

**MITCHELL HISTORIC PRESERVATION COMMISSION AGENDA
CARNEGIE RESOURCE CENTER, 119 W. 3RD AVE, MITCHELL, SD
DATE: AUGUST 29, 2018 TIME: 5:15 PM**

- 1. CALL TO ORDER**
- 2. ROLL CALL: Determination Of Quorum**
- 3. Approval Of Agenda**
- 4. Approval Of Minutes: 3/8/2018**

Documents:

[HPCMIN382018.PDF](#)

- 5. Update On New Grant For 2018-2019**
- 6. Mitchell Main Street & Beyond Report**
- 7. Approval Of Dr. Lucky's Plan**

Documents:

[DRLUCKYPLAN.PDF](#)

- 8. Response To City's Case Report In Regards To 301 N Main Street Building**

Documents:

[EXHIBIT A- ORDER TO CORRECT.PDF](#)
[EXHIBIT B- RESOLUTION R2018-21.PDF](#)
[EXHIBIT C- SUPPLEMENT REPORT.PDF](#)
[301 NORTH MAIN ASSESSMENT REPORT 2018-060.PDF](#)
[COMPLAINT- SIGNED.PDF](#)
[STANDARDSFORCASEREPORT.PDF](#)
[301 NORTH MAIN ASSESSMENT REPORT ADDENDUM 2018-060.PDF](#)
[301NMAINREPORT.PDF](#)

- 9. Discussion Of Possible New Members**
- 10. Discussion Of Possible Changes To The Sign Regulations**
- 11. PUBLIC INPUT: If You Need To Address The Mitchell Historic Preservation Commission On An Item That Was Not On The Agenda, Excluding Personnel Items, Please Come Forward To The Podium And State Your Name And Your Concern. Presentations Are Limited To Three Minutes. Items Will Be Considered But No Action Will Be Taken At This Time.**
- 12. ADJOURNMENT**

**CITY OF MITCHELL
MITCHELL HISTORIC PRESERVATION COMMISSION
MARCH 8, 2018**

NOT APPROVED

Chairman Logan called the March 8, 2018 Mitchell Historic Preservation Commission meeting to order at 5:15 pm at the Carnegie Resource Center, 119 W 3rd Ave, Mitchell, SD.

Members Present: Logan, Jirsa, Johnston, Clark, Ramsay, Pooley, Swenson, and Putnam
Member Absent: Collins

Approval of Agenda: Motion by Swenson, seconded by Clark to approve the agenda as presented. All members present voting aye, motion carried.

Approval of Minutes: Motion by Ramsay, seconded by Pooley to approve the minutes of the last meeting. All members present voting aye, motion carried.

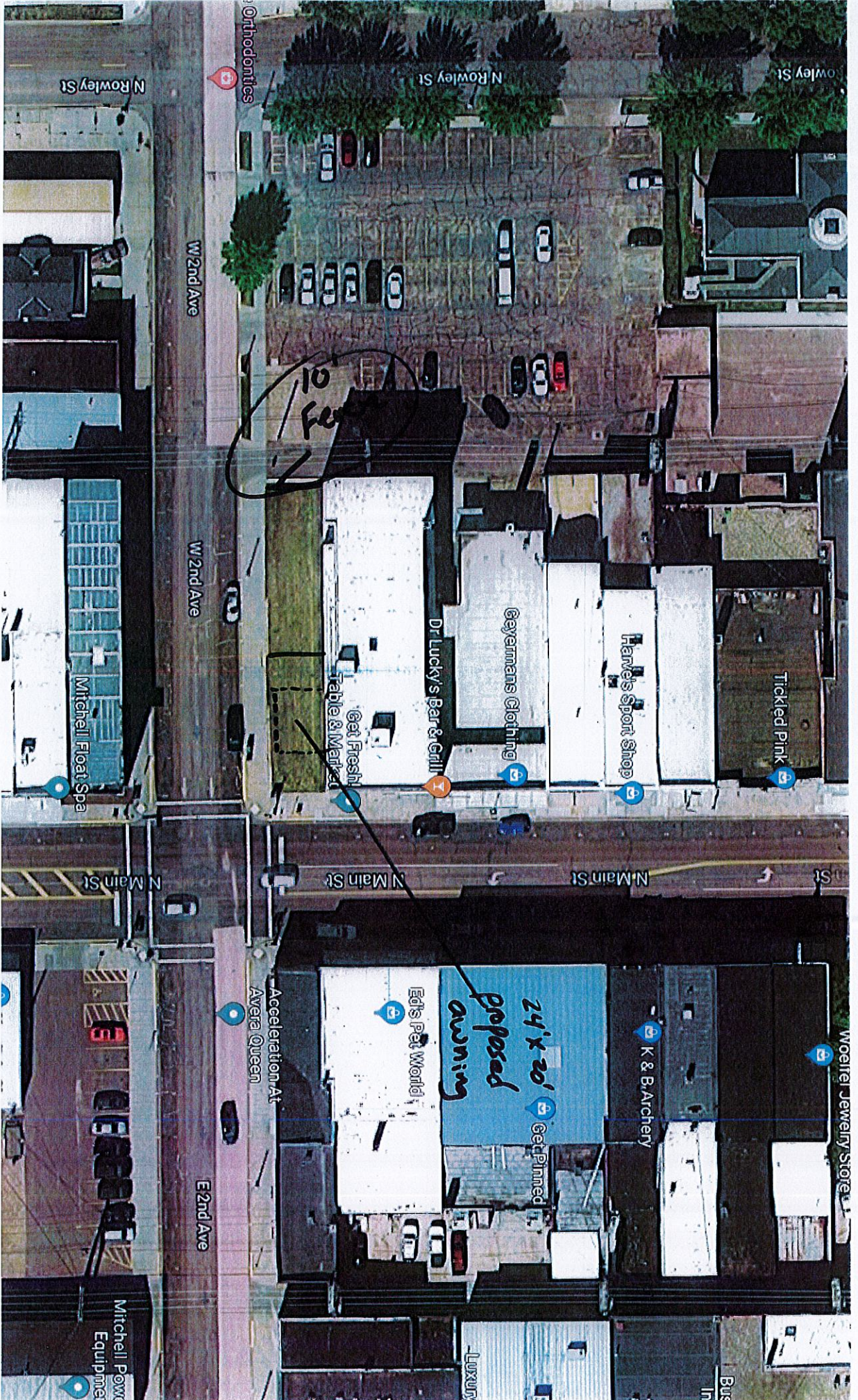
Update on New Grant 2017-18: Putnam informed the commission that SDSHPO may award the MHPC a grant up to \$2,000 for this year's projects, which include continued production and distribution of the walking tour brochures, attendance to various workshops and contribution to the state Historical Society. Putnam provided the commission the paperwork that needs to be filed with the SHPO.

Report from Mitchell Main Street & Beyond: Johnston & Logan provided the commission an update on the recent City Council presentation in regards to the formulation of a Business Improvement District in the downtown. The council has approved the first step in creating the BID and the board members. There will be an additional tax of for those businesses in the district and it will be used to commence the 'streetscape'.

Continue Discussion of Possible Historic Standards: Putnam will dissect a publication that has some suggested guidelines and will present pieces to the HPC at future meetings. The goal is to have some standards that may help the commission, property owners, and contractors when a historic project is being proposed and seeking various incentives.

Other Business & Reports: Jirsa presented an update on the 3rd and Main property. Logan also shared some conversations about possible development in the district and hopefully some may come fruition. Johnston updated the commission on the progress of the Back 40.

Logan adjourned the meeting at 6:30 pm.



N Rowley St

N Rowley St

N Rowley St

W 2nd Ave

W 2nd Ave

Mitchell Float Spa

Ticked Pink

Hamel's Sport Shop

Beyermans Clothing

Dr. Lucky's Bar & Grill

Get Fresh Table & Market

10 Feet

N Main St

N Main St

N Main St

N Main St

Woeffel Jewelry Store

K & B Archery

24' x 20' proposed awning

Ed's Pet World

Get Plinned

Acceleration At Avera Queen

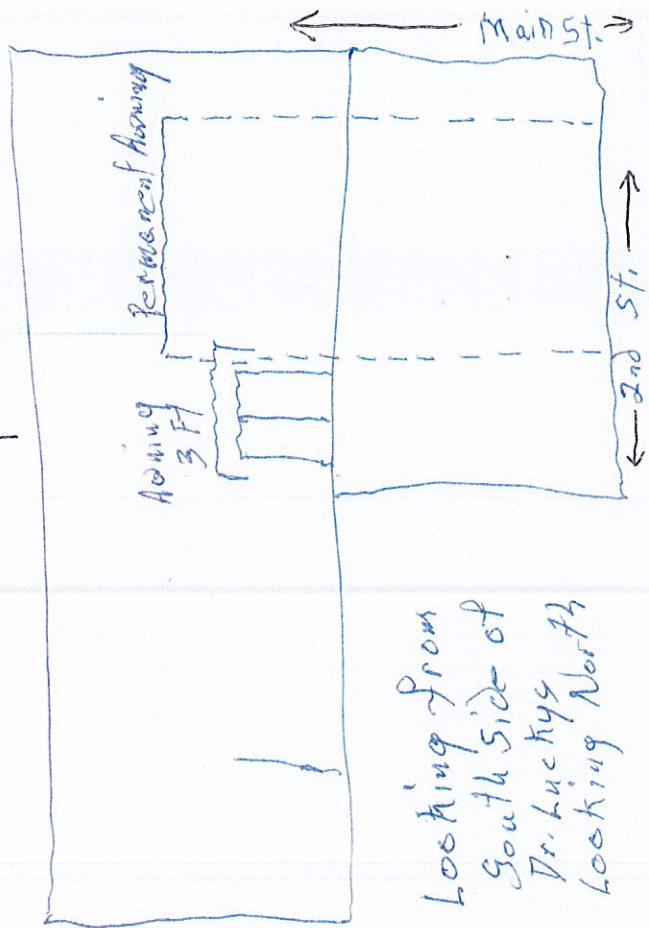
E 2nd Ave

Mitchell Power Equipment

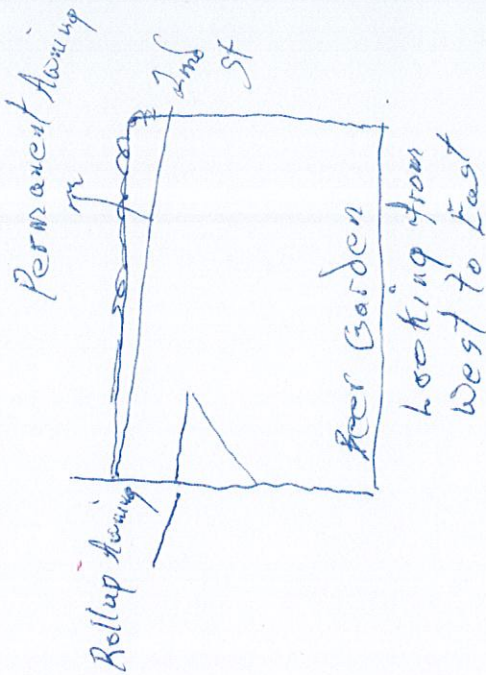
Luxury

Bus In

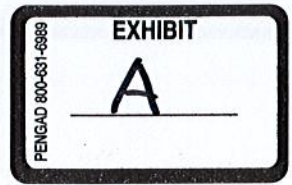
↑ N



Looking from
South Side of
Dr. Hutchins
Looking North



CITY OF MITCHELL
ORDER TO CORRECT



PROPERTY AGENT(S): David Finnell 303 N. Main Street Mitchell, SD 57301

PROPERTY ADDRESS: 301 N. Main Street Mitchell, SD 57301

LEGAL DESCRIPTION: Lots 11 & 12 Block 3 Original Mitchell

The above described property which you are responsible for is in violation of Sections (5-3-4(L), 5-3-4(K), 5-3-3(B)(1), 5-3-3(B)(3), 5-3-3(B)(4), 5-3-3(B)(5) of the Mitchell City Code based on the following conditions observed on the property:

Failure to maintain exterior building appearance
Rodents, vermin, insects, and other pests
Annoys, endangers the comfort, repose, health or safety to others
Lowers the value of adjacent real estate because of the unsightly conditions
Obstructs west 3rd street to allow traffic through
Renders other persons insecure in life or in the use of property, and which affects at the same time the entire community.

