

LF081402-09R

MEMORANDUM

TO: Mayor Jerry Munson
City Council Members

FROM: Adam Altman
City Attorney

RE: Development Appeals and Review Board Ordinance

DATE: September 5, 2002

Although you have instructed me to prepare this ordinance with a Council appointment rather than a mayoral appointment, I cannot do so at this time, as it is my opinion that such an appointment scheme would violate state law. However, as the ordinance takes shape, it may be possible to have the powers and duties of the Development Appeals and Review Board delineated such that Council appointment and removal is appropriate. I will be glad to discuss with any of you the parts of the ordinance that I believe elevate the Board into the province of officers of the City. I would also appreciate the opportunity to discuss the powers and duties of the Board and how the Board would function within the City. These issues seem to have been overshadowed by the less important issue of who gets to appoint the Board.

AA/map

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~~ has determined 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~~ various citizens within the City of Rapid City have requested that this 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~~ has found 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 Cities 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, and (3) to have input into ~~the creation of standards for design criteria necessary for the development of real estate, (specifically any Design Criteria Manuals setting standards for new development)~~ 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 Department ~~s except on proposed~~

~~development projects. The Board shall further render its opinion on any such complaint or appeal and shall deliver such opinion to the Council. However, the Council shall maintain the final determination as to any such application, 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 further develop, propose, and maintain any Development Design Criteria Manual outlining the design criteria for developments and subdivisions within the jurisdiction of the City, and shall present the same, and any revisions thereof, to the Council for adoption.

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 ~~Council of the City of Rapid City~~ Mayor with the approval of the Council and who shall serve two year staggered terms at the pleasure of the Council Mayor. ~~Members shall serve two year staggered terms. Further, The~~ Board shall consist of ~~two~~ one (21) registered professional engineers or land surveyors, one (1) registered land surveyor, one (1) member of the Economic Development Partnership, one (1) member of the Planning Commission, one (1) citizen from the three-mile extraterritorial jurisdiction, and two (2) citizens of Rapid City. ~~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 memberships a

Chairperson and a Vice Chairperson. Members of the Board shall serve at the pleasure of the ~~City Council~~ Mayor .

Section 2.88.060 APPEALS/COMPLAINTS.

Any appeal or complaint stemming from a determination made by the City of Rapid City 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~~ or the Chairperson of the Board. Such appeals must be served within ~~ten~~ thirty (30) 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. The Board shall conduct such investigations and/or inquiries, as it deems expedient and may preside over hearings, which shall be duly noticed.

Section 2.88.070 PLACE OF HEARING.

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

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~~ shall be presented to the Council in person and/or in writing by the Board at any

meeting of the Council in which such decision or recommendation is calendared or otherwise allowed by the Council

Section 2.88.090 INVESTIGATIONS.

At the request of the Council, any of its members, or upon the Board's determination, the Board may conduct investigations and/or studies concerning development issues within the jurisdiction of the Council as may be appropriate to determine any circumstance regarding concerning real estate development. The results of which shall be forwarded to the City Council for their consideration and any action the Council deems appropriate.

Section 2.88.090100 REMUNERATION

The Board shall consist of volunteers who shall not be entitled to any remuneration for their services as members of the Board. However, the Board may, at the discretion of the Council, be reimbursed for its reasonable and actual out-of-pocket expenses incurred in furtherance of its purposes and functions as outlined above. Requests for remuneration of such expenses shall be made in writing and submitted to the Council.

Section 2.88.110 REMUNERATION/OTHER

Expenses submitted to the Council for remuneration to the Board or its members must be approved by the Council in advance and are payable at the discretion of the Council.

Section 2.88.120 IMMUNITY AND PROTECTION.

All duly appointed members of the Board shall be entitled to the immunities and protections afforded public officials for the City of Rapid City and shall be indemnified

and held harmless by the City of Rapid City who shall defend the Board and its members
from any claim.

demand, or cause of action, inaction, or determination taken by the Board or its members
in furtherance of its purpose and function and outlined herein.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

First Reading:
Second Reading:
Published:
Effective: