

RILEY FLECTHER

Land Use Training

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Be Prepared . . .

The Basics

Zoning – What Is It?

The division of a city or area into districts and the prescription and application of different land use regulations in each district. An exercise of the police power that allows cities to regulate the rights of a private individual for the good of the community.



A Brief History of Zoning

Zoning is a valid exercise of the police power to protect the community's health, safety and welfare.



Village of Euclid v. Ambler Realty Co.
272 U.S. 365 (1926)

A Brief History of Zoning

- Standard Zoning Enabling Act – 1926
- Texas:
 - *Lombardo v. City of Dallas*, 124 Tex. 1, 73 S.W. 2d 475 (1934)
 - All property is held subject to the police power
 - A proper zoning regulation is not a “taking” for which compensation must be paid
 - Texas Local Government Code – Chapter 211
 - §211.001—Purpose: To promote the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.



The Comprehensive Plan – §211.004

1. Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to (police power elements):
 - a. lessen congestion in the streets
 - b. secure safety from fire, panic, and other dangers
 - c. promote health and general welfare
 - d. provide adequate light and air
 - e. prevent the overcrowding of land
 - f. avoid undue concentration of population
 - g. facilitate that adequate provision of transportation, water, sewers, schools, parks, and other public requirements

The Comprehensive Plan – §211.004

2. Elements of a Comprehensive Plan

- a. Land use plan
- b. Transportation plan
- c. Park and Open Space plan
- d. Housing and Public facilities plan
- e. Written policies and goals



Things Cities May Regulate With Zoning – §211.003

1. The height, number of stories, and size of buildings and other structures
2. The percentage of a lot that may be occupied
3. The size of yards, courts, and other open spaces
4. Population density
5. The location and use of buildings, other structures, and land for business, industrial, residential or other purposes
6. In areas of historical, cultural or architectural significance - may regulate construction, reconstruction, alteration or razing of buildings or other structures
7. Home rule cities may also regulate the bulk of buildings

Zoning Districts – § 211.005

1. City may divide the municipality into districts of a number, shape, and size
2. Each district may have its own regulations
3. Regulations must be uniform for each class or kind of building in a district
4. Regulations must be adopted “with reasonable consideration, among others things, for the character of each district and its peculiar suitability for particular uses with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality”
5. Planned Development Districts
6. Conditional Use Permit

Zoning Districts – § 211.005—Examples:

- (a) The town zoning districts are designated as follows:
 - (1) A-1: Agricultural District.
 - (2) SF-1: Single-Family Residential District—8,000 square feet or larger lots.
 - (3) SF-2: Single-Family Residential District—Lots smaller than 8,000 square feet.
 - (4) MU: Mixed-Use.
 - (7) PF: Public Facilities District.
 - (8) R: Retail District.
 - (9) C: Commercial District.
 - (10) LI: Light Industrial District.
 - (11) HI: Heavy Industrial District.
- (b) Specific district regulations are set forth in this article.

Zoning District Regulations—Example:

Typical types of regulations within each district include:

- (1) General Description.
- (2) Specific uses allowed in the district.
- (3) Minimum lot size; structure size and height.
- (4) Front, side and rear yard setback distances.
- (7) Driveway access and cross access.
- (8) Number and size of parking spaces.
- (9) Stacking and loading requirements.
- (10) Screening requirements.
- (11) Landscape requirements.
- (12) Lighting standards.

Making a Zoning Decision



Zoning Procedures - §211.006 and 211.007

1. Notice of Required Public Hearings
 - a. Mailed notice of P&Z hearing to rezoning applicant and to property owners within 200 feet
“Before the 10th day before the hearing date, . . .” §211.007(c)
 - a. Publish notice of City Council hearing in the newspaper of general circulation
“Before the 15th day before the date of the hearing, . . .” §211.006(a)
 - c. If changing a district regulation, notice should also be mailed to each affected property owner in the city.
See City of Austin v. Acuna, 651 S.W.3d 474, 485 (Tex. App. –Houston (14th Dist.) March 17, 2022
 - d. If a proposed change to a zoning regulation or boundary would cause a conforming use to be a nonconforming use, notice must be mailed to each owner and each occupant of such property at least 10 days before each hearing, with the following in 14-point font or larger:

"THE [MUNICIPALITY NAME] IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE. PLEASE READ THIS NOTICE CAREFULLY." § 211.006(a-1).

