

DEADWOOD HISTORIC PRESERVATION COMMISSION

Wednesday, October 29, 2008 ~ 5:00 p.m.

City Hall, 108 Sherman Street, Deadwood, South Dakota

1. Call meeting to order – Chair Willie Steinlicht
2. Review minutes.
3. Voucher approval.
4. Old Business
5. New Matters before the Deadwood Historic District Commission
6. New matters before the Deadwood Historic Preservation Commission
 - a. Purchase of Wooden Display Cases for Visitor Center – Mike Runge
 - b. Purchase of Metal Storage Cabinets – Mike Runge
 - c. Fall/Winter Internship Program – Mike Runge
 - d. 52 Taylor Avenue – Storm Door – Mike Olsen
 - e. 419 Cliff Street – Roof, Sheathing & Trim Boards – Nancy Redinger
 - f. 14 Van Buren Avenue – Fence – Tom McNary
 - g. 360 Main Street – New Construction – BY Development, Inc.
7. Revolving Loan Fund/Retaining Wall Program Update.
 - a. Retaining Wall Applications
 - b. Revolving loan disbursements
 - c. Retaining Wall disbursements
8. Items from Citizens not on agenda.
9. Committee Actions and Reports
 - a. Cemetery Headstone Grant Program changes – Kevin Kuchenbecker
10. Staff Report
 - a. Design Guidelines meeting with Winter & Company – Kevin Kuchenbecker
11. Other business
12. Adjournment

Wall of Fame Program – 6:00 p.m.

**City of Deadwood
Historic Preservation Commission
Wednesday, October 29, 2008**

Present Historic Preservation Commission: Darin Derosier, Ronda Feterl, Mary Ann Oberlander, Steve Olson and Matt Pike. Historic Preservation Officer Kevin Kuchenbecker was also present.

Absent Historic Preservation Commission: Mike Olsen and Willie Steinlicht.

All motions passed unanimously unless otherwise stated.

A quorum being present, Vice-Chairman Darin Derosier called the Deadwood Historic Preservation Commission meeting to order on Wednesday, October 29, 2008 at 5:00 p.m. in Deadwood City Hall located at 108 Sherman Street, Deadwood, SD.

Review Minutes

It was moved by Mr. S. Olson and seconded by Ms. Feterl to approve the minutes from Wednesday, October 8, 2008. *Aye –Derosier, Feterl, S. Olson, and Pike. Oberlander recused herself due to her absence at the October 8, 2008 meeting. Motion carried.*

Voucher Approval

Operating Account:

It was moved by Ms. Feterl and seconded by Ms. Oberlander to approve the HP Operating Account in the amount of \$63,821.76. Aye – All. Motion carried.

Bonded Account:

It was moved by Mr. Pike and seconded by Mr. S. Olson to approve the HP Bonded Account in the amount of \$128,066.44. Aye – All. Motion carried.

OLD BUSINESS

None.

NEW MATTERS BEFORE THE DEADWOOD HISTORIC DISTRICT COMMISSION

None.

NEW MATTERS BEFORE THE DEADWOOD HISTORIC PRESERVATION COMMISSION

Purchase of Wooden Display Cases for Visitor Center – Mike Runge

Mike Runge, City Archivist, appeared before the Commission requesting permission to have two wooden display cases constructed and installed at the Deadwood Information/Visitor Center located at 3 Siever Street. He explained that the first case is to replace the existing case that houses one of the pieces from

the Sogge Collection. He said the current case is pushed up against the wall and is vulnerable to potential theft or damage to the piece itself. He said he is asking for an enclosed case to be built to properly secure the display case, but also to allow protection from dust onto the display itself.

He said the second case would be placed in the conductor's room and would display some of the City of Deadwood's artifacts that are related to the railroad. Mr. S. Olson asked if it would be better to have Plexiglas on top of the cases rather than the proposed safety glass, to which Mr. Runge said, in his opinion, safety glass would be safer, as well as the fact that Mr. Dragoo who would be constructing the cases has built numerous display cases for the Adams Museum. *It was moved by Ms. Feterl and seconded by Mr. S. Olson to accept the quote from Dragoo Cabinetry in the amount of \$3,700.00 for the purchase of two wooden display cases with money to be expended from the Public Education line item. Aye – All. Motion carried.*

Purchase of Metal Storage Cabinets – Mike Runge

Mike Runge said the requested storage cabinets were budgeted for in the 2008 Archival budget and would be used to house the City of Deadwood's digital and photographic collection. He said the quote was received from local business, ABC Business Supply. *It was moved by Ms Feterl and seconded by Ms. Oberlander to approve the expenditure of \$1,000.00 for the purchase of two metal storage cabinets for the City of Deadwood Archives. Aye – All. Motion carried.*

