

## **ARTICLE XXVII. VESTED PROPERTY RIGHTS**

The South Carolina General Assembly has enacted the “Vested Rights Act” which is codified as Section 6-29-1510, et seq., Code of Laws of South Carolina (1976), as amended (The “Act”). The Act requires local governments to enact land development ordinances and regulations implementing the provisions of the Act on or before July 1, 2005. The Act authorizes local governments to establish a procedure for the vesting of rights in certain development plans, and provides that local governments that do not pass land development ordinances implementing a procedure for the establishment of vested rights will be subject to the requirements of Section 6-29-1560 of the Act. Dorchester County Council finds that the Dorchester County Zoning and Land Development Standards Ordinance should be amended to conform to the requirements of the Vested Rights Act and hereby adopts the following Ordinance in accordance therewith.

*(Amendment – Ordinance 05-14, adopted June 20, 2005 by County Council – Added Article XXVII, Vested Property Rights...)*

### **Section 27.1 Definitions**

As used in this Ordinance, the following words and terms shall have the following meanings:

- 27.1.1** “Approved” or “Approval” means a final action by the County governing body or an exhaustion of all administrative remedies from decisions of the Dorchester County Zoning, Planning, or Land Use officials, Boards or Commissions which results in the authorization of a site specific development plan.
- 27.1.2** “Landowner” means an owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and Personal Representatives of the owner. “Landowner” may include a person holding a valid option to purchase real property pursuant to a contract with the owner to act as his agent or representative for purposes of submitting a proposed site specific development plan pursuant to this Ordinance.
- 27.1.3** “Local Governing Body” means: (a) the governing body of Dorchester County or (b) a county body authorized by Statute or by the governing body of Dorchester County to make land-use decisions.
- 27.1.4** “Person” means and individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any legal entity as defined by South Carolina law.

- 27.1.5** “Real Property” or “Property” means all real property which is subject to land-use and development ordinances or regulations, enacted, approved, or promulgated by the Dorchester County Council, and includes the earth, water and air above, below or on the surface, and includes improvements or structures customarily regarded as part of real property.
- 27.1.6** “Site Specific Development Plan” means a development plan submitted to the local governing body or a body authorized by the local government to make land-use decisions by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties. The plan may in the form of, but is not limited to, the following plans or approvals planned unit development; subdivision plan, preliminary plat; variance; conditional use or special use permit plan; or conditional or special use district zoning plan.
- 27.1.7** “Vested Right” means the right to undertake and complete the development of property under the terms and conditions of a site specific development plan as provided in this Ordinance, the Vested Rights Act and in Dorchester County Land Development Ordinances or Regulations.

**Section 27.2 Establishment of Vested Rights**

- 27.2.1** A vested right as defined herein is established for two (2) years upon the approval a site specific development plan.
- 27.2.2** The landowner of real property with a vested right may apply before the end of the vesting period, but not thereafter, to the Dorchester County Planning Commission for an annual extension of the vested right for a period of one (1) year. If a timely application is made, for such one (1) year extension, the Dorchester County Planning Commission must approve such application. If no timely application is made by the landowner to the Dorchester County Planning Commission for such one (1) year extension, the vesting period applicable to such real property shall expire at the end of the vesting period.
- 27.2.3** No vested right in a site specific development plan shall attach or be established until all plans have been received, all required approvals have been given or granted, and all fees have been paid in accordance with the procedures set forth by the Dorchester County Zoning and Land Development Standards Ordinance. Further, no vested right attaches or is established until a final decision has been rendered favorable to the applicant on all administrative appeals.

