

Bastrop Planning and Zoning Commission Agenda

Bastrop City Hall City Council Chambers
1311 Chestnut Street
Bastrop, TX 78602
(512) 332-8800



June 29, 2023

Amended 3E - Agenda - Planning and Zoning Commission at 6:30 PM

Bastrop Planning and Zoning Commission meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at (512) 332-8800 or write 1311 Chestnut Street, 78602, or by calling through a T.D.D. (Telecommunication Device for the Deaf) to Relay Texas at 1-800-735-2989 at least 48 hours in advance of the meeting.

1. **CALL TO ORDER**

2. **CITIZEN COMMENTS**

At this time, three (3) minute comments will be taken from the audience on any topic. Anyone in attendance wishing to address the Board/Commission must complete a citizen comment form and give the completed form to the Board/Commission Secretary prior to the start of the Board/Commission meeting. In accordance with the Texas Open Meetings Act, if a citizen discusses any item not on the agenda, the Board/Commission cannot discuss issues raised or make any decision at this time. Instead, the Board/Commission is limited to making a statement of specific factual information or a recitation of existing policy in response to the inquiry. Issues may be referred to City Manager for research and possible future action.

It is not the intention of the City of Bastrop to provide a public forum for the embarrassment or demeaning of any individual or group. Neither is it the intention of the Board/Commission to allow a member of the public to slur the performance, honesty and/or integrity of the Board/Commission, as a body, or any member or members of the Board/Commission individually or collectively, or members of the City's staff. Accordingly, profane, insulting or threatening language directed toward the Board/Commission and/or any person in the Board/Commission's presence will not be tolerated.

3. **ITEMS FOR INDIVIDUAL CONSIDERATION**

3A. Consider action to approve meeting minutes from the May 25, 2023 Planning and Zoning Commission Meeting.

Submitted by: Melissa Gustafson, Development Technician

3B. Consider action to approve meeting minutes from the May 25, 2023 Impact Fee Advisory Committee Meeting Minutes.

Submitted by: Melissa Gustafson, Development Technician

3C. Consider action to approve meeting minutes from the June 8, 2023 Planning and Zoning Workshop Meeting Minutes.

Submitted by: Melissa Gustafson, Development Technician

3D. Consider action on an ordinance amending the Bastrop Building Block (B3) Code, Article 3.1 Place Type Zoning Districts, and Adding Article 3.4 Planned Development Districts, for the purpose of considering Planned Development Districts within the City of Bastrop.

Submitted by: Sylvia Carrillo, City Manager, ICMA-CM, CPM

3E. Consider action to approve the Casata Preliminary Plat, being 22.64 acres out of Farm Lots 64 & 65, located west of North Main Street within the Statutory Extraterritorial Jurisdiction of Bastrop, Texas, as shown in Exhibit A.

Submitted by: Trey Job, Assistant City Manager

4. **UPDATES**

4A. Future development related items

4B. Development Services Department Monthly Project Volume Report.

4C. Individual Requests from Planning & Zoning Commissioners that particular items to be listed on future agendas (no group discussion allowed).

5. **ADJOURNMENT**

I, the undersigned authority, do hereby certify that this Notice of Meeting as posted in accordance with the regulations of the Texas Open Meetings Act on the bulletin board located at the entrance to the City of Bastrop City Hall, a place of convenient and readily accessible to the general public, as well as to the City's website, www.cityofbastrop.org and said Notice was posted on the following date and time: Friday, June 23, 2023 at 4:00 p.m. and remained posted for at least two hours after said meeting was convened.

/s/ Viviana Andres
Viviana Andres, Customer Service Manager



STAFF REPORT

MEETING DATE: June 29, 2023

TITLE:

Consider action to approve meeting minutes from the May 25, 2023 Planning and Zoning Commission Meeting.

STAFF REPRESENTATIVE:

Melissa Gustafson, Development Technician

ATTACHMENTS:

- Meeting Minutes



Planning and Zoning Commission

Item 3A.

May 25, 2023 Meeting Minutes

The City of Bastrop Planning and Zoning Commission met Thursday, May 25, 2023, at 6:44 p.m. in the Council Chambers located at 1311 Chestnut Street, Bastrop, Texas 78602.

1. CALL TO ORDER

Debbie Moore called the meeting to order at 6:44 p.m.

Debbie Moore	Present
Ishmael Harris	Present
Carrie Caylor	Present
Scott Long	Present
Judah Ross	Present
Patrice Parsons	Present
Kristi Koch	Present
David Barrow	Present

2. CITIZEN COMMENTS

Cynthia Meyer – 110 Briar Court – Expressed appreciation to current Commissioners and time spent together serving on Commission.

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- 3A. Consider action to approve meeting minutes from the April 27, 2023, Planning and Zoning Commission Regular Meeting

Ishmael Harris made a motion to approve the April 27, 2023, Planning and Zoning Commission meeting minutes. Carrie Caylor seconded the motion and the motion carried unanimously.

- 3B. Consider action to approve meeting minutes from the April 27, 2023, Impact Fee Advisory Committee Meeting Minutes.

Judah Ross made a motion to approve the April 27, 2023, Impact Fee Advisory Commission meeting minutes. Scott Long seconded the motion and the motion carried unanimously.

- 3C. Public hearing to consider and act on amending SEC.2.4.001 NONCONFORMING USES AND STRUCTURES Continuing Lawful Use of Property & Existence of Structures item (4) No nonconforming use or Structure may be expanded, reoccupied with another nonconforming use, or increased as of the effective date of this Code, unless authorized the ZBA by adding an administrative relief component for residents.

Trey Job presented to Commissioners the Public hearing to consider and act on amending SEC.2.4.001 NONCONFORMING USES AND STRUCTURES Continuing Lawful Use of Property & Existence of Structures item (4) No nonconforming use or Structure may be expanded, reoccupied with another nonconforming use, or increased as of the effective date of this Code, unless authorized the ZBA by adding an administrative relief component for residents.

Planning and Zoning Commission

May 25, 2023
Meeting Minutes

Item 3A.

Staff presented the proposed changes as recommended by the Commissioners from the prior meeting showing:

Cannot stop the use for 18 months or longer if:

- Discontinuance of non-conforming upon an act (abandonment for example)
- They do not add more than 50% of structural alterations of the total appraised value as deemed by *Square Footage*
- Over 50% of the total *Square Footage* value is not lost due to damage.

Additional update was that notifications for changes to property zoning, etc., should change from 200 feet to 500 feet radius from the property in question.

Debbie Moore opened the Public Hearing for comments at 6:54 pm.

There were no citizens comments.

Debbie Moore closed the Public Hearing at 6:54 pm.

Discussion ensued between Commissioners and Staff regarding clarification of notification of radius of notifications.

Proposed changes were to have a 500-foot radius of notification from the property in question.

Carrie Caylor made a motion to approve with the changes discussed with 500-feet consistency for notice and radius and square footage being 50% of the structure. David Barrow seconded the motion. The motion carried with Seven (7) approvals and one (1) abstention.

4. WORKSHOP

4A. Presentation and workshop to discuss regulations for short-term rentals.

Sylvia Carrillo presented to the Commissioners the workshop to discuss regulations for short term rentals.

Discussion ensued between Commissioners and Staff regarding short term rental regulations.

1. Is there is a way to enforce code violations?
 - a. Staff stated it depends on what section the code violations fall under. Certain of the non-emergency type issues fall under the Police. There are other items, litter and animal control that fall under the PD Code Enforcement Officer.

Staff reminded Commissioners that we have very little ability to regulate short term rentals. We can run a search on all the sites and report to the State for those who are not registered.

2. Are short-term rentals not required to provide a registration to the City?
 - a. Staff stated it would be under very limited circumstances. We are required to treat short-term rentals as we would any single-family dwelling.
3. How do we identify the short-term rentals and ensure they are paying their taxes?

Planning and Zoning Commission

May 25, 2023
Meeting Minutes

Item 3A.

- a. Staff stated that we will run searches on the Air B&B sites and the Travelocity site and complete a cross reference. This will be done regularly as this will be the only way to ensure they are registered with the State and paying their HOT Taxes.

- 4B. Discussion and workshop on an ordinance amending the Bastrop Building Block (B3) Code, Article 3.1 Place Type Zoning Districts, and Adding Article 3.4 Planned Development Districts, for the purpose of considering Planned Development Districts within the City of Bastrop.

Sylvia Carrillo presented the Discussion and workshop on an ordinance amending the Bastrop Building Block (B3) Code.

Discussion ensued between Commissioners and Staff regarding the ordinance to amend the B3 Code.

1. Is there was a minimum amount of space that a PDD takes up and what defines it?
 - a. Staff stated that there is not a size requirement, however, we would be hard-pressed to allow a single-family home to do a PDD.
2. Are there examples of current or past projects where the PDD might would have applied?
 - a. Staff stated the Movie Studio Project would was a good example for where a PDD would have been helpful.
 - b. Rezzin Pullum, Assistant City Attorney added Burleson Crossing would also have been a good project for a PDD due to the number of warrants and variances requested for the project.
3. Commissioners stated they would like to have more discussion and citizen comments before proceeding with the PDD.
4. Would the administrative approval keep it from coming before the Planning and Zoning Commission?
 - a. Staff stated that any administrative approval would still be presented to the Commissioners for their review and feedback and would still require notice within ~~int~~ the 200 or 500 ft area of the project.
5. Rezzin Pullum clarified to the Commissioners that any PDD will be based on an existing zoning district and would offer flexibility in meeting the intent of the Code.
6. Is it possible to have some developers come and speak with the Commission?
 - a. Staff confirmed that the developers could come and speak with Commissioners in a workshop round table type format.
7. Commissioner would like to know what issues the developers are experiencing that the Commission needs to consider when making decisions.

Staff provided a 1998 PDD Primer to the Commissioners and clarified that the PDD is not an overlay, it's an actual district.

Planning and Zoning Commission

May 25, 2023
Meeting Minutes

Item 3A.

5. UPDATES

5A. Update on recent City Council actions regarding Development Services Department items.

Sylvia Carrillo presented to Commissioners the recent City Council actions on Planning Department items which included:

- Assistant Planning Director position was downgraded to a Senior Planner. An offer was made and accepted with a June 14th start date.
- Planner position has an offer made.
- There are vacancies for the Electrical Inspector and the Development Engineer.
- Holding off on filling the Director to allow the team time to become cohesive.
- Introduced new Building Official, James Cowey, new Development Technicians, PJ Collins and Alondra Macias, Process Improvement Manager, Kaye Sapikas. Reintroduced Development Technician, Melissa Gustafson.

There were 47 automated trade permits issued for Development Services, only 1 of the 47 permit was out of compliance.

There were no recent City Council actions regarding the Development Services Department items.

5B. Development Services Department Monthly Projects Volume Report.

Sylvia Carrillo presented to Commissioner the Building and Planning Department Monthly volume projects for April.

5C. Individual Requests from Planning & Zoning Commissioners that items to be listed on future agendas (no group discussion allowed).

Judah Ross requested continuing discussion on the Sign Ordinance and streamlining the process.

Carrie Caylor asked that we revisit the fee schedule for notification in 500 ft area. Sylvia stated it was being handled in the budget process.

Patrice Parsons requested a workshop with the Development community.

Sylvia Carrillo requested the Commission to meet every two weeks moving forward for the foreseeable future.

6. ADJOURNMENT

Scott Long made a motion to adjourn at 7:48 p.m. Ishmael Harris seconded the motion, and the motion carried unanimously.

Debbie Moore, Chair

Carrie Caylor, Vice-Chair



STAFF REPORT

MEETING DATE: June 29, 2023

TITLE:

Consider action to approve meeting minutes from the May 25, 2023 Impact Fee Advisory Committee Meeting Minutes.

STAFF REPRESENTATIVE:

Melissa Gustafson, Development Technician

ATTACHMENTS:

- Meeting Minutes



IMPACT FEE ADVISORY COMMITTEE MEETING

Minutes - Thursday, May 25, 2023, at 6:00 P.M.

1. CALL TO ORDER

Debbie Moore called the meeting to order at 6:00 pm.

Dawn Kana	Absent
Debbie Moore	Present
Ishmael Harris	Present
Carrie Caylor	Present
Scott Long	Present
Patrice Parsons	Present
Judah Ross	Present
Kristi Koch	Present
David Barrow	Present
Ashleigh Henson	Absent

2. CITIZEN COMMENTS

There were no citizen comments.

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- 3A. Potential Action on Transportation Impact Fees Land Use Assumptions and Capital Improvements Plan for City Council.

Jake Gutekunst, with Kimley-Horn on behalf of the City of Bastrop, presented the Commission with Potential Action for Comments on Land Use Assumptions and CIP

There were no questions or change requests from Commissioner prior to sending to City Council for review.

Judah Ross made a motion to approve the action as presented. Patrice Parsons seconded the motion. The motion carried unanimously.

4. WORKSHOP

- 4A. Presentation and discussion on Transportation Impact Fees, Maximum Fee Calculation, and Policy Information for City Council.

Jake Gutekunst, with Kimley-Horn on behalf of the City of Bastrop, presented the Commission with Transportation Impact Fees, Maximum Fee Calculation and Policy Information for City Council.

- 1. Commissioners asked for explanation regarding the property tax in play. Based on state law, in Chapter 395, one of the requirements when we calculate the impact of

development, is to take out any projected ad valorem property taxes that are expected to come in the next 10 years from that growth.

2. Commissioner asked if the conversion rates were available.
 - a. This information will be covered in the next meeting.
3. Is there a better way to handle Policy Consideration?
 - a. We need a system that is:
 - Predictable
 - Equitable
 - Transparent
 - Flexible
 - Legal
 - Consistent
4. Policy decision Outline:
 - Effective date
 - Should there be anything that is exempt?
 - Phased-In Approach
 - Collection rate
 - Limited by maximum fee
 - Other considerations
 - Flat option
 - Percentage Option
 - Vary by land use or land use category.
 - Reductions (optional)
5. Commissioners asked what we are being asked to recommend today.
 - a. There is nothing to recommend today, we are just setting the framework.
 - b. Staff stated that they do not have a date set for when we are going to enact these fees.
 - c. Staff noted that none of these fees will be passed on to current residents, it is only passed on to new development.
6. Commissioners were asked to come back to the next meeting with ideas for options of other types of collection rates and to bring any comments, and suggestions.

