

# NORTH TEXAS NEWS

International Right of Way Association, Dallas-Forth Worth

DECEMBER 2023

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# DECEMBER LUNCHEON

## Chapter 36 End of Year Event!

**Rangers Golf Course – Arlington**

**Friday, December 15<sup>th</sup>, 2023**

**11:30 – 2:00**



**SAVE  
THE  
DATE**

**Now accepting silent auction items!**

Please contact Ana Salazar to arrange delivery by  
December 11<sup>th</sup>! [ASalazar@Pinnaclegroup.biz](mailto:ASalazar@Pinnaclegroup.biz)

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# NORTH TEXAS NEWS

International Right of Way Association, Dallas-Forth Worth

DECEMBER 2023



**Texas Rangers Golf Club**  
**701 Brown Boulevard**  
**Arlington, TX 76011**

**Member - \$30**  
**Non-Member - \$35**  
**First-Time Guest - Free!**  
**Register at**  
**[www.irwchapter36.org](http://www.irwchapter36.org)**

**Walk-ins Welcome - \$35 (walk-in spaces are limited)**  
**Registration will be cut off at noon on Friday, December 11th**

<b>President</b>	Will Snider, MAI, SR/WA, R/W-AC
<b>Vice-President</b>	Matt Lance, SR/WA, R/W-RAC, R/W-URAC
<b>Secretary</b>	Tommy Matthews, SR/WA, R/W-AC
<b>Treasurer</b>	Leighton Gambill
<b>PDC Chair</b>	Gina Phalen, MAI, SR/WA, R/W-AC
<b>PDC - 2 Year</b>	Clara Castañeda, SR/WA, R/W-RAC
<b>PDC - 3 Year</b>	Darlene Snow, SR/WA-TN
<b>Director - 1 Year</b>	Sarah Riebe, SR/WA, R/W-NAC
<b>Director - 2 Year</b>	Michael Hale, SR/WA, R/W-URAC, R/W-NAC, R/W-RAC



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## NORTH TEXAS NEWS

# President's Message

Howdy Chapter Members,

First of all, I want to say a BIG thank you to our Membership Chair, [Shannon Perkins](#), and our Young Professionals Chair, [Ana Salazar](#), for the amazing job they did with our November Membership Drive! Thank you for all of the hard work in putting that together, and for adding six new members to our Chapter! Welcome to all new Chapter members, and we look forward to seeing you at our monthly luncheons very soon.



**Will Snider**

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Thank you as well to our Programs Co-Chairs, [Dorrien Himes](#) and [Matt Browne](#), for all of the hard work in preparing our End of Year Event taking place this year at the Rangers Golf Course in Arlington! Dorrien and Matt do a tremendous job each month in reaching out to presenters and finding great meeting locations, and we thank you very much for all that you do!

Speaking of our End-of-Year Event, please make sure to renew your membership before December 15<sup>th</sup> to be eligible for the membership renewal drawing that will take place at the luncheon, and if you are able, please bring a canned food item this year, as we will be donating those items to local food banks.

As we enter into the Christmas season, I hope that we can all take time to pause, take a breath, and spend quality time with family and friends, even as busy as we all are. I wish you and your families the very best!

Finally, as always, I want to say thank you to our Chapter Board and Committees, as well as our very loyal and dedicated membership and sponsors. Thank you for all that you do to allow Chapter 36 to be the best and largest Chapter of the IRWA!

Please feel free to contact me if you have any questions or comments ([wsnider@lowerypa.com](mailto:wsnider@lowerypa.com)), and thank you all again very much.

Merry Christmas!  
Will Snider



# Ask the Attorney

By: Jordan A. Miller and Charlie Wilson

**Question:** I saw you did a case law update in the last newsletter and was curious if you would breakdown the opinion that was issued in the *Baker v. City of Mckinney*, Texas case last month?

**Answer:** This case is hot of the press. On October 11, 2023, the U.S. Fifth Circuit Court of Appeals issued an opinion regarding the application of the Takings Clause of the United States and Texas Constitutions to emergency situations. In the Baker case, Baker sought to sue the City of Mckinney under the Takings Clause after city police caused severe damage to her property while trying to rescue a girl held hostage in Baker’s home.

Baker is a long-time resident of Mckinney, Texas. When the time came for her to retire, she planned to sell her home and move to Montana. On July 25, 2020, she was already in Montana while her daughter, Diane Cook (“Cook”) remained in Baker’s Mckinney home until it was sold. On that July morning, Cook saw a Facebook post that a man named Wesley Little (“Little”) was on the run with a fifteen-year-old girl. Cook recognized Little because she had hired him to do work inside her home a year ago. Little had evaded the Mckinney police that morning and later showed up at Baker’s home with the 15-year-old, asking to be let in to hide his car. Cook devised a plan to go to the supermarket and alert the authorities that Little was in her home with the girl.

