

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 747
HOUSE BILL 1211

AN ACT TO CONTROL THE COST OF ACQUIRING RIGHTS-OF-WAY FOR THE
STATE'S HIGHWAY SYSTEM; AND TO MAKE OTHER CHANGES IN THE
LAWS AFFECTING THE STATE'S HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-66.1(1) reads as rewritten:

"Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

(1) The State Highway System. The State highway system inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The Department of Transportation shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a statewide coordinated system of primary and secondary streets and highways, ~~but many of these streets and highways also have varying degrees of benefit to the municipalities. Therefore, the respective responsibilities of the Department of Transportation and the municipalities for the acquisition and cost of rights of way for State highway system street improvement projects shall be determined by mutual agreement between the Department of Transportation and each municipality.~~"

Sec. 2. G.S. 136-66.1 (4) reads as rewritten:

"(4) ~~In the event that~~ If the governing body of any municipality shall determine that it is in the best interest of its citizens to do so, it may expend its funds for the purpose of making the following improvements on streets within its corporate limits which form a part of the State highway system:

- a. Construction of curbing and guttering;
- b. Adding of lanes for automobile parking;
- c. ~~Bearing that portion of the cost of constructing~~ Constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system;

- d. Constructing sidewalks; provided, that no part of the funds allocated to the municipality by G.S. 136-41.1 may be expended for sidewalk purposes.
- e. Intersection improvements, if the governing body determines that such improvements will decrease traffic congestion, improve safety conditions, and improve air quality.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision ~~may be financed jointly~~ shall be financed entirely by the municipality ~~and the Department of Transportation pursuant to a cost-sharing agreement entered into by each.~~ and be approved by the Department of Transportation.

The cost of any work financed by a municipality pursuant to this subdivision may be assessed against the properties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular municipality."

Sec. 3. G.S. 136-66.3 reads as rewritten:

"§ 136-66.3. ~~Acquisition of rights~~ Municipal participation in improvements to the State highway system.

~~-(a) When any one or more street construction or improvement projects are proposed on the State highway system in and around a municipality, the Department of Transportation and the municipal governing body shall reach agreement on their respective responsibilities for the acquisition and cost of rights of way necessary for such project or projects. In reaching such agreement, the Department of Transportation and the municipality shall take into consideration:~~

- ~~(1) The relative importance of the project to a coordinated statewide system of highways.~~
- ~~(2) The relative benefit of the project to the municipality.~~
- ~~(3) The degree to which the cost of acquisition of rights of way can be reduced or minimized through action by the municipality and/or the Department of Transportation to acquire all or part of the rights of way for proposed projects well in advance of construction of such projects.~~

Except as otherwise authorized by this Article, no municipality shall participate in the cost of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4). No municipality shall be required to contribute to the right-of-way and construction costs of any State highway system improvement approved by the Board of Transportation under G.S. 143B-350(f)(4), nor shall the Department of Transportation accept any participation, directly or indirectly, from a municipality except as authorized by this Article.

(b) The restrictions imposed by this section on participation by municipalities in the implementation of improvements on the State highway system shall not apply to

those improvements approved by the Board of Transportation which are financed by funds allocated by the General Assembly for the 'Small Urban Construction Program'. The municipalities may, but shall not be required to, participate in the right-of-way and construction cost of 'Small Urban Construction Program' highway improvements.

(c) A municipality is authorized to make improvements to portions of the State highway system lying within the municipal corporate limits utilizing local funds that have been authorized for that purpose by a vote of the citizens of the municipality. All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of Transportation and shall be set forth in an agreement entered into between the municipality and the Department. The Board of Transportation shall not give consideration to or credit for such locally financed improvements in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) When in the review and approval by a municipality of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the municipality is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) A municipality may pursuant to an agreement with the Department of Transportation reimburse the Department of Transportation for the cost of all improvements, including additional right-of-way, for a street or highway improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that are in addition to those improvements that the Department of Transportation would normally include in the project.

