

- SUBJECT:** Establishing a process for receivership for certain platted lots
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 7 ayes — Deshotel, Leman, Biedermann, Burrows, Rosenthal, Spiller, Thierry
2 nays — Craddick, Romero
- WITNESSES:** For — Steve Bresnen, El Paso County; Sergio Estrada, HCIA; Roxanne Jurado, Horizon Communities Improvement Association; (*Registered, but did not testify*: Daniel Collins, County of El Paso; Claudia Russell, El Paso County; Julia Parenteau, Texas Realtors; Vanessa MacDougal)
Against — None
- BACKGROUND:** It has been suggested that a statutory framework is needed in order to enable around 90,000 lots in El Paso County, many of them abandoned and most lacking utilities and of minimal economic value, to be returned to productive use.
- DIGEST:** CSHB 1564 would establish a process for the appointment of a receivership for and disposition of certain lots that are abandoned, unoccupied, and undeveloped in a county that:
- had a population of more than 800,000;
 - was adjacent to an international border; and
 - contained more than 30,000 acres of lots that had remained substantially undeveloped for more than 25 years after being platted (El Paso County).

The bill would allow the commissioners court of an applicable county to implement an expedited process to administratively determine that a platted lot was abandoned, unoccupied, or undeveloped, if the lot:

- had remained undeveloped for 25 years or more after being platted;
- was part of a subdivision in which 50 percent or more of the lots were undeveloped, unoccupied, or no more than 10 acres in size;
- had an assessed value of less than \$1000 as of January 1, 2020; and
- as of that date, had not been valued for ad valorem taxation as land for agricultural use.

The county would not have an ownership interest in any lot administratively determined to be abandoned, unoccupied, and undeveloped, except for any existing or future legal interest established by other law.

Notice of hearing. Before making such an administrative determination, the county would have to hold a public hearing and make reasonable efforts to notify each owner and lienholder of the lot of the time and place of the hearing. The county also would have to:

- publish notice of the hearing in a local newspaper of general circulation no later than 10 days before the hearing and on the county's website; and
- file notice of the hearing in the county property records.

Notice to owners and lienholders and notice filed in county records would have to use and include the relevant names and addresses that could be reasonably ascertained from the deeds of trust or other instruments on file in county records. Once the county had taken such actions, an owner or lienholder would be presumed to have received notice of the hearing regardless of a response from the person.

Hearing and order of determination. The hearing could be held by the county commissioners court or by an appropriate commission or board appointed by the court. At the hearing the owner or lienholder would be able to provide testimony and present evidence to refute any of the bill's required elements for a determination of lot abandonment. It would be an affirmative defense to a determination of lot abandonment that a lot's ad valorem taxes had been paid in full for each year that a tax invoice was

issued. The county could conduct a single hearing for multiple lots and make a determination on multiple lots based on the same evidence.

No later than 14 days after a hearing at which a lot was determined to be abandoned, unoccupied, and undeveloped, the court would issue an order of its determination. No later than 14 days after the order was issued, the county would have to post notice of the order at the county courthouse and either publish notice of the determination including instructions for appeal in a newspaper of general circulation in the county or post the required information on the county's website.

Any owner of lienholder aggrieved by an order of determination under the bill's provisions would be able to file in a district court in the county a verified petition alleging that the decision was illegal and specifying the grounds for the allegation. The petition would have to be filed within 60 calendar days of the order. Otherwise, the order would become final.

Receivership. Upon a final determination that a platted lot was abandoned, unoccupied, and undeveloped, an owner or lienholder's rights and legal interests would be extinguished, and the county would bring a civil action to have the lot placed in a receivership. The court could appoint as receiver any person with a demonstrated record of knowledge of the problems created by abandoned lots. The county, its officials and employees, and their relatives would not be eligible to be receiver. Notice of the civil action proceedings would be provided to owners and lienholders of record of the lot.

The receiver would be an officer of the court, sworn to perform the relevant duties faithfully, and could:

- take control of a platted lot;
- make any repairs or improvements needed to make the lot developable;
- make provisions for the lot to be subject to infrastructure requirements;
- aggregate platted lots with others determined to be abandoned,

- unoccupied, and undeveloped;
- re-plat the lot;
- accept the grant or donation of any lot within the affected area to carry out the purpose of the bill; and
- exercise all other authority that an owner could have exercised.

If the donation of a lot to the receiver was not challenged within one year, the donation would be final and irrevocable.

The receiver's use of funds related to their duties would be subject to the approval of the court. All net proceeds from the disposition of a lot would be placed in trust and remain in trust for at least three years, unless claimed within that time. The court would have to provide additional notices as practicable to an owner or lienholder about net proceeds. On expiration of the trust period, any money remaining in the receivership would escheat to the state.

After the receiver had improved the lot to the degree that it was developable and met all applicable standards, or before petitioning the court for termination of the receivership, the receiver would have to file with the court a summary account of costs and expenses incurred, which could include a receivership fee of up to 15 percent of costs and expenses. The receiver also would have to file with the summary account certain information about the disposition of the lot and related revenue and net proceeds. The receiver would have a lien on the property for all unreimbursed costs and expenses and any receivership fee.

Sale. The sale of any property by the receiver would be subject to approval by the court, and would have to be made by public auction, sealed bid, or sealed proposal. Before a sale could take place, the receiver would have to publish notice in English and Spanish of the sale in a local newspaper of general circulation. The receiver also would be required to try to provide notice specifically to persons with an interest in developing the property. The receiver would be able to reject any and all offers and reoffer the property for sale, including in combination with other property.

The bill would take effect September 1, 2021.