



**Office of the Attorney General
State of Texas**

May 15, 1987

<p>Honorable John D. Hughes Hood County Attorney Room 6, County Courthouse Granbury, Texas 76048</p>	<p>Opinion No. JM-699</p> <p>Re: Whether a county clerk is required to notify nondeveloper owners of land in a subdivision of a developer's request to revise a subdivision plat</p>
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Dear Mr. Hughes:

Article 6626e, V.T.C.S., provides for the revision by developers of subdivision plats subject to the subdivision controls of the county and filed for record with the county clerk. See art. 6626e, s 1; cf. Attorney General Opinion JM-365 (1985). Section 3 of article 6626e provides that the county commissioners court shall permit the revision if it is shown either that the revision will not interfere with the established rights of any owner of a part of the subdivided land or, if the revision will interfere with such owners' rights, that the owners have agreed to the revision. Section 2 of the act provides for notice of the proposed revision by general publication and by specific notice to the nondeveloper owners of the subdivided land.

You ask two questions about the notice provisions of article 6626e. Your first question is whether section 2 requires the county to send notice to nondeveloper owners of part of the subdivided tract or whether the county clerk may require the developer to notify nondeveloper owners. Your second question relates to large subdivisions which have been platted in smaller units. You ask whether all nondeveloper owners in the subdivision must be notified or whether notice may be sent only to those nondeveloper owners of land in the unit of the subdivision that is subject to revision.

Section 2 of article 6626e provides:

(a) After the application is filed with the commissioners court, the court shall cause a notice of the application to be printed in a newspaper of general

circulation in the county. The notice must include a statement of the time and place at which the commissioners court will meet to consider the application and to hear protests to the revision of the subdivision plat.

(b) The notice must be published at least three times within the period beginning on the 30th day and ending on the seventh day before the date of the meeting.

(c) If all or part of the subdivided tract has been sold to nondeveloper owners, notice shall also be given to each owner, at his address on said tract, by certified mail or registered mail, return receipt requested. (Emphasis added).

Resolution of your first question depends on whether subsection (c) was intended to place a duty on the commissioners court to notify nondeveloper owners.

Statutory construction depends on a determination of legislative intent. The language of a statute is the primary guide in determining legislative intent. The language and syntax of section 2 indicate that the legislature intended that the county commissioners court notify nondeveloper owners of proposed subdivision revisions. Subsection (a) of section 2 refers to the commissioners court and expressly requires "the court" to cause notice to be printed in a newspaper of general circulation in the county. Subsection (c) states that "notice shall also be given to each owner...." Although subsection (c) does not refer expressly to the commissioners court, the use of the word "also" indicates that subsection (c) imposes an additional notice responsibility on the county commissioners court.

You also ask whether all nondeveloper owners in the subdivision must be notified or whether the county may limit notice to nondeveloper owners of land in the unit of the subdivision that is subject to revision. If one subdivision plat could be divided into smaller units for purposes of determining which landowners to notify, a core purpose of the notice requirements would be violated. Subsection (c) of section 2 states that "[i]f all or part of the subdivided tract has been sold to nondeveloper owners, notice shall also be given to each owner...." (Emphasis added). This subsection refers to "each" nondeveloper owner of land in the "subdivided tract;" it does not limit notice to owners in some smaller "affected portion" of the subdivision. Nor does it limit notice to owners in the "subdivision plat." Even if one subdivision is platted in various units, it remains one subdivision. Consequently, the legislature must have intended that the county notify all nondeveloper owners in the subdivision of proposed revisions in the subdivision plat, including revisions in any smaller unit plat of the subdivision.

SUMMARY

Subsection (c) of section 2 of article 6626e, V.T.C.S., places the duty on the county commissioners court to notify all nondeveloper owners of all or part of a subdivided tract of a proposed revision of the subdivision plat, including

revisions in any smaller unit plat of the subdivision, filed for record with the county clerk.

Very truly yours,



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Sec. 232.0085. CANCELLATION OF CERTAIN SUBDIVISIONS IF LAND REMAINS UNDEVELOPED. (a) This section applies only to real property located:

(1) outside municipalities and the extraterritorial jurisdiction of municipalities, as determined under Chapter 42; and

(2) in an affected county, as defined by Section 16.341, Water Code, that has adopted the model rules developed under Section 16.343, Water Code, and is located along an international border.

