



DETERMINATION FOR VESTED RIGHTS APPLICATION

Development Services – Planning Division
1 N. Bluford Avenue | Ocoee, FL 34761
Phone: 407.905.3157

Received Date – Office Use Only

(PLEASE TYPE OR PRINT ALL INFORMATION)

\$ 500.00

1. APPLICANT'S NAME: _____

APPLICANT'S MAILING ADDRESS: _____

TELEPHONE NUMBER: _____

IF THE APPLICANT IS NOT THE OWNER OF THE REAL PROPERTY WITH RESPECT TO WHICH THIS APPLICATION IS SUBMITTED, THEN THE APPLICANT MUST ATTACH HERETO AN AUTHORIZATION FROM THE OWNER TO SUBMIT THIS APPLICATION TO THE CITY. SUCH AUTHORIZATION SHALL BE EVIDENCED BY A POSER OF ATTORNEY SIGNED BY THE OWNER AND NOTARIZED SPECIFICALLY AUTHORIZING THE APPLICANT TO REPRESENT THE OWNER IN CONNECTION WITH THE APPLICATION AND AS TO THE OWNER'S REAL PROPERTY WHICH IS THE SUBJECT OF THE APPLICATION. THE AUTHORIZATION MUST ALSO INCLUDE AN AGREEMENT OF THE OWNER TO BE BOUND BY THE ACTIONS OF THE APPLICANT.

THE APPLICANT _____ IS _____ IS NOT THE OWNER OF RECORD OF THE REAL PROPERTY WHICH IS THE SUBJECT OF THIS APPLICATION.

2. OWNER OF RECORD: _____

OWNER'S MAILING ADDRESS: _____

(If more than one owner, please attach additional sheets.)

3. PROVIDE THREE (3) COPIES OF THE LEGAL DESCRIPTION OF THE PROPERTY ALONG WITH LOCATION MAP AND/OR SKETCH OF DESCRIPTION FOR THE SUBJECT PARCEL. SPECIFY BELOW: SECTION-TOWNSHIP-RANGE-SUBDIVISION-LOT-AND BLOCK, AS APPLICABLE.

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4. IN ACCORDANCE WITH SECTION 1-5.1 OF THE CITY OF OCOEE LAND DEVELOPMENT CODE, VESTED RIGHTS FOR THE REAL PROPERTY REFERENCED IN ITEM 3 IS ASSERTED BASED UPON THE FOLLOWING CRITERIA. (CHECK ALL THAT APPLY):

- A. THE PROJECT OR DEVELOPMENT HAS BEEN ISSUED A FINAL DEVELOPMENT ORDER AND THE DEVELOPER HAS COMMENCED DEVELOPMENT AND IS CONTINUING DEVELOPMENT IN GOOD FAITH ON SEPTEMBER 18, 1991 AND ON THE DATE OF SUBMITTAL OF THIS APPLICATION.
- B. THE OWNER, OR ITS PREDECESSORS IN INTEREST (i) HAVE RELIED IN GOOD FAITH AND IN REASONABLE RELIANCE UPON SOME CLEAR AND UNEQUIVOCAL ACT OR PROMISE OF THE CITY AND (ii) HAVE MADE A SUBSTANTIAL CHANGE IN POSITION AND INCURRED SUCH EXTENSIVE OBLIGATIONS THAT IT WOULD BE HIGHLY INEQUITABLE OR UNJUST TO DESTROY THE RIGHTS WHICH SUCH PERSON HAS ACQUIRED.
- C. THE CITY HAS ENTERED INTO A DEVELOPMENT AGREEMENT PRIOR TO SEPTEMBER 18, 1991 WHICH EXPRESSLY GRANTS VESTED RIGHTS TO ALL OR A PORTION OF THE REAL PROPERTY DESCRIBED IN ITEM NO. 3 HEREOF.

