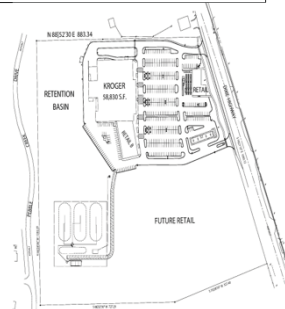


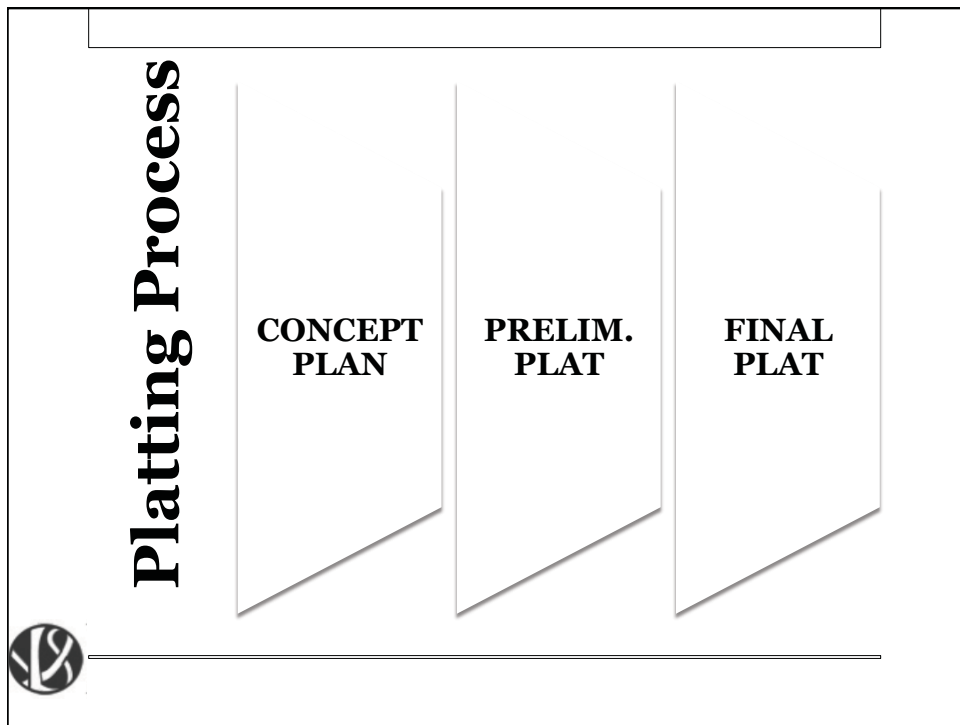
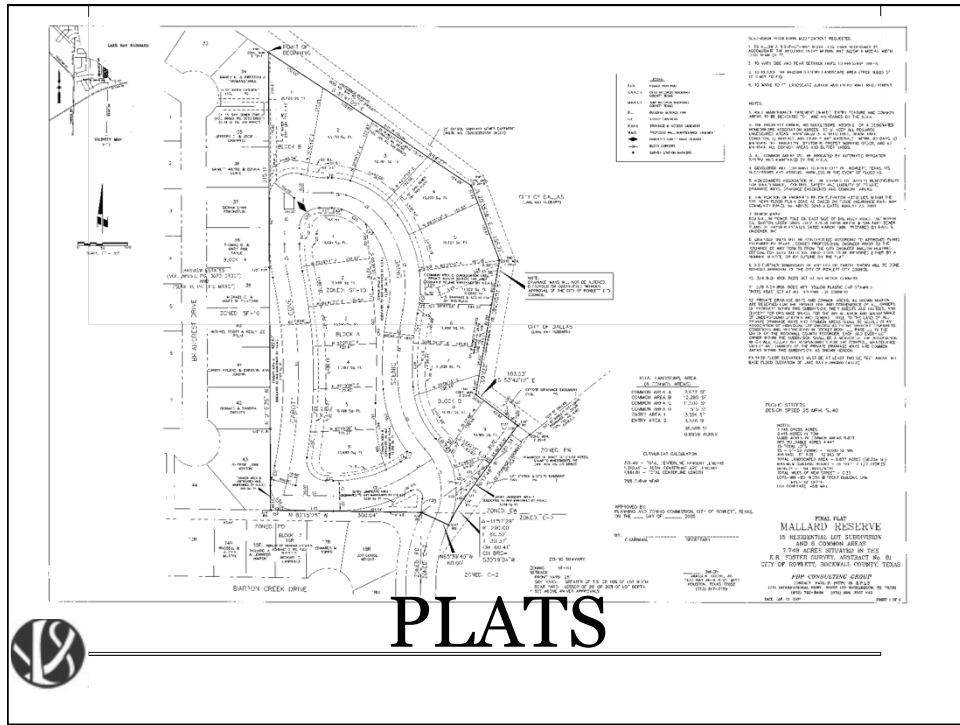
Land Use Law

