

DEADWOOD HISTORIC PRESERVATION COMMISSION

Tuesday, December 30, 2014 ~ 5:00 p.m.

City Hall, 108 Sherman Street, Deadwood, South Dakota

1. Call meeting to Order
2. Approval of Minutes from December 10, 2014
3. Voucher Approval
4. Old or General Business
 - a. NH Alliance for Children – First step childcare Center Loan Update
 - b. Request for Advocacy Funding – Deadwood Chamber of Commerce
 - c. Donations #2014.19 and 2014.20 – Historic Preservation Office
 - d. Deadwood Monument Entrance Signs – Site Improvements – Historic Preservation Office
 - e. DNA Analysis Results – Skeletal Remains from 66 Taylor – Historic Preservation Office
5. New Matters before the Deadwood Historic District Commission
 - a. CoA – Case#14069 370 Main Street – Optima, LLC – Fountain House Relocation
6. New Matters before the Deadwood Historic Preservation Commission
7. Revolving Loan Fund/Retaining Wall Program Update
 - a. Retaining Wall Applications
 - b. Revolving loan Program/Disbursements
 - i. Tom McNary – 14 Van Buren
 - ii. Dennis Sabo – 152 Charles Street
 - iii. Pete Kirchevel – 316 Williams Street
 - c. Retaining Wall Program / Disbursements
8. Items from Citizens not on agenda (*Items considered but no action will be taken at this time.*)
9. Staff Report (*Items considered but no action will be taken at this time.*)
10. Committee Reports (*Items will be considered but no action will be taken at this time.*)
11. Other Business
12. Adjournment

All Applications **MUST arrive at the City of Deadwood Historic Preservation Office by 5:00 p.m. MST on the 1st or 3rd Wednesday of every month in order to be considered at the next Historic Preservation Commission Meeting.*

CITY OF DEADWOOD
HISTORIC PRESERVATION COMMISSION
Tuesday, December 30, 2014

Present Historic Preservation Commission: Chair Laura Floyd, Michael Johnson, Lynn Namminga, Lyman Toews, Dale Berg, Chuck Williams and Thomas Blair were present.

Absent: None

Mr. Kevin Kuchenbecker, Historic Preservation Officer; Ms. Joy McCracken, Executive Director of NeighborWorks-Dakota Home Services; Mr. Mike Walker, Executive Lending Officer of NeighborWorks-Dakota Home Services; and Mr. Quinton Riggins, City Attorney, were all present. Ms. Terri Williams, City Attorney, was also present via phone.

Present City Commission members: Georgeann Silvernail, Jim Van Den Eykel, Gary Todd, Dave Ruth Jr. and Mayor Chuck Turbiville were all present.

All motions passed unanimously unless otherwise stated.

A quorum present, Chair Floyd called the Deadwood Historic Preservation Commission meeting to order Tuesday, December 30, 2014 at 5:00 PM in Deadwood City Hall located at 102 Sherman Street in Deadwood, SD.

Approval of December 10, 2014 HPC Minutes:

It was moved by Mr. Johnson and seconded by Mr. Blair to approve the minutes of Wednesday, December 10, 2014 as presented. Aye – All. Motion carried.

Voucher Approval:

Operating Account

It was moved by Mr. Johnson and seconded by Mr. Blair to approve the HP Operating Account in the amount of \$93,340.14. Aye – All. Motion carried.

Old or General Business:

Northern Hills Alliance for Children – First Step Childcare Center Loan Update

Mrs. Kayla Klein, Executive Director of First Step Childcare Center, informed the Commission they are able to pay off the Historic Preservation loan early and in full due to outstanding fundraising efforts and grant writing. She thanked the Commission for their support and presented the Commission with a check for the amount due in full.

