

# Planning and Zoning Issues

**Carvan E. Adkins**

**Taylor, Olson, Adkins, Sralla & Elam, LLP**

**6000 Western Place, Suite 200**

**Fort Worth, Texas 76107**

**(817) 332-2580**

**[www.toase.com](http://www.toase.com)**

# OVERVIEW OF TOPICS

- Zoning and Land Use
- The Role of the P&Z Commission
- Legal Issues (Zoning)
- Platting and the Platting Process
- Legal Issues (Platting)
- Conflicts of Interest

# Zoning and Land Use

- A Brief History:
  - Zoning generally refers to a city's comprehensive regulation of the uses of land within the city.
  - The word “zoning” is derived from the practice of dividing a map into “zones” (also called “districts”) and designating specific permitted land uses within each zone.
  - The purpose of zoning is to segregate land uses that are thought to be incompatible (e.g., industrial v. residential).

# Zoning and Land Use

- A city's zoning authority is governed by Chapter 211 of the Texas Local Government Code (a/k/a the "Zoning Enabling Act").
- Section 211.005(a)—"The governing body of a municipality may divide the municipality into districts of a number, shape, and size the governing body considers best for carrying out this subchapter. Within each district, the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land."

# Zoning Authority

- Cities have the power to enact zoning ordinances for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance. (§211.001, LGC)

# Why Zoning?



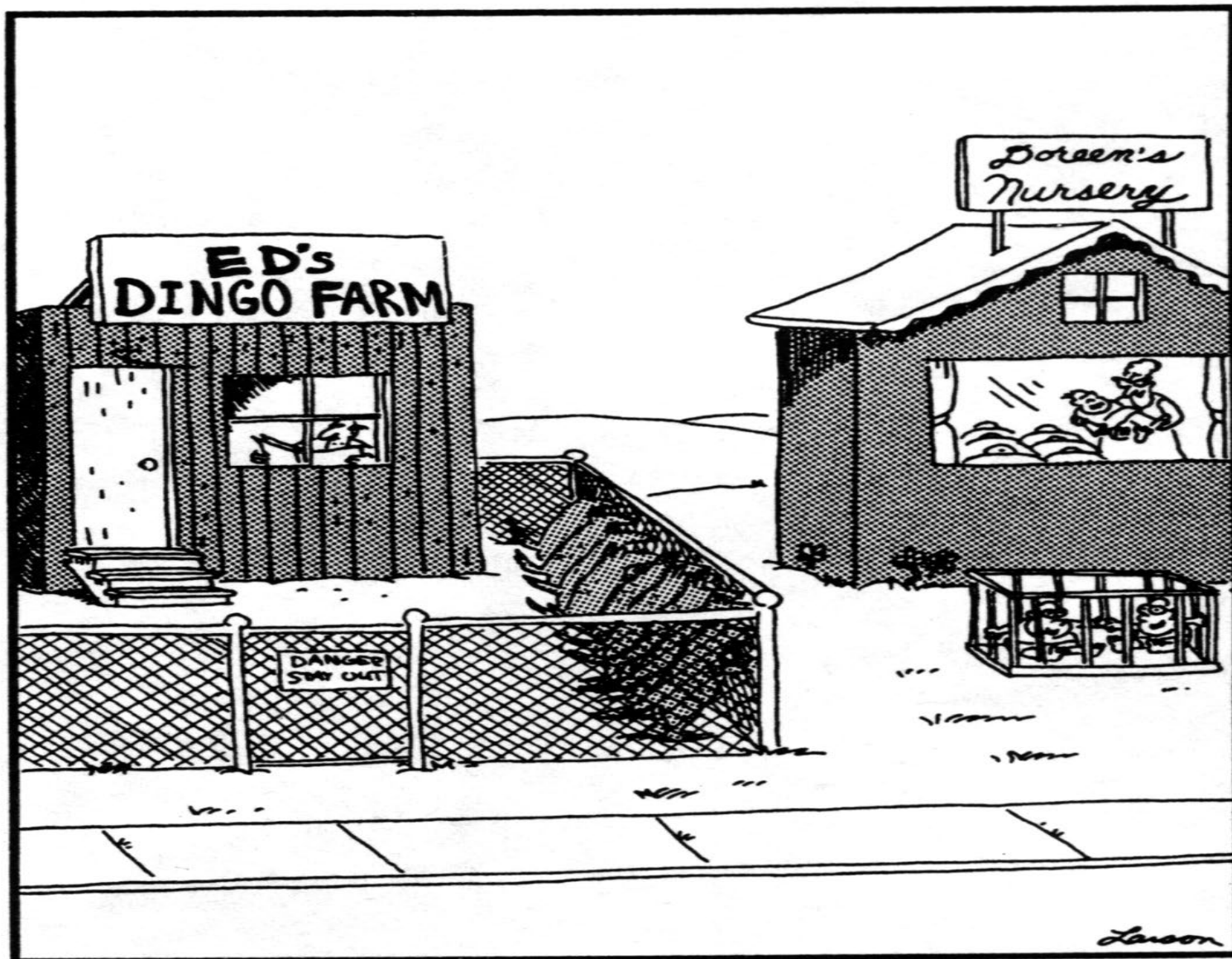
# Why Enact Zoning Laws?



