

MEMORANDUM

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Planning and Zoning Division
Department of Community Development

TO: Historic Landmark Commission

FROM: Cheri Coffey, AICP Deputy Planning Director

DATE: August 30, 2007

CC: George Shaw, Planning Director; Joel Paterson, Planning Program Supervisor; Lynn Pace, Deputy City Attorney, file.

SUBJECT: 470-06-57 Everest Builders Economic Hardship Application
Remanded by Land Use Appeals Board.

On August 13, 2007, the Land Use Appeals Board (LUAB) remanded the Request for Determination of Economic Hardship by Everest Builders, represented by Eric Saxey, back to the Historic Landmark Commission with direction for review. The Historic Landmark Commission must reconsider the evidence in the case, as directed by the LUAB, at the September 5, 2007 meeting. Attached is the following information for your review prior to the meeting:

- Substantive Information from the Land Use Appeals Board process, including the August 13, 2007 Notice of Decision;
- Staff Analysis document relating to the written and oral information submitted and discussed by the Economic Review Panel and the Historic Landmark Commission in relationship to the Economic Hardship Standards of the Zoning Ordinance (21A.34.020.K2 a-e);
- A Transcript of the April 4, 2007 Historic Landmark Commission meeting relating to this case; and
- The original record (Application, Public Input, Economic Review Panel Report, Minutes and Historic Landmark Commission Memorandums and Minutes.)

On April 4, 2007, the Historic Landmark Commission passed a motion rejecting the decision of the Economic Review Panel. The Commission determined that the Economic Review Panel had made an erroneous finding of material fact in its decision that there would be an economic hardship if the applicant were denied the demolition of the properties located at 256 South 700 East, 262-264 South 700 East and 268 South 700 East. This decision was appealed by the applicant to the Land Use Appeals Board. The Land Use Appeals Board originally reviewed the case on June 18, 2007 and reversed the Historic Landmark Commission's decision having determined that the Commission made an erroneous finding of material fact (please see the June 18, 2007 LUAB notice of decision). On July 20, the Land Use Appeals Board passed a motion to reconsider its decision (please see the July 20, 2007 LUAB notice of decision). The meeting for LUAB to reconsider the decision was held on August 13, 2007. At that meeting, the Board passed a motion to remand the matter back to the Historic Landmark Commission based on the following findings:

- That the Historic Landmark Commission 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 Historic Landmark 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 a rehearing of the original petition.

As a rule, the Land Use Appeals Board does not prepare minutes of their meetings. However, if you are interested, you can listen to the recording of the meetings. Staff can assist you in accomplishing this.

Staff met with the applicant on Monday August 27, 2007. The applicant stated that he intends to submit information to supplement the record. Information that was discussed included updated information on maintenance and holding costs, financial information on various scenarios and information he obtains after meeting with the State Historic Preservation Office relating to Tax Credits. The applicant may submit this information, as well as other pertinent information up until the time of the meeting. Staff encouraged the applicant to submit the supplemental information as soon as possible to give the Commissioners time to review the information prior to the meeting.

One of the issues the LUAB cited in its decision to remand was that the Commission did not base its decision on evidence before it. Therefore, staff has attached the Staff Analysis document which lists the Standards for Determination of Economic Hardship. Also included is information directing the Commission where in the packet the applicant has addressed the standards and where in the packet the Economic Review Panel and Historic Landmark Commission discussed the evidence and standards in prior meetings. The direction of the LUAB is that the Commission must consider all factors related to a reasonable rate of return for which there is evidence in the record. LUAB found that the earlier decision of the Commission was based on a comparison of the purchase price with the appraisal price to the exclusion of other, perhaps more significant factors in determining whether the applicant could obtain a reasonable rate of return. The LUAB found that the basis for the Commissions' denial of the Economic Review Panel's recommendation was incorrect as a matter of fact and law. Therefore, in the deliberation of the matter on September 5, 2007, the Commission should refrain from basing its decision solely on those factors.

If you have any questions relating to any of the attached information, please contact me (535-6188).

Thank You

**STAFF ANALYSIS
CRITERIA, SUBMITTALS AND ECONOMIC REVIEW PANEL
AND HISTORIC LANDMARK COMMISSION DISCUSSION**

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.
September 5, 2007**

DIRECTION TO THE COMMISSION

The following information is staff's summary of information relating to the Standards for Determination of Economic Hardship. This information is provided to indicate where the Economic Review Panel and the Historic Landmark Commission discuss each Standard. Staff created this document to assist the Historic Landmark Commission in its role of reviewing the application against the applicable standards. The document includes a list of the standards and where in the application, the minutes of the Economic Review Panel and the transcript of the Historic Landmark Commission each standard is discussed. The Commission should conduct a complete examination of the record (which includes the application, public comments, and records of the proceedings in the case) against the Standards for Determination of Economic Hardship (21A.34.020.K.2) prior to the Historic Landmark Commission making a decision on this case.

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 relating to determination of economic hardship. 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 must include 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

Below Staff has included various citations included in the record mainly focusing on the applicant's submittal and discussion of the Economic Review Panel and Historic Landmark Commission members during the Executive Sessions of the Economic Review Panel and the Historic Landmark Commission meetings. However, 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.

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:

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

Applicant Response: Information is included on Page 2 of the application form, where the applicant notes that he knew the property was in the historic district.

ERP Response: During the Executive Session of its meeting, the Economic Review Panel noted that the applicant knew of the historic designation and knew there may be challenges to complete his development because of the historic designation. On Page 4 of the ERP minutes, the applicant stated that he knew of the designation, did not believe the structures were significant because the website did not indicate that they were and he bought the properties with the intent to demolish the structures. The record shows that the applicant knew that the properties were in an historic district and therefore, may not be able to demolish the properties. The record also states that the applicant should have ensured that he could fund his mortgage cost with the amount of revenue that could be generated on the property with the structures remaining.

(See Page 11 of the Economic Review Panel minutes of the March 13, 2007 meeting). The record also notes that the applicant neglected to investigate the property thoroughly and consider the ramifications of the cost of rehabilitating and the difficulties of developing the property before purchase (See Page 14 of the Economic Review Panel minutes of the March 13, 2007 meeting).

HLC Response: During the Executive Session of its meeting, the Historic Landmark Commission discussed the applicant's knowledge of designation (please see page 39 of the transcript of April 4, 2007). They included this information as part of the findings of the approved motion (please see page 41 of the April 4, 2007 transcript). The Commission discussed the fact that the applicant knew of the designation, that a member of the Economic Review Panel noted that the structures were not contributing or significant and that this was not refuted by the other members of the panel. The Commission noted that the applicant could have gone through the process of demolition and determination of economic hardship prior to purchasing the property to determine whether his proposal would have been approved. The Historic Landmark Commission also used this in finding that the Economic Review Panel had made an erroneous finding of material fact in the Commission's decision to reverse the Economic Review Panel's decision.

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;

Applicant Response: The information the applicant submitted relating to this standard is listed on pages 2 and 3 of the application form. It is also included in the attachments to the application and in information submitted as part of the Economic Review Panel meeting (please see *Staff Memorandum to ERP [with attachments] 3. Supplemental Applicant information; and b) Information Submitted by applicant at ERP meeting*).

ERP Response: During the Executive Session of its meeting, the Economic Review Panel discussed Standard b and each of its sub-criteria. (Please see page 12 of the Economic Review Panel minutes of March 13, 2007.) They found that the appraisal was credible, the taxes were fair, and the debt service was burdensome but that was initiated by the owner and not a result of the condition of the property. They stated that they did not believe the bad lending decision of the applicant could be a factor in the case. They also stated that the applicant paid less than the appraisal price and that even with improvements, the rent would not be enough to substantiate the debt due to the size of the units and their location on this section of 700 East.

HLC Response: The Historic Landmark Commission discussed Standard b and each of its sub-criteria. (Please see pages 13,14, 33, 34, 38 and 39 of the Historic Landmark Commission transcript of April 4, 2007). They noted that the amount of debt service on the loan is very high and that actions by the applicant may have lead to a self-created hardship. They questioned whether the debt service on the loan was reasonable; what constitutes a reasonable rate of return (including the applicant's definition of this (6-8%); and whether the debt service on the loan should be considered in reviewing the economic return on the property. It was noted if the debt service is self-created, it can be discounted as a factor in determining economic hardship.

