Topic: He Mni Can-Barn Bluff Graffiti Policy Report – August 29, 2018

Background: In May of 2016 while developing the master plan for He Mni Can – Barn Bluff, the City received a complaint about a memorial to Prince that was painted on the bluff, and Public Works crews were sent up to cover the memorial. The policy at the time was to cover up graffiti on this location of the bluff when the City received a complaint from someone, and to otherwise leave it alone. (Red Wing does have a graffiti policy that it enforces throughout the community, but graffiti has been allowed in this particular spot on Barn Bluff for years without enforcement. See ordinance information attached.)

Clearly there was a need for a new approach to the policy and in 2016 the City Council approved an interim policy: The City now allows painting on this location on Barn Bluff unless a complaint is received. If a complaint is received, the Council President, in coordination with the Council Vice President and the Mayor, will determine if the complaint is warranted because the painting is of a political nature or is profanity.

City Survey: In 2017, the city contracted with The Morris Leatherman Company to conduct community-wide random survey to ask multiple questions about City services; one segment of that survey asked questions to gage residents' opinions about graffiti on Barn Bluff. A majority of people in the survey favored complete restriction or some restrictions to painting the bluff. (See attached survey results.)

Staff Concerns: With this in mind, a City staff team made up of representatives of Police, Fire, Public Works, Administration, and Planning met to discuss next steps. This leadership group felt the City should develop a policy of "no tolerance" regarding painting the bluff and should engage residents with public education and a dialogue to see if there could be a new form of citizen expression or public art that could replace this long-standing tradition. Staff members gave the following reasons for this position:

--The Police Department is concerned about inconsistent enforcement of the city code related to graffiti.

--Safety of the public and city workers is a serious concern. The location is difficult to get to and is hazardous to individuals performing the painting. This puts emergency personnel and public works employees in similar unsafe conditions when responding to calls or removing political or profane graffiti.

--The 2017 survey appears to support taking a stronger position on the matter.

--The bluff is considered sacred by the Dakota community and this policy change would be a positive response.

--Keeping the bluff as natural as possible is more in keeping with the Vision and Guiding Principles established by the Barn Bluff Master Plan that involved resident engagement and was approved by the City Council.

--This is an opportunity for the community to begin a new tradition and look for other ways for self-expression.

--The best management practice related to graffiti is to remove the graffiti immediately so that it is clear the ordinance is being enforced with quick action. The hope is that after a period of time, people will change their habits. The general policy would be to remove or cover over any painting on the bluff within 24 to 48 hours (weather permitting).

Freedom of Speech:

The City Attorney has looked into the First Amendment issues related to enforcement of the City's graffiti ordinance and the current policy concerning addressing complaints about graffiti at Barn Bluff.

To summarize, the degree to which freedom of speech may be regulated by the City depends on the "forum" in which it is offered. There are essentially three levels of public forum that cities may establish: Open Forum; Limited Public Forum; or Closed Forum.

Limited Forum: In this option, the city determines what content level is acceptable. Traditionally with this type of forum, governments ban political or religious messages, but such limitations must be content neutral. Determining what a political message is and what it isn't becomes an issue and leaves a lot open to interpretation. Council leadership would need to be prepared to continually make these decisions. Also, the City would need to be more proactive in covering up such messages and not wait for a complaint.

Open Forum: In this option, the city would allow any type of message other than obscene speech. The City of Belle Plaine, MN had a controversy last year when it created a "free speech zone" in one of its parks to allow a religious veterans' memorial. This was challenged by a satanic organization that sought to have a memorial established in the same park. Belle Plaine decided to remove the Christian memorial and close the forum entirely.

Closed Forum: This option does not allow any graffiti at all, and the graffiti policy would start being enforced. Council could activate this option by passing a resolution determining Barn Bluff to be a closed forum and enforcing the graffiti ordinance that already stands for the rest of public and private property. The City attorney also recommends that if the City decides on this option, some slight revisions should be made to the graffiti ordinance to clarify that graffiti applies to "natural edifices" (which more clearly specifies areas like bluffs).

