

STATEMENT

RE: C14-05-0025 - 1706 & 1708 W. 6TH ST.

CITY OF AUSTIN - PLANNING COMMISSION

PAUL SEALS

APRIL 26, 2005

My name is Paul Seals. My wife and I are opposed to the proposed zoning change. We are the owners of 1709 Francis Avenue, a property that is affected adversely by the recommendation of the staff in this zoning case. We have lived there for the past 18 years. I am also a member of Old West Austin Neighborhood Association Steering Committee. This is my second tour of duty on the Steering Committee, having served in the late 90's. I was also a member of the Neighborhood Planning Team, with responsibility for the land use policies incorporated into the Neighborhood Plan that was approved in 2000.

This is not my first appearance before this Commission regarding 1706 West 6th Street. The previous owner, filed a zoning request in 1998, which was denied by the City Council. The rationale for the denial of both that 1998 case and an earlier case involving 1804 West 6th formed the basis for the specific language in the Neighborhood Plan, which is applicable to this case. Dave Sullivan, who was also a member of the Planning Team took the lead in crafting this language.

The staff recommendation is contrary to the City Council instructions relating to this case.

The fundamental question before you tonight should be: why in the world are we here considering this zoning request? I hope that you have reviewed the transcript from the City Council Meeting of September 26, 2002. It is clear that the Council directed the staff to initiate rezoning after being assured by the owners of 1706 West 6th that they were aware of and would comply with the limitations in the Neighborhood Plan. For two and half years, the staff has pondered this case. Instead of going back to the Council for reconsideration and further instructions, the staff has recommended approval of the rezoning in violation of the Neighborhood Plan. If there is a problem with the Plan, the appropriate procedure should be to consider revisions to the Plan instead of what you have before you which is a recommendation to disregard the Plan. This Commission should not be considering a recommendation from the staff that is not in conformance with the Neighborhood Plan.

The land use provisions for the North 6th Street District are fundamental provision of Neighborhood Plan.

The provisions are designed to accomplish one of the overarching goals of the Neighborhood Plan's Land Use Policies -- preservation of the residential core of the neighborhood by protecting against erosion from the edges. The provisions for the North 6th Street District are designed to establish a defined barrier between commercial and residential properties. The Plan specifically prohibits alley access, which would impact residential properties. The staff proposal eviscerates the Neighborhood Plan.

The staff recommends that the rezoning include access through the existing narrow alley and a privately-owned driveway in clear violation of the Neighborhood Plan, which prohibits business

access through the alley and requires access through a street with minimum width of 36 feet. Although properties at either end of the 1700 Block of West 6th are zoned commercial, each rezoning required direct access off of either Augusta St. or Patterson Ave, both of which had to be widened when the earlier zoning was approved. This proposed use of alley access, if approved, will then serve as a precedent for the 1800 Block of West 6th, and then around the curve and up Theresa, which have similar alley access issues and face commercial zoning pressures.

The staff recommendation is not enforceable.

The staff has recommended site ingress off West 6th with egress through the alley. How will these restrictions be enforced, particularly in light of the on-going willful violations of existing zoning? There are no practical methods to enforce the restriction short of stationing a policeman in the alley or constructing one of those one-directional metal-barbed strips that you find at car rental locations.

The staff recommendation results in the condemnation of residential property.

Under Transportation on page 5 of the review sheet, the staff recommends that the currently existing pavement north of the dedicated alley should be dedicated as a public right-of-way. I assume this means that the City would condemn a portion of my property as well as at 1707 Francis to accommodate the rezoning. Please note the aerial photo in your back-up materials, which has been marked to show the dedicated alley. The alley dead-ends behind 1706 West 6th and my property. Previous residential owners paved a driveway across the southern portion of my property to connect to another alley to the west. The City proposes that access be through my property.

If the City wants to exercise this power of eminent domain, at least it should be done consistent with the Neighborhood Plan. The City could acquire a strip of land south and parallel to the existing alley to provide direct commercial access off of Augusta Street. This would not only be consistent with the Neighborhood Plan by providing for the construction of a barrier between the commercial and residential properties it would also correct fence that was constructed contrary to the City's approval of the rezoning of 1700-04 West 6th in the early 80's.

The City should not reward willful violation of the existing zoning.

Since 1997, shortly after the previous owner purchased the house from long-time residents and converted the house to an office, the residential neighbors have been complaining to the City about the illegal commercial use. Even after the rezoning was denied in 1998, the City did nothing in response to our complaints for the continued illegal use.

Shortly after the Leons acquired 1706 West 6th from the previous owner, I happened to meet them in the alley between our houses. I noticed their young child. I introduced myself and welcomed them to the neighborhood and started to praise our neighborhood elementary school. They looked at me with disbelief and told me that Sarah Leon was going to open her law office in the house and they had no intention of living there. I advised them of the residential zoning of the property and the past denial of the attempt at rezoning. With full knowledge of the zoning, Sarah Leon opened her office. We continued filing our complaints. The Leons continue their illegal use. What started out as one or two cars parked off the alley is now 6 to 8 cars double-

parked. Their backyard is now a parking lot. The parking has spilled over into the dedicated alley.

The Leons have no equitable position in this case. They knew they were buying residential property. They knew that their residential neighbors opposed the parking and access off the alley. They willfully flaunted the zoning requirements. Faced with their self-made problem, they ask the City to help them out. One of the fundamental principles of equity is clean hands. You do not seek equity unless you have clean hands. Neither this Commission nor the City should feel any compunction to grant the relief sought by the Leons.

As a resident of Austin, I find it unconscionable that the City staff appears to go to any length to force fit a rezoning to solve a problem of the Leon's own creation to the detriment of our neighborhood. That is surely not what the Council intended when they directed the staff to initiate this case.

Finally, I would ask you to consider what has been going on in our immediate neighborhood. In the past 5-10 years there has been a tremendous investment and growth in the owner-occupied residential properties along Francis, Patterson and Theresa. Because of the location, people want to live here. Just because the Leons were never interested in 1706 as a residence does not mean others would not be.

Our neighborhood is a real special place – something worth fighting for!!!

My family urges this Commission to reject the staff's recommendation to rezone these properties.

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