RECENT STATE CASES OF INTEREST TO CITIES

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I. Administrative Hearings

***City of Waco v. Texas Commission on Environmental Quality*, No. 03–09–00005–CV (Tex. App.—Austin, June 17, 2011).** The Texas Commission on Environmental Quality (TCEQ) refused to grant "affected person" status to the City of Waco, denied the City's request for a contested-case hearing, and authorized the expansion of an existing concentrated animal feeding operation permit to the O-Kee Dairy. On appeal, the court held that TCEQ acted arbitrarily and abused its discretion because, as a matter of law, the City had a legally protected interest in its property or economic stake in a lake's water quality.

II. Annexations

***Round Rock Life Connection Church, Inc. v. City of Round Rock*, No. 03-09-00523-CV (Tex. App.—Austin, February 18, 2011).** The City notified the landowners of its intent to annex their properties. The landowners claimed that the annexation of their properties was void because the City did not have the authority to circumvent the three-year notice requirement of Tex. Loc. Gov't Code § 43.052. The City's noncompliance did not render the annexation void because the legislature had indicated that the provisions of Tex. Loc. Gov't Code § 43.052 were procedural.

***City of San Juan v. City of Pharr*, No. 13-09-00422-CV (Tex. App.—Corpus Christi, May 26, 2011).** In 1983, the cities of San Juan and Pharr entered into a ten year agreement governing the expansion of their extraterritorial jurisdictions (ETJs). The agreement provided that a major thoroughfare would serve as the boundary between their ETJs and contained a provision for automatic renewal. The City of Pharr did not challenge the City of San Juan's annexations within two years during the 1990s. Accordingly, the annexations were conclusively presumed to be valid, and the City of Pharr was thereafter barred from challenging the validity of the annexations.

III. Civil Service

***City of Beaumont v. James Mathews*, No. 09-10-00198-CV (Tex. App.—Beaumont, June 30, 2011).** Mathews, a firefighter, appealed his involuntary suspension to an independent third-party hearing examiner. Under Tex. Loc. Gov't Code § 143.052(e), notice of suspension must set out the acts by the firefighter and the rules those acts violated. The City's notice did both, but the hearing examiner reinstated Mathews and ordered back pay without an evidentiary hearing. The hearing examiner exceeded his jurisdiction by acting contrary to the statute in reinstating Mathews.

***City of Houston v. Bates*, No. 14-10-00542-CV (Tex. App.—Houston [14th Dist.] August 16, 2011).** Retired firefighters filed suit against the City of Houston asserting two different claims relating to Houston's handling of their final payments upon retirement. The court of appeals held, among other things, that the City could not avoid paying overtime compensation for time the firefighters were not physically present at work.

IV. Collective Bargaining

***City of Beaumont v. Fowler,* No. 09-11-00068-CV (Tex. App.—Beaumont, August 11, 2011).** After participating in a promotional exam, Officer Fowler sued the City of Beaumont and its Civil Service Commission for breach of contract. The City argued that Fowler lacked standing to sue for breach of the agreement because the union was the sole and exclusive bargaining agent for police officers. The court of appeals held that an individual employee could sue under a collective bargaining agreement because it was a third party beneficiary agreement from which this employee would benefit.

V. Condemnation

***Martin v. City of Temple,* No. 03-09-00723-CV (Tex. App.—Austin, August 11, 2011).** Martin sued the City and numerous other individuals after discovering the house he purchased was condemned. The court of appeals dismissed Martin's claims because he failed to notify the City under Section 101.101 of the Texas Civil Practices and Remedies Code, and the two year statute of limitations had expired.

VI. Directed Verdict

***Wilt v. City of Greenville Police Dept.,* No. 06-10-00107-CV (Tex. App.—Texarkana April 29, 2011)**. The court of appeals held that there was evidence of probative force to at least raise a fact issue on the owner's claim that his car was improperly towed.