Request for Advocacy Funding – Deadwood Chamber of Commerce

Mr. Lee Harstad, Executive Director for Deadwood Chamber of Commerce, presented to the Commission a request for Advocacy Funding for 2015 to assist in the purchase of tradeshow, sales and display materials in the amount of \$3,460.00; to support their attendance to the “South Dakota’s Governor’s Conference on Tourism” in amount of \$3,000.00; and to cover costs for the mailing of Deadwood’s NEW Visitor Guide to state lawmakers/key staffers. (The memo is attached hereto on Exhibit A and incorporated herein by this reference.)

It was moved by Mr. Blair and seconded by Mr. Berg to recommend to City Commission for approval of expenditure in amount of \$3,460.00 to Deadwood Chamber of Commerce to assist in purchase of tradeshow, sales and display materials, out of the Advocacy budget line item. Aye – All. Motion carried.

It was moved by Mr. Blair and seconded by Mr. Toews to recommend to City Commission for approval of expenditure in amount of \$3,000.00 to Deadwood Chamber of Commerce to co-sponsor the “South Dakota’s Governor’s Conference on Tourism”, out of the Advocacy budget line item. Aye – All. Motion carried.

It was moved by Mr. Blair and seconded by Mr. Toews to recommend to City Commission for approval of expenditure in amount of \$413.25 to Deadwood Chamber of Commerce to cover expenses of mailing Deadwood’s New Visitor Guide to State lawmakers/key staffers, out of the Advocacy budget line item. Aye – All. Motion carried.

Mr. Kuchenbecker informed the Commission the City Archives is requesting permission to formally accept donation items into the City's permanent collection. These donations fall within the City Archives mission statement and were approved by the Archaeology, Archives and Acquisitions (AAA) Committee at the December 17, 2014 meeting. The donations consisted of the following: **Donation 2014.19** The Coburn family of Deadwood, South Dakota donated a substantial collection of photographs, ledgers, posters, Sanborn Fire Insurance Maps and ephemera focusing on Deadwood, the Days of 76 celebration, the Deadwood Volunteer Fire Department, and Tomahawk Country Club. **Donation 2014.20** Bill Walsh of Deadwood, South Dakota donated two boxes of archival documents from the late Vince Coyle of Deadwood. Vince Coyle was very involved in the promotion of Deadwood. Some of his positions included Director of the Lead-Deadwood Chamber of Commerce, reporter for the Lawrence County Centennial, and Master of Ceremonies for the annual Chinese New Year celebration. (The memo is attached hereto on Exhibit B and incorporated herein by this reference.) ***It was moved by Mr. Toews and seconded by Mr. Johnson to accept donations into the City's permanent collection as recommended by the Archaeology, Archives and Acquisitions Committee. Aye – All. Motion carried.***

Deadwood Monument Entrance Signs – Site Improvements – Historic Preservation Office

Mr. Kuchenbecker informed the Commission since the colorization on the six (6) existing gateway monument signs, an increase in public interest in these monument signs has created a new tourist photo opportunity for Deadwood. He noted due to heavy traffic around the monuments, the idea to make these signs more user-friendly and accessible was discussed. Mr. Kuchenbecker presented to the Commission a request from Ron Green, Public Works Director; Robert Nelson Jr., Planning & Zoning Administrator; and the Historic Preservation Office for permission to engage Tallgrass Landscape Architecture, LLC to provide site analysis/schematic design and Construction Administration Services for the Deadwood Monument Gateway Signs Site Improvements. (The memo is attached hereto on Exhibit C and incorporated herein by this reference.) ***It was moved by Mr. Johnson and seconded by Mr. Blair to recommend to the City Commission for approval of expenditure in amount of \$13,972.50 to engage Tallgrass Landscape Architecture, LLC to provide site analysis/schematic design and Construction Administration Services for the Deadwood Monument Gateway Signs Site Improvements, out of 2015 HP Professional Services budget line item. . Aye – All. Motion carried.***

DNA Analysis Results – Skeletal Remains from 66 Taylor – Historic Preservation Office

