

# SUBSTANDARD STRUCTURES: OPTIONS AND OBSTACLES

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TCAA SUMMER CONFERENCE - SAN ANTONIO RIVERWALK 2019

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CITY OF BRYAN, TEXAS THE GOOD LIFE, TEXAS STYLE <sup>TM</sup>



# OUTLINE

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- Introduction
- Statutory authority
- Dallas v Stewart
- Summary Abatement

# INTRODUCTION

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Nuisance abatement is a core exercise of the city's police power to protect public safety

Benefits include:

- Improved property value
- Reduced crime
- Fewer injuries and illness

Powerful tool

- Vacate
- Repair
- Demolition

“With great power, comes great responsibility” – Spiderman’s uncle



# STATUTORY AUTHORITY

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- LGC Ch. 54 SUBCHAPTER C. QUASI-JUDICIAL ENFORCEMENT OF HEALTH AND SAFETY ORDINANCES
  - Building and Standards Commission
- LGC Ch. 214 SUBCHAPTER A. DANGEROUS STRUCTURES
  - Municipal court
  - Governing body





# STATUTORY AUTHORITY

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All processes generally the same:

- Notice
- Hearing - opportunity to be heard
- Judicial appeal



# STATUTORY AUTHORITY

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## Scope of most orders

- Vacate
- Secure from unauthorized entry
- Shut off utilities
- Repair
- Demolition

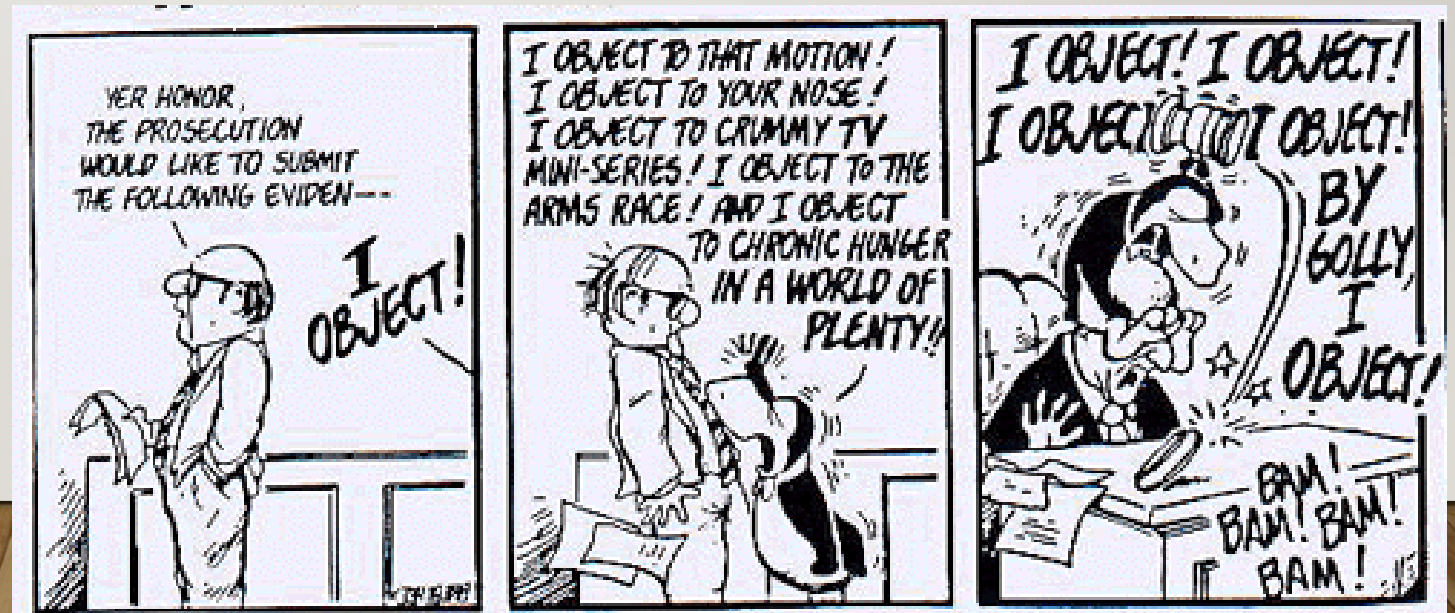


# STATUTORY AUTHORITY

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## Appeal

- Within 30 days of notice of the order
- Record owner/lienholder/mortgagee
- Petition for writ of certiorari in District Court
- State that order was illegal, basis of claim
- Verified





# STATUTORY AUTHORITY

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Writ of Certiorari may be granted

- Give a deadline, not less than 10 days, for return

- Review under substantial evidence rule.....

