

**AN ORDINANCE OF THE JACKSON COUNTY BOARD OF COMMISSIONERS  
INSTITUTING A MORATORIUM ON THE CREATION OF CERTAIN  
SUBDIVISIONS WITHIN JACKSON COUNTY, NORTH CAROLINA**

**WHEREAS**, the Jackson County Board of Commissioners at its regularly scheduled meeting of \_\_\_\_\_, after due advertisement as by law required, conducted a public hearing for the purpose of gathering information and taking appropriate action within the confines of applicable law regarding imposition of a moratorium on the creation of certain subdivisions; and

**WHEREAS**, the Board of Commissioners makes the following findings of fact:

- A. Jackson County is in the heart of the Great Smoky Mountains and the Cherokee Nation, situated in the Southern Appalachian Region that is renowned for its natural beauty, rural landscapes, strong communities, and a wealth of historic and cultural resources. These qualities are drawing more people than ever to the region, which is now one of the fastest growing in North Carolina.
- B. Between 1990 and 2000 the population of Jackson County increased by 23.4%, a figure which greatly exceeds the national growth rate of 13.2%. Over 90% of the Jackson County population increase was due to immigration. The County is projected to grow by another 17.2% between 2000 and 2010.
- C. The problem is not that the county is growing but that it is growing without land use, infrastructure and transportation policies to guide its development. The result is development that promotes sprawl, traffic congestion, air pollution, and the loss of prime agricultural and forest land due to inefficient and excessive land consumption. This new growth has already resulted in increased strains on the county's manmade infrastructure and natural resources. Even now, roadways are becoming congested. Health and governmental services are struggling to keep pace with demand. Pasture lands are disappearing and once uninhabited mountain slopes and ridgetops are being developed. Growth-related conflicts will continue to evolve as more people make their home in the county.
- D. This population increase has resulted in an explosive increase in the number of residential subdivisions. Between 2000 and 2005, nearly 5,500 new lots were created in 25 subdivisions in Jackson County. Inasmuch as Jackson County has no subdivision ordinance, these subdivisions have been created without any public review and analysis as to the adequacy of their roads and their impacts on public services and facilities and the natural environment.
- E. At the same time, Jackson County has seen a precipitous decline in the number of farms and the amount of land devoted to farming. According to the United States Department of Agriculture (USDA), the number of farms in Jackson

County declined from 280 to 248 during the five-year period between 1997 and 2002. Acreage in farms during the same period decreased from 20,707 to 16,399. This represents a decrease in farms of 11.4% and farm acreage of 20.8%.

- F. Jackson County has recently adopted a Land Development Plan intended to guide growth in the county. Included in that document were the following goals: (a) explore strategies to create an environment for sustainable economic growth, especially expanded employment opportunities in high-tech industries; (b) support efforts to ensure that infrastructure is adequate and placed to guide development; (c) promote a safe and efficient transportation system; and (d) support efforts to preserve the county's rural character while protecting private property rights. Jackson County desperately needs a comprehensive set of subdivision regulations to help meet these goals and to ensure that new development is consistent with Jackson County community standards.
- G. In order to meet the goals set forth above, subdivision regulations will need to be enacted that address, at a minimum, the following: road standards; stormwater drainage; flood protection; lighting; design standards; open space requirements; the adequate design of lots and subdivisions; the maintenance of common areas of subdivisions; water supply and sewer; stream buffer protection; steep slope protection and fire protection.
- H. Except as limited herein, the moratorium will prohibit the subdivision of land for a limited period which is deemed the minimum necessary to adopt subdivision regulations. A number of exceptions are included in order not to work a hardship on certain types of subdivisions not expected to have an adverse impact on those resources addressed herein. The moratorium will serve to protect the County's natural resources and manmade infrastructure on an interim basis until such time as a comprehensive set of subdivision regulations can be put in place to address the issues articulated in these findings.
- I. The moratorium imposed by this Ordinance will terminate six months from the date of adoption of the moratorium. The Board of Commissioners believes this is the minimum amount of time necessary to adopt subdivision regulations adequate to address the issues articulated herein. Included in this time frame is the development of the regulations by the planning board, an opportunity for public review and comment, and conducting one or more public hearings. The only alternative to imposing a moratorium on the subdivision of land is to simply allow the continued practice of the subdividing of lands without comprehensive review as to the impacts of such activity on the public health and safety and the planning goals and objectives of Jackson County. In light of the number of new subdivisions being platted each year in Jackson County and the impact of such subdivisions on the people of Jackson County, the Board of Commissioners believes such an alternative to be unacceptable.

