

ORDINANCE NO. 20101216-075

AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT WITH JOHN K. STRICKLAND, JR., PETER C. STRICKLAND, AND EDWIN L. STRICKLAND, III, AND GRANTING VARIANCES NECESSARY TO EFFECTUATE THE SETTLEMENT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

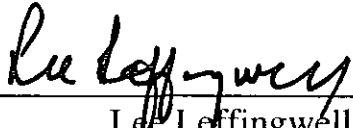
PART 1. The City Council approves the Settlement Agreement between the City and John K. Strickland Jr., Peter C. Strickland, and Edwin L. Strickland, III attached to this ordinance as Exhibit A and authorizes the City Manager to execute the Agreement.

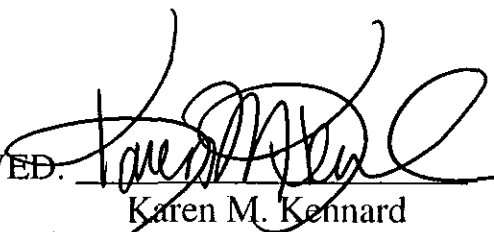
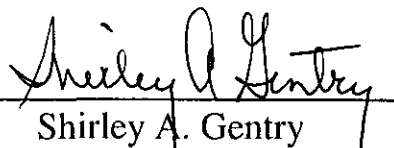
PART 2. The City Council grants variances from Chapter 25-8, Subchapter A, Article 7, Division 1 (*Critical Water Quality Zone Restrictions*), Section 25-8-452 (*Critical Water Quality Zone*), and Section 25-5-1 (*Site Plan Required*) of the City Code to allow implementation of the terms of the Agreement in Exhibit A.

PART 3. The City Council waives sections 25-1-213 and 25-8-41 of the City Code for this ordinance.

PART 4. This ordinance takes effect on December 27, 2010.

PASSED AND APPROVED

December 16, 2010 §
 §
 § 
 Lee Leffingwell
 Mayor

APPROVED:  ATTEST: 
 Karen M. Kennard Shirley A. Gentry
 Acting City Attorney City Clerk

NO. D-1-GN-09-001838

JOHN K. STRICKLAND, JR., PETER	§	IN THE DISTRICT COURT
C. STRICKLAND, and EDWIN L.	§	
STRICKLAND III	§	
Plaintiffs	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
CITY OF AUSTIN TEXAS	§	
Defendant	§	
	§	98 th JUDICIAL DISTRICT

FINAL SETTLEMENT AGREEMENT

Definitions

"City" whenever used in this agreement shall mean City of Austin and all of its officers, directors, agents, servants and employees.

"Stricklands" whenever used in this agreement shall mean John K. Strickland, Jr., Peter C. Strickland, and Edwin L. Strickland, III, and all of their agents, employees, engineers, attorneys and legal representatives.

"Dam" whenever used in this agreement shall mean the small concrete dam on Bullick Hollow creek, with rough dimensions of 60'x 4'11" x 8", situated on property owned by Stricklands at 12717 Bullick Hollow Road, Travis County, approximately 300 feet downstream from a larger dam which is not subject of this agreement or the lawsuit.

Recitals

In 2008 Stricklands constructed a dam across Bullick Hollow Creek, a small stream within the Lake Travis Watershed which runs through their property; no permit or approvals were sought or obtained for the dam. The City of Austin, exercising its regulatory authority to protect watersheds within its extra-territorial jurisdiction, has issued notices of violation to

Stricklands and demanded that the dam be removed and the site restored to comply with the Code of the City of Austin, and in accordance with the permitting processes imposed by the City. The parties' dispute about the dam resulted in the above-styled lawsuit, which the parties desire to resolve with this settlement agreement.

Agreement

The parties agree that the matters involved in this litigation will be resolved by the Stricklands removing the dam in accordance with a site restoration plan submitted for review and approval to the City. The City agrees to process and review the site restoration plan in accordance with the terms set out below.

TERMS

The dam removal and site restoration plan submittal must include the following components:

1. Dimensions of existing dam, topography at 1-foot contour intervals within 50 feet of the dam.
2. Remove sediment behind the small dam prior to initiating dam removal.
3. Remove dam to at or below pre-dam natural bed and bank elevations.
4. Notes on the restoration plan describing actions to occur and equipment to be used for dam removal.
5. Show the location of the sediment and/or spoils disposal area.
6. Show temporary and permanent erosion and sedimentation controls for the sediment and/or spoils disposal area.
7. Restore the vegetation along the banks with City of Austin Standard Specification Item No. 609S.5, Native Planting and Seeding. Provide a list of plants, such as inland sea oats.
8. Restore the pre-dam bank profile to connect with the upstream and downstream undisturbed bank. Install large boulders and/or bank stabilization materials.
9. Provide a list of milestones for project completion. For instance, Phase 1 – remove sediment; Phase 2 – route flow downstream of dam; Phase 3 – cut/remove structure; etc.
10. Provide a plan note that the City of Austin has the right of entry for environmental inspection.

The parties further agree that upon completion of final inspection and receipt of a letter of concurrence from the engineer that the project was completed according the approved submittal, specifically to include verification that that the required vegetation has been properly established, the City will dismiss the lawsuit and its claim for attorney fees. Each party will pay its own attorney fees and court costs.

This settlement agreement contains the entire agreement between the parties with regard to the removal of the dam and restoration of the site, as well as the lawsuit, and is binding upon all representatives and successors of each party.

As part of the consideration for this agreement, Stricklands acknowledge that:

- a. each party has read this agreement in its entirety and understands its terms;
- b. each party in executing this agreement has exercised his own independent judgment about his rights;
- c. each party represents and warrants that he is authorized to execute this agreement and meet the obligations contained in it.

Executed to be effective after all parties have signed:

City of Austin:

By: _____
_____(title)
_____(date)

Plaintiffs:

John K. Strickland, Jr.
_____(date)

Peter C. Strickland
_____(date)

Edwin L. Strickland, III
_____(date)