Mckinney police arrived on the scene and set up a perimeter. Eventually Little allowed the girl to escape, but he remained in the home with several guns while also high on methamphetamine. The police used explosive devices, toxic gas grenades, a Bearcat, and a drone to try to resolve the situation. The standoff ended when a drone captured a view of Little who had died by suicide.

Although all parties agreed the police handled the situation appropriately, Baker’s property suffered severe damage. The toxic gas required the services of a HAZMAT remediation team, the floors, walls, and appliances were destroyed, and Baker’s dog became permanently blind and deaf. Baker suffered approximately \$50,000 in personal and property damages. Baker made a claim for property damage with the City, but the City denied the claim because it had “no liability on the part of the City or any of its employees.” Baker’s insurance also would not cover any damage caused by the City’s police.

Baker filed suit against the City in Federal District court for violations of the Takings Clauses of the United States and Texas Constitutions. The City filed a motion to dismiss and alleged that it did not take Baker’s property under the Fifth Amendment; that the court lacked supplemental jurisdiction over the Texas Constitution claim, and that her claim was a “sheer attempt to allege tort recovery in a claim wearing Takings claim clothing.” The District Court denied the City’s Motion in full.

Baker filed a motion for partial summary judgment on her claims under the Fifth Amendment of the US Constitution and under the Texas Constitution. The District Court granted it but left the amount of damages that Baker sustained to be determined by a jury. The City timely filed a notice of appeal challenging all the District Court’s unfavorable decisions and orders.

With a sympathetic tone, the Fifth Circuit Court of Appeals reversed the District Court’s grant of summary judgment in favor of Baker, holding that the City’s destruction of Baker’s house and personal property was not a compensable Taking under the Fifth Amendment.



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# Ask the Attorney

By: Jordan A. Miller and Charlie Wilson

The Court explained the reasoning behind its ruling. It rejected the City’s argument for a broad, absolute exception which would state that a compensable taking does not occur when a City damages property pursuant to its police powers. The Court found this rule to be too broad because a City’s exercise of police powers can go too far, and if it does, there has been a Taking. Without such restrictions on the use of police powers, property rights would diminish to a significant degree.

Next, the Court rejected Baker’s argument that no consideration or exception should be made for property damaged as a result of emergency situations such as this one and that the standard Taking analysis should be used. The Court looked to historical precedence which has provided for necessity or emergency privilege in Takings Clause jurisprudence. The essence of the argument is that the state must not fear liability for the destruction of property during a public emergency such that it hesitates to use its full force to prevent the public emergency from becoming worse.

The Court cited several cases from the 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup> centuries that provided exceptions to the Takings Clause for necessity’s sake: houses may be razed to prevent the spreading of a fire; bulwarks may be built on private ground in times of war; the government may cut through a levee near a property to prevent enemy artillery shipments. Although the rights of private property are sacred to the laws of this country, they are still subject to the demands of the public welfare when faced with an imminent public emergency.

The Court did not establish a particular rule that states the limits of this exception; it held that the facts of this case objectively established that Baker’s property was damaged out of necessity because the police officers were responding to an imminent public emergency, therefore the damage the police caused was not compensable under the Takings Clause.

In conclusion, a private landowner may not be compensated under the Takings Clause for property damages caused by the government’s necessary response to an imminent public emergency. While the Court sympathizes with the landowner having to bear the brunt of this burden through no fault of its own, Supreme Court precedence requires that the government be able to respond accordingly without fear of civil or constitutional liability.

*The views, thoughts, and opinions expressed in this article belong solely to the authors –Jordan A. Miller and Charles M. Wilson– and not necessarily to the author’s law firm or its clients, or any organization, committee, or other group of which the author is a member. Transmission of the information contained in this article is not intended to create, and receipt does not constitute, an attorney-client relationship between you and Baker | Moran. This article contains information on legal issues and is not a substitute for legal advice from a qualified attorney licensed in the appropriate jurisdiction.*



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**NORTH TEXAS NEWS**

**YP Events**

On behalf of the Membership Chair and myself we wanted to say THANK YOU to those who took the time to come out to our joint event. We had such a great turn out and we had SIX NEW MEMBERS sign up!!! Let's be sure we give them a big welcome!



**Ana Salazar**


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## Upcoming Event

**ATTENTION ALL CHAPTER 36 MEMBERS! MARK YOUR CALENDARS! APRIL 3, 4 and 5, 2024.** To all our Chapter 36 and Region 2 Members, I am pleased to announce that we have secured our venues for the **25th Annual Steve Baggett Memorial Golf Tournament** and **2024 IRWA Chapter 36 Spring Seminar: Hot Topics in Real Estate & Eminent Domain.**

In honor of the City of Arlington hosting the 2024 Major League Baseball All-Star Game, Chapter 36 will be hosting our annual **Golf Tournament at Texas Rangers Golf Club on April 3, 2024**, and on **April 4, 2024**, will be hosting our own **Chapter 36 “All-Star” Spring Seminar at Globe Life Field**, home of the World Champion Texas Rangers!

