

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 652

Short Title: Property Owners Protection Act. (Public)

Sponsors: Representatives Moffitt, Brubaker, Brawley, and McComas (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE PROPERTY OWNERS PROTECTION ACT.

3 Whereas, the North Carolina Supreme Court has repeatedly held that land-use
4 regulations are in derogation of the common law, and therefore are to be strictly construed
5 against the government and liberally construed in favor of the free use of land, and further that
6 any ambiguity in the laws, rules, or regulations should be resolved in favor of the property
7 owner; and

8 Whereas, the State of North Carolina and local governments within the State
9 regularly employ attorneys and others who are experts in drafting land-use regulations, and
10 they have adequate resources and time to insure that the land-use regulations are clearly drafted
11 without ambiguity so that ordinary citizens may understand the regulations and their effect on
12 the citizens' property; and

13 Whereas, sometimes overzealous staff interpret and enforce land-use regulations
14 beyond the scope of the law or ordinance that was actually passed by the State or local
15 government and resolve ambiguities in the laws and ordinances against the property owners;
16 and

17 Whereas, the burden upon the property owner in challenging an illegal or erroneous
18 interpretation of a land-use regulation is severe and may involve great cost and delay; Now,
19 therefore,

20 The General Assembly of North Carolina enacts:

21 **SECTION 1.** The General Statutes are amended by adding a new Chapter to read
22 as follows:

23 **"Chapter 47I.**

24 **"Property Owners Protection Act.**

25 **"§ 47I-1. Free use of land policy.**

26 (a) It is the policy of the State of North Carolina that all statutes, ordinances, rules, and
27 regulations that affect the free use of land shall be strictly construed against the government
28 and liberally construed in favor of the free use of land. Any ambiguity in a land-use statute,
29 ordinance, rule, or regulation shall be resolved in favor of the property owner and the free use
30 of land.

31 (b) In every case in which a property owner successfully challenges the construction,
32 interpretation, or enforcement of a statute, ordinance, rule, or regulation that impairs the free
33 use of land policy stated in subsection (a) of this section, the court presiding over the action
34 shall award to the property owner, as costs, the actual attorneys' fees incurred by the property



1 owner in challenging the illegal or improper construction, interpretation, or enforcement of the
2 statute, ordinance, rule, or regulation.

3 (c) If a property owner or other person entitled to claim a common law vested right to
4 complete a development project, notwithstanding a subsequent change of a statute, ordinance,
5 rule, or regulation related to the development project, is required to file a cause of action in the
6 courts of this State to establish the vested right and the court presiding over the action finds that
7 the State or an agency of the State, or the county or municipality involved failed to fairly
8 investigate or provide an inexpensive means to establish the vested right, the court shall award
9 to the property owner, as costs, the actual attorneys' fees incurred by the property owner in
10 bringing the action.

11 (d) In any matter related to a land-use statute, ordinance, rule, or regulation, the State or
12 an agency of the State, or the county or municipality involved shall not enforce a penalty, fine,
13 or forfeiture against a property owner for an act not actually committed by the property owner."

14 **SECTION 2.** Part 3 of Article 18 of Chapter 153A of the General Statutes is
15 amended by adding a new section to read as follows:

16 **"§ 153A-348.1. Free use of land policy.**

17 The provisions of Chapter 47I of the General Statutes shall apply to counties."

18 **SECTION 3.** G.S. 160A-385 reads as rewritten:

19 **"§ 160A-385. Changes.**

20 (a) Qualified Protests.

21 (1) Zoning ordinances may from time to time be amended, supplemented,
22 changed, modified or repealed. In case, however, of a qualified protest
23 against a zoning map or text amendment, that amendment shall not become
24 effective except by favorable vote of three-fourths of all the members of the
25 city council. For the purposes of this subsection, vacant positions on the
26 council and members who are excused from voting shall not be considered
27 "members of the council" for calculation of the requisite supermajority.

28 (2) To qualify as a protest under this section, the petition must be signed by the
29 owners of either (i) twenty percent (20%) or more of the area included in the
30 proposed change or (ii) five percent (5%) of a 100-foot-wide buffer
31 extending along the entire boundary of each discrete or separate area
32 proposed to be rezoned. A street right-of-way shall not be considered in
33 computing the 100-foot buffer area as long as that street right-of-way is 100
34 feet wide or less. When less than an entire parcel of land is subject to the
35 proposed zoning ~~map~~ amendment, the 100-foot buffer shall be measured
36 from the property line of that parcel. In the absence of evidence to the
37 contrary, the city may rely on the county tax listing to determine the
38 "owners" of potentially qualifying areas.

39 (3) The foregoing provisions concerning protests shall not be applicable to any
40 amendment which initially zones property added to the territorial coverage
41 of the ordinance as a result of annexation or otherwise, or to an amendment
42 to an adopted (i) special use district, (ii) conditional use district, or (iii)
43 conditional district if the amendment does not change the types of uses that
44 are permitted within the district or ~~increase-change~~ the approved density for
45 residential development, or ~~increase-change~~ the total approved size of
46 nonresidential development, or ~~reduce-change~~ the size of any buffers or
47 screening approved for the special use district, conditional use district, or
48 conditional district.

49 (b) Amendments in zoning ordinances shall not be applicable or enforceable without
50 consent of the owner with regard to buildings and uses for which ~~either~~ either: (i) building
51 permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance

1 making the change or changes so long as the permits remain valid and unexpired pursuant to
2 G.S. 160A-418 and unrevoked pursuant to ~~G.S. 160A-422 or (ii)G.S. 160A-422;~~ (ii) a vested
3 right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and
4 unexpired pursuant to ~~G.S. 160A-385.1.~~G.S. 160A-385.1; or (iii) common law vested rights are
5 applicable."

6 **SECTION 4.** Part 3 of Article 19 of Chapter 160A of the General Statutes is
7 amended by adding a new section to read as follows:

8 "**§ 160A-394.1. Free use of land policy.**

9 The provisions of Chapter 47I of the General Statutes shall apply to cities."

10 **SECTION 5.** This act becomes effective October 1, 2011.