



# Staff Report

PLANNING DIVISION  
DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake City Mayor Jackie Biskupski

From: Amy Thompson, [amy.thompson@slcgov.com](mailto:amy.thompson@slcgov.com) (801) 535-7281

Date: August 29, 2018

Re: PLNAPP2018-00507 - Appeal of Historic Landmark Commission Decision to deny a request for Economic Hardship of three contributing structures

## Appeal of Historic Landmark Commission Decision

**PROPERTY ADDRESS/PARCEL ID: 248 W Bishop Place**  
Parcel ID 08-36-254-061

**265/267 W Bishop Place (duplex)**  
Parcel ID 08-36-254-022 & 08-36-254-022

**432 N 300 West**  
Parcel ID 08-36-254-009

**ZONING DISTRICT:** SR-3 Special Development Pattern Residential District, and  
H Historic Preservation Overlay District (Capitol Hill Local Historic District)

**ORDINANCE SECTIONS:** Section 21A.34.020 (H Historic Preservation Overlay District)

**APPELLANT:** Property owner Don Armstrong (International Real Estate Solutions (IRES)), represented by  
Bruce Baird

**APPEAL:** On June 28, 2018, the Historic Landmark Commission reviewed economic hardship applications for nine structures on or near Bishop Place (approximately 432 N. 300 West). The Historic Landmark Commission made a decision that there is an economic hardship with six out of the nine buildings, and found there is not an economic hardship with three out of the nine buildings, therefore denying demolition of the three buildings that are the subject of this appeal. This appeal of decision is specific to the three structures where no economic hardship was found.

**APPEAL ISSUES:** IRES, property owner, is appealing a decision of the Historic Landmark Commission to deny a request for Economic Hardship of three contributing structures on or near Bishop Place (approximately 432 N 300 West). The appeal is based on the following issues:

1. The Historic Landmark Commission's selection for the Economic Review Panel, Mr. Lewis Francis, was unqualified to serve on the panel.
2. The Historic Landmark Commission's selection for the Economic Review Panel, Mr. Lewis Francis, was biased.
3. The zoning ordinance process and standards for Economic Hardship are unintelligible and thus have to be construed in favor of IRES.

4. There was no evidence before the Historic Landmark Commission that contradicted the evidence submitted by IRES, and thus the Historic Landmark Commission decision to deny the request is not supported by “substantial evidence”.
5. The Historic Landmark Commission misapplied the law and the facts.
6. If the City does not approve demolition of the three subject buildings, the City will have taken the property of IRES for public purposes without any compensation for which the City will have to pay damages.

Please see the City Attorney’s brief, [Attachment 2](#) of this document, for a response to the issues identified in this appeal.

**STANDARDS OF REVIEW:** As per the following City Code, the Appeal Hearing Officer’s decision must be based on the record available to the Historic Landmark Commission at the time the original decision was made:

**21A.16.030.E. Standard of Review:**

2. An appeal from a decision of the historic landmark commission or planning commission shall be based on the record made below.
  - a. No new evidence shall be heard by the appeals hearing officer unless such evidence was improperly excluded from consideration below.
  - b. The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.
  - c. The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.

Also, whereas this is an appeal of a Historic Landmark Commission decision, no public hearing will be held and no public testimony will be received. (Section 21A.16.030.D.2)

**BACKGROUND:** The attached Staff Memo/Report of the Economic Hardship review panel provides the background on this request as well as a processing timeline (see [Attachment 3](#)).

**HISTORIC LANDMARK COMMISSION’S DECISION:** On June 28, 2018, the Historic Landmark Commission made a decision consistent with the findings and conclusions in the Report of the Economic Hardship Review Panel and did not find an Economic Hardship with the three subject properties, therefore denying demolition of the three structures.

**21A.34.020.K.3**

**Procedure for Determination of Economic Hardship:** *The Historic Landmark Commission shall establish a three person economic review panel. This panel shall be comprised of three real estate and redevelopment experts knowledgeable in real estate economics in general, and more specifically, in the economics of renovation, redevelopment and other aspects of rehabilitation. The panel shall consist of one person selected by the Historic Landmark Commission, one person selected by the applicant, and one person selected by the first two appointees. If the first two appointees cannot agree on a third person within 30 days of the date of the initial public hearing, the third appointee shall be selected by the mayor within five days after the expiration of the 30 day period.*

- a. **Review of Evidence:** *All of the evidence and documentation presented to the Historic Landmark Commission shall be made available to and reviewed by the economic review panel. The economic review panel shall convene a meeting complying with the open meetings act to review the evidence of economic hardship in relation to the standards set forth in subsection K2 of 21A.34.020. The economic review panel may, at its discretion, convene a public hearing to receive testimony by any interested party; provided, that notice for such public hearing shall be in accordance with chapter 21A.10 of this title.*

- b. Report of Economic Review Panel:** *Within forty five (45) days after the economic review panel is established, the panel shall complete an evaluation of economic hardship, applying the standards set forth in subsection K2 of this section and shall forward a written report with its findings of fact and conclusions to the historic landmark commission.*
- c. Historic Landmark Commission Determination of Economic Hardship:** *At the next regular historic landmark commission meeting following receipt of the report of the economic review panel, the historic landmark commission shall reconvene its public hearing to take final action on the application.*
- (1) **Finding of Economic Hardship:** *If after reviewing all of the evidence, the Historic Landmark Commission finds that the application of the standards set forth in subsection K2 of this section results in economic hardship, then the historic landmark commission shall issue a certificate of appropriateness for demolition.*
  - (2) **Denial of Economic Hardship:** *If the commission finds that the application of the standards set forth in subsection K2 of section 21A.34.020 does not result in an economic hardship, then the Certificate of Appropriateness for demolition shall be denied.*
  - (3) **Consistency with the Economic Review Panel Report:** *The Historic Landmark Commission's decision must be consistent with the findings and conclusions presented in the Report of the Economic Hardship Panel, unless the commission finds, by a ¾ vote of a quorum, that the Economic Review Panel either acted arbitrarily or based its report on an erroneous finding of fact.*

**NEXT STEPS:** If the Appeals Hearing Officer upholds the Historic Landmark Commission decision, the Commission's decision will stand that there is not an economic hardship with the three subject properties and therefore a Certificate of Appropriate for demolition will not be issued.

If the Appeals Hearing Officer reverses the Historic Landmark Commission decision and finds there is an economic hardship with the three subject properties, the requirements listed in 21A.34.020.O and 21A.34.020.P of the Salt Lake City zoning ordinance must be met prior to the issuance of a Certificate of Appropriateness for demolition.

A decision to uphold or reverse the Commission's decision may be appealed to 3<sup>rd</sup> District Court. An appeal to District Court must be filed within 30 days of the Appeal Hearing Officer's decision.

**ATTACHMENTS:**

1. [Appeal Application](#)
2. [Salt Lake City Attorney Response](#)
3. [Report of the Economic Hardship Review Panel](#)
4. [Historic Landmark Commission meeting minutes – June 28, 2018](#)
5. [Record of Decision Letter](#)
6. [Standards for Determination of Economic Hardship](#)

**ATTACHMENT 1: APPEAL APPLICATION**

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July 2, 2018

VIA HAND DELIVERY

Hon. Jackie Biskupski, Mayor  
Salt Lake City  
c/o Ms. Amy Thompson, Principal Planner  
Salt Lake City Planning Department

**Re: Bishop Place  
Appeal of HLC Approval of Portions of Economic Hardship Panel Report  
PLNHLC2017-00020 – 248 W Bishop Place  
PLNHLC2017-00029 – 265/67 W Bishop Place  
PLNHLC2017-00030 – 432 N 300 West**

Dear Mayor Biskupski:

I am counsel for International Real Estate Solutions, Inc., (“IRES”) the owner of the various properties commonly referred to as “Bishop’s Place”. Please consider this letter to be a supplementation of the “Appeal of a Decision” form provided to me by the City’s Planning Director, Mr. Nick Norris. This letter deals only with the properties listed above. (One of the properties is a duplex which tends to cause some confusion; I will refer to the properties collectively as “the 3 buildings”.) On Thursday night, June 28, 2018, in an exercise of confusion that would have been humorous if it were not so expensive to IRES, the Historic Landmark Commission sustained the recommendation of an Economic Hardship Review Panel denying IRES the right to demolish the 3 buildings.

First, let me provide some brief history which is taken largely from a report dated June 14, 2018 by the City’s Planning Division to the HLC and from the “Report of the Bishop Place Economic Hardship Review Panel” dated June 8, 2018. On July 6, 2017, the HLC denied the demolition of nine “contributing structures” on and near Bishop Place (approximately 432 N. 300 West). The purpose of the demolition process was to evaluate the historic integrity of the buildings including any negative effects from demolition on both the streetscape and the local district as a whole. It also took into account if there were negligent acts which deteriorated the buildings. The HLC found the demolition requests did not meet the threshold for approval and the applications were all denied. That decision of the HLC was sustained by a Hearing Officer and is now on appeal to Third District Court. That suit has been on hold pending the process that is now before you.

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If an application for demolition is denied, the City's H – Historic Preservation Overlay Zone has an Economic Hardship process that allows the applicant the opportunity to demonstrate whether the denial deprives the applicant of all reasonable economic use or return on the subject property (i.e., constitutes a “regulatory taking” of private property for public purposes without just compensation). Pursuant to then-Section 21A.34.020.K.3, (this section of the Code has since been amended but was applicable here) a three person Economic Review Panel is established. This panel was supposed to be comprised of real estate and redevelopment experts knowledgeable in real estate economics in general, and more specifically, in the economics of renovation, redevelopment and other aspects of rehabilitation.

The panel consists of one person selected by the HLC, one person selected by the applicant, and one person selected by the first two appointees. If the first two appointees cannot agree on a third person within 30 days the third appointee shall be selected by the mayor. The HLC selected Mr. Lewis Francis to serve on the Economic Review Panel. As noted below in more detail, Mr. Francis was utterly unqualified to serve on the Panel and was also hopelessly biased. The applicant selected Mr. Merlin Taylor. (Mr. Taylor's qualifications to serve on the Panel were never challenged.) As noted below, the HLC's representative, Mr. Francis, wrongfully and in support of his prejudgment and bias, refused to approve several third members proposed by IRES who were eminently more qualified than he was. Therefore, you appointed the third member of the Panel, Ms. Claudia O'Grady. Ms. O'Grady was selected by the Panel to serve as the Chairperson.

The Panel convened the first of two public meetings on April 11, 2018. A public hearing was also held during this meeting. A summary of that hearing, detailed minutes from the hearing and the audio are hyperlinked in the Panel's Report of June 8, 2018. At that hearing the Panel requested IRES to provide additional information regarding certain potential tax credits. IRES diligently complied. After receiving the additional information the Panel requested from IRES, the Panel reconvened the discussion at yet another public hearing on May 15, 2018. A summary of that hearing, the detailed minutes and the audio are also hyperlinked in the Panel's Report of June 8, 2018.

The decisions of the Panel on the 3 buildings, and those decisions being sustained by the HLC were arbitrary, capricious and illegal for the reasons stated below.

**1. Mr. Francis was utterly unqualified to serve on the Panel.**

The HLC's selection for its member of the Economic Hardship Panel, Mr. Francis, was supremely unqualified and IRES timely (and repeatedly and vehemently) objected to his participation. There was never any demonstration that he was: “[a] real estate and redevelopment expert [ ] knowledgeable in real estate economics in general, and more specifically, in the economics of renovation, redevelopment and other aspects of rehabilitation”

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as required by then-effective Section 21A.34.020.K.3.<sup>1</sup> Mr. Francis's law firm biography utterly belies that claim. <http://www.joneswaldo.com/attorneys/69/lmf>. There are no references listed there to anything remotely "historical" (unless Old Taco Bells count nowadays) and not even a single reference to any "real estate" or "land use" practice. His only argument in his own defense at the May 15, 2018 hearing of the Panel regarding his qualifications was that he has handled a total of one (1) land use case to the Utah Supreme Court (on behalf, it should be noted, of a goody-two-shoes, NIMBY environmental group opposing a development).

Mr. Francis is a member of Salt Lake Modern which is a "part of Utah Heritage Foundation" for which he seems to have written one article though that article is hard to find and does not relate to the economics of rehabilitation. A Google search of Mr. Francis in the context of "historical" yields only a few references to Salt Lake Modern (as well as the usual mismatches).

[https://www.google.com/search?q=lewis+francis+historical+utah&rlz=1C1JZAP\\_enUS695US695&oq=lewis+francis+historical+utah&aqs=chrome..69i57.10575j1j4&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=lewis+francis+historical+utah&rlz=1C1JZAP_enUS695US695&oq=lewis+francis+historical+utah&aqs=chrome..69i57.10575j1j4&sourceid=chrome&ie=UTF-8)

Mr. Francis should not have been allowed to serve on the Panel. The HLC did not even bother to address this issue. Two Members of the HLC stated that they knew and respected Mr. Francis (and at least one Member said words to the effect that she would rely on Mr. Francis's opinions) despite having read a similar argument from me.

## **2. Mr. Francis was transparently too biased to serve on the Panel.**

IREs timely and repeatedly protested Mr. Francis's bias that was inherent in his only even theoretical qualification to serve on the Panel; his membership in Salt Lake Modern. Salt Lake Modern's self-description is, by its own word: "dedicated to preserving and promoting the region's mid-century modern architecture and design." Its "Purpose" statement reads:

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<sup>1</sup> The City has repeatedly recognized that almost all of the Historic Preservation Overlay District, and, in particular, the "economic hardship" provisions were unintelligible. The H Overlay District was thus amended to now provide a different process for determining "economic hardship", 21A.34.020.L.3.: "The Planning Director shall appoint a qualified expert to evaluate the application and provide advice and/or testimony to the Historic Landmark Commission concerning the value of the property and whether or not the denial of demolition could result in an economic hardship. [ ] The Planning Director's appointed qualified expert should have considerable and demonstrated experience in appraising, renovating, or restoring historic properties, real estate development, economics, accounting, finance and/or law. [ ]" Mr. Francis could not have come even remotely close to qualifying as an "expert" under this standard. That newly adopted standard shows what the intent of the prior Code was, albeit however poorly worded at that time. (Emphasis added.)

## Purpose

By Kirk, December 7, 2011

As a committee of Utah Heritage Foundation, Salt Lake Modern is dedicated to the documentation, preservation, and public education about mid-century modern design and architecture in the Salt Lake region. Members of the committees are:

Lewis Francis, *Chair* Cindy Cromer

Note that the two listed “Member of the committee” of Salt Lake Modern who authored that Purpose statement are Mr. Francis and Cindy Cromer. Ms. Cromer spoke at both hearings of the Panel and at the HLC in opposition to the demolition.<sup>2</sup> Mr. Francis did not have the common decency or ethics to even bother to disclose this clear conflict. The HLC did not bother to address this impermissible bias either.

Also, Mr. Francis improperly, and in utmost bad faith, failed to approve as a third panel member three distinguished persons who were far more qualified to serve than he was. Those three persons were: Dan Lofgren (of Cowboy Partners); Scott Sabey (a real estate lawyer at FabianVanCott, the former chairman of the Sandy City Planning Commission and a lobbyist for the Utah State Bar); and Chris McCandless (a long-time Member of the Sandy City Council and a real estate developer whose vast experience includes a long-time partnership with the current President of the Utah State Senate). Mr. Francis blackballed these three gentlemen claiming, without any basis whatsoever, that they were, in his words, unqualified and inherently biased. Nonsense. Or, as using the phrase in psychology, “projection”.

Moreover, Mr. Francis’s actual participation on the Panel showed his bias (albeit in part because I deliberately and repeatedly baited him into revealing that bias; he was really easy to provoke) as noted more fully below. Alone among the three Members of the Panel, Mr. Francis voted to make IRES keep standing 6 buildings that anyone in their right mind would know could not be economically restored to their historical condition (or even repaired at all for any purpose) and are a current danger to public safety.<sup>3</sup> The transcript of the Panel hearings shows that Mr. Francis consistently (either out of ignorance or bias) misunderstood the evidence and applicable legal standards. Almost every question that he asked at both hearings of the Panel was either irrelevant, nitpicky or blatantly slanted to “prove” his pre-conceived determination (*i.e.*, “confirmation bias”). The bases Mr. Francis articulated for his votes on all 9 buildings also proved his bias.

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<sup>2</sup> It was Ms. Cromer who primarily addressed the “tax credit” issue which Mr. Francis used in his decision on the Panel to vote against demolition as discussed below. Of course, IRES established that any potential tax credits would not materially alter the economics of any rehabilitation. All of the discussion by Mr. Francis (and, unfortunately, Ms. O’Grady too) on this point was merely speculation and a mis-reading of the Code.

<sup>3</sup> There was absolutely no evidence in the record that the 6 buildings could ever be restored or rehabilitated. The HLC sustained that finding though their doing so only further proved the ambiguity of the Code and the bias/incomprehension of most of the members of the HLC.



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The HLC did not even bother to address this issue and, as noted above, two Members of the HLC stated that they knew and respected Mr. Francis and at least one Member said words to the effect that she would rely on Mr. Francis's opinions.

**3. The “Hardship” provisions (and almost all of the H Overlay District) are unintelligible and thus have to be construed in favor of IRES.**

Because ordinances governing land use “are in derogation of a property owner’s common-law right to unrestricted use of his or her property, provisions . . . restricting property uses should be strictly construed . . . in favor of the property owner.” *Patterson v. Utah Cnty. Bd. of Adjustment*, 893 P.2d 602, 606 (Utah App. 1995). This is particularly true when the ordinance at issue is at all ambiguous—*i.e.*, “if it can be understood by reasonably well-informed persons to have different meanings.” *Id.* (quoting *Miller Welding Supply, Inc. v. Utah State Tax Comm’n*, 860 P.2d 361, 362 (Utah App. 1993)).

In 2017 the Utah legislature codified these existing common law principles by adopting HB 232, which, in part, required local governments to use “plain” (*i.e.*, clear) language in land use ordinances and also made clear that if such language is anything less than plain, then the presumption is in favor of the private property owner. *See* Utah Code Ann. § 10-9a-707 providing that an “appeal authority shall . . . determine the correctness of [a] land use” decision based on “the *plain* meaning of the land use regulations” and shall “interpret and apply a land use regulation to favor a land use application *unless* the land use regulation *plainly* restricts the land use application”. (Emphasis added.)

The “economic hardship” process and standards at issue here is anything but “plain” or clear. To the contrary, the Panel and City Staff repeatedly acknowledged this undeniable fact during the two hearings. As one example among many:

**O’Grady:** Well I think the ordinance is ambiguous, that’s the problem.

June 14 Memorandum to HLC by Ms. Thompson, p. 86 (Transcript of May 15, 2018 hearing, p. 15).

Even the biased Mr. Francis acknowledged difficulty in understanding some of the applicable provisions:

**Francis:** Well and I think we only at least in our discussion so far we only identified a couple of areas with potential ambiguity so, I don’t think there’s any agreement that the ordinance as a whole is ambiguous but some of the language might be construed that way.

June 14 Memorandum to HLC by Ms. Thompson, p. 96 (Transcript of May 15, 2018 hearing, p. 27). Also, Mr. Francis’s misapplication of the Code (such as the “tax credit” issue discussed below) proves the ambiguity by itself.

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Every ambiguity in the Code must be construed in favor of IRES, the property owner. To his great credit, Mr. Neilson's legal advice to the Panel was consistent with the statements above.

**Nielson:** Ms. O'Grady I'm having this internal battle right now, the rules of professional conduct that govern attorneys dictate that an attorney must show candor towards the tribunal and this respect Mr. Baird raised the point of Patterson vs. Utah County, the panel has mentioned on a couple of occasions tonight that there are some ambiguities in the ordinance. Patterson vs. Utah County, and if you wish to have Mr. Baird expand on this...

**O'Grady:** No thank you, you're doing fine

**Nielson:** Patterson vs. Utah County dictates that in the land use ordinance where there is ambiguity in a land use code, it must be construed in favor of a property owner. That was codified in the 2017 General Legislative session. It's not something that I would normally volunteer...

**O'Grady:** Yes, I know. If there's ambiguity in the ordinance

**Nielson:** It needs to be construed in favor of the property owner. That's all I can say. I've been candid towards the tribunal.

June 14 Memorandum to HLC by Ms. Thompson, p. 96 (Transcript of May 15, 2018 hearing, p. 27).

Reading the Transcript of the May 15, 2018 hearing of the Panel it is also clear that the Panel had no idea how, or if, to balance, weigh or simply count the "5 factors" in the Code related to "hardship":

**O'Grady:** Ok, ok. I am also of the opinion that the applicant has not met their burden on that particular building. Although, I disagree that each factor must weigh in favor of a determination of economic hardship. I think we take these in the aggregate, that's my, that's reading on this

**Francis:** No, right... I agree. I wasn't suggesting that they had to meet all these factors

**O'Grady:** Ok, so...

**Francis:** Supposition would be that they have to meet the majority<sup>4</sup>

June 14 Memorandum to HLC by Ms. Thompson, p. 100 (Transcript of May 15, 2018 hearing, p. 31).

The process for the HLC in reviewing/rejecting/sustaining the Panel's decision is also incomprehensible. One Member of the HLC stated at the June 28, 2018 hearing that the "process is clear as mud."

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<sup>4</sup> Merely counting a majority of the 5 factors provides no guidance whatsoever about whether denying the requested demolition constitutes a "regulatory taking".

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Given the numerous ambiguities in the Code on this issue this case is over. The City has no choice but to overturn the HLC's sustaining of the Panel's findings denying the demolition of the 3 buildings that are the subject of this appeal to you. The Panel's determination was clearly wrong and unsupported by any evidence as noted above and below. The HLC's decision was similarly unsupported and unsupportable. There is no chance that any court will deny these demolitions. But that is not a reason for the City, acting through you, to shirk its responsibilities hoping that the court opinion will do the right thing.

**4. There was no evidence before the Panel (or the HLC in reviewing the Panel) contradicting the evidence submitted by IRES and thus any decision by the Panel as sustained by the HLC against IRES cannot be supported by "substantial evidence".**

Simply put, no one submitted any evidence at all that any of the 9 buildings could be economically restored to their historical condition (or rehabilitated to any other economically viable use). Mr. Francis complained about the quality and quantity of IRES's evidence regarding some of the Factors for some of the 9 building but offered no evidence rebutting the detailed and extensive evidence submitted by IRES. A few of the NIMBYs (and, of course, Mr. Francis) speculated that the buildings could be somehow magically restored in an economical fashion but no one offered any evidence to that effect. There was some speculation that tax credits may help with the economics but, while such credits may exist, there was no showing that they would materially alter the negative economics. Thus, there cannot be any "substantial evidence" that supported the Panel's denial of the demolition of the 3 buildings nor the HLC's sustaining that decision.<sup>5</sup>

At the HLC's review of the Panel's decision one member of the public, an architect, who commented opposing the demolition acknowledge that the buildings could not be economically restored. All that the HLC did in sustaining the Panel's decision regarding the 3 buildings at issue here was to quibble and speculate against the detailed analysis provided by IRES based on some of their own partial and *ad hoc* research. They also seemed to argue that IRES should have done work to disprove IRES's own case. (Fortunately, the City Attorney's Office promptly corrected them on that obvious mistake; but the fact that they could even entertain such ridiculous thoughts proves the bias of many Members of the HLC.) They complained that the Economic Hardship process did not provide for some neutral analysis. It is not IRES's fault that the Historic Overlay Zone is an unintelligible piece of garbage. (I note that, as referenced in footnote 1, above, the City has fixed a small part of the Code.) Some members of the HLC also speculated, wrongly, that IRES had not done a good enough job trying to make the entirety of the Bishops Place project viable. That speculation was an insult to all of the hard work that IRES has done.

Simply put, the HLC did not address at all the points that I raised to it on this issue.

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<sup>5</sup> I note that the now-approved demolition of the 6 buildings utterly destroys any justification for keeping any of the Bishops Place buildings standing as the "streetscape" for Bishops Place will no longer exist nor will any "historic context". Not that these determinations were valid in the first place when made by the HLC.

**5. The Panel misapplied the law and the facts and the HLC perpetuated that blunder.**

Section 21A.34.020.K.2 set out 5 factors for the Panel to consider (the sub-factors under some of those 5 factors, to the extent that they are intelligible, are not all repeated here but the HLC can read them in the June 14, 2018 Memorandum):

**a. The applicant's knowledge of the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition;**

**b. The current level of economic return on the property as considered in relation to the following: [ ]**

**c. The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and price asked and offers received, if any, within the previous two (2) years. This determination can include testimony and relevant documents regarding:**

**d. The infeasibility of alternative uses that can earn a reasonable economic return for the property as considered in relation to the following:**

1. A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation,
2. Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the decision of the historic landmark commission concerning the appropriateness of proposed alterations,

**e. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.**

This letter will address the 5 Factors *seriatim*.

First, Factor “a” is presumably included in order to help evaluate the “reasonable investment-back expectations” test that is found in some of the regulatory takings cases. Here, it is undisputed that IRES knew of the designation when it purchased the Bishops Place properties. That fact, however, does not shed any real light on the applicable test unless it could be shown that the purchase price paid by IRES at the time was unreasonably high in light of that designation. There is absolutely no evidence that the price paid by IRES was “[un]reasonable”.

Some Members of the HLC speculated that IRES may have, essentially, overpaid and made a bad investment but that is wrong and that speculation is not evidence. When IRES bought the 3 buildings (and the rest of the Bishops Place properties) it was anticipating a certain level of required rehabilitation. When it came time for IRES to move forward with permitting it became impossible to find a structural engineer who would certify the safety and Code compliance of the buildings without such major expenses that it would be uneconomic.

Second, regarding Factor “b”, the answer is that there is absolutely no economic return on the properties because they are not inhabitable (except for one where a caretaker is living at a token rent to try to keep the vandals, homeless and drug dealers away). Mr. Francis’s speculation that the increase in the value of the real estate itself constituted an “economic return” was silly and was rejected by the other two members of the Panel. See, e.g., June 14 Memorandum to HLC by Ms. Thompson, p. 87 (Transcript of May 15, 2018 hearing, p. 18):

**O’Grady:** Well, Ok. And without that information I just don’t think that we can conclude that there’s a return. A do [sic] economic return based on fair market value the deferential.

**Francis:** Well I disagree. I think there’s been a return on just in the increase of the value of the property since it’s purchased. That’s my point. There may not have been any income from it, but if you actually took the value of what he paid for it and what it’s worth now and you deducted what he’s paid in taxes over the period of time that he’s held it, he’s made money on the property.

**Armstrong:** You can’t sell it for that money until you can demolish

**Francis:** I’m just going through the factor analysis.

**Baird:** There’s no point in arguing

**O’Grady:** Ok

**Francis:** That’s otherwise I guess

**O’Grady:** I don’t see that, yeah

**Francis:** Otherwise you are saying the current economic return is zero. It’s either zero or the it’s the difference between what he paid for and what it’s worth. Seems to me. Because there’s no other activity.

**O’Grady:** And I guess I would say that the economic return is um... I could see the argument from a zero economic return on those. He bought them when they were on the Landmark

**Francis:** Right

**O’Grady:** on the register, nothing can be done with them until something, until the condition of the properties is somehow address or mitigated.

Even the HLC did not fall for Mr. Francis’s fallacy on this point. Or at least the HLC did not address it directly.

Third, regarding Factor “c”, the evidence before the Panel showed that the 3 buildings have been marketed but no one would buy them for the obvious reason that they have to be demolished and that demolition is stuck in this HLC process which is truly Kafkaesque. Mr. Francis and Ms. O’Grady did not explain how they could possibly have denied that fact. And neither did the HLC.

Fourth, concerning Factor “d” the Panel (at least Mr. Francis and Ms. O’Grady) seemed to believe that unless each of the 9 buildings was in immediate danger of falling over almost literally tomorrow this factor had not been met. (See, e.g., June 14 Memorandum to HLC by Ms. Thompson, pp. 92 – 94 and 98 – 103 (Transcript of May 15, 2018 hearing, pp. 23 – 25 and 29 – 34.) For example, Mr. Francis stated:

**Francis:** I think it’s fair to say that there will be increase costs with those buildings but I don’t think any engineering reports said that it couldn’t be done. But that they would all require foundations

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**Francis:** And again, I don’t think either of the engineering reports expressly stated that they couldn’t be rehabilitated. They just pointed out some issues.

*Id* at p. 93 of the Memorandum and p. 24 of the Transcript.

Even Ms. O’Grady made this same mistake:

**O’Grady:** yeah, but this is one with somebody living there, with a tenant in there, it’s obviously not been condemned by the City. I think the engineering report here does not specify that there are any fatal issues relative to the structure of the building. Is there more discussion on this particular property?

*Id* at p. 903 of the Memorandum and p. 34 of the Transcript.

Of course, whether there is a presently “fatal” defect in any of the structures is not the test. Again, the test is whether the prohibition on demolition constitutes a regulatory taking. Or, said another way, is rehabilitation economically feasible. There is no evidence in the record that contradicts the voluminous evidence provided by IRES on this issue. The 3 buildings cannot be rehabilitated in an economically sensible manner because they are all about to fall down one way or the other. No evidence in the record contradicts that fact which was clearly established in IRES’s submittals to the Panel.

However, to clear up any confusion about the engineering status of the buildings, IRES commissioned a supplemental report dated June 14, 2018 from Mr. Dean Conder of Webb & Associates that puts finality to any doubts about the woeful and essentially irreparable (at least at

any reasonable price) condition of the 3 buildings. A copy of that report was transmitted to the HLC.

Further, the Panel failed to consider the fact that if some of the buildings on Bishops Place are required to remain that would impact the viability of all of the other properties. The private road that now exists (and the road contemplated in the proposed subdivision) would not be legal or practical unless all of the buildings on Bishops Place are demolished.

The HLC did not specifically address this issue. Simply put, there is no evidence in the Record contradicting the evidence submitted by IRES “from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property [that they are unsuitable] for rehabilitation.” Also, there is no evidence in the Record contradicting the evidence submitted by IRES “[e]stimat[ing] the cost of the proposed construction, alteration, demolition or removal, and [ ] estimate[ ] any additional cost that would be incurred to comply with the decision of the historic landmark commission concerning the appropriateness of proposed alterations”. Also, please note, *pace* the HLC, that all that was required of IRES on this last point was “estimates”; not scientific perfection. Certain Members of the HLC may have their own *ad hoc* estimates (otherwise known as speculation) but that does not negate the validity of IRES’s estimates that were the entirety of the evidence before the Panel.

A summary of the rehabilitation analysis is shown in the table below. There has never been any contradictory evidence.

Properties	265-67 W. Bishop	258 W. Bishop	432 North 300 West
Acquisition Cost	\$93,459.27	\$76,451.92	\$167,170.85
Soft Costs to Date	\$154,821.76	\$77,410.88	\$77,410.88
Rehab Costs	\$726,919.55	\$466,542.54	\$1,124,394.57
Total Costs	\$975,200.58	\$620,404.56	\$1,368,976.30
Tax Credits-20% of Rehab	\$118,048.44	\$62,919.28	\$197,742.09
Net total Cost	\$857,151.15	\$557,485.00	\$1,171,234.20
Appraised Value	\$500,000.00	\$250,000.00	\$465,000.00
Sales and Marketing	\$50,000.00	\$25,000.00	\$46,500.00
Net from Sale	\$450,000.00	\$225,000.00	\$418,500.00
Gain/Loss	-\$407,151.15	-\$332,485.00	-\$752,734.20

Finally, regarding Factor “e”, it is undisputed that there is a potential that some tax credits may be available to IRES for rehabilitating the buildings. That is not, with all due respect to the Panel, the end of the question.

**Francis:** But I think we can agree that tax credits are available for this type of property. Whether or not the particular applicant chooses to use

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them or sets up the structure of this development situation to use them is really outside of the scope of what we are looking at isn't it? Because really it just says; economic consensus and/ or funding available to. I think there's evidence that there's at least a 20% tax credit that would be available for these buildings.

**O'Grady:** I guess that's true. They are available. I would note though that, you know tax credits are a, they are of value under a very certain set of circumstances and we don't know that, that set of circumstances would apply in this transaction. We just don't know that. We can't know that. So, I would note that in the report. [ ]

June 14 Memorandum to HLC by Ms. Thompson, p. 95 (Transcript of May 15, 2018 hearing, p. 26).

Instead, the real question is, as always, do the tax credits make any material difference in the economics of the potential rehabilitation. To that question, the answer is an unequivocal "no". As I advised the Panel by a supplemental letter dated May 4, 2018:

This letter transmits supplemental materials specifically addressing the Panel's request that IRES further investigate the possibility of State and/or Federal tax credits related to historic rehabilitation and how those credits might affect the financial analysis previously provided.

First, and very importantly, IRES cannot benefit from any tax credit. IRES currently has a significant tax loss carry-forward which would already shelter any income IRES might earn for years to come. (See letter from Swen Mortenson, accountant for IRES for at least 15 years). Also, because any rehabilitation of Bishop Place would still lose millions of dollars there would be no use for any tax credits. In addition, it would be futile to try to "sell" any tax credits to a third-party

As I explained to the Panel at the May 15, 2018 hearing:

**Baird:** First thank you, you've seen the letters in my updated report dealing with the tax credits. Even if they were available, they still, the project still doesn't pencil. But most importantly, I want to just run some math. Assuming that we get 4 million theoretical dollars of rehab tax credits. Just assuming that, still the pencil of property doesn't pencil but if you assume that, the tax credit would be 20%. That's 800,000 dollars. Assume it's usable as I believe it is over three years that would mean it would be 266,666 dollars a year. Assuming, as it's true the Utah tax rate is five percent, that would mean that you would multiply the tax number by 20 to get what you need to earn in income to maximize those tax returns. That means you would need 5.2 million dollars per year for 3 years of taxable income in



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order to utilize the state tax credits. If this property was free, literally free and all of the work was done on it “Free” and it was sold at market value, so there would be 100% profit one time, you’re still not at 5.6 million dollars. Well, you’re getting close, you’re getting close for the entire 1 year using up one third of the tax credits if it were free. So, you can’t, the tax credits don’t move the needle in the classic use of the phrase. So the math simply doesn’t work.

June 14 Memorandum to HLC by Ms. Thompson, p. 71 (Transcript of May 15, 2018 hearing, p. 2). I made a similar explanation to the HLC to the deaf ears of many of its Members on June 28, 2018. (*Jeremiah 5:21 KJV.*)

As noted regarding all of the other 4 Factors, no evidence was presented to the Panel or the HLC that contradicted the evidence of IRES. The Panel (at least Mr. Francis and Ms. O’Grady) and the majority of the HLC simply and mistakenly believed that any possibility of any tax or other credits, however small or unusable, was enough to prevent IRES from prevailing on this Factor. That is patently incorrect.

**6. Unless the 3 buildings are demolished the City will have taken the property of IRES for public purposes without any compensation for which the City will have to pay damages.**

In the late-eighteenth century, when the nursery rhyme originated, it may have been true that: “All the king’s horses and all the king’s men [c]ouldn’t put Humpty [Dumpty] together again.” In 2018, that is no longer the case. As I told the Panel, in land development “there is no such thing as an engineering problem, only a financial problem.”

It would be possible to reconstruct or rehabilitate the Bishops Place buildings. Maybe, with the advances in DNA and epigenomics, even Humpty’s yolk (or possibly his sense of humor too) could be reconstituted.

But it would cost a large fortune to do so. The law on “regulatory takings”, as Mr. Neilson instructed the Panel and the HLC, is that no one property owner can be forced to bear those unreasonable costs so that the public (even the mere 7 or 8 NIMBY opponents of these demolitions and certain biased Members of the HLC) can gawk at Humpty’s magnificent (and purely fictitious) renaissance. Keeping the 3 buildings from being demolished would constitute a regulatory taking for which the City will owe IRES “just compensation”.

Moreover, the 3 buildings will never be rehabilitated by any sane private party without massive financial assistance from a government or private source. (Salt Lake Modern perchance?) The 3 buildings will all eventually fall down, burn down or blow down. I can barely choose between the Big Bad Wolf (huffing or puffing) or Monty Python but, because I really want to have Monty Python in the record of a lawsuit, I will quote the Bride’s Father in the Holy Grail:

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**FATHER:** Listen, lad. I built this kingdom up from nothing. When I started here, all there was was swamp. Other kings said I was daft to build a castle on a swamp, but I built it all the same, just to show 'em. It sank into the swamp. So, I built a second one. That sank into the swamp. So, I built a third one. That burned down, fell over, then sank into the swamp, but the fourth one... stayed up! And that's what you're gonna get, lad: the strongest castle in these islands.

**7. Conclusion.**

The HLC's approval of the Panel's recommendation regarding the demolition of the 3 buildings was illegal, arbitrary and/or capricious for the reasons listed above. Thank you in advance for your prompt consideration of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'BR', with a long horizontal flourish extending to the right.

Bruce R. Baird

**ATTACHMENT 2: SLC ATTORNEY RESPONSE**

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ADMINISTRATIVE HEARING OF A LAND USE APPEAL  
(Case No. **PLNAPP2018-00507**)  
(Appealing Petition Nos. PLNHLC2017-00020, PLNHLC2017-00029,  
and PLNHLC2017-00030)  
August 29, 2018

Appellant:	International Real Estate Solutions, Inc.
Decision-making entity:	Salt Lake City Historic Landmark Commission
Addresses Related to Appeal:	248 West Bishop Place 265/267 West Bishop Place 432 North 300 West Street
Request:	Appealing the historic landmark commission’s adoption of the economic hardship review panel’s findings.
Brief Prepared by:	Paul C. Nielson, Senior City Attorney

Land Use Appeals Hearing Officer’s Jurisdiction and Authority

The appeals hearing officer, established pursuant to Section 21A.06.040 of the *Salt Lake City Code*, is the city’s designated land use appeal authority on appeals of historic landmark commission decisions.

Standard of Review for Appeals to the Appeals Hearing Officer

In accordance with Section 21A.16.030.A of the *Salt Lake City Code*, an appeal made to the appeals hearing officer “shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court.” It is the appellant’s burden to prove that the decision made by the land use authority was erroneous. (Sec. 21A.16.030.F). Moreover, it is the appellant’s responsibility to marshal the evidence in

this appeal. Carlsen v. City of Smithfield, 287 P.3d 440 (2012), State v. Nielsen, 326 P.3d 645 (Utah, 2014), and Hodgson v. Farmington City, 334 P.3d 484 (Utah App., 2014).

“The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.” (Sec. 21A.16.030.E.2.b). “The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.” (Sec. 21A.16.030.E.2.c). In this case, the appellant has opted to have the Salt Lake City Mayor serve as the land use appeal authority per Utah Code Section 10-9a-701(6).

This case deals with application of former<sup>1</sup> Subsection 21A.34.020.K (Zoning: Overlay Districts: H Historic Preservation Overlay District: Definition and Determination of Economic Hardship) of the *Salt Lake City Code*. Video of the commission’s public meetings are found at <http://www.slcgov.com/slctv/slctv-videos-demand>, and the video of the June 28, 2018 public meeting is part of the record of this matter. (See Video of June 28, 2018 Historic Landmark Commission Meeting).

### **Background**

In July 2017, International Real Estate Solutions, Inc. (Appellant) applied for and was denied permission to demolish nine adjacent residential structures located on Bishop Place in the H Historic Preservation Overlay District. Subsequent to the denial of Appellant’s demolition petition (and appeal of that decision), Appellant applied for a determination of economic hardship related to the demolition denial(s).

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<sup>1</sup> Subsection 21A.34.020.K was amended by the Salt Lake City Council in March 2018. Because Appellant filed its appeal prior to the effective date of the March 2018 amendments, the former provisions are applicable and shall govern for purposes of this appeal. The provisions of Section 21A.34.020 concerning economic hardship are now located in Section 21A.34.020.L.

An economic hardship panel (the “Panel”) was assembled per former Subsection 21A.34.020.K. The Panel reviewed the materials submitted by Appellant, and held public hearings on the matter on April 11, 2018 and May 15, 2018. At its May 15, 2018 meeting, the Panel determined that an economic hardship existed for six of the nine structures denied demolition approval. It determined by a 2-1 vote that no hardship existed for the denial to demolish three structures located at 248 West Bishop Place, 265/267 West Bishop Place<sup>2</sup>, and 432 North 300 West Street.

As required by former Subsection 21A.34.020.K of the *Salt Lake City Code*, the historic landmark commission held a public hearing on June 28, 2018 to review the findings of the Panel. At its June 28, 2018 meeting, the historic landmark commission, by a 7-1 vote, accepted and adopted the findings of the Panel with respect to the three structures for which the Panel found no economic hardship.<sup>3</sup>

On July 2, 2018, Appellant submitted an appeal of the historic landmark commission’s decision to accept and adopt the Panel’s findings with respect to the three structures for which the Panel found no economic hardship.

## **DISCUSSION**

Appellant claims the Panel’s findings, as adopted by the historic landmark commission, are arbitrary, capricious and illegal for various reasons. Each of Appellant’s arguments is addressed below.

### **1. Appellant’s Claim that Mr. Francis was Unqualified to Serve on the Panel.**

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<sup>2</sup> 265/267 West Bishop Place is a duplex structure.

<sup>3</sup> The commission made motions concerning the other six structures, which motions failed. This appeal does not concern those six structures.

Appellant, through counsel, argues that “Mr. Francis was utterly unqualified to serve on the Panel” because he lacked the background and experience required by former Subsection 21A.34.020.K of the *Salt Lake City Code*. (Appellant’s Brief at pp. 2-3). Whether Appellant’s argument on this point may be valid is irrelevant at this point. Appellant was aware of Mr. Francis’s appointment shortly after the historic landmark commission formally voted to select Mr. Francis as its panelist at the commission’s August 3, 2017 meeting. Despite that awareness and the many grumbings by Appellant’s counsel through email regarding Mr. Francis’s purported lack of qualifications, Appellant did not appeal the commission’s decision to select Mr. Francis when Appellant had the opportunity to do so in a timely manner. At this point, Appellant is without recourse to challenge the historic landmark commission’s decision to appoint Mr. Francis to the Panel.

Because Appellant did not appeal Mr. Francis’s appointment to the Panel in a timely manner, the hearing officer must reject Appellant’s claim regarding Mr. Francis’s qualifications to serve. Notwithstanding Appellant’s objection, the record reflects Mr. Francis’s understanding of the issues and thoughtful deliberation.

