

Building Codes in the ETJ

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



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April 28, 2016

ETJ Building Code Enforcement

Without

With



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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"Municipal Regulation in the ETJ: *Lakewood Village v. Bizios*"