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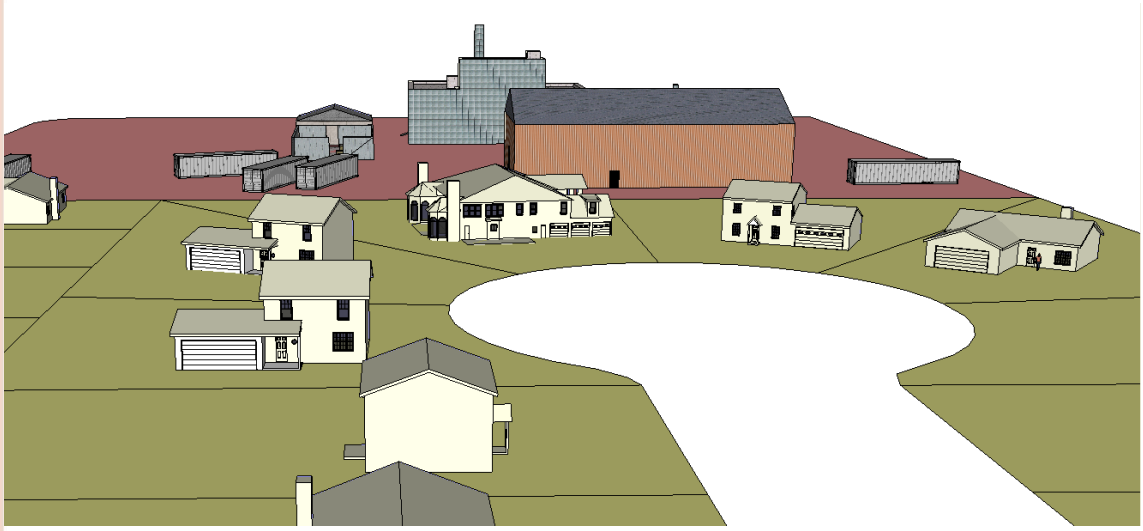
Counties

County Land Use Authority in Texas



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November 2009

County Land Use Authority in Texas

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Executive Summary

With a few notable exceptions, efforts to expand county land use powers in Texas have failed to advance since the most recent major revisions to the county provisions in the Texas Local Government Code passed in 2001. Despite the stalling of recent legislative efforts, many county officials continue to express their concerns about the effects of their limited ability to prevent some of the more negative effects of development and state the need for these limitations to be addressed through legislative action. Hearing these concerns, this report outlines the current state of county land use in Texas, focusing on the powers that counties currently have at their disposal. For each of these powers, where applicable, instances of counties innovating to maximize their granted powers in order to more effectively control land use are highlighted. When describing counties' current powers, both as granted and as exercised, this report provides both a reference to the legal basis for these powers as well as a link to the relevant code or statute that is cited.

This report is the first of two the Capital Area Council of Governments (CAPCOG) will produce on the topic of county land use authority. This report focuses almost exclusively on the current powers and limitations composing counties' powers to regulate land use and the efforts many counties have made to get the most of these powers. The second report, however, will focus on specific legislative strategies Texas counties may take to gain the powers necessary to effectively control the rapid pace of growth that unincorporated areas at the fringe of urban areas in many parts of the state are currently experiencing.

Introduction to County Land Use in Texas

County land use in Texas is an issue that continues to generate increased division of opinion regarding what, if any, further powers the state should grant counties in order to control growth. On one side are those who believe that areas outside of incorporated cities are rural in nature and should be subject to no regulations other than those strictly related to health and safety. On the other side are those who state that much of the state's residential growth is occurring outside of city limits, in areas that while urban in character do not have the power to enact the refined development review standards that cities do, resulting in haphazard development.

There have been no significant legislative changes to county land use power since the most recent large-scale updates to Section 232 of the Texas Local Government Code were passed in 2001. The debate on the issue has largely focused on the issues of protecting property rights and the desire to avoid growing county governments, rather than the benefits of the reduction of incompatible uses, overcrowding and protection of property values that can occur with well-executed planning and zoning. Even though legislation presented has used a format that makes

county zoning a local option that must be approved through a referendum, rather than something that is mandatory or enacted through act of the Commissioners' Court, legislation expanding county land use powers cannot muster the necessary votes for approval.

