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NOVEMBER LUNCHEON

**Speaker: Donald Sherwood, MAI,
SR/WA, R/W-AC**

“The Three ICBM Fields”

Segment I: Appraising ICBM Sites in Missouri, North Dakota and South Dakota

Segment II: The Impact of the Cold War





Donald J. Sherwood, SR/WA, MAI, RW-AC is the owner of Donald J. Sherwood, LLC. Donnie is the former Managing Director of the Fort Worth office of Integra Realty Resources, an international real estate valuation and consulting firm. He served as the 1998 President of the Dallas/Fort Worth Chapter of International Right of Way and was named “Professional of the Year” in 1998. He has also served as past president of the Central Texas Chapter of the Appraisal Institute. Donnie is a State Certified General Real Estate Appraiser. He teaches for both IRWA and the Appraisal Institute and has been an adjunct professor in the Finance Department at TCU.

Donnie is a graduate of Southwestern University and holds a Masters Degree in Land Economics and Real Estate from Texas A&M University. He is the author of “Easement Valuation” published by the IRWA. He is a qualified expert in both state and federal court. Donnie has been appraising real estate since 1978. His assignments include a wide variety of property types ranging from single family homes to major commercial projects including Reese Air Force Base, Six Flags over Texas in Arlington, ICBM sites in three states, and Texas World Speedway in College Station. Donnie has taught internationally in Russian, Lithuania, China, Nigeria and Saudi Arabia. In June 2010, Donnie was selected as the 2009 recipient of the Frank C. Balfour Professional of the Year Award at IRWA’s 56th Annual International Education Conference in Calgary, AB. This prestigious award is the Association’s highest honor bestowed upon an IRWA member. Donnie was named “Instructor of the Year” in 2018 by IRWA and in 2023 presented the Lifetime Achievement Award by Region 2.

NORTH TEXAS NEWS


International Right of Way Association, Dallas-Forth Worth

NOVEMBER 2023

JOINT GENERAL MEETING WITH APPRAISAL INSTITUTE NORTH TEXAS CHAPTER AND IRWA

THE THREE ICBM FIELDS



DONALD J. SHERWOOD MAI, SR/WA, R/W-AC

TUESDAY,
NOVEMBER 14, 2023
11:30 A.M. - 1:30 P.M.
TEXAS STAR CONFERENCE CENTER
1400 TEXAS STAR PARKWAY, EULESS, TX 76040

APPRAISAL INSTITUTE
\$35 MEMBERS
\$40 NON-MEMBERS
INCLUDES
2 HRS. AI AND TALCB CREDITS

IRWA MEMBERS
\$30 MEMBERS
\$35 NON-MEMBERS
DOES NOT INCLUDE AI OR TALCB CREDITS

Agenda

Registration 11:00 A.M.

Program Begins/Announcements 11:30 A.M.

Presentation With Q&A 11:50 A.M.

Break 12:30 - 12:40 P.M.

(IRWA members may leave during the break)

Meeting Ends 1:30 P.M.

AI Members Receive 2 Hours Of TALCB And AI Credit

Tuesday, November 14, 2023 | 11:00 A.M. - 1:30 P.M.

**Texas Star Conference Center | 1400 Texas Star Parkway,
Eules, TX 76040**

**IRWA Cost: \$30 Members | \$35 Guests Does Not Include AI Or
TALCB Credit**

IRWA Registrants must register through their chapter.

**Appraisal Institute Cost: \$35 Members | \$40 Guests Includes
AI And TALCB Credit**

President	Will Snider, MAI, SR/WA, 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, MAI, SR/WA, R/W-AC
PDC - 2 Year	Clara Castañeda, SR/WA, 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

NORTH TEXAS NEWS

President's Message

Howdy Chapter Members,

I look forward to seeing you all at our November luncheon that we will share with the Appraisal Institute Chapters of North Texas and Central Texas at Texas Star Golf Course where our own Donnie Sherwood will present a very interesting topic! **Please make sure you note that the agenda for the joint meeting will be slightly revised from our typical agenda to account for the extended registration time and the length of the program.**



Will Snider

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Director at Lowery Property
Advisors
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Agenda

Registration - 11:00am

Program Begins/Announcements - 11:30am

Presentation with Q&A - 11:50am

Break - 12:30 - 12:40pm

(IRWA members may leave during the break)

Meeting Ends - 1:30pm

Appraisers, please note that in order to receive AI and TALCB credits, you'll need to register through your respective AI Chapter:

Central Texas AI Chapter:

<https://centraltexasai.org/meetinginfo.php?id=1&ts=1698173878>

North Texas AI Chapter: <https://ainorthtexas.org/>

IRWA Members, please register through our Chapter website as usual

As we enter the fall and close in on Thanksgiving, I want to say a word of thanks 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!

