

SUNDAY

OCTOBER 16, 2005



Clemens, Astros edge out Cardinals

SPORTS

Comics conundrum

Pick the strip to replace Calvin & Hobbes
S.A. LIFE



Saints-Falcons
Four-page pullout
SPORTS

San Antonio Express-News

Metro Edition

\$1.50 www.MySanAntonio.com

THE VOICE OF SOUTH TEXAS SINCE 1865

Sunnis flock to the polls for Iraq vote

Their heavy turnout puts constitution's fate in doubt.

BY RICHARD BOUDREAUX AND BORZOU DARAGAH
LOS ANGELES TIMES

BAGHDAD, Iraq — Sunni Arabs voted in large numbers in a nationwide referendum on a new constitution Saturday, injecting a measure of uncertainty into the fate of a U.S.-backed charter that the country's disaffected minority largely had condemned.

As polls closed after 10 hours of balloting that was surprisingly free of insurgent violence, the Independent Elections Commission of Iraq reported a 61 percent turnout of the overall electorate, with higher rates of voting in three of the four provinces where Sunnis are a majority.

The large turnout reversed a defiant Sunni boycott of the country's historic elections in January.

Officials didn't announce any returns in the yes-or-no balloting. If two-thirds of the votes in three or more provinces go against it, the proposed constitution will be scrapped.

Kurdish voters in northern Iraq and Shiites in the south voted "yes" for the constitution, but election officials said they turned out in relatively smaller numbers.

That meant the outcome hinged on tallies coming as early as today from Sunni-dominated Salahuddin and the ethnically mixed provinces of Nineveh and Diyala. A "no" vote was a near-certainty in Anbar, the overwhelmingly Sunni province at the heart of an insurgency that has plagued the country since the ouster of Saddam Hussein.

"This referendum was a challenge for the Sunnis, and they turned out in force to reject it," said Jabber Habbieb, a Baghdad University political scientist.

The constitution's Kurdish and Shiite back-

See HEAVY/4A

Border-bound trains in deadly Texarkana wreck

Hundreds forced to flee as derailment in switchyard sparks huge fireball.

ASSOCIATED PRESS

TEXARKANA, Ark. — Hundreds of homes were evacuated Saturday after seven empty train cars and a tanker containing propylene derailed in a switchyard, exploding in a ball of fire and leaving a plume of smoke over the south end of the city.

One person was killed when a nearby home was destroyed, police spokesman Chris Rankin said.

At least seven people went to hospital emergency rooms with complaints of respiratory problems, hospital spokeswoman said.

The incident occurred when a Union Pacific train bound for Laredo ran into the back of a Union Pacific freight train en route to Harlingen.

At least two homes and several vehicles were destroyed in the quarter-mile area surrounding the wreck, Rankin said. And a Union Pacific spokesman said a 209-foot-long railroad bridge caught fire and was destroyed.

Seven hours after the 5 a.m. accident, the propylene tank continued to burn, but the fire was under control and the smoke had thinned out, Rankin said. Police canceled the evacuation shortly before 3 p.m., and residents began returning home.

See BORDER-BOUND/23A



Losing ground

Developers are avoiding rules intended to prevent neighborhoods that look like this. Here's how.

BY JOHN TEDESCO
EXPRESS-NEWS STAFF WRITER

An obscure Texas law written for developers has cost San Antonio millions of dollars, stripped parts of the scenic Hill Country of trees and blocked attempts to protect the region's water supply.

The "vested rights" law stops cities from imposing new restrictions on a real estate project once a developer files virtually any kind of plan for it.

From that point on, the project is "vested" and frozen in a time warp of more lenient city codes.

The industry portrays the statute as protection for the little guy from overbearing government. It's a message that resonates in Texas, where property rights are held sacred.

In reality, the law almost always is used by large development companies, which have invoked it hundreds of times to trump efforts by citizens to tame explosive growth, a yearlong investigation by the San Antonio Express-News has found.

Thanks to the law, developers bulldozed wide swaths of the Hill

Country, wiping out hundreds of acres of trees that residents fought hard to protect through two tree-preservation ordinances.

The law also is widely used by developers to avoid a 1995 ordinance intended to protect the Edwards Aquifer.

Passed amid thunderous applause in a packed City Council chamber, the water quality rules were hailed as a hallmark of planning for a city not known for its foresight.

Yet in the name of vested rights,

developers avoided the ordinance in four out of five cases in the past decade. Urban sprawl continues unabated, bringing dense development over the fragile watershed that the city intended to protect.

With so many developers ignoring the local ordinance, aquifer protection is left largely to state regulators, who can enforce some pollution controls but can't limit

See VESTED/15A

FIRST IN A SERIES

Today
Law lets developers ignore growth controls

Monday
Dig up an old plan, get vested

Tuesday
Pulling strings at the Capitol and City Hall

Wednesday
City getting tougher, but a new fight looms

INSIDE
Robert Rivard: Bad growth could mean bad water/3B



PHOTO ABOVE BY JOHN DAVENPORT/STAFF • TOP PHOTO BY KEVIN GEIL/STAFF

Evacuees out of shelters, but FEMA not out of woods

Agency now being blasted for Katrina victims' hotel bills.

BY KEVIN MCGILL
ASSOCIATED PRESS

BATON ROUGE, La. — Roughly 95 percent of some 270,000 Hurricane Katrina evacuees were cleared from shel-

ters around the nation by Saturday, the federal government's self-imposed deadline for emptying the refuges.

But that relative success comes amid continued frustration with the Federal Emergency Management Agency and a whopping hotel bill.

As of Saturday afternoon, 14,468 people remained in shelters, according to state and federal officials. Louisiana shelters held 9,003, with the remainder in 11 other states.

"Our count is down to 439," said Chisholm Pothier, a Red Cross spokesman at the Cajundome arena and convention center in Lafayette. It once held more than 7,000 evacuees.

Considering that thousands of those still in the shelters likely are evacuees from Hurricane Rita, which struck southwestern Louisiana and southeastern Texas on Sept. 24, authorities believe they've cleared out more than 95 percent of the Katrina evacuees.

Katrina displaced an estimated 1.5 million people when it struck Aug. 29. The shelter population peaked at about 273,000 in the days after the storm, according to FEMA. President Bush set a mid-October goal of emptying the shelters, and FEMA officials adopted Oct. 15 as their deadline.

