

NCDOT Legislative Report on Process for Accepting Subdivision Streets (S.L 2015-217)

February 1, 2016

This report is presented to the Joint Legislative Transportation Oversight Committee (JLTOC) pursuant to Session Law 2015-217, sections 1(a) and 1(b). The session law is as follows:

The Department of Transportation shall study the process that must be followed, and the requirements that must be met, for the Department of Transportation to accept subdivision streets dedicated as public on the State highway system for maintenance, including (i) whether the process that must be followed is efficient and timely, (ii) whether the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system are reasonable, (iii) what the financial impact is on the State and homeowners when subdivision streets are or are not accepted on the State highway system for maintenance, and (iv) any other matters the Department of Transportation deems relevant to the study

A study group was formed within the Department utilizing expertise from four district offices, state right-of-way branch, roadway design engineering, and staff from the Chief Engineer's office. The committee engaged other stakeholders and interest groups from outside the Department to solicit input from various public and private perspectives. They met with interested participants including representatives from the home builder and realtor associations, real estate attorney firms and associations and county governments. A complete listing of participants is included in Appendix-1.

Subsequently, a draft report was prepared and sent to industry partners for review and comments. These comments are included in Appendix-2.

This report includes a description of the Department's current processes and a summation of the study group's findings for each of the four areas included in the session law. The report also includes recommended changes to the Department's guidelines and processes as well as suggestions by industry partners. The intent of the recommended changes is to streamline Department processes. Suggestions are listed for lawmakers to consider as provisions for enhanced disclosure and protections to homeowners with respect to responsibilities for maintenance of subdivision streets intended to be publicly maintained, but not yet added to the State system.

General Statute 136-102.6 Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers (see Appendix-3) provides some specific requirements for plat recordation, disclosure of public or private status, and certification of minimum construction standards by NCDOT for streets dedicated as public. The purpose of this statute is stated plainly in subsection (i) and reads:

The purpose of this section is to insure that new subdivision streets described herein to be dedicated to the public will comply with the State standards for placing subdivision streets on the State highway system for

maintenance, or that full and accurate disclosure of the responsibility for construction and maintenance of private streets be made. This section shall be construed and applied in a manner which shall not inhibit the ability of public utilities to satisfy service requirements of subdivisions to which this section applies.

Subsection (f) of the statute is intended to be a disclosure provision for those purchasing real property and establishes responsibilities of developers, sellers and buyers in each case for roads recorded as public and for roads recorded as private.

136-102.6(f) Prior to entering any agreement or any conveyance with any prospective buyer, the developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement shall fully and completely disclose the status (whether public or private) of the street upon which the house or lot fronts. **If the street is designated by the developer and seller as a public street**, the developer and seller shall certify that the right-of-way and design of the street has been approved by the Division of Highways, and that the street has been or will be constructed by the developer and seller in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway system. **If the street is designated by the developer and seller as a private street**, the developer and seller shall include in the disclosure statement an explanation of the consequences and responsibility as to maintenance of a private street, and shall fully and accurately disclose the party or parties upon whom responsibility for construction and maintenance of such street or streets shall rest, and shall further disclose that the street or streets will not be constructed to minimum standards, sufficient to allow their inclusion on the State highway system for maintenance. The disclosure statement shall contain a duplicate original which shall be given to the buyer. Written acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of the delivery thereof.

The following is a summation of the Department's findings for each of the four study areas included in Session Law 2015-217, section 1.(a).

Study Area (1): Whether the process that must be followed is efficient and timely

Pursuant to the requirements of General Statute 136-102.6, the Department currently utilizes the process described below for review, certification and addition of public subdivision streets to the State highway system. The three main elements of the process are (a) plan review and certification of minimum right-of-way and design standards, (b) construction inspection and

approval, and (c) petition for addition by developer or property owners, investigation for eligibility and addition to the State highway system.

At any given time, a typical district office is processing multiple subdivision submittals at all stages of review, such as initial plan review, comments to land planners and developers, plat review and certification of approval of subdivision street design plans in accordance with minimum required standards, construction inspection and compliance certifications, road petition reviews and investigations, and road addition package preparations for final approval.

In addition to NCDOT processes, subdivision development submittals are also subject to review and approval by local jurisdictions. In general, local governments have various ordinances and requirements in place to protect local interests. The common theme found in local planning documents is that subdivision streets designated as public streets are to be constructed in a manner that will make them eligible for public maintenance. The process may also include posting of performance bonds by the developer to ensure completion of infrastructure as a condition of plat recordation or certificate of occupancy issuance.

- (a) The plan review process begins when a developer provides an application with copies of plans for a new subdivision to the Department via the appropriate District Engineer's office. The plans must include complete site layout, horizontal and vertical street alignments, typical street sections with pavement designs, slopes, hydraulic plans with drainage calculations, public right-of-way designations, and if applicable, structural storm water quality controls, erosion control plans and a permit approved by the appropriate resource agency or local government. The plans are reviewed relative to design requirements established by the Board of Transportation as published in the "NCDOT Subdivision Roads Minimum Construction Standards." Comments on unmet requirements are provided to the applicant as an iterative process.

