

Subdivision Regulations & Permitting in McKinney's ETJ

July 17, 2017 City Council Work Session



Background Timeline

- **1968 (Ord. 691):** McKinney adopts Subdivision Regulations applying to the City and its Extraterritorial Jurisdiction (ETJ)*.
- **1982 (Ord. 1290):** McKinney updates its Subdivision Regulations to include a provision requiring platting prior to constructing streets, utilities, buildings, etc.
- **March 2002 (Res. 2002-03-060(R)):** McKinney enters into a City-County Plat Approval Agreement granting McKinney exclusive control over subdivision plats and related permits in its ETJ (also known as a “1445 Agreement”).
- **March 2015 (Ord. 2015-03-015):** McKinney reaffirms its authority to enforce building codes in its ETJ.
- **Present Day:** McKinney is enforcing Section 142-5 of the Code of Ordinances (Subdivision Regulations) which states, as it did in 1982, that a plat is required prior to constructing streets, utilities, buildings, etc. McKinney also requires building permits in its ETJ prior to construction.

**In the ETJ, the City has no land use control or zoning authority but can make plans for the ultimate development in the area through master plans and the City’s Comprehensive Plan.*



Section 1.05 of the Subdivision Regulations (1982)

1.05 Approval Required: Unless and until any plat, plan or replat shall have been first approved in the manner provided by law, it shall be unlawful for any person, firm, corporation, or organization to construct or cause to be constructed any streets, utilities, buildings or other improvements to any tract of land; and it shall be unlawful for any official of said City to issue any permit for such improvements or to serve or connect said land, or any part thereof, or for the use of the owners or purchasers of said land, or any part thereof, with any public utilities such as water, sewers, lights, gas, etc., which may be owned, controlled, distributed, franchised, or supplied by such City. No building permits will be issued for the construction of any building on any unplatted land within the City of McKinney, Minor repair permits may be issued. When additions, alteration, or repairs within any 12 month period exceed fifty percent (50%) of the value of an existing building or structure on previously unplatted property, the land upon which such building or structure is located shall be platted in accordance with provisions of this Ordinance.

Section 142-5 of the Subdivision Regulations (*current*)

Sec. 142-5. - Approval required.

(a) Unless and until any plat, plan or replat shall have been first approved in the manner provided by law, it shall be unlawful for any person, firm, corporation, or organization to construct or cause to be constructed any streets, utilities, buildings or other improvements to any tract of land; and any official of the city, shall not issue any permit for such improvements or to serve or connect said land, or any part thereof, or for the use of the owners or purchasers of said land, or any part thereof, with any public utilities such as water, sewers, lights, gas, etc., which may be owned, controlled, distributed, franchised, or supplied by such city.

(b) No building permits will be issued for the construction of any building on any unplatted land within the city. Minor repair permits may be issued. When additions, alterations, or repairs within any 12-month period exceed 50 percent of the value of an existing building or structure on previously unplatted property, the land upon which such building or structure is located shall be platted in accordance with the provisions of this chapter.

Texas House Bill No. 1445 (May 2001)*

- House Bill 1445 amended the Local Government Code (LGC) to prohibit a plat from being filed with the county clerk without the approval of the appropriate governmental entity.
- The bill prohibited a municipality and county from regulating subdivisions in the extraterritorial jurisdiction (ETJ) of the municipality after an agreement is executed that identifies whether the county or the municipality is authorized to regulate **subdivision plats and approve related permits** in the ETJ. The bill required a municipality and a county by a specified time period to enter into such written agreement and adopt the agreement by order, ordinance, or resolution.
- The bill also authorized the municipality and the county to enter into an interlocal agreement (commonly referred to as a “1445 Agreement”) that established one office that is authorized to regulate plat application procedures for the ETJ and establishes a consolidated and consistent sets of regulations related to plats and subdivisions of land.
- *Neither the adopted bill nor the Texas Legislature’s analysis of the bill specifically discussed vertical construction thus there is some uncertainty as to what is meant by “...and related permits.”*
- Specifically, subsection 242.001(c) of the TX LGC states... “a municipality and a county may not both regulate **subdivisions and related permits** in the extraterritorial jurisdiction of a municipality after an agreement... is executed.”

City-County Plat Approval Agreement (“1445 Agreement” – March 2002)

1. *City Granted Exclusive Jurisdiction.* The parties agree that City shall be granted exclusive jurisdiction to regulate all subdivision plats and approve all related permits in its ETJ in accordance with Chapter 212 of the Local Government Code, its adopted Subdivision Regulations or other applicable codes or ordinances, and County shall no longer exercise any of these functions in the City’s ETJ.
2. *One Office for Plat Applications, Fee Payments and Responses.* Pursuant to this Agreement, the City Secretary or his/her designee is authorized to accept plat applications for tracts of land located in the ETJ of the City, to collect plat application fees established by law, and provide applicants one response indicating approval or denial of the plat application by the appropriate approving authority.
3. *Consolidated Regulations.* That the Subdivision Regulations of the City are hereby established as a consolidated and consistent set of regulations related to plats and subdivisions of land as authorized by Chapters 212 and 232 of the Local Government Code, and will be enforced in the ETJ of the City.
4. *Areas Outside ETJ.* In an unincorporated area outside the ETJ of the City, the City may not regulate subdivisions or approve the filing of plats, and the County retains jurisdiction to do so. Should the City expand or reduce its ETJ, City shall promptly notify County of such expansion or reduction. City and County agree that such an expansion or reduction shall not require amendment of this Agreement, and the City shall continue to be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in its ETJ, and the County shall continue to have jurisdiction of areas outside the City’s ETJ.
5. *Costs.* All costs involved with the approval of subdivision plats under this Agreement shall be borne by the City and payable out of current revenues available to it. All fees collected by the City will be the property of the City.
6. *Periodic Review.* This Agreement may be reviewed periodically and revised to address changed circumstances. This Agreement may only be modified or amended by a subsequent Agreement in writing between the same parties.

City Ordinance Reaffirming Building Code Applicability in ETJ (Ord. 2015-03-015 – March 2015)

Section 2. The Code of Ordinances of the City of McKinney, Chapter 122, Article I, is hereby amended by adding new Section 122-4, entitled “Permits,” which shall read as follows:

“Sec. 122-4. Permits within city limits and extraterritorial jurisdiction.

- (a) It shall be unlawful for any person to erect, move, add to, or structurally alter, or to cause to be erected, moved, added to, or structurally altered, or to permit any person to erect, move, add to, or structurally alter, any building or other structure within the city limits or within the city’s extraterritorial jurisdiction without first having procured a permit to do so from the city.
- (b) Building permits, development permits and all other construction-related permits required by this chapter are required within the city limits and on all property within the city’s extraterritorial jurisdiction.
- (c) No building permit, development permit or other construction-related permit shall be issued except in conformity with the provisions of this chapter and all applicable construction codes of the city.”

FAQs

Why does McKinney require platting?

- To ensure that growth occurs in an orderly manner via the dedication of easements for utilities and right-of-way (ROW) for streets. This orderly growth is aimed at promoting the health, safety, morals, or general welfare of the public.
- To subdivide property, to consolidate properties, to create platted lots of record, and to dedicate easements and ROW.

Where does McKinney derive its authority to require platting?

- Chapter 212 of the Texas Local Government Code authorizes municipalities to adopt rules governing plats and subdivisions of land in its corporate limits and its ETJ.

Does the “Subdivision” Ordinance apply to property that’s not being subdivided?

- The Subdivision Ordinance (Chapter 142 of McKinney’s Code of Ordinances) applies to all properties in McKinney’s City Limits and its ETJ. The Subdivision Ordinance contains requirements applying to more than just the subdivision of land.

