

## **A TROJAN HORSE**

### **FROM AUSTIN'S COMMERCIAL REAL ESTATE INDUSTRY**

Austin's commercial real estate industry claims to be the protector and promoter of an "affordable" Austin. They contend that Austin can achieve affordability by adopting new higher density rules and zoning deregulation in a radically new land development code. We believe their approach is really a Trojan horse<sup>1</sup> to abolish single-family zoning, promote gentrification, and to commercialize for profit our many unique single-family neighborhoods. We believe that Austin's citizens across the city overwhelmingly would reject this Trojan horse if they understood its threat to their homes, to the fabric of their neighborhoods, and to their way of life.

Like most Americans, the vast majority of Austin homeowners want to live in single-family neighborhoods. A 2011 survey from the National Association of Realtors found that over three-fourths of all Americans prefer to live in single-family, detached houses with yards.<sup>2</sup> Our neighborhoods provide safety for our children, reduced noise, a respite from commercialization, a sense of community, and a good place to live our lives and raise our families (of all types). Although only 20% of Austin's land is zoned for single-family use,<sup>3</sup> the commercial real estate industry seeks to undo Austin's use-based zoning laws and neighborhood plans that protect our neighborhoods. They are promoting this agenda under the guise of affordability and through the implementation of a radically new land development code.

#### Commercializing Single-family Zoned Land is More Profitable.

The industry wants to develop Austin's single-family properties into commercial and multifamily projects because it is more profitable than building these projects on properties outside of existing single-family neighborhoods. Single-family land prices are relatively less expensive and offer more profits than commercially

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<sup>1</sup> Merriam Webster: "Something that is used to hide what is true or real in order to trick or harm an enemy." The term Trojan horse originates from Greek mythology. The Greeks, unable to break through Troy's defenses, built a huge wooden horse. Hidden inside were Greek soldiers. The unsuspecting Trojans welcomed the wooden horse into their city, leading to Troy's sacking and ruin.

<sup>2</sup> Forbes (Feb. 6, 2014) (<http://www.forbes.com/sites/joelkotkin/2014/02/06/americas-future-cities-where-the-youth-populations-are-booming/>)

<sup>3</sup> Real Estate Council of Austin white paper: "Affordable Austin: Why Can't We Build the Supply We Need", p. 4.

zoned real estate.<sup>4</sup> As explained by a real estate consultant, “A house on a small lot might be worth \$90,000 if it can only be used as a rental or as an owner-residence. But that same piece of land might be worth \$150,000 after the house is torn down - if it is zoned to allow a store in its place. The idea, then, is to buy a property, and request a new zoning designation, which makes it more valuable. If you can get the zoning changed, you can then resell the property for a profit.”<sup>5</sup> In short, eliminating single-family zoning on a property allows commercial and higher density residential development, resulting in more profits for the industry. It also results in higher property taxes and more gentrification, forcing or encouraging people to sell their homes. While we see our single-family neighborhoods as a place to raise families, they see our neighborhoods as profit centers.

The commercial real estate industry’s leading lobbying organization in Austin contends that our city can build its way out of its affordable housing problem by enacting “the new policies necessary to enable and encourage all kinds of housing, in all parts of town, at a variety of price points.”<sup>6</sup> They further allege that the problem is caused by the “city’s obsolete and unrepresentative neighborhood plans”.<sup>7</sup> These are code words for abolishing single-family neighborhoods throughout our city and replacing them with higher density residential and commercial developments. While we believe that people who wish to live in areas with high-density or multi-use developments should have that right, we also believe we should be afforded the same right to live as we want – in single-family neighborhoods.

