



## Capitol Area Architectural and Planning Board

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**Date:** January 10, 2022 *(for January 18, 2022 Board meeting)*  
**To:** The Capitol Area Architectural and Planning Board (CAAPB)  
**From:** Merritt Clapp-Smith, CAAPB Executive Secretary  
**Subject:** **Update on Rulemaking for Proposed Amendments to Commemorative Works**

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### Recent Rulemaking Activities

The rulemaking process for commemorative works is moving along. Since the Board's last meeting on December 1, 2022, CAAPB staff and partners\* have:

- set Administrative Law Judge (ALJ) hearing for March 14, 2022 at 10 a.m.
- completed additional technical updates to the draft rules, with input from rulemaking experts and MN Revisor
- created a document comparing existing policy and proposed rules for new artworks
- continued drafting the SONAR (Statement of Need and Reasonableness)
- pinned down procedural items and task scheduling
- continued work on paperwork that accompanies each rulemaking step
- prepared for issuing the Notice of Intent to Adopt

This memo highlights key items and documents for your review. It concludes with a draft resolution requesting that the Board approve release of the Notice of Intent to Adopt. This sets the stage for the public hearing with an Administrative Law Judge on the proposed rule.

### March 14, 2022 Hearing Information

The public hearing is tentatively scheduled to occur virtually on Monday, March 14<sup>th</sup> starting at 10:00 a.m. and will continue until all people wishing to comment have done so. The hearing will be presided over by Administrative Law Judge Ann O'Reilly.

There is no formal role for Board members at the meeting, but I encourage you to attend some portion of the hearing as observers.

The hearing begins with an overview of hearing procedures and proceeds to a formal presentation of the proposed rules by CAAPB representative(s). Following the presentation, the ALJ will open the hearing to comments from the public, who will be taken in the order they request to speak. The ALJ can ask the commenters clarifying questions, if needed to understand their input. There is no dialogue between commenters, the ALJ, the Executive Secretary, or others attending the hearing. The ALJ may impose a time limit per comment at the start of the hearing.

I will send additional details about the hearing format and information on how to attend when I receive it from the ALJ.

**Updated MN Revisor rules draft and recent edits (see 2 attached documents Item 2b and 2c)**

Please find attached the current MN Revisor draft of the proposed amendments to MN Rules 2400.2705 on Commemorative Works. The Revisor modified the proposed rules based on revisions submitted to them by the CAAPB Executive Secretary, based on:

- input from the December 1, 2021 Board meeting
- continued review and suggestions from CAAPB staff, Advisors, and legal counsel
- review and suggestions from Ian Lewenstein, State Program Admin. Principal, Rulemaking has provided valuable advice to CAAPB staff on the rulemaking process
- continued review and recommendations from the MN Revisor

The recent set of revisions did not alter the intent, core content, or procedural elements of the rules, based on the last rules draft reviewed by the Board and discussed at its December 1, 2021 meeting. There are two versions of the current draft rules that accompany this memo:

- 1) MN Revisor rules copy, showing the current draft of the language.
- 2) Document created by CAAPB staff showing the language changes that occurred between the December 1, 2021 draft rules and the attached draft rules.

**Addition of new works – comparison of existing policy language and proposed rules language (see attached document Item 2d)**

At the December 1, 2021 CAAP Board meeting, Rep. Hertaus noted that the MN Revisor rules document showing proposed amendments, did not show a direct comparison between the proposed rules and the existing 2012 Policy on Commemorative Works, which is incorporate by reference in the existing rules. As we have discussed at recent meetings, in addition to the new processes for consideration of modification or removal it introduces, the draft rule would codify in Minnesota Rules the addition process for commemorative works that is currently established through CAAPB policy.

Responsive to the discussion at the December board meeting, CAAPB staff created a comparison document. The document MN Rules 2400: Addition of New Artworks in the MN Capitol Area -- DRAFT Comparison of Existing Policy and Proposed Rules is attached and will be an Exhibit of the SONAR. I would welcome any suggestions on how to most effectively present this comparison.

**Draft Resolution authorizing public hearing and notice of intent to adopt rules**

Under rulemaking protocols, the CAAP Board should authorize issuance of the Notice of Intent to Adopt Rules. This step enables confirmation of a public hearing date, public release of the proposed MN Revisor rule amendments and accompanying SONAR and start of the public comment period leading up to the hearing. The following resolution is recommended for Board approval.

