

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 721
Committee Substitute Favorable 4/22/15
Senate Judiciary II Committee Substitute Adopted 7/16/15

Short Title: Subdivision Ordinance/Land Develop. Changes.

(Public)

Sponsors:

Referred to:

April 15, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS RELATED TO LAND DEVELOPMENT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.(a)** G.S. 160A-372 reads as rewritten:

5 "**§ 160A-372. Contents and requirements of ordinance.**

6 (a) A subdivision control ordinance may provide for the orderly growth and
7 development of the city; for the coordination of transportation networks and utilities within
8 proposed subdivisions with existing or planned streets and highways and with other public
9 facilities; for the dedication or reservation of recreation areas serving residents of the
10 immediate neighborhood within the subdivision or, alternatively, for provision of funds to be
11 used to acquire recreation areas serving residents of the development or subdivision or more
12 than one subdivision or development within the immediate area, and rights-of-way or
13 easements for street and utility purposes including the dedication of rights-of-way pursuant to
14 G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner
15 that will avoid congestion and overcrowding and will create conditions that substantially
16 promote public health, safety, and the general welfare.

17 (b) The ordinance may require a plat be prepared, approved, and recorded pursuant to
18 the provisions of the ordinance whenever any subdivision of land takes place. The ordinance
19 may include requirements that plats show sufficient data to determine readily and reproduce
20 accurately on the ground the location, bearing, and length of every street and alley line, lot line,
21 easement boundary line, and other property boundaries, including the radius and other data for
22 curved property lines, to an appropriate accuracy and in conformance with good surveying
23 practice.

24 (c) The ordinance may provide for the more orderly development of subdivisions by
25 requiring the construction of community service facilities in accordance with municipal plans,
26 policies, and standards. To assure compliance with these and other ordinance requirements, the
27 ordinance may provide for performance guarantees to assure successful completion of required
28 ~~improvements. If a performance guarantee is required, the city shall provide a range of options~~
29 ~~of types of performance guarantees, including, but not limited to, surety bonds or letters of~~
30 ~~credit, from which the developer may choose.~~ improvements at the time the plat is recorded as
31 provided in subsection (b) of this section. For any specific development, the type of
32 performance guarantee ~~from the range specified by the city~~ shall be at the election of the
33 developer.

34 (d) The ordinance may provide for the reservation of school sites in accordance with
35 comprehensive land use plans approved by the council or the planning board. In order for this



1 authorization to become effective, before approving such plans the council or planning board
2 and the board of education with jurisdiction over the area shall jointly determine the specific
3 location and size of any school sites to be reserved, which information shall appear in the
4 comprehensive land use plan. Whenever a subdivision is submitted for approval which includes
5 part or all of a school site to be reserved under the plan, the council or planning board shall
6 immediately notify the board of education and the board of education shall promptly decide
7 whether it still wishes the site to be reserved. If the board of education does not wish to reserve
8 the site, it shall so notify the council or planning board and no site shall be reserved. If the
9 board of education does wish to reserve the site, the subdivision shall not be approved without
10 such reservation. The board of education shall then have 18 months beginning on the date of
11 final approval of the subdivision within which to acquire the site by purchase or by initiating
12 condemnation proceedings. If the board of education has not purchased or begun proceedings
13 to condemn the site within 18 months, the subdivider may treat the land as freed of the
14 reservation.

15 (e) The ordinance may provide that a developer may provide funds to the city whereby
16 the city may acquire recreational land or areas to serve the development or subdivision,
17 including the purchase of land that may be used to serve more than one subdivision or
18 development within the immediate area. All funds received by the city pursuant to this
19 paragraph shall be used only for the acquisition or development of recreation, park, or open
20 space sites. Any formula enacted to determine the amount of funds that are to be provided
21 under this paragraph shall be based on the value of the development or subdivision for property
22 tax purposes. The ordinance may allow a combination or partial payment of funds and partial
23 dedication of land when the governing body of the city determines that this combination is in
24 the best interests of the citizens of the area to be served.