# Zoning and Land Use

- Section 211.003(a)—“The governing body of a municipality may regulate:
  - The height, number of stories, and size of buildings and other structures;
  - The percentage of a lot that may be occupied;
  - The size of yards, courts, and other open spaces;
  - Population density;
  - The location and use of buildings, other structures, and land for business, industrial, residential and other purposes; and
  - The pumping, extraction, and use of groundwater by persons other than retail public utilities.”





Trouble brewing

# Zoning and Land Use

- Section 211.004(a)—“Zoning regulations must be adopted in accordance with [any] **comprehensive plan** [that has been adopted by the municipality] and must be designed to:
  - Lessen congestion in the streets;
  - Promote health and the general welfare;
  - Provide adequate light and air;
  - Prevent the overcrowding of land;
  - Avoid undue concentration of population; or
  - Facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.

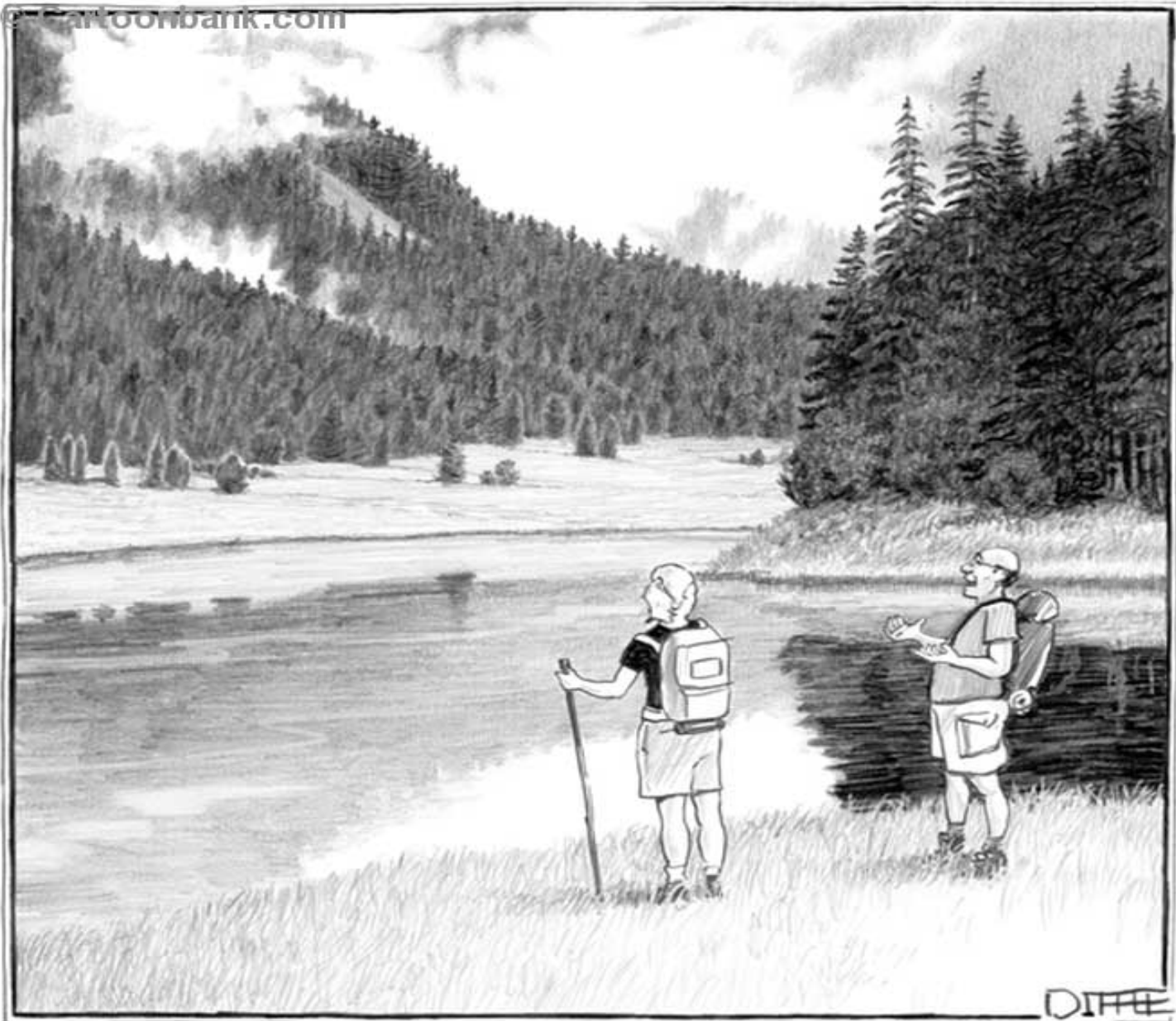
# Comprehensive Plan

- Zoning regulations must be adopted in accordance with a comprehensive plan (211.004, LGC)
- Actual plan not required in Texas
  - Chapter 213, Local Government Code
- If adopted, zoning matters should comply with comprehensive plan
- *Pharr v. Tippitt* – cities must “respect” the comprehensive plan

# Comprehensive Plan

## What is it?

- Long range plan intended to direct the growth and physical development of a community over time
- Comprehensive planning should be:
  - Future oriented
  - Continuous
  - Based on present and projected conditions
  - Comprehensive
- May be multiple documents



