Still Shaping Your Deals in 2026: The Texas Supreme Court Decisions Every Real Estate Owner Needs to Know

A wave of landmark rulings from 2024 and 2025 continues to reshape the ground rules for developers, buyers, lenders, and tenants across Houston and Texas — and the practical fallout is only beginning to play out.

The Texas Supreme Court has been unusually active on matters that directly affect real estate owners, developers, lenders, and tenants. In 2024 and the first half of 2025 alone, the Court issued a series of decisions that redefine how municipalities can regulate property, how title risks are assessed in commercial transactions, and what rights tenants retain when the stakes of a dispute escalate. Several of these cases originated right here in the Houston area, making them especially relevant for our clients and the broader Texas real estate market.

What follows is a thematic tour of the most significant developments — grouped by the issues that matter most to our clients — along with practical guidance on what these decisions mean for your next deal, development project, or dispute.

<u>When the City Gets It Wrong: Municipal Disputes and Regulatory Takings</u>

Two of this year's most consequential Texas Supreme Court opinions address a question that every developer and property owner in Houston has confronted at some point: what happens when a city changes the rules — or gets them wrong — after you have already invested millions?

<u>The Commons of Lake Houston v. City of Houston (March 21, 2025)</u>

In a case with deep roots in the Houston market, the Texas Supreme Court cleared the way for a major regulatory takings claim against the City of Houston arising directly from the aftermath of Hurricane Harvey. The Commons of Lake Houston has been developing a 3,300-acre residential community near Lake Houston since 1993. Its most valuable phase — a 300-acre section called The Crossing, featuring lakefront and lakeview lots — sits within the 100- and 500-year floodplains. In 2017, the City approved The Commons's general plan for 122.5 acres and 531 lots, and The Commons invested more than $1 million in infrastructure.

Then Harvey hit. In response, the City amended its floodplain ordinances in April 2018 to require foundation slabs at least two feet above the 500-year floodplain — a dramatic increase over the prior standard of one foot above the 100-year floodplain. According to The Commons, that change increased required slab elevations by an average of 5.5 feet and rendered 557 of its 669 lots — over 75% of the total acreage — undevelopable. The developer alleged $4.4 million in lost revenue, $1.8 million in forfeited bond reimbursements, and the effective destruction of its expected profits from the entire multi-decade project.

The City argued the amended ordinance could never constitute a taking because it was a valid exercise of police power and was designed to comply with the National Flood Insurance Program. The court of appeals agreed and dismissed the suit. The Supreme Court reversed. Writing for a unanimous Court, Justice Boyd was unequivocal: *"We have long rejected the notion that the government's duty to pay for taking property rights is excused by labeling the taking as an exercise of police powers."* The Court held that whether a regulation promotes a valid public purpose is *"simply irrelevant*" to whether it causes a compensable taking — and that a regulation can effect a taking even if it tracks federal flood-insurance program requirements.

The Court also rejected the City's ripeness and standing arguments. After years of The Commons's attempts to obtain a floodplain development permit — applications the City repeatedly rejected on procedural grounds without ever providing a clear path forward — the Court found the City had effectively committed to a final position. As Justice Boyd put it, the City "may not burden property by imposition of repetitive or unfair land-use procedures in order to avoid a final decision."

What this means for you: If you own or develop property in a Houston-area floodplain, this decision confirms that post-Harvey regulatory changes are not immune from takings challenges simply because they promote public safety or track federal standards. Developers and landowners affected by the 2018 ordinance amendments now have a confirmed pathway to pursue inverse condemnation claims under the Texas Constitution. The case is headed back to the trial court on the merits, so the story is not over — but the legal framework is firmly in place.

<u>PDT Holdings v. City of Dallas (May 2, 2025)</u>

If The Commons case addresses what happens when a city changes the rules, PDT Holdings addresses what happens when a city simply gets them wrong. In this Dallas case, a builder met multiple times with city officials, conducted independent research, and confirmed that the only applicable height restriction for a planned duplex townhome was a 36-foot maximum. The City approved the plans, issued a permit, and construction began. When the structure was approximately 90% complete and over $1 million had been spent, the City issued a stop-work order — this time citing an entirely different height ordinance, the residential proximity slope (RPS) rule, which limited the structure to just 26 feet.