2. P&Z Recommendation – The P&Z must make a recommendation prior to the City Council public hearing (in a General Law city, the Council may act as the zoning commission)

Zoning Procedures Cont. - §211.006 and 211.007

4. Legislative Action by City Council: Generally simple majority vote approves a zoning change
 - a. Protest by Neighbors- if the property owners of 20% of the area with 200 feet of the proposed zoning change file a written protest, the Council must vote by a super-majority (3/4 of the members voting in the affirmative) to approve an amendment
 - b. Protest by Owner- If the property owners of 20% of the land area covered by the proposed amendment file a protest, the Council must vote by a super-majority (3/4 of the members voting in the affirmative) to approve an amendment (this includes rezoning and district regulation changes)
 - c. Some local ordinances require more than a simple majority vote by City Council to approve zoning that received a negative recommendation from the P&Z , but not required by state law

Factors to Consider in Making a Land Use Decision

Compliance with Comprehensive Plan?

The State of Texas requires that municipalities zone in accordance with a comprehensive plan. §211.004 of the TEXAS LOCAL GOVT. CODE.

- Conflicting cases:
 - *Weatherford v. City of San Marcos* – “While a city’s zoning regulations ‘must be adopted in accordance with a comprehensive plan,’ TEX. LOCAL GOVT. CODE §211.004(a), it does not follow that the comprehensive plan dictates that a city council must approve every rezoning application that seeks to have certain property zoned in accordance with the comprehensive plan. If a city council were required to do so, then a comprehensive plan would become a de facto set of zoning regulations for the city. On the contrary, comprehensive plans in Texas must bear the following statement: ‘A comprehensive plan *shall not* constitute zoning regulations or establish zoning district boundaries.’ *Id.*§213.005 (emphasis added).

Compliance with Comprehensive Plan?

- *City of Laredo v. Rio Grande H2O Guardian*
 - City rezoned property from Residential and Ag to Light Industrial.
 - Comprehensive plan established a low density residential buffer zone for areas near the Rio Grande River.
 - “because the City did not rezone in accord with its Comprehensive Plan, the ordinances passed to rezone the property were void *ab initio*. ‘Void *ab initio*’ means ‘null from the beginning.’”

2011 WL 3122205 (Tex. App. – San Antonio 2011, no pet.) at 10

RULE OF THUMB: If the requested land use is shown on the Comp Plan, the City’s decision on a zoning case is discretionary. If the requested use is **NOT** shown on the Comp Plan, should amend the plan or deny.

Secondary Effects of Proposed Use?

Decisions on zoning applications should be made based on an analysis of the impact of the proposed use on the neighborhood and on the city as a whole. Such factors include traffic impacts, noise, light, air, crime, and the facilitation of the adequate provision of water, sewers, schools, parks and other public requirements. See §211.004 of the TEXAS LOCAL GOVT. CODE.



Consider the USE – not the USER!

Reasonable Use of the Property?

Any zoning regulation by a municipality must provide a property owner with a reasonable use of the property. Does the proposed regulation allow the property owner a reasonable use of the property?

- The U.S. Supreme Court ruled that a 94 percent reduction in value was a “mere diminution.”

Palazzolo v. Rhode Island, 533 U.S. 606, 121 S. Ct. 2448 (2001)

- U.S. Supreme Court ruled that an exaction that is a legitimate public purpose but unduly burdens an individual property owner is a regulatory taking.

Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309 (1994)

Plat Regulations

CHAPTER 212, TEXAS LOCAL GOVT. CODE

WHEN IS A PLAT REQUIRED?

“The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract into two or more parts to lay out a subdivision of the tract ... must have a plat of the subdivision prepared.”

