

STAFF ANALYSIS
Case 470-06-57
Everest Builders, Represented by Eric Saxey
Request for Determination of Economic Hardship
256 South 700 East, 262-264 South 700 East and 268 South 700 East.
December 5, 2007

REQUEST

This is a reconsideration of the September 5, 2007 Historic Landmark Commission's decision on Case 470-06-57. The case is in regards to the Economic Hardship request by Everest Builders, represented by Eric Saxey. The applicant is requesting the Historic Landmark Commission find that there is an Economic Hardship if the applicant is denied the right to demolish the three structures: 256 South 700 East (purple house), 262-264 South 700 East (white duplex) and 268 South 700 East (sixplex) in the Central City Historic District. The Commission's review and decision should focus on whether to uphold or overturn the decision of the Economic Review Panel. The Historic Landmark Commission can consider all evidence submitted as well as new evidence submitted after the September 5, 2007 meeting.

BACKGROUND

The Historic Landmark Commission originally overturned the Economic Review Panel's decision on April 4, 2007. That decision was appealed to the Land Use Appeals Board which, in its latest decision, remanded the decision back to the Historic Landmark Commission on the basis that the Commission had:

- Failed to provide an adequate explanation for its actions;
- That the explanation given by the Historic Landmark Commission was contrary to the evidence before it;
- That the Historic Landmark Commission motion which carried identified the basis for denial as comparison of purchase price with appraisal price to the exclusion of other, perhaps more significant factors in determining whether the applicant could obtain a reasonable rate of return. Therefore the Commission's basis for denial of the Economic Review Panel's recommendation was incorrect as a matter of fact and law; and
- That the Historic Landmark Commission shall consider all factors related to a reasonable rate of return for which there is evidence in the record and that the applicant may supplement the record as the applicant may deem appropriate, as cited in the minutes, at the rehearing of the original petition.

At the meeting on September 5, 2007, the Historic Landmark Commission made a motion to overturn the Economic Review Panel's decision by finding that the Panel made an erroneous finding of material fact because the panel failed to adequately address standards 21A.34.020K.d and e as follows:

1. The applicant failed to provide an adequate analysis of alternative scenarios which may produce a reasonable economic return on the property while preserving one or more of the contributing structures (Standard 21A.34.020.K.d); and
2. If the applicant had adequately analyzed alternative scenarios, he may have determined that an economic return on the property could occur with the preservation of one or more of the contributing structures which may have led to the availability of tax credits to offset some of the cost of rehabilitation of the contributing structures, making the project more economically viable (Standard 21A.34.020.K.e).

The Commission's vote on the motion was three in favor, one opposed and one abstention. The motion failed to carry the three-fourths (3/4) vote needed to pass, which resulted in the Commission upholding the Economic Review Panel's Decision. (Due to the number of Commissioners at the meeting, four would have needed to vote in favor of the motion for it to have passed.)

On September 19, 2007 Commissioner Paula Carl, who voted on the prevailing side of the motion at the September 5, 2007 meeting, moved to reconsider the motion. The motion was seconded and passed unanimously by the Commission. This action is in accordance with Roberts Rules of Order regarding reconsidering a case. Commissioner Carl stated that she moved to reconsider the case because she believed the majority of the quorum present at the meeting on September 5, 2007 expressed a desire to reverse the decision of the Economic Review Panel and she believed in fairness, that the case should be reconsidered so that the opinion of the full Commission could be stated.

Although the Commission specifically requested that staff schedule the matter as soon as possible, the applicant requested that the matter be delayed until such time as staff was able to review and make a recommendation based on new information the applicant desired to submit.

The original scenario included demolishing all three structures. At the September 5, 2007 meeting, the applicant submitted a scenario that would retain all three structures. Due to the timing of the submittal, staff did not have time to review and analyze that information. On October 26, 2007, the applicant submitted information on three new scenarios and, at the request of staff, later submitted additional information which resulted in a fifth scenario. Since then, the Planning staff has worked with a member of the RDA Staff, Senior Project Manager Mack McDonald, to compare the applicant's information with current construction rates and sale rates in the Salt Lake market for these types of developments to determine if the costs are reasonable. A description and analysis of the economic feasibility of the scenarios (standard d) is listed in the Analysis section of this report (pages 6 and 10).

LEGAL STANDARD

Section 21A.34.020.K. identifies the Definition and Determination of Economic Hardship as,

“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.”

