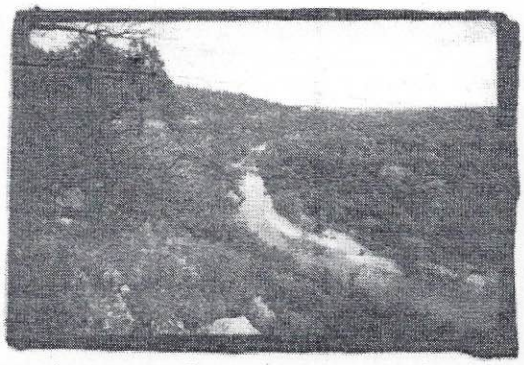
Save Our Springs: Clear and Simple

by Daryl Slusher



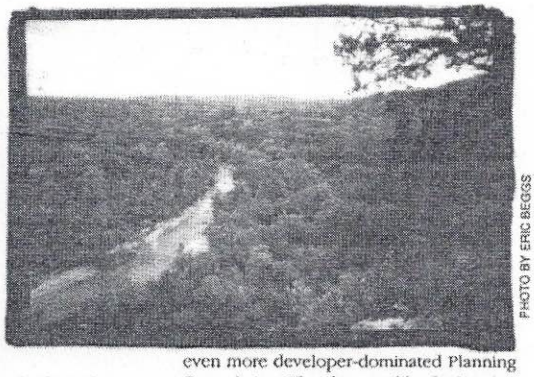


PHOTO BY ERIC BEGGS

politics

SOS: ORDINANCE #1

How complicated is it? The Save Our Springs (SOS) ordinance is so complicated that for several months the local daily newspaper, television reporters and developer representatives have droned on and on about how SOS is more than the average citizen can grasp, more than the average citizen desires to grasp. Indeed there are a few technical terms in the three page ordinance: site plan, final plat, impervious cover, preliminary subdivision approval. But, as ordinances go, this one features a large dose of simplicity as well as principle. And, it's a lot easier to comprehend than, say a speech by Ronney Reynolds or Bob Larson.

The SOS ordinance is not so much an attempt to prevent growth and development in the Barton Springs Watershed, as a quest to keep the area from becoming totally urbanized. SOS is based on three fundamental principles. One is that the higher the density of a development, the more pollution it creates. Thus SOS would allow roughly half as much impervious cover (unnatural ground cover; i.e. parking lots, buildings, roads etc.) as the current Comprehensive Watersheds Ordinance (CWO). The second is that non-degradation – which SOS backers and opponents say they want – means a development should generate no more pollution than came from the same property before the development. So SOS requires that a development not increase the total amount of pollutants beyond what comes from the property right now. The third is that everyone should play by the same rules and exemptions should not be allowed. To that end, SOS dramatically tightens – but does not eliminate – exemptions and variances, and shortens the timetable on previously granted project approvals.

SOS attorney Bill Bunch says the ordinance is based on the Austin Tomorrow Plan, which was developed through years of citizen input and adopted by the city council in 1979. The relevant section reads: "Development in this [Barton Springs] zone should not contribute to any increase in pollution of surface or ground water above that expected to occur in the natural, undisturbed state. Impervious surfaces in the zone should be minimized."

The Existing CWO

To understand the technical aspects of the SOS ordinance, one must compare it to the the current CWO, aka the "composite." If SOS fails, the current CWO stays in place. If SOS passes, however, it will not replace the existing CWO, but will instead strengthen key parts of it. Neither of these laws, though, was born in a vacuum; they're just the latest episode in an environmental war which has raged in Austin for more than 20 years.

In 1986 the city council passed the first Comprehensive Watersheds Ordinance (CWO) which wasn't all that comprehensive. Central city waterways were left out in a compromise with development interests. Those creeks finally won protection last year in the Urban Watersheds Ordinance, over the objections of development interests led by the Greater Austin Chamber of Commerce. During the current campaign developers have tried to blame environmentalists for the gap in coverage for central city creeks.

After passing the 1986 CWO, the council immediately began handing out exemptions and waivers to it. Between 1986-1991, 603 exemptions were requested in the Barton Springs zone alone; 524 or them, or 87 percent, were granted.

Citizen outrage finally boiled over in June 1990 with the historic uprising against the Barton Creek PUD proposal. After that proposal was unanimously rejected, the Lee Cooke council followed through in February 1991 with a stronger CWO, almost as strong as the SOS proposal. But they passed it only on a six month "interim" basis. The interim applied only to the Barton Springs zone. The 1986 CWO stayed in place for other areas.

The next council, led by new Mayor Bruce Todd, threw out the interim changes and passed a new compromise or "composite" CWO, forged as a compromise between a proposal put forward by Todd's developer-dominated task force and another from the even more developer-dominated Planning Commission. The changes, like the interim, applied only to the Barton Springs zone.

The SOS petition drive began soon after, amid charges that Todd and his council colleagues (except for Nofziger who voted against the composite) had broken campaign promises to protect the environment. SOS quickly collected around 30,000 signatures, more than enough to put their proposal on the ballot. The council's RULE majority (Ronney Reynolds, Charles Urdy, Bob Larson and Louise Epstein) defied the city charter and abstained from a vote to set the election for June 2. They instead put it on with 22 bond items for August 8.

(The council also added an SOS "alternative," offered by Reynolds. That's proposal number two, and it's a sham.)

