



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.

Washington, D.C. 20240

MAR 11 2009

IN REPLY REFER TO:

Re: **Klos Building, 2720 Minnesota Ave., Billings, Montana**
Project Number:

Dear :

My administrative review of the decision of Technical Preservation Services, National Park Service, denying certification of the rehabilitation of the property cited above is concluded. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. Thank you and for speaking with me via conference call on March 3, 2009, and for providing a detailed account of the project.

After careful review of the complete record for this project, including the written statement and additional photographs submitted with your letter of February 11, 2009, I have determined that the rehabilitation of the Klos Building is not consistent with the historic character of the property, and that the project does not meet Standards 2 and 9 of the Secretary of the Interior's Standards for Rehabilitation. Therefore, the denial issued on November 6, 2008, by Technical Preservation Services (TPS) is hereby affirmed. However, I have further determined that the project could be brought into conformance with the Standards, and thereby be certified, if the corrective measures described below are undertaken.

Constructed ca. 1893, and expanded in 1923, the Klos Building is located in an area surveyed as the potential Old Town Historic District. After reviewing the documentation submitted with the application, TPS issued a preliminary determination on March 6, 2008, that the building "appears to contribute to the significance of a potential historic district, which will likely be listed in the National Register of Historic Places if nominated by the State Historic Preservation Officer."

Upon review of the Part 2 application describing the proposed rehabilitation of this property, TPS issued a conditional approval on August 1, 2008. That decision specified that "the proposed clerestory monitor must not be visible (or must be as inconspicuous as possible so as not to diminish the historic character of the building) from surrounding public right-of-way vantage points." The letter stated further that a mock-up of the proposed monitor should be constructed so that its effect on the building could be evaluated "prior to initiation of the work."

However, construction of the monitor atop the Klos Building was already virtually complete by the time TPS reviewed the Part 2 describing the rehabilitation and issued the conditional approval. After reviewing photographs of the monitor, TPS denied the requested certification, noting that the new feature is "highly visible above the parapet of the one-story historic building. The monitor's height, width, profile, white color, dark glass and solar panels, and angled placement on the roof contribute to its high visibility, and make it a feature that overwhelms and competes with the small-scale building."

I agree with this evaluation. The photographs show convincingly that the monitor is readily visible from multiple vantage points, and that it indeed has a noticeable effect on the historic character of this modest building. Rising nearly two stories above the roof, it has become a dominant new feature that does indeed compete with the building on which it sits, as TPS had anticipated in its original review. As a result, I find that the addition has caused the project not to meet Standards 2 and 9. Standard 2 states: "*The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*" Standard 9 states: "*New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.*"

In our conversation you and [redacted] stated that the Minnesota Avenue (north) facade of the Klos Building is its most noteworthy feature, and that the monitor is not visible from the street in front of the building. You also observed that this new addition is visible now from the west only because the buildings that once stood on these lots have been demolished, and that if you were ever to build on these vacant lots, the new buildings would probably hide the monitor from view completely.

I agree that the street facade of the Klos Building, like that of almost every other building, is a primary character-defining feature, and I acknowledge that the monitor is set back sufficiently so that it does not detract from the contribution the street facade makes to the proposed historic district. However, the regulations state that, "*In situations involving the rehabilitation of a certified historic structure in a historic district, the Secretary will review the rehabilitation project first as it affects the certified historic structure and second as it affects the district and makes a certification decision accordingly.*" [36 CFR 67.6.b.6] Thus, the impact of the monitor on the overall character of the building is the primary concern. In that context, as TPS noted, the size of the monitor is both incompatible with the scale and massing of the building and its color makes it highly visible. It has in fact become a major new feature of the building—thus diminishing the very primacy of the north facade and elevating the west facade to a primary status, in great contrast with the building overall. And although future construction might lessen its visibility as you suggest, such construction is far from certain, and in any case, I must review the project as it is, not as it might be in the future. Further, the new entrance, fenestration, and canopy, on the west elevation will preclude new construction at that point, leaving the monitor visible above.

It is unfortunate that the project was substantially complete before the National Park Service reviewed the application because, as I mentioned in our conversation, other approaches for mounting skylights and solar arrays on the roof are available that would have produced the desired results in a manner that would have been compatible with the character of the structure.

In the material submitted with your February 11, 2009, letter, you proposed modifying the monitor by painting it a brick color (the treatment is simulated in altered digital photographs). I have examined these photographs and find that the monitor thus painted would be marginally less prominent than at present, since it would blend somewhat with the Klos Building and with the taller building immediately adjacent to the east. However, this treatment alone would not suffice to bring the project into conformance with the Standards for Rehabilitation.

While the project as completed cannot be approved, I have further determined that the project can be brought into conformance with the Standards, and thereby achieve the requested certification, if corrective measures are undertaken. Specifically, the height and massing of the monitor must be reduced significantly. As I noted during the appeal, it may be possible to reconfigure the double rows of skylights and solar collectors into two smaller and lower monitors. If you wish to propose this or other modifications in an effort to meet the Standards, I will review them as soon as practicable.

However, please note that this project will not become a "certified rehabilitation" eligible for the tax incentives until it is completed and so designated.

Alternatively, since the Old Town Historic District is not yet listed in the National Register of Historic Places, you may want to investigate the 10% Federal tax credit for the rehabilitation of pre-1936 buildings that have not been designated a "certified historic structure." All inquiries about the 10% credit and the eligibility requirements should be directed to the Internal Revenue Service.

As Department of the Interior regulations state, my decision is the final administrative decision regarding rehabilitation certification. A copy of this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Burns", with a long, sweeping underline.

John A. Burns, FAIA
Chief Appeals Officer
Cultural Resources

cc: SHPO-MT
IRS