

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1654

Short Title: Chapel Hill Development Agreements.

(Local)

Sponsors: Representative Insko.

Referred to: Ways & Means.

May 28, 1998

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF CHAPEL HILL TO ENTER INTO DEVELOPMENT AGREEMENTS WITH OWNERS OF LARGE TRACTS OF LAND WITHIN THE TOWN AND ITS EXTRATERRITORIAL PLANNING JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. Article 19 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

"Part 3D. Development Agreements.

"§ 160A-400.15. Purpose.

It is the purpose of this Part to authorize municipalities to enter into development agreements with owners of large tracts of land within their respective jurisdictions.

"§ 160A-400.16. Definitions.

The following definitions apply in this Part:

- (1) Development agreement. – An agreement, authorized by duly enacted local zoning ordinance and entered into between a municipality and an owner of a large tract of land, that recognizes (i) the plan of development of the land, (ii) the terms and conditions for development and the commitments and obligations of the parties to accomplish the terms of the development, and (iii) the municipality's authority to

1 modify its land use regulations for a period of time to comply with the
2 requirements of this Part.

3 (2) Large tract of land. – A contiguous tract or parcel of land, including any
4 intervening publicly dedicated right-of-way or utility easements,
5 consisting of at least 150 acres.

6 (3) Vested right. – The term as defined in G.S. 160A-385.1.

7 (4) Contract zoning. – A transaction wherein both the landowner who is
8 seeking a certain zoning action and the zoning authority itself undertake
9 reciprocal obligations in the context of a bilateral contract.

10 **"§ 160A-400.17. Development agreements authorized.**

11 (a) A municipality may by ordinance authorize the execution of development
12 agreements between the municipality and the owner of a large tract of land to establish
13 commitments and obligations of the parties as more fully described in this Part.

14 (b) Development agreements entered into pursuant to an ordinance enacted under
15 this Part are permissible and lawful and shall not constitute illegal contract zoning. A
16 municipality may enter into a long-term development agreement as authorized by this
17 Part and commit the municipality to that agreement beyond the term of the members of
18 the municipality's governing board who authorize the agreement.

19 (c) A municipality and the owner of a large tract of land are authorized to establish
20 a time period for the duration of vested rights for the plan of development recognized in
21 the development agreement, not to exceed 25 years for the initial agreement.

22 (d) A municipality's development regulations, laws, and policies governing the
23 development of the large tract of land at the time of the execution of the development
24 agreement shall govern the development of the land for the duration of the development
25 agreement, except that subsequently adopted laws may be applied pursuant to subsection
26 (f) of this section.

27 (e) Any subsequent change in any applicable municipal ordinance enacted by the
28 municipality that alters or amends the standards for development of the large tract of land
29 shall not apply, except as provided by subsection (f) of this section.

30 (f) A municipality may apply subsequently adopted laws and policies to a
31 development that is subject to a development agreement if the municipality holds a public
32 hearing and determines by competent evidence that:

33 (1) The subsequently adopted laws do not prevent the development of the
34 buildings identified in the plan of development in the development
35 agreement;

36 (2) The subsequently adopted laws are essential to the public health or
37 safety, and expressly state that they shall apply to a development
38 agreement;

39 (3) The subsequently adopted laws are laws of general applicability
40 throughout the municipality; and

41 (4) The municipality demonstrates that substantial changes have occurred in
42 pertinent conditions existing at the time of approval of the development
43 agreement.

1 (g) Any otherwise applicable limitations on duration of vested rights contained in
2 G.S. 160A-385.1 or elsewhere shall not apply.

3 (h) If a municipality and the owner of a large tract of land enter into an initial
4 development agreement, the parties are further authorized, by following the procedures
5 set out in this Part, to enter into subsequent development agreements for part or all of
6 property which is the subject of the initial agreement.

7 **"§ 160A-400.18. Contents of agreements; procedure.**

8 (a) A development agreement shall include the following:

9 (1) A legal description of the real property subject to the agreement.

10 (2) The names of all owners of legal or equitable interests in the real
11 property.

12 (3) The initial duration of the agreement, which shall not exceed 25 years
13 and shall include procedures for extension.

14 (4) A plan that recognizes development of the land, the terms and
15 conditions for development, and the commitments and obligations of the
16 parties to accomplish the plan of development.

17 (5) A description of all local development permits already approved or
18 which may be required in the future for the development of the property
19 subject to the agreement, including whether further development
20 agreements may be necessary.

21 (6) The commitments made by the municipality to the property owner to
22 recognize the rights of the property owner to develop the tract consistent
23 with the plan of development as established by the municipality and the
24 development agreement.

25 (7) A finding that the proposed development is consistent with the
26 comprehensive plan and development regulations of the municipality.

27 (8) A description of the conditions, terms, restrictions, or other
28 requirements determined by the municipality to be necessary to ensure
29 (i) conformance with the municipality's development regulations, laws,
30 and policies governing the development of the large tract of land at the
31 time of the execution of the development agreement, and (ii) the public
32 health, safety, or welfare as specifically defined in the criteria and
33 standards established in the municipality's development regulations,
34 laws, and policies governing the development.

35 (9) Provisions stating that the development agreement is binding upon the
36 property which is the subject of the agreement and upon the property's
37 owners and their successors and assigns.

38 (b) A development agreement may include the following:

39 (1) The period in which and terms by which development and construction,
40 in part or in its entirety, must be commenced or be completed; and

41 (2) Any other necessary or proper matter.

42 (c) A municipality shall establish by ordinance procedures to be followed for the
43 enactment of a development agreement, including requirements that:

1 (1) The municipality receive a recommendation from its planning agency
2 and conduct a public hearing prior to approving and entering a
3 development agreement.

4 (2) The owner, within 180 days of approval of a development agreement,
5 cause a copy of the agreement to be recorded in the office of the
6 Register of Deeds where the property is located.

7 (3) Pertain to any other necessary or proper matter.

8 **"§ 160A-400.19. Requirements for zoning ordinance implementing this Part.**

9 Any development agreement entered into under the authority of this Part shall be
10 authorized by a duly enacted zoning ordinance of the municipality. The ordinance shall
11 include:

12 (1) Procedural requirements for amendment, termination, and revocation of
13 the agreement.

14 (2) Provisions for the enforcement of the terms of the agreement by any
15 party to the agreement or their successors in interest in accordance with
16 the general law, including injunctive relief.

17 (3) Any other necessary or proper matter.

18 **"§ 160A-400.20. Application of Part to property owned by the State.**

19 (a) All of the provisions of this Part are hereby made applicable to the erection,
20 construction, and use of buildings by the State of North Carolina and its political
21 subdivisions.

22 (b) Notwithstanding subsection (a) of this section, nothing in this Part shall
23 prevent the parties from addressing nonbuilding uses of land in a development
24 agreement.

25 (c) Notwithstanding the provisions of any general or local law or ordinance, no
26 land owned by the State of North Carolina may be included within an overlay district or a
27 special use or conditional use district without approval of the Council of State.

28 **"§ 160A-400.21. Applicability.**

29 This act applies only to the Town of Chapel Hill."

30 Section 2. This act is effective when it becomes law.