

MEMORANDUM

TO: Mayor Jerry Munson
City Council Members

FROM: Adam Altman
City Attorney

RE: Development Appeals and Review Board Ordinance

DATE: August 26, 2002

Attached is the revised version of the Development Appeals and Review Board ordinance which was submitted to our office. In re-working the ordinance to achieve integration with State law and other municipal code sections, I have made the following changes or noticed the following issues. I will be looking for direction from the Committee on how to deal with these issues at Wednesday's meeting:

- 1) Is the Board to act as an intermediary between the citizens and departments or between the Council and departments?
- 2) The Board has input on design criteria. Is this input supposed to relate to projects (micro-management) or standards (macro-management)?
- 3) Section 2.88.050 does not provide for a member who lives within the three-mile area. Should there be one?
- 4) I don't believe anyone will do this. It is a significant amount of work and the proposed membership consists of extremely busy people. We have trouble getting participation in some volunteer boards with less duties.
- 5) The original proposal contained a provision relating to investigations and inquiries. I have removed this provision. I don't feel it is appropriate to have an untrained, volunteer board conducting investigations.

Page Two
August 26, 2002

- 6) Section 2.88.060 of the original proposal provided for 60 days to appeal. In my opinion that is too long. There needs to be some finality to decisions.
- 7) Section 2.88.080 deals with decisions made by the Board in its appellate function. The Council will need to decide whether this Board is to be a decision-making body or a recommending body.
- 8) The original proposal had a provision allowing the Board to determine violations and enforce compliance. Like the "investigations and inquiries" section, this power is inappropriate to a volunteer, untrained board.
- 9) The original proposal allowed for reimbursement of out-of-pocket expenses. I deleted this because the language would have implied that incurring such expenses was appropriate. There seems no reason for a voluntary board to incur expenses.

AA/map
Enclosure

ORDINANCE NO. 3854**AN ORDINANCE ESTABLISHING A DEVELOPMENT APPEALS AND REVIEW BOARD, BY ADDING CHAPTER 2.88 TO TITLE 2 OF THE RAPID CITY MUNICIPAL CODE**

WHEREAS the Common Council for the City of Rapid City, South Dakota, finds that there are many technical engineering and design issues presented in connection with developments located within and around the City of Rapid City which require specialized expertise and information beyond the knowledge of the Council; and

WHEREAS the Common Council has considered the organization of a Board of Appeals whose function would be to pass upon complaints and intermediate appeals from decisions of the City of Rapid City Engineering, Planning, Building Inspection, and Fire Departments concerning various criteria necessary for the development of real estate in Rapid City, and to render opinions and otherwise advise the Council on related issues so as to more fully inform the Council on various issues surrounding the approval, regulation, and administration of requests for developments in and around the City of Rapid City; and

WHEREAS the Council finds that the adoption of an intermediate review process would assist the Council in making more informed decisions on the orderly and uniform development of real property within its jurisdiction and would otherwise foster and improve the City of Rapid City's various Department relationships and lines of communication with applicants who provide the infrastructure for the community; and

WHEREAS the Council has determined that it is within its legal authority to form and organize such a board for the purposes of (1) acting as an intermediary between the City of Rapid City Engineering, Planning, Building Inspection, and Fire Departments and

applicants, (2) reviewing complaints and/or appeals from the City of Rapid City Engineering, Planning, Building Inspection, and Fire Department decisions on proposed real estate developments, (3) to have input into the creation of standards for design criteria necessary for the development of real estate, and (4) to provide advice and opinions to the Council on development issues.

NOW, THEREFORE, BE IT ORDAINED that the following enactment be passed into law by the Common Council of the City of Rapid City, South Dakota:

**DEVELOPMENT APPEALS
AND REVIEW BOARD**

Section 2.88.010 Name.

There is hereby formed a Development Appeals and Review Board.

Section 2.88.020 Purpose.

The purpose and function of the Board shall be to hear and determine all appeals and complaints filed by applicants relating to determinations made by the City of Rapid City Engineering, Planning, Building Inspection, and Fire Departments on proposed developments within the Council's jurisdiction. The Board shall also provide advice and recommendations on related issues for the Council's consideration, and shall aid in the review of existing design criteria and have input into new design criteria.

Section 2.88.030 Appeals Function.

The Development Appeals and Review Board shall preside over and hear appeals and complaints filed with it and concerning determinations by City of Rapid City Engineering, Planning, Building Inspection, and Fire Departments except on proposed development projects. The Board shall render its opinion on any such complaint or appeal. Any person may appeal any decision of the Board to the Council.

Section 2.88.040 Design Standards Function.

The Board shall, in conjunction with the City Engineering Department, help to develop, propose, and maintain a Development Design Criteria Manual outlining the design criteria for developments and subdivisions within the jurisdiction of the City.

Section 2.88.050 Membership Requirements.

The Board shall consist of seven (7) residents of the City of Rapid City who shall be appointed by the Mayor with the approval of the Council. Members shall serve two year staggered terms. The Board shall consist of two (2) registered professional engineers or land surveyors, two (2) persons from the development community, one (1) person from the Rapid City Economic Development Partnership, and two (2) persons from the community at large. No current city employee, elected city official or paid city consultant shall be allowed to serve as a voting member of the committee. The Board shall adopt bylaws, and shall elect from among its membership a Chairperson and a Vice Chairperson. Members of the Board shall serve at the pleasure of the Mayor.

Section 2.88.060 Appeals/Complaints.

Any appeal or complaint stemming from a determination made by the Engineering, Planning, Building Inspection, or Fire Departments and concerning the development of real property within the jurisdiction of the Council may be taken to the Board upon written notice served upon the department head of the appropriate City of Rapid City Department and the Chairperson of the Board. Such appeal must be served within ten (10) calendar days of the decision or action appealed. The Chairperson of the Board shall convene the Board to hear the appeal within ten (10) calendar days of receipt

of the notice of appeal, excluding the day of receipt. The Board shall not have the authority to waive any requirements of federal, state, or local law.

Section 2.88.070 Place of Hearing.

Any hearing or deliberation conducted by the Board may be held at such City facilities as may be made available for such purposes.

Section 2.88.080 Determinations.

The determinations, proposals, recommendations of the Board shall be made upon the majority vote of its members. Any determination or recommendation of the Board may be appealed to the Council by any person by filing with the Council a notice of such appeal.

Section 2.88.090 Remuneration.

The Board shall consist of volunteers who shall not be entitled to any remuneration for their services as members of the Board.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

First Reading:
Second Reading:
Published:
Effective: