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MARCH LUNCHEON

Speaker: Bryan E. Elkan, PE
North Texas Highways & Roads
Utilities Lead



Topic: "Utility Sector Update"

Bryan has over 18 years of civil engineering experience (16 years with HDR Engineering), which includes transportation design, site design, drainage design, utility project oversight, utility engineering, utility coordination, and construction management/verification for agencies such as TxDOT, Union Pacific Railroad, BNSF Railroad, and a handful of other Transportation Departments across the US. Bryan serves as the North Texas Highways and Roads Utilities Lead and has been working specifically in the Utility Services sector for the past 12 years for the majority on TxDOT projects.

Education

Master of Science, Civil Engineering, University of Louisville, 2005

Bachelor of Science, Civil Engineering, University of Louisville, 2004

Registrations

Professional Engineer - Civil, Texas #108256

Professional Engineer - Civil, Ohio, #74827



NORTH TEXAS NEWS

International Right of Way Association, Dallas-Forth Worth

MARCH 2024



Texas Rangers Golf Club
701 Brown Boulevard
Arlington, TX 76011
March 12th, 2024
11:30am-1:00pm

Member - \$30
Non-Member - \$35
First-Time Guest - Free!
Register at
www.irwachapter36.org

Menu: Buffett

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

Registration will be cut off at noon on Friday, March 8th

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



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



CHARLES STEARMAN, SR/WA
REAL ESTATE APPRAISER

APPRAISALS & REVIEWS

TELEPHONE 817-797-9997
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NORTH TEXAS NEWS

President’s Message

Howdy Chapter Members,

The next few months are shaping up to be very exciting, and there are plenty of upcoming events, educational offerings, scholarship application deadlines, and nomination opportunities to be aware of. Please make sure to review each section of the newsletter in its entirety so you will be up to date!



Will Snider

MAI, SRWA, RW-AC
 Director at Lowery Property
 Advisors
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First, it cannot be emphasized enough that the early registration deadline for the 2024 Spring Seminar will be closing soon, so be sure to register now to take advantage of the discounts! For more information, please visit the Chapter 36 website.

Second, the deadlines to submit applications for the Greg Cook Memorial Scholarship and the Donald J. Sherwood Scholarship are quickly approaching! The Greg Cook Scholarship application is due no later than 5pm on May 24, 2024. The Donald J. Sherwood Scholarship application is due no later than 5pm on April 21, 2024. Please visit the PDC & Scholarships tab on our website for more details and to access the applications.

Lastly, our Nominations and Elections Committee is currently accepting nominations for elected Board positions. If you or someone you know is interested in a position on our Chapter Board, please submit a nomination form to our Nominations and Elections Committee, which is chaired by Director Sarah Riebe, for consideration.

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), and thank you all again very much.

Best,

Will Snider



Ask the Attorney

By: Jordan Miller, Tony Attia and Charlie Wilson

Question: Would you brief the Nathan D. Albert, et al. v. Fort Worth & Western Railroad Company case that the Supreme Court just issued an opinion on?

Answer: Yes. On February 16, 2024, The Texas Supreme Court issued an opinion regarding the establishment of an implied easement over a railroad track. In the Nathan D. Albert, et al. v. Fort Worth & Western Railroad Company case, Albert sought to establish an implied easement for a gravel crossing from his property over Western’s railroad.

In April 2016, Nathan D. Albert and his business partners formed Chisolm Trail Redi-Mix, LLC, to operate a cement mixing plant. Albert purchased a ten-acre tract of land (the “Property”) in Johnson County for this plant. Fort Worth & Western Railroad Company (“Western”) owns the land separating the Property from State Highway 171. The reason being that Western’s predecessor in interest, Guld, Colorado & Santa Fe Railway Co. (“Gulf”), originally purchased a 12.7-acre tract (the “Railroad Tract”) to build its railroads. A military road was established parallel to Gulf’s railroad, and State Highway 171 follows the same path as the old military railroad. A single-lane gravel road crossing over the railroad tracks connects the Property to State Highway 171.

