

# The FAIR OAKS Gazette

July 2016

Volume 6 Issue 7



NEWS FOR THE RESIDENTS OF FAIR OAKS RANCH

## From the Mayor's Desk...

It's hard to complain about having too much of a good thing, but the recent torrential rains have identified a number of drainage issues on The Ranch.

I told you in last month's article that I plan to use The Fair Oaks Ranch Gazette to keep you informed about what is going on in our city. This includes talking openly and frankly about the problems as well as the many good things in our city. In this article I'm going to talk about the significant problems related to drainage.

I have explained to some residents as well as to the news media that there are both engineering and legal dimensions to resolving the drainage problems we are encountering. The engineering side describes what is happening, why it is happening, and how to fix it. The legal side answers questions like who is responsible for causing the problem, who is responsible for fixing it and, of course, who pays for it.

To begin getting our arms around this problem, the council asked our Public Works Director, Ron Emmons, and his staff to help us understand where we have problems. We also asked them to begin putting some dimensions around it including what we knew about the areas from the plats, if there was a party defined on the plats for maintaining drainage easements, whether the area had flooded any homes, and whether there were road passage issues associated with the drainage problem. By way of background, a plat is one of the tools utilized by municipalities to manage the development and subdivision of land. The purpose of a plat is to assure the orderly growth and development within the City's boundaries and extraterritorial jurisdiction relative to the health, safety, morals or general welfare of the municipality (public safety, sanitary conditions, governmental services, etc.). The subdivision enabling legislation for

Texas municipalities is set forth in Chapter 212 of the Texas Local Government Code.

Ron and his staff put together a remarkable amount of information in two weeks. At this point we have 47 known storm water drainage issues (and we are certain that there are several unreported issues.) In addition to creating a matrix of known issues, Ron's folks used our internal mapping system to create a map showing the locations and number coding them back to the matrix. (For more information go to the city's website ([www.fairoaksranchtx.org](http://www.fairoaksranchtx.org)) and see the quick links titled "Storm Water Drainage Issues" and "Drainage Map and Matrix" which show the information Ron and his folks put together.)

On a parallel track, we asked our City Attorney, Charlie Zech, to prepare a briefing for our council members on the relevant laws related to drainage. Charlie's briefing was a real eye-opener both in terms of who may be responsible and situations where the city is precluded from taking action. Let me begin with a summary of some information from Charlie's presentation because I believe this is where we have the greatest number of misconceptions. (For a more complete discussion go to the city's website and see the quick link titled "Drainage Flooding" to see the presentation Charlie delivered.)

From Charlie's Presentation

Charlie began his presentation by pointing out that cities have legal restrictions on how they use public funds (the money we collect from all of us in taxes, fees, etc.) Simply put, the city is precluded from using public money to make improvements on private property. In some of the flooding areas the city has neither direct ownership of the land nor a drainage easement. Charlie cited an Attorney General Opinion from 1946 that stated that if a drainage ditch was

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# FAIR OAKS RANCH

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The Fair Oaks Gazette is mailed monthly to all Fair Oaks Ranch area residents. Residents, community groups, churches, etc. are welcome to include information about their organizations in the newsletter. Personal news for the Stork Report, Teenage Job Seekers, recipes, special celebrations, and birthday announcements are also welcome.

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### *From the Mayor's Desk (Continued from Cover)*

constructed for the benefit of a private individual, the governmental entity cannot pay for construction and maintenance of the ditch.

Another significant piece of legislation is Texas Water Code Section 11.086, which says individuals cannot divert or impound the flow of water in a way that damages the property of another person. If you do divert the water and cause injury to the property of another person, the injured party can sue you to recover damages.

There are a variety of Regulatory Tools to manage drainage. These include:

- Subdivision Regulations
  - Zoning Regulations (we don't have these yet)
  - Building Codes
  - Floodplain/Drainage Way Management
- Typical sources of funding for these tools include:
- Drainage utility fees
  - Impact fees
  - General Government/Property Taxes

One of the most common misconceptions I have encountered in discussions with citizens is the notion that, because the city approves plats, in some way, that makes the city responsible for all drainage problems. As we have studied this issue I have learned that is not the case. In fact, the city is required, by law, to approve all plats that meet our subdivision regulations.

Generally, the responsibilities for managing drainage are:

- Developers/Property Owners are required to ensure City drainage and flood plain management regulations are complied with
- Developers/Property Owners must ensure that no diversion or impoundment of the natural flow of surface water occurs
- Private property owners have an obligation to ensure no diversion or impoundment of the natural flow of surface waters in a manner that damages the property of another
- Private property owners are required to comply with City regulations including the maintenance of privately owned drainage easement
- The City maintains publicly owned drainage ways
- The City reviews plats. The scope of this review does not include revalidating all the calculations done by the Licensed Professional Engineer who developed the drainage plan and affixed his seal to the plat.
- The City enforces local regulations

Maintenance of the drainage easement is the responsibility of the owner of that easement. Ownership is normally established on the plat, but sometimes by a separate instrument.

- Dedicating a drainage easement to the city requires acceptance by the city
- Drainage easements that have private ownership are typically maintained by
- HOA
- POA
- Property Owner

*(Continued on Page 4)*



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# FAIR OAKS RANCH

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## From Ron's Presentation

Ron's presentation presents a brief description of requirements for having a Storm Water Management Plan. We are responsible for providing minimum control measures with the objective focused on water quality when it reaches a natural Waterway system (i.e. Cibolo Creek, etc.)

