

**DEADWOOD HISTORIC PRESERVATION COMMISSION**

**Wednesday, August 4, 2010 ~ 5:30 p.m.**

City Hall, 108 Sherman Street, Deadwood, South Dakota

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1. Call meeting to order– Chair Darin Derosier
2. Approval of Minutes
3. Voucher Approval
4. Old or General Business
  - a. Case# 10035 – 30 Pine Street – New Construction – Tentexkota, LLC
  - b. Case# 10026 – 350 Williams Street – Garage – James Fletcher
  - c. Case# 10034 – 874 Main Street – Driveway – Dale & Susan Berg
5. New Matters before the Deadwood Historic District Commission
  - a. Case# 10038 – 764 Main Street – New Construction – Michael & Robin Berg
6. New Matters before the Deadwood Historic Preservation Commission
  - a. Case# 10036 – 880 Main Street – Garage – Jim & Rhonda Van Den Eykel
  - b. Outside of Deadwood Grant – Pyle House – GRAPE Committee
  - c. Not-for-Profit Grant – Deadwood Elks – GRAPE Committee
7. Revolving Loan Fund/Retaining Wall Program Update.
  - a. Retaining Wall Applications
  - b. Revolving loan Program/Disbursements
  - c. Retaining Wall Program/Disbursements
8. Items from Citizens not on agenda (*Items will be considered but no action will be taken at this time.*)
9. Committee Actions and Reports (*Items will be considered but no action will be taken at this time.*)
10. Staff Report (*Items will be considered but no action will be taken at this time.*)
11. Other business
12. Adjournment

**EXECUTIVE SESSION – LEGAL MATTERS – NO ACTION TO BE TAKEN**

**CITY OF DEADWOOD**  
**HISTORIC PRESERVATION COMMISSION**

**Wednesday, August 4, 2010**

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

**Absent Historic Preservation Commission:** None.

**Present Deadwood City Commission:** Mayor Francis Toscana and Commissioners Georgeann Silvernail and Lenny Schroeder.

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**All motions passed unanimously unless otherwise stated.**

A quorum being present, Chairman Darin Derosier called the Deadwood Historic Preservation Commission meeting to order on Wednesday, August 4, 2010 at 5:30 p.m. in Deadwood City Hall located at 108 Sherman Street, Deadwood, SD.

**Approval of Minutes**

*It was moved by Mr. Steinlicht and seconded by Mr. M. Olsen to approve the minutes of July 14, 2010 Aye – All. Motion carried.*

**Voucher Approval**

**Operating Account:**

*It was moved by Mr. M. Olsen and seconded by Mr. Steinlicht to approve the HP Operating Account in the amount of \$11,393.84. Aye – All. Motion carried.*

**Bonded Account:**

None

**OLD OR GENERAL BUSINESS**

*It was moved by Mr. M. Olsen and seconded by Mr. Steinlicht to remove Case# 10035 from the table. Aye- All. Motion carried.*

**Case# 10035 – 30 Pine Street – New Construction – Tentexkota, LLC**

Mr. Kuchenbecker stated that his initial analysis, from the July 14, 2010 HPC Meeting, held as the applicants had not brought forward any changes since that meeting. He also noted the affidavit, attached hereto on Exhibit A and incorporated herein by this reference, received from the ownership group of Tentexkota, LLC. Mr. Kuchenbecker stated that representatives from the ownership group, as well as

Tentexkota's architect were present and turned the meeting over to Mr. Ron Wheeler, managing partner for Tentexkota .

Mr. Wheeler said that it was a pleasure to be in front of the Commission. He stated that he had been successfully working with the Commission on this project for several years and that in those years the plans and drawings that were brought before the Commission always included plans for the construction of a 100 room hotel. Mr. Wheeler stated that all of the loans and financing that they have been able to pull together are based on a 100 room hotel. He explained that if the plans for the 100 room hotel are not approved that the owners will have two major problems. Mr. Wheeler said that the first problem would be that they would be in default of their loan and the second problem would be the loss of cash flow associated with the loss of 25 rooms which would significantly affect the owners' ability to satisfy their debt load. Mr. Wheeler stated that the cost of the project had risen approximately five million dollars in the past four years. Mr. Wheeler noted, for example, the slide on the back of the hill that threatened the integrity of the Slime Plant. Mr. Wheeler stated that this alone cost the owners \$500,000 dollars as they had to put in soil anchors to stabilize the soil and protect the structure. Mr. Wheeler also noted that they had had to spend a great deal of money hauling out contaminated soil, wood, and concrete. Mr. Wheeler stated that he believed that the project is a good project and that it is the only way to save the historic Slime Plant.

Mr. Derosier thanked Mr. Wheeler for coming before the Commission and for presenting the Affidavit. He noted that, as stated in the Affidavit in #7, the ownership partners have worked closely with the Commission and Mr. Kevin Kuchenbecker, historic Preservation Officer, to come up with viable plans for the rehabilitation of the Slime Plant. He stated that they have come to the Commission with designs and have always been given positive feedback on the direction of the project. Mr. Derosier also stated that it was important that the owners had demonstrated the economic hardship that would result from the loss of 25 hotel rooms.

Mr. S. Olson stated that he was not adverse to a 100 room hotel and that he understood the economic hardship associated with the loss of 25 rooms; however, he questioned if there was ever any consideration to step the structure back along the hill as had been done historically. Mr. Wheeler stated that there had been some discussion about doing this; however, the foundation and excavation costs associated with this design alternative had made this option economically unviable.