To a certain extent, this stalemate regarding county land use is a historical accident. Counties with over 62,000 residents gained the ability to adopt home rule charters in 1933, but no county was able to fully enact this power before it was rescinded in 1969. El Paso County was the only county to even try to pass the required referendum (House Research Organization, 2002: 2). Analyses of the failure of counties to adopt home rule charters generally blame the language of the constitutional amendment that granted the ability to pass the charter for being unworkable due to conflict with the constitution's delegation of powers to counties. As a result of this conflict, the ability for counties to enact home rule was unutilized and the provision was removed in a legislative act that removed several "inoperable" provisions of the state code (House Research Organization, 2002, 1). In the years since counties were first given then later denied the ability to pass the charters, which theoretically would have allowed eligible counties to pass zoning ordinances after gaining home rule, every state in the union other than Texas has either given zoning and planning authority to counties or otherwise created a mechanism whereby all territories in the respective state either can be or must be zoned or be included in a comprehensive plan. At present, Texas is the only state in the U.S. that restricts large areas within its boundaries from being or zoned or effectively planned. This prohibition against zoning and planning is based simply on the type of jurisdiction covering the lands, in this case county jurisdiction, not on the character of the lands. While not all states have "county zoning" per se, all other states have some mechanism to ensure that zoning, long-range planning controls are available to all jurisdiction types within their boundaries.

Perhaps the most surprising aspect of the county land use debate is the comparatively strong powers that Texas cities have in comparison with cities in most other states. Cities in Texas have the right to impose impact fees, which is far from uniform across the country. Similarly, Texas cities can review development outside of its city limits in areas called extra-territorial jurisdictions. This practice does not exist in the vast majority of states. Resultantly, city planning operations in Texas are frequently quite sophisticated, engaging in practices not allowable in many other states. This makes the restricted operations of Texas counties all the more incongruous.

The current relationship that counties have with the state government is that counties are a creature of the state, and as such are charged with carrying out its laws. This has conversely been interpreted as implying that counties may exercise no power unless specifically granted to do so. This is known as the "Dillon's Rule" interpretation, which named after a well-know court case involving state power over local government activities in Iowa. Unlike many other states, Texas has a mix with Dillon's Rule for counties and smaller cities and home rule for larger cities. Overcoming this situation would entail either creating the ability for counties to become

chartered or creating some other mechanism by which urban counties can acquire the city-like powers needed to manage their unincorporated urbanizing area

Until the Texas Legislature can be convinced that the state's fast-growing counties need the type of land use controls that are either granted or required in other states, the counties will have to focus on maximizing the limited powers that have already been granted. This paper will describe the land use controls that Texas counties have at their disposal, the sources of these powers and what counties have done to maximize these individual powers. Additionally, this paper will show what approaches are being developed as alternatives to the limited powers counties have.

Land Use Controls Granted to All Texas Counties

Subdivision Review

Counties are given the right to review and regulate the subdivision of land. Section 232 of the Texas Local Government Code details counties' subdivision authority. The basis of this grant of powers is the requirement for counties to review plats except under certain conditions under which subdivisions are exempt from plat review. The types of subdivisions that are exempt are those that create a "daughter tract" for relatives within the third degree of the subdivider, lots over10 acres, lots with frontage on existing roads, those created for veterans under certain conditions and lands that are subdivided for agricultural uses.

Section 232.0025 provides the explicit procedure for the submission and review of plat applications. Section 232.0025 (a) mandates transparency in the review process through requiring counties to create an explicit list of required documents and other information that are necessary for a county to review and approve a plat. Applications must be reviewed and final action taken within 60 days of an application being complete.

While the simple act of subdividing land may seem like a minor power that counties wield, the real power of subdivision authority comes from the related requirements that counties also must rely upon developers to satisfy in order to gain approval for their proposed subdivisions. As will be seen below, the most important standards that are also imposed on subdivision developments are based on water supply, drainage, transportation infrastructure and a number of environmental controls.

Local Examples of Current and Emerging Subdivision Ordinances

An example of how counties use subdivision review to package a number of additional reviews that proposed developments must undergo can be seen in the Travis County subdivision review procedure. Travis County's requirements for subdivision applications and the ordinances in which these requirements are contained can be viewed at the county's website at http://www.co.travis.tx.us/tnr/subdivision/default.asp.

After several years of working towards a producing a much more detailed and organized subdivision and land development ordinance, Hays County has repealed and replaced the ordinances the county had used to regulate development. The latest version of the Hays County development ordinance can be viewed at http://co.hays.tx.us.

