

ORDER NO. 2020 - 072

AN ORDER OF THE COMMISSIONERS COURT OF DE WITT COUNTY, TEXAS: (1) APPROVING A TAKINGS IMPACT ASSESSMENT FOR THE PROPOSED SUBDIVISION AND MANUFACTURED HOME RENTAL COMMUNITY REGULATIONS FOR DE WITT COUNTY, TEXAS; (2) ESTABLISHING A PUBLIC MEETING DATE FOR CONSIDERATION OF THE APPROVAL AND ADOPTION OF SAID REGULATIONS; AND (3) ESTABLISHING AN EFFECTIVE DATE AND COMPLIANCE WITH THE TEXAS OPEN MEETING ACT.

WHEREAS, DeWitt County, Texas (“County”) is a county of the State of Texas, having been duly created and organized under the constitution and laws of Texas, and further, the DeWitt County Commissioners Court (“Commissioners Court”) is the governing body of said County; and

WHEREAS, pursuant to Chapters 232 and 233 of the Texas Local Government Code and other authority, the Commissioners Court may adopt and enforce regulations governing plats, subdivisions of land, and manufactured home rental communities in the unincorporated area of the county to promote the health, safety, morals, and general welfare, as well as the safe, orderly, and healthful development of said area, said matters being declared to be worthwhile public purposes and in the public interest; and

WHEREAS, the Commissioners Court is considering the approval, adoption, and enactment of the Subdivision and Manufactured Home Rental Community Regulations for DeWitt County, Texas (“Regulations”), and pursuant to Chapter 2007 of the Texas Government Code and other authority, has conducted a takings impact assessment (“TIA”) regarding the proposed Regulations in the form and scope described in the attached **Exhibit 1**; and

WHEREAS, the Commissioners Court desires by this order to (1) approve and adopt the TIA attached as **Exhibit 1** regarding the proposed Regulations, (2) give public notice of the TIA approval as required by law, and (3) give notice of County intent to consider approval, adoption, and enactment of the proposed Regulations at a subsequent public meeting of the Commissioners Court as hereafter described.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the DeWitt County Commissioners Court, for and on behalf of said County and in the public interest, as follows:

- (1) Unless otherwise designated, the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning.

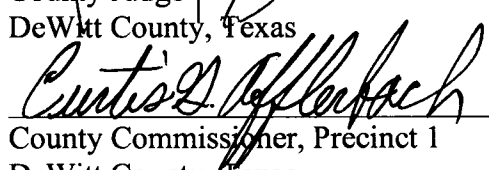
- (2) All statements made in the caption and preliminary recitals of this order, and all attached documents, are incorporated by reference.
- (3) The Commissioners Court approves, and adopts a takings impact assessment regarding the proposed Subdivision and Manufactured Home Rental Community Regulations for DeWitt County, Texas, in the TIA's form and scope described in the attached **Exhibit 1**.
- (4) The Commissioners Court directs that: (a) this executed order and the TIA attached as **Exhibit 1** regarding the proposed Regulations shall be filed in the official minutes for public inspection and copying; and (b) the County shall give public notice of the TIA approval as required by law, including publication of a newspaper notice which shall include a reasonably specific summary of the TIA and the name of the County official from whom a copy of the full assessment may be obtained.
- (5) The Commissioners Court hereby gives notice of County intent to consider approval, adoption, and enactment of the proposed Regulations at the public meeting of the DeWitt County Commissioners Court to be conducted at **9:00 a.m. on February 8, 2021** at the County Courtroom, DeWitt County Courthouse, 307 North Gonzales Street, Cuero, Texas 77954, and further, directs that all public notice of that meeting be accomplished as required by law.
- (6) All notice and conditions precedent for the approval and adoption of the TIA attached as **Exhibit 1** have been accomplished.
- (7) This order shall take effect immediately from and after its passage.
- (8) This matter was ordered, approved, and adopted at a public meeting held in compliance with Chapter 551 of the Texas Government Code, the Texas Open Meetings Act.

ORDERED, APPROVED, AND ADOPTED on the 14th day of December, 2020.


