

 American Planning Association
Texas Chapter
 Making Great Communities Happen

Basics of Zoning and Subdivision Regulation

What you need to know about zoning and subdivision regulation

2015 Central Texas Elected & Appointed Officials Planning Workshop

Sponsored By
Texas Chapter of American Planning Association

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Based on *A Guide to Urban Planning in Texas Communities* of the Texas Chapter of American Planning Association.

What is Zoning?

Zoning regulations govern the use of land, and the location, size and height of buildings. Zoning divides a jurisdiction into multiple districts, with each district containing a distinct set of regulations that are uniformly applied to all property within the district. Zoning ordinances consist of a text specifying the regulations and a map defining the location of the districts.



Zoning

History of Zoning Authority in U.S

- New York City zoning ordinance (1916)
- Standard Zoning Enabling Act (1922)
- City of Euclid v. Amber Realty (1926)
 - Police power under Constitution

Limits on Zoning

- Federal (5th and 14th Amendments)
 - Procedural due process
 - Substantive due process (regulatory takings)
- State
 - Taking statute (current applies to State and County, not City)
 - Vesting Statute (LGC 245)
 - Zoning Compensation bills
- Is Zoning a property right or a development regulation?



Zoning

Texas Zoning Enabling Legislation (Chap. 211, Local Gov. Code)

- Purposes
 - Protect health safety and morals
 - Protect historical, cultural and architectural areas
- Jurisdiction
- Authority to Regulate Private Property through Zoning
- Creation of Board of Adjustment (§ 211.008) as “safety valve”

Elements of a Zoning Ordinance

- Text and Map
- Purpose
- District regulations
 - Uses, density, heights, setbacks, building bulk
- Other regulations
 - Parking, landscaping, architectural, etc.
- Amendment Procedures
 - Notice requirements
 - Public hearings

Zoning

Relationship to Comprehensive Plan:

- Which comes first, planning or zoning?



Relationship to Subdivision Regulation

- Zoning regulates use, lot size, setbacks and heights
- Plats regulate street and lot layout, infrastructure, etc.

Different Types of Zoning

Euclidean Zoning

- Regulate uses by district
- Most common

Form-based Zoning

- Regulate building type by Transect zones

Performance-based zoning

- Uses allowed that meet performance standards



Zoning regulations

Permitted Uses

Heights

Minimum lot size and dimensions

Minimum setbacks

Parking requirements

Sign regulations

Landscaping

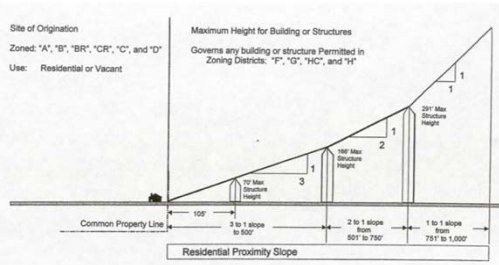
Architectural standards



Use Chart

OFFICE AND RETAIL	Agriculture	Single-Family - 7	Duplex	Multi-Family - 12	Multi-Family - 18	Office	Health Services	Neighborhood Service	Shopping Center	General Business	Commercial - 1	Commercial - 2	Industrial - 1	Industrial - 2	Freeway	Planned Development	Parking Requirements
Bed and Breakfast	S																1/room
Drug Store/Pharmacy							X	X	X	X	X	X	X	X	X	X	1/200-gb
Financial Institutions				X			X	X	X	X	X	X	X	X	X	X	1/200-gb
Grocery/Supermarket				X			X	X	X	X	X	X	X	X	X	X	1/200-gb
Home Improvement				X			X	X	X	X	X	X	X	X	X	X	1/200-gb
Hotel, Full Service						X							X	X	X		1.25/room
Motel, Limited Service						S							S	S	S		1.25/room
Landscape Nursery	S						X	X	X	X	X	X	S	S	S		1/200-gb

