

2 The Lindon City Board of Adjustments held a meeting on **Wednesday, May 27, 2015**
beginning at 6:00 p.m. in the Lindon City Center, Lower Level Conference Room, 100
North State Street, Lindon, Utah.

4 **Conducting:** Jeff Southard, Chairperson

6 **PRESENT**

8 Jeff Southard, Chairperson
Glenn Mitchell, Boardmember
10 Jeff Wilson, Boardmember
Hugh Van Wagenen, Planning Director
12 Jordan Cullimore, Associate Planner
Kathryn Moosman, City Recorder

ABSENT

Steve Smith, Boardmember
Greg Slater, Boardmember

14 The meeting was called to order at 6:03 p.m.

16 **APPROVAL OF MINUTES** – No minutes were reviewed at this meeting.

18 **CURRENT BUSINESS** –

- 20
- 22 **1. Training presented Brent Bateman: Training – Law of Variances & Standard of**
Review for Land Use Appeals: Brent Bateman of the Office of the Utah Property
Rights Ombudsman will conduct a training session with board members in which
24 he will discuss the law of variances and the standard of review for land use
appeals in Utah.

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Brent Bateman, with the Office of the Utah Property Rights Ombudsman, was in
28 attendance to conduct a training session with board members. He discussed the law of
variances and the standard of review for land use appeals in Utah.

30 Mr. Bateman mentioned his impression is that Lindon City is pretty consistent as
they have only been sued once. Mr. Van Wagenen then referenced the criteria that the
32 Chairperson reviews with the Board in reviewing a variance. Mr. Bateman also went
over the list of criteria. Mr. Bateman stated variances should be extraordinarily hard to
34 get (1 out of 20) should be granted. The Utah ethic is to look at the spirit of the law and
not the essence of the law. Mr. Van Wagenen asked if we go case by case does that ethic
36 apply. Mr. Bateman stated if you didn't follow the criteria and you give a variance and
the next applicant came in should they get the variance or should you follow the criteria;
38 you always follow the criteria. He noted that if the last time was illegal and you do it
again you don't fix an illegal by remaining illegal. He added it doesn't matter if you
40 granted the variance to a lot of people, if they don't meet the criteria they don't meet the
criteria, plain and simple.

42 Mr. Bateman pointed out when you don't follow the criteria you may make the
neighbors unhappy but you are following the law. Mr. Bateman stated there is an element
44 of subjectivity and he feels that criteria number two is the first to look at as there are
special circumstances attached to the property that do not apply to other properties
46 because it is less subjective and more objective.

2 Mr. Bateman added that with criteria number three the applicant has to be
3 deprived of something everyone else gets. He explained that the whole idea of a variance
4 is to prevent regulatory taking away property rights which is the whole point of a
5 variance; you have to be able to build what others can reasonably build and not deprive
6 them of what everyone else gets. He suggested thinking in terms of the taking; if we
7 enforce our rules is the applicant going to be deprived of something that he would
8 otherwise get and have a property right taken away; this is when you can consider a
9 variance. He stressed that variances are meant to protect people. He added that criteria
10 number one is where most variances get denied. He also stressed that you can never give
11 a use variance, ever!

12 Mr. Bateman then mentioned the definition of unreasonable hardship. He noted it
13 is the key and it means it has to be a severe hardship not just inconvenient. He explained
14 the substantial evidence on the record it is not arbitrary or capricious, so when it goes to
15 appeal there must be evidence and if there is more than a scintilla in the record they will
16 not substitute their conclusion. He would also suggest to never have a public hearing (not
17 a public meeting) but there is an advantage but to also be careful of evidence and clamor
18 as evidence can be considered but not followed with due process etc.; it can be a risk or
19 cause problems.

He noted that due process = notice + the opportunity to be heard.

- 20 • Evidence (applies and is fact) and clamor
- 21 • Make sure due process is protected religiously

22 Special circumstances:

- 23 • Must relate to the hardship
- 24 • Must deprive the owner of privileges granted to other properties in the same zone

26 Mr. Bateman went on to say that your job is to interpret the law and the public is
27 not a part of that. Mr. Bateman also spoke on appeals. They eliminate public hearings
28 from appeals and can be brought by any number of people and any adverse party can
29 appeal. They then take the appeal and see if the law was properly applied.

30 Mr. Bateman stated that criteria number four is second to the list of subjectivity
31 and criteria number five is the last, but you can still say no on number five. You want
32 evidence of what the spirit of the ordinance is. Mr. Bateman stated if you don't find the
33 special circumstance then go from the most objective to least objective.

34 Mr. Bateman then discussed the following bullet points followed by discussion.
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36 Variances:

- 37 • Variance runs with the land.
- 38 • Can impose conditions to mitigate any harmful effects.
- 39 • An appeal authority cannot grant a use variance and allow a use that is otherwise
40 prohibited.

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42 Notice and hearing:

- 43 • Give applicants a hearing and a chance to make their case.
- 44 • Give applicants the public and any parties directly affected notice of any hearings.

- Allow applicants affected parties and the public an opportunity to speak and present evidence.

4 Due Process

- Follow and applicable existing law.
- Disregard public clamor.
- Don't be afraid to say no but don't be afraid to say yes.

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10 Mr. Bateman stated that you, as a Board, are the judicial branch of the city and to
12 always disclose potential conflicts. He noted that appeals of decisions must be filed
14 within 30 days. Mr. Bateman concluded by stating this has been a good conversation and
he feels he doesn't have to worry about Lindon City. He noted if the city gets an appeal
he will come and give training on appeals but he thinks Lindon is a well-run city with a
desire to do the right thing.

16 **ADJOURN**

18 BOARDMEMBER WILSON MOVED TO ADJOURN THE MEETING AT 7:25
20 P.M. BOARDMEMBER MITCHELL SECONDED THE MOTION. ALL PRESENT
VOTED IN FAVOR. THE MOTION CARRIED.

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24 Approved – January 7, 2016

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Jeff Southard, Chairperson

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Hugh Van Wagenen, Planning Director