

**MEETING OF THE COMMITTEE ON FINANCIAL HARDSHIP
OF THE PHILADELPHIA HISTORICAL COMMISSION**

**THURSDAY, 27 FEBRUARY 2014
ROOM 18-029, 1515 ARCH STREET, ONE PARKWAY BUILDING
SAM SHERMAN JR., CHAIR**

PRESENT

Sam Sherman Jr., chair
Dominique Hawkins, AIA, NCARB, LEED AP
Joann Jones, Esq., Office of Housing & Community Development
Sara Merriman, Commerce Department
Robert Thomas, AIA

Jonathan Farnham, Executive Director
Kim Broadbent, Historic Preservation Planner I
Laura DiPasquale, Historic Preservation Planner I

ALSO PRESENT

Howard Haas, Friends of the Boyd (FOB)
Kathleen McGettigan
Dan Coyle, William Penn House
Matthew McClure, Esq., Ballard Spahr
Nelda Horwitz, FOB
Louis Bluver, FOB
David Litofsky, FOB
Jim Kietz, FOB
John Andrew Gallery
Shane Tobias, FOB
Gloria Reisman, FOB
Larry Pitt, FOB
Phyllis Melloff, FOB
Matt Golas, PlanPhilly
David Swift, FOB
Caroline Boyce, Preservation Alliance
Ben Leech, Preservation Alliance
Leonard F. Reuter, Esq.
Herb Moskovitz, FOB
Richard Tyler
Maggie Mund, CCRA
Eleanor Gesensway
Mike Miller Jr.
Ettore Ceraso, Davio's
Matt Grubel, FOB
Gabriel Gottlieb
Robert Shusterman, Esq., FOB
Saul Davis
Steven Green, FOB
Jacob Green, FOB

**COMMITTEE ON FINANCIAL HARDSHIP, 27 FEBRUARY 2014
PHILADELPHIA HISTORICAL COMMISSION
PHILADELPHIA'S PRINCIPAL PUBLIC STEWARD OF HISTORIC RESOURCES**

Robert Bender, FOB
Mike Belowa, Davio's
J. Matthew Wolfe, FOB
Lisa Rosen, FOB
Josh Silver, FOB
Amy Levine
Sharon Pinkenson, Greater Philadelphia Film Office
Peter Angelides, Econsult Solutions
Paul Safran, iPic Gold Class
Meg Sowell, Real Estate Strategies
Stephen Kazanjian, Real Estate Strategies
Frank Russo, spg3 Architects
Janice Vacca, Harman Group
Igna Saffron, Philadelphia Inquirer

CALL TO ORDER

Mr. Sherman called the meeting to order at 1:00 p.m. Mses. Hawkins, Jones, and Merriman and Mr. Thomas joined him.

ADDRESS: 1910 CHESTNUT ST

Project: Partially demolish building, restore entry arcade, construct addition
Review Requested: Final Approval
Owner: Live Nation Worldwide, Inc.
Applicant: Matt McClure, Ballard Spahr, LLP
History: 1928; Boyd Theater, Sameric Theater; Hoffman & Henon, architects
Individual Designation: 8/9/2008
District Designation: None
Staff Contact: Jon Farnham, jon.farnham@phila.gov, 215-686-7660

DISCUSSION: Mr. Sherman observed that the Committee on Financial Hardship would proceed with the review of the 1910 Chestnut Street application, which it started on 28 January 2014 and then, after several hours of testimony and discussion, adjourned to the call of the chair.

Mr. Sherman invited John Gallery to address the Committee. Mr. Gallery distributed copies of his written testimony and showed a Powerpoint presentation illustrating his written testimony. Mr. Gallery stated that, in his opinion, the financial hardship application is incomplete and does not demonstrate that a sale or lease of the property is impracticable or that other uses to which the property could be adapted are financially infeasible. He observed that it is important to remind the Commission that only the exterior of the Boyd Theater is designated and under the Commission's jurisdiction. The interior is not designated. The interior of the theater is not an issue for the Committee and Commission to consider in reviewing the hardship application.

Mr. Gallery showed a drawing from the Econsult report illustrating a section through the Boyd Theater. All of the alternatives for adaptive use of the Boyd Theater included in the Econsult and Real Estate Strategies reports are based on preserving the elements of the interior, he contended; all maintain the single auditorium and such features as the balcony and mezzanine. However, Mr. Gallery contended, none of these interior features is within the Commission's

jurisdiction and therefore, none needs to be preserved. Mr. Gallery displayed a section drawing showing the portion of the Boyd Theater that he claimed is under the Commission's jurisdiction, the exterior envelope of the building. He also claimed that the existing building has a basement, which is not shown in the applicant's drawings. As far as the Commission is concerned, he asserted, the interior might just as well be an empty box. Therefore, he concluded, the question before the Commission is: Can this empty box be adapted to some other purpose while retaining the exterior that is under your jurisdiction? Answering his question, Mr. Gallery responded that the obvious way to adapt this building if there is no need to consider the interior is to insert new floors within the building. He displayed an illustration showing three floors inserted into the building. He contended that four floors could also be accommodated in the building. At three floors, the leasable space in the auditorium section of the building is not 29,057 sf as Econsult states in its report, but is 52,839 sf of leasable space plus 2,723 sf in the lobby. At four floors the space would be 70,452 sf plus the lobby. Mr. Gallery noted that the roof structure of the building consists of trusses 15 feet on center. This would make it possible to introduce a series of skylights that would not be visible from the street and therefore would be within the Commission's guidelines. The skylights would make the third floor a more attractive space, suitable for office use, such as an architect's office. Mr. Gallery contended that the key question in this approach is: Can the mezzanine and balcony be removed without affecting the structural integrity of the exterior of the building? He replied that the answer to the question is yes, they can be removed without affecting the structural integrity of the building. Mr. Gallery displayed an illustration showing the balcony in red and the mezzanine in green. He asserted that one can see that the balcony is attached to the east wall, and it is supported by columns that rest on the mezzanine. It is not cantilevered. One can also see that the mezzanine extends too far into the auditorium from the east wall to be cantilevered. In addition, the two stairs to the mezzanine run along the east wall cutting off any structural connection. The mezzanine is supported by a north/south structural system connected to the north and south walls of the building, he claimed. He pointed the Committee to two letters with his testimony. Mr. Gallery reported that he asked Mary DeNadai of John Milner Architects and Melanie Rodbart of J&M Preservation Studio to examine the issue of whether the balcony and mezzanine can be removed without affecting the structural integrity of the exterior. Ms. DeNadai was the architect to 1910 Chestnut LP, a developer who previously considered redeveloping at the Boyd. She is also familiar with similar structural systems in historic theaters that her firm has restored including the Majestic Theater in Gettysburg, which was designed by the same architect as the Boyd. Her letter, which is attached to this testimony, states: "In my opinion, without a thorough investigation of the structure itself, I do not see where the removal of these upper levels could have an impact on the structural integrity of the building in general, especially if new floor framing were installed in order to create new intermediate spaces within the existing building." Mr. Gallery stated that Ms. Rodbart is a civil engineer and has worked on the engineering aspects of many historic properties as a member of the firm of the late Sam Harris. As indicated in her letter, she examined the structural reports that have been submitted to the Commission. She also states: "It is my opinion that the balcony and mezzanine could be removed so that the interior floor plan can be adapted to accommodate a multi-level configuration." Mr. Gallery concluded that the balcony and mezzanine can be removed, allowing a new structural system to be introduced in the interior of the building to support new floor levels. According to Mr. Gallery, removing the balcony and mezzanine, constructing a new structural system for the building, and adding three or four new floors within the former auditorium opens up new possibilities not considered in the Econsult analysis. He asserted that there is the opportunity for larger retail tenants, for a mixed-use project with office on the third floor and retail below, or for a facility such as a high-end fitness club, which could compete with the Sporting Club in the Bellevue. Mr.

