DRIPPING SPRINGS
Texas

# Recent State Cases 2025-Planning and Zoning

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CITY OF DRIPPING SPRINGS

# Contents

## CONDEMNATION

***Edukid, LP v. City of Plano*, No. 05-23-00269-CV, 2024 WL 5244613 (Tex. App. Dec. 30, 2024) (mem. op.).**

In 2017, the City of Plano initiated condemnation proceedings to acquire an easement on a portion of Effat Saifi's property (later transferred to Edukid, LP) for the construction of a hike-and-bike trail after negotiations with Saifi failed. After a hearing, special commissioners assessed damages, and Saifi objected to the award. In 2021, during the trial court proceedings, the city filed a traditional and no evidence motion for partial summary judgment on jurisdictional issues, and the trial court granted the motion. Then, in February 2023, the trial court granted a directed verdict for the city on the remaining issue relating to the value of the property, and Edukid appealed. Affirming the lower court's judgment, the court of appeals concluded as to the partial summary judgment ruling that the city was authorized under Local Government Code § 273.001 to acquire property for public purposes, including for parks, and the city's evidence was sufficient to show it intended to use the property for public use as a hike-and-bike trail to reduce pedestrian traffic related accidents, for which the taking was necessary. Further, nothing in the record supported Edukid's

argument that the city's condemnation determination was fraudulent, made in bad faith, or arbitrary and capricious. Addressing Edukid's due process argument, the court of appeals held that Edukid failed to cite to any legal authority mandating personal notice of the council meeting at which the council authorized the city manager and city attorney to acquire the easement, whether through negotiations or condemnation proceedings. As for the directed verdict, the court of appeals similarly held that Edukid failed to produce evidence on the value of the property or damages to the remainder.

***City of Dripping Springs, Tex. v. Lazy W Conservation Dist.*, No. 03-22-00296-CV, 2024 WL 2787270 (Tex. App.—Austin May 31, 2024) (mem. op.).**

In 2019, the city of Dripping Springs sought to install an underground wastewater pipeline under property owned by Bruce Bolbock and Barbara Wiatrek (the Bolbocks). To protect the property in question from condemnation, the Bolbocks conveyed it to the Lazy W Conservation District. The city proceeded with the condemnation suit against Lazy W and the Bolbocks, and special commissioners ruled in favor of the city. In response, Lazy W and the Bolbocks filed counterclaims, general denials, and objections to the ruling, arguing that: (1) the court lacked subject matter jurisdiction as Lazy W was entitled to governmental immunity, and (2) the paramount public importance doctrine prevented the city from condemning the property. After a hearing on the matter, the trial court granted Lazy W's plea to the jurisdiction, and the city filed an interlocutory appeal thereafter. In reversing the trial court's order, the court of appeals concluded that: (1) even assuming Lazy W is entitled to it, governmental immunity does not apply in eminent domain proceedings between two governmental entities; and (2) the doctrine of paramount public importance does not implicate a jurisdictional issue.

***Tran v. City of Haskell*, No. 11-23-00186-CV, 2024 WL 4292222 (Tex. App.—Eastland Sept. 26, 2024) (mem. op.).**

Long Tran owned four properties in the City of Haskell, and because of their dilapidated condition the city condemned the structures. A few months later the city's code enforcement officer resigned, and the city chose to rescind the condemnation orders and instead tried to work with Tran to establish a repair plan to preserve his properties. Tran thereafter sued the city claiming that the city's condemnation orders, although rescinded, constituted a "temporary" regulatory taking of his property for which he was entitled compensation under the Texas Constitution. Relying on the U.S. Supreme Court case *Arkansas Game & Fish Comm'n v. United States* and a concurring opinion in Texas Supreme Court case *City of Baytown v. Schrock*, Tran argued that because the federal takings clause provides for compensation for "temporary takings" in certain circumstances and the Texas takings clause language is even broader than federal law, his inverse-condemnation claim based on the city's temporary action was compensable under the Texas takings clause. In response, the city argued Tran's claims were not ripe or moot, and Tran failed to sufficiently allege a taking or a claim for property damages by the city. The trial court ruled in favor of the city, and Tran appealed. The court of appeals upheld the lower court's ruling concluding that although the Texas Constitution may very well provide for compensation for temporary takings, because Tran failed to comprehensively brief the court on the "precise scope of the right to compensation that the Texas Constitution affords" beyond its federal counterpart, it could not address the issue. Additionally, the court held that Tran's claims were not ripe for judicial review as there was no final governmental decision regarding his asserted claims.