Mr. Steinlicht stated that he agreed with Mr. Derosier and that the historic structure was actually higher than the proposed hotel. He also stated that the hotel itself was actually shorter than the Slime Plant. Mr. Wheeler stated that the opinion of the staff is that there is a spatial encroachment. He stated that he understood where this opinion was coming from as it would be more historically accurate to step the structure up the hill; however, this was simply not economically feasible. Therefore, he stated that they have done the best that they can with materials and planning to mitigate damages etc.

Ms. Feterl stated that she believed that one of the HPC Commissioners had suggested in 2007 that Tentexkota work with the National Park Service. Mr. Wheeler stated that this was a requirement if the owners were looking for tax credits. He stated that it became obvious to them that it would take the National Park Service so long to make a decision that it simply did not make sense to try to work with them. Mr. Wheeler noted that they had, however, sent the National Park Service window designs and some materials and that the Park Service had come back with some comments about colors and so forth. Ms. Feterl stated that she had spoken with Mr. Kuchenbecker and that it is her understanding that there is a three part certification process for tax credits. Mr. Kuchenbecker stated that this was correct for the rehabilitation tax credits. Mr. Kuchenbecker stated that Tentexkota had submitted the first part of the

application which certified them as eligible to receive the tax credits. He noted that they are in phase II. He stated that earlier on Tentexkota was working with a design team to complete this second phase. Mr. Kuchenbecker stated that if one thing was done on the inside, which HPC has no authority on, that violated their standards then they would not get the tax credit. Mr. Wheeler stated that this was a very valid point. He stated that they gave up on the tax credits not because they did not think that they were achievable, but because they would not live long enough to get a ruling. Ms. Feterl asked Mr. Wheeler if he had seen the information that Mr. Kuchenbecker had handed out about economic hardship. He stated that he had. Ms. Feterl asked Mr. Kuchenbecker if he believed that Tentexkota had satisfied all of the requirements of the statute in his affidavit. Ms. Feterl thanked Mr. Wheeler for working with the Commission. She stated that they had always been very upfront; however, she clarified that she wanted Mr. Kuchenbecker's opinion as to if Tentexkota had satisfied the requirements for economic hardship. Mr. Kuchenbecker stated that for the most part he believed that they had. Ms. Feterl asked if Tentexkota had satisfied requirement D which states that other reasonable uses for the structure must be considered. Mr. Kuchenbecker stated that since this was the only proposal brought forward, that it appears that this requirement has been met. Ms. Feterl asked Mr. Wheeler what percentage occupancy their loss had been based on in their affidavit. Mr. Wheeler stated that it was based on 85% room occupancy with a set room rate.

Mr. S. Olson referred to Mr. Kuchenbecker's staff summary sheet and questioned what would happen to the façade easement if the project is found to be adverse to Deadwood. Mr. Wheeler stated that he could not answer this question. He noted, however, that they would rather lose the money from the easement than lose the financial viability of the project. Mr. Wheeler further clarified that they did not want to lose this money however. Mr. Toscana stated that he and Mr. Kuchenbecker probably disagreed on this matter. Mr. Toscana stated that he did not think that it did affect the easement. He noted that Mr. Jason Campbell, Deadwood City Attorney, had stated that he did not think that it would necessarily jeopardize the façade easement. He stated that Mr. Kuchenbecker is looking at it as a project as a whole, while he is looking at it as the Slime Plant. Mayor Toscana stated that he did not think that the hotel would jeopardize the easement. Mr. Kuchenbecker stated that the Commission can disagree with his assessment as they have the ultimate say on the project. He noted that if they determined that there is not an adverse spatial affect then there would be no possible jeopardy to the easement. Mr. Pike stated that he wanted to pick up on exactly that point.

Mr. Pike stated that when he started going through all of the old information associated with the project he came up with a different conclusion which centered around Mr. Jason Haug's opinion and was mimicked in Mr. Kuchenbecker's assessment. He stated that Mr. Haug had submitted a letter on July 12 and in that letter he used a series of five pictures to support his decision that the proposed hotel had a dominating skyline. In the pictures he had used a red marker to draw lines to demonstrate how historic rooflines had achieved the stepping up of the hillside. Mr. Pike stated that the conclusion that he had come to was that while the lines drawn by Mr. Haug were reasonable, different lines associated with rooflines could also be obtained from the same pictures. From this he concluded that the proposed project did not somehow run afoul of historic rooflines. He noted that the overall length of the proposed hotel is 20-30% shorter than the Slime Plant and that the overall height is inline with other tall structures in Deadwood.

***It was moved by Mr. Pike and seconded by Mr. Steinlicht 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 and therefore moved to grant a Certificate of appropriateness.*** Ms. Feterl stated that, regarding height, the

Commission has always taken an average and then added up to 10%. She stated that they have always gone by this rule. Ms. Feterl stated that it is true that the Slime Plant Hotel will not be the tallest building in Deadwood; however, other surrounding buildings are smaller. She stated that she continues to struggle with the project. Ms. Feterl explained that she did not feel it was the Commission's place to come up with a decision based on whether or not Tentekota gets the façade easement or not. Ms. Feterl stated that they needed to use their guidelines to see where the project fits. Ms. Oberlander asked Mr. Kuchenbecker what he thought about Mr. Pike's conclusion. Mr. Kuchenbecker stated that he could see where Mr. Pike was coming from. Mr. Derosier stated that it was important to remember that the Commission does not have to agree with Mr. Kuchenbecker 100% of the time. He noted that this was not to short hand Mr. Kuchenbecker simply that the Commission did not always have to come to the same conclusion as Mr. Kuchenbecker. ***Aye – Pike, Derosier, S. Olson, and Steinlicht. Nay – Oberlander, Feterl, and M. Olsen. Motion carried 4-3.*** (The Affidavit, Staff Report, and Mr. Pike's document on the roofline are attached hereto on Exhibit A and incorporated herein by this reference).