The current policy does not fit well with any of these categories because the current policy is reactive to complaints, not proactive in its decision-making. It is also difficult to determine whether messages are political because there is such a broad range of political messages.
The current policy does not refer to religious messages and it is plausible that various religious messages could be painted on the bluff and not be considered a political message.

Discussions with Prairie Island Indian Community Representatives:

Prairie Island Indian Community has designated Barn Bluff as one of its top priorities in 2018 and feels strongly the bluff should be free of graffiti. PIIC and city staff have been in communication via Tribal Historic Preservation Officer Noah White and Compliance Officer Franky Jackson on behalf of the Tribal Council, and Community Engagement Specialist Michelle Leise on behalf of staff. All parties look forward to more discussions and collaborations in the short- and long-term future.

Earlier this year, PIIC was prepared to nominate Barn Bluff as one of the 11 Most Endangered Historic Places by the Natural Trust for Historic Preservation. As stated on the Natural Trust's web site, "Since 1988, the National Trust has used its list of America 's 11 Most Endangered Historic Places to raise awareness about the threats facing some of the nation's greatest treasures. The list, which has identified more than 270 sites to date, has been so successful in galvanizing preservation efforts that only a handful of sites have been lost." The 2018 deadline for nominating sites was April 13th.

At this time, PIIC has decided not to nominate Barn Bluff and instead work with the City to educate the community on the significance of the bluff, provide for culturally appropriate signage on the bluff, and work toward a future where the bluff is a natural, peaceful place for all residents.

In highlighting Barn Bluff as a priority, the Tribe is allocating some of its funds to develop educational materials that will be used for public outreach to define why Barn Bluff is significant to the Dakota people. The first materials will be shared on the City's Barn Bluff web site page. Additional materials will be created to educate elementary and high-school students, as well as the rest of the community.

Attached to this report are excerpts received from Prairie Island Tribal representatives. One is a cultural landscape analysis from the work "Lodges of Space and Time: The Stone Cairnes of Red Wing" by Michael Paul Bergervoet. The second is from a document entitled "A Monument Mosaic: Merging Indian Tradition and Scientific Method" by the same author. These give some sense of the cultural history of the bluff.

City Council Workshop

At the annual City Council Workshop in January 2018, Council members had a number of questions. Staff has been collecting the answers to these questions and they are listed below.

Barn Bluff – Could the question be put on a ballot for the public to vote? Council discussed possibly asking the voters to decide whether to enforce anti-graffiti laws on Barn
Bluff. However, according to the City Attorney, Red Wing as a charter city is only permitted to act according to authority granted to it by statute or by its charter. There is no authority found in either, so the City cannot ask an advisory question in an election. Also, as a general rule, cities are not allowed to conduct advisory elections to deal with political questions. City Councils are generally prohibited from re-delegating their authority, unless the power to delegate it has been specifically granted by the legislature.

Public Service Calls/Emergency/Rescue Calls and Helicopter Rescues.

Fire Department: A question was raised about who pays for a helicopter rescue. Any costs are paid for by the victim. There have been 17 calls for rescue to Barn Bluff made by the department since 2006. It is difficult to determine if any of these calls are related to the graffiti location on the bluff.

Police Department: There were 186 calls for service from the police department over the past ten years related to Barn Bluff. Calls for service include calls on the bluff, in addition to those at the entrance to Barn Bluff, parking lot area, and frontage road (between the railroad tracks and the bluff, near the kiln). It is difficult to determine if any of these calls for service relate to the graffiti location on the bluff.

Public Works: There are two calls for service dealing with graffiti at Barn Bluff from the Public Works Department; however neither were related to the highly visible site on the southwest side of the bluff. Public Works has sent employees to the site of the painting of Barn Bluff over the years but does not have any written record of those calls for service.

