

**BEFORE THE CITY COMMISSION OF THE CITY OF  
LAWRENCE, KANSAS**

*In Re:* APPLICATION FOR DESIGN )  
REVIEW OF 9-10, L.C. ) No. DR-12-185-11  
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**INTRODUCTION**

On April 30, 2012, the Historic Resources Commission ("HRC") disapproved the owner/applicant's proposed project -- a four-story, multi-use structure at 900 New Hampshire Street -- finding that it would "encroach upon, damage or destroy" the environs of historic properties protected by national and state registers of historic places. K.S.A. 2011 Supp. 75-2724(a). On June 26, 2012, pursuant to K.S.A. 2011 Supp. 75-2724(a)(1), the City Commission conducted a public hearing and, based on the credible evidence adduced at that public hearing, concluded "that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use." *Id.* This document, following the court's recommendation in *Friends of Bethany Place, Inc. v. City of Topeka*, 43 Kan. App.2d 182, 203, 222 P.3d 535 (2010), memorializes the City Commission's findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. 9-10, L.C., owns, and Ninth and New Hampshire, L.L.C., (collectively, "owner/applicant") has a contract to purchase, that real property commonly known as 900 New Hampshire Street, Lawrence, Douglas County, Kansas ("the subject property").

2. The subject property is located at the southeast corner of the intersection of Ninth Street and New Hampshire Street, Lawrence, Douglas County, Kansas. Immediately to its south is the Lawrence Arts Center. To its west, across New Hampshire Street, is a seven-story, multi-use building. To its north, across Ninth Street, are several office buildings and a parking lot. To its east, across the alley, are the Social Service League Building and the North Rhode Island Residential Historic District, National Register of Historic Places.

3. The subject property is zoned CD (Downtown Commercial) District. The CD District provides for a variety of land uses, including governmental, office, public, institutional, churches, residential, and neighborhood, community, and regional retail uses. City of Lawrence, Kan., Code § 20-210(a) (Jan. 1, 2011).

4. The subject property is currently a vacant lot. It has existed as a vacant lot since at least 1999. Prior to that time it was used as a parking lot. Prior to that, it housed a gas station and other buildings that were razed in the early 1980s.

5. The subject property is located within the environs of a several national, state, and local historic properties: (1) the Lawrence Downtown Historic District, National Register of Historic Places; (2) the North Rhode Island Residential Historic District, National Register of Historic Places; (3) the Shalor Eldridge Residence (945 Rhode Island Street), Register of Historic Kansas Places; and (4) the Social Service League Building (905-907 Rhode Island Street), Lawrence Register of Historic Places.

6. On September 12, 2011, because the subject property is located within the environs of historic properties and districts, the owner/applicant filed with the HRC, Application for Design Review, No. DR-9-151-11. Therein, the owner/applicant sought HRC approval of a six-story, multi-use structure, that would include retail space, an extended-stay hotel, apartments, a restaurant, a roof-top swimming pool, and underground parking. As presented, the height of the building at its northwest corner (at the intersection of Ninth Street and New Hampshire Street) was 79 feet; the height of the building at the southwest corner of the building (nearest the Lawrence Arts Center) was 71 feet; and the height of the east side of the building (facing the alley) was 64 feet.

7. On October 27, 2011, the HRC conducted a public hearing on Application for Design Review, No. DR-9-151-11. After reviewing the proposal, receiving staff's recommendation of disapproval, admitting relevant evidence, and hearing public comment, the HRC determined that, because of the height, size, scale, and massing of the proposed project: (1) the proposal did not meet the applicable "Downtown Design Guidelines;" (2) the proposal should not, under City of Lawrence, Kan., § 22-501 *et seq.* (Jan. 1, 2011), be granted a "Certificate of Appropriateness;" and (3) the proposal would, applying K.S.A. 2011 Supp. 75-2724(a) analysis, "encroach upon, damage or destroy" the environs of properties protected by national and state registers of historic places. On those bases, the HRC voted unanimously to disapprove Application for Design Review, No. DR-9-151-11.

8. At its December 6, 2011, regular public meeting, the City Commission convened, pursuant to K.S.A. 2011 Supp. 75-2724(a)(1), a hearing on Application for Design Review, No. DR-9-151-11. At the outset of that hearing, the owner/applicant formally withdrew Application for Design Review, No. DR-9-151-11, and presented instead an alternative project, one that reduced the height of the original proposal by one story, stepped the building down toward the alley, and removed the proposed use of the adjoining alley.

