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CITY PLANNING COMMISSION
Austin, Texas

Special Meeting -- September 21, 1970

The meeting of the Commission was called to order at 7:00 p.m. in the Electric Building Auditorium.

Present

S. P. Kinser, Chairman
Bill Milstead
Walter Chamberlain
Alan Taniguchi
C. L. Reeves
M. J. Anderson
Jack Crier
Fritz Becker
Jack Goodman

Also Present

Hoyle M. Osborne, Director of Planning Department
Caroline Schreffler, Administrative Secretary

ORDER OF BUSINESS

C2-70-4(d) ZONING ORDINANCE: Interim Revisions

Public hearing for the consideration of proposed flood hazard regulations

Mr. S. P. Kinser stated to all present that this meeting is a public hearing to allow the expression of views and to answer questions concerning the proposed Flood Plain Ordinance. He introduced the Commission members. As Mr. Kinser has been out of town for the past two months, Mr. Bill Milstead served as Chairman of the meeting. Mr. Bill Milstead briefly reviewed the history of this proposed Ordinance. In May, 1970 the City Council referred the proposed Flood Plain Ordinance to the Planning Commission and requested that they review and consider pertinent information regarding this Ordinance and any appropriate modification or alternative, and submit their recommendation to the Council. The Commission has held two hearings to hear expert testimony on this proposal, one in May and the other in June. A decision was reached in June that this Ordinance should not be considered as a vehicle for park acquisition and that parks should be considered separately from the Ordinance. At the June meeting, the Parks and Recreation Department was requested to submit a proposal for the Barton Creek area. This proposal was submitted in July and in August the Planning Commission submitted the basic Barton Creek Plan to the Council, with the recommendation that they recognize this preliminary plan and provide for acquisition of those tracts subject to early development, or those tracts acknowledged to have an inherent part in the plan. The Planning Department Staff has made alterations and revisions of the original Flood Plain Ordinance provisions, which has resulted in the

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Ordinance under consideration at this time. The Planning Commission has taken no stand for or against this proposed Ordinance. Mr. Milstead requested that the groups present appoint a representative to speak for them, with proponents and opponents speaking alternately, each speaker limited to five minutes. Mr. Osborne explained that several items have influenced the consideration of this Ordinance by the Commission; a series of technical problems, economic considerations, issues of regulatory processes and constitutional considerations. The constitutional considerations are:

1. The Ordinance must be enacted to serve valid public objectives or ends.
2. The Ordinance means used must be reasonably related to a valid objective.
3. Similarly situated individuals must be treated equally; if different regulations for different situations are required, the classification must be reasonable.
4. If the Ordinance vests discretionary power in an administrative agency, the Ordinance must provide sufficient standards to prevent the arbitrary exercise of this discretionary power. This refers to the Special Permit procedure vested to the Planning Commission.
5. The property owner must be left with some reasonable use of his property, primarily economic use.

Austin has had flooding along its creeks and streams and it is probable that such flooding will occur in the future, even in areas thought to be protected from flooding. Flooding produces hazards to persons and property. People should be protected where possible and property should have reasonable controls for future development. In turn, the community should be relieved, at least in part, of the potential burden of damage and loss of life which could result without reasonable development controls. Under Federal and State legislation it is now possible for a community to establish a program that will allow individuals to obtain flood insurance at reasonable cost, with the potential of reduced individual hardships and community cost if flooding occurs. Mr. Osborne further stated that he felt that this proposal is not a judgmental zoning issue, such as high or low density development, or small or large streets, but with the community's relationship with natural forces, which cannot be regulated as in zoning cases. Nature is being altered and care and thought should be taken regarding the present and future consequences of this alteration. With these objectives, the Staff recommends the adoption of this Ordinance. Mr. Charles Graves, City Engineer, discussed the extent and nature of flooding in the area of the City. A major charge of the Department of Public Works is to know what is going to happen on the area creeks and the Colorado River, and how to deal with it, particularly in an engineering sense. This is a difficult task, and mistakes have been made. The Department would prefer to plan ahead to avoid mistakes. Unfortunately, most of the Department's work at this time is correcting past mistakes. The City Government does not have the resources to obtain and analyze the data needed for flood control. This information has come from the most reliable sources available; the United States Corps of Engineers, the Texas Water Development Board and the United States Geologic Service. The two basic concerns in the City are the

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Colorado River and large and small creeks. Mr. Graves pointed out on maps the information available on the Colorado River, Boggy Creek and Barton Creek, showing 50-year flood plain and the 100-year flood plain information. There is not enough data available at this time and it is proposed to collect additional data as soon as possible, regardless of this Ordinance under consideration. The Department of Public Works feels that they are responsible for providing the citizens of Austin with information as to where flood hazards exist, and the severity of such hazard.

Mr. Trigg Twichell of the United States Geologic Service explained to the assemblage the methods of gathering data. He stated that the City of Austin is to be congratulated upon entering upon this program of gathering data for flood control and enuneralated past errors based on too little information. He feels that the data now available on the Colorado River, Bull Creek and Barton Creek is sufficient for good planning. The Geologic Service is charged by the United States Congress with the responsibility of collecting unbiased data on the water resources of the United States to evaluate the mode of occurrence, the quantity, quality and maximum flow of the streams, for the use of those who are building water control and water use facilities. Since 1893 continuous records have been collected of maximum flow, flood flow and flood plain conditions. This data is published and is available to the public. The 1935 flood was basically a 100-year flood, which is the basis for the design of the present spillway on the Colorado River. This storm generated 480,000 feet per second discharge. The Lamar Street bridge is designed to be submerged. The information on quantity and peak rates of flow is known, only the frequency of floods is not known. Flooding can occur again in Austin, and the governmental body of the City must decide what chances they wish to take regarding this possibility. Both San Antonio and Austin have had three large floods in the past 100 years. The Geologic Service can only give statistical information on the probability of flooding. Studies show that urban development will cause flooding on small creeks two to three times greater than rural development, creating a great need for proper planning. These facts, the economic considerations and the political desires of the community must be combined to create a flood control plan for the City.

