



Capitol Area Architectural and Planning Board
 204 Administration Building
 50 Sherburne Avenue
 Phone: 651.757.1500
www.mn.gov/CAAPB

Date: September 20, 2021
To: The Capitol Area Architectural and Planning Board (CAAPB)
From: Merritt Clapp-Smith, CAAPB Executive Secretary
Subject: **Commemorative Works update and next steps** (*Memo for 09.28.21 CAAPB meeting*)

Background

In June 2020, the Columbus statue on the Minnesota Capitol grounds was pulled down, without review or approval from any state entity. The state entity with jurisdiction over commemorative works decisions on the Capitol grounds is the Capitol Area and Architectural Planning Board (CAAPB), per MN Statute 15B. Debate about what to do with the Columbus statue ensued, with competing pressures to return the statue to its pedestal, alter it, or move it elsewhere. Some individuals and groups involved contended that pulling it down was the consequence of the lack of a formal process to make changes other than additions to the commemorative works on the Capitol grounds.

When the CAAPB reviewed its Commemorative Works rules to identify a formal procedure for determining the future of the Columbus statue, it was discovered that those rules did not address requests for alteration or removal of existing works. The rules only identified the process for considering new works.

The rules, found in MN Rules 2400.2705, identify the decision process for Commemorative Works review.

Subpart 1. Monuments, memorials, and commemorative works states:

“Monuments, memorials, and commemorative works structures must be approved for placement under Minnesota Statutes, section 15B.05, subdivision 3. MN Statute 15B.08, Subd. 3,”

And incorporates by reference

“Commemorative Works in the Capitol Area: A Framework for Initiation, Evaluation and Implementations of Commemorative Works in the Capitol Area, May 1993”.

Commemorative Works Task Forces

On July 23, 2020, the Capitol Area Architectural and Planning Board initiated a process to review and consider amendments to the Commemorative Works policy under MN 2400.2705. The Board established two task forces, one to gather input from the public regarding what is memorialized on the Capitol grounds, and the other task force to recommend a process for handling requests to change or remove existing monuments.

The **Decision Process Task Force**, chaired by Dr. Gwen Westerman, conducted a comprehensive review of CAAPB policies and procedures that relate to the addition, alteration, re-interpretation, or removal of monuments, memorials, and works of art on the Capitol grounds and in the State Capitol. The Task Force prepared recommendations on a decision-making process for the addition, alteration, or removal of monuments, memorials, and works of art on the Capitol grounds and in the State Capitol.

Deliverable – The task force submitted suggested amendments to the Commemorative Works decision process to CAAPB staff, who are reviewing it for clarity and implementation feasibility.

The **Public Engagement Task Force**, chaired by Carl Crawford, convened conversations, and hosted an online survey for members of the public to share their thoughts on what the Capitol means to them, their experiences being at the Capitol, and their feedback on the monuments, memorials, and works of art on the Capitol grounds and in the interior of the State Capitol. The Task Force considered how the CAAPB can ensure proactive and meaningful public engagement in its decisions.

Deliverable – All engagement input from the online survey and focus group conversations is being organized and summarized in a final report and will be ready for Board review ahead of the next meeting. Key messages will be highlighted and reviewed for consistency with suggested updates to the Commemorative Works rules.

Commemorative Works Review by the CAAP Board

The Board will consider and review amendments to the Commemorative Works rules over the span of at least four (4) meetings:

September 28, 2021 CAAPB Meeting – Overview of task force work

Dr. Westerman and Carl Crawford will provide an overview and status update of their task forces and the work they covered. They will share highlights of what they heard and discussed, and how that can inform future consideration of Commemorative Works. There will be time for questions following their overviews.

November XX (TBD) 2021 CAAPB Meeting – Engagement Results report; Proposed Amendments to Commemorative Works rules

The final report on Public Engagement Task Force findings will be presented. The proposed amendments to the Commemorative Works rules prepared by the Decision Process Task Force will be presented and discussed. Public comments on the Commemorative Works policy, gathered in the previous month, will be shared.

January 18, 2022 CAAPB Meeting – Public Hearing on Proposed Amendments to Commemorative Works rules

The Board will host a public hearing on the proposed rule changes. The hearing (which will be either completely virtual or a hybrid of virtual and in-person) will be attended by the assigned Administration Law Judge and must follow some prescribed procedures for rulemaking hearings.

Subsequent 2022 CAAPB Meeting – Board reviews Administrative Law Judge recommendation on the proposed Amendments to Commemorative Works rules and votes on a set of rules

The Board is encouraged, but not required, to follow the recommended decision of the Administrative Law Judge. The recommendation will include findings of fact and conclusions of law.

Commemorative Works Rulemaking

Any updates to MN Rules 2400.2705 on Commemorative Works must occur through the state’s Rulemaking process. Rulemaking in Minnesota follows procedures prescribed in the [Minnesota Administrative Procedure Act \(APA\), Minnesota Statutes, chapter 14](#). The process of rulemaking can vary in a couple of ways, depending on the nature of the rules being reviewed. In this case, the process must follow those for ‘Rules Adopted After Public Hearing’. Based on the prescribed rulemaking steps, CAAPB staff recommend the following steps for rulemaking on Commemorative Works:

RULEMAKING STEPS	EARLIEST POSSIBLE TIME PERIODS	STATUS
Register for rulemaking with Revisor	August 2021	Complete
Request docket #, which assigns an Administrative Law Judge (ALJ)	September 2021	Complete
Schedule hearing date with Admin Law Judge	September 2021	Complete
CAAPB Meeting – Overview of Task Force work and status updates	September 28, 2021	
Prepare Statement of Need and Reasonableness (SONAR)	Sept/Oct 2021	
Open 60-day “Request for Comments” period (required at least 90 days before public hearing)	October 18, 2021 to December 17, 2021	
CAAPB Meeting – Review and discuss proposed rules	November 2021	
CAAPB staff revise and finalize proposed rules, based on public comment and input from Board members	November/December 2021	
Publish “Notice of Intent to Adopt” and the proposed rules, for the 30-day formal comment proceeding the public hearing	December 18, 2021 to January 18, 2022	
CAAPB Public Hearing; ALJ attending	January 18, 2022	
Continue public comment period for up to 20 days	End by Feb 8, 2022	
Admin Law Judge (ALJ) reviews all material and prepares recommendation to the CAAPB	February/March 2022	
CAAPB Meeting – Board considers ALJ recommendation and votes on rules for adoption	TBD – pending timeline and outcome of recommendation	
Adoption of amended rules into MN State Statute	TBD – following completion of 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.*