

DEADWOOD HISTORIC PRESERVATION COMMISSION

Wednesday, February 12, 2014 ~ 5:00 p.m.

City Hall, 108 Sherman Street, Deadwood, South Dakota

1. Call meeting to Order
2. Approval of Minutes
 - a. Approval of Minutes from January 29, 2014
3. Voucher Approval
4. Old or General Business
 - a. Roger Brooks Assessment and Art of Branding Workshops – Feb. 13 & 14
 - b. Mayor's State of the City Address – Feb. 20 at 5:30 PM
 - c. Resolution to Exchange City Land with Private Owner
 - d. Case #14001 – Optima, LLC – 366 Main St – Demolition or Move
 - e. Case #14002 – Optima, LLC – 370 Main St – Move
5. New Matters before the Deadwood Historic District Commission
6. New Matters before the Deadwood Historic Preservation Commission
 - a. Case #14004 – 15 Denver - Erin Little & David Folger
 - b. Special Needs Siding and Window Programs – 15 Denver – Erin Little & David Folger
7. Revolving Loan Fund/Retaining Wall Program Update
 - a. Retaining Wall Applications
 - b. Revolving loan Program/Disbursements
 - 378 Williams – Ferd Balkenhol
 - 15 Madison – Gary & Dee Hurdt
 - 25 Denver – Felice Marks
 - 55 Taylor – Tim Coomes
 - 15 Denver – Erin Little & David Folger
 - c. Retaining Wall Program/Disbursements
8. Items from Citizens not on agenda (*Items considered but no action will be taken at this time.*)
9. Staff Report (*Items considered but no action will be taken at this time.*)
10. Committee Reports (*Items will be considered but no action will be taken at this time.*)
11. Other business
12. Adjournment

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

DEADWOOD HISTORIC PRESERVATION COMMISSION

Wednesday, January 29, 2014 ~ 5:00 p.m.

City Hall, 108 Sherman Street, Deadwood, South Dakota

1. Call meeting to Order
2. Approval of Minutes
 - a. Approval of Minutes from January 8, 2014
3. Voucher Approval
4. Old or General Business
 - a. Cemetery Headstones
 - i. #14001 – Hoffmann, Albert E – DOD 7/25/1928
 - ii. #14002 – Brown, James E – DOD 9/22/1943
 - b. Outside of Deadwood Grant Program recommendations
 - i. Black Hills Historic Preservation TrustMeeker RanchCuster
 - ii. Black Hills Mining MuseumArchival Development..... Lead
 - iii. City of Buffalo GapCommunity Center Buffalo Gap
 - iv. Fall River County Historical SocietyPioneer MuseumHot Springs
 - v. United Church of ChristExterior Rehabilitation..... Belle Fourche
 - vi. Meeting the NeedWindow repairs Keystone
 - vii. NeighborWorksStreet Flags Lead
 - viii. Newell MuseumChurch MuseumNewell
 - ix. Northern Hills Ranger District.....Hardy Guard StationO'Neill Pass
 - x. SDSHS FoundationArchival Development..... Pierre
 - xi. Tomahawk Lake Country ClubFairway Preservation Deadwood
 - xii. Verendrye MuseumRailroad Depot Project Ft. Pierre
 - xiii. Yankton County Historical Society.....Mead BuildingYankton
5. New Matters before the Deadwood Historic District Commission
6. New Matters before the Deadwood Historic Preservation Commission
 - a. Case #14001 - 366 Main St - Optima LLC
 - b. Case #14002 – 370 Main St – Optima LLC
 - c. Case #14003 – 874 Main St - Dale Berg

Continued on Next Page

7. Revolving Loan Fund/Retaining Wall Program Update
 - a. Retaining Wall Applications
 - i. 4 Sampson St – Verna Sandidge
 - b. Revolving loan Program/Disbursements
 - i. 17 Fillmore – Kevin Bloom
 - ii. 91 Forest – Naomi Gathman
 - iii. 23 Emery – Melody Lawson
 - iv. 23 Emery – Melody Lawson
 - v. 42 Lincoln Ave – George Wood
 - c. Retaining Wall Program/Disbursements
8. Items from Citizens not on agenda (*Items considered but no action will be taken at this time.*)
9. Staff Report (*Items considered but no action will be taken at this time.*)
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CITY OF DEADWOOD
HISTORIC PRESERVATION COMMISSION

Wednesday, January 29, 2014

Present Historic Preservation Commission: Chairman Willie Steinlicht, Vice-Chair George Milos, Michael Johnson, Lynn Namminga, Chuck Williams and Darin Derosier were present. Ms. Joy McCracken, Executive Director, and Mike Walker, Lending Director, both of NeighborWorks-Dakota Home Services as well as Zoning Administrator, Robert Nelson Jr, and Historic Preservation Officer, Kevin Kuchenbecker were all present. City Attorney, Terri Williams, was also in attendance.

Absent: Laura Floyd was not present.

Present City Commission: Mayor Chuck Turbiville and Georgeann Silvernail were present.

All motions passed unanimously unless otherwise stated.

A quorum present, Chairman Willie Steinlicht called the Deadwood Historic Preservation Commission meeting to order on Wednesday, January 29, 2014 at 5:00 p.m. in Deadwood City Hall located at 102 Sherman Street in Deadwood, SD. Chairman Steinlicht acknowledged and thanked the 30+ citizens in attendance for their interest and possible input.

Approval of January 8, 2014 HPC Minutes:

It was moved by Mr. Johnson and seconded by Mr. Namminga to approve the Minutes of Wednesday, January 8, 2014. Aye – All. Motion carried.

Voucher Approval:

Operating Account

It was moved by Mr. Milos and seconded by Mr. Johnson to approve the HP Operating Account in the amount of \$224,340.52. Aye – All. Motion carried.

Old or General Business:

Cemetery Headstones

Mr. Kuchenbecker informed the Commission that on January 7, 2014 the Cemetery Committee met and reviewed headstone grant applications. After reviewing the four applications received, the Cemetery Committee moved to approve two of the applications for the 2014 Headstone Grant Program as they met the required criteria. (The recommended applications are attached hereto on Exhibit A and incorporated herein by this reference.) ***It was moved by Mr. Milos and seconded by Mr. Johnson to accept applications #14001 for Albert E. Hoffmann and #14002 for James E. Brown into the 2014 Historic Preservation Commission Headstone Grant Program as presented. Aye – All. Motion carried.***

Outside of Deadwood Grant Program recommendations

On January 14, 2014, the Deadwood Historic Preservation Commission's Grants Recognition Advocacy & Public Education (G.R.A.P.E.) Committee met and reviewed the first round of the 2014 Outside of Deadwood Grants applications. The first round included nineteen (19) applications requesting a total of \$280,546.49. Mr. Kuchenbecker presented a table noting the applicant, project, location, amount and brief explanation of the thirteen (13) grants totaling \$125,000.00 the G.R.A.P.E. Committee recommended for approval from the first round

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2014 Outside of Deadwood Grants applications. (The list of recommendations is attached hereto on Exhibit B and incorporated herein by this reference.) ***It was moved by Mr. Milos and seconded by Mr. Johnson to accept the recommended applications into the 2014 Outside of Deadwood Grant Program as presented. Aye – All. Motion carried.***

New Matters before the Deadwood Historic District Commission:

No applications were addressed at this meeting.

New Matters before the Deadwood Historic Preservation Commission:

Chairman Steinlicht addressed the staff, applicants and citizens in attendance to respect the views and statements made by those who approached the podium as well as limiting time to three minutes or under.

Case # 14001 – 366 Main Street – Optima LLC

Mr. Kuchenbecker informed the Commission the applicant requests permission to demolish the resource (aka the Shea house) as submitted. Prior to any demolition, the house will be offered as a donation to Neighborhood Housing Service of the Black Hills in hopes that it will relocate this house to a suitable location in Deadwood. (The application is attached hereto on Exhibit C and incorporated herein by this reference.)

Case # 14002 – 370 Main Street – Optima LLC

Mr. Kuchenbecker informed the Commission the applicant requests permission to move/relocate the historic structure (aka the Fountain House) located at 370 Main Street to an empty lot located at 33 Lincoln Avenue in the Ingleside Planning Unit as submitted. (The application is attached hereto on Exhibit D and incorporated herein by this reference.)

Mr. Kuchenbecker summarized both staff reports for projects #14001 and #14002 as they were related resources in the project applications being presented by a single applicant. Due to the number of citizens in attendance, Mr. Kuchenbecker proceeded to clarify the process of due diligence in his duties required as the City's Historic Preservation Officer. He explained that under DCO 17.68.020(C)(11), which was enacted for the purpose of the protection of the historical resources of the City, the Historic Preservation Commission is to review and to issue or deny a permit for any undertaking or project which will encroach upon, damage or destroy any historic property included in the National Register of Historic Places or the State Register of Historic Places, which decision to approve or deny shall be based upon the United States Department of the Interior Standards for Historic Preservation Projects codified in 36 CFR 67 as of January 1, 1994. This section shall not apply to any project or undertaking which the Historic Preservation Commission or its staff determines will not encroach upon, damage or destroy any historic property. Such determination shall be based upon the guidelines adopted by the Deadwood Historic Preservation and District Commission(s). The City of Deadwood, South Dakota Code of Ordinances (DCO) 17.68.020 authorizes the City to establish a historic preservation commission to preserve, promote and develop the historical resources of the city.

Mr. Kuchenbecker outlined the reasons the proposed demolition and/or moving of the resources encroaches upon, damages and/or destroys the character of the historic properties including the State and National Historic Register Districts and the Deadwood National Historic Landmark District. This review is based on the GUIDELINES FOR UNDERTAKINGS IN THE CITY OF DEADWOOD NATIONAL HISTORIC LANDMARK DISTRICT as adopted by the City of Deadwood's Historic Preservation and Historic District Commissions as well as ratified by the Commissions, Downtown Design Guidelines for Deadwood of 1991, Deadwood Residential Neighborhood Design Guidelines of 2005, The Secretary Of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings of 1997, U.S. Department of the Interior Standards for Historic Preservation projects codified in 36 C.F.R. 67 as of January 1, 1994 and South Dakota Administrative Rules, Chapter 24:52:07:04 and 24:52:07:05.

The resource located at 366 Main Street (circa 1948) is listed as a non-contributing resource since it was constructed outside the period of significance of the National Historic Landmark District. At the time of the architectural survey (1993) it did not contribute to the National Historic Register District because it was not 50 years of age at the time; however, it was listed as eligible to the National Register of Historic Places in the future under the 1993 architectural survey.

The resource located at 370 Main Street (circa 1890) is a contributing resource in the Deadwood National Historic Landmark District. It is significant for its historic association with the founding and initial period of growth of the town of Deadwood. Spurred by the tremendous mining boom of 1876, Deadwood grew quickly and became the first major urban center of western South Dakota. This house displays the architectural characteristics common to working-class housing in pre-World War I Deadwood.

These resources add to the architectural character of the district through the spatial relationship of their size and massing. The loss of these resources will add to a cumulative adverse effect by damaging the architectural character of the district. This cumulative adverse effect begins to erode the district to a point where this portion of the National Historic Landmark District and the State and National Register Historic Districts may no longer be considered significant and may require a reduction in the size of the districts. Both resources are located in an area zoned as Commercial Highway in late 1980s-early 1990s. Since this zoning change, the area has begun to change from primarily small residential properties with a mix of small commercial structures to primarily large commercial structures with a mix of small resources. The property values of these properties along with adjacent resources appear to have greater values as commercial infill or parking facilities. It is the opinion of the Staff that once these residential style buildings are lost, it will be difficult to reverse or reproduce such a resource due to the extreme value put on parking or large commercial structures. The applicant has not submitted plans for the property as part of the documentation associated with the Project Approval for 366 Main Street. Staff does surmise the plans for surface parking lot and potential new parking structure associated with the application for Project Approval at 370 Main Street would relate to this application should action take place to approve the request. The features, spaces and spatial relationships of the district and adjacent properties will be dramatically changed with the removal of these resources. While the resource located at 366 Main Street is considered a non-contributing structure within the historic districts, the current size and massing of the resource does define the space and spatial relationships of the historic districts through its association with neighboring residential style resources. The new use of the property to a surface parking lot from that of former residential style structure requires a change which results in either the relocation or demolition of the resource.

The proposed project (removal of the resource at 366 Main Street and creation of a surface parking lot) does further encroach upon the historic resource located at 370 Main Street. Furthermore, the proposed project causes damage and continues to destroy the character and spatial relationships of the historic districts through the continuation of the erosion or loss of the fabric which makes up the character of the district. The fabric of both the contributing resource at 370 Main St and non-contributing resource at 366 Main St defines the spaces and spatial relationships of the district.

The structures located at 366 Main Street and 370 Main Street are a physical record of their time, place and use. Removal of the structures alters the district and therefore damages and destroys the district creating an adverse effect.

At this point, Mr. Kuchenbecker stated the applicant had not provided a detailed site map with a survey of the property for the proposed location to make a determination if the structure located at 370 Main Street will fit the proposed site location. It is not known whether there would be a need for variances within the zoning code for setbacks. Should the commission approve the removal of this structure, it shall be contingent upon Planning and Zoning Commission review and approval of the proposed site.

Furthermore, the applicant has indicated in the Project Approval documentation that prior to any demolition, the house will be offered as a donation to Neighborhood Housing Services of the Black Hills in hopes that it will relocate the house at 366 Main Street to a suitable location in Deadwood. Mr. Kuchenbecker pointed out that moving the property within any of the historic districts will require review by either the Deadwood Historic Preservation Commission or the Deadwood Historic District Commission through the submittal of a Project Approval or Certificate of Appropriateness.

Mr. Kuchenbecker asked the Commission to keep in mind the following questions when deciding the approval of both Cases # 14001 and # 14002. Is leaving the resources at their current locations reasonable and prudent? Is changing the current use of the structures from residential to small commercial use reasonable and prudent? Is moving resources to adjacent properties within the site and setting of the current location a reasonable and prudent alternative? Is demolition or relocation of the resources to another area of the historic district a reasonable and prudent alternative? Have ALL REASONABLE AND PRUDENT ALTERNATIVES been explored?

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Mr. Kuchenbecker stated it is staff's opinion these projects DOES cause damage and destroys a historic property (historic districts) included in the national register of historic places or the state register of historic places and fails to address ALL REASONABLE AND PRUDENT ALTERNATIVES and therefore is adverse to Deadwood.

Mr. Derosier asked Mr. Kuchenbecker in regards to his summarization of 366 Main Street, would he interpret Real Estate Center House as being defined the same as 366 Main Street. Mr. Kuchenbecker stated that under the Guidelines the Historic Preservation Office and Commission must abide by, the Real Estate Center does define the character of the district as it sits today.

Mr. Derosier expressed concern that, if there was a contributing resource among non-contributing resources that was to be removed or demolished, it would have an effect to the other areas of Deadwood as well as effect what a property owner's options would be in the future. Mr. Kuchenbecker stated that based on the rules and regulations set forth, the space and spatial relationships of the entire district, with the historic property being the historic district, removing a contributing or non-contributing may have an adverse effect on either the neighboring historic resource or the district as a whole; that being said, each situation would need to be reviewed on a case by case basis.

Mr. Namminga questioned as to whether or not moving or demolishing either of these houses would threaten Deadwood's current Historic Status. Mr. Kuchenbecker expressed that he was unsure; however in staff's opinion there has been a loss to the historic fabric in this district. Mr. Namminga asked who would make that judgment. Mr. Kuchenbecker stated the decision can be locally initiated through an evaluation of the historic integrity of this district to determine if that portion of the district is still contributing to the National Register District or it can be done by the Department of Interior National Park Service or the State Historic Preservation Office. It can be initiated at local, state or federal level.

Mr. Namminga asked what the consequences would be if our District was threatened or withdrawn from the National Historic Register. Mr. Kuchenbecker stated that he did not think our District would be withdrawn from our status with the National Historic Register; however there could be an amendment to the district to reconfigure the boundaries and size of the district to determine and carve out the area that no longer holds the required historic integrity. Mr. Kuchenbecker again reiterated that this can be instigated at any of the three levels: local, state or federal.

Mr. Milos requested clarification that the map of the district could theoretically change, but that Deadwood would not lose its historic status. Mr. Kuchenbecker did not know whether or not status could be lost.

Chairman Steinlicht again addressed the audience to respect the views and statements made by those who approach the microphone and podium to state their name as well as limiting time to three minutes or less, be kind to your neighbor and let cooler heads prevail.

Mr. Roger Tellinghuisen, on behalf of the applicant Optima, LLC, thanked the Commission for the opportunity as well as the privilege and right as the applicant to address the comments made by Mr. Kuchenbecker after his review of the staff report. Mr. Tellinghuisen stated that as we all know, since gaming came to Deadwood, Lower Main has changed, but he pointed out that the change began even before gaming came to town. Stating that it started back when the highways and railroads came to town and the commercialization occurred along that stretch of road. Mr. Tellinghuisen quoted Judge Johnson's findings made in 1990 reiterating a comment "the area encompassed by Planning Unit #10 (the area in question at this time also known as the Fountain District) is considered the gateway to Deadwood. There is no other commercial area that could be developed in Deadwood." He continued to quote Judge Johnson who said "this area is deteriorating as a place for people to live and raise their families because of high traffic volume, the noise, the increased crime, the increased danger for children from the street, the increased tourist parking in the area and the drop of residential value of the real estate." Mr. Tellinghuisen stated that Judge Johnson concluded the area was more suited to commercialization. That being said, Mr. Tellinghuisen echoed what the applicant proposed for the two structures. Regarding the Shea's House located at 366 Main, their preference is for it to be donated and moved. Optima LLC would help and work with NeighborWorks to find a suitable place to move it and to keep it in the community as a single-family residential dwelling. Currently the Shea House is vacant and in its present location, they feel it has no value as a residential structure and would be too expensive of a real estate to be run as a small business. In regards to the Fountain House located at 370 Main Street, this structure has been used as temporary housing for employees, but is in dire need of wall repair and new carpeting. To avoid Demolish by Neglect the exterior would be minimally kept, however none of the interior work would be done. Optima, LLC feels it would be in the best interest of both structures to move them from their current location to suitable destinations deemed by the

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Commission; they believe that doing so would utilize and preserve the structures as well as benefit others who can use them for their original intent.