**Case# 10026 – 350 Williams Street – Garage – James Fletcher**

Mr. Kuchenbecker stated that the applicant was present. He noted that the case had been previously reviewed. Mr. Kuchenbecker stated that from this review there were questions on the height of the proposed structure as well as questions on the type of fencing and garage doors. Mr. Kuchenbecker explained that the garage itself would sit over ten feet high. He stated that the question at hand was whether or not it fit into the district. He added that there are many vault style garages; however, this would appear to be the tallest in the neighborhood. Mr. Kuchenbecker stated that while the applicant had made an attempt to mitigate concerns associated with the proposed garage doors and fence style, because of the height and the fact that there was not historically a garage on the proposed location his finding is that the project does encroach upon or damage the original historic integrity and therefore may have an adverse affect on the district.

Mr. Derosier asked the applicant Mr. Fletcher if he had anything to add. Mr. Fletcher stated that one of the main reasons why the proposed structure is higher than the rest is that the land slopes back and rises up about 3 feet. He noted that the structure would not be much taller than other structures. Mr. Derosier asked if Mr. Kuchenbecker had any designs suggestions. Mr. Kuchenbecker stated that most design issues, except for the height were addressed. He noted that the proposed structure would be about 1 foot higher than any other garage structure in the neighborhood. He stated that if he were in the Commission's shoes he would find that the project does encroach upon the existing structure but that it does not have an adverse affect on the historic district. Mr. Fletcher stated that the addition would actually look nice and be a nice addition to the area. Mr. Kuchenbecker stated that there are several garage additions up there. He reiterated that it may encroach upon but probably does not have an adverse affect on the district.

Mr. S. Olson asked how this would be attached to the house. Mr. Kuchenbecker stated that the proposed structure would not be directly in front of the house that it would actually be off to the side a little.

***It was moved by Ms. Feterl and seconded by Mr. Pike that based upon all of the evidence presented the finding is that the project DOES encroach upon damage or destroy a historic property listed 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 all of the evidence presented that the project is ADVERSE to Deadwood but that the applicant had explored All REASONABLE AND PRUDENT ALTERNATIVES and therefore moved to Grant a project approval. Aye- Oberlander, Feterl, Derosier, S. Olson, and Steinlicht. Nay – Pike, and M. Olsen. Motion carried 5-2.*** (The staff report is attached hereto on Exhibit B and incorporated herein by this reference).

**Case# 10034 – 874 Main Street – Driveway – Dale & Susan Berg**

Mr. Kuchenbecker noted that the applicants were not present. He stated that on May 13, 2009 the use of concrete pavers to construct a driveway had been approved. Mr. Kuchenbecker stated that this option no longer appeared to be a viable option to finish the driveway. Mr. Kuchenbecker stated that it was staff's opinion that the completed landscaping had altered the project; therefore, the original site and setting had been altered. He stated that it was staff's opinion that this had been done without damaging or destroying the site, thus it does not have an adverse affect on the character of the district. Mr. Kuchenbecker also noted that the Commissioners had been given a memo regarding the proposed asphalt driveway from Mr. JR Raysor, Public Works Director. Mayor Toscana stated that he was confused about the matter. He noted that it was his recollection that this project probably would not have been approved with an asphalt driveway in May of 2009. He stated that Mr. Kuchenbecker had thought deep and hard to try to save the project and that was when he came up with the concrete pavers with a lot of grass. Mayor Toscana stated that while he agreed with Mr. Raysor's concerns that these concerns were not within the HP Commission's jurisdiction. He stated that if HP approved the project then it may go to P&Z or another entity. Mayor Toscana stated that he was very upset that this project had been approved without being on the agenda. He noted that Mr. Berg's neighbor had asked for an opportunity to be present at the meeting. He stated that this neighbor was told that no action would be taken and then it was. He clarified that it was not the neighbor that was opposing the driveway that it was he that was opposing the project. Mayor Toscana stated that while the Berg's are wonderful people and the work done looked great that it was confusing that a project would be approved now that would not have been approved a year ago. Mayor Toscana asked that the Commission to request completion of the project in a timely manner using either pavers or some other agreed upon alternative.

Mr. Derosier stated that in a heavy rainstorm, such as the one that had occurred the day before, pavers would have failed. Mayor Toscana stated that he did not agree with him. Mr. Derosier stated that what he was saying was absolutely true. Mayor Toscana stated that this information, like Mr. Raysor's memo was irrelevant to the question of the project's adverse affect. He stated that if the project was adverse in May of 2009 he did not know how it was different now. Mr. Derosier agreed that the information he had presented was absolutely irrelevant to the determination of adverse or not.

Mr. Pike explained, to the public present, that the applicant had come before the Commission and he was approved without being on the agenda. He stated that the commission had quickly realized their error and corrected the error by rescinding the action.

