

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 376
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40217-MQ-20 (01/23)

Short Title: Subdivision Improvement Guarantee Changes. (Public)

Sponsors: Representative McGrady.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES RELATING TO
3 SUBDIVISION IMPROVEMENT GUARANTEES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 153A-331 reads as rewritten:

6 "§ 153A-331. Contents and requirements of ordinance.

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

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

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

27 (d) The ordinance may provide that in lieu of required street construction, a developer
28 may provide funds to be used for the development of roads to serve the occupants, residents, or
29 invitees of the subdivision or development. All funds received by the county under this section
30 shall be transferred to the municipality to be used solely for the development of roads,
31 including design, land acquisition, and construction. Any municipality receiving funds from a
32 county under this section is authorized to expend such funds outside its corporate limits for the
33 purposes specified in the agreement between the municipality and the county. Any formula
34 adopted to determine the amount of funds the developer is to pay in lieu of required street
35 construction shall be based on the trips generated from the subdivision or development. The
36 ordinance may require a combination of partial payment of funds and partial dedication of



1 constructed streets when the governing body of the county determines that a combination is in
2 the best interest of the citizens of the area to be served.

3 (e) The ordinance may provide for the more orderly development of subdivisions by
4 requiring the construction of community service facilities in accordance with county plans,
5 policies, and standards. To assure compliance with these and other ordinance requirements, the
6 ordinance may provide for performance guarantees to assure successful completion of required
7 improvements at the time the plat is recorded as provided in subsection (b) of this section. For
8 any specific development, the type of performance guarantee from the range specified by the
9 county shall be at the election of the developer.

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

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

27 (h) In the event that the collateral for a performance guarantee obtained by a developer
28 pursuant to this section is paid to the county, the county may administer the funds received in
29 furtherance of the successful completion of the required improvements. Notwithstanding
30 subsection (d) of this section, if the subdivision is not located in whole or in part within a
31 municipality, then the county may contract with another entity to complete the required
32 improvements. If the funds paid to the county from the performance guarantee are insufficient
33 to complete the required improvements, the county may, at its discretion, administer the funds
34 in accordance with standards adopted by the board of commissioners. The provisions of
35 G.S. 160A-393 shall apply to the review of any decision of the board of commissioners
36 pursuant to this subsection."

37 **SECTION 2.** G.S. 160A-372 reads as rewritten:

38 **"§ 160A-372. Contents and requirements of ordinance.**

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

50 (b) The ordinance may require a plat be prepared, approved, and recorded pursuant to
51 the provisions of the ordinance whenever any subdivision of land takes place. The ordinance

1 may include requirements that plats show sufficient data to determine readily and reproduce
2 accurately on the ground the location, bearing, and length of every street and alley line, lot line,
3 easement boundary line, and other property boundaries, including the radius and other data for
4 curved property lines, to an appropriate accuracy and in conformance with good surveying
5 practice.

6 (c) The ordinance may provide for the more orderly development of subdivisions by
7 requiring the construction of community service facilities in accordance with municipal plans,
8 policies, and standards. To assure compliance with these and other ordinance requirements, the
9 ordinance may provide for performance guarantees to assure successful completion of required
10 improvements at the time the plat is recorded as provided in subsection (b) of this section. For
11 any specific development, the type of performance guarantee shall be at the election of the
12 developer.

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

29 (e) The ordinance may provide that a developer may provide funds to the city whereby
30 the city may acquire recreational land or areas to serve the development or subdivision,
31 including the purchase of land that may be used to serve more than one subdivision or
32 development within the immediate area. All funds received by the city pursuant to this
33 paragraph [subsection] shall be used only for the acquisition or development of recreation,
34 park, or open space sites. Any formula enacted to determine the amount of funds that are to be
35 provided under this paragraph [subsection] shall be based on the value of the development or
36 subdivision for property tax purposes. The ordinance may allow a combination or partial
37 payment of funds and partial dedication of land when the governing body of the city determines
38 that this combination is in the best interests of the citizens of the area to be served.

39 (f) The ordinance may provide that in lieu of required street construction, a developer
40 may be required to provide funds that the city may use for the construction of roads to serve the
41 occupants, residents, or invitees of the subdivision or development and these funds may be used
42 for roads which serve more than one subdivision or development within the area. All funds
43 received by the city pursuant to this paragraph [subsection] shall be used only for development
44 of roads, including design, land acquisition, and construction. However, a city may undertake
45 these activities in conjunction with the Department of Transportation under an agreement
46 between the city and the Department of Transportation. Any formula adopted to determine the
47 amount of funds the developer is to pay in lieu of required street construction shall be based on
48 the trips generated from the subdivision or development. The ordinance may require a
49 combination of partial payment of funds and partial dedication of constructed streets when the
50 governing body of the city determines that a combination is in the best interests of the citizens
51 of the area to be served.

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

- 3 (1) The term "performance guarantee" shall mean any of the following forms of
4 guarantee:
5 a. Surety bond issued by any company authorized to do business in this
6 State.
7 b. Letter of credit issued by any financial institution licensed to do
8 business in this State.
9 c. Other form of guarantee that provides equivalent security to a surety
10 bond or letter of credit.
11 (2) The performance guarantee shall be returned or released, as appropriate, in a
12 timely manner upon the acknowledgement by the city or county that the
13 improvements for which the performance guarantee is being required are
14 complete. If the improvements are not complete and the current performance
15 guarantee is expiring, the performance guarantee shall be extended, or a new
16 performance guarantee issued, for an additional period until such required
17 improvements are complete. A developer shall demonstrate reasonable, good
18 faith progress toward completion of the required improvements that are the
19 subject of the performance guarantee or any extension. The form of any
20 extension shall remain at the election of the developer.
21 (3) The amount of the performance guarantee shall not exceed one hundred
22 twenty-five percent (125%) of the reasonably estimated cost of completion
23 at the time the performance guarantee is issued. Any extension of the
24 performance guarantee necessary to complete required improvements shall
25 not exceed one hundred twenty-five percent (125%) of the reasonably
26 estimated cost of completion of the remaining incomplete improvements still
27 outstanding at the time the extension is obtained.
28 (4) The performance guarantee shall only be used for completion of the required
29 improvements and not for repairs or maintenance after completion.

30 (h) In the event that a performance guarantee obtained by a developer pursuant to this
31 section is called and paid to the city, the city may administer the funds in furtherance of the
32 successful completion of the required improvements. If the funds paid to the city from the
33 performance guarantee are insufficient to complete the required improvements, the city may, at
34 its discretion, administer the funds in accordance with standards adopted by the council. The
35 provisions of G.S. 160A-393 shall apply to the review of any decision of the council pursuant
36 to this subsection."

37 **SECTION 3.** This act is effective when it becomes law.