9. On December 14, 2011, consistent with its December 6, 2011, presentation, the owner/applicant filed with the HRC Application for Design Review, No. DR-12-185-11. Therein, the owner/applicant sought HRC approval of a revised proposal, comprising a five-story, multi-use structure, that would include retail space, an extended-stay hotel, apartments, a restaurant, an outdoor, ground-level swimming pool, and underground parking.

10. On February 16, 2012, the HRC conducted a public hearing on Application for Design Review, No. DR-12-185-11. After reviewing the proposal, receiving staff's recommendation of disapproval, admitting relevant evidence, and hearing public comment, the HRC determined that, because of the height, size, scale, and massing of the proposed project: (1) the proposal should not be granted a local "Certificate of Appropriateness"; and (2) the proposal would, under the state law analysis, "encroach upon, damage or destroy" the environs of properties included in national and state registers of historic places. On those bases, the HRC voted to disapprove Application for Design Review, No. DR-12-185-11.

11. At its April 24, 2012, regular public meeting, the City Commission convened, pursuant to K.S.A. 2011 Supp. 75-2724(a)(1), a hearing on Application for Design Review, No. DR-12-185-11. At the outset of that hearing, the owner/applicant moved the City Commission to continue the hearing in order to allow it additional time to present a third, revised proposal to the HRC. The City Commission voted to continue the hearing until the owner/applicant had time to present a third, revised proposal to the HRC.

12. Thereafter, the owner/applicant presented to the HRC revised Application for Design Review, No. DR-12-185-11, seeking HRC approval of a four-story, multi-use structure, that would include retail space, an extended-stay hotel (featuring a 9,000 square foot lobby and 90 guest rooms), a restaurant, an outdoor swimming pool, and two levels of underground parking (with 124 parking spaces). As presented, the height of the northwest corner of the building (at the intersection of Ninth Street and New Hampshire Street and housing the restaurant) would be five stories or 63 feet, the height of the southwest corner of the building (nearest the Lawrence Arts Center) would be four stories or 44 feet, and the height of the east side of the building (facing the alley) would be three stories or 35 feet. The revised plan also moved the structure an additional five and one-half feet from the and included a landscaping buffer as additional protection for the adjoining neighborhood. The revised plan further provided for renovations to that portion of the Social Service League Building added shortly after World War II.

13. On April 30, 2012, the HRC conducted a public hearing on revised Application for Design Review, No. DR-12-185-11. After reviewing the revised proposal, accepting staff's recommendation of approval, receiving evidence, and hearing public comment, the HRC determined that, while it met the "Downtown Design Guidelines and should receive the "Certificate of Appropriateness," because of its height, size, scale, and massing, it would, "encroach upon, damage or destroy" the environs of properties included in national and state registers of historic places. The HRC voted to disapprove revised Application for Design Review, No. DR-12-185-11.

14. At its June 26, 2012, regular public meeting, pursuant to K.S.A. 2011 Supp. 75-2724(a)(1), the City Commission convened a hearing on revised Application for Design Review, No. DR-12-185-11, for the purpose of determining whether, under the statute, there was "no feasible and prudent alternative to the proposal and that the program include[d] all possible planning to minimize harm to such historic property resulting from such use." *Id.*

15. Lynne Braddock-Zollner, Historic Resources Administrator, presented first. Ms. Braddock Zollner described the project, reiterated that the subject property was within the environs of the historic properties, outlined the HRC's decision, and emphasized that the City Commission's duty was not to revisit that decision, but to determine only whether there was "no feasible and prudent alternative to the proposal and that the program include[d] all possible planning to minimize harm to such historic property resulting from such use." K.S.A. 2011 Supp. 75-2724(a)(1).

16. Following that presentation, Diane Stoddard, Assistant City Manager, disclosed that the proposed project was part of a larger project that would also include the construction of an apartment building across the street on the northeast corner of the intersection of Ninth Street and New Hampshire Street and that, for the entire project, the owner/applicant was seeking public assistance in the form of incentives financing: (1) tax increment financing; (2) transportation development district financing; and (3) industrial revenue bond financing. Ms. Stoddard emphasized that, if the incentives were granted, there would be no cost to the City, that the increased tax revenues pay for public improvements made by the owner/applicant, and that it would also contribute \$850,000.00 toward retiring the City's debt on the existing parking garage on that block.

