

NORTH TEXAS NEWS

International Right of Way Association, Dallas-Forth Worth

JUNE 2023

In this issue:

- Chapter 36 Monthly Meeting Information
- Ask the Attorney
- PDC News
- Scholarship Recipients

JUNE LUNCHEON

Location - Joe T Garcia's
2201 N. Commerce St.
Fort Worth, TX 76164
11:30AM - 1:00PM

Program: 2023-2024 Officer Installation

There will not be a speaker at the June Luncheon as we will be installing the new 2023-2024 officers. We hope you are all able to attend this special luncheon as we support the officers who are stepping into, or staying in, a leadership position the next fiscal year. Congratulations to the following Chapter 36 Members who will be leading us moving forward!

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

Tuesday, June 13th, 2023

Member - \$20

11:30 AM - 1:00 PM

Non-Member - \$25

Joe T Garcia's

First-Time Guest - Free!

2201 N. Commerce St.

Register at

Fort Worth, TX 76164

www.irwachapter36.org

Walk-ins Welcome - \$25 (walk-in spaces are limited)

Registration will be cut off at noon on Friday, June 9th.

Menu - Mexican dinner, nachos, cheese enchiladas, crispy beef tacos, beans, rice, guacamole, chips and salsa.



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

Chapter 36 Advertisers



Ask the Attorney

By: R. Scott Moran, Jordan A. Miller and Charlie Wilson

Case Law Update: On May 19, 2023, the Supreme Court of Texas issued an opinion that will have a significant impact on the use of eminent domain in Texas. The case of *Hidalgo County Water Improvement District Number 3 v. Hidalgo County Irrigation District Number 1* involves the assertion of governmental immunity when a governmental entity’s land is condemned by another governmental entity with the power of eminent domain.

Answer: The Hidalgo County Water Improvement District No. 3 (Improvement District) and Hidalgo County Water Irrigation District No. 1 (Irrigation District) provide water and irrigation services in Hidalgo County. Both are political subdivisions entitled to the protections of governmental immunity, and both have the power of eminent domain. In this case, after negotiations failed, the Improvement District filed a condemnation proceeding against the Irrigation District seeking a permanent easement for the purpose of installing a water pipeline across the Irrigation District’s canal. After an uncontested special commissioners hearing, the Irrigation District objected to the commissioners’ award, arguing that the Improvement District could not establish the “paramount public importance” of its proposed pipeline. Before the trial court ruled on the above objection, the Irrigation District filed a plea to the jurisdiction asserting that, as a governmental entity, it is immune from condemnation suits and the Legislature has not waived that immunity.

Procedural History: The trial court granted the plea and dismissed the suit based on the Irrigation District's assertion of governmental immunity. The court of appeals affirmed the trial court’s ruling.

Holding: The Supreme Court of Texas reversed the court of appeals judgment and remanded the case to the trial court for further proceedings. In doing so, the court held that sovereign immunity, and by extension governmental immunity, does not apply to the Improvement District’s condemnation suit.

Analysis: The Court, after discussing the historical and legal background of governmental immunity and the historical development of condemnation proceedings, laid out three justifications for its holding.

First, the Court analyzed purpose of immunity “to shield the public from the costs and consequences of improvident actions of their governments.” *Tooke v. City of Mexia*, 197 S.W.3d 325, 332 (Tex. 2006). The Court held that condemnation proceedings do not challenge improvident government action; indeed, they challenge no government action at all. Additionally, the Court held like EDJA suits, condemnation proceedings against governmental entities are *in rem* and do not threaten the public treasury meaning that the purpose of immunity is not applicable to this case.

Second, the Court discussed its disagreement with the court of appeals’ conclusion that abrogating immunity in this context “threaten[s] separation-of-powers principles” that immunity protects. See 627 S.W.3d at 537–38. To the contrary, the Court held that extending sovereign immunity into condemnation proceedings would provide a political subdivision with the unilateral ability to undermine the Legislature’s allocation of condemnation power to an entity with an identified public need and would implicate separation-of-powers concerns as much as, or even more than, it mitigates them.

The Court reiterated that the paramount-public-importance doctrine has long provided an adequate framework for balancing a condemnor’s legislatively granted condemnation authority with the condemnee’s ability to



Scott Moran

Baker Moran Doggett MA & Dobbs
1400 Preston Road, Suite 350
Plano, Texas 75093
469.351.3487



Jordan Miller

469.351.3496
jmiller@bakermoran.com



Charles Wilson

469.351.3487
cwilson@bakermoran.com

Ask the Attorney

By: R. Scott Moran, Jordan A. Miller and Charlie Wilson

serve its own public purpose. The Court went on to rebuke the Irrigation District’s position, noting the Irrigation District’s claim of governmental immunity essentially asked the Court to replace the paramount-public-importance doctrine framework with a rigid judicial declaration that the policy decisions of the condemnee public landowner should always prevail unless the Legislature expressly provides otherwise.

Finally, the Court recognized well settled law that a governmental entity may be sued for inverse condemnation, by either a public or private landowner, for taking the owner’s property without paying just compensation. *Brazos River Auth. v. City of Graham*, 354 S.W.2d 99, 106 (Tex.1961). If a governmental entity is not immune from a takings claim on the “backend”—that is, after it has taken property without compensation—it logically follows that the entity may pursue a pre-taking eminent-domain action.

