
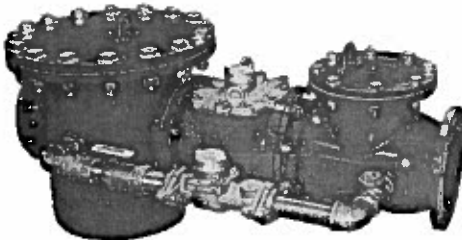
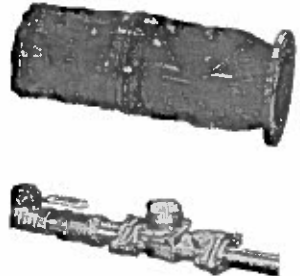


Cit. Comm.

Fire Demand Meter Billing Practices causing higher consumer cost of water service

Need for developer site plan warnings
similar to submeter and private fire hydrant warnings

When the developer of multifamily properties chooses a fire demand compound meter with one water line over 2 water lines with a domestic meter and unmetered fire line, there are higher cost of service consequences to the consumer not spelled out on the site plan. Specifically, an 8x2 fire demand meter is billed the same as an 8" meter. In 2009 the fixed cost of service difference was \$132.10 per month or \$1585.20 per year. In 2013 the fixed cost of service difference is \$1355.40 per month or \$16,264.80 per year. If rates stayed the same that's \$487,000 over a 30 year period. Being a homeowner in such a community, I have been directed by the water utility to take up this issue with the developer. Having looked at the land development code with a novice eye, I don't see how a developer could see the consequences since there are no notations on the site plan. At a minimum, the site plan should designate billable cost of service units. To protect the consumer, properties with less than the billable service units, i.e. 80 service units need special approval.

One 8" water line 8" Domestic Meter Billed 8" Rate = 80 LUE \$ 1462.00	One 8" water line 8" Fire Line with Meter 2" Domestic Meter Billed 8" Rate = 80 LUE No usage registered on fire line Billed at 8" \$ 1462.00 Equitable charges Plus meter maintenance fee	2 water lines : 8" & 2" 8" Fire Line : No Meter 2" Domestic Meter Billed 2" Rate = 8 LUE \$ 106.60
		

Fire Demand Meter Billing Practices
causing higher consumer cost of water service
need for developer site plan warnings
Similar to submeter and private fire hydrant warnings

§ 25-9-334 FIRE DEMAND METERS.

- (A) No service units shall be attributed to a tap that provides only fire protection capacity.
- (B) If a fire demand meter composed of a combination of independent units in separate housings monitoring both fire and domestic use is purchased, the number of service units shall be determined according to the largest independent unit for the fire demand meter that provides only domestic service to the property. For purposes of this section, only a simple or compound meter shall be used to calculate the number of service units.
- (C) If the fire protection capacity of the fire demand meter is routinely used for domestic purposes, as evidenced by the registration of consumption recorded on the City's meter-reading and billing systems, the owner of the property shall pay the current fee for the fire protection capacity that has been converted to domestic capacity by routine use.

Source: Section 13-3A-5(d); Ord. 990225-70; Ord. 031211-11.

Meter Size	Type	Service Units
5/8"	Positive Displacement	1
3/4"	Positive Displacement	1.5
1"	Positive Displacement	2.5
1 1/2"	Positive Displacement	5
1 1/2"	Turbine	8
2"	Positive Displacement	8
2"	Turbine	10
3"	Compound	16
3"	Turbine	24
4"	Compound	25
4"	Turbine	42
6"	Compound	50
6"	Turbine	92
8"	Turbine	160
10"	Turbine	250
6x2"	Fire Service	Based on Domestic Demand
8x2"	Fire Service	Based on Domestic Demand
10x2"	Fire Service	Based on Domestic Demand

Site plan

A

Domestic

METER REQUIREMENT FOR PROJECT

TYPE *Fire Demand*

SIZE *8x2"* GPM *1-4500*

SERVICE UNITS *8*

Water Requirement notations on site plans
Nothing about water service being billed at the larger fire service meter size

City of Austin Water & Wastewater
Utility Special Services Division
Private Fire Hydrant Note

This project has 6 private hydrants located within the property. The property owner is required to comply with Austin Fire Code. Failure to comply may result in civil and/or criminal remedies available to the City. The performance of this obligation shall always rest with the owner of record. Fire hydrants on private property are required to be serviced, maintained and flowed annually, using a contractor registered with the City to provide the service. Contractor to contact the Austin Water Utility (512) 972-1060 for additional information.

TEXAS WATER CODE 13.502
SUBMETERING IS REQUIRED
ON THIS PROJECT.

ALL BRANCH CONNECTIONS SHALL HAVE THE VALVE BOLTED TO THE MAIN METHODS OF FLANGE OR SWIVEL TEES. FOSTER ADAPTORS MAY BE USED IN LIEU OF FLANGE OR SWIVEL TEES WHEN CALLED OUT ON PLANS BY DESIGN ENGINEER.

ALL RESPONSIBILITY FOR THE ADEQUACY OF THESE PLANS REMAINS WITH THE ENGINEER. APPROVAL OF THESE PLANS BY THE CITY OF AUSTIN DOES NOT REMOVE THESE RESPONSIBILITIES.

REVIEWED BY THE AUSTIN WATER UTILITY APPLIES ONLY TO FACILITIES WITHIN PUBLIC STREETS OR PUBLIC UTILITY EASEMENTS. ALL OTHER WATER AND WASTEWATER FACILITIES INSIDE PRIVATE PROPERTY ARE UNDER THE JURISDICTION OF BUILDING INSPECTION.

Irrigation
METER REQUIREMENT FOR PROJECT

TYPE *Turbine*

SIZE *1 1/2"* GPM *80*

SERVICE UNITS *8*

Domestic
Fire Demand / Homes only
METER REQUIREMENT FOR PROJECT

TYPE *Fire Demand*

SIZE *8" x 1/2"* GPM *3500*

SERVICE UNITS *8*

25' Rear Setback



WEST POINT SOCIETY

WEST POINT SOCIETY OF CENTRAL TEXAS
FRIENDS OF MOUNT BONNELL/COVERT PARK
ADOPT-A-PARK 2010-2013

SEPT 2012 PROPOSAL STATUS

4/22 HLC ACTION
5/6 WPSCT APPEAL

APPEAL : NON COMPLIANCE

CITY CODE
DEPT OF INTERIOR GUIDELINES
GOOD STEWARDSHIP/BEST PRACTICES

SUMMARY AND RECOMMENDATION

1





Founded in 1802, West Point is the nation's oldest engineering school. The West Point Association of Graduates was founded in 1869. West Point Societies exist to further the ideals of the Military Academy, to perform community outreach, and to assist with Academy admissions.

In 2010, the West Point Society of Central Texas adopted Covert Park at Mount Bonnell and began improvement projects under the Austin Parks and Recreation Department Adopt-A-Park program. There are over 600 West Point graduates in the Austin area.

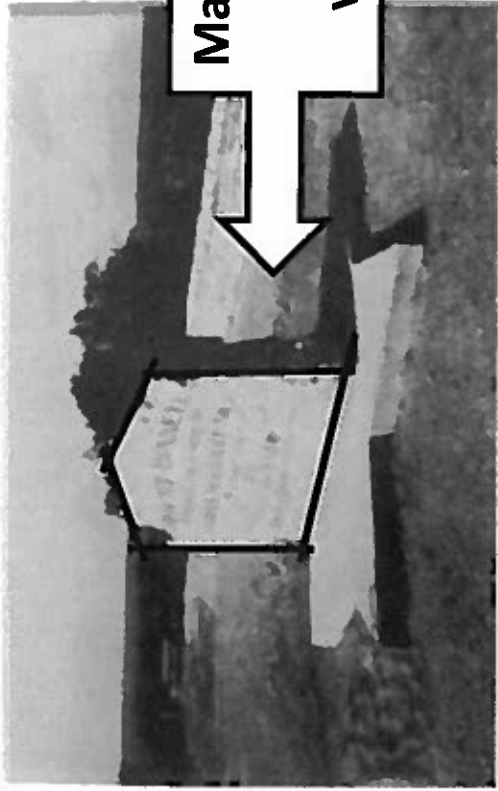
*Fred Bothwell
WPSCT, Class of 1962
frebo3@yahoo.com
512-635-4433*



WEST POINT SOCIETY OF CENTRAL TEXAS FRIENDS OF MOUNT BONNELL/COVERT PARK

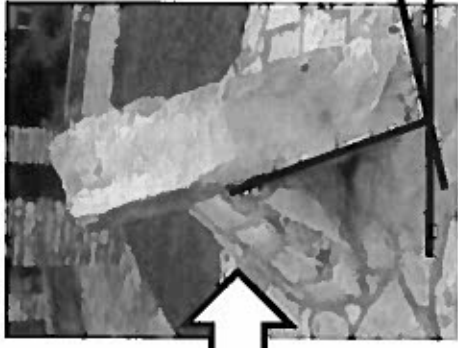
- Adopt-a-Park contract secured with PARD, June 2010.
- Restored the fabulous views through selective pruning and lifting of canopies.
- Secured the commitment from the Covert family to replace the worn and broken limestone Frank Covert Sr. monument with a permanent granite replica.
- Partnered with PARD and O'Connell Robertson to develop a landscaping improvement plan to include a dais, benches and hand rails.
- Coordinated with the Balcones Canyonlands Preserve to ensure the protection of the bracted twistflower population, an endangered species.
- Conducted 10 clean-ups involving 30 volunteers each.
- Worked with the Central Texas Mountaineers and Austin Fire Department personnel on five occasions to remove litter from the steeper slopes.
- Staffed Great Oyster Race site at Mount Bonnell.
- Installed 13 HIDE, LOCK, TAKE signs throughout the entire parking area.
- Partnered with PARD in the erection of a permanent two sided kiosk on the summit.
- Maintained contact with all eight neighborhood associations/groups

COVERT PARK MARKER CONDITION: 1938-2011



1938

Marker is no
longer
vertical



2010



2008

Marker is
disintegrating



2010

COVERT PARK MARKER CONDITION:1938-2011



2008

2010



COMMUNITY INITIATED IMPROVEMENT PROJECT APPLICATION

Community Initiated Improvement Projects provide a process for partners to raise funds and in-kind contributions in order to design and build improvement projects at Austin Parks and Recreation (PARC) parks and facilities that are in alignment with PARC plans and strategic priorities.

Include as much detail as possible in your proposal so that it can be reviewed accurately.

CONTACT INFORMATION

Contact Name: Stan Bacon Organization: West Point Society of Central Texas
Address: Austin, TX
City/State/Zip: Austin, TX
Phone Number: 512-355-5588 E-Mail: sbacon5588@legislative.net
Website:

Location Information

Park Name: Mammoth Cave Park

Project Summary

Provide a description of the proposed improvement. Please provide your information about size and materials. The majority of the project centers around the replacement of the current dedication marker which is in disrepair. The monument would be replaced with a new one made of Texas native granite (color TBD). In site visit to quarters for increased durability/longevity. It will measure approximately 54" high x 54" wide x 16" thick. The front face will be engraved with the same text and focus as the existing marker. One side of the marker will also be a smooth face for engraving - the text for this location is TBD, but is planned to include historical data and the date of the dedication. The profile of the marker will mimic the cross-section of the mountain and include annotations of factual information such as the name of the river below and the elevation at which it sits. The new marker will rest on a granite base and a 1' x 1' x 1' plate will be oriented along a straight line between the 360 Bridge and Downtown Austin to mimic the orientation of the existing marker and emphasize the views to these two iconic city elements.

Applicable Dates

Proposed Start Date: July 2011 Expected Completion Date: December 2011

Benefits and Benefits

Describe the benefits of the project. Re-established views of the 360 Bridge and Downtown Austin. Factual information as a learning opportunity. Creation of a plan that could potentially be used for group meetings and functions and additional seating. What would be the benefits to PARC? Aesthetic, functional, and durability improvements to the park.

Project Funding

What do you estimate the cost of the proposed project? \$65,000
How did you arrive at this figure? Cost estimate of preliminary design concepts using Means costing
What is your proposed source of funding? Private donor

PARC Role and Resources

SUBMITTED FOR REVIEW ON 4/24/2011

2011 PARC COMMUNITY INITIATED IMPROVEMENT PROJECT APPLICATION

JAN 2011: "...replacement of the current dedication marker which is in disrepair. The monument would be replaced with a new one made of Texas native granite... creation of a plaza that could potentially be used for group meetings and functions, and additional seating." What would be the Benefit(s) to PARC: Aesthetic, functional, and durability improvements to the park

WPST/PARD JOINT PLAN DELIVERED TO AUSTIN PARKS FOUNDATION: SEPT 2012

PHASE 1: REMOVE AND RESTORE BROKEN MARKER IN PROTECTED ENVIRONMENT, INSTALL PERMANENT REPLICA



BROKEN LIMESTONE MARKER

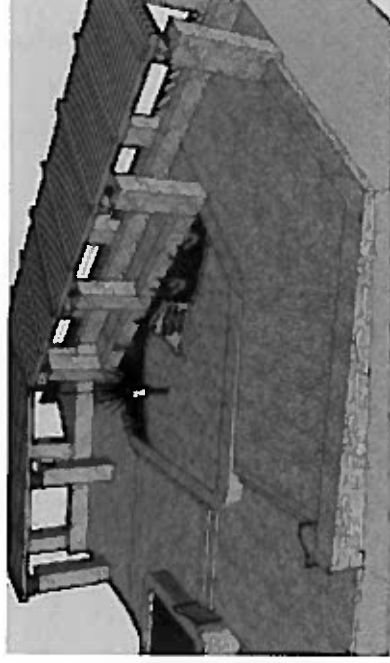


NEW GRANITE MARKER

PHASE 2: CREATE PAVED DAIS AND SEATING WALLS NEAR MARKER



EXISTING MARKER AREA



PLANNED DAIS AND SEATING SPACE

PROPOSAL SUPPORTED BY APF, FRIENDS OF MOUNT BONNELL/COVERT PARK, NEIGHBORHOOD ASSOCIATIONS, MAYORS LEFFINGWELL AND TODD, AND PARD DIRECTOR HENSLEY



PARD STATEMENT OF SUPPORT FOR WPSCT PROPOSAL
(Contingent on HLC approval)

RE: WPSCT/Covert Park Improvement Project Status

Sent: Tuesday, July 3, 2012 8:33 AM

From Hensley, Sara

To Bruce Todd

Mayor: I spoke with staff and they are very comfortable with the direction this is going. PARD is willing to carry the proposal forward to the Landmark Commission. If Landmark is good with it, we are ready to go. We are willing to state that we are in support of the current proposal. I hope this helps. Sara

***Sara L. Hensley, CPRP, Director
Austin Parks and Recreation Dept.
200 S. Lamar Blvd.
Austin, Texas 78704***

The "current proposal" supported by Director Hensley on July 3 is documented in the Grant Request made to the Austin Parks Foundation by the West Point Society of Central Texas in September 2012

**AUSTIN CITY LIMITS MUSIC FESTIVAL GRANTS
FUND APPLICATION**

Budget for:

COVERT PARK AT MT BONNELL RESTORATION AND ENHANCEMENT

Items in yellow changed/added to
comply with 2011-2012 PARD

Items/Services planned for purchase		Input
PHASE ONE: OCT-DEC 2012		
Remove demolished marker, relocate and restore in a protected environment		\$15,000
Purchase/replace existing replica marker		\$20,000
Demolish existing marker base		\$3,000
Install new marker base		\$8,000
Install new replica marker		\$2,500
PHASE ONE Estimated cost		\$48,500
+10% Contingency		\$53,350
PHASE TWO: JAN-APRIL 2013		
Remove retaining wall around marker site		\$0.00
Remove existing stone pavers at existing steps		\$4,500
Install new foundation and retaining wall		\$12,000
Install new stone pavers for dais		\$25,000
Install new stone pavers at steps		\$7,500
Install new Limestone benches under pergola (salvaged stone)		\$4,500
Landscaping, native plants, xeriscape		\$3,000
Install Handrails		\$2,500
PHASE TWO Estimated cost		\$66,500
+10% Contingency		\$73,150
TOTAL PROJECT COST		\$126,500

**A: REMOVE AND
RESTORE TEMPORARY
MARKER OFF-SITE**

AND

**B: INSTALL
PERMANENT REPLICA
MARKER**

AND

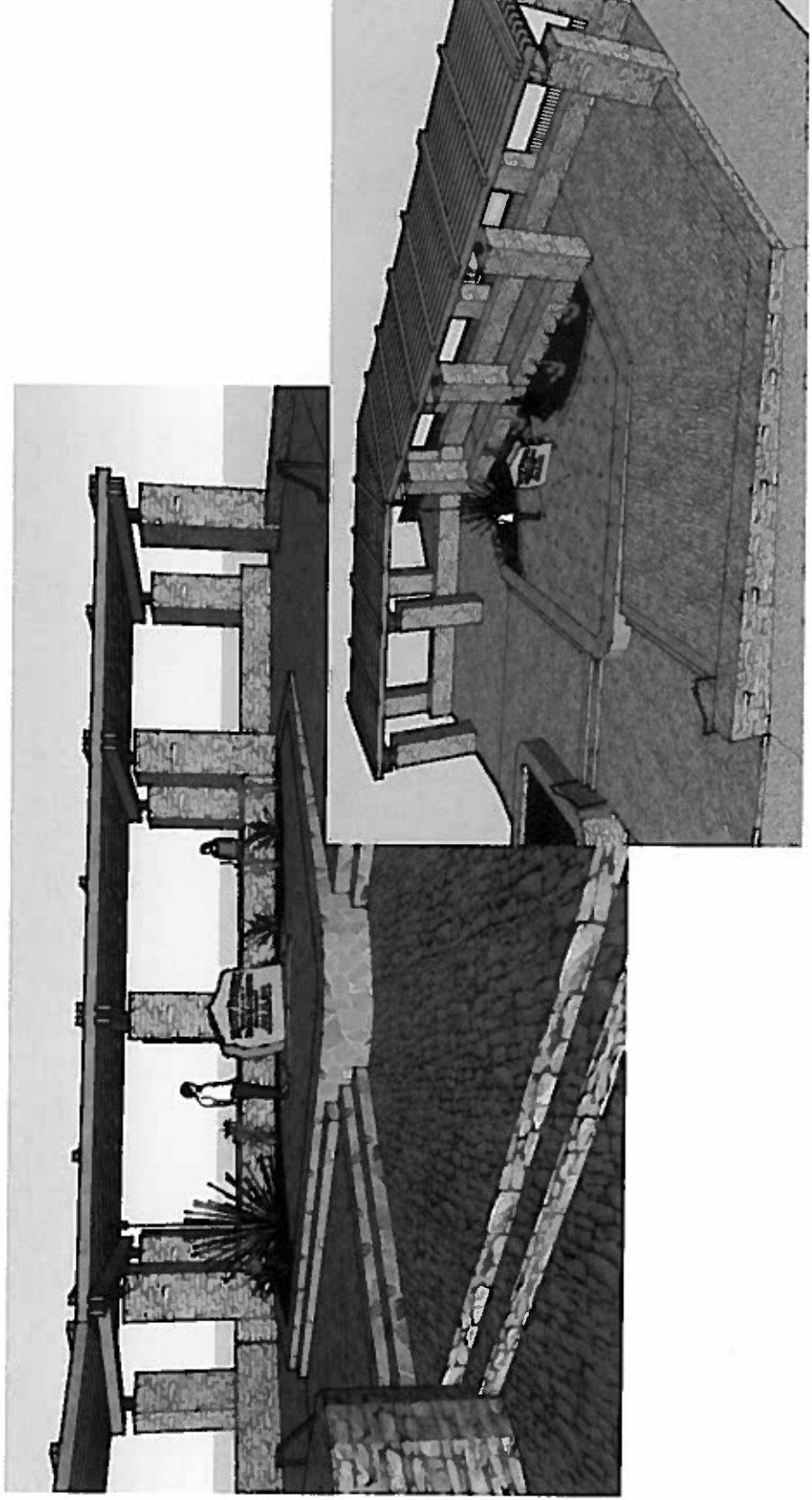
**C: INSTALL NEW DAIS,
BENCHES, AND
LANDSCAPING**

**PROJECT COST:
\$126,500**

*Contingencies include possible unforeseen fees from contractors or public entities (review fees, application fees, etc) or unanticipated costs of compliance with additional requirements imposed by PARD or other government agencies or NGAs.



APRIL 2013: Based on input from PARD, the Historic Landmark Commission, and other sources the proposed granite replica marker **WILL BE IDENTICAL** to the original, temporary limestone marker in size, shape, location, inscription, position, orientation, and coloration.





MOUNT BONNELL PROJECT TIMELINE

2Q 2010: WPSCT "adopts" Mount Bonnell at Covert Park

3Q 2010: Begin discussion with Covert family re marker replacement, other improvements

4Q 2010: O'Connell Robertson marker and improvement plan review and approval
Obtain APF grant for view restoration

1Q 2011: Submit PARD application for marker replacement
Accomplish view restoration

3Q 2011: Request \$50K APF/ACL grant for marker replacement and improvements
Total value, \$100+K
Endorsed by HPWBANA and WANG

4Q 2011: Partial Grant approved by APF
Historic Landmark Appropriateness Committee finds plan unacceptable
PARD withdraws support for improvements

Jan 2012: Mayor Leffingwell directs PARD and Historic Preservation Office to reconsider, enable improvements

Jan-Sep 2012: WPSCT and PARD develop modified, PARD supported plan, submit to APF

Apr 2013: PARD presents revised plan alternatives to HLC



HISTORIC LANDMARK COMMISSION, APRIL 22, 2013



PARD PROPOSAL: Repair the original, historic monument; OR in the alternative, erect a new monument ON THE SITE.