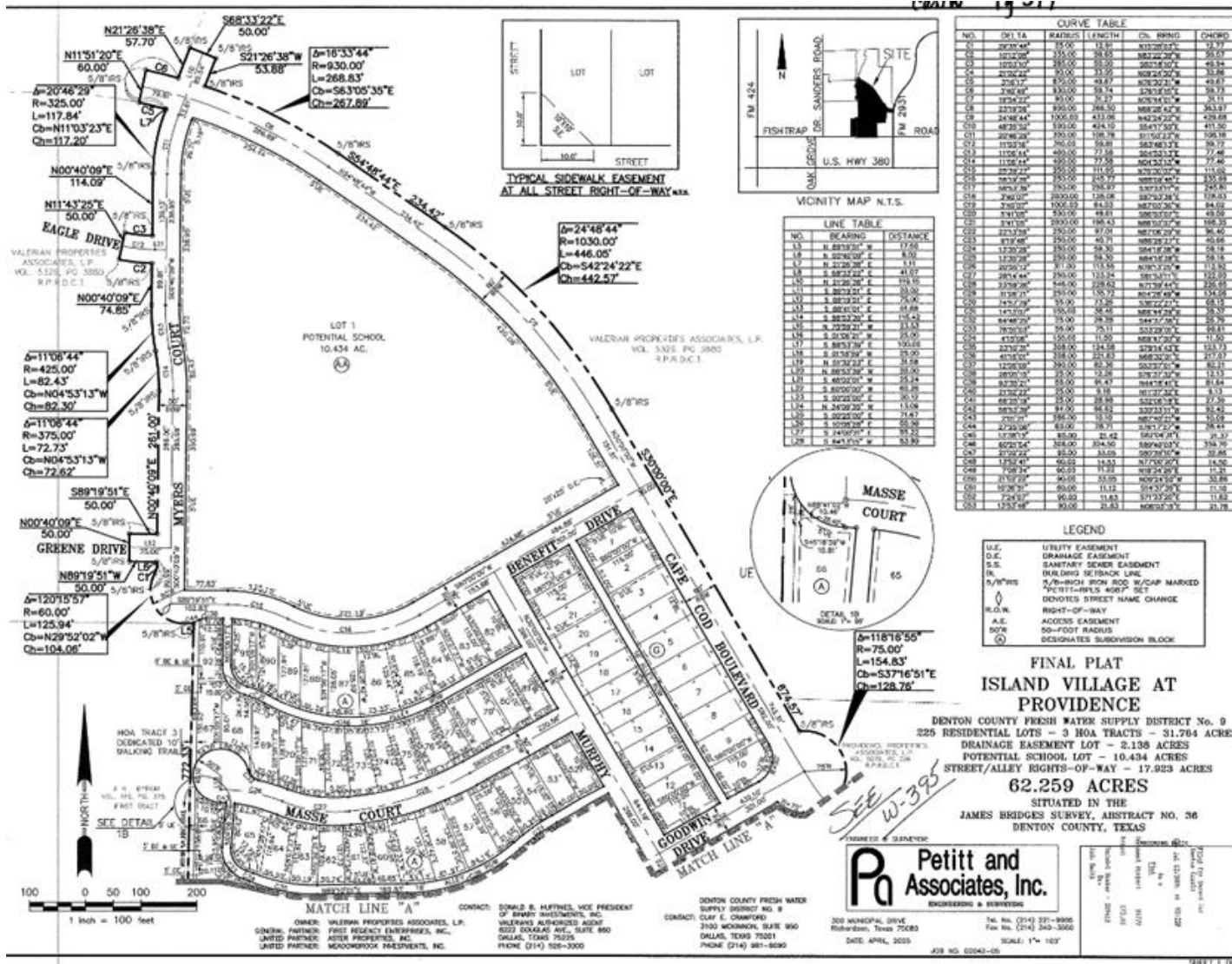
Section 212.004, Local Government Code

What is a PLAT?

For a subdivision . . .

Instrument conveying portion of property;

Division into lots, laying out streets, alleys, and other areas dedicated to the public.



PLAT Requirements

At a minimum should identify:

1. Legal description of property including total acreage;
2. Number of block and lots including lot lines and dimensions;
3. The locations of streets and alleys;
4. Utility easements;
5. Dedications of parks and other areas, designated for public use;
6. Person or firm who prepared the plat with seal;
7. Owner's name and address;
8. Date plat was prepared.