Impervious Cover

The most fundamental difference between SOS and the existing CWO involves impervious cover, or density. Impervious cover limits have been the focus of more than two decades of warring between developers and citizen groups. Citizen groups have argued that the higher the density, the more pollution a development creates. For example, a large shopping mall, with acres and acres of buildings and parking lots, generates more

The Save Our Springs Initiative

AN ORDINANCE INITIATED BY PETITION BY THE CITIZENS OF AUSTIN TO PREVENT POLLUTION OF BARTON SPRINGS, BARTON CREEK, AND THE BARTON SPRINGS EDWARDS AQUIFER; RESTRICTING IMPERVIOUS COVER; LIMITING EXEMPTIONS, VARIANCES, ETC.; REDUCING RISKS OF ACCIDENTAL CONTAMINATION OF BARTON SPRINGS AND OTHER WATER BODIES; REQUIRING FAIR, CONSISTENT, AND COST EFFECTIVE ADMINISTRATION OF AUSTIN'S WATER QUALITY ORDINANCES; CONTAINING OTHER PROVISIONS RELATING TO THESE SUBJECTS; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1. DECLARATION OF INTENT: The people of the City of Austin declare their intent to preserve a clean and safe drinking water supply, to prevent further degradation of the water quality in Barton Creek, Barton Springs, and the Barton Springs Edwards Aquifer, to provide for fair, consistent, and cost-effective administration of the City's watershed protection ordinances, and to promote the public health, safety, and welfare. The City of Austin recognizes that the Barton Springs Edwards Aquifer is more vulnerable to pollution from urban development than any other major groundwater supply in Texas, and that the measures set out in this ordinance are necessary to protect this irreplaceable natural resource.

PART 2. POLLUTION PREVENTION REQUIRED: (a) In the watersheds contributing to Barton Springs, no development nor any revision, extension, or amendment thereof, may be approved unless it is designed, carried out, and maintained on a site-by-site basis to meet the pollution prevention requirements set forth below for the life of the project. In order to prevent pollution, impervious cover for all such development shall be limited to a maximum of fifteen (15) percent in the entire recharge zone, twenty (20) percent in the contributing zone within the Barton Creek watershed, and twenty-five (25) percent in the remainder of the contributing zone. The impervious cover limits shall be calculated on a net site area basis. In addition, runoff from such development shall be managed through water quality controls and onsite pollution prevention and assimilation techniques so that no increases occur in the respective average annual loadings of total suspended solids, total phosphorus, total nitrogen, chemical oxygen demand, biochemical oxygen demand, total lead, cadmium, fecal coliform, fecal streptococci, volatile organic compounds, total organic carbon, pesticides, and herbicides from the site. For a given project, impervious cover shall be reduced if needed to assure compliance with these pollutant load restrictions.

(b) Within the watersheds contributing to Barton Springs, Section 13-7-23 of the Land Development Code is amended so that in no event shall the boundary of the critical water quality zone be less than 200 feet from the centerline of a major waterway or be less than 400 feet from the centerline of the main channel of Barton Creek. No pollution control structure, or residential or commercial building, may be constructed in the critical water quality zone in these watersheds.

PART 3: NO EXEMPTIONS, SPECIAL EXEMPTIONS, WAIVERS OR VARIANCES: The requirements of this ordinance are not subject to the exemptions, waivers, or variances allowed by Article V of Chapter 13-2 of the Land Development Code. Adjustments to the application of this ordinance to a specific project may be granted only as set out in Part 8 below.

PART 4: APPLICATION TO EXISTING TRACTS, PLATTED LOTS, AND PUBLIC SCHOOLS: (a) This ordinance does not apply to development on a single platted lot or a single tract of land that is not required to be platted before development if (1) the lot or tract existed on November 1, 1991, and (2) the development is either: (i) construction, renovation, additions to, repair, or development of a single-family, single-family attached, or a duplex construction used exclusively for residential purposes, and construction of improvements incidental to that residential use; or (ii) development of a maximum of 8,000 square feet of impervious cover, including impervious cover existing before and after the development.

(b) This ordinance does apply to development of public primary or secondary educational facilities if the City and the school district enter into a development agreement approved by a three-quarters vote of the City Council protecting water quality pursuant to Section 13-2-502(a)(7) of the Land Development Code.

PART 5. EXPIRATION OF PRIOR APPROVALS: Within the watersheds contributing to Barton Springs, the following provisions shall govern the expiration of certain prior approvals:

A. PREVIOUSLY APPROVED PRELIMINARY SUBDIVISION PLAN:

(a) Unless it has or will have expired sooner, a preliminary subdivision plan initially approved before the effective date of this ordinance expires one year after the effective date of this ordinance, or two years after its initial approval, whichever date is later, unless an application for final plat approval is filed before this expiration date and a final plat is approved no later than 180 days after filing.

(b) No approved preliminary plan, and no portion of an approved preliminary plan, shall be valid or effective after the expiration date established by this part, or shall be extended, revised, or renewed to remain effective after the expiration date, except according to subpart C.

B. PREVIOUSLY APPROVED SITE PLAN: (a) Unless it has or will have expired sooner, a site plan or phase or portion thereof initially approved before the effective date of this ordinance shall expire one year after the effective date of this ordinance, or three years after its initial approval, whichever date is later, unless:

(1) an application is filed before this expiration date for building permits for all structures shown on the site plan or phase or portion thereof and designed for human occupancy, and the building permits are approved and remain valid and certificates of occupancy are issued no later than two years after this expiration date; or

(2) if no building permits are required to construct the structures shown on a site plan described in subpart (a), construction begins on all buildings shown on the site plan or portion or phase thereof before this expiration date, and the buildings are diligently constructed and completed, and certificates of compliance or certificates of occupancy are issued no later than two years after this expiration date.

