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## SEPTEMBER LUNCHEON

**Speaker: R. Scott Moran**  
**Founding  
Partner**



Scott Moran was a Founding Partner with the law firm of Baker|Moran, where he is now Of Counsel. Scott is a certified mediator who has represented clients in all facets of eminent domain and other civil matters. Scott's clients have also looked to Scott for representation in various real estate transactions, including the purchase of property for, among other things, pipeline facilities and electric transmission line facilities. Scott is also a certified instructor for the International Right of Way Association.

Over the course of a legal career of over 48 years, Scott has tried numerous jury trials, the majority being eminent domain cases. After graduation from Baylor University in December 1973, with a combined degree in Business and Law, Scott began practice with the Waco firm of Smith, Segrest, Mills and Cameron, which later became Mills Riley & Moran. The firm was counsel for a prominent bank and a very large electric utility for which Scott handled banking and title matters and hundreds of eminent domain proceedings before Special Commissioners and tried numerous eminent domain and other civil and criminal cases throughout Texas, including a victory in a capital murder defense at the United States Supreme Court.

In 1982, Scott moved to the Dallas area and practiced until 1984 as General Counsel for Communication Systems, Inc. and Television Access, Inc., a nation-wide practice, hiring and overseeing extensive outside counsel regarding anti-trust and other complex litigation, overseeing SEC filings and tax advantaged limited partnership investments, dealing with governmental authorities, insurance, mergers and acquisitions, and overseeing taking the entities public on the NYSE. In late 1984 Scott began operating an escrow office for Dallas Title Company and practicing probate law. From 1986 through 1987, he practiced law with the McKinney based firm of Boyd, Viegel and Hance handling primarily an eminent domain practice for both Condemnors and Condemnees. In late 1987, after a hard-fought battle with partners of the Dallas firm of Burford & Ryburn, LLP in a condemnation case, Scott was hired by the Burford & Ryburn firm where he became a partner in 1991.

From 1987 until 2014, Scott represented the largest casualty and workers compensation insurance carrier in the State, handled and tried to a jury numerous premises liability and pharmacy mis-fill cases for two large grocery chains, handled electrocution and electrical burn litigation, extensive products liability cases and employment disputes. For 27 years, Scott represented Texas Power & Light, which became Oncor Electric and Lone Star Gas, which became Atmos Energy, throughout Texas in eminent domain proceedings, and also represented a large number of Condemnors in pipeline condemnations throughout the growth of the Barnett Shale, including Enbridge, Energy Transfer, Enterprise, Chesapeake and Texas Midstream Gas, E.O.G. and Pecan Pipeline, Eagle Mountain Pipeline, Devon Energy, Cowtown Pipeline, Empire Pipeline, DCP Midstream, Peregrine Pipeline, Phillips Pipeline, Koch Pipeline and DFW Midstream. Scott has ventured to the landowner's side of the eminent domain docket on occasion to successfully represent landowners in the style case of *Corsicana v. Herod*, 768 S.W.2d 805 (Tex. App – Waco 1989, no writ) and in representing a group of homeowners in a case drawing nationwide media attention for the expansion of the Northeast Mall by the City of Hurst from 1998 through 2002, culminating in an extremely favorable settlement. From 2010 to 2014, Scott was lead counsel for Oncor Electric and Lone Star Transmission (NextEra) in approximately 400 eminent domain proceedings in many counties known as CREZ (Competitive Renewable Energy Zone) building double circuit 345 kV lattice-towered electric transmission lines throughout Texas to link wind turbines in West Texas primarily for the population centers in Texas from Dallas to Houston. Scott has also served as an expert witness concerning attorney's fees in several eminent domain cases.

### Professional Affiliations and Honors

- State Bar of Texas
- Admitted to Practice in the United States Supreme Court
- U.S. Federal District Courts, Northern Eastern and Western Districts of Texas
- International Right of Way Association, Climb Certified Instructor
- Selected to Texas Super Lawyers 2018, 2019, 2020, 2021, and 2022.

### Publications and Speeches

- "Ask the Lawyer," an article included in monthly newsletter publication by Chapter 36 of the International Right of Way Association
- Skills of Expert Testimony, International Right of Way Association Course Instructor
- Ethics and the Right of Way Profession, International Right of Way Association Course Instructor
- United States Land Titles, International Right of Way Association Course Instructor
- Legal Aspects of Easements, International Right of Way Association Course Instructor
- Basics of Eminent Domain Law, International Right of Way Association Course Instructor
- Principles of Real Estate Law, International Right of Way Association Course Instructor
- Alternative Dispute Resolution, International Right of Way Association Course Instructor.