Fall/Winter Internship Program – Mike Runge

Mike Runge said he is requesting permission to hire another intern to digitize the archaeological collections, in addition to digitizing the Lawrence County collections. He explained she would be responsible for photographing the pages using the digital camera that was acquired earlier this fall. *It was moved by Mr. S. Olson and seconded by Mr. Pike to recommend to the City Commission the hiring of Shayna Monnens as a fall/winter intern beginning November 1, 2008 at a rate of \$7.50 per hour. Aye – All. Motion carried.*

Agenda Change

It was moved by Mr. Pike and seconded by Ms. Feterl to move Item 7, Revolving Loan Fund/Retaining Wall Program, to this point in the meeting. Aye – All. Motion carried.

Revolving Loan Fund

Ms. Joy McCracken explained the financial report and the delinquency report for Revolving Loan.

Revolving Loan Fund Cash Disbursements

It was moved by Ms. Feterl and seconded by Mr. Pike to approve the cash disbursements for Revolving Loan in the amount of \$4,460.10. Aye – All. Motion carried.

Revolving Loan Fund/Loan Approval

Ms. McCracken explained that this was an unusual request. She explained there was a loan approved for the residents on 51 Taylor and they received Project Approval for a wooden deck. She said there is a question as to whether or not this could be considered a Life Safety project, but due to the Building Inspector, Keith Umenthum, being out of the office for a few days that has not been determined. She said if this was not approved at this meeting, they would have to wait another month for the contractor to be paid and the project is 90% complete. She said her proposal is to have this approved subject to Mr.

Umenthum's approval. She said if he does not approve it, Neighborworks has other resources that could be utilized, as this is a noncontributing home. She said it would have to be Life Safety or it would not be eligible for the loan. *It was moved by Ms. Feterl and seconded by Mr. S. Olson to grant the loan disbursement to 51 Taylor in the amount of \$8,337.78 based on the approval of the building inspector qualifying it as Life Safety. Aye – All. Motion carried.*

Revolving Loan Fund/Loan Approval

It was moved by Mr. S. Olson and seconded by Mr. Pike to approve the loan for John Hopkins at 308 Williams Street at 0%, Special Needs Elderly in the amount of \$4,887.00. Aye – All. Motion carried.

NEW MATTERS BEFORE THE DEADWOOD HISTORIC PRESERVATION COMMISSION-CONTINUED

52 Taylor Avenue – Storm Door – Mike Olsen

Case #08090. Historic Preservation Officer, Kevin Kuchenbecker, explained that the applicant is requesting Project Approval to install a 36” storm door on the south side of the structure located at 52 Taylor Avenue in the Ingleside Planning Unit, which is a noncontributing structure built circa 1944. He said the applicant proposes to install a new 36” Hartford green Pella aluminum full-view storm door on the kitchen door to match the existing windows and storm doors. The proposed work and changes will not encroach upon, damage or destroy the resource, nor have an adverse effect on the character of the building or the historic character of the district. *It was moved by Mr. Pike and seconded by Ms. Feterl that based upon all the evidence presented the finding is that this project does not encroach upon, damage or destroy any historic property included in the National Register of Historic Places or the State Register of Historic Places.*

It was moved by Mr. Pike and seconded by Ms. Feterl that based upon the guidance of the United States Department of Interior Standards for Historic Preservation projects in 36 CFR 67, the project is not adverse to Deadwood and approves the project as presented. Aye – All. Motion carried. (The staff report is attached hereto on Exhibit A and incorporated herein by this reference.)

419 Cliff Street – Roof, Sheathing & Trim Boards – Nancy Redinger

Case #08091. Kevin Kuchenbecker explained that the applicant is requesting Project Approval for roofing, as well as sheathing and trim boards on the structure located at 419 Cliff Street in the Pluma Planning Unit. He said the house is less than 50 years old and cannot contribute to the Deadwood National Historic Landmark District. The applicant proposes to replace the existing asphalt shingles with new metal roofing, as well as new sheathing and trim boards. The proposed work and changes will not encroach upon, damage or destroy the resource, nor have an adverse effect on the character of the building or the historic character of the National Historic Landmark District, the National Register or the State Register Districts. *It was moved by Ms. Feterl and seconded by Mr. Pike that based upon the evidence presented the finding is that it does not encroach upon, damage or destroy any historic property included in the National Register of Historic Places or the State Register of Historic Places. Aye – All. Motion carried.*

It was moved by Ms. Feterl and seconded by Ms. Oberlander that based upon the guidance in the U.S. Department of Interior Standards for Historic Preservation Projects in 36 CFR 67 the finding is that the project is not adverse to Deadwood and approves the project as presented. Aye – All. Motion carried. (The staff report is attached hereto on Exhibit B and incorporated herein by this reference.)

