

**HISTORIC LANDMARK COMMISSION**  
**PERMITS IN NATIONAL REGISTER HISTORIC DISTRICTS**  
**SEPTEMBER 22, 2014**  
**NRD-2014-0090**  
**1006 Elm Street**  
**West Line**

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**PROPOSAL**

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Demolish a ca. 1977 non-contributing house and construct a new house.

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**PROJECT SPECIFICATIONS**

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The existing house was built in 1977, but is a very traditional, two-story stone-veneered frame house with a full-width two-story porch. The house is non-contributing because of its age, but is relatively compatible with the historic character of the district.

The proposed new house will be two stories, with a variety of roof lines. The front of the house will have a prominent overhanging gabled section front entry bay and a covered patio to the side; the remainder of the house is set significantly behind the one-story street presence. The carport will be at the rear of the house. The front-gabled entry bay will have brick; the rest of the house will have hardi-plank siding in both a horizontal and vertical board-and-batten pattern; the roof will be standing seam metal. There is a rooftop deck behind the front-gabled entry. A steel beam will extend across the front-gabled entry to the side covered patio. Windows will be metal-framed.

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**STANDARDS FOR REVIEW**

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The West Line National Register Historic District has no specific design guidelines for new construction. General design principles for historic districts encourage new construction to be compatible with the contributing houses in the district in terms of size, scale, massing, materials, and fenestration patterns.

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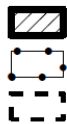
**STAFF RECOMMENDATION**

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It is unfortunate that the traditional look of the existing house cannot be retained; even though it is non-contributing, it is a very compatible with the contributing houses in the district. The majority of the houses on Elm Street are historic bungalows, Tudor Revival houses, and one-and-a-half story bungalow forms. The proposed house is a very contemporary design, but with a nod to traditional forms in its front-gabled entry and covered patio to the side defining the street presence of the house. Design guidelines for most historic districts emphasize a simplicity of rooflines; this house has a variety of rooflines, and staff's recommendation is to simplify the rooflines, locate the rooftop deck more towards the rear of the house, and simplify the siding patterns to make it more compatible with the contributing houses within the district.



The existing house at 1006 Elm Street is at the center of the picture.



SUBJECT TRACT  
PENDING CASE  
ZONING BOUNDARY

CASE#: NRD-2014-0090  
Address: 1006 ELM ST



1" = 200'

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

Dear Mr Sadowsky,

We are the holders of a deed of trust (copy included herewith) for the property referenced in the above cases (1006 Elm St. in Austin, Texas) scheduled for hearing by the City of Austin Historic Landmark Commission on Monday evening, September 22, 2014, in view, we would presume, of issuance of a Certificate of Appropriateness for a Building (i.e. Demolition) Permit for the structure on that property. We would raise the following questions with regard to the proposed hearing.

It is our understanding that the jurisdiction of the Historic Landmark Commission extends only to structures fifty years of age or greater. This structure was permitted in 1977 and completed in 1978. It is not yet 36 years old. What would be the basis of jurisdiction by the Historic Landmark Commission over this property?

Secondly, we would call your attention to Section B.2.a. of the Deed of Trust attached herewith. It is the Grantor's (Mr. Moore and Mr. Crowell) obligation under this section to "...keep the Propety in good repair and condition..." Doing so would, obviously, not include its demolition.

We would, therefore, respectfully request that this item be removed from the agenda of the Historic Landmark Commission to allow the parties to the deed of trust to negotiate terms under which the improvements currently located at this site might be demolished and replaced with the structure proposed by Mr. Moore and Mr Crowell.

Sincerely,  
William R. Fewell and Sheila D. Fewell  
Trustees, The Fewell Family Trust  
Lenders/Deed of Trust holders for 1006 Elm St., Austin, Texas

CC: Bill Smith, Broker  
Mark Moore, Broker  
Stuart Hersh, Lender's Representative

## Deed of Trust

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

## Basic Information

Date: February 28, 2014

Grantor: Mark F. Moore and Robert M. Crowell

Grantor's Mailing Address: PO Box 5670 Austin TX 78763

Trustee: John F. K. McGill

Trustee's Mailing Address: 6010 Balcones Drive, Ste. 100, Austin, Texas 78731

Lender: William R. Fewell and Sheila D. Fewell, Trustees of the Fewell Family Trust dated May 7, 2008

Lender's Mailing Address: 15920 Northwest St., White, Ca 90605

## Obligation

## Note

Date: February 1, 2014

Original principal amount: \$594,000.00

Borrower: Mark F. Moore and Robert M. Crowell

Lender: William R. Fewell and Sheila D. Fewell, Trustees of the Fewell Family Trust dated May 7, 2008

Maturity date: as provided in the Note

## Property (including any improvements):

Lot 17, Block 5, SHELLEY HEIGHTS NO. 2, according to the map or plat thereof recorded in Volume 3, Page 260, Plat Records, Travis County, Texas.