Innovative Practice: Parkland Dedication

Travis County has implemented a parkland requirement in new subdivisions. Developers unwilling or unable to incorporate the required parkland in their subdivisions must pay a fee in lieu of parkland. The formula for determining the amount of parkland required to be dedicated is based upon the number of units created multiplied by the number of residents per unit. Travis County's formula expects that more people per unit will live in dense developments in comparison to developments with larger lot sizes. The fee in lieu option is technically only available if the required parkland for a development is less than 6 acres. However, in negotiations with developers, Travis County has often ended up pursuing the fee in lieu option for larger developments in order to create larger, more comprehensive county parks.

Hays County's overhaul of its subdivision ordinance includes a requirement of one acre of parkland per 50 acres developed. This requirement could also be met with a fee in lieu of the dedication.

Transportation

Sections, 232.03 and 232.031 specify which road construction standards counties may require in submitted plats. Section 232.03 allows counties to set the specifications, but Section 232.031 states that the standards imposed on subdivision roads may not exceed those the county imposes upon itself. This limitation has also been interpreted in some counties as requiring the county to build to the same standards expected of developers. Generally speaking, subdivision roads used as main arterials can have a required right-of-way of 50-100 feet with shoulder-to-shoulder widths from 32 to56 feet, while local roads in the subdivision may have required rights-of way of

40-70 feet with shoulder-to-shoulder widths from 25-35 feet. This section allows for "reasonable" standards for roadway construction and drainage specifications to be set based upon the amount and types of travel over the roads. Perhaps most directly relevant to land use control, Section 233.032 allows counties to establish set back lines on public roads. Counties may not require more than a 25 foot setback from all public roads other than major highways or roads or more than a 50 foot setback on major highways and roads.

Section 232.025 details the required rights-of-way required for the arterial and local roads with in a subdivision. This section also details the minimum roadway width for the arterials and both minimum and maximum widths for the local roads.

Section 232.0033 allows counties to conduct tighter review of plats where all or part of the plat is within a planned major transportation corridor. This section allows counties to delay approval until it is clear that the plat will not interfere with the right-of-way needed for the transportation corridor.

Similarly, Section 232.102 allows for the creation of major thoroughfare plans in urban counties. This includes allowing eligible counties to require a 120-foot right-of-way for corridors that a county identifies as major thoroughfare, or rights-of-way of greater than 120 feet if identified as a major thoroughfare in a Metropolitan Planning Organization's long-range plan.

The Texas Utilities Code also has some provisions that directly relate to counties' ability to control land use through transportation planning. Chapter 181 of the Utilities Code requires utilities planning the location of transmission lines to notify the Commissioners' Court to propose the route for such transmission lines when they are in the right of way of a county road. The county may specify the allowable location of the utilities within the right-of-way. This provision applies to electric, gas, telephone, telegraph, and other telecommunication lines. This rule, by extension, could also be applied to the location of utilities in subdivisions where the roads will be dedicated to the county upon completion.

Local counties using transportation as a major element in land use control

Comal County has used its major thoroughfare plan in order to regulate setbacks from major roadways. The county is enforcing the maximum allowable distance as the required setback, something that is also proposed in Hays County's draft ordinance. This practice has proven controversial in Comal County, and is currently being tested in a lawsuit against the county. Bastrop County has minimum setback and driveway width requirements for residential subdivisions.

Kendall County has used its authority to regulate transportation infrastructure to upgrade the standards for roads in subdivision as well as the means of egress to and from county roads. This has included not only the setbacks from county roads and design standards of subdivision roads and the access routes to the county roads, but also signage of streets and the addressing of residential structures to facilitate better emergency response times in unincorporated areas. Additionally, the county has taken the bold step of requiring improvements to the county road a proposed subdivision abuts if the county judges that the subdivision will negatively impact traffic and safety on the county road.

Airports

Counties have enhanced land use control authority in areas surrounding airports. Section 241, which has "The Airport Zoning Act" as its short title, permits counties to create land use districts in areas surrounding public airports. The primary rationale for granting counties this right is the reduction of airport obstructions. An interesting feature of this section is that the same language applies to both cities and counties, with no limitation placed upon counties.

Housing

Section 232.007 allows counties to create specific standards for the review of manufactured home rental communities. These standards may specify the infrastructure, road and environmental protection requirements of such communities. However, the standards for manufactured housing communities may not exceed the standards imposed on non-manufactured housing in the county.

Travis County, like several other counties in major urban areas in Texas, uses subdivision review as a way to encourage the development of certain types of housing. In Travis County's subdivision ordinance, there are incentives for the development of affordable, energy efficient housing. These incentives can be found in Section 82.107 of the Travis County Code. The code provides for a partial or full waiver of review fees, covered by the Travis County Housing Finance Corporation. The amount of fees waived in is direct proportion to the percentage of the units in the developments designated as affordable and designed to incorporate universal design features.