Mr. Derosier questioned Mr. Tellinghuisen as to whether or not an alternative to moving these houses structures to a location within the current neighborhood was ever considered; he referenced a previous plan to move the Fountain House up to the City Parking lot. Mr. Tellinghuisen stated he could not answer that as he was not involved in the project back when it was discussed and was just made aware of that option earlier in the day. However it was Mr. Tellinghuisen's understanding that particular possibility was eliminated as an option. Another discussion involved moving it to another vacant Bradsky property, being next to Wayne Morris' property, but his argument was the resource would be moved from one area to another already being used as parking.

Ms. Ilene Brunner, Lillian Shea's niece, spoke of her Aunt's opinion and strong support of Deadwood. When properties were negotiated, Ms. Brunner stated that Ms. Shea knew her home would be demolished to make room for parking and she was okay with that. If the option of saving the house and moving it was a possibility, she would have really like that. Ms. Brunner noted that Cadillac Jacks took very good care of her Aunt; on one occasion cameras were installed to find out what was causing noises at night, only to discover turkey's rousting outside her house. After Ms. Shea passed away and with complications with moving her estate, extra time was given to help in assisting the process. Ms. Brunner recapped her Aunt's opinion by encouraged the Commission to approve the relocating of both resources currently at 366 and 370 Main Street.

Mr. Steve Olson, previous Historic Preservation Commissioner, agreed that in their current state the houses located at 366 and 370 Main are not conducive to family living; however he did remark that up until 5 years ago prior to the time Cadillac Jacks took over, he felt the houses were conducive to family living. When the property changed hands and during the expansion of Cadillac Jacks, Mr. Olson sat on the Commission and one of the questions he asked specifically was "What happens to those houses? Are they going to be left on an island and isolated out in a parking lot?" Mr. Olson stated Cadillac Jack's response was, "No, we will protect those houses and provide space around them." Mr. Olson pointed out there is no landscaping, parking within 2 feet of the house and driveway and because of that, it is true, you can't live in those houses. But they can certainly be utilized as other commercial properties such as a bookstore, a gift shop or a lawyer's office. Because he doesn't feel that all reasonable and prudent alternatives have been researched, Mr. Olson urged the Commission to deny the approval to remove or demolish the properties of 366 and 370 Main Street.

Louie Lalonde, who sat on the commission at that time, concurred that Mr. Olson's states was true and accurate.

Sharon Martinisko, current resident of Presidential Neighborhood proposed for relocating one of the properties, concurred with the previous statement made by Mr. Olson. Ms. Martinisko also expressed her concern with moving two empty houses to another location only to have them continue to be empty and un-kept. Ms. Ness questioned as to who would be responsible for the interior and exterior of each of these homes when it comes to refurbishing, bringing up to code and completing the work needed to make each habitable as well as who will sell these homes.

Mr. Tellinghuisen responded that both houses at 366 and 370 Main Street would be donated to Neighborhood Lending who would be responsible for making each house habitable and placing them on the market for families.

Ms. Mary Kopco, resident of Deadwood, stated that since 1961, Deadwood has prided itself on its National Historic Landmark designation. That status was threatened when the National Park Service put Deadwood on the threat list because of the amount of development and loss of historic integrity taking place in the early 2000s. Ms. Kopco continued to say that because of Mr. Kuchenbecker and the Historic Preservation Commission's hard work and efforts to protect and improve city ordinances to strengthen historic preservation in Deadwood, the Park Service upgraded Deadwood's Status to 'Satisfactory' in 2008. For the past 16 years Ms. Kopco has seen similar developments 'chip away' at the entryway of Deadwood and asked how many more losses of historic properties will there be before Park Service pulls Deadwood's status. Ms. Kopco asked the Commission to consider what they think the Historic Landmark District status truly means to this community and to the State. As appointed officials whose sole purpose is to protect Deadwood's status as a Historic Landmark District, Ms. Kopco asked the Commission to deem the project as adverse to Deadwood and to move to deny the project as presented as the reasons carefully articulated in the City's Historic Preservation Officer's Staff Report.

It was moved by Mr. Derosier and seconded by Mr. Johnson, to continue at the Historic Preservation Commission's next meeting scheduled for February 12, 2014, for further review of the application as

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well as requesting the Applicant to submit more in depth details of actual site plans and setbacks for Case # 14001, 366 Main Street. Aye – All Motion carried.

It was moved by Mr. Derosier and seconded by Mr. Johnson, to continue at the Historic Preservation Commission's next meeting scheduled for February 12, 2014, for further review of the application as well as requesting the Applicant to submit more in depth details of actual site plans and setbacks for Case # 14002, 370 Main Street. Aye – All Motion carried.

Case # 14003 – 874 Main Street – Dale Berg

Mr. Kuchenbecker informed the Commission the applicant requests permission to put in a walkout double door to 12' x 16' deck on 2nd floor above current porch and a 24' walkway to the back drive. Commission was informed that the work was done prior to the Project Approval review. Under the Deadwood Codified Ordinances the applicant may be subject to an investigation fee from Building inspector at four times the rate of the building permit. (The application is attached hereto on Exhibit E and incorporated herein by this reference.) ***It was moved by Mr. Derosier and seconded by Mr. Steinlicht to grant project approval with the fine as deemed by the Building Inspector, based on information as submitted for 874 Main Street. Aye - All. Motion carried.***

Revolving Loan Fund/Retaining Wall Program Update:

Retaining Wall Applications

4 Sampson St – Verna Sandidge

Mr. Kuchenbecker informed the Commission the applicant, Ms. Sandidge, requests permission to be considered to be entered into the retaining wall program; however, the retaining wall does not meet the criteria for the program. Mr. Kuchenbecker will discuss other options with the applicant such as the Special Needs – Elderly program. (The application is attached hereto on Exhibit F and incorporated herein by this reference.) ***It was moved by Mr. Derosier and seconded by Mr. Johnson to deny application for the Retaining wall program, based on information as submitted for 4 Sampson. Aye - All. Motion carried.***

Revolving Loan Program/Disbursements

It was moved by Mr. Namminga and seconded by Mr. Milos to approve the HP Revolving Loan Fund disbursement in the amount of \$10,163.40, based on information as presented by Ms. Joy McCracken, Executive Director of NeighborWorks-Dakota Home Services. Aye - All. Motion carried. Delinquency Report was reviewed and updates on projects were given. Overview of the Revolving Loan Fund was presented.

17 Fillmore – Kevin Bloom

It was moved by Mr. Milos and seconded by Mr. Derosier to approve a 6 month extension for Kevin Bloom, 17 Fillmore, as presented. Aye- All. Motion carried (The NeighborWorks packet is attached hereto on exhibit G and incorporated herein by this reference.)

91 Forest – Naomi Gathman

It was moved by Mr. Milos and seconded by Mr. Johnson to approve a 6 month extension for Naomi Gathman, 91 Forest, as presented. Aye- All. Motion carried. (The NeighborWorks packet is attached hereto on exhibit G and incorporated herein by this reference.)

23 Emery – Melody Lawson

It was moved by Mr. Derosier and seconded by Mr. Milos to approve a 3 month deferment in amount of \$15,772.84 for Melody Lawson, 23 Emery, as presented. Aye- All. Motion carried. (The NeighborWorks packet is attached hereto on exhibit G and incorporated herein by this reference.)

23 Emery – Melody Lawson

It was moved by Mr. Derosier and seconded by Mr. Johnson to approve a 3 month deferment in amount of \$25,833.87 for Melody Lawson, 23 Emery, as presented. Aye- All. Motion carried (The NeighborWorks packet is attached hereto on exhibit G and incorporated herein by this reference.)

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42 Lincoln – George Wood

It was moved by Mr. Milos and seconded by Mr. Johnson to grant the Special Needs Elderly Program loan to George Wood, 42 Lincoln, in the amount of \$10,000.00 as presented. Aye- All. Motion carried
(The NeighborWorks packet is attached hereto on exhibit G and incorporated herein by this reference.)

Additional Revolving Loan Disbursement

It was moved by Mr. Milos and seconded by Mr. Derosier to approve the HP Revolving Loan Fund disbursement in the amount of \$4,667.18, based on information as presented by Mr. Mike Walker, Lending Officer of Neighborhood Lending Services, LLC. Aye - All. Motion carried.

Retaining Wall Program/Disbursements:

No disbursements were addressed at this meeting.

Items from Citizens not on Agenda

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

Mr. Kuchenbecker reported on the following items:

- The Governor's Conference on Tourism took place January 22-23, 2014 in Pierre; Mr. Kuchenbecker, Mr. Bob Nelson, Jr., Mr. Johnson and Chairman Steinlicht attended the conference on behalf of the Historic Preservation Commission; Mr. Milos attended on behalf of Deadwood Chamber;
- Roger Brooks Community Assessment will be February 13, 2014, at 5:30 PM at the Deadwood Gulch Convention Center followed by an Art of Branding workshop on February 14, 2014 at 9:00 AM;
- Mr. Kuchenbecker updated the Commission on the status of the Historic Preservation Facebook page;
- The State History Conference will be April 4-5, 2014 in Pierre;
- The Archives Report from Mike Runge was included in the packet;
- The Soda Fountain arrived in Chicago and is undergoing restoration;
- The Minimum Maintenance letters for four property owners have been sent out by our legal counsel;
- The Historic Preservation Commission's next meeting will be on February 12, 2014 at 5:00 PM.
- Mr. Kuchenbecker thanked each Commissioner for serving on the Commission;

Other Business:

- Mr. Namminga asked for confirmation on whether or not the rumor of the Keller Estate was purchased for purpose of housing a casino; Mr. Kuchenbecker and Mr. Milos stated the bank has taken back the property which is currently up for sale;
- Mr. Johnson stated the Tourism Conference was a good public relations opportunity for Deadwood and as well as a great learning experience for himself;
- Mr. Johnson invited us to a St. Johns dinner on February 19, 2014 at 6:00 PM.

Adjournment:

There being no other business, the Historic Preservation Commission Meeting of January 8, 2014 adjourned at 6:29 PM.

ATTEST:

Willie Steinlicht

Chairman, Historic Preservation Commission

Kate Storhaug, Historic Preservation Office/ Recording Secretary

Presenting

A look at Deadwood, SD through the eyes of our Visitors

- First impressions
- Lasting impressions
- Business mix
- Signage
- Local attitude
- Beautification
- Ease of getting around
- Things to see and do
- Branding
- How the area stacks up against the competition
- Suggestions, tips and tricks that can bring spending to the area

Thursday, February 13, 2014
5:30 - 8:00 p.m.

Deadwood Gulch Gaming Resort
304 Cliff Street
Deadwood, SD 57732

Refreshments will be served

Sponsored by:
The Deadwood Revitalization Committee, a
joint effort of the Deadwood Chamber and
City of Deadwood. Funding provided by BID 7.

Presented by Roger Brooks
President of Roger Brooks International

ROGER BROOKS >
International

Presenting

The Art of Branding

Friday, February 14, 2014
9:00 - 11:30 a.m.

Deadwood Gulch Gaming Resort
304 Cliff Street
Deadwood, SD 57732

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ROGER BROOKS >
International

RESOLUTION 2014 – 01

RESOLUTION TO EXCHANGE CITY LAND WITH PRIVATE OWNER

WHEREAS, the Deadwood City Commission desires to exchange land in the City of Deadwood with private owner, Tim Davis, pursuant to SDCL 6-5-4,

AND WHEREAS, the public interest will be better served by exchanging the lands in question;

AND WHEREAS, the land to be exchanged will be of the same approximate value and to encourage the development of the Pollock Addition, add nearly five acres of land to the tax base, aid the preservation of the St. Ambrose Cemetery and preserve the hillside above the Presidential Neighborhood;

NOW THEREFORE IT IS HEREBY RESOLVED, pursuant to SDCL 6-5-4, that the public interest will be better served by the proposed exchanging of land between the City of Deadwood and Tim Davis.

IT IS FURTHER RESOLVED, that the Deadwood City Commission shall further follow all mandates of SDCL 6-5-4, as statutorily provided.

Date: January __, 2014

CITY OF DEADWOOD

By: _____
Charles Turbiville, Mayor

ATTEST:

Mary Jo Nelson, Finance Officer

OFFICE OF
PLANNING, ZONING AND
HISTORIC PRESERVATION
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"The Historic City of the Black Hills"
Deadwood, South Dakota 57732

KEVIN KUCHENBECKER
Historic Preservation Officer
Telephone: (605) 578-2082
Fax: (605) 578-2084
kevin@cityofdeadwood.com

MEMORANDUM

Date: February 7, 2014
To: Deadwood Historic Preservation Commission
From: Kevin Kuchenbecker, Historic Preservation Officer
Re: Optima, LLC Project Approvals for 366 and 370 Main Street

Optima, LLC has submitted a response to the continuation letter for Project Approval at 366 Main Street and 370 Main Street which includes the demolition and/or moving of these two resources from their current locations. (Case #14001 and #14002 respectively). This issue was continued until the meeting scheduled on February 12, 2014.

City Attorney Terri Williams has responded to the supplemental information provided by Optima and Roger Tellinghusen. This letter and supporting documentation from the South Dakota Attorney General's office is included. A memorandum from staff to supplement the original staff reports will be forwarded to you for additional consideration early next week when complete. Thank you.

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

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February 7, 2014

Kevin Kuchenbecker
City of Deadwood
Department of Planning & Preservation
108 Sherman Street
Deadwood, SD 57732

Re: City of Deadwood - General Advice
366 and 370 Main Street
GPNA File No. 07857.0003

Dear Kevin:

Please be advised I have reviewed Optima, LLC's response to your Staff Reports concerning the above-referenced properties. Mr. Tellinghuisen provided certain documents and I would like to advise you concerning the same.

First, Mr. Tellinghuisen provides "Exhibit E," a memorandum from John Frederickson dated November 9, 2004 concerning potential demolition of a residence located at 382 Main Street. Mr. Frederickson opined the City could not prevent the demolition of the residence, as the building was not considered an historic property. Please note ordinances and state law have been modified since the issuance of the Memorandum. In particular, SDCL §1-9-19(a) to §3 defines "historic property" as any building, structure, object, district, area, or site that is significant in the history, architecture, archeology, paleontology, or culture of the state, its communities or the nation. Such definition has been incorporated into 1-19(b)-1.1. Thus, historic property now includes a district.

Secondly, Mr. Tellinghuisen provides a Judgment on Writ of Certiorari, incorporating Findings of Fact and Conclusions of Law by the Court concerning properties then located on Main Street. Please note such are from November 1, 1990. Again, statutes and ordinances have been modified since such time.

What I would propose you, as well as the commission, utilize in addressing Applications for Project Approval be an AG Opinion dated December 17, 2013. I believe the Opinion provides excellent direction of what local government should consider when presented with Petitions

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

February 7, 2014

Page -2-

concerning historic properties. I believe you have provided a list of questions to be answered when considering the above application. Such questions appear to mirror certain aspects of the AG Opinion; however, I would pay particular attention to the directive that upon a finding that a "proposed project will encroach upon, damage or destroy historic property, the project may not proceed until the City or County has made a written determination, based on the consideration of all relevant factors, that there is no feasible and prudent alternative to the proposed project and that the proposed project includes all possible planning to minimize harm to the historic property." I am attaching the opinion for your review.

Kevin, I am not attempting to indicate you have not set forth sufficient information to the Commission to consider when addressing these properties. Instead, I simply want to ensure an appropriate response is made regarding legal arguments made by Mr. Tellinghuisen.

Best regards,

A handwritten signature in blue ink that reads "Terri Lee Williams". The signature is written in a cursive, flowing style.

Terri Lee Williams

TLW:jjh

Enc.

STATE OF SOUTH DAKOTA



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December 17, 2013

Jay Vogt, Director
South Dakota State Historical Society
900 Governor's Drive
Pierre, SD 57501

MEMORANDUM OPINION

Construction And Application Of SDCL 1-19A-11.1 By Municipalities And Local Historic Preservation Commissions

Dear Jay:

This office received a request for an official opinion from the Mayor of Rapid City and a Commissioner of the Rapid City Historic Preservation Commission concerning the proper construction and application of SDCL 1-19A-11.1. This office is aware that some local preservation commissions, such as Rapid City's, operate pursuant to intergovernmental agreements with the State Office of History (SOH). Others do not. State law also recognizes that a local historic preservation commission formed pursuant to state law may also function as a municipal historic district commission pursuant to local ordinances. SDCL 1-19B-38; SDCL 1-19A-62. **Deadwood has its own unique structure.** In light of the variations in local historic preservation commission structures, this office did not wish to issue a one-size-fits-all letter in response to Rapid City's questions.

