

Town of La Pointe
Zoning Board of Appeals Meeting Minutes
Thursday, June 10, 2010
5:00 PM

Board of Appeals Members Present: Mike Starck, Chair; William Tibble, Paul Brummer, Thomas Nelson, Warren Anderson (5).

Board of Appeals Members Absent: none.

Public Present: Charlie Brummer (1).

Town Staff Members Present: Margaretta Kusch, ZBOA Secretary (1).

I. Call to Order/Roll Call

Chair Starck calls the meeting to order at 5:00 pm at the Town Hall. Roll call reflected members present or absent as recorded above.

II. Approval of Previous Meeting Minutes:

1. Zoning Board of Appeals Meeting, May 13, 2010

P. Brummer moves to approve the Zoning Board of Appeals meeting minutes of Thursday, May 13, 2010 as presented. W. Tibble seconds. All in favor, 5 aye. Motion Carries.

III. Determine why Mike Fauerbach's presence at the April 15, 2010 BOA meeting was deemed to be for educational purposes

T. Nelson received a bill of Mr. Fauerbach's time working for the Town of La Pointe after submitting a public information request to the Zoning Administrator. The bill does not show a breakdown of Mr. Fauerbach's time spent on the Board of Appeals, just a delineation of the time he worked for the Board of Appeals in general versus other matters for the Town of La Pointe.

A discussion ensues regarding this itemization as to whether it is detailed enough or if the Board should request further itemization from Mr. Fauerbach. M. Starck and W. Tibble feel that the bill is sufficiently itemized. T. Nelson wants to see a breakdown of the time Mr. Fauerbach spent on Board of Appeals matters to see how much was general advice, and how much was for the Woods appeal, the C.A. Nelson variance, and educational purposes. M. Starck feels that his presence at the meeting was educational.

P. Brummer asks why Mr. Fauerbach was called after the C.A Nelson variance was decided on. M. Starck responds that he called Mr. Fauerbach to make sure that the decision was written correctly in order to stand up in court.

M. Starck further states that at the August 14, 2007 meeting of the Town Board, the following motion was made under agenda item *"Zoning Board of Appeals attorney assistance and/or attendance: The Town Board spoke of the wisdom of having an attorney at actual hearings and/or meetings and the consensus was that having and attorney present would be cost effective to do so and indeed, the chair is encouraged to do so. M. Starck moves, J. Patterson seconds, to authorize the chair of the Zoning Board of Appeals to have authority to contact a town attorney in matters of appeals. All in favor, 5 aye. Motion Carries."*

T. Nelson states that he doesn't think anyone feels it's a bad idea for the chair to have authorization to contact or call in an attorney. He does think that it would be a good idea to discuss doing so with the committee beforehand.

W. Anderson states that what was educational was that the Board members should have arrived at meetings prepared ahead of time, without needing the presence of a town attorney to answer questions.

T. Nelson moves that this committee ask the billing department at Fauerbach and Martell to supply an itemized bill of the work it has done for the Board of Appeals so far in 2010, making particular note of the following four categories: general, educational, Woods appeal, C.A. Nelson variance. P. Brummer seconds.

W. Tibble feels that this is not necessary. M. Starck feels that the motion should specify that the request should be done at no extra cost.

T. Nelson amends his motion to specify that the bill be supplied at no additional cost. P. Brummer seconds T. Nelson's amended motion. All in favor, 5 aye. Motion Carries.

IV. Set BOA policy on how items are to be placed on agendas

T. Nelson moves that on all future agendas of this board we have an agenda item posted that says "Future Agenda Items" right before "Adjournment." P. Brummer seconds. All in favor, 5 aye. Motion Carries.

The following procedures are also to be adopted:

- Any pertinent agenda topic proposed during a meeting is to be noted in "Future Agenda Items" and added to the next meeting's agenda.
- Any board member may submit future agenda items in writing to the recording secretary up to four (4) days prior to agenda posting.

V. Discuss the Bayfield County Board of Adjustment Rules and Procedures document, especially as it applies to the conflict of interest between BOA members and variance applicants (Starck and C.A. Nelson estate)

The Board of Appeals discusses two documents: the Bayfield County Board of Adjustment Rules and Procedures and the Standard Operating Procedures Resolution of the Town Board, currently in draft form.

W. Anderson states that he doesn't feel that this is necessary, as the Board of Appeals is governed according to state statutes.

M. Starck points out that the Town of La Pointe Zoning Ordinance already has Section 10.0, which governs the Board of Appeals. He feels that if any board member feels that there should be changes or additions to this section they should present their suggestions to the Town Plan Commission at one of their Zoning Ordinance Revision Project workshops or meetings.

C. Brummer notes that any input regarding Section 10.0 should be passed on to the Town Plan Commission sooner than later as the Zoning Ordinance Revision Project will be completed soon. He feels that such input would be valuable.

T. Nelson and W. Tibble feel that it would be worthwhile to look over the Bayfield County document, as there are some basic but sound and informative ideas in it.

P. Brummer asks if the Board of Appeals currently has by-laws. He states that the Town Plan Commission does have by-laws (that don't cover the Board of Appeals), but that they are virtually impossible to enforce. He feels that the Board of Appeals should have by-laws regardless.

T. Nelson asks if the board members feel they should work together or separately to provide input to the Town Plan Commission. P. Brummer feels it should be as a unit, perhaps at another meeting.

M. Starck doesn't feel that the Board of Appeals should have another meeting for this.

W. Anderson does not want to create any more rules. He feels that being governed by state statutes is enough, as any law created by local government can be overruled by state statute.

T. Nelson moves that the board send a communication to the Town Board asking if they would like the Board of Appeals to participate in their ongoing attempt to create the Standard Operating Procedures document.

T. Nelson withdraws the above motion.

The subject of conflicts of interests is next discussed.

T. Nelson feels that there has been at least an appearance of a conflict of interest during this year's Board of Appeals procedures. He feels that there is a chain of events that give that appearance. Greg Nelson actively sought M. Starck out to be on the Board of Appeals, who then became the chair. M. Starck sought attorney advise on the C.A. Nelson variance (of which Greg Nelson is representative) and the attorney advised the board to revisit its decision denying the variance.

M. Starck feels that if there is any conflict of interest, it would be on Greg Nelson's part, and points out that most members of the Board could be shown to have a conflict of interest regarding the C.A Nelson variance, as T. Nelson is related to Greg Nelson and P. Brummer abstained due to his conflict of interest regarding business with Tom and Marcy Woods.

W. Tibble feels that Board members who knew they had a potential conflict of interest should have recused themselves and found an alternate at the start of the proceedings.

W. Anderson adds that if someone feels they might have a conflict of interest, they should not even participate in any discussion, as well as recusing themselves.

P. Brummer said he was unsure if there was a conflict, and didn't make the decision to abstain until at the meeting where the decision was voted upon. To avoid this in the future he suggests that one or both alternates attend the public hearing instead of being dismissed by the chair. He doesn't feel that he did anything wrong by abstaining; if he was unable to attend the decision meeting due to a medical emergency it wouldn't have changed the outcome.

T. Nelson states that any ex-parte communication should be disclosed to the board at the earliest instance.

VI. Adjourn.

P. Brummer moves to adjourn. W. Tibble seconds. All in favor, 5 aye. Motion Carries. Meeting ends at 6:40 pm.

Draft Zoning Board of Appeals Minutes respectfully submitted by ZBOA Secretary, Margaretta Kusch, on Sunday, June 13, 2010.

Board of Appeals minutes approved as amended by ZBOA M. Kusch on Thursday, October 13, 2011.