

**CITY OF OAKLAND
AGENDA REPORT**

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OFFICE OF THE CITY CLERK
OAKLAND

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TO: Office of the City Manager/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: October 14, 2003

RE: REPORT RECOMMENDING ADOPTION OF A RESOLUTION AUTHORIZING AN EXCLUSIVE NEGOTIATION AGREEMENT WITH FOX THEATER I CORPORATION FOR REVITALIZING THE FOX THEATER AND THE COMMERCIAL/OFFICE WRAP-AROUND BUILDINGS, AND AUTHORIZING EXPENDITURE OF UP TO \$800,000 FOR TESTING AND CLEANUP WORK NECESSARY TO PREPARE THE THEATER AND WRAP-AROUND BUILDINGS INTO A PERFORMING ARTS CENTER AND FUTURE HOME FOR THE OAKLAND SCHOOL FOR THE ARTS ("PROJECT").

SUMMARY:

In 1996, the Agency purchased the Fox Theater from a private entity, and began efforts to revitalize and eventually re-open the theater and surrounding commercial/office buildings into a Performing Arts Center. In the past few years, a number of proposals from private developers were received by CEDA staff and judged to be either too conceptual in nature or financially infeasible.

In the winter of 2002, an unsolicited volunteer development team convened by California Capital Group (CCG) began a thorough analysis of the costs associated with one of the development alternatives outlined for the theater in the 2001 Fox Master Plan. This concept is for a 500-600 seat cabaret-style venue within the shell of the existing historic theater. The idea is predicated on the assumption that the theater could be opened relatively quickly and for a fraction of the costs needed to restore the theater to its full 3000 seat potential (estimated cost, \$60 million). At some point in the future, when funds are available, the theater could be converted into the larger venue.

The CCG development team prepared conceptual drawings for the cabaret design, and cost estimates for the needed improvements to the building's various systems. Upon completion of this work, the development team expanded its scope of work to include the 50,000 square foot commercial office and retail wrap-around building that is attached to the Fox. This was done as a response to the need to find a location for the Oakland School for the Arts (OSA), and provide needed space for it to expand beyond the limited confines of its present home at the Alice Arts Center. According to the development team, the costs associated with the renovation of the theater and surrounding building is \$23.95 million. The City/Agency would fund approximately \$13 million of the costs

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from the sale of City Center Garage West, which is presently owned by the City. Tax Credits and private funding would pay for the balance.

In order for the Historic Tax Credits to be used, at a value of almost \$3.5 million, the Fox would need to be transferred from the Agency to a for-profit entity. A method being advocated by the development team to accomplish the project would be for the OSA and the Paramount Theater Board to form a non-profit entity that would enter into an agreement with the Agency for ownership and operation, and subsequently create a for-profit subsidiary that would be eligible for the tax credits and would seek construction financing.

The OSA and The Paramount Board are currently negotiating a Memorandum of Understanding (MOU), to form the legal entity (to be named Fox Theatre I Corporation) and retain CCG as the fee developer, both prerequisites to moving ahead on the project (see attached MOU). Staff has reviewed the concept drawings, cost estimates and the financing and operational framework with the development team and the OSA and finds it to be the most realistic approach to date for re-opening the Fox and providing a compatible use for the wrap-around building(s).

Because the OSA will need to move from its present location at the Alice Arts Center before the Fox project is scheduled for completion in 2006, it will need temporary space. The OSA has expressed interest in the parking lot behind the Fox, which is owned by the Agency (see attached map). This could provide temporary space and make for an easy transition to the permanent facility when it is ready. OSA has proposed a temporary "Big Top" approach to housing the school in tent-like structures on the parking lot. The OSA would pay for the temporary facility, (letter of financial commitment forthcoming), in exchange for a license agreement to occupy the site, rent free, until the theater and wrap-around buildings are completed. The City would lose approximately one year in parking revenue, or about \$230,000 above and beyond the anticipated revenue reduction associated with the uptown development. Use of this site is consistent with phasing for the uptown development.

