SUBJECT: Defining a new project for purposes of development permits

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Walker, Crabb, F. Brown, Geren, Krusee, Mowery, Truitt, B. Turner

0 nays

1 absent — Howard

WITNESSES: For — Gary Brown, Jeff Friedman, and Richard H. Parker, Pohl, Brown and Associates; Jimmy Gaines, Texas Landowners Council; Robert Kleeman, Austin 360 Associates

Against — Cobby A. Caputo, Phillip T. Duprey, and Leonard Smith, City of Cedar Park; Marcella Olson, City of Fort Worth; Frank F. Turner, City of Plano and Texas Municipal League

BACKGROUND: The 75th Legislature in 1997 inadvertently repealed Government Code, chapter 481, subchapter I, which dealt with restrictions on state and local permits and generally required that approval or disapproval of a permit for a project be based on the requirements in effect when the original permit was filed. Also, if a series of permits had to be filed for a project, the applicable requirements would be those in effect when the first permit was filed.

In 1999, the 76th Legislature enacted HB 1704 by Kuempel, requiring political subdivisions to review project permits solely on the basis of requirements in effect when the original permit application was filed. This act, codified in Local Government Code, chapter 245, also voided any actions taken by political subdivisions after September 1, 1997, and before the act's effective date that caused or required the expiration or cancellation of a project, permit, or series of permits to which the act would apply.

DIGEST: CSHB 2951 would amend Local Government Code, chapter 245 to require that all development permits needed for the development of a particular tract of land would be considered one set of permits. Subsequent permits would

be considered a part of the original permit if the original permit would allow the proposed land use. An amended permit would not be considered a new project, which would make it subject to new permitting regulations, solely on the basis of a requested change in the development permit.

The bill would define a development permit as a preliminary plat, final plat, replat, preliminary plan, concept plan, general development plan, detailed development plan, or site plan. It would define a project as a land development proposal that included all the land subject to a development permit, including all uses allowed by applicable land-use regulations.

CSHB 2951 would allow the land or a portion of the land or an interest in the property under the existing development permit to be sold without being considered a new project that needed another development permit.

The bill would specify that Local Government Code, chapter 245 would not apply to municipal zoning regulations that did not affect development regulations unrelated to land use.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS SAY:

CSHB 2951 would clarify current law to underscore the concept that development rights do not go away when a property is sold. The original intent of HB 1704, enacted by the 76th Legislature, was to ensure that municipalities could not adopt retroactive requirements for ongoing projects after September 1, 1997, and that projects should not be viewed as terminated and subject to new regulation if the ownership changed.

CSHB 2951 also would provide for orderly process and certainty in the development process. Predictability is crucial for financing complex, long-term developments. Property owners and lenders could not make rational financial decisions on providing for infrastructure if the permitting requirements changed after either sale or foreclosure on a ongoing development project. Retroactive changes to development regulations should not be allowed.

While this bill arose out of a dispute in Cedar Park, it addresses public policy issues of importance to the entire state. The Legislature, rather than Cedar Park's attorney, should make the final interpretation of this statute. Changing 2 percent of a project should not restart the regulatory clock on the remaining 98 percent of the property.

OPPONENTS SAY:

CSHB 2951 would contradict the original intent of HB 1704, which was to vest rights at the time a plat was filed. This bill seems to imply that rights would be vested when even the skimpiest plan was developed. It could lead to a circumstance in which a "paper napkin" site plan would provide vested rights that would trump even the city's zoning ordinance.

CSHB 2951 would mix standards for permits that are tied to specific projects and land-use requirements spelled out under zoning ordinances, whereas HB 1704 specifically excluded zoning regulations. The vagueness and internal inconsistencies of CSHB 2951 would lead to complex and costly litigation to clarify these issues.

The City of Cedar Park has not changed its zoning ordinance or other requirements since the affected project began. Nothing the city has done has prevented development of these tracts during the recent economic boom in Williamson County.

NOTES:

The committee substitute differs from the original bill by adding provisions that would define "development permits" and would modify the definition of "project." The substitute would provide that all subsequent permits would be considered part of the original permit as long as the land use was allowed under that permit and that a proposed development would not be considered a new project solely on the basis of a requested change in the development permit. The substitute also added the provision that a development would not be considered a new project if the land, a portion of the land, or an interest in the land was sold.