



3. The City of McKinney’s Motion for Partial Summary Judgment on Permitting in the City’s Extraterritorial Jurisdiction (“**City’s Motion**”), filed by Plaintiff and Counter-Defendant the City of McKinney, Texas (“**City**”).

B. The Court, after considering Custer’s Motion, the County’s Motion, and the City’s Motion, as well as all responses, replies, and arguments of Custer, the County, and the City (collectively the “**Parties**”), finds and orders as follows:

1. Custer’s Motion is **GRANTED IN PART**, and **DENIED IN PART**, as follows:

a. Custer’s declaratory judgment request that the City lacks authority to require building permits in its ETJ is **GRANTED IN PART**, and **DENIED IN PART**. The Court finds that the City has the lawful authority to require landowners developing property located in the City’s ETJ to obtain building permits, inspections and approvals, and pay related fees in those instances, but only in those instances, where the property at issue is subdivided and is therefore lawfully required to obtain plat approval from the City. In those instances where the property at issue is not subdivided and therefore lawfully required to obtain plat approval from the City, the City lacks the lawful authority to require landowners developing property located in the City’s ETJ to obtain building permits, inspections and approvals, and pay related fees.

b. Custer’s declaratory judgment request that the City’s March 2015 ordinance extending the City’s building codes into the City’s extraterritorial

jurisdiction (“**ETJ**”) is null and void because the City lacks authority to regulate the construction of buildings in the ETJ is **GRANTED** as to properties that are not subdivided and **DENIED** as to properties that are being subdivided.

c. Custer’s declaratory judgment request that it is not required to obtain plat approval from the City because its property is not being subdivided is **GRANTED**.

d. Custer's declaratory judgment request that it is not required to obtain City building permits, inspections and approvals, and pay related fees because it is not required to plat its property is **GRANTED**.

e. Custer's declaratory judgment request that its property was legally developed pursuant to the County permits issued to Custer in this matter and those permits are lawful, valid and within the statutory authority granted to the County is **GRANTED**.

f. Custer’s declaratory judgment request that Custer is entitled to develop its property without City permits because Custer has vested rights under Local Government Code Chapter 245 is **DENIED** because the court otherwise finds that Custer is not required to obtain City permits.

g. Custer’s declaratory judgment request that Custer is entitled to develop its property without City permits because the City is estopped from enforcing its building codes as to Custer is **DENIED**.

h. Custer's declaratory judgment request that the City's declaratory judgment action and request for a permanent injunction is moot is **DENIED**.

i. All other relief requested in Custer's Motion not expressly addressed in this Final Judgment is **DENIED**.

2. The County's Motion is **GRANTED IN PART**, and **DENIED IN PART**, as follows:

a. The County's request that the Court find that City lacks the lawful authority to require landowners developing property located in the City's ETJ to obtain building permits, inspections and approvals, and pay related fees, is **GRANTED IN PART**, and **DENIED IN PART**. The Court finds that the City has the lawful authority to require landowners developing property located in the City's ETJ to obtain building permits, inspections and approvals, and pay related fees in those instances, but only in those instances, where the property at issue is subdivided and lawfully required to obtain plat approval from the City. In those instances where the property at issue is not subdivided and lawfully required to obtain plat approval from the City, the City lacks the lawful authority to require landowners developing property located in the City's ETJ to obtain building permits, inspections and approvals, and pay related fees.

b. The County's request that the Court find the 1445 Interlocal Agreement, entered into between the City and the County in 2002, does not allow

the City to require landowners developing property located in the City's ETJ to obtain building permits, inspections and approvals, and pay related fees, is **GRANTED IN PART**, and **DENIED IN PART**. The Court finds that the City-County 1445 Agreement is valid and enforceable, and that the County ceded all platting, inspection and building code authority in the ETJ to the City in 2002 as to all properties that are required to subdivide under State statute. Properties in the City's ETJ that are not required to subdivide under State statute, however, are not required to obtain building permits, inspections and approvals, and pay related fees.

c. The Court finds that the permits issued by the County to Custer in this matter are lawful, valid, and within the statutory authority granted to the County by state law.

d. All other relief requested in the County's Motion not expressly addressed in this final judgment is **DENIED**.