Mr. Graves pointed out that while the dam upstream from the City held back most water, there is a drainage area below the dam consisting of 270 square miles. This area is taken into account in the collection of data.

Mr. Charles Marin, United States Corps of Engineers, stated that he was pleased at the interest shown in the problem of flood hazard. The Corps uses the basic information accumulated by the Geologic Survey, which is obtained by measuring discharges, noting the high water marks and flood heights. The Corps is at the present time preparing a report for the Congress on the Colorado River. They have studied all the past floods on the Colorado River, which indicates that one major flood will occur in 100 years. Some control of development of the area should be maintained.

Mr. Graves stated that in the enforcement of subdivision regulations, three things can be done with flood waters; they can be avoided, changed or lived with.

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Many people would prefer to have a definite flood line on a map indicating the flood possibility, but this is impossible due to changing conditions. Runoff changes with development, changing the data previously established. This is the primary reason that homes are being threatened by flood at this time which were not threatened in the past, and as Austin continues the present rate of development this problem will increase. The channels themselves change, increasing the complexity of regulation. The City has primarily used the 25-year flood for the regulation of development.

Mr. Osborne explained that if this Ordinance is adopted under the regulations of the City and Texas Statutes, it does not apply to regulations on the ground. There would be subsequent hearings to apply the regulations to specific pieces of property. In addition, these regulations would not be applicable outside the City limits.

Mr. Russell Fish, President of the Austin Environmental Council, spoke in favor of this request as a vehicle for the protection and preservation of the creeks and streams in the area from destruction and pollution. The Austin Environmental Council feels that the proposed Ordinance is not strict enough, but can be the basis for a workable Ordinance which will be agreeable to everyone involved. It is felt that this Ordinance would not hinder subdividers, as it is based on the 25-year flood plain, which is being used presently in subdivision regulations. The Ordinance would merely set standards as is being done by the other codes used by the City. Mr. Fish read the following statement prepared by the staff of the Austin Environmental Council:

"The basic issue involved in the Flood Plain Ordinance is whether the City of Austin, as a municipal government, is willing to face the future and plan for it. No one who is urging the City to regulate the overflow areas of our water courses expects to benefit individually other than as a member of the public. We are not posing as water experts on floods. If there is any better authority on this subject than the U.S. Corps of Engineers we do not know about them.

The L.C.R.A. relied on the Corps of Engineers in building their dams. They call in the Corps of Engineers to take charge of the dams when floods threaten. The Corps has the full responsibility to open the gates. The lives of many persons are directly dependent upon their expertise, their criteria and their decisions. Why then would anyone question their ability to delineate the Flood Hazard Areas below the dam they are operating? Surely we cannot rely on people whose opinions are not unbiased and who cannot qualify as experts.

The adoption of a flood control ordinance is not a condemnation of anyone's land. It protects innocent future owners from perils they cannot foresee. Furthermore, such an ordinance prevents future flood disasters that could cripple the City and bring on a catastrophe. At least 30 Texas cities, including Dallas, have moved to control flooding and to give their citizens the right to insurance protection by passing flood plain ordinances.

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Do we want to plan reasonably and intelligently for the future and enjoy the added benefits of greater health and enjoyment of our natural resources as our city grows? Or do we intend to continue the patterns of lakeshore and creek line development which will pollute our waterways and cause environmental deterioration?"

Mr. Dudley Fowler spoke against the proposed Ordinance, and referred the Commission's attention to a three-volume work prepared by two Wisconsin University professors for the use of Water Resources Council, which he feels is a guide to avoid payment for the taking of private property. Mr. Fowler feels that this proposed Ordinance was taken verbatim from this work, and that the sole purpose of this Ordinance is the taking by police power of private property for public use, instead of normal channels, such as the power of eminent domain with payment to the property owners involved. Having attended the previous meetings on this Ordinance, it is felt that the gist of the technical data presented was that the flooding facts are not known, and several years will be required to obtain this information. The one exception is Barton Creek for which information is available; this study was made in order to have the Commission confiscate this land through the City's police power wrongfully and in contradiction to both the State and Federal Constitution. This proposed Ordinance is neither sound or realistic, it is a purported Flood Hazard Ordinance which should be called a Land Grab Ordinance. This proposed Ordinance asks the property owners to place the future of their land upon a series of unknown factors, which is similar to signing a blank check. The original rationale for the Ordinance was the benefits which would be afforded the community by flood insurance; this has changed to land control and land management. If this Ordinance in the present form is adopted, it will mean the destruction of approximately 18 million dollars worth of property on Lake Austin, destruction meaning removing this property from any beneficial use; this is just land value alone, and does not take into consideration the improvements or the number of people who would ultimately be expelled from their property. Mr. Fowler stated that if this Ordinance is passed, it will create endless arguments between the citizens and legal action between the citizens and the City government; this legal action will be expensive both to the citizens and the City. The present excellent scenic development on Lake Austin and Shoal Creek will be destroyed, as they will not be allowed to be repaired, which will create deterioration and slums along the creek banks. The Special Permit procedures will take up much time for the landowners and the City. Ultimately, hundreds of people will be displaced by the passage of this Ordinance, as it calls for the destruction and removal of homes. The basic philosophy of this Ordinance is that if property is going to be damaged, it should be destroyed immediately. For years Austin has boasted of its waterways, which constitute one of the greatest assets of the City, and which are now going to be done away with. The position of the Corps of Engineers on the situation on Lake Austin is confusing; its flooding potential seems to be based on the upstream facilities, but there is much additional storage upstream from Lake Travis which is not being taken into account in the Corps' computations of flood levels. Mr. Fowler enumerated several reservoirs and their capacities; he feels that the Corps did not take these facilities under consideration as they did not have control over them. The contrast between theoretical flooding and actual flooding should receive serious consideration. The 1935 flood was a major flood which caused much damage, but since that time

