

MARY M. ARNOLD
3404 Southill Circle, Austin, TX 78703 512-459-9460

July 22, 1998

Rosemary Castleberry, Chair, and Members of the Parks Board
Parks and Recreation Department, City of Austin
P. O. Box 1088
Austin, TX, 78767

Dear Rosemary and members of the Parks Board,

In February of this year Mr. Scott Sayers secured a License Agreement allowing him to wall off a portion of the Taylor Slough Lift Station site, including 13.5 feet of Lake Austin shoreline, and extending 55 feet back (728 sq. ft. of city land). In exchange, the Water/Wastewater Department is allowed about 5.5 ft. of extra space to get to their lift station equipment -- 110 sq. ft. of Mr. Sayers land.

Mr. Sayers sought this license for security and privacy of his property, including his newly constructed boat dock. He has also wants to help restore some vegetation and to prevent dumping and inappropriate behavior on the site.

The West Austin Neighborhood Group was surprised that such an agreement could be approved with no notification to the Parks Department or the public and in contradiction to the recommendation of the Parks Board in December 1997.

At its executive committee meetings in June and July, the WANG decided to try to get assurance from the city that such a situation would not happen again. At the same time, they want to move forward with efforts to improve the lift station site for public, pedestrian, use and enjoyment.

The WANG Executive Committee has also discussed whether the term of the License Agreement might be reduced: In the event that the Sayers family sells the property, the agreement should be cancelled. Also, a ten year limit to the agreement might be sought.

To summarize:

- (1) How can this be prevented from happening again?
- (2) What needs to be done to improve the lift station site, and How can that be accomplished?
- (3) Should the term of the License Agreement be shortened?

Sincerely,

Mary Arnold

Packet of Information for Parks Board re Taylor Slough Lift Station and Sayers Boat Dock Approval and Filling in of Boat Slips....

Memo re License Agreement

Copy of License Agreement with Sayers -- Feb. 12, 1998

Land Development Code provisions re License Agreements, Easements

Proposal for Consideration by Parks Board

Parks Board Resolution -- April 22, 1997

Portion of Parks Board Resolution from April 27, 1982

West Austin Neighborhood letter to Director of Water/Wastewater
-- June 12, 1998

Water/Wastewater memo to WANG -- June 18, 1998

MAPS and Drawings:

Scenic Cove Subdivision and Boundary issues - 1982
Retaining Wall and Fill proposal -- Ed Padgett - 1983
Quit Claim map of Lift Station site - Feb. 1984
Portion of Dr. Gordon lot deeded to City - Jan 1984
Gate/fencing along scenic Drive per Sayers proposal - Oct. 1997

Memo to Parks Board re Parks Board Responsibilities under the Land Development Code for Boat Docks, Shoreline Modifications, and Fill in certain lakes - Re Sayers dock and fill

MARY M. ARNOLD
3404 Southill Circle
Austin, TX 78703
512-459-9460

July 21, 1998

MEMO TO: Rosemary Castleberry, Chair, and Members of the
Parks Board
Parks and Recreation Department
City of Austin
P. O. Box 1088
Austin, TX, 78767

FROM: Mary Arnold

RE: *LICENSE AGREEMENT WITH SCOTT SAYERS - February 1998*

THE SITUATION: On February 12, 1998 a license agreement was signed by city staff allowing a private individual to build a wall blocking off public access to a portion of city-owned shoreline abutting Lake Austin. The city-owned property has been identified as very important city-owned frontage on Lake Austin, is used as a wastewater lift station, and has been designated and used by the public as "primitive" open space for over 20 years. (728 sq. ft. of city-owned land behind Sayers wall; 110 sq. ft. of Sayers land to be used by water/wastewater - per license agreement)

PREMISE: The intent of provisions of the Land Development Code regarding license agreements for private use of public property was NOT carried out with the Sayers license agreement

WHAT SHOULD HAVE HAPPENED: Any license agreement with Mr. Sayers should have been reviewed by the Parks Department and should have followed the recommendations of the Parks Board (made in December 1997).

WHAT HAPPENED?

"Streamlining" and Administrative Approval of License Agreements:

Administrative approval of license agreements was part of the January 1991 package of changes and additions to the city's Land Development Code designed to "streamline" development approvals.

Supposedly, the streamlining additions included adequate safeguards to assure that administrative approvals would not be misused.

FAILURE of "safeguards" of administrative approval re Sayers license:

— Safeguard - Distribution to interested City departments:

Application for the license was NOT distributed to the Parks Department13-1-952 (a)(2) provides for Real Estate Services to distribute the application to city departments with an interest in the property in question for review and comment.

-- Safeguard - Finding of interference with public use of property:

The Director is supposed to find that the proposed license does NOT interfere with the public use of the property (13-1-952 (a) (3)) Building a stone wall that blocks the public from access to publicly owned land interferes with public use of the property. How could the Director find otherwise?

-- Safeguard -- Recognition of significant public interest and submission to City Council:

The Director concluded that the encroachment of the Sayers license agreement was NOT of significant public interest and therefore should NOT be submitted to the City Council for review. (13-1-952 (c)) This conclusion was reached apparently without taking into consideration the documentation quoted to the Water/Wastewater Commission in March 1997, and by Nancy Matchus in the City Attorney's Office to a lawyer representing Mr. Sayers in a letter dated May 1997. Those documents clearly laid forth the agreements between Water/Wastewater and Parks in 1982 and 1983 that there was to be public use of the lift station property for recreational purposes.

— Safeguard — 90 day termination clause:

License Agreements under Sec. 13-1-952 "SHALL contain" termination clauses "*enabling the Council to terminate the license without cost to the city following 90 days written notice to the licensee and to the affected adjoining landowners, if applicable,*".

In the case of the Sayers License Agreement, the termination clause seems to have some special findings that are more stringent than simple termination by Council with 90 days written notice. In the Sayers license, the Council must find that revocation is "reasonably required by the public interest" and that "use of the licensed property becomes necessary for a public purpose".

NOTATION of special provisions in Sayers license and omissions in 13-1-952:

Annual Fee -- There is no annual fee for the Sayers license, but that is apparently not due to the provision (13-1-952 (b)(7)) giving the Director discretion to waive the annual fee if the Director determines that the agreement "benefits" the licensed property. i.e., how can making the land a part of a private lawn that is "off limits" to the public be a "benefit" to the licensed property? Rather, waiving the annual fee is probably related to XV. RECIPROCAL USE RIGHTS in the Sayers agreement that gives the city use of 110 sq. ft. of Sayer's property in exchange for the city allowing Sayers to use 728 sq. ft. of the city's property.

Notice per 26.001 of Parks and Wildlife Code -- No consideration is given under 13-1-952 as to whether a proposed license agreement should be "noticed" under the provisions of the state Parks and Wildlife Code 26.001 Protected Land; Notice of Taking. This state law covers "any public land designated and used prior to the arrangement of the program or project as a park, recreation area, scientific area, wildlife refuge, or historic site". It can certainly be argued that for over 20 years the lift station site has been designated as a recreation area.

Release of "claims" - Another provision of the Sayers license that seems to go beyond what was contemplated in 13-1-952 is part XVIII RELEASE OF CLAIMS which states that "The City and Licensee hereby mutually release any and all claims either party may have against the other relating to the properties described in Exhibits "A" and "B", and/or any of their other respective properties on Scenic Drive." If this provision is meant to avoid any future lawsuits, it would appear that greater scrutiny than administrative approval should have been given to such a license agreement .

FILED

98 FEB 12 PM 3:05

DAVID DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

ORIGINAL
FILED FOR RECORD

LICENSE AGREEMENT

The City of Austin, a home-rule city, municipal corporation, and political subdivision of the State of Texas situated in Travis County, Texas ("the City"), and Scott P. and Julie Sayers (the "Licensee"), enter into this License Agreement ("Agreement") on this the 12th day of February, 1998, upon the terms and conditions set forth below.

I. PURPOSE OF LICENSE AGREEMENT

The City grants to Licensee permission to use the licensed property for the following purposes only:

To allow the use of City of Austin Water and Wastewater Department property (the "Property") consisting of a strip of land described as being approximately 13.3' wide and 55' long for the construction and maintenance of a 6' high rock wall along the south side of the Property with a 15' wide gate (or removeable panel) across the 24" sanitary sewer line easement (to Taylor Slough Lift Station) as shown in Exhibit "A".