## **2. Appellant’s Claim of Mr. Francis’s Bias.**

Appellant’s second argument is that “Mr. Francis was transparently too biased to serve on the Panel.” (Appellant’s Brief at p. 3). The first reason Appellant gives for that claim of bias is Mr. Francis’s membership in the group, Salt Lake Modern. In support of Appellant’s claim that Mr. Francis’s membership in Salt Lake Modern shows bias, Appellant cites the purpose statement from that group’s website, which states that the group is “dedicated to the documentation, preservation, and public education about mid-century modern design and architecture in the Salt Lake region.” (Appellant’s Brief at p. 4). Merriam Webster’s online

dictionary defines “mid-century modern” as “a style of design (as in architecture and furniture) of roughly the 1930s through the mid-1960s characterized especially by clean lines, organic and streamlined forms, and lack of embellishment”. (<https://www.merriam-webster.com/dictionary/mid-century%20modern>). According to planning division staff research (included in the record of the initial demolition petitions), 248 West Bishop Place was built<sup>4</sup> in 1895, 265/267 West Bishop place was built in 1927 and 432 North 300 West Street was built in 1913.

Given the construction dates of the structures at issue, Appellant’s contention that Mr. Francis was inherently biased because he belongs to an association that seeks to preserve and educate about structures that are not mid-century modern style is misguided, to be kind.

Appellant also claims that Mr. Francis’s bias is exhibited by his failure to approve “a third panel member...who [is] far more qualified to serve than he was.” (Appellant’s Brief at p. 4). First, this is pure opinion (and an exhibition of Appellant’s counsel’s own bias) that lacks any measurable, factual support. Second, the former ordinance anticipated disagreements over whom the first two panelists might select as the third member, and, as noted on page 2 of the Appellant’s Brief, the former ordinance provided for the Salt Lake City Mayor to choose the third panelist. This contention deserves no more attention.

Finally, Appellant states that “Mr. Francis’s actual participation on the Panel showed his bias”, noting that this was due, in part, to Appellant’s counsel baiting Mr. Francis into “revealing that bias” through counsel’s repeated provocation. (Appellant’s Brief at p. 4). If this were, in fact, the case, it is hard to imagine that a judge appointed to the Third District Court would reward Mr. Baird’s antics. Notwithstanding Mr. Baird’s self-congratulatory claim of teasing out

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<sup>4</sup> Salt Lake County Assessor records indicate 248 West Bishop Place was constructed in 1906.



Mr. Francis's bias through baiting and provoking him, the record shows that Mr. Francis stayed on subject despite the barrage of insults from Appellant's counsel.

To put it plainly, Appellant's arguments that Mr. Francis was biased in his participation on the Panel is wholly unsupported nonsense. Accordingly, the hearing officer should reject Appellants claim of panelist bias.

### **3. Appellant's Claim that the Relevant Ordinance Provisions are Ambiguous.**

Appellant contends that the ordinance provisions that governed this process are ambiguous and must, therefore, be construed in its favor. The city acknowledges that there were instances during the Panel's review of whether certain standards were met where the Panel noted a lack of clarity in the standards. The city further agrees with Appellant that Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602 (Utah App. 1995) and Utah Code § 10-9a-707 require that ambiguous land use regulations be construed in favor of the property owner. However, Appellant has not specifically identified which ordinance provisions are to be construed in its favor.

To claim that "the numerous ambiguities in the Code on this issue" means that "this case is over" (Appellant's Brief at p. 7) is a misguided declaration of victory. As soon as Appellant can specifically identify the ambiguities to be construed in its favor, the hearing officer may make such a declaration, but no sooner. Appellant seems to contend that the city's entire body of historic preservation regulations--the former ones, anyway--are unintelligible, when, in fact, there were only a couple of instances where the Panel noted that the code language was unclear. Appellant may only benefit from the specific ambiguities that it can identify, but this does not mean that "this case is over." The city requests that the hearing officer require Appellant to

identify each applicable standard where the Panel noted a lack of clarity before any ambiguities are construed in Appellant's favor.

**4. Appellant's Claim that No Contrary Evidence Means There is No Substantial Evidence to Support a Finding of No Hardship.**

Appellant's fourth argument seems to be that because no evidence was submitted to contradict Appellant's submitted materials and testimony, the historic landmark commission and the Panel had no choice but to accept Appellant's arguments and conclusions. This assertion would have the hearing officer invent a new standard that ignores the law and the nature of this matter.

First, it should be noted that an economic hardship review is not a typical land use decision making process. Most administrative land use decisions take into account whether a proposed use will have some degree of negative impact on adjacent development. In those cases, opponents and proponents of proposed development often submit opposing "evidence" of potential impacts. Oftentimes that "evidence" is in the form of public clamor offered by the opponents and self-serving conclusions by the proponents. In this case, however, the concern is not whether a land use decision will negatively impact the community, but, rather, whether the city's decision may be considered a taking of property without just compensation. Thus, the focus is on what the proponent can prove and not on what may be disproved. This is so because the party advocating for a determination of economic hardship possesses all of the relevant information. The city's role is to evaluate that information--through the Panel and ultimately the landmark commission--and render a defensible decision as to whether the petitioner has adequately proven that an undue economic hardship will result if the permission to develop in a particular way is not granted. If the city were to undertake the very expensive endeavor of

commissioning its own studies and hiring its own experts to disprove Appellant's conclusions, Appellant would very likely have a strong case for a due process violation lawsuit.

All of this is to say that Appellant's assertion that it should prevail because there was no contrary evidence is completely misguided. This type of proceeding simply does not invite contrary evidence. While there were some members of the public who testified as to tax credits available to Appellant, that testimony was really informational highlighting of a hardship analysis factor in the ordinance. Neither the Panel nor the historic landmark commission cited public testimony as a basis of any finding or decision.

In sum, Appellant's argument that there is no substantial evidence to support the historic landmark commission's decision to adopt the Panel's finding because there was no credible contrary evidence submitted is meritless and cannot be supported by any authority.

#### **5. Appellant's Argument that the Panel Misapplied the Law and Facts.**

Appellant claims that the Panel erred in its application of the facts to the applicable ordinance provisions, that it misapplied the applicable ordinance provisions, and that the historic landmark commission erred in adopting those mistakes. Rather than pointing to the Panel's formal findings (See "Report of the Bishop Place Economic Hardship Review Panel"), Appellant nitpicks certain statements from the transcript of the Panel's May 15, 2018 meeting to question the basis of the Panel's decision.

As to the first factor, set forth in Section 21A.34.020.K.2.a, Appellant argues that "[t]here is absolutely no evidence that the price paid by IRES was '[un]reasonable'." (Appellant's Brief at p. 8). That argument is strange, given that the Panel made no such conclusion. Rather, the Panel concluded that "The applicant had knowledge of the landmark designation at the time of acquisition." (Report of the Bishop Place Economic Hardship Review Panel at p. 9). Appellant's

submissions and statements and the Panel's discussion all focused on the specifics of the first factor: Appellant's knowledge of the landmark designation at the time it acquired the property. Nothing in that standard or the Panel's findings pertain to the reasonableness of what Appellant paid for the properties in question.

Concerning the second factor (Sec. 21A.34.020.K.2.b), Appellant cites Mr. Francis's comments in the Panel's discussion, again, rather than citing the Panel's actual findings. The city acknowledges that the nature of a three person panel lends itself to persons offering differing thoughts and opinions, but the ultimate conclusion to be challenged is the formal finding made by the Panel and not the comments made in a discussion by Appellant's least favorite panelist. The individual comments are not the findings/decision and Appellant seems to have chosen to not address the specific finding.

As with the first two factors, Appellant has avoided discussing the Panel's actual, formal finding on the third factor regarding marketability of the properties (Sec. 21A.34.020.K.2.c). The Panel's finding was that Appellant did not provide any information pertaining to that standard. Instead, Appellant criticizes Mr. Francis and Ms. O'Grady for not adopting Appellant's worldview.

Continuing a trend, Appellant avoided addressing the Panel's actual finding on the fourth factor (Sec. 21A.34.020.K.2.d). The Panel issued separate findings on each structure in light of Appellant's engineer report, which report the Panel found was largely unhelpful on the three structures at issue.

Finally, as to the fifth factor (Sec. 21A.34.020.K.2.e), Appellant states, "it is undisputed that there is a potential that some tax credits may be available to IRES for rehabilitating the buildings. That is not, with all due respect to the Panel, the end of the question." (Appellant's

Brief at p. 11). Although Appellant did not reference the Panel's formal finding, it seems that Appellant and the Panel agreed on something. The Panel's actual finding is "Depending on whether or not the applicant chooses to use them, there are historic tax credits available to the property owner under certain circumstances." (Report of the Bishop Place Economic Hardship Review Panel at p. 10). Nothing in that language suggests that the availability of tax credits is "the end of the question". Clearly, the availability of tax credits to offset some of the financial impacts of rehabilitation is but one of several factors.

Appellant's review of the Panel's (and, by virtue of adoption, the commission's) findings on the economic hardship analysis is not really a review of the Panel's findings. Perhaps Appellant could address these findings more specifically at the scheduled appeal hearing.

#### **6. Appellant's Assertion of a Taking.**

Appellant's final argument is that the city will have taken its property without just compensation if the city does not allow Appellant to demolish the three structures at issue. At least, that's what the argument heading states. The substance of Appellant's sixth point of appeal consists, instead, of an anecdote about Humpty Dumpty and Mr. Baird's obligatory Monty Python reference. Admittedly, humorous, these references make no substantive point about the law of takings or the city's potential liability for a wrongful taking.

### **CONCLUSION**

For the reasons stated above, Appellant's arguments must be rejected and the historic landmark commission's decision to adopt the Panel's findings must be upheld.

**ATTACHMENT 3: REPORT OF THE ECONOMIC  
HARDSHIP REVIEW PANEL**

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## **REPORT OF THE BISHOP PLACE ECONOMIC HARDSHIP REVIEW PANEL**

To: Salt Lake City Historic Landmark Commission

From: Economic Hardship Review Panel – Bishop Place  
Lewis Francis  
Claudia O’Grady  
Merlin Taylor

Date: June 8, 2018

Re: **Economic Hardship Applications– Bishop Place Properties**  
PLNHLC2017-00017 – 241 W Bishop Place  
PLNHLC2017-00016 – 245 W Bishop Place  
PLNHLC2017-00020 – 248 W Bishop Place  
PLNHLC2017-00019 – 249 W Bishop Place  
PLNHLC2017-00024 – 258 W Bishop Place  
PLNHLC2017-00025 – 259 W Bishop Place  
PLNHLC2017-00026 – 262 W Bishop Place  
PLNHLC2017-00029 – 265/67 W Bishop Place  
PLNHLC2017-00030 – 432 N 300 West

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### **INTRODUCTION**

On July 6, 2017, the Historic Landmark Commission made a decision to deny the requests by International Real Estate Solutions, the owner of the subject properties, to demolish nine contributing structures in the Capitol Hill Historic District located at the above listed addresses. The Historic Landmark Commission found the demolition requests did not meet the threshold for approval.

On August 15<sup>th</sup> 2017, Bruce Baird and Seth Ensign, legal counsel for the property owner, filed an appeal of the Historic Landmark Commission’s decision to deny the demolition requests. The Appeals Hearing Officer issued a Decision on October 9, 2017 to uphold the decision of the Historic Landmark Commission.

After a request for Demolition is denied, the City has an Economic Hardship Determination process that allows the applicant an opportunity to demonstrate whether the denial deprives the applicant of all reasonable economic use or return on the subject property. Applications for Economic Hardship were submitted for the nine Bishop Place properties (addresses and petition numbers referenced above) and determined to be complete on February 23, 2018.

### **DEFINITION & DETERMINATION OF ECONOMIC HARDSHIP**

Pursuant to section 21A.34.020.K:

*“The determination of economic hardship shall require the applicant to provide evidence sufficient to demonstrate that the application of the standards and regulations of this section deprives the applicant of all reasonable economic use or return on the subject property.”*

## **PROCEDURE FOR DETERMINATION OF ECONOMIC HARDSHIP**

Pursuant to section 21A.34.020.K.3, a three person Economic Review Panel is established. This panel shall be comprised of real estate and redevelopment experts knowledgeable in real estate economics in general, and more specifically, in the economics of renovation, redevelopment and other aspects of rehabilitation. The panel consists of one person selected by the Historic Landmark Commission, one person selected by the applicant, and one person selected by the first two appointees. If the first two appointees cannot agree on a third person within 30 days, the third appointee shall be selected by the mayor.

### ***Selected Members***

The Historic Landmark Commission selected Mr. Lewis Francis to serve on the Economic Review Panel. The applicant selected Mr. Merlin Francis. Since the first two appointees were not able to agree on a third person, Mayor Jackie Biskupski selected Ms. Claudia O'Grady to serve as the third review panel member on February 20, 2018. Ms. O'Grady was selected by the Panel to serve as the Panel Chair.

### ***Processing timeline***

- **February 20, 2018** – Economic Hardship Review Panel was established
- **February 23, 2018** – Staff received complete Economic Hardship applications
- **February 28, 2018** – Application information delivered to Review Panel
- **March 2, 2018** – Site visit with Review Panel members, Staff, and applicant
- **March 2, 2018** – Review Panel made a decision to hold a public hearing at the meeting
- **March 29, 2018** – Notice for public hearing was mailed out and posted on the site
- **April 5, 2018** – Supplemental information provided by Planning Staff
- **April 11, 2018** – Review Panel meeting and public hearing – Panel requested additional information related to tax credits
- **May 4, 2018** – Additional information was provided by the applicant
- **May 15, 2018** – Review Panel second public meeting and vote
- **June 15, 2018** – Report of the Economic Hardship Review Panel to the Historic Landmark Commission
- **June 28, 2018** – Historic Landmark Commission will reconvene public hearing

## **ATTACHMENTS**

[Attachment A – Review Panel Meeting Minutes - April 11, 2018](#)

[Attachment B – Public Hearing Cards](#)

[Attachment C – Review Panel Meeting Minutes - May 15, 2018](#)

[Attachment D – Written Public Comments](#)



## ECONOMIC REVIEW PANEL MEETING - APRIL 11, 2018

The Panel convened the first of two public meetings on April 11, 2018. A public hearing was also held during this meeting. The following is an overview of the discussion from the meeting. Detailed minutes from this meeting can be found in [Attachment A](#) and the audio recording of the meeting can be accessed here: [April 11 Audio Recording](#)

### **Discussion**

- If the buildings are being considered individually or as a whole
- The applicant understood the properties were in a historic district when they were purchased
- The historic nature of the properties is not relevant in terms of the hardship
- The cost estimates for rehabilitation (page 13 of EH Report)– Panel members did calculations for a few of the buildings:
  - 241 Bishop Place, hard and soft costs at 653 dollars a square foot for rehab (225 per square foot for new construction)
  - 251 bishop - 557 per square foot for rehab
  - 432 N. 300 W. – 468 per square foot for rehab
- Whether or not the contractor has ever rehabbed a historic property
- Several of the frame buildings lack foundations – 7 from what the engineer could tell
- The estimated costs that were provided per building to pour a new foundation for the 7 structures without foundations
- The cost for pouring the foundations was priced out based on the idea that the structures could not be removed or taken down or pulled apart in order to put a traditional footing and foundation in.
- The applicants estimated value of new construction is based on a \$700,000 single family home
- The infrastructure work that has to be done for the site
- Information/budget that was provided to obtain the RDA loan vs. information that was submitted for the Economic Hardship applications
- Whether or not tax credits can be obtained for the properties

### **Public Hearing**

Six people spoke at the public hearing (See [Attachment B](#) for Public Hearing Cards). The following is a summary of the comments made during the public hearing:

- Buildings are deteriorated and have been deliberately neglected
- Ignoring the state of the buildings and then applying for it to be torn down defeats the purpose of a historic district
- Zoning tools could provide more options for reuse
- These are contributing buildings and should be eligible for tax credits
- Poor investment does not equal a taking by the City
- What are the properties worth and what were they worth before they were bought by the current property owner

### **Review Panel Conclusions**

The Review Panel tabled the applications and requested additional information from the applicant related to historic tax credits to consider at the next meeting of the Economic Review Panel.

## ECONOMIC REVIEW PANEL PUBLIC MEETING - MAY 15, 2018

After receiving the additional information the Panel requested from the applicant, the Panel reconvened the discussion from the April 11<sup>th</sup> 2018 public meeting on May 15, 2018. The following is a summary of the discussion from the meeting. Detailed minutes from this meeting can be found in [Attachment C](#) and the audio recording of the meeting can be accessed here: [May 15<sup>th</sup> Meeting Audio Recording](#)

### ***Discussion***

- The difference in the rehab estimates provided for the RDA Loan in comparison to the numbers provided in the Economic Hardship application evidence.
- The increase in cost of building materials between the time the RDA loan was obtained (construction contract signed 4/11/2014) and applying for Economic Hardship
- Other approvals that have been granted for the property – Planned Development, Rezone of 432 N. 300 W, make Bishop Place a public street, CoA's for additions to several properties
- Building permits and building code
- Engineering reports indicated the properties are in very poor condition, but didn't indicate they could not be fixed
- The comparables provided in the appraisals are for tear downs or vacant land
- The total investment to date on the properties - the original purchase price was approximately 600,000 and evidence submitted indicates a total investment to date is 1.5 million.
- Amount the property was purchased for compared to appraised value
- The appraisal provided is just of the land without the structures
- The current level of economic return on the property
- There is no proposed new construction
- All evidence submitted regarding attempts to sell the property are more than two years old (from 2012 & 2013).
- Similarities among some of the structures – it may make sense to discuss them in groups
- The standards in the ordinance – All standards/considerations for economic hardship in the ordinance do not need to be met, but the assumption would be they have to meet the majority.

### ***Submitted Public Comments***

Staff received public comments from seven people/ organizations. Some individuals submitted more than one public comment. All public comments that have been received are included in [Attachment D](#) of this report.

## REVIEW PANEL FINDINGS AND CONCLUSIONS

The Economic Hardship Review Panel based its findings of fact and conclusions on the evidence submitted by the applicant with the applications for Economic Hardship.

The Economic Hardship Review Panel found by a 2/3 vote, there **is an economic hardship** with the following properties:

**PLNHLC2017-00017 – 241 W Bishop Place**  
**PLNHLC2017-00016 – 245 W Bishop Place**  
**PLNHLC2017-00019 – 249 W Bishop Place**  
**PLNHLC2017-00024 – 258 W Bishop Place**  
**PLNHLC2017-00025 – 259 W Bishop Place**  
**PLNHLC2017-00026 – 262 W Bishop Place**

The Economic Hardship Review Panel made combined findings on the six buildings/petitions referenced above because they found these six shared some similarities, and therefore they were evaluated together.

### **Review Panel Votes**

Claudia O’Grady - **Yes** \_\_\_\_\_

*The applicant has met the burden of evidence as it relates to the standards in the ordinance to demonstrate economic hardship on these six properties.*

Merlin Taylor - **Yes** \_\_\_\_\_

*I believe the applicants have proven their economic hardship on these properties.*

Lewis Francis - **No** \_\_\_\_\_

*I don’t think the applicant has met their burden to show there is an economic hardship with respect to these properties. There is only one of the factors out of the five that has any evidence to support their application. The others are either neutral or contrary to the application.*

### **Review Panel Findings**

The below listed findings relate to the six properties/petitions listed above.

#### **21A.34.020.K.2 – Standards for Determination of Economic Hardship**

- a. *The applicant's knowledge of the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition;*

**Findings - The applicant had knowledge of the landmark designation at the time of acquisition**

- b. The current level of economic return on the property as considered in relation to the following:
- (1) The amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant, and the person from whom the property was purchased,
  - (2) The annual gross and net income, if any, from the property for the previous three (3) years; itemized operating and maintenance expenses for the previous three (3) years; and depreciation deduction and annual cash flow before and after debt service, if any, for the previous three (3) years,
  - (3) Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the previous three (3) years,
  - (4) Real estate taxes for the previous four (4) years and assessed value of the property according to the two (2) most recent assessed valuations by the Salt Lake County assessor,
  - (5) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property,
  - (6) The fair market value of the property immediately prior to its designation as a landmark site and the fair market value of the property as a landmark site at the time the application is filed,
  - (7) Form of ownership or operation of the property, i.e., sole proprietorship, for profit corporation or not for profit corporation, limited partnership, joint venture, etc., and
  - (8) Any state or federal income tax returns on or relating to the property for the previous two (2) years;

***Findings - There may be value in the property, but that cannot be realized until the property is sold. There is no current income on the property.***

- c. The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and price asked and offers received, if any, within the previous two (2) years. This determination can include testimony and relevant documents regarding:
- (1) Any real estate broker or firm engaged to sell or lease the property,
  - (2) Reasonableness of the price or rent sought by the applicant, and
  - (3) Any advertisements placed for the sale or rent of the property;

***Findings - No information has been provided regarding the marketability of the property for sale or lease within the previous two years***

- d. The infeasibility of alternative uses that can earn a reasonable economic return for the property as considered in relation to the following:
- (1) A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation,
  - (2) Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the decision of the historic landmark commission concerning the appropriateness of proposed alterations,
  - (3) Estimated market value of the property in the current condition after completion of the demolition and proposed new construction; and after renovation of the existing property for continued use, and

- (4) The testimony of an architect, developer, real estate consultant, appraiser, or other professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property;

***Findings - The engineering report did not thoroughly address the suitability for rehabilitation. These are frame buildings without foundations and would be difficult to rehabilitate at a significantly higher cost. Information has not been provided related to a reuse/new construction plan for the properties. The evidence provided is for demolition.***

- e. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.

***Findings - Depending on whether or not the applicant chooses to use them, there are historic tax credits available to the property owner under certain circumstances.***

## REVIEW PANEL CONCLUSIONS AND FINDINGS

The Economic Hardship Review Panel based its findings of fact and conclusions on the evidence submitted by the applicant with the applications for Economic Hardship.

The Economic Hardship Review Panel found by a 2/3 vote, there **is not an economic hardship** with the following properties:

**PLNHLC2017-00020 – 248 W Bishop Place**  
**PLNHLC2017-00029 – 265/67 W Bishop Place**  
**PLNHLC2017-00030 – 432 N 300 West**

The Economic Review Panel made separate findings on the three buildings/petitions referenced above. Where a finding relates to a specific property, the address is noted.

### **Review Panel Votes**

Lewis Francis - **Yes** \_\_\_\_\_

**432 N. 300 W.** - *I don't think the applicant has met their burden on this property. There are several considerations and we are just focusing on one of those considerations (standard 21A.34.020.K.2.e) and all of the others are against the applicant. If they haven't even met the one factor we're looking at, clearly they haven't met their burden to establish economic hardship.*

**265/67 Bishop Place**- *There hasn't been any evidence provided of any real significant structural issues with this building nor that it couldn't be rehabilitated. The applicant has not met their burden of proof in respect to this building.*

**248 Bishop Place** - *The applicant hasn't met their burden to establish Economic Hardship.*

Claudia O'Grady - **Yes** \_\_\_\_\_

**432 N. 300 W.** - *I agree the applicant has not met their burden on this particular building. I do not think each factor must weigh in favor of a determination of economic hardship. I think we take these in the aggregate.*

**265/67 Bishop Place** - *The applicant has not met their burden of proof. This building has enough integrity and potential use to it and evidence has not demonstrated economic hardship on the duplex.*

**248 Bishop Place** - *The applicant hasn't met their burden to establish economic hardship.*

Merlin Taylor - **No** \_\_\_\_\_

**432 N. 300 W.** - *I believe the applicants have met the burden of proof on that particular building.*

**265/67 Bishop Place** - *I believe the applicants have met the burden of proof on this particular building.*

**248 Bishop Place** - *The applicant has met their burden of proof for economic hardship.*

### **Review Panel Findings**

The below listed findings relate to the three properties/petitions listed on the previous page.

#### ***21A.34.020.K.2 – Standards for Determination of Economic Hardship***

- a. *The applicant's knowledge of the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition;*

#### ***Findings - The applicant had knowledge of the landmark designation at the time of acquisition***

- b. The current level of economic return on the property as considered in relation to the following:
  - (1) The amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant, and the person from whom the property was purchased,
  - (2) The annual gross and net income, if any, from the property for the previous three (3) years; itemized operating and maintenance expenses for the previous three (3) years; and depreciation deduction and annual cash flow before and after debt service, if any, for the previous three (3) years,
  - (3) Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the previous three (3) years,
  - (4) Real estate taxes for the previous four (4) years and assessed value of the property according to the two (2) most recent assessed valuations by the Salt Lake County assessor,
  - (5) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property,
  - (6) The fair market value of the property immediately prior to its designation as a landmark site and the fair market value of the property as a landmark site at the time the application is filed,
  - (7) Form of ownership or operation of the property, i.e., sole proprietorship, for profit corporation or not for profit corporation, limited partnership, joint venture, etc., and
  - (8) Any state or federal income tax returns on or relating to the property for the previous two (2) years;

#### ***Findings - There may be value in the property, but that cannot be realized until the property is sold. There is no current income on the property.***

- c. The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and price asked and offers received, if any, within the previous two (2) years. This determination can include testimony and relevant documents regarding:
  - (1) Any real estate broker or firm engaged to sell or lease the property,
  - (2) Reasonableness of the price or rent sought by the applicant, and
  - (3) Any advertisements placed for the sale or rent of the property;

#### ***Findings - No information has been provided regarding the marketability of the property for sale or lease within the previous two years***

***248 Bishop Place currently has a tenant living there.***

- d. The infeasibility of alternative uses that can earn a reasonable economic return for the property as considered in relation to the following:
- (1) A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation,
  - (2) Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the decision of the historic landmark commission concerning the appropriateness of proposed alterations,
  - (3) Estimated market value of the property in the current condition after completion of the demolition and proposed new construction; and after renovation of the existing property for continued use, and
  - (4) The testimony of an architect, developer, real estate consultant, appraiser, or other professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property;

**Findings – 432 N. 300 W.**

- ***The engineering report did not identify issues that would prevent the building from being renovated.***
- ***Most of the costs identified in the engineering report related to the frame buildings and dismantling them to pour foundations and the rebuilding – this cost doesn't apply to the brick craftsman on 300 W.***
- ***The purchase price of this building was \$145,000***

**Findings – 265/267 Bishop Place (duplex)**

- ***The engineer notes he didn't actually enter the duplex. His assessment is just an exterior observation and this structure does have a foundation.***
- ***The report does not indicate this building cannot be rehabilitated or brought to structural soundness or that it isn't structurally sound right now.***
- ***The location of this building may have more of an impact on the overall value of the property, but we are being asked to look at each building separately.***

**Findings – 248 Bishop Place**

- ***The engineer indicated they did not enter this building.***
- ***Comments were limited to some exterior issues, the main issue being the back porch.***
- ***This building is currently occupied***
- ***The purchase price of this property was \$100,000.***
- ***Information has not been provided related to a reuse/new construction plan for the properties. All the evidence is for demolition.***

- e. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.

***Findings - Depending on whether or not the applicant chooses to use them, there are historic tax credits available to the property owner under certain circumstances.***



**ATTACHMENT A: REVIEW PANEL MEETING MINUTES**  
**APRIL 11, 2018**

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**Meeting of the Economic Review Panel  
Verbatim Transcript**

**April 11, 2018**

**Room 118**

**Economic Hardship Applications– Bishop Place Properties**

PLNHLC2017-00017 – 241 W Bishop Place  
PLNHLC2017-00016 – 245 W Bishop Place  
PLNHLC2017-00020 – 248 W Bishop Place  
PLNHLC2017-00019 – 249 W Bishop Place  
PLNHLC2017-00024 – 258 W Bishop Place  
PLNHLC2017-00025 – 259 W Bishop Place  
PLNHLC2017-00026 – 262 W Bishop Place  
PLNHLC2017-00029 – 265/67 W Bishop Place  
PLNHLC2017-00030 – 432 N 300 West

[2:06:43 PM](#) **Nick Norris:** Hopefully everybody is ready to begin because we are going to start, my name is Nick Norris I am the planning director for Salt Lake City. And I just wanted to open up the meeting by reading from the ordinance what, why we are here and what our Economic Hardship panel is tasked with doing. And I am just going to read that straight from the ordinance so there is no confusion on that or that there is no opinion thrown into that. But the determination of economic hardship shall require the applicant to provide evidence sufficient to demonstrate that the application of the standards and regulations of this section, by this section it means the historic preservation overlay zoning district, deprives the application of all reasonable economic use or return on the subject property. The role of staff in this really is to help answer any sort of procedural questions. We do have the City Attorney here to help answer any sort of legal types of questions, and with that we normally would start this type of things just to make sure we get all of the people who might be from the applicant's team, from the panel, and from the staff side, make sure everybody's names are on the record. So Bruce, I am going to ask to just start with you.

[2:08:18 PM](#) **Bruce Baird:** Bruce Baird council for the applicant

[2:08:22 PM](#) **Don Armstrong:** Don Armstrong president of international real estate solutions Inc

[2:08:27 PM](#) **Robert Conger:** Robert Conger I'm a structural Engineer that investigated the structures

[2:08:32 PM](#) **Bruce:** just for the record, Adam Green is going to be here a few minutes later. He is running a few minutes late, he's also with my team and he'll walk in later.

[2:08:39 PM](#) **Nick::** great thank you. Claudia, do you want to?

[2:08:42 PM](#) **Claudia O'Grady:** Claudia O'Grady, I'm with Utah housing corporation and I serve as the chair of the Redevelopment Advisory Committee.

[2:08:51 PM](#) **Merlin Taylor:** I'm Merlin Taylor and I'm Part of the team for the developer

[2:08:56 PM](#) **Lewis Francis:** Lewis Francis I'm an attorney at Jones Waldo.

[2:09:01 PM](#) **Paul Neilson:** Paul Neilson with the Salt Lake City Attorney's Office.

[2:09:03 PM](#) **Michaela Oktay:** Michaela Oktay with the Planning Division.

[2:09:05 PM](#) **Amy Thompson:** Amy Thompson Salt Lake City Planning Division.

[2:09:09 PM](#) **Paul:** Alright thanks, I think there's a couple procedural types of things that we want to get out of the way first. Is that correct? As far as....

[2:09:18 PM](#) **Amy:** I think you covered everything pretty much that I was going to say, other than turning time over to the panel for presiding member

[2:09:22 PM](#) **Paul:** OK, so I guess we'll turn it over to the panel to determine the presiding member who essentially kind of manages the flow of the meeting.

[2:09:32 PM](#) **Claudia:** would that be called the Chair?

[2:09:34 PM](#) **Paul:** yeah, similar to a Chair but we didn't want to create that kind of a situation so it's a little bit different.

[2:09:43 PM](#) **Lewis:** I would move to appoint the presiding member, since she's been through his process before

[2:09:51 PM](#) **Merlin:** I will second that

[2:09:52 PM](#) **Claudia:** ok

[2:10:01 PM](#) Unknown alright, from there its

[2:10:03 PM](#) **Claudia:** So the panel have received a great amount of information and it's a lot of information and I think it covered the entirety of the case it was very thorough and I want to compliment the staff on that it was very, very helpful. Really helpful. We've also taken a tour of the site, which again was helpful and that we got to see most of the units. I think we may have had the opportunity to go in all of them, I am not sure of us did not go into all of them, but we walked the sites and the parcels of land thoroughly. We, those units that we were able to get into, we went in. and inspected those units, so I think that provides a good foundation of information and that's our starting point for today. Is there a procedural format that you want us to follow? I know that we invited public comments, would you like us to begin with public comment?

[2:11:12 PM](#) **Amy:** there should be an outline sheet there, is there not?

[2:11:15 PM](#) **Claudia:** probably

[2:11:18 PM](#) **Amy:** let me get one for you

[2:11:21 PM](#) **Michaela:** I could pass mine down, sorry this is scribbled

[2:11:32 PM](#) **Claudia:** this is great, ok. So, then we turn it over to the Planning Staff to give us a brief outline, so please.

[2:11:42 PM](#) **Amy:** so I don't have anything in addition to what Nick said regarding the purpose of this meeting. So, we can just turn the time over to the applicant if they have any additional comments that they want to make.

[2:11:55 PM](#) **Nick:** I might add because the panel has chosen to provide public comment, typically in any sort of situation like this when we have a public comment period we give the applicant an opportunity to respond to that public comment, so we want to make sure that's on your radar when we get to that point of the meeting.

[2:12:13 PM](#) **Claudia:** Great thank you. Alright then, the applicant is invited to introduce the case and discuss the petition before us today. So.

[2:12:27 PM](#) **Bruce:** Thank you Madam Chair, as I indicated before we went on the record I intend to be very brief because I have a faith that you have read all of the material that we have, the voluminous material, that we have submitted and the few comments from the public today I am going to address those as well. Let's make preliminary matters, and if it's alright with you I'd rather go through all of my preliminary matters before you make a decision on them. And then I will go through, not all of them can be dealt with, some will have to be dealt with on the fly. And then I will go through our presentation if that is acceptable. First, I would renew my objection for Mr. Francis's participation on the panel, as I have indicated before I don't believe he meets the standards set up in the code we will go into that in greater detail. I understand he has a relationship with Salt Lake Modern, but that is insufficient to me to meet the requirements of the code. It is certainly less qualifications than the three members of, that we suggested as neutral third parties that he black balled being: Mr. Lofgren of Cowboy Partners, one of the most experienced developers in the state; Scott Sabey, the Chairman of the Sandy Planning Commission; and the Real Estate Development Lawyer, very familiar with real estate development. For some reason Mr. Francis declared him to be unqualified and for unspecified reasons declared him to be biased and advanced, though he is the bars lobbyist and a respected lawyer and a respected member of the Planning Commission. He also, Mr. Francis also blackballed Mr. Chris McCanlis, a developer who happens to be the Chair of the Salt Lake Sandy City Council Member, also declaring him to be unqualified and biased. I have with me and put it in record that I have Mr. Francis's law firm bio and I suppose it references that he's an immigration practice and the franchising practice so if we needed a taco bell run by some people who needed green cards, it would be great but otherwise Salt Lake Modern is insufficient to qualify him to be on this panel. Second, I'm going to object to the citizen comments to the extent that they go to any issue other than economic hardship, no other issue is relevant to this question. Whether or not the buildings are the most historic buildings in the world is not, if it is the Sistine Chapel, it wouldn't matter. It might because it would be an economic issue, the renovation of Sistine Chapel. Also, they're not adversely impacted parties, finally I'd move to strike the testimony that has been submitted today and I's ask the hearing officer to immediately rule out of order any testimony not strictly related to economic hardship. I would also move to strike all of the minutes of the prior meetings which are irrelevant to the issue of hardship, whether there is a historic determination, whether any or all of the six criteria were met is not relevant to the seventh criteria, the stand-alone criteria of economic hardship. The City has already decided that in relationship to an appeal internally from the member of the HLC about how the City separated those two issues. Finally, I would object to the inclusion of the RDA information from four years ago, as being too old to be relevant. Those are my objections and preliminary motions and if you want to consider those before I move on to my maybe five minute presentation I would be happy to take a break, otherwise I will move on and you can discuss them afterwards.

[2:16:16 PM](#) Inaudible, recorder asking for Bruce to speak into the Microphone?

[2:16:18 PM](#) **Bruce:** Sorry, Sorry about that.

[2:16:23 PM](#) **Paul:** I don't know if you want me to respond to some of this?

[2:16:28 PM](#) **Claudia:** Yes

[2:16:29 PM](#) **Paul:** Salt Lake City, I think has been pretty fair at acknowledging all along the way in this process that our ordinance have, the ordinances that are applicable do not do an adequate job of guiding us along. So as far as a forma motions, we don't have anything in the ordinance to dictate how we do that so I think that we kind of handle this one the fly, we use our best judgement. I don't know if Bruce is demanding a formal decision on those issues right now?

[2:17:03 PM](#) **Bruce:** I am not.

[2:17:04 PM](#) **Paul:** OK. I think we are all going to try to do our best.

[2:17:10 PM](#) **Bruce:** the only one that I would request is that if testimony begins to come from someone about the historicity the historic nature of this property, that is unrelated to hardship, that the Chair rule it out of order so that we can move on and get to the real issues in this case.

[2:17:29 PM](#) **Claudia:** let me ask the panel, are there any of these objections that you with to address, any that we need to consider? Or any that you would like to discuss, including this last one of ruling out of order any testimony that is not related to the hardship issue, the economic component itself? Anything from the panel?

[2:17:52 PM](#) **Merlin:** I do not.

[2:17:53 PM](#) **Lewis Well** I think we should hear the comments and I think we are capable of discerning between those that are relevant and those that may not be relevant. I also would like to point out, with respect to the earlier RDA Loan and the documents that were submitted to the panel, I think they are relevant and I think Mr. Baird actually specifically referenced the RDA in his letter argument to the panel. So, I think we should be able to consider that as well. I think it is relevant.

[2:18:19 PM](#) **Bruce:** May I respond?

[2:18:20 PM](#) **Claudia:** yes, let me just say first that I would not want to exclude any testimony from, or any public comments from, any of the members of the public. I think that this process is intended to be a very open and transparent process, an extension of our City government and as such I just think it would be in bad taste to exclude any of the public comment that's offered here today.

[2:18:48 PM](#) **Bruce:** at the risk of offending the Chair, and I really have to walk a fine line here. I respectfully disagree, you can't un-ring a bell and the hearing has a specific purpose and if somebody wants to talk about whether the moon is blue it has nothing to do with economic hardship whatsoever. There is a total of one issue being discussed here today, and whether these are the world's greatest buildings or not doesn't matter unless it's related to the economic hardship. So, I respectfully disagree and object to the fact that you don't rule somebody else out of order, I will raise it once the first time that somebody comments and then I'll ask for a standing objection so I don't ruin the flow of the process. But I think you are completely wrong Ms. O'Grady.

[2:19:35 PM](#) **Claudia:** noted, you're not the first.

[2:19:37 PM](#) **Bruce:** as to, and lots of people think I'm completely wrong today, when I was in the supreme court this morning it was about a district court judge who thought I was completely wrong. Fortunately, the supreme court doesn't think so. At least doesn't seem to think so based on their questioning. Regarding the RDA, just for the record, the reason the RDA is in my material is because it had to be. Because the City required us to discuss any prior loans, if we were not required to discuss the RDA, we would not have discussed the RDA. So, you can't fault me for opening a door that I was required to open. Now, if I move on then to my presentation, it's going to be as I say very short.

[2:20:23 PM](#) **Bruce:** the first issue, the first point is that I'm not going to repeat my letter. My letter is four months old, you've had a chance to read it. I have some of my team here and one of the other people will be coming in if you have questions. I'm going to briefly summarize where we are, and what the standards are and then we are going to respond to questions. And we won't make any detailed presentation, other than then to respond to the issues raised by the public, assuming they are the least bit relevant. The single issue that is in front of you, the single issue, and you can phrase it multiple ways, but I think Paul's memo accurately states it. Is it an economic hardship to require IRES to Keep the buildings up? And not demolish them, put it another way but it's the same issue. Is the City taking the IRES's property by making the buildings stay up and not letting us demolish them. Put a third way, can the buildings be economically rehabbed back to their historical condition, whatever that might be? That's three ways of saying the exact same thing. Mr. Nielson's case laws analysis of takings is very good, I would add only one thing to it and that is you can't make one property owner, the City can't make one property owner, bare the economic burden of the City's historical visions. Our evidence is clear and it's un rebutted, requiring the rehab to the supposedly historical buildings would result in a net loss we show in our pleadings of about four (4) million dollars. Whether it's one million, two million, or four million, what's a few million among friends? But it's still a net loss and therefore would constitute a taking. That is specified in detail in our presentation titled Hardship Report, at pages 07-11 and all of the exhibits incorporated therein. Which I trust that you have read. Preventing Mr. Armstrong from demolishing the building and putting up a new building is also preventing him from earning any economic return on his reasonable investment backed expectations. I want to make it clear, we are not asking for carte blanche to do whatever anyone might want to do on this site, however ugly, subjectively ugly someone might think it is. We are not asking permission for that. All we are asking for permission at this hearing is to tear down buildings that will fall down on their own if somebody doesn't stop them. I want to also make it clear that no one has tried harder over the years than Mr. Armstrong, to do what he could to rehab these buildings if they made any economic sense. I will point out that our evidence is absolutely un rebutted and I will address Ms. Cromer's arguments in just a minute because she is the only one who has come close to discussing the issues as Cindy always does. Any new evidence presented on the economic hardship issue today would be an ambush and a violation of our due process rights. Let me address very quickly Ms. Cromer's issues. And you have Cindy's email of April 10<sup>th</sup>, there seems to be a miscommunication and for that I will, as I always do, take the blame if there is a miscommunication. On page 1 of 15 which Cindy discusses under paragraph 2, potential use after economically unfeasible restoration you'll see the phrase 10 Bishop Place housing units possibly priced at 450. Ms. Cromer read that, and I can understand how she reads it that way, as us saying that if they were rehabbed the totality of the 10 units would be only worth \$450,000 i.e. \$45,000 a piece. That is a mistake, if we conveyed that impression, we did not mean to convey that impression. If you look at other documents in our pleadings, you will see that we have actually estimated them to be worth far more than that. That 450 number was if we were allowed to demolish and if we were allowed to put up a real structure, what the

real structure would be worth. So that would be worth 450 for the replacement units and 800,000 for the replacement of 432. To the extent that that is a miscommunication, again I apologize and I personally accept responsibility for that. And that should deal with Cindy's issue on that. As to Ms. Cromer's issues about frame structures easier to deal with, Ms. Cromer despite being very experienced at lots of things is not an Engineer and she is speculating as to what that would be in terms of the cost. She also raises the potential that the zoning was quote "wrong ab initio", well we're stuck with the zoning whatever it is. To talk about rezoning it is purely speculative and any impact would only have an impact on what we could build subsequently, not what is there now. Cause what is there now, would have to be quote theoretically rehabilitated and restored so rezoning is irrelevant to the question of restoration. As to tax credits, that's hearsay and speculation. As to the vacant land, I'm not quite sure where that goes to, but again Ms. Cromer is not a real estate broker. You have to include marketing even in a frenzied market because God knows when this is going to be eventually decided, and God knows whether you have...I mean everyone markets something, there's got to be some marketing expense. And the marketing expense is De minimis and does not drive the cost of the rehab into such a level that it would make it proper.

