

**BISMARCK BOARD OF ADJUSTMENT  
MEETING MINUTES  
NOVEMBER 4, 2010**

The Bismarck Board of Adjustment met on November 4, 2010 at 4:00 p.m. in the 2<sup>nd</sup> Floor Conference Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. Board members present were Chair Michael Marback, Blair Ihmels, Jennifer Clark, Ken Heier, and Jeff Ubl.

Members absent were Dean Conrad.

Staff members present were Gregg Greenquist (Planner).

Others present were Charlie Whitman, City of Bismarck Attorney.

**MINUTES**

Chair Marback asked for consideration of the October 7, 2010 minutes.

**MOTION:** A motion was made by Mr. Ubl and seconded by Mr. Heier to approve the minutes of the October 7, 2010 meeting as presented. With all members voting in favor, the minutes were approved.

**GUEST SPEAKER-CHARLIE WHITMAN**

Chair Marback stated there were no applications that had been received, and therefore, no further action items on the agenda to address. He then introduced Charlie Whitman, Attorney to the City of Bismarck, who would be speaking to the members of the Board of Adjustment.

Mr. Whitman began by saying many of the legal aspects involving the Board of Adjustment, such as property owner notification and public notification of meetings to comply with the open meetings requirements, are taken care of by the Planning Department. However, one issue that directly affects the Board members is that of taking a roll call vote. When voting on any substantive issue before the Board, such as granting or denying a variance, a roll call vote is required. Names of individual Board members must be called in random order and their votes recorded. However, when doing a procedural motion, for instance, motions regarding meeting minutes or one member modifying another member's previous motion, voting can be done by assent, rather than a roll call vote. An easy way to discern whether a roll call vote is necessary, is to know that a roll call vote is required any time a third party is affected.

Mr. Whitman then identified certain meeting procedures to ensure sound information can be provided to the Bismarck Board of City Commissioners in case any decision by the Board of Adjustment is appealed. He explained it has become very important for administrative boards under governmental bodies to support their decisions with formalized findings. Without the support of findings, an appealed decision is easily dismissed by the court on the grounds of being arbitrary and capricious. Even if a motion is made amid much discussion, and the discussion is included in the minutes, if the findings are not sited, or the motion actually goes against the findings and no new findings are provided, the decision becomes virtually impossible to support from a legal standpoint later on if appealed. He referenced the written findings provided on

every staff report, stating that the findings can be modified at the time of a motion to support the motion made. He noted that there has been a statute change in the last couple years that mandates written findings must be used by planning commissions or their decisions will be reversed. Mr. Whitman added that many appeals do not go beyond the City Commission and the Commissioners are not as deeply involved (as the members of the Board of Adjustment) in each appeal considered, instead, relying mostly on the information provided them through the minutes and staff reports. Therefore, it is important to provide the Commissioners with clear yet substantial supporting factors for the Board's action so that the Commissioners have the proper information on which to base their decision.

Mr. Whitman emphasized the ordinance (regarding variances) is very strict, leaving very little opportunity to grant variances. However, it does allow some adjustment from the strict application of the ordinance, as stated within the ordinance. Because of this, if there is a rational basis for decisions made, those decisions are relatively easy to uphold, but that is why it is important to articulate that rationale in how the statute is applied.

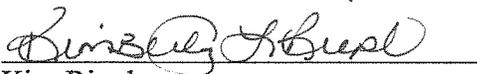
Mr. Ihmels asked if the public has an option in appealing a decision made by the Board. Mr. Whitman stated a decision can be appealed only by an interested party, a building official or a city official. He clarified by reading (14-06-03.3) from the ordinance, "...may be appealed to the board of city commissioners by either the aggrieved applicant or by any officer, department, board, or bureau of the city..."

The issue of setting precedent was discussed at length. Mr. Whitman ultimately cautioned the Board in this area, restating the fact that the (variance) ordinance is very specific in what a variance applies to, and application for a variance does not automatically grant relief to the applicant from city code. He stated that if city code seems too restrictive, an ordinance can be changed, the process takes about a month; but variances cannot be granted loosely.

## ADJOURNMENT

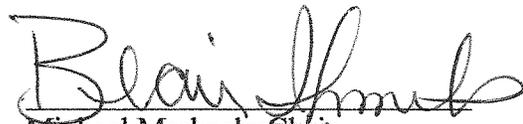
There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on December 2, 2010.

Respectfully Submitted,



Kim Riepl  
Recording Secretary

APPROVED:



Michael Marback, Chair

Blair Ihmels