Mr. Kuchenbecker presented to the Commission the final report on the DNA analysis from the set of remains unearthed in the Presidential neighborhood in 2012; the remains were discovered during a retaining wall replacement at 66 Taylor Street. He stated Dr. Angie Ambers a DNA Analyst and Forensic Geneticist at the Institute of Applied Genetics in Fort Worth, Texas was hired by the City to perform DNA tests on the unidentified human skeletal remains. Mr. Kuchenbecker informed the Commission based on the DNA results, the unknown individual came from a Western European ancestry reaching over 80% of the population in Ireland, the Scottish Highlands, western Wales, the Atlantic fringe of France, the Basque country as well as Catalonia and the unknown individual likely had light red hair and light brown eyes when alive. (The memo and report are attached hereto on Exhibit D and incorporated herein by this reference.)

New Matters before the Deadwood Historic District Commission:

CoA – Case#14069 370 Main Street – Optima, LLC – Fountain House Relocation

Mr. Kuchenbecker informed the Commission the applicant requests permission to allow the Fountain House, a contributing resource in the Deadwood National Historic Landmark District, to be move/relocate to an available lot located on Charles Street in the South Deadwood Planning Unit as submitted. (The application is attached hereto on Exhibit E and incorporated herein by this reference.)

Mr. Kuchenbecker noted the Fountain House was the resource in which on March 12, 2014 the Historic Preservation Commission, though they found it adverse to Deadwood, approved its moving/relocation as all reasonable and prudent alternatives had been explored by the applicant. He informed the Commission his Staff Report for this relocation request as presented tonight was based upon legal counsel's review of previous motions.

Mr. Kuchenbecker stated, based on the understanding the project is for the new location only, the relocating of the Fountain House to the proposed new location is not an adverse effect to this portion of the historic districts in which it is proposed, provided the applicant follows the proposed project plan as submitted with proper landscaping and maintenance of the resource. He continued to note staff's opinion is the project is congruous with the historical, architectural, archaeological and cultural aspects of the district.

Ms. Terri Williams, City Attorney available by telephone, gave an overview of her Opinion Memorandum determining the application request is for proposing a new location and not to discuss the case of whether or not it is allowed to be moved. She stated based upon her review of previous motions, City ordinance, applicable statutes, and Robert's Rules of Order, it is evident the issue to be determined by the Commission at this time is whether or not to approve the relocation of the structure to the proposed location to occur.

Ms. Williams addressed the question of whether or not any Attorney General's opinion should be considered. She stated a body can make a request for the Attorney General's opinion, however it is up to the Attorney General on whether or not to accept the application for opinion and, if accepted, the application can take an essence of 4-6 months. She noted there is a timeframe of a 12 month period in effect due to the resolution adopted on March 12, 2014 to address Optima's application for the relocation of the Fountain House. Mrs. Williams stated her opinion is it is highly unlikely due to the motions made by previous Commission and the Courts ruling the General Attorney would accept the application for opinion.

Mr. Quentin Riggins, City Attorney present at meeting, pointed out in Ms. Williams's unavailability to attend the meeting in person, he took an independent look to bring himself up to speed as to the question at hand. He noted in his review some of the language from the Circuit Court's opinion which specifically noted the "Historic Preservation Commission had three hearings to address the Fountain House on whether or not reasonable and prudent alternatives existed". He continued noting the Court further noted "the HPC acted within its authority in making their decision". Mr. Riggins stated, because that decision was rendered and not appealed, he agrees with Ms. Williams's assessment the only issue at hand is whether or not the move to the proposed location is appropriate or not.

Chair Floyd elaborated on Ms. Williams's comments regarding the request for the Attorney General's opinion. She explained, due to the concern from the community regarding this difficult and controversial topic, this was the reason she called into question the possibility to obtain an opinion from the Attorney General. Chair Floyd understands the concerns for the applicant's timeframe and confirmed the Commission has the ability to grant an extension to the applicant if needed.

Mr. Riggins stated he believed she was correct. He noted if the Commission was to request the Attorney General's opinion affecting the applicant's timeframe deadline to be missed; the court would not allow that to occur.

