AN ORDINANCE OF WALTON COUNTY, FLORIDA TO BE KNOWN AS THE VESTED RIGHTS REVIEW ORDINANCE, ESTABLISHING AN ADMINISTRATIVE PROCESS FOR PROPERTY OWNERS TO OBTAIN A DETERMINATION AS TO WHETHER OR NOT THEIR PROPERTY IS VESTED, AND THEREFORE EXEMPT FROM THE REQUIREMENTS OF THE COMPREHENSIVE PLAN; PROVIDING FOR AN ADMINISTRATIVE APPEAL PROCESS; PROVIDING FOR EXEMPTIONS; PROVIDING DEFINITIONS; PROVIDING A CONFLICT CLAUSE; PROVIDING A SAVING CLAUSE AND ESTABLISHING AN EFFECTIVE DATE:

WHEREAS, Walton County was required to adopt a comprehensive plan pursuant to Section 163.3167, Florida Statutes; and

WHEREAS, the comprehensive plan was submitted to the Department of Community Affairs on December 14, 1990 for review; and

WHEREAS, it is the responsibility of the Board of County Commissioners to adopt regulations that adequately plan for and guide growth and development within the County while ensuring that existing rights of property owners are preserved in accord with the Constitutions of the State of Florida and the United States; and

WHEREAS, the determination of vested development rights will ensure due process to anyone who may have a claim to vested development rights; and

WHEREAS, Walton County, in adopting this ordinance is establishing the procedure for the determination of vested development rights of any landowner in the unincorporated areas of Walton County.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF WALTON COUNTY, FLORIDA, THAT:

SECTION I. STATEMENT OF INTENT.

This ordinance establishes the administrative procedures and standards by which a property owner may demonstrate that private property rights have vested against the provisions of the Comprehensive Plan. Said procedure shall provide determination of vested rights for development which is not subject to the requirements of the Comprehensive Plan.

SECTION II. DEFINITIONS.

A. Building Permit. A permit to construct or reconstruct any structure having a roof and used or built for a shelter enclosure of persons, animals, or property of any kind.

B. Continuing In Good Faith. As used in this ordinance shall mean the final development order has not expired and no period of ninety (90) consecutive days passes without the occurrence, on the land, of development activity which significantly moves the proposed development toward completion, unless the developer establishes that such 90 day lapse in development activity was due to factors beyond the developer's control or unless development activity authorized by a final development order has been completed on a significant portion of the development subject to said final development order and has significantly moved the entire development toward completion.

C. Development. As used in this ordinance shall mean the particular development activity authorized by the unexpired development order issued for a particular project.

D. Director. The Walton County Director of Planning or his/her designee.

E. Final Development Order. The following unexpired development orders shall be considered to be final development orders for purposes of a determination of vested rights in a previously approved development:

1. Final site plan approval (pursuant to County Ordinance 91-4);

2. Building Permit;

3. Final Subdivision Plat Approval;

4. Existing Lots of Record (for a single family dwelling);

5. Approval of a P.U.D. Final Development Plan;

6. Any other development order which approved a particular use or uses at a specified intensity of use and which allowed development activity on the land for which the development order was issued.

7. A development order which authorizes development of a Development of Regional Impact pursuant to Chapter 380, Florida Statutes.

F. Lot of Record. As used in this ordinance, shall mean:

1. Any contiguous quantity of land that is part of an approved subdivision recorded in the Office of the Clerk of Court; or

2. Any contiguous quantity of land which is capable of being described with such preciseness that its location and boundaries are established by deed and recorded in the public records of Walton County prior to the adoption of this ordinance.

3. Any contiguous quantity of land which is the subject of an agreement for deed or other instrument of conveyance properly executed prior to the adoption of this ordinance and which describes the parcel with such preciseness that its location and boundaries are established and recognized by Florida Law.

G. Substantial Development. As used in this ordinance shall mean that all required permits have been obtained; permitted clearing and grading has commenced and the actual construction of water and sewer lines, or streets, or the stormwater management system, is complete or is progressing in a manner that significantly moves the entire development toward completion.

H. Staff Committee. As used in this ordinance shall mean a committee made up of the following persons or their designated representatives: the County Attorney, the Administrative Supervisor and the Chairman of the Board of County Commissioners.

SECTION III. ADMINISTRATIVE PROCEDURES.

A. EXEMPTIONS.

The following categories shall be presumptively vested for the purposes of consistency and concurrency as specified in the Comprehensive Plan and shall not be required to file an application to preserve their vested rights status.

1. All lots within a recorded subdivision.

2. All active and valid building permits issued prior to the adoption of this ordinance. All technically complete building permit applications received by the building department prior to the adoption of this ordinance shall be vested regardless of the date of issuance.

3. Any structure upon which construction has been completed.

4. All lots of record as of the date of this ordinance, but only to the extent of allowing one single family residence per lot.

