

# MOVE YOUR RESIDENCE OR BUSINESS NEAR THE AIRPORT AT YOUR OWN PERIL



## *COUNSEL'S CORNER*

83 Houston residents near Bush Intercontinental Airport sued the City of Houston. A new runway resulted in increased airplane traffic and the owners determined that living near the airport was untenable. So the owners argued that their properties had been taken by “inverse condemnation,” and they should be compensated for their loss.

The City won the case in trial court. The homeowners appealed.

The Houston Court of Appeals used a 1946 United States Supreme Court case to guide them. In that case, the property owners operated a chicken ranch but were forced to close their business when military planes were flying only 63 feet about the barn. Six to 10 chickens were killed daily by flying into the walls from fright. Egg production suffered. The owners were unable to sleep and became nervous and frightened, and were entitled to compensation.

Our Texas Supreme Court decided a case in 2002 where the plaintiff owned commercial property near the Austin-Bergstrom International Airport, and intended to use it as a landfill, but was unable to do so because of airplane traffic. The plaintiff sued the City of Austin for taking-by-overflight. The trial court awarded a judgment to the plaintiff, but the Texas Supreme Court reversed it because the property could maintain its use as a landfill.

The Texas Supreme Court focused on the concept of “*unsuitability*” in their 2002 decision. A mere impairment does not necessarily equate to unsuitability. Landfills, subject to zoning and other laws, can be anywhere.

The 83 Houston residents had not claimed that their residences were uninhabitable. Instead, they stated that conversations were impossible, TV reception was bad, sleep was interrupted, children and pets were frightened, nervous and irritable, and it was difficult to entertain friends or speak on the phone.

But the residents did not relocate. This could have been because no one would buy their properties, but that sidebar issue was not addressed in the Houston case.

And so the Houston Court of Appeals had no choice but to follow Texas Supreme Court precedent in the April 2010 case of *Alewine v. City of Houston*. Since the properties were still capable of use as residences, the plaintiffs must lose. Expect an appeal to the Supreme Court.

### Bottom line:

1. If you move your residence or business near an airport, don't expect to be compensated by the government when the airport expands.
2. If you are asking the government for compensation anyway, tell your lawyer to use the “*unsuitable*” word in the lawsuit.
3. Let's just use the KISS principle here: don't move near an airport.

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