Height Regulations

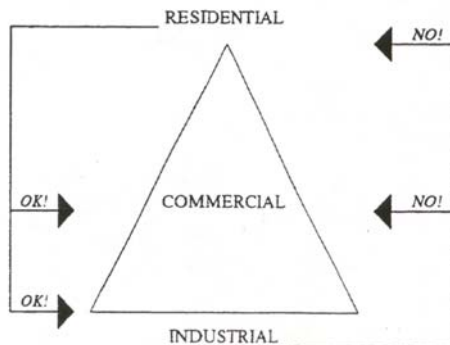


Zoning

Zoning districts

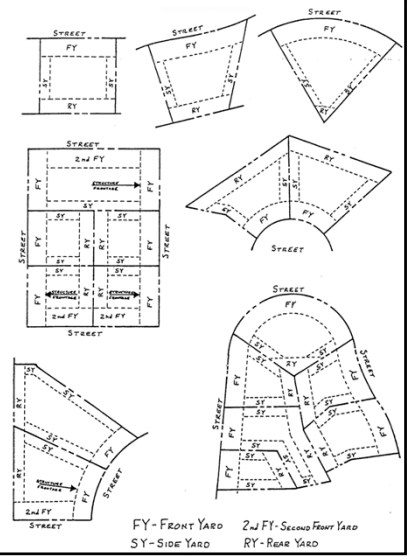
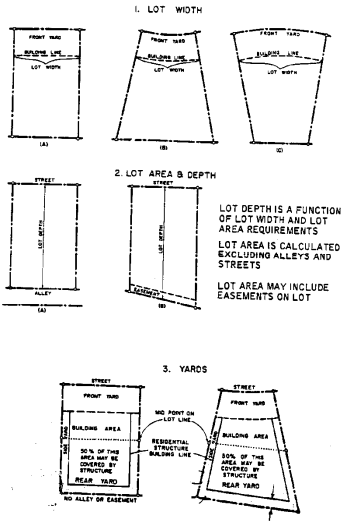
- Cumulative vs. Noncumulative

Pyramidal or Cumulative Zoning



Lot and Setback Regulations

APPENDIX ILLUSTRATIONS

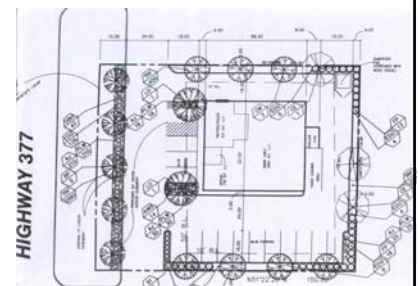


Landscaping Requirements

Two Approaches:

- Percentage of lot coverage
 - Landscaped area
 - Tree canopy
- Specific bufferyard standards
 - Bufferyards (front, sides, rear, etc.)
 - Vary depending on districts
 - Parking lot landscaping (e.g. 10 SF/stall)
 - Interior landscaping (e.g. 10% of building footprint)

Bufferyard	Minimum Width	Required Plants
Bufferyard "10"	Minimum Width is ten feet (10'). A minimum width of twenty feet (20') may be used in combination with a twenty percent (20%) reduction in planting density.	Required Plants per 100 Linear Feet: Canopy Trees: 1 Understory Trees: 2 Shrubs: 6
Bufferyard "11"	Minimum Width is ten feet (10'). A minimum width of twenty feet (20') may be used in combination with a twenty percent (20%) reduction in planting density.	Required Plants per 100 Linear Feet: Canopy Trees: 3 Understory Trees: 6 Shrubs: 6
Bufferyard "12"	Minimum Width is ten feet (10'). A minimum width of twenty feet (20') may be used in combination with a twenty percent (20%) reduction in planting density.	Required Plants per 100 Linear Feet: Canopy Trees: 4 Understory Trees: 8 Shrubs: 12



Sign Regulations

Goals of sign regulations:

