

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
Senate State and Local Government Committee Substitute Adopted 7/21/15

Short Title: Subdivision Ordinance/Land Develop. Changes.

(Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATED TO LAND DEVELOPMENT.

The General Assembly of North Carolina enacts:

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

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

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

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

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



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

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

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

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

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

44 a. Surety bond issued by any company authorized to do business in this
45 State.

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

48 c. Other form of guarantee that provides equivalent security to a surety
49 bond or letter of credit.

50 (2) The performance guarantee shall be returned or released, as appropriate, in a
51 timely manner upon the acknowledgement by the city or county that the

1 improvements for which the performance guarantee is being required are
2 complete. If the improvements are not complete and the current performance
3 guarantee is expiring, the performance guarantee shall be extended, or a new
4 performance guarantee issued, for an additional period until such required
5 improvements are complete. A developer shall demonstrate reasonable, good
6 faith progress toward completion of the required improvements that are the
7 subject of the performance guarantee or any extension. The form of any
8 extension shall remain at the election of the developer.

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

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

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

19 **"§ 153A-331. Contents and requirements of ordinance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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