
Tree Regulations and the Worth of a Tree

Plan

- Texas Tree Facts: New and Old
- Tree Ordinances under Fire in Texas
- Tree Bills: Regular and Special
- Why Trees Add Value
- Keeping Your City Scenic



A Few Texas Tree Facts: New and Old

- Tree ordinances in Texas can be found under multiple categories in cities' ordinances including:
 - Public Tree Care
 - Tree Preservation
 - Landscape
 - Landscape and Tree Preservation
- Included among Texas cities with tree ordinances under multiple categories of ordinances are: Austin, Coppell, Dripping Springs, Grapevine, Houston, Lakeway, Pflugerville, Shenandoah, The Colony, Weatherford, and West Lake Hills.

Some Texas Case Law Concerning Tree Regulations since 2007:

- *Continental Homes of Texas, L.P. v. City of San Antonio*, 275 S.W.3d 9 (Tex. Ct. App. August 20, 2008): Court of Appeals held that developer could remove trees from his property, against city ordinance, and not pay mitigation fees because the language of the city's ordinance did not dispel vested rights the project had prior to the adoption of the tree ordinance in 2003.
- *Milestone Potranco Development, LTD v. City of San Antonio*, 298 S.W.3d 242 (Tex. Ct. App. May 27, 2009): Court of Appeals held that the city's tree preservation ordinance was a rule "governing plats and subdivisions of land" that city was authorized to adopt; was not overbroad; and thus extended to plats and subdivision development.

Some Case Law from Outside of Texas since 2007:

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- *Save our Big Trees v. City of Santa Cruz*, 241 Cal.App.4th 694 (Oct 23, 2015): Court ordered city to remove amendments made to its Heritage Tree and Heritage Tree Removal ordinances which would have weakened protections for trees in both ordinances, after finding that the City had not substantially carried its burden of proving with substantial evidence that the changes fell under exceptions of the California Environmental Quality Act.
 - *Wilmes v. City of St. Paul*, 2012 WL 171390 (Minn. Ct. App. Jan. 23, 2012): Minnesota Court of Appeals upheld a city's denial of a permit to a landowner wishing to remove a tree. The court reasoned that it was because the tree was in the city's right-of-way; however, it hinted that its finding might have been different otherwise.

House Bill 969 (2019)

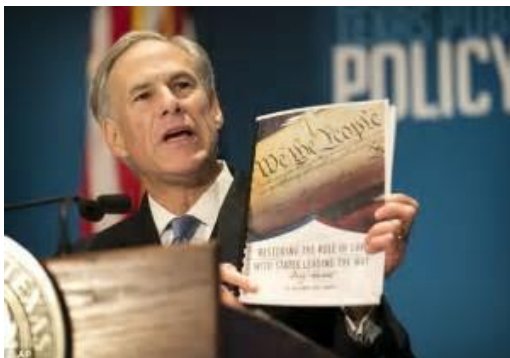
- “Noxious or invasive plant species”—undefined
- Property owners presumably would have had full discretion to decide, with no power by the city to regulate
- Purported intention was specifically to remove obstacles to brush clearing pursuant to the Texas Water Supply Enhancement Program (WSEP)—however, only city with a tree ordinance in a watershed is Abilene, which does not restrict the removal of any of the trees that were targeted by the bill
- Would have affected native Texas invasive species, some of which are protected by city ordinances

