

UT LAW 22ND LAND USE CONFERENCE (3/22-23/18) – AUSTIN, TX

DEVELOPING REAL ESTATE OUTSIDE CORPORATE LIMITS

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Introduction

- How much authority do cities have to control growth outside of their corporate limits?
- Cities vs. Counties vs. Developers

What is ETJ?

Extraterritorial jurisdiction (“ETJ”) is statutorily created and constitutes the unincorporated area that is contiguous to the corporate boundary and that is located ½ to 5 miles from that boundary depending upon population.

Municipal Annexation

- Can only annex within ETJ
- Restrictions on annexation authority contained in Ch. 43, TEX. LOC. GOV'T CODE
- Significant restrictions on urban counties after December 1, 2017
- Impact of new legislation

County/General Law Authority

- No inherent authority
- Look to Constitution and statutes to determine what they may do
- Implied authority to extent reasonably necessary to make effective the power expressly granted

Home Rule Inherent Authority

- Look to the Constitution and statutes to determine what they should not do.
- However, courts have held that a city must have express (or implied when such power is reasonably incident to those expressly granted) statutory authority to exercise its extraterritorial power. *City of Sweetwater v. Hamner*.
- “[A] city’s authority to regulate land development in its ETJ is wholly derived from a legislative grant of authority.” *FM Props Operating Co. v. City of Austin*, 22 S.W. 3d 868, 902 (Tex. 2000). Justices Abbott, Hecht and Owen in dissent.

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