SUBJECT: Modifying platting processes for subdivision golf courses

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Mowery, Orr, Zerwas, Callegari, R. Cook, Geren

0 nays

3 absent — Y. Davis, Pickett, Ritter

WITNESSES: For — John Branch, Clear Lake City Civic League and Clear Lake City Water Authority; Steve Brickhouse, Inwood Forest; Charles J. Butera, Quail Valley Fund; Mike Carpenter and Kenneth K Miller, Near Northwest Management District; Matthew A. Kornhauser, Toni Lawrence, and Larry Marinucci, Inwood Forest Community Improvement Association; Janice Scanlan, Quail Valley Open Space; Bobby L Gowens; Coby Hesse, Sandy MacNaughton; Allen Owen; Robert J. Thompson; Bobbie Tremain; James Tremain; (*Registered, but did not testify:* John Greytok, city of Missouri City; Darrin Hall, city of Houston; Ellen Marinucci, Inwood Forest Community Improvement Association; David Mintz, Community Associations Institute – Legislative Action Committee; Cheryl A. Gowens; Doyle W. Reynolds)

Against — Bob Collins and Jim Short, Houston Real Estate Council; (*Registered, but did not testify:* Scott Norman, Texas Association of Builders)

BACKGROUND: Local Government Code, ch. 212, subch. A, governs municipal regulation of subdivisions. The chapter requires owners intending to divide land in the full purpose or extraterritorial jurisdiction of a municipality to lay out and submit a plat detailing improvements, lots, streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public or private use. Plats are approved by a municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality.

Secs. 212.009 and 212.010 regulate the method and timeframe for approval for submitted plats. The municipal authority responsible for approving plats must act decisively within 30 days after the date the plat

was filed. A plat is considered approved by the municipal authority unless disapproved within that period. The municipal authority must approve a plat if it includes a reasonable plan to provide adequate water and wastewater facilities and if:

- it conforms to the general plan of the municipality and its current and future streets, alleys, parks, playgrounds, and public utility facilities;
- it conforms to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities;
- any applicable bonds are filed with the municipality; and
- it conforms to any rules municipalities may adopt to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthy development of the municipality.

DIGEST:

CSHB 3232 would add Local Government Code, sec. 212.0155 to modify municipal processes and requirements for platting proposals if any part of the area subject to the new plat was a subdivision golf course located in the boundaries of certain municipalities and counties. The bill would prohibit a municipality from approving such a plat unless it determined that:

- there was adequate existing or planned public infrastructure to support the future development of the subdivision golf course;
- based on existing or planned facilities, the development of the subdivision golf course would not have a materially adverse effect on traffic, parking, or drainage, water, sewer, or other utilities;
- the development of the subdivision golf course would not have a materially adverse effect on existing single-family property values;
- the new plat was consistent with all applicable land use regulations and restrictive covenants and the municipality's land use policies as described by the municipality's comprehensive plan or other appropriate public policy documents; and
- A previous plat did not reflect a restriction on the subdivision golf course.

A municipal authority also could determine that, to be appropriate, development of a golf course would have to be a currently permitted use

under applicable zoning or restrictive covenants or a compatible single-family residential development.

Any municipal authority reviewing the new plat would have to conduct, with ample notice provided, a public hearing at which interested parties had an adequate opportunity to comment to the application. If a protest petition was signed by owners of at least 20 percent of the area within 200 feet of the proposed development, the planning commission would require a three-fifths majority to approve the plat. The 30-day timeline for a decision on a plat would not apply.

A plan for development or new plat application for a golf course would have to contain basic development and infrastructure information, a landscaping plan to screen adjacent residential properties, and an analysis of the effect of the project on values in the adjacent residential neighborhoods. Municipal authorities would be able to impose additional requirements as conditions for approving the plat. An owner within 200 feet of a subdivision golf course subject to development would be able to seek declaratory or injunctive relief from a district court to enforce the added provisions.

