

**LEGAL FOUNDATIONS OF LAND USE
PLANNING**

**2017 TEXAS CITIZEN
PLANNER PROGRAM**

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“Planning? We don’t have to follow any stinkin’ planning.”

- Gideon Kanner, at ABA-ALI Land Use Institute, 2006



CONTROL OF LAND USE

- Goes back at least as early as Socrates:
 - Twelve Tables, Rome, 450 B.C.
 - Whoever sets a hedge around his land shall not exceed the boundary; in the case of a wall, he shall leave one foot; in the case of a house, two feet...
 - Law of the Indies, 1572
 - Required town planning based on an environmental assessment; Central plaza concept
 - London, 1666
 - Led to requirement of brick exteriors, wider streets and open space for fighting fires



THE ROOT OF LAND USE AUTHORITY: POLICE POWERS

- Authority to enact land development regulations stems from a city's police powers:
 - To adopt laws to protect the public health, safety, welfare, and morals.
 - U.S. Const., 10th Amendment: reserves to the states all powers not delegated to the federal government.
 - This allocation of power leaves the states in charge of regulating land use.



POLICE POWERS

- All land use is local.
 - State legislature adopts laws limiting application of local control.
- While there is no “federal land use law”
 - Congress regularly adopts regulations that may impact local planning decisions:
 - Fair Housing Act
 - Civil Rights Act
 - Religious Land Use and Institutionalized Persons Act
 - Federal Aviation Act
 - Environmental Protection Act



CONSTITUTIONAL PROVISIONS

- Due Process—State must respect all rights owed a person:
 - Notice: Individuals have adequate notice of prohibited, or required, conduct.
 - Grieve: A fair opportunity to be heard, and
 - Appeal: An opportunity to appeal a decision.

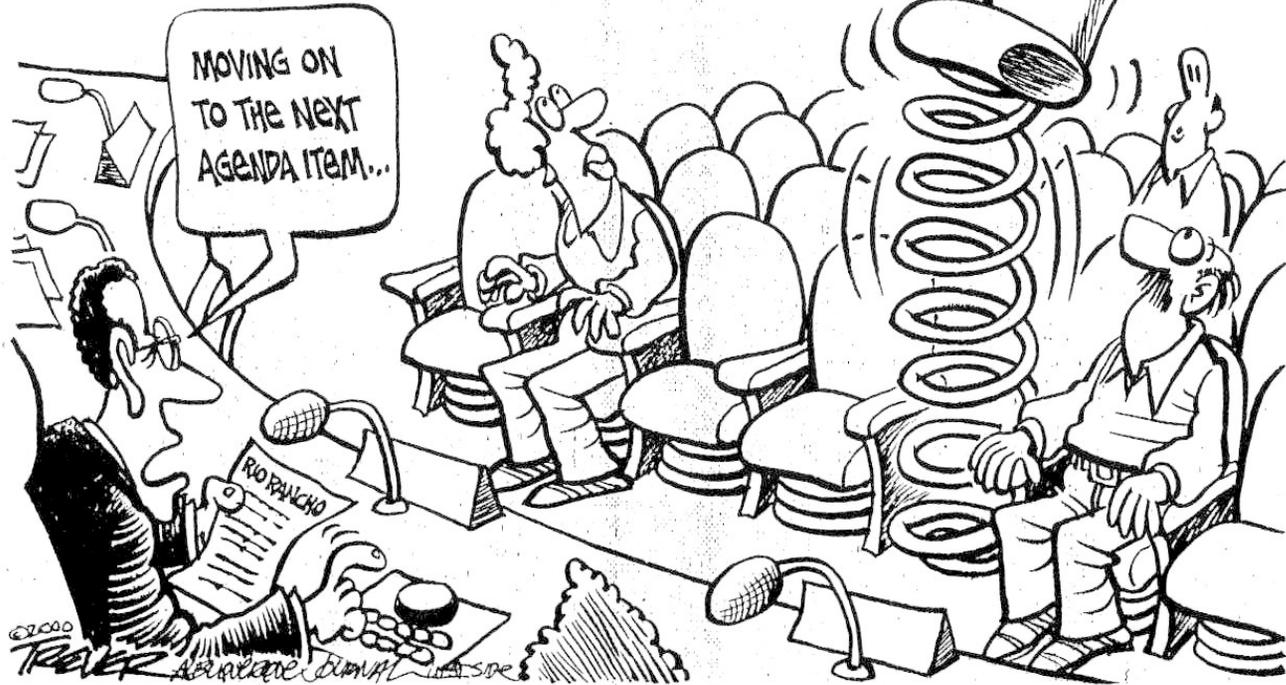


- Due Process challenges can be:
 - Procedural—an allegation that a full and fair opportunity for hearing was not afforded to all sides because of defects in notice, procedure, conflict of interest.
 - Substantive—an allegation that the action was arbitrary and capricious or exceeded legitimate governmental interests.

- Procedural challenges often arise if meetings conducted without good rules of procedure.



CITY COUNCIL MEETINGS PROCEEDED MUCH MORE TO THE MAYOR'S LIKING AFTER HE RETROFITTED THE AUDITORIUM WITH EJECTION SEATS



○ Vagueness and Overbroad

- Rules should not be drafted to lead to arbitrary and discriminatory enforcement.
- Rules should not be overly broad as written.
 - Avoid vague terminology such as “adequate” or “compatible”
- Rules should be narrowly drafted to to accomplish the significant government interest, in the least restrictive way.



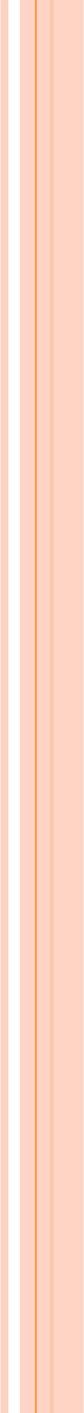
- Equal protection—treat similarly situated persons the same.
 - Rules must be applicable without giving preference to one class or type of individual.
- Preemption—The federal government may preempt, or takeover, an entire area of law:
 - Immigration
 - Foreign affairs



FREEDOM OF SPEECH

- Speech issues come up in
 - Political issues
 - Signs
 - General
 - ROW
 - Sexually oriented businesses
 - Parks/bandstands or pavilions
 - Parades or charitable collecting
 - Newspaper racks on sidewalks





○ Takings.

- U.S. Const., 5th Amendment provides that government may not take private property without the payment of just compensation.
 - Tex. Const. Art. I, Sec. 17 provides that no property may be “taken, damaged, or destroyed” without compensation.
- 

TAKINGS

- Acquisition of property—eminent domain. Compensation is a standard component.
- Regulatory—the regulation goes “too far.”
 - Permanent physical invasion: *Loretto v. Teleprompter Manhattan CATV Corp.*
 - Per se--allows NO use of the property: *Lucas v. South Carolina Coastal Commission.*
 - Exactions—dedication requirements for streets, parks; must be “roughly proportional”: *Nollan v. Cal. Coastal Commission*; *Dolan v. City of Tigard.*



CIVIL RIGHTS --INCL'G ADA, FHA

- Must challenge an action taken by a public official “under color of state law,” that is, in the scope of their duties.
- Immunity is generally the first defense—as a governmental official, actions taken within the scope of duties may be protected
 - Legislative actions--was there a rational basis for the decision?
 - Administrative or ministerial actions—was the ordinance met?



FEDERAL STATUTES

- Civil Rights Law—42 U.S.C. §1983
 - Anytime it says “civil rights”= many zeros to the left of the decimal point in an award.
 - Provides a remedy to landowners where an action taken under color of state law deprives an individual of “any rights, privileges, or immunities secured by the Constitution and laws...”



- Fair Housing Act—42 U.S.C. §3604, et seq.
 - “It shall be unlawful...to refuse...or otherwise make unavailable or deny, a dwelling to a person because of race, color, religion, sex, familial status or national origin or handicap.”



○ Fair Housing

- Failure of city to have “fair share” of low income housing for region.
- Denial of permits or zoning for a group home or a development serving a protected group.
- Having “too stringent” development regulations that “make housing unaffordable to protected groups.
- Failure to make “reasonable accommodations” in zoning regulations through granting of variances.



- Americans with Disabilities Act—42 U.S.C. §12101-12213.
 - Challenges for failure to make “reasonable accommodations” in zoning regulations through variances or waivers.
 - Affect subdivision design standards, can affect setbacks, stair or other structural elements in subdivision and building code.



- Environmental laws—Requirements for Corps permits, dredging rights, fill and wetlands issues.
 - Note that there could be GLO or TCEQ regulations for issues at the state level.



FEDERAL TELECOMM ACT OF 1996

- See also, Chapter 281, Texas Local Government Code.
- Issues arise in siting telecomm towers; what is “alternate site analysis.”
- State law governs how cities may regulate ROW with regard to telecomm carriers
- Impact on planning from both a visual, quality of life, and roadway maintenance issues.



RELIGIOUS RIGHTS

- Location of religious uses/accessory uses
- Christmas and Hannukah displays
- Establishment clause intended to ensure that laws are neutral towards religion.
- Free exercise clause is to ensure that laws do not inhibit the free exercise of religion or force individuals to violate the precepts of their religion.



POLICE POWERS IN TEXAS

- Cities are a creation of the state legislature.
 - Home-rule cities have all authority incidental to governance, subject only to limitation by specific provision by the legislature.
 - General law cities have only the authority given to them by the legislature.



○ In Texas, all property is “held subject to the valid exercise of the police power.”

○ *City of College Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 804 (Tex. 1984).



TEXAS STATUTES ON PLANNING

- Texas Local Gov't Code
 - Chapter 42—Municipal Boundaries
 - Chapter 43—Annexation
 - Chapter 211—Zoning
 - Chapter 212—Subdivision Platting
 - Chapter 213—Comprehensive Planning
 - Chapter 214—Buildings
 - Chapter 216--Signs
 - Chapter 243—Sexually Oriented Businesses
 - Chapter 245—Permit Processing/Vested Rights
 - Chapter 395—Impact Fees



MORE STATUTES RELATED TO PLANNING

- Texas Tax Code
 - Tax Abatement
 - Hotel-Motel Tax
- Texas Civil Statutes, Art. 5190.6
 - Industrial Development Corporations
- Texas Transportation Code
- Alcoholic Beverage Code
- Texas Property Code
 - Eminent domain
 - Condominium development



OTHER REGULATED AREAS

- Group homes
- Day cares
- Mobile homes and manufactured housing
- Industrialized housing
- Water/special districts (MUDs, WCIDs)



- Cities should adopt land use regulations that:
 - Are reasonable
 - Have valid governmental interests behind them
 - Help the community meet its goals and plan



LAND USE REGULATION

- Comprehensive Planning
- Zoning
- Subdivision Controls
- Annexation and Municipal Boundaries
- Capital Improvements Plans
- Other Development Regulations
 - Environmental
 - Drainage
 - Building/sub-standard buildings
 - Signs, Landscaping



COMPREHENSIVE PLAN

- Long-term look at the community
- Should guide planning, CIP, and financing decisions
- Zoning must be done “in accordance with a comprehensive plan.”
 - Zoning ordinance can be a plan by itself for that purpose.
 - If you have a plan, it should be followed—or amended.



WHAT IS A COMPREHENSIVE PLAN?

- ★ The COMMUNITY'S Plan
- ★ Policy document
- ★ Guides decisions about the city's future built environment
- ★ Long-range (20 plus years) and comprehensive



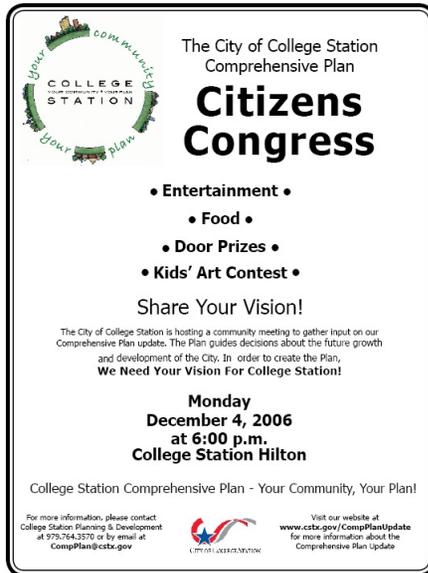


EXISTING CONDITIONS ASSESSMENT

- ★ Locational Context & the Land
- ★ Demographics
- ★ Economic Development
- ★ Existing Land Use
- ★ Public Facilities, Infrastructure & Services
- ★ Transportation



COMMUNITY INVOLVEMENT



The City of College Station
Comprehensive Plan

Citizens Congress

- Entertainment •
- Food •
- Door Prizes •
- Kids' Art Contest •

Share Your Vision!

The City of College Station is hosting a community meeting to gather input on our Comprehensive Plan update. The Plan guides decisions about the future growth and development of the City. In order to create the Plan, **We Need Your Vision For College Station!**

**Monday
December 4, 2006
at 6:00 p.m.
College Station Hilton**

College Station Comprehensive Plan - Your Community, Your Plan!

For more information, please contact
College Station Planning & Development
at 979.764.2570 or by email at
CompPlan@cstx.gov

Visit our website at
www.cstx.gov/CompPlanUpdate
for more information about the
Comprehensive Plan Update.



- ★ Focus Group Meetings
- ★ Citizens Congress
- ★ City-wide Survey
- ★ Comprehensive Plan Advisory Committee (CPAC)
- ★ Open House events
- ★ Public hearings

WE NEED YOU...

