



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 10, 2020

The Honorable Eddie Lucio, Jr.  
Chair, Committee on Intergovernmental Relations  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

**Opinion No. KP-0327**

Re: Standards applicable to roads constructed by the Bastrop County Water Control and Improvement District No. 2 under section 11001.008 of the Special District and Local Laws Code (RQ-0333-KP)

Dear Senator Lucio:

On behalf of former Senator Kirk Watson and the Bastrop County Water Control and Improvement District No. 2 (the "District"), you seek an attorney general opinion about the standards applicable to roads constructed by the District under section 11001.008 of the Special District and Local Laws Code.<sup>1</sup> The District states that it is a water control and improvement district that has road improvement powers under chapter 11001 of the Special District and Local Laws Code. Brief at 1. The District tells us that under chapter 11001 and the annual interlocal agreement between the District and Bastrop County (the "County"), the District improves roads within the District for the County to accept into the County system of roads. *Id.* at 2. The Request Letter poses questions about requirements in two statutes, sections 11001.008 and 11001.010, specifically concerning the Tahitian Village subdivision.<sup>2</sup> Senator Watson Letter at 1; Brief at 2-3. The first question is whether "Section 11001.008 of the Special District and Local Laws Code

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<sup>1</sup>See Letter from Honorable Eddie Lucio, Jr., Chair, Senate Comm. on Intergov'tl Relations, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Feb. 10, 2020), attached letter from Honorable Kirk Watson, Senator, Tex. State Senate, to Senator Eddie Lucio, Jr. at 1 (Feb. 5, 2020), and attached memorandum brief from Mary Beth O'Hanlon, President, Bd. of Dirs., Bastrop Cty. Water Control & Improvement Dist. No. 2, to Senator Watson at 3 (Jan. 17, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0333KP.pdf> ("Request Letter," "Senator Watson Letter," and "Brief," respectively). After you submitted the Request Letter, Senator Watson resigned from the Senate. See Tex. Gov. Proclamation No. 41-3722 45 Tex. Reg. 2095 (2020) (ordering a special election to fill the vacancy created February 25, 2029 by Senator Watson's resignation and its acceptance).

<sup>2</sup>As the Request Letter presents questions only about statutes, we do not address any effect the interlocal agreement might have on the District's and the County's duties.

require[s] new roads to be built under current standards applicable to new development in the remainder of the County, or some lesser standard.” Senator Watson Letter at 1.

We construe a statute according to its plain language, respecting what it says and what it does not say. *See In re Xerox Corp.*, 555 S.W.3d 518, 527 (Tex. 2018) (stating that courts “presume the Legislature selected statutory words, phrases, and expressions deliberately and purposefully and was just as careful in selecting the words, phrases, and expressions that were included or omitted”). Moreover, a statute must be read in the context of its place in the broader statutory framework. *See Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm’n*, 518 S.W.3d 318, 326 (Tex. 2017) (stating that courts “consider the context and framework of the entire statute and meld its words into a cohesive reflection of legislative intent”). Thus, we review salient provisions of chapter 11001. The chapter requires the District to make all road improvements according to the District’s master road plan, which the governing bodies of the County and the City of Bastrop (the “City”) must approve with respect to the improvements to be located in each entity’s jurisdiction. TEX. SPEC. DIST. CODE §§ 11001.003(a), (c), .005. “The district shall convey the completed improvements to the City of Bastrop or Bastrop County as appropriate.” *Id.* § 11001.010(a). Once the District completes all road improvements under the master plan and the County and City accept the improvements, the District’s road district authority under the chapter terminates. *Id.* § 11001.013.

Concerning County approval of road improvements, subsection 11001.008(c) provides:

In reviewing plans or specifications for construction in a subdivision, the City of Bastrop or Bastrop County shall generally apply, as a minimum standard, the standard the city or county applied to review similar plans or specifications at the time the subdivision was created. If the plans or specifications exceed that minimum standard, the standard for approval shall be based on good engineering practices related to subjects such as vehicle and pedestrian safety, soil and terrain variables, watershed impacts, projected traffic use, and future maintenance requirements.

*Id.* § 11001.008(c). The District informs us that the County did not have standards for subdivision road plans and specifications for a specific subdivision, Tahitian Village, when that subdivision was platted in 1974. Brief at 2. The District further states that in light of the absence of standards in 1974, “the County has recently advised the District that it must design roads to meet the current standards applicable to new subdivisions within Bastrop County.” *Id.* The District queries whether, in lieu of meeting current County standards for new subdivisions, the statute allows the District to make improvements meeting a lesser standard developed by a professional engineer who takes into consideration the specified statutory considerations. *Id.* at 2–3.