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Mansfield Dam has been constructed and many other facilities; furthermore, a study is presently being made for the construction of additional water facilities. The need for water along the Colorado River has grown since 1935, and this water is being used at such a rapid rate that the reservoirs do not spill over in times of much rain. In 1957 two floods came close together, but due to the L.C.R.A.'s excellent use of the water storage available were contained by the Colorado River. It appears that some large power has dictated that there shall be regulations on the 100-year frequency, which is five generations: the value, the cost to the community and the worth of this regulation should be seriously considered. This power has dictated the need for flood insurance, and to get this flood insurance the local determination of flood hazards must be given over to the Corps of Engineers, which will at some future date determine where the flood lines are. This Ordinance is open-ended and is an unconstitutional taking of private property.

Mr. George B. Shepherd, Sr., Chairman of the Executive Committee of the Austin Taxpayers' League spoke in opposition to this Ordinance. He requested information as to the number of acres of land which would be affected, and was advised that this information is not available at this time. Mr. Shepherd asked what effect this Ordinance would have on the general real estate taxes; Mr. Osborne stated that in his opinion any direct effect would be minimal, primarily because Austin is basically open-ended, with the capacity to grow outward and the capacity for redevelopment. He cited the city of Boston as an example of an enclosed city, with no room for expansion. Mr. Shepherd stated that his group has estimated that the City has withdrawn over one thousand acres per year from private use; Mr. Osborne stated that this would primarily be street right-of-way. Mr. Shepherd asked how much warning the residents of the City would have in case of a major flood. Mr. Graves stated that on the upper reaches of the Colorado a flood could be noted three days before reaching the City, but on the local streams with hilly terrain and rapid runoff, an individual homeowner could be flooded within 15 minutes. Mr. Shepherd asked if the effect of the flood control dams which have been constructed have been adequately considered in designating the flood areas in the Ordinance; Mr. Osborne stated that to the best of his knowledge from discussions with Mr. Graves, the Corps of Engineers and the Water Development Board these facilities have definitely been taken into account. The 1935 flood had a rise in excess of 40 feet, the rises shown on the current maps show rises of from eight to a maximum of 27 feet, with a typical figure being from 12 to 15 feet on Lake Austin. Mr. Shepherd stated that as the 1935 flood waters reached 6th Street on Congress and asked if it would be necessary to clear out everything between those two points. Mr. Osborne stated that the Ordinance does not cause or require the clearing out of any existing structures in any location.

Mr. John McPhaul, President of the Austin Association of Homebuilders, spoke against the proposed Ordinance. He has seen three separate drafts of this Ordinance, which begin with the idea of preservation of life and property, and the fact that without this Ordinance Federally-subsidized flood insurance will not be available. During the tropical storm which recently hit the Gulf Coast, which was much more severe than any storm which might occur in Austin, not one life was lost. Regarding the many cities which have passed such Ordinances as mentioned by the proponents, 80 per cent of these cities are coastal cities, which are prone to floods and storms. Since 1940 when the subdivision regulations

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based on a 25-year flood plain were passed, more people have been killed trying to walk across the expressway than by flood. If saving lives is a primary concern, the driving-while-intoxicated laws should be more strictly enforced. The Homebuilders Association also wishes to preserve the area streams, and is also against pollution; but people are polluters and as long as there are people there will be pollution. Laws against crime have not done away with crime. The various ordinances in existence at this time are adequate to serve the public and private interests in the City. The State, County and City agencies have laws which protect the City against the pollution of the public water supply. In addition, the City's extraterritorial jurisdiction over subdivision planning and development serve this purpose. Contrary to Mr. Osborne's statement, the City does have control through subdivision development extending to five miles outside the City limits. Strict application of the present drainage and drainage easement ordinances have worked very well to date, and the experience of the past 25 years have proven these ordinances a sound and practical approach to prevent and minimize flooding in the City. The City itself plans and constructs storm sewers, bridges, and other drainage facilities on a 25-year flood basis, which is the same policy the Planning Department presently requires in subdivision planning. The Flood Plain Ordinance would require private citizens to adhere to 100-year flood level standards. It is doubtful that the City will adhere to this 100-year standard or require other governmental agencies such as the Highway Department to follow the 100-year standard in their street, bridge, storm sewer and utility construction, as this would be economically imprudent. The L.C.R.A. authorities have stated that there is no appreciable risk of flooding from the Colorado River due to the construction of the Highland Lakes Dams. Neither the landowners of Austin nor the City knows at this time where the 100-year flood level is on any of the creeks and waterways in Austin, with the exception of Barton Creek. As it presently reads, the Ordinance for all practical purposes confiscates the property owner's land without compensation; this confiscation is brought about through use and construction prohibitions. The Ordinance is divided into two categories, the flood channel or 25-year level, and the flood plain, which is between the 25 and 100-year level. Some of the restrictions in the flood channel are:

- a. No permanent or transient living quarters. Whether existing structures can be used as a non-conforming use is still unclear.
- b. No cutting of trees six inches in diameter or greater. The National law states that in order to move water faster, a cleared area is desirable in order that debris will not collect and impede the flow of water. This implies that this Ordinance is for the purpose of acquiring open spaces only.
- c. No clearing of more than 20 per cent of the area. This also implies the acquisition of property for open spaces.
- d. No parking areas requiring more than 20 per cent of area.