Gallery stated that the 1900-block of Chestnut Street would be a good location for a high-end fitness center. It is at the center of a concentration of residential population and nearer new office development than the Sporting Club. Equinox Fitness is a national chain whose facilities and membership prices are comparable to the Sporting Club. One of Equinox's facilities in Chicago is located in a former movie theater. He suggested that a company like Equinox would be interested in the space. The fitness club's shop and café could be located in the Chestnut Street wing of the Boyd. He concluded that "there are many, many uses, none of which have been addressed in the financial hardship plan."

Mr. Gallery continued, stating "but that's not all." He displayed a slide of the plan of the existing theater with the west wall of the auditorium marked in with a red line. He claimed that it also seems possible to accommodate a six-screen movie theater using iPic's format within the existing building. He displayed an illustration of iPic's plan and noted that the red line indicating the western edge falls right between the third and fourth theater in iPic's plan. He claimed that this suggests that six iPic style theaters could be accommodated without demolishing the exterior of the building.

Mr. Gallery claimed that there has been no discussion "of a financial model using iPic's movie theaters." He asserted that Econsult's analysis used the Rave Theater in West Philadelphia as the basis for comparison, but iPic's model is very different from the Rave; its ticket prices are higher, it has food and beverage service and income within the theater. No analysis has been presented using numbers that reflect iPic's style of operation. Mr. Gallery contended that six, or maybe more, conventional small theaters could also be accommodated in the existing building using this approach. None of these alternatives have been examined in the financial hardship application.

Mr. Gallery continued, paraphrasing his written testimony. He stated that, at the last meeting, Mr. Farnham noted that Live Nation could, as a matter of right, obtain a permit to demolish the interior of the theater. Mr. Gallery claimed that Live Nation has an additional right already granted and approved by this Commission. He asserted that it has the right to demolish the stage house. He claimed that, because the Commission had already approved the demolition of the stage house as part of the Wheeler application, it would be compelled to approve its demolition again. Mr. Gallery contended that this means that the stage house can be demolished first, thereby allowing all the interior construction described previously to be staged from the parking lot west of the Boyd, owned by Live Nation, and through a completely open west end of the building. This makes the construction process much easier than if it was necessary to work entirely within the building, Mr. Gallery asserted.

Mr. Gallery claimed that Live Nation also has another right that the Historical Commission has already granted and approved: the right to construct an addition to the building. Because you have already approved this you cannot ignore it in considering the issue of financial hardship. Mr. Gallery asserted. He stated that he is not referring to a hotel or apartment building to subsidize restoration of the interior of the theater. He stated that he is referring to a normal, modest addition consistent with other types of additions the Commission has approved. He displayed a Powerpoint slide showing what he described as a simple extension of the three-floor plan within the existing theater to an addition on the parking lot. This would bring the total amount of leasable space to about 65,799 sf, or 83,412 sf with four floors. The south facade of the addition could be fully glazed and provide windows on all floors, as could a portion of the west facade where Live Nation owns a strip of property extending to 20th Street and some

easements, making this new space suitable for many types of uses. Mr. Gallery claimed that, with such a reconstruction of the building, the options for adaptation would be even greater. There would be more leasable space for a larger retail complex or mixed-use retail office development and greater possibility of including an atrium to let light into the interior of the space. There is also the possibility for a health and fitness club. This location would be ideal for a high-end health and fitness club competitive with the Sporting Club at the Bellevue. Mr. Gallery continued, asserting that the addition on the parking lot would also appear to make it possible to accommodate all eight of iPic's theaters.

Mr. Gallery claimed that his analysis suggests that there are at multiple uses to which the Boyd can be adapted once you understand that preservation of the interior is not required by the Commission and when you consider the rights already granted to Live Nation by the Commission. None of these approaches has been tested in the marketing of the building for sale and none of these alternatives has been tested in the financial hardship application or the Real Estate Strategies report. He stated that he does not know whether any of his suggestions would be financially feasible, but then contended that it is not his job to determine whether they are feasible. He argued that it is the applicants' task to test all possible adaptations and demonstrate that they are or are not financially feasible.

Mr. Gallery showed an image of a page from one of the applicant's construction cost estimates. He noted that the estimate is based on 50,814 sf of space. He calculated that, at \$302 per sf, it totals \$15 million in hard construction costs as indicated in the table. Including other elements, the cost is \$387.82 per sf, for a total cost of \$19.7 million. However, Mr. Gallery claimed, Econsult's figures indicate that the building has 29,057 sf of space even though it uses the construction costs for 50,814 sf in its financial analysis. He claimed that there appears to be an error. He showed a Powerpoint slide of a table from Econsult's retail analysis of 29,057 sf of space with his amendments to it. The land cost, as RES pointed out, should only be the sale price of \$4.5 million, he claimed. He opined that the construction cost of \$387.82 per sf for a vanilla box seems extremely high for a building in sound condition needing primarily new mechanical systems. He asserted that the Commission needs an independent evaluation of this figure before it makes a decision on feasibility based on this cost. However, even using that figure, Mr. Gallery claimed that the construction cost would only be \$11.3 million. The soft costs are based on 20% of that, so they should be \$2.3 million bringing the total to \$18.1 million, \$12 million lower than Econsult's figures. Mr. Gallery contended that, in addition, the Philadelphia Industrial Development Corporation and the state signed a Redevelopment Assistance Capital Program (RACP) agreement in 2010 for \$2 million that does not expire until 2015. It is still available, he asserted, provided some portion of the Boyd is being restored, which is true in this case since the Chestnut Street facade and entrance area would be restored. Thus, he concluded, the net cost is \$16.1 million, or even less if the \$387 per sf is high. Mr. Gallery deduced that the \$98 per sf that Econsult said would be needed from a retail use is incorrect. Mr. Gallery concluded that his numbers do not prove that any of the alternatives he suggested are feasible. He asserted that his numbers only suggest that the base cost of the vanilla box is much lower than the applicant claimed and therefore, even with the added costs inherent in the his proposals, some may be financially feasible.

Mr. Gallery stated that, to demonstrate a financial hardship, the applicant must address two issues, whether a sale or lease is impracticable, and whether the building can be feasibly adapted to other uses. He claimed that, with respect to sale or lease, the applicant has not demonstrated that a sale is impracticable. The last time Live Nation advertised the property for

sale was 2008 and then it asked for preservation plans for the interior as well as setting limits on use for live performances. These conditions clearly suggest Live Nation was seeking a use that would retain the interior volume and features of the auditorium. Mr. Gallery claimed that the property has never been marketed for the types of uses that would be possible if the interior were subdivided as he suggested. Mr. Gallery stated that is true even in the case of the letter from the Riddle Company regarding retail use. It cites only one potential contact, Alamo Cinema and Draft Co., again, a use only relevant to preserving the interior. He asserted that there is no mention of contacts with Walgreens for a super drug store, no contact with Urban Outfitters to consolidate its three locations, no contact with Equinox or another health club facility, no mention of any contacts with any retail or other commercial uses that would be relevant to the size and type of space to which the building can be adapted.