The above-described property, hereinafter referred to as the "licensed property", is further described in Exhibit "A" attached to this Agreement and incorporated by reference for all purposes.

The City makes this grant solely to the extent of its right, title and interest in the licensed property, without any express or implied warranties.

Licensee agrees that all construction, installation and maintenance permitted by this Agreement shall be done in compliance with all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.

Any provision herein to the contrary notwithstanding, Licensee shall be liable for, and shall indemnify and hold the City harmless from all damages, causes of action, and claims arising out of or in connection with Licensee's installation, operation, maintenance or removal of the improvements permitted under this Agreement.

II. ANNUAL FEE

No annual fee shall be due in connection with this License Agreement.

III. THE CITY'S RIGHTS TO LICENSED PROPERTY

This Agreement is expressly subject and subordinate to the present and future right of the City, its successors, assigns, lessees, grantees, and licensees, to construct, install, establish, maintain, use, operate, and renew any public utilities facilities, franchised public utilities, rights-of-way, roadways, or streets on, beneath, or above the surface of the licensed property described in Paragraph I.

Said uses of the licensed property by the City are permitted, provided that they do not substantially interfere with or destroy Licensee's use of the licensed property, or any property or improvements placed thereon or therein by Licensee. In case of an officially declared emergency, however, damage to or destruction of Licensee's property shall be at no charge, cost, claim, or liability to the City, its agents, contractors, officers, or employees.

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

13119 0396

Nothing in this Agreement shall be construed to limit, in any way, the power of the City to widen, alter, or improve the licensed property subject to this Agreement pursuant to official action by the governing body of the City, or its successors.

Notwithstanding any provision in this Agreement to the contrary, the City retains the right to enter upon the licensed property, at any time and without notice, assuming no obligation to Licensee, to remove any of the licensed improvements or alterations thereof whenever such removal is deemed necessary for: (a) exercising the City's rights or duties with respect to the licensed property; (b) protecting persons or property; or (c) the public health or safety with respect to the licensed property.

IV. INSURANCE

Licensee shall, at its sole expense, provide a personal liability insurance policy, written by a company acceptable to the City and licensed to do business in Texas, with a combined single limit of not less than \$100,000 which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. Such insurance coverage shall specifically name the City of Austin as an additional-insured. This insurance coverage shall cover all perils arising from the activities of Licensee, their guests, invitees, or contractors, relative to this Agreement. Licensee shall be responsible for any deductibles stated in the policy. A true copy of each instrument effecting such coverage shall be delivered to the City's Director of Public Works and Transportation, and the Director of the Water & Wastewater Utility within thirty (30) days prior to the effective date of this Agreement.

Licensee shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until forty-five (45) days after the Directors of Public Works & Transportation and the Water & Wastewater Utility have received written notice as evidenced by a return receipt of registered or certified mail.

V. INDEMNIFICATION

Licensee shall indemnify, defend, and hold harmless the City and its officers, agents and employees against all claims, suits, demands, judgments, expenses, including attorney's fees, or other liability for personal injury, death, or damage to any person or property which arises from or is in any manner caused by the Licensee's construction, maintenance or use of the licensed property. This indemnification provision, however shall not apply to any claims, suits, damage, costs, losses, or expenses (i) for which the City shall have been compensated by insurance provided under Paragraph IV, above, or (ii) arising solely from the negligent or willful acts of the City; provided that for the purposes of the foregoing, the City's act of entering into this Agreement shall not be deemed to be a "negligent or willful act."

VI. CONDITIONS

A. Licensee's Responsibilities. Licensee will be responsible for any damage to or relocation of existing facilities. Further, Licensee shall reimburse the City for all costs of replacing or repairing any property of the City or of others which was damaged or destroyed as a result of activities under this Agreement by, or on behalf of, Licensee.

B. Maintenance. Licensee shall maintain the licensed property by keeping the area free of debris and litter. Removal of dead or dying plants shall also be handled by Licensee at its expense, as required by the City; such removal shall be completed within thirty (30) days following receipt of a written request by the City to do so.

C. Removal or Modification. Licensee agrees that removal or modification of any improvements now existing or to be later replaced shall be at Licensee's expense. Said removal or modification shall be at Licensee's sole discretion, except where otherwise provided by this Agreement. However, complete removal of all such improvements must be preceded by at least thirty (30) days written notice to any adjoining land owners. This Agreement, until its expiration or revocation shall run as a covenant on the land adjoining the above-described real property, and the terms and conditions of this Agreement shall be binding on any subsequent owners or holders of the property. Licensee shall cause any immediate successors-in-interest to have actual notice of this Agreement.

D. Default. In the event that Licensee fails to maintain the licensed property or otherwise comply with the terms or conditions as set forth herein, then the City shall give Licensee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of, and, if Licensee does not satisfactorily remedy the same within the thirty (30) day period, the City may perform the work or contract for the completion of the work. Licensee agrees to pay, within thirty (30) days of written demand by the City, all reasonable costs and expenses incurred by the City in completing the work.

In addition to any other remedies afforded to the City herein or by law, Licensee's continuing default will result in a lien being placed on Licensee's property on or adjacent to the licensed property in favor of, and enforceable by, the City in a court of law.

VII. COMMENCEMENT; TERMINATION BY ABANDONMENT

This Agreement shall begin with the effective date and continue thereafter for so long as the licensed property shall be used for the purposes set forth herein. If Licensee abandons the use of all or any part of the licensed property for such purposes set forth in this Agreement, then this Agreement, as to such portion or portions abandoned, shall expire and terminate following thirty (30) days written notice to the Licensee if such abandonment has not been remedied by Licensee within such period; the City shall thereafter have the same complete title to the licensed property so abandoned as though this Agreement had never been made and shall have the right to enter on the licensed property and terminate the rights of Licensee, its successors and assigns hereunder. All installations of Licensee not removed shall be deemed property of the City as of the time abandoned.

VIII. TERMINATION

A. Termination by Licensee. This Agreement may be terminated by Licensee by delivering written notice of termination to the City not later than thirty (30) days before the effective date of termination. If Licensee so terminates, then it shall remove installations that it made from the licensed property within the thirty day notice period at its sole cost and expense. Failure to do so shall constitute a breach of this Agreement.

B. Termination by City. *This Agreement may be revoked at any time by resolution of the City Council if such revocation is reasonably required by the public interest, after providing written notice to the Licensee.*

Subject to prior written notification to Licensee or its successors-in-interest, this Agreement is revocable by the City if:

- 1. The licensed improvements, or a portion of them, interfere with the City's right-of-way;*
- 2. Use of the licensed property becomes necessary for a public purpose;*
- 3. The licensed improvements, or a portion of them, constitute a danger to the public which the City deems not to be remediable by alteration or maintenance of such improvements;*
- 4. Despite thirty (30) days written notice to Licensee, maintenance or alteration necessary to alleviate a danger to the public has not been made; or*
- 5. Licensee fails to comply with the terms and conditions of this Agreement including, but not limited to any insurance or license fee requirements specified herein.*

If Licensee abandons or fails to maintain the licensed property, and the City receives no substantive response within thirty (30) days following written notification to Licensee, then the City may remove and/or replace all licensed improvements and collect from Licensee the City's actual expenses incurred in connection therewith.

IX. EMINENT DOMAIN

If eminent domain is exerted on the licensed property by paramount authority, then the City will, to the extent permitted by law, cooperate with Licensee to effect the removal of Licensees' affected installations and improvements thereon, at Licensee's sole expense. Licensee shall be entitled to retain all monies paid by the condemning authority for Licensee's installations taken, if any.

X. INTERPRETATION

Although drawn by the City, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

XI. APPLICATION OF LAW

This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

XII. VENUE

Venue for all lawsuits concerning this Agreement will be in the City of Austin, Travis County, Texas.

XIII. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT

This Agreement and all of the covenants herein shall run with the land; therefore, the

conditions set forth herein shall inure to and bind each party's successors and assigns. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

XIV. ASSIGNMENT

Licensee shall not assign, sublet or transfer its interest in this Agreement without the written consent of the City, which consent shall not be unreasonably withheld. Subject to the assignee's compliance with the insurance requirements set forth herein, if any, Licensee shall furnish to the City a copy of any such assignment or transfer of any of Licensee's rights in this Agreement, including the name, address, and contact person of the assignee, along with the date of assignment or transfer.