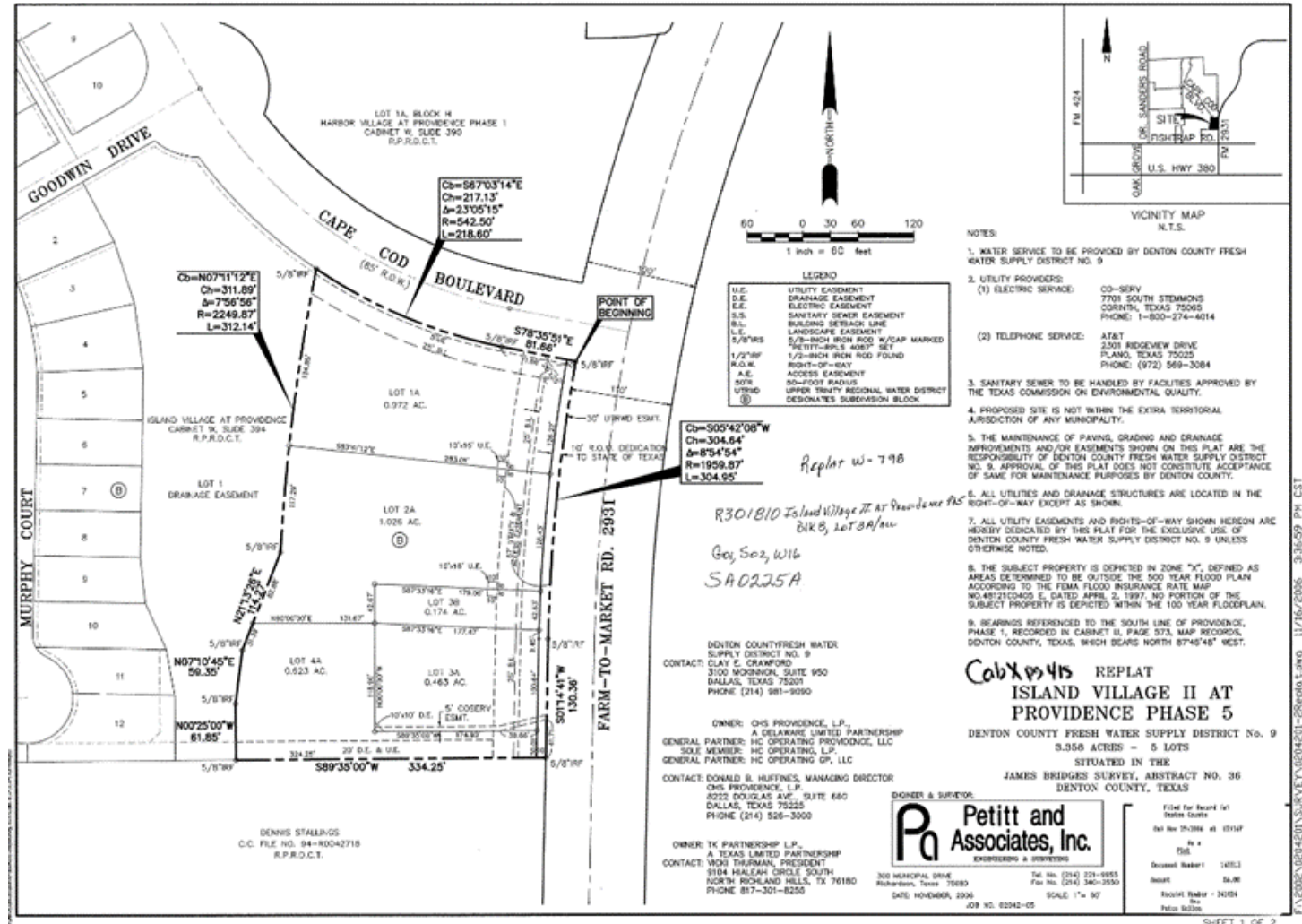
Local subdivision regulations usually include additional requirements.

Types of Plats

- Preliminary Plat (actually not required by statute)
- Final Plat
- Minor Plat (4 or less lots)
- Replat (Non-residential)
- Replat (Residential)
- Amending Plats
- Vacating Plat
- Administrative Plat

PLATTING Process

- Preliminary Plat (saves property owners money on engineering to do this first). Not mentioned in Chapter 212
- Final Plat-recorded in land records to create the lots and make the dedications



A PLAT Shall Be Approved If (§ 212.005):

1. It conforms to the general plan for the extension of the municipality and its roads, streets, alleys, parks and public utilities, taking into account access to and extension of sewer and water mains, utilities, and infrastructure; and
2. It complies with the city's subdivision regulations.

Standards
For
Approval

Be sure the ordinance contains the standards you want!

Conditional Approval and Denial

In addition to approval, the municipal authority may also conditionally approve or disapprove a plat. If the municipal authority conditionally approves or disapproves a plat, it shall provide the applicant a written statement of clearly articulated, specific conditions for the conditional approval or the reasons for disapproval. The conditions or reasons may not be arbitrary, and must be directly related to the requirements of city ordinances promulgated under Chapter 212, and include a citation to the law, including a city ordinance, that is the basis for the decision. *See* § 212.009

Thereafter, the applicant may submit a written response to the decision, subject to no deadline, which satisfies each condition for conditional approval or remedies each reason for disapproval. The city may not establish a deadline for the applicant to respond. The municipal authority then has 15 days after the applicant's response to approve or disapprove the plat or plan. *See* § 212.0093 and § 212.0095

In any legal action challenging the disapproval of a plan or plat, the municipality has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. *See* § 212.0099

30 Day Rule

As Amended by HB 3167, Eff. 9.1.19

“The municipal authority responsible for approving plats shall approve, approve with conditions, or disapprove a plan or plat within 30 days after the date the plan or plat is filed. A plan or plat is considered approved by the municipal authority unless it is disapproved within that period and in accordance with § 212.0091.”

Tex. Loc. Gov't Code § 212.009

Best Practice Tip: city engineer should write up technical deficiencies before a plat is approved with conditions or denied.

If process involves P&Z and council review process, the 30 day period applies to each body.

City must issue a written statement to applicant with the conditions for approval or reasons for denial.

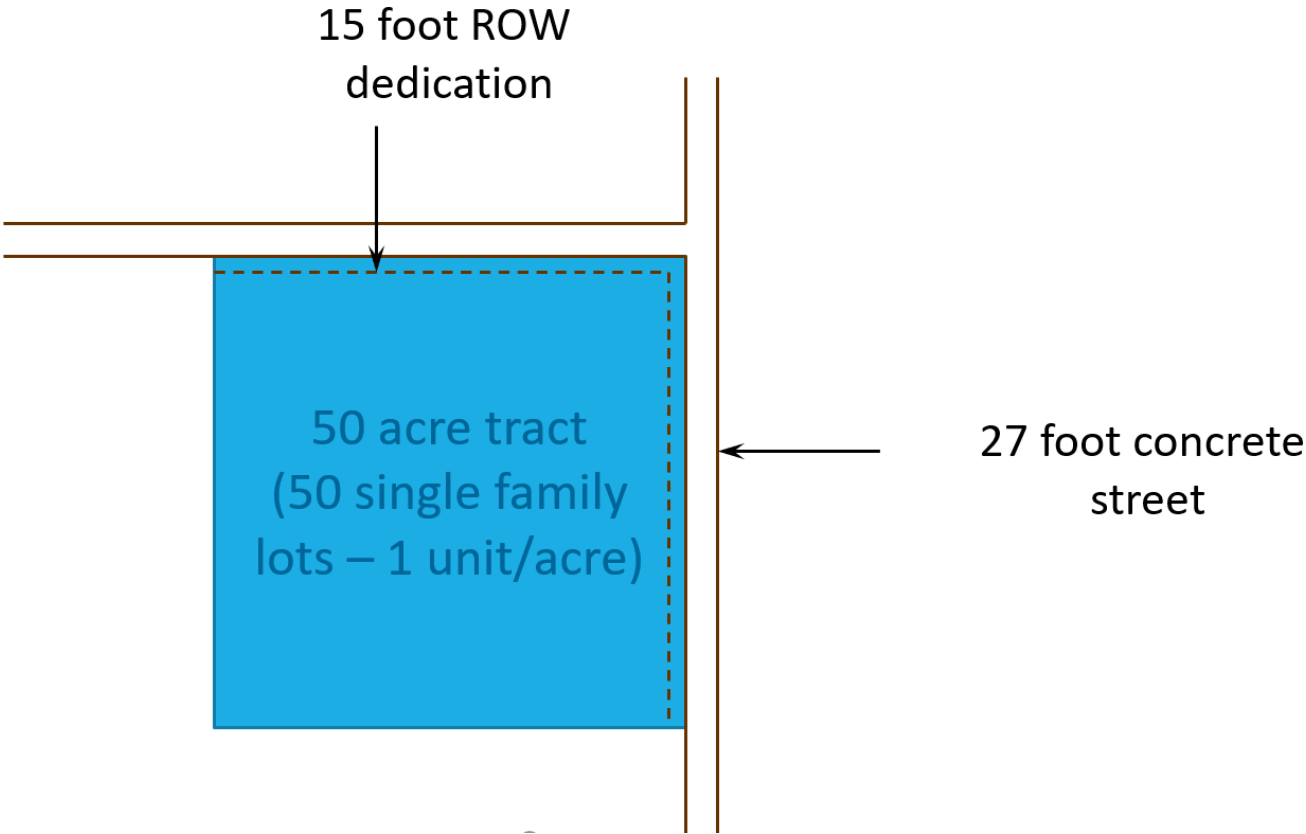
Once applicant corrects after a denial, only 15 days to act and no new comments.

