

# SECTION 5

Transcript of the  
January 9, 2023  
Landmark Commission  
Hearing  
338 S Fleming Avenue  
CD223-003(RD)

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IN RE: :

338 S. Fleming Ave. :

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LANDMARK COMMISSION MEETING  
 JANUARY 9TH, 2023

COMPUTER-AIDED TRANSCRIPTION  
 SAMANDA J. RIOS, COURT REPORTER

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(Transcription start time 52:50.)

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MADAM CHAIR MONTGOMERY: All right.

Next up we have on our rearranged agenda is D4.

STAFF: Yes.

MADAM CHAIR MONTGOMERY: And that is a Fleming Ave.

STAFF: Dr. Rhonda Dunn presenting on behalf of City Staff, discussion item D4. The subject property is located at 338 South Fleming Avenue in the 10th Street neighborhood Historic District. The case No. CD223-003 (RD).

The request is for a certificate of demolition to demolish primary residential structure. And we do have a speaker on this case.

MADAM CHAIR MONTGOMERY: We do indeed.

Welcome back, Mr. Shear.

MR. SHEAR: Thank you.

MADAM CHAIR MONTGOMERY: Again, I

1 need you to give me your name and address.

2 MR. SHEAR: Yes, yes. My name is  
3 Randy Shear, S-H-E-A-R. And I live at 7027  
4 Gaston Parkway in Dallas, Texas.

5 MADAM CHAIR MONTGOMERY: And you  
6 swear or affirm to tell the truth?

7 MR. SHEAR: Yes, I swear to tell  
8 the truth.

9 MADAM CHAIR MONTGOMERY: Okay.  
10 And you are here as the  
11 representative of the owner; is that correct?

12 MR. SHEAR: Yes, I'm here as the  
13 representative of the owner.

14 MADAM CHAIR MONTGOMERY: Alrighty.  
15 And we had another speaker listed,  
16 Mr. David Cossum, is he joining you are not;  
17 do you know?

18 MR. SHEAR: He's going to be  
19 online.

20 MADAM CHAIR MONTGOMERY: Okay.  
21 So we will let you go first and you  
22 have three minutes, which Elaine will set  
23 timing to share with us whatever you wish to  
24 communicate with us, and then we'll ask you

1 questions later.

2 MR. SHEAR: I actually wrote almost  
3 five pages here, but I'm going to make it very  
4 brief because this project has a lot of  
5 history to it.

6 MADAM CHAIR MONTGOMERY: It does  
7 indeed and we've been there for a lot of it.  
8 So you just begin and if you run out of time,  
9 then we'll talk about that one.

10 MR. SHEAR: If I do run out of  
11 time, could you just ask me to continue?

12 MADAM CHAIR MONTGOMERY: Yeah, we  
13 can. If someone makes a motion that's what we  
14 usually do and then we get more. So just go  
15 ahead with your three minutes first and then  
16 we'll --

17 MR. SHEAR: First, I'm going to  
18 talk about the things that have happened more  
19 recently. That the grant money that -- we  
20 applied for grant money in probably November,  
21 but it continued into December because it  
22 wasn't completed. At the same time,  
23 unfortunately, then Marie's husband, Larry,  
24 had succumbed to cancer and died on the 16th

1 of December, last year.

2 In the funding they have recently  
3 told us that we're actually on a waiting list.  
4 That was accepted, the application was  
5 accepted, but we're actually on a waiting list  
6 to get funding. But that doesn't exactly  
7 change the condition of property and so we're  
8 moving forward with this considering the fact  
9 that the CA was approved last June of last  
10 year. And we're -- they're actually going to  
11 move forward with both the engineer report and  
12 the code inspection on the property. It's  
13 possible that the property in this state is  
14 going to be condemned because the condition  
15 over the year has deteriorated even further.

16 Just last week I was at the house  
17 and I was able to get interior shots of the  
18 condition as it stands right now. It is a  
19 public threat because we actually disconnected  
20 the Encore power line, which was tethered to  
21 the building. And actually each time they  
22 came out to loosen the cable it tightened up  
23 because the building is shifting off of its  
24 Bodark foundations.

1                   And it's collapsed now about -- I  
2                   think when the bedrock report was done in July  
3                   or it was published in October of '21, that  
4                   had given the explanation that the building is  
5                   80 percent on the ground. And right now it's  
6                   more in the 95 percent, it's collapsed  
7                   further. I have a whole list of items about  
8                   the conditions so I'm not going to repeat them  
9                   right now. You can ask if you'd like.

10                   Also, that condition allowed Anne  
11                   Marie to say that she is keeping the existing  
12                   structure and the funding would go towards  
13                   pretty much the foundation. She had one  
14                   condition that the CA remains the same.

15                   COMMISSIONER UNKNOWN: I move that  
16                   we provide the applicant an additional three  
17                   minutes.

18                   COMMISSIONER HAJDU: I'll second.

19                   MADAM CHAIR MONTGOMERY:  
20                   Everybody's second. Okay. Mr. Hajdu, you  
21                   seconded that. All in favor?

22                   THE COMMISSION: Aye.

23                   MADAM CHAIR MONTGOMERY: All right.  
24                   Go ahead. So you have another

1 three minutes.

2 MR. SHEAR: So separate from the  
3 actual condition of the house, the funding was  
4 an incentive for Anne Marie to fix the house,  
5 so to speak. But the over the year the  
6 reports that come in to save the house no  
7 matter what, the actual CA that was approved  
8 was not signed by the director and as we know  
9 they had the seven aspects of integrity. And  
10 their building now and this "CJ Castle" brief  
11 was completed for the CPC meeting. And at the  
12 CPC meeting, we weren't able to actually show  
13 them the design of the building. So -- or the  
14 CA was not submitted to the CPC. So most of  
15 the questions at that meeting were around what  
16 did it look like?

