

**OPEN RECORDS AND MEETINGS OPINION  
2003-O-18**

DATE ISSUED: November 3, 2003

ISSUED TO: Minto Planning and Zoning Committee

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Sue Tibert asking whether the Minto Planning and Zoning Committee violated N.D.C.C. § 44-04-19 by holding a secret meeting and N.D.C.C. § 44-04-21 by not taking proper minutes.

**FACTS PRESENTED**

In a July 9, 2003, letter to the Minto Planning and Zoning Committee chairman, Sue Tibert requested a copy of the minutes of the June 24, 2003, Planning and Zoning Committee meeting. Instead of minutes, Ms. Tibert received a copy of an application for a building permit that was discussed during the June 24, 2003, meeting. According to the city attorney, Nicholas Hall, no minutes were kept of the June 24, 2003, Planning and Zoning Committee meeting.

The building permit Ms. Tibert received was signed by six committee members. One of the committee members who signed the permit had not attended the June 24, 2003, meeting at which the permit was approved.

Ms. Tibert alleges that the Planning and Zoning Committee held a meeting to have the absent committee member sign a building permit sometime after the June 24, 2003, committee meeting. When asked to provide information to this office regarding whether a meeting had been held some time after June 24, 2003, the City Attorney explained that on June 25 a committee member who was absent from the June 24 meeting stopped by the committee chairman's office to sign the permit.

**ISSUES**

1. Whether the Minto Planning and Zoning Committee violated N.D.C.C. § 44-04-21(2) by not taking proper minutes of an open meeting.
2. Whether the Minto Planning and Zoning Committee violated N.D.C.C. § 44-04-19 when a committee member signed a permit in the committee chairman's office.

## ANALYSES

### Issue One

“Minutes must be kept of all open meetings and are records subject to section 44-04-18.” N.D.C.C. § 44-04-21(2). The minutes must include, at a minimum:

- a. The names of the members attending the meeting;
- b. The date and time the meeting was called to order and adjourned;
- c. A list of topics discussed regarding public business;
- d. A description of each motion made at the meeting and whether the motion was seconded;
- e. The results of every vote taken at the meeting; and
- f. The vote of each member on every recorded roll call vote.

Id. As discussed in the “FACTS PRESENTED” portion of this opinion, no minutes were taken of the Planning and Zoning Committee meeting. It is my opinion that the Committee violated N.D.C.C. § 44-04-21(2) by failing to take minutes of the June 24, 2003, meeting.

### Issue Two

A “meeting” means a formal or informal gathering, whether in person or through other means such as telephone or video conference of a quorum of the members of the governing body of a public entity regarding public business. N.D.C.C. § 44-04-17.1(8)(a)(1). A “quorum” means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity. N.D.C.C. § 44-04-17.1(14).

As stated in the “FACTS PRESENTED” portion of this opinion, a committee member who was absent from the previous meeting stopped by the office of the committee chairman to sign a building permit. In a previous opinion regarding on-site investigations by individual water resource district board members, this office discussed the conduct an individual member of a governing body may engage in without running afoul of N.D.C.C. § 44-04-19:

Individual Board members are generally not prohibited from gathering information on their own or from talking to another Board member, even regarding public business. However, there is a threshold at which multiple conversations (in person or over the telephone) on a particular subject, each involving two or three Board members, collectively involve enough Board members (a quorum) that the conversations have the potential effect of forming consensus or furthering the Board’s decision-making process on that subject. At the point the conversations on a particular subject collectively

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involve a quorum of the Board, the "quorum rule" is satisfied and the topic of discussion must be considered.

N.D.A.G. 98-F-16. See also N.D.A.G. 2001-O-18 (a discussion involving two members of a five member board is not a quorum and therefore is not a meeting).

In this case, the committee member came to the office merely to sign the building permit. There was not a quorum of the committee present. Therefore, it is my opinion that an individual committee member signing a permit at the Chairman's office is not a meeting.

CONCLUSION

1. It is my opinion that the Minto Planning and Zoning Committee violated N.D.C.C. § 44-04-21(2) by not keeping minutes of its June 24, 2003, meeting.
2. It is my opinion that the Minto Planning and Zoning Committee did not violate N.D.C.C. § 44-04-19 when a committee member signed a permit in the office of the committee chairman.

STEPS NEEDED TO REMEDY VIOLATION

The Planning and Zoning Committee must create minutes of the June 24, 2003, meeting that comply with N.D.C.C. § 44-04-21(2). A copy of the minutes must be provided to the requester, Sue Tibert, free of charge.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2. N.D.C.C. §44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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