

PRESENTED AT
2016 Land Use Planning Conference
April 28-29, 2016
Austin, TX

BUILDING CODES IN THE ETJ

Wm. Andrew Messer



Wm. Andrew Messer
6351 Preston Road, Suite 350
Frisco, TX 75034
www.txmunicipallaw.com

Phone: 972.668.6400
Fax: 972.668.6414

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The Town of Lakewood Village (“Town”), like many cities in Texas, has adopted and extended to its ETJ the Town’s subdivision regulations and the International Residential Code, as well as uniform mechanical, electrical, fuel, gas, and plumbing codes. The Town’s building codes include heightened local standards tailored to the unique conditions in the Town and its ETJ such as floodplain regulations and requirements for foundations on expansive soils in order to increase the health, safety, and welfare of persons building in both the Town’s limits and its ETJ.

Harry Bizios was in the process of constructing a single-family residence on property in the Town’s ETJ without obtaining building permits and inspections from the Town, and failed to comply with the Town’s building codes. After Bizios intentionally removed and ignored two stop-work orders, the Town filed suit against Bizios seeking injunctive relief for violating its building codes in failing to obtain the required building permits and inspections. The trial court granted the Town’s request for a temporary restraining order and, after evidentiary hearing, a temporary injunction. Bizios appealed to the Second court of appeals.

On December 31, 2014, the Second court of appeals reversed the trial court’s grant of injunction. *Bizios v. Town of Lakewood Village*, No. 02-14-00143-CV, 453 S.W.3d 598 (Tex. App. – Fort Worth 2014, pet. filed). The court held that the Town, as a general-law municipality, did not have authority to extend its building codes to the ETJ, and remanded the case to the trial court for further proceedings. The opinion of the Second court of appeals was appealed to the Texas Supreme Court, which heard oral argument on March 8, 2016.

The ability of Texas municipalities to apply building codes to the ETJ is now a prevalent issue across the state. Municipalities have extended their building codes to their ETJ for decades with no issues and with full support from every reviewing court of appeals. Until the *Bizios*

case, the courts had uniformly held that subdivision rules governing development, including building codes, can be applied by Texas municipalities in the ETJ. The Fort Worth court's opinion has introduced uncertainty into the law and has put municipalities—and the Office of the Attorney General—into a kind of limbo state, without full knowledge of what the law allows. The issue is part of an appeal pending in the San Antonio court of appeals in *City of Helotes v. Continental Homes of Texas, L.P.*, No. 2013-CI-18405 (131st Dist. Co., Bexar County, Tex. June 15, 2015), *appeal docketed* 04-15-00571-cv, (Tex. App. – San Antonio 2015) (involving a general law city), part of the appeal pending in the Dallas court of appeals in *Arch Resorts, LLC v. City of McKinney*, No. 219-01855-2015 (219th Dist. Co., Dallas County, Tex. Aug. 24, 2015), *appeal docketed* 05-01108-cv (Tex. App. – Dallas 2015) (involving a home-rule municipality), and was the subject of a recent request for an Attorney General opinion involving home-rule municipalities, RQ-0023-KP. The Texas Supreme Court should resolve the uncertainty in the law and reverse the Fort Worth court of appeals' opinion by affirming every municipality's right to adopt and enforce its building codes in the ETJ.

I. ALL TEXAS MUNICIPALITIES HAVE THE STATUTORY AUTHORITY TO EXTEND THEIR SUBDIVISION RULES FOR DEVELOPMENT, INCLUDING BUILDING CODES, TO THE ETJ

Texas municipalities, whether home-rule or general-law, have been granted statutory authority to apply, by ordinance, their subdivision rules regarding development, including platting, building standards and permitting, in their ETJ. TEX. LOC. GOV'T CODE §§ 212.003(a), (c) 212.002, 214.904(a), 233.153(c). The Texas Legislature has specifically provided authority for municipalities (including general-law municipalities) to regulate development in the ETJ. Section 212.003 of the Local Government Code states in pertinent part:

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