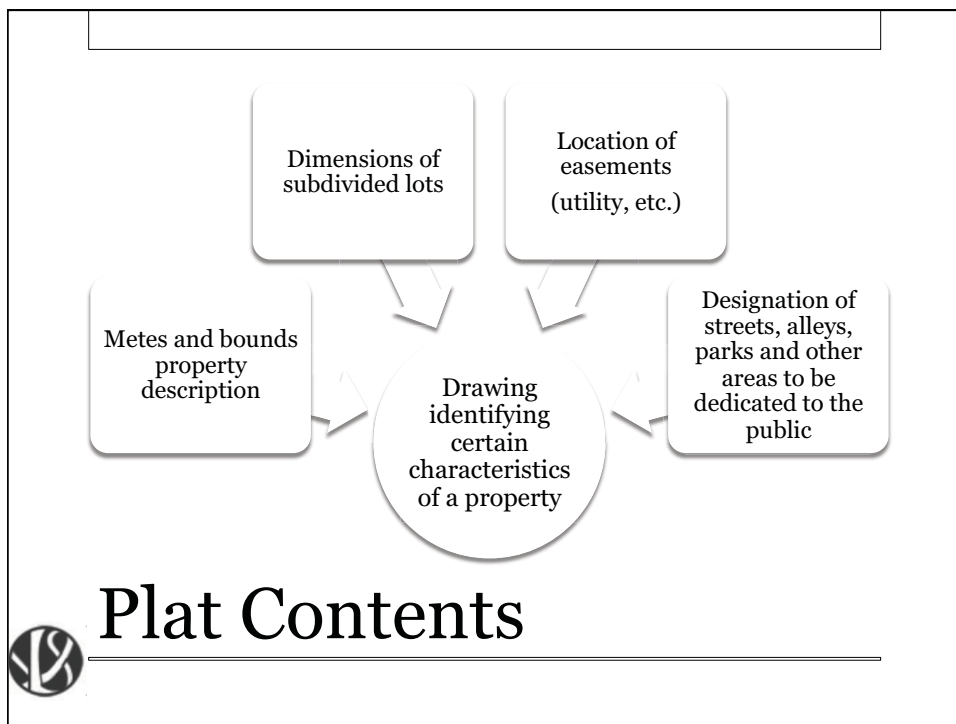
Riley Fletcher Basic Municipal Law Seminar

 LAFFERTY & SLAYTON, PLLC
ATTORNEYS AT LAW

LAND USE REGULATION







DOES THE CITY HAVE TO PROVIDE THE REASON FOR A PLAT DENIAL?

YES, upon request by the applicant, the City must certify the reasons for the plat denial.

TEX. LOCAL GOV'T CODE § 211.0035

TEX. LOCAL GOV'T CODE § 211.0035

What are possible reasons for denial?

A plat **shall** be approved if it:

Conforms to the city's general plan and its current and future streets, alleys, parks, playgrounds and public utility facilities

Conforms to the general plan for the extension of the municipality and its roadways, taking into account access to and extension of sewer and water mains and public utilities

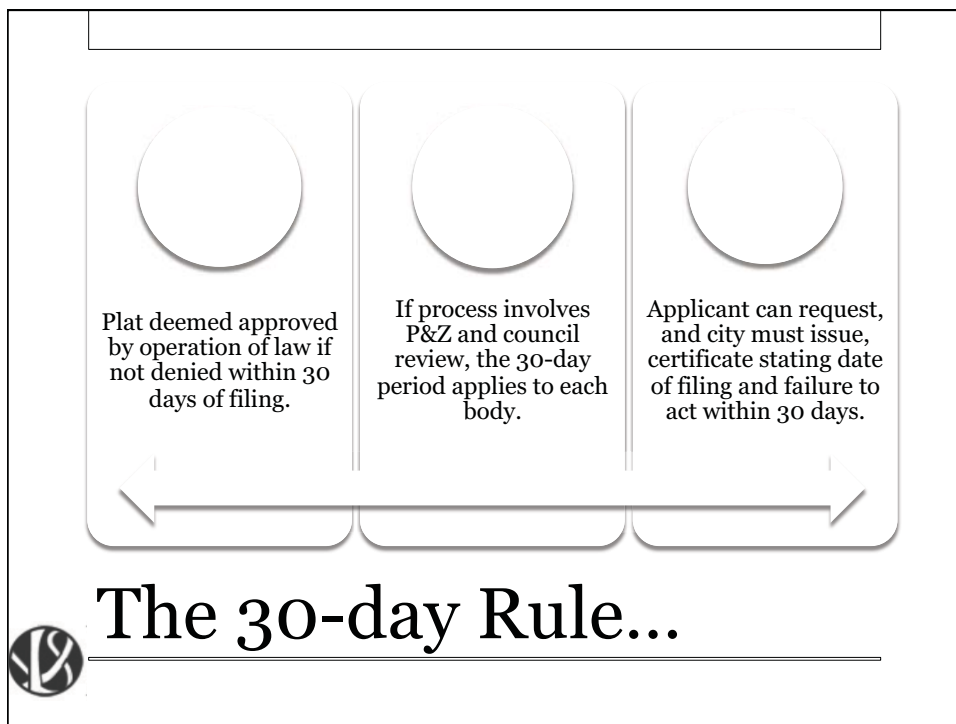
Complies with the city's subdivision and other regulations

