86R20764 SCL-F

By:  Oliverson H.B. No. 3167

Substitute the following for H.B. No. 3167:

By:  Craddick C.S.H.B. No. 3167

A BILL TO BE ENTITLED

AN ACT

relating to county and municipal approval procedure for land development applications.

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

SECTION 1.  Section 212.001, Local Government Code, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

(2)  "Plan" means a subdivision development plan, including a preliminary plat, preliminary subdivision plan, subdivision construction plan, site development plan, and final plat.

(3)  "Plat" includes a replat.

SECTION 2.  Subchapter A, Chapter 212, Local Government Code, is amended by adding Section 212.0085 to read as follows:

Sec. 212.0085.  APPROVAL PROCEDURE: APPLICABILITY. The approval procedures under this subchapter apply to a municipality regardless of whether the municipality has entered into an interlocal agreement, including an interlocal agreement between a municipality and county under Section 242.001(d).

SECTION 3.  The heading to Section 212.009, Local Government Code, is amended to read as follows:

Sec. 212.009.  APPROVAL PROCEDURE: INITIAL APPROVAL.

SECTION 4.  Sections 212.009(a), (b), (c), and (d), Local Government Code, are amended to read as follows:

(a)  The municipal authority responsible for approving plats shall approve or disapprove [~~act on~~] a plan [~~plat~~] within 30 days after the date the plan [~~plat~~] is filed. A plan [~~plat~~] is considered approved by the municipal authority unless it is disapproved within that period and in accordance with Section 212.0091.

(b)  If an ordinance requires that a plan [~~plat~~] be approved by the governing body of the municipality in addition to the planning commission, the governing body shall approve or disapprove [~~act on~~] the plan [~~plat~~] within 30 days after the date the plan [~~plat~~] is approved by the planning commission or is considered approved by the inaction of the commission. A plan [~~plat~~] is considered approved by the governing body unless it is disapproved within that period and in accordance with Section 212.0091.

(c)  If a plan [~~plat~~] is approved, the municipal authority giving the approval shall endorse the plan [~~plat~~] with a certificate indicating the approval. The certificate must be signed by:

(1)  the authority's presiding officer and attested by the authority's secretary; or

(2)  a majority of the members of the authority.

(d)  If the municipal authority responsible for approving plats fails to approve or disapprove [~~act on~~] a plan [~~plat~~] within the prescribed period, the authority on request shall issue a certificate stating the date the plan [~~plat~~] was filed and that the authority failed to act on the plan [~~plat~~] within the period. The certificate is effective in place of the endorsement required by Subsection (c).

SECTION 5.  Subchapter A, Chapter 212, Local Government Code, is amended by adding Sections 212.0091, 212.0093, 212.0095, 212.0097, and 212.0099 to read as follows:

Sec. 212.0091.  APPROVAL PROCEDURE: DISAPPROVAL REQUIREMENTS. (a) A municipal authority or governing body that disapproves a plan under this subchapter shall provide the applicant a written statement of the reasons for disapproval that clearly articulates each specific reason for disapproval.

(b)  Each reason specified in the written statement:

(1)  must:

(A)  be directly related to the requirements under this subchapter; and

(B)  include a citation to the law, including a statute or municipal ordinance, that is the basis for the disapproval, if applicable; and

(2)  may not be arbitrary or intended to delay approval.

Sec. 212.0093.  APPROVAL PROCEDURE: APPLICANT RESPONSE TO DISAPPROVAL. After the disapproval of a plan under Section 212.0091, the applicant may submit to the municipal authority or governing body that disapproved the plan a written response that remedies each reason for disapproval provided. The municipal authority or governing body may not establish a deadline for an applicant to submit the response.

Sec. 212.0095.  APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL OF RESPONSE. (a) A municipal authority or governing body that receives a response under Section 212.0093 shall determine whether to approve or disapprove the applicant's previously disapproved plan not later than the 15th day after the date the response was submitted.

(b)  A municipal authority or governing body that disapproves a plan following the submission of a response under Section 212.0093:

(1)  must comply with Section 212.0091; and

(2)  may disapprove the plan only for a specific reason provided to the applicant for the original plan under Section 212.0091.

(c)  A municipal authority or governing body that receives a response under Section 212.0093 shall approve a previously disapproved plan if the response adequately addresses each reason for the disapproval.

(d)  A previously disapproved plan is considered approved if:

(1)  the applicant filed a response that meets the requirements of Subsection (c); and

(2)  the municipal authority or governing body that received the response does not disapprove the plan on or before the date required by Subsection (a) and in accordance with Section 212.0091.

Sec. 212.0097.  APPROVAL PROCEDURE: WAIVER PROHIBITED. A municipal authority responsible for approving plans or the governing body of a municipality may not request or require an applicant to waive a deadline or other approval procedure under this subchapter.

