



HISTORIC LANDMARK COMMISSION
Friday, December 6, 2013 – 12:00 P.M.
SPECIALLY-CALLED MEETING
Room 500, One Texas Center
505 Barton Springs Road
Austin, Texas

CURRENT BOARD MEMBERS:

____ *Laurie Limbacher, Chair*
____ *Andrea Roberts*
____ *Dan Leary*
____ *Mary Jo Galindo*

____ *John Rosato, Vice-Chair*
____ *Leslie Wolfenden Guidry*
____ *Terri Myers*

AGENDA

CALL TO ORDER

I. CITIZEN COMMUNICATION: GENERAL

The first three speakers signed up prior to the meeting being called to order will each be allowed a three-minute allotment to address their concerns regarding items not posted on the agenda.

No speakers

II. PUBLIC HEARINGS

A. DISCUSSION AND ACTION ON APPLICATIONS FOR CERTIFICATES OF APPROPRIATENESS

1. C14H-1989-0010

Dabney-Horne House, 507 W. 23rd Street

Proposal: Relocate the house to the northwest corner of the same lot.

Applicant: Mike McHone; Donna Carter

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

Committee Recommendation: Keep the house where it is and remove non-historic additions and modifications to preserve the current setbacks.

Staff Recommendation: Staff supports the proposal to move the house a few feet to the northwest on the same site, and also supports the Committee's recommendation to investigate removal of non-historic additions before determining how far the house must be moved.

COMMISSIONER LIMBACHER : I'd like to call to order the December 6th specially called meeting of the City of Austin Historic Landmark Commission. Mr. Sadowsky, will you call the role please?

STEVE SADOWSKY: Sure, Laurie Limbacher

COMMISSIONER LIMBACHER: Here

STEVE SADOWSKY: John Rosato

COMMISSIONER ROSATO: Here

STEVE SADOWSKY: Mary Jo Galindo

COMMISSIONER GALINDO: Here

STEVE SADOWSKY: Terri Myers

COMMISSIONER MYERS: Here

STEVE SADOWSKY: Leslie Wolfenden

COMMISSIONER WOLFENDEN-GUIDRY: Here

STEVE SADOWSKY: Andrea Roberts

NO REPLY

STEVE SADOWSKY: Dan Leary

NO REPLY

COMMISSIONER LIMBACHER: Ok, Thank you Mr. Sadowsky. I think we have one item on the agenda and, umm, did you want to give us a presentation?

SS: I had not actually prepared anything. This is an application to move the Dabney-Horne House approx. 12 feet on the same lot. It has been before the Commission several times and Staff is recommending the move with the condition that the move be reassessed if less, or if the removal of the non-original additions would allow less {inaudible}.

COMMISSIONER LIMBACHER: so that is what you say here on A-1.1?

SS: yes

LAURIE LIMBACHER: yeah, um, so commissioners, did we have questions did we have questions for Mr. Sadowsky and what he just presented or in the packet which we have received?

COMMISSIONER ROSATO: I just have clarification from what you were saying. On this it shows, if I am understanding it, we are talking about moving the property 2.5 feet to W 23rd if...and the larger move is, um, getting it closer to Nueces; with the removal of this, which I

guess we have no problem with in terms with historically the removal of this appendage on the building. I know we have talked about it several times. It seems like that is consistent with the era that we are trying to go back to, is that right?

SS: yes

COMMISSIONER LIMBACHER: yes

COMMISSIONER ROSATO: Ok. So, in moving this, is it possible for the house not to have to move quite so far towards Nueces Street?

SS: Well, and that is exactly what my, the condition to my recommendation is that if, if the house doesn't have to be moved the full 12 feet after restoration of the original structure, it should be moved less.

COMMISSIONER ROSATO: right

COMMISSIONER MYERS: how much less and we don't have an illustration of that.

SS: the applicants are here. I think they can present that information for you.

COMMISSIONER WOLFENDEN-GUIDRY: Before we get into that, I would really like to have Ms. Sanchez explain what the restrictive covenant is at this time.