## DECLARATORY JUDGMENT

***Johnson v. Town of Fulton*, No. 13-23-00436-CV, 2024 WL 2198665 (Tex. App.—Corpus Christi–Edinburg May 16, 2024) (mem. op.).**

In 2012, the Town of Fulton by ordinance granted a 30-foot-wide portion of an easement to Johnson, who owned the underlying fee, so that Johnson could erect a building in the portion of the city's right-of-way that was not being used as a road. Subsequently Johnson erected a fence that blocked the portion of the easement that was being used as a public road. The city sued Johnson for injunctive relief and a declaration stating that the fence constitutes a nuisance and that the city's right-of-way had not been abandoned. Johnson argued that previous surveys, except for one, had been mistaken about the size of the block associated with the easement. He argued that under that survey, the 30-foot-wide grant of the easement extended into the paved portion of the road. The city filed a motion for summary judgment and attorney's fees, which the trial court granted. Johnson appealed.

The appellate court affirmed in part and reversed in part, holding that: (1) the 2012 ordinance relied on a certain survey when the city granted the 30-foot-wide portion of the easement to Johnson, and therefore Johnson could not try to enforce that ordinance by reliance on a different survey; and (2) because the declaratory relief added nothing to the judgment, the lower could not rely on the Uniform Declaratory Judgment Act for statutory authority to award attorney's fees.

## ECONOMIC DEVELOPMENT

***River Creek Dev. Corp. & City of Hutto v. Preston Hollow Capital, LLC, et al.*, No. 03-23-00037-CV, 2024 WL 3892448 (Tex. App.—Austin Aug. 22, 2024) (mem. op.).**

In 2018, the City of Hutto authorized the creation of a public improvement district (PID) and a local government corporation, River Creek Development Corporation (River Creek), to assist with the financing of the improvements. To that end, the city and River Creek entered into several agreements including: (1) a loan agreement and promissory note in which River Creek borrowed $17.4 million from Public Finance Authority (PFA); (2) an interlocal agreement in which the city promised to purchase the public improvements from River Creek through levied assessments paid in installments which would be used to pay off River Creek's promissory note; and (3) a contract with 79 HCD Development to build the public improvements. Rather than the city or River Creek issuing bonds themselves, River Creek entered into an agreement with PFA (a Wisconsin based governmental entity) to issue the bonds, which it later did. Preston Hollow Capital, LLC (Preston Hollow) purchased those bonds and was to be paid from the River Creek promissory note funds. U.S. Bank National Association was to act as the trustee for the transactions.

In 2021, after concerns arose about whether the city had lawfully entered into the agreements, the city and River Creek filed a lawsuit seeking declaratory relief under the Uniform Declaratory Judgment Act that the related agreements, bonds, and note were void and unenforceable because: (1) the "installment sales contract" provision in the interlocal agreement does not authorize the installment payments to be allowable costs of improvements under the PID Act (Local Government Code Section 372.024); (2) the bonds issued did not comply the PID Act as they had not been issued by an authorized issuer; and (3) promissory notes must be submitted to the attorney general for examination as required by state law. Preston Hollow filed counterclaims and a motion for summary judgment, which the court granted. The city and River Creek then filed this appeal.

The court of appeals affirmed the trial court's judgment holding that: (1) Sections 372.026(f) and 372.023(d) specifically authorize a city to enter into an interlocal agreement that serves as an

installment sales agreement in which the city pledges assessments it receives as installment payments to secure a corporation's indebtedness which it issued to finance construction of the public improvements; (2) because the bonds were not issued to fund the city's payment of its costs to purchase the public improvements from River Creek, the requirement in Section 372.024 that the issuer be a political subdivision of this state did not apply; and (3) because the legislature did not expressly provide for a remedy or consequence, failing to obtain attorney general approval under Transportation Code Section 431.071 does not render the agreements, bonds, or promissory note void or unenforceable.

## GOVERNMENTAL IMMUNITY—TORTS

***City of Cibolo v. LeGros*, No. 08-23-00291-CV, 2024 WL 3012508 (Tex. App.—El Paso June 14, 2024) (mem. op.).**

Deborah LeGros, a property owner, sued the City of Cibolo, alleging unlawful replatting of a subdivision and failure to enforce land-use restrictions. LeGros claimed that the city's replatting action removed covenants and restrictions, allowing her neighbors to maintain their property contrary to the original restrictions, resulting in potential health and safety hazards. She sought declaratory relief under the Texas Tort Claims Act (TTCA) and the Uniform Declaratory Judgment Act (UDJA). The city filed a plea to the jurisdiction asserting governmental immunity from the suit, which the trial court denied. The city appealed. Cities are generally immune from lawsuit unless the city's governmental immunity has been specifically waived by statute. Neither the TTCA nor the UDJA contain waivers of governmental immunity applicable to the instant case; therefore, neither waived the city's immunity. Ultimately, the appellate court reversed the trial court's order and rendered judgment for the city, dismissing LeGros' claims for lack of jurisdiction.

