

THE BASICS OF LAND USE LAW

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PROCEDURAL TRAPS



NOTICE



Insufficient notice is no notice at all and
INVALIDATES the ordinance



PROPER NOTICE

- Notice to the property owners
- Contents of Notice
- 200 feet of the property
- as certified on the most recent municipal tax rolls.
 - At least **11** days before Planning & Zoning meeting
 - At least **16** days before City Council meeting
- Substantial change requires new notice

CORRECT NOTICE

Errors may not be fatal and will not automatically render the notice legally insufficient

EXAMPLE

A misidentification of the current zoning classification of the property was acceptable when the mistake did not result in any failure to give accurate notice of which land was to be rezoned or of the nature of the proposed change of zoning

*Eudaly v. City of Colleyville, 642 S.W.2d 75
(Tex. App.—Fort Worth 1982, writ ref'd n.r.e.)*

VALIDATION STATUTE

- Even if a City fails to provide proper notice, if no person challenges the adoption of the ordinance within three years, the ordinance is valid despite such errors
- The Validation Statute creates a conclusive presumption of validity for actions taken more than three years before suit is filed

Tex. Loc. Gov't Code § 51.003

VOTING

- Zoning ordinances must be adopted by a majority of the City Council
- Unless there is a proper protest, the vote changes to a **supermajority** for passage

PLATTING

WHAT CONSTITUTES A SUBDIVISION

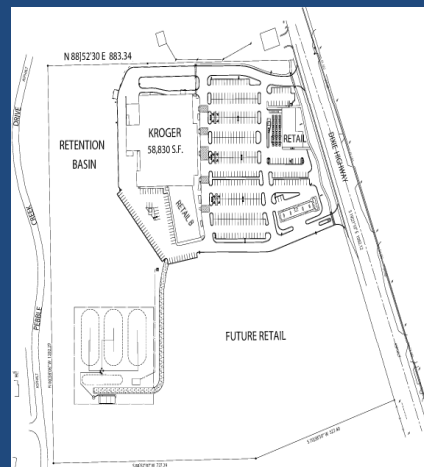
TEX. LOC. GOV'T CODE §212.002

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?

THE PLATTING PROCESS

- Concept Plan
- Preliminary Plat
- Final Plat



- **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.

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

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.