5. ADJOURNMENT

Carrie Caylor made a motion to adjourn the meeting at 6:44 pm. Ishmael Harris seconded the motion. The motion carried unanimously.

Debbie Moore, Chair

Dawn Kana, Advisor



STAFF REPORT

MEETING DATE: June 29, 2023

TITLE:

Consider action to approve meeting minutes from the June 8, 2023 Planning and Zoning Workshop Meeting Minutes.

STAFF REPRESENTATIVE:

Melissa Gustafson, Development Technician

ATTACHMENTS:

- Meeting Minutes



PLANNING & ZONING WORKSHOP MINUTES

June 8, 2023, at 6:00 P.M.

1. CALL TO ORDER

Time: 6:00 PM

Debbie Moore	Present
Ishmael Harris	Absent
Carrie Caylor	Present
Scott Long	RESIGNED 06/08/2023
Patrice Parsons	Present
Judah Ross	Present
Kristi Koch	Present
David Barrow	Present
Ashleigh Henson	Present

2. CITIZEN COMMENTS

Debra Jones, resident at 1606 Pecan Street spoke regarding the hardships and potential loss of income in trying to install utilities and to receive authorization needed to development her property.

3. WORKSHOP

3A. Discussion and workshop on an ordinance amending the Bastrop Building Block (B3) Code, Article 3.1 Place Type Zoning Districts, and Adding Article 3.4 Planned Development Districts, for the purpose of considering Planned Development Districts within the City of Bastrop.

Mechanics of a PDD

- Orderly Development
- Base Standards
- Own Rules/District
- Public Hearing AND Public Comment

PDD Process

- Conceptual Plan
- Public Hearings
- Amendment to the Zoning Map by Ordinance

Misconceptions to the PDD

- Staff Makes All the Decisions
- It is Spot Zoning
- We Won't Ever Get Good Connectivity
- It is an Attempt to Undermine the Code

Discussion ensued between Commissioners and City Staff regarding consideration of Planned Development Districts within the City of Bastrop.

1. Will we adopt the new code and use it to update things according to the B3 Code or vice versa?
 - a. We will look at the big picture and see how we can make things work for that particular development. A PDD cannot be brought in to destroy an underlying district.
2. When staff is considering working through a PDD does it allow for amendments to happen for the public?
 - a. If we see the same items being brought up, then those are things that need to be addressed in the code.
3. Can you speak to how the PDD may alleviate any current financial or administrative burden for the City and how they currently must navigate this process?
 - a. We will need to run some financial models. Currently the process runs linear. The City requires certain plans and then they receive approval from Planning & Zoning. The applicant now must follow those plans. If any issues arise, the applicant must come back to Planning & Zoning to get permission to make any necessary changes. A PDD allows for a more overall view of projects with basic requirements being met, but allowing necessary changes as the project develops.
4. Why can't we take the B3 and add elements of the PDD to the B3?
 - a. That is what we are doing – the PDD will “sit” inside the B3.
5. Can you speak more to the Public Hearing process – where would it be held?
 - a. It would be held here in Planning and Zoning Commission.
6. You mentioned City Council and Planning and Zoning Commission being able to speak – will upcoming projects be placed on the agenda, or will be if Planning and Zoning Commission brings it up?
 - a. It must be approved here, so must be discussed here for each amendment or project.
7. A concern, as stated previously, is that we've had approximately 4 projects that have come before us in the past two years, and we worked it out here. One specific project, there were three (3) meetings – the client failed to show up to one meeting - commissioners were able to come to a conclusion in two meetings. Commissioners addressed concerns and worked through the issues. It does not seem there have been very many brought before Planning and Zoning – are they getting mired down before even coming to P&Z? If so, we want to see them because we feel we can help them work through it. Commissioners would appreciate clarification. Process at the dais is painful for applicants. There is limited authority for staff/city manager to make a decision. Ties the hand of staff who are the professionals who are responsible for working through the process and as expeditiously as possible. House Bill 3167 requires action within a specific time frame. Anything must have action – approval or denial within 30 days from the date of acceptance. No response gives automatic approval. We accept every other Monday, go through a detailed review process, and we deny quickly because we know how it ends up here.
8. Can you elaborate on why it's not beneficial to have discussions like this in public?

- a. It is beneficial to determine what didn't work and what is not in the communities best interests. As professionals, you've entrusted us to ensure that we are executing all the plans and that all our actions relate to that. There is a stripping away of authority of the staff if we bring a product that checks all those boxes, and we don't get to do that. If we must bring you a product, as submitted, and must tell you what is wrong with it, even if I have a solution. I must bring everything that is wrong with the project and the Commissioners make the decision whether to grant a warrant or not.
9. Do you have any concern that there could be political pressure applied to staff to rule one way or another?
- a. That is in every City. That is why we have a public process here.
10. Is it safe to assume that the PDD process applies regardless of the size of the project?
- a. Yes.
11. Is it safe to assume that there is a little bit of a bi-directional flexibility for the benefit of the developer as well as the City?
- a. Yes, staff are living and breathing it. Staff cannot deviate from our lane unless we are given authority to do so. The code is supposed to be a living breathing document. It has not been.
12. Why could we not look at the specific things that are causing the problems and amend the B3 code around those items?
- a. We are, but it's taking some time. The pieces of the code that don't work are mainly on the commercial side. The PDD is a short-term solution enabling us to work on solutions to prevent the situation from imploding. Code amendments take time. Yes, we are amending the code and yes, we will be bringing the amendments forward.
13. If you decide to leave and are supportive of the code changes and then a new City Manager comes in with different ideas and now, we are locked into something that may not be what we believe the community will support. If we look at the major items first, Commercial and Multi-Family are having problems with, and figure out a way to amend the B3 Code without the PDD, would it be more palatable?
- a. The PDD is a way to salvage the good things without throwing out the B3. An amendment to the code may remove your ability to do certain things and then you end up with something that is not wanted.
14. Do we need to make a recommendation currently?
- a. A recommendation is not needed as this is a workshop.

3B. Discussion on a Town Hall meeting to revisit the B3 code on June 15th from 6pm to 8pm.

Planning and Zoning Commission is invited. It will be held at the Bastrop Convention Center, and it will be recorded and live streamed.

4. ADJOURNMENT

Judah Ross made a motion to adjourn at 6:56 pm. Patrice Parsons seconded the motion. The motion passed unanimously.

Debbie Moore, Chair

Carrie Caylor, Vice Chair



STAFF REPORT

MEETING DATE: June 29, 2023

TITLE:

Discuss and act on an ordinance amending the Bastrop Building Block (B3) Code, Article 3.1 Place Type Zoning Districts, and Adding Article 3.4 Planned Development Districts, for the purpose of considering Planned Development Districts within the City of Bastrop.

AGENDA ITEM SUBMITTED BY: Sylvia Carrillo, ICMA-CM, CPM, City Manager

BACKGROUND/HISTORY:

The B3 code, as written, was meant to be a living document. It has, since its adoption, only recently begun to be revisited as the commercial and residential development community continues to try to navigate the complexity and rigidity of the code as written. Local residents have faced similar challenges.

The recent code amendments have been introduced as a method to alleviate the pain points in the code as we continue to seek resolution to those segments of the code that do not work as written, nor in practice.

The Planned Development District amendment to the code is intended to alleviate the pain points of:

- Rigidity
- Impracticality of certain sites
- Lack of clear administrative authority to the staff
- Requirement of the Planning Commission and the City Council to design from the dais
- Additional time constraints in place as part of the B3 process

The PDD ordinance is intended to act as a rezoning and includes publication in the newspaper and public hearings. Further, is not intended to undermine the existing code as the underlying zoning remains intact. It is intended to apply flexibility while still meeting the intent of the code via an administrative process instead of the need for a warrant before the planning commission and council. During that administrative process, staff work out the best arrangement keeping the city's best interests at the forefront and bringing a solution-oriented process to planning commission and city council for final approval.

The planning commission may still request amendments to the agreed upon layout, as may the city council. Conversely, if there are areas in the design that still do not work, staff will be prepared to recommend a denial or to make amendments at the dais.

The beauty of the PDD is that it allows the public and the legislative bodies to see a project in its entirety and the required submittals are package based instead of piecemeal based. This leads to better decision making by the staff and legislative bodies.

ATTACHMENTS:

- Planned Development District Ordinance





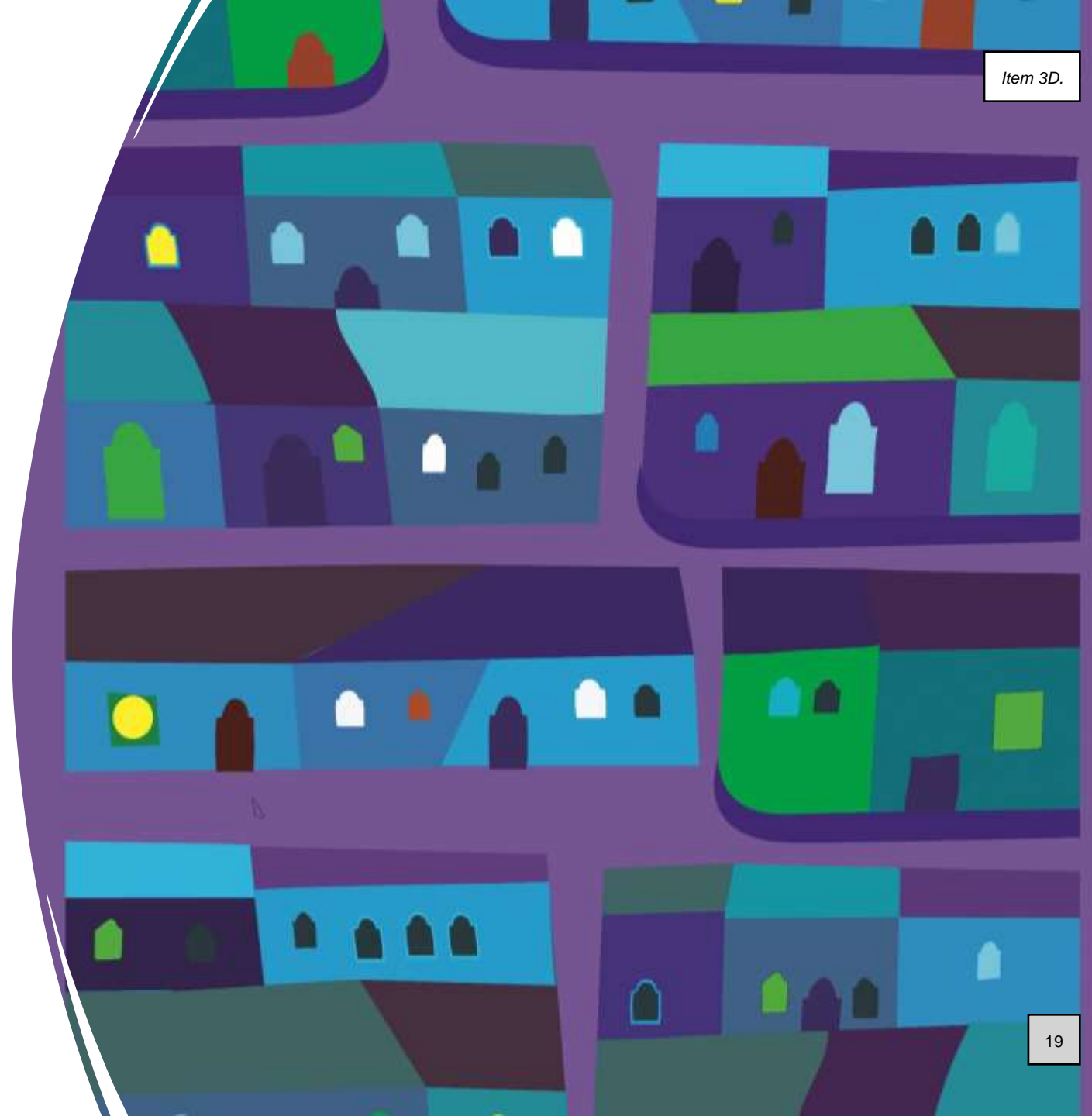
June 8, 2023

Planning and Zoning Workshop

Sylvia Carrillo , City Manager

Planned Development District (PDD)

- Chapter 211 – Local Government Code
- The purpose of PDDs is to provide more flexibility and creativity in zoning and project planning through the development of master-planned projects that encompass myriad land uses.





Why a PDD?

- Discussion regarding the B3 and its rigidity
- Flexibility
 - Intent
 - Purpose
- State Statue – Upheld in Court
- PROCESS

Mechanics of a PDD

Orderly Development

- Site plan
- Zoning
- Subdivision (Plat)
- COMBINED INTO ONE PROCESS

Base Standards

- Flexibility
- Intent/Purpose

Own Rules/District

- Meet the intent of orderly development
- Comprehensive plans
- Future land use plan
- Runs with the land until another rezoning occurs

Public Hearing AND Public Comment

- Planning and Zoning process similar to a REZONING
- Notice to 500 ft AND publication
- City Council process similar to a REZONING

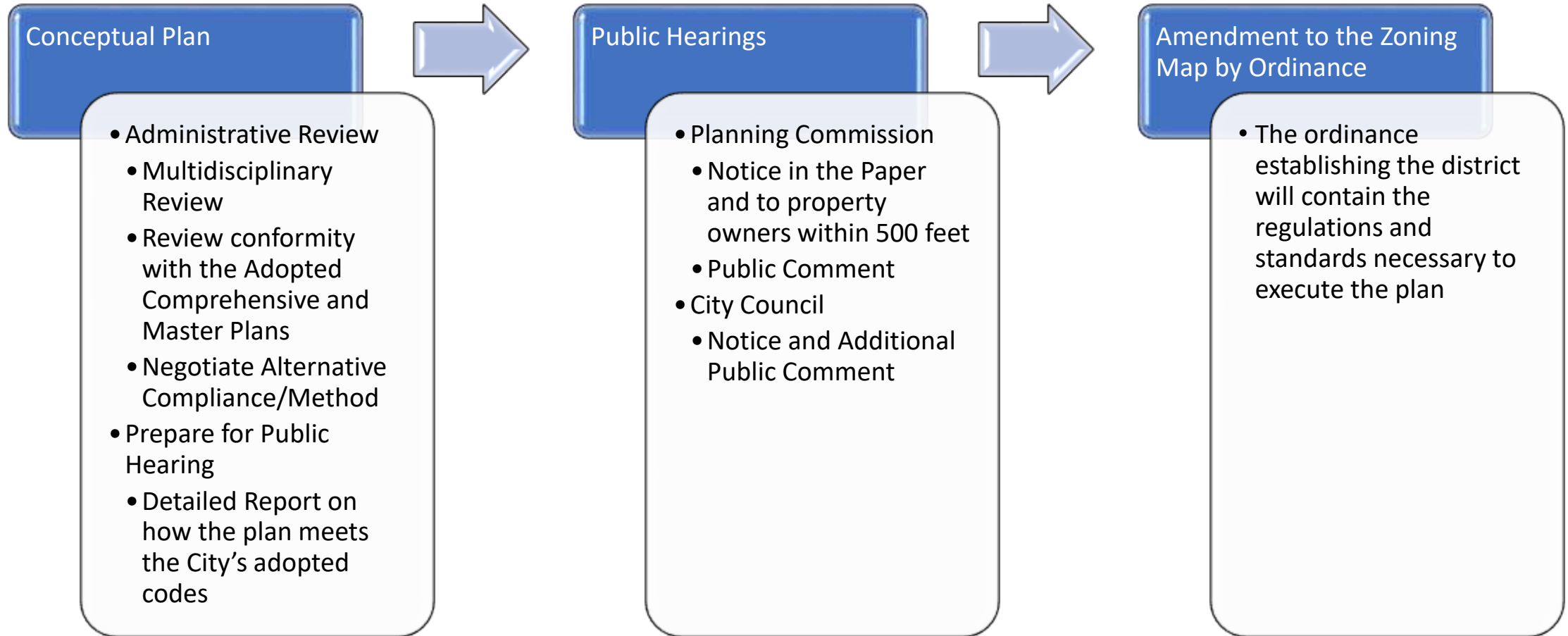
Intent and Focus of the Underlying Zoning will need to be met.