14 Van Buren Avenue – Fence – Tom McNary

Case #08092. Mr. Kuchenbecker explained that the applicant is requesting Project Approval to build a fence at the rear and side of the structure located at 14 Van Buren in the Ingleside Planning Unit, which was built circa 1915. He said the building is a contributing resource to the Deadwood National Historic Landmark District and the National and State Registries. The applicant proposes to build a Redwood Post/Cedar fence, 50' wide by 8' high at the rear of the structure and 15' wide by 8' high on the southwest side of the structure. The applicant is requesting additional height to cover up heating elements on the commercial building behind his home. The fence will have a similar look to the tall fence behind the Adams House. The proposed work and changes will not encroach upon, damage or destroy the resource, nor have an adverse effect on the character of the building or the historic character of the district. *It was moved by Mr. Pike and seconded by Ms. Feterl that based upon the evidence presented the finding is that this project does not encroach upon, damage or destroy any historic property included in the National Register of Historic Places or the State Register of Historic Places. Aye – All. Motion carried.*

It was moved by Mr. Pike and seconded by Mr. S. Olson that based upon the guidance in the U.S. Department of the Interior Standards for Historic Preservation Projects in 36 CFR 67 the finding is that the project is not adverse to Deadwood and approves the project as presented. Aye – All. Motion carried. (The staff report is attached hereto on Exhibit C and incorporated herein by this reference.)

360 Main Street – New Construction – BY Development, Inc.

Case #07050. Kevin Kuchenbecker explained that the Commission has had the staff report for approximately three weeks and that the courts have remanded this project back to the Historic Preservation Commission for review. The applicant is requesting Project Approval at 360 Main Street (Cadillac Jack's) for the construction of an addition located in the City of Deadwood. He said they are requesting to add an addition with a couple of options submitted. Option 1 is 205' long by 45' tall. Option 2 is 290' long by 45' tall with various setbacks that are outlined in the application. It is located in the National Historic Landmark District, the State Register District and the National Historic Register District. It is also adjacent to four contributing resources in the National Landmark, the National Register and the State Register Districts; those being the Sinclair Station, Auer house, Auer garage and the Ferris house. The staff report outlines the guidelines for consideration and based upon those guidelines it does encroach upon, damage and destroy historic properties listed in the National and State Register of Historic Places. He said it also encroaches upon the district and damages the historic district in a variety of ways, as well as encroaches upon the individual properties; the Ferris house, Auer house, Auer garage and Sinclair Station, which are contributing resources to those districts. Based upon these findings, Mr. Kuchenbecker put together recommendations regarding the effects and that it would have an adverse effect. He said he also received the information from the applicant's Preservation Consultant, Mr. Jim Wilson, and also received comments from the State Historic Preservation Office regarding this project.

City Attorney, Jason Campbell, entered into the record the items that Mr. Kuchenbecker mentioned above: the memorandum decision, which is Exhibit 23; Mr. Kuchenbecker's staff report, which is Exhibit 24; Mr. Wilson's report, which is Exhibit 20; Mr. Wilson's Curriculum Vitae, which is Exhibit 21; and the letter from the State Historical Office, which is Exhibit 25.

Roger Tellinghuisen, representative for BY Development, said he wanted to make sure that the record is complete. He said that as was noted at the onset that this is not new application, but a pending application that has been in place since September of 2007. He said it is back before the Commission pursuant to a

remand order issued by the honorable Judge, Randall Macy, and pursuant to his memorandum decision, which has been entered into the record as Exhibit 23. He also wanted to make sure that the record is clear that all of the records that were compiled or gathered over the course of the three public hearings that were held last year in regards to this matter are still a part of this record. He said he needed to make record though, something that was discovered as a result of getting ready for this hearing tonight. He said the official record contains Exhibits 1 through 11 and then there is a gap, adding that there are no Exhibits 12 through 18. He said when they came back for the second transcribed hearing last year on November 1, 2007, Mr. Campbell and himself mistakenly read the transcript from the first transcribed hearing and thought the Exhibit numbering left off at 18, so when they introduced the Exhibit on November 1, 2007 they labeled it Exhibit 19. So as to clarify the situation the numbering is continuing from where it was left off last year.