XV. RECIPROCAL USE RIGHTS

For and in consideration of the grant of this Agreement by the City, the Licensee agrees to grant to City a reciprocal use of property owned by Licensee and described as a strip of land at 2542 Scenic Drive as shown in Exhibit "B".

XVI. CITY INSURANCE

The City, as a political subdivision of the State of Texas, does not maintain liability insurance, but is self-insured.

XVII. INDEMNIFICATION BY CITY

To the extent allowed by State law, City agrees to indemnify and hold Licensee harmless from liability which may result from the City's use of the Licensee's property described in Exhibit "B" herein.


XVIII. RELEASE OF CLAIMS

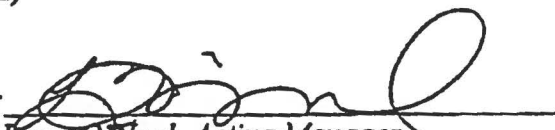
The City and Licensee hereby mutually release any and all claims either party may have against the other relating to the properties described in Exhibits "A" and "B", and/or any of their other respective properties on Scenic Drive.

TERMS AND CONDITIONS ACCEPTED, this the 12th day of February, 1998:

APPROVED AS TO FORM:

CITY OF AUSTIN
P.O. Box 1088
Austin, Texas 78767-8828
(512) 499-2268


Patrick G. Rehmet
Assistant City Attorney

By: 
Larry O'Neal, Acting Manager
Real Estate Services Division
Dept. of Public Works and
Transportation

APPROVED:

By: J. Chris Lippe
J. Chris Lippe, Assistant Director
Water & Wastewater Utility

LICENSEE:

Scott P. and Julie Sayers
2403 Tower Drive
Austin, Texas 78703

By: Scott P. Sayers
Scott P. Sayers

By: Julie Sayers
Julie Sayers

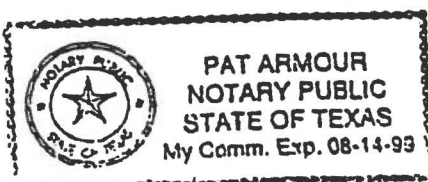
CONSENT OF LIENHOLDER

The undersigned Mortgagee as the lienholder on a portion of the licensed property hereby consents to the grant of the License Agreement and agrees to be bound by the terms herein contained.

NATIONS BANK
By: [Signature]
Name: Jay Angell
Title: Vice President

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 10 day of February, 1998, by Jay Angell, in the capacity of V-PRES of Nations Bank, a banking corporation, on behalf of the corporation.



Pat Armour
Notary Public, State of Texas

'EXHIBIT A'

LAKE AUSTIN

0.0195 ACRES
VOLUME 8464, PAGE 567
D.R.T.C.T.

N49°34'13"E
13.42'

S22°27'00"W 391.45'

24" SANITARY SEWER LINE

LEGEND

- 1/2" IRON ROD FOUND
- 1/2" IRON ROD SET
- STEEL "T" POST SET
- + PUNCH HOLE IN CONC.

LOT 1
SCENIC COVE II
BOOK 84, PAGE 79-A
P.R.T.C.T.

0.017 ACRE
(728 Sq. Ft.) OF LAND

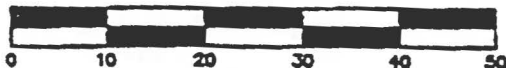
0.196 ACRE
VOLUME 8462, PAGE 865
D.R.T.C.T.

POINT OF BEGINNING

DANIEL J. GILBERT SURVEY NO. 8

POINT OF COMMENCEMENT

SCENIC DRIVE



SCALE 1" = 20'

SCALE: 1" = 20'
DATE: JAN. 22, 1998
REVISED: -
FILE NO. EXHIBIT-ADWG.
JOB NO. 002013.DWG
DRAWN BY: S.RHOAG

SKETCH TO ACCOMPANY A FIELDNOTE DESCRIPTION OF
0.017 ACRE (728 Sq. Ft.) OF LAND
BEING A PORTION OF 0.0195 ACRE TRACT
VOLUME 8464, PAGE 567 D.R.T.C.T. AND
0.196 ACRE TRACT VOLUME 8462, PAGE 865 D.R.T.C.T.
IN THE DANIEL J. GILBERT SURVEY NO. 8
TRAVIS COUNTY, TEXAS



AccuSurvey, Inc.

Professional Land Surveying

4201 Bee Caves Road, Suite B-200
Austin, Texas 78748

Phone: (512) 308-8412 Fax: (512) 223-8754
www.doucet-asso.com

'EXHIBIT B'

0.196 ACRE
VOLUME 8462, PAGE 865
D.R.T.C.T.

0.002 ACRE
(110 Sq. Ft.) OF LAND

LEGEND

- 1/2" IRON ROD FOUND
- 1/2" IRON ROD SET
- ⊕ PUNCH HOLE IN CONC.

POINT OF BEGINNING

LOT 1
SCENIC COVE II
BOOK 84, PAGE 79-A
P.R.T.C.T.

DANIEL J. GILBERT SURVEY NO. 8

N36°48'00"E 65.00'

N44°26'00"E
6.51'

19.81'

13.30'

S48°57'40"E
18.80'

N53°23'32"W
19.61'

S36°48'00"W
5.00'

POINT OF COMMENCEMENT

SCENIC DRIVE



SCALE: 1" = 10'

SCALE: 1" = 10'
DATE: JAN. 22, 1998
REVISED: -
FILE NO. EX-81T-B.DWG
JOB NO. 002013.DWG
DRAWN BY: SJRHOD
CHECKED BY: I. GRAYSON

SKETCH TO ACCOMPANY A FIELDNOTE DESCRIPTION OF
0.002 ACRE (110 Sq. Ft.) OF LAND
BEING A PORTION OF LOT 1
SCENIC COVE II
BOOK 84, PAGE 79-A P.R.T.C.T.
IN THE DANIEL J. GILBERT SURVEY NO. 8
TRAVIS COUNTY, TEXAS



AccuSurvey, Inc.

Professional Land Surveying

4201 Bee Caves Road, Suite B-200
Austin, Texas 78746

Phone: (812) 306-9412 Fax: (812) 329-8754
www.douzel-assoc.com

**ARTICLE XII: RELEASE, LICENSES, AND VACATION
OF PUBLIC RIGHT-OF-WAY AND EASEMENTS**

Section

**Division 1. Release, Licenses for
Private Use, and Vacation**

- 13-1-950 Definitions
- 13-1-951 Release of public easement
- 13-1-952 Application for license agreement
- 13-1-953 Vacation of public right-of-way
- 13-1-954 Annual report

**Division 2. Use of Right-of-Way
for Construction Purposes**

- 13-1-965 Definitions
- 13-1-966 Criteria for issuance
- 13-1-967 Term of permit
- 13-1-968 Processing the application; appeal of denial
- 13-1-969 Fee for permit
- 13-1-970 Fee rate
- 13-1-971 Compliance Review Committee

**DIVISION 1. RELEASE, LICENSES
FOR PRIVATE USE, AND VACATION**

§ 13-1-950 DEFINITIONS.

Subject to additional definitions contained in § 1-1-2 of this Code of Ordinances and in other chapters, articles, divisions, parts, or sections of this Land Development Code, and unless the context otherwise requires, in this Article:

DIRECTOR means the Director of the Department of Public Works and Transportation, or his or her duly authorized designee.

PUBLIC EASEMENT means any easement owned by the public or any governmental entity, or any easement lawfully dedicated as an easement for some public purpose.

PUBLIC PROPERTY means property owned, whether in fee simple or otherwise, by the public or any governmental entity, or property lawfully dedicated for some public use.

PUBLIC WORKS means the Department of Public Works and Transportation of the City of Austin.

REAL ESTATE SERVICES DIVISION means the Real Estate Services Division of the Department of Public Works and Transportation of the City of Austin.

RIGHT-OF-WAY means land dedicated by any lawful means to the public or any governmental entity, including the federal government, the State of Texas and any agency or subdivision thereof, and which is reserved for street, alley, sidewalk, highway or other related purposes.
(Am. Ord. 910110-J, eff. 1-20-91)

§ 13-1-961 RELEASE OF PUBLIC EASEMENT.