Sec. 212.0099.  JUDICIAL REVIEW OF DISAPPROVAL. In a legal action challenging a disapproval of a plan under this subchapter, the municipality has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. The court may not use a deferential standard.

SECTION 6.  Chapter 212, Local Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. APPROVAL PROCEDURES FOR LAND DEVELOPMENT APPLICATIONS

Sec. 212.201.  DEFINITION. In this subchapter, "development application" means an application for approval of proposed land development required by a municipality. The term does not include an application for the approval of a plat or other plan governed by Subchapter A.

Sec. 212.202.  APPLICABILITY OF SUBCHAPTER. This subchapter applies to a municipality regardless of whether the municipality has entered into an interlocal agreement, including an interlocal agreement between a municipality and county under Section 242.001(d).

Sec. 212.203.  INITIAL APPROVAL OR DISAPPROVAL. (a) A municipality that adopts a regulation requiring municipal approval for proposed land development shall determine whether to approve or disapprove a development application not later than the 30th day after the date the application is filed with the municipality.

(b)  A development application is considered approved by the municipality unless the municipality disapproves of the application in the period described by Subsection (a) and in accordance with Section 212.204.

Sec. 212.204.  DISAPPROVAL REQUIREMENTS. (a) A municipality that disapproves of a development application under this subchapter shall provide the applicant a written statement of the reasons for disapproval that clearly articulates each specific reason for disapproval.

(b)  Each reason specified in the written statement:

(1)  must:

(A)  be directly related to the requirements of the regulation requiring the approval; and

(B)  include a citation to the law, including a statute or municipal ordinance, that is the basis for the disapproval, if applicable; and

(2)  may not be arbitrary or intended to delay approval.

Sec. 212.205.  APPLICANT RESPONSE TO DISAPPROVAL. After the disapproval of a development application under Section 212.204, the applicant may submit to the municipality a written response that remedies each reason for disapproval provided. The municipality may not establish a deadline for an applicant to submit the response.

Sec. 212.206.  APPROVAL OR DISAPPROVAL OF RESPONSE. (a) A municipality that receives a response under Section 212.205 shall determine whether to approve or disapprove the applicant's previously disapproved development application not later than the 15th day after the date the response was submitted.

(b)  A municipality that disapproves a development application following the submission of a response under Section 212.205:

(1)  must comply with Section 212.204; and

(2)  may disapprove the application only for a specific reason provided to the applicant for the original application under Section 212.204.

(c)  A municipality that receives a response under Section 212.205 shall approve a previously disapproved development application if the response adequately addresses each reason for the disapproval.

(d)  A previously disapproved development application is considered approved if:

(1)  the applicant filed a response that meets the requirements of Subsection (c); and

(2)  the municipality does not disapprove the application on or before the date required by Subsection (a) and in accordance with Section 212.204.

Sec. 212.207.  WAIVER PROHIBITED. A municipality may not request or require an applicant to waive a deadline or other approval procedure under this subchapter.

Sec. 212.208.  JUDICIAL REVIEW OF DISAPPROVAL. In a legal action challenging a disapproval of a development application under this subchapter, the municipality has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. The court may not use a deferential standard.

SECTION 7.  Subchapter A, Chapter 232, Local Government Code, is amended by adding Sections 232.0005 and 232.0023 to read as follows:

Sec. 232.0005.  DEFINITION. In this subchapter, "plan" means a subdivision development plan, including a preliminary plat, preliminary subdivision plan, subdivision construction plan, site development plan, and final plat.

Sec. 232.0023.  APPROVAL PROCEDURE: APPLICABILITY. The plan application approval procedures under this subchapter apply to a county regardless of whether the county has entered into an interlocal agreement, including an interlocal agreement between a municipality and county under Section 242.001(d).

SECTION 8.  Section 232.0025, Local Government Code, is amended to read as follows:

Sec. 232.0025.  APPROVAL PROCEDURE: TIMELY APPROVAL OF PLATS AND OTHER PLANS. (a) The commissioners court of a county or a person designated by the commissioners court shall issue a written list of the documentation and other information that must be submitted with a plan [~~plat~~] application. The documentation or other information must relate to a requirement authorized under this section or other applicable law. An application submitted to the commissioners court or the person designated by the commissioners court that contains the documents and other information on the list is considered complete.

(b)  If a person submits a plan [~~plat~~] application to the commissioners court that does not include all of the documentation or other information required by Subsection (a), the commissioners court or the court's designee shall, not later than the 10th business day after the date the commissioners court receives the application, notify the applicant of the missing documents or other information. The commissioners court shall allow an applicant to timely submit the missing documents or other information.

