

A Reprint from *Tierra Grande*, the Real Estate Center Journal



# rural water

## Plan Before You Plat

By Charles E. Gilliland

**S**tampeding buyers eager to own country properties have prompted many Texas landowners to plan subdivisions in hopes of corraling a tidy profit. Because buyers often prefer land ready for building, with water service in place, landowners-turned-developers frequently plan to provide water by drilling wells and installing on-site water systems or by contracting with a nearby city for services. But regulations administered by the Texas Natural Resources Conservation Commission (TNRCC) can limit or even prohibit an owner from providing water service to rural subdivisions.

To avoid profit-draining delays and unanticipated expenses, prospective developers should learn about these regulations before undertaking a project. Real estate agents in rural land markets also should be aware of potential limitations on future land uses so they may educate clients.

### Certification of Sufficient Water Supply

Mindful of the water supply challenges facing Texas, the legislature passed a regulation to provide cities and counties with authority to withhold approval of subdivision plats until the developer obtains a certificate indicating that sufficient groundwater exists under the land being developed. This authority applies only when the developer plans to use groundwater — as opposed to surface sources — to supply a development. Senate Bill 1323, passed by the 76th Legislature in

1999, instructed TNRCC to develop rules to guide licensed engineers in certifying that sufficient water exists to satisfy a project's maximum future demand. The law permits but does not obligate counties and municipalities to require this TNRCC-prescribed certificate before accepting a plat.

The process requires developers to hire a registered, Texas-licensed professional engineer to prepare the certification. This must include a study of the local aquifers as they relate to the development. Specifically, engineers must provide a detailed description of the subdivision, anticipated type of water supply and an estimate of demand for water when the project is completely built out.

The groundwater phase of the study includes aquifer investigations, such as drilling test wells and observation wells and an analysis of groundwater quality. Engineers must use the forms and formats approved by TNRCC to prepare the certificate. (TNRCC rules on Groundwater Availability Certification For Platting can be found at: [http://info.sos.state.tx.us/pub/plsqlreadtac\\$ext.ViewTAC?tac\\_view=4&ti=30&pt=1&ch=230&rl=Y](http://info.sos.state.tx.us/pub/plsqlreadtac$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=230&rl=Y).)

If the prospective development is an area where municipal or county authorities require certification of sufficient water supply, developers face this added expense plus potential development delays. If the land does not have sufficient water for the planned subdivision, developers must obtain water

from an alternative source before proceeding. If an alternative cannot be arranged, owners face a ban on development.

In addition to ensuring sufficient water supplies for rural developments, current regulations protect existing water supply systems from developments that could deplete their water sources. The measures may also indirectly control rural development, making water a binding constraint in the subdivision process.

### Certificate of Convenience and Necessity

TNRCC also can establish an exclusive right for a municipality, water district, water supply corporation or private firm, known as an investor-owned utility, to supply water for a defined area. By obtaining a *certificate of convenience and necessity* (CCN), water utility providers gain an exclusive franchise to supply water in a specified service area. The CCN system serves to identify the specific utility responsible for water supply in the approved area.

A CCN not only establishes an exclusive right but also imposes an obligation. CCN holders are obligated to provide water within their exclusive areas at reasonable rates. Chapter 13 of the Texas Water Code empowers TNRCC to compel a utility holding a CCN to provide continuous and adequate service unless a developer fails to comply with the utility's policies.

To promote regional water-use cooperation, Senate Bill 1 requires developers of proposed new water systems to apply for service from all neighboring water systems before submitting plans and specifications for proposed projects. If the neighboring water providers either decline to provide service or cannot do so economically, the developer may apply for a

areas lie within their CCNs. In addition, the TNRCC maintains county maps showing water and sewer CCN areas.

Determining the existence of a CCN is critical. A CCN effectively subjects the development to compliance with the CCN holder's policies and regulations regarding extension of service. Developers who invest in water systems and subsequently find out a CCN exists are required to negotiate an agreement with the CCN holder instead of operating the system themselves. Developers may even be required to turn the system over to the CCN holder in exchange for compensation.

If a development involves multiple water utilities, other problems can arise. For example, a subdivision at the periphery of a city may extend beyond current city limits into a region covered by a CCN held by a rural water supply corporation. To serve that subdivision, the city has to negotiate with the rural supplier. Negotiations establish compensation for any infrastructure the supplier has installed in the area. In addition, the city may have to compensate the CCN holder for disruption of plans for future service within the CCN's boundaries. These kinds of negotiations may be costly, both in money and time.

### Challenging CCNs

**W**hen a CCN holder's policies result in onerous costs for service, developers can challenge the CCN holder's monopoly. Such a protest results in a TNRCC-administered hearing to designate the best service provider for the development. TNRCC rules Chapter 291, Subchapter G lists the criteria for determining which service provider should serve the development. Based on those criteria, if developers

demonstrate that they can provide acceptable water service for substantially less than the current CCN holder, they can petition TNRCC to grant a CCN for that particular development. These cases frequently involve considerable legal fees and can delay development for a year or more.

