

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

S

D

SENATE DRS65219-LB-285 (3/12)

Short Title: Municipal ETJ Street Standards.

(Public)

---

Sponsors: Senator Clodfelter.

---

Referred to:

---

A BILL TO BE ENTITLED

1  
2 AN ACT TO ALLOW SUBDIVISION STREETS THAT ARE CONSTRUCTED  
3 WITHIN THE EXTRATERRITORIAL JURISDICTION OF A MUNICIPALITY  
4 AND THAT ARE OFFERED FOR PUBLIC DEDICATION TO BE  
5 CONSTRUCTED IN ACCORDANCE WITH THE STANDARDS OF THE  
6 MUNICIPALITY RATHER THAN THE STANDARDS OF THE NORTH  
7 CAROLINA DEPARTMENT OF TRANSPORTATION.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 136-102.6 reads as rewritten:

10 "**§ 136-102.6. Compliance of subdivision streets with minimum standards of the**  
11 **Board of Transportation or a municipality required of developers.**

12 (a) The owner of a tract or parcel of land which is subdivided from and after  
13 October 1, 1975, into two or more lots, building sites, or other divisions for sale or  
14 building development for residential purposes, where such subdivision includes a new  
15 street or the changing of an existing street, shall record a map or plat of the subdivision  
16 with the register of deeds of the county in which the land is located. The map or plat  
17 shall be recorded prior to any conveyance of a portion of said land, by reference to said  
18 map or plat.

19 (b) The right-of-way of any new street or change in an existing street shall be  
20 delineated upon the map or plat with particularity and such streets shall be designated to  
21 be either public or private. Any street designated on the plat or map as public shall be  
22 conclusively presumed to be an offer of dedication to the public of such street.

23 (c) The right-of-way and design of streets designated as public shall be in  
24 accordance with the minimum right-of-way and construction standards established by  
25 the Board of Transportation for acceptance on the State highway system. Alternatively,  
26 if the streets are located within the extraterritorial planning jurisdiction of a municipality  
27 that has adopted subdivision regulations containing the provisions specified in

1 subsection (d1) of this section and such streets are not intended for maintenance by the  
2 Department of Transportation, then such streets may be in accordance with the  
3 minimum right-of-way and construction standards of that municipality rather than the  
4 standards established by the Board of Transportation. If a municipal or county  
5 subdivision control ordinance is in effect in the area proposed for subdivision, the map  
6 or plat required by this section shall not be recorded by the register of deeds until after it  
7 has received final plat approval by the municipality or county, and until after it has  
8 received a certificate of approval by the Division of Highways as herein provided as to  
9 those streets regulated in subsection (g). The certificate of approval may be issued by a  
10 district engineer of the Division of Highways of the Department of Transportation.

11 (d) The right-of-way and construction plans for such public streets that are  
12 intended for maintenance by the Department of Transportation in residential  
13 subdivisions, including plans for street drainage, shall be submitted to the Division of  
14 Highways for review and approval, prior to the recording of the subdivision plat in the  
15 office of the register of deeds. The plat or map required by this section shall not be  
16 recorded by the register of deeds without a certification pursuant to G.S. 47-30.2 and, if  
17 determined to be necessary by the Review Officer, a certificate of approval by the  
18 Division of Highways of the plans for the public street as being in accordance with the  
19 minimum standards of the Board of Transportation for acceptance of the subdivision  
20 street on the State highway system for maintenance. The Review Officer shall not  
21 certify a map or plat subject to this section unless the new streets or changes in existing  
22 streets are designated either public or private. The certificate of approval shall not be  
23 deemed an acceptance of the dedication of the streets on the subdivision plat or map.  
24 Final acceptance by the Division of Highways of the public streets and placing them on  
25 the State highway system for maintenance shall be conclusive proof that the streets have  
26 been constructed according to the minimum standards of the Board of Transportation.

27 (d1) The right-of-way and construction plans for proposed public streets that are  
28 located within the extraterritorial planning jurisdiction of a municipality need not be  
29 submitted to the Division of Highways if: (i) such streets are not intended for  
30 maintenance by the Department of Transportation, (ii) the subdivision regulations of  
31 that municipality authorize streets within the municipality's extraterritorial planning  
32 jurisdiction to be constructed in accordance with that municipality's standards rather  
33 than the standards of the Department of Transportation, (iii) the subdivision regulations  
34 of that municipality require that such streets be properly maintained by the developer or  
35 a property owners association pending annexation and acceptance of such streets by the  
36 municipality, and (iv) the developer complies with such subdivision regulations and  
37 submits to the municipality all required documentation to ensure that such streets will  
38 be so constructed and maintained until such streets are accepted by the municipality.

39 (e) No person or firm shall place or erect any utility in, over, or upon the existing  
40 or proposed right-of-way of any street intended for acceptance by the Department of  
41 Transportation in a subdivision to which this section applies, except in accordance with  
42 the Division of Highway's policies and procedures for accommodating utilities on  
43 highway rights-of-way, until the Division of Highways has given written approval of  
44 the location of such utilities. Written approval may be in the form of exchange of

1 correspondence until such times as it is requested to add the street or streets to the State  
2 system, at which time an encroachment agreement furnished by the Division of  
3 Highways must be executed between the owner of the utility and the Division of  
4 Highways. The right of any utility placed or located on a proposed or existing  
5 subdivision public street right-of-way shall be subordinate to the street right-of-way,  
6 and the utility shall be subject to regulation by the Department of Transportation.  
7 Utilities are defined as electric power, telephone, television, telegraph, water, sewage,  
8 gas, oil, petroleum products, steam, chemicals, drainage, irrigation, and similar lines.  
9 Any utility installed in a subdivision street not in accordance with the Division of  
10 Highways accommodation policy, and without prior approval by the Division of  
11 Highways, shall be removed or relocated at no expense to the Division of Highways.

12 (f) Prior to entering any agreement or any conveyance with any prospective  
13 buyer, the developer and seller shall prepare and sign, and the buyer of the subject real  
14 estate shall receive and sign an acknowledgment of receipt of a separate instrument  
15 known as the subdivision streets disclosure statement (hereinafter referred to as  
16 disclosure statement). Said disclosure statement shall fully and completely disclose the  
17 status (whether public or private) of the street upon which the house or lot fronts. If the  
18 street is designated by the developer and seller as a public street, the developer and  
19 seller shall certify ~~that either that:~~ (i) the right-of-way and design of the street has been  
20 approved by the Division of Highways, and that the street has been or will be  
21 constructed by the developer and seller in accordance with the standards for subdivision  
22 streets adopted by the Board of Transportation for acceptance on the highway system.  
23 system, or (ii) the street has not been approved by and will not be accepted for  
24 maintenance by the Division of Highways, but has been approved by the municipality  
25 with regulatory authority over that subdivision and has been or will be constructed by  
26 the developer or seller in accordance with the standards for subdivision streets adopted  
27 by that municipality for acceptance onto such municipality's street system. In this latter  
28 case, the disclosure statement shall also inform the buyer that the municipality cannot  
29 and will not accept the street until it comes within the corporate limits of the  
30 municipality through annexation and shall also disclose the arrangements that have been  
31 made to ensure the maintenance of the street pending acceptance by the municipality. If  
32 the street is designated by the developer and seller as a private street, the developer and  
33 seller shall include in the disclosure statement an explanation of the consequences and  
34 responsibility as to maintenance of a private street, and shall fully and accurately  
35 disclose the party or parties upon whom responsibility for construction and maintenance  
36 of such street or streets shall rest, and shall further disclose that the street or streets will  
37 not be constructed to minimum standards, sufficient to allow their inclusion on the State  
38 highway system for maintenance. The disclosure statement shall contain a duplicate  
39 original which shall be given to the buyer. Written acknowledgment of receipt of the  
40 disclosure statement by the buyer shall be conclusive proof of the delivery thereof.

41 (g) The provisions of this section shall apply to all subdivisions located outside  
42 municipal corporate limits. As to subdivisions inside municipalities, this section shall  
43 apply to all proposed streets or changes in existing streets on the State highway system

1 as shown on the comprehensive plan for the future development of the street system  
2 made pursuant to G.S. 136-66.2, and in effect at the date of approval of the map or plat.

3 (h) The provisions of this section shall not apply to any subdivision that consists  
4 only of lots located on Lakes Hickory, Norman, Mountain Island and Wylie which are  
5 lakes formed by the Catawba River which lots are leased upon October 1, 1975. No  
6 roads in any such subdivision shall be added to the State maintained road system  
7 without first having been brought up to standards established by the Board of  
8 Transportation for inclusion of roads in the system, without expense to the State. Prior  
9 to entering any agreement or any conveyance with any prospective buyer of a lot in any  
10 such subdivision, the seller shall prepare and sign, and the buyer shall receive and sign  
11 an acknowledgment of receipt of a statement fully and completely disclosing the status  
12 of and the responsibility for construction and maintenance of the road upon which such  
13 lot is located.

14 (i) The purpose of this section is to insure that new subdivision streets described  
15 herein to be dedicated to the public will either comply with the State standards for  
16 placing subdivision streets on the State highway system for maintenance, or with  
17 municipal standards for acceptance by that municipality, and that full and accurate  
18 disclosure of the responsibility for construction and maintenance of private streets be  
19 made. This section shall be construed and applied in a manner which shall not inhibit  
20 the ability of public utilities to satisfy service requirements of subdivisions to which this  
21 section applies.

22 (j) The Division of Highways and district engineers of the Division of Highways  
23 of the Department of Transportation shall issue a certificate of approval for any  
24 subdivision affected by a transportation corridor official map established by the Board  
25 of Transportation only if the subdivision conforms to Article 2E of this Chapter or  
26 conforms to any variance issued in accordance with that Article.

27 (k) A willful violation of any of the provisions of this section shall be a Class 1  
28 misdemeanor."

29 **SECTION 2.** This act becomes effective October 1, 2007.