**THE COMMISSIONERS COURT OF
DE WITT COUNTY, TEXAS**



County Judge
DeWitt County, Texas



County Commissioner, Precinct 1
DeWitt County, Texas


County Commissioner, Precinct 2
DeWitt County, Texas

Absent
County Commissioner, Precinct 3
DeWitt County, Texas

Richard Randle
County Commissioner, Precinct 4
DeWitt County, Texas

ATTEST:

Natalie Carson
County Clerk
DeWitt County, Texas

EXHIBIT 1

(Takings Impact Assessment Regarding Proposed Subdivision and Manufactured Home Rental Community Regulations for DeWitt County, Texas)

**TAKINGS IMPACT ASSESSMENT REGARDING PROPOSED SUBDIVISION AND
MANUFACTURED HOME RENTAL COMMUNITY REGULATIONS
FOR DE WITT COUNTY, TEXAS**

Introduction

(1) Pursuant to Chapter 2007 of the Texas Government Code, DeWitt County, Texas, by and through its Commissioners Court, hereby approves and adopts this **Takings Impact Assessment** regarding the following proposed governmental action: the proposed approval, adoption, and enactment of the **Subdivision and Manufactured Home Rental Community Regulations for DeWitt County, Texas**, pursuant to the express and implied authority of the County to enact said regulations under Chapters 232 and 233 of the Texas Local Government Code, and all other authority described in the Regulations and this TIA, the contents of which are incorporated by reference.

Definitions and Interpretation

- (2) The following terms shall have the following meanings unless otherwise designated:
- (a) “Act” or “Chapter 2007” shall mean Chapter 2007 of the Texas Government Code (TEX. GOV’T CODE §§ 2007.001-.045);
 - (b) “Chapter 232” shall mean Chapter 232 of the Texas Local Government Code;
 - (c) “Colonias” shall mean substandard, generally impoverished, rural subdivision or other developments that lack basic utilities and other infrastructure;
 - (d) “County” shall mean DeWitt County, Texas acting by and through its Commissioners Court, the County’s governing body;
 - (e) “County floodplain regulations” shall mean the County’s flood damage prevention order, ordinance or other floodplain management regulations adopted by the County;
 - (f) “County sewer, septic, and OSSF regulations” shall mean the sewer, septic, and OSSF regulations adopted by the County;
 - (g) “Guidelines” shall mean the guideline analysis developed by TXOAG for implementation of a takings impact assessment pursuant to Chapter 2007;
 - (h) “MHRC” shall mean manufactured home rental communities as defined by Chapter 232 and the Regulations;

- (i) “NFIP” shall mean the National Flood Insurance Program pursuant to 42 U.S.C. §§ 4001 *et seq.*, and 44 C.F.R. Ch. I, Subch. B, Parts 59, 60, and other authority;
- (j) “OSSF” shall mean septic and onsite sewage facilities;
- (k) “Proposed action,” “proposed governmental action,” “order,” or “project” shall mean the County’s final approval, adoption, and enactment of the Regulations;
- (l) “Regulations” shall mean the proposed Subdivision and Manufactured Home Rental Community Regulations for DeWitt County, Texas, the contents of which are incorporated by reference;
- (m) “State sewer, septic, and OSSF regulations” shall mean the sewer, septic, and OSSF regulations applicable for use in DeWitt County pursuant to the Texas statutes, TCEQ regulations, or other administrative agency regulations;
- (n) “Stated Authority” shall mean Chapters 232 and 233 of the Texas Local Government Code, the NFIP and TFCIA, the State sewer, septic, and OSSF regulations, the County floodplain regulations, the County sewer, septic, and OSSF regulations, and all other legal authority or local regulations described in this TIA and the Regulations;
- (o) “TCEQ” shall mean the Texas Commission on Environmental Quality;
- (p) “TFCIA” shall mean the Texas Flood Control and Insurance Act pursuant to Chapter 16, Subchapter I, of the Texas Water Code (TEX. WATER CODE §§ 16.311-.324);
- (q) “TIA” shall mean a takings impact assessment pursuant to Chapter 2007; and
- (r) “TXOAG” shall mean the Office of the Texas Attorney General.

(3) Unless otherwise designated, the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning.

(4) This TIA is approved, adopted, and enacted pursuant to Chapter 2007 and other authority.

TXOAG Guidelines

(5) According to TXOAG guidelines: (a) a TIA is required to describe the purpose of the proposed governmental action and whether it may constitute a taking of private real property rights;

and (b) if so, the TIA is required, among other things, to identify any reasonable alternative action that might accomplish the same purpose, and to evaluate such alternative, including whether it would constitute a taking as described by Chapter 2007.