Once all design requirements are satisfied, the District Engineer will issue a formal letter to the applicant verifying that the plans are in accordance with the minimum right-of-way and design requirements and are approved. Plan review time is variable and dependent upon the completeness and complexity of the plan submittal; however 30 days is typically the accepted goal. At this point, upon request by the applicant, the District Engineer may review the subdivision plat(s) and execute the required certificate of approval on the plat indicating that the proposed right-of-way and street designs meet the Department's minimum standards for acceptance of the streets to the State highway system. Typically, review and certification of plat submittals by the District Engineer is completed in 3-5 days.

Per General Statute 136-102.6, the District Engineer's certification does not constitute acceptance of the right-of-way dedication or acceptance of the streets for maintenance. Rather, the certification indicates approval of the design plans as being in accordance with the Department's minimum standards. The developer may then record the plat in the office of the Register of Deeds, subject to local requirements and approvals. The local jurisdiction may require the developer to post performance and indemnity bonds for incomplete infrastructure as a condition of plat recordation. The developer may opt to record the plat

after completion of the construction and verification of minimum construction standards as described below.

- (b) Following the plan approval letter, the next interaction between the developer and the Department is construction inspection and verification of compliance with the approved plan and the Department's minimum construction standards. During the construction phase, inspection and testing is performed by either Department technicians or by a third party professional engineering consultant providing a sealed certification of compliance and supporting documents, including inspection reports, physical testing reports, and materials certifications. Inspections typically occur on an iterative basis upon request by the applicant. Upon satisfactory completion of the street construction, the District Engineer will issue correspondence verifying that the streets were constructed in accordance with the approved plan and the Department's minimum construction standards. Verification of minimum construction standards does not constitute acceptance of the streets to the State highway system for maintenance.
- (c) The final phase begins with submittal of a petition for addition initiated by the developer or property owners for the acceptance of subdivision streets on the State maintained system for maintenance. In order to be eligible for acceptance, streets must meet certain minimum requirements established by the Board of Transportation including: verification of minimum construction standards, dedication of required public right-of-way, the presence of the minimum required number of individually owned and occupied homes, acceptable state of maintenance for all roadway features, absence of any installations or objects deemed to be highway obstructions as defined in NCAC 2E.0404, submittal of all required encroachment agreements for all utilities and authorized installations within the right-of-way.

Upon receipt of the petition for addition, the District Engineer performs an investigation to determine eligibility for acceptance to the State system which consists of the following steps:

- Verify the petitioned roads meet the minimum required individually owned and occupied home density
- Verify compliance with the minimum required design and construction requirements
- Verify public right-of-way is valid/certified as recorded
- Verify all utilities located within the right-of-way have submitted an encroachment agreement;
- Conduct a field inspection to verify the streets are in a state of maintenance. Areas inspected include:
 - Pavement Condition – good condition with no repairs needed
 - Adequate and functional drainage
 - Appropriate signage
 - Appropriate vegetation management
- Review for unacceptable encroachments in the right-of-way such as basketball goals and brick mail boxes and other installations deemed to be highway obstructions.

Upon completion of the investigation, the District Engineer provides correspondence to the petitioner summarizing the findings of the investigation, listing any identified deficiencies

and necessary repairs or administrative actions that the petitioner must accomplish in order to satisfy requirements for acceptance, establishing timelines in which the items are to be addressed and requiring that the petitioner provide written notification upon completion of the corrective actions.

Once deficiencies have been corrected to satisfy minimum requirements, the District Engineer prepares a road addition package for distribution and approvals as listed below in the order of occurrence:

- Consideration and recommendation by the Board of County Commissioners
- Approval by the State Board of Transportation member and Division Engineer
- Review by the Chief Engineer's office
- Submittal to the State Board of Transportation as a monthly agenda item for consideration and final approval

Upon Board of Transportation approval, acceptance to the State system and State maintenance responsibilities begin immediately. The District Engineer notifies the petitioner and other stakeholder agencies of the approved road addition and commencement of State maintenance begins. Appropriate secondary road number assignments and mapping/inventory updates are completed.

At the risk of redundancy, it is important to note here again G.S. 136-102.6(f) stipulates minimum right-of-way and construction standards for public streets and requires disclosure, of the status (whether public or private) at the time of property conveyance. However, the statute does not compel developers or property owners to pursue State acceptance of public streets for maintenance or to correct any deficiencies noted during a road addition investigation. The petition for road addition process is strictly voluntary and is initiated by the developer or property owners at a time of their choice. Accordingly, the Department currently has little to no influence on initiation or the timeline of the petition process, and does not track maintenance conditions, eligibility criteria for streets, or status of identified corrective actions. This responsibility lies with the petitioner. As such, the Department is unable to provide any reliable assurance to existing or prospective property owners that streets will be completed and/or added to the State maintained system.