J. Jackson County has already retained counsel who specializes in land use law and is experienced in representing local governments. Counsel has prepared a draft subdivision ordinance, and the Jackson County Planning Board has begun its review of that draft. The Board of Commissioners has instructed the Planning Board to expedite its review process and to provide a recommended subdivision ordinance as soon as possible. Accordingly, the Planning Board has committed to an accelerated meeting schedule. Once the Planning Board forwards its recommended draft to the Board of Commissioners, the document will immediately be made available for public comment. At the conclusion of the public comment period, which is expected to be 30 days, the ordinance will be scheduled for public hearing.

**NOW, THEREFORE,** the following is hereby ordained by the Jackson County Board of Commissioners:

- I. *AUTHORITY.* This Ordinance is enacted pursuant to the authority of Article 18 of Chapter 153A of the North Carolina General Statutes and N.C.G.S. §153A-121.
- II. *JURISDICTION OF ORDINANCE.* This Ordinance shall apply to all of Jackson County except for those areas included within incorporated municipalities and those areas within the Qualla Reservation, as provided by law.
- III. *DEFINITION OF SUBDIVISION.* For purposes of this ordinance, the term "subdivision" includes all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development, whether immediate or future, and includes all divisions of land involving the dedication of a new street or a change in existing streets; provided that the following shall not be included within this definition nor be subject to the moratorium imposed by this ordinance:
  - (A) The combination or recombination of portions of previously platted lots where 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 this ordinance.
  - (B) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.
  - (C) The public acquisition by purchase of strips of land for widening or opening of streets.
  - (D) 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 where the resultant lots are equal to or exceed the standards of the county, as shown in this ordinance.

IV. *IMPOSITION OF MORATORIUM ON THE SUBDIVISION OF LAND.* There is hereby imposed a moratorium on the subdivision of land, as defined herein, except as provided in Section VI, below. It shall be a violation of this Ordinance to create or cause to be created any subdivision, whether by means of the recording of a plat or by metes and bounds description, or by any other means, unless such subdivision falls within the terms of one of the exceptions specified in Section VI. This moratorium shall continue in full force and effect for a period of six months from the effective date of the Ordinance unless sooner terminated by the adoption of a subdivision ordinance or other act of the Board of Commissioners.

The subdivision of land in violation of this Ordinance shall constitute a misdemeanor pursuant to N.C.G.S. §14-4 and shall subject the offenders to a penalty of \$500.00.

V. *RECORDATION OF PLATS.* The register of deeds for Jackson County shall not accept for recordation any subdivision plat which is in violation of the Ordinance.

VI. *LIMITATIONS ON MORATORIUM.* This moratorium shall not apply to the following:

- (1) Any project for which a valid building permit issued pursuant to N.C.G.S. 153A-357 is outstanding.
- (2) Any development determined to be vested pursuant to N.C.G.S. 153A-344.1.
- (3) Any development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative approval.
- (4) Any preliminary or final subdivision plats that have been accepted for review by the County prior to the call for the public hearing to adopt the moratorium.
- (5) The division of land for the purpose of conveying a single lot or parcel to each tenant in common, all of whom jointly inherited the land by intestacy or will.
- (6) The division of land into no more than two parcels for the purpose of conveying at least one of the lots to a grantee who would have been an

heir of the grantor if the grantor had died intestate immediately prior to the conveyance.

- (7) The division of land pursuant to an order of a court of the general court of justice.
- (8) The division of land for cemetery lots or burial plots.
- (9) The division of land for the purpose of changing the boundary lines between adjoining property owners where no new road right-of-way dedication is involved.
- (10) Conveyance to heirs for the purpose of dividing real estate among such heirs.

**VI. SEVERABILITY.** If any portion of this Ordinance is deemed unconstitutional or unenforceable by a court of competent jurisdiction, the remainder shall remain in full force and effect.

**VII. ENFORCEMENT.** This ordinance may be enforced by any legal and equitable remedies including, but not limited to, injunctive relief.

**VIII. EFFECTIVE DATE.** This Ordinance shall be in full force and effect from and after adoption.

ADOPTED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007, BY THE JACKSON COUNTY BOARD OF COMMISSIONERS.

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Clerk to the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney