

BILL ANALYSIS

C.S.H.B. 3232
By: Olivo
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In the Houston area, subdivision golf courses are a popular type of neighborhood. This type of development involves creating residential lots adjacent to a golf course that winds through the community. When the golf course and the home sites are developed simultaneously under a single development plan, the home buyers are charged a premium price for the prestige of living in a golf course community; these buyers have a reasonable expectation that the land developed as a golf course will continue as a golf course.

In recent years, some owners of subdivision golf courses have considered redeveloping their land by converting the golf course into tracts for apartments, office buildings or warehouses. But this type of redevelopment, and even the public announcement of considering such a redevelopment, has a serious detrimental effect on the property values of the whole subdivision. When the property values deteriorate the homeowners suffer economic loss.

Older citizens who invested in a homestead environment where they could live out the rest of their lives depend on their home equity for part of their retirement savings. Young families want to raise their children where they can run and play and explore in open spaces and partake in activities that keep their kids busy and off the streets. Municipalities count on their tax base (as represented by the high value of the existing homes) not to lose its' value.

Currently, there is no process for neighboring homeowners to be notified of a proposed redevelopment of a subdivision golf course, nor is there currently any requirement for a public hearing on the golf course owner's proposed new plat for the redevelopment.

The purpose of C.S.H.B. 3232 is to make redevelopment of a subdivision golf course conform to an orderly process while not prohibiting such a redevelopment.

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

This bill amends Chapter 212, Local Government Code, by adding Section 212.0155 that is titled ADDITIONAL REQUIREMENTS FOR CERTAIN REPLATS AFFECTING A SUBDIVISION GOLF COURSE.

This bill makes this new Section 212.0155, Local Government Code, applicable to land located wholly or partly in the corporate boundaries of certain municipalities (those that have a population of more than 50,000 and are located wholly or partly in a county with either a population of more than three million or a population of more than 275,000 that is adjacent to a county with a population of more than three million).

This bill defines "management certificate", "new plat", "property owners' association", "restrictive covenant", "restrictions," "subdivision," "owner", and "subdivision golf course". For example, the definition of "subdivision golf course" refers to an area of land that has been used as a golf course or country club at any time in the five years preceding the date on which a new plat for the land is filed and that is or was, within the past five years, zoned as a community facility; or was originally developed as both a golf course or a country club and an integral part

of a common scheme of development for a predominantly residential single-family development project.

This bill requires that in addition to any other requirement of Chapter 212, Local Government Code, a new plat conform to the requirements of this new section if any of the area subject to the new plat is a subdivision golf course, and provides that the exception in Section 212.004(a), Local Government Code, excluding divisions of land into parts greater than five acres for platting requirements does not apply to a subdivision golf course.

This bill prohibits a new plat that is subject to the new Section 212.0155, Local Government Code, from being approved until each municipal authority reviewing the new plat conducts a public hearing on the matter at which the parties in interest and citizens have an adequate opportunity to be heard, present evidence, and submit statements or petitions for consideration by the municipal authority. This bill authorizes the number, location, and procedure for the public hearings to be designated by the municipal authority for a particular hearing, and authorizes the municipal authority to abate, continue, or reschedule, as the municipal authority considers appropriate, any public hearing in order to receive a full and complete record on which to make a decision. In addition, this bill provides that, if the new plat would otherwise be administratively approved, the municipal planning commission is the approving body for the purposes of this section.

This bill prohibits the municipal authority from approving the new plat without adequate consideration of testimony and the record from the public hearings and making the findings required by the new Section 212.0155(k), Local Government Code. This bill also provides that Sections 212.009(a) and (b), Local Government Code, do not apply to the approval of plats under this new Section 212.0155, Local Government Code.

This bill requires that notice of the initial hearing required by the new Section 212.0155(d), Local Government Code, be given before the 15th day before the date of the hearing by three methods. These three methods are first, by publishing notice in an official newspaper or a newspaper of general circulation in the county in which the municipality is located; second, by providing written notice, with a copy of this section attached, by the municipal authority responsible for approving plats to certain property owners' association and owners of lots (such written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in the United States mail); and, third, by any other manner determined by the municipal authority to be necessary to ensure that full and fair notice is provided to all owners of residential single-family lots in the general vicinity of the subdivision golf course. This bill requires the cost of providing these notices be paid by the plat applicant.

This bill requires that in order to be approved the proposed new plat must receive the affirmative vote of at least three-fifths of the members of the municipal planning commission or governing body if written instruments protesting the proposed new plat are signed by the owners of at least 20 percent of the area of the lots or land immediately adjacent to the area covered by a proposed new plat and extending 200 feet from that area and are filed with the municipal planning commission or the municipality's governing body before the conclusion of the public hearings. This bill provides that in computing this percentage of land area that the area of streets and alleys is included.

This bill prohibits the municipal planning commission or the municipality's governing body from approving a new plat under this new Section 212.0155, Local Government Code, unless it makes certain determinations. These determinations include that there is adequate existing or planned public infrastructure to support the future development of the subdivision golf course, that based on existing or planned facilities, the development of the subdivision golf course will not have a materially adverse effect on traffic, parking, or drainage, water, sewer, or other utilities, that the development of the subdivision golf course will not have a materially adverse effect on existing single-family property values, that the new plat is consistent with all applicable land use regulations and restrictive covenants and the municipality's land use policies as described by the municipality's comprehensive plan or other appropriate public policy documents, and that if any portion of a previous plat reflected a restriction on the subdivision golf course that either that restriction is not an implied covenant or easement benefiting adjacent residential properties or if the restriction is an implied covenant or easement benefiting adjacent residential properties, the

covenant or easement is legally released. This bill authorizes, for the purpose of these findings, the municipal authority to assume as the municipal authority determines to be appropriate the development of the subdivision golf course will be for either any currently permitted use under applicable zoning or restrictive covenants or residential single-family development compatible with the residential single-family development in the neighborhood benefited by the subdivision golf course.

