

**The law locks up both man and woman
Who steal the goose from off the Common
But lets the greater felon loose
Who steals the Common from the goose**
16th Century Anon.

Land speculation is an old trade. It's fast, legal and extremely profitable. The sale of Manhattan Island to the Dutch is a classic example where the Indians were paid off with \$24.00 worth of beads.

Are we, too, selling Austin for a handful of trinkets? A signature from an Indian chief is today's zoning change and utility extension — they're money in the bank for certain individuals.

A part of the Canadian-owned Patton Ranch was sold to Motorola recently after the City Council agreed to extend water for industrial use to this Oak Hill tract. Motorola's bait was the jobs it would provide Austin residents. Last

week Motorola began laying off workers at its existing Austin plant, and the company is expected to announce soon that it must delay construction of the Oak Hill plant. If this plant is built, Motorola plans to produce and store toxic chemicals at this environmentally delicate location. If any dangerous chemicals seep into the aquifer, Barton Springs will become a health hazard and an important source of our drinking water will be contaminated.

The Armadillo World Headquarters was urgently flattened a year ago to make way for a high-rise hotel-office complex. Not one Austin resident without financial ties to the project spoke at

Council hearings for rezoning this lot to allow such intensive development. Nevertheless the zoning change was granted, and the property was bought by Jeff Simon, nephew of Melvin Simon, entrepreneur of the Barton Creek Square Mall. A few months later, title was transferred to Sira, Inc. a Texas Corporation naming Melvin Simon as director. Three months ago, the land was again sold to a partnership involving local realtor/developer, Bert Pence.

Another example — where the "Common" happens to be our water supply — is the speculation that occurred on a large tract of land over the Barton Springs Aquifer. During a six-month period between 1974 and 1975, Austin developer Sid Jagger maneuvered a series of bureaucratic steps that make the game of Monopoly seem naive.

On the seventh month he rested — having resold the now annexed, rezoned and subdivided land to the Austin Mall Company, a subsidiary of the same Melvin Simon and Associates.

Where once was a graceful hill with rainfall draining naturally in five different directions, now squats the largest shopping center in the Southwest. Rainfall no longer drains harmlessly through the four small tributaries to Barton Creek and a fifth one to Dry Creek. Instead, rain now carries pollutants from the 100-acre asphalt parking lot into holding ponds for "filtering" and then is discharged into the creek and the underground aquifer that feeds Barton Springs. Some of the runoff avoids the ponds entirely, flowing directly into the creek. Substantial rains also avoid filtration by overflowing the limited capacity of the holding ponds.

Annexation of the Mall property occurred on December 12, 1974 with little fanfare. Thus the stage was set for Jagger to seek the City's official zoning permission to build a giant shopping center.

On January 6, 1975, Jagger appeared before the Zoning Commission at its public hearing on his request to establish general retail zoning on 104 acres. This request included an additional 54 acres of general retail zoning, 21 acres of office zoning, and 54 acres of apartment zoning. He stated his intention to place restrictive covenants (then being drafted) in the deeds so as to limit development of the property to protect the environment. He explained how the deed restrictions would address the quantity and quality of runoff from the Mall.

"Thirdly, we are proposing on the drainage that we have this deed restriction — again, which would be enforceable by the City — that we could not start development until we had a plan approved by the Director of the Engineering Department of the City of Austin. One that would provide that we would not increase the downstream flooding in Barton Creek, and that it would not add to the — uh — detract from the quality of the water. It's a little more technical than that, but that's basically what we're trying to come up with."

In response to the Planning Commission's initial concern about the environment, Jagger was reassuring. "The shopping center developers that we are discussing this particular site with have quite a bit of experience in other states that have had environmental impact requirements previously. They are very conscious of what will be necessary and have addressed themselves to these questions."

Citizen opposition based on concerns about pollution of the Creek and Springs subsided at this bold promise. Since there would be no more pollution than would occur in the natural state, there would be no problem. The Committee referred the case to the full Planning Commission for consideration at its meeting the following week.

A TALE OF ONE CITY

Sid Jagger's business interest in this Barton Creek area can be traced back to the early 1970's because of the planned southwestward extension of Mopac. He and his associates began acquiring interest in land in this previously undeveloped area north of Barton Creek. The Mall drama first surfaced publicly in 1974 when Sid Jagger and his associates sought City approval for a "conceptual plan" to develop 412 acres running from the intersection of Loop 360 and the proposed Mopac extension northward to Bee Caves Road.

This plan was known as the Bee Caves Tract. And so began six months of Planning Commission, Zoning Commission and City Council hearings, during which Jagger was awarded four lucrative plums — annexation of the property to the City of Austin, rezoning to permit general retail status, subdivision plats dividing over 100 acres of the land into two large lots, and a sewer pipe extension to the Bee Caves Tract.

The first of several Planning Commission meetings concerning the Barton Creek Square Mall was held on November 12, 1974. Sid Jagger was prepared.

"As we all know," he said, "this is a tremendously sensitive area . . . one of the things we were most interested in doing was getting as good a planner as we could find in the country, and one that particularly had a lot of experience in environmentally sensitive areas . . . So we made an arrangement to get Walter Richardson Associates to come in to Austin and plan this area for you."

The representative of this California firm amplified these qualifications. "We have had a great deal of experience in planned unit developments in very rough terrain." He brought maps, diagrams of the highways, soils, slopes, drainage areas, and views to and from the property. His conclusions on what development would be most suitable were summarized on a composite map. Some of his comments that evening were:

"There are some other areas in which the drainage moves in different directions, which suggests to us that you can either work with the land or go in there and grade and violate the land." "You begin to get a kind of feeling that with the loop system that is developing, with 360 and the connection with Mopac, that there is an opportunity and probably an obligation, because of the terrain in that area, to provide something that is regionally significant rather than just another residential development . . . We're talking about the most important regional aspect here, the intersection of Loop 360 and Mopac."

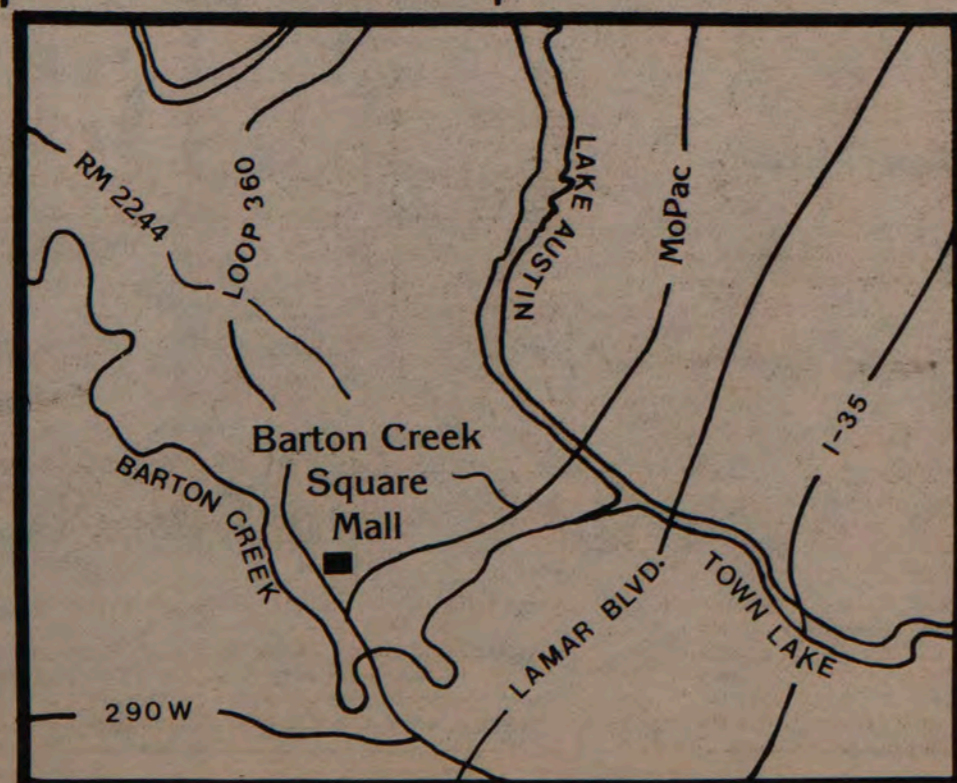
The planner proposed fulfilling this "obligation" by building a regional shopping center on a hill. Years later giant machines blasted away this hill-top and filled its valleys to create the flat expanse for the Mall.

