

DRAFT

Commission for Cultural Centers and Historic Preservation

August 25, 2016 9:00 a.m.

Meeting Minutes

Held: Room 4401
Grant Sawyer State Office Building

Video Conference: Room 2134 Nevada Legislature

Conference Call

1. Call to order by Chairman Robert Ostrovsky, (*Chair Ostrovsky*) at 9:00 am.

3. Roll Call:

Commissioners:

Robert Ostrovsky, Chairman (Board of Museums and History, Governor's Appointee)

Present, Las Vegas

Robert Stoldal, *Vice Chair* (Board of Museums and History) **Present, Las Vegas**

Judith Michaels Simon (State Council on Library and Literacy) **Present via Phone**

Irma Varela (Nevada Arts Council) **Present Via Phone**

Jennifer Satre (Nevada Humanities) **Present Via Phone**

Staff Present:

Rebecca Palmer, Historic Preservation Office (SHPO) **Present, Carson City**

Celeste Arnold, Historic Preservation Office (SHPO) **Present, Carson City**

Shane S. Chesney, Senior Deputy, Attorney General's Office **Present, Las Vegas**

Rayette Martin, Historic Preservation Office (SHPO), **Present, Las Vegas**

Guests:

Melissa Clary, Huntridge Foundation

Daniel Roberts, Huntridge Foundation

Jacie Urguidi-Maynerd, Huntridge Foundation

2. Public comment: *Chair Ostrovsky* asked for any public comment. There were no comments.

4. Discussion of Commission for Cultural Centers and Historic Preservation settlement with Eli Mizrachi, ECT Holding L.L.C., King George L.L.C., and Does I-XX

for alleged violations of Commission for Cultural Affairs restrictive covenants held by the State on the Huntridge Theater, Las Vegas, Clark County:

Chair Ostrovsky stated that the purpose of the meeting was to review and possibly accept or reject a proposed settlement with King George LLC, the official owner of the Huntridge Theater, and he introduced Chesney from the Attorney General's Office.

Chesney stated that after several years of negotiation this is the agreement that we have come up with. There were three grants placed on the property due to grants awarded a previous owner. Two in the amount of \$300,000 and one in the amount of \$765,800.49. Through the course of discovery it was discovered that the two covenants in the amount of \$300,000 were never recorded thus the current owner, King George LLC, was never given notice of those so we couldn't go after the owner for breach of those covenants. The one covenant for \$765,800.49 was due to expire in 2017 and we filed suit in 2014 so there were approximately 3 years remaining on that covenant though they had been out of compliance with that covenant at least since 2004 or 2005. The main goal was not to regain the money but to preserve the building as best we could and the current owners recognize that as well. This settlement agreement takes the \$765,800.49 and cuts in half and have a judgment entered against the property owner for \$389,925 and a lien will be recorded on the building in that amount. In addition, the covenant for \$765,800.49 from 1997 will be extended an additional 12 years to December 31, 2028 and they agree that no visual or structural changes will be made with prior permission of the State Historic Preservation Office (SHPO) and that representatives of the SHPO will be afforded reasonable access to the building to ensure covenants are being observed. This is a different inspection than that required by the settlement. For every year that the property owner is in compliance with the covenants, the amount of the judgment is reduced by \$32,494 per year. Incentive to get compliance, definitely a carrot. Need a mechanism to ensure that compliance. This will require a certification inspection every first and fourth quarter of any year when the owner contacts the SHPO and states that he or she believes they are in compliance with the covenants. For that special inspection there is a 30-day notice so that owner can ensure that everything is tip-top and it is not the general reasonable access that the Commission would generally have.

Chair Ostrovsky stated that now is the appropriate time for any Commissioner questions.

Vice Chair Stoldal stated that King George LLC is the recorded owner of the Huntridge now (page 2, line 14). Were they the original purchaser when the building was sold in 2002?

Chesney stated that no, the company at the time was ETC Holding LLC. King George LLC is the successor.

Vice Chair Stoldal stated that the parcel numbers on the documents is different that the parcel number on Exhibit A, the original covenant from 1997. Is the land the same in the settlement agreement as in the original covenant?

Chesney stated that yes; the parcels have been consolidated from the original covenant.

Chesney read the numbers of the prior parcels. Now it is all three under 162-02-110-016 and the new covenant may actually cover more property than the original covenant but does still cover building.

Vice Chair Stoldal, does the property owner agree with the judgment?

Chesney stated that yes they did.

Vice Chair Stoldal asked how the amount of the settlement was determined.

Chesney stated that half of the award was arrived and is a very fair offer.

Vice Chair Stoldal asked about two elements in Page 2, lines 15-17 in the settlement agreement. Does the settlement require the property owner to bring the property back to a usable public building and then reduce the settlement for each year inspection shows that the building is in a usable condition?

Chesney stated that there are two elements: Compliance with the covenants and returning the property to usable condition and then year-by-year compliance and a prorated reduction in the judgment for each year the building is in a usable condition.

