

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE DRH60011-LM-25 (02/04)

Short Title: Property Owners Protection Act.

(Public)

Sponsors: Representative Moffitt.

Referred to:

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

20 "**§ 160A-394. Free use of land policy.**

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

22 **SECTION 4.** This act becomes effective October 1, 2013.