Staff recommends that the Commission review all of the evidence in the record and any supplemental evidence submitted to it relating to Standards 21A.34.020 K.2a-e regarding the determination of economic hardship. *(Please refer the binder given to each Commissioner for the September 5, 2007 meeting, the packet of information attached to this report and any additional information that may be submitted at the December 5, 2007 Historic Landmark Commission meeting.)* Unless the Commission decides to table the matter, any motion made relating to this case, should include findings relating to the discussion of each standard and the action must result in one of the following:

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.

Denial of Economic Hardship: If the Historic Landmark Commission finds that the application of the standards set forth in subsection K2 of this section does not result in Economic Hardship then the certificate of appropriateness for demolition shall be denied.

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.

If the Commission’s decision is to reverse the Panel’s decision, it must make findings on each of the standards.

ANALYSIS

Section 21A.34.020K.2 includes the Standards for Determination of Economic Hardship. The September 5, 2007 staff report included the discussion information on each standard made by the applicant, the Economic Review Panel and the Historic Landmark Commission in past meetings as part of this case *Please see attachment C; September 5, 2007 staff report*) There may be other information applicable to the standards, including written submittals and discussion in the public hearing portions of the Economic Review Panel and Historic Landmark Commission meetings that is applicable to the standards that the Commission should also examine (please review the information in the binder that was submitted to the Commission members as part of the September 5, 2007 Historic Landmark Commission meeting). Standard d, relating to the review of alternative scenarios, is the standard on which the Commission focused its findings and decision at the September 5, 2007 meeting.

21A.34.020 K. 2. **Standards For Determination Of Economic Hardship:** The Historic Landmark Commission shall apply the following standards and make findings concerning economic hardship:

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

Finding: As noted in the September 5, 2007 staff report, the applicant knew the property was in the Central City Historic District prior to purchasing it. *Please see attachment C; September 5, 2007 staff report*)

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

i. 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,

ii. 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,

iii. Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the previous three (3) years,

iv. 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,

v. 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,

vi. 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.

vii. 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

viii. Any state or federal income tax returns on or relating to the property for the previous two (2) years;

Finding In their review and discussion, both the Economic Review Panel and the Historic Landmark Commission noted the amount paid for the property, the operating and maintenance expenses, remaining balances on the mortgage, assessed value, appraisals, taxes and fair market value. Both bodies stated there was a high debt service which was caused by the applicant and noted the difficulty in being able to secure enough rent to substantiate the debt. They also discussed what would be a reasonable rate of return on the property. (*Please see attachment C; September 5, 2007 staff report*)

Standard 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:

i. Any real estate broker or firm engaged to sell or lease the property.

ii. Reasonableness of the price or rent sought by the applicant, and

iii. Any advertisements placed for the sale or rent of the property;

Finding: In their review and discussion, both the Economic Review Panel and the Historic Landmark Commission noted that due to the high debt service on the property, it would be difficult to recoup the purchase price through rents due to the size and location of the units. The Economic Review Panel did not believe that selling the units would provide a reasonable economic return on the property due to the location and size of the units. The Historic Landmark Commission noted that the applicant bought the property for less than it was appraised. (*Please see attachment C; September 5, 2007 staff report*)

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

i. 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,

ii. 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,

iii. 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

iv. 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;

Analysis: Both the Economic Review Panel and the Historic Landmark Commission noted that the applicant did not provide enough documentation to prove that all reasonable alternatives were explored that may provide a reasonable economic return on the property. Even so, the Economic Review Panel did not believe there was a scenario that would be reasonable in terms of development and would also provide a reasonable economic return on the property. They noted the existing development in the area and voiced a concern with leaving a contributing building between two non-contributing buildings (the McDonalds Restaurant and the proposed residential development on the subject property).

The Historic Landmark Commission found that the applicant failed to adequately investigate alternative scenarios which may include relocation of structures, building new condominiums, taking advantage of the planned development process or other similar scenarios which would allow for the retention of one or more of the contributing structures while receiving a reasonable economic return. Due to the Economic Review Panel's failure to require these scenarios, the Commission found that the Economic Review Panel made an erroneous finding of material fact as a reason to reverse the Panel's decision. *Please see attachment C; September 5, 2007 staff report)*

The main issue identified by the Historic Landmark Commission at the September 5, 2007 Commission meeting was the fact that the applicant did not submit, and the Economic Review Panel did not adequately consider, feasible alternative scenarios that could earn a reasonable economic return on the property. Since that time, the applicant has developed and submitted detailed financial information on four scenarios to consider relating to whether there are alternative scenarios that can earn a reasonable economic return on the property as noted in Section 21A.34.020.K.d. These three scenarios as well as a fifth scenario submitted on the day of the September 5, 2007 meeting, are described and analyzed below.