(b) No approved site plan, and no separate phase or portion of an approved site plan, shall be valid or effective after the expiration date established by this part, or shall be extended, revised or renewed to remain effective after the expiration date, except according to subpart C.

C. APPROVED PLANS WHICH COMPLY: An approved preliminary subdivision plan, portion of a preliminary plan, approved site plan, or separate phase or portion of an approved site plan that complies with this ordinance does not expire under subpart A or subpart B and remains valid for the period otherwise established by law.

PART 6. LIMITED ADJUSTMENT TO RESOLVE POSSIBLE CONFLICTS WITH OTHER LAWS: (a) This ordinance is not intended to conflict with the United States Constitution or the Texas Constitution or to be inconsistent with federal or state statutes that may preempt a municipal ordinance of the Austin City Charter.

(b) The terms of this ordinance shall be applied consistently and uniformly. If a three-quarters majority of the City Council concludes, or a court of competent jurisdiction renders a final judgment concluding, that this ordinance, as applied to a specific development project or proposal, violates a law described in subpart (a), then the City Council may, after a public hearing, adjust the application of this ordinance to that project to the minimum extent required to comply with the conflicting law. Any adjustment shall be structured to provide the maximum protection of water quality.

PART 7. CONSTRUCTION OF ORDINANCE: This ordinance is intended to be cumulative of other City ordinances. In case of irreconcilable conflict in the application to a specific development proposal between a provision of this ordinance and any other ordinance, the provision which provides stronger water quality controls on development shall govern. If a word or term used in this ordinance is defined in Austin City Code of 1981, as that code was in effect on November 1, 1991, that word or term shall have the meaning established by the Austin City Code of 1981 in effect on that date, unless modified in this ordinance.

PART 8. REDUCE RISK OF ACCIDENTAL CONTAMINATION: Within one year of the effective date of this ordinance the City of Austin Environmental and Conservation Services Department shall complete a study, with citizen input, assessing the risk of accidental contamination by toxic or hazardous materials of the Barton Springs Edwards Aquifer and other streams within the City of Austin and its extraterritorial jurisdiction. The assessment shall

pollution than a small shopping center with only a few parking places. Likewise, an apartment complex with several acres of parking generates more pollution than a few houses on large lots. And, a subdivision with five houses to an acre generates more pollution than a ...ivision with lots of an acre or more. The ...opment lobby, on the other hand, ar...s that density doesn't necessarily create pollution. They say it can be prevented through structural controls like berms and retention ponds.

Both ordinances feature impervious cover limits, but the limits in the SOS are much stricter. The composite CWO allows more density, and relies more heavily on structural controls.

SOS would limit impervious cover to 15% in the entire recharge zone of all six creeks. The rest of the contributing zone, the parts of the six watersheds upstream from the recharge zone, would be limited to 25%, except for the the Barton Creek Watershed where areas not in the recharge zone would be limited to 20%. Barton Creek receives special distinction because it flows directly into Barton Springs Pool.

The composite makes no distinction for the recharge zone. It does distinguish between commercial and residential development, allowing more impervious cover for commercial projects. Commercial limits are 40% in the Barton Creek Watershed and 55% for the rest of the contributing zone. Residential limits are 25% and 40%, respectively—the same as in the 1986 CWO.

This may not be as big a contradiction as it sounds. SOS opponents have concentrated much of their fire on the effects SOS would have on residential development; but the real concern among developers and land speculators is about its effect on commercial development. Profits can be made selling houses with large lots, and/or builders can build in other areas. Commercial investors, though, will be hurt worse. The fewer stores and parking lots ...an be packed into the watershed, the ... the return on speculative land investments. And that's exactly where the SOS would make the biggest difference.

The composite, like the 1986 ordinance, carves a special category for intersections of state highways, where "bonuses" allow imper-

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inventory the current and possible future use and transportation of toxic and hazardous materials in and through Austin, and shall make recommendations for City actions to reduce the risk of accidental contamination of the Barton Springs Edwards Aquifer and of other water bodies. Within 60 days of completion of the study, and following a public hearing, the City Council shall take such actions deemed necessary to minimize risk of accidental contamination of city waters by hazardous or toxic materials.

PART 9. EFFICIENT AND COST-EFFECTIVE WATER QUALITY PROTECTIVE MEASURES: In carrying out City of Austin efforts to reduce or remedy runoff pollution from currently developed areas or to prevent runoff pollution from currently developed or developing areas, the City Council shall assure that funds for remedial, retrofit, or runoff pollution prevention measures shall be spent so as to achieve the maximum water quality benefit, and shall assure that the need for future retrofit is avoided whenever feasible.

PART 10. SEVERABILITY: If any provision, section, subsection, sentence, clause or phrase of this ordinance, or the application of the same to any person, property, or set of circumstances is for any reason held to be unconstitutional, void, or otherwise invalid, the validity of the remaining portions of this ordinance shall not be affected by that invalidity; and all provisions of this ordinance are severable for that purpose.

PART 11. AMENDMENT, CODIFICATION, AND EFFECTIVE DATE: (a) The adoption of this ordinance is not intended to preclude the adoption, at any time, by a majority vote of the City Council of stricter water quality requirements upon development in the watersheds contributing to Barton Springs or of further measures to restore and protect water quality.