I know that we are all tremendously busy with work, organizations, and extracurriculars, but I hope that we can all take time to pause and be thankful for the blessings in each of our lives. I encourage you to take a page from Sarah Riebe's tenure, and remind yourself what you are thankful for, what you are grateful for, and how you have been blessed.

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

Best,

Will Snider

Ask the Attorney

By: John P. Baker, Jordan A. Miller and Charlie Wilson

Question: I saw your case law update in the last newsletter and was curious if you have provided an update on the Running v. City of Athens case?

Answer: We have not done a case law update on this matter. On February 14, 2019, the Tyler Court of Appeals issued an opinion regarding the intent element requirements to sue a governmental entity for inverse condemnation. In Running v. City of Athens, the landowners sought to sue the City of Athens for inverse condemnation after their homes were flooded due to an overflow from a water treatment plant owned by the City of Athens.

Peter Running, Jamie Running, and Cindy Wilkens (the “Landowners”) owned property and homes directly downhill from a water treatment plant near the shoreline of Lake Athens. The City of Athens (“The City”) owned and operated the plant. The Landowners allege that water releases in May 2015, December 2015, and March 2016 caused flood damages to their homes and property. The Landowners sued the City of Athens for State and Federal claims inverse condemnation, negligence, and Texas Water Code violations. The City filed a plea to the jurisdiction and argued these claims were barred by governmental immunity. However, the Landowners responded that the Texas Tort Claims Act provided a waiver of immunity due to the damages caused by the negligence of a city employee’s operation of motor-driven equipment, and that the City had the requisite intent to satisfy an inverse condemnation claim.

The Trial Court overruled the City’s plea to the Jurisdiction as to the negligence and state and federal inverse condemnation claims but dismissed the Landowner’s claims for violations of the Texas Water Code. The City appealed the Trial Court’s denial of its plea to the jurisdiction.

The Tyler Court of Appeals reversed the Trials Court’s denial of the City’s plea to the jurisdiction and dismissed the Landowner’s State and Federal claims for inverse condemnation because the City did not have the requisite intent to cause the damage to the Landowner’s property. The Court also dismissed the negligence claim because the Landowners failed to provide sufficient evidence of the City’s use or operation of motor-driven equipment to cause the flood damages.

The Court explained that motor-driven pumps used in water treatment plants meet the statutory definition in the TTCA. However, the equipment’s use must have actually caused the injury to the Landowners; its existence alone is not sufficient. Testimony from the City’s former Water Superintendent revealed that high-service pumps pull treated water from Clearwell No. 2 for residential use. When the pumps are off, the check valve closes to prevent water flow into the well. In May 2015, December 2015, and March 2016, the check valve got stuck, causing water to flow back into the well and overflow. The overflow was designed to drain away from the Landowners and into the lake; however, the water instead flowed to the Landowners’ homes.

The Court found that this did not constitute a waiver of governmental immunity because the pumps did not malfunction, the valves did. Because the valves are not motor-driven, this did not constitute a waiver. Similarly, the City’s failure to turn on the high-service pumps to prevent backflow did not constitute a waiver because the waiver applies to use and operation, not a failure to use the motor-driven equipment. The Landowners’ failure to provide more than a mere scintilla of evidence in support of the claim for negligence led to the Court sustaining the City’s appeal.



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Ask the Attorney

By: John P. Baker, Jordan A. Miller and Charlie Wilson

Next, the City argued that Landowners did not have the requisite intent to satisfy an inverse condemnation claim under the Texas Constitution. The requisite intent for inverse condemnation is present when a governmental entity knows that a specific act is causing identifiable harm or knows that the harm is substantially certain to result; however, a taking cannot be established by proof of mere negligent conduct by the government. The government’s knowledge is determined at the time it acted, not with the benefit of hindsight.

The Landowners argued they satisfied the intent element based on evidence of conversations between Jamie Running, City officials, and Water Authority officials. One City official informed Running that it was common practice to release water from Clearwell no.2 when it became too full. The Water Authority official told Running that it had funding to redirect the water flow away from the Landowners’ property. Additionally, the Landowners argued that the fact that there were three separate water discharges, combined with the statements made to Running, made the City aware that flooding was a substantially certain result of its acts.

