SUBJECT: Platting requirements for residential subdivisions on unincorporated land

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Walker, Crabb, Bosse, F. Brown, Krusee, B. Turner

1 nay — Howard

2 absent — Hardcastle, Mowery

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; Judy Bell, City of Crandall; Susie Carter, Hays County Commissioner Precinct 2; Jack Harris, Brazoria County Commissioners Court; Mike Heiligenstein, Williamson County Commissioners Court and Texas Conference of Urban Counties; T. J. Higginbotham, Take Back Texas; James Hubbard, Wise County; Bill Powers, Texas Farm Bureau; Allen Walther, Hays County Commissioners Court; Ken Muller

Against — Thurman Blackburn, Texas Association of Builders and Texas Capitol Area Builders Association; Bill Stinson, Texas Association of Realtors

BACKGROUND: In *Elgin Bank of Texas v. Travis County, Texas*, 906 S.W.2d 120, (Tex. App. - Austin 1995), the Austin Court of Appeals ruled that Local Government Code, sec. 232.001(a) does not require landowners who subdivide land in unincorporated areas to prepare a subdivision plat if they do not create roads, parks, or other areas for public use within the subdivision.

DIGEST: CSHB 423 would amend Local Government Code, chapter 232 to require a plat application for subdividing land in unincorporated areas and to require timely approval of plats by county commissioners courts. It also would allow commissioners courts to regulate subdivision developments to address drainage concerns.

Platting requirements. CSHB 423 would require a landowner in an unincorporated area to prepare a plat if the owner divided the land into two or more parts for subdivisions, lots, or tracts of land intended for public use or for the use of lot owners, such as streets, alleys, parks, or squares.

The bill would *not* require a plat for a subdivision of land if:

- the land was to be used primarily for agriculture, ranching, wildlife management, or timber production;
- each lot in the subdivision was transferred to an individual related to the owner within the third degree of consanguinity or affinity;
- each lot was more than 10 acres in area and contained no land dedicated for public use; or
- all lots were sold to veterans through the Veterans Land Board program.

The exemptions based on land use and degree of consanguinity would be in effect for a particular piece of land only as long as the conditions qualifying the land for the exemption were in effect. If the land use changed or if the purchaser no longer was related to the buyer, the land would have to be platted according to the requirements of the Local Government Code.

Timely approval of plats. CSHB 423 would require county commissioners to review and approve any completed plat applications submitted by landowners within 60 days after the commissioners court or the court's designee had received the complete application. The county would have to provide a list of all documents and information required for an application to be complete. Each document or piece of information would have to be based on a specific requirement authorized in the bill or in applicable law. If the county received an incomplete application, it would have up to 10 days to notify the applicant of the missing information and would have to allow the applicant to submit the missing information in a timely manner.

If the commissioners court or the court's designee failed to take final action on a plat application before the required deadline, the plat application would be granted automatically. The applicant would be entitled to apply for a writ of mandamus to compel the commissioners court to issue documents recognizing the approval of the plat and would be entitled to a refund of 50 percent of the deposit or application fee or the unexpended portion of any application fee or deposit, whichever was greater.

The 60-day deadline for plat approval would include the resolution of all appeals by the landowner and would apply only to a decision completely within the authority of the commissioners court. The deadline could be extended for a reasonable period if the applicant so requested or for an

additional 60 days if a "takings" impact assessment was required by law. The commissioners court or the court's designee would have to decide within 20 days of receiving the completed application if the 60-day deadline needed to be extended for a takings impact assessment, and the court could not compel an applicant to waive the time limits specified in the bill.

Drainage concerns. CSHB 423 would allow county commissioners courts to require reasonable specifications in subdivisions to provide drainage, manage stormwater runoff, and coordinate subdivision drainage with general storm drainage patterns in the area. The bill would include drainage requirements for a subdivision in determining the amount of a bond executed by a developer if the commissioners court required a bond to develop the subdivision. Commissioners courts could deny a request to cancel a subdivision if the cancellation would prevent the proposed interconnection of infrastructure to pending or existing development.