(f) ~~Whenever a municipality agrees to acquire rights of way for a State highway system street improvement project, the Department of Transportation may agree to reimburse the municipality in whole or in part for expenditures made by the municipality to acquire such rights of way. Municipalities having a population of less than 10,000 according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer shall not participate in the right-of-way and construction costs of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4).~~

~~In the acquisition of rights of way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights of way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights of way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words 'Department of Transportation' appear in Article 9 they shall be deemed to include 'municipality' or 'municipal governing body,' and wherever the words 'Administrator,' 'Administrator of~~

~~Highways,' 'Administrator of the Department of Transportation,' or 'Chairman of the Department of Transportation' appear in Article 9 they shall be deemed to include 'municipal clerk.' It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter. Municipalities having a population of 10,000 or more according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer may, but shall not be required by the Department or Board of Transportation, participate up to a maximum percentage as shown below in the cost of rights-of-way of the portion of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits:~~

<u>Municipal Population</u>	<u>Maximum Participation In Right-of-Way Costs</u>
<u>10,000 - 25,000</u>	<u>5%</u>
<u>25,001 - 50,000</u>	<u>10%</u>
<u>50,001 - 100,000</u>	<u>15%</u>
<u>over 100,000</u>	<u>25%</u>

This authority to allow a municipality to participate in the right-of-way costs of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350 (f)(4) that is located within the municipal corporate limits shall expire on June 30, 1990.

Any participation shall be set forth in an agreement between the municipality and the Department of Transportation. Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs of rights-of-way necessary for the project. The Department of Transportation shall not charge a municipality any interest on its agreed upon share of rights-of-way costs. The Secretary shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

~~(g) In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights of way where the proposed project is deemed important to a coordinated State highway system. In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the~~

municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words 'Department of Transportation' appear in Article 9 they shall be deemed to include 'municipality' or 'municipal governing body,' and wherever the words 'Administrator,' 'Administrator of Highways,' 'Administrator of the Department of Transportation,' or 'Chairman of the Department of Transportation' appear in Article 9 they shall be deemed to include 'municipal clerk'. It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

~~(h) Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities for right-of-way acquisition by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation. In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.~~

~~(i) Any municipality which agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights of way. Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities for right-of-way acquisition by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.~~

~~(j) Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way."~~

Sec. 3.1. G.S. 160A-297 reads as rewritten:

"§ 160A-297. Streets under authority of Board of Transportation.—(a) A city shall not be responsible for maintaining streets or bridges under the authority and control of the Board of Transportation, and shall not be liable for injuries to persons or property resulting from any failure to do so.

~~(b) A city may, at its own expense, widen any street or bridge under the authority and control of the Board of Transportation, subject to the Board of Transportation's engineering and design specifications.~~

(e-b) Nothing in this Article shall authorize any city to interfere with the rights and privileges of the Board of Transportation with respect to streets and bridges under the authority and control of the Board of Transportation."

Sec. 4. This act shall not be construed to abrogate any agreement between the Department of Transportation and a municipality for the purpose of participating in a State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) if the agreement was approved by the Board of Transportation and executed prior to the effective date of this act. This act shall not apply to highway improvement projects identified in the Department's Transportation Improvement Program 1987-1995 adopted by the Board of Transportation in December 1986 for which local municipal participation in rights-of-way acquisition or construction or both is shown.

Sec. 4.1. G.S. 143B-350(f) reads as rewritten:

"(f) The Board of Transportation shall have duties and powers:

- (1) To formulate policies and priorities for all modes of transportation under the Department of Transportation;
- (2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the Department;
- (3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation taking into consideration the social, economic and environmental impacts of the various alternatives;
- (4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future which shall be published in a single document along with a report of the progress accomplished in the past year;
- (5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to it;
- (6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the Department;
- (7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be available;
- (8) To approve all highway construction programs;
- (9) To approve all highway construction projects and construction plans for the construction of projects;
- (10) To review all statewide maintenance functions;
- (11) To award all highway construction contracts;
- (12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain;

- (13) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The ability of a municipality to pay in part or whole for any transportation improvement project shall not be a factor considered by the Board of Transportation in its development and approval of a schedule of major State highway system improvement projects to be undertaken by the Department under G.S. 143B-350(f)(4).

Sec. 5. The City of Charlotte is authorized to acquire rights-of-way, construct and improve one thoroughfare that is presently a part of the State highway system and that may be partially located outside the corporate limits of the municipality and within the corporate limits of another municipality. The authorization granted by this section shall not be construed as authority to advance the schedule of any major transportation improvement project in the City of Charlotte urban area approved by the Board of Transportation.