Water, Wastewater and Stormwater

Sections 232.003 and 232.0032 grant counties the ability to set and enforce specifications for the supply of water, the treatment of wastewater and the handling of stormwater runoff. Section 366 of the Health and Safety Code allows counties to regulate the design, location and construction of on-site sewage disposal systems. Section 232.0032 specifically grants counties the ability to require an engineer's certification that wells or other subsurface sources of drinking water are adequate to serve the subdivision. Some counties have explored using this provision to form groundwater districts, which would serve as the official agencies to certify the wells.

Travis County is implementing SB 1299, which allows Travis County to qualify for Section 573.001 of the Local Government code, which allows for higher levels of stormwater management, due to its location near the Edwards Aquifer., Previously only Harris and Bexar counties qualified.

Comal County: rigorously enforcing water supply requirement

One county that has opted for a very strict interpretation of the power to require evidence of sufficient water supply is Comal County, just southwest of the CAPCOG region. Comal requires applicants to prove that their water supplier not only has adequate water to serve a proposed subdivision at buildout, but also that the supplier can handle the sum total of all subdivisions for which it has committed to supply water for the next 20 years. The strictness of this requirement has led to numerous subdivisions being categorically denied and several water systems being excluded from the list of eligible providers until they can demonstrate that they can serve both the developments to which they have committed to supply water as well as any proposed subdivisions.

TWDB Model Ordinance

One option that allows Texas counties and efficient way to utilize many of the powers granted to them is through the use of the model ordinance, which the Texas Water Development Board (TWDB) has created, commonly referred to as the Model Subdivision Regulations, or MSR. This MSR contains all the language needed to meet baseline standards of showing sufficiency of drinking water supply as well as what is necessary to ensure that wastewater and stormwater are properly addressed in the subdivision plats. The ordinance also provides language to establish basic subdivision standards, which can be a boon for counties that either do not have subdivision requirement language or if their subdivision ordinance has dated or weak provisions. Adding convenience for adopting counties is the model ordinance's feature of being written in a way that

does not require cross-references to other parts of a county's code, leading to easy self-contained adoption. The model ordinance also helpfully contains language that automatically repeals contradictory portions of the adopting county's code.

Any county wishing to gain access to funds through TWDB's Economically Distressed Areas Program needs to adopt the MSR before applying for the funds. Travis County in the CAPCOG region has adopted TWDB's model ordinance, and other counties have either adopted the provision in the ordinance or have codes that are effectively the same as those in the MSR. The Model Ordinance can be viewed at the following site: http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=31&pt=10&ch=364&sch=B

Floodplain

Section 232.030 of the Local Government Code requires counties to regulate standards for flood management in accordance with the standards set forth by the Federal Emergency Management Agency under the National Flood Insurance Act. Additionally, Section 16.315 of the Water Code allows counties to restrict development in land and regulate construction in flood plains. This has been used by local counties to require design that provides conveyance of stormwater from a 100 year flood, prevent flooding on either the subject properties or nearby properties, minimize erosion and control the two-year peak flow of stormwater. Section 82.207 of Travis County Code interprets this mandate to require a 25 foot easement for a floodway, with 15 feet allowed if enclosed drainage facilities are constructed. In this easement there may be no buildings, fences, or other improvements constructed and the county has the right to remove any objects that violate this requirement. This provision has the effect of having a considerable influence on which parts of a parcel to be subdivided can have structures placed on them. As this is a requirement of Texas Code, other counties' ordinances are very similar.