Mr. Schroeder stated, in Mr. Derosier's defense, that concrete pavers would have ended up down the street. He stated that with this knowledge a new light is shed on how to deal with an adverse affect. Mr. Schroeder stated that even if a project may be adverse if in fact by going by the "book" a problem is created then the commission must go with the adverse affect or deny everything completely. Mayor Toscana stated that then Mr. Raysor's memo needed to be considered. He stated that this would create a problem for the City. Mr. Derosier stated that his neighbor paved a historic tennis court without even going before the Commission. He noted that this was adverse and they did not even go before the Commission. Mr. Derosier stated that this driveway does not have an adverse affect on the actual structure of the house; therefore, he doesn't see it as adverse at all. Mayor Toscana stated that a year ago Mr. Kuchenbecker stated that the driveway would be adverse. He noted that the driveway itself was adverse; Mr. Kuchenbecker came up with the pavers to try to mitigate the adverse affect. Mayor Toscana stated that the storm should have no bearing on their decision. Mr. Schroeder stated that it actually did.

Mr. M. Olsen stated that it did not. Mayor Toscana noted that there are other alternatives and those should be considered before approving the asphalt. Mr. Schroeder questioned if the commission tells the applicants to use pavers and a storm, such as the one that occurred yesterday, happens and the pavers ended up on the street, if the City would then put the pavers back in. Mayor Toscana asked why they would. Mr. Schroeder stated because he requested a different material and was required to use something that he did not request. Mr. M. Olsen stated that the Commission's consideration was not if the pavers would wash out etc. their consideration is solely if a project has an adverse affect on a structure. He stated that their job is to protect the National Landmark. Mr. M. Olsen explained that to do that they must follow the Secretary of the Interior's Standards. He noted that the affects of the driveway are not their concern. Mr. Kuchenbecker stated that through the process of allowing the driveway to come into play, the adverse affect has already occurred. Therefore, he questioned if there would be a greater adverse affect by going from pavers to asphalt. Mayor Toscana stated that he appeared to think there was a greater adverse affect a year ago; however, that maybe Mr. Kuchenbecker had now changed his mind. Mr. Steinlicht stated that the driveway had been allowed because of elderly residents. Mr. Toscana stated that this was why Mr. Kuchenbecker had gone to bat for the applicants noting that this was probably a mistake in hindsight. Mr. Pike stated that what Mr. Kuchenbecker had done, however, was mitigate the adverse affect. Mr. Pike stated that what it comes down to for him is that he respectfully disagrees that they must consider the what if's of the most extreme situations. He stated that he would play with the logic for a second however. Mr. Pike noted that more than twenty years ago this community made a determination that within the district brick paved streets were to be an integral part of identifying the core district. He asked if the rain had washed out a number of paved streets, if the City Commission would consider removing the bricks. He noted that this is essentially the logic in taking into consideration the weather in decisions being made. He questioned similarly if an addition is allowed and somehow this leads to leaking if the City would somehow be financially responsible for the damage to the addition since the Commission approved a certain structure. He stated that again this would not be the case. He stated that these are unforeseen consequences. Mr. Pike stated that the determination of this Commission is limited to the limited area and the defined parameters in which they have an ability to make a decision. He noted that weather does not come into the equation. Ms. Silvernail stated that she did agree with Mr. Pike to a point; however, the house is located outside of the historic district. Mr. Pike stated that this was correct that it was just outside of the district. Mr. Derosier stated that he agreed with his fellow Commissioners and stated that he should have kept his comments to himself. Ms. Oberlander asked if Mr. Kuchenbecker had visited with the applicant about alternatives. Ms. Oberlander stated that with the kind of rain that occurred yesterday anything could have happened. Ms. Oberlander said that Mayor Toscana had hit the nail on the head when he said that a year ago asphalt would not have been accepted. Mr. Schroeder stated that there are drainage possibilities that could be put in to allow for the use of brick pavers. Mr. Kuchenbecker stated that he believed that the project had changed for Mr. Berg, thus making the driveway more important to him than it was a year ago. Mr. Kuchenbecker stated that he did not think that Mr. Berg felt that open block pavers would work anymore. He stated, however, that he felt that Mr. Berg may be open to other options. Mr. S. Olson asked if Deadwood ordinances even required HP approval for flat work. Mr. Kuchenbecker stated that this was a good question. Mr. Derosier noted that this was why his neighbor was able to pour over the historic tennis court without obtaining HP approval or a building permit. Mr. Pike stated that he believed what triggered HP review in the current case was the grading and excavation that resulted in the driveway as this kind of work around a historic resource requires HP review.

***It was moved by Mr. Pike and seconded by Mr. M. Olsen to table Case# 10034 to provide Mr. Kuchenbecker time to discuss alternatives with the applicant and to determine the scope of authority***

*the Commission has on the matter. Aye – Pike, Oberlander, Feterl, M. Olsen, S. Olson, and Steinlicht. Nay – Derosier. Motion carried 6-1.* (The Staff report is attached hereto on Exhibit C and incorporated herein by this reference).

### **NEW MATTERS BEFORE THE DEADWOOD HISTORIC DISTRICT COMMISSION**

#### **Case# 10038 – 764 Main Street – New Construction – Michael & Robin Berg**

Mr. Kuchenbecker stated that the applicants were present. He noted that they had also presented material samples. Mr. Kuchenbecker also noted that the original application had requested the use of vinyl siding; however, they had switched vinyl for hardy plank siding. He explained that the project was originally denied on June 9, 2010 due to inappropriate design of the proposed residential structure in the side yard of 764 Main Street as well as for the encroachment upon the existing historic resource and for damaging and destroying the site and setting of the side yard of 764 Main Street where it appears that no structure was originally located. Mr. Kuchenbecker stated that the original design did not fit the scale, rhythm, proportions, materials, etc. to fit in with the historic district. He noted that Mr. Berg had worked hard to try to address many of these concerns. Mr. Kuchenbecker stated that as recently proposed the new residential construction appears to meet the standards and guidelines; however, there are still issues surrounding the site and setting of the existing contributing resource and adjacent structures.

