

POLITICAL HOT TOPICS IN THE LAND USE WORLD

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In 1981, Terry began his legal career in the Dallas City Attorney's Office and he currently is one of the founding partners of Brown & Hofmeister, L.L.P. Since 1981, Terry has represented numerous growing communities in North Texas. He routinely represents and advises local governments on a variety of issues, including employment, land use, civil rights, police, election, natural gas drilling and other regulatory matters.

Terry received his Bachelor of Arts degree at the University of Illinois at Urbana-Champaign in 1976, his law degree in 1979 from the University of Houston College of Law and a Master of Public Affairs in 1981 at the Lyndon Baines Johnson School of Public Affairs at The University of Texas at Austin. Terry has authored and presented over 200 papers to various groups, including the American Bar Association, the Texas City Attorneys Association, the Texas Municipal League, the American Planning Association, the North Central Texas Council of Governments, CLE International, the National Business Institute and The University of Texas at Austin Continuing Legal Education Program. Terry's most recent publication was a chapter on municipal regulation of natural gas drilling in *Beyond the Fracking Wars*, published by the American Bar Association in late 2013. He has had four law review articles published in *The Review of Litigation*, *Southern Illinois University Law Journal*, *Baylor Law Review* and *The Vermont Journal of Environmental Law*. Terry also recently had published an article on urban sprawl in Texas in the *Zoning and Planning Law Report*. He was the 2004-05 Chair of the State and Local Government Law Section of the American Bar Association and Immediate Past Section Chair of the State and Local Government Relations Section of the Federal Bar Association. He also serves as the Chair of the Board of Trustees of Dallas Academy, an exceptional school for children with learning differences, located in the White Rock Lake area of East Dallas. In May 2014, Terry was appointed an adjunct member of the City of Dallas Civil Service Board and subsequently was appointed to the Civil Service Board in August 2015.

In his free time, Terry enjoys long distance running, having competed in 78 half-marathons as well as many other long-distance races. He completed his 46th marathon in Austin in February 2018. He has competed in the Chicago, New York, San Diego, White Rock/Dallas, Cowtown, Illinois, Marine Corps, Canadian International (Toronto), St. Louis, Austin and Berlin Marathons, all of which he ran very slowly!

I.

Introduction

As attorneys, we often encounter hot land use issues at local levels of government. While those issues may include the zoning application *du jour* or some other topic that results in droves of constituents descending on city council chambers or a county commissioners court meeting, there are a few issues out there that recently have become the subject of intense public debate. The purpose of this paper is not to address whether a position on the hot topic is right or wrong, but to review and analyze how cities across Texas and the nation have endeavored to address, and hopefully resolve, those hot-button issues. In no particular order, I have attempted to provide a synopsis of those topics.

II.

Where Did Robert E. Lee Go?: Confederate Monuments In Our Midst

Today there is perhaps no hotter political issue than the removal of Confederate statues and monuments by local governments along with the renaming of schools or streets that honor Confederate war heroes. Besides being an issue in those states which comprised the Confederacy, Confederate monuments have been removed from three of the four Border States (Missouri, Maryland and Kentucky) as well as in Ohio, California and New York while Massachusetts is still considering whether a monument on Georges Island in Boston Harbor (honoring the memory of Confederate soldiers who were prisoners of war and died there) should be removed.¹

A. State Preemption

Several southern state legislatures have addressed the issue by prohibiting local governments from removing Confederate monuments without a vote of the legislature or a state commission. Mississippi, Georgia, North Carolina, Tennessee, South Carolina and Alabama all prohibit the removal of Confederate monuments by local governments, although state laws generally do not refer specifically to Confederate monuments and instead term their statutes “heritage preservation.”² Alabama, for example, in the

¹ See <https://www.cheatsheet.com/culture/states-removing-the-most-confederate-statues.html/?a=viewall>.

² One University of North Carolina at Chapel Hill history professor has written “[l]et there be no doubt about the intent of this or similar ‘heritage preservation’ laws: They ‘protect’ and perpetuate the racist commemorative landscape that currently exists. Why shouldn’t the citizens of Durham [North Carolina] have had the choice to preserve, move, or remove the Confederate monument there? Local choice may allow some communities to keep ‘their’ Confederate monuments. So be it. Let them defend their decision if they do so.”

Alabama Memorial Preservation Act, provides that “[n]o architecturally significant building, memorial building, memorial street, or monument which is located on public property and has been so situated for 40 or more years may be relocated, removed, altered, renamed, or otherwise disturbed.”³ In South Carolina, a two-thirds vote in both the House of Representatives and Senate is required to remove a Confederate monument.⁴ In 2004, Mississippi adopted legislation that prohibits the removal or alteration of statues or memorials honoring the military, including those dealing with the Civil War. It also prohibits the renaming of streets, schools or government buildings likewise named for Civil War or other military figures or events.⁵ In Tennessee, the Heritage Protection Act was passed in 2013 and amended in 2016. Generally, the Act prohibits the removal, relocation or renaming of a memorial that is, or is located on, public property. A public entity exercising control of a memorial or statue honoring an “historic conflict” may petition the Tennessee Historical Commission in writing for a waiver from the prohibition. After consideration of the petition, the Tennessee Historical Commission votes whether to grant or deny the waiver. A two-thirds vote by the entire membership of the Commission is required.⁶

In 2017, Louisiana State Representative Thomas Carmody, Jr., a Republican from Shreveport, introduced House Bill No. 71, legislation to be known as the Louisiana Military Memorial Conservation Act.⁷ The statute would have barred all structures, plaques, statues or monuments that mark certain wars, including the Civil War, from being altered or removed, but local governments would have been allowed to remove such structures, plaques, statues or memorials if voters approved the action at an election held for that purpose.⁸ The legislation was left in committee in the Louisiana State Senate.⁹ There is litigation currently pending in Virginia over the Charlottesville City Council’s proposal to remove the Robert E. Lee statue since a state law bans cities that attempt to “disturb or

See <https://www.vox.com/the-big-idea/2017/8/18/16165160/confederate-monuments-history-charlottesville-white-supremacy>.

³ Ala. Code § 41-9-232(a).

⁴ See S.C. Code § 10-1-165.

⁵ See Miss. Code § 55-15-81.

⁶ See Tenn. Code § 4-1-412.

⁷ This bill apparently was in response to actions by the City of New Orleans to remove several Confederate monuments. A copy of House Bill No. 71 (2017 legislative session) may be found at <https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1041836>.

⁸ *Id.*

⁹ See <https://www.legis.la.gov/Legis/BillInfo.aspx?i=231424>.

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