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Texas Senate Bill 840: A Game-Changer for Housing Development

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On May 28, Senate Bill 840 arrived on Texas Governor Greg Abbott's desk after passing the Texas House and Texas Senate with bipartisan support. Authored by State Senator Bryan Hughes, the bill aims to increase the state's housing supply in larger municipalities by preempting certain municipal regulations. Once signed by Abbott, this new legislation will affect the state's larger municipalities, applying only to cities with populations exceeding 150,000 that are within counties whose population exceeds 300,000.

As most real estate developers (and their attorneys) know, the process for seeking a zoning change, a special use permit, or a variance can be time-consuming, tedious, and expensive. By allowing developers to simply ignore existing zoning classifications in commercially zoned areas, those costs, both in terms of time and money, are eliminated. SB 840 does not disappoint in that regard and leaves little room for interpretation — "a municipality shall allow mixed-use, residential use and development or multifamily use and development" in areas with commercial zoning.

At first glance, the bill awaiting the governor's signature is a boon to both developers and existing owners. Developers can, by right, build multifamily and mixed-use projects (with at least 65% being multifamily) in areas zoned for office, commercial, retail, warehouse, or mixed-use without needing to address zoning. Existing owners of commercially zoned property should also benefit as the expanded entitlements will open up their properties to the multifamily and mixed-use market.

The impact of Senate Bill 840 does not end with shaking off the handcuffs of zoning classifications for certain properties. The legislation also prohibits certain restrictions on density, building height, and parking for multifamily and mixed-use developments. Under the new legislation, any restrictions on density must allow for the greater of (i) the highest residential density allowed in the municipality, or (ii) 36 units per acre. Building height restrictions receive similar treatment with the law prohibiting restrictions on building height to (a) the greater of what is already allowed on the site or 45 feet. Municipalities are also prohibited from requiring more than one parking space per dwelling unit or a multilevel parking structure in connection with the construction of multifamily improvements.

Property owners with existing multifamily or mixed-use zoning should also take note that the provisions regarding density, height, and parking apply to any mixed-use or multifamily development and are not limited to mixed-use or multifamily developments on commercially zoned lots (*i.e.*, office, commercial, retail, and warehouse).

Where this new legislation could have the most significant positive impact is facilitating the conversion of vacant or underutilized office buildings, retail centers, and warehouses to a multifamily use or mixed-use. As long as the conversion from office, retail, or warehouse use includes at least 65% residential uses and was constructed at least five years prior to the proposed conversion, then the owner can make the proverbial lemonade out of the lemons. Sweetening the pot even more for conversions of existing uses to residential uses, this new law prohibits municipalities from requiring any of the following:

1. The preparation of a traffic impact analysis or other study relating to the effect the proposed converted building would have on traffic or traffic operations;

2. The construction of improvements or payment of a fee in connection with mitigating traffic effects related to the proposed converted building;

3. The provision of additional parking spaces, other than the parking spaces that already exist on the site of the proposed converted building;

4. The extension, upgrade, replacement, or oversizing of a utility facility except as necessary to provide the minimum capacity needed to serve the proposed converted building; or

5. A design requirement, including a requirement related to the exterior, windows, internal environment of a building, or interior space dimensions of an apartment, that is more restrictive than the applicable minimum standard under the International Building Code as adopted as a municipal commercial building code under Section 214.216.

By removing these barriers for the repurposing of these vacant and underutilized properties, the legislature has opened the door to a significant opportunity for developers to meet the ever-growing housing needs in Texas.

While the proposed law does an admirable job of addressing the bottlenecks and administrative burden of converting properties to residential uses, there may also be some unintended consequences created by a “one-size-fits-all” approach. Zoning ordinances are often cumbersome and sometimes antiquated, but the framework that these ordinances provide gives some degree of certainty to property owners, residents, and the municipalities themselves. For example, no consideration has been given to the impact on public schools when these additional projects result in an influx of students. Will dispensing with the need for traffic studies or traffic mitigation measures create more congestion? Developers who have invested heavily in entitling their multifamily projects must now compete with developers who can skip that entire process. Will owners of existing multifamily or mixed-use projects be at a disadvantage to those who can now bypass barriers to entry quickly and without cost?

One size rarely fits all. Eliminating obstacles to develop vacant or underutilized properties for residential use is a win for Texas and a win for developers. It remains to be seen what unintended consequences could result from this sweeping legislation that is set to change the playing field for real estate developers and Texas residents alike.

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