The bill would take effect September 1, 1999, and would apply only to land subdivided or a plat filed on or after that date, except that the requirements for timely approval of plats would apply only to plat applications submitted on or after October 1, 1999.

SUPPORTERS SAY:

Unscrupulous developers have exploited a loophole in the law to create residential subdivisions in unincorporated areas without submitting plats or providing water and wastewater services. These subdivisions are divided into "flag" lots, with the main portion of the lot connected to a county road by a narrow strip of land that resembles a flagpole. Flag lot developments are created solely to avoid county development regulations. They have no other economic or aesthetic value for the residents.

Flag lot developments often have insufficient water and wastewater services, creating health hazards for residents in the subdivisions and in adjoining areas. It is very difficult to provide services to residents in these subdivisions once they have been developed. Flag lot developments are exempt from providing adequate drainage, which may result in flooding for downstream residents. Driveways leading to residences often are of poor quality and impassable in wet weather.

The state should prohibit flag lot developments to ensure the safety of residents in and around these developments and to protect the property rights

of adjoining landowners. CSHB 423 would close the loophole in the Local Government Code to accomplish these goals. The bill would reestablish the legislative intent of the code to prevent the development of rural residential subdivisions without plat approval by counties.

The time limit for plat review would benefit developers by preventing lengthy delays by county commissioners in reviewing plat applications. The bill would provide sufficient safeguards to ensure timely review of applications. In addition, some counties may need the authority provided in the bill to regulate drainage in subdivisions and to include drainage costs in subdivision development bonds, to protect property in and around the subdivision.

CSHB 423 would not increase the powers of county governments nor impose unnecessary restrictions on subdivision development. The bill is supported by organizations concerned about property rights and limited government, such as the Texas Farm Bureau and Take Back Texas.

OPPONENTS SAY:

CSHB 423 would give counties increased authority over land development, which is contrary to the best interest of landowners. The state should not give counties such broad rulemaking authority in response to a few cases of unscrupulous development. Flag lot developments are a local issue that could be managed better through specific local actions.

The requirement that all lots in a subdivision be 10 acres or larger to be exempt from platting requirements is unrealistic. Very few subdivisions for residential development exceed five acres. A five-acre minimum for all lots would conform better to other development standards and would provide sufficient protection against substandard developments.

The bill also should exempt transfers of land between businesses. These transfers are unlikely to lead to substandard residential development. Platting requirements for such transfers could cause unnecessary financial and regulatory problems for businesses.

NOTES:

The committee substitute added an exemption for subdivided land used for farm, ranch, or wildlife management or timber production from platting requirements. It also added an exemption for land sold to veterans under the Veterans Land Board program. It removed from the original bill an exemption for land located within a priority groundwater management area.

The substitute extended to 60 days from 30 days the additional time available for plat review if a takings impact assessment is required. It added the provision requiring a commissioners court to notify an applicant within 20 days if the plat approval deadline had to be extended for a takings impact assessment. It removed a provision in the original bill that required lot frontage on all streets and roads to be at least 15 feet wide in subdivisions governed by the bill.

The companion bill, SB 710 by Wentworth, passed the Senate on April 19 and was reported favorably, without amendment, by the House Land and Resource Management Committee on April 22, making it eligible to be considered in lieu of HB 423.

SB 710 includes provisions not found in CSHB 423:

- A county could not impose a higher standard for streets or road in a subdivision than it imposes on itself for streets or roads with a similar type and amount of traffic;
- The bill would not apply to state land unless the subdivision laid out streets or other parts of the tract dedicated for public use;
- A county could not require a political subdivision to prepare a subdivision plat if the land was situated in a floodplain and the lots were sold to adjoining landowners;
- A county could not require an owner to prepare a subdivision plat if the owner did not lay out streets or other parts dedicated for public use and:
  - one new part was to be retained by the owner and the other new part was to be transferred to another person who would further subdivide the tract subject to plat approval by the county, or
  - all parts were transferred to persons who owned an undivided interest in the original tract and a plat was filed before any further development of any part of the tract;
- The county's acceptance of a completed plat would not be construed as approval of the required documentation or other information; and

- The 60-day deadline for county action on a plat application could be extended if the applicant and the county agreed to the extension in writing.