



The City of Seattle

## Landmarks Preservation Board

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LPB 18/10

### MINUTES

Landmarks Preservation Board Meeting  
Seattle Municipal Tower  
700 5<sup>th</sup> Avenue, 40<sup>th</sup> Floor  
Room 4060  
Wednesday January 20, 2010 - 3:30 p.m.

#### Board Members Present

Tom Veith  
Vernon Abelsen  
Marie Strong  
Meredith Wirsching  
Steve Savage  
Jerry Finrow  
Elaine Wine  
Mark Hannum  
Christine Howard  
Aaron Luoma  
Patrick King  
Alyce Conti

#### Staff

Elizabeth Chave  
Sarah Sodt  
Melinda Bloom

Chair Vernon Abelsen called the meeting to order at 3:30 p.m.

**012010.1 APPROVAL OF MINUTES**  
Meeting of December 16, 2009 – Minutes deferred.

#### Public Disclosure/Disclaimer Statement

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**Administered by The Historic Preservation Program  
The Seattle Department of Neighborhoods**

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## **012010.2 CERTIFICATES OF APPROVAL**

012010.21 Cooper House  
225 14<sup>th</sup> Ave. E.

Proposed modification to previously approved plans, including the addition of exterior stairs, handrails and guardrails, and modifications to the entry piers.

Ms. Chave explained that the project was a revision to a 2006 Certificate of Approval. She noted the change of use from residential to office prompted the changes. She said the revisions were recently reviewed by the ARC.

Project architect Thomas Gerrard explained change of ownership occurred during the construction process. He describes proposed changes to the piers at the driveway entrance, recycling enclosure, addition of handrails at second floor balcony, and the addition of stairs to allow first floor access.

Mr. Gerrard explained the historic balustrade at the second floor balcony, at a height of 2- 2 ½” to the top of the rail, was not code compliant and they proposed to place a steel guard rail on top to extend it up to minimum required height of 42” above the deck. He said they proposed to use ½ x 1 ¾” flat bottom and ½” round bars bent on radius to match curve of the balustrade and painted the same color as the building. While they will be visible Mr. Gerrard said he hoped they would be “transparent” and not compete with the building. They will be attached with four lag bolts per section and they are removable.

Mr. Gerrard explained that code compliant hand rails would be installed at the front entry steps, in a style consistent with previously approved railing at accessible ramp.

Mr. Gerrard went on to describe proposed changes to the piers at the entry to the courtyard engaged to a lower more linear concrete wall that will have the building address on one side. He said it would be low, minimalist and functional. He said there would be ground cover in front and other landscaping that would fill in that area over time. He said it would align with where the stairs are and fulfill the function of reinforcing the building entry and putting the address out there.

Mr. Gerrard said the proposed changes to the recycling enclosure would include of 1 x 3 cedar horizontal slats noting that they will weather to a gray color supported by a lower concrete wall similar at the entry to the site. He went on to describe the landscaping which, he said, when mature will soften or hide the enclosure. He said dwarf rhododendrons are proposed which will grow to 5’ – 6’ and will hide the enclosure.

Mr. Gerrard said the stair on the north side of the building would be slab on grade and provide access to the first floor level 9’ down. He said the stair rail

would be the same flat bar members as used on the balcony rail. He said a second bar would be added as a hand rail to accommodate children because a children's counseling office will be located on that floor.

#### Board Questions:

Responding to a Board member questions Mr. Gerrard explained that the hand rail at the stair entry would have the same detail as the handrails on the ramps and noted the details on A4 and A5 of the drawings. He didn't know if the child counseling center was state certified or not but noted the lower railing to accommodate children. Regarding the second floor balcony he said the rail was not compliant with current code, a safety issue and liability so it needs the extra railing. He said it is the same issue as the handrail on the four risers coming off the front porch. He clarified that on the walls in front of the building, just the address would be on the front of one wall – recessed and stained dark gray. He said the other concrete wall would be blank.

Mr. Gerrard said the risers at the entry were cast in place concrete leading to but separate from existing porch. He said the rails would be installed by a flange at the bottom at the bar that bolts into the wood porch and one embedded in a new concrete band.

Ms. Howard asked if other options had been explored for the second floor balcony railing.

Mr. Gerrard explained the intent to keep it as minimal as possible and went over options they explored before deciding on the proposed option. He explained that the rail attachments were placed at the columns rather than at the bottom due to issues with possible weather intrusion. He said the rectangular rail style was selected in effort to not mimic historic elements.

Public Comment: There was no public comment.

#### Board Discussion:

Mr. Abelsen said the balcony rail is removable and that trying to bolt to the roof of the porch below would be a challenge in terms of weather proofing and said that other attachments such as trying to connect to columns would probably detract more from the character defining details.

Ms. Wine commented that it was the most minimal approach with visual minimal impact and that the recycling enclosure had minimal impact as well.

Mr. Hannum said the second floor porch railing detracts from the historic structure and he didn't think it was a necessity. He didn't think it was mandated by code.

Ms. Wirsching pointed out that substantial work – such as this project – would require that it to be brought up to code.

Mr. Veith added that the change of use from residential to commercial would also have that requirement.

Ms. Chave pointed out that the previous use was going to be condos- a use that didn't trigger a change to the railing.

Ms. Howard agreed and said that while the rail will detract she understood the life safety issue.

Ms. Wirsching noted that at ARC they had discussed the character of the modern elements that were being introduced and that the Secretary of Interior's Standards encourage that anything new not mimic old. She said the applicant took the appropriate step to try to minimize the rail as much as possible

Mr. Luoma noted that the concrete wall and cedar fencing may not be consistent with the historic structure and its character and may be potential detractors but pointed out that the plantings will over time soften their appearance.

Action: I move that the Seattle Landmarks Preservation Board approve the application for the proposed modifications to previously approved plans, including the addition of exterior stairs, handrails and guardrails, modification to entry piers, and modification to recycling enclosure.

This action is based on the following:

1. The proposed work does not adversely affect the features or characteristics specified in Ordinance # 123022 because the proposed alterations do not destroy historic materials that characterize the property, and are compatible with the massing, size, scale and architectural features of the property, as per Standard #9 of the *Secretary of Interior's Standards for Rehabilitation*.