There are more restrictions in this area, which are available to the public, and the Homebuilders Association objects to these restrictions.

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The restrictions on the flood plain include:

- a. No new residential or commercial structures unless they are on stilts or fill above the 100-year level. The tax base will remain the same because this property will be still owned and maintained by the owner, and taxed by the City, but the property owners will not be able to use the land.

Mr. McPhaul stated that under the category of conditions which may be attached to structures or uses the City Administration is given unlimited and vague power, such as, modification of waste disposal and water supply facilities, limitations on periods of use and operation and imposition of operational controls and sureties and deed restrictions. There are no guidelines as to how and who will administer this Ordinance. The Ordinance suggests requirements for construction of channel modifications, dikes, levies, and other protective measures. This is not applicable to this area, but would apply to a coastal city such as Corpus Christi. These modifications would probably be more costly than the worth of the property. Also included are floodproofing requirements, anchorage of stored materials, unusual construction requirements, and installation of pumps and other preventive measures to prepare for 100-year floods. Mr. McPhaul stated that the life expectancy of a pump is 25 years, and questioned how such a pump could be installed to handle a 100-year flood. There are no exceptions or specific provisions for Lake Austin or the Colorado River. Homeowners below the 100-year level cannot rebuild except to the extent of assessed tax value before their home was destroyed by fire, etc., and then only by City permission. This means that due to inflationary increases, the property could not be replaced at value. The Federal insurance aspect is highly exaggerated. According to the Federal Flood Insurance Act, if a city adopts an ordinance to become eligible for Federal flood insurance, anyone who fails to buy flood insurance will lose their right to get Federal financial disaster aid for flood losses occurring more than a year after the adoption of the ordinance. If only 10 per cent of the people of Austin buy Federal flood insurance as a result of a flood plain ordinance, then 90 per cent of the people will not be eligible for Federal financial assistance for flood losses. In order to gain by this, 50 per cent of the citizens of Austin would have to buy this insurance and it is very unlikely that they would. Only two or three cities in Texas have adopted this type of Ordinance, the others have adopted a resolution stating the possibility of its adoption by December 31, 1971. In the Federal flood insurance form, no one is exempt; in the City's proposed Ordinance the local, State and Federal governments are exempt. It is felt that these agencies should be subject to the same regulations as the citizens.

Mr. Edward Kutac, President of the Travis Audubon Society, spoke in favor of the proposed Ordinance. The Society wishes to preserve the creeks and streams in the area, particularly Barton Creek and Bull Creek. Waller Creek and Shoal Creek are examples of what will happen to the area streams if they are not protected from intensive development. They feel that future generations will never know the beauty of the streams unless protective measures are taken.

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Mr. J. M. Owens, Assistant District Engineer for the Texas Highway Department, District 14, opposed this request and read the following basic policy statement on the proposed Flood Plain Ordinance:

"We are not opposed to some sort of ordinance to control activities in the flood channel and flood plain, but we feel that the Ordinance as written is too restrictive for our activities in these areas. As you know, we have for many years designed and constructed structures in the flood channels and flood plains over the entire state. Our present standards call for our structures to take care of anticipated floods, varying from two to fifty-year frequencies. On Interstate work, our bridges are built for a fifty-year frequency on the main lanes and lesser frequencies on the frontage roads. Storm sewers are designed on a ten-year frequency. On primary highways, our major structures are designed for a twenty five-year frequency and storm sewers on frequencies varying from two to ten years, depending on traffic volumes. On secondary roads, the frequencies vary from two years upward, depending on traffic volumes. In other words, we are opposed to anything which might be interpreted as a change in the design criteria for highway bridges, particularly the adoption of a 100-year design frequency and the prohibition of widening or rebuilding existing structures. We have these questions.

1. Whose 25-year or 100-year frequency will be used.
2. Who will be responsible for issuing special permits in both the flood channel and flood plain.
3. Will the flood channel and flood plain area change with each construction or usage activity.

Mr. Lee Arbon, 5107 Turnabout Lane, spoke in favor of this proposal. He stated he had come to Austin to retire and feels the City has many things well worth saving. He feels that a flood plain Ordinance is in order, but it must qualify. All of the opposing parties should get together and work out these problems.

Mr. R. E. Leigh, 3504 Lakeland Drive is not in favor of this proposal. He has lived in Austin for 37 years and has seen the floods. He owned property which was damaged in the 1935 flood, but it was a very profitable investment. Property well-situated in the City can suffer these damages and recover. He stated that he wishes to warn citizens about the unending encroachment on the liberties and rights of the people. They should not be apathetic. He has noticed a reversal of a trend, in that the states of Massachusetts, Michigan and New York's State Supreme Courts have been nullifying the power of eminent domain.