Opposition to this "conceptual plan" came from individuals in the community and from the Barton Creek Citizens Association, a neighborhood group on

the other side of the Creek. Jim Bannerot, an attorney and President of the Association, asked the Commission to delay approving the conceptual plan. He was concerned about certain unresolved questions on the City's legal authority over part of the tract, and the availability of city sewer service to the land. However, the official minutes of that meeting contain no mention of Bannerot's presence.

The Planning Commission voted that night to endorse Jagger's conceptual plan. Such approval created no legal rights under city ordinances for the developer, nor did it bind the City to also approve the follow-up requests for the necessary zoning and subdivision of the property. However, it did give encouragement to Sid Jagger to proceed to the next step — annexation.

Annexation was crucial in order to secure the necessary utilities to develop the property so intensively. While the land remained outside the City limits, Austin had no legal obligation to provide water or sewer service.



Jagger then wrote to Austin's planning director Dick Lillie that the drainage restriction discussed at the public hearing "will be included in the deed restrictions," and be made a part of the subdivision plat by reference. He stated his willingness to limit development in certain other respects. He submitted proposed language for restrictive covenants "to accomplish the above objectives." In its pertinent part, the proposed covenant for runoff water quality provided:

"Jagger, its successors or assigns, shall construct and install such low-flow grease and/or sand filters on the property for filtering contaminating or polluting storm water discharge as may be reasonably required by the Director of Engineering of the City of Austin."

Jagger's letter and the proposed restrictive covenants were read into the record of the Planning Commission. The Commission unanimously recommended to the City Council that the zoning change for the Mall be granted, subject to the restrictive covenants.

On February 6, 1975, the City Council held a public hearing on the zoning change request. Dick Lillie praised the steps Jagger had agreed to take in order to protect the environment. "In this application," he stated "we're talking about . . . retaining the quality of the water as it relates to Barton Creek."

At this hearing, Jim Bannerot of the Barton Creek Citizens Association criticized various provisions in the restrictive covenants and suggested several specific changes. The Council agreed that Bannerot, the developer, and the City Staff should meet to try to resolve their differences. The Council then voted unanimously to approve the zoning with the stipulation that the parties return "with final documents to tighten up the enforceability of the covenants."

After a meeting of the interested parties, Dick Lillie appeared at the February 20, 1975, Council meeting with a revised draft of the covenants supported by the city staff and the developer. The draft included but a couple of the changes Jim Bannerot sought. At the Council meeting Bannerot focused his efforts on trying to add a statement of a goal for the filtering of the runoff. He proposed prefacing the requirement for filtration with the phrase, "In order not to degrade the present quality of the water in Barton Creek as evidenced by laboratory analysis of said water by the Texas Water Quality Board or other governmental agencies or authorities."

Jagger spoke in defense of the developer/City Staff version. "We are saying that we are willing to live with standards established by the City Engineer to try to accomplish our objectives. We are in an area that we are, all of us, just beginning to learn how to go about doing some of these things." "And we feel that what we have proposed is a statement of trying to do the best that is possible under our technology to try to control the quality of the water."

A discussion between Bannerot and the Council went as follows:

Jim Bannerot

All that I am simply trying to do is incorporate an objective in here not to degrade the water quality of the Creek in its present form.

Councilmember Jeff Friedman

I guess . . . what you are asking for, Mr. Bannerot, is just a written commitment instead of the verbal agreement that Mr. Jagger has given that he is not going to do this.

Mayor Roy Butler

Mr. Kubicek (Assistant City Attorney) says that the language basically is in the proposed covenant.

Bannerot

I think it's inferred that the only reason you would put in low-flow grease and sand filters is not to degrade the water quality of the Creek; so certainly the goal is implied . . . Let's make it explicit. Now if the findings of the Water Quality Board or any other governmental study is objectionable, we can strike that.