However, this office has previously observed that by enacting SDCL 1-19A et seq., "the legislature has attached substantial importance to the preservation of historic structures in this state." Attorney General Opinion No. 89-41, 1989 WL 505682 (AGO 89-41). Because Rapid City's questions implicate legal questions that affect historic properties statewide, this office believes that answers to Rapid City's questions are important and that they should be addressed to the state agency responsible for oversight and enforcement in this area. Broadly speaking, the conclusions contained herein apply to any entity tasked with performing a review under SDCL 1-19A-11.1, whether it is the SOH itself, local commissions acting on behalf of the SOH through an intergovernmental agreement (like Rapid City's), and any governmental entity responsible for issuing a permit for a project adversely affecting a listed historic property. This opinion, however, does not seek to anticipate every form a permitting

entity or reviewing authority may take. To the extent your office encounters atypical situations, this office is available to you for further interpretation as needed.

SDCL 1-19A-11.1 requires local governments to extend certain protections to historic properties listed on national, state, or local registers. In furtherance of this policy, South Dakota's legislature and the SOH have made low interest loans and substantial tax benefits available to assist owners in maintaining and preserving historic properties. These state programs augment significant federal tax credits. "Given the benefits that may accrue to individuals placing structures on the list of historic places, it is not inconceivable that the legislature intended some negative consequences to attend an attempt to demolish structures so benefitted." AGO 89-41.

Naturally, it is important to preserve and protect South Dakota's historic resources without discouraging urban redevelopment through unnecessary restrictions on the use of property. This office has previously identified SDCL 1-19A-11.1 as a "state level section 106," referring to Section 106 of the National Historic Preservation Act from which SDCL 1-19A-11.1's standards and procedures are derived. Thus, this memorandum opinion looks first to published South Dakota judicial opinions for its interpretation of SDCL 1-19A-11.1 and, in the absence of express controlling authority by our state's highest court, it looks to the line of authority interpreting Section 106 as applied at the federal level and by states whose statutory schemes utilize the Section 106 "feasible and prudent" standard.¹

Rapid City's request for an official opinion posed the following questions.

1. Are the standards for the treatment of historic properties adopted in South Dakota's administrative rules authoritative standards to be applied to reviews under SDCL 1-19A-11.1?
2. Who bears the burden of proof in SDCL 1-19A-11.1 reviews?
3. Does a city have the authority or duty to deny a permit for projects adversely affecting designated historic properties if there are feasible and prudent alternatives to the proposed project?
4. What are the standards by which feasible and prudent alternatives are judged?
5. What is the scope of all possible planning to minimize harm?
6. Who decides if all alternatives and planning have been exhausted?
7. May individual commission members visit project sites and with property owners outside of formal commission proceedings to investigate the effect of a

¹ See *State v. Strauser*, 63 N.W.2d 345, 347 (1954) ("Inasmuch as the state law follows so closely the federal law, as . . . comparison discloses, there is a presumption that the legislature intended to enact a law with the meaning that the [United States Supreme] Court had previously placed upon the statute that served as the pattern for the later enactment"); *Lawrence Preservation Alliance v. Allen Realty*, 819 P.2d 138, 144 (though "not binding, case law interpreting this federal statute is helpful"); *Homich v. Lake Co. School Bd.*, 779 So.2d 567 (Fla.App.5 2001) (legislature's adoption of "feasible and prudent" standard interpreted to give same "paramount importance" to protection of state's historic resources as is observed by federal government).

proposed project on an historic property and the feasibility and prudence of alternatives.

SHORT ANSWER

Local municipalities and their historic preservation commissions are required to apply state administrative standards to reviews performed pursuant to SDCL 1-19A-11.1. Also they are not to issue a permit for any project that would encroach upon, damage or destroy a designated historic property if there is a feasible and prudent alternative that would prevent such encroachment, damage or destruction.

ANALYSIS

Per SDCL 1-19A-11.1, if a "proposed project will encroach upon, damage or destroy any [listed] historic property," the project may not proceed until the city or county has "made a written determination, based on the consideration of all relevant factors, that there is no feasible and prudent alternative to the [proposed project] and that the [proposed project] includes all possible planning to minimize harm to the historic property." A "project" includes any building or demolition permit involving a listed historic property.² A city or county may not issue any such permit without first obtaining review and comment from the SOH. Projects that encroach upon, damage, or destroy a historic property are said to have an "adverse effect" or "adverse impact."

1. What Is The Role Of Administrative Rules In SDCL 1-19A-11.1 Reviews?

The SOH has adopted administrative rules for the implementation of SDCL 1-19A-11.1 pursuant to its authority under SDCL 1-19A-29. ARSD 24:52:07:02 requires use of historic preservation "methods, policies, technical notes, preservation briefs, and guidelines" published in the Historic Preservation Fund Manual Appendices (2007) and in the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995). ARSD 24:52:07:04 also expressly states that the Secretary of Interior Standards apply to new construction on property or additions to existing structures within an historic district as well as eleven additional enumerated standards governing scale and form. ARSD 24:52:13:03 itemizes the information relevant to the SOH's (and therefore a city's) evaluation of a proposed project's effect on a property's historic integrity – such as a description of the project, a preservation plan, or an "evaluation of all feasible and prudent alternatives" which may minimize the project's adverse effect on the historic property. The SOH's administrative rules have the force of law.³ Accordingly, a municipality acting under SDCL 1-19A-11.1(1) must apply these rules.

A local historic preservation commission formed by local ordinance acting pursuant to SDCL 1-19B-3 and/or SDCL 1-19B-62 must also comply with these rules. SDCL 1-19B-62 expressly provides that decisions "to approve or deny a permit shall be based on the standards adopted by rules promulgated pursuant to 1-19A-29." City of

² ARSD 24:52:00:01(14) defines a "project" as "an activity, permit, plan, or action, including restoration or rehabilitation, which affects or may affect the physical structure or physical setting of a historic property." See also AGO 89-41 (a "project" under SDCL 1-19A-11.1 includes the issuance of building or demolition permits).

³ *Krsnak v. Department of Environmental and Natural Resources*, 2012 SD 89, ¶ 16, 824 N.W.2d 429, 436 (S.D. 2012); *Allen Realty, Inc. v. City of Lawrence*, 790 P.2d 948, 955-56 (Kan.App. 1990).

Deadwood v. M.R. Gustafson Family Trust, 2010 SD 5, ¶ 3, 777 N.W.2d 628, 630. Accordingly, both local historic preservation commissions and a cities must follow the standards established by ARSD 24:52A:07 in determining whether to approve or deny a permit for a proposed project that will encroach upon, damage, or destroy any listed historic property.

2. Who Bears The Burden Of Proving The Various Standards Governing SDCL 1-19A-11.1 Reviews?

Generally, a permit applicant bears the burden of proving that the conditions for issuing a permit have been met.⁴ This general rule applies equally in the context of applications for permits for projects affecting historic properties.

SDCL 1-19A-11.1 is implicated only if a proposed project adversely impacts an historic property. Once a reviewing authority – the SOH, a local historic preservation commission, or the city – makes a *prima facie* determination that a proposed project will adversely impact an historic property, the burden shifts to the project proponent to show the absence of feasible and prudent alternatives and, should that succeed, appropriate planning to minimize the resulting harm.⁵

According to court decisions from states with preservation statutes similar to SDCL 1-19A-11.1, to meet this burden a permit applicant must consider all reasonable alternative plans to the proposed project, not just the least expensive option. For example, in *Norwalk Preservation Trust, Inc. v. Norwalk Inn and Conference Center, Inc.*, 2008 WL 544508 (Conn.Super.), the project proponent wanted to demolish a neighboring historic home so that he could build a 44-room addition to his hotel. The court enjoined the demolition finding that the hotel owner had failed to consider other expansion options that would retain the historic home, such as incorporating the historic home into the hotel with an addition as part of a 24-room expansion, or building on other land owned by the hotel and selling the historic home for redevelopment as office space. Though economies of scale made the 44-room option the most profitable, the hotel owner had failed to demonstrate that the alternative plans could not meet his objective of profitably adding luxury rooms to the hotel.

Likewise, the *B.Y. Development* court found that any determination of the existence or non-existence of feasible and prudent alternatives must be “supported by sufficient

⁴ *Cole v. Board of Adjustment*, 2000 SD 119, ¶ 29, 616 N.W.2d 483, 490 (S.D. 2009)(burden on applicant to demonstrate right to zoning variance); *Ed Phillips & Sons Co. v. Schmidt*, 195 N.W.2d 400, 404 (S.D. 1972); c.f. *Breckweg v. Knochenmus*, 133 N.W.2d 860, 254 (S.D. 1965)(applicant may not be assigned the burden of proving right to building permit when the law does not set any preconditions for issuance of the permit).

⁵ *Archabal v. County of Hennepin*, 495 N.W.2d 416 (Minn. 1993)(once SOH makes *prima facie* showing that a proposed project will damage or destroy a historic resource, project proponent had burden of proving absence of feasible and prudent alternatives); *Friends of Bethany Place, Inc. v. City of Topeka*, 222 P.3d 535 (Ct.App.Kan. 2011)(after SOH made determination that project would adversely impact church grounds, church was obligated to demonstrate that there were no feasible and prudent alternatives to his proposed parking lot); *Save Old Stamford v. St. Andrew's Protestant Episcopal Church*, 2010 WL 625991 (Conn.Super.); *Connecticut Historical Commission v. Wallingford*, 2011 WL 1087088 (Conn.Super.); *Friends of the Riverfront v. DeLaSalle High School*, 2007 WL 4110617 (Minn.App.); *Lawrence Preservation Alliance v. Allen Realty, Inc.*, 819 P.2d 138 (Ct.App.Kan. 1992); *MB Associates v. D.C. Department of Licenses*, 456 A.2d 344 (Ct.App.Dist.Col. 1982).

facts.”⁶ While *B.Y. Development* did not further describe sufficiency in terms of quantity or quality of evidence, courts in other states have found evidentiary thresholds satisfied by testimony or evidence from experts in preservation-related fields such as architecture, engineering, property development, city planning, construction contracting, and environmental mitigation.⁷ Project opponents can suggest alternatives not considered by a permit applicant, but those suggested alternatives must be “supported by sufficient facts to indicate they are feasible and prudent.”⁸ Alternatives that are properly factually supported are statutory “relevant factors” that the city and a project proponent must consider and rule out before undertaking any project that would adversely impact an historic resource.⁹

3. Does A City Have The Authority Or Duty To Deny A Permit To Protect An Historic Property From The Adverse Impact Of A Proposed Project?

Under SDCL 1-19A-11.1, cities and municipalities have both the authority and the duty to deny a permit for any project adversely affecting an historic property if there is a feasible or prudent alternative to the project that will eliminate or mitigate its adverse impact.

The leading authority interpreting SDCL 1-19A-11.1’s standards is the United States Supreme Court’s decision in *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 91 S.Ct. 814 (1971). *Overton Park* is the foundational case underlying much of the country’s historic preservation jurisprudence as the standards of SDCL 1-19A-

⁶ *In re B.Y. Development, Inc.*, 2000 SD 102, 615 N.W.2d 604 (S.D. 2000)(a permitting authority must take a “hard look” at the proposed project, and alternatives to it that will avert damage to protected historic resources, before issuing a permit); *Kalorama Heights Limited Partnership v. District of Columbia*, 655 A.2d 865 (Ct.App.Dist.Col. 1995)(fifteen witnesses testified at hearing on demolition permit application, including engineer who found building structurally sound and a property development expert); *Citizen Advocates for Responsible Expansion, Inc. (I-CARE) v. Dole*, 770 F.2d 423 (5th Cir. 1985)(administrative record was “wholly inadequate” when agency gave no consideration to the effect of interstate overpass expansion plans on historic buildings located in and along its path).

⁷ *Homich v. Lake County School Board*, 779 So.2d 567 (Fla.Ct.App.5 2001); *Norwalk Preservation Trust, Inc. v. Norwalk Inn and Conference Center, Inc.*, 2008 WL 544508 (Conn.Super.); *MB Associates v. D.C. Department of Licenses*, 456 A.2d 344 (Ct.App.Dist.Col. 1982); *Block House Municipal Utility District v. City of Leander*, 291 S.W.3d 537 (Ct.App.Tex. 2009); *Lafayette Park Baptist Church v. Board of Adjustment*, 599 S.W.2d 61 (Ct.App.Mo. 1980)(substantial evidence is adduced through testimony of architects, structural engineers, contractors, and developers regarding the historic property’s condition, structural and historic integrity, cost, adaptive reuses, return on investment, and marketability); *Project Authorization Under The New Jersey Register Of Historic Places Act*, 975 A.2d 941 (App.Div.N.J. 2009); *Citizen Advocates for Responsible Expansion v. Dole*, 770 F.2d 423 (5th Cir. 1985)(administrative record contained testimony from engineers, city planners, designers, architects, and developers regarding the impact of interstate highway overpass expansion plan); *National Trust for Historic Preservation v. City of Albuquerque*, 874 P.2d 798 (Ct.App.N.M. 1994)(record was devoid of expert testimony respecting the impact of noise, visibility, or dust and exhaust caused by proposed highway).

⁸ *B.Y. Development*, 2000 SD 102 at ¶ 16, 615 N.W.2d at 610; *Friends of the Riverfront v. DeLaSalle High School*, 2007 WL 4110617 (Minn.App.)(though city’s contemplation of alternatives was not confined to project proponent’s demand to construct athletic facility on-site at school, city was not required to consider alternatives of off-site construction where project opponents did not identify potential off-site alternatives).

⁹ *B.Y. Development*, 2000 SD 102 at ¶ 16, 615 N.W.2d at 610; *Lawrence Preservation Alliance v. Allen Realty, Inc.*, 819 P.2d 138 (Ct.App.Kan. 1992)(a proposed alternative is a “relevant factor” if it includes sufficient factual information to support a conclusion that it is feasible and prudent); *Friends of Bethany Place, Inc. v. City of Topeka*, 222 P.3d 535 (Ct.App.Kan. 2011); *Don’t Tear It Down v. D.C. Dept. of Housing*, 428 A.2d 369 (D.C. 1981).

11.1 (and many other state preservation statutes) are replicated from the federal counterpart statute interpreted in that case.¹⁰

In *Overton Park*, the court examined the application of federal statutes that governed the use of federal funds to finance any highway project requiring the use of public parkland. Those statutes prohibit the use of public parkland for federal highway projects "unless there is no feasible and prudent alternative to use of such land" and "such program includes all possible planning to minimize harm to such park." *Overton Park*, 401 U.S. at 411, 91 S.Ct. at 821. The court interpreted the statute to be a "plain and explicit bar" to the construction of highways through parks except in "the most unusual situations." *Overton Park*, 401 U.S. at 411, 91 S.Ct. at 821. "If the statutes are to have any meaning, the secretary cannot approve the destruction of parkland" if there is a feasible or prudent alternative. *Overton Park*, 401 U.S. at 413, 91 S.Ct. at 822.

South Dakota's legislature enacted SDCL 1-19A-11.1 sixteen years after the *Overton Park* decision. The legislature's selection of the "feasible and prudent" and "all possible planning" standards, after substantial jurisprudence had developed surrounding those standards and their application, suggests that it intended for the state's historic resources to receive protections commensurate with those enunciated in *Overton Park*.¹¹

Reduced to its essence, SDCL 1-19A-11.1 holds that if there is a "feasible and prudent alternative" to a project that would adversely affect a designated historic property the project "may not proceed." Though no party in the leading South Dakota decisions in *B.Y. Development* or *Korzan* challenged the city's authority to deny a permit, the court's reasoning in both cases reveals that the accepted controlling premise in both cases was that the statute, of necessity, does impart that authority. Specifically, the *B.Y. Development* court stated that the subject project would proceed "unless the Office of History" were successful in its appeal. *B.Y. Development*, 2000 SD 102 at ¶ 11, 615 N.W.2d at 610 (S.D. 2000); *Korzan v. City of Mitchell*, 2006 SD 4, ¶ 15, 708 N.W.2d 683, 687 (S.D. 2006).

4. What Is A Feasible And Prudent Alternative?

The operative segment of SDCL 1-19A-11.1 states that a "project may not proceed until . . . [t]he governing body of the political subdivision has made a written determination . . . that there is no feasible and prudent alternative to the proposal."

Since neither "feasible," "prudent," nor "alternative" have been defined by statute or rule, it is good to start with their meanings in common usage.¹² *Webster's Dictionary* defines "feasible" broadly as "capable of being done" and "prudent" as "marked by wisdom or judiciousness" or "circumspection" or "shrewd in the management of

¹⁰ In addition to South Dakota, the following states expressly employ the federal "feasible and prudent" standard in their historic preservation laws: Connecticut, Minnesota, Kansas, Texas, New Jersey, New York, Pennsylvania, Florida, Ohio, Iowa, Wisconsin, New Mexico, Michigan, and Massachusetts. Other states have adopted close variations on the same standard.

¹¹ *State v. Strauser*, 63 N.W.2d 345, 347 (1954).

¹² *Jackson v. Canyon Place Homeowner's Assoc.*, 2007 SD 37, ¶ 11, 731 N.W.2d 210, 213 (dictionary definitions may be used to interpret meanings of undefined statutory terms).

practical affairs." "Alternative" means "a choice" between "one of two or more incompatible things, courses, or propositions."¹³

As used in SDCL 1-19A-11.1, "feasible and prudent" modify the clause "alternative to the proposal." A feasible alternative to a proposal is something that is "capable of being done" in light of technical, structural, engineering, and project design considerations.