The City may expend any of its funds, including property taxes, for the purpose of performing any work authorized by this section. Nothing in this act shall authorize the Department of Transportation to participate in the thoroughfare improvement authorized by this section. The authority granted by this section shall terminate upon the completion of the thoroughfare improvement.

Sec. 5.1. The City of Durham is authorized to acquire rights-of-way, construct and improve one thoroughfare that may be partially located outside the corporate limits of the municipality and said thoroughfare is a part of the transportation plan developed under G.S. 136-66.2 and is designated a State responsibility. The City may expend any of its funds, including property taxes, for the purpose of performing any work authorized by this section. The work to be accomplished as authorized by this section shall be done in accordance with the specifications and requirements of the Department of Transportation and shall be set forth in an agreement entered into between the City and the Department of Transportation. The authority granted by this section shall not be construed as authority to advance the schedule of this project or any other major transportation improvement project in the City of Durham urban area prior to the schedule shown in the Department of Transportation's "Transportation Improvement Program" dated December 1986. The authority granted by this section shall terminate upon the completion of the thoroughfare improvement.

Sec. 5.2. The City of High Point is authorized to select and to participate in the development, including right-of-way acquisition and construction, of one thoroughfare that is located inside the corporate limits of the municipality and said thoroughfare is a part of the transportation plan developed under G.S. 136-66.2 and is designated a State responsibility. The City may expend any of its funds, including property taxes, for the purpose of performing any work authorized by this section. The work to be accomplished as authorized by this section shall be done in accordance with the specifications and requirements of the Department of Transportation and shall be set forth in an agreement entered into between the City and the Department of Transportation. The authority granted by this section shall not be construed as authority to advance the construction schedule for this thoroughfare project or any other major transportation improvement project in the City of High Point urban area prior to the

schedule shown in the Department of Transportation's "Transportation Improvement Program" dated December, 1986. The authority granted by this section shall terminate upon the completion of the thoroughfare improvement.

Sec. 6. The City of Wilmington is authorized to select and participate in one State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4). The construction of the project selected shall not be commenced prior to the schedule shown in the Department of Transportation's "Transportation Improvement Program" dated December 1986. The City of Wilmington is authorized and empowered to acquire all rights-of-way for all portions of the selected transportation improvement project which may be partially located outside the Wilmington municipal corporate limits. The work to be accomplished as authorized by this section shall be done in accordance with the specifications and requirements of the Department of Transportation and shall be set forth in an agreement entered into between the City and the Department of Transportation. The authorization granted by this section shall not be construed as authority to advance the schedule of any major transportation improvement project in the City of Wilmington urban area approved by the Board of Transportation. Upon the completion of the selected project this authority granted to the City of Wilmington by this section shall terminate.

Sec. 7. Chapter 136 of the General Statutes is amended by adding a new Article to read:

"Article 3B.

"Dedication of Right-of-Way with Density or
Development Rights Transfer.

"§ 136-66.10. **Dedication of right-of-way under local ordinances.**—(a) Whenever a tract of land located within the territorial jurisdiction of a city or county's zoning or subdivision control ordinance or any other land use control ordinance authorized by local act is proposed for subdivision or for use pursuant to a zoning or building permit, and a portion of it is embraced within a corridor for a street or highway on a plan established and adopted pursuant to G.S. 136-66.2 for a street or highway that is included in the Department of Transportation's 'Transportation Improvement Program', a city or county zoning or subdivision ordinance may provide for the dedication of right-of-way within that corridor pursuant to any applicable legal authority, or:

- (1) A city or county may require an applicant for subdivision plat approval or for a special use permit, conditional use permit, or special exception, or for any other permission pursuant to a land use control ordinance authorized by local act to dedicate for street or highway purpose, the right-of-way within such corridor if the city or county allows the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land owned by the applicant. No dedication of right-of-way shall be required pursuant to this subdivision unless the board or agency granting final subdivision plat approval or the special use permit, conditional use permit, special exception, or permission shall find, prior to the grant, that the dedication does not result in the deprivation of a reasonable use of the

original tract and that the dedication is either reasonably related to the traffic generated by the proposed subdivision or use of the remaining land or the impact of the dedication is mitigated by measures provided in the local ordinance.