### Education and Professional Background

- Baylor University School of Law, J.D., 1973
- Baylor University, B.B.A., 1973
- International Right of Way Association, Climb Certified Instructor
- Texas Real Estate Commission, Certified Instructor
- Certified Mediator in the State of Texas
- Speaker, Presenter and Moderator at numerous Continuing Legal Education Seminars and Courses

# NORTH TEXAS NEWS

International Right of Way Association, Dallas-Forth Worth

SEPTEMBER 2023



**Tuesday, September 12<sup>th</sup>, 2023**

**11:30 AM - 1:00 PM**

**Texas Rangers Golf Club**

**701 Brown Blvd.**

**Arlington, TX 76011**

**Member - \$20**

**Non-Member - \$25**

**First-Time Guest - Free!**

**Register at**  
[www.irwachapter36.org](http://www.irwachapter36.org)

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

**Registration will be cut off at noon on Friday, September 8<sup>th</sup>**

<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



## Chapter 36 Advertisers

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C.STEARMAN@TX.RR.COM



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## NORTH TEXAS NEWS

# President's Message

Howdy folks, and welcome back from summer break!

First and foremost, I want to say thank you again to Michael Hale for his leadership as President over the last year. Thank you for your service as President to the Chapter and thank you for all that you continue to teach me. I look forward to learning from you as you serve as Director for the next two years.



**Will Snider**

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For those who might not have been able to attend the International Conference in Denver, I want to acknowledge this year's Employer of the Year – **HDR. Congratulations HDR!**

Additionally, Chapter 36 members also received accolades during the Region 2 Summer Refresher Conference.

- Region 2 Young Professional of the Year: **Danyelle Donnelly Daniels, SR/WA, R/W-URAC, R/W-RAC (Stateside Right of Way Services)**
- Region 2 Professional of the Year: **Dalton Vann, MAI, SR/WA, R/W-AC (CBRE)**
- Region 2 Lifetime Achievement Award: **Donald J. Sherwood, MAI, SR/WA, R/W-AC (Donald J. Sherwood LLC)**

**Congratulations Danyelle, Dalton, and Donnie!** Each of you are very well-deserving of these awards, and we are so proud to have you as members of Chapter 36!

Looking ahead to the coming fiscal year, it is a true honor to serve as President for the Chapter this year. I am humbled to be serving in this role, and want to make sure to make myself available to our membership should you need to reach me ([wsnider@lowerypa.com](mailto:wsnider@lowerypa.com)). Please feel free to email me if you have any questions, comments or concerns about the IRWA and/or our Chapter. However, I represent just one seat on our amazing Chapter Board, and look forward to serving along these fine folks:

### Board

Vice President: Matt Lance  
Treasurer: Leighton Gambill  
Secretary: Tommy Matthews  
Director 1 Year: Sarah Riebe  
Director 2 Year: Michael Hale

### Committees

Professional Development: Gina Phalen, Clara Castaneda, and Darlene Snow  
Education: Juan Salazar, Danyelle Donnelly Daniels, and Jake Bosacker

**NORTH TEXAS NEWS**

## President's Message

Programs: Dorrien Himes and Matt Browne

Young Professional: Ana Salazar

Membership: Shannon Perkins

Public Relations and Marketing: Mary Watson

Website: Lisa Featherstone

Newsletter: Ciara Brown

Historian: Brent Patterson

Social Media: Kate Evans

Virtual and AV: Jacian Martin

Registration: Melissa Ehrhardt and Miriam Salazar



**Will Snider**

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Our Board and Committees are well underway in planning events for the coming year, as well as educational offerings and networking opportunities. We'll also be planning another Membership Drive to encourage new hires or folks that are new to the right-of-way industry to have a chance to meet other members and encourage them to join the organization.

Thank you all again very much for this opportunity to serve, and I look forward to seeing everyone again at the September meeting!

Best,

Will Snider



**NORTH TEXAS NEWS**

**Chapter 36 Advertisers**



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# Ask the Attorney

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

**Question: I am involved in a matter that may involve project influence and I was told to review the State v. CC Telge Road case. Could you provide a summary of that case and its holdings specifically pertaining to project influence?**

**Answer:** Yes. This case centers around a development where Royce Homes owned 600 acres in Harris County and sought to develop a high-density residential community with a prominent water feature in the center. It began obtaining approval for a municipal water district, environmental studies, and other entitlements for its development plan. At the same time, the government sought to address the population boom by building a toll road that would service the outer parts of the Houston Metropolitan area. On November 20, 2008, the federal government issued a Record of Decision for a portion of the Grand Parkway toll road. The road's original route would bisect Royce's property at the water feature.

