

INSIDE STORY: City's war with Peaces

Court awards \$339K for property rights violation

The City of West Lake Hills has been dealt a blow in its years-long battle with homeowners Jeff and Carrie Peace. A Travis County court has ruled the city violated the couple's

constitutionally protected property rights, having also broken state law in deciding to do so behind closed doors. This labyrinthine property dispute centers on the coveted feather in the cap of



WEST LAKE HILLS FORMER MAYOR DAVE CLAUNCH

SEE **WEST LAKE** ON PAGE 2

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INSIDE STORY:
City's war with Peaces
Court awards \$339K for
property rights violation

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INSIDER DEAL GONE BAD

1 GOEHRING/HOVIS STRIKE DEAL WITH FRIENDS ON THE CITY COUNCIL:

- COUNCIL GRANTS APPROVAL TO SPLIT LOT IN TWO
- GOEHRING/HOVIS AGREE TO DONATE RIGHT OF WAY FOR BEE CAVE ROAD EXPANSION

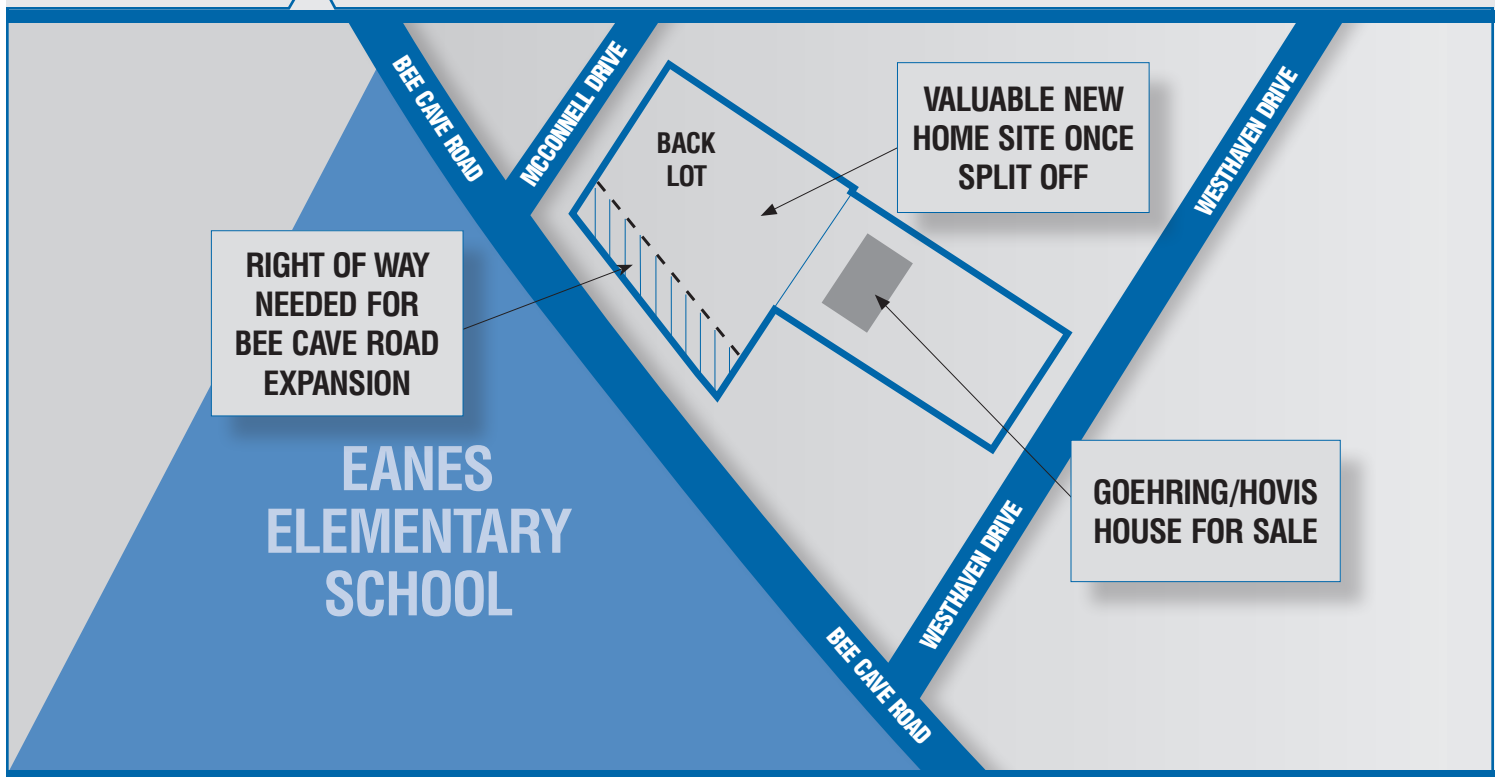
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FORMER COUNCILMAN
JEAN GOEHRING AND
WIFE AMY HOVIS

WEST LAKE HILLS CITY COUNCIL (AUG. 2010)

STAN GRAHAM
ANDREW SCHWARTZ
DAVIN FILLPOT
SPENCER STEVENS
JEAN GOEHRING



WEST LAKE FROM PAGE 1

former Mayor Dave Claunch. Before he stepped down in December, to be replaced by then-Councilmember Linda Anthony, Claunch announced his plans to resign by year-end after completing all acquisitions necessary for the Bee Cave Road expansion project.

Commenting on the importance of this project to his political résumé, Claunch

said “this [project] has been my ‘Moby Dick’ ... I’ve been chasing this whale for five or six years now, and I’ve just about caught it.” He went on, “I want to declare victory, then step aside and let someone else have the privilege and honor of being mayor.”

Claunch’s elusive victory lap remains on hold, pending the city’s acquisition of right-of-way from the Peaces via eminent domain.

This quagmire began over four years ago when city insiders got their friends on the council to grant a favorable ruling on their property along Bee Cave Road, reneged on their promise to grant the city right-of-way for widening of the road, then dumped their ostensibly more valuable property on unsuspecting buyers.

Rather than taking the

matter up with their friends, Claunch and other city officials instead set their sights on the new owners, kicking off a contentious chain of events, including a potentially criminal act by the mayor himself.

INSIDER DEAL SETS THE STAGE FOR A FLIP

In June 2010, Jean Goehring and his wife, Amy

2 GOEHRING/HOVIS SELL HOME AND BACK LOT TO PEACE FAMILY, BUT:

- ▶ DO NOT FOLLOW THROUGH ON RIGHT-OF-WAY DONATION TO CITY
- ▶ DO NOT DISCLOSE TO PEACES THEIR UNFULFILLED PROMISE

BUYERS



JEFF AND CARRIE PEACE

3 AFTER MONTHS OF SILENCE, MAYOR SENDS DEMAND LETTER TO PEACES ...

- ▶ **GIVE US** WHAT GOEHRING/HOVIS PROMISED
- ▶ **OR ELSE** WE WILL RECOMBINE YOUR LOTS

... THEY DISCOVER THAT:

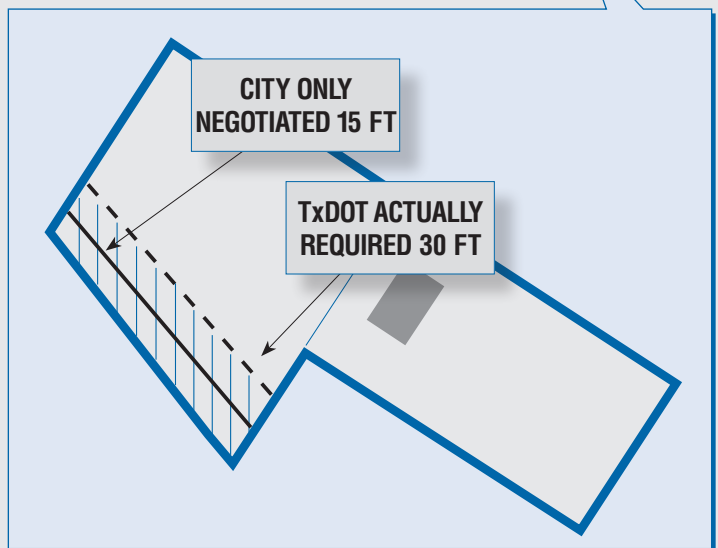
- ▶ GOEHRING/HOVIS ONLY PROMISED A 15-FT RIGHT OF WAY
- ▶ BUT MAYOR **DOUBLED** THAT TO MEET TxDOT REQUIREMENT



