

## Gene Powell is out on a limb

You can't tell it from the little smile he maintains throughout most of the interview, but developer Gene Powell has had a rocky morning. There's a front-page story in the Express-News that highlights a leaked memo in which, as chairman of the UT System Board of Regents, he floated the ideas of cutting tuition in half and bumping up enrollment by 10 percent at the flagship campus in Austin by 2013. Not bad in itself. But there's State Senator Judith Zaffirini, D-Laredo, chair of the Senate Higher Education Committee, letting him have it in an act of quote warfare, saying his aims and the transformation of UT-Austin into a top-shelf public university are "mutually exclusive."

The kerfuffle started when the Austin American-Statesman broke the story the day before, as Powell and his wife, Dana, made their way to San Antonio from their vacation home in Aspen, Colo. But volume-wise, it's a firecracker pop compared to the rhetorical fireworks over Rick O'Donnell, which started within weeks of his February election to the chairmanship.

Powell angered faculty and alumni organizations when he hired O'Donnell, a conservative think-tanker who authored a 2008 paper questioning the value of much of the research carried out in colleges and universities. O'Donnell was to collect data for two task forces Powell had appointed to hunt for potential efficiencies and to explore more online course offerings. To critics, including Zaffirini, the hire hinted at the more results-driven, business-minded approach that, as the Statesman reported recently, Governor Rick Perry began drumming into UT and Texas A&M Regents several years ago, before appointing Powell to the board in 2009. That decision, and Powell's proposal to create a low-cost degree for poor students, which mirrors Perry's, call into question Powell's independence from the governor.

Powell got to know then-Lieutenant Governor Perry not long before Governor George W. Bush left Austin to run for president in 2000. He has co-chaired Perry's statewide campaign finance apparatus the last five years, and contributed \$106,380 to the governor between 2001 and June 2010, according to the watchdog group Texans for Public Justice.

Powell, who's tall, solidly built and white-haired, seems surprised by all the fuss and welcomes a "great public debate" that will improve the end results. He also shrugs off the notion that he's taking marching orders from Perry. That they have nearly identical positions on improving higher education shouldn't be a surprise. "He knows that my philosophy and his philosophy are very similar."

Within weeks of the O'Donnell eruption, the former Texas Public Policy Foundation scholar was moved into a new position and then dismissed, and Powell doesn't want to talk about the episode.

"All I can tell you about Rick O'Donnell is that chapter is over," Powell says. "We hired someone we thought could help the task forces, and he's now not there... His only role was to help the task forces gather data, and he did a pretty good job of that."

Drawing on his upbringing in the Lower Rio Grande Valley town of Weslaco, he says his objective simply is to increase access to college for kids from low-income families, which will require more online classes, more efficient use of classroom space, and lower tuition rates. But to critics, Powell's agenda could look like an ideological, anti-intellectual assault on effete, research-heavy academia.

This is by far the most visible job Powell has taken on, and the convulsions early in his chairmanship indicate either that he hasn't found his footing yet in dealings with alumni, professors, and lawmakers, or that he's willing to rattle the system to get the changes he wants, or something close to them. To people who've worked with him in San Antonio, the latter might make more sense than the former. Powell is smart, aggressive, and cagey, whether it's in his business dealings or king-making in San Antonio politics. In those arenas, he's anything but uncertain or clumsy.

"He's exceptionally shrewd, exceptionally tenacious," County Commissioner Kevin Wolff said. "If there's a business deal he wants, he'll work his tail off to make it happen. He's a formidable force." His MO doesn't change if he decides to get solidly behind a mayoral or Council candidate. "I think Gene is more politically active than most developers, and when he decides to support somebody, he goes all in."

But he's also accustomed to working largely behind the scenes. Half a dozen people interviewed for this story — past and present officeholders, environmentalists, and a local GOP apparatchik — have either never met Powell or encountered him only once or twice.

While many candidates want his support, that mash of aggressiveness and elusiveness has made him something of a target in SA. Fairly or not, he's associated with efforts conducted through litigation and the Legislature to weaken or undo City rules designed to preserve the tree canopy and protect the Edwards Aquifer. His name even popped up in a campaign commercial in the 2005 mayor's race as a stand-in for the Greedy Developer.

This is a key part of the enigma: Powell's projects over the Edward Aquifer recharge zone are in several ways exemplary, but the positions he fights for could sweep away impediments for less scrupulous developers.

### **Up from the Valley**

Powell, who's 65, has called San Antonio home for 28 years, but he remains largely unknown.

The son of an insurance agent, he grew up in the Lower Rio Grande Valley, and went to UT-Austin on a football scholarship, playing for coach Darrell Royal. He was a mediocre student by his own admission — he says he can't remember his GPA — but he ultimately earned a master's in finance at UT before returning to Weslaco to help his father with his growing risk-assessment business.

In the small world of South Texas, Powell graduated from the same high school as Ramiro Cavazos, president of the San Antonio Hispanic Chamber of Commerce, albeit 16 years earlier. When Powell was a kid, Cavazos' father was his county commissioner.

“We lived on the north side of the tracks with the Mexican American community,” Cavazos says. “Ironically, the Anglo community lived on the south side of the tracks.”

When Powell left the family business in 1983 to join the Quincy Lee Company, a major real estate development firm in San Antonio at the time, Cavazos was a St. Mary's University grad student and worked for the City. Cavazos' dad wanted him to stay in touch with a handful of Weslaco transplants; Powell was one of them.

Powell was president of the company, but he didn't mix easily with San Antonio's clubby business establishment. Cavazos recalls: “He wasn't embraced by the downtown, Chamber of Commerce crowd in the '80s.”

Within a few years, Powell had broken off from Quincy Lee to start the Powell Companies, a real estate brokerage and commercial developer, and to launch Bitterblue Inc. with Lloyd "Laddie" Denton, whose father was a home-builder with a long history in San Antonio. They've always been a yin-yang pairing: Denton, ruffled, profanity-spewing, given to Big Picture pronouncements, and Powell, buttoned-down, take-charge, all-business. Powell does most of the talking during business meetings, note a couple of witnesses.

“You either like Gene Powell or you don't,” says Becky Oliver, executive vice president of the Greater San Antonio Builders Association. “He's demanding, he's so driven, and he won't take no for an answer. It's take no prisoners. I respect that.”

She says Powell “super-charged” the Denton family business, adding, “He's brought them a long way, though the Denton family has deep pockets.”

Powell and Denton have built major commercial projects — think Lincoln Heights and The Quarry — and it's regarded as one of the most successful developers of single-family lots in town. They thrived as young homebuyers rejected the inner city and looked north. Their subdivisions, all of them clustered near and between U.S. 281 and Interstate 10 on the North Side, include Rogers Ranch, Inwood, Kinder Ranch, and Lookout Canyon.

### **Writing his own rules**

As San Antonio sprawled over the Edwards Aquifer recharge zone, environmentalists and City officials realized that the traditional hands-off approach to growth could turn disastrous for San Antonio's sole source of drinking water. And while they're not fans of development over the recharge zone, many of them have at least some respect for Powell's and Denton's projects.

A trip to the headquarters of Bitterblue can be a little jarring if you know more about Powell's reputation than his business practices. If that's the case, you'd expect Bitterblue's offices to be wrapped in a glass-and-steel shell and situated in the middle of a Far North Side moonscape, scraped clean of trees. In fact, the building is something of a tree preservationist's dream. It's a one-story, stucco-encrusted structure in a shady corner of Oakwell Farms on the Northeast Side; it's one of two Bitterblue-constructed buildings along the curvy Lynn Batts Lane, where the most striking feature is the thick tree canopy. Just outside the conference room where Powell and I talk is a running trail, a stretch of the five miles of linear park that twist through the subdivision.

“I think there's been a demonization, for lack of a better word, of the development community,” says Powell. “Generally the press has never been favorable toward the development community, and I think the public is skeptical toward developers.”

He's much more at ease discussing home-building than O'Donnell.

When Powell talks about Rogers Ranch, one of Bitterblue's best known residential projects, he says they wanted to build the development in an "environmentally sensitive" manner. In part, it was good business; after good schools and a reliable highway system, home-buyers migrating north wanted a leafy Hill Country feel. But in 1992 the City had no tree preservation or water quality ordinances on its books to serve as guides.

"The only thing we had to go by was Austin's Save Our Springs ordinance, so we had Rogers Ranch comply with the Austin ordinance."

This isn't a developer inflating the significance of a few green touches as part of a marketing ploy. Several people contacted by PDA noted that the company's neighborhoods usually maintain more open space than we've come to expect in suburban neighborhoods, often incorporate hike-and-bike trails, and preserve more trees than would many of its competitors.

"What they've done out on the [Edwards Aquifer] recharge zone may not be to my liking, but they're not the worst ones out there," says Annalisa Peace of the Greater Edwards Aquifer Alliance. That's a compliment, albeit a back-handed one.

Powell kind of returns the favor as he makes a larger point about the importance of inclusiveness, which he links to his leadership of the UT board. He says he and Denton supported Peace's appointment to the San Antonio Water System's board of trustees in 1993, reasoning that it was better to have an environmentalist working on the inside than continually raising hell on the outside.

"The development community thought we were crazy, but we said they need a spot at the table," he says. "If you have them at the table, you solve problems."

Peace applied for the seat, but stepped aside when her partner at Aquifer Guardians in Urban Areas also decided to pursue the opening. It may say something about how Powell operates that his comment threw Peace off guard when I mentioned it. "This was the first I ever heard of it." (As Powell remembers it, she knew of his support.)

While she finds Bitterblue developments over the recharge zone to be among the least harmful, Peace sees Powell's political and legal maneuvers as potentially damaging. If successful, she says, they would allow developers less principled than Bitterblue to erode land over the recharge zone and eventually harm the quality of San Antonio's largest water supply.

"It's folks like Powell who are forwarding an agenda that says anything [developers] want to do is all right," Peace says. "He's enormously influential with some lawmakers."

She's not alone in that assessment; several other people told me the same thing, though unlike Peace, they didn't want to put their names to it. However, there's not much hard evidence to back them up. Maybe the clearest case is 2005 legislation that Perry signed into law; it said developers could claim exemption from tree-preservation and water-quality regulations, if they had a water service agreement in hand before the ordinances were enacted. Which is just what Bitterblue wanted for a planned development over the recharge zone. The late State Representative Ed Kuempel, who received \$3,000 in contributions from Powell and Denton on December 9, 2004, pushed the House version, and State Senator Florence Shapiro filed its Senate companion.

"I was involved in that," Powell says. "The City, from the time the [vested-rights state] law was passed about 25 years ago or so, acknowledged a water contract." Looking around at the maps, plans and photos cluttering the conference room, he adds: "Everything in this room is vested on a water contract or a sewer contract."

"Then they just changed the rules. 'We're no longer going to accept a water contract as the first permit.' We said wait a minute, you won't let us develop anything unless we have water ... In order to get that [SAWS] agreement, we have to spend \$100,000 in engineering because SAWS won't just grant us vested rights. They say, 'Bring us a plan. How much water are you going to need?'"

"So we went to the Legislature and said, 'Here's what's happened in the past. Here's what's changed. What do you think? Do you think a water permit is a first permit?' And they said, 'Yes, we do.'"

The City Council had adopted rules saying that property owners couldn't depend on early-stage water agreements to claim a plan was exempted from current regulations, and in 2006, the City Council denied Bitterblue's vested rights claim on a portion of its 1,700-acre Roger Ranch property, based as it was on a SAWS contract. Bitterblue and the Greater San Antonio Builders Association sued the City. The case is pending, but Powell says the parties are close to wrapping up a settlement that would let the company build houses on the property in the same fashion it's built elsewhere in Roger Ranch.

Peace considers the law Perry signed a blow to aquifer protection.

“That was one we were very upset about,” she says. “The way the state has been so generous with vested rights through bills like this one has had a horrible affect on cities’ ability to protect water quality.”

Powell says he’s been too busy to concentrate on the current legislative session, at least as it pertains to his industry. But he does agree with the most controversial bill targeting San Antonio — the measure that would prevent the City from enforcing its tree ordinance in its extraterritorial jurisdiction, which is seen as key to safeguarding the mission of the Army’s Camp Bullis medic training ground.