Prior Lien: None



Other Exceptions to Conveyance and Warranty:

**A. Granting Clause**

For value received and to secure payment of the Obligation, Grantor conveys the Property to Trustee in trust. Grantor warrants and agrees to defend the title to the Property, subject to the Other Exceptions to Conveyance and Warranty. On payment of the Obligation and all other amounts secured by this deed of trust, this deed of trust will have no further effect, and Lender will release it at Grantor's expense.

**B. Grantor's Obligations**

*B.1.* Grantor agrees to maintain all property and liability insurance coverages with respect to the Property, revenues generated by the Property, and operations on the Property that Lender reasonably requires ("Required Insurance Coverages"), issued by insurers and written on policy forms acceptable to Lender, and as to property loss, that are payable to Lender under policies containing standard mortgage clauses, and deliver evidence of the Required Insurance Coverages in a form acceptable to Lender before execution of this deed of trust and again at least ten days before the expiration of the Required Insurance Coverages.

*B.2.* Grantor agrees to—

- a. keep the Property in good repair and condition;
- b. pay all taxes and assessments on the Property before delinquency, not authorize a taxing entity to transfer its tax lien on the Property to anyone other than Lender, and not request a deferral of the collection of taxes pursuant to section 33.06 of the Texas Tax Code;
- c. defend title to the Property subject to the Other Exceptions to Conveyance and Warranty and preserve the lien's priority as it is established in this deed of trust;
- d. obey all laws, ordinances, and restrictive covenants applicable to the Property;
- e. keep any buildings occupied as required by the Required Insurance Coverages;
- f. if the lien of this deed of trust is not a first lien, pay or cause to be paid all prior lien notes and abide by or cause to be abided by all prior lien instruments; and
- g. notify Lender of any change of address.

**C. Lender's Rights**

C.1. Lender or Lender's mortgage servicer may appoint in writing one or more substitute trustees, succeeding to all rights and responsibilities of Trustee.

C.2. If the proceeds of the Obligation are used to pay any debt secured by prior liens, Lender is subrogated to all the rights and liens of the holders of any debt so paid.

C.3. Lender may apply any proceeds received under the property insurance policies covering the Property either to reduce the Obligation or to repair or replace damaged or destroyed improvements covered by the policy. If the Property is Grantor's primary residence and Lender reasonably determines that repairs to the improvements are economically feasible, Lender will make the property insurance proceeds available to Grantor for repairs.

C.4. Notwithstanding the terms of the Note to the contrary, and unless applicable law prohibits, all payments received by Lender from Grantor with respect to the Obligation or this deed of trust may, at Lender's discretion, be applied first to amounts payable under this deed of trust and then to amounts due and payable to Lender with respect to the Obligation, to be applied to late charges, principal, or interest in the order Lender in its discretion determines.

C.5. If Grantor fails to perform any of Grantor's obligations, Lender may perform those obligations and be reimbursed by Grantor on demand for any amounts so paid, including attorney's fees, plus interest on those amounts from the dates of payment at the rate stated in the Note for matured, unpaid amounts. The amount to be reimbursed will be secured by this deed of trust.

#### C.6. COLLATERAL PROTECTION INSURANCE NOTICE

In accordance with the provisions of section 307.052(a) of the Texas Finance Code, the Beneficiary hereby notifies the Grantor as follows:

(A) the Grantor is required to:

- (i) keep the collateral insured against damage in the amount the Lender specifies;
- (ii) purchase the insurance from an insurer that is authorized to do business in the state of Texas or an eligible surplus lines insurer; and
- (iii) name the Lender as the person to be paid under the policy in the event of a loss;

(B) the Grantor must, if required by the Lender, deliver to the Lender a copy of the policy and proof of the payment of premiums; and

(C) if the Grantor fails to meet any requirement listed in Paragraph (A) or (B), the Lender may obtain collateral protection insurance on behalf of the Grantor at the Grantor's expense.

C.7. If a default exists in payment of the Obligation or performance of Grantor's obligations and the default continues after any required notice of the default and the time allowed to cure, Lender may—

- a. declare the unpaid principal balance and earned interest on the Obligation immediately due;
- b. exercise Lender's rights with respect to rent under the Texas Property Code as then in effect;
- c. direct Trustee to foreclose this lien, in which case Lender or Lender's agent will cause notice of the foreclosure sale to be given as provided by the Texas Property Code as then in effect; and
- d. purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Obligation.

C.8. Lender may remedy any default without waiving it and may waive any default without waiving any prior or subsequent default.

#### **D. Trustee's Rights and Duties**

If directed by Lender to foreclose this lien, Trustee will—

D.1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then in effect;

D.2. sell and convey all or part of the Property "AS IS" to the highest bidder for cash with a general warranty binding Grantor, subject to the Prior Lien and to the Other Exceptions to Conveyance and Warranty and without representation or warranty, express or implied, by Trustee;

D.3. from the proceeds of the sale, pay, in this order—

- a. expenses of foreclosure, including a reasonable commission to Trustee;
- b. to Lender, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
- c. any amounts required by law to be paid before payment to Grantor; and
- d. to Grantor, any balance; and

D.4. be indemnified, held harmless, and defended by Lender against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the trust created by this deed of trust, which includes all court and other costs, including attorney's fees, incurred by Trustee in defense of any action or proceeding taken against Trustee in that capacity.