FORMER MAYOR
DAVE CLAUNCH

4 MAYOR MAKES GOOD ON THREAT: RECOMBINES LOTS (AND CLOUDS PEACES' TITLE IN THE PROCESS)

5 PEACES SUE THE CITY; PROTRACTED LEGAL BATTLE ENSUES



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Hovis, landed coverage in the Austin American-Statesman for their latest real estate play — their own home in West Lake Hills. They bought the property in 2006 “because they wanted a design and remodeling challenge,” the Statesman reported. And with the help of the Statesman, they were promoting their newly

modernized house, which was built in 1971 and located across Bee Cave Road from Eanes Elementary.

The couple had an ace in the hole that few real estate speculators enjoyed — Goehring sat on the city council of West Lake Hills. Their latest property on Westhaven Drive held untapped potential in a 0.45 acre back lot situated at the corner of McConnell Drive

and Bee Cave Road. Nicely wooded and level, this tract would be a hot commodity in the upscale neighborhood if only it could be split off from the home site on the opposite side of the property.

On the second Wednesday of August 2011, the city council voted in favor of doing just that — Councilman Goehring recused himself. In exchange for this windfall, Goehring’s

friends on the council stipulated that the couple donate a 15-foot strip of the back lot along Bee Cave Road needed to make way for a new center turn lane.

According to sworn deposition testimony by Goehring, it was Goehring’s friend, Mayor Claunch, who came up with the idea months before to “swap”

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the right-of-way for the property division. The two had contemplated teaming up to flip other properties in West Lake Hills, but never did.

According to city ordinance, Hovis had a 120-day window from the date of the council vote to make her land donation final. Then and only then could the city file the paperwork to put the property split into effect.

However, internal city correspondence confirms that Hovis and Goehring's friends at city hall bent the rules as an inside favor. On Sept. 12, City Administrator Robert Wood emailed an urgent request to City Attorney Alan Bojorquez: "Apparently Amy Hovis has a contract at the title company that cannot be processed because they need the [property split] issue resolved. Can you get us an answer on this today or tomorrow?" Bojorquez obliged, signing off on the property split. Not only did he do so prematurely — in violation of the city's own ordinance — but he also failed to reference Hovis' donation in the document.

The official title records now showed the property as two separate lots, with no indication that the city had any claim on the back lot.

OUTSIDERS BUY A BUNDLE OF PROBLEMS

Shortly after the property was split in two, Goehring and Hovis found their buyers. Jeff and Carrie Peace, who were relocating their family from Chicago, found the listing online and were particularly intrigued by the vacant lot. "The back lot was all about the investment," Jeff Peace said. "It was a security blanket."

On Oct. 12, the Peaces went under contract with Hovis. As the closing date approached, Councilman Goehring took steps to downplay any potential impact of the roadway expansion on the back lot. According to emails obtained by Watchdog, Goehring sent the Peaces a survey of the back lot, on which he had drawn a line to show the location of "a proposed right of way ... in the event of a possible expansion of Bee Cave." His email went on to say that the roadway expansion had been discussed for the past 15 years, and was subject to a number of contingencies. No mention was made of the 15-foot property donation to which Hovis had already committed, and the Peaces have consistently denied that the issue was otherwise disclosed to them during the pre-closing period.

The pending sale did not

go unnoticed at city hall. On Oct. 15, 2011, Claunch emailed Bojorquez and Wood: "Did we get the ROW donation from Amy Hovis for this lot? It's for sale with a contract pending. We should get it before it changes hands ... Duh." At the time, Claunch, Bojorquez and Wood all knew that the public records of the property were potentially misleading because of Bojorquez's premature approval of the property split. Between the date of Claunch's email and the closing date, Wood and others at the city communicated with Hovis and Goehring about securing the right-of-way donation; however, nothing was done to correct the public records or to protect against the possibility that the city's faith in Hovis and Goehring might be misplaced.

On Nov. 22, 2011, Hovis and Goehring sold the two lots to the Peaces. None of the closing documents referenced the 15-foot property donation or any other conditions to the property split.

