

CHAPTER 400. PERMIT TYPES AND APPLICATIONS

SECTION 407. RELIEF APPLICATIONS

407.6. Vested Rights

A. Generally

Any person that is in doubt as to whether he has established common law or statutory vesting against the Comprehensive Plan or this Code or who has had a provision of the Comprehensive Plan or this Code applied to his development and believes that such application is contrary to a common law or a statutory vested right, may seek to have the Board of County Commissioners (BCC) establish such vested rights pursuant to the criteria and procedures set forth in this Section. The criteria and procedures set forth in this Section are administrative remedies that shall be exhausted:

1. Prior to filing any claim or action against the County, for damages or injunctive relief, based on common law or statutory vesting against the Comprehensive Plan or this Code.
2. Prior to asserting any defense or counterclaim based on common law or statutory vesting against the Comprehensive Plan or this Code in any action initiated by the County or State of Florida.

The criteria and procedures set forth in this section shall not preclude the filing of other administrative remedies set forth in this Code including, but not limited to, the remedies set forth in Sections 407.1 and 407.4. However, if the application for any other administrative remedy seeks to establish or relies upon common law or statutory vested rights, the Planning Commission and/or the BCC may require the person seeking such remedy to follow the criteria and procedures in this Section prior to concluding the other administrative proceeding. In such event, all applicable time periods or deadlines in the other administrative proceeding shall be tolled until the conclusion of the procedures set forth in this Section.

B. Vested Rights Classifications and Criteria

Applicants may seek to demonstrate statutory vested rights or common law vested rights in accordance with the following:

1. Statutory vesting criteria. Any person seeking to establish statutory vested rights shall demonstrate compliance with all of the following criteria:
 - a. The Comprehensive Plan, this Code, State, or Federal statutes or constitutions include a provision that vest the development against the application of one (1) or more substantive provisions of the Comprehensive Plan or this Code (vesting provision).

- b. The development and property meet all statutory requirements of the vesting provision.
- c. The vesting provision applies to the particular Comprehensive Plan provision or this Code against which the person seeks to be statutorily vested.
- d. If the vesting provision is a State or Federal statute or constitutional provision that has not been implemented by, or incorporated into, the Comprehensive Plan or this Code, the vesting provision preempts the Comprehensive Plan provision or this Code against which the person seeks to be statutorily vested.

2. Common Law Vesting Criteria

- a. Any person seeking to establish common law vested rights or equitable estoppel shall demonstrate that the person has:
 - (1) Relied in good faith;
 - (2) Relied on some act or omission of the County; and
 - (3) Made a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights he has acquired by application of the Comprehensive Plan and/or this Code.
- b. Application of common law vesting criteria. In applying the criteria in this Section for common law vesting, the BCC shall be guided by the following additional rules based on the common law:
 - (1) Good faith reliance. Good faith reliance requires compliance with the law and mutual understanding of facts. Therefore, governmental action that is issued in violation of the law or that would accomplish an illegal result or governmental action based on a mutual mistake of fact may not be a basis for good faith reliance. In addition, a person may not rely in good faith on the existing Comprehensive Plan or this Code's provisions if the person has good reason to believe such provisions may change as of the date the County has accepted a development approval application. In the case of this Code, a person has good reason to believe provisions may change if an ordinance or resolution repealing or modifying such provisions has been introduced to the BCC and that the BCC has

applied the "pending ordinance" doctrine to such ordinance or resolution. In the case of Comprehensive Plan provisions, a person has good reason to believe such provisions may change if an amendment to the Comprehensive Plan repealing or modifying such provisions has been heard by the Local Planning Agency.

- (2) An act or omission by the County. The governmental act forming the basis of common law vesting or equitable estoppel must be a final action or approval of a County decision-making body or administrative official with authority to take action or grant the approval as authorized by this Code. Oral statements of the County administrative officials are presumed to be nonfinal actions. The governmental act must be evidenced by a written document or approval, except in those instances where the BCC has determined an oral statement to be a final act of an administrative official with authority to act; in such cases, the act shall be evidenced by testimony from the administrative official that acted. Documentation or testimony relating to the act by the County must be clear, complete and specific, and a person may not rely on the act for purposes or property that are not clearly, completely, and specifically set forth in the act. In addition, the act upon which the person relied must be one on which the person had a right to rely. An omission, inaction, or absence of regulation by the County will only give rise to common law vesting or equitable estoppel if the County has a statutory duty to act and such omission, inaction, or absence of regulation has not been caused by the person seeking to establish common law vesting or equitable estoppel. A person may not obtain common law vesting or equitable estoppel based on the existing zoning or land use classification of property unless there is some other governmental act or omission supporting common law vesting or equitable estoppel. A governmental act by the County will only give rise to common law vesting or equitable estoppel in rare instances and under exceptional circumstances. The act must go beyond mere negligence, but it is not necessary to prove intentional deceit.
- (3) Substantial change in position or incurring extensive obligations and expenses. The substantial change in position, obligation, or expense forming the basis of common law vesting or equitable estoppel must have been induced by the act or omission by the County. Accordingly, a substantial change in position or

obligation or expense occurring prior to the act or omission shall not be a basis for common law vesting or equitable estoppel. The substantial change of position, or obligation or expense forming the basis of common law vesting or equitable estoppel must have been incurred by the person seeking to establish common law vesting or equitable estoppel, and a person may not utilize substantial changes in position, obligations, or expenditures of predecessors or successors in interest. The governmental act or omission by the County must cause a serious injustice and the imposition of common law vesting or equitable estoppel must not unduly harm the public interest.

