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News

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June 14, 2013

Private deed restrictions put ZAP on the spot

By Elizabeth Pagano

The **Zoning and Platting Commission** last week managed to stay clear of a private deed restriction battle that may be re-emerging in north central Austin.

Mark Canada is seeking a re-subdivision for his lot which is just less than half an acre. Though the subdivision would require no variances, there is a private deed restriction on the land that Canada was not aware of before he went to the commission last month.

Ultimately, the commission voted 5-1 to continue the case until its July 2 meeting, which would allow Canada time to meet the requirements of the deed restriction, which requires two-thirds support of the neighborhood for re-subdivisions.

Commissioner Rahm McDaniel was the lone holdout, saying the he thought the commission was “treading in dangerous waters.”

He went on to say that though he appreciated the action that was taken, and the spirit behind it, he was concerned that the commission was getting involved in a contractual dispute.

Commissioner Gabriel Rojas was absent.

In her motion, **Chair Betty Baker** included a “respectful request” that **City Council** appoint a commission to further address the issue of private deed restrictions.

Commissioner Patricia Seeger agreed with the idea, saying that, as land becomes more scarce in the central city, the commission will need more direction on the topic.

“We try so hard as a community, and a commission, to be fair. And the one thing this isn't is fair to the little fella,” said Baker, who expressed dismay that the burden of enforcing private deed restrictions falls entirely on neighbors.

“Everybody gets grandfathered. If grandma walked by and waved to someone on the porch, they are grandfathered...The city annexes areas with deed restrictions, and do not accept or enforce those deed restrictions. To me, they are losing some rights through that annexation,” said Baker, who asked for an explanation from city staff about why people lose their rights by

being annexed.

“We're so cognizant of grandfathering and protecting peoples' rights. And yet, the people who need it probably the most are unprotected,” said Baker. “

Assistant City Attorney Patricia Link explained that, because the city is not a party to the private deed restrictions, the city's authority, in terms of land use of annexed properties, is limited to zoning.

Link explained that if a subdivision meets city code, the commission has no discretion about whether or not to approve it, and private deed restrictions do not enter into that analysis under code. She explained that to fight the re-subdivision, the neighborhood can take the landowner to court.

Several neighbors spoke in opposition to the subdivision request, though they emphasized a desire for Canada to comply with the deed restrictions over opposition to the subdivision specifically.

Catherine Fryer is one of the lot owners who has previously successfully sued over re-subdivisions in **Shoalmont addition**. She noted that a few years ago there were a rash of subdivisions, but it now looked like the problem for the neighborhood would be ongoing. She asked the commission to honor the restrictions.

“It's very difficult for individuals to bear this burden of enforcing the deed restrictions,” said Fryer. “Part of the problem is that we don't know when these applications have been filed...You have to be very, very vigilant to know when people are going to re-subdivide.”

She said that, from her perspective, the city was in violation of the law, because the subdivision attempted to “amend or remove covenants or restrictions.”

“In effect, by granting these applications, you are removing these restrictions,” said Fryer.

Lorinda Holloway was also part of the group that had filed suit. She suggested that the commission “punt” the case, giving time for the deed restrictions to be met.

“The neighbors in this area are essentially having to play whack-a-mole every time one of these applications pops up,” said Holloway.

Commissioner Jason Meeker pointed out that, if the commission granted the subdivision against the private deed restrictions, it was clear that it would lead to a lawsuit.

For his part, Canada pointed out that the subdivision met all the requirements of city code. He further pointed out that the proposed division will result in a lot size that is the “norm, not the exception” for the neighborhood.

That said, Canada told the commission that he had worked towards getting neighborhood support, and had no desire to be sued. In order to be in compliance with the private deed restrictions, he must win approval from two-thirds of the neighborhood, and Canada is in the process of doing just that.

Though he hasn't been able to reach all of the residents, Canada said that about 90 percent of

those that he did speak to were in support of the subdivision. Though he thought he could get the remaining signatures by the commission's next meeting, they gave him another month to ensure he had adequate time.

"I'm finding myself on a touchstone, apparently, with a lot of history before me," said Canada. "This has been an education, to say the least."

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Compost fire at Hornsby Bend plant to cost city some \$9 million

By Mike Kanin

The **City of Austin** spent nearly \$3 million to extinguish a February fire at the **Hornsby Bend Biosolids Management Plant**. According to a memo from **Austin Water Utility director Greg Meszaros** to Mayor and Council, the utility was forced to let out a contract to **OMI Environmental Solutions** in order to put out fires that spread among compost at the facility.

The utility is now set to begin cleanup operations. According to the memo, those could take up to two years and cost city taxpayers an additional \$6 million.

The utility placed an item on the June 20 Council agenda asking for ratification of the additional firefighting expense – something of a formality, considering that the work has been completed.

In addition to the cost associated with putting out the fire, the memo lists a host of next steps that will ultimately lead to the reopening of the facility to **Austin Resource Recovery** composting on July 1. Resource Recovery spokeswoman **Alexandria Bruton** says in the meantime, yard waste – the source of the compost at Hornsby Bend – is being processed under a temporary **Texas Commission on Environmental Quality** permit at the no-longer functioning FM 820 landfill. It is then transported to Hornsby Bend.