Common Ground

- Authentic Bastrop
 - Stewardship of the Environment
 - Stewardship of its People
 - Unique Buildings
 - Dark Sky “Lite”
- Connectivity
 - Sidewalks
 - Landscaping
 - No overparking
 - Drainage



PDD Process



Misconceptions to the PDD

- Staff makes all the decisions - **WRONG**
 - Staff attempts to bring the best possible resolution to the intent of the code
 - PUBLIC NOTICE just as a rezoning case
 - P&Z and the Council may seek additional requirements to the proposed PDD like a variance/warrant
- It is spot zoning - **WRONG**
 - Best solution to meet the intent of orderly development



Misconceptions to the PDD

- We won't ever get good connectivity- **WRONG**
 - Must follow the adopted master transportation plan
 - Alternate method of compliance to meet the intent of the plan
- It is an attempt to undermine the code-
WRONG
 - Best solution to resolve the conflicts in the existing code





Questions?

INTRODUCTION TO PLANNED DEVELOPMENT ZONING*

Frank F. Turner, FAICP and Terry D. Morgan, Esq.

Introduction

Planned development zoning and other flexible zoning techniques were developed to overcome the rigidity of traditional zoning. Traditional zoning divides a jurisdiction into districts (e.g., Single Family 1, Retail, Office). The zoning ordinance specifies regulations (e.g., use, yard, and building bulk requirements) that apply uniformly to all property within the same zoning district. Traditional zoning ensures consistent application of regulations, but it does not easily accommodate innovative development, especially where mixed-use projects are proposed, if the project does not conform to district regulations.⁽¹⁾ Traditional zoning also does not permit devising site-specific regulations in response to on-site conditions or to mitigate off-site impacts. Under traditional zoning, changing regulations to meet the needs of a specific project or property requires amending the district's regulations or granting variances to the regulations. Amending district regulations is difficult because the amendment would apply to all property within the district. A variance is difficult because it typically depends on demonstrating a unique hardship related to the physical characteristics of the property. The merits of the development concept alone are not proper reasons for granting a variance. Planned development zoning (also termed planned unit development) was created as a means of tailoring zoning regulation to the specific needs of a project plan and the unique characteristics of a site.

During the 1960s, many organizations, including the Urban Land Institute, National Association of Homebuilders and American Society of Planning Officials, published technical reports on the planned unit development (PUD) concept and model PUD ordinances.⁽²⁾ The term "planned unit development" was coined to describe a site specific zoning process which permits greater regulatory flexibility tied to site plan review. Early PUD literature cites three objectives for creating PUD ordinances: (1) unitary

development review (combining zoning, site planning and

* The original chapter appeared in *The Southwestern Legal Foundation Proceedings of the Institute on Planning, Zoning, and Eminent Domain* (1992), published by Matthew Bender & CO., inc. copyright 1993 by Matthew Bender & Company, Inc. and was reprinted with permission all rights reserved.

subdivision regulation); (2) flexible site plan based regulation; and (3) lower development cost. This literature primarily addresses the use of planned development zoning to regulate innovative residential development. Cluster housing, patio homes and zero lot-line homes are types of housing commonly cited as projects that are more easily accomplished as planned developments. These reports also refer to integrating other uses into residential areas and creating mixed use developments through planned development zoning, but the primary focus is residential development.

Planners support the use of planned unit development zoning because it offers the ability to facilitate innovation and respond to specific site conditions. Increasingly traditional land use regulations are criticized for reinforcing the pattern of sterile, homogeneous development characteristic of suburban areas.⁽³⁾ Planning commissioners and city council members also find advantages to planned development zoning because it provides a vehicle for negotiation unavailable in the yes/no options of traditional zoning. This is especially valuable in accommodating the demands of homeowners and other adjacent property owners who want negotiated agreements made enforceable by ordinance. Today, the use of planned development zoning- is firmly established and in common use throughout Texas and the remainder of the country.

Methods for Establishing Planned Developments

The method for establishing and administering planned development zoning varies among cities. Texas zoning legislation (Chapter 211, Local Government Code) does not directly address the use of planned development zoning, but the concept of planned development zoning has been held valid by Texas courts, provided the specific Methods of planned development zoning used by a city conform to the general requirements of state law pertaining to zoning. Planned development zoning establishes land use regulations for a specified area either as a unique zoning district or as an area specific amendment to the regulations of a

standard district. A planned development zoning district may be any size and include one or more land uses. Establishing a planned development zoning district typically includes the approval of a development plan. Requirements for a development plan vary in content and detail. Generally the plan illustrates the boundaries of the area being zoned (or rezoned) and the location of land uses, roads, lots, buildings, other surface improvements, and open space.

The ordinance establishing the district will contain the regulations and standards necessary to execute the plan. A planned development zoning district may be created as a freestanding district or as an overlay district. The use of both methods is further described below.

- **Free Standing PD Districts** - Each PD is a unique district tailored to the specific site and development. Typically, the zoning map designates the area zoned with the letters "PD" followed by a number used to reference the ordinance containing the regulations. The ordinance defines permitted uses, yard, height, bulk and other regulations for the property, similar to any other zoning district.
- **PD Overlay Districts** - PD districts are created by superimposing additional regulations to alter (i.e. add, delete, modify) the standards of the base zoning district. As an example, an area may be zoned Residential-1, permitting single-family houses centered on lots of 9,000 square feet or larger. A PD overlay is attached allowing cluster housing on smaller lots and requiring 15 percent of the area to be common open space. The zoning map shows the base zoning, the PD overlay designation, and an ordinance reference number. The ordinance describes changes to the base zoning requirements. Except as modified by the overlay district, the requirements of the base zoning district still apply.

Plan Approval — Most cities use a two step plan approval process. The first step is the approval of a conceptual or schematic development plan concurrent with establishing the zoning district. The second step is the approval of a final development plan prior to application and approval of plats and building permits. Planned residential districts frequently require an intermediate "preliminary" or "tentative" development plan to coincide with preliminary plat approval. Some ordinances, particularly those addressing mixed use, distinguish between a "development plan" for a phase of the project and a "site plan" for individual, non-single family uses. The conceptual plan aids in understanding the development proposal and negotiating the specific regulations to be included in the PD ordinance. Conceptual plans are very useful in coordinating the phased development of large projects. The conceptual plan may be approved administratively or as a part of the actual ordinance establishing the zoning¹⁵³

district. If the plan is administratively approved, it may be amended from time to time so long as it conforms to the district's regulations. Conceptual plans that are directly incorporated into the ordinance establishing the zoning district may only be amended by the same procedure as rezoning.

Administrative approval of the conceptual plan provides greater flexibility by accommodating plan amendments without the necessity of going through the rezoning process. This flexibility can, however, yield an amended plan that is significantly different from the original even if still within the terms of a broadly drawn adopting ordinance. Because of the limited discretion available through an administrative review process, a city may be unable to deny the plan or to impose additional development conditions. For this and other reasons discussed in succeeding sections, the preferred method is to incorporate the conceptual plan into the ordinance establishing the district. Alternatively, if a conceptual plan is administratively approved, the ordinance establishing the PD district should include all requirements and specifications that must be met if approval is later sought for a new or amended conceptual plan.

Generally, the final development (or site) plan is a detailed, scaled drawing of site improvements and buildings. Plan approval is required prior to the release of engineering plans and the issuance of building permits. The plan may be for the entire project or a portion of the project. Plan approval usually is a administrative function assigned by ordinance to staff, the planning commission or city council, although some ordinances confer considerable discretion on decision-makers at this stage of the process.⁽⁴⁾ The purpose of the review is to ensure that the proposed development conforms to the PD regulations and the prior approved plans. Although the site planning process is typically coupled with planned, development zoning, this is not always the case. Some cities use planned development zoning to modify standard zoning requirements for specific properties without requiring site plan approval concurrent or subsequent to the zoning approval.

Expiration of PD Approval - The creation of a planned development district is a legislative action. Once approved, the ordinance will remain in place and run with the land until a subsequent legislative action (i.e., rezoning) occurs. Depending on the terms of a city's zoning ordinance and whether or not a plan

for the development was adopted by ordinance, site plan approval may expire if the project is not built. A new plan may be submitted to replace the expired plan, but the new plan must comply with the ordinance establishing this district and other applicable regulations. Regulations pertaining to the expiration of administratively approved plans must be adopted prior to the acceptance of an application for plan approval. Tex. Loc. Gov't Code section 245.002(a) states: "Each regulatory agency shall consider the approval, disapproval, or conditional approval of any application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates or other properly adopted requirements in effect at the time the original application for permit is filed."

Use of Planned Development Zoning in Texas

In 1991, the authors of this chapter conducted a survey of the twenty largest (by population) cities in Texas to determine their use of planned development zoning. Seventeen of the twenty largest cities in Texas used planned development zoning. Of the three cities not using PD zoning, Houston and Pasadena did not have a zoning ordinance. Lubbock had a zoning ordinance but did not use planned development zoning. All of the cities using planned development zoning had specific sections within their zoning ordinances authorizing planned development regulations and defining procedures for establishing districts. All but three of the ordinances contained very brief purpose statements relating to the use of planned development zoning. Most PD purpose statements generally stated the need for flexibility. Few of the ordinances cited within the purpose statement the relationship of planned development zoning to implementing the community's comprehensive plan.

All but one of the cities could potentially use planned development zoning to regulate any type of development. The ordinances generally permitted planned development districts to be of any size deemed appropriate. Despite the residential origin of planned development zoning, very few of the ordinances showed a bias toward regulating residential vs. non-residential development. The majority of cities surveyed frequently used planned development zoning to regulate permitted uses, intensity and density of use, location and bulk of buildings and the extent of landscaping. Less than a third of the cities frequently used planned development zoning to specify architecture, public improvements

or development phasing. Only a few ordinances required or mentioned the use of a schedule to define the sequence and timing of development.

Use of Site Plans - Most of the Texas ordinances reviewed either required or allowed the submittal of a conceptual plan in conjunction with an application for planned development zoning, and required the conceptual plan to be adopted by ordinance as a part of the zoning. Very few of the ordinances specifically addressed the meaning of the plan as a regulation. Most of the ordinances stated that subsequent plans are to conform to the conceptual plan but did not define criteria for determining conformity. Many of the ordinances provided for minor amendments to the conceptual plan without rezoning. The responsibility for approving minor amendments was typically assigned to the planning director. Ordinances varied considerably on what is considered to be a minor amendment. The ability to request a minor amendment presumably resided only with the property owner, since none of the ordinances specifically stated that the city may make minor adjustments to conform the proposed development to new standards or to solve engineering problems.

Final development plans were typically required prior to the issuance of a building permit. Council approval of the final site plan was often required. Only a few ordinances provided for the expiration of development plans. Only one ordinance addressed the issue of vesting plans for partially built developments. A few ordinances required development schedules and stated that the city may call a public hearing to consider appropriate zoning if the schedule is not met and an extension is not approved.

One of the objectives of the PD concept stated in early literature is the integration of zoning, site planning and subdivision regulation. However, only a few of the Texas ordinances reviewed referenced the city's subdivision regulations and the need to coordinate platting and site planning.

One of the most interesting findings of the survey was how frequently the cities used planned development zoning. Seven percent of zoning cases approved during 1991 by the seventeen cities involved the use of planned development districts. Four cities reported that twenty percent or more of their zoning cases involved use of planned development districts. The frequency of use was greatest in the Dallas/Fort Worth area.

Pros and Cons of PD Zoning Cited by Texas Cities - The respondents in the cities surveyed were asked to list the reasons they support the use of

planned development zoning and concerns they have about its use. Listed below are their responses.

Reasons for Supporting PD Zoning:

- Greater flexibility;
- Ability to negotiate;
- Ability to assess and mitigate site specific impacts;
- Ability to address public concerns;
- Ability to compensate for deficiencies in standard zoning districts;
- Ability to better regulate large scale mixed use development; and,
- Ability to address site-specific considerations.
- Concerns About Use of PD Zoning:
- Contract zoning (inappropriate bargaining);
- Time consuming to establish and administer PD districts;
- More vulnerable to politics;
- Erosion of standard zoning requirements;
- Over use;
- Lack of an automatic revocation if project is not built;
- Manipulation of regulations to gain approval;
- Lack of consistency among districts; and,
- Difficulty in administering regulations when the district is split among multiple owners.

Authority For and Legal Challenges to PD Zoning

This section of the chapter reviews legal authority for planned development zoning and possible legal challenges to its use. Texas statutory authority and case law are surveyed generally. Additional case law, federal and of other states, are noted where principles may also apply to the use of planned development zoning in Texas.

