

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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SENATE BILL 1482

Short Title: Municipal ETJ Street Standards.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I (Civil).

March 26, 2007

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

(c) The right-of-way and design of streets designated as public shall be in accordance with the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system. Alternatively, if the streets are located within the extraterritorial planning jurisdiction of a municipality that has adopted subdivision regulations containing the provisions specified in subsection (d1) of this section and such streets are not intended for maintenance by the Department of Transportation, then such streets may be in accordance with the

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

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

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

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

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

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

39 (g) The provisions of this section shall apply to all subdivisions located outside
40 municipal corporate limits. As to subdivisions inside municipalities, this section shall
41 apply to all proposed streets or changes in existing streets on the State highway system
42 as shown on the comprehensive plan for the future development of the street system
43 made pursuant to G.S. 136-66.2, and in effect at the date of approval of the map or plat.

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

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

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

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

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