Other Environmental Controls

Habitat Conservation Plans

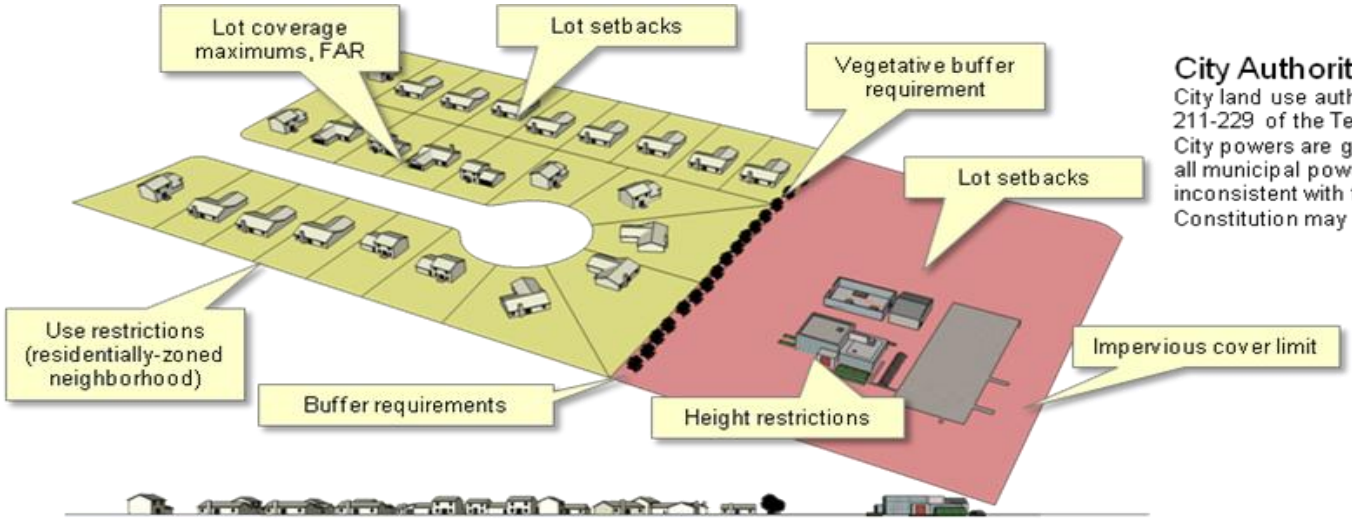
One tool that can potentially be effective in shaping development is the use of Habitat Conservation Plans (HCP). Chapter 83, Texas Parks and Wildlife Code is the source for the authority to create these plans. If a county has endangered threatened or endangered species identified as living or potentially living within its boundaries, the county can create a plan to conserve the areas that are likely habitats for these species. Bastrop County has done this with their lost pines/Houston toad habitat. Under this HCP, there are special development procedures

that apply if one participates in the plan (participation is voluntary). The benefits of participating are greatly streamlined requirements as opposed to what is required to meet the federal review of incidental taking of habitat.

Mitigation Banks

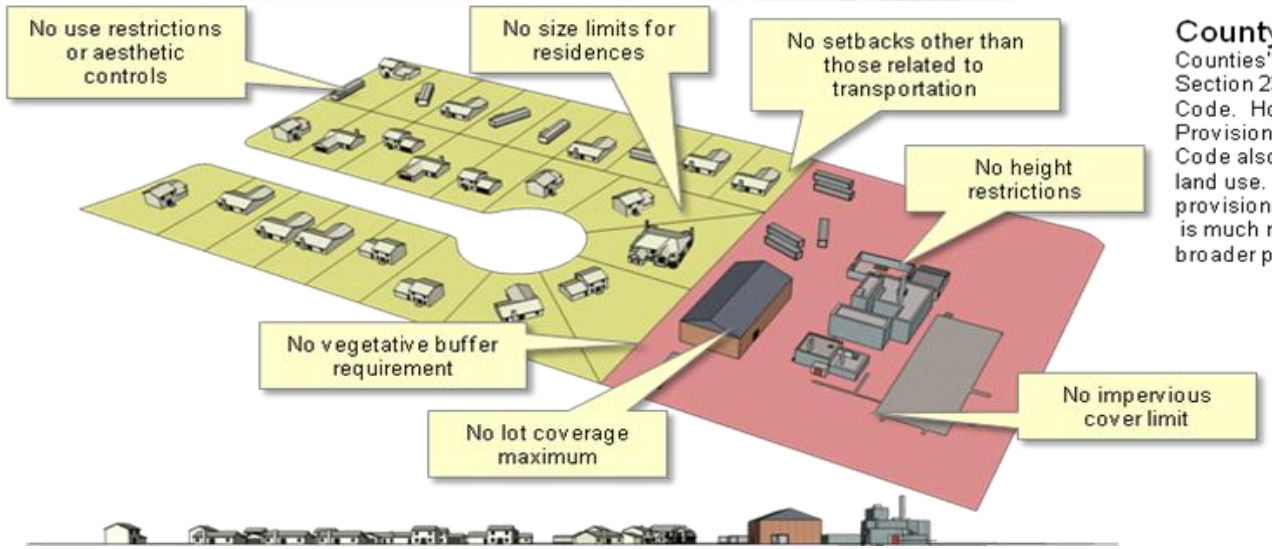
In conjunction with a habitat conservation plan, many counties will require developers to purchase habitat land elsewhere when developing land that has been identified in their habitat conservation plan. This land must also be identified as likely habitat for the protected species that has a habitat on the land to be developed. Williamson County has facilitated the purchase of lands in Burnet County to compensate for the development of land that could be habitat for the black capped vireo and golden-cheeked warbler bird species as well as several types of karst invertebrates. Similarly, the City of Austin has purchased land in Hays County to mitigate the effects of development over the Edwards Aquifer.