Planned development zoning was not anticipated in the Standard Zoning Enabling Act, and is not expressly authorized in Texas' zoning enabling act or in special statutes. In the absence of express enabling authority, however, most courts have been willing to broadly construe the state's zoning enabling act to find authority for PDs as valid exercises of the zoning power. In *Teer v. Duddleston*,⁽⁵⁾ the Texas Supreme Court upheld the City of Bellaire's planned¹⁵⁷

development district against a challenge by neighbors that PDs were not authorized under the zoning enabling act. In construing the act to allow PDs, the court noted that the enabling act did not specifically prohibit the use of PDs, and concluded, therefore, that PDs were not per se "spot zoning."⁽⁶⁾

Planned development zoning has been found to advance the purposes set forth in the standard zoning enabling act, such as the provision of open space and the prevention of overcrowding. A variety of reasons are given by courts interpreting statutes to authorize PDs.⁽⁷⁾ Authority for PD may also be found in home rule powers. Where home rule powers are strong, as in Texas, enabling statutes act as limitations, not grants of authority on local governmental powers⁽⁸⁾

Local governments must follow their own ordinances in regulating PDs⁽⁹⁾ Generally, local governments may not condition PD approval upon standards not contained in their regulations, nor may they apply more stringent standards than appear in the ordinance. Requirements of other ordinances, however, such as subdivision regulations, may be incorporated by reference into the PD ordinance, or may be implied by a reviewing court based on common definitions^{¹⁰}

Typical Challenges (and Defenses) to PD Techniques - All zoning actions are afforded a strong presumption of validity.⁽¹¹⁾ Because PDs depart from traditional concepts of zoning, however, they have been more closely scrutinized by reviewing courts than more typical zoning mechanisms.

Standards for Review - In determining whether PD regulations are arbitrary and capricious, or unreasonable, judicial inquiry frequently is focused on the absence of standards by which PDs are established or evaluated. In *Beaver Meadows v. Bd. of County Commissioners*,⁽¹²⁾ the County attempted to condition the approval of Beaver Meadows' planned development on the provision of off-site facilities and assurances for the provision of emergency medical services. While the trial court upheld these conditions, the Colorado Supreme Court reversed, in favor of Beaver Meadows. The Court held that, while the County ordinance appeared to authorize the Board to review the application, the regulation lacked the necessary detail to support the conditions.⁽¹³⁾

If PD ordinances do not contain sufficient standards to enable a reviewing court to determine the reasonableness of the local decision, they may be held invalid as an unlawful delegation of legislative authority."⁾

In Accordance With a Comprehensive Plan - General limitations on the amendment of zoning ordinances and other exercises of the zoning power apply to PDs. For example, PD districts must be established in accordance with a comprehensive plan. Where PDs are established as an overlay district or floating zone, the consistency doctrine -- where recognized -- may limit the location of such districts and the types and intensity of uses available.

Under the standard zoning enabling act, the requirement that zoning regulations be "in accordance with a comprehensive plan" may be satisfied by comparing a particular zoning amendment with the comprehensive zoning ordinance map, if such map presents a plan for orderly development.⁽¹⁵⁾ On the other hand, if a community has a separately adopted comprehensive plan, the court may rely upon such document in determining whether a particular zoning amendment conforms to the comprehensive plan. Accordingly, in *Mayhew v. Town of Surmyvale*,⁽¹⁶⁾ the court determined that the town zoning ordinance was in conflict with its adopted comprehensive plan and, consequently, that the applicant's planned unit development could not be refused on the basis of such zoning ordinance.

Soot Zoning - Situations where a zoning amendment is sought to establish a use prohibited by the existing regulations are frequently challenged as "spot zoning." Although PD overlay districts usually incorporate a concept plan for particular uses which identifies specific uses at the time of rezoning, this generally does not render the creation of the district as spot zoning.⁽¹⁷⁾ A number of factors will be taken into consideration to determine whether the zoning amendment constitutes spot zoning, such as: use of neighboring property; suitability of the tract for anticipated uses; relationship to valid police power objectives; and size of the tract rezoned.⁽¹⁸⁾ The conclusion that a particular zoning amendment involves "spot zoning" can be avoided if the comprehensive plan for the area designates the site as suitable for location of a "floating zone," such as a planned unit development.

Uniformity - The uniformity clause in the Standard Zoning Enabling Act requires that similar use be treated uniformly. Courts have upheld PDs challenges under this provision on the interpretation that uniformity is required only within, not among, zoning districts.⁽¹⁹⁾ In the *Chrinko* case, the court dismissed the uniformity challenge on the basis that the ordinance accomplished uniformity since the PD "option" was open to all developers.

Contract Zoning - Because many PDs are "negotiated," they are susceptible to challenge as unlawful contract zoning. In most jurisdictions, contract zoning is distinguished from permissible conditional zoning on the basis of whether the alleged agreement is bilateral (contract zoning) or unilateral (conditional zoning) in nature. In *Teer v. Duddlesten*,^(2°) supra, the city had obtained the developer's promise to perform conditions attached to the requested planned development amendment. Although the Court of Appeals found that the city had merely preserved its police power instead of bargaining it away with the acceptance agreement, the Supreme Court held that such arrangement amounted to illegal "contract zoning." The Supreme Court held that the city could accomplish its objectives by conditioning the rezoning. Such "conditional zoning" was unilateral in character, according to the Court, and was not personal to the applicant⁽²¹⁾

Statutory Procedures - In recent cases, most courts invalidating PDs have done so on the basis of the local government's failure to follow statutory procedures or those established by local ordinances. Standard zoning procedures for amendment of zoning ordinances or approval of special use permits must be followed. In *Wallace v. Daniel*,⁽²²⁾ a developer sought rezoning of a tract for use as a planned unit development, but failed to submit a detailed description of the proposed development as required by local ordinance. The planning commission recommended -approval of the development without such detail. Although the developer subsequently submitted a specific plan to the county council prior to approval of the ordinance, the court held that the procedure was fatally flawed. Because the planning commission did not have before it essential information concerning the nature of the project, it could not make an effective recommendation to the county council, the court reasoned.

The court in *Wallace* held that the enabling act required by implication that municipalities must follow their own procedures when adopting ordinance amendments. Failure to consider a specific plan when approving a PD amendment recommendation from the planning commission violated this municipal ordinance.⁽²³⁾

Challenges by PD Applicants - Challenges by applicants most frequently arise when initial approval or approval of the development plan is heavily conditioned, or when the local government attempts to rezone or otherwise impose new regulations on subsequent phases of the project:

Excessive Conditions - A condition imposed on development approval must substantially advance a legitimate governmental objective ⁽²⁴⁾ Generally speaking, a PD may be lawfully conditioned on the provision of improvements or amenities to serve the development which are contemplated; in the enabling act; in parallel statutes, such as subdivision laws; in the comprehensive plan; or in the zoning ordinance itself. The issue frequently is raised when the development plan is reviewed by the city. In *Board of Supervisors v. West Chestnut Realty Corp.*,⁽²⁵⁾ the court upheld the denial of the application for development plan on the ground that the developer was required to depict specific improvements, including utilities, at all phases of the application process. According to the court, additional detail was required regarding storm water management, considering the location of the property in relation to storm water facilities. Although the township's ordinance did not expressly require additional detail, the court found that such information was required based upon a reasonable construction of all of the township regulations.

In *Municipality of Upper St. Clair v. Boyce Road Partnership*,⁽²⁶⁾ the issue concerned what conditions the city could apply to subsequent phases of a multi-phase PD project. The court found that the developer's failure to install electric lines underground, failure to submit proof of project financing, and failure to comply with the township's interim floodplain ordinance constituted valid grounds for denying final approval of the third and fourth phases of the project. The court held that the conditions had been imposed at the time of granting final approval to previous phases of the development and that compliance with the conditions was required prior to final approval of subsequent phases.

Ad hoc conditions- unsupported by standards, however, may be invalidated. In *RIB Development Corp. v. City of Norwalk*,⁽²⁷⁾ the PD was denied on the grounds that the development posed safety hazards to school children. The court invalidated the denial, because the PD ordinance contained specific site development standards, but did not include the grounds for denial advanced by the city.

Some PD ordinances include exactions of land or improvements for public facilities as conditions of zoning or plan approval, similar to those imposed on subdivision plats. In such cases, cities must observe constitutional standards in imposing the conditions: In 1994, the United Supreme Court announced its "rough proportionality" standard governing development exactions in *Dolan v. City of Tigard* ⁽²⁸⁾ Under this test, a land dedication requirement (and perhaps other forms of development exactions)⁽²⁹⁾ must be "roughly proportional" to the nature and extent of the impacts on community facilities resulting from the development. Although mathematical precision is not required, the test requires that some quantification of this

relationship is necessary. The Texas Supreme Court in applying standards under the State's constitution requires that there be a "reasonable connection" between the exaction and both the need for the facilities exacted and the benefit to the development.^(3°)

This type of analysis was applied by the Colorado Supreme Court to invalidate a road exaction imposed on a planned development. Thus in *Beaver Meadows v. Bd. of County Commissioners*,⁽³¹³⁾ the board of commissioners conditioned approval of a planned unit development on improving an access road for 4.73 miles and arrangement for emergency medical services to serve the development. Although the county intended to pursue the formation of an improvement district to assist with the costs, the developer was required to pay the total initial cost of the improvement pending the formation of the district. The Colorado Supreme Court invalidated the conditions, reasoning that the county's regulations did not support the conditions imposed in the case. The Court construed the subdivision and planned unit development laws together, concluding that the county had the authority to impose conditions relating to road planning and improvements. The county's regulations, however, contained no criteria for evaluating roads to serve a particular development project. Because the regulations provided no guidance, the developer could not be required to install improvements which would obviously benefit other property owners. The Court also held that the county could have required provision for emergency medical services if the statutory authority were supported by standards in the regulations. In the absence of such local guidelines, the condition to provide emergency services could not be imposed ad hoc. Generally speaking, the conditions applied at the time of development plan approval must be contemplated in the concept plan.⁽³²⁾

Regulatory Takings - Where local governments rezone or otherwise impose new regulations on undeveloped phases of a PD, thereby changing uses, reducing intensity of use, or imposing stricter development standards, a property owner may challenge the action as a deprivation of economically viable use of the property under federal or state constitutional provisions prohibiting the taking of private property for public use without just compensation⁽³³⁾ Under most circumstances, a court will not evaluate the effect of a regulation on a single interest in the property, but will ascertain the impact. on the property when taken as a whole ⁽³⁴⁾ Applying this principle in a regulatory taking challenge, a reviewing court should take into account the beneficial uses that already have *been* developed in earlier phases of

the project when weighing the economic impacts of the new regulations.

Before challenging local government zoning regulations, the property owner usually must satisfy ripeness requirements imposed under federal and state law. Typically this requires that the property owner attempt to vary the application of new regulations or modify his development proposal before the claim matures.⁽³⁵⁾ In the case of *Williamson County Regional Planning Comm'n v. Hamilton Bank*, the county disapproved a subdivision plat for the latter phases of a development project because the plat did not comply with newly enacted zoning and subdivision regulations, even though the first phases of the project had already been developed. The Supreme Court overturned the damage award of \$350,000 for a temporary taking of the property because the developer had failed to apply for variances to the regulations. Under the county's testimony, some 300 units could have been constructed on the site under variance provisions. In the context of planned developments, a property owner may be required to seek relief from the *new* regulations by submitting a concrete development proposal, coupled with variance requests, before his claim ripens.

Vested Rights - When cities impose new regulations on subsequent phases of a planned development, landowners also may seek to enjoin such actions on the basis of "vested rights." In most cases, challenges will be based on Tex. Loc. Gov't Code ch. 245, a 1999 replacement statute for former "HB 4."⁽³⁶⁾ The new law attempts to make vested rights provisions retrospective to cover the period of the repeal, roughly two years. Because most planned developments involve multiple phases, however, it also is possible that the common law doctrine of vested rights will come into play. Under this seldom applied standard, a city may be estopped from applying new regulations, where a property owner has made substantial expenditures on a development in progress in good faith reliance on a validly issued permit.⁽³⁷⁾

Chapter 245 of the Texas Local Government Code, the usual vehicle for challenging new regulations, requires that " approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application permit is filed."⁽³⁸⁾ The law further states, "if a series of permits is required for a project, the orders, regulations, ordinances, or other requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for

the completion of the project. All permits required for a project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project (39)

There are certain exemptions to the provisions of Chapter 245 identified in Section 245.004. The exemption of most utility in addressing planned developments is that for "municipal zoning regulations that do not affect lot size, lot dimensions, lot coverage, or building size, or that do not change development permitted by a restrictive covenant required by a city." Thus even if subsequent applications for approval of later phases of a planned development are considered part of the same series of permits for a project, some types of new zoning regulations may be applied to limit development, including use restrictions.

A separate issue under the vesting statute is whether plans associated with establishment of PD districts are the type of "site plans" that qualify as "development permits" under the law. Approval of a planned development zoning district itself is a legislative act and should not be viewed as the issuance of a development permit. However, the concurrent review and approval of a development plan prepared in association with an application for PD zoning may trigger vesting of a "project" as defined by Chapter 245. The outcome depends in large measure on whether the "concept plan" is incorporated as part of the adopting ordinance; if the conceptual Plan is approved as an administrative action, it almost certainly will be considered a "site plan" triggering rights under ch. 245.

Procedures pertaining to the processing of a series of plans, plats and permits required to develop within a planned development district must be carefully drafted to avoid unreasonable freezing of development regulations. Each required approval should expire if applicant fails to proceed to the next required step with a defined time period. The procedures should also provide standards for determining when a plan amendment is substantially different than the original project and therefore may be regulated as a new project. These procedures must be placed before an application is filed for the first permit required to conduct a project. Chapter 245 prohibits retroactive application of new regulations, including permit expiration dates to projects in progress.

Section 245.005 includes language addressing dormant projects, a provision that may be useful considering the extended life of some planned developments. Dormant projects include those projects for which the permit

does not have an expiration date and on which no progress has been made towards completion of the project "Progress towards completion of the project" is defined as being any one or more of the following: application for a final plat, a good-faith attempt to file an application with a regulatory agency, incurred of costs for developing the project, posting of fiscal security to ensure performance, or payment of utility connection fees or impact fees for the project. Fortunately, Section 245.005 also provides for the expiration of some dormant projects that already have permits. After May 11, 2000, cities may place an expiration date on a permit that has no expiration date if no progress has been made toward completion of the project. If a city imposes an expiration date on such a "dormant project," the expiration date may not be earlier than May 11, 2004.