Study Area (2): Whether the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system are reasonable

Based on input received from both Department staff and external stakeholders, the minimum right-of-way and construction standards published in the "NCDOT Subdivision Roads Minimum Construction Standards" are appropriate to ensure safe operation and accommodation of the anticipated traffic volumes and vehicle types with reasonable constructability and cost. The Department also has substantial flexibility to authorize reasonable design deviations relative to safety, environmental and maintenance factors where extenuating circumstances exist.

Study Area (3): What the financial impact is on the State and homeowners when subdivision streets are or are not accepted on the State highway system for maintenance

Relative to the nearly 80,000 mile network of roads maintained by the Department, subdivision roads are considered the lowest tier of priority maintenance, simply due to traffic volumes and absence of heavy truck traffic. However, the maintenance activities associated with annual needs, and periodic cyclical needs quickly sum up to substantial amounts.

Based on current activity rates, potential costs for recurring annual maintenance activities would be expected to range from \$500 to \$1,500 per mile. These activities may include roadside mowing, snow and ice or storm debris removal and response to individual requests such as ditch and shoulder maintenance, or litter and dead animal removal.

Periodic maintenance and system preservation activities are also necessary every 10 years or so to prolong pavement life and prevent rapid deterioration. These activities may include pavement patching, crack sealing, ditch and pipe maintenance, vegetation management and sign replacement. Based on current activity rates, the potential average cost range of these activities is approximately \$10,000 - \$17,000 per mile.

The highest activity cost for subdivision roads is for comprehensive pavement resurfacing which generally occurs around the 20-year cycle. At this point, subdivision roads likely require structural pavement repairs, leveling to correct pavement rutting and a complete overlay with asphalt mix. Based on current activity rates, the potential costs of these activities fall into a range of \$100,000 - \$150,000 per mile.

The Department bears all the financial impacts listed above for State maintained roads. Roads that do not receive the minimal maintenance and preservation activities rapidly transition to much more costly situations for whoever maintains the street system.

When subdivision streets are not publicly maintained, financial impacts to property owners include all costs associated with maintenance and operation of the streets. Additional costs and impacts which may be less tangible and more difficult to quantify include, lack of direct access to public services such as school buses and postal service, and access to emergency services. Vehicle maintenance costs may increase in locations with severe roadway condition deficiencies. The ability to market and sell real estate may be affected by reduced willingness or ability of lenders to offer financing of property on roads for which responsibility for road maintenance is not duly established.

Study Area 4: Any other matters the Department of Transportation deems relevant to the study

As this study process progressed, an issue described by an industry representative as “orphaned roads” quickly became a predominant focus. These are roads that were dedicated to the public, designed and constructed to NCDOT standards, but not successfully added to the State highway system. This issue places property owners in a position to contend with maintenance responsibilities for streets intended for public maintenance. While figures are dependent upon development industry activity, in the last three years the Department annually received and

investigated an average of 435 new petitions for addition of subdivision streets to the State highway system. During that same period, an annual average of 250 subdivision petitions representing approximately 520 roads and 106 miles, met eligibility requirements and were approved by the Board of Transportation for addition to the State highway system for maintenance. As reported by NCDOT district offices statewide, the predominant reasons for ineligibility for successful road addition were road maintenance condition deficiencies that had developed after initial construction (68% of occurrences), followed by lack of sufficient housing density (13% of occurrences). A graphical format of this information is included in Appendix -4.

While this issue is not new to North Carolina residents, the issue has noticeably grown over the past few years for a variety of reasons. For some it is a result of economic downturn leaving developers financially unable to complete streets and infrastructure, potentially exposing property owners to maintenance liabilities. For others, home-owner associations have lacked resources and expertise to maintain roads at a reasonable state of repair. At times it is a result of prolonged delay or failure on the part of developers and/or property owners to voluntarily initiate a petition for road addition prior to the presence of maintenance condition deficiencies that occur as part of the normal infrastructure life cycle. Additionally, for subdivisions outside municipal limits, county governments do not have the same authorities as municipalities to finance and maintain public streets. To meet the directives of S.L. 2015-264, Section 90.5, an additional study of non-system roads is underway by the Department that will help reveal what the size of the inventory is in each county for roads intended for public maintenance but are not part of a maintained network.

The Department has historically enacted criteria to ensure there is sufficient public use for road additions before increasing the Department's road inventory. One long-standing requirement for adding subdivision streets to the State maintained system is related to the presence of a minimum number of individually owned and occupied homes relative to the roadway length. The Department's current standard housing density requirements for eligibility for addition of subdivision streets is an average of two individually owned and occupied homes per tenth of a mile and minimum of four homes served by short dead end roads less than two tenth of a mile. For perspective, this equates to roughly one home per city block. Streets with less than four occupied homes are considered a private driveway.

Connecting roads with less than the required number of occupied homes may be reviewed as to traffic usage for addition purposes. Traffic usage equivalent to the traffic that would be generated by the correct number of occupied homes is acceptable. Subdivision access roads that provide ingress and egress to the subdivision, but do not directly serve platted lots must provide access to an average of five lots per mile of length and a minimum of five homes for road less than one mile in length.