5. BASED UPON SECTION 1-5.1 OF THE CITY OF OCOEE LAND DEVELOPMENT CODE, THE TYPE OF VESTED RIGHTS BEING ASSERTED ARE: (CHECK ALL THAT APPLY)

- A. CONSISTENCY WITH OCOEE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE.
- B. CONCURRENCY REQUIREMENTS.
- C. OTHER:

6. THE APPLICANT BELIEVES THAT THE PROJECT OR DEVELOPMENT IS VESTED WITH RESPECT TO THE FOLLOWING:

7. IF THE CLAIM FOR VESTED RIGHTS IS BEING ASSERTED PURSUANT TO SECTION 1-5.1(C)(1)(A) OF THE CITY OF OCOEE LAND DEVELOPMENT CODE:

- A. IDENTIFICATION BY SPECIFIC REFERENCE TO ANY ORDINANCE, RESOLUTION, CITY COMMISSION ACTION, APPROVED FINAL SUBDIVISION PLAN, BUILDING PERMIT OR OTHER ACTION DEMONSTRATING THAT THE PROJECT WAS ISSUED A FINAL DEVELOPMENT ORDER PRIOR TO SEPTEMBER 18, 1991; AND
- B. A SWORN STATEMENT OF FACTS DEMONSTRATING THAT DEVELOPMENT OF THE PROJECT HAS CONTINUED IN GOOD FAITH.

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8. IF THE CLAIM FOR VESTED RIGHTS IS BEING ASSERTED PURSUANT TO SECTION 1-5.1(C)(1)(B) HEREOF:
 - A. A SWORN STATEMENT SETTING FORTH THE FACTS UPON WHICH THE CLAIM FOR VESTED RIGHTS IS BASED.
 - B. COPIES OF ALL CONTRACTS, LETTERS, APPRAISALS, REPORTS OR ANY OTHER DOCUMENTS, ITEMS OR THINGS UPON WHICH THE APPLICANT'S CLAIM IS BASED.
9. IF CLAIM FOR VESTED RIGHTS IS BEING ASSERTED PURSUANT TO SECTION 1-5.1(C)(1)(C) HEREOF:
 - A. A SWORN STATEMENT SETTING FORTH THE FACTS UPON WHICH THE CLAIM FOR VESTED RIGHTS IS BASED.
 - B. A COPY OF THE DEVELOPER AGREEMENT OR OTHER DOCUMENT SUPPORTING THE CLAIM FOR VESTED RIGHTS.
10. A SWORN STATEMENT SETTING FORTH THE SPECIFIC VESTED RIGHTS CLAIMED BY THE APPLICANT AND WHETHER VESTED RIGHTS ARE CLAIMED FOR PURPOSES OF CONSISTENCY OR CONCURRENCY, OR BOTH.
11. SUCH OTHER RELEVANT INFORMATION AS THE DIRECTOR MAY REQUEST.
12. APPLICANT WILL PROVIDE A COMPLETE LISTING OF ALL DOCUMENTS SUBMITTED WITH THE APPLICATION AND THAT ALL SUCH DOCUMENTS ARE INCORPORATED INTO AND MADE A PART OF THE APPLICATION.

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STATE OF _____

COUNTY OF _____

BEFORE ME, _____, who being first duly sworn upon oath stated and affirmed that the facts and information set forth in the above-referenced Application are true and correct to the best of the undersigned's knowledge and belief. Further, the undersigned acknowledges that the processing of the above-referenced Application is subject to the provisions of Section 1-5.1 and 1- 12 of the Land Development Code and that the Applicant will be responsible for the payment of all Review Costs incurred by the City in connection with the review and processing of the Application.

1. If the Application is being signed by an individual, use signature line and notary set forth below:

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ___ day of _____, 20___, by _____.

Such person did not take an oath and: *(notary must check applicable box)*

- is/are personally known to me.
- produced a current Florida driver's license as identification.
- produced _____ as identification.

{Notary Seal must be affixed}

Signature of Notary

Name of Notary (typed, Printed or Stamped)

Commission Number (if not legible on seal): _____

My Commission Expires (if not legible on seal): _____

2. If the Application is being signed by a corporation or other legal entity, use signature line and notary set forth below:

a _____

By: _____

As its: _____

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STATE OF _____

COUNTY OF _____

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{Notary Seal must be affixed} _____
Signature of Notary

Name of Notary (typed, Printed or Stamped)

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My Commission Expires (if not legible on seal): _____

- 2. If the Application is being signed by a corporation or other legal entity, use signature line and notary set forth below:

a _____

By: _____

As its: _____

LAND DEVELOPMENT CODE – EXCERPT FROM ARTICLE I

§ 1-5.1. COMPREHENSIVE PLAN VESTED RIGHTS DETERMINATIONS.

