

MINUTES
WINDSOR BOARD OF ADJUSTMENT
February 25, 2010

Chairman Danny Horner called the Windsor Board of Adjustment meeting to order at 7:00 p.m. and called for roll. The following members were present: Richard Conard, Mary Ann Baak, Sherry Carey and Cathy Broida. Director of Planning Joseph Plummer, Chief Planner Scott Ballstadt and Town Attorney John Frey were also present. Alternate Board member Chris Morgan was present in a non-voting capacity, and special counsel to the Board Greg Bell was also present.

See attached attendance sheet.

STATEMENT OF DOCUMENTS TO BE ENTERED INTO THE RECORD

Chairman Horner stated that he enters into the record the Town's Comprehensive Plan, the Town's Zoning Ordinance, the staff report regarding the action items of this hearing, and all of the testimony received at this hearing.

PUBLIC INVITED TO BE HEARD

There was no public comment.

APPROVAL OF THE MINUTES OF JANUARY 28, 2010

Chairman Horner asked for a motion to approve the January 28, 2010 minutes. Mr. Conard then made a motion to approve the minutes of January 28, 2010 as presented. Ms. Broida seconded the motion. Motion carried unanimously.

ADOPTION OF BOARD OF ADJUSTMENT APPEALS RULES OF PROCEDURES FOR APPEALS UNDER THE 2006 INTERNATIONAL PROPERTY MAINTENANCE CODE – JOHN FREY, TOWN ATTORNEY

Mr. Frey noted that item number seven on the agenda will not be an executive session. Mr. Frey explained that the Town philosophy has been to do business in public and feels that this item should be discussed according to the town philosophy.

Mr. Frey stated that he did not have much to add to the rules and procedures but would like to answer questions that the Board might have.

The Board discussed the first rule which talks about the quorum and having two-thirds of five voting members voting one way or the other. The Board also discussed item number fourteen and when the decision will be made for the appeal hearing. Mr. Frey discussed that it will most likely happen the night of the hearing and a document will be ready within 15 days stating what the ruling is, and regulations that go with the ruling. The Board discussed having limitations on the testimonies and lawyers comments but also needing to make sure that everyone has time to be heard.

ADOPTION OF BOARD OF ADJUSTMENT APPEALS RULES OF PROCEDURES
FOR APPEALS UNDER THE 2006 INTERNATIONAL PROPERTY MAINTENANCE
CODE – JOHN FREY, TOWN ATTORNEY (CONT'D)

The discussion continued regarding swearing in witnesses and how the rules and procedures allow for some flexibility regarding swearing in as a group versus individually. The Board and staff continued to discuss the lawyers opening and closing statements and why these are not to be considered evidence. The Board and Mr. Frey discussed that these rules need to be in place for the IPMC appeal and that once they are adopted they will be in place for any other appeals for the IPMC.

Mr. Frey stated that the role of the Board in this type of hearing is to act as a collective judge and make a ruling on the evidence that both sides have presented.

Based upon staff recommendation of making motions in the affirmative, Ms. Carey made a motion to approve Rules and Procedures for Appeals Under the 2006 International Property Maintenance Code. Second by Ms. Broida. Motion carried unanimously.

COMMUNICATIONS FROM THE BOARD OF ADJUSTMENT

There were no communications from the Board.

COMMUNICATIONS FROM THE STAFF

Mr. Plummer suggested that the Board consider appointing an acting secretary to sign the rules and procedures that were adopted earlier in the meeting since the Secretary to the Board Mr. Fanning was not present and the adopted rules and procedures needed to be published and sent to the attorneys who will be present at the upcoming hearing as soon as possible.

Mr. Conard made a motion to nominate Ms. Baak as the secretary pro-tem. Second by Ms. Carey. Motion carried unanimously.

PRESENTATION ON THE LEGAL PROCESS PERTAINING TO APPEALS – GREG BELL, SPECIAL COUNSEL TO THE BOARD OF ADJUSTMENT

Mr. Greg Bell stated that his job is to act as the Board's counsel in the judicial capacity. Mr. Bell stated that the Board's decision has to be based solely on the evidence that is presented at the hearing and not based on expertise or anything else that may be known outside the hearing. Mr. Bell explained to the Board the three things they should be considering during the hearing:

1. The true intent of the code has been incorrectly interpreted by the code enforcement officer.
2. The provision of the code does not fully apply to the situation.
3. The requirements of this code are adequately satisfied by other means.

PRESENTATION ON THE LEGAL PROCESS PERTAINING TO APPEALS – GREG BELL, SPECIAL COUNSEL TO THE BOARD OF ADJUSTMENT (CONT'D)

Mr. Bell continued to discuss the IPMC and advised the Board that if either of the legal representatives at the hearing requests postponement because there is not a full Board present to go ahead and postpone although the quorum is only four members. Mr. Bell stated that staff is taking care of many of the requirements such as proper posting of the meeting. Mr. Bell continued stating that the Chair should have some ability to override any of the rules during the hearing. Mr. Bell stated that this is because we cannot foresee the future and something may come up that wasn't thought of ahead of time.

Mr. Bell discussed that the Board may want to debrief after the meeting to see how they thought the rules worked and discuss possible ways to amend the rules and procedures. Mr. Bell discussed strict rules of evidence and that the Board is to make a decision with their best judgment of what is presented as evidence. Mr. Bell discussed deliberating in public and when the decision may be made and continued by explaining that he will prepare the findings after the decision has been made. Mr. Bell also stated that the Board may authorize the Chair to approve the written findings.

Mr. Bell stated that if any member of the Board feels that he or she has a conflict pertaining to the applicant or the business that that the member should excuse himself or herself from the hearing.

The Board, Mr. Bell, Mr. Frey and staff also discussed what will happen the night of the hearing and the order in which business should be conducted.

ADJOURNMENT

Mr. Conard made a motion to adjourn the meeting. Ms. Broida seconded the motion. Motion carried unanimously.

There being no further business, the meeting was adjourned at 7:55 p.m.

CERTIFICATION

Approved by the Windsor Board of Adjustment on the 25th day of March 2010.

Submitted By: 

Joy Liberty-Anglado
Recording Secretary