The Court rejected an argument the court of appeals found persuasive — that because governmental entities are immune from trespass-to-try-title actions, which are suits for a declaration of tile to land, they should be immune from condemnation suits. The Court noted that, unlike condemnation suits, sovereign immunity from trespass-to-try-title actions serves the intended purpose of protecting the public from the costs of improvident government action and preventing litigants from controlling government action by imposing liability.

Conclusion: Governmental immunity does not apply to eminent domain proceedings and a governmental entity is not immune from a condemnation suit brought by another entity with the power of eminent domain.

Author’s Note: Based on the broad and expansive language used by the Court in its ruling, it appears that governmental immunity does not apply to any eminent domain action in Texas, whether it be the action of a public or private entity. Caution dictates the need to thoroughly analyze the facts and parties in every case before making any decision to move forward with an eminent domain action.

The views, thoughts, and opinions expressed in this article belong solely to the authors— John P. Baker, 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.



Scott Moran

Baker Moran Doggett MA & Dobbs
1400 Preston Road, Suite 350
Plano, Texas 75093
469.351.3487



Jordan Miller

469.351.3496
jmiller@bakermoran.com



Charles Wilson

469.351.3487
cwilson@bakermoran.com



Professional Development Committee News

By: Tommy Matthews, PDC Chair

Another year has come and gone for IRWA Chapter 36. The June meeting will be the last for a couple of months as we install new board and committee members. Ms. Gina Phalen will be taking over as PDC Chair, with Ms. Darlene Snow joining as PDC Committee (3-yr), and Clara Castaneda continuing as PDC Committee (2-yr). All three will no doubt do a wonderful job. One last joke. How did Minnie save Mickey from drowning? Mouse to mouse resuscitation.



Tommy Matthews

SRWA, R/W-AC
Edgestone Realty Valuation
214.556.4035
tommy@edgestonerealty.com

The Professional Development Committee is available to help you reach your designation goals. 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.

Congratulations to the following Chapter 36 member for achieving his recent designations.

Specialist Certification

- Darrin Ruot, R/W-AC (CBRE)

For any questions on obtaining a certification or if you have any other questions regarding your Professional Development goals, please contact the PDC Committee.

PDC Committee Members:

- Tommy Matthews - SR/WA, R/W-AC – PDC Chair (Outgoing)*
- Gina Phalen – MAI, SR/WA, R/W-AC - PDC Chair (Incoming)*
- Clara Castaneda – SR/WA, R/W-RAC – PDC Committee (2 Yr.)*
- Darlene Snow – SR/WA – PDC Committee (3 Yr.)*



Chapter 36 Advertisers



Appraisal Reviews
Jennifer Ayers, SR/WA, R/W - AC
214.553.9133



IRWA Chapter 36 Donald J. Scholarship Recipients

By: Dalton Vann, MAI, SR/WA, RW-AC

The Donald J. Sherwood Scholarship Committee is pleased to announce the recipients of a Donald J. Sherwood Scholarship. Each of these eligible applicants are related to Chapter 36 members and are in the course of study at a collegiate institution. Scholarship awards varied based on various factors included in the application. Chapter 36 is proud to support our members and their families in education endeavors. This year's Scholarship Committee members are Dalton Vann, Tommy Matthews, and Lauren McCarthy.



Dalton Vann

MAI, SR/WA, RW-AC
Director of Right of Way
CBRE
817.806.1691
dalton.vann@cbre.com

Congratulations to the following recipients!

Avery Canuteson

Uncle, Josh Canuteson

Environmental Design major at Texas A&M University



Dalia Garza

Father, Siverio Garza, Jr.

Material Science and Engineering major at University of North Texas



Samuel Garza

Father, Silverio Garza
Pre-Business major at the University of North Texas



Emma Janeway

Father, Doug Janeway
Biology major at Texas A&M University



NORTH TEXAS NEWS

Chapter 36 Advertisers



CHARLES STEARMAN, SR/WA
REAL ESTATE APPRAISER

APPRAISALS & REVIEWS

TELEPHONE 817-797-9997
C.STEARMAN@TX.RR.COM



4600 Greenville Avenue
Suite 150
Dallas, Texas 75206
www.dfw.net

Office: 214.750.9898
Metro: 817.626.2400
Fax: 214.750.9908



Misty K Ray, MAI, AI-GRS
President/Owner

817-769-4060
misty@advalrp.com
advalrp.com
5154 Trail Lake Drive,
Fort Worth, Texas 76133

Shelby Wright

Father, Wayne Wright
Engineering major at Texas A&M University



Halle Wright

Father, Wayne Wright
Elementary Education major at University of North Texas



Tuett Kerby

Father, Rhett Kerby

Natural Resources major at Texas Tech University



Lester McCarty

Father, Shane McCarty

Business major at Blinn College



NORTH TEXAS NEWS



James McCoy

Father, Billy McCoy

Agricultural Economics major at Texas A&M University



Emmit Phalen

Mother, Gina Phalen

Computer Science major at Virginia Tech



Ethan Phalen

Mother, Gina Phalen

Mechanical Engineering major at University of Colorado Boulder



Kori Reinhardt

Father, Gary Reinhardt

Nursing major at University of Mary-Hardin Baylor



Leobardo Reyes

Stepfather, Scott Boyd
Business major at Texas Tech University



Courtney Paige Smith

Mother, Darlene Snow
M. Ed. In Curriculum and Instruction major at the University of North Texas



NORTH TEXAS NEWS

JEFF TILLMAN, MAI, AI-GRS
Appraisal & Appraisal Review
tillmanj@flash.net
817-926-9835



Alyssa Williamson

Father, Paul Williamson

Law major at the University of Tulsa, College of Law