(b) If this ordinance is enacted by the Austin City Council under subsection (a) of Section 5, Article IV of the Austin City Charter, this ordinance shall be effective ten days after the date of its final passage and, subject to subpart (a) and to controlling law, shall not be repealed or amended by the City Council until two years after its ...ive date. Thereafter, this ordinance may be repealed ...nded only by an affirmative vote of no less than six ...ers of the City Council

(c) The City Council shall codify the provisions of this ordinance into appropriately numbered sections of the Austin City Code without changing the language or effect of this ordinance, except to delete those subparts that do not apply because of the method in which this ordinance became effective.

vious cover to go as high as 70%. Such intersections in the Barton Springs zone are U.S. 290 and Texas 71, MoPac and 290, MoPac and Loop 360, and, if it happens, MoPac's intersection with the proposed Outer Loop. Many of these intersections are still wild land and their future is linked directly to the future of Barton Springs.

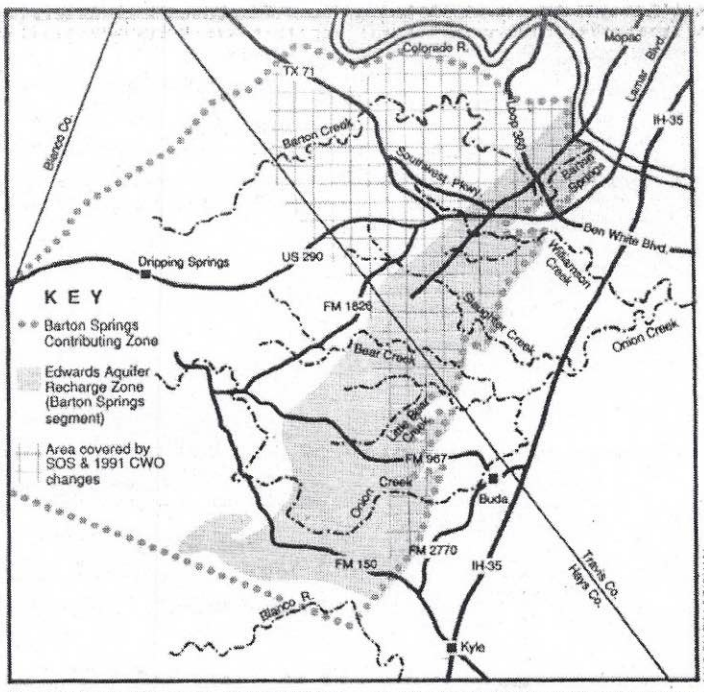
The high intersection density is consistent with a city policy dating back at least two decades. That policy encourages high density at major intersections, as a means of preventing strip development elsewhere. The strategy is questionable, especially over a sensitive recharge zone, but the real problem is that only one part of it has been implemented. High density has been allowed at intersections, like Barton Creek Mall at MoPac and Loop 360, but thousands of acres of strip development have been approved as well.

SOS: ORDINANCE #1

Along with impervious cover limitations, the SOS features tightened restrictions on building in the critical water quality zone (CWQZ), defined as 400 feet from the centerline of Barton Creek and 200 feet on each side of any other "major waterway" in the rest of the contributing zone. Structures prohibited include residential and commercial buildings, as well as "pollution control structure(s)." The existing CWO prohibits commercial or residential structures and most pollution control structures in the CWQZ. It does allow wet ponds in the CWQZ, and also allows bluff lines to define the edges of the CWQZ when the bluffs are closer than 400 feet, meaning that in some cases developers could build atop bluffs closer than 400 feet from the Creek. That option is eliminated in the SOS ordinance.

Neither ordinance, by the way, allows developers to use CWQZ property as part of the area from which they derive their impervious cover percentages. The impervious cover limit is instead calculated from the "net site area," the area on which building can occur. Steep slopes, where building is generally impossible, also deduct from the net site area. Slopes are figured into the net area in percentages according to steepness. The formulas are the same in both the SOS and the composite.

So what does that mean in practical terms? In traditional layout subdivisions, SOS limits residential density to roughly one unit per acre. Evidence that that's not an unreasonable limitation date back to the 1979-80 Barton Creek Watershed Study, a consultant study done by the engineering firm Espey-Huston. The company's spokesperson was Joe Beal, now a spokesperson for SOS opponent Citizens for Responsible Planning (CRP). In that study, Espey-Huston recommended that residential development outside the CWQZ be limited to densities ranging from one unit per two to three and a half acres. So Beal's 1980 recommendation was stricter on residential development in the Barton Creek Watershed than the ordinance that he now vehemently opposes.



MAP BY TIM GRISHAM

What Territory Does SOS Cover?

SOS covers the contributing zone for Barton Springs or the Barton Springs Watershed, where water from Barton, Williamson, Onion, Slaughter, Bear and Little Bear creeks flows underground into the Barton Springs/Edwards Aquifer Recharge Zone, then resurfaces at Barton Springs. Barton Creek flows directly into Barton Springs Pool, but Barton Creek water also dips into the recharge zone beginning near the Twin Falls area of the creek. Other city creeks are covered by either the by the 1986 CWO or by the year-old Urban Watersheds Ordinance (UWO). Changes made to the CWO by the 1991 council, like the SOS, apply only to the Barton Springs Watershed.

Joe Beal

A Case Study at the PUD

Specific cases are hard to come by, because of the number of variances, and the variations in each property's net site area. Barry Allison, vice-president and general manager of Barton Creek Properties (developers of the proposed Barton Creek PUD), offered an SOS worst-case scenario for residential development, during a series of "town meetings" sponsored by BCP this spring. Allison presented maps showing how BCP thinks the SOS would affect a 265-acre residential section of the company's latest development proposal. Under the current composite CWO, said Allison, BCP could build 306 houses on the 265 acres; under SOS only 153 houses could be built. To Allison and BCP officials this amounts to a confiscation of their property. But to many SOS backers it is an example of how their ordinance still allows much development to occur.