The Fire, Police, and Public Works departments do not generally record the exact location for these calls and so there are no written records for calls for service related to the painting on the bluff. It is fair to say that there have been very few calls for service related directly to the bluff painting location.

Other Issues from the January 2018 Workshop:

National Register of Historic Places. In 1990, Barn Bluff was placed on the National Register of Historic Places, which is the nation's official list of properties deemed worthy of preservation.
The Register recognizes properties that have local, state, or national significance. According to the Minnesota Historical Society, "a listing on the National Register constitutes an official recognition that certain properties are significant places in Minnesota and are worthy of preservation. Preservation may be encouraged through certain federal and state tax benefits and state and federal grant funds. An environmental review process also protects properties that may be affected by state projects or federally funded or licensed projects." Poor management or preservation of a National Register property can lead to delisting of the property.

- Conservation Restrictions. A question was asked about whether there were any other restrictions on the use of Barn Bluff (such as conservation easement). Barn Bluff is not included in any conservation district and does not have a conservation easement similar to the Upper Harbor Conservation Easement. However, when Barn Bluff was deeded to the City of Red Wing in 1911 it was done so with a deed restriction that it shall be used as "for park purposes at all reasonable times." There was also specific language in the deed restriction that states"… at no time shall there be removed from said premises any stone, gravel or earth except such as necessary for the protection of the public, or for the construction of suitable approaches to said premises and that *the property shall in no manner whatsoever be defaced* or any buildings or signs constructed thereon, except such building or signs as are suitable and appropriate for the use of said premises for Park purposes".

- How Would Public Works Enforce a No-Graffiti Policy? If the City decides to close the public forum, revise the graffiti ordinance and enforce a no-painting policy on this area of Barn Bluff, how would Public Works address the problem? Once the Public Works department would be notified, staff would be directed to paint over the graffiti with a bluff-colored paint. This would be completed within the timeframe of the graffiti ordinance which currently says the owner is notified of the graffiti within 24 hours by the Police Department; then the owner (in this case City Public Works) would have 48 hours to initiate covering up the graffiti; within 120 hours after notification, the graffiti should be covered over completely. Public Works would make an effort to cover it up as soon as feasible and as weather conditions allow.

  Safety improvements would be made at the site to make it safer for public works crews. Staff believes it would be difficult to find a contractor to complete this work. It is estimated that each time staff would cover up graffiti in this spot, it would take two crew members, a vehicle and equipment, and supplies. It would take 8 staff hours and an estimated $500 per time. A question as come up about whether a camera could be placed at the site and staff is looking into that further. There is concern that placing a camera is possible but it would very likely be vandalized. Staff has also looked at making improvements at the site to make it more secure or safe and is concerned that it would take enormous rock removal and construction that may very likely make the site less dangerous and also would not be sensitive to the natural character of the bluff. The Public Works staff in general is in favor of a policy that is as specific as possible with clear direction so it is not left open for interpretation.

- Police Enforcement. The Police Chief was asked about the current enforcement practice and what the county attorney's office views are on the matter. Chief Pohlman says that at present, the policy department does not arrest anyone caught in the act of painting the "message board" on Barn Bluff. What they have done in the past is identify the individuals, document the scene and create a detailed police report for record. In 2017, they started routinely documenting when the bluff is painted – at a minimum what was painted on the bluff and as near as possible a timeframe of when it occurred. If someone is caught doing something similar in one of the other parks or another part of Barn Bluff they would arrest and enforce the graffiti ordinance, or applicable code/statute.

  Chief Pohlman says the county attorney is reluctant to prosecute for something the

City has allowed since approximately 1959. Since it is an accepted local practice, it would be too subjective to determine who is charged and who isn't. The County Attorney recommended a couple of things that would allow for prosecution consideration: 1) the City could establish strict guidelines and make them public as to how Barn Bluff will be managed and what is allowed; the City could get a "fresh start" by either painting it "bluff color" OR removing all the paint currently on the bluff and returning it to the original environmental appearance.