17. Ms. Stoddard's presentation also served to introduce representatives of Springsted Incorporated, a consulting firm hired by the City to evaluate the financial feasibility of the proposed project as well as the necessity of the proposed requests for public assistance. Springsted Incorporated divided its presentation into two parts. Mr. David MacGillivray presented first and discussed the financial feasibility of a three-story structure on the subject property. Mr. Tony Schertler followed that with a discussion of the financial feasibility of a four-story structure, as proposed by the owner/applicant, and concluded with a discussion of the proposed request for public assistance and analysis of whether there was a need for public participation.

18. Highly summarized, Mr. MacGillivray noted that, using national averages, the average desired rate of return on the proposed project as an investment would be 8.28%. He stated that, assuming there was no public assistance on the project, that the statistical models indicated that the rate of return on a three-story project would be 0.2%. He then stated that, assuming there was public assistance involved, the rate of return would increase to 3.83%. He concluded that, taking into account all adjustments that could be made to ensure the accuracy of the numbers, under either scenario, a three-story project on the subject property would not be financially feasible.

19. Mr. Schertler then spoke regarding the proposed four-story project, featuring an extended-stay hotel with 90 guest rooms. He noted that, in such a project, using national averages, the expected rate of return on such an investment would be 11.65%. He stated that statistical models showed that, without assistance, the rate of return on the proposed project would be 2.6%. With assistance, the rate of return would be 5.73%. Mr. Schertler noted that, as it was, it was a "thin" project and that it was unlikely that the project would proceed without public assistance.

20. Mr. Schertler then discussed the entire project, including the proposed apartment building across the street. He stated that, without assistance, the project could expect a rate of return of 3.72%; with assistance, the project could expect a rate of return of 6.3%. He concluded that the project would not be feasible without some type of public assistance.

21. Following the presentation of Springsted Incorporated, the owner/applicant made its presentation. The owner/applicant divided its presentation into three parts. Dan Watkins, counsel for owner/applicant, presented first. He noted that under the Kansas Administrative Regulations, K.A.R. 118-3-1(e), the City Commission must consider four factors in determining whether or not a feasible and prudent alternative exist: (1) technical issues; (2) design issues; (3) the project's relationship to the community-wide plan, if any; and (4) economic issues. He noted that Springsted Incorporated had covered the fourth factor and that representatives of Treanor Architects, P.A., would address the other three factors.

22. Thereafter, Micah Kimball and Michael Treanor of Treanor Architects, P.A., spoke in succession. Highly summarized, they presented the following, which the City Commission finds credible:

(a) Since September, 2011, significant changes were made to the proposed project to meet the various guidelines as well as to make it less intrusive on the adjoining neighborhood, including significant reductions in height, size, scale, and massing;

(b) Beginning in January, 2012, in cooperation with the Architectural Review Board, the entire project was redesigned: it was reduced by one story, stepped down toward the alley, and the roof-top swimming pool was converted into an outdoor pool;

(c) Later in 2012, based on a plan which moves the proposed apartment use north across Ninth Street, the proposed project was again reduced in height, size, scale, and massing and would now include retail, a restaurant, and the extended-stay hotel;

(d) As the proposed project evolved, the height at the corner of the intersection of Ninth Street and New Hampshire Street was reduced 16 feet, the height of the building at the southwest corner (nearest the Lawrence Arts Center) was reduced 27 feet, and the height of the building on the east side (facing the alley) was reduced 29 feet;

(e) The latest proposal moves the building away from the alley five and one-half feet and includes a landscape buffer;

(f) The latest proposal moves the building away from the Lawrence Arts Center by four feet, includes the construction of a court yard between the two, and makes the building height compatible with the height of the Lawrence Arts Center;

(g) The proposed project was changed to remove all proposed uses of the alley and would include improvements to that alley;

(h) The latest proposal provides a transition in height from the US Bank Building at Ninth Street and Massachusetts Street, through the 901 New Hampshire Building, through the proposed project, and to the Social Service Building;

(i) The proposed project will have no more visible impact on the adjoining neighborhood than that of the 901 New Hampshire Building, which occupies the southwest corner of the intersection and is seven stories in height;

(j) All mechanical and physical units of the proposed project will be located inside the building -- rather than on the roof or outside -- and any noise generated thereby will be insulated from the adjoining neighborhood;

(k) The City's comprehensive plan calls for increased density downtown and the proposed project, together with the proposed apartment building, would achieve that goal; and

(l) The proposed project involves renovating that portion of the Social Service League Building that was added after World War II and which is in dire need of repair.