You are hereby ORDERED to correct this violation within 14 days from the Date of Service by taking the corrective action(s) stated below:

Fix hole on the south side of building to City of Mitchell ordinance and building code standards
Fix all windows and holes to prevent vermin, rodents insects and other pests from entering the building

If the above corrected action is not completed within the time specified, the City may take the actions specified above to remedy the violation at your expense, and if unpaid, may charge the costs against the property by special assessment. If the City corrects the violation, the costs incurred by it shall be recovered from you by special assessment of the property or other collection efforts. Any property removed can be destroyed or, if it has sufficient commercial value, will be sold by the City and the proceeds will be used to offset the costs of removal and sale.

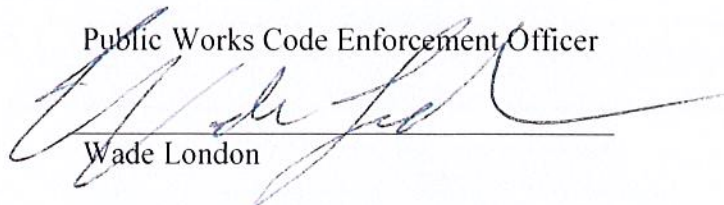
You may appeal this Order to Correct by filing a Notice of Appeal with the City Finance Office, located at 612 North Main Street, Mitchell, South Dakota, within 10 business days. Failure to appeal may affect the legal options available to you should you wish to dispute this matter.

In addition, a failure to timely correct the conditions above may result in your prosecution for violating the Section(s) above. Conviction of an ordinance violation carries a maximum penalty of up to \$500 and/or 30 days in jail on each count and each day a violation remains constitutes a separate offense.

If you have any questions about this Order to Correct, please call (605) 995-8433.

Dated: October 31, 2017

Public Works Code Enforcement Officer



Wade London



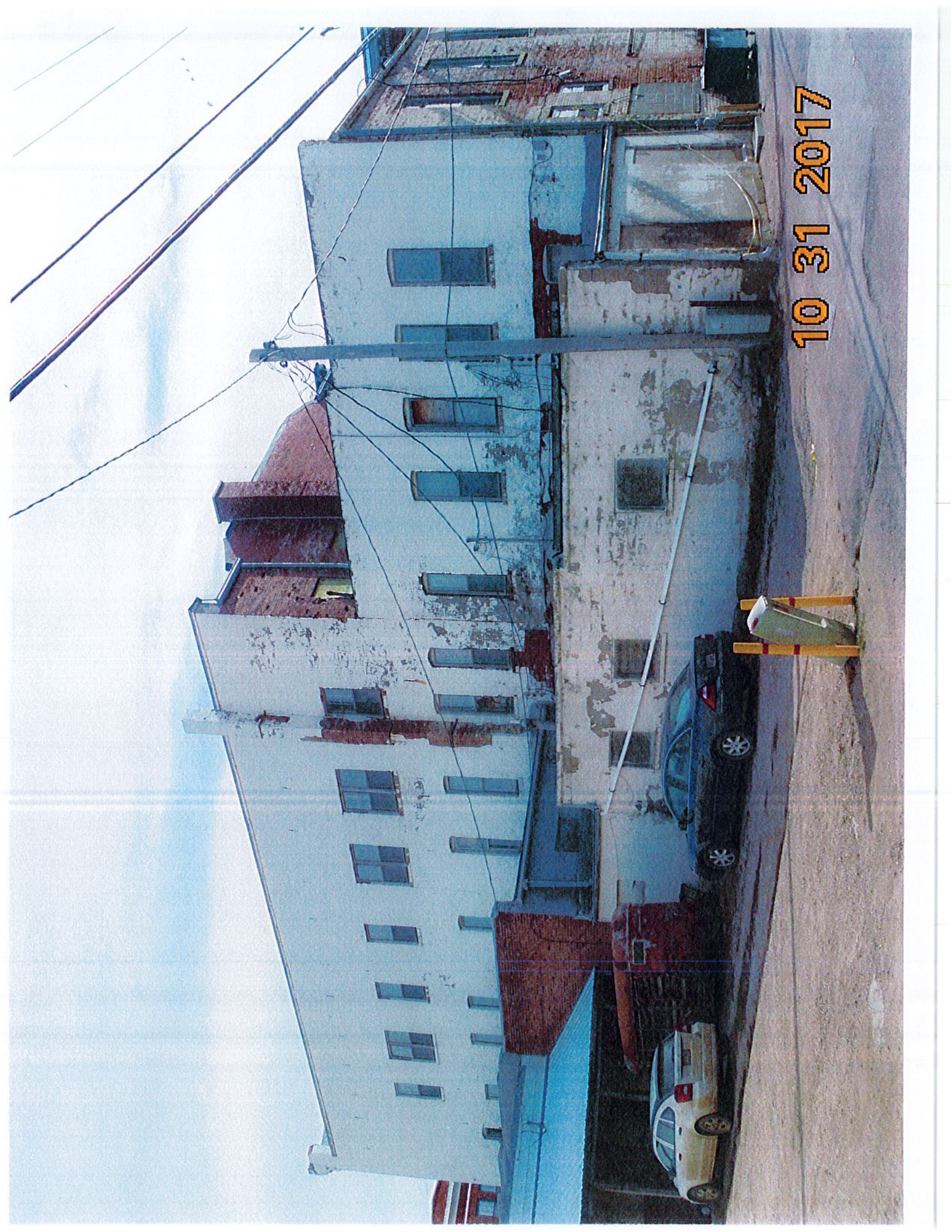
10 31 2017



HARDWARE

MERCHANDISE
OUTLET
Western Wear

10 31 2017



10 31 2017

10 31 2017



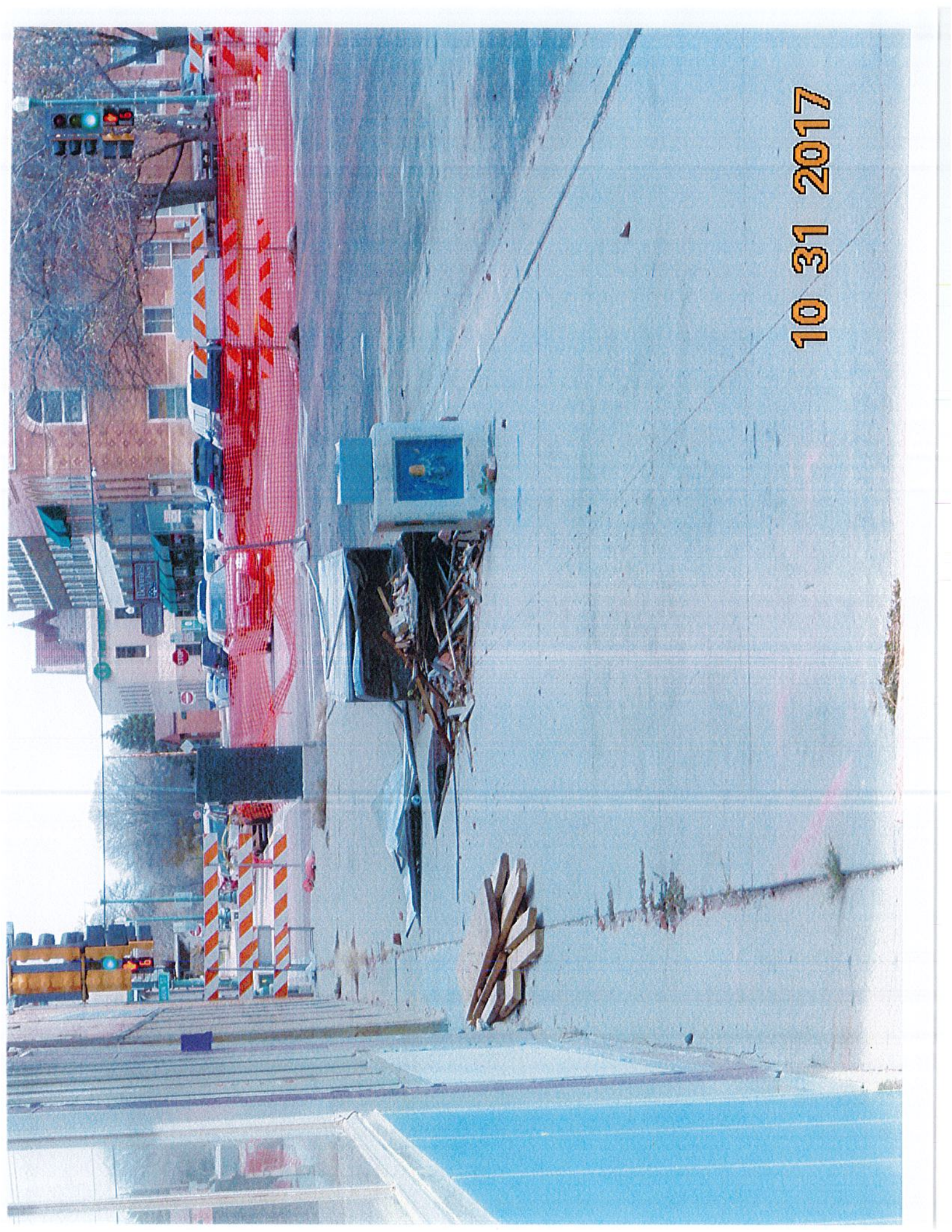
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10 31 2017

