



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Hamilton Municipal Heritage Committee
COMMITTEE DATE:	September 24, 2021
SUBJECT/REPORT NO:	Heritage Permit Application HP2021-037, Under Part IV of the <i>Ontario Heritage Act</i> , for Façade Integration into Redevelopment of 18 - 28 King Street East, Hamilton (PED21195) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Amber Knowles (905) 546-2424 Ext. 1291
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That Heritage Permit application HP2021-037, for redevelopment of the properties including integrating the designated heritage façades into a new six storey mixed use building, for the lands located at 18-28 King Street East, be **approved**, subject to the following conditions:

- (a) That a Conservation Plan in accordance with the City's Guidelines for Conservation Plans be prepared and submitted by the applicant to the satisfaction and approval of the Director of Planning and Chief Planner prior to the issuance of any Building Permit for demolition or new construction;
- (b) That the Conservation Plan completed by the applicant's heritage consultants address the following to the satisfaction and approval of the Director of Planning and Chief Planner prior to the issuance of any Building Permit for demolition or new construction:
 - (i) Structural drawings for the facade retention frame;
 - (ii) Demolition and dismantling plan that provides the methodology for labelling, dismantling, re-locating and storing heritage elements;

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- (iii) Inventory of items to be dismantled and stored;
 - (iv) Masonry key plan that shows the original location and condition of individual stones for 28 King Street East;
 - (v) Monitoring plan for regular monitoring of stored elements and structural retention frames;
 - (vi) Repair methodologies and materials for heritage fabric including masonry specifications for suitable repair mortars and replacement stone;
 - (vii) Structural and architectural drawings for integration of the heritage facades into the new structure;
 - (viii) Window specifications for replacement windows to be installed in the heritage facades;
 - (ix) Construction management plan that includes protection and monitoring of the façade retention frame and sequencing and co-ordination of conservation work, demolition work and new construction;
 - (x) Project schedule and cost estimates for the proposed conservation work; and,
 - (xi) Identify what remains of the original storefronts and provide recommendations for the final storefront designs;
- (c) That the recommendations from the Conservation Plan submitted to the satisfaction of the Director of Planning and Chief Planner, be implemented to the satisfaction of the Director of Planning and Chief Planner, prior to the issuance of an Occupancy Permit;
- (d) That the following conditions with respect to cost estimates to implement the Conservation Plan and a Letter of Credit shall be satisfied prior to submission of an application for a Building Permit for removal of portions of the building:
- (i) The applicant shall provide cost estimates for 100% of the total cost of securing, protecting and stabilizing the retained portions, the cost of monitoring and security for a period of three years and the total cost of restoration and protective enclosure of the retained Designated portions. Such cost estimates shall be in a form satisfactory to the Director of Planning and Chief Planner;
 - (ii) The applicant shall provide a Letter of Credit to the Director of Planning and Chief Planner for 100% of the total estimated cost as per (i) above in a form satisfactory to the City's Finance Department (Development Officer, Budget, Taxation and Policy) to be held by the City as security for securing, protecting, stabilizing, monitoring and restoring the retained portions as required by this Heritage Permit:
- (1) The Letter of Credit shall be kept in force, whether or not the ownership of 18-28 King Street East changes at any time, until the completion of

the required restoration of the retained portions and the erection of a permanent structure to enclose the rear of the retained portions and / or to otherwise attach the retained portions to a new building in conformity with the approved design and requirements;

