

October 30, 2017

Travis County District Attorney Margaret Moore  
Austin Texas  
Via Email:

Re: Request for the District Attorney to File a Petition for Quo Warranto Action to Remove Disqualified City of Austin Planning Commissioners

Dear District Attorney Moore:

As residents of the City of Austin in Travis County, we respectfully request in our individual capacities that the Travis County District Attorney's Office file a petition for quo warranto to remove City of Austin Planning Commissioners who are unlawfully holding their public offices. *Texas Civil Practices and Remedies Code, Section 66.001* authorizes a quo warranto action to remove officials who unlawfully hold their office: "An action in the nature of quo warranto is available if: (1) a person usurps, intrudes into, or unlawfully holds or executes a franchise or an office, including an office in a corporation created by the authority of this state..." The local District Attorney has authority under *Section 66.002* to file a petition for quo warranto on his or her own initiative or on an individual's request. "If grounds for the remedy exist, the attorney general or the county or district attorney of the proper county may petition the district court of the proper county or a district judge if the court is in vacation for leave to file an information in the nature of quo warranto." *Id.*

**Our Request:** We request that your office start immediately an investigation and then file a petition for quo warranto action in Travis County District Court to remove City of Austin Planning Commissioners who are unlawfully holding their public offices.

**The Planning Commission is a Sovereign Body.** The City of Austin Planning Commission is a sovereign body exercising governmental authority; therefore, commission members are public officials subject to quo warranto action. Texas Local Government Code Section 211.007 provides that a home-rule city, such as Austin, *must appoint* a Zoning Commission to exercise zoning and planning regulatory authority. In Austin, that body is named the Planning Commission. *Austin City Code, Section 2-1-166.*

Before the Austin City Council may make zoning or planning decisions, state law requires that the Council must receive a recommendation from the Planning Commission: "The zoning commission *shall* make a preliminary report and hold public hearings on that report before submitting a final report to the governing body... *the governing body may not take action on the matter until it receives the final report of the zoning commission.* *Texas Local Government Code Section 211.007 (B)* (emphasis added). The Planning Commission as an official public body is subject to Texas' Open Meetings Law. *Section 211.0075.* And under the Austin City Charter, the

Planning Commission has broad powers to make recommendations over zoning and planning to the Council. *Austin City Charter, Article X, Section 4.*

**The Planning Commission's Board Composition is Illegal and, Therefore, Planning Commissioners are Unlawfully Holding their Offices and Exercising their Authority.** *The Austin City Charter, Article X, Section 2* requires that "a minimum of two-thirds of the [planning commission] members shall be lay members not directly or indirectly connected with real estate and land development." The current City Council has ignored this law and has appointed 7 commissioners out of 13 who are directly or indirectly connected to real estate and land development. The 1994 voter-approved Charter provision allows only 4 members connected to these industries. Austin's Planning Commission has twice the number of development professionals as allowed by the Charter. The intent of the Charter is to have a Planning Commission controlled by the community and not development special interests. The City Council is subverting the voters' will as expressed in the charter.

Contrary to the Charter's dictates, the City's Planning Commission is dominated by real estate and land development interests. All four Planning Commission officers, including the Chairman, are part of the development industry. More than 50% of the Commissioners are connected to this industry. This Commission composition has contaminated the Commission's review, analysis and recommendations on the proposed comprehensive revision of the Land Development Code, named CodeNEXT, as well as its other zoning and planning decisions. CodeNEXT will impact every property in Austin, effecting people's homes, neighborhoods, and the City for decades to come. Its process should comport with the law.

These seven Commissioners are not lay persons. They have professional biases as well as the potential to benefit financially from more development. Their recommendations and work product have more often than not reflected the interests and views of the city's real estate industry, rather than the general public. They have potential conflicts of interest between their personal financial interests and their public service on the Commission, contrary to the Charter and public will.

There is no excuse for the Council's appointment of an illegally constituted body. This Charter amendment was enacted in 1994. The Mayor and Council were informed in the fall of 2015 that the Commission's membership was illegal and not in compliance with the Charter. Nonetheless, Council has taken no corrective action. In fact, two members with development connections have been appointed or reappointed this year: Chair Steve Oliver and Board member Greg Anderson.

The following Commissioners, at least, are connected directly or indirectly to real estate and land development:

Steve Oliver (Chair): Architect (<http://designopa.com/about/>)

Fayez Kazi (Vice Chair)(Engineer and land development planner)  
(<http://www.civiltude.com/staff/>)

James Shieh (Secretary) (Architect) ( <http://jsquarearch.com/james/>)

James Schissler (Parliamentarian)(Engineer and land development)  
(<https://www.linkedin.com/in/jimschissler/>)

Greg Anderson (Non-profit real estate developer)  
([https://www.bizjournals.com/austin/potmsearch/detail/submission/3546681/Greg Anderson](https://www.bizjournals.com/austin/potmsearch/detail/submission/3546681/Greg_Anderson)  
[n](http://www.mystatesman.com/news/local/developer-affordability-deal-includes-help-for-habitat-for-humanity/9Whyi0EzKpJzo8uen1dRgL/); <http://www.mystatesman.com/news/local/developer-affordability-deal-includes-help-for-habitat-for-humanity/9Whyi0EzKpJzo8uen1dRgL/>)

Karen McGraw (Architect)( [https://www.aiaaustin.org/firm\\_profile/karen-mcgraw-architect](https://www.aiaaustin.org/firm_profile/karen-mcgraw-architect))

Trinity White (Architect)( <http://www.trinitywhite.com/index-flatiron>)

We are not challenging the integrity of these commissioners, who are fine Austin citizens. We are challenging their qualifications to serve on the Planning Commission pursuant to the Charter.

Please uphold the voters' intent to have a planning and zoning process not dominated by development interests. Please take such action as needed to ensure that the Planning Commission's composition complies with the law. Please file a petition in quo warranto post haste and rectify the Planning Commissioners' unlawfully holding of public office.

Sincerely yours,

Fred I. Lewis

Bill Bunch

P. Michael Hebert

Bill Aleshire

Dr. Fred McGhee

Roy Waley

Mike Lavigne