This bill provides that the application for a new plat under this new Section 212.0155, Local Government Code is not complete and may not be submitted for review for administrative completeness unless the tax certificates required by Section 12.002(e), Property Code, are attached, notwithstanding that the application is for a type of plat other than a plat specified in that section.

This bill provides that a plan for development or a new plat application for a subdivision golf course is not considered to provide fair notice of the project and nature of the permit sought unless it contains certain specified information that is complete in all material respects. This information includes street layout, lot and block layout, number of residential units, square footage of nonresidential development, by type of development, drainage, detention, and retention plans, screening plan for adjacent residential properties, including landscaping or fencing, and an analysis of the effect of the project on values in the adjacent residential neighborhoods.

This bill authorizes a municipal authority with authority over platting to adopt rules requiring more detailed information for plans for development or new plat applications for a subdivision golf course than the information required by Section 212.0155(n), Local Government Code.

This bill authorizes a municipal authority with authority over platting to require as a condition for approval of a plat for a golf course that the area be platted as a restricted reserve for the proposed use and that the plat be incorporated into the plat for any adjacent residential lots.

This bill authorizes an owner of a lot that is within 200 feet of a subdivision golf course to seek declaratory or injunctive relief from a district court to enforce the provisions in the new Section 212.0155, Local Government Code.

This bill also amends Section 82.051, Property Code, by adding Subsection (f) that provides that Chapter 82, Property Code, does not permit development of a subdivision golf course, as defined by Section 212.0155(b), Local Government Code, without a plat if the plat is otherwise required by applicable law, and that a municipality or county may require as a condition to the development of a previously platted or unplatted subdivision golf course that the subdivision golf course be platted or replatted.

This bill provides that the change in law made by Section 212.0155, Local Government Code, as added by this Act, applies only to approval of a plat filed on or after the effective date of this Act. A plat filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose. This bill also provides that the change in law made by Section 212.0155, Local Government Code, as added by this Act, does not apply to a lawsuit filed before the effective date of this Act.

This bill provides for an effective date (upon passage, or, if the Act does not receive the necessary vote, the Act takes effect on the 91st day after the session).

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect on the 91st day after the session.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The heading of 212.0155, Local Government Code, is renamed ADDITIONAL REQUIREMENTS FOR CERTAIN REPLATS AFFECTING A SUBDIVISION GOLF COURSE in the Committee Substitute. This section in the Original was named ADDITIONAL

REQUIREMENTS FOR CERTAIN REPLATS AFFECTING COMMON AREAS. The Committee Substitute changes the applicability of this new section by striking language in the Original regarding a municipality's extraterritorial jurisdiction. The Committee Substitute strikes the definition of "common area", "dedicatory instrument", "residential real estate subdivision", and "real property records". The Committee Substitute adds definitions of "new plat" and "subdivision golf course." The Committee Substitute modifies the Original by pertaining to new plats and subdivision golf courses rather than a development plat, replat, amending plat, or vacating plat and common areas. The Committee Substitute also makes other conforming changes, most noticeably those provisions and language in the Original that pertain to common areas.

The Committee Substitute requires a vote of three-fifths, not three-fourths, of the members of the municipal planning commission of a governing body to approve a plat when certain written instruments are filed in protest.

The Committee Substitute provides for consideration of both existing and planned public infrastructure relating to the subdivision golf course. The Committee Substitute also adds water, sewer or other utilities and strikes crime, the environment, or other health, safety, or public welfare concerns to provisions prohibiting approval of a new plat unless there will not have a materially adverse effect on these issues.

The Committee Substitute adds a new subsection (q) not found in the Original, and that new section provides that an owner of a lot within 200 feet of a subdivision golf course may seek declaratory or injunctive relief from district court to enforce the provisions in this section.

SECTION 2 of the Original, which added a new Section 232.0033, Local Government Code (Additional Requirements for Certain Replats Affecting Common Areas), has been struck from the Committee Substitute.

SECTION 3 of the Original, which added new Section 5.016, Property Code (Seller's Disclosure of Possible Common Area Termination), has been struck from the Committee Substitute.

SECTION 4 of the Original, which added new Section 82.051, Property Code, has been renumbered as SECTION 2 of the Committee Substitute.

SECTION 5 of the Original, which added Section 23.88, Tax Code (Change of Use as Common Area), has been struck from the Committee Substitute.

SECTION 6 of the Original has been renumbered as SECTION 3(a) of the Committee Substitute. SECTION 3(b) of the Committee Substitute provides that the change in law made by Section 212.0155, Local Government Code, as added by this Act, does not apply to a lawsuit filed before the effective date of this Act.

SECTION 7 of the Original, the prospective clause pertaining to Section 5.016, Property Code, has been struck from the Committee Substitute.

SECTION 8 of the Original, the prospective clause pertaining to Section 23.88, Tax Code, has been struck from the Committee Substitute.

SECTION 9 of the Original has been renumbered in the Committee Substitute as SECTION 4, has struck the reference to September 1, 2007, and has been amended to provide an effective date of the 91st day after the last day of the legislative session, should the necessary vote not be viewed for the bill to have immediate effect.