

BILL ANALYSIS

C.S.H.B. 1835
By: Talton
Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2004, the Texas Supreme Court, in Town of Flower Mound v. Stafford Estates, Ltd. Partnership, 135 S.W.3d 620 (Tex. 2004), issued a significant decision regarding Texas law relating to exactions/dedications imposed by governmental entities as conditions to issuing permits for the development of property. The court restated and followed the rules established in two landmark U.S. Supreme Court cases, Nollan v. California Coastal Com'n, 483 U.S. 825 (1987), and Dolan v. City of Tigard, 512 U.S. 374 (1994), in ruling that exactions/dedications that are made as a condition of development permit approvals which do not (1) bear an essential nexus to the substantial advancement of some legitimate governmental interest, and (2) are not roughly proportional to the projected impact of the proposed development, violate federal and state constitutional provisions prohibiting the taking of private property for public use without just compensation. The Texas Supreme Court also ruled that state law does not entitle a developer to recover attorney's fees or expert witness fees.

HB 1835 codifies the decision made in Stafford Estates, that a developer may dispute a condition of approval for a property development project that requires a developer to bear a portion of the costs of municipal infrastructure improvements, and establishes that the developer may recover attorney's fees and expert witness fees when a developer prevails in an appeal.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Adds Section 212.904 to the Local Government Code to establish that a developer may dispute a condition of approval for a property development project that requires a developer to bear a portion of the costs of municipal infrastructure improvements beyond the municipalities minimum adopted standards for on-site development. The developer's portion of the cost may not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development. The developer may not be required to waive the right of appeal as a condition of approval for a development project.

A developer who disputes the determination by the municipality may appeal to the governing body of the municipality and may present testimony and evidence under procedures adopted by that municipality. A developer may then appeal the determination of the governing body to a county or district court of the county. The party that prevails in an appeal is entitled to applicable costs and reasonable attorney's fees, including expert witness fees.

Finally, the bill defines prevailing party as it applies to the new section to make certain a party may receive attorney and expert witness fees even if there is not a judgment, but court proceeding have advanced to the point where these fees are warranted.

EFFECTIVE DATE

This Act takes effect September 1, 2005 or immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute requires that a municipality make a determination on an appeal thirty days after hearing the appeal and that a developer may appeal the decision of the municipality within thirty days of final determination. In addition, the substitute defines prevailing party as it applies to the new section to make certain a party may receive attorney and expert witness fees even if there is not a judgment, but court proceeding have advanced to the point where these fees are warranted.