

# **Building Codes in the ETJ**

*Town of Lakewood Village vs. Bizios,*  
No. 15-0106 (Tex. 2016)



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April 28, 2016



## The State Mandate

“The legislature declares it the policy of this state to designate certain areas as the extraterritorial jurisdiction of municipalities to **promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.**” LGC 42.001



## Thus Sayeth The Courts

**Dallas Court of Appeals:** “Ordinances regulating development, such as those specifying design, construction and maintenance standards may be extended into a city’s extraterritorial jurisdiction” *Hartsell v. Town of Talty*, 130 S.W.3d 325, 328 (Tex. App. – Dallas 2004, pet. denied)

“[Section 212.003(a)] confers authority upon a city to extend its subdivision ordinances to its extraterritorial jurisdiction. ... Consequently, ordinances regulating development, such as those specifying design, construction and maintenance standards, may be extended by a city into its extraterritorial jurisdiction.” *City of Lucas v. North Texas Municipal Water Dist.*, 724 S.W.2d 811, 823 (Tex. App. – Dallas 1986, writ ref’d n.r.e.)



## Thus Sayeth The Courts

**San Antonio Court of Appeals:** Affirming injunction for the city to apply its tree preservation ordinance to the ETJ; tree preservation ordinance is a “rule governing plats and subdivisions of land that a municipality is authorized to adopt as rules that promote health, safety, morals or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.” *Milestone Potranco v. City of San Antonio*, 298 S.W.3d 242, 244 (Tex. App. – San Antonio 2009, pet. Denied)

**Tyler Court of Appeals:** “being subject to the city subdivision requirements are not peculiar burdens because they are the ordinary consequences burdening the general public, whose land falls within the city’s ETJ” *Sunchase Capital Group v. City of Crandall*, 69 S.W.3d 594, 597 (Tex. App. – Tyler 2001, no pet.)

**Corpus Christi Court of Appeals:** Weslaco’s subdivision rules applied to the ETJ, including rules for “construction,” “permits,” “licensing,” and “inspections.” *City of Weslaco v. Carpenter*, 644 S.W.2d 601, 603 (Tex. App. – Corpus Christi 1985, writ ref’d n.r.e.)



## Dallas Court of Appeals

- Lucas applied its subdivision rules and building codes to its ETJ, where the North Texas Municipal Water District sought to construct a wastewater treatment plant
- Holding: building codes apply to the ETJ
- Rationale: “Were we to hold that building standards are not contemplated by [212.002, .003], we would be left with a statute that grants authority over the laying out of streets, alleys and lot boundaries, but precludes authority over the most important part of a subdivision. Consequently, we conclude that the power over subdivisions conferred by [212.002, .003] necessarily or fairly implies a right to issue regulations governing construction of housing, buildings, and the components thereof. *City of Lucas v. North Texas Municipal Water District*, 724 S.W.2d 811, 823 (Tex. App. – Dallas 1986)



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20<sup>th</sup> Annual Land Use Conference session

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