A public easement may only be released in accordance with the following procedures:

(1) A person requesting a release of a public easement shall submit an application, together with a survey and a field note description for the area requested for release and a non-refundable application fee in an amount established by separate ordinance to the Real Estate Services Division.

(2) The Real Estate Services Division shall distribute the application and attached materials to city departments and franchise holders with an interest in the property in question for review and comment.

(3) If the application involves a release of a scenic, hike and bike trail, greenbelt, or other similar easement of significant public interest, the Director shall forward the application to the City Council for consideration.

(4) For all applications for releases of easements not covered by subsection (3) of this section, the Director may authorize and approve the requested release if he determines that no present or future public purpose is served by the easement.

(5) If the application is approved, the executed release of easement shall be filed in the Real Property Records of the appropriate county.

(6) If the Director or the City Council finds that a present or future public purpose or need is served by the easement, the application shall be denied. The decision of the Director to deny a release of easement under this section may be appealed by the applicant to the City Council in accordance with the provisions of Article V of this chapter.
(Am. Ord. 910110-J, eff. 1-20-91)

§ 13-1-082 APPLICATION FOR LICENSE AGREEMENT.

(a) Except as otherwise provided in this section, a license for private use of public property may only be approved in accordance with the following procedure:

(1) The applicant requesting a license shall submit an application together with a survey and a field note description to the Real Estate Division. A non-refundable application fee in an amount established by separate ordinance must be submitted with the application. Payment of this application fee shall not relieve the applicant of the requirement to pay any other fees assessed under this code, including but without limitation, the annual fees described in this section.

(2) The Real Estate Services Division shall distribute the application and attached materials to city departments and franchise holders with an interest in the property in question for review and comment.

(3) If the Director finds that the proposed license does not interfere with the public use of the property, the appraised value of the area to be licensed and the annual license fee will be established by the city. An executed License Agreement will be made available for the applicant after the city's receipt of payment in an amount equal to the annual fee.

(b) The annual fee for a License Agreement shall be calculated in accordance with the following:

(1) The minimum annual fee shall be established by separate ordinance.

(2) For surface licensing, the fee shall be 10% of the appraised value of the area subject to the license.

(3) For underground licensing, the fee shall be 5% of the appraised value of the area subject to the license.

(4) For serial licensing, the fee shall be 7.5% of the appraised value of the area subject to the license.

(5) The annual fee will be subject to change after each two year period the license remains in effect.

(6) No annual fee will be charged (i) for any structure officially designated as a historical structure or which is located on property with a historic zoning base use district; (ii) for the property which was originally dedicated to the city without charge only if the person or entity which originally dedicated the land in question continues to possess the adjacent property or the underlying interest in the land in question; or (iii) as specifically provided in a separate ordinance establishing fees and exemptions thereto.

(7) The Director may waive the annual fee for License Agreements which, in the Director's sole discretion, benefit the licensed property.

(c) If the License Agreement provides for an activity or encroachment which, in the opinion of the Director, is unusual or of significant public interest, the Director may, in his or her sole discretion, forward the proposed License Agreement to the City Council for consideration. Activities or encroachments which are unusual or of significant public interest may include, but are not limited to, pedestrian bridges or buildings over streets or alleys, or basements or tunnels under streets or alleys.

(d) License Agreements under this section shall contain:

(1) A termination clause enabling the City

Lead Development Procedures

93

Council to terminate the license without cost to the city following 90 days written notice to the licensee and to the affected adjoining landowners, if applicable.

(2) Provisions addressing insurance requirements and establishing liens on the applicant's property adjacent to or covered by the License Agreement.

(3) Such other provisions which, in the Director's sole discretion, are necessary to protect the interests of the city.

(e) This section shall not apply to the following:

(1) Temporary construction barricades;

(2) Banners over streets;

(3) Temporary street closings;

(4) Minor or temporary encroachments which, in the sole discretion of the Director, are adequately covered by other regulations to protect the interests of the city.

(f) The decision of the Director to deny a license may be appealed by the applicant to the City Council in accordance with Article V of this chapter. Before such an appeal may be filed, (i) the city must first have completed an appraisal of the value of the property in question, and (ii) the applicant must first have submitted to the Director the amount of the first annual fee and a written statement describing the basis of the appeal.

(Am. Ord. 910110-J, eff. 1-20-91)

§ 13-1-953 VACATION OF PUBLIC RIGHT-OF-WAY.

(a) Subject to the requirements of state law, public right-of-way may be vacated in accordance with the following procedure:

(1) A property owner requesting vacation of right-of-way adjoining his or her property shall submit an application to the Real Estate Division. A non-refundable application fee in an amount established by separate ordinance must be submitted with the application. Payment of this application fee shall not relieve the applicant of the requirement to pay any other fees assessed under this code, including but

without limitation, the payment for appraised value described in this section.

(2) The Real Estate Services Division shall distribute the application and attached materials to city departments and franchise holders with an interest in the right-of-way for review and comment.

(3) If the Director determines that the right-of-way serves no present or future public purpose, the Director may approve the application and submit it to the Urban Transportation Commission and the Planning Commission for their concurrent or sequential review. If the commissions have not forwarded an objection to the Director within 30 days from the date the Director first submitted the application to the commission for review, then the commission shall be deemed to have recommended vacation of the right-of-way and the Director may then process the application.

(4) If both commissions recommend vacation of the right-of-way, the Real Estate Services Division shall determine the appraised value of the area to be vacated. The value of the property will be determined by an appraisal prepared by the Real Estate Services Division or, at the sole discretion of the Director, by an independent appraiser engaged by the city. All owners who will receive any portion of the vacated right-of-way shall submit to the Real Estate Services Division a payment in the amount equal to the appraised value as determined by the city. The appraised value may be offset by the simultaneous dedication of right-of-way which would not otherwise be required as part of the development of the property. If the application is ultimately denied, the payment shall be returned to the applicant.

(5) For requested vacations of developed streets or alleys, the Director shall take the following additional action:

(A) Notify all notice owners of property within 300 feet of the proposed vacated right-of-way that the Director has received an application for vacation of the described right-of-way and may approve the request after ten days of the date of the notice. The notice will solicit comment from the property owners during that ten day period.

(B) The Director will consider any comment received from the owners of property within 300 feet of the proposed vacated right-of-way in

making a final determination on the application. The Director may process the application after ten days from the date of the notice based on his or her sole discretion under the provisions of this section.

(6) If the Director determines that the right-of-way serves a present or future public purpose, the application shall be denied. The applicant may appeal a decision of the Director to deny the vacation to the City Council in accordance with Article V of this chapter.

(Am. Ord. 910110-J, eff. 1-20-91)

§ 13-1-864 ANNUAL REPORT.

The Director of the Public Works and Transportation Department shall submit an annual report to the City Council summarizing the nature, number, and ultimate disposition of all applications for administrative approval under this article.

DIVISION 2. USE OF RIGHT-OF-WAY FOR CONSTRUCTION PURPOSES

§ 13-1-865 DEFINITIONS.

Subject to additional definitions contained in § 1-1-2 of the Code and in other chapters, articles, divisions, parts, or sections of this Land Development Code, and unless the context otherwise requires, in this Land Development Code:

PUBLIC RIGHT-OF-WAY means all public alleys, streets, sidewalks, highways, interstates, roads and shoulders, walkways, passenger zones, thoroughfares and other public traffic areas connecting the primary ingress and egress of private property and including the aerial space over and above said public ways.

RIGHT-OF-WAY FOR CONSTRUCTION means the traversing of the public aerial space or the entering, blocking and using of the public right-of-way or the diverting, impeding or rerouting of pedestrian or vehicular traffic in the public right-of-way for the benefit of or as a result of the stopping, standing, temporary location or parking of construction equipment, machinery or other materials in the public right-of-way in furtherance of a construction project on

adjacent property or property in close proximity to public right-of-way.

§ 13-1-866 CRITERIA FOR ISSUANCE.

An applicant for a right-of-way use for construction permit shall have the burden of showing that the project proposed cannot be performed without interference and use of the public right-of-way, and the extent to which the public right-of-way must be utilized.