Sandra DuPuy, 2411 Scenic Drive, spoke in favor of this request, as a joint property owner on Lake Austin. She stated that she has recently read and considered the Federal Insurance Act of 1968 and this Flood Plain Ordinance under consideration. This issue concerns responsible land use along creeks, streams and lakes along the Colorado River. These land areas are natural variables. If left up to un-coordinated and self-interested groups of land owners and land speculators, it is felt that the citizens of Austin will lose their hope and a dream. As our

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society has recently begun to realize, land use along public waterways and tributaries places each individual in a position of responsibility for the common good. Each individual's garbage is an offense and a danger to his neighbor. We must have faith in our corporate ability to work and plan together to save our environment, or place the next immediate generation in grave danger. She feels that a strong Flood Plain Ordinance is the first step toward preserving the water sources of Central Texas. It is the first step in controlling pollution, which affects Texans along the Colorado River all the way to the Gulf of Mexico, and finally, as an aid to cease the massive kill of marine life in the ocean system itself. Each community in the world must do this and Austin cannot call itself an exception. She stated that she does not understand why the opposition does not see that the best way to save their land is by controlling the devastation to Lake Austin which little or no flood line and shore line development control will cause. If development continues at the present rate, within five years no one will want to live on Lake Austin, as it will be an open sewer. Who will, without the Ordinance stipulating it, voluntarily give homebuilders the information that a subdivision is directly within a predicted flood channel. Who will have the self-control and wisdom to limit large areas of land fill to prevent siltation, which eventually chokes streams and springs. Who will consider the quality of life for all Austin citizens and the effect of our living on the Colorado River when they can sell an acre of land for \$50,000 to \$100,000 to developers who often use land fill and thousands of square feet of asphalt, creating an immediate large collection of garbage, oil residue from automobiles and rapid runoff, which can only runoff into the nearest water source with each rain. The citizens of Austin should set aside the loud wails of a few self-interested citizens who stand to lose their dream of monetary gain from rapid land value inflation, due in part to our rapid population increase. Plans must begin now for the quality of life for the generations of people who will live here tomorrow. Austin can be the City in America which did turn the tide. A strong Ordinance is supported in the name of environmental planning, on behalf of the children who will live crowded on this earth and who will need every green area which can be saved for them, the water for life, and hopefully, a source of spiritual calm through recreation. In supporting this Ordinance, the citizens of Austin have everything to lose if this important step is not taken now.

Mr. David Barrow, 4101 Edgemont Drive, is in opposition to the proposal. He was a member of the City Planning Commission for eleven years and Chairman of that body for nine years. For the past four years he has been Chairman of the Regional Planning Commission. Those who know him know that he is as interested in the welfare and beauty of the City as any citizen in it; his statements concerning this proposal cannot be construed as a desire to profit personally to the detriment of the people of Austin. Clear thinking is needed on this Ordinance; many of the desires of the proponents are also the desires of the opponents. The proponents are in favor of preserving the beauty spots, the streams and lakes in and around the City, but it should be done in the name of saving the environment, not as a Flood Plain Ordinance. As a resident of the City for sixty years, Mr. Barrow does not see the need for such an Ordinance, but if it is needed it should be studied as flood control only. The problem of saving Lake Austin from pollution can be handled by the City under existing

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Ordinances, such as the latest such Ordinance which prevents septic tanks closer than 200 feet to the lake. This proposed Ordinance gives unlimited power to unnamed persons. This Ordinance should be considered on the basis of flood control only; the problems of the environment separately.

Mr. Alex Moorelatos, 2108 Matthews Drive, favors this proposal as a property owner and as a representative of the 700 Austin residents who placed an ad in the local newspapers in April in which they commended the City management for their initiative in undertaking the enactment of a Flood Plain Ordinance. He considers this Ordinance as protection for the future and feels that younger citizens are more used to the idea of buying insurance for the future as they have not acquired other assets which would offset a catastrophe, should one occur. Even more important than individual benefits are the benefits of this proposal to the community. While the opponents contend that the danger to life and property has been greatly exaggerated, it is felt that they have underestimated the likelihood of damage which may occur. The testimony from the Corps of Engineers has not been contradicted; most importantly, as cities develop the danger from flooding keeps increasing. The opponents should consider the recent flood in San Marcos. The opponents grossly underestimate the effect this proposal would have on their enjoyment of their property. In owning property it is necessary to conform to certain standards, such as housing codes. We are living on a crowded planet, which is growing more crowded each day. The word ecology means the management of one's house; we live in our environment as much as we do our private property. This Ordinance is no more than a device to inject a measure of rational control and planning for the enjoyment of property, both for the individual owner and the public which views this property from afar. The individual owner cannot enjoy his property if his neighbor builds an ugly structure or does not care about pollution or beauty. It would be ironic if, at a time when the Nation is becoming more aware of the dangers resulting from overcrowding of our cities and over-use of our resources, the city of Austin took a step backwards by ignoring this proposal and allowing the existence of conditions which are becoming more dangerous every day, rather than a step forward to a rationally planned development of the resources of the City. Austin should not be allowed to become another ugly, trapping city as in the East, from which so many people have fled to Austin, contributing to its growth. For these reasons, Mr. Moorelatos and the 700 citizens already on record urge the Commission to recommend to the Council the enactment of a Flood Plain Ordinance which meets the minimum standards of the Federal Government.

Mr. Charles W. Hackett, Jr., 102 West 33rd Street, stated that he is neither for nor against this proposal, but wished to share his knowledge of flooding, having lived in Austin most of his life. He discussed the 1935 flood, which knocked out the power plant and the water purification system, and reached a height of 43 feet on 1st Street. This was the last major natural flood within living memory. In 1938 a man-made flood occurred, which was caused by faulty operation of the floodgates upstream. A hearing was held and more stringent controls were placed on the operation of the floodgates. Mr. Hackett requested that whether or not his Ordinance is adopted, some member of the City government again clarify with the proper authorities the proper operation of these floodgates so as to prevent a recurrence of this flood. He requested information as to the height of the flood waters during the 1950 floods. Mr. Charles Marin stated that due to the fact that the reservoirs were very low, only water for

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power was released during these floods, and in the 1952 flood the water at Austin was four feet above normal. In 1957 there were three floods after minor drought, and only a portion of the Colorado River was affected, which Mansfield Dam was able to control. A height of 17.6 feet was reached at the Colorado River bridge at that time. Mr. Marin requested that the record state that the figures given by Mr. Fowler on the storage facilities of several reservoirs on the Colorado River above Lake Travis were erroneous, and wished to state that these facilities were considered in computing flood plains at this time.