... to provide your opinions on the future of your community. This will take just a few minutes. But, your input will be invaluable as the City of College Station prepares to update its Comprehensive Plan - the long-range plan for how we can make our community even better in coming years. More information about the plan update process may be found online at www.cstx.gov/CompPlanUpdate



- A Comprehensive Plan addresses a wide variety of community needs and desires. Please select and rank from 1 to 3 your top three priorities on the following list:

<input type="checkbox"/> Environmental protection	<input type="checkbox"/> Historic buildings and areas
<input type="checkbox"/> Planning for compatible land uses	<input type="checkbox"/> Drainage and flooding
<input type="checkbox"/> Traffic circulation	<input type="checkbox"/> Community image/appearance
<input type="checkbox"/> Jobs and economic development	<input type="checkbox"/> Redevelopment efforts
<input type="checkbox"/> Parks and recreation facilities	<input type="checkbox"/> Public safety services (police/fire)
<input type="checkbox"/> Housing needs	<input type="checkbox"/> Utilities (water, sewer, electricity)
- Community planning is aimed at improving the "quality of life" of residents. Please select and rank from 1 to 3 the three items on the following list that most negatively impact your day-to-day life in College Station today:

<input type="checkbox"/> Traffic congestion	<input type="checkbox"/> Limited activities for kids
<input type="checkbox"/> Crime/security concerns	<input type="checkbox"/> Lack of job opportunities
<input type="checkbox"/> Loss of "green" space	<input type="checkbox"/> Dealing with City regulations
<input type="checkbox"/> Housing costs/availability	<input type="checkbox"/> City taxes and utility rates
<input type="checkbox"/> Impacts of rental housing	<input type="checkbox"/> Loss of "sense of community"

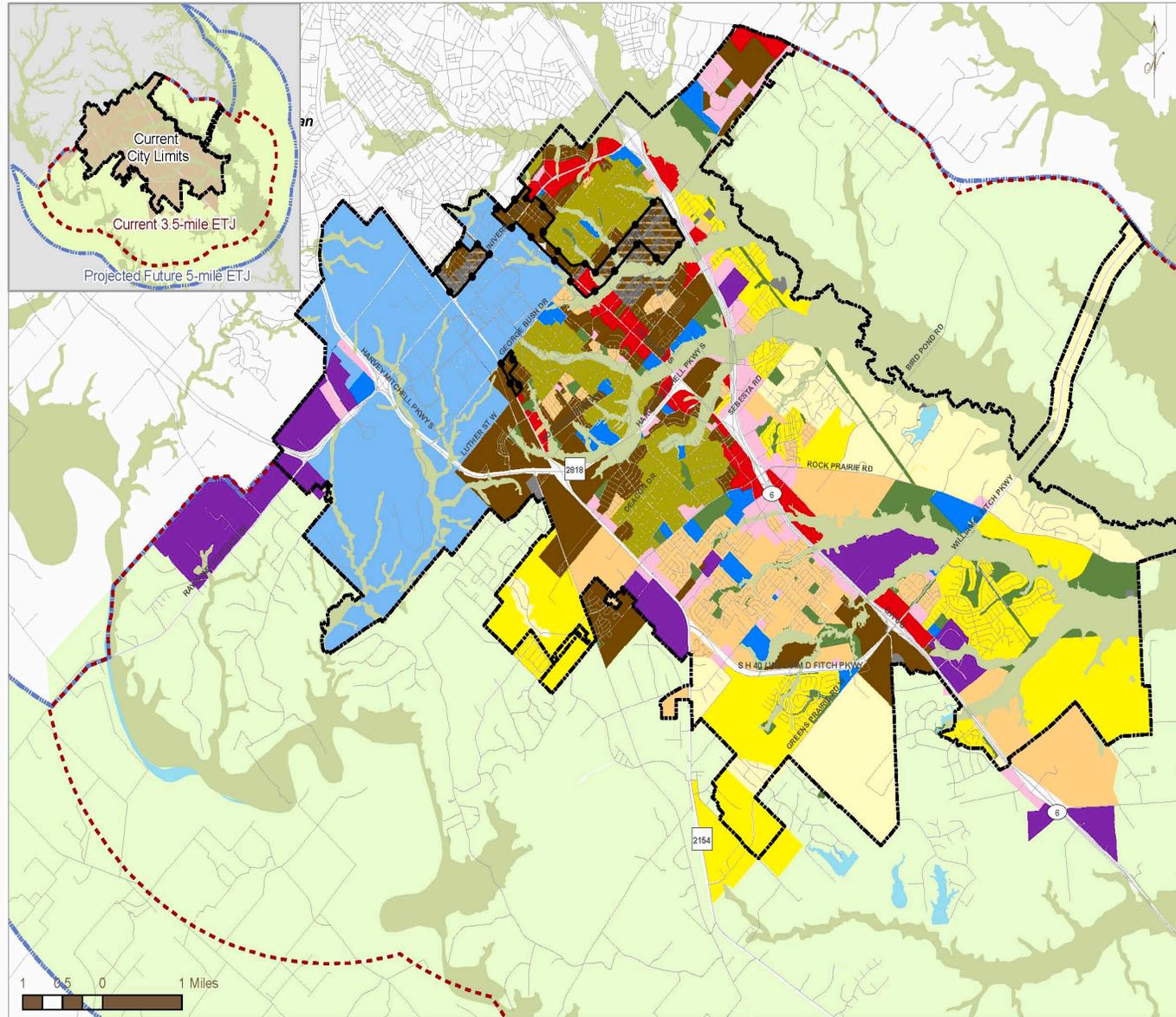


ELEMENTS OF PLAN (CHAPTERS)



- ★ Introduction
- ★ Community Character
(Land Use Plan)
- ★ Neighborhood Integrity
- ★ Economic Development
- ★ Parks, Greenways, and The Arts
- ★ Transportation
(Thoroughfare Plan)
- ★ Municipal Services and Community Facilities
- ★ Growth Management and Capacity
- ★ Implementation and Administration





