



JOHNSON COUNTY COMMISSIONERS COURT

Christopher Boedeker
County Judge

Rick Bailey
Commissioner
Precinct 1

Kenny Howell
Commissioner
Precinct 2

Mike White
Commissioner
Precinct 3

Larry Woolley
Commissioner
Precinct 4

THE STATE OF TEXAS

§

ORDER 2024-70

COUNTY OF JOHNSON

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§

TAKINGS IMPACT ASSESSMENT FOR SUBDIVISION RULES AND REGULATIONS OF JOHNSON COUNTY, TEXAS

On this the 8th day of July, 2024, the Commissioners Court of Johnson County, being duly convened at a regularly called meeting of the Commissioners Court, adopted the Subdivision Rules and Regulations of Johnson County, Texas as approved on November 14, 2011 and subsequently amended on March 13, 2017, July 10, 2017, September 28, 2020, January 25, 2021, August 22, 2022, January 23, 2023, October 10, 2023, February 12, 2024, and today, July 8, 2024.

WHEREAS, as stated in Subdivision Rules and Regulations of Johnson County, Texas (“Subdivision Rules”), Johnson County adopted its Subdivision Rules to avoid problems with construction of streets and drainage facilities in subdivisions; address traffic hazards and dangers posed by potential contamination from sewage and septic systems; insure orderly development and identification of new residences and business for safety and taxation purposes; provide for the safety of the public by ensuring proper drainage, maintenance, and construction of public roads; and oversee the welfare of the public in accordance with Johnson County’s mandate under Chapters 232, 233, and 242 of the Texas Local Government Code; and

WHEREAS, Johnson County’s Subdivision Rules constitute a “regulatory requirement” under Chapter 2007 of the Texas Government Code (“Property Rights Act”); and

WHEREAS, The State of Texas Office of the Attorney General promulgated the following questions in the Texas Private Real Property Rights Preservation Act Guidelines (“Guidelines”) to aid a governmental entity in determining whether the governmental entity’s regulatory requirement may result in a “taking,” which burdens private real property and therefore necessitates a Takings Impact Assessment:

3:28PM

Filed For Record

JUL 08 2024

April Long
County Clerk, Johnson County Texas
BY *ACL* DEPUTY

1. Is the Governmental Entity undertaking the proposed action as a governmental entity covered by the Property Rights Act (i.e., is it a “Covered Governmental Entity”)? *See* Guidelines at 12 citing Property Rights Act § 2007.002(1).
2. Is the proposed action to be undertaken by the covered governmental entity an action covered by the Property Rights Act (i.e., a “Covered Governmental Action”)? *See* Guidelines at 13.
3. [Assuming the proposed action to be undertaken by the covered governmental entity were an action covered by the Property Rights Act,] does the covered governmental action result in a burden on “private real property” as that term is defined under Property Rights Act section 2007.002(4)? *See* Guidelines at 13; and

WHEREAS, based on the following application of each Guideline question to Johnson County’s Subdivision Rules, Johnson County concludes the actions included in its Subdivision Rules are exempt from the requirements of the Property Rights Act, do not constitute “takings,” have “No Private Real Property Impact,” (*See* Guidelines at 11) and therefore do not require a Takings Impact Assessment:

1. Yes, Johnson County is a “governmental entity” covered by the Property Rights Act because it is a political subdivision of the State. *See* Guidelines at 12 citing Property Rights Act § 2007.002(1)(B).
2. No, the Subdivision Rules do not constitute physical or regulatory takings and fall within the Property Rights Act section 2007.003(b)(4) exception to the Property Rights Act.

Takings

Governmental actions covered by the Property Rights Act include physical and regulatory takings. *See* Guidelines at 5. A physical taking occurs when a governmental entity takes or occupies private property without compensating the property owner. *See* Guidelines at 4. A regulatory taking occurs when a regulatory requirement “diminishes or destroys a fundamental real property right—such as the right to possess, exclude others from, or dispose of real property . . .”. *See* Guidelines at 4 citing *Dolan v. City of Tigard*, 512 U.S. 374, 386 (1994). Takings questions “normally arise in the context of specific affected real property.” *See* Guidelines at 12. A governmental entity may “limit the use of real property through land use planning” without such regulation constituting a regulatory taking because a governmental entity must “regulate or limit the use of private real property, relying on its ‘police power’ authority and responsibility to protect the public health, safety, and welfare of its citizens.” *See* Guidelines at 5. The Subdivision Rules do not propose a physical taking of any property and do not regulate private property to an extent to constitute a regulatory taking.