It is unclear exactly how SOS, or the current CWO, would affect the future of the entire Barton Creek PUD, the development proposal that set off the more than two-year battle for a stronger CWO. That proposal featured 2538 houses, 1900 apartments, and 3.3 million square feet of commercial and industrial development on roughly 4,000 acres. It required nine "environmental variances," including variances to the CWO. That proposal was unanimously rejected by the city council in June 1990 after a 13-hour public hearing.

When the 1991 ordinance was passed, city officials and BCP representatives were unable to say how the PUD would fare under the new ordinance. In April of this year, BCP filed a new set of 13 subdivision plans, as well as plans for commercial and industrial development. It included more residential development than the previous plan, as well as comparable amounts of commercial and industrial development. BCP representatives said the plan complies with the 1991 CWO, even as they applied for at least one waiver from it. After more than a month of analysis, city staff concluded that more than one variance would be required. Staff did not say exactly how many variances would be required, but instead sent the developers a long list of questions that must be answered before they can proceed further in the development process.

Storm Runoff: Can More Be Less?

The second key difference between SOS and the composite is in the approach to measuring storm runoff. Both rely on structural controls to reduce the amounts of pollutants coming off a site. But there are two major differences.

The composite measures "concentrations," meaning the proportion of pollutants in the

BCP officials have not yet responded to the questions, but if they do respond before October 5 (180 days after their filing), they could seek variances and approval from the current Planning Commission and council under the composite CWO, and the commission and council would be free to grant variances on a majority vote. But even then, parts of the development that have not begun construction within three years, would fall under SOS. BCP representatives say their project will be built over a 20-30 year period. This will almost certainly be fought out in the courts, with BCP claiming that state law says they fall under rules in place when they filed. And even if the SOS were to end up applying to the PUD, it is unclear how much less development would be permitted.

– Daryl Slusher

water, whereas SOS says the total *amount* of pollutants must not increase when the site is developed.

CRP spokesperson Beal explains the difference between the two approaches with an example of pouring a teaspoon of salt into a [illegible] of water. "It tastes salty," says Beal. Add a [illegible] of water, says Beal, and, "it's not as salty." Add five gallons, he continues, and, "You wouldn't taste it at all."

Concludes Beal, "The concentration has dropped greatly, which is what the CWO requires. The pounds of pollutants is the same, which is what the SOS would require. So you have to ask yourself, is it okay to drink some of that water, the five gallons that has a teaspoon of salt in it, or should I not be allowed to put any more salt into that water because I might taste it? That's the difference between pounds and concentrations."

The amount of pollutants will likely increase from development, but where will the extra water come from to dilute the concentration? It will come from development also. Development increases runoff, giving more water to mix with more pollution. Moreover, the standard for concentration levels comes from water quality measurements taken at Barton Creek and Highway 71 during storms. SOS backers say this means the standards are set from a time when the Creek is at its dirtiest.

Another difference is that SOS calls for measurement of 13 pollutants and indicators of pollutants; the composite for four. SOS stipulates that runoff "shall be managed...so that no increases occur in the respective average annual loadings of total suspended solids, phosphorus, nitrogen, chemical oxygen demand, biochemical oxygen demand, total lead, cadmium, fecal coliform, fecal streptococci, volatile organic compounds, total organic carbon, pesticides and herbicides." The composite covers only suspended solids, phosphorous, nitrogen and organic carbon.

SOS opponents, like Beal, maintain that it is impossible to determine current levels of all 13 constituents, and add that it is also impossible to design a system to meet the requirements. SOS attorney Bill Bunch counters that estimates of "background levels" for 10 of the 13 constituents were calculated by Beal's employer Espey-Huston in their 1979-80 Barton Creek Watershed Study. Beal was a spokesperson for Espey-Huston on that study. SOS director Brigid Shea says the group chose these 13 constituents because the federal United States Geological Survey (USGS) has been sampling for "most of them" "from 18 different stream sites around Austin, including several sites along Barton Creek. Both Bunch and Shea add that the way to prevent some pollutants, in particular herbicides and insecticides, is to not apply them in the first place.

Beal warns, however, "I will tell you as an engineer that I wouldn't know how to design a system that would meet the requirements of that [SOS] ordinance."

Bunch says the process will work like this: City staff will develop rules establishing current

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SOS Analysis *from p.15*

levels of pollutants, and non-degradation strategies of structural and non-structural controls. (Staff is currently engaged in rule making for the composite.) Bunch says that if staff determines that a particular development proposal, because of its topography or other factors, cannot meet the pollutant standards, then it will have to be modified to compensate, which could include a further reduction of impervious cover.

Developers must submit plans, before project approval, satisfying city requirements to prevent increases in the 13 constituents. SOS backers argue that their approach is favorable because it relies on determining in advance that the development will not pollute, rather than building it and then testing. On the contrary, the CWO relies on developers' designs to achieve that. It is impossible to determine if the pollution abatement plans work until after the development is built. Then it is too late to stop the pollution. The same could happen under SOS, but it is less likely because the developments will be smaller.

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Exceptions Are the RULE

The third key difference between SOS and the CWO is that the SOS might actually apply to someone. The composite CWO carried over almost all exemptions from the 1986 CWO. Of 14 exemption categories, only one was eliminated. Remember, the 1986 ordinance featured an exemption rate of 87% in the Barton Springs zone. Many of those projects have not been built. The Cooke Council's "interim ordinance" tightened exemptions policy by establishing a January 1, 1992 expiration date for CWO exemptions where the proposed development had not been built. The composite CWO extended that deadline to 1996.