- Aesthetics, traffic safety

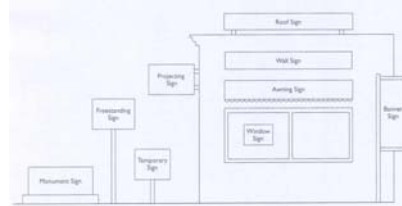
May regulate the number, size (area and height), setbacks, illumination, animation of commercial signage

Limitations on ability to regulate content

- Free speech issues, right to advertise, equal protection issues

Off-premise advertising

Signs on public property



Architectural Standards

Two Approaches:

- Specify Style, Pattern Book, etc., or
- Specify minimum standards
 - Materials
 - Colors
 - Façade Articulation
 - Entryway treatments
 - Repetitive ornamentation
 - Pedestrian features (e.g. walkways, display windows)



Parking Regulations

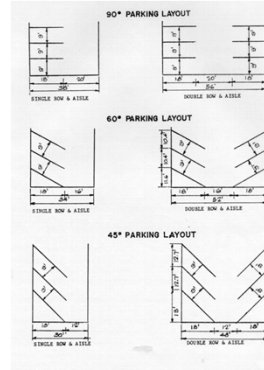
Requirement for provision of off-street parking (minimums, maximums)

Standards vary by land use, examples:

- retail store (1/250 SF GLA)
- restaurant (1/100 SF or 1/3 seats)
- Medical office (1/100 SF, or 1/examining room)
- Manufacturing (1/1000 SF, or 1/2 employees)
- Parking dimensions

Data Sources (Parking Generation, ITE; PAS Reports; parking demand study, etc.)

Unintended effects of parking standards
Shared parking, flexible parking



Sexually-Oriented Businesses

Free Speech Rights, cannot prohibit entirely

Two approaches:

- Concentrate (limit to specific area, "combat zone")
- Disperse (establish minimum separations between SOB and residence, church, school, park, and other SOB)

To be valid, City must demonstrate:

- That SOB's increase crime and adversely affect adjacent properties, and
- That at time of adoption, there are suitable areas for SOB's to locate.

Regulation by Specific Use Permit

- Must establish reasonable standards for decisions
- Limits on alcohol, separation from dancers, etc.



Historic Preservation

National Register of Historic Places

- National Park Service, State Historic Preservation Officer)
- 50 years old, significant building or associated with significant person, etc.)
- Section 106 review regarding federal actions
- Federal tax credits

Local Historic Preservation

- Historic landmark commission
- Procedure to add properties
- Review changes to properties

Certificate of Appropriateness

- Appeal

Incentives

- Tax benefits
- Grants



Zoning Change Process

Developer application request

Public Notice Requirements

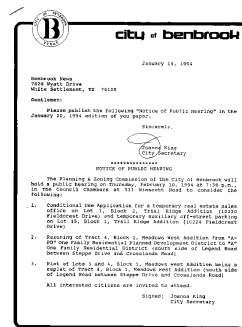
- Written notice prior to P&Z
- Newspaper notice prior to City Council
- Signs, Internet

Staff review

P&Z hearing and recommendation

City Council hearing and ordinance adoption

9 week process?



Zoning Changes

Administrative Review

- Who is the applicant?
- Who is the owner?
- Is property properly described?
- What is current zoning classification? Allowed uses?
- What is proposed zoning classification? Allowed uses?
- Does proposed zoning conform to comprehensive plan?

Planning Review

- Does proposed zoning achieve goals of comprehensive plan?
- Do proposed uses make sense for that location?
- Does proposed use conflict with adjacent uses? Can conflicts be mitigated?
- Is infrastructure sufficient to support proposed uses and density?

Factors To Consider In Making Zoning Decisions

- Compliance with Comprehensive Plan
 - Is application consistent with Plan?
 - If not, have conditions changed or new information been offered to support change?
- Surrounding Zoning & Land Use
- Infrastructure Impacts
- Size and Location of Parcel - Is land large enough & in proper location for proposed use?
- Reasonable Use of Property - Does proposed change provide reasonable use of property?
- Zoning has great discretion – deny if applicant has not proven it is in the best interests of City to rezone

Zoning Changes

- What questions are not appropriate?
 - How are the lots and streets going to be arranged?
 - This is a platting issue
 - How big will the houses be? What will they sell for?
 - City only enforces minimums
- Is anyone entitled to a zoning change?
 - Ripeness issue
 - Who can apply?
- Can area subject to zoning change be increased at public hearing? Decreased?
- Can area subject to zoning change be zoned to more intense use than advertised? Less intense?