***City of Garland v. Pena*, No. 05-24-00133-CV, 2025 WL 99785 (Tex. App.—Dallas Jan. 15, 2025).**

Benjamin David Pena, a temporary worker for a staffing agency, sued the City of Garland, alleging premises liability and negligence after being crushed by a dump truck at the city's landfill. The city, in response, filed a plea to the jurisdiction, which the trial court initially granted. Pena appealed the decision, and the court of appeals remanded the case to the lower court to allow Pena to amend his pleading. After Pena filed his amended petition, the city filed its plea to the jurisdiction claiming immunity under the Texas Tort Claims Act (TTCA). After a hearing, the trial court denied the city's plea, and the city appealed.

In reversing the lower court, the court of appeals held that: (1) Pena's allegations constituted a negligence claim rather than a premises liability claim where his injuries were caused by an act or activity, specifically the backing up of the dump truck by a third party, not by the condition or use of the city's tangible real property; (2) although Pena alleged the city's landfill was generally dangerous and the city could have found safer ways to operate the facility, he failed to sufficiently plead any facts that the city had actual knowledge of a specific condition posing an unreasonable risk of harm that caused his injuries; (3) public policy did not support extending sovereign immunity to include general allegations that a location was dangerous which would subject a landowner to premises liability for all injuries occurring on his property; (4) the city had no duty to protect another from the negligent acts of a third person; and (5) on his negligence claim, Pena failed to establish how a city employee waiving a truck driver in specific direction constituted "operation" or "use" of a motor-driven vehicle as required by the TTCA.

**GOVERNMENTAL IMMUNITY – CONTRACTS**

***Baylor Cnty. Special Util. Dist. v. City of Seymour,* No. 11-24-00071-CV, 2025 WL 863771 (Tex. App. Mar. 20, 2025).**

This case involves a breach of contract suit filed by the City of Seymour against Baylor County Special Utility District. The city alleged that Baylor violated their contract by purchasing water from a third party instead of exclusively from the city. Baylor claimed governmental immunity and argued that the contract was not a "requirements contract." In its opinion affirming the trial court's dismissal of the city's claims for declaratory judgment, injunctive relief, and attorney's fees, the Fifth Court of Appeals held that the parties' contract was a "requirements contract" and the city could not seek a determination of its rights and responsibilities against Baylor, a governmental entity. Thereafter, Baylor filed a motion for rehearing in which it requested that the court modify its opinion by removing the following statements to avoid confusion on remand: (1) "Importantly, Baylor presented no evidence that Seymour could not fulfill its water supply requirements or that its acquisition of water from other sources was due to Seymour's inability to provide same;" and (2) "Moreover, because our decision today includes that the contract is a requirements contract, Seymour's claim for declaratory judgment is moot." In denying Baylor's motion for rehearing, the court held that nothing in the statements prevents Baylor from providing evidence in support of its defenses in further proceedings or suggests that the city has already prevailed on its substantive claims.

***City of Rio Vista v. Johnson County Special Utility Dist*., 2025 WL 309937 (Tex. App.—15th Dist. Jan. 28, 2025) (mem. op.).**

The Johnson County Special Utility District (District) sued the City of Rio Vista for breach of an interlocal agreement resolving water service boundary disputes. The agreement included provisions regarding emergency water connections and a requirement for notice and consent before extending water lines into the other party's service area. The District alleged that the city violated the agreement by extending water lines into the District's service area and misusing an emergency connection agreement to calculate its water service capacity. The city filed a plea to the jurisdiction, arguing governmental immunity. The trial court denied the city's plea, and the city appealed. Cities are generally immune from lawsuit or liability unless immunity has been waived by the Legislature. Chapter 271 of the Texas Local Government Code waives a city's immunity from suit for contract disputes related to the provision of goods or services to the city. In this case, the court held the interlocal agreement not to be a contract for goods or services; therefore, the city's immunity was not waived from the District's breach of contract claim. Consequently, the appellate court reversed the trial court's order and rendered judgment dismissing the District's claims.

