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SENATE COMMITTEE ON NATURAL RESOURCES AND ECONOMIC DEVELOPMENT

March 5th, 2024

RECEIVED

By Opinion Committee at 4:35 pm, Mar 05, 2024

RQ-0535-KP

The Honorable Ken Paxton
Texas Attorney General
ATTN: Opinion Committee
PO Box 12458
Austin, TX 78711

RE: Request for a legal opinion regarding the implementation of House Bill 1526 of the 88th Regular Session.

Dear General Paxton:

I respectfully request an Attorney General Opinion in regards to the following question:

What is the proper method to calculate "average land value" as required under Section 212.209, Local Government Code, as enacted following the passage of House Bill 1526 of the 88th Regular Session?

Synopsis:

The Legislature passed House Bill 1526 in the 88th Regular Session to codify and put guardrails on a common practice, known as parkland dedication, several cities impose on new multifamily developments. This practice typically involves cities requiring a certain amount of land in a new multifamily development be dedicated as parkland for the city. Often, the city will allow a fee in-lieu of the parkland dedication or in combination with a parkland dedication. We learned in our committee hearings that some cities have continued to raise both the amount of parkland to be dedicated as well as the fee in-lieu, and the legislature ultimately determined it appropriate to place some limitations on this practice as indicated by the passage of House Bill 1526.

As the new law has gone through various stages of its implementation, a discrepancy in how some appraisal districts are determining a certain factor has been discovered. Particularly, the method by which an appraisal district determines the "average land value" is in question. Section 212.209(c) requires appraisal districts in which the municipality is wholly or partly located to calculate and provide to the municipality the average land value for each area or portion of an area designated by the municipality under Subsection (a) that is located in the district every 10 years. This calculation plays an important role in the final calculation of the fees that may be imposed in-lieu or in combination with a parkland dedication.



You will find attached a letter from Representative Cody Harris to the Travis Central Appraisal District (TCAD) regarding the particular method TCAD is using to calculate the average land value. In his letter, Representative Harris describes his legislative intent regarding the method of calculation that was envisioned when passing the bill, as well as his perception of the different method TCAD has opted to use for the calculation. You will note in the attached response from TCAD to Representative Harris that TCAD confirms the method by which it calculated the "average land value" and TCAD's reasoning for doing so as well as their unwillingness to calculate by the method Representative Harris indicates through his legislative intent in his letter. Representative Harris raises the concern that the differing methods produce widely different values. The fact pattern laid out in the correspondence between Representative Harris and TCAD highlights a discrepancy that will impact multifamily development in affected cities for no less than a decade, thus the foundation for this request for a formal Attorney General Opinion.

Sincerely,



Brian Birdwell

State Senator, Senate District 22

Senate Committee on Natural Resources and Economic Development, Chair

Cc: The Honorable DeWayne Burns, House Committee on Land and Resource Management, Chair
The Honorable Cody Harris, State Representative, House District 8
The Honorable Bryan Hughes, State Senator, Senate District 1
James Valdez, Travis County Appraisal Board, Chair
Roselyn Morris, Hays County Appraisal Board, Chair
Jon Lux, Williamson County Appraisal Board, Chair

TEXAS HOUSE of REPRESENTATIVES



CODY HARRIS

DISTRICT 8

CHAIRMAN OF LOCAL & CONSENT CALENDARS COMMITTEE

February 21, 2024

Re: Legislative Intent and Request Regarding House Bill 1526 (88R)

Dear Chief Appraiser Mann,

This letter serves to confirm my original legislative intent for House Bill 1526 from the 88th legislative session. As the author of the bill, it is imperative that those jurisdictions subject to the provisions of the bill implement the new law as it was intended by the originating author and the Senate sponsor. It is my understanding that the Travis County Appraisal District (TCAD) has not implemented House Bill 1526 correctly. The methodology TCAD chose to use to calculate land values is as follows:

- (Step 1) Sort all parcels into each of the suburban, urban, CBD areas.
- (Step 2) Compute a per acre per parcel value by either:
 - (a) grossing-up sub-acre parcels to a per acre value, or;
 - (b) calculating a per acre value for parcels at or above an acre.
- (Step 3) Take the average of all parcels' acre value within each area.

There are a couple of fatal issues with this methodology: (1) the legislation never references the term "parcel", thus manipulation of values at the parcel level are extrajudicial; (2) by grossing-up the sub-acre parcels, TCAD has effectively created phantom assessed value in these areas that doesn't exist on the tax rolls. As an example, TCAD's implemented methodology resulted in a 135% increase in implied assessed value (\$121 Billion) over the actual assessed value (\$51.4 Billion) in the suburban area.

My legislative intent of how to calculate the land values is as follows:

- (Step 1) Take all assessed value within each of the suburban, urban, CBD areas.
- (Step 2) Take the total acreage within each of the suburban, urban, CBD areas.
- (Step 3) Divide the total assessed value by the total acreage for each area.

This methodology is the most simplistic in that it requires no manipulation of data to calculate. Additionally, and most importantly, it ensures that the actual assessed value in each area matches the implied land value in each area based on the calculated average land values. In other words, it accomplishes the legislation's intent of tying parkland fees to the actual land values in which those fees are being charged.

I hereby respectfully request that you re-calculate the values according to the law and my legislative intent. If you chose not to do so, please send me an official statement as to why you will not do so by end of day on Monday, February 26, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cody Harris', with a stylized flourish at the end.

Representative Cody Harris
House District 8

TRAVIS CENTRAL APPRAISAL DISTRICT

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February 26, 2024

Representative Coddy Harris
P.O. Box 2910
Austin, Texas 78768-2910

Dear Representative Harris,

Thank you for your February 21, 2024, letter inquiring about the Travis Central Appraisal District's implementation of House Bill 1526 from the 88th Regular Legislative Session.

The statute directs the appraisal district to calculate and provide, "the average land value for each area or portion of area designated by the municipality." TEX. LOC. GOV'T CODE, section 212.209(c). Land value is defined to, "mean the market value of land per acre, not including an improvement to the land." *Id.* at 212.201(4). Market value has the meaning assigned by Section 1.04, Tax Code. *Id.* at 212.201(4).

I have consulted with the two other affected appraisal districts, Williamson County and Hays County, to determine the industry standard for implementation of the statute and the required average land value calculations. The method all appraisal districts used included determining a price per acre, per parcel, and then taking the average of those per acre values.

Additionally, I have sought and received legal advice from our outside law firm on the appropriate methodology for the appraisal district to use. I provided them with a copy of your letter, which they have also reviewed. Your letter outlines a formula to calculate average land value: Total assessed land value in a designated area ÷ total acreage within the same designated area. However, per our attorney, this formula does not appear in the statute, nor do the terms total assessed value or total acreage. Per the advice of our attorney, the Travis Central Appraisal District has calculated the average land value for each area or portion of the area designated by the municipality appropriately.

Sincerely,

Leana Mann
Chief Appraiser
Travis Central Appraisal District