



Culver CITY

PATIO ROOM
CITY HALL, 3rd FLOOR
9770 CULVER BOULEVARD
CULVER CITY, CALIFORNIA 90232-0507
CITY HALL Tel. (310) 253-5776
FAX (310) 253-5779

MARLA KOOSD, Chair
CLEMENT HANAMI, Vice Chair
RONNIE JAYNE, Commissioner
GAYLE SMASHEY, Commissioner
MARLYN MUSICANT, Commissioner

CULTURAL AFFAIRS COMMISSION MEETING AGENDA TUESDAY, June 8, 2010

PUBLIC COMMENT

The Cultural Affairs Commission will listen to the public on any item on the agenda or item of interest that is not on the agenda. The Cultural Affairs Commission cannot legally take action on any item not scheduled on the agenda. Such items may be referred for administrative action or scheduled on a future agenda.

If you wish to speak to the Commission, please complete a Speaker's Card and present it to the Secretary before the agenda item is called. You will be called to the podium by name when it is your turn to speak to the Commission.

PUBLIC COMMENT FOR ITEMS ON THE AGENDA

Persons wishing to speak on agenda items will be called at the time the agenda item is brought forward. Comments will generally be limited to five minutes per speaker; however, a three-minute limit may be declared by the Chair from time to time for agenda items for which many Speaker Cards have been submitted.

NOTE: AT OR ABOUT 11:00 P.M., COMMISSIONERS WILL DETERMINE WHETHER TO CONTINUE WITH DISCUSSION OF REMAINING ITEMS ON THE AGENDA OR TO CARRY SOME/ALL OF THE ITEMS OVER TO A FUTURE MEETING DATE.

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

A total of twenty minutes shall be devoted to audience participation at the beginning of the agenda. Speakers will be called on in the order cards were received by the Secretary. If additional time is needed, the Chair will allow for some at the end of the agenda.

When the Secretary calls your name, please advance to the podium, state your name and city of residence. Speakers must limit their comments to five minutes in length. A three-minute time limit may be declared by the Chair if there are a large number of individuals desiring to address the Commission.

CELL PHONES AND OTHER DISTRACTIONS

Use of cell phones, pagers and other communication devices is prohibited while the Commission meeting is in session. Please turn all devices off or place on a silent alert and leave the Chambers to use. During the meeting, please refrain from applause or other actions that may be disruptive to the speakers and the conduct of City business.

MEETING INFORMATION

Cultural Affairs Commission meetings are regularly scheduled for the second Tuesday of every month. Commission Agenda information is available 72 hours before each meeting.

Cultural Affairs Commission meetings can be viewed live on Channel 35 by most Comcast subscribers. Meetings are also broadcast on the City's Radio Station AM 1690. To view the commission meetings on line please visit <http://www.culvercity.org/webcast>.

ALD

Assisted Listening Devices are available through Cultural Affairs staff.



Agendas are
available on the web @
www.culvercity.org

AGENDA

Cultural Affairs Commission

June 8, 2010

7:00 p.m.

Patio Room, 3rd Floor of City Hall – Meeting

CALL TO ORDER & ROLL CALL:

Chair Marla Koosed
Vice Chair Clement Hanami
Commissioner Ronnie Jayne
Commissioner Gayle Smashey
Commissioner Marlyn Musicant

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT – Items Not On the Agenda

CONSENT CALENDAR *Note: Consent Calendar items are considered to be routine in nature and may be approved by one motion. Public requests to discuss Consent Calendar items must be filed with the Secretary before the Consent Calendar is called.*

C-1. Receive and file Secretary's Report on Posting of Agenda. **Approve report.**

C-2. Minutes of the May 11, 2010 Regular Meeting. **Approve minutes.**

ACTION ITEMS *Public requests to discuss Action Items must be filed with the Secretary before the item is called.*

A-1. Consideration of Removal of a Public Art Work Entitled, Menhir No. 2, from the Property Located at 5660 Sepulveda Blvd. **Approve Recommendation.**

PUBLIC COMMENT - Items Not On the Agenda

RECEIPT OF CORRESPONDENCE

ITEMS FROM STAFF

ITEMS FROM COMMISSIONERS

ADJOURN

Next Cultural Affairs Commission Meeting
Mike Balkman Council Chambers
July 13, 2010
7:00 PM