Friedman

I don't think it's objectionable. I think it's superfluous. . . .

Butler

Yeah, I don't think it's necessary, either.

The Council approved the restrictive covenants as drafted by Jagger and the City Staff. The provision for filtration used practically the same language the Planning Commission had recommended. Just before the vote, Mayor Butler comfortingly commented: "Mr. Bannerot, I think, judging from Mr. Jagger's cooperation and the way he worked with you all, that you can rest assured that he'll protect the area."

During the winter Jagger worked to get approval for a pipe to carry sewage from the Mall about a mile down to a big sewer line running along Barton Creek. Jagger proposed laying the line down Skunk Hollow, a short, pretty tributary which enters Barton Creek above Campbell's Hole. The neighborhood and the City's Environmental Board opposed tearing up a twenty to thirty foot wide path down the Hollow to make a trench for a 12 inch diameter pipe. In March, Jagger prevailed in getting consent to his "compromise." Most of the pipe would be laid in the bed of Skunk Hollow. The last 850 feet of the sewer would be tunneled underground, leaving the scenic lower portion of the Hollow undisturbed. Through the City's "approach main" policy, the utility customers of Austin have paid

Is There Life After Barton Springs?

The Mall has not kept the promise to combine commerce with environmental intelligence.

If one bought a new product that, when opened, was defective, it would normally be returned.

Satisfaction with the outcome would depend on how much that seller appreciated your goodwill.

We've bought a defective product — Barton Creek Square Mall. On August 19, when the package was opened, Barton Springs Pool was closed. The Mall came with a guarantee which is not being honored.

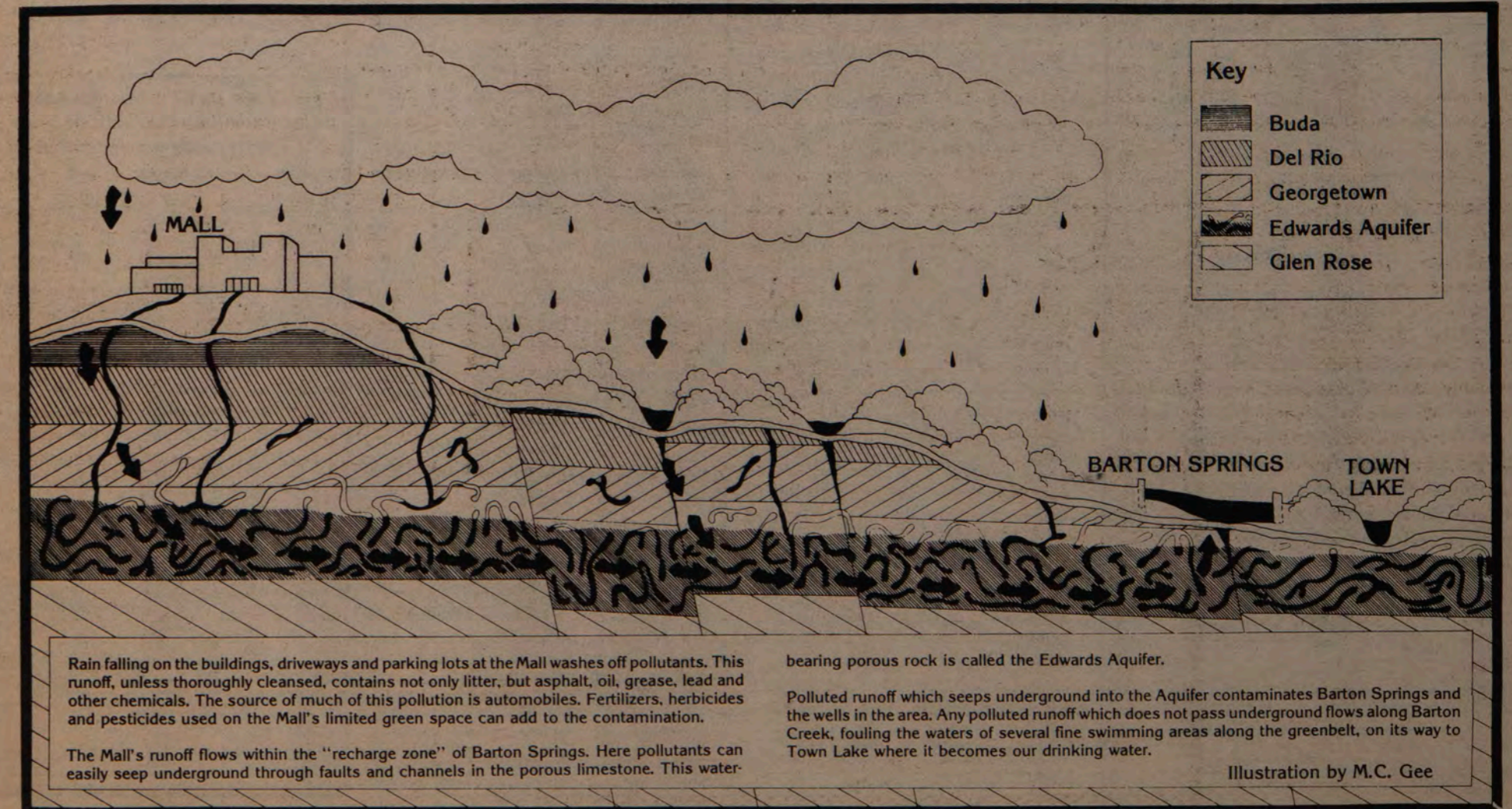
We cannot sue the Mall since we are not the original buyer. That task falls on our City Government, which shows no inclination to be an injured party.