10 31 2017





10 31 2017

Merchandise
OUTLET

REAR
ENTRANCE

Merchandise
OUTLET STORE

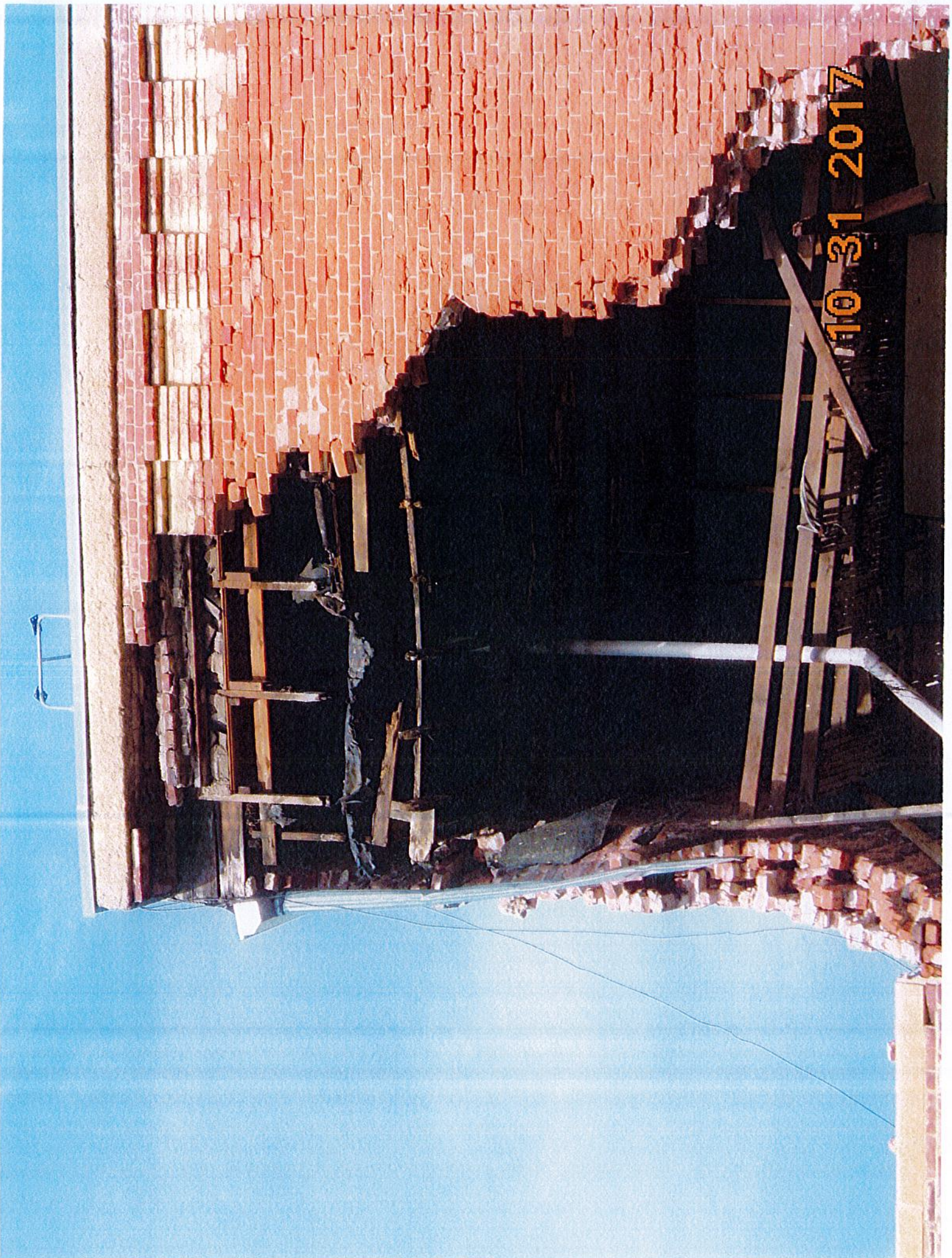
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10 31 2017

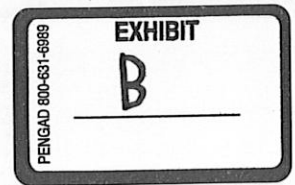
Merchandise
OUTLET
REAR
ENTRANCE







10 31 2017



RESOLUTION NO. R2018-21

A RESOLUTION DECLARING A NUISANCE AT 301 NORTH MAIN STREET

BE IT RESOLVED by the City of Mitchell, South Dakota:

1. The property described in paragraph 2 is hereby declared a public nuisance.
2. City Officials are hereby authorized and directed to commence legal action for the purpose of procuring an order of the court authorizing the abatement of all nuisance conditions on said property by the City or its agent in relation to the real property legally described as:

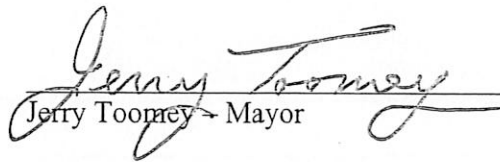
Lots 11 & 12 of Block 3, Original Mitchell, Davison
County, South Dakota. (301 & 303 North Main).

3. Legal action shall be commenced against all legal interest title holders in the above-described premises.
4. The premises constitutes a public nuisance for the following reasons:
 - A. The structure upon the premises is dilapidated and poses a safety risk to the public in its current condition; which includes brick walls bowing, caving, and collapsing in violation of Mitchell City Code (MCC) Section 5-3-4(L).
 - B. The structure contains numerous broken windows and holes within the structure which permit the harborage of vermin in violation of MCC Section 5-3-4(K).
 - C. The condition of the building endangers the health and safety of others in violation of MCC Section 5-3-3(B)(1).
 - D. The condition of the building does or tends to lower the value of adjacent real estate because of unsightly conditions in violation of MCC Section 5-3-3(B)(3).
 - E. The condition of the building does unlawfully interfere with, obstruct, or tends to obstruct, or render dangerous for passage a street or right of way in violation of MCC Section 5-3-3(B)(4).
 - F. The condition of the building does render other persons insecure in life or in the use of property and affects at the same time the entire community, neighborhood, or a considerable number of persons in violation of MCC Section 5-3-3(B)(5).

5. The City has given notice and order to abate or otherwise cure the nuisance condition of the property to the record owner of the premises; however, the record owner of the premises has failed to abate or otherwise cure the nuisance conditions upon the property above described.

Adopted by the Mitchell, South Dakota City Council in regular session this 21st day of May, 2018, with:

8 votes cast in favor of adoption,
0 votes cast against adoption, and
0 votes abstaining.

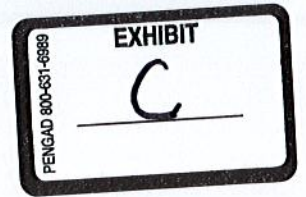


Jerry Toomey - Mayor

Attest:



Michelle Bathke - City Finance Officer



**CITY OF MITCHELL
ORDER TO CORRECT
SUPPLEMENT**

OCCUPANT/OWNER: David Finnell 303 N. Main Street Mitchell, SD 57301
PROPERTY ADDRESS: 301 N. MAIN STREET MITCHELL, SD 57301
LEGAL DESCRIPTION: LOTS 11 & 12 BLOCK 3 ORIGINAL MITCHELL

On June 11, 2018, Myself and City Attorney Justin Johnson went to the address of 301 N. Main to update pictures and view the outside structure. I took pictures of the West and South Side of the building. The building has deteriorated since I first took pictures on October 31st, 2017.