Recently, a prominent representative of Austin’s commercial real estate industry expressed in undisguised language that the industry sees our single-family neighborhoods as obsolete and immoral. His remarks were made at the January 2016 meeting of Austin’s Code Advisory Group, which is making recommendations to the Austin City Council on rewriting our land development code. He argued that “Austin needs a new and hopefully very different land development code... that neighborhood plans that seek to maintain single-family

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<sup>4</sup> Grella, The Bigger Pockets Blog: An Online Real Estate Magazine, “Developing Real Estate: How to Price Land for Profit (October 2, 2009) (<http://www.biggerpockets.com/renewsblog/2009/10/02/developing-real-estate-price-land-profit/>)

<sup>5</sup> Gillman, “Rezone for Profit” ([http://www.streetdirectory.com/travel\\_guide/74104/real\\_estate/rezone\\_property\\_for\\_profit.html](http://www.streetdirectory.com/travel_guide/74104/real_estate/rezone_property_for_profit.html)).

<sup>6</sup> Real Estate Council of Austin white paper: “Affordable Austin: Why Can’t We Build the Supply We Need”, p. 2.

<sup>7</sup> Real Estate Council of Austin white paper: “Affordable Austin: Why Can’t We Build the Supply We Need”, Executive Summary

as the character of an area are by definition now seeking to maintain the area as unaffordable... and that makes these particular plans illegal and immoral.” He concluded that if Austin were to keep its neighborhood plans at all, “both the plans and neighborhoods must change drastically.”<sup>8</sup> This speaker is a prominent Austin real estate attorney and agent, chair of the local Congress of New Urbanism’s comprehensive plan working group, and a member of the leading local real estate industry association’s working group on revising the land development code.<sup>9</sup> He also stated that he knew the industry did not want him to be so candid.

Every fast growing major city in the U.S. has an affordability problem, but none have solved it by destroying single-family neighborhoods. The industry’s approach will not address affordability, but it will be disastrous for our families and city. We will only have a strong city if we have strong neighborhoods.

### Destroy, Demolish, Displace

Over the past 10 years, thousands of moderately priced single-family homes throughout Austin have been demolished. Many have been replaced with more expensive, higher-density housing and mixed use, commercial developments for the affluent. The City estimated that over 1,000 homes would be demolished in 2015 alone.<sup>10</sup>

Single-family neighborhoods – south, central, north, west and east – already have experienced significant gentrification, in-fill and redevelopment. For example, neighborhoods in South Austin have endured such rapid in-fill and increased density over the past few years that it has overwhelmed the city’s transportation and storm water infrastructure, causing increased flooding and chronic traffic congestion. As a result, the City Council implemented the South Lamar mitigation project to address chronic flooding.<sup>11</sup> Central East Austin has been rapidly redeveloped, displacing its lower income residents with upscale

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<sup>8</sup> Frank Harren’s testimony, Austin Code Advisory Group Hearing (January 12, 2016), beginning at around 46:30 (<http://austintx.swagit.com/play/01132016-580/2/>).

<sup>9</sup>[https://www.austintexas.gov/sites/default/files/files/RECA\\_CodeNEXT\\_Working\\_Group\\_Input\\_FINAL.pdf](https://www.austintexas.gov/sites/default/files/files/RECA_CodeNEXT_Working_Group_Input_FINAL.pdf) (January 14, 2014);

<http://www.cbunited.com/Austin/Agent/Detail/Frank-Harren/7342561>

<sup>10</sup> “Austin homes demolished...” KVUE report (August 21, 2015)

(<http://www.kvue.com/story/news/local/2015/08/20/austin-homes-demolished--make-way--mcmansions/32093783/>).

<sup>11</sup> Ordinance No. 20141211-200, Dec. 11, 2014

gentrifiers.<sup>12</sup>

The industry wants even more Austin families displaced from their single-family homes. As a result, Austin is exporting large numbers of non-affluent families to the suburbs. City Demographer Ryan Robinson has noted that Austin's income level has increased because so many moderate-income families have moved to suburbs in Bastrop and Caldwell Counties.<sup>13</sup> Robinson also has reported that, with only a few exceptions, neighborhoods in Austin's urban core are becoming largely devoid of households with children.<sup>14</sup> Confirming this trend, the Austin Independent School District has reported declining enrollment in Central Austin neighborhood schools<sup>15</sup>.