Figure 1: Illustrative Comparison of City and County Authority



City Authority

City land use authority is granted in Chapters 211-229 of the Texas Local Government Code. City powers are granted in a manner where all municipal powers not otherwise inconsistent with the Texas Constitution may be exercised.



County Authority

Counties' authority is mostly found in Section 232 of the Local Government Code. However, miscellaneous other Provisions outside the Local Government Code also affect counties' ability to control land use. This combination of these provisions result in a grant of power that is much more limited than the much broader powers cities may wield.

Conservation Easements

A more generalized environmentally-based strategy to control development is the use of conservation easements. In purchasing these easements, counties make a contract with the developer that the tract for which the easement is created cannot be developed, subdivide or converted to a more intensive use. Generally, conservation easements are reserved for parcels that are identified as having scenic, ecological or historic/cultural value that separates them from typical undeveloped parcels. That being said, some governments may chose to purchase easements in order to create a buffer to try to contain development within a certain distance of a population center.

Central Texas Greenprint

Bastrop, Caldwell, Hays and Travis Counties in the Central Texas Region have collaborated with the Trust for Public Land, Envision Central Texas and CAPCOG to produce the Central Texas Greenprint. This document will be instrumental in assisting the participating counties in choosing which lands are best suited for conservation easements, habitat conservation or park and recreation facilities. The Greenprint will also help in guiding local land trusts in working with the counties to choose lands where preservation will help reinforce local conservation objectives. The final report and maps for the Greenprint can be accessed via CAPCOG's website.

Orderly, Healthful and Moral Development

Sale of Alcohol

Section 109.33 of the Alcoholic Beverage Code allows counties to prohibit businesses that sell alcohol from operating within 300 to 1,000 feet of a church, school or hospital. As is the case with other sections of the Texas Code, this only allows counties to exercise this authority outside incorporated areas.

Sexually-oriented Businesses

Section 243 covers the regulation of sexually-oriented businesses. Like the airport zoning statute, this section applies to both cities and counties. Per the language of this section, sexually-oriented businesses can be regulated for their location, density and proximity to other use types. Additionally, the language in this section requires that before a hearing, the property is posted to notify passersby of the nature of the use the applicant proposes. Section 243 also allows both

cities and counties to require permits for sexually-oriented businesses and establish the timing and procedure for the regular review of the permits.

Wrecking and Salvage Yards

Section 396.041 of the Transportation Code allows counties to require certain auto wrecking and salvage yards to obtain county permits for operation. These permits may specify the location of the yards, making the permits site-specific and not transferrable to other parcels. In a manner similar to zoning ordinance language, these junkyards must be screened from surrounding uses using either plants or natural materials. This section also states that junkyards are not to be located within 50 feet of the right-of-way of a public road.

Solid Waste

Section 361 of the Health and Safety Code provides guidance for both counties and cities regarding solid waste disposal. Section 361.162 states that a county may designate the areas that are suitable for solid waste disposal. Section 361.154 states that counties may require and issue licenses governing the maintenance of solid waste facilities in areas outside municipalities and their extra-territorial jurisdictions. Section 364 provides counties with the ability to regulate the ability to restrict dumping and other disposal of solid waste and enter into contracts to manage solid waste in conjunction with other entities.

Keeping of Wild Animals

Section 240.002 allows counties to regulate or prohibit the keeping of wild animals that pose a threat to humans and livestock in unincorporated areas. This section provides much leeway to counties in classifying restricted animals as well as determining the appropriate punishment.

Construction Codes

SB 365, passed during the 77th legislature specified municipal residential construction and electric codes cities are to use. The bill also allowed cities to adopt local amendments to the code (House Research Organization, 2002: 7). Counties, however, had not been allowed to enforce specified codes nor granted the authority to enforce them. Recent events have shown that unpermitted residential construction and poor siting of construction sites can have disastrous effects. A post event analysis of the 2009 Bastrop County Fire, which Texas Forest Service

conducted, showed that the materials and the location of features such as decks and roofs can have a profound effect on either resisting spreading wildfires. The inspection of residential construction plans and sites for these types of hazards would be helpful in wildfire and other natural disaster prevention or mitigation.