23. Thereafter, Ronald Schneider, counsel for opponents of the project, made his presentation. Again, highly summarized, the tenor of Mr. Schneider's presentation was that, under the law, any number of options, other than the proposed project, could be feasible and prudent. Mr. Schneider specifically referenced written proposals presented by Townsend Peterson, Ph. D., and Kirk McClure, Ph. D., that he claimed were not only feasible, but prudent. He declared that those proposals showed that a two- or three-story building, with any number of uses, could be economically viable at that location. He also objected to the proposed underground parking on the grounds that it was unnecessary and would increase the cost of the project. He suggested further that the property could be sold and proposed that the Lawrence Arts Center purchase it and employ it for its outdoor needs (instead of buying land to its south). He reiterated that the site was zoned CD, which permitted any number of residential, office, and retail uses, and that, from among those uses, there had to be at least one feasible and prudent alternative. Mr. Schneider then concluded by arguing that the presentation of Springsted Incorporated showed that the proposed project was, itself, neither feasible nor prudent.

24. Thereafter, the City Commission entertained comments from the general public. Some spoke against the proposed project, others spoke in favor of proposed project. During public comment, Steve Hitchcock presented Dr. Peterson's written alternative proposal, but was unable to answer any questions regarding it. Dr. McClure also presented his written alternative.<sup>1</sup>

25. After receiving public comment, the City Commission, in accordance with *Lawrence Preservation Alliance, Inc. v. City of Lawrence*, 20 Kan. App.2d 93, 95, 819 P.2d 138 (1991), *rev. denied* 250 Kan. 805 (1992), allowed Mr. Watkins an opportunity to refute the written alternative presented by Mr. Ralston, Dr. Peterson, and Dr. McClure.

26. Mr. Watkins argued, first, that Mr. Ralston's pro forma, which anticipated a profit of \$416,000 from a three-story apartment building, should be rejected because: (a) it failed to include any cost for the lot; (b) it failed to include operating expenses; (c) it lacked outside windows and permitted first floor living units in violation of Downtown Design Guidelines and the City Code; (d) it failed to include any analysis of building value or any type of loan-to-value analysis; (e) it failed to include a courtyard or buffer area to shield the historic district from the structure; (f) it did not address off-street parking needs; and (g) and it assumed a loan interest rate of only 4%.

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<sup>1</sup> Prior to the hearing, Mr. John Ralston also presented a written alternative. Other than the proposals of Mr. Ralston, Dr. Peterson, and Dr. McClure, the City Commission received no other written alternative to the proposed project.

27. Mr. Watkins argued second that Dr. Peterson's proposal, which called for a 30,000 square foot building with three-stories -- with the first one reserved for a grocery store, the second for office space, and the third for apartments -- be rejected because: (a) it provided no design documents showing layouts related to delivery, parking, etc.; (b) it assumed that all 30,000 square feet could be leased, whereas at least 25%-35% of the structure would be common space and could not be leased; (c) it did not include any operating costs, which often run as much as 33% in apartment leases; (d) no assessments were included for tenant finish costs; (e) there was no valuation regarding loan amounts or any attempt to calculate loan to value amount; and (f) there was no credible evidence or analysis that would establish that the market could bear 10,000 square feet of speculative office space.

28. Next, Mr. Watkins addressed Dr. McClure's proposed plan which called for a building similar in size to the proposed project, but with retail/office development and no apartments. Mr. Watkins argued that Dr. McClure's proposal be rejected because: (a) it provided no design details regarding parking, deliveries, layout, or any mitigating features; (b) it did not account for any operating expense; (c) it did not include building valuation calculations to support loan to value information or the amount of equity required by the project; (d) there was no analysis of tenant finish costs on lease rates; and (e) it did not establish that the market would bear the additional, speculative office space.

29. Mr. Schneider then argued that the alternate proposals, because opponents are not held to the same standard as developers, were more than sufficient to be relevant factors in the City Commission's determination. He then concluded, by stating that, for those reasons, the owner/applicant had failed to meet its burden of showing that there was "no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use." K.S.A. 2011 Supp. 75-2724(a)(1).