“This goes back to the Tea Party — I mean the Boston Tea Party,” Powell says. “Let’s take a farmer who’s lived out there for 40 years. This is his retirement tract. The City does not provide water, sewer, police protection. Provides him no services whatsoever, yet they want to tell that farmer what he can do with his land.” The restrictions, he adds, would cut into the price the farmer could fetch when he tries to sell the nest egg.

Powell doesn’t mention that residential and commercial developers have to spend money on tree preservation to comply with City land-use rules. But when asked what effect the exemption would have on Bitterblue, he does note that the lion’s share of the company’s holdings lie inside San Antonio city limits.

While Powell’s support is passive, GSABA members have testified in favor of the legislation — and over the objections of Mayor Julián Castro and former Mayor Phil Hardberger. Developer Michael Moore, a past president of GSABA who looks after the group’s legislative agenda, says he doesn’t know what Powell’s position is, but he assumes that he supports the measure.

“He’s always been a big property-rights guy — he’s been very protective of property rights,” Moore says. “But this session particularly I haven’t had much contact with him” because of his new role on the UT Board of Regents.

Like most of the Bexar County delegation, State Representative Mike Villarreal opposes the bills, authored by two East Texas Republicans: Chuck Hopson in the House and Robert Nichols in the Senate. The San Antonio Democrat has clashed with Powell on other pieces of land-use legislation as well as the proposed PGA Village nearly a decade ago. But Villarreal currently is working with Powell on a bill that would put more college money into the hands of low-income students, and he’s unwilling to revisit details of past policy disagreements.

“We’re still going to disagree on environmental issues and the right of cities to manage their growth, unless he has a change of mind,” Villarreal says. “But right now we have found common ground in trying to find ways to make higher education more accessible. That’s an opportunity I’m going to make the most of.”

Former State Representative Robert Puente, now chief executive of SAWS, says that to the extent that Powell got involved in legislation, it was always through lobbyists. “I don’t ever remember him walking the halls of the Legislature.” Indeed, Powell was so far behind the scenes that, when Puente pushed a bill in 2007 that would have put the Bexar Metropolitan Water District under the control of Commissioners Court, the former Democratic lawmaker says he didn’t know Powell had been a supporter “until I got to SAWS.”

Another Capitol insider notes: “Somebody like Gene has the resources to not have to show up at a committee hearing, to not have to sign in and testify.”

### **Powell at street level**

Howard Peak considers Powell and Denton model developers.

“They’re progressive people,” he says. “They may have lawsuits and this, that, and the other, but if you were to look at their record, you’ll see that Gene and Laddie were the good guys.”

Soon after his 1993 election to Council, Peak championed the City’s first tree-preservation ordinance, and was key to the groundbreaking water-quality ordinance in 1995 that placed limits on how much you could pave over the recharge zone, among other protections. Powell and Denton were supporters of his — Peak and Denton had been friends since their UT days — but the former Mayor says he doesn’t remember hearing much from either about the measures. The resistance, he says, came from GSABA and the Real Estate Council of San Antonio.

I ask Powell if he had any objections to the measures.

“Globally, no. Maybe on the specific rules, as to how they worked — but the overall philosophy of clean water, of saving trees, of a better environment is something we’ve always embraced,” he says. “Howard would come to us and say, ‘Here’s what I’d like to do, and I’d like guys to tell me what’s realistic and what’s not realistic.’ You always have to worry in this

community about driving the cost of housing up ... You want to keep creating jobs, you want to keep creating housing. There's always a balance with the politician. How much can you push the envelope without over-stepping?"

Powell and Denton also backed Ed Garza, an urban planner like Peak but seemingly an odder fit. Garza has preached balanced growth, the tagline for the argument that the North Side has been over-developed over the last several decades at the expense of other parts of town. Race, ethnicity, and class don't come up much in such discussions, but they're there. When he served as District 7 Councilman, Garza also made himself a target of developers when he opposed the annexation of Stone Oak, becoming part of the so-called "gang of four," and when he appointed community activist Nani Falcone to the Zoning Commission.

Yet Powell stepped in as his finance chairman in 2001 when Garza ran for mayor against then-Councilman Tim Bannwolf, a business-friendly North Side conservative with substantial business support. He leaned on many of his contacts to help raise roughly \$1 million, which prevented Garza from being dramatically outspent by Bannwolf.