17 In fact, one commissioner even  
18 asked she said your design looks like what?  
19 Because that was under the category to replace  
20 it with a more appropriate structure. That's  
21 the correct term. But we were always in the  
22 position of saying that the property itself is  
23 irretrievably lost because of its condition  
24 and that still remains. The house is still a



1 non-contributing commercial structure. The  
2 director was wrong in the briefing of the  
3 demolition by neglect to say that both he did  
4 not know what the property was used for. It  
5 was a commercial business that had plaster and  
6 statuette company and concrete, those added  
7 weight to the property, which contributed to  
8 the structure collapsing.

9 And Anne Marie then had seven  
10 dumpsters take everything on the interior so  
11 that we could actually see the corridors that  
12 we show in the pictures. I think I added one  
13 picture just to show you how much junk was in  
14 this building. And we estimate maybe 2 tons  
15 or even more were removed from the structure.  
16 And in some funny way you think that she was  
17 doing good to the building, but maybe that  
18 disturbed the building even further or made it  
19 more unstable will be the word.

20 Together with the condition of the  
21 building, the building still remains  
22 commercial and it is non-contributing. We  
23 feel that we're asking you to -- oh, just one  
24 more paragraph about --

1 STAFF: That is your time.

2 MADAM CHAIR MONTGOMERY: I moved we  
3 give the applicant one more minute.

4 COMMISSIONER UNKNOWN: Second.

5 MADAM CHAIR MONTGOMERY: Thank you,  
6 sir.

7 All in favor?

8 COMMISSIONER UNKNOWN: Aye.

9 MADAM CHAIR MONTGOMERY: All right.  
10 Proceed. One minute.

11 MR. SHEAR: So in a letter to the  
12 mayor I wrote about trying to find a  
13 compromise. And I actually had something in  
14 mind and when at the CPC meeting I said there  
15 was actually a Plan B that's available to us.  
16 And that was really deconstruction they asked  
17 me and I said I wasn't going to talk about it,  
18 but they finally looked like they wanted to  
19 know. So I told them that it was  
20 deconstruction, which was actually adopted by  
21 the EPA in 2015. And has been adopted and  
22 have new ordinances in San Antonio that's been  
23 approved August of last year.

24 I think that some form of

1           deconstruction has to happen on the structure.  
2           So we're here to actually ask you and I think  
3           that we've been on the same page from the very  
4           beginning and I'll tell you why. Because Anne  
5           Marie got up here a year-and-a-half ago and  
6           she said that she would save every piece of  
7           wood in that building to use in the new  
8           building. She also -- also --

9                         STAFF: That is your time, sir.

10                        MR. SHEAR: Just a few sentences,  
11           ma'am?

12                        Mr. Cummings had talked about a  
13           selective demolition, more recently Dr. Dunn  
14           talked about a manual demolition. And they  
15           actually asked in the task force meeting in  
16           the first go around for a -- I'm sorry, I just  
17           keep forgetting the word. But it's another  
18           word for salvage plan, that's it. The salvage  
19           plan. And so we're here today to ask this  
20           forum to let the building go through so under  
21           conditions, the conditions would be developed  
22           by you guys, to have the building go forward.

23                        We also submitted a letter for an  
24           extension on the CA, but that's not for this

1 discussion.

2 MADAM CHAIR MONTGOMERY: Yeah,  
3 okay. I think we get where you're headed with  
4 this. We can let Mr. Cossum continue now. I  
5 see he's here. He's online, we just need to  
6 see his face.

7 MR. COSSUM: Good afternoon,  
8 Commissioner, David Cossum, 10407 Silver Rock  
9 Drive in Dallas, Texas 75218.

10 And really, I'm just curious --

11 MADAM CHAIR MONTGOMERY: Okay.

12 And you do you swear or affirm to  
13 tell us the truth today, sir?

14 MR. COSSUM: Yes, ma'am.

15 MADAM CHAIR MONTGOMERY: Okay.

16 You'll have to speak up because  
17 when you started we could barely hear you so  
18 your microphone needs to be high.

19 MR. COSSUM: Will do.

20 I really just wanted to make a  
21 couple of observations about the case in that,  
22 you know, it just seems clear that the owner  
23 has had the best intentions from this when she  
24 initially acquired the property back in, I

1 think it was June of '21. She knew it was a  
2 historic district, she was aware that it was  
3 listed as non-contributing at the time. But  
4 she still wanted to come up with a solution  
5 that recognized the district and the  
6 historical fabric of the district.

7 She met with historic preservation  
8 staff almost immediately upon acquiring the  
9 property. Then had met with them a few times,  
10 then got the engineer's report, I think in  
11 October of '21. That engineer's report I  
12 think you've seen showed some substantial  
13 difficulties with the foundation of the  
14 structure. Some of the boat arch piers that  
15 actually toppled over. The joists are rotted  
16 from sitting on the ground. There were just a  
17 number of structural issues that affected the  
18 integrity of the overall house.

19 At the time it seems the Historic  
20 Preservation Office staff given that the  
21 structure was listed as non-contributing had  
22 made a recommendation that the applicant  
23 pursue a demolition to provide a structure  
24 that was more conforming than the existing

1 structure.

2 And there were reasons why that  
3 structure in the original survey was listed as  
4 non-contributing. The enclosure of the  
5 porches, other factors that pretty much  
6 diminished the architectural significance of  
7 the structure that's historic.