Because pertinent County standards did not exist in 1974, any improvements will exceed the nonexistent standards, and therefore will necessarily exceed the minimum standard as stated in the first sentence of subsection 11001.008(c). However, the second sentence regulates the standard the County may utilize to approve road improvements. *See* TEX. SPEC. DIST. CODE § 11001.008(c). The statute does not specify the source of the County’s standard of approval in

the event improvements exceed standards, if any, prevailing at the time a subdivision was created, only that it “be based on good engineering practices” according to the considerations identified in the statute. *Id.* Thus, the County has discretion about the approval standard it will utilize to approve District road improvements provided the standard comports with the statute. *See id.* The statute, in turn, requires only that the applicable standards be “based on good engineering practices related to subjects such as vehicle and pedestrian safety, soil and terrain variables, watershed impacts, projected traffic use, and future maintenance requirements” to approve the District’s road improvements. *Id.* Consistent with that requirement, the County may, in its discretion, apply the minimum standards it currently employs for new developments.<sup>3</sup>

The second question is whether the County is “required under Section 11001.010 of the Special District and Local Laws Code to accept roads constructed by the District that meet the applicable standards immediately, or may they impose a delay or other ‘warranty period.’” Senator Watson Letter at 1. The District states that “Bastrop County has determined that it will not accept completed roads by the District until after the expiration of a one year ‘warranty period,’ being the same warranty period applicable to the construction of new road improvements by developers of residential subdivisions.” Brief at 3.

Subsection 11001.010(b) provides that the “county *shall* accept the improvements” that comply with current County standards. TEX. SPEC. DIST. CODE § 11001.010(b) (emphasis added). The word “shall” in a statute ordinarily means the statute imposes a duty, “unless the context in which the word or phrase appears necessarily requires a different construction.” TEX. GOV’T CODE § 311.016(2); *see also Perryman v. Spartan Tex. Six Capital Partners, Ltd.*, 546 S.W.3d 110, 131 (Tex. 2018) (“By its plain and common meaning, “shall” denotes mandatory action.”). Accordingly, sections 11001.008 and 11001.010 require the County to accept District road improvements once they comply with the current minimum County standards that are based on good engineering practices as specified in the statutes. *See* TEX. SPEC. DIST. CODE §§ 11001.008(c), .010(b). By its plain language, the statute does not authorize the County to condition its approval on a requirement exceeding current standards or a standard unrelated to the good engineering practices specified in the statute. *See Cty. of Harris v. Eaton*, 573 S.W.2d 177, 178–79 (Tex. 1978) (construing the phrase “such as” in a statute listing items as including items “of the same kind or class as the ones expressly mentioned”). But the statutes leave it to the county commissioners court to determine in the first instance, subject to judicial review, whether a warranty period constitutes such a standard. *See* TEX. SPEC. DIST. CODE §§ 11001.008, .010; *see also Henry v. Cox*, 520 S.W.3d 28, 37 (Tex. 2017) (discussing district court’s authority to review commissioners court actions). Thus, the County may impose a warranty period on District road improvements provided that the warranty period constitutes a standard that (1) does not exceed the minimum standards the County currently prescribes in the County and (2) is based on good engineering practices related to subjects such as vehicle and pedestrian safety, soil and terrain variables, watershed impacts, projected traffic use, and future maintenance requirements.

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<sup>3</sup>This conclusion is bolstered by subsection 11001.010(b), which states that “[i]f the improvements comply with the minimum standards the . . . county . . . prescribes for improvements in its jurisdiction, the . . . county shall accept the improvements.” TEX. SPEC. DIST. CODE § 11001.010(b). The word “prescribes” in the present tense refers to the minimum standards the County currently prescribes.

S U M M A R Y

Chapter 11001 of the Special District and Local Laws Code requires the Bastrop County Water Control and Improvement District No. 2 to improve roads for acceptance by Bastrop County into the County system of roads. The County has discretion about the standard it will utilize to approve District improvements, provided the standard is based on good engineering practices according to specified statutory considerations. The County may impose a one-year warranty period on District road improvements, provided that the warranty period constitutes a standard that (1) does not exceed the minimum standards the County currently prescribes in the County and (2) is based on good engineering practices related to subjects such as vehicle and pedestrian safety, soil and terrain variables, watershed impacts, projected traffic use, and future maintenance requirements.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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