

October 19, 2010

Statement By Donald W. Allee, County Attorney of Kendall County, Texas
to the Senate Committee on Intergovernmental Relations.

Counties need specific authority to regulate multi-family, industrial and commercial developments.

With greater frequency, situations arise where more regulatory authority is needed by counties to address problems posed by multi-family residential projects and industrial and commercial operations. For example, if an apartment project is built on an existing tract of land, the plat requirements of Local Government Code Chapter 232, Subchapter A do not apply. Similarly, industrial and commercial developments constructed on an existing tract of land are not subject to the platting requirements. However, such developments have tremendous impacts on county roads, drainage, water resources, and other natural resources and existing infrastructure; increase the burden on local schools, law enforcement agencies, fire departments, and other emergency services; and adversely affect the health, safety and welfare of rural residents.

Examples: Kendall County has several that have either occurred in the last few years or that have been proposed to be located in the unincorporated area of the county:

1. Commercial operations such as convenience stores/gasoline stations, landscape supply yards, storage facilities, motor-cross tracks, "pseudo" junk and/or salvage yards (not operated as a business), communication towers (located in close and dangerous proximity to residential developments), and shooting ranges. (Note: The authority of counties to regulate shooting ranges – Section 756.042, Health and Safety Code was declared unconstitutional by the Attorney General in 1992 – Opinion No. DM-159, but no action has been taken by the Legislature to amend the statute. Counties have authority under Sections 235.021 et seq, Local Government Code, to regulate or prohibit the discharge of firearms, but only in platted subdivisions with lots that are 10 acres or smaller. Counties with a population of 1 million or more are given authority by Chapter 235, Local Government Code to regulate explosives, other counties such as Kendall County are not.).
2. Industrial operations such as quarries, rock crushers, cement plants; and feed lots, and other such operations can locate in close proximity to residential developments, schools, churches, health care facilities, parks and recreational areas, and have a drastic affect on the quality of life of those people unfortunate enough to be affected by the noise, smells, dust, traffic congestion, and other noxious activites that such

facilities generate. When citizens affected by such developments complain to the county, our only response is that we have no authority to regulate where such operations locate and little authority concerning their operations.

3. Residential developments with a large concentration of people in a small area such as apartments, motor home/camper parks, camps, communal living facilities, etc., have a drastic impact on natural resources, county infrastructure, facilities and services, but are subject to only minimal regulation by the county.

Amendments are needed to Chapter 232 Local Government Code. In addition to the need for legislation that will give counties more authority to control multi-family, industrial and commercial developments, amendments are required to Chapter 232, Local Government Code to clarify the authority of Commissioners Courts to regulate development. Attached to this statement are proposed amendments to Chapter 232 that would address some of the above issues:

Amendments are also required to Chapter 245, Local Government Code ("Vested Rights Statute"): Partially due to the wording of the statute, and partially due to court decisions interpreting the statute, counties may find their hands tied in applying new rules to old plats vested under prior rules adopted when counties had little or no authority to regulate plats and subdivisions of land. There needs to be specific authority for counties and other regulatory agencies to place a meaningful expiration date on permits and projects. Attached hereto is Section 245.005 with suggested amendments.

Another need – bringing the Transportation Code into the 21st Century. Another area that requires attention is the Transportation Code. Although some sections of the Code have been updated, there are many sections of the Code that date back to the late 19th or early 20th Century. For example, section 251.008 requires that all stumps over six inches in diameter be cut down to not more than six inches, and all other stumps be level with the ground. Section 251.010 requires that gates on third class roads have a hitching post and a stile block on each side of the gate. A comprehensive review and updating of the Transportation Code, would greatly assist counties in dealing with traffic and drainage issues in the 21st Century.

Respectfully submitted,



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