Mr. Gallery reiterated that, with respect to adapting the building to other uses, the financial hardship application gives no consideration to any of the types of uses to which the building could be adapted without preserving the interior. He claimed that all the uses considered by Econsult and Real Estate Strategies were based on preserving the interior features. He again asserted that there are numerous uses to which this building could be adapted, all of which are architecturally possible within the framework of your jurisdiction and approvals you have already given. However, he contended, not a single one of these has been examined by the applicant.

Mr. Gallery stated that he has said the hardship application is incomplete, but corrected himself, stating that it more accurate to say that there really is no hardship application for the Historical Commission to act on. He claimed that the application includes only alternatives that are based on saving the interior over which the Commission has no jurisdiction and none of the many reasonable alternatives for adaptive use that allow the exterior over which the Commission does have jurisdiction to be preserved. In Mr. Gallery's opinion, the Committee is supposed to take a narrow view of the facts and to leave broad, discretionary issues up to the Commission. Mr. Gallery contended that, based on the facts and the requirements of the Rules & Regulations and the ordinance, the Committee has no choice but to recommend that the Commission deny approval of this application.

Dan Coyle, a resident and president of the board of William Penn House, a cooperative residential building across Chestnut Street from the Boyd Theater, addressed the Committee. He stated that the vacant Boyd Theater building adversely impacts the living conditions and is a blighting condition on the street. He stated that he was a member of the Friends of the Boyd from 2003 until recently. He reported that he met with Hal Wheeler and his architect Gary Martinez to discuss the earlier rehabilitation plan for the Boyd, which he supported. He asserted that it is very easy to be a Friend of the Boyd when you do not live across the street from it. He displayed several photographs of the front garden at William Penn House, which borders on Chestnut Street. He contended that William Penn House is a very good neighbor and spends large sums of money maintaining and improving its property as well as neighboring properties. He stated that the Boyd Theater attracts vagrants, graffiti, and rats. He showed a series of photographs of people loitering in front of the Boyd, some of whom are being confronted by the police. He reported that he lives in fear that a vagrant will start a fire at the Boyd that will impact the entire neighborhood. He noted that 762 people live at William Penn House and they all support the redevelopment of the blighted, vacant theater building as an iPic Theater. He then discussed the recent proposal by the Friends of the Boyd to purchase the property. He stated that he does not believe that the organization will be able to raise the \$50 or \$60 million necessary to rehabilitate and run the theater. He asserted that the building would remain a

blighting influence if the Friends of the Boyd purchase it. He noted, on the other hand, that the iPic proposal is cogent and feasible. He asked the Committee to recommend approval of the application and allow the project to move forward and remove the blight while providing a movie theater for the neighborhood.

Saul Davis introduced himself as a resident of 1929 Chestnut Street since 1996. He stated that he does not consider the Boyd Theater as a blighting influence. He added that "it is not ideal, but I put up with it because I want to see it restored." He noted that it cannot be replaced if it is demolished. He contended that Mr. Coyle, the previous speaker, does not represent everyone on the block or even at the William Penn House. Mr. Davis claimed that he has collected "hundreds, if not thousands of signatures" supporting the preservation of the Boyd. The people of the city want the building saved, he concluded.

Louis Bluver introduced himself as a resident of the Rittenhouse Plaza at the corner of 18th and Walnut Streets and a lifetime resident of Philadelphia. He observed that he is involved with film, is an independent film producer, and a board member of the Philadelphia Film Society. He noted that he is involved with the nearby two-screen Roxy Theater on the 2000-block of Sansom Street, which reopened recently. He also noted that one of the two theaters at the Roxy is named for him. He is a member of the Theater Historical Society. He noted that the Society members visited the Boyd about five years ago and deemed it one of the finest theaters they had seen. He noted that he has visited 150 theaters. Many historic theaters were demolished, he reported, in the 1950s. He listed several lost theaters in Philadelphia. He stated that they were magnificent. He acknowledged that young people watch movies on phones or television screens, but asserted that that is not a "viable" way to watch a movie. He asked the Committee to help preserve the Boyd Theater.

Howard Haas of the Friends of the Boyd stated that he is "thrilled" to make an offer to purchase the Boyd Theater. He explained that he met in late December with the director of a local foundation, who was not aware that the Boyd was threatened with demolition. Mr. Haas claimed that the director's lack of knowledge of the matter indicated that Live Nation had failed to successfully market the property. On 12 February 2014, the foundation, which wishes to remain anonymous, issued a letter committing to provide \$4.5 million to the Friends of the Boyd to purchase the property. He claimed that the purchase price is specified in Point 47 of the affidavit. The only condition of the grant is that the money must be used to purchase the property. Mr. Haas stated that the foundation and its director are anonymous, but Caroline Boyce of the Preservation Alliance can testify that she has seen the commitment letter, is knowledgeable of the foundation, and met with its director. Mr. Haas contended that Ms. Boyce is honest and has integrity and, therefore, her testimony should confirm that "the funding commitment is rock solid." He reported that the Friends of the Boyd has communicated to the Historical Commission that it will not demolish the theater after it has purchased it. He stated that the group will immediately improve the appearance of the building on Chestnut Street and will maintain the building. He stated that they will also remove all dead animals from the building. Mr. Haas stated that he is working to obtain funding for the rehabilitation of the building. He asserted that the Boyd "should be fully restored and reused as a multi-purpose entertainment venue with an occasional film program." He reiterated that \$4.5 million has been obtained for the purchase. He explained that, once the funds are obtained for the rehabilitation, the theater can be "run in the black." He stated that the duty of the Historical Commission is to safeguard historic buildings. He advised the Committee to recommend denial of the hardship application because the Friends of the Boyd has offered to purchase the building. He promised

the Committee that he would obtain the many millions of dollars necessary to rehabilitate the building.

Caroline Boyce, the executive director of the Preservation Alliance, stepped forward to address the Committee. Attorney Matthew McClure noted for the record that the Preservation Alliance had already presented its testimony during the first session of the Committee's review. Ms. Boyce stated that she did not intend to repeat earlier testimony, but instead intended to corroborate the claims made by Mr. Haas regarding the foundation funding behind the Friends of the Boyd offer to purchase the property. Mr. McClure responded that he does not dispute the assertion that a foundation has committed to a \$4.5 million grant for an offer on the property. Mr. McClure observed that the Commission's Rules & Regulations require the submission of substantial testimony seven days in advance of the meeting. He noted that the Preservation Alliance and other interested parties have not complied with this rule, abridging his clients' rights and making it difficult for him to respond to allegations and counter-allegations. He asked why the Preservation Alliance, who testified on 28 January 2014 about an application that was submitted to the Commission on 30 September 2013, "get's to have another crack at the apple." Ms. Boyce stated that she merely wanted to corroborate the statements made by Mr. Haas about the grant funding for the offer on the property. She claimed that there have been substantial changes in the entire situation, environment that this theater building sits in. She stated that the Committee should be "pry to all of the information it should have to make its decision."

Ms. Merriman and Mr. Sherman asked Mr. Farnham to relate any legal advice that the City's Law Department has provided on this aspect of the review. Mr. Farnham stated that he met with the Historical Commission's attorney and sought his advice regarding the implications of the Friends of the Boyd's offer to purchase the property for \$4.5 million from Live Nation. Mr. Farnham stated that the Law Department advised that the Commission's primary task in this and all hardship reviews is to determine whether the property may be used for any purpose for which it is or may be reasonably adapted. He stated that the ordinance provides three subtests to assist the Commission in determining whether the property may be used for any purpose for which it is or may be reasonably adapted. The answers to each of the three subtests can provide information that can assist in answering the primary question regarding reasonable adaptation for use. The three subtests are: Is the sale of the property impracticable? Can commercial rental provide a reasonable rate of return? And, are other uses foreclosed? Mr. Farnham stated that the primary and secondary tests are directed at determining whether there is a reasonable or feasible reuse for the property that is not dependent of any particular individual or entity. He stated that the Commission must consider the characteristics of the property such as its location, configuration, and condition and determine whether the market, not any particular individual or entity, would be able to reasonably and feasibly reuse the property. He stated that the test is designed to determine whether anyone operating in the market and basing decisions on market forces and seeking a reasonable rate of return would adapt the property for new use. The test is designed to look at the property in the context of the market generally and ignore the circumstances of any one particular individual or entity. Mr. Farnham stated that he has been advised that the Friends of the Boyd offer to purchase the property provides no information that can help the Commission determine whether the property may be used for any purpose for which it is or may be reasonably adapted because the offer is being made without any expectation of return on investment. The offer is not a measure of the market, but only indicates that a particular group is willing to spend money without hope of a reasonable return on investment. The offer provides no information about whether the sale of

the property impracticable because it does not propose a sale in the eyes of the ordinance. The question before the Commission is whether any prudent investor would purchase the property, not whether a specific entity would purchase without hope of return on investment.

Maggie Mund of the Center City Residents Association presented a letter of non-opposition to the iPic project to the Committee. She stated that her organization considered the proposal very carefully, creating a special task force to meet with all parties and review the multiplex theater project. The full board of the Center City Residents Association then met with the iPic team and Friends of the Boyd, reviewed the proposal and the advice of its task force, and decided that the organization would not oppose the project or financial hardship application. She observed that the Friends of the Boyd has offered to buy the property, but has not put forth a plan to rehabilitate and reuse the building. She stated that the Friends of the Boyd have not proposed a productive use for the building. She stated that the estimates to rehabilitate the building are \$30 to \$40 million, which the Friends of the Boyd does not have. She opined that the City and the School District need this property to be productive and create tax revenue. She concluded that the Center City Residents Association wants to “voice our support for iPic.”

Larry Pitt, who described himself as “an ordinary citizen who lives in the city,” addressed the Committee. He apologized that he may not be knowledgeable of the technical aspects of the Commission’s decision-making. He stated that he is concerned about the destruction of the interior of the Boyd Theater. He stated that he understands the neighbor’s concerns about the health, welfare, and safety of the neighborhood. He stated that it should not be forgotten that there is an owner of that building that has an obligation to maintain it such that it is not a threat to the neighborhood. He stated that, if he lived in the William Penn House, he would ask for the court to issue an injunction requiring the owner to maintain it to the standards of general codes. He stated that he was born in Philadelphia, moved to the suburbs, but moved back to the city in the early 1980s. He noted the changes in the cultural climate of the city since the 1980s. He noted the Kimmel Center, Barnes Museum, and several other institutions. He stated that he is concerned about the future of the Boyd. He observed that there are many high-rise residential buildings in the area and suggested that such a building could be constructed on the Boyd. He suggested that the Commission find a developer who would like to build a residential tower over the Boyd and then negotiate with the developer to partially restore the theater in exchange for construction above. The theater does not need to be fully restored, only made safe and usable. He noted a new interest in film and cinema and said that the Boyd’s large screen would be a benefit. He suggested that the Boyd could host film festivals and silent films with live organ accompaniment. He noted the movie *Monument Men* and asked whether the preservation of a work of art was worth the life of a human being. He stated that it concluded that preservation of art was worth the loss of life. He concluded, stating that one would not destroy a Rembrandt to use its frame; likewise, one should not destroy the interior of the Boyd Theater to use its exterior walls, as Mr. Gallery suggested earlier. The iPic theater can be built elsewhere, he concluded.

Mr. McClure addressed the Committee. He stated that, according to the two main opponents of the application, the Friends of the Boyd and the Preservation Alliance, the situation has substantially changed since the earlier meeting of the Committee on 28 January 2014. Mr. McClure contended that nothing has substantially changed. The facts and the legal basis of the application remain the same. He asserted that this is a very clear case of financial hardship, when one considers the facts and the law.

Mr. McClure stated that he would like to break his response into four sections. First, he would like to address questions raised by Commissioners Hawkins and Thomas at the previous meeting. Second, he would like to respond to the Preservation Alliance testimony at the earlier meeting. Third, he would like to address John Gallery's testimony at this meeting. And fourth, he would like to address the Friends of the Boyd's proposal.

Mr. McClure noted that Commissioner Thomas had questioned whether the movie theater-restaurant scheme included in the Friends of the Boyd's submission was feasible. He noted that the Friends of the Boyd provided plans, but no feasibility analysis. He observed that Peter Angelides, the applicant's financial consultant, prepared an economic analysis of the Friends of the Boyd scheme, which he presented at the first session of the Committee on Financial Hardship review on 28 January 2014. Mr. McClure reminded the Committee that the last four slides of Powerpoint presentation shown by Mr. Angelides were dedicated to the summary of his analysis of this proposal. Mr. McClure noted that copies of the presentation were provided to the Commission on 28 January 2014. Mr. McClure stated that the analysis demonstrated that the Friends of the Boyd scheme was not financially feasible. He offered to have Mr. Angelides present the summary of the analysis again. Mr. Thomas asked how Mr. Angelides had reviewed the scheme at the 28 January 2014 meeting if the Friends of the Boyd did not propose it until that meeting. Mr. McClure explained that the Friends of the Boyd had submitted their materials in advance of the meeting as required by the Commission's Rules & Regulations, allowing Mr. Angelides to review it and prepare his analysis before the meeting. He thanked the Friends of the Boyd for submitting the testimony in advance as required and noted that the Preservation Alliance and Mr. Gallery had not complied with the rule. Mr. Thomas asked if the analysis was based on the preservation of the interior as a single theater, or if that or other analyses addressed the reuse of the building without necessarily preserving the interior of the single movie theater. Mr. McClure responded that they analyzed the Friends of the Boyd scheme that proposed an IMAX theater in the main auditorium, two screening rooms in the balcony, a restaurant in the basement, and an addition at the west end of the auditorium. He pointed Mr. Thomas to the analysis in the hard copy of the Powerpoint presentation and again offered to present it again. Mr. McClure again stated that the analysis of the Friends of the Boyd scheme presented on 28 January 2014 demonstrates that the project is not financially feasible. He noted that the scheme calls for a restaurant in the basement, which would require significant, expensive excavation. He stated that his consultants also question the logistical feasibility of a restaurant in the basement that is intended to serve theaters on two floors above as well as in a distant addition. Mr. McClure stated that the plan includes a fundamental misunderstanding of the real estate. He explained that the scheme proposed building in an alley to the north of the auditorium to provide access to the addition even though abutting property owners have easements allowing use of the alley and it can never be built on. The alley has an easement for the buildings to the north for deliveries, emergency egress, trash, and other access. It cannot be built on as the Friends of the Boyd propose. Mr. Thomas asked again about the cost estimates. Mr. McClure enumerated the financial analyses in the original application, in the supplement, and in the presentation of 28 January 2014. Mr. Farnham showed Mr. Thomas where to find the analysis of the Friends of the Boyd scheme in the application materials. Ms. Merriman asked Mr. McClure to have his consultant present the analysis again.