The other factors in SMC 25.12.750 are not applicable to this application.

MM/SC/SS/CH 12:0:0 Motion carried.

**012010.3 NOMINATION**

012010.31 1650 E. Olive Way  
(B & O Espresso Building)

Jack McCullough, attorney for the owner, explained his clients had applied for a MUP with plans for potential redevelopment of the site, and that is what triggered the nomination. He asked the Board not to nominate the building.

David Peterson, architect with Nicholson Kovalchick, presented the nomination report (full report available in DON file). He provided context of the site and noted that Capitol Hill is one of the oldest and most dense neighborhoods in the City and possibly the densest on the west coast. He said the building was constructed in 1924, designed possibly by the builder and is a vernacular style. He pointed out the mix of ages and types of buildings in the area.

Mr. Peterson provided information on when E. Olive Way became a major thoroughfare which impacted the shape of the building and parcel. He said when autos became more popular this became a major piece of property. He pointed out the beveled corner of the building and went on to describe the many changes to the building over time. He said many interior changes were made to accommodate the different businesses over time; exterior changes were made as well to storefronts, windows, bulkheads, marquee, awnings, and parapets.

Mr. Peterson said in his opinion the building does not meet the standards for designation because it is not remarkable nor does it have any unusual architectural qualities. He said it has been completely altered several times. He said it did not have an association with the development of coffee houses – it was neither the first nor the largest and was associated with no significant event.

Mr. McCullough said that the double significance of Criterion C had not been met. He explained that B & O Espresso had only one year left on their lease and there was no assurance they would remain. Without B & O Espresso there the building could not convey its significance and he compared it churches and laundries that have been landmarked; he said this attachment is more of use rather than the structure.

Board Questions:

Mr. Veith asked if there were any other buildings in the area that have the same chamfered corner that allows the building to address traffic.

Mr. Peterson cited two buildings nearby on Olive Way, one of which it terra cotta, that have chamfered corners.

Public Comment:

Michael Bush, adjacent properties owner, said that he was speaking on behalf of 1000 signers of a petition on the 1650choice.org website who supported nomination. He addresses the six designation criteria. He said it is as important as the Ward House, the San Remo and the Pantages House in the neighborhood. He said the business has operated there for thirty years noting its charm and distinction in the neighborhood and he called it the “neighborhood’s Taj Mahal”.

Sally Knodel agreed with the previous speaker and asked the Board to support nomination and to preserve vernacular architecture. She cited Criterion F.

Joe Ginsberg said that the B & O is listed in a data base of historic buildings as Colonial Architecture noting that there were many residences in this style but few commercial buildings. He supported nomination.

Board Discussion:

Ms. Chave explained staff recommended nomination based on Criterion C.

Mr. King said there was question about integrity but that the massing continues the spirit of the original building and a person from time of construction would still recognize it. He said that while he had trouble with Criterion C, he was considering Criterion F.

Mr. Veith said the building is not a very good example of vernacular architecture. Regarding Criterion C he said he wasn’t sure what the association was and went on to say that the use cannot be designated and the board cannot control whether or not B & O Espresso. He agreed with the presenter that the building is not a visual reminder of coffee industry or its development. Regarding Criterion F he said that any building on that site will have the quality of being visible to road users and the building itself doesn’t grab the site. He said he was leaning toward voting “no”.

Ms. Wine agreed with the presenter and said the building does not stand on its own. She said that Criterion F was more compelling. She noted the importance of preserving vernacular architecture but there had been too many alterations over time.

Ms. Strong agreed and said it was an interesting building and well sited but it has had too many alterations, and she would vote against nomination.

Mr. Savage said it was an eclectic, multi-tenant and wonderful neighborhood building but he didn't find anything significant about it and would not support nomination.

Mr. Hannum agreed and said the building had integrity issues and although it conveyed the vernacular of the period it wasn't original enough. He said nomination hung on use of building by B & O Espresso. He did not support nomination.

Ms. Howard struggled with Criterion C but said it met Criterion F because the site is prominent because of the way E. Olive way bends and wraps around the corner. She supported nomination.

Ms. Conti said the building is quirky and charming and houses a thriving neighborhood business. She said, however, it did not meet the hurdle for nomination and she would not support nomination.

Ms. Wirsching did not support nomination and said the integrity was not there and the character had changed significantly over time. She said there is nothing significant and the original fabric is not there. She said it did not meet the double standard – "significant aspect" and "significant way".

Mr. Finrow said the building is not worthy of nomination and noted there are others on the corridor that are. He cited integrity issues.

Mr. Luoma said coffee as an industry is significant in the city but he didn't think that B & O Espresso in this building had that significant relationship over time so he did not support Criterion C. He said there are better examples of vernacular architecture in the City and neighborhood. Regarding Criterion F he said that any building in this location would draw attention as going around the bend. He did not support nomination.

Mr. Abelsen agreed and noted the importance of the development of the city and changes in street routing were not tied to this building. He said it is a nice structure that follows the street, presents itself at the corner and steps up to follow the slope of Olive Way. He said truly vernacular buildings are difficult to nominate because it would have to carry its significance and this building does not. He did not support nomination.

Action: I move that the Board not approve the nomination of 1650 East Olive Way as a Seattle Landmark, as it does not meet any of the designation Standards of SMC 25.12. 350.

MM/SC/MH/JF 11:01 Motion carried. Ms. Howard opposed.

**012010.4      CONTROLS & INCENTIVES**

012010.41      Carmack House  
1522 E. Jefferson Street

Ms. Sodt explained the request from the owner for a three month extension and said they are still in the process of working with Historic Seattle and the National Parks Service to possibly move the building.

Action: I move to extend consideration of Controls and Incentives for the Carmack House, 1522 E. Jefferson Street for three months.

MM/SC/TV/CH      9:0:3    Motion carried. Ms. Strong, Ms. Conti and Mr. Hannum abstained.