Variances to Zoning

Zoning is an ordinance, not a guide

Variances must be approved by ZBA

- Must demonstrate hardship (i.e. inability to use property)
- Must obtain 4/5 vote to approve

Appeals are to District Court, not City Council

Who Decides: Zoning Board of Adjustment

- Appeals
- Special Exceptions
- Interpretation of Ordinance
- Variances
 - Types: Area, Setbacks, Not Use!
 - Hardship
- Voting requirements
 - 4 out of 5 to approve

Appeals of ZBA decisions



Site Plan Review

Why is Site Plan required?

- i.e. under what authority are you regulating site design? (PD, general requirement)

What can you regulate? What are City's goals?

- Building placement
- Building appearance, architectural standards
- Landscaping, bufferyards
- Circulation – vehicular, pedestrian
- Parking location
- Signage
- Dumpster location and access

Avoid design by committee, or redesigning the project for the applicant

Establish site design standards

- Allow creativity

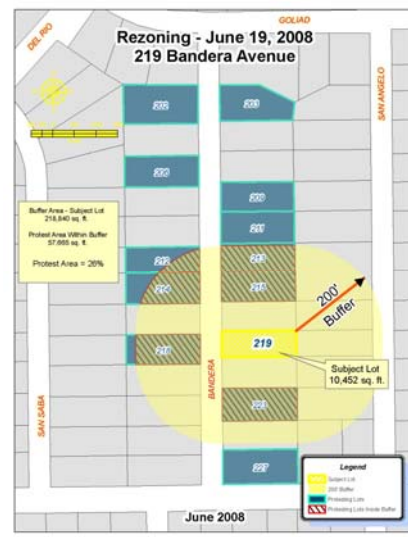
Zoning

Zoning Commission

- Home rule, appointment mandatory
- General law, appointment permissive

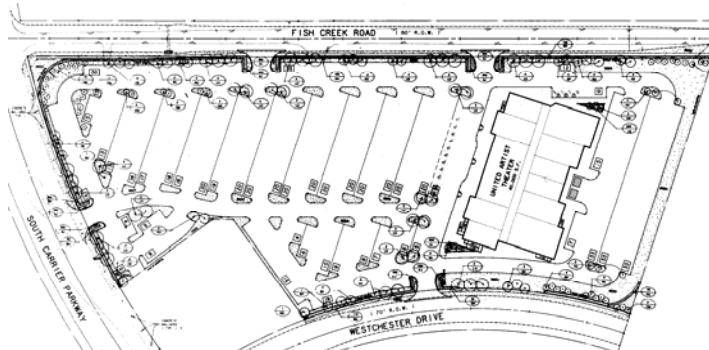
Voting requirements for City Council (Ordinance adoption)

- Simple majority
- 4/5 if protest by landowners (20 percent rule)
- 4/5 if recommended denial by Zoning Commission (if in ordinance)



Planned Unit Developments

- Should be used for unique developments, not routinely
- Site plan or special regulations attached to ordinance to be amended by public hearing process



Specific Use Permits

- Also called special use permit or conditional use permit
- Allows use to be established within certain zoning district only after public hearing
- Allows conditions to be placed on operation which may be unique to that use at that location



Overlay Districts

A district that is superimposed over one or more zoning districts or parts of districts and that imposes specified requirements in addition to those applicable in the underlying base zoning district.

