

John Wagner

BYLAW AMENDMENTS

Observations Regarding Bylaws Amendments

The South Dakota Code sections provided to the Commission at our last meeting to justify amendments to our bylaws are completely inapplicable and irrelevant. They only apply to city "appointive officers." We are not appointive officers. "Appointive officers" must take an oath of office - we don't. They must also be bonded - we aren't.

Three consecutive member absences (Bylaws Art. 11, Sect. 3)

The only suggested bylaws amendment that can be justified by law concerns the HPC deeming vacant the term of a member absent for three consecutive regular meetings without cause.

Section 2.68.080, of the Rapid City Code, deals with appointment of HPC members. It provides that the Mayor "recommends" and the "Council appoints" members. That being the case, it is hard to justify the power of the HPC to create a bylaw that deems a member's term vacant for any cause. This bylaws section exceeds the Commission's authority. Striking this section is appropriate.

Removal for cause (Bylaws: Art. 11, Sec. 2(c)).

Although we have not been given any applicable legal authority for striking this section, it should be stricken. The City Council "appoints" HPC members. It has the authority to remove them consistent with appropriate legal standards. (Hopefully, the recent censure debacle will not be a precedent.) The HPC doesn't have authority to enter this area.

Ex officio members (Bylaws Art. 11, Sect. 1 (a))

It has been stated that this provision exceeds the HPC's authority. No law has been cited to support this. Boards and committees often have ex officio members. They do not count for a quorum. (See Robert's Rules of Order, Boards and Committees.)

The only problem with this provision is the words "to participate in Commission proceedings." If it means make motions and vote, it would exceed the HPC's authority because the ex officio members are not appointed by the City Council (RC Code section 2.68.030).

Instead of eliminating "ex officio non-voting individuals" from the HPC (they can be helpful to the Commission), the bylaws can refer to "ex officio individuals to provide advice to the Commission." The full sentence would read: "The Historic Preservation Commission may appoint ex officio individuals to provide advise to the Commission."

Nomination of Historical Properties (Bylaws Art. 1, Sec. 1 (b)(2))

This amendment is a reaction to the Dakota Middle School nomination by the HPC. However, moving beyond that, a background is helpful.

If Rapid City were not a Certified Local Government, any nomination to the National Register of property within the city would be handled without a requirement of notifying the city. Because

Rapid City is a CLG, Rapid City must be notified, unless the nomination comes from or through the City itself. (And the City provides a recommendation and report.) In short, a CLG city gets more notification from the State because it is a CLG and works more closely with the State regarding historical properties..

Because of this close working relationship, this amendment is reasonable. If a private property owner and the HPC want the private property nominated, the HPC should be able to nominate it. If the private property owner does not want it nominated, the HPC should not be able to nominate it. In fact, it can't.

Public property can be nominated by anyone. If the HPC is involved with the nomination of public property, however, it is appropriate that the City Council consent.

As a matter of drafting, the amendment should read:

“The Commission may nominate historically significant private property to the State and National Registers of Historic Places with the written approval of the property owners. It may nominate significant public property to these registers with the consent of the City Council.”