In the memo, Meszaros notes that the fires were likely caused by spontaneous combustion, and that high winds caused the flames to spread rapidly. Though the **Austin Fire Department** responded to the incident, they did so "to prevent the fires from spreading and becoming a wildfire."

The utility then turned to OMI to finish putting out the fires. "Compost fires are not your typical fire," Austin Water's **Assistant Director of Treatment Jane Burazer** told *In Fact Daily*. "We needed specialized equipment brought in to fight this fire."

It took OMI three days to put down the most dangerous portions of the blaze. However, the company continued work at Hornsby Bend from March 4 through March 22. Between Austin Fire and OMI, 6.7 million gallons of water was expended from "on-site ponds." Nearly 5 million gallons was later replaced.

According to the memo, post-fire cleanup operations will prioritize Resource Recovery's yard waste grinding site. As part of that effort, the utility will solicit bids to clear 200,000 cubic yards of what Meszaros calls "burnt and charred materials left over following the fire" – a figure

roughly equivalent to “10,000 to 12,000 haul trucks of material.”

In the memo, Meszaros adds that “compost piles, by nature, are susceptible to spontaneous combustion and long term drought conditions have increased these risks.” He writes that, “in response, Austin Water is taking steps to mitigate the risk and strengthen on site fire suppression capabilities.”

According to Meszaros, those efforts include reconfigurations of the size, shape, orientation, and spacing of compost and the purchase of water cannons.

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Whispers 6-14-13

Fitch rates AWU bonds AA- . . . One of the three major ratings agencies assigned an **AA-** rating to two series of **Austin Water Utility** refunding bonds. The agency, **Fitch**, also boosted the ratings of a series of combined utility bonds from AA- to AA. Another combined utility systems bond series was affirmed at AA-, as was a series of water and wastewater revenue bonds. Fitch pronounced its outlook for the bonds it rated as stable. As part of its rating statement, the agency cited recent rate restructuring efforts. On the positive side, Fitch analysts found that “an increase to the fixed charge component of the utility bill is a positive credit development and should reduce variability in revenues related to demand.” However, they also saw negatives that would appear to reflect at least some measure of the weight of conservation on utility revenue. “Rates were increased by a combined 5.5 percent in both fiscals 2012 and 2013 but the revenue impact was muted from original expectations due to lower sales,” the firm notes.

. . . **ROT Rally takes over Eastside, Downtown streets** . . . Beginning at 6pm tonight, the **Republic of Texas (or R.O.T.) Biker Rally** will take place along parts of **East Austin** and along **Congress Avenue**. A motorcycle procession will begin at 8pm at the **Travis County Exposition Center**. Motorcyclists will be accompanied by a police escort from the Expo Center, toward downtown along **E. MLK Boulevard, Webberville Road, Oak Springs Road, and west on E. 11th Street**. The parade will conclude along Congress Avenue, and full road closures will take place between 6pm and 3am for the remainder of the R.O.T. Rally downtown. Congress Avenue will be closed between Cesar Chavez and East 11th Street and in between Colorado and Brazos. A large number of pedestrians are expected in the East 6th Street area and a public safety closure will likely be required west of the frontage of IH-35 and Brazos. . . . **Austin Energy leads nation in Green Power sales** **Austin Energy**

announced this week that it led all public power utilities in the country for sales of renewable energy in 2012 and finished second in the nation among all utilities. That was according to rankings by the **U.S. Department of Energy’s National Renewable Energy Laboratory**. Austin Energy sold 744 million kilowatt-hours of renewable energy through its subscription-based **GreenChoice program**. Austin Energy and **CPS Energy** in **San Antonio** – another public power utility – were the only electric utilities in Texas ranked in the top 10 . . .

DeBeauvoir receives award from LWV . . . **Travis County Clerk Dana DeBeauvoir** has been named the 2013 recipient of the first **Making Democracy Work** award from the **Austin League of Women Voters**. DeBeauvoir received the award at the organization’s reception Tuesday evening. The award was presented to DeBeauvoir by former State Rep. **Wilhelmina Delco** at a reception held at Green Pastures. Former State Sen. **Gonzalo Barrientos** acted as

master of ceremonies for the event. This is the first year the Austin League of Women Voters has presented such an award. . . . **Martinez to kick off Urban Roots Lunch Series** . . . **Council Member Mike Martinez** will join **Urban Roots** to kick off their **Community Lunch Series**. Today's lunch will be the first in a series of three lunches featuring local chefs that team up with a group of **Urban Roots Farm Interns** to prepare and share a seasonal, multi-course meal that incorporates fresh produce grown and harvested on the Urban Roots Farm. Urban Roots provides paid internships to youth interns to grow food for the community on 3.5 acres in East Austin. Youth learn valuable life and job skills while gaining knowledge in nutrition, healthy cooking, and sustainable farming practices. The event is set for 11:30am to 1pm at the Urban Roots Farm at 7651 Delwau Lane.

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