

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 809  
HOUSE BILL 1637

AN ACT TO AUTHORIZE TRANSYLVANIA COUNTY TO ADOPT "PRE-DEVELOPMENT ORDINANCES".

Whereas, steep slopes, shallow, fragile soils, and stream valleys with high water tables make some mountainous areas unsuitable or unfeasible for development; and

Whereas, mountain soil and topographic conditions can limit the use of on-site sewage disposal systems and aggravate potential soil erosion and sedimentation problems; and

Whereas, early planning and consultation can help ensure that the limitations of each development site are recognized early in the development process; and

Whereas, lack of proper site planning can jeopardize the economic feasibility of the development plan for the property owner or developer and harm unsuspecting lot purchasers; and

Whereas, not all developers are familiar with the various federal, State, and local laws currently affecting the development and subdivision of land in western North Carolina counties; and

Whereas, counties are capable of providing planning and consultation help to developers and can help inform property owners and developers of the federal, State, and local laws and regulations that may affect the development of their land and help ensure adherence to these requirements; and

Whereas, counties have an interest in the information developers can provide them about their developments; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. A county may regulate the subdivision and development of land pursuant to this act by adopting a "pre- development ordinance". The power granted to counties by this act may be exercised in any part or all parts of the county outside a city, except as otherwise provided in G.S. 160A-360, and for purposes of determining each county's territorial jurisdiction, the power shall be treated as if it were a power authorized by Article 19 of Chapter 160A.

Sec. 2. A pre-development ordinance adopted pursuant to this act shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat before its recordation and in granting or denying approval of a site plan for a development, and may provide for one reviewing agency to hear appeals from decisions rendered by another reviewing agency. The ordinance may

require that a plat be prepared, approved, and recorded pursuant to its provisions whenever a subdivision of land takes place, and that a site plan be prepared and approved pursuant to its provisions whenever the development of land takes place. No land-disturbing or construction activity carried out in conjunction with a development or subdivision may be commenced nor may a building permit for work done in conjunction with a development or for a lot in a subdivision be issued until required plans or plats have been submitted to and approved by the appropriate review agency or agencies, as provided by the ordinance. No person who is the owner or agent of the owner of any land subject to this act may (a) engage in the subdivision of land, or (b) sell or transfer a subdivided lot, or (c) file or record a plat of a subdivision, until the required plat has been submitted to and approved by the appropriate review agency or agencies, as provided by the ordinance, and until this approval is entered in writing on the face of the plat by the county official authorized by the ordinance to do so. The register of deeds may not file or record a plat of a subdivision of land subject to this ordinance that has not been approved in accordance with these provisions, and the clerk of superior court may not order or direct the recording of a plat if the recording would be in conflict with an ordinance adopted under this act.

Sec. 3. The ordinance shall provide that the final required plat or site plan may be approved if and only if the following requirements have been met: (a) the applicant has prepared and submitted to the county any subdivision streets disclosure statement required by G.S. Sec. 136-102.6(f); (b) the county has certified whether or not the land is located on a mountain ridge protected by the Mountain Ridge Protection Act (G.S. 113A-205 et seq.) or any ordinance adopted pursuant to it; (c) the county has approved a soil erosion control plan for the site, if such approval is required by a separate county ordinance, or the North Carolina Department of Natural Resources and Community Development has approved such a plan, if such approval is required by the Sedimentation Pollution Control Act of 1973 (G.S. 113A-50 et seq.), as amended, or regulations adopted pursuant thereto; (d) the district engineer of the Division of Highways of the North Carolina Department of Transportation has certified approval of any proposed street and highway plans, if approval is required pursuant to G.S. 136-102.6(c); (e) if land is to be subdivided and on-site sewage disposal systems involving sub-surface discharge are proposed for lots, the county health department has evaluated under state and county health regulations the general suitability of the entire tract for such systems and/or the suitability of each lot for an individual system serving a single-family residence; (f) if there is proposed in conjunction with the development or subdivision the establishment of, addition to, or change in a public or community sanitary sewage system, or a sanitary sewage system designed to discharge effluent to the land surface or surface waters, the Environmental Management Commission has issued the permit or permits required pursuant to G.S. 143-215.1; (g) if any sewage system proposed for use in conjunction with a development or subdivision is subject to approval by the North Carolina Department of Human Resources pursuant to G.S. 130A, Article 11, under rules adopted by the Commission for Health Services, the Department has approved the plans for such a system; (h) if a dam subject to the Dam Safety Act of 1967 (G.S. 143-215.23 et seq.), as amended, is proposed for use in

