

INTRODUCTION TO ZONING

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What is Zoning?

- ◆ Zoning is the division of land into distinct districts and the regulation of certain uses and developments within those districts.
- ◆ It is the process to legally control the use that may be made of property and the physical configuration of development
- ◆ The power of a municipality to establish zones is a police power and the adoption or amendment of a zoning ordinance is a legislative function.

Zoning

- ◆ Early 1920's US Department of Commerce produced model zoning act, Standard State Zoning Enabling Act (SZEA)
- ◆ In SZEA, states delegated zoning power to local governments
- ◆ Limitations imposed on local governments
- ◆ Texas adopted SZEA in 1927 – TLGC Chapter 211
- ◆ No zoning power delegated to counties

Zoning

- ◆ Supreme Court validated zoning as valid exercise of the police power in *Village of Euclid v. Amber Realty*, 272 U.S. 365 (1936)
- ◆ “Euclidian” zoning born: concept of separating incompatible land uses
- ◆ Texas zoning power upheld by Texas Supreme Court in *Lombardo v. City of Dallas* in 1934

What Can Zoning Regulate?

LGC § 211.003

- Height, number of stories, and size of buildings and other structures;
- Percentage of a lot that may be occupied;
- Size of yards, courts, and other open spaces;
- Population density;

What Can Zoning Regulate?

LGC § 211.003

- ❑ The location and use of buildings, other structures, and land for business, industrial, residential, etc.;
- ❑ Construction in areas of historical, cultural, or architectural importance;
- ❑ The bulk of buildings (if home-rule).

What Must Zoning be Designed to do?

LGC § 211.004

- ❑ Lesson congestion in the streets
- ❑ Secure safety from fire, panic, dangers
- ❑ Promote health & general welfare
- ❑ Provide adequate light & air

What Must Zoning be Designed to do?

LGC § 211.004

- ❑ Prevent overcrowding of land
- ❑ Avoid undue concentration of population
- ❑ Facilitate adequate provision of transportation, water, sewer, schools, parks, etc.

Zoning Commissions

LGC § 211.007

- ❑ Home Rule **must** have
- ❑ General Law **may** have
 - ❑ A planning commission may serve as the zoning commission
 - ❑ If no commission is appointed city council performs functions of zoning commission

Zoning Procedure

LCG §§ 211.006 & .007

- ◆ Zoning procedures must be followed or else zoning ordinances are void
- ◆ City council establishes regulations and procedures for adopting and enforcing regulations and boundaries.
- ◆ Zoning Commission (or council if none) conducts land-use inventories, determines preliminary land-use goals and policies, formulates specific district regulations, and draws tentative district boundary lines.
- ◆ A Preliminary Report is formulated based on the above determinations

Zoning Procedure

LCG §§ 211.006 & .007

- ◆ Zoning procedures must be followed or else zoning ordinances are void
- ◆ Two Potential Changes to a zoning ordinance
 - ◆ Change in Classification (USE)
 - ◆ Change in Regulation
- ◆ Separate Process for Each
- ◆ Different Process depending on existence of Zoning Commission

Zoning Amendments

LCG § 211.006

- ◆ A final report must be provided to the City Council before final action on a zoning classification change
- ◆ Written protest by 20% of lots or area of land covered or within 200 feet requires a $\frac{3}{4}$ vote of all members of the city council
- ◆ Council may require $\frac{3}{4}$ vote of all members to overrule a recommended denial by the Planning & Zoning Commission (must be in ordinance)

Classification Change

LCG §§ 211.006 & .007

WITH ZONING COMMISSION

- ◆ Public hearings are held to receive input from the public

Zoning Commission

- ✓ 11 days before hearing, written notice to owners within 200 feet
- ✓ Post agenda 72 hours prior to hearing
- ✓ Preliminary Report created from PH

City Council

- ✓ Newspaper notice 16 days prior to hearing
- ✓ Post agenda 72 hours prior to hearing
- ✓ City Council receives Preliminary Report
- ✓ City Council adopts zoning classification change

Classification Change

LCG §§ 211.006 & .007

WITHOUT ZONING COMMISSION

- ◆ A public hearing is held to receive input from the public

City Council

- ✓ Newspaper notice 16 days prior to hearing
- ✓ 11 days before hearing, written notice to owners within 200 feet
- ✓ Post agenda 72 hours prior to meeting
- ✓ City Council creates preliminary report
- ✓ 31 days after 11 day notice is given City Council adopts zoning classification change

Regulatory Change

LCG §§ 211.006 & .007

- ◆ A public hearing is held to receive input from the public

City Council

- ✓ Newspaper notice 16 days prior to hearing
- ✓ Post agenda 72 hours prior to hearing
- ✓ City Council adopts regulatory Change

Specific/Special Use Permits (SUP)

- ◆ SUPs are uses that a zoning ordinance permits but are screened and specially approved based on particular conditions and suitability.
 - ◆ The authority to grant an SUP must be provided for in the zoning ordinance.
 - ◆ The ordinance must specify the conditions to be met for the SUP.

Planned Developments

- ◆ Development that does not fit the standards within the standard zoning
- ◆ Unique circumstances
- ◆ Mixed Uses
 - ◆ Multi-family
 - ◆ Office Developments
 - ◆ Retail
 - ◆ Hospital Facilities
 - ◆ Hotels

COMPREHENSIVE PLAN AND ITS IMPACT

LGC §§ 213.00 et. al. & 211.004

- City is not required to have a comprehensive plan in order to zone; **HOWEVER**
- If a city adopts a comprehensive plan it must be followed when making zoning decisions.
LGC 211.004(a)

Zoning Pitfalls

❑ Exclusionary Zoning

- ❑ Where the intent or effect of zoning excludes certain people such as racial minorities, ethnic groups, lower income, etc.

❑ Constitutional Issues

- ❑ Substantive Due Process – goes to far
- ❑ Procedural Due Process – notice and opportunity to be heard – Legislative vs. Administrative
- ❑ Spot Zoning
- ❑ Takings

Zoning Pitfalls

❑ Regulation of certain uses

- ❑ Religious institutions - RILUPA

- ❑ Manufactured homes - TMHSA

- ❑ Sexually Oriented Businesses (SOB) – LGC section 243.000 et. al.

- ❑ Alcohol sales – TABC

- ❑ § 1.06. CODE EXCLUSIVELY GOVERNS. Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code.

Zoning Pitfalls

□ Regulation of certain uses

□ Group homes – THRC section 123.003

- ◆ Sec. 123.003. ZONING AND RESTRICTION DISCRIMINATION AGAINST COMMUNITY HOMES PROHIBITED. (a) The use and operation of a community home that meets the qualifications imposed under this chapter is a use by right that is authorized in any district zoned as residential.
- ◆ (b) A restriction, reservation, exception, or other provision in an instrument created or amended on or after September 1, 1985, that relates to the transfer, sale, lease, or use of property may not prohibit the use of the property as a community home.

□ Federal Fair Housing Act

Zoning Pitfalls

□ Regulation of certain uses

□ Pawn Shops – LGC section 211.035

□ § 211.0035. ZONING REGULATIONS APPLICABLE TO PAWNSHOPS.

□ (b) the governing body of a municipality shall designate pawnshops that have been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code, as a permitted use in one or more zoning classifications.

□ (c) The governing body of a municipality may not impose a specific use permit requirement or any requirement similar in effect to a specific use permit requirement on a pawnshop

□ Cell Towers – Federal Telecommunications Act

□ Amateur Radio Antennas – Texas and Federal

QUESTIONS ?

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