



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 25, 2021

The Honorable Bryan Hughes
Chair, Senate Committee on State Affairs
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. KP-0349

Re: Information a local jurisdiction must provide if denying or conditionally approving a plat under chapters 212 and 232 of the Local Government Code and the authority of local governments to establish prerequisites to the submission of a plat application (RQ-0367-KP)

Dear Senator Hughes:

You ask about requirements under House Bill 3167 (“HB 3167”), enacted by the Eighty-sixth Legislature.¹ HB 3167 amended provisions in the Local Government Code to require local jurisdictions responsible for approving plats or plans to generally “approve, approve with conditions, or disapprove” a plat or plan within thirty days of its filing. *See* TEX. LOC. GOV’T CODE §§ 212.009(a), 232.0025(d). As the author of HB 3167, you explain your intent in proposing the legislation was to “streamline and expedite the ability to obtain plat and plan approval statewide.” Request Letter at 1.

You first ask what information a local jurisdiction must provide if it denies or conditionally approves a plat under the laws amended by HB 3167. Request Letter at 2. HB 3167 amended chapters 212 and 232 by adding, among other provisions, sections 212.0091 and 232.0026. Those sections identify information a local jurisdiction must provide when disapproving or conditionally approving a plan or plat:

- (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

¹*See* Letter from Honorable Bryan Hughes, Chair, Senate Comm. on State Affairs, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (July 28, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0367KP.pdf> (“Request Letter”).

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.

TEX. LOC. GOV'T CODE § 212.0091 (emphasis added); *see also id.* § 232.0026 (applying the same requirements to a commissioners court or designee that conditionally approves or disapproves of a plat application). Pursuant to these sections, a municipal or county authority that does not grant full approval for a plat or plan must specify a clear reason why approval was not granted, citing the law, including a specific statute or ordinance, that serves as the basis for the denial or conditional approval. *Id.* §§ 212.0091, 232.0026. Despite these new requirements, you explain that “local governments continue to deny or conditionally approve plat applications with generic comments that do not fully address any specific deficiencies or advise applicants on the revisions needed to obtain approval.” Request Letter at 1. The language of sections 212.0091 and 232.0026 prohibit generic statements for a denial or conditional approval and instead require specific reasons with accompanying citations to law for anything other than full approval of a plan or plat. A municipal authority or commissioners court that does not provide such specificity violates chapter 212 or 232.

In your second question, you ask what remedies exist if a municipality or county denies or conditionally approves a plat or plan without providing a complete explanation of why full approval was not granted. Request Letter at 2. With regard to a municipality, subsection 212.009(b) provides: “A plan or plat is approved by the governing body unless it is disapproved within that period and in accordance with Section 212.0091.” TEX. LOC. GOV'T CODE § 212.009(b). The same applies to decisions by a county regarding the approval of a plat or plan under subsection 232.0025(d). *Id.* §§ 232.0025(d), .0026. Thus, if a municipality or county fails to adequately explain the reason for the denial or conditional approval as required in subsection 212.0091, “the plan or plat is approved.” *Id.* §§ 212.009(b), 232.0025(d). Furthermore, a local entity’s decision to deny approval of a plan or plat is subject to judicial review. *See, e.g., Town of Annetta S. v. Seadrift Dev., L.P.*, 446 S.W.3d 823, 830 (Tex. App.—Fort Worth 2014, pet. denied) (upholding summary judgment in favor of a developer who was unlawfully denied plat approval). In an action challenging the disapproval of a plan or plat, the municipality or county “has the burden of proving by clear and convincing evidence that the disapproval meets the requirements” in chapters 212 or 232, respectively. TEX. LOC. GOV'T CODE §§ 212.0099, 232.0029.