At this time, Telge sought partners to invest in a residential development project. Telge and Caldwell Companies were interested in Royce's property due to its naturally occurring water feature and the market demand for high-density residential development with a water feature amenity. Telge and Caldwell knew about the Record of Decision and inquired about altering the road's route. The project's Executive Director told Telge that the Grand Parkway was a "hope" and a "dream" without funding and that the State could alter the route once it got funding. Telge and Caldwell bought Royce's property and continued to seek approval of their development plans which required to request an alteration of the toll road, which the State had already granted to others along the route. Uncontroverted evidence showed that the State, acting without legal authorization, interfered with Telge's efforts to obtain approval. Ultimately, the State decided not to realign the road. As a result, the toll road was not realigned so Telge had to scrap its original plans of development, and instead elected to develop a high acreage community.

In 2014, the State began its condemnation proceedings to acquire a 40 acre-strip of Telge's land for the Grand Parkway. The issues of this case center on the proper determination of market value and the admissibility of evidence relevant to that determination where a jury determined Telge was due \$28,825,526.00 for the diminishment in value of the remainder of the property after the taking. The State argues Telge's compensation theory violated existing law on the project influence rule, highest and best use, and community damages. The Houston Court of Appeals held that the trial court did not abuse its discretion.

In its opinion, the Court synthesized three damages rules to support the trial court's award of damages. First, the Court acknowledged that a landowner cannot claim damages sustained "until there is a taking or some cognizable "direct restriction" on the property's use. *Westgate, Ltd. v. State*, 843 S.W.2d 448, 452 (Tex. 1992). Thus, the mere announcement of a government project that will interfere with the land's value cannot be claimed as damages until an "actual physical or legal restriction on the property's use" occurs.

Once a taking occurred, the Court discussed the application of the project influence rule. The project influence rule provides that "any change in property value that results from the government manifesting a definite purpose to take property as part of a governmental project must be excluded from the award of adequate compensation" when the State compensates for the taking to allow the landowner to receive the market value of his land without the diminutive effects of the condemnation. *Caffe*



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## Ask the Attorney

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

*Ribs, Inc. v. State*, 487 S.W.3d 137, 142 (Tex. 2016).

The Court instructs the jury to determine the market value of the land in a hypothetical world in which the impending condemnation had not affected the property's market value between the date of manifested intent and the date of condemnation. Here, the State's toll road route eliminated Telge's ability to construct a high-density residential development. Instead, Telge had to build a low-density residential development that was considerably less valuable. Telge admitted evidence showing the difference in value between the two developments as \$28.8 million. This led to the Court's discussion of the third rule.

The Court discussed the implications of *Sharboneau*, which prevent a landowner from inflating its land's market value by calculating that value under a hypothetical, alternate use of the property that is speculative. To warrant admission of market-value evidence based on a highest and best use other than the use to which the land is being put at the time of the taking, the landowner has to show, prospectively, that (1) the property is adaptable to the other use, (2) the other use is reasonably probable within the immediate future or a reasonable time, and (3) the market value of the land is enhanced by the alternate use.

The State argued that Telge's valuation of the property as a high-density development was too speculative because it voluntarily chose to pursue a low-density development. The Court rejected this argument due to the State's direct action in forcing Telge to change its development plans. "It would be manifestly unjust to allow the State to depreciate land by threat of condemnation and then take advantage of the depreciation in the price it would be required to pay for the property once eventually condemned." *Caffe Ribbs*, 487 S.W.3d at 143.

Lastly, the Court held that when a taking bisects a property and changes the remainder property's highest and best use, the change in highest and best use is unique damage and not community damage. Therefore, it is not barred from recovery. *State v. Gleannloch Commercial Dev., L.P.*, 585 S.W.3d 509, 526-27 (Tex. App.—Houston [1st Dist.] 2018, pet. denied) (mem. op.).

*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.*



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## Chapter 36 Advertisers



## McCarthy Right of Way Partners Job Opening

Chapter 36,

McCarthy Right of Way Partners is seeking to hire a Right of Way Agent. If you or someone you know is interested, please send your resume and cover letter to [info@mccarthypartners.net](mailto:info@mccarthypartners.net)

Since 2008, **McCarthy Right of Way Partners'** growth strategy has been slow and deliberate, carefully growing into new sectors while ensuring our current projects are not neglected. We are a husband-and-wife-owned firm with a strong work ethic and a commitment to communication.

