SUBJECT: Preventing delays in city and county approval for developments

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Craddick, Muñoz, Biedermann, Leman, Stickland, Thierry

2 nays — Bell, Canales

1 absent — Minjarez

WITNESSES: For — Richard Maier, Lennar Homes; Rainer Ficken, Newland; Mira Boyda, Pohl Partners; Leonard Smith, Pohl Partners, Texas Land Developers Association; Geoffrey Tahuahua, Real Estate Council of Austin; Scot Campbell and John Womack, Texas Land Developers Association; Shelby Sterling, Texas Public Policy Foundation; Mitch Fuller; (*Registered, but did not testify*: Trey Lary, Allen Boone Humphries Robinson LLP; Abigale McNomee, BGE; Kathleen Callaway, Blackburn Communities and RJ Allen; Jerry Valdez, Coats Rose Law Firm; Bradley Pepper, Greater Houston Builders Association; David Glenn, Home Builders Association of Greater Austin; Rick Neff, Hunt Communities; Shawn Kirkpatrick, KB Home; Dan Mays, Lennar; Ernest Meyer, Newland Real Estate Group; Jennie Braasch, Colleen Miller, William Pohl, Gina Tingley, and Amy Vatzlavick, Pohl Partners; Vera Massaro, Qualico Communities; Kyle Jackson, Texas Apartment Association; Ned Muñoz, Texas Association of Builders; Daniel Gonzalez and Julia Parenteau, Texas Realtors; Chuck Rice, TLDA; Ricardo De Camps; and 12 individuals)

Against — Andrew Linseisen, City of Austin; (*Registered, but did not testify*: Clifford Sparks, City of Dallas; Guadalupe Cuellar, City of El Paso; Michael Kovacs, City of Fate; Sally Bakko, City of Galveston; James McCarley, City of Plano; Christine Wright, City of San Antonio; Bill Kelly, City of Houston Mayor's Office; Chris Mullins, Save Our Springs Alliance)

On — (*Registered, but did not testify*: Ender Reed, Harris County

Commissioners Court)

BACKGROUND:

Local Government Code sec. 212.009(a) requires a municipal authority responsible for approving a plat with regard to subdivisions to act on the plat within 30 days of it being filed.

Sec. 232.0025(d) requires a county commissioners court or its designee to take final action on a plat application with regard to subdivisions within 60 days of receiving it. Sec. 232.0025(f) allows this period to be extended for a reasonable period if the applicant and the court or its designee agree to the extension in writing.

Sec. 232.0025(e) requires the court or its designee to provide a complete list of the reasons for disapproving a plat application with regard to subdivisions.

Sec. 232.0025(h) prohibits a county commissioners court or its designee from compelling a plat applicant to waive the time limits associated with the application.

DIGEST:

CSHB 3167 would require cities and counties to issue decisions regarding subdivision plans and proposed land developments in a timely manner. It also would give those whose applications were declined an opportunity to revise the application and resubmit it for consideration.

Definitions. The bill would expand the types of applications to be considered by authorities responsible for approving plats by replacing "plat" with "plan" in relevant sections of the Local Government Code and defining "plan" as a subdivision development plan, including a preliminary plat, preliminary subdivision plan, subdivision construction plan, site development plan, and final plat.

The bill would define "development application" as an application for approval of proposed land development required by a municipality and would specify that the term did not include an application for the approval of a plat or other plan defined above.

Municipal and county approval of subdivisions. The bill would require a municipal authority or governing body or county commissioners court or its designee to approve or disapprove, rather than act on, a plan within 30 days after the plan was filed. For a county authority, that period could be extended for another 30 days if the applicant requested it.

Disapproval requirements. The bill would require an authority that disapproved a plan to provide the applicant a written statement of the reasons for disapproval. Each reason given would have to be directly related to the statutory requirements and would have to include a citation to the law that was the basis for the disapproval. The reason could not be arbitrary or intended to delay approval.

