

**AN ORDINANCE IMPLEMENTING THE STATUTORY VESTED RIGHT
PROVISIONS OF GENERAL STATUTE 153A-344.1**

G.S. 153A-344.1 provides for the establishment of a statutory “vested right” upon approval of a “site specific development plan”; and

In compliance with the requirements of G.S. 153A-344.1, the McDowell County Board of Commissioners now adopts this Ordinance;

NOW, THEREFORE, be it enacted and ordained by the McDowell County Board of Commissioners as follows:

First. In response to Ordinance 139 entitled “McDowell County Watershed Protection Ordinance” of the Charter and Code of Ordinances for the County of McDowell the Ordinance 140 entitled “Vested Rights Ordinance” is hereby adopted as follows:

“Vested Rights”

Section 1. Statutory Authorization and Purpose

- A. Authorization. The Legislature of the State of North Carolina has required local governments to provide for the establishment of certain vested rights for landowners and/or developers after approval of a written land-use development proposal and conditional upon the approval of a site specific development plan in accordance with the authority set forth in G.S. 153A-344.1.

- B. Purposes. The purpose of this chapter is to implement the provisions of G.S. 153A-344.1. Application for vested rights pursuant to this chapter is an optional proceeding in order to insure reasonable certainty, stability and fairness in the land use planning process and protect the significant investment by a landowner or developer in site evaluation, planning, development costs, consultant fees or other related expenses. Landowners may continue to develop land through the normal process of obtaining any required watershed approvals and building permits. However, in situations involving substantial planning costs, time, labor or money, the landowner may find it convenient to protect the investment from subsequent changes in watershed classification or subsequent changes in applicable regulations by having his development rights vested through the procedures of this chapter. Compliance with these requirements is not a condition precedent to the development of property which is determined solely by the various permits or other approval under the applicable building code regulations established under Chapter One (1) and Two (2), the watershed regulations established under Ordinance 139 and flood damage prevention regulations under Ordinance 131. Likewise, the establishment of vested rights does not give the landowner the right to disregard applicable development standards requirements and regulations in effect at the time the rights become vested.

Section 2. Definitions

For purposes of this chapter only, the following definitions shall apply:

Administrator - means the McDowell County assistant to the County Manager.

Landowner - means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns and personal representative of such owner. The owner may allow a person holding a valid option to purchase, to act as his agent or representative for purposes of submitting a proposed site specific development plan in the manner allowed by this chapter.

Property - means all property subject to watershed regulations and restrictions and watershed regulations and restrictions and watershed boundaries within the jurisdiction of McDowell County.

Site Specific Development Plan - means a plan which has been submitted to the County by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property.

Vested Right - means the right to undertake and complete the development and use of the property under the terms and conditions of an approved site specific development plan.

Written Land-Use Development Proposal - means a written proposal, which has been submitted, to the County by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property.

Section 3. Vested Rights

A vested right shall only be established in accordance with the procedures set forth in this chapter and nothing in this chapter is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 153A-344.1.

Section 4. Application and Consideration

- A. Application. An Application for a vested right shall be submitted to the Administrator of McDowell County. All information requested on the application form shall be accurately set forth and the date and time of receiving the application shall be noted on the application.
- B. Fee. A nonrefundable processing fee in the amount set forth in the Schedule of Fees and Charges as adopted by the McDowell County Board of Commissioners from time to time, shall be due and payable upon submission of the application.

- C. Plans. The landowner shall submit to the Administrator a written land-use development proposal which shall include the name, address and phone number of the property owner, the location and parcel identification number of the property, the watershed area and classification, and a written description of the proposed plan which shall include approximate boundaries of the site, significant topographical and other natural features, location of existing and proposed infrastructure, utilities and parking areas, and flood plain boundaries. The Administrator shall present the proposal to the McDowell County Planning Board. Upon the approval of a written land-use proposal by the McDowell County Planning Board, a vested right shall be established contingent upon the approval of a site specific development plan.
- D. Plans. Upon the approval of a written land-use development plan, the landowner shall attach to his application a site specific development plan at a scale not less than two hundred (200) feet per one inch.
 - 1. Site Specific Development Plan. A site specific development plan shall include the approximate boundaries of the site, significant topographical and other natural features affecting the development of the site; the approximate location of the site of the proposed buildings, structures and other improvements; the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads and pedestrian walkways.

Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation:

“Approval of this plan is consistent with the written land-use development proposal which established a vested right under G.S. 153A-344.1. Unless terminated at an earlier date, the vested right shall be valid until _____.”

- E. Initial Review. The written land-use proposal shall be initially reviewed by the Administrator to determine if the proposal has been properly prepared and all fees paid. To allow adequate review time, the proposal shall thereafter be submitted to the first meeting of the McDowell County Planning Board held after the expiration of thirty (30) days from the date of original submission.
- F. Planning Board Consideration. Before acting on the proposal, the Board shall hold a public hearing. Notice of the public hearing shall be posted on the property and shall be published in a newspaper having general circulation in the area of McDowell County at least ten (10) days but not more than twenty-five (25) days before the date fixed for the hearing. It shall not be necessary for the Planning Board to officially schedule a public hearing and any required public hearing may be scheduled by the Administrator after the required notice.