conjunction with a development or subdivision subject to this act, the Environmental Management Commission has approved the construction plans or the work as completed, as provided by the ordinance; (i) the required plats or site plans are prepared in accordance with ordinance requirements, any applicable requirements adopted by the register of deeds governing the recordation of plats or plans, and the provisions of G.S. 47-30; (j) if a public water system (as defined in G.S. 130A-313(10)) is proposed to be constructed or altered in conjunction with a development or subdivision and the plans for it are subject to approval pursuant to G.S. 130A-317 by the North Carolina Department of Human Resources (or any certified local government, commission, authority, or board authorized by the Department to grant such approval), the Department (or certified local body) has approved such plans; and (k) the county has found that the applicant's proposal is in compliance with any other federal, state, or local laws specified in the ordinance.

Sec. 4. The following terms where used in this act shall have the following meanings, except where the context clearly indicates a different meaning:

(a) "Development" means (i) the improvement of a tract of land involving land-disturbing activity or (ii) the improvement of a tract of land of five acres or more for any purpose other than agriculture, forestry, or mining; however, development on land owned or managed by the United States of America or the State of North Carolina or its political subdivisions is not included within this definition and is not subject to the provisions of an ordinance adopted pursuant to this act.

(b) "Land-disturbing activity" means land-disturbing activity as defined in G.S. 113A-52(6) that is undertaken on a tract comprising more than one acre, if more than one contiguous acre is uncovered; however, those land-disturbing activities for which the North Carolina Sedimentation Control Commission is authorized to exercise exclusive regulatory jurisdiction pursuant to G.S. 113A-56(a) are not included within this definition and are not subject to any regulations enacted pursuant to this act.

(c) "Review agency" means one or more of the following:

the board of county commissioners; the county planning board; the county planner; a technical review committee comprised of those appointed and/or elected county officials designated in the ordinance.

(d) "Subdivision" means all divisions of a tract or parcel of land; however, each of the following is not included within this definition and is not subject to regulation under this act:

- (1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased;
- (2) The division of a tract into lots or parcels each of which is greater than 10 acres, if no public road right-of-way dedication is proposed;
- (3) The division of a tract in common ownership the entire area of which is less than five acres;
- (4) The division of land for the purpose of conveying a single lot or parcel to each tenant in common, all of whom jointly inherited the land by intestacy or by will;

- (5) The division of land into no more than two parcels for the purpose of conveying at least one of the resulting lots to a grantee who would have been an heir of the grantor if the grantor had died intestate immediately prior to the conveyance;
- (6) The public purchase of strips of land for widening or opening roads or highways;
- (7) The division of land pursuant to an order of a court of the General Court of Justice; and
- (8) The division of land for cemetery lots or burial plots.

(e) "Transfer" means a passing of title or ownership including a contract for deed or other similar document wherein land is being sold on an installment basis with the purchaser being given possessory rights to the land or lot even though the owner-seller retains title until the purchase price for the land or lot is paid.

Sec. 5. Before adopting or amending a pre-development ordinance authorized by this act, the board of county commissioners shall hold a public hearing on it. The board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. The board of county commissioners shall not hold the public hearing required by this section until the planning board has been given at least 35 days in which to make a recommendation concerning the proposed ordinance or amendment.

Sec. 6. The provisions of G.S. 153A-123 shall apply to the enforcement of an ordinance adopted pursuant to this act.

Sec. 7. This act shall apply only to Transylvania County.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 26th day of June, 1986.