

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

June 30, 2010

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Jim Shedd on Wednesday June 30, 2010 at 5:00 p.m. in the Deadwood City Hall Meeting Room located at 102 Sherman Street, Deadwood, SD 57732.

PRESENT PLANNING & ZONING: Jim Shedd, Mel Allen, Marie Farrier, Sheree Green and Larry Ryan.

PRESENT BOARD OF ADJUSTMENT: Mayor Francis Toscana, Mike Klamm, Lenny Schroeder and Georgeann Silvernail.

ABSENT BOARD OF ADJUSTMENT: Joe Peterson.

APPROVAL OF MINUTES:

Mr. Ryan moved to approve the minutes of the June 2, 2010 Regular Meeting, as mailed. Ms. Farrier seconded and the motion carried.

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

LUND ASSOCIATES - 3-D PRESENTATION ON DEADWOOD MOUNTAIN GRAND

Mr. Cam Lund from Lund Associates presented a 3-D presentation of the Deadwood Mountain Grand project to be located on Pine Street. He reviewed the renovation of the Slime Plant, proposed hotel and parking structure. Mr. Lund explained that through research of historic photos of the Slime Plant, it has been determined that the propose hotel actually sits lower on the hillside than the former buildings.

Mr. Ryan questioned where the entrance would be located. Mr. Lund stated that the existing north entrance would be sealed off and the new entrance would be located on Water Street through the parking structure. He noted that there would be a bridge over Whitewood Creek and pointed out a service entrance for loading and unloading for the entertainment facility. The public entrance would be located on the east side of the building.

Mr. Lund explained that the Assay office will be converted into a museum dedicated to the history of the Slime Plant. Mr. Ryan questioned what the projected date of completion of the hotel facility was. Mr. Lund stated that the entertainment venue and parking structure projected date is July 1, 2011 and the ninety-eight room hotel to be completed in three to four months after that. Mr. Toscana questioned if construction on the hotel would be started by July 1, 2011. Mr. Lund stated that it would be under construction; he explained that the project has to be built from the south end out to the north end.

Mr. Lund stated that the parking structure would have three hundred eighty (380) parking spots which include approximately fifty motorcycle parking. Mr. Lund stated that the parking structure would be place off of the VFW extending to Whitewood Creek. Mr. Lund explained that Water Street would become a one-way street that would extend through the parking structure then out behind City Hall. Ms. Silvernail expressed her concerns with Water Street becoming a one-way and questioned what would happen if Sherman Street were blocked for an emergency. Mr. Lund stated that Parking & Transportation was reviewing the proposal to make Water Street a one-way and noted that it was wide enough to keep it a two-way with a 14 foot clearance. He noted that the official decision had not been made.

Mr. Lund explained that the first floors of the parking structure would exit on to Pine Street and the second and third would exit on to Water Street to the south.

Mr. Allen questioned how people would pay for parking in the structure. Mr. Lund explained that the second and third levels would be coin metered. The lower level would be dedicated to Lawrence County staff and the VFW from 5:30 a.m. to 6:30p.m.; therefore not metered. The design does have an area for a potential ticket booth. Mr. Allen asked if it would be a City owned and operated parking structure. Mr. Lund stated to date, it would be.

Mr. Toscana explained that at a City Commission meeting Mr. Ron Wheeler, Deadwood Mountain Grand Representative stated that the investors were seeking other financing in hopes of building the parking structure without City financing. Mr. Toscana stated that the City is actively pursuing a Rural Development Grant. Mr. Lund stated that if the City does build the structure Deadwood Mountain Grand would lease 25% of the parking. Mr. Allen questioned the amount of Lawrence County parking the structure would house. Mr. Toscana stated the number of spaces was determined in the sale of the structure from the County to then owner, Bill McDavid. Mr. Lund stated he believed the number was seventy with an additional eighteen on the south end and the VFW would get twenty-four.

The Commission thanked Mr. Lund for the presentation.

