
VESTED DEVELOPMENT RIGHTS

An issue brief by the Master Builders Association of King and Snohomish Counties

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BACKGROUND

Washington's vested rights doctrine gives property owners and developers the right to develop properties according to the land use laws and ordinances in place when they submit a complete permit application. Vesting provides certainty for all parties to development that rules won't change, which could otherwise jeopardize a project after initiation.

The vested rights doctrine is crucial to ensuring certainty, stability, and fairness in the development process. Homebuilders depend on vested rights to successfully plan new communities on time and within budget, two factors critical to housing affordability and availability. The Master Builders Association has long supported Washington's strong vested rights doctrine maximizing our members' ability to provide housing for our citizens.

Several court rulings in recent years have reached inconsistent conclusions and severely limited Washington's common law vested rights doctrine. In one case, one Washington Court of Appeals severely restricted vested rights by going so far as to conclude that the doctrine is only statutory in nature, meaning that vested rights are afforded only to building permit and subdivision applications. While a city or county may re-institute vested rights by ordinance for those other types of applications that were previously protected, local legislative action is needed to enable this change. A recent state Supreme Court decision implies that only locally adopted land use controls enjoy vesting rights, meaning state and federally mandated environmental regulations do not vest.

PROBLEM

Declaring common law vesting doctrine to be statutory, as several court decisions have done, limits the types of development applications that vest by statute, whereas the common law vested rights doctrine previously extended to a broader range of applications. Over the years, Washington Courts applied the vested rights doctrine to many important land development applications, including conditional and special use permits, shoreline substantial development permits, and grading permits. The doctrine has now been deeply eroded, to the detriment of housing affordability and availability.

To purchase raw land for development and construction of new homes, a builder must put up a significant amount of equity. Without the certainty and protection vesting provides, changes in land use regulations could suddenly and unexpectedly make it infeasible to move forward with planned projects. Taking away common law vesting also injects significant inefficiency on the public sector during the development process: planning staff now may have to review the same applications two or three times as regulations change during review. Finally, predictability is lost, which is a benefit to all interested parties involved in a particular land development.

SOLUTION

The MBA has been working with stakeholders to codify and clarify vesting periods for specific land use and building permits to fill the void created by the absence of the common law doctrine. MBA's goal has been to seek legislative support for language either codifying the existence and legitimacy of the common law vested rights doctrine, or, to codify that vesting on specific land development permits takes place at the time of complete permit application.

We are currently working to enact legislation that recognizes vesting rights for state and federally mandated regulations.