Because the plats are important in defining ownership and responsibilities for maintenance, Ron presented a historical perspective on drainage easement notes on plats in Fair Oaks Ranch. If you go to the city website and read through this history, you will understand why deciding who is responsible is rarely an easy task, especially in the older developed areas of the city.

Ron pointed out that while we check plats for compliance with local regulations and ask questions if we notice something that concerns us, we are very much relying on the work of the Licensed Professional Engineers who are required to prepare plats and place their seals on the plats as detailed by our subdivision regulations.

Ron's presentation also presents a number of very good maps of the problem areas. You may be interested in going to the city's website and reviewing these (See quick link "Storm Water Drainage Issues".)

Where Do We Go from Here?

Many of the drainage issues have been outstanding for years. Others have been created as impervious cover has increased through development. Fixing the issues is going to take some time but we have begun the process.

Ultimately, we need to develop a Master Drainage Plan in conjunction with a Comprehensive Plan for the city. This exercise will be neither quick nor cheap but it is necessary if we are to move forward on a resolution.

Our new City Administrator, Tobin Maples, has experience helping cities move forward on these types of issues and he has begun the work of developing a set of priorities that he will be discussing with the council. Ultimately I anticipate that we will create a Storm Water Utility District that will give us a funding mechanism to correct drainage issues that are the city's responsibility. Many cities have already taken this action step.

In the interim, some of the more serious drainage issues are positioned where they will be improved as a necessary part of fixing the roads as part of our street bond project. This will give relief to some of the affected areas. We expect actual dirt moving construction work to start in the November 2016 time frame.

Future Information Articles

In future issues of The Fair Oaks Ranch Gazette, I want to establish a recurring column for our Public Works Director to communicate with you about our street repair construction that will be going on. Once started, this construction will be affecting all of us for a period of approximately a year. I think it is important that we keep everyone informed on where we are in the project and what will be coming up. We encourage everyone to use the link in

the City's website titled "FOR Roadway Reconstruction Project" to connect to the most up to date information that will be maintained by Pape-Dawson, our engineers on the project.

Best regards to all of you,  
Garry Manitzas  
Mayor, Fair Oaks Ranch

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meets weekly at noon at the Fair Oaks Ranch Golf and Country Club.

The Rotary Club facilitates the Meals On wheels service for the City and surrounding area and is always looking for folks who need that service.

*Fran Driskell*

fran@frand.com | 210-414-1981

## LETTERS TO THE EDITOR

Do you have an opinion that you'd like to see printed in this newsletter? Send it to us and we will publish it in the next issue. Email your document to [fairoaksranch@peelinc.com](mailto:fairoaksranch@peelinc.com).

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## Pruning Dilemma Part II

Currently, the State of Texas does not require any licensing for tree contractors. There are many contractors such as electricians, plumbers, irrigators and pest control contractors (to name just a few) that need to pass exams, maintain continuing education units plus keep other important commercial contractor requisites such as current liability insurance and sales tax payments. This begs the question: “Why not for tree contractors”? This needs to change!

Until there is change, it is a voluntary practice in the tree industry. Those tree contractors that maintain education are certified by the International Society of Arboriculture (ISA) and we are known as arborists. The arborists who are current with their credentials can be found on the ISA consumer website: [www.treesaregood.com](http://www.treesaregood.com).

Unfortunately, the present day reality in the tree care industry is slow in its caring and earning the education. The majority of tree care services have little, or none, of the professional requisites noted above. Consequently, the Texas Forest Service sets out recommendations on concerning issues such as oak wilt.

With the tree contractors not following education and a significant amount of ranchers and homeowners often unfamiliar with the oak wilt, there are potential problems. Adding improper tools plus minimal manpower to prune oaks safely and correctly, those problems are compounded especially during the spring/summer months. The Texas Forest Service recommends a complete prohibition of pruning of oaks during spring for both the tree contractor and the arborist. Yet, spring is the best season for pruning trees, shrubs, etc.

The message delivered by the Texas Forest Service’s spring “pruning ban” recommendation

is seriously flawed with this total prohibition in my professional opinion. The impression is that “no tree contractor or arborist” is capable of safely pruning oak trees during the best season for pruning.

Ironically, the Texas Forest Service maintains a website ([www.texasoakwilt.org](http://www.texasoakwilt.org)) where you, the consumer, can locate Texas Oak Wilt Certified arborists (the designation will change in a few years to Texas Oak Wilt Qualified). You can also find a listing of the most highly-qualified vendors, their locations and contact information.

It is my firm conviction that these highly-qualified individuals as well as many other arborists are fully capable of pruning oaks safely during the spring and summer months. Including this caveat to the pruning ban practices recommended by the TFS serves the tree, consumer, and the credentialed commercial arborist(s) best.

The following questions can be helpful to you, the consumer, as a means to further verify a particular arborist’s oak wilt pruning practices. (1) How much paint is stocked on your trucks?

(2) Do you replenish your stock of paint to ensure more than one day’s worth? (3) Does every climber carry paint when in an oak tree pruning? (4) Do you have a paint pole taller than your tallest pole saw? (5) Does sawdust from chainsaw cuts get wiped off the cut oak branch before paint application? (6) Do you paint all cuts before moving on to the next tree? (7) Does the ground man understand

that his most important job function regarding oak tree pruning is painting the cuts made?

Questions or comments that this article or previous articles have generated, may be directed to me at: [kevin@arborcareandconsulting.com](mailto:kevin@arborcareandconsulting.com)



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