Numbers fluctuated at some of the shelters. Missy Stehr-Wood, manager of a center in

See FEMA/20A

INSIDE
In transition
Solution sought for the hundreds of thousands of evacuees in temporary housing, including 4,000 in San Antonio.
Page 21A

Today's Weather
Morning clouds, warm
High 85, Low 63
Full report, Page 26C

San Antonio Home Page
MySA.com

INDEX

Business	1L	Deaths	6B	Metro/State	1B	S.A. Life	1K
Classifieds	1E	Drive	1F	Movies	5J	Sports	1C
Culturas	1J	Editorials	2H	Puzzles	6K	Travel	1M



140th year, No. 11, 818 pages. Entire contents copyright 2005, San Antonio Express-News. This newspaper is recyclable.

Losing ground

SAN ANTONIO EXPRESS-NEWS

SUNDAY, OCTOBER 16, 2005

15A



JOHN DAVENPORT/STAFF

Heavy land-clearing equipment has removed almost all of the foliage from the Bulverde Village subdivision, and 270 acres of habitat for the endangered golden-cheeked warbler were leveled for new housing.

Vested rights cost taxpayers

CONTINUED FROM 1A

the size of housing and commercial projects. Their budget in San Antonio has been slashed by more than half since 2002, from \$324,000 to \$141,000.

The Texas law also hit local taxpayers in the pocketbook.

In October 1997, San Antonio was poised to charge developers new fees to control storm water runoff and prevent flooding.

But the day before the drainage fees kicked in, developers flooded City Hall with nearly 200 planning documents known as plats — the most ever filed in a single day in San Antonio.

In the span of a few hours, the developers successfully exempted themselves from at least \$2.3 million in drainage fees, according to an Express-News analysis of a city database.

In recent years, tax-shy San Antonians voted to spend \$135 million in two sales tax propositions to buy vacant land over the aquifer's recharge zone.

The goal was to stem development and pollution.

GENE DAWSON JR.

"People get frustrated in the process. They get held up by the city arborist on a tree issue, so they just say, 'Well heck, I'm going to get my property grandfathered and I'm going to go clear the whole (property).'" I see that all the time."



Texas law hinders the buyout program because vested, or grandfathered, sites can turn more profit. Some owners of the exempted tracts are demanding top dollar for their properties, reducing the amount of land the city can buy.

While there are many factors that go into each land purchase, records reviewed by the Express-News suggest the city has paid an extra \$2 million for grandfathered properties.

Susan Spegar, the city official responsible for the property purchases, agreed with the Express-News analysis.

"There's no doubt that vested rights

contributed to an increase in land values," Spegar said.

By almost every measure, critics say, the statute has been a boon to developers while hampering efforts by residents, community groups and officials to make San Antonio a better place to live.

"Anytime a city wants to do anything, the developer can always beat you to the gun," said Terry Morgan, a Dallas lawyer who describes the Texas statute as the most lenient in the United States.

Developers say the law prevents cities from unfairly imposing expensive new rules on them.

While acknowledging hundreds of exempted projects cover San Antonio, they insist most are built responsibly, even without city oversight.

And they credit the law for promoting growth, saving costs for homebuyers and boosting the city's tax base.

"Real estate is an inherently long-term industry," said Norm Dugas, a housing developer and president of the San Antonio Real Estate Council.

"It takes a lot of upfront planning and a lot of upfront budgets and investment to do a project. If you're not able to finish the project under the same rules under which you started, you are going to bust your budget."

Paper projects

A venture is considered "vested" when developers start work on a shopping center, a neighborhood or some other project. From that point on, a city

can't change land-use controls on them.

For decades, courts held a high standard of vesting, usually ruling that projects weren't truly grandfathered until construction started.

But a Texas twist on vesting lowered that threshold.

The 1987 statute was written for developers who were unhappy with strict land-use rules in Austin, said Richard Suttle, a lawyer who helped lobby then-House Speaker Gib Lewis, the law's founding father.

The law had a far-reaching impact across Texas. It said a project is born when early permits such as plats or master plans are filed with a city. Construction can begin years, even decades later, but the project will fall under the codes in effect at the time of the original filing.

In San Antonio, the law encourages the development industry to blur the line between legitimate projects and outright land speculation, records show.

The Express-News review found that:

- In a pattern repeated on at least three occasions since 1994, developers flooded City Hall with plat filings hours before council members approved new development rules, exempting thousands of acres from more stringent city codes.

- Developers and lobbyists helped write rules such as the water quality ordinance. Those same insiders then shepherded scores of clients through the exemption process to avoid those

See APPROVAL/16A

How we did this report

The Texas grandfathering law has played a pivotal yet often hidden role in shaping San Antonio's growth. To determine the law's impact, the San Antonio Express-News pored over files for each vested project, conducted scores of interviews and analyzed several government databases.

To calculate how often developers file last-minute plans in an attempt to avoid looming ordinances, the Express-News turned to a city database of 8,200 plat applications filed between 1990 and April 2005, and broke down the number of plans by month to look for spikes in filings.

The database also helped show how much money the city lost in fees from developers who filed plats before an Oct. 20, 1997, drainage ordinance hit the books. The drainage fees are based on land use, acreage and number of residential lots. That information is noted for each plat in the database.

However, the plat database doesn't break down land use for sites devoted to apartments and businesses, and the drainage ordinances impose different fees for those types of projects. In those cases, the Express-News went with the apartment-complex fee — which is lower than the commercial fee — to provide a conservative estimate.

The Express-News also examined Texas databases that track political campaign contributions and lobbyist

activity. While the real estate industry as a whole has given generously to the Texas Legislature, the newspaper considered only interests that have supported vested-rights legislation.

The newspaper confirmed that support by reviewing witness lists for legislative hearings, or in some cases, learned of the support through interviews with lawmakers.

Lobbyists are required to provide only a payment range from their clients, not the exact amount. The Express-News always went with the lowest figure, not the highest, in adding up the total amount of money developers spent on lobbyists.

To tally the total amount spent by developers in campaign contributions at City Hall, the Express-News examined lobbyist lists, membership rosters, and its own database of vesting cases to confirm industry ties.

The map of exempted projects over the Edwards Aquifer recharge zone comes from data provided by the San Antonio Water System.

RIGHT: The new Bulverde Village subdivision east of Bulverde Road and north of Loop 1604 has been clear-cut, and the houses are placed close together. Rock saws gouge into the limestone to terrace the land.



