

**Historic District Study Committee – West Boulevard Historic District
Interim Report to City Council & Mayor
May 2010**

The purpose of this Interim Report is to provide the Mayor and City Council with an update on the work of the Historic District Study Committee (“Committee”) since its formation in the spring of 2009. This Interim Report is not intended to be a final report of the Committee and is not intended to be regarded as a report of the Committee’s findings pursuant to SDCL § 1-19B-35. Specifically, this Interim Report is not intended to trigger the commencement of the notice period for a public hearing provided for in SDCL § 1-19B-36.

After several meetings of the Committee and analysis of the relevant state statutes regarding the formation of a Historic District Commission, the Committee requires further guidance from the Mayor and City Council before the Committee can take further action. As background, the Committee was charged with the objective of developing a recommendation on whether a local Historic District Commission (“HDC”) should be established for Rapid City. Additional background is helpful to set the stage for the guidance needed from the Mayor and City Council.

The West Boulevard Historic District (“District”) was originally established in 1974. The District was expanded in 1995. The basis for granting Historic District status to the West Boulevard area and expansion of its boundaries are explained in the National Register of Historic Places Registration Form (the “Form”). The Form has not been updated since 1995.

Protection of the neighborhood’s designation as a Historic District, preservation of historic structures and preservation of the historic nature of the District are desirable for many reasons. They include:

- Preservation of the neighborhood’s architectural identity;
- Protection of structures that date to the founding of the city;
- Protect and enhance property values within the District;
- Retain the neighborhood as an asset for the community;
- Preserve the neighborhood as a source of community pride and identity in the city; and
- Remain eligible for grants, funding, and regulatory or enforcement techniques that result from having Historic District status.

Presently, the key enforcement mechanism to protect the historic appearance of the District and prevent projects that adversely affect the District is the issuance or denial of a building permit on certain projects which involve structures within the District after a Section 11.1 Historic Review. The State Office of History located in Pierre has enforcement authority over the District. The Rapid City Historic Preservation Commission (“HPC”) is an advisory board with no enforcement power. Under a Memorandum of Joint Powers Agreement between the state and City, the HPC conducts

Section 11.1 Historic Reviews and hearings on projects within the District and gives its recommendations to the State Office of History on whether a project will adversely affect the District.

The State Office of History can accept or reject the recommendations of the HPC. If they concur, then the City will issue a building permit for the project. If the State Office of History concludes the project will adversely affect the District, the property owner has the right to appeal the decision to the City Council and then to circuit court. Either way, local control over preservation decisions is either not optimized or is diminished by the current structure.

To give more control over historic preservation decisions at the local level, state law provides for two options. One option is the creation of a Historic District Commission (“HDC”) pursuant to SDCL § 1-19B-34-37. The other option is to pass an ordinance expanding the powers of the HPC, as the City of Deadwood did, pursuant to SDCL § 1-19B-62 (the “62 Option”).

The HDC option has several requirements. Prior to passing an ordinance establishing a HDC, a study committee must be appointed, the committee must prepare a report, and a public hearing must be held. A report from the Committee is required to satisfy state law on the formation of a HDC. The Committee was appointed by the Mayor for the purpose of exploring the HDC Option.

In its meetings, the Committee addressed whether local control through the HDC would place an undue burden on property owners within the District and City staff. The Committee weighed the impact on property owners and staff against the responsibility to protect, preserve and enhance the historic nature of the District.

The powers of a HDC, beyond the power to issue or deny Certificates of Appropriateness, are contained in SDCL § 1-19B-41 through 44. Specifically, the provisions of SDCL § 1-19B-42 & 43 create the need for guidance from the Mayor and City Council. These statutes grant substantial power to the HDC which may not be altered by City Ordinance. When the Committee was formed, it was not contemplated that the HDC would have the broad powers provided by state law, as set forth below.

SDCL § 1-19B-42, in relevant part, states: “... no exterior portion of any building or other structure (including walls, fences, light fixtures, steps, and pavement, or other appurtenant features...may be erected, altered, restored, moved, or demolished within such district until after an application for a certificate of appropriateness as to exterior features has been submitted and approved by the Historic District Commission.”

SDCL § 1-19B-43, in relevant part, states: “...the phrase, exterior features, includes the architectural style, general design, and general arrangement of the exterior of a building or other structure including the color, the kind and texture of the building material, and the type and style of all windows, doors, light fixtures, signs, other appurtenant fixtures, and natural features such as trees and shrubbery.”

The mandatory language of these statutes deprives the Committee, Mayor and Council of the discretion to fashion the powers of the HDC to tailor the unique needs of the District. The direct question to the Mayor and City Council is whether you are comfortable with the broad application of the power mandatorily granted to an HDC over the unalterable items referenced in § 1-19B-42 & 43? If the answer to this question were in the affirmative, the Committee would continue its work and provide a recommendation. However, if the answer is in the negative, then the Committee would discontinue its analysis of an HDC and look to other options to achieve the City's objective of historic preservation.

In connection with the HDC option, another option is to seek a change in the relevant state statutes in order to make them more flexible and accommodating to local control. These statutes were last amended in the 2009 legislative session. We are not aware of any amendments to these statutes during the 2010 session. Whether the state legislature would amend these statutes to provide more local control over decisions under the authority of the HDC has not been fully explored. This task is beyond the scope of the Committee.

The 62 Option revealed itself to the Committee after the South Dakota Supreme Court handed down its decision in Deadwood v. Gustafson, 2010 SD 5. The 62 Option involves passing an ordinance to expand the powers of the current HPC pursuant to SDCL § 1-19B-62, which states, in relevant part:

“Any...municipality may enact an ordinance requiring a...municipal historic preservation commission to review any undertaking, whether publicly or privately funded, 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. The ordinance may require the issuance of a permit before any undertaking which will encroach upon, damage or destroy historic property may proceed. The decision to approve or deny a permit shall be based on the U.S. Department of the Interior Standards for Historic Preservation Projects...”

The 62 Option would involve modifying the current powers granted to the HPC through adoption of an ordinance requiring the issuance of a permit by the HPC before any exterior changes were made to a residence or building in the District. A Section 11.1 Historic Review would still be required. The State Office of History would still have an opportunity to comment. However, if the 62 Option were adopted, the final say on issuing a permit would be with the HPC, unless that decision was appealed. The property owner would have the right to appeal the HPC's decision. The ordinance would need to specify whether the appeal was to the City Council or the Circuit Court. Deadwood selected the Circuit Court option.

Examples of projects that may fall within the authority of the HPC under the 62 Option include:

- Exterior projects requiring a building permit;
- Doors;
- Windows;
- Siding;
- Stoops;
- Porches;
- Railings; and
- Any change to a significant exterior architectural detail of the home.

Landscaping and color were rejected for inclusion in the list above.

Under the 62 Option, state law does not require a report from the Study Committee and a public hearing on the report. However, the Committee is hosting a public meeting at the Journey Museum on June 3rd to solicit comments on these Options. Our report will be supplemented after the public meeting.

The specific questions we need guidance on are:

1. Do the Mayor and City Council favor the 62 Option approach to the exclusion of the HDC Option?
2. If the 62 Option was preferred, what role do you want the Study Committee to perform?

Respectfully Submitted,



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