HB2833, which was passed in 2009, looks to have the possibility to change this situation for counties. This bill amends Section 233 of the Local Government Code to allow county governments to adopt the rules of this bill by resolution. The specific inspections to be undertaken are described in Section 233.151 (a) (2). This bill will be Section 233's new Subchapter F. The bill calls for the inspections to take place during three stages of residential inspection: the foundation stage, the framing and mechanical systems stage and upon completion of construction. These provisions apply to both the construction of new residential units and the expansion of existing units. The developer is responsible for having either professional inspectors from each of the specialties represented in the required inspection, a professional combination inspector or a qualified county employee perform the inspection. The one major caveat is that the local county government may not charge for the inspections or the cost of administering the inspection requirement.

The provisions of HB 2833 only apply to areas outside city limits, or in the cases of cities that have adopted building codes that apply to their ETJ areas, outside of the relevant cities' ETJ areas. At this time, the bill is too newly passed to see if county governments will enact this bill's provisions in a widespread manner. However, some counties have already begun to act, such as Bastrop County adopting the City of Bastrop's building standards as a result of this legislation.

Emerging Approach: Conservation Subdivisions

One area of potential innovation in land use regulation that is still emerging is the use of conservation subdivisions to create incentives to develop land in an environmentally-friendly manner. Typically, such approaches involve clustering residences in a small area of the parcel to be developed while leaving much of the parcel in its natural state. This approach is more difficult in unincorporated areas in Texas due to the state's lack of zoning controls. Without zoning, there is no possibility of "density bonuses" in a cluster area or allowances for more lots if certain best practices are used. However, a county can define the types of goals it desires from a conservation subdivision (specific sensitive features preserved, large areas of land left undisturbed, reduced water usage, lower infrastructure costs compared to standard development types, less impervious surface, use of energy-saving climate control or water supplies, other objectives) and reward applications that meet these standards with reduced fees or tax incentives. Other than a lack of zoning powers, the one major impediment to the success of conservation

subdivision ordinance is TCEQ rules that do not allow for the clustering of residential units on shared septic systems.

Local Progress in Implementing Conservation Subdivisions

Travis County passed a conservation subdivision ordinance in 2006. The main mechanism used to encourage conservation subdivisions in Travis County's ordinance is a series of waivers and incentive payments. Qualified conservation subdivisions are eligible for a waiver of the fees for application, plan review and inspection. Additionally, these projects are also excused from parkland dedications or fee in lieu of parkland dedication. Travis County also has incentive payments to reward developers for preserving areas in wildlife or agricultural tax credit, or to defray the cost of preparing an ecological assessment or managing the property's open space.

Hays County has recently passed a major rewrite of its subdivision ordinance that will include provisions to encourage conservation subdivisions. The entirety of the Hays County ordinance, including the conservation subdivision language, can be viewed at http://co.hays.tx.us.

Land Use Controls Granted to Selected Texas Counties

The Texas Code has a multitude of land use powers granted to certain counties or portions of counties. These provisions are mostly scattered throughout the Local Government Code, interspersed with the powers that all counties share. This mixture of widespread and specifically granted county powers is the result of the fact that Texas counties are not allowed to exercise any power which the state has not specifically granted. This section will highlight some of the powers that only certain counties and areas within counties enjoy as possible powers that counties could focus on gaining in future legislative sessions.

One option for counties interested in expanding their powers to control development is to seek legislative action that grants special county powers with the passage of so-called "bracketed" legislation targeting specific areas based on their location, population, or specific natural features. In many cases, the bracketed legislation provides full zoning powers to the area specified, or otherwise provides a much greater degree of land use control than the standard controls granted to counties that have not been specified in such legislation.

Establishment of Planning Commissions

The most extensive example of this phenomenon is Chapter 232, Subchapter B (Sections 232.021-232.043) of the Local Government Code. In this subchapter, counties with territories within 50 mile of the Mexican Border may establish a planning commission, something that is not explicitly granted to other counties in the Code. This subchapter also requires the counties to enact the TWDB model ordinance described above. Section 232.024 emphatically states that applications failing to satisfy the requirements of the subchapter may not be approved, making this section as much of a requirement to exercise the authority as it is a grant of the authority.