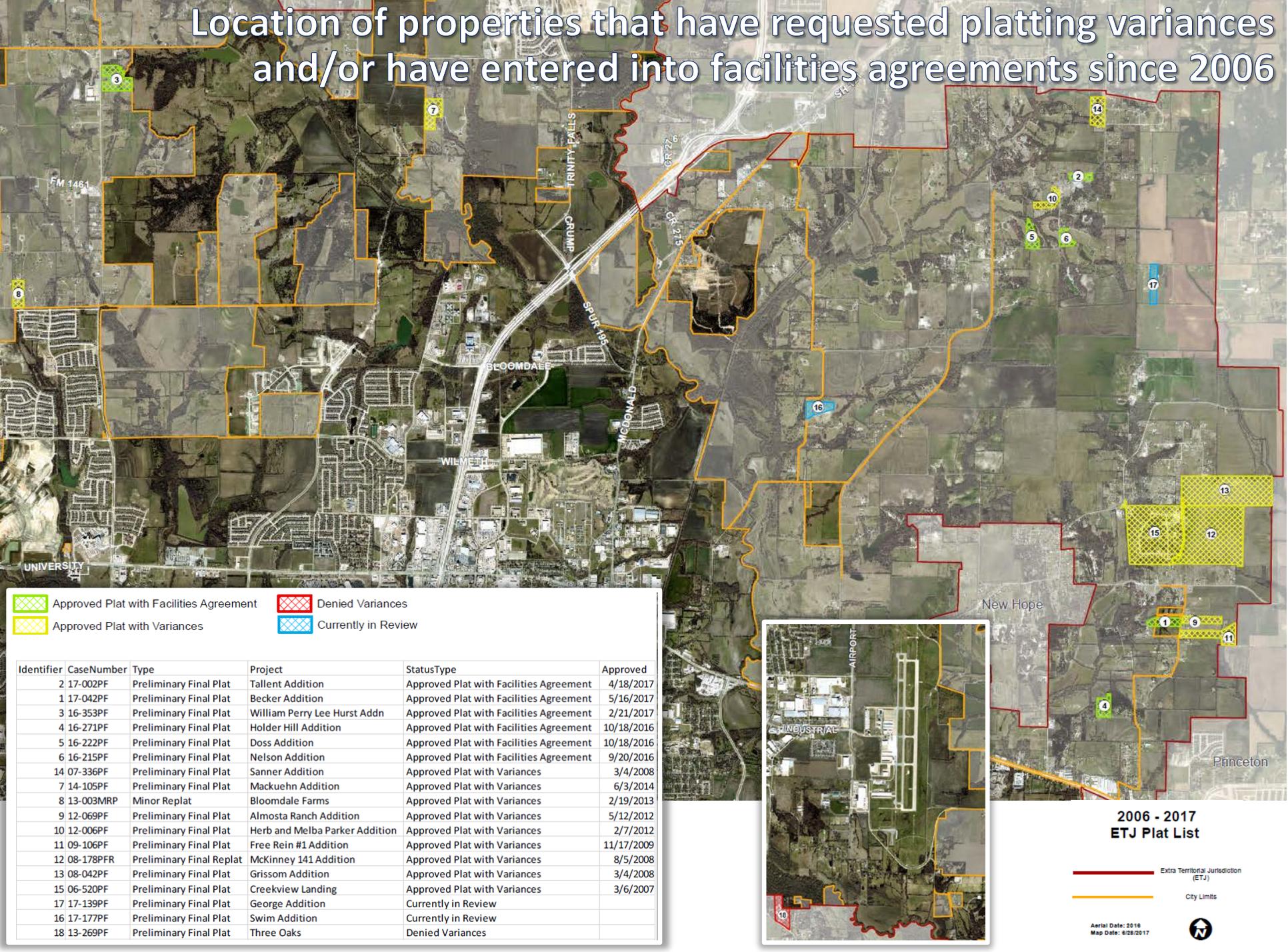
Why does McKinney require building permits in the ETJ?

- To ensure that the construction ensures the health, safety, or general welfare of the public.
- To ensure that McKinney’s first responders are safe when entering these structures.
- To ensure that when these structures are eventually annexed and incorporated into McKinney’s corporate limits, they’re safe.

What are the options available to property owners in McKinney and its ETJ if they’re required to plat but do not want to dedicate right-of-way or easements or construct public improvements?