MAYOR'S "SWITCHEROO" DEMAND LETTER

After the holidays, the city picked back up on its quest for the right-of-way. On Feb. 8, 2012, the city planner emailed the Peaces with notice that the right-of-way donation was expected of them. A deed was attached for their signatures.

"It was the first time either of us had seen any of this material," Carrie Peace said. Not knowing what to make of any of it, Jeff Peace emailed back asking for more information.

"Then the city went silent,"

Ms. Peace said. "We didn't hear back from them for months." When they finally did hear back, the message was much stronger, and it came from the mayor himself.

In late October 2012, Claunch sent the Peaces a demand letter that threatened to recombine their lots unless they lived up to the terms of the city's deal with Hovis. A deed was enclosed with the letter, and Claunch warned that the lots would be merged unless the Peaces signed the deed within two weeks.

A furious Jeff Peace fired back with an email to every email address at the city he could find. In it, he stated that his closing documents said nothing about a right-of-way owed to the city. He refused to sign Claunch's deed, and he called the threat to recombine his lots an abuse of power. He did, however, make clear that he was not opposed to the Bee Cave Road expansion, and was willing to negotiate a fair market value for the necessary right-of-way.

What he did not call out, and had not yet noticed, was that the enclosed deed for the Peaces' signatures was for a 30-foot right-of-way, not the 15-foot strip that Hovis had promised. The right-of-way had mysteriously doubled, although nothing in Claunch's letter provided any hint that the deed was for more land than Hovis had agreed to. The Peaces would not discover this discrepancy for months.

To understand this "switcheroo," as the Peaces call it, we must back up before the council approved

**DID WE GET THE [LAND] DONATION FROM
AMY HOVIS FOR THIS LOT? IT'S FOR SALE
WITH A CONTRACT PENDING. WE SHOULD GET IT
BEFORE IT CHANGES HANDS...DUH."**

— MAYOR DAVE CLAUNCH

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WEST LAKE FROM PAGE 4

the property split — when the mayor took a risk that would later come back to haunt him.

As Claunch would later explain to the Peaces, the Texas Department of Transportation had for decades argued for a broader widening of Bee Cave Road. When Claunch took office, he approached TxDOT about the possibility of an interim, narrower widening. TxDOT came around to the idea, Claunch explained, “so in this time leading up to [negotiating a donation amount with Hovis], I was still hopeful that TxDOT’s agreement to make the road

narrower meant that they’d also be willing to make the right-of-way narrower. So, this was part of the strategy to go back to TxDOT and wring my hands and say, ‘sorry we couldn’t get it, can you please scale back the road?’”

“It’s baffling that you operate on speculation,” replied Jeff Peace, to which Claunch said, “you’re absolutely right, it was a stupid idea for me to try that.”

Shortly before Claunch sent his demand letter to the Peaces, it became clear that his gamble had failed. According to correspondence obtained by Watchdog,

the city attorney initially prepared a deed for a 15-foot strip of property, exactly as Hovis had promised. That deed was rejected by TxDOT, however, which was now insisting on the full 30-foot strip that it had originally stipulated. The city attorney’s office revised the deed to include the wider strip of land. When Claunch presented the deed to the Peaces for signature, however, no mention was made of the difference in acreage. Instead Claunch’s letter vaguely stated that the property split was contingent upon the donation of “the necessary street right-of-way,” and quietly included

the 30-foot deed.


During his deposition last September, Claunch admitted that when he sent the demand letter, he knew that the deed called for nearly double the acreage that Hovis had promised, and that he knowingly chose the false wording in the letter because he needed to satisfy a more onerous TxDOT requirement. The Peaces’ attorney, Jim Schober, asked Claunch point blank: “Were you trying to trick the Peaces with this letter?” Claunch answered no, and explained that he was simply trying to

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MAYOR’S DEMAND LETTER

City of West Lake Hills

911 Westlake Drive
West Lake Hills, Texas 78746-4509



Robert J. Wood, City Administrator
City Hall: (512) 327-3628
Fax: (512) 327-1863
www.westlakehills.org
cityhall@westlakehills.org
Police Department: (512) 327-1195
Fax: (512) 329-5517

Dave Claunch, Mayor
CITY COUNCIL MEMBERS:
Stan Graham, Mayor Pro Tem
Jean Goehring
Taylor Holcomb
David Moore
Spencer Stevens

October 23, 2012

Jeff and Carrie Peace
102 Westhaven Drive
West Lake Hills, TX 78746-4441

Mr. and Mrs. Peace:

In the year 2000, the West Lake Hills City Council voted to approve an Amended Plat for Lot 26 of the Westlake Terrace subdivision. The effect of that Amended Plat was to join 101 McConnell Drive and 102 Westhaven Drive into a single, legal lot.