***Double H Contracting, Inc. v. El Paso Water Utilities Public Service Board, et al.*, No. 08-23-00345-CV, 2024 WL 4611957 (Tex. App.—El Paso Oct. 29, 2024).**

Double H Contracting, Inc. (Double H) sued the El Paso Water Utilities Public Service Board (EPWater), the City of El Paso, among other parties, after EPWater awarded multiple contracts for road repair work through a single public procurement process. Historically, EPWater had used a single contractor to address road repairs following utility line work, but with growing repair backlogs and resident complaints, EPWater sought bids to secure multiple contractors through a competitive sealed proposal process. Double H, the highest-ranking proposer, argued that Texas law limited EPWater to awarding the contract solely to the highest-ranked proposer. The trial court disagreed, granting EPWater's motion for summary judgment. Double H appealed.

Ultimately, the appellate court affirmed the trial court's grant of summary judgment in favor of EPWater, holding that EPWater's contract awards were lawful under the public health and safety exemption in Chapter 252 of the Texas Local Government Code. This exemption allows municipalities to bypass competitive bidding requirements if the procurement is necessary to preserve or protect public health or safety. EPWater provided evidence, including affidavits and data, showing that delays in road repairs after utility work posed risks to public safety and justified retaining multiple contractors to handle repair work more quickly and efficiently. The court found this evidence sufficient to support EPWater's determination that the exemption applied to the instant procurement, rendering competitive bidding requirements inapplicable. Additionally, EPWater acted within its discretion by retaining multiple contractors for efficient road repair work through the competitive sealed proposal process. The court concluded that the terms of the proposal explicitly allowed awarding contracts to multiple qualified proposers, and EPWater had followed the solicitation's procedures, which allowed contracting with additional entities beyond the highest scorer.

***San Jacinto River Auth. v. City of Conroe*, No. 22-0649, 688 S.W.3d 124 (Tex. Apr. 12, 2024).**
This case looks at the scope of the statutory waiver of immunity under Chapter 271 of the Local Government Code (Chapter 271) for contractual claims against local government entities.

At issue were contracts that obligated two cities to buy surface water from a river authority. When a dispute over fees and rates arose, the cities stopped paying their complete balances, and the authority sued the cities to recover those amounts. The trial court granted the cities' plea to the jurisdiction, and the court of appeals affirmed on the ground that the authority did not engage in pre-suit mediation as the contracts required. The river authority petitioned for review.

The Supreme Court held that neither the contractual procedures for alternative dispute resolution, which are enforceable against local governments under Section 271.154 of the Local Government Code, serve as limits on the waiver of immunity set out in Section 271.152, nor does the parties' agreement to mediate apply to the authority's claims. The Court also rejected the cities' alternative argument that the agreements did not fall within the waiver because they failed to state their essential terms. Accordingly, the Court reversed and remanded to the trial court for further proceedings to resolve the authority's claims on the merits.

***Campbellton Rd., Ltd. v. City of San Antonio by & through San Antonio Water Sys*., No. 22-0481, 688 S.W.3d 105 (Tex. Apr. 12, 2024).**
A property developer, which owned 585 acres within city's extra-territorial jurisdiction, brought a breach of contract and declaratory judgment action against the city by and through the city's water utility, arising from utility's agreement with the developer that the utility would provide sewer service for proposed residential developments on the developer's property. The trial court denied the city's plea to the jurisdiction and motion to dismiss for lack of subject matter jurisdiction. On appeal, the San Antonio Court of Appeals reversed and remanded, finding Chapter 271 of the Local Government Code (Chapter 271) did not apply to waive the city's immunity. The developer filed a petition for review.

The Supreme Court reversed and remanded, finding that the following supported waiver of the city's sovereign immunity under Chapter 271: (1) the developer sufficiently pleaded that a written, bilateral contract was formed; (2) the developer sufficiently pleaded that a written, unilateral contract was formed; (3) the contract terms contemplated that the utility had a right to the developer's participation in the project upon contract signing, as would support waiver of city's

sovereign immunity under the Chapter 271; (4) the contract terms contemplated provision of payment to the developer; and (5) the developer sufficiently pleaded that the contract contemplated provision of services to the utility, as required to trigger waiver of sovereign immunity.

***Graham Constr. Services, Inc. v. City of Corpus Christi*, No. 13-22-00536-CV, 2024 WL 4707819 (Tex. App.—Corpus Christi–Edinburg Nov. 7, 2024) (mem. op.).**

Graham Construction Services (Graham) and the City of Corpus Christi sued each other after various disputes arose when the city hired Graham to construct a new wastewater treatment plant. After Graham claimed completion of the first phase of the two-phase project, the city refused to issue a certificate of substantial completion, claiming the first phase had not been completed. Graham vacated the project site without performing the second phase. Graham sued the city for breach of contract and the city counterclaimed for breach of contract. The trial court awarded damages to both parties, which were offset, resulting in Graham owing the city $1.29 million. The trial court also awarded attorney's fees to both parties, which were wholly offset. Graham appealed, claiming that the trial court erred in its award of damages to the city for failure to complete the second phase of the project because the certificate of substantial completion was a condition precedent to Graham's obligations in the second phase, and that the city breached the contract first, excusing Graham's obligations. Graham also claimed that the trial court's award failed to fairly compensate it for city-related delays. The city cross-appealed, contending that the trial court erred by failing to award the city liquidated damages under the contract, by awarding Graham damages related to delays out of the city's control, and by awarding Graham attorney's fees.

