

In this issue:

- Chapter 36 Monthly Meeting Information
- President's Message
- Ask the Attorney
- Upcoming Events
- PDC News
- Education News
- Marketing News
- Nominations Announcement

OCTOBER LUNCHEON

Speaker: Brendon Wheeler, P.E., CFM



Topic: "High Speed Rail Update"

At the North Central Texas Council of Governments (NCTCOG), a regional planning organization centered around Dallas-Fort Worth, Brendon Wheeler works in Transportation Planning as the Program Manager for the Metropolitan Transportation Plan, the region's long-range transportation plan.

Part of his responsibilities include project management oversight on long-range transit planning projects like the Dallas-Fort Worth High-Speed Transportation Connections Study: a multi-year effort to plan for a state-of-the-art transportation facility between Dallas and Fort Worth to eventually connect with other high-speed transportation projects around the state.

NORTH TEXAS NEWS

International Right of Way Association, Dallas-Forth Worth

OCTOBER 2023



Tuesday, October 10th, 2023

11:30 AM - 1:00 PM

Texas Star Golf Club

1400 Texas Star Parkway

Eules, TX 76040

Member - \$30

Non-Member - \$35

First-Time Guest - Free!

Register at
www.irwachapter36.org

Walk-ins Welcome - \$35 (walk-in spaces are limited)

Registration will be cut off at noon on Friday, October 6th

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



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NORTH TEXAS NEWS

President's Message

Howdy Chapter Members,

You will notice that the monthly luncheon registration fees will increase to \$30 for members and \$35 for nonmembers, but the free registration for first-time guests will be maintained.



Will Snider

MAI, SR/WA, R/W-AC
Director at Lowery Property
Advisors
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WSnider@lowerypa.com

The decision to increase the registration fees comes as a result of expense increases that our Chapter incurs regarding room/space rentals and rising food costs.

It has always been the goal of the Chapter Board to steward the income received from our membership effectively, and to continue that effort, we will be aligning our luncheon fees with that of other Chapters within our Region to help offset the increase in expenses. It is important to note that this challenging decision was only reached after careful deliberation about ensuring that by raising these fees, we are still operating with the sole mindset of making sure that we continue to provide value to our members. After all, without our very loyal and supportive Chapter membership, we would not be the large and successful Chapter that we are.

To all of our Chapter members, companies, agencies and sponsors, thank you very much for all that you do to support our Chapter and the endeavors that we support each year – specifically our scholarship programs and educational offerings – and we greatly appreciate your understanding of this matter.

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: Can you break down the *KMS Retail Rowlett, LP v. City of Rowlett* case regarding the extent a public entity can condemn property that provides a benefit to a private party?

Answer: On May 17, 2019, the Texas Supreme Court issued an opinion that clarified the law regarding the extent to which a condemning authority may take a property that confers a benefit upon a private party. In *KMS Retail Rowlett, LP v. City of Rowlett*, the City of Rowlett sought to condemn a private road easement to benefit a third party in which it entered into an Economic Development Incentive Agreement with.

KMS Retail Rowlett, LP (“KMS”), a commercial real estate developer, owned a nine-acre triangular tract in Rowlett. Briarwood Armstrong, LLC (“Briarwood”), owned a twelve-acre tract to the east of KMS’s tract. KMS developed four commercial sites on its tract for a Wells Fargo Bank, Starbucks, Chick-Fil-A, and Arbys. To provide access to these businesses, KMS built a private drive that connected to Kenwood drive. The drive extended the length of the four businesses, but no further, which left a stretch of vacant land between the private drive and the border with the Briarwood tract to the east.

The City of Rowlett (the “City”) sought to recruit a high-quality grocery store and found mutual interest with Sprouts Farmers Market. Sprouts began negotiating with Briarwood to build a store on its tract, and in 2014, Briarwood asked the City about the possibility of an Economic Development Incentives Agreement to facilitate negotiations with Sprouts. The City required Briarwood to build a private circulation drive providing for cross-access to adjacent properties. This private circulation drive would connect KMS’s private drive to the commercial development on Briarwood’s property. However, Briarwood did not have an existing easement right to extend KMS’s drive to its property, and it was unable to negotiate a purchase of the necessary land. Consequently, the City decided to condemn the land necessary to extend KMS’s private drive to reach the Briarwood tract.