JOHN DAVENPORT/STAFF

Losing ground

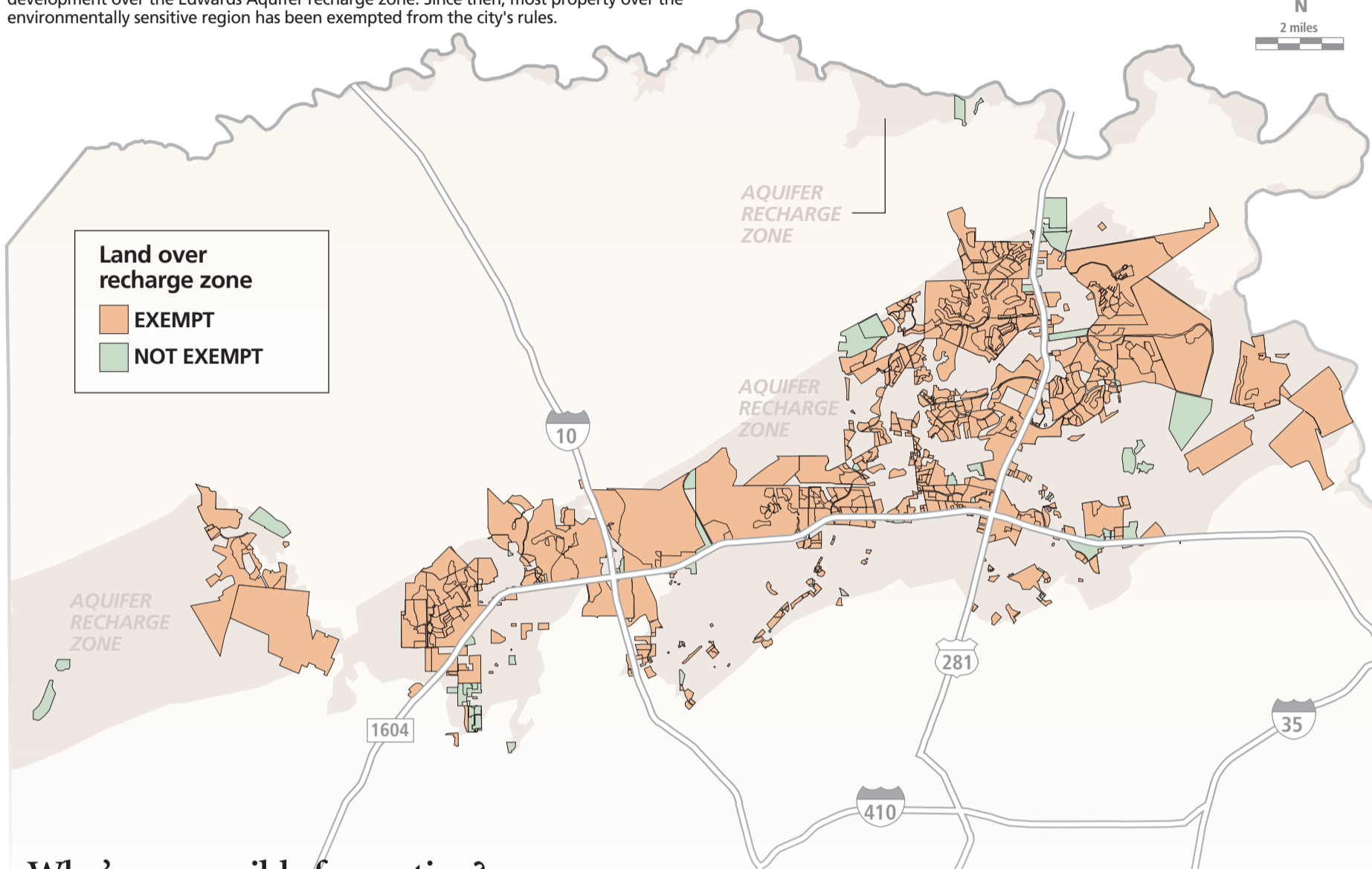
Vested rights in San Antonio

What are vested rights?

In 1987, Austin developers lobbied lawmakers for a new law to make it easier to avoid city ordinances. The statute says a landowner is 'vested' once the first permit for a project is filed. From that point on, the owner can be grandfathered from future city codes. The law protects property owners, but makes it difficult for cities to impose rules that protect trees and sensitive watersheds.

Most projects exempted from aquifer rules

In 1995, the City Council received a standing ovation after approving an ordinance to limit development over the Edwards Aquifer recharge zone. Since then, most property over the environmentally sensitive region has been exempted from the city's rules.



A chronology of vested rights

- 1987**
Feb. 2: Texas Rep. Ashley Smith files House Bill 4, which establishes the Texas Chamber of Commerce to jumpstart a stalling Texas economy.
March 26: An amendment is added to House Bill 4 at the request of then-House Speaker Gibson 'Gib' Lewis. The amendment says that in the interest of economic development, the government cannot change rules for a project once a permit for it is filed.
- Sept. 1:** Legislature approves the state's first vested rights law.
- 1994**
Sept. 8: As San Antonio considers new rules to limit development over the Edwards Aquifer recharge zone, a moratorium is placed on all plats and zoning requests over the recharge zone. The City Council was trying to stop developers from filing plans that could trigger exemptions from the new aquifer ordinance.
- Dec. 22:** City moratorium revised to include preliminary development plans.
- 1995**
Jan. 31: After the aquifer ordinance is approved, it becomes clear that the moratoriums failed to stop hundreds of plans from being filed. Local firm Pape-Dawson Engineers tells a client, Lumbermen's Investment Corp., that it filed a plan just in time to avoid the water quality rules.
- 1997**
March 1: Tree preservation ordinance goes into effect for commercial developments.
May 1: Tree preservation ordinance goes into effect for residential properties.
- 2001**
June 29: Edwards Aquifer Authority releases memo noting rapid pace of development over the recharge zone.
- 2003**
May 8: New tree ordinance approved in an attempt to close loopholes and preserve more trees than the 1997 ordinance.
- 2004**
May: Despite two tree ordinances on the books, builder Pulte Homes strips trees from more than 50 acres of Hill Country land within plain view of U.S. 281. The grandfathered clearcut sparks a public outcry.
June 1: Development services task force, a developer-driven committee, finds that the city is beginning to reject vested rights applications and causing delays in the development process.
Sept. 1: Mayor Ed Garza appoints vested rights task force to examine how San Antonio handles the law.
Oct. 25: Greater San Antonio Chamber of Commerce tells the vested rights task force that the inconsistency in enforcing vested rights is driving away business.
- 2005**
October: The City Council is preparing to consider the recommendations from Garza's task force.

Who's responsible for vesting?

