88R2894 SCL-D

By:  Bettencourt S.B. No. 1786

A BILL TO BE ENTITLED

AN ACT

relating to approval procedures for property development review by a municipality.

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

SECTION 1.  Section 212.0065(c), Local Government Code, is amended to read as follows:

(c)  The person or persons shall not disapprove the plat and shall be required to refer any plat which the person or persons refuse to approve to the municipal authority responsible for approving plats within the time period specified in Section 212.023 [~~212.009~~].

SECTION 2.  Chapter 212, Local Government Code, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. APPROVAL PROCEDURES FOR PROPERTY DEVELOPMENT REVIEW

Sec. 212.021.  DEFINITIONS. In this subchapter:

(1)  "Development application" means an application made to a municipal authority for property development review.

(2)  "Development inspection" means the inspection of an improvement to land required to be conducted as part of a project to develop the land or construct or improve an improvement to the land.

(3)  "Development permit" means a permit required to be obtained to develop land or construct or improve an improvement to land.

(4)  "Municipal authority" means the municipal authority responsible for conducting a property development review under law.

(5)  "Plan" and "plat" have the meanings assigned by Section 212.001.

(6)  "Property development review" means the process of granting municipal approval to subdivide land, develop land, or construct or improve an improvement to land. The term includes the review of a development application.

Sec. 212.028.  DELEGATION OF APPROVAL RESPONSIBILITY TO THIRD-PARTY REVIEWER. (a) Except as provided by Subsection (b), the appropriate municipal authority may delegate to a third-party reviewer the ability to approve a development application or conduct a development inspection.

(b)  If a municipality fails to complete at least 80 percent of the total number of development applications and requests for development inspections the municipality receives in a calendar year in accordance with the deadlines prescribed by this subchapter for two consecutive years, the governing body of the municipality must delegate to third-party reviewers the ability to approve all development applications and conduct all development inspections for the five calendar years following that second consecutive year.

(c)  A third-party reviewer shall process a development application or complete a development inspection in accordance with the deadlines and other approval procedures prescribed by this subchapter as if the reviewer is the municipal authority.

(d)  A municipality may audit the work of a third-party reviewer with a third-party auditor. The auditor must be an architect, engineer, or other appropriate professional who is licensed, certified, or regulated by this state.

(e)  A development application or development inspection that is begun by a third-party reviewer must be completed by the reviewer regardless of whether the governing body of the municipality elects to discontinue delegation authorized by Subsection (a) or the mandatory period of delegation prescribed by Subsection (b) expires.

Sec. 212.029.  THIRD-PARTY AUDITOR TRAINING. (a) The Texas Department of Housing and Community Affairs, in coordination with the Texas Department of Licensing and Regulation and other appropriate state agencies, shall:

(1)  develop requirements for certifying, insuring, and auditing third-party reviewers; and

(2)  develop and offer training programs for third-party reviewers that establish best practices.

(b)  The Texas Department of Housing and Community Affairs may adopt rules necessary to implement this section.

SECTION 3.  Sections 212.0085, 212.009, 212.0091, 212.0093, 212.0095, 212.0096, 212.0097, and 212.0099, Local Government Code, are transferred to Subchapter A-1, Chapter 212, Local Government Code, as added by this Act, redesignated as Sections 212.022, 212.023, 212.024, 212.025, 212.026, 212.027, 212.030, and 212.031, respectively, and amended to read as follows:

Sec. 212.022  [~~212.0085~~]. [~~APPROVAL PROCEDURE:~~] APPLICABILITY OF SUBCHAPTER. 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).

Sec. 212.023  [~~212.009~~]. [~~APPROVAL PROCEDURE:~~] INITIAL APPROVAL. (a) A [~~The~~] municipal authority [~~responsible for approving plats~~] shall approve, approve with conditions, or disapprove a plan or plat, approve or disapprove a development permit, or complete a development inspection not later than the 30th day [~~within 30 days~~] after the date the plan, [~~or~~] plat, or permit application is filed or the inspection is requested. A plan, [~~or~~] plat, or development permit is approved by the municipal authority unless it is disapproved within that period and in accordance with this subchapter [~~Section 212.0091~~]. A development inspection requirement is waived unless the inspection is completed within that period and in accordance with this subchapter.

(b)  If an ordinance requires that a plan, [~~or~~] plat, or development permit be approved by the governing body of the municipality in addition to any other municipal authority [~~the planning commission~~], the governing body shall approve, approve with conditions, or disapprove the plan or plat, or approve or disapprove the permit, as applicable, not later than the 30th day [~~within 30 days~~] after the date the plan, [~~or~~] plat, or permit is approved by the other authority [~~planning commission~~] or is approved by the inaction of that authority [~~the commission~~]. A plan, [~~or~~] plat, or development permit is approved by the governing body unless it is disapproved within that period and in accordance with this subchapter [~~Section 212.0091~~].

(c) [~~(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 to approve, approve with conditions, or disapprove a plat begins on the date the applicant submits the groundwater availability certification to the applicable municipal authority [~~responsible for approving plats or the governing body of the municipality, as applicable~~].

(d) [~~(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 applicable 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.

(e) [~~(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.

(f) [~~(d)~~]  If the municipal authority [~~responsible for approving plats~~] fails to approve, approve with conditions, or disapprove 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 (e) [~~(c)~~].

(g) [~~(e)~~]  The municipal authority [~~responsible for approving plats~~] shall maintain a record of each development application and request for a development inspection made to the authority and the authority's action taken on it. On request of an owner of an affected tract, the authority shall certify the reasons for the action taken on an application.

Sec. 212.024  [~~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, or disapproves a development permit, under this subchapter shall provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval, as applicable, 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 prescribed by law for the applicable development project [~~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. 212.025  [~~212.0093~~]. [~~APPROVAL PROCEDURE:~~] APPLICANT RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional approval or disapproval of a plan or plat, or disapproval of a development permit, under Section 212.024 [~~212.0091~~], the applicant may submit to the municipal authority [~~or governing body~~] that conditionally approved or disapproved the plan, [~~or~~] plat, or permit 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. 212.026  [~~212.0095~~]. [~~APPROVAL PROCEDURE:~~] APPROVAL OR DISAPPROVAL OF RESPONSE. (a) A municipal authority [~~or governing body~~] that receives a response under Section 212.025 [~~212.0093~~] shall determine whether to approve or disapprove the applicant's previously conditionally approved or disapproved plan or plat, or disapproved development permit, 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, or disapproves a development permit, following the submission of a response under Section 212.025 [~~212.0093~~]:

(1)  must comply with Section 212.024 [~~212.0091~~]; and

(2)  may disapprove the plan, [~~or~~] plat, or permit only for a specific condition or reason provided to the applicant under Section 212.024 [~~212.0091~~].

(c)  A municipal authority [~~or governing body~~] that receives a response under Section 212.025 [~~212.0093~~] shall approve a previously conditionally approved or disapproved plan or plat, or disapproved development permit, 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, or disapproved development permit, 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, or permit on or before the date required by Subsection (a) and in accordance with Section 212.024 [~~212.0091~~].

Sec. 212.027  [~~212.0096~~]. [~~APPROVAL PROCEDURE:~~] ALTERNATIVE APPROVAL PROCESS. (a) Notwithstanding Sections 212.023 [~~212.009~~], 212.024 [~~212.0091~~], 212.025 [~~212.0093~~], and 212.026 [~~212.0095~~], an applicant may elect at any time to seek approval for a plan, [~~or~~] plat, or development permit 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 212.023 [~~212.009~~], 212.024 [~~212.0091~~], 212.025 [~~212.0093~~], and 212.026 [~~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 212.023 [~~212.009~~], 212.024 [~~212.0091~~], 212.025 [~~212.0093~~], and 212.026 [~~212.0095~~] before bringing an action challenging a disapproval of a plan, [~~or~~] plat, or development permit 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. 212.030  [~~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. 212.031  [~~212.0099~~]. JUDICIAL REVIEW OF DISAPPROVAL. In a legal action challenging a disapproval of a plan, [~~or~~] plat, or development permit 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 4.  Section 212.0155(e), Local Government Code, is amended to read as follows:

(e)  The municipal authority may not approve the new plat without adequate consideration of testimony and the record from the public hearings and making the findings required by Subsection (k). Not later than the 30th day after the date on which all proceedings necessary for the public hearings have concluded, the municipal authority shall take action on the application for the new plat. Sections 212.023(a) [~~212.009(a)~~] and (b) do not apply to the approval of plats under this section.

SECTION 5.  Section 242.001(c), Local Government Code, is amended to read as follows:

(c)  Except as provided by Subsections (d)(3) and (4), a municipality and a county may not both regulate subdivisions and approve related permits in the extraterritorial jurisdiction of a municipality after an agreement under Subsection (d) is executed. The municipality and the county shall enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction. For a municipality in existence on September 1, 2001, the municipality and county shall enter into a written agreement under this subsection on or before April 1, 2002. For a municipality incorporated after September 1, 2001, the municipality and county shall enter into a written agreement under this subsection not later than the 120th day after the date the municipality incorporates. On reaching an agreement, the municipality and county shall certify that the agreement complies with the requirements of this chapter. The municipality and the county shall adopt the agreement by order, ordinance, or resolution. The agreement must be amended by the municipality and the county if necessary to take into account an expansion or reduction in the extraterritorial jurisdiction of the municipality. The municipality shall notify the county of any expansion or reduction in the municipality's extraterritorial jurisdiction. Any expansion or reduction in the municipality's extraterritorial jurisdiction that affects property that is subject to a preliminary or final plat, a plat application, or an application for a related permit filed with the municipality or the county or that was previously approved under Section 212.023 [~~212.009~~] or Chapter 232 does not affect any rights accrued under Chapter 245. The approval of the plat, any permit, a plat application, or an application for a related permit remains effective as provided by Chapter 245 regardless of the change in designation as extraterritorial jurisdiction of the municipality.

SECTION 6.  Section 242.003(c), Local Government Code, is amended to read as follows:

(c)  The agreement must be amended by the county and the municipality if necessary to take into account an expansion or reduction in the extraterritorial jurisdiction of the municipality. The municipality shall notify the county of any expansion or reduction in the municipality's extraterritorial jurisdiction. Any expansion or reduction in the municipality's extraterritorial jurisdiction that affects property that is subject to a preliminary or final plat, a plat application, or an application for a related permit filed with the municipality or the county or that was previously approved under Section 212.023 [~~212.009~~] or Chapter 232 does not affect any rights accrued under Chapter 245. The approval of the plat, any permit, a plat application, or an application for a related permit remains effective as provided by Chapter 245 regardless of the change in designation as extraterritorial jurisdiction of the municipality.

SECTION 7.  Section 214.904, Local Government Code, is repealed.

SECTION 8.  The requirement that a municipality process a certain percentage of development applications and development inspections in a calendar year as prescribed by Section 212.028(b), Local Government Code, as added by this Act, applies only to a calendar year that begins on or after the effective date of this Act.

SECTION 9.  Not later than the effective date of this Act, the Texas Department of Housing and Community Affairs shall comply with the requirements of Section 212.029, Local Government Code, as added by this Act.

SECTION 10.  The changes in law made by this Act apply only to a development application or request for a development inspection, as those terms are defined by Section 212.021, Local Government Code, as added by this Act, submitted on or after the effective date of this Act.

SECTION 11.  This Act takes effect January 1, 2024.