This gravel crossing (the “Way”) forms the subject of this case. Evidence from a 1941 aerial survey showed that the Way existed and was used long before Albert or Western became owners of their respective properties. In 1959 or 1960, Junior Meek owned the Property and agreed to a license agreement with Gulf to use and build a gravel crossing over the Way for personal and agricultural purposes. The license agreement stated that Meek could not assign the license without Gulf’s permission. However, Meek sold the Property to Marion and Jennie Scott in 1969, and the property changed hands several times before Albert purchased the Property in 2016.

Throughout those forty-six years, the various owners of the Property used the Way for many purposes despite not having the license to do so. Western acquired the Railroad Tract in 2005 and began sending notices to the landowners stating they were trespassers and must cease using the Way. However, Western never attempted to physically block the path of the Way. When Albert purchased the Property and began using commercial trucks over the Way, Western sent him a cease-and-desist letter. Albert filed suit for declaratory judgment that he had an implied easement over the Way.



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The trial court found that Albert held an implied easement over the way based on three theories: easement by estoppel, easement by necessity, and a prescriptive easement. Western appealed, and the court of appeals reversed the trial court on all three theories. The Texas Supreme Court then reversed the Court of Appeals in part, finding that Albert had an implied easement based on the theory of prescriptive easement.

The Supreme Court explained the general law of easements. An easement that entitles the adjacent landowners to cross over the adjoining tract is an easement appurtenant. Typically, an easement appurtenant must be written and signed by the parties to evidence its creation; however, an easement appurtenant can also be implied without a writing. One such way is an easement by prescription. An easement by prescription is created when a landowner uses someone else’s land

in a manner that is adverse, open and notorious, continuous, and exclusive for a ten-year period. An easement appurtenant established by prescription attaches to the Property, and when the Property is conveyed to another landowner, the new landowner also receives the easement.

Use is adverse when it notifies the servient landowner, here Western, that the claimant is asserting an adverse claim. It is open and notorious when the servient landowner has actual or implied notice of the use, and it is exclusive when the claimant and the servient landowner are not using the easement in the same way. Here, the Property owners trespassed over the Way from 1969 to 2016, because Meek did not assign his license to any subsequent property owners. The Railroad Tract owners knew about this use yet did not prevent or block the Way.

Additionally, neighbors familiar with the area testified that the Property’s owners used the Way to access the Property and the highway for as long as they could remember. The use was exclusive because only the Property owners used the Way to cross the railroad. Western argued that since it transported its trains over the railroad, it also used the Way such that the exclusivity element was not satisfied. The Court refuted this argument, stating that Western and its predecessors did not use the Way to cross the railroad. Exclusivity is only defeated when the landowner and claimant use the same path or passage that constitutes the Way.

The Court reasoned that the landowners from Marion and Jennie Scott in 1969 until Albert in 2016 had satisfied the requirements for a prescriptive easement. Thus, the prescriptive easement over the Way passed to Albert in 2016 when he purchased the Property.

In conclusion, a landowner may establish a prescriptive easement through the adverse, open and notorious, continuous, exclusive use of an easement for ten years by the landowner’s predecessors in interests.

The views, thoughts, and opinions expressed in this article belong solely to the authors – Jordan Miller, Tony Attia 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 News

Members,

The Chapter 36 Bylaws have been amended to reflect the current practices of the Chapter, clarify roles of directors, and update officer election procedures. The revised Bylaws have been reviewed and approved by IRWA Counsel and the Executive Director. The Chapter will vote to approve the new Bylaws after the General election of officers at the May meeting. Please see the annotated copy for your review prior to the vote in May [here](#).

If you have questions, please contact Sarah Riebe, sriebe@pinnaclegroup.biz; or Michael Hale, MHale@cobbfindley.com.



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*PRESTONWOOD
PROPERTY
ANALYSIS*

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Chapter News

Nominations for Chapter 36 Officers for the 2024-2025 fiscal year are now open. The current term ends on June 30 and the new slate of officers will take their positions on July 1, 2024.

As the 2 Year Chapter 36 Director, I am the Chair of the Committee. Please complete the officer nomination form and return to sriebe@pinnaclegroup.biz **no later than 5:00pm March 29, 2024.**

Nominations will be accepted through March 30. You may download the nomination form from the Chapter Website, or contact me and one can be emailed to you. Typically, the existing Officers move up in position. Each current Board Officer has expressed a desire to remain on the Board and move up in their respective positions. However, there will be open positions for Secretary and Professional Development Committee (PDC) 3 Year. The Nominations and Elections Committee will review the nominations and select a proposed slate of Officers that will be on the election ballot in May.