[2:26:12 PM](#) **Bruce:** the City cannot look at some speculative, unknown miracle buyer who claims that they would be able to rehab these properties for less and sell them for more. A speculative buyer is, by definition, speculative. The dollars are what they are, it's simply math. No sane human, according to our documentation, would buy these properties and rehabilitate them unless you used city dollars of some kind with a grant such as Park City did to restore those million dollar per unit and use them for low income housing. If the City wants to do that, that's just the same thing as taking so buy the property because it's for sale at the right price. Finally, and I really do mean almost finally, not quite. Mr. Armstrong would have to disclose the condition and his efforts to date, and his efforts in the past, and the discussion and the condition of the buildings to any potential buyer. Disclosure of this would be, and I'll pronounce it in Italian first since I'm leaving to Italy on Friday for a vacation and I called a friend of mine and asked how to pronounce it in Italian; "le chateau one speranza vacoas entrata" which means, "abandon all hope ye who enter here", once you get into the historical process, of course we all know that is from the third canto to Dante's Inferno titled "The Vestibule of Hell". And as the City has acknowledged repeatedly, their existing code is about as comprehensible as Dante would be to me in the original Latin. The only way that anyone could make any money on these properties and the evidence is undisputed about that, would be if we had a convenient wind storm or fire storm or if we had a snow year like last year, if we had two or three of those in a year these buildings would fall down on their own and somebody would be able to rehabilitate them. The only other possible way to make any money, would be to force Mr. Armstrong out by delaying him further and trying to just basically run out the clock on his ability to finance this. And then somehow convincing the Building Official by fair means or foul that the building should be declared a public hazard and torn down. That is the only possible way to make any money off this building, of course, what should have happened is the Building Official should've torn these buildings down but were stick in this historical process and public clamor has effectively stopped the Building Official from declaring these buildings to be what they are. Which is a blight on humanity and they should be torn down. The conclusion is very simple, and you will hear a lot of chuckling and a lot of giggling from the peanut gallery and they will tell you an awful lot of stuff that doesn't have anything to do with the economic hardship issue. And they will take offense at my characterizing their testimony and the historicity of these buildings and I don't care. The simple answer is in conclusion, there's one issue as I've said it's phrased many different ways, it's massively briefed, it's

unrefuted by any admissible evidence. We have the experts here to answer the questions, I ask you again to keep out all the irrelevant issues evidence especially that it's so historic. And I ask you to find that there is a hardship or the City will have committed a regulatory taking and owe IRES millions of dollars. We're here to answer any questions you may have.

[2:29:32 PM](#) **Claudia:** thank you, all right.

[2:29:33 PM](#) **Bruce:** one more thing, to the extent we are going to allow public comment. Please limit it if you don't, please limit it in time so that we don't go for ever, and ever, and ever amen. If you're not going to limit it in subject.

[2:29:49 PM](#) **Michaela:** panel members, generally at public hearings we limit it to about 2 minutes.

[2:29:53 PM](#) **Claudia:** per comment?

[2:29:54 PM](#) **Michaela:** per comment. Or let them just finish up and it would be up to the panel if they would like to have a member speak longer.

[2:30:02 PM](#) **Claudia:** ok.

[2:30:03 PM](#) **Michaela:** we'll go ahead and time it.

[2:30:04 PM](#) **Claudia:** before we start into the public comment section though, this is an opportunity for questions to the applicant from the panel.

[2:30:12 PM](#) Lewis I have a question. Mr. Baird, how do you explain the discrepancy between the proformas that were submitted in support of the RDA loan and the proformas you are now submitting?

[2:30:23 PM](#) **Bruce:** 4 years

[2:30:24 PM](#) Lewis well 4 years, priced have gone up a little and costs of construction, I'll acknowledge that. But also, the value of the property has gone up, probably tenfold over the cost, increased cost, of construction.

[2:30:36 PM](#) **Bruce:** you're purely speculating.

[2:30:37 PM](#) Lewis well, I'm just asking you to explain to me the discrepancy.

[2:30:40 PM](#) **Bruce:** and I'm going to tell you that the fact that you even have the hutzpah to say that real estate values have gone up ten times in 4 years further proves your biased. My house is not worth four times, ten times as much as it was 4 years ago. You said it, I didn't.

(Mr. Breen enters)

[2:31:00 PM](#) **Lewis:** well, actually Mr. Baird, you said this property is worth 10 million in your letter suggesting that the City buy it. In the proforma that was submitted with the original application for the RDA loan, it said that the interior and exterior renovation costs for all the properties totaled 1.35 million.

[2:31:18 PM](#) **Bruce:** the other answer is that when you get into further investigation of the properties, as required by the building code, and you look at 4 years of additional deterioration, it has become clear that the buildings cannot be effectively rehabilitated at all. We've gone through in detail in our letter and analysis what it would take to rehab these buildings, and we have a Structural Engineer



and a Contractor here to talk about that. What it would take, now after 4 yours of further investigation, to restore them would be to take them apart piece by piece almost literally with a toothpick, identify the few items of historical nature that are there depending upon whether you want to count them as wooden clap board style or you want to count them as faux gingerbread painted crap. Whichever it is, you would have to take them apart piece by piece, you'd have to move them to another site, you'd have to tear the foundations down, you'd have to build a new foundation, you would have to do all of that work, you'd have to put it up with modern code material. What you saw in the RDA was a proforma, what you're seeing now is detailed cost estimates generated in response to the City's requirements for detailed cost estimates. That and 4 years explained the difference, and I would ask you again, are you really claiming that land values have gone up ten times in the last 4 years? Which is what you just stated, which proved you're biased.

[2:32:50 PM](#) **Lewis:** Mr. Baird, what I'm referencing is your client paid \$800,000 for these properties, what 5 years ago. You are now saying that they are worth \$10 million. So, I'm not opining on anything as far as evaluations, I'm just basing it on what you've submitted to us.

[2:33:04 PM](#) **Bruce:** you stated real estate values have gone up by 10 times.

[2:33:07 PM](#) **Lewis:** based on what you said...

[2:33:08 PM](#) **Bruce:** that's not what you said.

[2:33:10 PM](#) **Lewis:** Mr. Baird, are you here to argue with us or answer questions?

[2:33:13 PM](#) **Bruce:** I'm here to do both Mr. Francis, but your bias is so transparently evident.

[2:33:18 PM](#) **Claudia:** we've noted your opinion of these biases...

[2:33:23 PM](#) **Bruce:** the answer is we have not made a claim that the property is worth \$10 million if the City decides to take it. What we have made a claim is that if you deny the demolition, you will have, or you force the rehab, you will cost approximately \$4 million. The value that we would bring, as you can see from our other filings that I don't have the number at my hand, we can tear it down we can build new buildings, the total value of the new buildings we proposed to build on the site works out to \$5.3 million gross if you take a look at paragraph number 2 on the first page. So it's not \$10 million, it's \$5.3 million gross by our own estimates. That's the math on page 1, page 1.

[2:34:09 PM](#) **Lewis:** so just so I'm clear on your answer to my question, the difference the costs that were submitted in support of the RDA loan application and the costs that you are now suggesting are a difference of 4 years and additional requirements that the City imposed..

[2:34:24 PM](#) **Bruce:** no, that's not what I said at all.

[2:34:26 PM](#) **Lewis:** k then clarify it for me.

[2:34:28 PM](#) **Bruce:** I guess I'll have to repeat what I said. What I said was, that it's 4 years of time and we did more detailed evaluation. So, it's 4 years of time, the cost increase, the change in quality of the property, and the fact that because the City required this level of detailed analysis for this. We've had to go into more detail to determine what can and cannot be preserved and what it costs to preserve that. And we've determined that the costs are higher than what we originally estimated them.

[2:35:07 PM](#) **Lewis:** Mr. Baird, was there any engineering analysis done as part of the RDA proposal?

[2:35:13 PM](#) **Bruce:** no is the answer to that question.

[2:35:15 PM](#) **Claudia:** you mean the RDA loan issue? Yeah, let me ask about that, so you went in with, my understanding is that you went in with some hand drawn architectural and the RDA or the Planning department I think turned that down, wouldn't issue a permit based on hand drawn...

[2:35:33 PM](#) **Bruce:** correct.

[2:35:34 PM](#) **Claudia:** right, so. That doesn't surprise me that they wouldn't issue a permit based on hand drawn drawings. And you couldn't find an Engineer to stamp the hand drawn drawings. Again, that doesn't really surprise me. So, at what point did it occur to you, the applicant, that gosh I probably need to get professional drawings done?

[2:35:55 PM](#) **Bruce:** professional drawings, would have... Don, you go ahead.

[2:36:01 PM](#) **Lewis:** well maybe I can. I think there were professional drawings submitted, there's a Staff Report dated June 18, 2014 that has elevations, it has floor plans. I don't know if they're detailed construction drawings but they're definitely drawn up by an architect and they, I assume these were submitted later. These were from John Maxim as well, who I understand previously represented the applicant in his dealings with the RDA. Is that correct?

[2:36:28 PM](#) **Bruce:** that's correct, and as it became clear that you have to do both things. You have to have pretty pictures and then you have to show that they structurally work. Once it became, and I'll let Mr. Greene deal with it in more detail, but once it became clear that the pretty pictures could not be translated with the Structural Engineer's stamp, because the buildings simply are structurally unsound. That's when we got stuck in this process.

[2:36:53 PM](#) **Claudia:** so you're saying that the Maxim drawings are just the pretty pictures?

[2:36:56 PM](#) **Adam Breen:** let me clarify a little bit, the difference between a hand drawn plan and an architectural set of plans. Yeah, sorry Adam Breen, Breen Homes General Contractor. The original set of plans that were submitted, were originally brought from the historic department that we needed to go through to get to the certificates of appropriateness. As we stepped in to get building permits we more formulated a beginning stage of an architectural set of plans. They were not a hand drawn sketch, as the Planning Department would obviously push for structural engineering, being one of the redlines to push back on is when we stepped into hiring out that professional service to have done, and started this spiral of that's not plausible.

[2:37:38 PM](#) **Lewis:** according to the plans that were originally submitted, there was an Engineer at Great Basin Engineering involved. Did they ever do any engineering analysis? I mean I see that there's at least one sheet from Great Basin.

[2:37:50 PM](#) **Adam:** I believe Great Basin was a Civil Engineer for public and utilities, not anything to do with Structural Engineer.

[2:37:59 PM](#) **Bruce:** I wanted to clarify as Mr. Breen indicated, the hand drawn related to the certificate of appropriateness from the City, which was originally indicated we would get, which then didn't happen.

[2:38:14 PM](#) **Claudia:** other questions? Lewis?

[2:38:22 PM](#) **Lewis:** I'm fine.

[2:38:23 PM](#) **Claudia:** flip through my notes, and just see. K, I think I'm fine too. That's good. We're going to open this up now for public comment, and we will try to adhere to our 2-minute limit. Can I just have a show of hands how many people want to make a statement on the record? Ok, we can do easily two minutes on comments, that's just fine with me. So, we'll have come up here.

[2:39:02 PM](#) **Michaela:** Claudia, we have cards too so we can actually call votes up. Thanks.

[2:39:05 PM](#) **Claudia:** awesome.

[2:39:07 PM](#) **David Scheer:** **Amy:** is very Efficient at this.

[2:39:08 PM](#) **Claudia:** she is very efficient. Are we going to have people come to the microphone?

[2:39:11 PM](#) **Amy:** yes.

[2:39:12 PM](#) **David:** that would be a good idea.

[2:39:12 PM](#) **Claudia:** and please, I'm sure it's being recorded so. Alright I'm going to start with David Scheer.

[2:39:22 PM](#) **Nick:** generally these microphones you have to pull up really close.

[2:39:28 PM](#) **David:** my name is David Scheer. I'm here to represent not only myself but also the Capitol Hill Community Council. I am the Chair of their committee that reviews all of the materials we receive from the City as required by Ordinance and what I'm about to say is not my personal opinion, it is the consensus of our Community Council. We don't want to see any of these buildings go, but we understand that there are real problems with some of them. What I would like to say is that as far as I understand the applicant's materials, all of the buildings have been costed out at \$250 a square foot for construction. Just take the numbers, I don't have, I was just looking for the page on my phone, but there is a spreadsheet that shows each property and how big, it has square footage, and then what it would cost to rehab. And if you the division you find that they've used \$250 a square foot for every building. Given that the buildings are in vastly different states of disrepair, that doesn't seem right to me. Somewhere, and I believe it's in the Structural Engineer's report, somebody makes note of the fact that the brick buildings are in much better than the wooden ones due to the nature of brick. So, there are two brick buildings in the, there are three properties but one pair of properties is actually a "party wall building", so there are two brick buildings and I would like to ask on behalf of our Council that these be given special consideration. Mr. Baird won't like this but they do have special historical significance...

[2:41:15 PM](#) **Bruce:** Madam Chair, I would object and move to strike if I could have a standing objection then I won't have to deal with it.

[2:41:21 PM](#) **Paul:** Let's.. Can we go through the public comment without any interruption?

[2:41:25 PM](#) **Bruce:** just give me a standing objection and I'm fine.

[2:41:27 PM](#) **David:** OK, I wasn't. that's not a major point in any event. The buildings are in much better shape, I too have toured the site. And I've been inside the building that's on 300 West, I think the

address is 432 North. Anyway, you walk in there, it's a disaster there is a foundation settlement crack on the south side. These are not considered terminal problems but most Architects and Engineers. Furthermore, replacing that building on 300 West with something of the order that the applicant has proposed in prior applications would degrade the street frontage of 300 West. So, I would ask that the applicant be asked, if that's within procedure here, to do a detailed evaluation of the costs of renovating that building. And the other one is at 265-267 West Bishop, which is the side-by-side duplex, also brick and I would ask that a more detailed analysis of the cost of renovating that building be done as well. As an Architect, I look over these cost estimates and they're exactly what I would expect for this stage of a project. In other words, not very detailed. So, I don't have terrible faith in any of the precise numbers, I believe that they were arrived at in good faith. But having done many of these myself I know there's only so much accuracy you can have given this stage of a property. Developers always want to sort of move it in steps, which is perfectly logical, but you can't hold up a cost estimate at this early stage of a project as accurate.

[2:43:28 PM](#) **Claudia:** thank you, we're going to hold you there. Would the applicant like to respond?

[2:43:35 PM](#) **Bruce:** why don't I save them till the end if that's ok?

[2:43:38 PM](#) **Lewis:** can I ask one question for Staff? So, we've got 9 different evaluation sheets for properties. Are we to be considering these collectively as a whole or can we consider them separately? I guess that's the question that I had as I read through the material as in terms of the denials that are already in place. Are we looking at this at the Bishop Place as a whole, or are we looking at the buildings on Bishop Place individually?

[2:44:10 PM](#) **Claudia:** yes

[2:44:10 PM](#) **Bruce:** we would stipulate that you're looking at them under the ordinance, unfortunately individually for this purpose. That's why we addressed each one of them individually and did a detailed analysis of each one.

[2:44:23 PM](#) **Lewis:** so technically then, the panel would have the power to day that certain buildings don't meet the requirement and others do? Ok I just wanted to be clear on that point..

[2:44:32 PM](#) **Claudia:** and the previous panel that I had participated on did that, we had different determinations for different.

[2:44:40 PM](#) **Bruce:** that's how we understand it.

[2:44:42 PM](#) **Claudia:** OK, let's see. Thank you David for comments. Griffin Jenkins.

[2:44:55 PM](#) **Griffin Jenkins:** not too sure well the mics work, here. My name is Griffin Jenkins, I live at 466 North 300 West so I am representing myself and three of my neighbors. So, I am representing the immediate neighborhood, I flatter myself. And I do agree that the buildings in appalling condition and they have deteriorated measurable, radically, during the ownership of the present owner. They have been deliberately neglected. I, personally, had to call the Salt Lake City Police Department to require that they actually be even fenced in. They were not even boarded up, they were completely left open. And I think your notes show that Planning permission was given for exploratory demolition, meaning putting a hole in the wall. These buildings under that permit, were literally gutted. They were taken down to the bare brick. These buildings are in significantly worse shape than they were when they

entered the present owner's possession. They have been deliberately neglected to bring us to this position. The point is, if I don't like the Planning rules, if I don't like our zoning laws, I simply ignore a building until it is in such an appalling condition that I have no choice but to tear it down. This basically puts the whole purpose of an historical district pointless. Anyone can do anything with any building, whenever they please. No matter what history, what value to the community, what value to the neighborhood, what value to the cityscape it has. If this motion passes, we may as well just dismiss the concept of an historical district because it would be pointless. Thank you.

[2:46:55 PM](#) **Claudia:** thank you for your comment. Staff do you have any response to that? The demolition that occurred thus far, the interior demolition, thus far? Can you maybe respond a little bit to that? How that came to be.

[2:47:12 PM](#) **Amy:** so in the Staff memo in attachment, I think it's B, sorry attachment C. Building services has addressed that because Building Permits aren't issued through the Planning Division and from what they've indicated there were some exploratory permits issued. However, there weren't any building permits actually issued, there were a number of building permits applied for but none that were actually issued. And no inspections were conducted, and those permits have all expired.

[2:47:43 PM](#) **Griffin:** I have one thing also almost immediately when the demolition was gone, the buildings were red tagged. (inaudible)

[2:47:52 PM](#) **Claudia:** thank you. Yes please.

[2:47:55 PM](#) **Merlin:** I have one comment to just clarify what Mr. Jenkins said, he said the brick had been, sorry about that. He said that Mr. Jenkins indicated that brick had been removed and that would indicate exterior brick I assume?

[2:48:13 PM](#) **Griffin:** had been taken down to the bare brick. (inaudible)

[2:48:16 PM](#) **Merlin:** on the inside you're just talking about interiors?

[2:48:19 PM](#) **Griffin:** yes

[2:48:19 PM](#) **Merlin:** OK

[2:48:20 PM](#) **Griffin:** there had been exteriors... (inaudible)

[2:48:24 PM](#) **Merlin:** ok thank you that helps.

[2:48:28 PM](#) **Claudia:** ok, we will move on then Cindy Cromer.

[2:48:36 PM](#) **Cindy Cromer:** so, my name is Cindy Cromer and I think Mr. Baird may have moved to strike my comments but I'm distributing them again because I'm rather persistent. My name is Cindy Cromer, I'm trained as a behavioral scientist, I have the equivalent of a Master's Degree in statistical analysis. But that's not what I do, I'm a landlord and property manager, and I have been for over 40 years. And I run my 10 buildings and my two dozen plus units which are affordable at a profit. And I'm proud of it, anything that I say that appears to be about the warm fuzzy aspects of historic preservation is being misinterpreted, I'm talking about my business interest and the economics. I have only begun to address the documents provided to you, I did not know this was going to be a public hearing because the last Economic Hardship panel was not and I had extreme difficulty introducing any information into

that process. So, I appreciate that this one is going to be public. I continue to find relevant submittals regarding this appeal, and I have not responded to everything that is in the notebooks in front of you. It's rather daunting looking, I will continue my efforts, but I am speaking from my experience in managing historic buildings. So first of all, I ask you as the previous Economic Hardship panel did, to address each building individually as if they were students in a classroom. So, each one of them deserves a separate evaluation and they will each be different in the previous Economic Hardship review, the panel found all of the buildings were an economic hardship and the RDA analysis reversed one of those decisions and that building is still standing. That is on Marakea at 300 South 700 East. So, I ask you to proceed with great caution so that we don't have to undo any of your efforts and also, I ask you to approach each building separately. I am concerned that Mr. Baird believes it's inappropriate to address zoning tools that are available to the applicant, to the owner, which would clearly increase the economic productivity of the building on 300 West. That new zone is the RMU-35, the City will not impose that zone on the property without the owner's permission unless it's part of a comprehensive rezone, which is not occurring in that area it's already taken place. For the life of me I don't understand why the SR-3 is used on a State highway, I know of no place in the City that that occurs but it is there, it is on the zoning map and my preliminary inquiries suggest that that's at the request of the applicant. The Planning Staff would never have done that, I don't understand why it's there but an SR-3 fronting on 300 West is completely inappropriate and I believe that the RMU-35 is the appropriate zone. And finally, to wrap up within the time limit, the experience quoted by the owner and Mr. Baird regarding the tax credits and their availability is completely and utterly inconsistent with my own experience, my own conversations with people of the State and all of my buildings are eligible for tax credits. Thank you.

[2:52:10 PM](#) **Claudia:** thank you. Can I again turn to Staff and ask for some comment on the alternate zone that Cindy has referenced? The RMF-35, is that, sorry RMU-35. Is it actually an option on this site?

[2:52:34 PM](#) **Nick:** well that is a decision of the City Council to ultimately make.

[2:52:38 PM](#) **Claudia:** so it would have to go through City Council to be rezoned?

[2:52:41 PM](#) **Nick:** that's correct.

[2:52:42 PM](#) **Bruce:** I was going to respond to that during my time.

[2:52:44 PM](#) **Claudia:** and it would be at the petition of the owner.

[2:52:47 PM](#) **Lewis:** to be clear is that the commercial zone?

[2:52:49 PM](#) **Nick:** It's a Residential Mixed-Use zone so it allows some commercial uses.

[2:52:54 PM](#) **Lewis:** so the property fronting 300 West potentially could be used for light commercial law office, something along those lines if requested by the owner? I mean it would fit within the current regulations for that...

[2:53:08 PM](#) **Nick:** I'm not 100% sure what the City's Master Plan says about that but considering the nature of 300 West I would imagine.

[2:53:15 PM](#) **Lewis:** one other issue that the commentator made was about applicable tax credits, has there been any analysis by the Staff as far as what tax credits would apply and has that been factored into the analysis that's been presented by the applicant in this case?

[2:53:32 PM](#) **Amy:** Staff didn't do any analysis; tax credits are administered by the State Preservation Office. And so, it would be the responsibility of the applicant to work with them and see what kind of options are available.

[2:53:47 PM](#) **Lewis:** but there's, is it fair to say Mr. Baird there's no reference to any applicable tax credits in the proposal that has been submitted?

[2:53:54 PM](#) **Bruce:** no it's not fair to say that. What's fair to say is what's actually in the proposal, which is that we've looked at it and we don't believe we qualify for any tax credits.

[2:54:05 PM](#) **Claudia:** based on what? Based on requirements for certain materials?

[2:54:08 PM](#) **Bruce:** yes. Based on all kinds of materials we've taken a look at it and we don't believe we qualify. We did all that engineering work before, we got nowhere, we tried it and we didn't get any, we didn't get there. And any effort to assume that we could get tax credits just because Ms. Cromer is diligent and dogged as she said she is, which I don't doubt for the least having known Cindy for 25 years, doesn't mean that these particular buildings would get tax credits. We don't believe they would, we have investigated it.

[2:54:40 PM](#) **Amy:** I also just want to add, with the discussion about the rezone, the front property from my understanding was rezoned from RMF-35 to SR-3 and that allowed them to split that lot in half in hopes of making 432 have an additional unit. So, they did go through a rezone, it was just to SR-3. I don't think RMU-35 was available at that time.

[2:55:03 PM](#) **Bruce:** and of course, I was going to save it to respond later but I'll respond now if that's alright. RMU-35, whether the Council would grant it is purely speculative. And given the, I'm trying to figure out the appropriate word without insulting too many people... it would take somewhere, nearly 9 months given the pace of rezoning in Salt Lake City, to get a rezoning for these. It would be highly speculative, and doing this for a living I promise you that if it's not these people who would be there with pitchforks and torches, it would be someone else. And I would start the clock on my watch like I always do when I show up at a public hearing and I stop it the minute the minute that somebody says and children will die. And the shortest I've ever gotten is 44 seconds on that before someone said it. Last in Draper I made it an entire 18 minutes before someone said it.

[2:56:02 PM](#) **Claudia:** very good. Next comment Polly Hart.

[2:56:11 PM](#) **Polly Hart:** thank you, I live at 355 North Quince Street and I am on the Community Council.

[2:56:19 PM](#) **Bruce:** please state your name again please.

[2:56:17 PM](#) **Polly:** Polly Hart, 355 North Quince Street. The petitioner's trying to convince you that this is a taking for the City to require these buildings remain standing given their current condition. The problem with this argument is that when you buy a property within a Historic District you are legally bound by the overlay ordinance which limits demolition. When purchased these buildings were in far better condition. From the get-go you should have known that your neglect could not be used as an excuse to demolish. If you intentionally allow your property to devalue through your own neglect, you alone are responsible for that. You cannot blame the City for the obvious fact that you have mismanaged your property while land values in the neighborhood have gone up. You cannot blame the

City because you expected to pay less to restore the buildings. The cost of restoration goes up, and up, and up. And it is your due diligence when you buy a house to know what it's going to cost to restore it. The low value of the property with buildings is entirely a function of the current owner. The bottom line, your poor investment and poor treatment of your investment does not equal a taking of the City. And I just want to point out that with regard to tax credits, the tax credits, because these are contributing buildings within the Historic District, the issue for getting a tax credit is not the buildings itself, it's what you are going to do with your restoration. If you restore in kind you qualify for tax credits, if you want to do something modern or different, or gut the building, or change the windows, you will not qualify for tax credits. So, tax credits should be available for these buildings.

[2:58:12 PM](#) **Claudia:** can I just ask you, the tax credits are unlike other types of tax credits they are not limited. There's not an allocation limit that makes a competitive process for these credits. Is that correct?

[2:58:30 PM](#) **Polly:** I'm not sure exactly what you are asking. There are State Tax Credits and there are Federal Tax Credits, some are for residents of your own and some are for commercial. So, you have to spend a minimum of \$10,000 per property, but here is no top limit.

[2:58:54 PM](#) **Claudia:** k, but those credits are available. If you qualify those credits are available.

[2:58:57 PM](#) **Polly:** yes. Exactly.

[2:58:58 PM](#) **Michaela:** they are, there is no cap.

[2:59:01 PM](#) **Claudia:** there is no cap.

[2:59:03 PM](#) **Lewis:** do you have understanding of what the percentage amount is on those credits?

[2:59:05 PM](#) **Polly:** I believe one is %10 and one is %20. Claudia would know that because she's done them.

[2:59:11 PM](#) **Paul:** can I jump in here, I find it difficult to ask Ms. Hart, although she has experience a lot of these things. These technical legal questions about what's in Sate code regarding tax credits, I think those are more appropriate for an expert.

[2:59:28 PM](#) **Polly:** yeah, I just wanted to clarify that the petitioner had said that the buildings didn't qualify for tax credits and that's not entirely correct.

[2:59:38 PM](#) **Bruce::** yes, it is.

[2:59:41 PM](#) **Polly:** not really, but..

[2:59:43 PM](#) **Claudia:** OK, sorry I interrupted you.

[2:59:44 PM](#) **Polly:** contributing buildings in historic districts qualify.

[2:59:48 PM](#) **Claudia:** thank you. Any additional Staff comment on that? No, OK. We have one more card here, Paul and I'm sorry I can't read your last name.

[3:00:05 PM](#) **Paul Svendson:** Paul Svendson, I'm a member of the Historic Landmark Commission. Two quick things, there's no question that these buildings are eligible for tax credits. I have a lot of



experience working on them personally, 20% at the Federal level applies to commercial buildings but the definition of commercial includes residential rentals. So, if these were left on a rental basis they would be eligible for that and it's %20 of the renovation costs. State level is also %20, that applies to any residential structure. And given that this is within the Federal Historic District, both of those credits are unquestionably available to a contributing structure. That's the first one. Second point is that I think it is really critical to focus on the correct standard for this, and at the beginning of this presentation Mr. Baird made three sorts of fashionings of the standard. I thought two of them were correct, and I thought one of them was completely wrong. The first two, I thought were right, he said that if the City by forcing his client to maintain the buildings on the property effects a statutory taking on his property then we have economic hardship. I think that is correct. His third definition of the standard however seemed to indicate that if, by requiring the buildings to stay, that would result in some sort of loss to his client that too would constitute a taking. That is utterly incorrect, there is ample case law that states that even very, very significant losses caused by a zoning decision do not represent a taking and I think Paul will back me up on that. Thank you.

[3:02:13 PM](#) **Claudia:** Paul do you have any comment on that please?

[3:02:15 PM](#) **Paul:** well, I tried to give you a little bit of flavor of the Supreme Court's jurisprudence on these issues. There are cases that discuss that if you haven't been deprived of all beneficial economic value in the property, there may not be a taking. The court in 2001, in a case called *Pallazzolo V.S. Rhode Island*, held that yeah we know we said if you haven't taken all economic value in this property it's not a taking. But the court said but if you're left with a token interest, it's the same thing. But there's also pen central line of cases which talk about reasonableness. So that's where we get into the balancing of, is there a reasonable expectation to develop this property at an economic fashion? And is the City's regulation as applied to this property reasonable? So, the court hasn't done a great job of giving us a roadmap of how they deal with the takings. There's the Lucas Track, which is reflected in the Ordinance, I forget the language set.. all reasonable investment backed expectations, and then there's the Penn Central which sort of evolved that of the Mahon case where we're talking about what's too far. What is an extreme result here, what is an extreme regulation, that impacts them in a way that just isn't reasonable. So, it's...

[3:04:08 PM](#) **Lewis:** could I ask you a question then, between the standard under the City ordinance that we've been asked to use as the baseline for our determination today and the notion of the constitutional take. Do you see a real difference between those two?

[3:04:23 PM](#) **Paul:** well the provision in 21A.34.020(k) seems to only reflect the Lucas Standard and not the Penn Central line of cases, which is a more ad hoc. The court looks at the particular cases and, it would be nice if the court gave us more direction as to what the courts should look for, as to what is too far, what is unreasonable. And they just haven't done that, so it's... (inaudible)

[3:04:58 PM](#) **Lewis:** but it's not really the panel's job to determine whether or not there's been a constitutional taking, right? Only to determine whether or not this particular standard has been..

[3:05:07 PM](#) **Paul:** correct. And I was asked to provide this memo on takings because the issue of economic hardship is really intertwined with that notion. That's what the purpose of the economic hardship analysis leads to is the question of whether this has been a taking because the economic

hardship is so severe that what the City has done has effectively, in a regulatory taking, eliminated the value of that property.

[3:05:39 PM](#) **Lewis:** I guess my point being that, that's probably something that Mr. Baird is going to argue before a court of law... (inaudible)

[3:05:44 PM](#) **Paul:** I assume that's something he would. It does not specifically state in the ordinance that your job is to analyze whether there is a taking, my point was it's something that's so closely associated with the economic hardship. That's really what the economic hardship decision leads to that you should be aware of those factors.

[3:06:06 PM](#) **Claudia:** has the City ever faced a taking case from other economic hardship panels?

[3:06:14 PM](#) **Paul:** I've been here 10 years, this is the first economic hardship panel that I've been a part of. The last one preceded me by a year of two. So, I don't.. (inaudible)

[3:06:23 PM](#) **Lewis:** I understand this will be the last as well right?

[3:06:25 PM](#) **Paul:** well.

[3:06:26 PM](#) **Lewis:** no?

[3:06:27 PM](#) **Paul:** I mean I imagine at some point, somebody can raise the issue. The process has been changed, to where there is no longer going to be a panel moving forward. But I couldn't state whether there has been one of these cases, coincidentally Mr. Baird at one point sat in my seat. He might be able to tell you if he experienced one when he was in the City Attorney's Office.

[3:06:53 PM](#) **Bruce:** to the best of my knowledge, this is the second one in the history of the City.

[3:06:57 PM](#) **Claudia:** the second one what?

[3:06:59 PM](#) **Bruce:** Economic Hardship Panel.

[3:07:00 PM](#) **Claudia:** so I've been on both?

[3:07:02 PM](#) **Bruce:** I believe... (inaudible).. Ms. O'Grady, I believe that to be your dubious distinction of the day.

[3:07:08 PM](#) **Claudia:** really dubious, isn't it?

[3:07:08 PM](#) **Merlin:** no wonder you're the Chair.

[3:07:13 PM](#) **Claudia:** put that on my resume, right? Are there other questions on taking anything else that we have to consider?

[3:07:20 PM](#) **Bruce:** I'll address that in my response as well.

[3:07:23 PM](#) **Claudia:** OK, we have run through all of the comments for which I received a card. Are there any other members of the audience who wish to comment? Go ahead, come on up and state your name and then I'll have you fill out a card for the record afterwards.

[3:07:38 PM](#) **David Amott:** my name is Dr. David Amott, I'm here representing myself as well Preservation Utah. I was wondering if in that thick binder there was any documentation of what these

properties were worth and what income they were generation when they were taken over by Mr. Armstrong. I think they were arguably worth much more than they are now after they have been let sit and decay for 4-5 years and I think those numbers should be weighed heavily in the evaluation of these properties. In terms of tax credits I would just like to volunteer my services, should Mr. Armstrong want tax services I have walked many people through that process and would be glad to walk Mr. Armstrong through that process and would like to present him with my card so that he could get in touch with me at a later date. Thank you.

[3:08:33 PM](#) **Claudia:** thanks. Don't forget to fill out a card, because I'll need that for the record. Thanks. OK. I think we've run through all the public comments that have been offered here so we'll give the applicant the opportunity then to go ahead and address those comments.

[3:08:53 PM](#) **Bruce:** thank you. First regard, and I'll try to take them seriatim, first I'd like to thank Mr. Scheer for acknowledging the good faith efforts that we've made to give cost estimates. Of course, the cost estimates that we give are preliminary, by definition they're estimates but we've given it a good faith and it's the best we can give at this time. And there's no requirement for perfection and as anybody who has ever built a building knows, or torn down a building knows, or rehabbed a building know, or remodeled your own house knows, whatever you estimate I think it's called box's law; all models are faulty. Some are better than others, but all models are faulty. The best we can do and what the code requires is to give good faith estimates by qualified experts. We have a Structural Engineer here, we have a Contractor here, we've given our best good faith estimates. We've also deliberately segregated the analysis on all of the properties. We recognize that the duplex and 432 are both brick buildings, that doesn't solve the fact that they both have fundamental foundational problems and cannot be economically resolved. We have analyzed that in detail and we've provided it in this massive book. The streetscape is, as I've indicated before, irrelevant to the question of hardship. Regarding Mr. Jenkins' comments, the deterioration not an issue for the panel. The way the code is specifically written, deterioration is one of the six factors that the Planning, the HLC considers whether to determine there's a historic character or not. It is not a factor for this determination. What you have to look at in this determination, is the buildings as they sit now. There is no requirement under United State Constitutional Law or State Law, that a landlord has to spend money to endlessly down a rat hole to try to keep pumping money in to fix a dilapidated building to the point where it is barely break even. There is no requirement of that. It would be illegal if there were a requirement because it would be unconstitutional to make someone spend money for the public good without compensation. So that takes care of that. There's a delay my friend Ms. Cromer indicated the delay, we have, she's basically asking for delay to give additional time to put additional materials in. This hearing has been noticed for a considerable period of time. The code, unfortunately, despite my objections says it's a public hearing. We applied for this hearing with my letter of December 12, or something like that. I don't even remember when, it's been so long ago I've forgotten how long it was ago that we were... (inaudible)

[3:11:57 PM](#) **Lewis:** it was December 12.

[3:11:57 PM](#) **Bruce:** it was December 12 if I remember right that was when we filed our application and we would object strongly to any further delays in this matter. This matter has now been pending through various processes of the City for a couple of years. And every day that it's up is another day that Mr. Armstrong is suffering of financial hardship, the City is depriving him of the economic value of his property. Let's talk about tax credits for just a second because Ms. Hart brought it up, Mr. Svendson

brought it up, and Ms. Cromer brought it up. That is at the moment, pure speculation as to whether or not these buildings could get tax credits or what the tax credits, even if they could be obtained, would work. And even if they were obtained, even if you took the best numbers that were given by Paul 20 and 20, even if you took those as credits you would still be net negative on these buildings if you just ran that in the spreadsheet. It wouldn't take any difficulty to show that you're still net negative on the buildings. But again that's speculation and we don't have to deal with speculation. Mr. Hart brought up excusable neglect as I've already addressed that you can't force someone to spend money on a rat hole and continue to pour good money after bad. The economic loss fallacy is, I'm sorry the sunk cost fallacy is precisely that. It's a fallacy, once you realize that something doesn't work and it doesn't work through no fault of your own, even if it works your fault doesn't work through a fault of your own. You don't have to keep wasting money on it and no constitutional provision, no City code, no State law, authorizes anyone to be forced to spend, to waste money. Finally, let me talk just a little bit about, respond to my old friend Mr. Svendsen on a couple of issues. (inaudible) I'll get to that in the end. I phrased three different issues, he took an objection to my third issue which was, and I'll read it off of my notes; put another way, can the buildings be economically rehabilitated back to historical condition. Which is theoretically the purpose of this code. There is a binary choice here. That this City and this Panel faces. The binary choice is this, allow us to demolish the building now or let the buildings fall down on their own eventually. Which they will do, because Mr. Armstrong is not going to put another penny and waste another penny on rehabbing these buildings. Thus, my third analysis is exactly what a takings analysis is; can you rehab these buildings in an economically viable fashion? And that triggers the analysis under Lucas, Nollan, Dolan, first English etc.. because taking all of someone's economic value is clearly a test that is met if what you're forcing them to do is get in a net negative situation. By making these buildings be rehabbed, which is the only other choice besides tearing them down, the City would be forcing a net negative expenditure and a net negative by definition is not just a regulatory takings, it's very close to a physical takings. Paul is 100% correct that, the United States Supreme Court as they often do, keeps too lines of cases running. One line of cases depends on what, one line of cases basically says you have to take all of the economic loss. We've shown you have to take all of them. The other one has a relative balancing test. I'm familiar with the cases Paul sites, Florida Rock being the primary case on how much of a diminution of value can a regulatory taking do before it affects a taking. But those are under different facts, those are in a downzoning situation. That's not what we're talking about here, we're talking about forcing someone to keep putting money down a rat hole. Regulatory takings analysis under a downzoning, such as Florida Rock which was a gravel pit case in Florida, that's not what we're looking at here. And I believe Paul would have the same opinion without having talked to him in advanced, I'm gambling but I believe Paul would have the same opinion about the regulatory takings nature. Finally, two points. There's some discussion about well, you should've kept renting them out and kept them up. They're unsafe to occupy, they violate every form of building code that you can think of. They always have violated every form of building code when you try to do it. Mr. Armstrong is not required to take a piece of crap and put money into it to meet the buildings code so that he can rent it out and lose money. It's that old Jewish joke, I lose money on every unit but I make it up on volume. That is not a requirement of State law, Paul that's why it's a joke, because it doesn't make any sense. Finally, the demolition here is not just an issue for Mr. Armstrong, while it's not a 100% relevant to the economic hardship issue, it's not just an economic hardship to Mr. Armstrong to have to keep these buildings up and to be required to throw money down a rat hole and not be allowed to fix them. It's also an economic hardship to the City. Because if we could tear these buildings down and build the

subdivision that's approved, it would be an economic value to the City. It will have increased tax base it will have increased housing stock and it's a good thing, not a bad thing to tear it down. Mr. Conger has sat here all the time very patiently, I don't have anything to toss a ball to him. But if somebody wants to ask him about why these are structural pieces of crap, feel free. That's Mr. Conger right there. (inaudible).

[3:18:24 PM](#) **Claudia:** at this point we're just entertaining the responses to the public comments, do you have any, who's the Engineer?

[3:18:32 PM](#) **Robert:** I am.

[3:18:32 PM](#) **Claudia:** OK, and do you have any response to public comment?

[3:18:35 PM](#) **Robert:** no.

[3:18:36 PM](#) **Claudia:** OK. Then we're going to continue on with the agenda. Are you done with your...

[3:18:44 PM](#) **Bruce:** yes ma'am.

[3:18:45 PM](#) **Claudia:** very good, thank you. Do you have any questions, Panel? At this point? OK. Is it appropriate now to move into executive session?

[3:19:05 PM](#) **Paul:** if there are no other dialog to occur between the petitioner and the panel.

[3:19:13 PM](#) **Claudia:** OK.

[3:19:14 PM](#) **Paul:** I want to note, there's an untouched treat cart right here.

[3:19:17 PM](#) **Bruce:** just for the record because I don't want to cause a problem with another hearing that I'm involved in at Summit County. I need to object, just so that somebody doesn't hold it against me that I'm not objecting here and I objected there. There is a complicated issue regarding whether deliberations can be conducted in private or not, there's a Supreme Court case that says that deliberations of administrative bodies can be conducted in private. There is a very vigorous dissent in that case saying that deliberations conducted in private violate the spirit and the letter of the open meetings act. I have raised this argument in Park City on a conditional use permit and I would be remiss if I didn't raise the issue now. So, for the mere fact of a proforma objection to be not inconsistent, I would object under the open and public meetings act to deliberations being held in private. The Wellsville Dairy case notwithstanding.

[3:20:23 PM](#) **Claudia:** thank you.

[3:20:24 PM](#) **Paul:** so this is a conundrum, there is a Supreme Court case as Bruce has indicated that for reasons I don't understand indicate that those deliberations (inaudible) take place in private, if you read the Open Public Meetings Act it discusses an open meeting as a meeting where a public body that is charged with making decisions and recommendations and whatnot is deliberating. So, at some point the court and the legislature need to get on the same page, Salt Lake City has been, I think very clear in all policy pronouncements about public conduct and public bodies, and public decisions that we do that in the open. And my recommendation would be that that continue to be the case with this panel.

[3:21:14 PM](#) **Claudia:** and executive session, can you clarify it for me what that means, exactly?

[3:21:19 PM](#) **Paul:** it means that you are here in front of the public you are deliberating amongst yourselves, it's your choice as to whether to open things back up to question for the petitioner. Public comment has ended. So, you may at this point reach out to staff, to the petitioner, ask questions, but this is mainly a point in the conversation where you are deliberating and discussing amongst yourselves. Also acknowledging that our ordinance hasn't been terribly specific on this process. I do want to address a couple of things. As far as the process goes and Nick was reading from the ordinance that discusses this process, at some point there's a written report and again the previous experience that you had a member of one of these panels. I'm not sure that it was done the correct way, in that case it ended up that Staff ended up writing a report and transmitting that to the Landmark Commission. My recommendation would be however this end up on paper, that the three panelists sign it. If there are differing votes, if it's not a unanimous vote then the dissenters may acknowledge that. Staff can certainly help to put something in writing, or it may be that you are the presiding member of this panel may decide, no we can handle that. One last item of process, the provisions and keep in mind these have been update, the new provisions have been adopted and we are playing under the old rules because this was brought in under the old rules. The ordinance states at the next regular Historic Landmark Commission meeting following receipt of the report of the Economic Review Panel, the Historic Landmark Commission shall reconvene it's public hearing to take final action on the application. Given the constraints of notice, that may not be possible at the very next meeting, it may be the one subsequent to that. We are bound to give 12 days notice, I believe it is, to put something on the agenda. So, if you're within that 12-day window, I'm stating on the record, it may be the Landmark Commission meeting subsequent to that time.

[3:24:05 PM](#) **Merlin:** may I reply? It was my understanding that we would each be submitting a report individually and not a report combined. Is that..

[3:24:15 PM](#) **Paul:** that is not what the ordinance says. The panel prepares a written report and I believe the language here is, finding this, help me out here Michaela.

[3:24:34 PM](#) **Merlin:** and not to talk over you but I was just..

[3:24:37 PM](#) **Paul:** findings of fact in conclusions to, so it's findings of fact, it's a report of the panel with its findings of fact and conclusions. I would like that to be one package, I know that Mr. Baird can tell you with his vast experience before the appellate courts of this State. That it may be a one person on an appellate panel dissents from the main decision and they will include a dissenting opinion. I think that would be acceptable if there were an additional note. I just want it to be packaged as one document so we can work with each other on what the final product looks like.