(b) The commissioners court of a county may cancel, after notice and a hearing as required by this section, a subdivision for which the plat was filed and approved before September 1, 1989, if:

(1) the development of or the making of improvements in the subdivision was not begun before the effective date of this section; and

(2) the commissioners court by resolution has made a finding that the land in question is likely to be developed as a colonia.

(c) The commissioners court must publish notice of a proposal to cancel a subdivision under this section and the time and place of the required hearing in a newspaper of general circulation in the county for at least 21 days immediately before the date a cancellation order is adopted under this section. The county tax assessor-collector shall, not later than the 14th day before the date of the hearing, deposit with the United States Postal Service a similar notice addressed to each owner of land in the subdivision, as determined by the most recent county tax roll.

(d) At the hearing, the commissioners court shall permit any interested person to be heard. At the conclusion of the hearing, the court shall adopt an order on whether to cancel the subdivision. The commissioners court may adopt an order canceling a subdivision if the court determines the cancellation is in the best interest of the public. The court may not adopt an order canceling a subdivision if:

(1) the cancellation interferes with the established

rights of a person who is a nondeveloper owner and owns any part of the subdivision, unless the person agrees to the cancellation; or

(2) the owner of the entire subdivision is able to show that:

(A) the owner of the subdivision is able to comply with the minimum state standards and model political subdivision rules developed under Section 16.343, Water Code, including any bonding requirements; or

(B) the land was developed or improved within the period described by Subsection (b).

(e) The commissioners court shall file the cancellation order for recording in the deed records of the county. After the cancellation order is filed and recorded, the property shall be treated as if it had never been subdivided, and the county chief appraiser shall assess the property accordingly. Any liens against the property shall remain against the property as it was previously subdivided.

(f) In this section:

(1) "Development" means the making, installing, or constructing of buildings and improvements.

(2) "Improvements" means water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and other utility facilities. The term does not include roadway facilities.

Added by Acts 1995, 74th Leg., ch. 277, Sec. 2, eff. June 5, 1995.

Sec. 232.009. REVISION OF PLAT. (a) This section applies only to real property located outside municipalities and the extraterritorial jurisdiction of municipalities with a population of 1.5 million or more, as determined under Chapter 42.

(b) 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.

(c) Except as provided by Subsection (c-1), after the application is filed with the commissioners court, the court shall publish a notice of the application in a newspaper of general circulation in the county. The notice must include a statement of the time and place at which the court will meet to consider the application and to hear protests to the revision of the plat. The notice must be published at least three times during the period that begins on the 30th day and ends on the seventh day before the date of the meeting. Except as provided by Subsection (f), if all or part of the subdivided tract has been sold to nondeveloper owners, the court shall also give notice to each of those owners by certified or registered mail, return receipt requested, at the owner's address in the subdivided tract.

(c-1) If the commissioners court determines that the revision to the subdivision plat does not affect a public interest or public property of any type, including, but not limited to, a park, school, or road, the notice requirements under Subsection (c) do not apply to the application and the commissioners court shall:

(1) provide written notice of the application to the owners of the lots that are within 200 feet of the subdivision plat to be revised, as indicated in the most recent records of the central appraisal district of the county in which the lots are located; and

(2) if the county maintains an Internet website, post notice of the application continuously on the website for at least 30 days preceding the date of the meeting to consider the application until the day after the meeting.

(d) During a regular term of the commissioners court, the court shall adopt an order to permit the revision of the subdivision plat if it is shown to the court that:

(1) the revision will not interfere with the established rights of any owner of a part of the subdivided land; or

(2) each owner whose rights may be interfered with has agreed to the revision.

(e) If the commissioners court permits a person to revise a

subdivision plat, the person may make the revision by filing for record with the county clerk a revised plat or part of a plat that indicates the changes made to the original plat.

(f) The commissioners court is not required to give notice by mail under Subsection (c) if the plat revision only combines existing tracts.

(g) The commissioners court may impose a fee for filing an application under this section. The amount of the fee must be based on the cost of processing the application, including publishing the notices required under Subsection (c) or (c-1).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 345, Sec. 6, eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 129, Sec. 8, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 523, Sec. 9, eff. June 20, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 430 (S.B. 552), Sec. 1, eff. June 14, 2013.