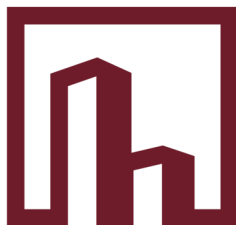
ALL positions, except PDC Chair and PDC 2 Year positions, must be elected. The positions are: Secretary, Treasurer, Vice President, President, Director 2-Year, Director 1-Year, and PDC 3 Year. If elected, the current officers have agreed to serve in the next positions for Treasurer, Vice President, President, Director 2-Year, Director 1-Year, and PDC Chair. Anyone can run from the floor against the slate of proposed Officers.

The members elected to the Board are those who have been active in the Chapter and have been seen servng in some volunteer capacity. Those elected on the Officer track are committing to service that exists well beyond a one-year term. The PDC is a three-year commitment and those elected as Secretary are expected to serve for 6 years.

Sarah Riebe, SR/WA

IRWA Chapter 36 Director 1 Year

817-304-2051



LPA
lowerypa.com

Spring Seminar News



Your Chapter 36 All-Star Spring Seminar Lineup is now posted!

DON'T STRIKE OUT LOOKING!

Early Registration for the Chapter 36 All-Star Spring Seminar ends March 4, 2024. Late Registration ends on March 18, 2024.

The Chapter 36 Spring Seminar: Hot Topics in Real Estate and Eminent Domain, is considered the marquee event of our All-Star Event schedule. The Spring Seminar will feature speakers from all disciplines involved in the Right of Way Industry and will present on relevant topics that will not only inform and educate but will also hopefully entertain. Since we will be hosting our event at a Major League Ballpark, the seminar will have a baseball themed presentation which will include “walk-up” music for our presenters. Remember, there are no ties in a baseball game so this will also be a “no tie” event, please feel free to wear your favorite team’s colors, attire, or jersey (even if you’re an Astros fan) as you cheer on your All-Star lineup of presenters. You will not want to miss this event!

Information concerning our All-Star Event Schedule, Event Information/Registrations, Sponsorship Opportunities, Venues and Hotel information can be found on the IRWA Chapter 36 Website at <https://irwachapter36.org/meetinginfo.php>.

PLAY BALL!



Spring Seminar News



All Star Lineup:

John Baker, Jordan Miller, Baker Moran: *“Pipeline Corridors: a Closer Examination of the Texas Supreme Court’s Hlavinka Decision”*

Geline Spinks, Community National Title: *“Knock Title Curative Out of the Park!”*

Angela Longoria, Darla Dunaway, Clara Castaneda, Julissa Hernandez, HDR: *“Cowboy Acres: The Trailer Park Round-Up: State Loop 9 Relocation Challenges”*

Larry Vincent, Daniel Charest, Burns Charest, LLP: *“How Will Federal Takings Claims Affect Eminent Domain Legal Practice Going Forward”*

Trey Yelverton, City of Arlington, TX: *“Arlington Homeruns”*

Mayor Jim Ross, City of Arlington, TX: *“Gameday Lunch Prayer”*

Bobby Debelak, McDowell Hetherington, LLP: *“Robert Moses and the Taking of New York City”*

Sarah Munson, Office of the Attorney General: *“Review of the 88th Texas Legislative Sessions”*

Michael Miggins, CBRE, Brent Pitts, Integra Realty Resources, Joel St. John, O’Brien Right of Way Evaluation: *“How Best to Determine Market Conditions Adjustments”*

Sejin Brooks, Barron, Adler, Clough & Oddo: *“Wait, That’s Not Right! Post Kelo, Legal but Questionable Uses of Eminent Domain in Texas, Louisiana, and Oklahoma.”*

Continuing Education Credit:

For this event, IRWA credit has been approved. The following CE credits are pending approval: CE, TREC TALCB CLE & TPLS.



TEXAS LAND AND TITLE LLC

Upcoming Event

IRWA REGION 5 SPRING FORUM @ LAMBEAU FIELD!