One common challenge for developers that surfaced while studying this issue was their ability to meet minimum home density requirements, particularly in a slow economic environment. To further complicate matters, roads not added to the State system in a timely manner due to insufficient home densities are left to the effects of natural deterioration if not maintained. Subsequently, (often years later) when home density requirements are finally met, the pavements are in need of costly repairs before being added to the state maintenance network. Unfortunately,

this seems to be a common scenario that developers and property owners find themselves facing along with inadequate private resources for resolution.

Some county governments have exercised statutory authority to pay for the cost of repairs and assess the property owners over a period of five to ten years. Depending on the extent of repairs, this cost can result in a significant financial burden to property owners.

One of the encouraging outcomes of conversations with industry partners was recognition that joint efforts among the various agencies and associations involved with these issues is paramount toward reaching acceptable outcomes.

One county government has taken a pro-active approach of performing annual inspections of subdivision developments within their jurisdiction, encouraging developers to follow through on the road addition process for State maintenance. Another major point of discussion was the need for surety bonding that would protect homeowners from absorbing financial impacts when developers default or fail to follow through with the petition and road addition process. The statutory provision allowing local governments to require maintenance bonding for new subdivisions was eliminated during the last legislative session. Comments from industry partners indicate differing opinions as to the appropriateness of local government authority to require posting of bonds for road maintenance.

Comments from real estate industry partners indicate the need for increased disclosure to home buyers regarding street status (whether public or private) and road maintenance responsibilities.

Study Conclusions and Recommendations

The Department's well established minimum construction requirements and processes for review and approval of design and construction of subdivision streets are effective in ensuring that streets added to the State system adequately and safely accommodate users with reasonable construction and maintenance costs. The petition process facilitates successful road additions if followed through to completion by the developer or property owners. Unfortunately a substantial portion of road addition requests are unsuccessful predominately due to ineligibility resulting from maintenance condition issues or lack of adequate housing density. This condition appears to be exacerbated by factors such as the voluntary nature of the road addition petition process, limited developer liability and limited authority of local and State agencies, economic challenges faced by the industry, lack of disclosure and understanding of responsibilities and processes by property owners and developers.

Recommendations for Improvements to NCDOT Processes

One process related to efficiency recently implemented at NCDOT is converting our paper flow process to a total electronic process. All road addition and abandonment packages are now prepared as electronic formats and sent to the central office for preparation as agenda items which the Board of Transportation approves. Other efficiency-change recommendations to the Department's process include:

- Consider implementation of “blanket” resolutions used by some counties in lieu of individual approvals of state road additions by local Board of County Commissioners. This action is expected to reduce delay to the administrative process by reducing county staff time and eliminating delays associated with scheduling agenda items. The Department would still require the resolutions for non-platted subdivisions or existing private streets being converted to public. Counties would be appropriately notified when roads are approved for addition by the Board of Transportation.
- Require early submittal of utility encroachment agreements at the time of installation and prior to issuance of the verification of minimum construction standards in order to avoid administrative delays during the road addition phase.
- Further examine current housing density requirements and look at changing to an average of two homes per tenth of a mile and a minimum of two homes on short dead end roads less than a tenth of a mile.
- Conduct periodic critical review of minimum construction requirements for subdivision roads and implement updates as needed to address new issues. Recent examples include implementation of cluster mailbox accommodation as required by the USPS and the Department’s adoption of the “Complete Street Guidelines.”
- Revise language of District Engineer’s certificate of approval statements that will add clarity to its true meaning as stipulated by GS 136-102.6 and help ensure developers and property owners are not misled to assume roads are maintained by NCDOT.

Suggestions from Local Government and Private Industry Partners

- Re-establish local government authority to require a maintenance bond or tweak development bond (additional response from the NCHBA is included in Appendix-2)
- Consider lowering the minimum home density requirements
- Letter of acceptance to petitioner needs to be recorded with register of deeds
- Develop an electronic database to quantify the problem and monitor trends
 - Centerline miles
 - Cost to get roads up to standard
- Develop a user-friendly public-facing database that allows users to accurately determine, by a street address look-up, road maintenance responsibility for a road or a portion of a road
- Local governments implement proactive strategies including annual inspections that encourage developers to petition roads for public maintenance.
- Allow extended repayment period up to 20 years, if county desires using its statutory authority under Article 9 to pay initial costs for bringing roads up to minimum standards for acceptance on the state maintenance system
- Enhance DOT certification letter – needs more clarity regarding road maintenance responsibility
- Study a means to penalize developers who are not following rules without being burdensome for those who are
- Look at a means to reduce/eliminate unlawful encroachments after first inspection

- Clarify road maintenance disclosure statements on real estate transaction documents to provide more consumer protection

Appendix-1

Representation at meeting December 8, 2015 for SB 581 Study Group:

