

SUBJECT: Allowable uses for a property owner with an adjacent lot in an HOA

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Deshotel, Orr, Bohac, Garza, Giddings, Quintanilla, Solomons

0 nays

2 absent — S. Miller, Workman

WITNESSES: For — Darrell Jack (*Registered, but did not testify*: Janet Ahmad, Homeowners for Better Building; Pat Carlson, Texas Eagle Forum and National Homeowner Advocate Group; Robert Doggett, Texas Housing Justice League; Robin Klar Lent and Lynn G. Walshak, HOA Reform Coalition; Irene Adolph; Frances Crouch; Wesley Crouch; Nancy Hentschel)

Against — Susan Wright, Texas Community Association Advocates and Texas Association of Builders

On — Evelyn Garcia

BACKGROUND: In 2001, the 77th Legislature added Property Code, ch. 209, the Texas Residential Property Owners Protection Act, which applies to all mandatory homeowners' associations (HOAs) and establishes requirements for association records, voting, attorneys' fees, foreclosing on property, and other procedures.

DIGEST: CSHB 44 would amend Property Code, ch. 209 to prohibit an HOA from banning or restricting a property owner from using for residential purposes an adjacent lot that he or she owned. The bill would define a "residential purpose" as:

- a noncommercial building or structure;
- a garage, sidewalk, driveway, parking area, playscape, residential natural gas tank, fence, septic system, swimming pool, utility line, or water well; and
- if otherwise permitted, parking for a recreational vehicle.

Any restrictive covenant that violated the bill's provisions would be void.

An owner would have to get the approval of the HOA before placing a structure on the lot. The association or its architectural committee would evaluate the proposal based on criteria in its dedicatory instrument, including reasonable restrictions on size, location, and aesthetics.

An owner who opted to use an adjacent lot for such residential purposes would have to include the lot in a sales agreement or restore the lot to its original condition upon the sale or transfer of the main residence. Unless he or she restored it to its original condition, an owner could sell an adjacent lot separately only to construct a new residence that adhered to the HOA's restrictive covenants.

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, 2011.

**SUPPORTERS  
SAY:**

CSHB 44 would bolster the property rights of Texans who own multiple properties in an HOA. While HOAs afford many benefits, there have been numerous conspicuous cases recently involving HOAs abusing their powers. One recent example involved an HOA in Comal County that attempted to prevent a property owner from placing a well on an adjacent property that he also owned. In that case, the HOA's attempts were prompted by a conflict with a neighbor, even though the property owner had obtained approval for his plans through the community's architectural review process.

CSHB 44 would protect the rights of those who own adjacent plots in HOAs to use their properties for reasonable purposes. The bill would do so by adopting a reasonable definition of "residential purpose" found in the legal documents establishing the vast majority of HOAs. In so doing, it would place into statute precedents established in two court cases concerning adjacent lots in HOAs. In the first, *Winn v. Ridgewood Development Co.*, the Second Court of Appeals of Texas held in 1985 that the term "residential purposes" in an HOA's restrictive covenant required the use of property for "living purposes" and not business or commercial purposes. In this case, the court held that a large tree house on an adjacent lot was within the definition of a residential purpose, since there was no evidence that it was being used for business or commercial purposes.

In the second case, *Berlioz Investments v. Tanglewood Homes*, the Fifth Circuit U.S. Court of Appeals in 1997 found for a developer who wished to construct a swimming pool, driveway, parking area, fence, or hedge on the lot adjacent to his primary residence. The court held that the proposed developments on the adjacent property did not violate a restrictive covenant requiring property in the HOA to be used for residential purposes only.

CSHB 44 would update and clarify state laws to reflect these legal precedents, saving many property owners from lengthy and costly legal proceedings. The bill strikes a balance between protecting the rights of property owners and recognizing the legitimate interests of HOAs to adopt restrictive covenants to protect property values and ensure compatibility of land uses. The committee substitute improved the introduced bill by adding language affirming that a property owner still would have to get the approval of an HOA's architectural review committee — a step that would be necessary regardless of the statutory requirement — and placing some reasonable limits on the sale of an adjacent property.

Arguments that the bill would infringe upon covenants between an HOA and a property owner are misplaced — the Legislature has frequently enacted laws to protect the property rights of homeowners in an HOA. Provided such laws are circumscribed to address a particular problem, as CSHB 44 is, they can stem the most conspicuous abuses while avoiding interference with the majority of HOAs that enjoy amicable relationships with homeowners.

OPPONENTS  
SAY:

CSHB 44 is an example of a troubling attempt to modify the relationship between a property owner and an HOA with legislation. When a property owner purchases property within an HOA, he or she enters into a voluntary contract to abide by the association's restrictive covenants. The definition of these covenants should be left to HOA boards and bylaws, and any disputes over the covenants can be resolved through existing processes — specifically, through the right to file action in court.

Although CSHB 44 would be restricted to specific instances when a property owner owned a main home and an adjacent lot, it could have unintended consequences. In particular, HOAs in urban settings adopt restrictive covenants to ensure that vacant parcels are developed as residential structures. In many urban HOAs, property owners purchase

residences with confidence that adjacent parcels will be developed as residential homes. Under the bill, an HOA would not be able to prevent parcels under common ownership from being used as parking areas, garages, or swimming pools. This could undermine the ability of HOAs in more urban contexts to fulfill one of their core missions — to protect property values by ensuring compatibility of land uses. At the least, CSHB 44 should be bracketed to rural areas where an HOA is less obligated to promote denser residential development.

OTHER  
OPPONENTS  
SAY:

The committee substitute to CSHB 44 added language that would diminish the merits of the bill by subjecting a property owner who owned a principal residence and an adjacent property to various restrictions regarding reselling an adjacent lot and seeking approval of improvements through an architectural review committee. These restrictions should not be imposed upon property owners, who should be able to enjoy the full use of all property that they purchase.

NOTES:

The committee substitute added requirements that an owner:

- receive the approval of the HOA before placing a structure on the lot; and
- include the lot in a sales agreement or restore the lot to its original condition upon the sale or transfer of the main residence.

The committee substitute also added a definition for “adjacent lot” and expanded the definition of “residential purpose” to include the location of a residential natural gas tank.