3. **Alternate Criteria or Rules for Statutory or Common Law Vesting**

If the vested rights applicant believes that any of the criteria or rules set forth in this Section are in conflict with a statutory provision or case law that is legally binding on the County, such person may present to the County Attorney, prior to or simultaneously with the vested rights application, a request for alternate criteria or rules based on the conflicting statutory provision or case law. If the request is granted by the County Attorney, the alternate criteria or rules accepted by the County Attorney shall govern the vested rights application in lieu of the applicable criteria or rules in this Section. If the conflict between the criteria and rules in this Section and the statutory provision or case law presented by the vested rights applicant cannot be reconciled without judicial action, the criteria in this Section shall govern for the purposes of the vested rights application and public hearing before the BCC. However, the conflict may be addressed in any appeal of the BCC action on the vested rights application.

C. **Vested Rights Application Content Requirements**

All applications to establish vested rights pursuant to this Section shall be filed with the County Attorney's Office. Unless otherwise approved by the County Attorney or the BCC, a vested rights application shall be accepted when it contains all of the following information:

1. A list of the specific Comprehensive Plan and/or Code provisions against which the applicant seeks to be vested.
2. A legal description and sketch of the property for which the applicant is seeking vested rights. If the property is part of a larger project, a legal description and sketch of the larger project shall also be provided.

3. Deeds, contracts, or other documents demonstrating that the applicant is the legal or equitable owner of the property for which the applicant is seeking vested rights.
4. A description of the existing use of the property and the entitlements for which the applicant is seeking vested rights.
5. Copies of all development orders, permits, and approvals that are relevant to the vested rights application.
6. For statutory vesting, copies of all documentation demonstrating compliance with the criteria in Section 407.6.B. and a statement describing how the applicant complies with each of the criteria of that Section.
7. For common law vesting or equitable estoppel, copies of all documentation demonstrating compliance with the criteria and rules in Sections 407.6.C and D. and a statement describing how the applicant complies with each of the criteria in Section 407.6.C. that is consistent with the rules in Section 407.6.D.
8. A list of all the witnesses that will present testimony to the BCC, including a short summary of the testimony that will be provided by each witness.
9. If not otherwise provided to comply with Section 407.6.C, Subsections 1-8 above, copies of all statutory, constitutional, and case law authority upon which the applicant will rely to support the vested rights application.
10. Names, addresses, telephone numbers, fax numbers, and e-mail addresses of the applicant and authorized agent for the applicant.
11. A proposed order of the BCC establishing vested rights.
12. Any additional information required by the vested rights application form prepared by the County Attorney.
13. A vested rights application fee as set by resolution of the BCC.

D. Procedural Requirements for Vested Rights Applications

1. The County Attorney or designee shall make a recommendation on all vested rights applications, which shall be based on the criteria and rules in this Section, the vested rights application materials, other relevant facts, and applicable law. If the County Attorney's recommendation is based on facts, witnesses, or law not provided by the applicant pursuant to this Section, the County Attorney's recommendation shall identify such facts, witnesses, or law. The vested rights application and recommendation shall be considered by

the BCC at a *de novo* public hearing. The BCC shall consider the criteria and rules in this Section, the evidence and testimony presented at the public hearing, and the recommendation of the County Attorney in evaluating the vested rights application. The BCC action on the vested rights application, which may include conducting the public hearing, or continuance of the application shall occur within ninety (90) days of the acceptance of the complete application, unless the applicant requests an extension of such time period and such request is granted by the BCC. Unless otherwise approved by the BCC, the County Attorney's recommendation shall be provided to the BCC at least twenty-eight (28) days prior to the public hearing.

2. Prior to the public hearing, public notice shall be provided pursuant to Section 304.2.
3. All decisions of the BCC pertaining to the vested rights application shall be rendered by written order of the BCC within thirty (30) days of the date of the public hearing. The BCC's order may grant vested rights with any conditions that the BCC deems necessary to ensure compliance with the criteria and rules in this Section including, but not limited to, granting vested rights for a specific period of time. Decisions denying vested rights shall include citations to any applicable ordinance, rule, statute, or other legal authority for the denial. Decisions of the BCC relating to vested rights applications shall be appealable in accordance with this Code, Section 407.1.