

**Historic District Study Committee – West Boulevard Historic District  
Interim Report to City Council & Mayor  
July 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.<sup>i</sup> 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.

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 District’s architecture was the basis for granting Historic District status to the West Boulevard area.

Protection of the neighborhood’s designation as a Historic District, preservation of its 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.<sup>ii</sup> 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 on projects within the District and gives its recommendations to the State Office of History on whether a project will adversely affect the District.

After an investigation, the State Office of History makes its findings. If it determines that the project will not harm the District, the City can 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”).<sup>iii</sup> The other option is to pass an ordinance expanding the powers of the HPC, as the City of Deadwood has done.<sup>iv</sup> This option is labeled the 62 Option because of the statute authorizing this option and to avoid confusion with the HDC Option.

### HDC 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. This Committee was appointed by the Mayor initially 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.<sup>v</sup> 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. The mandatory language of state law 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 the HDC Option and the City can look to other options to achieve its objective of historic preservation.

## 62 OPTION

The 62 Option revealed itself to the Committee after the recent South Dakota Supreme Court decision in Deadwood v. Gustafson.<sup>vi</sup> The 62 Option involves passing an ordinance to expand the powers of the current HPC pursuant to SDCL § 1-19B-62.<sup>vii</sup>

The 62 Option involves 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;
- Roofing;
- 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.

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?

## JUNE PUBLIC MEETING

On June 3, 2010, a public meeting was held for the purpose of taking comment on the draft Interim Report and West Boulevard historic preservation matters. Approximately 40 people were in attendance. Most provided comments.

The comments can be grouped into three generalized categories. First, maintain the status quo. Second, disband the HPC. Third, grant the HPC more powers under the 62 Option. Each will be briefly discussed below.

No support for adding the HDC was expressed. Adding another layer of oversight was not appealing to the commentators. Having both HDC and HPC would add to the confusion presently experienced in the administration of Historic District rules. HDC would complicate the process, not simplify it.

Maintaining the status quo was supported because the current HPC required the oversight function of the State Office of History as a counter-balance to the opinions expressed by the HPC. Certain commentators were opposed to giving more power to the HPC. They either supported keeping the current system in place with the State Office of History and the City Council as the oversight to the HPC, or sought to disband the HPC.

Another suggestion was to revise the qualifications of members appointed to the HPC.

Support for the 62 Option was coupled with a desire to see the HPC and residents in the District work together in establishing design standards for projects within the District. All seemed to agree there is a communication gap between property owners, the HPC and City Hall. There is a lack of understanding by property owners on the consequences of being labeled a Historic District and the purpose of historic preservation rules.

Whatever option is selected, it is imperative the communication gap is narrowed. All parties need to be united in the goal of historic preservation. The preparation of design guidelines represents a rallying point for residents of the District, the HPC, City Hall, realtors, and potential homebuyers to achieve these objectives.

Design guidelines can:

- Provide consistency;
- Be reflected on the title commitment to property (like restrictive covenants);
- Develop community and District standards;
- Limit the arbitrary exercise of discretion by the HPC;
- Give helpful guidelines to property owners;
- Counter the concern expressed of giving more power to the HPC; and
- Establish reasonable property owner expectations.

Beyond design guidelines, it is necessary to critically examine how the HPC interacts with home owners on historic preservation education and proposed projects. One commentator suggested the prevailing paradigm is to avoid projects that would bring the property owner in contact with the HPC. This paradigm suppresses historic preservation done right. The paradigm must shift in the direction of cooperation, not confrontation and education, not obfuscation.

To change this paradigm, what more can be done and what should be done differently? Some commentators have suggested either disbanding the HPC or replacing the current membership. Neither option is practical or recommended. Worthy of note, however, are the observations that the HPC needs to recognize how today's families live in historic

homes within the District. Property rights of the homeowner require a heightened respect and the process of enforcing District rules needs to be smoothed out.

More detailed comments were received online. To review those comments, you may review the file maintained by the City's Growth Management Department.

### RECOMMENDATION

The current HPC should be assigned the task of developing design guidelines for the District and obtain demonstrable support for the guidelines from District property owners. The HPC should demonstrate to the Council it has narrowed the communications gap with property owners in the District. The HPC should demonstrate to the Council it has shifted the paradigm on historic preservation matters to a streamlined, user-friendly, efficient, effective system. If the HPC can successfully achieve these objectives to the satisfaction of the City Council, then the Council should adopt the 62 Option.

To assist the HPC in achieving these objectives, an aggressive search for funding to establish a permanent, full-time Historic Preservation Officer for Rapid City is strongly recommended. The duties of this professional staff person would expand beyond the District and include the Downtown Historic District. This position would fit neatly with Downtown revitalization, the BID process and other urban renewal projects. A full-court press on exploring creative funding options is timely and needed.

Respectfully submitted by Patrick G. Goetzinger, Chair.

#### Historic District Study Committee Members

Patrick Goetzinger, Chair  
John Wagner  
Pat Roseland

Ruth Brennan  
Gary Vollmer

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<sup>i</sup> 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.

<sup>ii</sup> SDCL § 1-19A-11.1

<sup>iii</sup> SDCL § 1-19B-34-37

<sup>iv</sup> SDCL § 1-19B-62

<sup>v</sup> 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."

<sup>vi</sup> 2010 SD 5. Deadwood v. Gustafson

<sup>vii</sup> "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..."