REPORT OF THE COMMITTEE ON FINANCIAL HARDSHIP
PHILADELPHIA HISTORICAL COMMISSION

28 FEBRUARY 2007
ROOM 578, CITY HALL
MICHAEL SKLAROFF, ESQ., CHAIR

PRESENT
Michael Sklaroff, Esq.
Kafi Lindsay, City Planning Commission
Vincent Rivera, AIA
Scott Wilds, Office of Housing & Community Development

Jonathan Farnham, Acting Historic Preservation Director
Randal Baron, Historic Preservation Specialist
Leonard Reuter, Law Department

ALSO PRESENT
John Gallery, Preservation Alliance
Joe Schiavo, Old City Civic Association
Janet Kalter, Old City Civic Association
Fred Baumert, PE, Keast & Hood
Joe Graci, PE, Franklin Engineering
Ken Smuts, Brown Hill Developers
Carl Primavera, Esq., Klehr Harrison Harvey Branzburg & Ellers
Harvey Spear, Centra Associates
Robert Spear, Centra Associates
George Hoez
Daniel Reisman, Eckert Seamans
Jean Barr, Queen Village Neighbors Association

CALL TO ORDER
Mr. Sklaroff called the meeting to order at 11:00 a.m. Ms. Lindsay and Messrs. Rivera and Wilds joined him on the Committee.

48-50 S. FRONT STREET, 103 CHESTNUT STREET
Owner: Centra Associates, Harvey and Robert Spear
Applicant: Richard DeMarco, Klehr, Harrison, Harvey, Branzberg & Ellers
History: built separately c.1835
Designations: individually designated, 26 May 1970 and 7 October 1976
contributing to Old City Historic District
Project: Complete demolition based on financial hardship

OVERVIEW: This application proposes the complete demolition of the buildings at 48 and 50 S. Front Street and 103 Chestnut Street. It claims that the buildings are in poor condition and that adaptive reuse is infeasible. It is a revised version of a hardship application already reviewed by the Commission and its committees.

On 4 December 2006, the Committee on Financial Hardship reviewed an earlier revision of this hardship application. After the Committee identified numerous deficiencies in that application, the owners' attorney requested a 60-day continuance to revise the application. The Committee on Financial Hardship recommended that the Commission "table the matter for 60 days to allow the applicant to amend his incomplete application and submit a complete application for review." On 8 December 2006, the Commission considered the application and recommendation, which it adopted, tabling the matter for 60 days.

Simultaneously, on 28 November 2006, the Architectural Committee reviewed the application for the complete demolition of the buildings at 48 and 50 S. Front Street and 103, 107, and 111 Chestnut Street. The Committee recommended "denial of the demolition of the buildings at 48 and 50 S. Front Street and 103 and 107 Chestnut Street, pursuant to §14-2007(7)(j) and Standards 1, 2, 5, 6, 9, and 10; and denial of the demolition of 111 Chestnut Street, pursuant to §14-2007(7)(k)(.4). The Committee suggested that the applicant stabilize the buildings immediately." On 8 December 2006, the Commission considered the application and recommendation and tabled the application for 60 days, as it had the hardship portion of the application.

The Commission was scheduled to review the demolition application again at the 9 February 2007 Commission meeting, at the expiration of the tabling period. However, the applicant had not completed the revisions to the hardship application. He therefore requested a 30-day continuance to allow for the completion of that application; the Commission granted that continuance. The revised hardship application has now been completed and is attached to this overview.

In early February 2007, the Department of Licenses & Inspections issued Imminently Dangerous violations for 48 S. Front Street and 103 Chestnut Street and Demolition by Neglect violations for all three buildings. Copies of the violations and a letter from the Department ordering the property owners to stabilize the buildings and ensure public safety are included in the application.

The revised hardship application elaborates on the earlier hardship application. In addition to material submitted with the earlier application, this application includes:

- An appraisal report by George C. Hoez
- A supplemental engineering report on the state of the north wall of 48 S. Front Street by Joseph Graci
- A supplemental engineering report proposing a steel frame for the buildings by Joseph Graci
- A feasibility analyses for the conversions of the buildings to rental and condominium units by Ken Smuts

The report by George C. Hoez appraises the properties for $1,100,000. In this appraisal, the properties are compared to properties in Queen Village and Bella Vista, but not to properties in Old City. The real estate markets differ significantly between these neighborhoods. Developers have recently purchased and are rehabilitating several similar buildings in Old City, for example 20-30 N. Front Street, 36-44 N. Front Street, and 6-10 Strawberry Street. These and other similar buildings in Old City could have been included in the comparative analysis.

At the December 2006 Committee meeting, the current owners revealed that they paid $1,650,000 for the property in 2004. They stated that that amount included $1,550,000 for the property and a $100,000 fee to Gagan Lakmna of PREET Allied Properties, the grantor. Deed records show that the property was sold by PREET to NSHE Hiseville, LLC of Phoenix, Arizona for $1,550,000 on 23 November 2004. It was then sold by NSHE Hiseville to Cheswal, LP of Philadelphia, the current owners' partnership, for $1.00 on 29 March 2005.