June 2010 Public Meeting Tentative Schedule --

Date	Day	Time	Location
City Council			
June 7, 14,21, 28	Monday	7:00 PM	Council Chambers
Redevelopment Agency			
June 7, 14,21, 28	Monday	7:00 PM	Council Chambers
Parks and Recreation Commission			
June 1	Tuesday	7:00 PM	Council Chambers
Planning Commission			
June 9	Wednesday	7:00 PM	Council Chambers
Civil Service Commission			
June 2	Wednesday	7:00 PM	Council Chambers

- Times and dates may be changed.
- Meetings may be added or changed

**City of Culver City, California
Cultural Affairs Commission Agenda Item Report**

Meeting Date: 06/08/2010		Item Number: A-1	
AGENDA ITEM: Consideration of Removal of a Public Art Work Entitled, <i>Menhir No. 2</i>, from the Property Located at 5660 Sepulveda Blvd.			
Contact Person/Dept.: Christine Byers/ Cultural Affairs		Phone Number: (310) 253-5776	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Public Notification: Cultural Affairs Master Notification List (06/03/2010); Jeff Martin, Development Director, DDR (06/01/2010); Daniel Wurtzel, Artist (06/01/2010)			
Department Approval: Sol Blumenfeld		City Attorney Approval:	

RECOMMENDATION:

That the Cultural Affairs Commission approve Developers Diversified Realty's (DDR) request to remove a public art work, *Menhir No. 2* by Daniel Wurtzel, from its current location at 5660 Sepulveda Blvd. and de-accession it from Culver City's Art in Public Places Program collection.

BACKGROUND:

In 1995, the owner/developer of the property located at 5660 Sepulveda Blvd. (formerly Circuit City) chose to fulfill Culver City's Art in Public Places Program requirement for their project by purchasing a sculpture from artist Daniel Wurtzel (<http://www.danielwurtzel.com/>) entitled, *Menhir No. 2*, with an appraised value of \$35,000. The art work is made of steel, basalt and pressure-treated red oak, stands approximately 12' high, and is affixed to a concrete pad within a planter adjacent to the Slauson Ave. side of the property.

Initially, both the former Culver City Arts Committee and the Planning Commission expressed strong reservations over the suitability of the proposed siting of the art work on the property. The long-term durability of the wood component of the sculpture was also raised as a concern. The Planning Commission, which at that time reviewed and approved concepts for public art installations on private property with a recommendation from the Arts Committee, denied the owner/developer's application. The property owner/developer appealed the decision to the City Council in March 1995; the City Council granted the appeal with a 3-2 vote.

City of Culver City, California
Cultural Affairs Commission Agenda Item Report

DISCUSSION:

Pursuant to the Culver City Municipal Code (CCMC) Section 15.06.145, all art work placed on private property in conjunction with the City's Art in Public Places Program "shall become the property of the property owner and his/her successor(s) in interest. The obligation to provide all maintenance necessary to preserve the Art Work in good condition shall remain with the owner of the site". Maintenance costs are considered above and beyond the initial minimum investment for acquiring the art as specified by the CCMC. This applies to both City-owned art work and art on private property commissioned in conjunction with the City's Art in Public Places Program. The CCMC also states that a covenant shall be executed and recorded that addresses future maintenance of the art work.

Developers Diversified Realty (DDR) purchased the property at 5660 Sepulveda Blvd. in 2007. According to representative Jeff Martin, DDR were not aware that there was public art at the site at the time that they acquired the property. (Staff was not able to locate a copy of a covenant for *Menhir No. 2* at City Hall and, according to DDR, a covenant for the art work does not appear on the title report.)

In 2009, an application for tenant improvements was filed by DDR's tenant, Sprouts Farmers Market (Sprouts), scheduled to open the end of June 2010. This project triggered a second Art in Public Places Program requirement with a minimum valuation of \$11,000. Sprouts chose to fulfill this requirement by paying the in-lieu fee to the Art Fund at the time their Building Permit was issued.