"I think he enjoyed the challenge of campaigning for an underdog, the challenge of raising a million dollars," Garza says. Yet he also notes that a Survey USA poll early in the campaign season showed him leading Bannwolf, and that the result caused "a lot of people to hit the brakes and take a closer look."

Garza says Powell didn't push any kind of land-use agenda, and that he was surprised to learn after his election that the partners owned land near the proposed PGA Village location and were big advocates of the project, which would've included world-class golf courses and a resort. "I was shocked — surprised that he didn't bring it up during the campaign, which is good." As the debate heated up and increasingly focused on aquifer protection, Garza sought to put the matter to a public vote. He says Powell "was taken aback that I wanted to slow it down."

Ultimately, the Professional Golfers Association of America pulled out in 2004 because of the unending controversy. But PGA Tour, a separate organization, soon emerged with resort and golf course plans of its own and beefed-up environmental safeguards, and won City and County deals to make it happen in 2005. In the meantime, Powell and Denton had sold their property to several home-builders for a tidy return.

Powell says his differences with Garza over the PGA Village were minimal, and that his aim in backing candidates isn't to collect chits.

"I don't support them because I think they're going to do things for me," he says. "I support them because they'll bring good government. I don't go to them asking for favors."

In the 2003 race for the District 10 Council seat, Chip Haass didn't get his support. Indeed, he says, he got a taste of what happens when you cross Powell. The developer was backing insider favorite John Clamp, who ultimately lost that election but won in 2007. During that first campaign, Haass hung campaign signs on Bitterblue properties, without permission and unaware of the owners' allegiance. He soon received a scathing email from Powell demanding that he remove the signs. Powell closed by telling the young politician, "You will lose, you will lose, you will lose." At least that's how Haass remembers it.

"He is, to me, an intimidating sort of guy until you get to know him. Even then he's still intimidating," Haass says. "He's just so in your face."

But if he likes you ... Powell's Council campaign contributions stand out for their generosity. He and Dana Powell have written checks totaling \$16,200 to Council incumbents and candidates since the beginning of 2009 through April 14, according to campaign finance reports. Denton and family gave at least \$11,360 in the same period.

But Powell's real power lies in his talent for separating the well-heeled from their money for his chosen candidates. In 2005, for example, Powell put his fundraising prowess to work for then-Councilman Carroll Schubert, a North Side conservative struggling for a foothold in the mayor's race against Hardberger and Castro. Powell put together a fundraiser that took in a boat load — some say as much as \$300,000, though that sounds high to Powell — and shook up the contest.

"You know that if he goes in, he's going to raise a substantial amount of money," said Christian Archer, Hardberger's campaign manager at the time. "That changed the dynamics of the race."

In an email to donors, Powell called Schubert the only candidate who really understood San Antonio's development community. The email quickly went into a much wider circulation than Powell had intended, and wound up in a 30-second television ad declaring Schubert the developers' candidate.

That year, another developer provoked a public outcry when it scraped a tract of land off U.S. 281 North, near Stone Oak, clean to the ground. Relying on vested rights to avoid tree-ordinance restrictions, Pulte Homes uprooted trees and graded

Gene Powell is out on a limb – Plaza de Armas 5/6/2011

what had been an untamed 50-plus acres. The gash in the landscape was visible to commuters, and it focused attention on vested rights and what their holders can do under their protection.

“They’re an out-of-town developer,” Powell says. “They had a local president, and he admitted later it probably was a bad — he had a right to do it under the statutes, but it politically was not a good thing to do. He just didn’t realize. He was just trying to make a buck and the easiest thing to do was get rid of all the trees ... It creates a problem for us forever.”

The 400-acre property that the partners sold, near Cibolo Canyons, now home to two PGA Tour golf courses and a luxury JW Marriott resort, got roughly the same treatment as Encino Ridge. The main difference was that the property didn't sit on 281. In a May 2004 story, the San Antonio Business Journal reported that the buyers — Pulte, Centex, and Wilshire — planned to build Bulverde Village, a 2,000-home master-planned community, on the site.

If Powell and Denton had kept the property, which they owned through an entity called Indian Springs Ltd., Powell says they would have developed houses on large-acre lots, with plenty of trees.

“We would never have scraped the land and stair-stepped it,” he says.

Yet they would have been in their rights to do so.

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