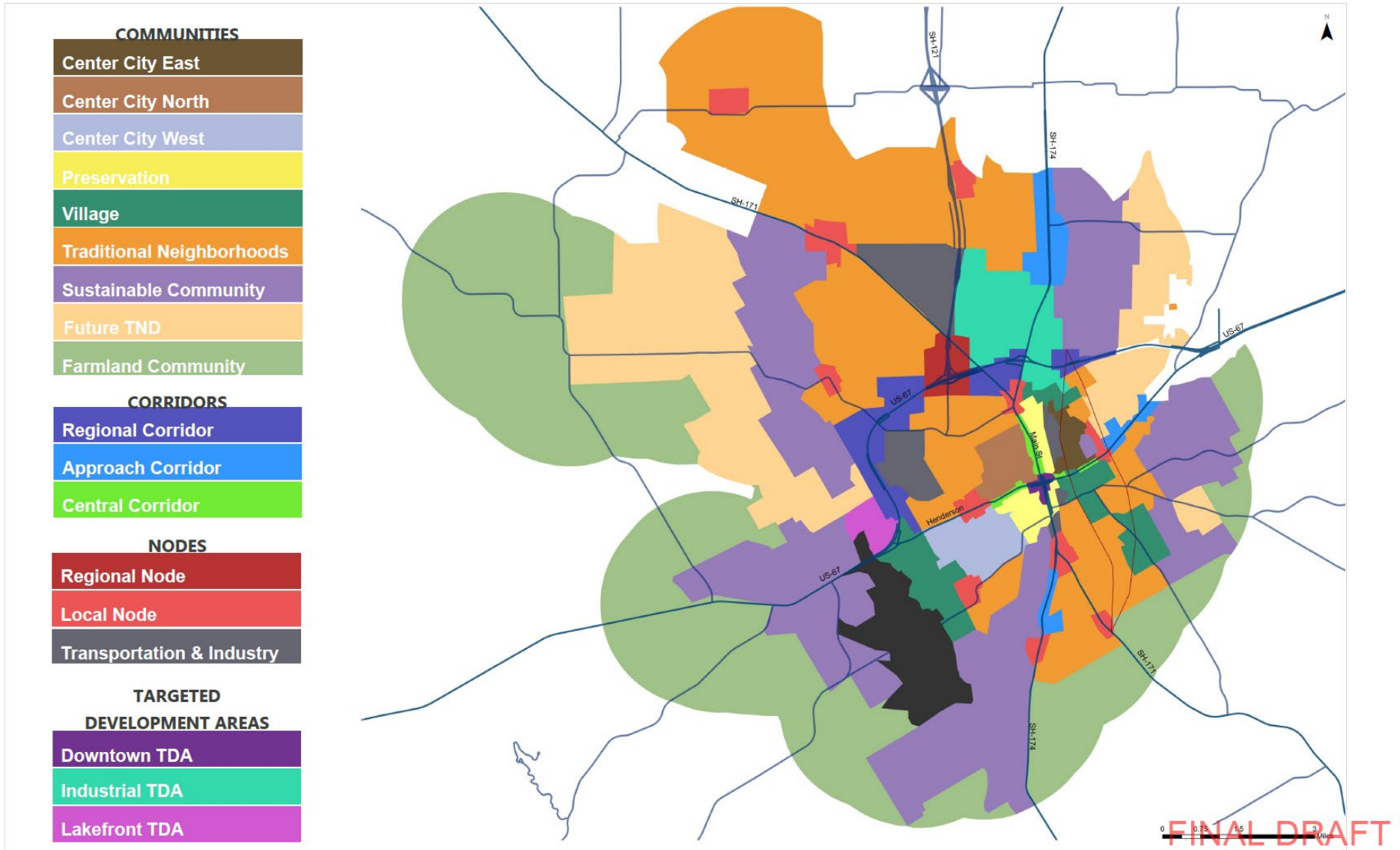
*"This would be a great place to put a huge city."*

# Comprehensive Plan

## What is it?

- A “comprehensive plan” is the projection of the city’s vision for what the city should look like and how the city should be developed over time.
- Section 213.002(a)—The governing body of a municipality **may** adopt a comprehensive plan for the long-range development of the municipality.
- Section 213.002(b)—The comprehensive plan may include provisions on land use, transportation and public facilities, may be contained in more than one document, and may be used to coordinate and guide the establishment of development regulations.

**Figure 57. Future Land Use Map**



# Zoning Role of Planning & Zoning Commission

- Section 211.007(a)—“The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district.”



# Zoning Discretion

- General Rule: broad LEGISLATIVE discretion is afforded to local governments in zoning matters.
- Presumption of validity.
- Unconstitutional only if shown to bear no relationship to securing public safety, health, morals or welfare and clearly arbitrary and unreasonable.

# Zoning Ordinance

- Zoning Map: a map showing the current designations of permitted land uses for land within the corporate boundaries of the city.
- Zoning Regulations: the text that tells what the restrictions apply in each district.

# Zoning Map

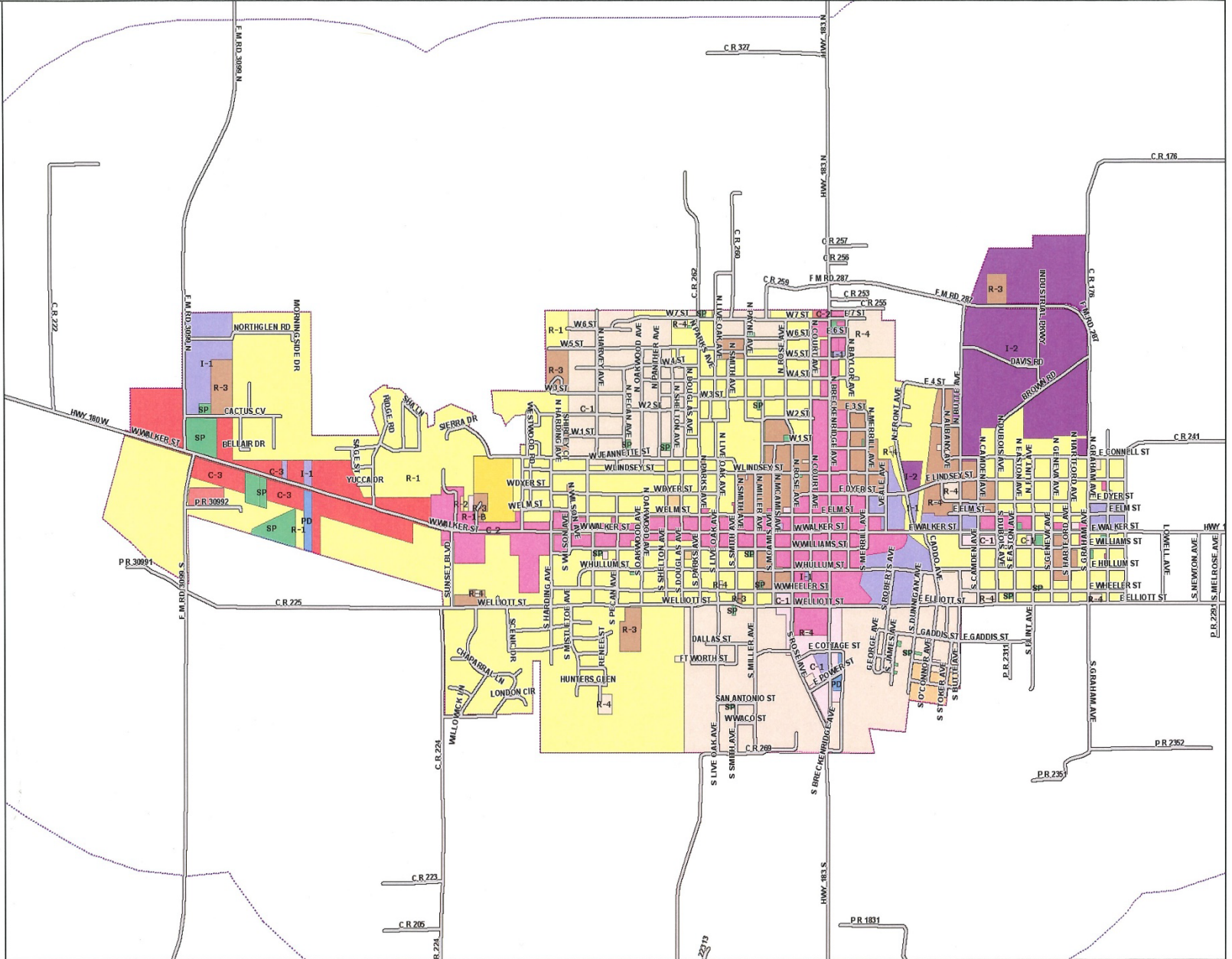
- Zoning Map—a map that denotes the current designations of permitted land uses for all of the land within the corporate boundaries of the city.



# Map

## Local Road Labels

- Local Roads
- Agricultural
- Single Family Dwelling
- Townhouse Dwelling
- Two Family Dwelling
- Multi Family Dwelling
- General Dwelling
- Mobile Home Dwelling
- Neighborhood Business
- Community Business
- General Business
- Light Industrial
- Heavy Industrial
- Planned Development
- Specific Use Permit
- Extra-territorial Jurisdiction
- City Limits



Data displayed were gathered by the City of Breckenridge for municipal purposes. No guarantee is made regarding suitability for any other use or purpose.