The Court disagreed, finding that none of these statements indicated an intent to harm the landowners or substantial certainty that its actions would harm the Landowners. At best, these statements showed an intent to release the water, which does not satisfy the intent element of an inverse condemnation claim. The Court also found that the Landowners were not harmed by the March 2016 water release and that the cause of the December 2015 flooding is unknown. Additionally, the Court found that the Water Authority’s potential solution to redirect the overflow away from the Landowners’ property was not made aware to the City. Therefore, the Landowners did not produce sufficient evidence to establish that the City had the intent or knowledge of a substantial certainty that the overflow of Clearwell no. 2 would flood the Landowners' property at the time of the releases. Lastly, the Court found that the Landowners’ Federal inverse condemnation claim was subsumed into the State inverse condemnation claim.

In conclusion, a Landowner must show that a governmental entity intended to damage the property or was substantially certain that its actions would damage the property to satisfy an inverse condemnation claim. The governmental entity will have governmental immunity against claims for mere negligence which damages the property. Additionally, the mere existence of motor-driven equipment will not waive governmental immunity; Landowners must prove that its use actually caused the damages to the property to waive governmental immunity under the TTCA.

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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NORTH TEXAS NEWS

YP Events

I just wanted to say **THANK YOU** to those who took the time to come out to our last YP event. A special thank you to Lynda Mears, for the suggestion and showing this girl how to shoot a shotgun! Here are a few pictures of the night.



Ana Salazar

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Please be on the lookout for our next event which will be held at Cidercade in Arlington here in the next couple of weeks! Hope to see you all there!



Upcoming Event

ATTENTION ALL CHAPTER 36 MEMBERS! MARK YOUR CALENDARS! APRIL 3, 4 and 5, 2024. If you haven't heard, we are bringing the IRWA Region 2 Spring Forum back to North Texas! We will be hosting our annual Educational Seminar as well as the Steve Baggett Memorial Golf Tournament in conjunction with the Forum. This is going to be an event unlike any we have done before.

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! (Hint Hint) In the next few weeks, we will be announcing some exciting news concerning venues and 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.



NORTH TEXAS NEWS

Chapter 36 Advertisers



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Professional Development Committee Autumn News

By: Gina Phalen, PDC Committee Chair



Gina Phalen

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 Senior Director Infrastructure
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It's Fall Y'all and it's time to give thanks for all our blessings!

We are thankful for:

Our amazing Education Committee - planning in-

person courses this Winter & 2024

The incredible folks at IRWA HQ helping to answer any ?'s you have about designations

Trinity River Authority for offering their office space to host course 200

Dalton Vann – infamous PEAK instructor for all courses Appraisal

A record number of new SR/WA's this Fall

Congratulations to our Recent SR/WA designates!

Terry Beck, SR/WA – Cobb Fendley

Matthew Yates, SR/WA

Michael Paramore, SR/WA – Blackbird ROW

Angel Garay Estefes, SR/WA – Crossroads ROW

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

Hello Chapter 36 Members!

We want to thank Halff & Associates for hosting Course 901 and 902 in August during our summer break. Thank you for support of Chapter 36.

Did you know Chapter 36 is hosting Virtual Courses? We recently hosted Course 505 and 502 Virtually. We are also hosting Course 421 virtually in a couple of weeks. We have Course 200 being held in Arlington. Below is the schedule of classes for the upcoming year.



Juan Salazar

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Chapter 36 2023-2024 Education Calendar

	Course	Location	Date
505	Advance Non-Residential Relocation	VIRTUAL	16-Oct-23
502	Non-Residential Relocation Assistance	VIRTUAL	23-Oct-23
421	Valuation of Partial Acquisitions	VIRTUAL	14-Nov-23
200	Principles of Real Estate Negotiation	TBD	16-Nov-23
802	Legal Aspects of Easements	VIRTUAL	30-Nov-23
218	The Valuation of Partial Acquisitions	TBD	1-Jan-24
501	Residential Relocation Assistance	TBD	1-Feb-24
410	Reviewing Appraisals in Eminent Domain	TBD	4-Mar-24
502	Non-Residential Relocation Assistance	TBD	1-Apr-24
604	Environmental Due Diligence and Liability	TBD	1-May-24

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.

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 SRWA the list of courses you need to complete your credentialing are located at 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.

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Chapter 36 Advertisers



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