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OPINION COMMITTEE

January 28, 2004

VIA CERTIFIED MAIL

Honorable Greg Abbott
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43474-04
I.D. # 43474
RQ-0177-GA

RE: Opinion Request from Hays County Criminal District Attorney Concerning Condominium Developments (Chapter 82, Texas Property Code) and multi-unit developments intended for separate ownership or use, and proper application of counties' regulatory authority contained in Chapter 232, Texas Local Government Code.

Dear General Abbott:

This opinion request is being submitted pursuant to Section 402.043 of the Texas Government Code. The legal issue presented was submitted to me by the Hays County Commissioners' Court through action taken at a recent meeting of the Court. The Commissioners' Court is seeking clarification of an issue relating to the subdivision authority of counties as provided in Chapter 232 in general and as amended in Chapter 232.100 of the Texas Local Government Code. Hays County is one of thirty-two Texas counties referred to as "urban counties", (counties situated next to metropolitan areas that are experiencing heavy growth). Issues relating to subdivision regulation in these rapidly growing areas are often hotly debated due to environmental concerns and urbanization of historically rural areas with limited infrastructure.

FACTUAL BACKGROUND

Hays County regulates the subdivision of land in all unincorporated areas of Hays County pursuant to Chapter 232, Texas Local Government Code. The Hays County Environmental Health Department administers these regulations and seeks Commissioners' Court approval of subdivision plats. Recently, the Hays County Environmental Health Department became concerned about a proposed development in northern Hays County in which a 12-acre parcel of land was proposed to house 17 three-bedroom homes. The developer proposed to develop the site as a condominium regime pursuant to Chapter 82 of the Texas Property Code rather than subdividing the land and meeting subdivision requirements pursuant to Chapter 232 of the Texas Local Government Code and the Hays County Subdivision and Development Regulations. Attached for your reference is a schematic design which illustrates the proposed development. See Exhibit "A".

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LEGAL ANALYSIS

Due to the possible consequences of allowing developments such as the one described above without county regulation of roads, drainage, and water availability, county staff sought the legal opinion of county law expert David B. Brooks for direction. Mr. Brook's legal analysis of the issue is attached as Exhibit "B". Mr. Brooks determined that the development should be considered a "subdivision" (See Tex. Local Gov't Code § 232.001) and the developer should be required to comply with all applicable state and local rules relating to subdivision requirements (i.e. road and drainage construction standards and water availability).

Conversely, attorneys for the developer believe the development does not qualify as a "subdivision" and is therefore exempt from development regulations. A legal opinion from the developer's legal counsel is attached as Exhibit "C".


LEGAL ISSUES PRESENTED

- 1) Whether a condominium development pursuant to Chapter 82, Texas Property Code, is subject to the regulatory control of the county under the subdivision statutes contained in Chapter 232 of the Local Government Code?
- 2) Does Section 232.100, Texas Local Government, allow urban counties to require condominium or other multi-unit developments (a building, structure or combination of structures which have been designed to contain units in which more than two families may reside) to meet subdivision or infrastructure planning requirements?

CONCLUSION

Should you require any additional information or need clarification on any information contained herein please contact me at (512) 393-7600 or Assistant District Attorney Jacqueline Cullom Murphy at (512) 393-2219. Thank you most kindly.

Sincerely,



Mike Wenk
Hays County Criminal District Attorney

cc: Hays County Judge and County Commissioners
David B. Brooks
James M. Butler