



Regulatory Takings

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THE ISSUE

In 1995, the Legislature passed the Texas Real Private Property Rights Preservation Act (RPPRPA), providing compensation to property owners for loss of value due to new regulations on land use.

Authors sought a method of protection and a deterrent against local government regulations that would damage the value of someone's property. Unfortunately, the act exempts municipalities. Since cities, due to re-zoning activities, are the largest condemners, this exemption practically renders the act ineffective.

Additionally, even when a condemner is not a municipality, the condemner does not have to compensate a private real property owner for the taking, unless a court decides that the land has been devalued by at least 25 percent of its original fair market value. This tells property owners to expect losses of almost a quarter of the value of their property due to regulatory impacts.

In 2007, SB 1180 attempted to address some of the above issues. However, the bill stalled in committee. The problems remain.

THE FACTS

- ★ Article I, Section 17, of the Texas Constitution states, "No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person."
- ★ The Texas Real Private Property Rights Preservation Act ensures this constitutional protection does not apply for regulatory takings through re-zoning. Section 2007.003(a) allows an exemption for

municipalities. Additionally, section 2007.003(b) (8) allows for an exemption for the formal use of eminent domain.

- ★ Guiding case law makes this point clear. The Texas Supreme Court has stated that property owners do not acquire a constitutionally protected vested right in property uses.
- ★ Dallas has recently opted to re-zone around Ross Avenue to increase the number of luxury condominiums and improve the aesthetic beauty of its eastern gateway to downtown. The practical effect is to prevent the property owners already working on Ross from continuing to operate their businesses.
- ★ The City of El Paso is actively taking steps to protect its ability to employ regulatory takings through re-zoning its downtown through the Downtown Revitalization Project.
- ★ The El Paso City Council expanded the boundaries of the Tax Increment Reinvestment Zone through which it can offer economic development incentives to attract higher tax-paying business to its downtown.
- ★ El Paso recently sought more than \$3 million in federal funds to assist in revising its comprehensive plan in order to re-zone its downtown in accordance with the new plan.

RECOMMENDATIONS

- ★ The current statute needs to be amended to apply to all municipalities, not just counties. It is not fair to bestow additional property rights protections on

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rural Texans in preference to urban Texans. Every Texan should have the same remedies of property rights transgressions via regulation, as guaranteed in the Texas Constitution.

- ★ The numerical threshold of what qualifies as a taking—25 percent of the market value of the affected private real property—is an arbitrary number that should be completely eliminated, or at the very least, significantly reduced.
- ★ Condemnors should have the ability to issue waivers as an alternative to financial compensation. Those waivers should specifically mention which property rights are being reinstated per the waiver. Doing so will allow the waiver to “run with the land” for future owners, as well as prevent municipalities from spending more.

RESOURCES

Article 1, Section 17, Texas Constitution, <http://tlo2.tlc.state.tx.us/txconst/sections/cn000100-001700.html>.

Texas Real Private Property Rights Preservation Act.

City of University Park v. Benners, 485 S.W.2d 773 (Tex.1972).★

