

J.D. Clark

I am writing on behalf of the Wise County Commissioners Court (County) to provide suggested revisions to the rules contained in 30 Texas Administrative Code (TAC) Chapter 230, specifically related to the question posed in the Notice of whether to include a definition for "credible evidence," as it relates to the waiver requirements defined by Local Government Code §§212.0101(a-1)(1) and 232.0032(a-1)(1), and what that definition would be.

As you know, SB 2440, authored by Senator Charles Perry, was enacted during the 88th legislative session and took effect on January 1, 2024. This bill mandates that counties and municipalities require groundwater availability certifications (GACs) in the platting of certain subdivisions utilizing groundwater as the source of water supply, with limited exceptions. Previously, counties and municipalities had the option to require these GACs. The process and content for groundwater availability certifications is set forth in 30 TAC Chapter 230, and TCEQ must update these rules to reflect the new requirement and limited exceptions contained in SB 2440.

While the County has a keen interest in seeing that there is adequate groundwater for the present and the future, one of the primary issues that we have encountered in the platting process is the ability of platting authorities to waive the requirement for a GAC, if the development is less than 10 lots, based on "credible evidence". Because the law and any existing rules are silent in regard to "credible evidence", the County is hesitant to provide any waivers. This has led to much frustration with non-developer landowners. For example, based on the law, if a landowner had a 10-acre tract of land and desired to subdivide the property to sale one or two 2-acre tracts from the original 10-acre tract, they would have to complete a full GAC, which could cost \$30,000 or more. The County encourages TCEQ to work with our groundwater district, the Upper Trinity Groundwater Conservation District, to identify potential ways to clarify what "credible evidence" means and how it is quantified.

Thank you for your consideration of our concerns and suggestions. In the meantime, please do not hesitate to contact me if you have any questions or would like to discuss this matter.

Sincerely,
County Judge J.D. Clark
Wise County Judge