Examples:

- Historic districts
- Airports
- Corridors
- Hospitals
- Environmentally sensitive areas
 - (floodplains, wetlands)



Frequently Asked Questions

- Who can request rezoning of property?
- What are notice requirements?
- What is the 20% Rule?
- Can area subject to zoning change be increased at public hearing? Decreased?
- Can area subject to zoning change be zoned to more intense use than advertised? Less intense?
- Ex-Parte Contacts – Check w/attorney
 - But never commit before hearing &
 - Share any information learned

Common Developer Complaints and Issues regarding Zoning

“City needs to give me what I want...”

- No one is entitled to a zoning change. City must act for good of all

“Process takes too long, time is money”

- Most of process is governed by State law notice requirements

“No other city makes us do that”

- Standards may vary from city to city to reflect local values, or are necessary to assure quality development

Developer is not obligated to develop site if zoning does not reflect market

- Short term vs. Long term

Subdivision Regulations

Subdivision regulations govern the division of land into two or more parts. The regulations specify the standards for drawing and recording a plat, and requirements for public improvements necessary to make the property suitable for development.



Subdivision Regulations

Brief History of subdivision regulation in U.S.

- Law of the Indies, Colonial townsites
- Jefferson and L'Enfant (1791)
- Railroad townsites (19th Century)
- New Jersey (1913)
- Los Angeles, Cincinnati (1920s)
- Standard City Planning Enabling Act (1928)

Subdivision Regulations

Texas Subdivision statute (Chap 212)

- Purposes
- Relationship to Comprehensive Plan
- Jurisdiction
- Plat required?
 - Municipal discretion
 - Five-acre exemption
 - Major vs. Minor subdivisions
 - One-lot plats
- 30-day rule
- Approval body
 - Planning commission
 - City council
 - Staff (minor plats)



Platting Approval Process

Ministerial act

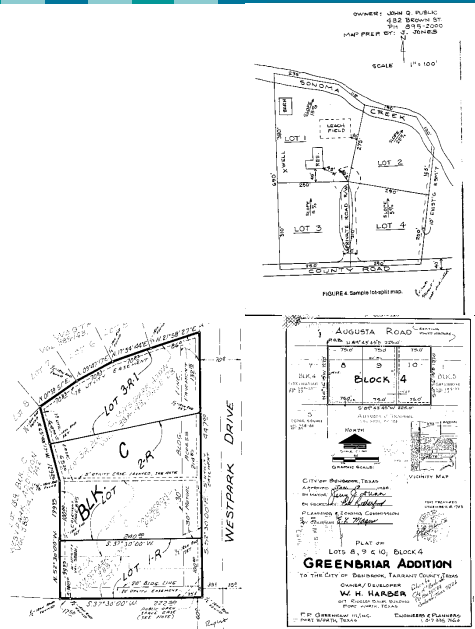
P&Z may approve plat, if delegated by Council

- In Benbrook, P&Z approves preliminary plat, staff approves final if it conforms to preliminary plat
- Appeal is to Council to remand back to P&Z for reconsideration

Waivers and exceptions by P&Z, not variances

Types of Plats?

- Sketch plat, concept plan
- Preliminary Plat
- Final Plat
- Short Form Plat
- Minor Plat (4 lots or less)
- Amending Plat, Correction Plat
- Replat
- Development Plat (Chap. 212, Subchapter B)
- Survey Plat
- One lot Plat



Application and Review Process

Minor Plat

- Approval by staff

Replats

- Public notice requirements (§ 212.015(b))
- Protest procedures

Initial application

- Preliminary conference
- Sketch plat/concept plan

Preliminary Plat

- Staff review
- Review by others
 - City engineer
 - Franchised utilities
 - Fire marshal
 - Public notice? Public hearing?
 - Planning Commission
 - City Council

Application and Review Process

Final Plat

- Application acceptance
- Staff review
- Planning Commission
- City Council
- 30-day clock
- No Discretionary Authority
 - Must approve if it complies with regulations



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Application and Approval Process

Final Plat continued

- Dedication instrument or statement
- City approval signature block
- Other required notes on face of plat
- Public Improvements
 - Financial assurance
- File at County Courthouse

STATE OF TEXAS }
COUNTY OF TARRANT }

KNOW ALL MEN BY THESE PRESENTS, That Mitchell W. Henzik, and wife, Mary W. Henzik aka HINDY HENZIK, are the owners of the following described real property, to wit:

Lots 1 and 2, Block 6

MONT DEL ESTATES

An Addition to the City of Benbrook
Tarrant County, Texas
According to the Plat recorded in Volume 38537, Page 14
Plat Records, Tarrant County, Texas.

