

Regulatory Takings Still a Threat to Property Rights

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Key Findings

- The Texas Supreme Court has ruled that *“Property owners do not acquire a constitutionally protected vested right in property uses.”*
- Texans may have title to the land they own, but do not have the right to use it without permission from the state.
- Cities can prohibit an activity or even force a business to close through zoning without it being considered a taking.
- Texas should expand the Private Real Property Rights Preservation Act to cover the actions of cities that restrict the use of private property.

“Property owners do not acquire a constitutionally protected vested right in property uses.”
—Texas Supreme Court; *City of University Park v. Benners*, 485 SW 2d 773 (1972)

Such is the law of the land when it comes to property rights in Texas. Texans have title to the dirt or water or other minerals that make up the land they own, but do not have the right to use them without permission from the state.

As a result, Texas courts grant municipalities wide latitude in placing regulatory restrictions on land. A common way that cities take advantage of this license is through restricting development on lands because of aesthetic, economic, or environmental concerns.

Local zoning ordinances are often the way these restrictions get put into place—except in Houston, which is the only major city in Texas and the U.S. that doesn’t have zoning. In other cities, zoning and rezoning of property can be done with little concern for the impact on property owners. Rezoning and other city ordinances that restrict use and diminish the value of a property are generally considered a legitimate “exercise of police power” as long as they “accomplish a legitimate goal” and are “reasonable.”

In other words, in most cases cities can prohibit an activity or even force a business to close through zoning without it being considered a taking.

While the Texas Supreme Court placed some limits on this ability when it said, “[A] regulation may, under some circumstances, constitute a taking requiring compensation,” in the same sentence it reiterated that “all property is held subject to the valid exercise of the police power.”

One expert who can testify to this is Allen Woodard.

Many of the old auto repair shops along Dallas’ Ross Ave. have shuttered as a result of a Dallas City Council vote to re-zone the area so that luxury apartments and condos could replace them, but at least one of the auto businesses remains: Woodard Paint and Body. Allen Woodard was not willing to simply close the doors to his family’s shop, which has been in business since 1920. Because of Texas law, he had no legal remedies for this taking of property. But after taking the fight to Dallas City Council, he was granted an exception to stay in business for another 10 years. He was required to make cosmetic changes to his property to “fit in” to the new neighborhood. The legal and construction costs that allowed Woodard to use his property for the same business that has been operating there for the last 90 years cost him over \$100,000.

This is the end result of the Texas Supreme Court’s jurisprudence. Because property owners have no right to use their property without permission, the courts reason that a property owner simply needs to have a little time to recoup his/her investment, through amortization, in what are determined to be “nonconforming uses,” i.e., uses that no longer comply with a new city ordinance. There is no consideration of the income, jobs, and property value that vanishes when the nonconforming use is finally terminated.

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