

TAKINGS IMPACT ASSESSMENT

Proposed Subdivision Regulations – Williamson County, Texas

PURPOSE AND INTENT

Williamson County, Texas, acting through the Williamson County Commissioners Court (hereafter “County”) is proposing to adopt new Subdivision Regulations (hereafter “Proposed Regulations”) for the County. The Proposed Regulations will include specification of County and Commissioners Court authority to define and implement its regulations along with definition of procedures and rules for implementation of subdivision land development projects within County jurisdictional areas including but not limited to the following:

- Plat application review and procedures
- Preliminary and final plat requirements
- Procedures for amending and vacating plats
- Fiscal security requirements and procedures
- Private subdivisions
- Variances
- Plat Expirations
- Manufactured home community standards
- Vesting protocol
- Engineering guidelines
- HB 1445 protocol
- Construction inspection requirements
- Lot requirements, including set-backs
- Development fees and penalties
- Technical specification for subdivision layout, street and driveway design, and drainage design.

This Takings Impact Assessment (hereafter “TIA” is intended to satisfy the statutory requirements of the Texas Private Real Property Rights Preservation Act (the “Act” or PRPRPA) in regard to the Proposed Regulations.

REGULATORY BACKGROUND

General Principles in the Law of Regulatory Takings

The U.S. Supreme Court and the Texas Supreme Court have formulated a standard for determining when a governmental regulation of private property goes so far as to become a taking. At present, the U.S. Supreme Court and Texas Supreme Court have adopted the following basic legal principals concerning the law of regulatory takings:

- Possible remedies for a regulatory taking are to invalidate the offending regulation or to make the governmental entity liable for monetary damages.
- In defending a challenge to a regulation, the governmental entity must show that the regulation actually substantially advances a legitimate state interest. A legitimate state interest has been liberally interpreted to include such things as protecting residents from the “ill effects of urbanization” and the preservation of desirable aesthetic features.
- A compensable regulatory taking occurs when a land use regulation either (1) denies the landowner all economically viable uses of the property, or (2) unreasonably interferes with the owner’s right to use and enjoy his property. The Texas Supreme Court has held that a land use regulation denies a landowner all economically viable uses of the property if the regulation renders the property valueless.
- In determining whether a governmental regulation unreasonably interferes with an owner’s right to use and enjoy his property, a court must evaluate two factors: (1) the economic impact of the regulation (i.e., comparing the value that has been taken from the property with the value that remains), and (2) the extent to which the regulation interferes with existing or already-permitted land uses is more likely to be considered a regulatory taking than a regulation which interferes with speculative uses or the landowner’s asserted entitlement to the highest and most valuable use of every piece of his property.
- In the case of governmental exactions, the required dedication for public use or of public facilities must be roughly proportional to the actual need for those public facilities which is generated by the proposed development. For example, the amount of roadway required to be dedicated by the developer must be reasonably commensurate to the amount of traffic generated by the new development.

The County recognizes the need to comply with the general principles regarding takings or other exactions as reflected in applicable state or federal laws, court rulings and the Texas Real Property Rights Preservation Act.

The Texas Real Property Rights Preservation Act (the “Act”)

In 1995, the Legislature enacted the Act which is codified in Chapter 2007 of the Texas Government Code (TGC). The overriding purpose of the Act was to ensure that governmental entities in Texas take a “hard look” at the effects on private real property rights of the regulations they adopt.

Definition of a Regulatory Taking Pursuant to the Act

The following information is taken from a guidance document prepared by the State of Texas Office of the Attorney General (OAG). The Act [specifically TGC §2007.002(5)] defines a “taking” as follows:

(a) a governmental action that affect private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or

(b) a governmental action that:

(1) affects an owner’s private real property that is the subject of the governmental action , in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner’s right to the property that would otherwise exist in the absence of the governmental action; and

(2) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The Act, in TGC §2007.002, thus sets forth a definition of “taking” that (i) incorporates current jurisprudence on “takings” under the United States and Texas Constitutions, and (ii) sets forth a new statutory definition of “taking.” Essentially, if a governmental entity takes some “action” covered by the Act and that action results in a devaluation of a person’s private real property of 25% or more, then the affected party may seek appropriate relief under the Act. Such an action for relief would be predicated on the assumption that the affected real property was the subject of the governmental action.

