Coates' Canons Blog: Land Subdivision Ordinances: The Regulatory Exceptions

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Last month my blog concerned the way the term “subdivision” is defined in the North Carolina General Statutes for purposes of city and county land subdivision regulation. This month’s blog is a follow-up and concerns the four exceptions to the scope of subdivision regulation set forth in G.S. 160A-376 and G.S. 153A-335. Are these exceptions mere minor loopholes (for these of you prone to analogies from the art of knitting), or can you drive a stock trailer through the gap in the regulatory fence (for those of you prone to analogies from cattle ranching)? One particular exception is wide enough for a small pickup truck, but most of the rest are relatively minor in impact.

Let’s review the county statute (G.S. 153A-335) and the city statute (G.S. 160A-376).

First, a procedural issue. If a division of land is exempt from regulation, how is the local government notified of the division in order to confirm that it is, in fact, exempt? May a county or city require that someone who wishes to take advantage of one of the exceptions prepare a plat of the proposed division that the local government may review to determine whether the division is exempt or not? The answer is no. G.S. 153A-331(b) and G.S. 160A-372(b) provide in part that an ordinance may require that a plat be prepared, approved, and recorded “whenever any subdivision of land takes place.” By implication, a plat may not be required if the division is outside the scope of the definition of “subdivision” or is exempt from it. As a result, many exempt divisions are accomplished by deed without the benefit of a recorded plat. If the sponsor does prepare a plat, then a city or county may provide a “certificate of no approval required” or stamp the plat as an “exempt subdivision” so that it may be recorded. (See G.S. 47-30 (f)(11)).

The Recombination Exception (No. 1).

The first exception is known as the “recombination” exception. Note that it applies to “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)(city) as shown in its subdivision regulations.” (Underlining added.) If two or more whole lots are merged to create a larger lot, then this first exception does not apply. Why? Because in such a case there is no subdivision of land in the first place, and no need for a statutory exception. The merger of lots (sometimes referred to as a reversion to acreage) can best be accomplished by the preparation and recording of a plat. Since the survey involved is of existing parcels and does not create or change an existing street (see G.S. 47-30(f)(11) (c)(1)), then a surveyor’s certificate to that effect is sufficient to allow the plat to be recorded.

The first exception applies to the divisions of land that are created when portions of lots are added to or subtracted from existing lots. These “existing lots” need not have been platted. They need only have been subdivided (by deed or by plat) and recorded. Prior to 1979, eligible lots had to have been platted as well as recorded.

Recombination may occur only if the number of lots is not increased. But wait a minute. How is this possible? Suppose two lots each 100 feet in width lie side by side. The owner of both lots intends to take a twenty (20)-foot strip along the boundary from one lot and add it to the other so to make an 80-foot-lot and a 120-foot lot. At some stage of the process doesn’t that involve three lots (an 80-foot lot, a 20-foot lot, and a 100-foot lot)? Yes, but the law is concerned only about the final result. A plat can illustrate the 80-foot lot and the 120-foot lot after the recombination, and recombination deeds may refer to such a plat.

Qualification under the recombination exception requires that all of the resulting lots must meet the current standards of the ordinance. Suppose a number of old shotgun lots along the coast were platted at 50 feet in width. Suppose also that today the ordinance requires lots of 100 feet in width. May a developer recombine lots so that the new lots are 80 feet in width, a considerable improvement some might think when compared to the old plat? The answer is no. The nonconforming lots of record must be reconfigured to conform in all respects with present subdivision ordinance

standards, or the recombination may not occur at all.

One puzzle concerns what it means for “the resultant lots” to meet “the standards of the (county)(city) as shown by its subdivision regulations.” The standards that must be met in connection with the first exception (and the fourth) are lot-related. Not all standards in a subdivision ordinance apply to lots (some apply to streets and other improvements, open space, general topography, etc.). Standards related to lot size, width, shape, slope, and street access are most likely the ones that will apply.

Another final principle is clear: lots must meet the standards of the subdivision ordinance, not the zoning ordinance. For communities with a unified development ordinance, it will be necessary to sort out whether a particular standard derives from one authority or the other. As last month’s blog makes clear, lots that are exempt from subdivision regulations are not necessarily exempt from zoning. The sponsor of an exempt division ignores zoning requirements when creating exempt lots at its peril.

The 10-Acre Exception (No. 2).

The second exception is known as the “10-acre exception.” It exempts the “division of land into parcels greater than 10 acres if no street right-of-way dedication is involved.” Let’s start with the word “dedication.” North Carolina courts have held that the term implies a grant of a property interest to the public. Conveying a series of private drives or driveway easements to lot owners or a homeowners’ association does not amount to a “dedication.” Well, then, what if the local ordinance requires that all new subdivision streets be offered for dedication to the city or the North Carolina Department of Transportation? That makes no difference. The subdivision ordinance itself cannot be the source of a requirement that makes an otherwise-exempt division subject to regulation. If a subdivider proposes new private streets, then one of the two requirements for exemption is met because “no street right-of-way dedication is involved.”

The other requirement for the exception is that the activity involve the division of land into parcels greater than ten acres. This feature is not particularly significant in areas around most municipalities. However, this exception is the source of some consternation among rural counties where activity to divide recreational or second home lots into sizes just above threshold (10.1 acres) can be substantial. What if a subdivision includes lots both greater than and less than ten acres in size? Are some of the lots exempt from review while others are not? Viewing the subdivision as a unified whole, that reading of the statute seems strained. A more reasonable reading is that this exception applies only when all of the lots in the subdivision exceed ten acres in size. In any event the 10-acre exception is often viewed as a source of regulatory avoidance and possible abuse.

The Public Right-of-Way Acquisition Exception (No. 3).

The third exception, which applies to the public acquisition by purchase of strips of land for widening or opening streets or public transportation system corridors is largely self-explanatory.

The Two-into-Three Exception (No. 4).

The fourth and final exception is for 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)(city) as shown by its subdivision regulations.” This is the “two-into-three” exemption. A key interpretation involves the language “a tract in single ownership the entire area of which is no greater than two acres . . .” “Single ownership” in this context does not refer to whether the parcel is owned by a corporation, by several persons, or by a single individual. Instead it means that all of the contiguous land owned by the qualifying owner does not exceed two acres.

Suppose that Brown owns an eleven-acre tract and divides the parcel into a 9.25-acre tract and a 1.75-acre. That division is a subdivision subject to regulation. Suppose that Brown sells the 1.75-acre parcel to Jones and retains the 9.25-acre parcel. Any further subdivision by Brown will be subject to subdivision regulation. However, Jones may qualify for the two-into-three exception and divide the land again, if he owns no additional land that is contiguous to the 1.75-acre parcel, and he meets the other requirements of the exception. What’s more, Brown may then divide the 9.25-acre parcel into a sub-two-acre parcel and a larger parcel; that division is not exempt. However, if he sells the smaller parcel, the buyer of the smaller parcel can take advantage of the two-into-three exception just as Jones did. Thus the two-into-three exception can

be enjoyed by more than one purchaser of land from the same parent tract.

So, there you are. Four exceptions to the definition of “subdivision” limit the regulatory scope of local land subdivision ordinances. If you have read to the end of this blog, interpretation of the exceptions should be more simple and less taxing.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-335
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-376
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-331
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-372
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=47-30