The builder sued on estoppel grounds. A Dallas district court sided with the builder, but the court of appeals reversed, reasoning that the City's mistake was not egregious enough to warrant estoppel. The Supreme Court disagreed and reinstated the trial court's judgment. Justice Busby wrote for the Court: "*Nothing in the record indicates that allowing this single over-height structure to remain would bar future enforcement of the RPS ordinance in other instances or hinder the City's ability to ensure public safety.*" The Court confirmed that this was one of those "exceptional cases" in which the City affirmatively misled the builder, the builder exercised due diligence, and applying estoppel would not interfere with the City's governmental functions.

As the builder's attorney told reporters after the ruling, "*Cities and local governments have a right to enforce their ordinances. However, they have to do so with reasonable promptness, and they can't come around when a structure is 95% complete, attempting to enforce an ordinance that they've never mentioned before.*"

What this means for you: Developers who rely in good faith on city guidance about zoning, height limits, setbacks, or other regulatory requirements now have a strengthened framework for pushing back when the rules change mid-construction. But the case also highlights the importance of documenting every interaction with city officials. The builder's meticulous record of meetings, representations, and approvals was essential to the Court's decision.

I. TITLE, DUE DILIGENCE, AND THE COST OF CUTTING CORNERS

Two decisions from this period reinforce a lesson that every real estate professional knows but that bears repeating: title and due diligence shortcuts can be extraordinarily expensive.

425 Soledad v. CRVI Riverwalk Hospitality (December 31, 2024)

This San Antonio case involved an office building, hotel, and parking garage connected by underground tunnels — all originally held by a common owner. When the office building was sold, the parties executed a parking agreement dedicating up to 150 garage spaces for building occupants. That agreement was never recorded. After a series of transactions — including a receivership — the garage's new owner argued the unrecorded parking agreement was unenforceable.

The Supreme Court held that the parking agreement was an enforceable easement appurtenant and that the garage purchaser was on *"inquiry notice"* because the due diligence materials reasonably available would have revealed the agreement's existence. The Court also clarified that a party purchasing through a receivership steps into the debtor's shoes and cannot acquire greater rights than the debtor possessed.

What this means for you: For buyers, the lesson is straightforward: thorough due diligence is not optional, even when purchasing through a receivership or other court-supervised process. Unrecorded interests — parking agreements, easements, license agreements — can survive a transfer if the buyer had reason to investigate. For sellers and those holding unrecorded rights, the case validates that your interests may be enforceable, but recording remains the safest course of action.

<u>Nooner Holdings v. Abilene Village (Pet. Denied 2024)</u>

In this commercial transaction, a buyer purchased a shopping center with a known-defective parking lot. The contract included a negotiated parking-lot-work clause, an “As-Is” clause, and due diligence provisions granting the buyer ample opportunity to inspect the property. After closing, the buyer sued for fraud, alleging the seller had disclosed only limited parking lot defects and concealed the full scope of the problem.

The court held that the buyer could not establish justifiable reliance as a matter of law. The combination of contractual *“red flags”* — the parking lot clause itself, the As-Is disclaimer, and the buyer’s own agreement to conduct due diligence — precluded the buyer from claiming it was misled. As the court explained, “*when a buyer has knowledge of existing issues but chooses not to exercise due diligence to inquire more about the details of those issues, it cannot justifiably rely on an alleged failure to disclose.”*

What this means for you: For sellers, this is a powerful validation of robust contract drafting. Well-crafted As-Is clauses, due diligence provisions, and negotiated risk-allocation terms can effectively foreclose post-closing fraud claims. For buyers, the message is equally clear: if you sign an As-Is clause and skip your inspections, Texas courts will hold you to that bargain.

II. <u>COMMERCIAL TENANTS: POSSESSION IS NOT EVERYTHING</u>

<u>Westwood Motorcars v. Virtuolotry (2024)</u>

In a case that clarifies the rights of commercial tenants across Texas, the Supreme Court drew a critical line between possession and damages. Westwood leased commercial property in Dallas for an automobile dealership. When a dispute arose over lease extensions, the landlord sued to evict in justice court and won. Westwood agreed to vacate and withdrew its appeal — but continued to press breach of contract and constructive eviction claims in a separate district court action. A jury awarded Westwood over $1.1 million.

