By:  Oliverson, Goldman, Thierry H.B. No. 3167

     (Senate Sponsor - Hughes)

(In the Senate - Received from the House May 3, 2019; May 6, 2019, read first time and referred to Committee on Business & Commerce; May 14, 2019, reported favorably by the following vote: Yeas 8, Nays 0; May 14, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton            X

Menéndez             X

Paxton               X

Schwertner           X

Whitmire                       X

Zaffirini            X

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 subdivision plan, subdivision construction plan, site plan, land development application, and site development plan.

(3)  "Plat" includes a preliminary plat, general plan, final plat, and 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.  Section 212.009, Local Government Code, is amended by amending Subsections (a), (b), (c), and (d) and adding Subsections (b-1) and (b-2) to read as follows:

(a)  The municipal authority responsible for approving plats shall approve, approve with conditions, or disapprove [~~act on~~] a plan or plat within 30 days after the date the plan or plat is filed. A plan or 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 or plat be approved by the governing body of the municipality in addition to the planning commission, the governing body shall approve, approve with conditions, or disapprove [~~act on~~] the plan or plat within 30 days after the date the plan or plat is approved by the planning commission or is [~~considered~~] approved by the inaction of the commission. A plan or plat is [~~considered~~] approved by the governing body unless it is disapproved within that period and in accordance with Section 212.0091.

(b-1)  Notwithstanding Subsection (a) or (b), if a groundwater availability certification is required under Section 212.0101, the 30-day period described by those subsections begins on the date the applicant submits the groundwater availability certification to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable.

(b-2)  Notwithstanding Subsection (a) or (b), the parties may extend the 30-day period described by those subsections for a period not to exceed 30 days if:

(1)  the applicant requests the extension in writing to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable; and

(2)  the municipal authority or governing body, as applicable, approves the extension request.

(c)  If a plan or plat is approved, the municipal authority giving the approval shall endorse the plan or 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, approve with conditions, or disapprove [~~act on~~] a plan or plat within the prescribed period, the authority on the applicant's request shall issue a certificate stating the date the plan or plat was filed and that the authority failed to act on the plan or 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, 212.0096, 212.0097, and 212.0099 to read as follows:

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

(b)  Each condition or 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 conditional approval or disapproval, if applicable; and

(2)  may not be arbitrary.

Sec. 212.0093.  APPROVAL PROCEDURE: APPLICANT RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional approval or disapproval of a plan or plat under Section 212.0091, the applicant may submit to the municipal authority or governing body that conditionally approved or disapproved the plan or plat a written response that satisfies each condition for the conditional approval or 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 conditionally approved or disapproved plan or plat not later than the 15th day after the date the response was submitted.

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

(1)  must comply with Section 212.0091; and

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

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

(d)  A previously conditionally approved or disapproved plan or plat is 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 or plat on or before the date required by Subsection (a) and in accordance with Section 212.0091.

Sec. 212.0096.  APPROVAL PROCEDURE: ALTERNATIVE APPROVAL PROCESS. (a) Notwithstanding Sections 212.009, 212.0091, 212.0093, and 212.0095, an applicant may elect at any time to seek approval for a plan or plat under an alternative approval process adopted by a municipality if the process allows for a shorter approval period than the approval process described by Sections 212.009, 212.0091, 212.0093, and 212.0095.

(b)  An applicant that elects to seek approval under the alternative approval process described by Subsection (a) is not:

(1)  required to satisfy the requirements of Sections 212.009, 212.0091, 212.0093, and 212.0095 before bringing an action challenging a disapproval of a plan or plat under this subchapter; and

(2)  prejudiced in any manner in bringing the action described by Subdivision (1), including satisfying a requirement to exhaust any and all remedies.

Sec. 212.0097.  APPROVAL PROCEDURE: WAIVER PROHIBITED. A municipal authority responsible for approving plats 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 or plat 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.  Section 212.014, Local Government Code, is amended to read as follows:

Sec. 212.014.  REPLATTING WITHOUT VACATING PRECEDING PLAT. A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

(1)  is signed and acknowledged by only the owners of the property being replatted;

(2)  is approved[~~, after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard,~~] by the municipal authority responsible for approving plats; and

(3)  does not attempt to amend or remove any covenants or restrictions.

SECTION 7.  Section 212.015, Local Government Code, is amended by adding Subsections (a-1), (f), and (g) and amending Subsection (b) to read as follows:

(a-1)  If a proposed replat described by Subsection (a) requires a variance or exception, a public hearing must be held by the municipal planning commission or the governing body of the municipality.