Mr. Angelides summarized the Friends of the Boyd proposal. It calls for a restaurant in the basement of about 3,000 sf. and a five-screen cinema, one screen of which would be an IMAX. He stated that he analyzed the plan to determine whether it could generate enough income to support the renovation. He stated that he was very generous in his assumptions. He assumed

that the restaurant space would generate \$50 per sf. He noted that this amount is about twice as much as a typical restaurant rent. He noted that this would be a “very challenged” restaurant space, in part owing to its location in the basement and its setback from Chestnut Street. He again stated that \$50 per sf is “extraordinarily generous,” yet, at 3,000 sf, it would only generate \$150,000 annually. He stated that he modeled the performance of the five-screen cinema using financial data from the Rave six-screen cinema. He stated that using the Rave per-screen revenue and calculating operating expenses including taxes, the five-screen Boyd would generate about \$760,000 per year in net operating income. The total net operating income for the project would be \$0.91 million annually. However, the renovation project would be very expensive; it would include excavating the basement and constructing new theaters. The construction costs would be \$37.5 million. Adding soft costs and land costs, the project would have a total development cost of \$51.6 million. Tax incentives would equal \$6.4 million, leaving a net cost of \$45.2 million. The question is: does the project generate enough revenue to justify a \$45.2 million investment. Using capitalization rates for restaurants and cinemas, one can calculate the annual revenue needed to fund the redevelopment project. One would need \$4.5 to \$5.3 million in annual revenue to support the investment, but the total revenue is less than \$1 million. There is a very large gap between costs and revenue. The Friends of the Boyd cinema and restaurant proposal is not economically feasible.

Mr. McClure noted that Commissioner Hawkins asked about the feasibility of inserting spaces within the existing auditorium box. He noted that Mr. Gallery claimed that removing the balcony and inserting new floors might also produce a financially feasible project. He stated that pages 8 and 9 of his supplemental report address these questions. He observed that the report, prepared by Mr. Angelides, was informed by investigations by Jan Vacca and Richard Gelber, the team’s structural engineer and architect respectively. Mr. McClure reminded the Committee that Ms. Vacca had testified during the earlier meeting that the balcony is structurally integral to the building. Mr. McClure noted that Mr. Gallery has provided to opinions on the feasibility of removing the balcony in letters from an architect and engineer that, although dated 7 and 9 February, were not provided to the Commission until late in the day on 26 February, one day before this Committee meeting. Mr. McClure conceded that, in theory, the balcony could be removed. He stated that he and his team never denied that it could be removed. He stated that they had testified that it is structurally integral to the building and, if it were removed, the exterior walls would need to be braced with steel, essentially resulting in the construction of new building within the old. Mr. McClure asked Ms. Vacca to comment on the letters presented by Mr. Gallery from architect Mary DeNadai and engineer Melanie Rodbart. Ms. Vacca stated that she is a structural engineer with 36 years of experience and a profession engineer registered in the Commonwealth of Pennsylvania. She stated that the auditorium box, the back portion of the building, consists of four plain brick walls that are about 50 feet tall. She stated that the building has a partial basement, not a full basement as Mr. Gallery claimed. She stated that the mezzanine and balcony span between the north and south walls of the auditorium box and are supported on structural steel. She stated that she would not comment on the letter from the architect because architecture is not her field. She would comment on the engineer’s letter. She read from the 9 February 2014 letter by Melanie Rodbart: “It is my opinion that the balcony and mezzanine could be removed so that the interior floor plan can be adapted to accommodate a multi-level configuration.” Ms. Vacca stated that she agreed with that statement. She stated that you can generally do anything structural, if you can afford it. She read the next sentence from the letter: “The exterior walls may require bracing during the removal of the balcony and mezzanine depending on the connection between the mezzanine and the walls.” Ms. Vacca stated that she has already reported to the Committee on a scheme to brace the walls to

remove the balcony and mezzanine and save the plain brick exterior walls. She stated that she has worked on many projects requiring the bracing of historically significant exterior features. She stated that it would be unusual and unreasonable to go to extraordinary efforts to preserve the plain brick walls. Ms. Hawkins asked Ms. Vacca if she visited the building and investigated its structure before drawing her conclusions. Ms. Vacca responded that a team of engineers from her company visited the building and fully examined its structure. She stated that interior finishes were removed to examine the structure and she and her team have fully explored the building's structural system. Ms. Hawkins asked if Ms. Vacca had conducted multiple site visits and actually inspected the mezzanine and balcony framing where it intersects with the side walls. Ms. Vacca responded that she has visited the site multiple times and inspected its structural system. She pointed Ms. Hawkins to several photographs of the structural members in question in her report submitted with the application.

Mr. McClure reminded the Commission that the application includes an assertion by the architects at spg3 that one could construct four iPic-style theaters within the auditorium building. He noted that the architects concluded that it was not possible to insert six theaters into the Boyd building, as Mr. Gallery claimed. To insert six theaters, one would need to create the "building within the building" and remove the entire west wall. Mr. McClure noted that these efforts would be necessary to save the unremarkable Sansom Street wall as well as the north wall, which is not visible to the public. He reiterated that six theaters would not fit in the existing building. He stated that Frank Russo of spg3, the architectural firm, can address the Committee and rebut Mr. Gallery's claim. Mr. Sherman stated that that would not be necessary, since Richard Gelber, also of spg3, had testified as such at the previous meeting.

Mr. McClure addressed the comments offered by the Preservation Alliance at the last session. He stated that he submitted the application to the Historical Commission on 30 September 2013 and, in the spirit of full disclosure, offered to meet with various interested parties including neighbors, abutting property owners, the Friends of the Boyd, and the Preservation Alliance. "We reached out to them immediately." He stated that, despite their efforts, the Preservation Alliance never responded with comments or questions about the application. Instead, the Preservation Alliance waited until the first meeting of the Committee on Financial Hardship on 28 January 2014 to respond, when it distributed its letter at the meeting, not seven days in advance as required. Mr. McClure stated that he was reluctant to raise the issue, but felt he must, in that Live Nation is a publicly traded company and iPic is a significant company. He observed that Caroline Boyce, in her letter and prepared statement to the Committee on 28 January 2014, stated without basis that the application was fundamentally incomplete and then stated that the application contained "misrepresentations." He asserted that "misrepresentations" is a very strong accusation and remarked that he would like to correct the record by considering each of her claims.

First, Ms. Boyce of the Preservation Alliance claimed that the application included no information from Live Nation. He countered that the affidavit is signed and attested to by James Tucker of Live Nation. Second, Ms. Boyce claimed that Intech's cost estimates were developed for an undefined scope. Mr. McClure countered that Will Schwartz of Intech testified that the cost estimates were based on a fully bid, fully permitted set of construction drawings. The scope was precisely defined, not undefined. Next, Ms. Boyce claimed that the Intech cost estimates were too high, \$1200 per sf. Mr. McClure stated that she was wrong. The estimates clearly show construction costs in the range of \$300 to \$500 per sf, depending on the projected uses of the various schemes. He also noted that the numbers provided by Ms. Boyce for the Queen

