HOUSE BILL 507:
Land-Use Regulatory Changes.

2017-2018 General Assembly

Committee:	House Regulatory Reform. If favorable, re-refer to Judiciary III	**Date:**	April 11, 2017
Introduced by:	Reps. Jordan, J. Bell, Conrad, W. Richardson	**Prepared by:**	Giles Perry Staff Attorney
Analysis of:	First Edition		

OVERVIEW: House Bill 507 makes changes to the land-use regulatory laws of the State.

[As introduced, this bill was identical to S575, as introduced by Sens. Gunn, Wade, Krawiec, which is currently in Senate Rules and Operations of the Senate.]

BILL ANALYSIS:

Sections 1-8 Permit Choice Changes

Current law provides that if a State agency, county, or city rule or ordinance changes between the time a permit application was submitted and the permit decision is made, the applicant can choose which version of the rule or ordinance will apply. Sections 1 through 8 make changes to the laws applicable to permit choice.

Modification of Permit Choice Statute Applicability, Expedited Court Hearing, Damages, Definition of Development Permit.

Section 1:

- Clarifies that the permit choice statutes apply to zoning map or text amendments, land development regulation amendments, and State regulation amendments affecting the development of property.
- Provides that any person asserting a claim for non-compliance by the State or a local government with the permit choice statutes may ask the Court for an order compelling compliance.
- Provides for expedited calendaring and review of permit choice related court actions at both the trial and appellate level.
- Provides that if any State agency or local government takes action in violation of the permit choice statutes, the permit applicant is entitled to damages.

Sections 2 and 3 amend county and city permit choice statutes to clarify that they apply to zoning map or text amendments and land development regulation amendments.

Section 4 changes the definition of "development permit" applicable to county or city development agreements, and to the permit choice statutes, to include "site plan".

Vested Rights Statutes Changes

Sections 5 through 8 provide all of the following related to the county and city statutes concerning vested rights[1].

- That unless the land owner grants written consent, land development regulation amendments do not apply in any of the following situation:
    - Uses of buildings or land, or subdivisions of land, for which a development permit has been issued that authorizes the use or subdivision of land.
    - Buildings, or uses thereof, for which a building permit has been issued.
    - A vested right has been established and the vested right remains valid.
    - A vested right is established by the terms of a development agreement.
- Statutory vesting starts when the application for the development permit or building permit is submitted, and lasts as long as the permit remains valid.
- Provides that local development permits expire one year after issuance unless work authorized by the permit has substantially commenced, unless otherwise specified in statute.
- Provides that the establishment of a vested right under one law does not preclude vesting under another, or vesting by application of common law principles.
- Provides that a vested right, once established, precludes any action by a county or city that would change, delay, or stop the development or use of the property, except where a change in State or federal law applies.
- **Multi-Phase Development Changes: Time of Vesting, Change to Applicability.**
    - Current G.S. 153A-344(b1) and G.S. 160A-385(b1) provide that a right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi phased development.
    - Sections 5-8 provide that a multi-phased development is vested for the entire development with land development regulations in place at the time the application for a development permit is submitted prior to the change in the land development regulations, as long as the permit remains valid; and redefines a "multi-phased development" to mean a development containing 25 acres or more (100 acres in current law) that (i) is submitted for development permit approval to occur in more than one phase and (ii) is subject to a master development plan with committed elements, showing the type and intensity of use of each phase.

Initiation of Rezoning Only by Property Owner, or Applicable County or City

Sections 9 and 10 provide that county or city zoning map amendments can only be initiated by property owner, or the applicable county or city.

Forum for Certain Claims-Superior Court

Sections 11 and 12 adds a new Section to the General Statutes authorizing landowners to bring challenges to county or city land use ordinances directly to Superior Court, for claims of unconstitutionality; preemption, or other lack of authority; violation of vested rights; or taking without just compensation.

[1]G.S. 160A-385.1(b)(6) "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 development plan or an approved phased development plan.

This section also provides that a landowner may assert any other available claims in this action, that the burden of proof is on the county or city asserting a violation, the action must be commenced by the landowner with one year, and adjoining landowners must be notified.

Changes to the Procedure Applicable to Land Use Appeals to Superior Court.

Section 13 makes changes to the procedure applicable to appeals to Superior Court of quasi-judicial land use regulatory decisions of local governments. Specifically, this Section:

- Requires that the court allow the record to be supplemented, under the rules of discovery of the NC Rules of Civil Procedure, if the following issues are raised: standing, impartiality of the decision making body, or error, including error related to claims or defenses concerning constitutionality, preemption, or violation of common law or vested rights.

