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Right-of-Way planning considerations
“There’s more to that right-of-way than that right-of-way”

*Understanding the basics of right-of-way to help local governments in their planning,
constructing, maintaining and use of their right-of-way.*

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I. Intro.

Local governments own and control the development and management of both their public right-of-way and in some instances can control development of private right-of-way. Proper city development requires review of those elements that are essential to the city development process. The hope of this paper is to offer some practical information, advice and guidance on the subject. This paper is by no means the end all or be all on the subject, but hopefully it is informative to you.

II. What is a right-of-way?

When initially learning about land use, one of my first questions (in my head and not out loud so others could hear) was, “what to call it”. There are many ways I have seen the phrase written. Some use: “rights-of-way”, “right-of-ways”, “right-of-way” with dashes, or “right of way” without dashes, or how about ROW (must be in caps of course) or R-O-W. Very confusing. I have found each of these versions throughout many types of documents I have reviewed. On a limb they are all acceptable (to me). For purposes of this paper, I will go with right-of-way version typically found in the Texas Local Government Code (LGC).

LGC defines a *public* right-of-way as the “area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include: (a) a private easement; or (B) the airways above a public right of with regard to wireless telecommunications”.¹

Generally speaking, most people think of the right-of-way as the street. However, the right-of-way includes not just the street, but the sidewalks, and the area on either side of the street typically about seven and one-half feet on either side of the street.² A street can be paved or unpaved.

III. Role of Planning.

A thorough review of development plans is necessary to provide comprehensive and proper information and guidance to the city in order for the city to make appropriate decisions. A city’s right-of-way in many ways is an anchor for the city. An anchor provides stability, consistency, grounding and support and provides a vehicle for growth. Planning is extremely important to the health, welfare, and safety of the local government.³ Good planning review and creative designing provides a mechanism to bring all those attributes to the city.

¹ Tex. Loc. Gov’t Code § 284.002 (West 2020)

² Right-of-Way and Land Use Planning, Practical Law Practice Note w-022-3409

³ Tex. Loc. Gov’t Code § 211.001 (West 2020)

IV. Who Are The Planners? *It Truly Takes A Village.*

Planning professionals include those persons that are AICP certified (American Institute of Certified Planners), civil engineers, city staff, and other professionals with a level of specialty, expertise or an area of focus that is germane to the needs of the city. Clearly, not every jurisdiction will need the expertise of a coastal resource and flood plains manager as Galveston Island, Texas; but their expertise in development planning for a coastal city is quite valuable. There are many areas in regard to city development that a city can hire a specialist or consultant to help decide and meet the right-of-way needs of their particular city are.

V. The Vision: ‘We Not Trying To Be Gotham City – Batman’

It is important for planners to see their city’s vision when evaluating a development plan. To that end, as much as I like Batman (the trilogies are the best, no offense to Michael Keaton fans), I’m positive none of us would want our city to look like Gotham. Ways to determine a city vision is often gleaned from a city’s comprehensive plan or a strategic plan. If a city has zoning regulations then they need to have a comprehensive plan.⁴ In addition to review of a comprehensive plan, or a city’s strategic plan, helpful resources include subdivision ordinances or permitting requirements adopted by the city, along with other local, state and federal laws.

Development plans that impact the right-of-way should address and be reviewed for some, if not all, of these factors:

- Access to residents to major streets and highways;
- Prevention of a residential street becoming an unintended major street;
- School zones;
- Size of the streets;
- Specific construction standards of streets; including but not limited to:
 - Type of paving material - ex. concrete or asphalt;
 - Thickness, strength, subgrade material;
 - Street geometrics - ex. Straight, curving, cul-de-sac;
 - Street size and capacity;
- Placement of traffic control devices and speed limits;
- Requirements for lighting, including limitation and dark sky requirements or decorative lighting;
- Multimodal transportation, ex. Bike lanes, scooters, trails;
- Drainage factors;
- Water and wastewater facilities;
- Electric facilities, including lines, poles, underground facilities and whether auxiliary facilities will be hidden or camouflaged;
- Gas facilities;
- Telecommunications and cable facilities;
- Permanent markings for utilities and temporary marking when locates are required (Underground Facility Damage Prevention & Safety, Utilities Code chapter 251).

⁴ Id. at § 211.004

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"The Basics of Right-of-Way"