination**

A zoning right that has been vested as provided in this article shall terminate:

- A. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
- B. With the written consent of the affected landowner;
- C. Upon findings by the appropriate approval authority, by ordinance after notice and a legislative 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 vesting plans;
- D. Upon payment of the affected landowner of 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 thereon at the legal rate until paid.
- E. Compensation shall not include any diminution in the value of the property, which is caused by such action;
- F. Upon findings by the approval authority, 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 approval authority of the site specific vesting plan; or
- G. Upon the enactment or promulgation of a State or Federal law or regulation that precludes development as contemplated in the site specific vesting plan, in which case the approval authority may modify, after notice and a hearing, the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on the plan.

**DIVISION 87 MISCELLANEOUS**

**Section 87.01 Voluntary Annexation**

A petition for annexation filed with the Town under North Carolina General Statutes 160A-31 or North Carolina General Statutes 160A-58.1 shall contain a signed

statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under North Carolina General Statutes 160D-108. ~~A statement that declares that no zoning vested right has been established under North Carolina General Statutes 160D-1081, or the failure to sign a statement declaring whether or not zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.~~

Commented [EC1]: these are repealed

**Section 87.02      Limitations**

Nothing in this article is intended or shall be deemed to create any vested right other than those established pursuant to North Carolina General Statutes 160D-108.