8 I appreciate staff's re-analysis of  
9 that last year saying just the fact that it  
10 was constructed originally in the period of  
11 significance is significant. I don't argue  
12 with that. But there are also valid reasons  
13 why the structure had initially been listed as  
14 non-contributing. So for that reason I  
15 believe staff directed them towards pursuing a  
16 CD for that purpose to replace it with a more  
17 -- more contributing structure.

18 This commission did, in fact,  
19 approve a CA that would have been appropriate.  
20 And I think that also shows the good faith of  
21 the applicant and the owner at the time to  
22 come up with a solution that is consistent  
23 with the historical integrity of the district.  
24 But of course, the CA was tied to a CD being

1 approved. And ultimately that was not approved  
2 based on the re-interpretation of staff that  
3 the period of significance, the fact that the  
4 original structure had been built during that  
5 time was so significant that perhaps the  
6 structure needed to be re-evaluated as  
7 contributing.

8 So I -- you know, I can't argue one  
9 way or the other with that, but I do think  
10 it's important to note that the applicant and  
11 the owner we're always following --

12 STAFF: Excuse me, that's your  
13 time.

14 MR. COSSUM: Okay.

15 MADAM CHAIR MONTGOMERY: Hang on  
16 for questions.

17 I do want to clarify for some of  
18 our newer commissioners who weren't around  
19 during the events that he has just described.  
20 It is our normal procedure when someone would  
21 like to remove an existing structure and  
22 replace it with a new one, first, we have to  
23 look at the proposed new one and rule on  
24 whether it's acceptable or not. But that does

1 not in any way mean that we're going to say  
2 that they are allowed to demolish the existing  
3 structure.

4 So that is what happened. We said,  
5 yes, this is a nice new house she proposed to  
6 build, and then we said we rejected their  
7 certificate of demolition.

8 Also, between that original time  
9 when we recommended to do the selective  
10 deconstruction and save all the pieces, staff  
11 got a chance to get inside of the structure,  
12 inside of that enclosure that's on the outside  
13 and see the inside and see that it was in  
14 their judgment in more salvageable state than  
15 previously they had been able to tell from  
16 outside that surrounding enclosing structure,  
17 which appears to have been put on when a  
18 previously domestic building was used for  
19 commercial purposes. That's different than  
20 just being a commercial structure, it's an  
21 adaptive structure. It happens a lot to old  
22 houses, they become a business.

23 So I just want to make sure  
24 everyone who has not had the pleasure of being



1 here for this entire thing because it has  
2 dragged on forever, and I know that's hard on  
3 the applicant, that we all understood.

4 Now, who has questions for our  
5 applicant?

6 COMMISSIONER OFFUTT: I have  
7 question or questions.

8 MADAM CHAIR MONTGOMERY: Go ahead,  
9 sir.

10 COMMISSIONER OFFUTT: As I recall,  
11 the engineer reports that we have seen  
12 essentially confirmed that this thing is a  
13 danger to anybody attempting to even enter it,  
14 plus just walking around it. And based upon  
15 what you said its continued to shift and its  
16 continued to be damaged. So my sense is that  
17 we're in a worse situation than we were a year  
18 ago. Is that a correct statement?

19 MR. SHEAR: Yes. Do you hear me?  
20 Yes.

21 COMMISSIONER OFFUTT: Right. Okay.

22 MADAM CHAIR MONTGOMERY: I think  
23 you have to speak up a little bit for the mic  
24 to pick up.

1 COMMISSIONER OFFUTT: At the -- I'm  
2 sorry --

3 MR. SHEAR: And I do have a list of  
4 items that are worse as of last week that I  
5 went to record the building.

6 COMMISSIONER OFFUTT: And you had  
7 made a comment and I just wanted to clarify  
8 that you had had one off discussion with one  
9 or more commissioners about this project. Is  
10 that what you said, in terms of reclaiming  
11 wood or whatever?

12 MR. SHEAR: You might have to  
13 repeat the question, but early on I had -- I  
14 had done some research on deconstruction. As  
15 everything was going on for the whole last  
16 year, I've done extensive research on  
17 deconstruction and I pretty much know all the  
18 players in Dallas who do it. It's kind of  
19 interesting, but yes. Does that answer your  
20 question?

21 COMMISSIONER OFFUTT: No. You made  
22 -- I thought you made specific reference to  
23 having a discussion or discussions, one off,  
24 with individual Commissioners about the

1           reclamation or this project? Is that correct  
2           or not correct?

3                   MR. SHEAR: No, I haven't had any  
4           discussions with one off commissioners. I did  
5           mention that as I said in the CBC meeting.

6                   COMMISSIONER OFFUTT: Thank you.

7                   MR. SHEAR: And actually the letter  
8           to the mayor said that we have to find some  
9           kind of common ground. I happen to think that  
10          common ground is something we can all agree on  
11          that the building is in very bad shape and it  
12          needs to be deconstructed before it is  
13          reconstructed.

14                   Now, I also have two examples of  
15          that condition for other historic buildings  
16          that have been deconstructed that I think are  
17          very interesting.

18                   MADAM CHAIR MONTGOMERY: Are you  
19          finished Mr. Offutt or did you have further  
20          questions?

21                   COMMISSIONER OFFUTT: That's it.

22          Thank you.

23                   MADAM CHAIR MONTGOMERY: Alrighty.

24                   Who else has questions? Mr. Swann?

1 COMMISSIONER SWANN: Yes.

2 Mr. Shear?

3 MR. SHEAR: Yes, sir.

4 COMMISSIONER SWANN: What do you  
5 see as the chief threat to public safety at  
6 this moment as the building stands?