3. The City's Motion is **GRANTED IN PART**, and **DENIED IN PART**, as follows:

a. The City's request that the Court find that City has the lawful authority to require landowners developing property located in the City's ETJ to obtain building permits, inspections and approvals, and pay related fees, is **GRANTED IN PART**, and **DENIED IN PART**. The Court finds that the City has the lawful authority to require landowners developing property located in the

City's ETJ to obtain building permits, inspections and approvals, and pay related fees in those instances, but only in those instances, where the property at issue is being subdivided and therefore is lawfully required to obtain plat approval from the City. In those instances where the property at issue is not being subdivided and therefore is not lawfully required to obtain plat approval from the City, the City lacks the lawful authority to require landowners developing property located in the City's ETJ to obtain building permits, inspections and approvals, and pay related fees.

b. The City's request that the Court find the 1445 Interlocal Agreement, entered into between the City and the County in 2002, allows the City to require landowners developing property located in the City's ETJ to obtain building permits, inspections and approvals, and pay related fees, is **GRANTED IN PART**, and **DENIED IN PART**. The Court finds that the City-County 1445 Agreement is valid and enforceable, and that the County ceded all platting, inspection and building code authority in the ETJ to the City in 2002 as to all properties that are required to subdivide. Properties in the City's ETJ that are not required to subdivide, however, are not required to obtain building permits, inspections and approvals, and pay related fees.

c. The City's request for injunctive relief is **DENIED**.

d. All other relief requested in the City's Motion not expressly addressed in this final judgment is **DENIED**.

C. The Court makes the following findings on the award of attorneys' fees.

1. By Rule 11 Agreement filed on March 8, 2017, the Parties agreed that (1) evidence in support of the Parties' respective claims for attorney's fees, which claims are brought pursuant to Section 37.009 of the Texas Civil Practice and Remedies, would be submitted to the Court by affidavit only; (2) the Court, and not a jury, would decide all issues regarding attorney's fees; (3) no expert designations or expert filings would be required on the issue of attorney's fees; and (4) if allowed by the Court, all attorney's fees issues shall be determined after the trial on the merits of the Parties' respective claims and defenses.

2. By Rule 11 Agreement filed with the court on April 19, 2017, the Parties agree and stipulated that the following amounts are the reasonable and necessary attorneys' fees of the Parties in this matter:

**City of McKinney, Texas:**

Through entry of a final judgment: \$79,415  
For an appeal to the Dallas Court of Appeals: \$20,000  
For a Petition for Review to the Texas Supreme Court: \$10,000  
Texas Supreme Court Briefing: \$10,000  
Texas Supreme Court Oral Argument: \$5,000

**Custer Storage Center, LLC:**

Through entry of a final judgment: \$79,464  
For an appeal to the Dallas Court of Appeals: \$30,000  
For a Petition for Review to the Texas Supreme Court: \$7,500  
Texas Supreme Court Briefing: \$20,000  
Texas Supreme Court Oral Argument: \$10,000

**Collin County, Texas:**

Through entry of a final judgment: \$32,133  
For an appeal to the Dallas Court of Appeals: \$25,000  
For a Petition for Review to the Texas Supreme Court: \$1,500  
Texas Supreme Court Briefing: \$20,000  
Texas Supreme Court Oral Argument: \$8,500

3. After considering stipulated attorneys' fees sums, related filings and the arguments of the Parties, the Court finds as follows regarding the Parties' respective claims of attorney's fees and costs, and awards the following, which the Court finds are reasonable, necessary, equitable and just:

a. The City and the County shall each bear their own attorneys' fees and taxable court costs.

b. Custer shall have and recover judgment from and against the City the sum of \$79,464.00 for Custer's attorneys' fees incurred through Final Judgment, which the court finds to be reasonable and necessary and just and equitable.



c. Additionally, should the Final Judgment be appealed by the City and be unsuccessful, this attorney's fees award to Custer will be increased by a further amount of \$30,000.00 for an appeal to the Court of Appeals; a further sum of \$7,500.00 if a Petition for Review is applied for to the Texas Supreme court; a further sum of \$20,000.00 if the Texas Supreme Court requests briefing; and a further sum of \$10,000.00 if the Texas Supreme Court grants the petition for review, which sums are reasonable and necessary and equitable and just.

d. All of Custer's taxable court costs incurred herein shall be and are hereby taxed against the City.

e. Custer shall have and recover judgment from and against the City for post judgment interest on the foregoing amounts at the rate of 5% per annum, compounded annually, from the date hereof until paid in full.

f. All writs of enforcement may issue to enforce this Judgment.

The relief provided in this Final Judgment is hereby **ORDERED**. All relief not expressly granted in this Final Judgment is hereby **DENIED**. This Final Judgment finally disposes of all Parties and all claims in this matter.

SIGNED this 15 day of May, 2017.

  
JUDGE PRESIDING