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;

Applicant Response: The information the applicant submitted relating to this standard is listed on pages 3 and 4 of the application form in addition to the written attachments to the application form. In addition, the applicant submitted a Memo from Kym McClelland (please see *Information Submitted by Staff at ERP meeting section*) and the *Partlow Investment Property Management* memo included in the section *Staff Memorandum to ERP (with attachments) #3*.

ERP Response: During the Executive Session of its meeting, the Economic Review Panel discussed Standard C. (Please see page 13 of the Economic Review Panel meeting of March 13, 2007.) They found that even if tax credits or low interest loans were used to bring down the cost of rehabilitation, recapturing the debt over time would be very difficult because of the high debt service obligation on the property. They determined that the property could not be rehabilitated for sale because the applicant would not be able to recoup the purchase price and the property could not be rehabilitated for rent to recoup the purchase price because of the location and size of the units.

HLC Response: During the Executive Session of its meeting, the Historic Landmark Commission discussed Standard C (please see pages 22, 32, 34, 35, 37, 38, 41 and 42 of the Historic Landmark Commission transcript of April 4, 2007). The Commission found that the applicant could have better explored the rate of return on renting the properties vs. the cost of servicing the debt and ensuring that all units were rentable prior to purchasing the property. The Commission also noted that the sale of the property would provide an economic return strictly based on the fact that the applicant purchased the property for less than it was appraised at and that it was reasonable to assume there was no depreciation of the property in a year's time. The Commission also noted that the debt service of the property could be considered self-created and therefore, discounted as a consideration of economic hardship; and that the purchase price and the appraisal price were concrete details that were not speculative. The Commission used the determination that based on the appraisal and the purchase price the applicant could sell the property and make a reasonable economic return on the property as part of its finding that the Economic Review Panel had made an erroneous finding of material fact which led to their reversal of the Economic Review Panels' decision.

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;

Applicant Response: Information submitted by the applicant is included on page 4 of the application form as well as attachments to the application specifically including the Letter from Prescott Muir, Architect (*Application Materials: Professional Reports*); the estimated market value of the proposed condominiums (*Supplemental Financial Information*) and the document “*If Vacant Land were Developed Fully*” located in the *Staff Memorandum to ERP [with attachments] section 3. Supplemental Applicant Information*)section of the record

ERP Response: During the Executive Session of its meeting, the Economic Review Panel discussed Standard D (please see page 14 of the minutes of the Economic Review Panel Meeting of March 13, 2007). The Panel members noted that the applicant did not provide enough documentation to prove that all alternatives were explored that would allow him to rehabilitate the property and create an alternative use for the structures. Even so, they found that the cost of rehabilitating the existing units still has to be factored in and that rehabilitating the existing units does not make economic sense. They also questioned whether a scenario where one of the structures was preserved and therefore, sandwiched between new construction on the south and the existing commercial development on the north was a reasonable approach or would be economically viable.

HLC Response: During the Executive Session of it meeting, the Historic Landmark Commission discussed Standard D (please see page 23, 31, 32, and 33 of the transcript of the Historic Landmark Commission meeting of April 4, 2007). The Commission noted that the applicant failed to adequately investigate alternative scenarios which may allow for the preservation of one or more of the

contributing structures including analyzing scenarios for condominiums, a planned development, relocation or a combination of the three scenarios which may afford a reasonable return on the property. The Commission also noted this as a reason to find the Economic Review Panel made an erroneous finding of material fact in its decision to reverse the Economic Review Panel's decision.

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

Applicant Response: Information submitted by the applicant is included on page 4 of the application form. The applicant noted that he cannot use tax credits when no taxable income is realized. Information the applicant submitted relating to cash flow is included in Cash Flow Statements (*see Staff Memorandum to ERP [with attachments] Section- 3. Supplemental Applicant information*)

ERP Response: During the Executive Session of its meeting, the Economic Review Panel discussed this issue. (see page 13 of the March 13, 2007 minutes). The Panel determined that even if tax credits or low interest loans were used to bring down the cost of rehabilitation, recapturing the debt over time would be very difficult because of the high debt service obligation on the property.

HLC Response: During the Executive Session of its meeting, the Historic Landmark Commission discussed Standard E. (see pages 21, 22, 32, and 33 of the transcript of the April 4, 2007 meeting). The Commission noted that the applicant had not fully investigated the tax credit program and they noted that the property would need to be rehabilitated, perhaps as something other than rental units, in order to make a profit enabling the applicant to qualify for the tax credit program to help offset the cost of the rehabilitation. Since the applicant did not fully investigate alternative scenarios such as condominiums, a planned development or relocation scenarios, the analysis of whether the tax credits could help offset the investment were not fully explored.

ERRONEOUS FINDING OF MATERIAL FACT.

At the April 4, 2007 meeting of the Historic Landmark Commission, the Commission found that the Economic Review Panel had made its decision based on an erroneous finding of material fact; specifically

A member of the Economic Review Panel categorized the contributing structures as being non-significant and this categorization was not refuted by the other panel members. (standard 21A.34.020 K 2a);

The applicant failed to look at alternative options (condominium, planned development or relocation scenarios) which may afford a reasonable economic return on the property; 21A.34.020 K2d; and

The failure to analyze the marketability of the property for sale based on the fact that the applicant purchased the property for less than the appraised value and this in itself would provide a reasonable economic return on the property 21A.34.020 K2 c.

RECOMMENDATION

Based on the evidence submitted, both written and oral, and based on the discussion relating to each of the standards for determination of economic hardship, Planning Staff recommends the Historic Landmark Commission reverse the decision of the Economic Review Panel. This recommendation is based on a determination that the Economic Review Panel made an erroneous finding of material fact in making its decision based on the following:

1. The applicant knew of the historic designation and that demolition of the property may not be approved, therefore, he should have more thoroughly analyzed whether leasing the properties would adequately cover the debt service (Standard 21A.34.020K2.a)
2. 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
3. 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.

Having said that, at the August 13, 2007, the Land Use Appeals Board included in its decision to remand the allowance for the applicant to supplement the record as the applicant may deem appropriate. Therefore, if the applicant submits information which addresses various scenarios which may preserve one or more of the contributing structures, and demonstrates to the Commission that a planned development, condominium, or relocation scenario, or combination of these scenarios, would not result in a reasonable economic return on the property, Staff recommends that the Historic Landmark Commission make a determination that although the Economic Review Panel made an erroneous finding of material fact as noted above, the application of the standards set forth in subsection K2 of this section results in economic hardship and grants a certificate of appropriateness for demolition.

Historic Landmark Commission Case No. 470-06-33
Verbatim Transcripts
April 4, 2007

Case No. 470-06-33 — a request by Everest Builders, represented by Eric Saxey, to review the findings of the Economic Review Panel regarding the proposed demolition of contributory structures located at approximately 256 South 700 East, 262-264 South 700 East, and 268 South 700 East, in the Central City Historic District. (Staff – Cheri Coffey at 535-6188 or cheri.coffey@slcgov.com)

Historic Landmark Commission members present were David Fitzsimmons, Chairperson (who recused himself prior to hearing the matter), Commissioner Heid; Acting Chairperson, Commissioner Carl, Commissioner Christensen, Commissioner Haymond, Commissioner Hunter, Commissioner Lloyd, Commissioner Norie, and Commissioner Oliver. Staff members George Shaw, Planning Director; Cheri Coffey, Deputy Planning Director; Janice Lew, Principal Planner; Michael Maloy, Principal Planner, Nick Norris, Principal Planner, Lex Traughber, Principal Planner, Lynn Pace, Deputy City Attorney, and Kathryn Weiler, Historic Landmark Commission Secretary.

Eric Saxey, Applicant, was present.

Fitzsimmons: The first is case number 470-06-33 a request by Everest Builders represented by Eric Saxey. Mr. Saxey is a client of the company I work for so I offer to recuse myself **INAUDIBLE**.

Heid: I am willing to do that. I'm also wondering if it's appropriate for us to a discuss whether the other Commissioners feel that the conflict exists or a when we revised that policy we kind of talked about whether or not.

Coffey: It is up to the Commission to determine that.

Pace: If David feels that on his own, he can recuse himself as well.

Coffey: Right.

Pace: If I can just interject, typically the question has been. **INAUDIBLE** Lynn Pace from the Attorney's Office. Um, typically the question is, if someone says, "I have what might be as a conflict, I don't think it is" on the contrary, if the Board member says, "I have a conflict and here's why." you don't debate that and they just excuse themselves and **INAUDIBLE**

Fitzsimmons: Thank you. Noreen? **INAUDIBLE**

Heid: Ok. So our first case is 470-06-33 if you will recall this is a request for a demolition of three properties on 700 East which the Landmark's Commission denied demolition rights and the applicant appealed, took it to an Economic Hardship panel which then found this demolition to be appropriate. So it is coming back here for us to take one of three actions on that, and do we have a Staff Report on this first, Cheri?

Coffey: Yes. I'm going to move over here for a second to the microphone. Ok. I first want to start out by saying that your packet. There was an omission in your packet. There was some information that was submitted by Cindy Cromer to the Economic Review panel on the day of the meeting and that was inadvertently not put into your packet that we gave you last week. We scanned it and emailed it to you today and I think that you also have a hard copy in front of you. I just wanted to say that up front. The, like Noreen said, the Economic Panel met on March 13, and it was the first time that we've had a public hearing. The ordinance allows for a public hearing, but it was the first time that we actually held a public hearing. And the Economic Review Panel, the make up of that panel is different than the other panels that we have in other decision making bodies. In the case of Economic Review Panel the ordinance says that the applicant can nominate a person to be on the panel, the Landmarks Commission has a person on the panel and then those two panel members decide who the third panel member is. In this case the panel members were Babs De Lay representing the applicant, Sarah Saviston, representing the Landmarks Commission, and then Claudia O'Grady was the third person. And Claudia was the Chair at the meeting. Sometimes in the past the panel members have represented themselves. They have been their own representatives. So, in those circumstances, the applicant will sit and debate and discuss during the meeting because their panel member...it seems awkward in the meeting because we had a public hearing there. And I think the public expected that this was a neutral body that was just going to take everything in and make a decision based on all that. And they weren't used to the panel member actually kinda representing the side. So, just to put it out there in the discussion. We are looking at changing our ordinance because we think the public hearing process is a good process, but we know that there's an expectation by the public that that will kinda be a neutral board. We currently have the Land Use Appeals Board which is a standing Committee and gets called up whenever there's an appeal, so we want to do something similar to that for the Economic Review Panel for the future and we already have that petition that we are working on.

Christensen: Cheri? Does that include public input or public watching?

Coffey: Public input for public hearing.

Christensen: But, I know the Land Use Appeals Board is public. It says the public can attend, but it's not a forum for looking over the data.

Coffey: Right, what we're proposing is to in the near future, the change that we're looking at in terms of the panel makeup will just be the panel makeup it won't change the Ordinance. And right now in the Ordinance it says that you can have a public hearing. So that does allow the public to come and talk to the panel and give them information. So we think that that is a good aspect of our Ordinance, we're not looking at changing that part of it as opposed to the Land Use Appeals Board.

Hunter: One of the other aspects of it is that we as Landmarks are able to actually pick or select who we want representing us. How would the selection...?

Coffey: Well, we would do that similar to what we do for other Boards. We would need people who are experts in the field of real estate and redevelopment but I anticipate that it would be people that the Mayor nominates and the City Council appoints, and that would just be a standing body that is called upon whenever there was an Economic Review Panel case, so they wouldn't be tied to any specific case.

Carl: So they would be basically, all three of them, neutral?

Coffey: Right. That's right. So moving on, the a kinda the crux of the whole thing, the a applicant has to provide evidence to demonstrate that the application of the standards of the Historic Landmarks denying a demolition case deprives the applicant of all reasonable economic use or return on their property. When the panel met, they took public comment, they closed the hearing, and they deliberated on each of the standards. And then they made a motion and they found that there was an economic hardship based on the information that they had and the public comment that they took. They determined, although in my Staff Report I put that they should make a determination on each of the properties separately, they determined that they needed to look at all of the properties together as a whole. Some of those properties, two of the structures are actually on one lot. The panel was told a couple times in the in the meeting they could postpone their decision. There is a time frame in the Ordinance, they have forty-five days to make their decision, and that clock was getting short. But, they met on Tuesday and they had to have a decision on Friday and they decided to make a decision on Tuesday night, but they were told that we could have another meeting during the week if they didn't want to make a decision that night. The role of the Economic

Review Panel is kinda being the fact gatherer, their the ones who have the expertise in economic development and real estate and so through their review of the information and based on their expertise, they determined if whether there was an economic hardship. They are kinda the number crunchers, and the Landmark Commission's role is to determine if the Economic Review Panel did their job, so that looking at things like was the process flawed, if they, if you think the panel didn't adequately address the standards, if you think that the panel made an arbitrary decision, or if you think the panel, there decision was based upon an erroneous finding of material fact, you can do three things. At the Landmarks Commission, you can either affirm what the panel decided, you can reverse what the panel decided, if you determine that you want to reverse it, it needs to be three-quarters of the majority of a quorum to do that, or you can remand it back to the Economic Review Panel, if you do that you should be very specific about what you want them to look at. In terms of a what the panel found relating to the standards, they found that the applicant did know the designation, the appraisal they had in front of them was a reliable appraisal, even with the rehab of the properties, they didn't believe that you could increase the rents enough, to make it economically feasible due to the size of the units and the location of the units on that section of 700 East. They identified that there was a high debt service on the property, they didn't think that that could necessarily be factored in to the economic hardship decision, they thought that the applicant made a very bad decision that way, that he mortgaged a lot, I mean it was very high debt, they, but also because of that debt service, they didn't think that the properties could be rehabbed and then sold. They didn't think the applicant would be able to recoup the purchase price and they didn't that that the properties could be rehabbed and then rented because of their location and the size of the units. They didn't think that would be profitable either, they looked at alternate uses; they were limited to residential uses, the Master Plan calls for that property to be a multi-family residential, and the zoning as well. So they couldn't assume that maybe you could get some mixed use, commercial uses out of it, they were limited to that. So they thought that based on limitations the parking requirements would pose to them and the fact that they did not think that the existing units could be economically viable, they didn't think that even through the planned development, they would be able to make an economic development there. They also talked about the need if they were going to do a kinda planned development scenario, they would lose the six-plex and duplex that are on one lot, on the southern lot, um they would have to lose those to make any kind of a viable operation and then that little purple duplex on the northern property, they didn't think that was very reasonable to leave that isolated that between kinda McDonalds the

new property. So those were the findings that they made that they based their decision on that they found there was an economic hardship.

Christensen: What about the vacant parcel in the corner? How was that handled?

Coffey: The applicant looked at, his analysis was that he could get two units on that property and I think parking was a limiting factor. The panel asked me to also do kinda a feasibility of what potentially could be built there for a planned development scenario, if you took all of the property all together, you could build 26 units there is already ten units, if you went through a planned development process, the Planning Commission can modify setbacks and those types of requirements, so you could probably get more than two units, but my opinion was that the parking again would again be a limiting factor, so...

Christensen: So was the initial cost of that vacant parcel figured in as part of the debt burden for the purposes of this study?

Coffey: No. The Economic Review Panel asked for the specific numbers that just related to the properties that had the structures so that the debt on the vacant property would not be a burden on the other properties.

Ashdown: So they were basically able to quantify, isolate basically that parcel. It seems like, that was a question, how would we know what was carrying on that vacant lot. They were able to show numbers that the parcel had a valuation that was not calculated in that.

Coffey: Right.

Hunter: My remembrance was that the calculation for the vacant lot, I can't remember where that came from Scott, the assessment or the County Assessor, or was it a value or was it an actual appraisal?

Carl: Appraisal.

Coffey: I think it was part of the appraisal; the applicant might be better able to answer that question.

Ashdown: You briefly mentioned that they can't review the purchase price. Will you go over why they can't consider the purchase price.