Staff, artist Daniel Wurtzel, and Jeff Martin of DDR have been in discussion for several months regarding options for restoring *Menhir No. 2* which include replacing the now rotting wood portion of the sculpture. Conservative cost estimates range from \$10,000 - \$20,000 depending on choice of materials. This cost range is for completing the majority of the work locally; if the art work were to be shipped to Mr. Wurtzel's studio in New York, the cost estimate would be closer to \$30,000. Options include replacing the rotting wood section with a similar material or using a more durable man-made composite material which then also alters the original concept of the art work. The cost of restoration, combined with DDR's position that *Menhir No. 2* does not reflect their corporate identity, nor fulfill their priorities for how the property is to be used, as well as the siting of the sculpture, have prompted DDR to request permission from the City to remove the sculpture altogether.

Although Mr. Wurtzel's first choice is to see this sculpture restored, he told staff and Mr. Martin in several conversations that other sculptures of his made from similar materials had a limited life-span and were subsequently disposed of when the

City of Culver City, California
Cultural Affairs Commission Agenda Item Report

materials had deteriorated to a degree comparable to the current condition of the materials used to fabricate *Menhir No. 2*.

Under the circumstances, Mr. Wurtzel would support a decision to remove and dispose of the art work. Mr. Wurtzel would have to provide the City written consent and relinquish his rights under the Visual Artists Rights Act (VARA) and the California Art Preservation Act prior to removal and/or disposal of the art work.

Staff outlined these issues with the CAC Public Art sub-committee (Chair Koosed and Vice Chair Hanami). In light of the absence of specific language in the CCMC with regard to removal of art work, the sub-committee considered a number of options including removal of the art in conjunction with a contribution from DDR to the Art Fund to off-set the limited "life-span" of the original sculpture. The sub-committee and staff were in agreement that DDR should be responsible for fees associated with the removal and possible disposal of the art work. The sub-committee did not unanimously agree on an exact amount that DDR should pay to the Art Fund in association with removal and disposal of the art work; DDR is currently considering this request. To date they have not provided a specific amount that they would be willing to pay as an "in-lieu" fee.

The sub-committee also suggested approaching West Los Angeles College about donating *Menhir No. 2* for possible display in a better sited location (such as an open, grassy field). Staff have forwarded information regarding the sculpture to WLAC's President and are waiting for a reply. WLAC would still have to address the issue of restoration and assume any costs associated with the same.

FISCAL ANALYSIS:

Currently no tangible costs to the City have been identified in conjunction with this item. Costs associated with the removal and possible disposal of the art work would be borne by DDR. There may be an additional payment by DDR into the Art Fund in conjunction with removal of the art work.

ATTACHMENTS:

1. City Council Agenda Report Dated 03/27/95
2. Letter to City dated March 6, 1995 from A&M Bank Consultants
3. Images of Menhir No. 2 Taken November 2009

**City of Culver City, California
Cultural Affairs Commission Agenda Item Report**

MOTION:

That the Cultural Affairs Commission:

1. Approve DDR's Request for Removal of *Menhir No. 2* by Daniel Wurtzel from the Property at 5660 Sepulveda Blvd. and Deaccession it from Culver City's Art in Public Places Program Collection with a Payment to the Art Fund of \$_____.

MEETING DATE: June 8, 2010

AGENDA ITEM: **Consideration of Removal of a Public Art Work
Entitled, *Menhir No. 2*, from the Property Located
at 5660 Sepulveda Blvd.**

ATTACHMENTS

	<u>Pages</u>
1. City Council Agenda Report Dated 03/27/95	1 - 5
2. Letter to City dated March 6, 1995 from A&M Bank Consultants	6 - 11
3. Images of <i>Menhir No. 2</i> Taken November 2009	12

Meeting Date: 3/27/95

Agenda Item Title:

Appeal of Planning Commission Resolution No: 95-P003 Disapproving the Installation of Art Work Entitled "Menhir No. 2" at 5640 Sepulveda Boulevard (Office Depot) and 5660 Sepulveda Boulevard (Circuit City) in Conjunction with the Art-In Public Places Program Allocation

Department/Division CDD/Admin.	Report Researched By / Date D. Rich 3/24/95	Public Hearing ☐ Discussion/Action Item ☒
Fiscal Impact No. ☒ Yes ☐ General Fund ☐ Enterprise ☐	Reviewed By / Date M. Winogrand 3/28/95	Consent Item ☐ Other ☐
Grant/RDA ☐ Budgeted Item ☐ Transfer of Funds Required ☐	CAO Approval / Date <i>Paul Eser</i> 3/25/95	Packet Enclosure(s) ☒

Public Notification:

Culver City Arts Committee, appellants

ISSUE

The Circuit City/Office Depot development team has filed an appeal of the Planning Commission's disapproval of the installation of an art work entitled "Menhir No. 2" at 5640 Sepulveda Boulevard (Office Depot) and 5660 Sepulveda Boulevard (Circuit City) in fulfillment of the City's Art in Public Places ordinance.

