UNIFIED DEVELOPMENT ORDINANCE

CHAPTER 16. ADMINISTRATION

16.10. Vested rights—Site-specific vesting plans.

A. *General procedures:*

1. Pursuant to G.S. 160D-108 and notwithstanding any other provision or amendment, a landowner may apply for approval of a site-specific vesting plan as defined in the statute that shall entitle said landowner to develop property in accordance with the previously approved plan.
2. All requests for vested rights shall be accompanied by a copy of the approved development plan in accordance with the provisions of this chapter. A request to extend vested rights to a previously approved development plan shall be reviewed and approved by the city council after notice and public hearing pursuant to Section 16.7.D.

B. *Administrative review procedure:*

1. The applicant shall request a meeting with the administrator and submit an application and a master plan as defined in CHAPTER 17. Upon determination of completeness of the application, the administrator shall authorize the applicant to submit the master plan for formal review.
2. The administrator shall review and make comment on the master plan. If the master plan is denied, the reasons for denial shall be stated in writing and the applicant may resubmit the development for further review.
3. The administrator shall require evidence of approval of any other permit required by any other federal, state, or local agency (i.e., NCDOT permits, NCDENR permits, Army Corps of Engineers permits, etc.).
4. The administrator may require that the application be circulated to other relevant city, county, and state agencies, committees, and officials for comment(s) as to the proposed development's conformance to all applicable standards and requirements and whether approval is recommended. The applicable agencies, committees, and officials shall transmit any recommendations to the technical review committee (TRC).
5. When the administrator determines that the application is complete and complies with this ordinance, the administrator shall transmit submitted application materials along with any recommendations to the TRC.
6. The TRC shall review and make comment on the application. The TRC may require a Traffic Impact Study, and Environmental Impact Statement, and any other additional information as necessary to properly consider the application.
7. The TRC shall, within 30 days of receipt of all necessary application materials and additional information, take action to recommend approval, approval with conditions, or deny the application.

C. *Legislative procedure:* If a site-specific vesting plan is based on an underlying legislative or quasi-judicial approval, such as a special use permit or a conditional zoning district, the administrator shall provide whatever notice and hearing is required for that underlying approval. A duration of the underlying approval that is less than two years does not affect the duration of the site-specific vesting plan established under this section. If

the site-specific vesting plan is not based on such an approval, a legislative hearing with BPB recommendation and notice pursuant to Section 16.7.D shall be held.

D. *City council action:*

1. The city council shall determine whether or not to grant or establish a vested right after the review and consideration of the application by TRC and the BPB in accordance with the aforementioned procedures.
2. The city council may not require the landowner to waive his or her vested right as a condition of development approval.
3. The city council may approve the vested rights for a period greater than two years where it is found that due to:
    a. The sizing and phasing of the development; or,
    b. The level of investment; or,
    c. The need for the development; or,
    d. Economic cycles; or,
    e. Market conditions.
4. Building permits for all phases of the development cannot be secured within two years, provided the total period does not exceed five years from the date of plan approval of the site.

E. *Effect of approval of vesting:*

1. The effect of the city council approving a vested plan shall be to vest such site plan for a period of ~~two~~ five years to ~~five~~ eight years as approved by the city council from the date of approval.
2. A 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 approved site-specific vesting plan as provided for in this section. Failure to abide by the terms and conditions placed upon such approval will result in the forfeiture of the previously granted or established vested right.
3. A vested right, once established shall preclude any ~~zoning action~~development regulation by the city which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property in accordance with the approved site-specific development plan except under the following conditions where such rights are terminated and revoked:
    a. The affected landowner provides written consent to the city of his or her desire to terminate the vested right; or,
    b. The city determines after having advertised and held a public hearing, that natural or man-made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety and welfare if the project were to proceed as indicated in the plan; or,
    c. Compensation is made by the city to the landowner for all costs, expenses, and other losses incurred including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and any other consultant's fees incurred after approval together with interest thereon at the legal rate until paid; or,
    d. The city determines, after having advertised and held a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the city council of the plan; or,
    e. ~~Upon the enactment of a~~ As required by state or federal law or regulations which precludes development as shown in plan. In such case the city may, after having advertised and conducted a

public hearing, modify the affected provisions upon a finding that this change in state or federal law has a fundamental effect on the plan.

4. Once a vested right is granted to a particular plan, nothing in this section shall preclude the city from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are consistent with the original approval.
5. ~~The establishment of a vested right on a piece of property for a site-specific development plan shall not preclude the city from establishing and enforcing on the property any additional regulations (adopted during the time the vested right was in effect) which are general in nature and applicable to all property subject to the regulations of this ordinance.~~ The establishment of a vested right under this section precludes the application of overlay zoning or other development regulations which impose additional requirements but do not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to development regulation, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise, applicable new development regulations become effective with respect to property which is subject to a site-specific vesting plan upon the expiration or termination of the vesting rights period provided for in this section.
6. Upon issuance of a development permit, the granted statutory vesting is effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to Section 16.13.

F. *Establishment of common law vesting plans:*

1. Previously approved site-specific vesting plans shall be reviewed for compliance and consistency and subsequently approved by the administrator or designee in accordance with the provisions of this chapter, providing the proposed preliminary plat for the major subdivision does not deviate from, and is subdivided in accordance with the previously approved site-specific plan.
2. Preliminary plats for major subdivisions with previously vested site-specific plans shall be reviewed for compliance and consistency and approved by the administrator or designee, providing the proposed preliminary plat for major subdivision does not deviate from, and is subdivided in accordance with the previously approved site-specific plan. Substantial financial investment must be determined and a good faith effort made to develop proportionate to the approved statutory vested plan.

G. *Revocation or expiration of a vested right:*

1. The vested right, resulting from the approval of a site-specific vesting plan, may be revoked by the city council if the city council determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of this ordinance. As prescribed under the provisions of G.S. 160D-308, the vested right shall otherwise expire at the end of the approval period established by the city council. A building permit issued by the Transylvania County Building Inspector pursuant to G.S. 160D-403 may not expire or be revoked because of the running of time on a piece of property while a plan has been approved and the vested right period has not otherwise expired.

H. *Establishment of multiphase development vesting plan:*

1. A multiphase 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 multiphase 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 multiphase development.