As noted in *B.Y. Development*, the SDCL 1-19A-11.1 determination does not require examination of "any and all alternatives," but only those supported by "sufficient facts to indicate they are feasible and prudent." *B.Y. Development*, 2000 SD 102 at ¶ 15, 615 N.W.2d at 610.

The *Korzan* decision illuminates the concept that alternatives must be supported by sufficient facts. In *Korzan* the analysis turned on the feasibility and prudence of two proposed alternatives: (1) mothballing the historic building for future restoration or (2) delaying demolition while a community group tried to raise money to compensate for the added cost of restoration. *Korzan* rejected these proposals because concerns about basic maintenance while the building was mothballed and the opposition group's ability to raise the incremental funding within an acceptable timetable were not allayed with sufficient facts showing that they were feasible and prudent. *Korzan*, 2006 SD 4 at ¶¶ 16-17, 708 N.W.2d at 687.¹⁴

Thus, the definition of "feasible and prudent" in the context of an SDCL 1-19A-11.1 determination requires sufficient facts to establish that a project alternative is "capable of being done" as opposed to being merely speculative. This highly individualized determination is made on a case-by-case basis considering the historical and architectural significance of a building, its condition, its relationship to a commercial or residential historic district, and its adaptability to alternate, economically viable uses.

A project proponent's proposed use of an historic property is a relevant, though not necessarily determinative, consideration. The proposal is the building or demolition permit request.¹⁵ Although no South Dakota court decision has directly reached this issue, SDCL 1-19A-11.1's use of the word "alternative," by definition, means that an alternative need not necessarily be compatible with the proposal described in a project proponent's permit application.¹⁶ Authorities from other states have consistently examined alternative uses for which a property is adaptable, such as reconfiguring or

¹³ Webster's New Collegiate Dictionary (7th Ed.)

¹⁴ Though *Korzan* looked solely to *B.Y. Development* for guidance, authorities from states with the same model statute adopted by South Dakota's legislature have also observed that "relevant factors" are "something more than mere suggestions as to possible alternatives. A proposed alternative would be a relevant factor if it included sufficient factual information to support a conclusion that such alternative was feasible and prudent." *Allen Realty*, 790 P.2d at 956.

¹⁵ AGO 89-41; *Allen Realty*, 790 P.2d at 956.

¹⁶ To the extent that the *Korzan* decision suggest *contra*, it does so in *dicta* in the context of rejecting two alternatives it deemed infeasible and imprudent. *Korzan*, 2006 SD 4 at ¶ 17, 708 N.W.2d at 687. *Korzan* did not examine a situation where the owner could make use of the property through other feasible and prudent alternatives. SDCL 1-19A-11.1 would, very clearly, be meaningless if its protections could be defeated simply by proposing a project wholly incompatible with a protected building as it exists. *Archabal*, 495 N.W.2d at 423.

scaling back the proposed project within parameters that preserve its profitability, putting a property to a different use,¹⁷ relocating an historic structure, pursuing rezoning or code modification options that will assist with adaptively reusing the property, integrating an historic structure into new construction,¹⁸ or selling the property to a buyer willing to preserve an historic structure.¹⁹

For example, in *Archabal v. County of Hennepin*, 495 N.W.2d 416 (Minn. 1993), the county sought a permit for the demolition of an historic art deco armory to build a new county jail. There was no dispute that the county urgently needed a new jail facility, or that the armory site was the optimal location for it. However, after extensive examination of the security needs of a modern jail facility, the *Archabal* court determined that alternative sites would meet the county's needs even if those sites did not provide the county with every convenience that the armory site offered, i.e. the armory was the only site that allowed the county to tunnel between the jail and the county courthouse.

According to the county, the tunnel offered the safest and most cost effective means of transporting inmates to court. With the assistance of expert testimony, the *Archabal* court determined that it was feasible to safely transport inmates between alternative jail sites and the courthouse in busses or vans so that the armory building need not be demolished for the sake of the county's preference for a tunnel. According to *Archabal*, it was inappropriate to "place [the] primary emphasis [of the feasibility analysis] on the needs of the criminal justice system, rather than addressing whether siting the [jail] on a site other than the armory site would cause 'community disruption of an extraordinary magnitude.'" *Archabal*, 495 N.W.2d at 423.

The "prudent" component generally involves the examination of economic considerations.²⁰ Strictly speaking, preservation and restoration of a property is rarely technically infeasible, but the associated costs may prove prohibitive, and, therefore,

¹⁷ *Kalorama Heights Limited Partnership v. District of Columbia*, 655 A.2d 865 (Ct.App.Dist.Col. 1995) (developer failed to explore preservation alternatives, such as renovating the subject home as multi-family condominiums or offices, adding a sympathetic addition to increase housing or office space on the site, partial demolition of the home with new construction behind a retained facade, or possibly selling the home to a buyer who would preserve it); *Connecticut Historical Commission v. Wallingford*, 2011 WL 1087088 (Conn.Super.) (alternatives that are different from the owner's purpose in owning protected property must be considered because to consider the owner's purpose in owning the property as paramount would be to ignore statutory protections and the burdens of proof placed on the parties); *Save Old Stamford v. St. Andrew's Protestant Episcopal Church*, 2010 WL 625991 (Conn.Super.). However, a proffered restoration alternative may be deemed infeasible if the surviving remnants of an historic structure are insufficient to restore. *Friends of Hillhouse Avenue v. Yale University*, 1999 WL 300904 (Conn.Super.); *Citizens Committee to Save Rhodes Tavern v. District of Columbia*, 432 A.2d 710 (Ct.App.D.C. 1981); *Lafayette Park Baptist Church v. Board of Adjustment*, 599 S.W.2d 61 (Ct.App.Mo. 1980).

¹⁸ *Connecticut Historical Commission v. Wallingford*, 2011 WL 1087088 (Conn.Super.).

¹⁹ *MB Associates v. D.C. Department of Licenses*, 456 A.2d 344 (Ct.App.Dist.Col. 1982); *First Presbyterian Church of York v. City of York*, 360 A.2d 257 (Comm.Ct.Pa. 1976); *Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975); *Connecticut Historical Commission v. Wallingford*, 2011 WL 1087088 (Conn.Super.); *Historic Preservation Alliance, Inc. v. City of Wichita*, 892 P.2d 518 (Ct.App.Kan. 1995); *Lafayette Park Baptist Church v. Board of Adjustment*, 599 S.W.2d 61 (Ct.App.Mo. 1980).

²⁰ *Lafayette Park Baptist Church v. Board of Adjustment*, 599 S.W.2d 61 (Ct.App.Mo. 1980).

economically imprudent.²¹ Consequently, the analysis of prudent alternatives often turns on the question of economic viability. Consistent with *Overton Park*, the *B.Y. Development* decision suggests that this analysis is broader than economic considerations alone. *B.Y. Development*, 2000 SD 102 at ¶ 17, 615 N.W.2d at 611.

In *Overton Park* the court considered alternative routes outside of protected parkland imprudent only if they "present[ed] unique problems" of cost, routing, and community disruption that reached "extraordinary magnitudes." *Overton Park*, 401 U.S. at 413, 91 S.Ct. at 822. Inquiry into the prudence of a proposed alternative did not require a "wide-ranging balancing of competing interests" given that "it will always be less costly and safer to build [a highway] straight through a park," just as it is often less costly to demolish an existing historic structure and build anew, or more costly to bring work on an historic property up to preservation standards. Knowing that preservation often entails higher costs, the *Overton Park* court nevertheless decided that "[i]f Congress intended [costs and other interests in competition with preservation objectives] to be on an equal footing with preservation of parkland there would have been no need for the statutes." *Overton Park*, 401 U.S. at 412, 91 S.Ct. at 821. Likewise, in *Archabal* the court found that "economic considerations alone" did not justify demolition of the historic armory because the increased costs associated with transporting defendants from the jail to the courthouse by bus or van "did not . . . create extreme hardship."²²

No South Dakota Supreme Court case has interpreted the term "hardship" in the historic preservation context, but, in the larger scheme of zoning of which historic preservation is a part, "hardship" generally means that the denial of a variance or rezoning request would work a *de facto* taking.²³ Through the adaptation of South Dakota's customary test for challenges to zoning restrictions, the analysis of economically prudent alternatives would consider (1) whether the property could yield a reasonable return if used for a purpose consistent with historic standards, (2) whether a project proponent's claimed hardship is due to unique circumstances and not the historical character of the property, and (3) whether the proposed project would alter the historical character of the property or of an historical district in which it is located.²⁴ A project would be imprudent only if denial of a permit, in light of the

²¹ *Friends of Hillhouse Avenue v. Yale University*, 1999 WL 300904 (Conn.Super.)(restoration of home located in historic district not prudent where \$1.8 million cost of reconstruction exceeded the expected post-renovation market value of \$450,000); *Hickory Neighborhood Defense League v. Skinner*, 893 F.2d 58 (4th Cir. 1990); *Homich v. Lake County School Board*, 779 So.2d 567 (Fla.Ct.App.5 2001)(demolition of historic buildings appropriate where rehabilitated buildings would have half the useful life of new construction and would cost more than twice as much).

²² *Save Old Stamford v. St. Andrew's Protestant Episcopal Church*, 2010 WL 625991 (Conn.Super.); *Connecticut Historical Commission v. Wallingford*, 2011 WL 1087088 (Conn.Super.); *Archabal v. County of Hennepin*, 495 N.W.2d 416 (Minn. 1993)(preservation of protected resource the paramount consideration).

²³ SDCL 1-19B-46; *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 98 S.Ct. 2646 (1978)(historic property protections are in the nature of zoning laws); *Cole v. Board of Adjustment of the City of Huron*, 2000 SD 119, 616 N.W.2d 483 (S.D. 2000); *City of Madison v. Clarke*, 288 N.W.2d 312, 314 (S.D. 1980); *Chokecherry Hills Estates, Inc. v. Deuel Co.*, 294 N.W.2d 654 (S.D. 1980); *Kalorama Heights Limited Partnership v. District of Columbia*, 655 A.2d 865 (Ct.App.Dist.Col. 1995)(standard for determining whether "no reasonable alternative economic use" exists for historic structure is in the nature of takings analysis, which examines if denial of demolition permit would deprive applicant of "all viable economic uses of the property").

²⁴ *Clarke*, 288 N.W.2d at 314, citing *Deardorf v. Bd. of Adj. of Planning and Zoning Commn.*, 118 N.W.2d 78, 82 (Iowa 1962).

foregoing considerations, would deprive a property owner of all viable economic use for the property. An alternative need not afford the highest or most profitable use to be prudent, but is prudent under SDCL 1-19A-11.1 so long as it provides some viable economic use for the protected property.²⁵

When evaluating the economics of alternatives, permitting authorities and project proponents should factor in all funding sources, such as insurance proceeds, grant funding, preservation tax incentives,²⁶ or community donations.²⁷ These financial benefits can offset the higher costs sometimes associated with restoration of properties to applicable standards. Hardship, however, does not encompass increased restoration or rehabilitation costs caused by an owner's neglect of basic maintenance and repair.²⁸ Such "demolition by neglect" would obviously defeat SDCL 1-19A-11.1's protective purposes.

5. Minimization And Mitigation Of Harm

If there are no feasible and prudent alternatives to a proposed project, SDCL 1-19A-11.1 requires a project to engage in all possible planning to minimize its adverse impact on an historic resource.²⁹ *Citizens Committee to Save Rhodes Tavern v. District of Columbia*, 432 A.2d 710 (Ct.App.D.C. 1981), provides an instructive case study in minimizing harm. In *Rhodes Tavern* a developer proposed to redevelop a blighted downtown city block located adjacent to another property of high historical significance. The block contained three historic structures - a bank, a theater, and an eighteenth century tavern. The developer determined that fully preserving the buildings was not feasible. This determination, however, did not mean that the

²⁵ *First Presbyterian Church of York v. City of York*, 360 A.2d 257 (Comm.Ct.Pa. 1976)(application for demolition permit properly denied where applicant had failed to show that commercial rental could not yield a reasonable return, that there were no other potential uses for property, and where fire insurance proceeds provided offsetting funds for the cost of restoration); *Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975).

²⁶ SDCL 1-19A-20 (tax moratorium applies to properties restored to historic standards); SDCL 1-19A-13.1 (historic preservation loan and grant fund); *Connecticut Historical Commission v. Wallingford*, 2011 WL 1087088 (Conn.Super.)(the availability grants, tax credits, and code modifications that will enable preservation are factors to consider when weighing alternatives).

²⁷ *Benton Franklin Riverfront Trailway v. Lewis*, 701 F.2d 784 (9th Cir. 1983)(available federal funds should have been considered); *Lawrence Preservation Alliance v. Allen Realty, Inc.*, 819 P.2d 138 (Ct.App.Kan. 1992); *Historic Preservation Alliance, Inc. v. City of Wichita*, 892 P.2d 518 (Ct.App.Kan. 1995)(project proponent did not demonstrate that preservation tax credits could not make project feasible); *Connecticut Historical Commission v. Wallingford*, 2011 WL 1087088 (Conn.Super.)(the availability of grants and tax credits are factors to consider); *Project Authorization Under The New Jersey Register Of Historic Places Act*, 975 A.2d 941 (App.Div.N.J. 2009); *Homich v. Lake County School Board*, 779 So.2d 567 (Fla.Ct.App.5 2001)(demolition allowed where community donations to save school were not forthcoming).

²⁸ *Clarke*, 288 N.W.2d at 314 (property owner could have avoided financial hardship associated with removing non-conforming use by complying with permitting process); *First Presbyterian Church of York v. City of York*, 360 A.2d 257 (Comm.Ct.Pa. 1976)(applicant had contributed to disrepair by failing to perform maintenance); *Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975)(demolition permit properly denied where deteriorated condition of property, and associated higher cost of renovation, was due to the project applicant's neglect); see also SDCL 1-19B-52.

²⁹ SDCL 1-19A-11.1; *National Trust for Historic Preservation v. City of Albuquerque*, 874 P.2d 798 (Ct.App.N.M. 1994)(a project does not include all possible planning if it excludes consideration of other forms of the project that would cause less harm); *Neighborhood Association of the Back Bay v. Federal Transit Administration*, 393 F.Supp.2d 66 (D.Mass 2005).

buildings could be demolished in total. To minimize the harm to the buildings and their historical surroundings, the developer was permitted to demolish all but the facades of the bank and theater buildings to incorporate the preserved facades into the overall new construction.³⁰

Minimization of harm is required even for projects other than full-scale demolitions or new construction. For example, if a city were to determine that an alteration must be made to an historic structure, such as, for example, by construction of an addition, a handicap access ramp, an exterior elevator tower, or an exterior fire escape stairwell, the project's design must minimize to the fullest extent possible its adverse impact on the historic resource, and it must further mitigate the extent of its adverse impact.³¹ Or, if a project calls for reconstructing or replacing original historic features or materials, such as porches, windows, or siding, the project must minimize to the fullest extent the potential for loss of historic integrity and mitigate the effect of that loss through appropriate measures, such as, for example, installation of historically-appropriate windows that are replacing original windows. As discussed above, state administrative regulations prescribe standards for minimizing and mitigating a project's adverse effects.

6. Who Decides?

The foregoing discussion raises the question of who decides whether all feasible and prudent alternatives have been properly examined and excluded, and whether the project has properly mitigated its adverse impact. A city historic preservation commission's role is limited to making initial findings regarding an applicant's compliance with SDCL 1-19A-11.1 and the feasibility or prudence of alternatives; to requiring further submissions from a project applicant to assist its review; to developing a record for later review by a governing authority; and to preliminarily granting or denying a permit on property within its jurisdiction. However, SDCL 1-19B et seq. does not vest local historic preservation commissions with the final authority to grant or deny a permit.³²

"The ultimate determination [of whether to issue a permit] remains in the hands of the city."³³ The governing entity is free to accept or reject a commission's findings and recommendations, and to enter such findings and determinations of its own as are supported by substantial evidence, but the final authority to grant or deny a permit, and the ultimate responsibility for reviewing all relevant factors, belongs to the city. The city's decision, however, like the local commission's, "shall be based on the

³⁰ This practice, colloquially referred to as a "facadectomy," is a common compromise between preservation and development interests. It has been utilized in many cities, notably Boston and Washington, D.C. The practice retains the historic streetscape design and character while affording developers modern structures and increased densities. See also *Hopkins v. Mills*, 2005 WL 4020384 (N.Y.S.Ct. 2005)(school district adequately minimized impact of building school on land adjacent to, and formerly a part of, an historic farm where it lowered building occupancy density and incorporated significant mitigation measures proposed by the SOH into the project).

³¹ *Friends of Bethany Place, Inc. v. City of Topeka*, 222 P.3d 535 (Ct.App.Kan. 2011)(plan to pave portion of historic church grounds for parking included all planning to minimize impact of project where church planned to conceal parking lot from street view with line of bushes and new tree plantings and SOH had not suggested any further mitigation activities the church could undertake).

³² *Donovan v. City of Deadwood*, 538 N.W.2d 790 (S.D. 1995).

³³ AGO 89-41.

standards for historic preservation" promulgated by the state's Office of History.³⁴ SDCL 1-19A-11.1 permits any person or entity who is aggrieved by the city's decision, and who has proper standing, to appeal to a court of competent jurisdiction;

7. Fact-Finding By Individual Commissioners

Finally, Rapid City asked whether individual commissioners are permitted to visit a project site, or communicate with a project proponent, opponent, or interested party outside of official meetings in order to gather information on a permit application before the commission. Unlike a court of law, a local preservation commission is not an adjudicative body to which principles of strict impartiality and the prohibition on *ex parte* contacts would apply. As noted above, the authority to grant or deny a project permit rests with the governing entity.