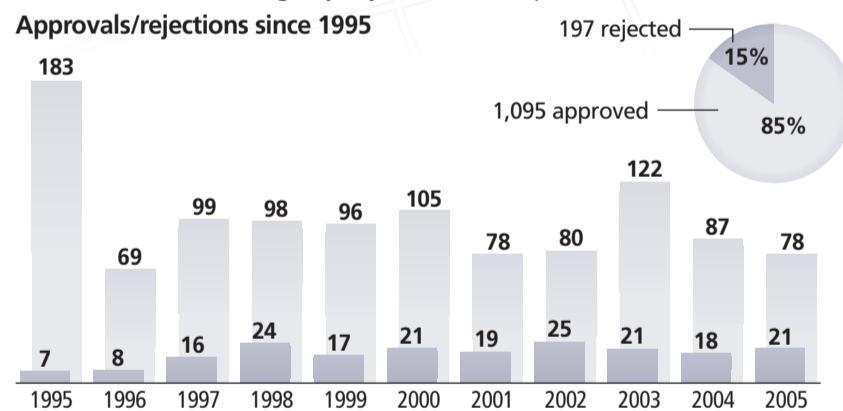
The city of San Antonio and San Antonio Water System are the two local bodies that approve or reject vesting claims.

SAWS

The San Antonio Water System enforces a city ordinance intended to limit development over the Edwards Aquifer recharge zone. The rules set caps for buildings, streets and other forms of 'impervious cover.' Developers must ask SAWS if their projects are exempt from the rules.

Easy approvals

Though rejections are becoming more frequent, SAWS has recognized grandfathering claims for an overwhelming majority of cases in the past decade.



Top 10 firms requesting vested rights from SAWS (1995-2005)

Engineer	Number of requests
Pape-Dawson Engineers Inc.	477
Macina, Bose, Copeland & Associates Inc.	95
W. F. Castella & Associates Inc.	90
M.W. Cude Engineers L.L.C.	79
Hallenberger Engineering L.C.	69
Brown Engineering Company	58
Vickrey & Associates Consulting Engineers	31
Bury + Partners Consulting Engineers & Surveyors	24
Civil Engineering Consultants	21
Alamo Consulting Engineering & Surveying	18

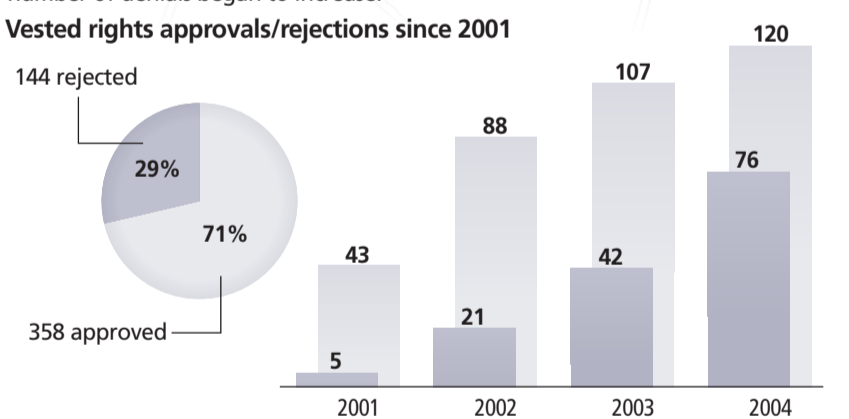
Source: San Antonio Water System records

City of San Antonio

The city's Department of Development Services handles grandfathering requests when it comes to other city ordinances. Those rules include the city's 2003 tree ordinance, which is the primary reason developers seek grandfathering status. The city's Planning Office originally dealt with such requests.

Denials on the rise

Since 2001, property owners who sought exemptions from the city ordinances, such as tree preservation rules, were successful in 70 percent of all cases. Last year, the number of denials began to increase.



Top 10 firms requesting vested rights from the city (2001-2005)

Lobbying/engineering firm	Number of requests
Earl & Brown (now defunct)	120
Pape-Dawson Engineers	93
Macina, Bose, Copeland	63
Vickrey & Associates	28
Brown Engineering	18
Overby Descamps Engineers	16
Carter & Burgess	16
Bury Partners	13
W.F. Castella	13
Earl & Associates	13

Source: City of San Antonio records

Approval of vesting requests has been easy to get

CONTINUED FROM 15A

rent rules. By relying on the old plan, H-E-B was required to follow only city codes in effect as of 1908. The company says it voluntarily followed current ordinances. "We didn't even have stores in San Antonio in 1908," a surprised Kate Rogers, a spokeswoman for H-E-B, said when asked about the vesting case. For years, local officials failed to do much to challenge this system. Instead, they handed out vesting approvals "like they were candy," said Ken Brown, a San Antonio lobbyist who represents developers.

While the city water department handed out blanket exemptions from aquifer rules, Brown said the Planning Department was just as lenient for all other city codes, such as tree preservation ordinances. Between 1997 and 2001, planning officials exempted 500 projects — covering nearly 70,000 acres, about one-fourth of the city's total acreage — that undermined efforts to manage San Antonio's growth. The city turned down less than 1 percent of all vesting requests during that period.

The projects keep their exempt status for years — many of those subdivisions and commercial projects are just now under way. "Really, if you had anything where you said this is my permit or this is my project, the city would accept it and give you vested rights," said Brown, whose law firm has handled vesting requests at City Hall on behalf of 120 clients since 2001. Brown said most plans turned in by developers were valid. But he also saw

See CLEAR-CUT/17A

AIR QUALITY

One study claims that the city's destroyed trees could have soaked up more than 3 million pounds of air pollutants a year.

Losing ground

SAN ANTONIO EXPRESS-NEWS

SUNDAY, OCTOBER 16, 2005

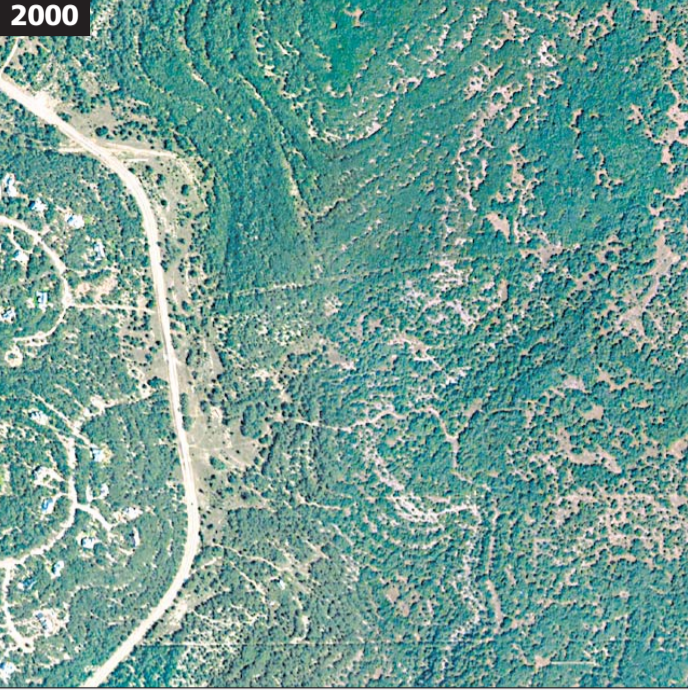
17A

Clear cut evidence

Developers say most projects exempted from city tree ordinances are built responsibly. But even a few clear cuts can span hundreds of acres.