May 2-4, 2024



IRWA Badger Chapter 17 cordially invites you to the 2024 Region 5 Spring Forum in Green Bay, WI.

Accommodations: Lodge Kohler
1950 South Ridge Road, Green Bay, WI 54304
Reservations: (855) 407-7346

Room Block: May 1-4 at a rate of **\$215 + tax/night**
~complimentary parking included~

Reservation deadline: **April 15, 2024**
Reference Reservation #448701 for IRWA room block

For more information contact:
Jeff Olson, Chapter 17 President
(715) 966-0241 or email jolson@landvest.com

THURSDAY MAY 2
8am - 4pm

IEUC Utility Symposium
Meeting space max: 120 people

6th Floor Indoor Clubs
Lambeau Field
enter at Bellin Health Gate

**\$75 IRWA members/
\$85 non-members**
Breakfast & Lunch +
Sponsored social event 5:30
Wed. May 1st
Taverne in the Sky
Lodge Kohler

THURSDAY NIGHT
5:00pm

Welcome Reception
North Lofts/Lambeau Field
Next to 6th Flr Club room

FRIDAY MAY 3
Meeting 10:00am
Shotgun start 11:00am

Chapter Meeting &
Annual Golf Outing
-Brown County GC-

\$85
Lunch + 19th hole + auction
included

SATURDAY MAY 4
8am-4pm + 2-hour Tour

Region 5 Meeting

6th Floor Indoor Clubs
Lambeau Field
enter at Bellin Health Gate

\$120/\$80/\$40
Breakfast, lunch + auction
included
Optional: Lambeau
Field + Hall of Fame Tour!



NORTH TEXAS NEWS

Chapter 36 Advertisers



Professional Development Committee News

By: Gina Phalen, PDC Committee Chair



Gina Phalen

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 Cushman & Wakefield
 Senior Director Infrastructure
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As the days grow longer & nature springs back to life, it’s a great time to renew your commitment to your profession and earn that IRWA designation! Stand out among your peers and impress your clients with your new knowledge from any of the outstanding courses offered.

Also, don’t miss the opportunity to win the **Greg Cook Memorial Scholarship**. This scholarship awards money to be used for courses pertaining to any IRWA designation. Applications are due May 24!

Congratulations to Pam Thomas on earning her SR/WA!

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!

Thank you to Trinity River Authority for their support of Chapter 36 in hosting us during our most recent Course 501. Please be sure to thank them when you see them next time.

As we have previously mentioned, we are continuing to add new course to host Virtually and we have Course 200, 604 and the SR/WA Study Session coming up. We have plenty of spots available for our next in-person Course (C-502) coming up in April whether you need it or need it for Recertification.



Juan Salazar

R/W-NAC, R/W-RAC
Pinnacle Consulting
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Let us know if you need any specific course as we continue to plan future course and any new courses that we might add to the list for the Chapter to host.

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

	Course	Location	Date
410	Reviewing Appraisals in Eminent Domain	CBRE-Ft. Worth	Mar. 4, 2024
200	Principles of Real Estate Negotiations	VIRTUAL	Mar. 7-8, 202
502	Non-Residential Relocation Assistance	Trinity River Authority, Arlington, TX	Apr. 22-23, 20
604	Environmental Due Diligence and Liability	VIRTUAL	May 6, 2024
R/WA Prep	SR/WA Study Session	VIRTUAL	May 29-31, 20

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.



**Value People.
Value Property.**



NORTH TEXAS NEWS

International Right of Way Association, Dallas-Forth Worth

MARCH 2024

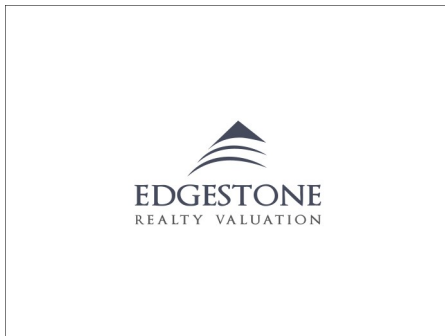
Marketing News



If you have not paid for your 2024 newsletter and website sponsorship, please contact Mary Watson at mwatson@tnpinc.com or 682-558-5752.

Thank you for your continued support of our chapter!

Mary



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