The Chapter is also in the final stages of securing the venue for the **Region 2 Forum** to be held on **April 5, 2024**, with an official announcement coming soon.



With hosting such events we are going to need a lot of support to make these events successful and knock it out of the park. We will soon be announcing some exciting news concerning sponsorship opportunities for the Golf Tournament, Seminar and Forum. If you have any questions about becoming a sponsor or if you wish to get involved with these events, you can contact me at [matt.lance@hdrinc.com](mailto:matt.lance@hdrinc.com).



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President/Owner

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## Chapter 36 Event

Chapter 36 was happy to co-host a luncheon with the Appraisal Institute on November 14, 2023 at Texas Star Golf Course. It was a great turn-out and an informative presentation by Donald J. Sherwood, MAI, SR/WA, RW-AC.



## Upcoming Event

### IRWA Region 5 Spring Forum 2024

**Thursday, May 2, 2024: IEUC Symposium & Social Event at Lambeau Field**

**Friday, May 3, 2024: Chapter Meeting, Golf Outing & Dinner**

**Saturday, May 4, 2024: Spring Forum Meeting & Lambeau Tour**



## Professional Development Committee Winter News

By: Gina Phalen, PDC Committee Chair



**Gina Phalen**

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With sparkling lights on the tree, the fireplace crackling, and maybe even snow falling outside, what better thing to do on a cold winter day than work on a virtual IRWA class?

IRWA currently has **382 combined in-person and virtual courses** scheduled in 2023-2024 so there is no shortage of opportunity to learn and earn your designations.



*Our success, and the Chapter’s success, are not only measured by the sheer number of members we attract, but also by the professional advancement our organization can offer.*

For any questions on obtaining a certification, or if you have any other questions regarding your Professional Development goals, please contact us!

PDC Committee Members:

- Gina Cannova Phalen** – MAI, SRWA, RW-AC - PDC Chair
- Clara Castaneda** – SRWA, RW-RAC – PDC Chair (2 Yr.)
- Darlene Snow** – SRWA – PDC Committee (3 Yr.)



## Education Committee News

Hello Chapter 36 Members!

We would like to thank Trinity River Authority for hosting course 200. We appreciate your support of Chapter 36. Please be sure to thank them if you see any of their wonderful folks in our next meeting. We have course 802 being held virtually coming up at the end of November. There are limited spots available if you are interested in taking this course.



**Juan Salazar**

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If there is a course that you are looking for that you don't see being offered be sure to contact any of us on the Education Committee. Also, remember that the full list of courses being offered is available on the link below.

### [IRWA Virtual Classes Calendar](#)

Below is the schedule of classes for the upcoming year.

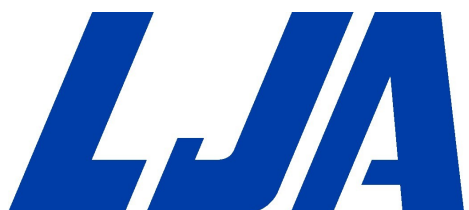
#### **Chapter 36 2023-2024 Education Calendar**

	<b>Course</b>	<b>Location</b>	<b>Date</b>
802	Legal Aspects of Easements	VIRTUAL	30-Nov-23
218	The Valuation of Partial Acquisitions	TBD	1-Jan-24
501	Residential Relocation Assistance	TBD	Feb-2024
410	Reviewing Appraisals in Eminent Domain	CBRE-Ft. Worth	4-Mar-24
502	Non-Residential Relocation Assistance	TBD	Apr-2024
604	Environmental Due Diligence and Liability	TBD	May-2024

If your company is interested in hosting a Closed Class for your employees, please reach out to us and we can assist in helping schedule and coordinate the class. Send the Education Committee an email at [education@irwachapter36.org](mailto:education@irwachapter36.org).

### **Which Courses Do I Need?**

Only the PDC can tell you which class you need to complete the education requirements for designation and certification. If you are planning to get your RWA, RWP or SR/WA the list of courses you need to complete your credentialing are located at [www.irwaonline.org](http://www.irwaonline.org). Just visit the "Credentialing" tab.



## Marketing News



Greetings Chapter 36 members. It's that time of year when we eat too much turkey, untangle the Christmas lights, and start planning for the new year. Why not make marketing in the Chapter 36 newsletter, and as a bonus, marketing on the Chapter 36 website, as part of the new year plan for 2024?

Your business logo on the IRWA Chapter 36 website, providing a link to your company website, is a great way to let everyone know who you are and what services you provide within the right-of-way industry.

As a great one-two punch, your company logo and information in the monthly newsletter allows maximum exposure to all our members.

Think this may be too expensive....think again.

Marketing on the website and in the newsletter - \$300/Year

Marketing in the newsletter only - \$100/Year.

A years' worth of great exposure to all your industry participants for only \$300. It's a Christmas miracle!

Please contact Mary Watson by email for any assistance or questions.

**JEFF TILLMAN, MAI, AI-GRS**  
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