A. Findings and Determinations.

It is hereby found, determined and declared as follows:

- (1) Pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, Part II, Chapter 163, Florida Statutes ("the Act"), the City of Ocoee is authorized and required to adopt a local comprehensive plan.
- (2) The City Commission of the City of Ocoee adopted a local comprehensive plan in accordance with the provisions of the Act on September 18, 1991 by adoption of Ordinance No. 91-28.
- (3) Under the provisions of the Act, in some circumstances development that was approved prior to the adoption of the Comprehensive Plan may be "vested" and not subject to the provisions of the Comprehensive Plan.
- (4) The City Commission of the City of Ocoee deems it necessary under the authority thus granted to it to adopt and enforce vested rights regulations for all development subject to the jurisdiction of the City.

B. Definitions.

For the purposes of this Section 1-5.1 only, the following terms have the following meanings:

- (1) "Commenced development" means that the developer of a project received a final development order prior to September 18, 1991.
- (2) "Continuing development in good faith" means that following the issuance of the final development order, the developer of a project diligently pursues the issuance of all permits necessary to begin development of the project, and once obtained, commences and proceeds with development. Once development is commenced, no more than one hundred eighty (180) consecutive days may pass without the occurrence of development unless the developer can establish that the lapse was due to circumstances beyond his or her control.
- (3) "Director" means the planning director for the City of Ocoee or his or her designated representative.

C. Existence of Vested Rights.

- (1) Notwithstanding its inconsistency, in whole or in part, with this Land Development Code or the Comprehensive Plan, a project or development shall be deemed to have vested rights if the project or development meets one (1) or more of the following criteria:

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- (a) The project or development has been issued a final development order, and the developer has commenced development and is continuing development in good faith on September 18, 1991 and on the date of submittal of the application for a determination of vested rights.
 - (b) The person seeking to establish vested rights, with respect to such project or development, or their predecessors-in-interest (i) have relied in good faith and in reasonable reliance upon some clear and unequivocal act or promise by the City, and (ii) have made such a substantial change in position and incurred such extensive obligations that it would be highly inequitable or unjust to destroy the rights which such person has acquired.
 - (c) The City has entered into a development agreement prior to September 18, 1991 which expressly grants vested rights to all or a portion of a project or development.
- (2) Nothing in this Land Development Code or the Comprehensive Plan shall limit or modify the rights of any developer to complete a project or development that has vested rights; provided, however, the development of a vested project must occur in a manner consistent with the final development order or other actions forming a basis for the vested rights in order to maintain the vested status of the project or development. Neither this Land Development Code nor the Comprehensive Plan shall be construed or applied so as to result in an unconstitutional taking of private property or the abrogation of validly existing vested rights.
- (3) A project or development may be vested for purposes of "consistency" or "concurrency" or both depending on the factual circumstances establishing the vested rights.
- (4) A project or development which is found to have vested rights shall enable the owner of the subject property to undertake development addressed by the vested rights determination made pursuant to this Section, notwithstanding that the development may be inconsistent with this Land Development Code and/or the Comprehensive Plan, or in violation of the concurrency requirements of the Comprehensive Plan, or both, as specified in the vested rights determination made pursuant to this Section, but only if the project or development complies with and is subject to all other applicable laws and regulations.

D. Takings.

Neither this Land Development Code nor the Comprehensive Plan is intended to constitute a taking without just compensation. No person claiming that this Land Development Code or the Comprehensive Plan as applied to a particular property, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court or before a quasi-judicial body unless the person has first exhausted the administrative remedies provided in this Section by applying for a vested rights determination to the extent any such claim is based in part or completely on facts related to the criteria for establishing vested rights. In such event, it shall be the duty and responsibility of the person alleging a taking to demonstrate the legal requisites of a taking.

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E. Application for Vested Rights Determination.

(1) Application Period.

The developer or owner of a project may request a determination of vested rights by filing a complete application and paying the applicable application fee.

(2) Contents of Application.

