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THE UNIQUE NATURE OF LAND DEVELOPMENT IN THE COUNTY

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THE UNIQUE NATURE OF LAND DEVELOPMENT IN THE COUNTY¹

A confluence of events has resulted in a plethora of development on land outside the corporate limits along with increasing concerns about this type of development. Despite the pandemic, land development in 2020 continued at a feverish pace. At the same time that there are more development pressures in unincorporated areas cities have fewer and fewer land use regulatory tools at their disposal.

Texas cities alone regulate land use within their corporate limits. Counties alone regulate land use outside of the corporate limits and a city's extraterritorial jurisdiction ("ETJ"). Cities and/or counties regulate development in the ETJ.

In 2019 the Texas Legislature extended the prohibitions already in place against general law town unilateral annexations to home rule cities. Texas municipalities are now essentially prevented from annexing, or threatening to annex, potential developments they oppose or wish to regulate. As a result, the steady expansion of corporate boundaries has ground to a halt.

Finally, the Dallas Court of Appeals issued an opinion prohibiting cities from requiring building permits in their extraterritorial jurisdiction but allows cities to require plat approval in certain situations where land is not subdivided. *Collin County v. City of McKinney*, 553 S.W.3d 79 (Tex. App.—Dallas, 2015, no pet.).

TEXAS GROWTH

As we all know, the State of Texas has been one of the fastest growing states for many years. Primarily due to concern about COVID, there has been a significant movement from urban to suburban or rural areas since early 2020. U.S. household moving and relocation trends in response to the pandemic's impact on job situations and lifestyle changes show that 28% of Americans have at least s thought about relocating due to the ongoing COVID-19 pandemic, and U.S. households that indicate planning to move in 2021 increased by 20 percentage points from 2020 to 56%.

According to the Census American Community Survey, the current list of the fastest growing cities (by percentage) in Texas is as follows:

1. Fulshear
2. Prosper
3. Buda
4. Selma
5. Fate
6. Leander
7. Melissa
8. Manor

¹ This paper does not address financing districts in any detail.

9. Cibolo
10. Manvel

The common theme among the cities on this list is that they are further out suburbs from metropolitan centers. For example, Fulshear is approximately 35 miles from downtown Houston and Prosper is 40 miles from downtown Dallas. There is a strong growth trend toward being far away from the downtowns of major cities such as Houston, Dallas, San Antonio and Austin. Numerous residential and commercial developments are also occurring outside of the corporate limits in more rural areas.

GOVERNMENTAL ENTITY TYPES

Texas law recognizes three types of cities: Home rule, general law, and special law municipalities. *See Forwood v. City of Taylor*, 147 Tex. 161, 214 S.W.2d 282, 285 (1948). The nature and source of a municipality's power depends on the type of municipality. *See Laidlaw Waste Sys. (Dall.), Inc. v. City of Wilmer*, 904 S.W.2d 656, 658 (Tex. 1995) ("Laws expressly applicable to one category [of municipalities] are not applicable to others.").

Home rule cities derive their authority from the Texas Constitution, not from the acts of the Legislature. *See* Tex. Const. art. XI, §5. As the Texas Supreme Court has consistently acknowledged, "[h]ome-rule cities have the full power of self-government and look to the Legislature, not for grants of power, but only for limitations on their powers." *Southern Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013) (citing *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641, 643 (Tex. 1975)).

Cities have broad zoning and other land use regulatory authority in the corporate limits. Those powers are greatly restricted outside of the corporate limits. Extraterritorial powers must be authorized by statutes. *Tex. Att'y Gen. Op. LO-97-055* (1997); *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 531 (Tex. 2016).

Texas county legal authority is similar to that of a general law town. Counties lack general police power and may exercise only those powers expressly conferred upon them by the Constitution and by the Legislature. *Canales v. Laughlin*, 214 S.W.2d 451 (Tex. 1948).

ANNEXATION HALT

Prior to 1963, a Texas municipality could annex territory up to the corporate boundaries of another municipality. The "first in time, first in right" rule that the first to commence annexation or incorporation proceedings was entitled to complete the annexation led to numerous boundary conflicts. The Legislature enacted the Municipal Annexation Act, *Tex. Rev. Civ. Stat. Ann. art. 970a*, (now Chapter 43, *Tex. Loc. Gov't Code*) to address this situation.

Pursuant to their police powers, home rule cities historically have been able to unilaterally annex land subject to few constraints. These cities could typically annex (or threaten to annex) land in order to prevent or delay development. General law towns, on the other hand, were limited for the most part to annexing land by landowner consent or petition.

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"The Unique Nature of Land Development in the ETJ"