- Plat the property in accordance with McKinney’s Subdivision Ordinance but request the City Council’s approval of variances to not dedicate all necessary ROW and easements or construct required public improvements.
- Plat the ETJ property in accordance with McKinney’s Subdivision Ordinance and enter into a development agreement with the City (ETJ only). This agreement could temporarily suspend the Subdivision Ordinance’s requirements to dedicate ROW and easements or construct public improvements so long as the property is used for an agreed upon use.
- Do not plat the property in accordance with McKinney’s Subdivision Ordinance and thereby elect not to develop the project.

Location of properties that have requested platting variances and/or have entered into facilities agreements since 2006



- Approved Plat with Facilities Agreement
- Denied Variances
- Approved Plat with Variances
- Currently in Review

Identifier	CaseNumber	Type	Project	StatusType	Approved
2	17-002PF	Preliminary Final Plat	Tallent Addition	Approved Plat with Facilities Agreement	4/18/2017
1	17-042PF	Preliminary Final Plat	Becker Addition	Approved Plat with Facilities Agreement	5/16/2017
3	16-353PF	Preliminary Final Plat	William Perry Lee Hurst Addn	Approved Plat with Facilities Agreement	2/21/2017
4	16-271PF	Preliminary Final Plat	Holder Hill Addition	Approved Plat with Facilities Agreement	10/18/2016
5	16-222PF	Preliminary Final Plat	Doss Addition	Approved Plat with Facilities Agreement	10/18/2016
6	16-215PF	Preliminary Final Plat	Nelson Addition	Approved Plat with Facilities Agreement	9/20/2016
14	07-336PF	Preliminary Final Plat	Sanner Addition	Approved Plat with Variances	3/4/2008
7	14-105PF	Preliminary Final Plat	Mackuehn Addition	Approved Plat with Variances	6/3/2014
8	13-003MRP	Minor Replat	Bloomdale Farms	Approved Plat with Variances	2/19/2013
9	12-069PF	Preliminary Final Plat	Almosta Ranch Addition	Approved Plat with Variances	5/12/2012
10	12-006PF	Preliminary Final Plat	Herb and Melba Parker Addition	Approved Plat with Variances	2/7/2012
11	09-106PF	Preliminary Final Plat	Free Rein #1 Addition	Approved Plat with Variances	11/17/2009
12	08-178PFR	Preliminary Final Replat	McKinney 141 Addition	Approved Plat with Variances	8/5/2008
13	08-042PF	Preliminary Final Plat	Grissom Addition	Approved Plat with Variances	3/4/2008
15	06-520PF	Preliminary Final Plat	Creekview Landing	Approved Plat with Variances	3/6/2007
17	17-139PF	Preliminary Final Plat	George Addition	Currently in Review	
16	17-177PF	Preliminary Final Plat	Swim Addition	Currently in Review	
18	13-269PF	Preliminary Final Plat	Three Oaks	Denied Variances	

**2006 - 2017
ETJ Plat List**

— Extra Territorial Jurisdiction (ETJ)
— City Limits

Aerial Date: 2016
Map Date: 6/28/2017



Options for a path forward:

1. Amend the Building Codes:

- a. To create an exception from permitting for certain types of construction (ex.: structures with no utilities or structures not intended for habitation/occupancy); **OR**
- b. To not apply City building codes to the ETJ; **OR**
- c. To not perform building inspections in the ETJ.

2. Amend the Subdivision Ordinance:

- a. To create an exception from platting for individual properties in the ETJ that are of a certain size (greater than ___ acres), and (i) which will not be divided into two or more parcels and (ii) on which one single family home is to be constructed (recommended by the City Council in April of 2017); **AND/OR**
- b. To only require platting in the ETJ if new or alterations to existing water service is requested; **AND/OR**
- c. To not require platting prior to building permitting in the ETJ.

3. Amend both sets of regulations.

4. Do not change anything.

Direction Requested:

How would the City Council like to proceed with platting and building permitting in McKinney's ETJ?