Trees and water quality

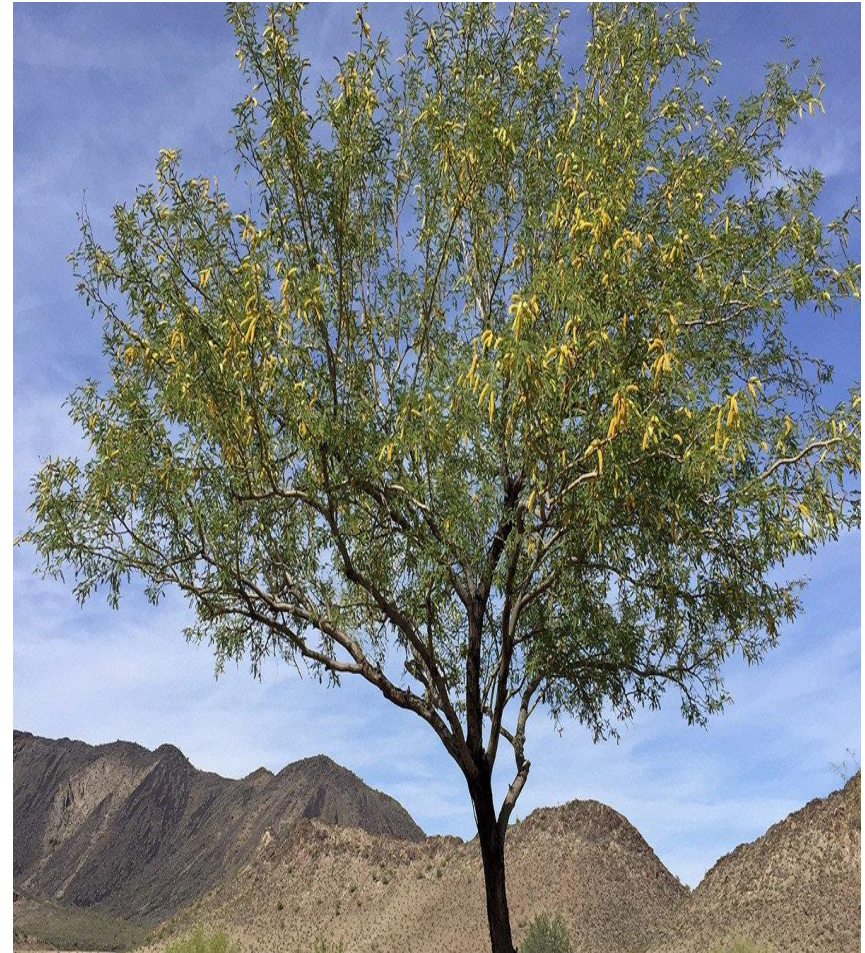
“Because we have concluded that the Ordinance is rationally related to the governmental interest in protecting water quality, the City has the right to significantly limit development in watershed areas in furtherance of this interest.”