On August 10, 2011 and at the property owner’s request, the West Lake Hills City Council voted to vacate (render null and void) the Amended Plat for Lot 26 of the Westlake Terrace subdivision. The Council’s vacation of that plat resulted in the two lots once again being separate, legal lots, but the Council’s action was **contingent upon the donation of the necessary street right-of-way along Bee Cave Road for the Bee Cave Road expansion project.**

Sometime after that meeting, it is my understanding that you purchased 101 McConnell Drive and 102 Westhaven Drive. To date, the additional right-of-way has not been deeded to the City as required by the City Council’s action on August 10, 2011.

Please sign the enclosed Right of Way Warranty, have them notarized, and return them to City Planner Davin Fillpot at City Hall at 911 Westlake Drive. (The City offers Notary services for free at City Hall.)

If we have not received the signed and notarized documents by November 6, 2012, the City will take the necessary steps to undo the plat vacation that was approved on August 10, 2011. That will result in 102 Westhaven Drive and 101 McConnell Drive once again being combined into a single, legal lot.

Please feel free to contact me if you have any questions, or if you need any additional information. Thank you.

Sincerely,

Dave Claunch
Mayor

Key queries in deposition

Claunch’s sworn testimony

Did you know the actual deal with Hovis was for a 15-foot right-of-way?

YES

Did you know that you demanded the Peaces deed over a 30-foot right-of-way?

YES

Was your characterization of the council’s conditions for the Hovis deal false?

YES

Did you choose those false words because TxDOT required double what the city originally bargained for?

YES

“**NOTHING SHORT OF ATTEMPTED FRAUD.**”
— JIM SCHOBBER, PEACE FAMILY ATTORNEY

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get the Peaces to “come to the table” and negotiate.

In court filings, the Peaces have alleged that Claunch’s demand letter was “nothing short of attempted fraud.” “The scary thing,” said Schober, “is that other people at the city saw that letter before it went out. The truth is, we still don’t know how many people at the city were aware of what Claunch was trying to pull.” Claunch acknowledged in his deposition that he shared a draft of the controversial letter with Wood, Bojorquez and members of the city council (other than Goehring) before it was sent out. What remains unknown, according to Schober, is whether this draft — which has never been produced by the city — presented the Hovis donation in the same misleading way that the final letter did.

MAYOR DROPS THE HAMMER

Upon receiving Claunch’s demand letter, the Peaces had two options: comply with the demand to turn over the acreage, or refuse and hope the mayor wouldn’t follow through on his threat to recombine the lots. Either choice effectively meant the destruction of the investment value in their back lot. Their “security blanket” was in the mayor’s hands.

A series of meetings followed in which the mayor continued to hold this threat over the

Peaces’ heads. The Peaces, uncomfortable with the way they were being treated, started secretly recording the meetings. In one such meeting in April 2013, Claunch acknowledged that recombining the lots would likely mean “go[ing] to war” with the Peaces.

The mayor later notified the Peaces by email that at the next city council meeting on May 8, the council would vote on whether to recombine their lots. Jeff Peace then went around the mayor, emailing each council member to set up a meeting to present his side of the story prior to the city council meeting.

Four days later, councilmen David Moore and Taylor Holcomb came by the Peaces’ house. “They walked in making accusations,” said Carrie Peace. Jeff added, “It was clear that even though we’d never met, they had the idea that we were trying to get away with something.”

Only after the Peaces described the pre-closing email in which Goehring portrayed the road expansion as a far-off possibility with no mention of the right-of-way deal did it dawn on the councilmen that they had been misled. “I saw it in their faces,” said Carrie Peace. “Taylor literally teared up.”