BACKGROUND

In December, 1988, the City Council adopted an Art in Public Places program. The program is applicable to all new residential development projects of more than four units, and all new commercial, industrial, and public building development projects with a building valuation exceeding \$500,000. The Art in Public Places program requires an allocation equal to one percent of the building valuation, as determined by the Building Official, to be allocated for art work. The developer may fulfill the requirement in four ways:

1. Payment into the City Art Fund;
2. Donating art work to the City;
3. Placing art work on their property subject to approval of the Arts Committee and the Planning Commission, if the development is otherwise subject to Planning Commission review; or
4. Posting a bond in the amount of the fee for an approved art work.

The Arts Committee reviews proposed art work, considering the aesthetic quality and harmony of the art work with the proposed on-site improvements, and considering the proposed location of and public accessibility to the art work. When development (for which art work is proposed) requires Planning Commission review, the Arts Committee role is advisory to the Planning Commission. In such cases, the Planning Commission must consider

the recommendation of the Arts Committee in the context of the proposed art work's harmony with the architecture or physical layout characteristics of the site.

The developers of Office Depot and Circuit City propose to fulfill the public art requirement through the placement of art work on their site. Because the Office Depot/Circuit City development underwent Planning Commission review for a conditional use permit, the Planning Commission was required to review the art work.

The proposed art work is entitled "Menhir No. 2", created by Daniel Wurtzel. The art work is a 12-foot high sculpture constructed of basalt and red oak mounted on a steel base. The art work is proposed to be installed in the landscaped setback on the Slauson Avenue frontage of this development, and will be illuminated with night lighting. A site plan and colored photographs of the actual art work (which has already been constructed and is part of the artist's collection) are included with the agenda materials, as is the artist's resume.

Daniel Wurtzel resides in Brooklyn, New York. His large-scale stone/woodworks have been exhibited throughout New York City, including the Dag Hammerskjold Plaza, Tribeca Park, City University of New York (College of Staten Island), as well as Wesleyan University in Connecticut. Mr. Wurtzel also commissioned another piece of art for Circuit City in Concord, California. His works have been displayed in art shows in New York, Florida, and Connecticut.

The Arts Committee first discussed this art work on August 17, 1994. Mike Banks, the project consultant, Daniel Wurtzel, artist, and Joseph Brisio, representing the site architect (Leidenfrost/Horowitz), attended that meeting. At the conclusion of that evening's discussion, Committee members requested the artist to return with specific information regarding the method of connection between the stone and wood, a structural engineer's report to address concerns regarding stability, details of the surrounding landscaping material to address the sense of placement, and a product report regarding the long-term effect of the environment on the wood. Copies of the Art Committee minutes are included with the agenda materials.

The discussion continued at the November 16, 1994, Arts Committee meeting, which was attended by Mr. Bank, Mr. Wurtzel, and Mr. Brisio. The issues which had been raised on August 17 were addressed, and the Arts Committee members discussed the art work among themselves. At the conclusion of the discussions, a vote was taken to recommend that the Planning Commission approve "Menhir No. 2". The motion was approved by an 8-3 vote (Sandy Levin, Jackie Peterson, and Miriam Shapiro voting in the minority). The majority opinion was that the art work satisfactorily met the guidelines for privately commissioned art work identified in the "Art in Public Places Developer's Handbook" (listed below), even though several of the Committee members expressed personal opinions that the particular art work was not to their personal liking:

1. The art work shall be accessible to the public a minimum of 10 hours per day.

2. The art work shall be located in an area specifically designated for such purpose. Installation of the art work shall be planned and implemented to enhance the work and allow for unobstructed public viewing from as many angles as possible.
3. The composition of the artwork shall be of permanent materials and require a low level of maintenance.
4. The art work shall be constructed in a size that is proportional to the size of the adjacent buildings.
5. Expressions of bad taste or profanity, which would likely be offensive to the general public, are not permissible.
6. If the art work is a sculpture, it shall be designed by persons with experience and knowledge of monumental scale sculpture.
7. Developers shall be encouraged to provide a wide range of styles, materials, and types when selecting an art work for the program.

The Planning Commission discussed this art work on January 11, 1995, with Mr. Brisio in attendance. Arts Committee members Hy Faine and Sharon Burns attended the meeting, and responded to questions posed by the Commission regarding the Committee's discussion, as did Ms Levin, who is the Commission's representative on the Arts Committee. At the conclusion of the Planning Commission discussion, the Planning Commission unanimously approved a motion disapproving "Menhir No. 2". Resolution No. 95-P003 (included with the agenda materials) cites the following reasons for disapproval:

1. The proposed location of "Menhir No. 2" is not in harmony with the development because, due to its scale and placement in relation to Slauson Avenue, the art work will be lost in its setting.
2. The proposed location of "Menhir No. 2" is not in harmony with the development because the proposed placement of this monolithic art work properly should be on a visual plane which is unobstructed by signage, landscaping and other on-site and off-site improvements.

ANALYSIS

Before proceeding with the analysis of the art work itself, it is important to point out that the appellant believes they were denied "the spirit of due process" because the Planning Commission denied their request to continue the matter until the artist could fly out to California to explain and defend his work.

The City's Art in Public Places program allows the developer three options to fulfill the public art requirement. If the developer elects to fulfill this requirement through placement of art work on their site, they select and pay the artist, own the art work, and have the on-going responsibility to pay for art work maintenance and insurance. The City's review process is intended to ensure that the artist is qualified, and that the art work is appropriate for the site in terms of accessibility, and harmony with the development both in quality and scale.

The relationship of the art to the site is a legitimate public concern. The City must be sure the art is placed in a location "specifically designated for such purpose" and that it "allow for unobstructed public viewing from as many angles as possible".

The Planning Commission believed the piece did not fulfill these legitimate criteria. They felt it would be "lost in its setting." The developer disagrees. They state they "designed an open landscaped area to highlight the sculpture we had chosen" and that the piece "stands 12 feet tall" but with the berming would "have the top of sculpture some 16 feet above the street at the curb". A rendering of the piece in its site is included in your packet materials.

The Commission also felt the view of the sculpture would be "obstructed by signage, landscaping and other on-site and off-site improvements". The appellant again disagreed, stating that "the proposed work is visible from 360 degrees. Only a very narrow viewing angle encompasses distant signage, as well".

Notwithstanding the Planning Commission's opinion on the subjective issue regarding the appropriateness of the location of the art work, the staff recommends supporting the applicant in this case for three reasons:

1. The art work is a legitimate piece designed by a nationally known artist.
2. The aesthetic quality and scale of the art work are in harmony with the development.
3. The location of the art work will not cause it to be obstructed by signage, landscaping, or on-or off-site improvements to such an extent that the art work will not be easily visible to the public.
4. The artist believes the aesthetics of and visual accessibility to his creation will not be adversely affected by the proposed location.

RECOMMENDATION

The Planning Commission recommends that the art work not be installed per Resolution No. 95-P003.

Staff recommends that the Council concur with the recommendation of the Arts Committee by granting the appeal and approving the installation of "Menhir No. 2" in fulfillment of the City's Art in Public Places requirement at 5640 Sepulveda Boulevard (Office Depot) and 5660 Sepulveda Boulevard (Circuit City).

ENCLOSURES

1. Appeal letter
2. Site Plan, colored photograph of the art work, resume of Daniel Wurtzel
3. August 17 and November 16, 1994 Arts Committee minutes
4. January 11, 1995 Planning Commission staff report and minutes excerpt
5. Planning Commission Resolution No. 95-P003

City Council Agenda Item Report

Continued

Agenda Item # 8C
Page 5 of 5

6. Letter from Steven Soboroff supporting the art work

PROCEDURE

1. Receive and file the packet enclosures.
2. Call for a staff report and/or pose questions as desired.
3. Allow the appellants to address you, followed by others you may desire.
4. Thoroughly discuss the matter and arrive at your decision.

MOTIONS:

That the City Council:

- 1a. Uphold the Planning Commission and deny the appeal
or
- 1b. Concur with the recommendation of the Arts Committee by granting the appeal and approving the installation of "Menhir No. 2" in fulfillment of the City's Art in Public Places requirement at 5640 Sepulveda Boulevard (Office Depot) and 5660 Sepulveda Boulevard (Circuit City); and
2. Instruct the City Attorney to prepare the appropriate document.

ATTACHMENT 2
A&M Bank Consultants
4949 Ethel Avenue
Sherman Oaks, California 91423

Phone: (818) 784-7117
FAX: (818) 784-2202

March 6, 1995

Ms. Debbie Rich, Deputy Community Development Director and
Art in Public Places Program Administrator
City of Culver City
4095 Overland Avenue
P.O. Box 507
Culver City, California 90232-0507

Dear Ms. Rich:

I am writing with reference to my letter of February 13 (another copy of which is attached) appealing Resolution No. 95-P003, "a resolution of the Planning Commission of the City of Culver City, California, disapproving the installation of an art work entitled 'Menhir No. 2' at 5640 Sepulveda Boulevard (Office Depot) and 5660 Sepulveda Boulevard (Circuit City) in conjunction with the Art in Public Places Program allocation."

In my earlier letter, I stated that the tape of the Planning Commission meeting we were provided was recorded at a speed that made it unintelligible. It turns out that the tape was fine, but the two machines on which I initially tried to play it were themselves defective. I apologize for this error.

I have subsequently listened to the tape in its entirety and, to further clarify our appeal, am enclosing 11 copies of the tape and 11 copies of a transcript we had made of the tape, for distribution to the members of the Council. I believe the tape and transcript serve to support our contention in our appeal letter that the Planning Commission used erroneous facts and reasoning in reaching its decision. Please note that the transcription was made by the Project's Texas counsel and not by someone familiar with all of the proper names. But I believe it is essentially accurate and can, in any event, be compared to the actual audio tape.

Sincerely,



Michael S. Bank
Consultant to Circuit City Stores and Office Depot and their Agent in this matter

A&M Bank Consultants
4949 Ethel Avenue
Sherman Oaks, California 91423

Phone: (818) 784-7117
FAX: (818) 784-2202

February 13, 1995

Mr. Tom Crunk, City Clerk
City of Culver City
4095 Overland Avenue
P.O. Box 507
Culver City, California 90232-0507

Dear Mr. Crunk:

As provided for in Article XXA, Section 37-120A and on behalf of the Circuit City/Office Depot team of the project bounded by Sepulveda, Playa, Hannum and Slauson known as the Kite Site, I am writing to appeal Resolution No. 95-P003, "a resolution of the Planning Commission of the City of Culver City, California, disapproving the installation of an art work entitled 'Menhir No. 2' at 5640 Sepulveda Boulevard (Office Depot) and 5660 Sepulveda Boulevard (Circuit City) in conjunction with the Art in Public Places Program allocation." Our filing fee check for \$122 is enclosed.

We believe the Planning Commission used erroneous facts and reasoning and erroneously overlooked or excluded facts and reasoning which were introduced, as more fully discussed below. We also believe we were denied what is the spirit of due process by being denied a requested continuance, which would have permitted the sculptor to make a third trip to Culver City from the East Coast to explain and defend his work. This is also more fully discussed below.

BACKGROUND OF ART PROJECT. As soon as we became aware of the Art in Public Places Program (APPP), we decided that rather than simply paying an in-lieu art fee, we would follow the more difficult route of seeking a sculptor specializing in outdoor public sculpture, identifying and choosing a specific work, and undergoing staff review and the Arts Committee and Planning Commission approval process. (It is our understanding that General Motors and the new Petrelli's restaurant, both of which are subject to APPP, and each of which is likely to be perceived by the public as enterprises separate and apart from the Circuit City/Office Depot "center," have not yet decided how they will meet their APPP obligations.)

We were motivated in that choice by several factors:

- 1) We took seriously that portion of the stated purpose of the program at the beginning of the Developer Handbook which says, "The program is designed to intertwine public art with the City's private growth and development. Public art can serve as a business trademark, conveying growth and prosperity to the private and public sector alike."
- 2) We believed that particularly because we were developing formerly public (Redevelopment Agency) property, it was appropriate that a work of art be sited on the property as a symbol of the public/private cooperation that had brought the project about.
- 3) Although the fronts of Office Depot and Circuit City face Sepulveda Boulevard, we were frequently made aware by staff, by the Design Review Committee, and by the Planning Commission itself that the Slauson frontage was equally important because it was considered a gateway to the City, because it directly faced the major entrance to Fox Hills Mall, and because that entrance was being redesigned to someday be a bus transportation center at the Mall.
- 4) We were able to select an actual completed work already on loan and successfully on display in an outdoor setting at Wesleyan University in Middletown, Connecticut, rather than having to commission a work from a maquette. We thought this latter approach would make the City approval process more uncertain and open the possibility of subsequent disappointment.