You also ask whether enactment of HB 3167 established “a new statutory requirement or direct authorization” for local governments to require developers to complete certain prerequisites prior to acceptance of a plan or plat application. Request Letter at 2. You tell us that prior to the enactment of HB 3167, some local governments required developers to include certain studies and reports with their plan or plat application, including “drainage studies, traffic impact analyses, utility evaluations, geotechnical reports, federal permits such as FEMA Conditional Letters of Map Revision (CLOMR) and Letters of Map Revision (LOMR).”² *Id.* And you state that in some instances, local governments are now requiring a “‘completeness check’ of an application before the application itself can be accepted for submission.”³ *Id.*

“A person desiring approval of a plat must apply to and file a copy of the plat with the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality.” TEX. LOC. GOV’T CODE § 212.008; *see also id.* § 232.001 (requiring filing of a plat with the county for division of land outside municipal boundaries). “Plan” is defined as “a subdivision development plan, including a subdivision plan, subdivision construction plan, site plan, land development application, and site development plan.” *Id.* § 212.001(2). “Plat” is defined as “a preliminary plat, general plan, final plat, and replat.” *Id.* § 212.001(3). Municipalities and counties are authorized to adopt rules and ordinances governing plats “to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.” *Id.* § 212.044; *see also id.* § 232.076 (authorizing a commissioners court to adopt rules related to certification regarding compliance with plat requirements).

Nothing in the language of chapters 212 or 232 directs local entities to require developers to complete certain prerequisites prior to acceptance of a plan or plat application, but it likewise does not expressly prohibit a municipality or county from requiring applicants to obtain certain approvals before submitting a plat or plan. While sections 212.009(a) and 232.0025(d) establish a thirty-day period in which a local jurisdiction must act on a plan or plat after filing, they do not provide an exhaustive list of what an applicant must include with that filing.

You point to subsections 212.009(b-1) and 232.0025(d-1) as evidence of the Legislature’s intent that a local government may not generally require prerequisites to submission of a plat or plan for approval. Request Letter at 2. Those subsections allow a municipality or county to require a groundwater availability certification be submitted prior to the start of the 30-day period for approval:

Notwithstanding Subsection (a) or (b), if a groundwater availability certification is required under Section 212.0101, the 30-day period

²Briefing submitted in response to your request states that a FEMA Conditional Letters of Map Revision (CLOMR) is necessary “for jurisdictions that participate in the National Flood Insurance Program” and that it can take “three to six months to obtain from FEMA.” *See* Brief from Honorable Bobby W. Stovall, Hunt Cty. Judge at 2 (Aug. 27, 2020) (“Hunt County Brief”) (on file with the Op. Comm.).

³Briefing submitted in response to your request states that some local governments required the studies and reports you describe prior to filing a plat even before the adoption of HB 3167. Hunt County Brief at 3; Brief from Scott Houston, Deputy Exec. Dir. & Gen. Counsel, Tex. Mun. League at 2 (Aug. 28, 2020) (all briefing on file with the Op. Comm.).

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.

TEX. LOC. GOV'T CODE § 212.009(b-1); *see also id.* § 232.0025(d-1) (providing substantially the same for county authorities). You suggest that the inclusion of these provisions “is indicative that any other similar prerequisites to the beginning of the 30-day application timeline would have been specifically included in House Bill 3167 if they had been part of the Legislature’s intent.” Request Letter at 2. While subsections 212.009(b-1) and 232.0025(d-1) authorize a municipal or county authority to require a groundwater availability certification prior to the thirty-day period beginning to run, they do not expressly prohibit those authorities from requiring other reports or studies prior to the submission of a plan or plat. Courts refrain from reading words into a statute to create a meaning different from the plain text of the statute, and this office likewise will refrain from doing so. *See City of Rockwall v. Hughes*, 246 S.W.3d 621, 630 (Tex. 2008).

S U M M A R Y

Sections 212.0091 and 232.0026 of the Local Government Code prohibit local jurisdictions from denying or conditionally approving a plan or plat with generic statements, instead requiring specific reasons with accompanying citations to law for anything other than full approval of a plan or plat. A municipal or county authority that does not provide such specificity violates chapter 212 or 232, respectively. If a local jurisdiction fails to adequately explain the reason for the denial or conditional approval as required in section 212.0091 or 232.0026, the plan or plat is approved, and a local authority's decision to deny approval of a plan or plat is subject to judicial review.

Subsections 212.009(a) and 232.0025(d) require the local authority responsible for approving plats to approve, approve with conditions, or disapprove a plan or plat within 30 days after the date the plan or plat is filed. A court is unlikely to construe the language of those provisions to prohibit local authorities from requiring reports or studies to be completed prior to the submission of a plan or plat.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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