§ 13-1-867 TERM OF PERMIT.

The right-of-way use for construction permit authorizes its holder to block, direct, impede or reroute pedestrian and vehicular traffic in the manner provided on its face and to place in the right-of-way the required barricades and other traffic impeding, diverting or rerouting devices, in accordance with the requirements of the Manual on Uniform Traffic Control Devices. The duration of the permit shall not exceed 180 days. The effective period of validity shall be stated on the permit. Bonding requirements in this Land Development Code for right-of-way use for construction permits must be met prior to issuance of the permit. Agreement to abide by the permit conditions, restrictions, and provisions, and to be subject to the assessment of an investigation fee following violation of the permit, is a condition for permit issuance which may not be waived and shall be so stated on the application. It shall also be a condition of the permit that the permit holder notify and direct the site manager, site supervisor, project superintendent or prime contractor representative on the site that they are to voluntarily sign any written notice of violation presented to them by a police officer, Building Inspector or Parking Patrol.

§ 13-1-868 PROCESSING THE APPLICATION; APPEAL OF DENIAL.

(a) The initial application for a right-of-way use for construction permit shall be submitted as part of the building, demolition or driveway permit. A right-of-way use for construction permit must be issued by the Director of the Public Works and Transportation Department before any building, demolition or driveway permit requiring use of public right-of-way for construction may be issued to any person for construction, renovation, building, moving or

PROPOSED for Consideration by Parks Board:

FINDINGS:

- 1) *The city-owned lift station site is important as publicly owned land along Lake Austin and should be open for public use -- pedestrian use, picnic table and benches, trash can, scenic vista, no cars, landscaping per natural character of area, curfew sign, maintenance by Parks Department.*
- 2) *The city used poor judgment in approving administratively a license agreement with Mr. Sayers blocking public access to a portion of the lift station site with no notice to the Parks Department or the public.*

What Should Be Done to help remedy this loss to the public and improve public benefit of the shoreline portion of the City-owned Lift Station Tract:

Suggestions:

- 1) City grant a public access/scenic/pedestrian easement on the shoreline portion of the lift station site, and appropriately record the easement in Travis County Deed Records. (Work with Water/Wastewater to identify how many feet back from shoreline such an easement would run)
- 2) Parks Dept. work with WANG, neighbors and Water/Wastewater and Public Works to improve the landscaping, operation and maintenance of the lift station to enhance public enjoyment of the site. (See Attachment A)
- 3) Water/Wastewater contribute \$ to pay for improvements to lift station tract.
- 4) Recommend replacement of wooden gates in Sayers wall with decorative iron gates in order to achieve part of Parks Board recommendation about visibility through any fence erected. (Replacement to be at Sayer's expense)
- 5) Amend License Agreement to terminate agreement at the end of ten years, or sooner if Sayers sells his lot and house, and to require removal of the wall at that time.
- 6) Amend the Land Development Code to (a) - require review by the Parks Department and Parks Board of any proposed license agreement for land on the shores of Town Lake, Lake Austin, or along a creek adjacent to or within an already designated city greenbelt; and (b) - require hearing before City Council for license agreement for any dedicated parkland.

Attachment A -- Specific Suggestions for improving maintenance and operation of the Lift Station site for enhancing public benefit.

- 1) Parks Department (PARD) work with WANG, neighbors and Water/Wastewater, Public Works and Watershed Protection on a PLAN for the lift station site.
- 2) Remove unnecessary barriers between Scenic Drive and the lift station -- restore a more open, welcoming aesthetic, while assuring adequate access and safety for water/wastewater crews and the lift station equipment.
 - a. Remove the two gates that have been placed at each end of the road barrier on Scenic Drive.
 - b. Work with Public Works to remove the tall red striped wooden barrier that has been placed on the old metal guard rail. (Perhaps some metallic stripes could be painted on the old guard rail for better visibility at night)
 - c. Landscape, in particular, the "panhandle" strip that is furthest from the lift station equipment, and place a permanent park bench in that area.
- 3) Consider restoration of "unusual" reeds along shoreline and thus enhancement of bird habitat. (Work with staff from Watershed Protection familiar with "water" plants)
- 4) Consider possibility of "reclaiming" additional portion of lift station site currently paved and used as a parking area adjacent to Scenic Drive. Could "bollards" be placed in different location to ease Scenic Drive into a "curve" rather than functioning as a sort of dead end street?
- 4) No vehicles on lift station site except for Water/Wastewater or other city trucks (what about truck access for Scott Sayers property??? How does that work? Not covered in license agreement) Also, lift station not to be used as "landing" for boats on Lake Austin.
- 5) PARD put up appropriate sign for curfew.
- 6) PLAN to include placement of permanent picnic table and benches, and placement of trash can.
- 7) PARD provide to WANG a maintenance schedule and to WANG and neighbors information re how curfew will be enforced, who to call, when Parks Police will patrol, etc.

PARKS BOARD RESOLUTION

-- Adopted April 22, 1997 by a vote of 6-0 (Cruz-Torres, Dwight, Naumann, Castleberry, Isaacs, Friday)

WHEREAS the City of Austin owns a small tract of public land on the banks of Lake Austin on Scenic Drive; and

WHEREAS this tract provides one of the few public spaces on Lake Austin north of the Walsh Boat Landing; and

WHEREAS this tract provides an excellent view of Lake Austin; and

WHEREAS The Parks and Recreation Board and City Council previously recommended, at the time subdivision construction was approved, that the tract remain open for public access, and that the view remain unimpeded; and

WHEREAS the Water and Wastewater Department maintains a lift station on the public land; and

WHEREAS the owner of the adjacent residence at 2542 Scenic Drive now proposes to build a fence around said tract; and

WHEREAS this property is not and will not be dedicated as parkland, it nevertheless satisfies the statutory description of parkland as "a parcel of land developed, designated and used for public recreation and/or passive recreational use," thus allowing the application of a curfew as on parkland;

NOW, THEREFORE, in consideration of the premises, the Parks and Recreation Board recommends to the City Council as follows:

- (1) The aforesaid tract of land should remain unfenced and open to the public; and
- (2) Any fencing constructed perpendicular and adjacent to the shoreline, on the property line between 2542 Scenic Drive and the public open space, should be of transparent material (e.g., decorative steel); and
- (3) In order to make public use of this property more compatible with nearby homes, and to address concerns of the neighborhood:
 - (a) The Parks and Recreation Department and the Water and Wastewater Utility commit to maintain the lift station tract as public open space;
 - (b) A curfew from 10: p.m. to 5:00 a.m. will be enacted.

PORTION OF PARKS BOARD RESOLUTION - April 27, 1982
Resolution re proposal to vacate a portion of Scenic Drive ROW

WHEREAS, the Parks and Recreation Department Lake Austin Corridor Recreational Study published in August 1981, concludes that there is not sufficient public access or public waterfront recreation opportunity on Lake Austin to meet present or future needs, and

WHEREAS, the West Austin Neighborhood Group chose the lift station site at Taylor's Slough as its Bicentennial project, seeking to improve its amenities for public use because of its proximity to Lake Austin, and the scenic vista afforded by the site, as well as its appropriateness as a linkage to Lake Austin from Reed Park along a dedicated public walkway beside Taylor Slough, through the Bello Vista Subdivision, and....

WEST AUSTIN NEIGHBORHOOD GROUP

Organized 1973

*" To preserve our neighborhood
and protect it from deterioration
through advocacy and action."*

P O Box 5722
Austin, Texas 78763-5722

EXECUTIVE COMMITTEE

12 June 1998

Blake Tollett
President

Randy Goss, Director
Water & Wastewater Utility
625 E. 10th
Austin, Texas 78701

Janis Pinnelli
Vice President

Walt McCool
Secretary

RE: License Agreement Between the City and Scott P. Sayers
and Julie Sayers Covering Real Property Owned by the
City Near Taylor's Slough

Don Cook
Treasurer

Dear Director:

STANDING COMMITTEES

Chris Garrigues
Membership Chair

At the last regularly scheduled meeting of the Executive Committee(ExComm) of the West Austin Neighborhood Group(WANG) on Monday 1 June 1998, honorary committee member Mary Arnold apprised the ExComm of the existence of and her concern with the above mentioned license agreement. A copy of the license agreement is enclosed.