At the urging of the multiple reviewers listed above, we substantially redesigned and enhanced the south (Slauson) elevation and entrance, including the Circuit City building and its lighting, curved low monument gateways at the driveway entrance, special paving, and the largest landscaped area at the site, including numerous mature palm trees along Slauson. To further enhance this approach, we designed an open landscaped area to highlight the sculpture we had chosen.

BACKGROUND OF SCULPTOR. Daniel Wurtzel (the sculptor) and we first appeared before the Arts Committee on August 17, 1994. At that time, several questions were asked concerning siting details, structural details, and wood preservatives. We were asked to return with the answers to those questions. Although no vote was taken at the first meeting, we assumed--correctly--that we would not have been asked for detailed information if a majority of the Committee had aesthetic reservations about the work in question. On November 16, 1994, Daniel Wurtzel and we appeared for a second time before the Arts Committee. As the Planning Commission's January 11, 1995 resolution itself states: "...following discussions with the artist and representatives of the property owner, and evaluation of the art work based on the guidelines for art work to be placed on private property in conjunction with the Art in Public Places program, the Culver City Arts Committee, by an 8 to 3 vote, found the aesthetic quality and harmony of the art work to be consistent with the purposes of the Art in Public Places program, and the proposed location of the art work to be compatible with the development."

Daniel Wurtzel, who crafted "Menhir No. 2" in basalt rock and hearty red oak, is a young artist who enjoys an excellent and growing reputation. He specializes in outdoor, public sculpture and his work has been approved through similar processes in other communities, including at least one elsewhere in California. Con-

current with the staff report, we expect to provide copies for each Council member of photos of the work in question and a colored rendering of the proposed site, as well as written background and appraisal material.

We also expect that Daniel Wurtzel will come to the meeting to explain his work and answer any questions. He did not make his third trip from New York to attend the Planning Commission meeting because, in what turned out to be an erroneous judgment, we believed such a trip was unnecessary. We thought that whatever questions arose could be satisfactorily answered by staff, any members of the Arts Committee who might be in attendance, and our representative. We relied in part on the 8-3 vote of approval (an almost 3-to-1 margin) by the Arts Committee. We also relied in part on oral assurances given us immediately after the Arts Committee meeting by the one person who serves on both the Arts Committee and the Planning Commission. That member told me, in response to my question, that although she had just voted against the proposal at the Committee meeting, she considered her role as representing the Committee to the Planning Commission and would therefore vote for the proposal at the Commission level, in solidarity with the majority vote of the Committee. That turned out not to be the case. Although there may have been reasons for that members change of position, we were not aware of them before or during the meeting. My subsequent effort to reach that member through the suggested staff contact route was not successful.

Notwithstanding the decision to not have Mr. Wurtzel travel to Culver City a third time (two or three more trips by him will be required in connection with this appeal and, we hope, the installation of his work), we anticipated that if the agenda item proved controversial, we would be granted a continuance to permit such a trip and a fuller defense. The denial of a request for continuance, while certainly within the Commission's power, would seem to violate the spirit of due process and fair dealing for a serious applicant that had invested time and money in and made a serious commitment to the APPP approval process.

SPECIFICS OF APPEAL. In the beginning of this appeal letter, we stated that we believe the Planning Commission used erroneous facts and reasoning and erroneously overlooked or excluded facts and reasoning which were introduced. I paraphrase what we understand to be some of the points raised at the Commission meeting. We ordered and obtained a tape of the meeting, in order to be able to supply verbatim quotes, but discovered too late to replace it that the tape had been recorded at one-half or one-third speed, making it unintelligible on the equipment available to us. In any event, some of the key facts and reasoning relevant to granting this appeal include:

- *One or more members of the Planning Commission argued that a larger piece was required for this project—that while the piece might be appropriate for a living room, it would get lost on Slauson Avenue. The scale and placement is wrong.* we believe the Planning Commission used erroneous facts and reasoning and erroneously overlooked or excluded facts and reasoning which we introduced.

the APPP contribution required of Circuit City and Office Depot is \$26,600. In addition to the cost of the work, this sum must cover all travel by the sculptor,

packing and shipping of the work to the site, and incremental site preparation costs (costs above what otherwise would have been spent), including the crane needed to site the piece. A respected professional art appraiser has formally appraised the value of the work at \$35,000. If one adds the additional costs cited above, it is clear that the purchase is being made at a substantial discount from appraised cost because of the generosity of the artist. Because of the cost of the special materials used in this work, the budget in part affects the size.

Despite that explanation, we believe, as the Arts Committee did, that the work is sufficiently imposing for the site. It stands 12 feet high (and would therefore not fit within a living room) and will be perceived as even taller. Our site plan shows some burming, the effect of which would be to have the top of the sculpture some 16 feet above the street at the curb. This height is very appropriate for the sight lines of passing motorists and pedestrians (as some members of the Planning Commission point out when the subject is signage). We believe that it will be clearly seen and appreciated.

- *One or more members of the Planning Commission felt that the work was phallic in nature and was a phallic symbol.*
- That view was not raised by any of the 11 members in attendance at the November 17, 1994, Arts Committee meeting that approved the work. Nor was that the intent of the artist, who produced it—as he will attest when he appears before the Council. It is probably the case that any vertical form can be thought of as “phallic” (for example, the Washington Monument) and any round form thought of as suggesting the female anatomy, but we believe it is a substantial stretch in this case and it is not likely to be a widespread reaction.
- *One or more members of the Planning Commission felt the work was “rustic” and did not “match”.*
- The materials used are natural ones -- basalt rock and red oak -- and they are irregularly shaped and finished. But it certainly falls within the mainstream of noteworthy contemporary American sculpture. It is common that outdoor sculpture be of different materials than nearby manmade improvements.
- *One or more members felt that “the proposed location...is not in harmony with the development because the proposed placement of this monolithic art work should be on a visual plane which is unobstructed by signage.”*
- If one were to meet this requirement literally, it would never be possible to place a sculpture on a commercial project, which is not the intent of the APPP. The proposed work is visible from 360 degrees. Only a very narrow viewing angle encompasses distant signage, as well.
- *One member of the audience said that the piece would need to be repaired constantly after each act of vandalism and “in ten years, you will have a toothpick.”*
- It is our understanding from the Deputy Community Development Director and Arts Coordinator that outdoor public art in Culver City has fared well and has

not typically been the subject of vandalism, even during the 1992 disturbances. Even if it were, contractual responsibility to maintain the work rests with the developer. And maintenance will not result in "a toothpick in ten years."

- *One or more members of the Planning Commission felt that the Commission is not a "rubber stamp" of the Arts Committee.*

This is certainly true. The comment may have arisen in response to a comment by a member of the Arts Committee in attendance to the effect that because the work met all of the criteria of the Developer Handbook and was approved by the Arts Committee, the Planning Commission *had to* approve it. The Planning Commission, as any other public body, acts independently and makes its own decisions. However, where there has been substantial review in two meetings by the Arts Committee, and overwhelming approval on the very issues raised above, the Planning Commission might be expected to give more weight to the Committee's findings, which were quickly dismissed. We felt that we were swept into a jurisdictional dispute that had an historic agenda not of our making.

The appreciation of art is always subjective, but if private developers are to be encouraged to develop APPP responses such as we have, they need to be treated with more contemplative decisions than we believe were made on this item at the Planning Commission meeting. If abstract sculpture, for example, is not acceptable, or siting within view of buildings or signs is not acceptable, either the Developer Handbook should be revised or the APPP should be changed to make simple payment of a fee the only option. Conscientious developers should not be encouraged to put in the time and effort we did.

We have worked very hard for two years to create a first class project on this difficult site, balancing and matching our needs and the needs of the City. We have been responsive to the requests and requirements of staff and the public bodies of the City, and we believe our proposal meets the spirit and the letter of what the City intended when it instituted the APPP. As we near the end of this process, we ask for your understanding and support in this matter.

Sincerely,



Michael S. Bank

Consultant to Circuit City Stores and Office Depot and their Agent in this matter

cc: Mark Winogrand/Debbie Rich

ATTACHMENT 3