Bulverde Village

Developers and builders cleared more than 600 acres of trees for a 2,000-home subdivision. The property had been covered with mountain cedar, live oak, Texas oak, persimmon and mesquite trees, according to a 2002 survey of the site.



Encino Ridge

Builder Pulte Homes cleared more than 50 acres in May 2004. Pulte insisted most of the site was covered with pesky mountain cedar trees. Neighbors remember seeing a healthy mix of live oaks. Wooded properties near Encino Ridge are thick with oaks and cedar.



The Rim

Roughly 20 acres of trees were turned to mulch to make room for 'The Rim,' a commercial project that includes a new Bass Pro shop.



Images provided by GlobeXplorer, TerraServer

EXPRESS-NEWS GRAPHIC

Clear-cut scars pockmark face of North Side

CONTINUED FROM 16A

the city accept vesting claims based on questionable documentation.

"There were some terrible ones. Really, really bad ones," Brown said. "I was part of it. You'll probably find my name on some of them."

Today, the pendulum has swung the other way.

With the hiring of City Attorney Andrew Martin in 2002, San Antonio officials began challenging more grandfathering claims, although most still are approved. The development industry has turned to an old friend, the Texas Legislature, to seek a remedy.

In the past five years, members of the real estate industry who have publicly supported the vested rights law paid more than \$4 million in campaign contributions to Texas lawmakers and spent at least \$11.7 million in lobbying fees.

During that time, legislators filed several bills that broadened the type of plans that could trigger exemptions.

Developers and lobbyists acknowledge the law invites abuses. But they insist the exemptions offer a measure of sanity in a city that piles restriction after restriction on landowners.

"People get frustrated in the process," engineer Gene Dawson Jr. said. "They get held up by the city arborist on a tree issue, so they just say, 'Well heck, I'm going to get my property grandfathered and I'm going to go clear the whole (property).'"

"I see that all the time."

The scar

Drive along U.S. 281 North to Stone Oak Parkway and a project appears that fits Dawson's description:

A gaping, 50-acre scar at the gateway to the Hill Country.

Earthmovers scrubbed a hillside covered with live oak and mountain cedar trees to bare limestone — wiping out a forest the size of North Star Mall.

Tract homes now are sprouting from the dusty landscape.

"I don't see why in the hell they did

that," said Richard Villarreal, 63, who on a recent summer morning stopped with his family at a nearby Exxon Speedy Stop on their way to Canyon Lake from the city's South Side.

"I understand it's progress," Villarreal said, shaking his head. "But did they have to tear all the trees down?"

The trees were bulldozed to make room for Encino Ridge, a dense neighborhood by national chain Pulte Homes, one of San Antonio's largest builders. The Michigan-based company took in a record \$11.7 billion in gross revenue last year.

"They worked day and night out here," nearby resident Donna Biggs said. She stretched her arms to form a wide circle. "There were oaks this big cut down."

Pulte's local president, Bart Swider, said the company wanted to grade the hill to cut down on the cost of each home. But he admits the clearing was an environmental blunder — one that city tree preservation ordinances might have prevented.

"We did not develop in a manner that was environmentally sensitive," Swider said.

Neither did the vested developers of Bulverde Village, where 270 acres of habitat for the endangered golden-cheeked warbler were leveled for new housing.

Nor the Encino Commons retail development, on Evans Road and U.S. 281, which flattened a tree-covered hill.

With no safeguards, the green hills of the North Side have been pockmarked over the years with barren clear-cuts, thanks in large part to the vested rights law.

An aerial tour by helicopter with an Express-News reporter and photographer came across a half-dozen sites.

Since 1985, San Antonio has lost

45,000 acres of dense tree cover to development, according to a November 2002 study by the nonprofit group American Forests.

The lost trees had more than aesthetic value. If preserved, the trees could have soaked up more than 3 million pounds of air pollutants a year, and saved the city \$146 million in drainage costs to control floodwaters, the study found.

City Arborist Debbie Reid is certain that exemptions to the tree ordinance are responsible for much of that loss.

Yet even Reid can't say for sure how many trees are being cut down in grandfathered projects. While city rules mandate tree surveys, developers aren't required to conduct them if they're exempt.

Resisting change

Many agree the city's newest tree preservation ordinance, approved in 2003, is complicated and costly.

The industry complains that homebuyers are unfairly being forced to shoulder those costs, while most developers are going out of their way to save trees anyway.

But in projects such as Encino Ridge, nothing can stop developers from bulldozing everything in sight if they're exempt from city ordinances, said Susan Wright, who chaired a mayoral task force that assessed the way San Antonio handles vesting issues.

"I don't think vesting in and of itself is bad, or the motivator for bad development," said Wright, who works as a

development consultant. Pulte "used the law to get away with something that was wrong."

Developers sat at the table with residents and environmentalists in crafting the city's rules. Each ordinance took months — even years — to complete, and involved numerous public meetings.

But interviews and a review of industry newsletters show the industry feels besieged by the city's new oversight and by "elitists" who don't know the first thing about development.

One industry leader chafed at San Antonio's open system.

"The democratic process allows any politician with an agenda, any organization with a big enough showing, even any bureaucrat with enough zeal to initiate legislation that impacts others more than themselves," David McAllister, then president of the San Antonio Real Estate Council, wrote in a January 2000 newsletter.

National companies such as Pulte Homes are often blamed for coming to San Antonio and avoiding local codes.

But lobbyist Ken Brown said his clients from outside Texas have no problem with San Antonio's rules.

City ordinances in other states, especially California, are considered more stringent.

Some local developers, accustomed to doing things their way, resist the city's new codes, Brown said.

"We have developers in this town

See DESIRES/18A

THE SIZE

At Encino Ridge, earthmovers wiped out a forest the size of North Star Mall. Tract homes are now sprouting from the dusty landscape.



RIGHT: This commercial development called Encino Commons near U.S. 281 North flattened a hill after all the vegetation was removed.