Thus, for example, personnel from the South Dakota Department of Water and Natural Resources are permitted to negotiate permitting conditions with applicants when it is the Board of Minerals and Environment that decides whether a permit should issue. *In re: SDDS Inc.*, 472 N.W.2d 502 (S.D. 1991).

By its very nature, an historic preservation commission is partial toward preservation and protection of a city's historic resources. Its mission, of necessity, requires it to negotiate with property owners to cure project deficiencies that would encroach upon, damage, or destroy a protected historic resource. *In re: SDDS Inc.*, 472 N.W.2d at 510-11. Indeed, state law requires that such commissions be staffed with persons qualified in the field of historic preservation and dedicated to that purpose. SDCL 1-19B-3. Thus, unless local ordinance delegates final decision-making authority on permits affecting listed properties to a local commission per SDCL 1019B-62, *ex parte* restrictions that might apply to an adjudicative body would not apply to individual historic preservation commissioners.

Respectfully submitted,


PAUL S. SWEDLUND
ASSISTANT ATTORNEY GENERAL

cc. Sam Kooiker, Mayor, City of Rapid City
Jean Kessloff, Commissioner, Rapid City Historic Preservation Commission

³⁴ SDCL 1-19B-62.



February 5, 2014

Kevin Kuchenbecker
City of Deadwood
Historic Preservation
108 Sherman St
Deadwood SD 57732

RE: SDCL 1-19A-11.1 Preliminary Determination

Projects: 140204002S & 140204003S – Relocation of 366 and 370 Main Street, Deadwood (Case No. 14001 and 14002)
Location: Lawrence County
(DHPC)

Dear Mr. Kuchenbecker:

Thank you for the opportunity to comment on the above referenced project pursuant to SDCL 1-19A-11.1. The South Dakota Office of the State Historic Preservation Officer (SHPO) would like to provide the following comments concerning effect of the proposed undertaking on the non-renewable cultural resources of South Dakota. Based upon the information provided, the relocation/removal of 366 Main and 370 Main does appear to have an adverse effect on the Deadwood Historic District.

Removal destroys relationships between buildings and landscape features in the district. The ability of the district to convey its associations from its period of significance is negatively impacted by the cumulative integrity loss to the setting, including the removal of both contributing and non-contributing buildings. Further destruction of the remaining historical relationships, both built and landscape, jeopardize this area's ability to convey the historic associations of the district for which it was listed.

If relocated to a similar setting and orientation within the historic district, 370 Main can still possibly contribute to the district. The SHPO will assess the status once the move is completed and amend its location information in the nomination, which will then require final approval from the National Park Service. Since 366 Main is non-contributing, it will remain non-contributing in its new location. The SHPO will also amend this home's location information in the nomination.

The SHPO will further consider the information submitted to the City for their review and conveyed to this office sufficient for completion of SDCL 1-19A-11.1. Once the City submits all additional information, the SHPO will provide the City with a final determination. If at any time

this project falls under the review of Section 106 of the National Historic Preservation Act, the state review will cease per SDCL1-19A-11.1.

If you have any questions or concerns, please contact Ted Spencer at Ted.Spencer@state.sd.us or at (605) 773-6296. Your concern for the non-renewable cultural heritage of our state is appreciated.

Sincerely,

Jay D. Vogt
State Historic Preservation Officer

A handwritten signature in black ink, appearing to read 'Ted Spencer', with a long horizontal flourish extending to the right.

Ted Spencer
Director, Historic Preservation Office

OFFICE OF
PLANNING, ZONING AND
HISTORIC PRESERVATION
108 Sherman Street
Telephone (605) 578-2082
Fax (605) 578-2084

DEADWOOD

"The Historic City of the Black Hills"
Deadwood, South Dakota 57732

KEVIN KUCHENBECKER
Historic Preservation Officer
Telephone (605) 578-2082
Kevin@cityofdeadwood.com

NOTICE OF CONTINUATION

Notification via email

February 3, 2014

Roger Tellinghusen
P.O. Box 1820
Rapid City, South Dakota 57701-2703

RE: Case Nos. 14001 & 14002 – 366 & 370 Main Street

Dear Mr. Tellinghusen:

On Wednesday, January 29, 2014, the Deadwood Historic Preservation Commission reviewed your client's applications for Project Approval at 370 Main Street and 366 Main Street located in the Fountain City Planning Unit in the City of Deadwood. The project involves the demolition or relocation of 366 Main Street and the relocation of 370 Main Street to 33 Lincoln.

As you are aware, the Deadwood Historic Preservation Commission has continued any action on these applications until the next regularly scheduled Historic Preservation Commission meeting on February 12, 2014. This information should be provided to my office by 5:00 p.m. the Wednesday prior to the meeting to allow proper distribution and public notifications in order for this item to be considered.

The Commission has requested additional information regarding the relocation of these resources as well as explanation on all reasonable and prudent options explored for these properties.

Please provide to this office a detailed site map with a survey of the proposed property showing the location of the resource on the lot and its relationship to the adjacent properties. The site plan also needs to include dimensions and setbacks from the property lines. (See attached sample illustration)

Also, please provide what type of guarantee the project(s) would be to ensure they are completed, if allowed to be moved, and what funding sources Neighborhood Housing Services of the Black Hills would use for the relocation of these resources in Deadwood.

The commission has the option to determine that all reasonable and prudent alternatives have been explored which would either eliminate or mitigate the adverse effect of moving the resources from this portion of the historic district.

With this option in mind, this office would encourage you to provide detail responses to the following questions:

OFFICE OF
PLANNING, ZONING AND
HISTORIC PRESERVATION
108 Sherman Street
Telephone (605) 578-2082
Fax (605) 578-2084

DEADWOOD

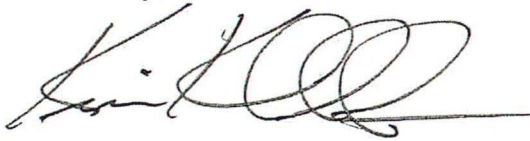
"The Historic City of the Black Hills"
Deadwood, South Dakota 57732

KEVIN KUCHENBECKER
Historic Preservation Officer
Telephone (605) 578-2082
Kevin@cityofdeadwood.com

- Is leaving the house at its current location reasonable and prudent?
- Is changing the current use of the structure from residential to small commercial use reasonable and prudent?
- Is moving it to an adjacent property within the site and setting of the current location a reasonable and prudent alternative?
- Is demolition or relocation of the resource to another area of the historic district a reasonable and prudent alternative?

If you have any questions or need further information, please do not hesitate to contact our office at your convenience. Thank you for your support in preserving, protecting and promoting the rich and unique heritage of Deadwood – A National Historic Landmark Community.

Sincerely,



Kevin Kuchenbecker
Historic Preservation Officer

cc: Historic Preservation Commission Members
Terri Williams, City Attorney
Keith Umenthum, City Building Inspector
Paul Bradsky, Optima LLC
File

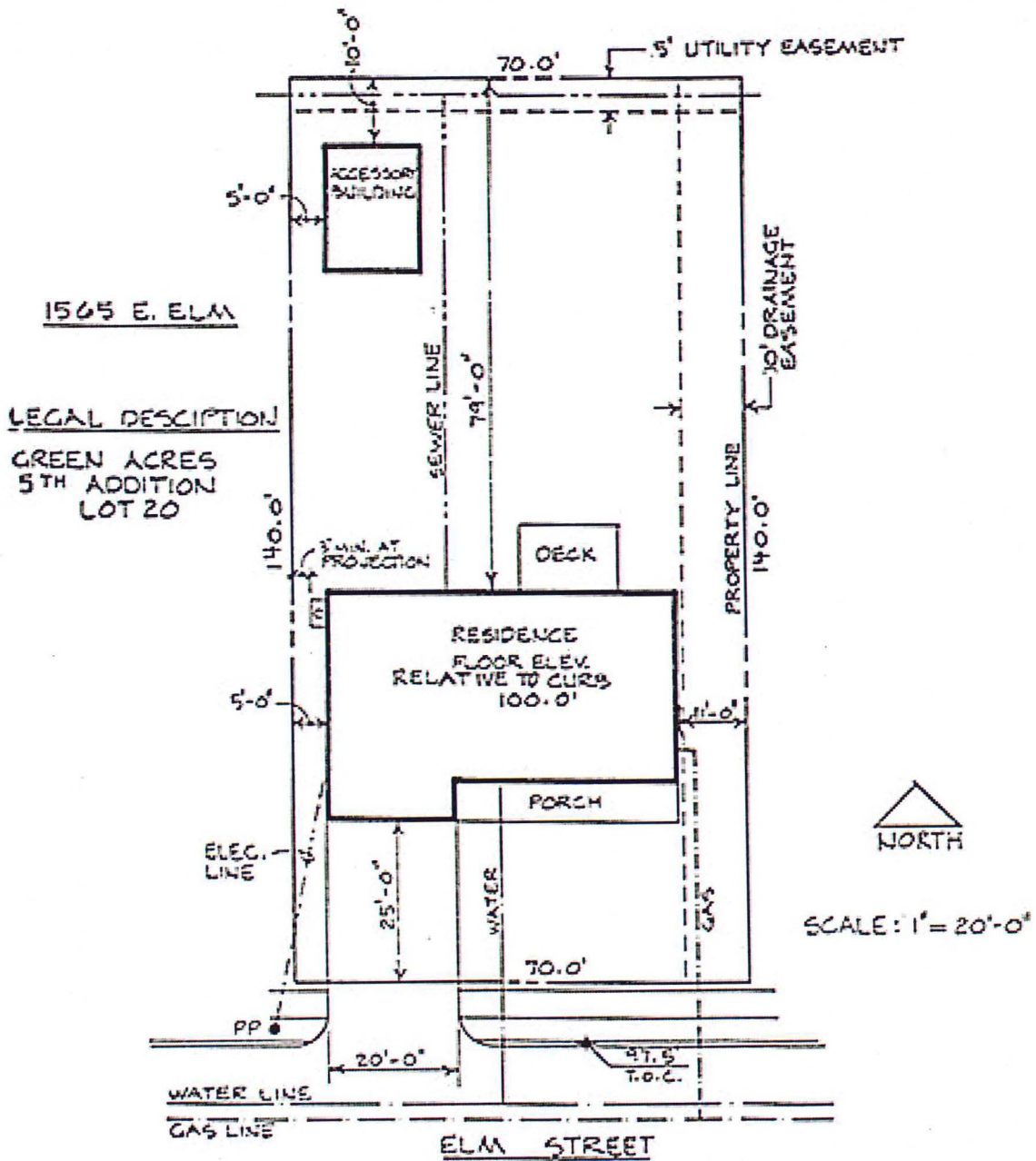
OFFICE OF
PLANNING, ZONING AND
HISTORIC PRESERVATION
108 Sherman Street
Telephone (605) 578-2082
Fax (605) 578-2084

DEADWOOD

"The Historic City of the Black Hills"
Deadwood, South Dakota 57732

KEVIN KUCHENBECKER
Historic Preservation Officer
Telephone (605) 578-2082
Kevin@cityofdeadwood.com

SITE PLAN ILLUSTRATION



LAWYERS

If relocation of this house is approved, Neighborhood Housing has agreed to be responsible for all costs associated with relocating the house to its new setting. No federal funds will be used. See **Exhibit "D"**.

February 5, 2014

Page 2

It is Optima's belief that the demolition and/or relocation of this non-contributing house DOES NOT encroach upon, damage, or destroy an historic property. Thus, the question as to whether all reasonable and prudent alternatives have been explored is a non-issue. In researching this matter, in fact, we have not been able to find a single case where a non-contributing structure such as this Shea House was found by this Commission to have an adverse affect on Deadwood's overall Historic District. It is Optima's position that denying its application to demolish and/or relocate a non-historic, non-contributing building would be contrary to both South Dakota law and City ordinances. This position is supported by former Deadwood City Attorney Memo dated November 9, 2004. See Exhibit "E".

In the event this Commission does find that the proposed project DOES encroach upon, damage, or destroy an historic property included in the national register of historic places or the state register of historic places, then we ask the Commission to find that this project, as proposed, is NOT ADVERSE to Deadwood and move to approve the proposed project as presented. If a suitable location is found, this non-contributing house will be preserved and put back to use as it was originally intended – as a single family dwelling in a residentially zoned neighborhood. This is the goal.

It is important to reiterate that the City of Deadwood has, through a long, incremental process of decisions and court decisions, made the determination that Lower Main Street is a predominately commercial/retail corridor – making Lower Main, and thus the Shea House's present location, entirely unsuitable for a single family dwelling. The site and entire strip in this area is zoned CH-Commercial Highway. See Exhibit "F" – Judgment & Findings of Fact and Conclusions of Law of Judge Warren Johnson dated November 1, 1990, Eighth Judicial Circuit, File No. 90-242.

Finally, should the Commission find that the proposed project DOES encroach upon, damage, or destroy an historic property and also finds that the project is ADVERSE to Deadwood, then Optima asks that the Commission find that the Applicant has explored all reasonable and prudent alternatives and thus APPROVE the project as presented.

In our opinion, given the information and accompanying Exhibits attached both to Optima's initial Application for Project Approval and this supplemental letter, all reasonable and prudent alternatives have been explored. This house already sits on an island between two commercial enterprises surrounded by parking lots (i.e. Cadillac Jack's Gaming Resort, the municipal parking lot across the street and The Real Estate Center). Leaving the house in its current location or moving it somewhere within the same area does not satisfy these larger issues and is thus not reasonable and prudent.

Furthermore, and for the same reasons set forth herein, leaving the house in its present setting and changing its use to "small commercial" is not reasonable and prudent. The market value of properties like this one, located along the main commercial entrance to this gaming town, will not from a financial feasibility standpoint, permit a small commercial

February 5, 2014

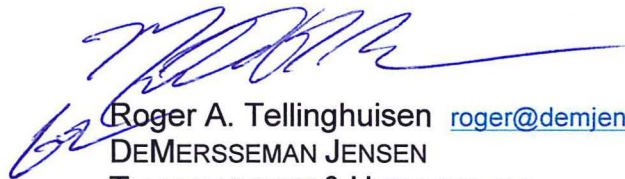
Page 3

stand-alone use such as an "attorney's office" or "hair salon", as has been suggested during public comment portion of the January 29, 2014 hearing. The market values of these properties, or in other words what one has to pay when purchasing them, drive what they can be used for economically.

In addition, additional parking to service Cadillac Jack's/Optima's present use as a hotel, casino, and convention center is what is needed. Even the City has recognized the need for parking in the construction of its municipal lot across the street.

In short, we believe that all reasonable and prudent alternatives have been considered.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roger A. Tellinghuisen", is positioned above the typed name.

Roger A. Tellinghuisen roger@demjen.com
DeMERsSEMAN JENSEN
TELLINGHUISEN & HUFFMAN, LLP

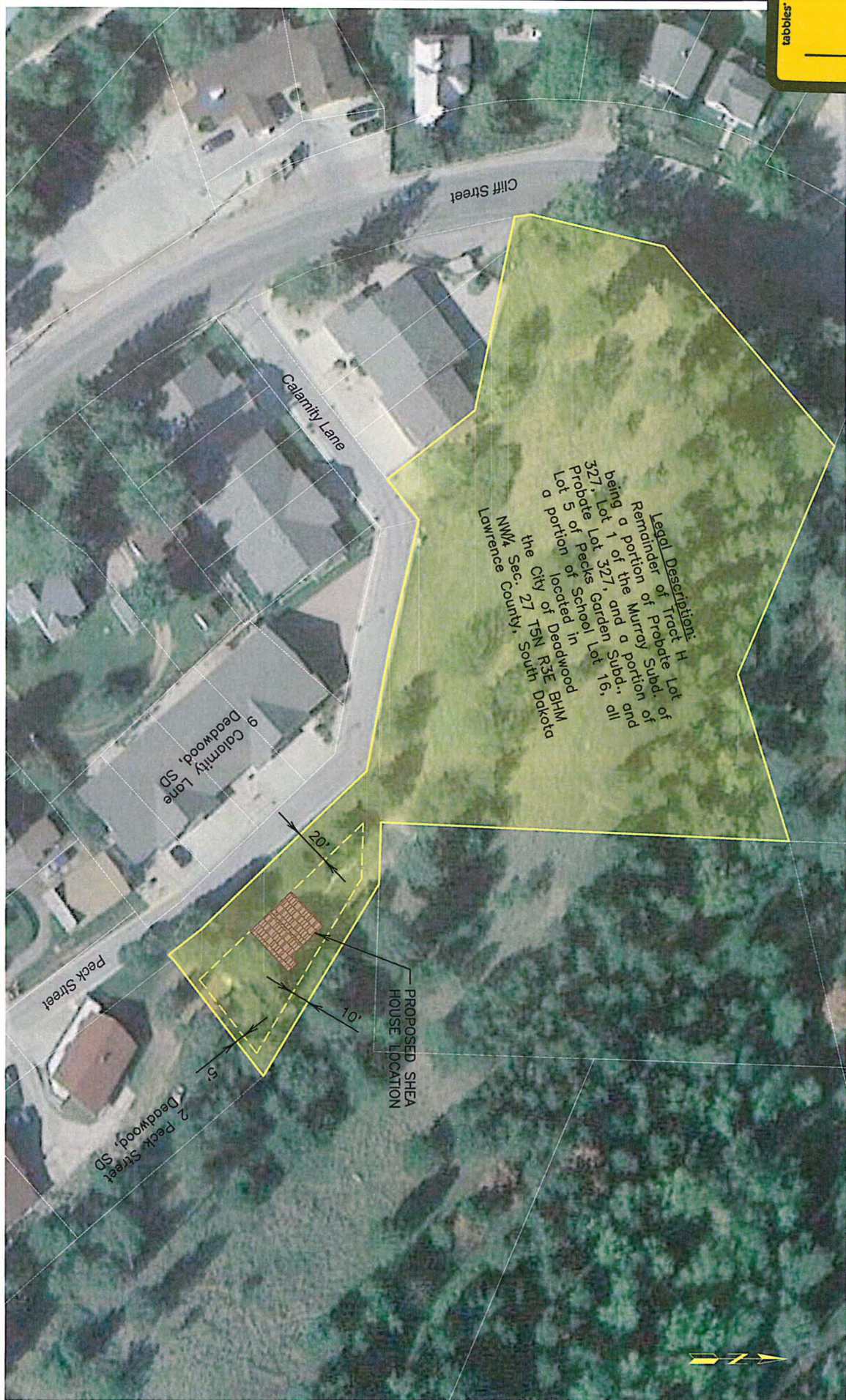
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Enclosure
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EXHIBIT