Notice of Public Meeting to Consider Approval of Regulations

(6) The County gives notice of its intent to consider the approval, adoption, and enactment of the proposed Regulations at the public meeting of the DeWitt County Commissioners Court to be conducted **at 9:00 a.m. on February 8, 2021** at the County Courtroom, DeWitt County Courthouse, 307 North Gonzales Street, Cuero, Texas 77954, said meeting to be predicated by all public notice required by law.

(7) The proposed Regulations are designed, among other things, to govern plats, subdivisions of land, and manufactured home rental communities (or MHRC), in the unincorporated area of the county in order to: promote the health, safety, morals, and general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county; and ensure that adequate plats, plans, design and planning procedure, water, sewer, septic, and OSSF facilities, and utility and transportation infrastructure are provided in the unincorporated area of the county. The proposed Regulations contain standards, requirements, and procedure for subdivision plats and MHRCs in the unincorporated area of the county relating, among other things, to: required compliance with federal law, state law, and County regulations; accomplishment of all public purposes described in the Regulations; definitions, an interpretation guide, establishment of an effective date, compliance with the Texas Open Meetings Act, application of certain legal authority, and other administrative provisions; development, design, and construction regarding land development in the unincorporated area; subdivision plat procedure and review, including recordation, exceptions or exemptions, variances, revision, vacation, amendment, subdivision regulation in the extraterritorial jurisdiction of an incorporated municipality, and dormant plat procedure; MHRC infrastructure development plan standards, requirements, and procedure, including restrictions on MHRC construction and occupancy unless approved by the County; bond or other financial security; a fee schedule and related procedure; subdivision plat and MHRC infrastructure plan disclosure, signature, and certification; division of land standards; survey, topographical data, lot/block, monumentation, and other required data and disclosures; water, sewer, septic, and OSSF facilities and service, including compliance with minimum state and County standards; engineer, surveyor, and/or geoscientist review, analysis, and disclosure requirements; utility standards, service, and connection, including compliance with minimum state and County standards and disclosure requirements; floodplain identification, management, and drainage, including descriptions, plans, and disclosure; road/driveway design and construction, drainage plans and facilities, lot frontages, and building and set-back lines; purchase contract disclosure and procedure related to water availability; groundwater sufficiency and disclosure requirements; fire suppression systems and disclosure requirements; lienholder identification and lien subordination; limitations and restrictions regarding subdivision plat or MHRC approval by the County; and civil and criminal enforcement remedies and penalties.

Public Inspection of TIA and Regulations

(8) This TIA and the Regulations may be inspected and copied during regular business hours at the office of the Hon. Daryl L. Fowler, County Judge, DeWitt County, Texas, DeWitt County Courthouse, 307 North Gonzales Street, Cuero, Texas 77954.

Analysis

(9) Applying the TXOAG Guidelines, the County makes the following determinations regarding the proposed governmental action.

QUESTION 1: Is the Governmental Entity undertaking the proposed action a Governmental Entity covered by the Act, i.e., is it a “Covered Governmental Entity?”

ANSWER: Yes. The County is a governmental entity undertaking the proposed action. Therefore, the County is a “Covered Governmental Entity” pursuant to the Act and TXOAG Guidelines.

QUESTION 2: Is the proposed action to be undertaken by the Covered Governmental Entity an action covered by the Act, i.e., a “Covered Governmental Action?”

ANSWER: No. Pursuant to Chapter 2007 and the Stated Authority, the proposed Regulations and project are exempt from coverage under or application to the Act. Therefore, the County’s proposed enactment of the Regulations does not constitute a Covered Governmental Action pursuant to the Act or TXOAG Guidelines as hereafter described:

- (a) Items (1) through (8) of this TIA are incorporated by reference.
- (b) Under the Stated Authority, the County, among other things, has obligations in the unincorporated area designated by law as a floodplain to: regulate construction and other development; regulate water safety; prevent waste and subsidence; regulate sewer and on-site sewage/OSSF facilities; protect the rights of owners of interests in groundwater; promote the public health, safety and general welfare; and minimize public and private losses (including death, personal injury, and property damage) due to flood conditions. The Regulations contain provisions to require development compliance with these obligations, including the following matters: plat and plan disclosure statements and descriptions regarding floodplain locations; compliance with the Stated Authority; efficient drainage and management of storm water runoff; coordination of drainage with the general drainage pattern for the area; reasonable specifications for the adequate drainage of roads; and compliance with minimum state and County standards regarding water, sewer, septic, OSSF, and/or utility facilities, connections, and service.