Mr. Berg explained that the house would be situated on the lot with 12' on either side of the proposed structure. He noted that other houses on the block are situated with only 6' on either side. Mr. Berg pointed out that there would be plenty of parking for the proposed structure to share with the current structure. Ms. Feterl asked Mr. Berg if he had mentioned what the footage would be between the buildings. Mr. Berg stated that it would be 12' on either side of the Church and the current structure. Mr. Berg noted that there would be 16' between the current structure and the proposed structure for parking. Mr. Derosier asked if the current structure belonged to Mr. Berg. Mr. Berg stated that it did. Mr. Berg explained that the house would have tall, double hung wood windows, 2 1/2 feet by 5 feet. He also pointed out color samples but noted that they would be amenable to change. Mr. Berg stated that they would be using a 30 year shingle.

Ms. Feterl asked what else one could do with the site if you cannot build a house there. Ms. Oberlander stated that it is a yard and has historically always been a yard. Mr. Pike thanked Mr. Berg for submitting a new application. Mr. Pike stated that he wanted to clarify that this is a fundamentally new application. He also noted that the Sanborn Insurance Maps were not present in the application. He explained that they were a part of the last application. He stated that he did not necessarily want to continue the application; however, he wanted to know if the maps could be obtained easily and made a part of the record. Mr. Pike asked that without objection that the maps become a part of the report. Mr. Derosier asked if Mr. Pike would like the maps obtained at the moment. Mr. Pike stated that that would not be necessary. He simply wanted them to be included as part of the record. Mr. Pike stated that from the staff report when referencing the Deadwood Residential Neighborhood Design Guidelines as adopted he sees "does not appear," "does not incorporate," "does not imitate," "does not harmonize." The scale and mass of the building are still inappropriate. "From the U.S. Department of the Interior Standards, the new construction will drastically alter and change the space and spatial relationship of the district." Mr. Kuchenbecker stated that these were all from the original staff report. Mr. Pike stated that this is his concern. Now that he sees the design, which he stated was not unappealing, can the Commission get to a point where they are allowing an infill building in a place where the Sanborn Insurance Maps, as he recalls, show that a structure never existed historically. He stated that if the answer to that question is yes,

then the next question is does the proposal meet the standards for infill. If the answer is no, then there are one or two options, as demonstrated in the Tentexkota case, that allow the Commission to still move forward. Mr. Pike stated that he simply was not at a point where he could determine if it is appropriate to even put a building on the lot. He noted that before he could get to a point where he would examine the proposed design he needed to find a good reason to even put a building on the historic yard. Mr. S. Olson stated that he fully agreed. Mr. S. Olson reiterated Mr. Pike's concerns and stated that he too could not examine the design because he had not yet determined if it was even appropriate to place a structure on the lot. Mr. Kuchenbecker stated that this was exactly the point that he was getting at in his memo. He explained that if this was a lot that had lost a structure to a fire etc. as designed it appears to meet the standards for appropriate infill. However, we are dealing with a site and setting within the historic district that historically appeared to have no structure. Therefore, does any proposed house damage the historic integrity of the site and setting. Mr. Kuchenbecker stated that as far as he is concerned the house design is right in line. Mr. Pike stated that he does not see this lot as an undeveloped, available lot for construction. He sees it as a historic yard between a residence and a church rectory. He stated that it has been that way for the community's history. He stated this is where he struggles. Mr. Toscana asked what would happen if he wanted to put a garage there. He asked if the same arguments would apply. Mr. M. Olsen stated that they would for him. Mr. Pike stated that they would for him as well. Mr. M. Olsen asked if the lot was always one lot. Mr. S. Olson stated that he would find it hard to believe that it was always one lot. Mr. Pike stated that this new construction would give the impression that houses were closer together in this neighborhood than they historically were. He stated that it is the Commission's duty to prevent such impressions.

***It was moved by Mr. S. Olson and seconded by Mr. M. Olsen to table Case# 10038.***

Ms. Feterl asked why this would not be appropriate infill. She stated that Mr. Kuchenbecker stated that it is an appropriate house. Mr. Pike stated that this was not necessarily the question at hand. Ms. Feterl stated that in Mr. Kuchenbecker's memo the elements in a setting are the relationship of buildings to each other, setbacks, fence patterns, views, driveways, walkways, streets, and trees which create the character of the district or a neighborhood. She stated that she knows that there has never been a structure there; however, this is setting. The site is the relationship between the buildings and landscape features. She stated that it is important to design adjacent new construction which is compatible with the historic site. She stated that he has done this for her. Ms. Oberlander stated that any yard, that's big enough, in Deadwood could then be used for new construction. Ms. Feterl stated that she is struggling if he doesn't get a house will he put in a parking lot. She stated that this would look awful. Ms. Feterl stated that he could also put in a garage and since it is not a livable structure questioned if it would even come to the HPC. Mr. M. Olsen stated that he would like to see more research done. In particular he wanted to know if it was always one lot. He stated that if it was two lots then this mitigates the adverse affect. Mr. Kuchenbecker stated that this is a very good point. He stated that the first Sanborn Maps don't show up until 1885, but there could have been cabins etc at some point and time. He stated that the Commission must ultimately decide how important the setting is to the district. Mr. Steinlicht stated that even if it is one lot he can always subdivide.