Development Exactions

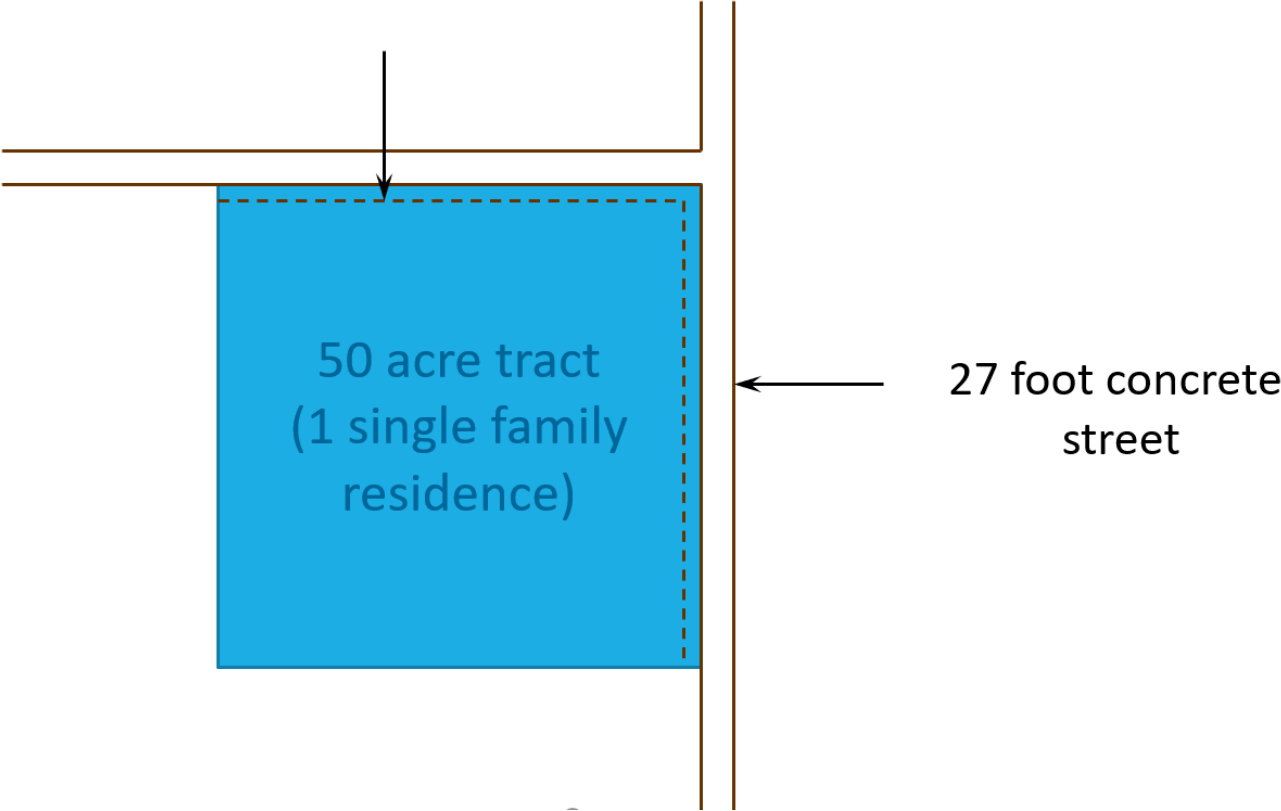
§ 212.904 Texas Local Govt. Code (Rough Proportionality)