Mr. Tellinghuisen said he had one additional Exhibit that he intends to put into the record, which will be Exhibit 22 and is titled "Cadillac Jack's Gaming Resort New Construction Comparison Review" as of October 2008. He said within the document there are eight sections. He said those sections contain reproductions of the photos that were introduced last year that showed the proposed project; an original proposal, which was a 45-degree cut on the front corners next to the Ferris House; slides, which took off 15' from the downstream end of the building; an aerial view of the Cadillac Jack's facility, which extends further down the street and picks up the First Gold property; the Deadwood Mountain Grand proposed new construction, which is the Slime Plant that was approved by the Commission; The Lodge at Deadwood proposed new construction, which is the convention center that has been approved; the Deadwood Recreation Center proposed new construction that was approved; an overlay of the proposed Cadillac Jack expansion laid over the approved Slime Plant project; and staff reports for the approved projects that he referenced before, those being the First Gold/Terrace Hotel, the First Gold parking structure, the Deadwood Mountain Grand, the Deadwood Rec Center and the Lodge at Deadwood.

Mr. Tellinghuisen said he felt it important for purposes of his presentation to at least state on the record with respect to the memorandum pursuant that Judge Macy issued. He said he felt it interesting in the Commission's proceedings earlier where they read into the record the finding that certain projects as proposed do not encroach upon, damage or destroy and whether or not they are contributing properties and felt it was exactly as the law required them to do under SDCL 1-19B-62 and consistent with Judge Macy's decision. However, he said it was also interesting that the Commission went on to make specific findings about them not having adverse effects, but felt this is where they made a mistake, as it is irrelevant.

Mr. Tellinghuisen read Judge Macy's memorandum decision, noting that on page 8 it states that if the local Historic Preservation Commission determines that the undertaking will not "encroach upon, damage or destroy" historic property listed on the State or National Register of Historic Places, the inquiry ends and the statute and ordinance no longer applies. Mr. Tellinghuisen said Judge Macy has sent this matter back to the Commission with specific instructions. He said there is a two-part analysis that they are to apply to this application, with the first being what has been applied to other projects by making a determination whether or not the project in the Commission's opinion will encroach upon, damage or destroy a historic property listed on the National or State Registers of Historic Places. He said Judge Macy's decision is very specific; that they need to identify the specific properties that are believed to have such encroachment, damage or destruction. He said he understands that in Mr. Kuchenbecker's report he refers to the district as a whole, but said that is not what Judge Macy's decision said. He went on to say

that if they determine that it encroaches upon, damages or destroys specific historic property, then they should move on to apply the criteria at 36 CFR 67. He said if you read that particular code of federal regulations you would very quickly discover that, in particular, the federal regulation addresses rehabilitation projects of certified historic properties. He added that if the Commission were to read 36 CFR 67 carefully, he challenged them to find any way that it can be applied to a non-historic property such as this. He added that when you look at this particular code of federal regulations, you have to start from the very beginning and cannot jump ahead to 67.7 where the guidelines are set forth.

Mr. Tellinghuisen said that the purpose behind the guidelines is to allow a property owner of a historically significant piece of property to have that property qualify for special tax treatment if they rehabilitate it pursuant to these guidelines.

Mr. Tellinghuisen said he wanted to leave the Commission with the fact that Mr. Kuchenbecker's report includes criteria that are not contained within 36 CFR 67. He said it refers to city ordinances, which purport to establish guidelines, but that is not what the statute says and it is not what Judge Macy ordered the Commission to do in his memorandum decision. He advised the Commission to critically and carefully read Judge Macy's decision before they begin the process of analyzing the material that has been provided by Kevin Kuchenbecker. He said once they start looking at the material provided by Mr. Kuchenbecker and the conclusory statement that he makes therein, they need to go back to 36 CFR 67 and see whether or not those specific standards he is referring to have authority in that code of federal regulation.

