

**From the Mayor's Desk
December 2019**

Planning and Zoning Commission (P&Z)

P&Z has not met since the last time I wrote to you.

Zoning Board of Adjustment

ZBOA has not had a need to meet since the last report.

The most significant issue facing our city at the moment is a dispute over the ownership rights to water and easements around our city wells. Accordingly, most of the current month article is going to be dedicated to that issue.

Town Hall Meeting on Water Rights

On November 19th, we held a Town Hall meeting regarding recent disputes about ownership of the city's water supply. For those of you who may not have become aware of this issue, yet, Vincent and Nancy Calderola, one of our newer families in The Ranch, have claimed that they own a city water well located on their property. Through their attorney, they have claimed that the city was trespassing on their property and that our city water utility was taking their water for resale without paying for it.

The majority of our city water wells are located inside of specific homeowners' lots because they were drilled by Ralph Fair Inc., many of them more than 40 years ago, when the Fair family owned all the land. As each unit was developed, a ground water well was drilled, if needed, to provide potable water to the unit. The wells were drilled and the units were platted prior to the sale of any property to a third party.

In addition, easements were executed to provide the right to the use of the well and well site, the right to service the wells, the right to access the wells, and to secure the sanitary control easement surrounding each well. In some cases, the easements were created by the Restrictive Covenants of each unit. In other cases, specific easements (ingress-egress; use; service; sanitary control) were created and filed of record in the applicable county deed records. Additionally, in some cases, the well site and/or easement were shown on the plat of the unit. Each unit was done a bit differently.

Ralph Fair Inc. conveyed the water utility to Glenpool, Inc. in May, 1978. After the City of Fair Oaks Ranch was incorporated, Glenpool, Inc. sold the water utility to the City in December of 1997. The sale conveyed to the City the water treatment facilities as well as the wells and all well equipment, main and distribution lines, storage facilities, customer list and account information, and all other personal property owned by it.

The City obtained an owner's title policy from Stewart Title Guaranty Company at the time of the purchase. The purchase price was \$4,100,000. The policy insured title to the owned water and wastewater tracts and the easement for the water utility. The total amount of the policy coverage was \$2,200,000, an amount that is far less than the current value of these assets.

At the time of the sale transaction the concerns regarding the water utility easement and groundwater apparently were identified, thus the inclusion of those items in the title policy. However, the groundwater ownership was not discussed. The City was relying on the title commitment and the advice of counsel representing the City on the matter. Neither the current members of the council nor current staff have any knowledge of discussions regarding this matter at that time.

Demands Received

Vincent Calderola spoke first to the City Manager shortly after he purchased the property last year to demand payment of a royalty for the production of "his" water. Subsequently, the City received a demand letter from his attorney, Edmond R. McCarthy, Jr., setting out the claims of the Calderolas against the City.

Subsequent to this, the Calderolas sent communications to all the well owners (about 37 of them) and the owners of the sanitary control easements (almost 90 of them) surrounding the well sites to encourage them to lodge similar claims against the City's water utility. It is our understanding that the Calderolas and their attorney have also conducted group meetings with property owners to encourage them to lodge these claims.

The City has also received a demand letter from Louis Rosenberg on behalf of his clients, Marshall and Renessa Denny, making similar claims to the Calderolas. The Dennys had first met with the City Manager and Special Counsel engaged by the City for these water issues. The Dennys acknowledged that when they had purchased the property, the city well and sanitary control easement were identified in their closing documents and title policy, and they had no thought that the well or the water belonged to them.

The Calderolas, through their attorney, also contacted the Texas Commission on Environmental Quality and claimed that the City was faced with a public calamity. Our Special Counsel has contacted TCEQ and they have assured us that TCEQ will not interfere with title issues between the City and the affected lot owners. Additionally, the City will file actions in court, if necessary, to ensure the continued operation of the City's utility system.

City Responses

The City believes every owner of a well lot knew from various sources before purchasing its lot of the existence of the City's wells and easements. The City has asked the lot owners to ratify or agree that the easements are validly owned by the City.

Additionally, well owners were asked to sign groundwater deeds to the City. Groundwater law has changed dramatically since the original wells were drilled. While the City has openly and continuously produced water from all the wells, to assure the continuation of services, the request for the groundwater deeds was made.

From the ruling on a significant groundwater case, *Day v. McDaniel*, it is settled law in Texas that, unless the groundwater has been legally severed from the land, the surface owner is the owner of the groundwater underneath the land. However, each well and the surface surrounding the well has been used by the water utility since it began production.