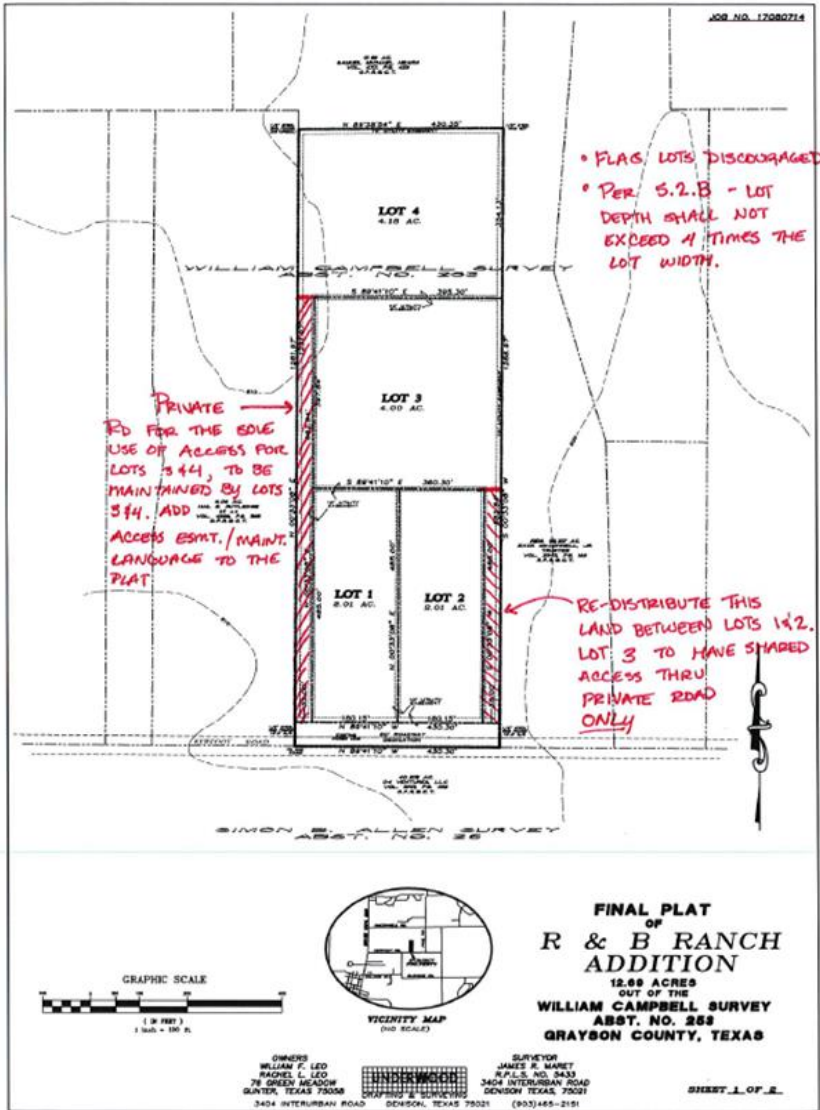
- Codifies Nollan/Dolan and Flower Mound Cases
 - If city requires developer to pay portion of infrastructure costs as condition of plat approval, developer's portion of cost must be “**roughly proportionate**” or consistent with only the impact of proposed development
 - As estimated by city's engineer

Proportionality



Proportionality





Does your ordinance prevent this?

= Bad Plat

Plats should not:

- Identify/plat building setback lines.
- Identify/plat firelanes

QUESTIONS?