TGC §2007.003(a) provides that the Act applies only to the following governmental actions:

(1) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure;

(2) an action that imposes a physical invasion or requires a dedication or exaction of private real property;

(3) an action by a municipality that has effect in the extraterritorial jurisdiction of the municipality, excluding annexation, and that enacts or enforces an ordinance, rule, regulation,

or plan that does not impose identical requirements or restrictions in the entire extraterritorial jurisdiction of the municipality; and

(4) enforcement of a governmental action listed in Subdivisions (1)-(3), whether the enforcement of the governmental action is accomplished through the use of permitting, citations, orders, judicial or quasi-judicial proceedings, or other similar means.

The requirement to do a TIA only applies to §2007.003(a)(1)-(3).

Governmental Actions Exempted From the Act

There are certain governmental actions exempted by the Act. The following actions are exempted from coverage of the Act under §2007.003(b):

- (a) an action by a municipality except as provided by subsection (a)(3);*
- (b) a lawful forfeiture or seizure of contraband as defined by Article 59.01, Code of Criminal Procedure;*
- (c) a lawful seizure of property as evidence of a crime or violation of law;*
- (d) an action, including an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by federal law or an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law;*
- (e) the discontinuance or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property;*
- (f) an action taken to prohibit or restrict a condition or use of private real property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state;*
- (g) an action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property;*
- (h) a formal exercise of the power of eminent domain;*
- (i) an action taken under a state mandate to prevent waste of oil and gas, protect correlative rights of owners of interests in oil or gas, or prevent pollution related to oil and gas activities;*
- (j) a rule or proclamation adopted for the purpose of regulating water safety, hunting, fishing, or control of non-indigenous or exotic aquatic resources;*
- (k) an action taken by a political subdivision:*
 - (1) to regulate construction in an area designated under law as a floodplain;*
 - (2) to regulate on-site sewage facilities;*

(3) *under the political subdivision's statutory authority to prevent waste or protect rights of owners of interest in groundwater; or*

(4) *to prevent subsidence;*

(l) *the appraisal of property for purposes of ad valorem taxation;*

(m) *an action that:*

(1) *is taken in response to a real and substantial threat to public health and safety;*

(2) *is designed to significantly advance the health and safety purpose; and*

(3) *does not impose a greater burden than is necessary to achieve the health and safety purpose; or*

(n) *an action or rulemaking undertaken by the Public Utility Commission of Texas to order or require the location or placement of telecommunications equipment owned by another party on the premises of a certificated local exchange company.*

Based on the types of actions anticipated under the Proposed Regulations, Williamson County believes that while certain actions included in the Proposed Regulations are exempt, other actions may not be exempt and will require the County to prepare this TIA.

Lawsuit to Invalidate a Governmental Taking

The Act allows landowners whose property is significantly impaired by governmental regulations to sue the governmental entity to invalidate the regulation. As an alternative to invalidation of the governmental action, the governmental entity may elect to pay the landowner compensation for the loss in value of the property interest. The Act is generally applicable to any governmental action (e.g., adoption of an ordinance, regulatory requirement or policy, or a governmental exaction) that restricts or limits the landowner's rights in the real property and that causes a reduction of 25% or more in the market value of the property. Any lawsuit by an affected real property owner against the governmental entity must be filed within 180 days after the owner knew or should have known of the governmental action. The prevailing party in the lawsuit against the governmental entity is entitled to recover reasonable and necessary attorney's fees and court costs from the losing party.

Requirement to Prepare A Takings Impact Assessment (TIA)

In addition to a lawsuit to invalidate a taking by a governmental entity, all governmental entities in Texas (including the County) are required to prepare a TIA evaluation of any proposed regulation that may impair private real property interests and to provide public notice of the takings impact assessment.

EVALUATION PROCESS

Based on those items from the Proposed Regulations determined to be subject to the preparation of a TIA, the County is evaluating these items using the guidelines prepared by the State of Texas Office of the Attorney General. These guidelines require each action be evaluated through a series of questions. These questions, with subsequent instruction, are:

Question 1: *Is the Governmental Entity undertaking the proposed action a Governmental Entity covered by the Act, i.e., is it a “covered Governmental Entity”? See the Act, §2007.002(1).*

The answer to Question 1 is “Yes”:

TGC §2007.002(1)(B) indicates that “a political subdivision of this state” is a covered governmental entity. Article IX of the Texas Constitution indicates that Counties are political subdivisions of the State. Therefore, the County would be a covered governmental entity, subject to the requirements to prepare a TIA where it would otherwise be required.

