

V. VESTING AND GROWTH MANAGEMENT

Note: In this context "vesting" is legal protection of an approved development against changes to land use regulations. It may be for a limited period of time or permanent, depending on the circumstances.

A. Temporary Extended Vesting - 2009 Chapter 93 (SB 93)

Recognizing that many property owners had unwittingly been caught up in the current recession with approved developments that they couldn't move forward until the economy improved, the Legislature adopted this temporary extension of the "four-year exemption" in RSA 674:39. [Effective June 12, 2009].

- RSA 674:39, V
 - For any subdivision or site plan approved by a planning board between January 1, 2007 and July 1, 2009
 - Three years (not 12 months) in which to undertake active and substantial development or construction
 - For any subdivision or site plan approved by a planning board between January 1, 2005 and July 1, 2009
 - Six years (not four) in which to achieve substantial completion (after which vesting is permanent)

B. Five-Year Exemption - 2011 Chapter 215 (SB 144)

Recognizing that the economy still hadn't recovered (see "temporary extended vesting, above), the Legislature decided to stop playing with date combinations that are hard to follow and harder to implement, and simply changed the four-year exemption to a five-year exemption. [Effective June 27, 2011]

- Delete RSA 674:39, V and change the statute to a FIVE-year exemption for projects to achieve substantial completion; with 24 months in which to undertake "active and substantial development or building" (instead of 12 months)

Practice Points: Vesting Periods

Confused by vesting? Use this chart to help guide your understanding of how these recent changes to the law weave together.

Approval Date	"Active and Substantial" period	"Substantial Completion" period
Past – 12/31/2004	12 months	4 years
1/1/2005 – 12/31/2006	12 months	6 years
1/1/2007 – 6/30/2009	36 months	6 years
7/1/2009 – Present	24 months	5 years

To make this just a little more complex, it could be construed that the new 24-month/five-year vesting periods apply only as of the effective date of the law (June 27, 2011). If that were the case, then the old 12-month/four-year periods would apply to projects approved between 7/1/2009 and 6/26/2011. This question may be more fodder for litigation in the future.

Vesting Rules of the Road:

1. All development approvals are exempt from changes to most local land use regulations made during the initial vesting period (above: 12, 24 or 36 months, as appropriate) after approval.
2. If a developer performs "active and substantial development or building" within the initial vesting period, then the development is protected against most regulatory changes (including changes to impact fees) for an additional period (above: four, five or six years, as appropriate).
3. If a planning board fails to identify what is meant by "active and substantial development or building", then the approved development automatically gets the full, multi-year exemption.
4. If the developer performs "substantial completion of the improvements" shown on the plat at any time (even after the multi-year exemption period is complete), then the development vests against any future changes to local regulations with the exception of impact fees, which may be changed at any time (after the multi-year exemption is complete). If the developer fails to substantially complete the development within the multi-year period, then the development will be subject to regulatory changes until it is substantially complete.
5. The planning board is not required to define the terms "active and substantial" and "substantial completion," but doing so will help avoid the problem faced in the *AWL Power* case (see [AWL Power v. Rochester, 148 N.H. 603 \(2002\)](#)).