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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 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

1 Subsections (b-1) and (b-2) to read as follows:

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

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

17 (b-1) Notwithstanding Subsection (a) or (b), if a  
18 groundwater availability certification is required under Section  
19 212.0101, the 30-day period described by those subsections begins  
20 on the date the applicant submits the groundwater availability  
21 certification to the municipal authority responsible for approving  
22 plats or the governing body of the municipality, as applicable.

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

26 (1) the applicant requests the extension in writing to  
27 the municipal authority responsible for approving plats or the

1 governing body of the municipality, as applicable; and

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

4 (c) If a plan or plat is approved, the municipal authority  
5 giving the approval shall endorse the plan or plat with a  
6 certificate indicating the approval. The certificate must be signed  
7 by:

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

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

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

18 SECTION 5. Subchapter A, Chapter 212, Local Government  
19 Code, is amended by adding Sections 212.0091, 212.0093, 212.0095,  
20 212.0096, 212.0097, and 212.0099 to read as follows:

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

1        (b) Each condition or reason specified in the written  
2 statement:

3            (1) must:

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

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

9            (2) may not be arbitrary.

10        Sec. 212.0093. APPROVAL PROCEDURE: APPLICANT RESPONSE TO  
11 CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional  
12 approval or disapproval of a plan or plat under Section 212.0091,  
13 the applicant may submit to the municipal authority or governing  
14 body that conditionally approved or disapproved the plan or plat a  
15 written response that satisfies each condition for the conditional  
16 approval or remedies each reason for disapproval provided. The  
17 municipal authority or governing body may not establish a deadline  
18 for an applicant to submit the response.

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

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

1           (1) must comply with Section 212.0091; and

2           (2) may disapprove the plan or plat only for a specific  
3 condition or reason provided to the applicant under Section  
4 212.0091.

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

10           (d) A previously conditionally approved or disapproved plan  
11 or plat is approved if:

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

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

18           Sec. 212.0096. APPROVAL PROCEDURE: ALTERNATIVE APPROVAL  
19 PROCESS. (a) Notwithstanding Sections 212.009, 212.0091, 212.0093,  
20 and 212.0095, an applicant may elect at any time to seek approval  
21 for a plan or plat under an alternative approval process adopted by  
22 a municipality if the process allows for a shorter approval period  
23 than the approval process described by Sections 212.009, 212.0091,  
24 212.0093, and 212.0095.

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

27           (1) required to satisfy the requirements of Sections

1 212.009, 212.0091, 212.0093, and 212.0095 before bringing an action  
2 challenging a disapproval of a plan or plat under this subchapter;  
3 and

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

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

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

18 SECTION 6. Section 212.014, Local Government Code, is  
19 amended to read as follows:

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

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

26 (2) is approved~~[, after a public hearing on the matter~~  
27 ~~at which parties in interest and citizens have an opportunity to be~~

1 ~~heard,~~] by the municipal authority responsible for approving plats;  
2 and

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

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

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

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

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

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

1 boundaries of the municipality.

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

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

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

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

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

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

25 SECTION 9. The heading to Section 232.0025, Local  
26 Government Code, is amended to read as follows:

27 Sec. 232.0025. APPROVAL PROCEDURE: TIMELY APPROVAL OF PLATS

1 AND PLANS.

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

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

14 (d-1) Notwithstanding Subsection (d), if a groundwater  
15 availability certification is required under Section 232.0032, the  
16 30-day period described by that subsection begins on the date the  
17 applicant submits the groundwater availability certification to  
18 the commissioners court or the court's designee, as applicable.

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

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

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

25 (B) [~~(2) may be extended 60 additional days if~~]

26 Chapter 2007, Government Code, requires the county to perform a  
27 takings impact assessment in connection with the [~~a~~] plat

1 application; and

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

4 (g) The commissioners court or the court's designee shall  
5 make the determination under Subsection (f)(1) [~~(f)(2)~~] of whether  
6 the 30-day [~~60-day~~] period will be extended not later than the 20th  
7 day after the date a completed plat application is received by the  
8 commissioners court or the court's designee.

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

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

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

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

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

26 SECTION 11. Subchapter A, Chapter [232](#), Local Government  
27 Code, is amended by adding Sections 232.0026, 232.0027, 232.0028,

1 232.00285, and 232.0029 to read as follows:

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

9 (b) Each condition or reason specified in the written  
10 statement:

11 (1) must:

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

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

17 (2) may not be arbitrary.

18 Sec. 232.0027. APPROVAL PROCEDURE: APPLICANT RESPONSE TO  
19 CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional  
20 approval or disapproval of a plat application under Section  
21 232.0026, the applicant may submit to the commissioners court or  
22 designee that conditionally approved or disapproved the  
23 application a written response that satisfies each condition for  
24 the conditional approval or remedies each reason for disapproval  
25 provided. The commissioners court or designee may not establish a  
26 deadline for an applicant to submit the response.

27 Sec. 232.0028. APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL

1 OF RESPONSE. (a) A commissioners court or designee that receives a  
2 response under Section 232.0027 shall determine whether to approve  
3 or disapprove the applicant's previously conditionally approved or  
4 disapproved plat application not later than the 15th day after the  
5 date the response was submitted under Section 232.0027.

6 (b) A commissioners court or designee that conditionally  
7 approves or disapproves a plat application following the submission  
8 of a response under Section 232.0027:

9 (1) must comply with Section 232.0026; and

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

13 (c) A commissioners court or designee that receives a  
14 response under Section 232.0027 shall approve a previously  
15 conditionally approved or disapproved plat application if the  
16 applicant's response adequately addresses each condition for the  
17 conditional approval or each reason for the disapproval.

18 (d) A previously conditionally approved or disapproved plat  
19 application is approved if:

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

22 (2) the commissioners court or designee that received  
23 the response does not disapprove the application on or before the  
24 date required by Subsection (a) and in accordance with Section  
25 232.0026.

26 Sec. 232.00285. DEVELOPMENT PLAN REVIEW. (a) In this  
27 section, "development plan" includes a preliminary plat,

1 preliminary subdivision plan, subdivision construction plan, site  
2 plan, general plan, land development application, or site  
3 development plan.

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

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

17 SECTION 12. Section 232.0025(e), Local Government Code, is  
18 repealed.

19 SECTION 13. The change in law made by this Act applies only  
20 to a plat application filed on or after the effective date of this  
21 Act. A development or plan application filed before the effective  
22 date of this Act is governed by the law in effect immediately before  
23 the effective date of this Act, and that law is continued in effect  
24 for that purpose.

25 SECTION 14. This Act takes effect September 1, 2019.