

April/May-2018-Property Rights

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There is no right more fundamental to an American citizen – and to we Texans – than the private ownership of property. This is true – whether we are talking of a private dwelling in an urban area – OR – the farm or ranch that we own. We believe that this ownership gives us the right/authority to use that property in the manner we choose – unless this takes advantage of an adjacent property owner. There is nothing that makes a Texan establish deep roots – like the long-term family ties of property ownership.

I have this feeling – since we own and live on the property which my grandfather originally bought – cared for and improved. In today's transient population environment – this is a facet of the American dream that seems to be missing the most.

The term private property rights is much talked about. In some cases – the term is used to promote your own cause or interest – even at the expense of possibly infringing on someone else's "property rights". In most of our opinions – YOUR rights end when it infringes on MY rights.

In the 74th Session of the Texas Legislature – Representative Susan Combs and I were co authors of HB 2591 - which came to be known as the Texas Private Property Rights Bill. This legislation was basically to protect an individual property owner's Real Property ownership rights.

This primarily dealt with state – county and municipal entities attempts to take – or reduce in value – our personal property ownership rights.

In recent sessions of the legislature – and several big court decisions – it has been determined that ownership of the ground water under your property is a definite private property right. During the oil and gas boom times that we have seen and continue to see – private property rights has taken on an increasing life of its own.

The rights and powers of the use of eminent domain is possibly the most current and pressing issue with most property owners. I think that all of us realize the need for prudently utilized eminent domain. Without the ability of entities to use this power and authority – we would not have highways and roadways that are so very important to us today. We would not have military bases which play such a major role in our national defense structure - nor electric transmission and service lines – if this power of eminent domain did not exist. This is simply to mention a couple of the most obvious needs for the power of eminent domain. The law clearly states that it may be used for the “public good” - not for private or personal purpose or gain. I firmly believe that property owners and property rights advocates are clearly in the right in asking that fair values be established for this taken property. The losing property owner must be compensated in a fair and prompt manner.

Trespass laws have long been needed and in place to protect us – the private property owners - from intrusion from outside individuals and interests. In the 1997 – the 75th Texas Legislature passed HB-793 – which put in place the law that designated purple paint markings as a means of identifying private property lines. This primarily was intended to clearly mark properties where property lines are not otherwise easily identifiable – such as fencing – walls, etc. There are definite rules that

apply to the usage of the purple paint laws. This is spelled out in the Texas Penal Code 30.05 Criminal Trespass section 1, subsection D.

When we think of private property ownership and the rights associated with that ownership – the issue of property taxes comes to mind. An interesting note – for we Texans – is the fact that Texas is one of the few states who do not have a personal income tax – similar in nature to the Federal Internal Revenue Service. As a result – this puts a much greater burden on property tax – as a means of financing - public schools - - city and county government - - fire and other public services. This is a source of much bickering and frustration – especially on the part of property owners. Sales tax is the primary provider for state governmental budget issues – while property tax is the major provider for the many needs of local governments.

In view of Texas not having a personal income tax – our property tax ranks among the higher in the nation. However - Texas ranks right in the middle of the 50 states – in total tax load per individual – or per household tax levy.

Texas property tax is locally based – on a per taxing entity basis. A number of years ago – the state legislature created what is known as a tax appraisal district – or authority – where all the individual entities function collectively in one central county wide office. The State Comptroller provides the Chief Appraiser of each of these appraisal districts with directions and guidelines – in an effort to gain some uniformity in tax rates. However – even farm and ranch lands vary in productivity – and thus are taxed at different rates. For instance – improved pasture is taxed at a higher rate than native range land. This rate is established by the local appraisal district and board of directors. This board is chosen by each entity included – based on their percentage of the total county tax base.

There are instances where a ranch that crosses a county line – can be valued at a different rate in each county. Ag-use evaluation is based on what each appraisal district determines to be the actual ag productivity value of the individual tract of land. This ag-use evaluation is similar in nature to how mineral (oil and gas) taxes are levied – as well as how commercial buildings and property are valued. All are based on their actual productivity values – NOT on inflated current specific sales prices.

All three of these categories of property should be extremely thankful that their tax value is based on their productivity capability – NOT ON CURRENT SALES PRICE value of any of these three types of property.

It is very obvious that the issue of property rights is broad and complex. A great deal of “common sense” (which is all too “UN-common”) must be applied in dealing with this most important issue.