30. The City Commission then discussed the issue, finding the following, from the credible evidence, to be "relevant factors:

(a) The City's comprehensive plan provides that there be something substantial on the subject property and that it serve as a transition between downtown and the adjoining neighborhood;

(b) The subject property has been vacant since 1999, and was used only incidentally for twenty years preceding that;

(c) The proposed use of the subject property is compatible with present zoning and downtown uses;

(d) Underground parking, as included in the proposed project, would benefit the adjoining neighborhood and downtown businesses by relieving traffic and parking congestion on the streets, whereas a building without such parking would overburden traffic and parking in the area and would be detrimental both to the adjoining neighborhood and downtown businesses;

(e) Planning staff recommended approval of the proposed project;

(f) There would be no gain to the public at large by rejecting the proposed project;

(g) There was no evidence that the market would bear additional, speculative office space;

(h) The proposed alternatives would not be feasible without additional parking, especially if the alternative use involved a grocery store or other retail use; and

(i) A three-story structure, as opposed to the four-story proposed project, would not be economically feasible.

31. The City Commissioners then discussed the three written proposed alternatives. Ultimately, the City Commission rejected the written alternatives as relevant factors, largely for those reasons proffered by Mr. Watkins. The City Commission also found that, even if they were deemed relevant factors, the credible evidence was that the proposed written alternatives were neither feasible nor prudent and would be rejected on that ground.

32. Finally, the City Commission noted that the credible evidence disclosed that the following planning has been undertaken to minimize harm to the protected properties:

(a) The proposed project had undergone significant revision to minimize harm to the protected properties;

(b) The highest point of the proposed project had been moved from the interior of the block to the intersection away from the adjoining neighborhood;

(c) The proposed project calls for a garden or green space between itself and the Lawrence Arts Center;

(d) The proposed project was moved five and one-half feet away from the alley and includes a landscape buffer;

(e) The proposed project is stepped down from west to east, providing a transition to the adjoining neighborhood;

(f) The proposed project includes underground parking, which will relieve traffic and parking congestion on surrounding streets, including neighborhood streets;

(g) The mechanical systems of the proposed project will be located indoors, insulating the neighbors from noise pollution;

(h) As the project has evolved, the height of the proposed project has been almost halved;

(i) The design of the proposed project has improved and is consistent with surrounding properties; and

(j) The developer will renovate a portion of the Social Service League Building, a protected historic property, that is in dire need of repair.

33. Based on the totality of the information presented at the hearing, the City Commission finds that the evidence presented by the owner/applicant to be credible. That credible evidence, as set forth in the preceding paragraphs which are hereby adopted as the City Commission's official findings of fact, when viewed in the light of all relevant factors, leads the City Commission ineluctably to find that "there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use." K.S.A. 2011 Supp. 75-2724(a)(1).

## CONCLUSIONS OF LAW

1. Under the Kansas State Historic Preservation Act of 1977 ("KSHPA"), K.S.A. 75-2715 *et seq.*, no proposed construction project involving an historic property or within the environs of an historic property may proceed until notice is given to the State Historic Preservation Officer ("SHPO") and the SHPO has been afforded the opportunity to investigate the proposed project and to provide comment. See K.S.A. 2011 Supp. 75-2724(a).

2. The SHPO may, under certain circumstances, by agreement with the local government, delegate the duties of the office to a city or a county. See K.S.A. 2011 Supp. 75-2724(e)(1).

3. The SHPO has, in fact, by way of a contract with the City of Lawrence, Kansas, delegated the authority of the SHPO to the City. The City, in turn, created the Lawrence Historic Resources Commission ("HRC") and has charged it, among other things, with fulfilling the duties of the SHPO. City of Lawrence, Kan., Code §§ 22-101 *et seq.* (Jan. 1, 2011).

4. At its April 30, 2012, public hearing on revised Application for Design Review, No. DR-12-185-11, the HRC reviewed the proposed project, received a recommendation of approval by City staff, admitted the relevant evidence, heard public comment, and voted to disapprove the proposed project, finding that it would, under the state law analysis, "encroach upon, damage, or destroy" the environs of properties protected by the national and state registers of historic properties. K.S.A. 2011 Supp. 75-2724(a).

5. Accordingly, under the KSHPA, the proposed project shall not proceed unless the City Commission determines, "based on a 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 the harm to such historic property resulting from said use." *Id.*

6. In making that determination, the City Commission is authorized to take into consideration all "relevant factors" relating to the project being reviewed. *Reiter v. City of Beloit*, 263 Kan. 74, 90, 947 P.2d 425 (1997).

7. A "relevant factor" is defined in the regulations as "pertinent information submitted by project proponents or project opponents **in written form**, including evidence supporting their positions. K.A.R. 118-3-1(j) (emphasis added).