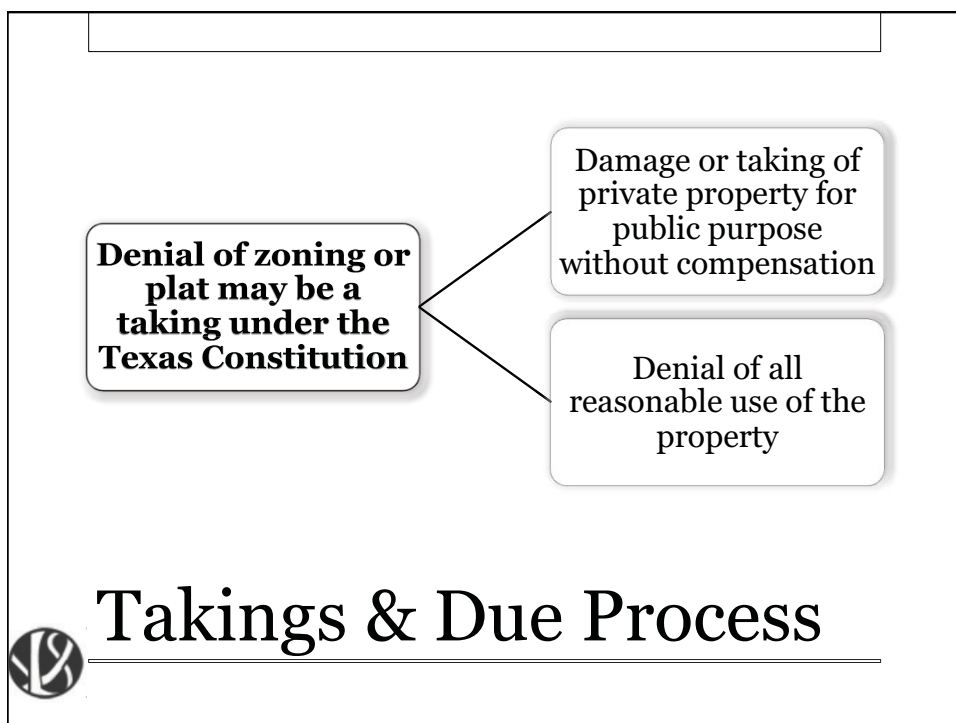
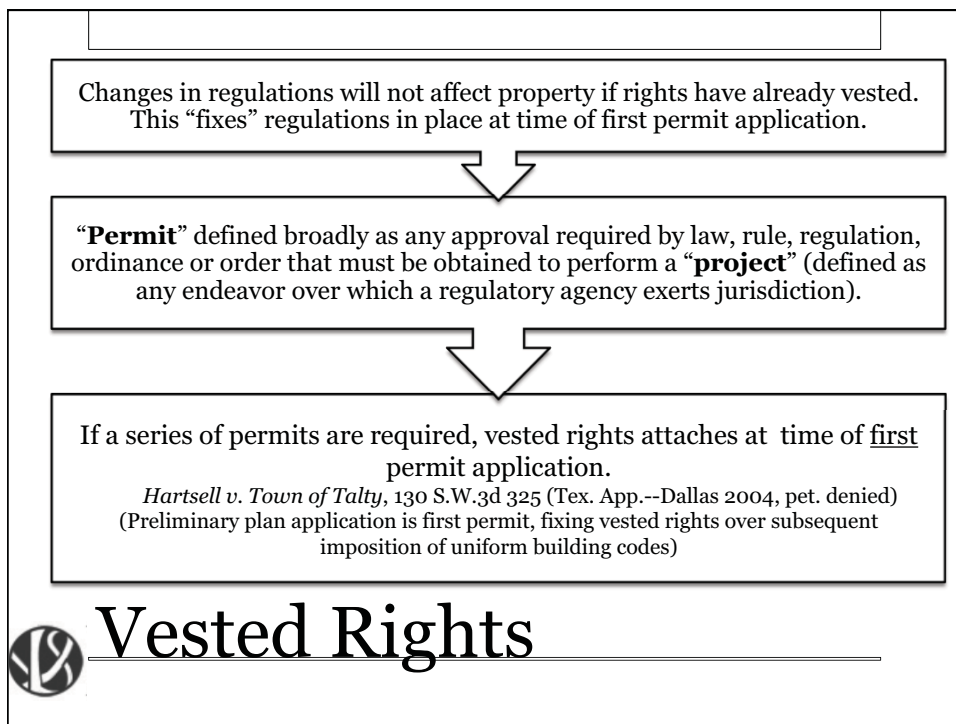