The appellate court affirmed in part and reversed in part, holding that: (1) Graham was not excused from its obligations under the contract because the issuance of the certificate of completion of the first phase was not a condition precedent to the performance of the second phase of the project and the city had not breached the contract; (2) the city was entitled to liquidated damages under the contract; (3) Graham had not shown with evidence as a matter of law that the trial court's damages award did not fairly compensate it for city-related delays; (4) because a provision in the contract provided that Graham was not entitled to damages arising from delays outside the city's control, the trial court had erred by awarding those damages; and (5) affirmed the trial court's award of attorney's fees to Graham.

## LAND USE

***City of Highland Vill. v. Deines*, No. 02-24-00431-CV, 2025 WL 494695 (Tex. App.—Fort Worth Feb. 13, 2025) (mem. op.).**

This case arises from flood damage to the home of Deines and Palumbo (Homeowners). During the month prior to the flood, the city had used skid-steer-type vehicles to place rocks near the Homeowners' property. On the day of the flood, the city delivered skid-steer-type equipment to the area adjacent to the Homeowners' home so that the city could begin its Sewer Line Stabilization Project. That evening, over three inches of rain fell, and the Homeowners' home flooded.

The Homeowners sued the city, alleging a claim under the Texas Tort Claims Act and, in the alternative, a claim for inverse condemnation. The city answered, asserting a general denial and the affirmative defense of governmental immunity, and later filed a plea to the jurisdiction, arguing (1) that its immunity was not waived because it did not use motor-driven equipment and (2) that

the Homeowners had failed to properly plead an inverse-condemnation claim. After additional filings by the parties and a hearing, the trial court denied the plea.

The appellate court reversed the trial court's denial of the city's plea to the jurisdiction and remanded the case to the trial court to provide the Homeowners with an opportunity to replead.

***City of Dallas v. Dallas Short-Term Rental All.*, No. 05-23-01309-CV, 2025 WL 428514 (Tex. App. Feb. 7, 2025) (mem. op.).**

In 2023, the City of Dallas adopted two ordinances regulating short-term rentals. The first ordinance banned short-term rentals in single-family residential zones, and the second established a permit process for other areas. Shortly thereafter, the Dallas Short-Term Rental Alliance (DSTRA) and several individuals sued the city, claiming the ordinances were unconstitutional and seeking injunctive relief. The trial court granted DSTRA's request for a temporary injunction, preventing the city from enforcing the ordinances, and the city appealed. In affirming the lower court, the court of appeals held that DSTRA met their burden to establish a probable right of recovery under their due-course-of-law argument by showing: (1) they possessed well-established rights to lease their property; (2) the city would deny them those rights by enforcing the two ordinances within six months; and (3) DSTRA would suffer probable, imminent, and irreparable injury without injunctive relief.

***Litinas v. City of Houston*, No. 14-23-00746-CV, 2024 WL 4982561 (Tex. App.—Houston [14th Dist.] Dec. 5, 2024).**

Nicholas Litinas, owner of a flower shop in the City of Houston, filed an inverse condemnation claim against the city and another local redevelopment authority. He alleged that modifications they were planning, including curbing and driveway reductions, would eliminate the head-in parking spaces essential to his business, damaging the market value of his property. The city filed a plea to the jurisdiction, arguing that the planned modifications were entirely within the city's right-of-way and did not materially impair access to Litinas's property. The trial court granted the plea, dismissing the case for lack of jurisdiction, and Litinas appealed.

Governmental immunity from suit can be waived if a taking, damaging, or destruction of property is established. Additionally, if access is materially and substantially impaired, it can constitute a compensable taking. In this case, while alternative access points and parking spots would remain after the project, the remaining access is incompatible with the property's specific use as a flower shop, which is reliant on convenient, head-in parking, which was completely eliminated by the project. Ultimately the appellate court reversed and remanded the trial court's decision, holding that Litinas presented sufficient evidence of material and substantial impairment of access to survive the city's plea to the jurisdiction.

