



LINCOLN COUNTY PLANNING & INSPECTIONS DEPARTMENT
302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NORTH CAROLINA 28092
704-736-8440 OFFICE 704-736-8434 INSPECTION REQUEST LINE 704-732-9010 FAX

To: Board of Commissioners
Planning Board

From: Jeremiah Combs, Planner I

Date: August 25, 2017

Re: UDO Proposed Amendment #2017-6
Lincoln County Planning and Inspections Department, applicant

The following information is for use by the Lincoln County Board of Commissioners and the Planning Board at their joint meeting/public hearing on September 11, 2017.

PROPOSAL

Staff is proposing the following amendments to the Lincoln County Unified Development Ordinance in response to state legislation regarding subdivisions, which took effect July 1, 2017:

- 1) Amend Section 9.6.2 to exempt the division of land in accordance with a probated will or intestate succession from subdivision requirements.
- 2) Amend Section 9.6.6 to allow an expedited review process for subdivisions that meet certain criteria described in Session Law 2017-10.
- 3) Amend Section 5.6.1 to exempt subdivisions that meet certain criteria, described in Session Law 2017-10, from the minimum road construction standards.

The full text of the proposed amendment is included with the text amendment application. Attached is the section from Session Law 2017-10 that established the new exemption and category of subdivisions that qualify for expedited review, and a blog post from the UNC School of Government that explains the implications of the new provisions.



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Zoning Amendment Staff's Proposed Statement of Consistency and Reasonableness

Case No. **UDO Proposed Amendment #2017-6**

Applicant **Lincoln County Planning and Inspections Department**

Proposed amendment **Amend Sections 9.6.2, 9.6.6 and 5.6.1 of the Lincoln County Unified Development Ordinance to conform with a new state law that exempts certain divisions of land from local subdivision standards and establishes a new category of subdivisions that qualify for expedited review.**

This proposed amendment **is consistent** with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that:

This proposal is not contrary to any of the guiding principles, objectives or strategies of the Land Use Plan.

This proposed amendment **is reasonable and in the public interest** in that:

This proposal will make the UDO sections regarding subdivisions conform with an amended state statute regarding exemptions from local subdivision standards and expedited review of certain subdivisions.



UDO Text Amendment Application

Lincoln County Planning and Inspections Department
Zoning Administrator
302 N. Academy St., Suite A, Lincolnton, NC 28092
Phone: (704) 736-8440 Fax: (704) 732-9010

Part I

Applicant Name Lincoln County Planning and Inspections Department

Applicant Address 302 N. Academy St., Suite A, Lincolnton, NC 28092

Applicant Phone Number (704) 736-8472

Part II

Briefly describe the proposed text amendment.

Amend Section 9.6.2 of the Lincoln County Unified Development Ordinance to exempt the division of land in accordance with a probated will or intestate succession from subdivision requirements.

Amend Section 9.6.6.A of the Lincoln County Unified Development Ordinance to allow an expedited review process for subdivisions that meet certain criteria identified in Session Law 2017-10.

Amend Section 5.6.1 of the Lincoln County Unified Development Ordinance to exempt subdivisions that meet certain criteria, identified in Session Law 2017-10, from the minimum road construction standards.

Part III

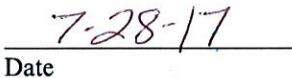
Provide the full text of the proposed amendment (on a separate sheet if necessary) with proposed deleted text shown as struck through and proposed added text underlined.

See next page

I hereby certify that all of the information provided for this application and attachments is true and correct to the best of my knowledge.



Applicant



Date

Proposed UDO Amendment #2017-6

§9.6 Subdivision Review

§9.6.2. Actions Exempt from Subdivision Requirements

The following shall not be considered “subdivision” subject to review under this section:

- A.** The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resulting lots are equal to or exceed the standards of this UDO;
- B.** The division of land into parcels greater than ten acres where no road right-of-way dedication is involved;
- C.** The public acquisition by purchase of strips of land for water or sewer infrastructure or the widening or opening of roads; and
- D.** The division of a site in single ownership whose entire area is no greater than two acres into not more than three lots, where no road right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this UDO.
- E.** The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

§9.6 Subdivision Review

§9.6.6. Definitions

A. Minor Subdivision

- 1.** A minor subdivision is a subdivision that does not involve any of the following:
 - (a)** Creation of a total of more than 20 lots;
 - (b)** Creation of any new roads;
 - (c)** Extension of any water and/or sewer lines, other than individual service lines; or
 - (d)** Installation of drainage improvements through one or more lots to serve one or more other lots.
- 2.** Minor subdivisions require minor plat review and final plat review.
- 3.** Subdivision of a tract or parcel of land in single ownership meeting the following criteria shall require only final plat review:
 - (a)** The tract or parcel to be divided is not exempted under Section 9.6.2.B;

- (b) No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division;
- (c) The entire area of the tract or parcel to be divided is greater than five acres;
- (d) After division, no more than three lots result from the division;
- (e) After division, all resultant lots comply with all lot dimension requirements;
- (f) After division, the use of the lots is in compliance with the applicable zoning requirements; and
- (g) A permanent means of ingress and egress is recorded for each lot.

§5.6 Lots and Blocks

§5.6.1. Lots

- A.** Every lot shall have a minimum of 35 feet of frontage on public right-of-ways or private right-of-ways pursuant to §5.4.6, except where otherwise specifically allowed by the dimensional standards of §2.4, and shall contain the minimum required lot width of the applicable zoning district within 100 feet of the road right of-way adjoining the front yard, except for lots created pursuant to §9.6.6.A.3 and lots in family subdivisions as authorized below.

Excerpt from Session Law 2017-10

- (2) A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.
- (3) A statement approving the zoning amendment and containing at least all of the following:
 - a. A declaration that the approval is also deemed an amendment to the comprehensive plan. The governing board shall not require any additional request or application for amendment to the comprehensive plan.
 - b. An explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.
 - c. Why the action was reasonable and in the public interest.

(c) Prior to consideration by the governing board of the proposed zoning amendment, the planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable plan. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

(d) Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

(e) As used in this section, "comprehensive plan" includes a unified development ordinance and any other officially adopted plan that is applicable."

SECTION 2.4.(d) G.S. 160A-400.32 reads as rewritten:

"§ 160A-400.32. Relationship of agreement to building or housing code:comprehensive plan amendment.

(a) A development agreement adopted pursuant to this Chapter shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the local government's planning, zoning, or subdivision regulations.

(b) When the governing board approves the rezoning of any property associated with a development agreement adopted pursuant to this Chapter, the provisions of G.S. 160A-383 apply."

SECTION 2.4.(e) Nothing in this section shall repeal, modify, or amend any prior or subsequent local act giving authority to a governing board to delegate zoning decisions to a planning board, planning agency, or planning commission.

SECTION 2.4.(f) This section becomes effective October 1, 2017, and applies to proposed zoning amendment applications filed on or after that date.

PARENT PARCEL/SUBDIVISION CLARIFICATION

SECTION 2.5.(a) G.S. 153A-335 reads as rewritten:

"§ 153A-335. "Subdivision" defined.

(a) For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

- (1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations.
- (2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved.
- (3) The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors.
- (4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.
- (5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

(b) A county may provide for expedited review of specified classes of subdivisions.

(c) The county may require only a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

- (1) The tract or parcel to be divided is not exempted under subdivision (2) of subsection (a) of this section.
- (2) No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.
- (3) The entire area of the tract or parcel to be divided is greater than five acres.
- (4) After division, no more than three lots result from the division.
- (5) After division, all resultant lots comply with all of the following:
 - a. Any lot dimension size requirements of the applicable land-use regulations, if any.
 - b. The use of the lots is in conformity with the applicable zoning requirements, if any.
 - c. A permanent means of ingress and egress is recorded for each lot."