The SOS states that it is "not subject to exemptions, exceptions, waivers or variances" allowed in the city Land Development Code. There are, however, tracts and potential developments that are exempt from SOS from the beginning. The ordinance will not apply to construction or renovation of a single family home or duplex, or to developments with less than 8,000 square feet of impervious cover. These exceptions apply on lots that don't need to be subdivided. Public schools will also be exempt if they reach a water quality agreement with a three-fourths majority of the City Council (six votes).

SOS forbids other variances except for a legal safety valve that comes into effect if a court renders a "final judgment" that the ordinance "as applied to a specific development project or proposal" violates state or federal laws or constitutions. In such a case

CRP representatives argue that SOS is unnecessary because Barton Springs is not polluted.

the city council can "adjust the application of this ordinance to that project to the minimum extent required to comply with the conflicting law." In addition, a "three-quarters majority of the City Council" can make the same determination, voting to grant whatever it considers to be the minimum variance required to comply with that majority's interpretation of the law. That would also take six votes on the council to grant such a variance; whereas variances can be granted with a simple majority vote under the existing CWO.

Also on the legal front, SOS contains a "severability" clause saying that if any parts of SOS are determined to be unconstitutional, void or invalid, then the remainder of the ordinance will remain in place and not be affected.

Now, before proceeding we must define a few terms because – I hate to admit it – things get a little complicated, or at least technical, at this point. Subdivisions first receive preliminary approval, then they return with a "final plat" proposal – basically a map of exactly how the subdivision will be laid out. The final plat also requires letters of credit to fund road and utility improvements. Commercial and multi-family developments require site plan approval, similar to a final plat, but more detailed.

Another critical issue is how the SOS deals with cases approved, or simply filed, before the ordinance goes into effect. There are more than 140 commercial and residential projects with some stage of city approval in the Barton Creek Watershed alone. Remember, the 1986 ordinance featured an 87% exemption rate for variances applied for in the Barton Springs zone, and many of those projects have still not been built. The Cooke Council's "interim ordinance" tightened exemption policy by establishing a January 1, 1992 expiration date for CWO exemptions where the proposed development had not yet been built. The composite extended the deadline to 1996, and carried over almost all exemptions from the 1986 CWO. And now, with SOS looming, developers have been rushing to file applications so they will fall under the older, weaker ordinance. The council has been playing its traditional role, handing out exemptions and approvals each week heading up to the election.

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Anti-Septic Burns

"Septic tanks cause pollution." It has been repeated so many times, people may be starting to believe it. Councilmember Bob Larson repeats it frequently. So do opponents of the SOS ordinance. It has also been used as a justification for the proposed sewer line through Zilker Park called the South Austin Outfall. Last week, University of Texas professor Joseph Malina, who was hired by the anti-SOS group Citizens for Responsible Planning (CRP), completed a report which said that septic tanks in the Barton Springs watershed would "have a devastating and irreparable impact on the quality of the water flowing in Barton Springs."

But there's a problem. In the past 13 years, three studies have been done on septic tanks in the Austin area which show that septic tanks don't cause water pollution. The most recent study was completed in April of this year in the Barton Creek watershed. It's the *only* study of septic tanks in the Barton Springs watershed. The findings? Septic tanks are not a problem.

The study results were included in an April 1 memo from Fred Rogers of the Austin/Travis County Health Department to Environmental and Conservation Services Department director Austan Librach. The survey found that of 308 private sewage treatment facilities in the Barton Creek watershed, only 22 (or 7.1%) weren't working properly. The average age of the failing systems was 15.2 years. Rogers concluded, "Based on the department's previous experience, the rate of private sewage facility failure determined from the survey is not unexpectedly high, considering the extended volume of high rainfall. In only one case was any significant volume of sewage flowing away from the property and getting into a drainway, and that overflow has been corrected. Due to the distance, it is unlikely that any detectable number of bacteria could survive an overland flow to a creek."

When the *Chronicle* asked Malina if he had seen the county report, he said, "No, I haven't seen their data." The only report on septic systems in the Barton Springs watershed, and Malina didn't even look at it before he concluded that septic tanks would pollute Barton Springs pool! Nor did Malina (who said he was paid "less than $5,000" for his work) bother to read the 1979 graduate thesis by Ann Elizabeth St. Clair of UT, who studied septic tanks in the Rollingwood area.

Hydrologists consider the Rollingwood area to be an ideal testing ground because the region is small (about four square miles) and it has lots of residential development, with about two houses per acre. And although Rollingwood is part of the Edwards Aquifer, it is completely independent from the Barton Springs section of the Aquifer. All of the water from the Rollingwood section of the Aquifer is discharged at one spot: Cold Deep Eddy Springs, on the banks of the Colorado River, directly across from where Deep Eddy Pool is now located. It is essentially, a small scale version of the Barton Springs Aquifer.