***San Jacinto River Authority v. Medina*, No. 01-23-00013-CV, 2024 WL 4885853 (Tex. App.—Houston [1st Dist.] Nov. 26, 2024) (mem. op.).**

Several dozen homeowners (the homeowners) sued the San Jacinto River Authority (the authority) alleging a constitutional taking of their properties after the authority released water from Lake Conroe following Hurricane Harvey in a manner that caused flooding and damage to their properties. The authority filed a plea to the jurisdiction based on governmental immunity, which the trial court denied. The authority appealed.

The appellate court reversed and rendered judgment, holding that the homeowners had not produced evidence sufficient to raise a fact issue as to whether the authority's water releases were a substantial factor in causing the flood damage on their properties.

***Maciejack v. City of Oak Point,* No. 02-23-00248-CV, 2024 WL 3195851 (Tex. App.—Fort Worth June 27, 2024) (mem. op.).**

This case stems from a dispute between the Maciejacks and the City of Oak Point, and Winston Services, Inc. over permits that the Maciejacks had sought from the city to build a fence and pool on their property. The Maciejacks sued the city and Winston Services, and the city countersued for remedies related to alleged violations of city ordinances. After a bench trial, the trial court entered judgment for the city and Winston Services, and awarded the city trial and conditional attorney's fees. On appeal, the Maciejacks raise five issues related to findings on their equitable-estoppel affirmative defense, findings that they had received proper notice of ordinance violations, and the attorney's-fees award.

The appellate court reversed and remanded the award of conditional attorney's fees. The court affirmed the rest of the trial court's judgement, finding that equitable estoppel was inapplicable to the city.

***TCHDallas2, LLC v. Espinoza*, No. 05-22-01278-CV, 2024 WL 3948322 (Tex. App.—Dallas Aug. 27, 2024) (mem. op).**

In 2020, the city's building official issued TCHDallas2 (TCH) a certificate of occupancy (CO) for commercial amusement use. Later in 2022, an assistant building official revoked TCH's CO after determining it had been issued in error as TCH, according to its original land use statement, had been operating a gambling establishment in violation of Texas Penal Code Section 47.04. TCH appealed the revocation to the city's Board of Adjustment (BOA), and the BOA subsequently reversed the building official's decision and reinstated TCH's CO. In its decision, the BOA presumed TCH's use of its property was legal as its operations may have fallen within the "safe harbor" provision of Section 47.04(b). Further, TCH had worked with the city attorney and city council for two years to obtain the CO and had not been prosecuted by the district attorney or found by a court to have been operating illegally.

Shortly thereafter, the city appealed the BOA's decision to the trial court. In reversing the BOA's decision, the trial court found that based on evidence presented at trial the BOA had abused its discretion by reversing the building official's revocation as she was obligated to revoke the CO because TCH had been operating an illegal gambling establishment. TCH appealed, and the court of appeals held that the trial court had impermissibly substituted its own discretion in place of the BOA's. Because the BOA could have reasonably reached more than one decision in the case, the trial court was required to give deference to the BOA's decision. As such, the court reversed the trial court's judgment and affirmed the BOA's reinstatement of TCH's CO.

***City of McLendon-Chisholm v. City of Heath, et al*., No. 05-23-00881-CV, 2024 WL 4824113 (Tex. App.—Dallas Nov. 19, 2024) (mem. op.).**

This case stems from a development agreement between the City of McLendon-Chisholm and MC Trilogy Texas, LLC, which provided for the development of land within the city limits and extraterritorial jurisdiction (ETJ) bordering the City of Heath. The agreement allowed for minimum lot sizes incompatible with McLendon-Chisolm's 2015 Comprehensive Plan. Heath claimed the drastic change in the residential density requirements near its border with McLendon-Chisholm would cause it substantial harm as it would create a 358% increase in traffic on its roads, require additional public safety personnel, decrease its property values and tax revenues, and disrupt its future development plans. Heath sued the McLendon-Chisolm seeking declaratory and injunctive relief and additionally claimed the city violated the Texas Open Meetings Act (TOMA) in 11 specific instances. In response, McLendon-Chisolm filed a plea to the jurisdiction on the basis that Heath

lacked standing. While the trial court granted McLendon-Chisolm's plea to the jurisdiction stating that Heath lacked standing to sue over "issues, ordinances, regulations, and agreements pertaining to development, land use, zoning, governance, and related matters involving land within the city limits and ETJ," the court denied the plea with regard to Heath's standing to bring TOMA claims. In reversing the lower court in part, the court of appeals concluded that because Heath presented sufficient evidence of concrete and particularized, actual and imminent injuries traceable to McLendon-Chisolm's agreement with Trilogy which could be redressed by a favorable ruling, Heath met its burden to show it has standing. As for Heath's standing as it relates to the TOMA claims, the court of appeals affirmed the lower court's ruling that Heath sufficiently alleged standing to support a showing that it is an "interested person" as required under the TOMA.