Wade Johnson 6/11/18

06 11 2018





06 11 2018



06 11 2018



06 11 2018



06 11 2018



06 11 2018

06 11 2018



06 11 2018



Merchandise
OUTLET

REAR
ENTRANCE

NO
TRESPASSING

REAR
DOOR

06 11 2018





06 11 2018



Merchandise
OUTLET

REAR
ENTRANCE

06 11 2018



Merchandise
OUTLET
REAR
ENTRANCE

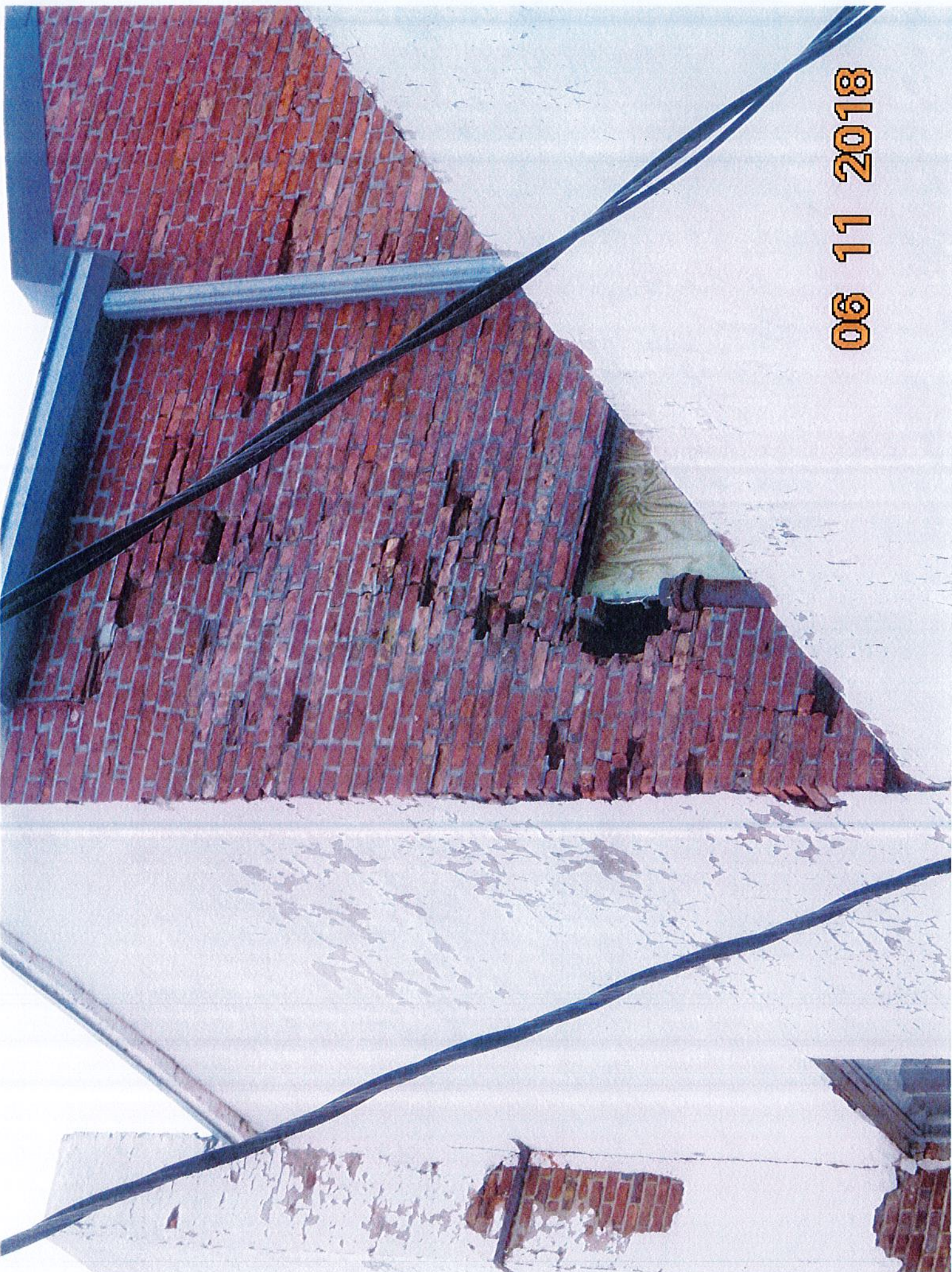
06 11 2018



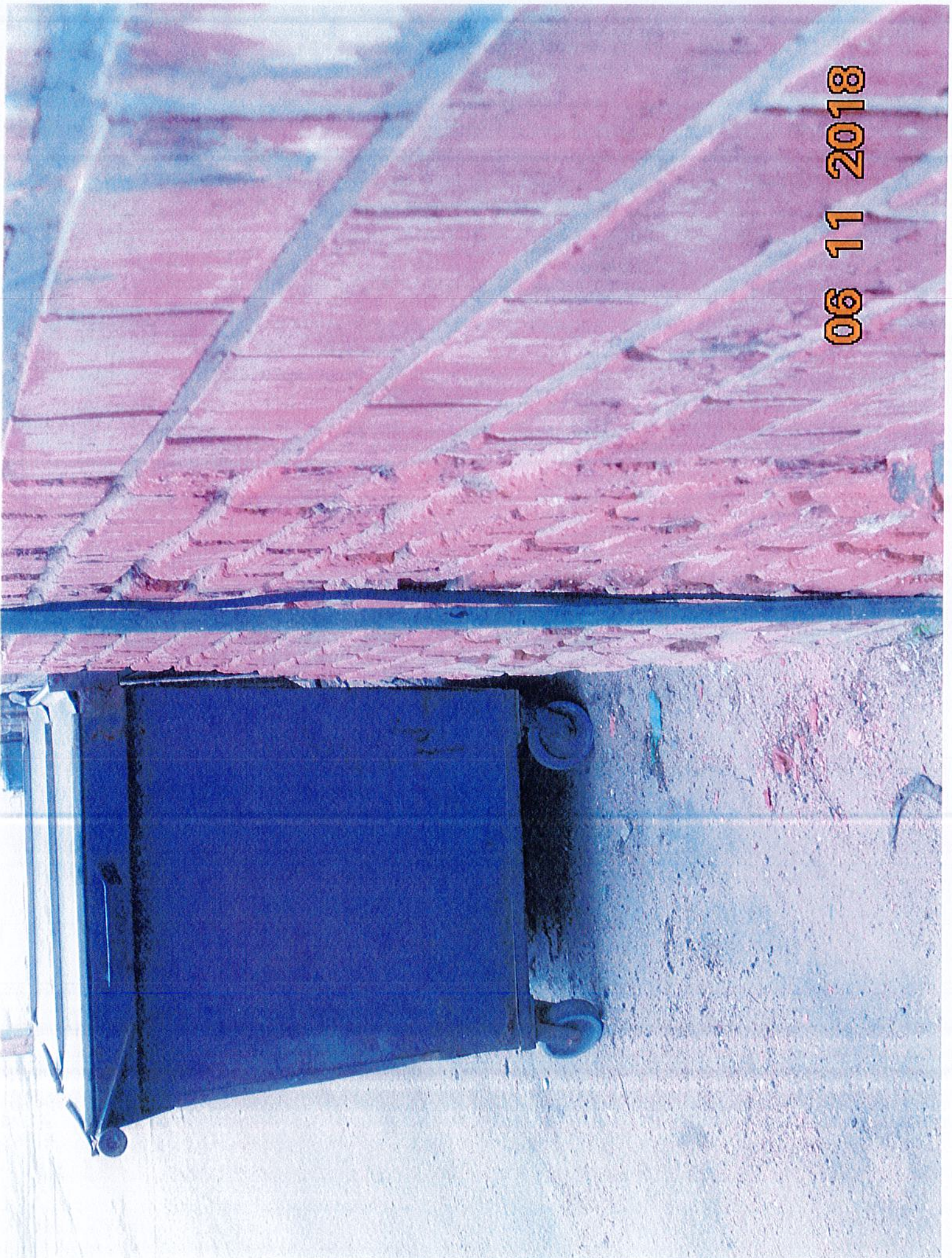
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06 11 2018



301 NORTH MAIN – BUILDING ASSESSMENT



1.0 Introduction

The building under review is located at 301 North Main Street in Mitchell, South Dakota. No existing drawings are available for the building as it was constructed in 1887. Based on discussions with the owner and City of Mitchell officials, Albertson Engineering Inc. (AEI) has gathered the following:

- What began as deterioration in the mortar of the South wall grew to become a hole in the multi-wythe load bearing brick wall.
- The owner attempted to take action by demolishing a portion of the wall. The City put a halt to the project due to safety concerns.
- Currently, an approximate 15'-0" wide opening in the South wall extends from the main level floor to a few feet below the roof framing leaving the roof framing and a portion of the masonry wall unsupported.
- Debris from the hole in the building has led city official to close the sidewalk and street to the South of the building.

Albertson Engineering Inc. (AEI) was engaged by the City of Mitchell to provide a structural review of the existing conditions with the primary focus of determining how to create a safe environment for the general public. On April 27, 2018, Blake Tideman and Aaron Hartwell of AEI along with the City building official, John Hegg, performed an onsite visual review of the existing conditions.

1.1 Structural Review Process and Approach

The structural review consisted of the following.

- Review field conditions to determine framing materials, methods, and condition of not only the building under review but also the adjacent buildings.
- Evaluate possible recommendations to create safe environment for the building occupants and the areas around the building.
- Calculate an opinion of probable cost for recommendations required to ensure life safety.
- Provide report detailing findings, recommendations, and opinion of probable cost.

It should be noted that this structural review is based on visual observations only. No detailed assessments or calculations were made as part of this review. A detailed structural analysis including a review of structure’s compliance with current and existing building code provisions is beyond the scope of structural engineering services for this project.

2.0 Structural Review

For the purpose of this report, the buildings on the site will be referred to as the East Building, West Building, and North building as shown in Figure 1. The East building is located at 301 Main Street. It should be noted that no original construction drawings for the building under review nor for any of the surrounding buildings were available. Since the primary focus of this review is the large opening in the South wall of the East building, the following will only provide very brief descriptions of the framing systems observed in each building as well as very brief comments on conditions observed.

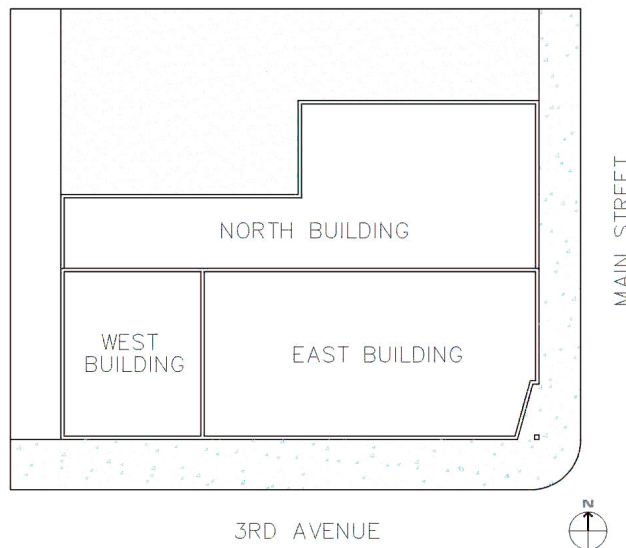


Figure 1. Plan showing building names and locations.

Structural Systems and Material Review

East Building

The East building is a three-story structure above a basement. The lower level is split by the interior multi-wythe masonry bearing wall. Separate stairs and or access holes were used to access the two

portions of the lower level. The east portion of the main level is currently occupied. The lower, second, and third floor levels of the building are not occupied. Based on discussions with John, it is believed that these levels have not been occupied for nearly 30 years.

- Foundations
 - The footing system could not be directly observed. It is assumed that the existing structure is founded on a spread footing system constructed with either concrete or stone footings. The footings system appears to be performing adequately as the structure does not show signs of foundation related movements.
 - The foundation walls were observed to be constructed as mortared stone walls. The mortar in the foundation walls was in poor condition in several locations. The deteriorated mortar is due to moisture intrusion through the wall.
- Main Level Floor
 - The main level floor was constructed with 2x floor joists which were supported by an interior masonry bearing wall, interior wood beam and column lines, and an interior wood stud wall framed directly inside the South exterior wall.
 - The floor joists did not appear to be supported by the South exterior foundation wall.
- Second and Third Floor
 - The second and third floor was framed with 2x floor joists supported by the exterior North and South multi-wythe brick walls and the interior wood framed corridor walls.
 - The second floor adjacent to the demolished area is heaved. This appears to have been caused during demolition.
- Roof
 - The roof was framed with 2x joist supported by the exterior North and South multi-wythe brick walls and the interior wood framed corridor walls. A few levels of 2x joist framing create the ceiling and roof structure.
 - Access to the roof was not gained due to safety concerns. Based on an aerial photograph, the roof was found to be a sloped roof with a hip roof on the West end of the structure.
- Walls
 - Exterior walls were constructed as load bearing multi-wythe brick walls.
 - Interior walls were constructed with both wood stud bearing and non-load bearing walls.
 - In several locations, the exterior wall was observed to be in poor condition. Damaged or broken windows and lack of maintenance has allowed water to cause the mortar to deteriorate over time. A photo of the large opening in the South exterior wall is provided in Figure 2. A photo of the severely deteriorated west wall is shown in Figure 3. Figure 4 shows the condition of the masonry wall in the Northwest corner of the East building.



Figure 2. Photo showing condition of South wall on April 27, 2018



Figure 3. Photo showing deteriorated masonry along West wall of East building.



Figure 4. Photo of Northwest corner of East building.

West Building

Although the West building was not the primary focus of the review, the structure was observed to gain a general understanding of framing methods and condition with special focus on bearing locations shared with the East building. The West building is a two-story structure above a basement. The building is currently not occupied on all levels.

- Foundations
 - The footing system could not be directly observed. Similar to the East building, it is assumed that the existing structure is founded on a spread footing system constructed with either concrete or stone footings. The footings system appears to be performing adequately as the structure does not show signs of foundation related movements.
 - The foundation walls were observed to be constructed as mortared stone walls.
- Main Level Floor
 - The main level floor was constructed with 2x floor joists which were supported by an interior masonry bearing wall, the West stone foundation wall, and a wood stud wall constructed alongside the East foundation wall.
- Second Floor
 - The second and third floor was framed with 2x floor joists. The joists were pocketed into the West wall of the East building and the West wall of the West building. The joists were observed to extend approximately 1” into the West wall of the East building. No connection between the joists and the wall was observed.

- Roof
 - The roof was framed with 2x joists. The joists were pocketed into the West wall of the East building and the West wall of the West building. The joists were observed to extend approximately 1" into the West wall of the East building. No connection between the joists and the wall was observed.
 - In the one location investigated, one of the four joists observed was found to be broken.
- Walls
 - Exterior walls were constructed as load bearing multi-wythe brick walls.
 - Interior walls were constructed with wood stud bearing and non-load bearing walls.
 - The mortar in the exterior walls was observed to be in poor condition in several locations. A large "bow" in the exterior wall was observed near the bottom of the west wall.

North Building

A very brief review of the North building was completed to determine general framing method and condition with focus given to the structures connectivity to the East building. The North building is a one-story structure with a portion of the building being above a crawlspace and the remainder being above a basement. Based on roof heights and transitions, it appears as though the North Building has had a couple of additions. The timeframe of the additions is unknown. The main level is currently occupied.

- Foundations
 - The footing system could not be directly observed. It is assumed that the existing structure is founded on a spread footing system constructed with either concrete or stone footings. The footings system appears to be performing adequately as the structure does not show signs of foundation related movements.
- Main Level Floor
 - The main level floor was constructed with 2x floor joists which were supported by an interior wood beam and column line, the North foundation wall, and a wood stud wall build alongside the south foundation wall. It is believed that the wood stud wall was constructed atop the footing below the East building.
- Roof
 - As mentioned earlier, the roof has (2) steps in elevation. The East portion of the North building slopes from East to West. The roof framing was not able to be observed due to hard ceilings and insulation. The middle portion of the North building had the lowest roof elevation and was framed with 2x joists spanning in the North/South direction. The West portion of the North building was higher than the middle portion. Roof framing was not observed in this area due to hard ceilings, but it is assumed that the framing consists of wood joists spanning in the North/South direction. Bearing conditions for all the framing was not observed so it is not known if the North building shares a common bearing wall with the East or West building.
- Walls
 - Exterior walls were constructed as load bearing masonry walls.

3.0 Recommendations

Given that the primary objective of this review is to determine the most economical way to achieve a safe environment for the occupants of the buildings and sidewalks, Albertson Engineering has developed the recommendations provided below. The recommendations stated are general in nature and are not to be taken as direction for construction. Recommendations are to be reviewed and discussed with the parties involved. Once a determination of direction is made, a set of construction documents may be developed describing final design. The drawings provided in the Appendix are shown for illustrative purposes only.

1. Remove 17'-0" of the West end of the East building. See Appendix for drawings showing recommendations described below.
 - a. Since the West wall of the East building is bearing for the floor and roof of the West building, the West wall of the East building will need to be sawcut above the roof of the West building and removed from the sawcut to the top of the wall.
 - b. It is anticipated that the North wall of the East building is also a bearing wall for the North building. Therefore, a sawcut will be needed above the roof of the North building.
 - c. Prior to demolishing any portion of the East building, the floor and roof of the North and West buildings will need to be anchored to the existing multi-wythe masonry walls. Anchoring the wall to the floor and roof framing systems will likely entail drilling and setting an anchor into the existing multi-wythe brick wall and then connecting a strap tie to each wood joist.
 - d. Construct new foundation wall and stud wall to provide closure to West end of East building. The wood stud wall will need to be sheathed to act as a shear wall for the structure.
 - e. Infill the lower level of the West end of the East building and provide a slab on grade that will drain water to the South. A few services in the lower level would need to be relocated.
2. Maintain status of "NO OCCUPACY" in the West building and in the second and third levels of the East building. A full assessment of the framing for those areas would need to be completed prior to being reoccupied. Such an assessment is outside the scope of work for this report.

After final construction documents are developed and a contractor is selected, the contractor should be required to submit a demolition/construction phasing plan including detailed descriptions of how safety will be monitored at all times. The plan should be submitted to the City Building Official for information purposes.

4.0 Opinion of Probable Cost

To achieve the recommendations stated above, Albertson Engineering Inc is of the opinion that the total cost will be approximately \$235,000. A detailed breakdown of cost is provided on the following page.

OPINION OF PROBABLE COST		
Sawcut Existing Masonry Walls	70 Linear Feet	\$15,000
Demolition and Removal - 17'-0" of East Building	40,000 Cubic Feet	\$60,000
Connect Existing Floor and Roof to Existing Wall	120 Feet	\$20,000
New Concrete Footing	51 Feet	\$5,000
New 8" CMU Wall	300 square feet	\$5,000
New wood stud wall with sheathing	2,500 square feet	\$25,000
Metal Siding	2,500 square feet	\$10,000
Exterior Concrete Slab on Grade	900 square feet	\$7,500
Granular Fill	225 cubic yards	\$10,000
Mechanical Allowance	1 Lump Sum	\$5,000
Electrical Allowance	1 Lump Sum	\$10,000
Miscellaneous Masonry Infill	1 Lump Sum	\$5,000
Equipment Rental	1 Lump Sum	\$15,000
Disposal Fees	1 Lump Sum	\$3,000
Safety Allowance	1 Lump Sum	\$3,500
Total		\$199,000
Excise Tax (2.04%)		\$4,776.000
Overhead & Profit (15%)		\$29,850.0
Grand Total		\$233,626.000

Given the age and historic nature of the building, any plans for demolition or construction for the building shall be submitted to the State Historic Preservation office for their review and approval prior to any demolition or construction.

5.0 Conclusion

All assessments and recommendations made were based solely on visual observations of the current conditions. Due to the limited scope of the field information, we cannot attest to the existing structure’s compliance with building codes or accepted construction techniques. This report is prepared for the sole benefit of the City of Mitchell. Unauthorized use without our written permission shall result in no liability or legal exposure to AEI.

The goal of this report was to provide short term recommendations to provide a safe environment for the occupants of the buildings and surrounding areas. Long term recommendations and assessment of occupancy are outside the scope of this report. However, if long term recommendations and maintenance on the structure are not pursued in the near future, the condition of the East and West building will likely continue to deteriorate. Further deterioration could create a similar problem in other

parts of the building that could lead to unsafe situations for the building occupants and occupants of the nearby spaces.

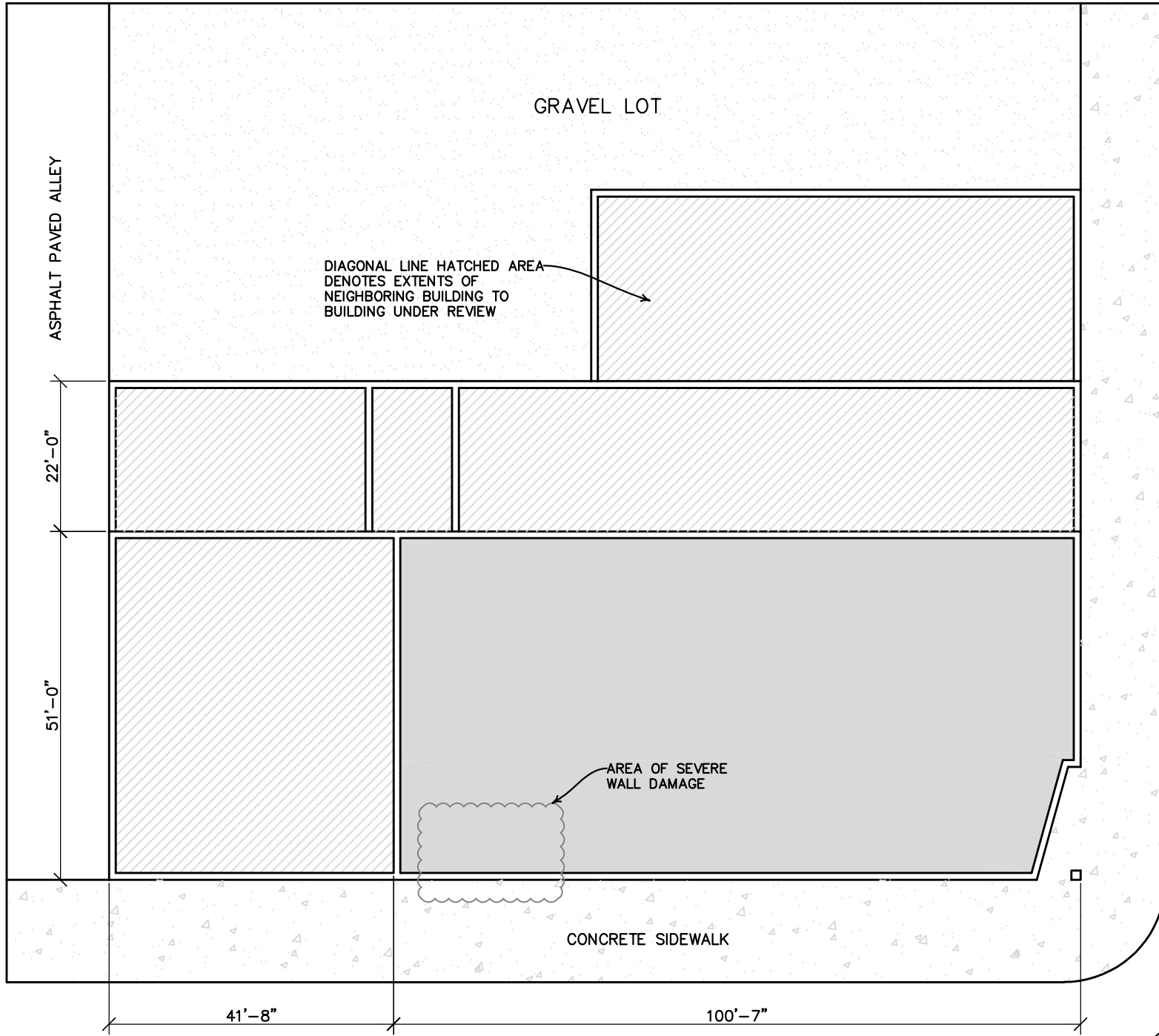
Thank you to the City of Mitchell staff that assisted our team during the on-site observations. Their efforts made the assessment go extremely well. We appreciate the opportunity to be of service and if we can be of further assistance, please let us know.

Albertson Engineering Inc.

A handwritten signature in black ink, appearing to read "Blake Tideman". The signature is fluid and cursive, with the first name "Blake" and last name "Tideman" clearly distinguishable.