- **Scenario A**: Renovating the six-plex and selling the units as condominiums; demolishing the two other structures and building sixteen (16) new Condominium Units (16- 2 bedroom units) along 700 East with underground parking.
- **Scenario B**: Relocating the purple house to the corner of 700 East and 300 South; demolishing the two other structures and building sixteen (16) Condominium Units (14-2 bedroom units and 2-1 bedroom units) along 700 East with underground parking.
- **Scenario C**: Relocating the purple house to the corner of 700 East and 300 South, renovating and selling it; demolishing the duplex structure; renovating the six-plex for sale as condominiums and building eleven (11) Town homes along Markea Avenue and 700 East with attached garages. (The applicant also explored relocating the purple house to front on Markea Avenue but this would decrease the number of townhouses that could be built; making it less economically feasible than relocating the purple house to the corner of 300 South and 700 East.
- **Scenario D**: Retaining all three structures, including relocating the duplex to Markea Avenue renovating the purple house and the six-plex, selling all of the existing units, and building ten (10) new condominium units along 700 East with underground parking.
- **Scenario E**: Demolishing the purple house and the white duplex, renovating the six-plex and selling as condominium units, and building thirteen (13) new townhouses.

Mr. McDonald assisted staff in its analysis of the submitted numbers. In each scenario, the Current Expense amount is the same. The expenses are based on the land purchase and expenses so far, which equal approximately \$979,667. It is also assumed that some costs are fixed (such as the fees, relocation costs etc.) and other costs can be modified (sales cost, sales commissions, construction costs, architectural and engineering fees and financing of the development). Staff worked with Mr.

McDonald to analyze the submitted financial numbers from the applicant in comparison with the current market for similar types of development in the Salt Lake Market. The focus of the analysis is on those costs that can be modified relating to the projected expenses and revenues for the projects.

According to information Mr. McDonald provided, the average cost for similar types of construction in the current Salt Lake Market is \$155 per square foot. It is a bit less for townhouse development (*please see attachment B*)

The four tables below visually convey information that can be used by the Commission to determine whether a reasonable economic return could be made on the various scenarios submitted by the applicant.

**TABLE 1: COMPARISON OF SQUARE FOOTAGE COSTS
NEW CONSTRUCTION**

	Scenario A	Scenario B	Scenario C	Scenario D	Scenario E
Square footage	31,974	28,240	12,650	22,000	15,200
Hard Costs (permit cost not included)	\$5,581,310	\$5,135,600	\$1,439,000	\$3,975,000	\$1,662,800
Project cost per square foot.	\$175	\$182	\$114	\$181	\$109
Current Market in Salt Lake per square footage	Range of \$146-\$206	Range of \$146-\$206	Range of \$107-124	Range of \$146-\$206	Range of \$107-124
Are the Applicant's Costs Reasonable	Yes	Yes	Yes	Yes	Yes

TABLE 2: REVENUE COMPARED WITH EXPENSES

	Scenario A	Scenario B	Scenario C	Scenario D	Scenario E
Projected Revenue	\$7,496,960	\$6,318,352	\$3,406,312	\$5,637,561	\$3,738,000
Projected Expenses	\$7,946,205	\$7,325,315	\$3,483,025	\$6,100,204	\$3,608,809
Balance	(\$449,245)	(\$1,006,963)	(\$76,713)	(\$462,643)	\$129,192

Table 1 indicates that the applicant's cost per square foot is reasonable based on the current Salt Lake Market for new construction of this type of development. Table 2 indicates that in each scenario, based on the information submitted by the applicant, there will be a negative return on the development. Table 3 and 4 include information on factors that may be able to be modified by the applicant in order to ensure a reasonable economic return.

TABLE 3: PROPOSED SALES PRICE OF UNITS IN PROJECT

	Scenario A	Scenario B	Scenario C	Scenario D	Scenario E
256 S. 700 East (Purple House)	NA	\$178,312	\$178,312	\$191,394	NA
262-264 S 700 East (White duplex)	NA	NA	NA	\$178,192	NA
268 S 700 East (sixplex)	\$104,000-\$125,000	NA	\$104,000-\$125,000	\$104,000-\$125,000	\$104,000-\$125,000
Condominiums	\$424,935	\$285,000-\$397,860	NA	\$282,150-\$480,225	NA
Townhouses	NA	NA	\$230,000	NA	\$230,000-\$280,000

TABLE 4: DEVELOPMENT COSTS THAT MAY BE MODIFIED

Costs that could be modified	Scenario A	Scenario B	Scenario C	Scenario D	Scenario E
Hard Costs*	\$5,581,310	\$5,135,600	\$1,439,000	\$3,975,000	\$1662,800
Arch & Engineering	\$120,000	\$120,000	\$95,000	\$110,000	\$95,000
Sales Commission & Title Fees (3% & 1%)	\$271,958	\$245,602	\$101,200	\$182,799	\$121,600
Financing Development	\$525,000	\$485,000	\$225,000	\$240,000	\$240,000
* <i>Building Permit costs have been subtracted from the Hard Construction Costs shown on the information submitted by the applicant.</i>					

Scenario E is the only Scenario that indicates a positive balance between the projected revenue and expenses. In his letter, Mr. McDonald indicates that Scenario C in Table 2 indicates a relatively small deficit of approximately \$76,713. Mr. McDonald indicates that it is feasible that decreasing the expenses and increasing the revenue of the project (relating to information in Tables 3 & Table 4) could result in a reasonable economic return on the applicant's investment.

Finding: Based on the information submitted by the applicant and current market information provided by the Redevelopment Agency of Salt Lake City, a reasonable economic return could be made by rehabilitating the six plex and selling it for condominium units and developing 13 new townhouse units along 700 East and Markea Avenue if a Planned Development is approved to modify setback requirements (Scenario E). According to Mr. McDonald's information, it may also be feasible to save the purple house, relocate it to 300 South and 700 East, renovate the six-plex and construct 11 townhouses (Scenario C).

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

Finding: Both the Economic Review Panel and Historic Landmark Commission discussed the potential for tax credits for this project. Federal tax credits are only allowed on income generating projects (for lease). However, there may be a way to provide lease to own options that could make the Federal tax credits work. State tax credits would be available even if the project is owner occupied. If the applicant chooses to take advantage of either the Federal or State tax credits, the State Historic Preservation Office will review interior and exterior plans of both the existing and proposed new construction to ensure compatibility with the historic property and district. (The National Park Service would review the project if Federal tax credits are sought). The fact that Scenario C or E, or a derivative of them, would require the demolition of at least one of the contributing buildings, it may hinder the chances that the Federal or State tax credits would be approved for the project.

RECOMMENDATION

Based on the evidence submitted, both written and oral contained in this staff report, attachments and previous submittals relating to this case, and based on the discussion relating to each of the standards for determination of Economic Hardship, Planning Staff recommends the Historic Landmark Commission:

1. Affirm the Economic Review Panel's decision relating to the white duplex structure (262-264 South 700 East) and the purple house (256 South 700 East) finding that there would be an economic hardship if the applicant were denied demolition approval for these structures; and
2. Reverse the Economic Review Panel's decision relating to the six-plex structure (268 South 700 East) based on the feasibility of Scenario E which includes renovating the six-plex and building new townhouses along 700 East and a portion of Markea Avenue which will provide a reasonable economic return on the property.

This recommendation is also based on the following condition:

1. A demolition permit shall not be issued until a reuse plan has been approved by the Planning Commission and the Historic Landmark Commission and a building permit issued.

Staff also recommends the Historic Landmark Commission transmit a favorable recommendation to the Planning Commission to approve the modifications to the site requirements relating to setbacks in order to accommodate the site plan of Scenario E to be developed on the property.

This recommendation is based on the assumption that the proposal will be approved by the Planning Commission as a Planned Development for Scenario E. If the Planning Commission denies the Planned Development request, or if the approval is for something which modifies the general parameters of Scenario E which would not render a reasonable economic return for the applicant, the applicant is invited to return to the Historic Landmark Commission for further consideration.

Attachments

- A. Submittals from Applicant
- B. Memorandum from Mack McDonald, Senior Project Manager for the Salt Lake City Redevelopment Agency
- C. Staff Report from September 5, 2007
- D. Historic Landmark Commission Minutes from September 5, 2007
- E. Historic Landmark Commission Minutes from September 19, 2007
- F. Public Comment