7 MR. SHEAR: Well, first of all, the  
8 building had -- Anne Marie, because of the  
9 demolition by neglect, I had instructed Anne  
10 Marie to make some needed repairs. And so she  
11 tarped the roof, she blocked holes where  
12 vagrants were going into the building. And as  
13 you know, if the vagrants go inside the  
14 building then it is a threat to them. And if  
15 they make a fire because it's cold it could  
16 just burn down. Not to mention the fact that  
17 the Encore service was the meter was very hot  
18 when they removed it few weeks ago.

19 And they said -- the guy from  
20 Encore said that because there's no circuit  
21 board inside the building, the biggest threat  
22 would have been fire from electrical service.  
23 But you also have other threats about the gas  
24 line being old and rusted. And so combine all

1 of these things I would believe that the  
2 building collapsing on somebody is a  
3 possibility. And I actually don't exactly  
4 like going inside the building at this point  
5 in time.

6 COMMISSIONER SWANN: Okay.

7 But now staff may need to help me  
8 with this and maybe code enforcement, too.  
9 But securing the building envelope against  
10 intrusion is the homeowner's or the property  
11 owner's responsibility, correct?

12 MR. SHEAR: It is and she did make  
13 sure that there is nobody able to access it.  
14 But they do get around that, you know, they  
15 take boards off and they get inside.

16 COMMISSIONER SWANN: Right. Oh,  
17 no, I understand. I mean, it requires  
18 constant vigilance in a case where people will  
19 ply to the plywood right off the buildings.

20 Now, the threat of fire from the  
21 connected electrical service that has been  
22 remediated, correct? So that is no longer an  
23 imminent threat to the building, correct?

24 MR. SHEAR: That is.

1                   COMMISSIONER SWANN: Okay. And the  
2 gas has been shut off. So if we're talking  
3 about deteriorated gas mains, we're talking  
4 about supply mains that come from the gas  
5 service; is that correct?

6                   MR. SHEAR: Yes. I would say the  
7 supply link, yes, but there were two meters on  
8 property there so we don't know if they're  
9 connected or not.

10                  COMMISSIONER SWANN: Okay.

11                   And currently the building has an  
12 additional line of defense, so to speak,  
13 against intruders as much as it is fenced. Is  
14 that not correct?

15                  MR. SHEAR: No.

16                  COMMISSIONER SWANN: Okay.

17                   I'm sorry, I think I misunderstood  
18 that then. I thought there was a fence around  
19 the property? No?

20                  MR. SHEAR: No, it's just a fence  
21 on the street line and that's just a normal  
22 3-foot fence.

23                  COMMISSIONER SWANN: Okay. Okay.

24                   Now, does the building -- we've

1           acknowledged it -- and no one has ever  
2           suggested to you on this commission or  
3           anywhere else that the foundation would not  
4           need to be replaced, have they? I mean, the  
5           foundation has always been acknowledged to be  
6           in need of replacement; is that not correct?

7                       MR. SHEAR: That would be correct.  
8           But unfortunately legal counsel based their  
9           argument on the fact that they got an email  
10          from staff members and that email stated that  
11          the foundation did not need to be replaced, it  
12          needed to be fixed as is in place.

13                      COMMISSIONER SWANN: That's almost  
14          a semantic argument to me because I don't see  
15          how the foundation would be fixed without  
16          raising the building. I mean, raising it up.

17                      MR. SHEAR: Well, they claimed and  
18          it was in the seven aspects of the condition.  
19          The foundation was in the seven aspects of  
20          integrity.

21                      COMMISSIONER SWANN: Right.  
22          Because there -- you know, of course, there  
23          are many buildings standing.

24                      MR. SHEAR: And it was possible --

1           it was plausible deniability on the directors  
2           part. That, oh, well, if the building is 80  
3           percent on the ground, how did they get  
4           underneath it to study the foundation is  
5           irretrievably lost. So that's what was said.

6                        COMMISSIONER SWANN: Okay.

7                        MR. SHEAR: As for the report, it  
8           came from the fact that Mr. Johnson, Task  
9           Force member, came and inspected the structure  
10          himself. And in that email he gave his aspect  
11          that it's fixable.

12                       COMMISSIONER SWANN: Okay.

13                       MR. SHEAR: So the city argument  
14          then went into the CJ Castle brief, the  
15          lawyers brief that I can get it for you to  
16          read it, but they basically said everything is  
17          fine. They had doubts they said about the  
18          foundation and the non-contributing status.

19                       COMMISSIONER SWANN: Okay. Now,  
20          visually do you -- you discern substantial  
21          racking or tilting out of "Guam." And when I  
22          say substantial, I mean substantial because  
23          these -- many of these occupied homes have a  
24          little bit of lean to them. But I'm talking



1           about the kind of racking, you know, the term  
2           that I mean, parallelogram of walls and  
3           twisting of the buildings that would indicate  
4           that it's about to -- that the structure  
5           supporting the roof is in danger of imminent  
6           failure.

7                         In other words, we've seen that the  
8           building has fallen the distance of the crawl  
9           space. Okay. So that it's on the ground.  
10          The crawl space is gone. But are we seeing  
11          evidence that the structural integrity above  
12          the building is compromised to the point where  
13          it would fall on someone?

14                        MR. SHEAR: The building was  
15          surveyed at a 2.5 degree rotation. I'm pretty  
16          sure they didn't build the building  
17          unparalleled to the street line.