Austin residents must force that goodwill from the Mall. Please refuse to patronize this shopping center until the Mall proves it is not abusing Barton Creek and Barton Springs. Would you still want to live in Austin if these splendid resources were gone?

back to Jagger a portion of the cost for the lower half mile of this line.

By the end of March, 1975, Jagger had received a waterway development permit for some of the site work on the Mall tract, and by the end of April, restrictive covenants for the tract were recorded in the County deed records. By May the subdivision plat had been recorded, and the City Council passed the ordinance officially zoning 99.42 acres for general retail use.

Having received the various approvals from the city, Jagger was ready to make his money. He sold the property to Austin Mall Company, a partnership controlled by Melvin Simon and Herbert Simon.



- Key**
- Buda
 - Del Rio
 - Georgetown
 - Edwards Aquifer
 - Glen Rose

Rain falling on the buildings, driveways and parking lots at the Mall washes off pollutants. This runoff, unless thoroughly cleaned, contains not only litter, but asphalt, oil, grease, lead and other chemicals. The source of much of this pollution is automobiles. Fertilizers, herbicides and pesticides used on the Mall's limited green space can add to the contamination.

The Mall's runoff flows within the "recharge zone" of Barton Springs. Here pollutants can easily seep underground through faults and channels in the porous limestone. This water-

bearing porous rock is called the Edwards Aquifer.

Polluted runoff which seeps underground into the Aquifer contaminates Barton Springs and the wells in the area. Any polluted runoff which does not pass underground flows along Barton Creek, fouling the waters of several fine swimming areas along the greenbelt, on its way to Town Lake where it becomes our drinking water.

Illustration by M.C. Gee

The Plat Thickens

The Austin Mall Company later bought from Jagger a 48 acre tract just northeast of the Mall. In the summer of 1977, the City Council again obliged the developers by passing an ordinance establishing the local retail zoning the Mall wanted for this additional acreage.

A public street had long been planned to cross this tract, but in April, 1979, the City Council vacated the street allowing the Mall to expand onto part of the 48 acres — resulting in the loss of an attractive natural area.

The original conceptual plan for the Bee Caves Tract indicated a stretch of Upper Skunk Hollow as "proposed park and greenbelts." Indeed, at the January, 1975, Zoning Committee meeting, Jagger said he would dedicate this green space to the city, or provide an environmental conservation easement stipulating that the area would remain in its natural state. However, before the zoning was approved, he had modified this promise. Part of the expanded area was buried under tons of fill to make building sites for future stores, and another part was bulldozed to make one of the ponds for the runoff.

By the fall of 1979, a citizen task force was drafting stricter rules for development standards. Meanwhile, several moratoriums were in effect on certain new subdivisions of land in the Barton Creek watershed.

