

By: Mowery

H.B. No. 2178

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the governing body of a municipality to change previously adopted zoning regulations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 211.003, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding any other provision of this subchapter, the governing body of a municipality may not change the zoning classification of a property that results in a diminution of more than 10 percent of the property's value unless:

(1) the owner of the property:

(A) waives any right to object to the proposed change; or

(B) fails to file with the governing body before the 90th day after the date the governing body notifies the property owner of the date the governing body will vote on the proposed change under Section 211.006:

(i) a written statement objecting to the proposed change under this section; and

(ii) a copy of an appraisal report by a state certified or licensed appraiser that states the appraiser's opinion of the value of the property before and after the proposed change in the zoning classification; or

(2) the governing body compensates the property owner

1 for the diminution in value resulting from the change as determined  
2 by:

- 3 (A) an agreement with the property owner; or  
4 (B) a proceeding governed by Chapter 21, Property  
5 Code.

6 SECTION 2. Subchapter A, Chapter 21, Property Code, is  
7 amended by amending Section 21.003 and adding Section 21.004 to  
8 read as follows:

9 Sec. 21.003. DISTRICT COURT AUTHORITY. A district court  
10 may determine all issues, including the authority to condemn  
11 property and the assessment of damages, in any suit filed under this  
12 chapter and any suit filed:

13 (1) in which this state, a political subdivision of  
14 this state, a person, an association of persons, or a corporation is  
15 a party; and

16 (2) that involves a claim for property or for damages  
17 to property occupied by the party under the party's eminent domain  
18 authority or for an injunction to prevent the party from entering or  
19 using the property under the party's eminent domain authority.

20 Sec. 21.004. PROCEEDINGS REGARDING CHANGE OF ZONING  
21 CLASSIFICATION. (a) A proceeding filed under this chapter for the  
22 purpose of determining the diminution of a property's value under  
23 Section 211.003(d), Local Government Code, is a condemnation or  
24 eminent domain proceeding under this chapter for the sole purpose  
25 of satisfying the procedures required by this chapter.

26 (b) In a proceeding described by Subsection (a), the  
27 condemnor or acquiring entity is the municipality, the condemned

1 property is the property for which the zoning is to be reclassified,  
2 and the condemnation is the change in the property's zoning  
3 classification.

4 (c) The special commissioners or district court, as  
5 appropriate, may determine all issues related to a proceeding under  
6 this section.

7 (d) Not later than the 10th day before the date the  
8 condemnation proceeding begins, each party shall provide to the  
9 other parties a copy of each appraisal report supporting that  
10 party's opinion of any diminution of value.

11 (e) The municipality may change the property's zoning  
12 classification after the special commissioners have made an award  
13 as prescribed by Section 21.021.

14 SECTION 3. Subchapter B, Chapter 21, Property Code, is  
15 amended by adding Section 21.0121 to read as follows:

16 Sec. 21.0121. CONDEMNATION PETITION RELATING TO ZONING  
17 CLASSIFICATION. (a) If the governing body of a municipality or a  
18 political subdivision of this state wants to change a property's  
19 zoning classification but is unable to agree with the owner of the  
20 property on the amount of damages, the condemning entity may begin a  
21 condemnation proceeding by filing a petition in the proper court.

22 (b) The petition must:

23 (1) describe the property to be reclassified under a  
24 different zoning classification;

25 (2) state the purpose for which the property's zoning  
26 is to be changed;

27 (3) state the name of the owner of the property if the

1 owner is known; and

2 (4) state that the entity and the property owner are  
3 unable to agree on the damages.

4 SECTION 4. The heading of Section 21.021, Property Code, is  
5 amended to read as follows:

6 Sec. 21.021. POSSESSION PENDING LITIGATION; ZONING  
7 RECLASSIFICATION.

8 SECTION 5. Section 21.021(a), Property Code, is amended to  
9 read as follows:

10 (a) After the special commissioners have made an award in a  
11 condemnation proceeding, except as provided by Subsection (c) of  
12 this section, the condemnor may take possession of the condemned  
13 property or change the zoning classification of the property  
14 pending the results of further litigation if the condemnor:

15 (1) pays to the property owner the amount of damages  
16 and costs awarded by the special commissioners or deposits that  
17 amount of money with the court subject to the order of the property  
18 owner;

19 (2) deposits with the court either the amount of money  
20 awarded by the special commissioners as damages or a surety bond in  
21 the same amount issued by a surety company qualified to do business  
22 in this state, conditioned to secure the payment of an award of  
23 damages by the court in excess of the award of the special  
24 commissioners; and

25 (3) executes a bond that has two or more good and  
26 solvent sureties approved by the judge of the court in which the  
27 proceeding is pending and conditioned to secure the payment of

1 additional costs that may be awarded to the property owner by the  
2 trial court or on appeal.

3 SECTION 6. Section 21.047, Property Code, is amended by  
4 amending Subsection (a) and adding Subsection (d) to read as  
5 follows:

6 (a) Special commissioners shall ~~[may]~~ adjudge the costs of  
7 an eminent domain proceeding as follows: ~~[against any party.]~~

8 (1) if ~~[if]~~ the commissioners award greater damages  
9 than the condemnor offered to pay before the proceedings began or if  
10 the decision of the commissioners is appealed and a court awards  
11 greater damages than the commissioners awarded, the condemnor shall  
12 pay ~~[all]~~ costs and reasonable and necessary attorney's fees; or ~~[.]~~

13 (2) if ~~[if]~~ the commissioners' award or the court's  
14 determination of the damages is less than or equal to the amount the  
15 condemnor offered before proceedings began, the court may require  
16 the property owner to ~~[shall]~~ pay the costs.

17 (d) This section governs a proceeding filed under this  
18 chapter, including a proceeding filed for the purpose of  
19 determining the diminution of a property's value under Section  
20 211.003(d), Local Government Code.

21 SECTION 7. Subchapter C, Chapter 21, Property Code, is  
22 amended by adding Section 21.0485 to read as follows:

23 Sec. 21.0485. PAYMENT OF DAMAGES BY CONDEMNOR. (a) This  
24 section applies to a property owner who prevails in a suit filed  
25 under this chapter, including a proceeding filed under this chapter  
26 for the purpose of determining the diminution of a property's value  
27 under Section 211.003(d), Local Government Code.

1       (b) The condemnor shall pay the full amount of the court or  
2 commissioners' award not later than the second anniversary of the  
3 date the judgment is final or all appeals have been exhausted,  
4 whichever is later.

5       SECTION 8. Subchapter D, Chapter 21, Property Code, is  
6 amended by adding Section 21.066 to read as follows:

7       Sec. 21.066. PREVAILING PROPERTY OWNER; DEVELOPMENT OF  
8 CERTAIN PROPERTY. Instead of enforcing a judgment under this  
9 chapter, a property owner who prevails in a proceeding filed under  
10 this chapter for the purpose of determining the diminution of a  
11 property's value under Section 211.003(d), Local Government Code,  
12 may develop the property under the zoning rules that applied to the  
13 property before the change in the property's zoning classification.  
14 The municipality shall authorize the development according to  
15 regulations prescribed by that zoning classification and waive any  
16 fee associated with the development of the property, including  
17 application and impact fees, and any pro rata changes.

18       SECTION 9. (a) Sections 21.0485 and 21.066, Property Code,  
19 as added by this Act, apply to a suit or proceeding filed under  
20 Chapter 21, Property Code, that is pending in a trial or appellate  
21 court on September 1, 2003.

22       (b) This Act takes effect September 1, 2003.