JOHN DAVENPORT/STAFF

Losing ground



PHOTOS BY JOHN DAVENPORT/STAFF

Sendero Ranch, in the foreground, has lots of 2 acres or more with trees and native fauna. Bulverde Village, in the background, has been clear-cut to bare limestone and will have an average of six homes per acre.

Building lots of differences

By JOHN TEDESCO
EXPRESS-NEWS STAFF WRITER

Wander along the shady, winding roads of Sendero Ranch, and you might just forget people live here.

Developed by Tom Dreiss, who grew up in the Hill Country, the upscale North Side neighborhood boasts vast lots of 2 acres or more that preserve as much land as possible.

Residents are barred from cutting down trees along the edges of their properties. Native deer, raccoons and rabbits thrive.

"That's exactly why we moved here," said homeowner Danna Bandy, whose family was lured to Sendero Ranch by the pristine environment.

Like many grandfathered neighborhoods in San Antonio, Sendero Ranch meets or exceeds city codes despite being exempt from them.

But it's difficult to measure how many developments follow that high standard.

While city officials track the number of exempted projects, their records don't reveal how many cut corners.

The real estate industry insists most owners build responsibly. They seek shelter under the Texas vested rights law simply to avoid a tangle of red tape at City Hall.

"The fact of the matter is, the bulk of the expense of complying with the tree ordinance has nothing to do with the number of trees saved, and everything to do with the cost of compliance," said developer Norm Dugas, a vocal critic of

TOM DREISS

The developer of Sendero Ranch says he makes sure his projects are exempted, then he takes it upon himself to preserve as much land as possible.



what he describes as burdensome city rules.

Dugas quipped that most developers want to save trees for one simple reason: greed. A nice tree on a residential lot boosts its value.

"I don't like the industry being tainted with this broad public brush, that we're not doing everything we can to save as many trees as possible — vested or not vested," Dugas said.

Developers say the same is true for the projects built over the Edwards Aquifer recharge zone, the swath of land on the city's North Side where rainwater replenishes the region's drinking supply.

"To create the impression that somehow vesting has allowed unrestricted development over the recharge zone isn't accurate," said engineer Gene Dawson Jr., whose firm handles the most business on the North Side.

Dawson pointed out that every grandfathered property must comply with state regulations, which are viewed by critics as weaker than the city code but better than nothing.

State records show the amount of land

covered by buildings, streets, and other forms of "impervious cover" on the recharge zone fall under caps set by the city's ordinance for hundreds of projects.

Some in the industry acknowledge that city codes at least offer a measure of protection against development gone bad. Nearly every time San Antonio residents have complained of an ugly clear-cut, the site was grandfathered from tree preservation rules.

"The public's outcry over the destruction of trees during development has been almost exclusively focused upon projects that are exempt from the new (tree) ordinance," Bill Ellis of the San Antonio Real Estate Council wrote in a Jan. 28, 2002, letter to the city arborist, Debbie Reid.

At the time, the city already had a 1997 tree ordinance on the books, and officials were poised to beef up the rules. Ellis argued that step wasn't necessary.

"Nothing can or will be done to stop the removal of trees from exempt property, and the public outcry over this destruction will not stop," Ellis wrote.

Sendero Ranch is an exception to that rule.

Live oak, mountain cedar and native fauna flourish in the quiet neighborhood. Narrow roads curve around big shady oaks. Dreiss said he and his workers wielded chainsaws, not bulldozers, and tried to cut down only what they had to.

"I could have ground that down to a quarry site," said Dreiss, recalling how the 620-acre development was grandfa-

thered from city ordinances that protect trees and the Edwards Aquifer.

"I didn't."

Next door to Sendero Ranch, builders leveled a forest to bare limestone and are packing in homes at an average of six per acre.

The new subdivision of Bulverde Village is being developed by a partnership of national companies: Pulte, Wilshire and Centex homes.

Pulte president Bart Swider said his company was not developing the land responsibly in Bulverde Village and apologized for it.

The sight of earthmovers and bulldozers flattening the wooded hills of the North Side sickens Dreiss.

"The land should dictate how it should be used," Dreiss said when asked about Bulverde Village. "They're not a good neighbor. They're not contributing anything to society. They're creating liabilities."

Dreiss harbors no love for the city bureaucracy and ordinances that he says are full of loopholes. City officials mean well, he said, but they end up hurting their cause because few developers want to spend the time or money to deal with them.

Instead, Dreiss said he makes sure his projects are exempted, then he takes it upon himself to preserve as much land as possible.

"Not everything's about taking all you can out of a piece of land," Dreiss said. "It's OK to respect it and preserve it."

jtedesco@express-news.net

SIMPLICITY

The real estate industry insists most owners build responsibly. They seek shelter under the Texas vested rights law simply to avoid a tangle of red tape at City Hall.

Desires of developers and of city can clash

CONTINUED FROM 17A

who have been here forever," Brown said at a public forum on vested rights held last year. "And the whole thing about vested rights is, they don't like to change. They don't understand change. God, I wish they would."

Land rush

In January 1995, the City Council was treated to a rare standing ovation when it unanimously approved, for the first time, controls to limit development over the aquifer's recharge zone.

The ordinance mandated the preservation of major sinkholes, caves and other recharge features that feed the aquifer; required filtration basins to capture pollutants in storm water; and capped the amount of land that can be covered with buildings and streets.

A committee of residents and developers debated the rules for months. Council members said the final draft was long overdue.

"This is an ordinance that will help protect the quality of the city's water supply," promised Howard Peak, a councilman at the time who championed the rules and was later elected mayor.

Since then, four out of five requests for exemptions over the recharge zone have been granted, according to records at the San Antonio Water System, the agency responsible for enforcing the ordinance.

Developers must ask if they have to

follow the ordinance every time they start a project or a phase of a project, or once a project changes.

Out of nearly 1,300 requests in the past decade, SAWS agreed to grandfather projects almost 1,100 times.

As urban sprawl swallowed recharge land, at least 32,000 acres — about 40 percent of the recharge zone in Bexar County — were exempted from an ordinance many San Antonians pinned their hopes on, according to SAWS data.

"Our efforts to protect the aquifer have been practically nullified by grandfathering," said environmentalist Richard Alles, a vocal critic of the way the city handles vested rights claims. "It's something that happened under the radar."

While officials say the aquifer is clean, they acknowledge traces of pollution have been detected in its only urban area: San Antonio.

"Work that we have conducted has shown pesticides and volatile organic compounds at very, very low levels in the aquifer system," hydrologist

See GRANDFATHERING/19A

THE AQUIFER

While officials say the aquifer is clean, they acknowledge traces of pollution have been detected in its only urban area: San Antonio.



