

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH50179-MA-233 (03/23)

Short Title: Withdrawing Public Use Dedication.

(Public)

Sponsors: Representative Owens.

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING PROPERTY OWNERS ASSOCIATIONS THAT OWN STREETS THAT ARE LOCATED OUTSIDE INCORPORATED MUNICIPALITIES AND THAT HAVE NOT BEEN ACCEPTED FOR MAINTENANCE BY THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR A PERIOD OF THIRTY YEARS TO FILE, WITH THE APPROVAL OF THE COUNTY COMMISSIONERS, A DECLARATION WITHDRAWING THE DEDICATION TO PUBLIC USE OF SUCH STREETS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-96.2. Withdrawal of public use dedication by property owners associations.

(a) Qualification for Withdrawal of Dedication. – A property owners association that owns subdivision streets or segments of streets may file in the office of the register of deeds, in the county where the streets are located, a declaration withdrawing any purported dedication to public use or withdrawing an offer of dedication to public use of such streets and declaring such streets to be private when all of the following conditions are met:

- (1) The subdivision within which the streets exist is located entirely outside the corporate limits of any municipality and bounded on the east by the Atlantic Ocean.
- (2) The subdivision was created by a plat recorded at least 30 years prior to the recording of the declaration of withdrawal.
- (3) The recorded plat of the subdivision bears a certificate signed by a county representative purporting to accept on behalf of the county the dedication of the streets shown on the plat.
- (4) At least two-thirds of the total length of all the streets shown on the plat have been paved, opened, and used for vehicular traffic for a period of at least 25 years prior to the recording of the declaration of withdrawal.
- (5) The subdivision streets have only one means of ingress and egress intersecting with a State highway.
- (6) The streets have never been maintained by the county, and the county claims no interest in the streets.
- (7) The Department of Transportation has never maintained the streets or accepted them for maintenance and claims no ownership interest in the streets.



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1 (8) The developer of the subdivision or the successor to the developer has
2 dedeed the streets to an incorporated property owners association and,
3 therefore, such property owners association is the record owner of the
4 streets.

5 (9) The streets within the subdivision are being maintained and insured by the
6 property owners association that represents all property owners.

7 (10) The declaration of withdrawal has been approved by a two-thirds vote of all
8 members of the property owners association present in person or by proxy at
9 a special meeting of all such members duly called for that purpose.

10 (b) Approval by Board of County Commissioners; Signature of Clerk. – A declaration
11 described under subsection (a) of this section may not be recorded unless it bears the signature
12 of the clerk to the board of commissioners of the county where the streets covered in the
13 declaration are located attesting to the adoption by the board of commissioners of a resolution
14 approving such declaration. The board of commissioners may adopt such a resolution only
15 upon a finding that each of the circumstances listed in subsection (a) of this section exists. In
16 approving such a resolution, the board of commissioners may provide that:

17 (1) The withdrawal of dedication shall not apply to (i) streets or segments of
18 streets where withdrawal of dedication would terminate all reasonable legal
19 means of access to any property or (ii) streets or segments of streets that are
20 necessary to connect a public street located outside the subject subdivision
21 with another public street located outside the subject subdivision.

22 (2) No gate or other obstruction may be placed across any street or segments of
23 streets unless such gate or obstruction is approved by the board of
24 commissioners upon a finding by the board that other methods of preventing
25 unauthorized parking or preserving public safety on such streets or segments
26 of streets have proved inadequate.

27 (3) The clerk to the board of commissioners shall sign the declaration of
28 withdrawal only upon completion of the improvements to the covered streets
29 in accordance with a plan for such improvements submitted by the property
30 owners association that complies with any published street standards
31 required by the county on the date that the subdivision plat was recorded as
32 certified by the county engineer.

33 (c) Effect of Withdrawal of Dedication. – The recording of a declaration authorized by
34 and in accordance with this section shall declare and make the streets described in the
35 declaration the private property of the property owners association that owns such streets, and
36 any offer of dedication of such streets that may have been created by the recording of the plat
37 creating the subdivision shall be conclusively presumed to be withdrawn. However, the right,
38 title, or interest vested in the property owners association remains subject to (i) public
39 pedestrian access on, over, and upon the road or easement as existed immediately before its
40 closing and (ii) any public utility use or facility located on, over, or under the road easement
41 immediately before its closing, until the landowner or any successor thereto pays to the utility
42 involved, and the utility accepts, the reasonable cost of removing and relocating the facility."

43 **SECTION 2.** This act is effective when it becomes law.