VII. Governmental Immunity

A. Contract:

***City of Houston v. Steve Williams, Et Al*, No. 09-0770 (Tex., March 18, 2011).** Former firefighters alleged wrongful underpayment of lump sums due upon termination of their employment. The issue in this case is whether the City's immunity from suit is waived by Local Govt. Code § 271.152. The firefighters asserted that the following writings constitute qualifying written contracts under that section: (1) certain City ordinances, (2) Chapter 143 of the Local Govt. Code, and (3) two Meet and Confer Agreements (MCAs) and a Collective Bargaining Agreement (CBA). The Texas Supreme Court held that the ordinances and agreements constitute written contracts within the scope of Section 271.152, but concluded that Chapter 143, standing alone, does not establish a contract between the City and the firefighters.

***City of Brownsville v. AEP Texas Central Company*, No. 05-09-00808-CV (Tex. App.—Dallas, July 15, 2011).** This case involves a dispute arising out of the sale of an ownership interest in an electric power plant. The City signed an agreement in which it released TCC from: "(i) all liabilities and obligations of TCC under the Oklaunion Participation Agreement and (ii) without limiting the generality of the foregoing, all Claims arising under or in connection with, or based upon any liability

or obligation of TCC under the Oklaunion Participation Agreement, whether in contract, tort, or any other legal theory, which [the City] ever had, now has or hereafter may have against [TCC]." Nevertheless, the Court of Appeals held that there was sufficient evidence that some of the City's claims were valid to overcome TCC's motion for summary judgment.

***City of Houston v. Rhule,* No. 01-09-01079-CV (Tex. App—Houston [1st Dist.] July 21, 2011).** Rhule sued the City after an alleged breach of a worker's compensation settlement agreement. The City argued that the amount awarded at the trial court exceeded that which is permitted under the Worker's Compensation Act. The appellate court held that the City waived its governmental immunity from suit and liability. Accordingly, damages were only limited by what is allowed in breach of contract cases.

***Southern Elec. Servs., Inc. v. City of Houston,* No. 01-10-00649-CV (Tex. App.— Houston [1st Dist.] August 18, 2011).** SES filed this breach of contract suit against the City alleging that the City provided incorrect wage scales in the contract documents. However, SES failed to provide evidence that labor costs increased due to the change in prevailing wage rates provided by the City. Thus, the court of appeals held that SES's breach of contract claim failed because SES did not show damages related to the alleged breach of contract.

***City of Dallas v. Albert,* No. 07-0284 (Tex. August 26, 2011).** Firefighters and police officers sued the City of Dallas for underpayment of wages based on a City ordinance. The City countersued, arguing that the plaintiffs had been overpaid. Then, the City non-suited the countersuit and filed a plea to the jurisdiction arguing that it was protected by governmental immunity from the plaintiffs' claims. The Texas Supreme Court held that, under the facts in this case, a City does not regain its immunity from suit after it drops a countersuit.

B. Tort:

***Shawn Hudson v. City of Houston,* No. 01-07-00939-CV (Tex. App.— Houston [1st Dist.] January 13, 2011).** Hudson filed suit after her two-year-old son was killed by a garbage truck driven by City of Houston employee Gilda Green. Green did not answer the lawsuit and a $3.5 million default judgment was awarded. Hudson sued the City as the assignee of Green, claiming that the City did not defend or indemnify Green in relation to the initial tort suit. The court determined that providing a defense and indemnity to a City employee through self-insurance was a proprietary function, not a governmental function. Accordingly, Hudson's suit against the City was not barred by governmental immunity. Nevertheless, Green failed to comply with the notice-of-suit provision in section 2-305 of the City's code of ordinances. Therefore, the City had no duty to defend or indemnify Green and no duty to pay the default judgment.