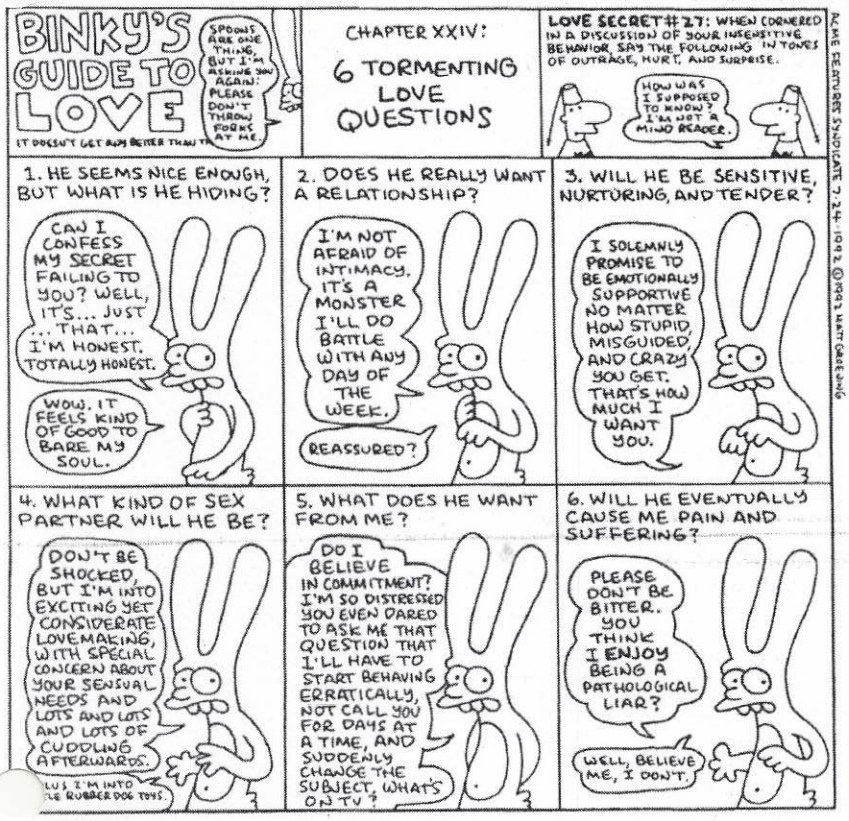
In her thesis, St. Clair explained that "In order to determine if effluent from septic tanks has affected the quality of ground water in the Edwards Aquifer, samples from wells in the area were analyzed for several constituents that may indicate contamination by septic tanks – nitrate, ammonium, chloride, phosphate, organic carbon, and total coliform bacteria. Concentrations of these parameters are similar to background concentrations in water from the Edwards, indicating that suburban development has not resulted in detectable degradation of the quality of water in the Aquifer." In her summary, St. Clair states that "there has been no significant degradation of the quality of water in the aquifer as a result of more than 25 years of suburban development using septic tanks."

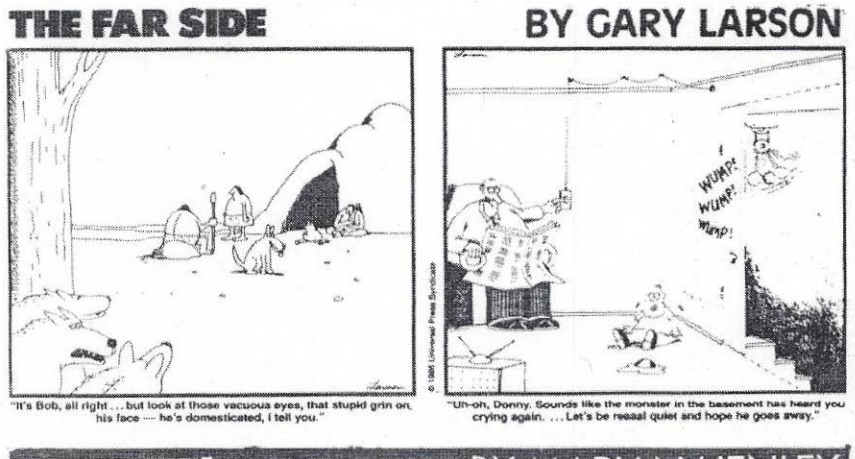
In August of 1991, Susan Parten completed a thesis study of the same septic systems in Rollingwood for her Masters in Engineering at UT. Parten said that about one-third of all households in the U.S. use on-site sewage disposal systems. And she figured that some 1400 people now live and work in the Rollingwood area, generating about 132,000 gallons of wastewater every day, all of it disposed into septic systems.

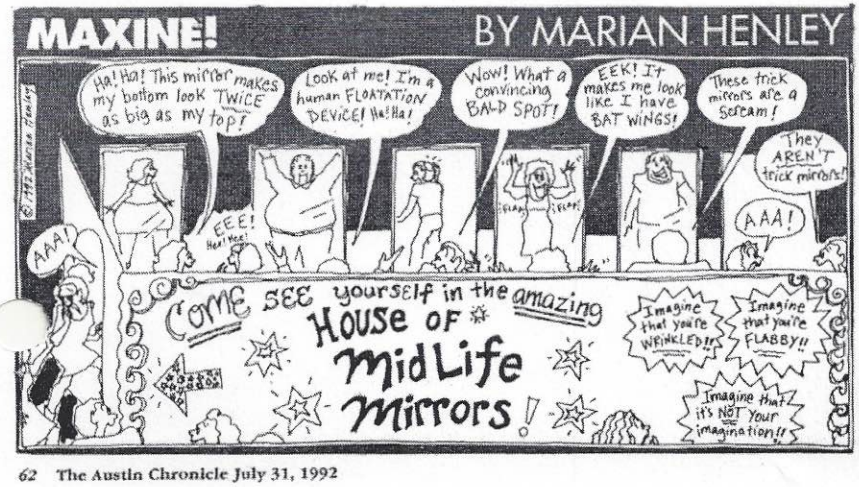
(Note that Malina's report is based on the belief that "Typical residential water use is about 200 to 300 gallons per person per day." The city of Austin says that actual water usage is about 100 gallons per day). Several times in her 190 page report, Parten points out that the septic tanks in Rollingwood are not up to today's standards: "According to the available records for on-site treatment systems, an estimated 22% of Rollingwood's septic tanks are undersized and a large number of tanks are constructed of unacceptable materials, such as cinder blocks and metal." Parten concluded that some of these old systems need to be replaced. But rather than put the entire Rollingwood area on centralized sewer, Parten concludes that " The on-site [sewage disposal] alternative was found to be the least costly alternative."