- (2) If a city or county does not require the dedication of right-of-way within the corridor pursuant to subdivision (1) of this subsection or other applicable legal authority, but an applicant for subdivision plat approval or a zoning or building permit, or any other permission pursuant to a land use control ordinance authorized by local act elects to dedicate the right-of-way, the city or county may allow the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land that is part of a common development plan or to transfer severable development rights attributable to the dedicated right-of-way to noncontiguous land in designated receiving districts pursuant to G.S. 136-66.11.

(b) When used in this section, the term 'density credit' means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, and/or other land use control ordinance authorized by local act, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be transferred to other portions of the same parcel or to contiguous land in that is part of a common development plan.

"§ 136-66.11. Transfer of severable development rights.—(a) When used in this section and in G.S. 136-66.10, the term 'severable development right' means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be severed or detached from the parcel from which they are derived and transferred to one or more other parcels located in receiving districts where they may be exercised in conjunction with the use or subdivision of property, in accordance with the provisions of this section.

(b) A city or county may provide in its zoning and subdivision control ordinances for the establishment, transfer, and exercise of severable development rights to implement the provisions of G.S. 136-66.10 and this section.

(c) City or county zoning or subdivision control provisions adopted pursuant to this authority shall provide that if right-of-way area is dedicated and severable development rights are provided pursuant to G.S. 136-66.10(a)(2) and this section, within 10 days after the approval of the final subdivision plat or issuance of the building permit, the city or county shall convey to the dedicator a deed for the severable development rights that are attributable to the right-of-way area dedicated under those subdivisions. If the deed for the severable development rights conveyed by the city or county to the dedicator is not recorded in the office of the register of deeds within 15 days of its receipt, the deed shall be null and void.

(d) In order to provide for the transfer of severable development rights pursuant to this section, the governing board shall amend the zoning ordinance to designate severable development rights receiving districts. These districts may be designated as separate use districts or as overlaying other zoning districts. No severable development rights shall be exercised in conjunction with the development or subdivision of any parcel of land that is not located in a receiving district. A city or county may, however, limit the maximum development density or intensity or the minimum size of lots allowed when severable development rights are exercised in conjunction with the development or subdivision of any eligible site in a receiving district. No plat for a subdivision in conjunction with which severable development rights are exercised shall be recorded by the register of deeds, and no new building, or part thereof, or addition to or enlargement of an existing building, that is part of a development project in conjunction with which severable development rights are exercised shall be occupied, until documents have been recorded in the office of the register of deeds transferring title from the owner of the severable development rights to the granting city or county and providing for their subsequent extinguishment. These documents shall also include any other information that the city or county ordinance may prescribe.

(e) In order to implement the purposes of this section a city or county may by ordinance adopt regulations consistent with the provisions of this section.

(f) A severable development right shall be treated as an interest in real property. Once a deed for severable development rights has been transferred by a city or county to the dedicator and recorded, the severable development rights shall vest and become freely alienable."

Sec. 8. G.S. 105-275 is amended by adding a new subdivision to read:

"(32) Severable development rights, as defined in G.S. 136-66.11(a), when severed and evidenced by a deed recorded in the office of the register of deeds pursuant to G.S. 136-66.11(c)."

Sec. 9. G.S. 160A-372 reads as rewritten:

"§ **160A-372. Contents and requirements of ordinance.**—A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-10 or G.S. 136-11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for

curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal policies and standards and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.

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

The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever any subdivision of land takes place.

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

Sec. 10. G.S. 153A-331 reads as rewritten:

"§ 153A-331. Contents and requirements of ordinance.—A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11;

and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice. A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land which may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county policies and standards, and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.

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

The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever a subdivision of land takes place."