Dudley Houghton
Zoning Chair

COMMITTEE MEMBERS

James Allman
Joyce Basciano
Harold Figg
Bailie Griffith
Gwen Jewiss
Linda Kay Keeling
Sharmyn Lilly
Charles Lohrmann
Sara Madera

The license agreement provides that Mr. Sayers can construct a 6 foot high rock wall on City owned property, allowing Mr. Sayers to use 728 sq. ft. of the lift station site, including 13 to 15 ft. of shoreline along Lake Austin in exchange for the Water and Wastewater Department being allowed to use only 110 sq. ft. of Mr. Sayers property, including no shoreline.

HONORARY COMMITTEE MEMBERS

Mary Arnold
Sinclair Black
Hon. Lloyd Doggett
Hon. Sherri Greenberg
Hon. Beverly Griffith

Could you please explain to us the actions taken leading to, and the logic behind, the execution of this document in light of specific opposition by PARD and the Parks Board. Documentation of this opposition is enclosed. In addition, a letter to the Water and Wastewater Commission on 24 March 1997 from Chris Lippe stated "The Water and Wastewater Utility agrees that if the proposed private fence is to be constructed, it be placed on Mr. Sayers property, not on Utility owned property".

WANG has been interested in the lift station site for over twenty years. It was chosen as the Bicentennial

project for WANG, with the group seeking to improve its amenities for public use because of its proximity to Lake Austin, and the scenic vista afforded by the site, as well as its appropriateness as a linkage to Lake Austin from Reed Park along a dedicated public walkway beside Taylor Slough. Mr. Sayers has also erected two metal fence gates on the edge of the lift station adjacent to Scenic Drive, thus attempting to limit public access to the site. Those gates were not mentioned in the license agreement and should be removed.

The ExComm of WANG looks forward to your reply. We are particularly interested in why this lisenace agreement was entered into with no notice to the public. We are very concerned with this matter, and are disappointed about the course it has taken.

Sincerely;

A handwritten signature in dark ink, appearing to read "J. Blake Tollett", with a long horizontal line extending to the right.

J. Blake Tollett, President
West Austin Neighborhood Group
3701 Bonnie Road
Austin, Texas 78703

copies:

Peter Rieck, Director DPWT
Jan Galbraith, Water and Wastewater
Chris Lippe, Water and Wastewater
Jesus Olivares, Director PARD
Rosemary Castleberry, Chair Parks Board
Jesus Garza, City Manager
Kirk Watson, Mayor
City Council Members
Mary Arnold



City of Austin

Founded by Congress, Republic of Texas, 1839

Municipal Building, Eighth at Colorado, P.O. Box 1088, Austin, Texas 78767 Telephone 512/499-2000

June 18, 1998

Mr. J. Blake Tollett, President
West Austin Neighborhood Group
3701 Bonnie Road
Austin, TX 78703

Dear Mr. Tollett:

Thank you for your June 12, 1998, letter regarding the License Agreement between the City of Austin and Scott P. Sayers. Mr. Sayers and his wife, recently, became new neighbors to the Taylor Slough Lift Station (Taylor Slough), when they purchased the property and constructed their home immediately east of the site.

Mr. Sayers indicated a desire and asked permission to construct a fence across the front of the Taylor Slough property, as an extension of his own property fence, to preclude the trash dumping that he observed on the site. Mr. Sayers offered to keep the grass cut at the lift station, as he pointed out the lack of site maintenance along the shoreline. The Water and Wastewater Utility strives to be a good neighbor to citizens and customers who live next to our facilities, especially those living next to lift stations. These facilities can be problematic with noise and potential odors. However, this request would have restricted all access to the site and had to be denied. Chris Lippe, Assistant Director, Water and Wastewater Treatment, Water and Wastewater Utility, informed Mr. Sayers that any fence he constructed would need to be on his property, not across the Utility's site.

The Utility understands that at different times, Mr. Sayers continued to present a number of different fence options to various groups and to request approval/support from those groups for the options. Some of these fence proposals enclosed the lift station site and some partitioned off large expanses of only shoreline from our site.

Mr. Sayers also requested permission from the Utility to construct a portion of his fence across the back of the lift station site, immediately north of the lift station itself. The northern boundary of the site is very close to the lift station, and offers almost no working space when major maintenance on the lift station is necessary. Mr. Sayers' specific request was once again denied, but it was recognized that the Utility had an opportunity to acquire additional space from Mr. Sayers' lot on the north side of lift station, if some agreement could be reached.

It was proposed that Mr. Sayers offer the use of part of his property immediately north of the lift station, in exchange for the Utility's permission to construct his fence across part of the lift station site. Mr. Sayers is agreeable to this resolution. Mr. Sayers and his wife agreed to allow Utility use of space north of the lift station, which is valuable to the Utility for long term maintenance of the lift station. In exchange, the Utility agreed to allow Mr. Sayers and his wife the use of a strip of property adjacent to them, which had less value to the Utility for operation and maintenance of the lift station.

Mr. J. Blake Tollett, President
June 18, 1998
Page 2 of 2

The City of Austin Law Department recommended the use of a "License Agreement" as the most effective instrument to implement this agreement. This agreement does not require either the Utility or the Sayers to sell or give up their respective property ownership. With assistance from the Law Department and the Department of Public Works and Transportation's Property Management, all steps and procedures prescribed for development and execution of the license agreement have been followed.

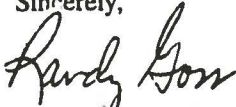
The fence gates installed at the front of the site have been placed there without authorization from the Utility. Mr. Sayers will be asked and expected to remove them.

The Utility is pleased that the West Austin Neighborhood Group (WANG) has such interest in this site, and we are interested to know the scope of its "Bicentennial Project". The Utility is concerned about effectively protecting its site. Existing cypress trees at the shoreline were recently vandalized and cut down, and trash is occasionally dumped along the shore. The Utility welcomes WANG to take a more active role in helping protect the Utility's site and keeping up its appearance. The Utility is open to suggestions on vegetative planting and other enhancements to the site's appearance, and would be pleased to participate with you on this project. In the past, Parks and Recreation Department (PARD) has agreed to maintain the site, and the Utility will share your suggestions with them and request their participation in planning.

Mr. Tollett, I would very much enjoy visiting with you and further discussing the future of this lift station site. I desire to be a good neighbor to all those who live around our properties and facilities.

Please contact me at 322-2916, or Chris Lippe, Assistant Director, Engineering, Water and Wastewater Utility, at 322-2780, if you have further questions.

Sincerely,



Randy J. Goss, P.E., Director
Water and Wastewater Utility

RG/CL

cc: Mayor and Council Members
Jesus Garza, City Manager
Toby Futrell, Assistant City Manager
Chris Lippe, Assistant Director, Water and Wastewater Utility

CAF#4099

LAKE
AUSTIN

LIFT STATION

226
226 226 226

LIFE STATION

(RAY THOMAS)

THORNTON

15' 50 56 00 57 00

TAK
ECN

SEAL DRIVE

2. SUGRILINE

APPROXIMATE LOCATION OF
VILLAGE TO
BESS

TAYLOR SLEIGHT

1918

SCALE: 1" = 100'

~~of purpose~~ 2nd. .