Discretionary v. Ministerial Actions - In a recent Dallas Court of Appeals decision, *Bartlett v. Cinemark USA, Inc.*,⁽⁴⁰⁾ approval of the second stage of a planned development was held to be a ministerial decision rather than an act of discretion on the part of the City Council.

Consequently, the Court found that the City's Council's denial of the development plan for a movie theater complex subjected the City and individual council members to civil rights hal:Jay. In reaching this result, the Court distinguished the Council's role in initially adopting PD zoning (a legislative function) from that the functions it played in acting on the subsequent development plan, which it ultimately characterized as "ministerial" in nature.⁽⁴¹⁾

- Although the facts in the Cinemark case were unique in many respects, the Dallas PD ordinance under consideration was not significantly different from that of many other cities. The ordinance required that the PD district be established on the basis of a detailed site plan approved with the ordinance. The developer could choose to submit the plan in two stages. If this option was taken, the first "conceptual plan" was incorporated .as part of the ordinance establishing the district. A development plan that was consistent with the conceptual plan had to be submitted within six months of approval of the district, supplying additional details for the project.

The case counsels great caution in applying PD standards to approval of site plan approvals after the first "conceptual" site plan is approved. The nature of subsequent site plans must be first determined from the text of the PD ordinance itself, with the key distinction being whether such stages of approval constitute a form of zoning amendment or at least allow the application of some measure of

discretion by the decision-makers. Clearly, the identity of the decisionmaker—whether the City Council, the Planning and Zoning Commission, or the Planning Director—is immaterial to characterization of the decision by the courts. Both the nature of the standards and the nature of the procedures to be applied at subsequent stages of the PD development process are relevant in determining whether such decisions constitute at least some measure of the exercise of discretion. This point in turn is important for determining the scope of immunities available to public officials under the federal civil rights act.

Subdivision Laws - Property division within land zoned for PDs is subject to enforcement of subdivision laws and ordinance requirements⁽⁴²⁾ Where residential development is involved, preliminary plats or tentative maps may be approved simultaneous with initial approval of the PD.⁽⁴³⁾ Under the Nevada legislation, cities and counties are given the power to modify subdivision as well as zoning requirements in approving a PD. The statute requires that "all planning, zoning and subdivision matters relating to the platting, use and development of the planned unit development and subsequent modifications of the regulations relating thereto to the extent modification is vested in the city or county, must be determined and established by the city or county [in the PD regulations]."⁽⁴⁴⁾

Unintended divisions may occur, however, where property ownership is divided through foreclosure. Although there is little case law on the subject to date, in such instances, subdivision of the PD may be required prior to further rezoning or development approval on the resultant tracts. The result may depend upon the wording of the state subdivision laws. In Texas, for example, any division of a tract into two or more parts constitutes a subdivision.⁽⁴⁵⁾ There are no express statutory exemptions. Consequently, local ordinance must exempt divisions that would occur by means of foreclosure.⁽⁴⁶⁾ In other jurisdictions, divisions resulting from foreclosure may be expressly exempt from subdivision requirements.⁽⁴⁷⁾ On the other hand, the Nevada enabling authority for PDs expressly requires that the property must be rezoned and resubdivided if the landowner abandons the development plan or fails to carry out the plan within the specified period of time.⁽⁴⁸⁾

Rights of Third Parties - Although PDs typically are conditioned to address complaints of adjoining landowners, local government action may be undone if such conditions amount to a delegation of zoning authority to neighbors.⁽⁴⁹⁾ By the same token, adjoining property owners do not acquire an

enforceable interest in the zoning of the land as PD or in particular conditions or restrictions governing development of the site. In *American Aggregates Corp. v. Warren County Comm'rs*⁽⁵⁰⁾, the county denied the plaintiffs request to build a concrete batching facility on property zoned for industrial purposes adjacent to its sand and gravel pit. The pit abutted a residential neighborhood, also zoned for industrial use. The local ordinance required the plaintiff to submit a planned unit development overlay for the affected area. The County approved the PD, but denied a requested modification for the batching plant following a public hearing at which residents of the adjoining subdivision objected. The Ohio Court of Appeals invalidated the planned unit development, reasoning that Ohio statutes authorized the use of such techniques only for uses zoned for residential purposes. The Court found that the sand and gravel operation did not constitute a nuisance to adjacent neighbors, since such residences were built on industrially-zoned property. The Court also ruled that the county could not impose the PD merely because the land could ultimately be reclaimed for residential purposes in the future.

In *Young v. Jewish Welfare Federation of Dallas*⁽⁵¹⁾, the city revised a site plan submitted in conjunction with approval of a special use permit, authorizing the holder of the special use permit to use right-of-way previously submitted in a deed of dedication as a parking lot. The city had not accepted the 25-foot strip as a public street, and the property owner had withdrawn its offer of dedication. The adjoining property owner sued the city, claiming that the amendment of the site plan without notification to him was unlawful and that he had acquired an interest in the street being placed adjacent to his property. The court rejected the claim, finding that the property had never been dedicated to the city and, consequently, the plaintiff was not entitled to rely upon dedication of the street in purchasing his property.

Issues Concerning Planned Development Zoning

While planned development zoning is a valuable tool in regulating development, its very flexibility can cause a number of problems. Since Texas' zoning statutes do not directly address planned development zoning, cities are provided little guidance on the use of PD zoning and procedures for establishing and administering PD districts. Some of the major concerns identified in the course of this study are reviewed below.

Ordinance Construction and administration - Each city's zoning ordinance must authorize the use of planned development zoning and define procedures for the creation and administration of districts. The text of the zoning ordinance governing PD districts should clearly specify whether the district is intended to be free-standing (in which case all pertinent zoning standards must be defined) or function as an overlay district. In the latter case, the ordinance should define the extent to which planned development zoning may be used to vary standard development regulations. Without proper authority PD zoning should not be used to alter subdivision ordinance or building code requirements. Unified development codes and cross authorizations may offer some ability, but this power should not be automatically assumed.

Drafting of specific planned development district regulations must avoid ambiguities to ensure intended results. Most planned development zoning requests involve complex issues and expectations.. The use of conceptual plans and illustrations is helpful in gaining an understanding of what can be done if the zoning is approved; however, unless the ordinance creating the planned development district clearly identifies the extent to which the conceptual plan is part of the district regulations (and hence part of the zoning for the district), the development proposed in subsequent plans may differ considerably from that shown on drawings at the time the zoning was approved, particularly if considerable time has elapsed since the original approval. Controversy over the intent of the ordinance inevitably arises in such circumstances. One technique to avoid ambiguities is to distinguish in the zoning ordinance between those features of a conceptual plan that are "regulatory" in character from those that are purely "informational." The difference is that regulatory elements require rezoning to change; informational features do not.

A related drafting issue is clarification of ambiguities concerning the level of discretion to be applied at later stages of the planned development process. This should be done in the text of the zoning ordinance that defines general standards for PD districts, rather than in the ordinances establishing individual PD districts. Discretion is mandated where the original conceptual plan is very general (or absent altogether), or the adopting ordinance fails to specify all uses or standards that are applicable to development within the PD district (for example, setbacks, heights applicable to structures, etc.). In some cases, the next stage of PD development constitutes in effect a zoning amendment to the original approval, necessitating appropriate notice and hearing procedures. In any event, the standards for approval, where discretion is called for in approving subsequent plans, should necessarily be broad.

Administration of planned development zoning is complicated by numerous factors. All zoning ordinances provide fertile ground for argument. Terminology, definitions and questions of intent seem produce endless debate. This problem seems even greater with planned development zoning. The problems of interpretation and enforcement only grows as the time between zoning approval and development lengthens and is further compounded by changes in property ownership and city staff.

Few planned developments are built as they were originally approved. As time passes, the market changes and unforeseen conditions and circumstances arise. Unfortunately, a change, even a minor change, to the development plan may require rezoning. This is especially true if the PD contains a long list of detailed requirements or if a preliminary development plan was incorporated by reference into the zoning. If rezoning is required, the process takes time, it may be expensive and may lead to opposition and renegotiation. Large planned developments are seldom built all at once. Zoning ordinances (both the general PD provisions of the zoning ordinance or the specific ordinance for the property) should deal with typical phasing problems. A related concern is the vesting of development plans when a portion of the project is built. Again, ordinances should directly define when vesting occurs.

Normally, the creation of a planned development district is initiated by a single property owner/developer. It is usually understood that a large project-will be built in phases by multiple owners/developers, but that the overall development will be coordinated through the zoning and master plan. Planned development ordinances should anticipate how to manage the plan and zoning rights if the owners are not cooperating and disagree on the meaning and distribution of development rights. This problem is common in the major metropolitan areas of Texas. The banking and real estate collapse resulted in foreclosures and the division and transfer of property within planned developments to such an extent that many PDs cannot be developed as zoned. The general provisions of a city's zoning ordinance should contain procedures for resolving issues concerning distribution of development rights and approval of development plans where a planned development district is divided into multiple ownerships.

Proliferation of Planned Development Zoning - The survey of Texas cities shows planned development zoning is used frequently. A number of forces have generated this demand. Neighborhood organizations are becoming stronger participants in the development decision-making process. Neighborhood associations

are insisting that negotiated concessions be made enforceable by recording them in the PD ordinance. Developers have found planned development zoning a successful strategy for gaining approval. Developers freely negotiate restrictions and concessions to win approval. Planners have promoted the use of planned development districts as a means of adding regulations that they have not been successful in getting approved as general ordinance amendments. All of the forces have resulted in the growing ad hoc use of planned development zoning.

Conclusion

Planned development zoning can be very valuable tool for regulating development. It offers tremendous flexibility in allowing development regulations to be tailored to the needs of a specific area based on actual conditions and development plans. The technique allows developers and cities to be innovative and more effective in ensuring sound development, consistent with the city's comprehensive plan and compatible with surrounding properties.

Successful use of planned development zoning depends on a well-written local zoning ordinance that defines the purpose, limits and abilities, and methods for establishing and administering PD districts. Specific PDs must be carefully written to ensure the accomplishment of the intended purpose. Overuse of planned development zoning should be guarded against. PDs should not be used to correct deficiencies of a standard district, nor should PDs be used as a means of legislatively granting a variance. Instead, PDs should be reserved to accommodate innovation and to respond to unique site conditions in accordance with the city's comprehensive plan.

Notes

1. Typically, zoning ordinances do not include residential and commercial land use within the same district Texas law does not permit use variances. Thus, planned development zoning is frequently used to regulate mixed-use development.
2. See FHA, Planned-Unit Development with a Homes Association (U.S. Government Printing Office, 1963); NAHB & ULI, Innovation v. Transitions in Community Development: A Comparative Study in Residential Land Use (Urban Land Institute, 1963); Huntoon, PUD: A Better Way for the Suburbs (Urban Land Institute, 1971); So, et al., Planned United Development Ordinances (American Society of Planning Officials, 1973).
3. See Porter, et al., Flexible Zoning-How It Works (Urban Land Institute, 1988).
4. Most zoning ordinances require site plans to be approved by the planning and zoning commission or city council even though this is an administrative function. Councils and commissions often incorrectly assume that site plan review gives them the power to make changes to the plan or to add requirements above those contained in the zoning.
5. 26 Tex. Sup. Ct. J. 544 (July 20, 1983), op. withdrawn and rev'd, 664 S. W. 2d 702 (Tex. 1984).

6. See, e.g., *Ahearn v. Zoning Bd. of Appeals*, 551 N.Y. S. 2d 392 (App. Div. 1990); *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, 426 A2d 327 (D.C. Appl. 1981).
7. See, e.g., *Chrinko v. South Brunswick Township Bd.*, 187 A2d 221 (N.J. L. Div. 1963).
8. *City of College Station v. Turtle Rock Corp.*, 680 S.W. 2d 802, 087 (Tex. 1984).
9. *Board of Supervisors v. West Chestnut.Realty Corp.*, 532 A2d 942 (Pa. Commw. Ct. 1987).
10. *Ibid.*
11. *Peabody v. City of Phoenix*, 14 Ariz. App. 576, 485 P. 2d 565 (1971); *City of Waxahachie v. Watkins*, 154 Tex 206, 275 S.W. 2d 477 (1955).
12. 709 P.2d 928 (Colo. 1985).
13. See also *Tri-State Generation & Transmission Co. v. City of Thornton*, 647 P.2d 670 (Colo, 1982); *Doran Investments v. Muhlenberg Township*, 10 Pa. Commw. 143, 309 A. 2d 450 (1973).
14. *Nemeroff Realty Corp. v. Kerr*, 32 N.Y. 2d 873, 299 N.E. 2d 897, 346 N.Y.S. 2d 532 (1973); *Cheney v. Village 2 at New Hope, Inc.*, 420 Pa. 626, 241 A.2d 81 (1968).
15. See *Teer*, N. 5 *supra*.
16. 774 S.W. 2d 284 (Tex. App. - Dallas 1989).
17. *Cheney v. Village 2 at New Hope, Inc.*, N. IS *supra*, 241 A.2d 81.
18. *City of Pharr v. Tippitt*, 616 S.W. 2d 173 (Tex. 1981).
19. *Orinda Homeowners Comm. v. Bd. of Supervisors*, 90 Cal. Rpt. 88 (Cal. App. 1970); *Chrinko v. South Brunswick Township Planning Bd.*, N. 7 *supra*, 187 A.2d 221.
20. N. 5 *supra*.
21. See also *Rutland Environmental Protection Ass'n v. Kane County*, 334 N.E. 2d 215 (111. Appl. 1975); see generally *Wegner, Moving Toward the Bargaining Table: Contract Zoning, Development Agreements, and the Theoretical Foundations of Government Land Use Deals*, 1988 *Land Use & Envir. L. Rev.* 245.
22. 409 S.W. 2d 184 (Tex. Civ. App. - Tyler 1966, *writ refd n.r.e.*)
23. See, e.g., *Turner v. Barber*, 380 S.E. 2d 811 (S.C. 1989).
24. *Nollan v. California Coastal Comm'n*, 483 U.S. 825 107 S. Ct. 3141 (1987); *Leroy Land Development Corp. v. Tahoe Regional Planning Agency*, 735 F. Supp. 1399 (D. Nev. 1990); compare *Arrington v. Mattox*, 767 S.W. 2d 957 (Tex. App. 1989).
25. N. 10 *supra*, 532 A. 2d 942.
26. 531 A. 2d 111 (Pa. Commw. 1987).
27. 242 A.2d 781 (Conn. 1968).
28. 114 S.Ct. 2409 (U.S. 1994).
29. It appears that the Court intended to limit its ruling in this case to exaction's of an interest in land. See *City of Monterrey v. Del Monte Dunes at Monterrey, Ltd., v.*, 119 S.Ct. 1624 (U.S. 1999).]