If authorized by the Agency, staff will enter into an ENA with Fox Theater I Corporation to continue the approach initiated by the CCG development team to revitalize the Fox and wrap-around building(s).

FISCAL IMPACT:

If the Agency determines to adopt the attached resolution authorizing entering into an ENA, then up to \$800,000 would be needed for building investigation, structural testing, design-development drawings, environmental clean-up work and associated costs during the ENA period. These funds are in the adopted FY 2003-2005 ORA budget. Specifically, the sources are as follows: \$300,000 from the Fox Master Plan (P131130); \$100,000 will be reprogrammed from Fox Maintenance (P131140) and; \$400,000 from

the Fox Retail line item (P131170). Should the funding for these tasks be expended, and the anticipated project not proceed, the work undertaken would be applicable and usable for any future use of the Fox Theater and Wrap-around Building.

BACKGROUND AND HISTORY:

The Oakland Fox Theater is a National Historic Landmark located in downtown Oakland. Opened in 1928, during the heyday of movie palaces, the theater reflects the state of the art in "atmosphere" theaters of the era. Inspired by Brahman Temples of Northern India, the theater is an eclectic mix of Moorish and European architectural styles. When the theater was first opened, it was outfitted with opulent finishes and the latest in movie-going technology and, unlike most theaters of the day, the Fox was also a mixed-use venue, with offices and storefronts surrounding it on three sides.

Over the years the theater maintained an entertainment presence in the community. In fact, along with the nearby Paramount, it contributed to an entertainment district that is commonly referred to today as uptown. During the 1930's and 1940's, the character of the Fox began to change from a movie and vaudeville house to a stage for major performers and entertainers. Bing Crosby, Frank Sinatra, and the Big Band sounds of the era filled the 3000 seats on a regular basis, but after World War II, the theater went through another transition from live performances to a traditional movie theater. By the late 1960's the theater began to lose popularity with first-run movie distributors and patrons. The theater finally closed in 1972, except for a few marginal shops that remained open in the buildings that surround the main theater.

By the late 1990's the Fox had stood vacant for over twenty years. In 1996, the Agency purchased the theater from a private party (cost \$3 million) and began the process of stabilizing the deteriorated building and implementing a strategy to ultimately re-open the theater as a performing arts center. These efforts included: relocation of the surround building tenants in 1998-99 (approximate cost, \$200,000); total replacement of the leaky roof in 1999 (approximate cost, \$950,000); completion of façade restoration and storefront drawings in 2000 (approximate cost, \$30,000); renovation of the historic marquee and vertical sign in 2001 (approximate cost, \$650,000); and completion of the Fox Master Plan in 2001 (approximate cost, \$350,000).

The Fox Master Plan, prepared by the architectural firm of Hardy Holzman Pfeiffer, (HHPA), outlined a number of development options for the theater, ranging from total restoration and development of a 2500 seat Broadway-style theater, to a cabaret-style venue seating 600-1000 patrons, to a minimalist approach, consisting of basic upgrades that would make the theater habitable, but unfinished. The surround buildings were included in the various options. All the options were drawn to scale and "order of magnitude costs" were calculated for each option. They varied in price from \$70 million for a completely restored Broadway theater to \$20 million for the renovation of the wrap-around office and commercial buildings that surround the theater. On completion, the

Master Plan was made available to developers who had previously shown interest in the theater and to those simply interested in the report's findings.

Over a dozen development entities expressed varying degrees of interest in revitalizing the Fox, toured the theater and reviewed the Master Plan. Most submitted conceptual ideas for the theater, but did not include a financial plan. One proposal included a financial plan, but it was linked to a housing development plan behind the Fox, that when sold would provide the capital needed to renovate the theater. In addition the land which could financially drive the project was not under their control but the present uptown developer, Forest City. Other proposals were not sufficiently developed, especially as to the financial feasibility of the proposed projects.