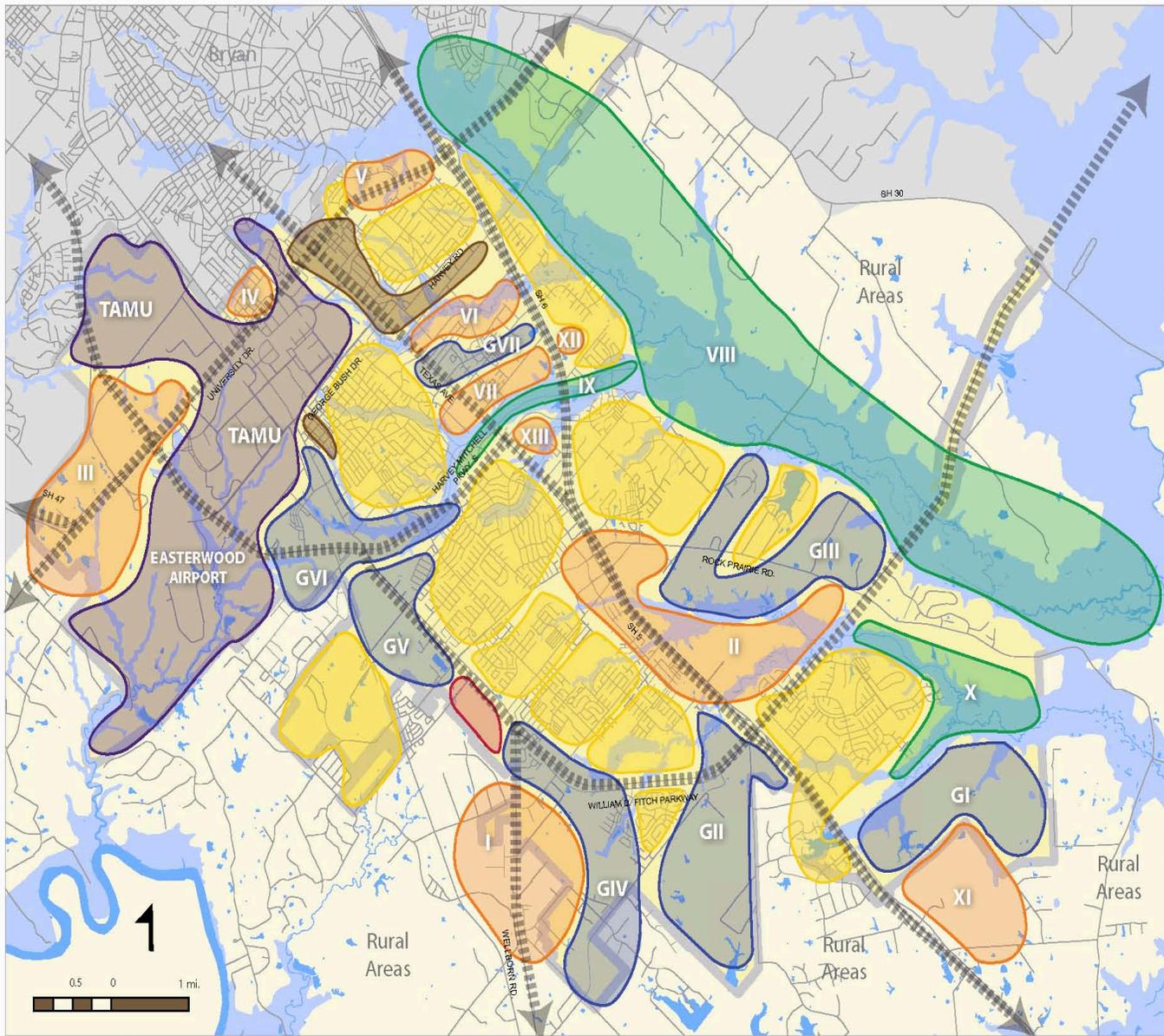
Map 2.2 Future Land Use and Character

- Neighborhood Conservation
- Rural
- Estate
- Restricted Suburban
- General Suburban
- Urban
- Urban Mixed Use
- General Commercial
- Suburban Commercial
- Business Park
- Institutional/Public
- Texas A&M University
- Natural Areas - Protected
- Natural Areas - Reserved
- Utilities
- Redevelopment Areas
- Water
- City Limits
- ETJ - 3.5 Mile
- ETJ - 5 Mile (estimated)

Note: A comprehensive plan shall not constitute zoning regulations or establish zoning boundaries.