**TAKINGS**

***Commons of Lake Houston, Ltd. v. City of Houston, No. 23-0474, 2025 WL 876710 (Tex. Mar. 21, 2025).***

A developer of a master-planned community in the floodplain brought an inverse condemnation action against the city, alleging that the city's amendment of its floodplain ordinance following a historic hurricane, to require residences to be built at least two feet above the 500-year floodplain, was a regulatory taking under the Texas Constitution.

The trial court denied the city's plea to the jurisdiction, but the court of appeals reversed and dismissed, holding that the developer cannot establish a valid takings claim because the city amended the ordinance as a valid exercise of its police power and to comply with a federal flood-insurance program. The developer petition for review.

The Supreme Court, reversed and remanded, holding that: (1) amendment of the ordinance as an exercise of the city's police power did not preclude a regulatory takings claim; (2) amendment of the ordinance to ensure compliance with the federal flood insurance program did not preclude a regulatory takings claim; (3) the regulatory takings claim was ripe for adjudication; and (4) the developer had standing to assert a regulatory takings claim.

***City of Kemah v. Crow*, No. 01-23-00417-CV, 2024 WL 3528440 (Tex. App.—Houston [1st Dist.] July 25, 2024) (mem. op.).**

Crow applied for a city building permit to build a barndominium and two cottages on her land for use as short-term rentals and as a residence for herself. The city issued the permit but then took a series of actions afterward to halt and delay construction, including requiring her to submit a drainage plan. Crow sued the city, claiming inverse condemnation because the city had made it impossible for her to use and enjoy her land. The city filed a plea to the jurisdiction, claiming the trial court had no jurisdiction because the city had not made a final determination denying Crow's drainage plan. The trial court denied the plea and the city appealed.

The appellate court affirmed, holding that: (1) Crow's pleading was sufficient to establish a facially valid takings claim because the pleading asserted that the city had issued a permit and then took a series of actions to prevent her from developing her property; and (2) Crow was not required to plead that the city had made a final determination with regard to the drainage plan.

***City of Buda v. N. M. Edificios, LLC*, No. 07-23-00427-CV, 2024 WL 3282100 (Tex. App.—Amarillo July 2, 2024) (mem. op.).**

The city entered into a drainage easement agreement with a developer where the city was to "construct, operate, maintain, replace, upgrade, and repair" drainage improvements that convey surface water from the subject property and other nearby properties. The developer then sold the

property to another developer. The second developer submitted updated plans for the property and the city instructed the developer to provide for additional drainage improvements before the application could proceed. The developer sued the city based on either an investment-backed or regulatory taking. The city filed a plea to the jurisdiction.

On appeal, the appellate court: (1) found the developer's claims were ripe; (2) rejected the city's arguments that the claim was really a contract dispute and not a taking; (3) rejected the city's challenges to the takings claims based on investment-backed expectations because regulatory takings claims may involve decisions by a governmental authority that do not directly implicate a regulation; and (4) found the statute of limitations for a takings claim is ten years so the claims could proceed.

## ZONING

***Badger Tavern LP, 1676 Regal JV, and 1676 Regal Row v. City of Dallas*, No. 05-23-00496-CV, 2024 WL 1340397 (Tex. App.—Dallas Mar. 29, 2024) (mem. op.).**

This case stems from a certificate of occupancy issued to Badger Tavern, which operated a cabaret in Dallas called La Zona Rosa. In 2021, Badger Tavern applied to the City of Dallas for a certificate of occupancy record change to rename its business to La Zona Rosa dba Poker House of Dallas. During the approval process, there was some indication that Badger Tavern was changing its business operations from a cabaret to a private membership-based poker club. While the city issued the certificate of occupancy record change, it later sent Badger Tavern two notices that it was in violation of the city's ordinances by failing to obtain the proper certificate of occupancy before changing the use of the property. When Badger Tavern failed to cease operations as a poker club and apply for a new certificate of occupancy, the city sued Badger Tavern seeking injunctive relief.