***City of Corpus Christi v. Eby*, No. 13-09-00205-CV (Tex. App.—Corpus Christi, April 14, 2011).** Eby sued the City for money damages after his car was wrongfully impounded. All of Eby's claims were for intentional torts. The court of appeals held that the City retained its immunity under the Texas Tort Claims Act, because the Act does not waive immunity for claims arising from intentional torts. Eby also argued that immunity was waived when the police officer filed a defamation suit against Eby. However, a suit filed by an employee does not waive governmental immunity.

***City of El Paso v. Hernandez*, No. 08-09-00149-CV (Tex App.—El Paso, April 20, 2011).** Hernandez brought a personal injury claim against the City after being struck by a car. She did not file a pre-suit notice of the claim as required by TEX. CIV. PRAC. & REM. CODE § 101.101. The Court held that an officer's written report and personal knowledge of the incident does not qualify as actual notice to the City of the claim under the Tort Claims Act.

***Teague v. City of Dallas*, No. 05-10-01163-CV (Tex. App.—Dallas, May 4, 2011).** Teague sustained injuries after a high speed chase and sued the City for negligent use and operation of motor-driven vehicles. She failed to demonstrate a nexus between the operation of the City and county vehicles and her injuries. Thus, the court of appeals held that the operation of the police officer's vehicle was too attenuated to be the cause of the accident under the Tort Claims Act and the City retained its immunity from suit.

***City of Laredo v. Varela*, No. 04-10-00619-CV (Tex. App.—San Antonio, May 11, 2011)**. This suit was filed against the City for damages arising out of a collision between Varela's vehicle and a police car. The police officer was responding to an emergency situation and there was no evidence that he acted with conscious indifference or reckless disregard for the safety of others. The court of appeals dismissed the case for lack of subject matter jurisdiction.

***City of McAllen v. Corpus*, No. 13-10-00670-CV (Tex. App.—Corpus Christi, May 19, 2011)**. Corpus called animal control concerning a bee hive and was permitted remain in the animal control vehicle while the officer sprayed the bees. The officer sought refuge from the bees and opened the vehicle door, which allowed bees to enter the vehicle and attack Corpus. The Court of Appeals held that opening the car door is not a use of motor driven equipment sufficient to invoke the Tort Claims Act.

***Sullivan v. City of Fort Worth*, No. 02-10-00223-CV (Tex. App.—Fort Worth, May 19, 2011).** Mrs. Sullivan fell and broke her ankle while attending a wedding at the Fort Worth Botanic Gardens. She alleged premises defect and other negligence claims based on the design and operation of the Gardens. The appellate court held that the City was immune for its design decisions; however, the City was not immune from liability for its operational decisions. In the alternative, the City argued that the duty it owed to the Plaintiff was limited by the Recreational Use Statute, but the appellate court rejected that argument.

City of Denton v. Paper, **No. 02-10-00239-CV (Tex. App.—Fort Worth, May 19, 2011)**. The City excavated and cut away a portion of a street. Several days later the Plaintiff rode her bicycle into a sunken area in the street caused by the City's excavation. The appellate court held that the defect was a special defect as a matter of law.

***City of Houston v. Esparza*, No. 01-11-00046-CV (Tex. App.—Houston ([1st Dist.] June 9, 2011)**. Esparza sued the City and its employee; alleging that the employee negligently caused a car accident and that the City was negligent in entrusting the vehicle to the employee. The appellate court held that Esparza's tort claims against the City were barred by the election-of-remedies provision. Texas Civil Practices & Remedies Code § 101.106(b).

***City of Dallas v. Hughes*, No. 05-10-00511-CV (Tex. App.—Dallas June 14, 2011).** Hughes sued the City of Dallas for injuries he sustained after attempting to jump protruding wooden planks on a bridge while riding his bike in a City park. Among other things, the court concluded that a recreational user would reasonably expect to encounter that type of imperfection in the course of permitted use on the park trail.

***City of Austin v. Albarran*, No. 03-10-00328-CV (Tex. App.—Austin, June 23, 2011)**. A collision occurred while an officer was making a turn at a busy intersection. The officer was responding to an emergency call, but he did not use his emergency lights or a siren. The appellate court held that there was a question as to whether an officer's decision to use emergency lights or a siren is discretionary or ministerial under the official immunity doctrine.