To the Peaces’ relief, the May 8 council meeting came and went with no vote on recombining the lots.

After that, the mood on the council seems to have turned against Goehring. Spencer Stevens, whose term on the council had just ended at the May 8

“I’M SURE THE MAYOR AND THE COUNCIL ARE CONCERNED ABOUT APPEARANCES OF SHADY INSIDE DEALINGS.”

— FORMER CITY COUNCILMAN SPENCER STEVENS

meeting, stated in an email to Goehring and copied to the rest of the city officials, “I’m sure the mayor and the council are concerned about appearances of shady inside dealings.” He demanded that Goehring “pay the city the full fair market value of the easement that the city bargained for” and “either do the right thing or resign.”

Goehring took no such action to make good with the city, but he did resign five months later, citing health issues.

The city also shrugged off what Stevens suggested as “the way out which preserves the public trust to the fullest extent” — holding Goehring and Hovis accountable — and instead zeroed in on the Peaces.

In June 2013, the city reversed its position, notifying the Peaces by email that the property split had actually never taken effect due to Hovis’ failure to make the land donation. In other words, what the mayor had threatened to do — deny the Peaces a sellable back lot by reversing the property split — was unnecessary.

The Peaces went to the next city council meeting a week later to get an explanation, but instead learned that the city had earlier that day filed a copy of the property division document with the word “VOID” stamped on it to reflect its new position.

Then, in the same meeting, the city invited the Peaces to reapply to have the property redivided. Stunned and on his heels, Jeff Peace declined to commit to file the application until he could figure out what had just happened.

Bojorquez pressed the Peaces in a series of emails to file the application. Jeff Peace replied that he would not commit to anything until he heard back from his title company. Nevertheless, in July 2013, the city sent notices to the Peaces’ neighbors and the Austin American-Statesman, falsely stating that the Peaces had filed a new application to split their lot. It was then that the exasperated Peaces hired Schober to represent them.

Schober sent an email to Bojorquez stating unequivocally that the Peaces did not intend to file an application, which he assumed to be contingent upon handing over the right-of-way for free. He also demanded that the city cease representing that the Peaces had filed the application.

In September 2013, the word back from the title company was not good. The irregular and questionable “VOID” stamp had clouded the title to the Peaces’ property — front and back — and applying to

WEST LAKE FROM PAGE 6

have the property re-divided would not necessarily fix the problem. What's more, their title insurance would not make them whole on this defect.

LEGAL NIGHTMARE ENSUES

In November 2013, with the statute of limitations approaching, the Peaces sued Hovis, Goehring, the realtor and the title company for damages and legal fees.

In July 2014, they added West Lake Hills to the suit and later named Claunch, Bojorquez, and Wood individually. They have also filed three in-depth ethics complaints with the city council against Claunch, Bojorquez, and Wood, most of which have been waved off "on the advice of counsel."

As the Peaces' lawsuit began working its way through the court system, the city continued its pursuit of the Peaces' right-of-way. After negotiations broke down over a difference of \$61,100, the city filed an eminent domain lawsuit in November 2014, which is set for trial this October. Watchdog has requested but not yet received the city's costs associated with the eminent domain proceedings to determine whether taxpayers were well served when the city walked away from the negotiating table.

West Lake Hills filed a motion to be dismissed from the Peaces' lawsuit in June 2015, but Travis County District Judge Karin Crump denied it. The judge did, however, dismiss Claunch,

PEACES' ETHICS COMPLAINTS

FILED AGAINST:



**FORMER MAYOR
DAVE CLAUNCH**



**CITY ATTORNEY
ALAN BOJORQUEZ**

PHOTO COURTESY OF WESTLAKEHILLS.ORG



**CITY ADMINISTRATOR
ROBERT WOOD**

PHOTO COURTESY OF WESTLAKEHILLS.ORG

REACTIONS FROM THE COUNCIL:



**COUNCILMAN
JIM O'CONNOR**

“WHAT I'VE SEEN SO FAR IS PRETTY DISGUSTING BEHAVIOR OF SOME OF OUR CITIZENS, AND THE WAY YOU TREAT CIVIL SERVANTS IS PATHETIC.”