30. *City of College Station v Turtle Rock Corp.*, 680 S.W. 2d 802 (Tex. 1984).
31. N. 12 *supra*, 709 P.2d 928.
32. *Board of Supervisors v. West chestnut Realty Corp.*, N. 10 *supra*, 532 A. 2d 942.
33. See *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978); *Mayhew v. Town of Sunnyvale*, 964 S.W. 2d 922 (Tex. 1998)
34. *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987); *Presbytery of Seattle v. King County*, 787 P.2d 907 (1990); but see *Ciampetti v. United States*, 18 C. Ct. 548 (1989); *Corrigan v. City of Scottsdale*, 149 Ariz. 553, 720 P.2d 528 (1985); see generally *Shonkwiler & Morgan, Land Use Litigation*, Section 3.05 (West 1991 Supp.).
35. *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 105 S. et 3108 (1985); *City of El Paso v. Madero Development & Construction Co., Inc.*, 803 S.W. 2d 396 (Tex. App. -- El Paso 1991, writ denied); *Mac Donald, Sommer & Prates v. County of Yolo*, 477 U.S. 340 (1986); see generally *Shonkwiler & Morgan N. 37 supra*, at Ch. 8; *Morgan, "Regulator Takings: A State and Federal Perspective," 1991 Institute of Planning, Zoning & Eminent Doman*, Ch. 6 (Matthew Bender 1991).
36. BB 4, formerly Tex. Gov't Code sections 481.141 et seq, was inadvertently repealed by the 1997 Legislature. Other states also have vested rights legislation, see e.gs., *Colo. Rev. Stat. Section 24-68-101 et seq.*; *Nev. Rev. Stat. Section 278 A.520 to 278A.540*; see generally *Morgan, "The Texas Permit Processing Law: Legislating Vested Development Rights" in 1996 Institute on Planning, Zoning and Eminent Domain*, ch. 3]
37. See *Caruthers v. Board of Adjustment*, 290 S.W.2d 340 (Tex. Civ. App.-Houston 1956); *Biddle v. Board of Adjustment*, 316 S.W. 2d 437 (Tex. Civ. App.-Houston 1958); see generally *Cunningham & Kremer, "Vested Rights, Estoppel and the Land Development Process," 29 Hastings L.J. 625 (1978).*
38. Section 245.002(a).
39. *Id.* at subsection (b).
40. 908 S.W.2d 229 (Tex. App. Dallas 1995, no writ.
41. Administrative actions may involve the exercise of discretion, in which case "qualified" immunity extend to public officials under the civil rights act; where no discretion is involved, officials may be subject to damages for violation of constitutional rights such as alleged in the *Cinemark* case.
42. *Prince George's County v. M&B Construction Co.*, 197 A2d 683 (Md. 1972).
43. See e.g., *Nev. Rev. Stat. Section 278A.460.*
44. *Ibid.*
45. See, e.g., *Tex. Loc. Gov't Code Section 212.004.*
46. See *Tex. Loc. Gov't Code Section 212.0045.*

See, e.g., *Nev. Rev. Stat Section 278.320 (1)(c)*, providing that "any division of land which is ordered by any court in this state or created by operation of law" is not a subdivision.
47. *Nev. Rev. Stat Section 278A.580.*
48. See, e.g., *Williams v. Whitten*, 451 S.W. 2d 535 (Tex. Civ. App. — Tyler 1970, *no writ*). 171

See also *Minton v. St. Worth Planning Comm'n*, 786 S.W. 2d 563 (Tex. App. — Ft. Worth 1990).

50. 528 N.E. 2d 1266 (Ohio App.).

51 371 SM. 2d 767 (Tex. Civ. App. -- Dallas 1963, writ refd n.r.e.).

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MEMORANDUM

TO: Sylvia Carrillo, City Manager, and the Bastrop Planning and Zoning Commission
FROM: Rezzin Pullum, Assistant City Attorney
DATE: May 23, 2023
RE: **LAND USE: Zoning: Planned Development Districts**

This memorandum is intended to provide internal guidance regarding the enactment of a Planned Development District (PDD) Ordinance in the City of Bastrop. At this point, we are deliberating putting into place the process and standards for the creation of PDDs.

SUMMARY

The City of Bastrop outlines its zoning regulations in Chapters 2 and 3 of the Bastrop Building Block Code ("B3 Code"). While it establishes several different zoning classifications, it does not currently allow for Planned Development Districts ("PDD") that do not already exist under previous codes enacted prior to the B3 Code.

The purpose of PDDs is to provide more flexibility and creativity in zoning and project planning through the development of master-planned projects that encompass myriad land uses. PDDs are especially helpful for large-scale developments with mixed uses that do not fit into one single zoning district currently allowed in the B3 Code. Alternatively, if PDDs are not permitted, a developer would have to seek several variances from the zoning regulations to accomplish these types of projects.

ORDINANCE ENABLING PDDs

The PDD Ordinance currently under consideration is intended to enable the creation of PDDs. It would provide for the development of a minimum of one (1) or more acres while allowing the combining and/or mixing of uses allowed in various districts with appropriate regulations that permit flexibility in the use and design of land and buildings. This is accomplished in situations where the modifications of specific provisions of Bastrop's codes and ordinances are not contrary to the intent and purpose of those provisions, or significantly inconsistent with the planning and/or zoning on which it is based. Upon confirming the development will not be harmful to its neighbors or the community, a PDD may be created to permit new and innovative concepts in land utilization.

The draft ordinance allowing for the creation of PDDs would be an amendment to the B3 Code. It would provide detailed standards, including application requirements, minimum standards, and the process for public notice and city review. The draft ordinance ensures that any potential PDDs in Bastrop must adhere to high standards of development.

A PDD application is a rezoning request in which the City concurrently considers establishing a new zoning district (the specific PDD for the property), which varies from standard zoning district requirements, and the City also considers rezoning the property to that newly created district. If adopted, PDDs become their own zoning district with their own set of regulations. Typically, PDDs have a *base* zoning district that most closely matches the type of development that the applicant is trying to achieve, and the PDD ordinance will show how the proposed regulations differ from the base district.

A PDD application is subject to certain special requirements and procedures in addition to the usual rezoning requirements under the City's zoning ordinance and Texas Local Government Code Chapter 211. Note that actual (specific) PDDs are subject to the same notice and public hearing requirements as any other rezoning. As with other zoning changes, the city (City Council, P&Z) retains its discretion when deciding to approve them.

The draft PDD ordinance contains detailed review standards that can be used as a checklist when city staff, the Planning and Zoning Commission, and City Council review any potential PDDs. It provides transparency in the review process by clearly outlining standards and principles that are the basis for review. This could include:

- Respect for an approved zoning plan (e.g., Comprehensive Plan, Future Land Use Map, Transportation Plan, Capital Improvements Plan);
- Nature and degree of adverse impact upon neighboring lands;
- Suitability of tract for use as presently zoned;
- Substantial relations of rezoning decision to public health, safety, morals, general welfare, protection, and preservation of historical or cultural places; and
- Changes in conditions or circumstances for the area that justify rezoning.

CONCLUSION

PDDs are a customized zoning district created to accommodate a development project that does not easily fit in the standard districts in the B3 Code. PDDs must be compatible with surrounding land uses and should preserve any historic areas, places of cultural significance, as well as environmentally sensitive areas. Additionally, a PDD will need to show substantial details for the applicable standards, including but not limited to, density, land uses, roadway alignments, parks and open space, community or amenity centers, as well as drainage features. The Planning and Zoning Commission will consider and review this ordinance prior to making a recommendation to Council. Accordingly, the Commission may consider modifications to the PDD Ordinance.

cc: Alan Bojorquez, City Attorney, Bastrop



STAFF REPORT

MEETING DATE: June 29, 2023

AGENDA ITEM:

TITLE:

Consider action to approve the Casata Preliminary Plat, being 22.64 acres out of Farm Lots 64 & 65, located west of North Main Street within the Statutory Extraterritorial Jurisdiction of Bastrop, Texas, as shown in Exhibit A.

STAFF REPRESENTATIVE:

Trey Job, Assistant City Manager

ITEM DETAILS:

Site Address: West of North Main Street (Attachment 1)

Total Acreage: 22.64 acres

Legal Description: 22.64 acres out of Farms Lots 64 & 65

Property Owner: Mainstreet Bastrop LLC

Agent Contact: Lexie England, Kimley-Horn

Existing Use: Vacant/Undeveloped

Existing Zoning: None. Extra-Territorial Jurisdiction

Future Land Use: Rural Residential

BACKGROUND/HISTORY:

The applicant submitted an application for a Preliminary Plat for Casta that is proposed to be a multifamily development (Exhibit A).

Traffic Impact and Streets

The Preliminary Plat is proposing to dedicate their proportional share of public right-of-way along North Main Street which is proposed as a Primary Multimodal Street with an 80-foot right-of-way in the Master Transportation Plan. Improvements will be made along North Main Street and Highway 40 that borders the southern portion of the development to accommodate for the increased vehicular traffic through the area. Additionally, there will be two driveway connections made onto North Main Street from the site, and one driveway connection added to Highway 40.

Utilities

Water service for the lots will be provided by Aqua Water Supply Corporation. Wastewater service will be provided to the site by extending the City of Bastrop wastewater utility service to the site. Fire service will be installed by the developer from the existing Aqua Water Supply Company line on the southeast side of the development. A Preliminary Infrastructure Plan has been reviewed and approved by the City Engineer.

Drainage

Stormwater runoff generated within the property will flow into either a detention pond on the southeast corner of the lot, or into a detention pond located on the southwest corner of the lot. Both detention ponds were designed with an emergency overflow feature. The drainage plan is using the updated rainfall totals of Atlas 14. A Preliminary Drainage Plan has been reviewed and approved by the City Engineer.

POLICY EXPLANATION:

Preliminary Plats are reviewed and approved by the Planning & Zoning Commission.

Compliance with 2036 Comprehensive Plan:

Future Land Use Plan - Neighborhood Residential: The Neighborhood Residential character area is for single-family residential subdivision development, associated amenities such as parks, trails, open spaces and public uses such as schools, fire stations, and more.

This plat complies with the Future Land Use Plan, which shows Rural Residential in this area. The plat proposes residential lots.

Objective 2.1.2: Exercise greater influence on development patterns and character in the Bastrop ETJ.

The subdivision is providing streets and connectivity in compliance with the adopted Master Transportation Plan Street Grid intent.

Goal 4.1.1 Provide a greater diversity of housing options in Bastrop while protecting the character of the City's existing neighborhoods.

This area of the ETJ provides a range of lot sizes. This subdivision will be constructing multi-family lots on 20.36 acres of the site. The lot sizes will be determined at the time of Final Plat and will take into account the 2036 Comprehensive Plan goals for this area.

Local Government Code

Sec. 212.002. Rules.

After a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.

Bastrop adopted subdivision regulations in 1981. The B³ Code, Chapter 1: Subdivision outlines the process and requirements for plats within the Bastrop city limits and Extra Territorial Jurisdiction (ETJ).

Section 212.004 Plat Required

(a) The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract in two or more parts to lay out a subdivision of the tract, including an addition to a municipality, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or

adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared.

The applicant has proposed subdividing a portion of Farm Lot 64 & 65 into a 20.36-acre multi-family development.

Sec. 212.010. Standards for Approval

- (a) The municipal authority responsible for approving plats shall approve a plat if:
- (1) it conforms to the general plan of the municipality and its current and future streets, alleys, parks, playgrounds, and public utility facilities;

The preliminary plat conforms to the Future Land Use Plan, which is designated Neighborhood Residential for this area.

- (2) it conforms to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities;

This subdivision will be dedicating their proportional share of right-of-way along North Main Street and making improvements to Highway 40 that will allow future connectivity and traffic flow for additional development in the area.

- (3) a bond required under Section 212.0106, if applicable, is filed with the municipality; and

A fiscal guarantee will be provided for the construction and maintenance of the street improvements before any final plats can be recorded.

- (4) it conforms to any rules adopted under Section 212.002.

The preliminary plat complies with the requirements of the adopted B³ Code.

B³ Code – Chapter 1: Subdivisions

- Section 1.3.001 Standard Procedure - Platting
Any subdivision requiring the extension of public infrastructure or of more than four lots require the approval of a Preliminary Plat, Public Improvement Plan, and a Final Plat.
- Section 1.3.002 Preliminary Plat or Section 1.3.003 Final Plat
The Preliminary Drainage Plan to determine drainage requirements was approved by the City Engineer on June 23, 2023.

The Preliminary Infrastructure Plan for the feasibility of the construction of the subdivision improvements was approved by the City Engineer on June 23, 2023.

- Section 1.3.004 Plat Requirements

The Development Review Committee reviewed the Casata Preliminary Plat for compliance with subdivision, and utility standards on June 23, 2023, and deemed the plat administratively complete. Staff recommends approval.

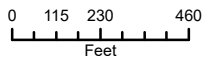
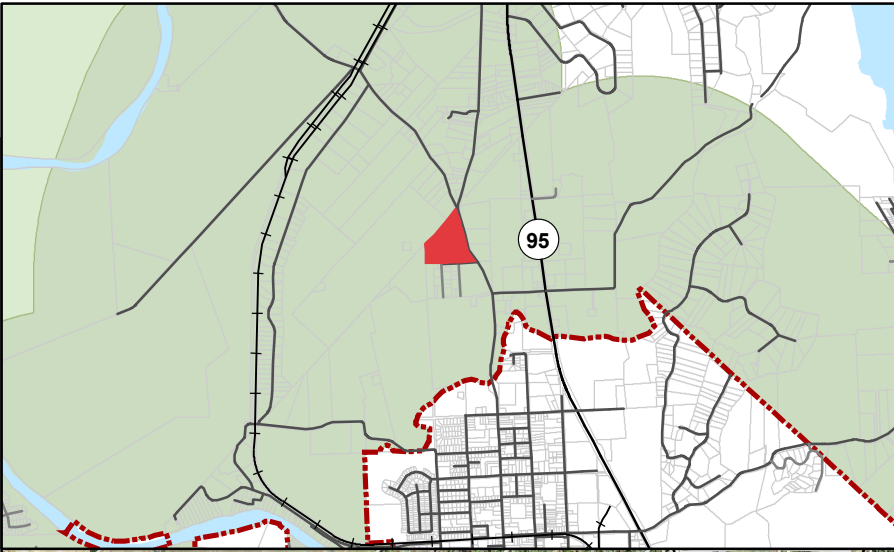
RECOMMENDATION:

Consider action to approve the Casata Preliminary Plat, being 22.64 acres out of Farm Lots 64 & 65, located west of North Main Street within the Statutory Extraterritorial Jurisdiction of Bastrop, Texas, as shown in Exhibit A.