***City of Beaumont v. Lathan*, No. 09-11-00110-CV (Tex. App—Beaumont, July 28, 2011).** The issue in this case is whether debris piled twenty feet away from an intersection constitutes a special defect under Texas Civil Practices and Remedies Code § 101.022. The plaintiffs alleged that the debris stacked alongside the road created a "visual hazard" that obstructed their son's view when he was struck and killed at an intersection after another driver ran a red light. The court of appeals held that the pile of debris was not a special defect because it was open and obvious, not unexpected or unusual.

***City of Dallas v. Patrick*, No. 05-10-00727-CV (Tex.App.—Dallas, August 15, 2011).** Patrick sued the City, alleging premises liability, general negligence, negligence per se, and a claim under the Recreational Use Statute after he tripped on a curb and fell at the Dallas Zoo. The Court of Appeals held that all of Patrick's claims fail for lack of subject matter jurisdiction and dismissed Patrick's action.

***City of Houston v. Johnson*, No. 14-10-01098-CV (Tex. App.—Houston [14th Dist.] August 16, 2011).** Johnson's husband was shot and killed in the line of duty as a Houston police officer. She alleged, among other things, that the City was grossly negligent and that the City's immunity from suit from such a claim violates the equal

protection clause of the Texas Constitution. The court of appeals rejected the plaintiff's claim that governmental immunity provided by the Texas Tort Claims Act violates the equal protection clause of the Texas Constitution.

***City of Dallas v. Brooks*, No. 05-10-00692-CV (Tex. App.—Dallas, August 30, 2011).** A police officer was providing backup when he hit and killed a woman. Among other things, Plaintiffs claimed that the police officer acted negligently by speeding and failing to use emergency lights and sirens. The appellate court held that the City conclusively proved each element of its official immunity defense because the officer was acting within the scope of authority and in good faith while performing a discretionary function.

VIII. Land Use

***Stephens v. City of Reno*, No. 06-10-00113-CV (Tex. App—Texarkana, May 26, 2011)**. The City sought to permanently enjoin Stephens from conducting a dirt mining operation. Stephens claimed that the operation was legal because it was "grandfathered" under the City's new ordinance. The appellate court held that Stephens failed to produce sufficient evidence to show that the operation existed before the ordinance was enacted.

***BMTP Holdings, L.P. v. City of Lorena*, No. 10-09-00146-CV (Tex. App.—Waco, June 1, 2011)**. BMTP argued that the City did not have a right to enforce a sewer tap moratorium that it instituted after BMTP's development had already been approved by the City. The City argued that Tex. Loc. Gov't Code § 212.131(3) describes each part of a development separately and distinctly from the other parts. The appellate court rejected the City's argument and concluded that the definition of "property development" includes the entire process from platting to finishing construction of infrastructure and buildings.

IX. Open Meetings

***City of Combine v. Robinson*, No. 05-10-01384-CV (Tex. App.—Dallas, August 16, 2011).** The City Council voted unanimously to terminate several police officers during a closed meeting or executive session. Robinson requested an open meeting to discuss her employment status and the status of her fellow police officers. The City Council later conducted an open meeting and reconsidered the police officers' future employment. By unanimous vote, the Council ratified all actions taken at the closed meeting. The appellate court held that the vote at the second meeting ratified the actions taken at the closed meeting and, thereby, negated any justiciable controversy as to the validity of the original vote.

X. Open Records

***Bonner v. City of Burleson*, No. 10-11-00060-CV (Tex. App.—Waco, August 31, 2011).** Bonner sought to compel the City to disclose a police report under the Texas Public Information Act. The police report contained statements made by Bonner's ex-wife that alleged abuse and child neglect. The City refused to disclose the information to

Bonner because the request was made by an individual named "Texas Brat." The appellate court concluded that Bonner is not entitled to the information sought, but reversed and remanded because a plea to the jurisdiction was not the proper procedural vehicle for dismissal in this case.

XI. Permit Vesting

***Harper Park Two, LP v. City of Austin,* No. 03-10-00506-CV (Tex. App.—Austin, August 18, 2011).** This case questions whether the identification of a lot as an "office" use in an application for a preliminary plan established that the project was limited to construction of an office building and not a hotel. The court of appeals held that, among other things, the definition of "project" in Chapter 245 of the Tex. Local Govt. Code permits the developer to change the uses contemplated within the plan while retaining the right to build under the regulations in place at the time of the original filing.

XII. Personnel

***Cooper v. Texas Workforce Commission and City of Dallas,* No. 05-10-00513-CV (Tex. App.—Dallas, June 8, 2011)**. The appellate court held that a former police officer was not eligible for unemployment benefits because his pension exceeded his unemployment benefits.

***City of San Antonio v. Caruso, et al.,* No. 04-10-00894-CV (Tex. App.—San Antonio, June 15, 2011).** Airport police officers sued the City after they were never paid overtime for working "on call" during their lunch and break times. The court of appeals held that Tex. Govt. Code § 180.006 waives immunity for any monetary damages, including back pay, even if that section and any related provisions don't specifically mention back pay.

XIII. Red Light Cameras

***Edwards v City of Tomball,* No.14-10-00284-CV (Tex. App.—Houston, May 3, 2011).** Edwards sued the City after she received multiple red light camera citations. She argued that the citations did not provide proper notice, and that the City did not conduct a proper traffic study before implementing the red light camera program. However, Edwards failed to follow the correct procedures in appealing the red light camera citations. Accordingly, the appellate court held that she lost her ability to contest the tickets.

XIV. Sexually Oriented Business

***D. Houston, Inc. v. City of Houston,* No. 14-10-00384-CV (Tex. App—Houston [14th Dist.] June 28, 2011).** A sexually oriented business (SOB) challenged the denial of its request for an amortization extension. The SOB argued that the hearing examiner failed to consider a current lease in making his decision. However, the appellate court held that the hearing examiner's decision to deny the extension was supported by substantial evidence.

***E.B.S. Enterprises, Inc. v. City of El Paso,* No. 08-10-00088-CV (Tex. App.—El Paso, August 10, 2011).** Several sexually oriented businesses (SOBs) challenged the constitutionality of the City's new SOB ordinance. The City passed the ordinance after considering local testimony, conducting hearings and extensively reviewing the negative secondary effects of SOBs in urban areas. Summary judgment was proper because there was no issue of material fact as to whether the City met its burden of showing that the ordinance was necessary to combat the negative secondary effects of SOBs in urban areas.

XV. Takings

***Garrett Operators, Inc. v. City of Houston,* No. 01-09-00946-CV (Tex. App.—Houston [1st Dist.] May 12, 2011).** Garrett Operators, Inc. sought to install a sign with an LED display and was warned by City staff that the sign violated the City's sign ordinance. Garrett attempted to install the sign without a permit and the City issued a stop order. Among other things, Garrett argued that the City's actions constituted a regulatory taking under the Texas Constitution. The appellate court denied Garrett's takings claim because prohibiting action until the sign owner obtained a permit is not sufficient to show a takings claim.

***City of Dallas v. Stewart,* No. 09-0257 (Tex., July 1, 2011)**. A City board determined that an abandoned house was a nuisance under Tex. Loc. Gov't Code Ann. § 214.001(a)(1) and ordered its demolition. The owner asserted due process and unconstitutional takings claims. The Texas Supreme Court reasoned that "unelected municipal agencies cannot be effective bulwarks against constitutional violations," and held that substantial evidence review of the nuisance determination did not sufficiently protect Stewart's rights under Tex. Const. art. I § 17.

