

# Common Law Vested Rights and Major Subdivisions



**Henderson County Planning Board Meeting  
January 15, 2015**

**Presented by: Matt Champion, Planner**

*Henderson County Planning Department*

# **Overview of Common Law Vested Rights**

- **Common Law Vested Rights (§42A-365) is established to complete a development and or use of a property based on:**
  - **A valid governmental permit has been obtained**
  - **The developer made a substantial expenditure**
  - **The developer was acting in good faith; and**
  - **The developer suffers hard if required to comply with new rules**

# **Major Subdivision Approval Process**

- **Major subdivisions are subdivisions with 11 or more lots**
  - **11-34 lots requires Technical Review Committee approval**
  - **35-299 lots meeting conservation standards requires Planning Board Approval**
  - **35-299 lots not meeting conservation standards and 300+ lots requires Board of Commissioners Approval**
- **Master and development plan approval**
  - **Master plan provides general information about the proposed development (impact, environmental features, orderly growth, etc.)**
  - **Development plan is a graphic representation of the tract of land to be developed (proposed divisions of land, uses, improvements, etc.)**
  - **Master and development plan approval is good for 2 years**
    - **Developers may request up to two (2) one year extensions for development plans**

# **Incomplete Major Subdivisions**

- **Staff had several inquiries about the issue of expired or incomplete major subdivisions in Henderson County**
- **Development slowed during the recent recession, which left many subdivisions incomplete**
  - **Most of these major subdivisions were not approved under the Land Development Code**
  - **The developers would have to go through the entire approval process again and adhere to the LDC**
  - **Several major subdivisions had infrastructure in place, but never recorded any lots**

# **Incomplete Major Subdivisions**

- **Planning Department Staff and the Deputy County Attorney reached out to major subdivisions with Common Law Vested Rights**
  - **Prepared a letter for incomplete and or expired major subdivisions**
  - **Would allow for developers to complete the subdivision under regulations present during first approval**
  - **The approval would be good until 2018, but Staff gave the option for negotiation.**

# **Incomplete Major Subdivisions**

- **17 major subdivisions had common law vested rights**
  - **10 subdivisions were already complete**
  - **7 letters were mailed out with the option for continuing development**
- **Staff has spoken to several property owners/developers**
  - **3 agreements have been signed, 2 developers were uninterested, and 2 have not been heard from.**
- **Staff will continue to reach out to the 2 remaining subdivisions**