***Aye – Oberlander, Feterl, Derosier, M. Olsen, S. Olson, Steinlicht. Nay – Pike. Motion carried 6-1.***  
(The Staff Report is attached hereto on Exhibit D and incorporated herein by this reference).

Mr. Kuchenbecker stated that the next step would include research into the plat. Mr. Pike thanked the Berg's for working so closely with the Commission and Mr. Kuchenbecker.

**NEW MATTERS BEFORE THE DEADWOOD HISTORIC PRESERVATION COMMISSION**

**Case# 10036 – 880 Main Street – Garage – Jim & Rhonda Van Den Eykel**

Mr. Derosier referred to Mr. Kuchenbecker's staff report and noted that the structure is not a contributing structure and that the work does not encroach upon, damage, or destroy any historic properties. He also noted that the garage is a newer structure.

*It was moved by Mr. M. Olsen and seconded by Ms. Feterl that based upon all of the evidence the finding is that this project DOES NOT encroach upon, damage, or destroy a historic resource nor does it have an adverse affect on the character of the building or the historic character of the State and National Register Districts, or the Deadwood National Historic Landmark District; and therefore, moved to grant a project approval. Aye – All. Motion carried.* (The staff report is attached hereto on Exhibit E and incorporated herein by this reference).

**Outside of Deadwood Grant – Pyle House – GRAPE Committee**

Mr. Kuchenbecker stated that the grant had been favorably reviewed by the GRAPE Committee. He explained that there were unencumbered 2010 funds that could be used for the grant. He noted that the Pyle House Museum had put together a wonderful grant application.

*It was moved by Mr. M. Olsen and seconded by Mr. Pike to recommend to the City Commission approval of the Outside of Deadwood Grant for the Pyle House Museum in the amount of \$6,300.00 for brick/mortar/and basement repair. Aye – All. Motion carried.*

**Not-For-Profit Grant – Deadwood Elks – GRAPE Committee**

Mr. Kuchenbecker stated that this grant had been favorably reviewed by the GRAPE Committee. He explained that the Deadwood Elks are waiting for an insurance settlement for roof damage. He noted that the Committee's share should not exceed 50% of the cost of the insurance settlement.

*It was moved by Mr. Steinlicht and seconded by Mr. Pike to recommend to the City Commission to approval of the Outside of Deadwood Grant for the Deadwood Elks in the amount of \$12,227.50. Aye – All. Motion carried.*

**REVOLVING LOAN FUND/RETAINING WALL PROGRAM UPDATE:**

**Retaining Wall Application**

None.

**Loan Committee Report**

**Revolving Loan Request – 753 Main Street- Northern Hills Alliance for Children**

Ms. McCracken stated that the Northern Hills Alliance for Children is requesting a \$50,000 loan, 0% life safety, with a 30 year amortization. She noted that the Alliance has done an excellent job of putting money on the table for the purchase and rehab of the building that will be used for childcare for the

community. She stated that the only money that they are waiting for is HP funding and two small grants. Ms. McCracken stated that since the report was written, there had been a building committee meeting at which they found that their construction costs had gone down. Ms. McCracken noted that the construction cost is now \$535,000 so they have sufficient funds on the table to do renovations. She explained that they also received a grant for operating costs from the John T. Vucurevich Foundation in the amount of \$195,000. She stated that this money will be drawn over the next three years. Ms. McCracken noted that they had also put together a three year pro-forma which has sufficient funds to service all of their debt. Ms. McCracken stated that in looking at the pro-forma she feels that it is very conservative. She stated that she does not see a problem in servicing this debt. She noted that she did not put a loan value because she did not know what the building will appraise for when it is completed. She stated that if the building appraises for what they have invested it would be at about 80%.

***It was moved by Mr. M. Olsen and seconded by Ms. Feterl to approve the loan request for the Northern Hills Alliance for Children at 753 Main Street in the amount of \$50,000 at 0% life safety. Aye- All. Motion carried.***

**Revolving Loan Request – 81 Stewart Street – Travis & Stephanie Floyd**

Ms. McCracken stated that the Floyd's are doing a lot of work with this property. She explained that with this loan they are replacing the roof and that they had some interior damage that they are using grant funds for. She stated that they would like to take advantage of the 0% loan for the roof. She stated that Mr. Keith Umentum, building inspector, had stated that this is a life safety issue. She also explained that they would like to take advantage of the siding program and the loan program. Ms. McCracken noted that their ratios are a little high; however, his income will be going up. She stated that the LTV value is based on the assessed value but noted that with all of the work that the assessed value should go up. She also mentioned that she is recommending to the applicant that they apply for the historic real estate tax moratorium.