In the winter of 2002, after many unsuccessful attempts to secure a viable development proposal for the Fox, CEDA was approached by a development team that wished to do a very thorough analysis of one of the HHPA theater options outlined in the Fox Master Plan. The team, which consisted of CCG as the developer, and a variety of architects, engineers, and cost estimators, began analyzing the costs associated with restoring the theater into a cabaret-style venue that would seat approximately 600 people. Contemporaneously, the Oakland School for the Arts began seeking a new home. The Fox analysis was then expanded to evaluate the rehabilitation of the attached wrap-around building(s) into a new home for the Oakland School for the Arts (OSA).

Over the past eight months, in cooperation with staff and the School for the Arts, the development team has prepared a proposal consisting of the following elements: (1) a concept plan for the theater's restoration; (2) a concept and use plan for the re-use of the commercial /retail buildings that wrap around the theater; (3) a detailed analysis of improvements and "order of magnitude costs" needed to make the structures safe and operational, (structural, mechanical, electrical, fire protection, hazardous materials etc.); (4) a financial and operational framework (including sources and uses of funds); and (5) a schedule for implementing the improvements and reopening the Fox into a performing arts venue. Each of these elements is outlined below:

KEY ISSUES AND IMPACTS

1. Fox Theater Concept Plan:

The CCG development team's concept for the Fox Theater is very similar to the "Basics" alternative outlined in the 2001 Fox Master Plan, consisting of a 600 plus or minus cabaret-style theater with platform seating and food and beverage service. The balcony and the basement of the building would not be used in this concept and would be closed to the public. All additions and modifications to the historic theater would be reversible and/or in compliance with the Secretary of the Interior's Standards for Rehabilitation.

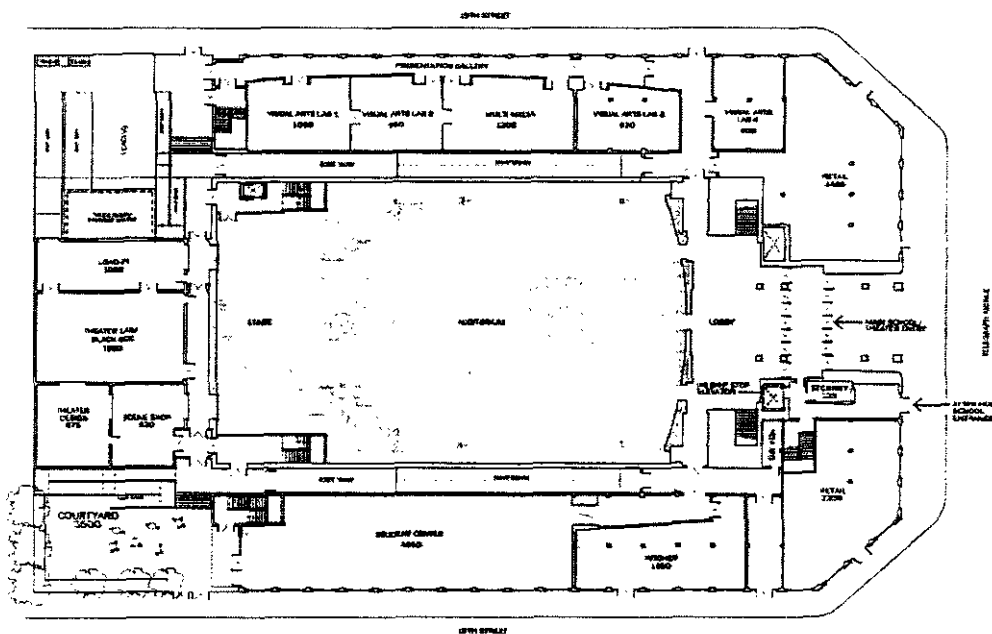
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2. Commercial Wrap-Around Building(s) Concept and Reuse Plan:

The development team's concept for the building(s) that wrap around the theater space is to rehabilitate the existing office and commercial space as the new home for the Oakland School for Arts (OSA). In the spring of 2003, the OSA concluded that its existing space at the Alice Arts Center would not be practical for its permanent facility because of cost and adverse community impacts. By September 2004, the school will have outgrown the capacity of its present space. It hopes to construct temporary facilities on the parking lot behind the present Fox Theater during the two-year period that the wrap-around buildings are being rehabilitated and made ready for re-use. This would make for an easy transition to the permanent facility but would also require a license agreement between OSA and the Agency that will allow OSA to occupy the temporary site rent free, in exchange for funding the temporary facilities.

The school has worked closely with the developer to program the wrap-around spaces and produce a conceptual plan that incorporates its long-term needs. The conceptual program has been used for cost estimating. Any improvements to the wrap-around buildings would be consistent with the Secretary of the Interior's Standards for Rehabilitation.

Commercial Wrap-Around Building(s) Concept and Re-Use Plan



The concept for the wrap-around building(s) includes:

- capacity for 520 students
- shared lobby with the Fox Theater

- multi-media and visual arts galleries on the 1st floor
- ground floor retail space
- student center and outdoor courtyard on 1st floor
- secured entry on the 2nd floor
- new 2nd and 3rd floor additions to the sides of the wrap-around buildings
- academic and music rooms on 2nd floor and 3rd floor
- new loading dock and possible black box theater on 1st floor

The wrap-around building would be renovated at the same time that the theater is being restored in order to minimize construction costs and fully integrate the two uses (theater and OSA).

3. Preliminary Budget for Renovation of Theater and Wrap-Around Building(s)

The CCG development team has worked closely with their architects, engineers and contractor to produce order of magnitude costs for the theater renovation and the rehabilitation and new additions to the wrap-around buildings. These estimates are based on multiple visits to the buildings by the entire development team.

Table 1. Fox Theater Renovation Costs:

Hazardous materials	\$366,000
Foundation and Excavation	\$335,000
Structural Frame	\$1,546,000
Roof and Waterproofing	\$0
Exterior Wall	\$25,000
Interior Construction	\$523,000
Special Requirements	\$450,000
Vertical Transportation	\$90,000
Mechanical	\$1,361,000
Electrical	\$780,000
Site Work	\$115,000
Sub-Total	\$5,591,000
General Conditions and Fees	\$1,118,000
Sub-Total	\$6,709,000
Estimating/Construction Cont.	\$1,342,000
Sub-Total	\$8,051,000
Cost Reduction	\$538,200
TOTAL	\$7,512,800

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Table 2.Wrap-Around Building Renovation and New Construction Costs:

New 3 rd and 4 th Floor Additions to Wrap-Around Building(s) on 18 th and 19 th	\$3,615,000
New One Story Loading Dock, Shops	\$650,000
Renovation of existing Wrap-Around	\$3,975,000
Total Building Additions/ Improvements	\$ 8,240,000
Add new Elect. Service, Panels, Distribution	\$750,000
Subtotal	\$8,990,000
20% Design and Construction Contingency	\$1,798,000
Subtotal	\$ 10,788,000
Overhead and Profit 15%	\$ 1,618,200
TOTAL	\$12,406,200

The total estimated construction cost of renovating the Fox Theater into the cabaret-style theater, and renovating the attached wrap-around building(s) to accommodate the long-term growth projection of the OSA is \$19,918,000. Soft costs of 9.66% or \$2,312,950, and contingency of 7.1% or \$1,719,000, contribute to a total cost for the entire renovation of **\$23,950,000**. These costs will be verified during the ENA, upon completion of the Design-Development Drawings.

4. Financial Framework, Including Sources and Uses of Funds

A new financial and organizational framework is needed to make the Fox Theater and OSA Project a reality. This is because under the present ownership structure, the Fox, which is owned by the Agency, is not eligible for the Historic Tax Credits administered by the U.S. Department of the Interior and The Department of the Treasury. Under the program, investors are allowed up to 20% of the costs of the renovation to be offset by direct tax reductions to the investor. These tax credits are a direct income tax credit, not a deduction which reduces the amount of income subject to taxation. In general, a dollar of tax credit reduces the amount of income tax owed by one dollar. The 20% rehabilitation tax credit equals 20% of the amount spent in a certified rehabilitation of a certified historic structure. Ownership and control of the project, whether by fee ownership or by long term lease, must be a tax-paying entity (not a public agency or a tax-exempt 501(c)(3)).

To take advantage of the Historic Tax Credits, the ownership of the Fox (and wrap-around buildings) must be transferred from the Agency to a new entity(s). The structure that is being proposed would involve the OSA Board and the Paramount Theater Board forming a new non-profit entity called Fox Theater I Corporation. Both the OSA Board and the Paramount Board have agreed in principle to the formation of the new entity (see attached MOU). As a non-profit, Fox Theater Restoration I would be qualified to receive donations from public and private sources for the renovation and operation of the theater

and/or school. It would be the entity that would enter into any development agreements with the Agency.

Fox Theater Restoration I would sell the theater and wrap-around building(s) to a newly created for-profit subsidiary called Fox Theater Restoration II, that would be the new owner of the theater complex. This entity is crucial to the theater restoration in order to take advantage of the 20% Historic Tax Credits. This entity would contract with the City/Agency and with the private lending institutions for financing.

Sources of funds for the project are as follows:

Proceeds from Sale of City Center Garage West:	\$13,000,000 ¹
Currently Budgeted Funds for Fox	\$ 800,000
Historic Tax Credits	\$ 3,700,000
Façade Improvement Funds and State Grant	\$ 750,000
Construction Loan (school rent services debt)	\$ 4,000,000
New Market Tax Credits	\$ 1,000,000
Proceeds from Cal Arts Building	\$ 700,000
TOTAL	\$23,950,000

5. Contingency Plan for Servicing / Eliminating City Debt

In the event the OSA were to vacate the wrap-around buildings surrounding the Fox, the Agency would service or eliminate the \$4,000,000 construction loan debt by either: (1) renting the 50,000 square foot wrap building to other office tenants at fifty cents a square foot (this is the rate OSA would be paying for the space and is well below market rate and could be increased); (2) issuing bonds to pay off the entire \$4,000,000 debt; or (3) using existing tax increment-dollars to service the debt. If the theater should fail to attract users, the Agency could implement similar procedures as outlined for OSA. Because the theater is being developed in a manner that is sensitive to the historic character of the theater, any improvements made under this proposal will be reversible, allowing for the future restoration of the Fox (if the market and funding exist) into a 2500 seat venue without jeopardizing future tax credits.

6. Management and Profits

It is the intention, under this proposal, that the operations of the Fox would be the responsibility of the Paramount Theater of the Arts and all profits would go to the PTA, which is owned by the City of Oakland. A detailed management structure will be negotiated during the ENA.

¹ The Agency currently has two offers for purchase of the City Center West Garage. This matter is addressed in a separate report to the City Council.

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7. Project Schedule

The project schedule is as follows:

- Council authorizes ENA with recommended developer... Oct.03
- ENA entered into between Agency and developer Dec.03
- Design/Development drawings..... Feb.04
- Environmental Review complete..... Feb.04
- Financing commitments complete..... Feb.04
- CED Committee review Mar.04
- Council authorizes DDA Mar.04
- DDA entered into by all parties..... Mar.04
- Financing Complete, close of escrow..... Aug.04
- Project Construction Aug.04
- Project Completion..... July 06

8. Alternatives to Sale of City Center Garage West

The key financial commitment comes from a needed infusion of \$13,000,000. Sources of this level of capital have become very scarce due to: (1) administrative overhead for Agency and City departments which limits bonding capacity, (2) the recent issuance of bond indebtedness which has absorbed most free tax increment, (3) State Educational Relief Augmentation Fund transfer which has absorbed tax increment growth for this year, (4) limited capital facility holdings by the Agency which could be sold to raise this level of capital, and (5) the reserve of bond proceeds and sale proceeds of smaller properties to fund the Uptown Project.

The only remaining sources of funding are sales of assets which have not had their proceeds allocated:

- a. **Sale of the Cal Arts Building** – potentially could generate **\$1.4 million**.
- b. **Sale of the 17th Street Garage site** for development of a garage by a private party – savings to Agency would be about \$4 million in capital expenditure for the construction of this garage plus land proceeds of approximately \$1.0 million, for a total of **\$5 million** in cash available for other projects.
- c. **Sale of the Ice Center** – The Ice Center parcel (70,567 sq. ft.) is valued at approximately \$4,586,000 based on an assumed sales price of \$65 per square foot. Subtracting demolition costs of about \$500,000 would yield \$4,000,000 in net proceeds of sale. However, the loss of the Ice Center as a community recreational asset could not easily be replaced. Selling the Ice Center as a business based on the current net profit of approximately \$65,000/year would yield a sale price of approximately **\$722,000**.
- d. **Sale of 8th and Washington parking lot** – Could raise **\$650,000**.

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The combined revenues of options "a" through "d" above would be approximately \$7.75 million, far short of the \$13 million needed for the Fox project.

9. City Center West Garage Sale Process

The only viable way to raise \$13 million in the short run is by **sale of the City Center West Garage** which could yield between **\$15.5 million** and \$19 million. Various offers have been submitted, but such a sale should be subject to an RFP process to attain the highest price and the best terms.

If the City Council authorizes the recommended ENA, then staff will issue an RFP to formally solicit proposals for purchase of the City Center West Garage. There would be no commitment to sell the garage, as any such sale would be contingent upon a favorable and viable outcome of the theater ENA process and authorization by the Council of a DDA for the Fox Theater Project. If the ENA process yields a viable project, then staff would return to the City Council with a proposed DDA for the Theater project and a proposed sale of the City Center Garage West to fund the project. Upon sale of the garage the Agency would transfer proceeds to the City to pay down a \$19 million loan the City holds on the garage. The City could then use the proceeds to fund the Fox project.

SUSTAINABLE OPPORTUNITIES

Economic: This project, if developed, will contribute significantly to the elimination of physical blight in the Uptown District of Downtown Oakland. In addition, it will stimulate new investment in the area, create development opportunities in the food and entertainment sectors and support and complement adjacent development projects.

Social Equity: The project, if developed, will train and educate students in the performing arts, providing them with opportunities for future employment. The project will promote pedestrian activity and vitality and public safety to an area that is presently void of positive activity.

Environmental: The project, if developed, will remove dangerous and hazardous materials from an existing building and replace them with recycled content materials and other environmentally sensitive materials.

DISABILITY AND SENIOR CITIZEN ACCESS

If and when this becomes a project, it will comply with all applicable State and Federal accessibility laws and regulations.

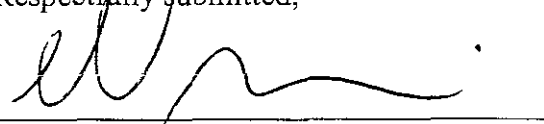
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RECOMMENDATION AND RATIONALE

Staff recommends that the Agency enter into an Exclusive Negotiating Agreement with Fox Theater I Corporation, an entity consisting of the Paramount Theater of the Arts Inc. and Oakland School for the Arts. An agreement to form this entity is presently being negotiated (see attached MOU). Fox Theatre I Corporation would engage the services of the California Capital Group as a fee developer and to provide for building investigation, structure testing, architectural drawings, environmental clean-up and other activities required during the ENA period. This recommendation would entail authorizing staff to utilize up to \$800,000 for building investigation, structural testing, design-development drawings, environmental clean-up work and associated costs during the ENA period.

Respectfully submitted,



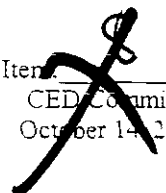
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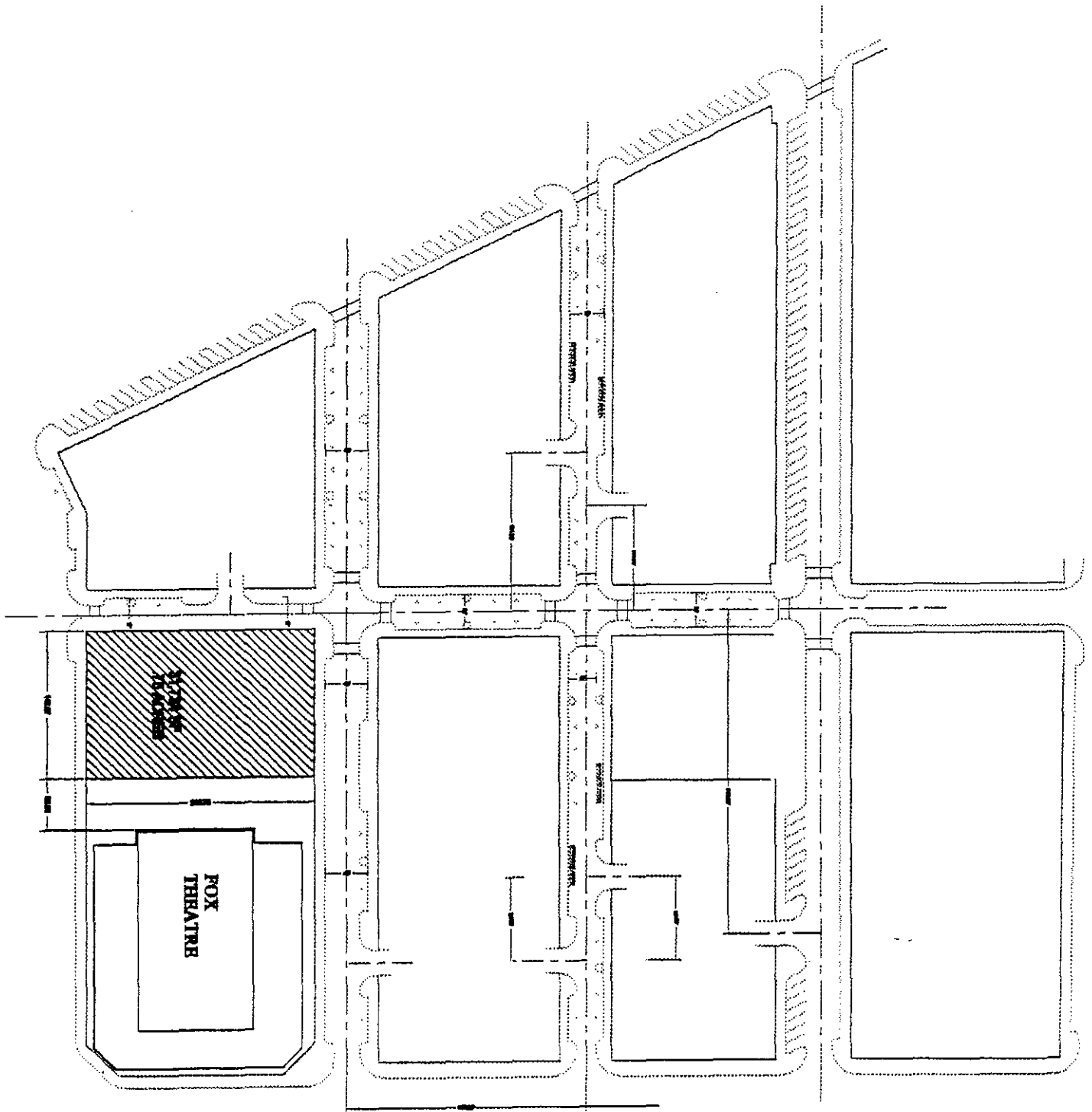
Prepared by:
Jeffrey Chew, Project Manager
Downtown Redevelopment Unit

APPROVED AND FOWARDED TO THE CITY COUNCIL


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