100 yr flood plain \rightarrow
create washline

*Good luck & all
offices Shoreline*

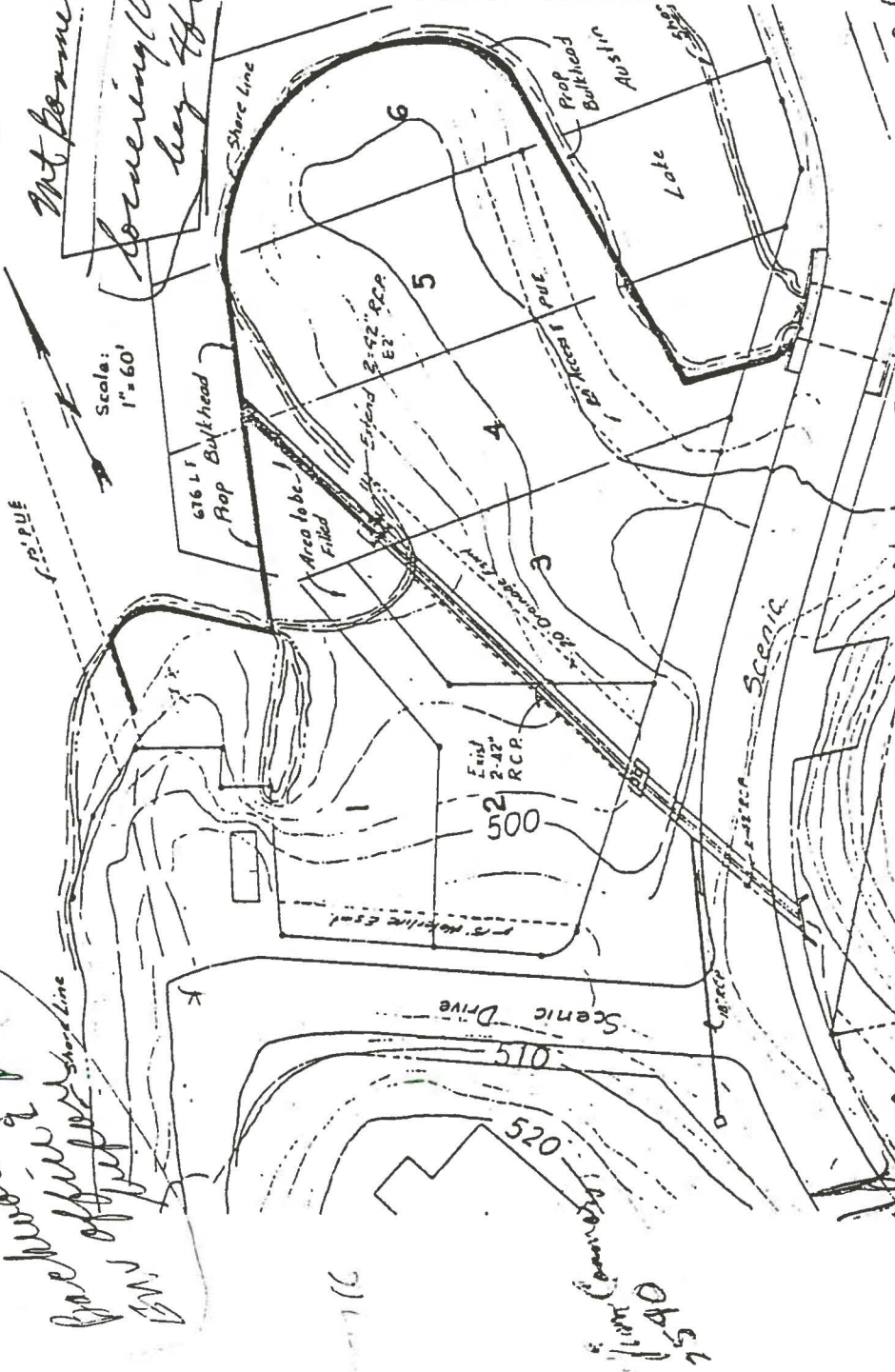
Orleans Harbor

Int Personnel Shells

Scale: 1" = 10'

Lowering 100 yds of lead line
over 41 ft

Lake reduction -
 site permit
 or WA clear permit



LOCATION MAP
VS

11/11/11

ED PADGETT

JULY 10, 1983

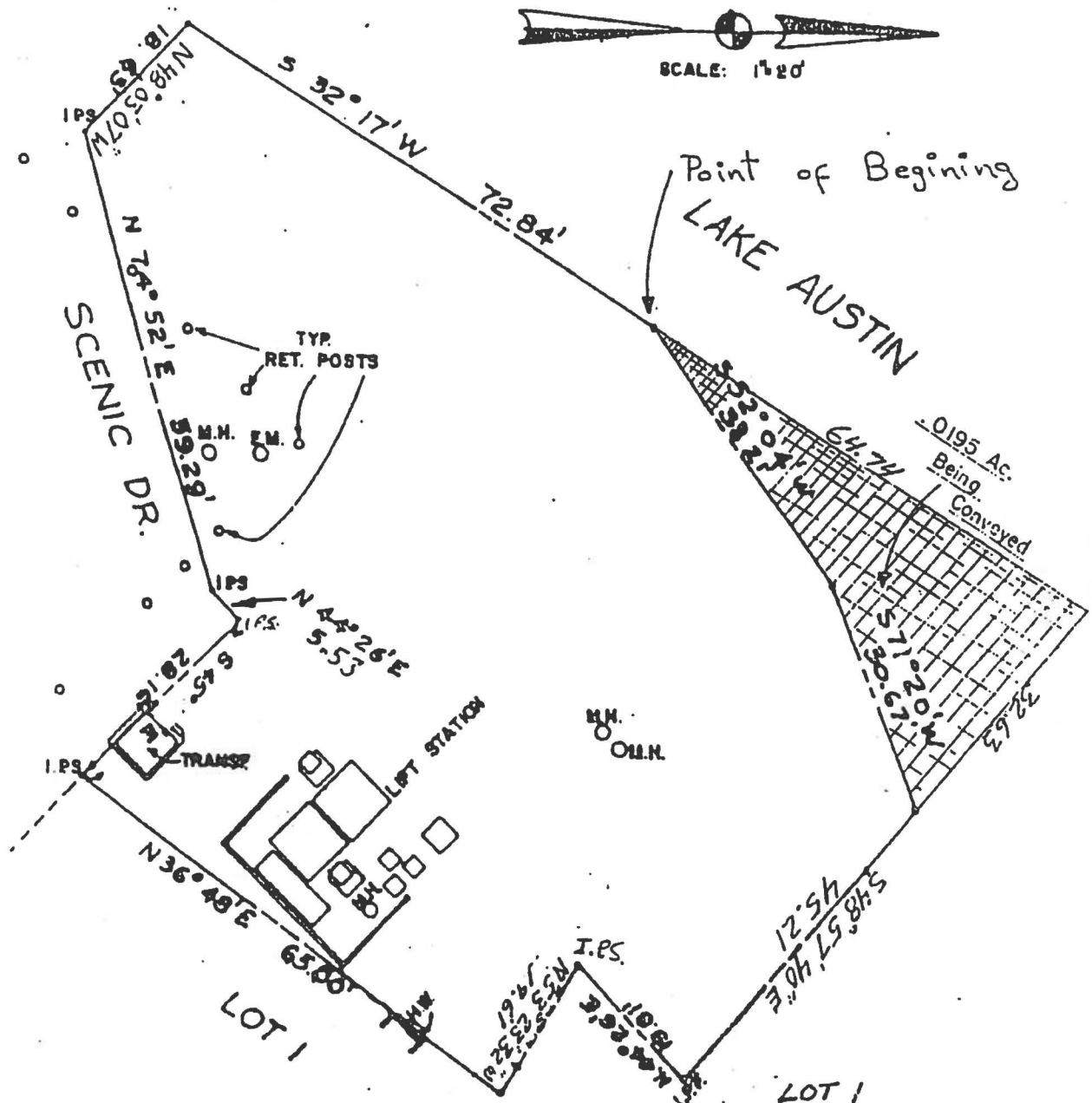
Form 10-7 from
#1 sent by V. Matthews

Shanahan
2-10-22

Shouldn't not have an inch

MAP TO ACCOMPANY FIELD NOTES

3-57-924



RECORDERS MEMORANDUM
ALL OR PARTS OF THE TEXT ON THIS PAGE WAS NOT
CLEARLY LEGIBLE FOR SATISFACTORY RECORDATION

LOT 1
Scenic Cove
Subdivision
Jan 26, 1984

FILED

EXHIBIT "A" PAGE 2 OF 2 PAGES

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on the
date and at the time stamped hereon by me; and was duly
RECORDED, in the Volume and Page of the named RECORDS
of Travis County, Texas, as stamp hereon by me, on

FEB 21 1984

FEB 21 8 42 AM '84

Doris D. Hargrave
COUNTY CLERK
TRAVIS COUNTY, TEXAS

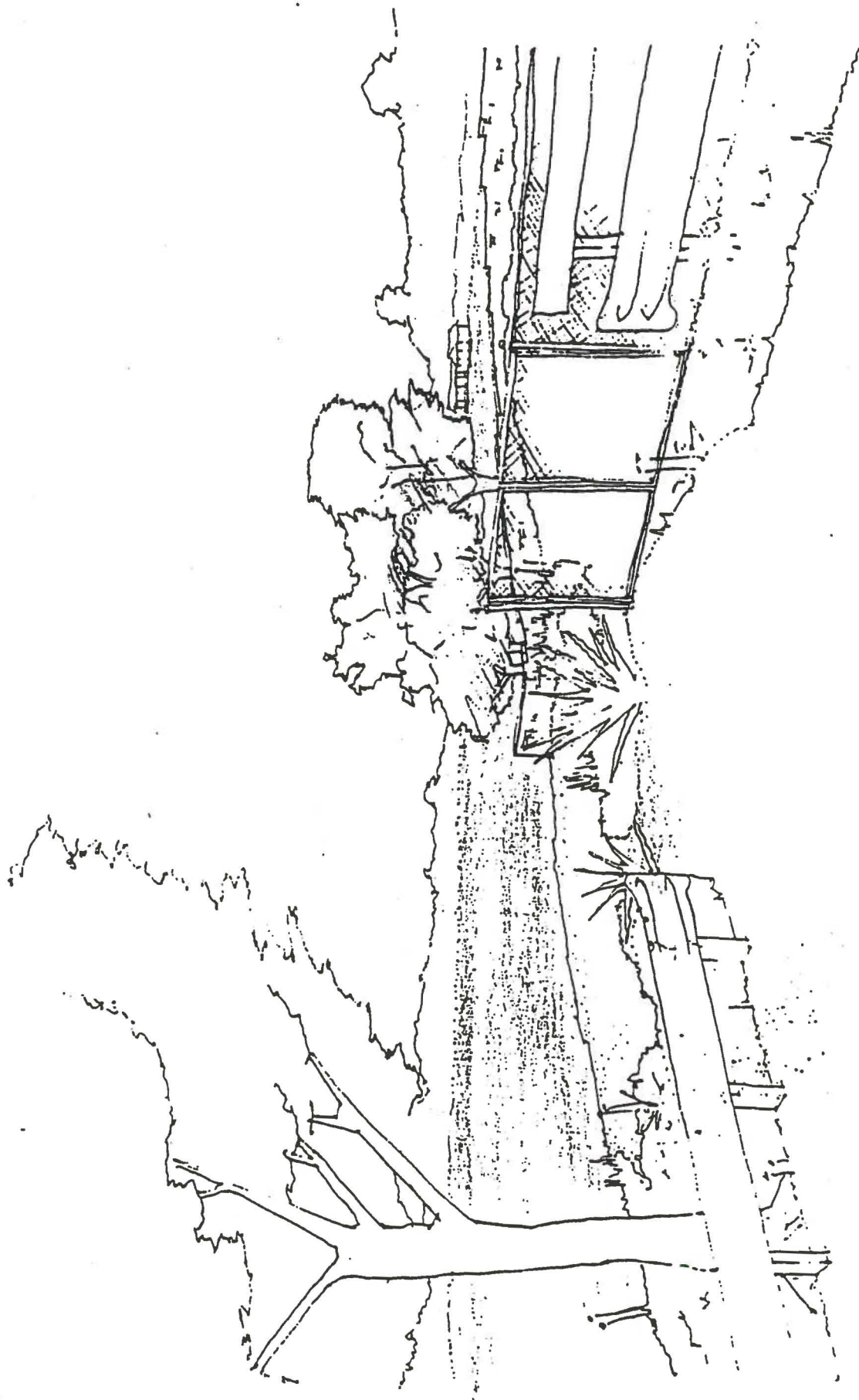


Doris D. Hargrave
COUNTY CLERK
TRAVIS COUNTY, TEXAS

8464

565

B



July 21, 1998

MEMO TO: Parks Board

FROM: Mary Arnold

RE: PARKS BOARD RESPONSIBILITIES PER LAND DEVELOPMENT CODE:
Boat Docks, Shoreline Modification or Dredging, Making Fills at Lake
Austin, Town Lake and Lake Long
and
Relation to Parks Board Approval of Sayers Dock and Fill

As a former member of the Navigation Subcommittee and the Parks Board I spent many hours reviewing boat dock applications and discussing erosion of the shoreline and the installation of retaining walls. In preparing information for the Parks Board related to the Sayers License Agreement, I decided to review the copy of the Land Development Code that I have (only up-to-date as of about 1992). I found the following provisions, and have made several suggestions:

Part E. Requirements for Construction of Boat Docks

13-2-795 of the Land Development Code involves the Parks and Recreation Board in reviewing and approving Boat Docks.

In particular, if a boat dock is to extend more than 30 ft. into a waterway, the Parks Board must determine whether a hazard will be created, and based on that determination approve or disapprove such construction.

Shoreline Modification or Dredging -- 13-6-14

"If a site plan proposes shoreline modifications or dredging in or along Lake Austin, Town Lake, or Lake Walter E. Long, the Director shall first submit the application to the Parks and Recreation Board for its review and comment concerning the navigational safety of the proposed development as well as its impact on the recreational and natural character of the Lake. The Parks and Recreation Board may develop specific criteria for determining the navigational safety of the proposed development as well as its impact on the recreational and natural character of the lakes."

Making of Fills at Lake Austin, Town Lake and Decker Lake - 13-7-50

"Any person desiring to make or cause to be made any fill with junk, earth, scrap, rocks, or any other material or substance in Lake Austin, Town Lake, or Lake Walter E. Long shall make an application in writing

to the Parks and Recreation Board for such fill. It shall be unlawful for any person to make or cause to be made such fill without first securing the approval of the Parks and Recreation Board."

Parks Board Review and Approval of Sayers Boat Dock and filling of boat slips:

Parks Board approval of the length of the Sayers Boat Dock and its side yard setback of 10 ft. seem to have been done per the code requirements. However, should the Parks Board have considered the "hazard" of possible encroachment by persons from the lift station site onto Mr. Sayers dock?

The filling in of the existing boat slips in the retaining wall around Mr. Sayers shoreline may NOT have been in accordance with the Land Development Code. The fill should have been considered a "fill" within the definition of 13-7-50, and it should have been considered a shoreline modification within the meaning of 13-6-14. As far as I can tell, there was no meaningful notification of the public of the proposal to fill the lake and modify the shoreline. There was no Parks Board motion approving the fill, per the requirements of 13-7-50.

The result of filling in the boat slips was to add more private property to Mr. Sayers yard -- and to reduce the surface of Lake Austin. The lot now owned by Mr. Sayers had already benefitted from being allowed to fill in behind the retaining wall when it was constructed in 1984. Part of the "compromise" about that retaining wall in 1984 was that by having the boat slips, boat docks extending into the lake would be avoided in that area.

If WANG had been properly notified about proposal to fill in the boat slips, they might have had some significant comments to make.

Recommendation and Questions:

It seems to me that the Parks Board and its Navigation Subcommittee need to explore with Parks staff and with review staff from Watershed Protection and Development Review and Inspection the above requirements of the Land Development Code and how they should be carried out.

Please clarify if neighborhood associations are notified about site plans proposing lakeside construction, shoreline modification and/or filling.

Is there a record at Development Review and Inspection that the provisions of 13-6-14 and 13-7-50 had been met before final approval of Mr. Sayers site plan?

Thank you for your consideration of these matters. Citizens of Austin appreciate your service, and the time you spend DOES make a difference!!

RESOLUTION

WHEREAS, any changes in Barton Springs Road through Zilker Park impacts the park and its users;

WHEREAS, the Parks and Recreation Board or its representative should be included in any team that develops plans for this portion of Barton Springs Road;

WHEREAS, minimizing the taking of parkland is of the utmost concern;

WHEREAS, development of the plans for Barton Springs Road should include features for pedestrian safety and safe alternative transportation plans;

WHEREAS, any plans for development of Barton Springs Road should include safe, easy pedestrian crossing of the road from one side of Zilker Park to the other;

WHEREAS, the impact of narrowing Barton Springs Road through Zilker Park to one lane in each direction should be studied;

NOW, THEREFORE, BE IT RESOLVED, the Austin Parks and Recreation Board recommends to the City Council and the Urban Transportation Commission that the above issues be included in any planning and development of Barton Springs Road through Zilker Park.

July 14, 1998