Sale and Block

That portion conveyed to
Mont Del Estates Homeowners' Association in
Special Warranty Deed dated December 13, 1983
Recorded in Volume 1885, Page 1218
Deed Records, Tarrant County, Texas

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,
That Mitchell W. Henzik and wife, Mary W. Henzik aka HINDY HENZIK
(owner) do hereby adopt the Plat of the hereinabove described real
property to be known as.....

Lot 1-B, Block 9

MEADOWS WEST ADDITION
City of Benbrook
Tarrant County, Texas

and does hereby dedicate to the Public's use forever, the streets
and easements shown hereon.

EXECUTED this the _____ day of _____
19____

Mitchell W. Henzik

EXECUTED this the _____ day of _____
19____

Mary W. Henzik aka HINDY HENZIK

STATE OF TEXAS }
COUNTY OF TARRANT }

BEFORE ME, the undersigned authority, on this day personally
appeared Mitchell W. Henzik, known to me to be the person whose
name is subscribed to the above and foregoing instrument, and he
acknowledged to me that he executed the same for the purposes and
considerations therein expressed and in the capacity therein
stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of
19____

Notary Public, Tarrant County, Texas
My Commission Expires _____

STATE OF TEXAS }
COUNTY OF TARRANT }

BEFORE ME, the undersigned authority, on this day personally
appeared Mary W. Henzik aka HINDY HENZIK, known to me to be the
person whose name is subscribed to the above and foregoing
instrument, and she acknowledged to me that she executed the same
for the purposes and considerations therein expressed and in the
capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of
19____

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Public Improvements

Financial Assurance

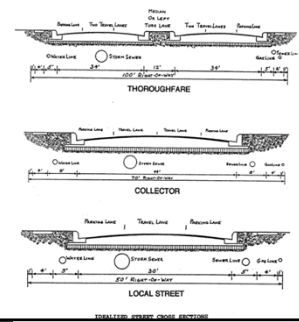
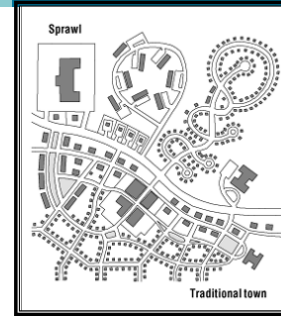
- Build before filing
- Post bond and developer builds
- Post cash and city builds
- Deferred construction
- Form of Instrument (cash, performance bond, letter of credit, deed covenant, promise)



Planning Review

Street pattern

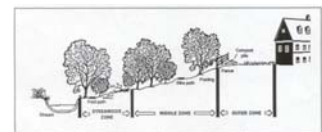
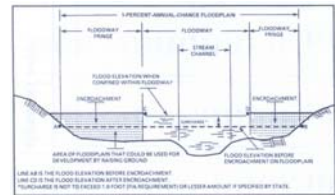
- Extension and connection of streets
- Adequate right-of-way width
- Adequate street width
- Street geometry
- Street intersections and jogs
- Dead-end streets and cul-de-sacs
- Adequate ingress and egress
- Curvilinear vs. straight streets



Planning Review of Plat

Drainage

- Floodplain
- Channel Improvements
- Detention Requirements
- Interior drainage
 - Street capacity
 - Curb inlets and storm drains
- Lot-to-lot drainage
- Drainage easements
- Water quality