***It was moved by Mr. M. Olsen and seconded by Mr. Pike to approve the loan in the amount of \$7,344.00 0% life safety for the roof at 81 Stewart Street Travis and Stephanie Floyd. Aye – All. Motion carried.***

***It was moved by Mr. M. Olsen and seconded by Mr. S. Olson to approve the loan in the amount of \$10,000.00 0% life safety special needs siding for 81 Stewart Street Travis and Stephanie Floyd. Aye – All. Motion carried.***

***It was moved by Mr. M. Olsen and seconded by Mr. Pike to approve the loan in the amount of \$3,570.00 5% for additional siding costs for 81 Stewart Street Travis and Stephanie Floyd. Aye – All. Motion carried.***

**Revolving Loan Program – 7 Emery- Floyd and Linda Miller**

Ms. McCracken stated that the Miller's are requesting subordination. She explained that the HPC Commission had granted the Millers several loans. Ms. McCracken stated that they have loans for Special Needs Vacant, Special Needs Siding, Special Needs Windows, and a 5% loan for a retaining wall. Ms. McCracken stated that right now they have outstanding loans in the amount of \$23,708.70. She explained that the Millers are refinancing their house and that the new loan will be in the amount of \$62,020.00. She stated that they are getting \$55,500.00 cash out. She stated that she recommended to the loan

committee to subordinate the first loan, special needs vacant, as it is seven years old in the amount of 9,999.70. She explained to the committee that if he is going to take \$55,500 out then maybe he should pay the rest of his loans off. Ms. McCracken stated that this was the recommendation that she received favorable comments from the Loan Committee on. She noted that Mr. Derosier had received a call from Mr. Miller regarding this matter. Mr. Derosier stated that Mr. Miller stated that it was his understanding that all HP loans would place HP in second or third position. Mr. Derosier stated that this was incorrect. That if no other loans are in place then they would be in first position. Mr. Derosier stated that Mr. Miller was adamant that HP was always in second or third position and could not understand why HP would not subordinate. Mr. Derosier stated that he had told Mr. Miller that it would be the Loan Committee's recommendation that HP subordinate the loan for \$9,999.70 and have him use his cash out to pay off the other loans.

Ms. McCracken stated that this would place HP in second position on the loan for \$9,999.70 only. Ms. McCracken stated that since the loan was seven years old and would be forgiven in about three years anyway, this was the compromise that the Loan Committee had come up with.

*It was moved by Mr. M. Olsen and seconded by Ms. Feterl to subordinate the loan in the amount of \$9,999.70 for special needs vacant but not the other loans to Floyd and Linda Miller at 7 Emery. Aye – Pike, Oberlander, Feterl, Derosier, M. Olsen, Steinlicht. Nay – S. Olson. Motion carried 6-1.*

#### **Revolving Loan Program – Cash Disbursements**

*It was moved by Mr. M. Olsen and seconded by Ms. Feterl to approve the HP Revolving Loan on Cash Disbursements in the amount of \$26,645.77. Aye – All. Motion carried.*

#### **Financial and Delinquency Report**

Ms. McCracken reviewed the delinquency report. She noted that she had received Mr. Blake Haverberg's July payment at the end of the month as agreed. She explained that Hickok's had received their appraisal and are now working with their attorney and Mr. Kuchenbecker to get the façade donated and the tax benefits of the donation sold. She stated that she has scheduled a visit with Ms. Betty Trevino. Ms. McCracken also noted that all of the paper work regarding the railroad society's moratorium had gone out for them to sign.

Mr. M. Olsen asked Ms. McCracken under the current guidelines for loans if non-contributing houses are not eligible for loans. Ms. McCracken stated that non-contributing houses are only available for loans in the event of life safety. Mr. M. Olsen asked if someone were to come in and asked to be declared a local historic landmark if they would then be eligible for loan money. Ms. McCracken asked Mr. M. Olsen if he was asking her if someone is trying to take a non-contributing structure and declare it a local historic landmark. Mr. M. Olsen stated that what he was asking is if you have a house that is non-contributing because it is outside of the 1939 landmark distinction but shows up on the architectural survey as a would-be contributing resource if the period of significance were extended could that property be declared a local historic landmark and therefore be eligible for money. Mr. Kuchenbecker stated that they would have to follow 1:19b:20-24 which provides the opportunity for local historic preservation commission to designate local historic districts. He noted however that he was unsure of what jurisdiction this gives commissions. Mr. M. Olsen stated that he brought this matter up because his neighbor desperately needs a new roof or the structure will fall down. Ms. McCracken asked if his neighbor is lower income. He said

she is. She stated that his neighbor should come and visit with her because there is probably funding through NeighborWorks. Mr. Kuchenbecker noted that in the event of a life safety issue, which it sounds like this case is, the property does not have to be a contributing resource.

Mr. Pike stated that when he has a pit in his stomach about a situation he has learned to act on his instincts. With that said, *it was moved by Mr. Pike and seconded by Mr. S. Olson to reconsider the subordination request for Floyd and Linda Miller at 7 Emery. Aye – All. Motion carried.* Mr. Pike clarified that this would allow for a revote on the subordination request.

*Aye – Oberlander, Feterl, Derosier, M. Olsen, Steinlicht. Nay – S. Olson, Pike. Motion carried 5-2.*

Mayor Toscana asked what just happened. Mr. Pike stated that if unanimous consent to reconsider a motion is obtained under Robert's Rules it is possible to redo the role. Mr. Pike stated that he is changing his vote. Mayor Toscana stated that he is confused about who is voting which way. Ms. Feterl stated that the motion will still pass. Mr. Derosier stated that it will simply pass 5-2 now instead of 6-1. Mr. Pike thanked the Commission.

**ITEMS FROM CITIZENS NOT ON AGENDA:**

Ms. Nyla Griffith thanked the Commission for approval of the loan for the Northern Hills Alliance for children. She also invited the HPC Commission to a groundbreaking for the daycare on August 18 at noon.