LEFT: Mail boxes have been set up at Encino Ridge subdivision, where once live oak and mountain cedar trees grew.

Losing ground

Grandfathering has undercut city ordinances

CONTINUED FROM 18A

George Ozuna of the U.S. Geological Survey recently told the City Council. "So we're starting to see a connection with man as we encroach out into the recharge zone, and that water quality is starting to get hints of degradation," Ozuna said.

SAWS officials said their hands were tied.

"Certainly there was a very high percentage of grandfathering, especially right after the ordinance," said Scott Halty, a SAWS manager who approved most of the exemptions.

Developers secured many grandfathered projects by flooding City Hall with plans before the new ordinance kicked in.

On Sept. 8, 1994, the City Council imposed a temporary moratorium on new plats, a type of planning document, over the recharge zone. The idea was to stop landowners from trying to get around the looming aquifer rules.

But in the week leading to the ban, engineering firms filed nearly 200 plats calling for the construction of 6,800 homes. Another thousand acres were to be used for stores, businesses and apartments, according to a city database of plat records.

Half the plats were filed on Sept. 7, hours before the moratorium started. On a single day, engineers filed more than a hundred plats covering 1,100 acres.

By comparison, in the eight months before the spike occurred, plat filings hovered at an average of 47 per month, according to the city's database.

The rush didn't stop there.

The city moratorium cut off the flow of plats on Sept. 8. But it didn't say anything about a type of document known as a preliminary overall area development plan.

The maps show multiphase projects that often cover far more territory than a typical plat.

Engineering firms — especially Pape-Dawson Engineers Inc. — filed 20 preliminary plans during the plat moratorium, eventually locking in 7,300 acres before the City Council discovered its

mistake and closed the loophole in December.

David Pasley, the city's director of planning at the time, said city officials were outmaneuvered. No one had realized the preliminary plans might be used for grandfathering.

"It was a brilliant move on their part," Pasley said of the development community. "They took something that was very benign, and were able to circumvent the city's regulatory desires."

The preliminary plans were specifically filed to avoid the aquifer ordinance, according to a Jan. 31, 1995, letter written by Stephen Kacmar, then a vice president at Pape-Dawson.

Writing to a client, Kacmar said Pape-Dawson Engineers had "been working behind the scene with respect to the new development regulations over the Edwards Aquifer recharge zone."

Kindly note, Kacmar continued, that the aquifer ordinance said any preliminary plan filed before the new rules are approved can justify vested rights.

"As you know, we prepared a (preliminary plan)," Kacmar wrote, and Pape-Dawson filed it "just prior to council action on the new regulations."

The client was James Lassiter, then senior vice president of real estate for Lumbermen's Investment Corp., an Austin-based developer.

The land Kacmar referred to is the site for a PGA golf resort over the recharge zone that sparked years of controversy.

The exempted status of the 2,800-acre project became an important bargaining chip for Lumbermen's. The company said if the city didn't accept its resort plans, it could turn around and build thousands of homes at the property, since it wasn't bound by the aquifer ordinance.

"Pape-Dawson has worked this issue as well as we could have anticipated," Kacmar wrote.

The firm certainly knew the issue. Gene Dawson Jr. co-chaired the committee that wrote the ordinance, and Kacmar served on it.

In an interview, Dawson described himself as torn between civic and pro-



JOHN DAVENPORT/STAFF

Clear-cutting left Encino Ridge looking like a lunar landscape. 'We did not develop in a manner that was environmentally sensitive,' says Pulte's local president, Bart Swider.

fessional duties. His firm's clients were nervous about the aquifer rules — rules Dawson had endorsed.

"There was a panic by property owners," Dawson said. His clients already had strong vesting claims, he said, but they asked his firm to file the last-minute plans to be safe.

"They wanted to do everything they could to protect their properties," Dawson said. "And of course, being the largest engineering company, we had the majority of the projects. So it was our responsibility on their behalf to make those submittals."

Dawson said he fought for the aquifer ordinance when the political will to pass it waned in December 1994. His advocacy made some of his firm's clients uncomfortable, he said.

"You can't imagine the pressure that was brought on to our company because of my personal commitment to the ordinance," Dawson said, adding: "There are still people today who won't work with Pape-Dawson."

Kacmar's letter was written to reassure Lumbermen's that its engineers were still looking out for the company's interests, Dawson said.

But he acknowledged the difficulty of explaining to the City Council why his firm had filed so many plans to avoid the very ordinance he championed.

"I had to stand up in front of the whole City Council and say that I did it," Dawson said.

"And believe me, as someone who

had been through the whole process promoting the ordinance, and then I had to say, 'Hey, look what our firm did,' it wasn't a very easy thing to do."

Just business?

Time after time, developers rushed to City Hall when a major ordinance was about to hit the books.

The city's plat database, when analyzed to show filing patterns, looks like a medical fever chart, with the pulse of the development industry racing whenever new rules loom.

In 2001, the city was deluged with plats as it prepared to unveil a new city code that encourages parks, hiking trails and more livable neighborhoods. The rules took two years to write.

But in May of that year, the number of filings for the month shot up to 120 plats before the ordinances kicked in. After the code became effective on June 4, 2001, filings trickled to 16 for the entire month, according to the city's database.

On Monday, Oct. 20, 1997, the city imposed its first flood-control measures on developers, who previously worried only about draining their own property with little regard for the effects downstream.

"The city had no drainage ordinance," said Charles Conner, a member of the drainage committee. "As long as you drained your own property, you were fine."

The new rules called for storm-water detention basins and drainage fees to be paid by developers.

But on Friday, Oct. 17, 1997 — the last business day before the ordinance became effective — the city suffered a different kind of flood.

Engineering firms filed 193 plats — the most that had been filed on a single day in San Antonio since 1990.

The city's top engineering firms were involved in the rush.

They included Pape-Dawson, which saved its clients at least \$287,000 in drainage expenses, according to city records.

The top firm, W.F. Castella, saved \$840,000 for clients in 24 separate plat filings, records show.

According to an Express-News analysis, the sheer number of filings on Oct. 17 meant the city lost at least \$2.3 million in flood-control fees, setting back the city program before it even started.

Messages left with W.F. Castella weren't returned.

Dawson did not dispute the Express-News analysis but said the exempted fees don't tell the whole story.

"I think what you're trying to say is they got out of having to pay \$280,000," Dawson said of his clients. "Now, I will acknowledge that."