Applicant response. If a plan was disapproved, the applicant could submit to the relevant authority a written response that remedied each reason given for the disapproval. The authority would be prohibited from establishing a deadline for an applicant to submit the response.

Upon receiving a response, the authority would be required to approve or disapprove the previously disapproved plan within 15 days. The authority would be subject to the same requirements that applied to the initial decision and only could disapprove the previously disapproved plan for a reason that had been previously provided to the applicant in response to the original plan.

The authority that received the response would have to approve the previously disapproved plan if the response adequately addressed each reason for the earlier disapproval. A previously disapproved plan would be considered approved if the response adequately addressed each reason for disapproval or if the response was not acted upon within the 15-day period.

Judicial review. If an applicant were to challenge a disapproval in court, the authority would have the burden of proving by clear and convincing evidence that the disapproval met the requirements of the law and would prohibit a court from using a different standard.

Other provisions. CSHB 3167 would require all of its provisions relating to subdivisions to apply to a municipality or county regardless of whether it had entered into an interlocal agreement, including one between a municipality and a county.

The bill would prohibit an authority from requesting or requiring an applicant to waive a deadline or any other relevant approval procedure.

Municipal approval of land development applications. CSHB 3167 would require any municipality that adopted a regulation requiring approval for a proposed land development to approve or disapprove the development application within 30 days of the filing of the application. Unless the municipality disapproved of the application within 30 days, it would be considered approved.

Disapproval requirements. A municipality that disapproved of a development application would have to provide the applicant a written statement of the reasons for disapproval. Each reason given would have to be directly related to the statutory requirements and include a citation to the law, including a statute or municipal ordinance, that was the basis for the disapproval. The reason could not be arbitrary or intended to delay approval.

If a development application was disapproved, the bill would allow the applicant to submit to the municipality a written response that remedied each reason given for the disapproval. The municipality could not establish a deadline for an applicant to submit the response.

Applicant response. If the applicant submitted a response, the municipality would be required to approve or disapprove the previously disapproved application within 15 days. The municipality would be subject to the same requirements that applied to the initial decision and would be able to disapprove the previously disapproved application only for a reason that had been previously provided to the applicant in response to the original application.

The municipal authority or governing body that received the response would have to approve the previously disapproved application if it adequately addressed each reason for the previous disapproval. Any response that adequately addressed each reason for disapproval would be considered approved, as would any previously disapproved application not acted upon within the 15-day period.

Judicial review. If an applicant were to challenge a disapproval of a development application in court, CSHB 3167 would place on the municipality the burden of proving by clear and convincing evidence that the disapproval meets the requirements of the law and would prohibit the court from using a deferential standard.

Other provisions. CSHB 3167 would require all of its provisions relating to approval procedures for development applications to apply to a municipality regardless of whether it had entered into an interlocal agreement, including one between a municipality and a county.

The bill would forbid a municipality from requesting an applicant to waive a deadline or any other relevant approval procedure.

The bill would take effect September, 1, 2019, and would apply only to a development or plan application filed on or after the effective date.

SUPPORTERS SAY:

CSHB 3167 would address problems with long delays and escalating costs in the development process. By limiting the time that cities and counties could take to render a decision on an application for development applications and requiring the reasons for rejections to be specific and relevant, the bill would help developers to address problems in their applications, expedite the approval of projects, and lower consumer costs.

The bill would give cities and counties 30 days to render a considered decision regarding the application, more than enough time to learn the details of the proposal and to investigate the relevant facts.

OPPONENTS SAY:

CSHB 3167 would limit the abilities of cities and counties to make the best land-use decisions for their residents and the environment. The prohibition on reconsidering issues from the initial application would not allow them to consider a new issue that might have arisen because of the applicant's revision of the application.

Development approval represents one of the few tools that these entities have, especially in areas without zoning, to ensure that their regions build in safe, productive, and environmentally balanced ways. This bill could make it harder for cities and counties to encourage responsible growth.