Organization
NC Bar Association- Real Property Section
NC Department of Revenue
Wake County
Pitt County Government
North Carolina Association of REALTORS® (NCAR)
Wake County Government
NC Land Title Association
North Carolina Home Builders Association (NCHBA)
NC Real Estate Commission
NC Secretary of State
Real Estate and Building Industry Coalition
Real Estate Lawyers' Association of NC
NC Association of County Commissioners (NCAACC)
North Carolina Land Title Association (NCLTA)
Rossabi Black Slaughter (Greensboro)
NC Real Estate Commission
NC Association of Realtors
Goldsboro/Wayne Co. Board of Realtors
NCHBA
Fayetteville Reg. Assoc. of Realtors
Attorney – CAI
NCDOT-Division 7
NCDOT-Division 3
NCDOT-Division 10
NCDOT-Division 11
NCDOT- Right-of-Way Branch
NCDOT-Roadway Design

Appendix-2

Response from Pitt County

Mr. Roddenberry –

On behalf of Pitt County Government, we appreciate the opportunity to have provided input during the December 8th meeting, and to comment on the draft report concerning SB 581. The draft report gives sufficient background information concerning the issues surrounding the road addition process and adequately captures concerns voiced at the December meeting. Below are a few comments regarding some of the report's recommendations and suggestions:

- In regards to the recommendation for the elimination of the local Board of Commissioners' approval of State road additions, we are in concurrence as a way of expediting the process. We ask that NCDOT ensure that the affected Counties are appropriately notified following Board of Transportation approval so that required local action can be undertaken (e.g., road sign changes, release of maintenance bonds (if re-enacted), etc.).
- In regards to the recommendation to modify the current housing density requirements, we concur and appreciate NCDOT's willingness to lessen the standards.
- In regards to the suggestion to re-establish local government authority to require maintenance bonds, Pitt County strongly supports such action to ensure that homeowners are protected and developers fulfil their responsibility for street maintenance until accepted by NCDOT, as required by local subdivision regulations. Pitt County performed an extensive study of street maintenance issues in 2012 which led to the enactment of maintenance bond requirements, only to have the authority to require the bonds taken away through HB 721 in 2015.

Thank you again for the opportunity to review the draft report. Please contact us if you have any questions.

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Janis Gallagher
Pitt County Attorney
1717 W. 5th Street
Greenville, NC 27834
252.902.3107 (phone)



Apendix-2 (Continued)

Response from North Carolina Real Estate Commission

Thank you for inviting the Real Estate Commission to participate in this study group. One of the most significant issued identified, in my opinion, was the inability of the public to accurately determine whether or not a road, or portion of a road, was being maintained by the State or not prior to contract or even closing. As was pointed out at the meeting, a party inquiring about a particular road may get a different answer depending on who they call, and even getting any answer is often not easy. The idea of a state-wide database was raised by Bob Ramseur and was probably one of the best ideas that came out of our meeting to provide direct information to the public. The database was to be created and maintained preferably by DOT for the public and industry members to be able to search a property address and determine the correct status of the street serving that particular property. Of course, the legislature would have to fund the database, but it would solve most disclosure problems and at least buyers of “orphaned” roads would be aware of maintenance issues in advance. I do not see a reference to this idea as proposed in the draft report, and having discussed this with the Real Estate Commission yesterday at their meeting, they have directed me to ask that it be included in the report and that I do what I can to continue to promote this idea as this report moves forward.

Janet B. Thoren

Legal Counsel

North Carolina Real Estate Commission

Appendix-2 (Continued)

Response from North Carolina Home Builders Association

Thank you for inviting us to participate. The information was very beneficial.

I have attached a letter that I ask be included with the report. I thought that our meeting was helpful but that the one of the true stakeholders, developers, were not included in the process to help you access the issues. I have also noted that even though maintenance bonds are listed in the report as an option, it was not something that the North Carolina Home Builders Association has not endorsed at this time.

Thank you again for the meeting.

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January 13, 2016

Delbert Roddenberry
Operations Programs Manager
North Carolina Department of Transportation
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Dear Delbert:

Thank you for sharing your draft report in regards to Senate Bill 581. Thank you for inviting us to participate. There were a couple of items that should be clarified regarding the report.

First of all, it should be noted that there were no developers invited to participate in the process. Since developers have firsthand knowledge of the process and participate in the program, a meeting with several of them to get their input on what is working and recommendations for change would be beneficial. At our meeting, it was suggested that there be a meeting with developers who have participated in the program. It appears that this did not take place.

Furthermore, the document highlights several suggestions that were discussed by the groups present. Please note that the representatives from the North Carolina Home Builders Association and some others did not advocate for the reinstatement of maintenance bonds.

I ask that this letter be included in the packet of information that will be provided to all of the legislators.