ATTORNEY, MARIA SANCHEZ: Ok. So the restrictive covenant is a public restrictive covenant. And it provides that, the provision is that the Dabney-Horne Home existing on the property on the date of execution of this restrictive covenant shall be retained on the property. Now, that language to me is somewhat vague and it can be interpreted in various ways, right. Whether it can be removed, well, it can't be removed from the property but can it be relocated on the property is another question. So one way to address that would be to clarify or modify the restrictive covenant to address that; so that it says that it can be relocated on the property but not away from the property.

COMMISSIONER LIMBACHER: does it address the size of the lot or anything like that?

ATTORNEY, MARIA SANCHEZ : I don't have the complete restrictive covenant just, the, I have the...what you would look at is the language, is...it says that on the property it doesn't say

COMMISSIONER LIMBACHER: So you don't have the original document, you only have what the applicant has provided to you?

ATTORNEY, MARIA SANCHEZ: I have a copy, but what I was looking at was the language that is in question about whether the house could be moved on the property, and it says it shall be retained on the property so that's the provision that we're looking at that's in question.

COMMISSIONER WOLFENDEN-GUIDRY: Well the other thing that is in question is it looks like the lot size is being downsized as well, and I don't know if that's covered by the restrictive covenant or not. Or am I reading this wrong?

COMMISSIONER MYERS: No I think you're reading it right.

ATTORNEY, MARIA SANCHEZ: I didn't see anything...

COMMISSIONER LIMBACHER: What does the covenant...can you read the entirety of the covenant please?

ATTORNEY, MARIA SANCHEZ: Well the covenants are the Dabney-Horne home existing on the property at the date of execution of this restrictive covenant shall be retained on the property. If any person or any entity shall violate or attempt to violate this agreement, covenant it should be lawful for the City of Austin to prosecute proceedings at law or in equity against such person/entity violating or attempting to violate such agreement or covenant to prevent the person/entity from such actions, and to collect damages for such actions. So in other words it's in essence saying the City of Austin can enforce the restrictive covenant, and if any part of this agreement or covenant is declared invalid by judgment or court order the same shall in the way effect any of the other provisions of this agreement, or such remaining portions of this agreement shall remain in full effect. So it has a severance clause, and it says at any time if the City of Austin fails to enforce this agreement whether or not any violations of it or known such [inaudible] shall constitute a waiver or estoppel of right to enforce it. And also provides this agreement can be modified/amended/terminated by joint action vote of the majority of the members of city council of the City of Austin, and by the owners of the property at the time of such modification and/or termination.

That is the portion I reviewed because I was not aware...the certificate of appropriateness was to relocate the house. I was not aware of the change in lot size.

COMMISSIONER ROSATO: And if I'm correct, we have no authority over the restrictive covenant or changing a restrictive covenant.

ATTORNEY, MARIA SANCHEZ: Right, that would be another process. That would be an application to amend the restrictive covenant and that is like a zoning case. That would go through a different process to modify it.

COMMISSIONER ROSATO: Maybe it's not true but it seems, shouldn't that be done first before this comes to us?

ATTORNEY, MARIA SANCHEZ: Well that would've been what I would have done.

COMMISSIONER LIMBACHER: yes

ATTORNEY, MARIA SANCHEZ: If I was the applicant I would have done that because that would have been cleaner. And that's why I think if there's any question if the language allows for the property to be relocated even on the property. Because to me it could be interpreted that it has to be retained at the same side on the property, so to avoid that I would've probably modified the restrictive covenant, and that would've been done simultaneously...

COMMISSIONER LIMBACHER: If we take action that could be perceived as being in conflict with the restrictive covenant are we in effect waiving or voiding, or whatever the word was in there, the restrictive covenant on behalf of the City of Austin?

ATTORNEY, MARIA SANCHEZ: Let me look at this ... again the restrictive covenant is subject to interpretation, but that language talks about if at any time the City fails to enforce the agreement then it would be voided...our right to enforce it. So if you vote and you are interpreting the restrictive covenant as providing that the house would have to be retained at the same location on the property then you would be waving your right to enforce, the city would be waving its right to enforce...that would be my opinion.

COMMISSIONER LIMBACHER: And restrictive covenants generally are private agreements?

ATTORNEY, MARIA SANCHEZ: Well they can be private or public in this case this is a public restrictive covenant and the authority to enforce it is the City of Austin, has the right to enforce it.

COMMISSIONER LIMBACHER: Over any owner of the subject property?

ATTORNEY, MARIA SANCHEZ: Right, it gives the city... based on this language its given the city the right to enforce it.

COMMISSIONER LIMBACHER: Other questions for Miss Sanchez? Okay, are there other questions or discussions for Mr. Sadowsky?

COMMISSIONER MYERS: I umm...the restrictive covenant is clear in one regard that the house must remain on the property what we're looking at is what part of the property which is not addressed in the restrictive covenant and I think that Commissioner Wolfenden alluded to this issue, moving the house and reducing the amount of the property changes the property and thus changes the relationship of the house to the property insofar as the restrictive covenant is concerned. I just throw that out there to see if anyone else thinks that, in my opinion the house on its site, where it is, retains integrity of its location, and moving it; kind of shunting it aside to the corner of the property doesn't follow the intent of the restrictive covenant.

COMMISSIONER WOLFENDEN-GUIDRY: It also changes the neighborhood feel as well. Typical setbacks, so the remaining historic homes that are on these couple of blocks, it also changes the setbacks.

STEVE SADOWSKY: I think as a point of order before we get into this we need to open up the public hearing?

COMMISSIONER LIMBACHER: Right, thank you. So are there any other questions for Mr. Sadowsky or Ms. Sanchez before we open the public hearing?

COMMISSIONER ROSATO: I guess maybe I'm slow, but I'm just trying to get an answer, do we have the authority to change a restrictive covenant?

ATTORNEY, MARIA SANCHEZ: You? The commission? The city does, but this commission does not have that authority. There's a process for modifying/amending a restrictive covenant it follows the same process that a zoning case does and that would not go before you. That would not be considered by your commission.

COMMISSIONER ROSATO: Because this would be a totally different hearing for us if the city council removed the restrictive covenant.

ATTORNEY, MARIA SANCHEZ: Or modified it.

COMMISSIONER ROSATO: Or modified it. I mean the decisions that we have to make for the property and all that

ATTORNEY, MARIA SANCHEZ: The issue that you are here to determine is the certificate of appropriateness. Whether to grant that certificate

COMMISSIONER LIMBACHER: Well in part that relates very specifically to the restrictive covenant because as discussed here the restrictive covenant could be read to say that the house may not be moved and there the decision is made for us.

ATTORNEY, MARIA SANCHEZ: That's right. It's your interpretation of the restrictive covenant yes, and the decision whether to relocate the house on that property.

COMMISSIONER LIMBACHER: Ok. Other questions for Mr. Sadowsky or Mrs. Sanchez? Alright, then we'll open the public hearing and by our order of business we'll hear from those in support of the relocation permit application.

MIKE MCHONE: Hi there my name is Mike McHone, and I am representing the project. Appreciate y'all coming out on a cold Sunday, unsunny day, Friday day, and I would like to clarify some of the issues before you. You know what we're trying to do we're trying to save the historic building by relocating it, and restoring it to 1900 status. It needs to be moved for the buyer to be able to do that, and have the funds necessary to make the project work. This property was zoned under a historic zoning case back in 1989 in which it was zoned historic and the full authority of this commission relates to that 1989 case. In 1991 the co-op filed a zoning case to change the zoning, the base district zoning from multi-family to office in that process the city council enacted a restrictive covenant. To me the restrictive covenant is a redundant requirement. But out of abundance of precaution, after talking with the city legal and the questions that this commission raised, we have filed both a zoning change to reduce the area that is zoned historic and a restrictive covenant modification case. Both of which will go before the Planning Commission and City Council as soon as possible. It is necessary for us to go forward with a Certificate of Appropriateness as a condition of the sale of the property because if they cannot get a building permit, a footprint that is sufficient to build a building, then you have in your packet the sale that might proceed and it is imperative that the sale proceed and we [inaudible] timelines. We did not and our attorneys did not interpret the restrictive covenant as being something that was the purview of this Commission and this Commission is an advisory commission and the City only abandons it enforcement when its, in our opinion, when staff fails to act or The City Council fails to act on the restrictive covenant on that 91' case. The historic case, which is before you, the 89' case, gives you the

authorization to say, is this an appropriate action as an advisory Commission to the City Council.

COMMISSIONER LIMBACHER: let me just correct that. My understanding of our authority is that we make recommendations regarding zoning. But our authority is absolute with respect to Certificate of Appropriateness, unless it's appealed.

MIKE MCHONE: And, well...

COMMISSIONER LIMBACHER: So we are not advisory in that regard which is the issue before us.

MIKE MCHONE: right, whatever

COMMISSIONER LIMBACHER: I just want to make that clear.

MIKE MCHONE: thank you, whatever. Since 1991 major changes speak to your point about the neighborhood. Major changes have occurred. In '91, this was an area in which most of the properties were at least forty years old and in decline. There were a few historic buildings around that were saved. We enacted a neighborhood plan that was a large compromise in which this area was given an overlay and this property is in the center of that overlay, and this property is in the center of that overlay, the center of that height to allow the student body to return to the University, to walk the campus and relieve the pressure on those other historic neighborhoods such as Hyde Park, North University, East Woods, I could go on and on. All of the central neighborhoods where we hope to have more single-family neighbors. So we hope that you can see beyond the confusion that was created in 1989 and 1991 by a, what I consider to be a redundant process; putting a restrictive covenant on a historic building that already had all the protections of the historic zoning ordinance and we'd be happy to answer any questions. I believe we have given you the adequate information about what the proposal is and we'd be happy to answer anything that you might have in the way of questions.

COMMISSIONER LIMBACHER: Thank you. Questions for Mr. McHone?

COMMISSIONER ROSATO: do you know what the required set-back is; building set-back is from the property line in this zoning? Is there...

MIKE MCHONE: zero

COMMISSIONER LIMBACHER: And what is the base zoning? Is that...

MIKE MCHONE: the base zoning is GO, but the overlay allows it to go to zero.

COMMISSIONER ROSATO: setbacks?

MIKE MCHONE: zero set-backs. What we are trying to do and showing that, is that by widening the sidewalk, the actual distance that we are changing from the existing, preexisting 1991 curb to the existing curb, because we've widened all of the sidewalks is about the same. And we...the envelope that we need to create is we need to have that 50 feet of frontage along 23rd Street. Even when this building was zoned historic, the west 25

feet of this lot is parking lot. Now that has no bearing, it was never a parking lot back when Dabney or Horne were there so, it's kind of a blanket situation. I believe this commission more accurately defines the area to be zoned historic now when they are dealing with new cases to the actual historic features and if you have an out building or something that was added in 2000 or 1950, well let's make it [inaudible] about 1970, you probably wouldn't zone that historic.

COMMISSIONER LIMBACHER: Well, again, I beg to differ. We often zone the entirety of a site so that we have review authority, under the Certificate of Appropriateness review process, for what happens on the site to ensure that new construction is compatible.

MIKE MCHONE: right.

COMMISSIONER ROSATO: as this is shown here, it calls out a 5 foot setback and once a house is moved on this side, but it doesn't call out what the setbacks will be on all of the other sides; on L1, L4, and L3.

MIKE MCHONE: yes, I believe that was in your packet at one point in time.

COMMISSIONER LIMBACHER: I think that was our question before.

MIKE MCHONE: yeah, that's in that...

COMMISSIONER LIMBACHER: But this just shows existing. There is another drawing which we don't have.

MIKE MCHONE: Yeah, I'm sorry, I don't have the full power point because where in this location, the power point had that in it.

STEVE SADOWSKY: Well, the full power point...

COMMISSIONER LIMBACHER: I think this is the full power point right here.

STEVE SADOWSKY: yeah.

MIKE MCHONE: the full power point? Well, it should show that there was a 20...I believe it's a 20... the distance from the front bay to the curb line...

COMMISSIONER ROSATO: I'm talking about the property line.

MIKE MCHONE: oh, the property line is about 5 feet, John.

COMMISSIONER ROSATO: on all sides?

MIKE MCHONE: Yes.

COMMISSIONER LIMBACHER: And what does this drawing show?

MIKE MCHONE: That drawing is the zoning drawing, I believe.

COMMISSIONER LIMBACHER: So this shows your proposed setback?

MIKE MCHONE: 50 feet... yes, 50 feet on 23rd Street and the 147 feet, I believe, on Nueces Street that would be the building site. 148 is it? Yeah.

COMMISSIONER LIMBACHER: this is the proposed...

MIKE MCHONE: Location

COMMISSIONER LIMBACHER: that's the proposed new location.

COMMISSIONER ROSATO: So that would be the same as this?

MIKE MCHONE: Yes, it's supposed to be the same as that.

COMMISSIONER ROSATO: So, yeah, that shows 5 feet here.

MIKE MCHONE: yeah. It's about 5 feet in all locations. Maybe a little more on 23rd, maybe 7 because of the stairs.

COMMISSIONER LIMBACHER: other questions for Mr. McHone? If there are no questions, we'll hear from our next speaker. Is there anyone else who would like to speak in support?

SPEAKER UNKNOWN: I am just here to support Mike. I've given my speech a few times.

COMMISSIONER LIMBACHER: Is there anyone else who would like to speak in support of the relocation? Then we'll hear from anyone who might be here to speak in opposition, and there are 3 others here. I don't know whether any of you wish to speak, but if you do, whoever goes first will have up to 5 minutes and whoever goes after that will have up to 3 minutes.

LYNN TEAM: Good afternoon Commissioners my name is Lynn Team, I am here on behalf of Preservation Austin. I see you have our letter in front of you, and you've seen it before. The complexities of this case are concerning in several ways, but our action, the action of our board is that you keep the building where it is and protect it, continue to protect it with its landmark status, following the Secretary of Interior's standards for that sort of thing. One of the things we want to stress is this is an important case that will influence, that will undoubtedly going to have influence how other historic properties are handled in the University Neighborhood Overlay district. We've lost a number of important structures that were not landmarked, and that was inevitable I suppose with the redevelopment of that area, but we feel the Dabney-Horne house has significant history, it has every possible protection, legal protection, that people think they can put on a property. Unfortunately, the wording is interpreted as being vague. I am not a lawyer, and I'll leave that interpretation to the lawyers. But I was also a member of the CAMPAC Plan Team, and in our CAMPAC Plan we emphasized when we gave this enormous entitlement to the properties in West Campus at the same time we wanted to balance the protection of historically significant structures they have been threatened they have been pushed they have been pulled and other places we have worked on have not ended well because it's really difficult to do the legal protections as tightly as we need to do

to prevent pressures from seeping around them and undermining them. We...Preservation Austin is not opposed to growth, we're not opposed to density, we're not opposed to student housing, but we do believe the site (papers shuffling) and its very important to maintain it in that way, also in part because of the contextual situation I think someone else is going to speak to in relation to other historic properties in the immediate vicinity. I think that's all I'll say unless anyone has any questions.

COMMISSIONER LIMBACHER: Questions for Ms. Team? Is there anyone else who would like to speak in opposition?

SARA CROCKER: Good afternoon my name is Sarah Crocker and I am here on behalf of Catherine Kerry who owns the Gerhard – Schoch House right across the street from this particular property. This is pretty straightforward; this whole process could have been avoided. The applicant could have avoided any kind of delays if they had just followed the order of processes set out in the code. It's very much there basically says you are supposed to follow a certain order of process. When you have...I have never, ever, in the 25 years that I have been doing this, have been able to circumvent a restrictive covenant, council imposed restrictive covenant by going in and trying to get a bunch of little approvals that are in direct opposition to that. I guess you can. Mr. McHone filed that restrictive covenant on November 18th and it's going to be coming forward. The reason they want to move this house and take the additions off is it affects the amount of square footage they can get from that building. You asked about setbacks, there are no rules in the Uno overlay. They don't have any. The only setback that is required in the entirely over lay is for historic properties, and this entire lot is zoned historic, not just the house, but the whole lot. There's a question then that comes into my mind is they're planning on building a building that is going to come onto and take up and eat up part of a lot that is zoned historic, so that will all have to be amended. So the first order of process in this is would be the restrictive covenant the amendment, he's not filing for an amendment to the restrictive covenant he's filing to terminate it. Doesn't want to change it, is requesting the termination of the restrictive covenant. So I'm really confused why anybody would think removing 2 wings to the building that weren't there originally, but were put on around 1909...that's part of the story of this house. The whole house, there was no objection raised by staff, or anybody else to zoning that portion of the house that is original, it was all zoned historic including the entire lot. And just because those additions were added later that's not the only property in the city that's zoned historic that has landmark status that has an addition that was put on it after it was built. It certainly isn't one and I don't think just because they want to take it off...the reason they want to take it off is if they can get this thing down to the size of a postage stamp, the bigger their building is. That's what this is all about, and they want you to go ahead and approve this today, so they can kind of waive this around in front of council and the planning commission and say see we've already gotten landmark approval. That's a pretty slick move, but the bottom line is you don't have all your information. They could have provided it to you they could have come in and said well we're going to have to set back and we're going to have to do this and this is why we need to do it because this project can't be built unless we have this house reduced to this size. And that's the truth. I can't stress to you enough I think it's important for the commission to deny this permit today, he can always re-file it and he can bring forth the correct...give you the whole package, so that you have all of the information to make a decision about a very important structure. This is the first case in the Uno area that has a landmark structure attached to it. There's not that many in this particular corridor, so whatever happens here is going to impact everything else that comes down the line. We don't have that many structures of this type in this

particular area. The council recognized...everybody recognized when they gave them these privileges that we were still going to do everything we could to preserve those pieces that were in the neighborhood, and that's why that provision was put in to this section of the overlay was to protect these properties. If it's okay to just come in and we'll just move it and whack off certain pieces of it, what you're doing is anybody else down the line is going to say okay before we start going to design this building what we need to do is shrink this thing down and cut off anything that wasn't original so we can make it small as a postage stamp so we can build around it. This is important if they're behind schedule or they don't meet their deadlines, they could have avoided all of that. They started filing applications last February. They've been doing this for a year. They could have avoided all of that by just coming in and filing for the restrictive covenant. If they want to terminate it, fine. File for the termination, file for the Certificate of Appropriateness, do everything at one time because I think the council needs your feedback for that restrictive covenant amendment/termination however it goes forward. I think it's important for them to have part of your feedback. That's what you're here for, you are the HLC, and they going to want to hear what you have to say (GAVEL) so let's do it all together.

STEVE SADOWSKY: That's 3 minutes.

SARA CROCKER: Please just deny this application today, they can always re-file and let it come forward with the RESTRICTIVE COVENANT let's follow the order of process set forth in the code. Thank you.

COMMISSIONER LIMBACHER: Questions for Ms. Crocker? Thank you...is there anyone else who would like to speak in opposition? Then by our order of business Mr. McHone you will have up to 3 minutes to offer clarifying comments to address things that have been said.

MIKE MCHONE: Thank you, this is an important case an important case for how we proceed with the city development. This project needs to be built for the owner. We realize as buyers that we will be back to you as soon as we comply with staff recommendation. The buyer will not go forward with the necessary expenses of having all of the research done to determine the minimum distance that the house can be moved if it needs to be moved at all once the 1991 additions are removed or 1920 when the bay windows were put on there. But we do know what it was in 1900 by our research that's been submitted to you, and that's what we would like to restore it to. It is true that we want to minimize the impact of the building, we want to preserve it, we feel this will be the retail component of a Combined University Neighborhood Overlay project, but we have followed what we thought were the processes necessary. Historic zoning-dealing with the historic zoning case. restrictive covenant - dealing with the zoning that happened in 1991. All of those are going to be moving forward simultaneously. This commission can say is it a good idea to restore buildings to their original? Is it important that it has a prominence, or shall we leave it in a situation where it is deteriorating with all these 1990 additions sitting on it and a 25-foot parking lot? Or do we allow it and get restored the landscape and look beautiful and we'll come back to you with what it will look like before we ever do anything to clarify what needs to be done. So we've realized this is a collaborative ongoing process but we need to get to the first step so the person who has the funds and ability to restore it can do that. So we know what our building blueprints need to be from the development end and whatever that's what we need to work from. So anything you can do to help us move along, help save

the Co-Op as entity we would love to have you help us do that. And we look at this as an ongoing process.

COMMISSIONER LIMBACHER: Thank you. Questions for Mr. McHone? Did I understand you to say that you intend to proceed in a methodical way; first with the removal with non- or certain designated additions?

MIKE MCHONE: Once we get...My understanding of the way... staff has explained to me their support would be and motion if you follow staff recommendation is that once we go to city council and planning commission and get everything done the property will close and then buyer will then have the consultants go in and do an extensive evaluation of what should be removed and what can be removed, and figure out exactly how much space and how it needs to be moved maybe its 12 feet maybe it's only 8 feet the idea being get that 50 feet of frontage we can build on 23rd street because that's minimum distance we can make the new building work. It would be in compliance with the requirements as we know of the buildings adjacent to historic buildings. And then we would go forward with other Certificate of Appropriateness back to you to go with those plans. Modify them as to your approval. And move forward with actually doing the relocation but that would occur after all of these other actions occur.

COMMISSIONER LIMBACHER: So the short answer is yes?

MIKE MCHONE: Yes, thank you.

COMMISSIONER LIMBACHER. Thank you. Okay commissioners I think we have heard from everyone and we need a motion to close the public hearing. A motion by Commissioner Meyers a second by Commissioner Rosado to close the public hearing. All those in favor say Aye (AYEs) opposed... the motion carries. Is there a motion on the case?

COMMISSIONER ROSATO: I have a question, for discussion. The issue of removing the things that were talked about before...do we have any issue with that amount? I have seen us allow appendages to buildings that weren't original to the absolute original building to be removed.

COMMISSIONER MYERS: Usually if they're 50 years old or older those appendages remain, they have taken on historic significance of their own.

COMMISSIONER ROSATO: Do we know which ones of these are...that fall within what you are talking about?

COMMISSIONER MYERS: I think Mr. McHone has said that once they have their approvals in place they will hire consultants or have consultants which ones those are and I would hope that if that does become the case they would come back to us or staff for verification.

COMMISSIONER LIMBACHER: So this page in the presentation begins to illustrate it and shows that this and this and that seem to be later additions from Sanborn map, and also I recall Ms. Carter and others in her office giving testimony about preliminary investigations they had done. Now what we don't really know is what exactly happens back

here. Because you can see there were something...What is the vintage of this Sanborn map, do you recall?

STEVE SADOWSKY: I don't, I think its...

MIKE MCHONE: Circa 1900...yeah that shows the contrast

COMMISSIONER ROSATO: So there was something here...

MIKE MCHONE: Yeah, different from what that shows

COMMISSIONER LIMBACHER: So we have some preliminary indications in our previous discussions in general I think those commissioners who have participated in committee meeting had indicated a general level of comfort with removing additions that occurred after a certain date. Now Ms. Crocker talked about just now that the entire accumulated history has significance and that we should proceed with caution as did commissioner Meyers.

COMMISSIONER MYERS: That's certainly and I think Commissioner Wolfenden can attest to this that that's something that comes up in National Register cases all the time. That generally it's frowned on to remove historic period additions or changes.

COMMISSIONER LIMBACHER: But our understanding is and I'm speaking from memory, some of these are not 50 years old, but basically we have been handed kind of a bag of worms.

COMMISSIONER MYERS: (Laughing) we're trying to sort it out

COMMISSIONER LIMBACHER: we don't really have entirely useful information.

COMMISSIONER WOLFENDEN-GUIDRY: What is the existing staff recommendation for the proposal?

COMMISSIONER LIMBACHER: It says staff can support the move of the house on the same lot, but recommends removal of non-historic additions to re-evaluate how far the house must be moved.

COMMISSIONER WOLFENDEN-GUIDRY: And the overall thing we're approving today is the permit to do so?

COMMISSIONER LIMBACHER: Well we have before us a relocation permit application we do not have a partial demolition permit application, but my understanding from previous cases is that demolition and relocation well no, they can be swirled together somehow.

STEVE SADOWSKY: Well no not this no, it will require a new application.

COMMISSIONER LIMBACHER: But the applicant's agent just gave testimony that their intention was to proceed in accord with this. To me and I believe I have said this from the earliest meeting that the prudent approach is to begin the process of peeling back the layers and make clear exactly what we have in terms of the building and what that

recommends in terms of any possible relocation if relocation is even needed to achieve development objectives, is a prudent approach. And that's consistent with staff recommendation and consistent with the applicant's testimony. So, what we need is a motion.