5. Developments of Regional Impact which have been authorized pursuant to Chapter 380, Florida Statutes, which has been issued a final development order prior to the adoption of this ordinance.

B. APPLICATION PROCEDURES.

1. The owner shall request a determination of vested rights by filing a technically complete, sworn application and the application fee with the Planning Department within ONE HUNDRED TWENTY (120) calendar days of January 1, 1993, upon a form to be provided for that purpose, setting forth the following information:

   a. The name and address of the applicant, who shall be the owner or a person authorized to apply on behalf of the owner; if the property is owned by more than one person, any owner or authorized agent of the owner may apply;

   b. A legal description of the property which is the subject of the application;

   c. The name and address of each owner;

   d. A site or development plan or plat of the property;

   e. Identification by specific reference to any ordinance, or other action of the County, or failure to act by the County upon which the applicant relied and which the applicant believes to support the owner's vested rights claim.

2. Failure to timely file an application requesting a determination within the prescribed time limits shall constitute a waiver of any vested rights claim by the owner of the property.

C. DETERMINATION PROCEDURES.

1. Planning Department staff shall screen the application to determine whether it is

technically complete. Technically incomplete applications shall be returned to the applicant with written notification of deficient items not provided as required by this ordinance. Upon accepting a technically complete application, staff shall review the application and make a final determination within thirty (30) days as to whether or not the application clearly and unequivocally has vested status.

a. Within ten (10) calendar days after receipt of an application, staff shall make a determination to ensure the application is technically complete. If not complete, the application shall be immediately returned with written notice of the deficiencies and the applicant shall be granted ten (10) additional calendar days following receipt of the returned application to complete the application. This policy shall be in effect during the one hundred twenty day application period and may at a maximum, extend the application period by ten (10 calendar days only once to any one applicant.

2. Within seven (7) calendar days after making a final determination of vested status, Planning Department staff shall provide the applicant with written notification of the determination of vested status. The owner shall have the right to rely upon such written notification that the owner is vested and the determination that the owner is vested shall be final and not subject to appeal, revocation or modification. If the Planning Department staff determines the applicant is not vested, the written notification shall set forth the factual and legal basis for the determination.

3. In the event the Planning Department staff recommends that a hearing before the staff committee is necessary to make a determination, the Director shall set a date for a hearing and shall notify the applicant and the staff committee of the time, date and place of such hearing. The hearing before the staff committee shall also be granted to the applicant, upon written request, if the applicant desires to challenge the decision made by the Planning Department staff.

SECTION IV. VESTING DETERMINATION CATEGORIES.

A. Vested Development Rights.

The Planning Department staff and the Staff Committee shall be guided by the following rules:

1. Common Law Vesting

a. A right to develop or to continue the development of property notwithstanding the Comprehensive Plan may be found to exist whenever the applicant proves by a preponderance of evidence that the owner, acting in good faith reliance upon some act or omission of the County, has 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 right to develop or to continue to develop the property.

2. Statutory Vesting

a. The right to develop or to continue to develop property shall be found to exist if:

1) A valid and unexpired final development order was issued by the County prior to the date of the adoption of this ordinance, and development has been commenced and is continuing in good faith; or

2) the development has been authorized as a development of regional impact by a final development order issued pursuant to Chapter 380, Florida Statutes.

b. Each statutory vesting determination also requires that all material requirements, conditions, limitations, and regulations of the development order have been met.

3. Effect of Vesting

a. Common Law Vesting: Persons who establish their common law vested rights are entitled to complete their development in accordance with those rights without having to comply with the consistency and concurrency

requirements of the Comprehensive Plan or the Land Development Regulations and are entitled to apply for other necessary development permits based on the zoning or other approval in which they have acquired vested rights even though such zoning or other approval might not be consistent with the Comprehensive Plan.

b. Statutory Vesting: Persons granted a final development order vested under the provisions of this ordinance shall be vested to complete their development in accordance with the terms of their development orders as approved in writing or shown on the accompanying plans, without having to comply with the consistency and concurrency requirements of the Comprehensive Plan.

SECTION V. JUDICIAL REVIEW.

If the applicant desires to challenge a vested rights determination by the staff committee, the applicant shall do so by filing a complaint for declaratory and other relief equitable in the circuit court.

SECTION VI. CONFLICT WITH OTHER ORDINANCES AND CODES.

All ordinances or parts of ordinances of Walton County in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION VII. SAVINGS PROVISION.

If any section, phrase, sentence, portion or application of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision or application and such holding shall not affect the validity of the remaining portions or applications thereof.

SECTION VIII. EFFECTIVE DATE

This ordinance shall become effective as provided by law.

DULY PASSED AND ADOPTED BY the Board of County Commissioners of Walton County, Florida this 28th day of December 1992.

Sam Pridgen

Sam Pridgen, Chairman
Board of County Commissioners
Walton County, Florida

for Martha Ingle

Catherine King, Clerk