- (c) Under the Stated Authority, the County, among other things, has obligations in the unincorporated area to ensure reasonable drainage, including but not limited to: the efficient management of storm water runoff; the coordination of drainage with the general drainage pattern for the area; and compliance with minimum state and County standards regarding water, sewer, septic, OSSF, and/or utility facilities, connections, and service in order to avoid pollution and contamination caused through inadequate drainage. The Regulations contain provisions to require development compliance with these obligations.
- (d) Under the Stated Authority, the County, among other things, has obligations in the unincorporated areas to regulate water safety, prevent waste and subsidence, and protect groundwater rights, including requiring: purchase contract disclosures to describe the extent to which water will be made available to a subdivision, and if so, how and when it will be made available; plat and plan disclosure statements certifying that adequate groundwater is available; plat and plan disclosure statements certifying compliance with minimum state and County standards regarding proposed water, sewer, septic, and OSSF facilities, connections, and service; and compliance with applicable state and County sewer, septic, OSSF, and floodplain regulations. The Regulations contain provisions to require development compliance with these obligations.
- (e) Under the Stated Authority, the County, among other things, has obligations in the unincorporated areas to regulate sewer, septic, and OSSF facilities. The Regulations contain provisions to require development compliance with these obligations, including the following matters: descriptions of the facilities to be constructed or installed; plat and plan disclosure statements certifying compliance with minimum state and County standards; and compliance with the Stated Authority to protect public health, safety, and welfare. The Regulations contain provisions to require development compliance with these obligations.
- (f) The approval, adoption, and enactment of the Regulations and project shall constitute a reasonable, good faith action taken by the County regarding subdivision and MHRC development in the unincorporated area, pursuant to the regulatory powers (express or implied) granted to the County by the Stated Authority to: fulfill mandatory obligations under federal, state, and local law; regulate construction in an area designated under law as a floodplain; regulate water safety, quality, and sufficiency; prevent waste and subsidence; protect rights of owners of interests in groundwater; regulate sewer and on-site sewage/OSSF facilities; prevent a grave and immediate threat to life or property; and provide a response to a real and substantial threat to public health and safety (including the occurrence of colonias or

other substandard development), said action being designed to significantly advance the health and safety purpose, and said action not imposing a greater burden than is necessary to achieve that purpose. Therefore, the Regulations and project are exempt from coverage under or application to Chapter 2007, pursuant to the exceptions authorized by § 2007.003(b) of the Texas Government Code and other authority.

QUESTION 3: Does the Covered Governmental Action result in a burden on “Private Real Property” as that term is defined in the Act?

ANSWER: No. Pursuant to Chapter 2007 and the Stated Authority, the County has determined the following:

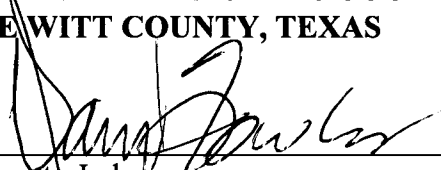
- (a) The Answer to **QUESTION 2** above is incorporated by reference. Pursuant to Chapter 2007 and the Stated Authority, the proposed Regulations and project are exempt from coverage under or application to the Act. Therefore, the County’s proposed enactment of the Regulations does not constitute a Covered Governmental Action pursuant to the Act or TXOAG Guidelines.
- (b) Pursuant to the Stated Authority, the public purposes of the Regulations include, among other things, the following matters: the Regulations shall govern plats, subdivisions of land, and manufactured home rental communities within the unincorporated area in order to promote the health, safety, morals, and general welfare, and the safe, orderly, and healthful development of the unincorporated area; and the Regulations shall ensure that adequate plats, plans, design and planning procedures, water, sewer, septic, and OSSF facilities, connections, and service (and related utility and transportation infrastructure) are provided in the unincorporated area to prevent colonias or other substandard development. The proposed enactment of the Regulations is authorized pursuant to the Stated Authority, and shall accomplish or substantially achieve all public purposes described in this TIA and the Regulations.
- (c) The Regulations require subdivision and MHRC development in the unincorporated area to occur in compliance with the Stated Authority. Given the requirements of the Stated Authority, no (or alternatively minimal) new burdens or restrictions will be imposed or created by the Regulations with respect to any private real property. A critical need exists in DeWitt County, Texas for the enactment of the Regulations because unrestricted development in the unincorporated area will be detrimental to the public health, safety, and welfare by contributing to the decline of residential neighborhoods and the installation of colonias or other substandard development.