Sincerely,

Tim Minton

Director of Government Affairs

Cc: Senator Louis Pate, Primary Bill Sponsor

*EUGENE A. GULLEDGE (1964)
C. PHIL ROBINSON, JR. (1966)
*CARL W. JOHNSON (1967)
*JOHN CROSLAND, JR. (1968)
*J.M. DAUGHTRIDGE (1969)
*HOMER BARRETT (1970)
*JAMES W. LESTER (1971)
CHARLES C. McLAURIN (1972)
*J. VAUGHN KLUTTS (1973)

*Deceased

*C.L. REAVIS (1974)
JOHN T. BELL (1975)
*WILLIAM T. BOYD (1976)
LARRY HAUSERICK (1977)
*J. RAY SPARROW (1978)
SHERILL FAW (1979)
MARK E. TIPTON (1980)
M. DUNWOOD STEPHENSON (1981)
J. WATTS ROBERSON (1982)

*NELSON CALLAHAN (1983)
*PAUL D. TROLLINGER (1984)
*RICK BATCHELOR (1985)
BURL LANCE (1986)
LARRY SUMMER (1987)
HERSCHEL REDDING (1988)
JAMES FORD (1989)
STEVE NASH (1990)
HARRIS B. GUPTON (1991)

RUSS DAVIS (1992)
CHUCK MILLER (1993)
CHARLES MULLEN (1994)
ROBERT INGRAHAM (1995)
DAVID PRESSLY, JR. (1996)
DONALD W. BETSWORTH (1997)
GEORGE HENSON (1998)
ROBERT YATKO (1999)
DANNY ADAMS (2000)

JONATHAN ELLIOT (2001)
DON CROOM (2002)
GREG ISENHOUR (2003)
RICK JUDSON (2004)
BUDDY HUGHES (2005)
DAVE STORMONT (2006)
PAUL MULLICAN (2007)
RAY RHODES (2008)
FRANK WIESNER (2009)

LYLE GARDNER (2010)
BILL DALEURE (2011)
ERIK ANDERSON (2012)
J. GARY HILL (2013-14)
SEAN SULLIVAN (2015)

Apendix-2 (Continued)

Response from Roger Bernholz – Coldwell Banker Howard Perry & Walston

Dear Mr. Roddenberry,

I have participated in two groups sponsored or co-sponsored by the North Carolina Association of Realtors that have sought input into the subject that is now the work of this study commission. Particularly the Joint Forms Task Force of the NC Bar Association and NC Realtor's Association has been perplexed in how to help assure that real estate purchasers receive adequate information about the classification of and maintenance of streets and roads upon which their prospective property may front and upon which they would rely for access.

After reviewing the Draft report (V. 2.0-1/11/16) I noted several matters deserving comment.

1. I see no mention of the fundamental impossibility of understanding and applying the existing statute Section 136-102.6 (f), which is intended to be a disclosure provision for real property purchasers. We have noted that this portion of the statute is most noteworthy for the extent to which it is entirely ignored. This may be because of how frequently it is either misunderstood or is simply unknown. The legislature needs to take a careful look at the disclosure requirements they expect and re-draft this to assure that the public is adequately informed about streets and roads serving their new home. Although disclosure is mentioned in the report, the magnitude of this problem for buyers of new homes is greatly under-emphasized. When the NC Bar Association Real Estate Section was presented by our task force with a proposed disclosure form for comment, there was so much controversy about the interpretation of this part of the statute that they suggested that no action be taken until the statute was revised so that it can be understood and easily applied.

2. The report mentions the problems arising from the length of time between commencement of construction and completion of the road and submission for public maintenance. However, it seems to ignore that the natural sequence of residential development invariable means that roads will not be completed, sometimes for years, as houses are still being built, because of the damage ongoing construction will do. The typical strategy is to wait for final asphalt or other top paving and related improvements (regardless of density) well after many houses are sold and buyer/owners have no idea that their "public road" is not accepted for public maintenance. And, of course, the required disclosure is virtually never given anyway. Clearly the report recognizes the problems that arise when the roads are never finished or accepted for maintenance. The report is rather slim, however, on the really difficult situation this creates for owners and sellers as the years go by with the status of the road remaining in limbo and there being no reliable assurance the roads will be completed and accepted for maintenance. This also has a potentially significant chance of greatly affecting values, which are determined/appraised (often erroneously) because of misunderstandings or ignorance about the status of the roads in question.

3. While these issues are being discussed, debated and possibly addressed with new legislation, there remains the issue of properly informing the public about the status of roads and streets, if anyone wants to inquire. Although NCAR has recommended this be an important component of buyer "due diligence", the resources available to investigate this issue and obtain definitive information are virtually unknown and if searched or contacted, the information is often incomplete or unavailable. Obviously, recorded plats showing "public roads" are misleading and misunderstood. Some clear public resource for this information being made known in a simple and straightforward manner is important right away. Realtors, appraisers and others are currently being blamed for a problem not of their making about which complete and reliable information is unavailable or difficult to find. This must be addressed quickly, while other actions are working their way into law.