Standards for Approval

- Do not table a plat
- Do not add conditions to a plat







Zoning



The Texas Supreme Court's criteria for reviewing zoning ordinances:

Respect for the approved comprehensive plan

The nature and degree of adverse impact on neighboring properties (traffic, noise, light, crime, adequate infrastructure)

The suitability of the tract as presently zoned

The existence of a substantial relationship between the ordinance and the public's health, safety, morals or general welfare



Legislative Preemption

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.



Limitations on Zoning

- Comprehensive Zoning Ordinance (use by right)
- Special/Specific Use Permits
- Planned Development



Zoning Techniques


Not a permit – zoning change

May include conditions

Run with the land

Why are SUPs useful?


Special Use Permits




Should include development regulations that provide comprehensive zoning standards for the PD district

Allows mixed uses within a single district

Used for developments seeking architectural uniqueness or consistency



Planned Developments





Notice

Notice to the property owner, as certified on the most recent municipal property tax roles, located within 200 feet of the property subject to zoning change:

- At least **11** days before P&Z meeting
- At least **16** days before City Council meeting

Contents of Notice

Substantial change requires new notice

Proper Notice

Insufficient notice is no notice at all and **INVALIDATES** the ordinance.

BUT errors may not be fatal and may not automatically render the notice legally insufficient.

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 zoning change.

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

What about a mistake?

- 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



The Validation Statute

Protests

Zoning ordinances must be adopted by a **majority** of the City Council

However, if there is a proper protest, the vote changes to a **supermajority** for passage.

Protests to the City Council

Written protest is signed by at least **20%** of the owners of either:

- The property covered by the proposed change
- The land within 200 feet of the subject property (counting streets and alleys)

What is a proper protest?

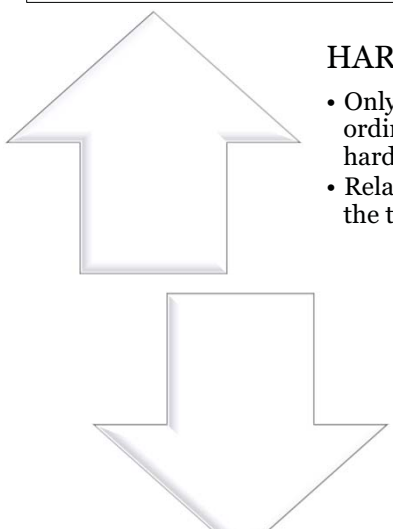
Board of Adjustment

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

Relates to technical zoning matters such as area, setback, and height regulations



Variances




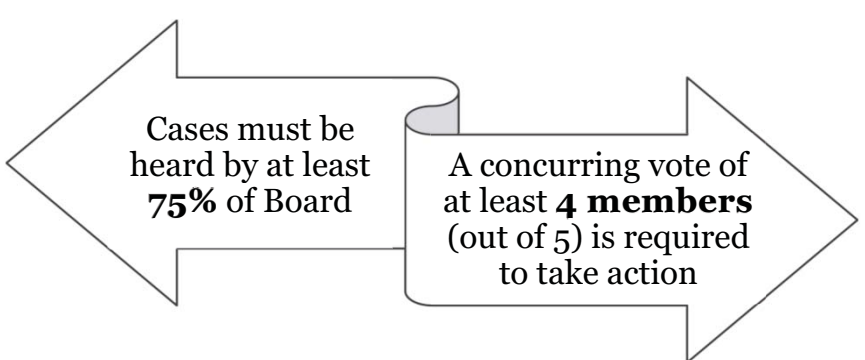
HARDSHIP

- Only if strict application of the zoning ordinance would cause unnecessary hardship
- Relates to a condition associated with the topography or shape of the lot

NOT A HARDSHIP


- Not authorized merely to accommodate the highest and best use of property
- Financial hardship is insufficient as a matter of law
- Must be one that is not personal to the property owner or self-created

 **Standard for Granting**



Cases must be heard by at least **75%** of Board

A concurring vote of at least **4 members** (out of 5) is required to take action

 **Meetings**

By petition for writ of certiorari

Filed in district court

Within 10 days of Board's decision

Standard of review - whether board has abused its discretion, i.e., whether it has acted without reference to guiding rules and principles or whether it has acted arbitrarily and unreasonably



Appeal of BOA Decision