KMS argued this condemnation was an impermissible use of the City’s eminent domain power solely to benefit a private entity and economic development. Both parties filed competing motions for summary judgment regarding the permissibility of the city’s taking.

The trial court granted partial summary judgment in the City’s favor and denied KMS’s motion for summary judgment altogether. The Court of Appeals affirmed. The Supreme Court affirmed the lower courts, holding that the taking was necessary for a constitutional public use, Section 2206 of the Texas Government Code did not bar the taking, and KMS failed to raise a fact issue of fraud that precluded summary judgment.

First, the Court explained that the city’s taking did not violate §2206 of the Government Code due to an exception that carves out takings of private property for “transportation projects, including but not limited to, railroads, airports, or **public roads** or highways...” Tex. Gov’t Code § 2206.001(c)(1) (emphasis added). KMS argued that the taking was not for a legitimate transportation project, and therefore is pretext to confer a benefit on Briarwood. However, the Supreme Court rejected this argument, reconciling the prohibitions of § 2206 with the exception. “We cannot read subsection (c) as anything other than a clear-cut exception to the limitations imposed by subsection (b).” This taking constituted a “public road” under § 2206 (c), therefore it was not subject to the prohibitions of § 2206 (b). The Court noted that takings that fit in the exception can still be challenged as fraudulent, in bad faith, or arbitrary and capricious.



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Ask the Attorney

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

The Court also explained that KMS did not raise a fact issue as to whether the taking was fraudulent, in bad faith, or arbitrary and capricious. KMS argued that the taking was fraudulent because it served as a pretext to confer a private benefit on Briarwood, since Briarwood could not acquire the right to construct the drive on its own. Fraud in this context means “the taking of property for private **use** under the guise of public **use**, even though there may be no fraudulent intent on the part of the condemnor.” *Whittington*, 384 S.W.3d at 779 (emphasis added). KMS directed the Court to a letter amendment sent from the City to Briarwood that it would reduce the compensation of the Economic Development Incentive Agreement in accordance “with right-of-way acquisition costs incurred by the City... to convert the existing private easement on the adjacent properties... to a public street or roadway.” The Court differentiated the City’s perceived intent to confer a benefit on Briarwood, with the reality that it still conferred a public use to justify the taking. A showing of fraud invalidates an otherwise valid taking when “contrary to the ostensible public use, the taking would actually confer only a private benefit.” *FKM P’ship, Ltd. v. Bd. Of Regents of the Univ. of Houston Sys.*, 255 S.W.3d at 629 n.9. Because the taking here plainly benefits the public at large, the Court held it is not fraudulent simply because it also privately benefits Briarwood.

In conclusion, a municipality may condemn land for the purpose of transportation projects or public roads, even if the purpose of the condemnation is to confer a benefit on a private party or advance economic development, so long as the taking is for a public purpose and is necessary to achieve that stated public purpose. Here, the taking was necessary for public use because it advanced the city’s stated purpose to increase access to Kenwood Drive and reduce traffic on nearby roads.



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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.



NORTH TEXAS NEWS

Upcoming Event



Come take your shot!

Greetings Chapter 36 members, our next “YP” event will be held at the Defender Outdoors Clay Sports Ranch in Fort Worth! You do NOT have to be a YP to attend! If you are interested in bringing your own guns below is the website so you can see what is allowed. If you don’t have guns no worries, they will be providing guns and ammo. Come out and bring the big guns!

When: Wednesday October 11, 2023

What time: 5:30 to 7pm.