012010.42      Eitel Building  
1501 Second Avenue

Ms. Sodt explained that the Eitel Building was designated in August 2006. She said that since that time they have been in the process of negotiating Controls and Incentives. She said a lot of information has been received from the owners; staff has reviewed the information and responded with questions, and some responses to those questions have been received. Recently some Board members have been involved in reviewing this information and have met with the property owners and have also had some questions. She said that at this point they have come to an impasse and staff feels that the information presented by the owners does not substantiate their assertions that there should not be any controls on the building. She said the recommended Controls and Incentives for the building is based on a standard agreement, and the only unique aspect of the agreement is that staff recommends including language stating that the Certificate of Approval process would not preclude the owner from infilling the light well on the west elevation, although the details of the infill would need to be reviewed by the Board. She said other items are administrative review for HVAC and other mechanical systems, security equipment and exterior signage. She went over the Board's possible actions, which would be to approve the recommendation as proposed by staff, or to not approve the staff recommendation and for the Board to adopt their own recommendation on Controls and Incentives.

Owner comment:

Mr. Costich asked that the Board reject the imposition of controls as proposed. Effectively the controls will deprive the owner of reasonable economic use of the building. He provided threshold criteria for Board to consider under SMC 25.12.590. He said that staff recommends controls that would leave the property owner with a loss of as much 3.5 million dollars or perhaps more.

He said that this effectively violates the City Code which states that the owner cannot be left without a reasonable economic use and it is also effectively a taking of the property. He said that they are asking the Board to recommend that no controls be imposed on this building. Mr. Costich said that Ms. Sordt had pointed out that they have been working at this for three years. He said that this has been a diligent effort on the part of the owner to try to address the concerns over the time that has been raised by the City. He said that they think they've done that very faithfully. He said that they've examined three real rehabilitation scenarios for this building: apartment use, condos, and then also a commercial and office space. He said that they've also examined hotel use for it in order to see if whether or not a preservation scenario could be economically viable. They've undertaken numerous appraisal reports, feasibility studies on these various scenarios. They've answered the various questions that have been raised by staff; they've addressed their concerns. He said that they've cooperated to the degree they thought they possibly could. Mr. Costich said to give the Board an example of that, when the staff had said that they needed an architect who could provide a better view point for historical preservation the owner had retained Bob Kovalenko of Kovalenko Hale Architects and as many of you know he was a former member of the Landmarks Preservation Board. Mr. Costich said they also went through the process of getting a second cost estimate in order to ground truth the estimate that we had been earlier been relying upon. He said they reluctantly came to the conclusion of an impasse and it was largely driven by their concern that the staff was misapplying the factors under SMC 25.12.590. Mr. Costich said that in this regard he asks that the Board review our summary and analysis letter that was dated November 12, 2009. He said that the numbers are staggering and when you look at the cost it is difficult for us and for the owner to come to a conclusion that this building can be preserved and provide the owner with an economic return.

Mr. Costich said that the first factor is the market value of the site before and after imposition of Controls. Before controls the owners' appraiser – O'Connor Consulting Group – had concluded that the property value was 3.5 million dollars. That would enable the building to be developed up to its vested entitlements. After the Controls that property value gets wiped out entirely and it is largely because the Eitel building as it sits now is effectively a liability. He said that it is both structurally and functionally obsolete. He said they've looked at the cost estimates to rehabilitate the structure and they run from 18.1 to 19.6 million depending on the scenario. He said they hired a second cost estimator to ground truth those numbers – Sandra Mattson – and her numbers were actually 3 million dollars higher than the numbers that they ultimately relied upon. He said they've used the lower construction number just to provide the most optimal opportunity to preserve this structure. He said that unfortunately even that shows that the numbers are just way out of alignment. Ultimately this left the property owner with a loss at the end of

construction of 3.5 – 4.5 million dollars and that is from the market value after the imposition of Controls.

Mr. Costich said that the second factor that they asked the Board to consider is provided under the section 590 is the yearly net return for the last five years. He said they demonstrated that they operating costs for the structure have been outpacing revenue and given its current condition they expect that there's going to be even more significant expenditures just to address the deferred maintenance for the structure. He said that floors 2-7 are unoccupied and have been unoccupied since 1976. Therefore the single greatest revenue that the property owner realizes on this building is a billboard that is located on the west face of the structure. Mr. Costich said that that represents 36% of his income.

Mr. Costich said that the third factor is the future yearly returns with or without Controls. He said that without the imposition of Controls the structure suffers a yearly loss of 18 – 17% and this is because the financing associated with the high construction costs that he alluded to earlier. He said that without the imposition of Controls the annual net return for the income producing scenario of apartment use would be 3.3%, which at least produces a positive income at that point.

Mr. Costich said that the fourth factor is the net return to attract investment capital. He said that with imposition of Controls a 125% return on equity is required for the preservation of the Eitel Building, and he estimates that the net returns will be -54% to -94%. To attract investment capital historic structures are going to require higher percentage to begin with and that the owner is in exceptionally negative territory in that regard. He said that without the imposition of Controls they anticipate that they would realize 112 – 165% return; that is construction and development of the site to its full entitlements. Compare that to what has been determined to be the necessary return on equity to attract investment capital of somewhere around 75 – 100%.

Mr. Costich said that as he pointed out earlier – they are concerned that these factors were being misapplied by the staff. The owner has applied the standards or the factors faithfully based on the Hearing Examiner's decision in December 2008 on the Bon Marche Stable Building. He said that as a comparison the Hearing Examiner found that an estimated negative return on equity after imposition of Controls was sufficient to mean that no Controls should be imposed on the building. He said that the conclusion that the Hearing Examiner had drawn after looking at these factors in this exact same fashion that they have, she concluded that the building should not be imposed with any Controls. He said that obviously they are mindful of the responsibilities of the Board; he said they understand that the Board's objective and mission is to preserve historic structures.

Dick Nimmer, the owner, said that they had intended to renovate the building when he bought the building in 1976. He said he initially went through the process of renovating the interior of the structure because he wanted to make it available for tenants. He said that unfortunately he determined as he started going through the renovation process that he wasn't going to be able to do that. Mr. Nimmer said that the renovation costs because of the structural condition of the building at the time – in 1976 – were so significant that his market rent value that he could realize from that would not pay for those costs. He said to bear in mind that he bought this building as a retirement investment so they had always the intent of trying to renovate the structure and then live off the income stream and some day sell it as a preserved structure. He said that they were never able to meet that because they could not keep pace with the exceptional rehabilitation costs. He said that in 2001 the Nisqually quake happened and at that point the structure was in significant need of immediate structural repairs. He said that they had spent money in order to do that and on the interior of the structure right now there is a lattice-work of diagonal cross bracing in order to keep the structure standing. He said that the condition is pretty significant. He said that this all gets to the heart of the matter and that is the cost to rehabilitate the structure given these conditions and given the fact that there is no revenue for floors 2 – 7. He said that it is just the rehabilitation and preservation of the structure is completely out of sight. He said that the numbers show that they are losing 3 – 3.5 million dollars if Controls are imposed on this structure. Mr. Nimmer said that this board has recognized that other buildings had also been in such condition that imposition of Controls is unwarranted. He reminded the Board that they had done same thing with Ballard Denny's. He said that he thinks that this building is subject to the same criteria and should be given the same review. He urged the Board to not approve the recommendations by staff but rather that they approve no controls be imposed on this structure.

Mr. Nimmer said they have tried to cooperate fully for three years and give everything that staff has asked of them. He said that it doesn't seem to be getting them anywhere and could go on another three years. He said they bought it for their retirement and they are just spending their retirement into costs and it doesn't make sense economically to rehab it or they'd do it tomorrow. He said that was their idea when they bought the building – years go on and rents go up and construction costs go up. He said that it never meets the threshold to make it work so they don't have any other choice but to go into the hearing, superior court or Supreme Court or whatever it takes because this is their full retirement that is on the line here.

Mr. Abelsen stated that he attended a meeting with the owner and his representatives and other board members to discuss the various materials that have been presented and submitted by the applicant and he said that one of the items discussed was in regard to a contractor estimate that the board members did not receive.

Mr. Costich said that the estimate had been provided in the last submittal that the owner had submitted in the beginning of December. He said that those estimates have been provided (it was December 15) and they transmitted that information and it included all the cost estimates, all the appraisal documentation, supplemental information that had been requested by staff. It also included the design plans that were brought in and prepared by Kovalenko. He said that the answer to Mr. Abelsen's question is – yes the cost estimates have been provided and that was on the December 15 submittal.

Mr. Abelsen said to step back – the disc that was provided to staff and the Board at that time did not have it so our review with you at that time was essentially unresolved because we were discussing one estimate when you were referring to another estimate. So for our purposes it was inconclusive. Would you not agree.

Mr. Costich said no based upon the questions being asked. He said that staff specifically asked that the owner provide the Board with some sort of summary that at least goes through the issues that are germane to this decision today. He said that they did that. He said that it is hard to give a two-page summary letter that addresses things that have taken a substantial amount and provide admittedly complicated information. He said they provided cost estimates that were prepared in that earlier submittal by W.G. Clark. He said they had provided hard copy cost estimate and for some reason it doesn't appear that they were provided in the disc but hard copy cost estimates have been provided to the city from W. G. Clark. He said that as they have pointed out at that time the W. G. Clark cost estimates – ones that they actually relied on – were actually 3 million dollars less than the cost estimates they had provided the Board from Mattson. He said they felt that if the Board wants to go through – and the process of dissecting the costs – that is fine, that is the Board's purview. He said they felt that the cost that they had provided at least gave an indication that the rehabilitation costs were significant. He said that to dovetail that with their November 12, 2009 letter which gives the summary that the Board had asked for that provided a detailed analysis of the SMC provisions that the Board has been charged with.

Mr. Abelsen asked what Mr. Costich meant by “mis-applying” the code. He said the Mr. Costich referred to the loss of the value of the property after a Controls and Incentives agreement were to be formed and he said he is unclear as to how one can erase 3.5 million dollars so readily.

Mr. Costich said it is a staggering amount. He said that the issue comes down to this: you have a building that is in significant need of repair – just as it is to maintain the status quo. He said that in order to do preservation that would make it able for habitation or use of the upper floors, a substantial infusion of money would be required. He said that the property value itself is associated

with the property – the dirt. Mr. Costich said that the structure is a liability. He said that in order to make this work under preservation they have to put that infusion into the building. He said that that alone just jacks up the construction costs because the preservation is so substantial and therefore reduces to zero – wipes out – what equity they had in the underlying dirt. He said that the building is a liability as it stands right now.

Mr. Abelsen said to stay on that one point in regard to equity. He said that the value of the property is both land and building value. Mr. Abelsen asked that the estimate the owner provided whether by the contractor or by a separate estimator for the various scenarios – apartment, condo, and office – retains the building, correct? He said that it is not a tear-down scenario; they are retaining it, re-using it. He said so if that is the case then there is inherently a value in the existing building.

Mr. Costich said that that is the point - there isn't. He said that if it costs more to preserve the structure, if one has to put in so much money to preserve, basically you are wiping out the underlying value of the property.

Mr. Abelsen said you need to have a comparative from which to reduce it from – it can't reduce value from itself.

Mr. Costich said that no the comparison is – by that – looking at subsection A of SMC 25.12.590 they looked at the market value before and after imposition of Controls. He said that without imposition of Controls – no controls are being imposed on this structure – then the property can realize its development entitlements. He said that means that he could actually go through the process of – right now there MUP that is pending for redevelopment of the structure – that would give it its value. He said that is referred to in some of the other sections that were addressed in the summary analysis.

Ms. Wine stated that she went through materials on the disk provided. She said that she didn't see a comprehensive analysis of available incentives like special tax valuations and TDRs.

Mr. Costich said they looked at all the incentives that were available in fact during the meeting held last month. He said that one of the incentives suggested was affordable housing. He said that he thought they addressed that in our December 15 letter. He said that they've looked at the income tax credits that would be available. He said that Ms. Wine raised a good point though with TDRs. Mr. Costich said that if Controls are imposed on the structure effectively there is very little in the way of TDRs that are available because you can only build within the envelope of the existing structure. The irony is that if you decide not to impose Controls then the entitlements that are realized to up to 240 feet. Mr. Nimmer could do a development up to 240

feet. He said that it is likely or conceivable that a property owner of an adjacent property would want to buy the air rights to the Eitel Building if there was some ability for the city to make available those TDRs for Mr. Nimmer this could possibly work out financially. He said that the only way that would happen is if the Board does not impose these controls – then the owner would actually have TDRs available for this property. He said that otherwise they have looked at all the incentives that are reasonably available.

Ms. Wine said so you say you are 3.5 – 4 million dollars in the hole if you rehabilitate the project, so does that take into consideration all of the incentives that are potentially available?

Mr. Costich said that is correct.

Ms. Wine said that the estimates from W. G. Clark are dated 2001 and that in the correspondence it is noted that they have been escalated to current numbers. She said that considering this process started in 2006 and given the marketplace today there surely would be a significant cost differential in construction. She asked if they looked at 2009 or projected 2010 figures.

Mr. Costich said not 2010, but they had examined this all the way up to current time. The escalation that W. G. Clark provided was consistent with how cost estimators would escalate the prices. He said that in 2008 they did hire Mattson to do her independent cost estimates and hers were higher. He said that in their correspondence to the Board Mattson had addressed that was a question that was raised by staff as far as whether the current market conditions would favor construction or lower the construction costs. He said her response to the question was that she is not seeing any significant reduction in construction costs – not enough that would offset the amount of cost that was required for the rehabilitation for the Eitel Building.

Mr. Veith asked for clarification of page numbers – he said the two Clark estimates were attached to that letter but didn't see anything from the other estimator.

Mr. Costich could not clarify the page number.

Ms. Wine asked how long are the “estimates of the owners’ future net yearly return on the site need to be considered” projected.

Mr. Costich said that in order for the owner to break even on a rehabilitation scenario it is going to take 45 years.

Ms. Wine asked about the numbers.

Mr. Costich said that with the numbers that they have – that is just to break even, hence the negative annual returns with imposition of Controls, because all that time the owner would be financing those costs.

Mr. Hannum asked if their contention is that with the imposition of Controls, even if the property were to be sold, that the building would have no value at all.

Mr. Costich answered that you'd need to find somebody who is truly driven by altruism to be able to make keeping the building worthwhile. He said that there is no economic return that would be available to anybody who buys the building, and the building with imposition of Controls is a liability.

Ms. Strong stated that in a couple places in the various reports provided there is reference to the City condemning the building – she asked Mr. Costich to provide details behind the reference.

Mr. Costich said the reference is not accurate to the extent – and apologized for the mischaracterization. He said that he doesn't believe the City actually condemned the upper stories, but it is that a Certificate of Occupancy would never be issued for those upper floors because the structural condition of the upper floors.

Mr. Nimmer said that the city was thinking of condemning it, or taking it, when they were thinking of putting the library there and later when they were thinking about putting a monorail station there. The city was thinking of taking the building down at that time. He said it really wasn't a condemnation, rather it was a taking.

Ms. Strong asked if the building was tagged during or after the Nisqually Quake.

Mr. Nimmer said that the building was not tagged. He said that they had significant work done.

Mr. Costich said there are some photographs that were provided in the packet many of them show this diagonal bracing and interior stud walls in order to support the structure and keep the walls intact. He said that this is fine for now since the upper floors are not occupied but it does preclude occupation.

Ms. Conti asked if the condition of the building is so bad right now on floors 2 – 7 that it is uninhabitable.

Mr. Costich said that is correct.

Ms. Conti asked if the constraints of the property being 5740 square feet as a footprint – can you really go as high as 240 feet?

Mr. Costich said that the MUP had been submitted under the old zoning – the zoning since has changed – but the owner had submitted the MUP prior to that so it is possible to build it up to 240 feet and they have designs that support that.

Ms. Conti asked if logistically it would actually work.

Mr. Costich said yes, that is correct.

Ms. Conti asked how ingress and egress would work, and how would parking be addressed – how would it function?

Mr. Costich said that there would be no requirement for parking, and that in fact the owner has an agreement with an adjoining property owner to provide parking for. He said that the idea would be for downtown living so there would be less need or desire for a driver for parking but the fact is that parking would not be required currently under the MUP application.

Ms. Conti said that she thought that no parking would make it difficult in terms of marketing.

Mr. Costich said that they believe at least the appraisal that has been undertaken – that the comparison to seven comparables that were provided in the O’Conner Group’s appraisal report suggest the opposite. He said he is not second guessing their technical expertise on that.

Ms. Conti asked if the comparables also don’t have parking.

Mr. Costich replied that he couldn’t remember which do or which don’t; he said he would have to refer Ms. Conti to their appraisal report where they examine the comparables.

Ms. Conti said that she recalled reading that most of the comparables had things like “great parking available” advertised.

Mr. Costich said that may very well be and said that if you look through the table that Brian O’Conner performed for that he did adjustments where there were things that differed from what the owner would propose for the Eitel Building. He said for instance if there wasn’t parking he would do an adjustment for that, as well as for views and other amenities that were provided he would make adjustments.

Ms. Conti asked if they have a recorded easement for parking.

Mr. Costich said he believes that they have a parking agreement.

Mr. Nimmer confirmed that they have a parking agreement.

Ms. Conti asked if the proforma is at 635 per square foot for condominiums.

Mr. Costich said that he don't know that off hand. He then said 620 per square foot.

Ms. Conti asked if she was looking at the wrong reference.

Mr. Costich said he was not certain – there were updates that were provided and he said he didn't know which one Ms. Conti was looking at.

Mr. Abelsen said that in the April 21, 2009 letter - part of Brian O'Conner's submittal – it says "before value" is 3,465,000 or \$620 per square foot.

Ms. Conti showed the document she has been using and asked if it is the right one.

Mr. Costich said that he could tell off hand.

Ms. Conti said she was looking at the December 2009 submittal – is that the most recent?

Ms. Sodt confirmed that the December 2009 submittal was the most recent.

Mr. Costich said that it is a \$10 difference per square foot.

Ms. Conti said that she just wants to make sure everyone is referencing the same things as they go through.

Mr. Costich said the numbers that they have been referring to and what he understands to be the most recent from O'Conner Group was \$620 per square foot.

Ms. Conti said that what she is looking at when she looks at the comparables and then when she look at the comparables that were used by O'Conner, she sees that a lot of their comparables are from 2007. She said that she is aware there are many available that are recent and she said that a lot has happened in the market between 2007 and the present. She said that so when using current comparables there is a huge swing in the square footage price – it is like \$150 per square foot difference.

Mr. Costich said that that also works against rehabilitation because there would be a corresponding decrease. He said that in the last years they've realized this economic decline and issues that have been fallen within the City as well as everywhere else. He said they've realized that there may be shift in some of these market values. He said that the conclusion that O'Connor has touched upon that but the conclusion is there would be a corresponding shift whether it's rehabilitation, redevelopment they suspect there would be some corresponding shift. He said that the underlying reality at least as they see it is that the numbers are what they believe them to be in regard to the differential. Mr. Costich said that if they felt that this were close – or if they thought we were within \$100,000 they probably wouldn't be here having this argument or at least presenting our case here today.

Ms. Conti said that sometimes it is numerous factors that make up that number. She said that she is not on one side or another and that she is just trying to get the numbers right. She said that she reviews the materials and looks for anomalies – that she looks at the numbers. She said that when she looks at the numbers presented for the Eitel Building and sees references to 2007, and then she pulls up on the MLS that there have been a slew of closings at the Montreau in 2009 that would show there to be a huge differential, that causes her concern. She said that she found a number of current comparables that show a large differential.

Mr. Costich said that he understands Ms. Conti's point, and he guesses as a general proposition that they have relied and brought in respected experts.

Ms. Conti asked about the income decline in 2006 - \$80,000 payment to Opus. She said that the report notes on a general level that there is an income decline but it is just this one lump payment so it is not really a trending of income unless you are making payment every year. She asked if they were making a payment to Opus every year.

Mr. Nimmer said that there was a onetime payment that they paid us for using the north side of the building for advertising.

Ms. Conti said so it is not a trend.

Mr. Nimmer replied no, it is not a trend.

Mr. Costich said that the point is that it was at least somewhat of an income stream that the owner had realized. He said they have provided annual returns over the last 10 years. Generally from the beginning to the end is a general decline. He said that the point of it – there is a lot of deferred maintenance on this structure. He said that there is also a sign – the billboard – that represents the most significant income stream for the building. He said that that sign is also in contention. He said that the property immediately to the west has

made statements that he believes the Eitel building owner is imposing and encroaching on their air rights. He said that that may be yet another issue that the Eitel building owner may have to take up so they'll see some appropriate redress or position. Mr. Costich said that it also demonstrates that the income stream is at stake and is not something they can continue to rely upon.

Ms. Conti asked if they had looked at historic tax credits as a potential.

Mr. Costich said that he couldn't speak to that. He said that O'Connor had gone through the tax credits and other incentives that were available and examined that. He said that is reflected in the report, but as far as the specifics he couldn't speak to that.

Ms. Conti said that she read they just contacted LIHI with regards to affordable tax credits which are 9%, but they didn't seem to address the historic tax credit aspect which is another opportunity.

Mr. Costich said that he believes that part of the distinction is that you are entitled to one versus the other but not both. He asked what would be the most you could realize with the tax incentives available for historic preservation.

Ms. Wirsching replied that there is a rehabilitation tax credit worth 20% of the rehabilitation value.

Mr. Costich asked 20% of the rehabilitation value?

Ms. Conti said that it is significant and especially where you have a building that needs major rehabilitation work, that this is a tremendous vehicle for being able to do a rehabilitation project.

Mr. Costich said that his understanding – the information they have had from the O'Connor Group as well – is that much of that market is actually dried up and there is not much available in the way of these historic tax credits given current economic conditions.

Ms. Conti said that certainly with the volatility of all markets anything is more difficult than it used to be. She said that condo financing and any kind of financing is not as easy as it used to be.

Mr. Abelsen noted that now, just like anything else, financing is more competitive.

Mr. Costich said that therein lies the problem – it is gambling with the Nimmer's retirement by going through the Controls and Incentives process. He said they think we've looked at it, they've accounted for it to the most they

thought was available. He said that it is not to say that it hasn't been analyzed in the report – he said that he doesn't know the numbers offhand for the tax incentives but they have been applied to that and they think that it still is not enough to overcome the substantial construction costs required for preservation. He said that it is not as if they just ignored those tax credits, he said they are in there, but he just don't know where in the report, or what rate was applied.

Ms. Conti said that the historic tax credits were not addressed in the report, so that would be something to contemplate. She said that she didn't understand the floor plan scenarios – that she didn't understand how only nine 350 square foot units were achieved – that is a whole problem with the financial scenario is not being able to maximize the space.

Mr. Nimmer said that the units were based on the location of the windows. He said they got as many units in there as they could to generate as much income per square foot because you can usually get more money with smaller units.

Mr. Costich said that the west side would be a fire wall – that is where the light well is now and under any rehabilitation whether they preserve the light well or remove it the windows have to be closed in order to meet the building code.

Ms. Conti said it appears that the units only take about 50% of the space.

Mr. Costich said that the floor plan shows that the west wall, which has no windows, would be largely taken by the stairwell, mechanical and elevator systems.

Ms. Conti asked for confirmation that the units only occupy 50% per floor.

Mr. Costich said he was not certain that is the percentage.

Ms. Conti said it appears that way to her.

Mr. Costich said that the floor plan demonstrates the maximum they could be able to put in the way of these apartments.

Mr. Abelsen asked on what basis the upper floors 2 – 7 were determined uninhabitable.

Mr. Nimmer said that it was not to code when they went in to get a building permit to rehabilitate the building. He said that two fire exits are required now where years ago they were not. He said that the whole building is required to be sprinklered, a fire pump to be put on the roof, a new roof, new

framing, and a seismic upgrade. He said that if it has been vacant more than year than it needs to be brought up to code – he said it has been vacant ever since they’ve owned it because it hasn’t penciled out to rehab it.

Mr. Abelsen asked when they applied for the permit to rehabilitate the building.

Mr. Nimmer said he thought it was in 2000.

Mr. Abelsen said he wanted an explanation of what incentives were considered, particularly special tax valuation.

Mr. Costich said he couldn’t speak to the specific incentives that were examined. Those incentives were identified in the O’Connor Group reports.

Mr. Abelsen said he didn’t recall seeing special tax valuation analysis as part of the applicant’s reports. He said that it is not a competitive incentive – it just something you have to follow through once the building has been designated and controls and incentives have been agreed upon. He said that it is something – as far as he could see – that was not figured into the calculations. He said he thinks some of the issues that were raised by other members of the Board brings to question how thorough that review was.

Mr. Costich said that this was a thorough undertaking. He said whether there were some incentives that may not have been available doesn’t mean that they weren’t looked at. He said that in many cases they felt they were traveling down a rabbit hole when they were asked to look at affordable housing and that they addressed that. He said there was enormous amount of time, energy and expense at the property owner in order to address all these issues. He said that he takes exception to that statement that it maybe wasn’t thorough. He said that it may be that it wasn’t applicable. He apologized that he couldn’t directly answer that question right this moment but that he believes that they have exhaustibly looked at all these issues.

Mr. Abelsen said that if analysis is not available to us, then it is difficult for the Board to make a determination as to how thorough your reports are.

Mr. Costich said that he takes exception to the characterization of the thoroughness with regard to the report. He said that they reluctantly came to the decision to declare an impasse because they felt as if the questions we were receiving from staff and from the Board was information that was largely provided and they weren’t getting anywhere and time was going on.

Mr. Abelsen asked for clarification regarding the statement Mr. Costich made that “staff misapplied Ordinance requirements”. Mr. Abelsen said he was not clear what was meant by that.

Mr. Costich said that they followed the Hearing Examiner decision in the Bon Marche Stable building, and they went through all the factors that are applicable under SMT 25.12.590. He said that when they meet with staff and Board members in December there was an issue with regard to the property value and whether for example under subsection A of section 590, whether the underlying property value should be accounted for when examining the imposition of Controls or not imposing Controls. He said that runs directly contrary to what the Hearing Examiner's analysis was of that subsection. He said that they were getting concerned that there was perhaps a lack of full understanding of the basis and interpretation of that Code. He said that Because of that they would never be able to overcome or satisfy perhaps the biases that would be imposed on them as they went through this process. He said that at that time he had urged staff to seek legal counsel from the City's prosecutor's office in order to examine how they were applying the Code.

Mr. Abelsen asked what the result of that was.

Mr. Costich said he was not certain. He said that it was something he urged the City staff to do. He said that he can only say what they did and they did follow that and obviously the Hearing Examiner's decision is available to you and to the staff, and staff could go through the same conclusion that the owner under subsection 590.

Mr. Hannum said at that same meeting with staff and Board member they also discussed the Hearing Examiner decision regarding the Treat House.

Mr. Costich said that the distinction given to the Treat House, with regard to the initial property value – whether the owner's purchase of the property should be taken into account when going through this analysis. He said that that is the major distinction between the two and in that particular case the Hearing Examiner on Treat had found that property purchase price could be taken into account. Mr. Costich said but bear in mind that Treat property owner had purchased the property five to seven years prior so it was much more current with when they were undergoing their Controls and Incentives agreement with the City. But with regard to the Bon Marche Stables building it was about 15 years prior from the time that they were going through the agreement. He said that the Hearing Examiner there concluded that the initial purchase price is not a factor. He said that Mr. Nimmer bought this property in 1976, which means it has been thirty years from the purchase price. He said that he thinks the conclusion they can safely come to is that purchase price would not be a factor in determining whether or not a reasonable economic return could be obtained.

Public Comment:

Marty Goodman, Samis Land Company the previous owner of property that 1521 Second Avenue sits on, and who also owns the property across the alley where there is currently a parking lot on First Avenue. He said he wanted to clarify a comment made earlier about a parking agreement with a neighbor. He said he thought Mr. Nimmer was referring to an agreement between Mr. Nimmer and Samis that was negotiated prior to starting the 1521 Second Avenue development. He said that agreement says that there are parking stalls available to Mr. Nimmer for purchase provided that there is no height added to the Eitel Building. So if Mr. Nimmer wants to go higher than that there are no parking stalls available with the exception of two that Mr. Nimmer purchased. He again clarified that the parking stalls were only available if Mr. Nimmer renovated the existing building as long as they don't go any taller.

Mr. Costich said that Mr. Goodman is in fact correct.

Board Discussion:

Mr. Luoma said after reading the documents and listening to the discussion he would have liked to see a line by line item description of what the potential incentives are and what is available and adding those up and clearly seeing what could be used for this building. He said that not having the analysis of the incentives clearly outlined was a huge factor for him.

Mr. Finrow asked how long the Board subcommittee had been working on this.

Ms. Sodt said that the subcommittee first met with the property owner on December 9, 2009.

Mr. Finrow asked if that group had an official recommendation about Controls and Incentives.

Mr. Abelsen explained the subcommittee would offer up their comments during Board discussion in the same manner as typical for ARC meetings.

Mr. Finrow supported Controls and Incentives as recommended by staff. He said the thing about parking was interesting because if you assume that the development of this site to its full height capacity does not involve parking would that cast a different market question on the viability of such a project. Having been on the Seattle Planning Commission he said he knows why the City has decided not to require parking in downtown but it has a huge impact on the marketability of projects. It is an interesting fact in this discussion and looking at the viability of full development of the site versus just rehabbing the site – without parking he didn't see how that makes sense. He supports Controls and Incentives and said there are a lot of questions that Board

members have had about the nature of the data that is being used to create the proforma analysis for the project. Those are all good and legitimate questions and given those questions and the not very clear nature of the analysis of the proforma he said he didn't understand why the advocates of this project weren't clearer about all how all those things went into the proforma analysis. He said he would be interested in hearing other comments from subcommittee members because presumably they have a more detailed exact knowledge.

Ms. Wirsching said a lot of information is provided and as you are hearing from the questions there is still a real lack of clarity and understanding of the information that was provided. One of the things that she found concerning was the 3.5 million dollar property value because if you look at that in relation to the proformas that were provided it seems that it is the property is what is breaking the project from the rehabilitation standpoint. That property value is presumably full development of the site. It is presuming viability of full development of the site. Can you really do that? You have zoning that says you can do that, but is it financially viable? She said she is not seeing anything that tells her that it is, because it is a very small site and it would be difficult to support a larger project at the size they are talking about. So it really brings into question whether the renovation really is not a viable project. She noted other Board member questions about incentives and said the subcommittee was not seeing the clarity they wanted to see about the incentives and whether they were truly examined. She said in the end there were too many questions and there was too much concern about the use of a property value that is presuming full development of the site when that is really questionable. It is great that zoning can tell you that you can do this but are you going to get investors? Is it legitimate to say that somebody is going to be able to reap an economic benefit out of full development of this site? The other question is about construction values – up until 2008 construction values were going through the roof. In 2009-2010 she said she has seen 20-40% reduction in values in construction and can't imagine that is not going to impact the viability of the renovation in a positive way. All those factors make her think they didn't have information to demonstrate that this wasn't viable.

Ms. Conti had a lot of questions still about viability. She doesn't know any bank – even with a permit – that would lend on a project without parking especially if it was that many stories. She agreed with Ms. Wirsching that construction costs were down significantly and it is not reflected in the owner's analysis. She noted her questions on unit size and the amount of units and all the questions about comparables used in the appraisal report. She supported the staff recommendation on Controls and Incentives.

Ms. Howard thanked the owners and staff for all the time spent trying to negotiate an agreement. She agreed with her colleagues that there wasn't

enough information to say that rehabilitation was not viable, and she said she supported the staff recommendation on Controls and Incentives.

Mr. Hannum was on the subcommittee for the analysis of the numbers and said he had the same concerns that his colleagues had addressed. He said there was somewhat of a circular nature to the numbers that bring them back to the amount of loss and those numbers are derived from sources that he found questionable and unsubstantiated. He noted the market had changed so dramatically in the past few years, and that unfortunately this period of time since the property was designated in 2006 until now has been unprecedented. From his experience in the residential market he said he couldn't imagine the property would be viable without parking and certainly not with the numbers that have been presented. He supported the Staff Recommendation on Controls and Incentives.

Ms. Strong stated that she reviewed all the materials – specifically the appraisal and she said in her opinion the basis for the value before Controls is flawed. She said that in reviewing the appraisal it seems like a lot of the comparables are not like properties – they are larger lots, they include parking and there is different zoning. It appears that is the basis for which all other numbers are driven and she said it appears flawed and doesn't reflect true value of the building. She said the materials also seem to be out of date. The supplemental updates do not reflect the current real estate market. The square footage price – she doesn't see in this market at all. She supported the Staff Recommendation Controls and Incentives.

Mr. Savage recused himself – his firm had been a consultant to the applicant.

Ms. Wine said she appreciated the dilemma of the site and what the owners are going through, but having a set of fresh eyes it is hard to be compelled to not support the Controls because the information wasn't cohesive and it left her asking a lot of questions. She said that if there was a cohesive document from 2009 that had gathered all the relevant information and really tried to look creatively at this project and incorporate as many tax credits or incentives as possible she might be able to look at 25.12.580 to support no Controls. She said she didn't have information to do that. She supported the Staff Recommendation on Controls.

Mr. Veith supported the Staff Recommendation on Controls and said between the documents that have been submitted he has been trying to find graphics so he could cite them specifically, but there are changes in the assumptions in some of the data, which make each graphic different. It seemed that when he read the initial 120 page document the statement was made that the rehabilitation schemes all lose money – although at least one of them actually did make a slight profit - whereas in more recent documents it sounds like none of them make any money at all. He said he didn't think he could trace

very well through the documents how and where those assumptions have changed. Also he said he thought on a couple of the measures in 25.12.590 that the building does better, or the existing and the proposed remodels do better, than the information they have provided would lead us to believe initially. He said he didn't like the idea of comparing a reasonable return standard to a highest and best use standard. He said to say we aren't getting the highest and best use when the hurdle is just a reasonable return is a mistake. If you are always looking for the highest and best return with every building you might miss some creative opportunities. For our purposes you would almost never be able to make that hurdle with an historic building. We have to go back to the reasonable return standard and not demand that this building be able to make the same kind of money that a much taller building might be able to make. We have already heard some discussion about whether the larger building would even be economically feasible. He said he had concerns about whether there should be comparative analysis on the value of buildings similar to the building we are talking about in the City because the applicants are only comparing it to buildings that are much more modern and much different. He said that doesn't necessarily give a good sense of the value of the building as it exists. He said he is surprised that the applicants have not looked at not only their initial investment but their capital contributions over the life of the building as an alternative approach to establishing the value of the building. Obviously if you give the site more value with the building not there then that skews all the other analyses. He said the applicant's report didn't convince him that the Controls and Incentives shouldn't be applied.

Mr. King agreed with his colleagues and supported the Staff Recommendation on Controls and Incentives.

Mr. Abelsen said that he felt his colleagues stated it well, and the review comments were comprehensive. He said that there are too many unknowns that remain and the material presented appears to be what has caused the loggerhead.

Action: I move to approve the Staff Recommendation on Controls and Incentives for the Eitel Building at 1501 Second Avenue as presented.

MM/SC/MH/MW 11:0:1 Motion carried. Mr. Savage recused himself.

## **012010.5 BOARD BUSINESS**

Ms. Chave said that Crawford Music Building nomination is posted on the website and will be reviewed at the February 17, 2010 meeting. It is on the Seattle Pacific University campus.

**012010.6 STAFF REPORT**

Respectfully submitted,

Elizabeth Chave, Landmarks Preservation Board Coordinator

Sarah Sodt, Landmarks Preservation Board Coordinator