Chair Floyd asked the Commission whether or not there was interest in proceeding with a request to the Attorney General for an opinion and allowing the Commission to proceed in making a decision with the full confidence all concerns of the community were met and steered to the main point of discussion.

Mr. Toews asked for clarification on what opinion is being sought from the Attorney General.

Mr. Riggins explained the request would seek the specific opinion as to whether or not the court decision's in light of the motions made, city ordinances, and state statutes, would do anything more than simply allow the Commission to address location. He noted the opinions of both he and Ms. Williams set forth, are limited to location only, and the request would be seeking clarification from the Attorney General that they are correct in their assessment.

Mr. Blair questioned if the previous acts of a Commission is binding on a new Commission.

Mr. Riggins stated "Yes".

Mr. Toews asked if there are factors that have changed in which needs to be taken into account by this Commission.

Chair Floyd stated a concern heard was the Commission had agreed based on consideration the resource was best used as residence not commercial; she noted however the new application proposes moving it into a location where it would more than likely be commercial property.

Mr. Riggins stated, if the Commission elects to request the Attorney General's opinion, it would be something which would need to be clarified in the application to the state.

Chair Floyd stated she felt requesting the Attorney General's Opinion is the best way to absolutely know the Commission is doing their due diligence in addressing the concerns of the community and give confidence in moving forward with their decision.

Mr. Namminga asked if it was possible for the Planning and Zoning Commission to rule on it prior to the Commission's decision.

Mr. Kuchenbecker noted the Zoning Administrator reviewed the proposed location finding it met the setbacks with no known variances needed.

Mr. Roger Tellinghuisen, Attorney representing Optima, LLC. and having been the Attorney General, informed the Commission the likelihood of getting an opinion was not good. He stated the State's Attorney General is not obligated

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to give an opinion on matters such as this. He pointed out the current location and the proposed location of the Fountain house are both commercial zoned. Mr. Tellinghuisen informed the Commission an investigation was done during the original application process for the Fountain House as to the economic feasibility of converting it to commercial use. He noted there is an interested party wishing to purchase it for vacation rental. Mr. Tellinghuisen pointed out the City's Historic Preservation Officer, Kevin Kuchenbecker agrees it is a suitable site and it would enhance the district to which it would be moved. He encouraged the Commission not to waste the time in requesting the opinion from the Attorney General of which you may be denied or, if accepted, may reflect your own Attorneys' assessments.

Mr. Williams asked if the Attorney General's opinion is binding.

Mr. Tellinghuisen stated "No".

Ms. Francy Foral, resident of deadwood, asked due to the last minute announcing of the meeting for a continuation of a decision to allow for Deadwood residence to provide input into the newly proposed location.

Mr. Blair asked for clarification as to the question being put before the Commission.

Mr. Kuchenbecker explained the decision before the Commission is based upon the guidance found in DCO 17.68.050, as to whether or not the location proposed is congruous with the historical, architectural, archaeological or cultural aspects of the district.

Ms. Kari Ruth, resident of Deadwood, noted that during the original hearings for the resource the Historic Preservation Officer's initial report recommended denying the move the Fountain House. She informed the Commission they are free to make their decision and legal counsel can give their opinion, but she pointed out Mr. Tellinghuisen's opinion should not sway your decision as he is not the Commission's legal counsel.

Mr. Jim Van Den Eykel, City Commissioner, commented Mr. Kuchenbecker's report indicated the location was deemed appropriate.

Mr. Toews asked Ms. Foral what her basis was for requesting the Commission to postpone the decision and indicating other comments that may come in.

Ms. Foral stated, even though the 24 hour public notice requirements were met, not everyone in the community knew the Fountain House was up for discussion at this meeting. She stated it only felt fair to everyone in the community who would like to have their voice heard regarding this matter to continue discussion until the next meeting.

Mr. Toews appreciated Ms. Foral's comment, however he respectfully informed her, the Commission as a whole, sometimes makes decisions without input from the public.

Ms. Foral stated she understood and respected Mr. Toews for his comment.

Sharon Martinisko, resident of Deadwood, advised the Commission of her original comments to put into writing all requirements needed to be met. She pointed the Historic Preservation Commission is in charge of preserving, protecting and keeping Deadwood's historic resources intact.

Chair Floyd asked the Commission whether anyone wished to make a motion to further explore and request the Attorney General's opinion on this matter.

Mr. Toews asked Mr. Riggins what the timeframe would be to receive an Attorney General's opinion.

Mr. Riggins stated there is no definitive timeframe and, if the Attorney General elects not to issue opinion, we will know sooner than if they elect to do so.

Mr. Blair asked if the Commission would get a response either way within then next two weeks.

Mr. Riggins stated it would be highly unlikely a response would be received within two weeks if not the next month.

Mr. Namminga asked what resource historically occupied the lot.

Mr. Kuchenbecker stated it was a residential resource dwelling on the lot according to Sanborn Maps; the resource disappeared after 1948.

Chair Floyd entertained the motion to get an opinion from the Attorney General.

No motion followed.

Chair Floyd asked the Commission for a motion to continue the discussion on relocating the Fountain House to the proposed new location to the next meeting on January 14th, 2015, allowing those within the community who wish the opportunity to comment on the proposed location.

It was moved by Mr. Johnson and seconded by Mr. Berg to continue the discussion on relocating the Fountain House to the proposed new location as submitted by Optima, LLC, to the next meeting on January 14th, 2015.

Mr. Williams requested clarification as to what will be discussed and decided on at the next meeting.

Mr. Kuchenbecker clarified the discussion would only be for the relocating of the Fountain House to the newly proposed location as submitted in the application by Optima, LLC.

Mr. Toews questioned moving it to the next meeting; he expressed concern the public may wish to discuss proposing other locations the resource could go, discuss reasons not to move it at all, or submit other unrelated contributions to the discussion. Mr. Toews asked if the public discussion should be limited.

Chair Floyd noted it would be reasonable and courteous to allow the public to make comments as to either pros or cons for that particular location. She agreed the conversation should be restricted to the proposed location as submitted. Chair Floyd confirmed for the record the discussion would be refined to relocating the Fountain House to the proposed location with the applicant to meet requirements for proper landscaping/maintenance of the resource as proposed.

Mr. Blair asked if Mr. Kuchenbecker had everything he needed to confirm his opinion.

Mr. Kuchenbecker stated he did.

Vote was called with 6 –Yes and 1 –No. Motion carried.

Mrs. Silvernail commented this meeting was originally scheduled for December 23, 2014 and was published. She noted the public was aware the Fountain House was up for discussion. Mrs. Silvernail asked if at the next meeting the plan is to postpone discussion again.

Chair Floyd stated she saw no reason for this application request to be postponed again and a motion would be made as to the application submitted. She felt continuing the discussion will give those within the community sufficient time to digest and decide if they had any input to add at that meeting.

New Matters before the Deadwood Historic Preservation Commission:

No applications were addressed at this meeting.

Revolving Loan Fund/Retaining Wall Program Update:

Retaining Wall Applications

No applications were addressed at this meeting.

Revolving Loan Program/Disbursements

Chair Floyd abstained from voting on Revolving Loan Disbursement. Vice-Chair Johnson called for motion.

It was moved by Mr. Blair and seconded by Mr. Toews to approve the HP Revolving Loan Fund disbursement in the amount of \$1,700.00, based on information as presented by Ms. McCracken, Executive Director of NeighborWorks-Dakota Home Services. Aye - All. Motion carried. Delinquency report was reviewed by Commission. Overview of the Revolving Loan Fund was presented.

Tom McNary – 14 Van Buren

It was moved by Mr. Toews and seconded by Mr. Blair to approve the HP Window Loan request for Tom McNary, 14 Van Buren, in the amount of \$3,000.00, based on information as presented by Mr. Walker, Executive Lending Officer of NeighborWorks-Dakota Home Services. Aye - All. Motion carried.