**THEN-COUNCILMEMBER
LINDA ANTHONY**

“I ... DO NOT APPRECIATE BEING LABELED A CRIMINAL. I WOULD SAY RATHER THAN BEING COWARDS, WE ARE FOLLOWING THE ADVICE OF AN OUTSIDE ATTORNEY THAT WE HIRED.”



**COUNCILMAN
STAN GRAHAM**

“QUITE FRANKLY, I SERIOUSLY QUESTION THE MOTIVES OF MR. AND MRS. PEACE IN FILING THESE VARIOUS [ETHICS] COMPLAINTS.”



**COUNCILMAN
DARIN WALKER**

“I THINK THE COUNCIL HAS DONE EVERYTHING THEY COULD POSSIBLY DO TO RECTIFY THE SITUATION.”



**FORMER COUNCILMAN
HOLCOMB**

PHOTO COURTESY OF
WESTLAKEHILLS.ORG

“I THINK WE WORKED HARD TO WORK WITH THE PEACES OVER TIME, FRANKLY.”



**FORMER COUNCILMAN
MOORE**

PHOTO COURTESY OF
WESTLAKEHILLS.ORG

“WE DID EVERYTHING IN OUR POWER TO GIVE THIS FAMILY EVERYTHING THEY WANTED AFTER WE FOUND OUT BOTH THEY AND THE CITY WERE EQUALLY CRAPPED ON BY OTHERS DURING THEIR PURCHASE OF [THE] PROPERTY.”

TRAVIS COUNTY COURT RULING (FEBRUARY 2016)



JUDGE KARIN CRUMP
250TH CIVIL
DISTRICT COURT

PHOTO COURTESY OF TRAVIS COUNTY COURTS



CITY COMMITTED UNCONSTITUTIONAL
TAKING WHEN THEY FILED VOID
DOCUMENT IN DEED RECORDS



\$339K

AWARD FOR DAMAGES
AND INTEREST



CITY ILLEGALLY CONFERRED BEHIND
CLOSED DOORS ABOUT VOIDING
PROPERTY DIVISION



\$60K

AWARD FOR RELATED
LEGAL COSTS



CITY DID NOT VIOLATE
PEACES' CONSTITUTIONAL RIGHTS
TO DUE PROCESS AND EQUAL PROTECTION
UNDER THE 14TH AMENDMENT OF THE US
CONSTITUTION



**NO FULL
REIMBURSEMENT
FOR LEGAL COSTS**

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Bojorquez and Wood from the lawsuit individually in December.

The Peaces settled with Goehring, Hovis, and their realtor in January for an undisclosed amount.

In February, Judge Crump handed down two weighty rulings against the city. She ruled in favor of the Peaces' claim that the city committed an unconstitutional taking of property when they voided

the property division; she also ruled that before making this move the city illegally conferred behind closed doors, in violation of the Texas Open Meetings Act.

On April 15, a jury ordered the city to pay the Peaces \$297,000 in damages for the taking; and on May 5 Crump added \$42,000 in interest and a \$60,000 reimbursement for the Peaces' legal costs related to the TOMA violation.

Crump denied two other claims made by the Peaces which, if not overruled, will prevent them from recovering the \$400,000 and counting that they have poured into this legal battle. Both are claims that the city violated the Fourteenth Amendment of the U.S. Constitution — one, that the city deprived the Peaces of their right to property without due process, and two, that the city denied them equal treatment with respect to other land owners along Bee Cave Road, with whom the city negotiated in good faith.

"We will appeal the dismissal of the federal constitutional claims," said Schober. "If due process means anything, it means that the government can't just wake up one day and suddenly decide that your property rights have changed." Schober also

indicated that the Peaces will appeal Crump's decision to dismiss Claunch, Bojorquez and Wood, who Schober says acted without authority of the city council.

The city, for its part, has publicly stated that it is still willing to consider splitting the lots again, so long as the Peaces sign a new application and go through the required approval process. The Peaces have steadfastly refused, looking instead to the courts for justice. "This case is about 18 months of egregious governmental coercion, lies, and abuse of power," Schober says. "Things like that aren't fixed by simply giving back what you never had the right to take in the first place. Lawsuits like this one are incredibly important to the integrity of our system." ■

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