Blake Tideman, PE

Appendix



1 EXISTING SITE PLAN
NTS

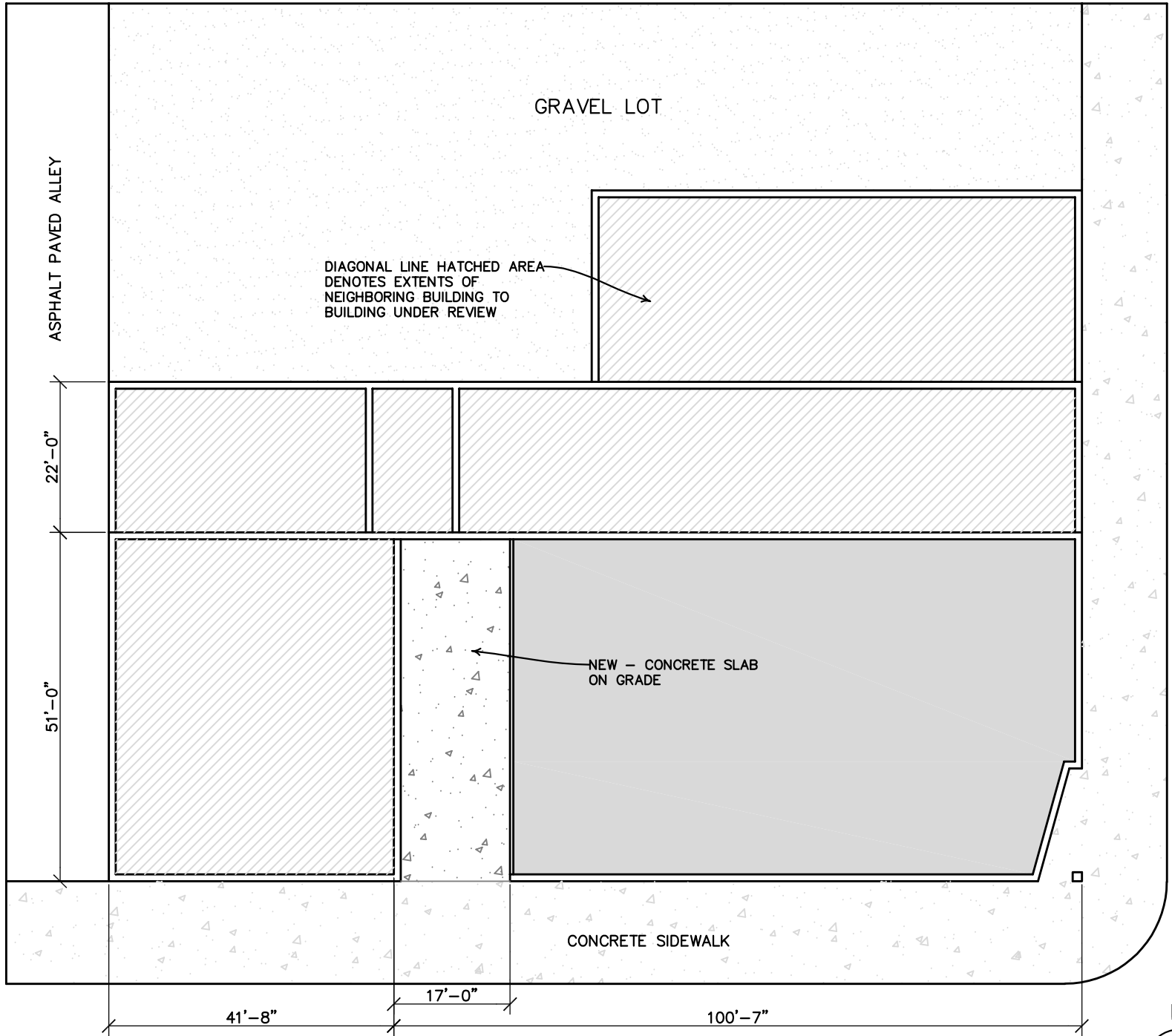


202 SOUTH MAIN
WINNER, SOUTH DAKOTA 57580
605.343.9606

Albertson Engineering Inc.

301 NORTH MAIN ASSESSMENT
MITCHELL, SOUTH DAKOTA

DATE: 04-30-2018
DRAWN BY: BT
SHEET TITLE: EXISTING SITE PLAN



ASPHALT PAVED ALLEY

GRAVEL LOT

DIAGONAL LINE HATCHED AREA
DENOTES EXTENTS OF
NEIGHBORING BUILDING TO
BUILDING UNDER REVIEW

22'-0"

51'-0"

NEW - CONCRETE SLAB
ON GRADE

CONCRETE SIDEWALK

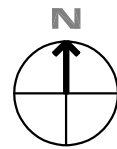
41'-8"

17'-0"

100'-7"

MAIN STREET

3RD AVENUE



2 PROPOSED SITE PLAN
NTS

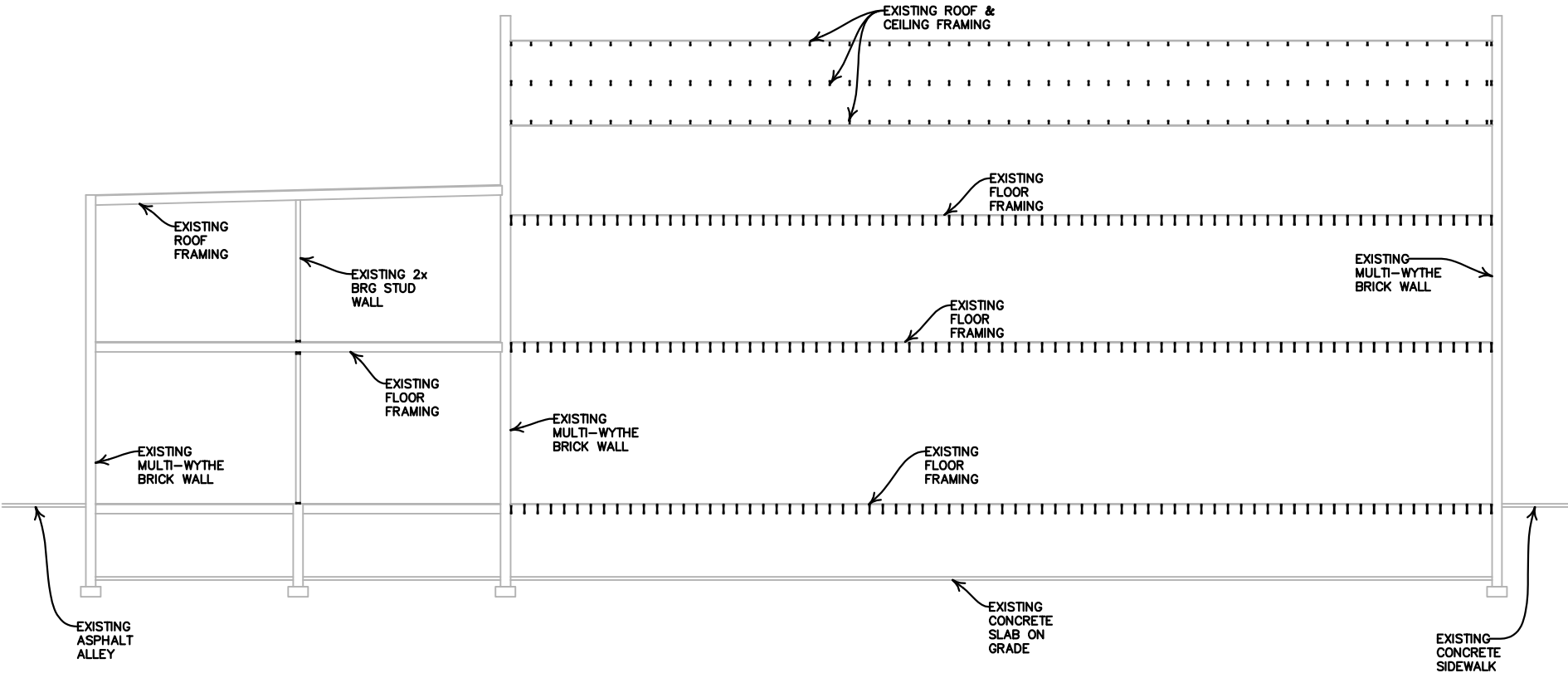
202 SOUTH MAIN
WINNER, SOUTH DAKOTA 57580
605.343.9606

Albertson Engineering Inc.

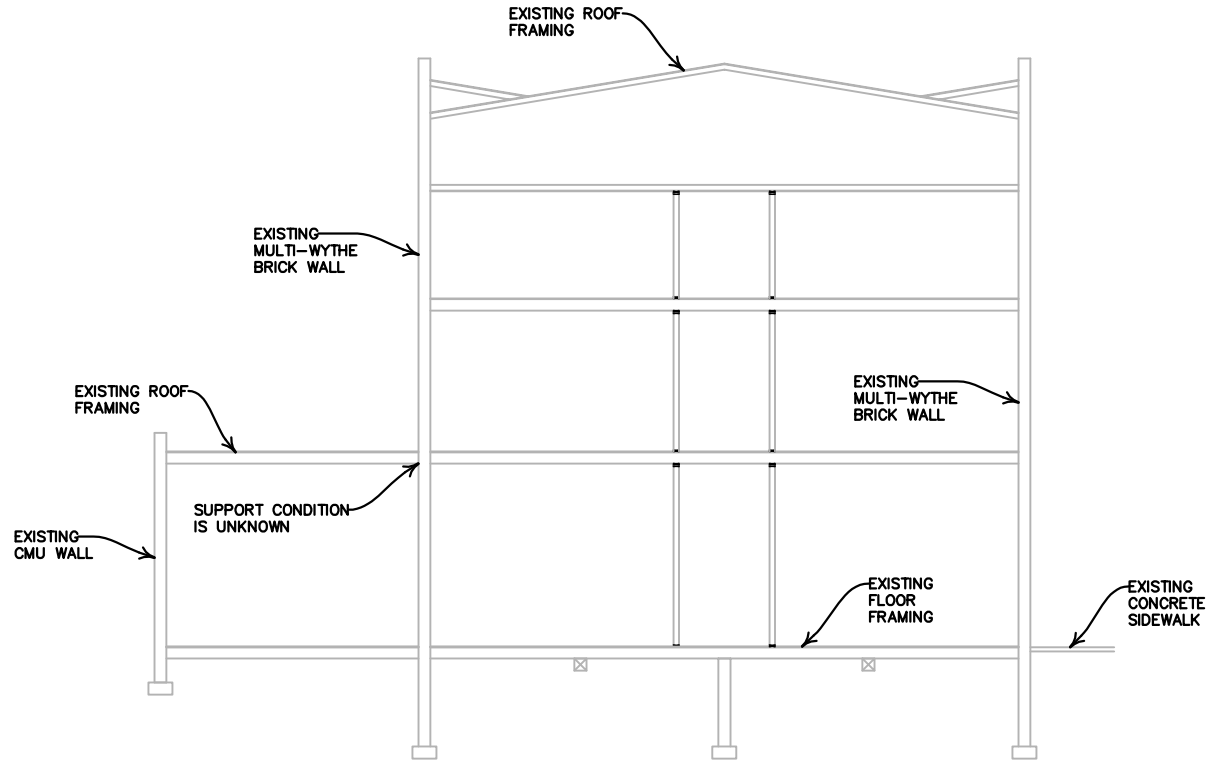
301 NORTH MAIN ASSESSMENT
MITCHELL, SOUTH DAKOTA