ATTACHMENTS:

- Exhibit A: Casata Preliminary Plat
- Attachment 1: Location Map





Preliminary Plat Casata

1 inch = 500 feet

Date: 6/23/2023

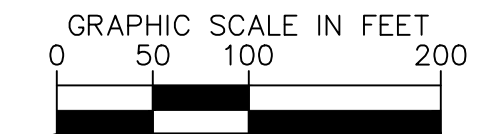
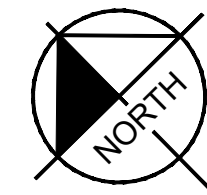
The accuracy and precision of this cartographic data is limited and should be used for information /planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness or usefulness of information, nor does it represent that its use will not infringe upon privately owned rights.



REVISIONS/CORRECTIONS							
NO.	DESCRIPTION	REVISE (R) VOID (V) ADD (A) SHEET NO.'S	TOTAL NO. SHEETS IN PLAN SET	NET CHANGE IMP. COVER (SQ. FT.)	TOTAL SITE IMP. COVER (SQ. FT.)/%	CITY OF AUSTIN APPROVAL DATE	DATE IMAGED

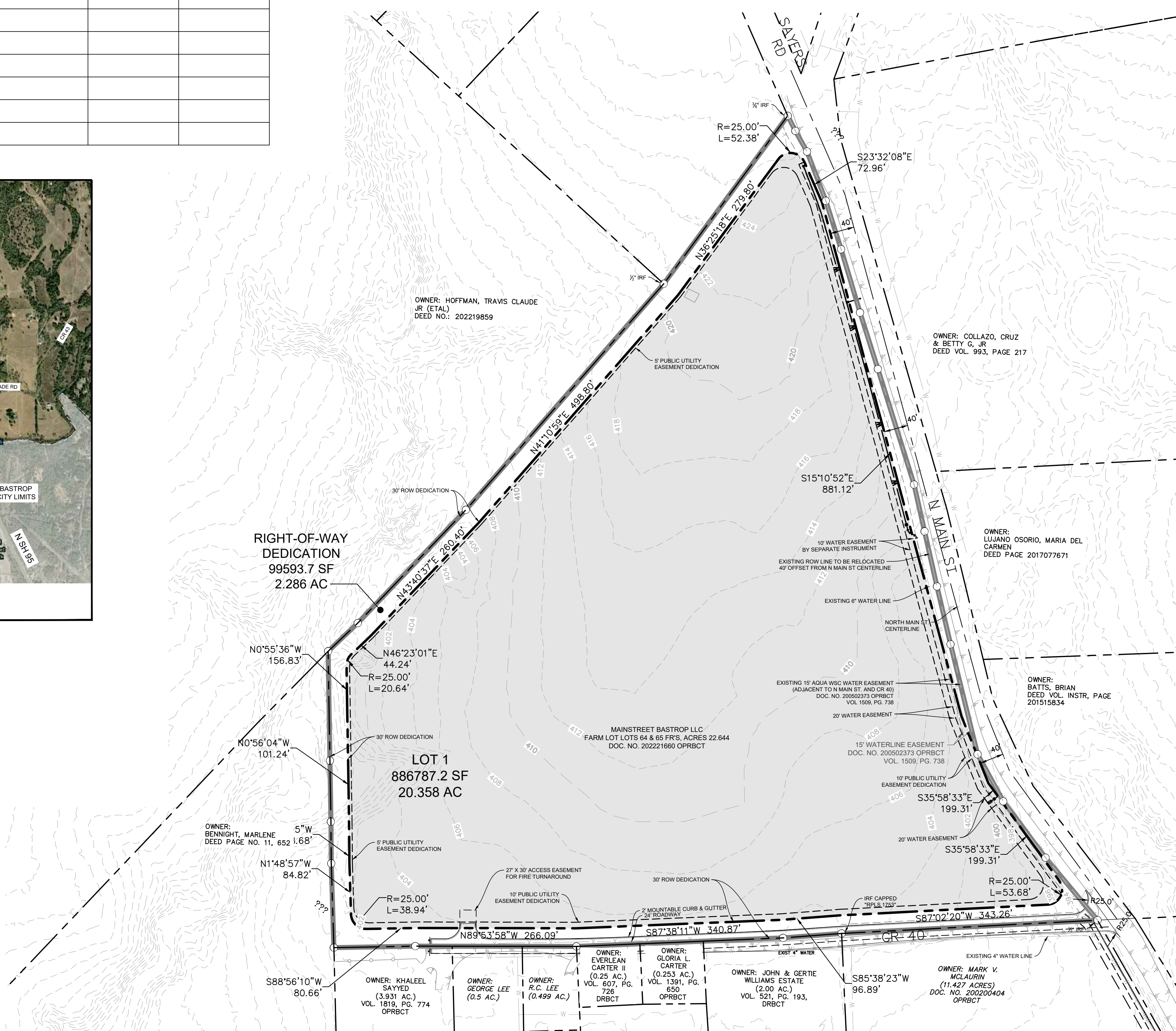
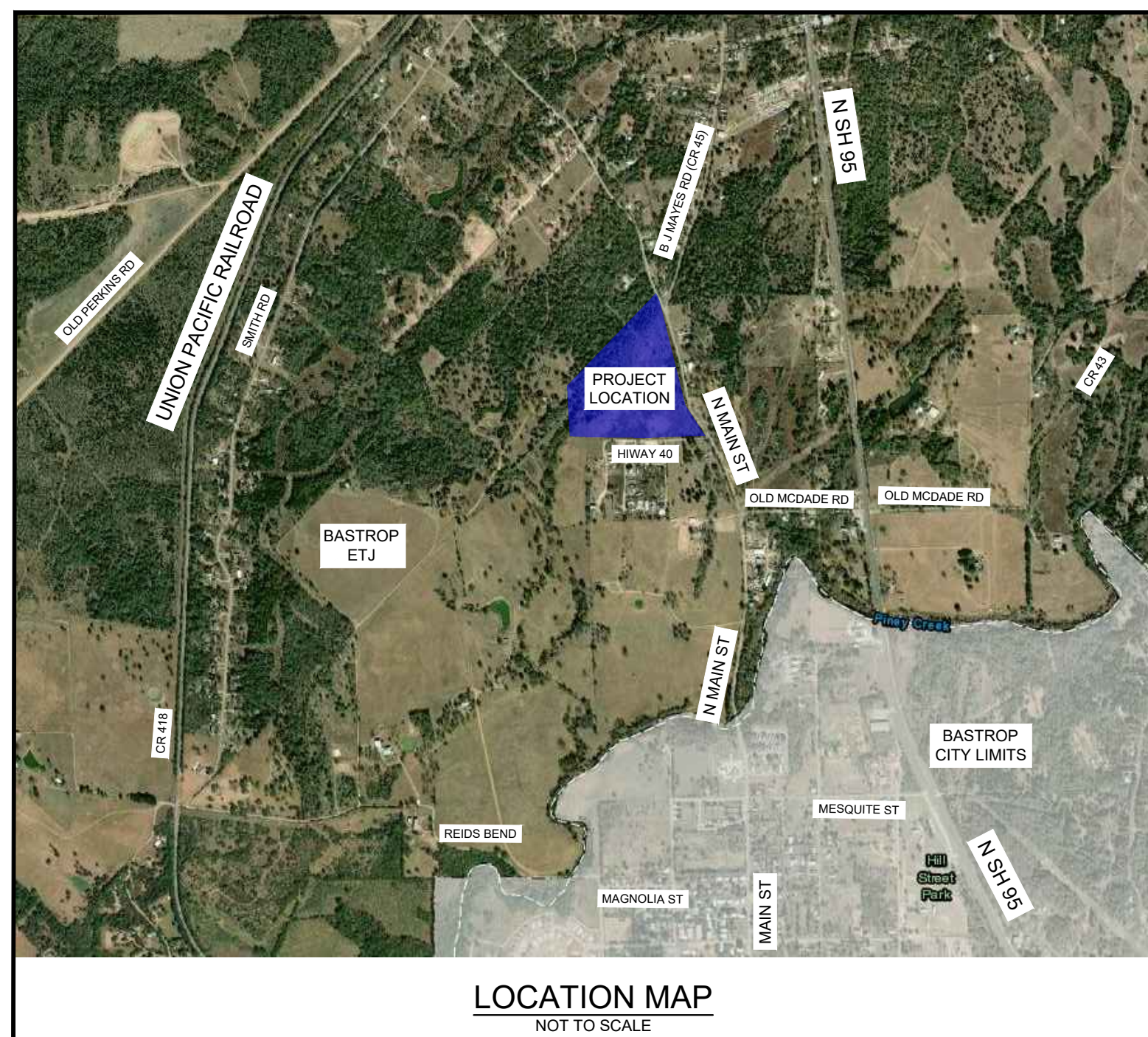
PRELIMINARY PLAT OF CASATA BASTROP

BEING A PRELIMINARY PLAT OF 22.64 ACRES INCLUDING A 20.36 ACRE LOT AND 2.28 ACRES OF STREET DEDICATION, PART OF AND OUT OF THE FARM LOT LOTS 64 & 65 FR'S, ABSTRACT SUBDIVISION CODE S5960, BASTROP, BASTROP COUNTY, TEXAS



LEGEND

- OWNER BOUNDARY
- PROPOSED PROPERTY LINE
- EXISTING PROPERTY LINE
- EXISTING ROW LINE TO BE RELOCATED
- EXISTING EASEMENT LINE
- PROPOSED EASEMENT LINE
- 450 EXISTING CONTOUR
- EXISTING WATER LINE
- SURVEYED INFLECTION POINTS
- LOT 1



- ALL RESPONSIBILITIES FOR THE ADEQUACY OF THESE PLANS REMAINS WITH THE REGISTERED PROFESSIONAL ENGINEER WHO PREPARED THEM. IN REVIEWING THESE PLANS, THE CITY OF BASTROP MUST RELY UPON THE ADEQUACY OF THE WORK OF THE DESIGN ENGINEER.
- NO PORTION OF THIS SUBDIVISION LIES WITHIN THE 100 YEAR SPECIAL FLOOD HAZARD AREA (1% ANNUAL CHANCE OF FLOODING AREA) AS IDENTIFIED BY THE FLOOD INSURANCE RATE MAP, PANEL NO. 48021C0215E, EFFECTIVE JANUARY 19, 2006 FOR THE COMMUNITY BASTROP COUNTY, COMMUNITY NUMBER 481193.
- THIS PLAT IS SUBJECT TO THE CITY OF BASTROP DEVELOPMENT REGULATIONS.
- ALL PUBLIC PARKS WILL BE MAINTAINED BY THE LOCAL HOA.
- SIDEWALKS CONSTRUCTED ALONG PUBLIC ACCESS ROADWAY PER CITY OF BASTROP THROUGHFARE PLAN.
- SIDEWALKS, STREET LIGHTING, AND LANDSCAPING WITHIN THE PUBLIC RIGHT-OF-WAY SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION OR OTHER SUCH ENTITY APPROVED BY THE CITY OF BASTROP. BASTROP COUNTY APPROVES WHO WILL MAINTAIN ITEMS IN THE RIGHT-OF-WAY.
- "PRELIMINARY. THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSES"

OWNER:
TOWNBRIDGE CAPITAL LLC
415 OLD AUSTIN HWY
AUSTIN, TX 78709
TEL: (954) 790-6333
CONTACT: AARON LEVY, CEO
TEL: (954) 790-6333

ENGINEER
KIMLEY-HORN
5301 SOUTHWEST PKWY, BUILDING 2,
SUITE 100
AUSTIN, TX 78735
TEL: (512)646-2237
CONTACT: LEXIE ENGLAND, P.E.