Mr. Pike said he wanted to clarify, that in his understanding, the Historic Preservation Commission has not approved the final design on the Slime Plant project, so they really do not know how big that would be. He said Mr. Tellinghuisen said on two different instances that it was approved and it has not been formally approved. Mr. Kuchenbecker said that when this was brought forth to the Historic District Commission, it was approved subject to final approval with the National Parks Service. Mr. Pike also wanted to clarify that this has been ongoing since July 2007 and not September 2007. Mr. Pike added that he would like to take Mr. Tellinghuisen's advice and read Judge Macy's report carefully, but needed a copy of those transcripts. ***It was moved by Mr. Pike to continue this matter for two weeks. Ms. Feterl seconded for discussion.***

Ms. Feterl stated that what Mr. Tellinghuisen has once again done, is present additional information and said there should come a time where this is all the information that needs to be looked at. Mr. Tellinghuisen said the problem is that there has been a decision entered and a new staff report made, and questioned why he should not be able to respond to that. Ms. Feterl clarified that he has brought forth additional information for the Commission to review. Mr. Pike said he did not interpret what Mr. Tellinghuisen brought forth for consideration as new information. He said he was just making a record and bringing to light a new way of looking at the entire analysis and did not consider any of his comments or exhibits as new information. Mr. Pike stated that he just provided a new methodology of interpreting the information they already have; therefore, that was the only reason for his motion to continue the matter. Mr. Derosier and Mr. S. Olson stated they agreed with Mr. Pike and felt it was not new information, but supporting information.

Mr. Tellinghuisen said he took "umbrage" to Ms. Feterl's comment that he brought forth new information. He said what he has brought forth is the law and it has always been the law. He said the

only new thing the Commission has is a decision that was rendered by Judge Macy back in June 2008 in response to an appeal from the denial in November 2007. *Aye – All. Motion carried.*

Items from Citizens Not on Agenda:

None.

Committee Actions and Reports:

Archeology: Commission representatives: Mike Olsen (chair), Darin Derosier and Willie Steinlicht
No report.

Archives: Commission representatives: Mike Olsen (chair), Steve Olson, and Matthew Pike
No report.

Budget: Commission representatives: Ronda Feterl (chair), Mike Olsen and Willie Steinlicht.
No report.

Cemetery: Commission representatives: Steve Olson (chair), Mary Ann Oberlander and Matthew Pike
Mr. Kuchenbecker explained the changes that the Cemetery Committee is proposing to the Cemetery Headstone Grant Program Application. *It was moved by Mr. S. Olson and seconded by Ms. Feterl to make the annotated changes to the Headstone Grant Program as presented. Aye – Derosier, Feterl, S. Olson and Pike. Abstain – Oberlander. Motion carried.*

GIS: Commission representatives: Steve Olson (chair), Mary Ann Oberlander, and Matthew Pike
No report.

Grants, Recognition, Advocacy & Public Education: Commission representatives: Ronda Feterl (chair), Willie Steinlicht and Mary Ann Oberlander.
No report.

Loans: Commission representatives: Ronda Feterl (chair), Willie Steinlicht and Darin Derosier.
No report.

Adams Museum: Commissioner Mary Ann Oberlander.
No report.

Chamber of Commerce: Commissioners Willie Steinlicht and Darin Derosier.
No report.

Days of '76: Commissioner Steve Olson.
No report.

Neighborhood Housing Services: Commissioner Willie Steinlicht.
No report.

Planning and Zoning: Commissioner Mike Olsen.
No report.

Demolition By Neglect: Commissioner Matthew Pike (chair) and Steve Olson.
No report.

Policies and Procedures: Commission representatives: Matthew Pike (chair) plus entire HPC
No report.

Historic Preservation Staff:
Mr. Kuchenbecker reported on the following:

There will be a joint meeting with the Historic Preservation Commission, the City Commission and the Planning and Zoning Commission to meet with consultants, Winter & Company from Boulder, Colorado regarding the development of the guidelines. That meeting is set for Wednesday, November 5, 2008 at 5:30 pm.

Notation was made of the monthly report from Mike Runge.

Notation was made of the letter from the Adams Museum and House regarding the HARCC Building.

The South Dakota Heritage Fund and the Historic Homestake Opera House Society will present The Phantom of the Opera on Saturday, November 1, 2008 at the Opera House in Lead.

He explained the memorandum regarding overhead utility lines behind the Visitor Center and the burying of those lines to service Deadwood Mountain Grand Resort. Mayor Toscana said bonded funds could be used for this project. ***It was moved by Ms. Feterl and seconded by Ms. Oberlander to recommend to the City Commission to consider the utilities on Siever Street as a bonded project. Aye – All. Motion carried.***

Other Business:
None.

Adjournment:
Hearing no further business to come before the Commission at this time and no objections from the Commission or the audience, Vice-Chairman Derosier adjourned the meeting at 6:05 pm.

ATTEST:

Willie Steinlicht
Chairman, Historic Preservation Commission
Ronda Morrison, Recording Secretary