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Appendix-2 (Continued)

Response from North Carolina Association of Realtors

Change Requests to DOT Draft Report Version 2.0-1/11/16: NCDOT legislative Report on Process for Accepting Subdivision Streets

1. In the stakeholders meeting there was great discussion on the need of a statewide database in order for the DOT and all stakeholders to be aware of what roads are part of the DOT system. There is also reference in multiple sections of the report that there is a need for increased disclosure, but without a database it is unreasonable to place the burden of disclosure without providing a tool for accessing that information.
2. Page 3 speaks about certificates of approval and letters and we believe that further clarification on the definition of the terms in the process as well as an accurate time frame for these denotations is necessary.
3. Some analysis needs to be taken on the voluntary nature of the road take over process. This is where many of the inherent problems have originated and looking at different options for take over need to be addressed.
4. Page 6 must be changed as it is incorrectly stating that “the ability to market and sell real estate may be affected by reduced willingness of lenders to offer financing of property on roads that are privately maintained.” There is no issue in financing with roads that are privately maintained. The issue in gaining financing on property is when a road is in a limbo or “orphaned” and no entity with the responsibility of its maintenance.
5. The portions on density requirement and condition on page 7 gave us concerns as to the vagueness of “sufficient traffic volume.” On page 5 further clarification is needed on the DOT flexibility mentioned in the phrase: “substantial flexibility to apply reasonable adjustments when minimum requirements cannot be met.”

Good afternoon, Delbert.

Appendix 3

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

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

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

(c) The right-of-way and design of streets designated as public shall be in accordance with the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system. If a municipal or county subdivision control ordinance is in effect in the area proposed for subdivision, the map or plat required by this section shall not be recorded by the register of deeds until after it has received final plat approval by the municipality or county, and until after it has received a certificate of approval by the Division of Highways as herein provided as to those streets regulated in subsection (g). The certificate of approval may be issued by a district engineer of the Division of Highways of the Department of Transportation.

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

(e) No person or firm shall place or erect any utility in, over, or upon the existing or proposed right-of-way of any street in a subdivision to which this section applies, except in accordance with the Division of Highway's policies and procedures for accommodating utilities on highway rights-of-way, until the Division of Highways has given written approval of the location of such utilities. Written approval may be in the form of exchange of correspondence

until such times as it is requested to add the street or streets to the State system, at which time an encroachment agreement furnished by the Division of Highways must be executed between the owner of the utility and the Division of Highways. The right of any utility placed or located on a

proposed or existing subdivision public street right-of-way shall be subordinate to the street right-of-way, and the utility shall be subject to regulation by the Department of Transportation. Utilities are defined as electric power, telephone, television, telegraph, water, sewage, gas, oil, petroleum products, steam, chemicals, drainage, irrigation, and similar lines. Any utility installed in a subdivision street not in accordance with the Division of Highways accommodation policy, and without prior approval by the Division of Highways, shall be removed or relocated at no expense to the Division of Highways.

(f) Prior to entering any agreement or any conveyance with any prospective buyer, the developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement shall fully and completely disclose the status (whether public or private) of the street upon which the house or lot fronts. If the street is designated by the developer and seller as a public street, the developer and seller shall certify that the right-of-way and design of the street has been approved by the Division of Highways, and that the street has been or will be constructed by the developer and seller in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway system. If the street is designated by the developer and seller as a private street, the developer and seller shall include in the disclosure statement an explanation of the consequences and responsibility as to maintenance of a private street, and shall fully and accurately disclose the party or parties upon whom responsibility for construction and maintenance of such street or streets shall rest, and shall further disclose that the street or streets will not be constructed to minimum standards, sufficient to allow their inclusion on the State highway system for maintenance. The disclosure statement shall contain a duplicate original which shall be given to the buyer. Written acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of the delivery thereof.

