



TEXAS SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS

SENATOR FRANK MADLA CHAIRMAN

May 24, 2001

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OPINION COMMITTEE

RQ-0386-JC

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The Honorable John Cornyn
Office of the Attorney General
300 W. 15th Street
Austin, Texas 78701

FILE # ML-42012-01

I.D. # 42012

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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

2048

Re: Request for Opinion as to the effect of Chapter 245 of the Texas Local Government Code in the conveyance of property

Dear Attorney General Cornyn:

As Chairman of the Senate Committee on Intergovernmental Relations, I respectfully request an Attorney General's Opinion on the following question:

(1) Under current law, is a buyer of a tract of land entitled to the rights and benefits provided to the previous owner under Chapter 245, Local Government Code, if the buyer desires to develop the property in accordance with the same rules and regulations in effect when the previous owner filed the application for the preliminary plat (i.e. the first permit)?

FACTS

Sections 245.002(a) and (b) of Chapter 245 of the Texas Local Government Code provide as follows:

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the permit is filed.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits



for a project.

ISSUE

Without any qualifications as to the ownership of property, this statute appears to state that a land development project must be reviewed in accordance with the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect when the application for the first permit is filed. Section 245.001 defines "project" as "an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor". *Id.* at 245.001. This definition is also set forth without any qualification as to the ownership, or change in ownership, of property subject to the regulatory agency's jurisdiction. Further, Section 245.001 of that Chapter defines a "permit" as "a license, certificate, approval, registration, consent, permit, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought." *Id.* Nowhere in the statute is there a qualification as to ownership, or a restriction on the rights granted under Chapter 245 as the result of a conveyance of property.

This office is in possession of a copy of a letter dated August 16, 1999, from the City Attorney of the City of Cedar Park, Texas which addresses the effect of the conveyance of a tract of land on the rights and benefits established under Chapter 245. In that letter, a copy of which is enclosed, the City Attorney states:

“While the present owner of a particular tract may claim the benefit of Chapter 245 for his project, that particular project ends when the owner sells the tract. Any rights a new owner may have under Chapter 245 can arise only after he acquires title to the subject property and makes a permit application. The projects of the former owner and the new owner represent separate endeavors.”

The issue at hand is whether a buyer of a tract of land is entitled to the rights and benefits provided to the previous owner under Chapter 245 if the buyer desires to develop the property in accordance with the same rules and regulations in effect when a previous owner filed the application for the preliminary plat (i.e. the first permit). The City Attorney's position seems to state that the rights and benefits terminate upon conveyance of the property. However, the statute does not appear to support his position.

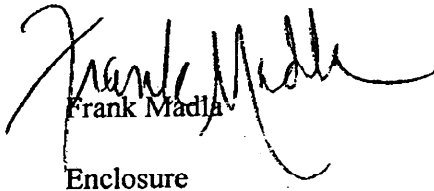
The statute appears to state that the rights and benefits accrue as the result of filing the application for the first permit for a development project and attach to that project regardless of a change in ownership. The statute does not require the rights and benefits to be re-established upon a conveyance. If a purchaser buys a tract of land which has been platted for uses allowed under applicable zoning regulations, and the purchaser desires to develop the property in accordance with the plat and those zoning regulations, it would seem to make sense that the purchaser's development should be reviewed in accordance with the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the preliminary plat was filed.

The City Attorney's interpretation, on the other hand, would have serious effect on property rights throughout the state and, therefore, is of significant public interest. His interpretation would mean that a specific store in a retail development, because of a conveyance in ownership, could be subject to a different set of regulations than other stores in the same retail development even though the land on which the store is built is included in the same plat as the other stores. Taken to an extreme, the City Attorney's position could also mean that the buyer of a single family home would be subject to different rules and regulations than the previous owner. Further, a builder who buys single family lots in blocks could be subject to different regulations even though the lots are all in the same subdivision. Such results would lead to piecemeal planning as developers would be deterred from bringing forward a tract of land for a large-scale development. It would seem that better planning would be promoted if the statute is read literally and there is no effect on the establishment of rights under Chapter 245 as the result of a conveyance.

Because I am not aware of any previous opinions or administrative construction on this issue, I believe an opinion is needed on whether the conveyance of a tract of land terminates any rights or benefits provided by the Legislature under Chapter 245 of the Local Government Code or whether the conveyance of land terminates such rights or benefits and requires a subsequent owner to file an application for a permit in order to establish such rights or benefits.

I would very much appreciate your prompt consideration of this request. Please do not hesitate to contact Jason Anderson on my staff should have questions or need additional information.

Yours truly,


Frank Madla

Enclosure