25 (f) The ordinance may provide that in lieu of required street construction, a developer
26 may be required to provide funds that the city may use for the construction of roads to serve the
27 occupants, residents, or invitees of the subdivision or development and these funds may be used
28 for roads which serve more than one subdivision or development within the area. All funds
29 received by the city pursuant to this paragraph shall be used only for development of roads,
30 including design, land acquisition, and construction. However, a city may undertake these
31 activities in conjunction with the Department of Transportation under an agreement between
32 the city and the Department of Transportation. Any formula adopted to determine the amount
33 of funds the developer is to pay in lieu of required street construction shall be based on the trips
34 generated from the subdivision or development. The ordinance may require a combination of
35 partial payment of funds and partial dedication of constructed streets when the governing body
36 of the city determines that a combination is in the best interests of the citizens of the area to be
37 served.

38 (g) For purposes of this section, all of the following shall apply with respect to
39 performance guarantees:

40 (1) The term "performance guarantee" shall mean any of the following forms of
41 guarantee:

42 a. Surety bond issued by any company authorized to do business in this
43 State.

44 b. Letter of credit issued by any financial institution licensed to do
45 business in this State.

46 c. Other form of guarantee of equivalent security than a surety bond or
47 letter of credit.

48 (2) The performance guarantee shall be returned or released, as appropriate, in a
49 timely manner upon the acknowledgement by the city that the improvements
50 for which the performance guarantee is being required are complete. If the
51 improvements are not complete and the current performance guarantee is

1 expiring, the performance guarantee shall be extended, or a new
2 performance guarantee issued, for an additional period until such required
3 improvements are complete. A developer shall demonstrate reasonable, good
4 faith progress toward completion of the required improvements that are the
5 subject of the performance guarantee or any extension. The form of any
6 extension shall remain at the election of the developer.

7 (3) The amount of the performance guarantee shall not exceed one hundred
8 twenty-five percent (125%) of the reasonably estimated cost of completion
9 at the time the performance guarantee is issued. Any extension of the
10 performance guarantee necessary to complete required improvements shall
11 not exceed one hundred twenty-five percent (125%) of the reasonably
12 estimated cost of completion of the remaining incomplete improvements still
13 outstanding at the time the extension is obtained.

14 (4) The performance guarantee shall only be used for completion of the required
15 improvements and not for repairs or maintenance after completion."

16 **SECTION 1.(b)** G.S. 153A-331 reads as rewritten:

17 **"§ 153A-331. Contents and requirements of ordinance.**

18 (a) A subdivision control ordinance may provide for the orderly growth and
19 development of the county; for the coordination of transportation networks and utilities within
20 proposed subdivisions with existing or planned streets and highways and with other public
21 facilities; for the dedication or reservation of recreation areas serving residents of the
22 immediate neighborhood within the subdivision and of rights-of-way or easements for street
23 and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or
24 G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid
25 congestion and overcrowding and will create conditions that substantially promote public
26 health, safety, and the general welfare.

27 (b) The ordinance may require that a plat be prepared, approved, and recorded pursuant
28 to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance
29 may include requirements that the final plat show sufficient data to determine readily and
30 reproduce accurately on the ground the location, bearing, and length of every street and alley
31 line, lot line, easement boundary line, and other property boundaries, including the radius and
32 other data for curved property lines, to an appropriate accuracy and in conformity with good
33 surveying practice.

34 (c) A subdivision control ordinance may provide that a developer may provide funds to
35 the county whereby the county may acquire recreational land or areas to serve the development
36 or subdivision, including the purchase of land that may be used to serve more than one
37 subdivision or development within the immediate area.