Adopted May 28, 2009



Map 2.1

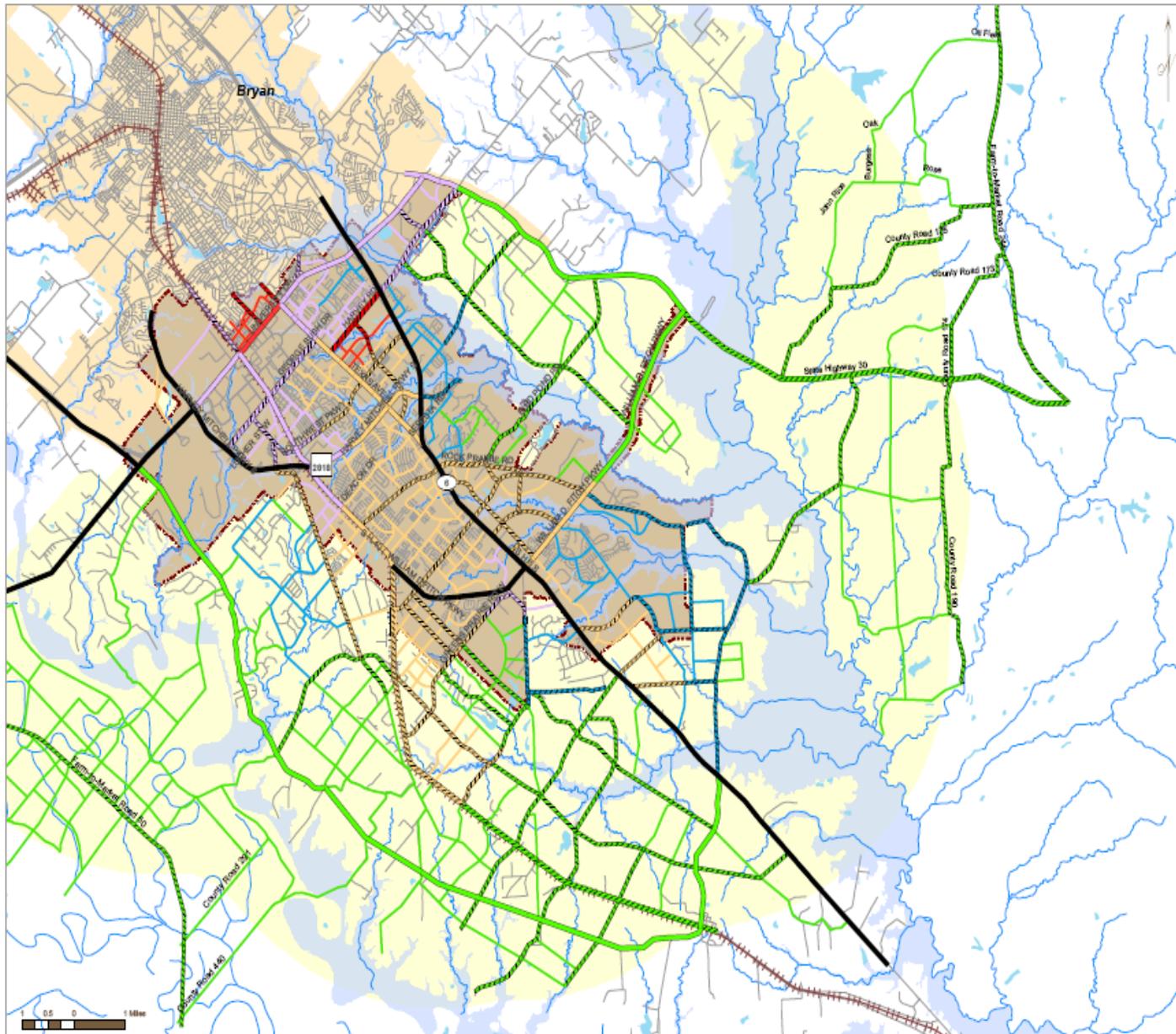
Concept Map

- Neighborhood Plans**
NEIGHBORHOODS & AREAS OF INFLUENCE
- District Plans**
WALKABLE, MIXED USE CENTERS WITH UNIQUE FOCUS
- Corridors**
IDENTITY CORRIDORS OR NATURAL CORRIDORS
- Redevelopment Areas**
REQUIRE CITY INTERVENTION
- Rural Areas**
SURROUNDING CITY, ESTATE WITHIN CITY

- Redevelopment Area
- Neighborhood Planning Area
- Growth Area
G - GVII
- Planning District/Corridor
 - I WELLBORN COMMUNITY AREA A
 - II SPRING CREEK DISTRICT
 - III PRESIDENTIAL CORRIDOR GATEWAY DISTRICT
 - IV NORTHGATE DISTRICT
 - V HOSPITALITY CORRIDOR
 - VI WOLF PEN CREEK DISTRICT
 - VII MUNICIPAL CENTER
 - XI SPEEDWAY DISTRICT
 - XII COLLEGE STATION SCIENCE PARK
 - XIII HARVEY MITCHELL DISTRICT
- Natural Planning Corridor
 - VIII CARTER CREEK CORRIDOR
 - IX BEE CREEK CORRIDOR
 - X LICK CREEK CORRIDOR
- Business Park
- Texas A&M University
- Floodplain

Adopted May 28, 2009



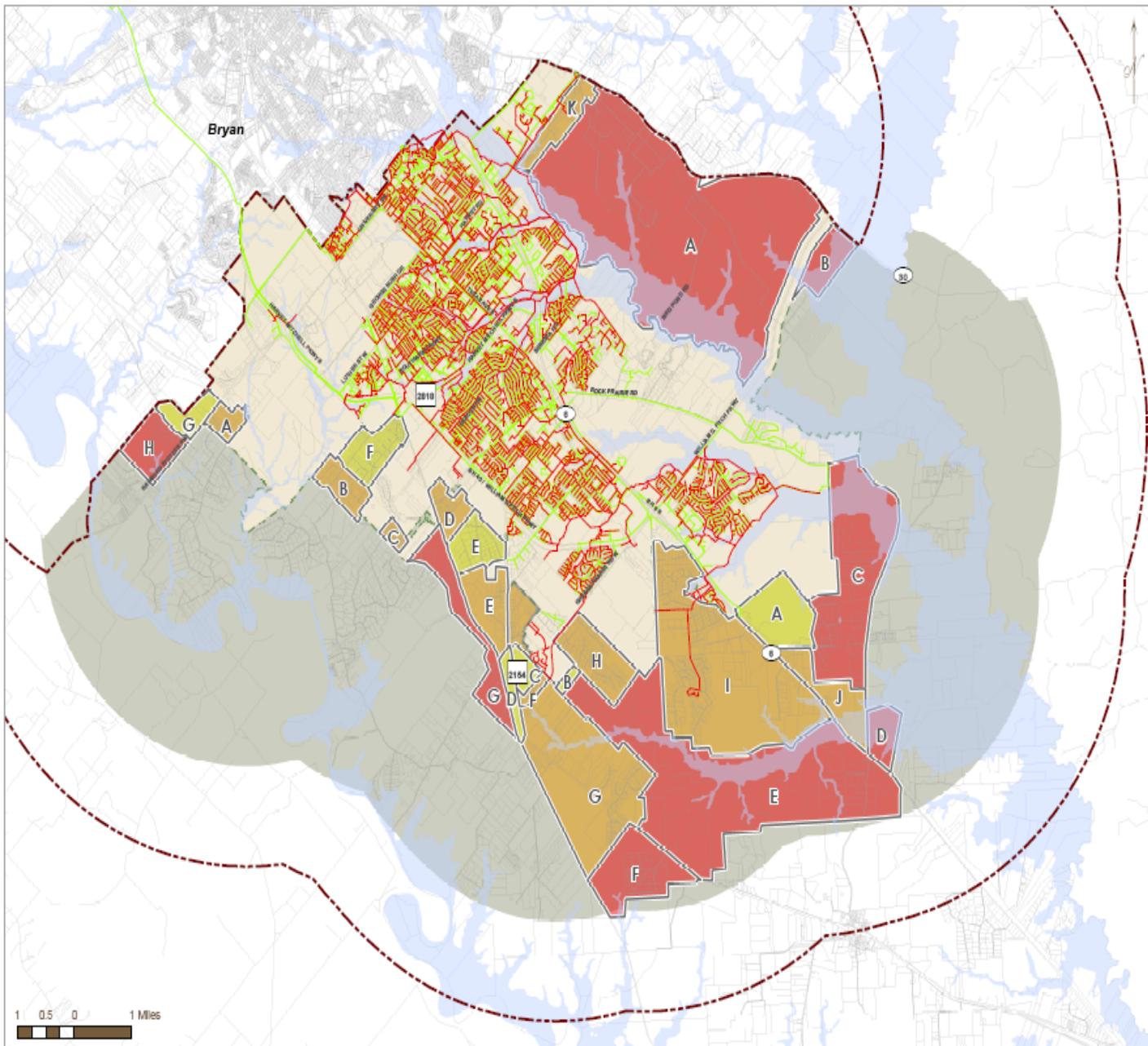


Map 6.7
Thoroughfare Plan &
Functional Classification
Map

- Freeway/Expressway**
- Boulevard, 6 Lane**
- Mixed Use Urban**
- Urban**
- General Suburban**
- Restricted Suburban**
- Estate/Rural**
- Boulevard, 4 Lane**
- Mixed Use Urban**
- Urban**
- General Suburban**
- Restricted Suburban**
- Estate/Rural**
- Avenue, 4 Lane**
- Mixed Use Urban**
- Urban**
- General Suburban**
- Restricted Suburban**
- Estate/Rural**
- Street, 2 Lane**
- Mixed Use Urban**
- Urban**
- General Suburban**
- Restricted Suburban**
- Estate/Rural**
- Floodplain**
- City Limits**
- ETJ**
- Railroad**