[3:25:23 PM](#) **Merlin:** thank you.

[3:25:28 PM](#) **Claudia:** OK, so at this point then we will move. Unless there are additional, anything else you want to do, we'll move into executive session.

[3:25:39 PM](#) **Lewis:** Mr. Baird did you, were you planning to present some evidence from the Engineers who are here today?

[3:25:43 PM](#) **Bruce::** he was here in case someone had any questions, as far as I know Mr. Francis, thank you very much. No one has offered any evidence whatsoever contradicting his findings that the buildings are structurally unsound. And no one had asked any questions about that so taken as a given

that all of the buildings are structurally unsound. I'm perfectly happy to have Mr. Conger leave with the unrespondent, unrefuted conclusively established evidence.

[3:26:17 PM](#) **Lewis:** well City is to say your characterization of the reports, are you relying then on the reports that were submitted? Is that the evidence?

[3:26:23 PM](#) **Bruce:** of course.

[3:26:24 PM](#) **Lewis:** OK

[3:26:28 PM](#) **Bruce:** that's the, yes.

[3:26:28 PM](#) **Lewis:** K, that's fine.

[3:26:30 PM](#) **Claudia:** OK. Thank you. Then at this point we will move into Executive Session and we will. The public is welcome to stay and we'll continue to deliberate and talk amongst ourselves with Staff. How would you like to go about this, you guys want to take each property piece by piece?

[3:26:50 PM](#) **Lewis:** well I had a question just in terms of, so the 250 a square foot was thrown about as the cost of I guess rehabilitating the structures. But I wasn't sure where the reference was for that and the applicant's material. I mean there seems to be summation costs on traditional costs of rehab separated out, but is there somewhere.. (inaudible) My question was, in the materials submitted by the applicant is there a specific reference to a cost per square foot on the rehab?

[3:27:28 PM](#) **Bruce:** Mr. Breen will respond to that because he prepared that.

[3:27:35 PM](#) **Adam:** from the public comment that was a simple calculation that they did based on their found square footages and cost. I did do the cost breakdowns, there was a round number we worked off of for the majority of those being speculative of to what materials would go back in the design of the homes that might be rehabbed and how they were rehabbed. Much as we all know when you're trying to estimate something that's not there, you're trying to estimate based off current costs and square footages. So, there is no reference back to a 250 a square foot, for square foot costs?

[3:28:06 PM](#) **Lewis:** so I guess what I'm asking is where's the detail in support of the numbers that are in the December 7, 2017 hardship report?

[3:28:19 PM](#) **Adam:** let me go through the book and find that.

[3:28:22 PM](#) **Claudia:** what are you looking at, oh yeah, OK I see.

[3:28:23 PM](#) **Lewis:** I am looking at the economic hardship report, it's the second or third tab in their book.

[3:28:39 PM](#) **Bruce:** I guess Mr. Francis, I'm not quite sure what you mean, what's back up beyond what's in the documentation.

[3:28:45 PM](#) **Lewis:** well I'm just asking him to direct me in the documentation where the backup is, that's all I'm asking.

[3:28:49 PM](#) **Claudia:** I think these are speculative.

[3:28:52 PM](#) **Bruce:** they're not speculative, they're estimates by a trained professional. It's different than speculation (inaudible).

[3:29:00 PM](#) **Claudia:** you're fine.

[3:29:01 PM](#) **Lewis:** so I'm just specifically, if you look at page 8 of 15 of the hardship report. It says the questions estimate the cost of the proposed construction alteration demolition removal and there's a response and it has additional cost of rehab with foundation work and for the first property it says \$510,257 what's the square footage on that particular property?

[3:29:28 PM](#) **Adam:** if you go to page 13 in that same tab there is a lot square footage, I believe it is the fourth column in from the left-hand side.

[3:29:36 PM](#) **Claudia:** that's the lot square footage?

[3:29:39 PM](#) **Adam:** lot square footage on there I believe, let's see if there's site square footage, I know we have those in there.

[3:29:43 PM](#) **Claudia:** but that's the lot square footage?

[3:29:44 PM](#) **Adam:** Unit square footage is further down, it looks like it's about column 8 or 9 in, it says unit sf.

[3:29:49 PM](#) **Lewis:** so what is the unit square footage on that property?

[3:29:53 PM](#) **Claudia:** 781

[3:29:54 PM](#) **Lewis:** so you're saying it would cost over \$500,000 to rehab a 800 square foot house?

[3:30:13 PM](#) **Adam:** is that unit 241?

[3:30:15 PM](#) **Lewis:** 241 is what you have on your report.

[3:30:19 PM](#) **Adam:** we actually got unit rehab on page 13 as 386,000 in that. I believe where the column on page 9 refers to is total brought in cost of not only unit rehab, the architectural and engineering fees site work and rehab financing costs as well. I believe that's a total of those, that full column.

[3:30:45 PM](#) **Claudia:** so to all of total development costs, hard and soft cost you're estimating at about \$653 a square foot on this unit?

[3:30:55 PM](#) **Adam:** yes

[3:30:55 PM](#) **Bruce:** to rehab it from..

[3:30:57 PM](#) **Claudia:** understood, I understand.

[3:30:59 PM](#) **Adam:** and I believe...

[3:31:01 PM](#) **Claudia:** that is a, in order of magnitude higher than...

[3:31:10 PM](#) **Bruce:** actually I disagree, an order of magnitude by definition means ten times.

[3:31:15 PM](#) **Claudia:** alright.



[3:31:16 PM](#) **Bruce:** but that's the math, and new building construction on virgin ground at the moment in this area, you're going to be lucky to get what? If you do it virgin ground?

[3:31:28 PM](#) **Adam:** yeah, virgin ground. Bringing your development. I'm just trying to put together a quick analysis in my head, probably \$225 a square foot, \$250 a square foot.

[3:31:39 PM](#) **Claudia:** hard and soft costs all in, yeah.

[3:31:41 PM](#) **Bruce:** so it's not an order of magnitude, it's triple to try to rehab it. To tear it down, take it back up to grade.

[3:31:47 PM](#) **Claudia:** got it, so it's not an order of magnitude but it is triple. OK understood.

[3:31:51 PM](#) **Bruce:** and we also have to complete the costs of the street as well.

[3:31:55 PM](#) **Adam:** there is evidence of quite a bit of road work and development work, infrastructure work that has to go into that being into the State highway there. It definitely raises the cost of sitework, it increases that as well as one of the high costs of building is just the hand takedown for rehab. The labor hours that would go in too.

[3:32:22 PM](#) **Bruce:** always more expensive... (inaudible) ...to rehab something old than it is to build something new.

[3:32:30 PM](#) **Claudia:** and what on page 9 of that same report, we have an estimated value of new construction. So, the estimated value of new construction would be \$700,000 for that same lot. What does that number represent?

[3:32:51 PM](#) **Bruce:** that number represents an estimate as you can see from exhibits F, S, J, and Q that are on the flash drive of various appraisals and various estimates of what brand-new buildings, if the old buildings were torn down and what we could build on the site for new buildings on the site.

[3:33:09 PM](#) **Claudia:** OK so that is a, and what is it that would be proposed, I guess what I am asking. What \$700,000 gets you is a twin home model?

[3:33:19 PM](#) **Bruce:** no.

[3:33:20 PM](#) **Claudia:** it's a single unit?

[3:33:22 PM](#) **Bruce:** yes, it's a single unit. We've got a, it's detailed in the estimate.

[3:33:25 PM](#) **Claudia:** uh-hu, \$700,000?

[3:33:28 PM](#) **Lewis:** for what square footage of a home?

[3:33:31 PM](#) **Bruce:** it's shown in the estimate, I don't have all the figures memorized off the top of my head but we have exhibits that are attached to it.

[3:33:37 PM](#) **Merlin:** that would be configured as a PUD

[3:33:40 PM](#) **Bruce:** yes, it would be configured as a PUD basically... (inaudible) ...approved subdivision plan. We have to modify it somewhat but it's an estimate of what we think it would be.

[3:33:53 PM](#) **Claudia:** that is quite a home.

[3:33:56 PM](#) **Bruce:** well you know I...

[3:33:58 PM](#) **Lewis:** that's quite a price for a home at least.

[3:34:00 PM](#) **Bruce:** the interesting part is we're sort of being damned if we do and damned if we don't. At one point people are saying we're underestimating costs and the next people are saying we're over estimating costs. So, on really the same thing, but again that's not related to the hardship of having to keep the buildings up, that's what would happen that's what we estimate it would be worth if we could replace them with new buildings. So that's essentially our estimate of what the takings number would be.

[3:34:31 PM](#) **Lewis:** so just going back to page 8 of the report then. So, is that approximate \$650 a square foot is that more or less what you used for each of these analysis on the other properties?

[3:34:43 PM](#) **Adam:** no those were all done individually and separately. So, if we're talking \$650 a square foot, no I think there was some round numbers brought in for individual rehab costs on the units themselves. But the site work, the architectural engineering fees, and the rehab financing costs were all separate within themselves.

[3:35:03 PM](#) **Lewis:** well like, for example on the property facing 300 West. You've got the rehab cost at \$1.124 million, right? What would be the square footage on the property facing 300 West?

[3:35:17 PM](#) **Adam:** just about 2400 square feet.

[3:35:19 PM](#) **Lewis:** so when you define \$1.12 million by 2400 what do you get?

[3:35:40 PM](#) **Claudia:** about 468

[3:35:41 PM](#) **Lewis:** so \$468 a square foot on that one. So, sort of double what you've already acknowledged is sort of new construction costs to rehab that building. Let's just sample another one. So, 259 West Bishop Place, what's the square footage on that one?

[3:36:00 PM](#) **Adam:** it says on the chart.

[3:36:01 PM](#) **Lewis:** well I don't have the chart in front of me, I am just looking at your report.

[3:36:04 PM](#) **Bruce:** look at page 13. Just a few more pages back.

[3:36:06 PM](#) **Claudia:** 910 square feet.

[3:36:08 PM](#) **Lewis:** 910. OK so 910, what's 507 divided by 910 what's the square footage on that one?

[3:36:19 PM](#) **Claudia:** 557.

[3:36:22 PM](#) **Lewis:** 557.

[3:36:21 PM](#) **Claudia:** that's not square footage, sorry that's rehab costs.

[3:36:22 PM](#) **Lewis:** right the rehab cost. Have you rehabbed any historic buildings?

[3:36:28 PM](#) **Adam:** yes, I have.

[3:36:29 PM](#) **Lewis:** can you tell me which ones you've rehabbed?

[3:36:31 PM](#) **Adam:** let me pull up the list and I'll go through to you.

[3:36:33 PM](#) **Lewis:** and do you have an idea of what the approximate cost per square foot was to rehab the buildings you were working on?

[3:36:38 PM](#) **Adam:** those would probably be more or less relative within the past two years, and anybody that's in the construction industry knows that the inflation over the last two years have gone up quite a bit. So, I tend to say those are not accurate, if I pull them up, I could pull up and give you numbers based off that.

[3:36:53 PM](#) **Lewis:** well, I mean we're looking at a report you submitted last year as well right? So, I'm just asking what was your approximate square foot cost to rehab the buildings that you worked on. What kind of buildings were they.

[3:37:04 PM](#) **Adam:** let me side note to the report that was submitted last year, these numbers were more brought up to date within the last few months. So, it wasn't a year old on the report itself.

[3:37:16 PM](#) **Bruce:** (inaudible) ...we have a general building to rehab these buildings to be occupied in their historical context. And thus, you specifically asking for an apples to oranges compare.

[3:37:32 PM](#) **Claudia:** just to be clear, the applicant understood that these were in a historic district when they were purchased.

[3:37:37 PM](#) **Bruce:** absolutely true.

[3:37:39 PM](#) **Claudia:** so, understanding that you buy a parcel of land that has a historic overlay and you understand that any rehab you do is subject to the conditions and criteria.

[3:37:49 PM](#) **Bruce:** absolutely true, no question.

[3:37:50 PM](#) **Claudia:** OK.

[3:37:54 PM](#) **Bruce:** (inaudible) I'm not arguing that that relates to the cost.

[3:37:57 PM](#) **Claudia:** I got it. (inaudible)

[3:38:01 PM](#) **Lewis:** so do you mind answering that question if only for a bench mark.

[3:38:03 PM](#) **Adam:** so let me add notes too as well. I have no ownership in this subdivision, with Mr. Armstrong over here. I was simply brought on I believe two years after he purchased the project. In the potential attempts of sale as a general contractor to, at one point try to rehab. And I believe that same goes for Structural Engineer, I hate to speak for him but I think that's important to know as you talk those number. This is as much a hired general contractor that I am, as anything. There's no ownership or shared potential ownership in that.

[3:38:41 PM](#) **Lewis:** are you being paid by the applicant?

[3:38:44 PM](#) **Adam:** currently no, I am actually here on good faith and good will and I think he could attest to that.

[3:38:48 PM](#) **Lewis:** so going back to my question, what was your average per foot cost to rehab the buildings that you did work on and what type of buildings?

[3:38:57 PM](#) **Adam:** past buildings, I did one, let me put, what was my downtown project here. We did a historic preservation in Sandy, Utah in the Granite community area. That one was \$365 a square foot. 3 and a half years ago.

[3:39:17 PM](#) **Lewis:** I'm sorry what type of property was that?

[3:39:19 PM](#) **Adam:** that was historic property in Granite, Sandy.

[3:39:21 PM](#) **Lewis:** was it a residential home?

[3:39:23 PM](#) **Adam:** residential home, yes.

[3:39:25 PM](#) **Lewis:** what did that property sell for after you rehabbed it?

[3:39:28 PM](#) **Adam:** that property sold for, man these numbers are going back I apologize for that. We were just below \$899 it was right around the area. If I remember right the square footage of the house was around 3000.

[3:39:47 PM](#) **Lewis:** and so that reconstruction was done for the purpose of selling the property at a profit?

[3:39:51 PM](#) **Adam:** no, it was actually done for a client.

[3:39:53 PM](#) **Lewis:** but then they subsequently sold the property?

[3:39:56 PM](#) **Adam:** yes, a year and half later.

[3:39:59 PM](#) **Claudia:** so that was \$299 a square foot.

[3:40:03 PM](#) **Adam:** yeah.

[3:40:04 PM](#) **Lewis:** and then what about the other property that you worked on?

[3:40:06 PM](#) **Adam:** we did up on North Temple, or sorry not North Temple, 11<sup>th</sup> Avenue. And I cannot remember the address to this one, it was about 5 and a half years ago we were about 325 a foot on this one if I remember it again I greatly apologize if these numbers are off a bit. I can tell you it was a spec home that we purchased for resale it was an old home owned by the Catholic Diocese that we turned into a complete gut and remodel within the historic guidelines as well and that one was sold for just under a million. I believe it was with a finished basement, a million fifty thousand. I don't recall the square footage of that one.

[3:40:49 PM](#) **Lewis:** but do you have an understanding what it was approximately the square footage to rehab it?

[3:40:52 PM](#) **Adam:** yeah I said that was right around \$300-\$325, I can tell you we did not make any money on that project when we sold it as a spec home.

[3:41:02 PM](#) **Lewis:** and those are the only two projects, historic rehab projects you worked on?

[3:41:05 PM](#) **Adam:** yeah, I can pull more here. I'm trying to pull some that are relevant so please mind that.

[3:41:14 PM](#) **Michaela:** Mr. Breen, did you say 11<sup>th</sup> Avenue in Salt Lake City?

[3:41:17 PM](#) **Adam:** yes.

[3:41:17 PM](#) **Michaela:** that is not within a local historic district.

[3:41:19 PM](#) **Adam:** it was, sorry, let me take that back it was done within the historic guidelines taken on good will of our own based being in the area the attempt to resale that. So, thank you for that clarification.

[3:41:33 PM](#) **Bruce:** (inaudible) I think it might help to have Mr. conger explain the structural issues with this property. I was pretty clear it has to be completely gutted, new foundation etc. but I'm just a poor humble lawyer. Perhaps... (inaudible)... that might be something that the wonderful person who put the letters P.E. after his name as opposed to JE after his name might be able to explain better because the structural issues are in large part that and the local historic requirements. Trying to replicate the materials and preserve the material etc. probably each about half of... (inaudible).

[3:42:33 PM](#) **Bruce:** sorry, yes. I just always assume anybody can hear me anywhere. If I could have Mr. Conger explain the structural half of why, how rehab costs are what they are, why they're different from the normal rehab of a normal building. Mr. Breen is sort of looking at the non-structural side of it. They are sort of blended but they're also somewhat separate. Mr. Conger can explain to you the abysmal shape of these buildings for the last literal hundred years.

[3:43:07 PM](#) **Lewis:** maybe I could ask a question in that regard. So, I understand at least several of the framed buildings lack foundations, right?

[3:43:15 PM](#) **Claudia:** sorry, pull the Mic up right up to your, there you go.

[3:43:19 PM](#) **Lewis:** and so out of the, at least 3 of the buildings have foundations right?

[3:43:25 PM](#) **Robert:** from what we can tell. A lot of them just have like a concrete...

[3:43:28 PM](#) **Lewis:** so one is currently occupied. The yellow Victorian. It has a foundation right.

[3:43:33 PM](#) **Robert:** yes, but it's an old masonry foundation. And it actually had several holes in the foundation.

[3:43:40 PM](#) **Lewis:** just follow my (inaudible)...so the brick house facing 300 West, the brick duplex, and the Victorian all have some form of foundation. Correct? So there are six frame buildings, how many of the small frame buildings are there? And how many of those are lacking a foundation?

[3:44:00 PM](#) **Robert:** they were seven of the framed buildings and from what I could tell almost all of them lacked a foundation. Most of them when you went in to look at it, the floor was either sitting on dirt or parts of it were within, beyond what code allows.

[3:44:18 PM](#) **Lewis:** so my question is for the smaller framed buildings what's the cost per building of pouring a new foundation? Are we talking about a slab or are we talking about you know having to dig out below the frost line, what are we talking about?

[3:44:30 PM](#) **Robert:** I would require that them to take that down to frost line which is 30 inches. To that they'd have to support the structure as they do that, to go in and do that.

[3:44:37 PM](#) **Lewis:** so what would be the cost on each of the structures? To put it in?

[3:44:42 PM](#) **Robert:** that wouldn't be an answer from me.

[3:44:44 PM](#) **Lewis:** so is that something that was priced out as far as these...

[3:44:47 PM](#) **Adam:** that is something that was priced out and based on the historic concept of not being able to take the building down that's where the cost increase comes along. The building could not be removed taken down or pulled apart in order to put out a traditional footing and foundation in. therefore we are trying to scrape along the side. At some point in time it looks like somewhere in the 70s or 80s someone came in and tried to pour a faux foundation up against the side of the building. Maybe 6 inches down poured in to. That cement now been all attached to the outside façade of the billings and to come in and try to...

[3:45:21 PM](#) **Claudia:** let me just, my understanding is that you can actually take apart a historic structure in order to put in a new foundation. Does Staff have any comment on that? Do you have any information that you can share?

[3:45:34 PM](#) **Michaela:** I know that it's been done before, yes.

[3:45:39 PM](#) **Adam:** ultimately that would be something that would be up to the Historic Landmarks Commission to make that decision.

[3:45:43 PM](#) **Lewis:** and we're talking about frame, wooden buildings, right? The ones that need foundations are the wooden buildings not the masonry buildings.

[3:45:49 PM](#) **Bruce:** we actually address that specifically in the report Ms. O'Grady we indicate that to do that would require interior structural bracing it'd require taking materials apart, replacing some, finding the so called materials taking those apart, rebuilding them with code compliance integrating that with the old historical spot. After you picked it up and scraped it, and you picked it up carefully so it wouldn't collapse like an egg shell you moved it you put it somewhere. You build the foundation, you take it back and you try then to restore what can be restored and that's what leads to the costs. And we talked about that base don't eh expertise of Mr. Conger and Mr. Breen. And that's why the costs are what they are. Because you have to treat these buildings like the eggs that they are. Actually they crack the eggs.

[3:46:41 PM](#) **Claudia:** anything else you want to add on structural issues that we need to be aware of?

[3:46:46 PM](#) **Robert:** we keep talking about the wood buildings ant that, on the masonry buildings, the on 300 West for example, it's an old sandstone foundation so it currently doesn't meet any code requirements. Any time that they make a change to any structure above it, it's going to require that structure to be brought into code. Which would basically instigate them having to go in and either shotcrete a new foundation against the existing so they can maintain what's there, or pouring, or casting the new foundation against what's there. And then pulling all the exterior walls apart so they can make proper connections, things like that through the roof. The roof itself had damage, the floor itself had

some deterioration. So, there were parts of those areas that would have to be repaired too. So, it was generally all across when we've run into projects like this in the past, typically we have clients come in and ask us to do something, as soon as the costs come in they back out of it. Unfortunately.

[3:47:42 PM](#) **Bruce:** and one other thing in that regard, there is a difference regarding use of the building. If it's converted to a commercial use, then it also has to meet earthquake standards, I believe but Mr. Conger can explain that more if it stays as a residential building it's got one lever of earthquake protection. If it were to go to a commercial use, it would have another level of earthquake design.

[3:48:04 PM](#) **Robert:** what it has is that anytime there's a change of occupancy, you have to meet that requirement. Typically, that's floor loading. Seismics don't change, but because the floor loading has changed they have to bring the rest of the structure up.

[3:48:19 PM](#) **Lewis:** so just to be clear then, you said that the foundation on the 300 West property is a sandstone foundation?

[3:48:25 PM](#) **Robert:** Yes.

[3:48:25 PM](#) **Lewis:** a shelf foundation, is that...

[3:48:27 PM](#) **Robert:** that's what I observed.

[3:48:28 PM](#) **Lewis:** and then the two other, the Victorian that's in the back that's currently occupied is that also stone foundation?

[3:48:34 PM](#) **Robert:** no, that was a CMU. Concrete Masonry Unit.

[3:48:38 PM](#) **Lewis:** so that has a concrete, and then the duplex? Does that also have a concrete foundation?

[3:48:40 PM](#) **Robert:** that was a concrete foundation.

[3:48:42 PM](#) **Lewis:** then it's your testimony that the other framed buildings all have some form of lacking of foundation, whether it's on rocks or has an apron?

[3:48:51 PM](#) **Robert:** that is correct. Yes.

[3:48:54 PM](#) **Adam:** can I add one note to the duplex? The interior slab is a, let's call it faux crawn space. There is no slab underneath it, so I know there is a concrete foundation in place. However, if you go underneath, all of the floor joists themselves are sitting right directly against the dirt and have had severe rot in there. That's been one of the concerns the façade of the building looks well, the brick is still standing well, but that floor is completely coming apart.

[3:49:25 PM](#) **Claudia:** OK, thank you for that information.

[3:49:34 PM](#) **Lewis:** so just another question on the valuation you gave, if you could tear these down and build new properties. Across the board it looks like you just assign a \$700,000 value to each of the properties. What was the estimated square footage on the new properties that would be there?

[3:49:51 PM](#) **Bruce:** Don knows the answer to that question.

[3:49:56 PM](#) **Don Armstrong:** I did those numbers and now looking back, I think you're right that they are high. But I was assuming at 2400-2500 square foot single family house.

[3:50:05 PM](#) **Lewis:** are those even possible on those size of lots? Are you talking about a two story structure?

[3:50:11 PM](#) **Don:** two story, well it almost becomes a three story. I think that was allowed, right? Yeah, basement and two stories. But those were just really rough, that was just my guess at that point. That was my input.

[3:50:27 PM](#) **Lewis:** so these are really just estimates by your own acknowledgement high estimates in terms of what those might be worth if you were allowed to build different structures on those properties.

[3:50:36 PM](#) **Don:** and we would have to go through the entire process and design homes and see what the, you know, that's just very, very rough. You're right.

[3:50:43 PM](#) **Bruce:** (inaudible) ...we did not want to submit an incomplete application so we made an estimate of what those numbers were. Relevant to the value of the takings issue under the hardships.

[3:51:23 PM](#) **Don:** one other comment, in the Staff report they mention you could get up to 30 units there. We don't know how many units we can get, if it's demolished and started over so that was just very, very rough.

[3:51:35 PM](#) **Lewis:** and then on page 11 on the report, the questions is, as it relates to any tax credits. It says International Real Estate Solutions Inc. has pursued various tax credits, we met with the State of Utah regarding a tax credits. No tax credits were available, if any interior wall or feature has been changed. Is that your testimony?

[3:51:56 PM](#) **Don:** yes, Mr. Maxim and I met with the head of State department, I forget his name, specifically on this project and that's what we were told. And that meant that any, and we had to make floorplan changes which would eliminate those tax credits.

[3:52:17 PM](#) **Lewis:** other than meeting with some person at the State of Utah, did you ever consult with Preservation Utah or any other entity that has expertise in giving historic tax credits for rehab projects?

[3:52:32 PM](#) **Don:** I think I may have talked to somebody like that, but I didn't pursue it. I didn't hire Mr. Amott to do that, no.

[3:52:38 PM](#) **Lewis:** well I think he offered his services for free but, my question was whether you actually consulted with anyone who might be an expert in that field about possible tax credits.

[3:52:47 PM](#) **Don:** well I thought going to the head of the office would be, probably the best approach that I could come up with.

[3:52:55 PM](#) **Claudia:** tax credit programs are complicated.

[3:53:10 PM](#) **Bruce:** could we let the record note that you nodded your head when I said that, and speculative, Ms. O'Grady?



[3:53:13 PM](#) **Claudia:** I run a tax credit program and so I wouldn't agree that they're speculative. So. We can disagree on that. The record can show that we disagree on that.

[3:53:28 PM](#) **Bruce:** I was just asking to reflect that you nodded your head when I said that.

[3:53:32 PM](#) **Claudia:** that part is true, the record certainly may reflect that I was nodding my head.

[3:53:38 PM](#) **Bruce:** I'm not trying to cause a problem... (inaudible).

[3:53:41 PM](#) **Claudia:** yes, go ahead please.

[3:53:42 PM](#) **Merlin:** may I share a story to try to balance Mr. Francis's grilling about cost per square foot?

[3:53:53 PM](#) **Claudia:** please.

[3:53:54 PM](#) **Merlin:** alright. In 2002, I restored a home that looked, from the outside very similar to the two-story facing 300 West. In beautiful downtown Holliday, I acquired the property with the intent of putting it in the parade of homes, which we did in 2002. And we also placed it on the historical registry. So, I took advantage of the State tax credits, and if you'd like to write the address down it's 2491 East Valleyview Drive which is right on the corner of Holliday Boulevard and Valleyview. It's a magnificent example of a two-story craftsman. This is all pebble dash on the outside, no brick. But a very similar structural look as far as the gable and the dormers, and what have you. My point for sharing this story is we spent \$450,000 on the home and it had a perfect foundation. It has a 16-inch-thick concrete foundation which was rocket science in 1910. Not a single settling issue, no cracks, fortunately no one had ruined the original integrity of the home. Even though it was run down and terribly abused as far as maintenance, it had never been remodeled and butchered so that it couldn't be restored. Photos are still available on the website if you'd like to see them my point is we spent \$450,000 to get it to the parade of homes in 2002, which we took People's Choice. The folks that bought it, that have become dear friends since, in 2006 have spent \$300,000 on it since. And when you do that by the square foot it sounds ridiculous, it's a moving target based on what you want to do to keep the original integrity of that home. So, I'd just like to share that story with you, I don't know what that works out per square foot but it's probably a very similar footprint to the home on 300 West. Just exterior pebbledash instead of brick. But again, no setting, no structural issues, quite a bit of decay. We were fortunate enough to place that on the National Registry that year.

[3:56:55 PM](#) **Claudia:** thank you.

[3:56:55 PM](#) **Merlin:** thank you Madam Chair.

[3:57:01 PM](#) **Claudia:** additional questions?

[3:57:24 PM](#) **Bruce:** are there any more questions for Mr. Conger? Otherwise we'll turn...

[3:57:26 PM](#) **Lewis:** I do have a question for the Engineer. So is it your testimony that it's impossible to make these structures reasonably sound? Or is it your testimony that it would be expensive to do so?

[3:57:42 PM](#) **Robert:** you can do anything if you've got the budget.

[3:57:45 PM](#) **Lewis:** well that's always the case, money can solve almost every problem. But let me ask you a little bit about your background. Have you worked on rehabbing historic structures?

[3:57:57 PM](#) **Robert:** we have, I can't name any of them off the top of my head but we've done quite a few up through the Avenues. I'm not sure if they're on the registry, usually the Architect is the one that deals with that part of the issues. We just go in and make sure that what they're doing is structurally sound and bringing it up to code.

[3:58:14 PM](#) **Lewis:** so when you say we, you mean the company that you work for?

[3:58:17 PM](#) **Robert:** my company, yeah.

[3:58:17 PM](#) **Lewis:** have you personally worked on rehabbing any historic structures?

[3:58:19 PM](#) **Robert:** I have.

[3:58:21 PM](#) **Lewis:** what structures have you worked on in the last 5 years?

[3:58:24 PM](#) **Robert:** I couldn't tell you off the top of my head.

[3:58:26 PM](#) **Lewis:** so it's not really a specialty of yours?

[3:58:28 PM](#) **Robert:** no, it is. We do quite a few with unreinforced type masonry homes that were built, and a lot of people right now, because of the economics are picking up these homes that are built in the early 1900s or 1950s for that period that don't meet current code requirements. They are going through and trying to do remodels, and a lot of the time what they're finding is that as they do these remodels they're having the extra costs put into it, they don't complete it. But we're asked to go in and because it's a voluntary upgrade at that point, for that homeowner, because of what they're doing they don't have to meet every item required by code. It's kind of a pick and choose for them saying, hey we will voluntarily upgrade this portion of the building while we are making this remodel. But it's more based on what the current codes say and what they're allowed to do by the current codes. Hopefully that answers.

[3:59:20 PM](#) **Lewis:** I guess the other question I have is, so I guess we have your report in, here right? Did you specifically address the cost involved in removing the wood frame structures and pouring the foundation separately?

[3:59:34 PM](#) **Robert:** no because that's usually Contractor that's involved in putting pricing together.

[3:59:38 PM](#) **Lewis:** is that somewhere in your report, that separate cost detailed?

[3:59:43 PM](#) **Adam:** it is in a separate report outside of this report, I believe those are... (inaudible) ...breakdowns for each house individually.

[3:59:49 PM](#) **Lewis:** so, but it's not in the materials that have been submitted to us?

[3:59:51 PM](#) **Adam:** probably in the materials here...

[3:59:52 PM](#) **Bruce:** I believe they are in the flash drives.

[3:59:55 PM](#) **Lewis:** so in the flash drives, somewhere there's a specific cost on each of those properties in terms of what it would cost to remove the..

[4:00:02 PM](#) **Adam:** they're full cost breakdowns for... (inaudible)

[4:00:09 PM](#) **Lewis:** is that something that you've actually ever performed? As far as removing a frame house and pouring a new foundation?

[4:00:16 PM](#) **Adam:** no I have not.

[4:00:18 PM](#) **Lewis:** did you consult with anyone else in getting those cost estimates?

[4:00:21 PM](#) **Adam:** yes, consulted with multiple Engineers on what it takes to do so. The work itself is multiple types of work that we have done in the past. I haven't consulted with anybody specifically that has done that, I don't believe that there's many people in town sorry so to speak that have lifted a building off its, or placed it on stilts to change. And most of those have been downtown commercial buildings. It's not very often you deal with that in residential, they typically try to scrape those and get them out of the way.

[4:00:47 PM](#) **Lewis:** right, but you acknowledge wouldn't you that often times people will move framed buildings and they can put them on the back of a flatbed truck and move it to a different location it is possible to pick up a framed buildings?

[4:01:01 PM](#) **Adam:** structurally sound buildings, yes. And that's relative. Do you mind if I go back to your question earlier to other projects we've done? We currently have one on Yale Avenue just under 1500 East that we're currently working on, we have one currently up on Sheridan Avenue as well as that we're currently working on. And finished one a year ago on Princeton Avenue, they're in the historic district as well. Those have all run us over \$300 a square foot on cost to rehab or at least being projected well over that. Those buildings are all on traditional foundations and have been in, let's say, good guts within the house itself. Pulling back to kind of Merlin's story of a home that hasn't been previously modified and not chopped into, so to speak.

[4:01:44 PM](#) **Lewis:** we are talking about total remodels, gut, taking it down to the studs, new wiring, new plumbing, everything.

[4:01:50 PM](#) **Adam:** correct.

[4:01:51 PM](#) **Lewis:** at approximately \$300 a square foot, which is maybe \$50 more a square foot than new construction?

[4:01:56 PM](#) **Adam:** yeah, could be. You know the exterior façades are staying in place, roof lines are staying in place, you know so.

[4:02:03 PM](#) **Lewis:** sorry Claudia, I've been monopolizing.

[4:02:08 PM](#) **Claudia:** no you're fine.

[4:02:08 PM](#) **Lewis:** do you have questions to ask?

[4:02:09 PM](#) **Claudia:** no these are great questions, and I think you've answered most of my questions. Yes sir?

[4:02:14 PM](#) **Merlin:** just one more, you work for Dean Webb?

[4:02:17 PM](#) **Robert:** yes.

[4:02:18 PM](#) **Merlin:** how many Engineers work at your firm?

[4:02:20 PM](#) **Robert:** we have two interns, well three interns, two that are in school and one that is working towards taking the exam in the next year. Then we have myself and two others.

[4:02:35 PM](#) **Merlin:** and Dean does a fair amount of work as well.

[4:02:39 PM](#) **Robert:** yes, he does, he purely does forensic Engineering.

[4:02:40 PM](#) **Merlin:** would you give him my best?

[4:02:41 PM](#) **Robert:** I will.

[4:02:46 PM](#) **Lewis:** could I ask another question? So, when you were coming up with new cost estimates, did you refer to at all the prior cost estimates that have been provided to the RDA?

[4:02:52 PM](#) **Adam:** the ones done by me? The prior ones done by me? Or previous ones prior to?

[4:03:00 PM](#) **Lewis:** who did the prior cost estimates?

[4:03:01 PM](#) **Claudia:** for the RDA Loan?

[4:03:02 PM](#) **Lewis:** right. Were those done by, John Maxim was he a Architect, was he a Contractor? The person that previously wrote... (inaudible)

[4:03:13 PM](#) **Don:** John Maxin is someone that did a lot of rehabs himself and he had a partner that did them, and they were partners with me and then they bailed on me. So, he started the original numbers and then Adam took over.

[4:03:25 PM](#) **Lewis:** k so going back to my question then, when you put the new numbers together did you review the prior numbers that had been submitted by Mr. Maxim?

[4:03:32 PM](#) **Adam:** no typically when I do new numbers I follow off current costs within the industry. I try not to refer back and sudee judgement into what the current costs might be.

[4:03:42 PM](#) **Lewis:** do you know what was included in the cost estimates that he gave?

[4:03:45 PM](#) **Adam:** I do not.

[4:03:46 PM](#) **Lewis:** so you didn't really review that at all.

[4:03:49 PM](#) **Adam:** I've looked through, speaking that I have not worked with John, don't know, I do know some of, quite a few projects John has personally done. I would be willing to say that back when he did those estimates, I'm assuming that they were back in... Don this is a guess 2010-2012. I would assume at the point they were very elementary I might say and maybe not encompassing the scope of the type of structural work that needed to be done. And maybe more of a face lift or rehab.

[4:04:25 PM](#) **Lewis:** well you're just making a lot of assumptions aren't you, because you didn't actually review it did you?

[4:04:29 PM](#) **Adam:** correct.

[4:04:31 PM](#) **Lewis:** in fact I'm looking at it right now and it has cost breakdowns including on many cases they've gotten bids for the pricing. What would you say to that?

[4:04:41 PM](#) **Adam:** bids for pricing are relative.

[4:04:44 PM](#) **Lewis:** well, I mean you've acknowledged to me that Mr. Maxim at least has done this sort of thing before and he's probably not a total novice and probably had some idea of what he was doing.

[4:04:55 PM](#) **Adam:** yeah, absolutely.

[4:04:56 PM](#) and if he went through and he actually gave specific detailed pricing on all of these elements, that would also be something more than just a preliminary guess as far as what it would cost right?

[4:05:08 PM](#) **Adam:** yes, and you might be safe to say our bids actually included in with those numbers that he submitted.

[4:05:16 PM](#) **Lewis:** all I'm looking at, and I'm not sure where this came from, I mean no it was the materials that the staff provided. The supplemental information requested Staff from review panel on the Bishop Place and then...

[4:05:28 PM](#) **Adam:** can you tell me what tab that's under.

[4:05:32 PM](#) **Lewis:** I don't think it's in your book.

[4:05:42 PM](#) **Amy:** this is information that was submitted to the RDA, so he's talking about these...

[4:05:46 PM](#) **Bruce:** just for the record, that's the materials that I objected to as being irrelevant based off of time. And after Mr. Breen finishes talking about it, Mr. Armstrong has some things to add on that subject. And I would note that, never mind.

[4:06:04 PM](#) **Adam:** just a quick, I am not discrediting your question., I think it's very valid in here, I might fall to some of these I say level sub floor guy has bid. The level of detail in there I'm assuming he's talking about pointing a lightweight jitcrete over the top of the subfloor that's currently here and some guy has a bid. I have a hard time validating what that might be, I'm not neglecting the point to your make that he went through and did some professional numbers on that. I will say that based on the time of how long ago that was, they are completely irrelevant to current industry with as fast as things are moving we don't hold, and when I say we, I'm talking trades, in general bids much past 30 days. These being years, even if I looked them two or three years later, they are irrelevant to a point.

[4:06:59 PM](#) **Lewis:** well I guess, my point is the time that this was done, and if you want to say the costs have gone up I won't disagree with you because I know that personally would be the case. But at the time that this was done by Mr. Maxim, who I think you have acknowledged generally knows that he's doing. Would you agree that this is a fare level of detail and in fact that this is what it was going to cost to rehab these buildings?

[4:07:27 PM](#) **Bruce:** that completely calls for speculation as to what was in someone's mind, the documents speak for themselves. This isn't to cross-examine somebody about what somebody else

might have though six years ago, this is simply an attempt Mr. Francis to prove your case because you've already made up your mind.

[4:07:46 PM](#) **Lewis:** are you finished testifying Mr. Baird?

[4:07:47 PM](#) **Bruce:** (inaudible)

[4:07:51 PM](#) **Lewis:** your objection has been noted. Maybe the witness can proceed.

[4:07:55 PM](#) **Adam:** I'd be more than happy to answer that question with these. Based on his costs at the time I think they were speculatively put together for a face lift of the buildings. I believe we had heard from the public that some of the buildings had some demolition done to them, I have not seen the buildings when Mr. Armstrong purchased them so I'm not sure what condition those were in. but doing a quick review of these numbers they were going in and giving a quick face lift to them. Installing electrical he's got in here \$3700.

[4:08:32 PM](#) **Lewis:** but wasn't this proposal done in coordination with an RDA loan which would have required that these properties be historically rehabbed?

[4:08:42 PM](#) **Adam:** they would have at that point, yes and I think that's, I can speak to where the turn came into place from what I understand that whether it was rehabbed historically and brought to current structural standards is where that came into place. These numbers were done prior to any, from what I understand with John, current structural status. Livability status. It was trying to rehab them based under a historic guideline of windows, doors, siding, to that degree. Does that answer your question?

[4:09:18 PM](#) **Lewis:** I mean as much as you can, I mean you testified that you didn't actually review this and coming up with your own numbers and you're sort of speculating on what..

[4:09:24 PM](#) **Adam:** would you take a bid that was six years old and review that on a new building?

[4:09:27 PM](#) **Lewis:** no I wouldn't but I'm, this is part of the record and it is something we need to look at in terms of making our decision. I'm not saying that I would expect you to do this for the bid that somebody else gave. That's not what I'm saying at all.

[4:09:38 PM](#) **Bruce:** it's only part of the record subject to an objection that it's irrelevant.

[4:09:42 PM](#) **Lewis:** Mr. Bair we've heard your objection repeatedly, it can stand, we know your objection. I think it's part of the record and I think we'll review it in making our decision. So, we've heard your objection.

[4:09:52 PM](#) **Bruce:** I know you will. Because you've made your decision.

[4:09:56 PM](#) **Lewis:** Mr. Baird do you want to address that right now? Because I haven't made my decision, I hadn't made my decision before I came on this panel. And if you'd also like to know, I do have a fair amount of history in this regard I was on the Preservation Utah board for about 5 years, I sat on their construction committee. I've also handled number our land use cases including one that's reported by the Utah Supreme Court that you probably regularly rely on for standing. So your Mountain Environmental case V.S. Toole County, you hear do that case?

[4:10:29 PM](#) **Bruce:** I'm quite familiar with that case.

[4:10:31 PM](#) **Lewis:** I'm the one that argued that through the Utah Supreme Court.

[4:10:32 PM](#) **Bruce:** I'm quite familiar with Cedar Mountain cause it reversed the case that I told the client that would lose on appeal because the court of appeals, it was Spect V.S. Big Water. Cedar Mountain reversed Spect V.S. Big Water and I told the client in that case that the court of appeal was crazy in Spect V.S. Big Water and all we'd have to do was appeal it and we'd get it overturned. So...

[4:10:54 PM](#) **Claudia:** I'm going to interject here.. (inaudible)...OK

[4:11:00 PM](#) **Lewis:** I just make the record on this point because he's objected to me being on the panel.

[4:11:01 PM](#) **Claudia:** he has objected, we've noted the objected...

[4:11:03 PM](#) **Claudia:** and **Lewis:** (inaudible).

[4:11:08 PM](#) **Lewis:** I just wanted to record to be clear in that regard, also that I'm not biased. I didn't come to this panel with any decision, unlike the applicant's designee on the panel.

[4:11:17 PM](#) **Bruce:** then why did you blackball....

[4:11:21 PM](#) **Claudia:** that's completely irrelevant. We're going to move on, we're just going to.. Yes. So.

[4:11:25 PM](#) **Bruce:** Mr. Armstrong would like to respond to that question that was asked of Mr. Breen because it was the same subject.

[4:11:32 PM](#) **Don:** you keep going back to those RDA figures so I'm just going to address the whole story. Yes we took that to the RDA, we wanted to demolish them, we tried to sell it to other people they all require that it be demolished. But we were told this is our only avenue.

[4:11:49 PM](#) **Claudia:** wait, let me ask you, so you went to the RDA and you wanted to demolish them at that point?

[4:11:53 PM](#) **Don:** no. we went to the RDA, we knew this is our only choice, so we went to them they were very interested in it. And we started working on a rehab. We've tried really hard to rehab it for 6 years, but we've started with those numbers and what really happened was we got into the process and we had to do full plans for the houses and then we tried to hire an engineer, and then it stopped. Because then we learned of what it was going to cost to really do it, which was to take them apart piece by piece. So, what changed through this whole thing that I think will help Mr. Francis is the Engineers said, we're not even going to be involved in this project. It's going to cost way too much to be able to sell them in that market place. So that's when everything changed and all the numbers went up and the whole process of how to rehab them went up and the cost went dramatically up. And I don't know that there was anybody's fault or anything. But normally in a loan, you get the loan when you have all of your permits. But the RDA really likes this project, so they went ahead and gave us a loan before we had our permits. So, we worked our way through the permit process to the point we could not get the permits because we could not get the engineering resolved. And the RDA was already involved, right or wrong. And I paid them back, because that didn't work. That was, that what you have there is a set of numbers that didn't work. And as we moved forward we tried to come up with what could work to the point we had to hire the Engineers and then we learned it couldn't work. That's the story.

[4:13:33 PM](#) **Lewis:** and with respect to that, were there specific engineering requirements that you established which were then taken by the contractor and assigned values to? Did the two of you work together in that regard?

[4:13:45 PM](#) **Adam:** I wasn't involved at that point. I wasn't asked to be involved until November.

[4:13:49 PM](#) **Don:** we talked to like for or five other Engineers all of which didn't want anything to do with the project. And there's letters, I think they're in the file somewhere, so the engineering problem started coming up when we started to try to get our, complete our application for building permit. And Mr. Conger was the last Engineer involved. But we went through four or five, and with those, there was no plans drawn because the engineers didn't want to be involved, cause it was... one engineer said he'd be involved if the City gave him a letter absolving him of any liability. Fat chance that was going to happen. So that's how these numbers kept evolving, and the reality of the situation kept evolving to the point those numbers didn't work, that process didn't work. We paid off the loan to move forward and here we are today.

[4:14:42 PM](#) **Lewis:** I understand, but my question was specifically; I know you've done cost estimates what you say would be required to make the foundation, make the buildings structurally sound, or to remove them to pour the foundation. Were those based on any specific requirements that were given to you by an engineer?

[4:14:59 PM](#) **Adam:** they weren't based off any specific engineer himself, however they were based on a current engineering standards of a frost gut footing. 10 inched thick, 24-20 inches wide on the exterior depending on the bearing point. Number four rebar put in, three foot wall put into place, bolts placed for (inaudible) onto, green plate put on, it was based off a standard of current construction.

[4:15:25 PM](#) **Lewis:** and what, and on those framed buildings what is the approximate cost of pouring, digging and pouring a foundation for each of those structures?

[4:15:33 PM](#) **Adam:** I would estimate on a virgin soil, your labor material, steel concrete, for footing and foundation getting to a point would be, I'm going to estimate this out at about \$8500-\$9500.

[4:15:51 PM](#) **Lewis:** even for that small of a square foot, I mean cause some of those houses are only 900 square feet, right?

[4:15:55 PM](#) **Adam:** right.

[4:15:56 PM](#) **Lewis:** You're saying that it would be \$10,000 to do a foundation for a 900 square foot house?

[4:15:59 PM](#) **Adam:** I do think so, to a point.

[4:16:01 PM](#) **Lewis:** what do you mean to a point?

[4:16:02 PM](#) **Adam:** you're going to fight anybody at this point getting them there to one small job at a time. You're also going to fight a schedule of getting that person to do some for such a small fee. You're going to have to pay for you to get somebody there.

[4:16:17 PM](#) **Lewis:** (inaudible).. at least seven at once right?

[4:16:20 PM](#) **Adam:** depending on at what point, you could.



[4:16:22 PM](#) **Lewis:** (inaudible)... just so we're clear, so there's nine properties, right?

[4:16:26 PM](#) **Adam:** correct.

[4:16:27 PM](#) **Lewis:** three of them have foundations whether you could, you could argue about whether they're good or not but. There's six of those, six framed buildings are the ones you've identified as needing new foundations. The building would have to be removed, you'd have to dig a hole, and you'd pour a foundation. And you're saying that your cost estimate is it would be approximate \$10,000 each for those foundations, to dig and pour?

[4:16:51 PM](#) **Adam:** sure, if you're putting a round number on that. I think you're high, I think you're sitting somewhere around \$7000-\$8000 into that point. But I do think so.

[4:16:59 PM](#) **Lewis:** that \$7000-\$8000 maybe if they did them all at the same time, maybe less?

[4:17:04 PM](#) **Adam:** maybe.

[4:17:07 PM](#) **Lewis:** and then what was your estimate of the additional cost of having to lift the structure or shore up the structure to do that?

[4:17:15 PM](#) **Adam:** I don't have that in front of me, I'd speculate it but I feel like throwing a number out there, I'm going to get held to. It is as a rule of thumb with a General Contractor, I think it's pretty hard when somebody calls and says how much is this going to cost to throw out a number on it.

[4:17:31 PM](#) **Lewis:** well I mean, you already did the calculations right, you said that they're in these thumb drives somewhere so you have a fare sense of what they are right?

[4:17:38 PM](#) **Adam:** mm-hmm (affirmative).

[4:17:39 PM](#) **Lewis:** so what did you estimate on those framed buildings to remove the frame, whether you lift it up and put it on something else or hold it up with a crane while you pour the foundation. I mean did you actually do the calculation on what it would cost?

[4:17:54 PM](#) **Adam:** yeah, we did do a calculation on that. The number jumps out at my at around \$15,000 to get it to that, to do that point of it. I'd have to go back to my records to review exactly what that was.

[4:18:07 PM](#) **Lewis:** so to put new foundations on the framed buildings, you're talking about maybe \$20,000-\$25,000 a piece. Isn't that what you're basically telling me?

[4:18:19 PM](#) **Adam:** I mean...

[4:18:20 PM](#) **Bruce:** we have the numbers in the report, I didn't know you were going to examine him about every single number on every flash drive...

[4:18:27 PM](#) **Lewis:** I'm not.

[4:18:28 PM](#) **Bruce:** yes you are. Every single number on every flash drive.

[4:18:31 PM](#) **Lewis:** Mr. Baird do you have an objection? I think I am entitled to ask these questions of your expert who you put here to tell us what it was going to cost to rehab these buildings.

[4:18:37 PM](#) **Bruce:** and I think I'm entitled to the fact that you would have reviewed the materials to know what it says because they are in the materials.

[4:18:43 PM](#) **Lewis:** K.

[4:18:43 PM](#) **Bruce:** I can't, you can't ask somebody every single document when we have the flash drives.

[4:18:50 PM](#) **Amy:** I have one here if he needs it.

[4:18:53 PM](#) **Adam:** I can pull that up.

[4:18:55 PM](#) **Claudia:** I have it here too, I'm looking.

[4:19:25 PM](#) **Adam:** I can zoom in on it. It just, we really to have a few hundred documents of pages of stuff in here so. Bear with me to get to that point.

[4:19:35 PM](#) **Claudia:** you have what?

[4:19:36 PM](#) **Michaela:** we have the flash drive information if either person would like to. (inaudible talking in group)

[4:19:46 PM](#) **Claudia:** did you want the information?

[4:19:47 PM](#) **Michaela:** did you want any of the flash drive?

[4:19:49 PM](#) **Lewis:** well he may want to look so he can tell me.

[4:19:51 PM](#) **Adam:** I don't know where it's at on the flash drive so let me pull up here and at least kind of give you back to a point to where I know on this cause I do know my document here. So, are you wanting a kind of a round figure cost getting up to the point of being ready to frame, is that more or less the direction you're headed?

[4:20:28 PM](#) **Lewis:** well yeah, I mean, it seems to me that the point's been made that the main problem with these buildings is that they don't have foundations.

[4:20:37 PM](#) **Adam:** I think that's fare to the foundation point, I think above that there's a lot of seismic tie in that still has to happen as well.

[4:20:44 PM](#) **Lewis:** but I'm just trying to get from you sort of an estimate of what it would cost to put a foundation on each of those buildings. I think you said based on the square footage there may be \$7000 each to dig and pour a foundation and I think you said might be another \$10,000-\$15,000 per building to get them ready to do that right?

[4:21:05 PM](#) **Adam:** yes, now we didn't include excavation work brought into that you know so you may pack on another excavation, back fill, bring in utilities, you know there's quite a few other things that need to go into some rough plumbing or gravel, something around a base of there. so.

[4:21:19 PM](#) **Lewis:** sure, but that's all something that you would do for new constructions anyway, right?

[4:21:22 PM](#) **Adam:** yes, correct.

[4:21:23 PM](#) **Lewis:** and that would all be included in the, say \$250 square foot estimate you gave for new construction on virgin grounds right?

[4:21:31 PM](#) **Adam:** yes.

[4:21:33 PM](#) **Bruce:** I's like to object to the characterization... (inaudible) that's not what the testimony was, there were a, to use the proper word a conjures of factors and Mr. Conger could testify to those including the structural instability of the buildings and the foundation. And they all worked together, like a concatenation of events that all together has a synergistic effect on increasing the costs. And if you have any questions Mr. Conger would be happy to talk about them.

[4:22:17 PM](#) **Lewis:** I think on my end the question has been answered. Claudia, do you have any more questions?

[4:22:23 PM](#) **Claudia:** I don't, I don't have any doubt that the cost associated with these particular structures and rehabbing them per guideline, per historic guidelines and requirements and code. I have no double that that is a fractional order of magnitude larger than, greater than other than rehabbing a house that doesn't have those overlays. And probably new construction as well. I've looked at your costs and personally I don't want to try to micro-guess on these costs and pick them apart individually. I think that what I would be happy to accept is that the costs are going to be significant, and I don't know if others agree or disagree with me here but I think that we have to recognize the fact that these homes are in extreme disrepair. Lifting them would require an extraordinary amount of prep work, all represented in your costs which are jaw dropping costs but you know, that may be what it is. Do you have other questions, or are we moving toward deliberation?

[4:24:07 PM](#) **Lewis:** I guess, do I have a question in that regard procedurally. How it's going to work from this point. I think you said that our deliberation is supposed to be open as well? Or do we have the ability to discuss this privately? Or what's our?

[4:24:21 PM](#) **Paul:** I believe your deliberations should be open. Again as Mr. Baird pointed out we have this Utah Supreme Court case that indicated that they do not have to be. That puts us in a weird place if you go into a, to use legal jargon.

[4:24:43 PM](#) **Lewis:** a more precise term...

[4:24:47 PM](#) **Bruce:** Justice Simone has said nothing burger today in arguments so I guess if that's a legal term.

[4:24:53 PM](#) **Paul:** I believe there is a conflict between the statute and that Utah Supreme Court decision. And my suggestion would be to deliberate in public.

[4:25:04 PM](#) **Lewis:** so I guess my question is, I mean are you expecting that we are going to deliberate and have a decision I the next half an hour, cause I don't really see that happening.

[4:25:11 PM](#) **Paul:** I have no expectations. Other than people will come and take food off the treat cart. Again we're playing this by ear. If you though you could come up to some sort of conclusion in the next half hour that would be unexpected. If you think that you need the next six to eight hours to do that, we'll figure out how we handle that.

[4:25:43 PM](#) **Claudia:** I'm going to Hamilton tonight.

(inaudible group comments).

[4:25:47 PM](#) **Paul:** if we have to continue this, we'll continue this.

[4:25:52 PM](#) **Lewis:** because the other thing is too, I guess for each of these. You got sort of a five-part analysis where we have to make specific findings for each of these buildings. Right, as part of our decision? I mean that could take hours and hours in and of itself.

[4:26:06 PM](#) **Claudia:** I would, I think we've taken in a lot of information, we've gotten a lot of additional information. And we're all very grateful for that, very grateful for the comments from the public and the information from the Staff. It's all been very helpful but I think we need more time to...

[4:26:26 PM](#) **Lewis:** honestly I mean, I need more time to go through the engineering report and review some of this information that's been provided by the applicant in light of what's been said today. And I'm also leaving town tomorrow for a week, so I'm not going to be able to do anything on it until after that point. I guess what I would suggest is if, I'm not sure what the procedure is of what's required but I think.

[4:26:54 PM](#) **Claudia:** what I would like us to do, and again just a suggestion but I would like us to schedule another meeting. And to use this report that they have provided us, maybe to begin to formulate some thoughts on where we're headed with this or where you individually would like to see this go with each individual structure. And we'll consider each individual structure on its own merits.

[4:27:31 PM](#) **Lewis:** maybe we could do this briefly, I guess on each of these you've got the same forms basically a different picture and different name. so maybe just walk through these each so we all understand what it is we're supposed to decide.

[4:27:41 PM](#) **Bruce:** and in that regard since we are just making this up as we go along, I was going to suggest that in the interim while you were waiting to reconvene. Each of you might want to go through your own thoughts on each of the buildings so that you would come prepared to the next meeting to have some tentative thoughts and maybe you could then, I'm just suggesting that maybe you could each straw poll on each one of them and if you agree on an issue we don't need to waste time discussing the issue. Or if you agree on a particular building.

[4:28:20 PM](#) **Claudia:** yeah, let me just ask the attorney what are we bound to in terms of discussion?

[4:28:31 PM](#) **Paul:** this is exactly where I wanted to go, so I like to use, I think that we have a good model with how our Landmark Commission our Planning Commission and our Hearing Officer address these kinds of things. So ex parte communications would be problematic, meaning any of you have conversations with anybody else about this matter. Internal conversations I think could be problematic because that could be considered deliberations which would require going through open or public meetings act process. And then the pother thing notes that you take, could be subject to the Government Records Access Management Act not to mention Discovery in the event of potential litigation. So as you take those notes be mindful that they may not be yours anymore., and the last thing I want to say is a little bit outside of that, there's been a little bit of antagonism here and I would hope that in the future meeting on this we can avoid that. It's not a good look for us and in the vain of due process we need to be respecting all of this, so that's really the best I can say. No ex parte communications, records are subject to disclosure, and as far as reconvening. Staff can work with you,

and I don't think that would be considered an ex parte communication because we would just be talking about process and how to calendar this. And then everybody would be apprised of how that works. I'm not assuming that we are done here for the moment, I don't know what time Hamilton starts. I know there's a Planning Commission meeting that starts in half hour, but I've got back up on that.

[4:30:39 PM](#) **Lewis:** what would be helpful for me is if we could just go through these, the five factors that you put in there. are these then the factors that we should be considering when making our determination?

[4:30:50 PM](#) **Claudia:** factors right out of the..

[4:30:51 PM](#) **Amy:** those are shortened version of the standards.

[4:30:55 PM](#) **Lewis:** so if we could discuss each of them just so we understand exactly what we're being asked to look at and then I think it makes sense for each of us to review what we have and then we can set another meeting. And we can maybe each of us come to a decision then, but so on the first factor it says the applicant's knowledge of historic designation property. I think It's undisputed that Mr. Armstrong knew, right?

[4:31:16 PM](#) **Bruce:** we've stipulated to that in our report.

[4:31:20 PM](#) **Lewis:** so that one is already done right? The current level of economic return on the property, is that with reference to what it's being used for now?

[4:31:32 PM](#) **Claudia:** as it stands.

[4:31:34 PM](#) **Lewis:** as it stands.

[4:31:35 PM](#) **Amy:** so another thing that might be helpful when you're going through those standards is the applicant actually provided a hardship report and that's included in the very back attachment. So, they're in order of the way that those sheets are, so if you look at his response to each one then that's how they're organized.

[4:31:55 PM](#) **Lewis:** you're referring to the December 7, 2017? The same report I was asking questions about? And you're saying that follows the...

[4:32:02 PM](#) **Amy:** yeah, so he's addressed each one of the standards in his report.

[4:32:11 PM](#) **Lewis:** just to be clear, what the means, are we talking about the current use of just the current value of the property? When you say the current level of economic return that's a lot of legalese. Or maybe economicese. But do we have a stipulation or even understanding of what that means?

[4:32:27 PM](#) **Claudia:** you know it's not a defined term. Level of economic return is not a defined term, so I would, I think that's one of the points that we each need to consider individually and make the case for individually. Comments closed right now, so.

[4:32:48 PM](#) **Amy:** another thing to note with those sheets is that in the evaluation sheets, those are shortened versions of the standards. And so, if you look in attachment A of the Staff Memo, which I apologize is a different document, but I could provide these in the same document for you. It goes into more detail what is underneath those standards.

[4:33:07 PM](#) **Lewis:** so what are you referring to specifically as far as the detailed standards?

[4:33:12 PM](#) **Claudia:** it was in an email and it was also I think handed out today, was it not?

[4:33:19 PM](#) **Lewis:** I've got hard copies here is it, are you talking about the specific provision attachment A where it has the standards for determination?

[4:33:26 PM](#) **Amy:** yes, so for example in the evaluation sheet under B I have the current level of economic return on the property. And that's just a summary of basically what that standard is. So, there's one through eight.

[4:33:37 PM](#) **Lewis:** alright so this is what we need to refer to here then.

[4:33:44 PM](#) **Nick:** and those factors are what you would use to help you reach whatever conclusion.

[4:33:48 PM](#) **Lewis:** OK, so that would inform that for us. So that's in dispute. Then the marketability of the property or for sale or lease considering in relation to any list of the property etc. and again that's subsection C of the ordinance, right?

[4:34:04 PM](#) **Claudia:** yeah, and there are some photos that may help you, some chronologic photos that may help you understand the marketability over the last couple of years a little bit better.

[4:34:20 PM](#) **Lewis:** and then the third factor, the feasibility of alternative uses (inaudible) economic return. I guess that's also in dispute? And that's defined again in the ordinance and then we have economic incentives and are funding available. Now that's the one part that I really don't feel like we've gotten enough information. As far as tax, applicable tax credits, is there some way Staff can provide us with that information, or?

[4:34:48 PM](#) **Claudia:** actually can we, is it still OK for us to get outside information? Can we do that?

[4:34:52 PM](#) **Michaela:** yes you can ask the applicant for more information.

[4:34:53 PM](#) **Amy:** yeah.

[4:34:56 PM](#) **Claudia:** can we ask you to maybe obtain a letter from maybe SHPO and maybe talk to us about what the criteria would be for a single-family dwelling, historic renovation, a historic restoration, adjust the general outlines of the program and its availability?

[4:35:23 PM](#) **Michaela:** we could ask them for general information but I don't know that they would write us a specific letter.

[4:35:27 PM](#) **Claudia:** I'm sure they won't write us a specific letter, but general information would be great.

[4:35:32 PM](#) **Amy:** they are listed as contributing structures in a historic district so if the renovations proposed were to be eligible based on their requirements, the buildings themselves are considered contributing. So they are eligible based on what is proposed for those renovations.

[4:35:49 PM](#) **Don:** can I address that for just a second because on the surface it looks like yeah there's tax credits, but when we went in to the actual details we were told...

[4:36:00 PM](#) **Claudia:** we understand what you were told, we got that. But we want to know, we want to hear it right from SHPO. Is that alright?

[4:36:07 PM](#) **Lewis:** yeah, and can we also get...

[4:36:14 PM](#) **Bruce:** go ahead Mr. Francis.

[4:36:15 PM](#) **Lewis:** I guess I just want to be clear what's available, I'm not saying it's necessarily would be awarded in this case. But I'd like to know what's available, I mean obviously it's one of the factors that we're supposed to evaluate and I don't feel like we've been given sufficient information. I'm not willing to accept the applicant's suggestion that they just don't apply and they can't be given. That's contrary to my understanding so I think we need at least some supplemental information so we can evaluate this factor.

[4:36:41 PM](#) **Michaela:** this seems like the burden of the applicant to provide this evidence to you rather than Planning Staff providing it. They made claims that they've met with SHPO, I don't know if they have correspondence from SHPO.

[4:36:53 PM](#) **Claudia:** that's a great idea, thank you. Will you provide to us your correspondences with SHPO.

[4:36:54 PM](#) **Bruce:** we will give you a detailed summary of what we've done in the past. I don't believe that there is any requirement that we go out and actively fish for tax credits.

[4:37:05 PM](#) **Claudia:** no you're misunderstanding then.

[4:37:08 PM](#) **Bruce:** I said we will give you a detailed outline of what we did in the past.

[4:37:12 PM](#) **Claudia:** and you're misunderstanding, what I ask for is a copy of your correspondences with SHPO. Because surely you have something in writing, you applied for something and they said here's what you can get.

[4:37:22 PM](#) **Don:** all we did was schedule a meeting and meet with them and were told no and that he end of it.

[4:37:26 PM](#) **Claudia:** OK, if that's the information that you want to provide to the panel we will take that into consideration as we deliberate. But that is not sufficient to tell us that there is or there is not a resource available.

[4:37:38 PM](#) **Lewis:** right or what the percentage amount would be if it were available.

[4:37:41 PM](#) **Bruce:** let me make an objection to the entire process, and as Paul has said. We're making it up as we go along. And in many ways that violates two things in the world; one due process, and second it violated the presumption under Utah State Law if there is an ambiguity in the code it's to be construed in favor of the land owner and what they're trying to do. There's no process in the code that says we have to prove to retroactively cross every T and dot every I and show that we can't do something.

[4:38:14 PM](#) **Claudia:** but there is a provision in the code that says...

[4:38:17 PM](#) **Lewis:** you have the burden on this application.

[4:38:20 PM](#) **Claudia:** there is a provision in the code here in our ordinance that says that we are to consider economic incentives and or funding available to the applicant. So we are asking...

[4:38:29 PM](#) **Bruce:** I understand and we'll get you what we have. But let me also make it clear that assuming Mr. Francis understands the case law and land use law. The test of substantial evidence is that evidence which if standing alone would convince a reasonable person to make that decision. We have met that test because Mr. Armstrong has testified that he met with the responsible people and they told him he couldn't have any tax credit. That evidence, which if standing alone would meet our burden of proof.

[4:39:02 PM](#) **Claudia:** surely there is something...

[4:39:05 PM](#) **Lewis:** the fact finding body also gets to determine whether that's credit evidence.

[4:39:10 PM](#) **Bruce:** I understand and will discuss the issue offline.

[4:39:13 PM](#) **Claudia:** and I would encourage you to go back through your correspondences, surely they don't turn you down verbally.

[4:39:19 PM](#) **Bruce:** all I do is represent the... (inaudible)...

[4:39:23 PM](#) **Claudia:** I deny people for tax credits all the time, never verbally.

[4:39:27 PM](#) **Bruce:** and you know what, I can't count the number. Once a week, I have a discussion with a client in dealing with the local government or a State government and the question I always ask is, is there anything about that in writing? And the answer about 80% of the time is no, because I thought I could rely on what the government told me.

[4:39:51 PM](#) **Claudia:** that's somebody's mistake, not mine.

[4:39:54 PM](#) **Bruce:** just telling you what the real world is, you, I'm sure you do it much better. But the real world is people don't do that all the time. And then they come to me after it's cratered.

[4:40:06 PM](#) **Claudia:** right it is problematic if we don't have anything that...

[4:40:10 PM](#) **Paul:** can I address a couple of things? Along these lines Mr. Norris and were just consulting on the standards, this language indicated in K2 says standards for determination of economic hardship. And standards may be the wrong word to be used there because these are really factors that when considered collectively should inform the decisions here, whether there is an economic hardship. There's no formula here obviously, and this is the other thing I want to address, is yes the City has acknowledged that the ordinance that was in place when this petition was filed certainly was imperfect.

[4:41:04 PM](#) **Claudia:** is this the same ordinance that was in place when I did Markea?

[4:41:06 PM](#) **Paul:** yes. The ordinance has to be amended, it has been published within the last three weeks, we did have a conversation with Mr. Baird yesterday about whether he and his client would prefer to operate under the new ordinance. That's not really the issue here, I'm just establishing the record here that there is a fix to what we're working with. I think we can be guided by some of the principals here that are obvious as to how you make this determination. When I'm criticizing the ordinance, and I think it's fair for anybody here, it's in the process. It's just not laid out. So, if there's something unfair about this process I'd love to have Mr. Bair identify that specifically because he's



indicated that there may be a due process implication. If they're ok with the process, if they think it's fair, and if this is a reasonable process, I think that....

[4:42:21 PM](#) **Bruce:** the process is inherently unfair because there is a complete lack of standards, there is a complete lack of process.

[4:42:28 PM](#) **Bruce:** I wouldn't say there is a complete lack of standards.

[4:42:30 PM](#) **Bruce:** ok the standards are extremely vague, why don't we say that. The standards are very vague, there's no balancing, there's no process for considering it. There's no process for what evidence can be kept in and kept out, there's no process for that at all. And we all know that, other than we're here.

[4:43:00 PM](#) **Paul:** as far as the process, the imperfections in the process. When we talk about how do we appoint a Chair, do we have a Chair, who guides this meeting. Those are the things that I said are imperfect. There's no specific language here on procedure.

[4:43:21 PM](#) **Lewis:** the substandard factors are pretty clear from the ordinance so I don't think it's that hard for us to apply these if we're given the evidence.

[4:43:28 PM](#) **Paul:** we believe that there is provision in the new procedure and the opportunity to elect that new procedure is certainly available.

[4:43:40 PM](#) **Bruce:** and my problem with the new procedure, as I indicated, Paul is I'm not sure that all of the issues that beset the old problem were fixed in the new process. I think it's certainly better in my opinion but that means we'd have to start over again. Because for example it requires an application to be on a form created by the City. There is no form created by the City, it asks for additional things such as a housing study which this process didn't require. That will take additional time and cost additional amounts of money. It reuses, it's changed some of the... I'm not faulting the process for somebody who hasn't been in this hellish nightmare, I mean this is Kafkaesque at best for the last year.

[4:44:40 PM](#) **Paul:** I'm establishing a defense for potential litigation.

[4:44:42 PM](#) **Bruce:** I know what you're doing, I understand.

[4:44:47 PM](#) **Claudia:** OK.

[4:44:47 PM](#) **Lewis:** is this all relevant to what we're deciding to do?

[4:44:49 PM](#) **Paul:** somewhat, has to be on the record.

[4:44:54 PM](#) **Claudia:** OK, so we have these really four points to consider on each home. So, Staff will poll us to find next best availability. And recognizing you're out of town for the next week.

[4:45:11 PM](#) **Lewis:** right well the other issue being, if the record is going to be supplemented on the economic incentives tax credits etc. we're going to need that information before we can finish our deliberations so I guess we've got to figure that out.

[4:45:25 PM](#) **Paul:** and I'm going to recommend that that all be channeled through Amy, so we're not dealing with ex parte problems.

[4:45:32 PM](#) **Claudia:** yes please.

[4:45:34 PM](#) **Lewis:** so maybe Amy, you could figure that part out and then we can set a new meeting. Depending on whether or not we are going to get that information and if we are, when.

[4:45:43 PM](#) **Amy:** OK.

[4:45:43 PM](#) **Lewis:** does that make sense?

[4:45:45 PM](#) **Claudia:** and I would encourage us all to come to the next meeting really prepared to, with your decisions.

[4:45:54 PM](#) **Lewis:** I don't want to have many more of these meetings, I don't know about you. I would just as soon get it done.

[4:46:00 PM](#) **Bruce:** Ms. O'Grady, if I may, you'll still be able to make it to Hamilton but..

[4:46:03 PM](#) **Claudia:** cocktails too? I don't know.

[4:46:05 PM](#) **Bruce:** I promise. I have sixteen tickets to Hamilton over the course of the next four weeks so, I'm very sympathetic with that. My sons hung out in line for three hours trying to get tickets. So trust me I am familiar. But Mr. Armstrong has something that he would like to personally say regarding the process, and go ahead.

[4:46:38 PM](#) **Don:** well, I mean, basically it seems to me and maybe I'm seeing this wrong that you're just discounting that I met with the State. And you're saying you deny applications all the time, well part of the process with the City any time is to have a preliminary meeting with the various department to see if it makes sense to even file an application. That's the meeting we had and it was determined that it didn't make sense for us to even file an application and that's why there's nothing in writing. And so, to go create that again, is very onerous, I mean I don't know how you create that again. The purpose of that meeting was to discuss filing an application and we learned that they, we were told that base don't he situation there was not sense in filing an application. I don't know what else you can say to that.

[4:47:34 PM](#) **Claudia:** OK, well if you have any records that would reflect what you presented to SHPO, what was, how they responded that would be very helpful to us, that's what we're asking.

[4:47:46 PM](#) **Bruce:** we will look, we will look and we will get back to you through Amy.

[4:47:49 PM](#) **Claudia:** thank you. Anything else that we need to cover today? Nick?

[4:47:55 PM](#) **Nick:** just one thing about scheduling a future meeting, I know a couple of people have mentioned that they're out of town and things like that. Are there periods of time over the next 30 days that we should not even consider because somebody is not going to be available? That makes our job a lot easier if we can figure that...

[4:48:16 PM](#) **Don:** I'm gone till May 8.

[4:48:19 PM](#) **Michaela:** starting?

[4:48:20 PM](#) **Don:** tomorrow.

[4:48:23 PM](#) **Paul:** somebody is going to Italy?

[4:48:25 PM](#) **Don:** no.

[4:48:28 PM](#) **Bruce:** he goes fishing and I don't.

[4:48:34 PM](#) **Claudia:** so how long are you indisposed?

[4:48:36 PM](#) **Bruce:** I'm back before Don is back.

[4:48:38 PM](#) **Claudia:** OK.

[4:48:45 PM](#) and I'm just scattered in May so I'll just let you know.

[4:48:49 PM](#) **Amy:** when you're here in May are you just here for a few days, or are there a few dates in May that you'd be available?

[4:48:54 PM](#) **Don:** can I send you an email later tonight?

[4:48:55 PM](#) **Amy:** yeah that would be great.

[4:48:57 PM](#) **Don:** I think I'm here for about ten days, I think.

[4:49:01 PM](#) **Merlin:** and I'm fairly free in May with the exception of a hearing and then I'm out for Memorial Day weekend.

[4:49:12 PM](#) **Claudia:** well hanks to everybody for their time today. I know that these are, we're getting through it and we want to be fair and deliberate about the information that we review so thank you for everybody's intention.

[4:49:35 PM](#) **Claudia:** motion to continue?

[4:49:38 PM](#) **Lewis:** I would move to continue this meeting to a later date to be determined.

[4:49:44 PM](#) **Claudia:** so moved.

## **ATTACHMENT B: PUBLIC HEARING CARDS**

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Salt Lake City Public Meeting Comment Card (please print)		Date 4/11/18
Name: DAVID SCHEER		
Address 776 N. EAST CAPITOL BLVD.		
Case # or Subject: BISHOP PLACE		
<input checked="" type="checkbox"/> I wish to speak	<input type="checkbox"/> In Support	<input checked="" type="checkbox"/> In Opposition
<input type="checkbox"/> I do not wish to speak, but I would like to submit the following comments: (Use the back if necessary.)		
<hr/> <hr/> <hr/>		

Salt Lake City Public Meeting Comment Card (please print)		Date Apr 11/18
Name: GRIFFIN JENKINS		
Address 466 No 300w SLCU-		
Case # or Subject: Bishop Place		
<input checked="" type="checkbox"/> I wish to speak	<input type="checkbox"/> In Support	<input checked="" type="checkbox"/> In Opposition
<input type="checkbox"/> I do not wish to speak, but I would like to submit the following comments: (Use the back if necessary.) <hr/> <hr/> <hr/> <hr/>		

Salt Lake City Public Meeting Comment Card (please print)		Date 4/11/18
Name: CINDY CROMER		
Address 3cinslc@live.com		
Case # or Subject: ECONOMIC HARDSHIP PANEL		
<input checked="" type="checkbox"/> I wish to speak	<input type="checkbox"/> In Support	<input type="checkbox"/> In Opposition
<input type="checkbox"/> I do not wish to speak, but I would like to submit the following comments: (Use the back if necessary.) <hr/> <hr/> <hr/>		

Salt Lake City Public Meeting Comment Card (please print)		Date 4/12/18
Name: POLLY HART		
Address 355 N QUINCE ST		
Case # or Subject:		
<input checked="" type="checkbox"/> I wish to speak	<input type="checkbox"/> In Support	<input type="checkbox"/> In Opposition
<input type="checkbox"/> I do not wish to speak, but I would like to submit the following comments: (Use the back if necessary.)		
<hr/> <hr/> <hr/>		
Case # or Subject:		



Salt Lake City Public Meeting Comment Card (please print)		Date 3/11/18
Name: Paul Swanson		
Address 903 2nd Ave SLC, UT 84103		
Case # or Subject: Bishop Pl		
<input checked="" type="checkbox"/> I wish to speak	<input type="checkbox"/> In Support	<input checked="" type="checkbox"/> In Opposition
<input type="checkbox"/> I do not wish to speak, but I would like to submit the following comments: (Use the back if necessary.) <hr/> <hr/> <hr/>		

Salt Lake City Public Meeting Comment Card  
(please print)

Date

April 10, 2018

Name:

David Amott

Address

Memorial House in Memory Grove Park

Case # or Subject:

Bishops Place

I wish to speak

In Support

In Opposition

I do not wish to speak, but I would like to submit the following comments:  
(Use the back if necessary.)

**ATTACHMENT C: REVIEW PANEL MEETING MINUTES  
MAY 15, 2018**

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**SALT LAKE CITY ECONOMIC HARDSHIP MEETING**  
**City & County Building**  
**451 South State Street, Room 326, Salt Lake City, Utah**  
**Tuesday, May 15, 2018**

**Economic Hardship Applications– Bishop Place Properties**

- PLNHLC2017-00017 – 241 W Bishop Place
- PLNHLC2017-00016 – 245 W Bishop Place
- PLNHLC2017-00020 – 248 W Bishop Place
- PLNHLC2017-00019 – 249 W Bishop Place
- PLNHLC2017-00024 – 258 W Bishop Place
- PLNHLC2017-00025 – 259 W Bishop Place
- PLNHLC2017-00026 – 262 W Bishop Place
- PLNHLC2017-00029 – 265/67 W Bishop Place
- PLNHLC2017-00030 – 432 N 300 West

The meeting was called to order at [4:23:08 PM](#)

Present for the Economic Hardship meeting were:

The Panel: Claudia O’Grady, Merlin Taylor and Lewis Francis.

The Applicants: Bruce Baird (legal counsel), Don Armstrong (property owner), Adam Breen (contractor)

Staff members present at the meeting were: Paul Neilson, Michaela Oktay, Amy Thompson and Nick Norris.

**O’Grady:** I’m going to call this meeting to order everybody, the attorney say’s we can begin. Is there an agenda for today? No? Ok. Please do.

**Ms. Thompson:** So, this is a continuation of the Hardship panel meeting that was held on April 11, 2018 related to the nine properties on or near Bishop Place which is approximately 432 North 3rd West. The review panel had a public hearing at that meeting and that hearing has been closed. The review panel asked the applicant for additional information that was related to tax credits and that information was provided electronically on May 7, 2018 and we also have hard copies available for you here and those are the white binders. The purpose of this meeting is for the review panel to make findings and conclusions based on the evidence submitted by the applicant. The panel may also have additional questions for the applicant or staff. The review panel should review each property petition and make conclusions based on the review standards and ordinance. The findings of the economic hardship panel for each property will be based on a majority vote of the panel. In front of you, you have your evaluation sheets and those are just to help guide you, they have the standards of approval and then, there’s a photo of each property, the petition number, the address and then also the applicants Hardship report is in attachment “J” of that. The standards in that packet are sort of in summary form and

so you also have a separate sheet in front of you which is titled “Standards for determination” and those are the complete standards copied from the ordinance just for reference. Following this panel meeting, staff will compile a report and that will include the findings from this meeting and that will be forwarded to each of the panel members for a signature and then that report will be forwarded to the landmark commission for a future public meeting. So, with that, I will turn the time back over to you.

**O’Grady:** Ok, Thank you. Um, did we have a, you are expecting to make a presentation?

**Baird:** Very, very, very brief.

**O’Grady:** Then, five minutes?

**Baird:** It will be less than that.

**O’Grady:** Ok. Then go right ahead please.

**PRESENTATION:** [4:25:26 PM](#)

**Baird:** First thank you, you’ve seen the letters in my updated report dealing with the tax credits. Even if they were available, they still, the project still doesn’t pencil. But most importantly, I want to just run some math. Assuming that we get 4 million theoretical dollars of rehab tax credits. Just assuming that, still the pencil of property doesn’t pencil but if you assume that, the tax credit would be 20%. That’s 800,000 dollars. Assume it’s usable as I believe it is over three years that would mean it would be 266,666 dollars a year. Assuming, as it’s true the Utah tax rate is five percent, that would mean that you would multiply the tax number by 20 to get what you need to earn in income to maximize those tax returns. That means you would need 5.2 million dollars per year for 3 years of taxable income in order to utilize the state tax credits. If this property was free, literally free and all of the work was done on it “Free” and it was sold at market value, so there would be 100% profit one time, you’re still not at 5.6 million dollars. Well, you’re getting close, you’re getting close for the entire 1 year using up one third of the tax credits if it were free. So, you can’t, the tax credits don’t move the needle in the classic use of the phrase. So the math simply doesn’t work. In conclusion, and I’ll jump right to the conclusion, there’s really one issue. The issue is, is it an economic hardship to require the buildings to stay up and not allow us to take them down? It’s not whether people like the buildings, it’s not whether they’re historic, it’s not whether some tooth fairy can come in and fix them for nothing, it’s not whether someone has speculative evidence. Your obligation, and we appreciate you doing this cause I know you’re not getting compensated for it, your obligation is simply to determine from the facts and evidence in front of you, is this an economic hardship? I would submit to you that we have shown that every single property is an economic hardship to keep together, to keep up. You also, I don’t believe can consider, I know you need to make the findings on each one individually and I know there’s going to be a temptation to say “well maybe we could keep the yellow house or the duplex or 432”. The problem is to improve the Bishop Place properties including the duplex and the yellow house would require the complete redevelopment of the property including the street, some of the houses would have set back problems, we would have other problems. You would have to put in all of those costs and those costs could not be born just by those 3 properties. It makes no sense to have those properties there. As to 432 has the same road issue because its property sneaks out into the road, so there would be road costs associated with 432. 432’s foundation is inherently unstable. There is, to be blunt there is zero evidence in the record that these properties can be

economically rehabbed. Not just to no scintilla, no substantial evidence, not just a ponderance of the evidence, there is zero evidence in the record that these properties can be rehabbed and that keeping them up would not be an economic hardship. I know, I made it under 5 minutes.

**O'Grady:** You did. Thank you for that. Ok, and thanks for those comments. So, we've now heard and been presented with all of the evidence that we are going to be presented with. Is that correct? Is that your understanding?

**Thompson:** Yes

**Baird:** Yes, we would stipulate there's no more evidence. Unless somehow it comes up in response to a question that someone may ask from the panel but don't have any more subs evidence.

**O'Grady:** Ok, then I would suggest that we maybe discuss how we want to, how we want to evaluate the 9 properties. In my mind, there are, we can maybe do this in a couple of clusters or because it seems to me, do we have to deliberate on or be specific of each of them individually? Can we talk about them in groups?

**Oktay:** My understanding that they all deserve to have findings made individually.

**O'Grady:** Individually yes.

**Baird:** But we would stipulate that you could talk about them in logical groups and then make a finding.

**Oktay:** Sure, you can talk. Yes, Thanks.

**Baird:** Segregate and desegregate.

**O'Grady:** That's what I meant. Right, right, right. I am certainly open to suggestion on this but as I was contemplating how to do this, I thought that there, the properties, I would have to get my map out, I think it's 1 & 9 are maybe a little bit different conversation than the others.

**Baird:** Is that the duplex and 432?

**O'Grady:** 1 & 9, I believe, yeah, yes 432 and the property to the south of 432. So, the immediate property. Is that the duplex?

**Oktay:** The duplex?

**O'Grady:** The duplex, yes. So, I'd ask my fellow panelist what your thoughts are on that approach.

**Francis:** Well I think that's fine. I mean I'd like to discuss the overarching evidence though, I'd have to say that the biggest problem I've had with this is overcoming the prior representations that were made. \*inaudible talk\* very specific that preforms that were made, there were evaluation representations made, there were rehab numbers given. Contractor, he's testified now that it's going to cost 5 million dollars to rehab the properties as part of the proposals saying that's going to cost more like 7 million dollars.

**Baird:** \*soft spoken - He's lying.

**O'Grady:** Right. Um...

**Francis:** I guess I have, I mean I have kind of a bigger picture view of it

**O'Grady:** Ok.

**Francis:** That causes a main concern but we can talk about them individually too.

**O'Grady:** Maybe we can ask staff about, Umm... about that issue. I have those questions myself and I'd just like to get some input. So, my understanding is that the applicant originally came in, under a different code, the building code was not yet modified. Is that correct?

**Oktay:** I don't think that we have ever verified that.

**O'Grady:** Ok

**Oktay:** That has been a claim but no.

**O'Grady:** Ok.

**Oktay:** Foundations in reference to the foundations

**O'Grady:** Right, that's...right.

**Oktay:** That has not change.

**O'Grady:** Ok. So, will, then it's the same code. So, they applied and they got their RDA with a set of drawings, that, hand drawings and then according to the applicant they then were told, well you have to come in with engineering and construction drawings.

**Oktay:** Right. They went through a RDA process, they got a loan and please feel free to jump in if I... miss any of this up. They went through a planned development where you have to meet and objective and part of that objective was to preserve historic buildings and so they got a number of items and relief as far as setbacks. They also rezoned the property appropriately. As part of the RDA, the RDA also decided to take the private street as a public street

**O'Grady:** Right

**Oktay:** as part of their loan process.

**O'Grady:** Right

**Oktay:** All certificates of appropriateness for additions and rehabilitation were issued by Planning and approved by Planning. The hang up was... building permits. Being able to complete the building permit application process. That is my understanding.

**O'Grady:** The applicant was unable to complete the building, the applicant was unable to complete the building permit

**Oktay:** that's correct

**O'Grady:** application. Ok

**Thompson:** According to the information that we bot from Building Services, they had asked for additional information from the applicant for the building permits and that wasn't provided and they expired.

**O'Grady:** Ok. So that just died on the vine and then we moved into this period of just maintenance on the properties, the applicant trying to market the property and now this. The application or economic hardship... Ok.

**Francis:** I had one question too as far as, so when we had asked for information on the prior RDA submission, there was extensive documentations provided by the city, one of the exhibits to that was the development project pro-forma and the talk about the cost of doing exterior stuff and talk about the cost of rehab in the buildings and then, it also indicated they were going to add square footage to at least more than half of the buildings. Was that additional square footage approved by the city at least in the principle? Cause the disconnect I see now is between the evaluation of these buildings as their existing footprint and whether or not that's economical feasible. From what I see in the prior proposal is that they were going to increase the square footage in the majority of them. I was under the impression the City was ok with that, is that true?

**Oktay:** I'm not sure if I can exactly verify the numbers that they gave the RDA as far as additional square footage as part of that plan development or any special exceptions. And um... what actually ended up being approved. But I know that there was additional square footage that was allowed as part of the plan development and that Planning had signed

off on because part of our preservation philosophy is to be able to add additions and rehab properties for modern living. If that answers your question. I can't verify that proforma with what the final was but I know that there was additional square footage.

**Francis:** So they said it was going to be additional square footage but what we have been, the submissions that have been made to us now are based on the original square footage of those buildings. I think the analysis that been made is based on original square footage of those building not increase square footage \*inaudible language\*

**Oktay:** I think that you are correct

**O'Grady:** yeah

**Oktay:** I think that you are definitely correct

**Francis:** I think there's a key document here that is, and I don't know whether this is the material. Was this document provided to us about the RDA loan? Do you know?

**O'Grady:** Yeah, I do.

**Francis:** And then there the attachments that were submitted by the developer. If you look at the...

**Taylor:** What page are you on?

**Francis:** This one doesn't have a page, so it would be the 3<sup>rd</sup>, it says attachment 8 the RDA load they should place \*inaudible\* First page is sort of the summary of the cost and then there's a place exterior cost.

\*someone whispers: Do you have this paper?

**Francis:** And there's worst case scenario, best case scenario and that puts...

**Baird:** I'm not sure what he's talking about. Thank you very much. Cause there's so much stuff in here its... Thank you, thank you very much.

**Francis:** I absolutely agree with you on that.

**Thompson:** So, it's not that one Merlin. It's the document that's titled supplemental information. I did not bring a hard copy but it has been provided to you. An extra hard copy

**O'Grady:** In which it was provided in the thumb drive?

**Thompson:** No, it's in your Dropbox

**O'Grady:** Oh, it's in the Dropbox. Ok. Oh yeah, Ok. And I think you sent it via email didn't you?

**Thompson:** Yeah. And I can actually resend it right now if, if anyone needs it.

**Oktay:** Please feel free to take your time to pull up that, or if the

**Baird:** I've got it. And thank you very much and I'm sure I would like a chance to respond to Mr. Francis after this.

**O'Grady:** Ok. Go ahead and please make your...

**Francis:** Oh, do you have it...Up?

**O'Grady:** I'm pulling it up, he, he has it.

**Taylor:** Ok, thank you.

**Francis:** Well I just wanted you to be able to see too.

\*inaudible\* [4:38:32 PM](#) - [4:38:42 PM](#)

**Francis:** Have that document, you can see for example the 267 W Bishop Place

\*inaudible\*

**Francis:** But also representation of whether or not they can get in terms of

\*inaudible\*

**Baird:** Yeah I know



**Okta:** Lewis, I'm so sorry. Can you please use the microphone?

Francis: Sure.

**Okta:** Thank you.

**Francis:** Um... worst case scenario they indicated that they would get 4 million out of the properties and their base case scenario, and this again this is 2014 was approximately 5 million. Then there's also, in these same proposals it looked like the, in the first page it says "the interior and exterior renovation cost for all properties total 1.35 million". The other thing I found interesting too was that the construction contract that was included with these proposals was done by the same contractor who came in and testified that it's going to cost over 5 million dollars now to rehab these properties. So if you look at the construction contract that's on the back of the RDA proposal it's from Breen Homes which is the same contractor that testified now as to rehab costs 3-4 times what were previously proposed or submitted. So I just have an overall hard time reconciling those two things. Also looking through the engineering reports, I mean engineering reports are limited to the current conditions of some of the properties and I think I would agree that couple, at least a couple of those properties are in very poor current condition. But they didn't seem to say they couldn't be fixed. They just said they are in extremely poor condition. Then they gave an opinion that it might cost 3-4 times what it would cost to build a new property but those are from engineers and there was no documentation given on how they came to that number or what that number was or what it was based on or anything else. So, I mean the only thing we have is two inconsistent pieces of evidence from the same contractor who's been working with the developer for some time. When they wanted the loan, it was a certain cost and now they want to tear the buildings down, it's 3-4 times what was originally represented.

**O'Grady:** You have a response to that?

**Mr. Baird:** I have several responses. First, I sort of resent Mr. Francis calling Mr. Breen a liar. Mr. Breen is here and can explain those differences. Thank you. Sorry, I thought my voice was loud enough to be picked up. Mr. Breen is here and can explain those differences. Third, anything can be fixed. There's an old saying in the development business for those of us who are familiar with it, there is no such thing as an engineering problem there is only a financial problem. Fourth, as to why the numbers are different. I'm reminded of the old saying from John Maynered Canes in 1937 when he was accused of changing his position against deficit spending as a remedy for the great depression. He stated, he said quote "When I find that the facts upon which I have based my opinion have changed, I reconsider my opinion. What sir, do you do?" The fact is that those numbers were estimates 5 years ago and they were assuming that someone would give a structural certification and they were also assuming that you didn't have to repair things stick by stick. And I'll get to these apples and oranges issue of square footage in a minute. But the fact is, people make estimates all the time in turning, in getting RDA loans and other loans and sometimes the estimates turn out to be wrong. If we want to walk literally 1000 feet from this very spot where we are sitting, I'll show you a 4 million dollar project that the RDA lost 8 million dollars on. No, the RDA loan was 4 million, City Bank lost 8, 12 million on a RDA project where they made an error in the construction cost and the estimates. And the RDA had to buy in a 4 million dollar loan because the project got partially finished and it turns out that the estimated costs were wrong. We could walk two and a half miles dead southwest of here and go to the famous sugar hole. Where the

RDA made estimates and issued a loan based on assumptions that turned out to be wrong. Assumptions change because facts change. Mr. Breen can explain them. The entire red herring about square footages and what might or might not have been approved in the past is utterly irrelevant because what we are told according to the hearing that we are following up on is that the buildings have to be kept in their historic condition. So we have evaluated them on their historic square footages. That's sort of why we were told that they were historic. The fact that the cost to construct them, to reconstruct them has escalated somewhat or a lot over the last 4 years. I think I have addressed but I would love to have Mr. Breen, who is sitting here and is an honest man explain it. And again, I resent the implication that he has changed his opinion merely because of the application that is being considered.

**O'Grady:** Do you have some input that you would be able to...

**Mr. Breen:** Sure, I'd be happy to extend on to that. So, when they originally did the estimates broken down from the RDA loan, those were, I came into the process, I'd say probably half way through the attempt of the RDA loan. Individual and previous owner was John Maxim was involved, he's the one that applied for the certificates of appropriateness and I believe started the process within the RDA. As we got into that, I was asked to simply estimate and bid out the homes for a remodel within the space they currently were. For an interior remodel of the individual units themselves. No road improvements, no utility improvements, no side improvements. It was just simply the cost of construction for those individual units. And there was some attempt, if I remember right, to potentially add on square footage in the attic cresses and bonus spaces alone. Whether we're shooting to try to get a little more square footage space on to it. Where the numbers begin to increase is that we got stepping into engineering, sight development, road development, infrastructure. Required with materials that had to be on the unit, all continued to increase along with obviously inflation of the market. I think it would be safe to say going from 2014 to currently where we are at, I can speak numbers with lumber and steel alone have increased close to 30% within the past year. I wouldn't say that eats up all of that chunk of increase

**Francis:** Let me ask you a question about that. So, you said cost of increase 30% since 2014

**Baird:** That's not what he said. He said in the last year, pay attention.

**Breen:** In the past year on steel and lumber alone.

**Francis:** Ok, so cost of increase 30%, that's what you said correct.

**Breen:** On steel and lumber within the past year.

**Francis:** Sure. So how much of property value of increased since 2014?

**Breen:** That it depends on the area you are looking at.

**Francis:** What about the area we're looking at?

**Breen:** I'm honestly not aware of nothing

**Baird:** Mr. Breen is a contractor, he's not offered as an expert evaluation.

**O'Grady:** Yeah, I think yeah, I would say that, uh... and we don't have somebody here who is an expert and can offer us that. I think we can all conclude it is considerable. The increase is considerable.

**Francis:** Cause that's another concern I have about this. These are property values as of 2014, what you proposed you could sell these properties for approximately 5 million. Even if we say that property value has increased 10% since 2014 that greatly increases

that number. I mean I think the last report I saw, so the property that the medium price of the house in Salt Lake City increased 15% of last year alone.

**Baird:** Objection. Speculation last foundation.

**Francis:** I'm just... Ok. And that, the other thing, I think we asked or at least the applicant provided some additional updated property evaluation. But when I looked at the evaluations were for either tear downs or raw land. So I don't think we even have any current evaluations on the property values in that neighborhood. It's one thing to say costs have gone up but I think you have to look at how much they have gone up in comparison to values because that's really what we are talking about. The difference between what it would cost to rehab these properties and what you can sell them for.

**Baird:** I understand that. And I don't think the only points to the costs have gone up was not a basis of what increased the cost from what was originally submitted to RDA and where we're currently at. There was a quite increase in scope of work and what needed to be done to the property in general and not individual buildings themselves.

**Baird:** We, if I may, can respond... we have met our burden of showing what we believe the values of the houses as rehabbed would be. There's no other evidence in front of anyone that counts. You can say the properties in Salt Lake have gone up by 15%, that may will be true but Salt in some parts of Salt Lake City, we have no idea whether that's localized true for this area. We have no idea whether that's comparing apples to oranges because the original values that were in the RDA included additional square footage and they included not necessarily the same type of rehabilitation required now. Facts change. It's 5-year-old RDA document of a proforma is irrelevant and should not be considered and I renew my objection to it.

**O'Grady:** And I guess. Lewis, let me... I'm sorry, do you have a comment?

**Baird:** No, it's changing the subject.

**O'Grady:** I guess my question is so, the, we will all agree that the, that property values have increased. Obviously, the value that's part of the ordinance, that we consider the value of the property prior to designation as a historic landmark although, um... yeah so we consider

**Francis:** Well I think another 1 piece of evidence that has been submitted in this regard, I think City asked the applicant to submit the value of the property without the buildings.

**O'Grady:** Mmm...Hmm...

**Francis:** I think according to the latest submission, it said it was worth 1.9 million if the buildings were off. Is that correct?

**Baird:** I'm sorry I...

**Francis:** I think my recollection is that you were asked to give an appraisal of the property, current appraisal of the property without the buildings, just the raw property. Isn't that correct?

**Baird:** Not appraise the property at 9 million without the buildings.

**O'Grady:** We have that 1.9

**Francis:** 1.9

**Baird:** 1.9? 1.65

**Francis:** 1.65. and the purchase price of the property was 600,000 right?

**Baird:** I think that's right

**Francis:** So, between the time it was in an arms length transaction when you bought the property at the time you bought the property and what year? 2012?

Armstrong: 2012

**Francis:** 2012 for 600,000. The property now without the buildings is 1.9 million. So, I think you can extrapolate an increase in value based on the numbers you alone have given us.

**Baird:** You absolutely cannot because there's a land used development lawyer, who does this for a living. I can tell you that there is no necessary correlation what so ever between the value of land and the value of the house, there's a correlation but the value of the land is only a component of the value of the property. And the mere fact that it's gone up 30%, again, you're just speculating and making things up because you have made your mind up.

**O'Grady:** Well, Lewis let me ask you... So, you cannot value this as raw land because there are historic structures on it.

**Francis:** True. I understand that.

**O'Grady:** So, I don't think that's... The land is certainly more valuable but there are structures that need to... there either needs to be, there has to some...

**Baird:** Right

**O'Grady:** Those structures, the condition of those structures has to addressed in some fashion.

**Francis:** My only point there being is if there's been an obvious increase in the value of the property both as to this property and the property in that neighborhood and based on the evidence that has been submitted by the applicant, the property of the land alone has gone from the 600,000 that was paid in 2012 to 1.9 million.

**Baird:** So 1.625

**Francis:** 1.625 excuse me

**Baird:** It helps to...

**O'Grady:** Um...

**Francis:** I just don't feel like the applicant submitted to burden on that issue to show what the actual value of these properties would be if they were rehabbed and sold. I just don't see it in submissions, it's contrary to other evidence that has been submitted by the applicant and to generalize knowledge of the market conditions in Salt Lake right now.

**Baird:** Let me be clear on that. We have submitted the only evidence in the record by a licensed appraiser, certified by the State of Utah and all you are doing is speculating and it's inadmissible and all it does, one more time, prove you're bias.

**Francis:** I think we've; you have established your claim in that regard Mr. Baird.

**Baird:** Oh, I know I have.

**O'Grady:** So we have

**Francis:** So let me just point out one thing that the updated appraisal reports that were submitted are for raw land, they're not for rehab properties. So the only appraisal we have is from August 2017 approximately a year ago.

**Baird:** That's because this process has been dragging on that long. Because you black balled qualified members of a panel.

**Francis:** Mr. Baird would you like to submit some evidence or you simply just want to continue to argue?

**Baird:** That is evidence.

**Francis:** Is it? Ok.

**Baird:** That will be evidence in the record if we have to appeal.

**O'Grady:** Ok. We are going to move on. You had a question.

**Taylor:** Adding to the square footage of the homes, how does that affect \*inaudible.

**Oktay:** Merlin can you please use your microphone as well.

**Francis:** He doesn't have one, ha ha ha.

**Taylor:** I just assumed I could speak loud enough. But how does adding the square footage to the structure sit with the historical significance? Because it's not in the historical state. I know in homes that I have been involved with, including the one that I spoke of during our last meeting, they are very particular on expanding the original footprint and giving it a historical designation. So that is my question. How does one grow 10% or 50% and still maintain its historical significance?

**Thompson:** We have a process in our ordinance for somebody to make a, either a minor or major alteration to a existing historic structure. So people can add on additions to them. If they are historically compatible and as Michaela mentioned they did get approvals for additions to many of these structures some of which were adding attic space, some of which were rear additions. So, I mean there's a number of options on a case by case basis but yeah, there's a pathway forward for that.

**Oktay:** If can add on. We use basically standards that are based on the secretary of the interior standards to manage that change so that we don't damage the historic integrity of that structure. That, that's maintained yet we can still add additions appropriately.

**Taylor:** Ok. Thank you.

**O'Grady:** Other issues, other questions? There is this dilemma that we have. The ordinance is, it binds us in many respects.

**Francis:** True. I think there's a factor analysis and I think we should go through each of the factors and see which way they go.

**O'Grady:** And I think that's outlined in the pages that you write the...

**Thompson:** Yeah, so there's... in those pages there, it's more of a summary just because the standards are so long so there's a separate sheet which is this one that includes the exact language in the ordinance.

**O'Grady:** I do. I have the ordinance here. Ok.

**Francis:** I have one question though before we get into that. Just on the, this submission has been updated various times, I'm referring to the most recent submission from the applicant dated May 4<sup>th</sup>. And was talking about the total investments to date on these properties. I think it's we established the original purchase price was approximately 600,000 now the total investment to date is 1.5 million. I tried to find in the materials an explanation for the delta between what was the purchase price and what this 1.5 million dollar floor is. Can you address that? Is there some detail on what the 900,000 is this been spent.

**Oktay:** Microphone please Don.

**Armstrong:** All that detail is in there. There's a specific documentation of every check that we have written, I believe.

**Francis:** Ok, well maybe you could just answer for me. I mean, obviously nothing really has been done to improve the buildings right? So what's the bulk of the expense that has been listed here between the purchase price and the 1.5 million?

Well actually there was some demo done.

**Francis:** And that was done without a permit, right?

**Armstrong:** No. We did get permits for that but that's what I understand. That's when John Maxim was running the show. I understood he had permits.

**Francis:** Were there any City permits issued for demolition on the property?

**Baird:** That's irrelevant.

**Francis:** No. It actually is relevant. And you're not the determinant.

**Baird:** I object

**Francis:** Ok, ok. Go ahead and object. Let me ask the questions.

**Okay:** Can we answer that question from the City?

**Francis:** I really want to know what portion of the, that delta is attorneys fees he's been challenging the designation of the City.

**Nielson:** I think that's irrelevant. As is whether demo permits were obtained.

**Francis:** But we need send the floorer. If they are saying that the additional, I mean the total cost of rehab they are including cost which may or may not relevant to the rehab. That's all I'm trying to ask. I think that is relevant to our determination.

**Armstrong:** That doesn't change the fact that the money has been spent. You want to throw money out the window and change the numbers in your mind so you can rule against us.

**Francis:** No, I'm just asking.

**Armstrong:** Those are the numbers.

**Baird:** We have provided in full details all expenditures which also includes the biggest or a very large chunk of it which is the payment of the RDA loan of \$185,000? 172,000 dollars of a payment, repayment of the RDA loan.

**Francis:** What was the 172,000 dollars spent on?

**Armstrong:** A lot of it on plans and engineering. We have drawn plans over and over. We've done these spread sheets, Adams' probably done the spread sheets 200 times trying to get them right and you want us to do them another 200. Architects, engineers, maintenance of the property, boarding the properties up, demolition, a lot of attorney's fees, no question about it and other things, all that is documented in there.

**Francis:** So when you say it's documented, I have looked for it and I was directed to another place where it wasn't. So is there a summary of those additional total investments to date? Could you tell me in the materials where it might be?

**Armstrong:** Well actually it's in the spread sheet. Which page is that?

**Francis:** Which spread sheet?

**Baird:** You know, we're just not going to get involved in a hunting and peaking. You've had this for months.

**Francis:** Yeah, it changes every day pretty much.

**Baird:** You know it changes every day because you ask us to change it.

**Francis:** I haven't asked you to change anything Mr. Baird, I've just asked you to meet your burden on this appeal. And that's your burden not mine.

**Nielson:** I think this would be a lot more productive if we were being civil with each other. So lets knock it off.

**O'Grady:** The spread sheet doesn't have a detail in it. You said you provided copies of expenses

**Armstrong:** Yes

**O'Grady:** Just might be helpful to be able to point us to those.

**Oktay:** Can we site that just for the record. Where that spread sheet is and... thank you. That's ok, take your time.

**Thompson:** And if you can reference if you're talking about something from the initial submittal or the supplemental submittal you just provided.

**Armstrong:** There's a check register or a document that details every check, I believe we have written. There's also the initial cost of the properties, there's some other expenses along the way that paid. I paid the RDA loan. And there are some financing costs of doing the loan and own the property.

Oktay: Can you direct the panel to the spread sheet.

**Baird:** We're looking.

**Oktay:** Ok.

**Baird:** Don's looking. In the meantime, I would...

**Francis:** It's referred to at various times as the hard cost but then I could never find a detail on the hard cost. So that's what I'm asking for. I'm just trying to understand the difference between the initial investment of buying the properties and what's been put in to date. Some of that obviously would be applicable toward rehab others may not. That's why I ask the question.

**Armstrong:** That doesn't change whether you make profit or not.

**Francis:** You don't want to give us the information that's fine.

**Breen:** There actually is a list check by check detail on one of the hard cost tab within the spread sheet.

**Thompson:** Do you know if its... Can you refer to just the exhibit number?

**O'Grady:** You mean at exhibit "T" which is the estimated construction cost spread sheet. There's a hard cost tab

**Armstrong:** There's a hard cost tab which details the cost of each individual property and the money that we have spent on it

**O'Grady:** It doesn't, the hard cost tab that I'm looking at does not have details at an advocate number.

**Armstrong:** But the detail for that is provided in another exhibit in the original submission.

**Braid:** We are looking for it. Part of the reason that the legal and accounting and engineering and other cost is so significant is because as the City has acknowledged repeatedly, the ordinance is barley intelligible and therefore we are trying to hit an ever moving target and staff has asked us, every time staff has asked us for additional information, which we understand why they are doing it, we have gone out of our way to provide complete exhaustive information.

**O'Grady:** I'm looking at the spread sheet exhibit "T", there's some tabs toward the end of the work book by address, 241,245 etc. and those detail the expenditures. We don't have a check register but it does provide a detail on the expenditures. This is the exhibit that they gave us and it does provide actual costs for umm...

**Francis:** Is that cost to date? Or is that projected costs

**O'Grady:** Well these are the costs that are tied into their hard costs.

**Francis:** Does it summarize anywhere in terms of what's what?

**O'Grady:** Well you know we have plumbing, ruff plumbing, plumbing, finish plumbing

**Breen:** Those aren't the specified costs of what we earned to date. Those are estimated cost breakdown for the individual units on rehab costs.

**O'Grady:** So estimated rehab costs?

**Baird:** Yeah, those are

**O'Grady:** Ok, so then how about what you have spent to date? Are those available? Those numbers?

**Breen:** So there are individual draws; draws 1-4 that were spent with RDA that's what was paid back. What I'm trying to do is open up his cells here. Sorry, I'm unfamiliar with MAC's and a right click but if I can get that, I can...

**Armstrong:** Well double click

**Breen:** That opened yep.

**Baird:** Can I point out one thing? This spread sheet that we are looking at, that someone has a question about, was provided in April or whenever we had our last hearing. If there had been questions that were fair and in good faith about that information, had they been raised in April, we would have provided supplemental information. We believe it's hidden in the, I don't say hidden, what I meant is in the algorithms in the cells behind the spread sheet where there's data after data. I specifically remember having a check register included and whether it got into the algorithm by the cell or another cell is another question. I don't know whether...

**O'Grady:** I don't think that we have seen a copy of check register. I think it's fair question. We are where we are. I appreciate your point but lets see if that number, that detail...

**Baird:** We are still looking for it. And I appreciate your curtosy.

**Armstrong:** In that same spread sheet if you look at draw 1,2,3 and 4, that's all the detail. There's all that detail in there.

**Breen:** Everything you have to date was right here so, I mean if you want to go through that list

**Armstrong:** Ok

**Baird:** Where is it? Just tell them where it is. No, don't go through it.

**Breen:** I don't know if it's technically included in there because it was a hidden cell in the algorithm itself, that's a list of every single expense that he had to date shown on there.

**O'Grady:** Can I come and look over your shoulder?

**Armstrong:** Please.

**Baird:** Absolutely, In fact, we can throw it up on the screen. If somebody has a dongle that will connect to this device, we will throw it up on the screen.

**Armstrong:** We aren't going to have a dongle

**Baird:** We didn't know it was hidden cell in the spread sheet.

**O'Grady:** Well you can kind of look but there are expenditures and they're listed

**Breen:** You can scroll down all through that Don

**Baird:** I didn't know it was a hidden cell in the spread sheet. I don't run spread sheets.

**Francis:** Like a summary part of that anywhere in term

**Breen:** That's also here and Don you may speak louder to where that summarized... In fact it looks like the very bottom of there you might have a expenditure total of expenses there.

**Baird:** I had Mr. Armstrong's accounting department make sure, because I anticipated this question that we provided, literally every back up document for it. And they are there. Didn't know it was hidden in a spread sheet, in a hidden cell and if someone would have asked me in April, I would have generated the hidden cell.



**Francis:** And again, I'm not asking you to itemize each expense, I'm just asking to tell me what, generally what those expenditures were. I mean, that's a pretty big delta between the purchase price and the...

**Baird:** And if you had asked me that in April, I would have provided it for you today.

**O'Grady:** Can you just read down that list. I mean, what are those expenditures generally?

**Armstrong:** Ok, hold on. Where was that again? Umm... It's not on that page. Oh, there it is over here. Umm... the hard costs... umm... there was that one here, I mean... um... I don't know what that was... um...

**Baird:** We can't summarize it on the fly.

**Breen:** Don let me summarize some of the stuff that was in the RDA loan. Architectural fees, building supplies, there's some demolition, sounds like pre to me coming in when there was demolition done. Engineering, equipment rentals, some plumbing that was put in, permits and fees.

**O'Grady:** There's wages in there. Who are those wages paid to?

**Armstrong:** They were to a guy named Guy Byman

**O'Grady:** His function was?

**Armstrong:** He was doing the initial demolition

**O'Grady:** Demo, ok.

**Francis:** But I think what you are referring to is the amounts that were spent of the RDA money and then paid back right?

**Breen:** Yeah, I believe that's what I'm pulling up right here. That sheet in front of me.

**Francis:** Accepting that as stuff that was done to the property that pushes up to about 8. So what's the 100 extra 6 or 700,000 thousand we are talking about? I mean, Mr. Armstrong, you should probably have a general idea of what you have spent your money on right? Without needing to go through your books and look at every expense, that's really what I'm asking for.

**Armstrong:** Excuse me for that opinion of yours about the way that I do business sir.

**Francis:** I'm just asking a question. If you can't...

**Armstrong:** I do a lot of things, I have to really look at the back of the spread sheet.

**Francis:** I'll just go with what's been given and um...

**Baird:** It doesn't matter, you're going to vote against it. I don't really care.

**O'Grady:** Ok. So we have established that there, that they have presented us with numbers on expenses that they have used, expenses that they have incurred to date on each property. We have expenses or maintenance expenses or upkeeping expenses. Engineering, architecture.

**Francis:** Attorney's fees.

**Baird:** Just for the record, may I make it clear. I want to figure out if Mr. Francis believes that Mr. Armstrong should have tried to hack his way through a code that the City believes is unintelligible and has repeatedly stated is unintelligible without competent council?

**Francis:** No, all I'm trying to look at is what the actual cost are rehab.

**Baird:** Then it doesn't matter whether there are lawyers fees in there does it?

**Francis:** I don't think lawyers fees are a cost of rehabbing in my view. I don't think that's a cost of rehabbing these buildings.

**O'Grady:** I'm going to you know

**Francis:** That's my view

**O'Grady:** I'm going to disagree with you. There are

**Francis:** unless they are related to acquisition of the property or other things related to the reconstruction of the property but I think we are looking at the floor if you will in terms of what the cost is compared to the probable sales value. I'm not sure that we can include that extra 750,000 dollars. I just don't we can,

**Armstrong:** Let me say that that's 750,000 is not going to change the numbers

**Francis:** Ok, well that's fine

**Armstrong:** It's not going to make a profit #1 and #2 this is you speculating on what somebody else might have been able to do. But this is what happened.

**Francis:** Just to point out the standards in the code that we are talking about in the K-2-D sub 2 estimate of the cost of the proposed construction, alteration, demolition or removal an estimate of any additional cost that would be incurred to comply with the decision of the Historic Landmark Commission concerning the appropriateness proposed alterations. I don't think the City would take such a restrictive view of what can be included on that. Well it says it would be incurred to comply with the decision. Not to challenge the decision. I think it's pretty clear in his face that those costs would not be, they're not, shouldn't be considered in the evaluation of whether or not it's economically feasible. That's my view, that's my reading of the regulation.

**O'Grady:** Ok. Yep, I get it. So lets get back to looking at the standards and just taking through some of the standards.

**Francis:** Sure

**O'Grady:** And you have, we have the summaries here, we have the ordinance which has greatly detail on the standards and we can just start going through that. It maybe and again, it may be easier to sort of talk about a number of these properties, there are some properties that I think will meet certain standards and some wont. And so, lets see if we can distinguish that in our comments and rather than going through each one with the standards individually maybe we can cluster some of that discussion together. Ok. So...

**Baird:** Madam Chair may I suggest that the process be similar to what Judge Waddoups is using in the RS2477 cases. Which is to the 7 properties, just pick a bell whether, pick one of them because there's going to be no material difference between 7 of them and the other 6 similar. Pick a bell whether, discuss that and then just aggregate it and say is there any difference between the 6 of them. That seems like a logical way to get us out of here before midnight.

**Nielson:** I think you are making a judgement that the panel needs to make.

**Baird:** I understand that, I was making, that's why I made it as a suggestion.

**Nielson:** Lets let them make that determination

**O'Grady:** Yeah, and I did... There are 9 properties and I did suggest that from my perspective is at, there maybe a couple that we can, I think we can talk about these in clusters. My opinion is that we, that 2-8 are maybe different than 1 & 9. Am I getting that right?

**Armstrong:** No, The duplex is 2 of the properties.

**Baird:** There's 10 total properties.

**Oktay:** When you're referring to 2-whatever...

**Francis:** Yeah, the numbering is confusing

**Oktay:** The number is different because

**O'Grady:** It is

**Okta:** are you using, if you're using a,b evaluation it's a through

**O'Grady:** Yeah, I was looking at

**Okta:** Just so for the record we are all following the same

**O'Grady:** Yeah, Yeah I was looking at something.

**Baird:** I missed placed my evaluation sheet. Do you by any chance have a spare copy of the evaluation sheet?

Thompson: Yes

**Baird:** Thank you so much Amy, I appreciate it.

**O'Grady:** Right. Ok, so umm..

**Baird:** Thank you so much

**O'Grady:** I'm looking at the web and associates report which has an ariel and it has the properties numbered 1-9. I understand that the duplex counts as 2.

**Francis:** Right, we can maybe say 8a and 8b if you wanted to on the duplex.

**O'Grady:** Well they would be 9a and 9b

**Francis:** or 9a and 9b. I think it would be helpful if we go by the numbering they use because

**O'Grady:** Yeah, Ok

**Francis:** Otherwise it's confusing. But the way this goes it's lettered

**O'Grady:** Right

**Francis:** and they're not in the same order as the numbers that were used with the engineering report.

**Thompson:** I think those maybe in the way I've ordered them, I think maybe in the same order that the hardship report has them in.

**Francis:** Yeah, ok

**Armstrong:** I found that just trying to use the address is helpful. What you're talking about is 432 North 300 West and 241 & 245

**O'Grady:** Yeah

**Baird:** and the duplex is 265 and 267

**Armstrong:** Yeah, 265 and 267

**O'Grady:** Wait the duplex is what?

**Armstrong and Baird:** 265 and 267

**Baird:** If you look at your evaluation sheet it has them probably the easiest way because Amy has put them in increasing numerical order of the address and that really works really nicely because A-G are the singles, H is the duplex and I is 432 and that really seems to be a, to me anyway, a very logical way to consider them

**Armstrong:** Yeah

**O'Grady:** So, we can discuss this any way we want but I was thinking A-G are, have some similar qualities and some similar issues that we can discuss and then maybe do H and I separately.

**Francis:** Well 248 seems to be an outlier from that group. And I would agree with you

**O'Grady:** ok

**Francis:** the frame buildings that need foundations

**O'Grady:** Ok

**Francis:** would probably be grouped together.

**O'Grady:** Ok, so then lets pull out "C". So we'll be talking A, B, D, E, F and G as a group.

**Taylor:** What's the difference why you pulled out "C"

**Francis:** Well it's occupied, has a foundation

**O'Grady:** Yeah and it is discussed differently in that web report. It does, the web report has some, something to say about that too. So lets do that, so we are now discussing A,B,D, E, F and G in general. And if we... So I'm just going to start running through these criteria here

**Baird:** The hynt eligible criteria?

**O'Grady:** Ok, the standards, Um... the knowledge of historic designation for the property. I think the applicant has noted that he was aware of the historic designation at the time he acquired the property.

**Francis:** and that applies to all of them across the board?

**O'Grady:** Yes it does, right, right.

**Baird:** We will stipulate to that to save time.

**O'Grady:** Thank you. The current level of economic return on the property, um...

**Francis:** I think we need to look at the definition on that and the.... Are we talking about the current value or just whatever income is coming off it.

**O'Grady:** Well the ordinance has if you look at paragraph "B" in the ordinance it discusses the current level of economic return with a number of factors but you know

**Francis:** The first is the amount paid for the property. Then the gross and net income rain and balance on any mortgage. There's no mortgage on any of these. All appraisals in the fair market value of the property immediately prior to its designation and the fair market at the time of application. So it's kind of, it's a little bit ambiguous in terms of the heading here. It says the level of economic return

**O'Grady:** Well I think the ordinance is ambiguous, that's the problem.

**Francis:** Well I think when you pair it down though as to in consider in relation to following, you have to look at the detail. I think that the amount that paid for it, I guess my view sort of in this is, the amount that was paid and the amount that it's worth now gives you some indication of what the level of return is. If nothing else. If it hasn't been income generated from it, at a minimum, if you paid \$40,000 for it and it's worth \$100,000 now then there's been a \$60,000 increase in the value of the property and thus the economic return from that investment.

**O'Grady:** Um...

**Baird:** What?

**O'Grady:** Except, hold on. I'm trying to find this in the ordinance.

**Baird:** I know I'm the one who should be telling myself to relax but

**O'Grady:** Trying to find what I read in the ordinance

**Francis:** So we could just read through it but it's "B"

**O'Grady:** It's paragraph "B" right and it, um... trying to find the subparagraph here. Where is it? Fair market value prior to designation as a landmark site and fair market value of the property as a landmark site at the time the application is filed. So

**Francis:** That's 1 yeah that's 1 of the considerations

**O'Grady:** So you're saying that fair market value prior to its designation, I'm sorry, let me ask the applicant. When you purchased these were they already on the register?

**Armstrong:** Yeah, so we don't know what it is.

**O'Grady:** Right. So we don't know what the fair market value was prior to the designation

**Francis:** No, we don't.

**Baird:** That's why the standard on the ordinance is ambiguous, that's why we can go home because of Patterson vs Utah County Board of Adjustment.

**O'Grady:** Well, Ok. And without that information I just don't think that we can conclude that there's a return. A do economic return based on fair market value the deferential.

**Francis:** Well I disagree. I think there's been a return on just in the increase of the value of the property since it's purchased. That's my point. There may not have been any income from it, but if you actually took the value of what he paid for it and what it's worth now and you deducted what he's paid in taxes over the period of time that he's held it, he's made money on the property.

**Armstrong:** You can't sell it for that money until you can demolish

**Francis:** I'm just going through the factor analysis.

**Baird:** There's no point in arguing

**O'Grady:** Ok

**Francis:** That's otherwise I guess

**O'Grady:** I don't see that, yeah

**Francis:** Otherwise you are saying the current economic return is zero. It's either zero or the it's the difference between what he paid for and what it's worth. Seems to me. Because there's no other activity.

**O'Grady:** And I guess I would say that the economic return is um... I could see the argument from a zero economic return on those. He bought them when they were on the Landmark

**Francis:** Right

**O'Grady:** on the register, nothing can be done with them until something, until the condition of the properties is somehow address or mitigated.

**Francis:** Right

**O'Grady:** So no money is made. There's no money being made until that happens. Until that can happen.

**Francis:** Well I would agree with you if that was the way it was defined. It seems to me that there's, the ordinance is definitely taken into consideration of what was paid for the property and what the property is worth. So now, so there's clearly a distinction between what was paid for and what the property was worth. I mean, if it's your opinion that there's, that he's made zero economic return on the investment, I think that's inconsistent with the increase in property values.

**O'Grady:** Mmm...Hmm.. Mmm...Hmm...

**Braid:** May I suggest that you take a vote on that issue because obviously we know where Mr. Francis's position is. Let's just vote

**O'Grady:** Um... before, yes go ahead

**Nielson:** I was just going to say, from this point forward, I think it would be beneficial if we just had the panel having the conversation

**Baird:** I'll be quiet

**Nielson:** Without interruption, I know that's hard

**Baird:** I'll be quiet Mr. Nielson

**Nielson:** Thank you

**Armstrong:** I want to make 1 point, That is he is saying there was an appraisal the way it is now. That appraisal is based on the assumption that they're demolished.

**Baird:** right

**Armstrong:** That's not based on, they're not valued at that today.

**Nielson:** I think that it would be fair for the panel to have their conversation and ask for comments on those

**O'Grady:** Right. And that's my point is that the appraised value, the current appraised value assumes that there is some mitigation of the property one way or the other. The condition of the property has to be mitigated.

**Baird:** Madam Chair I promise not to say anything as long as I may have a standing objection to the fact that Mr. Francis simply doesn't understand the code and is doing everything he can to demonstrate his bias and vote against us

**Francis:** You've made, you've registered that objection

**Baird:** I'm done

**Nielson:** You've registered that objection multiple times.

**Baird:** I'm done

**O'Grady:** Alright, from here on out it will just be discussion from the panel and we would invite discussion from the staff as well. Let me ask the staff, so if we go through each of these, the criteria here... What does that mean? We may say, collectively we might say oh well, um... lets ok we collectively agree or the majority of us agree that there is no economic return. So, what does that mean though because then there are several other criteria to consider. What do we do? Are we asked, do we just consider a preponderance of the criteria? Is that?

**Oktay:** You're gonna go through the criteria and make a finding on a,b,c,d, etc. and then we are hoping you will take a vote of some sort

**O'Grady:** Right

**Oktay:** Right, to meet the definition of economic hardship. Whether the regulations are depriving

**O'Grady:** Right

**Oktay:** the applicant of all reasonable economic user return of the property.

**O'Grady:** Yep.

**Oktay:** based on,

**O'Grady:** Right

**Oktay:** I know its

**O'Grady:** Ok

**Oktay:** not spelling it out

**Francis:** So one other point from my perspective, I think I pointed out that the regulation speaks in terms of what was paid for the property, what the property is currently worth, it also in subsection 5 talks about all appraisals obtained within the previous 2 years. All that to me suggest that the value of the property now in comparison is relevant to determination of economic return. And for Mr. Bairds benefit, I actually majored in economics in college so I do have certain understanding

**O'Grady:** You know what we are absolutely not, we are done with that Ok. I'm just going to say that one more time Lewis and I'm serious, we are done with that.

**Francis:** So, I think economic return is is the value of your investment and any increase value in your investment is an economic return. That's my view

**O'Grady:** But that, see, it just doesn't make sense to me in the context of this conversation because property values, um... you know, say for the great recession or other catastrophic times in our economy and disruptions, property values tend to

increase. So you would say, anybody purchases something, a piece of property anywhere in this land and there is economic and there's got to be an economic return because property value has increase. That, I don't think that's the question being asked of us here.

**Francis:** Well I think the reason this factor is in there is to determine whether or not the owner is actually losing money. I think that's the reason this is in here. Honestly. And I also think worth considering too that if you say that the property is now, we should be considering if we are creating a windfall for the applicant by saying he is now indicated the property is worth 1.65 million if the building is removed

**O'Grady:** Uh, huh

**Francis:** So if we were to decide as a panel that it's an economic hardship to rehab these buildings we are in fact giving the applicant a windfall because when he bought the properties

**O'Grady:** Yeah and

**Francis:** and we are subject to this

**O'Grady:** that is not, and the ordinance doesn't ask us to consider whether or not the applicant is going to benefit

**Francis:** But it does ask us to consider whether the applicant is losing money. My perspective is that the applicant is not losing money because these properties have continued to increase in value and will continue to increase.

**O'Grady:** Ok, So, I'm going to change my opinion on that and I will agree that there is very likely some increase with some property value, just property value alone and it is a nominal increase. I think it is a nominal economic gain on the value of the property, Yes

**Baird:** The value is based on sales and ability and if it's not saleable there really is no value.

**O'Grady:** that is true.

**Francis:** Well and again it also says the previous two years, all the evidence that has been submitted regarding the attempts to sale the property are more than two years old. In fact, all the evidence that was submitted was back from 2012 and 2013. So there is no current evidence that the applicants tried to sell the property or what the value of the property would be if he intended to sell it. It does limit it to two years prior to the application.

**O'Grady:** So lets go back to our little checklist here, the current level of economic return on the property review planning findings; is there and I don't think this has to a yes or no, Is there economic return, I think we can have a little bit of flesh on that bone right? So I guess my opinion would be that there is a theoretical but nominal increase in property value which can't be realized until the property is able to be sold.

**Francis:** Well I would agree there is no current income on the property and would agree that there has been an increase in the value of the property since the purchase. So that would

**O'Grady:** Ok and

**Francis:** Without quantifying what it is

**Taylor:** And you can't look at it from a hypothetical standpoint

**Oktay:** can you use the microphone. I'm the microphone police over here.

**Taylor:** They didn't give me one so...

**Baird:** Here, I don't want my microphone

**O'Grady:** Are you capturing these notes or do we need to write them down? Will they be in the record?

**Thompson:** They are being recorded

**O'Grady:** Ok, So

**Oktay:** We are recording and we are trying to take notes so

**O'Grady:** I think that um, we range a little bit in opinion but generally um... there may be value but it cannot be realized until the properties are able to be sold.

**Baird:** Right

**O'Grady:** Ok

**Oktay:** Sorry Merlin, I was, I interrupted you because I wanted you recorded. Did you want to finish any thoughts?

**Taylor:** It was just you can't look at any of this based on the hypothetical situation. The value is based on the property being able to have title insurance and be able to be transferred in title and until that happens there is no value, there is no increase in value.

**O'Grady:** Ok lets move on to the next item which is item "C", the market ability of the property for sale or lease considered in relation to any listing of the property for sale or lease.

**Francis:** And price asked and offers received in the past two years

**O'Grady:** And price asked and offers received within the previous two years. So, we have no information that is within the previous two years, within the previous two years of the date of the application.

**Francis:** Right

\*Inaudible

**Armstrong:** No one's going to buy it dude, figure this out.

**O'Grady:** Any information you can share?

**Oktay:** I don't think so.

**O'Grady:** Ok, that's ok. Alright, so we have no information then that is within the previous two years.

**Thompson:** I believe that is correct. I think the information they provided is outside of that two years.

**O'Grady:** Ok. Item "D" the infeasibility of alternative uses that can earn a reasonable economic return for the property. And...

**Francis:** I think this is where it gets the mead of it as it relates

**O'Grady:** Yep

**Francis:** to engineering reports

**O'Grady:** Right

**Francis:** and the construction costs.

**O'Grady:** So we are just considering the first cluster and I think the engineering report is kind of clustered along those lines as well.

**Francis:** Well if you look at the actual ordinance so it's "D" and then it's got the 4 sub points

**O'Grady:** Yeah

**Francis:** Ok, you're looking at the same thing, ok

**O'Grady:** Yeah. So the report from the engineer

**Taylor:** Are very clear. If you are used to reading engineering documents there's no mistaking with what they are proposing and what can be done with the buildings.



**O'Grady:** Well, lets see

**Francis:** Well lets look at each one of those. So report from a licensed engineer with experience in rehabilitation in structural soundness of some these structures of property and their suitability for rehabilitation. So seems like there's 2 separate things there. I would agree that on 2 of these properties, I think, Um... As they numbered in the reports it was #2 & #5

**O'Grady:** Building 2 and building 5?

**Francis:** Yeah, 262 West

**O'Grady:** Is this from the web report, from the web?

**Francis:** Right.

**O'Grady:** Yeah, Uh... huh...

**Francis:** So 262 West Bishops Place and 241 West Bishops Place, those were the two that I think both engineering reports identified as being in extremely bad condition

**O'Grady:** Right

**Francis:** and likely to collapse. Those were the only 2 that either of the engineering reports specifically made that comment. They said some portion of 249 West Bishop Place and some portion of the duplex at 265 and 267

**O'Grady:** Right

**Francis:** Not that category but they didn't make that comment on any of the other properties.

**O'Grady:** Right, so I would agree, buildings 2 & 5 are you, is everybody tracking with this? The property identification

**Francis:** 262 West and 241 West those are 2 & 5

**O'Grady:** Right, so...

**Taylor:** A & G

**O'Grady:** Pardon me

**Taylor:** A & G

**O'Grady:** uh...

**Taylor:** The numbering system

**Francis:** Is that the lettering number

**O'Grady:** Yeah, A & G. So, A & G is, the report does say very clearly here that 2 & 5 are in imminent danger of collapse, 4 & 9... Portions of 4 & 9 have imminent danger of collapse.

**Francis:** Is that 4 or 5?

**O'Grady:** It says 4. Buildings 2 & 5 are in imminent danger of collapse

**Francis:** Ok, and then 4 and

**O'Grady:** And building 4 & 9; portions of those buildings are in imminent danger of collapse.

**Francis:** Right. Although 4 is the one that is actually occupied and the only comment was made was the engineer didn't go inside of the building he was just commenting on the back porch, I believe

**O'Grady:** Right

**Francis:** So it's some small portion of 4

**O'Grady:** So 4 & 9 and 2 & 5 and which of our cluster are missing here then? This group, this first group that we are talking about. Because, you know what would help me, could we just take a second, so on this list

**Oktay:** absolutely

**O'Grady:** Tell me what numbers, what relative to the, related to the...

**Oktay:** Yeah, let do that. We need a key

**Baird:** Lets do a few coordinates, isn't that what it's called?

**O'Grady:** Yeah.

**Thompson:** So, just to clarify you are looking at the Robert Conder report?

**O'Grady:** Um... Yes, I am

**Thompson:** Ok, so

**O'Grady:** And there's an ariel and the buildings are all numbered 1-9. I get which one is #1 and I get that here I is 1. Um... A is 241 so that's building..

**Thompson:** #2 is 262 West

**O'Grady:** 2 is 262 West, hold on, Ok... got it

**Thompson:** 3 is 258 West

**O'Grady:** K

**Thompson:** 4 is 248 West

**O'Grady:** K

**Thompson:** 5 is 241 West

**O'Grady:** K

**Thompson:** 6 is 245

**O'Grady:** K

**Thompson:** 7 is 249

**O'Grady:** Yep

**Thompson:** 8 is 259

**O'Grady:** Hm...

**Thompson:** and 9 is the duplex

**O'Grady:** Got it

**Thompson:** 265 and 267

**O'Grady:** Ok, good. Whew, that helps. Ok...

**Francis:** So, seems like the second part of that factor and their suitability for rehabilitation and I didn't really get a sense of that from the engineering reports. I mean it talked somewhat about the problems with the buildings but I don't know, do you disagree that, that wasn't really addressed in the engineering

**O'Grady:** It was not thoroughly, it wasn't well addressed, the suitability for rehabilitation only the structural issues.

**Francis:** Although, I would admit acknowledge that I think they did point out that with respect to those frames structures without foundations that, that would be an issue. I think that was also addressed by the contract from terms the additional cost on those structures.

**O'Grady:** And which of the buildings, we can use the number instead of the address, were the frame structures with no foundation?

**Francis:** I think that's that group

**O'Grady:** All, yeah, all is that A-G? Is it all A – G? Or, I can't remember, does "C" have a partial foundation? "C" has a partial foundation.

**Francis:** And now you're going back to the letters again. How about we stick with the numbers.

**O'Grady:** Yeah, ok. Sorry. Ok, so um...

**Francis:** Lets just use the numbers cause that's easier to track. So, 1 is the 3<sup>rd</sup> West building that does have a foundation

**O'Grady:** Yes, correct

**Francis:** So 2 & 5, I think we have already identified those are the bad ones. Those are both lacking foundation

**O'Grady:** So 2, 3, 5, 6, 7 and 8 do not have foundations.

**Francis:** Well I'm confused on the one. Which is the occupied building? Is that?

**O'Grady:** Occupied building is 4

**Francis:** 4. Ok, so you didn't include that with group

**O'Grady:** I did not. That house a foundation doesn't it

**Francis:** It does

**O'Grady:** Yeah, so... and 1 has a foundation and 9 has a foundation. So it's 2, 3, 5, 6, 7, and 8 that do not have foundations.

**Thompson:** Correct

**O'Grady:** Ok

**Francis:** Ok

**O'Grady:** So I would, for those buildings, I would say that those are, that's my original cluster of buildings.

**Francis:** Right

**O'Grady:** Yep

**Francis:** I think it's fair to say that there will be increase costs with those buildings but I don't think any engineering reports said that it couldn't be done. But that they would all require foundations

**O'Grady:** Uh huh... Um... Ok, So if we go back to these criteria just on these, not counting, not discussing, 1 & 9 at the moment

**Francis:** Or 4

**O'Grady:** Or 4, right. Taking those out of the equation. We are to consider the suitability for rehabilitation. So again, that is some pretty vague language, suitability for rehabilitation.

**Francis:** And again, I don't think either of the engineering reports expressly stated that they couldn't be rehabilitated. They just pointed out some issues.

**O'Grady:** Yep

**Francis:** I do acknowledge on 2 & 5 though, they pointed out some significant issues with the structures that would play into the testimony from the contractor that it would be difficult to remove those structures, lift them up in poor foundation because of the missing supports.

**O'Grady:** Yeah, well all of the structures without foundations. Or are you just talking about 2 & 5

**Francis:** Well I'm just talking about 2 & 5 because I didn't see any specific issues with the frame structure identified in the engineering reports as to the other properties.

**Taylor:** There is very little difference between any of the structures without foundations.

**O'Grady:** I, that is where I'm falling in on this one too

**Taylor:** Whether they specifically talk about imminently going to collapse, they are all in inhabitable conditions.

**O'Grady:** And that's kind of where I'm falling on this. I feel like the lack of the foundation, the added, I agree that the engineering report specifically addressed 2 & 5

and but I think I also read in there about the difficulties of having to raise and remove members of the structure in order to get a foundation. So my opinion on that one would be that, those, that cluster of buildings, the frame buildings without a foundation are very difficult to rehabilitate. And the estimated cost of the proposed construction is significantly higher than the cost of new construction or rehabilitation of a non-historic structure. Any comment on that Lewis? Estimated cost of proposed construction?

**Francis:** Right. I don't know that we know exactly what it is but I would agree that it's significantly higher than trying to rehab a building that already has a foundation and/or is currently in livable condition.

**O'Grady:** Ok

**Francis:** So I would agree that it's significantly higher

**O'Grady:** Ok. The estimated market value of the property in the current condition after completion of the demolition and proposed new construction and after renovation of the existing property for continued use. This is really confusing to me. What does that mean exactly? Estimated market value of the property in the current after completion of the demolition; we don't know there's going to be demolition

**Francis:** Well, I think...

**O'Grady:** And proposed new construction. We don't know what the...

**Francis:** Well, I think if you look at the semi-colon there they are wanting you to compare the two things. One is the market value of the property if the buildings were demolished and new buildings were put up as opposed to the property value after renovation for continued use. So if you're comparing the two. I don't really sure what the point of it is but if you, if the owner was able to demolish all the buildings and I don't know put an apartment building there with 30 units. The value of that would be as opposed to renovating the existing buildings. Although, in this case there's no proposed new construction so I don't think we can even make that determination. I think it's not a factor because there's no new proposal and we're not comparing a new proposed new construction to demolition. All we are looking at is demolition.

**O'Grady:** Right. I guess we can note that in the report. There is no proposed new construction.

**Francis:** I think that's what we should note.

**O'Grady:** The market value after renovation of existing properties that just, I don't...

**Francis:** I think we do have evidence there. I mean we have the originally proposals what the value would be. Approximately 5 million dollars.

**O'Grady:** Right. Ok...

**Francis:** I think even if we looked at the appraisal that they submitted, what was the total, maybe you can help us on this the appraisal that was submitted last August what was the total value?

**Thompson:** You mean, the 2017 one?

**Francis:** Right

**O'Grady:** Yep

**Francis:** I have it here let me see

**O'Grady:** And then we, while she's finding that... the testimony of an architect, developer, real estate, consultant, appraiser or other professional experience in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing

structure of the property. Um... I think the testimony that we heard is, the cost is extreme.

**Francis:** Well, I think you have to separate that out as to the buildings without foundation.

**O'Grady:** I'm just talking about cluster of buildings, to be clear again, I'm just talking about this cluster of buildings

**Francis:** Ok

**O'Grady:** 2,3,5,6,7 and 8 no foundation. The cost is extreme.

**Francis:** Although I would also point out the inconsistency between the prior proposal to the RDA when the loan was sought and the current estimates both which were provided by the same contractor.

**O'Grady:** And then item "E" is economic incentives and or funding available to the applicant through programs, various programs. So, we now have some

**Francis:** We have evidence

**O'Grady:** Information that there is some, that the tax credits would be available, historic rehab credits would be available Federal and state.

**Francis:** And State is 20 and Federal is 20 for a total potential of 40.

**Baird:** Federal is only for rental

**Thompson:** Yeah, so, if they just had it as residential property then it's 20%, if it's a residential income property then it's an additional 20%.

**O'Grady:** Yep. Yeah, go ahead.

**Taylor:** Which rules out the Federal tax credits.

**O'Grady:** Yeah, I agree. We can't force them into that and force that to be the decision so, you know we're looking at the State tax credits, the value of the State tax credits which... So there are some incentives. They are... Um...go ahead

**Taylor:** I think Bruce's comments at the beginning of our hearing today were very on target. And he gave us the math and then tax credits expire after 3 years depending on your tax situation at a given time you may or may not be able to take advantage of the tax rebates from the State and you might also only get a very small portion of that.

**O'Grady:** Yeah, tax credits are uh... you know, that is a... we can look at that and say, well there's a sub city there available but it really is only available if under a certain set of circumstances.

**Francis:** But I think we can agree that tax credits are available for this type of property. Whether or not the particular applicant chooses to use them or sets up the structure of this development situation to use them is really outside of the scope of what we are looking at isn't it? Because really it just says; economic consensus and/ or funding available to. I think there's evidence that there's at least a 20% tax credit that would be available for these buildings.

**O'Grady:** I guess that's true. They are available. I would note though that, you know tax credits are a, they are of value under a very certain set of circumstances and we don't know that, that set of circumstances would apply in this transaction. We just don't know that. We can't know that. So, I would note that in the report. So, ok we've gone through the criteria as they relate to 2,3,5,6,7,8, these are the frame structures without a foundation. And I think what we just need to do is determine whether or not a economic hardship exists for these 6 structures

**Nielson:** Ms. O'Grady I'm having this internal battle right now, the rules of professional conduct that govern attorneys dictate that an attorney must show candor towards the tribunal and this respect Mr. Baird raised the point of Patterson vs. Utah County, the panel has mentioned on a couple of occasions tonight that there are some ambiguities in the ordinance. Patterson vs. Utah County, and if you wish to have Mr. Baird expand on this...

**O'Grady:** No thank you, you're doing fine

**Nielson:** Patterson vs. Utah County dictates that in the land use ordinance where there is ambiguity in a land use code, it must be construed in favor of a property owner. That was codified in the 2017 General Legislative session. It's not something that I would normally volunteer...

**O'Grady:** Yes, I know. If there's ambiguity in the ordinance

**Nielson:** It needs to be construed in favor of the property owner. That's all I can say. I've been candid towards the tribunal.

**O'Grady:** Thank you.

**Thompson:** Can I clarify? You were talking about properties 2,3,5,7,8

**O'Grady:** Yep. 2,3,5,6,7,8

**Thompson:** Oh 6, ok

**O'Grady:** Um... Thank you for that information. That actually helps me, it may help other of the panelist here, maybe not.

**Nielson:** Codification is not something I necessarily agreed with

**O'Grady:** Right.

**Francis:** Well and I think we only at least in our discussion so far we only identified a couple of areas with potential ambiguity so, I don't think there's any agreement that the ordinance as a whole is ambiguous but some of the language might be construed that way.

**O'Grady:** Ok, as it related to 2,3,5,6,7,8... are we prepared to take a vote? Do we have enough information here? We've gone through our points adequately?

**Francis:** Sure

**O'Grady:** Ok, Lewis, I'll start with you

**Francis:** Based on the factor analysis in the ordinance, I don't think that the applicants met it's burden to show that there's an economic hardship with respect to those properties.

**O'Grady:** Ok

**Francis:** There's only 1 factor out of the 1,2,3,4...5 which has any evidence to support their application. The others are either neutral or contrary to the application.

**Taylor:** I believe the applicants have proved their economic hardship on those properties

**Nielson:** So if we are doing this as like the formal motion, there needs to be a second on the motion

**O'Grady:** Would you prefer, do we need to do it as a formal motion

**Nielson:** You don't, we don't have to but that's the format we appear to be following the motion format. If there's no second on the motion, the motion fails.

**O'Grady:** Ok so, so you are construing the first comment to be a motion? Is there a second

**Nielson:** I think that's how you

**Francis:** I'll second the motion

**Nielson:** Is that how you stated it Mr. Francis

**Francis:** I didn't say it as a motion, she did

**Nielson:** Ok, based on, I heard based on the testimony and the information and...

**Francis:** Well I thought Claudia was asking for my vote based on

**Nielson:** Ok

**O'Grady:** Yeah I was. I didn't, I wasn't doing this a formal motion

**Nielson:** Ok, then we can do it however you want.

**O'Grady:** Ok

**Nielson:** We really as I mentioned previously, we don't have a good set of instructions for this...

**O'Grady:** Uh, huh... I get it

**Nielson:** So we can do it as a vote

**O'Grady:** The word ambiguous.

**Nielson:** Thank you

**Francis:** I guess if you want to make a formal motion, the formal motion would be that we haven't gone through the various factors as they relate to the identified properties of each of the panel members is going to indicate it's vote with respect to those properties. If you want to second that...

**O'Grady:** Do you want to second that motion

**Taylor:** No.

**O'Grady:** I think the motion was just that we would vote

**Nielson:** Ok, forget what I said

**O'Grady:** Yeah, ok. So lets just...

**Nielson:** Do it however you're going to do it

**O'Grady:** We're just going to vote. Go ahead and lets... please

**Taylor:** As much as I love conducting meeting with Robert's rules, this is not anywhere in the universe of doing Robert's rules and I believe our comment saying yes or no is adequate

**O'Grady:** Ok

**Taylor:** If that's ok

**O'Grady:** Yeah

**Nielson:** I thought we were going down a different road. However you want to proceed is fine, just as long as we each provide the rational for our votes.

**O'Grady:** Right, Merlin do you want to go ahead

**Taylor:** Well I believe I voted saying

**O'Grady:** Did you get that on record? I guess we did we got it

**Oktay:** Can you repeat that?

**Taylor:** I certainly can, I believe the applicants have proved the economic hardship on the 6 lots that we have been discussing for the last half hour. [5:54:36 PM](#)

**O'Grady:** Yeah and my vote is also that the applicant has met the burden of evidence as it relates, as it is so called for under the ordinance... um... to demonstrate economic hardship on these 6 properties; 2,3,5,6,7,8.

**Oktay:** Thank you

**O'Grady:** Thank you. Ok, which one do we want to discuss next?

**Francis:** You're the boss

**O'Grady:** Ok, how about property... let's go to the property #1 which is the 300 West property. Property #1. And we will start again, just running through the criteria of the ordinance. Ok, the first element we have agreement on that it was known that it was on the Landmarks. Current level of economic return on the property in relation to all of these other criteria... and we have information on amounts paid... um...

**Francis:** I think we could just say the same thing we said on the last, right?

**O'Grady:** Yeah, right, I agree. Annual gross in net income if any from the property for the previous 3 years there's been none, right? Remaining balance on mortgages, there are none. Real-estate taxes; we have that information and we've reviewed it. Appraisals obtained within the previous 2 years; we have the appraisal from August of 2017, correct?

**Francis:** That's actually for other properties

**O'Grady:** Oh

**Francis:** Compares. I think, I don't think there's any evidence's to the appraised value of these properties other than what was submitted as to the value without the buildings. Correct me if I'm wrong

**O'Grady:** No, I think you're right. The appraisals are valued without the buildings, right

**Francis:** Though, I think what we said before is correct. That we would agree that the properties increased, is likely increased in value but we don't know what that is. And there's no current income on the property.

**O'Grady:** And there's no current value to it unless, or no current appreciation of value until it can be sold. Until that, that appreciation can actually be realized. And that is true for #6 too. The fair market value of the property before designation, we just, we have no information on that and the fair market value as a landmark site, we just have no, no information on that delta. Anything else on item "B" the current level of economic return? Ok. Market ability of the property for sale or lease. Again, we've had no marketing effort in the previous 2 years, right?

**Francis:** Right

**O'Grady:** The infeasibility of alternative uses that can earn an economic return for the property as considered from all of this information. A report from the engineer or architect with experience in rehabilitation. Lewis, do you have comments on this?

**Francis:** Well, I don't. I mean, I would agree with you that the engineer had some specific concerns about the frame buildings and lack of foundation and their imminent collapse, but I didn't see anything to that level or even near that level with respect to the brick building on 3<sup>rd</sup> West, So...

**O'Grady:** Right.

**Francis:** You said it could be retrofitted in fact, it wouldn't require any foundation.

**O'Grady:** It would just, this one just needed some repair in the foundation. There were some cracks due to movement and it just needed some repair in that foundation, is that correct? Yeah, go ahead

**Taylor:** I don't believe the engineer had specified fixes, remedies or what's going on. There's substantial settling going on with that building and the means to fix that is with helical piers, push piers, you have to excavate the entire perimeter of the building and more than likely, and this is just based on other properties, that those piers would be placed anywhere from 4-6-8 foot on center around the entire perimeter. And they would



become, they would stabilize the building but there is no remedy similar to what I just discussed in the engineering.

**Francis:** I think it's fair to say there wasn't any evidence in that regard

**O'Grady:** Well, what their engineering report says is that on, for building, buildings 1 & 9

**Francis:** Right

**O'Grady:** Foundation retrofits would require new concrete walls, be cast or shotcrete installed to the face of all existing walls and footings. Footings would most likely need retrofitting also to support the new loads. So um... yes

**Taylor:** Again, building 1 on 3<sup>rd</sup> West, is unique to all the rest because of the style obviously and because of the basement

**O'Grady:** Right

**Taylor:** The other foundations that we are dealing with are just frost foundations down approximately 30 inches to 36 inches below grade so, it's a whole different animal with building 1

**O'Grady:** Right, ok, got it. This is the building that gives me the most, uh.... I'm having trouble, I'm having difficulty deciding on this building because I think it has potential. I think it has some, it is... it faces 3<sup>rd</sup> West, I think it has some potential as a commercial use and that changes the potential for value on that property to me. Yes...

**Taylor:** I hate to say hypothetical again

**O'Grady:** It is

**Taylor:** There's so many possibilities if you're looking at a property but I have great experience with a home so similar to that, that I talked about it in our last meeting in Holiday and we spent nearly 400,000 dollars in the foundation on that home was perfect fortunately. The rehab costs for that home for residential will be substantially different then the one for commercial property if it was going to be used for, well I don't know what the zoning is in Salt Lake City but in, for a business use or office use because of egress, fire sprinklers and a number of other things.

**O'Grady:** Purchase price of that building was 145

**Francis:** Right. It seems to be a fair amount of room there

**O'Grady:** Yep

**Francis:** To rehab the building. And I agree, I don't think that the engineering reports identify enough issues with that it couldn't be rehabbed

**O'Grady:** Right

**Francis:** And also, most of the extreme cost increases that have been discussed were with respect to the frame building and dismantling the frame buildings and putting the boards aside and rebuilding the buildings and putting the boards back, so I don't think that really applies to the brick craftsman building on 3<sup>rd</sup> West.

**O'Grady:** Lewis do you have a vote on this or a decision?

**Francis:** Um... Yeah, I don't think they met their burden on this, on the 3<sup>rd</sup> West property. I'd like to point out too, I mean I think this really is a factor analysis and we really just been focused on one of the factors and all of the other factors are against the applicant. So I think you really need to look when you get to this last factor then feasibility of alternative uses, I mean that really is just 1 of 5. Then they were looking within those, then if they really haven't even met even that one factor then clearly they haven't met their burden to establish an economic hardship. So, just to further

explanation for my vote, my vote would be that they haven't met their burden on 3<sup>rd</sup> West property.

**O'Grady:** Ok, Merlin

**Taylor:** I believe the applicants have met the burden of proof on that particular building

**O'Grady:** Ok, thank you. Any explanation on that? Or...

**Taylor:** Um... I don't think so.

**O'Grady:** Ok, ok. I am also of the opinion that the applicant has not met their burden on that particular building. Although, I disagree that each factor must weigh in favor of a determination of economic hardship. I think we take these in the aggregate, that's my, that's reading on this

**Francis:** No, right... I agree. I wasn't suggesting that they had to meet all these factors

**O'Grady:** Ok, so...

**Francis:** Supposition would be that they have to meet the majority

**O'Grady:** Right, yeah. So, I would vote that yeah, that's my vote. I think that they have not met the burden on this particular building.

**Thompson:** And that's in relation to 432 North 300 West

**O'Grady:** Correct. Building #1. Ok.

**Francis:** 7 down 2 to go

**O'Grady:** Yep, 2 to go. How about lets take the duplex which is building #5, 5?

**Taylor:** No, 5 was...

**O'Grady:** 4

**Thompson:** I think it's 9. It's building 9

**O'Grady:** It's building #4

**Thompson:** the duplex?

**O'Grady:** No. I'm sorry, I'm confused. Building #9

**Francis:** 365 & 367

**O'Grady:** Yes. I don't know why I would be confused. Now this building, this duplex, the engineer notes that he didn't actually enter the building. Right. So his assessment here is pretty... um... it's just the exterior observations. And this building has a foundation.

**Francis:** Right. What number is this building?

**O'Grady:** 9

**Francis:** 9. Yeah they just said that part of it is bad but I think that was just an exterior portion that he referred to in the engineering report.

**Taylor:** What do you mean exterior

**Francis:** Well, I'm not really sure but if you look at the engineering report

**Taylor:** I have

**O'Grady:** The engineering report says that the back portion of the building has excessive roof and wall damage. But is that the add on portion

**Taylor:** It definitely has damage and deterioration and decay in those areas but the overall original structure is surprisingly in good shape. They original brick in other words and foundation.

**O'Grady:** Right. Alright, so lets run through discussion on this building. The current... actually, I think that these some of these

**Francis:** They're all the same

**O'Grady:** They're all the same. Our discussion on the current level return, the market ability of the property, those items are all the same throughout. It really comes down to

these, this paragraph “D” the infeasibility of alternative uses in the subparagraphs they’re under

**Francis:** Well, I restate my objection to that cause I think that just ignores all the other factors but I understand your position in regards

**O’Grady:** Yeah, thank you. No, I get it. The report from the engineer is, it does not indicate that there is, that this building cannot be rehabilitated or brought to structural soundness or that it’s not structurally sound right now.

**Francis:** Right

**O’Grady:** Right. Merlin, do you have any comment on that?

**Taylor:** Not on the structural issue but on the effect that each building has to the overall value of the property and that building is certainly in that category because there is no question it has the least amount of decay because of time and settling but because of it’s location it has probably more a fact on the overall value of the property then even the one out front. The one on 3<sup>rd</sup> West. The one on 3<sup>rd</sup> West is a little bit by itself facing the street and the duplex is right kind of smack in the middle of the entry.

O’Grady: Now, I appreciate that argument, I do. And I understand the argument but we are being asked to consider these each individually and so, I don’t know that it would be... um...

**Taylor:** I understand

**O’Grady:** Yeah, yeah. Thank you. Lewis do you have comments?

**Francis:** Well, I agree, I don’t think there’s been any significant, uh... what’s the word? There hasn’t been any evidence of any real significant structural issues with that building nor that it couldn’t be rehabilitated. There was some comment by the contractor about how they might have to replace the floor joist

**O’Grady:** Right

**Francis:** But other than that it seems like it’s fairly solid building. I don’t think we are in a position to revisit Landmarks decision that it has historical significance so, we are really just here to determine whether or not could be rehabbed and whether it’s causing an economic hardship. So, again... My vote would be that they haven’t met their burden with this building.

**O’Grady:** Merlin

**Taylor:** I believe the applicant has met their burden of proof

**O’Grady:** And on this building I think that the applicant has not met the burden of proof. I think that this one has enough integrity to it and potential use and we have not had enough evidence to demonstrate economic hardship on this property, the duplex; building 9. 9a and 9b

**Francis:** So all that’s left is the Victorian, right?

**O’Grady:** Yes. And that is building number...

**Thompson:** Claudia, if I could have you just specify a little bit more of what the decision is based off of. You talked a lot about the engineering report so if you can entire a decision to a specific standard, it will help us when we formally do a report

**O’Grady:** Ok, so the... yeah, for me I think it is the engineering report has not made a clear determination that this building is structurally unsound or has fatal structural issues at this point. What the engineering report seems to say to me is that there are some issues that need to be address but they can be address.

**Francis:** Right, and just to be clear what Claudia has been doing is; we made the same factor determination on all of these except for D – 1 through 4, which we're now dealing with on a curb property basis

**Thompson:** Right

**Francis:** I think 3,2 sub factor 3 in every case, there is no proposed new construction so we can't... there's no evidence there so we are really just, the only thing that is really in play if you will, is the structural soundness and their suitability for rehabilitation and the costs associated there with

**O'Grady:** Alright, we are talking now about building #4. Which is the building that is currently occupied.

**Thompson:** Yeah, so 248 West Bishop Place

**O'Grady:** 48, Thank you.

**Francis:** And I think the engineer also indicated that neither went into this building

**O'Grady:** Right.

**Francis:** And that their comments were just limited to some exterior issues and it appeared to be like maybe the back porch was the main issue they had. So, I mean... My view is as with the other two that we have discussed, I mean obviously this building is still occupied, somebody is living there... it's not in danger of collapse, immediate collapse or someone wouldn't be living there. It's you know... It appears to be a building that can be rehabbed. What was the purchase price on the Victorian?

**O'Grady:** On the Victorian... What's the address on this one? 258...

**Thompson:** 248

**O'Grady:** 248

**Taylor:** Do you see a Victorian with that home?

**Francis:** Do I see a Victorian?

**Taylor:** I just wondered who named it that?

**Francis:** Well I just... That's what I would call a Victorian style house

**O'Grady:** It's a style. It's a...the purchase price was 100,000 dollars.

**Francis:** 100,000 dollars so, yeah, rehab that house will be worth 5 so, I think there is plenty of room to put that house back in shape. What's the square footage on that house?

**O'Grady:** 737, oh no...

**Francis:** No...

**Thompson:** I think its 996

**O'Grady:** 996, Yeah.

**Francis:** So, its got a... that's on the main a thousand or is that the total because its got an upstairs too right? It's not finished on the upstairs though but it looks like it has a dormer

**Thompson:** I'm not sure what that is included in the square footage but...

**Francis:** actually let me look real quick

**Thompson:** It says 996

**Francis:** It has a proforma on that one

**O'Grady:** The appraisal... Uh... do we have an appraisal on that one?

**Francis:** What was the address on that one?

**Thompson:** It's 248

**O'Grady:** 248

**Francis:** Yeah, so the...well according to the... huh...

**Taylor:** 996

**Francis:** 1690 is what it says on the original proforma. 248 West Bishop Place, on the original proforma that was submitted to the RDA, it says 1690 is the square footage.

**O'Grady:** 1690?

**Francis:** Yeah

**Taylor:** But there is no basement in that home, correct?

**O'Grady:** Yeah

**Francis:** No, but there is... there maybe an upstairs

**Taylor:** A crawl space

**Francis:** There's definitely an attic space.

**O'Grady:** A crawl space or an actual basement

**Armstrong:** I'd say it's a big crawl space

**O'Grady:** Hybrid

**Taylor:** Like a shelf basement

**Armstrong:** Yeah

**O'Grady:** Is it um... it's not poured. It's dug out? Is it just...

**Armstrong:** Yeah

**O'Grady:** It's just dug, yeah

**Francis:** Well, this says above ground square feet. And this is on the original proposal is 1690. In any event...

**O'Grady:** yeah, but this is one with somebody living there, with a tenant in there, it's obviously not been condemned by the City. I think the engineering report here does not specify that there are any fatal issues relative to the structure of the building. Is there more discussion on this particular property?

**Taylor:** I have a comment. Just that the square footage on the spread sheet that I'm looking at says 996.

**O'Grady:** Yeah, we seem to have conflicting information

**Taylor:** Right

**O'Grady:** Yeah, I don't know

**Taylor:** And that is the other comment that I would make is the foundation on that home is a sandstone or a masonry assembled foundation unlike the duplex which is a concrete foundation.

**O'Grady:** Say that again

**Taylor:** The home we are talking about now has a sandstone or a masonry assembled foundation vs. the duplex that we just talked about has a concrete

**O'Grady:** poured foundation

**Taylor:** Footings and foundation, more of a typical contemporary if you will footing and foundation.

**Francis:** But those stone foundations are typical for Victorian houses in the neighborhood

**O'Grady:** My house has a stone foundation

**Francis:** Yeah, I have a house there too, same thing. But it can be...

**O'Grady:** With lots of holes in it

**Francis:** You should fix it. So do we want to have more discussion on that one or?

**O'Grady:** I think we could probably discuss that one so, I'm ready for a vote.

**Francis:** Ok, well I think with respect to the Victorian house they haven't met their burden to establish economic hardship. It can be rehabbed and certainly could be within the scope, I mean within the spread of 100,000 dollar purchase price and the likely value of 500,000 or more once it's rehabbed there's plenty of room to fix that house.

**O'Grady:** That's my vote as well. I'll just step in and say that, that is my vote as well. I would also just note that there being a tenant there, there is some economic gain being captured on that so, that is the one difference that we might note on this structure, these will be the others. Merlin... for the record...

**Taylor:** Doesn't matter

**O'Grady:** For the record...

**Taylor:** The same as the others.

**O'Grady:** Ok. And that concludes...

**Francis:** And by that do you mean the same as the panelist or

**Taylor:** No, my vote is same as the others, same as the other buildings that the applicants have met their burden of proof

**O'Grady:** We're concluded [6:19:16 PM](#)

## **ATTACHMENT D: WRITTEN PUBLIC COMMENTS**

## Thompson, Amy

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**From:** Ashley Anderson <[REDACTED]>  
**Sent:** Friday, April 6, 2018  
**To:** Thompson, Amy  
**Subject:** Bishop Place demolition request

Dear Amy,

My name is Ashley Anderson and I'm a resident of the Marmalade District in Salt Lake City. I'm unable to attend the April 11th meeting regarding the Bishop Place demolition but wanted to share a comment and encourage the Historic Landmark Commission to deny the financial hardship claim by the developer.

I believe that like many landlords in this neighborhood, property owners at Bishop Place have deliberately allowed properties to degrade to qualify for financial hardship. Our neighborhood hosts many transitional housing units and our community serves folks with actual financial hardship, with over 80% of students at our local elementary school falling below the federal poverty standard. To allow otherwise well off individuals to purposefully degrade properties to subsequently build new (and typically unaffordable) housing units is manipulative and problematic for residents of this historic area.

I specifically encourage the Historic Landmark Commission to deny the request to demolish the properties at 432 N. 300 West and 265-267 W. Bishop Place which have architectural features of some import.

Sincerely,  
Ashley Anderson

[REDACTED]



## Thompson, Amy

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**From:** JOHN MITCHELL <[REDACTED]>  
**Sent:** Saturday, April 7, 2  
**To:** Thompson, Amy  
**Subject:** Bishop Place hearing

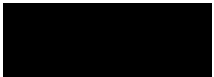
Amy,

I am a Capitol Hill resident and CHNC board member. I have toured the properties at Bishop Place. The historic duplex and the large home facing 3rd West should both be saved. Otherwise there's not much to save in the other buildings. I think the developer should have cared for the properties better, especially the two that I have mentioned.

Sorry, I won't be able to attend the April 11th meeting.

Respectfully,

John Mitchell



SLC, UT

Bishop Place Statement  
April 9, 2018

My name is Thomas Carter. I am an emeritus professor of architecture history from the University of Utah's College of Architecture and Planning. For over 30 years, I specialized in the study and preservation of Utah and western vernacular architecture. I'm not a monument man, but rather, a scholar with a passion for the ordinary buildings and landscapes in our region that are so often neglected.

I cannot attend the Economic Hardship meeting this week but am writing here to urge you to resist the demolition request for the houses in Bishop Place. They are seemingly plain and now in poor condition, but they are far from insignificant or unredeemable. I've had a chance to look at them carefully, and my conclusions are:

First, these houses are historically important as increasingly rare examples of working class housing on Salt Lake City's west side. Records indicate that they were probably built in place, starting in the 1880s, to house families employed in the near rail yard and factories. The 300 West neighborhood was once filled with such houses, but they are disappearing at an increasingly rapid rate. The city should be doing everything it can to preserve the remnants of this chapter in the city's history.

Second, the houses are also architecturally significant. I've looked at a countless numbers of nineteenth century buildings in Utah, and these are distinctive in their construction, being of box frame construction, with adobe infill, and vertical planks or siding on the exterior. The curious aspect of this construction is that the adobes are stacked with their narrow ends down, rather than the standard horizontal coursing usually found in such buildings. This is the only place in the state where I've seen this technique, making these houses rare examples of nineteenth-century Utah vernacular building. Also, and this is an added attraction, the houses on Bishop Place are sited with their narrow ends facing forward, which is a common design technique found in urban working class neighborhoods throughout the country, but something that is rare in Salt Lake City, where the early LDS pattern of lower density housing made such space-saving practices less common. Looking at the 300 West district insurance maps, we know that such "urban" housing was once quite common, but now there are only a few extant examples, including these on Bishop Place which is another thing that makes their demolition problematic.

I'm not an architect or an engineer, but I've seen hundreds of early Utah houses and these, while in rough shape (mostly through neglect) are definitely salvageable. If rehabilitated, the street could become a highly desirable place for

families wanting to help with the “re-urbanization “ of the city in the Twenty-first century.

We need to remind the developer too, that if they are demolished, we would ask the city to require Historic American Buildings Survey level documentation for the buildings, which would run around \$5K per sheet, or perhaps \$50,000 for the street. They cannot be torn down without some kind of mitigation. I could even see a publication on the street, it is that important.

Thank you.

Thomas Carter, PhD  
Professor Emeritus  
College of Architecture and Planning  
University of Utah

## Thompson, Amy

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**From:** cindy cromer <[REDACTED]>  
**Sent:** Tuesday, April 10, 2018 11:05 AM  
**To:** Thompson, Amy  
**Subject:** comments on Bishop Place

Amy-Please send these initial comments to the members of the panel, Mr. Armstrong, and Mr. Baird, also to any other City staff members involved in the hearing. I will make different remarks at the meeting tomorrow and will focus on my experience in construction and real estate, rather than in historic preservation.

Thanks for your assistance.

Sincerely, cindy cromer

To Members of the Economic Hardship Panel for Bishop Place and Mr. Don Armstrong  
From Cindy Cromer  
April 9, 2018

I do plan to speak at the hearing but anticipate that my public remarks will need to be very short and I have a great deal of experience in the rehabilitation of historic structures dating from the late 19th and early 20th centuries. I have owned and managed historic rental properties since 1980. I managed historic rentals prior to that for 5 years.

I am at a disadvantage because I have not had an opportunity to inspect the buildings. I have, however, dealt with all of the issues raised by the property owner in the past 40+ years.

When I apply my experience to the information presented by the owner, there appear to be other options. The owner's arguments depend on the acceptance of the information offered. If any part of that information is incorrect, the arguments fall apart. My remarks about historical characteristics are not based on aesthetics but on my experience rehabilitating structures and recent market forces.

-There is no way for example that 10 units of rehabilitated housing fronting on Bishop Place would be worth \$450,000 (p. 1 from the applicant). One bedroom apartments in multiple unit buildings are now bringing over \$120,000 (purchase price) per unit as rentals. My 4-plexes are assessed by the County at \$110,000 per unit. I have not appealed because I would not sell them for that amount. Using the County's assessment and treating the cottages on Bishop Place as one-bedroom apartments (neither of which is a reasonable assumption), I come up with 10 units at \$110,000/renovated unit, or \$1,100,000. That number for the properties as rentals is very conservative because they are not one bedroom apartments, but far more desirable single family and duplexes residences and because \$110,000/unit is less than market rate, an assessment from the County that I am willing to live with because I would not sell for that amount.

-The owner has indicated that there is ambiguity about the status of his appeal of the County's assessment. The Auditor's Office indicated this morning that 2 of the appeals were resolved as of 2/28/18. (I did not impose on the County employee by going through all 10 parcels.) The owner has signed a stipulation regarding the value of the 2 properties and is due a refund. I would expect the remaining appeals to have

been resolved similarly by signed stipulations. In short, the appeals with the County are no longer pending, at least for the 2 parcels I checked.

-Frame structures are frequently easier to deal with when severely delapidated than masonry structures. Admittedly, frame buildings were not the choice of the early settlers, but there are advantages in rehabilitating them. I have done extensive work with infra-red processes and structural modification on my 3 frame buildings. I would choose to work on a frame structure over a masonry one. From the standpoint of preservation, our surviving frame structures are especially important in documenting early development because they were less common than masonry. What is relevant here is that in my experience, they are easier to work on, especially with respect to structural settlement where I have experience with both masonry and frame buildings.

-The owner has failed to be an appropriate steward for the building at 432 N 300 W. This building never should have been zoned SR-3. It fronts on a State highway. I do not know of any other parcel in the City zoned SR-3 fronting on a State highway. The materials submitted by the owner show the parcel's zoning as RMF-35; the zoning map indicates that it is SR-3. The structure at 432 N 300 W could be zoned RMU-35, a new zone which the applicant has not applied for. That zoning classification, which I believe would be granted based on other successful applications, would completely alter the income potential of the property. The City never should have agreed to a SR-3 designation and the new RMU-35 offers a far greater return on the property.

In summary, the building at 432 N 300 W is inappropriately zoned SR-3 under any circumstances. Its income potential needs to be evaluated under the zoning of other structures fronting on 300 W or even more appropriately under the new RMU-35 classification. The owner has failed to address the relationship between the inappropriate zoning of his property and income potential. With an appropriate zoning classification which allows more intense use, this property will not qualify for economic hardship.

-All of my properties are eligible for State historic tax credits and all except my home are eligible for Federal credits. I have had numerous conversations with employees at the State office which administers the tax credits. While the Federal credits are more rigorous than the State credits, I have never encountered the kind of rigidity described by the owner regarding the relocation of walls. In fact, in one conversation, the State employee indicated that the original floor plan could be noted subtly when the majority of the wall had been removed to create a great room. That inquiry was based on the availability of State tax credits for a house on Third Avenue which is very similar to 432 N 300 W.

-Research I conducted regarding the value of vacant land within a mile and a half of Downtown in the fall of 2016 indicated that vacant, buildable parcels were selling for \$150,000. Such comparables were indeed difficult to locate. The size of the parcel didn't matter. The number of units it could support did not matter. What mattered was that the parcel was buildable and vacant. This threshold of \$150,000 in established, desirable neighborhoods east of I-15 would suggest that the appraisals provided by the owner were based on an entirely different set of numbers. The appraised values provided by the owner are comparable to the cost of a one bedroom condominium in today's market.

-In the current market with soaring prices and inadequate inventory, it is not necessary to include funds for marketing. This expense is not reasonable currently, although real estate agents continue to collect their fees and sellers continue to pay them. Word-of-mouth is adequate in the current frenzy.

-The estimates provided to the Landmarks Commission at its hearing included costs which are not only excessive, but inappropriate to the character of the structures (sorry: that is a comment based on aesthetics). The example which I recall clearly was the use of granite countertops.

-The properties on Bishop Place are important historically for reasons outlined by Tom Carter in his letter including their location on an intact interior court. In addition to discrepancies between my own experience almost two years ago and the appraisals offered by the owner, I doubt that the appraiser factored in the value of the amenity provided by the environment of an interior court. These interior block streets provide highly desirable locations for residences because the larger buildings serve as sound walls protecting the residential environment from noise.

## Thompson, Amy

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**From:** Anne Oliver <a[REDACTED]>  
**Sent:** Wednesday, Ap  
**To:** Thompson, Amy; Leith, Carl  
**Cc:** [REDACTED]  
**Subject:**

Hi Amy-

I will not be able to attend the meeting today but I have read through the materials for the economic hardship hearing and wanted to submit a few thoughts:

- As I think most people are aware, Bishop Place represents an important collection of historic vernacular houses that are significant both in the history of development in this part of the city and for their architectural character.
- I have not heard the results of the panel's review and cannot speak to whether or not the applicant is experiencing economic hardship. However, he has significantly diminished the value, both historic and economic, of these properties through multiple years of neglect and exterior and interior demolition without appropriate documentation and permits. To perpetuate this cycle of loss through a finding of economic hardship that might result in the demolition of the properties would be a grave disservice to the community. This would be of even greater concern if any public monies were to be involved.
- The historic district is characterized by low density vernacular housing, often clustered into slightly denser courts, and it is important to preserve this neighborhood-level characteristic both now and in future development. Any increase in density on Bishop Place beyond that originally approved with the RDA grant would have a detrimental effect on neighborhood development patterns and, ultimately, the character of life in the area, and the implications of any argument that maximizing density is necessary to avoid hardship should be considered very carefully.
- If hardship is recognized and demolition is approved, it is imperative that we learn as much as possible, through research and documentation, about the buildings and the history of the people who used them before they are further altered and lost.

Thanks very much for your time. Please forward these comments for consideration as appropriate.

Anne Oliver  
Historic Preservationist

# Utah Historic Preservation Tax Credit (Residential Use)

## 1. What is the Utah Historic Preservation Tax Credit?

A 20% nonrefundable tax credit (not just a deduction) for the rehabilitation of historic buildings occupied by owners or used as residential rentals. You can deduct 20% of all qualified rehabilitation costs from your Utah income or corporate franchise taxes.

Example: \$22,000 in qualified rehabilitation cost = \$4,400 state income tax credit.

## 2. Does my building qualify?

Any building listed in the National Register of Historic Places qualifies if, after rehabilitation, it is used as a residence (owner-occupied or rental).

You can't take the credit for any property used for commercial purposes, including hotels or bed-and-breakfasts. (However, if the historic B&B is also owner-occupied, this portion of the rehabilitation may qualify.)

The building does not need to be listed in the National Register at the beginning of the project, but a complete National Register nomination must be submitted when the project is finished. The property must be listed in the National Register within three years of the approval of the completed project.

Staff of the Historic Preservation Office can evaluate the eligibility of your building and provide instructions on nomination requirements.

## 3. What rehabilitation work qualifies?

The work may include interior and/or exterior repair, rehabilitation, or restoration, including historic, decorative, and structural elements as well as mechanical systems. All of the proposed, ongoing or completed work must meet the Secretary of the Interior's Standards for Rehabilitation and be approved by the State Historic Preservation Office (SHPO).

Depending on the historic conditions and the specifics of the proposed rehab work, some examples of eligible work items include:

- repairing/upgrading windows
- plumbing repairs and fixtures
- refinishing floors, handrails, etc.
- repairing or replacing roofs
- compatible new kitchens & baths
- reversing incompatible remodels
- painting walls, trim, etc.
- repointing masonry



- reconstructing historic porches
- new furnace, A/C, boiler, etc.
- new floor and wall coverings
- electrical upgrades
- necessary architectural, engineering, and permit fees

The purchase price of the building, site work (landscaping, sidewalks, fences, driveways, etc.), new additions, work on outbuildings, and the purchase and installation of moveable furnishings or equipment (window coverings, refrigerators, etc.) do not qualify for the credit.

All of the work must meet the Secretary of the Interior's Standards for Rehabilitation (See a great illustrated guide from the NPS) or the tax credit cannot be taken on any portion of the work.

#### **4. How do I apply for the credit?**

You should submit a complete application to us (the State Historic Preservation Office, or SHPO) as early as possible. The state law requires application and approval by the SHPO prior to completion of the project.

We strongly recommend that you submit an application before starting work. Any work you begin without prior SHPO approval is done at your own risk. Once you have begun work, changes to bring the project into conformance with the Secretary of the Interior's Standards for Rehabilitation can be difficult, expensive, or occasionally impossible to make.

As part of the application you will need to submit:

- photographs showing all areas of work (interior and exterior) prior to the beginning of the rehabilitation.
- any construction drawings or other technical information necessary to completely understand the proposed project

#### **5. How much money must I spend to qualify?**

Total rehabilitation expenditures must exceed \$10,000. (The tax credit applies equally to this first \$10,000.) The purchase price of the building and any donated labor cannot be included. The project must be completed within 36 months. (There is no limit to subsequent \$10,000+ projects; separate applications are required.)

#### **6. When can I claim the credit?**

The credit may be taken for the tax year in which the project was completed and the SHPO approves the rehabilitation work (as well as a National Register nomination, if needed). A unique certification number will be issued to the owner at that time. Credit amounts greater than the amount of tax due in that year may be carried forward up to five years.

#### **7. Are there any restrictions placed on my building?**

All work done to the building during the rehabilitation project, and for three years following the certification of the project, must meet the Secretary of the Interior's Standards for Rehabilitation. Please consult with the State Historic Preservation Office if you have any questions.

**8. What if I already have approval from my local landmarks commission?**

The local review process will be helpful to tax credit application process, but state law requires application to the State Historic Preservation Office (SHPO). Local preservation commissions sometimes have different requirements and other considerations than the Secretary of the Interior's Standards for Rehabilitation.

To qualify for the state tax credit, all of the work must meet the Standards and receive state approval. Application for the state tax credit must be made before the project is completed, preferably before work even begins (see the caution above).

**9. How do I claim the tax credit?**

After the work is completed and certified, we (SHPO) will provide you with a tax form, TC-40H, Historic Preservation Tax Credit. Do not submit this form with your tax return; keep it and all related documents with your tax records. If you carry forward an excess portion of this tax credit, you must attach a copy of the signed, original TC-40H form, with the new carry-forward amount, to your subsequent tax return(s).

Note that carry-forward amounts must be applied against tax due before the application of any historic preservation tax credits earned in the current year and on a first-earned, first-used basis. Please consult with the State Tax Commission if you have any questions. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

**10. For more information, contact:**

Amber Anderson  
Utah State Historic Preservation Office Tax Credit Program Coordinator  
300 S. Rio Grande Street (450 West)  
Salt Lake City, UT 84101  
801-245-7277

Information available at (<https://heritage.utah.gov/history/state-tax-credit>)

# Federal Historic Preservation Tax Credit

- 1. The Federal Investment Tax Credit (ITC) program gives a 20% tax credit (not just a deduction) to owners who rehabilitate historic buildings**

The ITC is based on a percentage of the rehabilitation costs and does not include the purchase price.

The tax credit applies to the building owner's federal income tax for the year in which the project is completed and approved. If it is not all needed in that year, the tax credit may be carried back one year or forward up to 5 years.

Example: 20% of a \$75,000 rehabilitation = \$15,000 federal tax credit.

Applicants requesting historic preservation certifications by the National Park Service as well as others interested in the use of these tax credits are strongly advised to consult an accountant, tax attorney, or other professional tax adviser, legal counsel, or the Internal Revenue Service regarding the changes to the Internal Revenue Code related to Pub. L. 115-97.

- 2. Does my building qualify?**

The 20% ITC is available for buildings listed in the National Register of Historic Places that, after renovation, are used for commercial or residential rental use.

Neither federal ITC is available for the rehabilitation of a private residence. However, the Utah Tax Credit is available for the certified rehabilitation of historic residential buildings.

- 3. What rehabilitation work qualifies?**

The work may include interior and/or exterior repair, rehabilitation, or restoration, including historic, decorative, and structural elements as well as mechanical systems.

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Depending on the historic conditions and the specifics of the proposed rehab work, some examples of eligible work items include:

- repairing/upgrading windows
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- refinishing floors, handrails, etc.
- repairing or replacing roofs
- compatible new kitchens & baths
- reversing incompatible remodels
- painting walls, trim, etc.
- repointing masonry
- reconstructing historic porches

- new furnace, A/C, boiler, etc.
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The purchase price of the building, site work (landscaping, sidewalks, fences, driveways, etc.), new additions, work on outbuildings, and the purchase and installation of moveable furnishings or equipment (window coverings, refrigerators, etc.) do not qualify for the credit.

#### 4. How do I apply for the credit?

The National Park Service requires that you work through us (the State Historic Preservation Office, or SHPO) on your application. You should submit the first two sections of the NPS's three-part application to us as early as possible.

We strongly recommend that you submit an application before starting work. Any work you begin without prior NPS approval is done at your own risk. Once you have begun work, changes to bring the project into conformance with the Secretary of the Interior's Standards for Rehabilitation can be difficult, expensive, or occasionally impossible to make.

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- Any construction drawings or other technical information necessary to completely understand the proposed project.
- Photographs of the completed work.

#### 5. How much money must I spend to qualify for the federal tax credit?

The rehabilitation expenditures must exceed the greater of either the "adjusted basis" of the building or \$5,000. "Adjusted basis" is the purchase price minus the value of the land, minus any depreciation already taken by the current owner of the building, plus any capital improvements.

##### Example 1 (a recent purchase):

\$130,000 (purchase price)  
 – \$33,000 (land)  
 \$97,000 (adjusted basis)  
 Rehabilitation expenses must exceed the adjusted basis (\$97,000).

##### Example 2 (long-time ownership):

\$130,000 (purchase price)  
 – \$70,000 (depreciation)  
 – \$33,000 (land)  
 + \$15,000 (capital improvements)

\$42,000 (adjusted basis)

Rehabilitation expenses must exceed the adjusted basis (\$42,000).

**6. When can I sell my rehabilitated building?**

In order to avoid any recapture of the tax credit by the federal government, you must keep the building for least five years from the date you complete the project. The recapture amount ranges from 100% of the tax credit if the building is sold within the first year, to 20% of the credit if it is sold within the fifth year.

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(<https://www.nps.gov/tps/tax-incentives.htm>)



April 26, 2018

Ms. Amy Thompson  
Principal Planner  
Salt Lake City Corporation  
451 S State Street  
Salt Lake City, UT 84111

Dear Ms Thompson,

During the first Bishop Place Economic Hardship Review Panel held on Wednesday, April 11, 2018 in the Salt Lake City and County Building, I volunteered to make available to Bishop Place property owner Don Armstrong information about state and federal preservation tax credits. The following documents present this tax credit information which is publically available on the Utah State Preservation Office website (<https://heritage.utah.gov>).

I would very much appreciate you placing these tax credit documents into the Bishop Place case file.

Many thanks,

A handwritten signature in black ink that reads 'David Amott'.

David Amott, Ph.D.  
Director of Programs

People  
Preserving  
Places.

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## Thompson, Amy

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**From:** Mark Moffat <[REDACTED]>  
**Sent:** Saturday, May  
**To:** Adams, Lisa  
**Cc:** Thompson, Amy  
**Subject:** Bishop Place property

Lisa- I am Jim Bradshaw's law partner. Last week we received notice of Dan Armstrong's request to appeal the findings of the Historic Landmark Commission's denial of Armstrong's request to demolish the buildings on the Bishop Place parcel. While I understand the notice indicates that the hearing will be closed, I write to express my frustration with the progress the Bishop Place project. As Jim indicated, we bought the parcel directly to the south of Bishop place in 2016. We completely remodeled the building and sought the Historic Landmark Commission's approval for modifications to the exterior of our building. At the time we bought our building, Mr. Armstrong had already been granted RDA money to upgrade the structures on the Bishop Place parcel. Since that time absolutely nothing has happened to improve the property. There have been 2 different sets of people living in the north eastern most structure. Given the condition of the property as a whole, it is difficult to imagine that the building in which they reside is habitable or meets code. High school kids go in and out of the property regularly. The house that fronts 300 West is an eye sore. Most of its windows are boarded up and those that are not are broken, exposing the interior to the weather. We bought and remodeled our building with the expectation that we would be part of a revival of this area. As you are probably aware, there is new construction and remodeling of older buildings going on all over the Marmalade District. Bishop Place could, and should be part of this revival. While Mr. Armstrong appears to have let many of the buildings fall into a further state of decay, there is little question that with ingenuity and creativity, they can be brought back to life. Bishop Place has the potential to become a very cool center piece to the Marmalade revival. It is my hope that the city holds Mr. Armstrong to the conditions he agreed to when he accepted the RDA money; to rehabilitate the property in keeping with its historical character. The project has been dormant for too long.

Mark R. Moffat  
[REDACTED]

## Thompson, Amy

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**From:** cindy cromer <[REDACTED]>  
**Sent:** Thursday, May  
**To:** Thompson, Amy  
**Subject:** Fw: letter regarding availability of tax credits  
**Attachments:** Bishop Place letter.pdf

Amy-I have been discussing a frame building I own with representatives from SHPO regarding the availability of tax credits. I have not organized the information from SHPO about my building but will provide it to the Economic Hardship Panel next week. The attached letter deals with the tax credits relative to the houses on Bishop Place. I was interested in information about the frame houses on Bishop Place because of their similarity to my building. Please make sure that all parties involved receive my communications. I will send additional documents as soon as possible.

Sincerely, Cindy Cromer



GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

Jill Remington Love  
Executive Director  
Department of  
Heritage & Arts



Brad Westwood  
Director

April 12, 2018

Don Armstrong, President  
International Real Estate Solutions, Inc.  
6839 Bufflehead Drive  
Park City, Utah 84098

Dear Mr. Armstrong:

I am responding to your inquiry about the feasibility of receiving historic tax credits for the rehabilitation of the buildings that are part of the Bishop Place project. As you may be aware, our office administers both the federal and state tax credit programs in Utah, each of which offers a 20% tax credit for eligible rehabilitation costs for buildings listed in the National Register of Historic Places.

According to our records, all of the buildings in question are currently evaluated as “contributing” buildings in the Capitol Hill Historic District, and therefore would be eligible candidates for both the federal and state tax credits. The basic conditions for qualifying for the credits are as follows:

- The buildings would have to be used for residential purposes (owner-occupied or rental) in order to qualify for the **state tax credit**.
- The buildings would have to be used for “income-producing” purposes to qualify for the **federal tax credit**. Residential rental use would enable the buildings to qualify for **both tax credits**, which would be a combined 40% tax credit on all eligible rehab costs.
- All of the rehab work would have to meet the Secretary of the Interiors Standards for Rehabilitation, and the appropriate forms would have to be filled out and approvals received from our office for the state tax credits and from the National Park Service for the federal tax credits.
- Any work that does not meet the Standards would disqualify that rehab project (each building would be reviewed separately) from receiving the tax credits.

Until we know more specifics about your proposed rehabilitation work, it will be difficult to give you a more precise answer about whether the buildings would indeed qualify for the tax credits. In theory, they could all qualify if the appropriate preservation standards are followed. And many of the costs associated with making the buildings viable would be eligible for the tax credits, including new foundations, structural repairs, installing and connecting utilities, system upgrades (electrical, plumbing, mechanical), architectural and engineering fees, and, of course, basic interior and exterior rehab work. The federal tax credit has an application fee, which would be approximately \$1,445 per building (based on a \$400,000 rehab). There is no fee for the state tax credit. Please let me know if you have further questions.

Sincerely,

Roger Roper  
Deputy State Historic Preservation Officer  
[rroper@utah.gov](mailto:rroper@utah.gov) 801.245.7251



300 S. Rio Grande Street • Salt Lake City, Utah 84101 • (801) 245-7225 • facsimile (801) 355-0587 • [history.utah.gov](http://history.utah.gov)

## Thompson, Amy

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**From:** cindy cromer <[REDACTED]>  
**Sent:** Tuesday, May 8  
**To:** Thompson, Amy  
**Subject:** supplemental information for Bishop Place

Amy-Please forward this message as indicated. Thank you, cindy cromer

To Members of the Economic Hardship Panel, Mr. Don Armstrong, Mr. Bruce Baird, c/o Ms. Amy Thompson,  
Salt Lake City Planning  
From Cindy Cromer  
Re tax credits associated with investment property  
May 8, 2018

Mr. Armstrong's remarks about tax credits at the hearing for economic hardship at Bishop Place concerned me greatly because I have planned to use State and Federal credits to rehabilitate a frame building similar to the frame structures on Bishop Place.

Generally speaking, buildings and their qualifications for tax credits are unique. My building does have much in common, however, with some of the ones of Bishop Place. It is frame, has had multiple additions, rests on the ground without a foundation, has a small footprint of slightly over 600 sq. ft., is unsightly and dilapidated, and is structurally compromised.

Once I heard Mr. Armstrong's remarks at the hearing, I decided to contact State History quickly because I have been counting on the tax credits to make the reuse of my building feasible. In a series of communications with Amber Anderson, Tax Credit Coordinator, I confirmed that my building would be eligible (4/24, 4/25, 4/30, and 5/1). I can probably relocate the building away from the property line. The only downsides to my inquiry were that I might not be able to reorient the building on the parcel and possibly could not use solar panels on a prominent façade. Excerpts from Ms. Anderson's communication on 5/1 are at the end of this message.

Of relevance to Mr. Armstrong's project:

\*My building is one of two on the parcel. I do not appear to have to follow the Standards for Rehabilitation on both structures to access the tax credits. The buildings are independent even though they are on the same parcel.

\*The ability to relocate a structure is clearly a case by case decision. In my situation, there is no potential to create an additional building lot. Mr. Armstrong's property may support additional building sites, an opportunity which needs to be evaluated as part of the economic feasibility of the rehabilitation. In recent years, developers have been paying \$100,000 per unit in land costs. I paid \$100,000 per unit for land in 2016.

from communication 5/1 from the State Office (Amber Anderson, Tax Credit Coordinator):

*-First, moving a historic building and keeping it "historic" can be done but usually only when the only other alternative is demolition. While I would say that you could probably make the case for moving the building a little bit west (away from the property line), and maybe north, as a necessity for keeping it viable, the National Park Service probably won't go for rotating and placing it at the back of the lot (for the reason you mentioned - its relationship to the house).*



*-The other thing to note is that due to the low profile of this building and high visibility of its entire roof, solar panels might not get approved either.*

**ATTACHMENT 4: HLC MEETING MINUTES – 6/28/2018**

**SALT LAKE CITY HISTORIC LANDMARK COMMISSION**  
**Meeting Minutes**  
**451 South State Street, Room 326**  
**Salt Lake City, Utah 84111**  
**June 28, 2018**

A roll is kept of all who attended the Historic Landmark Commission Meeting. The meeting was called to order at [5:33:13 PM](#). Audio recordings of the Historic Landmark Commission meetings are retained in the Planning Office for an indefinite time.

Present for the Historic Landmark Commission meeting were: Chairperson Charles Shepherd and Vice Chairperson Kenton Peters, and Commissioners Thomas Brennan, Sheleigh Harding, Robert Hyde, Victoria Petro-Eschler, Rachel Quist, David Richardson and Esther Stowell. Commissioners Stanley Adams and Paul Svendsen were excused. Planning Staff Members present at the meeting were: Nick Norris, Planning Director; Sara Javoronok, Senior Planner; Amy Thompson, Principal Planner; Deborah Severson, Administrative Secretary; and Paul Nielson, Senior City Attorney.

**FIELD TRIP NOTES:**

- Bishop Place: Staff gave an overview of the issue and process.
- 701 N I Street: Staff gave an overview of the proposal.

[5:34:01 PM](#)

**APPROVAL OF THE MINUTES FOR JUNE 7, 2018**

**MOTION**

**Commissioner Brennan moved to approve the minutes for the June 7, 2018 meeting. Commissioner Peters seconded the motion. Commissioners Brennan, Peters, Quist and Stowell voted “aye”. Commissioners Harding, Hyde, Petro-Eschler and Richardson abstained. The motion passed unanimously.**

[5:34:31 PM](#)

**REPORT OF THE CHAIR OR VICE CHAIR**

Chairperson Shepherd nor Vice Chairperson Peters had anything to report.

[5:34:32 PM](#)

**DIRECTOR’S REPORT**

Mr. Norris announced that Michaela Oktay, Deputy Planning Director, gave birth to a baby girl on June 28.

[5:35:17 PM](#)

**PUBLIC COMMENTS**

Stephen Pace discussed his ongoing plans for rehabilitating 181 N B Street and 222 E Fourth Avenue known as the William F. Beer Estate. The project consists of four buildings; the mansion, harness shop, garage and carriage house which were constructed in the late 1800s. The mansion, harness shop and garage have been rehabilitated and the carriage house is in

the planning stage. Mr. Pace submitted documentation outlining issues relating to the rehabilitation of the carriage house which he would like to use as a single-family dwelling. He asked that he be granted the opportunity to further discuss the matter with the Commission at a future meeting.

Chairperson Shepard asked Staff to provide the Commission with a report, and schedule a work session, if appropriate, to further discuss the matter.

**PUBLIC HEARINGS**

[5:43:10 PM](#)

**Nomination for National Register at 701 N I Street – Lowell and Emily Parrish House – The State Historic Preservation Office (SHPO) received a request to add the Lowell and Emily Parrish House to the National Register of Historic Places. SHPO will consider this request at their Board meeting on July 26, 2018, and requests review by Salt Lake City before that time as the Certified Local Government (CLG) in this matter. This item is being brought before the Historic Landmark Commission to provide input to SHPO. The property is currently zoned FR-3/12,000 Foothills Residential District and is located within Council District 3, represented by Chris Wharton (Staff contact: Sara Javoronok at 801-535-7625 or [sara.javoronok@slcgov.com](mailto:sara.javoronok@slcgov.com))**

Sara Javoronok, Senior Planner, gave an overview of the proposal noting that the structure has been nominated for Criteria C for architecture as an early Wrightian Modern style. Ms. Javoronok added that Planning Staff recommended a positive recommendation to the State Historic Preservation Office (SHPO) and the National Park Service.

[5:45:57 PM](#)

The Commission had no further discussion, and no one was present to speak to the matter.

[5:46:29 PM](#)

**MOTION**

**Commissioner Richardson moved for the Historic Landmark Commission to forward a positive recommendation to SHPO to nominate 701 N I Street to the National Register of Historic Places. Commissioner Quist seconded the motion. Commissioners Quist, Harding, Petro-Eschler, Richardson, Stowell, Peters, Brennan and Hyde voted “aye”. The motion passed unanimously.**

 [5:47:34 PM](#)

**Bishop Place Economic Hardship Applications - Nine Properties Located at approximately 432 N 300 West - Property Owner Don Armstrong, represented by Bruce Baird, is requesting the Historic Landmark Commission find in favor of his claim that application of the standards and regulations of the H Historic Preservation Overlay zoning district (section 21A.34.020) would deprive the applicant of all reasonable economic use or return on the subject properties based on the standards in section 21A.34.020.K of the zoning ordinance. This request is in response to the Historic Landmark Commissions denial of the applicants request to demolish the subject properties which are all identified as contributing structures to the Capitol Hill Local**

**Historic District. As part of this process, a three-person Economic Hardship Review Panel was established and public meetings were held on April 11, 2018 and May 15, 2015. The properties are located within Council District 3, represented by Chris Warton. (Staff contact: Amy Thompson 801-535-7281 or [amy.thompson@slcgov.com](mailto:amy.thompson@slcgov.com)) Case Numbers:**

- PLNHLC2017-00017 – 241 W Bishop Place**
- PLNHLC2017-00016 – 245 W Bishop Place**
- PLNHLC2017-00020 – 248 W Bishop Place**
- PLNHLC2017-00019 – 249 W Bishop Place**
- PLNHLC2017-00024 – 258 W Bishop Place**
- PLNHLC2017-00025 – 259 W Bishop Place**
- PLNHLC2017-00026 – 262 W Bishop Place**
- PLNHLC2017-00029 – 265/67 W Bishop Place**
- PLNHLC2017-00030 – 432 N 300 West**

*Commissioner Harding disclosed that she personally and professionally knows Lewis Francis who was one of the members on the Economic Hardship Review Panel for the Bishop Place matter. Commissioner Richardson also disclosed that he socially knows Mr. Francis. Paul Nielson advised the Commissioners that there would be no conflict of interest unless financial issues were involved. He also recommended that a Commissioner may recuse himself/herself if they believe they could not make an unbiased decision because of their relationship with Mr. Francis. No Commissioner felt the need to recuse.*

[5:49:57 PM](#)

Amy Thompson, Principal Planner, gave an overview of the process and the status of the request. The Economic Hardship Review Panel held a public meeting on April 11, 2018 which resulted in a request by the Panel for additional information specifically related to tax credits. A second meeting was held on May 15, 2018 at which time the Panel made findings and conclusions which were forwarded to the Historic Landmark Commission for review.

Ms. Thompson explained that the Review Panel found economic hardship with six properties (241, 245 249, 258, 259 and 262 W Bishop Place) and no economic hardship with three properties (248 and 265/67 W Bishop Place and 432 N 300 West).

Ms. Thompson further explained that the Historic Landmark Commission decision must be consistent with the findings and conclusions of the Economic Hardship Review Panel unless the Commission finds by a three-quarter quorum that the Review Panel either acted arbitrarily or based their report on erroneous findings of fact.

[5:53:10 PM](#)

Paul Nielson, Senior City Attorney, advised the Commission:

- The demolition process has been recently amended, but the Bishop matter should be reviewed under the former ordinance.
- The Commission’s role is to review the findings and conclusions of the Economic Hardship

Review Panel, and the Commission must find by a vote of three-fourths majority of a quorum present that the Panel acted in an arbitrary manner or that its report was based on an erroneous finding of a material fact to reject the Panel's findings.

- After reviewing the evidence and the Commission finds that the application resulted in an economic hardship, the Commission shall issue a Certificate of Appropriateness for demolition.
- The purpose of the economic hardship is to determine if the City could potentially cause a regulatory taking by prohibiting the property owner from using their property with economic expectation.
- Included in the packet presented to the Commission was a memo to the Panel from the City Attorney citing Supreme Court case law; and if the Commission determines it necessary, a closed meeting may be requested relating to depending litigation regarding potential takings claims.

[5:58:51 PM](#)

Don Armstrong, Property Owner (REIS); Bruce Baird, Counsel for the Property Owner; and Adam Breen, Breen Homes; were present.

Mr. Baird discussed the following:

- Six buildings are beyond repair and are about to collapse (241, 245 249, 258, 259 and 262 W Bishop Place), and abundant evidence was presented to the Economic Hardship Review Panel that met all City standards supporting demolition.
- Questioned Mr. Francis' qualifications and biasness as a Panel Member.
- The code being unintelligible, and the fact that any ambiguity in zoning law mandates decisions favoring property owners.
- The need for fixing the zoning law relating to demolition.
- The lack of evidence (none) contrary to economic hardship for 248 and 265/67 W Bishop Place and 432 N 300 West.
- The Panel misapplying facts to the standards; such as, applying available tax credits to meet Standard 5.
- Reviewed the letter from Robert Conder (Structural Engineer) noting that repairs to 248 and 265/67 W Bishop Place and 432 N 300 West would be so extensive that little if any of the original structure would be left remaining, and the expected costs of repairs would be three to four times more than new construction.
- Requested the Commission to uphold the Panel's decision for 241, 245 249, 258, 259 and

262 W Bishop Place supporting demolition which was supported by substantial evidence, and reverse the Panel's decision for 248 and 265/67 W Bishop Place and 432 N 300 West which had no evidence contrary to substantial evidence of economic hardship submitted by the property owner.

[6:10:59 PM](#)

The Commission and Applicants discussed the following:

- The reason for applying under the former ordinance rather than the amended ordinance. Mr. Nielson explained that the Applicant had a vested right to apply under the former ordinance.
- The change in events from the time the subject properties were purchased and the agreement with RDA for renovation - Estimates at the time of purchase was based on preliminary plans, and subsequent structural engineer reports stated that renovation was prohibited.

[6:16:06 PM](#)

**PUBLIC COMMENT**

David Sheer voiced his support for the Economic Hardship Review Panel findings and conclusions for 248 and 265/67 W Bishop Place and 432 N 300 West. Mr. Sheer added that the property owner should have taken better care in estimating renovation costs before purchasing the properties.

Cindy Cromer voiced concern about the process, and advised the Commission to carefully review the evidence due to the number of contributing structures involved. Ms. Cromer noted the Markea demolition, and stated that she believed the property owner would not lose money renovating all the structures particularly with the inclusion of development on four vacant lots.

Griffin Jenkins voiced his concerns about losing older low-density neighborhoods in the City. Mr. Jenkins stated that he believed the demolition of six structures would be a serious loss to the neighborhood and is totally unwarranted. He explained that the structures were re-habitable when Mr. Armstrong purchased them, but the structures have since reached the state of beyond repair.

David Amott, representing Preservation Utah, explained that Preservation Utah was not entirely satisfied with the results from the Economic Hardship Review Panel; however, adoption of their findings and conclusions would save a small piece of Bishop Place. Mr. Amott voiced concerns about setting a negative precedent when developers purchase historic properties and allow them to decay beyond repair. He also noted that tax credits would be very helpful in rehabilitating the properties.

[6:26:09 PM](#)

Mr. Baird responded to public comment explaining most comments were irrelevant, and no additional evidence has been presented contrary to economic hardship.

[6:31:38 PM](#)

The Commission and Applicants discussed the following:

- Intentional neglect after the properties were purchased. Mr. Baird explained that intentional neglect is untrue and is not a factor in terms of hardship. The buildings are to the point where they cannot be rehabilitated. Rehabilitation would leave very little or no historic elements. The homes were originally brown clapboard construction, and the gingerbread element was added later.
- Mr. Breen's experience with historical remodels and restorations. Mr. Breen seeks advice from real estate experts relating to value.
- Reviewed restoration costs and estimated values for 248 and 265/67 W Bishop Place and 432 N 300 West. Mr. Baird noted that the numbers were presented to the Review Panel and were not rebutted. It was noted that the Applicants obtained restoration costs including tax credits and appraisals for all properties (Exhibit U).
- The process in obtaining restoration costs and estimated values. The numbers were generated early 2018, and material costs have since risen.
- The grade of finished materials used in historic restorations. Mr. Breen explained that wall plaster rather than dry wall and granite countertops would be used in historic restorations to meet the level that prospective buyers look for in purchasing historic properties. Higher end products would be used to achieve a higher price for less square footage.
- Comparisons of rental values and returns in the area. Mr. Baird noted that some rental comparisons presented by the Commission have high end amenities (gym, pool, underground parking, etc.) and modern construction.
- High and low costs for rehabilitation and museum quality restorations. The Commission suggested that the properties would be rehabilitated rather than restored. Mr. Breen estimated about \$40 to \$45 a square foot for low costs such as paint and carpet, and about \$500 a square foot for full historic rehabilitations and restorations some including additions, but none including disassembling and foundations.
- Standards and Evidence – The Applicants believe the standards are unintelligible. Evidence from the structural engineer show that the structures cannot be economically rehabilitated and this evidence remains undisputed.

[6:53:48 PM](#)

The Commission discussed the following:

- Chairperson Shepherd reviewed the process to support or reject the findings and conclusions of the Review Panel. Mr. Nielson further explained that the Commission must state their analyses and findings should they depart from the findings and conclusions of the Review Panel.



- Rental Survey and Rental Returns – Mr. Nielson advised the Commission that the survey obtained by Chairperson Shepherd would make him a witness by introducing evidence that would be outside the record. No further discussion was held specific to the rental survey.
- Pros and cons for rehabilitation, and other rehabilitation cases.

[7:04:05 PM](#)

**BREAK**

The Commission requested a break for legal counsel on clarity relating to relevant issues of discussion and the scope of consideration for this case. The Applicants had no objections.

[7:14:46 PM](#)

The meeting resumed and the Commission discussed the following:

- The process for voting either on all properties or individually.
- Validity of unilateral cost estimates and efforts applied to make rehabilitations successful. The Commission noted that the RDA concept and economic process to purchase and redevelop the subject properties through renovation showed profitability. Subsequently, the seemingly successful concept fell apart and became an economic hardship.
- Discussed the findings from the Economic Hardship Review Panel. The Commission noted that the findings are detailed for 248 and 265/67 W Bishop Place and 432 N 300 West; however, the same level of detail was lacking for 241, 245 249, 258, 259 and 262 W Bishop Place.

[7:29:37 PM](#)

**MOTION**

Regarding 248 W Bishop Place (PLNHLC2017-00020), 265/67 W Bishop Place (PLNHLC2017-00029) and 432 N 300 West (PLNHLC2017-00030), Commissioner Richardson moved that the Commission support the findings and conclusions of the Economic Hardship Review Panel based on the summary of the economic hardship report. Commissioner Peters seconded the motion. Commissioners Quist, Harding, Petro-Eschler, Richardson, Stowell, Peters and Brennan voted “aye”. Commissioner Hyde voted “no”. The motion passed with a three-fourths majority vote.

[7:31:45 PM](#)

The Commission and Staff further discussed the findings for 241, 245 249, 258, 259 and 262 W Bishop Place. The Commission noted that the summary report for those properties only addressed demolition.

[7:38:59 PM](#)

**MOTION**

Regarding 241 W Bishop Place (PLNHLC2017-00017), 245 W Bishop Place (PLNHLC2017-00016), 249 W Bishop Place (PLNHLC2017-00019), 258 W Bishop Place (PLNHLC2017-

00024), 259 W Bishop Place (PLNHLC2017-00025) and 262 W Bishop Place (PLNHLC2017-00026); Commissioner Peters moved that the Commission support the findings and conclusions of the Economic Hardship Review Panel based on the summary of the economic hardship report. Commissioner Hyde seconded the motion. Commissioners Hyde, Brennan, Peters, Stowell, voted “aye”. Commissioner Richardson, Petro-Eschler, Harding and Quist voted “no”. Chairperson Shepherd voted “no” and broke the tie. The motion failed to reach a three-fourths majority vote.

[7:41:47 PM](#)

Mr. Nielson explained that the ordinance mandates the Historic Landmark Commission to be consistent with the Economic Hardship Review Panel unless three-fourths of the Commission (seven Commissioners in this case) vote to oppose the findings and conclusions of the Review Panel; not achieving a three-fourths vote to oppose, effectively supports the findings and conclusions of the Review Panel.

The Commission reviewed the ordinance, and debated the need for a contrary motion.

The Commission further reviewed rehabilitation costs presented by the Applicants, and considered analyzing the numbers and voting up or down one building at a time or grouping them in smaller groups.

Mr. Nielson advised the Commission that they must find and state in their contrary motion that the Review Panel acted in an arbitrary manner or that its report was based on an erroneous finding of a material fact.

[7:53:51 PM](#)

**MOTION**

Regarding 241 W Bishop Place (PLNHLC2017-00017), 245 W Bishop Place (PLNHLC2017-00016), 249 W Bishop Place (PLNHLC2017-00019), 258 W Bishop Place (PLNHLC2017-00024), 259 W Bishop Place (PLNHLC2017-00025) and 262 W Bishop Place (PLNHLC2017-00026); Commissioner Harding moved to not follow the Economic Hardship Review Panel recommendations because their findings are completely inadequate which means they are arbitrary and capricious; the Panel acted in an arbitrary and capricious manner and therefore they inappropriately found economic hardship. Commissioner Petro-Eschler seconded the motion. Commissioners Quist, Harding, Petro-Eschler, Richardson, Stowell and Brennan voted “aye”. Commissioners Peters and Hyde voted “no”. The motion failed to reach a three-fourths majority vote. \*

*\*Because the motion did not reach a three-fourths majority vote, the Historic Landmark Commission effectively accepted the findings and conclusions of the Economic Hardship Review Panel and found an economic hardship with the six properties referenced in the motion.*

There being no further business, the meeting adjourned at [7:57:30 PM](#).

**ATTACHMENT 5: RECORD OF DECISION LETTER**

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July 3, 2018

Bruce R. Baird  
2150 S. 1300 East 5<sup>th</sup> Floor  
Salt Lake City, Utah 84106

Re: RECORD OF DECISION: BISHOP PLACE ECONOMIC HARDSHIP APPLICATIONS:

**PLNHLC2017-00017** – 241 W Bishop Place  
**PLNHLC2017-00016** – 245 W Bishop Place  
**PLNHLC2017-00020** – 248 W Bishop Place  
**PLNHLC2017-00019** – 249 W Bishop Place  
**PLNHLC2017-00024** – 258 W Bishop Place  
**PLNHLC2017-00025** – 259 W Bishop Place  
**PLNHLC2017-00026** – 262 W Bishop Place  
**PLNHLC2017-00029** – 265/67 W Bishop Place  
**PLNHLC2017-00030** – 432 N 300 West

Dear Mr. Baird,

This letter is the Record of Decision relative to the petitions above regarding a request for a Determination of Economic Hardship for nine contributing structures in the Capitol Hill Local Historic District at the above listed addresses.

On June 28, 2018, the Historic Landmark Commission effectively accepted the conclusions and findings in the Report of the Economic Hardship Review Panel and found **there is an Economic Hardship** with the following six buildings/petitions:

- 241 W Bishop Place – PLNHLC2017-00017
- 245 W Bishop Place – PLNHLC2017-00016
- 249 W Bishop Place – PLNHLC2017-00019
- 258 W Bishop Place – PLNHLC2017-00024
- 259 W Bishop Place – PLNHLC2017-00025
- 262 W Bishop Place – PLNHLC2017-00026

And **did not find an Economic Hardship** with the following three buildings/petitions:

- 248 W Bishop Place – PLNHLC2017-00020
- 265/67 W Bishop Place – PLNHLC2017-00029
- 432 North 300 West – PLNHLC2017-00030

The Historic Landmark Commission made a motion to accept the findings and conclusions in the Report of the Economic Hardship Panel and by a 7-1 vote, did not find an Economic Hardship with the following properties:

- 248 W Bishop Place – PLNHLC2017-00020
- 265/67 W Bishop Place – PLNHLC2017-00029
- 432 North 300 West – PLNHLC2017-00030



In regards to the following properties:

- 241 W Bishop Place – PLNHLC2017-00017
- 245 W Bishop Place – PLNHLC2017-00016
- 249 W Bishop Place – PLNHLC2017-00019
- 258 W Bishop Place – PLNHLC2017-00024
- 259 W Bishop Place – PLNHLC2017-00025
- 262 W Bishop Place – PLNHLC2017-00026

The Historic Landmark Commission made a motion to accept the findings and conclusions in the Report of the Economic Hardship Panel to find an Economic Hardship with the six above properties. By a 5-4 vote, the motion failed.

The Historic Landmark Commission made a motion to reject the findings and conclusions in the Report of the Economic Hardship Panel because they were based on arbitrary erroneous findings of material fact. Rejecting the findings and conclusions of the review panel requires  $\frac{3}{4}$  of a quorum, and by a 6-3 vote, the motion failed.

Section 21A.34.020.K.3.c of the Salt Lake City Zoning Ordinance states:

*(3) Consistency With the Economic Review Panel Report: The historic landmark commission decision shall be consistent with the conclusions reached by the economic review panel unless, based on all of the evidence and documentation presented to the historic landmark commission, the historic landmark commission finds by a vote of three-fourths (3/4) majority of a quorum present that the economic review panel acted in an arbitrary manner, or that its report was based on an erroneous finding of a material fact.*

In accordance with the zoning ordinance requirement above, the Historic Landmark Commission decision must be consistent with the Economic Review Panel Report unless they find by  $\frac{3}{4}$  of a quorum the report was based on erroneous finding of a material fact. Because a motion to reject the Review Panel findings and conclusions failed, the Historic Landmark Commission effectively accepted the review panel findings and conclusions. Salt Lake City Attorney, Paul Nielson, acknowledged the Historic Landmark Commissions' acceptance of the Review Panel's conclusions, and Bruce Baird, legal counsel representing the applicant acknowledged the motion to accept the conclusions of the Review Panel was effectively accepted by the Historic Landmark Commission.

The decision of the Historic Landmark Commission was based on the evidence and documentation submitted by the applicant, the findings and conclusions listed in the Report of the Economic Hardship Review Panel, and testimony heard during the public meetings.

In accordance with the Salt Lake City Zoning Ordinance, the following is required for a Certificate of Appropriateness for demolition of a contributing structure:

**21A.34.020**

- O. Recordation Requirement for Approved Certificate of Appropriateness for Demolition



The applicant is to provide an Intensive Level Survey (ILS) for each contributing structure to be demolished for the purpose of providing documentation to state archives.

P. Review of Post Demolition Plan for New Construction or Landscape Plan and Bond Requirements for Approved Certificate of Appropriateness for Demolition

Prior to approval of any Certificate of Appropriateness for demolition the Historic Landmark Commission shall review the post demolition plans for compliance with the standards in 21A.24.020.H If the post demolition plan is to landscape the site, a bond shall be required to ensure the completion of the landscape plan approved by the Historic Landmark Commission. The design standards and guidelines for the landscape plan are provided in chapter 21A.48 of the Salt Lake City municipal code.

1. The bond shall be issued in a form approved by the city attorney. The bond shall be in an amount determined by the building official and shall be sufficient to cover the estimated cost, to: a) restore the grade as required by title 18 of the Salt Lake City Municipal code; b) install an automatic sprinkling system; and c) revegetate and landscape as per the approved plan.
2. The bond shall require installation of landscaping and sprinklers within six (6) months, unless the owner has obtained a building permit and commenced construction of a building or structure on the site.

R. Expiration of Approvals

Subject to an extension of time granted by the Historic Landmark Commission, no Certificate of Appropriateness shall be valid for a period of longer than one year unless a building permit has been issued or complete building plans have been submitted to the division of building services and licensing within that period and is thereafter diligently pursued to completion, or unless a longer time is requested and granted by the Historic Landmark Commission. Any request for a time extension shall be required not less than thirty (30) days prior to the twelve (12) month time period.

The minutes of the Historic Landmark Commission meeting are tentatively scheduled to be adopted on July 19, 2018. Copies of the adopted minutes will be posted on the Planning Division's website the day after they are adopted at:

<https://www.slcc.gov/boards/historic-landmark-commission-agendas-minutes/>

This Record of Decision is provided to you indicating the date, the action taken—to accept the findings and conclusions in the Report of the Economic Hardship Review Panel, the pertinent appeal periods; and, to what body an appeal can be made.

Appeal by the Applicant

There is a 30-day period in which the applicant may appeal the Historic Landmark Commission's decision. The applicant has the option of appealing to either the Appeals Hearing Officer **or** to the Mayor, who serves as Salt Lake City's Historic Preservation Appeal Authority. Any appeal by the applicant, including the filing fee, must be filed by the close of business on **July 30, 2018**.

JACQUELINE M. BISKUPSKI  
Mayor

COMMUNITY &  
ECONOMIC DEVELOPMENT  
PLANNING DIVISION



Appeal by an Affected Party

There is a 10-day appeal period in which any party entitled to appeal can appeal the Historic Landmark Commission's decisions to the city's Appeals Hearing Officer. This appeal period is required in the City's Zoning Ordinance and allows time for any affected party to protest the approval, if they so choose. Any appeal, including the filing fee, must be filed by the close of business on **July 9, 2018**.

If you have any further questions about the Planning Division's processes, please contact me at (801)535-7281 or by e-mail at [amy.thompson@slcgov.com](mailto:amy.thompson@slcgov.com).

Sincerely,

A handwritten signature in blue ink that reads "Amy Thompson".

Amy Thompson  
Principal Planner  
cc: Case file(s)

## **ATTACHMENT 6: STANDARDS FOR DETERMINATION OF ECONOMIC HARDSHIP 21A.34.020.K**

### ***21A.34.020.K – Definition and Determination of Economic Hardship***

The determination of economic hardship shall require the applicant to provide evidence sufficient to demonstrate that the application of the standards and regulations of this section deprives the applicant of all reasonable economic use or return on the subject property.

1. **Application for Determination of Economic Hardship:** An application for a determination of economic hardship shall be made on a form prepared by the planning director and shall be submitted to the planning division. The application must include photographs, information pertaining to the historic significance of the landmark site and all information necessary to make findings on the standards for determination of economic hardship.
2. **Standards for Determination of Economic Hardship:** The historic landmark commission shall apply the following standards and make findings concerning economic hardship:
  - a. The applicant's knowledge of the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition;
  - b. The current level of economic return on the property as considered in relation to the following:
    - (1) The amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant, and the person from whom the property was purchased,
    - (2) The annual gross and net income, if any, from the property for the previous three (3) years; itemized operating and maintenance expenses for the previous three (3) years; and depreciation deduction and annual cash flow before and after debt service, if any, for the previous three (3) years,
    - (3) Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the previous three (3) years,
    - (4) Real estate taxes for the previous four (4) years and assessed value of the property according to the two (2) most recent assessed valuations by the Salt Lake County assessor,
    - (5) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property,
    - (6) The fair market value of the property immediately prior to its designation as a landmark site and the fair market value of the property as a landmark site at the time the application is filed,
    - (7) Form of ownership or operation of the property, i.e., sole proprietorship, for profit corporation or not for profit corporation, limited partnership, joint venture, etc., and
    - (8) Any state or federal income tax returns on or relating to the property for the previous two (2) years;
  - c. The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and price asked and offers received, if any, within the previous two (2) years. This determination can include testimony and relevant documents regarding:
    - (1) Any real estate broker or firm engaged to sell or lease the property,
    - (2) Reasonableness of the price or rent sought by the applicant, and
    - (3) Any advertisements placed for the sale or rent of the property;



- d. The infeasibility of alternative uses that can earn a reasonable economic return for the property as considered in relation to the following:
  - (1) A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation,
  - (2) Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the decision of the historic landmark commission concerning the appropriateness of proposed alterations,
  - (3) Estimated market value of the property in the current condition after completion of the demolition and proposed new construction; and after renovation of the existing property for continued use, and
  - (4) The testimony of an architect, developer, real estate consultant, appraiser, or other professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property;
  
- e. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.