

## **Timeline for environmental litigation and related settlements involving attorney Steve Adler**

February 21, 1991

City of Austin passed Ordinance No. 10221-B, Interim Ordinance as a temporary amendment to the Comprehensive Watershed Ordinance. (City of Austin v. Eli J. Garza et al No. 03-03-00307-CV Dec. 18, 2003)

March 1, 1991

Eli Garza filed application for approval of a subdivision plat covering approximately 35 acres at MoPac and William Cannon. (City of Austin v. Eli J. Garza et al No. 03-03-00307-CV Dec. 18, 2003)

May 7, 1991

City of Austin Planning Commission approved the plat. (City of Austin v. Eli J. Garza et al No. 03-03-00307-CV Dec. 18, 2003)

July 26, 1991

Eli J. Garza issued special warranty deed to the City of Austin for Lot 1, Block A, and Lot 2, Block E of the Garza Ranch Subdivision (which consisted of 10 lots for commercial development) on condition that the city dedicate the property for park and recreational drainage easement for use by the citizens of Austin. The land became part of the Williamson Creek Greenbelt West. The transfer was conditioned on transfer of development rights to the upland area within the subdivision. (Special Warranty Deed of July 26, 1991, filed October 8, 1991, with the Travis County Clerk.)

September 11, 1991

Plat was recorded. (City of Austin v. Eli J. Garza et al No. 03-03-00307-CV Dec. 18, 2003)

April 17, 1996, Circle K Corporation, filed consolidated site plan application to City of Austin for Lot 2, Block B, with permission of owner Garza for development of a convenience store. City review of the application stated the project began March 1, 1991, was subject to Interim Barton Springs Contributing Zone Ordinance No. 910221-E and limited to 18 percent impervious cover. (Cause No. 97-12434.)

August 28, 1997

Gordon Dunaway applied for a site plan permit to develop Lots 1, 3 and 4 Block B, 5.4827 acres of the Garza Ranch Subdivision. (Cause No. 97-12434.)

October 10, 1997

City of Austin denied approval of Dunaway's site plan, stating development must comply with Non-Degradation Ordinance 910221-E notwithstanding that General Notes 6 and 11 to the Recorded Plat for Garza Ranch Subdivision allowed much

greater impervious cover. The ordinance was adopted February 22, 1991 and expired October 27, 1991. No project in the city was ever built under this short-lived interim ordinance. The impervious cover referenced in Note 6 allows 60 percent impervious cover without transfers and 70 percent with transfers. In compliance with Note 10 Garza conveyed title to Lot 2, Block E , and Lot 1, Block A, to the City of Austin in consideration for approval of the transfer credits as provided for in Note 11. (Cause No. 97-12434.)

1997 (month and day illegible)

Gordon Dunaway and Eli J. Garza filed lawsuit against City of Austin. Dunaway had contracted to buy 5.4827 acres of property at the intersection of William Cannon and South MoPac Expressway from Garza contingent upon obtaining a consolidated site development permit from the City of Austin. The property was part of the 34.6040-acre Garza Ranch Subdivision. Plaintiff's attorney Terrence L. Irion, attorney for Gordon Dunaway. (Cause No. 97-12434.)

October 29, 2002

Eli J. Garza v. City of Austin filed second amended petition to original lawsuit. Noted that the Planning Commission's granting of an appeal in February 1998 confirmed that the interim non-degradation ordinance was not be used for development of the property and that development meeting the impervious cover limits of the plat notes of the Garza Ranch Subdivision would apply. Lawsuit asks the court to rule that a site plan that complies with the Comprehensive Watershed Ordinance as described in the plat notes would meet the net site area and impervious cover requirements. Plaintiff's attorney Glenn K. Weichert. (Cause No. 97-12434.)

November 4, 2002

Eli J. Garza v. City of Austin filed third amended petition to original lawsuit, restating material in second amended petition but adding language from Chapter 245.002 of the Texas Local Government Code that allows "a permit holder to take advantage of recorded subdivision plat notes or changes to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the project." Plaintiff's attorney Glenn K. Weichert. (Cause No. 97-12434.)

September and November 2002

Lowe's began the process of seeking to build a home center within the extraterritorial jurisdiction of Sunset Valley. Submitted documentation to Sunset Valley to obtain approvals and subdivision related permits. Sunset Valley's impervious cover restrictions allowed 40 percent impervious cover.

