

# 21<sup>ST</sup> ANNUAL LAND USE CONFERENCE

Planning, Law, and Regulation



FUNDAMENTALS

April 5, 2017

CONFERENCE

April 6–7, 2017

Austin Marriott South  
Austin, Texas

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 **Live Webcast on April 5–7, 2017**

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Fundamentals—Earn up to 4.00 Hours of Credit

Conference—Earn up to 14.00 Hours of Credit Including 2.00 Hours of Ethics Credit

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2017

# LAND USE FUNDAMENTALS

April 5, 2017 ■ Austin Marriott South ■ Austin, Texas

## WEDNESDAY AFTERNOON, APRIL 5, 2017

### Presiding Officer:

**Dorothy Palumbo, Bojorquez Law Firm, PC,  
Austin, TX**

### 12:15 p.m. Conference Room Opens

Includes light refreshments.

### 1:10 p.m. Welcoming Remarks

### 1:15 p.m. .25 hr

#### Introduction

Identify the different forms of municipal government in Texas and their land use powers.

Dorothy Palumbo, Bojorquez Law Firm, PC,  
Austin, TX

### 1:30 p.m. .50 hr

#### Zoning 101

Review zoning legal requirements and procedures, how to make a zoning decision, and how zoning interacts with the comprehensive plan.

Brenda N. McDonald, Messer, Rockefeller & Fort,  
PLLC, Frisco, TX

### 2:00 p.m. .50 hr

#### Subdivision and Platting 101

Explore the basic building blocks for land use regulation and how they contrast with zoning. Get practical pointers to help practitioners on both sides of the aisle understand the platting process and avoid legal pitfalls.

E. Allen Taylor Jr., Taylor, Olson, Adkins, Sralla &  
Elam, L.L.P., Fort Worth, TX

### 2:30 p.m. .75 hr

#### Zoning Alphabet Soup: ZBA/BOA v. P&Z/ZPC

Discuss the differences between two critical zoning bodies: the Zoning Board of Adjustment and Planning and the Zoning Commission. Review the statutory basis, legal authority, procedural aspects, location in the zoning structure, and available options if you disagree with their decisions. Learn how to prevent clients from confusing these bodies.

Reid C. Wilson, Wilson, Cribbs & Goren, P.C.,  
Houston, TX  
Joseph J. Gorfida Jr., Nichols, Jackson, Dillard,  
Hager & Smith L.L.P., Dallas, TX

### 3:15 p.m. Break

### 3:30 p.m. .75 hr

#### Land Use Appeals

Now that the city board and the city council have decided your land use issue, someone is still dissatisfied. Discover what happens next when the unhappy party takes the city to court.

Ronald D. Stutes, Potter Minton, Tyler, TX

### 4:15 p.m. .50 hr

#### Moving On or Staying Put? The Law of Non-Conformity & Vested Rights

Examine the differences and similarities between nonconforming uses and vested development rights, and survey significant legal issues that arise in applying the two concepts to typical development scenarios.

Brent David Lloyd, City of Austin Law Department,  
Austin, TX

### 4:45 p.m. .75 hr

#### Plan Unit Development (or the Basics of Development Agreements)

Economic development agreements have become a significant part of major real estate development projects in Texas, and attorneys representing both cities and developers need to understand the tools in the economic development tool box. Explore the basics of development agreements from municipal and development attorney perspectives and examine the statutory basis, procedure, and negotiation issues regarding these agreements for land development projects in Texas.

William S. Dahlstrom, Jackson Walker LLP, Dallas, TX  
Peter G. Smith, Nichols, Jackson, Dillard, Hager &  
Smith L.L.P., Dallas, TX

### 5:30 p.m. Adjourn

## FUNDAMENTALS FACULTY

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Dallas, TX

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Messer, Rockefeller & Fort, PLLC  
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Dallas, TX

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Bojorquez Law Firm, PC  
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**E. ALLEN TAYLOR JR.**  
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21<sup>ST</sup> ANNUAL  
**LAND USE CONFERENCE**

April 6–7, 2017 ■ Austin Marriott South ■ Austin, Texas

**THURSDAY MORNING, APRIL 6, 2017**

**Presiding Officer:**

**James Benjamin Griffin, Brown & Ortiz, P.C., San Antonio, TX**

**7:30 a.m. Registration Opens**

Includes continental breakfast.

**8:20 a.m. Welcoming Remarks**

**8:30 a.m. .75 hr**

**New Land Use Decisions**

Review recent decisions shaping Texas land use law and practice, including an update on the takings explosion.

James L. Dougherty Jr., Attorney at Law, Houston, TX

**9:15 a.m. .50 hr**

**Sovereignty Immunity Update**

Sovereign immunity is the first defense raised by cities in land use litigation. Identify the judicial trends.

Arthur J. Anderson, Winstead PC, Dallas, TX  
Lowell F. Denton, Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C., San Antonio, TX

**9:45 a.m. .50 hr**

**Buying and Leasing Government Owned Property**

Learn how to overcome the limitations state law places on the ability of cities to sell real property, and examine the roles of RFIs, RFPs, RFQs, deed restrictions, and independent foundations in private and government sectors.

