

Old West Austin Neighborhood Association
P.O. Box 2724
Austin, TX 78768

August 28, 2017

To: Mayor Adler and Council

RE: Support for Item 98 Historic Landmark Commission Voting Reform

We are writing to express the OWANA steering committee's strong support for Item 98, changing voting requirements at Historic Landmark Commission from a two-thirds super majority to a simple majority. In this letter we will first offer reasons why this reform is so important and then address the arguments made in opposition by the real estate lobbyists.

These are the reasons to vote for Item 98:

- No other Austin land use advisory commission requires a supermajority. The BOA does, but it has zoning power and its supermajority is required by state law. Other commissions that advise council only require a simple majority.
- We are aware of no other city in Texas or elsewhere in the nation that requires a 2/3 majority of a historic landmark commission for a recommendation to go forward to a city council.
- Demolition permits in historically significant cases have been released without adequate debate of the merits of the case due to inability to meet the supermajority requirement. Historic buildings' fates should not be decided based on a technicality rather than through debate on the merits of each case.
- The City Council is the only body that has legislative power to make zoning determinations in these cases. The supermajority requirement is allowing final determinations on demolition permits to be made at the landmark commission, and this should be corrected.
- The problem to be solved by supermajority was that under the at-large council system all commissioners were generally of the same mindset, and the concern was not to send cases to council if there was significant disagreement over the merits of the case, such as architecture or associations between buildings and important people. This problem and concern are no longer issues with this commission under 10-1.
- A neighborhood should not be forced to resort to legal formalities such as an appeal when a majority of historic preservation experts have already ruled in favor of preservation, and the City has automatically dismissed these appeals in the past (see attached *Austin Chronicle* article and more on this below).

- Alternates will not solve the problem because some councilmembers will not appoint commissioners or alternates, and some commissioners/alternates will still decide cases based on political preferences such as density or property rights rather than architecture and other factors in our preservation ordinance.
- This reform enjoys broad support all over the city, and attached is a list of citizens in many different council districts who support Item 98.

The real estate lobbyists' opposition to this reform focuses on short-term costs and benefits rather than the long-run goal of preserving our unique built environment as the capital of the great state of Texas. Do we want our city to look like any other city in America, or should we preserve our town's unique architectural history for future generations? The Legislature did not buy the real estate lobbyists' argument, and we urge our city council not to buy it either.

The first argument by the real estate lobbyists is that the commissions made a recommendation against a simple majority voting requirement. That is not true. The Historic Landmark Commission recommended this reform. The Planning Commission vote on it—five votes against, four votes for the reform—shows a *majority of Planning Commission* could not decide either way. The commission that would be most affected by the change, the Historic Landmark Commission, voted in favor of the item 98 code amendment.

The Planning Commission, after not reaching a majority for or against Item 98, barely voted in favor of alternates as a plan B, pointing out that an appeal right in the code is the appropriate procedure when a simple majority, but not a supermajority, votes in favor of a recommendation of landmark status.

As for this theoretical appeal right, attached is an *Austin Chronicle* article dated October 12, 2007, "Wrecking Ball Stages Surprise Attack in Tarrytown." The article describes an appeal filed by the West Austin Neighborhood Group to block a demolition permit for a historic Tudor home, Reed Hall. The city denied the appeal on the same day it was filed, without taking the case to Planning Commission or City Council, and announced to the public that the city code does not allow this type of appeal. It would be contradictory for the city now to vote against reform given its decision on Reed Hall.

Alternates will not solve the problems either. With 10-1 there are some who may simply oppose our historic landmark ordinance, and rogue commissioners may refuse to decide cases based on merits such as architecture, but for political reasons such as density or a right-wing private property rights view that the U.S. Supreme Court ruled against long ago in its *Pennsylvania Central* decision. There are also council members who have not appointed commissioners for long periods of time, which will continue to plague the commission if there are alternates. And there will always be situations where life is busy for alternates as well. Only a simple majority vote will solve these problems.

A second argument by the real estate lobbyists is that because state law requires a $\frac{3}{4}$ majority of City Council to zone a property over an owner's objection, why add time,

conflict, and expense with no benefit to the process. The question is whether those three cases in the past two years should have gone to Planning Commission and City Council for a vote. Perhaps one or more would have been landmarked. The Historic Landmark Commission is simply given the power in these cases to make a recommendation, not the power to rezone property. Sending three cases through Planning Commission and to Council in the past two years would not have added much time, conflict or expense.

A third argument of the lobbyists is that this change in our code to the way countless other cities in Texas and throughout the country function would somehow traumatize Austinites who are seeking to capture generational wealth in traditionally vulnerable neighborhoods. We are debating cases such as the Montopolis Negro School, where a real estate speculator unrelated to the African-American history of this site is poised to make a bonanza on land appreciation. Property rights are protected by strict deadlines that favor demolition – a permit must be released if there is no decision within 180 days—and through state law when the actual zoning decision is made by City Council.

A fourth argument is that this change will only impact owner-opposed cases. This seems to be more of a reason for the change than against it. Why should the *recommendation* of this commission of experts be different based on whether an owner opposes or supports landmark status? We believe the recommendation of these experts should not depend on whether the case is owner-opposed.

A fifth argument of the real estate lobbyists is that a simple majority vote for a recommendation will degrade the integrity of Austin's preservation program. How would a hearing at planning commission and council on the Cherico-Franzetti-Arriaga House, Ben and Maude Leifeste House, and Montopolis Negro School cases have degraded the program? We do not know of another city in Texas or elsewhere in the country where a historic landmark commission's recommendation requires a 2/3 voting requirement.

In the debate over Item 98, the real question is whether future generations will be able to learn about the unique history of Austin by walking our streets, or whether our town's history will only be found in books. We are watching each month as more and more historically significant buildings are dismantled and replaced with modern McMansions and condos, and the question is whether Austin will preserve its unique history or become indistinguishable from any other city in America. We urge you to vote in favor of Item 98.

Sincerely,



Scott Marks

President of OWANA

Item 98

8-31-17

City Council Agenda

I support Item 98 to change the number of Commissioners needed on the Historic Landmark Commission to recommend historic zoning over the objections of a property owner from two-thirds to a simple majority.

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<https://www.austinchronicle.com/news/2007-10-12/549312/>

Wrecking Ball Stages Surprise Attack in Tarrytown

BY KIMBERLY REEVES, OCTOBER 12, 2007, NEWS

The violent demise of **Roberta Crenshaw's** longtime Tarrytown estate over the weekend came so quickly – and with so little warning – neighborhood leaders and local preservationists were stunned by how swiftly the bureaucratic wheels moved to facilitate the demolition of the massive Tudor home.

The teardown began late in the afternoon last Friday, only hours after the **West Austin Neighborhood Group** filed an appeal with the city to try to halt the demolition permit granted to the home's new owners, **Richard and Ann Smalling**. That permit became a reality on Sept. 24, when the **Historic Landmark Commission** failed to secure a supermajority vote to override the owners' demolition wishes and give the house protected status as a historic structure.

Neighborhood leader **Blake Tollett** said WANG's interpretation of the city's ordinance was that the group could appeal the demolition permit to City Council. As Tollett relates it, WANG got its appeal together and filed it with the city early Friday afternoon. Tollett also e-mailed a copy of the appeal to **Richard Suttle**, the attorney who shepherded the demolition process through the city on the Smallings' behalf. "The owner[s] have a current and valid demolition permit," Suttle responded in his e-mail to Tollett late Friday afternoon. "Work has commenced under the permit. I do not think there is an appeal right from the Landmark Commission," Suttle added. "The city agrees."

Indeed, by 4:30pm the appeal had been denied. By 5pm or so, Crenshaw's onetime home at 3200 Bowman, often referred to as **Reed Hall**, was being demolished behind the estate's historic gates.

Yes, the new owners of Reed Hall have property rights, Tollett agreed. And, yes, he knew it would be tough to secure the supermajority six votes from the Landmark Commission to overturn the demolition permit. But the haste of the decision – and its execution on a late Friday afternoon – left Tollett amazed. "Regardless of whether the appeal was granted ... whether or not it was successful ... that's not the issue," Tollett said. "As quick as this happened on a Friday afternoon of Texas-OU weekend, it's astounding. It was like the skids were greased. It's just not fair."

John Donisi, president of the **Heritage Society of Austin**, also takes issue with the city's interpretation of a code that he helped author. "The Heritage Society is very troubled with the treatment of the appeal," he said. "The code directly states that the validity of an appeal will be determined by the Planning Commission or the council. Apparently a group of city staff determined the appeal had no merit – no notice, no hearing, no written record – and this left WANG with no opportunity to pursue other remedies while unquestionable irreparable harm was done to Reed Hall. Beyond the obvious damage to Reed Hall, many have expressed to me their concern that significant damage has been done to their faith in the city process," Donisi noted. "Time will tell all that transpired on Friday, but judging from the nerve it has struck, I think it's obvious that some attention needs to be given to the process to ensure this doesn't happen again."

Historic Preservation Officer **Steve Sadowsky** says the only appeals the city code allows are appeals from the Historic Landmark Commission on a certificate of appropriateness or the demolition of either a designated landmark or a contributing structure in a historic district. "The agreement was to release the permit," Sadowsky said, responding to criticism that the process moved too quickly. "We do this all the time. Once the documentation of the building was done – and I confirmed that with Richard Suttle and with his contractor that it was done and that all the photos had turned out – there really was no legal grounds to stop the demolition."

The key argument at the Landmark Commission last month was the condition of the house. Suttle argued, and Sadowsky agreed, that mold had overrun the house due to serious roof leaks. "Personally, I think that if that house had been in better condition and would not have needed to be taken down to the studs [to repair], it would have been a great landmark," Sadowsky said. "Unfortunately, the conditions would have resulted in the construction of a new house because of the mold and water damage."

Because of the gates and dense foliage surrounding the 7-acre estate, it was impossible to view the demolition process, although the loud crashing and banging could be heard from the neighboring Tarry House. Activist and WANG member **Mary Arnold**, a longtime friend of the late Crenshaw, said she was disturbed and saddened by the demolition. The city, she said, failed to provide adequate notification to the neighborhood, which is currently working on its neighborhood plan with the city. "I had unfortunately envisioned something like this happening," said Arnold, who has spent decades fighting neighborhood and environmental battles.

The Reed Hall battle is particularly curious to Arnold, given the city's entrenched stance that the neighborhood had no recourse to begin with. "The city says we can't appeal this. We've gotten no written notice as to why we can't appeal. Everything else can get appealed, so why not this one?"

Arnold and others say they intend to take their concerns to council to try to keep other pieces of neighborhood history from disappearing on the fly. "We're going to ask for their help in getting this straightened out, because this is not good for our future," she said.

"It's very, very sad," Arnold concluded of the Reed Hall affair. "I don't think the Landmark Commissioners were given an adequate opportunity to consider what the alternatives might be – and staff certainly didn't help."

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