

Design Discretion & Entitlements: The Hays St. Bridge Problem

WHAT DOES ZONING ACTUALLY GET ME?

Land Use Law Conference: April 25, 2019

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IN THE SUPREME COURT OF TEXAS

No. 17-0423

HAYS STREET BRIDGE RESTORATION GROUP, PETITIONER,

v.

CITY OF SAN ANTONIO, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

Argued September 13, 2018

CHIEF JUSTICE HECHT delivered the opinion of the Court.

The primary issue before us is whether the waiver of governmental immunity for certain claims provided by the Local Government Contract Claims Act¹ ("the Act") at the time this case arose² applies when the remedy sought is specific performance rather than money damages. We hold

¹ TEX. LOC. GOV'T CODE §§ 271.151–160.

² This case centers on a Memorandum of Understanding executed in 2002. At that time, the Act applied to "a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity." Act of May 23, 2005, 79th Leg., R.S., ch. 604, § 1, sec. 271.151(2), 2005 Tex. Gen. Laws 1548, 1548 (current version at TEX. LOC. GOV'T CODE § 271.151(2)(A)). In 2013, the Legislature amended Section 271.153 of the Act to add Subsection (c), which states: "Actual damages, specific performance, or injunctive relief may be granted in an adjudication brought against a local governmental entity for breach of a contract described by Section 271.151(2)(B)." Act of May 24, 2013, 83rd Leg., R.S., ch. 1138, § 3, sec. 271.153, 2013 Tex. Gen. Laws 2756, 2758. The referenced provision added to the contracts covered by the Act: "a written contract, including a right of first refusal, regarding the sale or delivery of not less than 1,000 acre-foot of reclaimed water by a local governmental entity intended for industrial use." *Id.* § 2, sec. 271.151(2), 2013 Tex. Gen. Laws at 2757–2758 (codified as TEX. LOC. GOV'T CODE § 271.151(2)(B)). The 2013 amendments "apply [only] to a claim that arises under a contract executed on or after [their] effective date", and "[a] claim that arises under a contract

Current Event

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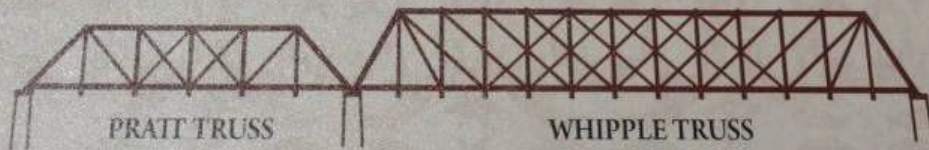
HAYS STREET BRIDGE HISTORY

The Hays Street Bridge, constructed as two separate railroad bridges in the late nineteenth century, is the oldest metal truss bridge in San Antonio. Since 1910, when it was moved to its current location, it has served as a viaduct connecting the east side of the city to downtown.

By the early twentieth century, the Galveston, Harrisburg and San Antonio Railway Company planned to expand their tracks across east-west streets between downtown and the city's Eastside. The city agreed to the expansion provided the railroad erected a viaduct for pedestrians and vehicular traffic to cross the tracks. In 1910, the railroad moved two wrought iron spans from elsewhere on its lines and widened them to 25 feet to construct a bridge over the tracks at Hays Street. The longer of the two spans, dating to 1881, came from a railroad crossing at the Nueces River west of Uvalde, Texas. Less is known about the origins of the shorter span.

In 1982, structural concerns forced the closing of the bridge. It fell into a state of disrepair and faced demolition until a group of supporters, including engineers, preservationists, Eastside residents and bike enthusiasts, petitioned the city to save the bridge. As a result of their efforts, the bridge received \$2.89 million in federal TEA-21 funding for restoration in 2001. It was also designated a Texas Historic Civil Engineering Landmark and a City of San Antonio Local Landmark. The City of San Antonio assumed ownership of the bridge from Union Pacific in 2007 and began restoration work in 2009.

Renovated for pedestrian and bicycle use, the historic bridge serves as a gateway linking downtown to the Dignowity Hill Historic District and to the Salado Creek Hike and Bike Trail.



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Focus Points

- Site and zoning context
- Development process downtown:
Non-discretionary?
- The role the community plays in the process when discretion is afforded
- The role and discretion of the advisory body in the process
- Moving forward, suggestions



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First appeared as part of the conference materials for the
23rd Annual Land Use Conference session

"Design Discretion in Entitlements: The Hays St. Bridge Problem"