# Types of Zoning

- Euclidian Zoning (pyramid zoning): All uses in more restricted zones allowed in less restrictive zones.
  - Industrial Districts
  - Commercial Districts
  - Multi-family Districts
  - Single-family Districts
- Commercial uses are permitted in Industrial Districts but industrial uses are not permitted in Commercial Districts.
- Exclusive Zoning: Only named uses allowed

# Types of Zoning Regulations

- Straight Zoning
  - Standard regulation of land uses
- Planned Unit Development (PUD)
  - Zoning may be permitted for specific types of mixed uses
  - Zoning may be tailored for a specific type of use
  - Requires site plan approval

# Types of Zoning Regulations

- Overlay Districts
  - Property is governed by more than one type of zoning regulation
  - (e.g., Commercial + Historical)
- Transit Oriented District (TOD)
  - Regulations designed to promote the use of transit systems (bus, light rail, etc.) in higher density areas.

# Enforcement of Zoning Ordinance

- Penal enforcement: up to \$2,000 fine (limited effect when value of illegal use is high)
- Civil injunction
- Private citizen may enjoin zoning violation



# Role of Planning & Zoning Commission

- What is a Planning and Zoning Commission?
- Section 211.007(a)—“The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district.”
- Tools: Subdivision Regulations, Zoning Ordinance, Zoning Map, and Comprehensive Plan.

# Role of Planning & Zoning Commission

- Section 211.007(b)—“The zoning commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the governing body.”
- A “final report” means a motion to recommend approval or denial of a requested change in the zoning regulations.

# Role of Planning & Zoning Commission Staff

- Role of the City Staff—
  - To receive and process all application requests for zoning changes;
  - To determine if a request is ripe for consideration by the P&Z;
  - To prepare and post the agendas for the meetings;
  - To communicate with P&Z members regarding the locations, dates and times of any special meetings; and
  - To provide P&Z members with copies of the agendas, applications and related information.
  - To advise P& Z Commission members

# Zoning Practice

- City or property owner may request zoning change
- Do not rezone property so that it cannot be economically developed
- No requirement that property be zoned for highest and best use
- No right of landowner to have property zoned for greatest profitability
- Underlying theory of zoning is compatibility

# Standards for Zoning Changes

- Texas Supreme Court has identified four guidelines:
  - Respect the Comprehensive Plan
    - Do not re-determine the City's policies and goals
    - Do not cause substantial detriment to surrounding properties
  - Consider impact on surrounding properties
  - Consider suitability of land as presently zoned
  - Consider relationship to public health, safety, morals or general welfare
    - Protect or preserve historical, architectural, or cultural places
    - Substantial change in conditions

# Zoning District Changes

- Public hearing
- Mail notice to property owners within 200 feet – P&Z meeting
- Newspaper publication of hearing - city council meeting
- Protests – 20% requires  $\frac{3}{4}$  vote of council
  - Called supermajority §211.006

# Types of Zoning Cases

- Planned Development (PD)
  - Zoning may be permitted for specific types of mixed uses.
  - The zoning regulations are essentially negotiated.
  - Development or regulating plan, site plan.
  - Development Plans required.

# Types of Zoning Cases

- Special Use Permit (SUP)
  - Additional uses allowed in a district after review of conditions by P&Z and Council.
  - This is an amendment of the zoning ordinance and legislative.
  - Conditions may be placed on SUP.
  - *“not have adverse effect on surrounding properties”*
  - *“use is consistent with the purpose of the zoning district”*



# Types of Zoning Cases

- Variances

- Zoning Board of Adjustment considers these.
- Allows quasi-judicial variance of regulations on how of, among other things, an “unnecessary hardship.”
- Hardship cannot be economic.
- Variance of text regulations, not uses.
- Should be granted sparingly.