If these trends continue, only the most affluent families will be able to live in the few remaining single-family neighborhoods in Austin. Average Austinites, such as first responders, teachers, and state employees, will continue to be forced to move to far away suburbs and commute back to their jobs in downtown Austin. Single-family homes will become an impossible dream for all but the richest Austinites.

### A Trojan Horse

The commercial real estate industry uses "affordability" and "missing middle" as a Trojan horse to eliminate single-family zoning, promote gentrification, and displace us from our neighborhoods. They use these terms as justification for repudiating neighborhood plans, eliminating residential compatibility standards, and weakening protections of our heritage trees and watersheds. They claim that these "reforms" will help make Austin more affordable, but what they really want is the land beneath our homes.

Many in the city management want to broadly adopt a loosely-defined experimental concept called "form-based code", which is a first step to abolishing our long-standing single-family land use zoning. The city's Planning Department

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<sup>12</sup> Busch, "Crossing Over: Sustainability, New Urbanism, and Gentrification in Austin Texas" (Southern Spaces, August 19, 2015) (<http://southernspaces.org/2015/crossing-over-sustainability-new-urbanism-and-gentrification-austin-texas>)

<sup>13</sup> "Austin's Affordability Issue", Building ATX (April 24, 2015) (<http://buildingatx.com/2015/04/austins-affordability-issue/>).

<sup>14</sup> Top Ten Demographic Trends in Austin, Texas (<https://www.austintexas.gov/page/top-ten-demographic-trends-austin-texas>).

<sup>15</sup> Community Impact Newspaper, "Multiple Central Austin schools losing students" (May 28, 2015).

defines form-based code as a “zoning tool”.<sup>16</sup> Well-intentioned out-of-state consultants promote this tool, asserting that it is a way to regulate development that controls building form first and building use (such as single-family or commercial) second<sup>17</sup>. This group includes current consultants to the City of Austin. These consultants advocate a “streamlined” administrative review and approval processes with plan approval “by right”. This could mean less, if any, participation by affected neighbors.<sup>18</sup>

In a 2015 white paper, Austin’s commercial real estate industry revealed its ploy by complaining that: “High-quality middle-density housing such as accessory dwelling units, duplexes, triplexes, fourplexes and small apartment buildings aren’t allowed in many of the city’s residential neighborhoods.”<sup>19</sup> This is also referred to as the “missing middle”. They expressed disappointment that 20% percent of the land in Austin is currently zoned for single-family homes or duplexes. Apparently, they are unsatisfied with building multi-use and commercial developments on 80% of the city’s land.

They aspire to eliminate single-family zoning and neighborhood plans. Yet a 2012 study by the City showed that Austin’s current zoning capacity would accommodate a doubling of the population.<sup>20</sup> Our current single-family zoning is not an obstacle to meeting this goal.

Last year, the City of Seattle in its quest for new urbanism and affordability floated the idea of abolishing single-family zoning. In less than a month, the headlines went from:

***“Rethink single-family zoning? Seattle officials open to some changes”***<sup>21</sup>

to:

***“Mayor Murray withdraws proposal to allow more density in single-family zones”***<sup>22</sup>

The latter news story quotes Toby Thaler, a Fremont Neighborhood Council board member, as saying “the real problem is a failure to have an inclusive process that empowers all stakeholders.” Austin has a similar problem, with the commercial real estate industry and city planning staff routinely ignoring input

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<sup>16</sup> <http://www.austintexas.gov/department/code-101>

<sup>17</sup> <http://plannersweb.com/2014/12/fbc1/>

<sup>18</sup> <http://plannersweb.com/2014/12/fbc2/>

<sup>19</sup> Real Estate Council of Austin white paper: “Affordable Austin: Why Can’t We Build the Supply We Need”, p. 4.

<sup>20</sup> Zoning capacity analysis (V. 11) by City of Austin Planning and Development Review Department (2012).

<sup>21</sup> The Seattle Times, originally published July 7, 2015, updated July 29, 2015

<sup>22</sup> The Seattle Times, originally published July 29, 2015, updated July 31, 2015.

from single-family neighborhood residents.

If the commercial real estate industry is allowed to continue its relentless, single-minded drive for fast and easy profits, it will demolish our neighborhoods block by block, east, west, south, and north. Once the dominos start falling, there will be no end. No area of town will be safe.

We purchased our homes in Austin based on customary, established single-family land use regulations that protect our homes and neighborhoods. Now, under the guise of new urbanism, the missing middle, and so-called affordability, the commercial real estate industry wants to take away our rights. Their public policy arguments are a veneer for more profits, which they seek to increase by depriving us of our property rights.

Austin homeowners have not invested their life's savings and their dreams in their homes to become guinea pigs for amorphous notions of new urbanist planning. If the industry wants to experiment with the latest planning fads, then they should do it outside of single-family neighborhoods (as they did with The Domain and Mueller). The industry will still make reasonable profits, but not at our families' expense.

#### A Red Herring:<sup>23</sup> So-called Affordability

The industry's main argument for destroying single-family zoning and neighborhood plans is affordability. But we ask, "Affordable for whom?" Higher-income newcomers? What they fail to mention is that destruction of existing affordable housing is often the first step to gentrification and less affordable housing for non-affluent Austinites. While maintaining Austin's existing affordable housing stock is key to affordability and preventing gentrification, the industry wants to knock down single family housing and replace it with less affordable housing or commercial projects.<sup>24</sup>

The industry claims that single-family homes take up too much land and should be replaced with high-density multifamily units and multi-use developments. One

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<sup>23</sup> Merriam Webster: From the practice of drawing a red herring across a trail to confuse hunting dog; something that distracts attention from the real issue.

<sup>24</sup> Levy, et. al., "Keeping the Neighborhood Affordable: A Handbook of Housing Strategies for Gentrifying Areas" (Urban Institute 2006), p. 12

of them likened single-family homes with yards to homes with “private parks.”<sup>25</sup>

But density already has increased significantly in Austin, and affordability has gotten substantially worse. The density of the Austin/Round Rock MSA has increased by 57% between 2000 and 2015<sup>26</sup>, and Austin has become less affordable. Austin’s experience with increased density resulting in reduced affordability is not unique.

A 2015 report by Demographia, a pro-density organization, reported that large cities in the world that have implemented urban density policies like “compact development” or “smart growth” have experienced significantly higher land prices, with no real impact on sprawl.<sup>27</sup> As reported in the Austin Business Journal, even most business leaders (80%) recognize the true cause of Austin’s lack of affordability: rapid population growth.<sup>28</sup> Only 6% of those surveyed by the Journal attribute neighborhood opposition to new development as a primary driver of Austin’s rising housing prices.<sup>29</sup> Given the clear evidence that increased density actually makes a city less affordable, we are perplexed why Austin’s commercial real estate industry perpetuates the false argument that increasing density in our single-family neighborhoods will improve affordability.

Single-family zoning is not the cause of Austin’s affordability problem; our single-family neighborhoods are in large part what makes Austin a great place to live. The affordability problem is rooted in the city’s poorly managed and wasteful policies to incentivize and subsidize growth and density. This incentivized growth has not paid for itself and, deplorably, has contributed to making Austin one of the most economically segregated cities in the U.S.<sup>30</sup> The mismanaged use of preferred development zones and density bonus programs have fueled a rapid escalation in land prices and rising property taxes. Blaming single-family neighborhoods for our city’s bad policies and hyper-growth takes a lot of chutzpah. What Austin has done so far has not worked, and the growth industry wants us to do even more of the same. As Einstein once said, the definition of insanity is doing the same thing over and over again and expecting different

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<sup>25</sup> David King, “Austin will have to fight to keep single-family homes” Austin American Statesman (September 4, 2015)

<sup>26</sup> Population data from Ryan Robinson, Demographer, City of Austin.

<sup>27</sup> 11<sup>th</sup> Annual Demographia International Housing Affordability Survey: 2015

<sup>28</sup> “What is the Primary Driver of Austin’s Rising Housing Prices”, Austin Business Journal (August 21, 2015), p.27

<sup>29</sup> Ibid.

<sup>30</sup> Florida and Mellander, “Segregated City: The Geography of Economic Segregation in America’s Metros” Martin Prosperity Institute (2015), p.9

results. Austin must seek a different approach to growth.

Their agenda is not about affordable housing for middle and lower income Austinites, but instead about making more profits by knocking down existing housing stock. They then can build more units on a single piece of land to sell to well-off buyers. In the name of affordability, they are demolishing the most affordable of all housing – our existing housing stock.

If the commercial real estate industry were sincere in its so-called affordability case, it would support meaningful efforts to make available affordable housing for moderate and lower income Austinites. To date, it has not.

### If All Else Fails, Demonize Your Opponent

One method the industry uses to confuse the public is to attack homeowner and neighborhood associations, calling them “powerful constituencies determined to fight growth and change at every turn with anti-development policies”<sup>31</sup>

The industry has even started a campaign to undermine historical neighborhood associations by advocating that our neighborhood associations might not “actually or accurately represent any significant portion of the residents” who live there.<sup>32</sup> They are even so bold as to claim that neighborhood plans are a cause of the ongoing displacement in Austin of lower-income residents.<sup>33</sup> They argue that greater density will help the environment and reduce sprawl, while they continue to build more suburban sprawl. Their agenda is not about affordability, the environment, or good public policy, but instead is about the industry making more money.

Austin’s single-family homeowners did not cause the affordability problem. We are simply trying to live our lives as we have planned. It is shameful that the commercial real estate industry is blaming neighborhood groups when they themselves promote and facilitate the very policies that worsen the affordability crisis.

Neighborhoods do not resist all redevelopment, in-fill, and increased density. All neighborhood plans foresee an increase in residential density and new multi-use projects, and they identify where and how this is appropriate. Some of our urban core neighborhoods were designed for multiple types of single-family housing

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<sup>31</sup> Real Estate Council of Austin white paper: “Affordable Austin: Why Can’t We Build the Supply We Need”, p. 11.

<sup>32</sup> Austin Chronicle, “*Friends Like These*”, (September 11, 2015), page 16

<sup>33</sup> Real Estate Council of Austin white paper: “Affordable Austin: Why Can’t We Build the Supply We Need”, Executive Summary

and are some of the densest areas in the city. This is due, in part, because Austin, unlike many cities, allows duplexes in its SF-3 zoning category. We strive to preserve the diverse single-family character of our neighborhoods that include homeowners, renters, new and long-time residents. We simply insist that residents have a say in planning, redevelopment, in-fill, and increased density in our neighborhoods that affect our families. We insist on a democratic process that includes all Austinites and not just powerful moneyed interests.

We can point to numerous examples of cooperation with developers who build housing that is compatible with single-family zoned neighborhoods. But we insist that the real estate industry follow the long-standing rules in the land development code and respect our rights.

### Let's Adopt a Plan that Works for Everyone: A Community, Not a Commodity

To date, the city process to update our Land Development Code (named "CodeNEXT") has been dominated by the commercial real estate industry. It has not been a transparent or inclusive process, and it has largely excluded neighborhood advocates. It will not succeed unless trust is established among all stakeholders. We hope that the newly constituted Code Advisory Group will address this problem.

We support appropriately cleaning up the Land Development Code, but not gutting it. We also support implementation of the holistic vision of Imagine Austin that incorporates our neighborhood plans. We support addressing the needs of the 60% of the city that is not yet covered by neighborhood plans. Neighborhood plans are an integral part of the fabric of our great city.

We are committed to doing our part to make Austin one of the most livable cities in the nation. But to achieve that goal, in the words of former Austin planning director Jim Duncan, we must address our city as a community, not as a commodity.

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