

ALLISON, BASS & MAGEE, L.L.P.

Attorneys at Law

A. O. WATSON HOUSE
402 WEST 12TH STREET
AUSTIN, TEXAS 78701
(512) 482-0701
FAX (512) 480-0902

JAMES P. ALLISON
j.allison@allison-bass.com

ROBERT T. BASS
r.bass@allison-bass.com

J. ERIC MAGEE
e.magee@allison-bass.com

PHILIP B. ARNOLD
p.arnold@allison-bass.com

JOSHUA HUMPHREYS
j.humphreys@allison-bass.com

May 28, 2019

VIA EMAIL

Judge Rick Lewis
Montague County Judge
P.O. Box 475
Montague, Texas 76251
co.judge@co.montague.tx.us

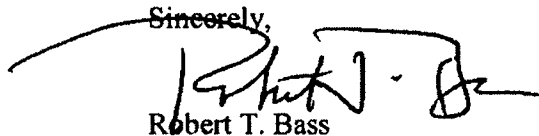
RE: Takings Impact Assessment

Dear Judge Lewis,

At your request, we have reviewed the proposed Montague County subdivision regulations and MHRC regulations in compliance with the Private Real Property rights Preservation Act (Chapter 2007, Texas Government Code) and the guidelines as outlined on the Texas Attorney General website. Based upon this review, we do not believe the requirements of the Montague draft regulations constitute a takings as defined by the statute.

We have complied with the Texas Attorney General questionnaire, and provide you with that document for inclusion in the minutes of the Commissioners Court.

Sincerely,



Robert T. Bass

RTB/jm
Enclosures

TAKINGS IMPACT ASSESSMENT

Proposed Action: The County proposes to adopt an ordinance concerning the regulation of Subdivisions of Land in unincorporated areas of Montague County

County Department: Commissioners Court

Contact Person: Rick Lewis, County Judge

Phone: (940) 894-2401

I. Stated Purpose

The purpose of the proposed action is to regulate the development of subdivisions of land, as defined by Chapter 232, Texas Local Government Code in order to protect the health, safety, and welfare of the citizenry; protect the citizens from inadequate infrastructure; preserve the quality of life; preserve property values and the character of the surrounding neighborhoods; and deter the spread of community blight. The Texas Legislature has determined that the unrestricted subdivision of land may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the installation of inadequate or unsuitable residential infrastructure, including the provision of utilities, including water, wastewater and drainage, as well as suitable access, ingress and egress by vehicular traffic including emergency vehicles. It is the judgment of the Montague County Commissioners Court that the unregulated development of subdivisions of land in the unincorporated areas of Montague County, would present an unnecessary threat of harm to citizens.

II. The Nature of the Action

A takings impact assessment is required only for two types of governmental of actions. State whether the proposed action is one of the following:

- 1) The adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure; or

- 2) An action that imposes a physical invasion or requires a dedication of private real property;

Yes. The proposed course of action is to adopt an ordinance.

III. Potential Effect on Private Property

1. Does the county action require a physical invasion, occupation or dedication of real property?

Yes _____ No x

2. Does the county action limit or restrict a real property right, even partially or temporarily?

Yes _____ No x

The proposed action does place restrictions on the use of property for the subdivision and development of land in the unincorporated areas of Montague County, Texas. However, the Texas Legislature has found that the unrestricted subdivision and development of land in the unincorporated areas of a Texas county may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the installation of inadequate or unsuitable residential or industrial infrastructure, including the provision of utilities, including water, wastewater and drainage, as well as suitable access, ingress and egress by vehicular traffic, including emergency vehicles. Under Texas law, a county may adopt regulations regarding the subdivision of land, as defined by Chapter 232 of the Texas Local Government Code, as necessary to promote the public health, safety, or welfare of the citizenry. Subdivisions of land that are in current operation and that may be affected by the regulations will be permitted to continue operations in their current locations so long as the same are not enlarged or expanded. The adoption of the proposed action does not result in the physical taking of private real property. The adoption of the proposed action does not

deprive the owner of all economically viable uses of the property, have a significant impact on the property owner's economic interest, or deny a fundamental attribute of ownership. Therefore, the proposed action does not appear to be an action covered under the Texas Real Property Rights Preservation Act.

IV. Exemptions

After consideration, the Commissioners Court finds that the proposed action is an action a) taken in response to a real and substantial threat to public health and safety, b) designed to significantly advance the health and safety purpose, and c) one that does not impose a greater burden than necessary to achieve the health and safety purpose.

Based upon the above findings, the proposed action is exempt from the provisions of the Texas Real Property Rights Preservation Act.