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

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

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

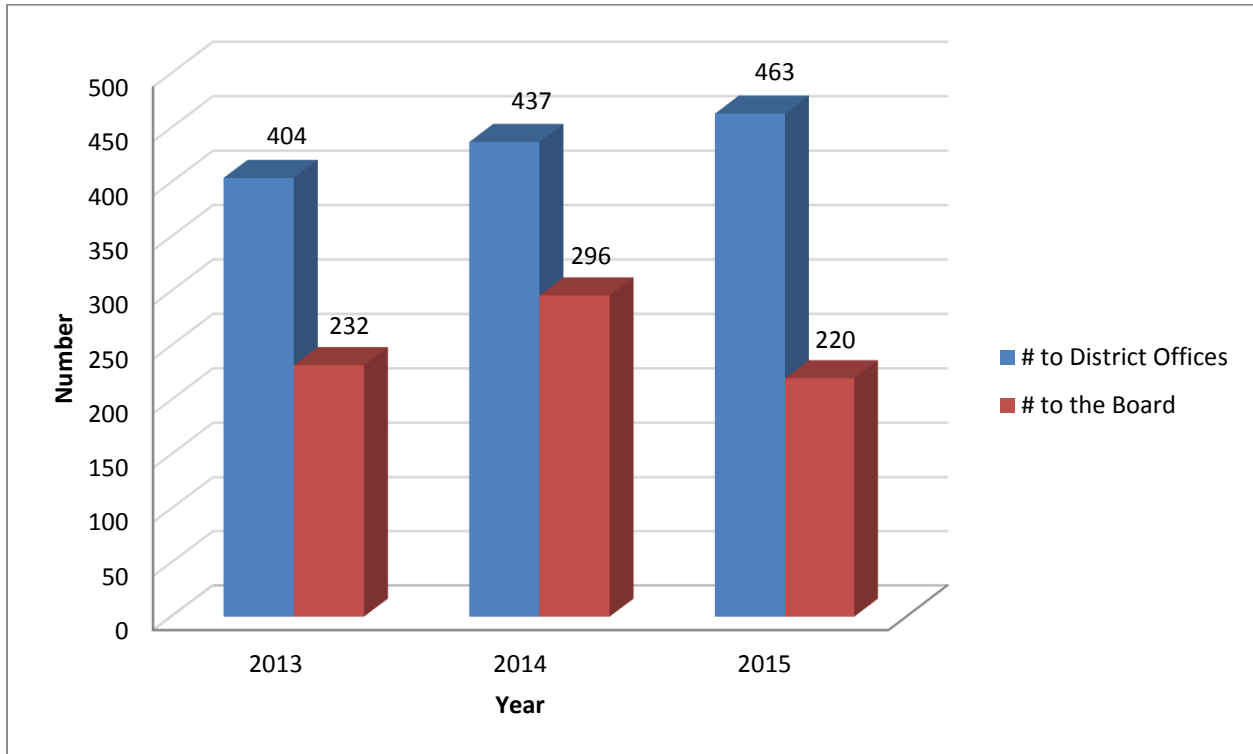
(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a transportation corridor official map established by the Board of Transportation only if the subdivision conforms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

(k) A willful violation of any of the provisions of this section shall be a Class 1 misdemeanor. (1975, c. 488, s. 1; 1977, c. 464, ss. 7.1, 8; 1987, c. 747, s. 21; 1993, c. 539, s. 996; 1994, Ex. Sess., c. 24, s. 14(c); 1997-309, s. 4; 1998-184, s. 3.)

Appendix-4

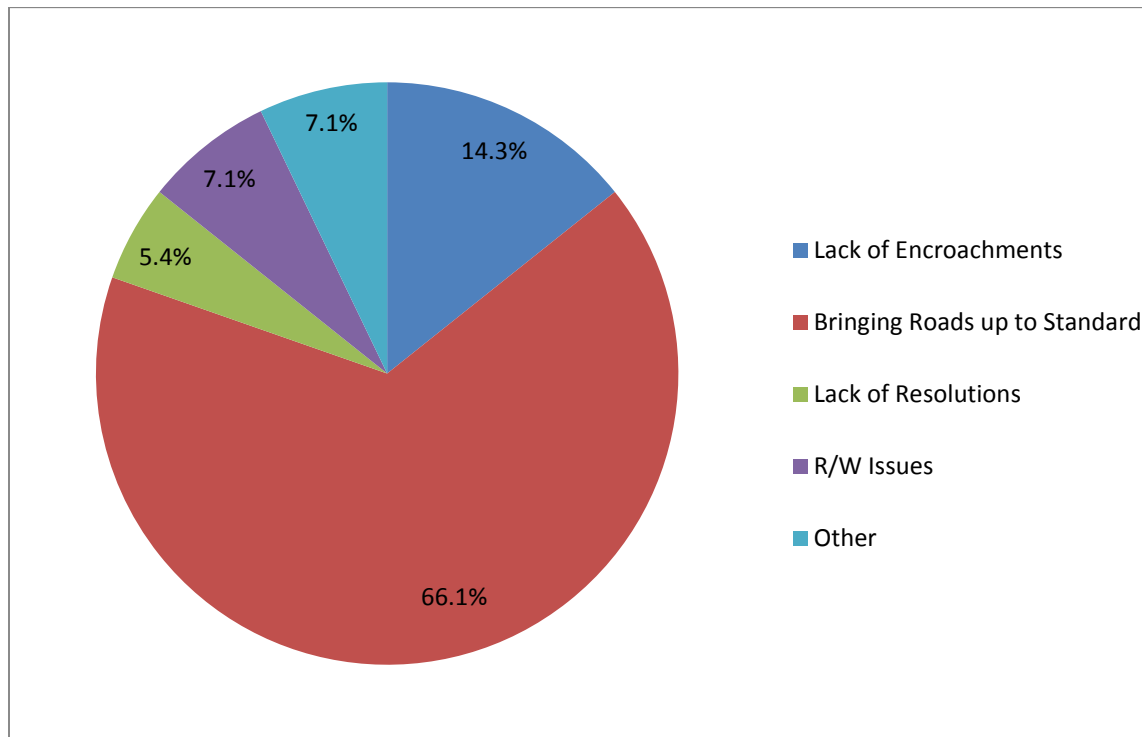
Data represents pool of field offices on quantity of road addition packages that are submitted to local NCDOT offices.

Road Addition Packages:



Appendix-4 (Continued)

Reasons for Delay in Road Addition Process



Road Deficiencies that Delay the Road Addition Process