Mr. C. L. Reeves requested of Mr. Marin information as to what height could be expected on Lake Austin with the present storage facilities if the 1936 flooding circumstances should occur today. Mr. Marin replied that this size flood would have a frequency of occurrence once in every 40 years; if all facilities were normal, the release of water into Lake Austin would raise the level four to five feet.

Mr. Walter Cavin, 2800 Scenic Drive, opposed this proposed Ordinance. As a property owner on Lake Austin, he is primarily interested in the way in which this Ordinance would affect the lake. This is a very difficult problem and there is a sharp difference of opinion with regard to the over-all objective and the effect which this Ordinance would have upon the community. In resolving this problem, the community as a whole must be considered. Because of the differences existing in various creeks and watersheds, it is felt that this all-encompassing Ordinance should not apply to Lake Austin. This Ordinance would not accomplish the objectives as stated by the proponents; if building is not allowed on the lakeshore, there will be nothing there to protect. Any governmental action which imposes upon a group which is so sharply divided a restriction which is detrimental to their interests on the one hand, and which does not meet the objective of curing the problem as defined by the proponents on the other hand, should be considered very carefully.

Mr. Lester Palmer, representing the Chairman of the Board of Regents of the University of Texas, stated that if the adoption of this Ordinance would ultimately affect the development of the University, particularly the development planned along Waller Creek, the University administration would be violently opposed to its passage.

Mr. Jack Goodman requested of the staff whether this Ordinance would affect the properties owned by the State. Mr. Osborne stated that it would not affect the State Government in carrying out its governmental functions, primarily the development of highways and the functions of the University. On some occasions the State Government may engage in proprietary or incidental functions which could be subject to regulation. These would be extreme or isolated instances. The variety of things associated with the State Government would not be subject to regulation; not by intent, but simply because the City of Austin is a creature of the State Government, and cannot regulate the State Government. The Chairman of the Board of Regents has been advised that there is an issue in regard to this matter. The State Highway Department has also been advised that there is a general issue regarding this matter on a statewide basis. The State Government must be a participant in consideration of flood hazards. In both cases, full agreement was reached on this concern and the recognition that this matter must be explored at considerable length as the State will have an obligation. For example, the Water Develop-

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ment Board is the coordinating agency as designated by the Legislature for studies, basic programs and the insurance program. Inter-governmental relations must be effected.

Mr. Barney Bowling, 1707 Palo Duro, stated that in 1935, he was 25 years old, and at the height of the flood, he dove into the river about 200 feet below the Austin Dam and swam to the Montopolis Bridge. He wished to observe that the current was not very strong in a flood of this type.

Mr. Wroe Owens, attorney, and Chairman of the Flood Plain Ordinance Committee appointed by Mr. John Nash, President of the Austin Chamber of Commerce, made the following statement:

"Under the heading of ecology, the offering of insurance protection and recreational uses, the Flood Hazard Ordinance, Proposed Flood Plain Ordinance and related matters have been submitted to and reviewed by your Flood Plain Ordinance Committee.

First, let us report to you that the facts that were made available to use through various media reflected ambiguities, lack of knowledge and total unpreparedness for intelligent review and discussion.

Second, let us report to you that your City Planning Commission is composed of good citizens who are contributing voluntarily of their time, energy and abilities in an effort to fairly, impartially and intelligently appraise the value and benefits of such proposals.

1. Our investigation reflects that sufficient ordinances exist, if enforced, to control the use or improper use of the property in question.

2. Our investigation reflects that the City has authority to condemn and acquire those lands needed for public use and beautification.

3. Our investigation reflects that neither the Planning Commission, City Council or Army Engineers have any definite knowledge of the exact

4. Our investigation reflects an "open-end" ordinance is proposed without limitation as to time, place or enforcement body.

5. Our investigation reflects the creation of a conflict in administration between the "City Administration" and the Planning Commission.

6. Our investigation reflects very little benefit to be gained by this of citizens without just compensation and due process of law.

7. Our investigation reflects very little benefit to be gained by this ordinance and the establishment of a procedure that could be extended to all types of police protection such as parking, walking, riding, various confiscations, etc. without following our very well-established rules.

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While we favor public parks, public recreation, etc., we believe in the use of existing methods for acquisition of the same and in this connection we recommend that if a particular area is a problem, then the City acquire equal or better housing facilities to be exchanged for those existing in such a danger zone.

Your committee respectfully recommends that the Chamber adopt this resolution to the effect that no needs exist for any such ordinance of the type proposed and that the adoption of the same would result in great damage to the City, economically, politically, socially and in the greatest enjoyment of our God-given benefits."

