The Davenport School District (DSD) has a problem with its memory. The DSD and Davenport's Historic Preservation Commission (HPC) appeared at a hearing last Wednesday, August 18, to present arguments before Judge David Schoenthaler for the DSD's motion for Summary Judgment to dismiss the HPC's lawsuit against the DSD for not acting in good faith to agree to a suitable reuse of the historic Crawford Sugarbowl. The Sugarbowl has been at the center of a controversy between the DSD and the HPC, after the DSD reneged on their agreement to keep the Sugarbowl for possible reuse as a storage, restroom, and concession facility for the new tennis courts adjacent to it.

The tennis compound originally consisted of five separate properties, each with a building on it, all located within an historic district. The Sugarbowl is listed on the National Register for Historic Places and is designated as a local landmark, giving it certain protection (through zoning ordinances in place) from those that would demolish historically significant structures.

But because the properties were within an historic district, the owners had to seek approval from the HPC before they could demolish the buildings to make way for the new courts. The HPC struck a compromise by allowing the demolition of four of the five structures, the fifth to be renovated for accomodations for the students who played on the courts. However, after the four structures were already torn down, the DSD appeared to have a memory lapse and suddenly claimed it had never agreed to the compromise to keep the Sugarbowl and set about to demolish it. The HPC, after failed negotiations with the DSD, proceeded to seek remedy through the courts to prevent the DSD from tearing down the historic edifice.

During last Wednesday's hearing, DSD attorney Dick Davidson presented four legal points arguing for a Summary Judgment. (Summary Judgment could be granted if the court found no genuine issue of material fact in dispute relative to the case, which means the case would be dismissed.) The first astounding point was the DSD's argument that they were immune to the City's due process in the first place. Davidson argued that the DSD, under Iowa Code 274.1, was not subject to the jurisdiction of the City or its ordinances, that the DSD operated under its own jurisdiction, citing case law from 1964. City Attorney Mike Meloy handily dispelled that assertion by citing the revision to the Iowa Constitution in 1968, when the Iowa Legislature adopted the amendment that established Home Rule for municipalities, causing governing bodies to fall under the jurisdiction of the City's ordinances—in other words, the city comes first

in the pecking order. This is emphasized by the recent ruling in the City's favor relative to a similar suit brought by Scott County against the City to demolish historic properties that were also protected by city ordinance. Meloy pointed out that the DSD couldn't fully participate in the process, then claim the process doesn't apply to them, especially if they don't like the outcome.

The second legal point the DSD made was similar in nature, claiming that the courts could not review legislative determinations by the DSD "in the absence of a showing of arbitrariness or abuse of discretion." Other supporting case law cited said, "Thus, the rule usually prevails that the action of a board of education taken in reasonable exercise of its discretion in honesty and good faith and without fraud or sinister motive is not subject to judicial review." Well, I believe the court would agree that abuse of discretion took place at Mac's Tavern the same night the resolution was drafted (December 15, 1999) when DSD president Denise Hollenbeck declared in so many words and in front of witnesses that the DSD would never agree to reuse the Sugarbowl, that it would be demolished. (The DSD's brief describes, "abuse of discretions as synonymous with unreasonableness and involves lack of rationality, focusing on whether the decision is clearly against reason and evidence.") If the court were aware of such behavior on the DSD's part, I believe it would suffice as a "scintilla of evidence of any abuse of discretion." Not to mention the distinct lack of honesty throughout this ordeal as demonstrated from the beginning, from the DSD reneging on the original agreement with the HPC to reuse the Sugarbowl to the language in their April 24, 2000, Regular School Board Meeting Minutes that denies the reuse plan based on financial hardship. (Another story altogether.) The DSD has never been able to demonstrate economic hardship in this case, which is required by ordinance as the only grounds for granting an appeal to override the HPC's decisions.)

The third argument concerned itself with the City not exhausting all its administrative remedies, which would apply if the matters at issue were internal to the DSD. But this issue is about land use and zoning requirements—clearly under the jurisdiction of the City and not the DSD.