- (d) Existing subdivisions and MHRCs which may be affected by the enactment of the Regulations may continue to operate, provided they are not enlarged or expanded.
- (e) The enactment of the Regulations will not: result or require a physical taking of private real property; deprive an owner of affected real property of all economically viable uses of the property; reduce market value of the real property, or have a significant impact on the owner's economic interest; or deny the owner a fundamental right of ownership, including title and/or possession, enjoyment, exclusion of unwanted persons from the property, and the conveyance or transfer of property interests. Should the Regulations be enacted: no new public interests are purported to be created, established, or transferred to the County; no (or alternatively minimal) new burdens or restrictions will be imposed or created by the Regulations with respect to any private real property; the Regulations will not require a private real property owner to dedicate property to the public, except as may be required regarding utility easements for utility service, if said service is planned for the property by the owner.
- (f) As potential alternative actions, the County could consider modifying the Regulations to: reduce or diminish mandatory owner compliance with the minimum development standards and requirements described in the answers to **QUESTIONS 2 and 3** herein; and/or request owners of real property to self-regulate their development sites in the public interest by consent, and in the form, manner, and scope described in the Regulations. These potential alternative actions, however, are not viable because: the proposed Regulations, as currently stated, are authorized for enactment and enforcement by the County pursuant to the Stated Authority; the alternative actions would not adequately promote and protect the health, safety, morals, and general welfare, and the safe, orderly, and healthful development of the unincorporated area, by requiring the provision of adequate plats, plans, design and planning procedures, water, sewer, septic, and OSSF facilities, connections, and service (including compliance with minimum state and County standards) in the said area, given the present risks for colonias or other substandard development in DeWitt County, Texas; and the proposed Regulations, as currently stated, shall accomplish or substantially achieve all public purposes described in this TIA and said Regulations. No viable alternative action exists which can accomplish the same development safeguards and other public purposes described in this TIA and the Regulations, as currently stated.
- (g) No taking of private real property or rights in private real property, as defined by the Chapter 2007, will occur as a result of the approval, adoption, and enactment of the Regulations. Therefore, a **"No Private Real Property**

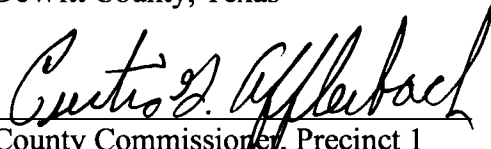
Impact Determination” is hereby made regarding the Regulations and project, and no further compliance with or analysis under Chapter 2007 is required.

ORDERED, APPROVED, AND ADOPTED on the 14th day of December, 2020.

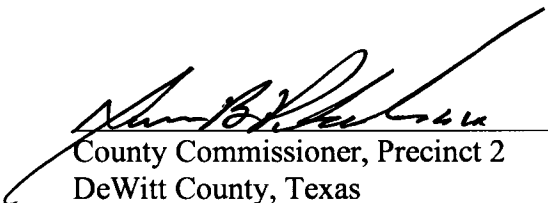
**THE COMMISSIONERS COURT OF
DEWITT COUNTY, TEXAS**



County Judge
DeWitt County, Texas



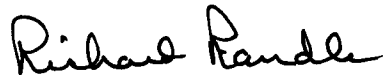
County Commissioner, Precinct 1
DeWitt County, Texas



County Commissioner, Precinct 2
DeWitt County, Texas

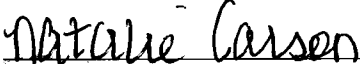
Absent

County Commissioner, Precinct 3
DeWitt County, Texas



County Commissioner, Precinct 4
DeWitt County, Texas

ATTEST:



County Clerk
DeWitt County, Texas

