

Amended Complaint
Original Filed: 20 November, 2015

ETHICS REVIEW COMMISSION
CHAPTER 2-7 CITY CODE
COMPLAINT

AUSTIN CITY CLERK
RECEIVED

2015 DEC 8 PM 1 26

NAME OF PERSON(S) FILING COMPLAINT: Fred L. McGhee

MAILING ADDRESS: 2316 Thrasher Ln., Austin, TX 78741

PHONE NUMBER: (512) 275-6027

EMAIL ADDRESS: [REDACTED]

PLEASE FILE A SEPARATE COMPLAINT FORM FOR EACH PERSON
COMPLAINED AGAINST.

NAME OF PERSON COMPLAINED AGAINST: David Whitworth

CITY OFFICE, DEPARTMENT, COMMISSION: Historic Landmark Commission

MAILING ADDRESS: 301 W. 2nd Street, Austin, TX 78701

PHONE NUMBER [IF KNOWN]: (512) 294-5139

EMAIL ADDRESS [IF KNOWN]: bc-David.Whitworth@austintexas.gov

The Ethics Review Commission has jurisdiction to hear complaints alleging violation(s) of
the following provisions:

- City Code, Chapter 2-1, Section 2-1-24 (City Boards, Conflict of Interest and Recusal)
- City Code, Chapter 2-2 (Campaign Finance)
- City Code, Chapter 2-7 (Ethics and Financial Disclosure), except for Article 6 (Anti-lobbying and Procurement)
- City Code, Chapter 4-8 (Regulation of Lobbyists)
- City Charter, Article III, Section 8 (Limits on Campaign Contributions and Expenditures)

PLEASE LIST EACH ALLEGED VIOLATION OF THE ABOVE CITY CODE AND
CHARTER PROVISIONS SEPARATELY ON THE FOLLOWING PAGES.

I.

SECTION OF CHARTER OR ORDINANCE VIOLATED: 2-7-1(A)

DATE OF ALLEGED VIOLATION: August 24, 2015 and September 28, 2015

ACTIONS ALLEGED TO BE A VIOLATION:

See attachment

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: _____

II.

SECTION OF CHARTER OR ORDINANCE VIOLATED: 2-1-44

DATE OF ALLEGED VIOLATION: August 24, 2015 and September 28, 2015

ACTIONS ALLEGED TO BE A VIOLATION:

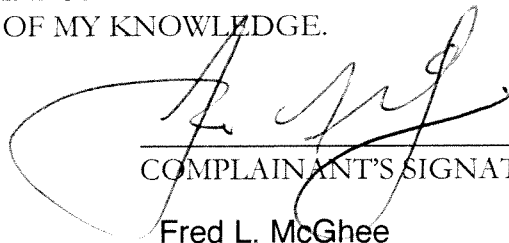
See attachment

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: _____

[IF MORE ROOM IS NECESSARY, PLEASE CONTINUE ON A BLANK PAGE
USING THE SAME FORMAT]

ALL THE STATEMENTS AND INFORMATION IN THIS COMPLAINT ARE TRUE
AND FACTUAL TO THE BEST OF MY KNOWLEDGE.

DATE: 8 Dec. 15



COMPLAINANT'S SIGNATURE

Fred L. McGhee

PRINT NAME

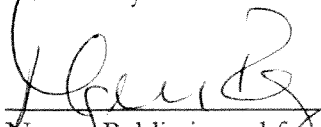
STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged, sworn to and subscribed before me by

Fred L. McGhee

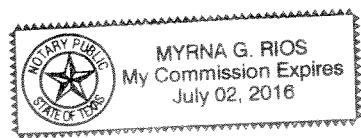
On the 8 day of December, 2015, to certify which
witness my hand and official seal.



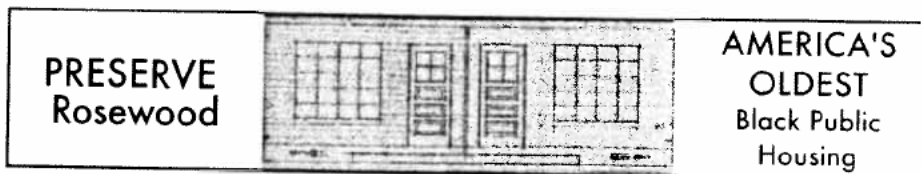
Notary Public in and for the State of Texas

Myrna Rios

Typed or Printed Name of Notary



THIS FORM MUST BE SUBMITTED TO THE OFFICE OF THE CITY CLERK.



2316 Thrasher Lane, Austin, TX 78741 • (512) 275-6027

City of Austin Ethics Commission
% Austin City Clerk
301 West 2nd Street
Austin, TX 78701

November 20, 2015

RE: Ethics Complaint against the Historic Landmark Commission

Pursuant to section 2-7-41 of the Austin City Code, this is an official complaint against the Historic Landmark Commission and its members for endorsing numerous violations of city ordinances by its assigned staff (i.e. Mr. Steve Sadowsky) and for conducting its August 2015 meeting in violation of city ordinance and state law. Per section 2-7-2 of the Austin City Code, the members of the Historic Landmark Commission are considered city officials and are subject to city ethics rules.

Specifically, the commission violated City of Austin ordinance 2-7-1(A) by failing in its duty to properly evaluate the nomination of the Rosewood Courts Historic District for local historic district status. The commission unanimously endorsed the National Register nomination for the property at its December 2013 meeting, but at the August 2015 meeting did not vote to support local historic district status, despite being furnished the same information. In spite of the fact that the commission had previously already approved the nomination, none of the commissioners who voted against the local historic district designation—all of them new appointees with scant historic preservation experience—explained the *historic preservation* rationale behind their decision.

None of the commissioners questioned the misleading and incorrect staff presentation made by Mr. Sadowsky regarding this case. During the meeting they also permitted Mr. Sadowsky to move the item further and further back into the agenda without explanation. This delay tactic resulted in the agenda item not being heard for hours into the meeting, a sign of profound lack of respect and courtesy to the witnesses who came to the meeting to testify, which included a mobility-impaired disabled veteran (myself) and the chair of the African-American Cultural Heritage District (Rev. Freddie Dixon) an elderly gentleman of distinction who walks with a cane.

In practice it is Mr. Sadowsky who runs the commission meetings, not the commissioners. The commission's acceptance of Mr. Sadowsky's meeting dominance and their lack of initiative in furnishing him with superintendence is particularly troublesome, considering that there were commissioners who were in a position to correct Mr. Sadowsky's basic errors of fact, given that they had already voted in favor of endorsing the National Register nomination and should have been familiar with what it states. Instead of correcting or even questioning Mr. Sadowsky's flawed presentation, most commissioners chose to remain quiet.

Interestingly, the vote at the August HLC meeting was 4-2 in *favor* of recognizing the property as historic¹, but after my colleagues and I left the meeting believing that the commission had voted to start the process of

¹ The Historic Landmark Commission was a seven member commission but now contains eleven members. Seven commissioners attended the August 2015 meeting, enough for a quorum, but only six voted due to a recusal. Video of the Rosewood Courts discussion and vote is located at the following: <http://austintx.swagit.com/play/08242015-1094>.

landmarking the property (which would have directed staff to research the property and to develop a historic preservation package for further consideration culminating in an up or down vote at a future meeting) we were informed the following morning by a local newspaper reporter that the vote was in fact a 3-3 split vote. The reason for the disparity has never been explained by Mr. Sadowsky or the commissioners. The reason why the voting outcome was unclear was because the new commission chair (Commissioner Galindo) did not announce the final vote for any cases at the meeting, including ours. This is a violation of Roberts Rules of Order, as well as state law, which specifically require the final vote of a governmental body to be clearly announced and properly recorded. Accordingly, a violation of section 2-1-44 of the city's code is also alleged and is asked to be investigated by the Ethics Commission.

Another issue of staff mismanagement countenanced by the commission is the issue of standing. The persistent information asymmetry between Mr. Sadowsky, applicants and the commissioners has been used to manipulate the process in order to forestall proper consideration of agenda items. To elaborate:

Questions of standing or of a meeting quorum (including recusals) should never be a surprise. Such matters are handled beforehand. If a sufficient number of commissioners cannot attend all or part of a meeting, the item is usually pulled (rescheduled) or the whole meeting is canceled. Similarly, if an applicant does not have standing to present before the commission, it is staff's responsibility to inform the commissioners and the applicant beforehand. As the supporting documents furnished to the Ethics Commission show, I first appeared before the Historic Landmark Commission regarding the Rosewood Courts matter in June of 2015, after having notified Mr. Sadowsky of my intent to pursue Local Historic District designation earlier in the spring of 2015. At my request, in June the commission voted to schedule the agenda item for its July meeting (the last meeting of the old seven-member commission) but *at the last minute* Mr. Sadowsky informed me he pulled the item off the July meeting agenda because according to section 25-2-242 of the Austin City Code citizens do not have the authority to initiate historic zoning, even for public property.² Disappointed by this untimely surprise, I requested that the agenda item be taken up as quickly as possible. The agenda item was then moved to the August 2015 agenda, which coincidentally was also the first meeting of the new 10-1 Historic Landmark Commission. Only two commissioners—commissioners Galindo and Myers—were re-appointees and had voted for the original national register listing in 2013. The other seven commissioners listed on the August 2015 agenda as members were new appointees and were seeing the item in an official capacity for the first time, at their first meeting. Lacking a historical perspective, they were therefore more susceptible to being misled by biased staff summary or public testimony. The lack of substantive *historic preservation* discussion at the meeting would bear this out; the commissioners almost exclusively directed their questions to the Austin Housing Authority and its plans for the Rosewood Courts property and did not ask any questions about the 91 page National Register nomination and the arguments it produces for landmark eligibility.

Allowing city staff to control meetings, manipulate the process and to present false information in such ways is not just bad ethics, it constitutes a failure to exercise proper meeting management initiative to the point of creating a violation of the public trust. This is especially the case if meeting results and meeting minutes are retroactively altered by the commissioners at the request of city staff, something which has also taken place. To elaborate:

A June 2015 Historic Landmark Commission vote regarding item B-11 on that meeting's agenda has been retroactively altered by the new 10-1 commission at the request of Mr. Sadowsky. As the supporting documents furnished you show, commissioner Leslie Wolfenden-Guidry originally recused herself from voting on this agenda item due to conflict of interest concerns but voted on the item anyway. However her recusal on the agenda item has been altered *post hoc*, with no proper public discussion or vote documenting the reversal of Leslie Wolfenden-Guidry's recusal. This is not a question of intent on the part of one particular commissioner; the present Historic

² This is not the case with the federal National Register process. *Any person* has the authority to initiate the national register nomination process, regardless of the public property owner's desires. See 36 CFR 60.1(b)(4).

Landmark Commissioners should not have voted *as a commission* to retroactively change the June 2015 meeting minutes to reflect a vote that should never have been counted. This is an example of mismanagement on the part of staff and bad judgment on the part of the commissioners and along with the shady manipulation of the Rosewood Courts process already discussed is a violation of Section 2-7-1 of the Austin City Code.

It bears noting that accusations of biased judgment and tenebrous administration on the part of this commission and its staff are not new. The 2010 audit of this commission, a copy of which has been furnished to you along with this complaint, makes similar findings of carelessness and inattention to detail, all of which have produced the cumulative effect of adversely impacting the proper historic preservation of East Austin accidentally on purpose.

The persistent lack of professionalism and double standards exercised by the Historic Landmark Commission bring shame and embarrassment upon our city, particularly within professional historic preservation circles domestically and abroad. These unfortunate practices have also long undermined the community's confidence in the ethics of our city's public servants. Instead of an equitable program commemorating the history of every part of our city, the evidence suggests that Austin's historic preservation program has primarily become a misguided and publicly financed property tax reduction program geared for taxpayers who own high-dollar West Austin real estate.

Given the seriousness and recurrent nature of the alleged transgressions, I respectfully request that the Ethics Commission undertake a full investigation of these concerns and consider issuing a formal reprimand or other higher sanction of the Historic Landmark Commission instead of an admonition.

In accordance with the City of Austin Ethics Code, I also respectfully request that the chair of the Historic Landmark Commission be presented with a copy of this complaint, along with the city attorney and the Ethics Commission. In addition, I ask that a full and complete public preliminary hearing be conducted by the Ethics Commission regarding this complaint within 20 working days.

I can be reached at (512) 275-6027 or at [REDACTED] if there are questions or for purposes of notification.

Sincerely,

A handwritten signature in cursive script, appearing to read 'F. L. McGhee'.

Fred L. McGhee, Ph.D.