SECTION 2.5.(b) G.S. 160A-376 reads as rewritten:

"§ 160A-376. Definition.

(a) For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations.
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.

Coates' Canons Blog: Subdivision Legislation: An Old Exemption and a New Expedited Review

By Adam Lovelady

Article: <https://canons.sog.unc.edu/subdivision-legislation-old-exemption-new-expedited-review/>

This entry was posted on June 13, 2017 and is filed under General Local Government (Miscellaneous), Land Subdivision, Land Use & Code Enforcement

During the 2017 legislative session lawmakers adopted [Session Law 2017-10](#) (S131), a law addressing an array of regulatory topics, including local zoning and subdivision regulations. With regard to subdivision regulations, Section 2.5 of S.L. 2017-10 adds one new category to the list of exempt subdivisions: divisions to settle an estate. The new law also creates expedited review for qualifying subdivisions greater than five acres. The former is straightforward and codifies prior caselaw into the statutes. The latter requires some interpretation and explanation.

These changes to subdivision statutes are effective July 1, 2017. Land subdivisions after that date are subject to these new rules, and cities and counties should amend their ordinances to comply.

This blog explores these changes enacted in S.L. 2017-10 concerning subdivisions.

The North Carolina General Statutes outline municipal and county authority to regulate land subdivisions (N.C.G.S. § [160A-371 et seq.](#) & [153A-330 et seq.](#)). Generally this includes an application and review process; standards for aspects such as streets, infrastructure, and parks; and requirements to record a map of the subdivision (a plat) with the register of deeds. I have covered aspects of subdivision regulation in various posts on this blog, as well as in my [book](#) on the subject.

Codifying the old exemption for settling an estate

State law specifies certain divisions of land that are exempt from local subdivision regulations, including: recombination of lots, divisions creating lots greater than ten acres, divisions for public right-of-way, and divisions of two-acre tracts into three lots (N.C.G.S. § [160A-376](#) & [153A-335](#)). My colleague, Rich Ducker, discussed these exemptions [here](#).

S.L. 2017-10 amends the city and county statutes to add the following to the list of exempt subdivisions: "The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes."

This change is essentially codifying a rule we already had from the courts. In the 1974 case, *Williamson v. Avant*, 21 N.C. App. 211, 203 S.E.2d 634 (1974), cert. denied, 285 N.C. 596 (1974), the North Carolina Court of Appeals ruled that a division of land for the purpose of settling an estate is not a division of land "for the purpose of sale or building development," so it is not subject to the subdivision regulations. This exemption was already standard practice and even reflected in the statutes concerning surveyor certifications for plats (N.C.G.S. § 47-30(f)(11)).

Expedited review for qualifying subdivisions

The more notable change of S.L. 2017-10 is the creation of expedited review for qualifying subdivisions of tracts greater than five acres. The city and county statutes, at N.C.G.S. § 160A-376 & 153A-335, now state the following.

(c) The city [or county] may require only a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

- (1) *The tract or parcel to be divided is not exempted under subdivision (2) of subsection (a) of this section.*
- (2) *No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.*
- (3) *The entire area of the tract or parcel to be divided is greater than five acres.*
- (4) *After division, no more than three lots result from the division.*
- (5) *After division, all resultant lots comply with all of the following:*
 - 1. *Any lot dimension size requirements of the applicable land-use regulations, if any.*
 - 2. *The use of the lots is in conformity with the applicable zoning requirements, if any.*
 - 3. *A permanent means of ingress and egress is recorded for each lot.*

Let's consider what this new provision means.

Is it an exemption? No, not in the traditional sense. The traditional exempt subdivisions are listed in subsection (a) of NCGS 160A-376 & 153A-335. Indeed, the new exemption for settling an estate (discussed above) is added as the fifth exemption under subsection (a). Subsection (b), which was already in statute, authorizes cities and counties to have expedited review for certain classes of subdivisions. Subdivision ordinances commonly rely on this statute to create different standards and procedures for minor subdivisions as compared to major subdivisions. S.L. 2017-10 adds a new subsection (c) stating that if a subdivision meets certain standards, the local government may only require a plat for recordation (a final plat). The new provision specifies a class of subdivisions that will be subject to expedited review—essentially mandating a class of minor subdivision. To be clear, generally there is not a substantial difference between the process and standards for an exempt two-into-three subdivision (it is exempt, but resultant lots must comply with the ordinance) as compared to the process and standards for an expedited subdivision. In certain cases, however, that distinction may be important.

