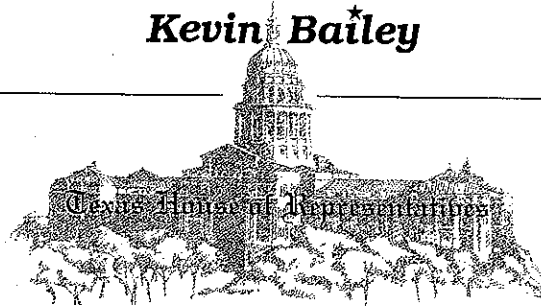


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December 17, 2007

OPINION COMMITTEE

FILE # ML-45486-07
I.D. # 45486

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street
Austin, Texas 78701

RQ-0654-GA

Dear General Abbott:

As chair of the House Urban Affairs Committee, I ask for your opinion on several questions regarding the application of Section 211.006, Local Government Code, to proposed zoning changes by a municipality.

Regarding a protest to proposed zoning changes, Section 211.006(d), Local Government Code, states:

(d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:

- (1) the area of the lots or land covered by the proposed change; or
- (2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

Section 211.006(d) does not exclude any type of landowner. Also, the section does not distinguish between different types of landowners. For instance, the section is unconcerned with the governmental jurisdiction in which the land is located and with the governmental entity to which the landowner pays property taxes.

The following information may help to provide context to the questions presented. Recently, the City of Austin changed zoning on a tract of land located at the edge of the corporate limits of the city. The relevant facts provided to my office are that the city gave notice of the proposed zoning change to landowners in at least two neighborhoods adjoining the tract: Westminster Glen and the River Place Municipal Utility District. Landowners in Westminster Glen, which was not located in the corporate limits of the city but was located in an area annexed by the city for limited purposes, were counted for the purposes of a protest petition under Section



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211.006(d)(2). Landowners in the River Place MUD neighborhood, which was not located in the corporate limits of the city and had not been annexed for limited purposes, were not counted by the city for purposes of the protest petition.

My questions are:

(1) Are all persons who own land immediately adjoining the area covered by a proposed zoning change and extending 200 feet from that area eligible to make a protest under Section 211.006(d)(2), Local Government Code?

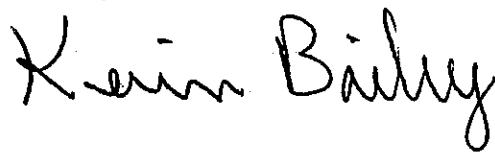
(2) More specifically, is the city required to count as eligible for a protest under Section 211.006(d) the signatures from landowners in an area that is not in the corporate limits of the city but is annexed for limited purposes by that city?

(3) What about the signatures of owners of land that is not in the corporate limits of the city and is not annexed for limited purposes?

The City of Austin may rely on Op. Tex. Att'y Gen. No. JM-1014 (1989) for the proposition that only owners of land included on the city tax roll are eligible to make a protest under Section 211.006(d). That opinion relied on *Strong v. City of Grand Prairie*, 679 S.W.2d 767 (Tex. App.--Fort Worth 1984, no writ). Unlike this situation, however, that case did not involve land located on the edge of the city but rather an area where all the adjacent properties were located in the corporate limits of the city. To extend that holding to this situation would deny certain owners of adjacent affected property a voice on zoning decisions and ignore the plain and unambiguous application of the statute to all adjacent land.

Thank you in advance for your consideration of these questions. Please contact my office if you have any questions or need further information.

Sincerely,



Kevin Bailey
Chair, House Urban Affairs Committee