**COMMITTEE ACTIONS & REPORTS:**

Grants, Recognition & Advocacy: Commission representatives: Ronda Feterl, Matt Pike and Mary Ann Oberlander.

No report.

Archaeology, Archives & Acquisitions: Commission representatives: Mike Olsen, Willie Steinlicht and Steve Olson.

No report.

Budget: Commission representatives: Ronda Feterl, Darin Derosier Matt Pike.

No report.

Cemetery/GIS: Commission representatives: Steve Olson, Mary Ann Oberlander and Mike Olsen.

No report.

Demolition by Neglect: Commission representatives: Mike Olsen, Steve Olson and Matt Pike.

No report.

Loans: Commission representatives: Ronda Feterl, Willie Steinlicht and Darin Derosier.

No report.

Policies & Procedures: Commission representatives: Entire HPC.

No report.

Adams Museum: Commissioner Mary Ann Oberlander.  
No report.

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

Days of '76: Commissioner Mike Olsen.  
No report.

Neighborhood Housing Services: Commissioner Willie Steinlicht.  
No report.

Planning and Zoning: Commissioner Mike Olsen.

Mr. M. Olsen stated that P&Z approved a free standing, directional sign with a variance for Big D Oil at 402 Main Street. He noted that P&Z and the Board of Adjustment approved the final plat for Lot 1 Block 1 of Deadwood Stage Run. He stated that the final plat for Lot 2 a portion of R1, the Engine House, was approved which allowed the sale to be closed. He also noted the approval of a partial 5 ft variance from side yard setback at 10 Centennial for a driveway with retaining walls.

### **STAFF REPORTS:**

Historic Preservation Staff: Kevin Kuchenbecker, HP Officer; Michael Runge, Archivist; Deanna Berglund, Administrative Assistant; Virginia Peterson, Administrative Assistant.

Mr. Kuchenbecker reported on the following:

He thanked the Commission for their flexibility regarding the current meeting.

He reported on the reburial of the unknown pioneer that had taken place the week before. He thanked the City Staff as well as the Trolley Department, Public Works, Bob Jr., Bob Sr., and the fire department for all of their hard work. He stated that the reburial had been very respectful and successful. Mr. Kuchenbecker also noted that various spiritual leaders including a Taoist Priest from S. California, Father Kerry from Deadwood, as well as Wimar Mesteth from the Rosebud and Oglala Sioux Tribe were present. He stated that it was kind of a stressful week for staff. Mr. Kuchenbecker stated that on the morning of the reburial he prepared the skeletal remains in the Lakota tradition because the spiritual leader was unable to make it to City Hall. He stated that he had participated in purification ceremonies the day before the reburial including a sweat lodge and that he was very glad that he did so he was able to respectfully prepare the remains.

Mr. Kuchenbecker also noted that the Days of '76 was successful.

Mr. Kuchenbecker stated that the next HPC Meeting would be August 25.

He stated that he would be on vacation the week of August 9.

Mr. Kuchenbecker stated 8 out of 10 current retaining wall projects would be in the bid process in the next couple of weeks.

Mr. Kuchenbecker stated that on August 16 the Days of '76 Museum project would be re-bid.

He noted that he is still working closely with the owners of the Slime Plant on the parking garage.

Mr. Kuchenbecker noted a draft of the Resolution for the joint purchase of the Fassbender Collection. He explained that he was not looking for any action as the matter was not on the agenda and would be addressed by the City Commission. He simply wanted to let the HPC Commission know what was going on. Mr. Kuchenbecker stated that the City of Spearfish had already committed to the purchase and is waiting to hear from the other towns. He stated that the ownership had signed the purchase agreement for \$300,000, 10% down and payable over the course of the next five years. He stated that originally four cities were included, Spearfish, Deadwood, Belle Fourche, and Lead. He explained that they were unaware where Belle Fourche sits on the matter; therefore, Deadwood and Spearfish would be asked to pick up Belle Fourche's portion. He said there would be a joint powers agreement with a three member appointed committee from each city to sit on a governing board to oversee the curation and management of the collection. He stated that it was anticipated that the matter would be back on the City Commission agenda on August 16 with action to be taken.

Mr. Derosier asked if the money would come from Historic Preservation. Mr. Kuchenbecker stated that that was correct. Mr. S. Olson asked Mayor Toscana if there was a reason why Sturgis was not considered to be part of the ownership group. Mayor Toscana stated that this was the second time in two days that he had been asked this same question. He stated that he did not have an answer. Mr. S. Olson asked if Sturgis would be interested in being a partner. Mayor Toscana stated that he was not sure how much of the collection pertained to Sturgis. Mr. Kuchenbecker stated that most of the collection pertained to other areas. Mr. Steinlicht said that the cities included were probably included because Black Hills Studios were located in these towns. Mr. Kuchenbecker stated that with the cities included it would also only include Lawrence County.

Mr. Kuchenbecker also stated that there would be a brief Executive Session for Legal Matters after the conclusion of the night's meeting.

**OTHER BUSINESS:**

Mr. Derosier stated that he thought that the night's meeting had been very successful. He said that even though everyone had not agreed with each other, there had been a lot of really good discussion and thanked his fellow commissioners.

**ADJOURNMENT:**

Hearing no further business to come before the Commission at this time and no objections from the Commission or the audience, Chairman Derosier adjourned the meeting at 7:15 p.m. to executive session with no action to be taken.

ATTEST:

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Darin Derosier  
Chairman, Historic Preservation Commission  
Virginia Peterson, Acting Recording Secretary