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THE TEXAS SENATE



BRYAN HUGHES

July 28, 2020

COMMITTEES ON:
ADMINISTRATION, CHAIR
STATE AFFAIRS, CHAIR
CRIMINAL JUSTICE
EDUCATION
NATURAL RESOURCES &
ECONOMIC DEVELOPMENT
REDISTRICTING

The Honorable Ken Paxton
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

RQ-0367-KP
FILE# ML-48845-20
I.D.# 48845

Dear General Paxton:

During the 86th Legislature, I brought House Bill 3167 forward in response to concerns raised by stakeholders that some cities, counties, and extraterritorial jurisdictions (ETJs) around the state had been circumventing the established statutory timelines for approving plat and other land development applications. HB 3167 requires local jurisdictions to approve, approve with conditions, or deny land development plat or plan applications within a very specific time frame - namely, within 30 days after the application was filed. A municipality or county may approve or disapprove the application, but they may also “approve with conditions” a plan or plat. Local Government Code Sections 212.0093 and 232.0027 further stipulate that after the conditional approval of a plat or plan by a municipality or county, the applicant may submit a written response that satisfies each condition of the conditional approval. The process established in HB 3167 was intended to streamline and expedite the ability to obtain plat and plan approval statewide.

Despite the Legislature’s enactment of House Bill 3167, 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. In addition, local governments installed new pre-application obligations for the developer that have historically been part of the traditional application process. This gamesmanship creates significant delays in the construction process as applicants attempt to determine what steps must be taken to obtain approval of the plat or plan. As a result, developers and homebuilders cannot provide housing at the pace of population growth. This causes demand to exceed supply and unnecessarily increase the price of a home. That, in turn, impacts the availability and affordability of homes and other real estate for the people of Texas.

DISTRICT ONE

BOWIE, CAMP, CASS, FRANKLIN, GRECC, HARRISON, LAMAR, MARION, MORRIS, PANOLA, RED RIVER, RUSK, SMITH, TITUS, UPSHUR AND WOOD COUNTIES

I therefore ask for your office to provide guidance on what information a local jurisdiction must provide if it denies or conditionally approves a plat under chapter 212 of the Local Government Code. Furthermore, 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, what remedy to applicants have to obtain such an explanation.

I am also advised that after the enactment of House Bill 3167, some local governments that previously treated certain items as part of the plan or plat application itself under the previous law are now treating those self-same items as “prerequisites” to the acceptance of plan or plat application, even though neither House Bill 3167 nor any other law passed by the Legislature in the 86th Texas Legislative Session required them to do so. These types of new “prerequisites,” all of which were prior to the enactment of House Bill 3167 generally a part of the actual application, now being required by municipalities prior to the acceptance of a plan or plat application include, but are not limited to, 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), and other various types of studies and reports. I’m advised in some instances that local governments have now even begun requiring a “completeness check” of an application before the application itself can be accepted for submission. All of these new “prerequisites” are being added and not being subjected to the 30 day timelines for approval, approval with conditions, or disapproval as stipulated in House Bill 3167. Simply put, some local governments are attempting to bypass the 30 day time frames for applications stated in House Bill 3167 by frontloading various new required submissions of individual items *prior* to submission of the application itself.

I therefore ask for your office to provide guidance on whether there was any new statutory requirement or direct authorization in House Bill 3167 for local governments to suddenly require items previously considered to be part of a plan or plat application to instead be now submitted separately beforehand as a prerequisite to submission or acceptance of the application itself. In particular, given that we specifically included in House Bill 3167 a provision stipulating that one such type of item actually should be treated as a prerequisite to the beginning of the 30 day application timeline – namely the submission of groundwater availability certifications – I would ask for your office’s confirmation that this 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. House Bill 3167 added Local Government Code Subsections 212.009(b-1) and 232.0025(d-1), which state that if a groundwater availability certification is

required by Local Government Code Section 212.0101 or Section 232.0032, the 30-day period for review begins on the date the applicant files the groundwater availability certification with the municipal authority responsible for approving plats or the governing body of the municipality, or to the commissioner's court or the court's designee, as applicable. This provision was inserted in response to stakeholder feedback provided both to my office and other legislative offices and was intentionally placed in the bill as a result. I ask for your office to provide guidance on whether similar types of prerequisites to the beginning of the 30-day time period for approval, approval with conditions, or disapproval of a plan or plat would have needed to be specifically enumerated in House Bill 3167 if it was the Legislature's intent for those items not to be included within the application itself and subject to the 30-day statutory timelines.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Hughes". The signature is written in a cursive, flowing style with some loops and flourishes.

Bryan Hughes

Proverbs 3:5-6

DBH/bt