

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 734

Committee Substitute as Amended Reported Without Prejudice Engrossed 4/29/99

Short Title: Chapel Hill Development Agreements.

(Local)

Sponsors:

Referred to:

March 30, 1999

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

1 terms of the development, and (iii) the municipality's authority to
2 modify its land use regulations for a period of time to comply with the
3 requirements of this Part.

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

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

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

11 **"§ 160A-400.17. Development agreements authorized.**

12 (a) A municipality may by ordinance authorize the execution of development
13 agreements between the municipality and the owner of a large tract of land to establish
14 commitments and obligations of the parties as more fully described in this Part, and may
15 authorize the assessment of a fee not to exceed one hundred dollars (\$100.00) on the
16 owner of a large tract of land as a condition of such development agreement. Such fee, in
17 the discretion of the municipality, may be waived for good cause shown.

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

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

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

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

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

37 (1) The subsequently adopted laws do not prevent the development of the
38 buildings identified in the plan of development in the development
39 agreement;

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

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

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

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

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

12 **"§ 160A-400.18. Contents of agreements; procedure.**

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

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

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

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

19 (4) A plan that recognizes development of the land, the terms and
20 conditions for development, and the commitments and obligations of the
21 parties to accomplish the plan of development.

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

26 (6) The commitments made by the municipality to the property owner to
27 recognize the rights of the property owner to develop the tract consistent
28 with the plan of development as established by the municipality and the
29 development agreement.

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

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

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

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

- 1 (1) The period in which and terms by which development and construction,
2 in part or in its entirety, must be commenced or be completed; and
3 (2) Any other necessary or proper matter.
4 (c) A municipality shall establish by ordinance procedures to be followed for the
5 enactment of a development agreement, including requirements that:
6 (1) The municipality receive a recommendation from its planning agency
7 and conduct a public hearing prior to approving and entering a
8 development agreement.
9 (2) The owner, within 180 days of approval of a development agreement,
10 cause a copy of the agreement to be recorded in the office of the
11 Register of Deeds where the property is located.
12 (3) Pertain to any other necessary or proper matter.

13 **"§ 160A-400.19. Requirements for zoning ordinance implementing this Part.**

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

- 17 (1) Procedural requirements for amendment, termination, and revocation of
18 the agreement.
19 (2) Provisions for the enforcement of the terms of the agreement by any
20 party to the agreement or their successors in interest in accordance with
21 the general law, including injunctive relief.
22 (3) Any other necessary or proper matter.

23 **"§ 160A-400.20. Application of Part to property owned by the State.**

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

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

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

33 **"§ 160A-400.21. Applicability.**

34 This Part applies only to the Town of Chapel Hill."

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