***City of Dallas v. VSC, LLC*, No. 08-0265 (Tex. July 1, 2011).** The City's police department seized a number of vehicles from VSC, a licensed vehicle storage facility. All of the vehicles seized from VSC had been reported stolen. Instead of pursuing a statutory remedy under Chapter 47 of the Code of Criminal Procedure, VSC sued, alleging that its interest in those vehicles had been taken without just compensation. The Court held that that the availability of the statutory remedy precludes a takings claim.

***City of Dallas v. CKS Asset Management, Inc.,* No. 05-10-01010-CV (Tex. App—Dallas, July 7, 2011).** In this case, both parties claimed exclusive ownership of the property in question. CKS sued the City for inverse condemnation, arguing that the City built improvements on land owned by CKS. The City produced evidence that its acquisition of the property did not necessitate use of its sovereign powers. Thus, the court of appeals held that CKS did not show that the City had the requisite intent to act under its sovereign powers as required for a constitutional takings claim.

***Battista v. City of Alpine,* No. 08-09-00221-CV (Tex. App—El Paso, July 20, 2011).** The Battistas alleged that the City's construction of a drainage modification was an unconstitutional taking of their property. According to the Battistas, the new drainage

modification diverted runoff onto their property, but the Battistas did not allege that the City's taking was for a public use. The appellate court held that the claim was properly disposed of by summary judgment as the Battistas failed to allege the third essential element of their claim.

***City of Fort Worth v. Park*, No. 07-10-0279-CV (Tex. App—Amarillo, July 26, 2011).** Park was given notice by the City's Building Standards Commission that a hearing would be held to determine whether civil penalties should be assessed for code violations. The notice Park received indicated that the hearing would be held in the afternoon, but the City conducted the hearing in the morning. The City recognized the error and held an additional meeting in the afternoon. The court of appeals held that summary judgment in Park's favor was improper because a fact issue still existed as to whether or not Parks had been given adequate due process on the City's substandard building claims.

***City of El Paso v. Ramirez*, No. 08-10-00174-CV (Tex. App.—El Paso, August 24, 2011).** The City's landfill retention ponds overflowed causing water and other waste to flow through Plaintiffs' properties and destroy structures and ruin crops. The appellate court held that the plaintiff's claim failed because the City's failure to act does not give rise to an inverse condemnation claim.

***Allen v. City of Baytown*, No. 01-09-00914-CV (Tex. App.—Houston [1st Dist.] August 25, 2011).** Allen's off premise signs were damaged by Hurricane Ike. He removed the damaged signs and attempted to erect new signs, but learned that the City's sign ordinance prohibited him from doing so. Allen's application was denied by the City's Building Official and he did not timely appeal the Building Official's decision. Allen filed suit, alleging an unconstitutional taking of his property and seeking a declaratory judgment. The court of appeals held that: (1) the declaratory judgment claim was invalid because he did not exhaust his administrative remedies; (2) Allen's regulatory takings claim was ripe even though he failed to exhaust administrative remedies; and (3) the City failed to establish as a matter of law that no regulatory taking occurred.

***El Dorado Land Company, L.P. v. City of McKinney*, No. 05-10-00381-CV (Tex. App.—Dallas, August 30, 2011).** El Dorado claimed that the City violated a deed restriction on property it sold to the City and notified the City of its intent to purchase the property in accordance with the deed. The City did not respond to the notice and El Dorado sued alleging that the City's actions constitute a taking of El Dorado's property without compensation. The appellate court held that the alleged property interests were created under contract and did not rise to the level of a compensable taking.

***Como v. City of Beaumont*, No. 09-10-00192-CV (Tex. App.—Beaumont, August 31, 2011).** The City declared Como's commercial building a public nuisance and condemned the property. Como sued after the City demolished the building on claim for inverse condemnation under both the Texas and Federal Constitutions. The question concerning whether Como's property constituted a nuisance could not be resolved through a plea to the jurisdiction. Accordingly, Como's takings claim was remanded to the trial court.

