

Comments of Alan Holman In Response to Texas Historical Commission Rulemaking Proposals on Removal of Markers & Monuments

NOW COMES Alan Holman, a resident of Austin, Texas, who loves Texas and its proud history, and respectfully submits these written Comments in Response to the Rulemaking Proposals of the Texas Historical Commission (the “Commission” or “THC”) on Removal of Markers & Monuments, as published in the Texas Register on November 13, 2020 (45 Tex. Reg. 8083-8091).

§ 17.2 Review of Work on County Courthouses.

It would have been enormously helpful to commenting parties if the Staff of the Commission had prepared and the Commission published a written summary or preamble to the proposed rules explaining precisely, on a provision-by-provision basis, what each element of its proposal would do, along with a reasoned and well-supported justification as to why each is necessary or desirable. Because this was not done, my comments on the proposed changes to §17.2 raise questions about their intended effect, rather than whether and, if so, how those changes should be revised.

Addition of the “Capitol grounds” to the definition of “courthouse”: In its proposed amendments to §17.2(1)(F), the Commission would expand the definition of “Courthouse” (that presently includes only “the courthouse square and its associated site features”) to expressly include “monuments.” The Commission would also add a new paragraph (H) containing a definition of “Monuments” that includes “markers and statuary located on public grounds such as courthouse squares, parks, and the Capitol grounds.” With this change, the definition of “Monuments” in § 17.2(1)(H) would track verbatim the definition of “Monuments” in the current Definitions section of the THC’s Rules of Practice and Procedure, §26.3(42). That is, the latter provision already incorporates “and the Capitol grounds” into the operative definition of “Monuments” for purposes of the Procedural Rules. My guess is that the Commission simply wants the definition added to the County Courthouses Rule to be consistent and thereby avoid any potential confusion. That in turn begs the question as to the substantive effect of the existing definition in the Procedural Rules.

The THC also proposes a related provision in §17.2(2)(A)(iv) stating that “the relocation or removal of monuments from a courthouse square is governed by §21.13 of this title (relating to Removal of Markers and Monuments).” Does this mean or imply that the relocation and removal of monuments from elsewhere than a courthouse square—for example, those on the Capitol grounds—are not governed by the proposed new §21.13? If so, are the Capitol monuments instead governed by the less detailed procedures and standards of Sections 191.097 and 191.098 of the Antiquities Code, which the proposed new §21.13(b) says are applicable to “monuments that are State Antiquities Landmarks”? That may be a given to those who are intimately familiar with the THC’s governing statutes and rules, but not to many members of the general public, like myself, who are not.

§ 21.13 Removal of Markers and Monuments.

Presumption that existing landmarks & markers are valid: As a general proposition, I believe that, if a marker is appropriately located, historically accurate, and balanced in its depiction of the person(s) or events it commemorates, it should be presumed to be proper and not subject to removal except in extraordinary circumstances. It may be that “extraordinary circumstances” or a similar general standard would be sufficient without delineating more specific grounds for removal in the rule. There are reasons why monuments and markers were created and placed, and most have stood the test of time at least to the extent that a significant burden of proof should be imposed on those who would urge its removal.

The Commission’s existing rules already provide sufficient remedies short of removal in most cases:

In the case of markers, §21.12(a) of the current rules spells out a thorough, well-designed process to address changes in the text of markers shown to be factually inaccurate. Grounds for such changes include errors in name(s), date(s), location, and even statements that “are not historically accurate.” The rule provides for local input, the assistance of a panel of three “professional historians” when the stated historical facts are in dispute, and a series of procedural steps by which every interested party has multiple opportunities to submit its position and concerns in writing and orally to the Commission.

Addressing historical disputes using supplemental markers: Another salutary approach built into the existing rules is found in §21.12(n), which provides that, “If a request or objection is approved by the Commission, marker staff will determine if the existing marker requires replacement or it can be corrected through the installation of a supplemental marker.” This approach is manifestly reasonable and pragmatic and should be applied in most cases in which an existing marker or monument is in dispute. Not only would it save money and effort, but it also recognizes that the best solution when history is disputed is usually “more history” through the supplemental presentation of alternative views and interpretations, rather than “removing history” from the public view and record.

Present “more history” rather than “remove history”: The criteria specified in §21.9 of the existing rules emphasizing “diversity” of topics, history, and cultures, and the telling of “undertold” stories and “facets of history,” are consistent with the approach suggested above. That is, disputes over monuments and markers are best resolved by supplementing existing monuments and markers with additional information and explanatory texts, instead of removing markers and monuments that have been in place for decades and quite properly reflect the history and times that produced them. It is unlikely that whatever may be politically correct or socially fashionable today—including the Commission’s notions of “current thematic priorities” and “statewide themes” (see the existing criteria in §21.9)—will be viewed in that same way in the decades ahead. Go ahead and present today’s competing views without erasing the evidence of how our historiography has evolved over time.

Taken together, the existing rule provisions noted above would obviate the need for removal except in the most unusual of cases.

§ 21.28 *Removal of Designations for Privately or Publicly Owned Landmarks.*

Most of what is stated above regarding §21.13 has similar if not equal application to §21.28 of the proposed rules as well.

Staff-initiated removal proceedings are neither necessary nor desirable: Subsection (c) of proposed §21.28 would create a new procedure whereby the THC Staff can initiate a proceeding “if it wishes to apply to remove a property’s landmark status.” The Staff would only be required to provide the owner with written notification of its request 15 days prior to the regularly scheduled meeting at which the Staff’s request will be presented to the Board. This subsection of the proposed rule should be rejected and stricken by the Commission. First, there is no justification or need for the Staff to initiate removal proceedings, except perhaps in the case of State-owned landmarks. In most cases, the Staff employees of a state agency headquartered in Austin lack the interests and perspectives that local residents and governmental entities have in their communities; thus, if local interests have not been moved to file a removal request with the Commission, there is no reason for Staff to do so in their stead. Second, a minimum notice of 15 days is unduly and unnecessarily short. It would enable the Staff to blind-side the owner and prevent him from being able to retain counsel, obtain the expertise of a professional historian, or otherwise adequately respond to what would likely be an adverse request by the Staff, since the owner had not seen fit to initiate a removal request of his own.

Private owners will almost always have been on notice of the marker, monument, or history associated with their property when they purchased it: Seldom will the buyer of a property with historical significance have been unaware of that element of his purchase. It will have come with a marker, monument, or historical significance of which he was almost certainly on notice, as well as the effect of same upon the relative value—be it higher or lower—of the property. If instead obtained via inheritance, then he will have inherited that which was bequeathed, no more and no less. Either way, private ownership, in and of itself, should not justify the removal of a monument or marker by an owner.

Respectfully submitted,

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