January 7, 2009



Map 8.4 Potential Annexation Priorities and Phasing

- Immediate (0-3 years)
- Near Term (3-10 years)
- Longer Term (10+ years)
- Annexation Subareas
- Sewer Lines
- Water Lines
- FEMA Floodplain
- City Limits
- ETJ - 3.5 Mile
- ETJ - 5 Mile

*Annexation areas are not intended to be parcel specific

*Subareas A through K are discussed further in Chapter 8

DRAFT
March 2009



IMPLEMENTATION

★ Other Master Plans

- ★ Bicycle, Pedestrian, & Greenways Master Plan
- ★ Water / Waste Water Master Plans
- ★ Parks & Recreation Master Plan
- ★ Economic Development

★ Subdivision Regulations

★ New Zoning Districts

★ Neighborhood & District Plans

★ Capital Improvements Programming



IMPLEMENTATION

- ★ Budget Constraints
- ★ The Political Reality
- ★ Infrastructure Challenges
- ★ Neighborhood Plans – Resident Turnover
- ★ Competing Interests
- ★ Long-Range Planning v. Development Review



IMPLEMENTING REGULATORY CHANGES

- Must be reasonable
- Must have sound governmental basis—why do you want to regulate that
- Must be clear and definite

- Don't try to be “short” or “simplified”. Definitions and detail matter. Sometimes it takes more words to be clear about what you want.



ZONING REGULATIONS

- Regulates the use of land
- Has been upheld as a valid exercise of the police power by federal and state courts
- Texas Zoning Enabling Statute:
Chapter 211 Texas Local Government Code



ZONING REGULATIONS—WHO'S WHO

○ City Council

- Legislative body
- Final authority on all zoning matters
- Cannot act without recommendation from Planning and Zoning Commission
- Due to legislative nature of actions in the zoning context, decisions given great deference



WHO'S WHO

- Planning and Zoning Commission
 - Appointed by City Council
 - Quasi-legislative body
 - Makes recommendations to City Council on zoning matters
 - Duty to implement plans adopted by City Council



WHO'S WHO

- Zoning Board of Adjustment
 - The quasi-judicial board
 - May not act in way that re-writes or changes the legislation
 - Empowered to hear certain applications
 - Variances
 - Appeals
 - Special Exceptions
 - Other matters under the zoning ordinance



ZONING APPLICATIONS

- Map changes—changes in zoning districts
 - Change in district
 - SUPs
 - Overlay districts
- Text changes—amendments to the regulations



NIMBYs, NIMTOOs AND LULUs—SOME THINGS YOU CAN'T TOTALLY CONTROL

- Sexually oriented businesses
- Manufactured homes
- Cell towers
- Signs
- Group homes
- Landfills
- No referendums except for initial zoning regulation



SUBDIVISION REGULATIONS

- Chapter 212 Texas Local Government Code
- City Regulations
- Provides system of land registration, identification of property for mail, emergency services
- Controls standards for infrastructure



SUBDIVISION REGULATIONS

- Governing body has approval authority for plats.
- Plats must be approved if they meet all elements of subdivision ordinance and related regulations.
- 30 day time limit for action—approval or denial— from date of application for action, or plat is deemed approved.



SUBDIVISION REGULATIONS

- Major issue is whether exactions are proportional or excessive
- There must be a “rough proportionality” between the exactions—e.g., ROW—and the burden on the city infrastructure.
- This requirement is now statutory—an engineer hired by the city must evaluate and certify that exactions are proportional.



VESTED RIGHTS IN TEXAS

○ Chapter 245, TLGC

- Projects have a right to continue under regulations in existence at:
 - The time a permit (or first in a series) is applied for,
 - that gives the city fair notice of the type of permit sought and
 - The nature of the development.
 - Unless city has procedure to review submission materials and respond on deficiencies within 10 days; then city can terminate application in 45 days.
 - Unless city regulations have provisions to restart “Project” upon certain occurrences.



VESTED RIGHTS (CONT.)

- SB 574, 2005. Expanded the law to include zoning regulations that affect landscaping, tree preservation, open space/park dedication and property classification.
- Provides that permits are good for two-5 years.
- Eliminates city's immunity from suit.