Question 2: *Is the proposed action to be undertaken by the governmental entity an action covered by the Act, i.e., a “Covered Governmental Action”*

- (1) *If the answer to Question 2 is “No”: No further compliance with the Act is necessary.*
- (2) *If the answer to Question 2 is “Yes”: Go to Question 3.*

Based on the County’s review of the Act, certain of the actions included in the Proposed Regulations may qualify as Covered Governmental Actions while others do not. Except as stated herein, the Proposed Regulations do not propose any “physical taking” of any particular property as defined in the Act, but certain actions are required to be evaluated as a “regulatory taking”. Those actions determined to be Covered Governmental Actions will be further evaluated using subsequent questions. Any “physical taking”, as defined by the Act, will be compensated for pursuant to the applicable provisions of the Texas Property Code and the U.S. and Texas Constitutions.

Question 3: *Does the Covered Governmental Action result in a burden on “Private Real Property” as that term is defined in the Act?*

- (1) *If the answer to Question 3 is “No”: A “No Private Real Property Impact” or NoPRPI Determination should be made.*
- (2) *If the answer to Question 3 is “Yes”: A TIA is required and the governmental entity must undertake evaluation of the proposed governmental action on private real property rights.*

Based on the County’s review of the Act, certain of the actions included in the Proposed Regulations may result in the imposition of a burden on “Private Real Property” as that term is defined in the Act. Those actions determined to impose a burden on “Private Real Property” will be further evaluated using subsequent questions and through the preparation of this TIA.

Question 4. *What is the Specific Purpose of the Proposed Covered Governmental Action? The TIA must clearly show how the proposed governmental action furthers its stated purpose. Thus, it is important that a governmental entity clearly state the purpose of its proposed action in the first place, and whether and how the proposed action substantially advances its stated purpose.*

Question 5. *How does the Proposed Covered Governmental Action burden society?*

Question 6. *How does the Proposed Covered Governmental Action benefit society?*

Question 7. *Does the Proposed Covered Governmental Action result in a “taking”?*

The actions determined to be Covered Governmental Actions which also impose a burden on “Private Real Property” as that term is defined in the Act have been proposed to accomplish several different purposes. Each of those actions determined to be both a Covered Governmental Action and which impose a burden on “Private Real Property” will be further evaluated using Questions 4 through 7 in this TIA. The Office of Attorney General guidance also provides the following sub-questions for items determined to be Covered Governmental Actions:

(1) *Does the Proposed Covered Governmental Action result indirectly or directly in a permanent or temporary physical occupation of Private Real Property?*

(2) *Does the Proposed Covered Governmental Action Require a property owner to dedicate a portion of Private Real Property or to grant an easement?*

(3) *Does the Proposed Covered Governmental Action deprive the owner of all economically viable uses of the Property?*

(4) *Does the Proposed Covered Governmental Action have a significant impact on the landowner’s economic interest?*

(5) *Does the Covered Governmental Action decrease the market value of the affected Private Real Property by 25% or more? Is the affected Private Real Property the subject of the Covered Governmental Action? See the Act, §2007.002(5)(B).*

(6) *Does the Proposed Covered Governmental Action deny a fundamental attribute of ownership?*

In addition to these questions to be addressed for each proposed action, the Office of Attorney General guidance also recommends an alternatives evaluation.

Question 8. *What are the alternatives to the Proposed Covered Governmental Action?*

For each of the Covered Governmental Actions which also impose a burden on “Private Real Property”, an alternative evaluation will be provided.

SUMMARY OF THE PROPOSED REGULATIONS

The Proposed Regulations establish new regulations governing the development of land within areas under the County’s jurisdictional authority. The Proposed Regulations are not provided as a limited change to an existing ordinance, but are intended to be a new and comprehensive statement of all of the County’s regulatory responsibilities as described in Texas Local Government Code Chapter 232 and other legislative authority. As such, most of the Proposed Regulations are explicitly required and authorized by TLGC Chapter 232 and are not considered to restrict or limit a property owner’s rights that would otherwise exist in the absence of the Proposed Regulations.