Mr. Rogan Giles, 3909-B East Avenue, spoke against the proposed Ordinance. He stated that everyone present is in favor of beautifying the creeks and the lake areas and in the protection of the environment. He represents a group which owns property on Town Lake, Delwood Center, Inc., in the East Riverside Drive area. Town Lake was created in 1960; at the time the property was covered by water and the city acquired it by eminent domain. In this process an overflow easement was established along all the property on Town Lake to 435 feet. The spillway level is 428 feet and anyone who builds on this property is charged with the fact that the overflow easement exists and the lake level can be raised seven feet. The same situation exists on Lake Travis. Many people did build in the overflow easement on Lake Travis and suffered the consequences in 1952 and 1957. He, too, saw the 1935 flood, and saw the Montopolis Bridge washed away. His property on Town Lake has a floor level ten feet above water level and is so constructed to withstand flooding. It is felt that the ecological aspects and prevention of pollution can be controlled by existing Ordinances. Insofar as flood protection is concerned, the U. S. Corps of Engineers should establish the flood lines, which could then be recorded in the deed records. Any property owner who builds below that line would do so at his own risk. It is not necessary to effect a taking of property by prohibiting construction below a certain level, while not providing compensation for this property. If the City needs the land for parks, the property should be condemned and paid for.

Mr. Jack Goodman asked if Lake Austin has a similar demarcation of overflow, and was advised by the staff that there is a line which has a relationship to overflow, but it is not consistent throughout the lake. The inundation easements are written into the deeds, but these too are inconsistent with the actual flood heights.

Mr. Leon Jaffe, 1526-A Brackenridge, spoke in favor of this proposed Ordinance, stating he would like to represent the interests of the future, the children and beauty. There is an essential conflict concerning this matter. The landowners along the lakes and streams feel that they should have the right to do what they wish with their property and to beautify it as they think is beautiful. On the other hand are the interests of the future and of the children who will live in this city which will be over-crowded and much bigger than it is at the present time. The most valuable asset to them will be beauty and having a peaceful place to go to for recreation. In the future, the areas around the creeks and lakes will have much more significance than at the present time. The proponents have taken the point of view that these lands will remain in the hands of private individuals and that the children of the future will look at the lands from afar.

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Mr. Jaffe feels that the children of the future will regard as absolutely essential that they will be allowed the use of these lands, and that the lands will be public property. This measure is an ecological strategy to freeze the present position of these lands, so that the people of the future will not have a jumbled mess of streets and houses obstructing the beauty and recreational value. This Commission must decide whether it is going to represent the interests of a small number of private landowners or the interests of the future, of children, of beauty and recreation.

Margaret Joseph, 109 Laurel Lane, appeared in opposition to the proposal, stating that she wished to know if the Ordinance would affect her property along Waller Creek. This property has been in the family for over 70 years and the City took half of their interest in Waller Creek for widening many years ago. Two floods occurred in her childhood and her father built two rock walls to protect his property, with no assistance from the City.

Mr. Osborne stated that any property along Waller Creek would be affected, as Waller Creek is subject to flooding. The effect of the Ordinance would be limited insofar as restrictions on or development of the property. It was pointed out that the Police Department Building is subject to inundation under severe conditions.

Mr. Raymond Tucker, 806 East 30th Street, spoke for the proposed Ordinance, if it is strong enough and can be enforced. He requested a legal definition of confiscation, and stated that he had read the proposed Ordinance and felt that the only restriction on property would be the possible use of it. Mr. Osborne replied that the general Ordinances of the City impose limitations and restrictions on the use and development of property, framed in terms of the public health, welfare and safety. Many cities, including several Texas cities, already have flood hazard zoning, which may or may not qualify them for Flood Hazard Insurance available through private enterprise and the Federal government. An example of this special purpose type of zoning is Airport Zoning, which restricts height of buildings on extensive areas both inside and outside the City limits for the purpose of protecting the traveling public, and those persons residing in the flight paths on the ground. There are gradations between regulations, acquisition of certain rights and outright acquisition of land. In this case, if the restrictions on the use of land were severe, the City felt the obligation to acquire the land. These same circumstances would apply to this proposed Ordinance.

Mary Ogden, 2604 Bridle Path, voiced opposition to the proposed Ordinance on the grounds that it is ridiculous to give away the use of land for 99 years on the chance that a flood may occur during one year. She feels that the beauty of the area lakes and streams should be preserved for future generations, but more importantly, property rights should be preserved for them. The individual purchases land knowing its drawbacks, and he should take the proper precautions. She feels that this Ordinance is just another way for the Government and the Hike and Bike Club to gain control over private property.

Mr. Russell Fish requested that the record reflect that he and his wife are responsible for the Hike and Bike Club, that they have spent over \$20,000 in personal funds to acquire land for these trails and have not taken one inch of land belonging to anyone else.

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Mr. R. G. Mueller, 1402 Wooldridge Drive, spoke in opposition to the proposed Ordinance. He stated that he has constructed a dike to protect his property, and he feels that the individual property-owner should be able to take protective measures. He feels that Town Lake and Lake Austin should be considered separately, and that the land value along the lakes precludes construction which would be detrimental to the area. The primary source of pollution of the lake is the people using the lake, not the people living on the banks of the lake. In addition, an Ordinance of this type should be reasonable and enforceable.

Mr. Gibson Randle, 801 International Life Building, spoke in opposition to this proposal. He owns property on Barton Creek and also represents other property owners there, whose property totals approximately four and one-half miles of frontage on both sides of Barton Creek. He stated that when a city considers exercising its police power, the protection of the public must be weighed against the individual's property rights who owns the land in question. The land in which he has an interest is above the flood line. He and the other property owners oppose the proposed Ordinance because if it is adopted it would put a complete blight on the 100-year flood plain throughout these areas, and wherever this occurs on vast areas of land in this City, the whole economy of the City is affected. He feels that there is such a remote public interest involved that the rights of the property owners far outweigh the public interest, which causes this proposal to be legally invalid. The restrictions of this Ordinance amount to a confiscation of the property, as the uses will be severely limited. Mr. Randle feels that this Ordinance is not legal. He feels that the City should compute the flood lines and acquire the land legally by eminent domain and purchase. Another possibility would be to record this flood line in the deed records, or that it be placed on the subdivision plats which would also be a public record. This would allow the propertyowner to make his own judgment as to the risk involved in construction on his property. As the U. S. Corps of Engineers uses topographical maps which are based on aerial maps, there would be many variations on the ground. These findings should be considered only presumptively correct, and each owner could question the validity of this line.