Vice Chair Stoldal stated that he sees a second element that is not covenants; that is to bring the building into a usable condition. The SHPO would need to know all of the City Codes as well?

Chesney stated that yes; the SHPO would need to work with City Building Officials to determine if the building was in a usable condition. The property owner would present all certificates from the City to the SHPO.

Vice Chair Stoldal asked about “usable public building” definition he couldn’t find in a law dictionary and that this settlement doesn’t require that it be open?

Chesney stated that the covenants require that it be opened to the public and that in order to do so it would need to meet all health and safety codes first.

Vice Chair Stoldal stated that the property owner could keep the building in the same shape it is now and do nothing on the building until the last year of the covenants when they got it into tip-top shape. The Commission would waive the judgment in total at the end of the covenants.

Chesney stated that yes; the property owner could wait until the very end of the covenants to fix it up and at that point the Commission would waive the judgment. They might even apply for funds in the future.

Vice Chair Stoldal stated that since it was owned by a commercial entity and not a non-profit it wouldn't be eligible for Commission grant funds. He stated that the covenants require the property owner to maintain and enhance the property and he hasn't seen any maintenance or enhancement to the property. He stated that he sees two inspections each year, once in the first and once in the fourth quarter with 30 days notice to get prorated reduction in the judgment. However, reasonable notice visits can occur any time under the covenants and do not require 30 days notice.

Chesney stated that *Vic Chair Stoldal's* reading of the settlement agreement was correct.

Vice Chair Stoldal stated that in order for the property owner to get the entire judgment returned using the prorated formula, the property owner would need to get the building in a usable shape by January 1 of 2017 so that the SHPO could issue a certificate of compliance.

Chesney stated that, yes, that was correct but that he didn't see that happening since he doesn't see the property owner achieving this goal.

Vice Chair Stoldal stated that if the property owner were to get the building into a usable condition in the second year judgment would be reduced to \$350,000 but the point is moot as the property owner isn't really required to do anything to improve the building's condition for ten years until the very end to get the judgment reduced to zero. That makes him unhappy. The State of Nevada needs to get a baseline condition assessment since the State hasn't been in the building for a decade. Can the State get into the building in the next 30 days? What process do we follow to get Palmer into the building? He isn't comfortable signing the document until the inspection occurs.

Chesney stated that prior to the suit, an inspection was requested and no response was received. He could use a court order to get into the building, but the Commission hadn't asked for this during the negotiation. Intent was work cooperatively to gain entry into the building.

Vice Chair Stoldal asked Palmer if she were able to visit the building to establish a baseline condition assessment in the next 30 days.

Palmer stated that travel in the next 30 would be challenging due to travel funds and the technical expertise needed. However, Palmer and her architectural historian will be in Las Vegas on Oct. 10 and could arrange for a visit then.

Vice Chair Stoldal stated that Oct. 10 is satisfactory assuming that the defendant didn't put any roadblocks in plan. Asked if SHPO staff or the AGs office should make the contact.

Chesney stated that he would reach out to the defendant's counsel to arrange for an Oct. 10 visit.

Vice Chair Stoldal asked about the role of the City in this settlement since they have to issue certificates. Still concerned about the possibility that the defendant could fail to do anything to the building for ten years and then at the very end of the extended covenant period would complete the work. Would the Commission be required to waive the judgment amount or is that optional?

Chesney stated that the Commission would be required to waive the judgment amount if the terms were met.

Chair Ostrovsky asked the other Commissioners if they had any questions.

Commissioner Verela seconded Vice Chair Stoldal's concerns about the inspection and a visit to the building to determine its condition. She would like to attend the inspection.

Chair Ostrovsky stated that members can attend the inspection if they wish and the owner should receive the notice of who will attend the inspection.

Commissioner Simon stated that she thought an Oct. 10 date was reasonable.

Chair Ostrovsky asked Vice Chair Stoldal if he had any other thoughts.

Vice Chair stated that the property owner would get a free pass for a decade, that he has neglected the property for a decade and had shown no inclination to improve the property. He is troubled by this settlement.

Chesney explained the context of the negotiation and current property owner, if the Commission had just received the judgment the building would still be in current condition. The prorating is a carrot to encourage the property owner to make improvements. He is concerned about the safety of the Commissioners and suggested that if it were deemed safe to enter they could enter, but first he would need to determine the safety concerns.

Chair Ostrovsky stated that the point of this litigation was to protect the taxpayer dollars already expended, to protect the building, and return the building to a source of pride to the community. This settlement agreement meets those goals and that he would be voting for accepting the settlement as presented to the Commission. Chair Ostrovsky asked for a motion to accept the settlement as proposed (Settlement Agreement and Stipulation for a Consent Judgment, and New Covenants).

***Commissioner Satre* made a motion accept the settlement as presented in the supplemental materials.**

***Commissioner Simon* seconded the motion made by Commissioner Satre.**

Chair Ostrovsky asked for comments from the Commissioners.

Vice Chair Stoldal stated the defendant has gone on record before this Commission saying that he wanted to demolish this building and buy his way out of the covenants. He stated as much to Palmer's predecessor. Nothing in this settlement gives him solace. He will be voting no on the motion.

***Chair Ostrovsky* called for a vote on the Motion made by Commissioner Satre and seconded by Commissioner Simon.**

The vote was held. Three Commissioners voted yes to the Motion to accept the settlement agreement as proposed (Satre, Simon, and Ostrovsky) and one voted no on the Motion (Stoldal).

Chair Ostrovsky thanked everyone for their efforts on the Settlement Agreement.

5. Public comment:

Chair Ostrovsky asked for public comment from anyone on the phone or from anyone in the room.

Daniel Roberts stated that he thought the extension of the Covenants was a thing and they are encouraged to see that. A couple of questions concerning travel fund for inspections.

Palmer stated that for the October 10 visit, staff will be Las Vegas and can arrange for the visit using other funding sources. A decision unit would need to be added to the FY18-FY19 Budget to support future travel in accord with the settlement agreement.

Daniel Roberts stated that Oct 10 would be the 72nd anniversary of the Huntridge Theater's opening. *Daniel Roberts* asked about potential future owners and the covenants. If the property was sold within the 10 year period. Would the new owner have to abide by the settlement agreement?

Chair Ostrovsky stated that yes; the new covenants would apply to the new owner. *Chair Ostrovsky* asked *Chesney* to clarify.

Chesney stated that there is a lien on the property that would have to be satisfied before the property is sold. The new owner would need to abide by the new covenants.

Daniel Roberts asked if the \$30,000 "carrot" would apply to the new owner as well?

Chesney stated that the "carrot" only applies to the current owner.

Daniel Roberts ask about the current operating status of King George LLC. He believes that they are possibly defunct or on their way out. Would that be a problem for the settlement?

Chesney stated that no, they are the recorded owner at this time. New owner would have to follow the covenants.

Melissa Clary stated that the business license system for the state is showing “dissolved” for King George LLC.

Chesney stated that they were still the legal owner according to the county Recorder’s Office.

Melissa Clary asked that they would need to reinstate their business license, yes?

Chesney stated that yes; they wanted to operate a business they would have to comply with all licenses and permits, but that this is separate from the property ownership issue.

Daniel Roberts asked what happens to any monies recovered under this settlement? Do they back to be used by the Huntridge Theater?

Chesney stated that he didn’t know. He wasn’t sure if it went to the General Fund or back to the Fund for the Preservation and Promotion of Cultural Resources (Fund).

Vice Chair Stoldal stated that under other circumstances when a Grantee returns a grant or a portion of a grant it goes back to the grant program. However, this is the first time that a settlement for covenant compliance has been completed. The Commission may need to seek an AG’s opinion as to where the money would go, but it would likely be back to the Fund for distribution to parties wishing to apply for a grant, could be Huntridge organization.

Daniel Roberts asked about work on the building, would a licensed, bonded and insured contractor be needed?

Chesney stated that the City code enforcement would need to determine that requirement.

Daniel Roberts asked about the “carrot” incentive to repair the building. Isn’t the carrot idea in conflict with the idea of the settlement? If the property owner were to make all of the repairs to make it a usable public building on the tenth year, there would not be judgment against them?

Chesney stated that no, the judgment would remain but would reduced by the number of years that the building had been deemed a “usable public building”. This was a difficult and hard fought negotiation.

Chair Ostrovsky asked if there were any other public comments.

Jacie Urguidi-Maynerd thanked everyone for their efforts but agreed with Commissioner Stoldal that she has some concerns. The issue has been real estate. Not clear on all of the points, recommend amending document. Building is still fragile; she wants to

depend on Commission to protect the property. She wants the State to work with the local organizations to support preservation. This project need community component, we will find volunteers to help with the effort.

Melissa Clary stated that she was appreciative the Commission bring the lawsuit and the strong message it sends about the Commission's desires to preserve and protect historic buildings. Hasn't seen preservation on this level in Nevada. This is a positive outcome and looks forward to seeing progress.

Chair Ostrovsky stated that the Commission learned a lot about their own covenants. They were fashioned after the National Park Service and they have been improved over the years. He believes that future covenants will continue to improve. Outcome will be positive for the Huntridge and other projects.

Vice Chair Stoldal stated that he was still troubled by a statement from Chesney. He thought that the Commission brought the lawsuit to accomplish three things: 1) to preserve the Huntridge and he sees a lot of good faith work on the part of the AG's office in the settlement agreement documents despite his challenges to it 2) issue of protection of taxpayer's dollars using covenants to preserve historic properties and leaving a legacy of tourist destinations along the way. He was very troubled by Chesney's statement that two of the three covenants were not recorded. He asked that at the next meeting, staff go back and make sure that all existing covenants still in effect have indeed been filed. Need to fix errors if any such exist.

Chair Ostrovsky stated that he agreed and with that, he closed public comment on the issue.

11. Adjournment

The meeting was adjourned at 10:06am on August 25, 2016.