The application shall contain the following information:

- (a) The name, address, and phone number of the applicant.
- (b) A legal description of the property.
- (c) The name and address of each owner of the property, if the applicant is not the owner.
- (d) If the claim for vested rights is being asserted pursuant to Section 1-5.1(C)(1)(a) hereof:
 - 1. Identification by specific reference to any ordinance, resolution, City commission action, approved final subdivision plan, building permit or other action demonstrating that the project was issued a final development order prior to September 18, 1991; and
 - 2. A sworn statement of facts demonstrating that development of the project has continued in good faith.
- (e) If the claim for vested rights is being asserted pursuant to Section 1-5.1(C)(1)(b) hereof:
 - 1. A sworn statement setting forth the facts upon which the claim for vested rights is based.
 - 2. Copies of all contracts, letters, appraisals, reports or any other documents, items or things upon which the applicant's claim is based.
- (f) If claim for vested rights is being asserted pursuant to Section 1-5.1(C)(1)(c) hereof:
 - 1. A sworn statement setting forth the facts upon which the claim for vested rights is based.
 - 2. A copy of the developer agreement or other document supporting the claim for vested rights.
- (g) A sworn statement setting forth the specific vested rights claimed by the applicant and whether vested rights are claimed for purposes of consistency or concurrency, or both.
- (h) Such other relevant information as the Director may request.

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(3) Application Submittal.

The application and application fee shall be submitted to the City of Ocoee Planning Department.

(4) Application Fee.

Any application for a vested rights determination pursuant to this Section shall be subject to the provisions of Section 1-12 of this Land Development Code, and for the purposes thereof the applicant shall pay the Flat Fee and the Review Deposit established pursuant thereto. No application shall be accepted until the Flat Fee and the Review Deposit are paid to the City. The applicant shall pay to the City all Review Costs associated with the vested rights determination as provided in Section 1-12 of this Land Development Code.

F. Procedure for Determining Vested Rights.

(1) *Application Review.* The Director shall review the application in consultation with the City Attorney and shall, within thirty (30) days after it is filed, determine if the application is complete. If it is not complete, the applicant shall be granted ten (10) days to provide additional information to make the application complete.

(2) Vested Rights Determination.

- (a) It shall be the applicant's burden to affirmatively allege and establish the existence of vested rights.
- (b) Following receipt of a complete application, if the applicant does not request the opportunity to present additional evidence to the Director, the Director shall issue a written vested rights determination ("the Vested Rights Determination") within sixty (60) days of the date of determination that the application is complete.
- (c) The applicant may request the opportunity to present additional evidence to the Director, and any such request shall be granted. The Director, in consultation with the City Attorney, may conduct a hearing to evaluate the applicant's evidence, and may require that all testimony be submitted under oath. In the event a hearing is conducted, a recording or transcript of the hearing shall be made. Within sixty (60) days following the conclusion of the hearing, the Director shall issue a written Vested Rights Determination.
- (d) The Vested Rights Determination shall contain findings of fact and conclusions of law and shall include the legal description of the property to which it applies. The Vested Rights Determination shall set forth whether the project or development is vested, in whole or in part, for consistency or concurrency, or both and whether the project or development is subject in whole or in part to this Land Development Code. The Vested Rights Determination may contain reasonable conditions necessary to effect the purposes of this Land Development Code and the Comprehensive Plan. It shall state that the Vested

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Rights Determination is subject to expiration in accordance with this or subsequent ordinances. The Director may consult with the City Attorney in connection with the drafting and issuance of a Vested Rights Determination.

(3) Appeal of Determination.

Any applicant may appeal to the City Commission the Director's Vested Rights Determination. The appeal shall be filed with the City Clerk within thirty (30) days following the rendering of the Director's Vested Rights Determination. This time is jurisdictional. The City Commission's review of the Vested Rights Determination shall be based solely upon a review of the application and the evidence in support thereof submitted to the Director. The City Commission shall take final action on the appeal within sixty (60) days from the date the appeal is filed with the City Clerk. The decision of the City Commission shall be final, subject to judicial review.

(4) Payment of Review Costs.

Notwithstanding any provision contained herein to the contrary, the Vested Rights Determination shall not be final until all Review Costs incurred by the City in connection therewith have been paid in full by the Applicant.

(5) Judicial Review.

Judicial review of the Vested Rights Determination made by the City Commission is available and shall be by common-law certiorari to the circuit court.

G. Health, Safety, and Welfare Considerations.

Nothing contained herein shall preclude the City of Ocoee from requiring a project or development to comply with any land development regulations adopted subsequent to the issuance of the Final Development Order or the obtaining of vested rights if the City Commission deems such compliance essential to the protection of the health, safety, and welfare of the citizens of Ocoee.