

RESOLUTION #R2018-64

**A RESOLUTION REGARDING SDCL SECTION 1-19A-11.1 FINDINGS
IN RELATION TO THE PROPERTY AT 301 NORTH MAIN**

WHEREAS, the David Finnell is the owner of certain real property at 301 and 303 North Main Street which is legally described as:

**Lots Eleven (11) and Twelve (12) in Block Three (3), Original
Mitchell, City of Mitchell, Davison County, South Dakota.**

WHEREAS the above described property is listed as a contributing resource in the Mitchell Commercial Historic District which is listed on the National Register of Historic Places.

WHEREAS the City of Mitchell declared the property a nuisance by resolution on May 21, 2018 and filed a civil lawsuit against Mr. Finnell seeking demolition of the structures on the property on June 12, 2018.

WHEREAS state law puts certain processes in place which must be followed prior to any governmental action that may damage, destroy, or encroach upon any historic property.

WHEREAS, in consideration of such laws, the City of Mitchell did provide notice of the status of the property, reports of its condition, and eventually the City's demolition plan to the State Historic Preservation Office (SHPO) on an ongoing basis beginning in August 2017 and continuing through October 31, 2018 at which point SHPO issued its determination that the proposed demolition plan would "encroach upon damage, or destroy a historic property . . . that there are no feasible and prudent alternatives to the proposal and that the proposal includes all possible planning to minimize harm to the Mitchell Commercial Historic District."

WHEREAS SDCL 11.1 requires in this case that the City make a written determination that "based upon the consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to the historic property, resulting from such use."

WHEREAS such a hearing by the City Council was scheduled, noticed, and held on December 3, 2018 during regular session and that at such hearing interested parties were afforded an opportunity to comment on the matter and the City Council did consider and discuss relevant facts relating to such demolition plan.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Mitchell, SD that the City Council does hereby make the following findings of fact and conclusions:

1. The above described property is a contributing resource in the Mitchell Commercial Historic District which is listed on the National Register of Historic Places.

2. The City of Mitchell, while dealing with the property as a nuisance, did submit a notice, abbreviated case report, and supplemental materials as required by state law and as requested by the State Historic Preservation Office.
3. The City Council, in its capacity as the governing body designated to make a final determination of project acceptability under SDCL 1-19A-11.1, must determine that, “based on the consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to the historic property.”
4. The City Council has taken into consideration all relevant factors including all testimony provided at the above described hearing, all documentation provided at or for use in such hearing, and specifically, the following materials:

Civil Complaint filed against Mr. Finnell and exhibits;
Assessment reports from Albertson Engineering
Email from SHPO giving general timeline of their involvement
8/1/2017 Project Notice Form to SHPO and 7/11/2017 Letter from LL Jirsa
7/11/2017 Email from Tim McGannon (3rd and Main)
Email chain between Tim McGannon and SHPO (RE Send data...)
Email chain between SHPO and Staff (RE Notice regarding nuisance...)
Mitchell Historic Preservation Committee minutes from 3/8/2018 and 8/29/2018
11/2/2018 letter from SHPO with final comments
Mr. Finnell’s 11/2/2017 Building Permit and plans from LL Jirsa

5. Based upon all relevant factors, there is no feasible and prudent alternative to the proposed demolition. The property began to exhibit nuisance conditions when bricks started to fall from the southwest corner of the structure in June 2017. The owner partially demolished the rear walls. Owner provided architectural plans for remodeling which were ultimately not completed in a timely manner. City attempted to find a contractor to complete the work at which point no contractors were interested without receiving the opinion of a structural engineer. City engaged a structural engineer to assess the structure and more serious problems were identified requiring that additional plans be made to address the identified concerns. Owner has not provided a proposal for reconstruction that addresses the identified concerns as of November 28, 2018.

The structural engineer, Albertson Engineering, provided the City with two alternatives. First, partial demolition and capping the remaining structure. Second, full demolition of the structures on the property. The City preferred the second option due to the fact that, under the first option, the remaining structures would still be in poor condition and would be likely to develop nuisance conditions similar to those existing on the southwest corner. Thus, the first option would involve sinking significant funds into repairing the corner only to be faced with having to tear down the entire structure, at additional expense, in the near future. The property owner has routinely claimed not to have the funds to complete the initial repair work, let alone the additional maintenance required to stabilize

and protect the remainder of the structure. As such, there is no feasible and prudent alternative to demolition that has been presented, adequately addresses the structural issues, and is realistically attainable within a reasonable period of time.

6. Based upon all relevant factors and the nature of the proposed demolition plan, the program includes all possible planning to minimize harm to the historic property.
7. That in recognition of these findings and conclusions, the State Office of History shall be provided with notice of this determination by certified mail, to include a complete record of factors considered.
8. That after ten days from sending such notice, compliance with SDCL 1-19A-11.1 shall no longer serve as an impediment to carrying out the proposed demolition plan.

Adopted by the Mitchell, South Dakota City Council in regular session this _____ day of _____, 2018, with:

____ votes cast in favor of adoption,
____ votes cast against adoption, and
____ votes abstaining.

Robert B. Everson, Jr. – Mayor

Attest:

(seal)

Michelle Bathke – City Finance Officer