(b)  Notice of the hearing required under Subsection (a-1) [~~Section 212.014~~] shall be given before the 15th day before the date of the hearing by:

(1)  publication in an official newspaper or a newspaper of general circulation in the county in which the municipality is located; and

(2)  by written notice, with a copy of Subsection (c) attached, forwarded by the municipal authority responsible for approving plats to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted, as indicated on the most recently approved municipal tax roll or in the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality.

(f)  If a proposed replat described by Subsection (a) does not require a variance or exception, the municipality shall, not later than the 15th day after the date the replat is approved, provide written notice by mail of the approval of the replat to each owner of a lot in the original subdivision that is within 200 feet of the lots to be replatted according to the most recent municipality or county tax roll. This subsection does not apply to a proposed replat if the municipal planning commission or the governing body of the municipality holds a public hearing and gives notice of the hearing in the manner provided by Subsection (b).

(g)  The notice of a replat approval required by Subsection (f) must include:

(1)  the zoning designation of the property after the replat; and

(2)  a telephone number and e-mail address an owner of a lot may use to contact the municipality about the replat.

SECTION 8.  Subchapter A, Chapter 232, Local Government Code, is amended by adding Section 232.0023 to read as follows:

Sec. 232.0023.  APPROVAL PROCEDURE: APPLICABILITY. The plat 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 9.  The heading to Section 232.0025, Local Government Code, is amended to read as follows:

Sec. 232.0025.  APPROVAL PROCEDURE: TIMELY APPROVAL OF PLATS AND PLANS.

SECTION 10.  Section 232.0025, Local Government Code, is amended by amending Subsections (d), (f), (g), (h), and (i), and adding Subsection (d-1) to read as follows:

(d)  Except as provided by Subsection (f), the commissioners court or the court's designee shall approve, approve with conditions, or disapprove [~~take final action on~~] a 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 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.

(d-1)  Notwithstanding Subsection (d), if a groundwater availability certification is required under Section 232.0032, the 30-day period described by that subsection begins on the date the applicant submits the groundwater availability certification to the commissioners court or the court's designee, as applicable.

(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 [~~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)(1) [~~(f)(2)~~] of whether the 30-day [~~60-day~~] period will be extended not later than the 20th day after the date a completed plat application is received by the commissioners court or the court's designee.

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

(i)  If the commissioners court or the court's designee fails to approve, approve with conditions, or disapprove a plat 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 plat application's [~~plat's~~] approval.

SECTION 11.  Subchapter A, Chapter 232, Local Government Code, is amended by adding Sections 232.0026, 232.0027, 232.0028, 232.00285, and 232.0029 to read as follows:

Sec. 232.0026.  APPROVAL PROCEDURE: CONDITIONAL APPROVAL OR DISAPPROVAL REQUIREMENTS. (a) A commissioners court or designee that conditionally approves or disapproves of a plat application under this subchapter shall provide the applicant a written statement of the conditions for the conditional approval or the reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval.

(b)  Each condition or 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 conditional approval or disapproval, if applicable; and

(2)  may not be arbitrary.

Sec. 232.0027.  APPROVAL PROCEDURE: APPLICANT RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional approval or disapproval of a plat application under Section 232.0026, the applicant may submit to the commissioners court or designee that conditionally approved or disapproved the application a written response that satisfies each condition for the conditional approval or 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 conditionally approved or disapproved plat 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 conditionally approves or disapproves a plat 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 condition or 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 conditionally approved or disapproved plat application if the applicant's response adequately addresses each condition for the conditional approval or each reason for the disapproval.

(d)  A previously conditionally approved or disapproved plat application is 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. 232.00285.  DEVELOPMENT PLAN REVIEW. (a) In this section, "development plan" includes a preliminary plat, preliminary subdivision plan, subdivision construction plan, site plan, general plan, land development application, or site development plan.

(b)  Unless explicitly authorized by another law of this state, a county may not require a person to submit a development plan during the plat approval process required by this subchapter. If a county is authorized under another law of this state to require approval of a development plan, the county must comply with the approval procedures under this subchapter during the approval process.

Sec. 232.0029.  JUDICIAL REVIEW OF DISAPPROVAL. In a legal action challenging a disapproval of a plat 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 12.  Section 232.0025(e), Local Government Code, is repealed.

SECTION 13.  The change in law made by this Act applies only to a plat 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 14.  This Act takes effect September 1, 2019.

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