Sec. 11. G.S. 160A-381 reads as rewritten:

"§ 160A-381. Grant of power.—For the purpose of promoting health, safety, morals, or the general welfare of the community, any city ~~is hereby empowered to~~ may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes and to provide

density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11. These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Sec. 12. G.S. 153A-340 reads as rewritten:

"§ 153A-340. **Grant of power.**—For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict

- (1) ~~The height, number of stories, and size of buildings and other structures;~~
- (2) ~~The percentage of lot that may be occupied,~~
- (3) ~~The size of yards, courts, and other open spaces;~~
- (4) ~~The density of population, and~~
- (5) ~~The location and use of buildings, structures, and land for trade, industry, residence, or other purposes, except farming.~~ the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

These regulations may not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

For the purpose of this section, the term 'structures' shall include floating homes. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Sec. 13. G.S. 160A-306(a) reads as rewritten:

"(a) A city shall have authority to (i) classify all or a portion of the streets in the city according to their size, present and anticipated traffic loads, and other characteristics relevant to the achievement of the purposes of this section, and (ii) establish by ordinance minimum distances that buildings and other permanent structures or improvements constructed along each class or type of street shall be set back from the right-of-way line or the center line ~~of the street of an existing or proposed street~~. Portions of any street may be classified in a manner different from other portions of the same street where the characteristics of the portions differ."

Sec. 14. G.S. 160A-306(c) reads as rewritten:

"(c) A setback-line ordinance shall permit affected property owners to appeal to the council for variance or modification of setback requirements as they apply to a particular piece of property. The council may vary or modify the requirements upon a showing that

- (1) The peculiar nature of the property results in practical difficulties or unnecessary hardships that impede carrying out the strict letter of the requirement,

- (2) The property will not yield a reasonable return or cannot be put to reasonable use unless relief is granted, and
- (3) Balancing the public interest in enforcing the setback requirements and the interest of the owner, the grant of relief is required by considerations of justice and equity.

In granting relief, the council may impose reasonable and appropriate conditions and safeguards to protect the interest of neighboring properties. The council may delegate authority to hear appeals under setback-line ordinances to ~~a board established~~ any authorized body to hear appeals under zoning ordinances. If this is done, appeal to the council from the board shall be governed by the same laws and rules as appeals from decisions granting or denying variances or modifications under the zoning ordinance."

Sec. 15. Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-326. **Building setback lines.**—Counties shall have the same authority to regulate building setback lines as is provided for cities in G.S. 160A-306."

Sec. 16. G.S. 160A-307 reads as rewritten:

"§ 160A-307. **Curb cut regulations.**—A city may by ordinance regulate the size, location, direction of traffic flow, and manner of construction of driveway connections into any street or alley. The ordinance may require the construction or reimbursement of the cost of construction and public dedication of medians, acceleration and deceleration lanes, and traffic storage lanes for driveway connections into any street or alley if:

- (1) the need for such improvements is reasonably attributable to the traffic using the driveway; and
- (2) the improvements serve the traffic of the driveway.

No street or alley under the control of the Department of Transportation may be improved without the consent of the Department of Transportation. However, if there is a conflict between the written driveway regulations of the Department of Transportation and the related driveway improvements required by the city, the more stringent requirement shall apply."

Sec. 17. G.S. 153A-331 is amended by inserting a new paragraph between the first and second paragraphs to read:

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

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

Sec. 18. G.S. 160A-372 is amended by adding a new paragraph at the end to read:

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

Sec. 19. Chapter 136 of the General Statutes is amended by adding a new Article to read:

"Article 2E.

"Roadway Corridor Official Map Act.

"§ 136-44.50. Roadway corridor official map act.—(a) A roadway corridor official map may be adopted or amended by the governing board of any city within its corporate limits and the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances or by the Board of Transportation. No roadway corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

- (1) The governing board of the city or the Department of Transportation in each county affected by the map, has held a public hearing on the proposed map or amendment. Notice of the hearing shall be provided:
 - a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the roadway corridor to be designated is located.
 - b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the roadway corridor passes.
 - c. By posting copies of the proposed roadway corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

- (2) A permanent certified copy of the roadway corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(b) Roadway corridor official maps and amendments shall be distributed and maintained in the following manner:

- (1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk for municipal-adopted maps, or in the office of the district engineer for State-adopted maps.
- (2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a roadway corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.
- (3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five dollars (\$5.00) for each map sheet or page recorded.

(c) No roadway corridor or any portion thereof placed on an official map shall be effective unless:

- (1) The roadway corridor or a portion thereof appears on the Transportation Improvement Program adopted by the Board of Transportation under G.S. 143B-350(f)(4); or
- (2) The roadway corridor or a portion thereof appears on the street system plan adopted pursuant to G.S. 136-66.2, and the adopting city or town has adopted a capital improvements plan of 10 years or shorter duration which shows the estimated cost of acquisition and construction of the designated roadway corridor and the anticipated financing for that project.