The Mall site — then divided into two large lots totalling 120 acres — was not subject to the moratorium — provided it kept its existing lot layout. However, some of the big department stores wanted to buy their own lots and construct buildings on them.

To create such lots, Austin Mall Company would have to subdivide 120 acres into ten lots — subjecting them to the moratorium unless a special exemption was made. The City Council promptly gave them this exemption by amending the moratorium to allow resubdivision of land provided there was no increase in the needed sewer capacity. By permitting the Mall to evade the moratorium, the Council threw away the chance to impose stricter development controls such as those later written into the Barton Creek Watershed Ordinance.

Filtration Manipulation

The moratorium exemption cleared the way for the Austin Mall Company to sell lots to the big stores. In January, 1980, the deeds were recorded conveying the individual lots for the six big department stores — Sears, Wards, Penney's, Scarbroughs, Dillard's and Foleys. The obligation to live up to the restrictive covenants — including the one covering water quality of the runoff — was passed on to these stores by a specific recitation in each deed.

In the fall of 1979, the engineers for the site work at the Mall proposed that three ponds be built to satisfy these covenants regarding storm water runoff. The ponds were designed to filter some of the runoff before releasing it into short tributaries of Barton Creek. In the event of a small rain, all the runoff entering the ponds would flow down

It's breaking my heart strings
What's coming down Barton Springs
Making my tongue speak
The Shopping Maw! of Barton Creek!
Filling the stream we know
With development overflow.

From the depths of Travis Heights
To the South of Zilker Park
We are tossing the best of South
Austin

To a few residential sharks.

And it makes my head swim
The direction we're going in
Painting the greenbelt black
With a sweep of the MoPac
Spilling right through our hands
Is the best of the Master Plan.

Condos on Zilker Park
Parking lots along Town Lake
Water district around Wild Basin
Impervious cover surrounding Lake
Austin

Forcing our water pollution level to
grow.

And it makes my heart sing
The beauty of Barton Springs
So lucky to have so near
Such a delicate eco-sphere
But its spilling right through our hands
Like the spirit of the Master Plan
Changing the town we know
Into a city of grow, grow, grow . . .

Bill Oliver

through a sand and gravel filter before being discharged. In a bigger rain, however, unfiltered runoff would overflow the ponds. The engineers submitted no data to the City predicting how much the filtration ponds would reduce water contaminants.

A local attorney for the Austin Mall Company requested that the City confirm that the ponds would satisfy the restrictive covenants regarding runoff volume and filtration.

After the City's approval of the ponds in January of 1980, the Director of Engineering short-sightedly responded. "It is our opinion that the approved plans fully address and comply with the conditions of Paragraphs 3 and 4 referenced in your letter with the exception of the actual construction of the facilities, which may now proceed."

In March, 1980, the Save Barton Creek Association (SBCA) gave notice of its intent to sue the Mall owners under the Federal Water Pollution Control Act. That Act requires that a permit be obtained for certain point sources of water pollution. The SBCA took the position that the filtration ponds would not work adequately and would be point sources of pollution. As a result, representatives from Melvin Simon and Associates began discussions with the SBCA in order to settle as many issues as possible without going to court. The SBCA asked the Mall's developers to provide a report on how well their pollution reduction measures (vacuum sweeping of the parking lots and construction of the filtration ponds) would work.

This report, released in July, 1980, contains the first numerical estimates of the Mall's water pollution. Because of the numerous assumptions and gaps in the information, the report is of limited reliability and usefulness. It nevertheless appears from their own report that the Mall's runoff will be significantly

polluted in several important respects. For example, their estimated level of biochemical oxygen demand is between 9 mg/l (best case) and 40 mg/l (worst case). This compares with 2.5 mg/l for natural runoff from a rainstorm in a rural area as estimated by Espey, Huston and Associates in the *Barton Creek Watershed Study*. The Mall's report also predicts high levels of coliform bacteria, an indicator of disease-bearing organisms.

The Fecal Coliform Hits the Fan

The Environmental Protection Agency recommends that fecal coliform levels in bathing water be no more than 200 colonies per 100 milliliters of water, averaged over a 30 day period.