The court of appeals reversed, reasoning that Westwood’s agreement to the eviction judgment amounted to *“voluntary abandonment”* of its damages claims. The Supreme Court disagreed. A judgment of possession from an eviction suit “*is a final determination only of the right to immediate possession,”* the Court wrote. It is not a determination of the parties’ ultimate rights, and it does not have preclusive effect on a subsequent action for damages.

The agreed judgment in the eviction merely said Westwood “*no longer wishes to appeal the decision of the Justice Court awarding possession of the property.”* Nothing in that language demonstrated an intent to abandon damages claims.

What this means for you: For commercial tenants, this decision means you can strategically surrender possession — to stop the bleeding on a deteriorating situation —

without sacrificing your right to recover damages in a separate proceeding. For landlords, winning an eviction suit is not the end of the story. A tenant who walks away from the premises may still come back for breach of contract damages, and that claim will be evaluated independently.

III. HOA AND COVENANT DISPUTES: THE LIMITS OF IMPLIED RESTRICTIONS

River Plantation Community Improvement Association v. River Plantation Properties (2024)

This case will resonate with every HOA, developer, and homeowner who has ever argued about whether a subdivision amenity must remain in place forever. The homeowners association sought to prevent a golf course in the River Plantation subdivision from being converted to another use, arguing the property was burdened by an implied reciprocal negative easement requiring it to remain a golf course in perpetuity.

The Supreme Court rejected the claim. The doctrine of implied reciprocal negative easements is a "*narrow exception*" to the general rule that express restrictions are required. It applies only when a substantial number of lots in a subdivision are sold with substantively uniform express restrictions — and some lots are either retained by the developer or sold without those restrictions. In River Plantation, there were no substantially uniform express restrictions on the lots that could give rise to an implied restriction on the golf course property. A general development plan alone was not enough.

What this means for you: For developers considering a change of use for amenity property — whether a golf course, clubhouse, or common area — this decision removes a significant obstacle. An HOA cannot block a conversion simply by pointing to a general development scheme. For HOAs and homeowners, the takeaway is that implied theories are fragile. If you want to preserve a particular use in your community, the only reliable approach is to secure express restrictive covenants that clearly bind the property in question.

IV. PROTECTING TAX SALE PURCHASERS

Thompson v. Landry (May 9, 2025)

Finally, the Supreme Court addressed an issue of critical importance to anyone who has purchased property at a tax foreclosure sale. Landry inherited a partial interest in a Chambers County property. Taxing authorities served her grandmother by publication and obtained a default judgment. Thompson purchased the property at a tax sale more than a year later. Over a decade after the sale, Landry sued to void it on due process grounds.

The Court held that notice during the statutory limitations period that property has been sold to satisfy a tax default judgment can defeat a later challenge to the sale. Critically, the Court also held that equitable defenses — including laches — are available to a subsequent purchaser when the former owner obtains notice of the purchaser's competing title but unreasonably delays in seeking relief.

However, the Court noted that Thompson had not conclusively established her equitable defense on the current record, and the case was remanded.

What this means for you: If you have purchased property at a tax sale, this case provides meaningful protection — but it also underscores the importance of building a complete evidentiary record of the former owner's knowledge of the sale. Document everything: lease payments, property tax payments, communications, and any other evidence that the former owner was aware of the transfer. That record may be the difference between keeping and losing the property.

LOOKING AHEAD

Taken together, these decisions signal a Texas Supreme Court that is willing to hold municipalities accountable for regulatory overreach, protect good-faith reliance on government representations, and enforce the bargains that sophisticated parties strike in commercial real estate transactions. For developers, buyers, lenders, tenants, and HOAs operating in the Houston market and across Texas, the practical implications are significant — and the lessons are actionable.

f you have questions about how any of these developments may affect your real estate matters, or if you would like to discuss a specific issue in more detail, we welcome the opportunity to connect. Please do not hesitate to reach out to our real estate litigation team.

For further information on these developments, please contact Bret Rycroft.