Fire Protection

Counties that either have a population of 250,000 or that are adjacent to a county with a population of 250,000 may pass fire codes for their unincorporated areas. The requirements related to the exercise of this authority are detailed in Subchapter C. The main limitation of this grant of power is that single-family residential structures are not affected. Rather, the fire code is only allowed to cover, commercial, public or multifamily residential buildings. The adoption of fire codes allows for counties to pass building ordinances affecting the classes of buildings that the fire code can cover. This section also allows for permitting processes and fees to be created to enforce the fire code and building permit ordinances.

The exclusion of residential structures in Subchapter C is a major shortcoming of this section. As shown in recent events in Central Texas, wildfires affecting residential areas outside of city limits are a major threat to health and safety. Expanding this power to cover residential structures is both necessary and potentially something that should find advocacy among county governments and volunteer fire departments.

Lighting near Military Installations

Section 240.032 allows counties to control lighting levels near military bases or astronomical observatories. Comal County is currently working with Camp Bullis to regulate dark sky conditions near that installation. The effect of this order will be to require permits for all new lighting in affected areas.

Water Wells and On-Site Sewage

Counties with populations in excess of 1.4 million have the ability to regulate water wells in order to avoid some of the more negative possible sources of groundwater contamination. This ability is detailed in Section 240.042 of the Local Government Code. Especially important in this power is the ability to regulate wells in a manner so that on-site sewage treatment systems do not contaminate water sources. Why this authority is only granted to such large counties is unclear, given that many of the state's fastest-growing counties are much smaller than this population yet still have immense burdens being created on their aquifers. Broadening this bracketed statute may be a vital strategy in gaining counties more control over potential threats that rapid development may place upon their groundwater.

HB 2275 (now in effect) would amend statute and create a task force to research and identify the conflicts and deficiencies in current law regarding the regulation of subdivision development in the unincorporated areas of counties near the international border and in economically distressed counties. The task force must develop recommendations and draft a proposal for legislation to create uniform standards for subdivision regulation in these areas. The Texas Water Development Board would provide administrative support to the task force, including necessary staff and meeting facilities.

Zoning

Contrary to popular belief, there is zoning in unincorporated areas in Texas. Examples of this are the unincorporated areas of South Padre Island as well as the areas surrounding Lake Tawakoni and Lake Ray Roberts, the El Paso Mission Trail and several other special areas all having zoning powers, including the ability to create and seat planning commissions. These special areas, and the authority the counties overseeing them enjoy, are detailed in Chapter 231, which is even entitled "County Zoning Authority." These zoning powers generally extend 5,000 feet beyond the feature in question, or otherwise cover an area in which potential impacts of development around the feature was sufficient to convince the legislature that enhanced land use control was necessary to protect the feature. While there may be additional areas that could receive the special powers granted to the areas covered in Chapter 231, the accretion of a few additional areas enjoying this power over time will not likely lead to greater land use power overall.

Conclusion

The ability for counties to control land use is largely limited to the reviews related to the subdivision of land. Counties leverage their subdivision authority to also control land development use in acceptable manners related to transportation, water supply, wastewater, and other environmental issues. Counties also have other land use controls, at their disposal, many of which address highly specific topics, and do not lend themselves to broad land use powers. Due to some ambiguity in the powers which counties have been granted, some counties have made efforts to expand their powers into land use controls that are not fully addressed or may be tangentially related to the powers that counties explicitly have.

The extremely limited nature of counties' land use controls has led to situations in which rapidly-growing counties find themselves unable to control development in an acceptable manner. This has led for populous or growing counties to try to secure further land use controls through action of the state legislature. However, these legislative efforts have been unsuccessful since the passage of SB873 in 2003.

Travis County Survey

Travis County has experienced rapid growth for decades. In recent years the vast majority of the county's growth has occurred outside of city boundaries. As a result, the county has been able to do very little to control growth. With the county's growth becoming an increasingly high-profile issue, the County conducted a survey to discern residents' support for enhanced land use controls. There survey showed very strong support for comprehensive planning in Travis County. Respondents were also generally favorable to limited zoning, buffers between incompatible uses and impact fees, especially those related to transportation. The proposed land use powers that did not gain support were home rule, which tested extremely poorly, and residential building codes. The results of the survey can be viewed at the following website: http://www.hillcountryalliance.org/uploads/HCA/traviscountygrowth.pdf

While there continues to be some debate over what authority counties ultimately need to manage growth, expanded county land use powers could become key in addressing other challenges related to sustaining and effective road system and extending water to new development. Expanding counties' ability to plan and regulate growth will ultimately be necessary to ensure our state and its communities have the infrastructure and resources for future generations.

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