Finally, the fourth point dealt with the city resolution 99-571 (commonly referred to as the "compromise resolution"), which specified that the DSD and the HPC would undertake certain actions in a "good faith" effort to find a "reuse" for the Sugarbowl. This is at the heart of the matter. The DSD claims they have fulfilled all the conditions of the resolution, but HPC maintains they have not because the DSD did not operate in "good faith." The DSD, in speaking to the four conditions of the resolution, states: a) They have not been issued a demolition permit before March 15, 2000. This is true, but not for the lack of trying. b) Interested parties met and came to an agreement for the building's reuse. Affirmed. However, the ad hoc committee that was formed to develop a reuse plan did not include a single school board member. The ad hoc committee was composed of two city aldermen, two HPC members, the DSD's buildings superintendent, and Central High School's principal. c) The plan was presented to the DSD on March 13, 2000. Also true, but the DSD did not respond, either way, to the plan. d) The DSD denied renovation of the Sugarbowl on April 24, 2000, citing lack of funds for the renovation as the primary basis for the denial. The HPC argues that the language of the DSD's resolution denying the plan was not specific enough. It doesn't speak directly to conditions of the compromise resolution in that it doesn't approve or disapprove a "reuse," but instead focuses on denying renovation due to a lack of funds and fundraising. In other words, the DSD introduced conditions here that were never part of the original compromise resolution, then denied

renovation based on these new parameters. More importantly, their own motion precluded the basis for their denial the previous month.

Within the DSD's own arguments, the lack of good faith is clearly demonstrated. On March 13, 2000, during a Regular School Board Meeting, an ad hoc committee presented the DSD with a "useable" plan for the Sugarbowl, per the resolution, as a storage, restroom, and concession stand. The DSD took no action at that night's meeting. On March 16, 2000, the DSD called a Special Meeting and voted down a motion to extend time to raise funds for the renovation (note that no original motion was ever made to create a time frame to raise funds in the first place) for the Sugarbowl's reuse. On April 24, 2000, at the next Regular School Board Meeting, the DSD voted down the ad hoc committee's plan and ordered the Superintendent to proceed with demolition of the building. The reason for their denial of the proposed plan was based on lack of funds for the renovation, yet a month earlier they had made sure that no fundraising would be sanctioned for the same. In effect, they set themselves up to claim they had no funds by ensuring no more funds would be secured. It appears the DSD had another lapse in memory because the compromise resolution doesn't address funding in any way. It strictly deals with a directive to "commence negotiation in good faith to reach an agreement on a useable reuse of 1130 Harrison Street" by the DSD. Funding or fundraising never entered into it. Why on earth would anyone, including the DSD or HPC, engage in fundraising before they had an agreement? It's complete nonsense. To further justify their position, the DSD secured an inflated estimate for the renovation, according to experts in historic renovation. Regardless, various community members still come forward and expressed their willingness to provide volunteers and funds for the proposed reuse, outside of DSD's coffers, to save the Sugarbowl.

As I sat in the hearing, I was frustrated with the legal rules of this motion. The Judge didn't get to hear how all of the tennis facility's designs incorporated the Sugarbowl, so how could the DSD claim it did not know there was an agreement to keep it? If there wasn't such an agreement, why had they not torn down the Sugarbowl when they demolished the rest of the buildings? The DSD was accounted for in all the minutes and documentation regarding the agreement.

Meloy was able to present documentation that, prior to a "useable" plan ever being presented, the DSD sought permits from the State's environmental agency for asbestos removal (required if a building is to be demolished and stated as the purpose of the permit on the permit application), as well as demolition bids from area contractors. Where is the good faith in those actions? Their minds were clearly made up in this matter and they were just going through the motions.

Hopefully, the court will discern such arrogance on behalf of the DSD through the briefs submitted by both attorneys. More importantly, it demonstrates the "spirit" in which the DSD participates with the community on issues of contention—as if the DSD rules, regardless of laws, ethics, or public sentiment.

But the real horror will occur if the DSD's Motion for Summary Judgment is granted and the Sugarbowl is torn down, leaving no facility in place for drinking fountains, restrooms or shelter from weather for students who play on the courts. They will have to cross Harrison, a four-lane

U.S. Highway with no traffic signal at any nearby corners, to seek such necessary accommodations. Demand for such convenience will eventually lead to the construction of some tin shack to accommodate these most basic needs. Residents will look back and realize how perfect the Sugarbowl would have been for such a reuse, and how cost effective to repurpose the building, not to mention the ill will that could have been avoided if the DSD had been even a little forward-thinking. But this suit has never been about the students' well-being. It has been about DSD egos run amok, strongly resembling vindictiveness and arrogance as the real core issue here.