Relief available

- Uphold, overturn, modify order
- No court costs may be awarded against city
- If order upheld, city entitled to attorney's fees

Or is it?????



# DALLAS V. STEWART – GAME CHANGER

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- Nuisance property
  - Code violations
  - Tree fell on neighbor's house
  - Unsecured
- URSB hearing
  - Ordered demolished
- Appeal to District Court



# DALLAS V. STEWART – GAME CHANGER

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- Demolition of house
  - Per § 54.039(e) appeal does not stay proceedings
- Amended petition
  - Takings claim added



# DALLAS V. STEWART – GAME CHANGER

- District court upheld URSB
  - Awarded attorney's fees for Dallas
  - Court severed takings claim and had trial
  - Jury awards \$80k to Stewart
- Appeal to 5<sup>th</sup> Court of Appeals
  - Decision upheld on other grounds
- Appeal to Supreme Court



# DALLAS V. STEWART - APPEAL

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First opinion – July 1, 2011





# DALLAS V. STEWART - APPEAL

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Second opinion – Jan. 27, 2012

Takings claims must be raised  
on appeal from agency decision

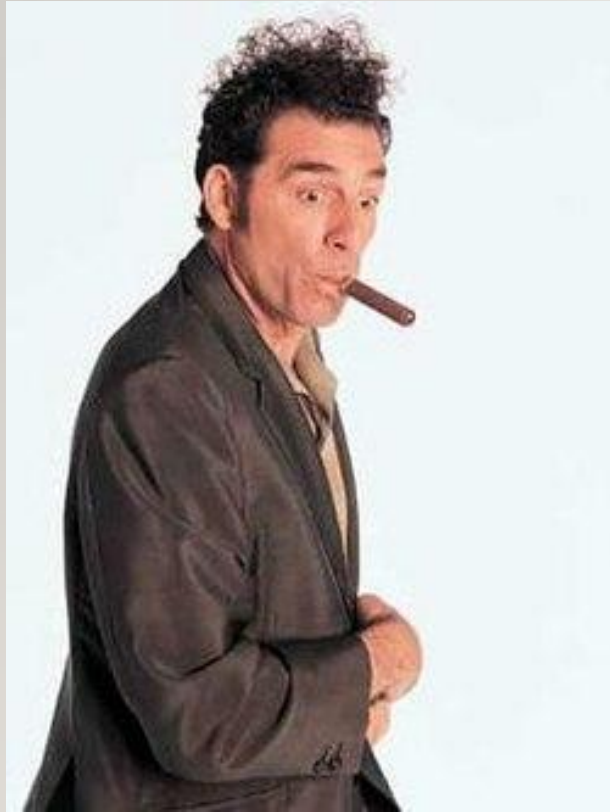
De novo review only  
required if they file an appeal

Property owners rarely  
invoke the right to appeal



# DALLAS V. STEWART - APPEAL

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## Subsequent opinions

- Patel – Jan. 27, 2012
  - Statutory appeal must be taken to conclusion
- Como – Aug. 2012
  - Statutory appeal must be filed

# DALLAS V. STEWART – HOLDING

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- Agency decisions are not “res judicata”
- Constitutional claims must be considered de novo by courts
- Collateral estoppel bars constitutional claims not raised during statutory appeal