Is the new provision mandatory or permissive? This is not clear, but it likely is mandatory. The language of the new provision states that the local government “may require only a plat for recordation.” One reading of that phrase—emphasizing the permissive *may*—is that the local government may choose if it will require only a final plat for that category of subdivisions. Another reading—emphasizing the limiting *only*—would interpret the phrase to mean that a local government must only require a plat for recordation for that category of subdivisions. Local governments already had the option to treat qualifying subdivisions as a special class under subsection (b). Thus, in order to give meaning to the new provision, it is likely to be interpreted to require expedited review for qualifying subdivisions.

So what does that mean? Let's walk through the language of S.L. 2017-10 and some related questions about standards and procedures.

Qualifying Subdivisions

S.L. 2017-10 outlines specific standards that a subdivision must meet in order to qualify for expedited review. Some relate to the nature of the tract before division, and some relate to the nature of the division of land itself. A subdivision must meet each of the standards in order to qualify for expedited review.

First, the property must be greater than five acres. Note that this is a minimum; the tract may be larger. (In contrast, for the Two-Into-Three exemption, two acres is a maximum tract size.) For expedited review, the subject property is “a tract or parcel of land in single ownership.” If Ms. Smith owns two contiguous four-acre parcels, for purposes of expedited review Ms. Smith has eight acres in single ownership.

Second, it must have been at least ten years since the property was subdivided with this expedited review. There is no mention of change in ownership here. If this expedited review was used for any part of the property to be divided—even if it was by a prior owner—the current owner must wait until ten years have elapsed before she or he may use this expedited review again.

Third, the subdivision must not be exempt as a Ten-Acre Exemption. This one is straightforward. Divisions of land are exempt from subdivision regulation if all resulting lots are greater than ten acres and there is no right-of-way dedication. If that exemption applies, then the new expedited review does not apply. Indeed, given that the Ten-Acre Exemption is more lenient, it is unlikely an owner would opt for the expedited review over the Ten-Acre Exemption.

Fourth, the subdivision must result in no more than three lots. This is a calculation of the total lots from the subdivision. If Ms. Smith owns eight acres, she may carve off two one-acre lots along the road (two home sites plus one lot with the remaining six acres) and qualify for the expedited review. If Ms. Smith carves off three home sites and keeps a five-acre lot, that subdivision would result in four lots and would not qualify for this expedited review.

Fifth, the resulting lots must meet applicable lot dimension requirements. This requirement is similar to, but slightly distinct from, the requirement for the Recombination Exemption and the Two-into-Three Exemption. Those exemptions require that “the resultant lots are equal to or exceed the standards” of the city or county subdivision regulations. For the new exemption, the resultant lots must meet “[a]ny lot dimension size requirements of the applicable land-use regulations, if any.”

Sixth, the resulting lots must have a permanent means of ingress and egress designated on the recorded plat. The subdivision must be designed to ensure access for the newly created lots. This could be accomplished with private easements or lots designed to have direct access to public roads. In any event, there must be permanent means of ingress and egress. Does it have to be usable? What if the platted easement is up a steep grade (where road construction is impractical)? There is not a clear answer here. It would seem that the access must be reasonably practical, but the statute merely calls for something designated on the plat. Note that other development regulations will apply. Depending on the intended use of the land, zoning or fire code requirements may require sufficient access for public safety concerns if and when the property is developed.