Characteristics	Streamline Zone	Middle Zone	Buffer Zone
Width	Minimum 25 feet plus 10 feet for every 100 feet of stream bank	50 to 100 feet depending on stream width, slope, and soil	25 feet minimum unless local ordinances
Vegetative Target	Native grasses, shrubs, and trees	Native grasses, shrubs, and trees	Native grasses, shrubs, and trees
Allowable Uses	Very Restricted	Restricted	Unrestricted
	e.g., Road, utility, utility right-of-way, landscape	e.g., some recreational uses, some commercial uses, some residential uses, some public uses, some parking areas	e.g., residential uses including yards, gardens, landscape, and other uses, some commercial uses

Planning Review of Plat

Easements

- Utilities
- Adequate width
- Ability to serve future lots
- Access easements and fire lanes
- Utilities
- Water
 - Fire hydrants
- Sanitary sewer
- Electric
- Natural gas
- Telephone
- Cable TV
- Public spaces and common areas
- Deed restrictions and covenants

Construction Issues

Public Improvements

- Acceptance requirements

Building permits

- Lot must be platted

Erosion control

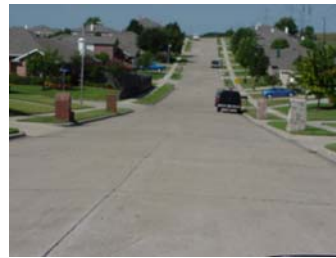
Coordination with other agencies:

- TxDOT, Utilities, etc.



Exactions

An exaction is a requirement to dedicate land (including rights-of-way and easements), construct public improvements, and payments of fees in lieu as a condition of development approval. The ability to require exactions is derived from general police powers and specific statutory authority.



Exactions

Types of Subdivision exactions

- On-site improvements
- Oversizing facilities and municipal participation
- Adjacent streets (perimeter streets)
- Off-site improvements and adequacy of public facilities
- Pro-rata agreements

Exactions

Impact Fees (Chapter 395)

- Water, sewer, drainage and streets only
- Process
 - Land use assumptions
 - Capital improvements program
 - Fee calculation
 - Accounting and segregation of funds
 - Refund provisions

Parkland Dedication

- Turtle Rock v. College Station
- Methodology
- Fee-in-lieu



Two Tests for Exactions

Rational Nexus

Rough Proportionality

- Required Certification by City Engineer
 - LGC § 212.904
- How much is too much?
- Calculations



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Questions?

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Hierarchy of Planning

The Mayor
Leaps tall buildings in a single bound,
Is more powerful than a locomotive,
Is faster than a speeding bullet,
Walks on water,
Gives policy to God.

The Planning & Zoning Commission Chair
Leaps short buildings in a single bound,
Is more powerful than a switch engine,
Is just as fast as a speeding bullet,
Talks to God.


The City Manager
Leaps short buildings with a running start and favorable winds,
Is almost as powerful as a switch engine,
Is faster than a speeding BB,
Walks on water in an indoor swimming pool,
Talks with God if special request is granted.



The Assistant City Manager
 Barely clears a Quonset hut,
 Loses tug-of-war with locomotive,
 Can fire a speeding bullet,
 Swims well,
 Is occasionally addressed by God.

The Planning Director
 Makes high marks on walls when trying to leap tall buildings,
 Is run over by locomotives,
 Can sometimes handle a gun without inflicting self-injury,
 Treads water,
 Talks to animals.

The Chief Planner
 Climbs the walls continually,
 Rides the rails,
 Plays Russian Roulette,
 Walks on thin ice,
 Prays a lot.



The Assistant Planner
 Runs into buildings,
 Recognizes locomotives two out of three times,
 Is not issued ammunition,
 Can stay afloat with a life jacket,
 Talks to walls.

The Planning Student Intern
 Falls over doorstep when trying to enter buildings,
 Says "Look at the choo-choo,"
 Wets himself with a water pistol,
 Plays in mud puddles,
 Mumbles to himself.

The Planning Department Secretary
 Lifts buildings and walks under them,
 Kicks locomotives off the tracks,
 Catches speeding bullets in her teeth and eats them,
 Freezes water with a single glance,
 She IS God.