November 4, 2002

Sunset Valley was concerned about Lowe's building a big box store over the Barton Springs segment of the Edwards Aquifer and voted to release from its ETJ to the City of Austin's ETJ the Lowes property.

December 2002

Lowe's submitted a plat application to Austin for the Lowe's tract that did not comply with the SOS Ordinance

February 2003

Lowe's filed lawsuit against City of Austin demanding right to build impervious cover in excess of what would be allowed by the SOS Ordinance. The lawsuit claimed that the Lowe's Tract was grandfathered to Sunset Valley's 40 percent impervious cover restrictions or, in the alternative, that the Lowe's Tract had not been released into Austin's ETJ, and therefore none of Austin's impervious cover restrictions applied. (Cause No. GN-300629. Terry Irion is Lowe's attorney, per In Fact Daily May 21, 2003.)

February 27, 2003

District Judge Pete Lowery issues judgment in Cause No. 97-12434 Gordon Dunaway and Eli J. Garza v. City of Austin, and intervener Provident Realty Advisors Inc. should have judgment against the City of Austin, declaring that the subdivision plat know as the Garza Ranch, recorded in Vol. 90, page 4-7 of the Travis County Plat Records, including all plat notes contained thereon, are valid, legal and enforceable, and that the development of property referenced in the Garza Ranch subdivision plat is subject to and should be reviewed under the City of Austin's Comprehensive Watershed Ordinance that existed prior to the Interim Non-Degradation Ordinance, No. 910221-E. Awarded intervener one-half of its attorney's fees (\$22,078.50). The basis of my decision is the inequality that would result if the City could disregard plat note 6, which provides the property "shall be developed, constructed and maintained" in accordance with the Comprehensive Watershed Ordinance after Plaintiff Garza fulfilled his duties under plat note 10 and deeded the land subject to that note to the city. The city is estopped to repudiate an unauthorized act where it has accepted benefits from the unauthorized act. See, e.g., *City of San Angelo v. Deutsch*, 91 S.W.2d 308 (Tex. 1936).

February 2003

Sunset Valley intervenes in the lawsuit as third-party defendant alleging that Lowe's could not grandfather development rights on the Lowe's Tract.

February 2003

District Judge Lowery finds for plaintiffs in Eli J. Garza et al v COA (per ABJ article 2/23/03).

June 2003

HB 1204 enacted by Texas Legislature (authors State Rep. Todd Baxter and State Sen. Jeff Wentworth). HB 1204 would be effective immediately to allow the Lowe's Tract development to proceed subject only to Travis County's approval of the plat application and related permits.

June 25, 2003

In Fact Daily reports in context of Commissioners Court vote to delay approval of preliminary plan for Lowe's Home Improvement Warehouse that Terry Irion, along with Dan Wheelus and Chris Shields, "were instrumental in the passage of HB 1204. (See 20030630 *In Fact Daily*.)

December 11 2003

Item 74 to conduct public hearing and approve third reading of settlement of Lowe's Home Centers Inc. v City of Austin (Cause No. GN300629 in the 98th Judicial Court of Travis County, concerning development of the Lowe's Tract, approximately 31 acres in the Barton Springs Zone located at the northwest corner of Brodie Lane and Allegro Lugar.) Ordinance No. 031211-74 vote 4-3 with Goodman, McCracken, Wynn and Dunkerley voting aye, and Alvarez, Slusher and Thomas voting nay. The SOS Ordinance requires a supermajority to exempt any property from SOS Ordinance. The settlement required Lowe's to pay \$1 million for the purchase of undeveloped land or conservation easements to mitigate the impact of 40 percent impervious cover, require all arsenic wood to be under cover, and require following Sunset Valley's dark sky lighting standards.

December 18, 2003

3rd Court of Appeals finds for appellees Eli J. Garza and Provident Realty Advisors Inc. v. City of Austin appellant (an appeal of City of Austin v. Eli J. Garza et all No. 03-03-00307-CV)

January 28, 2004

Sunset Valley, SOS Alliance, and Save Barton Creek Association file suit against City of Austin and Lowes. (Cause No. GV 400101) claiming City of Austin's settlement of Dec. 11, 2003, was void because it did not pass on the required supermajority of 6 votes and therefore the SOS Ordinance applied to development of the Lowe's Tract.

Date

Lowe's files cross-claim lawsuit against Austin and pending lawsuit, contending that it has the right to develop its land in accordance with the Dec. 2003 Settlement Agreement. (Cause No. GV-402301 in 201st Judicial District Court.)