8. Relevant factors **may** include, as may be relevant to the particular case, (a) the character of the neighborhood; (b) the zoning and uses of nearby properties; (c) the suitability of the property for the proposed use; (d) the extent to which the proposed use would detrimentally affect nearby property; (e) the length of time the property has remained vacant; (f) the relative gain to the public health, safety, and welfare balanced against the hardship imposed upon the applicant by denial; (g) the recommendations of professional staff; and (h) compliance with the comprehensive plan. *Reiter v. City of Beloit*, 263 Kan. at 90 (citing *Golden v. City of Overland Park*, 224 Kan. 591, 598, 584 P.2d 130 (1978)).

9. As used in the KSHPA, "no feasible and prudent alternative to the proposal" means that there is no alternative solution to the proposed project that can be accomplished that is either "sensible or realistic." K.A.R. 118-3-1(e).

10. When determining whether there is "no feasible and prudent alternative to the proposal," the City Commission **shall** consider the following factors: (1) technical issues; (2) design issues; (3) the proposed project's relationship to the community-wide plan, if any; and (4) economic issues. *Id.*

11. The words "feasible" and "prudent" shall be accorded their natural and ordinary meanings. *Reiter v. City of Beloit*, 263 Kan. at 74.

12. "Feasible" means "[c]apable of being accomplished or being brought about; possible;" "suitable;" or "reasonable." *American Heritage College Dictionary* at 499 (3d ed. 1997).

13. "Prudent" means "[w]ise in handling practical matters; exercising good judgment or common sense;" "marked by wisdom or judiciousness;" or "provident." *Id.* at 1102.

14. In determining whether there is "no feasible or prudent alternative to the proposal," the City Commission must make such determination on a "case by case" basis, taking into consideration all "relevant factors." *Reiter v. City of Beloit*, 263 Kan. at 93.

15. With respect to the City Commission's determination, a "relevant factor" means something more than a mere suggestion as to a possible alternative. *Allen Realty, Inc. v. City of Lawrence*, 14 Kan. App.2d 361, 373, 790 P.2d 948 (1990).

16. Consequently, a proposed alternative is only a "relevant factor" if it includes sufficient factual information from which a reasonable person could decide not only is the proposed alternative feasible, but prudent. *Id.*, 14 Kan. App.2d at 373.

17. A suggested alternative use is a "relevant factor" if it addresses technical, design, or economic issues related to the proposed project, as well as the project's relationship to the community-wide plan. *Friends of Bethany Place, Inc. v. City of Topeka*, 43 Kan. App.2d at 207.

18. If a suggested alternative is lacking in sufficient information, then it is not a "relevant factor," the proponent of the project need not refute it, and the City Commission may ignore it. *Lawrence Preservation Alliance, Inc. v. City of Lawrence*, 20 Kan. App.2d at 95.

19. The KSHPA encompasses a wide spectrum of possible actions that do not implicate the taking of protected historic property. Where the proposed project does not involve the actual destruction of protected historic property -- as in this case -- the courts do not read the "no feasible and alternative" language as "tightly" as they do in other circumstances. *Reiter v. City of Beloit*, 263 Kan. at 93.

20. The key is whether the City Commission took "a hard look at all relevant factors and, using plain common sense, based its determination upon the evidence." *Id.*, 263 Kan. at 93-4; see also *Mount St. Scholastica v. City of Atchison*, 482 F. Supp.2d 1281, 1291 (D.Kan. 2007).

21. As used in the KSHPA, "the program includes all possible planning" means "that the written evidence submitted ... [to the HRC] clearly identify all alternative solutions that have been investigated, compare the differences among the alternative solutions and their effects, and describe the mitigation measures proposed by the project proponent that address an adverse effect determination ...." K.A.R. 118-3-1(i).

22. By "program," the KSHPA means the proposed project. *Allen Realty, Inc. v. City of Lawrence*, 14 Kan. App.2d at 374.

23. In making that determination, the City Commission must consider such factors as lighting, traffic, vandalism, noise, drainage, fire, height, trash, among others, and determine whether the proposed project would protect the historic property from those sorts of harm. *Reiter v. City of Beloit*, 263 Kan. at 95-96.

24. Based on the credible evidence, after taking a good hard look at the relevant factors, balancing the benefits and harms to be conferred by the proposed project, heeding the peculiar nature of the instant issue, and applying common sense, the City Commission hereby concludes that "there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use." K.S.A. 2011 Supp. 75-2724(a)(1).

25. Bolstering that conclusion is the fact that, if there was indeed a feasible and prudent alternative to the proposed project, then the subject property would have been put to that use and it would not have remained vacant for the past thirty years.