**Section 27.3 Conditions and Limitations of Vested Rights**

**27.3.1** A vested right established by this Ordinance in accordance with the standards and procedures of Dorchester County zoning, land development, and land-use ordinances and regulations is subject to the following conditions and limitations:

- (a) The form and content of a site specific development plan submitted by a landowner must conform and comply with the Dorchester County zoning, planning, storm-water management and sediment control, building, electrical, mechanical, life safety, fire, and other land-use codes, ordinances and regulations;
- (b) No vested right in a site specific development shall be established except in conformity with the Dorchester County zoning, planning, storm-water management and sediment control, building, electrical, mechanical, life safety, fire, and other land-use codes, ordinances and regulations.
- (c) A vested right established in accordance with the provisions of this Ordinance shall be vested upon approval by the Dorchester County Planning Commission of the site specific development plan that authorizes the landowner to proceed with investment in grading, installation of utilities, streets and other infrastructure, and to undertake other specific expenditures necessary to prepare for application for a building permit. No landowner shall proceed with investment, grading, installation of utilities, streets, or other infrastructure, or shall undertake other significant expenditures necessary to prepare for application for a building permit before a site specific development plan authorizing such improvements and expenditures has been approved by the Dorchester County Planning Commission. No investment and grading, installation of utilities, streets or other infrastructure, or other significant expenditures shall give rise to establish a vested right until the Dorchester County Planning Commission has approved the site specific development plan that authorizes the developer or landowner to proceed with improvements or undertake other significant expenditures on the real property which is proposed for development.

**27.3.2** A site specific development plan for which a variance, regulation, or special exemption is necessary, does not qualify and may not claim or receive vested right status unless and until the variance, regulation, or special exemption is obtained.

- 27.3.3** A vested site specific development plan which has been approved by the Dorchester County Planning Commission may be amended if the amendments are approved by the Dorchester County Planning Commission pursuant to the provisions of applicable Dorchester County land development ordinances and regulations.
- 27.3.4** A validly issued building permit does not expire or is not revoked upon expiration of a vested right, except for public safety reasons or as prescribed by the applicable building code.
- 27.3.5** A vested right to a site specific development plan may be revoked by the Dorchester County Planning Commission upon its determination, after notice and a public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval.
- 27.3.6** A vested site specific development plan is subject to later enacted Federal, State, or local laws or Ordinances adopted to protect public health, safety and welfare, including, but not limited to, building, fire, plumbing, electrical and mechanical codes and non-conforming structure and use regulations which do not provide for the grandfathering of the vested right. The issuance of a building permit vests the specific construction project authorized by the building permit to the building, fire, plumbing, electrical and mechanical codes in force at the time of the issuance of the building permit.
- 27.3.7** A vested site specific development plan is subject to later local governmental overlay zoning that imposes site plan-related requirements, but does not affect allowable types, heights as its affects density or intensity of uses, or density or intensity of uses.
- 27.3.8** A change in the zoning district designation or land-use regulations made subsequent to vesting that affects real property does not operate to affect, prevent, or delay development of the real property under a vested site specific development plan without the consent of landowner.
- 27.3.9** If real property having a vested site specific development plan is annexed, the governing body of the municipality to which the real property has been annexed must determine, after notice and public hearing, in which the landowner is allowed to present evidence, if the vested right is effective after the annexation.

**27.3.10** The Dorchester County Council, the Dorchester County Planning Commission and local planning and zoning officials may not require a landowner to waive his vested rights as a condition of approval of a site specific development plan.

**Section 27.4 Nature of Vested Rights**

**27.4.1** A vested right, pursuant to this Ordinance or the Act, is not a personal right, but attaches to and runs with the applicable real property. The landowner and all successors to the landowner who secure a vested right pursuant to the Act or this Ordinance may rely upon and exercise the vested rights for its duration subject, however, to applicable federal, state and local laws adopted to protect public health, safety and welfare, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes, and non-conforming structure and use regulations which do not provide for grandfathering of the vested right.

**Section 27.5 Severability**

**27.5.1** The provisions of this Ordinance are hereby declared to be severable and if any provision or section of this Ordinance is declared to be unconstitutional or unenforceable by a Court of competent jurisdiction, such declaration shall not affect the constitutionality, legality or enforceability of any other section or provision of this Ordinance.

**Section 27.6 Effective Date**

**27.6.1** This Ordinance shall become effective immediately upon its adoption.