#### **E. General Provisions**

*E.1.* If any of the Property is sold under this deed of trust, Grantor must immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor will become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.

*E.2.* Recitals in any trustee's deed conveying the Property will be presumed to be true.

*E.3.* Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

*E.4.* This lien will remain superior to liens later created even if the time of payment of all or part of the Obligation is extended or part of the Property is released.

*E.5.* If any portion of the Obligation cannot be lawfully secured by this deed of trust, payments will be applied first to discharge that portion.

*E.6.* Grantor assigns to Lender all amounts payable to or received by Grantor from condemnation of all or part of the Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees and court and other costs, Lender will either release any remaining amounts to Grantor or apply such amounts to reduce the Obligation. Lender will not be liable for failure to collect or to exercise diligence in collecting any such amounts. Grantor will immediately give Lender notice of any actual or threatened proceedings for condemnation of all or part of the Property.

*E.7.* Grantor collaterally assigns to Lender all present and future rent from the Property and its proceeds. Grantor warrants the validity and enforceability of the assignment. Grantor will apply all rent to payment of the Obligation and performance of this deed of trust, but if the rent exceeds the amount due with respect to the Obligation and the deed of trust, Grantor may retain the excess. If a default exists in payment of the Obligation or performance of this deed of trust, Lender may exercise Lender's rights with respect to rent under the Texas Property Code as then in effect. Lender neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the Property. Lender may exercise Lender's rights and remedies under this paragraph without taking possession of the Property. Lender will apply all rent collected under this paragraph as required by the Texas Property Code as then in effect. Lender is not required to act under this paragraph, and acting under this paragraph does not waive any of Lender's other rights or remedies.

*E.8.* Interest on the debt secured by this deed of trust will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the debt.

*E. 9.* In no event may this deed of trust secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.

*E. 10.* When the context requires, singular nouns and pronouns include the plural.

*E. 11.* The term *Note* includes all extensions, modifications, and renewals of the Note and all amounts secured by this deed of trust.

*E. 12.* This deed of trust binds, benefits, and may be enforced by the successors in interest of all parties.

*E. 13.* If Grantor and Borrower are not the same person, the term *Grantor* includes Borrower.

*E. 14.* Grantor and each surety, endorser, and guarantor of the Obligation waive, to the extent permitted by law, all (a) demand for payment, (b) presentation for payment, (c) notice of intention to accelerate maturity, (d) notice of acceleration of maturity, (e) protest, and (f) notice of protest.

*E. 15.* Grantor agrees to pay reasonable attorney's fees, trustee's fees, and court and other costs of enforcing Lender's rights under this deed of trust if this deed of trust is placed in the hands of an attorney for enforcement.

*E. 16.* If any provision of this deed of trust is determined to be invalid or unenforceable, the validity or enforceability of any other provision will not be affected.

*E. 17.* The term *Lender* includes any mortgage servicer for Lender.

*E. 18.* Grantor represents that this deed of trust and the Note are given for the following purposes: The debt evidenced by the note is in part payment of the purchase price of the property; the debt is secured both by this deed of trust and by a vendor's lien on the property, which is expressly retained in a deed to Grantor of even date. This deed of trust does not waive the vendor's lien; and the two liens and the rights created by this instrument shall be cumulative. Lender may elect to foreclose under either of the liens without waiving the other or may foreclose under both. The deed is incorporated into this deed of trust.

*E. 19.* The property may be sold, conveyed or leased without the consent of the Lender, provided any subsequent buyer assumes the note.

E.20. Grantor shall furnish to Lender, before each year's ad valorem taxes become delinquent, evidence that all ad valorem taxes on the property have been paid. Grantor shall annually furnish Lender evidence of paid-up casualty insurance naming Lender as a mortgagee loss payee.

Mark F. Moore

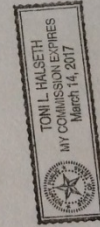
Robert M. Crowell

NOTICE: Prepared by Hancock & McGill, L.L.P. based upon un-verified information provided by third parties. We do not represent that this loan or the loan documents comply with the S.A.F.E. Act, the Dodd Frank Act, the Truth in Lending Act, or any federal or state rules or regulations based upon these laws. All deed of trust parties release the law firm from liability if the loan or documents are not in compliance.

#### Acknowledgement

State of Texas  
County of Tarrant

This instrument was acknowledged before me on the 28 day of February, 2014, by Mark F. Moore.



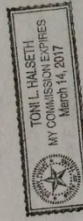
Toni L. Halseth  
Notary Public, State of Texas



## Acknowledgement

State of Idaho  
 County of Blaine

This instrument was acknowledged before me on the 23 day of February, 2014, by Robert M. Crowell.



[Signature]  
 Notary Public, State of Idaho

Prepared By:  
 Hancock & McGill, L.L.P.  
 Attorneys at Law  
 File No: 1400008

## After Recording Return To:

William B. Fewell and Sheila D. Fewell, Trustees  
1920 Mar Vista St.  
Whittier, Ca 90605

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