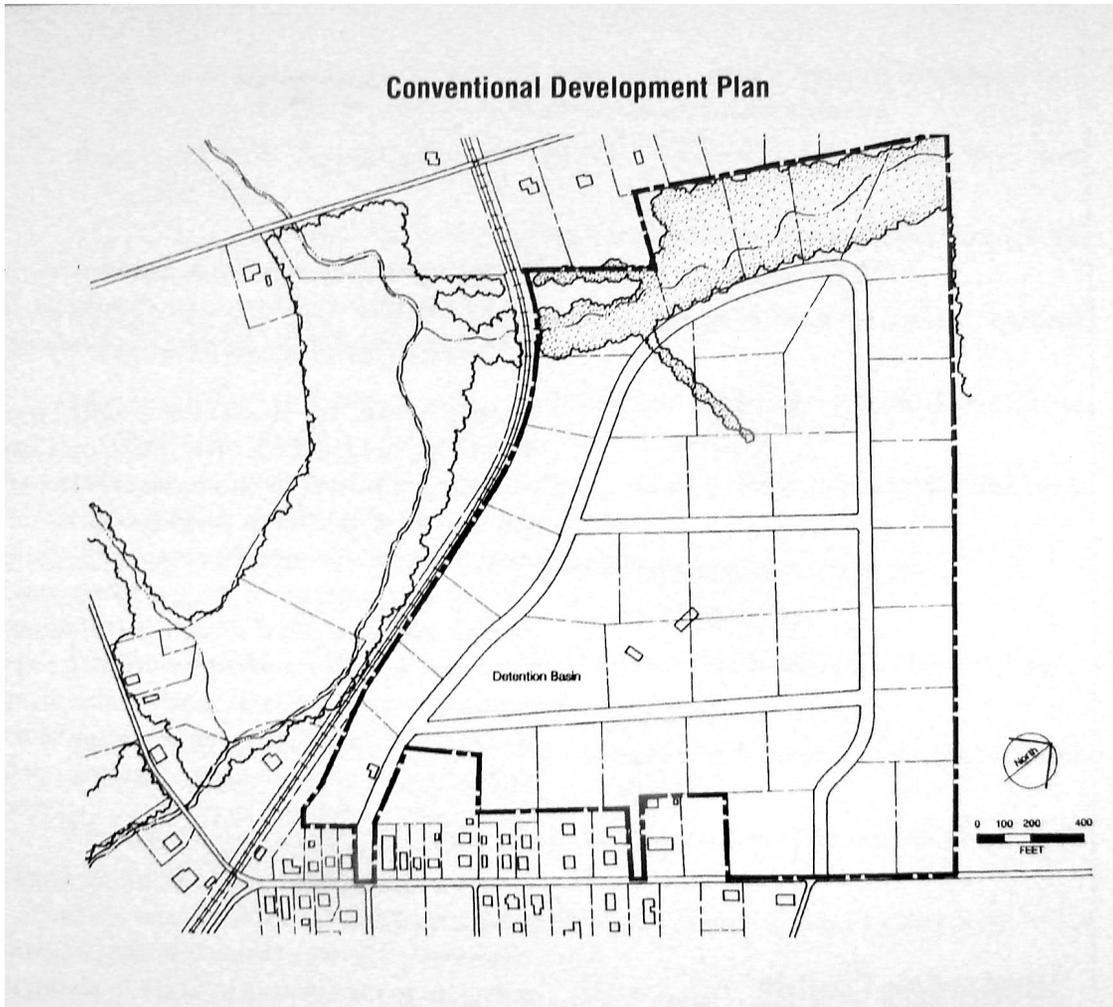


NEW(ER) IDEAS IN LAND DEVELOPMENT

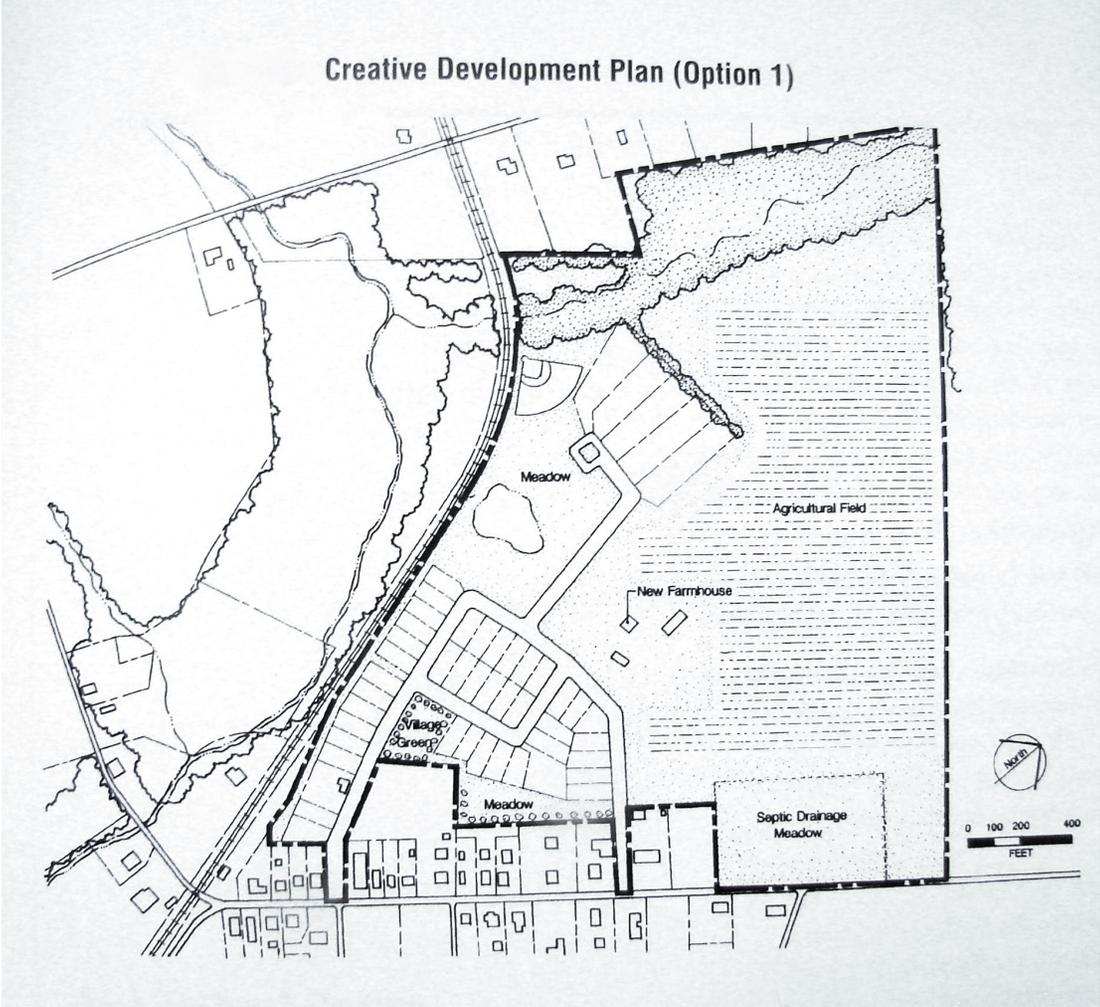
- Cluster Development Regulations
- Unified Development Codes
 - Brings all ordinances in one document
 - Potential for confusion and legal problems
- Planning for Health Related Issues
 - Urban farming
 - Location of grocery stores and health clinics
 - Walkability and bikeability
- Form Based Zoning
 - Looks less at use, more at structures