DATE: 04-30-2018
DRAWN BY: BT
SHEET TITLE: EXISTING SITE PLAN

APP2



1 EXISTING BUILDING SECTION
1/8" = 1'-0"



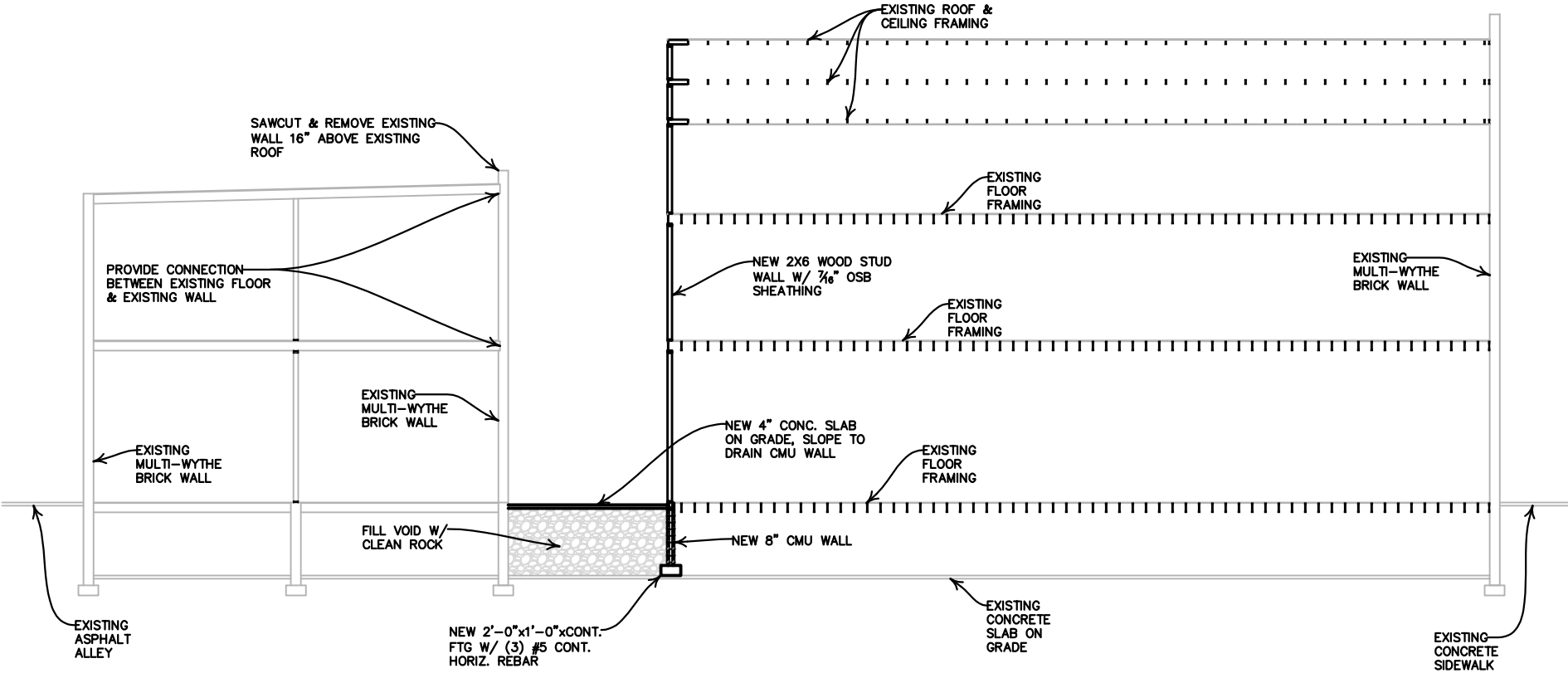
2 EXISTING BUILDING SECTION
 $1/8" = 1'-0"$

202 SOUTH MAIN
 WINNER, SOUTH DAKOTA 57580
 605.343.9606

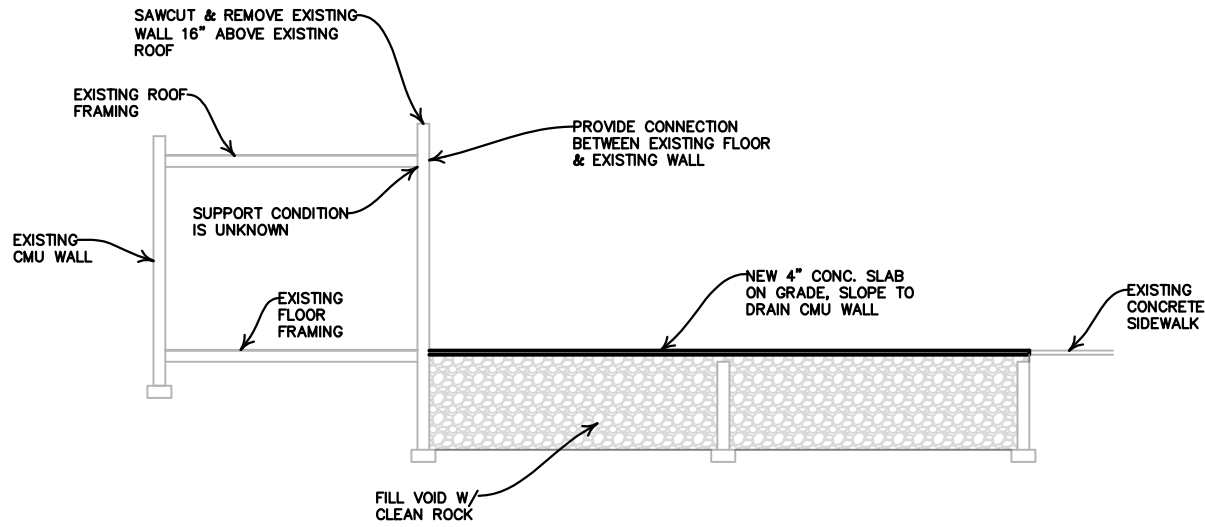
Albertson Engineering Inc.

301 NORTH MAIN ASSESSMENT
 MITCHELL, SOUTH DAKOTA

DATE: 04-30-2018
 DRAWN BY: BT
 SHEET TITLE: EXISTING BUILDING SECTION



3 PROPOSED BUILDING SECTION
1/8" = 1'-0"



4 PROPOSED BUILDING SECTION
 $1/8" = 1'-0"$

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF DAVISON)

IN CIRCUIT COURT
FIRST JUDICIAL CIRCUIT

CITY OF MITCHELL, SD)
a Municipal Corporation,)

17CIV18-_____

Plaintiff,)

COMPLAINT

vs.)

DAVID FINNELL)

Defendant.)

COMES NOW the Plaintiff, City of Mitchell, SD, (hereafter “City”) by and through its attorney, Justin M. Johnson, and for its complaint against the Defendant, pleads as follows:

- 1. That Plaintiff is a South Dakota municipal corporation located within Davison County, South Dakota.
- 2. The real property (hereafter “Nuisance Property”) which is the subject matter of this action for abatement of a nuisance is situated within the boundaries of the City of Mitchell, Davison County, South Dakota and is legally described as:

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

- 3. Defendant, David Finnell, is and has been at all times relevant to this action the record owner of the Nuisance Property.
- 4. The Defendant was issued an Order to Correct, attached hereto as **Exhibit A** and incorporated by reference, relating to the nuisance conditions on the Nuisance Property dated October 31, 2017.
- 5. The Defendant did not file a Notice of Appeal to contest the Order to Correct administratively within the time period established by Mitchell City Code Section 5-3-12 or at any point thereafter.

6. The real property above-described and the structures situated and attached thereon, have been declared to constitute a public nuisance by the City Council of the City of Mitchell. A copy of the Resolution adopted by the City Council declaring the above-described property as a public nuisance is attached hereto as **Exhibit B** and incorporated by reference.
7. The City has given notice to Defendant ordering the abatement of the nuisance by either repairing and restoring the property to a non-nuisance condition or alternatively by removing the structures from the property and by that means restoring the real property to a non-nuisance condition. Defendant has refused or otherwise failed to comply with such order and request of the City.
8. The City of Mitchell has in place the following ordinances relating to nuisances:
 - I. MCC 5-3-4(L) Failure To Maintain Exterior Building Appearance: All buildings' exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement. No unpainted galvanized metal material shall be used for exterior finish surfaces in residential areas. Windows, doors, roofing, gutters, soffit, and fascia must be maintained intact and in good repair, as shall any interior window dressings or other interior materials plainly visible from the exterior of the building. Temporary bracing, scaffolding, or the like shall not stand for more than sixty (60) days unless approved by the city building inspector. Buildings shall be free of any other similar conditions of disrepair or deterioration regardless of the condition of other properties in a neighborhood.
 - II. MCC 5-3-4(K) Rodents, Vermin, Insects, And Other Pests: All property shall be kept free of infestation by rodents, vermin, insects, and other pests, as well as conditions which may encourage such infestation. Where rodents, vermin, insects, or other pests are found, they shall be promptly exterminated by approved processes not injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation.

III. MCC 5-3-3 Nuisances Generally:

- A. It is unlawful for any property agent to create, maintain, commit, or permit to be created, maintained or committed, any public nuisance.
 - B. The term "public nuisance" consists of doing an act without lawful authority, or omitting to perform a duty, within the corporate limits of the city or in any public grounds, or parts belonging to the city, which act or omission either:
 1. Annoys, injures, or endangers the comfort, repose, health, or safety of others;
 2. Offends contemporary community moral standards;
 3. Does or tends to lower the value of adjacent real estate because of unsightly conditions;
 4. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage any lake or river, bay, stream, canal or basin, or any public park, square, street, alley, right of way, or highway; or
 5. In any way renders other persons insecure in life or in the use of property and which affects at the same time an entire community, neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.
9. The structures on the Nuisance Property were in extremely poor condition at the time the Order to Correct was issued as reflected in **Exhibit A** and are in as bad or worse condition, as of the time of filing, according to the June 11th, 2018 Supplemental Report from the City Code Enforcement Officer, attached hereto as **Exhibit C** and incorporated by reference. Specifically, the structures have bowing, collapsing, deteriorating, and missing masonry walls; partially unsupported roof; various holes and missing windows; 2nd floor heaving; broken joists; major portions of structures being unfit for occupancy; and significant water damage.
 10. The severity of the nuisance conditions on the Nuisance Property and their continued existence constitute violations of the above cited City ordinances.
 11. The severity of the nuisance conditions on the Nuisance Property and their continued existence also constitutes a public nuisance as defined by SDCL 21-10-1 and 21-10-2.

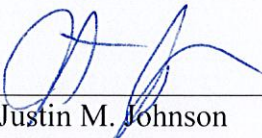
12. Plaintiff brings this action pursuant to SDCL 21-10-9 and requests the order of the court affirming the City's declaration of nuisance in respect to the above-described property, and an order of the court authorizing the City to raze and remove the structures from the premises and dispose of same and to remove all materials and debris from the property and restore the property to a non-nuisance condition.

WHEREFORE, Plaintiff requests the following:

1. That the Court enter its order authorizing the City to immediately enter upon the property and to raze and remove therefrom the structures and dispose of same, and to remove and dispose of all materials accumulated upon the property which contribute to the nuisance condition of the above-described property and to perform all acts necessary to restore the property to a non-nuisance condition.
2. That the Court enter its order authorizing the City to recover from the Defendant all costs of razing, removing, and disposing of all materials upon the above-described property and all costs of restoring the said property to a non-nuisance condition.
3. That the Court retain jurisdiction over this matter and the action for purposes of determination of the costs incurred by the Plaintiff in razing, removing, and disposing of all materials upon the above-described property and all costs of restoring the said property to a non-nuisance condition and for entry of judgment in favor of the Plaintiff and against the Defendant for such costs.
4. Such other and further relief as the Court may deem appropriate.

Dated this 12 day of June, 2018.

By: _____


Justin M. Johnson
City Attorney
612 North Main Street
Mitchell, SD 57301
(605) 990-7940

ADMINISTRATIVE RULES OF SOUTH DAKOTA (ARSD) 24:52:07:03

24:52:07:03. Standards for case report. If a state entity or a political subdivision of the state is required by law or rule to report possible threats to the historical integrity of a property on the state register, the threat must be reported by means of a case report that meets the requirements of this section.