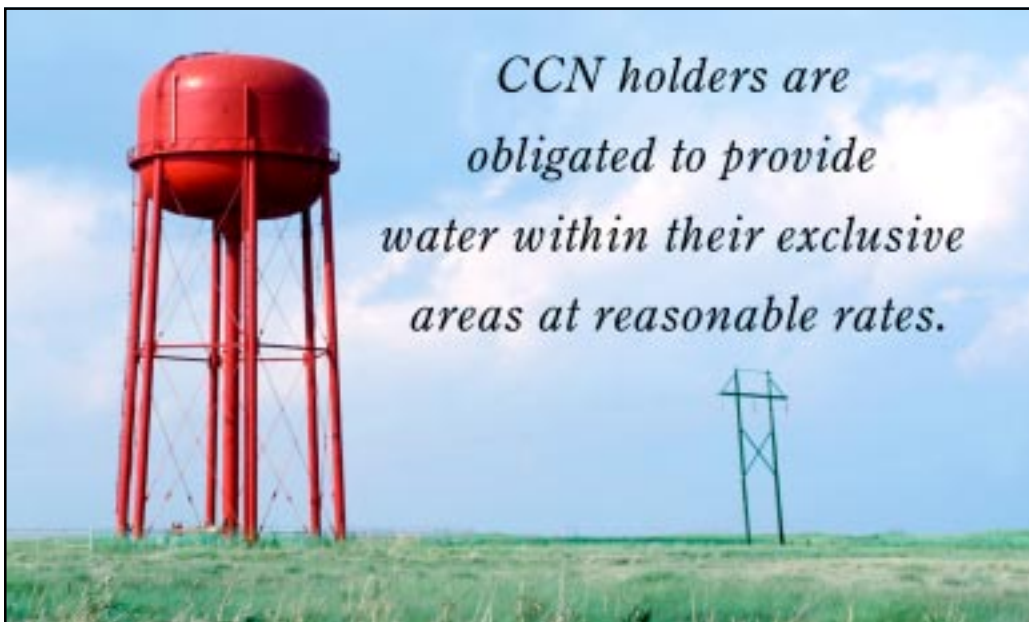
Several Texas cities recently applied for amendments to extend their existing CCNs to cover much of their extraterritorial jurisdiction. If they succeed in obtaining the extensions, no other entity will be allowed to provide water service in those regions without the cities' consent or approval by TNRCC. CCNs could give those cities control over development beyond their city limits.

In one such situation, the potential for restrictions on development prompted Tarrant County

and several local developers to object to a CCN application submitted by the City of Fort Worth. Those objections necessitated a hearing before an administrative law judge, with a final TNRCC decision on the city's CCN extension to come later. Such proceedings are likely to increase as CCNs are used to influence development in communities across Texas. Developers in areas subject to CCNs should anticipate potentially complicated negotiations when they want to provide water service from a different source.

Developers of raw land face many challenges as they create new living space. By anticipating potential problems and researching local water utility requirements, they can avoid or minimize expenses and delays in the development process. ♣

*Dr. Gilliland is a research economist with the Real Estate Center at Texas A&M University. His e-mail address is c-gilliland@tamu.edu.*



CCN for the development. Those are the only conditions under which the developer is allowed to provide water service to the development in areas already covered by a CCN.

CCNs are required for investor-owned utilities and in counties along the border with Mexico but are optional for municipalities, water districts and other governmental units in the rest of the state. However, many cities and special districts have obtained CCNs to protect their territories from other potential suppliers. Before landowners or developers plan a water supply system, they should find out if a CCN covers the land. Because a variety of water utilities can hold CCNs, making this determination may be confusing.

Developers should check with local water supply utilities and TNRCC to identify CCNs covering the subject properties. Local offices of water supply corporations, water supply districts, cities and other special districts should know which



LOWRY MAYS COLLEGE & GRADUATE SCHOOL OF BUSINESS

Texas A&M University  
2115 TAMU  
College Station, TX 77843-2115

<http://recenter.tamu.edu>  
979-845-2031  
800-244-2144 orders only

**Director**, Dr. R. Malcolm Richards; **Associate Director**, Gary Maler; **Chief Economist**, Dr. Mark G. Dotzour; **Senior Editor**, David S. Jones; **Associate Editor**, Nancy McQuiston; **Assistant Editor**, Kammy Baumann; **Editorial Assistant**, Ellissa Bravenec; **Art Director**, Robert P. Beals II; **Circulation Manager**, Mark W. Baumann; **Typography**, Real Estate Center; **Lithography**, Wetmore & Company, Houston.

**Advisory Committee**

Joseph A. Adame, Corpus Christi, chairman; Jerry L. Schaffner, Lubbock, vice chairman; Celia Goode-Haddock, College Station; Carlos Madrid, Jr., San Antonio; Catherine Miller, Fort Worth; Angela S. Myres, Kingwood; Nick Nicholas, Dallas; Douglas A. Schwartz, El Paso; Gloria Van Zandt, Arlington; and Jay C. Brummett, Austin, ex-officio representing the Texas Real Estate Commission.

**Tierra Grande** (ISSN 1070-0234), formerly *Real Estate Center Journal*, is published quarterly by the Real Estate Center at Texas A&M University, College Station, Texas 77843-2115. Subscriptions are free to Texas real estate licensees. Other subscribers, \$20 per year.

**Views expressed** are those of the authors and do not imply endorsement by the Real Estate Center, the Lowry Mays College & Graduate School of Business or Texas A&M University.