In his first supplemental engineering report on the state of the north wall of 48 S. Front Street, engineer Joseph Graci asserts that the wall is 8 inches thick. He concludes that the wall is unsound and the building should be demolished.

In his second supplemental engineering report, engineer Joseph Graci proposes steel framing for the buildings. At the Committee on Financial Hardship meeting on 4 December 2006, Scott Wilds of the Committee asked the applicants if this type of steel framing approach had been employed to rehabilitate similar buildings in Old City. Ken Smuts, a construction management consultant for the applicant, replied that this approach would be a "special" project unlike other rehabilitation projects in Old City. The report offers no repair alternatives to the expensive "special" framing system. The Keast & Hood engineering report prepared for the Historical Commission does not recommend employing this "special" framing system.

Ken Smuts of Jeffrey Brown Associates has prepared a feasibility analysis for two scenarios: commercial on the lower two floors with either rental or condominium residential units on the upper two floors. He estimated the total cost for rehabilitation at $7,064,297, which includes:

> $1,650,000 for the land
> $293,000 for land carrying
> $3,855,343 for construction
> $193,000 for hard cost contingency
> $599,996 for total soft costs
> $472,987 for other costs

The analysis concludes that neither scenario would be profitable. The rental scheme would have a projected negative cash flow of $247,106 in the first year. The condominium scheme would result in a projected loss of $5,074,597. The analysis includes at least one mathematical error; in Schedule A, the hard, soft and other costs do not equate to the total project cost.

Section 14-2007(7)(j) of the Philadelphia Code stipulates that:

> No permit shall be issued for the demolition of an historic building, structure, site or object, or of a building, structure, site or object within an historic district which contributes, in the Commission's opinion, unless the Commission finds that issuance of the permit is necessary in the public interest, or unless the Commission finds that the building, structure, site or object cannot be used for any purpose for which it is or may be reasonably adapted. In order to show that [the] building, structure, site or object cannot be used for any purpose for which it is or may be reasonably adapted, the owner must demonstrate that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return and that other potential uses of the property are foreclosed.

Section 7.5.a of the Commission's Rules & Regulations reiterates Section 14-2007(7)(j) of the ordinance and adds that the "applicant has an affirmative obligation in good faith to attempt the sale of the property." The applicant has not demonstrated that any effort has been made to sell the property. Although the reuse scheme proposed in this application, which the applicant's consultant has conceded is "special," may be financially infeasible, other developers may be able to devise profitable alternatives to it. The ordinance and Rules & Regulations require a demonstration that a sale is impracticable before demolition to ensure that all adaptive reuse schemes are tested. The owner who desires to demolish a historic building has no incentive to devise a profitable adaptive reuse scheme. The property must be opened to the free market because only the free market can determine whether profitable reuses exist.

Moreover, the analysis presented in this application does not prove that "other potential uses of the property are foreclosed," as the ordinance requires. The Rules & Regulations state that the "applicant has an affirmative obligation in good faith … to explore potential reuses." The applicant has endeavored to demonstrate that a single reuse with two options, rental and sales, is precluded. However, the ordinance requires that "other potential uses," not a single potential reuse, must be explored and proven infeasible. For example, the application does not account for the potential value of these buildings in a larger development project, such as the one recently proposed by the current owners. It likewise does not consider the financial feasibility of the reuse of these properties with an addition or additions to the buildings. Note that the Commission approved an adaptive reuse scheme with rooftop additions for these buildings in 2004. By presenting one reuse scheme with an expensive "special" structural system, the applicant has not satisfied his "affirmative obligation in good faith … to explore potential reuses."

STAFF RECOMMENDATION: The staff recommends denial, pursuant to Section 14-2007(7)(j) of the Philadelphia Code and Section 7.5.a of the Historical Commission's Rules & Regulations. The applicant has neither demonstrated that the sale of the property is impracticable nor that other potential uses are foreclosed.

DISCUSSION: Mr. Baron presented the application to the Committee. Attorneys Carl Primavera and Daniel Reisman, developers Robert and Harvey Spear, engineer Joseph Graci, appraiser George Hoez, and construction manager Ken Smuts represented the application.

Mr. Sklaroff directed his colleagues to two letters that had been recently submitted for the Committee's consideration, one stating the position of the Old City Civic Association on the matter and a second from engineer Joseph Graci responding to a letter from David Perri of the Department of Licenses & Inspections.

Mr. Primavera suggested that he review the financial numbers in the application for the Committee. He handed out a timeline for the properties and a checklist of the materials submitted for the review.

Mr. Sklaroff asked that Mr. Primavera clarify some aspects of his application. He noted that this is a financial hardship request to demolish a group of buildings. He asked Mr. Primavera to identify the buildings in question. Mr. Primavera stated that the buildings have been consolidated into one; they were known as 48 and 50 S. Front Street and 103 Chestnut Street. Mr. Sklaroff asked whether the Department of Licenses & Inspections considered the properties one or three zoning lots. Messrs. Primavera and Reisman stated that they believed it to be one zoning lot. Mr. Baron stated that the Department of Licenses & Inspections uses three separate addresses for the properties. Mr. Sklaroff suggested that the Committee consider the property to be three separate zoning lots. Mr. Primavera stated that they filed one application, but Mr. Baron then asked them to file separate applications for each address. He noted that the violations were issued under several different, inconsistent addresses. Mr. Baron disagreed and stated that the violations were filed under the correct addresses. Mr. Primavera reported that David Perri of the Department of Licenses & Inspections referred to them as 48 and 50 S. Front Street, a.k.a. 103 Chestnut Street, in his recent letter. Mr. Sklaroff noted that Harvey Spear's affidavit lists assessed values from the Board of Revision of Taxes for three addresses, 48 and

50 S. Front Street, and 103 Chestnut Street. He suggested that the Committee consider them three separate properties.

Mr. Primavera stated that the Department of Licenses & Inspections has declared the buildings Imminently Dangerous. He claimed that Keast & Hood was incorrect when it deemed these building easily repairable. He also stated that it is not possible to stabilize these buildings in the interim until a larger development project is feasible. He reminded the Commission of the Cecil Baker development for these parcels and the neighboring lots. He asserted that the Cecil Baker project did not proceed because the community would not support it. Mr. Sklaroff asked Mr. Primavera about the developments proposed by the previous owner, Gagan Lakhmna. Mr. Primavera responded that he did not represent Mr. Lakhmna; William Schwartz served as his legal counsel. Mr. Sklaroff asked if the Commission approved a proposal from Mr. Lakhmna for these properties. Mr. Primavera responded that the Commission did approve a proposal, but not the one Mr. Lakhmna wanted to build. Mr. Farnham clarified that the Commission approved a proposal that included the rehabilitation of the buildings in question and the addition of a penthouse and roofdecks. Mr. Reisman disagreed with Mr. Farnham's statement. Supporting his statement, Mr. Farnham presented the Commission's decision letter and the associated architectural drawings to the Committee. Mr. Primavera described the proposed mixed-use development prepared by architect Cecil Baker that would include these buildings. He explained that that the project was abandoned owing to community opposition and the changing condominium market. After the abandonment, he and his clients decided that demolition was the only prudent action. He stated that the buildings are vacant and blighted.

Mr. Wilds asked for a clarification. Mr. DeMarco's letter at Tab 9 of the application materials states that the buildings were purchased in March 2005, but other documents included Harvey Spear's affidavit indicate that they were purchased in November 2004. Mr. Primavera stated that the correct date is 23 November 2004. Mr. Sklaroff observed that Mr. DeMarco has submitted inaccurate information at several points in this review process. Mr. Sklaroff asked how long the owners had the properties under agreement before they purchased them in November 2004. The Spear brothers estimated that they were under agreement for "a couple of months." Mr. Sklaroff requested that the applicants provide the details of the sales agreement to the Commission. Mr. Sklaroff asked if the Spears practiced due diligence and inspected the properties before purchasing them. The Spears answered that they did.

Mr. Hoez stated that he appraised 48 and 50 S. Front Street and 103 Chestnut Street. He stated that the properties are three separate parcels as Mr. Sklaroff had suggested earlier. He reported that he assessed the buildings at $1,100,000 as of February 2007. He acknowledged that he only inspected the lower two floors of the four-story buildings. He reviewed the engineering reports and agrees with them that the buildings are dangerous. He stated that the buildings are a "bad shells" and would require a large investment to repair. He stated that it would not be feasible to reuse them. It would cost $600 to $650 per square foot to rehabilitate. Mr. Sklaroff objected to his claims and asked him if he undertook anything more than a market data assessment. He stated that he did nothing more than the market data assessment. Mr. Hoez stated that he did not analyze the reuse or evaluate the possible incomes from the properties. Mr. Sklaroff asked him if he assessed the value of the properties with restrictions including zoning and historic preservation restrictions. Mr. Hoez stated that he did. Mr. Sklaroff concluded that Mr. Hoez is merely speculating when he speaks of anything other than his assessment from a market data approach. Mr. Hoez conceded that he only executed a restricted use appraisal. Mr. Sklaroff asked Mr. Hoez if the essence of his report is that the properties in their current conditions with their current restrictions are worth $1.1 million. Mr. Hoez agreed that that is the essence of his report. Mr. Primavera asserted that Mr. Hoez appropriately relied on the opinions of other experts when he prepared his report. Mr. Primavera then asked Mr. Hoez how long the property would be exposed if it were placed on the market today. Mr. Hoez stated that it would be exposed to the market for about 18 months. It would be placed under agreement quickly, but the agreement would include contingencies that would extend the process. Any prospective purchaser would confront a great deal of "red tape." Mr. Sklaroff asked Mr. Hoez what the impact of the Demolition by Neglect violations could have on the values of the properties. Mr. Hoez declined to answer the question. Mr. Primavera likened Mr. Sklaroff to a "French Inquisitor" and asserted that the facts support their claim of hardship.

Mr. Graci testified about his engineering studies executed since the last Committee meeting. He explained that he cut test holes in the north wall. The testing showed that the wall is eight inches thick at the points where he cut the holes. Mr. Wilds asked him if he was asserting that the north wall of 48 N. Front Street is a single wall, not the wall of 48 as well as a remnant of 46, the building demolished to the north. Mr. Graci stated that it is a single eight-inch wall. Mr. Wilds asked why the Hilti bolts were installed if the north wall is one eight-inch wall. He stated that, presumably, the installer of the Hilti bolts was attempting to tie together the two four-inch wythes of brick that make up the eight-inch wall. Mr. Sklaroff asked if the north wall is bowing. Mr. Graci stated that it is bowing toward the north. Mr. Sklaroff asked if Mr. Graci would agree that the building is Imminently Dangerous. Mr. Graci answered in the affirmative. Mr. Wilds asked him about the star bolts on the front wall. Mr. Graci explained that the front wall is tied to the side wall. He explained that, as the front wall is moving out to the east, it is pulling a small piece of the side wall with it. Mr. Sklaroff asked Mr. Graci to explain his proposal for an interior steel structure. Mr. Graci stated that he would construct a steel structure inside the historic buildings. He stated that the proposal is feasible, but very expensive. Mr. Sklaroff asked if he had priced the steel structure. Mr. Graci stated that it would cost about $1.5 million, but that Mr. Smuts could present a more accurate estimate. Mr. Wilds asked why the north and east walls would require replacement even if the steel structure was added. Mr. Graci replied that the walls could fall even if tied back to the steel structure. In their current poor condition, the walls could pull away from any ties to the new steel structure. Mr. Wilds asked if the brick could be salvaged from the walls. Mr. Graci replied that 70% of the outer and none of the inner could be salvaged. Mr. Wilds asked if the front (east) and north walls were rebuilt, what percentage of them would be original. Mr. Graci stated that they would be 40% to 50% original if rebuilt with salvaged brick. Mr. Rivera noted that the star bolts are installed at the floor levels; the Hilti bolts are installed between the floors. He asked Mr. Graci if timber rather than steel could be connected to the Hilti bolts to reinforce the north wall. Mr. Graci stated that it would not be an appropriate solution. The wood would sag. Also, the old wood framing is in poor condition. Mr. Rivera, who explained that he is an architect and has worked on several similar projects, disagreed and stated that these buildings are similar to buildings he is familiar with that have been stabilized with much less expensive methods than those Mr. Graci is proposing. Mr. Sklaroff asked Mr. Rivera if he believed that less expensive structural solutions could be devised for these buildings. Mr. Rivera replied affirmatively, stating that cheaper solutions are feasible. Mr. Farnham asked Mr. Graci if, in light of the fact that the north and east walls need to be rebuilt regardless of the structural solution, he could forego the steel structure for masonry load-bearing walls. Mr. Graci stated that that could be done, but there would be problems with side-sway that would need to be addressed. Mr. Rivera asked about the condition of the joists in the 48 S. Front building. Mr. Graci answered that they are pulling out of their pockets as the north wall moves toward the north. Mr. Primavera concluded that Mr. Graci has stated that in reports of 18 July 2005 and 24 October 2006 that the buildings should be demolished. Answering Mr. Sklaroff's question, Mr. Graci stated that he considers the phrases "should be demolished" and "are Imminently Dangerous" as equivalents. Mr. Primavera also pointed to Mr. Graci's letter of 27 February 2007 that states that the buildings cannot be stabilized on an interim basis. Mr.

Graci added that the buildings must either be demolished or fully stabilized with the steel frame he has devised. No intermediate measure would be appropriate. Mr. Sklaroff asked him if he considered the buildings to be Imminently Dangerous. Mr. Graci stated that they are. Mr. Sklaroff asked him if the temporary fix is also the $1.5 million steel-structure fix. Mr. Graci responded that that is true. Mr. Primavera asserted that there is no feasible way to stabilize the buildings. Addressing an earlier question, Mr. Graci added that the steel frame would stabilize the failing joists.

Mr. Primavera asked if Fred Baumert, an engineer from Keast & Hood in the audience, planned to testify. Mr. Sklaroff asked Mr. Baumert if he had any comments. Mr. Baumert stated that he would not "contend" with anything Mr. Graci had said.

Mr. Rivera asked if a development on the vacant lots surrounding these buildings and owned by the Spear brothers would support these buildings. Mr. Primavera replied that banks would lend $1 million to stabilize these buildings if incorporated into a larger development, but not if they were developed on their own. Mr. Sklaroff stated he believed that banks would lend to stabilize these buildings if they were later incorporated into a larger project. Mr. Wilds remarked that the Committee should review the applications as presented and not speculate that these buildings could be included in a larger development.

Mr. Reisman introduced Mr. Smuts. Mr. Reisman also explained that all costs from the larger development project, which is now abandoned, have been removed from the analysis. He emphasized that all "sunk" costs have been removed from their new financial analysis. He also noted that they have now addressed the application of historic tax credits to the project. He finally explained that the proposed uses have been clarified. They have analyzed two scenarios. Scenario One proposes rental retail at the first and second floors and rental residential at the third and fourth floors. Scenario Two proposes rental retail at the first and second floors and residential condominiums at the third and fourth floors. He noted that they had prepared a "Sensitivity Analysis" that demonstrates the impacts of adjusting the variables such as construction costs and sale prices. Mr. Reisman noted that they have corrected some mistakes in the last few days, since they submitted the revised application to the Commission. He handed out corrected sheets for insertion into the application. Messrs. Wilds and Sklaroff stated that the data sheets are very difficult to understand. Looking at the new sheets, Mr. Sklaroff summarized the results: the condominium project would loose $4,240,167; the rental project would not be able to be financed. Mr. Wilds asked about the hard and soft costs of the proposed rental project with and without the land costs. He noted that the total costs without the land, which they purchased for $1.65 million, would be approximately $5.35 million. With a total area of 11,000 sf, Mr. Wilds estimated that, without the land cost, the total costs per sf would be about $486. He concluded that, even without the land figured in, the project would not be able to service the debt. He then stated that, even if you found a way to lower the cost to $300 per sf, the income could not service the debt. He asserted that the rental project would not work. Mr. Sklaroff stated that, if one values the land at $1.1 million or even $0, the rental residential project does not work financially. He concluded that, therefore, the rental residential project could not be the highest and best use of the land because the appraiser has informed the Committee that it is worth $1.1 million in its current state. Mr. Sklaroff noted the interesting situation presented by the application: the current condition of the vacant buildings may be the highest and best use of the properties.

Mr. Wilds asked Mr. Smuts to clarify whether his estimates include the steel frame proposed by Mr. Graci. Mr. Smuts stated that they do. He also noted that his current estimates only include

48 and 50 S. Front Street and 103 Chestnut Street, not the other properties included in the earlier analysis.

Mr. Wilds stated that the condominium scenario is not feasible even if the construction costs are deflated and the sales prices are inflated. He noted that the condominiums would sell for approximately $400 per sf. He also noted that the retail has about $800,000 in value. He asserted that the only way for the condominium scenario to break even is to increase the cost of each condominium to $1,000,000, double the value of the retail, and reduce the construction costs to $300 per sf. He concluded that there is no way to make the condominium project financially feasible.

Ms. Lindsay asked if Mr. Smuts had analyzed the project approved by the Commission for the previous owner. Mr. Smuts stated that he had not analyzed that project. Mr. Sklaroff stated that he did not believe that the penthouse would make the project profitable.

Mr. Sklaroff asked Messrs. Smuts and Reisman to explain the sensitivity analysis. They explained that the sensitivity analysis did not reveal a break-even point.

Joseph Schiavo of the Old City Civic Association asked if the condominium scenario would be financially feasible if the second floor was used for condominiums instead of retail. He suggested that the retail should be limited to the first floor and basement. He also noted that his copy of the application provided by the applicant did not include several of the sheets submitted to the Commission. Mr. Schiavo asserted that the construction estimates are unusually high. He contended that Mr. Graci's steel structure is unusual in the neighborhood and would be very expensive. He pointed to an example just one block south of these properties. During the construction of the Beaumont building, the neighboring historic brick loft building to the north partially collapsed. He reported that, during its reconstruction, no structural steel was used. The reconstruction was done entirely in masonry. He also noted that the new and old buildings are not joined; the new does not support the old. There is a seismic gap between the buildings. Mr. Schiavo also asserted that the proposed condominium price of $350 per sf is unusually low for Old City. He pointed to a recent condominium conversion at 3rd and Race Streets that sold for $650 per sf and another on Arch Street that sold for $500 per sf. He suggested that Mr. Graci's structural solution was extreme. He concluded that, with a less expensive stabilization, condominium use at the second floor, and a higher sf sales price, the project might be profitable. Mr. Smuts stated that he employed the sensitivity analysis to answer these types of questions. He conceded that $350 per sf or even $450 per sf might not be an appropriate estimate of the sales prices. He also stated that Mr. Graci's report did not convince him, but the sensitivity analysis shows that a lower stabilization cost would not make the project profitable. He noted that $450 per sf was probably an appropriate sales price number to use. He also stated that he analyzed the second-floor condominium project and it was not profitable. Mr. Reisman agreed that the second-floor condominium project was not feasible.

John Gallery of the Preservation Alliance addressed the Committee. He reported that the analysis does not include the land price at the appraised $1.1 million or the purchase price of $1.65 million, but at $1,943,000. Mr. Smuts stated that the difference is carrying costs. Mr. Sklaroff replied that those are sunk costs. Mr. Gallery then reminded the Commission that the ordinance allows for a finding of hardship when a sale is not practicable, not necessarily when a sale at fair market value is not practicable. Mr. Gallery asserted that the land cost has $1 million of surplus built into it. He also noted administrative costs including a $220,000 development fee. He suggested that the development fee should be questioned. He also suggested that the value of a preservation easement could offset the loss in tax credits in the condominium model. He stated that he had identified $2 million in savings over the applicants' analysis; he stated that this savings does not close the gap between feasibility and infeasibility entirely, but it does highlight the excessive cost of the special structural system. He claimed that the gap or the cost of the special structural system results from the neglect of the property owners. The property owners should have taken the steps advised by professional engineers over the past two years to abate the neglect. Mr. Gallery noted that Mr. Lakhmna was able to propose a profitable project for the buildings two years ago, but the current owners cannot because they have neglected to take the appropriate steps to protect the buildings over the intervening two years.

Mr. Sklaroff tested Mr. Gallery's logic and reminded the Committee that Harvey Spear had testified that Mr. Lakhmna had destabilized the building during his ownership. Mr. Sklaroff postulated that, in a hardship claim, one cannot add the cost of stabilization if, in fact, there had been neglect in the chain of title. One should not be given credit for the remediation of neglect of an historic building in a hardship analysis. Mr. Gallery stated that he believes that owners who had allowed the neglect to persist should not then be given credit in a financial analysis for repairing the damage from that neglect. He claimed that there is clear evidence that the current owners have allowed this building to slip from an Unsafe to an Imminently Dangerous state since 2005. Mr. Sklaroff stated that he would like to assume that there is no fault here to test this argument. He noted that the building has continued to do what buildings do when they are neglected. He stated that, from Mr. Gallery's perspective, the cost of the steel structure and the cost of the property should not be included in the financial analysis to measure hardship. Because demolition by neglect is not permissible and this is a self-inflicted wound, one should assume that the neglect is remedied and then calculate the financial feasibility of the project. Mr. Gallery agreed that Mr. Sklaroff had summarized his position accurately. Mr. Wilds summarized it in a different way; the buyer has purchased and assumed the accumulated neglect. Mr. Sklaroff stated that, in Mr. Gallery's position, the current owners bought it "as is, where is."

Mr. Wilds asked if the Hilti bolts were in place when the Spears purchased the property. The Spears answered that they were. Mr. Wilds concluded that the north wall was therefore moving when they purchased the property and has continued to move.

Mr. Primavera stated that he agreed with Mr. Gallery in regard to a practicable sale. The ordinance is not meant to protect purchasers who overpay for properties. He stated that the earlier owners neglected these properties for more than 15 years. Mr. Lakhmna purchased the properties and removed some of the structural supports during his investigation of the buildings. Soon after the Spears purchased them, Mr. Graci analyzed the buildings and stated that they should be demolished. Mr. Sklaroff stated that the Committee could not determine when the buildings became Imminently Dangerous. However, Mr. Sklaroff declared that Mr. Primavera had proved his point. The Spears did or should have known that the buildings were or were becoming Imminently Dangerous. The current owners are asking the Commission to sacrifice the ordinance and its values to economics. Mr. Sklaroff stated that he is convinced that, if you accept the assumptions of the analysis, then there is a hardship. But, he asked, at what point can a buyer purchase a building that everyone knows has been neglected and expect to demolish it. Mr. Primavera contended that the buildings were Imminently Dangerous when his clients purchased them; therefore, the Commission cannot penalize them. Mr. Sklaroff countered that this is not a question of penalizing, but of due diligence. He noted that the Spears chose to purchase historically-designated properties that had been neglected. Mr. Primavera reported that his clients owned the adjacent properties and had to buy these properties to protect their investment and their employees who occupy a nearby building. He stated that the Spears had no choice but to purchase the properties. Mr. Sklaroff contended that they did have a choice; the appropriate way to protect their investment and employees would have been to report the neglected properties to the Department of Licenses & Inspections instead of purchasing them and assuming the liability. Mr. Sklaroff stated that the Spears accepted responsibility for the historic properties when they purchased them. Mr. Sklaroff also stated that there is no real confiscation in this case; Mr. Hoez has testified that they are worth $1.1 million in their current state. Mr. Gallery agreed with Mr. Sklaroff, but asserted that the owners have responsibilities both before and after purchase. In addition to due diligence before purchase, they have a responsibility to maintain them after purchase. He reminded the Commission that engineer Albert Tantalla deemed the buildings Unsafe in 2005. They are now considered Imminently Dangerous; their conditions have changed. Neglect has occurred under the current owners. Mr. Wilds disagreed and asserted that buildings do not change that rapidly except during catastrophic events. He stated that the labels like Unsafe and Imminently Dangerous are “artful.” They depend on the observer; they are subjective. The buildings may not have changed; perceptions of them may have changed.

Mr. Sklaroff noted that Mr. Primavera has appealed the Demolition by Neglect citations. He stated that the Board of License & Inspection would determine whether there has been fault. Mr. Reuter stated that the preservation ordinance requires that historic buildings must be maintained. Mr. Reuter also asserted that these buildings must be stabilized now, while the appeal process, which may be lengthy, is ongoing. Mr. Sklaroff reminded the Committee that Mr. DeMarco had stated at the December 2006 Commission meeting that measures would be taken to protect the buildings. Mr. Primavera countered that his colleague had stated that measures would be taken to protect the public, not the buildings; he reported that those measures have been taken. He stated that they had not touched the buildings because Mr. Graci has stated that they will collapse if any work is undertaken on them. Mr. Sklaroff noted that Mr. Graci had cut holes in the north wall and inserted his head in them. Mr. Graci replied that temporary stabilization is not possible. Mr. Gallery displayed a photograph of the buildings taken on the previous Sunday; he claimed that the owners have not complied with the Department of Licenses & Inspections order. Mr. Reuter informed the Committee that the Law Department retains the option of enforcing the preservation ordinance through a court of equity.

Mr. Primavera stated that it is the owners’ responsibility to make the buildings safe. He asserted that his clients are being prudent in requesting the demolition of the buildings. Interim stabilization is not a possibility; a profitable project is not a possibility. Therefore, the only prudent course of action is the demolition of the buildings. Mr. Sklaroff noted that the fact that the owners also own the adjacent lots complicates this matter. If cleared of their buildings, they could incorporate these properties into a larger development project or could use them for parking.

Mr. Sklaroff agreed that Mr. Primavera had made a good, “standard” case that these properties suffer from a hardship. However, the fact that the Spears purchased properties that have been chronically neglected complicates the hardship question. Therefore, following Mr. Gallery’s logic, an owner who chooses to purchase a neglected historic property should not be credited for the remediation of that neglect or even for the value of the properties. Mr. Primavera countered that his clients should not be penalized for neglect that occurred under other owners. Mr. Wilds asked what types of neglect had caused the structural failures. Mr. Graci responded that there are several possible sources for the current poor conditions: construction of I-95, demolition to the north, water infiltration, poor original condition, and/or poorly executed alterations. Mr. Wilds asserted that it was not a lack of maintenance; the shifting has been occurring for years. He concluded that the applicants have made their case for a finding of hardship.

Mr. Sklaroff remarked that the Committee is not in a position to adjudicate demolition by neglect. He stated that the Committee does not know exactly what happened in the past. The Committee cannot determine whether there was demolition by neglect, but the City has made the claim that there has been neglect. Mr. Primavera interpreted the violation notices to mean that the owners must make the $1 million investment in stabilization. Mr. Sklaroff disagreed.

Mr. Gallery reminded the Committee that the application proposes the demolitions of three buildings, but all of the discussion has been centered on 48 S. Front Street only. He noted that the buildings on the corner are very important to the historic streetscape. Mr. Graci claimed that, with the demolition of 48, 50 would eventually confront similar problems. Mr. Sklaroff asked if 48 could be demolished, but 50 saved. Mr. Graci stated that it would be possible, but the north wall of 50 would have to be stabilized.

Mr. Rivera asked Mr. Graci to clarify the locations of his test holes in the north wall of 48 S. Front. He noted that the wall appears to be very thick at the base. Mr. Graci stated that he cut his test holes at the second and third floors. Mr. Graci clarified his earlier testimony and stated that he never meant to claim that the entirety of the wall is eight inches thick. It is eight inches at the upper sections, but may be thicker below the second floor. Mr. Rivera again stated that, as an architect, he believes that the building at 48 S. Front could be repaired in a less expensive manner than proposed by Mr. Graci.

Mr. Wilds asked about the issuance of the Imminently Dangerous violations. He stated that it appears that the Department of Licenses & Inspections has not declared 50 S. Front Imminently Dangerous. Mr. Primavera directed the Committee to a document, but it did not support his claim that 50 S. Front had been declared Imminently Dangerous. Mr. Sklaroff noted that the applicants have again failed to accurately present the facts. Mr. Reuter stated that the Department had not issued an Imminently Dangerous violation for 50 S. Front.

Mr. Baron asked about the fate of 105 Chestnut, which the Spears do not own, if 103 Chestnut is demolished. If 105 Chestnut must be braced, why not construct the bracing to protect 50 S. Front as well. Mr. Sklaroff noted that the Spears might be responsible for the structural work to support their neighbor’s property; Mr. Primavera acknowledged his clients’ responsibility. Mr. Graci stated that 50 S. Front could not stand on its own, but 105 Chestnut could.

Mr. Sklaroff asked Mr. Reuter if the Law Department would require some time before advising the Commission on the legal questions raised by the neglect. Mr. Reuter stated that case law exists related to the question of whether the Commission should factor the cost of remediation of the neglect into the hardship equation. Mr. Sklaroff asked if Mr. Reuter needed time to explore the case law and advise the Commission. Mr. Wilds objected to any delay owing to the Imminently Dangerous conditions. He stated that he must accept the Department of Licenses & Inspections assertions on the Imminently Dangerous conditions. Mr. Sklaroff noted that, if Mr. Wilds is deferring to the Department on the Imminently Dangerous assessment, he must also defer to the Department on the Demolition by Neglect assessment. Mr. Sklaroff stated that there is a fundamental legal question: Should the cost of remediating the neglect and the cost of the property be factored into the hardship calculations if there is a determination of neglect? Mr. Reuter stated that case law contends that the costs of remediation and the purchase price of the property should not be factored into hardship calculations in cases of neglect. The owners knew or should have known that the repairs to remedy the neglect would have to be undertaken because the properties are historically designated. Mr. Sklaroff added that the Commission should not even consider hardship applications for these properties if the neglect allegations are proven. Mr. Reuter stated that the conditions of the buildings were reflected in the purchase price; in other words, the deteriorated conditions have already received consideration. Mr. Sklaroff posited that, if there has been neglect, this is a self-inflicted hardship. Mr. Sklaroff suggested that the Committee could either request guidance from the Law Department in writing and then reconvene to consider that guidance or it could formulate a recommendation to the Commission based on its current understanding of the case. Mr. Sklaroff stated that he would entertain a motion. Mr. Reuter suggested that, if the Committee chooses the guidance path, Mr. Sklaroff request the guidance of the Law Department as the chair of the Commission and not as chair of the Committee.

Mr. Schiavo addressed the Committee. He asserted that these buildings are typical of unrestored buildings in Old City. He noted that Tab 22 in the application evidences that only $1,424 has been expended on maintenance since the current owners purchased these buildings in 2004. Mr. Schiavo noted that the owners' commissioned an engineering report from Tantalla that was issued on 27 November 2006; it states "substantial corrective work is required immediately." However, no action was taken. Mr. Primavera noted that the Tantalla report also states that localized areas are Imminently Dangerous. Mr. Sklaroff replied that the owners did not act on their own engineering report. Mr. Schiavo noted a correction of the applicants' timeline; it should not state that Tatalla recommended demolition on 27 November 2006. Mr. Schiavo concluded that the expenses listed in the analysis remain expenses even if the demolition is approved. Approving the demolition will not offer relief.

Mr. Wilds moved that the Committee recommend that the applicants have met the burden under the ordinance, that a hardship has been proven, and that demolitions of 48 and 50 S. Front Street and 103 Chestnut Street be approved. No one seconded.

Ms. Lindsay stated that she would like direction from the Law Department regarding whether the Committee should include the stabilization and land costs in the hardship analysis. She also stated that she would like the opportunity to assess other methods of stabilizing the buildings in addition to the expensive steel structure scheme. Mr. Wilds commented that adjustments to the cost of stabilization do not render the rehabilitation financially feasible.

> **COMMITTEE ON FINANCIAL HARDSHIP RECOMMENDATION:** Mr. Rivera moved that the Committee recommend denial of the application because the applicants have not proven their hardship claim. Ms. Lindsay seconded the motion, which passed with a vote of 2 to 1. Mr. Wilds dissented; Mr. Sklaroff abstained.

Mr. Sklaroff officially requested guidance from the Law Department on two issues. First, does neglect impact the economic analysis? And, if so, how? Second, does neglect preclude any relief on hardship? Mr. Wilds asked Mr. Reuter to advise the Commission on the role of changing market conditions. Mr. Sklaroff stated that changing market conditions present a factual question, not a legal question.

Mr. Primavera asserted that Keast & Hood is an expert for the City. He claimed that Mr. Baumert stated that he agreed with all of the statements made by Mr. Graci. Mr. Sklaroff objected to Mr. Primavera's characterization of Mr. Baumert's statement. Mr. Baumert stated that he "chose not to contend with anything Mr. Graci said." Mr. Primavera asserted that Mr. Baumert should have presented his opinion.

Mr. Reuter asked for clarification from Mr. Sklaroff. He asked if he should determine whether the cost of the property and stabilization should be included in the analysis irrespective of the potential demolition by neglect if the conditions of the buildings were known or should have been known before the purchase. Mr. Sklaroff responded that he should.

Mr. Reisman asked how the Law Department's guidance would be communicated to the applicants. Mr. Reuter responded that the Law Department provides guidance to the Commission, but not to private parties.

ADJOURNMENT: The Committee adjourned at 2:00 p.m.