(d) Within one year following the establishment of a roadway corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work within the one-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the roadway corridor.

"§ 136-44.51. Effect of roadway corridor official map.—(a) After a roadway corridor official map is filed with the register of deeds, no building permit shall be issued for any building or structure or part thereof located within the roadway corridor, nor shall approval of a subdivision, as defined in G.S. 153A-335 and G.S. 160A-376, be granted

with respect to property within the roadway corridor. The district engineer of the Highway District in which the roadway corridor is located shall be notified within 10 days of all requests for building permits or subdivision approval within the roadway corridor. The provisions of this section shall not apply to valid building permits issued prior to the effective date of this section, or to building permits for buildings and structures which existed prior to the filing of the roadway corridor provided the size of the building or structure is not increased and the type of building code occupancy as set forth in the North Carolina Building Code is not changed.

(b) No application for building permit issuance or subdivision plat approval shall be delayed by the provisions of this section for more than three years from the date of its original submittal.

"§ 136-44.52. Variance from roadway corridor official map.—(a) The Department of Transportation or the city which initiated the roadway corridor official map shall establish procedures for considering petitions for variance from the requirements of G.S. 136-44.51.

(b) The procedure established by the State shall provide for written notice to the Mayor and Chairman of the Board of County Commissioners of any affected city or county, and for the hearing to be held in the county where the affected property is located.

(c) Cities may provide for petitions for variances to be heard by the board of adjustment or other boards or commissions which can hear variances authorized by G.S. 160A-388. The procedures for boards of adjustment shall be followed except that no vote greater than a majority shall be required to grant a variance.

(d) A variance may be granted upon a showing that:

- (1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and
- (2) The requirements of G.S. 136-44.51 result in practical difficulties or unnecessary hardships.

"§ 136-44.53. Advance acquisition of right-of-way within the roadway corridor.—

(a) After a roadway corridor official map is filed with the register of deeds, the Department of Transportation or the city which initiated the roadway corridor official map is authorized to make advanced acquisition of specific parcels of property when such acquisition is determined by the respective governing board to be in the best public interest to protect the roadway corridor from development or when the roadway corridor official map creates an undue hardship on the affected property owner.

(b) Prior to making any such advanced acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective municipal governing board which initiated the roadway corridor official map shall develop and adopt appropriate policies and procedures to govern such advanced acquisition of right-of-way and to assure such advanced acquisition is in the best overall public interest.

(c) When a city makes an advanced right-of-way acquisition of property within a roadway corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the city for the cost of such advanced right-of-way

acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The city shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a municipality is authorized to expend municipal funds for the protection of rights-of-way shown on a duly adopted roadway corridor official map whether the right-of-way to be acquired is located inside or outside the municipal corporate limits."

Sec. 20. G.S. 47-30(1) reads as rewritten:

"(1) The provisions of this section shall not apply to the registration of highway right-of-way plans provided for in G.S. 136-19.4 nor to registration of roadway corridor official maps provided in Article 2E of Chapter 136."

Sec. 21. G.S. 136-102.6 is amended:

- (1) by redesignating subsection (j) as subsection (k); and
- (2) by inserting a new subsection (j) to read:

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

Sec. 22. Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-277.9. Taxation of property inside certain roadway corridors.—Real property that lies within a roadway corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at twenty percent (20%) of the general tax rate levied on real property by the taxing unit in which the property is situated if:

- (1) As of January 1, no building or other structure is located on the property; and
- (2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor."

Sec. 23. Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-458.3. Designation of roadway corridor official maps.—Any city may establish roadway corridor official maps and may enact and enforce ordinances pursuant to Article 2E of Chapter 136 of the General Statutes."

Sec. 24. Article 5A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-19.9. Local acts affecting State highway system to be considered by transportation committees.—Any local bill affecting the State highway system shall, prior to its passage, be referred to a committee of either the House or Senate charged

with the responsibility of examining bills or issues related to transportation or to the State highway system."

Sec. 25. As used in this act the word "municipality" means a "city" as defined by G.S. 160A-1.

Sec. 26. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of the act which can be given effect without the invalid provision.

Sec. 27. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of August, 1987.