(c)  An application is considered complete when all documentation or other information required by Subsection (a) is received. Acceptance by the commissioners court or the court's designee of a completed plan [~~plat~~] application with the documentation or other information required by Subsection (a) shall not be construed as approval of the documentation or other information.

(d)  Except as provided by Subsection (f), the commissioners court or the court's designee shall approve or disapprove [~~take final action on~~] a plan [~~plat~~] application[~~, including the resolution of all appeals,~~] not later than the 30th [~~60th~~] day after the date the [~~a~~] completed [~~plat~~] application is received by the commissioners court or the court's designee. An application is considered approved by the commissioners court or the court's designee unless the application is disapproved within that period and in accordance with Section 232.0026.

[~~(e)  If the commissioners court or the court's designee disapproves a plat application, the applicant shall be given a complete list of the reasons for the disapproval.~~]

(f)  The 30-day [~~60-day~~] period under Subsection (d):

(1)  may be extended for a [~~reasonable~~] period not to exceed 30 days, if:

(A)  requested and agreed to in writing by the applicant and approved by the commissioners court or the court's designee; or

(B)  [~~(2) may be extended 60 additional days if~~] Chapter 2007, Government Code, requires the county to perform a takings impact assessment in connection with the plan [~~a plat~~] application; and

(2) [~~(3)~~]  applies only to a decision wholly within the control of the commissioners court or the court's designee.

(g)  The commissioners court or the court's designee shall make the determination under Subsection (f)(2) of whether the 30-day [~~60-day~~] period will be extended not later than the 20th day after the date a completed plan [~~plat~~] application is received by the commissioners court or the court's designee.

(h)  The commissioners court or the court's designee may not request or compel an applicant to waive the time limits or any other approval procedure contained in this subchapter [~~section~~].

(i)  If the commissioners court or the court's designee fails to approve or disapprove a plan application [~~take final action on the plat~~] as required by this subchapter [~~Subsection (d)~~]:

(1)  the commissioners court shall refund the greater of the unexpended portion of any [~~plat~~] application fee or deposit or 50 percent of an [~~a plat~~] application fee or deposit that has been paid;

(2)  the [~~plat~~] application is granted by operation of law; and

(3)  the applicant may apply to a district court in the county where the tract of land is located for a writ of mandamus to compel the commissioners court to issue documents recognizing the plan application's [~~plat's~~] approval.

SECTION 9.  Subchapter A, Chapter 232, Local Government Code, is amended by adding Sections 232.0026, 232.0027, 232.0028, and 232.0029 to read as follows:

Sec. 232.0026.  APPROVAL PROCEDURE: DISAPPROVAL REQUIREMENTS. (a) A commissioners court or designee that disapproves of a plan application under this subchapter shall provide the applicant a written statement of the specific reasons for disapproval that clearly articulates each specific reason for disapproval.

(b)  Each reason specified in the written statement:

(1)  must:

(A)  be directly related to the requirements of this subchapter; and

(B)  include a citation to the law, including a statute or order, that is the basis for the disapproval, if applicable; and

(2)  may not be arbitrary or intended to delay approval.

Sec. 232.0027.  APPROVAL PROCEDURE: APPLICANT RESPONSE TO DISAPPROVAL. After the disapproval of a plan application under Section 232.0026, the applicant may submit to the commissioners court or designee that disapproved the application a written response that remedies each reason for disapproval provided. The commissioners court or designee may not establish a deadline for an applicant to submit the response.

Sec. 232.0028.  APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL OF RESPONSE. (a) A commissioners court or designee that receives a response under Section 232.0027 shall determine whether to approve or disapprove the applicant's previously disapproved plan application not later than the 15th day after the date the response was submitted under Section 232.0027.

(b)  A commissioners court or designee that disapproves a plan application following the submission of a response under Section 232.0027:

(1)  must comply with Section 232.0026; and

(2)  may disapprove the application only for a specific reason provided to the applicant for the original application under Section 232.0026.

(c)  A commissioners court or designee that receives a response under Section 232.0027 shall approve a previously disapproved plan application if the applicant's response adequately addresses each reason for the disapproval.

(d)  A previously disapproved plan application is considered approved if:

(1)  the applicant filed a response that meets the requirements of Subsection (c); and

(2)  the commissioners court or designee that received the response does not disapprove the application on or before the date required by Subsection (a) and in accordance with Section 232.0026.

Sec. 232.0029.  JUDICIAL REVIEW OF DISAPPROVAL. In a legal action challenging a disapproval of a plan application under this subchapter, the county has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. The court may not use a deferential standard.

SECTION 10.  The change in law made by this Act applies only to a development or plan application filed on or after the effective date of this Act. A development or plan application filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 11.  This Act takes effect September 1, 2019.