XVI. Taxes

***Joe Putnam and Irving Taxpayers Opposed to Illegal and Wasteful Use of Tax Money v. City of Irving*, No. 05-10-01269-CV (Tex. App— Dallas, January 27, 2011).** The City sought a declaratory judgment to validate the issuance of municipal bonds for the construction of an entertainment center/hotel complex and the pledge of certain revenues to repay the bond debt. A group of taxpayers opposed the issuance of the bonds and pledge and intervened in the action. The Taxpayers were ordered to post security to continue their participation in the proceeding in accordance with Tex. Gov't Code § 1205.104(a). The Taxpayers failed to post the required security by the statutory deadline and the trial court dismissed the intervention. The appellate court concluded that the trial court did not abuse its discretion.

***Rameses School, Inc. v City of San Antonio*, No. 14-10-00320-CV (Tex. App— Houston, April 7, 2011).** The school sued the City after the City sold the school's property at a tax sale. The school waited five years after the sheriff's deed was entered to file suit. The appellate court held that the school's suit was barred by the statute of limitations.

***Comunidad Balboa, LLC v. City of Nassau Bay*, No. 14-10-00167-CV (Tex. App— Houston [14th Dist.] July 21, 2011).** The City sought de novo review of the Harris County Appraisal District's determination that a tax exemption should be granted to Communidad Balboa under Tax Code Section 11.182. The City argued that the tax exemption did not apply because Communidad Balboa could not establish when it became the owner of the property in question. The appellate court held that a fact issue existed as to whether or not Comunidad Balboa owned the property eligible for the exemption at the time the exemption was requested.

XVII. Utilities

***University of North Texas v. City of Denton*, No. 02-09-00395-CV (Tex. App.—Fort Worth, April 14, 2011).** The City alleged that the university was wrongfully withholding 20 percent of the amount of each monthly billing, and the University claimed that it was entitled to the discount under the Texas Utility Code. The court of appeals held that the City's lawsuit was barred by sovereign immunity.

XVIII. Voting/Redistricting

***Michael R. Morton v. City of Boerne*, No. 04-10-00293-CV (Tex. App.—San Antonio, February 2, 2011).** The City had previously been sued in federal district court on a claim that its method of electing council members unlawfully diluted the voting strength of minority voters. The action was settled and then reopened to modify the settlement agreement. The modified agreement allowed elections of council members using single-member districts and the City passed an ordinance authorizing the same. The federal district court issued a final order based on the modified settlement agreement. Morton appealed the final order to the Fifth Circuit, and filed suit in state district court alleging

that the City effectively amended the City charter without voter approval. The state appellate court held that the state court action was an improper collateral attack on the federal judgment.

XIX. Zoning

***City of Laredo v. Rio Grande H20 Guardian*, No. 04-10-00872-CV (Tex. App—San Antonio, July 27, 2011).** After the City of Laredo amended its zoning map, Rio Grande filed a declaratory judgment action against the City challenging the legality of the new zoning ordinances. In response, the City filed a motion for summary judgment. Among other things, the City argued that Rio Grande's claim that the new zoning ordinance was not adopted in accordance with the City's comprehensive plan was moot. The City's argument is based on the fact that, during the instant suit, the City modified its comprehensive plan as permitted by its charter. Under Local Government Code § 211.004(a), zoning regulations must be adopted in accordance with a City's comprehensive plan if one exists. The court reasoned that if a City fails to adopt zoning ordinances in accordance with its comprehensive plan, such ordinances are void *ab initio.* Thus, the court held that the ordinances were never valid and the City could not revive them by subsequently amending the comprehensive plan.

***City of Gatesville v. Hughes*, No. 10-11-00030-CV (Tex. App.—Waco, August 17, 2011).** The City reclassified property that previously operated as a nursing home from single family residential to community facility. The appellate court ruled that neighboring property owners did not meet their extraordinary burden to prove that the City acted unreasonably or arbitrarily in enacting the zoning ordinance.