Seventh, the use of the resulting lots must comply with applicable zoning requirements. While subdivision regulation and zoning regulation are distinct authorities for local governments in North Carolina, in practice they are necessarily intertwined. The zoning requirements may specify the lot dimensions for a land subdivision, and the subdivision standards may be triggered by development of a new land use (changing from agriculture to multi-family, for example). Indeed, the state statutes recognize this interrelation and explicitly authorize unified development ordinances consolidating zoning, subdivision, and other development regulations. The requirement for expedited subdivisions to comply with zoning requirements reflects that interrelation and, perhaps, ensures that an expedited review will not be abused to avoid basic standards for public health and safety.

Expedited Review

The new provision appears to establish a mandatory category of expedited review. Above I outlined what divisions qualify for the expedited review. Now, consider some of the procedural issues.

Final plat only. The statute now states that for qualifying subdivisions, the local government “may require only a plat for recordation.” In other words, only final plat review. For qualifying subdivisions there will be no sketch plan review nor preliminary plat review. This aligns with the minor plat review for many jurisdictions.

Review and approval. Even exempt subdivisions are subject to a level of local review to confirm that they are exempt. For the new qualifying subdivisions, review may be expedited, but it is still review. As with any other subdivision, before a plat review officer may sign off for a qualifying plat to be recorded, the plat must be approved by the local government subdivision officer. The local government subdivision officer must determine if the plat meets the standards to be a qualifying subdivision.

Other standards. Can the local government impose other subdivision standards such as frontage requirements, fees in lieu of parks, or utility construction? It seems unlikely. The new provision states that for a qualifying subdivision the local government may require only a plat for recordation. The statute itself outlines the standards to qualify for expedited review (as discussed above). It appears unlikely that other subdivision standards may be imposed if the division is a qualifying subdivision under the statutory standards. Note, though, that one of those requirements is that the lots meet zoning requirements, so there may be situations where certain zoning requirements trigger improvements relating to the subdivision. Note, too, that subdivision review is one piece of development regulation. Other ordinances will address development standards and public safety concerns. Just because a landowner is relieved of certain subdivision standards does not mean they get a free pass on zoning, building code, fire code, public health codes, stormwater standards, or other elements of applicable development regulations.

Application Fees. The statute does not state that the local government may charge fees for this review. The language of S.L. 2017-10 says local governments may require only a plat for recordation. So arguably a local government could not charge a fee for review of the subdivision application. North Carolina courts, however, have previously allowed that even without express statutory authority local governments may charge reasonable fees to cover the cost of administering a regulatory program such as subdivision. See *Homebuilders Association of Charlotte v. City of Charlotte*, 336 N.C. 37, 442 S.E.2d 45 (1994). Given that the expedited review is analogous to a minor subdivision review, it is reasonable to impose a comparable application fee. To be clear, application fees may be permissible for expedited review subdivisions, but exaction fees likely are not permissible. Fees in lieu of road construction, fees in lieu of parks, and other fees that may be authorized for common subdivisions are not allowed for expedited review subdivisions.

Conclusion

Among many other topics, S.L. 2017-10 amends the municipal and county authority relating to subdivision ordinances. This new law adds one new category to the list of exempt subdivisions: divisions to settle an estate. That amendment codifies the existing rule from caselaw, and does not significantly alter the law or practice of subdivision regulation. S.L. 2017-10 also creates a new category of subdivisions that will enjoy expedited review. Local governments may only require a final plat for certain qualifying subdivisions—those greater than five acres, resulting in no more than three lots, and meeting certain standards. This, in essence, creates a mandatory category of minor subdivisions, but the language requires some interpretation and the full implication of this law is not clear.

Links

- www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2017&BillID=s131&submitButton=Go
- www.ncleg.net/gascripts/Statutes/StatutesTOC.pl?Chapter=0160A
- www.ncleg.net/gascripts/Statutes/StatutesTOC.pl?Chapter=0153A
- www.sog.unc.edu/publications/books/land-subdivision-regulation-north-carolina
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-376.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_153A/GS_153A-335.pdf
- canons.sog.unc.edu/land-subdivision-ordinances-the-regulatory-exceptions/