Requirement for Platting (232.001) – “The owner of a tract of land located outside the limits of a municipality must have a plat of the subdivision prepared if the owner divides the land into two or more parts to lay out a subdivision; lots, streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use...”

Enforcement Authority (232.005) – “At the request of the commissioners court, the county attorney or other prosecuting attorney for the County may file an action in a court of competent jurisdiction to enjoin the violation or threatened violation of a requirement established by, or adopted by, the commissioners court.”

Exceptions from Platting (232.0015) – “To determine whether specific divisions of land are required to be platted, a county may define and classify the divisions. A county need not require platting for every division of land otherwise within the scope of this subchapter.”

Authority to Allow Revision or Cancellation of a Plat (232.008 & 232.009) – “A person owning real property in this state that has been subdivided into lots and blocks or into small subdivisions may apply to the commissioners court of the county in which the property is located for permission to cancel all or part of the subdivision, including a dedicated easement or roadway, to reestablish the property as acreage tracts as it existed before the subdivision,” and “a person who owns real property in a tract that has been subdivided and that is subject to the subdivision controls of the county in which the property is located may apply in writing to the commissioners court of the county for permission to revise the subdivision plat that applies to the property and that is filed for record with the county clerk.”

Requirements for Fiscal Security (232.004) – “The commissioners court may require that the owner of the tract to be subdivided execute a good and sufficient bond...”

Authority to Adopt Rules (232.101) – “...the commissioners court may adopt rules governing plats and subdivisions of land within the unincorporated areas of the county to promote the health, safety, morals or general welfare of the county and the safe, orderly, and healthful development of the unincorporated areas of the county .”

Technical Specifications for Street and Drainage Infrastructure Design (232.003) – “The Commissioners Court may adopt reasonable specifications relating to the construction of each street or road” and “adopt reasonable specifications that provide for drainage in the subdivision to efficiently manage the flow of stormwater runoff...”

Authority to Require Water and Wastewater Service (232.030) – “The commissioners court shall adopt and enforce the model rules developed under Section 16.343 of the Texas Water Code.”

Requirement for Certification of Groundwater Availability (232.0032) – “If a person submits a plat for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land, the commissioners court of a county by order may require the plat application to have attached to it a statement that it is prepared by an engineer licensed to practice in this state or a geoscientist licensed to practice in this state and certifies that adequate groundwater is available for the subdivision.”

General Subdivision Requirements (232.003)- “By an order adopted and entered in the minutes of the Commissioners Court...the commissioners court may...”

Major Thoroughfare Plan (232.102) – “...the commissioners court may (1) require a right-of-way on a street or road that functions as a major thoroughfare of a width of not more that 120 feet...”.

Lot Frontages (232.103) – “...the commissioners court may adopt reasonable standards for minimum lot frontages...”

Set-backs (232.104) – “...the commissioners court may establish reasonable building and set-back lines...”.

Impacts Of Development Regulation In General

In general, reasonable development restrictions will serve a basic public purpose but will not be of such an extreme character as would constitute a regulatory taking. First, the goals of protecting public health and safety and water quality clearly appear to qualify as a legitimate state interest since prior U.S. Supreme Court rulings have held that governmental regulations addressing the “ill effects of urbanization” and the preservation of desirable aesthetic features are legitimate state interests. It has also been expressly held by the Supreme Court that governmental restrictions on the use of only limited portions of a parcel of land such as setback ordinances are not considered regulatory takings.

This conclusion is consistent with the guidelines adopted by the OAG. These guidelines provide as follows:

“Accordingly, government may abate public nuisances, terminate illegal activity, and establish building codes, safety standards, or sanitary requirements generally without creating a compensatory ‘taking’. Government may also limit the use of real property through land use planning, zoning ordinances, setback requirements, and environmental regulations.”

These guidelines further indicate that some types of development regulation may qualify for the exemption from the Texas Private Real Property Rights Preservation Act as regulatory actions which protect public health and safety.