Although Parten's study was not an endorsement of septic systems in Rollingwood, water analyses in her report and from the U.S. Geological Survey continue to show no sign of contamination from septic systems at Cold Deep Eddy Springs. Malina did not reference Parten's report or the St. Clair study in his report. In addition, Malina apparently forgot a study that he did last September which contradicts the study he did for CRP. In a study on wastewater treatment systems for small communities he said that on-site treatment systems (including septic systems) are "advantageous in situations where a group of residences is separated from the main community by distance or topography." – *Robert Bryce*

COMICS







SOS Analysis, *from p.15*

(This is in keeping with a long tradition of granting approvals and variances under an old ordinance, before a new stronger ordinance takes effect. The developers seeking these approvals and variances may not even intend to proceed with developments. But, with approvals and variances, the resale value is greater, whether the land is being sold to another developer, or to the city for parkland.)

The SOS would allow those projects which are already in the works to continue under the existing rules, but only if they're actively being developed. For instance, preliminary subdivision approvals granted under another ordinance will expire one year after the approval of the SOS or two years after initial approval, whichever is later. Developers must file for a final plat before the preliminary approval expires, then win final plat approval within 180 days, or their preliminary approval expires and they must comply with SOS. The city must act on a final plat within 180 days, but the plat can be denied if it doesn't meet specifications, and/or if it requires variances the city is not willing to grant. Then the property would fall under SOS. Similar rules apply to commercial and apartment development, and to projects filed, but not approved.

Moreover, a development cannot maintain its exemption from the SOS unless construction on all buildings in the site plan is begun before the deadline, and "the buildings are diligently constructed and completed ... and certificates of occupancy are issued no later than two years after this expiration date."

If a site plan already complies with SOS, then it does not expire.

Development representatives are almost certain to contest this section and maintain that they should fall under the ordinance in place when they originally filed.

Other Sections

Contamination of the Edwards Aquifer is the focus of part eight of SOS. This section requires the city Environmental and Conservation Services Department to complete a study within one year of the passage of the ordinance to determine the risk of accidental contamination to the Barton Springs Edwards Aquifer from toxic and hazardous materials that are used and transported through Austin. Within 60 days of the completion of the study, the city shall then act to reduce the risk of accidental contamination of the Aquifer.

Part nine requires that all city funds allocated for "remedial, retrofit or runoff pollution prevention" be "spent so as to achieve the maximum water quality benefit..." Despite this call for spending on retrofitting – building of structural controls to try to mediate existing pollution problems – developer representatives, including Barry Allison in this paper last week, maintain that SOS would forbid retrofitting.

Part 11 of the ordinance also speaks to retrofitting, or restoring water quality. It reads: "The adoption of this ordinance is not intended to preclude the adoption, at any time, by a majority vote of the City Council of stricter water quality requirements upon development in the watersheds contributing to Barton Springs or of further measures to restore and protect water quality." This means SOS directly addresses retrofitting, as well as restoring water quality. This hardly seems like a prohibition of retrofitting.

Do We Need It?

CRP representatives argue that SOS is unnecessary because Barton Springs is not polluted. Beal and development attorney David Armbrust have made this claim at a series of forums and media appearances.

SOS backers say there is a clear trend of pollution as documented by the U.S. Geological Survey (USGS), the Texas Water Commission (TWC) and the City of Austin. SOS director Shea points to a 1985 study by the City of Austin showing increases in phosphorous. She also frequently invokes a USGS study showing increasing nitrates, and, in the last couple of years, the carcinogen TCE in trace amounts at the Springs. "There is a clear trend of increasing contamination and it is directly related to excessive development on the Aquifer," says Shea.

When Beal presented the Barton Creek Watershed Study to the council in January 1980 he said, "It's [Barton Creek] not a pristine stream today, but with development it will become even less pristine. Speaking during a forum at the Barton Creek Country Club earlier this year, Beal maintained, "The basic premise for having all of these sorts of controls is that there is a trend of pollution within Barton Springs. If you ask knowledgeable people, people who have studied the data, I believe that you will find that there is no identifiable trend of pollution within those Springs and the Creek today... If there are individuals that tell you there is an identifiable trend of pollution there today, you should ask knowledgeable people like the USGS and the Texas Water Commission what their opinion is."

In a 1990 study, the USGS concluded that fecal coliform bacteria, an indicator of human or animal waste, had "exceeded established water quality criteria" in Barton Creek and Barton Springs several times. Samples taken at Loop 360 (just downstream from two popular swimming pools) during storms was more than 13 times the safe level established by the federal Environmental Protection Agency.

In October 1990 Raymond Slade of the USGS told a water quality gathering, "There is something happening in the reach – the five mile reach of Barton Creek between Highway 71 and Camp Craft Road. The things we see increasing are things associated with sewage." Two golf courses along that stretch of the Creek – Lost Creek and the Barton Creek Country Club – irrigate their courses with sewage from their developments. Continued Slade, "There is strong evidence to show that irrigation on golf courses in the Barton Creek Watershed may serve as a detriment to the water quality of the Creek during floods."

On particularly high fecal levels at the Springs, the report stated, "The source for at least some of the high fecal coliform densities for Barton Springs is probably any of several sewer lines near the Springs."

The TWC in a 1990 report concluded that Barton Creek is being polluted by golf course runoff, highway construction, runoff from existing highways and rangeland.

Yet David Armbrust still maintains, "There is no evidence of any significant change in the quality of Barton Springs ... It is today like it was years and years ago." ■