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Implications of New Subdivision Shot Clock Rules for Municipalities and Developers

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In 2019 the Texas Legislature made a number of changes to the Texas Local Government Code that were intended to provide more certainty and uniformity in the development process. These changes included restrictions on municipalities' ability to mandate building materials, limitations on historic designations without owner consent, a reduction in the open-ended nature of Board of Adjustment appeals and an expansion of the existing "shot clock" rule for approval of a subdivision plat.

The new shot clock rules adopted under House Bill 3167 that became effective on September 1, 2019 will significantly change the process for plat approvals in some jurisdiction and will lead to a higher level of certainty for developers. While the new platting rules may create some additional challenges for municipalities and counties, particularly under the current conditions caused by the response to COVID-19, the changes should ultimately benefit both developers and the local jurisdictions.

I. Shot Clock Rule Before 2019

Chapter 212 of the Texas Local Government Code included limitations on the timing to approve a plat prior to the changes in the law made during the 2019 session of the Texas Legislature. The previous version of the shot clock rule provided that municipalities and counties had to take action on a plat within thirty (30) days of the submittal of the plat.

(a) The municipal authority responsible for approving plats shall act on a plat within 30 days after the date the plat is filed. A plat is considered approved by the municipal authority unless it is disapproved within that period.

(b) If an ordinance requires that a plat be approved by the governing body of the municipality in addition to the planning commission, the governing body shall act on the plat within 30 days after the date the plat is approved by the planning commission or is considered approved by the inaction of the commission. A plat is considered approved by the governing body unless it is disapproved within that period.

TEX.LOC.GOV'T CODE §212.009.

the commissioners court or the court's designee shall take final action on a plat application, including the resolution of all appeals, not later than the 60th day after the date a completed plat application is received by the commissioners court or the court's designee.

TEX.LOC.GOV'T CODE §232.0025(d).

Chapter 212 offers several options for municipal plat approval, either through city council, planning commission or a designated staff member. The thirty-day rule applied to whoever was responsible for final plat approval.

The municipal authority responsible for approving plats under this subchapter is the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality. The governing body by ordinance may require the approval of the governing body in addition to that of the municipal planning commission.

TEX.LOC.GOV'T CODE § 212.006(a).

(a) The governing body of a municipality may delegate to one or more officers or employees of the municipality or of a utility owned or operated by the municipality the ability to approve:

- (1) amending plats described by Section 212.016;
- (2) minor plats or replats involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities; or
- (3) a replat under Section 212.0145 that does not require the creation of any new street or the extension of municipal facilities.

(b) The designated person or persons may, for any reason, elect to present the plat for approval to the municipal authority responsible for approving plats.

(c) The person or persons shall not disapprove the plat and shall be required to refer any plat which the person or persons refuse to approve to the municipal authority responsible for approving plats within the time period specified in Section 212.009.

TEX.LOC.GOV'T CODE § 212.0065.

Many municipalities in Texas use a two-tier process for plat approval: a preliminary plat and final plat. Prior to the effective date of House Bill 3167, the shot clock rule did not apply to preliminary plats, only to final plats. This was discussed at length in a 2008 opinion by the 1st Court of Appeals, relying on a 1975 opinion on shot clock rules.

The parties disagree as to whether the 30-day rule applies to all plats, both preliminary and final, or only to final plats. Section 212.009 does not distinguish between preliminary and final plats—indeed, appellees admit that such a distinction is “not specifically contemplated” by the statute. Chapter 212 defines a plat only as including a replat. The parties disagree how a two-tier plat-approval process like the City's fits into the 30-day rule.

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What the parties dispute is whether the filing of a preliminary plat—which did not comply with section 212.004's requirements, did not meet all requirements of the City's ordinance for preliminary plats, and did not include matters that the City's ordinance required for final plats—triggered section 212.009(a)'s 30-day rule, when section 212.009(a) does not distinguish between preliminary and final plats.

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