The following items provide a summary of the major actions described in the Proposed Regulations. Based on the regulatory background information and the nature of the proposed actions, each major proposed action has been assigned to one of three categories, depending on whether it was determined to be a “Covered Governmental Action” and whether it places a “burden” on property, as those terms are defined under the Act. An explanation of each action and the rationale for its inclusion in its selected category is provided below.

Burdens and Benefits of Proposed Impacts on Private Property

The Proposed Regulations may create certain burdens on private property by subjecting the property to the requirements set forth in the Proposed Regulations. These burdens include the cost and administrative burden of applying for required permits and limiting the freedom of a landowner to develop property without regard to impacts on adjoining landowners and the County as a whole. However, such burdens are no greater than as reasonably necessary for the County to accomplish the public health, safety and welfare objectives the Proposed Regulations are intended to achieve. Moreover, the burdens imposed by the Proposed Regulations are no greater than those typically placed on developers and landowners in rapidly urbanizing counties in Texas such as Williamson County. These burdens must be weighed against the benefits to the residents of the County and society as a whole which include a uniform set of development requirements that protect the health and welfare of the County’s residents and the environment of the County. Having a uniform and consistently enforced set of development regulations allows for private development to occur in a known and planned manner that is more efficient and cost-effective than rules imposed under unwritten policy and guidance.

Reasonable Alternative Actions

The reasonable alternative actions to the Proposed Regulations include (1) maintaining the current system of development regulatory ordinances; or (2) adopting more detailed and burdensome regulations similar to those recently adopted in nearby counties. The Proposed Regulations are considered to be the best of these alternatives because they strike a fair and reasonable balance between (1) haphazard regulation under the current set of regulations which were not designed for the rapidly urbanizing environment in the County, and (2) regulation of development at a detailed scale that cannot be adequately enforced by the County under the present economic and budgetary constraints under which the County presently operates. Based on available information, neither of these alternatives would constitute a taking to any greater degree than the Proposed Regulations.

2.0 Actions in the Proposed Regulations Determined to Not Place a Burden on Property (“No” to OAG Question 3)

Standardization of Administrative Procedures, Applications Processing, Public Notice Procedures and Other Land Development Activities

Under the County’s authority to regulate various aspects of land development as authorized under various chapters of the Texas Local Government Code, the County is proposing changes and additions to the administrative procedures, and applications processing procedures to be utilized by the County in the regulation of development within the County. While these proposed actions affect the information to be prepared and submitted to the County, and how the County will apply the Proposed Regulations, the administrative procedures themselves do not create a “burden” per se on “Private Real Property”, as that term is defined in the Act, being regulated by the Proposed Regulations. As outlined in the guidance from the OAG:

TIA’s must concentrate on the truly significant real property issue. No need exists to amass needless detail and meaningless data. The public is entitled to governmental conformance with legislative will, not a mass of unnecessary paperwork.

Therefore, the proposed actions regarding the administrative procedures and applications processing were determined to not place a direct burden on “Private Real Property” and qualify for a “No Private Real Property Impact” Determination (hereafter “NoPRPI Determination”) as provided in the OAG guidelines, and would not be subject to the requirement to prepare a TIA.

3.0 Actions in the Proposed Regulations Determined to Be “Covered Governmental Actions” and to Place a “Burden” on “Private Real Property”

Based on the evaluation conducted by the County, the following list of proposed actions may qualify as “Covered Governmental Actions” and place a “burden” on Private Real Property. The further evaluation of these items is presented in the following section:

- Plat Expiration

Takings Impact Assessment For the Qualifying Actions

The following proposed actions have been determined to be “Covered Governmental Actions” that may place a “burden” on Private Real Property. Each of these proposed actions has been evaluated using the additional questions in OAG guidelines (specifically Questions 4 through 8, and where necessary, the sub-questions).

Plat Expiration

The County’s proposed development regulations contain certain requirements for the expiration, and in some cases renewal, of various permits and approvals. Specifically, the Proposed Regulations stipulate that a Preliminary Plan shall expire five (5) years after the date of approval unless a Final Plat is submitted for all or part of the area covered by the Preliminary Plat.