- (2) The Letter of Credit may be reduced in accordance with the City's Letter of Credit Policy for site plan applications;
 - (3) If the Letter of Credit is about to expire without renewal thereof and any part of securing, protecting, stabilizing, monitoring or restoring the retained portions has not been completed in conformity with their approved designs, the City may draw all of the Letter of Credit funds and hold them as security to guarantee completion unless the City's Finance Department (Development Officer, Budget, Taxation and Policy) is provided with a renewal of the Letter of Credit forthwith; and,
 - (4) In the event that the Owner fails to complete, to the satisfaction of the Director of Planning and Chief Planner, the required securing, protecting, stabilizing, monitoring or restoring of the retained portions and the erection of a permanent structure to enclose the rear of the retained portions and / or attach to a new building in conformity with its approved design within the time required, then the City, in addition to any other remedies that the City may have, may exercise its authority under section 446 of the *Municipal Act* to have its employees, agents or contractors enter 18-28 King Street East to complete any one or more of these requirements. The cost of completion of securing, protecting, stabilizing, monitoring or restoring the retained portions shall be paid in full by the Owner from the Letter of Credit. In the event that there is a surplus, the City shall pay the surplus to the Owner upon completion of the requirement(s). In the event that there is a deficit, the City may further exercise its authority under section 446 of the *Municipal Act* including but not limited to adding the deficit to the tax roll and collecting it in the same manner as property taxes;
- (e) That prior to the issuance of any Building Permit for demolition or new construction, the applicant enters into and registers on title a Heritage Easement Agreement and covenant with the City pursuant to the *Ontario Heritage Act* for the purposes of maintaining the heritage attributes consistent with the conditionally approved permit to the satisfaction and approval of the Director of Planning and Chief Planner, and that the Mayor and Clerk, or delegate, as the case may be, are hereby authorized to execute any such agreement;

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- (f) That any minor changes to the plans and elevations following approval shall be submitted, to the satisfaction and approval of the Director of Planning and Chief Planner, prior to any application for a Building Permit and / or the commencement of any alterations;
- (g) That should a Building Permit for the proposed alterations, in accordance with this approval, not be obtained and acted upon by October 31, 2023 then this approval expires as of that date and no alterations shall be undertaken without a new approval issued by the City of Hamilton;
- (h) That the proposed alterations, in accordance with this approval, shall be completed no later than October 31, 2024. If the alterations are not completed by October 31, 2024, then this approval expires as of that date and no alterations shall be undertaken without a new approval issued by the City of Hamilton;
- (i) That the Director of Planning and Chief Planner be authorized to approve a request to extend the dates noted in conditions (g) and (h) of this approval, if that request is submitted prior to the expiry and if progress is being made.

EXECUTIVE SUMMARY

The subject properties at 18-28 King Street East (see Appendix “A” attached to Report PED21195) are designated under Part IV of the *Ontario Heritage Act* by By-law No. 18-321, attached as Appendix “B” to Report PED21195.

This Heritage Permit application (HP2021-037) was received on July 6, 2021 and the Notice of Complete Application was issued on July 29, 2021. The application proposes to redevelop the current property while integrating the designated heritage façades into the new six storey mixed use building. The Kerr Building facade (18-22 King Street East) will be retained, the Skinner Building façade (24 King Street East) will be replicated, the Glassco Building façade (28 King Street East) will be dismantled and rebuilt. The vacant lot at 30 King Street East will be used as a courtyard. The proposal can be found in the Cultural Heritage Impact Assessment Addendum, attached as Appendix “C” to Report PED21195.

The *Ontario Heritage Act* requires that Council make a decision on a Heritage Permit application within 90 days of the issuance of a Notice of Complete Application. If no decision is reached within the 90-day timeframe, Council shall be deemed to consent to the application. The subject application’s 90-day timeframe will be reached on October 27, 2021.

The Heritage Permit Review Subcommittee of the Hamilton Municipal Heritage Committee (HMHC) reviewed the subject application on July 27, 2021, and

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recommended approval. When demolition of a designated heritage building is proposed as part of a Heritage Permit application, the application is subject to Council decision.

Staff are of the opinion that the proposed scope of work will ensure the conservation of significant cultural heritage resources. As such staff recommend approval of the Heritage Permit application, subject to the recommended conditions to ensure that additional concerns, such as the stabilization of the retained portions, will be addressed through a comprehensive conservation plan.