Regarding trespassing issues, other local city parks fall under the City Parks ordinance which has a closing time of 10:30 PM. Chief Pohlman noted that he is not aware Barn Bluff is posted with the park closing hours. Public Works will post the park.

Citizen Concerns Expressed at the January 27, 2018 Council Workshop

During the City Council Workshop in January, 2018, some residents attended and expressed support and opposition for painting on the bluff. These concerns are summarized below.

Several comments disputed the validity of the community survey because they did not know of anyone who answered the survey. Residents completed their own non-- scientific survey and revealed that 93 percent of the respondents were in favor of maintaining the current policy.

Resident suggested that if the bluff is sacred to the Dakota, the flag pole location is also an issue in addition to painting on the bluff

Residents questioned whether there were any reported instances of injury as a result of the painting on the bluff.

- A statement was read describing the tradition of rock painting for the purposes of celebration and remembrance.

- A comment was made that Red Wing promotes itself as an artistic community and that bluff painting can be thought of as a form of public art significant to the community that is meaningful emotionally, culturally, and artistically for many individuals.

  It was stated on Facebook that Native American youth have been involved in rock painting.

- A question was asked about asking youth about their opinion.

- A resident expressed wanting to know more about how the Prairie Island Indian Community felt about this issue.

  One resident thought there are other ways for artists to display their work that would be more respectful to the Dakota community and the environment.

- Another comment stated that the painting area remains clean and there is not trash left behind at the site. It was also stated that the site is not dangerous.

- Another resident mentioned that as a long-time Red Wing resident, the rock painting is an awe-inspiring experience; that there is a history and tradition of painting the bluff; and that the City has more important things to worry about.

- A resident expressed the desire to keep the bluff natural and the need to update the city ordinance to reflect that.

If you wish to listen to the January 2018 Council workshop go to this link:

http://red-wing.granicus.com/MediaPlayer.php?viewid=2&clip id=1127

Listen between 14:35 and 1:18:15. It's audio only (not video)

(See next page for City Commission Recommendations)

Recommendations from Heritage Preservation Commission, Human Rights Commission, and the Advisory Planning Commission

All three commissions met earlier this spring to consider the matter and met again in the summer of 2018 to make a recommendation. Below is a summary of each recommendation and the reasons that were given by the three advisory commissions.

Heritage Preservation Commission Recommendation June 6, 2018

The Red Wing Heritage Preservation Commission conducted an extensive review of the Barn Bluff Painting issue at their meetings on April 4, 2018 and June 6, 2018. On April 4th, Brian Peterson presented the Barn Bluff Graffiti Policy Report in its entirety with particular attention drawn to the discussion related to the National Register listing; restrictions in the original deed of the bluff to the city for park purposes; and the input from the Tribal Historic Preservation Officer of the Prairie Island Indian Community. At that meeting the commission had a lengthy discussion and took no action on the matter.

On June 6, 2018 the commission took up the matter. After discussion, the Heritage Preservation Commission adopted a motion unanimously to recommend that the City establish a Closed Public Forum for He Mni Can – Barn Bluff Park and direct staff to draft clarification amendments to the graffiti ordinance for council consideration. A date should be established in the future by the council (for example in 90 to 120 days) at which time the new ordinance and policy will become effective and enforced. The Commission gave the following reasons for their recommendation:

- The elimination of painting on the bluff would be more in keeping with the purposes of the Heritage Preservation Commission by preserving a National Register of Historic Places site. This would reduce the possibility of any action in the future to delist the site because of degradation and poor stewardship.

- Elimination of painting on the bluff would show respect for the Prairie Island Indian Community which has demonstrated that the bluff is a sacred place to the Dakota and painting the bluff is considered a desecration of a sacred placed. Furthermore, eliminating painting on the bluff would show a good faith action on the behalf of the City of Red Wing in response to PIIC's decision to refrain from listing Barn Bluff to the 100 Most Endangered Sites. Protecting the bluff would also meet the commission's purpose based on the idea that keeping the bluff in a more natural state better reflects elements of the City's cultural, social, economic, political, visual, or architectural history.

