

CHAPTER 108

H.B. No. 850

AN ACT

relating to the authority of Garza County to adopt zoning and building regulations for areas around certain lakes; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

- (1) those parts of Garza County that surround Lake Alan Henry and Post Lake will be frequented for recreational purposes by residents from every part of the state;
- (2) orderly development and use of the area is of concern to the entire state; and
- (3) buildings in the area that will be frequented for resort or recreational purposes will tend to become congested and to be used in ways that interfere with the proper use of the area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

(b) The powers granted under this Act are for the purpose of promoting the public health, safety, peace, morals, and general welfare and encouraging recreation.

(c) The commissioners court may not regulate new manufactured or industrialized housing, constructed to preemptive state or federal building standards, for siting or zoning purposes in any manner that is different from regulation of site-built housing.

SECTION 2. AREAS SUBJECT TO REGULATION. (a) This Act applies to those parts of Garza County located within one mile of the high water marks established for Lake Alan Henry and Post Lake. However, land located in Garza County and owned by the White River Municipal Water District is not subject to this Act.

(b) The areas described by Subsection (a) are subject to regulation under this Act regardless of whether the construction of an affected lake is complete.

SECTION 3. ZONING REGULATIONS GENERALLY. The Commissioners Court of Garza County may regulate in areas subject to this Act:

- (1) the height, number of stories, and size of buildings and other structures;
- (2) the percentage of a lot that may be occupied;
- (3) the size of yards, courts, and other open spaces;
- (4) population density;
- (5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and
- (6) the placement of water and sewage facilities, parks, and other public requirements.

SECTION 4. COMPLIANCE WITH COMPREHENSIVE PLAN. Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

- (1) lessen congestion in the streets and roads;
- (2) secure safety from fire, panic, and other dangers;
- (3) promote health and the general welfare;
- (4) provide adequate light and air;
- (5) prevent the overcrowding of land;
- (6) avoid undue concentration of population;
- (7) facilitate the adequate provision of transportation, water, sewers, parks, and other public requirements; or

(8) assist in developing the area into parks, playgrounds, and recreational areas for the residents of this state and other states and nations.

SECTION 5. DISTRICTS. (a) The commissioners court may divide the area in the county that is subject to this Act into districts of a number, shape, and size the court considers best for carrying out this Act. Within each district, the commissioners court may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) The zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the area.

SECTION 6. ZONING COMMISSION. (a) The commissioners court shall appoint a zoning commission. The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. The commission must consist of an ex officio chairman and four additional members.

(b) The commissioners court shall appoint a chairman who must be a public official in Garza County. The chairman serves a two-year term of office. The other members serve four-year terms. In making the initial appointments of the other members, the commissioners court shall designate the members for staggered terms of one, two, three, and four years. In the event of resignation, end of term, or a vacancy, the court shall appoint new members. The court shall fill a vacancy in the office of chairman by appointment. A person is not eligible for appointment to, or service on, the commission after the person's 70th birthday. The zoning commission may employ a secretary, an acting secretary, and other technical or clerical personnel.

(c) A member of the commission is entitled to compensation in the amount of \$10 a month except that the chairman of the zoning commission is not entitled to compensation under this section if the chairman receives compensation in the chairman's capacity as a public official in the county. A member of the commission may also be entitled to expenses actually incurred while serving on the commission as provided by order of the commissioners court.

(d) The zoning commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the commissioners court. The commissioners court may not take action or hold a public hearing until it has received the final report of the commission.

(e) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to:

(1) each owner of affected property or to the person who renders the property for county taxes; and

(2) each owner of property that is located within 200 feet of property affected by the change or to the person who renders the property for county taxes.

(f) The notice may be served by depositing it, postage paid and properly addressed, in the United States mail.

SECTION 7. PROCEDURE GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES. (a) A zoning regulation or zoning district boundary proposed by the zoning commission is not effective until it is adopted by the commissioners court after a public hearing. Before the 15th day before the date of the hearing, the commissioners court must publish notice of the hearing in a newspaper of general circulation in the county.

(b) The commissioners court by a majority vote may amend or reject a regulation or boundary proposed by the zoning commission.

(c) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative

vote of at least three-fourths of all members of the commissioners court. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the lots covered by the proposed change; or

(2) the lots immediately adjacent to the rear of the lots covered by the proposed change and extending 200 feet from those lots, or from the street frontage of the opposite lots.

(d) After the commissioners court receives the protest, the court shall hold a public hearing. The court shall publish notice in the manner provided by Subsection (a).

SECTION 8. SPECIAL EXCEPTION. (a) Any of the following persons may petition the commissioners court for a special exception to a zoning regulation adopted by the commissioners court:

(1) a person aggrieved by the regulation; or

(2) any officer, department, board, or bureau of the county or of a municipality in the county.

(b) The commissioners court shall hold a public hearing on the petition and shall publish notice of the hearing before the 15th day before the date of the hearing in a newspaper of general circulation in the county.

(c) Except as provided by Subsection (d), the commissioners court may grant a petition for a special exception by majority vote.

(d) If a proposed special exception to a zoning regulation is protested in accordance with this subsection, the proposed special exception must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the commissioners court. The protest must be presented at the hearing and signed by the owners of at least 20 percent of:

(1) the lots covered by the proposed exception; or

(2) the lots immediately adjacent to the rear of the lots covered by the proposed exception extending 200 feet from those lots, or from the street frontage of the opposite lots.

SECTION 9. ENFORCEMENT; PENALTY; REMEDIES. (a) The commissioners court may adopt orders to enforce this Act, any order adopted under this Act, or a zoning regulation.

(b) A person commits an offense if the person violates this Act or a zoning regulation. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000. Each day that a violation occurs constitutes a separate offense. Trial shall be in the district court.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this Act, an order adopted under this Act, or a zoning regulation, the appropriate county authority, in addition to other remedies, may institute appropriate action to:

(1) prevent the unlawful action or use;

(2) restrain, correct, or abate the violation;

(3) prevent the occupancy of the building, other structure, or land; or

(4) prevent any illegal act, conduct, business, or use on or about the premises.

SECTION 10. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a zoning regulation adopted under this Act requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer number of stories for a building, requires a greater percentage of a lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local order or regulation, the regulation adopted under this Act controls. If the other statute or local order or regulation imposes higher standards, that statute, order, or regulation controls.

(b) This Act does not authorize the commissioners court to require the removal or destruction of property that exists at the time the court implements this Act or restrict

the right of a landowner, acting in the owner's behalf, to construct improvements for agriculture and ranching operations or to otherwise use the land for agriculture and ranching operations. Agriculture and ranching operations include but are not limited to the following activities: cultivating the soil; producing crops for human food, animal feed, planting seed, or fiber; floriculture; viticulture; horticulture; raising or keeping livestock or poultry; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure. The commissioners court may take those actions to restrict or prohibit any commercial agriculture enterprise, such as a commercial feed lot, that are reasonably necessary to protect the public health, safety, peace, morals, and general welfare from the dangers of explosion, flooding, vermin, insects, physical injury, contagious disease, contamination of water supplies, radiation, storage of toxic materials, or other hazards.

(c) This Act, an order adopted under this Act, or a zoning regulation does not apply to the location, construction, maintenance, or use of central office buildings or equipment used by a person engaged in providing telephone service to the public.

SECTION 11. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 7, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 850 on May 7, 1987, by a non-record vote. Passed by the Senate, with amendments, on April 30, 1987, by a viva-voce vote.

Approved May 18, 1987.

Effective 90 days after date of adjournment.