No Estoppel[2] Effect when Challenging Rezoning Conditions or Development Permit Conditions Conditions

Section 14 adds a new section to the General Statutes providing that a county or city may not assert estoppel[3] when a landowner challenges rezoning conditions or development permit conditions on a development authorized by a rezoning or development permit, while proceeding with the authorized development subject to the conditions.

Award of Attorneys' Fees and Costs when a County or City Acts Outside the Scope of its Authority - Changes

Section 15 makes changes concerning when a county or city must pay attorneys' fees and costs for acting outside the scope of its authority. Specifically, this Section:

- Requires a county or city to pay attorneys' fees and costs when a county or city is found by the court to have "violated a statute or case law setting forth unambiguous limits on its authority". Under current law, mandatory attorneys' fees and costs are awarded only when an abuse of discretion is also found, in addition to an action outside the scope of a county's or city's authority.
- Requires award of attorneys' fees and costs if the court finds that a violation of the "permit choice" statutes has occurred.

Performance Guarantee Changes - Cities

Sections 16 make changes to the law governing city subdivision ordinance provisions providing for performance guarantees to ensure completion of required improvements. Specifically, this Section provides:

- A city may require a performance guarantee either at the time the subdivision plat is recorded, or after the recording of the subdivision plat.
- If a city fails to adopt an ordinance requiring performance guarantees, they may not later require the completion of required improvements prior to a plat being recorded.
- For any specific development, the type and term of performance guarantee, or any extension of the performance guarantee, shall be at the election of the developer.

[2] "Estoppel" means a legal bar or prohibition on a person from asserting or denying facts because of a person's previous words or actions to the contrary.
[3] See Note 2

- At the election of the developer, 125% of the reasonably estimated cost of completion may be determined by a licensed architect or registered engineer, with unit pricing provided by a licensed general contractor or other competent source.
- The developer shall have the option to post one form of a performance guarantee in lieu of multiple forms, for all development matters related to the same project requiring performance guarantees.
- The developer shall be allowed to reduce the amount of the performance guarantee to reflect only the remaining incomplete items.
- No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:
    - The local government to whom such performance guarantee is provided.
    - The developer at whose request or for whose benefit such performance guarantee is given.
    - The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer.

Performance Guarantee Changes - Counties

Section 17 make changes to the law governing County subdivision ordinance provisions providing for performance guarantees to ensure completion of required improvements. Specifically, this Section provides:

- A county may require a performance guarantee after the recording of the plat.
- If a county fails to adopt an ordinance requiring performance guarantees, they may not later require the completion of required improvements prior to a plat being recorded.
- For any specific development, the type and term of performance guarantee, or any extension of the performance guarantee, shall be at the election of the developer.
- The developer shall be allowed to reduce the amount of the performance guarantee to reflect only the remaining incomplete items.

Limitation on Specified Special Use or Conditional Use Permit Conditions under County and City Development Regulation Ordinances

Sections 18 and 19 amend existing law limitations on unauthorized or judicially prohibited special or conditional use permit condition, to specifically prohibit unauthorized taxes, impact fees, or building design elements; street or driveway improvements in excess of those authorized by law; or other unauthorized limitations on the development or use of land.

In addition, these sections prohibit denial of a county or city development permit on the basis of inadequate public facilities.

Clarify Applicability of Law Prohibiting Local Residential Inspections Beyond What NC Building Code Requires

Sections 20 and 21 amends current law prohibition on counties or cities adopting local ordinances that require one or two-family residential unit inspections beyond what is required in the NC Building Code, to clarify that the restriction applies to existing local ordinances, as well as new ones.

Municipal Driveway Connection Regulatory Authority

Section 22 amends current municipal driveway connection regulatory authority to provide:

- On State roads, DOT's driveway permit rules cannot be superseded by more stringent municipal driveway permit rule.
- A municipality may not require a driveway permit applicant to acquire right-of-way from property the applicant does not own.

EFFECTIVE DATE:

- G.S. 160A-385(c), as enacted by Section 5 of this act, and G.S. 153A-344(b1), as enacted by Section 7 of this act, are effective with respect to phased development approvals that are valid and unexpired on the effective date of this act.
- The remainder of this act is effective when it becomes law and applies to permits previously issued that remain valid and unexpired on the date this act becomes law and to permit actions filed, actions filed in court, and claims and defenses asserted on or after that date.