Mr. Ted Nuse, 406 Jesse Street, opposes this Ordinance on the grounds that it uses the flood plain issue to pass environmental, beautification and pollution controls. If this Ordinance is passed the City will acquire much additional land. Mr. Nuse questioned the feasibility of the City's maintaining and policing this land, as there is a shortage at the present time of personnel used in this capacity.

Mr. Richard Baker, 900 Brown Building, spoke in opposition to the proposed Ordinance. He stated that the owners of the land along the creeks and streams in the area will be vitally affected, but cannot speak as directly to the Commission as the owners of lake property, as there is no information designating how seriously the property will be affected. It is felt that the area of land withdrawn by this Ordinance along the many streams in the area will far surpass the amount affected bordering the lakes. There is a primary difference between the lake development and development along the streams. Lake development faces the lake, while streams are normally the rear property line of development. At this time, many property owners fence their property at the 25-year flood line as they do not like to care for large backyards. This Ordinance would move development further from the streams, causing a larger amount of land to be used for backyards, which would be uncared for. Maintenance

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of land along a creek is a serious problem. The failure to maintain this land is an even more serious problem. The requirement that individuals maintain this land with no adequate means of enforcement will result in weeds and garbage which will create infestation of rats and snakes. The 100-year flood plain will create a burden on the landowners and adversely affect the environment of the City.

Mr. James Babb, 6408 Shoal Creek Boulevard, stated he had no opinion concerning this proposed Ordinance. As a property owner on a creek, he is concerned with the additional runoff created by development upstream. At this time, flood waters are reaching his yard. Two to three times the runoff is created by urban development as opposed to rural development; in his opinion, allowing further development upstream will destroy his property investment. The City does not have excellent drainage control, as is evidenced by his problem after every rainfall. Mr. Babb asked who was responsible for the flooding of his property, and what guarantee he might have concerning the future of his property.

Mr. Osborne stated that mistakes have been made regarding additional drainage into the area streams created by more intensive development. The City has been involved in litigation on this problem.

Mr. Graves stated that after each rainfall his office receives such calls from residents being threatened by water. A record is kept of these calls. An improved policy and more strict control on the area ditches and streams are needed as undeveloped areas become developed.

Mr. A. H. Merchant, 807 West 31st Street, stated that the primary problem at this time is the lack of knowledge of the general public regarding the problems involved. The public needs to understand the terms being used. As a former engineer for the City, he has personal knowledge that much more information is available than is assumed by the public, for example, 100-year flood plains have been established on reaches of the area streams. At times the runoff of streams is increased, but not the peak flow of water. In order to improve the passage of the water, it is not necessary to destroy the beauty of the stream. He feels that the City has the legal means to effect considerable control, but this control is not being enforced. How the flooding will be controlled, who will control it, and how much effort will be expended in terms of money and personnel capable of providing the necessary experience in both the engineering and legal professions, must be seriously considered before adopting any Ordinance. A crash program of education is needed for the citizenry of the City in order that they may express intelligent opinions on this proposal. An Ordinance is needed which will clarify the ambiguities in the present code, and possibly additional criteria is needed, but even more needed is the setting aside of means to enforce these controls.

Mr. George Shepherd made the following personal statement in defense of the real estate developers who have been criticized by other speakers at this meeting. Mr. Shepherd has engaged in real estate development and land planning for over forty years. He has lived in the City for 17 years and has been instrumental in developing Highland Park West, which he feels is an asset to the City. The real estate developers which Austin has are far and above developers in other cities in their concern about pollution and the environment of the City. They are a

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very dedicated group of people and the City of Austin is very fortunate to have these people.

Mr. Kinser stated that he had listened very carefully to both sides. He feels that each member of the Commission should have time to digest these views, and proposes that another public hearing be held.

Mr. Reeves stated that much testimony for and against this proposal has been heard, which must be considered in the proper prospective. The charge given this Commission is the consideration and recommendation to the City Council of a Flood Plain Ordinance and how it will affect the public, not a beautification, ecology, park or playground Ordinance. Any motion at this time either for or against this proposal would be hasty; a workshop is needed too consider this information.

Mr. Milstead suggested that a definite time be set in order that the people present will be aware of their plans.

Mr. Taniguchi stated that zoning is public control of private land and this is the purpose of the Ordinances in effect at this time. A flood plain is susceptible to flood and the best use of that land is not for the development of structures which will suffer damage. Control of this development is no different from any other zoning controls. It is alarming to think that every backyard will be fenced from an environmental feature; if this is the case, something is wrong with the way the land is being developed. The developers should be challenged to develop the land so that the creek or other natural feature becomes an amenity in the development. If the environmentalists are hiding behind this proposal, as has been charged, perhaps they would not be so concerned if this approach is taken. It is obvious that more imaginative land use planning and development is needed.

The Commission then unanimously

VOTED: To continue this public hearing at a time to be set at the Planning Commission meeting to be held on October 13, 1970, which will subsequently be published in the newspapers for public knowledge.

ADJOURNMENT: 11:00 p.m.

Hoyle M. Osborne
Executive Secretary