Section 2007.003(b)(4) Exception to the Property Rights Act

Rather, the Subdivision Rules fall squarely within Johnson County’s mandate to regulate land use under Chapters 232, 233, and 242 of the Texas Local Government Code. Therefore, the

Subdivision Rules fall within an exception to application of the Property Rights Act found in section 2007.003(b)(4): “[The Property Rights Act] does not apply to . . . an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law. . .”. See Property Rights Act § 2007.003(b)(4). Additionally, when a governmental entity “merely enforces another governmental action, the [Takings Impact Assessment requirement] does not apply.” See Guidelines at 10, citing *Texas Gen. Land Off. v. La Concha Condo. Ass’n*, No. 13-19-00357-CV, 2020 WL 2610934, at *8 (Tex. App.—Corpus Christi May 21, 2020, no pet.) (citing Property Rights Act §§ 2007.043(a), 2007.003(a)(4)). The Subdivision Rules are therefore exempt from the Property Rights Act under section 2007.003(b)(4).

3. No, the Subdivision Rules do not result in a burden on private real property because the Subdivision Rules fall within a second exception to the Property Rights Act found in section 2007.003(b)(13). See Property Rights Act § 2007.003(b)(13)(A)—(C). As required by the section 2007.003(b)(13) exception to the Property Rights Act, the Subdivision Rules constitute actions (A) “taken [by a governmental entity] in response to a real and substantial threat to public health and safety” namely hazardous subdivision and infrastructure construction; (B) are “designed to significantly advance the health and safety purpose” by carefully regulating such construction; and (C) impose no “greater burden than necessary to achieve the health and safety purpose” of Johnson County, namely avoiding subdivision construction and infrastructure hazards. The Subdivision Rules also do not impose “a burden on private real property which creates a disproportionate diminution in economic value or renders the property wholly useless” because the Subdivision Rules burden no specific properties and protect property values by ensuring adequate and safe construction. See Guidelines at 7 citing *Town of Flower Mound v. Stafford Estates Ltd. P’ship*, 135 S.W.3d 620, 643 (Tex. 2004). The Subdivision Rules are therefore also exempt from the Property Rights Act under section 2007.003(b)(13); and

WHEREAS, though Johnson County’s Subdivision Rules fall outside of the Property Rights Act for the reasons stated above, Johnson County may request a Waiver of Takings Impact Assessment (“Waiver”) from a developer in which the developer may waive the rights granted to the developer under the Property Rights Act. If a developer wishes to waive such rights, the developer shall notarize the Waiver and include the Waiver when submitting the final plat.

IT IS THEREFORE ORDERED that Johnson County hereby adopts its Taking Impact Assessment for Subdivision Rules and Regulations of Johnson County, Texas. It is further ordered that said Subdivision Rules and Regulations of Johnson County, Texas, are exempt from the requirements of the Property Rights Act under Property Rights Act sections 2007.003(b)(4) and (b)(13), and do not constitute takings. It is further ordered that said Subdivision Rules and Regulations of Johnson County, Texas, have no private real property impact and therefore do not require Johnson County to perform a Takings Impact Assessment. It is further ordered, as a categorical determination, that any future amendment to its Subdivision Rules and Regulations of Johnson County, Texas, is excepted from Chapter 2007 of the Texas Government Code.

WITNESS OUR HAND THIS, THE 8TH DAY OF JULY 2024.

Chris Boeder

Christopher Boedeker, Johnson County Judge

Voted: yes, no, abstained

Rick Bailey

Rick Bailey, Comm. Pct. 1

Voted: yes, no, abstained

Kenny Howell

Kenny Howell, Comm. Pct. 2

Voted: yes, no, abstained

Mike White

Mike White, Comm. Pct. 3

Voted: yes, no, abstained

Larry Woolley

Larry Woolley, Comm. Pct. 4

Voted: yes, no, abstained

April Long

ATTEST: April Long, County Clerk