A

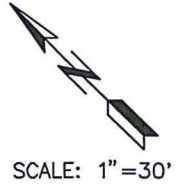
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Shea House Relocation
Deadwood, South Dakota
Conceptual Layout

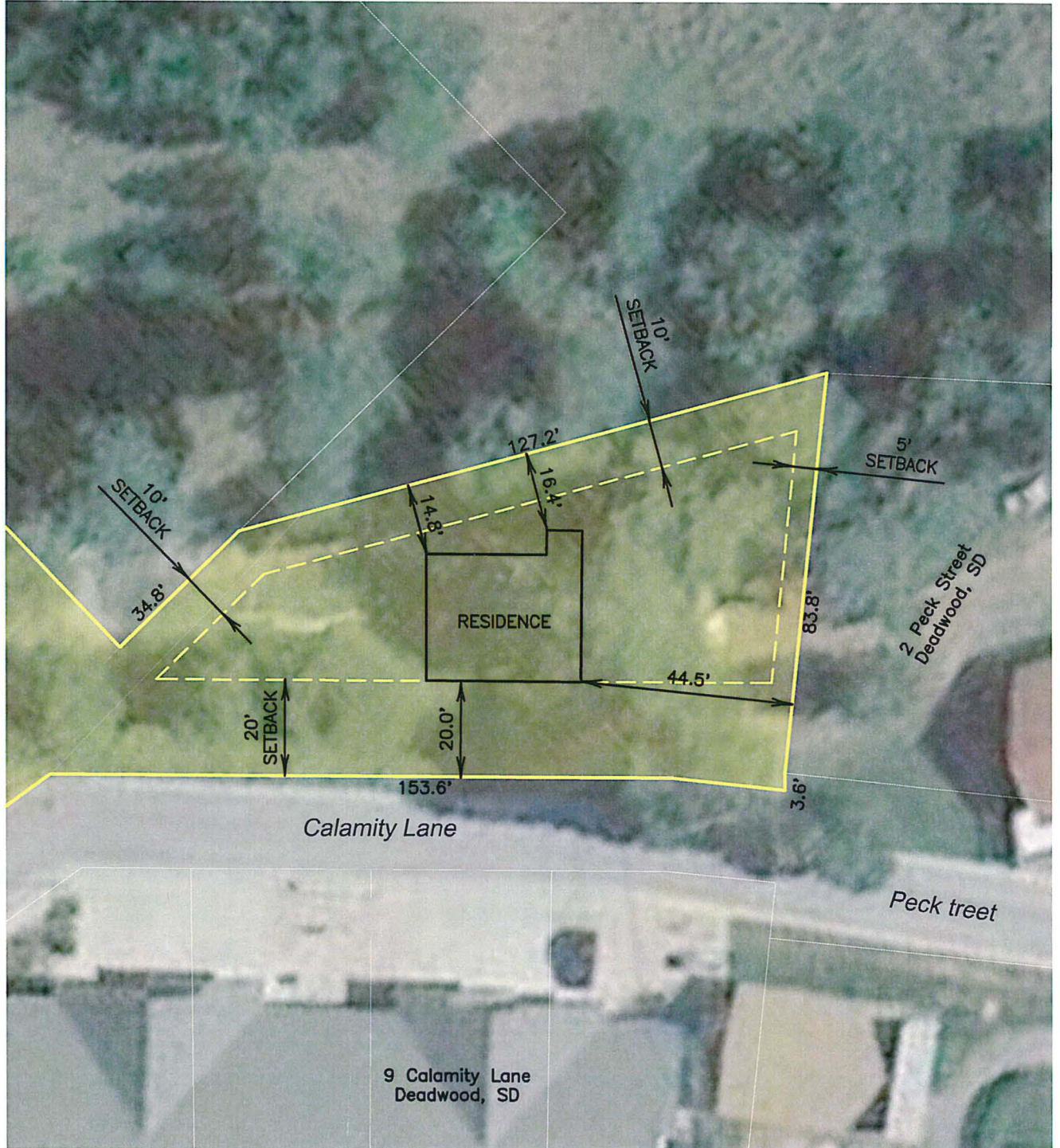


Shea House Relocation
Deadwood, South Dakota
Site Plan Illustration

LEGAL DESCRIPTION:
REMAINDER OF TRACT H
BEING A PORTION OF PROBATE LOT 327,
LOT 1 OF THE MURRAY SUBD. OF PROBATE LOT 327,
AND A PORTION OF LOT 5 OF PECKS GARDEN SUBD.,
AND A PORTION OF SCHOOL LOT 16,
ALL LOCATED IN THE CITY OF DEADWOOD
NW¼ SEC. 27 T5N R3E BHM
LAWRENCE COUNTY, SOUTH DAKOTA



NOTE: DIMENSIONS ARE APPROXIMATE



Fountain House and Shea House Relocation
Deadwood, South Dakota
Vicinity Map







COMMUNITY LEADERS

Adams Mastrovich
Family Foundation
City of Belle Fourche
Town of Central City
Citi Foundation
City of Deadwood/
Deadwood Historic Preservation
Community Development
Financial Institutions Fund
Deadwood Gaming Association
First Interstate Bank
Lawrence County
City of Lead
Meade County
NeighborWorks America
South Dakota Housing
Development Authority
City of Spearfish
City of Sturgis
United Way of the Black Hills
US Bank
USDA Rural Development
Wells Fargo Bank

Alternative format
available upon request.

An equal housing
opportunity organization.



February 5, 2014

Kevin Kuchenbecker
Deadwood Historic Preservation
108 Sherman Street
Deadwood, SD 57732

Mr. Kuchenbecker,

As Executive Director of NeighborWorks Dakota Home Resources (DHR), I am formally accepting the responsibility of moving the Fountain House and the Shea house. We will do our best to preserve and protect these historic resources of Deadwood. It is our intent to move the Fountain House to 33 Lincoln in Deadwood. We are considering a couple of sites for the Shea house and it is our goal to relocate this house in Deadwood. NeighborWorks DHR will be utilizing our own funding sources for the projects. Federal funding will be not be utilized for this project.

If you should have any questions, please contact me at (605) 578-1401.

Thank you.

Sincerely,

Joy McCracken
Executive Director



Buy, Fix, Keep. Building Neighborhoods Together



JOHN
ATTORNEY AT LAW

R.

FREDERICKSON

Box 583

68 Sherman Street, Suite 311 - P.O.

Deadwood, South Dakota

57732

M E M O

To: Mayor Toscana
Deadwood City Commission
Deadwood Historic Preservation Commission
Bernie Williams
Jim Wilson

From: John R. Frederickson

Re: 382 Main Street Demolition Request

Date: November 9, 2004

ISSUE

Whether or not the Deadwood Historic Preservation Commission can deny a request for demolition of a non-historic, non-contributing building located in an area zoned for commercial uses within the City of Deadwood.

BRIEF ANSWER

It is unlikely that a court would uphold the denial of the application to demolish the building because the structure would not be considered an historic property.

FACTS

Wal-East Development, Inc. has requested a demolition permit to tear down a building located at 328 Main Street, Deadwood, South Dakota. The structure is an office building located in the area zoned for commercial use. The building was constructed and built in 1963 and is not an historical contributing building in Deadwood. The building is not associated with any significant historical event, individual or pattern in the Deadwood history nor does the building present any historic appearance to the public.

The Deadwood Historic Preservation Commission has requested an opinion as to whether or not, under the above facts and current South Dakota law and the Deadwood City Ordinances, it

can deny project approval for the demolition of the building.

ANALYSIS

South Dakota law defines historic property as any building, structure, object, district, area, or site that is significant in the history, architecture, archeology, paleontology, and/or culture of the state, its communities or the nation. SDCL 1-19A-2(3). SDCL 1-19B-20 further provides:

the local governing body of any county or municipality may adopt an ordinance designating one or more historic properties on the following criteria: historical, architectural, archeological, and cultural significance; suitability for preservation or restoration; educational value; cost of acquisition, restoration, maintenance, operation, or repair; possibilities for adaptive or alternative use of the property; appraised value; and the administrative and financial responsibility of any person or organization willing to underwrite all or a portion of such cost.

The City of Deadwood has adopted such ordinance and provides that the demolition of historic resources within the City of Deadwood is governed by Ch. 17.68 of the City of Deadwood Code of Ordinances. In particular, Section 17.68.050 addresses the criteria for the issuance of certificates of appropriateness or project approvals for requests like the demolition from Wal-East Development. The project approval in this particular case is for the demolition of a building located at 382 Main Street, Deadwood, South Dakota. Demolition of historic resources is addressed under Section 17.68.050(D) Demolition, and provides in general that the Commission is to use the following criteria in reviewing whether or not historical resources can be demolished:

1) The individual architectural, cultural and/or historical significance of the resource.

2) The importance or contribution of the resource to the architectural character of the district and, where appropriate, the damaging impact of the resource on the architectural character of the district.

3) The importance or contribution of the resource to neighboring property values and, where appropriate, the damaging impact of the resource on neighboring property values.

4) The commission shall consider the difficulty or

impossibility of reproducing such a resource because of its texture, design, material or detail.

In the instant case, the staff has determined that the building is not historically contributing. It is not associated with any significant events, individuals or patterns of history of Deadwood. The building does not present any historic appearance to the public. Additionally, it has been determined that the demolition of the building would have no adverse effect on a historic district and will not encroach upon, damage or destroy the Deadwood National Historic Landmark District (see staff report).

It seems apparent that the state statutes and the ordinance governing demolition, when read in concert, are intended to preserve and protect historic properties. I believe historic resources and historic properties for the purpose of preservation and protection are one in the same. The building at 382 Main is not an historic property nor an historical resource to which the statute or ordinance seems to apply. Because the building is not a contributing building, is not associated with any significant event, individual or pattern and the proposed demolition would not have an adverse effect on any historical district, to deny the application approval would be contrary to South Dakota law and Deadwood City Ordinances. *

Also troublesome is reference to a lower court determination that nowhere within SDCL 1-19B exists any authority for a commission to deny a demolition permit even if a property is historic. Donovan v. City of Deadwood, 538 NW2d 790, 793 (S.D. 1995). The South Dakota Supreme Court went on to say that "on the contrary, SDCL 1-19B-27 provides that historic properties may be demolished after 180 days notice given to the historic preservation commission and during that 180 day period, the commission may negotiate with the owner in an effort to find a means of preserving the property. However, at the conclusion of the 180 days, the owner of historic property may raze the property. Based on my reading of SDCL 1-19A, 1-19B and the Donovan case, I do not believe the Deadwood Historic Preservation Commission denial of a request for demolition under these facts would be upheld by the courts. *

Should you need anything further please feel free to contact me.

11/09/2004 TUE 17:45 FAX 6056421756 TG AND P C

005/005

JRF:mls

Deadwood Office

(605) 578-1903
644-0040

FAX (605) 578-3078
Office
E-Mail: fredericksonlaw@rushmore.com

Spearfish

(605)

STATE OF SOUTH DAKOTA)
COUNTY OF LAWRENCE) :SS

IN CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

Civ. No. 90-242

JOHN MAXWELL, LINDA MAXWELL,
MARILYN E. CARTNER, WILLIAM H.
PEARSON, JOAN L. PEARSON,
FAUNILLE FIERRO, PAMELA
CLEVELAND, PHILIP SHAMA,
WINIFRED SHAMA, JUDITH BAUER,
DONALD OSTBY, NORA OSTBY,
CHARLES B. FERRIS, WINIFRED
FERRIS, and MYRTLE AUER

Petitioners,

vs.

CITY OF DEADWOOD BOARD OF
ADJUSTMENT and its members
BRUCE OBERLANDER, GLEN
STRATTON, MARY DUNNE, MARIE
FARRIER and W. E. LANDWEHR,

Respondents.

JUDGMENT ON WRIT OF
CERTIORARI

The Petitioners having appealed the decision of the City of Deadwood Board of Adjustment; and the Petitioners being represented by Reed C. Richards of Deadwood, South Dakota; and the Respondents being represented by Steven M. Christensen of Deadwood, South Dakota; and the Court having taken testimony on the 5th day of September, 1990, and upon the testimony heard, the exhibits of the parties and the argument of counsel, the Court having entered its following Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED

That the decision of the Deadwood Board of Adjustment denying the Petitioners' request for rezoning is reversed, and

It is further ORDERED, ADJUDGED AND DECREED that the zoning

FILED

Lawrence County, South Dakota

of the property from 390 Main Street to 296 Main Street be and
hereby is changed from residential to commercial.

Done in open Court this 15 day of November, 1990.

BY THE COURT:

Wm. H. Gibson
Circuit Court Judge

ATTEST:

[Signature]
Clerk of Courts

By: Deputy Clerk

(S E A L)

COUNTY OF LAWRENCE
I hereby certify that I have carefully compared
the within instrument with the original now on
file in my office and that it is a true and correct
copy of the same and the whole thereof, in-
cluding the filing thereon and same is now in
full force and effect.

Dated Nov 9 1990
ALICE I. BRUCE, Clerk of Courts

[Signature]

FILED
Lawrence County, South Dakota

OCT 31 1990

STATE OF SOUTH DAKOTA)
COUNTY OF LAWRENCE) :SS

IN CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT
Civ. No. 90-242

JOHN MAXWELL, LINDA MAXWELL,
MARILYN E. CARTNER, WILLIAM H.
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FERRIS, and MYRTLE AUER.

Petitioners,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

07/22/98 FRI 07:38V9K 885-578-38-3

CIRCUIT

202

CITY OF DEADWOOD BOARD OF
ADJUSTMENT and its members
BRUCE OBERLANDER, GLEN
STRATTON, MARY DUNNE, MARIE
FARRIER and W. E. LANDWEHR,
County of Respondents.)

The Petitioners having appealed the decision of the City of
Deadwood Board of Adjustment; and the Petitioners being
represented by Reed C. Richards of Deadwood, South Dakota; and
the Respondents being represented by Steven M. Christensen of
Deadwood, South Dakota; and the Court having taken testimony on
the 5th day of September, 1990, and upon the testimony heard, the
exhibits of the parties and the argument of counsel, the Court
hereby makes and enters the following Findings of Fact and
Conclusions of Law:

FINDINGS OF FACT:

1. Petitioners are all residents and owners of real
property located between 390 Main Street to 296 Main Street,
Deadwood, South Dakota;

FILED
Lawrence County, South Dakota

2. Petitioners appeared before the Deadwood Board of Adjustment on the 2nd day of May, 1990 and requested that the above-described property be rezoned from residential to commercial which request was denied.

3. Petitioners then petitioned the circuit court for a Writ of Certiorari, which Writ was issued on the 31st day of May, 1990, with a hearing set for September 5, 1990.

4. On September 5, 1990, the Court heard testimony from representative members of Petitioners and Respondents and received into evidence certain exhibits offered by the parties.

07/24/98 FRI 07:38 FAX 605.572.3812

CIRCUIT COURT

4993

5. The evidence shows that a portion of the above-described real property from 350 Main to 296 Main was at one time zoned commercial and that the balance of property was zoned residential.

6. A new zoning map was adopted in 1989 by the City of Deadwood. No one involved in the adoption of the new zoning map was aware of the fact that the property from 350 Main to 296 Main was then zoned commercial.

7. The Deadwood planning and zoning administrator testified that if the existing commercial zoning from 350 Main to 296 Main had been known at the time that the new zoning map was being considered, that zoning classification would have been maintained in the new zoning map.

8. The petitioners testified and presented evidence that the property involved in the petition was deteriorating as a place for people to live and raise their families because of the high traffic volume, the noise, the increased crime, the

FILED
Lawrence County, South Dakota

182

NOV 1 1990

increased danger to children from the street, the increased danger to drivers in attempting to get in and out of their driveways, the increased tourist and commercial parking in their area and the drop in residential value of their real estate.

9. The petitioners testified and presented evidence that the property involved is much more suited for commercial use, has greater value as commercial property, has a dominant and growing use as commercial property and as a commercial strip located at one of the major highway entrances to the City of Deadwood.

07/24/98 FILED 07 The City planner and one city commissioner testified

004

that the area was basically a growing commercial area and that the area should be changed from residential to commercial.

