

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  
PROPOSED SENATE COMMITTEE SUBSTITUTE H721-PCS40487-RN-35

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.



\* H 7 2 1 - P C S 4 0 4 8 7 - R N - 3 5 \*

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.