After a hearing, the trial court granted the city's request, and Badger Tavern appealed. Badger Tavern argued that: (1) the trial court lacked jurisdiction because the city failed to first exhaust its administrative remedies by appealing to the city's Board of Adjustment (BOA); (2) the court erred in granting an injunction under Texas Local Government Code Sections 54.016 (applicable to municipal health and safety ordinances) and 54.018 (an action for repair or demolition of a structure) when the city did not request relief under Section 54.018; and (3) the city failed to present sufficient evidence of a "substantial danger of injury or adverse health impact" to support a temporary injunction under Section 54.016.

In affirming the lower court, the court of appeals concluded that because the city was not alleging an error in a zoning decision but instead was enforcing a zoning ordinance violation by Badger Tavern, it was not required to appeal to the BOA. As for the grounds for injunctive relief, the court held that although the city did not present evidence as required under Section 54.016, it also sought temporary and permanent injunctive relief under Texas Local Government Code Section 211.012(c) (zoning ordinance violations and remedies). Because the record reflected that Badger Tavern changed the use of its property without first obtaining the proper certificate of occupancy and failed to cease operations as such, the evidence was sufficient to support temporary injunctive relief under Section 211.012(c).

***Arlington v. City of Arlington*, No. 02-23-00288-CV, 2024 WL 2760415 (Tex. App.—Fort Worth May 30, 2024) (mem. op.).**

Liveable Arlington, Jade Cook, and Gibran Farah Esparza (collectively "plaintiffs") sued the City of Arlington; the Assistant Director of the Planning and Development Services Department; the

Mayor; and City Council Members (collectively the "city") seeking injunctive, mandamus, and declaratory relief based upon the city council's approval of the establishment of a drilling zone and new gas-drilling permits on land known as the Fulson Drill Site. The plaintiffs further alleged that the council failed to provide proper notice of its actions. The city filed a plea to the jurisdiction alleging governmental immunity. The trial court granted the plea. The plaintiffs appealed.

The appellate court affirmed in part, finding that governmental immunity protected the city from claims they violated the Texas Constitution due-course-of-law provision, Section 253.005 of the Local Government Code or a city ordinance. But the court reversed and remanded, finding that the plaintiffs' claim under the Open Meetings Act survives the city's plea. The court also affirmed the trial court's order denying the application for temporary injunction.

**MISCELLANEOUS**

***Kleinman v. State*, No. 03-23-00708-CR, 2024 WL 3355046 (Tex. App.—Austin July 10, 2024).**

In late 2021, Cedar Park code compliance officers learned Michael Kleinman and AusPro Enterprises, L.P. were operating a head shop in violation of the city's zoning ordinances. After a warning, Kleinman and AusPro failed to come into compliance with the city's codes, and as a result were issued 15 citations over several months. The violations were Class C misdemeanors and were punishable by fines only. Kleinman and AusPro were found guilty of the violations in municipal court but later appealed. During this time, they also filed a pretrial application for writ of habeas corpus challenging the city's zoning ordinance as unconstitutionally vague on its face and additionally alleging their prosecution was unconstitutionally selective and in violation of their rights to equal protection. Although the trial court determined Kleinman and AusPro were restrained in their liberty, the court denied their application for writ of habeas corpus.

In affirming the lower court's order, the court of appeals concluded that Texas habeas relief could not be extended to applicants who have been charged with fine-only offenses and are not in custody or have not been released from custody on bond. As a such, Kleinman and AusPro failed to satisfy the restraint requirement for habeas relief.

***Kleinman v. State*, No. 03-23-00665-CR, 2024 WL 3355069 (Tex. App.—Austin July 10, 2024).**

This case stems from the same shop in which Kleinman was cited multiple times by code compliance officers for violating various Cedar Park ordinances and a provision in the Texas Health and Safety Code. In 2023, Kleinman was found guilty of those violations in municipal court but appealed his convictions to the trial court. As part of the process, Kleinman filed the required appeal bonds but did not personally sign them, instead granting his attorney a limited power of attorney to do so. Because Kleinman did not personally sign them as required by Tex. Code of Criminal Procedure Art. 17.08(4), the municipal court denied the bonds. The State then filed an application for a writ of procedendo arguing the trial court lacked jurisdiction because Kleinman's appeal bonds were insufficient to perfect the appeals and that the court should remand them to the municipal court for enforcement of the final judgments. The trial court granted the State's application, and Kleinman appealed.

Evaluating Articles 44.14 and 45.0426 of the Code of Criminal Procedure and citing to a sister court's decision, the Court of Appeals concluded that a court in which an appeal is taken cannot dismiss a defendant's appeal for lack of jurisdiction for a deficient appeal bond without first providing the defendant notice and an opportunity to cure by filing a new amended bond. Because

the trial court did not provide Kleinman this notice or opportunity to cure, the court of appeals reversed the trial court's order and remanded the case for further proceedings.