- The deed for the bluff property in 1911 stated that the property was to be used for park purposes and that the property should not be defaced. Painting the bluff defaces the property and elimination of this activity would be more in keeping with the maintenance of the bluff in as natural a state as possible.

- The City has a graffiti ordinance already established and should enforce the ordinance.

Human Rights Commission, June 14, 2018

The Human Rights Commission met on May 24, 2018 and reviewed the material in the He Mni Can - Barn Bluff Graffiti Policy Report. At their June 14, 2018 meeting commission adopted a motion unanimously to recommend that the bluff be considered a Closed Forum. On August 16, 2018, the Human Rights Commission approved the following list of reasons for their recommendation:

- The bluff is a sacred place to the Dakota people, and the Prairie Island Indian Community has stated through its representatives that it strongly desires no painting on He Mni Can-Barn Bluff. Respecting this wish is a form of reparations for past transgressions and should be honored. Although painting on the bluff has been tolerated for decades (and has been recognized as a tradition to some), we as a Red Wing community know more now about the bluff's history and its importance to the Dakota people than we did years ago. Knowing what we know now, allowing graffiti to continue would be a worse offense than it was in the past.

- The original Barn Bluff Park deed to the City of Red Wing in 1911 states that no property on the bluff shall be defaced. The act of painting the bluff is in violation of this deed.

- The City upholds a graffiti policy citywide and painting graffiti anywhere on He Mni Can-Barn Bluff is still in violation of this law. Although the law has not been enforced in this specific location in recent decades, the policy should cover all places equally.

- The HRC supports a coalition of people examining the prospect of designating another space, accessible to everyone, as a place for public expression.

Advisory Planning Commission, June 19, 2018

The Advisory Planning Commission reviewed the Barn Bluff Policy Report at their meeting on April 17, 2018. On June 19, 2018 the commission adopted a motion unanimously to recommend that the City establish a Closed Forum for He Mni Can – Barn Bluff Park and direct staff to draft clarification amendments to the graffiti ordinance for council consideration. Establish a date 120 days in the future at which time the new ordinance and policy will be effective. The following reasons were given:

- The elimination of painting on the bluff would be more in keeping with the park master plan vision statement to recognize that the bluff "…will stand as an honored landscape sacred to the Dakota, respected by all, where our wise stewardship will perpetuate its natural and cultural integrity." This policy change would show respect for the Prairie Island Indian Community by acknowledging that the bluff is a sacred place to the Dakota and painting the bluff is considered a desecration of a sacred place.

- The elimination of painting on the bluff would be consistent with the guiding principle related to “Sustain” because the deed for the bluff property in 1911 stated that the property was to be used for park purposes and that the property should not be defaced. Painting the bluff defaces the property and elimination of this activity would be more in keeping with the maintenance of the bluff in as natural a state as possible.

- The elimination of painting on the bluff would be consistent with the guiding principle related to “Educate” because it provides an opportunity to educate the community and visitors about the relationship between the Dakota community and the bluff.

- The elimination of painting on the bluff would be consistent with the guiding principle related to “Honor” because it would be a policy change that directly addresses the principle to “Realize that our stewardship for this place is a great responsibility and any interventions must reflect the sacred legacy of He Mni Can.”

The Commission also discussed their support for investigating an alternative location in order to find a way to honor the tradition and allow for creative expression.

Next Steps

A Public Forum will be held at 6 p.m. on Monday September 10, 2018, in the City Hall Council Chambers as part of the City Council’s regular meeting to provide an opportunity for the public to provide verbal and written comment and information concerning this overall issue and the City’s graffiti policy in relation to He Mni Can-Barn Bluff.