"At the same time, if you want to place blame or somehow say that that wasn't right, then I also want to take credit for the \$15 million (in drainage fees) that has been paid through our projects since the time of the ordinance."

Nat Hardy had a ringside seat to the flood.

As an engineer at Pape-Dawson in 1997, Hardy witnessed the rush of filings. But Hardy left the firm, and until August worked in the city's storm-water division, which enforces the drainage ordinance.

Some of the old plats filed in 1997 are still kept in cramped offices where Hardy oversaw the city's efforts to control deadly flooding.

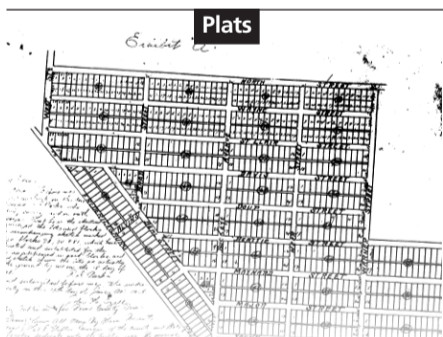
"Was it a good business decision? Sure," Hardy said of the rush of paperwork.

"Was it in the best interest and welfare of the city?" Hardy asked. "No. I can look you in the eye and tell you that."

jtedesco@express-news.net

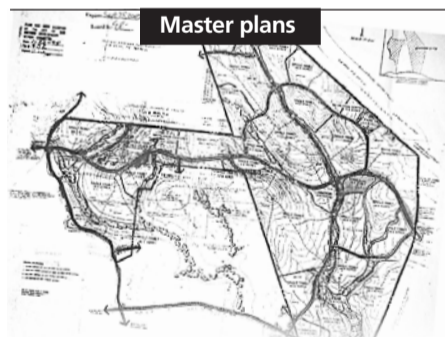
How vested rights work

When the first land permit required for a project is filed, landowners can legally ignore future city codes that limit development. Developers have used several types of documents to seek exemptions, some of which go back decades.



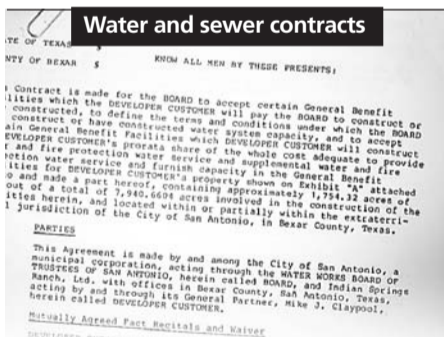
June 19, 1908: A developer files a hand-drawn plat at the county courthouse that maps a residential neighborhood near West and Hildebrand avenues.

Dec. 11, 2001: Decades later, H.E. Butt Grocery Co., seeking to expand a grocery store on the site, finds the old plat and argues its project dates to 1908. The city agrees and shortly later the expansion moves forward. Today, city officials suggest this kind of vesting case wouldn't have been approved because the 1908 described a residential project, and H-E-B sought a commercial expansion.



Dec. 20, 1994: Engineers for Lumbermen's Investment Corp. file what is known as a Preliminary Overall Area Development Plan for the future site of the PGA Village. The plan is filed shortly before the City Council bans such plans over the Edwards Aquifer recharge zone. The council was poised to enact a new ordinance intended to limit development in that area.

Jan. 31, 1995: Engineers argue the project should be grandfathered from the water quality ordinance. They cite the Dec. 20 filing of the preliminary plan, noting it was filed before the ordinance kicked in. The city approves the exemption request.

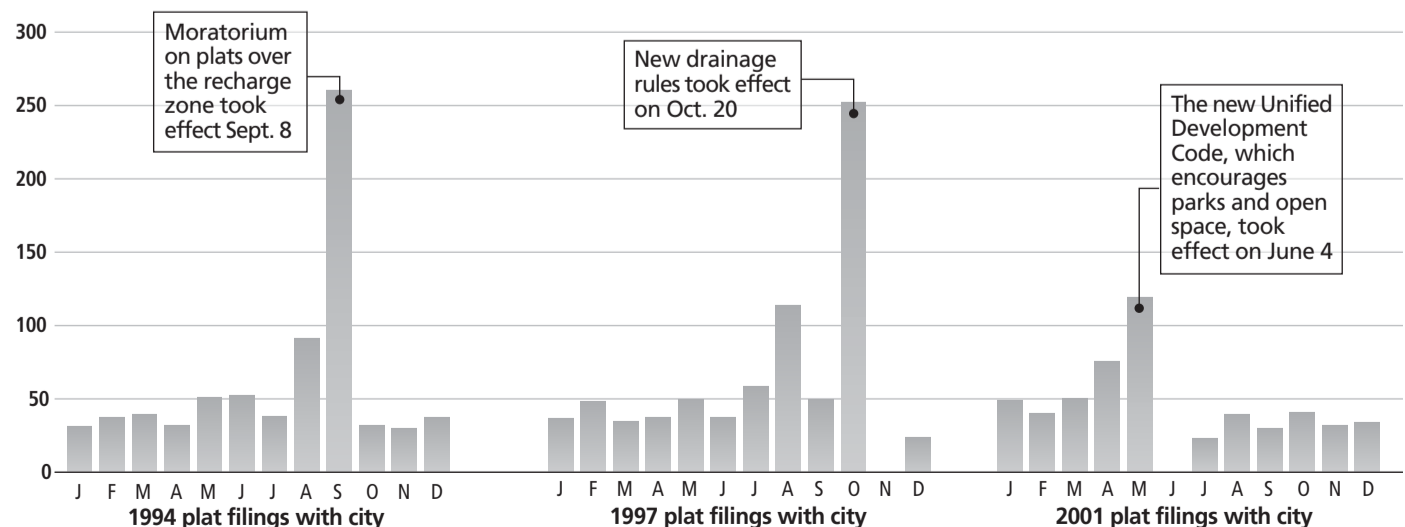


Dec. 20, 1984: Developers sign an agreement with the city's water utility to build water mains to a 1,700-acre site on the city's North Side. The contract does not describe what the developers plan to build. The project later fails.

2001: A different pair of developers, Gene Powell and Laddie Denton Jr., buy the land and cite the 1984 water contract as the first permit for their housing division. The city accepts the argument, which means a 1997 tree preservation ordinance doesn't apply to the property. The developers begin clearing trees the same month they received the exemption: August 2001.

Restriction rush

Filing documents prior to the adoption of new rules is a popular way of avoiding restrictions. This chart shows how key development restrictions in 1994, 1997 and 2001 were preceded by huge jumps in plat filings.



Source: City of San Antonio records

MONTE BACH/STAFF