Staff: Steve Sadowsky, Historic Preservation Office, 974-6454

Staff Recommendation: Staff favors the proposal to repair and re-install the original, historic monument in accordance with the Secretary of the Interior's Standards for Rehabilitation and the Commission's own Standards for Review of Applications for Certificates of Appropriateness.

HLC DECISION: "to support a Certificate of Appropriateness application for the restoration of the monument IN PLACE"



BASIS OF APPEAL

The decision to authorize restoration and retention of the original marker "in-place" is non-compliant with:

- 1. City Code (25-11-243)**
- 2. Department of Interior guidelines (36 CFR 67.7(b))**
- 3. Principles of Good Stewardship**

PARD EXPERT OPINIONS

Silverlining Art Conservation LLC, February 17, 2012

- "Sealants exist but no they either don't work for the long-term (50+ years) or haven't been field-tested long enough"
- "the best and only guaranteed long-term way to slow weathering from outdoor exposure is to provide a cover over the stone"
- "what happens after several maybe 10 to 20 years is that stress cracking will form within the stone"
- "eventually the entire surface of the stone where the sealing has been applied will fall off"

Matthew Johnson, March 6, 2012

- "if the sealer or hardener traps water behind it eventually the pressure will cause the entire face of the stone to flake or spall off"
- "it is inevitable that limestone left outside will weather over time regardless of whether you seal it or not"

Stewart Simpson, Austin Stonecarving, February 19, 2012

- "It is also suggested that sealants not be used on the monument because these chemicals can affect the stones longevity"
- "many times these chemicals can trap sediment and moisture underneath the sealer and can have a reverse effect"

Frances Gale, Historic Preservation Program, UT School of Architecture, February 10, 2012

- "As you know these treatments are sometimes problematic and in most cases are not recommended for historic masonry materials."

DEPARTMENT OF INTERIOR GUIDELINES FOR PRESERVATION OF STONE OBJECTS

The WPSCT proposal for the disposition of the original tablet is **consistent with the Secretary of Interior guidelines for curatorial care of stone objects** (rather than buildings and structures) as found in the Department of the Interior NPS Museum Handbook in Paragraph E.5, page 12 at <http://www.nps.gov/museum/publications/MHI/AppendP.pdf>

"The best way to protect stone objects stored outdoors is to move them inside. This action radically limits the agents of deterioration that will contact the objects."

"MOVE THEM INSIDE"



BASIS OF APPEAL (1)

NON-COMPLIANCE WITH CITY CODE: According to 25-11-243 ACTION ON A CERTIFICATE OF APPROPRIATENESS:

A certificate should be granted only

"If the commission determines that the proposed work will not adversely affect a significant architectural or historical feature of the designated historic landmark."

In the opinion of experts, leaving the marker in its present location, exposed to the elements, will result in its future continued deterioration, a severely adverse effect.



BASIS OF APPEAL (2)

NON-COMPLIANCE WITH DOI GUIDELINES: In authorizing a course of action that guarantees adverse effects and the future deterioration of the marker, **the HLC failed to apply the reasonability standards of the Department of the Interior**

Secretary of the Interior's Standards for Rehabilitation, 36 Code of Federal Regulations Section 67.7(b), requires a reasonability test for implementation of the subsequent guidelines:

"(b) The following Standards are to be applied to specific rehabilitation projects in a reasonable manner, **taking into consideration economic AND technical feasibility.**"

1. **After two years of study, the technical feasibility of restoration has not yet been determined.**
2. **Experts agree that is NOT technically feasible to seal the marker from further damage if left outdoors.**
3. **Requiring the marker to remain outdoors, unprotected, and subject to continuous deterioration at effectively limitless future cost of repair is not a "reasonable" application of economic standards.**



BASIS OF APPEAL (3)

POOR STEWARDSHIP: A LOSE-LOSE SITUATION FOR THE CITY AND THE CITIZENS

- 1. Taxpayers will pay a substantial initial cost (estimated to be in excess of \$35K) for the temporary restoration of a marker to be subsequently ruined by continued exposure to the elements,**
- 2. Continued future deterioration of the restored marker will require continual future restoration expense**
- 3. Taxpayers will be deprived of the \$120K value of the proposed improvements, to be entirely funded from private sources.**
- 4. Other civic minded citizens and groups that observe the impossibility of doing business with the city may well be discouraged from even attempting to initiate and fund good works.**
- 5. Rigid adherence to costly, inappropriate and in this case, irrationally applied guidelines could draw unwanted media attention and criticism of the city's decision-making apparatus.**
- 6. Clearly conflicts with the intent of the city to encourage private funding of public works.**
- 7. Negates previous PARD support for plan jointly developed by PARD and WPSCT**



SUMMARY OF APPEAL

ACCORDING TO EXPERT OPINION, LEAVING ORIGINAL LIMESTONE MARKER ON SITE WILL RESULT IN CONTINUING UNCONTROLLABLE DETERIORATION.

DECISION TO LEAVE ORIGINAL MARKER "ON-SITE" IS NON-COMPLIANT WITH CITY CODE 25-11-243, ACTION ON A CERTIFICATE OF APPROPRIATENESS: Leaving the marker on site will result in continuing the adverse effects of exposure to uncontrollable weathering.

DECISION TO LEAVE ORIGINAL MARKER "ON-SITE" IS NON-COMPLIANT WITH Secretary of the Interior's Standards for Rehabilitation, 36 Code of Federal Regulations Section 67.7(b) The action approved is neither economically or technically feasible.

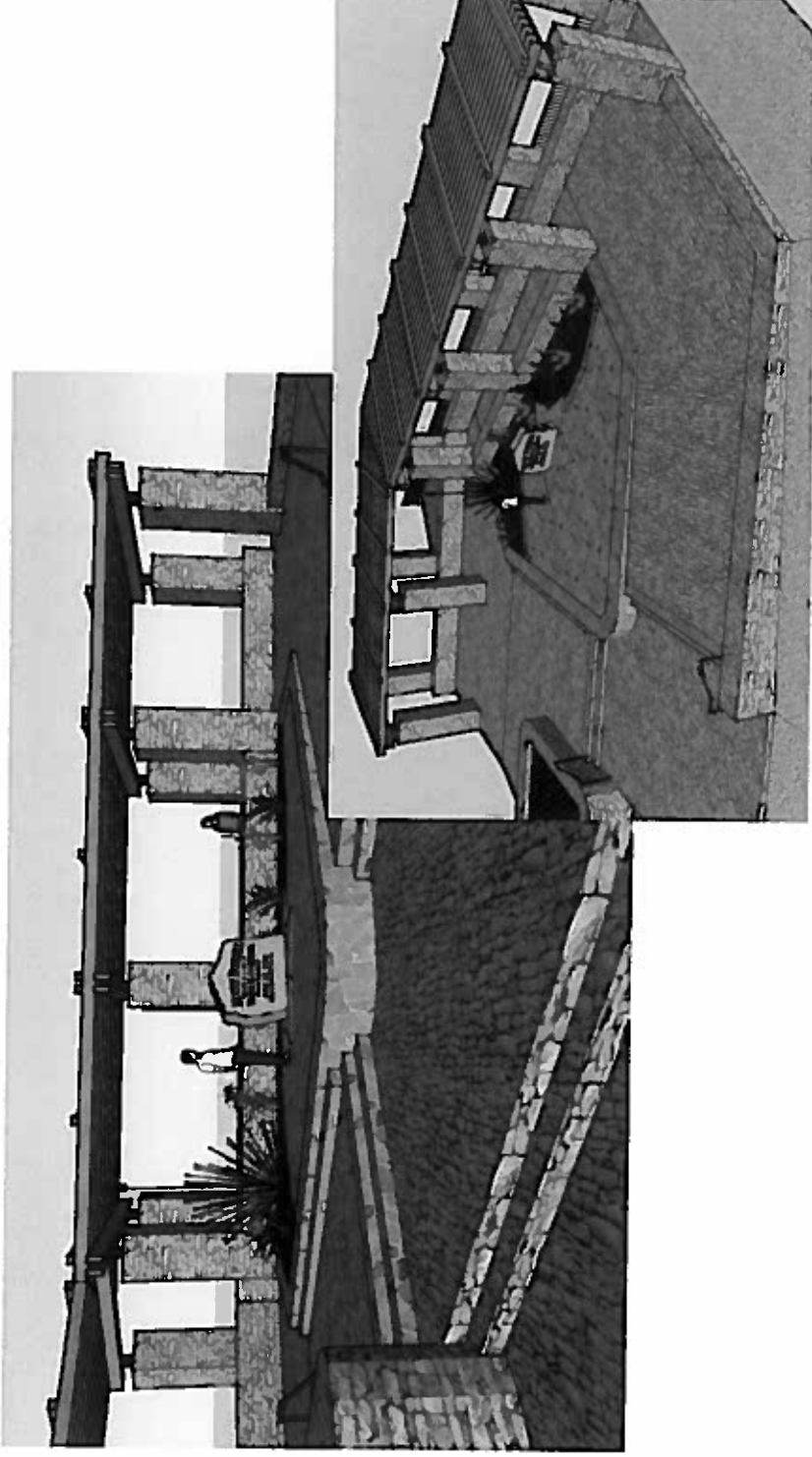
DECISION TO LEAVE ORIGINAL MARKER "ON-SITE" IS NON-COMPLIANT WITH Department of the Interior NPS Museum Handbook in Paragraph E.5, page 13 :

"The best way to protect stone objects stored outdoors is to move them inside. This action radically limits the agents of deterioration that will contact the objects."
<http://www.nps.gov/museum/publications/MHI/AppendP.pdf>

LEAVING ORIGINAL MARKER ON SITE WILL PREVENT IMPLEMENTATION OF \$120K+ IN PARK IMPROVEMENTS

RECOMMENDATION

1. **SET ASIDE** the HLC decision to grant a COA to the restoration and retention of the original marker ON-SITE
2. **APPROVE** joint WPSCT/PARD plan to restore and display original marker in a protected location, install a permanent replica, and implement site improvements as previously supported by Director Hensley and PARD staff.



BACKUP

DEPARTMENT OF INTERIOR GUIDELINES FOR PRESERVATION OF STONE OBJECTS

The WPSCT proposal for the disposition of the original tablet is **consistent with the Secretary of Interior guidelines for curatorial care of stone objects** (rather than buildings and structures) as found in the Department of the Interior NPS Museum Handbook in Paragraph E.5, page 12 at <http://www.nps.gov/museum/publications/MHI/AppendP.pdf>

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"MOVE THEM INSIDE"

[illegible][illegible][illegible]

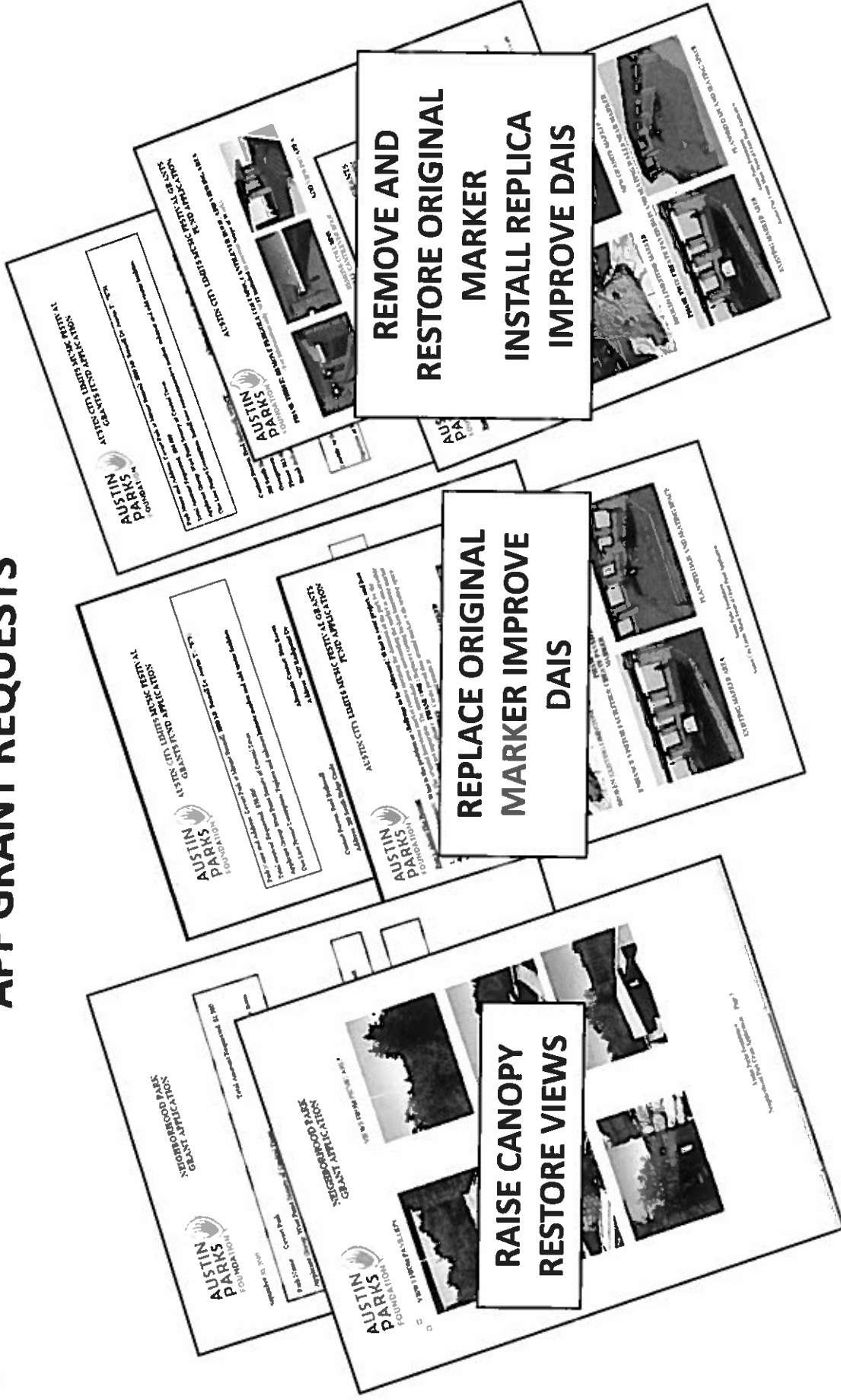
THE WEST POINT STORY AT MOUNT BONNELL!

The new PARD kiosk atop Mount Bonnell confronts visitors with a detailed account of West Pointers' historical association with the site

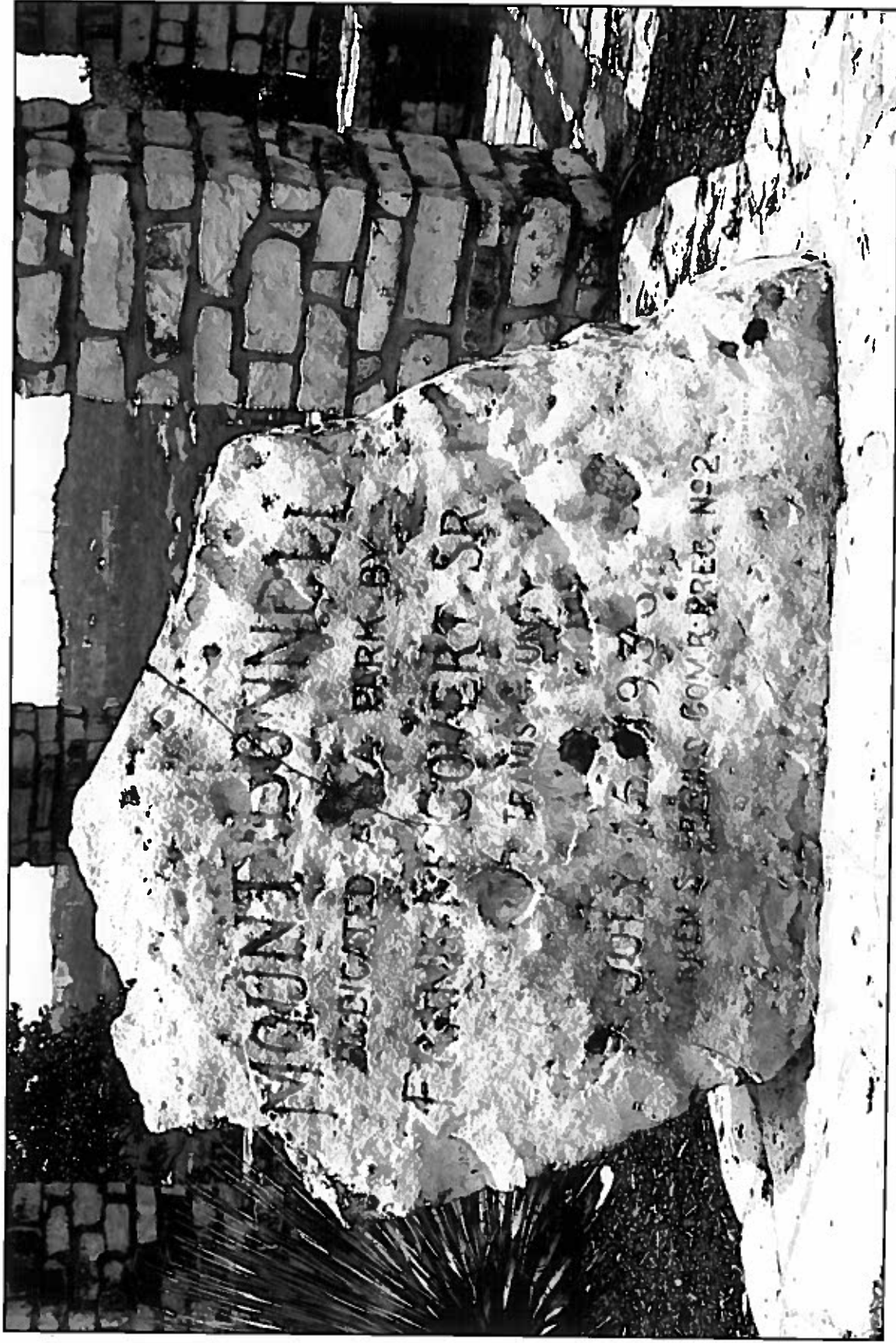


"Mount Bonnell is a famous and integral part of Austin. Its close association with the military defense of Austin in 1839, Gen. Albert Sidney Johnston, the Army of the Republic of Texas, Maj. Gen. George Armstrong Custer, and the Band of the Sixth Cavalry Regiment makes it a significant and historic military site"

APF GRANT REQUESTS



GRANITE SAMPLES



GRANITE SAMPLES





GRANT TO RESTORE EXISTING MONUMENT HAS NO LINK TO ANY OTHER GRANTS

RE: Covert Marker Restoration

From **Hernandez, Reynaldo**
To **Stan Bacon**
CC **McKnight, Kim** frebo3@yahoo.com

Thu, May 23, :

Stan,

PARD is not aware that the grant to restore the existing monument at Mt. Bonnell has any direct link to other grants.

Rey

Reynaldo Hernandez Jr, RLA
Landscape Architect II
Office of CIP, Planning and Design
City of Austin Parks and Recreation Department
512-974-9464



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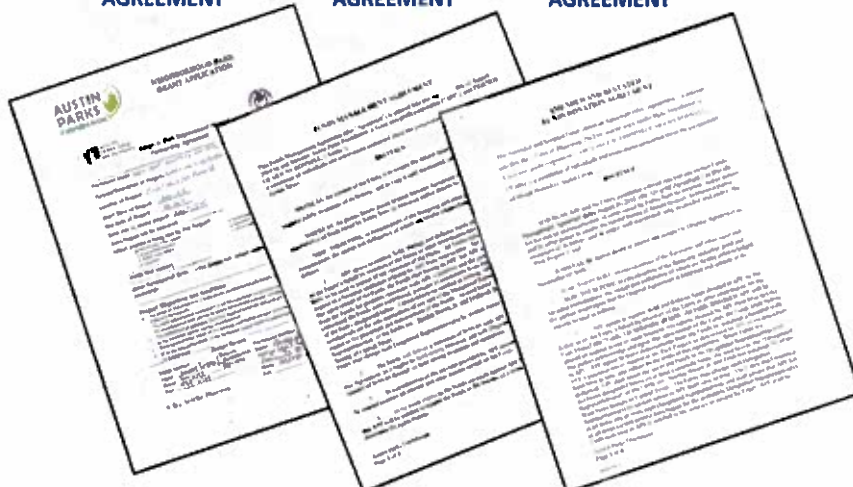
In 2010, the West Point Society of Central Texas adopted Covert Park at Mount Bonnell and began improvement projects under the Austin Parks and Recreation Department Adopt-A-Park program. There are over 600 West Point graduates in the Austin area.

Fred Bothwell
WPSCT, Class of 1962
frebo3@yahoo.com
 512-635-4433

ADOPT-A-PARK AGREEMENT

INITIAL FIDUCIARY AGREEMENT

CURRENT FIDUCIARY AGREEMENT



2010

2010

2012

**WEST POINT SOCIETY OF CENTRAL TEXAS
FRIENDS OF MOUNT BONNELL/COVERT PARK**

- Adopt-a-Park contract secured with PARD, June 2010.
- Restored the fabulous views through selective pruning and lifting of canopies.
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- Installed 13 HIDE, LOCK, TAKE signs throughout the entire parking area.
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4

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The new PARD kiosk atop Mount Bonnell confronts visitors with a detailed account of West Pointers' historical association with the site



"Mount Bonnell is a famous and integral part of Austin. Its close association with the military defense of Austin in 1839, Gen. Albert Sidney Johnston, the Army of the Republic of Texas, Maj. Gen. George Armstrong Custer, and the Band of the Sixth Cavalry Regiment makes it a significant and historic military site"

5



**Adopt-A-Park Improvement Project
Partnership Agreement**



Participant Name: WEST POINT SOCIETY OF CENTRAL TEXAS

Purpose/Description of Project: Restore views of Austin and Lake Austin

Location of Project: Covert Park/Mt Bonnell

Start Date of Project: June 2010

End Date of Project: 1Q 2011

Date met to review project: May 3, 2010

Date Project will be evaluated: _____

Which priority is being met by this Project?

- ☒ Park/Facility Enhancement
☐ Program Enhancement
☐ Park/Facility Safety
☐ Education

- ☐ Environmental Protection
☐ Recreation for all ages
☐ Others (list here) _____

PARD ORG number _____

Other Participants? ☒ No ☐ Yes (please list, attach additional pages if necessary):

Project Objectives and Conditions:

- The intent of this project is to build on and coordinate mutually beneficial endeavors between PARD and Participants.
- The staff and personnel involved will at all times perform in a professional manner, reflecting the commitment of both parties to quality services and customer satisfaction.
- The commitment of personnel, facilities, supplies/materials, and cash will be honored according to the timetable agreed upon by all participants.
- The projected dollar values of the services contributed are best estimates.
- If at any time either PARD or the Participant cannot fulfill its commitments, the project may be discontinued.

Contact Persons:

PARD contact
 Name: DANNY CASTRO / CASTRO-ESA
 Phone: 914-6797 837-4500
 Fax: 914-6729

Participant Contact
 Name: Stanley Bacon, Jr.
 Address: 2627 Rockpoint Dr.
Austin, TX 78731-1438
 Phone: 512/346-5764/7777
 Fax: _____

* PER WALTER PASSMORE



NEIGHBORHOOD PARK GRANT APPLICATION

Page 2 – partnership agreement

Desired Outcomes or End Results which have to happen for this to be a successful undertaking to Participant:

"Fabulous Views" of Austin and Lake Austin from top of Mt Bonnell are restored


Desired Outcomes or End Results which have to happen for this to be a successful undertaking to PARD:

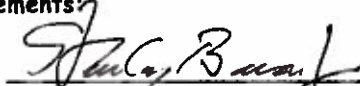
Participant contributions/responsibilities:	Dollar Value:
Labor	\$850 \$800
Cash	\$500 \$1500
Admin	2500
Total:	\$3850 \$2300

PARD Contributions/Responsibilities:	Dollar Value:
Provide Woodchipper/Truck	Ø

Total:

Acknowledgements:


Signature (PARD)
Name (printed)
Dawn Castro
Acting Division Manager
Title
5/24/2010
Date


Signature (Participant)
Name (printed)
Stanley Bacon, Jr.
WPSC Project Manager
Title
5/24/2010
Date

AMENDED AND RESTATED FUNDS DONATION AGREEMENT

This Amended and Restated Funds Donation Agreement (this "Agreement") is entered into this the 11th day of December, 2012 by and between Austin Parks Foundation, a Texas non-profit corporation ("APF"), and THE FRIENDS OF MOUNT BONNELL, ("Entity"), a committee of individuals and associations concerned about the preservation of Mount Bonnell in Austin Texas.

RECITALS:

WHEREAS, APF and the Entity previously entered into that one certain Funds Management Agreement dated August 30, 2010 (the "Original Agreement") to provide for the receipt and maintenance of funds raised by Entity from its members and/or donors and by other parties to sustain the natural beauty of Mount Bonnell, to improve public awareness of its history, and to keep it well maintained, safe, accessible, and usable (the "Park Project"); and

WHEREAS, the parties desire to amend and restate the Original Agreement as hereinafter set forth.

NOW THEREFORE in consideration of the foregoing and other good and

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Original Agreement is amended and restated in its entirety to read as follows.

1. APF agrees to receive, hold and disburse funds donated to APF by the Entity or on the Entity's behalf by members of the Entity or other contributors for the Park Project (the "Funds") as hereinafter set forth. All Funds delivered to APF will be placed on deposit in one or more financial institutions selected by APF from time to time. The parties acknowledge and agree that upon receipt of the Funds, the Funds shall belong to APF. APF agrees to make disbursements from the Funds for purposes consistent with APF's purposes and in support of the Park Project, as determined by APF in its discretion from time to time, and subject to the terms of this Agreement. When Funds are disbursed, APF shall report the use of the Funds to the Designated Representative(s) of the Entity designated below on at least a quarterly basis. As used herein, the "Designated Representative(s)" of the Entity are: Stanley Bacon, Jr. and Frederick Bothwell III of the West Point Society of Central Texas. The Entity may change such Designated Representative(s) by written notice to APF from time to time. The Entity shall maintain at all times one or more such Designated Representatives, and shall ensure that APF has at all times current contact information for the applicable Designated Representative(s). Until such time as APF is notified to the contrary in writing by Entity, APF shall be

entitled to deal exclusively with any one or more of the Designated Representatives, each of whom shall be deemed to have the authority to bind Entity in its dealings with APF.

2. The Entity will diligently strive to retain a minimum balance of \$100.00 through its fund raising initiatives and operations, so long as this Agreement remains in force.

3. APF shall be entitled to retain all interest and other income earned on the Funds. In addition, APF shall be entitled to withdraw from the Funds the following amounts, which APF may transfer to its general fund or use in any other manner that APF determines in its sole discretion:

(a) a Fifty and no/100 Dollar (\$50.00) per year maintenance fee beginning January 1, 2013; and

(b) a one time two percent (2.0%) charge on the first \$5,000 of ^{an} ~~the~~ ^{individual contribution} ~~total of monthly contributions~~ added to the Fund from time to time after January 1, 2013 (payable monthly based on total contributions for the month).

4. In the event claims to the Funds are made against APF by third parties, the parties agree that APF will be entitled to deposit the Funds in the registry of a court of competent jurisdiction to determine the rights thereto.

5. Entity hereby acknowledges and understands that no tax advice whatsoever has been given or will be given by APF with respect to this Agreement or otherwise, either express or implied, and further acknowledges that Entity should seek tax advice on its own.

6. Each of APF and the Entity is hereby authorized to publicize the existence of this Agreement in its publications, promotional materials and initiatives, so long as this Agreement remains in force, and so long as such materials fairly and accurately reflect the terms and conditions of this Agreement. Except as expressly set forth herein, neither party shall have the right to solicit grants or other contributions in the name of the other, and neither party shall have the right to bind the other party.

7. This Agreement may not be assigned, in whole or in part, by any party hereto without the express written consent of the other party in each instance. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

8. The parties hereby agree that APF shall incur no liability to Entity or its contributors for any acts or omissions by APF in connection with APF's duties hereunder, except for loss occasioned by the gross negligence or bad faith by APF. The duties of APF shall be only those specifically set forth herein, or hereafter agreed to by it

in writing. APF is not acting as a trustee and there are no attributes of a trust inherent in the relationship between the Entity and APF.

9. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party, provided APF agrees not to exercise such right of termination as long as reasonable progress is being made towards completing the Park Project, as determined by APF in the exercise of its reasonable discretion. Upon any termination of this Agreement, the remaining Funds shall remain the property of APF, but APF agrees that it will, to the extent APF deems such use reasonable and practical, endeavor to use such remaining Funds in a manner generally consistent with the Park Project, or such similar project as APF determines appropriate.

10. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

11. This Agreement amends and restates the Original Agreement in its entirety. The Original Agreement is hereby superseded by the terms of this Agreement. From and after the date of this Agreement, the terms of this Agreement shall govern the rights of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their duly authorized representatives.

AUSTIN PARKS FOUNDATION

By: Jessica Wassenaar
Name: Jessica Wassenaar
Title: Operations Manager

FRIENDS OF MOUNT BONNELL

By: Stanley Bacon, Jr.
Name: Stanley Bacon, Jr.
Title: Member, Board of Directors, West Point Society of Central Texas

Optional second signer:

By: _____
Name: _____
Title: _____

Austin Parks Foundation
Page 3 of 4

FUNDS MANAGEMENT AGREEMENT

This Funds Management Agreement (this "Agreement") is entered into this the ____ day of August, 2010 by and between Austin Parks Foundation, a Texas non-profit corporation ("APF"), and FRIENDS OF MOUNT BONNELL, ("Entity"), a committee of individuals and associations concerned about the preservation of Mount Bonnell in Austin Texas.

RECITALS:

WHEREAS, the mission of the Entity is to sustain the natural beauty of Mount Bonnell, to improve public awareness of its history, and to keep it well maintained, safe, accessible, and usable; and

WHEREAS, the parties hereto desire to enter into this Agreement to provide for the receipt and maintenance of funds raised by Entity from its members and/or donors for pursuit of Entity's initiatives.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. APF agrees to receive, hold, manage and disburse funds placed with APF by the Entity or on the Entity's behalf by members of the Entity or other contributors (the "Funds") as hereinafter set forth, to be used in pursuit of the initiatives of the Entity. All Funds delivered to APF will be placed on deposit in a financial institution selected by APF from time to time. The Parties acknowledge and agree that upon receipt of the Funds, the Funds shall belong to APF, but APF agrees to make disbursements from the Funds for purposes consistent with APF's purposes and the purposes for which APF understand the Funds were contributed, pursuant to instructions from the Designated Representative(s) of the Entity designated below. Unless otherwise notified in writing, APF shall be entitled to rely conclusively on the sole instructions of any one of the Designated Representative(s) of Entity with regard to the placement and disbursement of the Funds. As used herein, the "Designated Representative(s)" of the Entity are: Stanley Bacon, Jr. and Frederick Bothwell III of the West Point Society of Central Texas.

Entity may change such Designated Representative(s) by written notice to APF from time to time.

2. The Entity will deliver a minimum of \$100.00 with APF within the first five (5) days of this Agreement, as it begins its fund raising activities, and will diligently strive to retain a minimum balance of \$100.00 through its fund raising initiatives and operations.

3. In consideration of the services provided by APF pursuant to this Agreement, APF shall be entitled to retain all interest and other income earned on the Funds.

4. In the event claims to the Funds are made against APF by third parties, the parties agree that APF will be entitled to deposit the Funds in the registry of a court of competent jurisdiction to determine the rights thereto.

5. Entity hereby acknowledges and understands that no tax advice whatsoever has been given or will be given by APF with respect to this Agreement or otherwise, either express or implied, and further acknowledges that Entity should seek tax advice on its own.

6. The Entity is hereby authorized to represent itself as having an account relationship with APF in its publications and initiatives, so long as this Agreement remains in force.

7. This Agreement may not be assigned, in whole or in part, by any party hereto without the express written consent of the other party in each instance. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

8. The parties hereby agree that APF shall incur no liability to Entity or its contributors for any acts or omissions by APF in connection with APF's duties hereunder, except for loss occasioned by the gross negligence or bad faith by APF. The duties of APF shall be only those specifically set forth herein, or hereafter agreed to by it in writing. APF is not acting as a trustee and there are no attributes of a trust inherent in the relationship between Entity and APF.

9. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party, provided APF agrees not to exercise such right of termination as long as Entity, in APF's reasonable opinion, is making reasonable progress towards accomplishing the purposes for which APF understands the Funds were contributed. Upon any termination of this Agreement, the remaining Funds shall remain the property of APF, but APF agrees that it will, to the extent APF deems such use reasonable and practical, endeavor to use such remaining Funds in a manner generally consistent with the purpose for which APF understands the Funds were contributed.

10. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their duly authorized representatives.

AUSTIN PARKS FOUNDATION

By: Rosie Weaver
Name: ROSIE WEAVER
Title: Outreach Director

FRIENDS OF MOUNT BONNELL

By: Stanley Bacon Jr
Name: Stanley Bacon Jr
Title: WPSC Committee Chair

Optional second signer:

By: Fredrick C. Buthwell III
Name: FREDRICK C BUTHWELL III
Title: WPSC Committee Member



COMMUNITY INITIATED IMPROVEMENT PROJECT APPLICATION

Community Initiated Improvement Projects provide a process for partners to raise funds and in-kind contributions in order to design and build improvements projects at Austin Parks and Recreation (PARD) parks and facilities that are in alignment with PARD plans and strategic priorities.

Include as much detail as possible in your proposal so that it can be review accurately.

CONTACT INFORMATION

Contact Name:	Stan Bacon	Organization:	West Point Society of Central Texas
Address:			
City/State/Zip	Austin, TX		
Phone Number:	E-Mail: sbacon58@sbcglobal.net		
Website			

Location information

Park name: Mount Bonnell/Covert Park

Project summary

Provide a description of the proposed improvement. Please provide some information about size and materials. *The majority of the project centers around the replacement of the current dedication marker which is in disrepair. The monument would be replaced with a new one made of Texas native granite (color t.b.d. by site visit to quarries) for increased durability/longevity. It will measure approximately 54"high x 54"wide x 16"thick. The front face will be engraved with the same text and fonts as the existing marker. One side of the marker will also be a smooth face for engraving – the text for this location is t.b.d., but is planned to include historical data and the date of the rededication. The profile of the marker will mimic the cross section of the mountain and include annotations of factual information such as the name of the river below and the elevation at which it sits. The new marker will rest on a granite star and it's front face will be oriented along a straight line between the 360Bridge and Downtown Austin to mimic the orientation of the existing marker and emphasize the views to these two iconic city elements.*

Applicable Dates

Proposed Start Date: July 2011 Expected Completion Date: December 2011

Results and Benefits

Desired Outcome or End Results: *see above*

Description of Benefit to the Public: *Re-established views of the 360Bridge and Downtown Austin, factual information as a learning opportunity, creation of a plaza that could potentially be used for group meetings and functions, and additional seating.*

What would be the Benefit(s) to PARD: *Aesthetic, functional, and durability improvements to the park*

Project funding

What do you estimate the cost of the proposed project? *\$65,000*

How did you arrive at this figure? *Cost estimate of preliminary design concepts using Means catalog*

What is your proposed source of funding? *Private donor*

PARD Roles and Resources

SUBMITTED FOR REVIEW ON 1/24/2011



COMMUNITY INITIATED IMPROVEMENT PROJECT APPLICATION

Describe what, if anything, you are requesting for PARD's Participation/Contribution: *Review, feedback, and approval of the design concepts and approval/permitting to move forward with the project.*

Support

Is there community support for the project from the neighborhood association, local school principals, other park user groups, etc? Please list.

**There is no need to collect letters of support at this time, but we ask for documented support in the future.*

Send this form along with any drawings, plans, photos or supporting documents to:

Austin Parks & Recreation
200 South Lamar, Austin TX 78705
Attn: Development Administrator
Email: Brian.block@ci.austin.tx.us • Fax: 512.974.6729

SUBMITTED FOR REVIEW ON 1/24/2011



**AUSTIN CITY LIMITS MUSIC FESTIVAL
GRANTS FUND APPLICATION**

Item # C-1

Park Name and Address: Covert Park at Mount Bonnell; 3800 Mt. Bonnell Dr. Austin TX 78731

Total Amount Requested: \$50,000

Applicant Group: West Point Society of Central Texas

One Line Project Description: Install new commemorative marker, enhance and add visitor facilities.

Contact Person: Fred Bothwell, WP SCT

203 South Ridge Circle

Georgetown, TX 78628

Phone: 512-635-4433

Email: frebo3@yahoo.com

Alternate Contact: Stan Bacon, WP SCT

7627 Rockpoint Dr

Austin, TX 78731

Phone: 512-345-5964

Email: sbacon58@sbcglobal.net

I certify, to the best of my knowledge, that the information in this application is true and correct.

Signature of Primary Contact: ___/s/ F C Bothwell III

Date: ___9/30/2012___

Part 1: About The Project

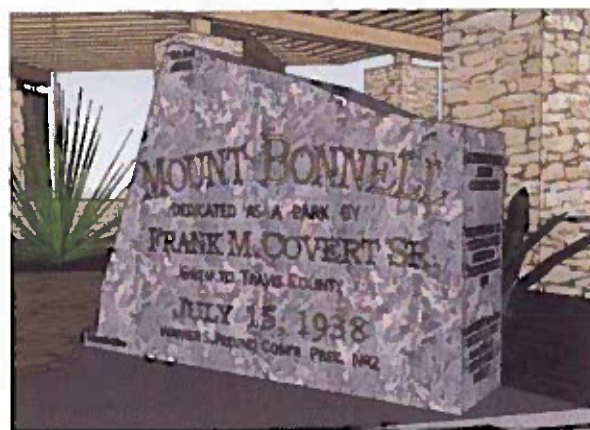
Synopsis of project: What is the problem or challenge to be addressed? What is your project, and how does it address the issue? The original limestone marker commemorating the donation of the park by the Covert family is broken. The area surrounding the marker is inaccessible and unusable. The current proposed project has two phases: PHASE ONE: Remove, restore and preserve broken marker. Install a permanent granite marker on new base. PHASE TWO: Create paved dais around marker. See images of scope of work and planned results at http://www.west-point.org/joseph_bonnell/pavilion

Note: A currently unfunded third phase, involving modification of the current pergola and improved viewing facilities is also described, but **is outside the scope of this application**. It is planned for future review with PARD and other stakeholders.

PHASE ONE: INSTALL PERMANENT COVERT MARKER



BROKEN LIMESTONE MARKER



NEW GRANITE MARKER

PHASE TWO: CREATE PAVED DAIS AND SEATING WALLS NEAR MARKER

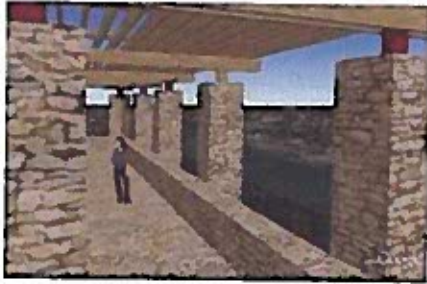


EXISTING MARKER AREA



PLANNED DAIS AND SEATING SPACE

PHASE THREE: REMOVE PERGOLA COLUMNS, CANTILEVER ROOF, ADD VIEWING AREA
(For information only. NOT included in current Scope of Work)



CURRENT PERGOLA



**REMOVE COLUMNS
INSTALL CANTILEVER ROOF**



ADD VIEWING AREA

2. Briefly list steps involved in completing your project and give a timeline:

PHASE ONE: OCT 2012-FEB 2013	
Complete review of project plans	
Obtain FINAL approval from City Council	
Order replica marker	
Remove demolished dedication marker, relocate and restore in a protected environment	
Remove retaining wall around marker site	
Install new marker base and reconfigure planted area around marker site	
Deliver and install replica marker	
Landscaping, native plants, xeriscape	
PHASE TWO: FEB-JUNE 2013	
Install new pavement around marker area	
Install new Limestone benches under pergola	
Install Handrails	
PHASE THREE: TBD (Information Only)	
Remove pergola roof and west side columns	
Install cantilevered pergola roof	
Install viewing steps	

3. How has or will the group obtain community support for this project? Neighborhood association leaders, local residents and park users have already been briefed and expressed enthusiastic support for the project. See attached letters from major neighborhood associations.

4. Is there a volunteer component to your project? Nearly all of the major work involved in the project requires the services of professional contractors. Volunteers will be continuously involved in project administration (3 volunteers) and continuing site cleanup and maintenance during the project. (20-30 Volunteers). Volunteers are also expected to play a major role in landscaping and planting associated with

the project (5-10 volunteers) Architectural and construction services are provided as in kind support by O'Connell Robertson of Austin and KG Construction of Georgetown.

5. How will your group's project or program be maintained or sustained in the future?

- The West Point Society of Central Texas has completed an Adopt-A-Park Agreement for past, current, and future projects to follow.
- The WPS will assume continuing responsibility for organizing and managing periodic site cleanup activities, staffing events such as the Oyster Race at Mt Bonnell, and working with APF, PARD, Keep Austin Beautiful, and other agencies to sustain and enhance the natural beauty and usability of the park in the future.
- The WPS, working with the various neighborhood associations, Friends of Mt Bonnell, and PARD, is executing ongoing site improvement projects and planning follow-on projects to include but not limited to path improvements, additional litter receptacles, organizing future pick-up activities, and working with APD to improve public safety in the park.

6. How will your group evaluate the success of your project? We will regard the project as successful if the marker is replaced as planned and visitors are able to approach the marker and make use of the newly available seating space

7. City approval status: Is there an approved site plan, have other permissions been obtained? What further steps are needed before work can begin? The current plan is the product of a year of joint development undertaken by the WPSCT, O'Connell Robertson, G&S, and PARD staff, with input from the Historic Landmark Commission Certificate of Appropriateness Committee, the Balcones Canyonland Preserve, and the Heritage Society of Austin. It has the support of Mayor Leffingwell and former Mayor Bruce Todd. It has not yet been approved by the Historic Landmark Commission. It is planned for presentation to the City Council for final approval in 4Q 2012.

8. Is there anything else we should know about your project? We anticipate that despite possible non-concurrence from the Historic Landmarks Commission, and based on support by Mayor Leffingwell and former Mayor Bruce Todd, the project will be approved by the City Council in 4Q 2012.

Part 2: About The Organizers

9. How many people are actively working on this project as organizers? What are their skills?

There are several people working on this project as organizers. Stan Bacon is a retired Army officer, a member of the Board of Directors of the West Point Society and has major responsibility for overall coordination and administration of this project, and all other WPS support of Mount Bonnell activity. He has a B.S. degree in Engineering and an MA in Geography. During his active service he was a member of the Faculty at West Point in the Geography Department. Several other members of the West point Society are retired and provide additional support as required. Nearly all have Engineering degrees and have had extensive project management experience. The architectural design concept and the detailed specifications for the project were developed by a team headed by Jason Andrus, an architect with the Austin firm of O'Connell Robertson. O'Connell Robertson is one of Texas' leading architectural firms, specializing in healthcare and education projects, and public works like the design of the Texas State 9/11 memorial. Mr. Andrus will continue to provide needed support and professional services for the project during its implementation. The CEO of KC Construction of Georgetown is a West Point graduate with

extensive experience in the management of major construction projects undertaken by the City of Austin, Travis County, and the State of Texas.

10. History of your work: How long have you been working at the park? What has been accomplished to date? List two or three past projects undertaken by your group and explain how they were funded. The WPS adopted the park in 2010 and since that time has organized many activities, including projects to build an information kiosk and restore historic views from the mountaintop, funded by donations from nearby neighborhood associations, individuals, the West Point Society of Central Texas and grants from APF and Keep Austin Beautiful/

WPSCT MOUNT BONNELL/COVERT PARK PROJECTS AND FUNDING

5/24/2010 – PARD Adopt-a-Park Improvement Project Agreement signed.
10/16/2010 – Supported Austin Oyster Urban Adventure Race.
11/20/2010 – Service Austin Days Fall Clean-up, 33 volunteers and 2 firefighters.
1/31/2011 -- Restored the fabulous views of the Colorado River Valley and City of Austin skyline through selective vegetation trimming with PARD support (chipping and brush removal), community contributions of \$2,450 and an APF grant of \$1,550.
3/2011 – PARD Director Hensley agrees to erect \$5,000 permanent kiosk provided WPSCT erects base.
3/5/2011-- My Parks Day, APF, 23 volunteers.
4/9/2011 -- Clean Sweep, KAB, 31 volunteers.
5/15/2011 -- Supported Austin Oyster Urban Adventure Race.
8/25/2011 – Received KAB grant of \$850 to apply to Kiosk Base payment.
10/22/2011 – Planned Clean-up w/Central Texas Mountaineers.
11/19/2011 – Planned participation in Service Austin Days Fall Clean-up.
YTD 2012 - Kiosk Installation Underway, additional cleanup days, Oyster Race Support

For over two years the West Point Society has also maintained a web site with information about the history and current status of Mount Bonnell. See http://www.west-point.org/joseph_bonnell/mount_bonnell
See examples of past work at http://www.west-point.org/joseph_bonnell/gallery/4

11. Are there other project partners? (Include other funders, in-kind donors, community groups, etc.) There are nine neighborhood groups around Covert Park, the two largest being HPWBANA and WANG. Leaders of all nine groups have been contacted and kept informed of the nature of this project. Both WANG and HPWBANA, the two largest organizations, have expressed strong support for our project in letters, meetings, newsletters, and the local newspaper, the West Austin News. The Covert family is also expected to financially support the erection of a new marker. See Attachments.



AUSTIN CITY LIMITS MUSIC FESTIVAL GRANTS FUND APPLICATION

Budget for:

COVERT PARK AT MT BONNELL RESTORATION AND ENHANCEMENT

**Items in yellow changed/added to
comply with 2011-2012 PARD
input**

Items/Services planned for purchase	
PHASE ONE: OCT-DEC 2012	
Remove demolished marker, relocate and restore in a protected environment	\$15,000
Purchase/deliver replica marker	\$20,000
Demolish existing marker base	\$3,000
Install new marker base	\$8,000
Install new replica marker	\$2,500
PHASE ONE Estimated cost	\$48,500
+10% Contingency	\$53,350
PHASE TWO: JAN-APRIL 2013	
Remove retaining wall around marker site	\$8,500
Remove existing stone pavers at existing steps	\$4,500
Install new foundation and retaining wall	\$12,000
Install new stone pavers for dais	\$25,000
Install new stone pavers at steps	\$7,500
Install new Limestone benches under pergola (salvaged stone)	\$4,500
Landscaping, native plants, xeriscape	\$3,000
Install Handrails	\$2,500
PHASE TWO Estimated cost	\$66,500
+10% Contingency	\$73,150
TOTAL PROJECT COST	\$126,500

*Contingencies include possible unforeseen fees from contractors or public entities (review fees, application fees, etc) or unanticipated costs of compliance with additional requirements imposed by PARD or other government agencies or NGAs.



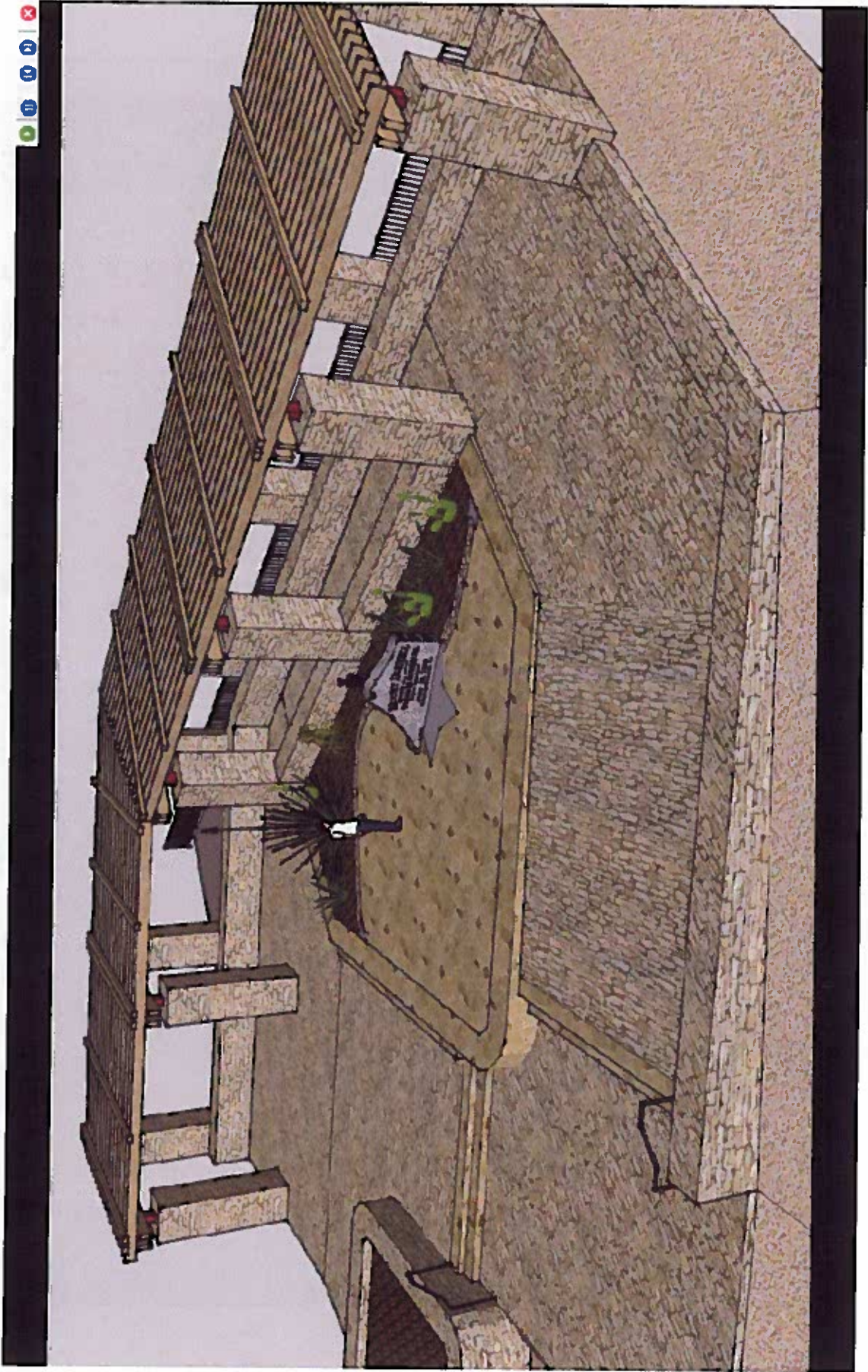
**AUSTIN CITY LIMITS MUSIC FESTIVAL GRANTS
FUND APPLICATION**

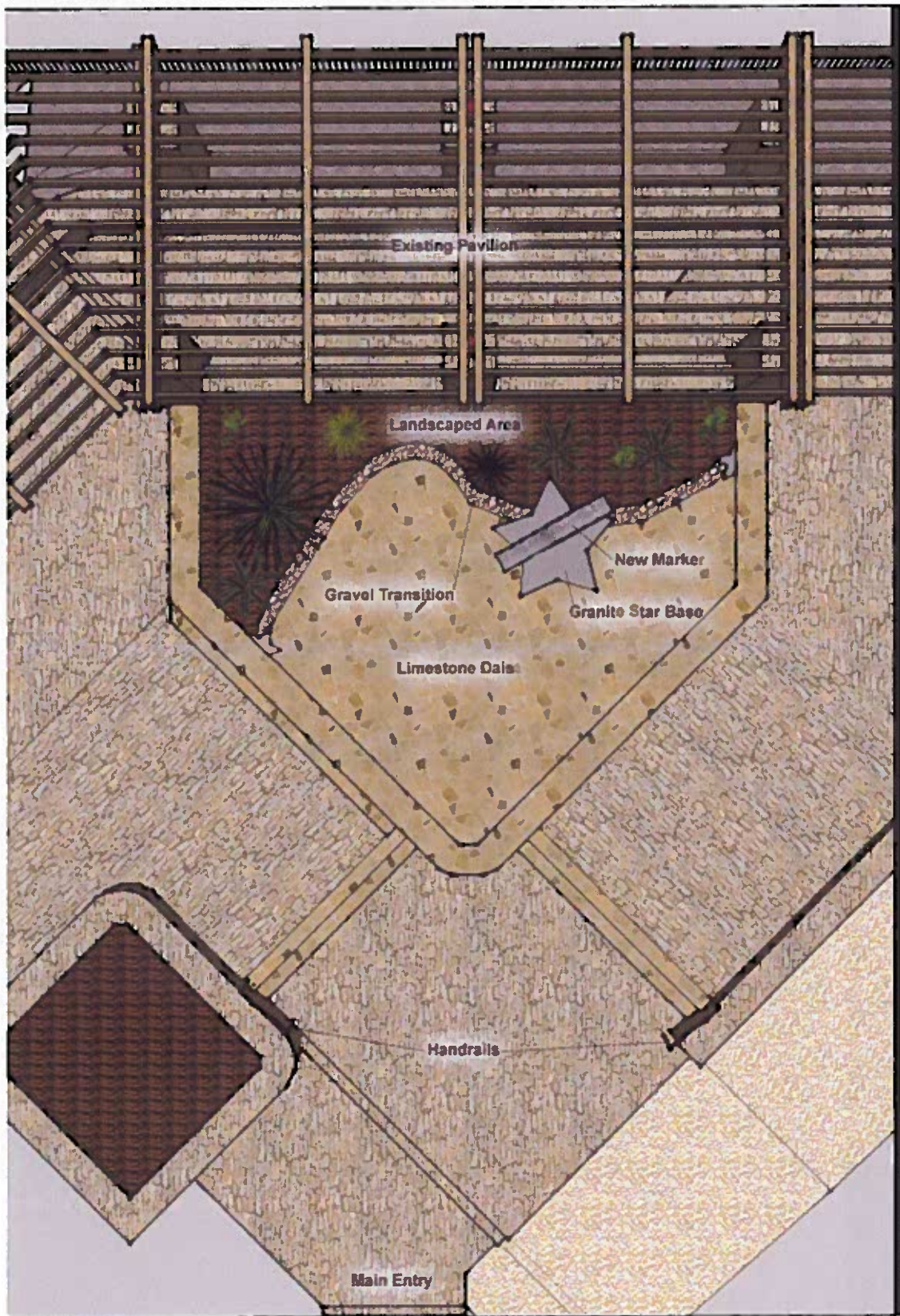
Budget Summary and Grant Request		
Line 1	Total Project Cost and Contingencies (cash)	126,500
Line 2	Total Cash Contributions from your group	76,500
	Grant Request (Line 1 minus Line 2)	\$50,000

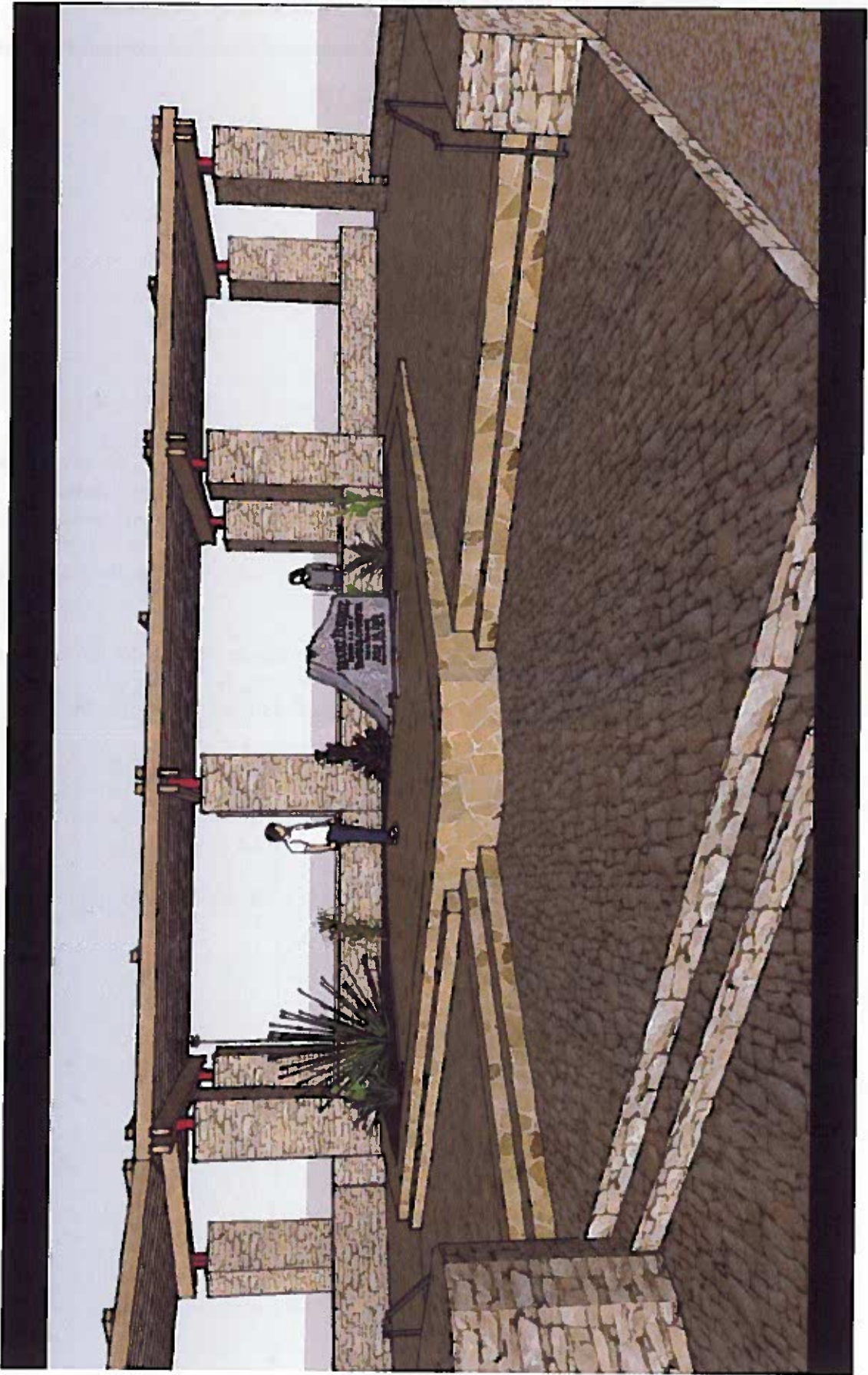


AUSTIN CITY LIMITS MUSIC FESTIVAL GRANTS FUND APPLICATION

Your Contributions 2012-2013		
Your Labor Contribution		
Volunteer labor	Hours	Total Value at \$10.65/hr
Continuing site cleanup, beautification, planting, and maintenance.	20 volunteers x 48 hrs x \$10.65	8,520
Total Volunteer Labor Value		\$8,520
Your In-Kind Contributions		
In-Kind contributions from entities other than PARD	Likely donor source (Who will you ask for this?)	Cash Value
Continuing architectural services, detailed planning and project support: 200 hours @ \$100	Jason Andrus, O'Connell Robertson (already committed) Friends of Mt Bonnell	20,000
Prime contractor project management: 120 hours @ \$150 providing budget review and validation, initial cost estimates, industry recommendations for cost savings, construction inspection, construction oversight to ensure applicable code compliance, submittal and Mock Ups review.	Eric Klingemann, President, KC Commercial LLC, a Commercial Utilities Construction Company, Member West Point Society of Central Texas (already committed)	18,000
Contribution of heavy equipment , tools, and general labor to assist PARD in demolition, and removal of existing components. 2 days @\$1500		3,000
Continuing project administration, meetings, briefings, and liaison with neighborhood associations, APF, PARD, and other NGAs. 120 hours @ \$50	West Point Society of Central Texas (already committed)	6,000
Total In-Kind Contributions		\$47,000
Your Cash Contributions (Including savings, funds from other grants, and funds yet to be raised)		
Likely Source (e.g. neighborhood assn, neighbors, bake sale)	Contribution	
Neighborhood Associations, Friends of Mt Bonnell, WPS of Central Texas, Covert Family, APF/ACL (2011 Grant)	\$76,500	
Total Cash Contributions		\$76,500
Total of all YOUR GROUP's contributions (labor, in-kind and cash)		\$132,020









WEST AUSTIN NEIGHBORHOOD

GROUP

Organized 1973

*"To preserve our
neighborhood
and protect it from
deterioration."*

OFFICERS

August Harris
President

Gwen Jewiss
Past President

Michael Cannatti
Secretary

George Edwards
Treasurer

BOARD MEMBERS

Mary Arnold
Joyce Basciano
Joseph Bennett
Erik Cary
Haidar Khazen
Cathy Kyle
Susan Pascoe
Blake Tollett

September 16, 2011

Mr. Charlie McCabe
Executive Director
The Austin Parks Foundation
816 Congress, Suite 1680
Austin, TX 78701

Dear Charlie:

The West Austin Neighborhood Group has reviewed the West Point Society's plan for enhancing certain features of the pavilion at Covert Park on Mount Bonnell in conjunction with the replacement of the Covert stone marker. We understand these include a partial terracing of the garden and the addition of stone benches, stairs, handrails and xerophytic plants to the garden in accordance with the plans submitted to us for consideration.

We support this plan and are confident that these enhancements, under the hand and ongoing care and commitment of the West Point Society, will add greatly to the utility and esthetic value of the park for the benefit of its many visitors. We urge you to approve their grant request.

We also are grateful for the work of the West Point Society thus far and are pleased that through their committed effort, they have secured the buy-in of the Covert Family in the replacement of the marker sited at the heart of the pavilion.

As always, please do not hesitate to reach me at 512.320.8808 should you have any questions.

Sincerely,

August W. Harris III
President
West Austin Neighborhood Group



September 22, 2011

The Austin Parks Foundation
816 Congress, Suite 1680
Austin, TX 78701

Dear Sir/Madam:

The Highland Park West Balcones Area Neighborhood Association (HPWBANA) has reviewed the West Point Society's plan for enhancing certain features of the pavilion at Covert Park on Mount Bonnell in conjunction with the replacement of the Covert stone marker. We understand these include a partial terracing of the garden and the addition of stone benches, stairs, handrails and xerophytic plants to the garden.

We are excited about the improvements that the West Point Society has presented and our neighborhood association strongly supports this plan. Mount Bonnell is dear to our neighborhood and we are confident that these enhancements will add greatly to the utility and esthetic value of the park for the benefit of its many visitors. We appreciate the West Point Society's efforts to enhance Mount Bonnell and we urge you to approve their grant request.

Sincerely,

Andrea M. Torres
HPWBANA President
andreatorres11@yahoo.com



COMMUNITY INITIATED IMPROVEMENT PROJECT APPLICATION

Community Initiated Improvement Projects provide a process for partners to raise funds and in-kind contributions in order to design and build improvements projects at Austin Parks and Recreation (PAR) parks and facilities that are in alignment with PAR plans and strategic priorities.

Include as much detail as possible in your proposal so that it can be review accurately.

CONTACT INFORMATION

Contact Name:	Stan Bacon	Organization:	West Point Society of Central Texas
Address:			
City/State/Zip	Austin, TX		
Phone Number:		E-Mail:	sbacon58@sbcglobal.net
Website			

Location information

Park name: Mount Bonnell/Covert Park

Project summary

Provide a description of the proposed improvement. Please provide some information about size and materials. *The majority of the project centers around the replacement of the current dedication marker which is in disrepair. The monument would be replaced with a new one made of Texas native granite (color t.b.d. by site visit to quarries) for increased durability/longevity. It will measure approximately 54"high x 54"wide x 16"thick. The front face will be engraved with the same text and fonts as the existing marker. One side of the marker will also be a smooth face for engraving – the text for this location is t.b.d., but is planned to include historical data and the date of the rededication. The profile of the marker will mimic the cross section of the mountain and include annotations of factual information such as the name of the river below and the elevation at which it sits. The new marker will rest on a granite star and it's front face will be oriented along a straight line between the 360Bridge and Downtown Austin to mimic the orientation of the existing marker and emphasize the views to these two iconic city elements.*

Applicable Dates

Proposed Start Date: July 2011 Expected Completion Date: December 2011

Results and Benefits

Desired Outcome or End Results: *see above*

Description of Benefit to the Public: *Re-established views of the 360Bridge and Downtown Austin, factual information as a learning opportunity, creation of a plaza that could potentially be used for group meetings and functions, and additional seating.*

What would be the Benefit(s) to PAR: *Aesthetic, functional, and durability improvements to the park*

Project funding

What do you estimate the cost of the proposed project? *\$65,000*

How did you arrive at this figure? *Cost estimate of preliminary design concepts using Means catalog*

What is your proposed source of funding? *Private donor*

PAR Roles and Resources

SUBMITTED FOR REVIEW ON 1/24/2011



COMMUNITY INITIATED IMPROVEMENT PROJECT APPLICATION

Describe what, if anything, you are requesting for PARD's Participation/Contribution: *Review, feedback, and approval of the design concepts and approval/permitting to move forward with the project.*

Support

Is there community support for the project from the neighborhood association, local school principals, other park user groups, etc? Please list.

**There is no need to collect letters of support at this time, but we ask for documented support in the future.*

Send this form along with any drawings, plans, photos or supporting documents to:

Austin Parks & Recreation
200 South Lamar, Austin TX 78705
Attn: Development Administrator
Email: Brian.block@ci.austin.tx.us • **Fax:** 512.974.6729

SUBMITTED FOR REVIEW ON 1/24/2011



COMMUNITY INITIATED IMPROVEMENT PROJECT APPLICATION

Community Initiated Improvement Projects provide a process for partners to raise funds and in-kind contributions in order to design and build improvements projects at Austin Parks and Recreation (PAR) parks and facilities that are in alignment with PAR plans and strategic priorities.

Include as much detail as possible in your proposal so that it can be review accurately.

CONTACT INFORMATION

Contact Name:	Stan Bacon	Organization:	West Point Society of Central Texas
Address:	7627 Rockpoint Dr		
City/State/Zip	Austin, TX 78731		
Phone Number:	512-345-5964	E-Mail:	sbacon58@sbcglobal.net
Website	http://www.west-point.org/joseph_bonnell/mount_bonnell		

Location information

Park name: Mount Bonnell/Covert Park

Project summary

Provide a description of the proposed improvement. Please provide some information about size and materials.

The majority of the project centers around the replacement of the current dedication marker which is in disrepair. The monument would be replaced with a new one made of Texas native granite (color t.b.d. by site visit to quarries) for increased durability/longevity. It will measure approximately 54" high x 54" wide x 16" thick. The front face will be engraved with the same text and fonts as the existing marker. One side of the marker will also be a smooth face for engraving – the text is planned to include historical data and the date of the rededication. The profile of the marker will mimic the cross section of the mountain and include annotations of factual information such as the name of the river below and the elevation at which it sits. The new marker will rest on a granite star and it's front face will be oriented along a straight line between the 360Bridge and Downtown Austin to mimic the orientation of the existing marker and emphasize the views to these two iconic city elements.

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Proposed Start Date: July 2011 Expected Completion Date: December 2011

Results and Benefits

Desired Outcome or End Results: *see above*

Description of Benefit to the Public: *Re-established views of the 360Bridge and Downtown Austin, factual information as a learning opportunity, creation of a plaza that could potentially be used for group meetings and functions, and additional seating.*

What would be the Benefit(s) to PAR: *Aesthetic, functional, and durability improvements to the park*

Project funding

What do you estimate the cost of the proposed project? *\$65,000*

How did you arrive at this figure? *Cost estimate of preliminary design concepts using Means catalog*

What is your proposed source of funding? *Private donors, neighborhood associations, APF/ACL grant*

PAR Roles and Resources

Describe what, if anything, you are requesting for PAR's Participation/Contribution: *Review, feedback, and approval of the design concepts and approval/permitting to move forward with the project.*



COMMUNITY INITIATED IMPROVEMENT PROJECT APPLICATION

Support

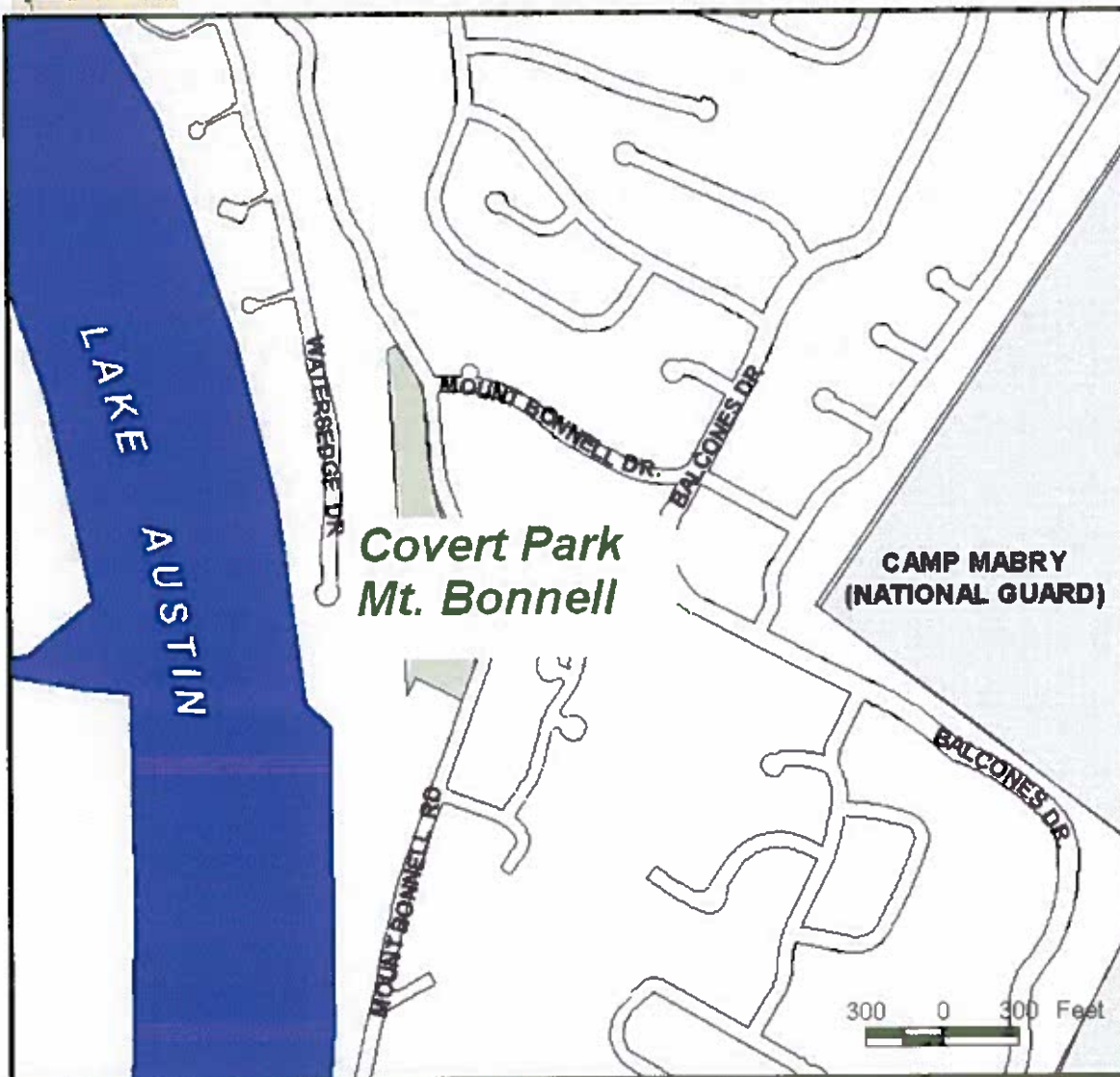
Is there community support for the project from the neighborhood association, local school principals, other park user groups, etc? Please list.

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Send this form along with any drawings, plans, photos or supporting documents to:

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Covert Park and Mount Bonnell



Community volunteers spruce up Mount Bonnell for holidays

By Alana Moehrling Mallard

Neighborhood and community volunteers headed to Mount Bonnell on Nov. 19 and helped West Point Society members clean up the park trails and parking area, including picking up litter and weeding gardens. And when walking along the trails to find trash wasn't enough, members of Austin Fire Department rappelled down the cliffs facing Lake Austin to get at litter.

Thirty volunteers from the Hispanic Business Students Association at UT came out to the historic landmark and much visited park, many of them for a second work party at Mount Bonnell.

"This is part of our service work for the community," said Jon Winton.

West Point Society members have adopted Mount Bonnell, organizing several work days to clear brush, trim trees and improve trails. The society has presented evidence to



Randy Elmore, Roger Davis, Tye Baker, Matt Avery and Scott Bartell of Austin Fire Department helped at Mount Bonnell on Austin's Rotary Day of Service, Nov. 19

Austin Parks and Recreation Department and to Texas Historical Commission that Mount Bonnell is properly named for Capt. Joseph Bonnell, a hero of the Texas Revolution who served under Sam Houston, rather than newspaperman George Bonnell who arrived in Texas after the

Battle of San Jacinto.

West Point Society member Stan Bacon hopes to restore a broken limestone marker at the top of Mount Bonnell with grants from the city and from the Covert family, who donated the area as a park.



Jon Winton, Israel Hernandez, Julian Hernandez, Roxanne Hernandez, and Jimmy Monreal volunteered at Mount Bonnell during Austin's Rotary Day of Service.

By Alana Moehring Mallard

Thanks to Fred Bothwell and Stan Bacon of the West Point Society, Austin's iconic Mount Bonnell will get a much needed sprucing up and a more accurate take on Austin's early history.

"We want to clear the shrubbery to restore a view of downtown Austin," said Bothwell, "which will also remove concealment areas where people can hide."

West Point Society has partnered with the City of Austin and nearby neighborhoods Highland Park West Balcones Area and West Austin to organize a work day on Nov. 20 to begin to replace the "fabulous views" of the city and river as Gen. George Custer and his family saw it when they lived in Austin in 1865.

West Point Society members want to restore more than the view at Mount Bon-

"We want to clear the shrubbery to restore a view of downtown Austin, which will also remove concealment areas where people can hide."

—FRED BOTHWELL

nell. Restoring its name is an important goal as well. Group members hope to persuade Texas Historical Commission to reconsider its 1969 marker to recognize the possibility that Mount Bonnell was named for Lt. Joseph Bonnell, a West Point graduate who was posted in Austin, rather than George Bonnell, a newspaperman who arrived in Texas after the war. Lt. Joseph Bonnell was Sam Houston's aide and a hero of the Texas Revolution.

Once the views are restored at Mount Bonnell,

Bacon and Bothwell hope to organize regular military band concerts at the park.

"This is our first foray into the community," said Bacon. West Point Society of Central Texas supports West Point graduates in the area with monthly lunches and speaker programs as well as recruiting candidates for attendance at West Point Military Academy. Bacon graduated from West Point in 1958, Bothwell in 1962.

West Point Society volunteers will staff a station in this weekend's Oyster Race.

If you are interested in helping with the Nov. 20 workday, contact Bacon at sbacon58@sbcglobal.net or 345-7999 or 345-5964. The group is also raising money to restore the marker at the top of Mount Bonnell, which was put in place when Frank Covert donated the land to Travis County in 1936.

"I've never seen this view before..."

West Austin News

www.westusnews.com

February 03, 2011

Downtown and river views restored at Mount Bonnell

By Alana Moehring Massey

Even on a Monday morning a steady stream of tourists and visitors came to the top of Mount Bonnell, and all of them stopped at the limestone overlook to see Lake Austin to the west and at a picnic table to admire the downtown skyline to the east.

"I've never seen this view before," said Highland Park West resident Nadene Morning. "I didn't know this was here." Morning walked with Sam Bacon and Fred Bothwell of West Point Society of Austin as they consulted with City of Austin and Central Texas conservation organizations to restore the views through

strategic pruning and brush removal this past Friday and Monday.

"And now we can see the 'Texas tower,'" said Bothwell. "That's a milestone, because we wanted to be able to see from downtown Austin to the 360 bridge."

Austin Tree Specialists crews, headed by Pat Wentworth, trimmed and cleared Friday and Monday with the supervision of Austin Parks and Recreation and Balcones Canyonlands Preserve. A couple of patches of protected bracted twilistat flower prevented clearing four or six feet east of the pavilion at the summit of Mount Bonnell.

With the fabulous views

restored, Bacon and Bothwell have more plans. "Kiosks are next," said Bacon. "We'll meet this week with PARD on specifics of what we can do." West Point Society of Austin also plans to replace the limestone marker at the pavilion.

West Point Society of Austin is working with Austin Parks Board to raise money to coordinate Mount Bonnell improvements. Don can be made online Parks Foundation.

Now go (not up) limestone steps and at this view of Austin's beautiful sight work. West Point Society of Austin.



Pat Wentworth, Sam Bacon, Nadene Morning and Fred Bothwell admired views of downtown Austin and Lake Austin after two days of pruning and clearing restored views from the top.

www.westusnews.com

October 4, 2010

WEST AUSTIN

West Point Society to restore views and history to Mount Bonnell



Fred Bothwell and Sam Bacon of West Point Society are leading an effort to restore views of Mount Bonnell and surrounding area.

By Alana Moehring Massey

Think up Fred Bothwell and Sam Bacon of the West Point Society, Austin's iconic Mount Bonnell will get a much needed pruning up and a more accurate take on Austin's early history.

"We want to clear the shrubbery in western view of downtown Austin," said Bothwell, "which will also remove concealment areas where people can hide."

West Point Society has partnered with the City of Austin and nearby neighborhoods Highland Park West, Balcones Area and West Austin to organize a work day on Nov. 20 to begin to replace the "fabulous ruins" of the city and river as Geo. George Custer and his family saw it when they lived in Austin in 1865.

West Point Society members want to restore more than the view at Mount Bonnell.

"We want to clear the shrubbery to restore a view of downtown Austin, which will also remove concealment areas where people can hide."

(CUTLINE)

Restoring its name is an important goal as well. Group members hope to purchase Texas Historical Commission to recognize the possibility that Mount Bonnell was named for Lt. Joseph Bonnell, a West Point graduate who was killed in Austin, rather than George Bonnell, a newspaperman who arrived in Texas after the war. Lt. Joseph Bonnell was Sam Houston's aide and a hero of the Texas Revolution.

Once the views are restored at Mount Bonnell,

Bacon and Bothwell hope to organize regular military band concerts in the park.

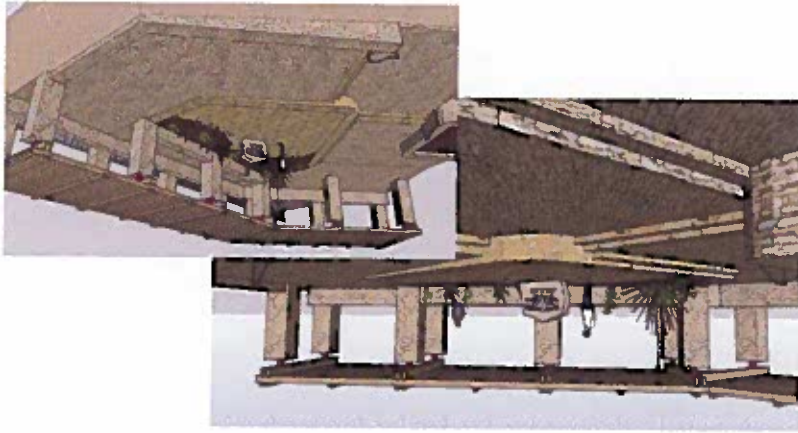
"This is our first foray into the community," said Bacon. West Point Society of Central Texas supports West Point graduates in the area with monthly luncheon and speaker programs as well as recruiting individuals for promotions at West Point Military Academy. Bacon graduated from West Point in 1958, Bothwell in 1962.

West Point Society volunteers will staff a station in this weekend's Oyster Run.

If you are interested in helping with the Nov. 20 workday, contact Bacon at 512-333-7777 or 512-333-7777, or 347-7777 or 347-5964. The group is also raising money to restore the market at the top of Mount Bonnell, which was put in place when Frank Coker donated the land to Lewis County in 1956.



GRANITE SAMPLES



APRIL 2013: Based on input from PARC, the Historic Landmark Commission, and other sources the proposed granite marker **WILL BE IDENTICAL** to the original, temporary limestone marker in size, shape, location, inscription, position, orientation, and coloration.

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak **FOR** or **AGAINST** the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing; and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 14 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: www.austintexas.gov/development.

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number(s): C14H-1990-0006 Error! Reference source not found.

Contact: Steve Sadowsky, 512-974-6454

Public Hearing: June 4, 2013, Zoning and Platting Commission

Your Name (please print)

ROBERT LITTLEFIELD BOULEVARD, JR

Your address(es) affected by this application

Robert Littlefield Jr. 5/27/13

Signature

Date

Comments:

CR

If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review

Steve Sadowsky

P. O. Box 1088

Austin, TX 78767-8810

Fax Number: (512) 974-9104

RECEIVE

MAY 31 2013

NPZD/CHPO

10



WEST AUSTIN NEIGHBORHOOD GROUP

Organized 1973

*"To preserve our
neighborhood
and protect it from
deterioration."*

OFFICERS

Catherine Kyle
President

August Harris
Past President

Michael Cannatti
Secretary

George Edwards
Treasurer

BOARD MEMBERS

Mary Arnold
Joyce Basciano
Joseph Bennett
Erik Cary
Gwen Jewiss
Haidar Khazan
Blake Tollett

March 14, 2013

Sara Hensley
Director
Parks & Recreation Department
City of Austin
200 South Lamar
Austin, Texas 78704

Colin Wallace,
Executive Director
Austin Parks Foundation
816 Congress, Suite 1680
Austin, Texas 78701

ca

Re: Covert Park (Mt. Bonnell) Improvement Grant Request

Dear Director Hensley and Mr. Wallace:

The West Austin Neighborhood Group applauds the West Point Society of Central Texas for the work it has done to improve and enhance the visitor experience at Mt. Bonnell, one of Austin's beloved recreational and historic landmarks. As an adjacent neighborhood association, our organization has supported them through two rounds of funding requests through the Austin Parks Foundation in this effort.

Disappointingly, future stewardship by the West Point Society of Central Texas of Mt. Bonnell appears to be in doubt. We hope that stakeholders will continue to work together and that an historically appropriate course of action regarding any future efforts is agreed to by all. If the West Point Society of Central Texas elects not to proceed, we urge PARD and the Austin Parks Foundation to work with interested parties to identify a new group to undertake stewardship of this oft neglected Austin treasure.

Sincerely,

Catherine Kyle

President
West Austin Neighborhood Group

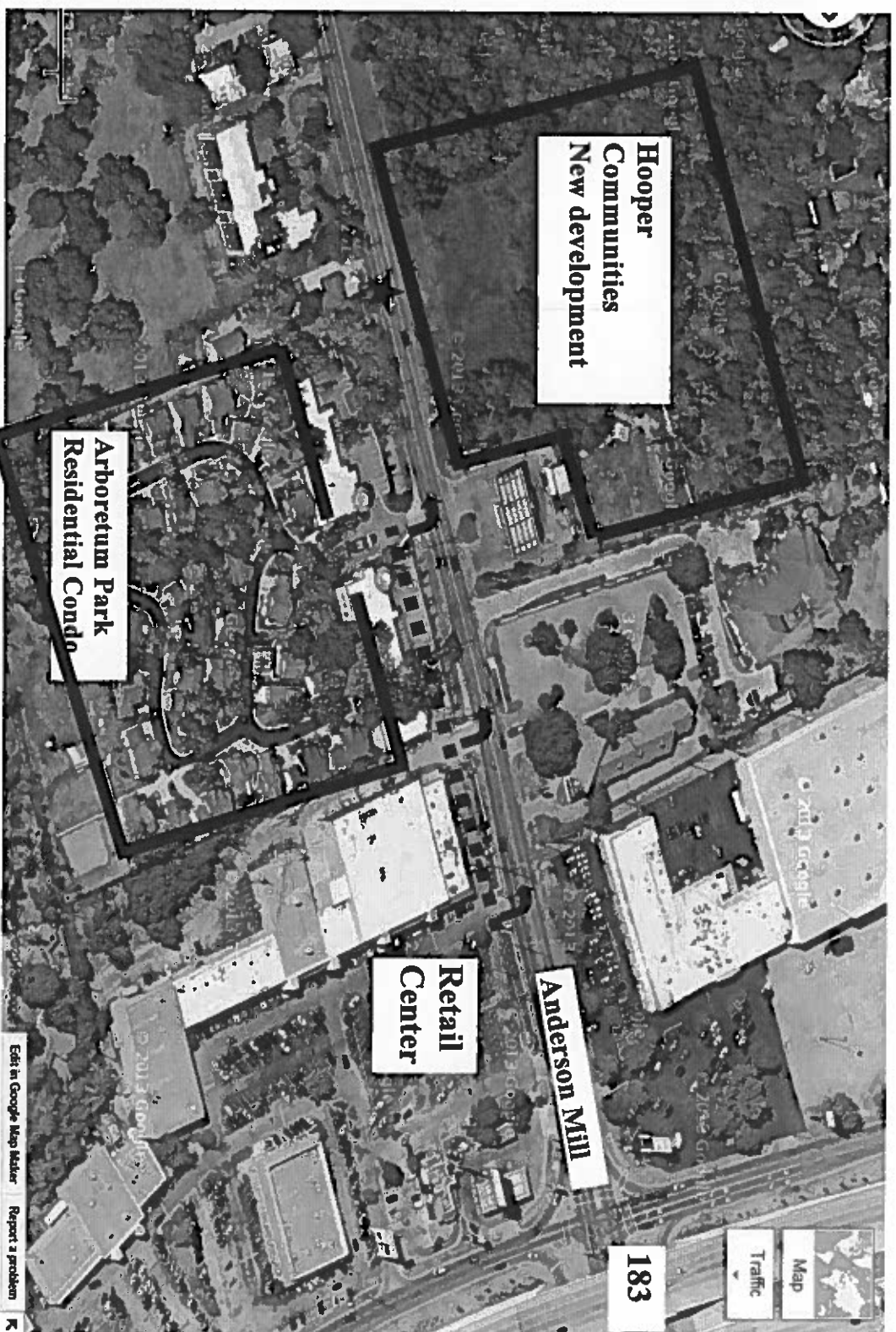
10

Arboretum Park HOA not included in neighboring properties and is across the street. Comments:

New development mixed use increases commuter traffic on Anderson Mill Road

No middle turn lanes on Anderson Mill Rd. During commute hours, cars backed up from 183 to star on map. In addition, shopping center traffic uses connecting parking lots as short cut to turn left (westbound) onto Anderson Mill.

Concern is placement of entrance to new development should not contribute to already accident ridden situation.



C-8

Rhoades, Wendy

From: Jim Wittliff [REDACTED]
Sent: Monday, June 03, 2013 3:43 PM
To: Rhoades, Wendy
Subject: C14-2013-0027 - Postponement Request

Wendy,

Due to my recent back surgery and the complications associated with my back surgery I am requesting a two week postponement of rezoning case #C14-2013-0027. I would like to meet and be able to get written support from the property owners that support this rezoning. However, at this time I'm unable to walk without assistance. Please let me know if you need any further information from me to get the postponement request approved.

Thank you,
Jim Wittliff

Land Answers, Inc.
3606 Winfield Cove
Austin, TX. 78704
Ph: 512-416-6611
Fax: 512-416-6610

~~_____~~

C9

"A replat, without vacating the prior plat, must not "attempt to amend or remove any covenants or restrictions." TEX. LOCAL GOV'T CODE § 212.014. "*1

However, if the plat is lacking what "the statutes and laws demand," that is a proper basis for denial. *Howeth Invs. Inc. v. City of Hedwig Village*, 259 S.W.3d 877, 895 (Tex. App.—Houston [1st Dist.] 2008, pet. denied). *1

"[T]here shall be no resubdivision of any lot ... without the advance written approval of the Owners of at least sixty-six and two-thirds percent (66-2/3%) of all lots in the Subdivisions, with the owners in the aggregate of each lot being entitled to but one vote." *2

The three legal arguments we have heard before ZAP by the City of Austin attorneys over the last several years are that 1) "the deed restrictions are not being amended they are being violated", 2) the City of Austin does not enforce deed restrictions, 3) the only restrictions 212.014 speak to are those printed on the plat.

1. The theory that a violation of deed restrictions is not an "attempt to amend or remove" some part or all of the deed restrictions flies in face of the law. There is the issue of "waiver" in all deed restrictions. Waiver means that lot owners in a subdivision have failed to oppose violations to the level that the deed restrictions have been amended by waiver. Clearly, a single violation is a portion of the number of violations necessary to amend the deed restrictions by waiver. Therefore, any violation is clearly an "attempt to amend" as defined by 212.014. Further, by creating new lot owners, the resubdivision is adding votes to any percentage requirements in the restrictive covenants, thereby amending them.
2. The City of Austin says it does not enforce deed restrictions. That is fine. We are not asking the City of Austin to enforce deed restrictions. But by failing to invoke 212.014, the City of Austin is actually amending deed restrictions. We argue that by not invoking 212.014, the City of Austin is enforcing new deed restrictions on the subdivision, while invoking 212.014; it is not enforcing deed restrictions. The City has not prevented the applicant from complying with the deed restrictions by invoking 212.014.
 - a. Resubdivision without vacation is a task granted to cities and counties by the State of Texas. However, the subdivision is a private contract as to size, shape, location, number of lots, and restrictions between the developer and the purchaser of lots based on City or County requirements. All buyers of lots sign onto the restrictive covenants.
 - b. When the City of Austin takes upon itself to resubdivide in violation of the deed restrictions, it is imposing itself on a private contract. Are we prepared to state that the City of Austin now has the power and authority to dismantle legal, private contracts whose basis in land it had approved? Can the City of Austin under 212.005 take the position that because a replat that meets all the requirements under law except a provision it doesn't like it can approve the replat and thereby amend platted property restrictions, private contracts, and intervene to eliminate or add lots? It is

our argument that doing so actually puts the City in a position of adding new deed restrictions to the property.

- c. This means that the City of Austin can take a subdivision that:
 - i. Has restrictions saying that it takes more than 50% of the lots owners to amend the restrictions and more than 50% of the owners to approve a replat,
 - ii. Has a total of 10 lots, 9 lots having 6,000 sq ft and 1 lot having 66,000 sq ft, divide the large lot into 11 lots, thereby allowing the new owner to vote out the old deed restrictions and put in any new restrictions he/she desires. Keep in mind the owner of the big lot now owns 11 lots and can amend the deed restrictions at will.
- d. However, the deed restrictions above state that a replat must have over 50% of the lot owners' approval. Are we saying that the City has the right to approve a resub to the extent that it allows the new owner to completely amend the old deed restrictions and implement new restrictions at the whim of the new owner? That is what the City of Austin is arguing here.
- e. The City is certainly not enforcing existing deed restrictions, it is enforcing new restrictions on existing owners in a blatant taking of the rights and privileges associated with the plat and filed with the County Clerk's Office.

- 3. The City has argued that restrictions relate only to restrictions on the plat.
 - a. Property Code §201.003 includes the following definition:
"Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records

I urge you to vote no on this replat as it violates Local Government Code Chapter 212.014 and City Ordinance 30-2-40 and to instruct City staff not to approve any future replats that attempt to amend, alter or remove existing deed restrictions.

*1 Land Use Conference Austin TX March 21, 2012
Messer, Campbell, Brady LLP Attorneys at Law
Wm. Andrew Messer and Jennifer W. DeCurtis
Frisco, TX 972 424-7200

*2 Paragraph M, Page 3, of Amended Restrictive Covenants of Shoalmont Addition, Resubdivision of Shoalmont Addition, and Shoalmont Addition Section #2, filed at Book 7684, Page 1 of the Real Property in Travis County

Rhoades, Wendy

From: Gibbs, Carol
Sent: Friday, May 31, 2013 4:39 PM
To: Baker, Betty - BC; Rojas, Gabriel - BC; Banks, Cynthia - BC; Meeker, Jason - BC; Seeger, Patricia - BC; Compton, Sean - BC; McDaniel, Rahm - BC
Cc: Allan McMurtry (amccompany@austin.rr.com); Zavala, Cesar; Rivera, Andrew; Rhoades, Wendy
Subject: FW: 5409 Shoalwood Resub
Attachments: Opposition to resub Brief Shoalwood Addn Resub.pdf; May 24 email to ZAP.doc; Land Use Conference Austin Tx March 2012-Replats and Neighborhood Plans.doc; Legislative History on Replatting-7-2009-rewrite 5-2013.doc

Dear ZAP Commissioners,

Allan McMurtry has asked me to FWD this email and its attachments to all of you, because his earlier attempt to send it apparently "bounced" a couple of them back to him as undeliverable.

I have CC'd him here, as well as the support staff who may be at your meeting on Tuesday, per his permission.

Sincerely,

Carol Gibbs

Carol Gibbs, Neighborhood Advisor
 City of Austin Planning & Development Review Dept.
 505 Barton Springs Rd., 5th floor
 512-974-7219

Please click here to complete an anonymous Satisfaction Survey about the Neighborhood Assistance Center

Please note: E-mail correspondence to and from the City of Austin is subject to requests for required disclosure under the Public Information Act

From: AMC Co [mailto:AMCCompany@austin.rr.com]
Sent: Friday, May 31, 2013 4:29 PM
To: Gibbs, Carol
Subject: FW: 5409 Shoalwood Resub

Dear Commissioners

I'm not sure my first email went through or not.

5409 Shoalwood:

There are several major issues here:

- 1) Will the City recognize the rights of adjacent property owners given them by 212.014 and reaffirmed in 212.015. The legislation is clear. I have sent the history of the legislation to prove why we have it. In the City of Blythe the court ruled the applicant could not resub. In our case before Judge Livingston she ruled for a TRO (which basically lets everybody know she believes that we would have a high probability of winning the suit.) We got a permanent injunction from Judge Rose on the deed restrictions validity. The land use seminar held right here in Austin had a paper on this very law stating that the resub COULD NOT be done in violation of 212.014. I will send you another legal brief today from a local attorney whose firm does work for the City stating the same thing (See attached).

- 2) Is the City staff going to say no variance exists because the applicant paid a fee "in lieu of"? Seriously, this is a breach of 212.015 where the right of valid petition is connected to a variance. The City simply **DOES NOT HAVE THIS RIGHT**. It cannot declare there is no variance because the applicant paid a fee. On top of that, the variance here is on flood control, in the Shoal Creek drainage area! The neighborhood put their tennis courts, park, and ball field up as flood control ponds, yet a developer can opt out of flood projects? The City Staff clearly checked Variance on the forms.
- 3) The Chairperson for ZAP has to sign a document filed with the Count Clerk's office. That document, or the last one I personally saw, stated that the signee affirms that no laws for the State of Texas were violated in this procedure. That's a serious commitment to make in face of the issue of 212.014
- 4) The attorney for the brief that I have attached on Woodview eventually convinced his clients to drop the resubdivision request. His concern was that the resubdivision clouded the title if 212.014 was ignored by the City. He told them that if they got that resub, they were guaranteeing title for them, their heirs, and their consigns in perpetuity. The lawyer was Jim Arnold. I share his concerns.
- 5) Finally, the ultimate issue here is whether the County Clerk can file the resub even if the City approves it. The county won't allow a resub that violates deed restrictions. It is our contention that the County Clerk should not accept a resub that violates 212.014 for filing, regardless of whether Austin approved it.

The City attorney is likely saying the City doesn't enforce deed restrictions. I buy that. I accept that. I don't want the City enforcing trailers, cars in the yard, paint color, tree selection, and a thousand other items.

BUT, I do expect the City of Austin to enforce 212.014. Don't enforce deed restrictions-fine; enforce 212.014. I see that as two separate issues. The City ADOPTED 212.014 into its codes in 2005, but it DID NOT adopt 212.005 (The municipal authority responsible for approving plats must approve a plat or replat that is required to be prepared under this subchapter and that satisfies all applicable regulations.), which is the one that specifies that if an applicant has complied with all applicable laws, he/she must be given the resub. So, tell me why they would adopt 212.014, and not enforce it, then enforce a state law they didn't adopt? Well, State law is controlling. By adopting 212.014, it tells me that the City explicitly wanted to prove it was enforcing them.

Heck, the County requires that there be a posting on the property when a resub occurs. The City does not. The county will not resubdivide in violation of deed restrictions. The City will. Why is the County so far ahead of the City? Why does the County think it has to apply all of 212.014? Is it because the County has no attorneys. No, it's not that.

I think there is a solution. The law is there-I've sent it to ZAP. The legal briefs are there—I sent them to ZAP as well. The court decisions are there—I sent Hedwig, I sent Blythe, and I sent Judge Judy Livingston. So, except for 1 or 2 City attorneys, everybody else in the Free World thinks 212.014 is clear, and should be enforced.

Solution:

- 1) Require an applicant for a resub without vacation to get a 1 page letter from an attorney licensed to practice law in the State of Texas certifying that there are no deed restrictions that would violate the intent of 212.014. If an attorney says there aren't, then the deed would be on the opposition to provide such a document. To insure that people are notified adequately, require that notice of a resub must be posted on the property site just like the County does.
- 2) Require that staff list ALL VARIANCES that have been or will be approved for the resubdivided lots without exception, whether in lieu of payments or any other administrative cure for a variation. That will make sure that we don't have ex post facto variances given out, robbing citizen property owners of their rights. This happened on a case on Pembroke trail in far south Allandale in 2010. The staff finally admitted an environmental variance had been granted but had not been listed on the application sheet. The applicant was denied by ZAP.

I am aware of two subdivisions with deed restrictions against resubdivision without a % of current lot owners approving: Judges Hill at 19th and Lamar and Shoalmont Addn Resub in Allandale.

Multiple applicants in Allandale have lost a lot of money resubdividing, only to find out the City failed to tell them about 212.014 and failed to enforce it. Applications costs now run over \$10,000 for a standard resub. Lawsuits now cost \$50,000 to take to District Court. The City is abusing lot owners and applicants alike. It is an equal opportunity hosing. And as a commissioner, I think you need to ask why. Both Judges Hill and Shoalmont have been fought over before ZAP. Heck, it was the City that handed Mr. Canada a copy of the deed restrictions, I guess. Because I didn't. If these things are on file, the City has a moral obligation and a legal one to tell applicants.

Let's put this to bed. The City has other issues to fight besides creating massive legal expenses for the people who pay the bills. The City has enough money to take me to the State Supreme Court on this issue. Even if they lose at each level. Where is the equity in that?

ZAP's authority is delegated to it by the City Council of Austin. It is acting on behalf of the City Council. The only appealable ZAP action to the City Council is an environmental variance. ZAP is a heavy hitter. It has the power to solve this. I think they need to step in. Too much money is being lost by people who don't deserve this kind of treatment. It isn't right.

Finally, the staff's argument before ZAP in a case on Pembroke trail back in 2010, I believe, was that the resubdivision "...violates deed restrictions, it doesn't amend or terminate them." This is an illogical construct of the words and spirit of 212.014 and the City of Austin Codes.

If any of you would like, give me a call. I won't rehash this, I just need to know what I have to do to get ZAP to force the City of enforce 212.013-212.016.

Thanks,

Allan McMurtry
Cell 512 670-6166
Office 512 452-9765

PS—I have attached a brief against the resubdivision of a lot in Shoalmont Addn Resub. This resub is one block west and one block south of the current resubdivision request. The brief was filed by a law firm that the City of Austin uses. The waiver argument is against the "waiver theory" that the deed restrictions had been waived. Judge Rose issued a permanent injunction finding that the deed restrictions in Shoalmont Addn Resub were valid, the only issue before his court. The arguments regarding 212.014 mirror my own position and take the argument further. It is directly on point to the case we are hearing. Ultimately, the applicants withdrew their resubdivision request based in part on this brief and based in part on the concerns their attorney had regarding clear title.

Case No. C8-2008-0224.0A

In re: Resubdivision of	§	Before The
	§	
Shoalmont Addition	§	Zoning and Platting Commission
	§	
Lots 19-20, Block 5	§	Of the City of Austin, Texas

SECOND BRIEF IN OPPOSITION TO APPLICATION FOR RESUBDIVISION

To The Honorable Members of the Zoning and Platting Commission:

Now Comes Judy Forgason, Allan McMurtry and Nancy McMurtry and file this Second Brief in Opposition to Application For Resubdivision and would respectfully show as follows:

INTRODUCTION

1. Applicant is the estate executor acting for the estate of Frankie Bentrup (also known as Mrs. Gustave Bentrup), the record owner of the property in question. Judy Forgason is the owner and resident of 5514 Woodview Ave., Lot 12, Block C, Shoalmont Addition Section 4, which is directly across Woodview Ave. from the proposed resubdivision of Lots 19 & 20 of Block 5 of the Shoalmont Addition (the "Resubdivision"). Allan and Nancy McMurtry are the owners of 2605 Northland, Lot 18 Block D Shoalmont Addition Section 4.

2. The Applicant seeks approval of a replat (without vacating the preceding plat) to resubdivide two lots into four lots. The two lots are subject to the following restrictive covenant (the "Restrictive Covenant"):

"[T]here shall be no resubdivision of any lot ... without the advance written approval of the Owners of at least sixty-six and two-thirds percent (66-2/3%) of all lots in the Subdivisions, with the owners in the aggregate of each lot being entitled to but one vote."¹

¹ Paragraph M, Page 3, of Amended Restrictive Covenants of Shoalmont Addition, Resubdivision of Shoalmont Addition, and Shoalmont Addition Section #2, filed at Book 7684, Page 1 of the Real Property

3. The previous brief in opposition demonstrated that the application must be denied for the following reasons:

- a. State Law and City Code prohibit the grant of a replat in violation of a restrictive covenant.
- b. The Applicant is bound by Frankie Bentrup's express agreement to the Restrictive Covenant.
- c. Even if waiver were properly a subject of consideration, Applicant cannot meet his burden to establish waiver.

4. Following the submission of the prior brief in opposition, the City Attorney's office has raised questions with regard to whether Local Government Code §212.014 applies to a private restrictive covenant. The City Attorney's office suggests that §212.014 has in the past only been applied to property restrictions imposed on plats by the City of Austin. This interpretation of the law does not meet the clear statutory meaning. Accordingly, this brief will confine itself to addressing the meaning and application of §212.014 the clear statutory requirement of its application to all restrictive covenants.

LOC. GOV'T. CODE §212.014 APPLIES TO PRIVATE RESTRICTIONS

5. Local Government Code Chapter 212.014 provides:

§ 212.014. Replatting Without Vacating Preceding Plat

A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

- (1) is signed and acknowledged by only the owners of the property being replatted;

Records of Travis County, Texas ("Amended Restrictive Covenants"). A true and correct copy of the Amended Restrictive Covenants is attached hereto as Exhibit A. The approximately 200 pages of signatures have not been included to prevent unnecessary waste.

(2) is approved, after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard, by the municipal authority responsible for approving plats; and
(3) does not attempt to amend or remove any covenants or restrictions. (emphasis added).

6. Local Government Code Chapter 212 does not contain a definition of the terms “covenants” or “restrictions” however a definition found in the Texas Property Code demonstrates that the Restrictive Covenant in this case falls clearly within the legal definition of “Restriction.” Property Code §201.003 includes the following definition:

“Restrictions” means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records.

7. There is no question that the Restrictive Covenant in this case fits within this definition. It is a restrictive covenant applicable to the Shoalmont subdivision that is contained in an instrument filed in the Travis County real property records at Book 7684, Page 1. Accordingly, the Restrictive Covenant in this case fits within the generally understood legal definition of a “Restriction” as illustrated by the statutory definition set forth in Property Code §201.003. Local Government Code §212.014 does not contain any provision suggesting that the term “restrictions” set forth therein has any narrower meaning than the ordinary definition. Accordingly, the Restrictive Covenant in this case should be included in the “covenants or restrictions” to which §212.014 applies.

REPLATS IN VIOLATION OF RESTRICTIONS VIOLATE §212.014

8. There are no cases interpreting this provision of Local Government Code §212.014, however caselaw from the prior statute illustrates that the purpose of this statute is to prevent replatting in violation of applicable restrictive covenants. The prior statute was Vernon’s Ann. Civ. St. art. 974a §5, which included the language prohibiting

a replat that attempted to amend or remove any covenant or restriction. This language was the subject of *Blythe v. City of Graham*, 287 S.W.2d 527 (Tex. App. – Ft. Worth 1956, writ refused n.r.e.).

9. In *Blythe*, the property owner was actually the City of Graham rather than a private party. However, the Court held that the actions of the City in seeking to plat and then replat the subject property were the same as if it had been a private party. “Under these circumstances, we believe rules of law applicable to individuals and private corporations would be those proper to be applied, and that the City of Graham and those holding under it should have no greater dignity as regards the controversy presented than would any other person who subdivides property and imposes restrictions thereon.” *Id.* at 530. The City had filed a plat, sold some of the platted lots, and then filed a replat to make some of the lots smaller in direct violation of the restrictive covenant that had been part of the original plat. The Court held that the attempted replat did not comply with Vernon’s Ann. Civ. St. art. 974a §5 because it violated the restrictive covenant setting the lot size.

10. *Blythe* makes it clear that a replat which violates the restrictive covenants of a prior plat may not be approved because it seeks to amend or remove a covenant or restriction. In the present case, the Applicant is seeking approval of a replat that violates the provisions of the Restrictive Covenant and thereby seeks to amend or remove a covenant or restriction. Such a replat was not permissible under art. 974a and is not permitted under §212.014.

MUNICIPAL CODE REQUIRES REPLATS TO COMPLY WITH §212.014

11. City of Austin Municipal Code prohibits the approval of a plat that does not comply with §212.014:

§ 30-2-40 VACATING PLAT; REPLATTING WITHOUT VACATING PLAT; AMENDING PLAT.

(A) The city and the county shall review and approve, disapprove, or deny a plat vacation, replat, or amending plat in accordance with the standards and procedures in Local Government Code Section 212.013 (*Vacating Plat*), Section 212.014 (*Replatting Without Vacating Plat*), Section 212.015 (*Additional Requirements For Certain Replats*), and Section 212.016 (*Amending Plat*).²

This provision expressly requires that the city shall disapprove or deny a replat in accordance with Section 212.014. As set forth above, the Applicant's request for a resubdivision seeks a replat that does not comply with §212.014. Accordingly, Municipal Code requires the replat to be denied.

THE BURDEN IS ON THE PARTY SEEKING TO REPLAT

12. The foregoing does not mean that the Applicant cannot resubdivide the subject property, it merely requires the Applicant to comply with the Restrictive Covenant before seeking approval from the Zoning and Platting Commission. The Applicant seeks to profit from the resubdivision to the detriment of the adjoining landowners, whose property values will be negatively affected by the resubdivision into smaller lots. Accordingly, the law appropriately places the burden of compliance and good faith negotiation on the party seeking to profit from the application.

13. The interpretation of §212.014 by the City Attorney not only defies the plain language of the statute, but it also places the burden on residential property owners to spend their money on legal fees in an effort to preserve their neighborhoods against the

² §30-2-40 of the Municipal Code is attached as Exhibit B.

destructive efforts of developers. The proper interpretation of §212.014 is to place the burden of obtaining compliance with restrictive covenants on the party with the profit incentive. Accordingly, the Commission should deny the application and require the Applicant to comply with the Restrictive Covenant before seeking approval of the resubdivision.

Respectfully Submitted,

RICHARDS, RODRIGUEZ & SKEITH LLP
816 Congress Avenue, Suite 1200
Austin, Texas 78701
Tel (512) 476-0005
Fax (512) 476-1513

A handwritten signature in black ink, appearing to read 'C.R.', is positioned above a horizontal line.

Clark Richards
State Bar No. 90001613
**ATTORNEYS FOR JUDY FORGASON AND
ALLAN AND NANCY MCMURTRY**

AMENDED RESTRICTIVE COVENANTS

STATE OF TEXAS
COUNTY OF TRAVIS

Feb 17 88 RICH P. 1685 - 821.00
RICH P. 1983 81.75
KNOW ALL MEN BY THESE PRESENTS:

2-79-1439

RECITALS

The Individual owners ("Owners") executing this document own the lots identified on the Affidavit of Consent to Amended Restrictive Covenants and Acknowledgment annexed hereto and made a part hereof. All of such lots are located within the area (hereinafter, the "Subdivisions") described as follows:

Shoalmont Addition, a subdivision of a part of the George W. Spear League No. 7 and a part of the James P. Davis Survey No. 14, according to the map or plat thereof of record in Plat Book 3, Page 230, of the Plat Records of Travis County, Texas (hereinafter, "Shoalmont Addition"); the Resubdivision of Shoalmont Addition according to the map or plat thereof of record in Plat Book 4, Page 9, of the Plat Records of Travis County, Texas (hereinafter, the "Resubdivision of Shoalmont Addition"); and Shoalmont Addition Section #2, according to the map or plat thereof of record in Book 4, Page 50, of the Plat Records of Travis County, Texas (hereinafter, "Shoalmont Addition Section #2"). Some of the lots owned by Owners are located in subdivisions which are in fact resubdivisions of portions of said Shoalmont Addition, the Resubdivision of Shoalmont Addition, and Shoalmont Addition Section #2.

By instrument dated the 26th day of March, 1946, executed by Adolph Kuhn, et al., of record in Volume 643, Page 243, of the Deed Records of Travis County, Texas, certain restrictions (hereinafter, the "Restrictions") were placed upon the following described property, to-wit:

"All the property comprising the 'Resubdivision of Shoalmont Addition', in Travis County, Texas, as the same is set out in plat recorded in Plat Book #4, Page 19, of the plat records of Travis County, Texas; together with all of the property shown and designated as 'Shoalmont Addition Section #2', on plat recorded in Plat Book #4, Page 130, of the Plat Records of Travis County, Texas."

DEED RECORDS
Travis County, Texas

7684

1

The Restrictions further provided as follows:

"All of said above described property shall be subject to the following restrictions and/or covenants, insofar as hereinafter provided."

2-79-1440

"(A) All lots in the tract shall be known and described as residential lots, except Lots No. 1 One (1), Two (2), Three (3), Four (4), Five (5), Six (6), and Seven (7), in Block One (1), of the Re-Subdivision of Shoalmont Addition, and Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), and Seven (7), in Block No. Two (2), of the Re-Subdivision of Shoalmont Addition. . . ."

The Restrictions contain the following covenant:

"(I) These covenants are to run with the land and shall be binding on all of the parties and all persons claiming under them until January 1, 1965, at which time said covenants shall be automatically extended for successive periods of ten years unless by vote of a majority of the then owners it is agreed to change the said covenants in whole or in part."

The Owners signing this document (which may be signed in more than one counterpart) comprise more than fifty percent (50%) of the present owners of lots in the Subdivisions and desire to amend the Restrictions pursuant to the above quoted provision permitting amendment thereof by majority of the Owners.

Accordingly, it is agreed by the undersigned as follows:

The Restrictions of record in Volume 643, Page 243, of the Deed Records of Travis County, Texas, are amended as follows:

Paragraph "(I)" of the Restrictions is hereby amended to read as follows:

"(I) These covenants, conditions and restrictions shall run with the land and shall be binding upon and inure to the benefit of all persons who now or hereafter own property in the Shoalmont Addition, a subdivision of a part of the George W. Spear League No. 7 and a part of the James P. Davis Survey No. 14, according to the map or plat thereof of record in Plat Book 3, Page 230, of the Plat Records of Travis County, Texas; the Re-subdivision of Shoalmont Addition according to the map or plat thereof of record in Plat Book 4, Page 9, of the Plat Records of Travis County, Texas; and Shoalmont Addition Section #2, according to the map or plat thereof of record in Book 4, Page 50, of the Plat Records of Travis County, Texas, and any resubdivisions of portions of said

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2-79-1441

Shoalmont Addition, Resubdivision of Shoalmont Addition and Shoalmont Addition Section 42, for a period of twenty-five (25) years from January 1, 1981, and thereafter shall be automatically renewed for successive periods of ten (10) years unless amended or revoked by a recordable instrument executed by the owners of at least sixty-six and two-thirds percent (66-2/3%) of the lots in said subdivisions, (hereinafter, the "Subdivisions"), with the owners, in the aggregate, of each lot being entitled to but one vote."

The Restrictions are further amended to include the following paragraphs:

- "(M) Except as set forth in Paragraph "(O) (1)" below, there shall be no resubdivision of any lot shown on the plat entitled 'Resubdivision of Shoalmont Addition' of record in Plat Book 4, Page 9, of the Plat Records of Travis County, Texas, or the plat entitled 'Shoalmont Addition Section 42', of record in Plat Book 4, Page 30, of the Plat Records of Travis County, Texas, without the advance written approval of the owners of at least sixty-six and two-thirds percent (66-2/3%) of all lots in the Subdivisions, with the owners in the aggregate of each lot being entitled to but one vote.
- "(N) In the event that legal action is required to be taken by any person now or hereafter owning an interest in any land within the Subdivisions to enforce these Restrictions, and such action is successful, the attorney's fees and costs of the prevailing party shall be paid by the violator.
- "(O) The following covenants shall apply to Lots 10 and 11 in Block 12, Shoalmont Addition, as shown by the plat of Shoalmont Addition recorded in Plat Book 3, Page 230, of the Plat Records of Travis County, Texas, and the plat of the Resubdivision of Shoalmont Addition recorded in Plat Book 4, Page 9, of the Plat Records of Travis County, Texas:
 - (i) Notwithstanding any other provision of these Restrictions, such Lots 10 and 11 may be resubdivided into one lot, without further approval of the owners of any of the lots in the Subdivisions herein described, provided that all Restrictions as amended herein shall continue to apply to any resubdivided lot consisting of Lots 10 and 11 or any portion thereof.
 - (ii) Notwithstanding any other provision of these Restrictions, provided that the owner(s) have complied with the ordinances of the City of Austin regarding construction across lot lines, there may be constructed and erected on such Lots 10 and 11 a condominium project complying with the applicable laws of the State of Texas pertaining to condominiums (the "Condominium Project"). The Condominium Project shall contain

7684

3

a total of not more than 21,000 square feet of enclosed indoor space, shall contain no more than 20 units and shall not be more than 33 feet in height, nor more than two stories in height including the basement, if any. The exterior of the Condominium Project (excluding the roof) shall be constructed with a minimum of sixty-five percent (65%) masonry finish. For purposes of this subparagraph, the term "enclosed indoor space" shall mean the total area on all levels within the outermost perimeter of the walls of any structure comprising the Condominium Project.

- (iii) No balconies shall be constructed, placed or permitted to remain on the west side of any building constituting a part of the Condominium Project.
- (iv) All exterior lighting installed on Lots 10 and 11 shall be hooded, diffused, or otherwise designed and arranged to prevent the physical light source (e.g., the bulb) from being visible from adjacent properties and public streets.
- (v) Along the West line of Lot 11 and the South line of Lots 10 and 11 as same presently exist, there shall be erected and at all times maintained in good condition, a solid wood fence, six feet (6') in height, presenting a continuous and unbroken screen of privacy between said Lots 10 and 11 and adjacent lots. The fence will be so constructed as to present the relatively smooth exterior surface to the adjoining property, and any vertical or horizontal braces or posts will be on the inside of the fence facing the Condominium Project.
- (vi) That portion of Lots 10 and 11 lying to the north of the front (north) exterior of the Condominium Project outlined as Section One on the Plot Plan attached hereto as Exhibit "A" not needed for sidewalks, or not needed for drainage improvements required by the City of Austin shall be retained as open space and landscaped by planting grass, shrubs, trees or other form of vegetative cover, and so maintained so long as these restrictions are in force.
- (vii) The right to build such Condominium Project on such Lots 10 and 11 shall expire if substantial construction is not commenced within five (5) years from the date these amendments are recorded.
- (viii) The Owners hereby approve the plot plan of such Condominium Project attached hereto as Exhibit "A" and made a part hereof, and agree that a Condominium Project built in accordance with such plot plan and the other requirements hereof shall comply with these restrictions.
- (ix) There is hereby appointed a three (3) member Architectural Control Committee consisting of the following persons: Charles Watkins, Douglas Tabony and Olivia Adams. In the event any member of such Architectural Control Committee shall die, resign, or be unwilling or unable to serve for any reason, the remaining

2-79-1443

member or members shall appoint a successor or successors. The Architectural Control Committee, acting by and through a majority of its members, shall have the responsibility and authority to (a) certify to any lender, purchaser or third party that the plans and specifications for the Condominium Project comply with the terms hereof, or identify the respects in which they fail to comply, (b) certify that the Condominium Project, as constructed, complies with the provisions hereof, or identify the respects in which it fails to comply, (c) approve changes in the plot plan attached hereto as Exhibit "A" provided such changes do not violate any other provision hereof, (d) approve plans, specifications and actual construction of any remodeling or modifications to the Condominium Project which do not violate the provisions hereof, and (e) interpret any inconsistent or ambiguous provisions hereof. The Architectural Control Committee shall upon reasonable request by the Owners of said Lots 10 and 11 provide such certifications, approvals and interpretations (if the Owners of such lots are entitled to same) within a reasonable time after written request therefor. Any lender, purchaser or third party shall be entitled to rely upon such certification, approval or interpretation without further investigation and any such certification, approval or interpretation shall be binding on the owners of all lots in the subdivisions. In the event such Architectural Control Committee shall not give any certification, approval or interpretation to which the Owners of said Lots 10 and 11 shall be entitled hereunder or otherwise respond to a request for certification, approval or interpretation as provided hereinabove, within twenty (20) days after receiving written request therefor, then it shall be conclusively presumed that such approval, certification or interpretation was granted and an affidavit to such effect filed by the Owners of Lots 10 and 11, or their duly authorized representatives, filed in the Public Records of Travis County, Texas, shall conclusively establish such approval, certification or interpretation as to any lender or third party relying upon such affidavit.

- (x) In the event all of the members of the Architectural Control Committee shall die, resign or be unwilling or unable to serve for any reason without having appointed successors, then, and only in that event, the Owners of said Lots 10 and 11 (who may act by and through any association of condominium owners formed in accordance with the rules or bylaws of the Condominium Project) shall have the responsibility and authority to select a nominating committee composed of three (3) owners of residential lots within the subdivisions, one of whom shall be an owner of a lot in Block 12, one of whom shall be an owner of a lot in Block 14, and one of whom shall be an owner of a lot in Block 5, as such blocks are shown on the plat of the Resubdivision of Shoemaker Addition of record in Book 4, Page 9, of the Plat Records of Travis County, Texas. The Nominating

Committee shall, within forty (40) days thereafter, appoint three (3) willing individuals to serve as the Architectural Control Committee, which Committee shall have all of the rights, duties, and authority conferred upon such Committee hereunder. The members of the Architectural Control Committee shall not include among their number any member of the Nominating Committee, and shall be composed solely of owners of lots within the subdivisions. The failure of the Nominating Committee to appoint three (3) willing individuals to serve within such 40 day period shall entitle the Owner or Owners of Lots 10 and 11 to appoint such three members.

- (xi) The Architectural Control Committee shall not unreasonably withhold any approval, certification or interpretation which it is authorized to grant hereunder, and the owners of said Lots 10 and 11 shall have the right to enforce this provision by any available legal or equitable remedy. In the event litigation is necessary to enforce or defend any provisions of subparagraph (viii) through (x), the prevailing party shall be entitled to recover reasonable attorney's fees. However, no member of the Architectural Control Committee shall be personally liable for a money judgment for any action or refusal to act if undertaken in good faith. A member shall not be deemed to be acting in good faith if such member fails or refuses to timely consider all relevant material and documents submitted to such member in connection with any request, provided that each such member shall be afforded sufficient time to consider the materials and documents so submitted. No legal action shall be commenced pursuant to this subparagraph without giving to each member of the Architectural Control Committee ten (10) days prior written notice of the intention to institute such action, together with a copy of this subparagraph and specifying the grounds which will constitute the basis of the claim.
- "(P) The Owner of any lot in the subdivisions may enforce the provisions hereof by any available legal or equitable remedy, including, but not limited to, an injunction, declaratory judgment or action for damages. Nothing herein contained shall be deemed or construed to place any lien, mortgage or similar encumbrance on said Lots 10 and 11, provided, however, that this provision shall not impair the attachment of any judgment lien which is otherwise valid. Any lien of judgment herein-after imposed upon said Lots 10 and 11 shall be subordinate and inferior to any valid lien or mortgage which has been lawfully placed against said lots and duly recorded at the time that such judgment lien is abstracted.
- "(Q) The invalidity of any provision of these Restrictions as amended shall not affect the validity of the remaining provisions hereof."

**§ 30-2-40 VACATING PLAT; REPLATTING WITHOUT VACATING PLAT;
AMENDING PLAT.**

(A) The city and the county shall review and approve, disapprove, or deny a plat vacation, replat, or amending plat in accordance with the standards and procedures in Local Government Code Section 212.013 (*Vacating Plat*), Section 212.014 (*Replattng Without Vacating Plat*), Section 212.015 (*Additional Requirements For Certain Replats*), and Section 212.016 (*Amending Plat*).

(B) The single office shall provide a single joint notice stating the dates of the city and county hearings for a notice required by Local Government Code Section 212.015 (*Additional Requirements For Certain Replats*) or Section 212.016 (*Amending Plat*).
Source: Ord. 20050929-079.

May 24, 2013

To ZAP Commissioners

Re: Resubdivision

My name is Allan McMurtry. I have dealt with land use issues, zoning, resubdivision and deed restrictions since 1976 when a call from me to the City of Austin reassured me that a church could not buy lots next to me and turn them into parking lots. It did. Since then I have been involved with the Allandale Neighborhood Association, including 2 terms as President, with Austin Plan as a resource delegate, filed or was involved in 4 law suits over deed restrictions, headed the 3050 lot zoning rollback in Allandale in 1981, testified before legislative committees on 974a which became 212, lobbied for legislation to insure that owners of lots close to rezoning and resubdivision are served by the law as intended and finally was a member of a Zoning and Platting Subcommittee on Flag Lots. Further, I have been trained in how to do legal research and have worked as an employee for the City of Austin doing same for over a year and a half.

Attached are several documents pertaining to the case before us on 5409 Shoalwood

1. These actions, [Staff approval of a resub] and [Staff retraction of the variance in lieu of money], are in violation of State and City law and are a serious burden to Austin's neighborhoods:
 - a. It destroys the integrity of neighborhoods
 - b. It pits neighbor against builder
 - c. It costs builders 10s of thousands of dollars for each application not including the land purchase
 - d. It is a huge financial burden to surrounding landowners to sue every time, especially since the City is giving an illegal green light to builders
2. This resub and the retraction of the variance is illegal
 - a. This neighborhood sued the City over a resub issued on Montview
 1. Judge Judy Livingston in Austin ruled that she would issue a Temporary Restraining Order against the City of Austin, preventing the resub, based on 212.014
 2. She then instructed us to sue the applicant to prove up the deed restrictions
 - b. We then sued the applicant
 1. It was heard in Judge Rose's court in Travis County
 1. After hearing testimony, he issued a Temporary Injunction against the applicant finding the deed restrictions would likely be found to be valid
 2. After further consideration the applicant withdrew his resubdivision and recognized the deed restrictions
 2. Judge Rose then issued a Permanent Injunction against the resub based his finding on the deed restrictions
 - c. Due to prearrangements with the law firm, we did not pursue the case in Judge Livingston's court with another firm
 1. The cost to do so would be \$50,000 over what we had already spent with more money needed if the City appealed
 2. We withdrew the suit against the City based on cost as no issue existed anymore
3. An overview of a portion of the Land Use Conference in Austin in March 2012 is attached:
 - a. Synopsis of a paper delivered by a law firm in Frisco, TX regarding 212 on replats
 - b. Replats – definition of terms
 - c. Obligations of both the City and the applicant in replats as defined by 212.013-.016 and more.

All the words in this attachment are quotes from the paper delivered. I added bold and underlines to some of the words. As you read this independently prepared legal brief, you will notice several significant issues:

- 1) the plat has to conform to 212.014 in all its details (deed restrictions in this case),
- 2) if, and only if, all the ordinances and state statues are complied with can the application to replat be approved
- 3) the City cannot create a new set of criteria to apply to the replat after it has been filed,

4) BUT, all state law and municipal ordinances in place at the time of the application must be adhered to.

It is obvious in this paper, in the statutes, and in the cases listed by the legal brief that all portions of 212 must be considered in determining whether a replat without vacation can be issued by the City and filed by the County.

4. Legislative history of 212

- a. Outline of the various legislative amendments to the subchapter on plats and replats
- b. Discussion of same

I am sorry this is so lengthy, but you need to know the history on the Legislative Agenda so you can understand how we got here and why.

5. Issue of valid title has to be considered in all deliberations. If a property was resubdivided in violation of the terms of the process as defined by 212 or the Austin Municipal Codes, a valid issue of title could well occur.

- a. People buying the property can be adversely affected
- b. The City carries some legal responsibility here as well
- c. Persons acting in good faith while applying for a replat without vacation will also suffer

6. The County Clerk should not file any document that is in violation of State Statutes. The Chairman or Vice Chair of the legislative body is stating that the documents filed are true and correct and comply with the laws of the State of Texas. It is clear in the paper delivered on Land Use by attorneys licensed in the State of Texas that no replat document can be filed that does not comply with 212.014.

7. Staff's position on 212.014 is:

- a. "The resub doesn't amend or terminate the deed restrictions, it violates them."
- b. Testimony given before ZAP.

8. The County does not allow violations of deed restrictions

The City should stop the practice of encouraging developers to resubdivide where deed restrictions prohibit it. It is illogical to assume all deed restrictions are invalid or to assume that by complying with State Law and Municipal Codes the City of Austin is enforcing deed restrictions. That is not the case. The City cannot continue to cause 10s of thousands of dollars to be wasted on each application in this manner. The law is clear, Judge Livingston saw it that way. Lloyd Doggett authored the bill that created 212.014. How much more evidence does it take to get the City to recognize the rights of its citizens.

Sincerely.

Allan McMurtry
5901 Cary Dr
Austin, TX

§ 30-2-40 VACATING PLAT; REPLATTING WITHOUT VACATING PLAT; AMENDING PLAT.

(A) The city and the county shall review and approve, disapprove, or deny a plat vacation, replat, or amending plat in accordance with the standards and procedures in Local Government Code Section 212.013 (*Vacating Plat*), Section 212.014 (*Replating Without Vacating Plat*), Section 212.015 (*Additional Requirements For Certain Replats*), and Section 212.016 (*Amending Plat*).

Source: Ord. 20050929-079.

PLEASE NOTE: The city or county shall review and approve, disapprove, or deny a plat vacation, replat... 30-2-40 obviously envisions and allows a disapproval or a denial of a replat.