IV. Analysis of Purpose, Burdens and Benefits

- A. Referring to the purpose of the county action in Section I above, state how the action achieves or advances its purpose.

As stated, the purpose of the proposed action is to promote the public health, safety, or welfare of the citizenry by requiring minimum standards for the planning, platting and development of subdivisions of land within the unincorporated areas of Montague County, Texas. This purpose is furthered by placing minimal standards upon the development of land for use as a residential or industrial development, and to required sensible standards regarding the provision of residential or industrial services, including utilities, including water, wastewater, drainage, and access, ingress and egress by vehicular traffic, including emergency vehicles. Further, the proposed action provides legitimate accountability to developers of rural subdivisions outside of the incorporated areas of Montague County, by providing requirements designed to protect the public health and safety.

B. Describe the benefits to society resulting from the county action.

The benefits include 1) reasonable regulation of rural subdivision development in order to protect the health and well-being of the citizens; 2) provide accountability for developers of rural subdivisions of land outside the incorporated areas of Montague County by reasonable requirements designed to protect the public health and safety; 3) prevent the installation of inadequate infrastructure by requiring minimal standards upon the development of rural subdivisions of land located in the unincorporated areas of Montague County, Texas ; 4) prevent a decrease in property value by placing reasonable requirements for utilities, including water, wastewater, drainage and access, ingress and egress of vehicular traffic, including emergency vehicles; and 5) prevent the spread of unregulated development that will be injurious to the public health and safety.

C. Discussion of the burdens that may be imposed on private real property by the county action.

After consideration, the Commissioners Court finds as follows:

1. The proposed action will not result indirectly or directly in a permanent or temporary physical occupation of private real property;
2. The proposed action does not require a property owner to dedicate property or grant an easement except as may be required to satisfy requirements addressing the provision of utilities, including water, wastewater, drainage, utility services, or access, ingress and egress for vehicular traffic, including emergency vehicles;
3. The proposed action does not deprive the owner of all economically viable use of his property;
4. The proposed action does not deny any owner the right to possess his real property, enjoy it, exclude others from it or sell it; and
5. It does not appear that the proposed action will serve to reduce the market value of any owner's property.

Presently established rural subdivisions that may be affected by the regulations will be permitted to continue in their current location and condition so long as these locations are not enlarged or expanded. Therefore, it appears that there will be no reduction in the market value of any owner's property.

Additional discussion of potential burdens:

The proposed actions pose a minimal burden on real property owners and present a substantial benefit to society. The County is permitted to adopt regulations that address the public health, welfare and safety of its citizenry. Presently established rural subdivisions that are in current operation and that may be affected by the regulations will be permitted to continue operations in their current locations and conditions so long as the same are not enlarged or expanded. These subdivisions will also have adequate notice and opportunity to construct or renovate their premises and arrange their operations in order to comply with the proposed regulations should the present subdivision be enlarged or expanded. The adoption of the proposed action does not result in the physical taking of private real property. The adoption of the proposed action does not deprive the owner of all economically viable uses of the property, have a significant impact on the property owner's economic interest, or deny a fundamental attribute of ownership. Therefore, no existing property rights will be impinged and market value should not be affected.

V. Alternatives

- A. Describe alternative actions that could accomplish the same purpose as the proposed action.

After consideration, the Commissioners Court finds that there are no alternatives which would effectively accomplish the same purpose.

- B. Would these alternatives impose a lesser burden on the property which is the subject of the proposed action?

This section is inapplicable in light of the response to V(A.).

VI. Potential Impact on Value

A. Will the county action reduce the market value of any parcel of private real property by 25% or more?

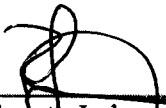
Yes _____ No x

Presently legally existing rural subdivisions that may be affected by the regulations will be permitted to continue operations in their current locations and conditions so long as the same are not enlarged or expanded. In addition, this regulation does not restrict any use of the property other than for the development of a subdivision of land, as defined by Chapter 232 of the Texas Local Government Code. The Commissioners Court finds that there are alternative uses available for the property.

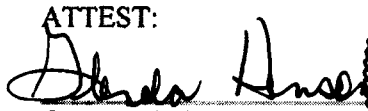
VII. Conclusion:

- _____ Not a Covered Action
- x No Impact on Private Real Property
- x Proposed Action is Exempt
- x Proposed Action Fully Assessed for Potential Impact on Private Property.

Read and adopted this 10th day of June, 2018, by a vote of 5 ayes and 0 nays.



County Judge

ATTEST:


County Clerk