SIGNS:

DEADWOOD SHRINE CIRCUS - TEMPORARY BANNER

Mr. Nelson stated that the applicants were requesting to display a temporary banner for the Deadwood Shrine Circus held June 26, 2010. Mr. Nelson stated that the application and approval by the Planning and Zoning Commission is "after the fact" because Mr. Umenthum had misplaced the application. Staff recommends approval of the temporary banner and waiver of the fee.

Mr. Allen moved to approve the temporary banner for Deadwood Shrine Circus and waiver of the fee "after the fact". Ms. Green seconded and the motion carried.

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

HARLEY KIRWAN - PAM'S PURPLE DOOR - 637 MAIN STREET - PROJECTING SIGN, TEMPORARY WALL SIGN AND WINDOW SIGN

Mr. Nelson stated that the applicant was requesting three signs at Pam's Purple Door at 637 Main Street.

Sign #1:

Mr. Nelson stated the first sign was a projecting sign to be located above the front entry doors. It would be 48"x 37" or 12.33 square feet made of painted wood with no variances required. Staff recommended approval of the permit for the projecting sign.

Ms. Green moved to approve the permit for the projecting sign for Pam's Purple Door at 673 Main Street. Ms. Farrier seconded and the motion carried.

<u>All in favor</u>	<u>-</u>	<u>4</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

Sign #2

Mr. Nelson stated the second sign was a temporary wall sign; no information was given as to the location. It would be 48"x 60" or twenty (20) square feet made of painted wood. A variance would be required because the type of signage is disallowed under section 15.32.130 of the sign ordinance. Staff recommended denial of the temporary wall sign.

Mr. Harley Kirwan explained that he had talked to Mr. Umenthum on Friday June 25, 2010 and had modified his application for sign #2 and #3 to make them both window signs. The dimensions of the window signage would be 27"x 33" or 50% of the space of the window.

Mr. Nelson asked if Mr. Kirwan had submitted a new application. Mr. Kirwan stated that Mr. Umenthum said that Mr. Kirwan would have to discuss the changes with the Commission. Mr. Nelson asked Mr. Kirwan if he was requesting two (2) window signs with 50% coverage of the windows. Mr. Kirwan stated he was and the text would remain the same as presented.

Mr. Nelson explained that no variances would be necessary, however it could be required that a new application be filled out. Mr. Allen questioned if Mr. Nelson knew if Mr. Umenthum approved of Mr. Kirwan's new proposal. Mr. Nelson stated that Mr. Umenthum was agreeable if he was willing to comply with the sign dimensions of 27" x 33".

Ms. Farrier questioned if the applicant would have to pay an additional fee. Mr. Nelson stated he would not be required to pay an additional fee and he question if Mr. Kirwan had taken down the banner on his building. Mr. Kirwan stated he had taken the banner down.

Mr. Allen stated that as long as Mr. Umenthum was in favor of the changes he should not be postponed.

Mr. Allen moved to approve the sign permit for sign #2 with the new dimensions with the stipulation that Mr. Keith Umenthum stands in favor of the changes.

Ms. Farrier questioned if the sign was temporary as stated in the application. Mr. Kirwan stated it would be permanently on the window. Ms. Farrier stated that what was presented in the Staff Report is entirely different than what the applicant is requesting. Mr. Kirwan explained proposed location has changed to be displayed permanently in the window and the dimensions would be smaller.

Ms. Silvernail noted from the Staff Report that the applicant must comply with the Sign Ordinance and Historic Preservation.

Mr. Nelson stated he felt Mr. Kirwan should fill out a new sign permit for sign #2 and sign #3. Ms. Farrier and Ms. Green agreed. Mr. Kirwan stated that the style was the same only the dimensions and location.

Mr. Allen stated he could withdraw his motion; however felt it was unnecessary to hold up the applicant because Mr. Umenthum was agreeable with the changes. Ms. Farrier stated that according to the Staff Report, Mr. Umenthum recommended denial as presented and Mr. Umenthum did not provide any written information regarding the changes discussed with Mr. Kirwan. Mr. Ryan suggested the Commission move forth with the sign as presented in Staff Report and deny the application. Mr. Kirwan stated that he had offered to submit a new application on Friday; however Mr. Umenthum stated he would have to go through the process with the Commission. Ms. Green questioned if Mr. Umenthum had had Mr. Kirwan fill out a new application. Mr. Kirwan stated that Mr. Umenthum did not have him fill out a new application.