18                        COMMISSIONER SWANN: No, but would  
19          you not also agree that the failure, the  
20          tipping over of the bodark supports could  
21          create that degree of rotation?

22                        MR. SHEAR: There is rotation, yes.  
23          And there's further rotation as it's  
24          collapsing down to the south side really and

1           it's actually rotating also because the bodark  
2           tree trunks, not the -- they're not stubbed  
3           into the ground, they're actually just tree  
4           trunks of various sizes which have been  
5           pictured. Because right now the interior  
6           wall, be it the wall between the porch and the  
7           inside of the building, has separated from the  
8           porch decking. So it was this much and I was  
9           able to very carefully not drop my iPhone to  
10          get pictures of the further bodark evidence  
11          further into underneath the home.

12                           And I actually took more pictures  
13          because the walls have started to crack so  
14          that's evidence of collapse of the roof down.  
15          Also, the floorboards are buckling as it's  
16          collapsing so there's more evidence of  
17          buckling. And so --

18                           COMMISSIONER SWANN: Okay.

19                           But would you not also agree that  
20          if you have a foundation that is failing by  
21          degrees you are inevitably going to have  
22          buckling? Because some parts will be supported  
23          and some parts will not be as it progressively  
24          fails. And when I'm talking about failure,

1 I'm talking about the bodark. Because  
2 wouldn't you also agree that if it came down  
3 in what we would call a catastrophic failure,  
4 a sudden, not a gradual failure, that would  
5 create some progressive shock to the structure  
6 of the building Above the floor, correct?

7 MR. SHEAR: Yes, of course.

8 COMMISSIONER SWANN: Which wouldn't  
9 you agree from the pictures that it appears to  
10 have withstood that shock fairly well?

11 MR. SHEAR: No, the pictures I've  
12 taken over the few times that I've been there  
13 I've shown catastrophic collapse. It's just a  
14 matter of how big the storm will be. Well,  
15 we're just waiting for another storm to have  
16 it collapse further.

17 COMMISSIONER SWANN: But without  
18 bracing that was essentially doing its job,  
19 whether it be a kind of plate structure effect  
20 created by the intact siding, wouldn't we  
21 expect to see more racking and lean in the  
22 building that has essentially fallen off its  
23 foundation if it were not essentially sound in  
24 terms of its basic structure from the floor

1 level above?

2 MR. SHEAR: Well, look, look, I  
3 mean, you've got this email from three people.  
4 You have it from Director Miller, Carlos and  
5 owner and the task force member. And that  
6 email had given their version of what the  
7 structure condition was. They -- none of them  
8 including myself as an engineer. How can I  
9 talk about all these things, about racking and  
10 stuff like that? It was already in the bedrock  
11 report that the building had collapsed. And  
12 so it's just a matter of how much more the  
13 building can collapse and if it can be  
14 fixable. And my claim is that the building  
15 has to come down to be rebuilt. It has to be  
16 --

17 MADAM CHAIR MONTGOMERY: Could I  
18 insert one question that you have just made me  
19 think of in your line of questioning? As its  
20 lean and its twist has gotten worse, could you  
21 have helped support it at any time by building  
22 some sort of external supports that would have  
23 helped hold it in place as its foundation  
24 seems to hold it adequately in place?

1 MR. SHEAR: I don't think any kind  
2 of bracing at the beginning of this process or  
3 at the process now is available to hold up  
4 that building.

5 MADAM CHAIR MONTGOMERY: All right.  
6 Thank you.

7 MR. SHEAR: You can't get  
8 underneath it so it just keeps going down and  
9 twists and down. Plus, the code official that  
10 examines the building, the roof itself is made  
11 of 2 by 4 and is supported by a shelf in the  
12 middle of the building that people have seen  
13 that has six posts to it. That's everything  
14 that's holding up the roof at this point. If  
15 you remove that shelf system in the middle of  
16 the building, then you'll see catastrophic  
17 collapse.

18 MADAM CHAIR MONTGOMERY: I'm glad  
19 you're aware of that because then you won't  
20 remove the shelf which would be sort of, you  
21 know, make it all worse. What I was actually  
22 getting at is had we started holding it up  
23 better before it was quite as bad, could we be  
24 in a better position than we are now? And you

1           have said that you feel we could not have done  
2           anything to improve our current condition. So  
3           let me let Mr. Swann continue.

4                           COMMISSIONER SWANN: Okay.

5                           I'm going to address the next  
6           questions to staff. How do you in terms of  
7           city of Dallas, how does the city of Dallas  
8           make determinations of contributing versus  
9           non-contributing?

10                          STAFF: Well, this, in other words,  
11           the reason why it's listed as  
12           non-contributing, it was a part of a study, a  
13           survey. In other words, historic resources  
14           surveys are conducted. And this survey that  
15           was done in 1994, I think it was Hardy Heck-  
16           Moore was done in 1994. And according to that  
17           survey, it was listed as non-contributing.  
18           But some things we don't know is if they  
19           actually came onto the property and actually  
20           examined the building, those things we don't  
21           know.

22                          COMMISSIONER SWANN: I think you're  
23           about to answer -- you almost answered my next  
24           question. So what you're saying is this was a

1 determination made in order to prepare the  
2 nomination form for the National Registered  
3 listing?

4 STAFF: Correct.

5 COMMISSIONER SWANN: Okay. And  
6 isn't it true that a lot of those -- because  
7 when we're dealing with historic districts  
8 with a lot of structures, many of those  
9 surveys are essentially curb surveys.

10 STAFF: Correct. Windshield  
11 surveys as well.

12 COMMISSIONER SWANN: Thank you.  
13 That's the term I wanted, windshield surveys.  
14 And if you would please describe a windshield  
15 survey?

16 STAFF: A windshield survey is  
17 basically what it says you're in a car, you  
18 have your paperwork in front of you, your  
19 addresses you're supposed to be investigating.  
20 And you basically go from residence to  
21 residence in this case, you make a  
22 determination while you're sitting in the car  
23 of whether or not the structure you're looking  
24 at or investigating is or is not contributing.

1                   In this case I could see if you did  
2                   a windshield survey why would be  
3                   non-contributing because the major historic  
4                   feature of the property is a wraparound porch.  
5                   And that wraparound porch was covered at that  
6                   time with board and batten -- not horizontal,  
7                   vertical siding.

8                   COMMISSIONER SWANN: And at one of  
9                   the first landmark meetings this was it not  
10                  discussed that that was likely the reason that  
11                  it was deemed non-contributing? And I believe  
12                  it was Commissioner Cummings who pointed out  
13                  that some exploratory, at least the removal of  
14                  the sheathing would be required to make a --  
15                  to revisit the assessment of contributing  
16                  versus non-contributing?

17                  STAFF: Correct.

18                  COMMISSIONER SWANN: Okay. And was  
19                  that visit made to get behind the sheathing?

20                  STAFF: Well, that's the July 25th  
21                  visit that Mr. Shear is referring to, the  
22                  seven points of integrity.

23                  COMMISSIONER SWANN: Okay.

24                  STAFF: Where Director Miller,



1           staff member Carlos Winona and myself, I was  
2           new at that time, maybe I was here for a week  
3           or two. But we actually went onto the property  
4           with Mr. Shear and went inside, took pictures  
5           both of the interior and the exterior. And  
6           that's when Mr. Miller made the assessment  
7           looking at the fact that behind that board and  
8           batten siding is actually 117. Like there's  
9           the actual porch and then there's behind the  
10          porch, the front facade that faces the south  
11          yard. So you could see where it did indeed at  
12          some point have that wraparound porch that we  
13          do see in the Sanborn map of 1922.

14                           COMMISSIONER SWANN: Okay. And did  
15          Director Miller have the experiencing  
16          qualifications to make that professional  
17          assessment?

18                           STAFF: I would think that he did.  
19          He's a licensed architect.

20                           COMMISSIONER SWANN: All right.  
21          Thank you.

22                           MR. SHEAR: I have to say that he  
23          is not a licensed architect.

24                           MADAM CHAIR MONTGOMERY: You

1           haven't (indiscernible.)

2                         MR. SHEAR: No, but if he was going  
3           to -- let's say, Mr. Swann, is going to change  
4           the status from non-contributing to  
5           contributing, he'd have to do the seven  
6           aspects of integrity. But he'd also have to  
7           confirm the fact that the building itself and  
8           the structure is not irretrievably lost. So  
9           he cannot --

10                        MADAM CHAIR MONTGOMERY: Sir, we  
11           have occasionally found that something was  
12           ruled non-contributing in error, for instance,  
13           because they couldn't see what it really was  
14           behind an exterior covering. So that is the  
15           process we will go through to that. And  
16           Mr. Miller always seemed to firmly understand  
17           those seven attributes of integrity and so I  
18           would trust his judgment in interpreting what  
19           he saw there.

20                        I must say that sometimes I find  
21           his writings a little bit confusing so I could  
22           imagine the memo reporting what he came to  
23           know from looking at it might be a little hard  
24           to read, but that doesn't mean he was wrong in

1 his thinking. So I'm inclined to believe that  
2 he did have the qualifications to understand  
3 about that. He's seen a few buildings in his  
4 time.

5 MR. SHEAR: Yeah, but if I -- you  
6 know, there's this beautiful little Victorian  
7 white structure around the corner that's off  
8 the historic district. Why is Mr. Miller not  
9 going for status on that property because it  
10 have more integrity than our property?

11 MADAM CHAIR MONTGOMERY: That is a  
12 completely different process to bring a  
13 building into being covered by historic  
14 preservation ordinance. It doesn't have  
15 anything to do with evaluating those that have  
16 already been in. So let's move onto  
17 Mr. Renaud's question. He is a licensed  
18 architect, correct, Mr. Renaud?

19 COMMISSIONER RENAUD: That's  
20 correct, in the state of Texas.

21 Mr. Shear, I have some questions  
22 for you in particular. Have you worked on  
23 other historic homes of this period, of this  
24 vintage?

1 MR. SHEAR: You know, I have a  
2 history and I've sent -- actually in Toronto I  
3 ended up doing some historic work in finding a  
4 book on EJ Lennox and I actually saved the  
5 home from demolition in Toronto. So that was  
6 way back. And more recently, like I had sent  
7 the letter that I wrote to Michelle Obama to  
8 try to save the Phillis Wheatley School in New  
9 Orleans. And so I dabbled in trying to  
10 preserve these buildings. So I came into this  
11 job because Anne Marie hired me to fulfill her  
12 dream of fixing this building at the beginning  
13 and doing an addition to the building.

14 COMMISSIONER RENAUD: Right.

15 MR. SHEAR: But I mean at this  
16 point in time I -- I designed bigger things.

17 COMMISSIONER RENAUD: So my second  
18 question or the follow up question is that or  
19 at least what I've found in the past of homes  
20 of this vintage of, you know, built in the  
21 early 1900's is that 2 by 4 was very common  
22 construction type for both the ball framing  
23 and for the roof framing. In fact, you know,  
24 center rafters would be a 1 by 4, not a 2 by

1           4. There's a gigantic difference between the  
2           quality of wood produce, you know, 150 years  
3           ago compared to today. It was a lot more  
4           dense. In fact, at this point it's become  
5           almost as strong as steel, it becomes  
6           petrified. The cells are a lot tighter.  
7           There's just a lot more structural integrity.

8                         And, in fact, you know, you look at  
9           the rafters of the roof today, I see very  
10          little sag in those and really what's  
11          collapsing is the foundation as we've seen in  
12          the photographs. Bodark interior posts were  
13          very, very common again. In fact, perimeter  
14          -- when they were concrete around the  
15          perimeter those were poured just right on the  
16          surface of the soil, they didn't even drop  
17          below the surface. So these are very common,  
18          you know, constructed. It's a very common  
19          construction type for this period so I don't  
20          see anything sort of out of the ordinary or  
21          poorly built originally. It's really just  
22          been a lack of maintenance.

23                         Those are my comments and my  
24          questions. Thank you.

1                   MADAM CHAIR MONTGOMERY: Any other  
2 commissioners? Any of you at home? Anyone  
3 else here?

4                   I will say my home stands on little  
5 bodark post just sitting there on the ground.  
6 Does it stand still? Not exactly. But has it  
7 stood for over 100 years? Indeed and it  
8 functions as our house. A once in a while we  
9 go in and we replace one with concrete.  
10 There's 112 of them, we're not up there yet.  
11 So a foundation like that moves a bit and can  
12 be replaced piecemeal until it reaches a point  
13 of no return like perhaps this one has.

14                   So no other -- because if no one  
15 has any comments then I am looking for a  
16 motion. And if we could reiterate the three  
17 reasons, either staff or our attorney, perhaps  
18 our attorney should do it. The three reasons  
19 that would lead us to need to approve this  
20 demolition.

21                   STAFF: It says the Landmark  
22 Commission must deny an application to  
23 demolish or remove a structure that poses an  
24 imminent threat to public health or safety

1 unless it finds that, one, the structure  
2 constitutes a documented major and imminent  
3 threat to public health and safety; two, to  
4 the demolition or removal is required to  
5 alleviate the threat to public health and  
6 safety. And three, there is no reasonable way  
7 other than demolition or remove to eliminate  
8 the threat in a timely manner.

9 MADAM CHAIR MONTGOMERY: Go ahead,  
10 Commissioner Swann.

11 COMMISSIONER SWANN: Otherwise  
12 known -- oh, thank you. Let me -- I'm sorry.  
13 Let me make sure this gets on the recording.

14 I move that in the matter of  
15 CD-223-003(RD) otherwise known as 338 South  
16 Fleming Avenue, in the 10th Street  
17 neighborhood historic districts, that we deny  
18 the request for the certificate of demolition  
19 to demolish primary residential structure  
20 without prejudice with a finding that the  
21 posed work is inconsistent with the standards  
22 and city code section 51a-4.501H4C.

23 MADAM CHAIR MONTGOMERY: Do I have  
24 a second?

1 COMMISSIONER RENAUD: Second.

2 MADAM CHAIR MONTGOMERY: Thank you,  
3 Commissioner Renaud.

4 Any further discussion before we  
5 call for a vote?

6 COMMISSIONER SWANN: I really think  
7 some further discussion is appropriate.  
8 Because this is a project that everyone here  
9 wants to see come to a good end on both sides  
10 of this horseshoe. And our -- well --

11 MR. SHEAR: But Mr. Swann, it's  
12 become impossible to deal with you people  
13 because you've changed your minds.

14 MADAM CHAIR MONTGOMERY: We're  
15 actually at the point where only we get to  
16 talk. I know that may seem unfair, but it is  
17 just our rule.

18 COMMISSIONER SWANN: We're beyond  
19 the questioning period, but I think I've been  
20 fairly consistent on this case from the very  
21 beginning. I would be surprised if you can  
22 point to a situation where I've changed my  
23 mind.

24 MR. SHEAR: You said it was a



1 sticky one. What do you mean by that?

2 STAFF: Sir, the public hearing is  
3 closed so it's just comments of the  
4 Commission. Thank you.

5 COMMISSIONER SWANN: Okay. There  
6 is a great deal of integrity remaining in this  
7 building. I think the points made by  
8 Commissioner Renaud are well taken about the  
9 value and strength of old growth timber, which  
10 you will never see again, the hardness of the  
11 wood. The fact that the connections that were  
12 made when this building was constructed are  
13 original. It has not been dismantled, it has  
14 not been subjected to the potential for  
15 splitting and compromise a pin joints that you  
16 would get from dismantling. You have a  
17 valuable structure with a great deal of  
18 integrity that needs a new foundation.

19 And I hope that the powers that be  
20 that are making the determination on grants  
21 see this and reward you with a substantial  
22 grant to make necessary repairs to that  
23 foundation, which in this case do mean a  
24 replacement of that foundation because it is

1           that important. And we were, I think, very  
2           warm to the design that was proposed because  
3           it was in many ways faithful to the original  
4           structure. What it was not is the original  
5           structure. There are some ways in which you  
6           could never be faithful to the things that we  
7           value in historic districts when we're  
8           assessing integrity. And materials and the  
9           irreplaceable materials are a big issue in a  
10          district 10th Street that is built  
11          substantially where things are original of old  
12          growth timber.

13                   I don't think the argument can be  
14          successfully made that this building poses an  
15          imminent danger to anyone. It has been  
16          appropriately mothballed and secured against  
17          intrusion, which we've acknowledged is an  
18          ongoing process. I think this commission has  
19          been very friendly to the addition as well.  
20          Yeah, we've massaged a little bit, but it was  
21          approved.