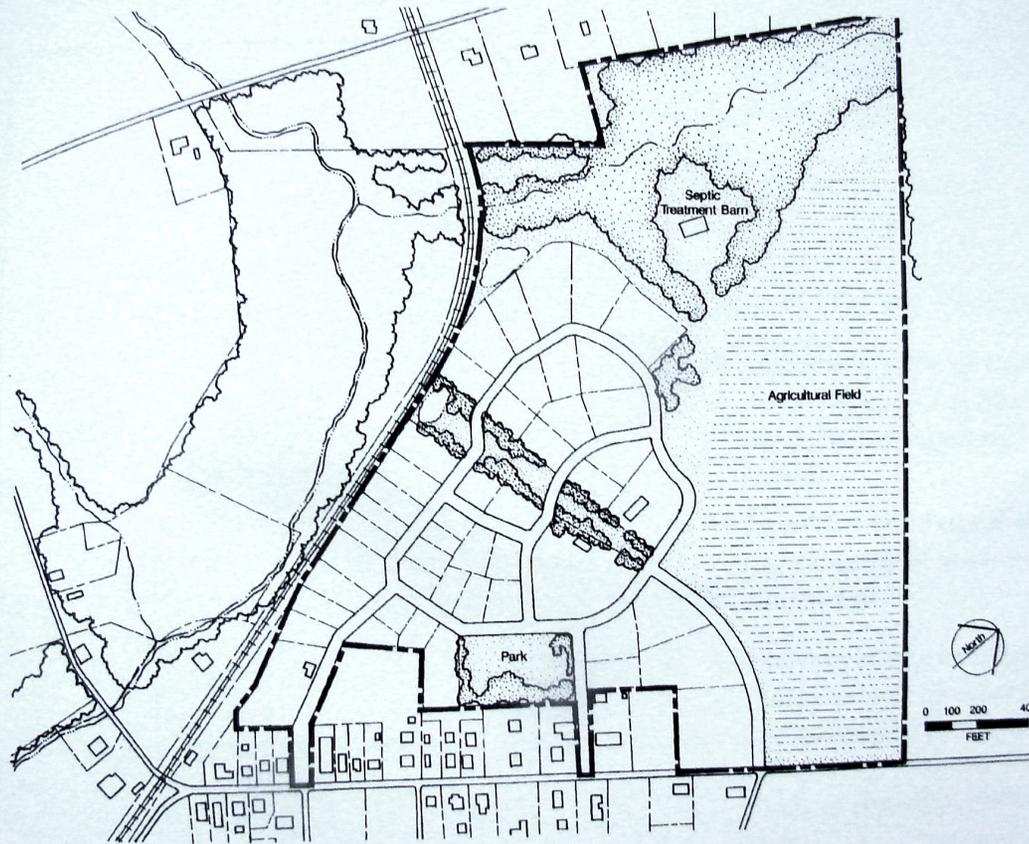
Conventional Development Plan



Creative Development Plan (Option 1)



Creative Development Plan (Option 2)



DEFINITIONS: “GREEN SPACE”

- City X: Comprehensive Zoning Ordinance, Div. 7, Parking Requirements:
- All required parking lots for commercial use shall meet the following requirements:
 - “Be paved with concrete or other impervious surface to the thickness required in Table A,
 - Be striped in accordance with the City’s design standards, and
 - Contain at least 20% of the total lot area of green space.”**



“GREEN SPACE”

- The term “green space” was not defined.
- The city GOT 20% “green space”—painted concrete.
- In the enforcement action, the judge agreed with the owner.



URBAN FARMING



URBAN FARMING



URBAN FARMING



URBAN FARMING

**Are animals
an accessory
use?**



WIND TURBINES AND SOLAR PANELS



CHECK FOR INTERNAL CONSISTENCY



PRIVATE WI-FI BUSINESS



WHAT IS THE SIGN IN THIS PHOTO?



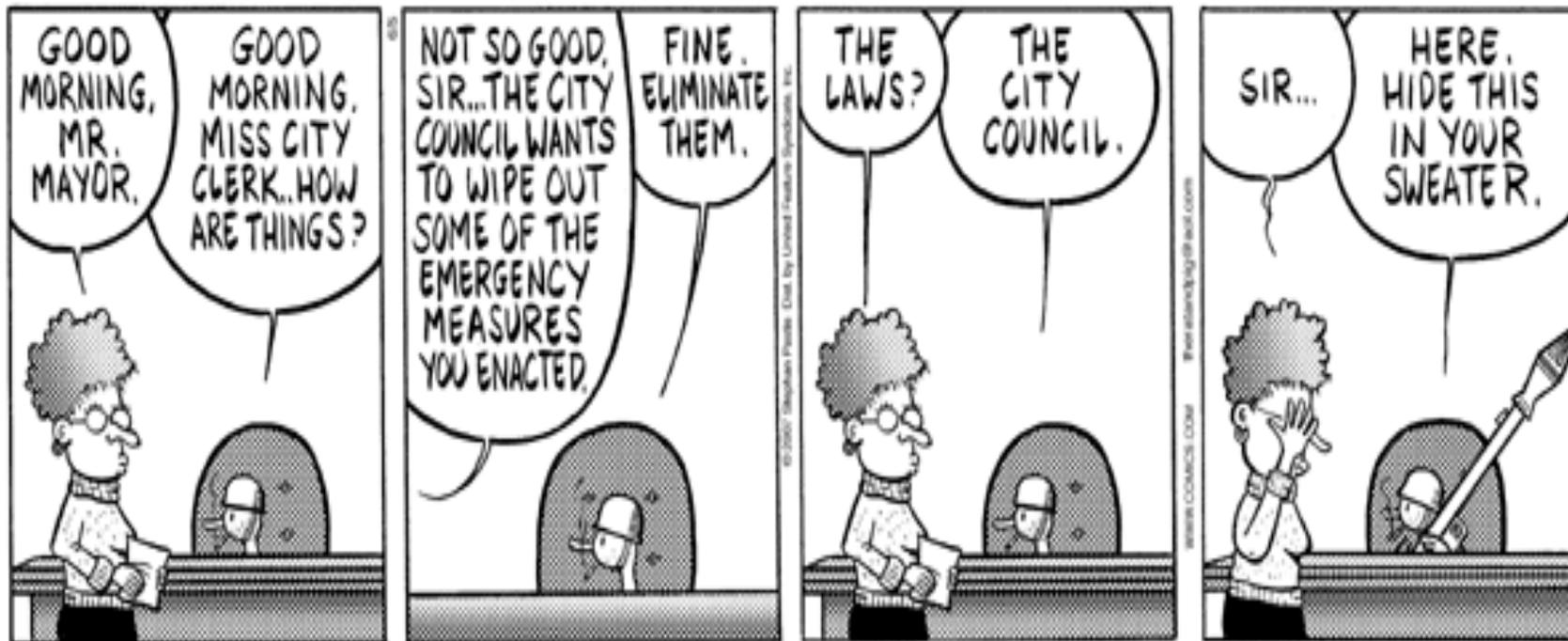
SIGN OR ART?



STATUTES AFFECTING GOV'T OPS

- Texas Local Government Code (other than planning statutes)
 - Chapter 171—Conflict of Interests
 - Chapter 176—Disclosure of Relationships
- Texas Government Code
 - Chapter 551—Open Meetings Act
 - Chapter 552—Public Information Act
 - Chapter 2007—Private Property Act/Takings Law





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ALL OF THESE LAWS ARE DESIGNED:

- Protect the city,
- Protect elected and appointed officials, staff as individuals,
- Protect the applicant's property and civil rights,
- Protect neighbor's and public property interests, and
- Protect and inform the public.



GOALS FOR LAND USE DECISIONS

- To make reasoned decisions that will provide the best growth and development plans for the community.
- To make those decisions in accordance with all applicable laws and due process.
- To avoid the courthouse.



AVOIDING THE COURTHOUSE

- Utilize professional staff and legal counsel.
- Ask questions of staff or the city attorney.
- Follow your comprehensive plan and ordinances.
- Ensure an accurate record is made, if required.
- Be objective in your comments and let the process work.
- Treat everyone the same and consistently follow good rules of procedure.



“By far the greatest and most admirable form of wisdom is that needed to plan and beautify cities and human communities.”

--Socrates, Greek philosopher,
educator and dramatist
(469-399 BC)



*Of course, the Athens city
leaders tried and sentenced
Socrates to death...*