Theater in Wilmington, Delaware are not comparable. They are 2010 numbers, not adjusted for 2014. The level of work was different. For example, the Boyd numbers include the construction of a 100-foot tall fly tower and stage house. He stated that they are not comparable projects, but, nonetheless, when the per square foot construction costs are correctly compared, they are nearly equal. There was no misrepresentation; she simply misunderstood the materials. Both Ms. Boyce and Mr. Gallery claimed that the Boyd is only 29,000 sf, not 50,000 plus sf as stipulated in the Intech estimates. Mr. McClure stated that this is a very simple mistake on the part of Ms. Boyce and Mr. Gallery that could have been rectified quickly if they had simply asked, "rather than make all this commotion about it." The January 2014 Econsult report discusses 29,000 sf of space, but only in the context of rentable space for retail or restaurant use. There is 29,000 sf of space in the building that could be potentially converted to retail space. There is other space in the building, basement, mechanical, film projection rooms, and back office space, that is not suitable for retail use and is not part of the 29,000 sf, but is part of the total construction area. Mr. McClure listed the spaces that are not suitable for retail. He concluded that Ms. Boyce and Mr. Gallery are simply confusing usable retail space for total space. Ms. Boyce should not accuse the applicants of misrepresenting when she made the mistake. Next, Mr. McClure observed that Ms. Boyce had claimed that the application did not include a breakdown of the costs that were included in Econsult's historic tax credit assumptions. He concluded that a request for that level of detail is unprecedented and absurd. "It is an insane amount of detail." He stated that they could provide that detail to the Commission, but they believe that it is unnecessary to prove their claims. He asserted that Ms. Boyce also claimed that Econsult only considered the exterior costs when calculating the potential tax credits. "Again, that is totally incorrect," he contended. He stated: "It is in the report. Just read it." He observed that Ms. Boyce and Mr. Gallery claimed that the Commonwealth's Redevelopment Assistance Capital Program (RACP) funding is still available for the Boyd. Mr. McClure held up a 2013 letter from the Commonwealth stating that the contract for the RACP funding had been terminated. The money is no longer available. The letter is signed by the Office of the Budget. Mr. McClure again stated that Ms. Boyce should not claim that he and his team were guilty of misrepresentations when she is simply unaware of the facts. Mr. McClure reminded the Committee that "to misrepresent" means "to lie." He asserted that Ms. Boyce leveled a serious accusation without proof. Next, Mr. McClure continued, Ms. Boyce claimed that the air rights over the Boyd were worth \$3 million. He rejected this claim as unrealistic and noted that the very same person is insisting that the entire property is worth only \$4.5 million. He asserted that there is no way to reconcile the claim that the air rights are worth \$3 million if the purchase price for the property is only \$4.5 million.

Mr. McClure turned his attention to Mr. Gallery's testimony earlier in the meeting. He noted that Mr. Gallery submitted his materials to the Commission yesterday afternoon, less than one day before the meeting, even though the application was submitted to the Commission on 30 September 2014. He asserted that Mr. Gallery was using the process "to delay or filibuster rather than to assess reasonable reuse." He observed that the letters in Mr. Gallery's submission were dated three weeks ago. Mr. McClure contended that Mr. Gallery's letter contains "many novel legal arguments, yet each is fundamentally flawed." Mr. McClure agreed with Mr. Gallery that the Commission has jurisdiction over the exterior, but not the interior. Mr. Gallery does not acknowledge the differences between the character-defining features and unremarkable features of the exterior. The Chestnut Street façade is the character-defining feature; "anyone who says otherwise is not serious." The exterior of the auditorium is an unremarkable structure. When the Commission approved the demolition of the stage house in 2008, it unanimously found that the west wall was not a character-defining feature and therefore

its removal was not a demolition. Mr. McClure observed that Mr. Gallery labeled the application incomplete because it did not consider a use that would require the reconstruction of virtually all of the auditorium structure. The test is not to determine whether you can build a new building to subsidize the historic building. The test is not to determine whether “you can destroy the entirety of the building and build a new building in the building to save the building.” To insert four new theaters into the auditorium, one would have to remove the balcony and mezzanine and erect a new structural system within the existing building. One would have to go to extraordinary efforts to save an unremarkable wall at the north, which cannot be seen by the public, and an unremarkable wall at the south along Sansom Street. To insert six new theaters into the auditorium, one would also have to remove the entire western wall of the auditorium. This is not the intention of the ordinance. Mr. Gallery makes a seemingly clever argument that twists the purpose of the ordinance, namely the retention and preservation of character-defining features, not blank walls. Mr. McClure concluded that one does not need to conduct a feasibility analysis of the project proposed by Mr. Gallery because employing remarkable feats of engineering to save two unremarkable walls is not a reasonable adaptation. Mr. McClure stated that the Econsult and RES reports document the feasibility of retail reuse for this property. Mr. McClure stated that Mr. Gallery’s claim that the applicants did not consider any retail reuses is “total baloney.” He stated that retail reuses are considered throughout the 9 January 2014 supplemental report. He stated that they had a retail consultant visit the site and assess its feasibility for reuse. He asserted that it is “absolutely baseless” to allege that they did not consider retail reuses. He stated that Mr. Gallery is incorrect in asserting that the applicant needs to assess the gutting of the entire interior to accommodate up to four floors. It would be absurd to build a new building inside a building to save unremarkable brick walls. Mr. McClure also noted that Mr. Gallery has mischaracterized the approval of the removal of the west wall of the auditorium in 2008. He acknowledged that the Commission did approve the removal of the west wall, but with a series of conditions that Mr. Gallery conveniently failed to mention. The removal of the west wall was conditioned on the construction of the hotel tower and the full restoration of the interior. Mr. McClure addressed Mr. Gallery’s claim that the property had not been sufficiently marketed. He noted that the Rules & Regulations requires the owner to make a good faith effort to sell and rent the property. Mr. McClure stated that owners have been searching for ways to sell and rent this property for reuse for 19 years. He stated that the property has been sold twice to developers looking to reuse it. Millions of dollars have been invested seeking new uses. To say that the property has not been marketed is absurd, he asserted. And, for most of that period, the property was not listed on the Philadelphia Register of Historic Places. Before it was designated as historic in 2008, there were no restrictions on demolition and yet no one was able to find a reuse for the building. Mr. McClure noted that Mr. Gallery claimed that the property was only marketed for full restoration. To that, Mr. McClure responded: “That’s just not true.” He stated that it was listed for sale with CBRE in 2006 and 2007, before it was designated as historic. There were no restrictions regarding restoration in the listing. Mr. Gallery’s allegations are “baseless and need to be corrected on the record.” Mr. McClure stated that Live Nation, a publicly-traded company, is proposing to sell the building at a substantial loss. He asked why it would do that if it had other recourse.

Mr. McClure addressed the Friends of the Boyd proposal to purchase the building. He acknowledged the work of Howard Haas and the Friends of the Boyd and stated that he respects their efforts to save the building. He stated: “No one doubts the historical importance of this building.” Mr. McClure asserted that the fundamental question before the Commission is whether there is or is not a reasonable or feasible adaptive reuse for the building. Can the building be used for any purpose for which it is or may be reasonably adapted? The

Commission's review criteria require it to consider the significance of elements being preserved and removed when reviewing applications. Considering the importance or lack thereof of what would be demolished is required under the ordinance. During the last meeting, Mr. Farnham commented correctly that the applicant need not seek out a benefactor such as a foundation who would invest without expectation of return to preserve the building. Mr. McClure stated that he was respectfully suggesting that the Friends of the Boyd was not making an offer to purchase the building, but instead had come forth with a benefactor who would invest without expectation of return. He asserted that, if one is an appraiser looking for comparable sales, one would not consider the offer made by the Friends of the Boyd because it is not reflective of the market value. An appraiser would disregard it. It is not driven by market forces. Mr. McClure asserted that the Friends of the Boyd offer is irrelevant in the eyes of the Commission and ordinance. He stated that the primary test is whether the building can be reasonably adapted for a new use. The ordinance prescribes three subtests that can inform an answer to the primary test. One of this is: Is a sale of the property impracticable? The subtest is designed to expose the property to market, which has investment-backed expectations, to determine whether the market can provide reasonable reuses for the property. By definition, a benefactor is not a market participant seeking return on investment. In fact, the fact that the Friends of the Boyd sought a benefactor is, in and of itself, evidence of a financial hardship. Mr. McClure noted that, earlier, Mr. Haas asserted that the benefactor's lack of knowledge of the iPic proposal demonstrates that the property was not marketed properly even though Mr. Haas himself told *USA Today* in 2012 that the property was for sale. The Friends of the Boyd offer does not indicate any market interest in the property. It only indicates that the Friends of the Boyd was able to find a benefactor. "Put simply, this is not a sale as contemplated by the ordinance." The Friends of the Boyd offer tells us nothing about whether a sale is impracticable. The property has changed hands many times since its first designation and the subsequent litigation. It was transferred to United Artists, then the Goldenberg Group, and then Live Nation. The fact that the title changes hands does not eliminate the financial hardship that is endemic to this property.

Mr. McClure asked the Committee to assume that the benefactor is real for a moment. He stated that they would not dispute that contention. He then asked if \$4.5 million was a sufficient offer for the property. He stated that Neil Rodin, the ground lessor, has an interest. The ground lessee and the sub ground lessee also have interests. iPic, which has invested significant money in this project, has constitutionally protected rights. Live Nation spends more than \$100,000 annually to maintain the property. It secures and heats the building and pays taxes on it. Mr. McClure noted that Mr. Haas has stated that he wants to use the theater as a multipurpose entertainment venue. Mr. McClure asked Mr. Haas to present his assumptions and calculations of costs to renovate and reuse the theater. Is he assuming \$35 or \$37 million? What is the source of this funding? What are his assumptions about net operating income? Will this income cover the debt service for the hard costs? Who will operate the venue? If he has an operator, what does that operator estimate for net operating income? Is it higher or lower than that projected in the Econsult report? Mr. McClure stated that Econsult's projections of net operating income were exceedingly high. Who will be the developer? Mr. McClure concluded that, if the Friends of the Boyd has this information, it should make it available for analysis.

Mr. McClure stated that, regardless of the Friends of the Boyd proposal, the fact that there is no feasible reuse scheme for this property is inescapable. Without a feasible reuse scheme, this property will continue to be a blight on the neighborhood. He asserted that, in the context of a financial hardship application, blight is relevant. He pointed out that the opinions of the Center City Residents Association, Rittenhouse Row, the elected officials for the neighborhood, and the

neighbors across the street and next door all matter. He pointed out that Sharon Pinkenson, who testified at the last session and was a founder of the Friends of the Boyd, supports the project.

Mr. McClure completed his remarks, reading from a *Daily News* editorial on the Boyd hardship question, which was published on 30 January 2014.

In short, the Boyd is not economically viable as a single theater acting as a venue for concerts, movies or Broadway musicals.

The hope offered by Friends of the Boyd is that someday, somehow, someone will find a use for the theater that will preserve it. But, no one can say when that will happen: maybe in a few years, maybe in a few decades, maybe never.

While the Friends may have the patience to let some future generation save the Boyd, the rest of us should not. Cities don't thrive by allowing viable property to sit neglected and unused. The Boyd property has been an eyesore along a stretch of Chestnut Street that has seen a commercial and residential revival in recent years.

Balancing preservation with development is never easy, with the city of the past and the city of the present often tugging in different directions.

When it comes to the Boyd, it is not a case of demolition by neglect. People have searched for years for a reuse of the property that preserves the grand theater inside. The process of deliberation by the appropriate city agencies has run its course.

Such conversations are one way that cities examine what they value and why, and this one has been a particularly long conversation. But everyone has gotten a say.

The key question before the commission is: Does the building create financial hardship for its owner because of its limited potential for reuse as a single theater? The Historical Commission's own analysis makes it clear that the building's owner can make the case for financial hardship.

When the commission meets next month, it should let the new project advance. As tantalizing as it is, the dream of a Boyd restored to its former glory is not going to come to pass. It is time to let go.

Meg Sowell and Stephen Kazanjian, the Commission's consultants from Real Estate Strategies, Inc. (RES), addressed the Committee. Ms. Merriman asked the consultants to respond to the claims and counterclaims that they had heard today. She also asked them to address reuse schemes that include the basement. Ms. Sowell stated that she had conversations with John Gallery about the reuse of the building as a health club and was directed to architect Mary DeNadai, who had worked on plans for the Boyd for a developer. Ms. Sowell stated that the architect explained that the basement is not a full basement, but only a partial basement. Ms. Sowell explained that she and her partner very carefully surveyed and studied retail rental rates around the Boyd Theater. She provided two maps to the Committee with retail rates tied to locations. She stated that they considered retail and restaurant reuses for the Boyd and found that the rental rates that would support the renovation were well above market rates and

therefore not feasible. She stated that their analysis was done independently of the Econsult analysis, but came to the same conclusion, that the potential rents would not support the cost of renovation. She stated that the \$50 per sf that Econsult used in its analysis is an aggressive number. In reality, the space would likely rent for less. She stated that \$50 per sf would be difficult to achieve, especially for 3,000 sf in a basement. She stated that “running black iron,” meaning installing and operating a restaurant kitchen, would increase the costs. She concluded that a retail or restaurant use would not be feasible. Mr. Kazanjian added that the basement is a relatively small space that is distant from Chestnut Street and relatively difficult to access. The space is not practical for a retail use. The basement retail use would also need to be compatible with the above-grade use. For example, a restaurant use would not be compatible with an upstairs office use. Mr. Kazanjian stated that he and his colleague were the ones who first suggested exploring retail uses. They convinced Econsult to fully analyze the retail and restaurant options. He stated that they carefully analyzed the rents and found fairly high rents at small retail spaces at corners in the prime retail areas. At the corner of 18th and Chestnut, a retailer is paying \$90 per sf. At 17th and Chestnut, Nordstrom Rack will pay fairly high rents at the old Bonwit Teller building. However, the Boyd location cannot compare to those locations. No retailer will pay the kinds of rents needed to support the renovation on the 1900-block of Chestnut with the narrow street frontage. Ms. Sowell explained that they tested sensitivity in a number of ways with the retail scenario. She stated that they had hopes that it would work, but it did not. They determined that the retail space would need to rent for \$120 per sf to support a renovation for retail. She stated that that rent was infeasible. It could not be attained. She added that that rent is triple net, meaning that the tenant would pay utilities, management fees, and taxes. She stated that she wanted the retail scenario to work and “pushed at it in every direction, but it would not work.” Mr. Kazanjian reported that they studied a scenario in which one would empty the auditorium box and add floors, just as Mr. Gallery had suggested. He cited a church in New York City in which floors had been added for a conversion to retail. He also cited Union Station in Washington, DC and the Bourse Building in Philadelphia, where similar conversions had taken place. He explained that the need to remove the balcony and add structure to the Boyd would significantly increase development costs. He stated that their study concluded a project like the one Mr. Gallery suggested would not be financially feasible. The potential rents would not support the construction costs. Mr. Kazanjian stated that their rent projections are all triple net; the cost to run this building would be very high and would deter potential retailers. He concluded that the space is very large, not configured for retail, and would be too expensive to adapt for retail. Ms. Sowell confirmed Mr. McClure’s assertion that the RACP funding for the building had been terminated. She stated that a new developer could apply for new RACP money, but it is not by right; the process is very competitive and there is no guarantee that it could be obtained. Ms. Sowell also responded to the Preservation Alliance’s claim that the historic preservation tax credit should be estimated at 92% of the total cost, not the 72% used in the Econsult report. She stated that the Preservation Alliance had included the new construction costs in the basis for the tax credits. Those costs are not eligible for the tax credits. Ms. Sowell stated that she and her partner checked Econsult’s assumptions about the tax credits and did their own tax credit calculations and arrived at virtually the same number as Econsult. Mr. Kazanjian elaborated, stating that they developed their own spreadsheet for the tax credits and confirmed Econsult’s numbers. Ms. Sowell stated that they did not accept any Econsult numbers on their face, but verified all of them. They built their own spreadsheets for net present value. Regarding the historic tax credits, Econsult’s estimate was correct; the Preservation Alliance’s estimate was not. Ms. Sowell concluded that “sadly, sadly ... sadly, we couldn’t get there.” She concluded that there is no reasonable reuse for the property. Mr. Kazanjian also noted that the Preservation Alliance and Mr. Gallery were mistaken about the square footage

used to estimate construction costs. He stated that, in every real estate feasibility analysis, one uses the total gross square footage to estimate construction costs. Rental revenue estimates are based on net usable square footage. The Preservation Alliance and Mr. Gallery confused gross and net square footage, using the wrong numbers in their analyses and getting results that differed significantly from those of Econsult and RES.

Attorney Leonard F. Reuter, on behalf of the Preservation Alliance, addressed the Committee. He observed that the intention of the ordinance with respect to claims of financial hardship is to determine whether there is an adaptive reuse for the property. Mr. Reuter then claimed that the regulations regarding hardship applications are very clear; there is no ambiguity. He read from the Rules & Regulations: "To substantiate a claim of financial hardship to justify a demolition, the applicant 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." Each of the three prongs of the test must be met. They are connected by the conjunction "and," not "or." They are not optional. He stated that they have a firm and anonymous offer to purchase the property, which has not been denied by the applicant. He said that the response that the offer is not a purchase "sounds kind of made up." He stated that it is an offer to purchase the property. It is irrelevant who is making the offer or why they are making it. Whether or not the purchaser has an adaptive reuse for the property is irrelevant. The purchaser would be bound by the preservation ordinance just as the current owner is. The Commission can assume that the purchaser would find a reuse for it and would maintain it. Mr. Reuter stated that the purchaser would immediately seek a reuse for the property that does not require the demolition. Mr. Reuter concluded that, in his opinion, the anonymous offer to purchase the property defeats the hardship application automatically, as a matter of law.

Mr. Sherman instructed the audience to stop disrupting the proceedings with applause.

Ms. Merriman asked Mr. Farnham to comment on the role of the Committee in relation to the Commission. Mr. Farnham responded that the Committee is advisory and must offer a non-binding recommendation to the Commission as to whether the application does or does not demonstrate that the building in question can be used for any purpose for which it is or may reasonably be adapted. The Committee may also recommend to the Commission that it table the application for the submission of additional information. Mr. Sherman noted that the Commission has the ultimate decision-making authority. Ms. Merriman asked Mr. Farnham to show the Powerpoint slide with the language of the hardship provision in the ordinance. Mr. Farnham displayed the slide, which read:

Section 14-1005(6)(d) Restrictions on Demolition. No building permit shall be issued for the demolition of a historic building, structure, site, or object, or of a building, structure, site, or object located within a historic district that contributes, in the Historical Commission's opinion, to the character of the district, unless the Historical Commission finds that issuance of the building permit is necessary in the public interest, or unless the Historical 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 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.

Mr. Thomas asked whether the owner must satisfy all three sections of the subtest, 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. Mr. Farnham responded that the answers to the three subtests are designed to assist the Committee and Commission in answering the primary question, whether the building can or cannot be used for any purpose for which it is or may be reasonably adapted. To find that the property suffers from an inherent hardship, the Committee should be able to answer all three questions in the subtest affirmatively.

Ms. Merriman stated that she is personally struggling with a decision. She noted that there is an offer to purchase the property on the table and observed that the anonymous foundation making the grant to the Friends of the Boyd for the offer appears to have the capacity and commitment to follow through on it. She opined that the Committee is not questioning the validity of the offer. She stated that she has heard evidence to fully support the claim that there is no use for this property that would provide a reasonable rate of return on investment. She stated that she is struggling with the implication of the offer on the property for the hardship decision. She asked: "If some non-profit was to take this land, take this building, and do with it something where there is no expectation of a reasonable rate of return, who are we to deny that?" She continued, stating that, without seeing a plan for a non-profit to run this facility "in the black" or, at least, "on a revenue neutral basis," and without seeing plan to fund the rehabilitation of the building, she cannot reach any conclusions on the Friends of the Boyd's proposal. Mr. Thomas observed that many projects he has undertaken as an architect have been funded in part with subsidies such as New Markets Tax Credits. He asked about the standard they must apply. Does the building have to be able to be profitable on its own without subsidies? Mr. Thomas stated that he would like to be provided with more information, not by the applicant, but by the Preservation Alliance and the Friends of the Boyd. He stated that he is concerned about acting prematurely. Ms. Hawkins stated that the meeting "feels like a funeral." She stated that this is very emotional topic for people on the Committee and in the audience. Ms. Hawkins reminded the Committee that the applicant submitted an application in September 2013 and, in all fairness, deserves an answer. She stated that "it is fantastic that there is a potential savior, but this applicant deserves due process and, as part of that due process, they need to move on to the full Commission." She stated that the Commission has the authority to request additional information regarding the offer to purchase, but the Committee should move forward and make a recommendation on the merits of the application. She stated that she hopes the savior is ultimately successful, but asserted that she cannot deny this applicant its due process. She stated that the applicant has responded fully to the Committee's questions and concerns in a timely manner and has been confronted with materials submitted by some interested parties at the last moment. She stated that it is in the Commission's best interest to respond to the merits of the application that is before it today. Mr. Thomas stated that he voted to find a hardship on the merits in the case of the Church of the Assumption, but nonetheless held out hope that the church would be saved. No one on this Committee wants to see the Boyd Theater demolished, he observed, but there is a process that must be followed. Mr. Thomas stated that the Committee is determining that the application is complete and meets the standard. The Commission, which holds the authority, can consider other factors. The same is true for the Architectural Committee. It is a technical body that determines whether applications strictly satisfy the Secretary of the Interior's Standards. The Commission has the authority to consider other factors when reviewing an Architectural Committee recommendation. The Commission will consider this matter on 14 March 2014.

COMMITTEE ON FINANCIAL HARDSHIP RECOMMENDATION: Ms. Jones moved that the Committee on Financial Hardship recommend, pursuant to Section 14-1005(6)(d), that:

1. the application for the property at 1910 Chestnut Street has demonstrated that the building cannot be used for any purpose for which it is or may be reasonably adapted;
2. that the owner has demonstrated that the sale of the property at 1910 Chestnut Street is impracticable;
3. that commercial rental of the property at 1910 Chestnut Street cannot provide a reasonable rate of return; and,
4. and that other potential uses of the property at 1910 Chestnut Street are foreclosed.

Ms. Hawkins seconded the motion, which passed by a vote of 3 to 0. Mr. Sherman and Ms. Merriman abstained.

ADJOURNMENT

ACTION: Ms. Jones moved to adjourn at 3:03 p.m. Ms. Hawkins seconded the motion, which passed unanimously.