Under the County's authority to regulate the expiration of various permits and approvals provided in TLGC, Chapter 245, the County is proposing to establish this expiration period for these permits and approvals included within the Proposed Regulations. Specifically, the County is relying on TLGC Chapter 245 which authorizes a "regulatory agency" to establish expiration periods for various permits and approvals. In this context, a "regulatory agency" includes a political subdivision, and "political subdivision" includes a county. This provision of the TLGC authorizes the County, upon the adoption of the Proposed Regulations, to establish expiration periods for a broad range of permits, which is defined to include an "approval" or "other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought."

OAG Question 4 – What is the specific purpose of the proposed CGA?

The purpose of the proposed CGA is to minimize the number of projects that are constructed under older, and generally less protective standards, to the extent allowed by law.

OAG Question 5 – How does the proposed CGA burden Private Real Property?

The proposed CGA may create a burden on Private Real Property by requiring the Permittee to continue to make progress on a project within a specific timeframe, regardless of the market or other timing factors.

OAG Question 6 – How does the proposed CGA benefit society?

In general, the County believes that by implementing the proposed expiration period, the County will minimize the number of projects constructed under the older, generally less protective, standards. The proposed CGA will benefit society by minimizing the number of projects using old or outdated standards.

OAG Question 7 – Does the proposed CGA result in a "taking"?

OAG Sub-question 1 – Does the proposed CGA result indirectly or directly in a permanent or temporary physical occupation of Private Real Property?

No.

OAG Sub-question 2 – Does the proposed CGA require a property owner to dedicate a portion of Private Real Property or to grant an easement?

No.

OAG Sub-question 3 – Does the proposed CGA deprive the owner of all economically viable uses of the Property?

In the event that a plat has expired, the Permittee might be deprived of the specific use(s) authorized in the plat. However, there would likely be other uses available or the Permittee could

apply again for a new plat. Given these conditions, the proposed CGA will not deprive an owner of all economically viable use of the Property.

OAG Sub-question 4 – Does the proposed CGA have a significant impact on the landowner’s economic interest?

A determination as to whether the proposed CGA has a significant impact on the landowner’s economic interest must be made on a case-by-case basis. As outlined in the response to OAG Sub-question 3, in the event that a plat expired, the proposed CGA could result in the loss of a particular use. However, the “producing cause” of this loss would be the Permittee’s failure to act under the terms of the Proposed Regulations and not the expiration of the plat. Since the CGA would not be the “producing cause”, it would therefore not constitute a regulatory taking.

OAG Sub-question 5 – Does the CGA decrease the market value of the affected Private Real Property by 25% or more? Is the affected Private Real Property the subject of the covered governmental action? See the Act, §2007.002(5)(B).

As outlined in the previous response, determinations as to whether the proposed CGA decreases the market value of affected Private Real Property must be made on a case-by-case basis. However, given the considerations outlined in the responses to OAG Sub-questions 3 and 4, if an instance occurred where the expiration of a particular plat resulted in the decrease of the market value of the private real property by 25% or more, the “producing cause” of this loss would be the Permittee’s failure to act under the terms of the Proposed Regulations and not the expiration of the plat. Since the CGA would not be the “producing cause”, it would therefore not constitute a regulatory taking.

OAG Sub-question 6 – Does the proposed Covered Governmental Action deny a fundamental attribute of ownership?

No.

OAG Question 8 – What are the alternatives to the proposed CGA?

The County’s proposed CGA is based on authority granted to counties by the Texas Legislature. The only alternative to the proposed CGA is to not implement this authority. The County believes that the proposed CGA provides significant public benefits at relatively small risk of adverse impact to property owners.

Conclusion: The County’s proposed action of establishing a plat expiration period does not constitute a regulatory taking.

Right-of-Way Dedications

Most plats may require dedication of right-of-way. The County acknowledges that it must comply with general principles regarding takings or other exactions as reflected in applicable state and federal laws, court rulings and the Texas Real Property Rights Preservation Act. The required dedication for public use must be roughly proportional to the actual need for the public use which is generated by the proposed development.

Conclusion:

The County's proposed action requiring right-of-way dedications does not constitute a regulatory taking so long as (1) the County action is not such that would require compensation under the United States or the Texas Constitution, or (2) the County action does not affect the private real property in a manner that restricts or limits the owner's right to the property and is the producing cause of a reduction of at least 25% in the market value of the property.