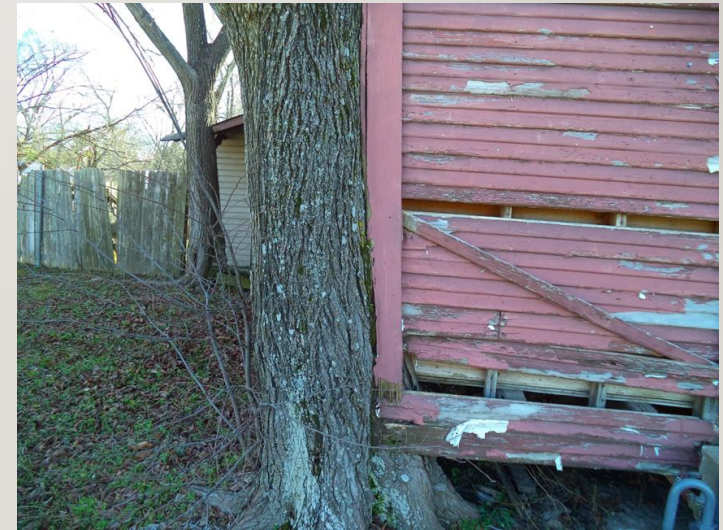




# APPEALS AFTER DALLAS V. STEWART

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- Collateral estoppel – cannot attack collaterally what you do not challenge primarily
  - Must file statutory appeal and prosecute to conclusion
  - Must raise constitutional claims during statutory appeal
- Statutory pre-reqs for suit
  - Within 30 days
  - Petition for writ of certiorari
  - In district court
  - Record owner
  - Verified





# APPEALS AFTER DALLAS V. STEWART

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- Plea to the Jurisdiction
  - With answer or shortly thereafter
  - Can be based on pleadings or testimony
  - Resolve case without reference to the merits



# APPEALS AFTER DALLAS V. STEWART

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- Appeal of Agency Nuisance Determination –
  - De novo review?
  - Substantial evidence review – without preclusive effect?
  - De novo trial?
- Conventional Wisdom
  - De novo review of return on writ
  - Trial, if necessary, on constitutional claims





# APPEALS AFTER DALLAS V. STEWART

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## Motion for Summary Judgment

- A de novo review of the record, no fact issues to resolve
- Court makes its own nuisance determination, which would have preclusive effect on takings claims
- Other constitutional claims can be resolved based on summary judgment evidence



# DALLAS V. STEWART – TAKE AWAY

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## **Do not demolish properties pending appeal!!!**

LGC §§ 54.039(e) and 214.0012(e) appeal does not stay proceedings on the decision appealed from

Lower risk options:

- Vacate
- Secure
- Shut off utilities





# SUMMARY ABATEMENT

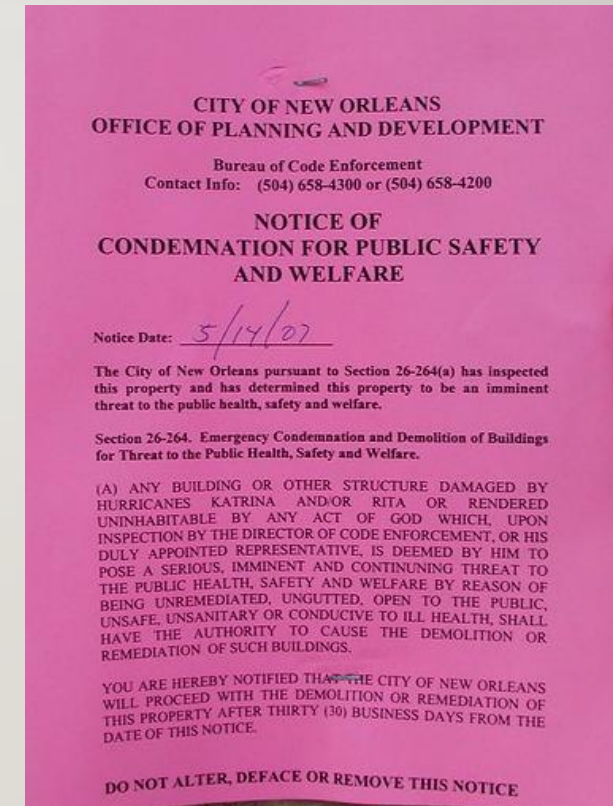
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- Emergency situations or imminent danger
- Notice and hearing not practical
- Due process still required



# SUMMARY ABATEMENT

- Post deprivation process can be constitutional
- Procedural safeguards
  - Shared decision making
  - Clear standards for imminence
  - Post deprivation notice
- Judicial appeal still possible



# THE END

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