Mr. Toscana stated that because Mr. Umenthum was not present he suggested the Commission wait until a time he could be present. Ms. Farrier agreed and stated that they need something in writing to support approval and what was presented in the Staff Report was to deny.

Mr. Allen withdrew his motion.

Ms. Farrier moved to deny the application for sign #2 as presented, until Mr. Umenthum provides additional paperwork to the Planning & Zoning Commission. Mr. Ryan seconded and the motion carried.

All in favor - 5
Opposed - 0

Sign #3

Mr. Nelson stated the third sign was a window sign to be located on the entrance door. It would be 27" x 60", made of vinyl or painted on the glass. A variance would be required because the size of the sign under section 15.32.280 of the sign ordinance requires the sign not to exceed fifty percent of the total area of the window. Staff recommended denial of the sign.

Mr. Kirwan stated again that the size of the sign was changed to conform with the sign ordinance.

Ms. Green moved to deny the application for sign #3 as presented, until Mr. Umenthum provides additional paperwork to the Planning & Zoning Commission. Ms. Farrier seconded and the motion carried.

All in favor	-	5
Opposed	-	0

Mr. Kirwan thanked the Commission.

PUBLIC HEARINGS:

PUBLIC HEARING FOR A REQUEST FOR A CHANGE OF ZONING - ENGINE HOUSE - 180 SHERMAN STREET

Mr. Nelson referred to the following staff report:

CITY OF DEADWOOD
REZONING ANALYSIS
REQUEST FOR
AMENDMENT TO
ZONING MAP

NAME: **City of Deadwood / Engine House**

LEGAL DESCRIPTION: **Plat of Bank Lot 2 and dedicated private access and utility easements, Located in a portion of Lot R1, City of Deadwood Railroad Property, All located in the NW ¼ of Section 26, T5N, R3E, B.H.M., Lawrence County, South Dakota**

ADDRESS: 180 Sherman Street

PRESENT ZONE: PU - Public Use District
PROPOSED ZONE: CE – Commercial Enterprise District
ASSESSOR'S NO: 30025-09200-000-00

BACKGROUND:

The applicant has submitted to the City a rezoning request from PU – Public Use District to CE – Commercial Enterprise District to allow for commercial business after the sale of the property. The PU – Public Use District is intended to provide locations for areas worthy of preservation due to their natural beauty and open space character or otherwise to provide for public uses which will serve the public good. The CE – Commercial Enterprise District is intended to provide locations for the development of a shopping area or center which will include commercial service establishments primarily catering to the retail service and merchandise needs of the local population. Gaming is not a permitted use in this district. The sketch plat has been set and the final plat will be done after the sale of the property at the buyer's expense.

The subject property is situated in Railroad Lot 1, known as the Sherman Street Municipal Parking Lot. The Engine House was restored with an ISTE A Grant and interpretive plaques presenting the railroad history of Deadwood were placed in the Engine House for public display; however, it was scarcely used or promoted and the rear portion of the Engine House was leased out to a party for bicycle rentals.

COMPLIANCE:

1. The Zoning Officer provided notice identifying the applicant, describing the project and its location and giving the scheduled date of the public hearing in accordance with Section 17.96.020
2. A sign was posted on the property for which the requests were filed.
3. Notice of the time and place was published in the designated newspaper of the City of Deadwood.

SECTION 17.100.030 -STANDARDS OF REVIEW:

In reviewing an amendment to the text of this Ordinance or an amendment to the Official Zoning District Map, the City Commission and Planning and Zoning Commission shall consider the following:

- A. Whether the proposed amendment is in conflict with any applicable portions of this Ordinance.
The application is not in conflict with the City of Deadwood zoning code. The CE – Commercial Enterprise Zone is a non-gaming zoning classification.
- B. Whether the proposed amendment is consistent with all elements of the Deadwood Comprehensive Plan.
The Comprehensive Plan Land Use Map depicts the area as Community Commercial and Open Space/Park. This use would be appropriate for the subject area.

