

BOARD OF ADJUSTMENT MEETING MINUTES
September 13th, 2013

OPENING CEREMONIES AND PRESENTATIONS

I. CALL TO ORDER

Chairman Larry Bares called the meeting to order at 7:30 AM. Commissioner Dukart arrived at 7:33 AM.

II. ROLL CALL

PRESENT: Larry Bares, Blaine Dukart, Scott Bullinger, Pat Bren and Trevor Ernst

ABSENT:

STAFF: Ed Courton, Community Development Director and Matt Kolling, City Attorney

III. MINUTES

Minutes of the July 8th, 2013 meeting submitted for approval.

MOTION BY: Pat Bren **SECOND:** Scott Bullinger

To approve minutes of the July 8th, 2013 meeting with correcting a few typing errors.

DISPOSITION: Motion carried unanimously. Commissioner Dukart absent.

REGULAR AGENDA

1. TO CONSIDER A REQUEST TO INCREASE THE MAXIMUM HEIGHT OF A FENCE WITHIN A REQUIRED STREET SIDE YARD FROM 4 FEET TO 6 FEET FOR A PROPERTY LOCATED AT 1508 GRASSLANDS DRIVE.

Mitch Gilseth requested a variance to raise the height of the fence for more privacy and safety for his child. Mr. Gilseth lives off of 15th Street West, which is a busy street.

Community Development Director, Ed Courton recommended approval as long as the fence is located outside of the City's right-of-way. Mr. Courton stated at this time, there is no fence permit; however, the City of Dickinson will start requiring a fence permit on October 1, 2013. A letter of opposition was sent to the Board of Adjustment Commissioners from Ron and Eileen Will.

MOTION: Blaine Dukart **SECOND:** Scott Bullinger

Motion to approve the variance request and that the fence shall be located outside of the City's right-of-way.

DISPOSITION: Motion carried unanimously

2. TO CONSIDER AN APPEAL OF THE COMMUNITY DEVELOPMENT DIRECTOR'S DECISION RELATING TO PROHIBITING OFF-PREMISE SIGNS.

Patrick B. Kenney, attorney at law, represented an appeal by Newman Signs, Inc. Mr. Kenney summarized the Newman Signs, Inc. position which is outlined in Appendix A (see attached).

Community Development Director, Ed Courton countered Mr. Kenney's claims. Mr. Courton explained the difference of on-premise and off-premise signs – See Section 39.10.002 & 004. Though off-premise signs are not defined, it is logical to presume it is the opposite of on-premise. Under the sign section referring to "Rules and Regulations Relating to Advertising Adjacent to the Interstate and Federal Aid Primary Highways" Mr. Courton stated that it was necessary to reference this provision for existing signs along the highway, as it dealt with additional sign regulations more stringent than the City's sign regulation, such as a prohibition of amortization of existing signs, unless a local jurisdiction pays the cost of the sign to remove it. In addition, Mr. Courton stated the definition of "on" as challenged by the applicant's attorney; why the City hasn't enforced off-premise sign regulations due to staff shortage and priorities; and why the City didn't send a formal letter of denial in sufficient time. The latter issue was due to several staff conversations with the Newman sign representative and Mr. Newman himself. Staff didn't feel a need to officially notify the applicant when there were several conversations with staff members. Mr. Courton strongly recommended that the Board support his interpretation of the Dickinson Municipal Code and deny the applicant's appeal of the Community Development Director's decision.

City Attorney Matt Kolling stated that on-premise signs can also advertise and provide identification, like a gas station. A gas station sign can advertise the price of gas and can also provide name of the store. Mr. Kolling stated that the billboard application is clearly a pole sign. A pole sign must be on-premise and not off-premise.

Chairman Bares asked what the time frame was for the board to make a decision. Mr. Kolling stated the Board has 30 days to make their decision.

Mr. Kenney stated that Newman Signs has not sued the city. All that Newman Signs have done at this point is appeal the decision that was made by Community Director Ed Courton. Mr. Kenney stated that Mr. Courton didn't feel that it was necessary to follow the written procedure of a written denial. The code states once the applicant has applied then either the application must be approved or denied, if the application is denied then the written denial needs to

be in writing within 10 days. Mr. Kenney stated the Board has the obligation to read the ordinance as a whole.

Mr. Bullinger asked if there is any penalty for the City of Dickinson for not following Code regarding the written denial. Mr. Kolling stated that the Code is silent with regard to penalties.

MOTION: Blaine Dukart

SECOND: Trevor Ernst

To reject the appeal and confirm the decision of the Community Director Ed Courton.

DISPOSITION: Motion carried unanimously

OTHER BUSINESS

1. **ADJOURNMENT**

There being no further business to discuss.

MOTION BY: Pat Bren

SECOND: Scott Bullinger

Motion to adjourn meeting at 8:49 am

DISPOSITION: Motion carried unanimously

PREPARED BY:

Melissa Gjermundson

APPROVED BY:

Ed Courton