The bill would apply to municipalities with more than 50,000 people located in counties with more than 3 million people (Harris), or in counties with more than 275,000 people and adjacent to a county with more than 3 million people (Montgomery, Fort Bend).

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 August 27, 2007.

SUPPORTERS SAY:

CSHB 3232 is necessary for the protection of landowners who purchase property in subdivisions with the assumption that certain community goods, such as a golf course, will be available for the foreseeable future. In certain regions in Texas, golf course subdivisions are very popular. Families purchase homes in these subdivisions often to be near golf greens, which offer opportunities for recreation and provide a buffer from encroaching development. Such courses, however, may be owned by an entity independent and separate from the subdivision that arranges for its continued maintenance and operation. These agreements do not guarantee the continued existence of the golf course, and such courses may be sold off to developers who attempt to develop higher-intensity land uses that

are incompatible with the original subdivision. This outcome is upsetting to owners who purchased property in the subdivision due to the existence of a golf course and to those whose property is directly impacted by any new development.

CSHB 3232 would add some basic protections for landowners in golf course subdivisions by modifying the processes through which such courses may be platted and redeveloped. Current platting review standards do not adequately address the issues that this specific situation presents. The bill would provide an opportunity for affected property owners to take part in the development process and would allow a planning commission or governing body to account for the neighborhood impacts of a proposed development.

The bill would allow a reviewing planning commission to take into account whether a development proposal would have a material, adverse effect on the neighborhood and whether the proposed development was compatible with existing residential construction. Planning commissions would have the ability to deny a platting application that posed clear, considerable negative impacts on the existing subdivision. The bill would not allow a planning commission to deny an application that did not present an incompatible use and was willing to make adjustments to reduce the impact of development on existing residents. Only conspicuously incompatible uses, such as commercial developments that generate significant traffic and noise, would be denied through the process.

CSHB 3232 would be bracketed to mid-size and larger municipalities in Harris, Montgomery, and Fort Bend counties, where golf course subdivisions have proliferated. The bill would supplement weak land use and zoning controls in some of these areas to provide a minimal degree of protection for the thousands of property owners who are vulnerable to unregulated redevelopment at the center of their neighborhoods.

OPPONENTS SAY:

CSHB 3232 would introduce significant uncertainty into the platting process, confuse powers associated with zoning and platting, and give planning commissioners a burden of making difficult decisions regarding the impact of development. Current platting practices create an expectation that a city will approve a plat if all statutorily stated requirements are met. HB 3232 would make this process entirely discretionary with no clear indication of why a plat would or would not be

approved. The bill would introduce standards for determination that could be subject to various interpretations and produce unpredictable outcomes. Reducing uncertainty in the development process is highly problematic for developers, who are reluctant to engage in processes that could yield uncertain outcomes.

The bill would attempt to use the plat approval process to control land uses. Platting review is utilized by counties and cities that do not have zoning ordinances and largely concerns whether a development proposal contains the infrastructure necessary to serve a proposed use and whether adequate provision has been made for access to streets, public utilities, and other basic services. Zoning powers have traditionally been used to address land uses, structural compatibility, density, and other matters regarding the appearance and construction of improvements. CSHB 3232 would extend traditional zoning powers to the platting process, and in so doing would undermine longstanding practices governing the processes and determinants of platting decisions. The bill effectively would put in place a zoning code for development on subdivision golf courses in Houston, Pasadena, and unincorporated areas.

The bill would give planning commissions inordinate powers to make findings regarding applications and to determine if an application would have material, adverse effects on a number of considerations. Commissioners are not accustomed to making decisions regarding adverse effects of development, and many rightfully are reluctant to take on this responsibility. The material, adverse effect of a development is best left for courts to decide.

The bill also would eliminate the 30-day time limit on planning commission decisions. This would allow a planning commission that did not want to consider an application to simply never make a ruling. A planning commission also would have to determine whether an application concerned a golf course that was an "integral part of a common scheme" of a development. Such a determination should not be made in a platting framework by planning commissions that are ill-equipped to make such decisions.