- C. Whether the proposed amendment is compatible with surrounding Zone Districts and land uses, considering existing land use and neighborhood.
The subject property is near Bank Lot 1, owned by First Interstate Bank. That lot is also zoned CE – Commercial Enterprise District. The hardware store is zoned C1 – Commercial District. The remainder of the land surrounding the area is zoned PU – Public Use District since it is used for public parking.
- D. Whether and the extent to which the proposed amendment would result in demands on public facilities, and the extent to which the proposed amendment would exceed the capacity of such public facilities, including, but not limited to transportation facilities, sewage facilities, water supply, parks, drainage, schools, and emergency medical facilities.
The proposed project will not substantially impact the demand on the public facilities. The subject property is located in Zone X – Areas of 500-year floods; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees-from 100-year flood. The building has been in existence, and only new construction or substantial improvements are addressed in this flood zone. This structure would be considered non-conforming since it was built prior to flood regulations.
- E. The effect of the proposed amendment on traffic generation and road safety.
The generation of traffic should not exceed the previous uses located on the site. Since the land has set vacant for some time, some added traffic may come from a new business on the property. The area does have adequate parking to handle the added traffic and business.
- F. Whether the proposed amendment is consistent and compatible with the community character in the City of Deadwood.
The proposed amendment is in harmony with the overall character of existing development in the vicinity of the subject property.
- G. Whether there have been changed conditions affecting the subject parcel or the surrounding neighborhood, which support the proposed amendment.
The uses in the subject area are long established with the exception of the First Interstate Bank. The proposed amendment blends well with surrounding uses.
- H. Whether the proposed amendment would be in conflict with the public interest, and is in harmony with the purpose and intent of this Ordinance.
The proposed amendment will not be in conflict with the public interest. There have been no comments in support or against this amendment. Commercial business in Deadwood is needed and this type of development is needed. This amendment allows for a business to be brought to Deadwood and not be a gaming establishment. The change of zoning is in harmony with the purpose and intent of the ordinance.

ACTION REQUIRED:

1. Recommendation by Planning and Zoning Commission
2. First Reading by Board of Adjustment

Mr. Nelson stated that he did not receive any response from adjacent landowners.

Ms. Green moved to approve the request for a Change of Zoning at 180 Sherman Street from Public Use District to Commercial Enterprise. Mr. Ryan seconded and the motion carried.

All in favor	-	5
Opposed	-	0

Mr. Shedd closed the Planning and Zoning Commission and turned the meeting over to the Board of Adjustment.

Mr. Toscana opened the Board of Adjustment.

Mr. Klamm moved to approve the request for a Change of Zoning at 180 Sherman Street from Public Use District to Commercial Enterprise, as recommended by the Planning and Zoning Commission. Ms. Silvernail seconded.

Mr. Toscana noted a Change of Zoning is required to have two readings by the Board of Adjustment; second reading would be held on Tuesday July 6, 2010 at the City Commission Meeting.

The motion carried.

All in favor	-	4
Opposed	-	0

Mr. Toscana closed the Board of Adjustment and turned the meeting over to the Planning and Zoning Commission.

APPROVAL OF TEMPORARY VENDOR(S):

Biker Design Inc. - Gary Nowicki/Tom Recel - 629 Main Street

Mr. Nelson stated the applicant is requesting two outdoor vending locations at 629 Main Street and 594 Main Street. He noted that the fees and bonds have been paid and have provided sales tax numbers. Mr. Nelson explained that the applicant had not turned in the application in the required sixty (60) day time frame for review as set in the Vending Ordinance.