Section 5. Approval and Establishment of Vested Rights

- A. Establishment of Right. Following the public hearing, a vested right shall be deemed established upon approval by the Planning Board of the written land-use proposal contingent on the completion and approval of a site specific development plan. The action taken by the Planning Board to approve the proposal shall be in the form of an order or ordinance and the vested rights shall thereafter confer upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the written land-use development plan and contingent on the completion of the site specific development plan, including any amendments thereto; however, in approving the written land-use proposal, the Planning Board may attach such terms and conditions to its approval as may be reasonably necessary to protect the public health, safety and welfare and to insure further compliance with building codes and other development standards.

Any plan approved pursuant to this section shall be deemed to be approved subject to the further requirements set forth in Section 6.

- B. Approval. The Planning Board shall approve the proposal with or without conditions, if the use anticipated is a permitted use, classification and if the plan substantially complies with all other land-use regulations and development criteria in effect on the date of the approval. If the proposal does not comply with applicable regulations but can be brought into compliance with minor changes, the Planning Board shall conditionally approve the plan. Any conditional approval shall note all required changes in the proposal to bring it into compliance during the development process.

The action taken by the Planning Board to approve a proposal shall clearly identify any additional conditions attached to such approval. Such conditions may require the landowner to obtain other necessary permits, both local, federal or state, require specific soil and erosion controls, traffic control plans, specific buffer or screening requirement, or other similar conditions designed to protect the value of adjacent property and to promote or improve the general health, safety and welfare of the public.

- C. Denial. The Planning Board shall deny any approval of a written land-use proposal if the proposal anticipates uses which are not permitted in the particular watershed classification or if the proposal does not substantially comply with other applicable land-use regulations and development requirements and cannot reasonably be brought into compliance by amendments to the proposal or if the proposal poses a danger to the public health, safety and welfare. The ordinance or order action denying approval of the proposal shall include the necessary findings of facts and conclusions to support the denial.

Section 6. Conditions and Other Requirements

- A. Variance. Approval of a land-use development proposal upon the condition that a variance be obtained, shall not confer a vested right unless and until the necessary variance is obtained.
- B. Subsequent Amendments. The establishment of a vested right shall not preclude (1) the application of overlay zonings that imposes additional requirements but does not affect the allowable type or intensity of use, or (2) ordinances or regulations that are general in nature and are applicable to all property subject to land-use regulations by the County including but not limited to, building, fire, plumbing, electrical and mechanical codes. Otherwise, applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this chapter.
- C. Appurtenant to Land. A vested right is not a personal right but shall attach to and run with the applicable property. After approval of a written land-use development proposal and contingent upon the approval of a site specific development plan, all successors in title to the original landowner shall be entitled to exercise such right during the applicable period.
- D. Subsequent Phases. The landowner shall submit a site specific development plan for approval by the County with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the watershed classification.
- E. Additional Approvals. Following approval or conditional approval of a written land-use development proposal and a site specific development plan, nothing in this ordinance shall exempt such a proposal or plan from subsequent review and approvals to insure compliance with the terms and conditions of the original approval provided that such reviews and approvals are not inconsistent with the original approval.
- F. Renovation. Nothing in this ordinance shall prohibit the renovation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the Watershed Ordinance.
- G. Time Limits. A right that has been vested as provided in this ordinance shall remain vested for a period of two (2) years except that it may provide that rights shall be vested for a period exceeding two (2) years but under no circumstances in excess of five (5) years where warranted in light of all the relevant circumstances, including, but not limited to, the size of the development, the level of the investment, the need for or desirability of the development, economic cycles and market conditions. These determinations shall be made in the sound discretion of the Planning Board at the time the written land-use development proposal is originally approved.

H. Building Permits. Upon issuance of a building permit the expiration provisions of G.S. 160A-418 and the revocation provisions of G.S. 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

Section 7. Subsequent Changes and Termination

- A. Watershed Changes. A vested right, once established as provided in this ordinance, precludes any watershed classification changes by a County which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved written land-use development proposal except to the extent permitted in this ordinance and consistent with G.S. 153A-344.1.
- B. Termination. A right that has been vested as provided in this ordinance shall terminate:
1. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed; or
 2. With the written consent of the affected landowner; or
 3. Upon findings by the Planning Board, by ordinance or order after notice and public 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 written land-use development proposal and/or the site specific development plan; or
 4. Upon payment to the affected landowner of compensation for all costs, expenses or other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal or other consultant fees incurred after approval by the County, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action; or
 5. Upon findings by the Planning Board, by ordinance after notice and hearing, that the owner or his representative intentionally supplied inaccurate information or made material misrepresentations which make a difference in the approval by the Planning Board of the written land-use proposal and/or the site specific development plan; or

6. Upon enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan in which case the approval authority may modify the affected provisions, upon a finding that the change in law has a fundamental effect on the plan, by ordinance after notice and hearing.

Section 8. Repealer

In the event that General Statute 153A-344.1 is repealed, this Ordinance shall be deemed repealed and the provisions hereof no longer effective.

Second. It is the intention of the McDowell County Board of Commissioners and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances for McDowell County and to accomplish such intention, sections of this Ordinance maybe renumbered, captions added, sections retitled, section references corrected and repeals provisions deleted.

This Ordinance shall be adopted on this the 6th day of December, 1993.

This Ordinance shall take effect and be in force on the 31st day of December, 1993.

s/Jack A. Wood
Chairman of the Board of
Commissioners of
McDowell County, NC

s/Carrie Padgett
Clerk to the Board
of Commissioners
McDowell County, NC