22                   Now, it was approved as part of a  
23          process proceeding under a different standard.  
24          And that standard has changed now and we are

1 bound to satisfy to our satisfaction the three  
2 elements of the standard or to deny the  
3 certificate of demolition. And that's why the  
4 motion that is on the floor is on the floor.

5 MADAM CHAIR MONTGOMERY: Thank you,  
6 Mr. Swann.

7 I would like to also add that it's  
8 our own rules that say we have to deny a  
9 request for certificate of demolition. Unless  
10 we find it has been proven that it's a major  
11 and imminent threat to public health and  
12 safety, it is currently boarded up if that is  
13 not effective, perhaps a fence could be added.  
14 But it is not about to fall over on passers  
15 by. And if there are ways for you to prevent  
16 passers by and intruders getting close enough  
17 to it, more effort needs to be put into that.

18 But the other thing that we  
19 absolutely must meet, which I don't think has  
20 been met, is there no reasonable way other  
21 than demolition or removal to eliminate the  
22 threat in a timely manner? I do not believe  
23 you have thoroughly explored those ways or  
24 even kept up with trying to keep the building

1 in shape and as secure as it could be during  
2 this time that has past. I know it's been a  
3 lot of time, but we had a pandemic and things  
4 happen and that's what goes on.

5 So we are not -- we must deny it.  
6 That's the word they use unless we find those  
7 things to be true that there's just no other  
8 way. And I do not find there to be no other  
9 way around this house. No new house is  
10 probably going to be more authentic than the  
11 one that's there and did the things that have  
12 been done to it over time. And that's real  
13 standard, a lot of houses have disappeared in  
14 businesses, but they're still under there and  
15 could be a nice place to live and a  
16 contributing factor to that.

17 MR. SHEAR: I'm not suggesting that  
18 this building be demolished in the sense that  
19 it's demolished.

20 MADAM CHAIR MONTGOMERY: I know, I  
21 know, I know. (Indiscernible.)

22 MR. SHEAR: I don't know why you  
23 don't understand that we are going to use  
24 every piece of wood we possibly can and the

1 owner had stated that a year-and-a-half ago.

2 MADAM CHAIR MONTGOMERY: And that's  
3 better than just knocking it down and throwing  
4 it away, but it's still not the highest  
5 option.

6 MR. SHEAR: Don't change the  
7 narrative. Mr. Swann's been changing the  
8 narrative. Also, Mr. Anderson said why didn't  
9 you do B instead of A.

10 MADAM CHAIR MONTGOMERY: Sir, sir,  
11 you have to stop. And I would point out  
12 you've had a narrative, we all have, we've had  
13 our discussion.

14 COMMISSIONER SLADE: Can I ask --

15 MADAM CHAIR MONTGOMERY: There's  
16 always appealing?

17 MADAM CHAIR MONTGOMERY: Yes, who  
18 is online and wishes to ask something?

19 COMMISSIONER SLADE: This is  
20 Commissioner Slade. For the sake of order,  
21 could we please mute his microphone? He's  
22 being disrespectful of the order for this  
23 public hearing.

24 MADAM CHAIR MONTGOMERY: He has

1 left the microphone. I believe he has waved  
2 goodbye to me in a friendly manner. All  
3 right. Clearly this has become an extremely  
4 emotional issue for all of us. It's  
5 inappropriate for me to respond in that way,  
6 but sometimes we can't help it and I can  
7 understand why he feels quite frustrated.

8 Are there any other comments  
9 anybody wishes to make?

10 COMMISSIONER RENAUD: I would like  
11 just from a planning standpoint, just looking  
12 at this lot I don't think all opportunities  
13 have been considered by the owner of this  
14 property considering its size, considering  
15 what's existing there now. So I just wanted  
16 to make put that on the record.

17 MADAM CHAIR MONTGOMERY: You mean  
18 all opportunities for securing it?

19 COMMISSIONER RENAUD: No, all  
20 opportunities regarding the size of the  
21 property when I'm looking at the zoning of the  
22 site I just think if somebody wanted a new  
23 house there's an opportunity on the remainder  
24 of the tract for that to occur. And with

1 proper subdivision and work done in order to  
2 achieve that. So there are other options  
3 available from my opinion. Thank you.

4 MADAM CHAIR MONTGOMERY: All right.

5 Are we ready to call for a vote?

6 All right. All those in favor of the motion  
7 please say aye.

8 THE COMMISSION: Aye.

9 MADAM CHAIR MONTGOMERY: Any  
10 opposed?

11 COMMISSIONER OFFUTT: Oppose.

12 MADAM CHAIR MONTGOMERY: All right.

13 Mr. Offutt is in opposition to this  
14 motion. Everyone else was in favor and  
15 therefore the Aye's win. And since it is a  
16 denial you will inform Mr. Shear that he could  
17 go back to CPC if he wants to.

18 All right. Because I just love to  
19 take risks I have made my argument here and I  
20 think Mr. Swann has supported me that more  
21 could have been done over this past year-  
22 and-a-half now to hold the building in stasis  
23 while it moves through this process, which was  
24 the duty of the owner both for public safety





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C E R T I F I C A T I O N

I hereby certify that the recorded proceedings and evidence are contained fully and accurately in the notes taken by me of the above case, and this copy is a correct transcript of the same.

*Samanda J. Rios*

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Samanda J. Rios  
Court Reporter  
Notary Public of Pennsylvania

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