Robert Wagnon Collins Sr., City of Houston Legal Department, Houston, TX

**10:15 a.m. Break**

**10:30 a.m. .50 hr**

**Fair Housing and Inclusive Communities**

Explore controversies, hot topics, and recent developments in Fair Housing litigation, regulation, and initiatives.

William M. McKamie, McKamie Krueger, LLP,  
San Antonio, TX

**11:00 a.m. .50 hr**

**Challenges to Infill Residential Development**

Growth in Texas cities has led to a higher demand for and a shorter supply of housing and commercial space. This has led to higher housing prices, while urban planners see the increase of density within cities as a development strategy. Discuss some of the legal, political, and technical challenges of infill development and how cities might consider approaching them in the future.

Garrett Scott Martin, Milestone Community Builders, Austin, TX  
Jeffrey S. Howard, McLean & Howard, L.L.P., Austin, TX

**11:30 a.m. .50 hr**

**In the Path of Growth: Small Town Growing Pains and Conflicts with Urban Areas**

Using case studies to provide insights and illuminate the topic, a seasoned planning and design professional provides perspectives on the issues based on a decade of experience helping shape the development and overall growth characteristics in Dripping Springs.

Keenan E. Smith, City Lights Design Alliance,  
Dripping Springs, TX

**12:00 p.m. .50 hr**

**ABCs of Development Financing**

Review the vocabulary and tools used by large and small cities when negotiating today's public-private partnerships, as well as tools used for projects inside and outside city limits.

Julie Y. Fort, Messer, Rockefeller & Fort, PLLC, Frisco, TX  
Misty M. Ventura, Shupe Ventura, PLLC, Dallas, TX

**12:30 p.m. Pick Up Lunch**

Included in registration.

**THURSDAY AFTERNOON**

**Presiding Officer:**

**William S. Dahlstrom, Jackson Walker LLP, Dallas, TX**

**LUNCHEON PRESENTATION**

**12:50 p.m. .50 hr**

**Financial and Regulatory Constraints on Commercial Development**

Hear from a private sector non-bank construction lender and investor on public-private development transactions (ground leases), about the construction of new multi-family homes, offices, hotels, and how the structure may impact underwriting and loan proceeds.

Ron Lawrie, Orix, Dallas, TX

**1:20 p.m. Break**

**1:35 p.m. .50 hr**

**Sharing Economy**

Address the regulatory issues associated with sharing—from sharing residences (Airbnb and short term rentals) to modes of transportation (Uber and Lyft)—and how local governments are responding to sharing-for-profit activities.

Terrence S. Welch, Brown & Hofmeister, L.L.P., Richardson, TX

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2:05 p.m. .50 hr

### Recent Developments in the Regulatory Arena: Use of a Municipality's Public Rights of Way

Cities across Texas have long had the duty to manage the public rights of way in trust for their citizens, but recently that duty has been challenged by entities providing the infrastructure to support small-cell wireless technology. Explore the collision of rights between these entities through which they operate, and the PUC.

Alfred R. Herrera, Herrera & Boyle, Austin, TX

2:35 p.m. .50 hr

### Rough Proportionality

Review the concept and significance of rough proportionality in land-use and development matters, with an emphasis on practical approaches and solutions to rough proportionality concerns, as viewed by land-use practitioners from both government and developer perspectives.

Robert F. Brown, Brown & Hofmeister, L.L.P.,  
Richardson, TX  
James Benjamin Griffin, Brown & Ortiz, P.C.,  
San Antonio, TX

3:05 p.m. .50 hr

### Managing the *Fixer Upper* Effect

Examine the impact of HGTV's show *Fixer Upper* on land use in Waco, including short-term rentals, redevelopment, and permitting processes.

John T. Patterson, City of Waco Attorney's Office,  
Waco, TX  
Clint Peters, City of Waco, Waco, TX

3:35 p.m. Break

3:50 p.m. .75 hr

### Metropolitan Planning Organizations and Urban Transportation Planning

Hear an overview of the process for state and federal transportation funding with a focus on the role and authority of MPO's transportation policy boards.

Tom Nuckols, Travis County Attorney's Office,  
Austin, TX

4:35 p.m. 1.00 hr ethics

### Cyber-Secure Attorneys: Ethical Obligations, Ambiguities, and Practical Considerations

Review developing online security considerations for attorneys, with a focus on ethical obligations, unsettled questions, and practical tips. Address what steps an attorney should take to secure online communications with clients and others, secure law office electronic data, and what online investigative techniques are permissible.

Peter Brooke Haskel, City Attorney, Dallas, TX

5:35 p.m. Adjourn

## FRIDAY MORNING, APRIL 7, 2017

### Presiding Officer:

Bryn Meredith, Taylor Olson Adkins  
Sralla & Elam LLP, Fort Worth, TX

7:30 a.m. Conference Room Opens

Includes continental breakfast.

8:30 a.m. .50 hr

### Innovative Districts and Creative Spaces

Explore public and private sector perspectives on the uses, costs, and special requirements of innovative districts and creative spaces.