Tickets: \$0.00 Please RSVP by selecting a “ticket” (it’s free)

Directions: 8270 Aledo Road, Fort Worth, Texas 76126

Website: <https://defenderoutdoors.com/clay-sports-ranch/>



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



Upcoming Event

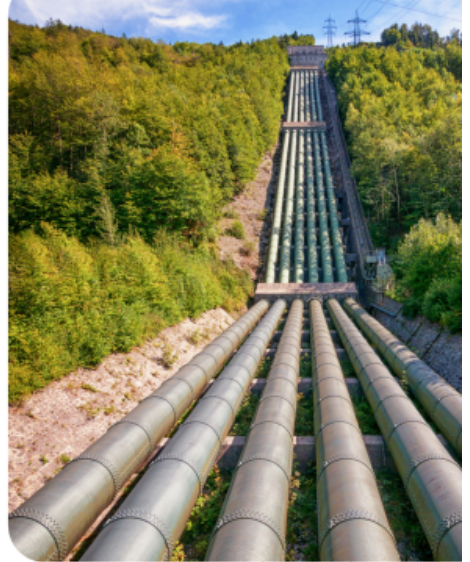


IRWA
CROSSROADS OF AMERICA
CHAPTER 10

UTILITY DAY OCTOBER 26TH

PROGRAM DETAILS

8:00 am - 8:30 am Registration
8:30 am - 11:45 am Program
11:45 am - 12:45 pm Lunch
12:45 pm - 4:30 pm Program



TOPICS

- Working with Utilities During Survey and Right of Way Acquisition
- GIS in Today's World
- Fundamentals Associated with Right of Way and Easements
- Lesson Learned in ROW Acquisition
- Intersections of ROW and Utility Coordination
- Electronic Vehicles Infrastructure and Public Rights of Way

LOCATION

The Wellington,
9775 N by NE BLVD, Fishers, IN 46037

FEATURING THE FOLLOWING SPEAKERS

- Lisa Robbins, HWC Engineering
- Andrew Harrison, GISP, Schneider Geospatial
- David Laur, PS, Wessler Engineering
- Kevin Rowland, PS, Banning Engineering
- Daniel Corbin, AICP, PMP, INDOT
- Kenny Franklin, Parsons
- Ryan Hadley, IN Office of Energy Development

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October 10th

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Professional Development Committee News

By: Gina Phalen, PDC Committee Chair



Gina Phalen

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If you've been contemplating pursuing an IRWA designation, it's never been easier than now. Your Education Committee is hard at work planning in-person courses this Winter and many more in 2024. Sitting in a classroom with your colleagues can be so much more fun than on-line, so keep an eye out for these classes to move you towards your SR/WA!

Benefits of in-person classes:

- Networking
- Afternoon junk food snacks
- Excuse to get out of your home office
- Access to world-class IRWA instructors during coffee breaks
- Real world ROW stories that just don't translate virtually
- Actually raising your REAL hand instead of your virtual hand (flashback to 5th grade)

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

Hello Chapter 36 Members!

It was good seeing you all at last month's luncheon. You should have received an email with a survey. We know there are some of you who wish to start your journey towards obtaining a Designation as well as some of you who might need to recertify. We want to hear from you regarding which courses you need or want to take.



Juan Salazar

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Below is the schedule of classes for the upcoming year. We are hosting both In-person and Virtual Classes, and if any of these

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 SR/WA the list of courses you need to complete your credentialing are located at www.irwaonline.org. Just visit the "Credentialing" tab.



Marketing News



To all the great companies that have marketed their business on the Chapter 36 website and newsletter in 2023, the Public Relations and Marketing Committee thanks you! We appreciate your partnership and collaboration!

For any companies that may have started in 2023 or for any that may just like some additional exposure, the Chapter 36 website and newsletter would be a great place to start.

If you would like to renew, or start marketing with our Chapter, the cost is just \$300.00/Year for Marketing on the website and in the newsletter, or \$100.00/Year for Marketing in the newsletter only.

We begin in January of each new year and run through December.

2024 is just around the corner!

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

mwatson@tnpinc.com



Nominations Announcement

Hello Chapter 36 Members!

NOMINATIONS FOR JAN T. WHATLEY PROFESSIONAL OF THE YEAR, EMPLOYER OF THE YEAR, YOUNG PROFESSIONAL OF THE YEAR

Jan T. Whatley Professional of the Year, Employer of the Year, and Young Professional of the Year nominations for Chapter 36 are currently open. This is an opportunity to highlight rising stars, recognize people and organizations that contribute to the Chapter's success, and promote professionalism in our profession. The nominations form can be found on the IRWA Chapter 36 website. We will also be sending it out via email. Please turn in your nominations to Kristen Short at kristen@blackbirdrow.com by October 31.



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REAL ESTATE APPRAISER

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