February 6, 2004

City of Austin purchases 18.98 acre Lundelius Tract for mitigation with \$436,563.31 of the \$1 million paid by Lowe's. (Accounting supplied by Junie Plummer in e-mail of March 27, 2014.)

February 20, 2004

City of Austin purchases 9.323 acre McDaniels Tract for mitigation with \$2,900 from the \$1 million paid by Lowe's used for an Environmental Site Assessment. (Accounting supplied by Junie Plummer in e-mail of March 27, 2014.)

April 2, 2004

City of Austin purchases 236.66 acre LS Ranch (John Lloyd) for \$1,608,025.14 of which \$510,536 came from the \$1 million paid by Lowe's for mitigation land. (Accounting supplied by Junie Plummer in e-mail of March 27, 2014.)

April 13, 2004

Lowe's begins construction at site.

June 15, 2004

Judge Lora Livingston grants summary judgment in favor of Sunset Valley, SBCA and SOS Alliance declaring that the Lowes-City of Austin settlement agreement is void because it was not supported by a supermajority of City Council members.

June 18, 2004

Travis County District Judge Darlene Byrne grants Temporary Restraining Order against Lowe's enjoining further construction. (See 20040618 TRO)

Lowe's subsequently hired Dan Byrne, husband of Judge Darlene Bryne, effectively barring the judge from further involvement in the case.

June 30, 2004

Hydrologist Lauren Ross through discovery in the lawsuit gained access to the Lowes property and observed a leaky fuel tank and fuel on the ground; she also observed water contaminated by fuel flowing directly into a recharge feature on the site. Mueller Airport recorded 1.35 inches of rain that day. (Photos)

July 1, 2004

Hearing in front of Judge Scott Jenkins in which he receives testimony from Lauren Ross and more arguments of counsel. (See 20040701 partial Trial Court Transcript, 62 of 162 pages.)

July 2, 2004

Judge Jenkins issues ruling and Temporary Injunction against Lowes, precluding further construction, ordering cleanup of the fuel and prevention of further contamination of the aquifer. (See 20040702 Temp Injunction)

August 5, 2004

Judge Lora Livingston issues Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant Lowe's Home Centers Inc.'s Motion for Partial Summary Judgment. (See 20040805 Partial SumJudg.)

August 19, 2004

Terry Irion deposed by Doug Young for City of Sunset Valley and Brad Rockwell for SOS Alliance. Steve Adler represented Lowe's and counseled Irion during his testimony. The In Fact Daily article on Irion taking credit for HB 1204 passage

included. (See 20040819 Irion.)

October 11, 2004

Judge Livingston issues Order to deny Defendant Lowe's Home Centers Inc.'s Motion for Summary Judgment. (See 200471011 Deny Lowes SumJudg.)

March 24, 2005

Austin City Council approves Ord. No. 20050324-048, a Settlement Agreement related to City of Sunset Valley, Save Barton Creek Assn., and Save Our Springs Alliance v. City of Austin and Lowe's Home Center, Inc., Cause No. GV 400101, superseding City Code Chapter 25-8, Subchapter A, Article 12 (Save Our Springs Initiative), to extent of conflict with the terms of the Settlement Agreement or this Ordinance. Vote 6-0 with McCracken off the dais.

September 28, 2012

Attorneys Steve Adler and Terry Irion file BCAC Acquisition LLC v. City of Austin (Cause No. D-1-GN-12-003061) after the City of Austin issued a stop-work order to halt construction of Phase II of One World Theatre. The lawsuit claimed vested rights to continue Phases II and III under the Barton Creek Watershed Ordinance.

December 10, 2012

Texas Attorney General Opinion GA-0980 was issued stating that the City of Austin's Project Duration Ordinance would likely be found void by a court of law as it conflicted with vested rights granted by Local Government Code Chapter 245.

December 11, 2012

Attorneys Adler and Irion filed a Motion for Summary Judgment in the BCAC lawsuit, citing among the legal precedents the appeals court decision in Harper Park Two v. City of Austin et al.

2013 Legislative session

State Representative Paul Workman (R-Austin) filed three bills that targeted the City of Austin's Project Duration Ordinance.

March 28, 2013

The Austin City Council enacted Ordinance No. 20130328-018 to approve a Mediated Settlement Agreement that ended the litigation in BCAC Acquisition v. City of Austin.