# Zoning Exceptions

- Nonconforming Use—created when the existence of a condition or use prohibited by a restriction contained in the zoning ordinance pre-dates the effective date of the restriction.
  - A nonconforming use is considered to be “grandfathered.”
  - Status as a “nonconforming use” may be lost if the use is abandoned or if there is a material change in the property (e.g., the structure is substantially damaged by weather)
  - Subject to amortization by the ZBA

# Illegal Zoning

- Spot zoning
  - Unacceptable rezoning that singles out a single tract for treatment that differs from surrounding properties
  - Must show change in conditions
  - Look at size
  - Look at adverse impact
- Contract zoning
- Conditional zoning
  - Legal alternative to contract zoning

# Contract Zoning

- Occurs when the city council promises to make a zoning change in the future regarding the development of property.
- Example: developer agrees to purchase property zoned industrial for use as a mall if the city would agree to rezone the property to commercial to permit the construction of the mall.
- Contract zoning may be avoided through the use of special use permits, variances, or planned development districts regulations.

# Unconstitutional Zoning Decisions

- Zoning decisions may be held to violate the constitution if the decisions are deemed to be arbitrary, unreasonable or unrelated to a legitimate police power (protection of public safety, health, welfare).

# Unconstitutional Zoning Decisions

- Permissible factors to consider when making a zoning decision:
  - The need to allow for the circulation of air and light
  - The need to separate structures to avoid fire hazards
  - The need to lessen the congestion of traffic
  - The need to separate incompatible uses of property
  - The impact of density on the infrastructure, utilities, schools and other community facilities
  - The need to preserve property values

# Unconstitutional Zoning Decisions

- Permissible factors to consider when making a zoning decision:
  - The need to preserve neighborhood boundaries and the character of the neighborhood
  - The need to implement the city's future land use plan
  - The need to protect historical structures or architecturally significant structures or places
  - The need to protect or preserve the environment
  - The need to maintain a good aesthetic appearance (if it is one of multiple factors)

# Special Use Regulations

- Sale of alcohol
- SOBs
- Group homes/Community homes
- Fair Housing Act
- HUD Code Manufactured Housing
- Governmental entities
- Oil and gas drilling
- Pawn shops



# Regulation of SOBs

- Specific authority in Chapter 243 of the Local Government Code to regulate SOBs
- First Amendment issues
- Cannot be “zoned out” entirely
- Should be controlled through “content neutral” zoning and amortization techniques

# Role of Zoning Board of Adjustment

- Specific statutory functions
  - Variances to zoning ordinance
  - Special exceptions
  - Appeal of Zoning Official's Decisions
- Additional functions under zoning ordinance
  - Amortization
  - Continuation of nonconforming uses

# Amortization of Nonconforming Use

- City's amortization scheme to terminate a nonconforming use is proper use of police powers
  - Reasonable opportunity for recoupment of investment
- Legally defensible if “reasonable conditions” are established

# Platting v. Zoning

## ZONING

- Zoning regulates how land is used.
- Zoning is legislative and discretionary
- You are making the law!

## PLATTING

- Platting serves to divide land into lots; provide for streets, utilities
- Platting is quasi-judicial and “ministerial.”
- Does this comply with the law? Check the boxes!

# Platting

- Platting is a geographical description that aids in recording and deed description.
- Zoning regulates how land is used.
- Platting serves to divide land into marketable parcels.
- Platting regulations concern planning for infrastructure.

# When are Plats Required?

- General rule: A plat is required when “An owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality . . . divides the tract in two or more parts:”
  - To lay out a subdivision
  - To lay out suburban or building lots
  - To lay out streets, parks, squares, etc. to be dedicated to the public

# Plat Content

- Dedication of streets and easements
- Donation of public facilities
- Parkland dedication
- Public street frontage for all lots
- Building setback lines
- Metes and bounds description of property





R. SALAZAR  
VOL. 1315, PG. 674  
GEORGE RODRIGUEZ  
AND JENNIFER RODRIGUEZ  
VOL. 1012, PG. 780

WILLIAM WALLS, JR.  
AND IRENE WALLS  
VOL. 635, PG. 410

CONTINENTAL WHOLESALE  
FLORIST, INC.  
VOL. 821, PG. 464

CONTINENTAL WHOLESALE  
FLORISTS, INC.  
VOL. 611, PG. 257

S. BAYER  
VOL. 291, PG. 152

VIRGINIA G. MAGEE  
VOL. 976, PG. 69



# Platting Process

- Plats **must** be acted on within 30 days after filing.
  - What is “filing”?
  - If Commission does not act on plat within 30 days, it is deemed approved.
  - The filing of a preliminary plat may trigger the 30-day period.
  - General rule: *Do not table or postpone action on plats!*