Many of McCarthy Partners' staff have been trained in multiple right-of-way specializations (acquisition, relocation, and condemnation support), so they are qualified to lead and/or cross-assist. Our organizational structure is designed intentionally and carefully, ensuring long-term success by putting people in roles where they will be successful. It allows our people to shine independently while providing support when needed.

As a Right of Way Agent, you will negotiate right of way and easement acquisitions for transportation projects, including road widening and new road build projects. You will also mentor junior agents and assist landowners through the acquisition process. Our ideal candidate will be a seasoned Agent with experience working with TxDOT on right-of-way acquisition for transportation projects.

### To be successful, you should have:

- Texas Real Estate Commission Salesperson's License
- Bachelor's degree; or 8+ years related experience and/or training; or equivalent combination of education and experience.
- Microsoft Office (Word, Excel, PowerPoint, Access, Publisher, Outlook, Microsoft Edge)
- Must have one of the following certifications:
  - Senior Right of Way (SR/WA) Professional Certification
  - Right of Way Negotiation and Acquisition (R/W NAC) Certification
  - Right of Way Relocation Assistance (R/W RAC) Certification
  - Project Management Profession (PMP) Certification
- Valid driver's license

### Your responsibilities as the Right of Way Agent will include:

- Negotiates with property owners for parcel acquisitions
- Creates initial offer and final offer packages with little oversight
- Creates and submits milestone packages
- Creates and submits administrative settlements
- Attends property closings
- Maintains parcel files
- Maintains contact report logs
- Maintains status report spreadsheets and presents at project status meetings
- Inputs data into TxDOTCONNECT & any other data management system
- Mentors junior agents
- Performs other related duties as assigned

### Best-in-Class Benefits and Perks:

We value our employees' time and efforts. Our commitment to your success is enhanced by a competitive compensation and an extensive benefits package including:

- Health benefits, including medical, dental, and vision insurance
- 401(k) / retirement plan
- 401(k) employer matching
- Life insurance
- Disability insurance
- Flexible spending account
- Health savings account
- Paid time off
- Flexible schedule
- Employee assistance program
- Paid family leave
- Professional development assistance
- Paid holidays
- Remote work/telecommuting options
- Workplace perks

Plus, we work to maintain the best environment for our employees, where people can learn and grow with the company. We strive to provide a collaborative, creative environment where everyone feels encouraged to contribute to our processes, decisions, planning, and culture.

## Professional Development Committee News

By: Gina Phalen, PDC Committee Chair



**Gina Phalen**

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Senior Director Infrastructure  
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### Hello Chapter 36 Members!

Wow, if this summer is any indication, you all are BUSY working on a variety of IRWA designations and we couldn't be any prouder of our Chapter! IRWA is continually improving upon their course content and selection. Even if you aren't ready to embark on a designation path just yet, consider taking a course or two this Fall to continue improving your skillset professionally.

What did the horse say when he fell over? "Help, I've fallen, and I can't giddy up!"

### Congratulations!!!

#### Specialist Certification

Mark Laird (RWA-GN) – City of Denton

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.

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, SR/WA, R/W-AC - PDC Chair

**Clara Castaneda** – SR/WA, R/W-RAC – PDC Chair (2 Yr.)

**Darlene Snow** – SR/WA – PDC Committee (3 Yr.)



## Education Committee News

By: Juan Salazar, Education Committee Chair

### Hello Chapter 36 Members!

Welcome back! I hope you all had a great summer. I am ready for the break from the heat and am looking forward to September and what will hopefully bring cooler temperatures.

I would like to take a moment and introduce the Education Committee for the 2023-2024 year. Thank you for volunteering your time.

- EDC 3 Year – Jake Bosacker
- EDC 2 Year – Danyelle Daniels
- EDC Chair – Juan Salazar

A goal for the Education Committee this year is to get back to in-person classes. We will be sending out a survey to gauge interest in certain courses that will offer the best opportunities to our Members. We will gather all the responses and put together a list of courses for you all to be able to reach your Credentialing goals.

If Virtual Classes are easier for you, Headquarters has a list of Classes which could be the class you are looking for. The list of classes is located at [IRWA Virtual Classes Calendar](#).

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?

Our PDC and the credentialing concierge can tell you which classes you need to complete the education requirements for the designation and certification. If you are planning to get certified in any discipline the IRWA offers, 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.



**Juan Salazar**

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