**On January 18, 2021, the Capitol Area Architectural and Planning Board (CAAP Board) resolved the following:**

WHEREAS, the CAAP Board approved initiating a rulemaking process to amend MN Rules 2400.2040 through 2400.2705, regarding the process and standards for review of commemorative works, at its Board meeting on September 28, 2021; and

WHEREAS, the CAAP Board reviewed and discussed public input, background information, key issues, and proposed rule language regarding the process and standards for commemorative works, at its board meetings on September 28, November 18, and December 1, 2021, and on January 18, 2022;

NOW, THEREFORE, BE IT RESOLVED, the Executive Secretary of the CAAP Board, Merritt Clapp-Smith, is authorized and directed to develop a Statement of Need and Reasonableness (SONAR) to accompany the proposed Rule Amendments. Clapp-Smith is further authorized and directed to sign and to give the Notice of the Board's Intent to Adopt Rules, which includes the proposed Rule amendments and the Statement of Need and Reasonableness, and to schedule a public hearing with an Administrative Law Judge in the matter of proposed permanent rules, chapter 2400, regulating Capitol area commemorative artwork; Revisor's ID No. R-4720; OAH Docket No. 65-9055-37789; and

BE IT FURTHER RESOLVED, Executive Secretary Clapp-Smith must give this notice to all persons who have registered their names with the Board for that purpose and must also publish the Hearing Notice in the *State Register*. Furthermore, Executive Secretary Clapp-Smith is authorized and directed to do anything else needed to complete this Hearing Notice; and

BE IT LASTLY RESOLVED, Executive Secretary Clapp-Smith is authorized and directed to act as the Board's representative at the hearing and take any other action needed to adopt these rules with a hearing. This includes authority to sign the Order Adopting Rules if there are no modifications to the rules other than modifications approved by the Board.

### Anticipated\* Schedule of Rulemaking Steps

<b>CURRENT AND FUTURE RULEMAKING STEPS</b> <i>(already completed steps are not shown)</i>	<b>EARLIEST POSSIBLE DATE / TIME PERIOD</b>	<b>STATUS</b>
Prepare Statement of Need and Reasonableness (SONAR)	November 2021 thru January 27, 2022	In process
<b>CAAPB Meeting – Review and discuss proposed rules</b>	<b>November 18, 2021</b>	Complete
CAAPB staff revises proposed rules, based on public comment; input from Board members; and recommendations from MN Revisor	November 2021 thru January 27, 2022	In process
<b>CAAPB Meeting – Review updated Rules draft; approve release of Notice of Intent to Adopt</b>	<b>January 18, 2022</b>	
Publish “Notice of Intent to Adopt” and the proposed rules, for the 30-day formal comment proceeding the public hearing	February 7, 2022	
<b>CAAPB Public Hearing; chaired by ALJ</b>	<b>March 14, 2022 10:00 a.m. – end of day</b>	
<i>Extended Hearing? If there is not time to hear all comments on March 14<sup>th</sup>, then ALJ has authority to extend the hearing to another day.</i>	<i>Past March 14<sup>th</sup>?</i>	
5-day ‘rebuttal’ period for CAAPB staff to prepare written response to substantive comments.	March 20, 2022	
Continue public comment period for up to 20 days	Latest possible date is April 3, 2022	
<b>CAAPB Meeting – Review and vote on potential revisions to rules draft (public hearing version)</b>	April 5, 2022	
Admin Law Judge (ALJ) reviews all material and prepares recommendation to the CAAPB	April – May 2022	
<b>CAAPB Meeting – Board considers ALJ recommendation and votes on rules for adoption</b>	<b>TBD – pending timeline and outcome of recommendation</b>	
Adoption of amended rules into MN State Statute	TBD – after CAAPB vote	
Applications for Commemorative Works can be accepted if they meet the criteria of the amended rules.	TBD – following completion of CAAPB vote	

*\*Schedule above is subject to change based on decisions of the Board regarding when to proceed with certain rulemaking steps, or subject to unforeseen administrative delays in the rulemaking steps.*