# Platting Process

- “Continuance” requires consent (on the record or in writing)
- Generally, plats must be approved if all applicable standards are met – ministerial function

# Platting Process

- § 212.005. Approval by Municipality Required
  - The **municipal authority responsible for approving plats** must approve a plat or replat that is required to be prepared under this subchapter and that satisfies all applicable regulations
- City not liable for negligence in plat approval process

# Preliminary v. Final Plats

- Preliminary plat allows City staff, P&Z Commission, and Council to look at particular issues
  - Lot layout
  - Dedications
  - Utilities and infrastructure
- Only final plat is filed with county

# Processing of Plats

- Approval of Planning and Zoning Commission
- Approval of City Council
- No public hearing required unless the property is being replatted

# Types of Plats

- Minor plats (§ 212.0065)
  - 4 or fewer lots fronting on an existing street
- Amending plats (§ 212.016)
  - To correct scrivener's errors
- Replats (§ 212.014)
  - Require public hearing
  - May not remove any covenants or restrictions
  - Requires notice if zoned for one or two family dwellings
- Vacating plats (§ 212.013)

# Enforcement of Plats

- Refuse to serve or allow connection to water, electricity, or other utilities
- Enjoin landowner's operations (TLGC § 212.003(c))
- Recovery of damages from landowner in amount necessary to bring landowner into compliance (TLGC § 212.108(a)(2))
- Criminal penalty for violation of ordinance
- Civil penalties under Chapter 54, TLGC



# Legal Issues (Platting)

- Exactions and Rough Proportionality
- Park land dedication
- Flower Mound
- Taking
- Impact fees

# Legal Issues (Platting)

## Flower Mound



Search all cases and statutes...

Opinion Summaries Case details

Summaries of

## Flower Mound v. Stafford Est. L P

Court of Appeals of Texas, Second District, Fort Worth

Mar 14, 2002

71 S.W.3d 18 (Tex. App. 2002)

In Flower Mound, the court disagreed with the town's argument that the court should "adopt a standard that requires developers to seek to strike down conditions that they believe are unconstitutional before accepting the conditions and irreparably changing the status quo."

Summary of this case from [City of Carrollton v. RIHR Inc.](#)

Applying Dolan to town ordinance requiring road improvements because improvement exactions "involve conditional governmental land use approval and present the same opportunities for governmental 'leveraging' [as dedicatory exactions]"

Summary of this case from [B.A.M. Development v. Salt Lake County](#)

# Conflict of Interest

- A person has a conflict of interest when his or her professional judgment or decision-making process is influenced by a secondary interest, usually monetary.
- If you or a family member has any ownership interest in property that is the subject of a P&Z action item or if you live within 200 feet of such property, you may have a conflict of interest.
- Call us—preferably prior to the meeting!

# Conflict of Interest

- If a person has a conflict of interest, the person must:
  - file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the City Secretary stating the nature and extent of the interest
  - abstain from further participation

# Conflict of Interest

- A person who knowingly violates Chapter 171 commits a criminal offense
  - class A misdemeanor
  - maximum fine of \$4,000 or up to one year in jail, or both

# Conflict of Interest: Practice Pointers

- Should not vote on matters regarding the subdivision where the City official resides
  - We advise that, if you are within the 200-foot area that receives notice of a zoning issue, file the affidavit and do not vote on it!
- Should never abstain merely to avoid a controversial issue

# Misuse of Confidential Information

- Chapter 39 of the Texas Penal Code prohibits a public official from using confidential information to gain a benefit or advantage for him/herself or others
- The prohibition consists only of information that has not been made public (information learned in executive session)
- Third degree felony

**TOASE**



**TAYLOR\*OLSON\*ADKINS\*SRALLA\*ELAM**  
L.L.P.

---

ATTORNEYS & COUNSELORS