Dennis & Brenda Sabo – 152 Charles St

It was moved by Mr. Johnson and seconded by Mr. Toews to approve the 3 month extension request for Dennis & Brenda Sabo, 152 Charles Street, in the amount of \$10,000.00 and taking maturity date to March 21, 2015, based on information as presented by Mr. Walker, Executive Lending Officer of NeighborWorks-Dakota Home Services.. Aye - All. Motion carried.

It was moved by Mr. Johnson and seconded by Mr. Toews to approve the 6 month extension request for Dennis & Brenda Sabo, 152 Charles Street, in the amount of \$3,000.00 and taking maturity date to March 21, 2015, based on information as presented by Mr. Walker, Executive Lending Officer of NeighborWorks-Dakota Home Services.. Aye - All. Motion carried.

It was moved by Mr. Blair and seconded by Mr. Johnson to approve the reversal of term to the HP Retaining Wall Loan for Pete & Amy Kirchhevel, 316 Williams, taking maturity date back to October 1, 2014, based on information as presented by Mr. Walker, Executive Lending Officer of NeighborWorks-Dakota Home Services. Aye - All. Motion carried.

It was moved by Mr. Johnson and seconded by Mr. Blair to forgive the HP Retaining Wall Loan for Pete & Amy Kirchhevel, 316 Williams, in the amount of \$52,875.41, allowing Closing to proceed with an escrow holdback and pending final inspection of siding/roofing repairs by City Building Inspector, based on information as presented by Mr. Walker, Executive Lending Officer of NeighborWorks-Dakota Home Services. Aye - All. Motion carried.

Retaining Wall Program/Disbursements:

It was moved by Mr. Toews and seconded by Mr. Blair to approve the HP Retaining Wall Fund disbursement for 2 Dudley in the amount of \$28,228.55, based on information as presented by Ms. McCracken, Executive Director of NeighborWorks-Dakota Home Services. Aye - All. Motion carried.

Items from Citizens not on Agenda

Staff Report: (items will be considered but no action will be taken at this time.)

Mr. Kuchenbecker reported on the following items:

- Announced new property owners to buildings located on Sherman Street: Jerry Greer Engineering purchased the Keene Realty building and Bone Daddy's Custom Cycle of Red Lodge, MT, purchased the Adrenaline Junkies building;
- Due to weather and the holidays, progress has been slow on the retaining wall at 2 Dudley;
- Invited the Historic Preservation Commission to attend Keith Umenthum's Retirement Party scheduled for 3pm on January 3, 2015; Keith Umenthum served as the City's Building Inspector for the past 25 years; Mr. Kuchenbecker publicly thanked Mr. Umenthum for this support and dedication not only to the City of Deadwood, but also for his long-time support of Deadwood's Historic Preservation efforts;
- Reminded the Commission the South Dakota's Governor's Tourism Conference is scheduled for January 21-22, 2015 in Pierre; if interested in attending, contact Kate;

Other Business:

- Mr. Toews, Chair for the Minimum Maintenance/Demolition by Neglect Committee, updated the Commission on the discussion of finalizing the Demolition by Neglect process; they discussed ordinance issues and incentives for individuals to complete projects as proposed;
- Mr. Toews met with NeighborWorks and was informed there was \$3.2M available in the Revolving Loan Fund; he questioned the Commission on how they could utilize programs and allow more residents the opportunity to use funds available;
- Mr. Namminga reported he had attended his first NeighborWorks Board Meeting; he noted discussion of
- The next Historic Preservation Commission meeting is scheduled for Wednesday, January 14, 2015 at 5:00 PM.

Adjournment:

There being no other business, the Historic Preservation Commission Meeting of December 10, 2014 adjourned at 6:18 PM.

ATTEST:

Laura Floyd
Chairman, Historic Preservation Commission
Kate Storhaug, Historic Preservation Office/ Recording Secretary