Two city commissioners voted to change zoning and one commissioner and the mayor voted not to change the zoning.

The mayor was against the change in zoning since it would set a precedent for Charles Street which is currently zoned residential; that there wasn't adequate replacement housing in Deadwood; that there was other commercial property of the same size and type that could be utilized in Deadwood.

14. The Petitioners presented evidence that the change of zoning on lower Main would not be a precedent for Charles Street; that there was other housing available; that there are a number of residential developments in the planning stages; that there is no other similar commercial areas that could be developed in Deadwood and that the availability of other commercial areas is not a proper consideration in determining whether or not to change zoning.

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Lawrence County, South Dakota

NOV 1 1990

15. The City adopted a Comprehensive Plan in 1971 which called for and planned upon further commercial development in the area proposed by petitioners for a change of zoning.

16. The Comprehensive Plan is a legal document under which the planning and zoning for the City and with which the City is to comply in all zoning decisions.

17. The petition for change of zoning is in compliance with the Comprehensive Plan of the City; that the current zoning of the area as residential is not in compliance with the 7/24/80 Comprehensive Plan for the City of Deadwood.

005

Upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW:

1. The Court has jurisdiction of this matter pursuant to SDCL 11-4-25, et. seq.

2. The action of the Deadwood Board of Adjustment denying the petition for change of zoning is not supported by any substantial or competent evidence and is unreasonable.

3. The decision of the Deadwood Board of Adjustment, being unsupported by substantial or competent evidence is arbitrary, capricious and contrary to the Comprehensive Plan adopted by the City in 1971.

4. The petitioners have shown the action of the Deadwood Board of Adjustment to be arbitrary and capricious and without basis in law or fact by clear and convincing evidence.

5. The decision of the deadwood Board of Adjustment denying the request for rezoning is therefore reversed.

FILED
Lawrence County, South Dakota

Maxwell, et. al. v. City of Deadwood Board of Adjustment, et. al
Findings of Fact and Conclusions of Law

LET JUDGMENT BE ENTERED ACCORDINGLY

Done in open Court this 1st. day of November, 1990.

BY THE COURT:

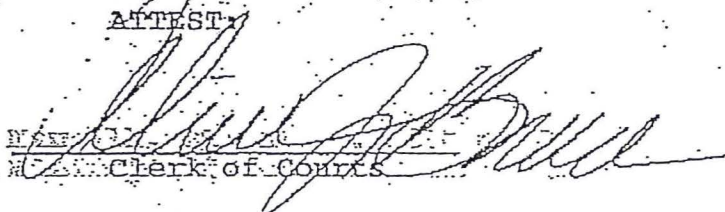

Circuit Court Judge

24/98 FRI 07:38 FAX 605-578 3613

Circuit Court Judge

4296

ATTEST:


Clerk of Courts

By: Deputy Clerk

(S E A L)

D.A. is

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Lawrence County, South Dakota

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**DEMERSSEMAN JENSEN
TELLINGHUISEN & HUFFMAN, LLP**

L A W Y E R S

PO Box 1820, RAPID CITY, SD 57709-1820
516 FIFTH STREET, RAPID CITY, SD 57701

MICHAEL B. DEMERSSEMAN
CURTIS S. JENSEN
MICHAEL V. WHEELER
RICHARD E. HUFFMAN
GREGORY J. SPERLICH
ROGER A. TELLINGHUISEN
ROBERT J. ROHL

TELEPHONE
605-342-2814

FAX
605-342-0732

February 5, 2014

Historic Preservation Officer
Attn: Kevin Kuchenbecker
108 Sherman Street
Deadwood, SD 57732

Sent Via E-Mail & US Mail

Re: Optima LLC: Application for Project Approval
 370 Main Street, Deadwood, South Dakota
Your Case No.: 14002

Dear Mr. Kuchenbecker:

The purpose of this letter is to provide the additional information requested of the Applicant, Optima, LLC, by the Historic Preservation Commission at its January 29, 2014 hearing.

Recall that Optima's Application for Project Approval is to move/relocate the "Fountain" house located at 370 Main Street to the vacant lot known as 33 Lincoln Avenue, within the city limits of Deadwood. This area is also known as Ingleside Planning Unit. See Exhibit "A" setting forth proposed house location with proposed setbacks (Options 1 & 2). Also see Exhibit "B" that illustrates the overall Vicinity Map – the existing Fountain House location and the proposed Fountain House location. Finally, see Exhibit "C" depicting the front and side elevations as to how the Fountain House would look in the proposed new residential area setting.

The setbacks set forth in Deadwood's ordinance are: 20' front yard; 10' rear yard; and 5' side yard (except for corner lots where a 10' side yard setback is set forth). It is important to note that the setbacks set forth in the ordinance are strongly supported for *new* construction projects in *new* areas of development. In this case, however, most every single house along Lincoln Avenue would violate the required setbacks in some fashion. Most do not meet the front yard setback of 20'. In fact, in this case, while the proposed lot would allow for the front yard setback to be met, a lesser setback would be desired to match up with the adjacent houses.

February 5, 2014

Page

As for the side yard setback, it appears that a variance will be required. This is not out of the ordinary for this historic neighborhood, however. The house just across Jackson Street on the same side of the street as the Lincoln Avenue lot is also on a corner lot and appears to set right along the property line or close to it, clearly not meeting the 10' corner lot side yard setback requirement. If a variance were requested, we believe logic would prevail in its approval. The rear yard setback is easily satisfied.

Exhibit "E" depicts the old apartment building that was destroyed by fire and that historically used to set on this now-vacant Lincoln Avenue lot. Note that it does not even remotely meet the required setbacks!

If relocation of this house is approved, Neighborhood Housing has agreed to be responsible for all costs associated with relocating the house to its new setting. It's our understanding that no federal funds will be used. See Exhibit "D".

In the event this Commission finds that the proposed relocation project DOES encroach upon, damage, or destroy an historic property included in the national register of historic places or the state register of historic places, then we ask the Commission to find that this project as proposed is NOT ADVERSE to Deadwood and move to approve the relocation of the Fountain house as presented. This contributing house will be preserved and put back to use as it was originally intended – as a single family dwelling in a residentially zoned neighborhood.

It is important to reiterate that the City of Deadwood has, through a long, incremental process of decisions and court decisions, made the determination that Lower Main Street is a predominately commercial/retail corridor – making Lower Main, and thus the Fountain House's present location, entirely unsuitable for a single family dwelling. The site and entire strip in this area is zoned CH-Commercial Highway. See Exhibit "F" – Judgment & Findings of Fact and Conclusions of Law of Judge Warren Johnson dated November 1, 1990, Eighth Judicial Circuit, File No. 90-242.

Finally, should the Commission find that the proposed relocation project DOES encroach upon, damage, or destroy an historic property and also finds that the project is ADVERSE to Deadwood, then Optima asks that the Commission find that the Applicant has explored all reasonable and prudent alternatives and thus APPROVE the project as presented.

In our opinion, given the information and accompanying Exhibits attached both to Optima's initial Application for Project Approval and this supplemental letter, all reasonable and prudent alternatives have been explored. The Fountain House already sets on an

February 5, 2014

Page

"island" between two commercial enterprises surrounded by parking lots (i.e. Cadillac Jack's Gaming Resort, the municipal parking lot across the street and The Real Estate Center). Leaving the house in its current location or moving it within the same planning unit does not satisfy these larger issues and is thus not reasonable and prudent.

Furthermore, and for the same reasons set forth herein, leaving the house in its present setting and changing its use to "small commercial" is not reasonable and prudent. The market value of properties like this one located along the main commercial entrance to this gaming town will not, from a financial feasibility standpoint, permit a small commercial stand-alone use such as an "attorney's office" or "hair salon", as has been suggested during public comment portion of the January 29, 2014 hearing. The market values of these properties, or in other words what one has to pay when purchasing them, drive what they can be used for economically.

In addition, additional parking to service Cadillac Jack's/Optima's present use as a hotel, casino, and convention center is what is needed. Even the City has recognized the need for parking in the construction of its municipal lot across the street.

In short, we believe that all reasonable and prudent alternatives have been considered.

Sincerely,


Roger A. Tellinghuisen roger@demjen.com
DeMERSSEMAN JENSEN
TELLINGHUISEN & HUFFMAN, LLP

RT/ca
Enclosure
Cc: Client

Fountain House Relocation
Deadwood, South Dakota
Conceptual Layout - Option No. 1



33 Lincoln Street
Site Plan Illustration - Option 1

LEGAL DESCRIPTION:

LOTS 6-7-8 & 9, 30' X 50'

N & NW 8 & 9 &

VACATED ALLEY BLK 42

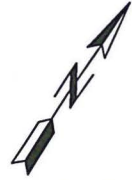
ALL LOCATED IN THE CITY OF DEADWOOD

SW¼ SEC. 23 T5N R3E BHM AND

NW¼ SEC. 26 T5N R3E BHM

LAWRENCE COUNTY, SOUTH DAKOTA

NOTE: DIMENSIONS ARE APPROXIMATE



SCALE: 1"=30'



Fountain House Relocation
Deadwood, South Dakota
Conceptual Layout - Option No. 2



Fountain House Relocation Deadwood, South Dakota

33 Lincoln Street
Site Plan Illustration - Option 2

LEGAL DESCRIPTION:

LOTS 6-7-8 & 9, 30' X 50'

N & NW 8 & 9 &

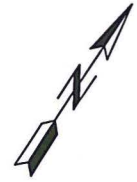
VACATED ALLEY BLK 42

ALL LOCATED IN THE CITY OF DEADWOOD

SW $\frac{1}{4}$ SEC. 23 T5N R3E BHM AND

NW $\frac{1}{4}$ SEC. 26 T5N R3E BHM

LAWRENCE COUNTY, SOUTH DAKOTA



SCALE: 1" = 30'

NOTE: DIMENSIONS ARE APPROXIMATE





Lincoln Ave. Lot

Property Line

Setbacks Not Met

Fountain House and Shea House Relocation
Deadwood, South Dakota
Vicinity Map











COMMUNITY LEADERS

Adams Mastrovich
Family Foundation
City of Belle Fourche
Town of Central City
Citi Foundation
City of Deadwood/
Deadwood Historic Preservation
Community Development
Financial Institutions Fund
Deadwood Gaming Association
First Interstate Bank
Lawrence County
City of Lead
Meade County
NeighborWorks America
South Dakota Housing
Development Authority
City of Spearfish
City of Sturgis
United Way of the Black Hills
US Bank
USDA Rural Development
Wells Fargo Bank

Alternative format
available upon request.

An equal housing
opportunity organization.



February 5, 2014

Kevin Kuchenbecker
Deadwood Historic Preservation
108 Sherman Street
Deadwood, SD 57732

Mr. Kuchenbecker,

As Executive Director of NeighborWorks Dakota Home Resources (DHR), I am formally accepting the responsibility of moving the Fountain House and the Shea house. We will do our best to preserve and protect these historic resources of Deadwood. It is our intent to move the Fountain House to 33 Lincoln in Deadwood. We are considering a couple of sites for the Shea house and it is our goal to relocate this house in Deadwood. NeighborWorks DHR will be utilizing our own funding sources for the projects. Federal funding will be not be utilized for this project.

If you should have any questions, please contact me at (605) 578-1401.

Thank you.

Sincerely,

Joy McCracken
Executive Director



Buy. Fix. Keep. Building Neighborhoods Together

EXHIBIT

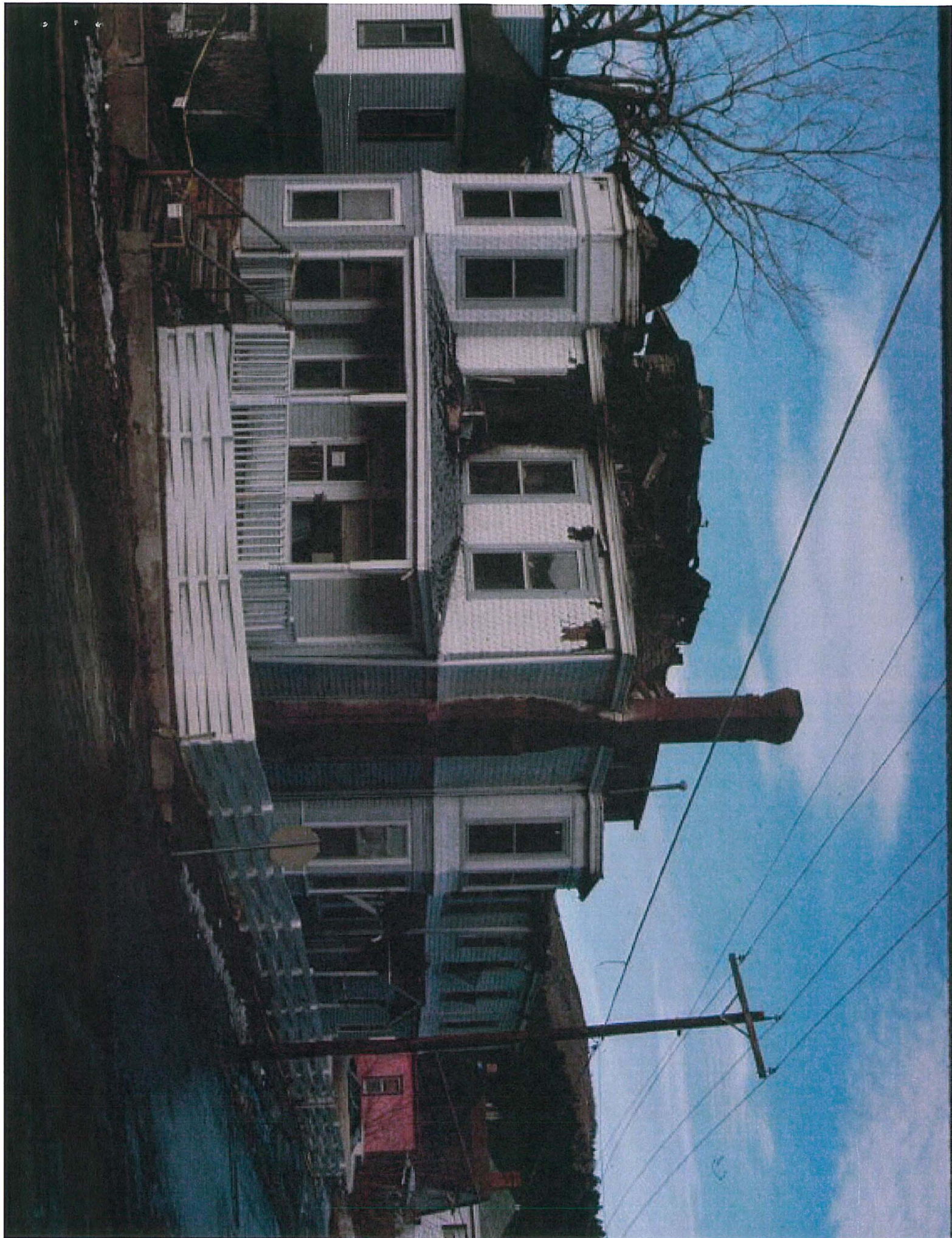
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STATE OF SOUTH DAKOTA)
COUNTY OF LAWRENCE) :SS

IN CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

Civ. No. 90-242

JOHN MAXWELL, LINDA MAXWELL,
MARILYN E. CARTNER, WILLIAM H.
PEARSON, JOAN L. PEARSON,
FAUNILLE FIERRO, PAMELA
CLEVELAND, PHILIP SHAMA,
WINIFRED SHAMA, JUDITH BAUER,
DONALD OSTBY, NORA OSTBY,
CHARLES B. FERRIS, WINIFRED
FERRIS, and MYRTLE AUER

Petitioners,

vs.

CITY OF DEADWOOD BOARD OF
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BRUCE OBERLANDER, GLEN
STRATTON, MARY DUNNE, MARIE
FARRIER and W. E. LANDWEHR,

Respondents.

JUDGMENT ON WRIT OF
CERTIORARI

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It is further ORDERED, ADJUDGED AND DECREED that the zoning

FILED

Lawrence County, South Dakota

of the property from 390 Main Street to 296 Main Street be and
hereby is changed from residential to commercial.

Done in open Court this 15 day of November, 1990.

BY THE COURT:

Wm. H. Nelson
Circuit Court Judge

ATTEST:

Alice I. Bruce
Clerk of Courts

By: _____
Deputy Clerk

(S E A L)

COUNTY OF LAWRENCE
I hereby certify that I have carefully compared
the within instrument with the original now on
file in my office and that it is a true and correct
copy of the same and the whole thereof, in-
cluding the filing thereon and same is now in
full force and effect.

Dated Nov 9 1990
ALICE I. BRUCE Clerk of Courts

Alice I. Bruce

658 LN

15-28

27/22/28

FILED
Lawrence County, South Dakota

OCT 31 1990

STATE OF SOUTH DAKOTA)
) :SS
COUNTY OF LAWRENCE)

IN CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

Civ. No. 90-242

JOHN MAXWELL, LINDA MAXWELL,
MARILYN E. CARTNER, WILLIAM H.
PEARSON, JOAN L. PEARSON,
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FERRIS, and MYRTLE AUER.

Petitioners,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

07/22/98 FRI 07:38VSA 865-578-3813

CIRCUIT COURT

Page 2

CITY OF DEADWOOD BOARD OF
ADJUSTMENT and its members
BRUCE OBERLANDER, GLEN
STRATTON, MARY DUNNE, MARIE
FARRIER and W. E. LANDWEHR,
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property located between 390 Main Street to 296 Main Street,
Deadwood, South Dakota.