SURVEYOR
ATWELL LLC
3815 S CAPITAL OF TEXAS HWY. STE. 300
AUSTIN, TX 78704
TEL: (512)904-0505
CONTACT: ROBERT J. GERTSON, RPLS
RGERTSON@ATWELL-GROUP.COM

WATER:
AQUA WATER SUPPLY CORPORATION
415 OLD AUSTIN HWY
BASTROP, TX 78602
TEL: (512) 303-3943

WASTEWATER:
CITY OF BASTROP
1311 CHESTNUT ST.
BASTROP, TX 78602
TEL: (512) 332-8960

ELECTRIC
BLUEBONNET ELECTRIC COOP
690 STATE HWY 71
BASTROP, TX 78602
TEL: (800) 842-7708

TELECOM
SPECTRUM
12012 N MOPAC EXPY
AUSTIN, TX 78758
CONTACT: WILLIAM THROCKMORTON
TEL: (512) 531-3252

PREPARED BY:

Kimley»Horn

5301 Southwest Pkwy, Building 2, Suite 100
Austin, Texas 78735 FIRM # 928
www.kimley-horn.com

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1:60	JN	LE	3/22/2023	069278814	1 OF 1

GENERAL PLAT NOTES:

- PERMITS: PROPERTY IN THIS SUBDIVISION SHALL BE DEVELOPED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS INCLUDING, BUT NOT LIMITED TO: BASTROP COUNTY 9-1-1 ADDRESSING ASSIGNMENT, DRIVEWAY/CULVERT, DEVELOPMENT, FLOODPLAIN, AND ON-SITE SEWAGE FACILITY. COUNTY PERMITS ARE OBTAINED AND ISSUED THROUGH THE BASTROP COUNTY DEVELOPMENT SERVICES DEPARTMENT.
- CONSTRUCTION PLANS AND SPECIFICATIONS FOR ALL SUBDIVISION IMPROVEMENTS SHALL BE REVIEWED AND ACCEPTED BY THE CITY OF BASTROP PRIOR TO ANY CONSTRUCTION WITHIN THE SUBDIVISION.
- THE OWNER OF THIS SUBDIVISION, AND HIS OR HER SUCCESSORS AND ASSIGNS, ASSUMES SOLE RESPONSIBILITY FOR PLANS FOR CONSTRUCTION OF SUBDIVISION IMPROVEMENTS WHICH COMPLY WITH APPLICABLE CODES AND REQUIREMENTS OF THE CITY OF BASTROP. THE OWNER UNDERSTANDS AND ACKNOWLEDGES THAT PLAT VACATION OR RE-PLATTING MAY BE REQUIRED, AT THE OWNER'S SOLE EXPENSE, IF PLANS TO CONSTRUCT THIS SUBDIVISION DO NOT COMPLY WITH SUCH CODES AND REQUIREMENTS.
- BY APPROVING THIS PLAT, THE CITY OF BASTROP ASSUMES NO OBLIGATION TO CONSTRUCT ANY INFRASTRUCTURE IN CONNECTION WITH THIS SUBDIVISION. ANY SUBDIVISION INFRASTRUCTURE REQUIRED FOR THE DEVELOPMENT OF THE LOTS IN THIS SUBDIVISION IS THE SOLE RESPONSIBILITY OF THE DEVELOPER AND/OR THE OWNERS OF THE LOTS. FAILURE TO CONSTRUCT ANY REQUIRED INFRASTRUCTURE TO CITY STANDARDS MAY BE JUST CAUSE FOR THE CITY TO DENY APPLICATIONS FOR CERTAIN DEVELOPMENT PERMITS INCLUDING BUILDING PERMITS, SITE PLAN APPROVALS AND/OR CERTIFICATE OF OCCUPANCY.
- FISCAL SURETY FOR SUBDIVISION CONSTRUCTION, IN A FORM ACCEPTABLE TO THE CITY OF BASTROP, SHALL BE PROVIDED PRIOR TO PLAT APPROVAL BY THE CITY.
- NO LOT IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO THE APPROVED WATER DISTRIBUTION, WASTEWATER CONNECTION FACILITIES, AND ELECTRICAL DISTRIBUTION SYSTEMS.
- WASTEWATER AND WATER SYSTEMS SHALL CONFORM TO TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ).
- ALL NEW UTILITIES WILL BE UNDERGROUND.
- IMPACT FEES SHALL BE ASSESSED IN ACCORDANCE WITH THE ORDINANCE EFFECTIVE AT THE TIME OF PLATTING.
- DEVELOPER OR PROPERTY OWNER SHALL BE SOLELY RESPONSIBLE FOR ALL RELOCATION AND MODIFICATIONS TO EXISTING UTILITIES.
- TEMPORARY AND PERMANENT EASEMENTS TO BE PROVIDED, AS REQUIRED AT THE CITY'S SOLE DISCRETION FOR OFF-SITE IMPROVEMENTS. AS SHOWN HEREON, A TEN (10) FOOT WIDE PUBLIC UTILITY EASEMENT (P.U.E.) IS HEREBY DEDICATED ADJACENT TO STREET RIGHTS-OF-WAY ON ALL LOTS. A FIVE (5) FOOT WIDE P.U.E. IS HEREBY DEDICATED ALONG EACH SIDE AND REAR LOT LINE.
- PROPERTY OWNER SHALL PROVIDE FOR ACCESS TO ALL EASEMENTS AS MAY BE NECESSARY AND SHALL NOT PROHIBIT ACCESS BY GOVERNMENT AUTHORITIES.
- NO BUILDING, FENCES, LANDSCAPING OR OTHER STRUCTURES ARE PERMITTED WITHIN DRAINAGE EASEMENTS SHOWN, EXCEPT AS APPROVED BY THE CITY OF BASTROP AND/OR BASTROP COUNTY.
- ALL EASEMENTS ON PRIVATE PROPERTY SHALL BE MAINTAINED BY THE PROPERTY OWNER OR HIS OR HER ASSIGNEES.
- NO LOT OR STRUCTURE SHALL BE OCCUPIED PRIOR TO THE APPLICANT SUBMITTING TO THE CITY OF BASTROP DOCUMENTATION OF SUBDIVISION/SITE REGISTRATION WITH THE TEXAS DEPARTMENT OF LICENSING AND REGULATIONS (TDLR) AND PROVIDE DOCUMENTATION OF REVIEW AND COMPLIANCE OF THE SUBDIVISION CONSTRUCTION PLANS WITH TEXAS ARCHITECTURAL BARRIERS ACT (TABA).
- EROSION AND SEDIMENTATION CONTROLS CONSTRUCTED IN ACCORDANCE WITH THE CODE OF ORDINANCES OF THE CITY OF BASTROP ARE REQUIRED FOR ALL CONSTRUCTION ON EACH LOT, INCLUDING SINGLE FAMILY AND DUPLEX CONSTRUCTION.
- PUBLIC UTILITY AND DRAINAGE EASEMENTS WHERE SHOWN AND/OR DESCRIBED HEREON ARE INTENDED TO INDICATE AN EASEMENT FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF PUBLIC UTILITIES AND DRAINAGE WAYS, INCLUDING, BUT NOT LIMITED TO, SANITARY SEWERS, FORCE MAINS, WATER LINES, TELEPHONE SIGNAL CONDUITS, ELECTRIC CONDUCTORS, DRAINAGE PIPES, AND NATURAL GAS LINES.
- A BASTROP COUNTY DEVELOPMENT PERMIT IS REQUIRED PRIOR TO ANY SITE DEVELOPMENT.
- ALL INFRASTRUCTURE REQUIRED FOR PUBLIC ROADS, DRAINAGE, OR OTHER PUBLIC INFRASTRUCTURE (INCLUDING BUT NOT LIMITED TO LIGHTING, SIGNAGE, TRAFFIC LIGHTS, SIDEWALKS, PARKING AREAS, STORM SEWERS, OR OTHER DRAINAGE INFRASTRUCTURE), SHALL BE MAINTAINED BY THE DEVELOPER, OR THEIR ASSIGNS, UNTIL SUCH A TIME THAT IT IS ACCEPTED, IF AT ALL, BY A GOVERNMENTAL ENTITY FOR MAINTENANCE.
- UNTIL SUCH A TIME AS BASTROP COUNTY, THROUGH THE BASTROP COUNTY COMMISSIONERS COURT, ACCEPTS THE DEDICATION OF THE IMPROVEMENTS DELINEATED AND SHOWN ON THIS PLAT, SAID IMPROVEMENTS ARE NOT BASTROP COUNTY IMPROVEMENTS AND ARE NOT SUBJECT TO BASTROP COUNTY MAINTENANCE.
- THIS SUBDIVISION IS LOCATED WITHIN THE STATUTORY OR VOLUNTARY ETJ OF THE CITY OF BASTROP.
- THIS PROJECT IS NOT LOCATED WITHIN THE "KNOWN AND POTENTIAL HABITAT" OF THE ENDANGERED HOUSTON TOAD.
- SINCE NO FURTHER FRAGMENTATION OF POTENTIAL HOUSTON TOAD HABITAT OCCURS FROM THIS SUBDIVISION, IT HAS NO EFFECT TO THE LPHCP.
- WATER SERVICE IS PROVIDED BY AQUA WATER SUPPLY CORPORATION.
- WASTEWATER SERVICE IS PROVIDED BY CITY OF BASTROP.
- ELECTRIC SERVICE IS PROVIDED BY BLUEBONNET ELECTRIC.

APPROVED THIS ____ DAY OF _____, 2022, A.D. BY THE PLANNING & ZONING COMMISSION OF THE CITY OF BASTROP, TEXAS.

APPROVED: _____ ATTEST: _____

PLANNING & ZONING COMMISSION CHAIRPERSON _____ CITY SECRETARY _____

THE STATE OF TEXAS
COUNTY OF BASTROP

KNOW ALL MEN BY THESE PRESENTS

THAT I, AARON LEVY, BEING THE OWNERS OF 22.644 ACRES, AND AS CONVEYED TO US BY DEEDS RECORDED IN 202221660 OF THE OFFICIAL PUBLIC RECORDS OF BASTROP COUNTY DO HEREBY SUBDIVIDE SAID LAND WITH THE PLAT SHOWN HEREON, TO BE KNOWN AS:

CASATA BASTROP SUBDIVISION

SUBJECT TO EASEMENTS AND RESTRICTIONS HERETOFORE GRANTED AND NOT RELEASED AND DO HEREBY DEDICATE ANY STREETS AND/OR EASEMENTS SHOWN HEREON TO THE PUBLIC.

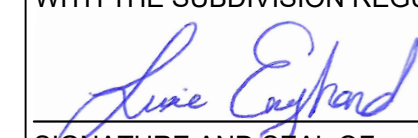
WITNESS MY HAND THIS 23rd DAY OF June, 2023, A.D.


AARON LEVY
PO BOX 90638, AUSTIN, TX 78709

THE STATE OF TEXAS
COUNTY OF BASTROP

KNOW ALL MEN BY THESE PRESENTS

THAT I, ROBERT J. GERTSON, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE ON-THE-GROUND SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF BASTROP, TEXAS.


SIGNATURE AND SEAL OF REGISTERED PUBLIC SURVEYOR

06/23/2023
DATE



THE STATE OF TEXAS
COUNTY OF BASTROP

KNOW ALL MEN BY THESE PRESENTS

THAT I, LEXIE ENGLAND, DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED ON THIS PLAT COMPLIES WITH THE SUBDIVISION REGULATIONS FOR THE CITY OF BASTROP, TEXAS AND THAT THE 100 YEAR FLOOD PLAIN IS AS SHOWN AND WILL BE CONTAINED WITHIN THE DRAINAGE EASEMENT AND OR DRAINAGE RIGHT-OF-WAY, AS SHOWN HEREON.

PRELIMINARY
SIGNATURE AND SEAL OF REGISTERED ENGINEER _____ DATE _____



STAFF REPORT

MEETING DATE: June 29, 2023

TITLE: FUTURE DEVELOPMENT RELATED ITEMS

AGENDA ITEM SUBMITTED BY: Sylvia Carrillo, ICMA-CM, CPM, City Manager

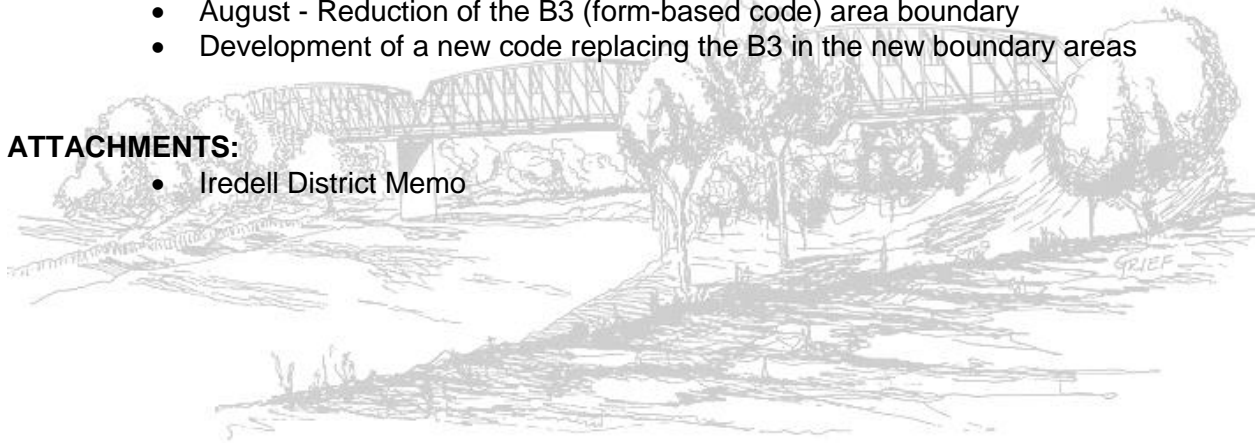
INFORMATION:

Proposed amendments to the unified development code (B3) coming to Planning and Zoning

- June - Iredell District suspension memo (in the 6.29.23 packet)
- July – Elimination/Amendment of the grid street requirement
- August - Reduction of the B3 (form-based code) area boundary
- Development of a new code replacing the B3 in the new boundary areas

ATTACHMENTS:

- Iredell District Memo



CITY MANAGER'S DIRECTIVE

To: Bastrop Planning and Zoning, Bastrop Historic Landmark Commission, and Bastrop Development Services Department

From: Sylvia Carrillo, City Manager, ICMA-CM, CPM

Date: March 28, 2023

RE: Temporary Suspension of Building Materials requirements as condition of approving Certificates of Appropriateness in the Iredell District

In accordance with Bastrop's Home Rule Charter, Section 4.04, as the chief administrative officer of the City I am responsible for the proper administration of all affairs of the City, including directing and supervising the administration of all departments, offices and agencies of the City. It is my duty under the Charter to see that the laws of the City are faithfully executed.

In accordance with my authority under the Charter, I hereby ***temporarily suspend*** the requirement that applications for Certificates of Appropriateness for historic projects in the Iredell District comply with building materials specifications in the Authentic Bastrop Pattern Book (as adopted under the *Building Bastrop Block Code – B3*).

In considering an application for a COA under B3, the Historic Landmark Commission is to be guided by any locally adopted design Standards, Section 9.3.006(a), p. 249. For building materials, architecture standards, architectural details, massing for a variety of building types, see the Pattern Book. B3, Section 9.3.006(a)(8), p. 250. The *Authentic Bastrop Pattern Book* (Pattern Book) is a supplemental set of Standards, information, and inspiration supporting this Code. Architecture, urban design, and landscape design are housed within its contents. B3, Section 10.1.002, p. 239. The Pattern Book states that it is, "mandatory in the Iredell District,..." p. 2. The Pattern Book specifies certain building materials, which vary depending on the project.

This directive is issued upon the recommendation of the City Attorney, who has evaluated the City's ability to require specific building materials in this area and concluded that certain necessary procedural steps may have been omitted. State and federal laws establish standards for designating historic areas and for mandating or restricting building materials beyond what is allowed in international codes.

While this matter is under review, the City shall not base its approval of applications CoAs on compliance with the proposed building materials conforming to the Pattern Book. This directive shall remain in effect until I withdraw it or receive policy guidance from the Bastrop City Council.