In August of this year the City of Austin and the United States Geological Survey (USGS) began a much needed weekly monitoring program of the water at Barton Springs. On August 19, when the Pool was closed because of cloudiness after a moderate rainfall, the fecal coliform level reached an alarming 2600 colonies per 100 milliliters. On October 7, after a heavy rainfall, the lever registered 2100/100 ml.

The USGS began periodic monitoring of the Pool in 1978. The highest fecal coliform level recorded in 1979 was 420/100 ml, and in 1980, 480/100 ml.

Few monitoring records exist before 1978, but a thesis by Steve Twidwell, *Bacteriological Study of Barton Springs* included data on fecal coliform samples taken from the Pool between September 1973 and September 1974. The data is not extensive enough to be conclusive, but of the eleven samples taken, none included fecal coliform levels of more than 10/100 ml.

The SBCA responded in March, 1981, with detailed criticisms of the Mall's report and the proposed ponds. This response contained a section specifying what improvements would be necessary if Sid Jagger's promise not to degrade the water quality of Barton Creek was to be kept.

The Mall did not reply to the Save Barton Creek Association nor make any substantial changes to the design of the drainage system.

The SBCA again wrote the Mall on December 3 requesting, among other things, that the Mall reaffirm its inherited promise to not allow polluted runoff to disturb Barton Creek.

A lawyer for the Austin Mall Co. replied that while the owners were willing to discuss the concerns, it was stressed that the "alleged promise referenced in (the) letter has never been included in any of the agreements with the City or any other party of which we are aware."

Open and Closed

By late July, 1981, some of the large department stores were preparing to open. The grand opening, which included many of the smaller shops, was set for August 19. The filtration ponds, however, were not finished. The network of pipes to drain the ponds had not been laid, and the sand and gravel

filters had not been installed. The embankments around the ponds were simply slopes of dirt and rocks, with nothing to keep the dirt from washing into the ponds. The Mall was feverishly spending much time and money on promoting the Mall's opening, while ignoring the effect that hundreds of customers' cars could have on Barton Creek and the Springs.

Despite the pond's incompleteness, the City's Building Inspector allowed the stores to open as planned. He issued them 60-day "temporary" certificates of occupancy under a building code provision that allows occupancy if "no substantial hazard will result."

The day of the Mall's grand opening, Barton Springs was closed for the second time this year, due to turbidity (cloudiness). The water was so murky that guards could not see much beyond the surface of the water. The Zilker Park Posse held a press conference that day urging people not to shop at the Mall, because each car that is driven to the Mall's 100-acre asphalt parking lot can contribute to the polluting of Barton Springs.

More than 80 days passed before construction of the filtration systems was "complete." Meanwhile, the stores remained open.

The building of the Barton Creek Square Mall is a sad example of how development is harming Austin's environment. Much lip service has been paid to protecting Barton Creek and Barton Springs while the actual performance has been totally inadequate.

It is a tragedy is that our government agencies, representing the collective social wisdom and public interest have failed to protect Austin's most valuable natural resource.

Building a large shopping center over the recharge zone of the aquifer was a mistake. The effects of this poor geographical decision could have been minimized had the developers worked with the land, invested substantially in vegetation erosion controls for the siltation their massive earth moving caused, and used state-of-the-art filtration systems to disperse the runoff from rains.

The Zilker Park Posse urges Austin-ites to boycott the Mall until such time as the Mall provides evidence that the quality of our water is not being degraded.

Specifically the Posse demands that the owners of the Mall do the following:

1. Monitor Runoff Water Quality

Install continuously operating devices to measure the volume flow and to collect runoff samples. These should be installed at the various drainage areas at and adjacent to the Mall. The water samples should be scientifically analysed for comparison with runoff from natural, undisturbed land, and the data from the analyses made public. The owners of the Mall should assume the cost of such monitoring.

2. Reaffirm the Commitment to Maintain Water Quality

We request that the owners publicly reaffirm their commitment to maintain the water quality of Barton Creek and Barton Springs. The people of Austin should be reassured that the Mall will improve its treatment methods if experience shows that the runoff detracts from the water quality.