Ed Walts, The University of Texas System, Austin, TX

9:00 a.m. .50 hr

### HB 40/245 Between a Gas Rock and a Hard Place

Discuss the effect of HB 40 on the enforcement of setbacks, noise, and other gas drilling and fire code regulations as it relates to Chapter 245 and residential subdivision development.

Bryn Meredith, Taylor Olson Adkins Sralla &  
Elam LLP, Fort Worth, TX  
Sarah J. Fullenwider, City of Fort Worth,  
Fort Worth, TX

9:30 a.m. .50 hr

### Regulations of Really Nimby (Dangerous) Land Uses

Analyze the recent Texas Supreme Court decision regarding nuisance (*Crosstex North Texas Pipeline v. Gardiner*) and its effect on prosecuting future nuisance cases.

Cathy Meyer Cunningham, Boyle & Lowry, Irving, TX

10:00 a.m. .50 hr

### Creative Economic Development

Examine how innovative zoning and development tools, as well as pocket homes and affordable housing, encourage successful communities, tax base, and job creation.

E. Scott Polikov, Gateway Planning Group, Inc.,  
Dallas, TX

10:30 a.m. Break

10:45 a.m. .50 hr

### Prior Non-Conformities

Hear a review and update on the law relating to nonconformities, including recent major cases. Discuss how and why an increasing number of communities in Texas, and around the country, are beginning to allow nonconforming uses to continue and, in some cases, expand.

Matthew Goebel, Clarion Associates, Denver, CO  
Karla Mariana Nieman, City Attorney's Office City of  
El Paso, El Paso, TX

11:15 a.m. .50 hr

### Reasonable Accommodations in Land Use

Hear a discussion and update of federal laws and related cases on accessibility requirements and reasonable accommodations—from sidewalks, to recreation, to housing, to information.

Kimberley Mickelson, Olson & Olson LLP,  
Houston, TX

11:45 a.m. .75 hr

### Navigating the Muddled Waters of Environmental Investigations in Land Use

Learn tips, tricks, and strategies for identifying and evaluating environmental concerns in property development.

Mark McPherson, McPherson LawFirm, PC, Dallas, TX  
Stephanie Sunico, Pape-Dawson Engineers, Inc., Fort  
Worth, TX

12:30 p.m. Pick Up Lunch

Included in registration.

## FRIDAY AFTERNOON

### Presiding Officer:

Kimberley Mickelson, Olson & Olson LLP,  
Houston, TX

## LUNCHEON PRESENTATION

12:50 p.m. .75 hr

### Legislative Update

Review pending legislation related to land use issues and other matters important to city and county government.

Snapper Carr, Focused Advocacy, LLC, Austin, TX  
Paul J. Sugg, Texas Association of Counties,  
Austin, TX  
Craig Farmer, City of Weatherford, Weatherford, TX

1:35 p.m. Break

1:50 p.m. .50 hr

### Tax Credits

For the past 30 years, the low-income housing tax credit has been a driving force to finance affordable housing. Learn how tax credit financing works and gain insight as to how changes in Washington, D.C. may impact the program.

Cynthia L. Bast, Locke Lord LLP, Austin, TX

2:20 p.m. 1.00 hr ethics

### Ethics of Negotiation

Discuss the ethical duties and obligations of both city and private attorneys. Distinguish when are you dealing with law and when are you dealing with fairness.

Michael A. Shaunessy, McGinnis Lochridge,  
Austin, TX

3:20 p.m. Adjourn



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### FUNDAMENTALS—LB17 – APRIL 5

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Conference registration includes Electronic Course Binder Download (PDF) in "Your Briefcase" at utcle.org

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Includes Electronic Course Binder Download (PDF) in "Your Briefcase"

- ☐ Live Webcast: April 5, 2017 ..... \$100

Fundamentals Registration Total ..... \$ \_\_\_\_\_

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Includes Course Materials and Thursday and Friday Luncheon Presentations

#### Select Registration Type

- ☐ Individual registration by March 29 ..... \$495  
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Call (512) 475-6700 to register additional participants

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## COMPLETE CONFERENCE MATERIALS For Research and Self-Study

Comprehensive Binder and Audio from the live conference. Available for download 6–8 weeks after the live conference date. Texas customers add 8.25% sales tax.

### FUNDAMENTALS—LB17

- ☐ eBinder Download (PDF) ..... \$60  
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☐ Audio Download (MP3) ..... \$50

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## AUSTIN

April 5, 6–7, 2017

### CONFERENCE LOCATION



#### Austin Marriott South

4415 S. IH. 35  
Austin, TX 78744  
512.441.7900

**Special Room Rate: \$179**  
good through March 15, 2017  
(subject to availability)

**Parking:**  
Complimentary self-parking

### KEY DATES

#### March 29, 2017

*last day for early registration*  
add \$50 for registrations  
received after this time

#### March 31, 2017

*last day for cancellation (full refund)*

#### April 3, 2017

*last day for cancellation (partial refund)*  
\$50 processing fee applied

#### April 5, 2017, 1:10 p.m.

*Fundamentals begins*

#### April 6, 2017, 8:20 a.m.

*Conference begins*

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