FILED
Lawrence County, South Dakota

2. Petitioners appeared before the Deadwood Board of Adjustment on the 2nd day of May, 1990 and requested that the above-described property be rezoned from residential to commercial which request was denied.

3. Petitioners then petitioned the circuit court for a Writ of Certiorari, which Writ was issued on the 31st day of May, 1990, with a hearing set for September 5, 1990.

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07/24/98 FRI 07:38 FAX 605 572 3812

CIRCUIT COURT

4098

5. The evidence shows that a portion of the above-described real property from 350 Main to 296 Main was at one time zoned commercial and that the balance of property was zoned residential.

6. A new zoning map was adopted in 1989 by the City of Deadwood. No one involved in the adoption of the new zoning map was aware of the fact that the property from 350 Main to 296 Main was then zoned commercial.

7. The Deadwood planning and zoning administrator testified that if the existing commercial zoning from 350 Main to 296 Main had been known at the time that the new zoning map was being considered, that zoning classification would have been maintained in the new zoning map.

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FILED
Lawrence County, South Dakota

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07/24/98 FR1107:37 The city planner and one city commissioner testified that the area was basically a growing commercial area and that the area should be changed from residential to commercial. 2004

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14. The Petitioners presented evidence that the change of zoning on lower Main would not be a precedent for Charles Street; that there was other housing available; that there are a number of residential developments in the planning stages; that there is no other similar commercial areas that could be developed in Deadwood and that the availability of other commercial areas is not a proper consideration in determining whether or not to change zoning.

FILED

Lawrence County, South Dakota

NOV 1 1990

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16. The Comprehensive Plan is a legal document under which the planning and zoning for the City and with which the City is to comply in all zoning decisions.

17. The petition for change of zoning is in compliance with the Comprehensive Plan of the City; that the current zoning of the area as residential is not in compliance with the Comprehensive Plan for the City of Deadwood.

005

Upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW:

1. The Court has jurisdiction of this matter pursuant to SDCL 11-4-25, et. seq.

2. The action of the Deadwood Board of Adjustment denying the petition for change of zoning is not supported by any substantial or competent evidence and is unreasonable.

3. The decision of the Deadwood Board of Adjustment, being unsupported by substantial or competent evidence is arbitrary, capricious and contrary to the Comprehensive Plan adopted by the City in 1971.

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FILED
Lawrence County, South Dakota

Maxwell, et. al. v. City of Deadwood Board of Adjustment, et. al
Findings of Fact and Conclusions of Law

LET JUDGMENT BE ENTERED ACCORDINGLY

Done in open Court this 1st day of November, 1990.

BY THE COURT:

Wanda J. Olson
Circuit Court Judge

24/98

ATTEST:

[Signature]
Clerk of Courts

By: [Signature]
Deputy Clerk

(S E A L)

FILED
Lawrence County, South Dakota

NOV 1 1990

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Date: February 6, 2014

Case No. 14004
Address: 15 Denver

Staff Report

The applicant has submitted an application for Project Approval for exterior work at 15 Denver a contributing structure located in the City Creek Planning Unit in the City of Deadwood.

Applicant: David Folger & Erin Little
Owner: Same
Constructed: ca. 1895

CRITERIA FOR THE ISSUANCE OF A PROJECT APPROVAL

The Historic Preservation Commission shall use the following criteria in granting or denying the Project Approval:

General Factors:

1. **Historic significance of the resource:** This building is a contributing resource in the Deadwood National Historic Landmark District. It is significant for its historic association with the founding and initial period of growth of the town of Deadwood. Spurred by the tremendous mining boom of 1876, Deadwood grew quickly and became the first major urban center of western South Dakota. This house displays the architectural characteristics common to working-class housing in pre-World War I Deadwood. These small, vernacular cottages, typically of foursquare or T-gable plan, occasionally featured limited Queen Anne detailing. A number of these houses survive today, scattered throughout Deadwood's neighborhoods.
2. **Architectural design of the resource and proposed alterations:** The applicant requests permission to do structural repair as housing is sinking due to water and drainage damage. The work consists of replacing cement for proper drainage, rebuilding walls and replacing porch and deck to match. A Special Needs -Siding Program application has also been submitted.

Attachments: Yes

Plans: No

Photos: Yes

Staff Opinion: The applicant and their contractor are working closely with this office. As proposed the work and changes do not encroach upon, damage or destroy a historic resource or have an adverse effect on the character of the building or the historic character of the State and National Register Historic Districts or the Deadwood National Historic Landmark District.

Furthermore, staff recommends acceptance into the Special Needs Windows program and the Special Needs Siding program.



Motions available for commission action:

If you, as a commissioner, have determined the Project DOES NOT Encroach Upon, Damage or Destroy a historic property then:

Based upon all the evidence presented, I find 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 move to grant a project approval.

If you, as a commissioner, have determined the Project will Encroach Upon, Damage or Destroy a historic property then:

First Motion:

Based upon all the evidence presented, I move to make a finding that this project **DOES** encroach upon, damage, or destroy any historic property included in the national register of historic places or the state register of historic places. [If this, move on to 2nd Motion and choose an option.]

Second Motion:

Option 1: Based upon the guidance in the U.S. Department of the Interior standards for historic preservation projects in 36 C.F.R. 67, I find that the project is **NOT ADVERSE** to Deadwood and move to **APPROVE** the project as presented.

OR

Option 2: Based upon the guidance in the U.S. Department of the Interior standards for historic preservation projects in 36 C.F.R. 67, I find that the project is **ADVERSE** to Deadwood and move to **DENY** the project as presented.

OR

Option 3: Based upon the guidance in the U.S. Department of the Interior standards for historic preservation projects in 36 C.F.R. 67, I find that the project is **ADVERSE** to Deadwood, but the applicant has explored **ALL REASONABLE AND PRUDENT ALTERNATIVES**, and so I move to **APPROVE** the project as presented.

OFFICE OF
PLANNING, ZONING AND
HISTORIC PRESERVATION
108 Sherman Street
Telephone (605) 578-2082
Fax (605) 578-2084

DEADWOOD

Deadwood, South Dakota 57732

DEADWOOD CITY HALL
102 Sherman Street
Telephone (605) 578-2600

City of Deadwood Application for ☒ Project Approval or ☐ Certificate of Appropriateness

The Deadwood Historic Preservation Commission reviews all applications. Approval is issued for proposed work that is in keeping with City of Deadwood Ordinances & Guidelines, South Dakota State Administrative Rules and the Secretary of the Interior's Standards for Rehabilitation.

This application must be typed or printed in ink and submitted to:

City of Deadwood
Deadwood Historic Preservation
108 Sherman Street
Deadwood, SD 57732

FOR INFORMATION REGARDING THIS FORM, CALL 605-578-2082

PROPERTY INFORMATION

Property Address: 15 Denver Ave., Deadwood, SD 57732

Historic Name of Property (if known):

APPLICANT INFORMATION

Applicant is ☒ owner ☐ contractor ☐ architect ☐ consultant ☐ other

Owner's Name: David Folger / Erin Little
Address: 8842 Luss Dr.
City: Huntington Beach, CA Zip: 92646
Telephone: (714) 336-2264 Fax: _____
E-mail: hb2bhc@gmail.com

Architect's Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-mail: _____

Contractor's Name: Dana Pierce
Address: 312w Foot hills const.
City: Lead State: SD Zip: 57754
Telephone: (605) 641-8023 Fax: _____
E-mail: Foot hills const@yahoo.com

Agent's Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-mail: _____

TYPE OF IMPROVEMENT

- | | | | |
|---|--|--------------------------------------|---|
| ☐ Alteration (change to exterior) | ☐ New Building | ☐ Addition | ☐ Accessory Structure |
| ☐ New Construction | ☐ Re-Roofing | ☐ Wood Repair | ☐ Exterior Painting |
| ☐ General Maintenance | ☒ Siding | Other _____ | |
| ☒ Other <u>structural</u> | ☐ Awning | ☐ Sign | ☒ Fencing removal |

Life Safety
repair,
repairs,
porch, deck

Estimated Cost of Work: \$ 40,000

DEADWOOD

Deadwood, South Dakota 57732

DEADWOOD CITY HALL
102 Sherman Street
Telephone (605) 578-2600

ACTIVITY: (CHECK AS APPLICABLE)			
Project Start Date: <u>1/15/14</u>		Project Completion Date (anticipated): <u>3/30/14</u>	
☐ ALTERATION	☐ Front	☐ Side(s)	☐ Rear
☐ ADDITION	☐ Front	☐ Side(s)	☐ Rear
☐ NEW CONSTRUCTION	☐ Residential		☐ Other _____
☐ ROOF	☐ New	☐ Re-roofing	
	☐ Front	☐ Side(s)	☐ Rear
☐ GARAGE	☐ New	☐ Rehabilitation	
	☐ Front	☐ Side(s)	☐ Rear
☒ FENCE/GATE	☐ New	☐ Replacement	
<u>Removal</u>	☐ Front	☐ Side(s)	☐ Rear
Material _____ Style/type _____ Dimensions _____			
☐ WINDOWS	☐ STORM WINDOWS	☐ DOORS	☐ STORM DOORS
☐ Restoration		☐ Replacement	☐ New
☐ Front	☐ Side(s)	☐ Rear	
Material _____ Style/type _____			
☐ SIGN/AWNING	☐ New	☐ Restoration	☐ Replacement
Material _____ Style/type _____ Dimensions _____			
☐ OTHER – Describe in detail below or use attachments			

DESCRIPTION OF ACTIVITY

Describe, as specifically as possible, the above activity (use attachments if necessary including type of materials to be used) and submit as applicable. Descriptive materials such as photos and drawings are necessary to illustrate the work and to help the commissioners and staff evaluate the proposed changes. A request for approval of a window replacement, for example, should be accompanied by measurements of the existing window, a picture of the existing window, and a picture or catalogue sheet with manufacturer information for the new window. Similar information should be supplied for each element of the proposed work along with general drawings and/or photographs as appropriate.

Failure to supply adequate documentation could result in delays in processing and denial of the request.

Structural repair to 15 Denver Ave House is sinking. Water and drainage damage. Bedms to support home to be installed (3), walls rebuilt (3 basement / 2 bedroom), porch and deck to be replaced (not safe), come it replace creant for proper drainage. Demo included.

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SIGNATURES

I HEREBY CERTIFY that I understand this application will not be accepted and processed until all the requested information has been supplied. I realize that drawings and measurements must be exact and if errors result in a violation of the Commission's approval, then appropriate changes will have to be made. I also understand this application may require a site visit / additional research by staff and a PUBLIC HEARING by the DEADWOOD HISTORIC PRESERVATION COMMISSION.

I understand that this application is for a Certificate of Appropriateness or Project Approval only and that a building permit is required for any uses associated with this location prior to any constructions, alterations, etc. All statements are true to the best of my knowledge and belief.

I understand that approval is issued for proposed work that is in keeping with City of Deadwood Ordinances, South Dakota State Administrative Rules and the Secretary of the Interior's Standards for Rehabilitation and copies are available for my review.

ECutt 1/23/14
SIGNATURE OF OWNER(S) DATE

SIGNATURE OF AGENT(S) DATE

Dave 1/23/14
SIGNATURE OF OWNER(S) DATE

SIGNATURE OF AGENT(S) DATE

SIGNATURE OF OWNER(S) DATE

SIGNATURE OF AGENT(S) DATE

APPLICATION DEADLINE

This form and all supporting documentation **MUST** arrive by 5:00 p.m. on the 1st or 3rd Wednesday of every month to be considered at the next Historic Preservation Commission Meeting. The meeting schedule and filing deadlines are on file with the Historic Preservation Office and the City Clerk. Any information not provided to staff in advance of the meeting will not be considered by the Commission during their deliberation. Please call if you have any questions and staff will assist you.

Please use the enclosed criteria checklist as a guide to completing the application. Incomplete applications cannot be reviewed and will be returned to you for more information. All submitted materials will be retained by the Historic Preservation Office. Do not submit your only copy of any piece of documentation.

The City of Deadwood Historic Preservation Office has numerous resources available for your assistance upon request.

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FOR OFFICE USE ONLY:

Please check and initial items as they are completed.

Case No.: 14004

Date of Filing: _____

- ☐ Certificate of Appropriateness
- ☒ Project Approval
- ☐ Sign Application

Property Designation:

- ☒ Contributing
- ☐ Non-contributing

Historic Overlay District:

- | | | |
|--|--|--|
| ☐ 1. Pluma | ☐ 5. McGovern Hill | ☐ 9A. Large's Gulch |
| ☐ 2. Peck's Garden | ☐ 6. Ingleside | ☐ 9B. Spruce Gulch |
| ☐ 3. Cleveland | ☐ 7. Upper Main Street | ☐ 10. Fountain City |
| ☐ 4. Deadwood | ☒ 8A. City Creek | ☐ 11. 1 st Ward - Industrial |
| ☐ A. Deadwood City | ☐ 8B. Forest Hill | ☐ 12. Pinercrest |
| ☐ B. South Deadwood | ☐ 8C. Highland Park | ☐ 13. Hillside Environs |
| ☐ C. Chinatown | Addition | |
| ☐ D. Elizabeth Town | | |

Application complete

Project Documents submitted (check all that apply)

- ☐ Photographs of property and/or adjacent properties
- ☐ Drawings and/or architectural renderings
- ☐ Materials and/or color samples
- ☐ Other

Staff Preparation

Initials

Date below

- | | | |
|---|--------------|--|
| ☐ Site Visit | _____ | ____/____/____ |
| ☐ Project visible from right-of-way? | _____ | ☐ Yes ☐ No |
| ☐ Logged into HPC Agenda | <u>KS</u> | <u>2/7/14</u> |
| ☐ Staff Report (research) | <u>KK</u> | <u>2/7/14</u> |
| ☐ Packet to HPC Members | <u>KK/KS</u> | <u>2/7/14</u> |

Post Meeting Documentation

Initials

Date below

- | | | | |
|--|---------------------------------|-------|----------------|
| ☐ Approval | ☐ Denial | _____ | ____/____/____ |
| ☐ Property owner notification | | _____ | ____/____/____ |

Building & Zoning Department (if applicable)

Initials

Date below

- | | | |
|--|-------|----------------|
| ☐ Building Permit Application | _____ | ____/____/____ |
| ☐ Setback(s) checked by P & Z | _____ | ____/____/____ |
| ☐ Detailed plans reviewed | _____ | ____/____/____ |
| ☐ Building Permit Issued | _____ | ____/____/____ |
| ☐ Fee collected (if applicable) | _____ | ____/____/____ |
| ☐ Setback(s) reviewed | _____ | ____/____/____ |

Filed on ____/____/____

Special Needs – Siding Removal - Application/Policy Guidelines

Return this form to:

City of Deadwood Historic Preservation
C/O NeighborWorks
795 Main Street
Deadwood, SD 57732

Revolving Loan Fund – Special Needs/SIDING REMOVAL

Application

(Revised October 13, 2010)

The Deadwood Historic Preservation Commission reviews all applications.
Please read the attached Policy Guidelines and provide the requested information below.

1. Address of Property:

15 Denver Ave.
Deadwood, SD
57732

2. Applicant's name & mailing address:

Erin Little & David Folger
8842 Luss Dr.
Huntington Beach, CA 92646
Telephone: (714) 336-2244
E-mail: hb2bhc@gmail.com

3. Organization name and mailing address:
(If different from applicant)

Telephone: (____) ____-____

E-mail _____

Type of Entity (Please check one of the following):

Government _____ Non-profit Corporation _____ Profit Corporation _____

4. Description of Proposed Work:

Please describe, in detail, the work to be funded by the Revolving Loan Fund Program, including a detailed description of the facility, project, its location, existing conditions, a description of how the work will benefit the City of Deadwood and its historic qualities, and the reasons why funding for the work is required. Use additional sheets if necessary.

15 Denver Ave, Deadwood, SD 57732. Registered historical home. See attached. Siding to be removed and replaced for 90' feet of basement and bedroom walls.

Special Needs – Siding Removal - Application/Policy Guidelines

Revolving Loan Fund – Special Needs/SIDING REMOVAL

I acknowledge that I have read the policy guidelines for the loan or grant included with and for this application and agree to all of the terms and conditions contained in the policy guidelines. I agree that any contractors which I hire for this project will hold contractors licenses for the City of Deadwood and will require that they also agree to and abide by the terms and conditions of the policy guidelines.

I certify that all information contained in this application and all information furnished in support of this application is given for the purpose of obtaining financial assistance in the form of a grant or a loan and is true and complete to the best of my knowledge and belief.

I acknowledge that the Deadwood Historic Preservation Commission is merely granting or loaning funds in connection with the work or project, and that neither the Historic Preservation Commission nor the City of Deadwood is or will be responsible for satisfactory performance of the work or payment for the same beyond the grant or loan approval by the Historic Preservation Commission. I acknowledge that I am solely responsible for selecting any contractors hired in connection with the project and in requiring satisfactory performance by such contractor. I agree to indemnify and hold harmless the Deadwood Historic Preservation Commission and the City of Deadwood against losses, costs, damages, expenses and liabilities of any nature directly or indirectly resulting from or arising out of or relating to the Deadwood Historic Preservation Commission's acceptance, consideration, approval, or disapproval of this application and the issuance or non-issuance or a grant or loan.

In Witness whereof, the owner, Enn Little, being duly authorized, has caused this document to be executed in its name on this 4th day of January, 2014.

Signature: 

Signature: 

Signature: _____

Signature: _____