Case reports must provide the Office of History with sufficient information for the office to make an independent review of effects on the historical integrity of historic properties and shall be the basis for informed comments to state entities and the public. Case reports shall thoroughly examine all relevant factors involved in a preservation question. They must contain the following:

- (1) A description of any impending project which may adversely affect historic property;
- (2) Photographs, maps, or drawings showing the existing project site, the extent of projects, and details of the proposed projects, which may include three-dimensional models or accurate computer-generated representations of proposed new construction. Models or representations must clearly show the visual impacts of new construction on surrounding neighborhood or landscapes;
- (3) The planning and approval schedule for projects which may adversely affect historic property;
- (4) A statement explaining how projects adversely affecting the historic property were brought to the attention of a state entity or political subdivision;
- (5) A description of potentially affected historic property with any relevant physical, economic, or situational information on the property;
- (6) A description of the potential effects of a proposed project on historic property and the basis for the determinations of effect;
- (7) A historic preservation plan or description and evaluation of all feasible and prudent alternatives which a state entity or political subdivision proposes in order to minimize adverse effects of a project on historic property and alternatives which the state entity or political subdivision has examined and rejected. The reasons for rejection must be included. This section of the case report must clearly substantiate that all possible efforts to minimize harm to the historic property have been undertaken. Alternatives to aspects of the project which may adversely affect the historic property must:
 - (a) Receive consideration based on factual reports, research, tried methods, and professional and lay preservation advice;
 - (b) Explore alternatives beyond the immediate project, taking into account broad community or regional issues in which the historic resources may play a contributing role;

(c) Take into account the impact of potential adverse effects on surrounding historic resources, community preservation plans, and long-range community opportunities;

(d) Be based on professional assessments of the value and basic structural condition of the affected property and estimates of a range of rehabilitation or mitigative options prepared by people experienced in historical preservation work; and

(e) Provide adequate periods of time for information to be prepared and for preservation options to be attempted;

(8) Documentation of consultation with the Office of History regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(9) A description of the efforts of a state entity or political subdivision to obtain and consider the views of affected and interested parties;

(10) Documentation that a local historical preservation commission constituted under SDCL [1-19B](#) with jurisdiction in the city or county where the affected historic property is located was provided a specified period of time to examine plans for proposed projects. Official comments of the commission must be included. The Office of History shall specify periods of time not to exceed 180 days to be given local historical preservation commissions to examine plans and may specify such periods for each set of revised plans submitted for a project. The commission shall:

(a) Agree with the findings of the case report;

(b) Disagree with the findings of the case report; or

(c) Decline to comment on the findings of the case report;

(11) Copies of written views submitted by the public to the state entity or political subdivision concerning the potential adverse effects of projects on historic properties and alternatives to reduce or avoid those effects.

The Office of History may require an abbreviated case report if, in its opinion, less than a comprehensive review of a preservation issue is needed. The office shall determine the elements needed for an abbreviated case report case by case.

Source: 16 SDR 239, effective July 9, 1990; 21 SDR 50, effective September 21, 1994; 24 SDR 73, effective December 4, 1997.

General Authority: SDCL [1-19A-5](#), [1-19A-11](#), [1-19A-29](#).

Law Implemented: SDCL [1-19A-5](#), [1-19A-11.1](#).



301 NORTH MAIN – BUILDING ASSESSMENT – ADDENDUM LETTER #1



1.0 Introduction

This report serves as a follow up to the original report dated on May 8th, 2018. The previous report provided an overview of our site visit, building analysis, recommendations, and opinion of probable costs. The purpose of this letter is to provide alternate recommendations and opinion of costs for either demolishing the entire East building or demolishing both the entire East and West buildings. Please see the original report for descriptions of the buildings and previous recommendations with opinions of probable costs.

3.0 Recommendations

As an alternative to the recommendations given in the original report, the entire East or East and West building may be demolished. The East and West buildings share a common bearing wall and the West building is currently unoccupied. It is noted that the East and North buildings also share a common wall, but the North building is occupied. The North building should be protected during demolition of the building(s).

The recommendations stated below are general in nature and are not to be taken as direction for construction. Recommendations are to be reviewed and discussed with the parties involved. Once a determination of direction is made, a set of construction documents may be developed describing final design.

Albertson Engineering Inc.
Rapid City
3202 West Main, Suite C
Rapid City, SD 57702
605-343-9606

Sioux Falls
315 North Main Avenue, Suite 200
Sioux Falls, SD 57104
605-274-0880

Winner
202 South Main
Winner, SD 57580
605-842-1144

Option 1: Demolish East building

- a. Since the West wall of the East building is bearing for the floor and roof of the West building, the West wall of the East building will need to be sawcut above the roof of the West building and removed from the sawcut to the top of the wall.
- b. It is anticipated that the North wall of the East building is also a bearing wall for the North building. Therefore, a sawcut will be needed above the roof of the North building.
- c. Prior to demolishing any portion of the East building, the floor and roof of the North and West buildings will need to be anchored to the existing multi-wythe masonry walls. Anchoring the wall to the floor and roof framing systems will likely entail drilling and setting an anchor into the existing multi-wythe brick wall and then connecting a strap tie to each wood joist.
- d. Remove the East building in its entirety.
- e. Infill the lower level of the East building with engineered fill with a slope to drain water to the South. A few services in the lower level may need to be relocated.
- f. Maintain status of "NO OCCUPACY" in the West building. A full assessment of the framing for that building would need to be completed prior to being reoccupied. Such an assessment is outside the scope of work for this report.

Option 2 Demolish East and West building

- a. It is anticipated that the North wall of the East building is a bearing wall for the North building. Therefore, a sawcut will be needed above the roof of the North building.
- b. Prior to demolishing any portion of the East and West buildings, the floor and roof of the North building will need to be anchored to the existing multi-wythe masonry walls. Anchoring the wall to the floor and roof framing systems will likely entail drilling and setting an anchor into the existing multi-wythe brick wall and then connecting a strap tie to each wood joist.
- c. Remove the East and West buildings in their entirety.
- d. Infill the lower level of the East and West buildings with engineered fill with a slope to drain water to the South. A few services in the lower level may need to be relocated.

After final construction documents are developed and a contractor is selected, the contractor should be required to submit a demolition/construction phasing plan including detailed descriptions of how safety will be monitored at all times. The plan should be submitted to the City Building Official for information purposes.

4.0 Opinion of Probable Cost

To achieve the recommendations stated above, Albertson Engineering Inc is of the opinion that the total cost will be approximately \$560,000 for option 1 and \$745,000 for option 2. A detailed breakdown of cost opinions for each option is provided on the following page.



OPINION OF PROBABLE COST - Option 1: Demo East Building		
Sawcut Existing Masonry Walls	160 Linear Feet	\$30,000
Demolition and Removal of East Building	240,000 Cubic Feet	\$330,000
Connect Existing Floor and Roof to Existing Wall	120 Feet	\$20,000
Granular Fill	1300 cubic yards	\$55,000
Mechanical Allowance	1 Lump Sum	\$5,000
Electrical Allowance	1 Lump Sum	\$10,000
Miscellaneous Masonry Infill	1 Lump Sum	\$5,000
Equipment Rental	1 Lump Sum	\$12,000
Disposal Fees	1 Lump Sum	\$7,000
Safety Allowance	1 Lump Sum	\$3,500
Total		\$477,500
Excise Tax (2.04%)		\$ 11,460
Overhead & Profit (15%)		\$ 71,625
Grand Total		\$ 560,585

OPINION OF PROBABLE COST - Option 2: Demo East & West Building		
Sawcut Existing Masonry Walls	100 Linear Feet	\$21,000
Demolition and Removal of East & West Building	334,000 Cubic Feet	\$460,000
Connect Existing Floor and Roof to Existing Wall	200 Feet	\$30,000
Granular Fill	1870 cubic yards	\$80,000
Mechanical Allowance	1 Lump Sum	\$5,000
Electrical Allowance	1 Lump Sum	\$10,000
Equipment Rental	1 Lump Sum	\$15,000
Disposal Fees	1 Lump Sum	\$9,000
Safety Allowance	1 Lump Sum	\$4,000
Total		\$634,000
Excise Tax (2.04%)		\$ 15,216
Overhead & Profit (15%)		\$ 95,100
Grand Total		\$ 744,316



Given the age and historic nature of the building, any plans for demolition or construction for the building(s) shall be submitted to the State Historic Preservation office for their review and approval prior to any demolition or construction.

5.0 Conclusion

All assessments and recommendations made were based solely on visual observations of the current conditions. Due to the limited scope of the field information, we cannot attest to the existing structure's compliance with building codes or accepted construction techniques. This report is prepared for the sole benefit of the City of Mitchell. Unauthorized use without our written permission shall result in no liability or legal exposure to AEI.

We appreciate the opportunity to be of service and if we can be of further assistance, please let us know.

Albertson Engineering Inc.



Blake Tideman, PE



Albertson Engineering Inc.

NUISANCE ABATEMENT AGREEMENT

WHEREAS the City of Mitchell, hereinafter "City", and Merlin Tingle (Owner), hereinafter "Property Agent", would like to provide terms relating to the correction of certain conditions at 301 North Main Avenue, hereinafter "Property", and the parties mutually wishing to address this situation without need for judicial recourse; it is hereby:

MUTUALLY AGREED that the Property Agent shall have until September 1st, 2017 at 7 A.M. to remedy the conditions discussed below; and it is further;

MUTUALLY AGREED that all of the following nuisance conditions be remedied at the Property:

- 1) All factor and dates MUST be met and the building MUST be made safe to Public Safety:
 - Engineer Plan and building permit issues (August 7th 2017)
 - Walls from Basement to ceiling MUST be installed to secure building (August 18th 2017)
 - Wall shall be replaced and secured to meet Nuisance and Building standards (August 31st 2017)

and it is further;

MUTUALLY AGREED that if Property Agent does not have the Property cleared of all said conditions deemed to be a nuisance, that City may come onto the Property and abate any remaining conditions deemed to be a nuisance; and it is further;

MUTUALLY AGREED that in the event Property Agent fails to remedy the nuisance conditions and then refuses to grant City access or opportunity to abate the nuisance, that Property Agent shall be liable for liquidated damages at the rate of \$50 per week that the nuisance conditions persist, not as a penalty, but as agreed upon liquidated damages due to the impracticability and difficulty of fixing the actual damages for the continuance of the nuisance conditions; and it is further


MUTUALLY AGREED that in the event Property Agent fails to remedy the nuisance conditions and then refuses to grant City access or opportunity to abate the nuisance, that City shall be entitled to an immediate Order of Abatement from a court of competent jurisdiction with said Order to also award a Judgment for all costs incurred by City in remedying the nuisance and obtaining the Order, including costs of cleanup, reasonable attorney's fees, and legal expenses; and it is further;

MUTUALLY AGREED that Property Agent waives any and all rights to trial or to otherwise dispute the nuisance conditions listed above and this Agreement shall be deemed an admission of the same and that a court may enter its Order in conformity with this Agreement without further notice to either party; and it is further;

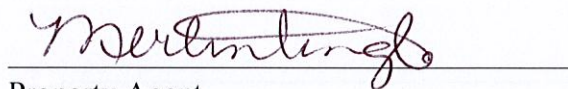
MUTUALLY AGREED that if any section, or portion thereof, of this Agreement is found to be void, unenforceable, or unconstitutional, the improper portion shall be severed and the remaining provisions will remain in full force and effect to the maximum extent permitted by law; and it is further

MUTUALLY AGREED that this Agreement constitutes the entire agreement between the parties and that it shall not be modified unless mutually agreed by the parties in writing.

Signed this 31st day of July, 2017.



City of Mitchell
By its: Code Enforcement Officer



Property Agent

Tingle Friday July 28, 2012

two walls from Basement to brace floors - Aug. 18th

Demo Building & INS. covers.

Wall come down - Aug. 31st