38 (d) The ordinance may provide that in lieu of required street construction, a developer
39 may provide funds to be used for the development of roads to serve the occupants, residents, or
40 invitees of the subdivision or development. All funds received by the county under this section
41 shall be transferred to the municipality to be used solely for the development of roads,
42 including design, land acquisition, and construction. Any municipality receiving funds from a
43 county under this section is authorized to expend such funds outside its corporate limits for the
44 purposes specified in the agreement between the municipality and the county. Any formula
45 adopted to determine the amount of funds the developer is to pay in lieu of required street
46 construction shall be based on the trips generated from the subdivision or development. The
47 ordinance may require a combination of partial payment of funds and partial dedication of
48 constructed streets when the governing body of the county determines that a combination is in
49 the best interest of the citizens of the area to be served.

50 (e) The ordinance may provide for the more orderly development of subdivisions by
51 requiring the construction of community service facilities in accordance with county plans,

1 policies, and standards. To assure compliance with these and other ordinance requirements, the
2 ordinance may provide for performance guarantees to assure successful completion of required
3 ~~improvements. If a performance guarantee is required, the county shall provide a range of~~
4 ~~options of types of performance guarantees, including, but not limited to, surety bonds or letters~~
5 ~~of credit, from which the developer may choose.~~ improvements at the time the plat is recorded
6 as provided in subsection (b) of this section. For any specific development, the type of
7 performance guarantee from the range specified by the county shall be at the election of the
8 developer.

9 (f) The ordinance may provide for the reservation of school sites in accordance with
10 comprehensive land use plans approved by the board of commissioners or the planning board.
11 For the authorization to reserve school sites to be effective, the board of commissioners or
12 planning board, before approving a comprehensive land use plan, shall determine jointly with
13 the board of education with jurisdiction over the area the specific location and size of each
14 school site to be reserved, and this information shall appear in the plan. Whenever a
15 subdivision that includes part or all of a school site to be reserved under the plan is submitted
16 for approval, the board of commissioners or the planning board shall immediately notify the
17 board of education. The board of education shall promptly decide whether it still wishes the site
18 to be reserved and shall notify the board of commissioners or planning board of its decision. If
19 the board of education does not wish the site to be reserved, no site may be reserved. If the
20 board of education does wish the site to be reserved, the subdivision may not be approved
21 without the reservation. The board of education must acquire the site within 18 months after the
22 date the site is reserved, either by purchase or by exercise of the power of eminent domain. If
23 the board of education has not purchased the site or begun proceedings to condemn the site
24 within the 18 months, the subdivider may treat the land as freed of the reservation.

25 (g) Any performance guarantee shall comply with G.S. 160A-372(g)."

26 **SECTION 1.(c)** G.S. 160A-400.25 is amended by adding a new subsection to read:

27 "(e) Any performance guarantees under the development agreement shall comply with
28 G.S. 160A-372(g)."

29 **SECTION 1.(d)** G.S. 153A-349.6 is amended by adding a new subsection to read:

30 "(e) Any performance guarantees under the development agreement shall comply with
31 G.S. 160A-372(g)."

32 **SECTION 2.(a)** G.S. 160A-417 is amended by adding a new subsection to read:

33 "(e) No city may withhold issuing a building permit or certificate of occupancy that
34 otherwise would be eligible to be issued under this section to compel, with respect to another
35 property or parcel, completion of work for a separate permit or compliance with land use
36 regulations under this Article unless otherwise authorized by law or unless the city reasonably
37 determines the existence of a public safety issue directly related to the issuance of a building
38 permit or certificate of occupancy."

39 **SECTION 2.(b)** G.S. 153A-357 is amended by adding a new subsection to read:

40 "(f) No county may withhold issuing a building permit or certificate of occupancy that
41 otherwise would be eligible to be issued under this section to compel, with respect to another
42 property or parcel, completion of work for a separate permit or compliance with land use
43 regulations under this Article unless otherwise authorized by law or unless the county
44 reasonably determines the existence of a public safety issue directly related to the issuance of a
45 building permit or certificate of occupancy."

46 **SECTION 3.** This act becomes effective October 1, 2015, and applies to
47 performance guarantees or extensions of performance guarantees issued on or after that date.