Legislative History of 974, 974a, and 212.0xx
Of Vernon's Annotated Statutes
As of September 1, 2011

After the turn of the 19th Century, the State of Texas began a process of codifying the State Statutes. In 1927, the 40th Texas Legislature took on that task. The Local Government Code fell under Article 974 and 974a. Article 974a is the one of interest to us now.

I did not research back into the early history of all of 974a because we are only interested in what was the wording in Section 5 that related to resubdivisions from 1928 on. As of 1979, 974a Section 5 c granted right of petition to owners of lots in subdivisions. If any person wanted to replat an existing subdivision, they petitioned the governing authority, either the Count or the City. Notice was issued to persons within 500's feet. If 20% of the owners objected, then the law required that every single lot owner had to agree in writing to that replat.

The 1979 Legislature action was the first attempt I could find to overturn parts of 974a Section 5. A bill by Senator Bill Moore from Bryan tried to eliminate the provision regarding approval of owners of lots. The bill died in the Senate. The reason I know that is I was an unpaid lobbyist against it. This bill was endorsed by the then Texas Land Title Association.

In 1981 a second approach was put forward under Senate Bill 767 cosponsored by Senators Doggett, Farabee, and Caperton, newly elected Senator from Bryan. As you may be aware, Lloyd Doggett was the State Senator from Austin at that time.

As the new method to replat, the bill laid out 4 essential criteria:

1. The replat has to be signed by all owners of the replatting property
2. It has to be approved by the appropriate governing body after notification and hearing (Note: the bill did not say that the governing body was mandated to approve, but one could not obtain the replat without that body's approval.)
3. The replat does not attempt to alter, amend, or remove any covenants or restrictions
4. There is compliance with Subsections of this section relating to zoning, deed restrictions, notice etc

(Subsequently became 212.014)

That bill:

1. Retained the 500' notification limit,
2. Held that if 20% objected to the replat, then the applicant had to get 66 2/3 thirds of the signatures of the lot owners.
3. It also stated that the replat must not alter, amend or remove any covenants or restrictions.
4. Finally, in 974a Section 5 b 4 c it stated that exceptions were contingent on whether the zoning was limited to no more than two residential units per lot or was limited by deed restrictions to no more than two residential units per lot.

(Subsequently, this became 212.015)

It is clear that with the multiple references to deed restrictions in 974a Section 4 and 5, the Legislature intended that deed restrictions be a part of the decision making process for replatting. It is mentioned so many times; the legislative intent is clear.

What is instructive in this case is the presence of Lloyd Doggett, the sitting State Senator for Austin, TX. Senator Doggett was not only a cosponsor; he was part of the House/Senate Conference Committee.

There is no record of objections by the City of Austin, or for that matter, any City. The bill passed 30-0 in the Senate and 121-0 in the House.

Section 212.014 remains intact from this legislation passed in 1981 as it relates to whether or not deed restrictions should be taken into account in resubdivision restrictions.

In 1983 HB 1986 was introduced to define subdivision. The salient parts were:

1. Definition of subdivision
2. A person can move lines within a lot as long as it doesn't
 - a. Attempt to remove recorded covenants or restrictions
 - b. Increase the number of lots

People testifying for this bill were the Texas Association of Builders
Testifying against was the City of Houston planning Department

In 1987 a nonsubstantive recodification was done to the Civil Statutes in Vernon's. A recodification can by law ONLY renumber the existing law from the previous numbers, 974 to the new numbers, 212. This recodification included 974 and 974a at a minimum. This 5000+ page bill rearranged the numbering system without making changes to the meaning. An example of this is dropping the word "alter" in 212.015. In stead of "...amend, alter, or remove..." it read after the rewrite, "...amend or remove..." The bill was carried by Senator McFarland. All changes were noted in Reviser's Notes. It should again be explained that though no substantive changes are permitted by law, this bill took out the second word "alter." The margins notes said the word was redundant. Of course, that is tantamount to rewriting the Gettysburg address from "We cannot dedicate, we cannot consecrate, we cannot hallow this ground." And insert the words, "We can't dedicate..." You tell me which more clearly explains the mood that day and the intent of the President.

In 1989 SB 1075 was introduced by Rep Henderson to discuss defining jurisdiction between county and municipal platting Section 232.009. The bill was filed on March 9, 1989 with no Senate companion bill. It dealt with the subject. However, on May 28, 1989, it was amended on the House floor to the following:

212.0065-an employee may not disapprove the replat

212.015— changed 500' to 200'

Eliminated the notice to all lot owners if more than 100 lots

If replat is protested by 20%, then it requires a ¾ vote of the governing body

Eliminated the 66 2/3 vote of the property owners

There was no opposition in the Senate, but there were dissenting votes in the House Subcommittee. This subcommittee was the County Affairs Committee, which is an unusual place to hold issues relating to cities.

It is obvious that some member of the House wanted fewer lot owners involved in the notice and wanted no property owner vote. However, there was no amendment to take out "compliance with deed restrictions" and in hand written notes, the phrase relating to the impact of "legally recorded restrictions applicable to the plat" was left intact.

The floor amendment occurred on the Third reading of the bill as recorded on May 28, 1989. Keep in mind that the public hearing had come and gone. Also, the bill analysis was completed prior to the amendments.

Still, even with legislators making changes out of the public eye, the sections relating to deed restrictions were left in while other modifications were deleted by hand written notes. The single glaring inclusion were the two words "and replat."

In 1993 Oliveira filed HB 496 in the 73rd Legislature. The companion bill was SB 161. The bill related to Sections 212.004(a) defining:

1. Any division of land requires a plat whether it is by metes and bounds or not
2. Amends 212.005 (Approval by Municipality Required) to require approval if it satisfies all applicable regulations
3. Amends 212.041 to eliminate the words: this applies only to municipalities over 1.5 million
4. Amends Section 212.015 b and c:
 - a. Changes notice to 200' of "lots that are" the original subdivision
 - b. If plat "requires a variance and" is protest in accordance with this subsection

The bill passed without noted amendments.

It was supported by:

Texas Municipal League
City Planners Association of Texas
Judges and Commissioners of Texas
County Judges and Commissioners Association
Travis County—Jann Phenix
Greater Houston Builders Association

Opposed by:

Houston Homeowners Association

NOTE: The key phrase in this legislation is "or replat." Note: On # 2 above, the entire statute has been convoluted by the insertion of the words "or replat" in front of the word plat. Since 1927, if a plat met all requirements of the laws of the county or municipality, it had to be accepted. This was new land with agreed service from the county or municipality, filed with the County, and subject to rigorous analysis of services, size, scope, location, etc. There were no lot owners, just the landowner. By inserting "or replat" in there, the theory was that now replats had to be automatically approved.

However, the term variances was purposefully included in the legislation. Besides leaving in the references to not violating deed restrictions in tact, 212.015 (c) now read that if the replat requires a variance and is protested, it required an affirmative vote of least $\frac{3}{4}$ of members of the governing board that were present.

Conclusions:

The subsections within 212 of the Local Government Code .014-.015-.016 relating to the wording “cannot attempt to amend or remove” deed restrictions still stand from the original drafts in 1981. Further, they occur in various iterations in multiple locations. The very definition of when a replat occurs relies on knowledge of the deed restrictions. Peculiar to Austin, some of this wording came from a bill cosponsored by Lloyd Doggett, the then State Senator from Austin.

The phrase “variances” was purposefully inserted into the language in 1993. It is clear that variances exist. Attempting to amend or remove deed restrictions is clearly one of them.

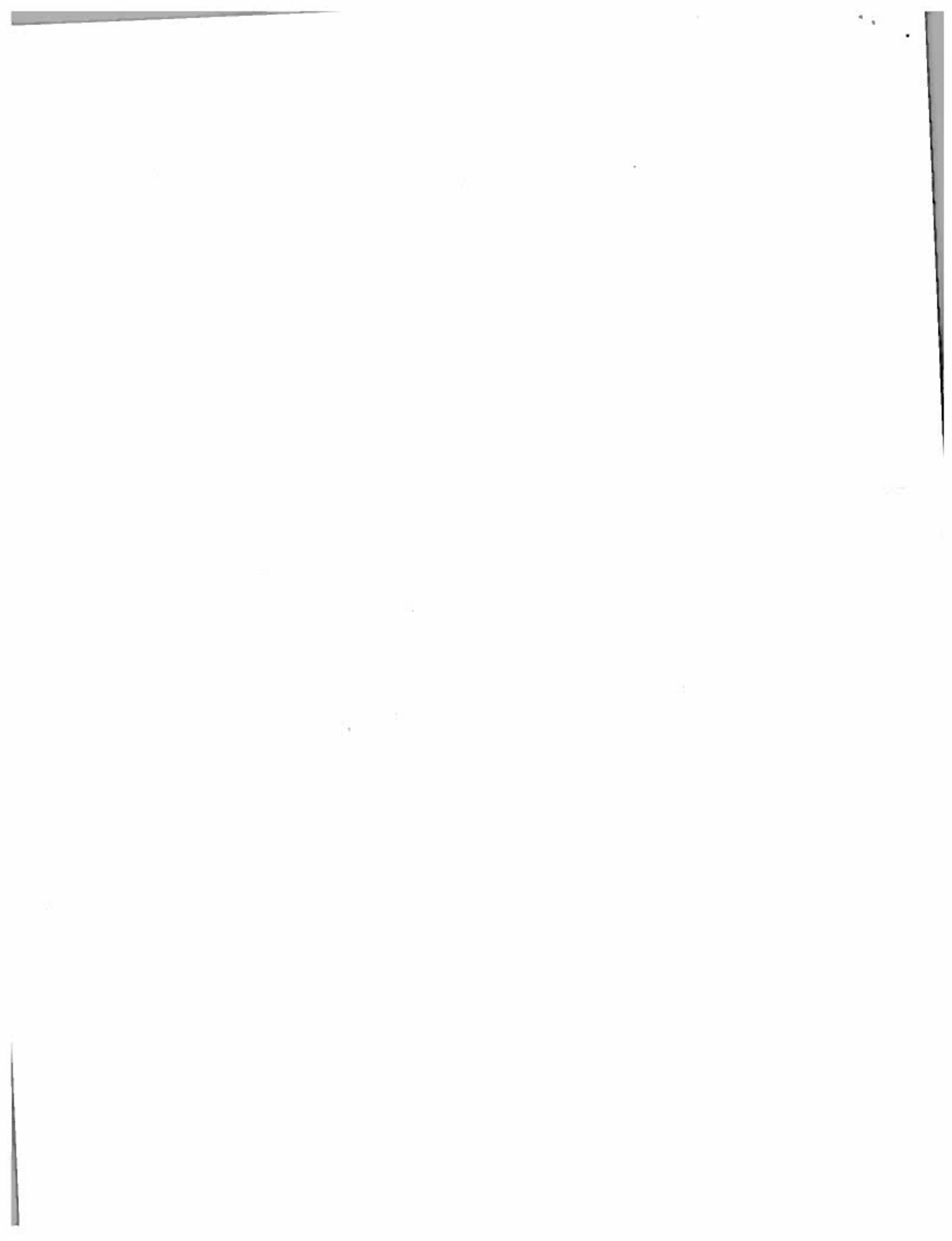
The issue of notice has been discussed numerous times in the past legislation. In all sections where it occurs in the various bills, it is never eliminated, modified, but never eliminated. Obviously, notice is useless if a replat cannot be successfully challenged. Notice requires both a time component and an accurate detail of the rights of the individual and specific remedies available. To enclose notice that does not contain these or lacks accuracy is a violation of this Section.

Based on the research of the Legislative record on replatting going back to 1927, it is an indisputable fact that:

1. Replats without vacation cannot be approved if they even **attempt** to amend or remove deed restrictions.
2. Shoalmont Addition Resub has deed restrictions limiting resubdivision and setting criteria for doing that
3. Variances occur and can be appealed to the governing body that determines by at $\frac{3}{4}$ vote whether the replat is to be approved. Violations of deed restrictions are variances.
4. In no section of this document does the adoption of it preclude the exercise of all elements therein
 - a. To that point, assuming that all replats must be automatically adopted is a violation of the document used to draw that conclusion
 - b. ALL relevant sections of this Section apply to all replats

- c. A governing body cannot choose to apply only certain portions of this Section as it is both State Law and potentially the guiding authority for that governing authority
5. Austin adopted Section 212.013, 212.014, 212.015, 212.016 in 2005 under Section 30-2-40 regarding replats in the Austin Municipal Code..
6. The portion of Section 212 requiring that a municipal authority MUST approve a replat is Section 212.005.
7. Austin has not adopted Section 212.005 in Code Section 25 or Code Section 30 that deal with Subdivisions or resubdivisions.
8. Austin is in effect arguing that state law applies to resubs in 212.005 but not in 212.014 or 212.015 and neither does its own Codes.
9. Austin cannot approve a replat merely because it has been filed. It must approve a replat only based on all the rest of the Sections in 212, including 212.014 – 212.016.
10. The classic definition of 212.014 from City Staff was given to ZAP back a couple of years ago in a contested hearing thusly: "The resub violates deed restrictions, it does not amend them or terminate them."
11. Travis County is required to look at deed restrictions prior to approving replats without vacation.
- 12.

By Allan McMurtry
5901 Cary Drive
Austin, Texas 78757
512 670-6166



Madam Chair, Commission Members, staff and guests. My name is Bob Conkright. I live on Arabian Trail and am speaking for the Raintree Estates Neighborhood Alliance tonight.

The neighborhood alliance is opposed to the proposed zoning change for 11800 Arabian Trail. The neighborhood alliance met on May 9, 2013 and at that meeting there was a vote on this issue. The vote was unanimous against the proposed zoning change. The reason for the opposition is as follows:

1. The property is located within a residential neighborhood. Although it is on the corner of Jollyville Road and Arabian Trail, the property faces and is accessed by a driveway on Arabian Trail. To allow the zoning change would decrease the resale potential and value of the more than 120 homes within the neighborhood. It also violates the intent of the zoning statute.
2. The restrictive covenant of the property precludes the use of the structure for commercial endeavors. Rezoning this property as commercial would create a conflict between the zoning status and the restrictive covenant which could lead to a long and costly litigation.
3. Since current access to this property is from Arabian Trail, there would be a significant increase in commercial traffic along a residential street. Children live and play along Arabian Trail and increased traffic would increase the chance of an accident which could have tragic results. It would also cause parking congestion on Arabian Trail near the corner of Jollyville Road and increase the risk of accidents when cars are turning off Jollyville Road onto Arabian Trail.
4. The applicant states that he would create access to the property from Jollyville Road; however, we do not believe this is feasible. We do not believe there is not enough room to cut a new driveway without a waiver from current rules. Since Jollyville Road is a major arterial, allowing such a waiver could affect traffic flow. There are currently 6 driveways and intersections within 300 ft. of 11800 Arabian Trail. It is already a dangerous area. In addition, the driveway would have to cross a drainage ditch which could cause additional flooding during a heavy rain. Our neighborhood currently has major drainage problems (we are currently in the top 10 of drainage problems in the city according to city staff) and allowing a driveway across the drainage ditch might exacerbate the drainage problems.
5. At this point our neighborhood has not been selected to develop a neighborhood plan. We do, however, have the Jollyville Road study which currently guides most development along Jollyville Road. That study suggests that property along Jollyville Road should be encouraged to developed as commercial in lieu of residential. However, the study states, as many have overlooked, that current residential areas should remain residential. Our neighborhood predates the Jollyville Road study and therefore should remain residential.

We ask only that the Commission accept the recommendation of the staff and continue to support the language in the US 183/Jollyville Road area study, like you have consistently done in the past, and allow our neighborhood to remain residential. Thank you for your attention and your service to the city.

LOCAL GOVERNMENT CODE

TITLE 2. ORGANIZATION OF MUNICIPAL GOVERNMENT

SUBTITLE C. MUNICIPAL BOUNDARIES AND ANNEXATION

CHAPTER 43. MUNICIPAL ANNEXATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. DEFINITION. In this chapter, "extraterritorial jurisdiction" means extraterritorial jurisdiction as determined under Chapter 42.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 43.002. CONTINUATION OF LAND USE. (a) A municipality may not, after annexing an area, prohibit a person from:

(1) continuing to use land in the area in the manner in which the land was being used on the date the annexation proceedings were instituted if the land use was legal at that time; or

(2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the annexation if:

(A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and

(B) a completed application for the initial authorization was filed with the governmental entity before the date the annexation proceedings were instituted.

(b) For purposes of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.

(c) This section does not prohibit a municipality from imposing:

(1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;

(2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581, Government Code;

(3) a regulation relating to preventing imminent destruction of property or injury to persons;

(4) a regulation relating to public nuisances;

(5) a regulation relating to flood control;

(6) a regulation relating to the storage and use of hazardous substances; or

(7) a regulation relating to the sale and use of fireworks.

(8) Expired.

(d) A regulation relating to the discharge of firearms or other weapons is subject to the restrictions in Section 229.002.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 18, Sec. 3, eff. May 3, 2005.

SUBCHAPTER B. GENERAL AUTHORITY TO ANNEX

Sec. 43.021. AUTHORITY OF HOME-RULE MUNICIPALITY TO ANNEX AREA AND TAKE OTHER ACTIONS REGARDING BOUNDARIES. A home-rule municipality may take the following actions according to rules as may be provided by the charter of the municipality and not inconsistent with the procedural rules prescribed by this chapter:

(1) fix the boundaries of the municipality;

(2) extend the boundaries of the municipality and annex area adjacent to the municipality; and

(3) exchange area with other municipalities.

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June 4, 2013



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City of Austin Zoning and Platting Commission
Betty Baker, Chair
Gabriel Rojas
Cynthia Banks
Jason Meeker
Patricia Seeger
Sean Compton
Rahm McDaniel

Re: SP-2012-0382D; Appeal of an Administrative Extension on a Site Plan Application

Dear Commissioners:

Winstead PC is representing Republic Services of Austin ("Republic Services") in connection with the appeal filed by Austin HB Residential, Ltd. (the "Appellant") of the Grading Plan reflected in SP-2012-0382D.

In connection with that appeal, please note the following:

1. Site Plan Does Not Provide Rights Other Than Grading. SP-2012-0382D only reflects grading of the site. It does not reflect any permanent uses for the site. On behalf of Republic Services, its successors and assigns, I hereby acknowledge that SP-2012-0382D **does not** provide Republic Services, its successors and assigns, with any rights to build any permanent structures on the site related to any uses other than the grading of the site and removal of dirt from the site, all as shown on SP-2012-0382D. Although SP-2012-0382D contains a reference to a "recycling center" in the title of that site plan, such title obviously does not carry with it any rights for permanent uses on the site, and this letter is intended to acknowledge that.

2. Use of Soil. The grading of the site and removal of dirt from the site is intended to provide soil for the "capping" of the Sunset Farms landfill. Republic Services has committed to close that landfill by November 1, 2015. Thereafter, Republic Services will cap the landfill in accordance with TCEQ rules.



The soil proposed to be removed from the site at Highway 290 and SH 130 and the site grading reflected in SP-2012-0382D is necessary for that purpose.

3. Permanent Uses. A zoning case has been filed on the site with respect to potential permanent uses on the site. That zoning case is still being reviewed by City Staff. The zoning case will proceed to the Zoning & Platting Commission for its recommendation following completion of City Staff review. **Any discussion of permanent uses on the site is both premature and misleading as SP-2012-0382D has absolutely no impact on any such potential uses.**

4. Legal Rights. Chapter 43 of the Texas Local Government Code ("Chapter 43") provides various protections to property owners who have their property annexed by a municipality. Republic Services is entitled to protection of its proposed grading activities on the site in accordance with Chapter 43. Denial of the site plan extension would be contrary to Republic Services' legal rights under Chapter 43.

I will be happy to answer any questions that any of you may have in connection with any of the matters addressed above, or any other matters in connection with SP-2012-0382D.

Sincerely,



Stephen O. Drenner
Winstead, P.C.

cc: Lee Kuhn, Republic Services, *via electronic mail*
John Donisi, Winstead, P.C., *via electronic mail*
Christine Barton-Holmes, City of Austin Planning and Development Review Department, *via electronic mail*

Item# C-5

Sirwaitis, Sherri

From: David Whatley <david.whatley@shcglobal.net>
Sent: Monday, June 03, 2013 11:30 AM
To: Sirwaitis, Sherri
Cc: Bob Conkright
Subject: Case C14-2013-0011

Ms. Sirwaitis,

My name is David Whatley and my wife and I own 11809 Arabian Trail, Austin, TX, 78759. We have owned this home since 1993. The legal description is LOT 33 & NE 1/2 OF LOT 34 HIGHLAND OAKS.

Our LOT 34 is within 200' of 11800 Arabian Trail, which is the property in question in the above referenced zoning case that is before the Zoning and Platting board for review on Tuesday, June 4.

We have reviewed the application to change the zoning from SF-2 to GR (or GR-CO) and are against any change in zoning from SF-2. As I'm sure the Commission is aware, a neighborhood is only as good as its boundaries and 11800 Arabian Trail represents a key corner boundary for this small, established residential neighborhood that has been in place since the late 1950's. We ask that the Commission accept the recommendation of Staff and deny this zoning change to maintain the integrity of our neighborhood boundaries and the consistency of our small neighborhood as a whole.

Regards,
David Whatley

SECRET