Alternatives for Consideration – See Page 13

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: This Heritage Permit application has been processed and considered within the context of the applicable legislation.

Section 34 (1) of the *Ontario Heritage Act* states that:

“No owner of property designated under Section 29 shall do either of the following, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal:

1. Demolish or remove, or permit the demolition or removal of, any of the property’s heritage attributes, as set out in the description of the property’s heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be; and,
2. Demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property, whether or not the demolition or removal would affect the property’s heritage attributes, as set out in the description of the property’s heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be. 2019, c. 9, Sched. 11, s. 12.”

Section 34 (4.2) of the *Ontario Heritage Act* states that:

“The council, after consultation with its municipal heritage committee, if one is established, and within the time period determined under subsection (4.3),

- (a) shall,
 - (i) consent to the application;
 - (ii) consent to the application, subject to such terms and conditions as may be specified by the council; or,
 - (iii) refuse the application;
- (b) shall serve notice of its decision on to the owner of the property and on the Trust; and,
- (c) shall publish its decision in a newspaper having general circulation in the municipality.”

With respect to the delegation of Council’s approval authority, Section 33 (15) of the *Ontario Heritage Act* states that:

“The power to consent to alterations to property under this section may be delegated by by-law by the council of a municipality to an employee or official of the municipality if the council has established a municipal heritage committee, and has consulted with the committee prior to delegating the power.”

HISTORICAL BACKGROUND

18-20 King Street East was constructed circa 1840 and early occupants were Archibald and Thomas C. Kerr, who established their successful wholesale dry goods business there as early as 1848. 22 King Street East was constructed circa 1840 for H. E. Smith. By the 1850’s, both buildings were under single ownership.

The architect of 18-20 King Street East, William Thomas, was considered a key figure in Canadian architecture, designing important buildings throughout Ontario as well as in other Provinces. The building’s composition, design and materials provide a representative example of Renaissance Revival architecture dating to the pre-Confederation period and display a high-degree of craftsmanship. The buildings retain their original architectural features on the upper levels of their front facades and are among very few pre-Confederation stone commercial buildings remaining in Hamilton.

24 King Street East was constructed in 1875-1876 for James A. Skinner. Skinner was a crockery merchant who opened his “China Palace” at another location around 1850 and the current building was built as an expansion. James A. Skinner and Co. was recognized as “the largest importer of crockery, glassware, etc. and largest shippers to

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Manitoba, British Columbia and the Northwest". Later, Minden's Ladies Wear operated in this location between 1924 and 1951.

The building at 24 King Street East was originally designed and constructed in the Victorian Style of architecture with vertical brick coursing, stone window sills, metal hood mouldings and a metal cornice. Several alterations have been undertaken to the building and only the brick façade (painted), three window openings on the fourth level and the cornice and brackets remain.

28 King Street East was constructed in 1874 for William H. Glassco & Sons to house their furrier business, established in 1843 and first located in a building further to the east along King Street East. The building housed a large cold storage vault that was considered to be advanced at the time. G.F. Glassco & Sons operated in this location until 1931 and a succession of other furrier businesses subsequently operated out of the building.

The composition, design and materials of the building at 28 King Street East provide a representative example of Victorian architecture. At the time of its construction, the building was less elaborate than the buildings on either side; however, the building has retained most of its original architectural features on the upper levels of its front façade.

The buildings face Gore Park and are integral components to the King Street East streetscape and the character of the 'Gore' area. Gore Park is surrounded by largely intact groupings of three to four storey commercial row buildings, many displaying early architectural styles and high levels of craftsmanship in both design and construction.

The City of Hamilton issued a Notice of Intention to Designate 18-22 King Street East, as well as a Notice of Intention to Designate 24-28 King Street East, under Part IV of the *Ontario Heritage Act* on December 13, 2013. The Notices of Intention to Designate had the effect of voiding the Demolition Permit that had been issued on January 25, 2013.

In 2016 - 2017 a redevelopment proposal was submitted through the Heritage Permit process and Site Plan Control application process (SPA-17-087). On January 25, 2017 Council approved Heritage Permits HP2016-027 and HP2016-028 to retain the façade of 18-22 King Street East and to demolish 24 and 28 King Street East, respectively. In 2018, Heritage Permit HP2018-035 was approved for the retention and restoration of the front portions of 24 and 28 King Street East, replacing HP2016-028 for the demolition of those buildings and this permit expired on September 30, 2020 (attached as Appendix "D" to Report PED21195). Heritage Permit HP2016-027 was extended in 2020 and expired on January 31, 2021.

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The current Heritage Permit application (HP2021-037), was received on July 6, 2021 and included a Cultural Heritage Impact Assessment Addendum prepared by Megan Hobson which addressed the current retention and redevelopment proposal (attached as Appendix “C” to Report PED21195). A Notice of Complete Application was issued on July 29, 2021.

The Site Plan application (SPA-17-087) has since lapsed and the new development proposal is being considered under Site Plan Control application SPA-21-116.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Urban Hamilton Official Plan

Volume 1, Section 3.4 – Cultural Heritage Resources Policies of the Urban Hamilton Official Plan (UHOP) states that the City shall:

- “B.3.4.2.1(a) Protect and conserve the tangible cultural heritage resources of the City, including archaeological resources, built heritage resources, and cultural heritage landscapes for present and future generations.
- B.3.4.2.1 (i) Use all relevant provincial legislation, particularly the provisions of the *Ontario Heritage Act*, the *Planning Act* R.S.O., 1990 c. P.13, the *Environmental Assessment Act*, the *Municipal Act*, the *Niagara Escarpment Planning and Development Act*, the *Cemeteries Act*, the *Greenbelt Act*, the *Places to Grow Act* and all related plans and strategies in order to appropriately manage, conserve and protect Hamilton’s cultural heritage resources.
- B. 3.4.5.2 The City shall encourage the retention and conservation of significant built heritage resources in their original locations. In considering planning applications under the *Planning Act* and heritage permit applications under the *Ontario Heritage Act*, there shall be a presumption in favour of retaining the built heritage resource in its original location.
- B. 3.4.5.5 Where a significant built heritage resource is to be unavoidably lost or demolished, the City shall ensure the proponent undertakes one or more of the following mitigation measures, in addition to a thorough inventory and documentation of the features that will be lost:
- (a) preserving and displaying of fragments of the former buildings' features and landscaping;
 - (b) marking the traces of former locations, shapes, and circulation lines;

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- (c) displaying graphic and textual descriptions of the site's history and former use, buildings, and structures; and,
- (d) generally reflect the former architecture and use in the design of the new development, where appropriate and in accordance with Section B.3.3 - Urban Design Policies.”

These policies from the Urban Hamilton Official Plan demonstrate Council's commitment to the identification, protection, and conservation of cultural heritage resources, and the recommendations of this Report meet the intent of these policies.

Downtown Hamilton Secondary Plan

Volume 2, Section 6.1- Downtown Hamilton Secondary Plan of the Urban Hamilton Official Plan (UHOP) states that:

- “B 6.1.11.1 (d) Conservation of existing cultural heritage resources shall be a priority in all development. New development shall be compatible with on-site and adjacent cultural heritage resources. Adaptive re-use will be given priority for all built heritage resources;
- (e) The City may require that as part of development proposals that cultural heritage resources be retained on-site and incorporated, used or adaptively re-used, as appropriate with the proposed development. Retention and protection of cultural heritage resources on lands subject to development may be a requirement as a condition of development approval. Specifically, heritage easements under subsection 37(1) of the *Ontario Heritage Act* may be required and negotiated, as well as development agreements, respecting the care and conservation of the affected heritage property.”

These policies from the Downtown Hamilton Secondary Plan demonstrate Council's commitment to the protection and conservation of cultural heritage resources, as they relate to the Downtown Hamilton area, and the recommendations of this Report meet the intent of these policies.

RELEVANT CONSULTATION

Heritage Permit Review Subcommittee

Pursuant to Sub-sections 28 (1) of the *Ontario Heritage Act* and the Council approved Heritage Permit Process (PED05096), the HMHC advises and assists Council on matters relating to Part IV and V of the *Ontario Heritage Act*.

SUBJECT: Heritage Permit Application HP2021-037, Under Part IV of the *Ontario Heritage Act*, for Façade Integration into Redevelopment of 18 - 28 King Street East, Hamilton (PED21195) (Ward 2) - Page 10 of 13

The Heritage Permit Review Subcommittee of the HMHC reviewed the subject application at a special meeting held on July 27, 2021. After a presentation and question and answer period with the applicant's agent and consultant, the Subcommittee passed a motion to recommend approval of the application as submitted, subject to the following conditions:

- (a) Any minor changes to the plans and elevations following approval shall be submitted, to the satisfaction and approval of the Director of Planning and Chief Planner, prior to submission as part of any application for a Building Permit and / or the commencement of any alterations;
- (b) Installation of the alterations, in accordance with this approval, shall be completed no later than July 31, 2023. If the alterations are not completed by July 31, 2023 then this approval expires as of that date and no alterations shall be undertaken without a new approval issued by the City of Hamilton;
- (c) That a Conservation Plan in accordance with the City's Guidelines for Conservation Plans be submitted to the satisfaction and approval of the Director of Planning and Chief Planner;
- (d) That a Heritage Easement Agreement be reached with the City prior to the commencement of work; and,
- (e) That a Letter of Credit be provided to be held by the City based on the cost estimates for 100% of the total cost of securing, protecting and stabilizing the retained portions, the cost of monitoring and security for a period of three years and the total cost of restoration and protective enclosure of the retained Designated portions. Such cost estimates shall be in a form satisfactory to the Director of Planning and Chief Planner.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Heritage Permit application (HP2021-037) proposes the following alterations:

- Retention and restoration of the front facades of 18-22 King Street East;
- Facade replication of 24 King Street East;
- Facade dismantling and rebuilding of 28 King Street East;
- Removal of the buildings behind the front facades;
- Restoration of the gable roof and dormers of 18-22 King Street East;
- Construction of a six-storey mixed-use building behind the heritage facades; and,
- Installation of store fronts including signage bands.

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A Cultural Heritage Impact Assessment Addendum, prepared by Megan Hobson dated July 6, 2021 (see Appendix “C” attached to Report PED21195) was submitted with the Heritage Permit application (HP2021-037) in support of the proposal and staff deemed it comprehensive and complete.

Key factors that are considered in the evaluation of any change affecting a heritage resource are consideration of:

- **Displacement effects:** those adverse actions that result in the damage, loss, or removal of valued heritage features; and,
- **Disruption effects:** those actions that result in detrimental changes to the setting or character of the heritage feature.

In the consideration of any Heritage Permit application, staff must assess the impact of the displacement and disruption effects on the heritage resource, particularly in relation to the heritage attributes mentioned in the Designation By-law, in this case By-law No. 18-321.

The Designation By-law identifies only the front façade and related elements on the front facades of 18-22, 24, and 28 King Street East such as cornices and parapet walls, window openings and sashes, and original masonry (see Appendix “B” attached to Report PED21195).

Minimal “disruption effects” are expected to the heritage context of the property. The front facades will be retained and when this is not possible, such as with 24 King Street East, the original facade will be replicated. Investigation of the condition of the masonry of 24 King Street East determined that the brick has deteriorated to such an extent that retention of this facade is not feasible, resulting in the proposed replication with new brick and the cornice being repaired and reinstated on the replicated facade. The east pier and upper courses of masonry for 28 King Street East have shifted because the east wall is leaning eastward due to lack of lateral support from 30 King Street East which was demolished in 2012. Due to this current condition, dismantling and rebuilding of this facade is proposed. Recommendations (a) to (c) of Report PED21195 require a Conservation Plan that will contain a demolition and dismantling plan that provides the methodology for labelling, dismantling, re-locating and storing heritage elements, as well as protection and monitoring of the facades and repair methodologies. A Letter of Credit will also be required to ensure the securing, protecting, stabilizing, monitoring and restoring the heritage facades (Recommendation (d) of Report PED21195).

The retained facades will minimize the disruption effects that loss of the entire buildings would entail. Due to the current condition of these buildings, imminent conservation efforts on the front facades are needed to preserve the heritage attributes. The side

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and rear facades of the buildings are not listed as heritage attributes and as the structure is in poor condition, cannot be feasibly retained. The proposed design of the redevelopment will allow the front facades to remain the focal point of the new structure, using a neutral colour and set back from the facades.

There will be minimal “displacement effects” to the subject property as a result of this work. The front facades have been thoroughly documented to identify what can be retained, repaired, reused, or replicated. There is significant water damage to the structures, so removal of the existing structures and retention and repair of the front facades and notable heritage features will prevent continuing damage to the facades. While typically staff would like to see additional retention to further minimize displacement effects, the existing damage to the structure is too severe and staff are satisfied that the applicants have retained and reincorporated as much of the heritage features as possible in order to minimize these negative effects to the greatest extent possible under these circumstances.

In addition to requiring a Conservation Plan and Letter of Credit as conditions of HP2021-037, which is consistent with the previous Heritage Permits for this site, staff have also proposed a condition for the applicant to enter into a Heritage Easement (Recommendation (e) of Report PED21195). This Easement will provide a further legal obligation for the owners to protect and preserve the heritage facades of 18-28 King Street East through requirements to maintain the facades and their features in good condition, have adequate insurance, and provide further protection against demolition. This agreement would be registered on title and would run with the property.

Staff further recommend that minor changes to the plans and elevations can be submitted to the approval of the Director of Planning and Chief Planner (Recommendation (f) of Report PED21195) and that the applicant must obtain a Building Permit within two years after the Heritage Permit is issued, which is expected to be October of 2021 (Recommendation (g) of Report PED21195). The alterations are to be completed within one year of the deadline to obtain a Building Permit (Recommendation (h) of Report PED21195) and an extension to the deadlines noted above can be approved by the Director of Planning and Chief Planner.

Conclusions:

Staff are of the opinion that Heritage Permit application (HP2021-037) can be supported as the proposed alterations are in keeping with Designation By-law No. 18-321 and will minimize any future displacement or disruption effects that may occur if the condition of the building continues to deteriorate.

Additional concerns such as the restoration methods and how the facades will be retained during demolition and construction of a new building can be addressed in a

comprehensive Conservation Plan, as required by Recommendations (a) to (c) of Report PED21195. As such, staff recommend that the Heritage Permit application be conditionally approved.

ALTERNATIVES FOR CONSIDERATION

(1) Refuse the Heritage Permit Application.

HMHC may advise Council to refuse this application. This is not being recommended.

(2) Approve the Heritage Permit with Additional or Amended Conditions.

HMHC may advise Council to approve this application with additional or amended conditions of approval. This is not being recommended.

(3) Approve the Heritage Permit with No Conditions.

HMHC may advise Council to approve this application with no conditions. This alternative is not recommended, as it would not be consistent with municipal and provincial policy that state that the cultural heritage resources shall be preserved. Furthermore, it would prevent staff review of additional details to ensure that the Heritage Permit approval will result in high-quality conservation and the implementation of the appropriate conservation methods.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED21195 - Location Map

Appendix “B” to Report PED21195 - Designation By-law No. 18-321

Appendix “C” to Report PED21195 - Cultural Heritage Impact Assessment Addendum by Megan Hobson

Appendix “D” to Report PED21195 – Heritage Permit HP2018-035

AK:sd