Mr. Dale Hansen, attorney representing Biker Design was present to answer questions regarding the proposed vending. Mr. Hansen stated the Vending Ordinance conflicts with the City's website online application that states the final day to submit applications for Rally vending was July 15, 2010. Mr. Hansen stated he hand delivered the applications on June 23, 2010 to Mr. Nelson and discussed the sixty (60) day review. Mr. Hansen stated that it was unfair that the application states July 15, 2010 as a deadline and that the complete Vending Ordinance is not listed close to the application on the website. He stated that last year the applicant applied and was granted a Vendors license a week prior to the Rally. Mr. Hansen requested that the requirement be July 15, 2010 not sixty (60) days as set by the Vending Ordinance.

Ms. Headstrom stated that it was the feeling of most downtown business owners that Deadwood does not need any additional vendors. She stated that the downtown business owners pay taxes year around and it is not fair to the owners when the temporary vendors take away their business selling the same merchandise. She stated she did not want to see Deadwood turn into Sturgis.

Mr. Hansen stated that the City Ordinance does allow temporary vending in Deadwood. Mr. Toscana agreed that the City Ordinance does allow temporary vending. Mr. Toscana explained that in meetings in late May and June with business owners, the Chamber of Commerce, and City Staff, the common consensus was that no temporary vendors would be issued because the sixty (60) days had lapsed. Mr. Toscana stated that in the past the sixty (60) day requirement was not enforced; however, the Vending Ordinance clearly states that it is a requirement. Mr. Toscana stated that after the meetings he felt that the property owners of 629 and 594 Main Street would not be asking for temporary vending on their property.

Mr. Hansen questioned how Mr. Toscana could justify having on the City website the application that states July 15, 2010 for rally registration, then fall back on the ordinance. Mr. Toscana stated that he has no control over what goes on the City website and apologized to Mr. Hansen's clients; however the City Ordinance clearly states sixty (60) days in advance. Mr. Toscana explained that a year ago for whatever reason, the City was lenient and the sixty (60) day review was disregarded. Mr. Toscana stated he has been led to believe that according to the City Attorney, Jason Campbell, the Commission does have a right to require the sixty (60) day review.

Mr. Hansen questioned how a business can come to the City in good faith and do business in the City of Deadwood. Mr. Hansen stated that the City is being unfair and could take legal action against the City. Mr. Hansen stated his client is not a "fly by night" operation and has locations throughout the Black Hills during the Sturgis Rally. He explained that they have a good relationship with the South Dakota Department of Revenue and pay sales tax. He stated that last year the sixty (60) days was not enforced.

Mr. Shedd stated that the sixty (60) days is stated in the ordinance and that he was not going to go against the City ordinance. Mr. Hansen questioned why he would go against the official City website and he also noted that the vending page does not refer a person to the Vending Ordinance. He stated that what he was asking for was not out of line and that if the City wants to change the ordinance it is their right however it must be done fairly. It must be done lawfully and cannot be "pick and choose". Mr. Hansen stated that the temporary vendors were approved on July 23, 2009 and he felt that they were not received sixty (60) days in advance.

Mr. Toscana suggested that the Commission could continue the application until an opinion of the City Attorney is received. Mr. Nelson stated that Mr. Campbell felt the City Ordinance is more solid than the City website.

Ms. Green moved to deny the application for a temporary vendor, Biker Design Inc. based on the City Attorney's option and as set by the City Ordinance. Mr. Ryan seconded.

Mr. Hansen asked if the application could be continued until such time as a written City Attorney opinion could be provided to the Commission and his client. Mr. Hansen also requested to speak with Mr. Campbell.

Ms. Green withdrew her motion.

Ms. Green moved to table the applications for a temporary vendor, Biker Design Inc. until July 21, 2010 and requested a written opinion from the City Attorney. Mr. Ryan seconded and the motion carried.

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

OPEN:
None

ADJOURNMENT:

Ms. Farrier moved to adjourn the Joint Meeting of the Planning and Zoning Commission. Ms. Green seconded and the motion carried.

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

There being no further business, Planning & Zoning Commission adjourned at 5:50 p.m.

ATTEST:

Mr. Jim Shedd
Chairman
Planning and Zoning

Ms. Sheree Green
Secretary
Planning and Zoning