--Justice Greg Abbott, Supreme Court of Texas

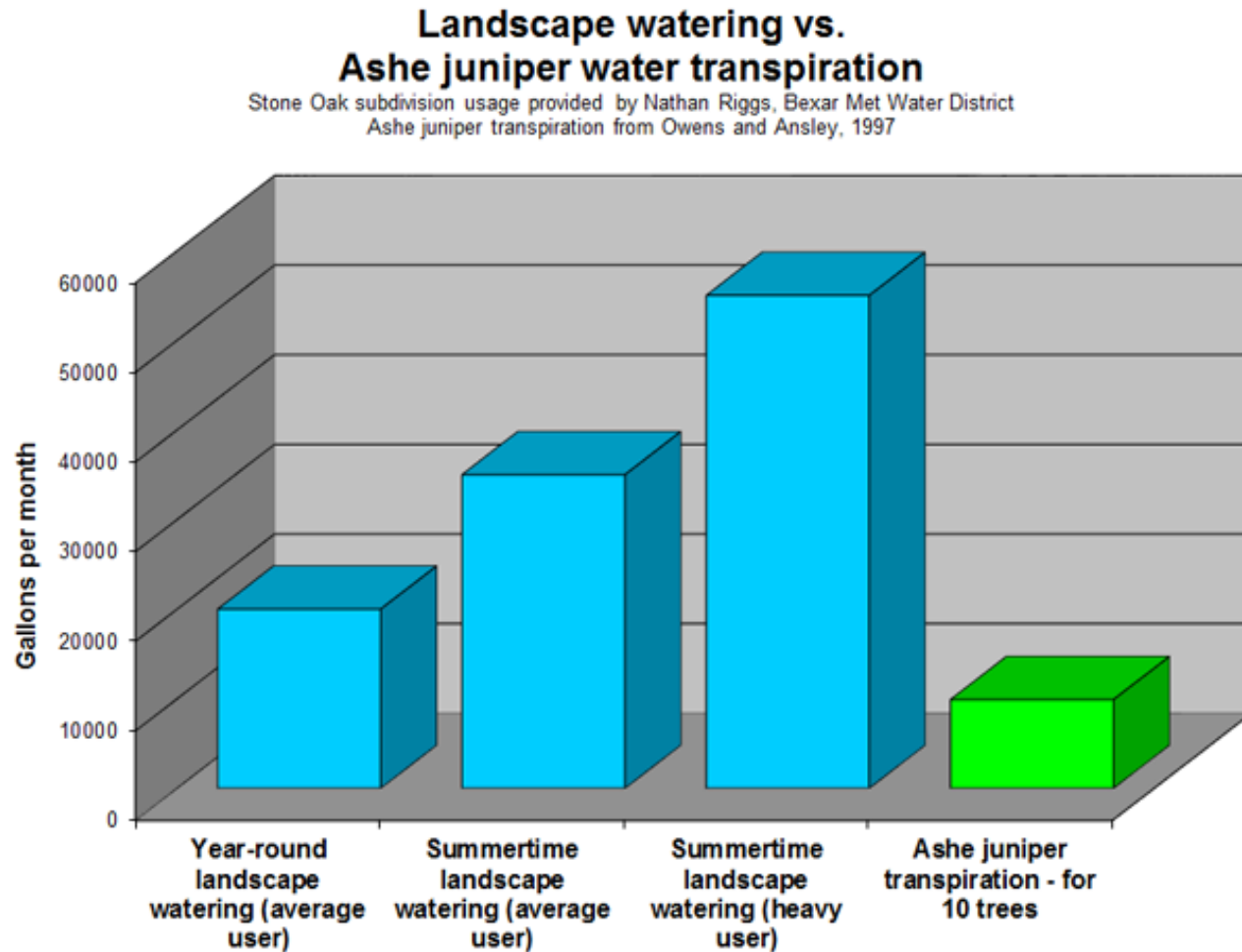
Quick v. City of Austin, 1998



“Are we so bad? ☹ ” (The Ashe Juniper and Mesquite)



Water usage: Ashe Juniper vs. Landscaping



Takings Law and Tree Regulations

Attorney General Opinion RQ-0164-KP
request by Senator Dr. Donna Campbell

“City tree ordinances are some of the most egregious examples of property rights violations in our state, affecting millions of property owners in Texas. We must ensure that city bureaucrats and central planners are not infringing on local citizens’ liberty.”



S.B. 744 (Kolthorst/Phelan)

- “Cities telling landowners what they can and cannot do with the trees in their own backyard is an assault on private property rights. Senate Bill 744 appears to be a compromise bill...But in doing so, it gives the imprimatur of state law to the municipal micromanagement of private property, which should be abolished altogether (...) It actually ended up doing more to protect cities than it did to protect the rights of property owners. I applaud the bill authors for their efforts, but I believe we can do better for private property owners...”
 - Governor Abbott’s veto message, 2017

Taking Down Tree Regulations

S.B. 744 (Kolkhorst): Tree Mitigation Fees

Passed and Vetoed by Governor

1 H.B. 7 (Phelan): Tree Mitigation Fees



Local Control meets the Legislature

They took all the trees
And put them in a ~~tree-museum~~ state park
And they charged all the people
A dollar and a half to see 'em

--Texas Senate

West Lake Hills at the Capitol

“The fee should be set locally ... \$400 is a lot to an individual living on a quarter-acre lot in parts of Texas,” said former Mayor Dave Claunch. “But in West Lake Hills, someone will drop \$400 on lunch.”



Trees and Property Value

- “A mature tree can often have an appraised value of \$1,000 and \$10,000.”
 - The Council of Tree and Landscape Appraisers

Statistics from The Arbor Day Foundation

- “Landscaping can add approximately 10 to 20 percent more value to a property – especially landscaping that incorporates mature trees.”
- “83 percent of realtors® believe that mature trees have a ‘strong or moderate impact’ on the salability of homes listed for under \$150,000; on homes over \$250,000, this perception increases to 98 percent.”

Cooling cities down

“The right amount of tree cover can lower summer daytime temperatures by as much as 10 degrees Fahrenheit. And the effect is quite noticeable from neighborhood to neighborhood, even down to the scale of a single city block.”

--Proceedings of the National Academy of Sciences

Health Benefits

- In 2010 America's trees absorbed between 9 and 23.2 million tons of pollution, with an estimated health value of between \$1.5 and \$13 billion.
 - *Environmental Pollution* (journal)
- Texas was among the top three states that saw the greatest pollution removal amounts by volume.

By his count: 15,035 trees planted



- Gene DeSantis, planting trees every Saturday for the last 40 years
- Stress levels, heart rate, muscle tension, asthma rates, and blood pressure all decrease in their presence.

(Photo credit: Baltimore Sun)

Keeping Your City Scenic

- Review Your Ordinance Language
- Don't make your City an easy target for a Takings accusation.

“The Big Tree” on Goose Island State Park, Aransas Bay



- “These leafy streets cannot afford to be seen as a luxury.”
– Ellie Anzilotti, *Fast Company* magazine
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