

# THE BASICS OF LAND USE LAW

## The Tenth Annual Riley Fletcher Municipal Law Seminar

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- Platting
- Subdivision Regulations
- Zoning
- Planning & Zoning Commission
- Board of Adjustments

What is Platting?

What Constitutes a  
Subdivision?

Tex. Loc. Gov't Code §212.002

Municipalities may adopt rules governing plats and subdivisions in order to promote "the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.

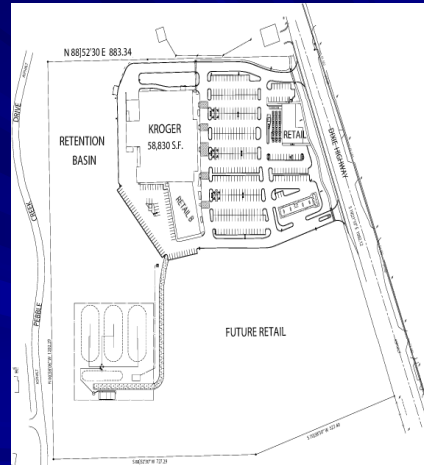
Can a City extend its subdivision regulations into the extraterritorial jurisdiction of the City?

What about zoning regulations?

<u>Population</u>	<u>ETJ from City Boundary</u>
Less than 5,000	One-half mile
5,000 – 24,999	1 mile
25,000 – 49,999	2 miles
50,000 – 99,999	3.5 miles
100,000 +	5 miles

## THE PLATTING PROCESS

- Concept Plan
- Preliminary Plat
- Final Plat



## PLAT REQUIREMENTS

- In order for a plat to be recorded with county records, the plat must:
    - (1) describe the subdivision in metes and bounds;
    - (2) locate the subdivision with respect to a corner of the survey or tract;
    - (3) identify the dimensions of the subdivision and each street, alley, park, and other portion to be dedicated to the public use or to abutting property owners; and
    - (4) must contain a jurat or acknowledgement similar to a deed.
- TEX. LOC. GOV'T CODE § 212.010.
- Other Local Requirements

- **Administrative Approval**  
TEX. LOC. GOV'T CODE § 212.0065
- **The Thirty Day Rule**  
TEX. LOC. GOV'T CODE §212.009
- **Vested Rights**

## STANDARDS FOR APPROVAL

A plat shall be approved if:

- (1) it conforms to the city's general plan and its current and future streets, alleys, parks, playgrounds and public utility facilities;
- (2) it conforms to the general plan for the extension of the municipality and its roads, streets, and public highways, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; and
- (3) it complies with the city's subdivision and other regulations.

## ZONING ORDINANCES

The Texas Supreme Court has established four basic criteria that should be used in reviewing zoning ordinances:

- (1) respect for the approved comprehensive plan;
- (2) the nature and degree of adverse impact on neighboring properties;
- (3) the suitability of the tract as presently zoned; and
- (4) the existence of a substantial relationship between the ordinance and the public health, safety, morals or general welfare.

## LIMITATIONS ON ZONING AUTHORITY

Preemption by Specific Legislation. The authority of a local government to adopt zoning regulations may be preempted by an express statutory enactment of the legislature.

- Sale of alcoholic beverages. *City of Dallas v. Dallas Merchants Concessionaires Association*, 823 S.W.2d 347.
- Pawn shop regulation. TEX. LOC. GOV'T CODE §211.0035.
- Sexually oriented businesses. TEX. LOC. GOV'T CODE §243.003.
- Manufactured housing. TEX. OCC. CODE §1201.

## MUST REASONS FOR A PLAT DENIAL BE PROVIDED?

YES. Upon request by the owner, the local government shall certify the reasons for subdivision plat denial. TEX. LOC. GOV'T CODE §211.0035

## SPECIAL USE PERMITS

### EXAMPLES

## PLANNED DEVELOPMENT

### ADVANTAGES





- Role of the Commission
- Role of the City Council
- Joint Public Hearings

## NOTICE

- Public hearings must be held when the planning commission and city council consider zoning changes. Notice of the public hearing must be sent to the property owners of the property that is subject to the zoning change and to all owners of real property within 200 feet of the property subject to the zoning change. This notice must be sent at least eleven (11) days before the public hearing. Mailing by regular first class mail satisfies the notice requirement and notice is deemed complete when deposited in the mail.
- Notice of the council's public hearing must be published in the city's official newspaper or in a newspaper of general circulation in the area at least sixteen (16) days before the hearing.
- Since the Open Meetings Act applies to both the commission and the council, the public hearings must be posted on the agenda at least seventy-two (72) hours before the date of the hearing.

## PROTESTS

Property owners may protest a zoning change, triggering a more stringent approval process. A supermajority vote is required for approval of a zoning change when a written protest is signed by at least twenty percent of the owners of either:

- (1) the property covered by the proposed change; or
- (2) the land within 200 feet of the subject property.

## THE BOARD OF ADJUSTMENT

The board may:

- (1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;
- (2) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;
- (3) authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and
- (4) hear and decide other matters authorized by an ordinance adopted under this subchapter.

## SPECIAL EXCEPTIONS

A comprehensive zoning ordinance may authorize a board of adjustment to hear and decide special exceptions to certain ordinances. A special exception is a use expressly authorized under the zoning ordinance under the conditions specified in the ordinance.

## VARIANCES

A variance is permission to depart from the literal requirements of a zoning ordinance by virtue of an unnecessary hardship due to special circumstances inherent to the property. See TEX. LOC. GOV'T CODE § 211.009(A)(3). An administrative official of a city cannot approve a variance; only the board of adjustment holds that authority. Variances relate to technical zoning matters such as area, setback, and height regulations.

## BOARD MEMBERSHIP AND VOTING PROCEDURES

- A board of adjustment consists of five members, each appointed for a term of two years. TEX. LOC. GOV'T CODE § 211.008.
- All cases must be heard by a minimum of four members.
- The concurring vote of at least four members is required to reverse administrative decisions, grant special exceptions, authorize variances, and take any other action authorized by the ordinance.

## APPEAL OF BOARD'S DECISION

An appeal of an adverse determination by the board is by petition for writ of certiorari which must be filed in an appropriate district court within ten (10) days of the board's decision. Tex. Loc. Gov't Code § 211.011.