Additionally, production of groundwater is restricted by Trinity Glen Rose and Cow Creek Groundwater Conservation Districts and by the Edwards Aquifer Authority rules that prohibit production of groundwater other than an exempt groundwater well. Furthermore, Restrictive Covenants filed at the time of the initial development of The Ranch prohibit drilling personal or exempt wells.

In addition to the previous restrictions, the few lots that are allowed, by the Restrictive Covenants, to drill personal/exempt groundwater wells must drill the well 1,000 feet from any utility well. It is unlikely that any lot on which a utility well is located could meet this requirement.

The City claims ownership of each well site and the water produced from the wellsite. Because of the Day case, the City has asked the lot owners to convey any remaining interest they have in the groundwater to the city to clarify the City's ownership rights.

Similarly, the City believes that most owners of a lot with a sanitary control easement knew, from various sources, before purchasing its lot, of the existence of the easement. The City has asked the lot owners to ratify or agree that the sanitary control easements are validly owned by the City. (A sanitary control easement is a tract of land, 150 feet in radius, around a water well used to delivering water for a public water utility. The easement is required by the Texas Commission on Environmental Quality (TCEQ), to protect water quality.) The City will work with any affected lot owners who are concerned with their use of the property covered by the sanitary control easement and with TCEQ to verify the validity of the use.

The City's first attempt to solve the problem was a letter to each lot owner on which a well was located explaining the situation to them and asking for their help and cooperation by the signing of a Ratification of the easements on their property to the City for access to the well, use of the well site and the sanitary control easement. The City also asked the homeowners to voluntarily convey their interest in the groundwater, since the City has been continuously using it and the groundwater is of no real value to lot owners due to various restrictions on their ability to produce it commercially.

The City sent a similar letter to those lot owners on which a portion of the sanitary control easement was located. Several property owners with wells and a number of property owners with sanitary control easements have agreed to do this.

Additional Steps

For property owners who do not wish to voluntarily ratify and convey easements, the City will take steps to condemn the easements and the groundwater.

Condemnation is a well-defined legal process for acquiring ownership of personal property for a public use. The Special Counsel, acting on authority granted by the City Council, has engaged Pape-Dawson to survey all the easements and well sites. Special Counsel has also engaged Glen Co., Inc. to appraise the easements and groundwater as part of the condemnation process. The City plans to survey all of the well sites and easements to ensure that we have accurate legal descriptions of these properties filed of record. Documentation with the new metes and bounds description will be filed in the deed records of the applicable county to replace any older descriptions.

Letters have been sent to all affected homeowners asking them to sign a Right of Entry Agreement so that the consultants can do their work. If the property owner does not execute these agreements, the City will be forced to file an injunction to require the property owners to allow the consultants on the affected lots. We will take this action if necessary. Our legal counsel has advised that right of entry is a common law right given to the condemning authority as a part of the condemnation process.

No elected official or municipal staff person is ever happy about having to engage in condemnation proceedings. However, the City Council has taken the position that our responsibilities lie in protecting the water supply for all of our residents, not just in considering the concerns of a small number of residents who happen to have a well or a sanitary control easement on their property. That is why our City Council has taken formal action to approve condemnation proceedings, where necessary.

I am very pleased that a number of residents have voluntarily complied with the City's requests. I am hopeful that after we provide information about the process, we will find that many more residents believe the City is taking a reasonable position and will assist us in confirming our rights to easements and groundwater.

I have always been respectful of the actions of our founders in creating a very special community. Realistically, however, in a complex situation like creating a community there are always going to be things that were done which could have been done better. This water/easement rights situation is one of those things.

Thanks to the claim raised by the Calderolas, the City and its counsel reviewed the documentation that establishes the rights of the City. The prior documentation could have been prepared in a way that made the City's ownership clear. That is not

the case, which allowed the Calderolas and the Dennys the opportunity to file claims against the City. To avoid any other claims, the City has chosen to correct the prior documentation now.

The burden for both legal costs and any settlements reached will fall squarely on the water utility rate payers. We are much too early in the process to be predicting the ultimate impact, but the opportunity exists for it to be a very costly consequence. The City has already spent more than \$130,000 in legal costs to defend our rights of ownership. I feel sure the cost will be much more than this before we are finished but this is an issue which cannot be ignored. In particular, filing what we view as an inappropriate claim with TCEQ escalated this situation to one that must be dealt with immediately. Our current City Council has always taken the position that we deal with issues rather than “kicking the can down the road.” This situation is no different.

We had a Town Hall meeting at Cibolo Creek Community Church last night (11-19) and these issues were thoroughly discussed. We did about 40 minutes' worth of presentations from me, Tobin Maples our City Manager, and Rhonda Jolley and Joe Davis from the Branscomb law firm. We then spent about an hour and a half answering questions. The meeting was video-taped and you can access the meeting on our website or our Facebook page if you want to see the comments made. On our website you can click on the banner heading that shows the water drop. In addition to the video, you can access the updated Q & A document we have posted to give you an update on this topic.

Tobin Maples asked that anyone needing to discuss specific issues with him to please call him at City Hall at 210-698-0900 or email him at tmaples@fairoaksranchtx.org. Additionally, our Special Legal Counsel is available to answer questions (Rhonda Jolley at 210-598-5406 or Joe Davis at 210-598-5414).

Development of the Pfeiffer Tract/The Reserve

There has been no additional activity on this development. The developer is planning to come back to the city with an updated development plan in the near future. I will keep this item as a recurring topic in the monthly newsletter because I know it is important to everyone.

Elevated Storage Tank

Ryan Sowa, P.E. and his associates from Kimley-Horn and Associates will be presenting their report on this topic at the November 21st council meeting. Unfortunately, that is a day after my deadline for writing this article so I will have to provide an update of actions taken in next month's edition. I anticipate that we will publish a release to announce any decisions made through our website and Facebook page. We are expecting council to approve a final site in November of this year. Engineering design is expected to be completed by August 2020 with construction to begin around November 2020. Construction time for a project of

this magnitude is about a year, so that would indicate completed construction around November 2021.

Resident Volunteers/City Staffers at Work

- Our city Facebook page is continuing to attract readers. For those of you who are Facebook fans you can find us at City of Fair Oaks Ranch, TX. Our page is used for sharing information about the city, but it is not a public forum. The page is monitored and objectionable or off topic material will be removed. We currently have 1,749 followers. We have had 1,540 likes recently and reached as many as 1,240 members during the past month.
- I will do one more reminder that “Deer in Rut” is the order of the day. I have had to put on the brakes a couple of times since the last time I wrote to you so I encourage all of you to check the edges of the road when you are driving.
- I attended a Veterans Day celebration at Fair Oaks Ranch Golf and Country Club on November 11th. Chef Mark Sierra, who is a veteran himself, worked with others to put together a real celebration of this special day. The Club hosted a golf tournament to raise money for the PTSD Foundation of America and I got to meet a number of fine folks from this organization. The event included a Veterans Run and Golf Cart Convoy down Fair Oaks Parkway. Mr. Rich Hovey provided a beautiful lead car from Hovey Motorcars. Mr. Jim Manzo, our favorite trumpet player, did a beautiful outdoor rendition of *The Star Spangled Banner*. And last, but certainly not least, our favorite ice cream parlor, Parker’s, provided some incredible blueberry cheesecake ice cream to top off the delicious burgers and dogs that Chef Mark’s crew put together. It was a first rate celebration to honor our veterans!
- You may have noticed a front page article in *The Boerne Star* about the First Lady of Fair Oaks Ranch putting together some outdoor holiday decorations for City Hall. This project is in full swing. We want to thank the Fair Oaks Ranch Women’s Club for a generous donation as well as our friends Councilwoman MaryAnne Havard and her husband Jim and Ms. Bobbe Barnes, one of my Rotary Club friends, for their donations. I can hardly wait for my credit card bill to show up! I think everyone will enjoy the decorations. Our garage has looked like Santa’s workshop for the past couple of weeks as Dedie and some of her friends hand made the wreaths that will be hung. We also want to recognize Home Depot, Sam’s Club, and Hobby Lobby for helping us out with some special pricing to support our holiday decorations for City Hall.
- PARENTS OF YOUNG CHILDREN ALERT!!! Part of the decorations will be a Santa mailbox at the front door of City Hall and another one at the front of Fair Oaks Ranch Homeowners Association. If your youngster would like to write a note to Santa, you can deposit it there for redelivery to the North Pole!
- We are planning to do some kind of a tree lighting ceremony but will get back to you later with the details. We are hoping to coordinate this event with FORHA’s annual visit with Santa event. From my conversation with the

FORHA Office Manager, I believe the event will start in the 3:00 to 3:30 p.m. range on December 8th. The tree lighting will be at dusk.

Looking forward to Thanksgiving, I wish you all the best as we move toward our holiday season.

Garry Manitzas
Mayor – Fair Oaks Ranch