COMMISSIONER MYERS: I move that we deny the applicant's request to move the property at this time. I just like to justify this a little bit. This is bonified Austin historic landmark. The property is an Austin historic landmark. We generally follow national register guidelines, and there are 7 aspects of integrity and I think by moving this property it affects the location, the setting, the feeling, and the association of this building, and I think what we have proposed to us the past several meetings and today will render this property as having a lack of integrity in those areas.

COMMISSIONER LIMBACHER: Is there a second?

COMMISSIONER WOLFENDEN-GUIDRY: I'll second.

COMMISSIONER ROSATO: I'd like to discuss. I think I would feel a lot more comfortable and I'm fine with your motion, but they need to deal with the restrictive covenant and come back to us. That's the crux of it. That affects even with your objections to it. If the city council decides they're going to remove the restrictive covenant then it's a different story of what they're asking for legally.

COMMISSIONER LIMBACHER: So you're making a friendly amendment?

JOHN ROSATO: I don't know whether it's an amendment, it could be that the applicant can consider coming back to us after the restrictive covenant is decided. I don't know if this needs to be an amendment... it's peeling back the onion like you said.

COMMISSIONER WOLFENDEN-GUIDRY: It's just so unclear, and as we are not lawyers to interpret this beyond what is obvious. Making the property lot smaller and moving the house isn't obvious in the restrictive covenant. So I'm with John on his...I would make a friendly amendment.

COMMISSIONER LIMBACHER: Would the maker of the motion accept that?

COMMISSIONER MYERS: I'll accept that.

COMMISSIONER LIMBACHER: The motion is to deny the relocation permit application and do we want to further advise the applicant to return with specific requests for demolishing non-historic parts of the building and resolution of the restrictive covenant. That was part of your talk. Further discussion? Mr. Sadowsky did you have any comment? In other cases you have said a demolition permit is as good as a relocation permit, I'm not sure you said we can go the other way relocation is as good as demolition but...

STEVE SADOWSKY: Right, but in this case that's usually for the entire structure when that is true. Because what you're making a decision on at that point is whether the property, whether the building can be removed from its site, whether that happens through demolition, or that happens through relocation is not really an issue, but here the application is for relocation and then we'll be having another...and those are also on cases

that are not historic landmarks, so here we will be having a situation of the relocation permit application being denied if you all vote that way and then the application of partial demolition coming as a COA again, so it is two different aspects of the same case rather than the other way around.

COMMISSIONER ROSATO: And they can at that time come back and ask about relocation?

STEVE SADOWSKY: Sure

COMMISSIONER LIMBACHER: They don't have to wait a certain number of months?

STEVE SADOWSKY: Not on a COA.

LAURIE LIMBACHER: And Ms. Sanchez is our attorney right, so you're the new Chad (laughter)

ATTORNEY, MARIA SANCHEZ: Yes.

COMMISSIONER LIMBACHER: Did you have any comment or concern about the action the commission is contemplating?

MARIA SANCHEZ: No.

COMMISSIONER LIMBACHER: Well thank you. Further discussion? I'll just offer a comment and that is I have found the case very confusing from the beginning I thought the testimony that was given about a more normal and methodical process, that was in my opinion...I have been seeking information to make clear what the request is what the action is what the outcome is, I regret that we have spent time in this kind of state of murkiness and things not being entirely clear, but it feels to me that this is the right action, this is the only response we can take given what we have before. If there is no further discussion we will call to question all those in favor say Aye (many Ayes) opposed...(none) then the motion carries thank you.

STEVE SADOWSKY: Thank you. Is there a motion to adjourn?

COMMISSIONER LIMBACHER: Oh right, is there a motion to adjourn?

COMMISSIONER GALINDO: So moved

COMMISSIONER WOLFENDEN-GUIDRY: Second

COMMISSIONER LIMBACHER: Motion by Commissioner Galindo a second by Commissioner Wolf enden to adjourn. All those in favor say Aye (many Ayes) opposed...the motion carries.