Coffey: The panel did not believe that they could because of the size of the units and the location of the units that they would be able to put, they could put in money into...

Ashdown: No, I guess I'm not talking...I'm talking about his selling it in units or reselling or resale of the entire property, was that considered or was that not considered?

Coffey: I am not well versed on many things, but I think that what the economic review panel said was that he financed so much of the property, that he would have to rehab it in order to sell it and they didn't think he could recoup that investment back if he tried to sell it. That was my understanding.

Christensen: That same question was also mine. At least if the minutes are accurate, on page 2, Ms. De Lay, speaking for Mr. Saxey said, "Mr. Saxey purchased the property for less than the appraised value at the time of purchase." And, I don't know that property values have gone down in Salt Lake. Since he purchased the property, most general sites property values have stable or increased in some cases. So even if some investment was needed to raise some properties up to some level, to be sellable, I guess I was just curious at how the numbers for it came out on this, if you buy a property a little over a year ago below established market apparently based on the appraised value, how can you lose money on it a year later? Inaudible.

Coffey: And I can't answer that.

Ashdown: But that wasn't discussed by the Economic Hardship Panel?

Coffey: The fact that he bought the property for less than the appraised value?

Heid: The fact that could he resale it now, a year later and would it have appreciated. Is that what you're asking Pete?

Coffey: I don't know that they specifically asked that, but they did talk about whether he could recoup his losses if he sold it, and they didn't think that he could.

Carl: Is that because his debt service was so high?

Coffey: I think so. That was my understanding.

Carl: He's leveraged to the max then.

Ashdown: So, is all that's required to demolish a building is to buy it and waste a lot of money on it. You put a lot of money into it, you can tear it down.

Carl: Well, the way the Ordinance stands now, it's true. Am I wrong?

Coffey: Yeah, I don't know.

Ashdown: You understand better than probably better than the rest of us in the room, the potential tax credit benefits, I know that there's a 20% state tax credit and a 20% federal, one is for residential and one is for residential rental. On the bottom of page 3 again, Ms. De Lay addresses the issue of a 20% tax credit on a residential rental, realizing that it has to make a profit in five years, to benefit from that tax breakup, I don't know if that happened or not, but the other 20% potential tax credit wasn't...it's not in the minutes, was it mentioned at the meeting?

Coffey: It was mentioned. Kirk Huffaker from the Utah Heritage Foundation, came and spoke to the Economic Review Panel, we also gave them the information in writing from SHPO, that oversees those programs. So it was talked about and the panel had that information in front of them.

Heid: So it may not have been captured? So what you're questioning whether what's in the minutes is accurate capturing of Mr. Huffaker's presentation?

Ashdown: Yeah.

Coffey: I think it's in here somewhere.

Hunter: Well, more specifically application to various scenarios of how to recoup costs.

Ashdown: Is that... if you potentially can apply 40% income return on your work, then that seems like one avenue that might make the project more profitable.

Coffey: Well, it was discussed by the economic review panel and for whatever reason, I don't think that they thought it would make the project economically feasible.

Hunter: Cheri, I want to address one different thing that you talked about in the process. Um, we all know that ordinance needs some work, and we were talking some about the process, um and also re-listening to it on a CD, what I found disturbing was not just the fact that a person was representing was also speaking for...but it was what seemed to be a dual process going on, what was allowed for the applicant was not at the same time, really allowed for the opposite side to present, it did not seem equitable to me. It was more than the same person speaking, it was the amount of interruptions, the amount of contrary comments that happened

throughout. And I know there's nothing in the guidelines legally that really defines one way or another, but generally we tend to do some sort of Robert's Rules related to some of the meeting procedures, and that really did not take place because happen because debate was made after any positive comments were made in terms of the demolition. And so I was concerned that it was more of debating process that happened through the whole thing. It did not seem like that was a reasonable way to really conduct it. Now, we may not have anything in the guidelines right now to define that, but given that we are under Roberts Rules and that this is a panel who is acting in our behalf to gather data, it would seem logical that there also would be some sort process that would guide the panel that way. So I was quite disturbed of not so much that the two points of view were presented, but the manner in which the whole hearing kinda engaged. I also just had some questions about the materials that were presented, because there were many things that were given out newly to the panel at the time and um, it did not seem that the panel had considered some of those. There were some things, I guess a copying error or something that happened and it seems that there, are, it's like today, we got some of the materials and it is a lot of material to digest. And to get it at 12:00 today to get some of those materials, and that had happened in the packet, and it seems like the same thing happened to the panel. The panel did not have everything to actually consider. So, I have some concerns about that and hopefully it is something we can address in this process.

Coffey: At the Economic Review Panel meeting, the panel did have before them all of the information that we had on the Thursday before the meeting when we mailed out the packet. There was a copying error like the back sheet of one of the applicant's statements didn't make it into the packet, but I think most of the stuff that the panel got that day was submitted to Staff that day, and there wasn't really...

Carl: It was submitted the day of the meeting.

Hunter: Yes, I was speaking to about the statement page, because it seemed that the statement page is what caused some confusion discussion the panel related to the amount of debt service, what the interest on the debt service was because I know there was some discussion about how much was the actual debt service because that page was not there. So to me it seemed...

Coffey: Yeah, then they got that in the meeting and they discussed it in the meeting, yeah.

Heid: So it wasn't an omission that would invalidate the conclusion of the Economic Hardship Panel.

Coffey: Well they talked, Yeah, they got the information and then they discussed the information. The panel discussed the information in the meeting. So, I bet, I don't know, but..

Heid: I mean some of those concerns, I wonder if they more appropriately belong in the Executive Session. Are there other questions for Staff at this time?

Christensen: I wasn't able to be at the meeting, inaudible and I am surprised by something on page 3 and I've confirmed, talking with the secretary when checking the minutes that this was accurate, Ms. Cromer began to testify, and Ms. De Lay, who wasn't the Chair, so right in this page, said that she should not be allowed to be heard today as she is a property owner in the immediate neighborhood and her testimony would be tainted. Is that correct?

Coffey: And Ms. De Lay is here, but I think that what that says, is that she was stating that there were conversations between Ms. Cromer and the applicant and there was an accusation, or however you want to call it, that Ms. Cromer had offered to buy the applicant's property and that's why Ms. De Lay did not think it was appropriate, but when Ms. Cromer got up and spoke she said that wasn't the case. That's what she was referring to I think.

Heid: Is there questions for Staff? Alright, then I guess we'll move along and invite the applicant to come forward. Can I just by show of hands have anyone who is here to speak to a case other than this one, would you just raise your hand? Ok. So everyone that is in the audience today is here for this one.

Unidentified: Except one.

Heid: I'm sorry, I didn't, one back there. Oh, ok, so the majority are here for this case.

Hunter: Can we ask how many are intending to speak?

Heid: How many are here to speak? And how many are here who are content to have others speak for them if they know they are in agreement. I have a card from Cindy Cromer, I also have a card from Jody Bangeter, are there other folks who are planning to speak? Just the two of you? Our

agenda is pretty crowded today, so I am trying to be cognizant of the time so I'd like to suggest the time frame when we allow a ten minute presentation from the applicant and then perhaps five minutes for each of the two people who have chosen to speak. And then in executive session I guess we can determine whether further testimony is needed. Is that within our prevue Cheri? Alright we'd like the applicant to go first.

Saxey: I don't have an application or anything to add other than the numbers I have already turned in. I was just assuming this meeting was a ratification of what already occurred. If the...

Heid: Please give us your name.

Saxey: My name is James Eric Saxey, I own the property, my company, Everest Builders owns the property, so I don't have anything to add other than the Community Council meeting voted unanimously, the Panel voted unanimously, they had all the information, they had plenty of time, inadible, with that they voted after having the information for forty-two days, they've had the information to review and go over in detail and they voted unanimously to for demolition. So and that's all, and they've gone over all these questions during the meeting they've pretty much gone over everything.

Heid: Do you have any questions for the applicant that you don't feel were covered it the Staff Report or?

Ashdown: Do you have a copy of the information that Ms. Cromer has given to the Commission?

Saxey: Ms. Cromer's information was all basically stuff that nobody would put their name to. It was just stuff basically pulled out of thin air. She didn't have anything documented by any person, no one would say this is my information.

Ashdown: That's not my question. My question is have you seen it?

Saxey: Oh. I not the actual stuff that she came up with, but it was all discounted in the meeting. I talked about it. It never got brought up because all of my information was documented by professionals, by everyone in the industry stand behind the information I turned in. She turned in numbers she just pulled out of thin air. So there are kind of...I don't know how they can argue my numbers really.

Ashdown: Can you tell me why the tax incentives wasn't discussed.

Saxey: It was discussed. Both tax incentives were discussed, they said there was a tax credit on the construction, twenty percent on the construction could be taken off your income, obviously there is no income, so I could not take advantage of that tax credit. The other one was a twenty year, it could be up to twenty years later, you could take advantage of this twenty percent tax credit and it would. If you look at the loan, the loan is an interest only loan, and I put ten percent down on the property and now I put over twenty percent down. And those numbers reflect that. So twenty percent is pretty standard for a down payment on a property. I am not financed it to the max as they say. The bank wouldn't loan me that anyway. So the tax credit over a twenty year period, being able to take it, the advantage of that at some point down the road, twenty years from now, you know, didn't...having the numbers being so far apart from it being anywhere being close to profitable, I don't think they saw them as of...

Ashdown: And the rehabilitation tax credits won't qualify here?

Saxey: Twenty percent of the rehabilitation costs would be about \$300,000 so that would be about \$60,000. Take \$60,000 off of those numbers; off of the numbers of the interest or whatever, it's not even, still isn't even come close to being you can look at the page I printed out of the scenarios, of what was going to be happening, what the scenarios of what was going to be happening, basically I did break it down where I could build a house or redevelop it, this way, rehab the units, build two more houses as a PUD, should all be there. I've gone through every one. If you were to take \$60,000 off of one of those numbers and then see where it would be at the end, it still wouldn't even be close.

Noreen: Scott would it be appropriate to ask the applicant your question in terms of reselling it as is a year later with assumed appreciation?

Christensen: You probably heard one of the question I made a few moments ago. If this is correct, what I've heard of what Ms. De Lay said, you've purchased the property for below the appraised value. It's kinda unheard of in Salt Lake City for property to decrease in value. So did you explore as part of this Economic Hardship process, simply reselling?

Saxey: Ah yeah we talked about this in the meeting too, including...we came out with some of the units are unrentable, there is rear unit in the back of that purple house that has never had anyone in it. It's not really, we'd need quite a bit of upgrade even to be inhabitable and there is another unit which is on the brink of that, one unit that is only bringing in a couple hundred bucks a month and it is extremely expensive to get back up to

living. Basically I could sell this for a you know as the selling price being a function of the rent basically with the rents being so low, could see how I could sell it for that having the units continuing to decay as they are. It just costs too much to bring all those up to rentable standards, to a be able to get that out of the sales price. We did talk about this in the meeting.

Christensen: The logic would ask the next question then: would the properties have so deteriorated in your one year of ownership, so deteriorated in your one year of ownership to make them worth less than a bonafide appraisal appraised them at when you purchased them below that appraised value. I am struggling to understand how the conditions could deteriorate so much as to decrease the value of that property over that year.

Saxey: Well, you also have to...the interest on the loan. I put minimal money into the property. The part of the value of the land is the zoning. The zoning is the RMF-45 and you take that away and that causes hardship.

Christensen: It's not been taken away, you want to sell that land. If it appraised for one number one year how come that has changed so drastically that you can't sell it for that same number.

Saxey: In that one unit that somebody moved out of was completely unrentable, and that happened in the year. And another unit were somebody had moved out of we rented for about \$200 something a month. So there's almost a \$1000 between... no about \$800 bucks between those two units. Inadible. ...spent in the meantime.

Christensen: But weren't those conditions. inaudible. Weren't those conditions known a year ago when it was appraised before you purchased it?

Saxey: Well they weren't as bad as it was now.

Ashdown: What has changed precisely? Did they burn their apartments or rip out the carpet?

Saxey: Some of the structural beam back of that purple house we, was knocked loose.

Ashdown: By the occupant?

Saxey: I don't know. When I walked in there, I didn't shake it, but when I went back through it was moving and there was not footing underneath it. And there is some water damage in the back of that white house and it is pretty

severe. They rebuilt a floor inside of that unit and if I remodel that, it will have to be replaced.

Christensen: So, would you suggest that there was potentially malpractice in the work of the appraiser who appraised the house before you purchased it?

Saxey: No. That was already discussed in the meeting also. They said that the appraisal legit.

Ashdown: We weren't in the meeting so we are trying to understand the scope of what took place. I see a number of questions about the meeting that is why I am trying to find out your perspective on it.

Saxey: Ok.

Hunter: Mr. Saxey I'm going to make sure that I understand what, you are looking for in terms of reasonable return. What you define reasonable and wanted to make sure that I understood what your business plan was based on and I reread the data today and I'm not sure I read it right. Is that you are estimating that about six million that would be your return if your return if you were able to go forward with the condo. project as you had planned.

Saxey: That would be an addition of all the sales prices, that would be the top line number.

Hunter: Right. So what would be reasonable? In your mind what is a reasonable return.

Saxey: On the condos if I was to build those?

Hunter: On the land.

Saxey: A reasonable, normal rate of return. Probably six to eight percent would be reasonable. inaudible.

Heid: Other questions for the applicant? Is there anything you would like to add Mr. Saxey?

Saxey: No, other than the fact that we had this panel to go over the information in great detail which unanimously voted to allow the motion so I pretty much thought it was a simple thing were we would agree, rely on these people to make a decision, they made their decision, and I think we need to rely on what their experts on this job and we should rely on what they've come up with, they've had the information they acted fairly. Thank you.

Heid: Ok. Thank you very much. Alright, Jody Bangeter, would you like to come up and speak to this issue? And Cheri are we timekeeping? I just want to make sure everybody gets their fair say.

Bangeter: I'm a neighbor in the neighborhood representative in the Benion neighborhood which is part of East Central which in proximity is very close to the proposed subdivision. And we feel strongly that someone shouldn't be able to purchase a property at perhaps an inflated price, show that they can't make it and then tear down historic homes. A bad business decision is a bad business decision and the neighborhood should not suffer because of that. We have also had some problems with the process and we're glad that we are looking into how the Board is now formulated. And we also had some questions on the application and didn't feel that we had all of the information. It says that tax credits were looked at, but doesn't show who they talked to specifically and we feel like we need some of that information at least to prove inaudible.

Ashdown: I have one question: are you active in the Community Council?

Bangeter: Yes.

Ashdown: Can you tell me why the Community Council voted unanimously for the demolition?

Bangeter: (Talk over) inaudible.

Ashdown: I'm on Bennion, that's on 700 to 1000 East between fifth and inaudible.

Oliver: And I think as I read the minutes, the Community Council did not vote for demolition they voted for demolition only if Economic Hardship was proved.

Hunter: So it was conditional.

Heid: Ok, thank you very much. Ok, Cindy Cromer.

Cromer: I have a handout and I am so nervous, which I am not usually, that I have to remember to save one for myself. My name is Cindy Cromer, I own two historic buildings on this block. I have buildings that were in comparable states, I have shopped well two weeks for fire insurance on a building and I have buildings nick named dog breath and nightmare. Those are some of my credentials, they also include thirty years of being a landlord and I have ten historic structures. I deeply regret that some of the materials I intended for you to have were not in your packet and I also regret that I did

not discover that until this morning. I did provide a letter for you last week listing all of the materials I had submitted for the Economic Hardship Panel and the dates I submitted them to Staff. So, you have a list of everything I was intending for you to have, but I understand that you didn't get it until the middle of your workday today. I would just let you know that the credentials of the people preparing this document were similar or exceeded my own, they were licensed professionals and have experience as landlords comparable to mine, they all have historic buildings that they rent out and they have additional credentials. I think that there is convincing evidence in those materials, that if these properties are similar to other historical properties that owners are purchasing and operating as rentals. Those are the comparable in the materials I intended for you to have. I think there is also informational materials I prepared about the opportunities on the vacant land for infill housing. I disagree with the statements about those lots not being buildable or financially viable. You got from me in your packet a recent comparable on some acreage I believe is .19 with a density potential of two units and that sold for just under 200,000 making it look like we are willing to pay, in this area, \$100,000 in land cost per unit. I don't feel the petitioner has met the burden as required by the Ordinance, the burden requires no economic return. I've looked at about six different scenarios, I've gone through a mountain of paperwork associated with this proposal and no were in that, do I find any direction to your representative on the Economic Hardship Panel. I would urge you, if your decision is to remand this back to the panel, that you give very explicit instructions to the person who is representing you on that panel. The panel persisted in focusing only on rental. Those of you who are in the market know that the condo development is what is happening now. Rentals is a very hard business to be in, I've been in it for 30 years, both the commercial and residential side of it, and experience does help, but I have bad days as a landlord. The economic hardship panel failed to consider redevelopment of the rental properties as condominiums and all of you would recognize that that certainly is a possibility. And it is inaudible of our existing rental housing is being redeveloped as a condominiums. Also it is very sad for me to see all of these drawings coming in from the architectural firm that are based on a very straightforward use of the RMF-45 Zone. Because this property is large enough to be eligible for the use of a PUD and it will be absolutely essential for you to use a PUD to create a project here that reflects the historic streetscape of the historic multi-story apartment buildings that are around the intersection of 700 East and 300 South. What I am saying to you that there are buildings there that are three to three and one half stories tall, and they have in some cases a minus setback from the property line. They actually have balconies hanging over public property. We are not talking about a twenty foot setback here and it would be

inappropriate to use a twenty foot setback in any new construction on this site. I deeply regret that that message has not been conveyed to the petitioner or his architect. Because, it would be a travesty to waste the developable space on this site by setting the building back twenty feet. That would just be a huge loss. So, with whatever time I have left, I am going to walk you through, hopefully, quickly, what I have here. These are taken off of an old aerial. Here is the existing at the top, the second sheet shows a cluster of historic buildings, to preserve the frame, I had to move the frame one to Marakea, but that was a good thing as there is a hole in the streetscape there, and so you complete the streetscape on Marakea and get some surface parking for the historic buildings. I don't really care how many units you have there...

Unidentified: Please conclude.

Cromer: Yes, a the assets are listed on the last page and the footprint of the potential new building is 11,345 square feet with underground parking. Thank you.

Ashdown: Cindy, am I understanding correctly that you are proposing to move one of the buildings?

Cromer: Yes, I know that it is not normally considered inaudible and a great way to proceed, but it's easy to save one of the historic structures the building that is currently used as a six-plex, it 's possible to save two of them, but I don't see a way to get a good sized housing project in here and save all three of them and the frame one is the easiest one to move. My first idea was to move it down to Trolley Square, to the block south of Trolley Square, to where there is an opportunity for some buildings to be relocated. But one of the Staff wisely pointed out that there is this obstacle called the Traxx line in the way. And then I started thinking about keeping it onsite and that's when things really started to come together, on Sunday and I have to tell you there is a market for this. This property if the Staff doesn't shoot this down, if you don't shoot this down, if the Planning Commission doesn't shoot this down, there is a market for this and this property will resale with this proposal, I don't have any doubt at all.

Ashdown: I have a couple of questions about, you attended the Economic Hardship.

Cromer: Yes.

Ashdown: There is a question about...you have an interest in this property. Is that inaudible wrong? A financial interest.

Cromer: Well, first of all, I no. I have no financial interest here, I am way overextended, I have nightmare and dog breath to deal with. I have an interest in every historic structure on the planet. That interest varies from very intense if it is close to where I had invested to isn't that interesting? But I have an interest in all historic buildings. I have an interest especially in multiunit buildings especially in buildings that are four units or more and I did find that I found the six-plex to Mr. Saxey because he insisted that no would want to buy it. So rather than volunteering someone else, I said, well I find that building interesting. But, I never invest on state highways, and so this would not be a property that I would ever seriously pursued because it is located on a state highway.

Ashdown: And do you feel that the facts and figures that you provided to the Economic Hardship Panel were not considered accurately. Talkover.

Cromer: The Panel members received, the Staff received some of that information days ahead of time as the professionals who were working on it provided, I was collecting information up until the day of the Economic Hardship Panel and some of it came into the Panel that day. No, I don't feel that they considered it seriously, I feel they flipped through it and dismissed it, that is my personal perception on how the information that I had collected was treated.

Ashdown: Was that the case for all of the Panel members, was the representative for the Commission also was flippant towards your data?

Cromer: I think you can look at the minutes and make that evaluation for yourself, looking at what you have before you now and how much time it would take to digest that accurately, so I would tell you that they didn't spend a great deal of time on it, in the analysis you can see the substantial size of the material, I did make the mistake in my presentation in that I didn't have time to get through it, there was just way too much information and I couldn't verbally talk about everything that was in the packet, so again, I would just urge you to provide some direction to the Economic Hardship Panel representative if you are sending this back that way. I would urge you to look at the information I submitted, and I am sorry to take up so much time.

Carl: May I ask you one question?

Cromer: Sure.

Carl: I understand that you are active on the Community Council, what , I'm sure that inaudible Community Council was as far as the inaudible it makes it sound that all were in favor of demolishing it.

Cromer: The Central City Community Council, is not a Community Council that has a lot of attendance, it has some very stalwart dedicated people who keep the neighborhood organization going. It is particularly not well represented at the north end of the neighborhood, where this property is, I was the only property owner in attendance at the meeting, so I was the only property owner who owned property on the block who at the meeting. And there is no representative forum as there is in the neighborhood next door East Central, there is no representative forum with a neighborhood representative for each block of each neighborhood attending the Community Council on a regular basis. So there are very few people there.

Heid: I have a question as well, one of the... I understand you raised as a question and when I read the minutes, I was not able to determine whether or not you received an answer or not. The expenses that were projected by Clark Burns construction should bring each of the units up to rentable status. I believe those were based just on the owner and the construction person's judgment as to what was needed. And you raised the question as to whether a City inspector had come out and determined that certain repairs were needed in order to bring the buildings up to code, in other words are these repairs needed in order to make them legal or were they somewhat cosmetic, so was there an answer given to you in terms of who determined what was needed or not.

Cromer: No my understanding was that the appointment for the inspection for the City was scheduled for the Friday after the Economic Hardship Panel met and so they were meeting and the inspection was scheduled for Friday.

Heid: So there wasn't a resolution to that question of yours in terms of whether or not the proposed renovation was to bring things up to code or not or for...

Cromer: No.

Heid: Thank you very much.

Hunter: Cindy, can I ask you a question? Um, you talked a little about in one of your documents, about the value of the vacant lot and I wondered if since you own quite a bit of property, what your experience or what data you

had in regard to the value of the vacant lot that could be removed from the purchase price?

Cromer: Well, I just think just basic, it isn't based upon my experience except early school arithmetic that you have to subtract like numbers from like numbers. So if you are going to use the tax assessor's values, you have to use all tax assessors' values and if you are going to use the appraiser's values straight across in order to come up with a number that's equitable. Vacant land is extremely rare and the proximity to Traxx has made all of the parcels more valuable. I am astounded that this being a parcel at 141 South 800 East that recently sold at \$199,900 with 2 units as the maximum density.

Norie: I have a question about the property.

Hunter: Yes, you in a memo on 3/13 talked about reasonable debt service and that you thought the owner had not presented a reasonable debt service. I wondered if you could talk about that.

Cromer: Well, I can talk about it on a lot of different levels. one of the things that is going on in the market right now and I think that I mentioned it for the first Memo on March 7th, was is that a lot of the money that is going around now is 1031 exchange money where people are coming in with cash and full price offers, making full price offers and above price offers, and willing to close quickly. When in the marketplace it is very difficult to compete with them because they have no debt service on their buildings. Difficult for a landlord to compete with these people who have no debt service, so when you come in with a project that has such a phenomenal debt service, of course, it's very difficult to compete. It is also difficult to hire a management company and you only have a maximum of 10 units. You can't hire somebody, I have right now about 24 and I manage them for myself.

Heid: If there is anyone else in the audience who wants to speak to this matter, if so you will need to fill out a card on the table in the back there. All right, seeing none, we will close the Public portion of the meeting then and move to Executive Session. And remind the Commissioners that our task is to choose one of the three options that were outlined in the Staff Memo; that is to either confirm the decision of the Economic Review Panel which is to approve demolition, to reverse the decision of the Economic Review Panel in which case we need a three quarter majority of a quorum, or remand the case back to them to be reheard and in that instance we would need to find specific reasons why we feel that it wasn't done

appropriately and specific instructions as to what the rehearing would cover.

Christensen: I have a procedural question; can I direct that to Staff?

Heid: I think probably we better answer that.

Christensen: Cheri, I can see why the owner might want to go down certain roads, with his property within the boundaries of zoning and law. But for the purposes, for a hardship case, is an applicant required or does the process require options to be considered, even if they are not options the property owner would then enact?

Coffey: The way it is written in the Ordinance, one of the criteria is to look at alternate uses for the property and the panel made some statements about how they didn't think the applicant did a lot of that, but they talked about alternate scenarios, the panel talked about the Planned Development process, and the Panel didn't think that they were reasonable scenarios that would bring a reasonable return.

Christensen: There are two at least that I have heard, down notes and I would love to bounce them off you and see if they are viable.

Pace: Just in response to being viable. If you look at 21A.020.k.2.d is sections on the standards for determining Economic Hardship. d. says: in infeasibility of alternative uses, the Panel certainly had the license to look at a draft of these and consider alternative uses to look at the alternative beyond what the applicant might...inaudible...property.

Carl: Does the reason...Sorry...

Christensen: Oh, just let me finish quickly. I can certainly understand that the applicant didn't want to go through a tax credit process, feeling that the recapture would take too many years. But, it seems that that wasn't fully understand until the meeting, a potential of 40% return on approved work.

Norie: Can I just...inaudible, inaudible. The way I read it and the way I view the tax credit, the tax credit is just on the Federal on the construction cost, on the rehab cost and 20% on the state and my understanding was why they rejected that was because he would actually have an income to take the tax credit and from what they looked at, it seemed, not that I think there weren't other issues to look at, but I don't know that the tax credits...

- Coffey: That was the argument that applicant made, was that he wasn't getting any return on his property so he didn't think he could take a tax credit.
- Ashdown: But isn't income subsequent to rehabilitation? I mean if you rehabilitate with the intent of taking the tax credit and you leave your apartments empty, you're an idiot. It just seems to me that there is a chain of events that is inevitable, and so to say that there is no income now, before you rehabilitate, doesn't seem to wash very well.
- Coffey: Well the discussion that took place was that the applicant didn't think that they could put enough money into the rehab, or they could put a lot of money into the rehab and they still couldn't get a return on their investment because the market wouldn't allow them to rent the units because of their size and their location for very much money.
- Christensen: Were they able to explore the issue of at least the majority of the units being rented at the time he purchased the property? Does that factor in to the time he purchases the property...if the owner chooses not to advertise and re-rent properties when they become vacant.
- Coffey: My understanding, and you might ask the applicant this, but my understanding is when they purchased the units, there weren't very many of them rented. They put money in to use, to be able to rent the units. That might be incorrect, but that was my understanding. When they purchased them, there weren't very many rented, but now I think eight of the ten are rented, but then the other two the applicant doesn't think they are structurally sound enough to rent out.
- Oliver: I have a question about where the burden lies. It doesn't seem to me that all avenues had been thoroughly explored on all options for this property and I wondered if the burden of considering those options and coming up with concepts lies with the new property owner or with the hardship committee?
- Pace: The burden lies with the applicant.
- Carl: I know that the Hardship Panel expressed some concerns that they had asked to see different scenarios and didn't get the information if I'm correct. At least that's sort of what I heard. Are we allowed to table this ask the applicant to present.
- Ashdown: We requested that information anyway.
- Hunter: Right. Right.

Ashdown: That was one of our requests to the applicant, was that they would address a reuse plan, an alternate proposal of the development which we never received.

Hunter: Right.

Ashdown: And as I look at the things that are issues with the recommendation of Economic Hardship Panel, was that those avenues were not addressed and do they fall into the category of erroneous finding of fact? And if a resale plan option of creating condo units was not considered, whether or not that's the preferred option of the applicant or a straight resale of the property was not considered, as a viably economic model. Those are really things that if the applicant is not motivated to research and provide them himself, we've seen basically a neighboring party on her own has proposed a redevelopment plan that is more thought out or more thorough than the applicant or the applicant's architect or the applicant's representative on the Economic Hardship Panel has ever proffered. And I think those things are things we need to consider and look at the completeness of the recommendations of the Economic Review Panel.

Carl: Yes, I agree. We haven't seen anything substantive, I mean granted he seems to be in dire financial straits, but is that our fault. I mean...

Hunter: I know. As was pointed out we know that a price below list was basically or appraised value was paid, but the debt service is extremely high, and the question is it really reasonable? And to then have to take that into account, which was a pivotal point at the actual Panel with how much the debt service was. It was hard to describe unless you were at the Panel of how that process took place. When it gets formed into minutes, it seems somewhat reasonable, but I can tell you that was not a reasonable Panel. And as representatives of ours, as a Commission to actually be doing some of this number crunching for us, to come back to us to give us sound recommendation, I from the process do not feel comfortable that everything was considered, that everything was considered fairly, or that things were actually reasonable in what was actually being handled. And so while that isn't anything that we can make our decision on necessarily today, I have some real concerns about that, while it may have been ok legally, because technically it's not there, it's still back to the process of allowing the panel members to fairly really be able to consider what's there.

Christensen: Cheri, rejection vs. remanding. If we reject do they form a new Panel?

Coffey: If you reject the Panel's findings then that means that... inaudible.

Pace: If you reject the Panel's findings that means that it is akin to a reversal. And that says there is no Economic Hardship and you don't get to demolish.

Unidentified: But, my experience tells me that that is not the end of it.

Pace: No, the applicant can't...you get one bite of the apple. Absent the change in circumstances you don't get to come back and say I lost the last lawsuit, I'm going to file another one and put on a better cape. They have to come in with a change in circumstances; there since has been a fire, earthquake, something happened where it might have been feasible yesterday, but it isn't today, a change in circumstances. Otherwise you don't get to apply again on the same facts.

Christensen: But our facts would have to support that rejection.

Pace: You would have to come up with findings on your own to contradict what the Panel found and say, contrary to their findings, we think there was a erroneous finding of material fact. Based upon that, you either remand or reverse. If you reverse, then there has to be findings that it is feasible based upon the evidence. And that has to be done, but the decision has to be based upon the findings. If you reject the findings the panel has put before us, you have to come up with findings of your own.

Oliver: So knowing the appraised value, that he bought for less than the appraised value, we could assume that he could sell the land for what he purchased it for.

Pace: I'm not going to give you a fact but, I understand your point.

Oliver: Ok. Thanks.

Norie: If I had an appraisal on my house knowing that I should be able to sell it for at least what I purchased it for. Therefore, not being a hardship.

5:45 Unidentified: Especially if it was under appraised. If the value you purchased it at was under the appraisal. It seems to me the appraisal is what the purchase price was.

Unidentified: And it could be if we understood correctly the answers to the questions that have come up in the discussion, that there would be an Economic Hardship proved in favor of the applicant, or maybe not. Our struggle is that in our discussion we come to come up with several questions that

come up that were not answered fully or explored fully and that makes me worry about the summary of findings.

Carl: May I ask the Attorney a question. If we did want the applicant to explore other options and give us, you know, more detailed financial information, is that something we can do? Would we remand it back to the Hardship?

Pace: The Ordinance is structured such that this panel, it suggests that this panel does not have the expertise to do such detailed analysis to determine to inaudible. If what you're saying is, in essence we can't determine whether or not the Panel got it right, because they apparently didn't consider options A & B, they considered others and absence that consideration, we can't tell if they got it right or wrong, then you would send it back with instructions to consider those two, A & B and get back to us inaudible.

Carl: And they again would hold public hearings and...

Pace: They are not obligated to hold public hearings.

Carl: All right.

Pace: They can, but that is the process.

Heid: But the Panel, the folks that were in Panel initially would remain for the rehearing.

Pace: Right.

Heid: There wouldn't be new folks brought on board.

Christensen: And I think as a Commission, with a staff without people who might represent us on that hardship panel. If I am remembering right, correct me if I am wrong, I think the members of the Commission, when this was first brought up that this might be going through an Economic Hardship Review, and we talked to the Commission with the Staff about people who might represent us on that Hardship Panel. Ah, and if I'm remember right, correct me if I am wrong, we specifically asked that after the Staff had talked to different potential representatives, the one or the few that they felt best about, come back and meet with us in a Commission meeting, and we could make the decision and have the opportunity to make specific issues we were interested in knowing, known to them so that the Hardship Panel could return a series of facts that would be as complete as reasonably possible. I'm sure the applicant did a good job, but I think

none of us were able to meet with her before and express the issues that we had specific concerns about. And we had specifically asked for that right.

Coffey: Can I just interject here because I didn't understand it that way. The panel came up with several different names and you kinda put them in order as to who you wanted us to contact. And if this person was willing to do it and you know we went down the line that way, and then you did have some specific things that you wanted to make sure that they were aware of like not including the vacant property price, so that was my understanding that if the first person wasn't willing to do it, I'd go to the next person down the line.

Hunter: How I remember it was that we really did not have a firm understanding of who might have this level of expertise and I know that we were stretching for names to come up with representative of the Historic Landmark, and we did want to meet with them did actually convey what some of our concerns were as well as taking notes and I do recall the point your recalling as far as us wanting to meet with them, and getting a sense of you know being able to meet with them as far as us wanting to meet with them and getting a sense with you know, being able to talk with them about some of our things we wanted explored.

Carl: And I don't remember us asking to meet with them.

Hunter: I remember asking that.

Heid: We could ask Staff to check the minutes and see if that's reflected in the meeting minutes from the original.

Christensen: I have a question for Staff regarding the Panel. It seems that there was some conflict on the Panel that was not fully explored. Is that not the case?

Coffey: I don't know how to address that, but your talking about the applicant's representative, is that right?

Christensen: I don't know who it was, but I was under the impression that there was a conflict.

Carl: She has a financial interest in it, to me it seems like that is a conflict.

Christensen: Well was there any way for the applicant to not have a representative who doesn't have an interest in the property.

Pace: Well, the challenge we would have is the ordinance is wrapped; it requires a certain level of expertise, but it does not require the panel members to be disinterested. And in many cases, prior cases, the applicant said that they are going to be ...inaudible... and they're clearly interested and in every **parpahse** they have never held a public hearing. So the deliberations of becoming a Panel member of the Economic Hardship Panel simply consists of the applicant making his case, and they haggle over the facts, and they debate and argue and they come up with a decision. In this context, they elected to hold a public hearing. So you have the same panel and you have members of the public coming in to make their pitch, and I understand their frustration, they are used to a panel of objective disinterested people and the way that this panel was structured in the past, I wasn't prepared to say that that was a problem.

Carl: So the whole ordinance would basically need to be revisited, and the ordinance would have to be revisited, yeah.

Pace: Right. So in every other case in the past, you had two people, who knew how both were going to vote when they came in and both were trying to convince the third one. This one was a little bit different in that at the end of the day, all of them agreed. Which is real unusual. That is why when ...inaudible...the hearing, I understand your concerns, but ...inaudible... I said I don't it was ...inaudible...handle the structure.

Hunter: However, I think that there would be good to have a little bit of decorum in the meeting. It is fine to have debate once they have closed the session, but to debate every point that is brought up, rather than just letting people make presentations, I felt not appropriate. And that more of a meeting decorum, you know of how to handle things, if they want to close that to the public and then want to debate between them, then that's a different experience to me than what happened.

Pace: I think the issue there is a those types of issue are really at the discretion of the Chair. You didn't ask permission of the chair before you spoke up. I don't care, but in some cases the Chair runs a much tighter meeting and you ask permission before you speak. It is or is not customary to ask questions of the public witnesses. That happened today.

Hunter: This wasn't just questions.

Heid: Yeah.

Pace: I understand that and sometimes it was more gentle and sometimes it is more harsh.

- 5:54 Pace: So I understand that and I was at the meeting as well and sometimes you have a more aggressive questioner and sometimes a softer. Another thing that happened in this meeting was, I can't say that I fault the chair, but the Chair was concerned with getting the number of people in the room and expanded the interest that they might spend a lot of time on something that was irrelevant. The only issue to which they had discretion about was the ...inaudible. She appropriately said, confine your remarks to the ...inaudible...of the case because the building is ..inaudible.. of the case because the building is rizen or historic, whether you like it or not, it doesn't help. So she said that in the beginning and also occasionally reminded people when they drifted afield. That is again a discretionary call of the Chair, I don't fault her for doing that, but some people would have let them say whatever they wanted to say. So...
- Hunter: That's of course appropriate, but what I found inappropriate about it is that it wasn't equal. While people who were presenting these points were limited to Economic Hardship points. The applicant's representative as able to talk about everything and then some. Father of single, on and on.
- Pace: I guess I don't remember it quite as you do, but it is not unusual to allow the applicant more time and latitude than you allow the public. You did that in your meeting today. So, again those are discretionary elements which are up to the Chair.
- Hunter: And I know that it is not in the ordinance, but I am raising them formally, and I hoping that these things would be considered as things are restructured and I actually propose that someone from landmarks be part of the Staff's rewrite and consideration of some of the things that you're thinking about for the Panel and such. I think that that would be a good thing.
- Heid: Well, until such time as a revision takes place, we need to make a decision based on the current ordinance. Inaudible...and I think it is, inaudible.
- Christensen: If this is remanded back to the Economic Review Panel, can that process once again be a process that once again includes a public hearing? Or has that happened and it can't happen...? Is this considered now to be on appeal when you don't take public comment?
- Pace: I guess this, they may or may not hold a public hearing. I guess I would, depending upon what you find. If the decision is remanded and I would certainly encourage if that is the direction you are going to take, remanded

to hear as soon as you can to look at it. Remanded inaudible, if one of the reasons to consider alternatives and you will need someone to present evidence as to whether or not that is feasible. You can try all you want, if it ain't feasible, it doesn't do it much good. So I would assume that if someone from the public is coming in with an alternate plan they think is feasible, we are going to have to take some evidence as to whether or not it is feasible. I think it would be appropriate for this body to recommend whether or not they reopen the public hearing to take back some evidence on how many inaudible.

Coffey: In the Ordinance it is pretty specific that it's the panel members who make that determination as to whether it should be a public hearing or not. Is that still the case if it's remanded? So you guys could recommend to the panel to hold another public hearing, but it's up to the panel whether they want it or not.

Hunter: Cheri, I had a question about the limit on options related to the Master Plan and zoning. I know that many things that often are presented and developed have exceptions that people are hoping to get. Whether it be through Board of Adjustments, whatever there are variances in side yards and all kinds of things as people are trying to do conceptually thinking of different options while the opportunity to consider this as both a residential and commercial development was immediately ruled out rather than really explored as a possibility. And I just wondered, I didn't understand why that was limited.

Coffey: Well the Master Plan is kind of the governing vision for that property and doesn't have a mixed use, it identifies that property as a residential and it's speculative to think that the City Council might rezone it, but it is probably speculative to identify it for a redevelopment plan as well, but that was our thought and it is speculative for us to think that the Planning Commission would modify setbacks for the Planned Development process as well, but that was our thought, is what the Master Plan identified it for, that's probably what we should go by in terms of reuse of that property for that property or look into development for that property.

Hunter: Is it inappropriate to allow that for a possibility to be considered? Let me just, I don't want to do...inaudible to put the finger on the scale inaudible discussion. The reason for this Economic Hardship review process in place is to protect the City from ...inaudible...a legal taking. If you want somebody to tear down their property and they argue with by refusing demolition you are taking all economic use. In defense of that kind of claim, I don't it would, I don't think that claim that you might be able to get it rezoned, you might be able to change the Master Plan, would be very

useful. And so I think, I would agree with Cheri, there are some ground rules as to what the City can say what you can do to your property.